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TELEVISION INQUIRY

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

SECOND SESSION

PURSUANT TO

Senate Resolutions 13 and 163

AUTHORIZING INVESTIGATIONS OF CERTAIN PROBLEMS RELATING TO INTERSTATE AND FOREIGN COMMERCE

(Including testimony on S. 825, by Mr. Bricker, to authorize the Federal Communications Commission to establish rules and regulations and make orders with respect to networks and their activities)

JANUARY 26, FEBRUARY 7, 20, AND 21, 1956

PART I

UHF-VHF ALLOCATION PROBLEM

Testimony of Federal Communications Commission

Printed for the use of the Interstate and Foreign Commerce Committee

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TELEVISION INQUIRY

(UHF–VHF Allocation Problem)

THURSDAY, JANUARY 26, 1956

United States Senate,
Committee on Interstate
and Foreign Commerce,
Washington, D. C.

The committee met, pursuant to call, at 10:15 a. m., in room G–16, United States Capitol, Hon. Warren G. Magnuson (chairman) presiding.

Present: Senators Magnuson, Pastore, Bible, Bricker, Schoeppel, Purtell, and Payne.

The Chairman. The committee will come to order.

I was going to wait a little longer, because there are several other Senators who are going to be present. However, in view of the fact that Mr. McConnaughey does have a lengthy statement, I think we could get started and get through most of it. The other Senators have been furnished with a copy.

But before we start, the Chair would like to make a short statement which merely sums up the matter before the committee. There has been a lot said by members of the committee and other Senators regarding this whole matter, but I do want to have this in the record.

I first want to announce that this is the first of a series of hearings which the Senate Interstate and Foreign Commerce Committee plans to hold during the next few weeks. Actually, of course, these hearings are not completely new, but are intended to carry on the work previously done in this field by the Subcommittee on Communications and by our committee staff over the last almost year and a half.

As most of us will no doubt recall, extensive hearings, for instance, were held on the status of UHF television and on multiple ownership of television stations, in May and June of 1954 by the Subcommittee on Communications under the chairmanship of Senator Potter, of Michigan.

Those hearings, in part at least, related to Senate bill 3095, which was introduced in the 83d Congress by Senator Johnson, of Colorado, the former chairman of this committee, and related to the multiple ownership of television stations.

Thereafter, the full committee decided to institute a study of the entire broadcasting field, and Robert F. Jones and Harry Plotkin

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Note.—Staff Members assigned to this hearing: Kenneth A. Cox and Wayne T. Geissinger, special counsel; Nicholas Zapple, communications counsel.

were designated as majority and minority counsel, respectively, for that investigation.

They submitted separate reports in February of 1955 which were immediately forwarded to the Federal Communications Commission and the Justice Department for comment and suggestions.

Since that time, members of the committee and its staff have met with representatives of the manufacturers of television sets and tuners in an effort to encourage stepped-up production on all-channel sets. Toward that same end, the Senate Finance Committee was urged to eliminate the excise tax on such sets.

During the same period, the Communications Act of 1934 has been under study by former Senator C. C. Dill, who was then chairman of this committee briefly and probably had more to do with drawing the original act than any other one man. He has concluded that perhaps minor improvements could be made in the provisions of that act, but that the solution of the pressing problems in the television field are not to be found in mere refinement of the language of the existing statute. In other words, television came on later, after the act was written.

The committee has also established an ad hoc committee of outstanding radio and television engineers under the chairmanship of Dr. Edward Bowles, of MIT, which is working on the technical aspects of television allocation and the UHF problem.

Likewise, the FCC has been given an appropriation of $80,000 in this year's budget to finance a study of the networks and of the economics of the broadcasting industry. It so happens that the chairman of this committee is chairman of the Subcommittee on Appropriations for the FCC, too. So I sort of wear two hats in this matter.

With this by way of background, we are ready to proceed with today's hearing, and I want to interpose here that I apologize on behalf of myself and the committee for at least two delays in this matter.

The first delay was occasioned by the early adjournment of Congress at the end of July, and the second delay was caused by the very untimely death of our general counsel.

No hearings were held in the fall because the chairman found that it was most difficult to get together any 1 or 2 Senators to go ahead with this matter from September until the Congress met again.

The chairman of the Subcommittee on Communications, the very able Senator from Rhode Island, Senator Pastore, did evidence a desire to go ahead, but he also encountered complications. The President designated the Governor of Rhode Island to be a member of the General Assembly of the United Nations but he couldn't do it, so Senator Pastore was designated.

Senator Pastore. Very unfortunately.

The Chairman. So he was tied up, and many of us were likewise engaged throughout our own respective districts, but I am sure everybody will understand that situation.

Now, the committee is interested in all problems of radio and television broadcasting which properly fall within its jurisdiction. It is concerned with problems arising out of the operation of networks and has before it Senate bill 825, introduced by the distinguished Senior Senator from Ohio, Senator Bricker, and designed to authorize the FCC to regulate networks.

A copy of S. 825 will be inserted in the record at this point.
(The bill referred to follows:)

[S. 825, 84th Cong., 1st sess.]

A BILL To authorize the Federal Communications Commission to establish rules and regulations and make orders with respect to networks and their activities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Communications Act of 1934, as amended, is amended as follows:

(1) In section 2 (a) after "radio stations" insert "and the regulating of networks".

(2) At the end of section 3 insert the following:

"(ee) 'Network' means any person who operates a system which, for the purpose of simultaneous or delayed broadcasting of identical programs, in any way interconnects or affiliates any two or more broadcasting stations."

(3) At the end of section 303 insert the following:

"(s) Have authority to establish rules and regulations and make orders with respect to networks and such of their activities as affect licensed broadcast stations to operate in the public interest."

The CHAIRMAN. Now, in relation to the ad hoc committee, I conferred most of yesterday afternoon with Dr. Bowles and received an informal account of the work of his committee to date. Quietly, informally, they have done considerable work.

It was agreed then that the committee should be enlarged somewhat to permit it to broaden certain aspects of its study, and this investigation is still in the active stage. It is hoped, and we were assured by the chairman of the committee, that interim recommendations will be forthcoming.

Now, the committee is also deeply concerned, as has been indicated on many occasions, about the problem of the UHF band and deintermixture, set conversions, and other questions relating to a truly national, competitive television system.

It is interested in the FCC's network study, its procedural problems, and what steps have been taken to find solutions to all these problems, with specific attention to what the Commission has done in respect to the recommendations set forth in the Jones and Plotkin reports.

Now, we have invited all the members of the Commission to appear before the committee at this time, and we, of course, have the Chairman as our first witness. He has submitted a statement in advance, and I think the committee appreciates, Mr. McConnaughey, the furnishing of this copy of this statement yesterday morning, I believe it was.

On receipt of the statement yesterday, in conformity, of course, with the provisions of the Legislative Reorganization Act of 1946, I am sure we have all had the benefit of being able to look at it, maybe not as carefully or as closely as we should, but the hearing will bring out many of those points as we move along. So I suppose, Mr. McConnaughey, you could proceed with your general statement, and the other members of the Commission who may have statements could proceed with theirs, not necessarily separately, but maybe independently. I think in view of the number of subjects that are involved in the statement, and the fact that the committee sent a letter to the Commission not too long ago, making inquiry about several of the many aspects of this matter, that you might well go ahead with your statement and the committee members could follow, I am sure, very closely. Then they will probably know more the type of questions they may want to ask you or the other Commissioners when we are through.

I want also to point out—and I have conferred with many members of the committee individually on this matter—that we don't expect, because of the broad and complex aspects of this matter, to go ahead with hearings every single day and conclude them. I am sure that we will get into many subjects and then recess to a time agreeable to everybody, when we can come back and go into specific aspects of this very broad field.

If that is agreeable to the members of the committee, we will proceed in that manner.

Senator PASTORE. Do I understand that it is the desire of the Chairman that the witness not be interrupted until he has completed his statement?

The CHAIRMAN. Well, I was thinking that if he went ahead with his statement, or at least sections of it, the committee might have a better chance to evaluate what the Chairman is about to say, and then the questions could be asked with a better background of his long and detailed statement.

Is that agreeable to the members of the committee? Of course, any committee member may interrupt the witness any time he wishes. That has always been the rule here, and I think it has been quite frequently invoked.

Go ahead, Mr. McConnaughey.

STATEMENT OF HON. GEORGE C. McCONNAUGHEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. McCONNAUGHEY. My name is George McConnaughey. I am Chairman of the Federal Communications Commission.

My colleagues and I value a great deal this opportunity to report to your committee concerning current developments in the dynamic, fast-moving and complex field of television broadcasting.

Not wishing this morning to burden your time or your patience unduly, it was not my intention to read the full text of my prepared statement, which I now submit for your record.

The CHAIRMAN. That will be put in the record in full.

(Full statement will be found at p. 30.)

Mr. McCONNAUGHEY. I hope it will be helpful if I now review with you briefly the highlights of the more detailed questions your committee has directed to the Commission.

I would like first to express the gratitude of the Commission for the most helpful amendment to the statutory requirements on Commission procedure which has now been enacted upon the recommendation of this committee. It may be expected that this amendment to section 309 (c) of the Communications Act concerning hearings and stays in protest procedures will help substantially toward facilitating the prompt, fair, and orderly disposition of protests against Commission decisions.

We are indeed grateful for the way you gentlemen, many of you, helped us out with this new amendment. The television industry, which I understand you are primarily concerned with in this hearing, is a many-faceted complex of station licenses, networks, advertising agencies, producers of shows, manufacturers of equipment, program sponsors, and other elements, all of which play significant roles in bringing the end product of television programing to the screen.

Among all these, only the station licensee is directly subject to Federal communication jurisdiction. All are conducted as competitive enterprises responsive to the same basic economic forces which influence the development of any other competitive industry. I think we must bear that in mind. Moreover, television as a whole competes with other mass media, notably with radio, newspapers, and magazines, for the advertising dollar.

Notwithstanding the important role of the Commission, it will be apparent to the committee that the Commission alone cannot insure the fullest achievement of the ulimate goals of the Nation's television service. Our efforts are concentrated on establishing the basis for television operations which will best facilitate the orderly development and continued expansion of television service in large and small communities over the Nation.

The proble we now face in overcoming hindrances to television's further expansion cannot obscure the impressive and unpredictable strides which have been achieved by television during the brief period since the freeze was lifted in July 1952—108 television stations serving 63 markets have grown during the last 3½ years to over 440 serving 278 communities in outlying areas. As against 23 communities which, in 1952, had 2 or more local stations, there are now 113.

Over 90 percent of the people of the United States receive television service and about 75 percent of the people of the United States are within the range of two or more television stations. The American public has invested no less than $15 billion in 37 million receiver sets. The annual volume in television advertising, receiver sales, and servicing runs close to $3 billion per year.

I was privileged to be in Europe this summer and see and talk to the broadcasting people in the various countries and to see in a comparative light what we have accomplished in this country. I take no credit for it. I have had very little to do with it. But it is a rather imposing record that the United States of America has made in this regard.

The brief facts I have mentioned sketch the picture of a television service well established, and taking impressive strides forward. In fact, the meteoric rise of the industry has, itself, created some of the problems which are of present concern to this Commission and the industry and to this committee.

One crucially important aspect of television broadcasting today is the extent to which the stations depend on the networks for much of their popular programing. I am now coming to the network study. I welcome the invitation to this Commission, as extended to me, to report on the progress of the network study. We at the Commission consider it one of our most important current activities.

As you undoubtedly know, no study has been made of networks since the chain-broadcasting investigation of 1938 to 1941. The rules that grew out of that investigation have been applied without change to a much larger radio industry and to the vital new television industry. Clearly, it is time to study the situation anew.

I am happy to report that the study is well underway. It has been placed under the direct responsibility of Commissioners Hyde, Bartley, Doerfer, and myself. A special network staff comprising 11 highly competent professional personnel has been organized. The staff has already begun study on 3 basic issues described in the Network Study Committee Order No. 1, issued November 21, 1955.

First, whether there is opportunity for effective competition among networks. Two, whether there is opportunity for effective competition between network and nonnetwork organizations. Three, whether changes are desirable in the present relations between networks and affiliated stations. These are important areas for study, since under existing legislation competition, rather than regulation, is depended upon to determine the industry's course of growth.

We are all aware of the importance of the networks to economic health of the broadcast industry. The limited number of networks is of vital concern to us as it may adversely affect competition and the fullest development of the industry. We are, therefore, exploring thoroughly the various economic and other factors which have combined to limit the number of competing networks.

Also, nonnetwork organizations, especially independent program suppliers, state that they are unable to assure advertisers that stations in large communities will carry their programs during preferred hours.

These organizations state that the source of their competitive disadvantage is the option time arrangements between networks and stations. Yet networks state that option time is vital to their survival. For these reasons, the network study staff is analyzing the competitive opportunities between network and nonnetwork organizations.

The staff is also studying the need for changing the chain broadcasting rules governing relations between networks and affiliated stations. These rules were designed to free stations from undue control by networks and to encourage competition among stations for affiliation and among networks for affiliates. The staff expects to ascertain what changes, if any, should be made in the rules to achieve these objectives. This portion of the study is also concerned with the possibility of extending network affiliation or services to stations in the smaller communities. The networks have developed plans to do this, but the study is examining additional possibilities.

Network Study Order No. 1 specifies other matters for study which the staff is currently examining in relation to the three issues already described. They include joint ownership of radio and television networks, joint ownership of networks and stations, multiple ownership of stations, talent contracts and production and sale of programs, network representation of stations in the national spot field, and the impact of networks' related interests on the conduct of their network function.

The special staff has participated in formulating these issues and is now engaged in collecting the necessary facts. It has already held several conferences with representatives of networks and other components of the industry and, in the process, has obtained a substantial amount of factual data. The networks are now preparing additional information for the staff. Arrangements are being made for conferences with all other components of the industry.

As the network study has progressed, it has become increasingly clear that more than 1 year will be required to deal adequately with the numerous and complex problems of network broadcasting. I so advised the Appropriations Committee a year ago. It is contemplated that if sufficient funds are appropriated, the study will be completed in fiscal year 1957.

The President, in his budget for fiscal year 1957, has recommended that $141,000 be appropriated for this purpose. However, the $80,000 appropriation for this fiscal year to initiate the study will enable the staff to attempt much of the required statistical data on network operations and affiliations by the end of the fiscal year 1956.

You have also asked whether the Commission will wait until the study is completed before taking appropriate action. Many of the matters under study are so interrelated that the Commission must wait until all the facts have been analyzed before it can act on any of them. However, some phases of the study, when completed, may be sufficiently independent of the rest of the study that action can be taken on them at an earlier date. It is not possible at this time to specify what these phases are, but we hope to be able to do so after the study has progressed further.

I have been in contact with Dr. Bowles and Dean Barrow, dean of the Law School of the University of Cincinnati, who heads our network study. I feel we were most fortunate to get Dean Barrow for this work. He has been in conference with Dr. Bowles, and I want to assure you gentlemen that we will work in every way to cooperate with your committee in any way that it is humanly possible to hasten the proper conclusion of this study.

The next topic which I will discuss is UHF broadcasting. This important matter is the subject of questions your committee has directed to the Commission.

The inability of a substantial proportion of UHF stations to achieve financial success has disappointed the expectations generally held in 1952 concerning the contribution which utilization of the UHF band could make toward the expansion of our national television service.

While financial problems are by no means confined to stations operating on UHF channels, the difficulties associated particularly with UHF broadcasting do raise problems of widespread concern to the industry and to the Commission.

It would serve little useful purpose to repeat here the familiar catalog of the difficulties UHF broadcasters have encountered in acquiring sufficient audience, network programing, and advertising revenues to support their stations. The scope of the problem is indicated by the fact that of 152 UHF stations which have commenced operations, only 99 are now on the air.

A considerable number of those still on the air continue to operate at a loss. These difficulties have spawned numerous suggestions to the Commission and to this committee for remedial action ranging from the deintermixture of UHF-VHF channel assignments in individual communities to proposals for major recasting of the entire allocations plan and basic revision of the present television engineering standards.

A substantial part of the Commission's time and efforts during the past year has been concentrated on the questions for solutions of lasting value.

Deintermixture: Formal rulemaking proceedings have been conducted to examine proposals in 5 separate communities for channel reassignments which would confine local channels to a single band. In these cases, the UHF band.

In doing so, the Commission endeavored to ascertain whether the public interest could be served by "selective deintermixture." Proponents of selective deintermixture urge it as a means of facilitating more balanced competition between stations in selected communities, in the hope that this would strengthen UHF generally by increasing the number of "UHF islands" in which local UHF stations would be substantially free from competition with VHF stations.

It had been hoped when these rulemaking proceedings were initiated that a detailed examination of the problem in the light of the circumstances prevailing in these communities might yield useful indications concerning the possible effect of deintermixture locally, and also concerning the question of whether policies applicable nationally might be evolved from a study of these individual cases.

During the period when the individual deintermixture petitions were under consideration, the Commission also gave attention to other, alternative approaches to the allocations problem, which it has become increasingly apparent is nationwide in scope.

Some proposals conflicted wholly or partially with deintermixture. The majority of the Commission concluded that the review of individual deintermixture petitions would neither provide an adequate basis for considering deintermixture itself as a nationwide solution, nor afford the opportunity to evaluate deintermixture as a possible solution in the light of a considerable number of other alternative proposals.

Moreover, the majority felt that there was serious doubt that scattered deintermixture adopted without reference to the general nationwide problem could provide significant lasting improvement.

There was, for example, little in the records of these cases to support the conclusion that limited deintermixture on the basis sought by the petitioners would have helped significantly to resolve the difficulties confronting UHF broadcasters in other cities, or would materially strengthen UHF.

To illustrate, we were unable to conclude that the reassignment of channels on an ad hoc local basis would significantly stimulate the conversion of VHF receivers to UHF, the increased sales of combined UHF-VHF receivers, or the improvement of transmitting equipment. The Commission, therefore, determined that selective deintermixture of communities where allocated VHF services had not yet gone into operation was not a satisfactory solution to what was essentially a nationwide problem.

The conclusion was also reached that proper consideration of the numerous and somewhat conflicting proposals for alleviating the national allocations problem called for the conduct of a formal rulemaking proceeding to review all the suggested alternatives.

Since selective deintermixture, as proposed—that is, based on the absence of local VHF services—had been determined to be an inappropriate approach to the problem, it was decided that the individual petitions before the Commission should be denied. This was done, however, without prejudice to full consideration of deintermixture in the context of the broad rulemaking proceeding. Consistently with this, the Commission denied not only the deintermixture petitions on which rulemaking had been initiated, but also a number of others on which action had been deferred pending decision on these pilot cases.

The CHAIRMAN. Mr. Chairman, I think, with the permission of the committee, we can alter our original proposal a bit. The Senator from Rhode Island thinks that if we break this down into general subjects it might be helpful, and I think he does have some questions he might want to ask at this point.

Senator PASTORE. Do I understand your thesis, developed under this particular subsection, to be that the majority of the Commission has found that selective deintermixture is not feasible?

Mr. MCCONNAUGHEY. That is correct on the basis set out in my statement.

Senator PASTORE. Now, if selective deintermixture is not feasible, how are you going to reach the feasibility of a nationwide deintermixture?

Mr. MCCONNAUGHEY. In this way: A nationwide study means a study of the country as a whole, and going back and studying the sixth order and report with reference to the possibility of completely reallocating the entire spectrum. That, in turn, means that we can decide after a study of all the possible methods of reallocation, including squeeze-ins of more V channels, the possibility of getting more V channels from various sources and numerous other possibilities, then you can make a decision——

Senator PASTORE. Well, don't let's go by that too fast. From other sources—you mean from the military?

Mr. MCCONNAUGHEY. I mean a possibility from the military.

Senator PASTORE. Is there any other possibility?

Mr. MCCONNAUGHEY. Well, possibilities have been suggested from the FM band. I am merely telling you what has been suggested.

Senator PASTORE. All right.

Mr. MCCONNAUGHEY. We have over 200 comments that have been filed by the leading people in this country, engineers and people interested in this business, to permit us to study the whole reallocation plan, and we felt to do it on a selective basis would not be helpful for the reasons contained in my statement.

It only involved about 2 percent of the population of the country in these 5 cases. We didn't feel that we were justified—I am speaking of the majority—that we were justified in creating and causing a freeze, because that is what the majority felt would be involved, and we had had enough experience with freezes.

The allocation plan under the sixth report already provided for VHF channels to go in these five places. We felt that the public deserved to have the service. It can be taken back after our study is completed.

Under the law, we can take out any other V's which may have to do when we complete this whole study. We may have to try to make UHF islands of V's; we may have to try to make whole areas VHF or UHF.

That may be, but we felt that we had to get service on the air. If there is anything in the world I dislike, it is a freeze. It scares me to death when I hear the word.

The people are entitled to all the service they can get. By putting in these V's some people will get service that wouldn't have gotten service before. There are some people who will be getting service from their local communities that wouldn't have been getting it before, and it involves basically putting in a V where it had been assigned, where there are 2 U's in operation, and we felt that 1 V with 2 U's—we had no evidence to show that that means it is going to drive anybody out of business under that operation.

The CHAIRMAN. It might be well for the record to put in the names of these five areas.

Mr. McCONNAUGHEY. Hartford, Evansville, Madison, Peoria, and Albany.

The CHAIRMAN. May I just say this so that we can get a little bit of order here. I might say that I forgot to mention this in the opening statement. I would like to say that there may be questions regarding individual communities in connection with deintermixture applications and issuance of licenses. We hope to take up some of these individual cases after we are through with the general proposition.

I do not think there is a Senator in the whole 96 who does not have 1 or 2 cases which he would like to inquire about.

Mr. McCONNAUGHEY. When you come to that, we would like to know about them beforehand, because we are going to have to compile the information.

The CHAIRMAN. Yes. And I am not passing on the merits of the decisions one way or another. But the Commission being an arm of the Congress, I think Members of Congress and this committee are entitled to a perfectly logical explanation of why certain things happen. But we will take that up later, because I am afraid if we get into those individual cases right now, we might be here all weekend. So, we will get to them. I just wanted to point that out.

Senator PASTORE. Yes; and my purpose in pointing up a specific case is in line with this matter of giving service to the public.

The CHAIRMAN. Yes. I just forgot to make that announcement. And I wanted that on the record.

Senator PASTORE. There is no need to point up specific examples. But you have two UHF stations serving the city of Hartford; right?

Mr. McCONNAUGHEY. One in Hartford and one in nearby New Britain.

Senator PASTORE. You have two VHF stations in the city of Providence? Am I right?

Mr. McCONNAUGHEY. That is correct.

Senator PASTORE. You have one UHF station in the city of Providence that is off the air? Am I right?

Mr. McCONNAUGHEY. That is right.

Senator PASTORE. You have an application, or have heard of an application, with reference to a VHF station in Hartford? Am I correct in that?

Mr. McCONNAUGHEY. That is right.

Senator PASTORE. Now, you have taken the position that, until such time as you have made a nationwide study of deintermixture, you should allow the VHF station in Hartford? Am I correct?

Mr. McCONNAUGHEY. That is right.

Senator PASTORE. Now, why can't you give 3 UHF stations to Hartford and 3 VHF stations to Providence without putting them all out of business?

Now, what is wrong with that?

Mr. McCONNAUGHEY. We may do something on those lines when we finish the allocation plan. And I don't think we are going to put anybody out of business in the meantime.

Senator PASTORE. This is no reflection on the applications made anywhere. But the thing I don't understand is how you are going to start intermixing and then later on deintermix your intermixture? You are going to get yourself in an awful squeeze on that.

Mr. McCONNAUGHEY. No, no. We do not feel so.

Senator PASTORE. The allocations are all mixed up now and have been for some time. The point I would like to have explained to me—and I hope someone can explain it to me— is this: An application was made to bring the VHF station to the Providence area, whereby the people could enjoy 3 channels instead of 2, isn't that correct?

Now, you have two UHF stations serving Hartford. I understand that they have raised the argument that if your VHF goes into Hartford it will put the two UHF stations out of business.

Now, why can't you satisfy the State of Rhode Island and the State of Connecticut by this selective deintermixture, whereby you would have three channels in Hartford and everybody would be happy on a UHF band? And you would have three VHF's in Providence and make everybody happy there on a VHF band.

Now, why can't that be done?

Now, I think it is a very simple thing, and requires a very simple answer, without all of this technology and technical advice that I think is going to add up to nothing.

Can somebody answer that?

Senator PURTELL. Would the Senator yield?

Senator PASTORE. Yes.

Senator PURTELL. Mr. Chairman, how long has the application for that very high frequency station been in? It has been pending for a number of years; is that correct?

Mr. McCONNAUGHEY. The application was filed in 1952 for channel 3. Earlier applications came in before the freeze, which started in 1948.

Senator PURTELL. I don't mean any particular station. Was it not considered originally that there would be an allocation of a very-high-frequency station in Hartford regardless of who might have it?

Mr. McCONNAUGHEY. That is in the sixth order and report. That is already in there. That is your present allocation. That is what you have got to follow until it is changed.

Senator PURTELL. Let me ask this: Actually is it not true that you have a controversy as to who should get that allocation, and that matter is in the process of adjudication?

Mr. McCONNAUGHEY. That is an understatement to say that it is a controversy. It was a controversy to say the least.

Senator PASTORE. I don't want to get into who should get it, because I think all of these petitioners are reaching for the pot of gold at the end of the rainbow. All I am talking about is the viewer. I have said here time and time again that I am only interested in the people in Connecticut and the people in Rhode Island getting all the television service that they can get.

Mr. McCONNAUGHEY. That is all we are interested in.

Senator PURTELL. That is all I am interested in.

Senator PASTORE. We are all interested in that.

The CHAIRMAN. One thing we are all in agreement on is that point, I gather.

Senator PASTORE. That is right. The point I want to make is this—and I hope someone can answer this question: Why couldn't 3 UHF stations do in Hartford, regardless of who runs them, and 3 VHF stations do in Rhode Island, regardless of who runs them?

Now, what is wrong with that?

The CHAIRMAN. I think Commissioner Lee could answer that. I did want to proceed here with these general things. But I think as long as we are on the subject, we can proceed with it. Commissioner Lee probably has something to say about that.

Mr. LEE. On this particular case I wanted to call attention to 1 or 2 things.

In the first place, I think it is generally agreed that the VHF is a superior service. It gives more coverage and takes less investment. There might be some technical reasons why the U could be almost as good as the V as far as coverage is concerned. But it takes a lot more money.

Now, then, when we speak about deintermixture, we are speaking of a situation where you could put only U's in one place. Now, if the U would give as much coverage as the V—maybe it would in that situation; I don't know—that might be one thing. The V probably would give service to people who won't get it with the U.

Now, the other thing is: If you are going to have all U's in Hartford, you have to remember that you have a VHF station now in New Haven that is putting a very good signal into Hartford. So, if the second V does not go into Hartford, you still have the V from New Haven.

Senator PASTORE. Now, taking your thesis, what happens to the two UHF's in Hartford once you put another station in there? Don't you throw them out of business?

Mr. LEE. In my opinion, "No."

Senator PASTORE. Hasn't that been the record here? You say you started out with a hundred-and-some-odd UHF stations, and now you have 99. What has happened to them? Hasn't it been the competition between U and V?

Mr. LEE. That has not been where the UHF has been established first and one V has moved in. It has been where the V was there first and then the U came in.

Senator PASTORE. Are the two UHF stations serving Hartford happy about the VHF coming in?

Mr. LEE. No, sir. But I could call one further point to your attention. And that is that they originally had the opportunity to apply for the V.

Senator PASTORE. Well, that is apart from the question. We are talking about public service now. Now, isn't there a tendency, if this trend continues, that that VHF going into Hartford will get the better programs on VHF because it has more power, is a superior station by contrast with the two existing UHF stations?

The ultimate result will be that the concentration will be on VHF, and the two UHF's are going to suffer thereby, with the consequence that they may go out of business? And the people in Hartford might be left with the one station, with the hope of tying in with the New Haven station? Am I right or wrong?

Mr. LEE. I think you are right to the extent that the V will get the better programing, because they are better stations. Therefore, the people of Connecticut get a better service.

Senator PASTORE. Let me ask another question, and then no more. Do you honestly, fairly, and sincerely feel that once you have intermixture, you are ever going to deintermix?

Mr. LEE. I wouldn't hesitate a minute if I found it was in the public interest.

Senator PASTORE. How are you going to take away something you have already given? Didn't you come here with the idea of changing section 309 (c) because there were 2 pending cases before the circuit court and in the event you were ruled against you would have to take 2 stations off the air, both in Providence and Rochester? Wasn't that your big problem? Wasn't your big problem that of allowing stations to go off the air once you put them on? Isn't that an awful thing to happen?

Mr. LEE. But if we changed the frequency, they would not have to go off the air.

Senator PASTORE. Well, I hope that never happens.

Mr. DOERFER. Senator, there might be as many reasons for the position taken as there are commissioners. But there is one thing that has been overlooked throughout all of the comments and throughout all of the criticisms of our present policy, or the policy of the majority. And that is that section 1 of the law itself provides that the FCC was created to provide a service to all of the people.

And section 307 (b) provides for a fair and an equitable distribution of the frequencies amongst the several States and communities. And our problem is: Is it fair and equitable that Providence have all V's and Hartford have all U's, or vice versa?

Senator PASTORE. If you can give them proper service, I would say yes.

Mr. DOERFER. Therein lies the rub.

Senator PASTORE. I would say this: I would like to see Hartford all VHF; I would like to see Rhode Island all VHF if that is the better quality of service. But I am saying this: I think we are all in accord that UHF and VHF, because of the superiority of one station over the other, cannot live in the same community for too long a period of time. Now, history has shown that. I think, to be fair with ourselves, we ought to say if we are not going to deintermix, we ought to tell these people that. But we have been fumbling and toying with this proposition for 2 years. We are no closer to the solution now than we were to begin with.

Mr. McConnaughey assured me that there would be no further grants until we had settled the problem of deintermixture the last time he appeared before this committee. Since then I think you have granted 3 or 4 applications. Then, actually, you create a situation of intermixture. And I am telling you very frankly as I sit here—and I am sorry and regret to say this—I do not see any hope for a solution of this problem. I really don't see any hope for a solution while the present attitude of the FCC prevails.

And I think they ought to have the courage to stand up and say "Look, boys, we are going to continue intermixture; it is going to be the survival of the fittest; hang on as long as you can; but within the next month, year, or 2 years, nothing much is going to change." Now, if you only told these people that, then I think we would not be troubled any more with all of these telephone calls from people wanting to talk to us about UHF and VHF.

Mr. DOERFER. May I add this:

Getting back to the original premise, the policy of Congress has been an equitable distribution of the frequencies. The sixth order and report was a culmination of about 4 years of hearings and considerations. That incorporates the equitable principles which I just announced, or discussed.

We are required under the law to try to be equitable in the distribution of frequencies. Now, to unscramble the sixth order and report on a piecemeal basis is not working in compliance with the announced policy of Congress, nor is there any solution that I can see which will satisfy the present law unless we wind up with an equitable distribution of frequencies.

Senator PASTORE. Do you think that is really ever going to happen? I mean, as a fair man, do you think that is ever going to happen?

Now, you have been with this Commission for some time. The thing that I am weary of is that we are no closer to a solution now than we were a year and a half ago. And in my own mind I will tell you frankly that I do not think we are ever going to have deintermixture in this country.

I regret to say that. But for all the problems that have been raised and all the innuendoes in these comments that have been made here, all the clouding and all the mystery in these statements that are made before this committee convince me pretty much that we are never going to have the day of deintermixture, because it is so badly scrambled that you will never unscramble it. And you are in the process now of scrambling it up even more, because the minute you throw out selective deintermixture, you throw nationwide deintermixture right out the window.

Mr. DOERFER. I do not agree with that.

Senator PASTORE. Well, I hope you are right and I am wrong.

Mr. DOERFER. The Commissioners indicated that they would go to the extent of deintermixing markets if it ultimately proved to be in the public interest.

The big question today is: Deintermixture. As you have indicated, today it is a scrambled situation or intermixture.

Now, to unscramble it you just don't deintermix the tail end of a processing list and think that that is going to solve the overall nationwide problem.

If anything is required, it would be some bold overall action. But whatever it is it requires a conformance with the policy of this Congress. It is manifestly unfair to deprive the rural people of a service at the expense of the urban dwellers. That is our real problem today.

Mr. McCONNAUGHEY. That is exactly right. That is the reason we put these V's in there.

The CHAIRMAN. I think we will come to that in due course. Unless the other Senators have other questions, I think we should proceed.

Senator PURTELL. I think it has been ably said that what we are thinking of and trying to do is serve the greatest number of people. Certainly I think that the Senator from Rhode Island would agree with me that it does not necessarily follow that an easy solution is a proper solution.

Senator PASTORE. No. And I never took that position. I do not want to take that position. I am very realistic about this, and I think we are both in accord that we want all the people possible to have all the choices of television service possible.

Senator PURTELL. That is correct.

Senator PASTORE. The only point I make is this—and I want to be understood on this: I am not interested in individual parties. I repeat again that they are all reaching for the pot of gold at the end of the rainbow. I am only interested in the viewer. But I am only saying this: That from what Mr. Lee has already said—and I acknowledge everything that he said about the superiority of VHF—I do not see how UHF can live with VHF in the same area. It is impossible economically to do that. Let's face it.

Mr. McCONNAUGHEY. Senator Pastore, I would like to call your attention to this: That history shows that UHF stations which were built before local VHF service started have, in the majority of the cases, been able to live with the subsequently established VFH stations.

With reference to your statement a while ago on unscrambling——

The CHAIRMAN. Well, let's get our ducks in a row here. There is no member of this Commission who would make an application himself for a UHF channel if he had a choice between VHF and UHF.

Mr. McCONNAUGHEY. You are so right about that; there is no one who owns a U who wouldn't like to have a V.

Senator PURTELL. There is no reason, Mr. Chairman, is there, that we should concentrate all of the VFH's in one area simply because it is an easy way of doing it? There is no reason why the people of Connecticut—assuming that VHF is better—and I do not know whether it is or not in that particular case—should be deprived of some of their rights simply because an easy solution can be found otherwise?

Senator PASTORE. No. But all I am saying is this: Beware, because once the VHF goes into Hartford, you will see your UHF's go out. That is all I am saying. That is the prediction I make.

Mr. McCONNAUGHEY. Senator Pastore, one statement you made should be corrected from the standpoint of the 7 members of this Commission.

I think that every member of this Commission is going into this rulemaking sincerely, hoping and believing that this matter can be solved in the next 15 or 20 years. And if it involves deintermixing, making islands of UHF, or whatever it involves, or putting the whole thing in UHF, I think that this Commission is going on honestly and face up to that fact; and nobody has any preconceived ideas as to the final result, speaking for the seven members of this Commission.

(Letter from Hon. George C. McConnaughey, dated March 9, 1956, inserted at this point at his request.)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., March 9, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate,
Washington 25, D. C.

DEAR SENATOR MAGNUSON: During the course of my testimony before your committee on January 26, 1956, I stated that the members of this Commission hoped and believed that "this matter (i. e., the diffiulties standing in the way of full development of the Nation's television service) can be solved in the next 15 or 20 years." While it would appear unlikely that this brief comment would be misconstrued, it may be desirable to clarify it in order to allay any possibility of its being misunderstood to indicate that it would require anything approaching that period of time to eliminate some of the present barriers to the expansion of the number of TV stations serving the public.

When the present TV allocations plan was adopted in 1952, it was intended to serve as the basis for the long-range development of our television system, and it was recognized that, as in the case of radio, it would take many years—15, 20, or more—before the industry could achieve anything approaching complete realization of the objectives set out in the Commission's sixth report and order. In my statement I wished to convey the confidence of my fellow Commissioners and myself that in the rulemaking proceeding in which we are now engaged we can take steps which will allow scope for the continued expansion of television over the longer run of 15 or 20 years.

It was not intended, of course, to indicate that it would require that length of time to work out the particular allocation problems now before us. In order to avoid any possible misunderstanding of my statement, I would be appreciative if this clarification might be inserted in the record where my statement occurs (page 36 of the typewritten transcript of your committee's proceedings of January 26, 1956).

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*

Senator PASTORE. I will take your word for it; and I look forward to the future with hope.

The CHAIRMAN. I think we ought to also clear up the fact that when we all come to the conclusion that VHF is now a better service than UHF, that that is because of present conditions. I don't think we ought to foreclose the possibility that correction of certain conditions or the development of new conditions might make UHF just as desirable in the future. That is a possibility, but that isn't true now.

Mr. MCCONNAUGHEY. I am glad you brought that up, Mr. Chairman, because there are developments being made today——

The CHAIRMAN. That is because of the network situation, the established position of the older channels, and many other things, but that doesn't mean——

Mr. MCCONNAUGHEY. And the developments that are being made.

The CHAIRMAN. Yes, and the developments that are being made, and I think we ought to have that clear. But as of now, that is the situation.

Mr. MCCONNAUGHEY. That is right.

Senator PURTELL. May I ask a question? How many FM channels are there available that are not being used, or might be made available?

The CHAIRMAN. Well, I might say to the Senator from Connecticut that the engineering committee is right in the middle of that. The FCC engineers have thought about it, and——

Mr. MCCONNAUGHEY. We can't answer it yet, sir.

The CHAIRMAN. I think it is hard to answer, but I think before we are through with this we will have an answer.

Senator PURTELL. Well, he brought it up, and I simply wanted to remark on it. Perhaps there is an area in which something can be done. I want to make it clear that I want to see all stations prosper. Nor do I want to see us do anything that will keep them from being prosperous, at the same time safeguarding the public good. I have no particular interest in any particular channel or station or anything else.

Senator PASTORE. One more question, in conclusion: You have expressed the hope that this thing can be unscrambled.

Mr. McCONNAUGHEY. Yes.

Senator PASTORE. And I join in that hope. You have now 99 stations out of 152 UHF's now on the air?

Mr. McCONNAUGHEY. That is correct.

Senator PASTORE. By the time you get around to solving this problem, do you expect to have more than 99 or less than 99 on the air?

Mr. McCONNAUGHEY. You, naturally, know that I or no man alive can say that it will be thus or it will be so.

Senator PASTORE. You don't expect more than 99 on the air by that time; do you?

Mr. McCONNAUGHEY. Expect more?

Senator PASTORE. Yes.

Mr. McCONNAUGHEY. I don't know. I don't know how many U applications are pending. I know we are granting them. We are making new grants right along. We are going to make one before long in Canton, Ohio, and we are making them right along, Senator.

That is rather interesting. Since we put out our notice of rulemaking, and denied the 5 deintermixture cases, since we have denied deintermixture on a selective basis, there have been 5 U's that have gone off the air, which is no more in proportion than have gone off the air in the 12 months previous to that time.

In other words, they aren't going off any faster. Now, there is about a third of the U's—the last report of the Federal Communications Commission showed that about one-third of the U's are operating successfully, and possibly more than that today.

That last report was as of October 1954, and the present report isn't due until some time in February or March. About two-thirds of the V's are successful.

In other words, we have V's that aren't successful, as well as U's, but the U's do have——

The CHAIRMAN. You mean financially?

Mr. McCONNAUGHEY. I am speaking financially. And, of course, when you get into that, you get into so many things. You get into the operation and management, and many other factors, but what Commissioner Lee said is a fact. Today the V does have the advantage. That is one reason for this network study. We come into it there. What can be done, if anything there, to help the U situation.

The CHAIRMAN. I think we would like to proceed here. Of course, the committee also realizes that the Commission is never unanimous on these matters, and I know Commissioners Hyde and Bartley might have something to say, and the rest of you. Of course, you can have that opportunity. I do hope you will address yourself to the subject, because I think it is the crux of the whole problem that we face.

Mr. McCONNAUGHEY. We certainly will do it, Mr. Chairman, and you are so right about seven people not agreeing. If we did, we might as well just have one. That is all. One would be enough.

The CHAIRMAN. That is the reason we made seven of you.

Mr. McCONNAUGHEY. Right.

The CHAIRMAN Unless some of the other Senators have some more questions, I think it will be brought up later by the other Commissioners who do have something to say about it.

Mr. BARTLEY. Mr. Chairman, if we are expected to say anything, I think this might be the point at which it should be said, so the record is even on it.

The CHAIRMAN. Well, all right, if the committee has no objection. It is perfectly all right to ask the other Commissioners on this particular point. I think there are other points you wanted to discuss later. On this particular point, we would be glad to hear from you, as long as we have got it out in the open here.

Mr. BARTLEY. Mr. Chairman, what I would like to say is that I think that the principal difference of opinion in the disposition of the proposed rulemaking cases which we had before the Commission is that in those cases in which we had the benefit of the views of the people in those areas, it is my own view that failure to deintermix those particular areas will foreclose deintermixture in other areas.

I think we had all the facts necessary to make a decision. The prime reason I wanted a decision out of the Commission was to afford some stability to the industry so it would know which way we are going.

Now, we could have done that back in November. We had, I think, all the facts that we will get in connection with those cases at that time, and the reason I point it up is that I think that the word "freeze" which has been thrown around more or less implies that those who wanted to go ahead and adopt final decisions in those cases are being accused of being the ones who are now in favor of a freeze.

I was in favor of just exactly the opposite.

Senator PASTORE. Well, let me say on that point, I would have preferred to see 3 UHF's in Rhode Island in the beginning than 2 VHF's with a dead UHF. Now, that is the way I feel about it. At least you could turn on NBC, CBS, and ABC. As it is now, you only have two.

It would have been better, in the beginning, if the FCC had assigned 3 stations in Rhode Island, even if they were all UHF, and you could have had 3 in Hartford, even if they had to be VHF, because then each community would have the advantage of 3 channels in the same band.

I realize that this cannot be done now, because this would mean that the set owners would have to convert their sets. I must emphasize that I would want nothing done, under any circumstances, which would compel a set owner to undergo any exepnse whatsoever to unscramble a mess for which he is not responsible, or even had anything to do with.

If it is a question of the power of the stations, either raise it or lower it, but give the people the opportunity of 3 channels if you have 3 national broadcasting setups. That is all I am arguing. It is a question of which one you take.

I know VHF is better. I am saying that they can't live in the same pond together, because the big fish will eat up the small one, and UHF is the small fish.

The CHAIRMAN. Commissioner Hyde, do you have any comment to make?

Mr. HYDE. Mr. Chairman, I do not have a formal statement to make. I hope I will have an opportunity to answer some of the statements that have been offered for the record, particularly with reference to the suggestion that any procedure contrary to that taken by the Commission would promote a freeze. I think I can demonstrate that it would have just the opposite effect. I would like to offer, for the committee's attention, the separate views which I stated at the time the Commission entered its order of November 10, when it dismissed or denied the deintermixture petitions without making findings as to the factual matter submitted to the Commission.

The CHAIRMAN. Commissioner, if you would stop right there, Senator Pastore wants to make a further comment.

Senator PASTORE. In Hartford, you don't have the problem of set conversion. The people already have sets that are tuned to UHF. In Rhode Island their sets are on VHF, and if they want to listen to a UHF, they have to convert. I mean, I wanted that in the record, but if we were starting from scratch, if we were starting over again, I would take 3 UHF's in preference to 2 VHF's and 1 dead UHF, so that we would have NBC, CBS, and ABC.

Mr. DOERFER. People in Hartford don't have to convert.

Senator PASTORE. They don't have that problem at all. I mean, I wanted to make that qualification so that someone wouldn't say, "Well, now, what about the poor person who has already bought a television set?"

I realize that that is a big problem in this, but all I am arguing is that UHF, if it is all UHF, can well service a community with the three networks.

Mr. HYDE. In that connection, Senator, a man who had recently been an applicant before us, speaking to me after the action, told me that he had to fight for that one VHF as long as it was going to be allocated to his community, because if it was going to be there, it was essential for him to have it.

He would be content to take an ultra-high if he was sure that one of his competitors would not get that channel.

Senator PASTORE. Now, is that a fact?

Mr. HYDE. It is the fact that he told me that. I assume that he meant what he said.

Senator PASTORE. You mean to tell me that the petitioner for the VHF, if the Commission would pass a rule saying that Hartford would have three UHF——

Mr. HYDE. No, I am not speaking of Hartford.

Senator PASTORE. Oh, excuse me.

Mr. HYDE. I am speaking of a city which has only ultra-high service, and where only one VHF channel is available under the allocation. The concern of the applicant is that somebody is going to get it there, and he is going to be the top man. He must fight for it as long as—as long as we have that 1-for-1 allocation.

The CHAIRMAN. The set man. To the fellow that has the set?

Mr. HYDE. That is right.

I want to repeat that in taking that action, the Commission did not make findings as to what areas would be served or would not. There is nothing in that order of November 10 which indicates that rural areas would lose service if the Commission proceeded on those cases.

Now, in the records of the proceedings, there are conflicting claims on that, but in dismissing the action, the Commission did not make findings one way or the other. There is nothing in the November 10 order which would indicate that that order was necessary in order to provide service to rural areas.

I would like to say that the basic issue here now is whether the United States, with its growing economy and its expanding need for communications service, and particularly for television service, is going to have a system with low ceilings built in or whether it is going to have a system with a sufficient number of channels to give opportunity for development of a comprehensive competitive free enterprise system.

I think that we should recognize the fact that the main issue now is what steps are necessary to conduce to the development of a television service on this broader basis. Now, the broader basis must necessarily include ultra-high-frequencies.

The CHAIRMAN. Commissioner Hyde, right there I think we ought to clear up one matter for the committee. Even if we could find some more VHF channels, we still would be faced with the same problem we have on the matter of UHF, because the present sets would not be capable of receiving signals on these new VHF channels without conversion, which would involve some expense.

I think this committee is not looking for any villains around here. We are trying to see that we will have a national policy that is going to be broad enough and expansive enough to cover national growth in this great new medium of expression—television.

Mr. HYDE. Yes, sir.

The CHAIRMAN. And no matter which way we go, we have got problems, and I think that is what we should sit down here and try to work out. I think the other members agree with me on that.

Senator PASTORE. Yes.

The CHAIRMAN. Because television is somewhat frozen, now, even in its technical aspects.

Mr. HYDE. It could be very well frozen, indeed, if we follow a policy that is going to encourage the demise of the ultra-high stations, all of them, and limit our potential to 12 or 15 channels, if it proves feasible to salvage 2 or 3 from FM or anywhere else.

I think that anyone who has made any study at all of the overall spectrum allocations knows that there is no other place in the spectrum where anything comparable to the allocation of 72 UHF channels can be found. They just are not there.

If you could persuade the military at this time to give up more channels than they were willing to give up in 1945, there still wouldn't be enough to compensate for the abandonment of the ultra-high, because there aren't channels in that number available in the VHF spectrum. And as you have pointed out, additional channels in any part of the spectrum have that same conversion problem that you have with ultra-high. I can't but be concerned with a policy that vacillates from one period to another.

How are the manufacturers, the investors in stations, or anyone else, to know how to plan or what investments of capital should be made? What we should be doing is turning our attention to a policy that would provide incentives or inducements to improvement of sets in the use of all of these channels in the interest—as I have said before—of a multichannel comprehensive, nationwide system.

I do not think that this premise that you cannot make improvements in the situation in one particular place because you have a national problem is sound at all. It doesn't make sense to me to say you must not improve the situation in this locality because this petitioner here has not provided a plan which will solve the problems in every other community.

In the first place, that puts a very unreasonable burden on the particular petitioner. I have been concerned about a policy which disregards the difficulties in local situations and proceeds with a course of action which is discouraging to the development of the ultrahigh stations.

It gives a very unfortunate psychology. It causes doubt as to whether the Commission means to continue to encourage the use of those channels. This unfortunate psychology affects the judgments made by time buyers, by networks, by set buyers, by manufacturers; while the uncertainty about this policy has been prevalent, the percentage of sets being manufactured for all-channel reception has constantly been going down.

If it could be made clear that the United States policy looks toward the development of a multichannel system, you would have added interest in the improvement of apparatus, both for transmission and reception. Notwithstanding these, to me, very unfortunate developments, there have been some very significant developments, looking toward improvement in sets, particularly. I should like to say, too, that the——

The CHAIRMAN. Right there, Commissioner Hyde, of course, the Commission is familiar with the attempts we made to see what we could work out with all the set manufacturers who came down here. We even had the tuners, and the only suggestion they could make was we take off the excise tax. Senator Harry Byrd didn't like that, Secretary Humphrey didn't like it, and a few of the rest of them didn't like it, but that was about the only real conclusion or suggestion we finally got after quite a long discussion.

So the fact that you say now, even after posing the problem that exists, there seems to be even more reluctance to get into all-channel sets because of the fact they don't know where the Commission is going.

Mr. HYDE. The reluctance at the present time is due to this uncertainty more than anything else, in my opinion. Now, that is a matter that there could be different views about, of course.

Now, as to the procedures that have been undertaken here, the Commission majority dismissed the deintermixture petitions without findings as to their merits, except for the finding that this is a nationwide problem and that decisions in these particular cases will not give you a 100 percent nationwide solution.

It was essentially a procedural device. Having dismissed these procedures, the Commission proceeds to make grants of VHF stations in markets which up to now have been ultrahigh markets.

These grants go into communities where the dominant services are rendered by UHF stations, and stations operating under those conditions are succeeding in general. Ultrahigh service is not an inferior service. The number of lines per picture and the number of frames in a given interval of time are identical with VHF stations.

Actually, there are some aspects of ultrahigh operations which are superior to VHF. Engineers will tell you that in the transmission of color, there is some advantage in use of the ultrahigh channel. There is some advantage with respect to freedom from interference from automobile ignition and other electrical apparatus.

The CHAIRMAN. Well, in any event, I don't think any of us should say that the possibility of making UHF as good as VHF, engineeringwise, is remote.

Mr. HYDE. No, sir. We should not say it is remote, because very substantial progress has been made.

Mr. CHAIRMAN. And if color is coming in, why, if it has some advantages—I don't know what comes out of laboratories; you fellows do—it might be even better.

Mr. HYDE. Senator, what we need, in order to get that progress, is to provide some incentive to the development of that apparatus. Our allocation policy should be one that conduces to that kind of development, rather than one that conduces to the abandonment of ultrahigh channeling.

The CHAIRMAN. But this was a nationwide problem when you all began.

Mr. HYDE. That is right, sir. It was, Senator, and, of course, all of us can——

The CHAIRMAN. Now, we suddenly discover it is. I don't know why.

Mr. HYDE. The sixth report was a nationwide plan, and the original allocation that was made by the Commission was intended to obtain the objective which I have mentioned. There were some operational results which were not judged nearly as well then as we can judge them now, with the advantage of hindsight. I wanted to say something about the effect of the kind of procedure that has been undertaken here. In the first place, I do——

The CHAIRMAN. Now, by procedure—we want the record to be clear as to what you mean.

Mr. HYDE. I refer to the order of November 10 which dismissed the individual deintermixture petitions and cleaned the slate so that processing could begin. At that time, the Commission did issue an order of a general rulemaking character inviting comments looking toward consideration of changes in the allocation. The majority stated, in issuing its notice, that denial of the deintermixture petitions was without prejudice to the consideration of the petitons for deintermixture or any of the other changes. I would like to suggest that whether you say it is without prejudice or not, it still is prejudicial to the consideration of any such course of action for several reasons—particularly for legal reasons, and factual reasons which have to do with investments and that sort of thing that will ensue.

Let me explain. When the Commission makes a rule, it must make it on a finding that public interest, convenience, and necessity will be served by the adoption of the rule, and the allocation is a matter of rulemaking.

When we issue a license or a permit for the construction of a station, we issue it on a finding that the granting of that permit will serve the public interest, convenience, and necessity. Now, in bare legal theory, the Commission, on an appropriate finding, can first issue a permit and later modify that permit.

But that would require the Commission first to find that the issuance of the permit will serve public interest, convenience, and necessity, and then a little later make a contrary finding that public interest, convenience, and necessity will not be served by the operation of that VHF channel under the conditions.

That picture is complicated further by the fact that the Commission is already on notice that we have problems in this field. There are questions as to whether this licensing policy which tends to discourage the development of ultrahigh is in the public interest. So you have this very difficult situation that, when you come to judge the rulemaking, when we get to that, subsequent to the grant, the Commission can't change that rule unless it makes a finding which is just the opposite of the one we have previously made. Now, one more matter of law——

The CHAIRMAN. The policy may be bad, but you have the authority to modify it.

Mr. HYDE. In bare legal theory, the authority is there.

The CHAIRMAN. Legally, you have the authority.

Mr. HYDE. Also, that authority has to be exercised in accordance with certain——

The CHAIRMAN. But you have the burden of proof in that particular case.

Mr. HYDE. We have that, and also there are certain procedural conditions attached to it.

In the absence of any—in the absence of an issuance of a new permit or a license in an area which would be affected by the rule, a rulemaking procedure could accomplish the change in the allocation. But after you have issued a permit or a license, then you have established legal rights which require notice and hearing. These rights are not just technical obstacles at all; they represent changes in a situation which will have to be taken into consideration in determining whether a modification of that license will serve the public interest, convenience, and necessity.

These changes in the situation might very well be the investment of as much as a half a million dollars in the construction of a station. It might very well represent steps taken by thousands of citizens to put in antennas or equipment tuned toward that station.

At the time that we go to make this second finding that public interest will be served by an entirely different course of action, we must satisfy these additional procedural steps. We must take into consideration the new factual situation, and having done that, we must be satisfied that public interest, convenience, and necessity would be served by the action.

In view of those requirements, how can you say that to summarily dismiss the petitions and say "We will take them up in a subsequent proceeding" is not prejudicial? I disagree with that finding for the reasons I have stated there.

The CHAIRMAN. It may not be technically prejudicial, but I think it puts it quite at a disadvantage.

Mr. HYDE. I think it does. Let me illustrate——

Senator PASTORE. Well, before you illustrate, you have the added legal problem of constitutional rights. I mean, how can you take a man's station or compel him to go into something else where he would have to spend money in order to do it without giving him a right to be heard? Otherwise, you would be depriving him of property without due process of law. Every man who owns a station will have a right to be heard. You can't do that too easily.

Mr. HYDE. Not just the right to be heard, but he is entitled to a right to have his equities, if you wish to call them that, determined on the record made at that hearing.

There is another legal point that I think I ought to mention here. Section 319 of the act provides that when the Commission issues a permit to construct a station, and the station is built in accordance with that permit, and it appears that all the conditions of that permit have been satisfied, the Commission must issue a license unless there is some new condition first coming to the attention of the Commission after the grant which would demonstrate that the issuance of a license would not serve the public interest, convenience, and necessity.

In this situation, the circumstance which raises the question in my mind, at least, as to whether you should issue permits without first solving the policy question, is already before us. Consequently, permits made after our notice of this difficulty would be subject to this provision of 319 which requires issuance of a license unless some new condition has intervened.

In connection with the difficulties that arise where permits have been issued and investments have been made, let me mention the fact that when the Commission promulgated its sixth report, it made substantial allowances for the existing situation. It limited the number of instances where the assignments of stations were changed to a minimum. The Commission had, for instance, the fact that there were 7 VHF assignments in New York City prior to the 1952 decision, and 7 in Los Angeles.

If it were not for the fact that these stations were constructed, the investments made, the public accustomed to listening to them, and business enterprises operating based on these, I am quite sure the Commission would have wished to make a better distribution of those facilities.

Senator PASTORE. In other words, we wouldn't be in the mess we are in now.

Mr. HYDE. Well, there would have been some improvement. I mean, changes in those particular places wouldn't have solved the whole problem at all, but it would have given you a more equitable distribution of the VHF assignments if the Commission could, in fact, disregard established investments and listening habits and all those things.

Senator PASTORE. Wouldn't you say this: That the very inability to do anything about that will be duplicated in the inability to deintermix after you have intermixed?

Mr. HYDE. I was illustrating that element by the example that I cited.

I want to mention again that probably the most disturbing thing about a policy which seems to be looking for a solution to this problem in VHF only is the depressing effect it has, and the discouraging effect it has, on efforts to develop the ultrahigh channels, which it has been recognized since 1945 would be required for a truly nationwide system with any potential for growth, any potential for a truly free-enterprise system.

I want to say a word or two, if I may——

The CHAIRMAN. Well, in other words, I think we all are in agreement that this was a problem that we knew about a long time ago.

Mr. HYDE. This problem has been before us for some months.

The CHAIRMAN. We have held hearings up here, I think, away back in——

Mr. HYDE. Well, the hearings before Senator Potter's subcommittee were——

The CHAIRMAN. Were a year ago, May 1954, nearly 2 years ago.

Mr. HYDE. Yes. Well, I must say that at that time——

THE CHAIRMAN. And then prior to that, we had discussed this. I remember having discussions on this matter with the then members of the Commission, I think as far back as 5 or 6 years ago, up here in this committee, and Senator Bricker has pointed it out on many occasions.

Mr. HYDE. Actually, the difficulties of developing television in the ultrahigh service have come to the fore since the lifting of the freeze in July of 1952.

The CHAIRMAN. Off the record.

(Discussion off the record.)

Mr. HYDE. I want to question the need for proceeding with——

The CHAIRMAN. Well, we will move along here—well, you can finish, because we want to hear from you later about several matters.

Mr. HYDE. One statement more, and that is simply this: The statement which the majority has submitted says there is television service available to 90 percent of the population, at least 2 services to as much as 75 percent. In view of that, what argument is there for this proposition that we have to go ahead and license new stations irrespective of the consequences that may follow in regard to our allocation procedure?

The CHAIRMAN. Well, I pose a question there to the Commission. Taking the fact that 75 percent of the people have 2 channels available to them, I don't think that is enough.

Mr. HYDE. It is not enough.

The CHAIRMAN. I mean it may be at the present time, all factors considered, but I think looking in the future, that can't be permitted to exist, and I don't think that is enough.

Mr. HYDE. In that connection, Senator——

The CHAIRMAN. There may be enough now—I mean all factors considered.

Mr. HYDE. It is hardly enough to provide competitive opportunity for as many as three national networks.

Senator PASTORE. Well, do you think we are promoting a national competitive television system throughout this country when certain cities have 7 channels and others are being told that if you have 2, you ought to be satisfied?

Mr. HYDE. No; certainly we are not. I do believe, Senator, that if we could get established that it is the policy of this country to use the whole 82 channels, to so conduct our affairs as to provide conditions conducive to that development, that we would have enough channels to have a comprehensive setup.

The CHAIRMAN. Well, Mr. Chairman, didn't you recently make a speech at the Poor Richard Club in Philadelphia, in which you said—

basically, at issue, is how widespread a service can television become? In one sense, television is already a national medium. Industry researchers tell us that with 450 stations on the air, 96 percent of the Nation live within viewing distance of at least 1 service, and a large majority of the public have at least 2 services available.

Then you say—

That is good, but not good enough. For one, there are not enough competitive facilities in the largest centers to completely serve the needs of the public or of the advertisers. Even when we have disposed of all pending applications, almost two-thirds of the 100 leading markets will have only 2 stations or less.

Mr. McConnaughey. That is my statement.

The Chairman. You say that is good, but not enough.

Mr. McConnaughey. Why sure.

I trust that this committee got no other idea when I merely stated that in 3½ years we have grown to a place where 90 percent of the people in this country can see a picture; 75 percent of them can see 2 or more—and I think that is a remarkable record in 3½ years, perfectly remarkable taking any other country in the world. But, of course, it isn't enough, and I never said and I never implied it was enough.

The Chairman. I think you made that clear in your statement.

Mr. McConnaughey. I think so.

The Chairman. Well, I think if we could proceed here with the chairman's statement—it is getting near adjournment time——

Mr. McConnaughey. Commissioner Lee and Commissioner Mack will not be able to be here tomorrow, if you are going to go forward tomorrow.

The Chairman. I will discuss that with you. The Commissioner from Florida hasn't said anything, and I don't know, maybe you might just want to say something briefly. You haven't been there a long time.

Mr. Mack. Thank you for those kind words.

It just so happens I made, some weeks ago, an engagement for tomorrow that I can't very well get out of. Of course, I will be right back.

The Chairman. Well, the committee will be glad to arrange this. None of us are going to hold anybody, and I know the Commission has a lot of work to do.

We are not going to straighten this out today—I am am sure of that—or tomorrow either. I have a lot of questions I want to ask the Commission. I have about 40 pages of them.

Mr. Mack. Well, I will wait. I won't make any statement now.

The Chairman. On policy. And I don't know how long it will go on some of the individual stations.

Mr. Lee. Senator, I am absent tomorrow through no fault of my own. That is a classified matter. I will be glad to tell you about it in privacy. This is just beyond my control. I need, oh, maybe 7 or 8 minutes is about all.

If it is all right with you, I could do it now or later. Are we going to meet this afternoon?

The Chairman. Well, I don't know. We have the gas bill on the floor.

Senator Pastore. We have gas on the floor, too.

The CHAIRMAN. And it is a bill from this committee, and most of the members are vitally interested in it. Well, if the Chairman would go ahead, unless you wanted to interrupt at this point.

Senator SCHOEPPEL. Mr. Chairman, do I understand that at some later meeting, we will have an opportunity to go into some of these matters, because I know personally—and I regret this—a previous engagement takes me out of Washington this afternoon, back to Kansas. I did want to leave some questions so that if we are going on this week, and not going to have the opportunity to have some of these men before us later, I would appreciate their answering these questions into the record, which would be satisfactory.

The CHAIRMAN. I will say to the Senator from Kansas that it was the hope of the chairman that we would discuss general policy and listen to the Chairman's statement, which I knew would take most of the morning.

Then I thought we would arrange the most satisfactory time for everybody interested to get into some of the details with the Commission.

Senator SCHOEPPEL. That would be satisfactory.

The CHAIRMAN. If that is satisfactory, we will work that out someway. They need not all be here, but I am sure they want to be cooperative.

Commissioner Lee, we will take your statement now.

Mr. LEE. All right, sir.

The CHAIRMAN. You don't mind that, Mr. Chairman?

Mr. MCCONNAUGHEY. I don't mind a bit.

Mr. LEE. On the problem of the procedures of the Commission, I wanted to say that at the time these matters came up, I, for one, was prepared to dispose of the pending deintermixture cases on their merits. I think I would have denied them.

I was persuaded that perhaps I should retain my mind open until we had this rulemaking, and if I thought that the rulemaking could have been concluded in a reasonable period of time, I would have no hesitancy in holding up pending grants.

I thought it was impractical. I think it has been proven to be. We have already granted some three extensions of time to file. This could go into hearings and so on. I was just afraid it would last a year. Hence, my feeling was we should make these grants and give people service.

Now, I wanted to leave just 2 or 3 suggestions with the Commission, or with the committee, that I think are pertinent to your inquiries.

I believe that you should give some consideration, for example, to subscription television as a related problem. That might sound strange, but after looking over the docket and discussing this thing with about everyone I could find, I feel there is some merit to considering subscription television on the UHF only under certain limitations, since their problem (the UHF) is a matter of revenue.

If this thing is good, I feel that maybe it should be given a trial on UHF only, and under controls such as a percentage of the broadcast time. If you can broadcast on subscription television 10 percent of the time you are on the air, if you want more time for subscription, you have to give more free, and that sort of thing. Perhaps even consideration on some kind of a limitation on the rates, and certainly not permit it where there is only one service; and that sort of thing.

But I would hope that you would give it some consideration.

The CHAIRMAN. We have that on the agenda.

Mr. LEE. Likewise, I wanted to call to your attention something that I found. I am sure the staff is familiar with it.

In 1950, February 2, 1950, there was delivered to this committee a report by a committee of experts, Dr. Condon, of the Bureau of Standards; Newbern Smith, chief of the Central Radio Propagation Laboratory; Dr. William L. Everett, dean of engineering, University of Illinois; Donald Fink, editor of Electronics; and Stewart Bailey, consulting engineer.

Now, this report, I think, is worth your perusal, since at that time it pointed out—this was 1950—this very problem of U versus the V, and it indicated the problems that the U had from a technical standpoint.

At that time, it is my understanding, the President appointed the so-called Stewart Committee to make a study, and this apparently went to them. Now, the——

The CHAIRMAN. That was on color, too; wasn't it?

Mr. LEE. I believe so; yes, sir.

Now, the real impact of this thing, as I see it, is on the problem of obtaining, if possible, more space from the Government, more VHF space. They pointed out very clearly how important that was and pointed up the problems of the FCC adjudicating for commercial broadcasters and finding in the public interest, versus the Government passing out frequencies without that kind of review.

That was a part of the Stewart study group who, as a matter of fact, recommended some kind of coordination.

Senator PASTORE. If I may ask a question, Mr. Lee, the only thing that I see wrong with your suggestion is this: Let's assume that subscription turns out to be a very lucrative thing. Then aren't you reversing the problem as against the VHF station? Why should they be precluded? I mean, you are going to have the problem there.

Mr. LEE. My suggestion is to consider the limitations only as a beginning, perhaps eliminating the restrictions later. If this thing is in the public interest, you would presumably extend it, so that everyone could see it.

It just occurred to me, reading these petitions, that since it is a matter of revenue and the proponents say this is like Coca-Cola, there are so many millions of people even at a dime, if you can give them revenue, they can stay on the air and provide a free service as well as the subscription service.

Senator PASTORE. Until you decide the overall policy.

Mr. LEE. That is right, sir.

Senator PASTORE. I see.

Mr. LEE. The reason I want you to look at this report is that it points up this dual problem of commercial versus Government, and it quotes Senator MacFarland; at that time he was quite interested in this problem. He has some very firm ideas.

The CHAIRMAN. Is it classified to state for the record how many channels the Government has frozen for itself?

Mr. LEE. No. I think depending on how you measure it, it approaches about a 50–50 split.

The CHAIRMAN. On the band?

Mr. LEE. On the entire band, yes.

The CHAIRMAN. That is all we need to know. Approximately 50–50.

Mr. LEE. Much of it is highly classified.

The CHAIRMAN. Yes. What they use it for, but I mean generally speaking, the band is about 50–50.

Mr. LEE. Yes, sir. There is one other important point, and I will sit down, and that is in the event there are additional possibilities of additional channels, I personally would like to see some kind of legislation—I think we need it—to permit a show-cause order to permit a U to go on a V if we put it in.

Apparently now if we find another one and set it up in a community, anybody can file for it. Now, I think the existing U operator would have quite a leg up, but to force him through 2 years of hearings and so on would give me some concern.

I think that is a matter that should be properly before you.

That is all I had to say. Thank you very much.

Senator SCHOEPPEL. Mr. Chairman, I know that Mr. Lee has to go, and the time is approaching when I will have to leave for the airport. I have a series of questions that I wanted to ask the respective Commissioners, and for the purpose of getting them into the record, so they might be prepared when we reconvene, I would like to record the following inquiries:

No. 1. What is the status of the negotiations to obtain additional VHF space from the Government for commercial broadcasting?

No. 2. Do you consider the present allocation plan adequate to meet the requirements for nationwide television service?

No. 3. Do you recommend the intermixture of VHF and UHF stations in selected areas?

No. 4. Do you recommend shifting all television assignments to the UHF portion of the spectrum?

No. 5. Do you recommend freezing all further assignments until the present rulemaking proceedings have been completed?

No. 6. What is the status of subscription television, and what are your views on it?

No. 7. Do you have any specific recommendations for this committee here?

The CHAIRMAN. Senator, those are asked to the Commission generally ?

Senator SCHOEPPEL. Yes, sir.

The CHAIRMAN. They will take them with them.

Senator SCHOEPPEL. Yes, because I have to leave.

(FCC answers appear at p. 165.)

Mr. MCCONNAUGHEY. Do you want me to start answering those now?

The CHAIRMAN. Well, I think they open up a field that a lot of us have questions on.

I am going to suggest this: It is almost 12 o'clock, and we are not allowed to be in session when the Senate is in session without unanimous consent. The Chairman will work out with the Commission and the Senators a time for another hearing, but I do think it would be better to wait.

(Discussion off the record.)

(The prepared statement of Chairman McConnaughey follows:)

PREPARED STATEMENT OF GEORGE C. MCCONNAUGHEY, CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION

The Commission welcomes this opportunity to report to the Committee on Interstate and Foreign Commerce concerning recent television activities and developments, particularly insofar as those activities and developments relate to the functions of the Commission and this committee.

We are all aware of the tremendous growth of television during the last decade and of the impact it has had on so many facets of our way of living. But the development of this marvelous new medium has not been without "growing pains." Under these circumstances we at the Commission are sincerely appreciative of the cooperative manner in which we have been able to work with your committee and members of your staff.

It is important that the Commission let your committee have the full benefit of information, experience, and advice available to it in order that legislative policies may be charted in a realistic manner with a view to providing and preserving for the American people the best possible television service.

To that end we welcome your guidance and counsel. The field with which we are concerned is dynamic, fast moving, and very complex. As changes occur, we must be prepared to make suitable adjustments to reflect new conditions. It is singularly difficult to foresee with any precision the course of rapid developments in the still very new field of television broadcasting.

THE TELEVISION INDUSTRY

There are few, if any, other industries having so many independent, although closely related, segments so vital to the successful operation of the business as a whole. Fitting into the complex television pattern are station licensees, networks, advertising agencies, producers of shows, including large film companies, and independent packagers, talent, labor unions, manufacturers of equipment and, of course, the sponsors of programs whose support in the final analysis makes possible the end product which the American people view on their television screens.

All of these interrelated components play an important role in the overall process. Yet among all these components, only the station licensee is directly subject to FCC jurisdiction. Indirectly, and to a more limited extent, the Commission can establish limitations affecting the network and equipment manufacturers, through requirements laid down for station licensees.

Nevertheless, television broadcasting in all its facets is conducted as free, competitive enterprise, responsive to the same basic economic forces which influence the development of any other competitive industry. Competition is no less a desirable feature of the television industry because its end product is a public service, or because limited aspects of television broadcasting are subject to Federal regulation.

Station competes with station for audience, programing, and advertising revenues. Networks compete among themselves for station affiliates, for talent, for the advertising dollar. Other program sources, including film syndicators, compete among themselves and with the networks. National spot advertising represents an additional field of competition. These are only some of the many aspects of competition within the television industry itself. Moreover, television as a whole competes with other mass mediums for the advertising dollar--notably with radio, with newspapers, and with magazines.

These facts underscore the enormous impact which economic factors, largely beyond the Commission's control, have on the development of the Nation's television service.

This is not to minimize the importance of the Commission's role, with which you are familiar. But it does suggest the limitations on the ability of the Commission, alone, to insure the fullest achievement of the ultimate goals of the television service.

OTHER COMMISSION RESPONSIBILITIES

Television is not the only fast-growing industry or activity with which the Commission is concerned. Radio broadcasting has mushroomed since World War II. In 1940 there were fewer than 800 AM stations on the air; today there are nearly 3,000.

In 1940 there were 9,988 stations in the important safety and special radio services. Today there are nearly 170,000 such stations, excluding amateurs. These 170,000 stations include over 700,000 individual transmitters. And the trend is still upward. In 1950 we received 6,288 broadcast applications (TV, AM, and FM). During the current fiscal year we expect to receive well over 7,000.

In the safety and special radio services, the change has been even more marked. In 1950 we received 93,960 applications; in 1955, 151,330; and for fiscal year 1956 we expect our workload in this field to be almost 160,000 applications. This briefly illustrates the diversity and the size of the Commission's task, which extends into numerous fields besides television.

Television has, however, absorbed a major and increasing part of the Commission's time and attention during recent months. We understand that this hearing is concerned chiefly with the problems of the television service. This statement, is accordingly, directed particularly to television broadcasting.

TELEVISION'S METEORIC GROWTH

Since its inception, progress in the development of our television service has been marked by impressive strides. In most important respects accomplishment has outstripped even the most optimistic predictions. And if we are now confronted by problems which are hindering television's further expansion, these problems can be better understood in the perspective of the tremendous advances which have been achieved in the relatively short period since the freeze was lifted in 1952. It may be useful, therefore, to take brief stock of the developments since then before commenting on the problems which remain to be solved.

In July 1952, when the first postfreeze station was authorized, only 108 television stations were on the air. Today more than 440 are in operation. When the freeze was lifted only 63 markets had 1 or more local stations. Only 23 had 2 or more. Today there are over 4 times as many communities with their own television stations; 278, to be exact.

One hundred and thirteen of these have two or more stations. While it is difficult to provide precise figures, it has been estimated that over 90 percent of the people are now within the range of at least 1 television station and a large portion of the public—perhaps as much as 75 percent—lives within the service range of 2 or more stations.

The American public has overwhelmingly accepted this expanded television service; 37 million television receivers are in the hands of the public, and almost 70 percent of American homes have television sets. The American people have invested over $15 billion in television-receiving equipment and the annual volume in television advertising, set sales, and servicing runs close to $3 billion per year.

Whatever the questions which have arisen during this phenomenally rapid expansion, it is evident that the problem is no longer the establishment of a television service. We already have a well-established television service. The problem is how we can best facilitate the further development and expansion of this service in accordance with the needs and desires of the American public, giving the fullest opportunity for application of the abilities and ingenuities of American broadcasters.

THE NETWORK STUDY

The networks perform a crucially important function in the television industry of today. You have requested a progress report on the network study, including the subject matter to be covered, target dates for completion of any phases, and whether the Commission will take appropriate action on each phase, as the facts are developed, or await completion of the entire study before determining whether remedial action is indicated.

I am pleased to report on the progress made in the network study. The Commission regards the study as one of its most important current activities. It has for some years felt the need for a comprehensive study of radio and television network broadcasting.

Each Commission budget since fiscal 1950 has called attention to the need for such a study and pointed out the limiting budgetary considerations. No study of the functions of networks has been made since the chain-broadcasting investigation of 1938–41. The chain-broadcasting rules adopted, incident to that study, for radio were applied to television without change, and it is not known whether the rules are achieving their objectives for the larger radio industry of today or the vital new television industry. Also, to recommend or comment upon proposed legislation in the network field requires greater knowledge of the network function. The Commission is gratified by the opportunity given in the $80,00 appropriation for this fiscal year to initiate the study.

The study is well underway. It has been placed under the direct responsibility of a committee composed of Commissioners Hyde, Bartley, Doerfer, and myself. A special network-study staff has been organized under the competent direction of Dean Roscoe L. Barrow, of the Cincinnati College of Law. Dean Barrow has had extensive experience with the Federal Government, and he is ably supported by 10 staff members of high professional caliber. I am pleased with the stature of this staff. Selection of a special staff of this stature for a relatively short term of employment has taken considerable time.

A number of matters to be studied were described in the Network Study Committee Order No. 1, issued November 21, 1955, and other matters may be added as the study progresses. A study designed to assist the Commission to an informed solution of problems in the network field and to comment on proposed legislation for the regulation of networks, must encompass the economic structure and operation of the broadcast industry. Accordingly, the order was intended to lay a broad base for the study. A copy of the order and accompanying statement are attached.

The order is basically concerned with three issues: (1) whether there is opportunity for effective competition among networks; (2) whether there is opportunity for effective competition between network and nonnetwork organizations; and (3) whether changes are desirable in the present relations between networks and affiliated stations.

Analysis of the opportunity for network competition is important. The small number of national networks, the recent withdrawal of a network, and the lack of entry of new networks in recent years suggest the need for study of those factors which limit entry of new competition.

A multiplicity of networks fosters competition, increases program choices, provides broadcast time for additional advertisers, and gives broader economic support to the broadcast industry. An important factor governing the number of networks is the availability of outlets. However, this is not the only factor involved.

Assuming a potentiality for sufficient outlets, other factors must be appraised. Among these are the number of networks which advertising will support and whether the investment and risk in network operations are so disproportionate to incentive as to discourage entry of new network competition. In this connection, the study must consider the number of advertisers desiring network advertising, the point at which division between networks of potential audience in a given market renders other advertising mediums more desirable to the advertiser, and the point at which division of audience so decreases revenues that the network function is not profitable.

These and other considerations involved in developing the maximum number of networks are focal points of the study.

The study will also consider the opportunity for effective competition between network and nonnetwork organizations. Nonnetwork organizations include national spot representatives, independent stations, and independent program sources. The Commission desires to secure an opportunity for as many program choices as possible.

Nonnetwork organizations state that they are at a competitive disadvantage because they are not able to assure advertisers, as networks under affiliations contracts are, that stations in major markets will be available to carry the programs during the preferred hours. A change in option time rules, it is argued, would enable stations to exercise freer choice of programs between network and nonnetwork program sources. On the other hand, networks consider option time as vital to the maintenance of the network structure. The Commission in considering whether to change its rules, as they relate to competition between nonnetwork and network programs, must determine the effect of such change on the broadcast structure.

A third area for study is whether changes are needed in the chain-broadcasting rules governing relations between networks and affiliated stations. These rules were intended to free stations from undue control by networks, to provide opportunity for local programing, and to encourage competition between stations for affiliation and between networks for affiliates.

This committee is fully aware of the impact on stations of the tremendous growth in radio and the advent of television since the chain-broadcasting rules were adopted in 1941. In this connection, consideration is being given to determining what changes would be desirable in the rules under present conditions of competition with a limited number of networks and stations and what changes might be desirable if there were more networks and more stations.

This portion of the study is also concerned with the possibility of extending network affiliation or services to stations in the smaller communities which now receive little or no network service.

It is appreciated that networks have developed plans for expanding television to smaller communities. The study will examine the possibilities of bringing additional network programing to stations in such communities as well as to extending service to other stations not receiving network programs under these plans.

Network Study Order No. 1 specifies a number of other matters for study. These will be examined primarily in relation to the issues already described.

(*a*) Joint ownership of radio and television networks. Consideration is being given to such matters as the advantage or disadvantage which joint ownership gives to a network in competition with another network engaged only in one medium for advertiser support and for affiliates; whether television network affiliation is in any way dependent upon radio affiliation with the same network; whether the decline in network radio is due in part to an overriding interest of the network in television; whether there is sufficient incentive to attract new radio networks not in the television field; and whether joint control is necessary in order that television may support radio.

(*b*) Joint ownership of networks and stations. Consideration is being given to such matters as whether network ownership of stations in major cities tends to discourage entry of new networks in view of the limited number of stations, and whether ownership by networks of stations is necessary to their economic health or to the continuation of network services of high quality.

(*c*) Multiple ownership of stations. Consideration is being given to the extent to which an owner of more than one station has an advantage over an owner of a single station in the competition for affiliation with networks, and related matters.

(*d*) Talent contracts and production and sale of programs. Consideration is being given to such matters as whether long-term exclusive-talent contracts tend to impair network competition; whether the fuller occupation of the talent and program fields by networks since the advent of television unduly restricts the opportunities for the broadest choice of programs; and whether there is any relationship between sale of network programs and sale of preferred viewing hours.

(*e*) Representation of stations in the national spot field. Consideration is being given to whether representation of stations in the national spot field by networks gives the networks any undue advantage in the competition with non-network program sources.

(*f*) Related interests. Consideration is being given to the effect of having companies engaged in the network function engage in other enterprises related to the broadcast field and to what extent the related interests tend to influence the conduct of the network function in ways which are detrimental or beneficial to the public interest.

The special staff which has been assembled for the network study participated in the formulation of these issues for study, and is now engaged in collecting the necessary data. The staff has held several conferences with representatives of the networks and other segments of the industry; has obtained from the networks substantial information regarding accounting procedures and financial organization; has requested information, which the networks are assembling, relative to contract provisions with affiliated stations, and has held initial conferences with the networks relative to obtaining detailed data on network programing.

The staff is arranging meetings with all components of the industry—networks, affiliates, television film producers and syndicators, talent agencies, national spot representatives, advertisers and advertising agencies, independent stations and others, as rapidly as feasible. Overall planning of the study and the preparation of questionnaires along lines of recognized problems is going forward.

From our experience with the network study to date, it is clear that the study cannot be completed during this fiscal year. During the Senate hearings on the independent offices appropriations bills for 1956, I testified that the $80,000 appropriation would be sufficient only to initiate the study. This amount, I stated, would enable the Commission to establish a staff adequate to formulate procedures for conducting the study and to make substantial progress in the first, or factfinding phase. (Pages 293 and 294 of the hearings on H. R. 5240, subcommittee of the whole Committee on Appropriations of the United States Senate, 84th Cong., 1st sess.)

As the network study has progressed, it has become increasingly clear that the number, magnitude and complexity of the problems under study will require substantially more than 1 year. The former chain broadcasting study was conducted from 1938 to 1941. The telephone industry investigation continued from 1935 to 1939. It is contemplated that if sufficient funds are appropriated, the current study of radio and television network broadcasting will be completed in fiscal year 1957 and that a final report will be prepared by the end of fiscal year 1957.

At this stage of the study it is difficult to give accurate estimates of target dates for completion of any phase. It is hoped that by the end of fiscal 1956 substantial data will have been assembled in the following areas:

(1) Historical, organizational, and financial development of networks.

(2) Significant revenue sources and categories of cost of networks and their owned and operated stations.

(3) Functioning of the networks and national spot organizations.

(4) Opportunities for choices by stations of programs from network and nonnetwork sources.

(5) Affiliation contracts, especially on such factors as right of first refusal, option time, free hours, division of revenue, and term of contract.

You have asked whether the Commission will wait until the study is completed before taking any appropriate action. Many of the matters under study will be affected by facts gathered in all phases of the study and, accordingly, action as to these interrelated matters should be withheld until the study is completed. However, other phases of the study will be completed earlier, and it may well be that some of these are sufficiently independent to be acted upon prior to completion of the entire study.

In such instances, if the facts indicate that remedial action needs to be taken, the matters will be presented to the Commission. It is not possible, however, in the current status of the study to specify such areas in which action might be taken before completion of the entire study.

UHF BROADCASTING

Another important matter which is the subject of questions your committee has directed to the Commission is the status of UHF.

The inability of a substantial proportion of UHF stations to achieve financial success has disappointed the expectations, generally held in 1952, concerning the contribution which utilization of the UHF band could make toward the expansion of our national television service.

While financial poblems are by no means confined to stations operating on UHF channels, the difficulties associated particularly with UHF broadcasting raise problems of widespread concern to the industry and to the Commission.

It would serve little useful purpose to repeat here the familiar catalog of the difficulties UHF broadcasters have encountered in acquiring sufficient audience, network programing and advertising revenues to support their stations.

The scope of the problem is indicated by the fact that of 152 UHF stations which have commenced operating, only 99 are now on the air. A considerable number of those still on the air continue to operate at a loss.

These difficulties have spawned numerous suggestions to the Commission, and to this committee, for remedial action ranging from the deintermixture of UHF–VHF channel assignments in individual communities to proposals for major recasting of the entire allocations plan and basic revision of the present television engineering standards. A substantial part of the Commission's time and effort during the past year has been concentrated on the quest for solutions of lasting value.

DEINTERMIXTURE

Formal rulemaking proceedings have been conducted to examine proposals in five separate communities for channel reassignments which would confine local channels to a single band—in these cases the UHF band. In doing so the Commission endeavored to ascertain whether the public interest could be served by "selective deintermixture."

Proponents of selective deintermixture urge it as a means of facilitating more balanced competition between stations in selected communities, in the hope that this would strengthen UHF generally by increasing the number of UHF "islands" in which local UHF stations would be substantially free from competition with VHF stations.

It had been hoped, when these rulemaking proceedings were initiated, that a detailed examination of the problem in the light of the circumstances prevailing in these communities might yield useful indications concerning the probable effect of deintermixture locally, and also concerning the question of whether policies applicable nationally might be evolved from a study of these individual cases.

During the period when the individual deintermixture petitions were under consideration, the Commission also gave attention to other, alternative approaches to the allocation problem, which it has become increasingly apparent is nationwide in scope.

Some proposals conflicted wholly or partially with deintermixture. The majority of the Commission concluded that the review of individual deintermixture petitions would neither provide an adequate basis for considering deintermixture itself as a nationwide solution, nor afford the opportunity to evaluate deintermixture as a possible solution in the light of a considerable number of other alternative proposals.

Moreover, the majority felt that there was serious doubt that scattered deintermixture adopted without reference to the general nationwide problem could provide significant lasting improvement. There was, for example, little in the records of these cases to support the conclusion that limited deintermixture on the basis sought by the petitioners would have helped significantly to resolve the difficulties confronting UHF broadcasters in other cities, or would materially strengthen UHF.

To illustrate, we were unable to conclude the reassignment of channels on an ad hoc local basis would significantly stimulate the conversion of VHF receivers to UHF, the increased sale of combination VHF–UHF receivers, or the improvement of UHF transmitting and receiving equipment.

The Commission therefore determined that selection deintermixture of communities where allocated VHF services had not yet gone into operation was not a satisfactory solution to what was essentially a nationwide problem. The conclusion was also reached that proper consideration of the numerous and somewhat conflicting proposals for alleviating the national allocations problem called for the conduct of a formal rulemaking proceeding to review all the suggested alternatives.

Since selective deintermixture as proposed, that is based on the absence of local VHF services, had been determined to be an inappropriate approach to the problem, it was decided that the individual petitions before the Commission should be denied. This was done, however, without prejudice to full consideration of deintermixture in the context of the broad rulemaking proceeding.

Consistently with this, the Commission denied not only the deintermixture petitions on which rulemaking had been initiated, but also a number of others on which action had been deferred pending decision on those pilot cases.

REVIEW OF TELEVISION ALLOCATIONS

In the notice of proposed rulemaking initiating the general proceeding, proposals and comments were invited from all interested parties for such revisions of the nationwide allocations plan and television engineering standards as might reduce the present obstacles to fuller development of the television service.

Written comments were requested by December 15, 1955. Approximately 200 comments have been filed. The time for filing reply comments has been extended to February 8, 1956. The suggestions before the Commission encompass a considerable variety of approaches, including the use of additional VHF frequencies; the reduction of minimum station separations to make additional VHF channel assignments possible, using either the present 12 VHF channels, or new VHF channels, or both; the use of directional antennas; cross-polarization; deintermixture; and others, including combinations of the foregoing.

A considerable number of these proposals contemplate basic departures from the structure of the existing system, which was adopted in 1952. The proposals are widely diversified. Some are mutually exclusive. Most of them cannot be properly evaluated except in the light of a complete review of the nationwide allocation plan. The basic question before the Commission is whether, and if so, in what manner, the public interest may be served by revising the structure of the present plan.

Notwithstanding the pendency of the general rulemaking proceeding in which the foregoing proposals are being considered, the public continues, understandably, to press vigorously for the expansion of presently available television services, especially in communities and areas where available service is either nonexistent or where there is an insufficient number of stations to provide adequate choice of programs.

It happens that in a number of communities in which local UHF broadcasters had sought deintermixture, mutually exclusive applications for a locally assigned VHF channel have reached advanced states in comparative hearings which have been subjected to unavoidable but lengthy delays.

The Commission has been urged by some of these UHF broadcasters to defer or stay the authorization of new VHF stations on those channels. The majority are convinced that it would be contrary to the public interest to create added delays by deferring grants on such VHF channels until it could be determined whether final decisions in the general allocations proceeding would possibly result in deintermixture of any such local cammunity.

To do so in the opinion of the majority would be to frustrate further expansion of television service when expansion is the very objective of the current review of the television allocations plan.

Your committee has requested the views of the majority on a dissenting opinion of one of the Commissioners who expressed the view that:

"The Commission may, in granting the VHF applications, effectively eliminate many UHF stations which are presently in operation, and in many instances render the cases moot. * * * The actions of the Commission in making further VHF grants in these areas (deintermixture areas) can have the effect of seriously hampering and perhaps of unalterably precluding the Commission from giving proper and adequate consideration to the overall study of the allocation plan."

In the typical case involved here, the VHF grant is for the first VHF station in communities where a large proportion of the existing sets are capable of receiving UHF as well as VHF signals. Thus, set conversion, although a significant obstacle to some UHF broadcasters, is a far less significant factor in communities where UHF service is already established.

There is little basis, in the opinion of the majority, to assume that a first local VHF station would necesarily eliminate local UHF stations.

Nor, in the majority's view, would the VHF grants in question hamper or preclude proper and adequate consideration of any of the suggested revisions to the allocation plan. The particular concern which may be felt on this point is indicated in the next question raised by the committee, namely:

"How can the Commission, having denied deintermixture in specific cases, adopt deintermixture as a sound, overall policy in the public interest after it has proceeded to intermix or further intermix the areas requested to be deintermixed?"

No VHF grant, whether recent or long standing, creates a necessary barrier to deintermixture, should the Commission find, in keeping with the conclusions reached in the general allocations study, that deintermixture of any community is required in the public interest.

As the Commission has stated, the fortuitous circumstances of whether there is an existing or authorized VHF station in any community cannot provide a proper basis for determining whether the deintermixture of local channel assignments would serve the public interest as part of any overall revision of the existing system.

A decision as to whether deintermixture would serve to enhance the opportunities for the expansion of television service in any communities or areas must be governed by the manner in which this action would fit into an integrated nationwide television plan. The fact that the Commission has recently granted a new VHF station can have no more bearing on its judgment as to whether deintermixture in that locality would serve the public interest than the existence of a long-established VHF station.

Moreover, no grant, whether recent or long standing, impairs the Commission's authority to order such channel reassignments as it may find necessary in the implementation of revisions to the allocations plan which may be necessary in the public interest.

In view of this, and in view of the fact that it cannot be determined at this time whether deintermixture will be adopted either on a broad or limited basis, the majority is unable to justify the withholding of authorizations for stations which have been long awaited and which are needed to expand inadequate local television service.

For the stated reasons, the majority believes that neither the denial of the individual deintermixture petitions nor the grant of VHF channels in the same communities can prejudice the fullest consideration of the merits of deintermixture as a possible feature of any nationwide revisions to the allocations plan.

The committee has inquired whether the public would be penalized if the Commission permits a channel to go on the air and then decides that it must go off the air at a later date because deintermixture would be a sound policy.

This question is understood to refer to recent VHF grants in communities where deintermixture has been sought. It should be noted first that none of the deintermixture proposals before the Commission contemplate the elimination of a local VHF assignment without the substitution in its place of a UHF channel.

Accordingly, there would be no question of the VHF station being obliged to go off the air. What could arise is a requirement that a VHF station transfer its operation to a substitute UHF channel.

In most of the cases for which deintermixture requests were submitted to the Commission, almost all of the families in the communities involved already own receivers capable of getting UHF transmissions. Viewers having such sets will not be penalized by a later shift of a station to UHF since their sets will be equipped to receive UHF.

Further, as to the minority of viewers in these communities with VHF-only sets, if the Commission decides at a later date to deintermix particular localities and to require certain VHF stations to shift to UHF, the shift over to UHF need not be accomplished abruptly.

It is quite possible that an appropriate transition period could be provided during which the affected stations could operate on both the old VHF channel and the new UHF channel, thereby assuring that those members of the public having VHF-only sets would continue to receive service for a suitable period.

Such a gradual shift-over during which new sets may be purchased, or old sets converted to UHF, would minimize any disruption of television service provided to the public.

The Commission also desires to acquaint the committee with its efforts to overcome the obstacles hindering the advent of television to many of the smaller communities.

Another of the committee's questions was directed to this matter. A major obstacle has been the high cost of building, operating and programing of television stations during this early stage in the development of the art—factors largely beyond the Commission's control.

TELEVISION FOR THE SMALLER COMMUNITIES

The high cost of local programing has, as you know, made adequate amounts of network programing generally indispensable to economic station programing. With this in view, the Commission has been considering ways by which the cost of intercity transmission of programs can be minimized.

Under the Commission's present rules, stations may operate private intercity relay systems to connect with program service points only on an interim basis until adequate common-carrier facilities are available.

Stations located in communities at some distance from program service points have urged that the common carrier mileage charges for connecting them to the network make profitable operation impossible. We have instituted rulemaking looking toward liberalizing the requirements for establishment of private intercity relay systems by the broadcasters themselves.

The telephone company has suggested in this proceeding the establishment of an off-the-air pickup service at charges substantially less than those required for direct network connections. Broadcasters interested in establishing their own intercity relay systems claim that their costs would be still lower than these reduced charges of the common carrier. We hope to issue our final report on this proceeding in the near future.

One of the first steps the Commission took to alleviate the high cost of programing was to announce in August 1954 that it would authorize the operation of satellite stations—stations that would be permitted to operate without their own locally originated programs or local studies—in communities which might not otherwise be able to support their own stations.

The satellites are licensed to operate in accordance with our rules and differ from other television stations only in that they confine their programing to the rebroadcast of programs of other stations.

Supplementing this policy for reducing the high cost of station operation in the smaller communities, the Commission amended its rules in June 1955 to reduce the minimum power requirements of television stations from 1,000 watts to 100 watts, and to eliminate the minimum antenna height requirement. This amendment makes possible the construction of television stations in the smaller cities at reduced cost.

In addition to these steps designed to encourage the construction of stations in the smaller communities, the Commission instituted rulemaking in March 1955 to consider the operation of "boosters" which would operate with limited power on the same channel as the main transmitter of UHF stations.

Such operation, if technically and economically feasible, would benefit the UHF stations by enabling them to improve their coverage by filling in shadow areas within their service range. Initially the proposal was aimed primarily at reducing disparities between UHF and VHF service in rough terrain, and the Notice of Rulemaking looked toward confining the use of boosters to UHF stations.

However, comments have been filed and are being considered by the Commission in this proceeding which urge that such authorizations should also be permitted by which VHF stations could boost their signals. The Commission is presently evaluating the comments filed in this proceeding.

In some areas of the country where regular TV service is not yet available there is a great temptation to erect low-power booster stations to provide this desired service. For reasons which I will mention, the Commission has not established rules permitting booster stations.

In a few cases such booster stations have been installed without Commission authorization, particularly in the central part of the State of Washington, where geographical isolation prevents direct service from existing stations.

This situation gives the Commission a dual concern. On the one hand, unauthorized operations present a problem. On the other hand, the Commission recognizes the natural desire of the residents of these communities to receive broadcasts which cannot reach them direct from distant stations without some device which will enable them to do so.

The Commission has, accordingly, concentrated careful attention on this problem in an effort to find a solution which will avoid serious interference problems created by boosters operating outside the normal service range of television stations. In addition, it is necessary to give careful consideration to the possible impact on UHF stations of any VHF boosters which would extend the effective range of existing VHF stations.

Our first inclination was to authorize low-power booster operation so that the existing booster stations could continue operation without making major changes. Careful engineering analysis has convinced us that this would be a very dangerous thing to do. Boosters are essentially squeezed-in channels, and as such, derogate from the planned approach of the sixth report and order.

Operating as they do on the same channel as the parent station, and usually from high elevations, we see no way, at least at the present time, of insuring that existing stations will be protected from interference. Although the actual coverage of boosters may be confined to a few miles, their signals can easily interfere with reception of signals within the normal coverage area of regular TV broadcast stations as much as 50 miles away.

This is an engineering fact. It occurs, the engineers tell us, because a signal of less than one-hundredth of the value of the signal strength needed to provide service can result in interference to another station.

However, I think we may have found the answer with the use of "translator" stations, which were the subject of a rulemaking instituted earlier this month. Let me give you a brief history leading up to this action.

In its search for an effective and economical method of serving isolated areas, the Commission began, as early as 1951, authorizing research and experimentation with a type of satellite station now known as translators. As distinguished from the booster type of station, translators pick up the signal from a parent station and "translate" the program to a new frequency before rebroadcasting. Thus, the translator type of operation has the very important advantage of being able to select a frequency least likely to cause interference in the particular area.

In January 1955, a permittee in Manson, Wash., was given an experimental authorization to begin construction of a station of this type, and by June programs were being furnished to the area by this station. On the basis of observations of the operation of this station, and of comprehensive reports furnished in connection with a similar operation begun in 1951 at Emporium, Pa., as well as other interrelated experimental operations, the Commission, on January 11, 1956, instituted a rulemaking to consider the operation of translator stations on a commercial basis.

As a result of the experimental data accumulated, it has been possible to reduce operating requirements to the barest minimum consistent with dependable service and protection to other services. Realizing that operating costs must be kept to a minimum in order to make such stations feasible, the proposed rules contemplate major relaxations of our rules relating to operator requirements, multiple ownership, monitors, measuring equipment, times of operation, station identification, and transmitter locations.

It is proposed to confine translator stations to the channels between 70 and 83, and thus reduce the need for protection spacings with existing stations because most UHF stations operate on lower channels. In addition, by confining translator operations to one portion of the UHF band, it is possible that transmitters used by translator stations may be manufactured to sell for about $1,000.

Comments on this translator proposal are due by March 5, 1956. The Commission intends to pursue this matter diligently in an effort to find suitable solutions with a minimum of delay.

NEW TELEVISION GRANTS

In a separate question, the committee inquires concerning the number of final decisions issued in the past year in television procedures. Nineteen grants were made in 1955 after comparative hearings conducted to select the best qualified applicant for channels for which more than one qualified applicant had applied. A total of 53 new television stations were authorized in 1955, including in addition to the foregoing, grants made for channels on which only a single application had been received.

The Commission has continued its diligent efforts to reduce the large backlog of mutually exclusive applications for television channels which have required numerous lengthy hearings. I am happy to be able to inform you that there are now only 10 cases awaiting the final decision of the Commission. Eleven are ready for oral argument. Only four are awaiting the examiner's initial decision. Hearings are in progress on the 11 other cases now remaining for disposition.

STATION COVERAGE

The committee has also inquired concerning whether the Commission at the time it adopted an order on July 22, 1955, with respect to antenna heights for VHF television stations in zone I, was in possession of data respecting "actual coverage" of the VHF stations if they proceeded to the new antenna heights authorized by the order. It should be noted that the amendment adopted by that order has not gone into effect. After several extensions of the effective date the Commission decided that the question of changes in maximum antenna heights should be considered in the general rulemaking proceeding on revision of the allocation plan. Accordingly, the order of July 22, 1955, has been vacated.

The question concerning "actual coverage" requires a brief explanation of the basis on which coverage of television stations in calculated by the Commission. Numerous factors determine the range within which satisfactory signals can be received from a television station transmitter. These factors include conditions of terrain, the sensitivity of receivers, the height and elaborateness of receiving antennas, the time of day, the time of year, weather conditions, and other factors.

Because a considerable number of variables enter into the picture and because the concept of a satisfactory signal calls, to some extent, for subjective judgments, there are many bases on which "coverage" might be defined and measured. Standards and criteria for evaluating "coverage" and "interference' have been established with the help and advice of leading electronic scientists, engineers, and physicists, with the assistance of the Bureau of Standards, the Commission laboratory, and field divisions, and on the basis of substantial data accumulated on propagation characteristics and the general behavior of radio waves and equipment.

From these standards the Commission evolved the well-known grade A and grade B coverage contours. Our grade B contours tell us the distance from an average station where 50 percent of the locations can receive for 90 percent of the time what we have determined to be a "satisfactory" signal. Our grade A contour gives us the same information for 70 percent of the locations at 90 percent of the time. For the purposes of determining Commission policy on channel assignments and overlap between stations the Commission believes this basis strikes a desirable compromise between more costly refinements on the one hand and the requirements of administrative efficiency on the other hand.

In making its decision on July 22, 1955, to permit VHF stations in zone I to operate at maximum power at 1,250 feet instead of 1,000 feet, the Commission relied principally on the standards and criteria to which I have referred. The average increase in range of stations going to the new height at maximum power would be minimal—on the order of 2 to 5 miles depending on the interference encountered. As noted, the amendment has not gone into effect, but will be reconsidered in the general allocations proceeding. A minor change was adopted, however, to avoid hardships in one special type of situation.

OVERLAP

You have also asked for the Commission's policy on overlap in television. The Commission is concerned with overlap in the television service in connection with the so-called duopoly rule (sec. 3.636 (a) (1) of the Commission's rules) which provides that licenses for TV broadcast stations shall not be granted to any party if such party owns, operates, or controls another television broadcast station which serves substantially the same area.

In determining what does or does not constitute "substantially the same area," the Commission considers the existence or absence of significant grade A overlap, i. e., whether the grade A contour of one station owned by a licensee would significantly overlap the grade A contour of another station proposed by that licensee. Where only grade B overlap exists or is proposed, in the absence of other considerations, the Commission has considered such overlap not to involve service to "substantially the same area."

CONCLUSION

It was not my desire, in this report, to burden the committee with an encyclopedic review of all the aspects of television which have engrossed the Commission's attention during the past year. In the belief that it would better serve the committee's present purposes this report has touched, rather, on the highlights of matters in which it is understood the committee is particularly interested at this time.

As you have seen, the keynote of the Commmission's recent activities has been the diligent quest of solutions to problems which are inhibiting the fulller expansion of television service in communities throughout the Nation, both large and small. To this end the Commission is bending strong effort to seek the means for bringing service to the limited areas still lacking it, to bring local outlets to many of the smaller communities, and to augment the number of competing stations in the larger centers.

The network study, our current review of the entire allocations plan, and our efforts in regard to satellite, booster and translator station are foremost among the Commission's present activities in the television broadcast field. Great importance is attached to these and other endeavors to keep abreast of constant changes and developments on the television scene. We must insure not only that our decisions are well adapted to current conditions, but also that the framework of the allocations plan and television standards is realistically calculated to facilitate television's continued growth and the fullest possible achievement of the goal of a nationwide competitive television service.

For its own part, the Commission will continue to explore every possibility for improvements which lie within its power to bring about. The Commission welcomes the interest of your committee in the problems which remain to be solved before this goal can be fully attained.

The cooperative efforts of the committee, the Commission and the industry itself can go far toward realizing our common objective of service to the people.

[Attachment]

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

NOVEMBER 22, 1955.

STATEMENT BY NETWORK STUDY COMMITTEE OF PURPOSES AND OBJECTIVES OF THE NETWORK STUDY

In order to perform its functions and duties in the field of radio and television network broadcasting, the Commission has recognized a need for information in this field.

The Commission is frequently requested by appropriate committees of the Congress to comment upon proposed legislation relative to the networks.

In 1943, the Commission promulgated its chain broadcasting rules following a rulemaking proceeding begun in 1938. The essential principles adopted in those rules are still in force. However, in the interim, radio network broadcasting has undergone substantial change and television network broadcasting has developed. Moreover, the Communications Act was enacted prior to the advent of television and no amendment to meet problems raised by the growth of this great new industry has been adopted.

The chain broadcasting rules applicable to radio were, upon the advent of television, carried over to the television field with little change. No detailed study has ever been made to determine whether radio and television networks are sufficiently similar to justify the application of the same regulatory policies to both media. Nor has such a study been made to determine whether and to what extent chain broadcasting rules have been rendered obsolete by developments in radio network broadcasting in the past 15 years.

The Congress has authorized a study of radio and television network broadcasting to provide the Commission with the information necessary to the performance of its duties. Accordingly, the network study committee has initiated an appraisal of the entire network broadcasting industry, both radio and television.

A firm factual basis is necessary for a determination as to whether the Commission's rules, in the light of current conditions, are achieving the objectives of the act and of the Commission's policies under the act. This appraisal is also necessary to enable the Commission to comment on any proposed legislation in the network field.

Existing regulatory concepts can be evaluated only after a thorough study of the broadcast industry. Such a study should necessarily encompass a thorough, well-documented, factual analysis of network broadcasting, and its effect on the broadcast industry and the public which the industry serves. To study the networks one must consider not only the networks themselves, but also the interrelations between the networks and their owned stations, affiliated stations, advertising agencies, talent agencies, national spot representatives, producers and distributors of film for television and radio purposes, and the effects of network operations on independent radio and television stations. Only in the context of these relations of the networks with other components of the industry and the public can the adequacy and wisdom of current regulatory policies be appraised.

The nature of an objective study of network broadcasting requires that the full scope of the study not be delineated until substantial exploratory work has been done. On the basis of its work to date, however, it is possible for the committee to set forth in broad terms several areas within which the study will proceed. As the study goes forward other necessary areas of inquiry will be added.

Basically, the network study will concern itself with the broad question whether the present structure, composition, and operation of radio and television networks and their relationships with their affiliates and other components of the industry, tend to foster or impede the maintenance and growth of a nationwide competitive radio and television broadcasting industry.

In determining this overall question, it will be necessary first to obtain the detailed facts required for the solution of the following subsidiary problems:

(a) What has been and will continue to be the effect on radio and television broadcasting of the following:

(i) Ownership and operation of both radio and television networks by the same person, or persons affiliated with, controlled by, or under common control with the same person;

(ii) Ownership and operation of radio and television broadcasting stations by persons who, directly or indirectly, own or operate radio or television networks;

(iii) The production, distribution, or sale of programs or other materials or services (including the providing of talent) by various persons, both within and outside of the broadcasting industry, for (1) radio and television network broadcasting, and (2) radio and television nonnetwork broadcasting;

(iv) The representation of stations in the national spot field by various persons;

(v) The relationships between networks and their affiliates including but not limited to those having to do with: (1) selection of affiliates, (2) exclusivity, (3) option time, (4) free hours, (5) division of revenue, and (6) term of contract.

[Attachment]

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D. C.

IN THE MATTER OF STUDY OF RADIO AND TELEVISION NETWORK BROADCASTING PURSUANT TO DELEGATION ORDER NO. 10, DATED JULY 20, 1955

NETWORK STUDY COMMITTEE ORDER NO. 1

Whereas by delegation order No. 10, dated the 20th day of July 1955 the Commission, pursuant to section 5 (d) of the Communications Act of 1934, as amended, and section 0.201 of the Commission's Rules and Regulations, designated this committee composed of George C. McConnaughey, chairman, and Commissioners Rosel H. Hyde, Robert T. Bartley, and John C. Doerfer, and ordered that this committee institute and carry on the study of radio and television network broadcasting provided for by Public Law 112, 84th Congress, 1st session, with the same powers and jurisdiction conferred by law upon the Commission; and

Whereas orders of this committee issued in respect to the matters assigned or referred to this committee by said delegation order shall have the same force, and effect and may be evidenced and enforced in the same manner as if made by the Commission (47 U. S. C. A. sec. 155 (d). Sec. 0.201 FCC Rules and Regulations); and

Whereas the Commission pursuant to sec. 403 of the Communications Act of 1934, as amended (47 U. S. C. A. sec. 403) has full authority and power, at any time, to institute an inquiry to obtain information necessary to the discharge of its proper functions and duties; and

Whereas under the provisions of the Communications Act of 1934, as amended, this Commission is empowered and directed to grant construction permits and station licenses, or modifications or renewals thereof, for broadcast stations only after it has made a determination that the public interest, convenience, or necessity would be served thereby; and

Whereas the Commission is empowered to perform any and all acts, make such rules and regulations, and issue orders not inconsistent with the act, as may be necessary in the execution of its functions (47 U. S. C. A. 154 (i) and 47 U. S. C. A. 303 (f)), and to make such special regulations applicable to radio stations engaged in chain broadcasting as the public interest, convenience, or necessity requires (47 U. S. C. A. sec. 303 (i)); and

Whereas, the Commission is required to make specific recommendations to Congress as to additional legislation which the Commission deems necessary or desirable (47 U. S. C. A. 154 (k)); and

Whereas, the Commission has been requested by Congress to comment on proposed legislation affecting networks; and

Whereas the network study committee has determined that, in order to institute and carry on the study of radio and television network broadcasting directed by the Commission, as aforesaid, and to report to the Commission the relevant facts necessary to enable the Commission properly to perform its functions and duties under the Communications Act of 1934, as amended, as above set forth, it is essential that inquiry be instituted pursuant to said section 403 of the Communications Act of 1934, as amended, by the committee, to obtain certain data and other information from various persons and sources regarding radio and television network broadcasting.

Now, therefore, it is ordered this 21st day of November 1955, that inquiry be made by the network study committee to obtain data and other information relevant to the study ordered by the Commission, as aforesaid, regarding the following matters and such other matters relating to radio and television network broadcasting as the committee may, from time to time, direct:

(*a*) What has been and will continue to be the effect on radio and television broadcasting of the following:

(i) Ownership and operation of both radio and television networks by the same persons, or persons affiliated with, controlled by, or under common control with the same person;

(ii) Ownership and operation of radio and television broadcasting stations by persons who, directly or indirectly, own or operate radio or television networks;

(iii) The production, distribution, or sale of programs or other materials or services (including the providing of talent) by various persons, both within and outside of the broadcast industry, for (1) radio and television network broadcasting, and (2) radio and television nonnetwork broadcasting;

(iv) The representation of stations in the national spot field by various persons;

(v) The relationships between networks and their affiliates including but not limited to those having to do with (1) selection of affiliates, (2) exclusivity, (3) option time, (4) free hours, (5) division of revenue, and (6) term of contract;

(vi) The contracting for or lease of line facilities used in the operation of networks by persons who, directly or indirectly, own and operate networks;

(vii) Related interests, other than network broadcasting, of persons who, directly or indirectly, own or operate networks;

(viii) The ownership of more than 1 radio or television broadcast license by any 1 person.

(*b*) Under present conditions in the radio and television broadcasting industry, what is the opportunity for and the economic feasibility of the development of a multiple-network structure in terms of (1) the number of broadcast outlets available, (2) national advertising potential, (3) costs of network establishment and operation, and (4) other relevant factors.

(*c*) Under present conditions in the radio and television broadcasting industry, what is the opportunity for and economic feasibility of effective competition in the national advertising field between networks and nonnetwork organizations in terms of (1) the number and type of broadcast outlets available, (2) national advertising potential, (3) needs of the advertiser, and (4) other relevant factors.

The CHAIRMAN. The committee will adjourn, to reconvene at the call of the chairman.

(Whereupon, at 11:56 a. m., the committee adjourned, to reconvene at the call of the chairman.)

TELEVISION INQUIRY

(UHF–VHF Allocation Problem)

TUESDAY, FEBRUARY 7, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to call, at 10 a. m., in room G–16, United States Capitol, Hon. Warren G. Magnuson (chairman) presiding.

Present: Senators Magnuson, Pastore, Monroney, Potter, and Payne.

Also present: Harold I. Baynton, acting chief counsel; Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nichols Zapple, staff communications counsel; Bertram O. Wissman, assistant clerk.

The CHAIRMAN. The committee will come to order.

We will have some more Senators here in a moment, but they were in session late last night so a lot of them are in their offices.

Before we begin today, I want to read another short opening statement for the record.

When we recessed our last hearing on January 26, we had hoped to resume last week. On checking with the Commission, however, we found that they were involved in hearings before the House Committee on Interstate Commerce and the House Appropriations Committee; had a regularly scheduled meeting of their own, and that some of them had other commitments. As a result, this was the earliest possible date for continuation of these hearings; and because of the Commission's schedule, we again find that this will be the only day available this week.

When we recess today we probably will have to convene on Monday, February 20. I understand the Commission will be available at that time. The reason is that next week is the anniversary of the founder of the Republican Party, and the Senate doesn't do much that week—the Republicans are all gone. Of course we Democrats go out in April when the great Thomas Jefferson was born.

Senator MONRONEY. We consider Jackson born all the year around.

The CHAIRMAN. So it appears we will have to continue these hearings until the 20th, but after that we hope to have hearings on a fairly regular basis so we can get at some of these matters. I am going to try to set some more definite dates after this is over. We have a regular meeting of the committee tomorrow, and I am sure that we can sound the Senators out as to when they will be available.

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Now, one other thing the Chair wants to announce. I have sent a letter to the Federal Trade Commission about a matter we are going to have to get into. I am asking the Federal Trade Commission what procedures it is following, if any, to establish a check on what I call false advertising on radio. I want to see if they have any method by which to check possible false and fradulent advertising. I am sure the committee and the FCC might want to go into that at a future date.

I realize that the Federal Trade Commission has jurisdiction over false and fraudulent advertising so far as the advertiser himself is concerned, whereas, the FCC only has the authority to deal with the broadcaster. Sometimes these activities aren't correlated. I think anyone listening to the radio on any given day in any given area in the United States will run into some very startling things, which I think are in violation of the Federal Trade Commission Act. We will probably hear from the Federal Trade Commission in reply to my letter by the time we have our next hearing.

Senator MONRONEY. Is there any limitation on the amount of time commercials can take? Should you get 50 percent commercials and 50 percent entertainment, or three-fourths commercials and one-fourth entertainment on radio now?

The CHAIRMAN. Is there a Communications Commission rule on that?

Mr. McCONNAUGHEY. Just a balance is all. As far as the Commission is concerned, they are required to have a reasonable balance.

Senator MONRONEY. What is the reasonable balance? Is it 50 percent soap and 50 percent news, or 75 percent advertising and 25 percent entertainment? If you listen to the car radio—and about the only time I get to do so is as I go about the State of Oklahoma—your commercials are taking at least 50 percent of the time.

Mr. McCONNAUGHEY. That is certainly true. They take far too much in many instances.

Senator MONRONEY. Are you monitoring any of these stations to know just how much they are abusing the privilege of the air waves with excessive amounts of "character-building cigarettes" and that sort of thing?

Mr. McCONNAUGHEY. The only jurisdiction I think, Senator Monroney, that the Commission has, is that they look at it at renewal time, and in response to complaints.

Senator MONRONEY. Then you have a death sentence?

The CHAIRMAN. You mean they have the autopsy.

Senator MONRONEY. In other words, you pull the license away because the fellow for 3 years or so has been devoting 50 percent of his time to commercials and maybe 50 percent to public-interest programs of some kind. I have noticed a tremendous difference, since the advent of television, in the loss of entertainment values in radio, and the overwhelming percentage of time—I don't know what percent, but it always seems like a great deal more—devoted to advertising. I don't know whether there are fewer advertisers and they have to give them more time, but they are driving people away from the radio with this policy.

Mr. McCONNAUGHEY. That is true.

The CHAIRMAN. I know that Mr. McConnaughey has expressed his concern on a number of occasions about this. I am not talking about legitimate advertising—cigarettes and food and things of that kind—

but it seems to me that if any monitoring were done, a rundown on some of these fantastic offers that come on the air would show that some advertising is not what it pretends to be at all, and that the public gets bilked.

If you listen to the radio long enough on a given day, you will be told that you can get almost anything free of charge. They tell you there is no obligation, but you find there is a gimmick to it all, in my opinion, which generally violates the concept of the Federal Trade Act. I suppose it would be most difficult for a radio operator himself to run those things down, and I suppose he should only be responsible if and when he had knowledge of the fact that it was that type of advertising. But the Federal Trade Commission has the right and the duty to look at those things and go directly to the advertiser himself. They do it on all other types of advertising, but I don't know what they have done here—they may be doing something—and we will have that information I hope by the next time we get together.

We will get at that matter and I hope to have a report. I am sure the Federal Communications Commission is concerned with it, and it is becoming, I think, a very serious matter. I am sure the Commission will be cooperative. And in these cases there should be some kind of rules of the game on this, as Senator Monroney points out, so these people can adhere to our policy.

Senator MONRONEY. Do you have a radio association now?

Mr. McCONNAUGHEY. Yes.

The CHAIRMAN. They will testify, I suppose?

Mr. McCONNAUGHEY. Yes.

Senator MONRONEY. When they do, I hope we can ask what they consider a normal formula. The newspapers pay postal rates according to the percentage of advertising contained. In other words, if they are carrying 50 percent advertising and 50 percent news, then they pay one rate. If they carry 75 percent advertising, they have to pay a higher rate. Public service material is what is carried at low cost.

The CHAIRMAN. Isn't it true, Mr. Chairman, that once a year or so, all stations send to the Commission a breakdown of their general programing?

Mr. HYDE. Just with a renewal license application.

The CHAIRMAN. That isn't broken down as to the content of advertising, is it? I suppose it is broken down only as to the amount of time devoted to advertising?

Mr. HYDE. That is an analysis by classifications and numbers of announcements. It is a pretty comprehensive analysis.

The CHAIRMAN. Not as to content?

Mr. HYDE. Just so many minutes.

The CHAIRMAN. Not what they say in those minutes?

Mr. McCONNAUGHEY. No.

The CHAIRMAN. It would be very difficult for you to get that, but surely the Federal Trade Commission and this committee might be able to do something about this.

Senator MONRONEY. We ought to give the Federal Trade Commission some money to monitor these programs. If we put some more money in the Federal Trade Commission's budget for this kind of a job, I believe it would be very helpful.

The CHAIRMAN. I would like to have enough people sometime to answer all of this advertising and to see the difference between what is said on the radio and what you get when you go down to the advertiser. There is absolutely no connection in some cases, and the public gets it in the neck. A lot of people assume that what the announcer says is right, and they go down and find themselves paying more, or there are some hidden qualifications, making it false and fraudulent advertising.

Senator PASTORE. May I ask a question? Would that fall within the exclusive jurisdiction of the FCC?

Mr. MCCONNAUGHEY. No.

Senator PASTORE. I mean, let's get into the jurisdictional part of it. Would it be your responsibility?

Mr. MCCONNAUGHEY. We have no jurisdiction over the advertisers.

Senator PASTORE. If an advertiser broadcasts fraudulent, deceptive matter, it is not in your purview?

Mr. MCCONNAUGHEY. Except to the extent of looking into the licensee's discharge of his responsibility.

Senator PASTORE. That is as to the station, which may be an innocent party. It is the advertiser who is actually deceiving the public, so to speak.

Mr. MCCONNAUGHEY. We have no jurisdiction.

Senator PASTORE. That would fall under the Federal Trade Commission?

Mr. MCCONNAUGHEY. Entirely.

The CHAIRMAN. The station would only be liable, and you would only have jurisdiction over it, if they knew in fact it was false and deceptive advertising.

Senator PASTORE. I grant you that.

Mr. MCCONNAUGHEY. They have an inherent implied station-operator responsibility.

Senator PASTORE. You almost have to prove a conspiracy.

(Letter inserted later at request of Mr. McConnaughey.)

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., March 15, 1956.

Hon. WARREN D. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington 25, D. C.

DEAR SENATOR MAGNUSON: The information contained in this letter is submitted in response to requests conveyed through Mr. Zapple and Mr. Cox of your committee's staff.

Inquiry has been made as to the Commission's policy and actions with respect to excessive commercialization and alleged fraudulent or misleading advertising contained in radio and TV commercials.

Broadcasting is, within the framework provided by the Communications Act of 1934, as amended, essentially conducted as a free, competitive enterprise. Under section 326 of the act, the Commission is prohibited from exercising censorship of radio communications by conditions or regulation and the Commission does not undertake to dictate specific advertising format or program content.

As I indicated in testimony before your committee on February 7, 1956, the Commission examines evidence of overcommercialization at renewal time and if the Commission should be unable to find that renewal of a license is in the public interest, either on account of past operating practice or for any good and sufficient reason, then the Commission would not renew.

My testimony of February 7, 1956, also refers to power to revoke licenses under section 312 of the act. In this connection, I wish to call to your attention that the same section 312 also provides for issuance of orders calling upon any person who (1) has failed to operate substantially as set forth in a license, or (2) has violated or failed to observe any rule or regulation of the Commission, or (3) has violated or failed to observe any of the provisions of this act to cease and desist from such action. The Commission has used the cease and desist procedure in appropriate cases, but not as a device for halting specific advertising practices.

Over a recent 2-year period (December 1, 1953 to December 1, 1955) the Commission directed staff inquiry into some 60 situations where there appeared to be evidence of overcommercialization. While in none of these situations was it found necessary to deny an application for renewal of a license, I feel that on the whole the steps taken by the Commission have served to improve advertising practices in the industry.

In addition to the foregoing, the Commission also accepts responsibility for directing attention of other agencies to possible frauds and sharp practices which seem to fall largely within the jurisdiction of the respective agencies. Of these agencies, the Department of Justice and the Federal Trade Commission have the principal primary jurisdictions in frauds and advertising practices conducted by wire or radio. As you know, the Federal Trade Commission conducts rather extensive monitoring of advertising scripts and frequently institutes proceedings designed to minimize or halt unlawful practices. Where violations of the criminal laws are concerned, the Justice Department of course, is primarily concerned and is most cooperative about investigating and prosecuting law violations which are referred to them.

This Commission does not have staff personnel assigned specifically to monitoring advertising scripts. However, in the course of the Commission's other monitoring and regulatory activity, it is felt that the Commission receives sufficient information to enable it to discharge its responsibilties in this field.

In view of the fact that the content of this letter, in part, elaborates on certain of my testimony before your committee on February 7, 1956, I would appreciate having the text hereof inserted in the official transcript, volume 2, Television Inquiry, Tuesday, February 7, 1956, p. 127 following line 14.

I am happy to have been able to supply the foregoing information, and if further information is desired, please so advise.

Sincerely yours,

George C. McConnaughey, *Chairman.*

The Chairman. The members of the Association of Radio Broadcasters have tried to police themselves. They do have very definite rules—what they call a code—and when you get that in front of you, you will get information about their operations.

Well, now, for instance, you can listen to radio advertising, and it urges you to call number so-and-so, STerling 6–7400, or whatever the number is, and——

Senator Potter. It is interesting to know the type of program the chairman listens to.

The Chairman. They say: "Call this number, and we will deliver you a television set free of charge. You can use it for 10 days, there is absolutely no obligation, and you can have the fellow take it back at the end of that time if you don't want it." Well, I'd like to have the average person just try that.

Senator Monroney. Shifting from the character of the advertising, you do have power over the time consumed?

Mr. McConnaughey. That is right.

Senator Monroney. If an unduly large amount of time is devoted strictly to commercials, as I understand your testimony, you only consider that at the time of renewal of the station license and you have not invoked any sanctions or warnings other than at that time?

Mr. McConnaughey. We consider the question also if we have a specific complaint, Senator Monroney, from the public, then we inquire into it.

Senator Monroney. The public is not very well advised as to the fact that you accept such complaints.

Mr. McConnaughey. That is right.

Senator Monroney. If they think you are permitting too much advertising, you'd have to get a couple of trucks to handle the mail.

The Chairman. When the Federal Trade Commission was up here last summer, there was some indication that it might begin to monitor some of these programs. I wonder if that has been done at all?

Mr. McConnaughey. I don't think so.

Mr. Lee. I don't think it is quite fair to blame the advertiser entirely, although that is the FTC jurisdiction. The broadcaster has some responsibility to see that he is putting out a good product, and it is at that point that we can move in on the public-interest concept.

Senator Potter. Do you have a rule as to what is too much advertising?

The Chairman. Yes.

Senator Potter. What is too much advertising?

Mr. McConnaughey. No.

Mr. Lee. The NARTB has. It varies by the time hours—20 percent, during the day, of a 15-minute spot, I believe.

Senator Potter. What criterion do you use when a license comes up for renewal, as to whether they have used too much time for advertising?

Mr. Doerfer. We have a difference of opinion.

The Chairman. You get into a rule of thumb, 3 minutes out of 15, I think, is what is generally looked at as proper.

Senator Pastore. With all the other things you have to do, how much serious attention can you pay to all this?

Mr. McConnaughey. Not a whole lot, Senator.

Mr. Doerfer. There are 3,000 radio stations on the air.

The Chairman. Why don't we do this, and we can proceed. If you could, the next time we meet, submit for the record what general policies you have on the question that the Senator from Oklahoma raises——

Mr. Hyde. May I say that there is a specific provision of the act, section 326, which denies us any responsibility for censorship, or any power of censorship.

The Chairman. You couldn't censor context of a piece of advertising yourself, but if you knew this was going on——

Mr. Hyde. A violation of law is not made proper by the anticensorship provision.

The Chairman. That is right.

Mr. Webster. Not all of the broadcast stations belong to NARTB, and a great many, I believe, from my observation, are stations that do not comply with their code, because they don't belong. Secondly, I think you should keep in mind that the whole trend in broadcasting has changed since television. Their livelihood now is depending upon more and more advertising, and I think that is one of the reasons. We are increasing every day the number of broadcast stations in this country, and that is one of the reasons they are going more and more into advertising, that is the way that they live, and I think that is an element in the problem.

The Chairman. I am sure we appreciate that, and I think we all appreciate that the very fact that this is happening should give us a greater sense of responsibility for the type of advertising being broadcast.

Senator PASTORE. May I ask another question.

Isn't it a fact that the trend has been more advertising in radio because the rates in television have become almost impossible?

Mr. WEBSTER. That may be so.

Senator MONRONEY. If you overload radio or television with a superdose of commercials, you are going to kill the goose that lays the golden egg. "I am going to get a hi-fi and play my own records," is what the attitude may become.

Mr. WEBSTER. I am surprised at the number of AM broadcasting applications we get every day; it is increasing all the time. If they are losing money, they'd go out of business, so they must be making money by loading up with advertising.

Senator MONRONEY. We are in favor of making money, but we think you will finally reach a point of diminishing returns. Certainly the programs on my car radio as I drive over that great State of Oklahoma lead me to believe you have a heavy load of advertising. Three minutes out of 15. If you get 3 minutes of entertainment in a 15-minute program, consider yourself lucky.

The CHAIRMAN. Have you segregated the Mexican programs from those originating in Oklahoma?

Senator MONRONEY. We get Mexico, too.

Senator PASTORE. From now on in you will be floating on gas.

The CHAIRMAN. We are up in the air now. The Chair wants to finish this statement. Since the last hearing we have received a number of communications which I believe should be inserted in the record at this point. The first of these consists of a form of resolution signed by Senator Bush and all of the members of the Connecticut Delegation in the House of Representatives, urging that Congress and this committee require the Federal Communications Commission to assign additional VHF channels in Connecticut, or to minimize VHF competition with UHF stations, or both. A copy of this resolution with indication of all the signatories will be placed in the record.

(The resolution referred to is as follows:)

RESOLUTION

Whereas the Communications Act directs the Federal Communications Commission to make television service available, insofar as possible, to all the people of the United States by providing a fair, efficient, and equitable allocation of television channels to the several States and communities; and

Whereas almost 10 years after the inception of commercial television, there are only 5 television stations in operation in the entire State of Connecticut—fewer stations than in a single city of a neighboring State—and this number may be reduced to 3 since 2 stations have operated at a substantial deficit since their inception and see no prospect of successful operation under present conditions; and

Whereas the various communities in Connecticut are entitled to their own television stations to serve as outlets for local self-expression in the same manner as this function is performed in related fields by the 31 radio stations and 32 daily newspapers which are in operation in the State of Connecticut; and

Whereas the principal reason why Connecticut has so few operating television stations is that 14 of the 16 television channels assigned to Connecticut are in the UHF band, and UHF stations find it extremely difficult to survive when they are faced with competition from VHF stations in neighboring cities—a type of competition which is the fate of most UHF assignments in Connecticut; and

Whereas the Committee on Interstate and Foreign Commerce of the United States Senate is scheduled to commence hearings at an early date in an attempt to solve this problem: Now, therefore, be it

Resolved, That the undersigned public officials from the State of Connecticut do hereby earnestly petition the Congress and the Committee on Interstate and Foreign Commerce to take imediate steps to insure that the congressional policy set forth in the Communications Act is implemented by requiring the Federal Communications Commission forthwith to assign additional VHF channels in Connecticut or to minimize VHF competition to UHF stations, or both.

PRESCOTT BUSH, *United States Senator.*
J. T. PATTERSON, *Member of Congress.*
A. P. MORANO, *Member of Congress.*
THOMAS J. DODD, *Member of Congress.*
ALBERT W. CRETELLA, *Member of Congress.*
HORACE SEELY-BROWN, Jr., *Member of Congress.*
ANTONI N. SADLAK, *Member of Congress.*

The CHAIRMAN. The second item is a joint telegram from 10 of the members of the Massachusetts delegation in the House of Representatives, urging substantially the same relief for Massachusetts. This telegram will be inserted in the record.

(The telegram referred to is as follows:)

JANUARY 26, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee,
United States Capitol, Washington, D. C.

DEAR MR. CHAIRMAN: We, the undersigned United States Representatives from the Commonwealth of Massachusetts, do hereby earnestly petition your Committee on Interstate and Foreign Commerce to take immediate steps to insure that the congressional policy and intent set forth in the Communications Act is implemented by requesting the Federal Communications Commission to assign additional VHF channels in Massachusetts or to equitably regulate any unfair VHF competition to UHF stations, or both.

Respectfully,

Harold D. Donahue, Richard B. Wigglesworth, Edward P. Boland, Thomas J. Lane, Philip J. Philbin, Donald W. Nicholson, Edith Nourse Rogers, Laurence Curtis, William H. Bates, Thomas P. O'Neill, Jr.

The CHAIRMAN. In addition, Congressman Philip J. Philbin, of Massachusetts, one of the signers of the telegram, has submitted a statement on this problem, which will also be made a part of the record.

(The statement referred to is as follows:)

STATEMENT OF HON. PHILIP J. PHILBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

I desire to present my views on the UHF–VHF problem with special emphasis on the situation insofar as Massachusetts is concerned, and especially wish to commend this committee and its distinguished chairman, Senator Magnuson, of Washington, for its work and efforts in trying to get established a clear, realistic, overall FCC policy on the assignment of television channels.

I think that certain facts ought to be carefully considered in connection with television channel allocations—that it is most desirable:

(*a*) To have uniformity of reception in television sets so that as nearly as possible everyone in the country owning a television set can enjoy all of the programs.

(*b*) To provide a system whereby each community in its choice and discretion shall have a television outlet for its own culture and establish patterns, including an opportunity for the expression of political views and the conduct of charitable, social, and educational work. In the present situation, which involves conflict, dispute, and controversy between the networks for position and markets, this important public-service feature is in jeopardy.

I would address a few words to my own county of Worcester, Mass. For your information, this is a very important area combining industrial, mercantile, residential, and some farming areas. There is a single TV station located in the county, the signal of which cannot be received by the set owners without special technical adaptation entailing considerable expense. Of course, in such an area most of the popular programs of one of the major networks should be available.

I have read the brief filed by the Committee for Home Town Television on some of these points, and believe it contains suggestions as to how the above results can be accomplished without adversely affecting, but rather effectively implementing, existing priorities.

Unquestionably, monopolistic groups are seeking to control the television field in some areas, and this would clearly be very harmful to the small local stations which could otherwise perform such valuable functions. Another anachronism in this picture is the present total number of unused channels as a result of the daily schedule for some stations which, when they go off the air, leave channels entirely unused. The effect of this is to add to the number of major cities in Massachusetts with no local outlets, and we are facing a situation which may result in greatly impairing television service in our State.

I think that the FCC has an obligation to correct such abuses in the television field, and, obviously, if it fails in that primary obligation, Congress should act.

There are 22 potential UHF channels available to Massachusetts. About half of these channels have already been assigned by the FCC, but actually only four of these stations are now operating. Of these 4, it is extremely doubtful that any 1 station is operating in the black. The financial outlook for these telecasters is far from encouraging in the face of entrenched VHF competition offering a varied fare of network programing. These stations are losing money, but they remain on the air with the hope that the FCC will allow more VHF channel assignments and that their past record of public service as a UHF station might perhaps work in their favor when a VHF channel is being assigned.

One UHF station, channel 14, WWOR–TV of Worcester, up until recently provided programs of distinct interest to central Massachusetts. The station carried some network programing, but much of its telecasting was of a distinct community interest. Now, WWOR–TV is off the air after several months operation in the red because it was unable to cope with VHF competition from the Boston, Providence and Manchester stations. All these VHF stations have good signals which can be picked up by viewers with regular television sets. WWOR–TV, while it did its best to offer worthwhile program material, was faced with this problem: how to get the average viewer to spend anywhere from $50 to $100 to convert his present television set and receiving antenna so as to pick up the UHF picture. The problem was doubly difficult for WWOR–TV because these same viewers could watch top network programing from the nearby VHF stations without any additional expenditures for special adapters or special antennas.

Actually, all UHF stations in Massachusetts, despite the huge television viewing audience, are still in the pioneering stage and are facing the same problems which beset our Boston VHF stations, WBZ–TV and WNAC–TV, several years ago. These two stations also operated in the red during those early days of television when a television receiver was truly a luxury. WBZ–TV and WNAC–TV rendered outstanding public service in those early days and are continuing this splendid public service tradition to this day.

The problems which face the UHF stations in Massachusetts are the same that have held back UHF programing all over the country where VHF channels are already providing service: only a small proportion of the TV audience have sets to receive the UHF broadcast, networks are not too desirous to affiliate with them and advertisers are loathe to support them because of the small audience. Without network affiliations and advertising, UHF stations lose money and without money, they cannot offer the quality of local programing to build up an audience.

The only hope of the UHF stations to stay on the air is to obtain VHF channel assignments from the FCC. These stations already have the know-how, the technical people, the transmitters, the towers, and local program features to serve community interest.

I hope that the FCC will not longer delay the assignment of VHF channels to the UHF pioneers who have their personal fortunes and the money of their stockholders tied up in a losing battle. When these channels are made available, a new competitive era will begin in the television broadcasting industry to the distinct advantage of the viewers.

I urge your continued consideration of these matters and hope that in the not too distant future this distinguished committee will come up with the

right answer to adjust the present problems of the television industry so that it can more capably and adequately serve the public interest.

The CHAIRMAN. Mr. Chairman, you didn't finish your statement, and I think we were down to what page?

Mr. McCONNAUGHEY. We were on page 9. No, I was not reading my statement; I was merely giving you a synopsis.

I am to the "Review of television allocations."

The CHAIRMAN. That is on page 10. We will be glad to have you proceed in the same manner, if you wish.

STATEMENT OF HON GEORGE C. McCONNAUGHEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION—Resumed

Mr. McCONNAUGHEY. In the notice of proposed rulemaking initiating the general proceeding, proposals and comments were invited from all interested parties for such revisions of the nationwide allocations plan and television engineering standards as might reduce the present obstacles to fuller development of the television service. Written comments were requested by December 15, 1955. Approximately 200 comments have been filed. The time for filing reply comments has been extended to February 8, 1956. The suggestions before the Commission encompass a considerable variety of approaches including the use of additional VHP frequencies; the reduction of minimum station separations to make additional VHF channel assignments possible, using either the present 12 VHF channels or new VHF channels, or both; the use of directional antennas; cross polarization; deintermixture; and others including combinations of the foregoing.

A considerable number of these proposals contemplate basic departures from the structure of the existing system, which was adopted in 1952. The proposals are widely diversified. Some are mutually exclusive. Most of them cannot be properly evaluated except in the light of a complete review of the nationwide allocation plan. The basic question before the Commission is whether, and if so, in what manner, the public interest may be served by revising the structure of the present plan.

Notwithstanding the pendency of the general rulemaking proceeding in which the foregoing proposals are being considered, the public continues, understandably, to press vigorously for the expansion of presently available television service, especially in communities and areas where available service is either nonexistent or where there is an insufficient number of stations to provide adequate choice of programs. It happens that in a number of communities in which local UHF broadcasters had sought deintermixture, mutually exclusive applications for a locally assigned VHF channel have reached advanced states in comparative hearings which have been subjected to unavoidable but lengthy delays. The Commission has been urged by some of these UHF broadcasters to defer or stay the authorization of new VHF stations on those channels. The majority are convinced that it would be contrary to the public interest to create added delays by deferring grants on such VHF channels until it could be determined whether final decisions in the general allocations proceeding would possibly result in deintermixture of any such local community.

The CHAIRMAN. In that particular case you are speaking about the allocation of channels in areas where deintermixture has been proposed; is that right?

Mr. MCCONNAUGHEY. Grants, not allocations?

The CHAIRMAN. I mean grants. In other words, there are cases pending before the Commission that can be decided that do not involve this problem, is that correct?

Mr. MCCONNAUGHEY. That is right, Senator.

The CHAIRMAN. I wanted to make that clear.

Senator MONRONEY. Do I understand you to say you think that it would be bad to hold up the TV grants where you would destroy the few remaining islands of successful U stations?

Mr. MCCONNAUGHEY. We don't feel it would destroy them.

Senator MONRONEY. If you put a V in there you would destroy them.

Mr. MCCONNAUGHEY. We don't think so.

Senator MONRONEY. Don't you have an examiner's report saying that?

Mr. MCCONNAUGHEY. No.

Senator MONRONEY. You say it is the Commission's stand that if you put a V in there you will not destory the U's in the area?

Senator POTTER. It would if you have two V's.

Senator MONRONEY. One V.

Mr. MCCONNAUGHEY. It depends on the place you are talking about entirely.

Senator MONRONEY. Only one place that is left, Hartford.

Mr. MCCONNAUGHEY. Oh, no, no. Well, no, sir, quite a number of them.

Senator MONRONEY. I am glad to know that.

Mr. MCCONNAUGHEY. There are 29 markets where UHF stations were established before VHF stations were built. UHF survived the VHF in 16 markets and went off the air in 13 markets. Nobody can make an absolute statement. There are many places where 2 U's could live with 1 V. When you get to two V's with the U's, I am speaking personally only, I have my serious doubts.

Senator MONRONEY. Until the television set manufacturers do something to make all-wave reception possible on a standard basis, all new sets, with one V in the area, are perhaps going to be just the V channels, isn't that so?

Mr. MCCONNAUGHEY. The opposite of that happens. The thing we are talking about, the people in the communities all have U's.

Senator MONRONEY. Those are the old sets. There are a lot of color sets coming in and a lot of new set buyers.

Mr. MCCONNAUGHY. A little bit.

Senator MONRONEY. With a $30 or $40 conversion cost, you surely do handicap these U stations, with the result the advertisers are going to be slow to patronize such stations.

Mr. MCCONNAUGHEY. It is a pretty big problem.

The CHAIRMAN. The results you cite give the U stations a 50–50 chance to survive.

Mr. MCCONNAUGHEY. It depends on whether there are 1 or 2 VHF stations; where there is 1 it would show a lot more chance to survive.

The CHAIRMAN. We are only speaking about those places where intermixture would take place if grants were made.

Mr. McConnaughey. I think that that is a correct statement.
The Chairman. There are some places where the problem doesn't exist.
Mr. McConnaughey. That is right.
Mr. Webster. You have some places where you can't survive with just one V.
Mr. Doerfer. You have some places where you cannot survive without a V.
The Chairman. Let's go on with this statement here, Mr. Chairman.
Senator Pastore. When do you expect this study of yours to be complete?
Mr. McConnaughey. Senator Pastore, the reply comments will be in tomorrow.
Senator Pastore. Tomorrow?
Mr. McConnaughey. If I guessed it would be just as wild as anything that ever could happen. We are putting our staff, as many of them as we can, on this thing immediately. We consider it top priority. I hope that within 3 or 4 months we could come to some conclusion on it.
Senator Pastore. So we would definitely know, say, within 6 months anyway, just what the ultimate decision is going to be on deintermixture and drop-in in VHF stations here and there, and all that sort of thing?
Mr. McConnaughey. I certainly——
Senator Pastore. You would resolve this whole problem and would have a definite answer, whether everybody likes it or not, within a period of 6 months?
Mr. McConnaughey. Yes, sir. I am speaking personally, and I will say yes, sir.
Senator Pastore. Does anyone else on this Commission have a different viewpoint on this? I'd like to know when we can hope for an answer.
Mr. Webster. When we have the proper investigations before us under the Communications Act and under the Procedures Act and the volume of material to be analyzed and the difficult questions involved in that—and they are difficult, and it is not just one little problem it is hundreds of little problems—you analyze all of these comments that have come in and they are varied and everybody has a different idea, and don't forget that those people who came in with good intent, honest about it, are not the people that make the decisions. I have to make a decision, I am the legal one to make the decision. I have been on their side, too, and I can make recommendations very easily when I do not have to make the final decision. I think it has got to be more than 6 months.
Senator Pastore. How long?
Mr. Webster. I said when we started the proceeding it would be at least a year. We started the proceeding in November.
The Chairman. I was hoping to get this done before Congress recessed.
Mr. McConnaughey. Mr. Hyde, do you have something to say?
Mr. Hyde. It might be helpful to know how long it took the Commission to write the sixth report which specifies the general allocation of station assignments on TV channels. The notice looking toward the completion of that project was issued in July of 1951, about

the 25th of July. In this undertaking it was proposed to establish a television allocation on some 82 channels. We completed that very enormous study by April of 1952.

What is proposed here are some adjustments within that allocation, and, depending on how you go about it, whether or not you undertake to re-do the whole thing, or whether you give some appropriate consideration to work that has already been done, you could make some very constructive changes in much less time in my judgment. It all depends, though, on whether you want to face up to the issues, recognize the realities of the thing, and take advantage of work that has already been done, judgments that have already been made.

Senator PASTORE. How long do you say?

Mr. HYDE. I should say that we could have completed these adjustments in the time that we have been arguing about the individual cases.

Senator PASTORE. Can you put it in a matter of months?

Mr. HYDE. I should say 6 months. But, Senator, one Commissioner cannot control the timing of it and a lot depends upon the approach that is taken. I meant to indicate that. If we undertake now to reexamine all of the decisions that have been made in the past and start from scratch, it could take years. If, however, we want to take advantage of work that has previously been done and try to do something that is realistic, we could do it in 6 months, such as the chairman mentioned.

Senator PASTORE. Let me say this. You have a complex problem, and you have different points of view, and naturally each man is looking out for his own point of view. Of course, all of you are concerned with the public interest, and I think we should adopt some kind of a system where people would have as much television as possible.

We keep saying most regions have two outlets now. What I want to find out is whether we are going to end up with 2 in most localities, and 7 in others. I think something ought to be done about it. If you want to advertise in a little community outside of New York, and you have to pay New York station prices, it is prohibitive. There ought to be some local benefit in television, too. I recall, one of the candidates that ran for high office in Massachusetts had to come into Rhode Island and get himself on a station there in order to reach some parts of Massachusetts, and vice versa. A lot of the small people cannot advertise on television because the rates are prohibitive. They ought to have a community service, too. I am holding out for—I hope I am going to be successful—but somehow we ought to have three V's in Rhode Island. I am going to fight for that until the cows come home. Because I don't relish this idea—I come down to Washington and it has 4 outlets, New York has 7, I think Miami has 7 or is it Los Angeles, and I don't see why we shouldn't have a competitive system where any viewer can get NBC, CBS, or ABC.

The CHAIRMAN. Or a local.

Senator PASTORE. Or a local.

Mr. MACK. There are not 7 in Miami; 2 at the moment.

Senator PASTORE. I'd like to see them get 3 or 4 or more.

The CHAIRMAN. Let's go on with this——

Senator PASTORE. I hope you're going to end up with four.

The CHAIRMAN. I don't know why we have to take so much time on all these things. It seems to me you can make decisions a little faster than you do.

Mr. HYDE. May I say something more about the time there?

The CHAIRMAN. I want to go into that a little later. I think there are a lot of things that can be done to speed up these things so we can get to a place where the Commission can meet and vote them up or down. I know your problem, I know what a regulatory lag that becomes, because that is the complaint against all the Commissions downtown. It isn't just your Commission. Some cases in the ICC have been over there for years, not for months. We in Congress have to go down and stand up and say "yes" or "no," there comes a time.

Senator MONRONEY. I suggest that the Commission talk to Ross Rizley, a good Republican, Chairman of the CAB, who has about determined that this musclebound practice in Washington has reached the limit. Once permission is granted, that is permission to build, but before the station gets on the air other procedures are invoked which act as a delaying factor. All the while the Washington lawyers get fat on the fees, and the viewers don't get the stations. I mean, I think they are musclebound.

The CHAIRMAN. All those in the room stand up.

Senator MONRONEY. And until you do finally take the bit in your teeth and say, "We are running this for the public and we are not going to flyspeck this thing with dozens and dozens of different hearings on little technicalities," you are going to be tied up in a morass of legalistic joking. Mr. Rizley has accomplished that in the CAB. We have gotten more action down there in cases pending than we have in the last 5 or 6 years.

Mr. McCONNAUGHNEY. Congress musclebound us in section 309 (c) until some of you good Senators got us relieved within the last month. We were musclebound by Congress in spite of the fact that we told Congress over and over again that that section should never be passed, but it was.

Senator MONRONEY. Give us some more examples and we will try to unmusclebind you some more.

Senator PASTORE. If you will play ball with us the way we played ball with you on 309 (c), we ought to get somewhere.

Mr. DOERFER. I'd like to say something with respect to that. I think we are up to our necks in due process, and that has been the result of a series of laws and court decisions, piecemeal, which, when added up, really hobble us. For illustration, section 309 (c), which I don't think even today, as amended, goes far enough. Nonetheless, Congress has even engrafted upon the FCC procedure a remedy without a right. People now have the right to come in to prevent competition, when the act itself calls for a competitive system.

Now, with respect to some court decision, naturally I am going to abide by them, but——

The CHAIRMAN. Of course, the law provides that, but you don't have to give the parties all this time to do these things. Sometimes hearings on a given case are spaced 6 months apart.

Mr. DOERFER. Senator, a protest——

The CHAIRMAN. Read some of your examiner's reports in a lot of these hearings. A person can have his day in court, but you have to get on with the cases. I have seen examiner's reports, and the examiners say "this is not relevant to the case at all, but go ahead and put it in," and some of them are in this high [indicating].

Mr. DOERFER. I think that could be explained.

The CHAIRMAN. Evidence is admitted in these proceedings that wouldn't be admitted in a police court.

Mr. DOERFER. I agree to that, Senator, but I do think there are some decisions the examiners find it difficult to follow. The Johnston case——

The CHAIRMAN. We all have a sense of duty, but we don't have to sit there and go on and on. You can exercise your duty quickly.

Mr. DOERFER. I think each Commissioner is very anxious to do so. The courts don't always permit that. For illustration, in the Johnston case, the courts require that the applicants be permitted to assert every reason why they should have a license, and the other fellow shouldn't. We have to make findings on all assertions that aren't frivolous; we have to explain why he got it, and the other fellow didn't. We decided a case, and after it was decided by us and was on appeal in a circuit court, one of the principal parties, a losing applicant, died, and the court sent it back and said we should take that into consideration.

The CHAIRMAN. Let the court do that; that is the court's responsibility, for whatever they do. You can give people their day in court under the act.

Mr. DOERFER. And they sure take it.

The CHAIRMAN. You can, you know, shorten these things up. Our court proceedings don't go along indefinitely. Cases are begun and the evidence is heard, and only that evidence is admitted that is pertinent. Many times I have had judges tell me to hurry along, cut out all this business, let's get going. That is our system.

I think you people can come up here, when we are through with these hearings, with some pertinent suggestions for procedural improvements in the act itself.

Mr. MCCONNAUGHEY. We can't even speak to a hearing examiner. We can say, "Good morning," and that is all.

The CHAIRMAN. You have a right to set the rules by which he conducts hearings.

Mr. MCCONNAUGHEY. I told you last summer I was going to do it, and it has been done.

The CHAIRMAN. You went to work on that matter right away.

Mr. MCCONNAUGHEY. And it's been accomplished.

Senator PASTORE. The protest amendment we have passed is going to help.

Mr. DOERFER. We still have to have the hearings.

The CHAIRMAN. You folks do shorten up procedures. I think you allow 30 minutes for an oral argument, 20 or 30 minutes. That is an important part of the case done in a short period of time.

Mr. DOERFER. We have that, and we have a prehearing conference where we try to get the attorneys to stipulate.

The CHAIRMAN. All the regulatory lags are down in the other places apparently.

Mr. MCCONNAUGHEY. I think we must look at this thing in terms of what has been accomplished. In 12 months it is all going to be over. In other words, we are talking about something, the deal is over, this Commission. I don't get any credit for this. This Commission has gotten television to over 90 percent of the people in the United States.

Senator POTTER. When are we going to get it in Cheboygan?

Mr. McCONNAUGHEY. Seventy-five percent of the population has got two. No other place in the world has as many as we have. They have been about as far from being musclebound as any regulatory agency that ever existed. They have gotten the show on the road in about 5 or 6 years. My hat is off to them because I can't take any credit, and now we have only got about 12 months left, only about 35 or 40 cases on the docket, and we are talking much ado about nothing.

The CHAIRMAN. That is not the way I view it, taking into account the expansion of our television system which I think we must provide for in the future.

Mr. McCONNAUGHEY. There you get, Senator, into this rulemaking thing. How much expansion can you get? You have 12 VHF channels, not enough to cover the country; you have got your UHF. What utilization can you make of it? What is going to be economically feasible and possible to have in this country?

The CHAIRMAN. How many unused allocations do we have now, about 1,400?

Mr. LEE. 1,200.

Mr. McCONNAUGHEY. In other words, you get into the question of how you expand it, you run into economics, as well you know. What will the manufacturers do? I wish I knew what they would do. We have no control, and we can't tell them what to do.

Senator MONRONEY. I think you said 6 months

Mr. McCONNAUGHEY. I said I would hope we could get it out of the way in 6 months.

Mr. DOERFER. It all depends. May I explain my position?

Mr. McCONNAUGHEY. I think Mr. Webster said a year.

Senator MONRONEY. I think we should get what the Commission's target date on this is.

Mr. DOERFER. It will be a guess, but let me outline what I consider to be the problem. The sixth report, as I read it, did nothing more than decide that the first objective was service to all of the people, and the next one, as much competition as possible. Now, in the actual administration of those two things, they are antithetical. It doesn't appear so on the surface, but it is. And our problem today is whether or not we are going to shift that fundamental priority, whether or not we are going to try to rearrange the priorities to have a national competitive system with a possibility of all people getting a television service relegated to the bottom of the ladder practically. The problem is fundamentally complex; over much we don't have control. Commissioner Bartley's and Commissioner Hyde's view don't necessarily part with mine. The law says an equitable distribution of the frequencies. It doesn't say one State or one area gets all the U's or V's and the other doesn't. They say, "Create U islands." When you create UHF islands you create islands of VHF also, and ne'er the twain shall meet. They can't compete with V's in the big market today——

The CHAIRMAN. I understand the difference of viewpoints. Senators Pastore, Monroney, and I had a different viewpoint for about 2 weeks, but we finally had to go down to say "Yes" or "No."

Mr. DOERFER. The sixth order report was based on the premise that there must be intermixture to get the full utilization of the spectrum. Now, if we are going to divert that policy, if intermixture is going to be replaced by deintermixture, that is a very serious problem. If it were not, we could decide it in 30 days.

The CHAIRMAN. There are a lot of other decisions that lag down there. I haven't gotten your agenda recently but it gets thicker all the time. And I want to say this—and I have said this to other Commissions when they have been up here—I have asked the question time and time again, is the reason why we can't make some of these decisions due to the lack of money to hire people? I have always tried to recommend to the Appropriations Committee the amount of money you needed to do the job. In some cases I appreciate that it is hard to find the type of man to do the job, but I don't think there is a one of you who will disagree with me that there has been a lot of delay—and it is true of all commissions—what we call a regulatory lag that sometimes becomes almost unconscionable, due to a lot of things.

Maybe the Commission should meet more often as a Commission, then you'd argue yourself out for awhile, call for the previous question, and you'd have to vote. I don't know, maybe that is the answer.

Mr. DOERFER. The problem is like trying to unscramble eggs, and that is a pretty tough job for anybody. This thing started in 1948.

The CHAIRMAN. Don't scramble them any more than they are already.

Mr. DOERFER. In 1951 you had 108 television stations serving 75 percent of the people; now, according to some estimates it is 95 percent. My question is, what about it, are we going to forget about the remaining 5 percent? We have got to remember that you have to look at the VHF problem and the UHF problem as though you had a plate with a saucer on top. How about that perimeter on the edge? Are those people going to be without service forever? That is a very serious problem. If this Congress will say——

The CHAIRMAN. The Senator from Michigan has got to go down and make a television show.

Senator POTTER. You know, I can't even get into my hometown.

Mr. DOERFER. I will close by saying, if this Congress wants the Commission to lay emphasis on a competitive system rather than a service to all the people, I can make up my mind in 10 minutes. We will intermix what we have got here and try to pull some V's out that are established and let it go at that. But I am satisfied there will be many many years when many rural inhabitants will never get a television service unless they get it through community antennas or some other means.

The CHAIRMAN. I know that members of the Commission have different views on these matters, but once they have established their views, then, what I am trying to say is, sit down and vote it.

Mr. DOERFER. We tried to expedite what we had on the calendar and, of course, it gets tied up in the courts. Just the other day the courts refused a stay——

The CHAIRMAN. Get it that far anyway; that is my point. If the court ties it up, no one can blame any commission for that. Get it to that point.

Mr. DOERFER. We would like to have the benefit of their opinion.

The CHAIRMAN. You are supposed to worry about the law and the purposes of Congress. After the court has made an opinion, you adjust your thinking to what the court decides, but I think until that happens you should forget about the courts.

Mr. WEBSTER. Mr. Chairman, will you go into this subject of delays and so forth, because I have a lot to say about that.

The CHAIRMAN. Well, I think we want to. I would like to get through with the chairman here, and when we get through this statement we can go on with some of these other things.

Mr. LEE. The only thing I was going to say is that I can certainly agree with Commissioner Hyde that one Commissioner cannot speak for the Commission. On the other hand, I think when we are speaking of delays, we have two areas. One is the competitive-applicant aspect where two or more people are fighting for one facility and we are separated from the staff. On this so-called rulemaking, I feel that we could act much more quickly if we had the will to be, let's say, a little bit arbitrary.

That might not be a very good choice of words, but I am impressed with the fact, in reading the sixth report and order and in reading all the comments that have been filed since in this present proceeding, that many decisions of a body of this nature must necessarily be somewhat arbitrary in order to reach a decision.

In other words, I would be prepared to adjust my viewpoint in order to get some kind of unanimity to get something done, because the greatest error we can make, I feel, is to do nothing, and that is a general weakness in Government, where it is easier to drag along than to face up to something, knowing that somebody is going to get hurt, which is certainly true here.

Senator PASTORE. Use the word "forthright" instead of "arbitrary."

Mr. LEE. Thank you.

The CHAIRMAN. I must admit that in some cases even Congress has suggested that some matters be not decided until the policy is determined, but that doesn't mean you can't go ahead and decide the policy and then go right ahead and decide the particular matter accordingly.

Mr. LEE. That is right. As far as my estimate is concerned, it would be under a month.

Well, Mr. Chairman, if you will go ahead here——

Senator MONRONEY. Could we get their opinion on a time schedule? Mr. Bartley, I think, had an idea about it.

Mr. BARTLEY. I would say as far as I am concerned we should be able to get it out by the first of June.

Mr. MACK. I would like to make an observation here, just a short one. It has been my experience in about 9 years of regulatory agency work that when you adopt a major policy, such as you adopted in the Sixth Report, you'd better stick awfully close to it, once you start.

We have proceeded on the basis of that order and report and all 7 of the members of this committee voted to have this general rulemaking procedure. It is my opinion we are bound by the sixth report until we change it and I am not going to hold up any action, as far as I am concerned, unless the court holds me up, on the policy of the sixth report, until this Commission changes it. I think it is our duty to abide by that policy.

Senator PASTORE. Even if it means scrambling it more?

Mr. MACK. My point is this: It might be that when we get through with this general rulemaking, we won't want to change the sixth report because it may not prove to be practical, sound, or reasonable.

Senator PASTORE. When do you think we will get to that point?

Mr. MACK. When you gentlemen put me on this job you put me here for 7 years. I am going to finish every job as quickly as I can.

Senator PASTORE. Do you think it might take 7 years?

Mr. MACK. No, I just would not want to hazard a guess.

Senator PASTORE. The chairman said 4 months.

Mr. MACK. The chairman said he hoped 6 months.

Mr. HYDE. I said it would depend upon the approach that was taken. If, for instance, the Commission should undertake to allocate additional VHF space and try to salvage out a comprehensive television system in VHF alone it would mean dislocation to other services.

Furthermore, it would require that the Commission give public notice of this possible new alinement of spectrum space to the other services, at which time we would want to hear these various other services which have vital needs for VHF.

I will mention that in the VHF, which goes from 30 megacycles to 300, the non-Government services have about 58 percent of the total VHF. In the division of that, television has about 46 percent. The vehicular services, a very important application of radio, have about 22 megacycles.

The CHAIRMAN. By that you mean, for the record, police cars, taxi cabs and things of that sort?

Mr. HYDE. I refer to the State vehicle, land transportation, public safety, the industrial and the common carrier mobile services. This part of the spectrum is the backbone of those services and they are pinched now.

If there should be any additional VHF space available for non-Government use, or if the Commission should undertake in this allocation study to make some adjustments, we would necessarily have to provide opportunity for representatives of these several services to be heard. Any changes in existing operations would involve modification of licenses, as well as rulemaking. These items which I have mentioned just illustrate the scope and extent that a rulemaking could grow into. If you add to that such other interesting subjects as pay-as-you-go TV, the thing could be made so all-inclusive that you could work on it for years.

I am very hopeful that the Commission will determine that the television space now available can be used more effectively and that we can turn our attention to a more effective use of it. I think that very substantial improvements in that direction could be made in a relatively short time.

The CHAIRMAN. Let me ask one question: You said that this has top priority. How many people do you have working on this particular project now?

Mr. HYDE. I believe the personnel in what we call the rules section, in the Broadcast Division, is 4 or 5.

Mr. MACK. Five, I believe.

Mr. HYDE. And, of course, in a matter of this kind the Commission would expect to have the assistance of the Chief Engineer.

The CHAIRMAN. You draw on all of the people, too?

Mr. HYDE. That is right, sir.

The CHAIRMAN. If the addition of a few more people in this matter could speed up the decision, I would hope that we could take that up with the Appropriations Committee when you come up here.

Mr. HYDE. Thank you.

The CHAIRMAN. Go ahead.

Mr. MACK. Your committee has requested the views of the majority on a dissenting opinion of one of the Commissioners who expressed a view that:

> The Commission may, in granting the VHF applications, effectively eliminate many UHF stations which are presently in operation and in many instances render the cases moot. The action of the Commission in making further VHF grants in these areas, can have the effect of seriously hampering and perhaps of unalterably precluding the Commission from giving proper and adequate consideration to the overall study of the allocation plan.

In the typical case involved here, the VHF grant is for the first VHF station in communities where a large proportion of the existing sets are capable of receiving UHF, as well as VHF signals. Thus set conversion, although a significant obstacle to some UHF broadcasters is a far less significant factor in communities where UHF service is already established. There is little basis in the opinion of the majority, to assume that a first local VHF station would necessarily eliminate local UHF stations.

The CHAIRMAN. Let me ask this question there. I should know, but I do not, because I do not know much technically about UHF receivers. Do the sets in use in an all-UHF area have to be converted for VHF?

Mr. MACK. No, sir.

The CHAIRMAN. In other words, they are capable of taking both?

Mr. MACK. That is right.

The CHAIRMAN. I think the record ought to show that. There is nothing that has to be done to the UHF set to get VHF.

Mr. MACK. That is correct.

Nor in the majority's view would the VHF grants in question hamper or preclude proper and ample consideration of the suggested revisions to the allocation plan. The particular concern which may be felt on this point is indicated in the next question raised by the committee, namely,

> How can the Commission having denied deintermixture in specific cases, adopt deintermixture as a sound, overall policy in the public interest, after it has proceeded to intermix or further intermix the areas requested to be deintermixed?

No VHF grant, whether recent or of long standing——

The CHAIRMAN. I want to say also here, for the record, that the questions sent to the Commission are not necessarily the questions of the chairman or any one individual. They represent the combination of a lot of questions that were put together and condensed, representing a great number of viewpoints of the committee.

Mr. MCCONNAUGHEY. No VHF grant, whether recent or of long standing, creates a necessary barrier to deintermixture should the Commission find, in keeping with the conclusions reached in the general allocations study, that deintermixture of any community is required in the public interest. As the Commission has stated, the fortuitous circumstance of whether there is an existing or authorized VHF station in any community cannot provide a proper basis for determining whether the deintermixture of local channel assignments would serve the public interest as part of any overall revision of the existing system. The decision as to whether deintermixture would serve to enhance the opportunities for the expansion of television service in any communities or areas must be governed by the manner in which this action would fit into an integrated nationwide television plan. The fact that the Commission has recently granted a new VHF station can have no more bearing on its judgment as to whether deintermixture in that locality would serve the public interest than the existence of a long-established VHF station.

Moreover, no grant, whether recent or long standing, impairs the Commission's authority to order such channel reassignments as it may find necessary in the implementation of revisions to the allocations plan which may be necessary in the public interest. In view of this and in view of the fact that it cannot be determined at this time whether deintermixture will be adopted either on a broad or limited basis, the majority is unable to justify the withholding of authorizations for stations which have been long awaited and which are needed to expand inadequate local television service.

For the stated reasons, the majority believes that neither the denial of the individual deintermixture petition nor the grant of VHF channels in the same communities can prejudice the fullest consideration of the merits of deintermixture as a possible feature of any nationwide revisions to the allocations plan.

The CHAIRMAN. In other words, the majority feel it is all right to do this, and that in the long run it is not necessarily controlling one way or another.

Mr. McCONNAUGHEY. Yes, sir, that is certainly true.

The CHAIRMAN. And the majority feels that it doesn't complicate the problem at all?

Mr. McCONNAUGHEY. That is the majority opinion, but we want it understood, I guess, that there is a minority opinion.

Mr. HYDE. Yes.

Mr. McCONNAUGHEY. Commissioner Hyde expressed that.

The committee has inquired whether the public would be penalized if the Commission permits a channel to go on the air and then decides it must go off the air at a later date because deintermixture would be a sound policy. This question is understood to refer to recent VHF grants in communities where deintermixture has been sought. It should be noted first that none of the deintermixture proposals before the Commission contemplate the elimination of a local VHF assignment without the substitution in its place of a UHF channel. Accordingly there would be no question of the VHF station being obliged to go off the air. What could arise is a requirement that a VHF station transfer its operation to a substitute UHF channel. In most of the cases in which deintermixture requests were submitted to the Commission, almost all of the families in the communities involved already own recivers capable of getting UHF transmissions. Viewers having such sets will not be penalized by a later shift of a station to UHF, since their sets would be equipped to receive UHF.

Further, as to the minority of viewers in these communities, with VHF only sets, if the Commission decides at a later date to deintermix localities, and to require certain VHF stations to shift to UHF, the shift over to UHF need not be accomplished abruptly. It is quite possible that an appropriate transition period could be provided during which the affected stations could operate on both the old VHF channel and the new UHF channel, thereby assuring that those members of the public having VHF-only sets would continue to receive service for a suitable period. Such a gradual shift over during which new sets may be purchased or old sets converted to UHF, would minimize any disruption of television service provided to the public.

The Commission also desires to acquaint the committee with its efforts to overcome the obstacles hindering the advent of television to many of the smaller communities. Another of the committee's questions was directed to this matter. A major obstacle has been the high cost of building, operating and programing of television stations during the early stage in the development of the art factors largely beyond the Commission's control.

The high cost of local programing has, as you know, made adequate amounts of network programing generally indispensable to economic station programing. With this in view the Commission has been considering ways by which the cost of intercity transmission of programs can be minimized.

The CHAIRMAN. Now, right there I just wanted to ask this one question. Is that due a lot to the so-called cable charges?

Mr. MCCONNAUGHEY. Yes.

The CHAIRMAN. And interconnection charges?

Mr. MCCONNAUGHEY. That is right.

The CHAIRMAN. That is a matter which the Commission has authority to determine, isn't it?

Mr. BARTLEY. Yes.

Mr. MCCONNAUGHEY. Yes, we do.

The CHAIRMAN. When were they last fixed, do you remember?

Mr. MCCONNAUGHEY. Somebody said 2 years ago.

The CHAIRMAN. Of course, the suggestion would naturally follow there, maybe it is about time we took another look at them.

Mr. MACK. You can always take a look, even at an individual rate for a particular type of service.

The CHAIRMAN. It might be time to take another look at them. I don't know whether they are right or wrong.

Mr. MCCONNAUGHEY. We are constantly surveying those costs.

The CHAIRMAN. Go ahead.

Mr. MCCONNAUGHEY. Under the Commission's present rules stations may operate private intercity relay systems to connect with program service points only on an interim basis, until adequate common carrier facilities are available.

Stations located in communities at some distance from program service points have urged that the common carrier mileage charges for connecting them to the network make profitable operation impossible. We have instituted rulemaking looking toward liberalizing the requirements for establishment of private intercity relay systems by the broadcasters themselves.

The telephone company has suggested in this proceeding the establishment of an off-the-air pickup service at charges substantially less than those required for direct network connections. Broadcasters interested in establishing their own intercity relay systems claim that their costs would be still lower than these reduced charges of the common carrier. We hope to issue a final report on this proceeding in the very near future.

The CHAIRMAN. For instance, on that, Mr. Chairman, we won't go into detail, but the committee has heard from 1 broadcaster who claims that he built his own microwave system for $51,000 and operated it for 1 year at the cost of $14,800, as against a proposed charge by the telephone company of $67,000 a year, together with a termination charge scaling down from $104,000 in the event of a cancellation of service within 3 years. That is just one example. There may be more.

Mr. McCONNAUGHEY. I think that is one we approved, wasn't it?

The CHAIRMAN. Well, go ahead with your statement. We will go into those matters.

Mr. McCONNAUGHEY. One of the first steps the Commission took to alleviate the high cost of programing was to announce in August 1954 that it would authorize the operation of satellite stations—stations that would be permitted to operate without their own locally originated programs, or local studios, in communities which might not otherwise be able to support their own stations. The satellites are licensed to operate in accordance with our rules and differ from other television stations only in that they confine their programing to the rebroadcasting of programs of other stations.

The CHAIRMAN. Now, for the purpose of the record, could you give us a simple definition of a satellite station?

Mr. McCONNAUGHEY. I will try to do that. I have that written down here someplace.

The CHAIRMAN. Well, would this be correct, Mr. Chairman? It is a station that must confine itself to the rebroadcasting, or retelevising, of programs that come from another station?

Mr. LEE. No local programs.

Mr. McCONNAUGHEY. No local programs.

The CHAIRMAN. On a channel allocated to the local area. Would that be a good definition?

Mr. McCONNAUGHEY. That is right.

The CHAIRMAN. And that would be, of course, in communities getting further out in my country?

Mr. McCONNAUGHEY. That is correct.

The CHAIRMAN. We will get away from Rhode Island here, sooner or later.

Senator PASTORE. Over my dead body.

Mr. McCONNAUGHEY. Supplementing this policy for reducing the high cost of station operation in the smaller communities, the Commission amended its rules in June 1955 to reduce the minimum power requirements of television stations from 1,000 watts to 100 watts and to eliminate the minimum antenna height requirement. This amendment makes possible the construction of television stations in the smaller cities at greatly reduced cost.

The CHAIRMAN. Now, let me ask this, again for the record: The reduction to 100 watts and the elimination of the minimum antenna height requirement doesn't necessarily affect the character of the operation, does it?

Mr. McCONNAUGHEY. They get smaller coverage is all.

The CHAIRMAN. They get just as good a picture and things of that kind?

Mr. McCONNAUGHEY. That is right.

The CHAIRMAN. All right; go ahead.

Mr. McCONNAUGHEY. In addition to these steps designed to encourage the construction of stations in the smaller communities, the Commission instituted rulemaking in March 1955 to consider the operation of boosters which would operate with limited power on the same channel as the main transmitter. The Commission is presently evaluating the comments filed in this proceeding. In some areas of the country where regular television service is not yet available, there is a great temptation to erect low-power booster stations to provide this desired service. For reasons which I will mention, the Commission has not established rules permitting booster stations. In a few cases such booster stations have been installed without Commission authorization, particularly in the central part of the State of Washington, where geographical isolation prevents direct service from existing stations.

This situation gives the Commission a dual concern. On the one hand, unauthorized operations present a problem. On the other hand, the Commission recognizes the natural desire of the residents of these communities to receive broadcasts which cannot reach them direct from distant stations without some device which will enable them to do so. The Commission has concentrated careful attention to this problem in an effort to find a solution which will avoid serious interference problems created by boosters operating outside the normal service range of main station transmitters.

Our first inclination was to authorize low-power booster operation so that the existing booster stations could continue operation without making major changes. Careful engineering analysis has convinced us that this would be a very dangerous thing to do, since boosters operate on the same channel as the parent stations and usually from high elevations. We see no way, at least at the present time, of insuring that existing stations will be protected from interference. Although the actual coverage of boosters may be confined to a few miles, their signals can easily interfere with reception of signals within a normal coverage area of regular television broadcast stations as much as 50 miles away.

However, I think we may have found the answer, with the use of translator stations, which were the subject of a rulemaking instituted early in January.

The CHAIRMAN. Now, would translators cost more than boosters?

Mr. McCONNAUGHEY. A little bit.

The CHAIRMAN. About how much more?

Mr. McCONNAUGHEY. As I recall, they figure about $1,000 for these translators.

The CHAIRMAN. That is for the translator, alone; isn't it?

Mr. McCONNAUGHEY. Manufacturers have estimated that translators may be manufactured to sell in quantity for about $1,000.

The CHAIRMAN. Then, there would be the added cost of installing it and putting it all together.

Mr. McCONNAUGHEY. While the cost of equipment is approximately equal in both cases—that is in both booster and translator—boosters would usually require high installation cost in order to protect against interference with the other stations on the same channel. Also in the matter of operating expenses, translators should be considerably cheaper, since these stations operate on little-used channels, and we are able to relax requirements with respect to operators, monitoring equipment, transmitting locations and so forth.

Senator MONRONEY. They don't operate on the same channel?

Mr. McCONNAUGHEY. No.

Senator MONRONEY. Would they involve getting into set conversion again?

Mr. McCONNAUGHEY. Yes, they would.

The CHAIRMAN. In other words, generally speaking, without having all the details, the overall cost of operating a translator over a given period of time, in the opinion of the Commission, wouldn't be any higher than the booster?

Mr. McCONNAUGHEY. I think it would be lower.

The CHAIRMAN. It might even be lower?

Mr. McCONNAUGHEY. Yes, I think so. I think so.

Senator MONRONEY. But you would have to convert your set?

Mr. McCONNAUGHEY. Yes, you would.

Senator MONRONEY. Would normal conversion to the U be sufficient or would it be something beyond a U?

Mr. McCONNAUGHEY. No, the normal.

Senator MONRONEY. It comes back to the set as being the problem?

Mr. McCONNAUGHEY. It really does.

Senator PASTORE. How many sets do we have in the country, how many adaptable to VHF, how many to UHF?

Mr. McCONNAUGHEY. We have 37.5 million receivers in the United States and around 7 million are U's.

Mr. DOERFER. Seven million were produced, but there are probably in use today about 4 million.

Senator PASTORE. The new ones that are being made, are they dual purpose?

The CHAIRMAN. Oh, no.

Mr. McCONNAUGHEY. About 15 percent of them, sir, are dual purpose.

Mr. LEE. Most of the color sets are.

The CHAIRMAN. That is what we had all the manufacturers in about last year. I am sorry to say that despite that meeting of all of them, there seem to be fewer all-channel sets being made than there were last year.

Mr. LEE. I think in color, Mr. Chairman, they are making a great many all-channel sets.

Senator MONRONEY. Don't these manufacturers have any sense of public service at all, or are they just interested in getting the lowest price possible so they can advertise at a lower figure every wear?

Mr. McCONNAUGHEY. Of course, I can't answer, sir, for the manufacturers, but I suppose they feel they get into a competitive situation where they say, "Well, we will try to manufacture an all-channel set," and it costs a little more, and their competitors won't do it, and you are walking right into competition.

Senator MONRONEY. Didn't we have testimony at one time that about $6 additional cost was involved in the production of all-channel sets?

The CHAIRMAN. I can clear the record on that. It was not testimony, but just an informal meeting of every manufacturer, or 95 percent of them. Various estimates ran from $8 to $13. That is at the production level. Now, that would be multiplied as you go through the wholesale, and I suppose retail level, so that you probably end up closer to $25 or $30 on the floor.

Mr. LEE. Plus antenna.

Senator MONRONEY. It takes a different antenna, does it?

Mr. LEE. Yes.

The CHAIRMAN. And the only suggestion they had, in the last analysis, was that we take the tax off an all-purpose set, which would stimulate them to build such sets. The amount of the Federal tax is just about the difference in the cost of an all-channel set. I transmitted that information to the Finance Committee, but they took a dim view of the situation.

Mr. MCCONNAUGHEY. In the search for an effective and economical method of serving isolated areas the Commission began as early as 1951, authorizing research and experimentation with the type of satellite station now known as translators.

As distinguished from the booster type of station translators pick up the signal from a parent station and translate the program to a new frequency before rebroadcasting. Thus a translator-type of operation has the very important advantage of being able to select a frequency less likely to cause interference in the particular area.

The CHAIRMAN. Now, I think, Mr. McConnaughey, for the purpose of time, the rest of the statement regarding that matter in Washington may be omitted. The only reason I say that is the problem arose in my area first, but it is spreading throughout the West and the East, too.

How much time do you think will elapse before the translators can be authorized and begin furnishing service?

Mr. MCCONNAUGHEY. Comments on the translator proposal are due March 5, and replies can be accepted up to March 15.

The CHAIRMAN. That is, people can make application?

Mr. MCCONNAUGHEY. No, comments on the rulemaking.

The CHAIRMAN. How long do you think it would take then?

Mr. MCCONNAUGHEY. I think a final decision can be issued in early April.

The CHAIRMAN. Then the applications, of course, would have to go through the normal process.

Mr. MCCONNAUGHEY. That is right. Well, no, it would be a very simple matter, then. It would be a very simple matter.

The CHAIRMAN. So sometime in April, whatever the Commission decides on this, if they do decide on the translators, the people who want them could probably get going very soon?

Mr. MCCONNAUGHEY. I would think so. I would think they could get equipment on the market very shortly after it is authorized by the Commission. I think the manufacturers could.

The CHAIRMAN. It is an important matter for these small communities who are isolated because of the topography and nature of the country. I hope we can resolve something that will do the job for them. Out in my State there are all kinds of valleys in the mountains, and this is the only chance they have of getting service. It applies to Nevada, also, and all of the Mountain States—Utah, Oregon.

Mr. McCONNAUGHEY. In a separate question, the committee inquired concerning the number of final decisions issued in the past year in television proceedings. Nineteen grants were made in 1955, after comparative hearings conducted to select the best qualified applicant for channels, for which more than one qualified applicant had applied. A total of 53 new television stations were authorized in 1955, including in addition to the foregoing, grants made for channels for which only a single application had been received.

The Commission has continued its diligent efforts to reduce the large backlog of mutually exclusve applications for television channels which have required numerous lengthy hearings.

I am happy to be able to inform you that there are now only 10 cases awaiting final decision of the Commission. Eleven are ready for oral argument. Only four are awaiting the examiner's initial decision. Hearings are now in progress on the 11 other cases now remaining for final disposition.

The CHAIRMAN. And that was a matter we covered earlier. I think we are all agreed to proceed as fast as possible.

Mr. McCONNAUGHEY. The committee has also inquired whether at the time the Commission adopted an order on July 22, 1955, with respect to antenna heights for VHF television stations in zone 1, it was in possession of data respecting actual coverage of the VHF stations if they proceeded to the new antenna heights authorized by the order.

It should be noted that the amendment adopted by that order has not gone into effect. After several extensions of the effective date, the Commission decided that the question of changes in maximum antenna heights should be considered in the general rulemaking proceeding, on revision of the allocation plan. Accordingly, the order of July 22, 1955, has been vacated.

Senator PASTORE. Will you put that in practical language for me? What does that mean?

Mr. McCONNAUGHEY. We put out an order raising the height of antennas from 1,000 feet to 1,250 feet, and then we rescinded that and put it in the whole allocation order.

Senator PASTORE. Why did you put out the original order, and why did you rescind it? What did you seek to accomplish?

Mr. McCONNAUGHEY. We put it in the original order raising it to 1,250 feet thinking we could get more coverage without interference from other sections—we would get 2 to 5 miles more coverage in outlying areas. Then, when you come to going into the whole proceeding, we decided we had better not put it into effect until we had covered this whole allocation plan because we might come out with a different setup of shortening separations and mileage separations, and we might not want to stick with it.

Senator PASTORE. If you had points A, B, and C; and B was in the middle, and you had a television station at A and a television station at C, could you cut down the power of A and C and drop in another station at B, without interference?

Mr. McCONNAUGHEY. That is something that is in this rulemaking now.

Senator PASTORE. I mean technically; is it feasible? Is that what we are getting at? For instance, if you had a television station at each of two points and they are strong enough to meet the center, couldn't you cut down the power and drop in a third one? And spread it to left and right?

Mr. McCONNAUGHEY. I think so.

Senator PASTORE. Isn't the Commission considering that element, too?

Mr. McCONNAUGHEY. That is in this rulemaking, Senator.

The CHAIRMAN. How many people took advantage of the order increasing antenna heights when it was in effect?

Mr. McCONNAUGHEY. It was never put into effect.

The CHAIRMAN. Wasn't one fellow permitted to raise his antenna?

Mr. McCONNAUGHEY. One was granted in Buffalo.

The CHAIRMAN. It doesn't mean there were a lot of people who had the advantage of this and went ahead and did something, and then the vacation of your order shuts other people out?

Mr. McCONNAUGHEY. Oh, no.

Senator PASTORE. May I ask this other question: Is not part of the problem of lack of service in a local community the result of too much power in neighboring communities?

Mr. McCONNAUGHEY. I do not know.

Senator PASTORE. Can anyone answer that?

Mr. HYDE. Senator, the sixth report was designed to provide——

Senator PASTORE. I am not concerned with the sixth report. I just want to get an answer to the question.

Mr. HYDE. I am really answering your question, sir. An effort was made to balance antenna heights and powers so that interference-free reception could be had in a way that would achieve the objective of the sixth report to provide service to the whole country, multiple services to communities, and so forth.

My point is that with the advice of engineers, both from the Commission and the industry, a formula that was appropriate to recognize the needs of communities and also to provide general service was worked out. On any question such as that, as you have proposed, there can be variations. The formula used in the sixth report is the one that the Commission, on the basis of the record, thought would give the best results.

Senator PASTORE. The point I am getting at, if you see what I mean, is I don't want so much power on the part of a certain number of stations that they could monopolize an entire field.

If, technically speaking, you can cut down this power and give local service to other communities as well, then why not do it, because I repeat again, television has to have a local aspect, too.

I am only using this as an example. You are going to have four stations in Boston, ultimately. Now, is the policy going to be that those 4 stations are going to spread out so far that other communities are going to be satisfied with service from them, or are we going to contain this power so that the people in Boston will have adequate service, but insofar as Rhode Island is concerned, we can still have our 3 stations and have 3 networks come in?

Now, that is my point. Why isn't that technically feasible without hurting Boston, without hurting Hartford, without hurting New Haven?

Mr. HYDE. That is really a very complex question that you have asked there. You could have more stations by having lower power and lower antennas. You could have the stations so small that they wouldn't serve the logical market area of the city where they are located.

I would also raise the question of service to rural areas, dependent upon the station.

Senator PASTORE. I mean to do this on a selective basis, of course.

Senator MONRONEY. Do you know how far your television station range is?

Mr. HYDE. Studies have been made to indicate how far they can be observed.

Senator MONRONEY. Do your records show how far the New York City stations reach out into Connecticut?

Mr. HYDE. Our records would not give exact mileage in every instance, but they would give you general information as to the coverage they get; that is right.

Senator MONRONEY. Is it not a fact that on your figures you don't go nearly as far as Bridgeport, but as a matter of fact, Bridgeport people are now served by New York stations?

Mr. HYDE. One of the things that complicates the problem there is that various definitions of service are used. In one man's mind, a reception of a picture that is full of snow indicates that the station is too far away. To another, that is service. Very often your judgment on that depends upon your standards of reference. In my own State of Idaho, my father gets television service from Idaho Falls, 90 miles away, but on the basis of my observation of that picture, I have very grave doubts as to whether he is really getting service or just a suggestion of it. In the absence of something better, he looks at it for such information and entertainment as can be had. It is not a satisfactory picture by any means.

The CHAIRMAN. Let me ask you this, too. When I was talking about confinement to a certain market area, is it true that some of the stations direct their antennas so that they don't cover the whole surrounding area? In other words, just part of the circle?

Mr. HYDE. In television, directional antenna techniques are not practiced. Such devices are used extensively in AM broadcasting, but the rules do not contemplate the use of a directional antenna for the operation of stations at short separations.

The CHAIRMAN. If a fellow gets a license in Tulsa, Okla., it has to cover a circumference. It can't just be limited to the northwest, only, or the southwest?

Mr. HYDE. There are some instances where you have directional antenna characteristics, like where an antenna might be tilted at the top of the mountain in order to give better coverage in the market. That technique was used from Mount Wilson, I understand, in certain instances, because some of the communities nearer to the mountain apparently were underneath the projection of the signal, but in television, we have not used the directional-antenna technique.

The CHAIRMAN. How about those that border on water? The signal still goes out over the water?

Mr. HYDE. That is right. Now, let me mention, quickly if I may, that the directional-antenna technique in AM has caused many complications. For one thing, you get stations of different coverage characteristics in the same market.

It was the hope of the Commission when it adopted the sixth report to keep service areas on as nearly a uniform basis as possible, to keep competitive conditions as nearly uniform as possible.

There are quite a number of considerations that go into any projected use of that.

The CHAIRMAN. But you have the overlap in given communities. Take my own community. The Tacoma stations come into Seattle and Seattle stations go into Tacoma, but you consider that as a single-market area, I suppose?

Mr. HYDE. Market areas are determined by commercial practices there, rather than by the Commission. We endeavored, in making station-operating assignments, to set it up in such a way as to make the assignments available to the communities, large and small, but actually what is a trade area is determined by trade conditions in it, as you know.

Mr. McCONNAUGHEY. Senator Pastore and Senator Monroney asked a question which might help explain this. As I have explained more fully in my complete statement, I submitted to the committee that there are so many variables which enter into the calculation of station coverage that a completely accurate depiction of the service contours of individual station coverage would require very expensive field engineering checks.

After careful study of the problem on the basis of the advice of experts and voluminous data, the Commission evolved a concept of grade A and grade B contours, which is used for purposes of television assignments, and the determination of station overlap.

Our grade B contours tell us the distance from an average station, where 50 percent of the locations can receive for 90 percent of the time, what we have determined to be a satisfactory signal.

A grade A contour gives us the same information for 70 percent of the locations at 90 percent of the time. The Commission is aware that signals considered to be satisfactory are received beyond grade B contours, and also that service with a grade B standard is not received at all locations within the grade B contour.

This method of calculating service range is considered, however, to strike a desirable compromise between the inordinately high costs of engineering refinements on the one hand, and the requirements of administrative efficiency on the other.

In the opinion of the Commission, the grade A and grade B contours have provided a very satisfactory basis for calculating the service ranges for the purposes I mentioned.

Senator PASTORE. Well, that is so from the efficiency of the signal, insofar as the strength of that particular station is concerned, but I am approaching this on a new angle.

I am approaching this on the angle of greater competition and less monopoly. I think we are creating an evil here when we get down to the point that we grant a license to 3 or 4 operators, and say, "You have so much strength that you can cover all these communities, only because your power will carry satisfactorily."

Now I do say this, that their signal would be just as good if you cut down their power and allowed someone else to come in, in order to give the people more channels to work on.

The CHAIRMAN. More stations?

Senator PASTORE. And your advertisers in local places a chance to advertise on television. Have you any idea what the cost is for 15 minutes locally in a zone 1 area? Has the Commission ever gotten into that?

Mr. McCONNAUGHEY. Yes.

Senator PASTORE. How much does it cost an advertiser to take a 15-minute spot on television?

Mr. LEE. It might run from $600 to $900.

Senator PASTORE. That is a lot of money. In other words, if a candidate for office wants 15 minutes on television, it will cost $800 or $900?

The CHAIRMAN. We are going to get into this question of political time a little later.

Senator MONRONEY. Somebody else uses television besides politicians. Grocery stores in Bridgeport might want to advertise on television. A. & P. comes in, but the independent grocery store can't advertise in Bridgeport.

Senator PASTORE. He can't pay that price, only because he has to advertise in a locality where he has no patronage and that is the only way he can get on the air.

He has to pay the big price because they cover a big area, and yet he comes from a small town on the outskirts, so television means nothing to him. That kind of television means nothing to him and I think it is bad. I think we ought to consider that.

The CHAIRMAN. I think that is true—it is a basic problem. There are many large communities like the city of Bremerton with 70,000 people—the merchant over there has to advertise on a Seattle station. Well he can't afford that so he is denied the use of television.

Senator MONRONEY. But his competitor, the chain store, can advertise and reach not only the market in Seattle, but every place else.

Mr. McCONNAUGHEY. I think that is a problem that is a real one.

The CHAIRMAN. Well, you have further here a statement on overlap. Why don't you read this and that might clear it up? That is on page 17. You have finished the station-coverage matter. We asked you that question, too.

Mr. McCONNAUGHEY. You have also asked for the Commission's policy on overlap in television. The Commission is concerned with overlap in the television service in connection with the so-called duopoly rule, which provides that licenses for television broadcasting stations shall not be granted to any party if such party owns, operates, or controls another television broadcasting station which serves substantially the same area.

In determining what does or does not constitute substantially the same area, the Commission considers the existence or absence of significant grade A overlap. That is, whether the grade A contour of one station owned by a licensee would significantly overlap the grade A contour of another station proposed by that licensee.

Where only grade B overlap exists or is proposed, in the absence of other considerations, the Commission has considered such overlap not to involve service to substantially the same area.

The CHAIRMAN. Well that is based on your Commission's standards rather than an examination, isn't it?

Mr. McCONNAUGHEY. Rules.

The CHAIRMAN. On the Commission rules rather than a direct examination of the area?

Mr. McCONNAUGHEY. Yes, it is on the rules.

The CHAIRMAN. And if the question arises as to whether there is an overlap between A and B, what do you do then?

Mr. McCONNAUGHEY. Where there is an overlap in grade B——

The CHAIRMAN. Between two points.

Mr. McCONNAUGHEY. They have said that is all right but if there is a substantial overlap in the grade A contour, then they do not permit it, under the duopoly rule.

Mr. DOERFER. "Substantial" overlap.

The CHAIRMAN. If there is a question as to overlap between Pittsburgh and Cleveland, do you go out and take a look at it and measure the actual signals?

Mr. McCONNAUGHEY. Do you mean between the coverage between Pittsburgh and Cleveland?

The CHAIRMAN. Yes.

Mr. McCONNAUGHEY. You are talking about the same owner?

The CHAIRMAN. Yes.

Mr. McCONNAUGHEY. Yes. We check that if it is the same owner.

Mr. DOERFER. We do not go out and take a look at it.

Mr. McCONNAUGHEY. We do not physically go out and take a look at it.

The CHAIRMAN. That is what I am getting at.

You just look at your standards.

Mr. McCONNAUGHEY. That is right.

It is not my desire in this report to burden the committee with an encyclopedic review of all aspects of television which have engrossed the Commission's attention during the past year. In the belief that it would better serve the committee's present purposes this report has touched on the highlights of matters in which it is understood the committee is particularly interested, at this time: The network study, our current review of the entire allocations plan, and our efforts in regard to satellite, booster and translator stations are foremost among the committee's present activities in the television broadcast field.

Great importance is attached to these and other endeavors to keep abreast of constant changes and developments on the television scene. We must ensure not only that our decisions are well adapted to current conditions, but also that the framework of the allocations plan and television standards is realistically calculated to facilitate television's continued growth and the fullest possible achievement of the goal of a nationwide competitive television service.

For its own part, the Commission will continue to explore every possibility for improvement which lie within its power to bring about.

The Commission welcomes the interest of your committee in the problems which remain to be solved before this goal could be fully attained. The cooperative effort of the committee, the Commission, and the industry, itself, should go far toward realizing our common objective of service to the people.

The CHAIRMAN. You have included in your statement the public notice on the network study and you have set out in that notice the different phases of the study, the ownership and operation of both radio and television networks by one person, so on and so forth.

The question of option time and affiliation contracts—as we understood it last year, Mr. Chairman—you were also going into the network contracts with affiliates, in some detail.

Mr. McConnaughey. Yes, sir, we are doing that and also we are going into talent.

The Chairman. Talent?

Mr. McConnaughey. Yes, and the advertisers.

We are meeting in New York Thursday and Friday and Saturday and Monday and Tuesday with ABC and Mutual, and also with the advertising people and talent people.

The Chairman. And then for the benefit of the committee, when we gave the Commission the money for this study last year you were in general agreement that as your people move along, the committee can have the benefit of whatever they find out.

Mr. McConnaughey. We are going to report to you as we go on.

The Chairman. And they have been sending those things up when we have asked for them.

Mr. McConnaughey. And we have asked for more money to go on and do the job.

The Chairman. We want to go into that phase, too, and many other phases that have been brought up here in a general way.

I did say that I had 40 pages of questions here, which supplement the general questions sent down to the Commission in advance and which have been answered here. They are the concern of different members of the committee and somewhat detailed. They are not just the questions of one man. We will go into them when we have our next meeting.

Mr. McConnaughey. Senator Schoeppel, if you will recall, Mr. Chairman, asked some questions. Perhaps I should wait until he is here to answer them——

The Chairman. I discussed that with him and he discovered that they were very broad and go into the things we are asking for here, anyway, in detail.

Senator Monroney. Could I ask one question?

The Chairman. Yes, go ahead.

Senator Monroney. Is there any way that you could be given money, through the Congress, on appropriation, to do independent work on a low-priced converter to use. The point I am getting at is that the geniuses who make these television sets can't build one at a reasonable price. Is there any chance that it could be brought in through some experimentation and development within the FCC, and then made available to these companies, on a free licensing basis?

Mr. McConnaughey. Would you mind if I let our chief engineer, Mr. Allen, who is here, answer that question?

Senator Monroney. There is no legal prohibition against the Congress appropriating money for research or development.

Mr. McConnaughey. No, there is no legal bar. I can answer that.

Senator Monroney. Maybe he can answer the technical side.

Mr. Allen. I don't think it would be practical for the Commission to undertake a program of research on television receivers, principally because it is a problem involving the development of vacuum tubes. It is a very specialized type of research. It takes a lot of equipment and resources to do it. There are several laboratories in the country who are very diligently working on this problem, and quite recently one of them has come out with a new tube which gives great promise of permitting the development of tuners for UHF.

I am sure the rest of the engineers in the industry are looking forward with great expectation to the development from that source.

Undoubtedly, the other laboratories will meet this challenge and will produce similar tubes in the near future. I don't think it is a problem that we can assist in very much. Once the tube is developed we can assist in the circuitry, but in the tube development I don't think we can be adequately equipped to do that.

Senator MONRONEY. Do you think anybody is dragging their heels in the manufacturing industry intentionally to keep everything concentrated in the V field?

Mr. ALLEN. I haven't seen any evidence of that.

I think that the people are very diligently working on vacuum tubes and transistors, both, in order to develop them as quickly as possible.

Senator MONRONEY. For the purpose of making available at the lowest possible cost, the sets that will take both the V and the U?

Mr. ALLEN. On the set circuitry, itself.

Senator MONRONEY. I am not talking about perfection of the picture and all the daylight tubes and all that, I am talking about the simple little matter of finding out how to get the lowest possible manufacturing costs to receive the U band.

Do you think there is diligence in the manufacturing industry commensurate with the need for diffusion of ownership and the opening up of hundreds of new stations?

Mr. ALLEN. That is a little beyond the engineering problem. There is a professional problem that comes into that.

The CHAIRMAN. Well, they are getting tuners down cheaper; aren't they?

Mr. ALLEN. That is right; but as I say, the solution to this problem is mainly a vacuum tube development problem, and a transistor development program, and those things are being worked upon and once the tubes are available then we will go into the circuit design.

I see no evidence of deliberate dragging.

The CHAIRMAN. Mr. Hyde.

Mr. HYDE. I should like to say, in the rulemaking proceeding which the chairman referred to, we received comments for several companies interested in the manufacture of equipment—large ones—favoring the use of the ultra-high-frequency channels. Now, they would not be doing that except that they are interested in developing the equipment, if there is some incentive for the use of it.

As I indicated in a previous statement to the committee, I think the Commission's allocation policy should be one to encourage the use of the ultrahigh, which would provide incentive for the development of equipment such as you have mentioned.

The CHAIRMAN. Senator Monroney.

Senator MONRONEY. It would open up new fields for television sets, wouldn't it; the more stations you have?

Mr. DOERFER. Not necessarily. That is the point I would like to emphasize, that many of the applications, those sets are 100 percent converted, today. If we followed their suggestion we wouldn't add one UHF set to the overall picture, other than the normal growth which is going on, today.

Senator PASTORE. It all depends on the way you start. If you start out with UHF and drop in a V, naturally the person who has U can get V; but the opposite is not true.

If you start with 1 or 2 V's and try to add a U, you have a conversion cost problem. You place the burden upon the viewer to meet a situation which he is not responsible for, at all. I mean if he wants the new U channel. Now, if you are going to say, "If you have 2, you have enough," that is one argument; but if we say that with 2 V's on the air you can drop in another U and give the community 3 channels, we are only kidding ourselves.

It is just as simple as all that. You can't expect the people to go out and make that kind of conversion. It costs $30 or $35. They have to readjust their aerial, and actually you are imposing upon the public to unscramble a mess they are not responsible for and you just can't get away from it.

Mr. DOERFER. That doesn't necessarily follow. I would say that my position then is if we are going to embark upon a policy of deintermixture, then we should do a thorough job, and it should be a bold job. We should probably take out some V's in some of the larger markets. But to expect to give a shot in the arm to UHF to the point where it will get off the ground by merely stopping now what we have in process, in my opinion, is not a cure, nor does it promise to be a cure.

Senator PASTORE. When you speak about boldness, I agree with you, there has to be boldness, but what I am trying to look at is the practical element, too. Where you have a VHF area, and people have sets that can only receive VHF, you can never convert that to U without telling all these people they have to throw away their sets and buy new ones, or get themselves a converter.

I mean you just can't do that. You can't impose upon the viewing public the responsibility to unscramble this. The only way that you can get deintermixture, in my humble opinion, is where you already have a UHF market. They have the sets to receive it, you see, and you shouldn't allow a VHF to come in that can be assigned someplace else.

Now, if you allow the VHF to come in, in all probability, as far as the public in that area is concerned, they will be satisfied, because they just switch from U to V, since they have sets adapted to that.

But speaking of a VHF area, when you bring in a UHF station you can't kid that viewing public along with the idea that now they have three receptions, because they don't, without converting their sets.

Mr. DOERFER. Let me put it this way: If the objective is merely to deintermix, I agree you are correct; but I don't think that should be our objective, at least without further examination. Our objective should be to try to figure out how UHF can work with intermixture in all the major markets in the next 10, 20, or 50 years. And if we don't do that, we will stop short. We won't have any more than perhaps 3 stations in the first 100 markets. If you are satisfied that that is an adequate, competitive nationwide service for the next 50 years, we can solve that in 30 minutes.

Senator PASTORE. No; but that isn't my point at all. That isn't my point at all. You started out with the statement here—I think the chairman did—that we had 152 UHF stations. Today we have less than 100. Apparently something is happening. These people are going out of business. Something is causing it.

You can sit back and talk about the sixth report until the cows come home, but the fact remains that some of these U's have gone out of business.

Your chairman has said that in his experience, 2 UHF's can live where you have 1 VHF.

Mr. DOERFER. I don't quite agree with that. I would say yes, in some markets, but not in all markets.

Senator PASTORE. The chairman has already made that statement and you don't agree with it. That is where we are.

Mr. McCONNAUGHEY. I believe he agrees with the statement I made. It depends on the market. In the little, tiny market, it wouldn't.

The CHAIRMAN. The fact is if you have 2 VHF's in a given area, and granted applications for 3 UHF's, the latter won't even be built.

Mr. McCONNAUGHEY. That is right.

Senator PASTORE. Isn't it true in Boston you have two UHF's that haven't even been applied for?

Mr. DOERFER. That is probably true in many of the markets.

Senator PASTORE. Does it ever occur to you to ask why?

Mr. DOERFER. I am aware of that.

Senator PASTORE. What is the answer?

Mr. DOERFER. Economics.

Senator PASTORE. They cannot live?

Mr. DOERFER. We don't have control over the economic end of this problem.

Senator PASTORE. I realize that, but the point I am making is this: Somewhere along the line someone has to come up with a certain boldness and say, "This is going to be it." Then these people will have to fish or swim or do whatever they can to meet their own problems. But somewhere along the line I think we ought to stop kidding somebody. You see, in the beginning when these people applied for the U—I wasn't a member of this committee at the time, but I heard our former chairman, Ed Johnson, discuss it—apparently very grandiose prospects were given out to these people on UHF.

Mr. DOERFER. By whom?

Senator PASTORE. By members of the Commission. I don't know who, particularly, but apparently everybody thought they were going to hit the jackpot.

Mr. DOERFER. No; what they thought was if they got in the markets first, and with our delay in the processing, that they would be on the air for about 2 years, everybody would have sets, and then they would be safely home.

The CHAIRMAN. That is what I am talking about, that delay, you see.

Senator PASTORE. You have a very, very serious problem and it becomes all the more serious because there seems to be such divergence of view, even within the Commission itself. Somewhere along the line you have got to hit some unity on this and tell the viewers and the industry exactly what the pattern is going to be. Somewhere along the line, the decision has to be made.

Now, if Rhode Island is going to end up with two V's, I suppose that is going to be the end; but I am hoping for the time when you can give us a little more service.

The CHAIRMAN. Let me ask you this: As I understand the statement of the majority of the Commission here, now, at least your objective is to keep both alive, is that correct?

Mr. DOERFER. If possible.

Mr. McCONNAUGHEY. Yes, sir.

The CHAIRMAN. If it is possible.

Mr. McCONNAUGHEY. If it is possible to do it.

The CHAIRMAN. We have that objective and we are clear on that.

Mr. McCONNAUGHEY. That is right. That is the feeling of all seven Commissioners.

The CHAIRMAN. That is 1 thing all 7 of you agree on?

Senator PASTORE. And in a year's time or so you will tell us whether or not that is possible?

The CHAIRMAN. Oh, shorter than that.

Senator PASTORE. I hope.

The CHAIRMAN. Before Congress recesses, they ought to come up with that.

Senator PASTORE. I don't think so.

The CHAIRMAN. Burn a little midnight oil. Do what we do. We meet sometimes from noon until midnight. And we vote several times during that time.

Mr. DOERFER. I wish you would vote on the NARBA Treaty.

The CHAIRMAN. We will vote on that. We will get that out.

Senator PASTORE. If I may add this, Mr. Chairman: We have a lot of the owners of these stations, V's and U's, come before this committee and recite their problems. We would like to listen to their problems. They certainly do have problems. But fundamentally I don't see how we of the committee are going to unravel these problems. It is your responsibility. I think whether it is going to take boldness, forthrightness, courage, whatever it will take, somebody will have to stand up and be counted.

Mr. DOERFER. Consider how the ground shifts. Less than 2 years ago you were told that the big problem was the conversion of sets. If they could get conversion of sets they wouldn't have a problem. Today, Madison is about 99 percent converted—Madison, Wis.; Fresno, 99 percent, Springfield, Ill., 99 percent, and some of the others, substantially converted.

Now today, you don't hear that argument any more, but still they want us to keep the V's out of those markets. So it is no longer a problem of set conversion. It gets right down to programing. It gets right down to trying to keep competition out. Now, that is our big problem.

Senator PASTORE. I think you have an easy answer there. I don't see any problem there. Where you have people who can switch on either one or the other, as they choose, why then you have serviced the public, and that is the answer.

Mr. DOERFER. The answer is we should not deintermix in those markets.

Senator MONRONEY. You have the problem of a policy of the networks that favors VHF over UHF.

Mr. McConnaughey. It is the advertisers, and we have no jurisdiction over them.

The Chairman. Advertisers are the ones who direct this.

Mr. McConnaughey. They call the shots.

Senator Monroney. It is Madison Avenue, again.

The Chairman. It is getting late and I appreciate you gentlemen coming up here and we will meet again on February 20. I don't want to give you any more to do, but you can do this afterhours and you don't even need to meet for this. I hope you can bring some suggestion on the very important matter of political time for the next few months.

(Whereupon, at 12:30 p. m., the committee recessed, the hearing to reconvene Monday, February 20, 1956, at 10 a. m.)

TELEVISION INQUIRY
(UHF–VHF Allocation Problems)

MONDAY, FEBRUARY 20, 1956

United States Senate,
Committee on Interstate and Foreign Commerce,
Washington, D. C.

The committee met, pursuant to call, at 10 a. m., in room G–16, United States Capitol, Hon. Warren G. Magnuson (chairman) presiding.

Present: Senators Magnuson, Pastore, Bricker, Schoeppel, Potter, and Payne.

Staff personnel present: Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel; Bertram O. Wissman, assistant clerk.

The Chairman. The committee will come to order.

There will be some other Senators here later, but we have a long session and we want to get started.

The chairman wants to make just a short statement here. Since our last session, I have received a reply from the Chairman of the Federal Trade Commission on the question of advertising on radio, and we released it to the press sometime since our last hearing. In general, we found out that they do quite a bit of checking on advertising, and are looking into these matters.

I will insert the letter in the hearings right now, with some enclosures, and also a number of letters on the subject which have been received from members of the public.

(The communications referred to appear in appendix I, p. 221.)

The Chairman. In addition, I want to insert a copy of a letter from the Governor of Massachusetts, Christian Herter, to Senator Saltonstall, relating to local television stations as affected by increase in power and in antenna height.

The Commonwealth of Massachusetts,
Executive Department, State House,
Boston, February 1, 1956.

Hon. Leverett Saltonstall,
Senate Office Building, Washington, D. C.

Dear Lev.: It is my understanding that a Senate Interstate and Foreign Commerce Subcommittee is now conducting hearings on certain problems raised by holders of ultra-high-frequency television licenses, some of whose stations are located in Massachusetts.

It is the claim of this group that recent rulings by the Federal Communications Commission, granting the holders of certain VHF licenses the right to increase their transmitting power and to increase the height of their transmitter towers, unfairly place the holders of UHF licenses in an unfavorable position.

It is held that these commission rulings will act to centralize television broadcasting in the so-called large stations and to curtail or even wipe out the smaller home-town stations holding UHF licenses.

In my opinion it is important that "hometown" television be maintained on a more healthy basis than at present. Local television stations serving smaller areas can surely serve Massachusetts communities better than the larger stations blanketing wide areas from transmitters located in other States.

My warmest personal regards.

Sincerely,

CHRISTIAN A. HERTER,
Governor of Massachusetts.

UNITED STATES SENATE,
COMMITTEE ON ARMED SERVICES,
February 6, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee, Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: Because I know it will be of interest to you, I enclose a copy of a letter I have just received from Governor Herter of Massachusetts, describing a situation with which I also have some acquaintance as a result of visits to certain Massachusetts communities in recent weeks.

I think that it might be of interest and some value if Governor Herter's letter could be included in the record of your current hearings.

Thank you for your courtesy in this regard.

Sincerely yours,

LEVERETT SALTONSTALL,
United States Senator.

The CHAIRMAN. Now, Mr. Chairman, we have this series of questions here which I stated before were not necessarily mine, but a combination of what we thought would be typical questions that have been asked through communications, letters, other Senators, members of the committee, all dealing with the various phases of the television industry.

In order that the record may be entirely clear, I wish to point out that some of them have been answered in general in the colloquies that occurred during the last two hearings. But in order to have a cohesive record we have written them all down and I am going to ask the committee's special counsel to ask them.

I presume that the Chairman will answer for the Commission, but we will have the same procedures we have had before. Knowing that the Commission is not always in agreement on many of these matters, any of the other members of the Commission who are here can add anything that they wish to the chairman's answers.

There are quite a number of questions and I don't know whether we will get through with them all today, but we will go as fast as we can. Some of them may seem overlapping, where the problem was discussed in general last hearing, but these questions are more specific and better worded.

Mr. Cox will go ahead with the questions.

Mr. Cox. Thank you, Senator.

The CHAIRMAN. I want to say this before you start that in many cases here we have used the word "you." That means the Commission, and not you, personally.

[Laughter.]

Mr. Cox. Without detracting in any way from the very solid advances in television which have been made since July 1952, as outlined in your statement to the committee, I would like to explore and establish some less reassuring aspects of this matter for the record.

In the first place, you noted that there are now more than 440 commercial television stations on the air. Now, isn't it true that that is somewhat less than 25 percent of the commercial assignments which the Commission made in the sixth report and order?

Mr. McCONNAUGHEY. I think there were about 1,800 commercial assignments—1,800 assignments made in the sixth report.

Mr. COX. If you look only at the UHF assignments and the UHF stations presently on the air, wouldn't it be fair to say that you have only about 7½ percent, at least, something less than 10 percent, of the UHF assignments presently in use?

Mr. McCONNAUGHEY. I don't know what the number is. I think I testified to 99.

Mr. COX. There were over 1,300 UHF commercial assignments made; weren't there?

Mr. McCONNAUGHEY. I think that is right, roughly.

Mr. COX. Isn't it true that 21 UHF stations left the air in 1955?

Mr. McCONNAUGHEY. I think that is correct; that is about right, yes.

Mr. COX. Now, you did in a general way discuss what you thought might be the impact on UHF stations still on the air of certain of your policies, but would you think it is a reasonable expectation that additional UHF stations are likely to leave the air during this calendar year unless some rather positive steps are taken to improve their relative position in the industry?

Mr. McCONNAUGHEY. I don't know how you can answer that "Yes" or "No," for this reason: The present state of the development of UHF, we hope, is going to be improved, and speaking from a technical standpoint, the stations that have gone on, some of them have not been on for too long a period of time, and I think we always have to bear in mind that when we speak of stations going off the air it is something you cannot project with any definite ideas.

For example, when TV first started in, an awful lot of stations lost a tremendous amount of money for quite a period of time. I understand that there is about a third of them yet, that is, postfreeze V's that lost money during 1954. So I don't know how you can say definitely how many would, or how many would not, or whether there would be very many of them that would. It depends a good deal upon the demand and the way they get established in business.

Mr. COX. Based upon past history, would you say that a VHF station which has been losing money has a better chance of converting that into a favorable earning picture than a UHF station which has been losing money for the same period?

Mr. McCONNAUGHEY. I think so. I say, I personally think that is true because of the reputation that a V has for being a better facility. At least, that is the reputation it has, and getting a wider coverage. I would think there would be a better opportunity. And the advertisers, to date at least, seem to prefer the V operations. I think that is a matter of common knowledge.

The CHAIRMAN. Mr. Chairman, isn't it true, too, that even in a VHF station the initial cost of getting it on the air is so great that it would take some time, even though they might be in the black, before they would ever get out where they were making any reasonable profit?

Mr. McCONNAUGHEY. That is certainly true, Mr. Chairman.

Mr. Cox. What does it cost on the average to put a VHF station on the air?

Mr. McConnaughey. Three, four hundred thousand dollars.

Mr. Doerfer. Half a million.

Mr. McConnaughey. Half a million at least.

The Chairman. As I understand from reading some of the figures in the trade magazines of the industry, some of these costs run between half a million——

Mr. McConnaughey. That is right.

The Chairman. And up, according to the amount of working capital. I think you would have to have almost a million dollars for a large station.

Mr. Doerfer. That is right.

Mr. McConnaughey. I think at least that, Senator, because we all know of examples where they started out and they lost seven or eight hundred thousand dollars before they get into the black. I am talking about V's, now.

The Chairman. And the UHF would be a little bit lower, but it is quite expensive.

Mr. Cox. What would be the average cost of a UHF station to get it operating?

The Chairman. It would be a little less.

Mr. Lee. No.

The Chairman. More?

Mr. Lee. Yes. I think one of the points that should be made, another one of the factors where the U is at a competitive disadvantage is that in attempting to equalize coverage they have to use higher power and perhaps a higher tower.

The Chairman. It costs them more.

Mr. Lee. Therefore, to reach the same area it costs them more to start.

Mr. McConnaughey. It is a more expensive operation.

Mr. Cox. Could you give us a figure on that to compare with the half million mentioned for VHF stations?

The Chairman. It is a half million and up, because I saw some costs in trade papers, some of them run seven, eight hundred thousand dollars.

Mr. McConnaughey. That is right.

Mr. Cox. Mr. McConnaughey, could you have your staff get a figure on that for us, and supply it for the record, on the comparative costs of VHF and UHF stations?

The Chairman. Just in a general way.

Mr. McConnaughey. All right.

Mr. Cox. You mentioned technical improvements as possibly increasing the chances of success——

Mr. McConnaughey. Could I go back a minute? They just handed me here——

Mr. Cox. Yes, sir.

Mr. McConnaughey. —average actual costs. This is last year's figures. For the V stations—this is an average—$376,125—and average cost to UHF stations, $300,493.

Mr. Cox. You have no way of knowing whether that is a U station with sufficient power even to approximate the coverage of a V, do you?

Mr. McCONNAUGHEY. It would be less coverage.
Mr. Cox. Less coverage?
Mr. McCONNAUGHEY. Oh, yes.
Mr. Cox. You mentioned certain——
The CHAIRMAN. Just a minute, there. Of course, that is only the construction costs.
Mr. McCONNAUGHEY. That is correct.
The CHAIRMAN. When you start to talk about personnel and working capital and all the other things that go with it, you almost double that?
Mr. McCONNAUGHEY. That is right. This is just base construction cost.
The CHAIRMAN. Just construction and material.
Mr. McCONNAUGHEY. Yes.
Mr. Cox. Would the operational cost of the U be higher because of the extra power required?
Mr. LEE. I understand there is some differential. I couldn't tell you how much more. They do require more maintenance.
Mr. Cox. Mr. Bartley?
Mr. BARTLEY. I just said not substantially different, I mean percentagewise.
Mr. Cox. Could you give us a figure for that on the record?
You mentioned certain technical improvements which you thought were perhaps on the way which might improve the chances of survival of UHF stations. Are those in such a status that you could give us any date as to when you think they would be likely to play an effective part?
Mr. BARTLEY. No, sir, I couldn't.
Mr. Cox. You noted in your statement to the committee that 278 communities now have local stations. Are some of those satellite stations?
Mr. McCONNAUGHEY. Just a handful.
Mr. Cox. Could you give us for the record the number of——
Mr. McCONNAUGHEY. Five or six.
Mr. Cox. Five or six?
Mr. McCONNAUGHEY. Yes; just a very few of them.
Mr. Cox. Doesn't that figure of 278 amount to about 20 percent of the communities for which allocations were made in the sixth report?
Mr. McCONNAUGHEY. That is correct; that is correct.
Mr. Cox. Could you tell us how many communities got a first local television station in calendar 1955, excluding satellites?
Mr. McCONNAUGHEY. That will have to be checked.
Mr. Cox. All right, you can furnish that for us.
Mr. McCONNAUGHEY. Surely.
Mr. Cox. And at the same time, can you tell me how many pending applications for permits are before the Commission which would give a first local television station in the community concerned, excluding again satellites and also excluding UHF permits which have been outstanding for more than 6 months.
Mr. McCONNAUGHEY. We will supply that for you.
Mr. Cox. All right. Now, the committee, of course, is familiar with the sixth report, and with the policies or priorities that are

stated there. I wish you would state for the record at this time, however, what the priorities set out in the sixth report were?

The CHAIRMAN. I think we can read those.

Mr. COX. I have them here, subject to your confirmation.

The CHAIRMAN. Ask if that is correct?

Mr. COX. I believe the first one was to provide at least one television service to all parts of the United States—is that correct?

Mr. MCCONNAUGHEY. That is right.

Mr. COX. Second, to provide each community with at least one television broadcast station?

Mr. MCCONNAUGHEY. Right.

Mr. COX. Third, to provide a choice of at least two television services to all parts of the United States?

Mr. MCCONNAUGHEY. That is right.

Mr. COX. Fourth, to provide each community with at least two television broadcast stations; and finally, any channels then unassigned under the foregoing priorities were to be assigned to the various communities depending on population, geographical location, and the number of television services available to such community from television stations located in the other communities.

Mr. MCCONNAUGHEY. That is right; that is correct.

Mr. COX. All right. Now, in your opinion, sir, is it going to be necessary for substantially greater progress to be made toward the achievement of all of those objectives if this country is going to have a truly nationwide competitive television system?

Mr. MCCONNAUGHEY. Well, in what way do you mean that? I mean, I don't quite understand.

Mr. COX. Well, when you issued your sixth report you set up these priorities. You have admittedly made tremendous steps toward the achievement of some of them.

Mr. MCCONNAUGHEY. That is right.

Mr. COX. Particularly the first one.

Mr. MCCONNAUGHEY. On the first one they have made wonderful progress, the Commission.

Mr. COX. All right. Would you say, however, that these remaining items are goals which must be pursued, at least below the first one, if we are to develop a competitive nationwide system of television?

Mr. MCCONNAUGHEY. I feel that a lot of improvements need to be made and I think they are going to have to be made. We hope considerable of them can be made in our reallocation rulemaking proceeding, which we are going into now.

Mr. COX. The point I would like to develop, though, is: Do you and the other members of the Commission in general feel that, although perhaps reallocation must be made to achieve these policies, these continue to be goals for which the Commission ought to be working?

Mr. MCCONNAUGHEY. Yes.

Mr. DOERFER. We don't agree as to whether or not we have made substantial progress on the first priority.

Mr. COX. All right. Would you care to expand on that point, Mr. Doerfer?

Mr. DOERFER. Yes. I feel that west of the Blue Ridge Mountains there are much more wide-open spaces; these require V services rather than U. I feel that within the range of a V service there would be a fringe area which would be denied a service if converted either to a U or maintained at a present U service—so that a substantial number of people may be forever without a service unless they get it through community antenna systems or perhaps boosters or satellites. But we don't have any jurisdiction, as I read it, to compel the UHF operator to install a booster or a satellite. In the first place, it would be uneconomic; and, secondly, there would be no incentive.

Assuming there is a market of 300,000 people that would be served with a V service, but only 250,000 with a U service—the 50,000 people are spread on the perimeter or the fringe area. They are not dense. They can't be reached readily by booster or satellites unless you put a number of them around the circumference of the grade B contour.

Mr. Cox. The cost, however, of the translators that the chairman was discussing at the last session would not be prohibitively great to permit achieving that peripheral coverage, would it, on the part of the U?

Mr. Doerfer. Human nature being what it is, a broadcaster is not going to increase his expenditures unless it reflects itself in the rate card.

Mr. Cox. However, if there is a V in that market, isn't it almost imperative that he equalize his coverage with that very station if he is to have a chance competitively?

Mr. Doerfer. I agree. That is why I feel that the proper way to achieve a solution of this is to try to blend or permeate U services and V services, so that a market which will sustain 3 U's, I think will also sustain 1 V and 2 U's. That, in my opinion would be the proper approach. I have been opposed to the establishment of UHF islands because the necessary corrolary is that you establish VHF islands and you never will achieve the penetration of the U's and the V's.

All you have done is you have isolated service; you have built a sort of an economic Iron Curtain between the two.

Mr. Cox. Substantially, then, you say that you feel that there still remains progress to be made to a fairly considerable degree even in achieving the first priority in the sixth report.

Mr. Doerfer. Yes, I think so, Mr. Cox. I would say this, that I think on the fringe areas there are some people who, if there were a V service presently implemented, would be getting an only service. I do think there are a substantial number of people who desperately and rather pathetically reach out for a service by putting antennas on top of pine trees or whatever object they have in order to get it. I do think that many times they get a picture which you and I might consider snow, but which they, not having the opportunity to compare it with anything else, think is an acceptable service. I think those people are just as much entitled to a service as are the people in the more populous eastern sections of the country.

Mr. Cox. You are speaking there, I take it, ideally, because, by the nature of their geographical location which they have selected themselves, they have placed themselves at disadvantages as regards other services; haven't they?

Mr. Doerfer. That is not true. I have given an illustration of a market in which today, in accordance with the sixth order and report, they are within the range of a V service.

If we implement it, if we keep faith with the objectives of the sixth order and report, they would get a service. I do not agree with the chairman that the objectives of the sixth order and report are harmonious, and that they complement each other. I think that there is definitely a conflict between the first priority and the second priority.

Mr. Cox. Would you elevate the first priority to such a point that it would prohibit achievement, even on a reasonable scale, of the second priority?

Mr. Doerfer. No, I would not. I think that you certainly reach a point where the loss of service is *de minimis*. I think that if people live in the mountains or the wide open spaces where they would not receive a VHF service under the present allocation, they have definitely put themselves by choice beyond a service. But where the Commission has taken the entire map of the United States, and allocated various services, I would say that any of those people within the fringe areas are entitled to a service.

I think that the act itself does not place emphasis upon a nationwide competitive service. The Federal Communications Act provides for an equitable distribution of frequencies, and I say that it is inequitable to assign a U service to some people and a V service to others under the present state of the Art.

Mr. Cox. Wouldn't the specific provisions of the Communications Act regarding the applicability of the antitrust laws require that this service that you establish be competitive?

Mr. Doerfer. Well, I don't think I understand your question.

Mr. Cox. Well, you said that all that the act requires is that there be a fair distribution of the frequencies?

Mr. Doerfer. I did not say that that is all that the act required. I think that the achievement of a nationwide competitive service is consistent with the act. But I do say that the act itself lends support, first, to the equitable distribution over the competitive. In other words, I think that in view of the scarcity of available frequencies this Commission is struggling essentially with a priority system.

Whenever you have a priority system you have to choose, sometimes, between whether or not you are going to attempt an equitable distribution or whether you are going to get off of the course and get into the so-called competitive system.

Now we have ample competition in many, many markets. I do not think we have as much as I would like. I am not so sure that we have had enough experience, as yet, to write off UHF. I think that a good deal of the success of UHF in a so-called V market—and I am speaking of a one V market—depends essentially upon programing. I think that if the Commission—and we have been considering it, I think that perhaps what we have to explore would be the feasibility and the practicability of writing a rule limiting an affiliate to one network service, so that the one V affiliate, where there are U's in the market, cannot scoop off the cream of the three networks.

I am not so sure that I am ready at the moment to adopt it. I would like to explore it. But I think that the solution of the problem will be programing. If we can devise some rules which will not do violence to our free-enterprise system.

Mr. Cox. We will go into that a little more at a later point, but I am interested in this proposition: Would you think that you have achieved an equitable distribution of facilities if, in order to get as near as possible to 100 percent coverage for a first signal, you take steps which in terms of the economic interplay of forces in the market are going to restrict major centers of population to less than the number of services that they can support?

Mr. DOERFER. Well, now, you are tending to be academic about it. Let me say this: A farmer 50 miles from Madison is just as important as John Jones in New York City.

Mr. COX. Is he just as important as 7 million John Joneses in New York City?

Mr. DOERFER. Let me say this: Why should John Jones in New York have seven services and farmer Brown 50 miles from Madison no service?

Mr. COX. Well, isn't that partly because of the policies that were followed in the sixth report which maintained seven existing V channels in New York, rather than make any drastic readjustment in those in 1952?

Mr. DOERFER. Well, I do not want to pick out New York. I use that as perhaps an extreme illustration. But let's go down to the 4-station market, or let's go down to the 3-station market. Why, within the city of Madison or in its immediate environs, within the reach of a UHF signal, should 250,000 people have 3 services, and immediately outside of that 50,000 people having no service?

Mr. COX. We will get to that question about whether they have a service a little later on.

Mr. DOERFER. Of course, I am assuming that. Now all I say is this: I am faced with the situation between 2 choices. For myself I would choose 1 service for 300,000 people rather than 3 services for 250,000 people, if I have no other solution.

Mr. COX. If you have no other solution. Would you take that one service for all of them even though it drove from the market the existing additional services that served the five-sixths of the population?

Mr. DOERFER. Given that assumption directly. However, I am not quite as pessimistic as to believe that the people living within the 250,000 population limit that I have just indicated would be without a service.

Mr. COX. We will explore that also.

Mr. DOERFER. I think it will work out.

Mr. COX. Is it a fair inference, however, from what you said in starting, that in your opinion, east of the Blue Ridge or Alleghanies, you have substantially achieved the first priority to the maximum possible extent?

Mr. DOERFER. I think yes. I think that either most of the people there have it or it is available to them without doing violence or altering the sixth order and report.

Mr. COX. All right. Now, Mr. Lee, a while ago I think you had a comment regarding the chairman's statement that these priorities of the sixth report were still valid policies that ought to be pursued?

Mr. LEE. Well, as we go along here I just wanted the record to reflect my individual views on the items of importance. I think it is very difficult to quarrel with the objectives of the sixth report and order. It may be that they need some redefining. For example, maybe it is not realistic to say that we can provide each community with a service.

Maybe we will have to give some recognition to the area concept. As far as I am concerned at this time after reading most of these comments I would like to have the flexibility to determine where stations should be in any given area on application, irrespective of allocations of the sixth report and order.

In other words, I would retain some engineering standards, but I would like the ability to revise or waive them in a given situation. Where I can weigh in an area that they need a service, that it will provide additional service, and that it can be perhaps fitted in without violence and without interference.

I want the ability to say I will do it here, but I don't want to be stuck with the same situation somewhere else.

Mr. Cox. In other words——

Mr. Lee. I think the country is different.

Mr. Cox. You are going to handle this on a case-by-case basis?

Mr. Lee. I am leaning that way; yes.

Mr. Cox. Even though you felt it was not wise to handle deintermixture on that basis.

Mr. Lee. Yes. [Laughter.]

Mr. Cox. Are the present allocations of the sixth report based on a city-to-city approach or on an area approach?

Mr. Lee. Pretty much on a city-to-city approach.

Mr. Cox. Were those cities selected, however, to give at least a fair degree of areawide coverage?

Mr. Lee. I am not the person best qualified on that. It is my impression that at the time we made the allocations we did not fully appreciate how much coverage these stations would give. In other words, we might not have known as much as we do now. These signals go out further than perhaps were anticipated at that time, and certainly some recognition had to be given to the economic support.

The Chairman. Isn't it true that as time goes on we surely hope that the technological aspects of this are not going to remain just the same?

Mr. Lee. It should improve, if history teaches us anything.

The Chairman. Yes. Any new thing usually starts out in the places where it is most adaptable, and as we move along technologically and scientifically it spreads. That was true of the telephone. There are some areas in the United States today that still do not have telephones.

Mr. Cox. I think Mr. Hyde had a comment on that point.

Mr. Hyde. May I say that the sixth report did contemplate area coverage. The station assignments were made to communities, the Commission recognizing the fact that a station has to have a market and has to have a home base. But the geographical separations and engineering standards were all designed to permit the stations to locate in the cities where they have to be located to reach the areas which are entitled to service.

And the Commission did not approve that report without ascertaining in advance that it would give area coverage, assuming that stations were constructed and operated. I would like to mention in this connection that we have better national coverage in television now, after this very short experience operating under a nationwide plan, than we have been able to obtain in AM radio in 30 years of application-by-application processing.

Mr. Cox. Mr. McConnaughey, I think it was brought out earlier that you had recently stated in a speech that even when the Commission has disposed of all pending applications, some 66, or two-thirds, of our country's 100 top markets will have 2 television stations or less; is that right?

Mr. McConnaughey. I believe that is. If that is what I said, that is what I said.

Mr. Cox. I think this is from your speech to the Poor Richard Club in Philadelphia in December.

Mr. McConnaughey. That is correct.

Mr. Cox. You went on to say that you thought that this constituted an undue constriction, both upon advertising outlets and upon the availability of program choices to the people; is that correct?

Mr. McConnaughey. I think that is right; yes.

Mr. Cox. I think you also said that you were not willing yet to surrender the hope that the some 1,400 communities in this country which have a local newspaper or radio station would someday have their own television station.

Mr. McConnaughey. It certainly is my hope that can be accomplished.

Mr. Cox. Can you suggest at this time any basis on which it is conceivable that that can be achieved—that you can get that wide a distribution of stations and can avoid this undue constriction—which will not require full and effective use of the UHF portion of the spectrum?

Mr. McConnaughey. I do not know of anything right at this time, but I have great faith in development of this brandnew gadget, I will call it, television—this brandnew business and industry—that there will be developments made that will enable many, many people to have television outlets.

Mr. Cox. Do you have similar faith that there will be developments——

Mr. McConnaughey. You get into the economics of it, and the thing has to develop as economically as possible, plus technical improvements.

Mr. Cox. Do you have similar faith that techniques are going to develop that will bring an effective use of the FM band?

Mr. McConnaughey. I hope so; I don't know.

Mr. Cox. I take it, then, that if you still have this much unfinished business in accomplishing the policies of the sixth report and in achieving relief from this constriction and further extension of local services, that when in our last session you indicated that it was "much ado about nothing" to talk about delay in your procedures because the whole thing was going to be done in 12 months, you were speaking only of pending applications which were made for V channels under existing economic conditions?

Mr. McConnaughey. That is all; just with reference to what we have.

Mr. Doerfer. Just the V's?

Mr. McConnaughey. Well, V's and U's; whatever applications there are. I spoke of the number as 36 or maybe 35, or whatever it is. We are talking about what we presently have before us; that is all I had reference to.

Mr. Cox. In other words, however, the job of effecting a nationwide competitive system of television, or bringing local services to anything like 1,400, or even 700, communities is going to require years?

Mr. McConnaughey. I would think so, and a lot of developments and a lot of economic changes; something that you and I, nobody, can foresee.

Mr. Cox. Under the Communications Act the Commission is the agency which is primarily charged with developing the orderly and efficient use of the radio spectrum.

Do you agree that when the Commission feels that it lacks power to do something which it conceives is necessary to achieve that end, it should come to Congress, to this committee, and ask for changes in the law?

Mr. McConnaughey. I would think so; yes.

Mr. Cox. Do you feel that the Commission does require additional statutory authority from Congress at this time to assist in its continued efforts toward achieving a nationwide competitive television system?

Mr. McConnaughey. I think we would have to study it to find out, and that is what we are doing now, as you know, in this network study which you folks had us make. I think when we get through with this, we can make some suggestions to you, to the Congress of the United States. We have nothing specific sitting here today.

Mr. Cox. Isn't it true that the problem of the present allocations, at least as far as their impact upon the interrelationship, the intermixture of U and V stations is concerned, has been before the Commission at least since May and June of 1954, when the Potter hearings were held?

Mr. McConnaughey. Yes; sure.

Mr. Cox. Now, do you feel, for instance, that at least as far as you now know the Commission has all the statutory authority that it needs to deal effectively with the allocations problem in the course of its present proceeding?

Mr. McConnaughey. Well, I don't know. We may come back and ask you people for suggestions after we have made a study of it.

Mr. Cox. In other words, you are going to ask Congress whether it thinks you need more authority?

Mr. McConnaughey. No. We would come and ask you and tell you if we thought we needed more authority.

Mr. Cox. Very well. Then it is primarily, as far as the allocations problem is concerned, a matter of the Commission's making up its mind and then executing any policies that are decided upon within the powers which are already conferred upon you by the Communications Act of 1934?

Mr. McConnaughey. Yes; that is right.

Mr. Cox. Now, there has been some talk in your statement, and of course throughout the industry, about the possibility of obtaining more V channels. Do you have any substantial hope at this time that additional VHF channels can be obtained from other services?

Mr. McCONNAUGHEY. The Commission addressed a letter to the Office of Defense Mobilization some time ago and a study is being made by the Government today at a pretty high level.

Mr. Cox. Could you tell us approximately when that letter went forward?

Mr. McCONNAUGHEY. It was in the fall. And then an ad hoc committee was appointed and a staff committee was appointed from Government and they have been working, and working pretty hard, on that very subject.

Mr. Cox. Well, realizing of course——

Mr. McCONNAUGHEY. So I can't tell you a thing about it.

Mr. Cox. Realizing of course that their efforts are not complete I am asking you for the expression of a personal opinion as to whether you think this is likely to be productive.

Mr. McCONNAUGHEY. I cannot answer that, I do not know.

The CHAIRMAN. You have the military working on it?

Mr. McCONNAUGHEY. That is right.

The CHAIRMAN. You have an ad hoc committee within the defense group?

Mr. McCONNAUGHEY. That is right.

The CHAIRMAN. And we have our ad hoc committee which is working on the same problem?

Mr. McCONNAUGHEY. That is right, yes.

The CHAIRMAN. They are all engineering problems?

Mr. McCONNAUGHEY. Yes, sir, they are.

The CHAIRMAN. I might say to the Commission that we have had several meetings, not several, 2 or 3 meetings, with part of the ad hoc committee that we asked to work here, including Dr. Bowles, who is the chairman, and they are quite active and will be for the next few weeks in an effort to see what they can recommend to us which of course would be a recommendation to you people.

Mr. McCONNAUGHEY. Which would be very helpful.

Mr. Cox. Can you at least tell us this much, Mr. McConnaughey: In your opinion is there any conceivable possibility that this work now being carried out with respect to additional V spectrum space can produce any number of channels remotely comparable to the 70 UHF channels which are already available for television?

Mr. McCONNAUGHEY. Well, you are just asking me my personal opinion; I would not think it would be possible.

Mr. Cox. There is not that much frequency space even under discussion, is there?

Mr. McCONNAUGHEY. No.

The CHAIRMAN. And of course you run into the practical problem. That requires a change in sets, too?

Mr. McCONNAUGHEY. Certainly.

Mr. Cox. Could you explain that a little further?

That is, don't you have the same problem there of set incompatibility that UHF operators initially had?

Mr. McCONNAUGHEY. A good deal, yes, sir.

Mr. Cox. Aren't you going to have to convert sets to receive signals on any new V channels?

Mr. McCONNAUGHEY. Yes.

Mr. LEE. May I just add that that conversion is considerably less of a problem than the UHF conversion, if you convert to a new V channel.

Mr. COX. In what way?

Mr. LEE. For example, you do not need a new antenna, which might be half the cost.

Mr. COX. Is the cost of the tuner substantially less than a UHF converter?

Mr. LEE. It varies by area and depending on where the space is. I am advised, for example, that if some adjustment came out where you would use some FM space, the cost there might be as low as, oh, maybe a dollar plus a service call, or maybe you could do it yourself.

The CHAIRMAN. It is cheaper?

Mr. LEE. I understand it is very simple in that instance.

Mr. COX. In any event, however, a licensee licensed by the Commission to operate on such a frequency would have the problem, through programing or other means, of persuading local viewers to take the effort to make that conversion?

Mr. LEE. That is right.

Mr. COX. Would you say that the possibility of getting additional V channels from the military or from other present users can be realistically considered by the Commission as a solution to the allocations problem as it is now presented to the Commission and as it must be decided in its pending rulemaking proceeding?

Mr. MCCONNAUGHEY. It certainly could contribute. I do not think it is a final answer one way or another, but it certainly could contribute.

Mr. COX. Even if you get additional space there, how long is it going to be before it will be available for commercial television use?

Mr. MCCONNAUGHEY. There again nobody in the world can answer that.

Mr. COX. It will be years, won't it?

Mr. MCCONNAUGHEY. I do not know. It could be or could not be.

Mr. COX. Mr. Bartley?

Mr. BARTLEY. Not necessarily.

Mr. COX. That is you think it is possible that the military can be displaced without some period for amortization of their existing equipment, also the aviation people and so on?

Mr. BARTLEY. I do not know. That is what is being studied now.

The CHAIRMAN. That is what we are trying to find out.

Mr. BARTLEY. That is what we can't find out yet either.

Mr. MCCONNAUGHEY. That is what we are trying to find out too.

The CHAIRMAN. And of course if we should find out that these would be available that still means we have just another tool to work with to help solve the allocation problem, that is all.

It may be the one we want to use and it may not.

Mr. MCCONNAUGHEY. I don't know.

Mr. LEE. As a matter of fact, Mr. Chairman, part of the decisions as to how quickly such a channel might be available would be a congressional consideration, through appropriations.

The CHAIRMAN. Oh, yes.

Mr. LEE. If you might be willing to spend a lot of money and obsolete something instead of letting it amortize.

Mr. COX. That would cost a lot of money, wouldn't it?

Mr. LEE. I am afraid it would.

Mr. Cox. In the range of billions of dollars?

The CHAIRMAN. It would not be that, but the way they spend money it is a lot of money.

Mr. Cox. Didn't you say in your report to this committee last March, your original comments [1] on the Plotkin and Jones Report, that the addition of substantial VHF space would involve such tremendous dislocation of existing operations that it should be considered only if Congress itself should determine this should be done?

Mr. McCONNAUGHEY. I think that is right. It is just as Commissioner Lee pointed out, it gets into something that has to come to Congress.

Mr. Cox. Do you feel you lack authority to make such adjustments, assuming you can reach agreement with the military?

Mr. McCONNAUGHY. You come into the money proposition where you have to come to Congress.

Mr. Cox. It would be largely on appropriations, rather than a question of your authority?

Mr. McCONNAUGHEY. I think that is right.

The CHAIRMAN. Congress would have to agree that it is worth while to spend this money in the solution, otherwise you could not do it.

Mr. McCONNAUGHEY. That is right.

The CHAIRMAN. You could do it, but otherwise it wouldn't be done, I should say that.

Mr. Cox. Turning now to your very interesting discussion, in your statement, of the Commission's network study, am I correct in assuming that that study is for the long-range general guidance of the Commission, and that you are not looking to it to develop answers to the UHF problem, and therefore do not propose to withhold an order in your rulemaking proceeding until that study is completed?

Mr. McCONNAUGHEY. You are correct about that.

Mr. Cox. Are you agreeing, Mr. Doerfer?

Mr. DOERFER. No, I was not agreeing, no.

Mr. Cox. All right, let's have your view, then.

Mr. DOERFER. Well, I think that as we go along with the network study, we may find some basis for some change which may help solve the UHF problem. I indicated before that I am exploring the possibility of having the Commission issue some proposed rulemaking which would deny an affiliate the right to scoop off the cream of the best networking programs of 3 networks in a market where there are 2 U's either operating or potentially capable of operating.

I am not as pessimistic about the development of UHF as some people are. I do feel that the Commission and Congress should not get too impatient. After all, it is an infant industry. An industry, if it needs anything, needs a certain amount of stability, definiteness. Set a policy, even if it is not a perfect one, and industry will be able to work with it.

Now, I say that in the absence of some very bold stroke to move it up in the UHF or to deintermix the first dozen major markets. Now with respect to the network study I am satisfied that some, not all, of the UHF problem has to do with programing and network programing.

[1] These and other comments of the Federal Communications Commission on the Jones and Plotkin Reports are set out in appendix II.

But I am also aware, Mr. Cox, that some UHF, at least one that I can document, has gone off the air albeit it had a network-affiliation contract.

So, the solution is not as easy as some people would lead you to believe, although I do think that with respect to some of the critical areas, if we could devise some legal constitutional means, without destroying the fundamental concept of the act which is free interplay of enterprise and competition, and devise some way to get some networking program to the UHF operators, I think that we have probably solved the immediate problem and we would lay a good foundation for the ultimate growth, and that is the intermixture of U's and V's for we need both.

Mr. Cox. All right. Now as I recall it——

Mr. McConnaughey. I think I answered your question. It is not anything different from what the Commissioner says. We, of course, will use whatever information we obtain from the network study that can be of use, but we are not going to hold up our rulemaking proceedings until the network study is completed.

Mr. Cox. The target date on that network study is probably July 1957?

Mr. Doerfer. There are many things connected with the study which may not have anything to do with the life and death of UHF.

The Chairman. In the network study, you are going to study contracts, you are going to study questions of monopoly, all phases of the problem?

Mr. McConnaughey. Programing, talent.

Mr. Cox. Are you attempting to accelerate that part of the study which bears on this possible rule you are discussing, limiting the affiliation rights of a V?

Mr. Doerfer. Well, it has been accelerated to this extent, that four Commissioners spent a good deal of time in New York with respect to the first once-over involving networks, national spot representatives, advertising agencies, talent agencies. We have got a rough picture which we hope will be filled in and studied further by the staff. It has given me, and I am satisfied some of the other Commissioners, much more intimate knowledge as to how these things work.

Now with the proposition which I just indicated before, I feel at the moment that it is possible to work out a rule, but yet I realize my shortcomings with respect to experience, and I would like to test it out with the other Commissioners and with the industry, not only the UHF people but with independent operators and network people themselves.

I think with some of the studying that the Commissioners have been doing on their own, that it might be possible to get some rulemaking going within, I would say, a week or 2 weeks, if we feel that 1 or 2 possibilities would aid not only the immediate solution, but would be harmonious with a long-term solution.

Mr. Cox. In connection with what you have just said, is it planned to conduct this investigation by your network committee through informal private conferences such as these recent meetings held in New York, or is it intended that at least in part, to the extent possible, you will develop a public record which will permit all segments of the industry to know what has been submitted to the staff, to comment on it, and where necessary to correct it?

Mr. DOERFER. I do not know what the Commission will do. My viewpoint, if you are asking that, is that no doubt a good deal would be handled through the public hearing process. But I am reluctant to make public that which may be a trade secret, that which may cause more harm to the programing for the people than good. Now, there is an area within which the networks operate that I do not think it would contribute much to the solution of any of our problems to make it public.

Mr. COX. Will you at least do this, and perhaps I should address this question to Mr. McConnaughey—perhaps he would like to answer my general question about this procedure—it is your view that if you are presented with such information, and perhaps do not desire to make it public, that you should at least undertake investigations in other segments of the industry to check to see whether the information you have been supplied is accurate and is not in any way distorted?

Mr. MCCONNAUGHEY. Yes; we naturally would——

The CHAIRMAN. What we are trying to say is that I could appreciate that you must have these informal conferences to get sort of the feel of things, and then you would probably have informal conferences with other segments of the industry?

Mr. MCCONNAUGHEY. That is what we propose to do, Mr. Chairman. I don't think we would ever make any final decision, I am speaking for myself, without having a public hearing.

The CHAIRMAN. And surely this Commission would say right now that before any decisions are made, all segments of the industry should be heard, and sometimes in public?

Mr. MCCONNAUGHEY. Yes.

Mr. DOERFER. Oh, yes.

Mr. MCCONNAUGHEY. By all means, that is exactly what we do.

Mr. DOERFER. That I may not be misunderstood, I was thinking about the revelation, publicly, of the negotiations that go on between a network and talent. If they were made public, my present appraisal of the situation is that the talent would just play one network against the other, and just increase the cost of programing. Of course that is talent's right to do so, to drive the best bargain they can. But I do not know why a governmental agency should get in there and tip the scale of something which does not really concern the public to that extent.

Now, if it does, I am heartily in accord with even putting that in a public hearing. But I would have to be convinced first that a public good would be the ultimate result.

The CHAIRMAN. But you surely should not ignore contracts that create a monopoly of talent in any one given place?

Mr. DOERFER. I agree with that, absolutely.

The CHAIRMAN. And you should not ignore the fact that maybe 2 or 3 or 4 or 5 large advertising agencies might—I don't say this is happening—but it could be possible the trend would be such that there would become a monopoly of talent?

Mr. DOERFER. Well, if there is any evidence on our first run there which points——

The CHAIRMAN. In other words, that is what you are looking at. If that is true, you are going to pursue that I hope?

Mr. DOERFER. Yes.

Mr. MCCONNAUGHEY. No question about that.

Mr. Cox. In connection with what you have indicated about your desire to reach all segments of the industry, is that, subject at least to budgetary problems, going to include visits to Los Angeles where the film producers are largely centered, consultation with advertising agencies, local stations, national spot representatives and so on, independent stations throughout the country, not centralized in this area or in New York?

Mr. McConnaughey. Oh, no. No, no. We will do it on an overall basis.

The Chairman. I think we ought to be clear here because this is a very important study. You might be subject to some criticism. On the face of things it might appear, since you went to New York and had an informal private conference with some of the networks, that maybe you are sitting down in some closed room and talking things over. But as I understand what you were doing, you are doing this first so you can get sort of a feel of the thing.

Mr. McConnaughey. So our network study committee would get—yes, you put it very well, we get a feel of it.

The Chairman. Then you go out and do the same thing with other segments of the industry?

Mr. McConnaughey. That is right.

Mr. Cox. Then you come to a point where you are going to decide on public hearings on the many factors involved?

Mr. McConnaughey. Yes, you go to the station around over the country, I mean get a complete overall job, and then have a public hearing before a decision is made.

Mr. Cox. Is it fair to say, although we have been referring to this as the network study, that actually it is a study of the economics of the entire broadcasting industry and will therefore involve consideration of the problems of the affiliate, of the independent station, of the independent film producer and so on?

Mr. McConnaughey. I think yes, because they are so interrelated, Mr. Cox.

Mr. Cox. It is called a network study only because of the preponderant position which is occupied by the three major networks?

Mr. McConnaughey. That is right.

The Chairman. That is why you have got to embrace such questions as whether independent stations have equal and fair access to programs?

Mr. McConnaughey. Correct.

The Chairman. Whether the small-business man has a fair chance of employing television to advertise his product or services?

Mr. McConnaughey. That is right.

The Chairman. What is the chance of the small-business man in a given community today to use the world's greatest medium of expression, television, to advertise his product?

Is he shut out because of a network situation?

Is it approaching a monopoly? Or does he have an equal access to a television station?

Mr. McConnaughey. I think that is right, that is one of the very, very, important——

The Chairman. I think that is the most important thing of all.

Mr. McConnaughey. Yes, that is just vital, just vital.

Mr. Cox. Turning again to this ever-prevalent question of UHF, you referred briefly in your statement to the——

The CHAIRMAN. Before we go into that, I think we will take a recess, give the reporter a rest here, for about 10 minutes.

(Short recess.)

The CHAIRMAN. The committee will come to order.

Mr. Cox. You referred very briefly in your statement, Mr. McConnaughey, to the difficulties of the UHF operators, without going into any detail. I would like to ask whether you agree in general with the factual analysis of the extent and causes of their problems which is set forth by Mr. Jones and Mr. Plotkin in their reports.

Mr. McCONNAUGHEY. I would have to analyze those pretty carefully to give you an answer to that. There are some 100 pages of their reports and they are not in harmony, one with the other. They have disagreements.

The CHAIRMAN. Well, we are talking about the facts that they put in the reports.

Mr. Cox. Have you not had those analyzed? They were sent to you last February.

The CHAIRMAN. Some of them were economic facts, the number of stations.

Mr. McCONNAUGHEY. I think, generally speaking, the facts are correct.

Mr. HYDE. If I may add a word here, I would direct your attention to a statement that was made in behalf of the Commission in connection with the hearings conducted by Senator Potter. In that statement we outlined the whole history of the development, and reported to the committee the various considerations which entered into the difficulties which have prevented ultrahigh stations from reaching the success which the sixth report contemplated.

The CHAIRMAN. But the facts in both cases——

Mr. HYDE. Largely a recitation of the factual pattern as it developed after lifting the freeze.

Mr. Cox. In your opinion, if the UHF channels are allowed to stagnate, in the sense that you do not have applications for the available allocations and if UHF stations continue to leave the air, do you think there is a danger that there will cease to be any adequate incentive to manufacturers to develop high quality all-channel sets, high-power UHF transmitters, and the other equipment which is necessary for this technical development that you were talking about awhile ago?

Mr. HYDE. I think a number of manufacturers, from what I understand from our chief engineer as he testified last week or the week before last, a number of manufacturers are working pretty hard to try to perfect technical improvements in UHF, and I think that will continue. I think many of them are very much interested in trying to perfect it.

Mr. Cox. Do you think that that will continue even if there is a growing disuse of U channels so their possible markets for either sets or transmitters are reduced?

Mr. HYDE. If they all go off the air, no, of course not. But we do not anticipate that is going to happen at all.

Mr. Cox. If half of them go off the air, is that not going to have a substantial discouraging effect upon technical development in the field?

Mr. Hyde. I would think it would have some effect on them, yes.

Mr. Cox. If these channels, the UHF channels, fall into growing disuse, is there not grave danger that the chance of ever making effective use of them for commercial and educational purposes might be lost for good?

Mr. Hyde. No question about it. If they continue to go off the air at a rapid pace, it is going to discourage the development of UHF.

The Chairman. Of course, the fact is that despite what we have been trying to do, as I understand it, last year there were less all-channel sets made and put on the market than there were a year ago.

Mr. McConnaughey. I think that is correct. I think that is right.

Mr. Cox. Mr. Webster?

Mr. Webster. Referring back to a question you asked a minute ago. There is apparently a recent development that may help out UHF. I have in front of me the release of RCA that announces the production of a 4½-million watt radiated power for UHF–TV transmitters. This shows the encouragement that is taking place, at least on the transmitter side.

Mr. Cox. Is this the first such high-powered transmitter that has been available?

Mr. Webster. Apparently. It is a new tube. As far as I know, as I say, I have just looked at the release, and all I know is what I read in the newspaper.

The Chairman. Well, is not NBC buying 2 or 3 UHF stations? Two?

Mr. McConnaughey. Two, yes.

The Chairman. That is a recent application, is it not?

Mr. McConnaughey. Yes.

The Chairman. They might be buying them for experimental purposes on this.

Mr. Cox. That is in Buffalo and Hartford, is it?

Mr. McConnaughey. That is right; that is right. CBS bought one.

The Chairman. CBS has bought one, too?

Mr. McConnaughey. In Milwaukee, yes.

Mr. Cox. And is applying for one in Hartford?

Mr. McConnaughey. CBS? Yes, that is correct.

Mr. Cox. Or, rather, the one in New Britain which serves Hartford.

Mr. McConnaughey. Yes, that is the reason for my confusion—it is the same one.

Mr. Cox. Now, is it not true that in those areas, the people from whom the networks are acquiring the stations have already achieved substantial set conversion?

Mr. McConnaughey. Yes, I think so.

Mr. Cox. So that this is not going to contribute materially to the sale of all-channel sets?

Mr. McConnaughey. Well, in Buffalo, I guess it would. I think it would in Buffalo. Of course, the same thing you can say where we had these deintermixture cases, most of the people already had UHF sets, as you know. So the question of how much that would contribute to the sale of additional UHF sets——

Mr. Cox. They would both contribute primarily, would they not, in the sense of providing a more or less guaranteed future market for replacement sets, at least?

Mr. McConnaughey. Let us put it this way: That it might be an encouragement to some extent.

Mr. Cox. I believe I understood you to say at our last session that all of the pending UHF construction permits which have not been utilized, in the sense of starting construction, have now been extended until July 16 of this year, pending your further proceedings.

Mr. McConnaughey. That is correct.

Mr. Cox. Now, are you extending all of these permits, including those which may have been applied for and received within fairly recent months, even in the light of all the information that now exists as to the problems which face the UHF operator?

Mr. McConnaughey. We have nothing to extend on the more recent ones, but the ones that have been there longer, we have extended them.

Mr. Cox. What is the initial period of such a construction period?

Mr. McConnaughey. Eight months.

Mr. Cox. In other words——

Mr. McConnaughey. The ones recently being filed, there is nothing to extend.

Mr. Cox. No action is required on them?

Mr. McConnaughey. That is right.

The Chairman. But you have extended quite a few of them?

Mr. McConnaughey. The ones that need to be extended. We have extended all of them.

The Chairman. I should know this but I do not—how many educational channels are on UHF?

Mr. Doerfer. About 200.

Mr. McConnaughey. Pretty close to it.

The Chairman. About 200. Then how many on VHF?

Mr. Doerfer. About 57.

The Chairman. So most of the educational channels are on UHF, is that right?

Mr. McConnaughey. Two-thirds of them.

The Chairman. Two-thirds of them. I wanted to get that in the record. In the case of educational stations you have to extend construction permits quite frequently, do you not?

Mr. McConnaughey. Oh, yes.

The Chairman. I can understand that because they have difficulty in financing.

Mr. McConnaughey. That is right.

The Chairman. Legislators do not appropriate money for them.

Mr. McConnaughey. A lot of things come into that picture.

The Chairman. Yes.

Mr. Cox. We have been talking here, of course, for several days now about deintermixture. I think perhaps it would be wise if we got a definition of that in the record. Could you tell us just exactly what is meant by deintermixture?

The Chairman. Educate me and the press table there, and everybody else.

(Laughter.)

Mr. McConnaughey. Well, when you deintermix, you remove a channel that has been allocated and make it all one band.

Mr. Cox. It is an adjustment of the allocations which would result in all V in one area and all U in another?

Mr. McConnaughey. All U, yes.

The Chairman. But you have got it mixed first, have you not?

Mr. McConnaughey. Yes. You have an allocation, we will say, of a V and two U's. If you are going to deintermix, you would say that the V would be taken out, and that could become a U. It would replace the V with a U.

Mr. Cox. Is it not true, however, that some proposals for deintermixture do not go quite all the way, but would leave perhaps a dominant V in the market and additional U's, but would eliminate a second V, or any further V's?

Mr. McConnaughey. Yes, there are different shades of deintermixture, partial deintermixture, total deintermixture.

Mr. Cox. Then "selective deintermixture" is simply the concept of applying deintermixture not across the Nation, nationwide, but in carefully selected areas?

Mr. McConnaughey. In areas.

Mr. Cox. Selective deintermixture was suggested as a possible solution for this problem as early as the Potter hearings, was it not, in May and June of 1954?

Mr. McConnaughey. I was not here at that time. It may have been.

Mr. Cox. Then in his report, did not Mr. Plotkin suggest that the Commission should reconsider certain petitions for selective deintermixture which it had previously denied?

Mr. McConnaughey. Yes, he did.

Mr. Cox. During the spring and summer of 1955, is it not fair to say that the Commission represented to this committee on at least three occasions that it was considering selective deintermixture as a possible solution to the UHF problem?

Mr. McConnaughey. Yes.

Mr. Cox. And in addition, did you not, sir, in testifying before a subcommittee under the chairmanship of Senator Pastore, in connection with the protest bill, state that the Commission was withholding VHF grants in areas where deintermixture had been requested until decision was reached on the question of whether or not to deintermix?

Mr. McConnaughey. Yes, we did withhold them until we made a decision not to deintermix.

Mr. Cox. Have you ever decided, on the merits, whether you are or are not going to deintermix in the areas which were in question?

Mr. McConnaughey. Well, it will come under this broad rulemaking proceeding. We refused to deintermix in these particular markets.

Mr. Cox. Without prejudice; was it not?

Mr. McConnaughey. Yes.

Mr. Cox. And you are still considering that in the pending allocations procedure?

Mr. McConnaughey. Absolutely.

Mr. Cox. So you have never actually, in any of the cases that you were talking about when you were before Senator Pastore's subcommittee, you have never actually decided in those areas whether to deintermix or not?

Mr. McConnaughey. Not as of now, no.

Mr. Cox. Now, as I understand it, the time for reply comments in your pending allocations proceeding expired on February 8?

Mr. McConnaughey. That is right.

Mr. Cox. You have already talked about the overall time that various members of the Commission thought this proceeding might take?

Mr. McConnaughey. Right.

Mr. Cox. I would like to consider briefly what some of the steps will be that are involved in your further proceedings. Now, what is the next stage of your proceeding?

Mr. McConnaughey. Having the staff digest some 200 comments and some 350 reply comments.

Mr. Cox. That work, I assume, has been going on ever since the comments first began to come in last December?

Mr. McConnaughey. Right; correct.

Mr. Cox. And I believe you stated last time that you had some 4 or 5 people at work on them?

Mr. McConnaughey. When you speak of comments starting to come in last September——

Mr. Cox. December, I meant.

Mr. McConnaughey. December. I thought you said September.

Mr. Cox. No.

The Chairman. Let me ask you this——

Mr. McConnaughey. We have seven people working on that at the present time, in addition to the heads of the departments. Excuse me, Mr. Chairman.

The Chairman. We discussed this at the last hearing—the number of people you might have. Is it possible to speed that work up by putting on more people?

Mr. McConnaughey. Yes, if you sacrifice other work. That is a question of allocation—it is a question of allocation of work.

The Chairman. Do you not think we ought to go ahead faster on digesting those replies, get more people?

Mr. McConnaughey. I was surprised last week, Mr. Chairman, to find out how rapidly these people have been—how much time they have been spending, how rapidly they are able to digest them. They indicated to me that within another week they expect to have practically all lof them digested.

The Chairman. That is fine. I hope that will be done.

Mr. McConnaughey. They have been doing a terrific job.

Mr. Cox. What will be the next step after that?

Mr. McConnaughey. Then they will come to the Commission to study those digested comments.

Mr. Cox. Do you plan to hold oral arguments on this matter?

Mr. McConnaughey. Do we?

Mr. Cox. Yes.

Mr. McConnaughey. We have not decided whether we will or not.

Mr. Cox. It is possible that you may?

Mr. McConnaughey. It is possible.

Mr. Cox. I believe you stated that in your best judgment you, individually, believed that the Commission would be in a position to issue its final order in these proceedings in, say, from 4 to 6 months?

Mr. McConnaughey. I said I would hope within 6 months we could.

The CHAIRMAN. I still want to say I hope it is done before we quit here.

[Laughter.]

Mr. McCONNAUGHEY. Are you quitting before 6 months?

The CHAIRMAN. Well, we might. [Laughter.] Senator Bricker has some important business in San Francisco and I have some important business in Chicago, and we have got to be there.

Mr. MACK. I might say, Mr. Chairman, that I hope that the FCC and this committee of yours will be able to work this thing out faster than the ICC and this committee have worked out the railroad passenger deficit.

The CHAIRMAN. Yes, I hope so, too.

[Laughter.]

Mr. Cox. Mr. Webster?

Mr. WEBSTER. I wouldn't want to let the impression be gained on the length of time it is going to take us to come to a final decision. You mentioned final decision. I would like to point out that when these comments are digested and they are laid before the Commission, I can't digest them overnight. It is going to take me some time, and I don't know how long that is going to be. I hope it is a short time, but I have a lot of other things to do besides digesting these. If you want the work of the Commission to go forward, that is. Now, after I have digested those and we have a meeting and decide our course of action, that doesn't close the matter.

Mr. Cox. That is what I was coming to.

Mr. WEBSTER. We at that point—and this is the point I want to make—at that point we have to sit down and work out what we think would be a practical set of changes to the rules. Now, when we do that we are then just starting, because we have to put those proposed rules out for rulemaking, and we have to go through a series of rulemakings to put those rules out for the public to comment on.

Mr. Cox. In other words, you have another round of comments and reply comments?

Mr. WEBSTER. Yes—now, wait a minute. When they go out, the public is entitled to comment on those and I am as sure as I sit here that there is going to be a lot of disagreement with it, because we are not going to—as far as I am concerned I am sure that our solution is not going to be satisfactory—well, I was going to say to anybody.

(Laughter.)

Mr. Cox. Not to everybody.

Mr. WEBSTER. Not to everybody. And we are going to have a series of disagreements and we may end up with a public hearing so that the people can come in—and this is the point I want to make because I am very sincere on this—I want to be in a position where I can test what these people, who have made comments, test their material on a record. Now, all we have at the present time is self-serving statements. I have no way of testing them; even though they might be under oath, I have no way of testing them, unless I get the person on the stand to test them. And I don't mean by that that they have done anything wrong or said anything wrong. But if I am going to make a decision in this matter, I want the man that made those statements in front of me so I can test them. That doesn't mean I have to test everybody. I will select out those that I think are important enough to test. So I want—I don't want to leave anything misunderstood here that this thing is going to wind up in a month or a few days.

Mr. Cox. Mr. McConnaughey, that is the thing I want to pin down. When you say 4 to 6 months, is that going to be the date, the time within which you expect to issue these proposed rulings for further comment?

Mr. McConnaughey. I would think that we should be able to issue those in not a longer period than that. But when it comes to a finalization, which Commissioner Webster had reference to, which is a statutory requirement.

Mr. Cox. I realize that.

Mr. McConnaughey. To attempt to say there will be any final decision and conclusion in 6 months, it is a very optimistic statement, from a practical standpoint.

Mr. Cox. Then how long is it going to take, in your best judgment, from now till the day when you will have gone through all the procedures statutorily required and you will have issued what in your best judgment, after weighing all of these comments, is the set of rules regarding possible changes in the allocation?

Mr. McConnaughey. I would have not the slightest idea.

The Chairman. Can't you fellows——

Mr. McConnaughey. Nobody in the world can ever——

The Chairman. Can't the Commission set a target date? You may not hit it.

Mr. McConnaughey. Mr. Chairman, if you set a target date on when you would hope to get out——

The Chairman. The rules.

Mr. McConnaughey. The rules. But then when you get out the rules and you start romancing about what answers are going to be, and what demands are going to be for hearings, and how long the hearings are going to take, and how long it is going to take the Commission, of necessity, to come to some attempted logical, wise solution, there is no man alive, and I repeat that, can say the day or the month that that is going to happen. I hope within——

The Chairman. Would this be a fair question to ask you: Do you consider this to be—this whole matter, which is probably the real reason why we are all here—a top priority insofar as your time and energies are concerned?

Mr. McConnaughey. To me, sir, it is the very top priority, which we have to be thinking about.

The Chairman. I appreciate that you have other things to do. You are a lot like us up here on the Hill—there are several things going on this morning that Senator Bricker and I should or could attend, but some mornings, some days, we have to just decide which one we think is the most important.

Mr. McConnaughey. I feel this certainly has top priority, but there would be a lot of people that would take exception to my statement in that regard, particularly all the people in industrial radio—thousands of applications, 163,000 of them filed this year and 170-some next year—they would take very violent exception to that, and they'd say "You are just a thousand percent wrong. You don't know what is important. You have gotten 90 percent of this country covered. We have something that is vital to the defense and protection of the country."

The CHAIRMAN. Yes.

Mr. McCONNAUGHEY. I mean you could get a lot of arguments on what should take top priority in this business.

Mr. COX. We understand that you, at least, are giving this top priority.

Mr. McCONNAUGHEY. Yes, that is my personal view.

Mr. COX. Isn't it also true that, even in line with this statutory requirement, you can expedite these matters by setting short periods for comment and reply which can perhaps speed up the process?

Mr. McCONNAUGHEY. Oh, yes. It has to be reasonable. I mean you always have to use a rule of reason.

Mr. COX. Mr. Hyde?

Mr. HYDE. I think you are overlooking one important additional step. If the change in rules should by any chance require changes in licenses now existent, or if these changes should require modification of these permits that we are now granting, there would have to be notices to those holders and an opportunity for hearing before the Commission could order the modifications of permits or licenses necessary to effectuate the rule change.

The CHAIRMAN. Then you may run into some court action.

Mr. HYDE. Undoubtedly.

Mr. McCONNAUGHEY. No question about it. I shouldn't say that, but I imagine you will.

Mr. COX. But at that stage, at lease, you will have reached a new policy as far as the Commission is concerned, and it is a question then of effectuating the policy.

Mr. HYDE. Yes, sir. Once the policy is stabilized, and once it is made clear what the Government policy as to use of channels is going to be, we will have made a reasonable contribution to the solution of the problem now before us.

Mr. McCONNAUGHEY. Mr. Chairman, I would like to make a statement which is my own feeling, a good deal—that when we come to some decisions as to proposed rulemaking, and we put those out, while that isn't a final answer, I think that that is going to be a very substantial alleviating assistance to this whole thing, to this whole picture. It doesn't resolve it finally, but I think it is going to be a very substantial help in the settlement of this entire allocations problem.

The CHAIRMAN. Well, at least the industry will know then where it is going.

Mr. McCONNAUGHEY. That is what I was—that is what I am talking about.

The CHAIRMAN. With some exceptions, but there will be some broad——

Mr. McCONNAUGHEY. They will have some guideposts.

Mr. COX. Am I correct in my understanding, Mr. McConnaughey, that the reason for the action of the majority of the Commission in denying the petitions for deintermixture on November 10 of last year was that you had concluded that the problem was nationwide in scope and that deintermixture in these five communities would not solve the broader problem?

Mr. McCONNAUGHEY. That certainly was what we were taking into consideration.

Mr. Cox. Wasn't that problem nationwide in scope when you instituted the deintermixture proceedings back in April of 1955?

Mr. DOERFER. That is what I thought. But I stood alone.

Mr. Cox. Didn't you so state in your notice of proposed rulemaking in April 1955?

Mr. DOERFER. I was giving you my view. I thought in April it was certainly nationwide. I opposed the rulemaking. I am speaking for myself now. I opposed the motions to deintermix on the basis of what was before us at that time.

Mr. MCCONNAUGHEY. I think, to answer your question, the majority of the Commission felt that they wanted to look at these five cases which you have reference to on an individual case-by-case basis, and the majority decided that that would not be an answer to this problem, that we ought to go into a complete study of the whole picture as far as the country is concerned. I think a good many of us felt that it would not be an answer, it would not be of any material help and it might keep some people from getting service. We didn't feel—we felt we were still operating under the sixth order and report—it has not been changed—that there should be no attempt at selectively deintermixing in any of these markets.

Mr. Cox. In light of your statement in your decision that you denied deintermixture primarily because you concluded it was not a solution to what you had now determined to be a nationwide problem, isn't it true that on page 5 of your decision of November 10, in a footnote, you stated: "In our notice of further rulemaking * * * in Docket No. 11238, issued April 21, 1955, we explained that we were 'attempting to arrive at a decision of future policy to be uniformly followed, wherever possible, in the effectuation of our allocation table for a nationwide television system.' "

Mr. MCCONNAUGHEY. We were attempting, but it didn't work out.

Mr. Cox. Then it was not a sudden discovery in November that this was a nationwide problem with which you were attempting to deal.

Mr. MCCONNAUGHEY. No. It has become a gradually increasing problem.

The CHAIRMAN. Mr. Chairman, wouldn't it seem clear that even at the time of the Potter hearings the question of allocations, as it bears on UHF, was a nationwide problem?

Mr. MCCONNAUGHEY. I was not here, sir, but I would think so. I say, I would think so. I think it has been a nationwide problem, and is going to continue to be a problem.

Mr. Cox. Is it true certain UHF operators in other areas, aside from the five which you were specifically considering, were advised by the Commission that it wasn't necessary to institute rulemaking on their petitions because nationwide policy was going to be made on the five cases in Madison, Peoria, Evansville, and so on?

Mr. MCCONNAUGHEY. I don't think so. I think we were just looking to see if it was a nationwide problem.

Mr. Cox. You were looking to see if it was a nationwide problem?

Mr. MCCONNAUGHEY. To see how much it developed into a nationwide problem.

Mr. Cox. Don't you think, as I believe was suggested awhile ago by one of the members of the Commission, that when you reach a nationwide solution to the allocations problem, it is quite likely it is going to consist, not of a universal rule that can be applied in every part of the country, but is going to be made up of a combination of various proposed remedies?

Mr. McCONNAUGHEY. That is certainly possibly true, possibly. It may come out where there can be shortening separations, where you can get more VHF channels assigned. There is just a lot of things that may come out of it. I mean, it is not strictly a UHF–VHF problem. It is a problem that the Commission is now, I think quite properly, after the sixth order and report—4 years have elapsed—taking another look to see what can be done in light of experience.

Mr. Cox. After looking at all these comments and all the proposals, isn't it likely that you are not going to pick on one and say, "We are going to apply the logic of this recommendation to every community in the United States," but that instead you will look at one community, and then at another community, and decide which of these proposals, in the broad picture, is going to produce in this area the goal you are seeking?

Mr. McCONNAUGHEY. Well, you tie into a broad, overall picture—you can look at the individual communities, but to me it is a broad overall picture. It is not a localized picture. I mean, you never can say, "Well, this State has this and this State has that, and because this community doesn't have this, this one is going to have that." I think it is too big; when you start looking at the United States in spectrum, you have to do it on a nationwide basis.

Mr. Cox. How are you ever going to develop a universal without consideration of some specifics in the first place?

Mr. McCONNAUGHEY. Well, they all work together. I mean, it all works together. I mean, you can't pick out one town or one community and say, "We are going to build a nationwide allocation around this community."

Mr. Cox. No; but in reaching a nationwide system of allocation, you are going to have to consider a possible choice among different solutions which, fitted into the whole context, best develops the problem in a particular area.

Mr. McCONNAUGHEY. That is correct. That is correct.

Mr. Cox. Now, do you think that deintermixture—which as I understand it, you say you are still considering—do you think that selective deintermixture fits conditions in Madison, Evansville, Hartford, Peoria, and the Hudson Valley as well as it is likely to be found to fit anywhere in the United States?

Mr. McCONNAUGHEY. I don't know if that is true. I say, I don't know if that is true at all.

Mr. Cox. Didn't you develop considerable information in those proceedings, prior to dismissing them, as to what the facts were in those areas?

Mr. McCONNAUGHEY. And we concluded we should not deintermix under existing conditions, but go into the nationwide situation. I don't know whether deintermixture is an answer in Peoria or not. I don't know today. It is difficult to say.

Mr. Cox. I think it was indicated earlier that at least some members of the Commission felt that in November they had sufficient information about these communities, and the impact of selective deintermixture on them, to decide the cases on the merits, even though they were willing to look ahead to a general allocations proceeding to take care of the rest of the country.

Mr. McCONNAUGHEY. It is true of two of the Commissioners; yes.

Mr. MACK. That doesn't mean that this action would have been taken, though. They might have been ready to vote.

Mr. COX. You would have voted on the matter on its merits.

Mr. MACK. But there might not be anything more happen than has happened now.

Mr. COX. At least you would have disposed of the thing in those five areas.

Mr. MACK. We didn't think we ought to do that.

Mr. COX. So I gathered.

Mr. MACK. We didn't dismiss them with prejudice.

Mr. COX. The proposals are still pending in those five areas, and in any community in the country where deintermixture has ever been suggested?

Mr. DOERFER. Not pending.

Mr. McCONNAUGHEY. You know what they are. They are under the rulemaking.

Mr. COX. I do not mean in separate proceedings, but I would assume that the applicants in the earlier cases have suggested, in the allocation proceeding, that at least you ought to deintermix those five areas.

Mr. DOERFER. Well, Mr. Cox, I think we pointed out in the November 10 decision that these people are building at their peril, so to speak. They may or may not have a V operation in those communities.

Mr. COX. Well, they are strongly resisting any effort to stay them from building the stations, aren't they?

Mr. DOERFER. Well, the UHF operators are.

Mr. COX. I mean the VHF operators are resisting the stay.

Mr. DOERFER. Yes; the court has decided that.

Mr. McCONNAUGHEY. You have got to take all these things in their proper light, I think. Each individual person is thinking about his own existence, and I don't blame him a whole lot. But we just recently put a V in Corpus Christi where there was only one station. That was a U, and the U bitterly opposed a V coming in, to keep the people in Corpus Christi from having more than one service. That allocation was made there. We would, of course, have obviously done a terrible injustice to the public had we done what the U operator wanted us to do. But I mean you have to take all of these and think about the individual people. They are the people who make the most noise. They are the people you hear from.

Mr. COX. We will consider that in a moment. You said further in your statement that you doubted whether scattered deintermixture would provide lasting improvement, because it wouldn't significantly help UHF broadcasters in other cities. Do you think it would be helpful to the general status of UHF operations if they could be stabilized at least in some areas?

Mr. McCONNAUGHEY. If it was large enough, it might—it might be a help, if it was large enough. But I don't know that either, and I don't know who does know it. I always have in my own mind a question: What are the people going to get? That is about all I think about, not the operator. I think about what the people are going to get if they have all UHF. I don't know yet. I am not sure in my own mind what they get. Are we making second-class citizens out of them?

Mr. Cox. If they get the signal, it is a good signal, isn't it, from a UHF station?

Mr. McConnaughey. If they get it, if they get it, if they get it.

Mr. Cox. All right.

Mr. McConnaughey. There is a lot of testimony that in a lot of spots they don't get it, a lot of testimony that they get snow in various places. There is a lot of testimony that they can't get the proper coverage. There is a lot of testimony that it costs more money; that their equipment goes out quicker and it costs more money to keep them up. I don't know.

We do know that the Columbia Broadcasting System, which owns a U in Milwaukee—and CBS doesn't have any difficulties with reference to programing, they can put on programs that will be comparable to anybody—and they are having a rough go making it go in Milwaukee with the Columbia Broadcasting System programs.

Why? I don't know all the reasons. I do know what they said, that there would be certain places right in the city of Milwaukee where they get no picture at all to speak of, and where there will be snow and where it will be blacked out. So when you ask me that question, I always wonder in my mind whethere there has been the developments made.

What am I going to do to the people if I deintermix? If I deintermix Peoria, Ill.? A question comes to my mind. What am I going to do to the folks by having them all have UHF? I have a question in my mind as to coverage in the Peoria area. Can the V, which will get out and cover some of the people out in the outlying rural areas, that the U won't cover, who are part of the Peoria farming market, which is the largest farming market in America, basically, the largest farming market in the area—what am I doing to those people out in the country? I don't know.

Mr. Cox. Isn't it true that you have never made a formal finding that the people out there in this rural area surrounding Peoria do not receive television service?

Mr. McConnaughey. No, you never make a formal finding, merely——

Mr. Cox. Isn't there considerable evidence that they do get service, perhaps not from the U station in Peoria, but from V's in surrounding communities?

Mr. McConnaughey. All right, then you go back to another problem that you must consider, the fact that they get V's from, we will say Chicago, if that was true, or from Bloomington, Ill., or from some other city.

Mr. Doerfer. Iowa.

Mr. McConnaughey. Or from Iowa. Is that the answer to the people who have their own center, their own farming market center? I don't know. I am just telling you some of the questions that come to my mind.

The Chairman. Well, it is not the answer to the small-business man in the area.

Mr. McConnaughey. No.

The CHAIRMAN. Surely that is true. I think that is one of the most important things here. The local businessman in a situation like that, unless he has a local station, has no chance to advertise.

Mr. McCONNAUGHEY. Now, more important—these are things that come to my mind and I think to all the Commissioners' minds, they are not so simple as the point you attempt to make.

Mr. COX. I don't think they are simple, Mr. McConnaughey.

Mr. McCONNAUGHEY. There is a lot of questions. I mean, you give me the idea we will—well, why didn't you deintermix here, there, and the other place. We have told you that quite a number of times. But I was giving you some of the reasons that come to my mind as an individual as to why I want to proceed with a considerable amount of caution in all of these matters.

Mr. COX. As I understand it, one of the reasons that you give is that you feel that by permitting the continued allocation of a V in Peoria and the ultimate construction of a V station there, that you are going to get apparently a first signal to someone in the rural area who is not now served by the existing U stations in Peoria, is that correct?

Mr. McCONNAUGHEY. Possibly, that is one of the things. I say, that is one of the things I think about.

Mr. COX. But you do this despite the fact that there is, as I understand it, and this is hearsay with me, evidence in the record that in many of these alleged white areas surrounding these centers where deintermixture is proposed, there is evidence that actual surveys have found one or more acceptable signals in those areas.

Mr. DOERFER. May I correct that?

Mr. McCONNAUGHEY. There is no evidence to that effect.

Mr. DOERFER. Somebody may even have come in under affidavit——

Mr. COX. He is under oath.

Mr. DOERFER. No, the affidavit is on oath, but there has been no cross-examination.

Mr. COX. You can verify his conclusions, can you not?

Mr. DOERFER. No, we don't have the staff nor the facilities to go out and check that.

Mr. COX. How about his opponents, do they come in and offer sworn proof that it is not true?

Mr. DOERFER. They counter it. You will find a direct conflict in the testimony with respect to that.

Mr. COX. I am advised that in the court of appeals proceeding in the Evansville case, I believe it is, there is an unchallenged sworn statement that in the areas of alleged lack of service there are at least two acceptable signals. That has not been controverted?

Mr. DOERFER. What case is that?

Mr. LEE. Evansville.

Mr. COX. *Premier Television* v. *the FCC*, the Evansville case.

Mr. DOERFER. I am not familiar with it, but I know some of the facts of life. The fact that it is not controverted doesn't convince me that Evansville is any different with respect to other areas in this country where there is hilly terrain.

Mr. COX. Don't you suppose if it were controvertible it would be to the best interests of the opposing party in that proceeding to controvert it?

Mr. DOERFER. Let's get the record straight. This is an application to change a rule. This was not an adjudicatory case in that sense. Obviously, those people who didn't want to deintermix were in there. But when we submit questions for rulemaking and we set a time limit, that doesn't give the opponent an opportunity beforehand to know what the other fellow is coming in with, much less to prepare and counter it. I wouldn't put too much emphasis on the validity of many of these assertions. I don't wish to impugn the intent of the people who present them. They believe that. But remember, they always put their best foot forward.

Mr. COX. I will get back, Mr. Doerfer, to the fact, and correct me if this is not true, that as far as the Commission's actions are concerned, it is founded on no finding that there is no service in those areas, primarily because the Commission doesn't know whether there is any service in those areas.

Mr. DOERFER. Let me put it this way: We have the sixth order and report; that was a rule that was adopted after years of consideration. That order also includes standards. It defines the grade A contour and the grade B contour. Now, we can't go outside of that because the best engineering brains in the country have indicated that there is no validity to some of the assertions which have been attempted to be interjected in some of the contested cases. Now, we are not blind to the fact that there is perhaps an excellent service outside of the grade B contour under certain circumstances in certain terrain, but we don't have the staff to check it. So we have to revert to the standards which we ourselves have adopted. They haven't been changed and we are not warranted in disregarding them until they are changed.

Mr. COX. The point I am trying to make, though, is that in applying those standards in a decision, in an admittedly very difficult problem in a specific area and Peoria is the one we have been talking about that you proceed, the majority, on the assumption that it is a fact that if you were to grant deintermixture, you would be depriving people on the periphery of this market area——

Mr. MCCONNAUGHEY. No.

Mr. COX. Of service.

Mr. MCCONNAUGHEY. No, that wasn't the basis of the decision at all, and it doesn't so state. It doesn't so state. I merely said those are questions which come to your mind when you start to deintermix.

Mr. COX. All right. They came to your mind. Did you dispose of these proceedings without deciding those questions?

Mr. MCCONNAUGHEY. I think there is no question about it.

Mr. COX. Well, wasn't the procedure an apt one for deciding them?

Mr. DOERFER. The correct term is we didn't dispose, we suspended.

Mr. MCCONNAUGHEY. That is all.

Mr. DOERFER. We are attempting to dispose of who is the winner of these things. Now, that is to avoid some further adjudication, and if possible I don't know whether we could legally—but if possible whoever is the winner, in the event that we do deintermix, should get the U. We may not be able to do that.

Mr. COX. You said in that proceeding you tried to dispose of the matter in the sense of deciding who was the winner, and to make way for your general rulemaking proceeding. Didn't you also dispose of this matter procedurally to permit you to grant a first V in some of those markets, Mr. McConnaughey?

Mr. McCONNAUGHEY. Grant the first V, but it belonged in there. It was the first V under the allocation system. You couldn't—the majority felt you couldn't hold up the public getting additional service until you resolved the final rulemaking.

Mr. Cox. Did you ever make a finding that the first V in Madison, or anywhere else, is going to give additional service?

Mr. McCONNAUGHEY. If it was found in the public interest—when you make your decision, you make that, my friend.

Mr. DOERFER. Excuse me. The first V was assigned there in 1952. Now, some basis there must have been some support for that allocation.

Mr. Cox. It was assigned there on the supposition, was it not, that at least in the relatively near future U and V allocations would be substantially competitive?

Mr. DOERFER. Not entirely. I think if you read the sixth order and report you will find that part of the basis was the equitable distribution of the various types of frequencies.

Mr. Cox. That is, you distributed the V's as far as they would go, and then gave U's because that is all you had left?

Mr. DOERFER. I don't know exactly what entered into the mental process of the commissioners at that time. I read their report, and apparently they were trying to follow their priorities, first a service to all parts of the country and then the competitive things. But this did qualify it by indicating that they were trying to observe the equitable distribution mandate of the act itself. So it is a combination of other things. That had been determined. All we were doing was following the policy which had been set in 1952.

Mr. Cox. But as I understand it, gentlemen, since 1952, when this initial allocation of the V in Madison was made, there has developed experience with respect to the probable conditions of intermixed assignments.

Mr. DOERFER. There is a more important thing at stake than the experience or the fate of UHF broadcasters. In my opinion one of the things that motivated me was that I don't think that this Commission could accomplish anything if we ever recognized the right of anybody to stay our hand in an adjudication proceeding by petitioning us for rulemaking in the adjudication proceeding. That would be devastating to our process. That would really tie us up in all adjudicatory proceedings.

Mr. Cox. Your conception is that any comparative proceeding for the granting of a permit under the existing allocations should be made only in terms of the comparative qualifications of the applicants, and without considering the underlying question of whether or not the sixth report should still be effectuated in this area in terms of permitting anybody to build a VHF station?

Mr. DOERFER. As a general proposition, I think that is correct. But you may find, even in an adjudicatory case, that there is some vast public interest at stake, or a peril to the public interest, which is imminent and which can be seen. But that doesn't apply in those cases where there is a good difference of opinion by reasonable-minded men trying to protect the public interest.

Mr. Cox. All right. I would like to go back, Mr. McConnaughey, to the point we broached awhile ago, that is quite apart from the question of whether deintermixture is a good policy in any given market. You indicated that one of your reasons for dismissing these pending proceedings was that you didn't think that doing anything in these areas, even if it were affirmatively to grant deintermixture, would help the situation on any broad scale.

The question that I was trying to get to was whether or not there would have been some benefits on a somewhat broader scale if you had: (1) voted on the merits of these cases, and (2) in at least some of them, granted the deintermixture that was petitioned for?

My first suggestion was whether it would not have granted some degree of stability, for the long range, for UHF operations in at least those areas in which you decided to grant deintermixture by deleting V allocations?

Mr. McConnaughey. I doubt if it would have had very much of an encouraging effect on anybody.

Mr. Cox. What is your meaning then——

Mr. McConnaughey. I would question it, but that is just——

Mr. Cox. You made a report to this committee in which you referred, yourself, to the concept of creating "UHF islands of security." Wasn't that something you thought had some significance?

Mr. McConnaughey. It may have, and we may come to that solution; I mean, that may be one of the things we will finally decide when we get through with this. But the way I felt about it, and the majority of the Commissioners, was that we wanted to take a look at this on an overall basis. And that is what we have decided we are going to do, that is what we are going to do. What we have done, we have done. That is over with. That is past. The reasons for our doing it, we felt were sound. And that is a matter of history now. Now we are going into a rulemaking on the whole picture. And as to the whys and wherefores, I think we have explained them about as thoroughly and completely as we possibly can. We are not going to change our ideas.

The Chairman. Mr. Chairman, with that last statement I think this is a good time to recess until tomorrow.

Mr. Cox. No, this afternoon.

The Chairman. This afternoon. Would you like to come this afternoon? [Laughter.]

Mr. McConnaughey. I would prefer to come this afternoon rather than tomorrow.

The Chairman. All right, 2 o'clock this afternoon.

(Whereupon, at 12 o'clock, the hearing was recessed until 2 p. m., of the same day.)

AFTERNOON SESSION

The Chairman. The committee will come to order.

We will proceed with the questioning.

Mr. Cox. Mr. McConnaughey, in your statement to the committee in our two earlier hearings you stated that during the time you were considering these individual deintermixture petitions which were denied last November, the Commission gave attention to some other alternative approaches to the allocation problem. Could you tell the committee what these alternative approaches were that you were considering at that time?

Mr. McConnaughey. Well, possibly what should be done with the VHF channels in case they would be taken out, and possibly squeeze-ins, what could happen, whether they could be put in other places. I think those were things the commission was thinking about.

Mr. Cox. Now were these alternatives suggested to the Commission by its staff, or were they proposed by private parties who were not before the Commission in the deintermixture proceedings?

Mr. McConnaughey. I guess both. I believe both, Mr. Cox, I believe both.

Mr. Cox. In other words, you were—did you receive suggestions from outside parties for proposals which were inconsistent with deintermixture and regarded it as no solution to the problem?

Mr. McConnaughey. Yes. Well, they gave suggestions where they would like to have a V moved, and then the staff also brought up——

Mr. Cox. Were you able to effect any procedure in which these views were then called to the attention of the parties in the deintermixture proceedings, so that they had a chance to make replies to them?

Mr. McConnaughey. No, it was not a part of the proceedings at all.

Mr. Cox. It was not a part of the proceedings?

Mr. McConnaughey. No, no.

Mr. Cox. However, it may have firmed up your conclusion that deintermixture was not a substantial solution to the problem?

Mr. McConnaughey. No, no.

Mr. Cox. It did not enter into your decision at all?

Mr. McConnaughey. No, I do not think so. It was just something that was talked about, was all.

Mr. Cox. Well, would you comment then on Commissioner Hyde's dissent in those cases, in which he indicates that he thought that material outside the record had been considered in reaching these conclusions?

Mr. McConnaughey. No, no comment to make on that. I say I have no comment to make on that.

Mr. Cox. Would you care, Mr. Hyde, to add to what was stated?

Mr. Hyde. I do not have the text in front of me but I think you will find in the text of the majority report an acknowledgement that they had taken into consideration matters outside the records in the five deintermixture cases.

If you will give me just a moment I will refer you to the language.

Mr. Cox. Fine.

Mr. Doerfer. May I comment on that, Mr. Cox?

Mr. Cox. Yes.

Mr. Doerfer. With respect to outside comment I assume you were referring to the meeting that the Commission had with some of the networks. Now that is not the only outside comment you get in a rulemaking proceeding. For my part, I was satisfied that whatever information we got should be subjected to cross-examination and study by other parties. And that was one of the things that motivated my rejecting the determination of the motion to deintermix on November 10 with respect to the five that were before us.

And that has happened. Now since that time, with the new rulemaking, the CBS comments and many other comments from engineers, both sides of the question, are now, as I understand it, part of the record for everybody to examine, explore and reply to.

Mr. Cox. That is, you considered the overall allocations proceeding a better vehicle for that sort of confrontation than the deintermixture proceedings themselves?

Mr. DOERFER. Let me say this: That when the original motions for deintermixture were made, they were made with respect to the particular problem in the community of the moving party. But, by a process of presentation and proposed rulemaking, all of them apparently attempted to convince the Commission that this was a nationwide problem. So that I concluded for myself that if this is a nationwide problem, then there is no sense in trying to determine a nationwide problem by the merits of five applicants before us.

Mr. Cox. But as we pointed out this morning, hadn't you invited them to advance deintermixture in these areas as a possible basis for reaching some kind of a broader solution?

Mr. DOERFER. Yes. And I think when they filed their comments and as they made their oral arguments, it became more clear to me that we had to have the comments and reaction of all of the leaders in the industry, those that had actual experience, as well as the bar, or anybody else that was familiar with the problem and could lend some aid or assistance.

Mr. Cox. Well, then, as I understand it—and I think this has already been stated, but to come back to it—the majority, in denying intermixture in these cases, did so without prejudice, and is presumably still giving serious consideration to the possibility of employing deintermixture at least as a partial solution to this problem. Would that be true, Mr. McConnaughey, that it is still under consideration?

Mr. McCONNAUGHEY. Yes, sir.

Mr. Cox. Now if you think that you may want to create a certain number of all-UHF markets—which is one form, at least, of deintermixture as you defined it this morning—don't you think it would be sound policy, while you are trying to make up your mind on that ultimate question, to preserve any existing all-UHF areas which you have?

Mr. McCONNAUGHEY. Any existing all-UHF areas?

Mr. Cox. Yes.

Mr. McCONNAUGHEY. What do you mean, are you talking about like Peoria and Madison?

Mr. Cox. Yes.

Mr. McCONNAUGHEY. Heavens, no. That is the reason the majority acted differently. No, no, we told you this morning that we did not feel that we could hold up the public interest—and I think the court of appeals has affirmed the Commission in that regard—you can't hold up the demands of the public on a temporary basis while you are going into rulemaking proceedings, you can't do that. The Commission does not propose to do it, they don't propose to do anything of that kind.

Mr. Cox. What was the nature of this demand of the public?

Mr. McCONNAUGHEY. Well, it is in the public interest.

Mr. Cox. Were public bodies appearing before you?

Mr. McCONNAUGHEY. Oh, no, no, but it is obviously in the public interest to get television grants out under the sixth order and report just as fast as you can. That is what the Congress has been interested in all the time.

Mr. Cox. Is it in the public interest to get out grants which may complicate a problem which you are considering at the same time?

Mr. McConnaughey. We do not think it complicates it.

Mr. Cox. Let's go into that a little. Isn't it true that there is a very definitely limited number of areas which are now available for deintermixture on a reasonably simple basis—that is in terms of a minimum disturbance of existing conditions?

Mr. McConnaughey. I do not know how many there are, Mr. Cox. I have never made a study of it. I do not know how many.

The Chairman. There would be very few?

Mr. McConnaughey. As I recall, Mr. Chairman, it was, oh, I think 15 or 20 areas at least where they asked that such an action be considered.

Mr. Cox. Weren't most of the areas where what I refer to as a simple sort of deintermixture is available—weren't they involved in these five proceedings, and in the group of other proceedings which you dismissed at the same time that you dismissed Madison, Peoria and so on?

Mr. McConnaughey. Yes, that is right.

Mr. Cox. And isn't it true—I think it has been established, but just to make it clear for the record—isn't it true that since November 10 when you denied all of these pending petitions for deintermixture, the Commission has granted construction permits for a first VHF station in Corpus Christi, Evansville, Fresno, and Madison?

Mr. McConnaughey. That is right.

Mr. Cox. Isn't it generally agreed that this intermixture, which is basic to the sixth report, is at least one of the roots of the UHF problem, in that it results in requiring competition between facilities which, it has developed, are not quite equal?

Mr. McConnaughey. It is one of the problems, that is right.

Mr. Cox. Now this is where I want to get back to the point you suggested a while ago. Having refused to grant deintermixture in 5 specific cases where you considered it in some detail, and on the same basis, then, in some 29 or 30 other petitions involving additional areas, how can the Commission assert that it is not going to be less likely to grant deintermixture ultimately in those areas than if no construction permit for a V station had ever been made?

Mr. McConnaughey. I think the Commission's feel is that after a study of this overall reallocation, then they can come out with some very positive statements with what can be done. They might come out with shorter separations and be able to get more V's in; they might come out with an all-UHF recommendation. I don't know. I mean you can't tell what——

Mr. Cox. In the first instance, of course, your action in granting the V permit raises no problem; but if you are ever going to tend toward all-UHF, or toward deintermixture in this particular market, haven't you in some sense prejudged the issue by having denied deintermixture and granted the V, so that you are bringing into existence a facility that was theretofore only allocated but not realized?

Mr. McConnaughey. We don't believe so at all.

Mr. Cox. Well, assuming——

Mr. McConnaughey. It has just been the opposite of any prejudging. There has been no prejudging on the part of the Commission at all.

Mr. Cox. Mr. Hyde?

Mr. HYDE. You asked me to give you the reference for the statement which you read from my dissent. In paragraph 10, 4 lines from the top of page 8 of the mimeograph, you will find this language:

We have determined that the records now before use are inadequate to support a grant of the requested deintermixture because of their limited scope. We of course have knowledge, and should, of other and more general suggestions informally submitted to us or before congressional committees.

Mr. Cox. Yes, sir. That was the reference that you had in mind in connection with the statement in your dissent?

Mr. McCONNAUGHEY. That is right.

Mr. Cox. Thank you. Well, now, you have at least complicated ultimate deintermixture—if you are going to decide that it should be the policy pursued, and I have no opinion that—but assuming that in 1 of these 5 areas, and related areas, where you have granted a first V, you now decide to deintermix. Have you not made the Commission's problem more difficult, procedurally at least, by granting the V in the meanwhile?

Mr. McCONNAUGHEY. I don't think we complicated it at all.

Mr. Cox. Isn't your grantees perhaps going to go out and spend substantial funds erecting a transmitter which, in the final analysis, you are not going to permit him to operate?

Mr. McCONNAUGHEY. He is doing it at his own risk, and he so understands it.

Mr. Cox. Why didn't you make that expressly conditional in the grant you gave him?

Mr. McCONNAUGHEY. We made it very, very specific that it is a condition of the grant.

Mr. Cox. Whereabouts in the grant?

Mr. McCONNAUGHEY. It is a condition of all grants.

Mr. Cox. What?

Mr. McCONNAUGHEY. It is a condition of all grants.

Mr. Cox. Of all grants?

Mr. McCONNAUGHEY. Yes.

Mr. Cox. Well, any such condition attached to the grant is fully hedged about, is it not, by the procedural rights that are created in the Communications Act in the event you are going to alter or impair——

Mr. McCONNAUGHEY. That is right.

Mr. Cox. The grant in any way?

Mr. McCONNAUGHEY. Exactly, that is right.

Mr. Cox. Exactly what proceedings would you have to go through—let's take Madison, where you have granted a V, and we will assume that the V is under construction, or on the air, and you decide, strictly hypothetically, that in the overall public interest you are going to substitute a U channel for that. Now, don't you have to serve some kind of a notice to show because on the permittee, or the licensee, before you can make——

Mr. McCONNAUGHEY. We would have to have a hearing if the licensee objected to it.

Mr. Cox. All right. In that hearing the burden is upon you, is it not, by statute, to establish that the public interest requires what you are now proposing to do, is that not correct?

Mr. McCONNAUGHEY. Yes, I would think so, I would think so.

Mr. Cox. You are in a position then, are you not, of having just a short time ago, over objection, and in the light of this entire picture, made a ruling that the public interest requires you to grant the V?

Mr. McCONNAUGHEY. As of this time, that is true. But you get into a reallocation, and you may find something entirely different.

Mr. Cox. Now, however, even though you may prevail in the long run, is it not true, having made the V grant, that under the statute the grantee is going to be entitled to the full course of certain procedures which are going to consume time?

Mr. McCONNAUGHEY. It will consume some time, yes.

Mr. Cox. And it may be a substantial period?

Mr. McCONNAUGHEY. I cannot answer that; I do not know.

Mr. Cox. Well, that is——

Mr. McCONNAUGHEY. I say I don't know. I mean——

Mr. Cox. He has a right, if you make an adverse decision, to appeal to the courts?

Mr. McCONNAUGHEY. Sure.

Mr. Cox. And to carry it to the Supreme Court if necessary?

Mr. McCONNAUGHEY. That is right.

Mr. Cox. And that might well consume a couple of years?

Mr. McCONNAUGHEY. It could.

Mr. Cox. And in that event, simply in pursuing procedural remedies that are available to the man, you have involved yourself in a delay in the eventual effecting of your policy which would not have existed, would it, if you had not made the grant?

Mr. McCONNAUGHEY. Yes; it was just pointed out that the policy could have been appealed too, but in the meantime you are not going to keep anybody from having service. That is about all we are interested in, you see. You must not lose sight of the fact that what we are interested in is the public getting service, that is the thing we are interested in, and that is the reason we made these grants basically, because we wanted the public to have more service.

And if we ever created a freeze here, which some of us felt would be a freeze—if not a freeze at least holding up of grants——

Mr. Cox. If we are going to talk about a freeze, how many applications for licenses do you now have pending in which a station which has applied for will provide a new service where none now exists?

Mr. McCONNAUGHEY. Now pending?

Mr. Cox. Yes.

Mr. McCONNAUGHEY. Now pending? I would not have any idea.

Mr. MACK. You mean where there is no service at all?

Mr. Cox. Yes.

Mr. McCONNAUGHEY. No service now?

Mr. Cox. That is what you are talking about. You say you have got to go ahead with this, you have got to keep turning out grants despite the pendency of your overall proceeding, because you are granting service to people who do not now have it?

Mr. McCONNAUGHEY. I did not say that; you must not put words in my mouth. I said additional service.

The CHAIRMAN. He didn't say that.

Mr. Cox. A second signal?

Mr. McCONNAUGHEY. Second or third, whatever it is.

The CHAIRMAN. Complete?

Mr. McCONNAUGHEY. Yes.

The CHAIRMAN. One of the best available?

Mr. McCONNAUGHEY. Exactly right.

Mr. Cox. Perhaps I did misunderstand you, sir, but didn't you state this morning that in Madison, to use that as an example, one of the chief motivations was the feeling that by granting a V allocated there in the sixth report you are going to provide a first-rural service beyond the reach of the existing U stations?

Mr. McCONNAUGHEY. I said that was one of the arguments that was put up in the Madison case, that it would be a first service from Madison to some outlying rural areas. That is one of the arguments put up to the Commission. The same thing is true in Peoria.

Mr. Cox. All right.

Mr. McCONNAUGHEY. Those are arguments that were presented.

Mr. Cox. Now assuming that there is in fact a first service there—although I do not think that was ever established in the records in your proceedings, and certainly not in any findings made by the Commission—would there not arise, then, a possibility that viewers in that area would acquire VHF-only sets, since they are now, you feel, in an area to be served by this V that is granted, who will then be left with no service if you eventually delete that V, deintermix the market, and substitute U?

Mr. McCONNAUGHEY. That depends upon so many things that I don't know. It depends upon the power of the U's and what they may have developed by that time. I mean you just don't know.

Mr. Cox. Mr. Webster?

Mr. WEBSTER. I take it that you are assuming that we are going to deintermix.

Mr. Cox. No, I am not assuming anything. I am assuming that you are still considering that you may want to deintermix, because that is what you tell me.

Mr. WEBSTER. That is true. But the way you have been wording it, I took it for granted that what you are assuming, that when we got through with our procedure that we were going to do some deintermixes.

Mr. Cox. You say you are still considering it.

Mr. WEBSTER. I want to make it perfectly clear that I don't know what I am going to do at the end of that proceeding. It might be deintermixture plus a lot of other things. And there are a lot of other things, like smaller separations, lower power, higher power, various other elements that go into the picture. And one of them might be deintermixture, but in deintermixing you may have other things that go along with it that will upset the situation in any one of these places—Peoria, or Madison, or any place else.

You may upset it by the formula that we finally come out with. Deintermixing only one, we can have very readily upset Madison with other features than deintermixture. So deintermixture is not the whole problem that we are talking about.

Mr. Cox. I quite realize that, Mr. Webster.

Mr. WEBSTER. You might have three V's before we get through in there.

Mr. Cox. The only question I am raising is this: One, you say you are still considering deintermixture as a solution——

Mr. WEBSTER. As a part of the solution——

Mr. Cox. As a part of the solution; two, you have, meanwhile, granted a first V in at least four markets; three, if you decide that deintermixture would work and be in the public interest in those four markets, have you not made your problem, then, procedurally more difficult than if you had either made a conditional grant or had temporarily suspended the grant until you concluded this allocations proceeding sometime this summer or fall?

Mr. WEBSTER. I do not think so, and I don't think it is any worse than if it was the other way around.

Mr. Cox. Let's consider this factor, then. You referred in your statement to these 200 comments—you mentioned them this morning—and the 350 reply comments that you received in this allocation proceeding. Isn't it true, by and large, just putting these into general categories, that for the most part the substantial recommendations you have had that approach anything like a general basis, rather than being limited to specific markets, propose one of these things: First, that you transfer all television to the UHF; second, that you create VHF drop-ins by means of reduced separations, lower power and antenna heights, cross polorization, and/or directional antennas.

The CHAIRMAN. What is cross-polarization?

Mr. Cox. They turn the antenna like this [indicating]——

The CHAIRMAN. O. K. [Laughter.]

Mr. Cox. Three, selective deintermixture; four, additional VHF channels from other services; five, reassignment of unused educational VHF channels; and six, subscription television. Now, isn't it fair to say that only the last, only subscription television is a proposal which is not either a complete or partial suggestion of deintermixture.

Mr. MCCONNAUGHEY. Oh, I guess that is true, and shades of that. You may have to deintermix. Of course, the Commission may come out and say, the sixth order and report is all right, we will just leave things where they are. We may do that.

The CHAIRMAN. But that is what the general trend of these answers were?

Mr. MCCONNAUGHEY. The general trend of these comments—as you know I haven't digested them—contained those suggestions and many shades of those suggestions.

The CHAIRMAN. Many shades of them, but generally speaking that is what they——

Mr. MCCONNAUGHEY. I think the basic principle of them has been brought out.

Mr. Cox. Did the following individuals or organizations file comments which either advocate deintermixture, or suggest that no more V grants should be made in markets which are now served by UHF. These would be the American Broadcasting Company, did they file such a comment to the best of your knowledge?

Mr. MCCONNAUGHEY. I haven't digested it. I say I haven't digested it.

Mr. Cox. But, you have received substantial support for such a proposal from other organizations than the individual operators concerned?

Mr. MCCONNAUGHEY. Yes. And I suppose, as many or more strong counterproposals.

Mr. Cox. Well, have you received any proposal in this 200 which suggests that you should affirmatively adopt a policy of further intermixture?

Mr. McConnaughey. I can't answer, I don't know, because they are being digested, as I said this morning.

The Chairman. Well, the only thing is, Mr. Chairman, that we had information that certain groups advocated either deintermixture or no more grants in markets now served by UHF. I don't think there is anything private in their opinion—they have said this on many occasions and I think it is only fair to say they include not only American Broadcasting, but General Electric, RCA, Storer Broadcasting, Westinghouse, UHF Industry Coordinating Committee—which we will hear from here, I suppose all of these people—the Committee for Home Town Television—I don't know what that is—and some twenty-four other individual UHF licensees or permittees. I think it is common knowledge that they did advocate either deintermixture or that no more grants be made in markets served by UHF. Well, that is part of the whole group of people that advocate it. There are probably several others involved.

Mr. McConnaughey. That is right, yes.

Mr. Cox. You said in your statement that there is little basis, in the opinion of the majority, to assume that a first local VHF station would necessarily eliminate local UHF stations. Now, as I understood your testimony the last time you were here, your records indicate that in 13 of 29 cases where a first V came into a market where U's were already on the air, the appearances of the V did eliminate at least one U, is that correct?

Mr. McConnaughey. I think that is correct. I say I think that is correct.

Mr. Cox. And hasn't the appearance of a second V in a market almost invariably meant the elimination of an operating U if there was one on the air?

Mr. McConnaughey. I don't know, I say I don't know. I don't know who——

The Chairman. Well, that was the general testimony here.

Mr. Cox. You stated, did you not, the last time, sir, that you personally thought that a U in a market with two V's would have a very difficult time making a go of it.

Mr. McConnaughey. I sure did. I say I certainly did, as a general rule, as a general rule.

Mr. Cox. Yes. There may be exceptions.

Mr. McConnaughey. There, generally, it depends on the size of the territory you are going to serve.

The Chairman. Size of the market?

Mr. McConnaughey. Yes, sir, completely.

Mr. Cox. Isn't there very real danger though, the way things are going now, that the establishment of two VHF stations in a market which has only U channels in addition thereto—that is the sixth report gave them 2 V's and 1 or more U's to fill out room for expansion—isn't there a very real danger that under existing conditions those 2 V's constitute an artificial restriction and limitation upon the possibility of growth of television service in that area?

Mr. McCONNAUGHEY. Well, maybe, it depends again on your area. You have got two V's I guess in Milwaukee, the Columbia Broadcasting system saw fit to buy a U.

Mr. Cox. You said this morning that they were losing money?

Mr. McCONNAUGHEY. They are not having too easy a time. They feel they can operate. The same with NBC buying one in Buffalo and New Britain, Conn., I believe it is. They feel—undoubtedly their business judgment caused them to feel that they could make money with V's that they won't have any trouble making money with the 2 V's in the market.

Mr. Cox. That would restrict you to owned and operated stations of a network, as a possible basis for further growth of UHF service.

Mr. McCONNAUGHEY. Maybe; maybe not. I don't know. Maybe there are some U operators in some large markets that can survive and get along well with 2 V's, I don't know.

Mr. Cox. Isn't it historically established that in Providence the existence of 2 V's has created a ceiling on possible future growth of television service there because the only other allocations made are U's?

Mr. McCONNAUGHEY. It could be, I don't know. Portland, Oreg.——

Mr. Cox. Who owns the UHF station in Portland? George Storer?

Mr. McCONNAUGHEY. Mr. Storer, I believe. Among 16 markets where UHF survived, there were 4 markets with 2 VHF's that is just a note given me here.

Mr. Cox. Can you name those four?

The CHAIRMAN. Just a moment. The only difference in Portland is the UHF is still on NBC and gets the advantage of the network.

Mr. McCONNAUGHEY. And that helps it, and you are putting your finger on the crux of all this talk.

The CHAIRMAN. What would happen to the UHF in Portland if the network was taken off? That is another story?

Mr. McCONNAUGHEY. Then you get into the network study, Mr. Chairman.

Mr. Cox. Would you care to venture a prediction as to what will happen when, in Portland, a third V station goes on the air?

Mr. McCONNAUGHEY. It depends on whether he has a network or not.

Mr. Cox. Either way.

Mr. McCONNAUGHEY. I wouldn't attempt to predict what is going to happen in Portland.

The CHAIRMAN. I don't think we need to belabor this. I think we all recognize the fact that UHF or VHF, with a network program, has a pretty good chance to survive in any given good big market area.

Mr. McCONNAUGHEY. Sure. Sure.

The CHAIRMAN. But without that—I think we also recognize the fact that most networks, I suppose for their own economic reasons or because they deem it advisable, want to go on VHF wherever they have a choice, in any given market area, between UHF and VHF.

Mr. McCONNAUGHEY. That is pretty much the crux of all this problem.

The CHAIRMAN. And that means that the UHF people, of necessity, have a poor chance of economic survival.

Mr. McCONNAUGHEY. Surely.

The CHAIRMAN. And the proof of that pudding is that they are going off the air, and I think we all recognize that fact. Now, the record will show a lot of the reasons for this, but nevertheless that is a fact. We are trying to see if we can't solve that problem for those who are on the air.

Mr. McCONNAUGHEY. See if we can get the advertisers to buy UHF time.

The CHAIRMAN. And that works pretty well—we must say this, too, in all fairness, the networks furnish the service, but the advertisers pick out where they want to go.

Mr. McCONNAUGHEY. That is right. And we have no control over them. I guess Congress doesn't either, up to date.

Senator PASTORE. I realize that and I hate to be too critical, but it strikes me and I say this as kindly as I could say it—it strikes me here that we are closing our eyes, or wearing blinkers, to fundamental facts, that we ought to know almost by instinct. Now, I don't see, Mr. Chairman, why you take such an uncertain position about what makes this thing work or not work. Fundamentally, to me—and I am a newcomer in this whole field—fundamentally to me the survival of the UHF in many of these areas has been only through ownership of the major networks. Now, you will recognize that, don't you?

Mr. McCONNAUGHEY. I think that has generally been true.

Senator PASTORE. Now, you say that is the crux of the whole thing. Now, are we actually talking here that the only way that we can survive with a national competitive television system throughout the country is to allow the big networks to own them, own the stations?

Mr. McCONNAUGHEY. Why, of course not. I say, of course not. I say the crux of the whole thing is getting the advertisers to buy UHF service. That is the crux of it.

Senator PASTORE. How are you going to do that——

Mr. McCONNAUGHEY. It has nothing to do with networks.

Senator PASTORE. How are you ever going to do that? I mean how are you and I ever going to do that?

Mr. McCONNAUGHEY. I don't know how you can change their minds. It is not going to be easy.

Senator PASTORE. We have talked here for a long time about getting the manufacturers to make these sets in the future, so that you can receive UHF and VHF, but we can't make them do it—this is America. We can't tell the manufacturer what kind of a set to produce. We have a regulated industry here, but there is a limitation even on regulation. Now, the thing that is bothering me is this: That here we are after so long a period of time, it strikes me—I have said this before and I don't want to belabor the same thing—there has got to come a time when we have to take the bull right by the horns, and call a spade a spade. If we keep saying here that a UHF can live in the same locality with two VHF's, I think myself we are shutting our eyes to the facts. Now, it may be——

The CHAIRMAN. I don't think anyone said that.

Senator PASTORE. Oh, yes. The chairman, if you go back to the record, he said, "Well, I don't know, it could be, it depends upon the size of the market." Well, we "if" and "but" this thing until we kick it around and we lose it. But all we do is "if" and "but" it. I think the time has got to come when we have to recognize the realities involved here.

The CHAIRMAN. I don't think anyone up here thinks that a UHF can survive in a market with two VHF's.

Mr. McCONNAUGHEY. Unless it is an awfully big market.

Senator PASTORE. Where is that market? Do you know of any market where it has survived outside of a network owning it? That ought to be simple to answer that question.

Mr. McCONNAUGHEY. Sacramento, Tampa, West Palm Beach and Wichita.

Senator PASTORE. All right, let's take them one at a time, let's get into these things one at a time. Let's take West Palm Beach. What was the first station that went there, a VHF or a UHF?

Mr. McCONNAUGHEY. A U went there first.

Senator PASTORE. A U went there first. Therefore, everybody who had a set would receive the U.

Mr. McCONNAUGHEY. Right.

Senator PASTORE. Can you name one market where you had a VHF first?

Mr. MACK. Miami.

Mr. McCONNAUGHEY. That is right.

Senator PASTORE. How many VHF's do you have in Miami?

Mr. MACK. One.

Senator PASTORE. How many UHF's?

Mr. MACK. Two.

Senator PASTORE. Now, how did the UHF's feel in Miami about the two VHF's coming in?

Mr. MACK. I don't know, but they had an opportunity to apply for those V's just like these other people.

Senator PASTORE. That is apart from the point. You are talking now about the person who owns the station. I am not so much concerned about him as I am about the public getting these five vehicles of receiving programs.

Mr. MACK. All right. If they have three services that are good, does it make any difference to you whether they are V's or U's?

Mr. COX. Does it make any difference to you, Mr. Mack, whether in permitting these things to come about you may possibly be imperiling the possible future usability of these UHF channels?

Mr. MACK. Well, it is awfully hard for Congress or anybody else to legislate economics. Now take Jacksonville, Fla. They had a V and a U come in there. There are only two services, that is a big market, and the U is well financed and doing a good job.

Senator PASTORE. Who owns it?

Mr. MACK. John H. Perry.

Senator PASTORE. What station network do they have?

Mr. MACK. I don't know. They have got two of the networks, I know. The V is CBS and they are showing programs on the other two——

Senator PASTORE. Now——

Mr. MACK. Here is what I started to say.

Senator PASTORE. All right.

Mr. MACK. In spite of the fact they have had two networks and they are running a good operation, they have only been able to get the people of that area to buy 36,000 conversions or all-channel sets, whereas the area is supposed to have some 360,000 just straight V sets. You cannot make John Q. Public buy anything he doesn't want to.

Senator PASTORE. That is right. I go along with that a hundred percent. That is the reason why I say it makes a big difference here whether you start out with UHF or VHF. In a locality where you only had UHF to start out with, like you had in Hartford, the fact that a VHF comes in you might get a little squabble as to who has got more power and who is going to be able to get the network. But the fact of the matter is, insofar as the public is concerned, they can turn it on and off as they please, so you have no disruption. But I am talking about the localities where you had a lot of VHF. Well, all I heard here was that the UHF claims that "Every time a VHF station came in, we couldn't talk to the network any more. They would draw their contract to a close, and the first thing we knew they would do business with the VHF station." Now, that is a fundamental fact to me. Is it so or isn't it so? Can't we agree on that? That every time a VHF comes in, it gets the prize of the networks.

Mr. DOERFER. That is not true.

Senator PASTORE. Where was it not true?

Mr. DOERFER. It was not true in Portland, Oreg.

[Aside.] Sure, Storer owns the station; he owns it down in Miami, too——

The CHAIRMAN. But it is true—let us get in general agreement here—it is true that the networks would rather, in a given community, get on a VHF instead of a UHF?

Mr. DOERFER. Speaking for myself, I would make that concession and I agree. But following up Senator Pastore's thought there, to me it is much more logical to permit one V to operate, where it is operating in competition with two U's. Or stated another way, it is better to prevent the other V's from going in than it is to prevent the first V to go in, and make it an all-UHF market. Now, I am talking about permeating the country with UHF and not building economic iron curtains around certain communities.

Mr. Cox. You are talking, are you not, about a system in which no market would have more than one V?

Mr. DOERFER. We have to start with a premise we have not got enough V's, and the economic practicalities of it? We cannot shift this thing up to all U's. So we have to use both. Now, that is intermixture; that is not deintermixture.

Senator PASTORE. In other words, you do not believe in islands of V's and islands of U's.

Mr. DOERFER. Nobody has ever indicated remotely to me how it is possible. All I have gotten is a prayer and a hope; once you have a UHF on it, we think, we hope—it is all speculative. Now, if the advertiser will not take a U in competition with a V, where three stations would ordinarily be sustained of one kind or the other, how can we hope he will do it in the future?

Senator PASTORE. In other words, you are saying this—are you not actually saying this, Mr. Doerfer—that insofar as your thinking is concerned this is the survival of the fittest?

Mr. DOERFER. No——

Senator PASTORE. And the fact that you had 152 UHF's and now you have only got 99 and gradually they are dying off, makes very little difference to you. Insofar as you are concerned, there are not going to be islands of U's, there are not going to be any islands of V's.

You are just going to grant these V's as they have been allocated, and who stays on stays on, and who gets off, gets off. Is that not in fact what your conclusion is coming to? I mean in plain English, is that not it?

Mr. DOERFER. No; if you will hear me out——

The CHAIRMAN. The Chairman does not like to stop this, but we have gone into a lot of this all morning.

Senator PASTORE. But I was not here. [Laughter.]

That is just it; I was not here.

The CHAIRMAN. Everybody got their notices.

Senator PASTORE. I know.

The CHAIRMAN. Everybody got their notices. What we are trying to do here is this. The special counsel and I have gone over a great list of questions to get the really technical ones and good ones along these same lines—to get this record in shape. And we—but go ahead. I did not want to stop you.

Senator PASTORE. I do not care when I ask the questions. But the thing that has disturbed me—and I cannot make that too clear—somehow this thing is so loose, now, there does not seem to be a meeting of minds, even among the members of the Commission. There seems to be frustration now, the way we started with frustration in the beginning. No one seems to have a sense of where we are going.

Now, the thing that disturbs me is that the chairman said here last time that this thing was all going to be studied, we are going to have an answer in 6 months. After the last statement you just made, I will tell you very frankly and honestly, I do not expect an answer.

Mr. COX. Mr. McConnaughey, along this line——

The CHAIRMAN. Now, I am interrupting. [Laughter.] But I want to say that I am not in agreement with the Senator from Rhode Island, but it is true that on this whole problem the Senator from Michigan did go into the whole thing—was that a year ago?

Senator PASTORE. Two years ago.

Senator POTTER. Two years ago.

The CHAIRMAN. It was the same then, I will agree, as it is now. And I think the Commission will say that they think it is pretty near the same. And that was——

Senator POTTER. The fact remains that if you have more than two stations with a V and a U mixed, the V's are going to get the networks—they are going to go to the V's, rather than the U's. It is happening right along. The networks claim it is the advertisers that make the selection because of the wider market. I do not know what the answer is.

The CHAIRMAN. I think we are all in agreement on that. Of course, I think we all understand that when two VHF's come into a community, the networks and the advertisers all begin—the industry wants to go on the VHF's.

Now, what the Commission says, it is like that old song, "It Ain't Necessarily So." But we all agree that it has happened that way and it seems to continue that way.

Go ahead.

Senator PASTORE. And Mr. Doerfer takes the position that you ought not deny a community a VHF that has been allocated to that community. There is a lot of common sense in that, because, as I think Mr. Lee said, I think it is a better quality of reception, it is a better kind of television broadcasting. But even if that is so, where does that lead us? That is the big question in my mind.

Mr. DOERFER. Senator, I base my viewpoint at the present on what I consider to be fundamentals. If we are groping for a nationwide competitive system, then we have to remember that if you are going to drop the Iron Curtain around just a few communities, how are we going to get the fourth station in what is today a three-station market? How about the Philadelphias and the Detroits, the St. Louises, and we go right down with the first 30 markets.

It seems to me that we must start out with the fundamental premise we do not have enough in the V's, and in the U's who do not have economic acceptability at the moment. So we have to decide in our own minds that there must be intermixture. Either that, or we have to shorten our sights and say that this country will then settle for about 3 stations in the first 100 markets, with a few exceptions.

Senator PASTORE. In other words—and I give you a lot of credit for your position—I mean at least you have got the courage to say what you think. Your answer is deintermixture is no answer to the problem—you said that?

Mr. DOERFER. That is right.

Senator PASTORE. You do not believe in deintermixture?

Mr. DOERFER. I think it will work out.

Senator PASTORE. There are the ifs and buts. There you go. How are you going to work——

Mr. DOERFER. I am trying to say that by deintermixture, you would not provide a service to all the people. I do think if you allow intermixture that we will eventually have a nationwide competitive system.

I agree with the chairman, the nub of this whole thing is programing.

Mr. COX. Mr. Hyde, do you have some views on possible ways in which we can get this room for expansion—that is, the possible creation of a third or fourth network, or at least the development of additional outlets—through deintermixture or anything else?

Mr. HYDE. I think that it should be clear from the studies that have been made on this, and from reference to the comments that have been filed in the rulemaking proceeding by very knowledgeable people who have made very great studies of this subject, that there is only one place in the spectrum to find enough channels to ever provide multichannel, mutistation service, and that is by using the ultrahigh channels. If you determine that that is the only place where you can find the channels, then does it not follow that we must give our attention to ways and means that will be conducive to the development of those channels?

Now, in that connection, the weight of opinion seems to suggest consideration of the deintermixture technique. Certainly in those areas where you have ultrahigh channels operating on an equal competitive basis, they are working satisfactorily. The public is getting service, and so far as I am aware the Commission is not getting any complaint about the brand of service. Ultrahigh channels do not offer an inferior service. As I mentioned earlier in this proceeding, the picture has exactly the same number of lines, the same number of frames per second, and it has certain advantages with respect to interference and industrial, electrical emissions. It has certain advantages in the transmission of color.

Senator PASTORE. Let me interrupt you, Mr. Hyde, just so we can get this thing crystalized. Mr. Doerfer, here, believes that deintermixture is not the answer. Am I right, Mr. Doerfer?

(Mr. Doerfer nods.)

Senator PASTORE. How do you feel, Mr. McConnaughey? Is, or is not, deintermixture the answer?

Mr. McCONNAUGHEY. It certainly is not the answer at all. It might be part of the answer. That is the reason we are studying this rulemaking. It may come out to be a very substantial part, and I think I believe that, and I think the majority of this Commission believes that.

Senator PASTORE. Well, then, you would not go as far as Mr. Doerfer goes?

Mr. McCONNAUGHEY. I would not go so far as to say that deintermixture is no answer, because it may well turn out to be a part answer.

Senator PASTORE. It strikes me that we have reached a point where you have got to—you can certainly take a position whether it is or it is not.

Mr. McCONNAUGHEY. I have already taken it. I told you that I thought that it was a part of the answer.

Senator PASTORE. I tell you very frankly that is the thing that disturbs me. We are no closer to the solution of this problem than when Senator Potter ran his hearings.

Mr. McCONNAUGHEY. I think we are a lot closer——

Senator PASTORE. How do you feel, Mr. Webster, is it or is it not?

Mr. WEBSTER. I do not think it is fair, Senator, to ask any one of us to state categorically what our position is, not that I would be dodging it. But there is a hearing—a procedure underway. I have got to study those various comments that are made. There are alternatives. There are all sorts of suggestions. And for me to sit here and say I am for or against deintermixture, I think it would be unfair for anybody to ask me that.

Now, it is a possible technique, along with a lot of other things. And I am willing to study all of those when the time comes for me to review all these proposals. Now, if you will read those proposals, you will find there are differences of opinion there in the industry as well as around this table.

Senator PASTORE. But I read the Plotkin report and it leans very heavily on the element of deintermixture. Will you agree with me on that?

Mr. WEBSTER. That is one man's opinion.

Senator PASTORE. I know it. I realize that. But after he reviewed this whole subject, it really boils down to that.

Mr. WEBSTER. And he worked in the Commission and helped us on it.

Senator PASTORE. I know there are a lot of elements concerned here, but I think deintermixture is a big element. I think it is a very, very big element. Whether or not we are going to deintermix is a very, very big element in this whole problem. And I think pretty soon somebody will have to come to a conclusion, without any ifs or without any buts, as to whether or not this is ever going to happen.

Mr. WEBSTER. But I do not think——

Senator PASTORE. I am trying to be realistic. I know you could be very technical about this and say it is unfair to ask that kind of a question, but, my goodness gracious, I have waited 3 years to ask it.

Mr. COX. Mr. Hyde, would you care to continue?

Mr. HYDE. I was asked a question as to how we were going to get this competitive service, and I gave my opinion that we would have to find some method of developing the use of the ultrahigh channels.

I would like to explain why that is necessary. The VHF part of the spectrum runs from 30 megacycles to 300. Subtract 30 from 300 and you get 270. Divide that by 6 and I think you get 45. That means that in the entire VHF part of the spectrum there is a potential of 45 television channels, including the present 12 now allocated to VHF television.

Now, bear this in mind that about 58 percent of this VHF part of the spectrum which I have referred to is available to the non-Government services, the balance to the Government services, with a certain overlapping of Government and non-Government as to 24 megacycles of space. The general division is 58 percent to non-Government and the balance to Government.

In the non-Government or commercial part of the VHF space where we have allocated 46 percent, now, to television, we have allocated 21.73 to land mobile. This includes various safety services, police, industry and all types of land mobile services—95 percent of it, as a matter of fact.

If the Commission should find it possible to find additional VHF space from any source, they would certainly have to give consideration to other possible use before it could be given to television. When we come to make that decision we would certainly have to decide whether or not the problem of television is one of needing more space or whether the allocation is an efficient one of the space now allocated.

That might be critical for this reason: The demands for mobile or vehicular and manufacturing radio are not in any wise satisfied by the present allocation. As a matter of fact, our present economy tends to develop along the lines of a production-line economy. Attempts are being made to provide transportation facilities, and concurrent with that we ought to have communications facilities. One television channel in the lower part of the VHF portion of the spectrum would provide as many as 150 voice channels. In the upper part of the VHF under the present divisions, it runs to about 100.

If we had some additional VHF space to allocate in the public interest we could make a very significant addition to the provision that has been made for industrial use of the radio spectrum. That is also something very important since it affects our national economy.

Senator POTTER. Mr Hyde, would you yield at this point? Isn't it true that if you did find some more space for additional VHF channels you would have the problem of set conversion?

Mr. HYDE. We would have that problem if we attempted to allocate it to television, and it is essentially the same problem we have in trying to implement the use of UHF.

Mr. COX. If we are going to use the U's then, which would seem to be the most—that is they are presently allocated and are aavilable in sufficient number—how are you going to make an effective use of those to get this multiple service?

Mr. HYDE. You must set up conditions that will make it possible for a U station to operate, it seems to me. Now, I haven't wished any more than Commissioner Webster to give an opinion now about our rulemaking matter. That should be decided by study of the record, exchange of views among the Commissioners, and all of us, of course, would do well to reserve our opinions until we could study this together, and make a judgment on that record.

I have been concerned, however—and I expressed my concern in various dissenting views—by the course of action which tends to freeze the situation in a present pattern which, of course, will limit us in what we can do when we reach any solution that we would attempt on completion of the rulemaking.

I want to state here, I want to call attention here to the low horizons that obtain where you attempt to solve this thing in the VHF alone. Suggestions have been made here about shortening separations, putting in more stations. We instituted the freeze to reexamine the situation when short separations tended to produce interference conditions. Now, supposing that we would narrow or reduce the separations 50 percent, one-half, and assuming that would give you twice the number of stations that you have on VHF, there would be 2 stations where you have 1. We have too many cities where you have one VHF. If you add a second one, have you made provision for a truly competitive television service? I don't think you have. We have, as of now, 3 national networks, only 2 of which are able to get into as many as the first 50 markets of the country.

An analysis of the situation would go something like this: In 7 of the top 100 markets, there are 4 or more VHF channel assignments; in 26 markets, there are 3; in 32, there are 2; in 19 of the first 100, 1 VHF. We now have a shortage of facilities evident. As I have mentioned, the third network cannot get into enough markets to operate fully competitively with the other two.

The two that can get into the top markets have all of their time sold out in the evening hours, fully sold out, and actually there is jockeying for space there. You have the spectacle of not being able to activate all of our television channels notwithstanding the fact that 2 networks are sold out and the 1 that isn't sold out can't get into all the markets on a competitive basis.

This isn't just a network matter. Networks are not the only source of program materials, and we shouldn't look toward them as being the last and final answer to that problem. We should have provision for local community stations with local programs. There should be opportunity for programs that might be produced and delivered in any number of ways.

We can look forward to the development of tape recording. We can recognize right now that television programs can be produced on films. We should recognize right now that there are commercial interests, known as station representatives, engaged in the sale of spot advertising, and spot programing. I am not talking now about spot announcements, solely. I am talking about advertising which is spotted in the geographical sense. Certain industries do not market their products on a nationwide basis, and would logically have interests in marketing their products in those places where they have their distributors.

Without enough facilities to take care of three networks, obviously there are not enough facilities to take care of these other types of advertising.

As of now, and just based on a preliminary examination of it, you can notice that more than 50 percent of the advertising on networks is controlled by about 25 advertisers. So with a shortage of facilities available to television you can expect that it will have untoward results, economically, in the sense that you will have those that are fortunate enough to be on shows having facilities, having a tremendous advantage over those that do not.

I believe that some way must be found to make it possible to use the ultrahigh channels to provide the incentives that will permit the operation of the stations that will encourage the development of the apparatus, so that you can at least have facilities available for present demands. And of course, in a situation like this, we must give some consideration to the future.

The thing is pointed up by the fact that right as of now you can't even accommodate the three networks presently organized in the present economy. That doesn't look like a very bright picture insofar as any consideration might be given toward future needs.

Senator POTTER. Is ABC growing, or are they struggling?

Mr. HYDE. ABC?

I don't want to——

Senator POTTER. We know that is the third network.

Mr. HYDE. Yes. I don't want to seem to be urging the needs of any one network, but ABC is the third network. They have made rather remarkable progress in the expansion of their network, but it doesn't make any difference how good your program is, if when you want to offer it in a market against the program of two other networks there is no space to put it before the public. You are stopped at the threshold.

Mr. COX. Would it be your position, Mr. Hyde, assuming that it were found to be desirable by the Commission, that deintermixture could have been accomplished in selected areas without having prejudged the solution to the balance of the problem on a nationwide basis.

Mr. HYDE. I think something could have been done in that regard. I would like to say in this connection that the sixth report is not like an act of Congress. It isn't like the laws of the Medes and the Persians, that can't be changed except by complete and revolutionary changes. It was not contemplated as being the last and final solution, although we heard that phrase "firm, fixed and final."

The fact of the matter is that the sixth report was issued under the Administrative Procedure Act. It was issued by an administrative commission, and it is the particular forte of an administrative agency that it should be able to review its rules and regulations, and make adjustments as conditions which come to its attention may require.

When the sixth report was adopted, for procedural reasons and for procedural reasons only, the Commission announced it would not entertain petitions to make changes for 1 year. That was necessary in order that the Commission could turn its attention to lifting the freeze, and making some grants.

Actually, under the Administrative Procedure Act, we must be ready to consider petitions to make changes in the rules at any time consistent with the orderly handling of our work a petition might come up.

Mr. Cox. That could be done on a local basis.

Mr. Hyde. That could be done on a local basis. And as a matter of fact, you could make area changes. The dropping in of additional channels is an example.

Mr. Cox. Wasn't that done at the time you denied the deintermixture petitions?

Mr. Hyde. Yes, however, there is no difference in logic in taking away a channel and putting one in. It is a modification of your rules, it is a rulemaking proceeding, and is the sort of thing that an administrative agency, as I view it, should be prepared to do in order to meet changing conditions or to take care of the situations first coming to its attention.

Senator Pastore. For my benefit, would you explain what you mean by "dropping in a channel"?

Mr. Hyde. When a petitioner shows that a VHF assignment can be set up in the rules in a given place, consistent with the geographical separations and the other conditions of the sixth report, and the Commission grants a petition establishing another television assignment in its rules, it has come to be known as a drop-in.

In other words, in writing up the sixth report, a possibility may have been overlooked, a petitioner calls attention to it, the Commission allocates the channel to the community, and that is called a drop-in.

Senator Potter. You allocate a channel where a channel didn't exist before?

Mr. Hyde. That is right.

Mr. Cox. Take that specific example where you dropped one in at Vails Mills, N. Y. Wasn't that a sort of a deintermixture in reverse in the sense of creating a signal in Albany, which placed a probable ceiling upon future development of television service in the area?

Mr. Hyde. I have felt, on the basis of the evidence to come to us so far, that adding VHF's in ultrahigh areas would tend to freeze the situation against other changes. Now, actually, in the Albany area there was a single V, and it is a prefreeze station, WRGB, at Schenectady. An added V does bring in another competitive V in the area.

Deintermixture could involve adding V's in some areas, taking them out of others, and trying to arrange the allocations so that like stations would be in competition with like stations.

Mr. Cox. Isn't there this possibility that, in having decided not to wait about making available in the Vails Mills area this additional channel, a disposition may be made of it if procedures are completed which will prevent the Commission from making perhaps another use of that V channel, in connection with this general allocations proceedings, which would have been a more effective overall usage of that spectrum space?

Mr. Hyde. Every action that is taken either to allocate a channel in a single place or to grant a permit will, at least from a procedural standpoint, complicate the problem that you have in making any changes later on.

In that connection, the Commission decided when it was working on the sixth report that it would not be feasible to move television to the ultrahigh channels, because of the developments in the field that had already taken place. Subsequent to that, studies were made by counsel for this committee, and I believe both Mr. Plotkin and Mr. Jones advised that it would not be possible to make a wholesale change. That simply illustrates the difficulty you run into when you have a buildup which would have to be reduced for purposes of making a change.

Let me just conclude this whole statement by saying that in 1945, when the Commission completed its general reallocation, it determined then that there was not sufficient room in the VHF part of the spectrum, which I analyzed here in outline, to accommodate a nationwide competitive television system. Nothing that has happened since has raised any questions as to the validity of that judgment.

The CHAIRMAN. Is that how we got into all this mess?

Mr. HYDE. No, sir; no, sir; it is not.

The CHAIRMAN. Let me ask this question which has been bothering me, and you know hindsight is always very good. If the military had not got on to a third of the VHF band—approximately a third; is it not?

Mr. HYDE. The division is 58 percent–42 percent, with a certain part of it in joint use.

The CHAIRMAN. Well, if they had not got on to that, and they had gone up to the UHF and stayed there, would we have this problem here?

Mr. HYDE. Certainly, we would.

The CHAIRMAN. You still would have it?

Mr. HYDE. We would have 45 channels in the VHF space. Now we have 82, including UHF and the 12 VHF.

The CHAIRMAN. So that was not a factor?

Mr. HYDE. Let me put it this way: The total VHF space from 30 to 300 megacycles would give you only forty-five 6-megacycle channels which, in my judgment, would give you a limited service unless you cut those channels, unless you cut the service areas down to small parts. But before you would do that, you would have to take into consideration the needs of other services which have need of frequencies with the characteristics available in the VHF.

The CHAIRMAN. Supposing that in the beginning we had put all channels on UHF, would the problem have been solved?

Mr. HYDE. We certainly would not have this problem that is created where stations operating on very different channels are attempting to compete in the same market.

The CHAIRMAN. Would there have been enough UHF for the whole country?

Mr. HYDE. There would be 70 channels, and notwithstanding the fact that the upper channels are a little bit slow of development, we would have a lot more room than we have in the VHF allocation. In that connection, Senator, the ultra-high allocation to television is in one solid block. If you would study the spectrum allocations, you can't help but notice that that is just about the outstanding allocation of spectrum space to a given service. Even in the VHF part of the spectrum the channels are in three different blocks.

Senator POTTER. Did I understand you to say that with 45 channels we couldn't have a nationwide competitive television system?

Mr. HYDE. Oh, you could have a very, very sizable system—you could. But it is an academic question, Senator, because you can't possibly, giving any consideration at all to safety needs, allocate 45 channels from the VHF to television. You just couldn't do it and make provision of certain vital needs.

With 45 VHF channels you could have a tremendous television service, I am sure. If you followed the separation that we used in the Sixth Report, there would be cities where the number of stations would be limited. You get about one national coverage from six channels.

Senator POTTER. Here we are today, and in most communities there is just 1 channel, in some communities there are 2, and at the best 3, where you have networks and maybe another one with local programing. Now if that is the case, I am wondering about the concern—about having so many channels and getting the programing to put on those channels.

Mr. HYDE. Well, sir, as of now, programing is finding difficulty to find facilities to get into markets. You will find that—you will find evidence of that with the national advertising agencies, with the networks, particularly the ABC network, which is having the greatest difficulty. We should not assume, it seems to me, that three networks alone should be the criteria. We should give some thought to having facilities available for other methods of program distribution, such as film and tape.

Senator POTTER. Would that be competitive with your big network programs?

Mr. HYDE. Based on the opinions of certain advertising people, certain station representative people, if they could get their programs into enough markets they could put on a show that would be competitive. But they are stopped at the threshold by not being able to find time in those markets. Comparable facilities are in such short demand that there is scarcely any station time left.

The networks not only need what is known as network option time, but they tend to get into time which ordinarily would be reserved by the stations to take care of other types of programing. Shortage of facilities creates a pinch on independent programing, both from a national representative's and from a local standpoint.

Mr. COX. Thank you, Mr. Hyde.

I would like to turn, at least temporarily, from the intriguing question of deintermixture and go to——

The CHAIRMAN. Well, are we all through with that section? I think this will be a good time to take about a 5-minute recess.

(Recess.)

The CHAIRMAN. The committee will come to order. I want to say to the Commission that as far as the questioning on deintermixture and UHF and VHF, we have concluded that. Then we have these other matters relating to some of these problems which we will try and go on here a little bit today, and see if we can't get far enough so we'll be sure and be through tomorrow.

Mr. MCCONNAUGHEY. Do you want to go forward tomorrow?

The CHAIRMAN. Well, I don't think we will be able to quite finish it today.

Mr. MCCONNAUGHEY. I understood we were going on this afternoon on the condition that we would——

The CHAIRMAN. Well, we will be cutting it half a day for you anyway, because I think we are moving along as fast as we can. There are some other matters I am sure the Commission will want to be on record on. So we will start on those.

Mr. Cox. I would like to turn to some other matters which were discussed in your statement with reference to television for smaller communities. In that connection, you listed a number of steps that the Commission was taking which it hoped would be helpful. The first of these was the freer establishment of private intercity relays by broadcasters. Could you tell the committee why the Commission, in the past, has had restrictions on the operation of intercity relays by individual broadcasters which you are now proposing, apparently, to relax?

Mr. HYDE. I am sorry, I didn't hear that question——

The CHAIRMAN. The question is: Why has the Commission previously restricted private intercity relays so that it is now proposed that this should be relaxed?

Mr. HYDE. The reason has been that this has been thought to be a field in which a common carrier could best handle the transmission of materials. Handled on a common carrier basis, the cost, of course, could be allocated to all users and it would also make it possible to make most efficient use of spectrum space.

The CHAIRMAN. Well, then, what happened that you thought there was basis for a proposal that you relax this now?

Mr. HYDE. It has been relaxed by degrees. The Commission started first by issuing permits to television grantees, with notice that they should plan to amortize their investments looking toward the use of common carrier facilities.

The rapid development of the television industry, however, brought many calls for transmission of programs, many times from markets where the station's funds would be relatively low, too low to afford the kind of costs that would be involved in using a type of service that a common carrier would undertake to put in.

The Commission has recognized the realities of the situation. Where it appeared that the carrier could not provide the service as quickly as needed, or where the conditions were going to be very burdensome for the market, and where it did not appear that the granting of the private facilities would cause any untoward effect on other stations, we have issued permits for the private link. I will add this. It has seemed to me not a bad policy to issue permits for private links to people who could demonstrate ability to provide that service at low cost. It is just another example of use of competitive techniques to get a desired result.

Mr. Cox. And you do require, before the grant is made to them, a showing of what their expected cost is, their ability to establish and maintain this service?

Mr. HYDE. We do require in all applications a showing as to what the investment is going to be and, of course, an appropriate description of the equipment, so we will be able to ascertain—because we determine the grant will serve the public interest—that the service that can reasonably be expected will do the job.

Mr. Cox. When was your rulemaking proceeding for this freer establishment of such relays initiated? Do you recall? Was it sometime in September of 1954?

Mr. HYDE. That is approximately right. I can't recall the exact date.

Mr. Cox. What is its present status?

Mr. HYDE. It has not been finalized, but we have been following a very liberal policy in this——

The CHAIRMAN. You have been issuing them while it is pending?

Mr. HYDE. That is right.

Senator POTTER. I wonder if I could ask a question at that point, and this is a personal question. My home town, a little town of 6,000, has applied for use of the channel there. Can you let me know so I can advise my people back home when we are going to have television up there?

Mr. HYDE. Yes; we will take a look at any applications pending looking towards service there. It will be a pleasure to find out what the situation is. I don't think you are going to find the Commission insisting upon some method which will not be practicable for bringing that service to you.

Senator POTTER. At the present time the nearest station is over a hundred miles, and it is surprising the number of people that have invested, not only in sets but more money in an antenna to get a very bad picture.

Mr. HYDE. Senator, I would like to mention that, before Chairman McConnaughey came to our Commission, we had informally called this situation to the attention of the carrier, since it is the type of service you would normally expect a carrier to supply. In this connection you are all aware of the fact that they provide the program transmission for the aural network. We informally called attention to the need for providing a service which a television station in a small market could afford.

One of the results of that suggestion or inquiry was the filing of the off-the-air pickup tariff, and that was designed to provide service at a lower cost by picking up a transmitted program from some station at a point nearer to the place of usage.

Mr. Cox. Was that proposed by the telephone company as a substitute for relaxation of your rules on private relays?

Mr. HYDE. That was proposed, as I understood it, as one possible way of providing service at lower cost to markets which didn't seem to justify the other method.

Senator POTTER. Is that cheaper than microwave?

Mr. HYDE. That might combine both, Senator. They could have a pickup from a——

Senator POTTER. I am thinking of towers, these connecting towers.

Mr. HYDE. It would have this advantage: If a network program of station A were to be used at station B, it would be taken off the air at some point between station A and B, saving the first link, and then you would have the usual cost from that pickup to the place of usage. We have Mr. Cowgill here from the Common Carrier Bureau who could give you more specifications on how that works if you wish it.

Senator POTTER. That is all right.

Mr. Cox. Could you state just generally what the present status of this rulemaking proceeding on private relays is as far as a possible date for finalization?

Mr. COWGILL. My name is Harold Cowgill.

I am from the Common Carrier Bureau, chief of the Common Carrier Bureau. The comments are in from the rulemaking. They are being processed at staff level within the Commission. We are not far away from carrying that question to the Commission. I would say 2, 3, 4 weeks—something in that order.

Mr. Cox. Now, in your report to this committee of March 16 of last year, it seems to be suggested that it is thought that this proposal, in and of itself, might be a possible solution to the UHF problem. In your opinion, is it going to result really in any improvement of UHF's competitive position, or is it simply going to grant a cheaper form of operation to remote stations regardless of whether they are U or V.?

Mr. Hyde. I would be inclined to think that it would simply help television stations in either class.

Mr. Cox. Generally?

Mr. Hyde. Generally, yes.

Mr. Cox. With regard to this proposed off-the-air pickup service which was discussed by Mr. McConnaughey in his statement. I gather that is not separate proceeding—that it is simply being considered as a comment in this same proceeding, is that correct?

Mr. Hyde. No. The off-the-air pickup is an established service. They filed a tariff and that is available now.

Mr. Cox. That is in operation?

Mr. Hyde. Yes.

Mr. Cox. Now, I think Mr. McConnaughey said in his statement that certain broadcasters claim that they can still build a private intercity relay at their own expense and provide themselves with connection at a cost lower than afforded by the Telephone Company in this off-the-air pickup service. I would like to ask you whether the Commission has made any study of the costs of construction of these systems built by the broadcasters to determine their adequacy, operating costs and so on?

Mr. Hyde. We, of course, have taken note of the costs, and there are very great differences in the way the private operator will perform this service and the way the Telephone Company will do it, and there have to be certain differences. The Telephone Company, of course, would have to put up a complete system. It would have to acquire either leases or land, and it would have to put up equipment that would not require too much attention from time to time. A station operator, with a resourceful staff, could use that same staff to put up equipment, some of it of his own manufacture, and he could make a good part of the maintenance a part of the incidental duties of personnel attached to his radio operation. We must recognize here, too, that he will also content himself with a service which will not be up to the technical standards which the carrier would feel bound to supply.

Now, I am not—I don't want to leave the impresion here that I think that television service delivered over these private lines is in general inferior to that supplied by the carrier. There are a good many private installations that would be a credit to any carrier, I am sure. But in general a less costly installation, less capital outlay, and less special personnel can do the job if it is handled by the broadcaster.

Mr. Cox. Does it permit him to establish a service tailored to his needs which in turn provides a type of signal to the public that the Commission is justified in authorizing?

Mr. Hyde. I think it does. We make—we have so determined in those instances where we have authorized the private links.

Mr. Cox. Now, Senator Magnuson pointed out the other day that the committee has been advised of at least one instance in which we were furnished with some figures, which he read into the record, showing a very substantial difference in operating costs of about a quarter of what he had been told the Telephone Company would want for a similar service. Now, if there is in fact such a substantial differential, don't you think that the existence of those higher toll charges might tend, in itself, to stifle the development of stations some distance from the main lines of the carrier?

Mr. Hyde. I think it might tend to retard the development except for the fact that the Commission has been very liberal in making grants of circuits to be operated on a private basis.

Mr. Cox. Where they have been applied for?

Mr. Hyde. Where they have been applied for.

The Chairman. And I suppose if an applicant could show that the telephone proposal was expensive and that he could do it much cheaper, that that would be a good bit of evidence in the case for you to allow him to do it?

Mr. Doerfer. I might say that in one case, if I remember correctly, we gave the applicant permission to run it from point A to point C, and after operating it for some time on his own he concluded that he would have to do the job over by running it from point A to point B and then to point C. We also gave him authority to do that. But the disparity in costs there can be explained by the fact that the carrier has almost a guaranteed job, whereas the independent operator himself is willing to take his chances.

The Chairman. But don't you think he should be allowed that opportunity if he wants to?

Mr. Doerfer. We have allowed them.

Mr. Hyde. Mr. Cowgill has called my attention to the fact that we haven't made grants on the sole finding that the private link is cheaper than the common carrier. It hasn't been that simple. Usually it has been a question of immediate availability—the larger and more formidable array that the Telephone Company would supply has usually not been available as quickly as the broadcaster would wish it. And also we have taken into consideration the fact that we have got to encourage the broadcaster to solve that problem. So we get the application, and if he is in position to provide a needed service which he can afford, we approve it.

Mr. Cox. Did you have a comment?

Mr. Bartley. Yes. I think there are two points that I would like to put on the record here that do get into our consideration as to whether or not we grant these. One of them is that if the station operator himself—and I am not talking about off-the-air only—but if he is interconnected, he is not dependent upon the mother station. If he is interconnected he can take programs which the mother station doesn't necessarily have to take. So he has that flexibility, so there is value in that.

Another point that we have to consider, I think, is that in the first place we do have authority to require the Telephone Company to extend their lines and provide their service. Some of these inter-city links might very well be the links which would keep you from having an inter-continental network. Once you break it on an off-the-air picture, you are broken down all the way through. So that if enough of the, let's say, inter-Mountain stations used off-the-air pickups for their own private links, there wouldn't be support enough for the telephone company to supply the inter-continental link. So economics gets into this thing, too.

Mr. Cox. As I understand it, though, by encouraging a rapid amortization of the cost of this, you would be in a position perhaps to require the private operator at a later time, when the economy has developed further, to permit the substitution of a common carrier facility which would do this job on the nationwide basis.

Mr. Bartley. I would think that most of these will end up as an interim operation, because any station that can support itself is going to eventually want an interconnection.

Mr. Hyde. There has been this transition over to common carrier operation in a number of instances.

Mr. Bartley. I believe so.

Mr. Mack. The common carrier, as a general rule on a proposition like that, will give them a very substantial allowance for their equipment and all when they switch over.

The Chairman. You mean the phone company is getting liberal

Mr. Mack. Well, if you make a suggestion to them, sometimes they do.

Mr. Cox. Again I think it was indicated earlier that this proposal might help UHF. Is this again a situation where substantially what it does is just facilitate service in remote areas regardless of the portion of the spectrum that the station is in?

Mr. Hyde. That is true in general. But if you can envisage the situation where many stations are being brought into operation, that will necessarily include UHF, and so any move that helps to provide transmission of programs to a lot of stations should help UHF.

Mr. Cox. Because UHF allocations have been made in some of these remote areas which can't come into existence without such a cheap service?

Mr. Hyde. That is right.

Mr. Cox. Mr. McConnaughey, in your statement you said that in order to reduce programing costs, the Commission had authorized the operation of satellite stations by some action taken in August of 1954, and in your report of March 16 of last year to this committee, you indicated that you thought that this policy would help strengthen UHF. Could you tell the committee whether the authorization of satellites has, first of all, brought television service to people who otherwise would have had none?

Mr. McConnaughey. It certainly has. It permitted them to operaate without their own locally originated programs, and I think basically it has worked out pretty well to enable people in smaller communities—it has assisted them in being able to get television.

Mr. Cox. You said this morning you thought there were only approximately five such instances.

Mr. McCONNAUGHEY. I think that is about all.

Mr. Cox. Would you be of the opinion that this change in your rules has helped the status of UHF stations generally throughout the country?

Mr. McCONNAUGHEY. Well, it has helped. It hasn't developed to any great extent. It is available, they can use it.

Mr. Cox. How many of these satellites—the five that you mentioned—operate on UHF channels? Could you tell us that or provide the information for use?

Mr. McCONNAUGHEY. We will provide that information.

Mr. Cox. You will provide that?

Mr. McCONNAUGHEY. Yes.

Mr. Cox. Only one, Mr. Bartley?

Mr. BARTLEY. One is all I can recall.

Mr. Cox. I take it, then, that your rules under which satellite stations are permitted to operate, very clearly do not limit the benefit of such an arrangement to UHF stations?

Mr. BARTLEY. Oh, no, it wasn't designed to do that.

Mr. Cox. In fact, haven't you in a number of instances permitted the construction of VHF satellites to VHF parent stations?

Mr. BARTLEY. In a very few cases.

Mr. Cox. For instance, isn't it true that in Lufkin, Tex., you authorized a VHF satellite which rebroadcasts the programs of a VHF parent in Houston, 124 miles away?

Mr. BARTLEY. That is not the same ownership.

Mr. Cox. Not the same ownership. But the satellite and the parent are both V stations?

Mr. BARTLEY. That is correct.

Mr. Cox. The point I am making is that the creation of the satellite on a V channel has not materially, for instance, stimulated the purchase of all-channel sets?

Mr. BARTLEY. No, it is a VHF channel in Lufkin; it is a VHF channel in Sweetwater; the one out of Cheyenne, Scotts Bluff, is a VHF; and I believe Pasco, Wash., is a UHF; and there is a UHF in New York State—I forget the name of that town—off of a UHF station, that is.

Mr. Cox. If you permit V satellites to V parents, whether they are under common ownership or not, don't you find that you not only have not stimulated the development and sale of better UHF receivers and better UHF transmitters, but that, at least in the case where the parent owns the satellite, you have permitted this parent to increase its competitive position through this kind of an operation? Would that be true, Mr. McConnaughey?

Mr. McCONNAUGHEY. I don't think that we felt it was designated for that purpose at all.

Mr. Cox. That is you simply——

Mr. McCONNAUGHEY. It was designed to be helpful to small communities is what it was. Irrespective of VHF.

Senator POTTER. It similarly would go to a community if the market were such that it couldn't afford to operate its own station?

Mr. McCONNAUGHEY. That is right.

Mr. Cox. I take it, as you have indicated, this satellite station is not really a local television station within the meaning of the second priority of the sixth report, would that be true?

Mr. McConnaughey. Well, it could grow into one, I guess.

Mr. Cox. Have you in any way conditioned the grant of the license for a satellite to require that the licensee develop it into a truly local station within a certain period of time, or upon the happening of certain circumstances?

Mr. Doerfer. I think our original rulemaking commented on the fact that that was our purpose. Now I am not sure about it, but that was discussed. Is that correct?

The Chairman. Let me get this straight. Let's take the Pasco station. I think they get their programs out of Yakima. Is there a local staff in Pasco, or do they just feed the programs to Pasco? Can they take local advertising?

Mr. Hyde. I'm sure that the station is not equipped with a camera and necessary facilities to put on a local program.

The Chairman. So it is just an extension——

Mr. Hyde. It really becomes an extension of the Yakima station.

Mr. McConnaughey. Just a rebroadcasting——

The Chairman. Of what they have in Yakima?

Mr. McConnaughey. That is right.

Mr. Bartley. It takes its programs off Yakima.

The Chairman. I see. For instance, the local Pasco merchant couldn't go in there and advertise on that station because it is in Pasco, could he?

Mr. Bartley. That is correct.

Senator Pastore. What happens on a satellite station when they have an advertising portion? I mean they do not rebroadcast that, do they?

Mr. Hyde. Sure, everything.

Senator Pastore. What good does it do the community 125 miles off?

Mr. Hyde. They hear the network programs

Senator Pastore. Unless it is a national product.

Mr. Cox. They get the network programing.

Mr. Hyde. These things have usually been authorized simply to meet the demands of the public in some place.

Senator Pastore. I am not being critical of that. I am curious to know what happens. For instance, their advertising, you say it comes from a large city.

Mr. Cox. Yakima is not very large.

Senator Pastore. It comes from a parent station that has, let us assume, a local advertisement.

Mr. Hyde. They repeat that, too.

Senator Pastore. They repeat that, too?

Mr. Hyde. Repeat everything, yes.

The Chairman. They repeat local news from the other place?

Mr. Hyde. Yes.

Senator Pastore. So it isn't really desirable service; it is more or less an expedient.

Mr. Hyde. It is not the best possible service, but it is something there seems to be a great demand for.

Senator Pastore. Something more than nothing.

[Laughter.]

Mr. Cox. Recognizing, of course, that this does permit you to get national programing, at least, into areas where a station might otherwise not exist——

Senator POTTER. Isn't it true in many cases where you have your satellite stations, your parent station has also a limited market and it allows them to increase their market and put them on a little better competitive position?

Mr. COX. It permits them to increase their card rate for television service.

Mr. HYDE. There seems to be an acquiescence of many a licensee in the extension of his programs by such means as community antenna and other devices.

Senator PASTORE. One more question. Do you shift from a V to a U on that setup, too?

Mr. HYDE. Not usually, but the Commission has issued proposed rulemaking to permit a very liberal use of the upper part of the UHF allocation for what are called translators, which would of course operate in the ultrahigh channels. On of the reasons for proposing use of the ultra high channels is it would eliminate any problem of interference with stations operating on the VHF allocations.

Mr. COX. Isn't it true, though, that when you license a satellite, you have made use of a channel that is allocated to that community in the Sixth Report?

Mr. HYDE. Well, in the case of satellites, yes. But in the case of these translators, it is contemplated that they would use ultra high channels without regard to the allocation.

Mr. COX. Yes. But in so doing, in permitting, say, the station in Yakima, either to extend its market as Senator Potter suggests, or simply to meet the demands of the people in Pasco to build a satellite there, have you not in some sense permitted the usurpation of the channel in Pasco to the extent it may, if the Yakima owner doesn't desire to create a local station in Pasco, prevent the appearance in the Pasco area of a truly local station?

Mr. HYDE. These kind of authorizations do tend to supplant the local station, and that is why the Commission has been reluctant to encourage that type of operation. The Commission would prefer a complete station, prepared to broadcast matters originating locally. But you cannot refuse the people some national programs and wait too long a time awaiting the development of the local station.

The CHAIRMAN. Well, are those satellites conditional grants? I mean, in the sense, supposing someone decided now in Pasco to go ahead and have a real local television station, you could take the satellite away, could you?

Mr. HYDE. No license can be issued for more than 3 years at the most, Senator. This is a program—this is a field in which developments are not going to be too rapid to get out of hand.

The Chairman. No, and you have not granted many of them. But in the cases you do, surely the applicant must realize the reason he has the satellite is because there is no other local service available there?

Mr. HYDE. I am sure they do. We have had a policy question of this kind to come up in my own State. I think we mentioned this at the last meeting. We had a community station in Twin Falls, Idaho. Some other interest operating a station in Boise proposed to put in a transmitter at Twin Falls to repeat the Boise station. The Commission raised questions as to whether it would be in the public interest to license this relay station to operate competitively with the complete station. At that juncture the applicant amended its application to put in local facilities.

Senator PASTORE. Take the situation that was given as an example by Mr. Magnuson. Let's assume you have a satellite station in Pasco. Let's assume "X" comes along and applies for a station—an actual station in Pasco—can the satellite object to it?

Mr. HYDE. He has a procedural objection. Now, of course that has been watered down considerably by the recent amendment of the act.

Senator PASTORE. But he does have a right to protest?

Mr. HYDE. He does have a right to protest.

Senator PASTORE. And in his protest, before we passed the amended law, he could have kept that station off the air.

Mr. HYDE. He could have kept it off. There was a builtin automatic stay with that protest. If the protest conformed to the requirements of section 309 (c).

Senator PASTORE. Now under the present law, if you find it in the public interest to allow the new station to go on, you can grant it.

Mr. HYDE. That is right, sir.

Mr. MCCONNAUGHEY. Let him go on, that is right.

Mr. COX. Are satellites counted as separate stations for the purpose of the Commission's multiple-ownership rule?

Mr. MCCONNAUGHEY. I don't think so. I don't think so. It never came up. There has been no problem.

Mr. COX. Now, if you wanted to permit a UHF parent station to get a signal into white areas within its normal service area—which was one of the initial purposes you stated for the adoption of this rule—wouldn't another possibility be, as I think Mr. Hyde already suggested, the licensing of a translator or booster to provide that fill-in service, rather than the use of a satellite?

Mr. MCCONNAUGHEY. That is right.

Senator POTTER. Let me ask this question so I fully understand what a satellite is. We have a case, I mentioned my hometown of Cheboygan, where there has been an allocation of channel 4 VHF channel, Traverse City, which is 100 miles distant. There is a parent station. The man at Traverse City has filed with the Commission for the channel 4 station in Cheboygan, a town of 6,000 people and very little, in northern Michigan, very little market outside of the area. Now, is that a satellite station?

Mr. MCCONNAUGHEY. I understand, Senator, that he has filed an application for a grant. That would not be a satellite station.

Senator POTTER. But he is going to take the programs from the parent station and rebroadcast them on the Cheboygan station.

Mr. MCCONNAUGHEY. And then it is a satellite.

Senator POTTER. Then it would be a satellite?

Mr. MCCONNAUGHEY. If he does that, and he does that alone and rebroadcasts; if he just rebroadcasts them.

Mr. COX. But if he set up an intercity relay to bring the programs that he wanted from the national network and supplemented that?

Mr. MCCONNAUGHEY. Then it is a separate station. Then it is a separate station.

Senator PASTORE. Who has that choice? Does he have that choice or do you supervise it in any way. I mean, how do you determine the public interest? You have the public interest in having programs of a local aspect. Now, does he decide whether it is going to be a satellite or whether he is going to have local programs, or is he supervised in any way or told in any way what he should have in the public interest, or does he do as he pleases?

Mr. McCONNAUGHEY. Well, it depends on what his application would show at the time he filed it. As I take it, in this particular case he is asking for a separate operation. Then he comes into a hearing and he states what his programing is going to be.

Senator PASTORE. And you have to pass on it?

Mr. McCONNAUGHEY. We have to pass on it.

Mr. COX. If you concluded that the application was not in the public interest because you thought there was a possibility of the development of a truly local station, then you simply would reject his application?

Mr. McCONNAUGHEY. That is correct.

Mr. COX. Have you turned down some applications for satellites in this rather limited experience?

Mr. BARTLEY. In effect.

Mr. COX. In effect?

Mr. BARTLEY. In effect.

Mr. COX. By requiring amendment of the application?

Mr. BARTLEY. By asking—no, we used the letter process.

Mr. COX. Could you tell us what is the approximate cost of a satellite, for instance, as related to the cost of the translators you were discussing the other day? It is a much more expensive proposition, isn't it?

Mr. McCONNAUGHEY. Yes, considerably more. I can't tell you—I don't know the exact figures. It is a much more expensive operation.

Mr. COX. I think I saw figures for one in Nebraska which was stated to cost upward of $180,000. Would that be possible?

Mr. McCONNAUGHEY. I don't know.

Mr. BARTLEY. Generally, Mr. Cox, they are a television station without studio equipment.

Mr. COX. So that transmitterwise they require equipment comparable to that of a regular station rather than one of these more local expedients of the translator type?

Senator POTTER. I assume the distance from the parent station would have a great deal of bearing on the cost, too.

Mr. COX. Wouldn't it be more the size of the area they wanted to service?

Mr. BARTLEY. That is the determining factor in cost of transmission, tower and power.

Mr. COX. Mr. Chairman, as a further means of reducing construction and operating costs you cited the amendment of your rules in June of 1955 to reduce the minimum power requirements and to eliminate the antenna height requirement. Could you tell the committee how many stations have taken advantage of this change in the rule?

Mr. McCONNAUGHEY. I do not know the number.

The CHAIRMAN. You can furnish that for the record?

Mr. McCONNAUGHEY. All right.

The CHAIRMAN. Furnish that for the record?

Mr. McCONNAUGHEY. Yes.

Mr. Cox. Could you, in supplying that, indicate whether they were new or previously existing stations, seeking to reduce their power and antenna heights; how many of them were UHF and how many were V; and whether or not, therefore, your rule is limited to UHF stations?

Mr. McConnaughey. Yes, we will furnish that.

Mr. Cox. Now, you say that this change in your rules is going to make possible the construction of television stations in smaller cities. Is it restricted to cities smaller than a certain size?

Mr. McConnaughey. No, sir. It makes possible, I said, the construction of television stations in smaller cities.

Mr. Cox. All right. To the extent it is not limited to smaller cities, does it raise a possibility that channels may be preempted even in larger cities by the expenditure of relatively small sums for the construction of such a station?

Mr. McConnaughey. Well, it could. But I would assume that the larger cities would want a thousand watts and the maximum antenna height that they could get.

Mr. Cox. But it would be possible under the rule?

Mr. McConnaughey. Yes. I mean, it is not limited. It is merely an aid.

The Chairman. And it would make it possible, would it not, Mr. Chairman, in cities even of large size, for a fellow with a smaller investment to have a better chance of taking on local advertising and take care of the local people?

Mr. McConnaughey. Better chance to survive.

The Chairman. It would be possible he could do that?

Mr. McConnaughey. That is correct.

Mr. Cox. In that connection, however, are these lower power station required to originate any local programs?

Mr. McConnaughey. Not in the event they are satellites, they are not.

Mr. Cox. The point I am raising is, Aren't they always going to be satellites?

Mr. McConnaughey. I do not know that. I mean I don't think—you can't tell because the future you can't figure out.

Mr. Cox. Didn't you state in your annual report for the fiscal year 1955 that by lowering power requirements stations can be constructed in small communities at a modest investment, particularly if they are also permitted to operate without originating local programs? So that——

Mr. McConnaughey. That would be a satellite.

Mr. Cox. You contemplate satellite operation?

Mr. McConnaughey. Yes.

The Chairman. But there is no reason—I hope you wouldn't rule out the fact that the fellow could start in and be a local programer.

Mr. McConnaughey. We certainly would not.

Mr. Bartley. The idea is to build it into a situation where he may do that.

The Chairman. He might do that.

Mr. McConnaughey. Sure.

Mr. Cox. Has the Commission considered, in that connection, inserting a condition in his grant that he be required to make an orderly progression to full-fledged operation?

Mr. HYDE. I am sure that the Commission finds it is in the public interest when they grant one of those only for the license period, which has a maximum run of 3 years. Now, when he comes up for renewal of license, we can raise the question then as to whether this kind of service is adequate to the needs of that community. It was discussed among the Commissioners that it might be desirable, as this thing developed, to raise that question.

Mr. COX. Add requirements each time he comes up?

Mr. HYDE. The Commission thought it would be better to proceed that way than to put conditions on at the beginning which might discourage——

Mr. COX. Applications?

Mr. HYDE. Applications.

Mr. COX. Well, how do you expect this change in your rules to effect any material improvement in the general UHF situation in the future?

Mr. MCCONNAUGHEY. Well, it could.

We know it is our hope, but I assume that when we authorize satellites, it was our hope that they would grow into a regular operation.

Mr. COX. This would be done, as far as overall UHF improvement is concerned, where the low-power station authorized is the first station in the area and therefore will get a certain amount of additional sale of all-channel service; would that be a possible benefit from it?

Mr. MCCONNAUGHEY. It could be. It certainly could be. And if and when local advertisers support the additional cost of local spots, then the satellite could invest in equipment and grow into a regular operating station. It would be possible.

Mr. COX. Both in your report of last May to this committee and in your present statement you referred to exploration of the possible use of boosters as a means of increasing the coverage of UHF stations, and also possibly of extending service into remote areas. Now, could you tell us what the status is of the rulemaking proceeding that you referred to at that time?

Mr. MCCONNAUGHEY. Well, I think I told you at the time it was being studied. And I believe Mr. Allen, who is the chief engineer, could tell you we have run into some pretty serious engineering problems on these boosters, with reference to interference.

The CHAIRMAN. There is a bill introduced in Congress—I think in both House and Senate—which they are urging me to bring up in front of the committee. It would allow boosters 1 watt, is that correct—1 watt boosters to operate without any license, but only subject to inspection by the Commission, when they interfered with other air waves or things of that kind? Of course they would only cover really isolated areas; that is, they possibly could. Does the Commission have any opinion as to that bill? Where is that, in the House? It is in the House, I am informed.

Mr. ALLEN. These boosters would be operated within the State and would be expected not to cause interference across State lines, is that it?

The CHAIRMAN. Yes, that is the one.

Mr. ALLEN. We will probably have to examine those very carefully, because you have not only the problem of interference in television, because if these things don't design properly, they can interfere with the aviation frequencies.

The CHAIRMAN. The bill would provide, of course, that you people would have the right to inspect them and throw them off the air if they were interfering in any way; but they could go on without any license from the Commission.

Mr. ALLEN. I am afraid that would introduce some rather fundamental problems in the national treatment of the use of radio frequencies, because these things have a chain reaction, you see, and they have to fit into the overall pattern. It could not be done from an engineering standpoint.

The CHAIRMAN. You would be fearful, I suppose, that by the time you got around to them, they may have caused some trouble, would that be it?

Mr. ALLEN. They could raise some serious problems.

Mr. COX. Mr. Hyde?

Mr. HYDE. I suggest that that is a proposition which would have to be examined very carefully, because you may find that you will have to have some regulation of even the one-watter at the initial stage to keep them from interfering with each other. How are you going to prevent the two one-watters from coming up in the same city?

The CHAIRMAN. If they wanted to collide with each other privately, why, the Commission has enough troubles without worrying about that.

(Laughter.)

The CHAIRMAN. What I mean is that under this, if we went on the air without a license, you and I, and we collided, why, we would have no right to come to the Commission and ask for protection, either one of us. We took it on ourselves.

Mr. HYDE. You remember from the history of the Radio Act of 1927 that a licensing authority was set up to bring order out of the chaos that was developed when stations operated without regulation.

The CHAIRMAN. You are fearful this might bring on the same kind of thing?

Mr. HYDE. Locally, if not in a larger area.

Mr. COX. Am I correct in this, that when this rulemaking proceeding was started the concept that you had was of a booster created by the parent station for purposes of extending its service—that it did not contemplate the erection of boosters by local residents who are trying to use it to bring in signals from remote points?

Mr. HYDE. I think our discussion did not go to the point of who should operate that booster. The first tests were actually efforts at research to find out what could be done from a technical standpoint.

Mr. COX. Do I understand that, because of the engineering problems which it is felt would be encountered, this proceeding is not going to be drawn to a conclusion, or that——

Mr. HYDE. I should think we would be able to resolve it one way or another. I think we must do that.

The CHAIRMAN. You have got the case from my State down there now, haven't you?

Mr. HYDE. I am thinking of your State.

(Laughter.)

Mr. MCCONNAUGHEY. That is where it is.

Mr. HYDE. We have got to find some authorized way to satisfy a need. Is that all I need to say on that? [Laughter.]

Mr. McCONNAUGHEY. That is about it.

Mr. COX. Now as I understand Mr. McConnaughey's statement, then, your current thinking toward that end is in line with the development of these translators to provide not a repetition of the signal on the same channel but a conversion of the signal to one of the top 14 UHF channels for purposes of rebroadcasting into more remote areas, is that right?

Mr. McCONNAUGHEY. That is a true statement. As you will recall, I said that careful engineering analysis has convinced us that this would be a very dangerous thing to do. I am speaking now of boosters. Let me go to the translator which is a facility which intercepts the signal of a TV station and puts it over on a different channel.

The CHAIRMAN. My people raised the question of how much more will it cost for a translator?

Mr. McCONNAUGHEY. I testified to that. As I recall, it was a thousand dollars.

Mr. COX. Isn't it true that that is the cost of the converter, the part of the equipment——

Mr. McCONNAUGHEY. Translator you mean.

Mr. COX (continuing). Translator, the part of the equipment that is going to convert the received V signal, or U signal, to a high band U for rebroadcast? Wouldn't there be additional expense for construction of the necessary receiving equipment, the amplifiers, the traps, cable connections and any other items that would be necessary in this whole complex?

Mr. McCONNAUGHEY. There would be some cost. I don't know what it would be. Remember we told you the cost of the converter, along with the UHF antenna, would vary from $20 to $50 per receiver.

Mr. COX. Yes. Now you are talking about the viewer and his expense?

Mr. McCONNAUGHEY. That is right.

Mr. COX. That is, you anticipate that the man who presently gets some kind of a signal from a booster, which simply rebroadcasts the V signal received from the distant station, when you use a translator so that he receives a U signal, is going to have to spend from $25 to $50 in, and on top of, his house to get that signal on his set?

Mr. McCONNAUGHEY. It is estimated $20 to $50.

Mr. COX. Now do you think that it could be possible that the cost of the receiving equipment which would be prior to the translator would be $1,000 to $1,500 per channel, to be handled in this way?

Mr. McCONNAUGHEY. I don't know whether we made any study of the cost of that.

Mr. COX. Mr. Allen?

Mr. ALLEN. I don't see why the receiving end of the apparatus would be any more expensive than the receiving end on the booster. Some of the aspects of it would be simple, because you would not have to isolate the receiving antenna from the transmitting antenna.

The CHAIRMAN. Is the picture the same?

Mr. ALLEN. The picture would be the same.

Mr. COX. What I am trying to get at is that—at least for a new operation, not one where you are converting an existing booster to a translator—for a new operation there would be, in addition to the thousand-dollar cost for the translator, some such cost for the erection of receiving equipment?

Mr. ALLEN. That is right. It would include receiving antenna installation, a good receiver which is stable, and then your translator, and an outgoing antenna system, UHF antenna system.

Mr. Cox. And you would have such an array for each one of the channels that you wanted to try to bring into this community, would that be correct?

Mr. ALLEN. That is right, and housing of course.

The CHAIRMAN. What about the station they take the programs from? Do they pay them?

Mr. Cox. Don't your proposed rules on the translators require, at least, that they get the consent of the station whose program is rebroadcast?

Mr. HYDE. Our Commission rules do require that a station that rebroadcasts the program of another have his consent. And we would naturally assume that anyone appropriating or using the broadcasts of station A to rebroadcast on B would have to have that consent.

Mr. Cox. Does that carry with it the right in the owner of station A to decline that consent, or to exact a charge for it?

Mr. HYDE. We could not undertake to settle property rights in our regulations. There are rights of artists, copyrights and things; it is a field in which the operators would have to resolve their problems.

Mr. MCCONNAUGHEY. As you know——

Mr. Cox. There is a requirement in the statute?

Mr. MCCONNAUGHEY. The act itself requires it.

Mr. HYDE. That you have consent for broadcast is a statutory requirement.

Mr. Cox. Wasn't that designed—at least wouldn't it appear to have been designed—to prevent a person setting up a full-fledged commercial broadcast station from appropriating the property of another, and not with specific reference to a man who is simply trying, in effect, to use this rebroadcast as a means of receiving the signal for a limited area?

Mr. DOERFER. I think that interpretation is possible under the wording of the act. I do think that perhaps the courts would have to decide it in the event these was ever a contest. But a good argument can be made that once the signal has been dissipated so that it is of no earthly use——

Mr. Cox. No more property?

Mr. DOERFER. No more property rights there.

Mr. Cox. How about this. Are the receivers, when they operate at these extremely high frequencies above channel 70, are they less sensitive than in the lower U bands?

Mr. MCCONNAUGHEY. Mr. Allen, could you tell him that?

Mr. Cox. Mr. Allen, are the receiving sets, when they operate in the top 14 bands of UHF—do they have a tendency to be less sensitive than when they operate in the lower band?

Mr. ALLEN. There is a gradual increase in a UHF receiver as you go toward the top channels.

Mr. Cox. Are there any UHF broadcast stations now operating in these top 14 channels?

Mr. ALLEN. I can't answer that. You will have to get that from the records.

Mr. Cox. Will you get us that information for the record, please? Is there a problem with the oscillator tube in the UHF receiving set having a tendency to fade out more—and be more erratic in the higher bands than in the lower bands?

Mr. ALLEN. That is right, as of the present day.

Mr. Cox. If we ever get to substantial broadcast of color television in these remote areas, will there be problems there also in connection with the use of these top 14 bands?

Mr. ALLEN. I think so far as color is concerned, the problem is tied in with the same problem in black and white, to get your receiver to work in the upper end of the UHF. As I stated here in the last appearance, I believe, that there are developments which have been perfected, which I think will go a long way toward solving this problem. I think it is a matter of time when we can build a good all-wive, all-channel receiver, both VHF and UHF.

Mr. Cox. Which would be equally sensitive in all of the bands?

Mr. ALLEN. I would not say equally sensitive, but satisfactory in all bands.

The CHAIRMAN. Now this is a good place for us to recess. Are you through with that?

Mr. Cox. I have just three more questions I think here which are slightly related, and we might as well dispose of them.

The CHAIRMAN. All right.

Mr. Cox. First of all, does the Commission have, or at least exercise, jurisdiction over the community antenna systems which have come into some of these remote areas for purposes of bringing television service?

Mr. MCCONNAUGHEY. They have not exercised jurisdiction over community antennas.

Mr. Cox. Do they pose any problems, or does the fact that they are wired systems and do not emit signals avoid the difficulties that you have encountered in the boosters?

Mr. MCCONNAUGHEY. How about it, chief engineer; does it present any problems?

Mr. ALLEN. Well, they would not be expected to have problems of as great magnitude as you would on the reradiating booster, but it is not true that they do not emit signals.

Mr. Cox. They do?

Mr. ALLEN. They do emit signals, and depending upon the design of the system, how well it is designed, and the original equipment that goes into it, some of them can operate satisfactorily in areas where people are trying to receive direct signals and no interference is caused. But in other systems, they radiate sufficiently so that they interfere severely with local reception and direct reception by people who are trying to receive the signal directly.

That is reasonably close to the system, usually though, within say feet or hundreds of feet of a system, rather than a question of miles which you may get in a booster station.

The CHAIRMAN. Isn't it true that they have some sort of a petition before the Commission, the community antenna people, in which they are asking for some kind of protection—is that right, Mr. Chairman?

Mr. MCCONNAUGHEY. I don't think so, Mr. Chairman, none that I know of.

Mr. Cox. Have you ever instituted any formal proceeding to decide and pass upon the question of whether they are within or without the jurisdiction of the Commission.

Mr. DOERFER. There was one applicant that asked the Commission to decide that, but I understand that he dismissed his petition. Isn't that the Clarksburg matter?

The CHAIRMAN. I don't want to go into cases. This is off the record.

(Discussion off the record.)

The CHAIRMAN. Is this correct: You never decided whether you had authority over community antenna systems; and, not having decided that, they have no way to formally petition you, but they watch these other proceedings very closely to see what you are going to do.

Mr. McCONNAUGHEY. And they write us letters all the time. Once a week, I just heard, one gentlemen out there has been writing for the last 20 weeks.

Mr. Cox. Is it correct—this question has been raised as to the Commission's jurisdiction over these systems by the circuit court in the Clarksburg case, with a suggestion that this matter should be determined one way or the other by the Commission; is that right?

Mr. McCONNAUGHEY. Just a minute. The General Counsel will answer that.

Mr. HENLEY. That has been raised only in a very limited way by the Clarksburg case. That is, the court of appeals said, in the Clarksburg case, that in determining whether there is overlap of service between the two stations the Commission should consider also the program service that is brought into one of the communities by a community antenna system. The Commission had theretofore not considered that service. So it is only to that very limited extent.

Mr. Cox. Well, is there any good reason why the Commission shouldn't determine jurisdiction one way or the other?

The CHAIRMAN. They may have to, sooner or later. I should think you are going to have to meet up to the problem sooner or later if there is this sort of interference.

Mr. DOERFER. If it is broadcasting or whether it is a common carrier service is the big issue. Now, if it is a common carrier, that would mean that the Commission probably would assume jurisdiction over 300 community antenna systems, if not more, setting the rates for the service and setting service standards.

Now, if the Commission decides that it is not a common carrier service—and there is good argument to indicate that it is not—but broadcasting, well, then about the only question that remains there happens to be whether or not a particular service is going to frustrate an overall Commission plan.

The CHAIRMAN. Yes.

Mr. DOERFER. To develop free television.

The CHAIRMAN. They are mainly intrastate, are they not, too?

Mr. DOERFER. That is another question; yes. I don't know, I would assume that the only possible way to determine that is to initiate a proceeding whereby we take all of the national implications into consideration. I don't think you could reach an answer by merely deciding a case in which the court has indicated that there is some overlap, and is more interested in overlap than it is as to whether or not we have jurisdiction.

Mr. Cox. In these some 300 or 400 community systems that are built, isn't there an investment of some $30 million which is more or less in a dubious status until the question is decided?

Mr. MACK. I understand it has been decided in 2 States by the State regulatory agency. They have taken jurisdiction.

Mr. Cox. It has been decided in favor of State regulation?

Mr. MACK. That is right.

Mr. DOERFER. California and Wyoming.

Mr. Cox. To the possible exclusion of your jurisdiction?

Mr. MACK. Why, certainly.

Mr. Cox. Is this decided by these agencies without any consideration on your part, so as to preempt you from later deciding otherwise?

Mr. MACK. Let me finish. They have considered it as the same thing as local telephone service, over which we have no jurisdiction.

The CHAIRMAN. So in a State, for instance, the State of Washington, the State public utility service——

Mr. MACK. If they have the statutory authority.

The CHAIRMAN. If they have the statutory authority they could go——

Mr. MACK. Move in.

The CHAIRMAN. We might have rulemaking to take care of the community antenna?

Mr. MACK. We could certainly run into the same situation that we have with the State regulatory agencies now, that on interstate service if the fellow was getting any we would be involved to the extent he paid interstate tariffs.

Mr. Cox. Will the Commission—when it gets around to licensing translators, if it is decided in this pending rulemaking proceeding that that is the solution to this problem—is it going to be inclined to regard the operators of these present informal boosters as being debarred from being licensed to convert that to a translator?

Mr. MACK. We had better wait until we come to that.

Senator THURMOND. Are you asking these people to say what they are going to do when a case comes before them? If so, I object to that, Mr. Chairman. I think you are trying to browbeat these people and trying to get them to say what they will decide and I think it is unfair.

The CHAIRMAN. I was just going to say that is a case before them, they have testified they are getting ready to work on it——

Senator THURMOND. I don't think counsel had any business trying to pull out of these people what they are going to decide in the future because that is not our people.

The CHAIRMAN. He hasn't done that and didn't intend to.

Mr. Cox. I would like to state for the record that I was not relating to any pending case, I was asking with regard to a statutory policy. As I understand it, the Communications Act states that no person can ever be licensed to operate a broadcasting facility who has built such a facility without license from the Commission. Isn't that—

Mr. HYDE. No, that is not correct, the act provides that if a station is built without a permit, we may not license that station.

Mr. Cox. That particular——

Mr. HYDE. But that relates to the station, not necessarily the operator.

Mr. Cox. I certainly wasn't inquiring as to any pending case or any possible decision in that case.

Mr. Hyde. No, you are referring to section 219.

Mr. McConnaughey. I thought you were referring to the present booster case before us.

Mr. Cox. No. I am talking about rulemaking and about the policy that might come out of your translator rulemaking proceeding.

Senator Thurmond. I think also what they are going to decide in any matter in the future is something that would be unfair to ask them. I think you are pinning them down to tell you what they are going to do in setting policies and rules in the future. I don't think we have a right to do that.

The Chairman. No, no one is trying to pin them down to that at all, Senator. We are talking about certain matters which involve the problem of when they are going to get at this matter or whether they have authority to get at the matter. It is a very ticklish matter, legally and otherwise. It is a problem that the Commission hasn't yet taken up and I don't know whether they can, as Commissioner Doerfer said, for several reasons, and involves community antennas. No one intended to ask them about what they were going to decide on a case before them at all.

Well, I think this is probably a good time to recess, and I am sure we can get through very quickly tomorrow.

Mr. Mack. What time, Mr. Chairman?

Mr. Cox. Ten o'clock.

(Whereupon at 4:33 p. m., the committee adjourned, to reconvene at 10 a. m., Tuesday, February 21, 1956.)

TELEVISION INQUIRY

(UHF-VHF Allocation Problems)

TUESDAY, FEBRUARY 21, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m. in Room G-16, United States Capitol, the Honorable Warren G. Magnuson (chairman) presiding.

Present: Senators Magnuson, Pastore, Bible, Bricker, Schoeppel, and Potter.

Committee personnel present: Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel.

The CHAIRMAN. The committee will come to order. There will be other Senators here, but we are going to try and see if we can't finish this morning, so we will skip along. We will skip over some of the questions that the counsel and the committee have prepared; some of them are necessarily a little bit repetitious; but in order to make the record cohesive, we have put them in here. We will skip over those and if we want the answers we can always send our questions down and you can send them up in writing.

Mr. McCONNAUGHEY. Yes, sir.

The CHAIRMAN. Some of them are technical anyway.

Do you have a statement you want to put into the record?

Mr. COX. Did you have a letter in response to some questions from the committee?

Mr. McCONNAUGHEY. Yes.

The CHAIRMAN. That will be placed in the record at the proper place.

(The information is as follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., February 20, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: The information contained in this letter is submitted in response to a telephoned request received from Mr. Nicholas Zapple of your committee's staff on February 13, 1956.

Mr. Zapple first requested the names of the 29 markets to which I referred in my testimony before your committee on February 7, 1956. These are markets in which UHF stations commenced operating before the advent of VHF stations, which subsequently came on the air. In answer to the first question, the names of these 29 markets are:

Alabama: Mobile,[1] Montgomery
Arkansas: Little Rock [1]
California: Bakersfield, Sacramento, Stockton [1]

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[1] See footnote p. 158.

Florida: Pensacola,[1] Tampa-St. Petersburg, West Palm Beach
Georgia: Columbus, Macon[1]
Illinois: Rockford
Kansas: Wichita
Louisiana: Baton Rouge, Lake Charles, Monroe[1]
Maine: Lewiston,[1] Portland[1]
Minnesota: Duluth-Superior
Mississippi: Jackson[1]
North Carolina: Asheville, Winston-Salem
Oregon: Portland
South Carolina: Columbia, Greenville
Texas: Beaumont-Port Arthur, Tyler,[1] Waco[1]
West Virginia: Charleston.[1]

The next question related to the profit or loss position of UHF stations as of the most recent date for which data are available. There are at present 96 UHF stations on the air. However, the most recent date as of which the Commission possesses information concerning the current financial position of UHF stations is October 1954.

The financial position of UHF statons at that time is reflected in table 1 of the enclosed Third Survey of Postfreeze Television Stations.

A question was also raised concerning the survival of UHF stations in markets where UHF broadcasting commenced before the advent of local VHF stations, and the profit or loss position of UHF stations in such markets. As I have already pointed out, UHF stations which went on the air before the advent of local VHF stations have continued to operate in 16 of the 29 markets in this category. However, as of October 1954, the latest date as of which we possess information disclosing the current financial position of these UHF stations, there were only 11 markets of this type in which local VHF stations had already come on the air. There were 12 UHF stations in these 11 markets. One of these reported a profit for the entire period January through October 1954. One additional UHF station in this group, while reporting a loss for the entire 10-month period, had attained profitable monthly operation by October 1954. The remaining 10 UHF stations in this group reported continuing monthly losses through October 1954.

The regular financial reports for 1955 are due to be filed by April 1 of this year. As soon as these are received and can be compiled, we will have more current information concerning the financial position of UHF stations.

It was also requested that the Commission furnish the names of all members of the Commission staff who were working on the general allocations proceeding (Docket No. 11532), the percentage of their time which was being devoted to the proceeding or to related problems and the date each staff member started working on it. The Rules and Standards Division of the Broadcast Bureau has the primary responsibility for handling rulemaking proceeding at the staff level. The following members of that Division have devoted the indicated percentages of their time to television allocation problems arising out of and related to Docket No. 11532 since November 10, 1955, when that rulemaking proceeding was initiated:

	Percent
Hart S. Cowperthwait, chief of the division	50
Herbert M. Schulkind, assistant chief of division	50
Robert G. Weston, engineer	80
Louis H. Rein, engineer	80
Louis C. Stephens, attorney	80
Lynne A. Kaufman, attorney	80
Arnold I. Weber, attorney	80

In addition, a substantial amount of the time of Edward F. Kenehan, chief of the Broadcast Bureau, and James E. Barr, assistant chief of the Broadcast Bureau has been devoted to this problem.

Also, Edward Allen, chief engineer and several members of his staff have devoted substantial time to the allocation proceeding, and problems relating directly to it. Warren E. Baker, general counsel, Richard A. Solomon, assistant general counsel, and Charles Smoot, assistant general counsel, have also devoted time to television allocation problems.

[1] The UHF stations went off the air after the advent of local VHF stations in these 13 markets.

Substantial time of the aforenamed staff members of the Rules and Standards Division and the Office of the Chief Engineer was devoted to the allocations problem during the weeks preceding the initiation of the general allocations rulemaking proceedings.

Replies to the additional questions concerning excessive and fraudulent commercial announcements will be submitted separately.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman*.

(The survey is as follows:)

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D. C.

THIRD SURVEY OF POST-FREEZE TELEVISION STATIONS

PUBLIC NOTICE 23055, AUGUST 19, 1955

The Commission's third survey of post-freeze television stations covers the period January 1 through October 1954. Of 144 VHF post-freeze stations, 52 (36 percent) had overall profitable operation during the 10-month period; another 50 VHF stations (35 percent), although reporting an overall loss for the 10-month period, were showing a monthly profit in October or in October and one or more earlier months; while 42 stations (29 percent) had continuing monthly losses through October 1954. Only 1 of these 42 stations had ceased opearting as of June 4, 1955.

Reports from 122 UHF stations indicated that 18 (15 percent) had overall profitable operation during the same period; 15 others (12 percent), although reporting an overall loss for the 10-month period, were showing a monthly profit in October or in October and 1 or more earlier months; and 89 (73 percent) had continuing monthly losses through October 1954. Of the 89 UHF stations with continuing monthly losses, 31 (35 percent) had ceased operating by June 4, 1955. (Table 1.)

The median monthly loss for those stations with continuing monthly losses (and still in operation as of June 4, 1955) was $8,460. For VHF stations, the median monthly loss was $8,750 and for UHF stations, $8,260. (Table 1A.)

Of the 143 VHF stations, 101 (70 percent) carried commercial programs of NBC or CBS, or both, in excess of 7½ hours per week (based on the week of October 10, 1954). The great majority of these stations (82 percent) were either profitable overall or achieving a monthly profit by October 1954. Of the 42 VHF stations with fewer that 7½ hours of CBS–NBC programing, less than half (45 percent) were in these 2 profit categories. Of the 42 UHF stations carrying commercial programs of NBC–CBS in excess of 7½ hours per week, 62 percent were in the profit categories; of the 49 UHF stations with fewer than 7½ hours of NBC–CBS programing, only 14 percent were in the profit categories. (Table 2.)

Half of the VHF stations had average monthly revenues of $30,000 or more. Of these, 90 percent were in the 2 profit groups, whereas of 41 VHF stations below $20,000 in average monthly revenues, 48 percent were in the profit categories. (Table 3.)

Approximately one-fourth of the UHF stations reported monthly revenues of $30,000 or more. Of these, 75 percent were in the profit groups while only 11 percent of those with less than $20,000 monthly revenues were in the 2 profit groups. (Table 4.)

Tables 5 and 6 show the general interrelationship of carrying NBC–CBS programing, average monthly revenues, and profitablility. Of the 101 VHF station carrying 7½ hours of NBC–CBS programing, 64 (63 percent) had average monthly revenues above $30,000; of these 64, 60 (94 percent) were in the profit groups. Of the 42 VHF stations carrying less than this number of NBC–CBS programs, 8 (19 percent) had average monthly revenues of over $30,000. Of these 8, 5 (62 percent) were in the profit categories. Below $20,000 average monthly revenues, 8 out of 13 stations in the NBC–CBS group were in the profit categories as compared to 12 out of 28 stations in the "all other" group. Table 5.)

For UHF stations, 18 of 42 such stations (with NBC–CBS programing) obtained revenues above $30,000, of which 16 were in the profit groups as compared to 2 out of 6 in the "all other" group. Below $20,000 average monthly revenues, 3 out of 11 UHF with NBC–CBS were in the profit groups as compared to 3 out of 40 in the "all other" category. (Table 6.)

Of the 143 VHF stations, 44 (31 percent were located in areas served by at least 2 other VHF stations; 55 (38 percent) were in areas served by only 1 other VHF station; and 44 (31 percent) were the only VHF stations serving their area. (Tables 7, 8, and 9.) [The availability of competing VHF signals is based on the number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.]. Of the 44 VHF with competition from 2 or more other VHF, 68 percent were in the profit groups; of 55 with competition from only one other, 71 percent were in the profit groups; and 75 percent of the VHF with no other VHF competition were in the profit groups. For stations above $30,000 average monthly revenues, there was little difference in the percent in the profit groups based on number of competing VHF stations, that is, approximately 90 percent. For stations with average monthly revenues between $20,000–$30,000, 36 percent were in the profit groups where there were 2 or more competing VHF as compared to 80 percent where there was no competing VHF. Similarly, for stations with revenues of less than $20,000 monthly, more than half of the VHF without competition were in the profit groups as compared to less than half where one or more other VHF stations were serving the same area. (Table 13.)

Of the 91 UHF stations, 34 (37 percent) were in areas served by 2 or more VHF stations; 39 (43 percent) were in areas served by only one VHF station; and 18 (20 percent) were in areas served by no VHF stations. Tables 10, 11, 12, and 14.)

Table 15 shows the relationship between community size and level of monthly revenues for VHF stations. Of 43 stations located in communities of 175,000 and over, 37 achieved monthly revenues of $30,000 or more, whereas, of 64 stations located in communities below 75,000 population, only 13 had this level of revenues. In addition, 21 of the 41 VHF stations with continuing monthly losses were located in the smaller communities (that is, below 75,000 population).

TABLE 1.—*Third survey of postfreeze TV stations*

[Covering period January through October 1954]

	VHF	UHF	Total
A. Postfreeze TV stations in survey (total in operation July 1, 1954)	148	124	272
B. Total stations reporting	144	122	266
C. Number reporting profit during 10-month period, January through October 1954	52	18	70
D. Number reporting loss for same period:			
1. But reporting profitable operation in 1 or more months at end of period	50	15	65
2. With continuing monthly losses during period	42	89	131
(a) Operating as of June 4, 1955 [1]	41	58	99
(b) Ceased operating by June 4, 1955	1	31	32

[1] See table 1A for volume of average monthly losses.

TABLE 1A.—*Postfreeze TV stations with continuing monthly losses during period January–October 1954*

Average monthly loss during 10-month period	VHF	UHF	Total
Under $5,000	7	14	21
$5,000 to $10,000	18	23	41
$10,000 to $20,000	12	12	24
Over $20,000	4	9	13
Total	41	58	99
Median monthly loss	$8,750	$8,260	$8,460

TABLE 2.—*Postfreeze television stations*

Type of station	Network programs carried	Number of stations, January through October 1954			Total
		Profitable overall	Monthly profit by October 1954 [1]	Losses through October 1954	
VHF	NBC-CBS [2]	46	37	18	101
	All other	6	13	23	42
	Subtotal	52	50	41	143
UHF	NBC-CBS [2]	14	12	16	42
	All other	4	3	42	49
	Subtotal	18	15	58	91

[1] Stations reporting overall loss for the 10-month period but reporting profitable operation in October or in October and 1 or more earlier months (see table 1, group D-1).
[2] Stations carrying network programs of NBC, CBS (or both) in excess of 7½ hours per week (based on week of Oct. 10, 1954).

TABLE 3.—*VHF post-freeze television stations*

Average monthly revenues [1]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Average monthly revenues [1]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	31	4	35	$10,000 to $20,000	14	16	30
$40,000 to $50,000	13	2	15	Less than $10,000	6	5	11
$30,000 to $40,000	21	1	22				
$20,000 to $30,000	17	13	30	Total	102	41	143

[1] During period January through October 1954.

TABLE 4.—*UHF postfreeze television stations*

Average monthly revenues [1]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Average monthly revenues [1]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	8		8	$10,000 to $20,000	4	18	22
$40,000 to $50,000	3	1	4	Less than $10,000	2	27	29
$30,000 to $40,000	7	5	12				
$20,000 to $30,000	9	7	16	Total	33	58	91

[1] During period January through October 1954.

TABLE 5.—*VHF postfreeze television stations*

Average monthly revenues [1]	NBC and CBS [2]			All other		
	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	29	1	30	2	3	5
$40,000 to $50,000	13	2	15	---	---	---
$30,000 to $40,000	18	1	91	3	---	3
$20,000 to $30,000	15	9	24	2	4	6
$10,000 to $20,000	5	5	10	9	11	20
Less than $10,000	3	---	3	3	5	8
Total	83	18	101	19	23	42

[1] During period January through October 1954.
[2] Stations carrying network programs of NBC, CBS (or both) in excess of 7½ hours, per week (based on week of Oct. 10, 1954).

TABLE 6.—*UHF postfreeze television stations*

Average monthly revenues [1]	NBC and CBS [2]			All other		
	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	7	---	7	1	---	1
$40,000 to $50,000	3	1	4	---	---	---
$30,000 to $40,000	6	1	7	1	4	5
$20,000 to $30,000	7	6	13	2	1	3
$10,000 to $20,000	3	5	8	1	13	14
Less than $10,000	---	3	3	2	24	26
Total	26	16	42	7	42	49

[1] During period January through October 1954.
[2] Stations carrying network programs of NBC, CBS (or both) in excess of 7½ hours per week (based on week of Oct. 10, 1954).

TABLE 7.—*VHF postfreeze television stations (VHF stations whose area is served by 2 or more other VHF stations [1])*

Average monthly revenues [2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Average monthly revenues [2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	13	2	15	$10,000 to $20,000	3	4	7
$40,000 to $50,000	2	---	2	Less than $10,000	1	1	2
$30,000 to $40,000	7	---	7				
$20,000 to $30,000	4	7	11	Total	30	14	44

[1] Based on number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.
[2] During period January through October 1954.

TABLE 8.—*VHF postfreeze television stations (VHF stations whose area is served by onc other VHF station*[1])

Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	15	2	17	$10,000 to $20,000	3	7	10
$40,000 to $50,000	5	1	6	Less than $10,000	3	1	4
$30,000 to $40,000	8	1	9				
$20,000 to $30,000	5	4	9	Total	39	16	55

[1] Based on number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.
[2] During period January through October 1954.

TABLE 9.—*VHF postfreeze television stations (VHF stations whose area is served by no other VHF stations*[1])

Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	3	----------	3	$10,000 to $20,000	8	5	13
$40,000 to $50,000	6	1	7	Less than $10,000	2	3	5
$30,000 to $40,000	6	----------	6				
$20,000 to $30,000	8	2	10	Total	33	11	44

[1] Based on number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.
[2] During period January through October 1954.

TABLE 10.—*UHF postfreeze television stations (UHF stations whose area is served by 2 or more VHF stations*[1])

Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	1	----------	1	$10,000 to $20,000	1	9	10
$40,000 to $50,000	1	----------	1	Less than $10,000	1	12	13
$30,000 to $40,000	3	1	4				
$20,000 to $30,000	3	2	5	Total	10	24	34

[1] Based on number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.
[2] During period January through October 1954.

TABLE 11.—*UHF postfreeze television stations (UHF stations whose area is served by 1 VHF station*[1]*)*

Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	3	----------	3	$10,000 to $20,000	2	8	10
$40,000 to $50,000	1	----------	1	Less than $10,000	1	13	14
$30,000 to $40,000	1	4	5				
$20,000 to $30,000	3	3	6	Total	11	28	39

[1] Based on number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.
[2] During period January through October 1954.

TABLE 12.—*UHF postfreeze television stations (UHF stations whose area is served by no VHF stations*[1]*)*

Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total	Average monthly revenues[2]	Profit overall or monthly profit by October 1954	Continuing losses through October 1954	Total
Over $50,000	4	----------	4	$10,000 to $20,000	1	1	2
$40,000 to $50,000	1	1	2	Less than $10,000	----------	2	2
$30,000 to $40,000	3	----------	3				
$20,000 to $30,000	3	2	5	Total	12	6	18

[1] Based on number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.
[2] During period January through October 1954.

TABLE 13.—*VHF postfreeze television stations—Percent of total stations within each group that were profitable overall or showing monthly profit by October 1954*

NUMBER OF OTHER VHF STATIONS SERVING AREA[1]

Average monthly revenues[2]	2 or more	1	None	All groups	Average monthly revenues[2]	2 or more	1	None	All groups
Over $30,000	92	87	94	90	Less than $20,000	44	43	55	49
$20,000 to $30,000	36	55	80	56	All stations	68	71	75	71

[1] Based on number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.
[2] During period January through October 1954.

Note: See tables 7, 8, and 9 for data on which this table is based.

TABLE 14.—*UHF postfreeze television stations—Percent of total UHF stations within each group that were profitable overall or showing monthly profit by October 1954*

NUMBER OF VHF STATIONS SERVING AREA[1]

Average monthly revenues[2]	2 or more	1	None	All groups	Average monthly revenues[2]	2 or more	1	None	All groups
Over $30,000	83	55	89	75	Less than $20,000	9	12	25	12
$20,000 to $30,000	60	50	60	56	All stations	29	28	67	36

[1] Based on number of VHF signals received by 50 percent or more of the TV homes in the station's standard metropolitan area—1955 Metropolitan Area Coverage Study, American Research Bureau, Inc.
[2] During period January through October 1954.

NOTE.—See tables 10, 11, and 12 for data on which this table is based.

TABLE 15.—*VHF postfreeze television stations*

Average monthly revenues [1]	Population of metropolitan area											
	175,000 and over				75,000–175,000				Under 75,000			
	NBC–CBS [2]		All Other		NBC–CBS		All other		NBC–CBS		All other	
	Profit group [3]	Loss group	Profit group	Loss group	Profit group	Loss group	Profit group	Loss group	Profit group	Loss group	Profit group	Loss group
Over $50,000	22	------	2	3	5	1	------	------	2	------	------	------
$40,000 to $50,000	2	------	------	------	7	1	------	------	4	1	------	------
$30,000 to $40,000	6	1	1	------	8	------	------	------	4	------	2	------
$20,000 to $30,000	1	1	------	1	2	6	------	1	12	2	2	2
$10,000 to $20,000	1	------	------	1	------	1	1	2	4	4	8	8
Less than $10,000	1	------	------	------	------	------	------	1	2	------	3	4
	33	2	3	5	22	9	1	4	28	7	15	14

[1] During period January through October 1954.
[2] Stations carrying metwork programs of NBC, CBS (or both) in excess of 7½ hours per week (based on week of Oct. 10, 1954).
[3] Includes stations reporting profit overall for period and stations reporting overall loss for period but reporting profit in October or October and 1 or more earlier months (see table 1, group D–1).

Mr. McCONNAUGHEY. And there were some answers to questions Senator Schoeppel asked.

The CHAIRMAN. All right. They will be put in the record at the proper place.

(The information is as follows:)

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

Answers to questions asked by Senator Andrew F. Schoeppel on January 26, 1956.

Question No. 1: What is the status of the negotiations to obtain additional VHF space from the Government for commercial broadcasting?

Answer: The FCC has requested consideration by ODM and other interested departments, including the Department of Defense, of the possibilities for making some VHF frequencies now allocated to Government uses available for TV broadcasting. The matter is under study by the interested departments. There is no clear indication yet of the possible results.

Question No. 2: Do you consider the present allocation plan adequate to meet the requirements for national television service?

Answer: The present allocation plan provides for over 1,800 commercial channel assignments in more than 1,200 communities. Thus in terms of allocated space the present plan affords opportunity for over four times the present number of stations on the air. But there have been disappointing results with broadcasting in the UHF band, in which 1,300 of the commercial channel assignments are located. The 12 VHF channels alone offer much more limited opportunity for the development of the Nation's television system. In these circumstances the Commission is giving intensive study to a considerable number of proposals for revision of the present allocation plan.

Question No. 3: Do you recommend the deintermixture of VHF and UHF stations in selected areas?

Answer: Deintermixture is one of the proposals now being considered by the Commission. For the reasons which are set out at some length in the statement I submitted to the committee, the majority have concluded that deintermixture on the basis proposed in a number of petitions relating to scattered individual communities would not afford lasting solution.

Whether deintermixture on some other basis would be desirable is one of the questions with which the Commission will deal in its present review of the entire television allocation plan.

Question No. 4: Do you recommend shifting all television assignments to the UHF portion of the spectrum?

Answer: As in the case of deintermixture, the Commission cannot offer recommendations concerning the proposal to move all television to the UHF band until it has completed its extensive review of the entire nationwide allocation plan.

The Commission has in a previous report expressed the opinion that, although an all-UHF television system would offer some advantages, it could not be achieved without substantial dislocation and cost to both the industry and the public. Owing to this the Commission has in the past felt that other solutions should be sought. Nevertheless the proposal for moving all television to UHF, like all the other proposals the Commission has received, will be given careful consideration in the present allocation rulemaking proceeding.

Question No. 5: Do you recommend freezing all further assignments until the present rulemaking proceedings have been completed?

Answer: The majority are convinced, for the reasons set out in my statement to your committee, that it would be distinctly contrary to the objectives of facilitating television's continued expansion to freeze new assignments or new station authorizations until the present allocation proceedings have been completed.

Question No. 6: What is the status of subscription television and what are your views?

Answer: The Commission instituted the subscription television proceeding on February 11 of last year to explore the question of whether it would be in the public interest to permit television stations to engage in subscription television operations on a regular commercial basis. Interested parties were invited to submit their comment in order to assist us in resolving the numerous legal, technical, and policy questions involved. When the time for filing comments expired on September 9, 1955, the Commission found that the comments received totaled approximately 25,000 formal pleadings and less-formal submissions which filled nearly 80 reference volumes. This is more than has been filed in any other docketed case in the Commission's history.

Because of the nature of this proposal and the many questions and problems to be resolved, including the question of whether legislation by the Congress is called for, I am unable to promise the early conclusion of this proceeding.

Moreover, our consideration of this matter must also yield to the need for the earliest possible resolution of the questions before us in our current review of the established system of television allocations.

Question No. 7: Do you have any specific recommendations for this committee here?

Answer: For the reasons already given, it is felt that it would be premature for the Commission to lay specific recommendations before the committee at this time. Insofar as the networks are concerned, useful recommendations could be made only after we have assembled, compiled, and evaluated data on network operations which is now being obtained.

With respect to allocations, there is no recommendation which the Commission can usefully make until its review of the present system has been completed.

TESTIMONY OF MEMBERS OF THE FEDERAL COMMUNICATIONS COMMISSION

Mr. Cox. With respect to the matter of station coverage and overlap, which was discussed somewhat previously, you listed certain factors, such as terrain, weather, and so on, which affected the range or coverage of a television station, and said that there are many other bases on which such coverage might be made. Now, as I understand your testimony, the one which is actually used is simply the application of certain formulas involving power of transmitter and antenna height; is that right, in a particular zone?

Mr. McConnaughey. I think that is correct.

Mr. Cox. That, then, is a mere matter of standards which have been set by the Commission for an average station, without considering the actual site, the terrain, the prevailing weather, or the other specific conditions surrounding any particular station?

Mr. McCONNAUGHEY. They were developed, as I understand it, for allocation purposes. I wasn't here, but that is my understanding of it.

Mr. Cox. And those standards which were developed, then, I take it, in or prior to 1952, are still being applied in current questions which arise involving overlap, duopoly, and things of that sort?

Mr. McCONNAUGHEY. That is right.

Mr. Cox. Now, I gather from the testimony of the Commissioners, or statements that have been made, that the reason for not attempting to determine exact and precise overlap in these cases, or coverage in these cases, is lack of personnel and equipment for doing that; is that true?

Mr. McCONNAUGHEY. It would be too expensive to do this.

Mr. DOERFER. No, it is more than that.

Mr. HYDE. Well, if I may comment on that question? The Commission hasn't thought it wise to attempt, particularly in a hearing, to define exact coverage patterns because of the lack of tools or data that would give you the kind of exact determinations that you seek in that sort of thing. The art hasn't developed to the point where the tools available will permit you to define with the definition of "a line," exactly where television coverage would go. And also the Commission has been aware of the fact that when you attempt to count heads to determine exact populations that would get a given signal you run the risk of getting into very doubtful data because conditions vary from antenna to antenna depending on installation and things that would be local to 1 block or 1 house, and of course, certain variables as Commissioner Doerfer mentions——

Mr. Cox. Based on seasonable conditions?

Mr. HYDE. Yes.

Mr. Cox. Do the individual stations undertake such measurements for their own commercial purposes?

Mr. HYDE. I am sure that individual stations do attempt to estimate their circulation, and I am sure that network research departments attempt to get a workable measure of their audience in order to use it for sales purposes, yes.

Mr. Cox. Has the Commission ever undertaken—or any other agency—to make some kind of a check of this simply in terms of set sales in areas which might appear to be white areas according to the Commission's standards?

Mr. HYDE. Our economic section has tried to follow the trend in the industry by obtaining information as to set sales, but not for the purpose of defining the coverage of an individual station.

Mr. Cox. Now, Mr. Jones in his report to this committee, which was forwarded to the Commission for comment, recommended that the Commission should require each television station to file some sort of proof of performance to show its measured coverage. Has the Commission given consideration to that proposal?

Mr. DOERFER. May I ask what the date of that proposal was?

Mr. Cox. It was submitted to you February 17, 1955, in the Jones report.

Mr. DOERFER. Oh, excuse me.

Mr. McCONNAUGHEY. I think Iwould like to read an answer on that into the record.

Mr. Cox. All right.

Mr. McCONNAUGHEY. The letter which Senator Bricker addressed to the Commission on October 1, 1954, as chairman of this committee, requested the Commission supply the committee information with respect to the 108 pre-freeze television stations and all of the television stations which have been authorized since the date of the Sixth Report, and Order.

The material requested was principally of an engineering nature. Upon receipt of this letter members of the Commission's staff were assigned to prepare the requested information for the committe.

On December 3, 1954, the information requested in paragraph 1 of the committee's letter was furnished to the committee. It consisted of three copies of a list which contained the following information pertaining to all television stations as of the date of the television freeze in 1954, and as of October 1, 1952, and as of October 1, 1954: Call letters, channel number, location of stations, name of licensee or permittee, authorized visual power, antenna height above average terrain, antenna height above ground, date upon which station commenced operation and the name of network with which station is affiliated.

Preparation of the remainder of the information requested by the committee required the making of various maps showing the service areas, as limited by interference, of all television permittees in the United States. As applicants for television stations are only required to submit to the Commission information as to their normal service areas, not considering interference, this information was not contained in the Commission files.

The chairman of the committee was informed by letter of October 27, 1954, that the determination of service areas of television stations, as limited by interference, would require the use of considerable Commission manpower. A letter of November 8, 1954, the chairman of the committee replied, suggesting that the Commission request licensees of individual television stations to perform some of the required work. Accordingly, the Commission, by letter dated December 15, 1954, requested all VHF commercial stations prepare and submit to the Commission small scale clear acetate templates depicting their service areas.

The letter advised permittees as to the method to be used in the preparation of these templates. Excellent cooperation was received from permittees in supplying the Commission this requested information. The Commission's staff computed the interference contours and prepared templates showing the service areas of all UHF and educational permittees. A sample map was prepared showing all the existing and proposed UHF stations in the United States.

Because of the great number of services in heavily populated areas of the country, principally the northeastern section, a map resulted which contained sections so densely filled with service contours that it was difficult to identify an individual contour. From the appearance of this map it was evident that it would not be possible to superimpose further service contours on this map and indicate the numbers of services available to certain areas as requested by the committee.

In the early part of 1955 arrangements were made for members of the Commission's staff to confer with Mr. Robert Jones, committee majority counsel, regarding this problem. The Commission's staff members called on Mr. Jones at the committee staff offices on the appointed date, but were advised he would not be able to consult with them. An attempt was made to discuss the problems with other committee members, committee staff members in the office, but they advised they could not do so. Shortly thereafter, Mr. Jones resigned as counsel for the committee, presenting his report and recommendations before resigning.

A letter dated December 21, 1954, from Commission Chairman to chairman of the committee, estimated 47 man-months of manpower would be required to complete this project. A total of 19 man-months had been used already, leaving a balance of 28 man-months which have not been expended.

Mr. Cox. Then the Commission does now have—at least based upon reports of licensees computed in accordance with standards set up by the Commission—information as to their claimed actual coverage?

Mr. McConnaughey. To this extent, that it has been done, yes.

Mr. Cox. That is, as I understand it from that statement, you received such information from all VHF stations and the Commission's staff, itself, made similar calculations for the UHF and educational stations?

Mr. McConnaughey. That is my understanding. I say that is my understanding.

The Chairman. Of course, how does the station do that? Do they do that themselves, or do they hire somebody, an engineer or something like that? I guess that is the way they do it.

Mr. McConnaughey. I think so.

The Chairman. I suppose they all have a tendency to pad it a little bit?

(Laughter)

The Chairman. I mean, make it look better than it actually is.

Mr. Cox. Does the Commission proposed to request that this information be furnished to it on a recurring basis, or at least whenever it seems that there have been changes in power or in the state of the art which might have affected these coverages?

Mr. McConnaughey. There is no plan in that regard at the present time.

The Chairman. Well, in any event, when the Commission has to make an allocation plan, you are going to have to go into that again—and be more accurate on it than just get the station's estimate of it.

Mr. McConnaughey. Mr. Plummer is here, I believe, I think he could explain that.

Mr. Plummer. I am Curtis Plummer, Chief of the Safety and Special Services Branch.

Mr. McConnaughey. At that time, he was Chief of the Broadcast Bureau of the FCC.

Mr. Plummer. I was the member of the staff that talked with Mr. Jones on this problem. First, I would like to underline that there are no service standards, no method of determining service in our rules at present. A certain amount of work was done on that in the sixth report and order, but due to the great variation that you can get in various terrains as you have previously mentioned, Mr. Cox, we just regarded these curves as average and used that only for overlap in multiple ownership.

Now, when we came up to this problem with Mr. Jones on the problem of trying to get overall coverage, we had to take something as a bench mark, so to be equal for all stations, whether it was actually that in the field or not. I want to carefully determine the difference between, let us say, a set of Hoyle's Rules, and what actually happens in the field. So Mr. Jones and myself determined a set of Hoyles Rules to make these calculations—an average situation.

We assumed a certain signal-to-noise ration; we assumed two sets of the Commission's curves; and we figured from there. The thing I want to point out is that that does not necessary correlate with what you would measure in the field. If it does, it is coincidence.

Mr. Cox. In other words, what these stations then submitted was not itself based on actual measurement?

Mr. Plummer. That is right.

Mr. Cox. It was based on their application of the standards that you provided to them at that time?

Mr. Plummer. That is right.

Mr. Cox. It was based on their application of the standards that you provided to them at that time?

Mr. Plummer. Well, I would like to say it this way: That after Mr. Jones and myself agreed on this Hoyle's Rules, then we made that up and sent it out to the stations and said: "Calculate it this way, please."

Mr. Cox. I see. Now, in your opinion, were the overlays you got showing coverage at that time more, or less, likely to approximate actual conditions than the application of the standards of the Sixth Report? So far as service areas are concerned?

Mr. Plummer. Again, I would like to point out that the sixth report does not delineate service areas. Then I will go from there. They probably are a good average condition. But when applied to any one station it could go either way. Now, among engineers and scientists there is a great amount of disagreement on exactly what the correlation is between these Hoyle's Rules and what actually happens.

For instance, one organization—I do not remember who—when they sent in their data and the discs, sent us a letter and said that their field work had indicated, at least in some stations they had measured, that the coverage was somewhat greater; whereas, some others in mountainous terrain thought that the coverage was so much smaller. That goes back to the thing I mentioned before, that after all, they are nothing more than averages. I would like to add one thing.

The Chairman. But you do think you struck a mean average?

Mr. Plummer. Yes, as a mean average, but you cannot apply it to any one station. Now, I would like to point out the reason behind this: Whenever you try to correlate measurements and average conditions, there are a lot of factors like terrain that will make the actual measurements vary greatly. The variation might be in the order of 100 to 1 in signal strength in these television frequencies, whereas, in standard broadcast the order of variation might be only 5 to 10 or 10 to 1.

That is one of the basic reasons we did not put service calculating devices in our rules, because we knew when we got to hearings, for instance, engineer A could measure this and engineer B could measure this, both would vary greatly.

The Chairman. Thank you.

Mr. Cox. Have you made any use of the information that was obtained in this way in any of the subsequent deliberations of the Commission or the activities of the staff?

Mr. PLUMMER. Commissioner McConnaughey answered that, that we got up to the point of measuring the maps and Commissioner Jones resigned and it was dropped at that point.

Mr. Cox. But I mean the information, even as accumulated to that date, then, has not been further used?

Mr. PLUMMER. That is right, the disks are all available and filed a the Commission, and I believe there has been one request from a licensee.

The CHAIRMAN. But you could use them if necessary?

Mr. PLUMMER. Yes.

The CHAIRMAN. In a certain given case?

Mr. PLUMMER. Yes.

The CHAIRMAN. You might want to go back and look at that for some kind of a reference, if you have a mean average there.

Mr. PLUMMER. Yes. They are all made up in disks of an average service area, and the original idea was to put those on maps. As Commissioner McConnaughey pointed out, we ran into a presentation problem of how much data you needed on any one map versus readability, and we wanted to talk about other methods of presentation, and the project stopped there.

Mr. Cox. I take it these disks are different for different stations?

Mr. PLUMMER. Yes.

Mr. Cox. Does it involve any difference in terrain?

Mr. PLUMMER. No.

Mr. Cox. In other words, this is not an effort to adjust it beyond the effective radiated power of the station?

Mr. PLUMMER. No, no.

Mr. Cox. Now, what are some of the practical problems that arise out of the question of whether there is or is not overlap? There is the familiar illustration that has been used here of New York and Bridgeport—the question of whether you can get a signal in Bridgeport despite the fact that the Commission's standards apparently would show it is not within the service range of the New York stations?

Mr. PLUMMER. I think Mr. Allen touched upon that in one of his previous statements. It depends a great deal on how willing a person is on the receiving end to go after a signal—how much money he is willing to put into an antenna; high-gain receiving antenna; a tower to go with it—that is one of the great variables in the thing, besides terrain.

For instance, I understand there are many places in the West where there is only 1 station, and people will put up a 250-foot tower, put a high-gain antenna on top of that, maybe even a booster amplifier; and that tower, antenna, and booster-amplifier are worth 2 or 3 times the cost of his television set. But he does get a signal. It may have some snow. But it is the only thing that he has, and that is better than nothing.

Mr. Cox. Does the Commission, though, really have any knowledge as to whether people in Bridgeport are doing that—or have to do it—to get the New York signals, or are able to get the New York signals with an average antenna?

Mr. PLUMMER. I do not know that a particular study has been made of that, sir. It is a difficult subject. Of course you can go into any one city and start looking at houses and counting antennas and see what they are, but we have not done any of that.

Mr. Cox. The Commission, however, I assume is aware of the possible consequences, in terms of the likelihood of development of local television in these areas, of the availability of a signal from a high-powered station in another community?

Mr. PLUMMER. I would say in an average way we are; yes. In general, you know, as I mentioned——

Mr. Cox. Is that again just from an application of these standards?

Mr. PLUMMER. No. I think I pointed out a while ago that these standards are average conditions, and we just know from general knowledge that there are many places that people get television beyond it, and within any calculated areas there are also holes.

Mr. Cox. Let's take it this way and perhaps I can address this question again to Mr. McConnaughey. I think it was stated last week, or at least in our last hearing prior to this week, that antenna heights had been increased in zone 1, and this action later canceled; and that the purpose for increasing the antenna heights was to provide increased coverage. Now hadn't you already, at that time, received complaints from some areas that the existing VHF stations in other communities were already possessed of too wide a coverage in terms of the possibility of developing local service?

Mr. HYDE. Yes. The Commission was aware of the fact that there were complaints that networks would get into a second community from a first, and to that extent make it difficult for the second community to obtain affiliation with that network. But here is a situation where you have conflicting factors in operation.

On the one hand, you have the interest of setting up conditions that are conducive to development of a local station. On the other hand, you have a need for getting reception at substantial distances in order to reach people who do not live in either city.

Obviously we can't control radiation in such a way as to protect a station in city B and yet provide enough service in certain hinterlands outside of both cities to serve the rural folks and the folks in very small communities where it is not reasonable to expect development of an independent station.

Mr. Cox. Is that true in the Northeast and along the Atlantic seaboard?

Mr. HYDE. In the Northeast it is true that there are more communities and less wide-open space, but this whole problem—the problem you get into when you undertake to protect one service against another gets you immediately into this question as to whether there should be any protection of one competing signal against another when those signals have anything near an equal competitive opportunity.

A policy of protecting local stations in general from the competition of stations which reach the areas from other points would be most difficult of application.

Mr. Cox. Isn't it true, however, that the second priority of the sixth report looks to the development of local TV stations in as many of these communities as possible, and that you simply are never going to create conditions in which that can be done unless some attention is given to this problem?

Mr. HYDE. Let me suggest one way to get reception of programs in a given community is to have a program which will appeal to the residents of that community as against a program from out of town. Now in other broadcast services—in AM radio—we have witnessed the development of very successful local broadcasting. A correlation with the local community in many situations will hold the attention of the residents of that community against the broadcasts from out of town.

But we must recognize, of course, that folks in the small community and in the big one are interested in national affairs; those in the smaller villages just as much as those in the big city. They also have their separate interests, and what is needed, of course, is the development of local services to meet local needs concurrent with the recognition of the fact that there are programs of wider interest which will be competitive everywhere they can be received.

Mr. Cox. But if those programs of wider interest come into this area on a network program from another community, the advertiser who has paid the station originating that program is not going to pay for duplicated coverage in this area, so that leaves the local station, if it does develop, to present local programing, completely dependent upon local advertising; does it not?

Mr. HYDE. As long as we are going to be dependent upon 2 or 3 sources of programing you are going to have that kind of a problem. I suggested yesterday that if we could get enough stations operating on a comparable competitive basis we could expect the development of other program sources which would make it possible—at least this has worked in AM broadcasting—to develop schedules that would be competitive.

The CHAIRMAN. Well, there is nothing—I just ask this question, maybe I am wrong—there is nothing really wrong with overlaps unless they would kill off the economic incentive for local stations? I may be wrong in that.

Mr. HYDE. Senator, you could——

The CHAIRMAN. I mean, that just gives more service to more people?

Mr. HYDE. More selections.

The CHAIRMAN. More selections I should say.

Mr. HYDE. Yes.

The CHAIRMAN. Unless that would completely kill the incentive, or the opportunity, for a local station to operate as a local station and survive?

Mr. HYDE. Right. Now the Commission did attempt, in its sixth report, to try to balance these things in such a way as to provide both area coverage and to provide enough assignments to give opportunity for community assignments.

The one thing that has caused difficulties in the implementation of the sixth report and the attainment of its objectives has been our failure to get the expected development of the ultra high channels.

There would be no shortages of facilities in the first hundred markets—at least there would not be such shortages as to prevent competive operation of three networks and possibly more—if we had been able to get the expected development of the ultra high channels.

The CHAIRMAN. The only difference, I would think, would be that you would have to be much more alert to this thing in the television field because of the cost of programing for a local station versus a network. There are some little local stations that are listened to more in a small community than the network radio stations coming in from a nearby big city.

Mr. HYDE. That is very true in AM.

The CHAIRMAN. Yes? In AM?

Mr. HYDE. Right.

The CHAIRMAN. For instance I know of a case in Bremerton, where all of the Seattle and Tacoma stations beam in, yet the Bremerton station has the biggest audience. That is AM. But in television it would be a little more difficult. I think you would have to be much more alert to it in that case.

Mr. HYDE. In television the cost of programing, and the cost of operation——

The CHAIRMAN. Is a difference?

Mr. HYDE. Yes, it is so different that up to now it has been almost essential to have a network affiliation to operate. Now that is not——

Senator POTTER. Of course, in AM even with your little station you have good programs with the use of your records—same type of quality—that you have in your large stations?

Mr. HYDE. That is right.

Senator POTTER. But in television the big problem is the fact that with your local stations you can't have the programs that you receive from your networks?

Mr. HYDE. We think—at least I think—that there is a possibility of development of additional program resources and of additional apparatus. I am thinking particularly of magnetic tape recordings, and I am also thinking of the development of regional programing, cooperative programing, and more extensive use of films. But these are things it is very difficult to get developed on a national scale without access to more of the larger markets.

Senator POTTER. Even so, I doubt if it would still be competitive with your big programs that originate from our major networks?

Mr. HYDE. I imagine so.

Senator POTTER. When all a person has to do is flip the dial to make the selection, I doubt very much if he is going to select something on tape, when he can get a live program from one of the major networks?

Mr. HYDE. Well, if we are talking about a variety show, undoubtedly that would be true. But there could be, of course, a local basketball game.

Senator POTTER. That is right.

Mr. HYDE. There are many variations of programing, and some categories, interest in local personalities——

Senator POTTER. We have I think in Washington a good, probably a typical situation: We have four major stations.

Mr. HYDE. Yes.

Senator POTTER. One is not a network station. Now I will be very frank with you that unless it has special programs, such as a ball game or some special programs, that station does not receive the watching audience that your other stations receive. And I think they do an excellent job in providing local programs.

Mr. HYDE. During the baseball season we all took a considerable interest in this independent station.

Senator POTTER. That is right.

The CHAIRMAN. Let me ask you this question: Would you consider this true, and I am quoting Mr. Taishoff here [indicating], I guess, on this. In the latest issue of Broadcasting and Telecasting it says:

"What was the greatest impression made upon FCC's Network Committee and its special staff during its "clinical study" of network TV and related operations in New York? Answer is unequivocally: Shortage of competive facilities in top 100 markets. This was recognized not only by networks but also advertising agencies, station representatives and other groups contacted during sessions which concluded last Tuesday.

Would you say that was a fair analysis of the situation?

Mr. HYDE. Yes, I think it is. I would add a little more to that. I believe that there are national accounts that would be available for broadcasting on a national basis now, if they could obtain clearances in the first 50 markets.

The CHAIRMAN. Top markets——

Mr. HYDE. Yes.

The CHAIRMAN. Let's proceed here.

Senator POTTER. You made a statement, or somebody made a statement yesterday I believe, that 25 advertisers——

Mr. HYDE. Yes, I did make a statement that 25 advertisers account for as much as 50 percent of the national network advertising, and I was relating that to sale of time.

I think the figure actually runs closer to 60 percent than 50, and I am only talking about station time. I think if you took into consideration talent costs and others the figure might be higher.

Senator POTTER. That is not a healthy situation.

Mr. HYDE. No, sir, I regard that as a very restrictive situation.

Mr. MACK. I think the same thing would apply to any other medium of advertising—the Saturday Evening Post, any newspaper.

The CHAIRMAN. It might.

Senator POTTER. But they can still go into the smaller magazines or less expensive magazines for advertising. But you have just so much time on the television stations.

Mr. MACK. Senator, what I meant was I think if you took the same 25 advertisers, they spend more money with every other medium of advertising than anybody else.

Mr. COX. Those media are not restricted as are the television frequencies we are talking about—isn't that the fundamental problem?

Mr. MACK. We are speaking about getting the national advertising dollar.

Mr. DOERFER. On a national basis.

Mr. COX. Isn't the problem that if the 25 companies with the biggest advertising budgets go out to buy television advertising, they are going to prevent others who have funds and would advertise if they could get the time clearance simply because there are not enough facilities in enough of the major markets to give them a substantial coverage to justify such expenditure?

Mr. MACK. I think you come right back to economics. The local grocery store cannot pay as much as A. & P.

Senator POTTER. Say you have four companies. You have one company that advertises over one network; another one over a second network; the third one on the third network; where is that fourth company going to go?

Mr. MACK. I do not know whether you are going to get General Motors to switch to a fourth network. I don't know whether you are getting them to switch from the Miami Herald to the Miami News.

Senator POTTER. Let's use the automobile industry; Maybe General Motors, I do not know what they advertise over, but say one is with NBC, maybe Ford with CBS, Chrysler with ABC, what about Packard-Studebaker?

Mr. COX. What about Chrysler——

Mr. MACK. They are probably still on NBC.

The CHAIRMAN. General Motors advertises with their dealers mainly.

(Laughter.)

The CHAIRMAN. Let's go on here because I think that we realize that the quote there just about hits it. I don't know what the answer to the problem is. That is the American economy. I suppose the same is true on billboards. There is just so much billboard space available, and yet Safeway buys up all the billboards to the exclusion of the local grocery store.

Mr. COX. There is a lot more real estate available for more billboards.

The CHAIRMAN. Yes, but it gets down to availability, I think that is your problem.

Mr. COX. There are a number of other matters which have not been discussed by the Commission in its current appearance but which were referred to in earlier reports as possibly providing assistance in solving the UHF problem. For instance, in your Preliminary Report of March 16, 1955, you stated that you felt the Commission's action of September of the preceding year in relaxing its multiple-ownership rules—which we referred to briefly yesterday—to permit one person to own 5 V's and 2 U's was going to strengthen UHF generally. Could you tell us whether, in your opinion, this has actually been the case under the operation of this change?

Mr. MCCONNAUGHEY. Whether it has strengthened UHF?

Mr. COX. Yes.

Mr. MCCONNAUGHEY. I think it has protected UHF.

Mr. COX. In what way?

Mr. MCCONNAUGHEY. I think it has protected it by preventing too many of the larger people to get too many stations. Of course, we have gotten knocked down by the court here recently on our multiple-ownership rule. The Court of Appeals said it will not stand up. So we have tried to constrict this so the big people could not get all the control but so far the courts knocked us down.

Mr. COX. But the effect of the relaxation of this rule was to permit the big people to own 2 more stations, as long as they were UHF?

Mr. MCCONNAUGHEY. Yes.

Mr. COX. I think there——

Mr. MCCONNAUGHEY. It was to help in the regard that they could have 2 U's, as I understand it. I was not here at the time. It was 5 V's, 5 stations before. Now they can have 2 U's.

Mr. DOERFER. Multiple ownership?

Mr. MCCONNAUGHEY. Yes.

Mr. Cox. How many multiple owners have taken advantage of this rule?

Mr. McConnaughey. NBC, CBS, Storer. That is about it.

Mr. Cox. Just those 3?

Mr. McConnaughey. I think that is right.

Mr. Cox. That involves, then, a total of something like 6 UHF stations that have been brought under the operation of this rule?

Mr. McConnaughey. Yes.

Mr. Cox. Is it not true that in each case those were stations that were already on the air, and so did not represent the construction of new UHF stations?

Mr. McConnaughey. Yes, but they were stations having a very difficult time getting along in the world, and they have a better chance now. I think it was a wonderful encouragement to UHF. The statement I made in 1955 sure holds good today.

Mr. Cox. Were they not stations that were in better markets, certainly as far as UHF were concerned?

Mr. McConnaughey. They were in better markets, but they were not doing very well. They were having a tough time, about ready to go under, I guess, most of them. This has given quite a boon to UHF.

Mr. Cox. As I understand it from your testimony yesterday, you feel in the case of CBS in Milwaukee they probably are still losing money?

Mr. McConnaughey. They are having a rough time. They were about even, or losing a little, but I have a suspicion that they will make money. It is confidential information and I actually do not know as of today; but I would venture a hazard that they will make good on it someway or other.

Senator Potter. Are the other stations making money, Storer and NBC?

Mr. McConnaughey. We do not have the latest financial reports.

Mr. Cox. Isn't it true that in one of the trade magazines it was reported that Storer showed, for the first time, a profit in the Miami UHF station in 1955, and that was of course before the appearance in that market of additional V's?

Mr. McConnaughey. I think he showed a profit in 1955, I think I saw that.

Mr. Cox. Another measure which you listed as likely to be helpful was the proposed rule-making to preclude the establishment of transmitter sites more than 5 miles from the city in which the station is authorized, unless special reasons for such a location are established. Now the final outcome of that proceeding was that you decided against adopting such a rule, wasn't it?

Mr. McConnaughey. That is right.

Mr. Cox. Can you tell the committee the basis upon which the Commission decided that this was not going to help UHF after all?

Mr. McConnaughey. We did not decide that. We thought it was too arbitrary, and we thought we would put it on a case by case basis.

Mr. Cox. So it is going to be left initially to the application of the licensee in each case, which would be then accepted or refused by the Commission?

Mr. McConnaughey. That is right. We felt a hard and fast rule just practically is not workable.

Mr. Cox. Does the Commission have a policy of favoring the location of transmitter sites within some such reasonable distance of the community in which a channel is allocated?

Mr. McCfnnaughey. Yes, I would say that is a correct statement, yes.

Mr. Cox. Doesn't the establishment of transmitters at remote locations result in straddling markets, so that a station which was allocated to city A ends up in duplicating, in part, the coverage of a station allocated to city B?

Mr. McConnaughey. That sometimes is true, yes.

The Chairman. Doesn't the Commission, when you grant an application—or a construction permit I guess is what you would call it—doesn't the site have to be approved?

Mr. McConnaughey. That is right.

The Chairman. On a case by case basis?

Mr. McConnaughey. Yes, sir.

The Chairman. And naturally in each case you would have to look at the distance from the coverage area?

Mr. Cox. Don't you have instances in which application has been made for the location of transmitter sites to serve city A, which are actually closer to city B, which also has an allocation.

Mr. McConnaughey. Yes.

Mr. Cox. Have some of those applications been granted?

Mr. McConnaughey. Yes. I think there is one; down in Galveston-Houston I think one was granted.

Mr. Cox. Doesn't this amount to a sort of a private modification—with the concurrence of the Commission—of the allocation scheme in this particular, in that you are, in effect, moving the service area of this assignment from the place where it was originally contemplated in 1952?

Mr. McConnaughey. I do not think the Commission has that feeling about it. I think that is one of the things they are going to consider in this rulemaking. We may have to go—you see I am going back and saying something about what happened when I was not even around.

Mr. Cox. I realize that, sir.

Mr. McConnaughey. But we may have to go to an economic basis in this matter in order to serve more people with more different services. We speak of 1,800 channels. Do you know where a good many of them are? They are in places where you probably never could have television in a thousand years. In other words, they were just placed here and here and here and here, all around. So we may have to go to an economic basis.

What are the economics of this place, locating a transmitter? If your transmitter is located out here [indicating] where it serves 200,000. If it could be moved where it will serve 2 million, then you have got a question of taking it on a case-by-case basis, looking toward the public interest; and that is where we may have to come out in the final analysis.

I think many Commissioners have that feeling. I have stuck a little bit close to the old hard and fast rule of sticking by a city, but I am not at all sure that I am right in my thinking.

Mr. Cox. If you move it so that you can serve 2 million instead of 200,000, haven't you possibly created a situation where, in obtaining that desirable coverage, you have at the same time reduced the chance of developing other TV outlets to serve the extra 1,800,000?

Mr. McConnaughey. No. Well, so far it has not worked that way. In other words, we are very careful, if we—as I understand it again, I think the Commission has been very careful. When they would permit a transmitter to be moved from Galveston toward Houston, they have been careful that they were not taking service away from anybody.

That the Galveston station, from the standpoint of economics, probably would have to go out of existence, but by moving in closer where they got a bigger coverage, they then were able to stay in business and cover more people. More people would get service, and I think that has been a good deal of the theory of this thing.

In other words, why let a fellow die because he is sitting out here at Salem, Oreg., when if he would move in closer to Portland he would be able to live. I mean that is the type of thing that is involved in these considerations, and that is the reason we made no hard and fast rule. And we would have been very foolish if we had adopted a so-called 5-mile rule. We would be fighting economics, and you can't do it.

Mr. Cox. Has there been any indication to the Commission that, in some instances, these requests to move transmitters are made in order to avoid overlap with an existing station which has an affiliation with a network, to permit the man who is seeking a remote transmitter site to get an affiliation that he otherwise could not have gotten?

Mr. McConnaughey. Oh, I think your network problem comes into it every time, almost every time you enter into one of these moves. They are all fighting to get the networks.

The Chairman. Aren't you getting down to what is the real problem here, in this whole allocation? It is not how many stations you can put on the air—it is how many can live.

Mr. McConnaughey. You said a mouthful there, sir. [Laughter.] That is a fact. You will pardon me for saying that, Mr. Chairman, but that is the truth.

The Chairman. All right.

Mr. Cox. Isn't there also, however, an underlying problem not only of providing facilities where they can now live, but of providing room for growth in areas where they can be supported at some time in the future?

The Chairman. As our economy expands, you have got to be able to have the allocations, or whatever these engineers are trying to study now—there must be channels available as our economy expands, to take care of new stations for better coverage as the economy changes the picture.

Mr. McConnaughey. That is the balance.

Mr. Cox. Another matter that you mentioned in your March 1955 report was that you were——

The Chairman. Excuse me. That is what I think—I may change my mind—that no allocation plan can be hard and fast. It can't deal only with the present economy, because we hope we are living in an expanding economy.

Mr. McCONNAUGHEY. And many intelligent people feel that these things should be taken on a case-by-case basis; and for you or for me, or for anyone else, to sit here with 160 million people in America and try to project what it is going to be in 15 or 20 years with 210 or 220 million people in America, we can't do it. It just cannot be done.

The CHAIRMAN. And with that, we hope, will come a lot of technological advances that may make it easier to fit into this expanding economy?

Mr. McCONNAUGHEY. Quite right.

The CHAIRMAN. And we may be able to build these stations much cheaper, so that the local stations can survive. The programing may be cheaper. Capital investment may be reduced. And ultimately we try and end up with everybody having this service.

Mr. McCONNAUGHEY. That is right. But you cannot—a bureaucratic agency cannot do that by artificial means.

Mr. Cox. Another item you mentioned in your 1955 report was that you were continuing to review the charges of the telephone company for direct intercity program transmissions. Now is this a formal proceeding or just a staff review that is continually underway?

Mr. McCONNAUGHEY. I think it is a formal proceeding.

Mr. BARTLEY. Informal.

Mr. McCONNAUGHEY. Informal.

Mr. Cox. I think you said at that time—last March—that you expected to conclude this in the near future. It has not been concluded to date has it; or is it something that is periodically concluded and then reopened?

Mr. McCONNAUGHEY. I would say it is under constant review. I would think it would just be under constant review. Maybe one of the staff members here, Mr. Cowgill, Chief of the Common Carrier Bureau, is better able to answer that question.

Mr. Cox. Can you help us on that?

Mr. COWGILL. Harold Cowgill, Chief of the Common Carrier Bureau. Did you have a question pending?

Mr. Cox. The question is this: Mr. Bartley said this is an informal proceeding. Do you periodically, then, either accept new tariffs that are filed, or reject them, or adjust rates, or does this go on all the time? What is the nature of the operation?

Mr. COWGILL. Generally speaking, it is a continuing operation. Let me describe this area of the problem in this way. With the development of television, along about 1948, the first tariffs were filed with the Commission which established intercity transmission rates.

The question was raised at that time as to whether or not those rates were reasonable within the concepts of public utility regulatory policies and law and so forth. That proceeding was never drawn to a close; it is still a continuing, pending proceeding.

Periodically during that period—I think now we have had three complete studies of the costs of doing business in this particular area by the telephone company.

Just this last year, with the commencement of your interest in this subject, we asked the telephone people to make a thorough third study of this problem. That study was completed late last summer, and the staff has been, both in the field and in Washington, reviewing the results of those studies.

Mr. Cox. Then has there never been any determination made that the rates that have been charged for the last 7 years are, or are not, reasonable?

Mr. Cowgill. No determination has been made.

Mr. Cox. What if it is decided they are unreasonable; then are there refund procedures available?

Mr. McConnaughey. No.

Mr. Doerfer. There won't be any refunds. [Laughter.]

Mr. McConnaughey. I think we might tell you they are very apt to go up. The television industry has made a very close study of it at a number of conferences which were had, and I think from the standpoint of costs they are apt to go in the opposite direction.

Mr. Cox. If they are going up, certainly this is not going to produce anything that would be of assistance to a struggling UHF station?

Mr. McConnaughey. No.

Mr. Cox. You stated also in your preliminary report that the Commission favored the removal of excise taxes on all channels on receivers in order to promote their manufacture. I would like to ask whether you formally communicated your views to the appropriate committees of the Senate and House of Representatives on that matter?

Mr. McConnaughey. We contacted the Bureau of the Budget. I think we wrote a letter to one of the committees. Does anybody here know?

The Chairman. I don't know that we have received a formal letter from you, but surely the committee understands—this committee at least understands—that you people were all for it.

Senator Potter. I believe they submitted a letter.

Mr. McConnaughey. Yes, we reported it right here.

Senator Potter. To the Finance Committee——

The Chairman. Then we took it to the Finance Committee. So I think you will find it is on record over there.

Mr. Hyde. That was in the previous session. Yes, we did.

Senator Pastore. There, again, aren't we whistling in the dark? I mean, does anybody really hope that an exception is going to be made on the excise tax?

The Chairman. No; I do not think so. We made a good try, but it did not receive any support. I appeared before the Finance Committee, and I talked to the members individually, and I find no response whatsoever to it. Of course, the Treasury Department is vigorously opposed to it.

Mr. Cox. Has an effort been made——

Mr. McConnaughey. Senator Byrd probably is not favoring it very strongly.

The Chairman. No. And the rest of the committee, too.

Senator Pastore. It would be a nice thing, if it is going to happen.

The Chairman. Right at this point would be a good place to put in the record an article from the Columbus (Ohio) Dispatch. We have all these problems. Now here is another one that has come into the picture. This is by Robert Connors, the radio-TV editor, and reports that he went out and personally made a check with TV salesmen to inquire about the feasibility of purchasing a TV set equipped to receive ultra-high-frequency channels, in order to get the new Ohio State University station which is to go on the air this month.

"I'm not familiar with this matter of VHF and UHF," I told the salesmen. "A friend said that I should get a set with UHF. What do you think?" * * * The gist of each salesman's response was: Unless you are interested in "educational" programs, don't bother.

So we have the salesmen now in this. [Laughter.]

And he went to all the places in Columbus and he even called service companies. They had people call to get their sets converted to UHF, and the service people were not interested. So there is another problem.

Senator BRICKER. I would not want to clutter up the record with this, so take it off the record.

(Discussion off the record.)

(The article is as follows:)

[From the Columbus (Ohio) Dispatch]

ON THE AIR: THINGS TO KNOW ABOUT UHF—AND WOSU-TV

(By Robert Connors, Dispatch radio-TV editor)

Are local television salesmen and servicemen playing fair with WOSU-TV—and the public?

I know a few who are not. First, let's discuss TV salesmen. Not too long ago I contacted several salesmen in their stores and without identifying myself inquired about the feasibility of purchasing a TV set equipped with ultra-high-frequency channels in order to receive the new Ohio State University station which is to go on the air February 20.

"I'm not familiar with this matter of VHF and UHF," I told the salesmen. "A friend said I should get a set with UHF. What do you think?" I asked.

The gist of each salesman's response was: Unless you are interested in "educational" programs, don't bother. And it was the way the salesmen said "educational" that would make many customers decide not to bother with UHF.

"Is that what you recommend when customers inquire about getting UHF?" I asked. In each case, they said it was.

I don't think it's fair to give a customer such an offhand opinion of the new station. The customer ought to be presented details of what UHF—and in this case, what WOSU-TV—is likely to offer. Then let the customer make up his mind rather than get a VHF set home and become dissatisfied with it.

Since some salesmen are not bothering with the explanations. I'll do it briefly here.

After it once gets on the air and irons out the initial bugs of operation, WOSU-TV plans to offer:

(1) News, sports, musical and children's programs conducted by its professional staff. The TV station, just as the present radio station, will not be a student endeavor.

(2) Programs conducted by members of the university faculty. These will be information as well as instruction broadcasts.

(3) Community programs conducted by members of local organizations.

(4) Kinescope programs made for the Educational Radio-TV Center at the University of Michigan at Ann Arbor, Mich. An example of the type of broadcasts the center produces (although this one may not necessarily be shown by WOSU-TV) is Dr. Frank Baxter's Shakespearean program which has received wide acclaim in the press.

(5) In-school instruction programs. These programs are not planned for the immediate future but will eventually become a part of the daytime WOSU-TV program schedule.

As far as TV service is concerned, the TV station has received several telephone calls from local residents who were attempting to get their sets converted to UHF. One woman reported that the serviceman tried to discourage her and did not agree to put in the converter until she became angry. These cases probably are rare, but they should not occur at all.

Many sets can be converted in two ways, and be sure to inquire about both before converting. One is through a boxed converter which sits on top of your present set. Although converters come in all sizes and types, you can probably get one for your purposes for approximately $20.

If you are able to decipher the instruction book and unfasten a few screws on the back of your TV set, you can install it yourself and save the service fee. With most of these converters you can receive any UHF station on the air locally.

This, however, is of dubious value since the only other UHF channel available locally, for a commercial station, may not be used.

The other way to convert a set is through a "strip" converter. A TV serviceman tells me the cost is usually $10 (plus installation) for such strips. They are adjusted to pick up only one channel and should be set for channel 34 for WOSU-TV.

Some sets (those with wafer, or continuous, type tuners) can be converted only through the box converter.

If your present set has an outdoor antenna, it will also serve a UHF set. If you have an indoor antenna, "rabbit ears," it too will serve a UHF set, in most cases.

TV servicemen say that you may find reception is clearer if the "ears" of the indoor antenna are lowered to a point close to the set.

Next Sunday I'll discuss what other UHF stations have discovered about the rate of conversion to UHF.

Mr. Cox. In this matter of the excise tax is it your opinion then that no further effort will be made by the Commission to persuade the Treasury or Congress on the advisability——

Mr. McConnaughey. Yes, we have already spoken in favor of it. No, we are not going to do anything further.

Mr. Cox. At this session you are not going to press the matter again?

Mr. McConnaughey. No.

The Chairman. The Commission would only express their opinion and then you could not go any further unless you were asked to, or unless you were called up before the committee.

Mr. McConnaughey. That is right.

The Chairman. And asked your opinion. But I think it is common knowledge up here on the Hill, and down in the Treasury Department, what the feeling of the Commission is about this matter?

Mr. McConnaughey. I think so.

Senator Pastore. Yes.

Mr. Cox. You further stated that you believed that voluntary action by manufacturers looking to expanded production of all-channel sets would help in the development of UHF. Now, has the Commission been able to do anything to encourage this, informally, as far as manufacturers are concerned?

Mr. McConnaughey. No; I do not think the Commission or your committee has been able to do very much.

Mr. Cox. Have you consulted with representatives of manufacturers about the problem?

Mr. McConnaughey. Talked to them at various times, I have talked to them personally at various times and just—well, just have not gotten any place, that is all.

The Chairman. And this committee called them in. We had them all here for a long meeting, and the only answer they had was removal of the excise tax, although they did say that they were hopeful that they could do more themselves, in their laboratories or their research departments, to get the cost of an all-channel set down cheaper, so that it wouldn't make much difference which kind they manufactured. And I honestly believe they they are trying to do that.

Mr. BRICKER. Has there been any advance, since we had the report at the time of the hearing, in the technology of production so that the cost of the combined set, the complete set, is less than it would have been then?

Mr. MCCONNAUGHEY. Is Mr. Allen here? Chief engineer.

Mr. ALLEN. I don't have any information on the cost of the thing. The only information we have on the advance of technology has been the development last fall of a new tube which should make a successful UHF receiver.

The CHAIRMAN. Would it make it——

Mr. ALLEN. I don't think the cost would be materially different.

The CHAIRMAN. It would make it cheaper, wouldn't it?

Mr. ALLEN. Well, I am not sure of that because the sets that have been made up to the present time do not have a radio frequency, an amplifier ahead of the section of the set that changes the signal down to a lower frequency, and the sets have been defective in that respect. What they need is a front-end section which is equivalent to the front-end section in a VHF receiver, which would amplify the signal just as it comes into the set. That is the tube they haven't had. This new tube will do that, and will also make the set operate through all of the channels up to Channel 83. Some of the sets would not do that—the sets would operate on the lower UHF but not on the upper end. But this new tube should make them operate through there.

Senator PASTORE. The argument has been made here that V is much better than U. Now, with this new tube would you say that improves the status of the U?

Mr. ALLEN. Relative to the V it should improve the status.

Senator PASTORE. By comparison, to what extent would it improve it? Would it make it as good as the V in your opinion, or not quite so good?

Mr. ALLEN. It depends on what you mean by as good. In certain conditions the U promises to be better than the V in that there are four kinds of miscellaneous noise to get into your set—ignition noise and things of that nature are practically nonexistent in UHF. But on the other hand, from the nature of the propogation of radio waves, and the fact that a VHF antenna is bigger, and the fact that as far as we know VHF sets will probably be more sensitive than UHF sets, if you want to get extended range, VHF is likely to get extended range beyond the U.

But as long as you can get enough coverage so as to get good support for the UHF it seems to me that the UHF can be competitive with the V.

Senator PASTORE. With this new tube especially?

Mr. ALLEN. That is true. The rate at which it is going to be implemented and put into new sets is going to depend on the demand for the sets.

Senator POTTER. What about the maintenance cost for this new tube?

Mr. ALLEN. We have no experience with that. The maintenance cost is going to be the problem of the tube, and the circuit it is going to be put in, and the whole design of the receiver. This tube has just come out of the laboratory and it is going to take some experience. We have had no experience with it at our laboratory at all. We don't even have a tube available.

Mr. COX. Is it in production yet?

Mr. ALLEN. I don't know whether it is on production line yet or not.

The CHAIRMAN. Anyway, this is one instance that proves that we are making some technological advances toward an answer to the problem?

Mr. ALLEN. We certainly will make technological advances. If there is a demand for the UHF receiver, that is.

Senator BRICKER. Just one question: Regardless of the demand, if you have level terrain the UHF signal, picture and sound, are just as good as the VHF within a certain radius, are they not?

Mr. ALLEN. Within the radius to which it provides a required signal level it is just as good as the VHF, and we have measured data from several stations which indicates that in level terrain the UHF gets a good signal and gets good range.

Mr. COX. Mr. Webster?

Mr. WEBSTER. I think we can look, in the near future, for some help in this production of UHF receivers, or combination, from the color situation, because undoubtedly there will be a drive in the very near future for the production of more color receivers. As more of those come in and the price goes down, I think you will begin to see color receivers bought instead of black and white.

That isn't today's solution, but I am sure that before long you are going to find that the color situation is going to have an effect on the increase in the number of UHF receivers.

The CHAIRMAN. Are color sets all-channel?

Mr. WEBSTER. Yes.

The CHAIRMAN. Is this one we have in here (pointing to adjoining room) all-channel?

Mr. WEBSTER. Yes. I am not saying every color set is going to be all-channel, but I think the move will be in that direction.

Mr. COX. We hope to get representatives of the manufacturers in to tell us about that.

Senator BRICKER. There is no more difference, then, in color reception that would distinguish UHF from VHF than there is in the black and white?

Mr. WEBSTER. No, sir.

Mr. DOERFER. It might be a little bit better.

Senator BRICKER. It might be better?

Senator PASTORE. Why is that so, Mr. Webster; why is it better?

Mr. WEBSTER. The same standards are used, same number of lines, same frames.

Senator PASTORE. I am just curious, that is all. I was just wondering why, technically, UHF is better for color than VHF.

Mr. MACK. I don't think he heard your question.

Mr. COX. The question is why UHF is possibly going to be better for color than VHF.

Mr. HYDE. Our engineer will tell you that he can transmit more intelligence usable for color reproduction in the ultra-high band. That may relate to this freedom from noise as well as other considerations.

Senator PASTORE. I see.

Mr. HYDE. I have had one engineer tell me that he has observed it, and noticed the improvement in the transmission but he, as an engineer, wasn't right sure why it all happened.

[Laughter.]

Mr. HYDE. But he was sure that it did happen.

Senator BRICKER. That is a very encouraging development, I think. If the transition could take place at the same time, or the one encouraging the other.

Mr. HYDE. And then as more color comes on the air, the more people will be buying color sets—if and when they get cheaper, which they probably will.

Mr. BARTLEY. Mr. Chairman, the difficulty, I might add, is that the color sets aren't necessarily going to be all-channel sets.

The CHAIRMAN. I thought they were.

Mr. BARTLEY. They are not. And the same competitive factors will enter into the manufacturing and sale of sets with color that do so with black and white. And the manufacturer that can sell a cheaper set in color will bring the others down with him before it is over with.

Mr. COX. Isn't it true that the Commission presently sets technical standards for transmitters—minimum standards? That is correct, Mr. McConnaughey?

Mr. MCCONNAUGHEY. Yes, that is correct.

Mr. COX. But you have taken the position that, at least under present statutory authority, you do not have power to fix standards for the receiver at the other end of the signal?

Mr. MCCONNAUGHEY. That is right.

Senator SCHOEPPEL. I would like to ask this question now, since we were talking about the difference in the picture presented by UHF and VHF on the color sets. Can somebody here tell us for the record—and I am merely inquiring for my own information—what is the differential in cost between an all-inclusive type of set in color as related to the all-inclusive type set in black and white.

Mr. MCCONNAUGHEY. The difference in cost?

Senator SCHOEPPEL. Yes. Does the corresponding cost run about the same?

Senator BRICKER. You mean as bmetween UHF and VHF?

Senator SCHOEPPEL. I mean as between UHF and VHF, yes.

Mr. MCCONNAUGHEY. I guess the UHF would be $25—I am just estimating this—$25 to $40 more. And I think what Commissioner Bartley said is something that this committee should keep in mind. We shouldn't attempt to impress you with the idea that every manufacturer is going to put out, in color, all-channel receivers, because several of them have started out to do that, not all of them—some are not.

But I think the manufacturer would be very honest with you if you would ask him. If his competitor comes out and he is knocking the price off $25 or $30 and he is selling them, that will be the end of that all-channel business. Now, that is a very practical situation that would result. I think RCA, Philco or any manufacturer would tell you just that. They may start out with the all-channel sets, which cost a little more money, but if their competitors don't do it, and they are cutting the price and they are losing sales, that is the end of it.

The CHAIRMAN. What would you think, just offhand, Congress could do, or the FCC could do, to encourage the all-channel color set? It is just starting out; maybe we could take the tax off color sets.

Mr. HYDE. That bill which would take the excise tax off the all-channel set would apply to the color and would be a tremendous incentive.

Mr. McConnaughey. No question about it.

The Chairman. Because this is a new thing.

Senator Potter. If we limit it just to color, we wouldn't have the big revenue problem that the Treasury confronts us with.

Senator Pastore. If the excise tax was merely being imposed upon these sets, I could see where you could work up a logical case that it ought to be removed in order to encourage this all-channel set. But, after all, this excise tax applies to jewelry and other things. When you begin to single out one, you run into some difficulty to justify that exception. But if it were decided, let's assume, in the public interest in order to have a nationwide competitive television system that you must have, let's say, this intermixture as against deintermixture, in order to keep UHF alive, and that it would promote the public interest by having these all-channel sets, then without the excise tax do you see any relief at all in speaking with the manufacturers?

In other words, if the very survival of UHF in a VHF market depended upon an all-channel set in color, would you feel that you would have any authority to encourage the manufacturers to have all-channel sets?

Mr. McConnaughey. This is certainly a curbstone opinion——

Senator Pastore. Yes.

Mr. McConnaughey. You can be sure. Offhand, I can't quite see the authority.

Mr. Cox. Haven't you recently imposed a requirement that receiving sets bear a certificate that they are free from excessive radiation?

Mr. Doerfer. Well, that is definitely our duty under the act.

Mr. McConnaughey. That is an obligation which is specifically there.

The Chairman. I think the point that counsel is trying to make here is—what they are trying to do is not be critical—but if you do have some authority over receiving sets, that you might be able to go a little further, and if you haven't got that authority, that may be something we want to look at.

Mr. Webster. We have authority over the emissions of any piece of apparatus——

Mr. Cox. Isn't the reason that you can do this, with respect to emissions from the set, because it is going to interfere with other radio transmission or reception? Can't you perhaps, by analogy, take the position that you will require certain minimum standards with regard to the number of channels that this set is going to receive in order to preserve and promote your responsibility for the development of a nationwide competitive television system?

Senator Bricker. That would have to be tested by the facts.

The Chairman. I am afraid we would have to give them some more lawyers. [Laughter.]

Mr. McConnaughey. I want to talk to my General Counsel about that, and think about it myself.

The Chairman. O. K. I think this would be a good time to take just about a 5-minute recess and give the reporter a rest here.

(Recess.)

The Chairman. The committee will come to order. The committee will proceed.

Mr. Cox. Mr. McConnaughey, the last suggestion which you made to this committee in your report of July 21, 1955, was that you thought that UHF would be helped as a result of a proceeding instituted the preceding month for the purpose of increasing maximum power for such stations from 1,000 kilowatts to 5,000 kilowatts. I think there was a comment made yesterday that RCA had announced the placing on the market of a 4,500-kilowatt transmitter. What is the status of this rulemaking proceeding—has that been concluded yet?

Mr. McCONNAUGHEY. It has not; no.

Mr. COX. How many UHF stations are now operating at the presently permitted maximum of 1,000 kilowatts?

Mr. McCONNAUGHEY. How many of them? I will have to get that, and supply it.

Mr. COX. Can you get that information for us, for the record?

Mr. McCONNAUGHEY. Yes.

Mr. COX. Isn't it two?

Mr. McCONNAUGHEY. I think 2 or 3. I can think of two offhand. There might be a third one.

Senator POTTER. As of the time of the last hearing they experienced difficulty in receiving the powerplants that they needed. Has that been remedied?

Mr. McCONNAUGHEY. Again, I am going from memory. I think it has, to some extent. There was some trouble over at Wilkes-Barre, I think it was, and I believe that RCA went in there and straightened a good deal of that out. I believe George Storer has installed one down at Miami, and my understanding is that he has had pretty good success with it.

Mr. COX. Has the Commission any information as to the probable cost of a 5,000-kilowatt transmitter, as compared to a VHF transmitter?

Mr. McCONNAUGHEY. Again, I think that can be furnished.

Mr. COX. Can be furnished to us?

Mr. CONNAUGHEY. Yes.

Mr. COX. Fine. Can you also furnish us information as to the comparative costs of operation of a UHF transmitter at maximum of 5,000 kilowatts as compared with the cost of a VHF transmitter?

Mr. CONNAUGHEY. We haven't any reports to show it yet. Just as soon as we get it we will furnish it to you.

The CHAIRMAN. Well, in a general way, what we want to know is whether it will cost more or less.

Mr. COX. Whether it is much greater—the proportion. Do you have any information upon which you can found a belief as to whether or not a UHF station with a 5,000-kilowatt transmitter can duplicate the coverage of a VHF station operating at its presently authorized maximum?

Mr. McCONNAUGHEY. It would depend upon the terrain. I am giving my opinion now. I do think that we have our staff people—our staff people, I think, have observed an operation of that type and in certain types of terrain it does a pretty creditable job compared with the VHF. I don't know whether you could say it is just the same—whether you could say sufficient study has been made to say it is just the same. I do know personally I have observed one of those installations and they give a good signal out quite a long distance. But I don't know how many tests have been made to show what it would do in apartment buildings and built-up sections.

Mr. COX. Mr. Doerfer?

Mr. DOERFER. The height of a transmitting antenna may be more important than an increase in power. There is a relationship between the UHF signal and line-of-sight radiation—more so than in the V, as I understand it. So that just the increase in power, although it may send a signal out farther from the center of the circle, may not get the coverage that a V would get, nor would it probably get the coverage if you raised the antenna so that the radiations would beam downward and fill in the so-called shadow areas.

Senator POTTER. Isn't it true many times with the UHF receiver that just by shifting the height of the receiving antenna, or shifting the place on the roof or whatever it may be, means the difference between getting a good signal and not getting a good signal? It is much more sensitive in that respect than a VHF; isn't that correct?

Mr. DOERFER. I understand so.

Mr. MCCONNAUGHEY. That is correct.

Mr. COX. Mr. Webster?

Mr. WEBSTER. I think we should remember also that in the V portion of the spectrum, the low V's and the high V's require different elements of power. So that you have the same principle that stations in the low part of the spectrum, in the element of power, are different than the high.

Mr. COX. Under your rules, and in the current state of the art, you have been able pretty well to equalize the effectiveness of stations on all of the V channels?

Mr. WEBSTER. The stations do it themselves.

Mr. COX. Yes. But you adopted rules to permit them to do it.

Mr. WEBSTER. Under rules, yes. But I say the principle is the same. You have got to have more power under certain conditions.

Senator BRICKER. Just one question.

Mr. COX. Yes, Senator.

Senator BRICKER. What is the real technical difference between UHF transmission and the VHF that causes the greater distance of the signal in the VHF? That is a technical engineering problem, but I would like for the record to show it.

Mr. MCCONNAUGHEY. Yes.

Mr. ALLEN. I may say there are two principal differences. One difference is, as Commissioner Doerfer said, the UHF signals travel more nearly in the line of sight, like light does, than do the VHF signals. The VHF signals will bend more easily and get down behind obstructions and will follow the curvature of the earth better. Then there is a second propagation difference, in that the UHF signal is absorbed more by vegetation. Where you have lots of trees going overland, with lots of trees, forest and so forth, the UHF signal is absorbed more quickly than VHF.

Senator BRICKER. Why is that?

Mr. ALLEN. It is just a——

(Laughter.)

Mr. ALLEN. The UHF will have a wavelength which is measured in a few inches, and things like pine needles and twigs and things of that nature have a length such that they resonate that frequency, like you pluck a fiddlestring. And when they resonate, they have large amounts of current in them, and the signal is absorbed by the action of that current in the twig or the leaf. Whereas, with VHF you have to have longer things to absorb this energy, and the energy is absorbed less rapidly.

Senator BRICKER. Coming back to what Commissioner Webster said a moment ago, is that a matter of degree between UHF and VHF and is there the same range in VHF and then you just continue on to the shorter wave in UHF?

Mr. ALLEN. There is a continuous progression in the wavelengths from VHF to UHF; however, there is not a continuous progression in the frequencies which are assigned to television. They are in various blocks. In the VHF you have 3 blocks of frequencies, you have channels 2, 3, and 4 together, and then 5 and 6 are together, and 7 to 13 are together. Then you skip about 250 megacycles and then you come to channel 14.

Senator BRICKER. And it is that skip that causes the great difficulty?

Mr. ALLEN. That is a gradual degradation as you go up in frequency.

Senator BRICKER. It is something of the same thing that you have in AM and FM.

Mr. ALLEN. That is a different problem: In the AM band there is a degradation from the lower frequencies to the upper frequencies. So that the stations in the lower end of the AM band can, at certain times, cover 3 or 4 times the area than in the other band. So you don't have a complete comparability of facilities in the AM band with frequency.

Senator BRICKER. Then there is not a distinction in the character of the transmission or the nature of the waves, except that the higher the wave the shorter the length.

Mr. ALLEN. The shorter the length, and therefore the shorter the distance. Now, there is another factor related to that which has a bigger effect than this first propagation factor. That is the fact that as you shorten the wavelength, you also have to shorten the elements on your receiving antenna.

So the receiving antenna being smaller it gathers less energy than at the lower frequencies. Therefore, in order to produce a picture you have got to have greater field strength, or greater intensity of energy in the area, so that this smaller antenna will pick up enough to produce the picture. That is a bigger effect than this absorption effect.

Senator BRICKER. You mentioned that the VHF, or the long wavelength, will follow the contour of the earth.

Mr. ALLEN. Better.

Senator BRICKER. Better than the UHF?

Mr. ALLEN. But it is a matter of degree. In rough terrain even the "V's" do not do a very good job of coverage—in West Virginia, Pittsburgh, places where you have lots of hills.

Senator BRICKER. Thank you very much.

Mr. COX. I would like to go now to some matters raised in the Jones and Plotkin Reports on which the Commission has never commented to the committee in reply. For instance, both Mr. Jones and Mr. Plotkin suggested that the networks should clarify their affiliation policies, under Commission approval, to the end that affiliation be uniformly and impartially available, except where it would result in a substantial duplication of network service. Has the Commission taken any action on this proposal?

Mr. McCONNAUGHEY. They certainly have in this network study which you have authorized us to make. That is going to be very thoroughly covered.

Mr. Cox. Do you think this is a matter which must necessarily await the completion of the network study? Doesn't the Commission have considerable knowledge about the method of operation of the networks at the present time, which would justify action on some of these matters?

Mr. McCONNAUGHEY. Oh, no, you have got to await the network study.

Mr. Cox. That is, after regulating the networks for 25 years——

Mr. McCONNAUGHEY. We don't regulate them.

Mr. Cox. Having dealth with networks——I will strike that suggestion.

Mr. McCONNAUGHEY. That is better. We have no jurisdiction.

Mr. Cox. In all this time, you don't feel that you know enough about any phase of their operation to permit Commission action?

Mr. McCONNAUGHEY. I think, as told to Senator Magnuson, that we expect as soon as we complete any phase of this network study—this might be a part of it—as soon as we complete it we are going to report to this committee, and we are going to put into effect whatever we can as we go along, not wait until its completion.

Senator BRICKER. What control is that? I missed the first question because I was thinking about some pulsation problems.

Mr. McCONNAUGHEY. We have no control over the networks.

Senator BRICKER. I know that now. I wish you did have. There was something in the Plotkin report that suggested you did have. I have never agreed with it. But should we go into that problem here; is that what you are going into now?

Mr. Cox. Yes.

Senator BRICKER. I will wait until you have finished.

The CHAIRMAN. In any even, I think the chairman did answer this last question, and that is correct. As they move on the network study—and we hope they will move quickly—as they move, if any one phase of it is completed, they have agreed to tell us what that phase is.

Senator BRICKER. I think we ought to have that information as you go along because the problem is going to confront this Congress this year, next year, and the year after if something isn't done about it as to the control of the networks. They have too much economic and too much power generally in the country today. They could make or break a station; they can make or break an industry.

In my judgment that is entirely too much power to be in the public interest. I think it is something that we have to face, and I wish that the Commission would give its attention to that problem because the Congress is going to be dealing with it sooner or later.

Mr. McCONNAUGHEY. Senator Bricker, we are doing that just as rapidly as we can. We have retained Dean Barrow, and he has collected a very able staff around him—in my opinion, a very outstanding staff. They are working very diligently on all these network problems, and they are are going to report to the Commission and to the Congress as they go along without awaiting until we finally finish.

We hope we can finish this study by June 30, 1957, that is the target date. But in the interim we are going to report to you folks just as rapidly as we complete any phase of this thing.

Senator BRICKER. I think that is fine.

Mr. COX. I gather it is your opinion, presently, that the Commission does not have power to regulate the networks and their various practices, even if you might find, hypothetically, that something they were doing was contrary to the public interest; is that correct?

Mr. McCONNAUGHEY. That is correct.

Mr. COX. Isn't it true that the networks——

Mr. McCONNAUGHEY. Wait a minute, Mr. Cox. I ought not to go quite that far. We can regulate their stations, as you know.

Mr. COX. That is their owned and operated stations?

Mr. McCONNAUGHEY. Yes.

Mr. COX. And you can regulate the terms of contracts that other licensees enter into with them; is that not correct?

Mr. McCONNAUGHEY. That is right; that is right.

Senator BRICKER. But you can't at the present time say to them, "You can't take this one on because the other is a better public service"?

Mr. McCONNAUGHEY. No, sir.

Mr. COX. Isn't it true, to state an obvious truism, that the networks play a tremendously important part in broadcasting today, as we know it?

Mr. McCONNAUGHEY. They certainly do.

Mr. COX. Do you think that the Commission can properly exercise, in the public interest, all of the delegated constitutional authority of Congress in regard to the radio spectrum without having some power to regulate the networks and their practices?

Mr. McCONNAUGHEY. I think we will have to await the conclusion of this study.

Mr. COX. You think that that would develop facts——

Mr. McCONNAUGHEY. Not necessarily the conclusion of it. We have got to wait until we know a little bit more about it.

Senator PASTORE. Didn't you say yesterday that the crux of much of the problem lies in the programing? I think you said that, Mr. Chairman?

Mr. McCONNAUGHEY. I think that is correct, Senator.

Senator PASTORE. Now, if a network owns broadcasting stations and fundamentally the problem is in programing, and they have the authority to pass on to their affiliates what they please, then don't you feel that if programing is the crux of the problem that proper regulation would regulate how the programing is allocated, and the fact that a network owns a station might be fundamental?

Mr. McCONNAUGHEY. That is on of the facets that we are going to have to ascertain. Yes; I mean there is an awful lot to what you say, but I say we are just going to have to get into this.

Senator PASTORE. What is the distinction between—I ask this question; you might want to refer to the counsel—what is the distinction between a motion-picture maker running a show house in the city, which they had to divest under our antitrust laws, as against a network running a broadcasting station? What is the fundamental distinction?

Mr. DOERFER. I can give you my interpretation of that.

Senator PASTORE. I would like to have it.

Mr. DOERFER. I think that in the movie industry the restraint of trade was the result—and the courts so found—of a design to suppress competition, other outlets. In the networking situation the shortage of facilities is not by design of the networks.

It happens to be by reason of the fact that the Federal Communications Commission hasn't got enough space to provide the additional facilities at this particular moment, or those facilities which have been provided have not been accepted by the public or the broadcasters or the networks or the advertisers because of the economic aspects.

Mr. COX. Isn't it true, however, in the Paramount case, that it was ruled that you can find a violation of the antitrust laws in the absence of any express intent to monopolize?

Mr. DOERFER. I don't think that the court went that far. It quoted Justice Learned Hand's language. But I think there are some excellent dissertations on it by lawyers who disagree that the Supreme Court adopted that. If there is any question about it they certainly veered away from it in the Times-Picayune case.

Mr. COX. Mr. Plotkin suggested that use of time options constitutes a form of block booking which he felt was comparable to the practices held illegal as violative of the antitrust laws in the Paramount Picture case. I would like to ask you, Mr. McConnaughey, whether you have referred this question to your General Counsel or to the Department of Justice for an opinion.

Mr. MCCONNAUGHEY. That is covered by this network study.

Mr. COX. Isn't this a matter primarily for the determination of your legal staff or of the Attorney General?

Mr. MCCONNAUGHEY. I don't think the Commission—the Commission at least hasn't felt so.

Mr. COX. That is your'e not——

Mr. MCCONNAUGHEY. First, you got to get the facts. The fact Plotkin says it doesn't mean a thing.

Mr. COX. We are talking now——

Mr. MCCONNAUGHEY. Mr. Plotkin is just talking about his opinion or something.

Mr. COX. We are talking, however, not about facts but about the interpretation of certain decisions of the Supreme Court, and about analogies which I think would fall within the knowledge of the Commission between what was dealt with in the moving-picture cases and the network situation. The question is whether you have consulted, or will consult, with your General Counsel and the Attorney General to see whether Mr. Plotkin has anything in this conclusion of his.

Mr. MCCONNAUGHEY. I think you go back, it depends upon what facts you are applying it to. I think when we get along with this network study we will talk to our General Counsel about it.

Mr. COX. Does not the Commission now have copies of all the affiliation contracts between the networks and their affiliates?

Mr. MCCONNAUGHEY. I think we do have; yes.

Mr. COX. Don't you know, from observation if from nothing else perhaps, the way in which the option provisions in those contracts operate for purposes of time clearance?

Mr. McConnaughey. I think the General Counsel's office has an estimate he could make on this.

Mr. Cox. Yes.

The Chairman. In any event, let us get the record clear.

The first question was whether or not you had referred this matter, which was raised in the Plotkin report, to the Attorney General; and the answer is you have not.

Mr. Henley. Sir, if I might address myself to that question?

The Chairman. I thought you said you had not.

Mr. Henley. That is the one I wanted to answer.

The Chairman. All right.

Mr. Henley. The Plotkin report and the Jones report have been sent to the Department of Justice. The Commission's staff also maintains an informal liaison with the Department of Justice in antitrust matters, through direction of the Commission.

The matter of the time-option contracts is, of course, a very significant aspect in relationship of antitrust laws, or the applicability of antitrust laws, to network practices. As the Chairman told you, however, I think it would be premature to try to come up with any final answer until at least that portion of the network study is completed.

It is quite true we have a good many of the facts, but it is not easy to say either legally or factually the extent to which the principles of the Times-Picayune case and the ABC-Paramount case, to which we have referred, also apply to this situation. There is considerable difference of opinion among lawyers and I think the General Counsel's Office of the Commission certainly does not at this point have what it feels is any final answer.

Senator Pastore. I am not maintaining there is any compatibility between the two situations, because naturally it is a factual situation that has to be explored in detail. But as a general proposition we are driving in that area.

The thing that disturbed me—last year we had before us a bill that would have authorized the networks to assume more of these UHF stations in order to cure this problem, and I think I made the observation at the time that it was actually encouraging a monopoly to cure a monopoly, which, of course, is not good, either.

I don't think that the ultimate answer in this whole problem is going to be to encourage the networks to take more of these stations in order to fortify them with better contracts, to the exclusion of the other operators within that area, in the hope that we may settle this problem. I don' think that is the answer to it. But it does drive in that general direction.

Mr. Henley. As the committee knows, one of the ways in which we have some control over network operations is through our so-called chain-broadcasting rules, which are directed, of course, not to networks but to our licensees.

Now, I am sure that one of the things that the Commission will want to do, after it gathers some more facts through this network study, is take another look, a complete look, at these chain-broadcasting rules, which were enacted in substantially their present form many years ago before there really was television.

They were enacted to be applicable to the AM situation. I think we have to look and see whether those rules actually fit the present pattern of television. I am sure that is one thing the Commission and its staff will do.

Senator BRICKER. May I ask a question?

Mr. COX. Yes.

Senator BRICKER. You mentioned there is a difference of opinion among lawyers as to the impact of the Paramount and the Times-Picayune cases. There is no question among lawyers about this whole industry being charged with the public interest if Congress so says?

Mr. HENLEY. Certainly not.

Senator BRICKER. That is my judgment. Because after the Supreme Court decision in the Associated Press case, which dealt with the transmission of news alone, there is no doubt but what the Congress could say that this whole industry, from the inception to the receiver, is charged with the public interest.

Mr. HENLEY. I think there is no doubt about that. I didn't mean to leave that impression——

Senator PASTORE. We are not getting into natural gas again? [Laughter.]

Senator BRICKER. You are not dealing with a natural resource or a tangible product here. You are dealing with something entirely different, and something far more important, I might say in passing.

Mr. COX. As I understand it, in connection with the time-option clause, the two largest networks maintain a policy of so-called "must buy." Could you explain to the committee what that consists of and how it operates, or are you familiar with it?

Mr. HENLEY. I am familiar with it only in a general way. I could not explain to this committee in detail.

Mr. HYDE. It is simply a schedule of stations, of the number, I think, of 55, which the network requires the sponsor to take as a minimum. Now, you mentioned that two networks have such a list. The third network is not in position to get enough clearances to operate on that basis—that is my understanding of the situation.

Mr. COX. I would like to ask where the network study group and the General Counsel's Office are considering the possible antitrust implications of a practice of that kind as perhaps constituting some sort of collective refusal to deal, of the sort outlawed by the Supreme Court in the Griffith case?

Mr. DOERFER. That is the opposite. The advertiser himself—many advertisers themselves are perfectly content to take the first 25 or 30 markets.

Mr. COX. Can be buy the first 25?

Mr. DOERFER. The network says, "No; you have to take some of these others."

Mr. COX. All right. Now, is that, again, an exercise of economic power on the part of the network to require the purchase of something that the man doesn't want, in order to get a facility he needs?

Mr. DOERFER. I think that is definitely within the area of bargaining power, indeed.

Mr. COX. And is it also possibly within the area of concern of the Commission under the antitrust provisions of the Communications Act?

Mr. DOERFER. Well, as the Chairman indicated, that is still under study. I would say that the proper exploration should be along the lines as to whether or not—which I think is highly academic—the sponsor wants to buy more than the network is willing to sell, and I don't think you can find an instance of that. That will be an attempt by a network to prevent certain stations from getting programs.

That would be in restraint of trade. That would have all the earmarks of an exercise of a monopolistic power. But certainly not where a sponsor thinks that he can get 80 percent of the people in this country by X dollars, and the network comes along and says, "Now we are going to make you spend a little bit more so that you get 95 percent of the country."

Mr. COX. If the operation of this time-option system for clearance of network time were shown to prevent the producers of other forms of programing from getting sufficient clearance to make their products salable, would you not possibly then have a case where, without any intent, the operation of the system is such as to restrain trade?

Mr. DOERFER. Well, I don't quite—I haven't concluded at this stage of my study that it is a restraint of trade or an exercise of monopolistic powers. It may be contrary to the public interest. The time-option agreements may well warrant some revision. But we have to remember this; that we are not dealing with the fortunes of broadcasters. We have to always keep our foot on earth, and that is—it is the people. The people like networking. Now, we have to be careful that we don't throw the baby out with the bath water.

Mr. COX. They like the programs that the networks provide them.

Mr. DOERFER. We have to be careful that if the people want networking and if the people get something that they could not get without networking, that we can't destroy networking. We may be faced at the end of this study as to whether or not a certain move that we take or don't take is either going to sustain or destroy networking. It must always be valued and related to the interest of the public and not necessarily to the individual fortunes of broadcasters.

Mr. COX. In connection with this antitrust matter I would like to ask——

Senator BRICKER. Mr. Chairman? I don't think anybody is interested in destroying networking.

Mr. DOERFER. I don't think so.

Senator BRICKER. I don't think this committee or the Congress of the United States is interested in it. But they want it exercised in the public interest, that is the only purpose of the investigation as I see it. If they get too much economic or political power over the country, it will become a very dangerous thing to all of our institutions, economic and otherwise.

Mr. DOERFER. That is precisely why I don't think any Commissioner is in a position today to state——

Senator BRICKER. I think you are right, and I don't think this committee is in a position to say yet what they think about it.

The CHAIRMAN. But we do have before us S. 825, and I presume from what you say that the Commission is not in position to comment on S. 825 if we would ask for a comment. That is Senator Bricker's bill for regulation of the networks.

Mr. COX. Has that been under study by your legal staff?

The CHAIRMAN. Have we ever formally sent that down for comment? We have.

Mr. HENLEY. It has been under study, but we have not as yet prepared any comment on it.

Senator BRICKER. I do not think you could until you complete this study you are on now.

Mr. DOERFER. We could not give any opinion that would be of value because it may be reversed as we go along in this study. It would serve no useful purpose.

Mr. MACK. Let me make one observation. I think the purpose of this study—I do not want to argue with John here—is not to bring you personal opinions but to bring you the facts.

Senator BRICKER. Your opinion is worth a great deal, because you are experts in the field.

Mr. MACK. After we get you the facts.

Senator BRICKER. Yes.

Mr. COX. I would like to ask whether or not the Commission, in another connection, in handling applications for licenses or for the transfer of licenses considers the antitrust aspects in each case?

Mr. McCONNAUGHEY. I do not think there is any question about it. We have a duopoly rule—we have even gone to the extent of instituting a rule just to prevent that antitrust violation.

M. COX. Then do I understand you that as a matter of routine the Commission considers, and passes on, the question of whether granting this application will, or will not, tend to lessen competition or restrain commerce in violation of the antitrust laws?

Mr. McCONNAUGHEY. No question about it.

The CHAIRMAN. At this point, I know the chairman has got to go and make a speech and it is the luncheon hour. He could be excused. I do not know that we should go on, without the chairman here, with some other questions. That is up to the Commission, but I think we could——

Senator POTTER. How much do you have left?

Mr. COX. We could finish in half an hour.

Mr. McCONNAUGHEY. I will stay here for half an hour if we could finish. I will be late, but it does not make any difference.

Mr. COX. Does the Commission have any established procedures to get additional facts which may be necessary in passing upon this question—that is other than the representation made by the parties to the case?

Mr. McCONNAUGHEY. Oh, I think by sending 309–B letters and by making investigations by our staff, yes. That is one of the purposes of a 309–B letter, is to get information.

Mr. COX. That is addressed to whom?

Mr. McCONNAUGHEY. To the applicant.

Mr. COX. To the applicant?

Mr. McCONNAUGHEY. Yes.

Mr. COX. You take his statements on this. Now do you have addional methods of investigation?

Mr. McCONNAUGHEY. We have additional methods of our own staff to go out and investigate to find out what their opinion is.

Mr. COX. Do you have a section which is concerned with economic matters which would be capable of looking into questions of possible restraint of trade?

Mr. McConnaughey. Yes, I think it is a pretty good economic staff.

Mr. Cox. Well, do they in fact function in this field?

Mr. McConnaughey. Not strictly in this field, but they partially function in that field.

Mr. Cox. How many men are in this section that you are talking about now?

Mr. McConnaughey. Well, there are 3 of them, 3 or 4 of them, 3 or 4 of them.

Mr. Cox. Do you in these cases, where you are considering passing on the antitrust aspect, do you clear this with the Department of Justice in any way? Do you have any procedures for clearance?

Mr. McConnaughey. I do not think we clear them. I think the Commission general counsel's office works with the Department of Justice pretty closely.

Mr. Henley. Mr. Cox, if I might——

Mr. Cox. Yes?

Mr. Henley. Through a delegation by the Commission the general counsel's office maintains a liaison with the antitrust department of the Justice Department. I am the Commission's liaison representative. We are authorized to confer with the staff over at Justice about any of these antitrust problems that come to our attention in the general counsel's office or that are referred to us by other staff people.

Justice, in turn, calls to our attention anything that they run across in the course of their affairs that shows or indicates that there may be some antitrust problem in a broadcasting matter. It is handled on that basis.

If as a result of staff conference there seems to be some need for further attention to it, the matter may be referred either by Justice to the Commission formally, by a letter from Judge Barnes, or the Attorney General, or from us to Justice by formal letter from the chairman to Justice.

Mr. Cox. Do you delay action, then, if you are advised that the Department of Justice is still investigating the matter because of possible antitrust complications?

Mr. Henley. Not necessarily, not necessarily.

Mr. Cox. Then I would like to ask Mr. McConnaughey whether it is the feeling of the Commission that the Commission has primary jurisdiction insofar as the enforcement of antitrust laws in the field of radio and television is concerned, or does it more or less confine itself to the technical communications aspects of the case and leave the antitrust issues primarily to Justice?

Mr. McConnaughey. I think—the first of course is our primary function, but we do keep a constant liaison with Justice, but we are also looking toward monopoly.

Senator Bricker. Mr. Chairman.

The Chairman. Yes.

Senator Bricker. The chairman mentioned a moment ago that you have a duopoly rule. I am interested in that because of the fact that a few years ago the Justice Department threatened to bring a duopoly suit against an industry in this country that was highly competitive, and I am wondering if you would explain for the record what you mean by the duopoly rule?

Mr. McCONNAUGHEY. It merely means that the same owner cannot have stations in the same communities, adjoining communities. Where there is an overlap of service, where there is an overlap of grade A service. There can be an overlap of grade B service but not of grade A service.

In other words, so they could not be here and here in two cities (indicating), and overlap each other with the same owner. That in very simple terms is the duopoly rule.

Senator BRICKER. That is an entirely different thing than what I was thinking about.

Mr. PASTORE. May I ask a question?

The CHAIRMAN. Yes.

Senator PASTORE. Has the Commission ever denied an application on the grounds that it violated an antitrust law?

Mr. McCONNAUGHEY. I have not been here long enough. Maybe some of these people who have been around longer.

Mr. HYDE. I can't recall any case that was denied on that sole ground. But the Commission has denied applications on the ground that they were not consistent with our own rules which are designed to promote competition.

Mr. Cox. I would like to pursue a little more, with Mr. Henley perhaps, this question about primary jurisdiction. That is, does the Commission's legal staff take the view that the initial and basic responsibility for preventing monopoly in the communications field is upon the Commission, or is it upon Justice, or is it a sort of divided matter where maybe something gets lost in between?

Mr. HENLEY. Mr. Cox, I think the General Counsel's office is of this opinion:

First, our rules are designed to promote diversification of viewpoint, program viewpoint, and to discourage monopoly.

Senator BRICKER. In a local community?

Mr. HENLEY. Not only in a local community, but in a region, or in an area. The duopoly, rule, for example, is a part of that. So that we do not have stations with overlapping service areas owned by the same person.

Now, so far as the application of those rules is concerned, and entirely apart from criminal proceedings or other proceedings that the Justice Department is authorized to bring, it is our primary responsibility.

We have, however, in many of these areas overlapping and concurrent jurisdiction with Justice. For example, a practice that might be a violation of the antitrust laws, a specific practice, would in all probability also be a violation of one of our rules. Now we are applying our own rules. When it gets over into a violation of the antitrust law we ship it to Justice.

Of course, if it violates our rule, which is designed to follow the congressional policy against monopoly, it is not in the public interest and should not and would not be granted.

Mr. Cox. And you have procedures for the enforcement of those rules if after a grant you determine that some such——

Mr. HENLEY. Yes, we do. We have two very useful tools. We have revocation and we have cease and desist.

If the matter is so serious as to warrant a revocation proceeding, we can institute such a proceeding and revoke a license.

Now that could be done, for example, if an operator—if a licensee has misrepresented certain facts to us at the time he made his application and it later developed that he had done so.

Mr. Cox. I understand though that you have never done this actually, is that right? Never revoked a license?

Mr. HENLEY. On an antitrust matter?

Mr. Cox. Yes.

Mr. HENLEY. I do not think we have.

Mr. HYDE. I cannot recall.

Senator PASTORE. Let me help you out in this instance. Would you say that your rules are much more stringent, in your desire to promote a competitive television or radio system within an area, your rules are much more stringent than the antitrust laws might be?

Mr. HENLEY. Yes, we stop far short of the antitrust laws in most of these areas. That is, a particular operation cannot violate the antitrust law but still present a concentration that we would find was not in the public interest.

Senator PASTORE. In other words, anything that might have violated the antitrust law certainly violates on of your rules before it gets that far?

Mr. HENLEY. That is correct.

Senator BRICKER. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Senator BRICKER. In the light of your study, your experience in the limiting of your antitrust applications to regions or communities, do you see a need for the Congress taking a new look at the antitrust laws which originally were enacted for the purpose of controlling monopoly in manufacture and industrial pursuits? Here you have got an entirely different problem.

Mr. HENLEY. I think I could not answer that at this point, sir. If the Supreme Court affirms the Court of Appeals in the case that is now before it on our multiple ownership rules and strikes them down, then it may very well be that we will come to the Congress and ask for specific authority to adopt rules in that area.

And if as the result of facts that are discovered in this network study we feel that some further authority is necessary in the network situation we may very well ask for authority. Now those two are the only situations I know of at the moment.

Senator BRICKER. At the present time?

Mr. HENLEY. Yes.

Senator PASTORE. Isn't the essence of the opinion of the Circuit Court of Appeals, really, that it does not make any diffierence as to the number of stations that a man owns, but you have to justify each situation on the facts as to whether or not it violates the public interest?

Mr. HENLEY. In a capsule, yes, that is what it amounts to.

The CHAIRMAN. Well, it is much the same as we have discussed on a number of occasions before—the fact that a person owns a newspaper is not necessarily a disqualification for owning a television station. But if in the circumstances owning newspapers and television stations would create a monopoly, then you have a different situation. So that each case is different.

Mr. HENLEY. The Court of Appeals decision, I think, amounts to this in the multiple ownership situation: The Commission saw fit, in an area that is incapable of exact definition, to express a policy favoring diversification in a numerical proscription.

Now to some extent that is like my enacting a rule that my children must go to bed at 7:30. We know they must go to bed some time, they must stop somewhere. Whether it should be 7:15, 7:25, or 8 o'clock, I could not perhaps sustain that in an argument with them each evening. [Laughter.]

So I adopt an arbitrary rule, that it must be here, I know it is in this area. That is what is really at stake. The Court of Appeals said, "You cannot draw this line. You must give each applicant a hearing each time on each application." That is what the fuss is about.

Senator BRICKER. When will the Supreme Court likely pass upon that case?

Mr. HENLEY. I think at this term. I believe it will be argued the 28th of March—February, excuse me, this month.

Mr. COX. Have you given any consideration to Mr. Plotkin's suggestion that perhaps some thought should be given to possible abolition of the chain broadcasting regulations so as to bring into the forefront again the normal application of the antitrust laws?

Mr. HENLEY. Well, I do not think that we have considered abolishing them. I think that we have considered that substantial revisions may be necessary, and that is one of the things, of course, we hope will come out of this network study.

Mr. COX. In connection with this use of time-options that we have been discussing in this monopoly situation, isn't it possible that their employment serves to place primary determination of the program content of an affiliated station in the hands of the network for a substantial portion of the time?

Mr. HENLEY. Oh, you could say that. Really it places it in the hands of the advertiser, I think, more than the network, in that sense.

Mr. COX. Yes.

Mr. HYDE. I would like to discuss that if I may.

Mr. COX. All right.

Mr. HYDE. The regulations permit the option contract, but a station can reject any program which it determines would not be in the public interest for it to broadcast. But the actual pressure on the station to broadcast a program does not come from that option contract, which, as I say, has a qualification, so much as it does from the interest of the station in broadcasting network programs.

Mr. COX. And maintaining his affiliation?

Mr. HYDE. Yes, that has been said.

Mr. COX. Now is this consistent, if there is any such operation—that is, if through any pressure of any sort the affiliate takes programs on just a steady flow basis because they are submitted to him from the network, is this consistent with the Commission's policy that the licensee's responsibility for his programing is not delegable?

Mr. HYDE. The chain broadcast rules, which permit the options, with the qualifications, were designed to provide a method by which a station could retain its responsibility and yet the network have a sufficient assurance of being able to clear the time to get sponsors and to offer national advertising.

You have got a very difficult problem there on both sides. The station must, under its license, maintain a sufficient degree of control to satisfy this principle of licensee responsibility. On the other hand, we must recognize that if they are going to have national advertising, the advertising agency, or the network, has got to have a reasonable prospect of being able to offer national coverage at the time that it negotiates.

Mr. Cox. Isn't it true that the network regulations were adopted at a time prior to the development of systems permitting release of a program at different times at different points?

Mr. Hyde. The network regulations, or chain broadcast rules, so-called, were adopted as I recall in May of 1941, and the whole television industry has developed since then.

Mr. Cox. I mean even in the field of radio—wasn't it true that the use of transcriptions did not come to the front until a later time?

Mr. Hyde. That is right, that is right.

Mr. Cox. Doesn't it make a difference, therefore, whether the program that network is releasing to the affiliate is live, and therefore must go out simultaneously coast to coast, or whether it is filmed and could be released substantially at different times?

Mr. Hyde. There would be some differences there. Some programs are so arranged that the time is of the essence—baseball games, for instance, which would be of no interest later. The coverage problem remains a serious one, and those networks that have to use delayed broadcasts have certain difficulties in selling national advertisers which in another situation would not obtain.

Mr. Cox. How about the mere matter of the determination of the time a program is to go on? We have a problem on the west coast with Disneyland, for instance, as to when you can get your children to bed, as Mr. Henley says. Should the question of the time of the release of that program in the local market be determined by the licensee or by the network?

Mr. Hyde. We hold that consistent with his responsibility the licensee must make that final judgment as to anything that goes over his station, but we recognize that a licensee has got to take into account in making his judgment that the maintenance of a network program is an important factor.

The Chairman. Because he is responsible to you?

Mr. Hyde. He will be one—that is right, he is responsible, the licensee is responsible to us.

Senator Bricker. If he does not conform to the wishes of the network they can easily remove his contract, take it away from him?

Mr. Hyde. Under our own rules a network contract may not be made for a period longer than 2 years. That is another matter that we do feel should be reexamined in the light of current conditions.

The Chairman. Now the time is running here. We have quite a few further questions, but I think that some of them can be taken down and answered in a brief way. The ones on exclusivity, here, you can take with you. Some of them I would not be too particular about the wording, because some of them were typed out fast. Then one is on the question Mr. Jones raised in which he suggested that the Commission should establish a more uniform accounting procedure providing for the submission by the networks, and by individual stations, of reports in much greater detail. That was not answered.

And then there are—these can be passed. I think we have covered a lot of it. But Mr. Plotkin did raise additional questions on spot representation, cable and microwave charges, and things of that kind which you can have and submit answers later.

Then the matter that we took up briefly in the beginning. I think maybe you would like to enlarge upon your testimony on the question of what power you do, or do not, have in view of the Federal Trade Commission's answer to me concerning advertising on radio stations.

And then I wanted to review with the Commission a typical case of a person who applies for a radio or television license—just what are the steps—because I think there is great room for improvement

Mr. DOERFER. Who are his opponents, first?

The CHAIRMAN. Well, perhaps Congress can be helpful in clarifying this and making it more simple, with better ground rules.

Mr. McCONNAUGHEY. You are speaking about an application that will be in controversy.

The CHAIRMAN. Yes, just the steps. One thing that has always bothered me is that I know the Commissioners have a meeting informally and sort of decide on applications; then the case is sent to an opinion writer; and in the meantime a lot of things may, or may not, happen. Sometimes we think it might be much more helpful to the Commission—and I know you have legal problems involved—if you could be like some Federal judges I have appeared before. They come on the bench and say "Case decided, written opinion follows." Then it is all over with. Then you are not subject to all kinds of pressures and everything else that occurs between the time you really think you have decided and the time you formally write your opinion.

I think—maybe it can't be worked out that way legally—but I think if we could do that it would be helpful to this committee.

I think maybe we are going to have to come back on this other item a little later. There are a lot of bills pending on this. This is the year when everybody is going to be interested in what political time——

Mr. McCONNAUGHEY. Political broadcasting.

The CHAIRMAN. There are all kinds of ideas. The problem on television has become greater and greater not only for candidates, but both political parties. The costs of campaigns are becoming terrific because of the advent of television.

This is a public license the station has. We do have the equal time theory in the law. But all of us know, as a practical matter, that is not the answer. It does not work. And I think we are going to have to sit down and get a lot of suggestions from everybody on this, because if we do not, when you get into the heat of this campaign I am sure there are going to be more complaints and more trouble than ever before. People will feel that they are shut out, or are not getting time, or that somebody has too much time. The State candidates have a problem—the local candidates.

I don't know the answers to it, but I do know that we have probably got to have some ground rules there, too. So maybe we will pass over that and come back to it later.

Now we have just a very few questions here—there seems to be no end of problems—on another matter which I am sure is going to be covered by other witnesses before the committee, and that is the question of subscription television. I think our counsel would like to ask just a few brief questions on that, without going into—again, we do not expect the Commission to intimate what they are going to do about these things; that is your business.

Mr. Cox. Without regard to the merits of the proposals, and in the light of Mr. Lee's statement during the first day's hearing that subscription television might be a possible answer to the UHF problem, I would like to ask whether the Commission is still of the opinion expressed to the House Committee on Interstate Commerce in May 1954—that is, if it were to decide that a subscription service was in the public interest, does it feel it has legal authority to approve and to adopt a rule so providing?

Mr. McConnaughey. I think so.

Mr. Cox. You are still of that view?

Mr. McConnaughey. I think so.

Mr. Cox. I would like to put into the record at this time, then, the comments of the Federal Communications Commission submitted in connection with the Hinshaw bill on May 6, 1954.

(The document is as follows:)

COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION

H. R. 6431 is a bill concerned with the application of the Communications Act to subscription operations carried on over either radio or television stations. Specifically, it attempts to clarify the legal status of such operations by amending the definition of "broadcasting" in section 3 (o) of the Communications Act of 1934, as amended, expressly to exclude communications, intended to be received by the public, which involve "the payment of any charge, subscription fee or other form of direct compensation."

At the same time, section 3 (h) of the Communications Act would be amended to provide that persons engaged in subscription operations in interstate or foreign communication by radio shall be deemed to be common carriers.

No subscription service, in the sense that that term is usually used, is presently authorized by the Commission; broadcast station licensees may not transmit radio or television programs for reception by the public on home receivers under circumstances where such programs can only be received by those members of the public willing to pay a specified fee.

There are, however, presently pending before the Commission a number of petitions requesting the authorization of subscription radio or television services by broadcast stations and in the broadcast bands.

The entire problem is now being actively studied. Pending the conclusion of its study, the Commission wishes to stress the fact that it has reached no determination relative to the merits of subscription radio and television, and that th se comments are in no way based on any policy decision with respect to subsection operations.

There has never been any definitive determination, either by the Commission or the courts, as to whether the transmission of program material intended to be received by those members of the general public willing to pay a fixed charge or subscription fee can properly be classified as "broadcasting" within the meaning of the present definition of that term in section 3 (o) of the act.

It would appear, however, that, were the Commission to decide that such subscription operations were in the public interest, such programs could be classified as "broadcasting" within the meaning of the present language of section 3 (o). It might be argued that such programs are not "intended to be received by the public" since their intended receipt would be limited to members of the public willing to pay the specified price. But absence of any charge for the program is not made a prerequisite of "broadcasting" operations under the present language of section 3 (o).

And the reliance of the broadcasting industry upon advertising revenue, rather than upon direct charges to the public, as its principal source of revenue, has not been the result of any action by either Congress or the Commission, but rather the result of the natural development of the industry.

It would appear that the primary touchstone of a broadcast service is the intent of the broadcaster to provide radio or television program service without discrimination to as many members of the general public as can be interested in the particular program as distinguished from a point-to-point message service to specified individuals.

If this is true, subscription services should properly be characterized as a type of broadcast service. For while particular subscription programs might have a special appeal to some segment of the potential audience, this is equally true of a substantial portion of the programing now transmitted by broadcasting stations.

The legislative history of section 3 (o), while admittedly meager, does not in any way detract from an interpretation of the language of the section under which subscription operations would be held to be broadcasting. At the time of the passage of the Radio Act of 1927, which contained no definition of broadcasting, there was some discussion of subscription radio, and H. R. 16887, a separate bill, upon which no action was ever taken, had been introduced which would have prohibited the "broadcast" of programs for which a fee was charged.

And in the course of the debates on the bill, Senator Dill, who was the manager of the bill in the Senate stated that in his opinion nothing in the Radio Act would prohibit the institution of a subscription service and that, while he had doubts as to the extent to which the public would be willing to pay for radio programs, he did not believe Congress should preclude such a broadcast service (see 68 Congressional Record 2880–1).

The present definition of "broadcasting" was adopted at the time of the enactment of the Communications Act of 1934, without discussion or explanation in the committee reports or in the public debates. It was apparently derived from the definition of "broadcasting" which had been adopted at the International Telecommunications Conference held in Madrid in December 1932 and incorporated into the radio regulations annexed to the convention signed there.

A study of the documents surrounding these negotiations also fails to disclose any consideration of the question of whether a radio program service offered to the public upon the payment of a specified fee would, because of such charge, cease to be a broadcasting service.

The exclusion of subscription services from the classification of "broadcast" operations, which would be accomplished by the proposed amendment to section 3 (o) would not, in and of itself, preclude the authorization of subscription operations by licensed stations operating in the broadcast bands.

The Commission may authorize other services on the broadcast bands if it determines that the public interest will be served thereby.

Adoption of the proposed amendment would, however, have certain significant effects upon any subscription operations which the Commission might authorize, for there are several provisions of the Communications Act which by their terms apply only, or particularly, to broadcasting activities. These include section 303 (i), which gives the Commission authority to make special regulations applicable to stations engaged in chain broadcasting; section 307 (d), which limits the license term of broadcast stations to 3 years, but permits licenses for other classes of radio stations to be for as long as 5 years; section 315, which provides for equal opportunities for legally qualified candidates to use the facilities of broadcast stations; section 317, which provides that, in the case of broadcast stations, matters paid for or otherwise furnished to the station licensee must be properly announced as such; section 325, which provides no broadcast station may rebroadcast a program of another broadcast station without express authority of the originating station; section 506, relating to coercive labor practices affecting broadcasting; and section 605 of the act, which expressly exempts "the contents of any radio communication broadcast" from its application.

The Commission believes that it would not be advisable to make these various provisions inapplicable to any stations which might be authorized to provide subscription programs to the general public for home reception. Thus, while it is not presently known to what extent networking of subscription operations would be either technically or economically feasible, there would appear to be no reason why the Commission should not have the same authority over any chain operation in the subscription field as it now does over stations engaged in conventional chain broadcasting.

Similarly, to the extent candidates for public office might use subscription services, or the program material of such operations be paid for or furnished by commercial sponsors or other groups, it would appear that the provisions of sections 315 and 317 of the act, relating to the handling of such programs over broadcast stations, might well be applied to the subscription operations.

Section 1 of the proposed bill would amend section 3 (h) of the Communications Act to classify the operations under consideration as "common carrier" operations. Although it might be felt to be desirable to subject subscription services to regulation as a public utility, the Commission does not believe that classification of these services as operations would appear to be selling program material to the members of the listening or viewing public, either developed by the station itself or procured by contract with another originating source, rather than providing them with a communications service for hire. It has been a fundamental concept in the communications field that a person is not a "common carrier" of communications where he is providing his subscribers primarily with a news or information service, rather than with a communication service enabling subscribers to communicate among themselves. Thus, for example, while the furnishing of leased wires or radio circuits by the telephone or telegraph carriers is part of their common-carrier activities, the use of such leased wires by the news services to transmit news to their subscribers, or by the stock exchange to transmit price quotations, has been held not to involve common-carrier operation.

Similarly, in the case of subscription radio or television program services, the subscribing members of the public would be paying for the programs rather than for the use of communications facilities.

Moreover, it obviously is not contemplated that subscription stations would have the common carrier obligation of carrying, without discrimination, all programs offered for carriage. And since the Commission's jurisdiction over common carriers runs only to their interstate operations, a serious question would be raised as to whether particular subscription operations are interstate or intrastate, for purposes of the Commission's common carrier jurisdiction. The Commission believes, therefore, that subscription program services do not lend themselves to classification as common carriers, pursuant to the provisions of title II of the Communications Act.

The Commission now has authority under title III of the Communications Act to adopt such regulations as might be required with respect to matters such as the number and type of hours during which subscription programs could be broadcast by any station, the number of stations in any community which could engage in subscription operations at any one time, or the approved transmission standards for such operations. Any subscription service which might be authorized will be likely to be faced with the natural forces of competition from other subscription operations (including "closed circuit" operations by wire of the type now utilized in "theater television"), and from conventional broadcasts received by the public without direct charge.

In the absence of experience in this field, we cannot now foretell the effect of these natural competitive forces and whether any additional regulatory authority would be required in the future.

Attachment.

Adopted May 6, 1954.

The CHAIRMAN. Maybe I can simplify this too: Is there an application pending before the Commission on this?

Is there one application, or two, or how many are there pending?

Mr. McCONNAUGHEY. There are three; three systems. But this is in general rulemaking.

The CHAIRMAN. A rulemaking application. Now do you have any indication as to when you may make a decision on this matter? I know we are asking you to make a lot of decisions fast——

Senator POTTER. But they are such easy decisions. [Laughter.]

Mr. McCONNAUGHEY. I would like to answer that in this way, speaking personally, I feel that we should bend every effort with reference to this rulemaking in allocations, and I feel that we should pretty much get that out of the way before we take up the subject of subscription television.

Senator PASTORE. May I ask a question at this point?

The CHAIRMAN. Yes.

Senator PASTORE. Isn't one of the important issues in this rulemaking process that you are undergoing now, with reference to subscription television, the question as to whether or not you have the authority under the law.

Mr. McCONNAUGHEY. That question certainly does come into it, Senator.

I say it does come into it. I think the general feeling is that possibly we do have the authority. But it is not too clear-cut.

Senator PASTORE. Well now, how does the legal staff feel with reference to that, as against these opposing parties?

Naturally those who are interested in it say you have the authority; those who are opposed to it say of course you do not.

It would be an endless war between two conflicting interests as to whether or not you have the authority. But it strikes me that it is a matter for the legal staff to decide, and if they are in doubt they ought to come to the Congress.

I would not waste too much time with that. Why do you have to ask outsiders whether or not you have the authority. Your legal department ought to determine that. If you don't think so, you ought to come here and get it.

Mr. HENLEY. I would hope that the Senator would not insist upon an answer from the legal staff at this time. [Laughter.]

As to whether we do have. I agree, however, that I think the staff is capable of answering that question to the extent that an answer is available. And of coming to the Congress.

Mr. COX. Are you possibly, then, considering a modification of the position taken by the Commission at this earlier time?

Mr. McCONNAUGHEY. I don't feel that he should try to answer that at this time.

Mr. COX. Perhaps that is not appropriate.

Mr. BARTLEY. There are not the same Commissioners here now.

Mr. COX. Not the same personnel? Then my understanding is that your scheduling on the decision on these matters would be that the allocations proceeding comes first, and that the pending subscription proceeding would be decided thereafter.

Mr. McCONNAUGHEY. I feel—that is my own personal feeling that we have to take up this rulemaking, and I think Chairman Magnuson pointed out pretty clearly that he thought it took No. 1 priority in our work.

The CHAIRMAN. Yes.

Mr. McCONNAUGHEY. I feel we have to do it.

The CHAIRMAN. I think it does. I may be wrong about it, with all these problems.

Mr. McCONNAUGHEY. Along with all the rest of our regular work which has to go on.

The CHAIRMAN. Yes. But Mr. Henley, I do think that the quicker you can resolve whether you have the power—I am not talking about the merits of this—so that Congress can act if you have not the power. I think in any event, regardless of what you decide in these cases, that Congress should give you the power in this matter, the authority to act. I think we are agreed on that, aren't we?

Mr. HENLEY. Yes.

Mr. McCONNAUGHEY. Yes, sir.

The CHAIRMAN. Yes. And that might pose a problem for us as to what to do, because you are the experts in the field and we have to listen to you. The last few questions we have—I will make them brief and this is just general—but some of these stations are having some labor troubles, station management. Has there been any tendency to try to inject the FCC in these labor disputes at all?

Mr. HYDE. There have been, I think, two instances where sabotage of equipment was charged to operators licensed by us; that was the charge. But these have been very infrequent.

In another instance where we undertook to modify the requirements as to operators of stations, labor organizations submitted views and there were some differences of opinion as to whether we should make the changes that were made.

The CHAIRMAN. That is as to the number of people employed?

Mr. HYDE. Yes; this had to do with the class of operator required for a certain type station.

The CHAIRMAN. There was one case out in California of some kind.

Mr. MCCONNAUGHEY. That is right.

The CHAIRMAN. Yes. But generally speaking I think you will agree that the FCC should not involve itself in any of these cases as between the parties involved.

Mr. MCCONNAUGHEY. And we have not been brought into the subject. It is only destruction of property, if it is in the public interest, that we come into that.

The CHAIRMAN. I want to thank the members of the Commission. We have taken up a lot of your time, but I think we are quite clear on many things in the record that we were not before. And we appreciate your coming up here.

Senator BRICKER. Mr. Chairman, before you conclude I would like to ask the engineer to come to the desk here for a minute. I would like to talk to him. [Laughter.]

The CHAIRMAN. I want to say that I hope maybe we can all be thinking informally about this matter of political time, because I am afraid we have got several bills in—they will all come here—and rather than make a report on all the bills, which might be difficult, we might arrange sometime in the very near future to sit down and discuss them all.

Mr. MCCONNAUGHEY. We would be glad to do that with you.

The CHAIRMAN. And then you will send in the answers to the questions to fill in the record?

Mr. MCCONNAUGHEY. Right.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., April 9, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: We are happy to provide the following additional material concerning the Commission's testimony before your committee:

The information below marked "I" through "VIII" is in response to questions posed to the Commissioners during the hearings before your committee on February 20 and 21, 1956, on which we agreed to furnish answers for the record.

I. In volume 3 of the official transcript, at pages 328–329, Mr. Kenneth Cox, committee counsel, asked if the operational cost of the U would be higher because of the extra power required. The operational cost of a television station as far as the equipment is concerned is composed of (1) power costs and (2) maintenance costs. The difference in power costs for UHF and VHF is negligible either at below maximum authorization or at maximum power. The maintenance costs for the two services depend, in a large part, on the replacement cost of parts and tubes in the equipment. Although the Commission does not possess detailed data on this, the maintenance costs for the two services are understood to be generally comparable. This conforms with the statement of Dr. Engstrom, of RCA, who in a recent statement made before your committee testified that the equipment and operating costs of maximum power VHF and UHF stations are approximately the same.

II. On page 330 Mr. Cox asked: "Could you tell us how many communities got a first local television station in calendar 1955, including the satellites?" Twenty-six communities got their first local station on the air in 1955. Of the 26, 24 were VHF stations and 2 were UHF stations; 4 of these were satellites. In addition, 14 communities received their first local television grants, but of these none were on the air as of the end of 1955; 11 of the 14 grants were VHF and 3 were UHF.

A second part to this question was: "* * * how many pending applications for permits are before the Commission which would give a first local television station excluding again satellites and also excluding UHF permits, which have been outstanding for more than 6 months?" As of March 9, 1956, there were 24 VHF applications pending before the Commission, which would give a first local service to the community, and 6 UHF applications pending.

III. On page 364, it was agreed that there be incorporated into the record of this committee the statement of the then Chairman of the Federal Communications Commission, Mr. Rosel H. Hyde, before the Subcommittee on Communications, concerning the status and development of the UHF channels in the United States. This statement is enclosed.

IV. The answer to Mr. Cox's question, asked on pages 468–469, concerning satellite television stations is: A total of 14 stations have been authorized to operate on a satellite or a semisatellite basis. The term "semisatellite" is used here to refer to satellite stations wich are broadcasting or planning to broadcast a small amount of locally originated programs. Of the 14 authorized cases, a total of 11 are on the air; 10 of these are VHF and 1 is UHF. One of the 3 satellites authorized, but not yet on the air, is a VHF and 2 are UHF.

V. Quoting Mr. Cox from page 481: "Mr. Chairman, as a further means of reducing construction and operating costs you cited the amendment of your rules in June of 1955 to reduce the minimum power requirement and to eliminate the antenna height requirements. Could you tell the committee how many stations have taken advantage of this change in the rule? * * * new or previously existing stations * * * how many of them were UHF * * * [is] your rule limited to UHF stations?"

There are nine stations which have taken advantage of the reduced minimum power requirements set forth in the rules amendment of June 1955. These were all new stations, both VHF and UHF. Eight are VHF and only 1 of the 9 is a UHF station.

VI. On page 494, Committee Counsel Cox asked Commission Chief Engineer Edward W. Allen, Jr., whether there are any UHF broadcast stations now operating in the top 12 channels of UHF. There are now a total of five stations presently authorized to operate on UHF channels 70–83. However, of these, only one is on the air, channel 71 in Harrisburg, Pa.

VII. At page 572 it was asked how many UHF stations are now operating at the presently permitted maximum of 1,000 kilowatts. There were, as of February 29, 1956, 6 UHF stations operating at 1,000 kilowatts.

VIII. On page 573, Mr. Cox asked if the Commission had any information as to the probable cost of a 5,000-kilowatt transmitter, as compared to a VHF transmitter? The Commission has no prices on such a transmitter. It is still in the experimental stage.

IX. The question of this Commission's power and policy concerning advertising on radio and television asked on page 608 of the transcript has been answered by my letter to you dated March 15, 1956.

X. The following aditional questions were submitted to the Commission at the conclusion of the Commission's testimony:

1. Has the Commission done anything with regard to the following matters during the last year, aside from the institution of its Network Study?
   - (*a*) National spot representation by networks.
   - (*b*) Coaxial cable and microwave charges.
   - (*c*) Ownership of AM and TV networks by the same organization.

(*d*) Ownership of station by networks.
(*e*) Multiple ownership of stations by nonnetworks.
(*f*) Duration of networks contracts.

The Network Study is presently studying topics (*a*), (*c*), (*d*), and (*f*) above. As to topic (*b*) above the Commission's Common Carrier Bureau has made studies of the telephone company's program transmission services, rates, and regulations. As to topic (*e*), on February 24, 1955, the United States Court of Appeals for the District of Columbia Circuit held, in *Storer Broadcasting Co.* v. *United States and the Federal Communications Commission* (220 F. 2d 204) that the portion of section 3.63 (a) of the Commission's rules fixing maximum limits on the numbers of television stations under common ownership was invalid because of the lack of provision for a hearing on applications for television stations exceeding the maximum number specified in the rule. This decision has been appealed to the United States Supreme Court, before which oral argument was held on February 28 and 29, 1956. It is hoped that a decision will be rendered during the current term.

2. Questions of exclusivity:

(*a*) Is it planned that your study will look into the question of whether exclusivity of affiliation and territorial exclusivity continue to be practiced, despite the provisions of the Chain Broadcasting Regulations?

Answer. Yes; as set forth in Network Order No. 1.

(*b*) Have you instructed your study committee to consider and evaluate Mr. Plotkin's suggestion for dealing with the exclusivity problem?

Answer. This and related suggestions will be considered by the study committee.

(*c*) Do your plans in this field include discussion of the problem with affiliates, independent stations, competing networks, national spot representatives, and other segments of the industry?

Answer. Yes; the Network Study staff has already met with the networks and national spot representatives.

3. Questions of more complete financial information:

(*a*) Has the Commission done anything about the proposals set forth by Mr. Jones concerning uniform accounting procedures?

Answer. Yes. The Network Study has this problem under consideration.

(*b*) Has the Commission looked into the matter of whether the networks follow reasonable and equitable policies with regard to paying for electrical interconnection of affiliates, and in other respects treat their various affiliates fairly?

Answer. Yes.

XI. On page 143, in answering a question posed by Senator Monroney, I stated that there was no examiner's report finding that to grant a VHF channel to an area that was at present solely a UHF area would destroy the UHF's. On going into this more fully, I find that on January 20, 1956, an examiner concluded on the record that a UHF station would go off the air in Saginaw, Mich., if a nearby VHF station assigned to Flint, Mich., went on the air at the proposed transmitter site. This would not, however, furnish the first VHF signal in the area. (See initial decision of Hearing Examiner Herbert Sharfman, *In re Application of WJR, the Goodwill Station, Inc.*, pages 76–77, paragraphs 18–21, Docket No. 11412.)

This letter elaborates on testimony before your committee. Accordingly, I would appreciate having this additional information inserted in the official transcript.

Sincerely yours,

George C. McConnaughey, *Chairman*.

Statement of Chairman Rosel H. Hyde on the Status and Development of the UHF Channels in the United States

Mr. Chairman and members of the committee, my name is Rosel H. Hyde. I am Chairman of the Federal Communications Commission.

I appreciate this opportunity to join you in a discussion of the status and development of UHF channels, for the fate of the UHF channels is a matter of great import in the development of our Nation's communications system.

The problem which confronts us today stems basically from the fact that the television service began in one part of the frequency band—the VHF. Now, that service has been expanded into another and substantially higher portion of the spectrum—the UHF, or ultra high frequencies.

The stations in operation prior to June of 1952 all operated in the VHF. And all of the television equipment—transmitting and receiving—was geared to VHF operation. The UHF stations require new types of transmitting equipment and, in order for the stations to be received, the public must either purchase new receivers or make extensive changes in existing receivers. In short, UHF operation requires substantial changes by manufacturers and by the public, and therefore has a significant impact on advertisers, networks, and all other elements in the industry.

I think it necessary to an understanding of the problems that are presented that we review and keep before us the principal events and considerations which have brought this situation about. I shall, therefore, set forth briefly the factors which led to the utilization of the UHF band and the manner in which it was to be used. I shall indicate specifically why we could not place all television in the VHF, why we intermixed VHF and UHF channels in the same community, anad why we provided for wide coverage areas for all stations. I shall also analyze the growth of television stations since the lifting of the "freeze" and the current financial reports of new VHF and UHF stations. Finally, I shall touch on the measures the Commission has under consideration affecting UHF.

Television is a newcomer in the art and industry of communications. You will recall that commercial television began in 1941 but was blocked from normal development as a result of the wartime freeze, which lasted until October of 1945. The utilization of the UHF band is an even more recent development. In the sixth report and order, adopted April 11, 1952, after 3 years of extensive hearings in which hundreds of experts were heard and thousands of exhibits were carefully studied, the Commission promulgated a nationwide Table of Television Assignments and rules and standards to govern the television broadcast service. For the first time commercial television stations were authorized to operate in the frequency band 470–890 Mc., commonly known as the UHF band. This table of assignments provided for assignments of both VHF and UHF channels in the same community. In addition, the rules and standards governing the television broadcast service adopted by the Commission at that time specified the powers and antenna heights that stations operating on VHF and UHF channels might employ.

It was apparent that the 12 VHF channels allocated for commercial television would not be adequate for a competitive nationwide system of television broadcasting. And it was equally apparent that realistically there was little prospect for allocating to television more channels in the VHF portion of the spectrum. To do so would have required that other highly important radio services would have to be deprived of frequencies vital to their operations. These other services include the use of radio frequencies for FM as well as for police, fire, aeronautical, petroleum, utility, railroad, and other nonbroadcast services. Accordingly, the plan adopted by the Commission in its sixth report and order provided for use of the 12 VHF channels and, in addition, for the use of 70 UHF channels. In reaching this decision the Commission rejected another proposal which had been made—that all television be moved to the UHF band. For at that time there were 1 or more VHF stations in operation in 63 of the most populous centers of the United States. At the end of 1951 close to 15 million families, located principally in and around these 63 areas, had VHF sets. In many of these cities set saturation was more than 50 percent. The assignment of all television stations in the UHF would have had staggering consequences, not only to the industry but to the public as well. The investment of consumers in VHF at that time amounted to billions of dollars. Similarly, the industry, including broadcasters, manufacturers, service and repair people, had invested untold millions in the VHF.

To put the matter simply, if we were to provide an adequate number of television facilities, if we were to meet the need for multiple and local sources of expression, if we were to meet the need for adequate service, then we had no other choice—we were obliged to use not only the 12 channels available in the VHF portion of the spectrum but also 70 channels in the UHF band. We must not lose sight of the fact that the assignment plan must serve not only for the present but for the future. It must serve as the basis for the long-range development of our national television service.

A reference to the pattern of development of AM emphasizes the importance of this long-range viewpoint. Twenty years after the institution of the aural broadcast service there were less than 900 stations. From time to time the view had been expressed that this country could not support more than that number of stations. The fact is, however, that since 1945 the number of operating AM stations has increased almost threefold, so that today there are approximately 2,600 radio broadcast stations. An assignment plan that limited AM to 900 stations obviously would not have been in the public interest.

With the increased demand for television service following the end of World War II, it was perfectly clear that 12 channels were not enough to do the job needed to be done.

It was necessary, therefore, to use both VHF and UHF channels. And, for reasons which I shall discuss in some detail, it was necessary also to make both VHF and UHF assignments in the same community in order to avoid serious limitation on the number of services that might be provided. Indeed, of the 100 most populous markets, the Commission felt that the assignment of UHF channels in addition to VHF was needed in 70 of these top markets. Thus, UHF was needed to provide the fourth commercial local station in 24 of those communities, the third commercial local station in 29 communities, and the second commercial local station in 17 communities. In another 17 of these top 100 markets only UHF assignments were made. Some examples may help to illustrate the problem: The Boston metropolitan area is able to support 17 radio stations. Are 3 commercial VHF stations adequate to meet the needs of that community? The Baltimore metropolitan area supports 11 radio stations. Are 3 VHF stations adequate to meet its needs? The Chicago metropolitan area supports approximately 30 radio stations. Are 4 commercial VHF stations adequate to meet its needs? The same question may be asked of many, many other leading markets. To ask the question is to answer it, for the answer is indeed obvious.

But there is a further consideration which impels the intermixture of UHF and VHF assignments. Technically, it is the most efficient way of allocating the scarce and precious television frequency space to maximize the number of assignments. As we have pointed out:

"* * * VHF stations are capable of providing a greater coverage than UHF stations. Hence a more extensive television service is made available where some VHF assignments are made in as many communities as possible than where only VHF assignments are made in some communities and only UHF assignments are made in the other communities."

Stated otherwise, if we do not arbitrarily limit the assignment of VHF stations, we achieve a greater flexibility in the utilization of these assignments and as a result are enabled to use them more often and where needed most.

The Commission concluded, therefore, that intermixture was necessary. However, even had we been willing to limit arbitrarily the number of channels in communities—even had we been willing to utilize a less efficient method of assigning the VHF portion of the spectrum—even so, we would not have eliminated the effects of intermixture. For eliminating the intermixture of VHF and UHF assignments in the same cities would not have eliminated the overlap of VHF and UHF service areas. And there is the rub. For one of the principal difficulties facing most UHF stations is that they are within the service areas of large VHF stations.

But the difficulties in the long-run development of UHF would, in my opinion, have been greater than they are today if we had failed to intermix. At the time of the lifting of the freeze there were 108 television stations operating throughout the United States. These were all VHF stations, and they were located in 63 of the top markets in the United States—markets which contain over 60 percent of the Nation's population and which account for approximately 60 percent of the Nation's retail sales. If we had not assigned additional UHF stations to these very important population and economic centers, then for a certainty the UHF would have been permanently relegated to an inferior position in the television service. For if we had assigned the UHF service to the smaller communities only, then such incentive as presently exists for equipment manufacturers to produce reliable low-cost, all-channel tuners or converters, or to produce UHF high-powered transmitting equipment, would have been very substantially lessened.

In recent weeks some currency has been given to proposals for the reallocation of the spectrum assigned for television broadcast stations. Sometimes it is suggested that we reallocate the VHF portion of the spectrum so as to provide one or more additional VHF channels and then assign all stations in the VHF. On the other hand, it has also been suggested that we move all stations into the UHF. Both proposals have an obvious appeal. For—in one fell swoop—

they would eliminate the disparity between stations; put all stations on an equal competitive basis; and thus remove the UHF problem.

But the very factors that made such moves impracticable 2 years ago when the sixth report and order was adopted still exist, and perhaps in even more intensified form at this time. The needs of other services in the VHF portion of the spectrum are at least as great now as they were several years ago. You will recall that these include other broadcasting services, such as FM: They also include many other services such as police, fire, aeronautical, petroleum, utility, and railroads which are not only important to the national economy but also to public safety. In these services many thousands of stations are operating. New lodgings in the spectrum would have to be found to house these services, with a resulting chain reaction of dislocation. And even the most drastic action would secure only a few additional VHF channels, hardly enough to supplant the 70 UHF channels. In view of the cost, the widespread disruption and confusion that would result from any effort to move these stations elsewhere in the spectrum, it must be concluded that a proposal to obtain more VHF channels for television to replace UHF channels is infeasible and impracticable.

And the impact upon the public and the industry of a move of all stations to the UHF would be far greater now than it was 2 years ago: For since the lifting of the freeze the number of VHF receivers in the hands of the public has increased from approximately 15 million to 30 million. And the number of stations operating on VHF channels has increased from 108 to 250. Similarly, the investment of the industry, including broadcasters, manufacturers, service and repair people, has increased several fold. Here, too, the disruption and dislocation, and uncertainty and confusion, make this proposal infeasible and impracticable.

I have dealt at some length with the salient considerations involved in the assignment of channels because of the importance of these matters to the national television structure. A second and equally important problem arises from the nature and extent of the service area that should be provided for television stations authorized to operate on the assigned channels.

It was our objective to provide the whole of the American public—including people who reside in cities, farms, and rural areas—in all parts of this country, with at least one television service. In addition, it was our objective—wherever practicable—to make it possible for the American people to be provided with a choice of two or more television services. Further, it was our objective to make a nationwide service available at the earliest practicable date. We assumed that in the immediate future, at least, television service would originate from the larger cities where there was a substantial economic base for their operation, in terms of population and purchasing power. Consequently, if persons outside these cities were to obtain television service in the near future, it would have to come from stations in the large centers.

In the light of these objectives and considerations it was the Commission's decision that all stations should have the potentiality of relatively wide coverage. Further, we concluded that the high power which was necessary for wide coverage was further desirable since it made possible a better grade of service to the viewer within the service area. We, therefore, authorized the use of high power.

I think you can see that in terms of the public interest there is substantial justification for providing television stations with wide coverage. However, the fact is that the transmitters necessary to provide such high powers for the UHF have not yet been developed. The result is that the approximation to comparable coverage that we hoped would be possible between VHF and UHF stations has not yet been attained.

Now, I should like to review briefly the growth of television stations since the lifting of the "freeze" and the current financial status of these new stations. I do not propose to burden the committee with the detailed data, but rather I shall set out the highlights of our analysis. The summary figures are available in these tabulations which I have had prepared for this proceeding. In addition, I would like to make available copies of a previous report which the Commission released on the UHF situation.

As you know, there has been a very rapid expansion in television during the past 2 years. There are well over three times as many stations in operation now as compared with April 1952. Of the 377 commercial stations on the air as of May 1, 1954, 127 were UHF.

On the basis of applications already received, there could be a total of 673 commercial stations. Of these, 404 would be VHF and 269 UHF. By comparison, in our allocation plan, we provided for approximately 550 commercial VHF and 1,300 commercial UHF stations.

Now, how extensive is intermixture of VHF and UHF stations in the same community? The great majority of UHF stations on the air—68 percent—do not operate in the same community with a local VHF station. Another 26 percent of UHF stations have only one VHF station in their same community. Only a handful—6 percent of the UHF stations—are in communities with two or more VHF stations. I want to emphasize that I am now talking about intermixture in the same community. However, intermixture on an area basis—that is, VHF signals coming in from outside communities—is very general.

I said a moment ago there could be 673 commercial stations on the basis of stations authorized and applications pending. This, however, presumes two things: (1) That all stations on the air will continue in operation; and (2) that all permit holders will eventually build stations.

Let me indicate what has been our experience thus far with both of these factors. Thus far, a total of 77 permittees have canceled out their authorizations before going on the air or have ceased operation after going on the air. These 77 include 13 VHF and 64 UHF. Thus the number of UHF cancellations is half as large as the total number of the UHF stations in operation. However, it should be noted that few of the dropouts had actually gone on the air—2 in VHF and 10 in UHF.

In the great majority of cases where UHF permittees have canceled, they faced substantial VHF-only set saturation in their markets. This was true not only in communities in which a VHF station was in operation in their community, but also in communities which had no local VHF station. It is also true that in a number of these communities VHF-set saturation was relatively low in May 1952, when the Commission had just lifted the "freeze". Such VHF-set saturation developed between then and the end of 1953 as the result of two factors: New VHF stations going on the air, and increased coverage of existing VHF stations.

There are now 120 UHF permits outstanding, in addition to the 127 UHF stations on the air. Over 60 percent of the 120 UHF permits outstanding are now at least 8 months old. We do not know when these 120 UHF permit holders will go on the air. We do know that they face the task of overcoming considerable VHF-only set saturation. This is particularly true of the 49 UHF permittees scheduled to go into 33 prefreeze markets. To a somewhat lesser degree, it is also true of 40 UHF permittees authorized for operation in 40 UHF-only markets where there are no UHF stations now in operation and no UHF-only circulation, but where there is considerable VHF-set ownership.

Previously, I have indicated that if UHF is to achieve comparable coverage with maximum-power VHF stations, it must have higher power. In fact, it would require radiated power of 1,000 kilowatts. This calls for a transmitter with rated power of 50 kilowatts or more. RCA, GE, and DuMont have advised that such transmitters are currently under development, but they are not likely to be available commercially until late 1955 or mid-1956.

The bulk of UHF transmitters now in operation are relatively low-powered. They have a rated power of 1 kilowatt and with high-gain antennas they operate at approximately 20 kilowatts. The highest rated UHF transmitter currently in operation is 12 kilowatts; with high-gain antennas these operate at approximately 200–240 kilowatts radiated power.

With the transmitters now available to UHF operators, they generally cover their local community, but they cannot reach out as far as VHF stations nor can they overcome poor viewing conditions as well as VHF stations.

We do not know precisely how many UHF sets are presently in the hands of the public, but the best information available indicates that the figure is somewhere between 2 million and 3 million. A survey made in November 1953 by a commercial organization indicated that as of that date there were 27.5 million families with a television receiver, including 1.8 million families who were equipped for UHF reception. In this connection, it is important to note that factory production and factory sales of combination VHF-UHF receivers have both gone down rather substantially between October or November 1953, and March 1954.

The financial statements of the stations taken as a whole should reflect broadly the various factors operating in the industry. However, because there has been a sudden expansion of stations and because most of the postfreeze stations have had a relatively short operating experience—their average age is only 9 months—the financial pattern at this point is still somewhat confused.

However, the financial reports of the industry for 1953 and the first quarter of 1954, which we have collected and analyzed, do reveal some broad trends, and are of considerable importance for the light they shed on the UHF problem.

First, I should like to report on the overall 1953 financial experience of the television industry. The industry, as a whole, had a prosperous year. Total revenues were $430.8 million. Income, before Federal income tax, was $68.4 million. The average prefreeze station had revenues of $1.9 million and income, before Federal income tax, of $658,000. The 4 networks and their owned and operated stations, as a group, had revenue of $231.7 million and income of $18 million.

With respect to the postfreeze stations, let me first give you an overall view of their investment. As of the end of 1953, the postfreeze VHF stations reported a total investment in tangible broadcast property (transmitters, studios, land, and buildings, etc.) of $41 million, an average of $376,000 per station. The UHF stations reported an investment of $30 million, an average of $300,000 per station.

To measure the experience of postfreeze stations in terms of profit and loss, we are using as our benchmark the reports of the stations detailing their operations during the 3 months—January, February, and March 1954. This is necessary because of the varying periods that these new stations have been in operation and their very limited experience overall. The information pertains to 175 of the 192 postfreeze stations that were in operation by November 1, 1953.

About 37 percent (33 stations) of the postfreeze VHF group reported profitable operation during the first quarter of 1954. By contrast, only 15 percent (13 stations) of the UHF group were profitable during the same period.

The average monthly profit of the profitable VHF and UHF stations was about the same—between $10,000 and $11,000. However, the monthly losses experienced by the losing UHF stations were substantially higher than for the losing VHF stations—between $10,000 and $11,000 for the UHF's, and $7,000 for the VHF's.

Thus far I have discussed the economic condition of postfreeze stations in terms of profitability. I think it important that we view these data in another light, to determine the number of these stations which suffer continuing substanial monthly losses. We find that 25 percent of the postfreeze VHF stations, as contrasted with 60 percent of the UHF stations, reported substantial monthly losses.

I have described in very broad terms the growth, development, and present status of UHF television. When examined in detail the problem is exceedingly complex: In some degree it varies from market to market, and it changes from month to month. Some of the facts are readily measurable; others are not. The applicability of some of the factors is not limited to the UHF only. Such factors as size of the market, the number of stations already in existence, the resources and experience of station operators, will influence the success of any station, VHF or UHF. Thus, any generalization which is drawn may have only limited applicability in understanding the present status of any individual UHF operation.

With these caveats and qualifications in mind I believe we can draw at least the general outlines of the problems and difficulties that confront the UHF broadcaster. I have pointed out that 68 percent of all operating UHF stations are in markets with no competing VHF station. But intermixture of service areas is far more general, and I would say that the typical UHF broadcaster finds himself in competition for the viewing audience with one or more VHF stations.

In this competition the disadvantage of the UHF station in coverage is two-pronged: In most cases he finds that his own service area is already effectively covered by high-powered VHF stations located in large urban markets: UHF stations frequently are in the position of providing duplicate coverage. And it is well known that national advertisers seek as far as possible to avoid duplicate coverage. The second disadvantage stemming from inequality of coverage is that where VHF and UHF stations are in the same market, the national advertiser can reach many more people by buying time on the VHF rather than the UHF station.

But most important in my view is the receiver difficulty with which UHF stations must contend. This difficulty arises from the fact that VHF receivers in the hands of the public cannot receive transmissions from the UHF station without conversion. This I believe is the most critical disability facing the UHF.

There are relatively few large-sized markets in which UHF stations can be located, which do not already have 25 percent or more VHF-only set saturation. Thus the new VHF operator will often find a ready-made substantial market in the sense that the public will receive his signal merely by a twist of the dial. The UHF operator, however, must actively sell and promote the sale of UHF converters which may cost $50–75, and which may not operate altogether successfully. Or he must persuade the public that in the purchase of new sets they ought to buy receivers which will tune all channels including the UHF channels, and such combination receivers may cost the consumer substantially more than a VHF only receiver.

To accomplish this task of building audiences, the UHF operator must make his service sufficiently attractive so that the listener will voluntarily incur the added expense involved in the conversion of his VHF receiver or in the purchase of a new all-channel receiver. In a community which is not reached by VHF service, the UHF station can expect gradually to build up a UHF audience. At best, the process is slow and costly to the station.

At the other end, where there are two or more local VHF stations or signals from outside stations serving the same community, and especially where these VHF stations are bringing in popular network programs, the incentive to convert or to buy UHF equipment, which is higher priced, is substantially weakened. And, where UHF-set circulation is low, obviously advertisers and networks are reluctant to place their programs on the UHF station. And so, to the extent that these factors apply to individual cases, the circle is complete. The audiences of UHF stations are limited. They can be increased by obtaining network programs. The UHF stations do not get sufficient network programs because they do not have an audience.

This set-conversion problem also has serious long-run implications. While UHF stations are on the air, they are an active force in persuading people in their community to buy UHF equipment. But if the UHF station becomes discouraged as a result of slow conversion, or if it does not have the financial resources to wait out the period necessary to achieve substantial UHF-set circulation, and it goes off the air, then, what are the consequences? The chances are that progress will be halted in building up UHF-set circulation, only VHF-only sets will be purchased and it will be even more difficult in the fuutre for new UHF stations to operate in that community. In other words, so long as VHF-only receivers are manufactured and retailed and purchased time alone will not solve the UHF problem in many, many communities.

In brief, then, the UHF problem, generally speaking, stems from three limitations: The limitation of low UHF set ownership, of coverage, and of programing. These limitations are substantial and I must state my own conviction that there is no one magic solution to the problem. Nevertheless, there are measures which may help overcome some of the present handicaps of UHF. Some, the Commission itself has proposed; others have been urged on the Commission by outside parties. I would like to review these proposals with you, although I cannot of course state the ultimate decision which my colleagues may reach in their consideration of any one of these proposals.

First, the problem of coverage. On March 11, 1954, the Commission issued a notice of proposed rulemaking, looking toward the upward revision of its requirements with respect to the minimum power which UHF stations might utilize. In the Commission's notice it pointed out that requirements of power by UHF stations were made in the light of the equipment which was then available. At that time transmitters capable of producing an effective radiated power in the order of 100 kilowatts were not available in the UHF. Since the adoption of the sixth report, it appears such power has become available and can be accomplished with a transmitter with a rated power of 5 kilowatts. Accordingly, the Commission proposed to require all UHF stations to operate with a transmitter with a minimum rated power of 5 kilowatts. The time afforded interested parties for the submission of views expired on May 17, 1954.

Another proposal for extending coverage was made in two petitions filed by parties requesting an amendment of the television broadcast rules so as to authorize the use of new techniques for extending the service of television stations. These techniques have been labeled as satellites and boosters. The satellite operation contemplates the operation of a subsidiary station on a different channel than is authorized for the operation of the main station. The booster technique contemplates the operation of a subsidiary station on the same channel authorized for the main station. Both petitions which have been filed and are presently pending before the Commission request the authorization of satellites and boosters on both the VHF and the UHF channels. The Commission has already authorized Sylvania Electric Co. to experiment with satellites and several parties, including RCA, WSM, Adler Communications Laboratories, and Associated Broadcasters, to experiment with boosters. The results of these experimental authorizations will undoubtedly help the Commission in its final decision.

The problem of building of UHF set ownership is, as I have pointed out, of major significance in the present situation of UHF stations. This problem need not be one of indefinite duration, however. First, if the manufacturers of receivers were to manufacture only all-channel tuners, obviously this problem would disappear as new sets were purchased. The data I have furnished sets out the extent to which all-channel tuners have been manufactured. Further, the problem would be considerably lessened if set conversions were readily accomplished.

The Commission's authority in this area is virtually nonexistent. But to the extent that actions in other fields within our competence and jurisdiction have a bearing on this problem I think it appropriate to raise it at this time. The committee is aware that on December 23, 1953, the Commission issued a notice of proposed rulemaking, looking toward a revision of its mutiple ownership rules. The rules in effect specify a five-station maximum for television stations without distinction between UHF and VHF. The revision proposed by the Commission is to increase the maximum permissible ownership of television stations to 7—no more than 5 of which may be in the VHF band. In its notice the majority of the Commission stated their view that this amendment would help encourage the development of the UHF band. This proposal is designed to encourage large organizations with program production, know-how, and resources, to enter into the UHF field, in the ownership and operation of stations. To the extent that this is accomplished and results in the rendition of full network programs over UHF facilities on a regular basis, a direct incentive would be furnished to persons within the service range of such stations to convert to UHF. Moreover, to the extent that a number of major networks have UHF stations with popular programs, the greater the incentive to manufacturers to turn out all-channel receivers only and highpower UHF transmitters. Accordingly, although no action can be taken by the Commission directly with respect to the UHF receiver problem, it might be that the liberalization of the multiple-ownership rules would help indirectly in some measure to reach the same result.

On March 9, 1954, a Senate bill, S. 3095, which generally looked toward the same objectives as the Commission's proposal, was introduced in the Senate. This bill proposed to add a new section to the Communications Act, which would regulate the multiple ownership of television broadcast stations. The Commission's views on this bill were submitted to the full committee yesterday.

In addition, on May 11, 1954, a proposed amendment of H. R. 8300 was introduced, which would exempt from the 10-percent excise tax all television sets with built-in UHF tuners.

And now let us consider proposals designed to assure UHF stations better programing. Under the present provisions of the Commission's chain broadcasting rules a network affiliate, which renders coverage to a substantial portion of the service area of a station located in another community, may contract with a network organization to preclude the station in that other community from carrying network programs which the affiliate carries. The network affiliate may do so, even though the program's sponsors and the network itself desire that they be broadcast by the latter station also. On April 1 of this year the Commission issued a notice of proposed rule making, looking toward a revision of this section of its chain broadcasting rules. The change proposed by the Commission would continue to recognize the right of an affiliate to contract with the network to preclude stations located in the same community as the affiliate from taking programs of the network. The proposed rule would operate to the benefit of UHF stations where the existing rule, because of the wide latitude afforded the VHF affiliate, has operated to preclude UHF stations from obtaining network programs where the sponsor desires to broadcast over the UHF facilities. The time for the submission of views by interested parties expired on May 10, 1954, and that proposal is presently pending before the Commission for final action.

On April 29 a further proposal, seeking a revision of the Commission's network rules, was filed. That proposal requests an amendment of the chain broadcasting rules to provide, in effect, that 1 year from the effective date of the amendment at least one-third of network television affiliates receiving revenue from the sale of network time be UHF stations and that 2 years from the effective date of the amendment at least one-half of network television affiliates receiving revenue from the sale of network time be UHF stations. That petition is presently pending before the Commission.

More recently, on May 13, 1954, a bill was introduced in the Senate (S. 3456) which looks toward a revision of the Communications Act to give the Commission authority to "establish rules and regulations and make orders with respect to networks and such of the activities as affect licensed broadcast stations to operate in the public interest."

In addition to the foregoing proposals designed to assure UHF stations a high-quality-program fare, a number of petitions have been filed with the Commission relating to subscription television. Subscription television takes various forms, but basically it is a technique for coding or scrambling the transmitted signal so as to produce a distorted picture and unintelligible sound at any receiver which is not equipped with appropriate decoding or unscrambling devices. The systems contemplate a regular charge by the operator of the system for the periodic purchase of the "code" or "key" to activate the decoding units. Developmenttal and experimental research has been carried on for some time and there are presently several different systems in various stages of experimentation and development. From time to time, upon request of interested parties, the Commission has granted special authorizations to permit developers of subscription television systems to use broadcast facilities for such developmental work and experimental operations. Among other things, the proponents of the system urge that the operation of subscription television by UHF stations will open the way to many new avenues of attractive programing and thus speed up set conversions; and also that it will supplement the revenues of such stations. In addition, it is alleged that subscription television will free stations of their dependency on networks. These petitions are presently pending before the Commission.

Also, there is now pending H. R. 6431, a bill to amend the Communications Act with respect to its application to subscription radio and television. Last week in reply to a request from the chairman of the House Interstate and Foreign Commerce Committee, the Commission submitted its comments on this bill, and I would like to make a copy of the Commission's comments available.

Thus far I have described those proposals made by the Commission and by interested private parties which are related to the three principal problems that I have described, i. e., coverage, UHF set ownership, and programing. In addition, there have been filed on April 29 of this year a couple of miscellaneous proposals, looking generally toward a relaxation of the Commission's rules with respect to the operation of UHF stations. One request seeks a revision of the Commission's technical standards to authorize what has been described in the request as "binaural third dimensional or stereophonic sound"—designed to provide "* * * tonal perspective with movement and quality and * * * a feeling of realism." A further request for the amendment of the Commission's operating requirements of UHF television stations seeks an amendment of the Commission's rules so as to authorize aural transmissions by stations with varied fixed images rather than moving images as the rule presently requires.

In addition to these requests a further request presently pending before the Commission seeks a suspension of the further processing and grant of construction permits in the television broadcast service until such time "that the Commission may adequately study, particularly in the light of forthcoming Senate hearings, as adjustment of the inequities presently existing between UHF and VHF television stations."

In conclusion I should like to state that this meeting between representatives of the Government and the industry can be helpful in adducing all relevant data so that we may explore fully all facets of the problem. The Commission will, of course, cooperate to the fullest extent with this committee.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., April 11, 1596.

Hon. WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I have your letter of April 3, 1956, referring to the information the Commission was requested to supply for the record during the appearance of the Commissioners before your committee. Eleven items are listed on which additional information is sought.

The information requested in items 2 through 11 have been supplied in my letter to you of April 9, 1956.

Item 1 asks for the average cost of construction of UHF television stations. During my testimony I read into the record the average cost of construction for UHF stations for 1953 as $300,493 (transcript p. 328, as corrected).

I will be happy to furnish any additional information that you may require.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*

The CHAIRMAN. The committee will now recess until 10 o'clock on Monday morning, at which time we will begin to hear outside witnesses.

(Whereupon, at 12:27 p. m., the committee was adjourned, to reconvene at 10 a. m. Monday, February 27, 1956.)

APPENDIXES

APPENDIX I

RADIO AND TELEVISION ADVERTISING

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
February 3, 1956.

Mr. JOHN W. GWYNNE,
Chairman, Federal Trade Commission,
Pennsylvania Avenue at Sixth Street,
Washington, D. C.

DEAR MR. GWYNNE: It has come to my attention both through complaints from the public and from my own observations that there is a great deal of objectionable and possible fraudulent advertising being broadcast over radio stations in the Washington area.

I wonder if you would advise me if the Federal Trade Commission maintains any continuing check, monitoring service or otherwise, on the contents of such radio advertising. Would you please advise me for use of the Senate Interstate and Foreign Commerce Committee in our pending investigation in radio and television, what if any procedures are followed by the Federal Trade Commission in guarding the public interest in connection with such radio advertising.

Very truly yours,

WARREN G. MAGNUSON, *Chairman.*

FEDERAL TRADE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D. C., February 9, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR: In reply to your inquiry of February 3, 1956, the Commission requests and receives the written continuities of all radio and television advertising originating from individual stations, for one selected 24-hour period approximately every 3 months. This applies to all commercial advertising except that over which the Commission has no jurisdiction. Enclosed herewith is a specimen of the form upon which such requests are regularly made.

However, we do not put the individual stations to the burden of transcribing their film or advertising or advertising broadcasts from electrical reportings. Instead, we request and receive a list of the sponsors, products so advertised, and the advertising agencies from which they originate. If it appears that some sponsor, product, or agency is involved with which the Commission is already concerned, a request is made for transcripts.

The national networks, without request, voluntarily forward to us written transcripts of all advertising continuities broadcast over national hookups, for a selected 8-day period, once each month.

All continuities submitted are examined by attorneys and any appearing to warrant further action are referred directly to our Bureau of Investigation for consideration, except where such advertising appears to violate trade practice rules, stipulations, or cease and desist orders, in which event it is referred directly to the division having the responsibility for the administration of the respective matter.

In addition to the foregoing, any and all complaints of false and misleading advertising received from the public, or from competitors of advertisers, are referred to our Bureau of Investigation. When an investigation is instituted in any case we do not rely entirely on the submittals by the radio and television station but obtain all the relevant advertising material either from the advertiser itself or other sources.

No attempt is made otherwise than herein described to monitor local stations in the metropolitan area, and for that reason advertising that is "ad libbed" would not come to our attention.

For the period from September 1, 1955, to and including January 20, 1956, in this fashion there were examined 3,676 radio and television continuities.

Our records are not kept so that corrective actions based on radio and television advertising in this area obtained in the foregoing manner can readily be segregated from the corrective actions taken on such advertising coming to our attention by any other means. However, the following are illustrative of actions taken involving radio and television advertising in this area:

Docket No. 6131, advertiser, Lacy's, Inc., et al.; complaint issued October 27, 1953, O. C. D. issued, February 26, 1954. Monetary savings on a "family food plan" in connection with sale of home freezers, and bait advertising for television sets and other appliances.

Docket No. 6140, advertiser, George's Radio & Television Co., Inc., et al.; complaint issued, November 4, 1953, O. C. D. issued, December 28, 1953. Substantially the same as Lacy's.

Docket No. 6181, Clean-Rite Vacuum Stores, Inc., et al.; complaint issued February 18, 1954, O. C. D. issued, June 4, 1954. Bait advertising of vacuum cleaners.

Docket 6209, Bond Vacuum Stores, Inc., et al.; complaint issued May 27, 1954, O. C. D. issued October 22, 1954. Bait advertising and other misrepresentations of vacuum cleaners and sewing machines.

Docket 6295, Sew-Ezy Machine Co., et al.; complaint issued February 8, 1955, O. C. D. issued May 31, 1955. Bait Advertising and other misrepresentations of sewing machines and vacuum cleaners.

Docket 6404, Mayflower Television Co.; complaint issued August 24, 1955, O. C. D. issued December 1, 1955. Misrepresentations of service and other charges for repairing television sets.

There are enclosed herewith copies of the complaints, findings, decisions of the Commission, and orders in the above entitled matters. There have been many others, of which these are only representative.

I trust that this will be the information you require, but if additional information is desired, please advise.

Very truly yours,

JOHN W. GWYNNE, *Chairman.*

FEDERAL TRADE COMMISSION

WASHINGTON

ADVERTISING SURVEY IN RE COMMERCIAL BROADCASTS

GENTLEMEN: The Federal Trade Commission, in connection with its review of current radio and television advertising, requests that you forward to the Advertising Survey, Federal Trade Commission, Washington 25, D. C., typed script representing the commercial text of all advertising originating in your studios and disseminated through your facilities on the following date(s):

Commercial continuities submitted should include those announcements, statements, and testimonials tending to or intended to create a demand for, or to induce the purchase of, any article of commerce, whether such commercial script opens, is interspersed with, or concludes a program. If commercial continuities are in a foreign language you are requested to submit an English translation of the continuities.

Date of dissemination and station call letters should be printed, stamped, or written, preferably at the bottom of each sheet of commercial continuity. Legible carbon copies of commercial continuities are acceptable. The advertiser's name and address should be indicated where not part of the script. Electrical transcriptions or films need not be transcripted. It will be sufficient to list the sponsor, the product advertised, and the agency from which it is received.

Noncommercial script (i. e., without any commercial objective) covering lectures and similar programs, which are purely educational, religious, civic, or political need not be submitted. Further, you may omit forwarding commercial advertising continuities of local banking institutions, building and loan associations, transportation companies, including local taxi services, local hotels, restaurants, theaters, nightclubs, and mortuary establishments.

Please mail return promptly, in packages weighing not more than 4 pounds, each, and use the enclosed Government franks for mailing. Please prepare the enclosed transmittal form FTC-R-6 covering individual station material, to distinguish your network material sent by originating key stations.

Very truly yours,

LEO J. KRIZ,
Attorney in Charge, Advertising Surveys.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF GEORGE'S RADIO AND TELEVISION COMPANY, INC. A CORPORATION, AND GEORGE WASSERMAN, LEOPOLD FREUDBERG, SOLOMON GROSSBERG, AND PHILLIP KELLER, INDIVIDUALLY

Docket No. 6140

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that George's Radio and Television Company, Inc., and George Wasserman, Leopold Freudberg, Solomon Grossberg, and Phillip Keller, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. George's Radio and Television Company, Inc. is a corporation, organized, existing, and doing business under and by virtue of the laws of the District of Columbia, with its principal office and place of business located at 816 F Street, NW., Washington, D. C. George Wasserman is President and Treasurer, Leopold Freudberg is Vice President and Chairman of the Board of Directors, Solomon Grossberg is Secretary, and Phillip Keller is General Manager of the corporate respondent, George's Radio and Television Company, Inc. These individuals formulate, control, and direct the affairs and policies of the corporate respondent. Said individual respondents have their offices at the same place as corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale of electrical appliances, including home freezers and television sets. Respondents have made arrangements whereby purchasers of said home freezers are enrolled in a food-distributing organization operated by a concern unaffiliated with respondents, which entitles members to purchase certain food items in bulk quantities.

PAR. 3. In the course and conduct of their business, respondents cause their home freezers, television sets, and other electrical appliances, when sold, to be transported to the purchasers thereof at their places of residence in the District of Columbia, and in the States adjacent thereto, and at all time material herein have maintained a course of trade in said home freezers, television sets, and other electrical appliances in commerce in the District of Columbia and adjacent States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents, through the use of radio broadcasts and other means of advertising, have made certain statements and representations of which the following are typical:

Continuity broadcast over Station WARL, Arlington, Virginia, on June 7, 1952:

". . . Friends, if you've been doing without—if you've been denying yourself big necessities and little luxuries because you just can't see where the money's coming from: this revolutionary plan may alter your whole life. Now George's make it possible for you to buy food the way your grocer does—buy it packaged the way you want—meats cut the way you want—buy it at tremendous savings—buy it at George's Food Chest Plan Way. Call George's at RE 7420 now for all the details at no obligation. Find out what the Food Chest Way can mean to your standard of living now that prices are going up again in foods. . . ."

"A plan that will save you hundreds of dollars and still let your family eat better than before. Has the cost of living got you down? Are you constantly worried about how you can make your budget stretch? Friends, savings on your food bill can be the difference between poverty and plenty. George's has gotten together with nationally famous food distributors and now you can buy direct with fantastic savings. . . . Call RE 7420 now to see how you can buy as your grocer buys, direct, and save hundreds of dollars. . . ."

". . . If you've ever been worried about money—if you're seriously concerned about how your salary can stretch—or how your husband's salary can meet ever-increasing expenses—a simple phone call can open up a whole new way of running your household."

Continuity broadcast over Station WTTG, Washington, D. C., June 7, 1952:

". . . I'm going to tell you how you can eat better than you've ever eaten, and spend less. How you can put money in the bank, not for one month, not for one year, but for the rest of your life! George's . . . Washington's great appliance dealer and the Nation's famous food distributors have gotten together. Famous brands like Snow Crop, Armour, Swift, dozens more. They've cooked up a fantastic plan to let you buy direct with incredible savings. You actually buy as your grocer himself buys, with foods packaged and meat cut the way you specify. You buy direct, and save hundreds of dollars, with no money down, for your food, and convenient installments. . . . This revolutionary new way to eat better and actually save money is as close as your telephone . . . call George's and ask about the fantastic Food Chest Food Plan, to save you hundreds of dollars . . . it's money in the bank, tremendous lifetime savings. . . ."

Continuity broadcast over Station WARL, Arlington, Virginia, on June 12, 1952:

"Republic 7420—that's the number to call now for the fantastic George's Food Plan—the food plan that's sweeping the whole country—the food chest you've heard so many incredible things about. Yes, it's an amazing new idea—and here's the lowdown on how you can save hundreds of dollars . . . because now with a Food Chest not only can you buy food in season, not only can you buy it in quantity, but you can actually buy it with a big quantity discount! Yes, because of a special new arrangement with the big national distributors, you get the benefit of buying with a discount that saves you an incredible percentage of your whole food budget, and you pay no money down for your food. Imagine being able to buy meats, fish, fruits, and vegetables, at actual discounts that will mean fantastic savings for you and your family. . . ."

Continuity broadcast over Station WTOP, Washington, D. C., on June 13, 1952:

". . . Now for years people have been buying food chests and saving money every year by having the facilities to buy in quantity. When beef is low they buy 100 pounds of beef. In the summer they buy strawberries and eat them all year around. And now something sensational has been added, because now with a Food Chest not only can you buy food in season, not only can you buy it in quantity, but you can actually buy it with a big quantity discount. . . ."

PAR. 5. Through the use of the foregoing statements and representations and others of the same import, but not specifically set out herein, respondents represented, directly or by implication:

(1) That participants in said plan can buy food at wholesale prices or from a wholesaler.

(2) That participants in said food plan can effect overall monetary savings through the general use of frozen foods in a place of corresponding foods in other forms.

(3) That substantial overall reductions in food costs will be effected through participation in said food plan.

(4) That net monetary savings can be effected by all who purchase and use respondent's home freezers.

PAR. 6. The aforesaid statement and representations are false, misleading and deceptive. In truth and in fact:

(1) The food distributing organization from which participants in said plan purchase is not a wholesaler and the prices at which participants purchase are not wholesale prices.

(2) In the main, frozen foods, purchased through said plan, will cost more per edible pound than corresponding foods in other available forms normally consumed by the public. No overall saving in food costs will be accomplished

by the general substitution of frozen foods, available under said plan, for corresponding foods in other forms.

(3) In the main, food plan prices are considerably in excess of usual retail prices of corresponding foods in other forms, and are close to, and in some instances identical with, usual retail prices of similar frozen foods. As a consequence, substantial overall reductions in food costs will not be effected through participation in said food plan.

(4) In a substantial number of instances, the purchase and use of a home freezer will not result in net monetary savings. In such instances, the increase in expenses directly attributable to the purchase and use of a home freezer will eliminate savings, if any, which may be effected through the purchase of food in bulk quantities. Among the expenses which will be thus incurred are the costs of financing where credit is used, and the costs of operation, maintenance and depreciation of the home freezer.

PAR. 7. In the course and conduct of their business, respondents, through the use of radio broadcasts, newspaper advertisements, and other means of advertising, have made certain statements with respect to their television sets. Among the typical, but not all-inclusive, of said statements, are the following:

In the Washington, D. C. "Evening Star," issue of April 11, 1952:

"Brandnew $309.95 Majestic 20 Inch Console Television
"$188
"Fully Guaranteed—On Sale At All Stores."

"Brandnew $279.95 Majestic 20 Inch Table Model Television
"$134
"Fully Guaranteed—On Sale At All Stores."

"New 1952 $249.94 Mirrortone 20 Inch TV
"$99
"Fully Guaranteed—On Sale At All Stores."

"Brandnew $299.95 CBS Columbia 20-Inch TV
"$149
"In Full Supply At All Stores."

In the Washington, D. C., Evening Star issue of April 18, 1952:

". . . We may be stepping on toes but for once and for all let's get the record straight. George's has served the Washington area for over a quarter century. We've grown and prospered with your patronage and we did it by honest, straightforward selling. The record proves it! Over a million satisfied customers. Satisfied with Bargains NOT BAIT! When George's advertises such specials as appear on this page you can be sure of quality and value. A quarter-century of successful business proves it!"

"Brandnew 1952 Mirrortone TV
"$99.95
Regular $249.95"

In the Washington, D. C., Times-Herald issue of April 25, 1952:

"50 Percent OFF!
"Brandnew Famous Make Television"

"Brandnew $459.95 Emerson 19-inch console
"$229.98
"This Merchandise On Sale At All Stores"

"Brandnew $525 Admiral 20-inch Console
"$262.50
"This Merchandise On Sale At All Stores"

"Brandnew $369.95 Philco 17-inch Console
"$184.98
"This Merchandise On Sale At All Stores"

"Brandnew $299.95 Motorola 20-inch Ensemble
"$149.98"

"Brandnew $299.95 CBS–Columbia 20-inch Table Model
$149.98
"This Merchandise On Sale At All Stores"

"Brandnew $279.95 Hallicrafters 20-inch Table Model
"$139.98 (base extra)"

"Brandnew $249.95 1952 Mirrortone 20-inch Table Model
"$99
"This Merchandise On Sale At All Stores"

"Brandnew $299.95 1952 Mirrortone 20-inch TV Console
"$129
"This Merchandise On Sale At All Stores"

Continuity Broadcast by Station WRC, Washington, D. C., on June 29, 1952.

". . . George's makes a special offer of 20-inch table-model television for just 99 dollars plus tax and warranty. A fabulous price and a great value you can't afford to miss. A 99-dollar price tag on any television is going some—but when it's a 20-inch television from George's it's the buy of a lifetime. George's invites you to look this set over at no cost, no obligation. Right now special operators are waiting to take your calls at RE 7420. Well rush a 20-inch television to your home this very afternoon for a free look. . . ."

PAR. 8. Through the use of the foregoing statements and others of the same import, but not specifically set out herein, respondents represented, directly or by implication:

(1) That respondents' television sets which are described as brandnew, are sets of the current year's model.

(2) That the higher price for "Mirrortone" sets shown in said advertisements, represents the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

(3) That the price at which said "Mirrortone" sets are offered is lower by 50 percent than the usual price at which they were customarily offered for sale and sold by respondents in the recent regular course of their business.

(4) That respondents were making bona fide offers to sell "Mirrortone" television sets for $99 and various other prices stated from time to time.

PAR. 9. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

(1) The television sets described as brandnew were not current models at the time the said advertisements were published.

(2) The higher price for "Mirrortone" sets shown in said advertisements does not represent, but on the contrary greatly exceeds the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

(3) The price at which said "Mirrortone" sets are offered is not 50 percent less than the usual price at which said sets were customarily offered for sale, and sold by respondents in the recent regular course of their business.

(4) Respondents' offer to sell "Mirrortone" television sets at the various advertised prices were not genuine or bona fide offers to sell such sets. On the contrary, said offers were made for the purpose of inducing persons to visit respondents' stores or to obtain leads as to persons interested in the purchase of television sets in order that they could be solicited in their homes by respondent's salesmen.

Respondents and their salesmen, at their places of business and in calling upon persons in their homes, in many instances displayed great reluctance or refused to demonstrate or gave an improper demonstration of said television sets, or disparaged the design, workmanship and performance of said sets and attempted to demonstrate and sell different and more expensive sets than those advertised.

PAR. 10. The use by respondents of the said false and misleading statements and representations has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein are true and to induce the purchase of substantial quantities of respondents' freezers and television sets by reason of such erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 4th day of November A. D. 1953, issues its complaint against said respondents.

NOTICE

Notice is hereby given you, George's Radio and Television Company, Inc., a corporation, and George Wasserman, Leopold Freudberg, Solomon Grossberg, and Phillip Keller, individually, respondents herein, that the 13th day of January, A. D., 1954, at 10 o'clock is hereby fixed as the time and room 332, Federal Trade Commission Building, Washington, as the place when and where a hearing will be had before William L. Pack, a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after serivce of it upon you. Such answer shall contain a concise statement of the facts which constitute the ground for defense and shall specifically admit or deny each of the facts alleged in the complaint unless you are without knowledge, in which case you shall so state. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

If respondents desire to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondents admit all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondents may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under Rule XXI, and the right to appeal under Rule XXIII.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission and Hearing Examiner William L. Pack, without further notice, to find the facts to be as alleged herein and to issue the following order in this proceeding:

It is ordered, That respondents, George's Radio and Television Company, Inc., a corporation, and its officers and George Wasserman, Leopold Freudberg, Solomon Grossberg, and Phillip Keller, individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of home freezers and television sets, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That participants in a food purchasing plan can buy food at wholesale prices or from a wholesaler, contrary to the fact.

2. That overall monetary savings can be effected through the general use of frozen foods in place of corresponding foods in other forms.

3. That substantial overall reductions in food costs will be effected through participation in a food purchasing plan.

4. That net monetary savings, however expressed, can be effected through the use of freezers purchased from respondents unless the costs of operation, maintenance and depreciation and, in the event that the freezer is purchased on credit, the costs of such credit, are taken into account.

5. That television sets which are not of the current year's model are new, through the use of such terms as "Brand New" or any other terms which describe said sets as new, unless the year in which said sets were current models is disclosed.

6. As the usual price of television sets, any price or value which is in excess of the price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

7. That the price at which respondents' television sets are offered is lower by 50 percent or any other designated percentage, than the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

8. That television sets are being offered for sale when such offer is not a genuine and bonafide offer to sell the sets so offered.

The inclusion of such order to cease and desist in this complaint will be without effect in the event you show cause, on or before the 13th day of January, A. D., 1954, why such order should not issue.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 4th day of November, A. D., 1953.

By the Commission:

[SEAL] ALEX. AKERMAN, Jr., *Secretary.*

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

(Commissioners: Edward F. Howrey, Chairman, Lowell B. Mason, James M. Mead, Albert A. Carretta, John W. Gwynne)

IN THE MATTER OF GEORGE'S RADIO AND TELEVISION COMPANY, INC., A CORPORATION, AND GEORGE WASSERMAN, LEOPOLD FREUDBERG, SOLOMON GROSSBERG, AND PHILLIP KELLER, INDIVIDUALLY

Docket No. 6140

NOTICE

The consent settlement rendered by the parties in this proceeding, a copy of which is served herewith, was accepted by the Commission on December 22, 1953, and ordered entered as the Commission's findings as to the facts, conclusion, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

By direction of the Commission:

[SEAL] ALEX. AKERMAN, Jr., *Secretary.*

Issued December 28, 1953.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

(Commissioners: Edward F. Howrey, Chairman, Lowell B. Mason, James M. Mead, Albert A. Carretta, John W. Gwynne)

IN THE MATTER OF GEORGE'S RADIO AND TELEVISION COMPANY, INC., A CORPORATION, AND GEORGE WASSERMAN, LEOPOLD FREUDBERG, SOLOMON GROSSBERG, AND PHILLIPS KELLER, INDIVIDUALLY

Docket No. 6140

CONSENT SETTLEMENT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 4, 1953, issued its complaint, which was duly served on the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth and in lieu of answer to said complaint, hereby:

1. Admit all the jurisdictional allegations set forth in the complaint.

2. Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion, and order to cease and desist. It is understood that the respondents in consenting to the Commission's entry of said findings as the facts, conclusion, and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

3. Agree that the consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceedting, are as follows:

PARAGRAPH 1. George's Radio and Television Company, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 816 F Street, N. W. Washington, D. C.

George Wasserman is president and treasurer, and Phillip Keller is general manager of the corporate respondent George's Radio and Television Co., Inc. These individual respondents formulated, controlled and directed the affairs and policies of the corporate respondent at the time the acts and practices hereinafter set for the transpired.

Said individual respondents have their offices at the same place as corporate respondent.

Individual respondents George Wasserman and Phillip Keller have executed affidavits dated November 24, 1953, which state that individual respondents Leopold Freudberg and Solomon Grossberg are officers for convenience purposes only, and during their tenure of office as vice president and secretary, respectively, have had no voice whatever in the formulation, control, or direction of the affairs, policies, or advertising practices of respondent George's Radio and Television Co., Inc.

By reason of the matters set forth in said affidavits, the Commission finds that the complaint herein, insofar as it relates to the respondents Leopold Freudberg and Solomon Grossberg as individuals, should be dismissed, and accordingly, the term respondents, as hereinafter used, shall refer to respondents George's Radio and Television Co., Inc., and George Wasserman and Phillip Keller, individuals.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale of electrical appliances, including home freezers and television sets. Respondents have made arrangements whereby purchasers of said home freezers are enrolled in a food distributing organization operated by a concern unaffiliated with respondents, which entitled members to purchase certain food items in bulk quantities.

PAR. 3. In the course and conduct of their business, respondents caused their home freezers, television sets, and other electrical appliances, when sold, to be transported to the purchasers thereof at their places of residence in the District of Columbia and in the States adjacent thereto, and at all times material herein have maintained a course of trade in said home freezers, television sets and other electrical appliances in commerce in the District of Columbia and adjacent States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, respondents, through the use of radio broadcasts and other means of advertising, have made certain statements and representations of which the following are typical:

Continuity broadcast over Station WARL, Arlington, Virginia, on June 7, 1952.

". . . Friends, if you've been doing without—if you've been denying yourself big necessities and little luxuries because you just can't see where the money's coming from: this revolutionary plan may alter your whole life. Now George's makes it possible for you to buy food the way your grocer does—buy it packaged the way you want—meats cut the way you want—buy it at tremendous savings—buy it at George's Food Chest Plan Way. Call George's at RE 7420 now for all the details at no obligation. Find out what the Food Chest way can mean to your standard of living now that prices are going up again in foods . . ."

"A plan the will save you hundreds of dollars and still let your family eat better than before. Has the cost of living got you down? Are you constantly worried about how you can make your budget stretch? Friends, savings on your food bill can be the difference between poverty and plenty. George's has gotten together with nationally famous food distributors and now you can buy direct with fantastic savings . . . call RE 7420 now to see how you can buy as your grocer buys, direct, and save hundreds of dollars . . ."

". . . If you've ever been worried about money—if you're seriously concerned about how your salary can stretch—or how your husband's salary can meet ever-increasing expenses—a simple phone call can open up a whole new way of running your household."

Continuity broadcast over Station WTTG, Washington, D. C., June 7, 1952:

". . . I'm going to tell you how you can eat better than you've ever eaten, and spend less. How you can put money in the bank, not for one month, not for one year, but for the rest of your life! George's . . . Washington's great appliance dealer and the Nation's famous food distributors have gotten together. Famous brands like Snow Crop, Armour, Swift, dozens more. They've cooked up a fantastic plan to let you buy direct with incredible savings. You actually buy as your grocer himself buys, with foods packaged and meat cut the way you specify. You buy direct, and save hundreds of dollars with no money down, for your food, and convenient installments . . . This revolutionary new way to eat better and actually save money is as close as your telephone . . . Call George's and ask about the fantastic Food Chest Food Plan, to save you hundreds of dollars . . . it's money in the bank, tremendous lifetime savings . . ."

Continuity broadcast over Station WARL, Arlington, Virginia, on June 12, 1954:

"Republic 7420—that's the number to call now for the fantastic George's Food Plan—the food plan that's sweeping the whole country—the food chest you've heard so many incredible things about. Yes, it an amazing new idea—and here's the lowdown on how you can save hundreds of dollars—because now with a Food Chest now only can you buy food in season, not only can you buy it in quantity, but you can actually buy it with a big quality discount! Yes, because of a special new arrangement with the big national distributors you get the benefit of buying with a discount that saves you an incredible percentage of your whole food budget and you pay no money down for your food. Imagine being able to buy meats, fish, fruits, and vegetables, at actual discount that will mean fantastic savings for you and your family . . ."

Continuity broadcast over Station WTOP Washington, D. C., on June 13, 1952:

"Now for years people have been buying food chests and saving money every year by having the facilities to buy in quantity. When beef is low they buy 100 pounds of beef. In the summer they buy strawberries and eat them all year around. And now something sensational has been added, because now with a Food Chest not only can you buy food in season, not only can you buy it in quantity, but you can actually buy it with a big quantity discount . . ."

PAR. 5. Through the use of the foregoing statements and representations and others of the same import, but not specifically set out herein, respondents represented, directly or by implication:

1. That participants in said plan can buy food at wholesale prices or from a wholesaler.

2. That participants in said food plan can effect overall monetary savings through the general use of frozen foods in place of corresponding foods in other forms.

3. That substantial overall reductions in food costs will be effected through participation in said food plan.

4. That net monetary savings can be effected by all who purchase and use respondents' home freezers.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. The food distributing organization from which participants in said plan purchase is not a wholesaler and the prices at which participants purchase are not wholesale prices.

2. In the main, frozen foods, purchased through said plan, will cost more per edible pound that corresponding foods in other available forms normally consumed by the public. No overall savings in food costs will be accomplished by the general substitution of frozen foods, available under said plan, for corresponding foods in other forms.

3. In the main, food plan prices are considerably in excess of usual retail prices of corresponding foods in other forms, and are close to, and in some instances identical with, usual retail prices of similar frozen foods. As a consequence, substantial overall reductions in food costs will not be effected through participation in said food plan.

4. In a substantial number of instances, the purchase and use of a home freezer will not result in net monetary savings. In such instances the increase in expenses directly attributable to the purchase and use of a home freezer will eliminate savings, if any, which may be affected through the purchase of food in bulk quantities. Among the expenses which will be thus incurred are the costs of financing where credit is used, and the costs of operation, maintenance, and depreciation of the home freezer.

PAR. 7. In the course and conduct of their business, respondents, through the use of radio broadcasts, newspaper advertisements, and other means of advertising, have made certain statements with respect to their television sets. Among the typical, not not all inclusive, of said statements, are the following:

In the Washington (D. C.) Evening Star, issue of April 11, 1952:

"Brandnew $309.95 Majestic 20-inch Console Television
"$188
"Fully Guaranteed—On Sale At All Stores."

"Brandnew $279 Majestic 20-inch Table Model Television
"$134
"Fully Guaranteed—On Sale at All Stores"

"New 1952 $249.95 Mirrortone 20-inch TV
"$99
"In Full Supply At All Stores"

In the Washington (D. C.) Evening Star, issue of April 18, 1952:

". . . We may be stepping on toes but for once and for all let's get the record straight. George's has served the Washington area for over a quarter century. We've grown and prospered with your patronage and we did it by honest, straightforward selling. The record proves it! Over a million satisfied customers, Satisfied with Bargains, NOT BAIT! When George's advertises such specials as appear on this page you can be sure of quality and value. A quarter century of successful business proves it!"

"Brandnew 1952 Mirrortone TV
"$99.95
"Reg. $249.95

In the Washington (D. C.) Times Herald, issue of April 25, 1952:

"50 percent OFF!
"Brandnew Famous Make Television"
"Brandnew $459.95 Emerson 19-inch Console
"$229.98
"This Merchandise On Sale at All Stores."

"Brandnew $525 Admiral 20-inch Console
"$262.50
"This Merchandise On Sale at All Stores."

"Brandnew $369.95 Philco 17-inch Console
"$184.98
"This Merchandise On Sale at All Stores."

"Brandnew $299.95 Motorola 20-inch Ensemble
"$149.98
"This Merchandise On Sale at All Stores."

"Brandnew $279.95 Hallicrafters 20-inch Table Model
"$139.98 (base extra)"

"Brandnew $249.95 1952 Mirrortone 20-inch Table Model
"$99
"This Merchandise On Sale at All Stores."

"Brandnew $299.95 1952 Mirrortone 20-inch TV Console
"$129
"This Merchandise On Sale at All Stores."

Continuity Broadcast by Station WRC, Washington, D. C., on June 29, 1952.

". . . George's makes a special offer of 20-inch table model television for just 99 dollars plus tax and warranty. A fabulous price and a great value you can't afford to miss. A 99 dollar price tag on any television is going some—but when its a 20-inch television from George's its the buy of a lifetime. George's invites you to look this set over at no cost, no obligation. Right now special operators are waiting to take your calls at RE 7420. We'll rush a 20 inch television to your home this very afternoon for a free look . . ."

PAR. 8. Through the use of the foregoing statements and others of the same import, but not specifically set out herein, respondents represented, directly or by implication:

1. That their television sets which are described as brand new, are sets of the current year's model.

2. That the higher price for "mirrortone" sets shown in said advertisements, represents the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

3. That the price at which said "mirrortone" sets are offered is lower by 50 percent than the usual price at which they were customarily offered by sale and sold by respondents in the recent regular course of their business.

4. That respondents were making bona fide offers to sell "Mirrortone" television sets for $99 and various other prices stated from time to time.

PAR. 9. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. Many of the television sets described as brand new were not current models at the time the said advertisements were published.

2. The higher price for "mirrortone" sets shown in said advertisements does not represent, but on the contrary greatly exceeds, the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

3. The price at which said "Mirrortone" sets are offered is not 50 percent less than the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.

4. Respondents' offers to sell "Mirrortone" television sets at the various advertised prices were not genuine or bona fide offers to sell such sets. On the contrary, said offers were made for the purposes of inducing persons to visit respondents' stores or to obtain leads as to persons interested in the purchase of television sets in order that they could be solicited in their homes by respondents' salesmen.

Respondents and their salesmen, at their places of business and in calling upon persons at their homes, in many instances displayed great reluctance or refused to demonstrate or gave an improper demonstration of said television sets, or disparaged the design, workmanship and performance of said sets and attempted to demonstrate and sell different and more expensive sets than those advertised.

PAR. 10. The use by respondents of the said false and misleading statements and representations, had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein were true and to induce the purchase of substantial quantities of respondents' freezers and television sets by reasons of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondents, George's Radio and Television Co., Inc., and George Wasserman and Phillip Keller, individually, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

It is ordered, That respondents, George's Radio and Television Co., Inc., a corporation, and its officers and George Wasserman and Phillip Keller, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of home freezers and television sets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That participants in a food-purchasing plan can buy food at wholesale prices or from a wholesaler, contrary to the fact.
2. That overall monetary savings can be effected through the general use of frozen foods in place of corresponding foods in other forms.
3. That substantial overall reductions in food costs will be effected through participation in a food purchasing plan.
4. That net monetary savings, however expressed, can be effected through the use of freezers purchased from respondents, unless the costs of operation, maintenance and depreciation and, in the event that the freezer is purchased on credit, the costs of such credit, are taken into account.
5. That television sets which are not of the current year's model are new through the use of such terms as "Brand-New" or any other terms which describe said sets as new, unless the year in which said sets were current models is disclosed.
6. As the usual price of television sets, any price or value which is in excess of the price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.
7. That the price at which respondents' television sets are offered is lower by 50 percent or any other designated percentage, than the usual price at which said sets were customarily offered for sale and sold by respondents in the recent regular course of their business.
8. That television sets are being offered for sale when such offer is not a genuine and bona fide offer to sell the sets so offered.

It is further ordered, That respondents, George's Radio and Television Co., Inc., and George Wasserman and Phillip Keller, individually, shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied therewith.

It is further ordered, That the complaint be, and it hereby is, dismissed as to the respondents Leopold Freudberg and Solomon Grossberg, individually.

GEORGE'S RADIO AND TELEVISION COMPANY, INC.,
By GEORGE WASSERMAN,
President and Treasurer.
(Sgd.) GEORGE WASSERMAN, *Individually.*
(Sgd.) PHILLIP P. KELLER, *Individually.*

Date: December 4, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this the 22d day of December 1953.

By direction of the Commission:

[SEAL] ALEX. AKERMAN, Jr., *Secretary.*

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF BOND VACUUM STORES, INC., A CORPORATION, AND ALBERT HYATT, PHILIP MORRIS, HAROLD STENGEL AND JULIUS LANGSNER, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

Docket No. 6209

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that Bond Vacuum Stores, Inc., a Delaware Corporation, and Albert Hyatt, Philip Morris, Harold Stengel and Julius Langsner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Bond Vacuum Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 610 Ninth Street, Northwest, Washington, D. C. Respondents Albert Hyatt, Philip Morris, Harold Stengel and Julius Langsner are individuals and president, vice-president-treasurer, vice president and secretary, respectively, of the corporate respondent. These individual respondents formulate, control and direct the policies, acts and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale and distribution, among other things, of vacuum cleaners and sewing machines. In the course and conduct of their said business respondents have caused their vacuum cleaners and sewing machines, when sold, to be transported from their place of business at the aforesaid address to purchase thereof located in the District of Columbia and in various States of the United States.

They maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce in the District of Columbia and between the District of Columbia and various States of the United States. Their volume of trade in said commerce has been and is substantial.

PAR. 3. At all times mentioned herein respondents have been, and are now, in direct and substantial competition with other corporations, firms and individuals engaged in the sale and distribution of vacuum cleaners and sewing machines in commerce.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their vacuum cleaners and sewing machines, the respondents have engaged in extensive advertising in newspapers and on television and radio. Among and typical of the statements and representations made in such advertising relating to their said products are the following:

"ACT NOW! QUANTITIES LIMITED

BOND RECONDITIONED

ELECTROLUX

COMPLETE WITH 8 ATTACHMENTS

(Picture of vacuum cleaner)

RECONDITIONED BY BOND EXPERTS WITH BOND PARTS

1-Year Guarantee Parts and Labor

$10.95

FREE HOME DEMONSTRATION

Big trade-in allowance for your old vacuum cleaner

BOND

VACUUM STORES, INC., 610 9TH STREET NW."

"PHONE NOW!

Ex. 3-5380 for Free Home Demonstration

RECONDITIONED PORTABLE ELECTRIC SINGER

Plus—At No Extra Cost—Pinking Shears With Every Machine Purchased

(Picture of Singer sewing machine)

$21.50

Full Cash Price—Five Years' Guarantee

EASY TERMS ARRANGED

Free Home Demonstration

Big Trade-In Allowance on Your Old Sewing Machine

BOND

VACUUM STORES, INC.

STORES IN PRINCIPAL CITIES

PAR. 5. By and through the use of the aforesaid statements and representations and others of similar import, but not specifically set out herein, respondents represented, directly or by implication:

1. That they were making bona fide offers to sell reconditioned Electrolux vacuum cleaners and reconditioned Singer sewing machines at the low prices specified in the advertising and that the said products would do a satisfactory job of cleaning and sewing, respectively;
2. That they operate stores in principal cities;
3. That in connection with the sale of vacuum cleaners and sewing machines they will give big trade-in allowances on customers' old cleaners and sewing machines;
4. That they furnish a five-year guarantee on their reconditioned Singer sewing machines.

PAR. 6. The aforesaid statements and representations were false, deceptive and misleading. In truth and in fact:

1. The said cleaners and sewing machines would not do a satisfactory job of cleaning and sewing, respectively, and the said offers were not genuine or bona fide offers to sell the cleaners and sewing machines advertised, but were made for the purpose of obtaining leads and information as to persons interested in the purchase of vacuum cleaners and sewing machines.

After obtaining such leads, through responses to said advertisements, respondents' salesmen called upon the persons so responding at their homes or waited upon them at respondents' place of business and in many instances demonstrated such cleaners and sewing machines, well knowing that their performance would be unsatisfactory; made no effort to sell the advertised cleaners and sewing machines, but in many instances belittled and disparaged such cleaners and sewing machines and attempted to, and frequently did, sell different and much more expensive vacuum cleaners and sewing machines to such persons;

2. Respondents do not operate stores in principal cities. The store located at the address hereinabove set forth is the only store operated by respondents.
3. Respondents do not make or give big trade-in allowances, or any trade-in allowances, on customers' old cleaners and sewing machines when they purchase new or reconditioned cleaners and sewing machines, since the price of the merchandise purchased in so-called trade-in transactions is increased to cover and take care of the so-called trade-in allowance made or given.
4. Respondents' five-year guarantee is not a bona fide guarantee because it does not set forth the terms thereof or the manner in which respondents will perform thereunder. Such a guarantee is confusing and misleading to the purchasing public.

PAR. 7. In addition to the foregoing, the respondents, in connection with the offering for sale and sale of vacuum cleaners and sewing machines, have misrepresented the regular and customary prices at which they sell their merchandise. In advertising literature such as instruction booklets which they exhibit to purchasers and prospective purchasers respondents have represented that the regular and customary price of their Kingston vacuum cleaner is $129.95; that the regular and customary price of their Monarch sewing machine is $189.50 and that the regular and customary price of their Kingston sewing machine is

$199.50. These prices are fictitious and far in excess of the prices at which the respondents regularly and customarily sold the said merchandise.

In connection with the sale of vacuum cleaners and sewing machines respondents have also engaged in the practice of charging purchasers an amount of $2.50 represented as being a "recording fee." Respondents have not had any of their sales contracts recorded but have retained the money thus collected for their own use.

PAR. 8. The use by the respondents of the aforesaid false, deceptive, and misleading statements, representations and practices had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and because of such statements, representations and practices to purchase substantial quantities of respondents' vacuum cleaners and sewing machines, particularly their more expensive vacuum cleaners and sewing machines. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 9. The aforesaid acts and practices, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 27th day of May A. D., 1954, issues its complaint against said respondents.

NOTICE

Notice is hereby given you, Bond Vacuum Stores, Inc., a corporation, and Albert Hyatt, Philip Morris, Harold Stengel, and Julius Langsner, indivdiually and as officers of said corporation, respondents herein, that the 5th day of August, A. D., 1954, at 10 o'clock is hereby fixed as the time and Federal Trade Commission Building, Sixth and Pennsylvania Avenue, Washington, D. C., as the place when and where a hearing will be had before John Lewis, a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the 20th day after service of it upon you. Such answer shall contain a concise statement of the facts which constitute the ground for defense and shall specifically admit or deny each of the facts alleged in the complaint unless you are without knowledge, in which case you shall so state. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

If respondents desire to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondents admit all the material allegations of fact charged in the complaint to be true.

Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondents may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under Rule XXI, and the right to appeal under Rule XXIII.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the commission and hearing examiner John Lewis, without further notice to find the facts to be as alleged herein and to issue the following order in this proceeding.

It is ordered, That respondent Bond Vacuum Stores, Inc., a corporation, and its officers, respondents Albert Hyatt, Philip Morris, Harold Stengel, and Julius Langsner, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vacuum cleaners and sewing machines or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;

2. Representing, directly or by implication, contrary to the fact, that their reconditioned vacuum cleaners will do a satisfactory job of cleaning or that their sewing machines will do a satisfactory job of sewing;

3. Representing that they operate more stores than they do in fact operate;

4. Representing that trade-in allowances on old or previously used sewing machines or vacuum cleaners may be obtained by purchasers, when the prices of respondents' merchandise have been advanced above respondents' regular prices in any amount serving to nullify or offset such allowances;

5. Representing, directing or by implication, that any merchandise sold or offered for sale by respondents is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;

6. Representing, directly or by implication, that the usual or customary price of any merchandise is in excess of the price at which said merchandise is regularly and customarily sold in the normal course of business;

7. Requiring purchasers to pay sums of money to respondents represented by them as being for recording fees or for other expenses to be paid to others by respondents, when such sums are retained by respondents.

The inclusion of such order to cease and desist in this complaint will be without effect in the event you show cause, on or before the 5th day of August, A. D., 1954, why such order should not issue.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 27th day of May A. D. 1954.

By the Commission:

[SEAL] ROBERT M. PARRISH, *Secretary.*

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

(Commissioners: Edward F. Howrey, Chairman, Lowell B. Mason, James M. Mead, John W. Gwynne, Robert T. Secrest)

IN THE MATTER OF BOND VACUUM STORES, INC., A CORPORATION, AND ALBERT HYATT, PHILIP MORRIS, HAROLD STENGEL AND JULIUS LANGSNER, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

Docket No. 6209

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Rule XXII of the Commission's Rules of Practice, the attached initial decision of the hearing examiner did, on the 9th day of December, 1954, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent, Bond Vacuum Stores, Inc., a corporation, and its officers, and Albert Hyatt, Philip Morris, and Harry Stengel, individually and as officers of said corporation, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission:

[SEAL] ROBERT M. PARRISH, *Secretary.*

Issued December 20, 1954.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF BOND VACUUM STORES, INC., A CORPORATION, AND ALBERT HYATT, PHILIP MORRIS, HAROLD STENGEL AND JULIUS LANGSNER, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION.

Docket No. 6209

INITIAL DECISION

Before *Loren H. Laughlin*, Hearing Examiner.
Appearances:
Michael J. Vitale, Counsel supporting the complaint.
Stanley Kamerow of Kamerow and Kamerow, Attorney for Respondents, 1010 Vermont Avenue, N. W., Washington, D. C.

The Federal Trade Commission (hereinafter referred to as the Commission) on May 27, 1954, issued its complaint herein under the Federal Trade Commission Act against all of the above-named respondents, charging them with having committed certain alleged unfair or deceptive acts and practices which purport to be violations of section 5 of said act. All respondents joined in an answer filed on June 18, 1954, after due service of the complaint upon each of them.

On September 24, 1954, the respondent corporation, by its president and its attorney, and all individual respondents except Julius Langsner, both in person and by their attorney, stipulated in writing with counsel supporting the complaint that a consent order against such respondents be entered herein, which stipulation was approved by the Director and Assistant Director of the Commission's Bureau of Litigation.

By said stipulation, among other things, said respondents admit all the jurisdictional allegations set forth in the complaint and stipulate that the record herein may be taken as if the commission had made findings of jurisdictional facts in accordance with such allegations; that such stipulation is made for settlement purposes only, and does not constitute an admission by said respondents that they have violated the law as alleged in the complaint; and that respondents withdraw their said answer filed on June 18, 1954.

It was further stipulated that the complaint, insofar as it concerns the respondent Julius Langsner, be dismissed for the reasons set forth in his affidavit executed August 27, 1954, attached to said stipulation, which affidavit in substance states that theretofore having held stock in and having been a member of the Board of Directors of respondent Bond Vacuum Stores, Inc., in July 1953, the said Julius Langsner sold all of his said stock and thereupon severed all connections with said corporation; and that neither as an employee or director of said respondent corporation did he ever formulate, control or direct its policies, acts and practices; and that he has no intention of again being connected in any way with said corporation or any similar corporation engaged in a like business, having been since August 1949, and presently being employed by the United States Government.

Said stipulation further provides that all the parties thereto expressly waive a hearing before a Hearing Examiner or the Commission, the making of findings of facts or conclusions of law by the Hearing Examiner or the Commission, and the filing of exceptions and oral argument before the Hearing Examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; and that the cease and desist order therein set forth and hereafter made, shall have the same force and effect as if made after a full hearing, presentation of evidence, and findings and conclusions thereon.

Respondents further specifically waive any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with said stipulation, and agree that the complaint herein may be considered in construing its terms in any further proceedings which may arise involving said order.

The said stipulation for consent order and the accompanying affidavit of respondent Julius Langsner were submitted on October 4, 1954, by the Commission's Bureau of Litigation to the undersigned Hearing Examiner duly designated by the Commission, for appropriate action by him under Rule V of the Commission's Rules of Practice.

After due consideration, it appearing to the Hearing Examiner from the presentation of such matter that only such acts and practices alleged in the complaint as are unsupportable by evidence or are repetitious have been deleted from the sanction of the proposed consent order and that the said stipulation and affidavit afford the basis for appropriate disposition of this proceeding, said stipulation and affidavit are accepted and ordered filed as a part of the record in this proceeding. The withdrawal of respondents' answer is hereby approved.

Upon the whole record as now made, in accordance with the said stipulation, the Hearing Examiner finds that the Commission has jurisdiction of the subject matter of this proceeding and of all of the parties respondent; that this proceeding is in the interest of the public; and that the following order as proposed in said stipulation is appropriate for the disposition of this proceeding, and the same therefore should be, and hereby is, entered as follows:

ORDER

It is ordered, That respondent Bond Vacuum Stores, Inc., a corporation, and its officers, respondents Albert Hyatt, Philip Morse, and Harold Stengel, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of vacuum cleaners and sewing machines, or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;
2. Representing that they operate more stores than they do in fact operate;
3. Representing, directly or by implication, that any merchandise sold or offered for sale by respondents is guaranteed, unless the nature and extent of the guaranty and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;
4. Representing, directly or by implication, that respondents' usual or customary price of any merchandise is in excess of the price at which said merchandise is regularly and customarily sold by respondents in the normal course of respondents' business.
5. Requiring purchasers to pay sums of money to respondents represented by them as being for recording fees or for other expenses to be paid to others by respondents, when such sums are retained by respondents.

It is further ordered, That the complaint insofar as it relates to the respondent Julius Langsner be, and the same is, hereby dismissed.

LOREN H. LAUGHLIN,
Hearing Examiner.

October 22, 1954.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF STANLEY L. ROSE AND RUTH ROSE, INDIVIDUALS, TRADING AND DOING BUSINESS AS SEW-EZY MACHINE COMPANY, SEW-EZY SEWING MACHINE COMPANY, SEW-EZY VACUUM CLEANER COMPANY, SEW-EZY SEWING MACHINE AND VACUUM CLEANER COMPANY

Docket No. 6295

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Stanley L. Rose and Ruth Rose, individuals, trading and doing business as Sew-Ezy Machine Company, Sew-Ezy Sewing Machine Company, Sew-Ezy Vacuum Cleaner Company, and Sew-Ezy Sewing Machine and Vacuum Cleaner Company, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Stanley L. Rose and Ruth Rose, are individuals trading and doing business as Sew-Ezy Machine Company, Sew-Ezy Sewing Machine Company, Sew-Ezy Sewing Machine and Vacuum Cleaner Company. Said respondent, Stanley L. Rose and Ruth Rose, cooperate and act together in performing the acts and practices hereinafter set forth. Respondents' office and principal place of business is located at 5156 Benning Road, SE., Hillside, Maryland.

PAR. 2. The respondents are now, and for more than one year last past have been, engaged in the sale and distribution of vacuum cleaners and sewing machines. In the course and conduct of their said business respondents have caused their vacuum cleaners and sewing machines when sold, to be transported from their place of business at the aforesaid address to purchasers thereof located in the District of Columbia, and in various States of the United States. They maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between various States of the United States and the District of Columbia. Their volume of trade in said commerce has been and is substantial.

PAR. 3. At all times mentioned herein, respondents have been, and are now, in direct and substantial competitions with corporations, firms and other individuals engaged in the sale and distribution of vacuum cleaners and sewing machines in commerce.

PAR. 4. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their vacuum cleaners and sewing machines, the respondents have engaged in extensive advertising in newspapers and on radio. Among and typical of the statements and representations made in such advertising relating to their said products are the following:

"SEW-EZY VACUUM CLEANER CO.

5156 Benning Road SE.

JO. 8-5400

Large Size Rebuilt

ELECTROLUX

But Every One Runs Like New!

(Picture of vacuum cleaner)

With Attachments

This is the Famous Model 12 Vacuum

Fully Guaranteed Special Purchase

Call JO. 8-5400 FOR FREE HOME DEMONSTRATION

$9.50

Call St. 3-4000 After 6 p. m.

OPEN MONDAY, WEDNESDAY, FRIDAY TIL 9

For Your shopping Convenience"

"SEW-EZY VACUUM CLEANER CO.

5156 Benning Road NE.

JO. 8-5400

FAMOUS MAKE VACUUM CLEANER

Save Over 50 Percent Summer Special

(Picture of vacuum cleaner)

With Attachments

Absolutely Brand New 1954 Model

Fully Guaranteed Special Purchase

Call JO. 8-5400 For Free Home Demonstration

Limited Quantity, $16.50

Reserve Yours NOW

Call St. 3-4000 After 6 p. m.

OPEN MONDAY, WEDNESDAY, FRIDAY 'TIL 9

For Your Shopping Convenience"

"Here's what you get for the total complete price of $13.50. You get a New famous make vacuum cleaner. You get the complete Goodhousekeeping set of attachments, the floor brush, floor tool, rug tool, upholstery tool, crevice tool, dusting brush, paint sprayer and ~~demothing~~ attachment free with your vacuum cleaner. Plus while they last, you'll get free with your nationally famous vacuum cleaner, a 24 piece set of silverware, 6 knives, 6 forks, 6 table spoons, 6 teaspoons, all free with your vacuum cleaner. Remember, only 20 people daily can be accommodated on this outstanding offer and the supply is limited. so you must hurry. Here's what to do—pick up your phone and call Overlook 3-3000, Overlook 3-3000, leave your name and address and phone number, and at your convenience a Sew-Ezy Company representative will come to your home to fully demonstrate this sensational vacuum cleaner. He'll clean your rugs, your closets, your blinds, anything that you'd like for him to do. He'll show you what a wonderful buy this vacuum cleaner is. You inspect it, you look it over, you try it, and if you like it, and want it, you make just a small down payment, and keep the vacuum cleaner * * *"

"The Sew-Ezy Company handles the finest vacuum cleaners in the world, Electrolux, General Electric, Westinghouse, Lewyt and Premiers. Just arrived at the Sew-Ezy Company is a full shipment of new vacuum cleaners. We are overloaded, and will have to get rid of these vacuum cleaners. These vacs must be sold and the Sew-Ezy Company is reducing the price of a famous make vacuum cleaner down to a low, low $13.50 * * *. If you like a free home trial dial now Overlook 3-3000, Overlook 3-3000. We can save you up to $100, up to a hundred dollars. Try before you buy, that's been the Sew-Ezy Motto for 25 years. Try before you buy. This is definitely a famous make vacuum cleaner, advertised nationally and reduced just in time for fall cleaning to Thirteen and half dollars. Also, as a part of our get acquainted offer, we will send out free a parakeet for the children or for yourselves a lovely 24 piece set of silverware. We have mobile units to service you whether you live down in Fredericksburg or out at Hagerstown, Maryland, or live right here in Washington, D. C."

"Announcing a Sew-Ezy rebuilt Electrolux Vacuum Cleaner for only nine dollars and fifty cents and every one runs like new. * * * This is the famous Model 12 Vacuum. The large size Electrolux with all parts guaranteed. * * * The price has been brought down for clearance—down to $9.50, saving you many, many dollars on the regular catalog listing. Here are Electrolux Vacuum Cleaners rebuilt by the Sew-Ezy Company experts using all brand new parts—guaranteed. * * * What makes this a wonderful buy for you housewives or Government girls—is the goodhousekeeping set of attachments, the floor buffer—the demother, the paint sprayer, the crevice tool for hard to get at places—many other attachments—this complete set of tools will be yours free along with the Electrolux." * * *

"Just arrived at the Sew-Ezy Company.

"Just arrived at the Sew-Ezy Company are some wonderful Singer Sewing Machines. These Singers are all guaranteed, rebuilt by the Sew-Ezy experts with brand new parts. * * * You can sew fall clothes for the kiddies going back to school or for the pre-school children * * *. We'll come to your apartment, place it there for you to use and you can sew garments, clothes, anything under the sun free of charge as part of your free home trial offer. For 25 years, our motto has been Try before you buy, and Madam, if you don't know how to sew don't be ashamed of that for one moment because our polite, courteous Sew-Ezy representative will show you how to sew. Just dial Overlook 3–3000, the price is only $18.50 * * *. Also free to you will be a lovely and entertaining parakeet bird for the children or a set of 24 piece silverware absolutely free because we are getting acquainted." * * *

PAR. 5. By and through the use of the aforesaid statements and representatives, and others of similar import, but not specifically set out herein, respondents represented, directly or by implication:

1. That they were making a bona fide offer to sell new and reconditioned vacuum cleaners and new and reconditioned sewing machines at the low prices specified in the advertising.
2. That their products were guaranteed.
3. That they have been engaged in their present business of selling vacuum cleaners and sewing machines for 25 years.
4. That the new vacuum cleaners offered for sale are of a famous make.

PAR. 6. The aforesaid statements and representations were false, deceptive, and misleading. In truth and in fact:

1. The said cleaners and sewing machines would not do a satisfactory job of cleaning and sewing, respectively, and the same offers were not genuine or bona fide offers in that respondents did not intend to sell the cleaners and sewing machines advertised, but were made for the purpose of obtaining leads and information as to the persons interested in the purchase of vacuum cleaners and sewing machines. After obtaining such leads, through response to said advertisements, respondents or their salesmen, called upon the persons so responding at their homes or waited upon them at respondents' place of business and, in many instances, demonstrated such cleaners and sewing machines, well knowing that their performance would be unsatisfactory; made no offer to sell the advertised cleaners and sewing machines, but in many instances belittled and disparaged such cleaners and sewing machines, and attempted to, and frequently did, sell different and much more expensive vacuum cleaners and sewing machines to such persons.
2. Respondent's use of the word "guaranteed" without disclosing the terms and conditions of the guarantee is confusing and misleading to the purchasing public.
3. Respondents have been engaged in their present business of selling vacuum cleaners and sewing machines for substantially less than 25 years.
4. The vacuum cleaners represented as being of a famous make in the aforesaid advertisements are not of a famous make.

PAR. 7. The use by the respondents of the aforesaid false, deceptive, and misleading statements, representations, and practices had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations were true and, because of such statements, representations, and practices, to purchase substantial quantities of respondents' vacuum cleaners and sewing machines, particularly their more expensive vacuum cleaners and sewing machines. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 18th day of February, A. D., 1955 issues its complaint against said respondents.

NOTICE

Notice is hereby given you, Stanley L. Rose and Ruth Rose, individuals, trading and doing business as Sew-Ezy Machine Company, Sew-Ezy Sewing Machine and Vacuum Cleaner Company, respondents herein, that the 12th day of April A. D. 1955, at 10 o'clock, is hereby fixed as the time and Federal Trade Commission Building, 6th and Pennsylvania Avenue, North West, Washington, D. C., as the place when and where a hearing will be had before James A. Purcell, a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. Such answer shall contain a concise statement of the facts which constitute the ground for defense and shall specifically admit or deny each of the facts alleged in the complaint unless you are without knowledge, in which you will so state. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

If respondents desire to waive hearing on the allegations of fact set forth in the complaint and not to contend the facts, the answer may consist of a statement that respondents admit all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondents may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under rule XXI, and the right to appeal under rule XXIII.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission and Hearing Examiner James A. Purcell, without further notice, to find the facts to be as alleged herein and to issue the following order in this proceeding:

It is ordered, That respondents, Stanley L. Rose and Ruth Rose, individuals, trading and doing business as Sew-Ezy Machine Company, Sew-Ezy Sewing Machine Company, Sew-Ezy Vacuum Cleaner Company, and doing business under any other name or names, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines and vacuum cleaners or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;
2. Representing, directly or by implication, that any merchandise sold or offered for sale by respondents is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;
3. Representing directly or by implication, that they have been engaged in their present business of selling vacuum cleaners or sewing machines any number of years in excess of that in which they have actually been engaged;
4. Representing, directly or by implication, that any merchandise being offered for sale is of a famous make when such is not the case.

The inclusion of such order to cease and desist in this complaint will be without effect in the event you show cause, on or before the 12th day of April A. D. 1955, why such order should not issue.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 18th day of February A. D. 1955.

By the Commission:

[SEAL] ROBERT M. PARRISH, *Secretary*.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

(Commissioners: Edward F. Howrey, Chairman, Lowell B. Mason, James M. Mead, John W. Gwynn, Robert T. Secrest)

IN THE MATTER OF STANLEY L. ROSE AND RUTH ROSE, INDIVIDUALS, TRADING AND DOING BUSINESS AS SEW-EZY MACHINE COMPANY, SEW-EZY SEWING MACHINE COMPANY, SEW-EZY VACUUM CLEANER COMPANY, AND SEW-EZY SEWING MACHINE AND VACUUM CLEANER COMPANY

Docket No. 6295

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 8th day of July, 1955, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent, Stanley L. Rose, an individual, trading and doing business as Sew-Ezy Machine Company, Sew-Ezy Sewing Machine Company, Sew-Ezy Vacuum Cleaner Company and Sew-Ezy Sewing Machine and Vacuum Cleaner Company, shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

By the Commission:

[SEAL] ROBERT M. PARRISH, *Secretary.*

Issued June 20, 1955.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF STANLEY L. ROSE AND RUTH ROSE, INDIVIDUALS, TRADING AND DOING BUSINESS AS SEW-EZY MACHINE COMPANY, SEW-EZY SEWING MACHINE COMPANY, SEW-EZY VACUUM CLEANER COMPANY, AND SEW-EZY SEWING MACHINE AND VACUUM CLEANER COMPANY

Docket No. 6295

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

1. The Federal Trade Commission on February 18, 1955, issued its complaint in this proceeding charging respondents with specific unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Federal Trade Commission Act, as will with particularity appear by reference to said complaint. On March 16, 1955, respondents filed answer in form of a general denial of the allegations of the complaint, and specifically, inter alia denying that respondent, Ruth Rose, is a co-partner or otherwise connected with the described business other than to assist respondent, Stanley L. Rose, her husband, in the business.

2. Thereafter, on May 21, 1955, respondent, Stanley L. Rose, entered into a Stipulation or Agreement for Consent Order with counsel supporting the complaint, all in conformity with Rule No. 3.25 of the Commission's Rules of Practice. Thereafter said Agreement was submitted to the hearing examiner who, being of opinion that said Agreement effectually disposes of all of the issues herein, hereby accepts same with the proviso that this Initial Decision shall not become a part of the official record of this proceeding unless and until it becomes the official decision of the Commission.

3. The Agreement recites that respondent, Stanley L. Rose, during the period charged, has been engaged in, and trading under the names of Sew-Ezy Machine Company, Sew-Ezy Sewing Machine Company, Sew-Ezy Vacuum Cleaner Company, and Sew-Ezy Sewing Machine and Vacuum Cleaner Company with his office and principal place of business located at No. 5156 Benning Road, Southeast, Hillside, Maryland. It will be noted that respondent, Ruth Rose, is not a party signatory to said Agreement, with respect to whom there accompanied said Agreement an affidavit by her to the effect that she is not associated or connected

with her husband, Stanley L. Rose as owner or co-partner in his business undertaking; that she is not engaged in the sale and distribution of sewing machines and vacuum cleaners, and renders only such assistance to her husband in his business as she "possibly can and as a wife should."

4. All parties move that the answer filed on March 16, 1955, be withdrawn of record and held for naught, which motion is hereby granted.

5. By said Agreement respondent specifically admits all of the jurisdictional allegations set forth in the complaint and agrees that the record herein may be taken as though the hearing examiner or the Commission had made findings of jurisdictional facts in accordance with such allegations; that the order therein agreed upon shall have the same force and effect as though made upon a full hearing, presentation of evidence and findings and conclusions based thereon, specifically waiving any and all right, power or privilege to contest the validity of said order and that the complaint herein may be used in construing the terms of said order, which order may be altered, modified or set aside in the manner provided by statute affecting orders of the Commission.

6. All of the parties to said Agreement waived a hearing before a hearing examiner or the Commission; the making of findings of fact or conclusions of law by the hearing examiner or the Commission; the filing of exceptions and oral argument before the Commission; and all further and other procedure before the hearing examiner and the Commission to which the respondent might otherwise, but for the execution of said Agreement, be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission; and further, that said Agreement, together with the complaint, shall constitute the entire record herein. The Agreement further provided that same was executed for settlement purposes only and does not constitute an admission by the respondent that he has violated the law as alleged in the complaint.

7. On the basis of the representations contained in the affidavit of Ruth Rose, and nothing to the contrary appearing of record, the complaint, as to her, will be dismissed.

8. Pursuant to the intent of said Agreement and of the facts therein agreed upon, and that the order embodied therein is in accord with the order nisi accompanying the complaint excepting only as to the named respondent, Ruth Rose, the hearing examiner, being of opinion that the order agreed upon will effectually safeguard the public interest; finds that this proceeding is in the public interest and issued the following order:

ORDER

It is ordered, That respondent Stanley L. Rose, an individual trading and doing business as Sew-Ezy Machine Company, Sew-Ezy Sewing Machine Company, Sew-Ezy Vacuum Cleaner Company, and Sew-Ezy Sewing Machine and Vacuum Cleaner Company, or trading and doing business under any other name or names, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines and vacuum cleaners or other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that certain merchandise is offered for sale when such offer is not a bona fide offer to sell the merchandise so offered;
2. Representing, directly or by implication, that any merchandise sold or offered for sale by respondents is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed;
3. Representing directly or by implication, that he has been engaged in his present business of selling vacuum cleaners or sewing machines any number of years in excess of that in which he has actually been engaged;
4. Representing, directly or by implication, that any merchandise being offered for sale is of a famous make when such is not the case.

Further ordered, That the complaint, insofar as same affects the named respondent, Ruth Rose, be, and the same is hereby, dismissed.

JAMES A. PURCELL, *Hearing Examiner*.

May 31, 1955.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF MAYFLOWER TELEVISION COMPANY, INC., A CORPORATION, AND RAYMOND H. BENTE, LOWELL EWING, AND LILLIAN TURNER, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

Docket No. 6404

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Mayflower Television Company, Inc., a corporation, and Raymond H. Bente, Lowell Ewing, and Lillian Turner, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mayflower Television Company, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 1529 17th Street NW., Washington, D. C. Respondents Raymond H. Bente, Lowell Ewing, and Lillian Turner are President-Treasurer, Vice President, and Secretary, respectively, of this corporate respondent.

All of the aforesaid respondents cooperate and act together in performing the acts and engaging in the practices hereinafter set forth.

PAR. 2. Respondents, for more than several years last past, have been engaged in the sale and distribution of television and radio replacement parts. An essential and integral part of respondents' said business is the furnishing of television repair services. In connection with their television repair service respondents remove television sets from the homes of owners located in the District of Columbia and in the States of Maryland and Virginia, and transport said television sets to their repair shop, which is located in the District of Columbia, for servicing and replacement of parts, said parts being furnished and sold by respondents.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said business in commerce in the District of Columbia and between the District of Columbia and other States. Their volume of business in said commerce has been and is substantial.

PAR. 3. At all times mentioned herein respondents have been, and are now, in direct and substantial competition in commerce with other corporations, firms, and individuals engaged in a similar business.

PAR. 4. In the course and conduct of their aforesaid business, respondents have made and are making certain statements and representations concerning said business by means of advertisements on television, in newspapers, and other advertising media. Among and typical of the statements and representations made in such advertising are the following:

"* * * We offer this terrific T-V special? $1.50 service charge to all who call for Mayflower T-V service now at STerling 3-3800 * * *"

"* * * Each a specialist for a different make set! * * *"

"* * * For today's great special! A Mayflower serviceman will come to your home to fix your T-V set for only $1.50 service charge. If parts are needed, there is no service charge at all! * * *"

"* * * A Mayflower expert will come to your home to fix your television set—for the low service fee of just $1.00. And that's not all. For if your set does happen to need new parts in this home repair—Mayflower will foot the service charge. You pay nothing for the service. This offer is in effect for a limited time only—so we urge you to call now * * *"

"* * * One of the finest engineers in the business will come out to your home * * * if you want him to fix your television set, the charge is only $1.50."

"* * * Nine out of ten, it's some small thing that can be fixed in a jiffy, right there in your own home, and if you want us to fix it, the service charge is only $1.00."

"* * * We'll have one of our experts out to your home today, free. He'll examine your set, find out what's wrong with it, inform you of it. Nine times out of ten, we can repair the set right there in your own home. Usually it's a small adjustment that has to be made. Maybe a tiny part replaced, maybe a connection tightened * * *"

"* * * Mayflower will repair your set for a service charge of $1.00, plus parts if any are necessary, and your set will be working perfectly again."

". . . He'll examine that set, find out what's wrong with it FREE OF CHARGE, repair it for a Service charge of $1.00 IF you want him to."

". . . If you want us to repair the set after you know what's wrong with it, we do 9 out of 10 repairs in the home. The Service charge is only $1.00, regardless of what's wrong with your set. . . ."

PAR. 5. By and through the use of the said statements and representations, and others of similar import, but not specifically set out herein, respondents represent, directly or by implication:

1. That the service charge for servicing and repairing a television set is $1.00 or $1.50.

2. That only those parts which are needed will be replaced and if any new parts are replaced in a television set there will not me a service charge.

3. That a television expert or specialist will come to your home to examine and repair your television set.

4. That nine times out of ten a television set can be repaired in the home.

PAR. 6. The aforesaid statements and representations were false, deceptive, and misleading. In truth and in fact:

1. The service charge for repairing a television set, in most instances, is far in excess of the represented amounts of $1.00 or $1.50. A service charge of $1.00 or $1.50 is made only when the television sets are serviced and repaired in the customer's home. However, in many instances, the television sets are removed to respondents' place of business for repairs and at that time the service charge is automatically increased to an amount far in excess of that which is represented. The advertisement of a low service charge was made to obtain leads and information as to persons interested in having their television sets repaired. After obtaining such leads, respondents increase the service charge to a larger amount without disclosing it to the customers.

2. Respondents have adopted the practice of replacing parts which were not needed and have also included a service charge in those instances.

3. The persons who examine the television sets are not experts or specialists in the servicing or repairing of television sets, but are persons possessing a limited knowledge in the field of television repairs. In fact, at the time the so-called experts or specialists come to the homes of customers, the only testing equipment they have with them is that which is used for testing tubes.

4. In most instances the television sets are removed from the homes of their owners and transported to respondents' place of business for service and repair. In fact, the servicemen, as an inducement to discourage the repair of television sets in homes, receive a commission for each set brought into the workshop for repairs.

PAR. 7. The use by the respondents of the aforesaid false, deceptive, and misleading statements, representations, and practices, has the tendency and capacity to mislead and deceive a substantial portion of persons owning television sets into the erroneous and mistaken belief that such statements and representations were and are true, and to induce said persons to have respondents service and repair their television sets because of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 24th day of August, A. D. 1955, issues its complaint against said respondents.

NOTICE

Notice is hereby given you, Mayflower Television Company, Inc., a corporation, and Raymond H. Bente, Lowell Ewing, and Lillian Turner, individually and as officers of said corporation, respondents herein, that the 20th day of October, A. D., 1955, at 10 o'clock is hereby fixed as the time and Hearing Room, Federal Trade Commission Building, Washington, D. C., as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violation of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. Such answer shall contain a concise statement of the facts constituting the ground of defense and a specific admission, denial or explanation of each fact alleged in the complaint or, if respondents are without knowledge thereof, a statement to that effect.

If respondents elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that respondents admit all material allegations to be true. Such an answer shall constitute a waiver of hearing as to facts so alleged, and an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be issued by the hearing examiner. In such answer, respondents may, however, reserve the right to submit proposed findings and conclusions and the right to appeal under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

If any respondent elects to negotiate a consent order, it shall be done in accordance with Section 3.25 of the Commission's Rules of Practice.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize a hearing examiner without further notice to respondents, to find the facts to be as alleged in the complaint, to conduct a hearing to determine the form of order, and, thereafter, to enter an initial decision containing such findings and order.

In witness whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 24th day of August, A. D., 1955.

By the Commission:

[SEAL] JOHN R. HEIM, *Acting Secretary*.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

(Commissioners: John W. Gwynne, Chairman; Lowell B. Mason, Robert T. Secrest, Sigurd Anderson, William C. Kern)

IN THE MATTER OF MAYFLOWER TELEVISION COMPANY, INC., A CORPORATION, AND RAYMOND H. BENTE, LOWELL EWING, AND LILLIAN TURNER, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

DOCKET NO. 6404, DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 1st day of December 1955, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Mayflower Television Company, Inc., a corporation, and Raymond H. Bente, individually and as an officer of said corporation, shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission:

[SEAL] ROBERT M. PARRISH, *Secretary*.

Issued December 1, 1955.

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF MAYFLOWER TELEVISION COMPANY, INC., A CORPORATION, AND RAYMOND H. BENTE, LOWELL EWING, AND LILLIAN TURNER, INDIVIDUALLY AND AS OFFICERS OF SAID CORPORATION

Docket No. 6404

INITIAL DECISION

(By Everett F. Haycraft, hearing examiner)

The Federal Trade Commission issued its complaint against the above-named respondents on August 24, 1955, charging them with having made certain false, deceptive, and misleading statements and representations regarding television and radio services and replacement parts in violation of the Federal Trade Commission Act. In lieu of submitting answer to said complaint, respondents Mayflower Television Company, Inc., a corporation, and Raymond H. Bente, an individual, entered into an agreement for consent order with counsel supporting the complaint, disposing of all the issues in this proceeding, which agreement has been duly approved by the Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional fact had been duly made in accordance with such allegations. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified, or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

While the other respondents in the proceeding, Lowell Ewing and Lillian Turner, were formerly officers of corporate respondent Mayflower Television Company, Inc., it appears from affidavits executed by such respondents that they are on longer connected with said corporation; that said individual respondents did not participate in the management or operation of respondent corporation, and have had no part in determining its policies; and that any of the acts alleged in the complaint were without the knowledge, consent, cooperation, or condonement of said individual respondents. It is therefore provided in the agreement that the complaint should be dismissed as to these individuals.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice, and in consonance with the terms of said agreement the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Mayflower Television Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1529 17th Street, NW., Washington, D. C. Respondent Raymond H. Bente is an individual and officer of said corporation, with his office and principal place of business the same as that of corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Mayflower Television Company, Inc., a corporation, and its officers, Raymond H. Bente, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of replacement parts for television sets and other merchandise, or repair services in connection therewith, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That the charge for servicing or repairing is $1.00 or $1.50 or any amount which is not in accordance with the facts.
2. That only parts which are needed will be replaced unless such is the fact.
3. That in case parts are replaced no service charge will be made.
4. That their servicemen are experts in servicing and repairing.
5. That repairs can or will be made in the home in any specific number of cases which is contrary to the fact.

It is further ordered, That the complaint be, and the same hereby is, dismissed without prejudice as to respondents Lowell Ewing and Lillian Turner as individuals.

EVERETT F. HAYCRAFT,
Hearing Examiner.

OCTOBER 18, 1955.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
February 15, 1956.

Hon. JOHN W. GWYNNE,
Chairman, Federal Trade Commission,
Washington, D. C.

DEAR MR. CHAIRMAN: Thank you very much for your letter of February 9, 1956, in reply to my inquiry concerning the procedure followed by the Federal Trade Commission in checking radio advertising in the District of Columbia. I wish to express my appreciation for your very prompt response to my letter.

I read your letter and examined the enclosures with a great deal of interest. Am I to understand that the program of supervision which you outline applies to radio and television stations throughout the country or is this program limited to the District of Columbia? The enclosures which you sent me related only to advertising in the District of Columbia, which was the specific subject of my letter. However, it appears from the general terms employed in your letter that this program applies on a nationwide basis.

Does this problem justify an extension of your program? Is the Commission's present staff adequate to accommodate such an extension, or would additional personnel be required? If so, what is the estimate as to the extra number of personnel required? To what degree does the Commission monitor radio and television broadcasting? If not, why doesn't it monitor broadcasts? Is a system of spot checking such as the Commission employs satisfactory and effective?

Is not advertising of the sort involved in the specific cases that you sent me still being carried on in the District of Columbia, particularly with respect to reconditioned electrical equipment, low-priced television sets and television repairs? Isn't such advertising now being done by means of electrical transcriptions, which, as I understand it, are not checked by your staff unless they have previously received a complaint concerning the advertisement in question?

Any further information which you can give us in accordance with the above will be very helpful to the Senate Interstate and Foreign Commerce Committee in its current hearings on radio and television.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

FEDERAL TRADE COMMISSION,
Washington, February 27, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This is in reply to your letter of February 15, 1956, requesting further information in regard to the procedure followed by this Commission in checking radio and television advertising.

The program detailed to you in previous correspondence on this subject does apply, as you have assumed, on a nationwide basis, the idea being to get a satisfactorily representative coverage of both national and regional broadcasts. This is because the Commission is not usually concerned, except in the District of Columbia, with purely local broadcasts. We believe the principal advertising affecting commerce is broadcast nationwide and regionally for such periods of time that our present selective sampling is effective.

It is felt that the question of whether the problem justifies a substantial extension of the program ought to be appraised in the light of its relative importance in the overall project of enforcing all the laws committed to the Commission for enforcement, which it must administer with available funds and personnel.

A small increase in personnel engaged in such survey is contemplated from existing funds, when feasible.

A reasonable lapse of time of necessity occurs between observance of false advertising and its correction. Each case requires careful investigation, preparation of complaint, and thereafter all due process of law. From this it is apparent that a considerable amount of questionable advertising now being observed is already in process of correction here in various stages. Its broadcast may continue until a cease-and-desist order is obtained and enforcement proceedings brought, if necessary.

The appearance of any form of censorship is to be avoided, and no amount of correction, after publication, is likely to prove 100 percent effective. However, I believe that, generally speaking, the Commission's present program is proving satisfactory and effective.

You inquire whether advertising of the sort involved in the specific cases sent you with my letter of February 9 is still being carried on in the District of Columbia, particularly with respect to reconditioned electrical equipment, low-priced TV sets, and TV repairs. Such advertising, I am informed, is being done by means of electrical transcriptions, and otherwise. The majority of the cases previously referred to related to bait advertising in which cease-and-desist orders have been issued.

The practices of four local TV repair shops were recently investigated by our staff, resulting in a complaint being recommended in 1 case and closing of the other 3. These practices were somewhat similar to those considered in the *Mayflower* case, Docket 6404 (reported to you previously) and involved bait advertising only in the sense that representations may have been employed in local advertising, including statements as to service charges, to obtain leads to new customers.

We also have pending in our Washington field office a case involving unfair bait advertising by a Washington radio and TV concern offering brand new TV sets for $99.

We have no pending cases involving reconditioned electrical equipment by local concerns, but we are giving current consideration to bait advertising charges filed against two sewing machine distributors in New York and one in Ohio.

We are also working on a bait advertising case involving a local distributor of hearing aids.

Investigations are pending, or have been concluded, which involve charges of bait advertising by 10 or 12 distributors of storm windows, none of whom are located in Washington. Our Bureau of Consultation is now giving consideration to an application for a trade practice conference covering the storm-window industry. None of these matters have yet reached the stage of information for general public release.

Corrective actions of the Commission, widely published as they are, particularly in trade publications of the industry affected, undoubtedly exercise a stabilizing and deterrent effect upon many who otherwise would be disposed to publication of misleading advertising claims. The extent of this effect is only to be surmised. It cannot be calculated.

In false advertising penalty proceedings for violations of Commission cease and desist orders, we have pending in the United States district courts 10 suits asking a total of over $400,000 in civil penalties, and since 1947 we have obtained over $273,000 in judgments for violations of such orders. These facts will indicate that we are sometimes obliged to, and do, go further than merely issuing our orders. However, I believe that in the great majority of cases our orders are voluntarily obeyed.

Since August 1954, when the present Advertising Unit was instituted as a part of our Compliance Division (the operations of which have been described to you in prior correspondence), 43 investigations have been started from advertising referred by it to our Bureau of Investigation. Of them, 13 or 14 involved local advertising practices culled from national and regional advertising broadcast here.

I trust this information will be helpful to your committee in its current hearings on this subject.

Sincerely,

JOHN W. GWYNNE, *Chairman.*

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
March 19, 1956.

Hon. GEORGE C. MCCONNAUGHEY,
Chairman, Federal Communications Commission,
Washington, D. C.

DEAR MR. MCCONNAUGHEY: Thank you for your letter of March 15, 1956, in answer to certain requests for information forwarded to you by Mr. Zapple and Mr. Cox.

I note that in referring to your power to issue cease and desist orders you indicate that this procedure has never been employed to halt specific advertising practices. This seems to be consistent with a newspaper account of a recent statement of yours warning the industry to police itself in this regard and stating that the Commission has no power to deal with overcommercialization until a license comes up for renewal. Is it your position that the cease and desist procedure is not appropriate for dealing with advertising practices? If so, do you feel that Congress should enact legislation which would permit you to employ this machinery to deal with false and fraudulent advertising as well as excessive commercialization? In your opinion, would cease and desist proceedings be more effective in stamping out bad advertising practices than the mere review of the practices of the station when its license comes up for renewal?

I also note that your staff made an inquiry into some 60 situations where there appeared to be evidence of overcommercialization, but that in none of these cases was the application for renewal of the station's license denied. I would appreciate further information as to the basis for renewal of the licenses in these cases. Did you find that the complaints against the stations' advertising practices were not well founded in fact? Did you conclude that, although some of their practices were objectionable, they were not likely to repeat them? If so, has the Commission maintained a check upon the practices of these stations to see that their records in this regard have improved upon renewal of their licenses?

You state that the Commission has the responsibility for directing attention of other agencies to possible frauds. Will you please advise me in how many instances the Commission has forwarded information on fraudulent advertising to the Department of Justice or to the Federal Trade Commission?

You further point out that the Commission does not have staff personnel assigned to monitoring advertising scripts, but that you feel that it receives sufficient information on this through other means. I assume that if at any time additional personnel is required to discharge that duty you will advise the Congress. In this connection, I would like to know whether or not you regularly receive from the Federal Trade Commission information as to all cases instituted by it against the advertiser where the medium employed is radio or television? If so, are these matters then taken up with the station which carry such advertising?

Pursuant to your request I have asked the committee staff to arrange to have your letter inserted in the record of the hearings for February 7, 1956, on page 127 following line 14.

Very truly yours,

WARREN G. MAGNUSON, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., April 30, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington 25, D. C.

DEAR SENATOR MAGNUSON: This is in further reference to your letter of March 19, 1956, concerning overcommercialization and alleged false and misleading advertising over the facilities of broadcast stations. One of your inquiries is directed to my position on the use of cease-and-desist proceedings in dealing with such matters. Because of the interrelationship of your questions, I have taken the liberty of answering your in letter in the following manner.

It should be pointed out that in the experience of the Commission, it has not been found necessary to resort to the use of cease-and-desist proceedings in dealing with licensees who permit the use of their facilities for allegedly false and misleading advertising. In the past, when a broadcast station has had its attention called by the Commission to the presentation of questionable advertising over its facilities, it has taken steps to correct the matter, thus obviating the necessity for formal action. You will appreciate, I am sure, that as a practical matter, broadcast licensees are not always able to test the accuracy of advertising claims made over their facilities. Generally, the first indication which a licensee receives that the advertising presented by it is false and misleading, is the receipt of a complaint either by the station or by the Commission. In those instances where the Commission receives information which indicates that a station may have permitted its facilities to be used for the dissemination of fraudulent and misleading advertising, it is the practice to inquire of the station concerning the matter in order that such action may be taken as the facts determined in the particular case warrant. In addition, it has been the practice of the Commission, in cases where there appear to be instances of fraudulent advertising, to refer a copy of the complaint to the Federal Trade Commission for appropriate action by that agency. While the latter agency does not pursue the specific practice of informing this Commission of instances where it has instituted proceedings against concerns or individuals employing the medium of radio and television in disseminating false and fraudulent advertising material, the Federal Communications Commission does receive a report from the Federal Trade Commission, published approximately weekly, setting forth all actions taken by that agency involving false and misleading advertising. However, this report does not disclose whether the media of radio and television was used for such advertising practices. In the event the report disclosed that the action taken by the Federal Trade Commission involved advertising matter presented over the facilities of a broadcast station, the matter would be taken up by us with the station involved.

As indicated in my letter of March 15, 1956, to you, section 312 (b) of the Communications Act of 1934, as amended, provides for the use of cease and desist procedures where any person (1) has failed to operate substantially as set forth in a license or (2) has violated or failed to observe any of the provisions of the Communications Act, or (3) has violated or failed to observe any rules or regulations of the Commission authorized by this act. It will be noted that advertising practices are not set forth in either the license or the Communications Act, nor has the Commission promulgated any rule or regulation governing advertising practices of station licensees. The failure to promulgate such rule or regulation has resulted from the provisions of section 326 of the Communications Act of 1934, as amended, which expressly prohibit the exercise of censorship powers by the Commission. Additionally, it should be pointed out that under section 312 (d), both the burden of proceeding with the introduction of evidence and the burden of proof in a cease-and-desist hearing rest upon the Commission. Because of these burdens, it would first be necessary to conduct a full-scale investigation in the service area of the station to determine whether sufficient probative evidence could be discovered to justify a hearing. Then, such evidence would have to be assembled, checked, and formally presented before an examiner at the hearing. Furthermore, because of the very nature of such proceeding, the hearing should be conducted in the area where the station is located. At present, budget and personnel limitations do not make such hearings practicable. Thus, it is believed that the above two cited sections make the use of cease-and-desist proceedings in dealing with advertising practices impractical, as well as of questionable legality. Personally, I have not been shown sufficient evidence to warrant legislation at this time to empower the Commission to institute such proceedings.

It should also be pointed out that if the Commission adopted the use of cease-and-desist proceedings to halt specific advertising practices, it would be to a great extent duplicative of procedures within the Federal Trade Commission. As you know, the Federal Trade Commission has jurisdiction over all false, fraudulent, and misleading advertising in interstate commerce. They have a field organization whose function is to investigate claims relative to such advertising and to present their findings to that agency for such action as it deemed necessary. Cease and desist proceedings are used by the Federal Trade Commission in dealing with false and misleading advertising, and their order halts the practice complained of, irrespective of its manner of dissemination.

With reference to your inquiry concerning the 60 stations cited for purported overcommercialization, there is enclosed a chartered summary of the Commission's inquiries into what, on initial examination of the stations' applications for renewal of licenses, appeared to be evidence of tendencies to overcommercialize. The compilation covers Federal Communications Commission action authorizing staff inquiries from October 28, 1953, through December 1, 1955, as to stations whose licenses expired during the period December 1, 1953, through December 1, 1955. It should be noted that column 7 of the enclosed chart briefly summarizes the stations' responses to the Commission's inquiries in the matter. On the basis of the submitted information, the Commission concluded with regard to 50 of the applicants (the applications of 10 are still pending), that the stations would fulfill their future responsibilities, and that a grant of their applications would be in the public interest. A further analysis of the chart will disclose that in some instances the charges of overcommercialization were not well founded, since the purported excessive showing of commercial programing was attributable to the applicants' errors in computing the program log analyses submitted to the Commission.

In granting the aforementioned applications, the Commission relied upon the good faith and cooperation of the licensees to self-regulate and self-restrain their operations within the limits of the programing representations submitted to the Commission. Thus, no independent check is made as to their subsequent operations. However, the Commission's renewal of license procedures enable it to reexamine and reevaluate the stations' overall records upon subsequent applications for renewal of licenses. At that time the Commission is afforded the opportunity to determine the extent of improvements in the stations' operations.

We regret to inform you that the Commission is unable to supply the precise number of instances in which the Commission has forwarded complaints pertaining to fraudulent advertising to the Department of Justice or to the Federal Trade Commission. The unavailability of such information is attributable to the fact that the Commission maintains no separate file for correspondence of this nature. It is not segregated, but is associated with the Commission's files on the stations involved. The effort required to enable the Commission to supply you with the information requested would entail the examination of virtually all outgoing Commission correspondence files since the Commission's inception. I am sure that you will appreciate the enormity of such a task and the tremendous expenditure of Commission manpower it would involve. I am informed that the Federal Trade Commission would have a similar problem in locating complaints forwarded by this Commission.

I hope that the foregoing information answers the questions raised in your letter, and if further information is desired, please do not hesitate to let me know.

Sincerely yours,

GEORGE C. MCCONNAUGHEY,
Chairman.

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
May 11, 1956.

Hon. GEORGE C. MCCONNAUGHEY,
Chairman, Federal Communications Commission,
Washington, D. C.

DEAR MR. MCCONNAUGHEY: This is in further reference to matters raised in my letter to you on March 19, 1956, and dealt with in your reply of April 30, 1956, regarding overcommercialization and alleged false and misleading advertising over radio and television.

There are still a number of points on which I would appreciate further clarification. Am I to understand from your letter that in every case where the Commission has received a complaint regarding the broadcasting of allegedly false and misleading advertising the station in question has discontinued such advertising upon notification from the Commission, except where it is found the advertising is in fact not improper? Do you keep a record of all such incidents in the file for each station, and do you raise an issue of general policy with any station which has a record of repeated acceptance of questionable advertising?

I was glad to know that it is your practice to refer complaints regarding advertising to the Federal Trade Commission for appropriate action. I am also glad that you receive reports from the Federal Trade Commission setting forth all action regarding false and misleading advertising. Would it be feasible for you to arrange with the Federal Trade Commission to advise you as to its cases in which such advertising was disseminated over the facilities of a broadcasting station? Would this not give you an additional source of information to be used in policing advertising practices in broadcasting?

You point out that advertising practices are not set forth in either the license issued to the station operator, the Communications Act, nor the rules and regulations of the Commission, and indicate that the Commission has failed to promulgate such rules because of the statutory prohibition against the exercise power of censorship by the Commission. It would appear to me that, without any reference to advertising practices in the act, the license, or the rules or regulations of the Commission, any instance of the continued broadcasting of false and misleading advertising would demonstrate clear failure to operate in the public interest, requiring Commission action. In connection with the matter of censorship, I am quite sure that section 326 of the Communications Act is designed only to prevent prior restraint by the Commission in advance of broadcasting, and that it cannot be construed as prohib'ting punitive measures to deal with this type of misuse of the airwaves after the fact.

You again refer to budget and personnel limitations as making it impractical to police advertising practices through cease and desist proceedings. I would again remind you that, as I have previously indicated, I would be happy to recommend the appropriation of additional funds to make possible whatever activities on the part of the Commission might be necessary to deal with this problem. In this connection, I note that you indicate you personally see no need for legislation to empower the Commission to institute such proceedings. Do you take this position because you feel the Commission already has such power, or because you feel that the use of such proceedings is not necessary in dealing with advertising practices?

You state further in your letter that if the Commission were to employ cease and desist proceedings to halt advertising practices this would duplicate the activities of the Federal Trade Commission. Is it not true that the Federal Trade Commission proceeds only against the advertiser concerned, and that any action to correct the practices of a radio or television station which has a record of continued broadcasting of improper advertising would fall completely within the jurisdiction of the Federal Communications Commission?

Thank you for sending me the information regarding the 60 stations cited by the Commission for alleged overcommercialization.

Could you please tell me what was the nature of the staff inquiry made in regard to these stations? Was it of such a nature that the Commission was able to determine precisely what the practices of the station had been in this regard? I note, of course, that with a few exceptions the licenses were reissued in rather short order. You state that this was done in reliance upon good faith of the licensees, who promised to correct any improprieties. You further indicate that no independent check is made as to subsequent operation of such stations, but that the matter is again considered when their licenses come up for further renewal. If at that time it appears that the station has not corrected the practice previously complained of, what is the policy of the Commission with regard to renewal of the license?

I am sorry to protract our correspondence on this matter, but I feel that there are important problems in this area which should be fully explored.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., May 29, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce, United States Senate, Washington 25, D. C.

DEAR SENATOR MAGNUSON: This will supplement my acknowledgment of your letter of May 11, 1956, regarding overcommercialization and alleged false and misleading advertising broadcast over the facilities of radio and television stations. In your letter, you request further clarification of certain matters set forth in my letter of April 30, 1956.

With reference to your inquiries relating to false and misleading advertising, it should be pointed out that where it can be determined that a particular station has knowingly and deliberately engaged in misleading advertising, or has permitted its facilities to be so used after having its attention drawn to the fact that questionable advertising practices have occurred over its facilities, a substantial question would be raised as to the station's continuing ability to serve the public interest. The Commission would be authorized to consider this question in connection with its periodic examination of the overall station performance when application is made for renewal of license. If the record, after hearing, warrants, the Commission can deny renewal of the offending station's license. Thus far, as pointed out in my letter of April 30, 1956, it has not been found necessary to resort to such drastic measures since the Commission has not been confronted with a case involving a station which has a record of repeated acceptance of questionable advertising subsequent to inquiry by the Commission. In a number of instances, alleged false and misleading advertising has been brought to the attention of the respective stations and, in each instance, pursuant to the Commission's inquiry into the matter, the station has submitted a satisfactory explanation or has given adequate assurance that the practice or practices complained of have been discontinued and that improper advertising copy would not be broadcast in the future. I know of no case where formal action was warranted because a station failed to make a satisfactory showing with respect to alleged false and misleading advertising. In answer to your specific question, it is the Commission's practice to place the records of such incidents in the station's files.

The Commission has found the above procedure to be both expeditious and practicable. Further, it is believed that the course heretofore followed by the Commission has substantially circumscribed the broadcasting of false and misleading advertising material over the media of radio and television. For reasons set forth in my letter of April 30, I am of the view that the utilization at this time of cease-and-desist procedures in dealing with advertising practices of this nature would be administratively impracticable and, in all likelihood, would raise a serious question as to its legality.

In my letter to you of April 30, I stated that, personally, I had not been shown sufficient evidence to warrant legislation to empower the Commission to institute cease-and-desist proceedings in cases involving objectionable advertising practices. While the Commission has never been called upon to decide in a formal proceeding whether it has power to institute such proceedings, as heretofore indicated, the Commission has not found the use of such proceedings to be necessary in dealing with advertising practices.

In pursuance of the thought expressed in your letter, the Commission is planning to seek an arrangement with the Federal Trade Commission for the latter agency's submission to us of instances in which false and misleading advertising material is disseminated over the facilities of broadcast stations. In the event that such an arrangement is feasible, the Commission agrees with your observation that it would serve as an additional source of information concerning stations which provide the use of their facilities to advertisers engaged in improper advertising practices.

In my previous letter, I referred to a duplication by this Commission "of procedures within the Federal Trade Commission." I was not referring to the sanctions available to that agency and to this Commission. Rather, I had in mind the investigative procedures and expertise necessarily involved in ascertaining the actual falsity or misleading character of the objectionable advertising. As you indicate in your letter, we have jurisdiction over station licensees but not over sponsors.

To illustrate the nature of the inquiry made by the Commission with respect to a station's operations and alleged overcommercialization, there is enclosed a sample letter used to elicit additional programing information in such cases. The Commission has found that a station's response to such an inquiry usually results in the submission of detailed information pertaining to the circumstances surrounding the alleged overcommercialization. This information permits the Commission to determine whether renewal of the station's license, and its continued operation, would be in the public interest. In the event the licensee should fail to self-regulate and self-restrain its operations within the programing representations submitted to the Commission in such a response, the Commission, upon subsequent application for renewal of license would again defer the station's renewal application and inquire into its continued ability to serve the public interest.

I trust that the foregoing information answers the questions raised in your letter. If further information is desired, please advise me and I shall endeavor to supply it.

By direction of the Commission.

GEORGE C. MCCONNAUGHEY, *Chairman.*

GENTLEMEN: This has reference to your application for renewal of license of Station ———. The Commission considered your application on ——— and deferred action pending further study of the program service.

A review of the program analyses submitted with the renewal application indicates that Station ——— devoted more than — percent of total time to commercial programs and broadcast ——— commercial announcements during the 1955 composite week. Additionally, it appears that there has been a failure to include agricultural, educational, and discussion programs in the station's offerings.

A station is not expected to conform to a rigid standard with respect to the amount of time it devotes to particular types of programs or the amount of time it devotes to commercial programs. The Commission is aware that, in the day-to-day operation of a broadcast station, numerous questions of policy will determine the selection of programs so that the amount of time devoted to particular types will vary with the facts and circumstances in each case. Also, the Commission recognizes the limitations under the act whereby it cannot direct a licensee to broadcast or refrain from broadcasting a particular program or to censor the content of a particular program. Nevertheless, it has been the experience of the Commission that a comparatively high percentage of commercial time and the failure to include agricultural, educational, or discussion programs in the program structure are sometimes indcative of the failure on the part of the licensee to maintain a well-balanced program service which serves the needs and interests of the community. In view of these considerations, your comments regarding programing matters are requested.

The information requested herein should be filed at your earliest convenience in order that further consideration may be given the application for renewal of license.

Very truly yours,

MARY JANE MORRIS, *Secretary.*

LETTERS FROM MEMBERS OF THE PUBLIC

EARLE C. ANTHONY, INC.,
February 14, 1956.

HON. WARREN MAGNUSON,
United States Senator,
Senate Office Building, Washington, D. C.

DEAR SENATOR MAGNUSON: I refer to information we have received relative to the Senate hearing pertaining to "false and fraudulent" sales pitches.

On behalf of one of the radio stations that was adhered to a firm policy in the matter of ethical advertising, I wish to congratulate you and thank you and the committee for your concern against this bad business practice. This practice, which seems to be condoned by the authorities, has become so flagrant in recent years that we feel a protest such as yours is long overdue.

We are proud of the fact that our listeners rely upon our integrity in program and commercial content, as well as our selectivity in our sponsors, and are fully aware that any deviation from this concept can only deteriorate our industry.

We appreciate the stand you are taking and wish you success in alerting the Federal Trade Commission to this situation.

Very truly yours,

CHARLES HAMILTON,
Assistant to the President.

ST. ALBANS 12, N. Y., *February 9, 1956.*

Hon. WARREN G. MAGNUSON,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I was much interested in reading, in the New York Times of yesterday, your criticism of radio advertising. I would like to add my support, and that of many in the audiences I address, in my work as an instructor and lecturer.

For some time, I believe, that there have been excessive liberties taken by the advertisers, when sponsoring the products they represent over radio and television.

There are three very glaring faults that I have found: (1) the announcements are exaggerated and superfluous; (2) they are very often misleading, and sometimes false; (3) they are represented by glamor, both in the text and by the individuals who deliver and "act" the text.

In addition, I believe they may be exceeding the time allowed for advertising on programs.

I have written both to the Federal Trade Commission and the Federal Communications Commission, and have had no satisfaction. In one or two cases, they have not even answered my letters.

I believe this matter should be very much more carefully checked, and something should be done to bring these announcements within the range of truth and modesty.

I hope that you and your committee will follow through in this matter.

Sincerely yours,

AUGUSTUS E. CALIFANO.

RADIO ENTERPRISES, INC., (AMERICAN BROADCASTING CO.),
El Dorado, Ark., February 8, 1956.

Senator WARREN G. MAGNUSON,
Senate Office Building, Washington, D. C.

DEAR SENATOR: Relative to our telephone conversation, I would like to expand my remarks on the subject of false and fraudulent claims made in radio advertising. Of course, many of these same ads are run in the printed media, but that is no concern of mine.

I have worked diligently at this business of cleaning up radio during the past several years. During my term as president of the Arkansas Broadcasters Association, our group was vitally concerned with a rash of rebuilt sewing machine and vacuum cleaner deals.

The broadcasters of our country are deeply concerned with the welfare of our listeners. We feel a deep obligation to protect them from such deals offered by unscrupulous merchants.

We try our best to investigate each deal that might seem the least bit misleading, but we admit that other fraudulent schemes have slipped by us.

It would be next to the impossible to clear each and every offer we handle in a day—with a thorough investigation. However, upon finding such a scheme or discovering advertising which is fraudulent or misleading, the broadcaster will immediately take steps to cease such advertising on his facilities.

Under the present system of the Federal Trade Commission (in checking the local advertising on broadcast stations), it is not possible to secure an actual picture of what the public is being offered.

On the other hand, it is an unjust hardship on the broadcaster to require copies of every ad run on each day of a year. We are currently plagued with forms, reports, and questionnaires as it is.

I feel that the answer to your problem might be found in more active trade organizations of various types. Let the trade organization help police themselves. We, as broadcasters, cannot be sure of every claim made by an advertiser. After all—we are broadcasters—not furniture men, car dealers, or vacuum machine salesmen.

As a broadcaster, may I say that we are most anxious to help clean up any existing advertising practices that are either fraudulent or misleading. We will continue our investigations into advertising that does not appear to be accurate or in good faith. It is my hope that some method of self-policing can be worked out among both the broadcasters and the various trade organizations, because I am strongly opposed to any form of Government control or restrictions or any business that would prohibit fair trade or the right to operate on a competitive basis.

I enjoyed talking with you and hope to hear from you.

Regards

W. N. McKinney,
General Manager.

Aluminum Products Co.,
Salisbury, Md., February 11, 1956.

Senator Magnuson,
Senate Office Building,
Washington, D. C.

Dear Senator Magnuson: I read in the Baltimore Sun paper under date of February 8, 1956, that you had "accused some radio advertisers of engaging in 'false and fraudulent' practices by which the public is bilked" and "we ought to make a rundown on some of these fantastic offers."

You have my enthusiastic approval for all efforts your committee may make along this line, and especially may I recommend that you investigate thoroughly the fantastic offers made in the aluminum storm window and door business.

These radio and newspaper advertisers follow the well-known "bait and switch" game of which every better business bureau is well acquainted.

Our local area on the Eastern Shore of Maryland has for the better part of a year been subjected to their advertising, mostly in our local Salisbury Times, but also from radio stations in Philadelphia and Baltimore.

These "bait and switch" operators advertise storm windows at a ridiculously low price, from $6.50 to $9.99, but after you call or write them, if you insist on the advertised window, they never deliver. The salesman of such a firm must switch the customer to the "de luxe" window, which in every case is an inferior product at a highly inflated price.

Firms engaging in this type of advertising as a rule operate "out of a hat," have no address except a mail pickup or a box, employ every unethical sales practice in the book, are not set up to give any service on their installations, and in case of legal suit, quickly change their name and continue their false and misleading advertising.

I estimate that these baiters have taken from the local dealers in this area about 50 percent of our business in the last 6 months, and are making it hard for legitimate local dealers to stay in business.

Anything your committee can do to expose and give publicity to this racket will be appreciated.

Sincerely yours,

Allen C. Gregory.

Wessen Buick Co.,
Los Angeles, Califg., February 14, 1956.

Senator Warren Magnuson,
Senate Building, Washington, D. C.

Dear Senator Magnuson: I have read with great interest the news item of February 7 about your comments at a hearing of the Senate Commerce Committee on the subject of radio and television advertising. It seems to me that it is high time someone interested themselves in this deplorable situation.

For several years now the Los Angeles Motor Car Dealers Association has made substantial contributions to the Better Business Bureau to help underwrite the expense of controlling and eliminating fraudulent and misleading advertising from all media. We have met with some success, but find the most difficult job lies in radio and television. Here it is easier to deviate from prepared script, and a clever announcer can change the meaning of a statement so that only an experienced person in advertising can detect the falsifications in it.

As a businessman in a very competitive field, I feel that we should operate with a minimum of laws and regulations, but here is one phase of our economic life that is in desperate need of some controls against the false and fraudulent advertising that is all too common today.

Under present laws, many radio and television stations accept most any kind of advertising copy, and unless the Better Business Bureau does something about it, the advertiser and his advertising agency go on with ever-increasing dishonest "pitches."

It is the feeling of many automobile dealers as well as businessmen in other fields, that advertisers, advertising agencies and radio and television stations should be held fully responsible for the truthfulness and accuracy of all commercials given.

I could write pages about the clever way automobile copy is handled over the air, but you are undoubtedly quite familiar with all this.

Please read the enclosed article that I have clipped from the February 6th issue of Automotive News. This is one of the practices that the great majority of new car automobile dealers want stopped.

Please continue your efforts to correct this serious and dangerous condition that has been going on too long.

Sincerely,

J. T. WESSEN.

[From Variety, February 22, 1956 (editorial)]

IT'S HAPPENED AGAIN

The NARTB meets regularly and indulges in discussions on sundry matters, sometimes realistic, sometimes lofty. It has yet to do something about policing the fast-buck indies who, seemingly, have no compunction in lending their facilities to propagate food clubs, blue-sky stock peddlers, dubious underwriting propositions and the like.

And they get caught every time, but not without helping to do much trouble, because no more vivid medium of propaganda exists for the radio pitchman. The food clubs came first. Recently the "let's pay your debts for you" boys got curbed, but only after New York State Attorney General Jacob K. Javits got into the act. And now the same arm of the law succeeded in getting a temporary injunction restraining Tellier & Co., a Jersey City securities dealer, from doing business in New York. The concern is accused of fraudulent practices in the sale of uranium and Alaskan telephone securities involving $1 million. Tellier was a large user of spot commercials on the indie Manhattan and nearby Jersey stations covering the New York metropolitan area.

It might be more in the public interest for the eager-beaver time sellers on any of those stations to take stock of how the AM time is being used and abused. They should do it not only in the public interest but also with an immediate eye to the goodwill engendered by the station in becoming party to such a dubious pitch. It doesn't require much perspicacity for that—all you got to do is just listen to a sample of the unctuous pitch with its almost open-and-shut blue-sky ballyhoo.—*Abel.*

APPENDIX II

FCC 55-314

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

PRELIMINARY REPORT OF THE FEDERAL COMMUNICATIONS COMMISSION TO THE SENATE INTERSTATE AND FOREIGN COMMERCE COMMITTEE WITH RESPECT TO VHF-UHF AND TELEVISION NETWORK PROBLEMS

1. In evaluating the current status of television broadcasting and in determining how it may best develop in the future, we think it essential to keep in mind the positive advances which have been made in the less than 3 years since the "freeze" was lifted. In July 1952, when the first postfreeze station was granted, there were only 108 television stations in operation; at the present time more than 425 are in operation. In 1952, 63 markets had 1 or more local stations—in most cases 1; now there are over 4 times as many communities with their own television facilities, 100 of which have 2 or more facilities. The pub-

lic's acceptance of the expanded television service has been overwhelming. The number of television receivers in the hands of the public has grown from 20 million to 35 million; and today almost 70 percent of American homes have a television receiver. The American people have already invested over $10 billion in television receiving equipment and the annual volume of television advertising, set sales, servicing, and operating combined runs close to $4 billion per year.

2. We mention these figures at the outset to stress the fact that the problems raised by the Plotkin and Jones reports are not whether we can develop an adequate television service—for we already have such a service. The problem with which these reports and your committee's study is concerned is rather how we can best insure the fullest development of the industry's potentialities in line with the needs and desires of the American public and the abilities and ingenuity of the American broadcasters. So much has been accomplished in so short a time that we cannot but feel optimistic that the remaining problems can be resolved through constructive planning and cooperation among all interested groups.

3. The Commission in formulating its national television assignment plan and the associated rules and standards in the sixth report, was seeking to promote several different objectives designed to provide television service and facilities to the Nation. It gave first precedence to making available at least one service to all areas of the country; second priority to making a local facility available to as many communities as possible; third and fourth priorities to making second services and second local facilities available wherever possible; and allocated the remainder of the channels so as to achieve a fair, efficient, and equitable distribution of television service and facilities throughout the Nation.

4. Many of the Commission's objectives have been largely fulfilled. While it is difficult to provide any precise figures, it is estimated that over 90 percent of the people of the country are now within service range of at least 1 station. A large portion of the public, perhaps as much as 75 percent, is within service range of 2 or more stations. Furthermore, 255 communities have at least 1, and 100 of these have 2 or more, local television facilities in operation.

5. However, it is evident that there are substantial obstacles (for example, limited economic support) presently in the way of bringing a first local outlet to hundreds of smaller communities as well as in expanding the number of multiple, competing services in the larger economic and population centers of the country. A major obstacle is the high cost of television programing during this early stage in the development of the art, which makes the securing of a substantial amount of network and similar programing a prerequisite to successful station operation. Of even greater importance is the failure, thus far, of UHF stations to become fully integrated with established VHF stations into an economically sound nationwide television service. To a large extent these two problems, the securing of adequate programing and the UHF problem, intermesh.

6. Thus, while there is some indication that many larger communities can support 3 stations when all of the stations are in the VHF band, these same communities may be unable to support at the present time 3 stations when only 2 of the stations are VHF and the third is UHF. The failure of UHF to become integrated with VHF is manifested by the fact that of 318 UHF stations authorized by the Commission, only one-third are presently in operation. Many authorized were never actually constructed. And the financial outlook for a number of the operating UHF stations is by no means bright. The plight of UHF has been discussed in detail in the presentation of Commissioner Hyde and other witnesses at the Potter hearings, as well as in the Plotkin and Jones documents.

7. It has been argued that the difficulties encountered by most UHF stations, and by some VHF stations, are the result of the inability of the economy to absorb the suddenly increased number of stations. We cannot, of course, predict the exact nature of the future development of the television industry, nor is it the Government's function to create television service where there is no demand or economic basis for such service. It is essential, however, that television's capacity for future growth not be impaired by any artificial curtailment of channel space. To achieve its full potentialities, we believe television will eventually utilize a number of channels in the order of those presently allocated to it, just as AM broadcasting developed its present national pattern within the 107 channels allocated to that service.

8. The majority of the Commission agree with the conclusions reached in both the Plotkin and Jones reports that the only practicable course of Commission action lies in doing what is possible to promote the present allocation plan

utilizing both VHF and UHF channels. The addition of substantial new VHF space or the movement of all television stations to the UHF would involve such tremendous dislocation of existing operations and have such a severe impact on millions of viewers that such action should be considered as a possible alternative only if Congress itself were to determine that the long-run benefits to the publc required adoption of such drastic remedies. Therefore, the Commission has taken, and is contemplating, a number of specific actions calculated to enhance the potentialities for television's growth within the existing allocation system. No one of these moves, in and of itself, provides or is intended to provide any cure-all. But their cumulative effect, we believe, will be beneficial.

9. Thus, it is expected that the acquisition of UHF stations by certain multiple owners as a result of last year's modification of our multiple ownership rules will help to strengthen UHF in such markets as Milwaukee, Portland, Oreg., and Miami where such parties have recently acquired UHF outlets. Similarly, we believe the Commission's policy in permitting UHF satellite stations to rebroadcast programs of established stations in areas which might otherwise not be able to support a station will prove helpful. We also have two rulemaking proposals under consideration which offer promise of facilitating the growth of additional television outlets and of maintaining existing stations. One of these would authorize low-power operation in communities of less than 50,000 population; the other would preclude the establishment of transmitter sites more than 5 miles from the city in which the station is authorized unless special reasons for such locations can be established.

10. As part and parcel of the same problem, the Commission is considering ways by which the cost of intercity transmission of programs can be minimized. It is attacking this problem in two directions: First, we have instituted rulemaking looking toward the freer establishment of private intercity relay systems by the broadcasters themselves. In this connection, the telephone company has initiated suggestions looking toward the establishment by it of an off-the-air pickup service which the company believes could be provided at charges substantially less than those required for direct network connections. At the same time, we are continuing to review the existing charges of the telephone company for direct intercity program transmissions and expect to be able to conclude the outstanding proceedings as to this matter in the near future.

11. "Selective deintermixture" has been suggested as another possible line of approach. The Commission has been requested to reconsider certain actions it has already taken in this area to determine whether it might not be possible, with a minimum of dislocation of existing services, to insure that a number of markets become or remain UHF-only communities or are restricted to a single VHF station. The theory of such deintermixture is that it would provide for more balanced competition in the various communities, while at the same time strengthening UHF generally by increasing the number of "islands" of permanent UHF stability. The Commission is presently studying this problem to determine the feasibility of any such limited deintermixture—a study which necessarily involves such questions as the other VHF service available to the communities from outside and the effect that the elimination of VHF operations in some of the areas would have on rural coverage. We are unable at this preliminary stage in our consideration to offer any definitive answer to these questions. However, we are presently considering the circumstances, if any, under which such limited deintermixture may be appropriate in the public interest.

12. A related and highly important problem referred to in both reports is the inability of most outstanding sets to receive UHF programs. Of the 35 million receivers in the hands of the public, only 5 million are UHF-equipped. We also note with some concern that less than 20 percent of the sets now being produced are all-channel receivers. It may well be that this lack of UHF receiving equipment, as well as the delay in developing high-power transmitting equipment, have been the most important single factors in the relative backwardness of UHF development.

13. The Commission has no direct regulatory authority over the manufacturers of radio and television receiving equipment which would enable it to require manufacturers to adopt any particular course of conduct. It is the Commission's view, however, that removal of the excise tax on the manufacture of all-channel receivers would conduce to the wider distribution and sale of all-channel sets and the Commission therefore favors legislation toward this end. In this connection, the Commission also believes that voluntary action by manufacturers looking toward the expanded production of all-channel sets to the greatest extent practicable would be extremely helpful in assisting the development of the UHF.

14. Over and beyond these specific measures the Commission believes that a general study by the Commission into the entire economic structure and operations of the television industry is essential. This study would include, but not be limited to, consideration of the respective roles of the networks, advertisers, agencies, talent, independent film producers and distributors, and other program sources as well as other means of distributing programs to the public. The essential objective of such a study would be to obtain for the first time a factual basis for evaluating the necessity and advisability of any action by the Commission, Congress, or the Department of Justice in this area.

15. In our opinion, the network problems referred to in both the Plotkin and Jones reports cannot be considered by themselves but are inextricably interwoven within the structure of television programing. Only through a study such as we are proposing will we have a proper basis for evaluating the various types of regulatory proposals which have been suggested. While network programing is admittedly of crucial importance to profitable station operation at the present stage of development, the Commission believes that establishing an economic base for the growth of new stations lies not in any artificial restriction or redistribution of network programing but in an overall expansion of all sources of programing.

16. The Commission has long believed that an overall study of the broadcast industry, including a review of the network rules, should be made. The last such comprehensive study was conducted in 1938–41 with respect to AM broadcasting and led to the promulgation of the chain broadcasting and multiple ownership rules. We have informed both the legislative and appropriations committees of the Congress on numerous occasions since the end of World War II of the need for a new study. But we have also indicated, and here reiterate, that any such study by the Commission, if it is to be meaningful and productive, requires a high-caliber staff. This staff would have to devote full attention to the study. As a result, we would need to recruit immediately additional personnel in order to avoid disruption in the essential work of the Commission. Neither the Bureau of the Budget nor the Congress has seen fit to make available the funds necessary for conducting such a study; such supplemental sums as have been appropriated have been earmarked for application processing. No funds have been allowed by the Bureau of the Budget in our present budget proposal for fiscal 1956 to establish such a staff—though we had originally asked for funds sufficient to establish at least a skeleton staff to make a start on the problem.

17. It is the Commission's view that the type of study contemplated in this field cannot be completed within 1 fiscal year. We think it would be appropriate, therefore, for such a Commission study to be authorized and the funds therefor appropriated pursuant to a congressional resolution. This was done in the 1935 telephone investigation, at which time Congress specifically authorized the Commission's continuing study by a resolution (Public Res. No. 8, 74th Congress). We are prepared to present to the committee in detail the subject matter to be covered by the proposed study and the funds and staff required.

FCC 55-590

Interim Report of the Federal Communications Commission to the Senate Committee on Interstate and Foreign Commerce

1. In our preliminary report we noted that we were contemplating various actions designed to strengthen the structure of television broadcasting within the existing allocation plan utilizing both VHF and UHF channels. By this interim report the Commission is bringing the committee up to date on the status of the various measures the Commission has under consideration.

2. As indicated in our preliminary report, "selective deintermixture" has been suggested as one possible line of approach to alleviate some of the problems now confronting UHF stations and to enhance the potentialities for the further growth of the television service. We noted that a number of petitions requesting selective deintermixture were then pending and that we were considering the circumstances, if any, under which limited deintermixture might be appropriate in the public interest. In this connection, on March 31, 1955, the Commission instituted rulemaking proceedings to look into deintermixture of television assignments in Peoria, Ill.; Evansville, Ind.; Hartford, Conn.; and Madison, Wis. In addition, the Commission is engaged in a similar proceeding with respect to the Albany, N. Y., area. Copies of the Commission's notices of proposed rulemaking institut-

ing these proceedings are enclosed for your information. Your attention is directed to the matters specified by the Commission in the enclosed notices with respect to which the Commission has asked that data be submitted. The date for filing written comments in the proceedings was originally specified as May 2, but in response to requests from several of the parties, was extended to May 17, 1955. You will note that the Commission has also stated that subsequent to the submission of written comments, oral argument will be held before the Commission en banc. The Commission hopes that as a result of the procedures to be followed in these proceedings, it will have a firm, factual basis for determining the need, feasibility, and circumstances, if any, under which deintermixture would be warranted in these communities.

3. In addition to the several communities listed above for which we have instituted rulemaking proceedings, the Commission also has pending similar requests for deintermixture in a number of other cities.

4. Since the submission of our preliminary report to the committee we have initiated another rulemaking proceeding aimed at improving the VHF–UHF relationship. It is apparent that, as compared with VHF, the signals from UHF transmitters have less tendency to fill in areas which are not in direct line of sight with the transmitting antenna. One means of providing UHF coverage in such shadow areas may be the use of amplifying transmitters, sometimes referred to as boosters. The purpose of the rulemaking proceeding, which was initiated March 31, is to determine whether such operations would present a feasible means for increasing the coverage of UHF stations. The time for filing comments in this proceeding has been designated as May 20, 1955; and a copy of this notice is also enclosed.

5. We wish also at this time to note the status of rulemaking proceedings which we have previously brought to the committee's attention. One of these proceedings relates to the authorization of low-power stations in communities of less than 50,000 population; another deals with a proposal to preclude the establishment of transmitter sites more than 5 miles from the city in which the station is authorized unless an adequate basis for such location can be established. The time for filing comments by interested parties in both of these proceedings has expired, and we are now in the process of analyzing the various comments submitted.

6. Another rulemaking matter referred to in our preliminary report concerned ways of reducing the cost of intercity program transmissions. It was noted that a rulemaking proceeding had been initiated for the purpose of relaxing present restrictions on the establishment of private intercity relay systems by the broadcasters. In view of the response by the American Telephone & Telegraph Co. indicating their willingness to provide an off-the-air pickup type of intercity service at substantially less than present charges for direct network connection, the Commission, on April 1, issued a further notice of proposed rulemaking to obtain the views of interested parties on this new proposal. Comments are still being received on this matter.

7. We wish also to call your attention to the appropriation of $80,000 proposed by the House in connection with the Commission's 1956 budget allocation "to make a study of radio and TV network broadcasting." In a statement presented to the Senate Appropriations Committee on May 5, we indicated our views that such a study would be very worthwhile. We stated, however, that it should not be limited to networking but, as indicated in our previous report to your committee, the study should be concerned with the entire economic structure and operation of the industry. Such a study, we suggested, would be a large undertaking and would require more staff and time than contemplated by the House bill. We stated to the Senate Appropriations Committee that the suggested $80,000 appropriation would enable the Commission to establish the staff to initiate the study, draw up the detailed procedures, and make substantial progress in the first, or factfinding phase of the study.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., July 21, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: The Commission is herewith transmitting its second interim report with respect to television network regulation and the

UHF problem. This report will apprise the committee of the present status of various actions previously reported as well as new measures initiated by the Commission.

By direction of the Commissison:

GEORGE C. MCGONNAUGHEY, *Chairman*.

SECOND INTERIM REPORT OF THE FCC TO SENATE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

The committee has requested that the Commission furnish reports at 60-day intervals on the subject of network regulation and the UHF problem. This is the Commission's second interim report and will apprise the committee of the present status of the various actions previously reported as well as new measures which have been initiated since our previous report.

Deintermixture.—On June 27 and 28, the Commission heard oral argument with respect to deintermixture in 5 specific localities—Peoria, Ill.; Evansville, Ind.; Hartford, Conn.; Madison, Wis., and Albany, N. Y.

Low power.—On June 22, we issued a final report amending our rules to reduce the minimum power requirement for TV stations without regard to the size of the city. Our new rules permit stations to operate with a mimimum power of 100 watts with no minimum antenna height specified. (Report and order enclosed.)

Chain broadcasting.—On June 22, 1955, the Commission amended its television chain broadcasting rules to remove a restriction which operated to preclude stations from contracting with networks for particular programs when a station with overlapping coverage in another community had contracted for "first call" on the same network programs. The revised rules restrict the right of stations to contract for "first call" rights on network programs to the communities in which they are located. (Report and order enclosed.)

Amplifying transmitters or boosters.—Our previous interim report referred to a proceeding to consider the authorization of amplifying transmitters or boosters intended to fill in shadow areas of UHF transmitters. The Radio-Electronic-Television Manufacturers Association has requested that the time for filing comments in this proceeding be extended to July 21, and this request has been granted.

High power for UHF.—On June 22, the Commission issued a notice proposing to amend its rules to increase the maximum permissible effective radiated power for UHF stations from 1,000 to 5,000 kilowatts. In the same proceeding the Commission requested data relating to the sensitivity of UHF sets and tuning mechanisms. (Notice of proposed rulemaking enclosed.)

Pending actions.—No action has as yet been taken on two other rulemaking proceedings mentioned in our previous report. One of these proceedings is a proposal to limit transmitter sites to within 5 miles of the city in which the station is authorized, and the other concerns ways to reduce the cost of intercity program transmissions.

The committee will also be interested to know that the Commission on July 20 took action setting up a Committee of Commissioners to institute and carry on a study of radio and television network broadcasting as authorized by the Congress in appropriating funds specifically for such a study during the fiscal year 1956 (order enclosed).

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

Delegation Order No. 10

IN RE DELEGATION ORDER FOR COMMITTEE OF COMMISSIONERS

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 20th day of July 1955,

IT APPEARING, That it is necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business to refer to a committee of Commissioners the work, business and functions of the Commission in connection with the study of radio and television network broadcasting provided for by Public Law 112, 84th Congress, First Session;

IT IS ORDERED, Pursuant to the provisions of Section 5 (d) of the Communications Act of 1934, as amended, and Section 0.201 of the Commission's Rules and Regulations that there be designated a committee of four Commissioners, composed of Chairman George C. McConnaughey and Commissioners Rosel H. Hyde, Robert T. Bartley, and John C. Doerfer; that there be referred to this Committee the conduct of the study of radio and television network broadcasting provided for as aforesaid; and

IT IS FURTHER ORDERED, That the committee so designated shall be and hereby is instructed to institute and carry on a study of radio and television network broadcasting, with the same powers and jurisdiction conferred by law upon the Commission, all as provided for in the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., November 17, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington 25, D. C.

DEAR SENATOR MAGNUSON: The Commission, as you know, has been giving close attention to the matter of television service, and recently took a number of actions in this field.

On November 10, 1955, the Commission instituted a rulemaking proceeding to consider all possible overall solutions, on a nationwide basis, to the difficulties now confronting the fuller development of a competitive nationwide television service. Interested parties have been afforded to December 16, 1955, to file comments in this proceeding, with reply comments due January 6, 1956. Copies of the Notice of Proposed Rule Making are enclosed.

On the same date, the Commission, in the light of the general rule making proceeding, denied requests for selective deintermixture of commercial VHF and UHF channels in Peoria, Evansville, Madison, Hartford and Albany. The Commission also rejected requests for the institution of rule making to achieve deintermixture in various other scattered communities or to add channel assignments by means of substandard spacings. Copies of the Commission's report and order and memorandum opinion and order taking these actions are also enclosed. Views of dissenting Commissioners are attached to the decisions.

As more fully explained in the enclosed decisions, it was the Commission's view that the problem of deintermixture could not be approached on the piecemeal basis of scattered communities but, along with all other remedies, must be considered in the general proceeding which will explore the matter from a national standpoint.

At the same time, the Commission concluded that the public interest would be served by the assignment of channel 10 to the community of Vail Mills, N. Y. This assignment can be accomplished in complete conformity with the Commission's present rules and engineering standards, and the Commission concluded that it would not be justified in withholding from the public the additional service that can be afforded by this facility pending the general proceeding. The Commission pointed out that this assignment differs from the requests for deintermixture, or for the assignment of additional channels at substandard spacings, in that the latter proposals involve basic departures from the present television structure.

It is the Commission's firm belief that its recent action represents a significant step toward the realization of a truly nationwide competitive television service. The Commission will continue to give this matter careful attention and will keep your committee fully advised of subsequent action.

By Direction of the Commission.

GEORGE C. MCCONNAUGHEY, *Chairman.*

FCC 55-1125
24918

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

Docket Nos. 11238, 11333, 11334, 11335, 11336

IN THE MATTER OF AMENDMENT OF SECTION 3.606, TABLE OF ASSIGNMENTS, RULES GOVERNING TELEVISION BROADCAST STATIONS

REPORT AND ORDER

By the Commission: Commissioners Hyde and Bartley dissenting and issuing statements; Commissioner Webster concurring in part and dissenting in part and issuing a statement.

1. The Commission has before it for consideration five proceedings concerning requests for the deintermixture of VHF and UHF television channel assignments in specific communities and a request for the addition of a VHF channel assignment in one community. The Commission issued a Notice of Proposed Rule Making concerning the proposal to assign Channel 10 to Vail Mills, New York on December 17, 1954. On March 31, 1955, the Commission issued Notices of Proposed Rule Making in the Peoria, Evansville, Madison and Hartford deintermixture proceedings. On April 21, 1955, the Commission issued a Notice of further Rule Making in the Vail Mills case to consider the deintermixture proposal for the Albany-Schenectady-Troy area. Oral Argument in the five cases was heard before the Commission on June 27 and 28, 1955. Following is a brief summary of the proposals:

(*a*) *Peoria, Illinois* (*Docket No. 11333*)

This proceeding involves the joint request of two UHF broadcasters in Peoria, Illinois-West Central Broadcasting Company (WEEK-TV) and Hilltop Broadcasting Company (WTVH)—for deintermixture of commercial VHF and UHF assignments in the Peoria area by reserving VHF Channel 8 in Peoria for noncommercial educational use in place of UHF Channel 37; or, in the alternative, by deleting Channel 8 from Peoria, substituting UHF Channels 31, 78 or 82 therefor, and shifting Channel 8 to some other community. Plains Television Corporation (WICS), Springfield, Illinois, requests that Channel 8 in Peoria be shifted to Illipolis, Illinois, to provide additional VHF service to the Springfield area in the event Springfield is not also deintermixed by the removal of Channel 2. Other parties participating in the proceeding include WIRL Television Company and WMBD, Inc., applicants for Channel 8 in Peoria; Bradley University, and the American Farm Bureau Federation. In addition to the pleadings and material in the record of the proceeding when Oral Argument was heard on June 27–28, 1955, the Commission now has before it the following pleadings: "Petition to Adopt Policy of Deintermixture or for Alternative Relief", filed by Plains Television Corporation on October 18, 1955; "Opposition to and Motion to Dismiss" the foregoing petition, filed by WMBD, Inc., on October 21, 1955, an Opposition to the foregoing petition filed by WIRL Television Company on October 25, 1955; and Petitions for Further Oral Argument filed on November 4, 1955 by West Central Broadcasting Company, Hilltop Broadcasting Company, and Plains Television Corp.

(*b*) *Evansville-Hatfield, Indiana* (*Docket No. 11334*)

This proceeding involves the request of two UHF broadcasters in the Evansville area—Premier Television, Inc. (WFIE), Evansville, and Ohio Valley Television Company (WEHT). Henderson, Kentucky—for deintermixture of the commercial VHF and UHF assignments in the Evansville-Hatfield area by deleting Channel 9 from Hatfield and by either reserving Channel 7 in Evansville for education or deleting it. Petitioners suggest that Channel 56 can be added to Evansville and Channel 78 to Hatfield. If Channel 7 in Evansville is deleted rather than reserved, Channel 39 is suggested as an educational frequency. Mid-America Broadcasting Corporation (WKLO-TV) Louisville, Kentucky, requests that the Evansville-Hatfield area be deintermixed by reassigning Channels 7 and 9 to Louisville, Kentucky. To accomplish these channel shifts, Mid-America requests that the rules be amended to permit television stations to operate at reduced separations with directional antennas. Other parties participating in the proceeding include Evansville Television, Inc., Consolidated

Television & Radio Broadcasters, Inc., and On The Air, Inc., applicants for Channel 7 in Evansville; Owensboro Publishing Company and Owensboro On The Air, Inc., applicants for Channel 9 in Hatfield; Congressman Winfield K. Denton (8th District of Indiana); the Evansville Chamber of Commerce and Evansville College. In addition to the pleadings and material in the record of the proceeding when Oral Argument was heard on June 27–28, 1955, the Commission now has before it two petitions filed on October 17, 1955, by Mid-America Broadcasting Corporation and by Premier Television, Inc., and Ohio Valley Television Co. jointly, requesting "Time to File Additional Comments", Opposition to the petition of Mid-America Broadcasting Corporation, filed by Evansville Television, Inc., on October 27, 1955, an Opposition to both petitions filed by Owensboro On The Air, Inc. on October 27, 1955, and by On The Air, Inc., on October 28, 1955, and an Opposition to the joint petition of Premier Television, Inc. and Ohio Valley Television Co., filed by Evansville Television, Inc., on October 28, 1955. Also, on November 7, 1955, Mid-America Broadcasting Corp., Premier Television, Inc. and Ohio Valley Television Co., filed Supplements to their October 17 Petitions, making further requests discussed in Paragraph 11, below.

(c) *Madison, Wisconsin, and Rockford, Illinois* (*Docket No. 11335*)

This proceeding involves the requests of two UHF broadcasters in Madison—Monona Broadcasting Company (WKOW-TV) and Bartell Television Corporation (WMTV)—for deintermixture of commercial VHF and UHF assignments in the Madison area by shifting the educational reservation in Madison from Channel 21 to Channel 3. Another UHF broadcaster in Rockford—Winnebago Television Corporation (WTVO) requests that commercial deintermixture be achieved in Madison by deleting Channel 3 from Madison, substituting Channel 39 therefor, and by assigning Channel 3 to Orangeville, Illinois, so as to make Madison an all-UHF city and Rockford an all-VHF area. Alternatively, Winnebago Television suggests that Rockford be made an all-UHF area by deleting Channel 13 from Rockford, substituting Channel 51 therefor, and assigning Channel 13 to Aurora or Elgin, Illinois. Other parties participating in the proceding include Radio Wisconsin, Inc., and Badger Television Company, Inc., applicants for Channel 3, Madison; the State Radio Council of The State of Wisconsin (WHA-TV), Madison, and the Greater Rockford Television, Inc. (WREX-TV). In addition to the pleadings and material in the record of the proceeding when Oral Argument was heard on June 27–28, 1955, the Commission now has before it the following pleadings: "Petition for Taking of Official Notice or for Limited Reopening of Record" filed on August 29, 1955, by Monona Broadcasting Company, and Bartell Television Corporation; a Response to the aforementioned petition filed on September 7, 1955, by Radio Wisconsin, Incorporated; "Petition to Adopt Policy of Deintermixture or for Alternative Relief" filed on October 18, 1955, by Winnebago Television Corporation, a Motion to Strike the Winnebago petition filed by Radio Wisconsin, Incorporated, on October 27, 1955; and Petitions for Further Oral Argument filed on November 4, 1955, by Monona Broadcasting Company, Bartell Television Corp., and Winnebago Television Corp.

(d) *Hartford, Connecticut* (*Docket No. 11336*)

This proceeding involves the joint request of four UHF broadcasters in the Connecticut River Valley—General Times Television Corporation (WGTH-TV), Hartford, New Britain Broadcasting Co. (WKNB-TV), New Britain; Hampden-Hampshire Corporation (WHYN), Springfield and Springfield Television Broadcasting Corp., Springfield (WWLP)—for deintermixture of commercial VHF and UHF channels in Hartford by shifting the educational reservation in Hartford from UHF Channel 24 to VHF Channel 3. Three other UHF broadcasters request that Channel 3 be deleted from Hartford and assigned elsewhere. Channel 16 of Rhode Island (WNET) in Providence, Rhode Island, requests that Channel 3 in Hartford be assigned to Westerly, Rhode Island; Eastern Connecticut Broadcasting Company (WICH, AM), Norwich, Connecticut; requests that Channel 3 in Hartford be assigned to Norwich, and Thames Broadcasting Corp. (WNLC-TV), New London, Connecticut, requests that Channel 3 in Hartford be shifted to New London. Other parties participating in the proceeding include Hartford Telecasting Company, Inc. and Travelers Broadcasting Service Corporation, applicants for Channel 3 in Hartford; Western Massachusetts Educational Television Council, Springfield; the Connecticut Radio Foundation (WEDH), Hartford, and the WGBH Educational Foundation (WGBH-TV), Boston, Massachusetts. In addition to the pleadings and material in the record of the proceeding when Oral Argument was heard on June 27–28, 1955, the Commission now has before it the following pleadings: "Petition for Leave to File Additional Comments" and "Additional Comments" filed on October 17, 1955, by General Times Television Corporation, New Britain Broadcasting Company, Hampden-Hampshire Corporation and Springfield Television Broadcasting Corporation; a "Petition to Adopt Policy of Deintermixture or for Alternative Relief" filed on October 18, 1955, by the same four parties; "Opposition to Petition for Leave to File Additional Comments" filed on October 20, 1955, by Travelers Broadcasting Service Corporation, "Statement with Respect to Matters Not of Record" filed on October 28, 1955, by the same four parties; and Petitions for Further Oral Argument filed on November 4, 1955, by General Times Television Corp., New Britain Broadcasting Co., Hampden-Hampshire Corp., Springfield Television Broadcasting Corp., and Channel 16 of Rhode Island, Inc.; and by Eastern Connecticut Broadcasting Company on November 9, 1955.

(e) *Albany-Schenectady-Troy, New York (Docket No. 11238)*

This proceeding involves the request of Hudson Valley Broadcasting Company, Inc. (WROW-TV), Albany, New York, for the assignment of Channel 10 to Vail Mills, New York, as a "drop-in" to bring a second VHF service to the Albany-Schenectady-Troy area, and the alternative request of Van Curler Broadcasting Company (WTRI), Albany for the elimination of the intermixture of commercial VHF and UHF assignments in the Tri-Cities area by shifting the educational reservation at Albany from Channel 17 to Channel 6 and by modifying General Electric Company's authorization to operate Station WRGB on Channel 6 at Schenectady, New York, to specify operation on Channel 17. Other parties participating in the proceeding include Greylock Broadcasting Company (WMGT), North Adams, Massachusetts; the General Electric Company (WRGB), Schenectady; Walter C. Neals, Albany, and the State Education Department of the University of the State of New York (WTVZ), Albany. In addition to the pleadings and material in the record of the proceeding when Oral Argument was heard on June 27–28, 1955, the Commission now has before it a "Petition to Adopt Policy of Deintermixture or for Alternative Relief" filed by Greylock Broadcasting Company on October 18, 1955; a "Petition to Reopen Proceedings" filed by Van Curler Broadcasting Corporation on October 25, 1955, an Opposition to the Van Curler petition filed on October 28, 1955, By Hudson Valley Broadcasting Company and a Petition for Further Oral Argument filed November 4, 1955, by Greylock Broadcasting Company.

2. The petitioners in these proceedings are UHF broadcasters. With the exception of Hudson Valley, which requests the assignment of Channel 10 to Vail Mills, the petitioners seek to deintermix the VHF and UHF assignments in their communities by eliminating VHF commercial channel assignments by reserving them for educational use, shifting them to another community, or by deleting them. The VHF channels which would be affected by the petitioners' basic proposals, with the exception of Channel 6 in Schenectady on which Station WRGB is operating, have not yet been granted by the Commission. However, applications are pending for the VHF channels in the other four cases—Peoria, Evansville an Hatfield, Madison, and Hartford—and lengthy comparative hearings have been conducted to select the best qualified applicant. Initial Decisions have been rendered by the Hearing Examiner in the Evansville, Peoria and Madison cases and Oral Argument has been heard by the Commission. In the Hartford case, an Initial Decision has been issued and Oral Argument is being awaited. In Hatfield, the hearing has been concluded and proposed findings have been filed, but an Initial Decision has not yet been issued.

3. A grant of the deintermixture petitions in these proceedings would enable the UHF broadcasters to avoid competition from VHF stations in their own communities or immediate areas. In support of their proposals the petitioners cite the familiar difficulties which have been encountered by UHF broadcasters in competing with VHF. They urge that the opportunities for a full utilization of the locality assigned UHF channels will be substantially reduced by the advent of a local VHF station, or, as in the case of the Albany-Schenectady-Troy area, the continued operation of a VHF station already on the air. Referring to the experience of UHF broadcasters generally where UHF and VHF assignments are intermixed, the UHF broadcasters submit that deintermixture as proposed for their respective communities would insure a larger number of local television services and a healthy, competitive television operation in their communities.

4. It is necessary, however, not to lose sight of the fact that the communities involved in the instant proceedings represent only limited segments of the overall problem, which is nationwide in scope. The five rule making proceedings now under consideration were initiated in the hope that a detailed examination of the problem in the light of circumstances prevailing in these communities would provide the basis on which the Commission could formulate policies applicable generally in the effort to alleviate a nationwide problem.[1] In addition to the instant five cases, petitions had been submitted seeking similar action in approximately 15 other communities. But the scope of the problem does not end there.

5. Careful review of the comments and data submitted in the instant proceedings has convinced us that it would not be useful to attempt to find solutions of lasting value within the relatively limited scope of the instant proceedings.[2] Although they have shed helpful light on the problems associated with deintermixture, including the disposition of the channels sought to be removed, the question of "white areas" and others, it has become clear that these proceedings provide an inadequate basis for the formulation of policies which must take due account of the extensive and intricate interrelationships of all parts of the Table of Assignments.

6. Petitioners seek alleviation of a nationwide problem by action directed toward their individual, local communities. Whatever the merits of their contentions that local deintermixture would benefit the particular UHF operators and their local communities, the Commission has serious doubts that the requested relief would be meaningful with respect to the general problem. It is noted that most of these petitions are directed toward those communities where both VHF channels and UHF are now allocated but where no VHF stations (or, in some instances not more than one) have commenced operation, apparently on the theory that deintermixture should be accomplished wherever VHF stations have not yet become so established that, in the view of petitioners, deintermixture is no longer feasible. In our opinion, if deintermixture, even on a partial basis, should finally be determined to be a useful method of resolving the overall problems, the particular communities for its application should not be selected merely because of the fortuitous circumstance of whether a VHF station has commenced operation in any particular community. Certainly there is nothing in the records before us which would lead us to conclude that the limited deintermixture here sought would provide any significant help in resolving the difficulties now confronting UHF broadcasters in other communities, or for that matter, whether the relief that might result in the areas directly involved, would materially strengthen UHF in general. There is little, if any, reason to believe, for instance, that the reassignment of channels as requested in the instant petitions, and in the other pending petitions seeking similar relief, would significantly stimulate the conversion of VHF receivers, the increased sale of combination UHF-VHF sets, the improvement of UHF transmitting and receiving equipment or the elimination of UHF and VHF equipment cost differentials. Moreover, apart from the question of whether deintermixture would provide lasting benefit to the specific communities in question here, it is not possible to ascertain on the basis of the instant rule making proceedings whether deintermixture on the basis proposed by petitioners would be consistent with measures which the Commission must consider in a separate rule making proceeding of much broader scope to cope with the nationwide problem.

7. The present system of intermixed channel assignments is basic to the structure of television allocations established by the Sixth Report and Order. We believe that any modification of the Table of Assignments which would involve significant departures from this system of assignment requires a thorough reexamination of the entire television structure. The interrelationships between the particular circumstances in specific cases and the nationwide tele-

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[1] In our Notice of Further Rule Making (FCC 55–492) in Docket No. 11238, issued April 21, 1955, we explained that we were "attempting to arrive at a decision of future policy to be uniformly followed, wherever possible, in the effectuation of our Allocation Table for a nationwide television system."

[2] On August 29, 1955, Monona Broadcasting Company and Bartell Television Corporation filed a petition requesting the Commission to take official notice, or to permit limited reopening of the record in the Madison proceeding to admit certain figures released in August 1955 by the United States Census Bureau. Radio Wisconsin, Inc., filed a response to this request. This data has been considered by the Commission.

In the Evansville case, On The Air, Inc., moved to strike the comments of Mid-America Broadcasting Corporation, contending that it would be illegal for the Commission to adopt Mid-America's proposal without further rule making. Owensboro On The Air, Inc. and Owdensboro Publishing Company also moved to dismiss Mid-America's comments. Mid-America filed a reply to these motions. Mid-America's comments have been considered in the proceeding.

vision system as a whole cannot be disregarded. In the Commission's opinion, considerations of both fairness and practicability preclude an *ad hoc* approach such as that suggested by the petitioners in these proceedings.

8. The Commission is convinced that if lasting solutions to the allocation problems now confronting the development of a nationwide competitive television service are to be found, the approach must be nationwide in scope. Accordingly, in order to facilitate the orderly examination of a number of possible solutions, the Commission is instituting a general rulemaking proceeding. Only through such a general proceeding do we believe the Commission may thoroughly and effectively treat this matter. Accordingly, the Commission believes that the public interest would be best served by denying the instant requests for deintermixture. Petitioners will have the opportunity of participating in the general rulemaking proceedings and our denial of their petitions is without prejudice to any action the Commission may take as a result of that proceeding.

9. The Hudson Valley proposal presents a different problem. Hudson Valley requests the assignment of a new channel, Channel 10, to Vail Mills, a small community located in the Albany-Schenectady-Troy area, about 20 miles northwest of Schenectady. The Hudson Valley proposal comports with the Commission's present television allocation plan and rules. Unlike the proposals for deintermixture, the petition to assign Channel 10 to Vail Mills is consistent with the rules and principles of our present television allocations established in the Sixth Report and Order. Channel 10 would meet the present minimum spacing requirements and all other standards.[3] Until a decision has been reached on possible amendments to our present allocation, the Commission believes that it would not be justified in withholding action, pursuant to our present allocation plan and rules, that would bring additional television service to a significant number of people. Refusing to make use of this valuable VHF frequency as contemplated by the present rules would, we believe, be a waste of valuable spectrum space for which active demand is indicated. Channel 10 in Vail Mills will represent a second television service to an appreciable percentage of families residing in the area, as well as a first service to a significant number of families. We do not believe that we would be justified in withholding this service, which can be afforded under our present rules even though we are presently considering possible amendments to our allocations. Accordingly, we are amending our rules to add the assignment of Channel 10 to Vail Mills.

10. A number of parties have filed requests for additional time for the filing of supplementary comments, or for the reopening of the record for the submission of additional material or for other relief. The submitted basis of these pleadings is that matters have been presented to the Commission outside of the formal framework of comments and arguments provided for in the procedures governing consideration of the petitions and notices of proposed rule making. In short, an opportunity to reply to this matter is requested. The material referred to related to possible national reallocation schemes. It does not pertain to the merits of granting or denying the particular petitions before us, except as part of such a nationwide approach. We have determined that the records now before us are inadequate to support a grant of the requested deintermixture because of their limited scope. We, of course, have knowledge, and should, of other and more general suggestions informally submitted to us or before congressional committees. Having decided upon these records that some approach other than piecemeal deintermixture must be followed, we will afford an opportunity for the formal submission of nationwide solutions in the general rule making proceeding we are concurrently instituting. Whatever plans or solutions which may there be advanced by those persons who were not parties to the present proceedings will be considered in that proceeding, and an opportunity afforded for the submission of supporting or adverse comment. In view of our decision in the instant proceedings, and the fact that a new proceeding of wider scope will now be held, there is no point in reopening the present proceedings to insert comments, and replies thereto, whose function is to discuss nationwide plans and whose proper forum is the general rule making proceeding in which all interested parties may participate.

11. There are also pending in the Evansville case (Docket No. 11334) petitions filed on November 7, 1955, by Mid-America Broadcasting Corp. and Premier Television, Inc. and Ohio Valley Television Company, jointly, which request,

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[3] It is noted that Vail Mills does not have a post office. A post office, however, is not a prerequisite to the assignment of a television channel. The post office is merely a convenient reference point; and the lack of a post office in a community does not bar an assignment.

inter alia, consolidation of the rule making proceeding concerning deintermixture in Evansville and Hatfield with the two adjudicatory proceedings instituted for the purpose of choosing among mutually exclusive applications for VHF Channels 7 and 9 assigned to those cities. The same petitions also request an amendment of the rules which would preclude action on applications for construction permits for new television stations until after disposition of all pending petitions for rule making and rule making proceedings looking toward removal of the particular channel assignments applied for. The Commission does not believe that it would be desirable to confuse the rule making proceeding with questions of the comparative merits of mutually exclusive applications, which are at issue in the adjudicatory proceedings. Moreover, it would serve no useful purpose to burden the rule making process by consolidating the two matters since, as we point out in paragraph 6 above, final decision on deintermixture of VHF and UHF channels in any community should not be governed by the existence or absence of a VHF station in the community. Nor does the Commission believe that it would serve the public interest to adopt the proposed amendment to the rules, which would be tantamount o a freeze on authorizations for new television stations. The Commission believes that it must retain the discretion to determine on a case-by-case basis when the public interest requires that it freeze its adjudicatory processes during the pendency of rule making. (See *FCC* v. *WJR, The Goodwill Station, Inc.*, 337 U. S. 265. The Commission is of the opinion that the procedural inflexibilities petitioners seek to introduce are neither necessary nor desirable. The petitions referred to at the beginning of this paragraph are, accordingly, denied. The petitions for intervention in the adjudicatory proceedings, which were incorporated in the same documents with the foregoing requests, are not disposed of here. Various requests for stays in adjudicatory proceedings are also not disposed of here.

12. Several additional petitions advert to the fact that Commissioner Mack was not yet a member of the Commission at the time the oral arguments were held in the instant proceedings and request further oral argument for the purpose of enabling Commissioner Mack to participate in these proceedings, and to afford an opportunity to present views on courses of action which petitioners state were not contemplated at the time of the initial oral arguments. It should be recognized at the outset that there is no requirement of law that an oral argument be afforded in a rule making proceeding. *FCC* v. *WJR, The Goodwill Station, Inc., et al.*, 337 U. S. 265. *Daily News Television Company*, 7 Pike & Fischer, R. R. 839. The Commission, within its discretion, heard oral arguments in these proceedings. However, we see no necessity for further argument. Petitioners' reference to participation by Commissioner Mack erroneously presupposes that because he took office after the oral arguments were held, he is not qualified to participate in decisions adopted in these proceedings. In the Commission's view, no such limitation affects the qualifications of a Commissioner to participate in these proceedings. The full record in the proceedings, including the transcript of the oral arguments, has been available to Commissioner Mack; and he has read the transcript. There is no bar to participation by a Commissioner who takes office after an oral argument if the Commissioner has read the transcript of the argument. See *Eastland Co.* v. *FCC*, 92 F. 2d 467, cert. den., 302 U. S. 735. The petitions requesting further oral argument in these proceedings are accordingly denied.

13. Authority for the adoption of the amendment herein is contained in Sections 4 (i), 301, 303 (c), (d), (f) and (r), and 307 (b) of the Communications Act of 1934, as amended.

14. In view of the foregoing, IT IS ORDERED, That the foregoing petitions for deintermixture listed in paragraph 1 above, ARE DENIED.

15. IT IS FURTHER ORDERED, That, effective December 16, 1955, the Table of Assignments contained in Section 3.606 of the Commission's Rules and Regulations IS AMENDED insofar as the city named is concerned as follows:

City: Vail Mills, N. Y. Channel: 10.

FEDERAL COMMUNICATIONS COMMISSION *
MARY JANE MORRIS, *Secretary*.

Adopted: November 10, 1955.
Released: November 10, 1955.

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*See attached Dissenting Statements of Commissioners Hyde and Bartley;
*See attached Statement of Commissioner Webster concurring in part and dissenting in part.

(NOTE.—Rules changes herein will be included in Amendment 3–61.)

DISSENTING OPINION OF COMMISSIONER ROSEL H. HYDE

I dissent to the Report and Order entered by the majority in Docket Nos. 11238, 11333, 11334, 11335 and 11336, dated November 2, 1955, and to the Memorandum Opinion and Order of the same date, denying some 26 petitions for rule making to amend Part 3 of the Commission's regulations. I consider the actions of the majority of the Commission to be premature, ill-advised and wholly inconsistent with the Commission's other actions in this area.

The Commission is under a statutory mandate to provide a nationwide competitive television service. Until it has been shown that this can be achieved with the 12 present VHF channels (or that additional VHF channels are available with which to achieve such result), I deem it imperative to preserve the UHF service. What the Commission has done today may deal a death blow to UHF television service.

The Orders which have been entered in these cases would dispose of a large number of individual petitions addressed to specific situations, by blanket declarations to the effect that action on individual petitions would not resolve the overall problem. This offers strange reasoning and an abrupt change in procedure much belated in its application.

Until this moment, it has been the practice of the Commission to consider petitions for changes in rules establishing the TV allocation upon an individual basis. Many such petitions have been acted upon in individual rule-making proceedings. A large number of such petitions have been granted, including petitions for shifts in TV station assignments, changes in zones, reservation of channels for educational purposes, and the addition of new station assignments. Five of the petitions disposed of today have been subjects of notices of proposed rule making issued in March of this year. Comment was invited from interested persons, and the Commission requested that participants direct their attention and submit data with reference to a number of particular matters. Oral Argument in the five cases was heard before the Commission on June 27 and 28, 1955. The rule making notices, the requests for specific information and the issues discussed in the argument contemplated consideration of the cases on their individual merits. The summary disposition of these cases today on what is essentially a new procedural device seems certain to raise grave questions as to the meaning of the earlier proceedings.

While the orders are virtually bereft of specific findings to support the conclusions, it is manifest that material, both in and end de hors the record, has been considered in reaching such conclusions. The unfortunate result of this method of disposing of the various proposals is that no real consideration is given to the merits of any of them. Moreover, to the extent that information outside of the record played a part in the majority decisions, the participants in the formal proceedings have not had a fair opportunity to be apprised of the existence of such material, let alone meet or test the validity thereof. To give the semblance of due process, the majority proposes a general rule-making proceeding in which all of the various problems can be lumped together and considered, and in which proceeding all pertinent information can be spread upon a public record before a final determination is reached.

The procedures which have been invoked at this time can only be interpreted as putting the petitions (and the formal proceedings heretofore held on a number of them) out of the way, although obviously, such procedure is not at all necessary to the general rule-making proceeding proposed.

But the obvious reason for the sudden haste of the majority in taking the present action is to clear the decks for the immediate grant of VHF applications in a number of communities involved in the deintermixture cases, and in other communities in which deintermixture has been suggested and peremptorily turned down. The deintermixture petitions which have been turned down request stays in the pending VHF proceedings. Therefore, these requests for stays are here being denied without proper findings or without proper consideration of the material submitted in their support. But if the evidence which has been adduced by the petitioners (and not considered by the majority) has merit, the grant of these VHF applications may well have the effect of denying the very relief sought by the proponents of deintermixture prior to the determination of the general rule making proceedings. Without passing upon the contentions made by the various petitioners, and without evaluating the evidence that has been adduced upon the record, the Commission may, in granting the VHF applications, effectively eliminate many UHF stations which are presently in operation and in many instances render the cases moot. Thus, we have a situation not too dissimilar from that presented in the Ashbacker case whereby the Commission, by making a grant to one applicant before it is effectively denying relief to another party, and without giving that party its day in court. The actions of the Commission in making further VHF grants in these areas can but have the effect of seriously hampering and perhaps of unalterably precluding the Commission from giving proper and adequate consideration to the overall study of the allocation plan.

DISSENTING STATEMENT OF COMMISSIONER ROBERT T. BARTLEY

I believe these petitions should be disposed of separately upon their individual merits, thereby serving as a pattern for the expeditious disposition of the remaining deintermixture petitions. Such action would afford stability and guidance to the television service. Such action would clear the way for continued processing of applications and would provide permit holders with the necessary confidence that their status would not be changed in the immediate future. The uncertainty created by the action of the majority is not conducive to encouraging the assumption of the substantial risks involved in getting additional service on the air.

With respect to the Vail Mills "slug-in," I cannot agree with the conclusion reached by the majority on the merits of the petition. In my judgment, the result will be the death knell of multiple UHF services in the area; consequently, less instead of more service to the public.

COMMISSIONER WEBSTER CONCURRING IN PART AND DISSENTING IN PART

When consideration was first given to these deintermixture cases I was of the opinion that, deplorable as may be the delay already occasioned by unforeseen developments relating to these petitions, action thereon at this time, in the face of the Commission's notice of proposed rulemaking for the purpose of reviewing the nationwide television allocation plan, appeared both inappropriate and inconsistent. It seemed to me that the further delay which would result from the Commission withholding action on these petitions until a decision in the general proceeding had been reached would be warranted in view of the cloud which the decision in these cases might place upon the larger proceeding.

However, in view of the fact that the Commission's report and order as now written provides that its denial of the deintermixture petitions is without prejudice to any action the Commission may take as a result of the general rulemaking proceeding in which the petitioners in these deintermixture proceedings will be given the opportunity to participate, it would appear to me that the majority's views are sufficiently similar to mine to enable me to concur with its report and order insofar as it concerns the deintermixture cases.

However, the decision to authorize a drop-in of channel 10 at Vail Mills, N. Y., is so obviously inconsistent with the proposed general rulemaking proceeding that I am forced to dissent from this action.

FCC 55-1126
24919

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

IN THE MATTER OF AMENDMENT OF PART 3 OF THE COMMISSION'S RULES AND REGULATIONS GOVERNING TELEVISION BROADCASTING STATIONS

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Hyde dissenting for the same reasons set forth in his dissent in the Report and Order in Docket Nos. 11238 et al; Commissioner Bartley dissenting.

1. The Commission has before it for consideration the following petitions seeking to amend the Table of Assignments contained in Section 3.606 of its rules and regulations and other rules and standards relating to television broadcast stations:

Date filed	Petitioner	Request
1954		
July [1] 6	Mid-America Broadcasting Co., Louisville, Ky.	Assign channels 7, 9, 13 to Louisville, Ky.
Aug. 13	Neptune Broadcasting Corp., Atlantic City, N. J.	Assign channel 8 to Atlantic City, N. J.
Oct. 29	Coastal Bend TV Co., Corpus Christi, Tex	Delete channels 6 and 10 and assign channels 56 and 65 at Corpus Christi.
1955		
Jan. 5	Atlantic Video Corp., Asbury Park, N. J	Assign channel 8 to Asbury Park, N. J.
Feb. 2	Stanley H. Durwood, Hutchinson, Kans	Assign channel 8 to Hutchinson, Kans, and delete from Manhattan, Kans., and Woodward, Okla.
Mar. 22	Supreme Broadcasting Co., Inc., New Orleans, La.	Assign channel 2 to New Orleans and substitute channel 61 for channel 2 at Baton Rouge, La.
Mar. 30	Plains TV Corp., Springfield, Ill	Shift educational reservation from channel 22 to channel 2 at Springfield or assign channel 2 to St. Louis and substitute channel 41.
Apr. 5	Sir Walter TV Co., Raleigh, N. C	Shift educational reservation from channel 40 to channel 11 in Durham, N. C., and from channel 22 to channel 5 in Raleigh.
7	O'Neill Broadcasting Co., Fresno, Calif	Shift educational reservation from channel 18 to channel 12 in Fresno.
11	Jacksonville Journal Co., Jacksonville, Fla	Shift educational reservation from channel 7 to channel 36.
12	Capital City Corp., Sacramento, Calif	Shift educational reservation from channel 6 to channel 40 or delete channels 3 and 10 from Sacramento.
13	Wilton E. Hall, Anderson, S. C	Delete channel 7 from Spartanburg, S. C., and reassign to other cities.
[2] 14	Storer Broadcasting Co. and Gerico Investment Co., Miami-Fort Lauderdale, Fla.	Delete channels 7 and 10 from Miami, Fla.
15	Eastern Broadcasting Corp., Newport News, Va.	Shift educational reservation from channel 21 to channel 10 at Norfolk-Portsmouth-Newport News, Va.
22	Woodward Broadcasting Co., Toledo, Ohio	Delete channel 11 at Toledo and assign to Detroit and reserve channel 13 for education.
May 12	The Brush Moore Newspapers, Inc., Canton, Ohio.	Assign channel 12 to Canton, Ohio.
13	Bakersfield Broadcasting Co., Bakersfield, Calif.	Assign channel 12 to Bakersfield and delete from Fresno.
June 6	Southern Connecticut and Long Island TV Co., Inc., Bridgeport, Conn.	Assign channel 6 to Bridgeport, Conn.
17	Prairie TV Co., Decatur, Ill	Delete channel 2 from Springfield, Ill.
July 28	James Monroe and William E. Sullivan, Santa Barbara, Calif.	Assign channel 12 to Santa Barbara, Calif.
29	Southern Radio and Equipment Co., Jackville, Fla.	Reserve channel 12 for education in Jacksonville and assign channel 7 to Savannah, Ga.
Aug. 15	Board of Public Instruction of Duval County, Fla., Jacksonville, Fla.	Shift educational reservation from channel 7 to channel 36.
8	WLBE, Inc., Leesburg, Fla	Delete educational channel 7 from Jacksonville and assign it as a commercial channel in Leesburg.
Oct. 14	Herbert Mayer d/b as Ajax Enterprises, Philadelphia, Pa.	Delete VHF channels in Philadelphia, Pa.
18	Charles W. Lamar, Jr., and KTAG-TV, Inc., Pensacola, Fla., Lake Charles, La.	Delete channel 4 from Beaumont-Port Arthur, Tex., and New Orleans, La.
25	WGOV-TV, Inc', Valdosta, Ga	Assign channel 8 to Valdosta, Ga.
27	W. Glenn Thomas, Sr., Jesup, Ga	Assign channel 8 to Brunswick, Ga., and delete channel 7 from Jacksonville, Fla.
28	Southern Central Broadcasting Corp., Knoxville, Tenn.	Delete channel 7 from Spratanburg, S. C., and assign to Knoxville, Tenn., and Columbia, S. C.
31	WISE-TV, Inc., Asheville, N. C	Assign channel 2 to Asheville, N. C.
Nov. 7	Great Lakes Television Co., Erie, Pa	Assign channel 6 to Erie, Pa.

[1] Amended June 2, 1955.
[2] Amended Oct. 14 and Nov. 4, 1955.

2. The foregoing petitions seek to institute rulemaking proceedings to consider new television channel assignments, and also to consider other amendments to the television rules and standards which would constitute basic departures from our present allocation plan and standards promulgated in the Sixth Report and Order. For example, some of the petitions contemplate the assignment of the VHF channels at separations below those presently specified, coupled with the use of low power operation and directional antennas. Others request departure from the principle of intermixture of VHF and UHF channels employed in the present allocation plan. The petitions, however, are all designed to alter the television assignments in an individual community or a limited area.

3. The Commission is today instituting a general rulemaking proceeding to consider amendments to its present television allocation plan and rules on a nationwide basis. The Commission points out in its Notice announcing that proceeding that the difficulties now confronting the television service, while they affect individual communities, are national in scope and may have far-reaching implications for the future of the television system as a whole; and the Commission expresses its conclusion that any approach to their consideration must, of necessity, take cognizance of the broad scope of the general problem.

4. In the Commission's view it would be neither appropriate nor feasible to approach the problem on the basis of separate, individual petitions designed to alleviate conditions in an individual community or a limited area, through departures from the present structure of channel assignments or existing television standards. In our view, it would be fruitless to undertake to consider this nationwide problem through piecemeal measures, which neither promise significant overall relief, nor would necessarily be consistent with such action as the Commission may find it appropriate to take in its general proceeding.

5. Accordingly, the Commission does not believe that the institution of rulemaking proceedings in the above-mentioned petitions would be warranted at this time. The petitioners will, of course, have full opportunity to submit their views with respect to the overall, nationwide problem in the general rulemaking proceeding we are instituting today. When the Commission may have determined the broad basis of any desirable revisions to its present allocation scheme and related rules, it will be in a position to consider questions, such as those raised by the subject petitions, concerning specific channel assignments in individual communities or limited areas.

6. In view of the foregoing, IT IS ORDERED, That the aforementioned petitions for rule making listed in paragraph 1 above, ARE DENIED.

7. On November 7, 1955, Sir Walter Raleigh Television Company and Prairie Television Company submitted petitions requesting (1) leave to intervene in the respective comparative hearings instituted to select the best qualified applicant for Channel 5 at Raleigh, North Carolina (Docket Nos. 10861 and 10862) and for Channel 2 at Springfield, Illinois (Docket Nos. 10701 and 10703); (2) consolidation with the foregoing respective docketed proceedings of petitioners' requests for rulemaking looking toward the channel reassignments in Raleigh and Springfield listed above; and (3) amendment of the Commission's rules to preclude action on pending applications for television channels until pending petitions and rulemaking proceedings looking toward reassignment of the channels in question have been disposed of. It is not appropriate to deal here with the request for leave to intervene in the adjudicatory proceedings. With regard to Request (2) the Commission does not believe that it would be desirable to confuse matters which are the proper subject of rulemaking proceedings with questions of the comparative merits of mutually exclusive applications, which are at issue in the adjudicatory proceedings. Moreover, it would serve no useful purpose to burden the rulemaking process by consolidating the two matters since, in our view, final decision on deintermixture of VHF and UHF channels in any community should not be governed by the existence or absence of a VHF station in the community. With respect to Request (3), the Commission does not believe that it would serve the public interest to adopt the proposed amendment to the rules, which would be tantamount to a freeze on authorization for new television stations. The Commission believes that it must retain the discretion on a case-by-case basis when the public interest requires that it freeze its adjudicatory processes during the pendency of rulemaking. (See *FCC* v *WJR, The Goodwill Station, Inc.*, 337 U. S. 265). The Commission is of the opinion that the procedural inflexibilities petitioners seek to introduce are neither necessary nor desirable. Accordingly, so much of the subject petitions are concern Requests (2) and (3) above, ARE HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary*.

Adopted: November 10, 1955.
Released: November 10, 1955.

FCC 55-1124
24917

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D. C.

Docket No. 11532

IN THE MATTER OF AMENDMENT OF PART 3 OF THE COMMISSION'S RULES AND REGULATIONS GOVERNING TELEVISION BROADCAST STATIONS

NOTICE OF PROPOSED RULEMAKING

1. The Commission's present television assignment plan, promulgated in its Sixth Report and Order in 1952, was designed to lay the foundation for the development of a nationwide competitive television system which would meet a series of stated objectives. These objectives may be briefly summarized as follows:

(*a*) At least one service to all areas.

(*b*) At least one station in the largest possible number of communities.

(*c*) Multiple services in as many communities as possible to provide program choice and to facilitate competition.

2. To some extent these objectives have been realized. Over 90 percent of the population can receive a degree of service from at least one television station. Approximately 75 percent can receive a degree of service from two or more stations. Almost 275 communities have at least one, and 112 of these have two or more, local television facilities in operation. Over 430 stations are now on the air, and the number of television sets in the hands of the public has increased to 35 million.

3. But despite this tremendous growth, it is evident from recent experience that a nationwide competitive television service has not been realized to the extent contemplated at the time the Commission issued its Sixth Report and Order. Many of the smaller communities are without a first local outlet and the expansion of multiple, competing services in the larger economic and population centers of the country is lagging. Difficulties encountered in achieving successful operation of stations in the UHF band have been a significant factor leading to this situation.

4. The familiar difficulties presently facing television broadcasters raise questions with respect to basic elements of the standards and principles established by the Commission in the Sixth Report and Order. And while these difficulties have varying impact on individual broadcasters and communities, they are manifestly nationwide in scope and may have far-reaching implications for the future of the television system as a whole. The Commission is therefore convinced that any approach to their solution must take cognizance of the overall, national scope of the problem.

5. The Commission recognizes that some of the present hindrances to the further expansion of television service in many communities are due to causes which lie beyond its control. To an appreciable extent these problems are basically economic and arise out of the limits beyond which it is not possible, at the present stage of the development of the television art, to obtain sufficient economic support to meet the high costs of construction, programing and operation of television stations. On other aspects of the problem, relating for example to the improvement of transmitting and receiving equipment, the industry itself can make valuable contributions. At the same time, the Commission wishes to insure that to the extent that any of the present difficulties may be alleviated by possible revision of the present allocation system, such possibilities will be fully explored.

6. The Commission has received a number of propsals from interested segments of the industry, which although they envisage fundamental departures from the present system adopted in the Sixth Report and Order and approach the problem on a nationwide basis, do not challenge the Commission's basic objectives. Some of the techniques suggested for alleviating the difficulties involve the use of additional VHF frequencies; the reduction of minimum separations to make additional VHF channel assignments possible, using either the present 12 VHF channels or new VHF channels, or both; deintermixture on a basis consistent with a nationwide solution; and other techniques. A number of the proposals include suggestions for modifications of the present standards which would permit the use of directional antennas, cross polarization, new limits on antenna heights and maximum powers for new channel assignments, and

others; and some proposals contemplate combinations of the foregoing techniques. Some of the proposals envisage a revised nationwide table of fixed assignments; others look toward the adoption of new standards which would govern the addition of specific channel assignments on the basis of individual applications. In addition to these plans which have already been advanced, the Commission understands that a number of studies have been initiated by other groups in the industry.

7. In these circumstances, the Commission believes that the public interest would be served by the institution of a general rule-making proceeding to consider possible overall solutions to the problem on a broad, nationwide basis. All interested parties, including those who have informally tendered proposals to the Commission, will have the opportunity of submitting their suggestions in this proceeding. This proceeding will, we believe, facilitate an orderly review of the proposals and will afford the Commission a sound basis on which it may compare the advantages and disadvantages of the proposals, both among themselves and with respect to the present plan, and evaluate them in terms of the opportunities they may provide for fuller realization of a nationwide competitive television system.

8. As noted, there is considerable diversity among the various approaches that have been suggested. The multiplicity of the possible alternative plans suggests the desirability of establishing a basis on which it will be possible for the Commission to make a full and fair evaluation of the different proposals. This would be facilitated if those parties submitting proposals included data and comments relating to:

(*a*) The nature and the extent of departures, if any, from the present standards as adopted in the Sixth Report and Order with respect to:

(1) Minimum separations.

(2) Minimum and maximum limitations on powers and antenna heights.

(3) Use of directional antennas.

(4) Cross polarization.

(5) Any other deviations from present standards.

(*b*) The effect of the proposed revision on the assignments occupied by existing stations.

(*c*) The extent to which the plan submitted provides for the future expansion of television service.

(*d*) The impact of the plan on the problem of receiver incompatibility.

(*e*) The effect of the plan on the educational reservations.

It would also be helpful to the Commission if parties submitting proposals which envisage a revised table of fixed channel assignments, would include an assignment plan for Zone I indicating the specific assignments in each city. The Commission will also consider proposals which envisage revised standards for the addition of channel assignments on the basis of individual applications, rather than by incorporating new assignments in a revised fixed Table of Assignments.

9. In this initial stage, the Commission believes it would not be desirable to consider proposals whose scope is limited to action affecting only individual communities or a limited area. Premature involvement with questions relating exclusively to individual city assignments or to limited areas, without reference to a nationwide system, would unduly impede our progress in determining the basic course which it would be desirable to follow in considering possible revisions to the nationwide television allocation plan. At a later date, when the Commission has determined the general nature of any revisions to the present allocation scheme which it would be desirable to adopt, it will then be in a better position to consider comments relating to specific channel assignments proposed for individual communities.

10. All interested parties are invited to file written comments in accordance with this Notice. In light of the many considerations which favor minimizing delay, the Commission has decided to require the filing of comments no later than December 15, 1955, and the filing of reply comments by January 6, 1956. An original and 14 copies of comments should be filed.

11. Authority for the institution of this proceeding is contained in Sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h), and (r), and 307 (b) of the Communications Act of 1934, as amended, and Section 4 of the Administrative Procedure Act.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary*.

Adopted: November 10, 1955.
Released: November 10, 1955.

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., April 29, 1955.

HON. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce,
United States Senate, Washington 25, D. C.

DEAR MR. CHAIRMAN: Since I do not share the views expressed by the majority of the Commission in its comments submitted pursuant to your request, I welcome this opportunity to submit by separate comments on the grave problems of UHF, and network monopoly of television.

The congressional objective of a nationwide competitive system providing a free market place of ideas which is possible only through diversified program sources and adequate numbers of station outlets is now being seriously jeopardized. This congressional policy is vital to the national interest. The Congress itself must take decisive and prompt action if its policy is not to be vitiated by monopolistic control of the whole TV industry.

It is gravely disturbing that neither Special Counsel Harry M. Plotkin nor Special Counsel Robert F. Jones nor the Commission has come to grips with the three basic issues facing this committee:

First. The sets now being sold are depriving the public of 85 percent of TV.

The public has invested more than $10 billion in over 30 million sets that cannot tune into the UHF channels, which represent 85 percent of all television. The public, still kept in the dark, continues to buy VHF-only sets at the rate of over half a million a month. All this adds up to destruction of 85 percent of television.

Second. The network monopoly controls every phase of TV and strangles its development.

The networks maintain a life and death control over TV and are strangling UHF and the development of TV. There are 108 UHF stations presently left on the air, whose continued operation is threatened by the vicious circle of no sets—no programing—no advertising. The fate of these 108 stations is inseparable from the fate of 85 percent of all TV spectrum space.

Third. Inaction is destroying UHF.

Almost immediately after UHF stations went on the air in 1952 it became obvious that something had to be done to save UHF, but the FCC did nothing. This committee appointed counsel to study means of saving UHF, and the stations on the air, but all they recommend is more study and more delay. The time has come for action.

I urge this committee to embark upon the following 4 point program:

First. This committee and the Federal Communications Commission should immediately initiate a national campaign to inform the public that they are purchasing sets that cannot tune into 85 percent of television. Unless your committee takes action to put a halt to the deluge of incompatible sets, the monopolistic pattern will take hold permanently and thereby thwart the congressional objective of a nationwide competitive television system. In the next 6 to 8 years, the normal turnover of sets can take care of the problem if the public is informed that it should buy VHF–UHF sets.

Second. This committee should take all necessary measures to make it possible for the public to buy VHF–UHF sets, including a direction to the FCC that it use its power in connection with licensees who are manufacturers. For the networks, the television licensees who are manufacturers, and Government agencies involved should be held to account for what is presently happening to the service to which the public is entitled from 85 percent of television.

Third. This committee should direct the FCC to institute immediate rulemaking proceedings aimed at correcting the monopolistic scarcity of network programing and at equitable availability of such programing to UHF as well as VHF stations.

Fourth. An immediate, vigorous network investigation should be conducted by Congress to get at the monopolistic grip which the networks are exercising over stations, advertisers, programing and talent in television.

I have the utmost faith and confidence that this committee and the Congress will do whatever is necessary to preserve this most important medium of communication for the best interests of the American people.

Very truly yours,

FRIEDA B. HENNOCK, *Commissioner.*

Summary of Separate Comments of Frieda B. Hennock, Federal Communications Commissioner

UHF, which represents 85 percent of TV, is in danger of destruction. The reports to the Senate committee by the special counsel and the FCC suggest delay and study instead of immediate remedial action. Because I feel that immediate action is necessary by the Congress, I submit these separate views.

ULTRA HIGH TELEVISION

I. Comments on the Plotkin memorandum

The crucial problem—Present sets shortchange the public.—The public has been kept uninformed that the sets it has bought, and continues to buy are unable to tune into UHF, which constitutes 85 percent of the television channels. This set incompatibility, unless checked, will wreck UHF.

Eighty-five percent of television laid waste.—Nowhere does Mr. Plotkin point to the fact that one of the major reasons for the UHF debacle is the long line of decisions by the Commission preferring and advancing VHF over UHF. This started with the decision allocating channels to television, and has been followed by decisions in specific cases which in each instance have favored VHF over UHF.

FM—The pattern of destruction for UHF.—The same pattern is being used to destroy the growth of UHF as was used to stunt the development of FM—no sets, no network programing, no advertising. Having seen this happen to FM 10 years ago, we should not continue to let it happen to UHF now.

Technical comparisons—UHF and VHF.—Present disparities between UHF and VHF service areas, which Mr. Plotkin imputes to technical differences, could be eliminated by appropriate action of the FCC and the production of suitable UHF transmitters by the manufacturers.

All-UHF television.—Of all the proposals made to the Senate, this is the first of three which Mr. Plotkin considers. He discards it for erroneous reasons based on inadequate data.

Deintermixture.—Mr. Plotkin's comments about deintermixture continue to mislead desperate UHF broadcasters into thinking that he deems it a solution for their difficulties. Actually the opposite is true, since he is opposed to it except for a few scattered communities throughout the country.

II. Comments on the Jones progress report

The Jones report marshals the facts showing the suppression of UHF, and deals with network practices, but suggests no effective remedies. Mr. Jones lays undue stress on the operation of the natural laws of economics as a basic source of much of UHF's plight. The fact is that the barriers to UHF's success can be and must be levied by decisive action. All Mr. Jones proposes is further study and fact gathering at this time but the mere passage of time militates against the success of UHF.

III. Comments on FCC report

The Commission's majority report accurately diagnoses the existing situation when it states that the lack of VHF–UHF sets is critical and that the UHF crisis was precipitated in part by program limitations. However, it completely fails to prescribe any effective remedies for the illnesses it diagnoses, and prefers to let the passage of time take care of them.

THE NETWORK PROBLEM

I. Congressional investigation of networks

I recommend an immediate, thorough, and vigorous congressional investigation of networks. The critical nature of the problem, the breadth of involvement of other industries and of Government agencies and the relationship to congressional policy and necessary legislation, requires an immediate congressional airing and investigation rather than a long-term study by the FCC.

II. Congressional policy against monopolies

The policy of Congress is strongly against monopolistic control of broadcasting. Despite this, the networks today have a stranglehold over the industry, through their control over programing, advertising, and talent. The FCC's chain broadcasting regulations are a dismal failure in preventing monopolistic control of broadcasting by the networks.

I recommend that the FCC be given statutory authority to regulate networks.

III. Scope of investigation

The Congress should investigate the following:

(1) Should networks be permitted to dominate and control TV?

(2) Why is American business unable to procure advertising time on TV?

(3) Should networks be allowed to own TV stations?

(4) Should networks be allowed to produce and syndicate motion pictures?

(5) Additional matters requiring congressional investigation as set forth fully in the attached comments.

Separate Comments of Frieda B. Hennock, Federal Communications Commissioner

INTRODUCTION

The Senate Committee on Interstate and Foreign Commerce has requested a report from the Federal Communications Commission on the memorandums of Mr. Harry M. Plotkin and Mr. Robert F. Jones, both addressed to two basic problems:

1. The difficulties confronting UHF television, and
2. The necessity and feasibility of legislation authorizing the FCC to regulate networks.

The FCC, by majority vote, has submitted a report so unsuited to protecting and advancing the public interest that I feel compelled to submit these separate comments.

The recommendations of Mr. Plotkin and Mr. Jones on UHF are pure temporizing or ineffective expedients and do not alleviate the plight of UHF as Congress clearly intended. They both suggest study and delay; the mere passage of time works against UHF.

Their recommendations on networks display utter disregard for the essential legislative role of Congress in this area. Moreover, the have failed to meet the challenge posed by Senator Bricker that "it would appear that the networks, rather than the FCC, control the physical number of TV stations which will serve the public."

In general, neither the Plotkin, Jones, nor FCC report reflects what Chairman Magnuson calls "a continuing responsibility to insure that law and regulations are kept abreast of the growth of the industry and the needs of the American people."

The following comments are submitted in the hope of meeting this responsibility.

UHF

I. COMMENTS ON THE PLOTKIN MEMORANDUM

(1) The crucial problem—present sets shortchange the public

Nowhere does Mr. Plotkin perform a greater disservice to UHF than in his neglect of the crucial problem of mounting UHF set incompatability. For he does not deem it worthy of mention that with every passing day the public invests an addition $5 million in 20,000 TV sets of which only 3,500 can tune into UHF stations. The 30 million VHF-only sets already in the hands of the public which cannot tune into ultra high—85 percent of the television spectrum—represent a crucial disadvantage to UHF. But the alarming increment of over half a million additional VHF-only sets every month could alone seal UHF's fate, if it is not promptly remedied.

Set incompatibility.—Mr. Plotkin does not cope with the progressively worsening problem of set incompatibility, which is the crux of the entire ultra high debacle. Not only has he failed to point out the gravity of this daily compounding of the set problem, but nothing has been done by anyone to arrest it or to bring it to the public's attention. As a result, the public at this late date, is still completely unaware of the fact that they are being cheated when they buy sets that cannot receive signals from 85 percent of the TV spectrum.

Mr. Plotkin has not only failed to analyze the causes of the UHF set debacle but has also failed to relate them to FM, where the industry established the pattern of not making sets for spectrum space that it did not want used and developed. This was accomplished so deftly in FM that set incompatibility was at the bottom of FM's failure to prosper. It is no wonder therefore that he fails to state that since the Potter hearings the public acquired another 7,200,000 sets, representing an investment of $1,800 million. Moreover, since Mr. Plotkin was appointed special counsel in September, over 4 million of these sets have been acquired, representing an investment of $1 billion. Only a little over 18 percent of these sets can receive UHF signals.

Without sets capable of receiving UHF signals, the UHF broadcaster, deprived of audience, cannot attract advertising revenues, and his station goes off the air. Without such sets, 70 UHF channels are condemned to disuse, the public is deprived of 85 percent of its potential television service and the remaining 15 percent succumbs to inescapable monopolistic domination. This is the significance and the portent of the UHF set problem.

To the rapidly worsening problem of set incompatibility Mr. Plotkin responds by concentrating all his attention on the necessity of preserving the public's investment in the outstanding 30 million VHF-only sets. He totally ignores the daily compounding of this critical problem. The public, with the purchase of every new VHF-only receiver, continues to victimize itself by reducing its chances of ever obtaining service from 85 percent of television. Nor does Mr. Plotkin mention that the proportion of VHF–UHF sets being manufactured is constantly dwindling. I cite the following table which illustrates more specifically the worsening condition of UHF set incompatibility:

TV set production

[In millions]

	1953	1954
Total TV set production	7.2	7.4
With UHF tuner:		
Number	1.5	1.4
Percent	20.2	18.8

Moreover, although 35 percent of the sets manufactured during November 1953 were VHF–UHF receivers, the figure had dropped to below 10 percent by January 1955.

Instead of calling for an urgent warning to prevent the still uninformed public from participating any longer in the destruction of its chances for anything approaching full television service, Mr. Plotkin, by loudly proclaiming the need to safeguard the public's past investment in the 30 million VHF-only sets, creates the powerfully misleading impression that due regard for the public compels the rejection of measures urgently needed to save 85 percent of their television service.

Mr. Plotkin professes great concern with these 30 million sets and brandishes them constantly as a reason for dismissing aid to UHF which would prove really effective. He raises misleading alarms about damage to the public's investment in these sets resulting from several suggested remedies, but no public official has proposed or would advocate measures which would injure the public's investment in these sets. I will expose later the fallacies of Mr. Plotkin's unsupported conclusion that the public's investment is in any way jeopardized.

No sets—No UHF.—Mr. Plotkin's failure to deal with set incompatibility is difficult to reconcile with the tacit admission, discernible on a careful reading of his memorandum, that the very existence of UHF hinges on the set problem. For instance, he claims that the stifling effect on network development resulting from the lack of VHF channels in the first 100 markets is such that there are insufficient outlets for more than 2 networks in too many of these markets. He goes on to say that many of these VHF communities do have UHF assignments but the latter are not the answer to the problem at this stage of television's development.

The most disturbing thing about the latter statement is the fact that only 2½ years after the Commission opened up UHF for licensing, Mr. Plotkin is ready to write off UHF television as a service in most of the first 100 markets. He gives as his reason the poor UMF set circulation potential in these communities where most of the sets are VHF-only.

He also states advertisers will not order these UHF stations because of poor set circulation. Mr. Plotkin goes on to say: "Hence as a practical business matter networks frequenly place their programs on a delayed basis over a VHF station rather than live on a UHF station." He thus fails to charge the net works with any dereliction in placing the programs on a delayed basis on the VHF, and depriving the UHF stations of these live programs, because of lack of UHF receivers. At the same time he implies that no criticism is due the networks for heaping programs on the over-glutted VHF stations while starving the needy UHF stations. The whole problem is relegated to the sphere of practical business judgment by the networks without any suggestion that it is a proper concern of the Commission or the committee which demands their urgent and immediate attention. Justification of the networks in favoring VHF is based on the lack of UHF set circulations. The effect and significance of Mr. Plotkin's subsequent criticisms of network practices are thus considerably lessened.

Set incompatibility in color TV.—Nor does Mr. Plotkin point out that the Commission's neglest of the crucially important problem of set incompatibility in UHF television stands in vivid contrast to its concern with the same problem in color television during the same period.

From the outset the Commission recognized that any decision preferring one color system over another must, in part, rest on the system's comparative merits as to compatibility with receivers then in the hands of the public. Accordingly, the Commission in the color television hearings heard extensive testimony of manufacturers and other elements of the television industry in order to elicit information concerning that subject which would facilitate the Commission's decision

In sharp contrast, the ultrahigh hearings were characterized by an absence of diligent inquiry into the issue of set compatibility and fact-gathering conferences between the Commission and representatives of the television industry. This was so despite the fact that the public was acquiring millions of VHF-only receivers annually throughout the freeze, and by the time the freeze was lifted the public had bought 17 million VHF-only sets.

In the CBS color television decision of 1950 the Commission said in paragraph 124:

"It would not be in the public interest to deprive 40 million American families of color television in order to spare the owners of 7 million sets the expense required for adaptation."

In paragraph 151 of the same decision, the Commission requested the manufacturers to submit proof to the Commission's satisfaction that they could incorporate bracket standards in their sets. If the Commission received satisfactory assurances from a sufficient number of manufacturers that such bracket standards would be incorporated, then the Commission stated:

"* * * we will be in a position to postpone a decision in this proceeding * * * confident in the knowledge that adequate provision has been made to prevent aggravation of the compatibility question. If the bracket standards cannot be made final * * * or if assurances are not received from a sufficient number of manufacturers concerning their plans for incorporating bracket standards in their receivers, the Commission will not feel free to postpone a decision, for every day that passes would aggravate the compatibility problem. In that event, a final decision would be issued adopting the CBS color standards."

For a technological improvement, albeit an important one, the Commission not only went to all this trouble to solve the incompatibility problem, but because of the intransigence of the set manufacturers, felt justified in deciding in favor of the CBS color system. Moreover, the important distinction should not be overlooked that, whereas the color hearings were concerned with a new technical development, UHF involves 85 percent of the entire television spectrum space.

Legislative proposals.—To the critical problem of set incompatibility, Mr. Plotkin responds with nothing more than a proposal for an excise tax exemption for manufacturers who would produce only VHF–UHF sets.

While I favor the exemption, I agree with that part of the Jones report which states that excise tax exemption will not be a sufficient incentive for production and distribution of VHF–UHF sets. There is no assurance that the same forces at work today to suppress their manufacture will not conduce to production of the minimum possible number of VHF–UHF sets, despite the exemption.

The more effective remedy of legislation prohibiting shipment in interstate commerce of VHF-only sets, Mr. Plotkin disposes of by casting doubt on its constitutionality, without explaining the grounds for his doubts. Nor, taking into account the vital importance of VHF–UHF receivers to an objective so important as a nationwide competitive television system, is it easy to understand why, in Mr. Plotkin's language: "* * * a manufacturer should not be prevented from marketing a receiver capable of receiving one channel only, if the public will buy it."

Public deceived.—While Mr. Plotkin displays great concern over the 30 million VHF-only sets in the hands of the public, his concern does not extend to the fact that these sets are confined to the use of only 15 percent of the TV spectrum space. Mr. Plotkin speaks of these 30 million VHF-only sets in the hands of the public as if their restriction to the VHF channels alone was in keeping with the FCC's sixth report and order, and as if that decision opened up for licensing only 12 VHF channels. Consistent with that approach, Mr. Plotkin says in his report: "We cannot overlook the fact that more than 30 million receivers are in the hands of the public and that they have been bought on the faith of a formal decision of an agency of the Federal Government. The public is entitled to rely upon decisions of the Federal Government."

Mr. Plotkin proclaims the obvious when he stated that "the public is entitled to rely upon decisions of the Federal Government." However, he seriously misapplies this principle. For the public, when it purchased the 30 million VHF-only sets, had never been informed that these sets could not receive 85 percent of the spectrum space. They certainly had every right to rely on the decisions of the Federal Government.

But the decisions with which we are here concerned were the ones made as far back as 1945, reannounced in 1948 and implemented in 1952, to open up UHF for television. The public was led to invest in 17 million VHF-only sets during the 3½-year freeze and an additional 13 million VHF-only sets since the freeze—not in reliance on, but in derogation of, the decisions of the Federal Government. Thus, rather than having been bought on the faith of a decision of the Federal Government, as Mr. Plotkin suggests, these VHF-only sets were bought in deplorable ignorance of that decision and because proper steps were not taken by the Commission to implement it.

In a field so highly technical, the public was particularly dependent on efforts which should have been made by the Commission to provide for the availability of equipment to the public which would implement rather than frustrate the FCC's allocation decisions. The public made television possible by their gigantic investment, which should have been protected with bona fide VHF–UHF sets in conformity with FCC decisions.

Industry's failure to act in public interest.—Mr. Plotkin went to great length to discuss the necessity of standardization in the radio, as distinguished from the automotive field. He showed that when a change is effected in the radio field it results in the abandonment of a band of frequencies and that all of the old receivers are automatically rendered either partially or totally useless. By contrast, however, he fails to excoriate the industry for its failure to produce sets that will implement the FCC's decisions and thus destroy for a second time the allocation of spectrum space by the FCC and allow it to fall into disuse. Nor does he account for the FCC's failure to cope with this set and equipment problem.

Mr. Plotkin does not discuss the inefficient sets and converters produced for FM and relate them to UHF, nor does he mention the gradually dwindling production of VHF–UHF sets.

The performance of UHF sets and UHF converters leaves much to be desired. UHF receivers have not reached the same state of development as have VHF receivers. As the UHF receivers are improved, it will have the same effect as increasing the power of the transmitter. For example, a decrease of 6 decibels in the internal noise of the receiver would have generally the same effect as quadrupling the power of the transmitter.

The manufacturing industry with all its ingenuity and resourcefulness in bringing improvements quickly to the public in this field has been notably lacking in the development of UHF. Nor has the FCC demonstrated any interest in conferring with the industry, either during the freeze or since the freeze—a period of 7 years—with regard to the development of both sets and transmitting equipment.

This is particularly unfortunate because the acceptance of television by the public has been so great, and especially so among the lowest income groups who most require information and guidance as to the limitations of the sets they are purchasing.

Further delay will be fatal to UHF.—If this committee follows the advice of the Plotkin memorandum of delay and further studies and continues to raise a hue and cry about existing sets, and takes no action to get the proper sets into the hands of the public, then UHF will inevitably fall into disuse in the foreseeable future.

There is critical need for immediate action by this committee to get through to the public and bring the entire problem to their attention. It also must instruct the FCC to call to account those licensees who are also manufacturers for not making sets that will tune into all TV channels, thus depriving the public of the use of 85 percent of the spectrum space. The committee should also question those licensees who have stated in congressional hearings that sets and transmitters would be forthcoming and that this equipment would be available for UHF. They should also be questioned.

Mr. Plotkin neither points out the serious effects of the Commission's failure to alert the public in the past, nor does he make any suggestion as to the urgency of doing so.

He fails to show that by the end of the next turnover period, which is generally estimated to be between 6 to 8 years, all television sets can be VHF–UHF if proper measures are taken now—and in that way 85 percent of television can be preserved.

Nothing has been done to invite the attention of the Federal Trade Commission to the question of whether these sets should be labeled so as to indicate that they can receive only 12 TV channels out of 82. Nor has the Department of Justice been called in to determine whether there is a violation of the Sherman Act by the manufacturers who manufacture TV sets that tune into only 15 percent of the spectrum space and who are constantly decreasing the manufacture of the VHF–UHF sets.

With the passage of time, TV programing will rely more and more on films. Unless UHF sets are manufactured, UHF stations will not be able to come on the air even though sources of filmed programs become more widely available. These UHF channels would continue to lie fallow for lack of sets.

VHF–UHF sets—The key to the problem.—Mr. Plotkin states that the UHF portion of the band "shows alarming signs of going the way of failure upon which FM-preceded it." Every effort must be made to prevent the public's continued purchase of these limited VHF-only sets. The public must be apprised of the limitation of these sets in terms of program sources and the fact that they are going to be limited to the use of 12 channels instead of 82. It would be virtually impossible to release television from a relentless monopolistic grip already fastening on it if this dynamic industry were constricted within the limits of 12 VHF channels.

During the next 6 to 8 years, which is the normal period of turnover of sets, the public will, at the present rate, acquire 50 million sets, representing an investment of another $12 billion. Here lies the key to the future of television. If these sets are equipped to receive UHF as well as VHF signals, then UHF would become the equivalent of AM; that is to say, it could provide a nationwide service and unlike FM, it would have 50 million sets that could tune into it. For then the spectrum space would be kept alive for UHF with its 70 channels. Nothing could then stop this dynamic industry from realizing the great achievements for which it is destined because of its public acceptance, its importance as a medium of mass communications, and its vital role in a democratic society.

But if the public should acquire in the next 6 to 8 years 50 million VHF-only sets, then we have nothing to look forward to except the sure destruction of any realistic hope for a nationwide competitive TV system, and can expect the imminent demolishment of 85 percent of all television. The stakes are high. Every effort must be made by this committee, the Commission, the industry and all concerned to insure that the next 50 million sets the public buys will be able to tune into all television.

Come to grips with this problem and the solution is in hand. Neglect it and no other solution will save UHF. Mr. Plotkin has chosen the latter course. For in his memorandum the crucial problem of set incompatibility is neither traced to its real causes nor approached in terms of the critical urgency for prompt, decisive, and effective remedial action.

(2) *85 percent of television laid waste*

The second major defect of the Plotkin memorandum is its failure to analyze clearly the actions of the Federal Communications Commission in order to determine the extent to which the Commission is at fault for the present state of UHF. Any impartial investigation of these decisions will convince this committee that in addition to failing to do anything to help ultra high during the freeze between 1948 and 1952, the Commission handed down a long series of decisions on particular cases and issues, each one vitally affecting the very life of UHF. In these decisions the Commission turned its back on its earlier repeated announcement that UHF was necessary if the public was to obtain a satisfactory nationwide television service. The Plotkin memorandum ignores the fact that the Commission itself is in very large measure responsible for the present critical condition of UHF.

As early as 1945, the Commission realized that use of the ultra high band was necessary in order to achieve a nationwide competitive television system. It then stated: (To quote the Commission):

"The Commission repeats the hope expressed in its proposed report that all persons interested in the future of television will undertake comprehensive and adequate experimentation in the upper portion of the spectrum. The importance of an adequate program of experimentation in this portion of the spectrum cannot be overemphasized, *for it is obvious from the allocations which the Commission is making for television below 300 megacycles* (i. e., in the VHF band) *that in the present state of the art the development of the upper portion of the spectrum* (i. e., in the UHF band) *is necessary for the establishment of a truly nationwide and competitive television systems.*" [Emphasis supplied.] (Report of General Allocations Proceeding, May 25, 1945, Docket 6651.)

But despite the payment of periodic homage to principle, Commission practice has been at the expense of service in the UHF. For during the freeze and since it was lifted, the Commission, by action and inaction, has, with only two exceptions, made television synonymous with VHF. Its policies resulted in bringing television service to the public via the big-city VHF stations, and the extension of their coverage wherever possible to include outlying communities while it did little to improve the worsening UHF problem. I submit that the series of actions listed below have led to the morass in which the Commission is presently entangled, and out of which it cannot be expected to extricate itself.

I believe it desirable to sketch the various decisions taken by the Commission affecting UHF and by so doing, to set out the Commission's attitude toward it. For the remedies suggested by me are in large part depentent upon a recognition of the inadequacies and mistakes made by the Commission in recent years.

Commission Action and Inaction on UHF

HELPFUL

1. March 2, 1955, notice of proposed rulemaking to limit location of antenna to 5 miles from city to which channel is assigned.
2. March 30, 1955, notice of proposed rulemaking looking toward the use of amplifying transmitters (boosters) by UHF stations.

INJURIOUS

1. Prolonged 3½ year freeze during which VHF became firmly established in the most desirable markets, the public acquiring almost 17 million VHF-only and no VHF-UHF receivers.
2. The sixth report and order establishing a table of assignments which intermixed VHF and UHF channels in the same communities, and thereby placed the latter in an unfair competitive position.
3. Increase of maximum permissible antenna heights and power for VHF stations, thereby increasing the coverage of these VHF stations to such a point that they blanketed UHF stations in contiguous as well as distant communities.
4. Failure to apprise the public both during and after the freeze that it would be economicaly unwise to invest in VHF-only receivers when the purchase of VHF–UHF receivers would result in a greater variety of programs from a larger number of stations.

HELPFUL	INJURIOUS
	5. Failure to take any significant action directed toward the manufacture of VHF-UHF receivers or expedition of the development of adequately powered UHF transmitters.
	6. Unjustified acceleration of post-freeze VHF licenses by hurried grants and procedural short cuts in cases of dropouts and mergers of competing applicants.
	7. Dropin of additional VHF channels subsequent to adoption of Commission's allocation table, thereby giving further dominance to VHF.
	8. Revision of rules to authorize common ownership of 2 UHF in addition to the 5 VHF stations, thereby increasing monopoly control by multistation owners.
	9. Institution of rulemaking to increase antenna heights of VHF stations in zone 1, which would further increase present large coverage at the expense of UHF.
	10. Authorization of satellites, as described below.
	11. Institution of rulemaking to permit operation of low-power television stations in communities of less than 50,000 without requirement of local programing.
	12. Failure to adopt measures to make available network programs and other programing to UHF licensees.

From the foregoing, it is immediately apparent that the Commission has instituted only two constructive measures to aid ultra high since the freeze, these of very recent origin and not yet of benefit since they are only in the proposed rulemaking stage.

Multiple ownership rule—Network and nonnetwork.—It should be noted that I consider the amendment of the Commission's multiple-ownership rules to allow ownership of 2 UHF stations in addition to 5 VHF stations as an action detrimental to the development of ultra high service. When this action was taken, the majority expressed the view that it would constitute an assist to UHF by encouraging the largest chain broadcasters, network and nonnetwork alike, to undertake UHF broadcasting. But, as I suggested in my dissent at that time, no more illusory benefit has ever been advanced as justification for increasing concentration of control of the most effective medium of mass communications. First, such large chain broadcasters will only enter the markets most propitious for UHF broadcasting; second, even were such actions to lead to an improvement in the UHF broadcasting situation in the areas involved, only a few more UHF stations would result; and finally, the acquisition by such large chain broadcasters of UHF stations has presently only resulted in the demise of existing, independent UHF stations struggling to attain a foothold in such markets.

The majority cite the recent purchase of UHF stations in Milwaukee, Portland, Oreg., and Miami subsequent to this amendment as examples of the way in which the UHF plight is being mitigated. I am not that discerning. But I do note, however, that 1 of these UHF stations is owned by Columbia Broadcasting System and 2 by Storer Broadcasting Co., and that 2 of these acquisitions resulted in a second UHF station in Milwaukee and Miami going off the air.

It is suggested that medicine wrongly administered makes the sick more sick. It took no extraordinary prescience to foresee that this amendment to the rules would not only fail to favor the development of UHF, but would also do violence to the very important principle against undue concentration of control in television. This is particularly borne out by the failure of the rule to produce additional UHF applicants for local, independent stations.

There is serious need of consideration by this committee of whether networks should be permitted to own and operate television stations. Not only do the network charges and those of their 16 owned stations enable them to corral the lion's share of all TV broadcast revenues (60 percent in 1953), but it is difficult for film syndicators, who are attempting to compete with the networks, to clear desirable time on these major stations, which are of course inaccessible to competing networks as well.

While Mr. Plotkin invokes history as justification for permitting the networks to own stations in the three major talent centers of New York, Chicago, and Los Angeles, history shows that the network owned stations are the cornerstone of the network monopoly, and this committee should determine whether there is justification for permitting the networks to own TV stations.

The multiple ownership rules permitting the licensing of as many as seven TV stations to a single licensee without regard to the size of the station or the concentration of such stations in contiguous areas, seriously infringe upon the important principle of diversification of control over mass media. They also give the multiple-station owners enormous and unjustifiable advantages over their competitors in the quest for network affiliation, programing, and advertising dollars. Because of this, I would urge the committee to give close attention to the multiple ownership rules, whose inadequacies and inequities urgently require correction.

Satellite stations usurp UHF channels.—Until August 5, 1954, nothing has been done to disturb the allocation of channels under the FCC's allocation plan. On that date the Commission suddenly issued an announcement that it had adopted the policy of licensing television stations which provide no local programing. This new pronouncement overthrew important basic policies and opened the way to the usurpation of the unused TV channels for purposes diametrically opposed to the objectives for which those channels had been reserved.

It now became possible to build satellite stations which merely rebroadcast the programs of some distant parent station, and provide no local programing.

Rulemaking procedures appropriate to so radical a departure from long-settled policy were bypassed. No conditions or limitations were established as to the number of satellities a parent station could program. No limit was set on the distance a satellite could be authorized from the parent station. Nor, although the policy announcement intimated that it was intended as an aid to UHF, were satellites limited to UHF. The Commission soon after granted a construction permit for a VHF satellite at Lufkin, Tex., to broadcast exclusively the program of a VHF parent station at Houston, 124 miles away.

The adverse affect of this decision is clear. It discourages others from applying for available UHF channels and thus deprives the Lufkin area of a VHF and potential UHF station which could provide local programing responsive to community needs, and surrenders control of the market to a large VHF station in a distant area. The Commission's decision of August 5, 1954, is an almost incredible departure from two of the most firmly established policies of the Commission which have heretofore always governed the grants of broadcast licenses in the public interest. One of these is that a station serve the particular needs and interests of the community in which it is licensed. The other is that a licensee maintain full "control over the operation and programing of his station."

Satellite stations destroy local initiative.—The operation of a satellite deprives the local public of the kind of television service Congress and the Commission intended to be made available. Instead of having programs originated by independent, local station management to meet its local needs and interests, the community becomes—for purposes of television—a mere appendage of the parent community.

Not only is the community deprived of local programing on the channel occupied by the satellite station, but where the satellite happens to be a VHF station, the set conversion problem it creates blocks the way to the building and successful operation of a station on a locally assigned UHF channel. In this way satellites can be used as another device for suppressing the development of UHF television, not to speak of the inability of UHF to overcome competition of large distant VHF stations, with their extensive coverage.

If it were necessary in exceptional cases to permit a UHF parent station to get its signal into a "white area" within its normal service area, the appropriate means would be a booster, which operates on the same channel as the parent station. But by authorizing satellite stations, the Commission has opened the way to preemption of television channels and spectrum space in complete derogation of the Communications Act.

To compound its error, the Commission has initiated rulemaking looking toward reduction in the minimum power requirements of stations in communities under 50,000. This would open the way to the preemption of valuable TV channels or spectrum space by the outlay of negligible sums required for very low power transmitters for satellite stations. The proposal applies equally, however, to stations not serving as satellites. Yet, it is not known how such extremely low-powered stations could meet the Commission's programing standards. It is also open to question whether they could render a useful broadcast service.

The effect and potential danger of this decision can be more graphically illustrated when it is recalled that out of 1,300 communities in which channel assignments have been made by the Commission under the allocation plan approximately 1,128 have a population of less than 50,000, and therefore would qualify under the proposed rule.

The policy of authorizing satellites gives unprecedented power to parent stations which, through satellites, can program for large areas. The parent station with a far-flung audience, could easily shoulder all local competitors aside in the quest for advertising revenues. In short, satellites present one of the most insidious threats to free competition in television and conveniently facilitate monopolistic control, with which this committee is so deeply concerned. Without the preservation of spectrum space and its effective utilization through proper receivers, we are sterilizing the potential usefulness of the whole UHF band, and inviting monopolistic control over the inadequate 12 VHF channels.

This line of decisions culled from many made by the FCC, issued while UHF was trying to get started ever since the lifting of the freeze, is in derogation of the Commission's statutory duty to provide so far as possible television service to all of the people of the United States, and to preserve competition and prevent monopoly by providing a choice of as many services as feasible. The Commission's decisions indicate a predetermined policy to favor large stations with large coverage regardless of how few would result from such policy. Congress obviously intended that there should be a nationwide chain of local stations serving local needs throughout the country. This the Commission has thwarted by its decisions.

(3) *FM—The pattern of destruction for UHF*

It is important to consider what happened to FM, which held high promise as the home of all radio broadcasting and which suffered the same fate that will befall UHF unless immediate steps are taken for its relief. Mr. Plotkin does not comment anywhere that the pattern in FM parallels the techniques which have been used to frustrate UHF's fulfillment of its vital role in television. Because Mr. Plotkin does not do so, I feel that a brief review of the FM debacle is necessary to throw helpful light on the entire UHF problem.

The FM service, like UHF, was initiated after a freeze. The freeze which preceded FM licensing was occasioned by World War II, and lasted almost 4 years. The television freeze lasted just about as long. The dramatis personnae are similar, and this similarity is not, perhaps, purely coincidental. Here are the facts: When the wartime freeze on aural broadcasting licensing was lifted, a great cry was voiced for bringing radio service to the public. Apparently, radio service was then synonymous with AM. When the television freeze was lifted, there was a similar cry for bringing television service to the public. This time, television service was synonymous with VHF.

In both cases, two new services were awaiting a chance to get going in new spectrum space whose virtues were widely proclaimed. In the case of FM, it was generally anticipated that it would become the future home of aural broadcasting; and, in the case of UHF, it represented 85 percent of all television channels. But, in both cases, new expediting procedures favorable to the entrenched services were devised.

In AM, the favored device was "drop-ins" of new AM stations, made possible by the ingenuity of the engineering profession in devising directional antennas. In television, the favored devices were mergers and "drop-outs," with all parties cooperating to avoid the process of public inquiry, and the "drop-in" of additional VHF channels.

Through quick processing and by "drop-ins," there were more than 1,000 new AM stations licensed in the 2-year period after the FM spectrum space was opened up for licensing. This figure exceeded the total number of AM stations licensed since the inception of the medium in 1912.

Great interested in UHF and FM.—Lest there is a misimpression that there was a dearth of interest in FM, I hasten to add that there were plenty of applicants for FM stations. As a matter of fact, the interest was so great that the Commission during the same 2-year period licensed 769 FM stations. Similarly, there has been no lack of interest in UHF. Three hundred and fifty applicants have applied for authorizations to build UHF television stations in a medium that is much more expensive and complex than radio and must of necessity move more slowly. Three hundred and eighteen of these applicants obtained construction permits. Today there are 108 left on the air.

The facts are the same with respect to receivers. In a 4-year period, from 1946 to March 31, 1950, there were only 179,000 FM sets produced; and indeed, they were faulty and expensive. During the same period, there were 4,600,000 AM–FM sets made. But the production of AM-only sets was a remarkable 46,-655,000. The retail cost of many AM receivers was as little as $15 or less, while FM sets to this day are much more expensive. Thus, FM was confronted with virtually the same receiver problem in a fast growing AM world that UHF encountered in the VHF world. Out of some 18 million new television sets sold in less than 2½ years since the TV freeze was lifted, only 3½ million are UHF-equipped. In addition, 17 million VHF sets were acquired by the public before the freeze was lifted—about 16 million of these during the freeze itself.

Starvation of programing.—Like UHF stations, the FM stations as a class have not been successful in obtaining network programing and the lucrative advertising revenues that go with it. At first, the networks prohibited their AM affiliates from carrying network programs on their FM stations. After complaints to the Commission, the networks reversed their position and authorized AM stations to carry network programs on their FM stations as well, provided however, that the FM station duplicated all the network programs broadcast by the AM parent station. This not only violated the intent of the chain broadcasting rules, which sought to preserve a licensee's control over his programs, but also inhibited the independent development of FM as a separate aural broadcast service. Nine years after the aural freeze was lifted, there are, as far as I know, no FM-only stations that are affiliates of a network. (The term "FM only" is used to denote the 60 FM stations that are operated as independent broadcast services, as distinguished from the approximately 540 FM stations that are used solely to duplicate the AM stations' programing and for which no additional network advertising revenue is received). The record is similarly replete with evidence as to the small amount of network programing available to UHF stations and the niggardly amount of advertising dollars doled out to UHF broadcasters by the networks.

And so FM, like UHF, was a victim of intermixture and was caught in the same deadly circle—no sets because no programs, because no advertising, because no sets.

Those who would consign UHF to the ultimate fate of FM do not fully appreciate the indispensable role of UHF in the development of a nationwide visual service. They are willing to surrender too easily in the face of exaggerated difficulties, and underestimate the resourcefulness of their Congress.

But it must not be overlooked that despite the striking similarities in the history of techniques used to repress the development of FM and UHF, there is no comparison between them in the gravity of the crippling of these two services. The public, denied the advantage of a fully developed FM broadcasting service, is at least served by 2,600 AM radio stations. In television, however, the elimination of UHF threatens to deprive the public of service from 85 percent of the total number of stations for which provision is made in the allocation plan. Thus, not only would UHF's demise force all of television into 12 grossly inadequate channels and deprive countless communities of the stations and diversity of program sources to which they are entitled, but the resultant scarcity of stations could operate only to augment the network domination of television.

(*4*) Technical comparisons *UHF–VHF*

Part of the pattern of killing UHF is to speak disparagingly of it as technically inferior to VHF.

Mr. Plotkin states that VHF and UHF have different technical qualities and that VHF signals travel farther than UHF and reach more people. But nowhere does Mr. Plotkin mention the Commission's error, in the sixth report and order, of substantially increasing the VHF service areas by raising the maximum power and antenna heights permitted for VHF stations. This was done at the same time the Commission opened up the UHF band for licensing. Nor does Mr. Plotkin point out—although it was urged during the Potter hearings—that reduction of these powers and antenna heights could reduce the disparity between VHF and UHF service areas, thereby confining VHF stations to their natural markets and removing their signals from distant communities intended to be served by local UHF stations.

Mr. Plotkin admits that "UHF has suffered from equipment limitations." But what Mr. Plotkin fails to point out is that during the entire period of the freeze the Commission did not confer with the manufacturers of both transmitting and receiving equipment in order to encourage and facilitate the development and availability of proper and adequate UHF equipment.

The majority of the UHF stations on the air today are still operating with either 1-kilowatt or 12½-kilowatt transmitters. Until the spring of 1953 the highest power UHF transmitter available was 1 kilowatt. For the next 1½ years the highest power UHF transmitter was 12½ kilowatts. And only recently has higher power transmitter equipment become available making it possible to attain the maximum permitted limit of 1 megawatt of effective radiated power.

Nowhere does Mr. Plotkin emphasize the crucially important point that most of the "marked [technical] advantages" he ascribes to VHF, would disappear with reasonable exploitation of UHF's acknowledged technical potentialities. Not only could service areas be equalized, but the use of inexpensive UHF boosters, where necessary, could fill in and extend UHF coverage.

Mr. Plotkin makes no mention of the fact that whereas the 1 megawatt power maximum authorized for UHF transmitters is considered to give UHF coverage in flat terrain equivalent to VHF coverage, higher UHF maxima ranging from 2 to 3 megawatts or more would, with adequate antenna heights and occasional boosters, enable UHF to give service equivalent to VHF in rough terrain. Nor does he advocate that the Commission adopt these higher UHF maxima, or mention that by using high power tubes and taking advantage of high antenna gains possible in UHF, there is no reason why 2 or even 3 megawatt transmitters could not be made available in the near future for UHF broadcasting.

In short, Mr. Plotkin, while conceding that performance in producing transmitting equipment capable of realizing UHF's technical potentialities has been "disappointing," he neither traces this serious handicap to its true sources, nor calls for immediate remedial action by either the committee or the Commission.

Mr. Plotkin points out that the quality of UHF pictures is at least as good as, if not better than VHF. The technical advantages Mr. Plotkin ascribes to VHF all relate to service area coverage; but as I have explained, this VHF-UHF disparity can be equalized. Yet UHF's potential as a broadcasting service technically comparable with VHF has not been exploited by the manufacturers or the broadcasters.

It is unfortunate that those broadcasters who are UHF licensees and those who have since ceased operation had to spend their money on equipment that was so limited and deficient, and in addition sustain the great losses in operatiton that they did. For at this time, they could very well come in for new equipment and obtain the coverage that they have so badly needed from the inception of UHF, except for the loss of their original capital investment and their staggering operational losses.

(5) All UHF television

The Plotkin memorandum is at its worst when it comes to proposing remedies. It is, fundamentally, shot through with pessimism and do-nothingism. Mr. Plotkin is all for UHF, provided you do nothing for it. He rejects the remedies proposed by others and offers nothing himself that is even remotely adequate to meet the ills for which he purports to prescribe.

Of all the many thoughtful and helpful proposals made during the Potter hearing, advanced by responsible and well-informed people, Mr. Plotkin merely discusses three recommendations, one of which he rejects altogether and the other two of which he vitiates by the character of his suggestions.

The first of these many recommendations which he discusses is that for an orderly transfer of all TV to UHF over a suitable transition period of 6 to 8 years.

Orderly transition to UHF.—First, Mr. Plotkin adverts to the millions of VHF-only receivers in the hands of the public and expresses the baseless fear that

VHF service would be discontinued long before 100 percent of the sets have been converted and certainly long before 100 percent of the sets have become obsolete. He makes no mention of the fact that the average life of a television receiver is estimated at 6 years, or of the obvious conclusion that by the end of a 6- to 8-year transition period during which VHF service would continue to be available, normal set turnover alone would eliminate any question of financial injury to the public from a gradual move of television to the UHF band. Nor does Mr. Plotkin allude to two factors which tend to sustain, if not accelerate, normal set turnover—the reduced prices of large screen monochrome receivers, and the gradual development of color television which must make itself felt during a 6- to 8-year period.

Mr. Plotkin, moreover, ignores the powerful incentive for the public to install UHF converters on their VHF-only sets when, by doing so, the public could avail itself of greatly expanded service and wider program choices. Neglecting relevant facts, Mr. Plotkin says nothing about the continuous reduction in the cost of UHF converters, or that they can now be installed for as little as $25. Nor is there any reason to suppose that the cost of converters will not continue to be reduced. Experience has demonstrated that as sales of receiving equipment climb in volume, prices reduce and quality improves, as a result of increased competition in the growing market.

Mr. Plotkin also conjectures that VHF service would disappear while the public is still making installment payments on VHF-only sets. This conclusion inexplicably ignores the fact that installment payments customarily run not longer than 2 years, whereas the transition period envisaged would run at least 6 to 8 years. Quite obviously there is no realistic prospect that by the end of such a period any member of the public would still be paying installments on VHF-only receivers purchased that long ago.

Protection of the public paramount.—Mr. Plotkin predicts that when VHF service discontinues, an unstated number of people will be left with sets incapable of receiving UHF signals. This prophecy he rests on the curious supposition that the cost to VHF stations of broadcasting simultaneously on a UHF and VHF channel during the transition period, together with unidentified pressure on the Commission to permit the use of VHF frequencies for other purposes would force premature discontinuance of VHF service long before UHF set conversion and set replacement were completed.

Here, Mr. Plotkin goes so far as to suggest that the nominal additional cost of operating a second transmitter, including the added cost of electric power, tube replacements, maintenance, and in some cases a small addition to the staff, would dissuade VHF operators from profiting by the substantial advantage of being able to broadcast on two channels throughout the transition period. This supposition is too far removed from the facts of broadcasting life to warrant serious consideration. Rather than being based, as Mr. Plotkin would have it, on straight economics, it reflects greatly distorted economics.

Mr. Plotkin omits any mention of the fact that the additional cost of a UHF transmitter and incidental equipment would represent only a percentage of the investment already made in the VHF station. Nor does he take into account the fact that by the end of the transition period the major part of the existing investment in VHF transmitters would have been fully depreciated.

The suggestion that irresistible pressures would preclude the Commission from maintaining the VHF television allocations until the end of the transition period is equally specious. Mr. Plotkin does not explain the reasons for his conclusion that the Commission, endowed with the responsibility and the authority for allocating spectrum space in the public interest, would be powerless to maintain VHF television allocations so long as they were required in the interest of an orderly transfer to UHF.

It has been suggested in some quarters that certain of the VHF television channels might eventually become very useful to the military; and I feel sure that this committee will look very carefully into the necessity for the use of VHF channels by the military.

Rural service.—Mr. Plotkin goes on to raise unwarranted fears that a move to UHF might permanently deprive a substantial portion of the rural public of television service. He adduces no facts or data to support these fears. In fact, Mr. Plotkin points out that no study has been made or submitted on the subject. He implies criticism when he points this out. Yet, as counsel to the committee, Mr. Plotkin called for no such study, which could have been furnished promptly. Instead, he proceeded to make judgments whose fallacies would have been exposed by the study. A study should be made and could be completed within several weeks.

Mr. Plotkin's discussion of rural service adopts the approach of the proponents of clear channel, superpower radio stations which was rejected by this committee in 1938. In doing so, it ignores the most important objective of the allocation plan, which is to provide for the largest possible number of stations furnishing diversified sources of programing which respond to the particular interests, needs, and desires of the communities the stations are licensed to serve.

While it is true that it requires more time to build stations in the less densely populated areas than in the larger markets, Mr. Plotkin wrongly assumes that UHF stations cannot be equipped to serve these rural areas. The use of UHF boosters, coupled with adequately powered transmitters and sufficient antenna height, would enable UHF stations to provide full rural coverage. Moreover, there are almost six times as many UHF channels as VHF, so that UHF offers not only better coverage but, what is more important, diversity of program sources.

Mr. Plotkin states that "In the present state of the television art, the service area of a VHF station is substantially greater than that of a UHF station." It is of course fallacious to impute the present VHF coverage solely to the state of the television art. The inequality in coverage is actually attributable to a very large extent to the Commission's Sixth Report and Order in which it increased the maximum power and antenna heights permissible for VHF stations. Moreover, the manufacturers have not made it possible until this year for UHF broadcasters to take advantage of the maximum power (1 megawatt ERP) which the Commission has allowed for UHF stations. Furthermore, as Mr. Jones has pointed out, still higher power maxima would be required to make UHF coverage reasonably equivalent to VHF coverage.

Mr. Plotkin says nothing about the fact that blanketing rural areas with VHF signals from large VHF stations intensifies the set incompatibility problem and lays down an almost insuperable barrier to the building of UHF stations on many channels assigned to smaller communities. If, during an interim period, high-power stations were required in some cases to provide service before local stations are built, there is no reason why that service could not be provided by UHF stations. Mr. Plotkin does not mention that if this were done, the barrier of set incompatibility would be lifted and the way opened to the utilization of large numbers of UHF channel assignments now lying idle.

In his preoccupation with what Mr. Plotkin considers to be the indispensability of superpower VHF stations for rural service, he overlooks the important fact that the prodigious expansion of AM service in hundreds of smaller communities was made possible by the absence of set incompatibility. Rural audiences formerly dependent on large, distant stations could tune their sets in to the local stations as soon as they appeared. That is why the AM spectrum space is not lying fallow today.

The Commission, moreover, has already stated in its report of July 27, 1954, to the Subcommittee on Communications that the bulk of all present television channel assignments could be encompassed in an all-UHF television allocation plan. The Commission went on to say: "Under such a UHF plan, present problems of disparity and set incompatibility would be overcome. As a result, station and network competition might well be fostered."

Nationwide allocation plan necessary.—It would be helpful for the committee to obtain from the Commission a nationwide all-UHF allocation plan along with a nationwide all-VHF allocation plan. Since the clear danger facing the industry and the public is disappearance of UHF service, it is important that the committee have an all-VHF allocation plan which will show specifically and graphically the grossly inadequate basis on which it would be necessary to provide television service with only 12 VHF channels. Mr. Plotkin has himself deprecated the possibilities for a nationwide competitive TV system based on the VHF channels alone.

The Commission has already prepared an all-UHF plan covering the northeast, which clearly demonstrates the feasibility of providing nationwide television service in the UHF band. The nationwide UHF allocation plan should be accompanied by an economic analysis of its relation to varying population densities, and its adaptation to the differing economic circumstances of different areas. Only on the basis of such full factual data is it possible to arrive at valid conclusions concerning questions of rural service, about which Mr. Plotkin proceeds to casual conclusions totally unfounded in fact.

As far back as 1945 the Commission indicated that the permanent home of television would lie in the UHF band, and allocated to television the UHF spectrum space in which, in 1952, after 3½ years of deliberation, it assigned UHF channels. Eighty-five percent of all television channels were thus established in UHF for the indefinite future.

Despite this, Mr. Plotkin does not take the move to UHF any more seriously than to consider it a passing fancy. "Today," he says, "the pressure may be to move all television receivers to the UHF portion of the band. Tomorrow a new development may come along that theoretically has important advantages for television if the band could be moved again." For Mr. Plotkin to indicate that a move to still another portion of the spectrum might be anticipated tomorrow hardly indicates any but a flippant attitude toward the most critical problem that has yet faced this Commission in the history of communications.

There were 350 applicants who retained lawyers and engineers and applied for UHF channels. Of these, 318 received construction permits. There are still 108 stations on the air, most of whom are in critical condition. Mention is not made, moreover, of the public's investment in 5 million UHF sets and converters, not to speak of the investment in the UHF stations that have shut down to date, the losses they have taken, or the losses that are incurred daily by existing UHF stations.

It must be pointed out also that to this very day the Commission itself has made no distinction between VHF and UHF as a broadcasting service. And despite the encouragement given by the FCC and by individual Commissioners to the use of the UHF channels opened up for television in 1952, there is no mention anywhere of the obligation to investors in UHF stations or to the public which has invested in VHF–UHF sets and converters, all of whom relied upon our conduct and our representations as a Commission.

Nor is recognition given to the fact that additional numbers of applicants would have sought licenses to build UHF stations if, so soon after the first UHF stations went on the air, they had not been subjected to the punishing disadvantages of lack of sets, network programing and advertising dollars. All of this has been clearly evident from the inception of UHF broadcasting, and repeatedly called to the attention of the Commission. But no relief has been provided to this day.

The move of all television to UHF, proposed during the Potter hearings, is before the committee for its consideration. The committee would of course wish to base its decision on more substantial evidence than the unsupported judgments offered by Mr. Plotkin.

(6) Deintermixture

The main fault of the basic allocation plan of the Commission in 1952 was the intermixture of VHF and UHF channel assignment, just as it was in the case of AM–FM intermixture.

The difficulty intermixture creates is that the existing VHF channels are generally affiliated with the large networks which have both the programing and the sets. UHF cannot get started in these communities as there is no incentive on the part of the public to buy sets which tune into stations unable to supply them programing as a result of which these stations cannot get advertising. To meet this problem, suggestions were submitted at the Potter hearing for "deintermixture" or revision of the table of assignments so that a community would have either VHF or UHF channels exclusively.

It would be diffcult to imagine a greater blow to UHF in its present parlous state than to arouse false hopes of relief. This Mr. Poltkin has done in sounding a hopeful note on deintermixture which, as he mentioned, had strong support at the Potter hearings. The widespread impression has been gained that Mr. Plotkin's report advocates deintermixture as a meaningful solution to the UHF problem, and that he has recommended that the Senate committee require the Commission to pursue a meaningful policy of deintermixture. The UHF broadcasters have not been slow to respond to the impression that in deintermixture Mr. Plotkin has held out hope for salvation.

Intermixture the underlying cause of the trouble.—If it were possible to single out from the welter of UHF's affilictions one basic cause for its failure to prosper, it would be the intermixture of VHF and UHF service, taking into account the enormous handicaps of set incompatibility and the absence of adequate transmitting equipment and network programing, which have plagued the UHF broadcaster from the beginning.

The key to the crushing disadvantages confronting UHF broadcasters in the intermixed system is the fact that so few sets are able to receive UHF signals. As early as March 22, 1951, when the Commission issued its third notice of further proposed rulemaking during the freeze, it recognized that "receiver problems" would have to be overcome in order to enable UHF stations to complete successfully with VHF stations serving the same markets. In response to warnings concerning "receiver problems," the Commission then said:

"* * * During the hearing on the general issues, it was urged by some witnesses that the elimination of intermixtures would simplify receiver problems and would minimize the broadcasters' competitive problems. It was argued that intermixture would tend to deter the construction of UHF stations and that until a large number of VHF-UHF receivers were distributed, such UHF stations as were constructed would have difficulty in surviving."

The Commission concluded, however, that:

"* * * * It is reasonable to assume that if the entire UHF band is allocated for regular television broadcasting, television receivers will be built to receive VHF and UHF signals. * * * The Commission has concluded that the adoption of an assignment table based on nonintermixture constitutes a short-term view of the problem and is inadvisable. Accordingly, the proposed table attached herein has been prepared on the basis of intermixture of VHF and UHF channels."

The foregoing excerpt from the third report and order was incorporated in the sixth report and order, which went on to state in paragraph 197:

"Because television is in a stage of early development and the additional consideration that the limited number of VHF channels will prevent a nationwide competitive television service from developing wholly within the VHF band, we are convinced that the UHF band will be fully utilized and that the UHF stations will eventually compete on a favorable basis with stations in the VHF. The UHF is not faced, as was FM, with a fully matured competing service. In many cases UHF will carry the complete burden of providing television service, while in other areas it will be essential for providing competitive service. In view of these circumstances, we are convinced that stations in the UHF band will constitute an integral part of a single, nationwide television service."

The record of the Potter hearings convincingly demonstrated that the Commission's judgments and anticipations concerning UHF operation in intermixed markets were erroneous and illusory. With the benefit of hindsight it has become clear that the warnings urged on the Commission during the freeze, as to UHF's inability to overcome the problem of set incompatibility, were well founded. While there would be little gained in dwelling lengthily on these errors of the past, it is necessary to recognize them as such; and it is crucially important to rectify them without further delay.

Mr. Plotkin rejects deintermixture in practice.—In point of fact, he has all but rejected deintermixture on the ground that it would run into the same practical difficulties as confronts the suggestion that all television stations be moved to UHF. Mr. Plotkin actually would limit any consideration of deintermixture to those few cities which do not yet have an existing VHF operation. It would appear from his subsequent discussion of deintermixture that Mr. Plotkin would exclude from consideration not only cities where there is an existing VHF operation but also cities where a grant has been made.

Continued discussion of deintermixture by Mr. Plotkin coupled with the recent notices of proposed rulemaking which the Commission has issued on the subject, raises the hopes of desperate UHF licensees seeking relief and who see relief on the horizon every time deintermixture is mentioned. These hopes are destined only to be dashed, however, by an approach so inadequate and so harmful as that suggested by Mr. Plotkin. Broadcasters who are eager to grasp at the last straw in the wind are likely to find that a straw like this is the one that finally breaks their backs.

For not only would deintermixture on Mr. Plotkin's basis leave the problem virtually untouched, but it also offers only illusory benefits to the few UHF stations directly concerned.

Nationwide plan necessary.—Patently, any program of deintermixture which would both conform to reasonable standards and respond realistically to the desperate need for deintermixture, must be based on a nationwide plan creating a reasonable and equitable proportion of UHF-only communities in the large metropolitan areas. Moreover, it seems to me impossible to make a judicious and meaningful attack on the problem of intermixture without first assembling complete information showing the extent of intermixture, not only arising out of the assignment of VHF and UHF channels to the same communities, but also regarding intermixture which results from the overlap of vastly over-extended VHF service areas into the areas intended under the allocation plan to be served by UHF stations.

Such a study should be instituted immediately so that it will be possible for the Commission to make a sound determination of the steps required to carry out a fair and equitable plan of deintermixture which will not merely affect a few individual communities selected at random, but will accomplish deintermixture on an equitable nationwide basis.

Economic analysis necessary.—Another requirement for a sound and effective approach to the problem of deintermixture is careful analysis of the economic considerations which should enter into a revised allocation plan. Only by taking into account varying population densities and other economic factors largely overlooked in formulating the present allocation plan will it be possible to establish a realistic basis for the equitable distribution and the efficient use of television channels.

Thus Mr. Plotkin exalts above everything else the desire to avoid dislocation; and without adducing facts, data, or sound analysis to show how meaningful nationwide deintermixture would involve dislocation, he makes the serious proposal that the Commission consider deintermixture in just those few scattered cities where it just happens that there is not yet an existing VHF operation. He says "It is not possible to fortell just how many intermixed communities could eventually be saved in this manner, but the effort is worth while.

One inquiry to the Commission would have provided Mr. Plotkin with the information that there are only 3 cities in the first 100 markets where no VHF grant has been made and only 8 in markets with populations of at least 100,000. Nevertheless, undeterred by the fact that he lacked information which was readily available, Mr. Plotkin recommended that deintermixture be contemplated—after, of course, more study and reconsideration—in just a handful of cities. He does not trouble to explain the justification or the value of arbitrarily confining deintermixture to just these few cities, but he would have the Commission do this despite the fact that it would favor a few and abandon all other UHF broadcasters to their fate.

Moreover, as was pointed out to the Potter subcommittee last year in testimony representing the views of the majority of the Commission:

"* * * eliminating the intermixture of VHF and UHF assignments in the same cities would not have eliminated the overlap of VHF and UHF service areas. And there is the rub. For one of the principal difficulties facing most UHF stations is that they are within the service areas of large VHF stations."

Commissioner Hyde also stated to the Potter subcommittee last year:

"I have pointed out that 68 percent of all operating UHF stations are in markets with no competing VHF station. *But intermixture of service areas* is far more general * * *." [Italic supplied.]

This emphasizes the necessity for developing a revised reallocation plan on a nationwide basis.

FCC policies aggravate intermixture.—Nowhere in Mr. Plotkin's discussion does he mention the fact that intermixture was vastly augmented by the Commission's increase in the maximum power and antenna heights for VHF stations in the sixth report and order. Although warned about the impact of the set incompatibility problem on UHF broadcasters in an intermixed television system, the Commission nevertheless in this way vastly extended the reach of VHF stations into distant communities to which UHF channels were assigned.

The large VHF stations which were thus created blanketed the UHF areas. As was foreseen, the availability of VHF service from distant VHF stations in many areas where UHF beginners were making their start, provided a substantial deterrent to the purchase of UHF–VHF sets and to the conversion of existing VHF-only sets. This put in motion the vicious circle which has since hobbled the most strenuous efforts of UHF broadcasters. Absence of sets led to absence of network programing and absence of advertising revenue.

Under these circumstances, it would have seemed appropriate for Mr. Plotkin to comment on the desirability of reducing VHF power and antenna heights. Mr. Plotkin, however, was content to ignore one of the most important aspects of the intermixture problem, notwithstanding the fact that it was raised repeatedly during the hearings and the record of these hearings contains strong recommendations to reduce the overextended service of VHF stations.

This further illustrates that Mr. Plotkin was not seriously suggesting deintermixture as a nationwide solution for UHF but desired it only for a few scattered cities. It is needless to labor this subject any further in order to demonstrate how far Mr. Plotkin's proposal falls short of the measure of real relief which the UHF broadcasters desperately need and to which they look with hopeful anticipation whenever deintermixture is mentioned. At all events, Mr. Plotkin's misleading remedy of deintermixture in a few markets must be exposed in its true light.

II. COMMENTS ON THE PROGRESS REPORT OF ROBERT F. JONES

The progress report submitted by Mr. Jones calls for less extensive comment than Mr. Plotkin's memorandum.

In addition to a restatement of available financial and statistical information on UHF and on network operation, Mr. Jones has also provided a concise summary of the factors which have suppressed UHF's development, in which he traces many of its difficulties to their actual sources.

Mr. Jones points out how past actions of the FCC have served to accentuate, rather than alleviate, the economic and operational difficulties of the UHF telecasting as compared with VHF telecasting. He also recognizes the deeply injurious effect of the operation of satellite stations by VHF stations, and points out that satellites, coupled with the proposed doubling of VHF maximum antenna heights in the northeastern United States, would compound the problem of overextension of VHF service areas. Mr. Jones looks into the past for the basic causes of the UHF crises and properly ascribes many of them to what he correctly terms "The Uneconomic Allocation Plan," meaning the sixth report and order.

However, for the reasons I have already set out at length in discussing Mr. Plotkin's memorandum, I disagree with Mr. Jones' conclusion that voluminous additional study and fact gathering should be completed before firm action is taken to aid UHF.

I also differ from the disquieting implication Mr. Jones leaves in a number of sections of his report that we must look primarily to the natural laws of economics for a principal source of UHF's difficulties. This, it seems to me, tends to put the cart before the horse, for whatever validity may attach to some of the economic factors he discusses, they serve only to reinforce and underscore the necessity for taking bold, effective countermeasures which will create the only condition in which UHF can possibly hope to fill its vital role as a broadcasting service, i. e., an opportunity to compete in the market on an equal footing.

The sine qua non of equalizing VHF–UHF competition is, as I have stressed, to solve the problem of mounting set incompatibility. One of the principal remedies proposed by Mr. Plotkin for this problem was the excise-tax exemption. Mr. Jones properly evaluates this remedy when he says: "The proposed removal of the Federal excise tax from all-channel receivers, in order to make all-channel sets competitively priced with VHF-only sets, appears an insufficient incentive for the increased production and successful marketing of such sets."

He goes on to say: "The committee might well consider some other means to encourage manufacturers of TV receivers to shift to production of all-channel receivers only. This would give UHF considerable impetus." Elsewhere I have discussed means to accomplish this purpose.

I fully agree with Mr. Jones when he says that: "It is little short of tragic that the body to whom Congress has delegated quasi-legislative, quasi-judicial, and quasi-executive functions have less information in their files than have the people it purports to regulate." This situation, little short of a travesty on the conduct by a public body of is regulatory functions, should be remedied without delay.

In the concluding section of his report Mr. Jones points out that selling time in the first 50 markets is a condition precedent to a network's financial success, and goes on to describe the lack of sufficient VHF stations in the major markets to enable 4 networks to compete in these markets on an equal basis. The scarcity of VHF stations in major markets could be alleviated by relaxing the Commission's rules, but Mr. Jones correctly states that this would tend to make the plight of UHF stations even worse in areas given additional VHF assignments, although such action would help equalize the competitive opportunities of the third and fourth networks.

Mr. Jones contends that any action to make UHF service areas competitive with VHF would require a wholesale reassignment of VHF channels and entail staggering capital expenditures by VHF permittees and licensees. I need not repeat here the reasons for my disagreement with this conclusion, which I have discussed in detail in commenting on similar conclusions reached by Mr. Plotkin.

This, of course, leaves Mr. Jones in a dilemma which he cannot resolve because he does not contemplate a bold frontal attack on the problem of UHF set incompatibility which is mounting daily, and which is daily pushing UHF further from hope of success.

Mr. Jones concludes that whatever advantage the sixth report and order gave VHF over UHF, and whatever unfair opportunities for success it may have created for two networks and their affiliates in the major markets, this is now an "accomplished fact," and "we have to live with the results of the allocation plan that the Commission adopted in 1952." There is, in my opinion, no justification for acceptance by the committee or the Commission of the dolefully pessimistic view that, in only two and a half years since the allocation table was promulgated, the pattern so destructive to UHF has become crystallized beyond remedy and that as a consequence, UHF must be denied the meaningful remedial measures which alone could save it, reinvigorate it, and enable it to play its intended role as a source of 85 percent of all television service.

Nor would I admit that the Commission which had the power to issue the sixth report and order containing the allocation plan, cannot issue a new one and remedy its shortcomings. If the Commission had the power to create this mess, they certainly have the power to undo it.

III. COMMENTS ON FCC MAJORITY REPORT

The Commission's majority report is to my mind seriously deficient. It is remarkable for its air of equanimity, complacency, and optimism that all is well in the television industry and that nothing should be done to disrupt the status quo, despite the admittedly urgent UHF crisis. While this falls in line with the Commission's inaction during the past 3 years, it nevertheless contrasts vividly with its repeated admissions of UHF's critical state.

VHF–UHF receivers

In its report of May 19, 1954, the Commission, speaking through its Chairman, testified at the Potter hearings that lack of VHF–UHF receivers constitutes "*the most critical disability facing the UHF*." [Emphasis supplied.] The July 27, 1954, report of the Commission expressed a like conviction when it said that "it is essential for the effective use of UHF channels that there should be widespread ownership by the public of sets equipped to receive UHF." The analysis of course is well founded; the action commensurate therewith fell far short of the mark, for it could only suggest excise-tax exemption and voluntary agreements among set manufacturers as means of remedying the set incompatibility problem, neither of which has materialized.

The latest report again reaffirms these views when the Commission states in paragraph 12 that lack of UHF receivers and high power transmitters are the greatest deterrents to the development of UHF. Yet, despite all this, the majority has not advanced one step from their July 1954 report, offering the same ineffective remedial measures.

In paragraph 7 the majority states: "To achieve its full potentialities, we believe television would eventually utilize a number of channels in the order of those presently allocated to it, just as AM broadcasting developed its present national pattern within the 107 channels allocated to that service." The fallacy here is clear. Whereas the 107 channels referred to above are part of a continuous, unbroken band, the problem of television growth is seriously handicapped by the separation of TV channels in 2 separate parts of the spectrum. Unlike AM broadcasting, over 85 percent of TV receivers presently in the hands of the public are not equipped to receive 85 percent of the television spectrum. I have discussed this matter at length elsewhere. Suffice it to say that to date the Commission has taken no steps to encourage set conversion nor to prevent the continued manufacture of VHF-only receivers and has failed to inform the public that it would be unwise to purchase these sets.

Deintermixture

The Commission in its May 19, 1954, statement before the Potter subcommittee stated that intermixture—both as to communities and especially as to service areas—results in serious competitive disadvantage to UHF operators. That it defines and admits the difficulties resulting from intermixture is clear; however, it is equally clear that the Commission fails to institute or even recommend effective remedial measures.

It is significant that in its July 27, 1954, report, commenting on various projected remedial measures, the Commission summarily rejected one calling for deintermixture in the first 100 markets using the stereotyped reason, "economic dislocation," a phrase apparently serving as a roadblock to every avenue leading to the relief of UHF.

Now the majority, after this lapse of time, despite the urgency of the UHF crisis, can only offer to inquire into the feasibility of selective deintermixture. I note that the Commission recently adopted a notice of proposed rulemaking, from which I dissented, to deintermix in four cities only and which, even if finalized, would be of no help to UHF.

I have no objection to deintermixture if properly defined. If it is to be taken seriously, however, then it must be executed on a nationwide basis or at least in a substantial number of the major markets. To be really effective, deintermixture on an area basis—to eliminate VHF–UHF service area overlap—requires the reduction of VHF power and antenna heights. Only in this way can deintermixture be seriously suggested as a means of aiding UHF.

Moreover, I propose that if undertaken at all, it should be accomplished at a pace consistent with the preservation of existing, and the need for additional, television service.

The Commission need not feel shackled by the sixth report and order. Intermixture was an avowed error, so let it be remedied, even if a seventh report and order is necessary.

Programing

In its report of May 19, 1954, the Commission unequivocally stated that the UHF crisis was precipitated in part by limitations on programing. Consistent therewith the Commission on April 1, 1954, issued a notice of proposed rulemaking designed to prevent an affiliate from contracting with a network in order to preclude a station—presumably UHF—in a different community from carrying the same program, despite overlap of service areas. Time for submission of views by interested parties expired on May 10, 1954.

Although in the above-dated report the Commission depicts this notice as being "* * * designed to assure UHF stations better programing," it is submitted that one year has elapsed since then without action by the Commission looking toward finalizing this notice. Clearly such apathy is inconsistent with the Commission's purported interest in saving UHF.

Moreover, in the July 27, 1954, report the Commission's response to proposals designed in part to effect program distribution conducive to UHF development was to the effect that "extensive investigation will be required" before any detailed comments, much less remedial measures could be offered. This despite the majority's admission, in the previous report that programing was one of the contributing factors to the UHF plight. Now comes a suggestion for lengthy and involved study before any changes in network distribution of program are effectuated. This means further delay, so that by the time the Commission will be ready to act, if at all, the demise of UHF will be fait accompli.

And so, the Commission now can only conclude without offering any remedial measures that the "high cost of television programing" is a major obstacle to the development of local, competing television services—words tantamount to UHF. This statement, profound as it is, is merely carrying coals to Newcastle. What the Commission should have appropriately directed its attention to, and made recommendations accordingly, are the causes of such prohibitive cost of television programing. I cannot impress too strongly on this committee the importance of its insistence that the FCC institute immediate rulemaking proceedings looking toward the equitable distribution of network programs among VHF and UHF stations alike.

Additional comments on the majority's report

There are additional statements in the majority's report to which I take exception and which do not appropriately fall under any of the foregoing rubrics, and which I shall therefore treat specifically below.

In paragraph 9 the majority refers to several measures adopted by the Commission purporting to have a salutary effect on the development of UHF, namely; (1) amendment to the multiple ownership rule to allow common ownership of 2 UHF in addition to 5 VHF stations; (2) August 5 policy announcement permitting UHF satellite stations which would rebroadcast programs of established stations; (3) rulemaking to permit operation of low power television stations in communities of less than 50,000 without requiring local programing; and (4) adoption of notice of proposed rulemaking to preclude establishment of transmitter sites more than 5 miles from the city in which the station is located.

I have discussed these alleged remedies in detail elsewhere and point out how the first three, on the contrary, militate not toward but against the healthy development of UHF, and how the latter will hardly conduce to the growth of UHF because the damage it seeks to obviate has already been incurred.

The "positive advances" in the television industry suggested by the majority in the first paragraph cannot be attributed to the Commission as such; rather it is the dynamics of the industry and the overwhelming public acceptance of television that have resulted in the tremendous growth of the industry. That this is so demonstrated by the fact that in September of 1948 just before the freeze there were only 750,000 receivers in the hands of the public whereas in April of 1952 notwithstanding the freeze the number of sets had catapulted to more than 17 million, not to mention the mushrooming growth of industry budgets for television advertising.

Moreover, I have difficulty with the majority's assertion in paragraph 2 that the Nation has already achieved "adequate television service." Immediately preceding this statement the Commission cites the amount of money invested by the public in sets and the tremendous expansion of the television industry. I therefore understand the majority to equate adequate television service with dollar expenditure. The adequacy of our television service depends upon what the public can get on TV. Does the FCC now, by its statement, abandon its allocation plan as the means of complying with the congressional dictate for a nationwide competitive television system to provide a choice of as many services as possible to each community?

The majority of the Commission agree with the conclusions reached in the Plotkin memorandum that any suggestion of an ultimate move of television to ultrahigh is impracticable and feel constrained also to argue undue economic dislocations if such a move were effected. The majority go one step further, however, and say that if such a step is to be taken, it should be done only after Congress concludes that it would be in the public interest. While I do not object to the Commission's seeking the considered judgment of Congress on such an admittedly important change, I am clearly of the opinion that the majority should not have heaped this burden on Congress without first submitting a detailed factual report, consonant with its expertise, on why all UHF television would entail "tremendous dislocation of existing operations."

With respect to the majority's proposal in paragraph 14, concerning long-range studies, I need add nothing to what I have already said concerning the pressing need of immediate relief for UHF broadcasters and that delay with its attendant increment of VHF-only sets would prove fatal. As for the need to obtain full information concerning the rules of the networks, advertisers, agencies, talent, independent film producers and distributors, and other program sources, these are, in my opinion, appropriate fields for intensive investigation by this committee in hearings conducted under close cross-examination of all the important witnesses. Among the various reasons why the Congress and not the FCC should conduct the investigation is that legislation is necessary in this field, as I will show at another point, and this can accrue best through investigation and action.

I cannot accept the suggestion of the majority that the Commission be authorized to undertake an extensive investigation of the broadcast industry like that of 1938–41. This type of protracted investigation would, in my opinion, spell out the doom of UHF.

If the committee considers the majority's report in the light of what has been said herein, I feel confident that it will not subscribe to any policy of delay or inaction, but rather will immediately accept the challenge with the kind of balance and prudence that will ultimately result in the extrication of UHF from its present crisis and create an atmosphere conductive to the growth of a nationwide competitive television system.

The Network Problem

I. Congressional Investigation of Networks

Senator Magnuson aptly said, in the letter of transmittal with the Plotkin report, that there is "a continuing responsibility upon both the Congress and its administrative arm, the FCC, to insure that private monopoly does not occur where Government monopoly is avoided." And Senator Bricker, in his letter of transmittal accompanying the Jones report, said of the networks that "the objective of the Communications Act to provide for a nationwide competitive system of television is threatened with defeat," because "The power of TV networks to affiliate or not affiliate amounts practically to the power to control the number of TV stations in the Nation which can subsist financially."

Nevertheless, Mr. Plotkin proposes no action by Congress to loosen the network stranglehold over TV, but merely suggests further studies by the FCC—

ignoring the Commission's inability, since its creation, to cope with network domination of the broadcast industry, as proved by the dismal failure of the chain broadcasting regulations and the fact that the Commission did not enforce them against the networks.

If ever a subject were appropriate for congressional investigation, it is this, the network monopoly. It involves (1) the basic issue of future congressional policy, (2) the assessment of the success of previous congressional enactments, (3) the role of other related industries (such as the movie industry) in TV, (4) the function of other Government agencies in this field (e. g., the Justice Department and the monopoly problem, the Commerce Department and others who may be involved in needed technical research and development, and the Federal Trade Commission), and (5) the effect of the economy of scarcity in TV stations and TV time upon business seeking time to advertise its merchandise. The FCC cannot and should not be asked to conduct such an investigation. This is an appropriate and necessary area for a congressional committee.

Nothing less than a sweeping and searching investigation by a congressional committee will, in my opinion, suffice to achieve full disclosure of all the facts necessary to a determination of the action needed to free broadcasting from network domination and to create the conditions in which a fully nationwide, competitive television system can be developed and maintained. Detailed information on numerous aspects of network operation is lacking at the Commission. Whatever supplemental efforts the Commission may contribute, it would seem clear that there is urgent need of a broad-scale and intensive investigation by a congressional committee, and that it should be undertaken without further delay.

I strongly urge that this Senate committee embark as soon as possible on such a thorough and vigorous investigation.

II. CONGRESSIONAL POLICY AGAINST MONOPOLY

Congress has consistently opposed monopoly in the communications field.

The deepening crisis in UHF is part of the broader problem of 30 years of dominance of the broadcasting industry by networks.

In the most important markets, the most desirable outlets in AM and TV are affiliated with and under the control of networks. The tremendous influence wielded by the networks over television programing centralizes control over the dissemination of news and opinion in a few hands. The result is to frustrate the basic American principle enunciated by Congress in the Communications Act.

Congressional mandate against monopoly

The legislative history of the Radio Act of 1927 attests the alertness of Congress to the perils associated with monopolistic control of broadcasting. Senator Dill, as sponsor of the bill, counseled the Senate:

"* * * the Commission, of course, having the power to protect against a monopoly, must give such protection."

He continued:

"I wish to state further that the only way by which monopolies in the radio business can secure control of radio here, even for a limited period of time, will be by the Commission becoming servile to them. Power must be lodged somewhere, and I myself am unwilling to assume in advance that the Commission proposed to be created will be servile to the desires and demands of great corporations of this country."

The antimonopoly provisions of the Radio Act of 1927 were substantially reenacted and expanded in the Communications Act of 1934, which in addition empowered the Commission to make special regulations applicable to radio stations engaged in chain broadcasting. But as Senator White stated in a speech before the upper House on March 17, 1937:

"The regulatory body has seemed indifferent to the problem or without definite views concerning it."

In July of the same year Senator White charged that:

"With the approval of the Commission there has come about a monopolistic concentration of ownership or control of stations in the chain companies of the United States."

Spurred by this and other expressions of dissatisfaction on the part of Members of both Houses, the Commission in April 1938 inaugurated an investigation into chain broadcasting.

Network monopoly controls TV

Hearings were held between November 14, 1938, and May 19, 1939. Two years later, in May 1941, the Commission issued a lengthy report which discussed in detail the network practices which had made possible their domination of radio station affiliates and which had so severely inhibited free competition in the broadcast industry. The network practices criticized then were essentially similar to those in evidence today with the difference that they have since been applied to the new media of FM and TV, in addition to AM. Plotkin's study merely shows how little has been done to curb the networks in the practices that were rampant in 1938.

The following summary of the 1941 report reflects patterns of network operation basically similar to those which are now being followed to minimize free competition in TV broadcasting:

1. The networks buttressed their dominant position in the broadcast industry by ownership and control of the most powerful and profitable stations.

2. The 2 major networks had as affiliates all but 2 of the 30 high-power, unlimited-time, clear-channel stations.

3. The networks developed their "chains" around these network owned and controlled stations. The interests of the stations, the real foundation of nationwide broadcasting, were subordinated to the interests of the network owned and controlled stations.

4. Half of the 1938 net operating income of all radio stations and networks went to NBC, CBS, and their 23 owned and operated stations. The remainder was divided among 327 affiliated stations and 310 nonaffiliated stations.

5. Whereas CBS and NBC had aggregate time sales of $44 million for 1938, they paid to their 253 affiliates only $12 million, approximately half of which went to 25 of these affiliates which had a relatively strong competitive position based on the networks' need of their particular facilities. Affiliation contract provisions requiring the free use of station time for broadcasting a specified number of the first hours of network commercial programing each month, combined with low initial compensating rates for the next hours, resulted in inequitable distribution of proceeds from network broadcasting.

6. The networks exercised complete control of the programing of affiliated stations by including provisions in affiliation contracts which, for example:

(*a*) Prohibited affiliates from taking programs of other networks;

(*b*) Gave the networks options to clear time during all of the desirable hours and most of the remainder of the stations' broadcast day; and

(*c*) Required affiliates to accept all commercial programs unless they were able to prove to the satisfaction of the networks that a particular program would not serve the public interest.

7. Affiliates were bound to one network (in those days under affiliation contracts), thereby depriving such affiliates of profitable business and the listening public of programs in popular demand. They also obstructed opportunities for competing networks to clear station time.

8. NBC and CBS controlled name talent and numerous additional artists as well. In 1941 both these networks operated talent agencies through which talent was placed under the management of and exclusive contract of these networks.

9. Competition from national spot business was suppressed through preemption of desirable station time for network programs, and penalization of affiliates for offering to national spot advertisers rates lower than those applicable to time sales for network programs.

In their report to the full Commission of June 12, 1940, the Committee on Chain Broadcasting, consisting of three Commissioners, summed up the situation in these words:

"The inescapable conclusion is that National and Columbia, directed by a few men, hold a powerful influence over the public domain of the air and measurably control radio communication to the people of the United States. If freedom of communications is one of the precious possessions of the American people, such a condition is not thought by the committee to be in the public interest and presents inherent dangers to the welfare of a country where democratic processes prevail."

Chain-broadcasting regulations a failure

In 1941 the Commission announced its chain broadcasting regulations, a series of rules whose basic purpose was "opening up the field to competition." It sought to accomplish this by proscribing certain provisions in agreements between licensees and networks. These rules met with intransigent opposition from the networks, and they did not go into final effect until 1943, after the Supreme Court upheld their validity.

Experience during the 12 years which have elapsed since the rules went into effect in AM radio has demonstrated their inadequacy to accomplish the objective of insuring free competition in broadcasting; for although the rules prohibited certain types of provisions in affiliation contracts, they left the stations and the networks relatively free to conduct their actual operations in much the same fashion as before, so long as the affiliation contracts conformed to the letter of the law.

Moreover, the Commission was unequipped to enforce the regulations and unwilling, where evidence of violation on the part of a broadcaster was uncovered, to invoke the extreme sanction of revocation of station licenses held by the networks.

With the advent of FM and later TV, the Commission perfunctorily applied to these new instruments the same chain broadcasting rules designed for AM radio, without inquiry into or adaptation to the different needs and circumstances of the new media. The networks were therefore uninhibited by the chain broadcasting rules from adapting to FM and TV the basic techniques they had employed in AM, over which they acquired a position of dominance.

Legislation necessary

One of the two purposes for which the Senate committee initiated the present study was to determine whether networks should be brought within FCC's direct regulatory jurisdiction, as proposed by Senator Bricker who initiated the study. Mr. Plotkin finds no necessity for such legislation at present. Mr. Jones finds insufficient jusification for it on the basis of information available to date.

The simple and uncontested fact is that television is controlled by the networks. The congressional purpose that the FCC act as an arm of the Congress in regulating the broadcast industry is being thwarted by an ostrich-like attitude toward networks. The FCC has no statutory authority to regulate networks as such, but only insofar as they are station licensees. This is an absurd situation, wholly inacapable of serious justification. If television is to be regulated by the FCC, then the FCC must be given jurisdiction over networks. I strongly urge enactment of legislation empowering the Commission to extend its direct regulatory jurisdiction over the networks themselves. The conclusion is amply supported by the failure of the chain broadcasting regulations.

III. SCOPE OF INVESTIGATION

Congress should conduct, as I have recommended, a sweeping investigation of the networks and their monopoly over the broadcast industry.

Mr. Jones is quite correct when he points out how little information the FCC has in its files on networks in particular, and on licensees in general. This makes it all the more important that the Congress obtain the necessary information, on the basis of which it can legislate.

Some of the questions to which answers should be sought by the Congress are:

(1) Should network be permitted to dominate and control TV?

The networks can grant or deny affiliation at will. Since affiliation is essential to remaining in business, the networks have a life-and-death grip over stations and, to a large extent, over their programs and use of time on the air. This situation was well summed up in the remarks of Mr. Dunville, president of the Crosley Corp.: "Networks seem increasingly inclined to consider individual stations as push-button operations, automatic outlets which cater to programing networks' desires."

With particular reference to UHF, the experience of the last 2½ years since UHF was opened up for licensing reflects a clear disposition on the part of networks to heap their programing on the larger VHF stations and, by and large, to keep the UHF stations on a starvation diet.

(2) Why is American business unable to procure advertising time on TV?

Competition in business is adversely affected by the inability of advertisers to get television time, owing to the monopoly of scarcity created by networks. The networks, who are reaping the advantage of a seller's market, would have you believe that the reason for the inability of more stations to achieve profitable operation is the limit on sums advertisers are prepared to devote to television. The Congress should look at the facts.

Although television required the development of a new technique of advertising, the growth of the TV advertising dollar has been spectacular from the outset, as is attested by the following figures:

Advertiser expenditures for TV:	Amount
1949	$57,200,000
1950	170,800,000
1951	332,300,000
1952	453,900,000
1953	610,500,000
1954	809,100,000

Advertising expenditures for television in 1954 increased 33.5 percent over the 1953 figures. Mr. Frank M. Folsom, president of RCA, has pointed out that 7 percent of all-media advertising expenditures were allocated to TV in 1952, and 9 percent in 1953. It was approximately 10 percent in 1954. Mr. Folsom has predicted an increase to 20 percent in 1956, equivalent to an estimated expenditure of $1,900 million for TV advertising by that date. He made no suggestion that this represented the end of the climb.

The public statement of the president of just one rapidly rising company in the cosmetics industry illustrates the kind of information which this committee could usefully develop in public hearings concerning the crucial question of the amount of advertising support now available for TV and which may reasonably be expected in the future. Mr. Willard Gidwitz, president of Helene Curtis Industries, Inc., had the following things to say in an article in the December 1954 issue of Television Magazine:

"Yet we have not been able to spend the proportion of our advertising budget on television that we would like. This last year we could have handled any good evening network program in the $2 million to $2,250,000 bracket that was offered to us. But we could not get one."

(3) *Should networks be allowed to own TV stations?*

In 1953, the networks and their 16 stations garnered almost 60 percent of all TV broadcast revenue, while 50 percent of all TV stations on the air got a total of only 5 percent of the TV broadcast revenue.

(4) *Should networks be allowed to produce and syndicate motion pictures?*

Control by networks of their own stations and affiliates and talent, and the penetration of networks into the production, syndication and all other phases of the motion picture industry, jeopardize development and expansion of TV film as a competitor to networks for programing. More and more, television is becoming a motion picture business in its end product, the programing. Should networks be permitted a monopoly not only of live programing but of film programing as well?

(5) *Additional matters requiring congressional investigation*

In addition to those inquiries, there are other questions which need investigation by this committee, namely: other potential sources of revenue for UHF, such as subscription TV; the charges for intercity TV transmission service; the impact of network practices on national spot business; the extent of control of talent by networks; and all other aspects of network domination of the television industry.

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TELEVISION INQUIRY

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 13 and 163

AUTHORIZING INVESTIGATIONS OF CERTAIN PROBLEMS RELATING TO INTERSTATE AND FOREIGN COMMERCE

(Including testimony on S. 825, by Mr. Bricker, to authorize the Federal Communications Commission to establish rules and regulations and make orders with respect to networks and their activities)

FEBRUARY 27, 28, 29, MARCH 2, 14, 15, 16, 26, 27, 28, MAY 14, 15, JUNE 11, AND JULY 17 AND 18, 1956

PART II

UHF-VHF ALLOCATIONS PROBLEM

Testimony of Public and Industry Witnesses

Printed for the use of the Interstate and Foreign Commerce Committee

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[1] Appointed April 18, 1956, to succeed Strom Thurmond, South Carolina, who resigned on April 4, 1956.

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APPENDIX

ALLOCATIONS

The hearings in connection with the Television Inquiry, are printed in four parts, as follows:

Part I, UHF-VHF Allocation Problem—testimony of Federal Communications Commission.

Part II, UHF-VHF Allocations Problem—testimony of public and industry witnesses.

Part III, Subscription Television.

Part IV, Network Practices.

TELEVISION INQUIRY

(UHF–VHF Allocations Problem)

PART II: TESTIMONY OF PUBLIC AND INDUSTRY WITNESSES

MONDAY, FEBRUARY 27, 1956

United States Senate,
Committee on Interstate and Foreign Commerce,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:10 a. m. in room G–16, United States Capitol, Senator Warren G. Magnuson (chairman) presiding.

Present: Senators Magnuson, Pastore, Ervin, Thurmond, Bricker, Schoeppel, and Potter.[1]

The Chairman. The committee will come to order. Again, because of the number of witnesses, we will start without certain Senators who will ultimately be here.

The first witness is Mr. George Storer. We are glad to hear from you at this time. Do you have a prepared statement? Do you wish to read that?

Mr. Storer. Yes, Senator, I have a very brief statement.

The Chairman. We will be very glad to hear from you.

STATEMENT OF GEORGE B. STORER, PRESIDENT, STORER BROADCASTING CO., MIAMI, FLA.

Mr. Storer. Incidentally, if I don't speak loudly enough—I have a hearing aid on these glasses—please tell me and I will speak up.

The Chairman. Several of the people in the back are interested in your testimony, and it is easy for us to hear, but maybe they cannot hear as well back there.

Mr. Storer. In the first place, I want to say that we appreciate the privilege of being back here again. My name is George B. Storer. I am president and founder of Storer Broadcasting Co. Our company has owned and operated radio and television stations since 1928, and presently it owns and operates 5 VHF stations and 2 UHF stations.

Our business is the ownership and operation of these stations, and our radio stations. Each station is operated as an integral part of its local community, creating local programing, servicing local advertisers, and meeting the needs of local public service organizations. Our company does not link its own stations together in a company net-

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[1] Staff members assigned to this hearing: Kenneth A. Cox and Wayne T. Geissinger, special counsel; Nicholas Zapple, communications counsel.

work. We have affiliation agreements with the national networks in most markets, but we do not own or operate any network organization. We are not connected with the manufacturing part of the broadcasting industry, except insofar as we use its products. So much for the description of Storer Broadcasting Co.

The CHAIRMAN. The record ought to show what VHF stations you have.

Mr. STORER. We have Detroit, Toledo, Cleveland, Atlanta, and Birmingham, Ala.; and the UHF's are in Portland, Oreg., and Miami, Fla.

The CHAIRMAN. Now they are operated, as I understand, as a corporation?

Mr. STORER. I couldn't quite hear you, sir.

The CHAIRMAN. Is this a corporation that operates these seven stations?

Mr. STORER. Yes, sir; it is. The corporation has 4,000 stockholders, and all of the management own a substantial part of the corporation.

The CHAIRMAN. It is one of the pioneer companies in the radio broadcasting and television field?

Mr. STORER. Yes, sir.

The CHAIRMAN. But you are here today to testify, as I understand it, generally—and you will read this testimony—on the UHF experience of the corporation?

Mr. STORER. Yes, sir; that is right.

The CHAIRMAN. Are you doing all right with the VHF?

Mr. STORER. Yes, sir.

I have read with great interest the transcript of the prior hearings held before this committee as part of its television inquiry, and I realize fully that the committee members are very well informed on the problems facing the television industry. My only reason for appearing here, at the committee's request, is that I feel that my company's actual experience in the operation of local stations in diverse communities has given it some knowledge that may be of value to the committee.

For 28 years we have participated in the development of radio broadcasting; and for 8 years, since July 1948, we have actually operated television stations. We acquired UHF station KPTV, Portland, Oreg., in November 1954, and UHF station WGBS-TV, Miami, Fla., in December 1954, pursuant to commitments made to the Federal Communications Commission in the proceedings in which the Commission relaxed its multiple-ownership rules, effective in October 1954, permitting multiple owners, including ourselves, to acquire two UHF stations in order to aid in the development of the UHF band.

We have gone all out in the installation at WGBS-TV and KPTV of the best equipment available at the present stage of the art. At WGBS-TV, Miami, we have installed a 1,000-foot tower, equal in height to the tower of the VHF station already in the market. Our station WGBS-TV now operates with 185,000 watts visual power, and provides a very satisfactory, if not superior, signal to the entire area, including coverage about 70 miles south of Miami.

I want to say in passing that we found that tower height is of the utmost importance, even more so than power. We learned from this installation that, given a high-tower, high-power operation, a UHF station in an area of flat terrain and constant foliage conditions, can provide a service equal to VHF service, and even better than VHF with respect to manmade interference—manmade interference being particularly road signs, neon signs, and trucks, ignition static, and that sort of thing.

We have reported to the Commission that in areas of flat terrain such as Miami—where the highest hill is 33 feet above mean sea level—grade B quality service extends to the 500-microvolt-per meter contour rather than to the 1,600-microvolt-per meter contour as specified in the Commission's 1952 rules, which in effect makes our coverage equal to that of the VHF station in the area. We have over $1,300,000 invested in WGBS–TV, in equipment and operating losses.

I might say in passing that the operating losses at the end of the year were about $272,000, as near as I recall. So the rest is in equipment. The tower, due to the hurricane situation in Miami, and the land on which it stands has cost us an aggregate of $330,000.

Senator SCHOEPPEL. Was that this last year?

Mr. STORER. Yes, sir. Our investment in Miami includes very substantial sums spent for improvement in programing, operating a conversion project to secure the accelerated conversion of receivers unable formerly to receive UHF signals, and appropriate promotion and advertising.

The CHAIRMAN. What do you mean there—a conversion project? What do you mean by that?

Mr. STORER. Senator, we soon found that it took a lot of promotion and effort working with the dealers to get people to convert from VHF to UHF. It just didn't happen. You had to really put on a terrific campaign. So we set up what we call project 23, which was to get people to convert. We employed technical men, promotion men, and an advertising agency, and put on a campaign in all mediums that we felt was effective in the Miami area, to tell the people of the programs that they could get on WGBS–TV.

We accelerated the conversion very rapidly by doing that. If we hadn't done it, it would have remained rather static.

The CHAIRMAN. In other words, you went out on your own volition and started a so-called sales campaign to get people to convert their sets?

Mr. STORER. Yes, sir. We divided the area up into districts, and we had various technical assistants go around to the dealers, and we created banners promoting the sale of converters and/or all-channel sets.

The CHAIRMAN. The retail dealers?

Mr. STORER. Yes, sir.

The CHAIRMAN. What percentage have converted?

Mr. STORER. Above 85 percent.

The CHAIRMAN. In the Miami area?

Mr. STORER. Yes, sir. I noticed in one of the papers there the other day it said 90.1 percent. We don't believe it is quite that high.

The CHAIRMAN. What was it when you started?

Mr. STORER. Roughly 40 to 45 percent.

The CHAIRMAN. So the ability to receive the U signal has increased by 40 percent in the Miami area?

Mr. STORER. Yes, sir; that is true.

The CHAIRMAN. How long a period of time did this take?

Mr. STORER. Twelve months.

The CHAIRMAN. But in about a year, with your campaign and other factors, you were able to increase that up to between 85 and 90 percent?

Mr. STORER. Yes, sir.

The CHAIRMAN. So that only maybe about 10 or 15 percent of the sets in the Miami area now are not all channel?

Mr. STORER. Yes, sir. I might say in passing that currently no new sets are sold in Miami that are not all-channel receivers. That we find is the 100-percent answer from every dealer we talked to.

The CHAIRMAN. I want to get this straight: All the dealers in Miami now sell all-channel sets; is that what you say?

Mr. STORER. Yes, sir.

The CHAIRMAN. That is all they sell?

Mr. STORER. Yes, sir; they have some old second-hand sets from time to time that they sell at low prices, which are not all-channel receivers, but most of those are now being sent to other points. They are exported—some to South American countries and Cuba. Generally speaking, the receiver problem no longer bothers us very much down there.

The CHAIRMAN. Is that due to the public demand or to dealer policy, or both?

Mr. STORER. It is a combination of both. You have to waken the public to the fact that they are missing a lot of good programing. That is the first order of business. Then after you have done that, you have to work with the dealers and sell them the idea that here is a substantial new business area that they can avail themselves of. That takes quite a bit of doing at first.

The CHAIRMAN. I suppose you go into that later in your statement?

Mr. STORER. Yes; I do.

The CHAIRMAN. You are affiliated with a network?

Mr. STORER. NBC. Our sales staff in New York worked with the National Broadcasting Co. with which WGBS–TV is affiliated, to secure additional network advertisers, so that we were able to increase our network programing to approximately 60 percent of the basic NBC network schedule.

We had hoped that NBC would place us on its "must-buy" list in the same manner as WTVJ, the Miami VHF station, is on the CBS television network list, but they felt that due to advertiser resistance they could not see their way clear to do this, with which we could have no quarrel.

The CHAIRMAN. I don't understand what you mean by "advertiser resistance" there. You might enlarge upon that.

Mr. STORER. As I believe was reported in the——

The CHAIRMAN. First of all, what is a "must-buy" list, so the record will be clear?

Mr. STORER. "Must-buy" means the list of stations which an advertiser must buy at certain times of the day to get on the network, so to speak.

The CHAIRMAN. A certain number of stations?

Mr. STORER. Yes, sir.

The CHAIRMAN. I think that figure is in the record.

Mr. STORER. About 55, I think it was.

The CHAIRMAN. What about the advertiser resistance? That is because of what?

Mr. STORER. The advertiser very properly said that he didn't want to add a station which only serve a half, we will say, of the population in the area. NBC cooperated to the fullest extent. We have absolutely no quarrel with them. Their sales department were very active in working with ours. Yet we did find that there was a tremendous resistance from the advertisers and agencies to adding the station.

The CHAIRMAN. Go ahead, sir.

Mr. STORER. The net result, however, has been to prove that local and network advertisers, and some national advertisers, can be persuaded to buy UHF and do learn that a UHF picture is as good a sales medium as a VHF picture, provided the UHF station has a high-tower, high-power operation. This experience enables us to conclude that if enough UHF stations throughout the country were used by the advertisers, in competition with not more than one VHF station, it would be possible ultimately to attain advertiser recognition of the UHF service.

In addition, our Miami experience demonstrates that UHF is highly acceptable to the viewing public. In the 12-month period from December 1954 to November 1955 the improved service of WGBS-TV and the increased power of the other UHF station in the area, which carries ABC network programs, resulted in all-channel tuner and UHF converter sales totaling 121,241. So that at the present time in excess of 85 percent of the television receivers in the area can receive the two UHF stations.

At our UHF station in Portland, Oreg., we increased the power to 1 million watts effective radiated power and installed a new tower on the hill above the city. As a matter of fact, our total investment in equipment is $1,172,000, which includes color equipment. Portland, of course, lies in a valley surrounded on two sides by high mountains, with a high hill in the middle of the city, on which our antenna is located.

In the outlying areas there are some other hills where our UHF station has a serious shadow, or fill-in, problem. Despite the fact that KPTV has the best tower location and 1 million watts power, because of the inherent difficulty UHF signals have in filling in shadow areas, there are some few areas where the signal of KPTV does not compare favorably with the signal received from the low-band VHF station in Portland. The comparison with the high-band VHF station is not so bad.

The CHAIRMAN. There is another channel that has been granted in Portland?

Mr. STORER. Yes, sir.

The CHAIRMAN. Is that in the high or the low?

Mr. STORER. That is in the high. That is channel 8. There is channel 8 and I believe channel 12 in the high band, and channel 6 in the low band. Parenthetically, it should be noted that low-band VHF stations on channels 2 to 6 enjoy better fill-in characteristics than high-band VHF stations on channels 7 to 13.

Thus we have learned from our KPTV experience that, at the present time, equipment is not available to make UHF equal to VHF in areas of rugged terrain—and the same applies to areas of high buildings. In Miami we do not have the building-shadow problem, because the high buildings are so located that shadow areas fall into Biscayne Bay or the Atlantic Ocean.

Our Portland experience has also led us to the conclusion that high-power UHF satellite stations may well provide the necessary relief for UHF stations in rugged terrain.

The CHAIRMAN. Tell us about that. What do you think you can do in an area like Portland on satellites?

Mr. STORER. Sir, the proposal or the remedy which we have in mind is to situate a second satellite of considerable power on a separate channel so that we wipe out the shadows. In other words, over on one side of the valley we have our present UHF station. Out a ways you will find some hills and behind those hills the shadow areas are very pronounced. In those areas down deep——

The CHAIRMAN. Is that across the river?

Mr. STORER. That is across the river.

The CHAIRMAN. You go across the river and take one of those hills over there and get on top of that?

Mr. STORER. Yes.

The CHAIRMAN. So you would have two towers?

Mr. STORER. That is right.

The CHAIRMAN. One on one side of the river and the other on the other side?

Mr. STORER. Yes, that is right. And to show you, if you will bear with me a moment——

Senator SCHOEPPEL. On the same channel?

Mr. STORER. No, not on the same channel.

Senator SCHOEPPEL. Different channels?

Mr. STORER. You have to take a different channel. If you were on the same channel, the interference would be so bad it just would not be practical.

If you will bear with us a moment, Mr. Clemans X. Castle, who is our director of engineering, had these shadowgraphs prepared in Portland and they show very clearly what happens.

Mr. CASTLE. The photograph was taken of the basic scale relief map about 10 by 16 feet. We put a very small light at an elevation above the map, which corresponds to our present 500-foot tower. You will notice on this there are areas in here that are in very black shadow.

The CHAIRMAN. Here is your river?

Mr. CASTLE. Yes, that is the Columbia River, and there is also the Willamette River there which runs along at the foot of the hill.

The CHAIRMAN. We will look at these. Let Mr. Storer go on.

Mr. CASTLE. If you will notice, these are from three different locations. Therefore the shadows in the three locations do not overlap completely. In other words, it is floodlighted.

(The three photographs referred to will be retained in the committee files.)

The CHAIRMAN. All right. Go ahead, Mr. Storer.

Mr. STORER. Thank you sir. We believe that it will be possible in Portland to construct a satellite station, using power on the order of 200,000 watts, which can be so located that most, if not all, of the shadow areas can be served adequately by either the main transmitter or the satellite transmitter of the station.

We are preparing an application to the Federal Communications Commission requesting permission to construct such a satellite on an experimental basis, but carrying the regular programs of KPTV. In connection with that application, we will request, if necessary, that the Commission waive or suspend its multiple ownership and overlap rules. We believe that this experiment holds great promise of providing a realistic solution to the UHF coverage problem in many areas. This experiment will cost our company about $150,000.

The CHAIRMAN. Would you say that that is the average price of the satellite?

Mr. STORER. Oh, no, sir. Portland being a rather large community, and with the extremely rugged terrain, we have to use a higher power in Portland than you would in other areas.

Our experience in Miami and Portland also bears on the questions of the cost of equipping UHF stations and of maintaining them in operation, which have been considered by this committee. It is true that both VHF and UHF studios, transmitting and antenna plants cost a lot of money—somewhere between $500,000 and $1,500,000, depending on the type of installation.

When the size of the investment is considered, the cost of a UHF station is not very substantially higher than that of a comparable VHF station. At the present time, there is no difference in the cost of studios and studio equipment; there is no difference in the cost of land and tower; and UHF transmitters and antennas for full-power operation cost about $35,000 more than similar equipment for VHF high-band stations (channels 7–13).

With respect to operating costs, UHF transmitting tube costs are about double that of VHF, which means an additional expense of about $1,500 to $2,000 per month for running a high-power UHF station for a full 17-hour daily operation. Other operating expenses are about the same for UHF and VHF.

Experience with similar problems in VHF, in the years 1948 to 1952, indicates that UHF costs of transmitting equipment and tubes will go down, as the manufacturers gain more experience and amortize their developmental expenses. In my personal opinion, the additional cost of UHF should not be used as a reason for not utilizing the UHF band to the fullest extent possible.

I might say in passing that in Toledo, where we operated on channel 13, we had terrific difficulty when we first went on the air with our tubes. We burned up tubes about every week or every 2 weeks in the final stages of that transmitter. But ultimately the manufacturers were able to eliminate that difficulty. The higher the frequency, the more difficulty you have, but we believe there is considerable hope, based on that experience.

The CHAIRMAN. What you say here, in effect, is that, generally speaking, with technological developments and better know-how and manufacture, the cost of VHF and UHF may vary back and forth, but nevertheless it could be practically the same for development of the station?

Mr. STORER. Yes, except there is a question of power involved which has some costs.

The CHAIRMAN. You mean the necessity for more power?

Mr. STORER. Yes. I wouldn't want to go so far as to say——

The CHAIRMAN. Out in Portland that would be cheaper than power in Toledo, wouldn't it?

Mr. STORER. Yes, sir, I think so.

Now, turning to the economic and allocation problems which face this committee, the Commission, and particularly the UHF pioneers who are losing money from operations and who face the loss of their entire investment.

First, considering the VHF situation, we recognize that VHF stations are superior to UHF both in propagation characteristics and in the ability of receivers to accept signals. This country deserves the best possible television system, and to attain this goal, the VHF band must be preserved without degrading the service VHF stations can render.

VHF stations are superior in providing rural service in a large part of the United States, and we believe that in Zones I and II the 170-mile and 190-mile cochannel separations should be maintained in order to provide this rural service. VHF stations are superior in providing close-in service in rugged terrain, such as Portland, Oreg., and Pittsburgh, and they should be maintained to provide this service.

Likewise, VHF stations are superior in providing service behind high buildings and in areas of rolling terrain and high trees, and they should be maintained in cities like New York, Chicago, and Detroit, to provide the best possible service to the cities, their suburbs, and the outlying rural areas.

We also believe, and I don't see how this can be disputed, that UHF stations are essential to provide room for future growth of the television system. In the cities and areas where multiple television stations can be supported economically, there are too few VHF assignments available to allow for future expansion in the number of stations, unless the UHF band is preserved.

From Commissioner Rosel H. Hyde's testimony before this committee, it seems apparent that there is no real chance of obtaining additional VHF channels from the Government or other non-broadcast services. Further, additional VHF stations cannot be created by reducing cochannel separations, unless at the same time the valuable propagation advantages of the VHF band are sacrificed and rural service is abandoned in many areas.

There has been some talk of obtaining two VHF channels from the FM band. This is a problem that the Commission can best evaluate, for they must determine whether the public interest would be best served by seriously reducing the frequencies available for FM, in order to create two new VHF channels.

But even if two new VHF channels are taken from FM, they would be insufficient and inadequate to provide any substantial number of stations. By preserving the present UHF stations that are now on the air, more stations could be saved than could be created from two new VHF channels.

The CHAIRMAN. Mr. Storer, you still have the same set conversion problem anyway, regardless?

Mr. STORER. Yes, sir.

The CHAIRMAN. In creating new VHF bands, you have the same set problem as you have with the UHF's.

Mr. STORER. Yes, sir; that is truly substantial, particularly in an area currently served by a multiple group of VHF stations. You have to persuade the public to spend that money, and if they are getting 2 or 3 or 4 good services—good program services—today, I could tell you that in my opinion it will take an awful long while, and I seriously doubt whether they will ever get converted.

Now what can be done to alleviate the present problems and provide a sound foundation for the future growth of television? It is apparent that there is no panacea, and no simple solution for all the problems. But it seems to us that there is so much to be gained, and so little to lose, from preserving the UHF band for the television service, that steps should be taken at once to accomplish this objective.

Storer Broadcasting Co.'s proposal to the Federal Communications Commission to save the UHF band for television is contained in its Reply Comments dated February 1, 1956, in docket No. 11532. Copies of this document have been distributed to the committee members, and I would like to request that the entire document be made part of the record of this hearing.

The CHAIRMAN. We will make it a part of the record in the sense that it will be kept in the committee's files in connection with this inquiry. We cannot put these maps and things in the record itself. But we will take advantage of the document, its tables and things of that kind, by retaining them in our files.

Mr. STORER. Thank you, sir.

[Document entitled "Reply Comment" of Storer Broadcasting Co., in Federal Communications Commission docket No. 11532, dated February 1, 1956, will be retained in the committee files.]

Mr. STORER. Briefly, our proposal is that the Commission adopt a policy of deintermixture to provide 6 new UHF-only markets, 8 new markets with UHF plus only 1 VHF, 9 new 3-VHF markets, and 1 new 4-VHF market, as detailed in exhibit A attached to our reply comments.

The CHAIRMAN. Right there, when you talk about the six UHF-only markets, you are suggesting Evansville, Fresno, Madison, Peoria, Corpus Christi, and Springfield?

Mr. STORER. Yes, sir.

The CHAIRMAN. The new one-VHF markets, you are suggesting Hartford—we have heard that name before around here—New Orleans, Miami, Jacksonville, Norfolk, Spartansburg, Beaumont-Port Arthur, and Albany?

Mr. STORER. Yes, sir.

The CHAIRMAN. Then the new three-VHF markets: Davenport, Harlingen, Laredo, Terre Haute, Providence, Tampa, Orlando, Knoxville, and Charleston, S. C.?

Mr. STORER. Yes, sir.

The CHAIRMAN. And a new four-VHV market, St. Louis?

Mr. STORER. Yes, sir.

The CHAIRMAN. Then in your maps you show how that will cover the market areas?

Mr. STORER. Yes, sir.

The CHAIRMAN. In the country?

Mr. STORER. Yes, sir.

This proposal can be adopted by the Commission at once without dislocation of any existing station and without depriving a single person of existing VHF or UHF service because:

First: No change is made in the license of any stations now on the air or authorized, except that proposed VHF stations authorized by recent final hearing decisions in Fresno, Madison, Evansville, Peoria, Miami, and Corpus Christi would be modified to UHF.

The CHAIRMAN. In that case, the Commission, I think, testified that they could take these back?

Mr. STORER. Yes, sir. I comment on that a little later.

The CHAIRMAN. Go ahead.

Mr. STORER. Second: No changes are made in present VHF engineering rules or standards. All VHF changes proposed by Storer comply with the Commission's rules as to cochannel separation and otherwise.

After adopting this proposal, with such modifications as it deems in the public interest, the Commission can then proceed to evaluate at length the possibility of obtaining additional VHF channels, the desirability of reducing cochannel separations, and similar problems; but it can then do so with the assurance that enough UHF stations will stay in existence, so that, during its deliberations, the UHF service will not, like the fabulous dodo bird, become extinct.

Under the Storer deintermixture proposal, a total of 20,765,866 persons will rely on UHF stations for program service, thus, I believe, establishing a strong economic base for survival and growth of the UHF service.

In the markets involved, there are today 4,225,268 UHF television receivers, and numerous stations which I haven't counted. These viewers, receivers, and stations, in my opinion, represent sufficiently large numbers so that the advertiser cannot afford to neglect them. He will be forced to use UHF stations where they can compete effectively, and will learn, therefore, that the UHF service can be, and is, a good television service.

Likewise, manufacturers will be given the incentive to continue the manufacture and development of UHF transmitting and receiving equipment, and ultimately they will solve the major technical problems facing UHF, by providing superpower transmitters and antennas, improved UHF receivers, and economical transmitter tubes.

Under the Storer deintermixture proposal, 25 markets will be established where UHF stations can compete on a fair basis with not more than 1 VHF station. These markets include 8 UHF-only markets, and 17 1-VHF markets, as listed in exhibit C attached to our reply comments.

These basic UHF markets will be supplemented by the numerous other smaller markets in which today many of the UHF stations on the air now defy the maxim that UHF cannot compete with more than one VHF station.

For example, I am informed that WHIZ-TV, Zanesville, Ohio, a UHF station on channel 18, is operating at a small profit, and that WIRK-TV, West Palm Beach, Fla., a UHF station on channel 21, is just about breaking even. WHIZ-TV has no VHF station in its market, but WIRK-TV competes with two local VHF stations.

Incidentally, I understand that in Zanesville, they get service from Columbus, Ohio, from the VHF station. So they do have some competition.

WIRK–TV may have the formula for the UHF-holding operation, since it is able to continue on the air by operating only a few hours a day with a very small staff of 5 or 6 persons.

The CHAIRMAN. What kind of programs do they have? What type?

Mr. STORER. They have films. They have a rather restricted schedule, it is true.

The CHAIRMAN. Apparently they have been able to sell it.

Mr. STORER. They have been able to sell it locally. By keeping their expenses at a very modest figure, they are still in business. It has been quite a surprise to us, frankly, watching it, because there are two VHF's there. One of them on NBC lying to the north of West Palm Beach, and one right in Palm Beach.

The CHAIRMAN. Do they do any local programing at all?

Mr. STORER. Yes; they all program locally.

The CHAIRMAN. Live?

Mr. STORER. Live and film, both. Stations like the WHIZ–TV's and the WIRK–TV's undoubtedly will gain substantial encouragement from the adoption of a deintermixture proposal which demonstrates that the Commission has not sold UHF "down the river." Further, they will be operating as part of a going industry, and will benefit from the promotion and sales activities, and the success stories, of their bigger brothers in the deintermixed markets.

On the other hand, if nothing is done for UHF, these stations would be foolhardy to try to buck the tide of advertiser resistance on a nationwide basis.

Release of certain VHF channels, as the result of deintermixture, also makes their use possible in present 1–VHF and 2–VHF markets, not now served by UHF stations. Thus, under the Storer plan, 9 new 3–VHF markets will be created to provide competitive facilities for the 3 national television networks, and St. Louis will become a 4–VHF market, as set forth in exhibit A attached to our reply comments.

As a result of the deintermixture plan we have proposed to the Commission, in the first 100 television markets—as defined by CBS—3 or more competitive stations will be established in 80 markets. Two VHF stations will remain in only 20 markets, and in 9 of these CBS' own plan does not propose to add additional stations.

We do not propose our plan as a panacea. It evolved from a comprehensive study of the entire country to determine whether UHF stations had a realistic chance of success, provided no more VHF stations went on the air in their markets. We realize that criticism can be leveled at the plan, and it may well be possible to make changes in it that will improve it; but we felt a definite obligation, arising out of 28 years of broadcasting and telecasting, to make a contribution designed to maintain, insofar as possible the UHF service.

After a very thorough consideration of the problem, based on our actual experience in VHF and UHF broadcasting, we feel that it would be contrary to the public interest to abandon UHF at a time

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when, as outlined in our reply comments, the major technical problems of UHF are on the verge of solution, and while there still remain on the air sufficient UHF stations to provide a strong base for the development of the service.

We do not view the UHF markets as "islands"; we think they would be UHF strongholds, where UHF could be demonstrated to be a good television service which the adertiser could not afford to ignore.

In our opinion, Miami would be a particularly strong center for demonstrating the potentialities of UHF stations. The terrain characteristics, and the fact that Miami is rapidly developing as a network origination center, would provide the greatest opportunity for proving out UHF, and for convincing the doubters. Incidentally, I realize this is somewhat self-serving, but nonetheless we haven't found anywhere in the United States a better location for a UHF station.

Finally, with respect to the UHF service, we urge that action be taken at once. Whether the UHF service is going to be saved or abandoned, in all fairness to present UHF licensees and pioneers, let them be advised promptly of the final decision, whatever it may be.

Certain members of your good committee have pointed out, if additional VHF stations are permitted to go on the air in many of today's UHF markets, even fewer UHF stations will remain to be saved for the future.

Although we filed our deintermixture proposal with the Commission on February 7 in good faith, in all candor I must say that the recent decision of the court of appeals issued February 14, denying stays of the Madison, Evansville, and Corpus Christi VHF grants makes deintermixture practically moot. Once VHF stations are built in these cities, and in Fresno, Peoria, and Miami, I have grave doubts whether deintermixture could be implemented as a practical matter. It is a serious matter for any Government agency to attempt to delete existing stations and withdraw existing service from the public.

With respect to the operation of UHF stations by the major national networks, Storer Broadcasting Co. believes that networks that take advantage of the liberalization of the five-station limit on television station ownership to obtain UHF stations for themselves have a definite obligation to continue affiliations with UHF stations where it can be shown that no substantial loss of network coverage results from such continued affiliation. We especially want to commend the National Broadcasting Co. for having pursued such a policy of continued affiliation with our Portland UHF station, for without their support it is doubtful that the station could afford to continue on the air.

The CHAIRMAN. Right there, when the new VHF comes on the air, I suppose that there will be a question of policy involved with any network as to what network goes on that station. Isn't that correct?

Mr. STORER. Yes. sir.

The CHAIRMAN. Because unless you get the so-called satellite, the new VHF might be a better service. I don't know.

Mr. STORER. Yes, sir.

The CHAIRMAN. Technically, I mean, engineeringwise.

Mr. STORER. But I must say, Mr. Chairman, in all fairness——

The CHAIRMAN. I mean, here comes the problem, again—that is what I am trying to say. You have got to face up to it again.

Mr. STORER. Yes. But NBC, as recently as within the last 2 weeks, has indicated to us that they will continue with us and assist in developing, if the Commission grants permission for us to try this experiment, a development of the UHF service in Portland.

The CHAIRMAN. Naturally then you would have a better service to offer to any network if you did get the satellite; more nearly competitive, let me say that.

Mr. STORER. A better service than we have now.

Changing to another subject, which is of particular interest to the management personnel of our company, why, by reason of geography—living down in Miami as we do—have to fly continuously in airplanes, we are not sympathetic toward the idea of towers higher than 1,000 feet. We feel that the public safety is more important than the 5 extra miles of coverage for a television station which is gained by going from 1,000 feet to 1,250 feet. In some cases I might say that higher towers offer a very serious hazard. We don't think they are of that importance.

May I express my thanks and appreciation for your consideration in hearing the views of our company. If there are any questions, I would be delighted to answer them.

The CHAIRMAN. I think the counsel has 2 or 3 questions he wants to ask. I want to thank you for the statement. I think it has contributed a great deal to the problem we have in front of us.

I wanted to ask this because you have had a lot of experience in these matters. I might say since last week's hearing, I have inquired of people who have had experience, but it did strike the committee that in all of these cases again, we are getting down to the problem of the set. That is one of the things that causes a great deal of this problem.

It is good to note that in the Miami area, which is a little different and a little easier to handle, which you will admit, than in other areas, you have been able to work this set problem out. But we are coming now to color, and I suppose you would agree with me—or your engineer would, that color sets will gradually drop in cost as they get the know-how, and what is in the tube that Allen testified about—General Electric's development.

What would be your suggestion, as to what we could do, or the Commission or all of us and the manufacturers, now that we are phasing into a new set situation in which I suppose in a few—not too many—months, maybe 2 or 3 years, people will be buying color sets. Networks, I suppose, will be putting on more and more color programs as the sets multiply, and the cost goes down.

Most color sets now, I understand, are all channel.

Mr. STORER. Yes, sir.

The CHAIRMAN. But they could be made color and just VHF, too.

Mr. STORER. Yes, sir.

The CHAIRMAN. And make them maybe a little bit cheaper.

Mr. STORER. A little bit cheaper, probably.

The CHAIRMAN. What would be your suggestion—if you haven't one now I wish you would think about it—how we can now get this thing when it is just budding. There are not too many color sets now, but if we could start this off now whereby the color sets would be all channel, wouldn't it in your opinion help go a long way toward the solution of the thing you are talking about?

Mr. STORER. Yes, sir.

The CHAIRMAN. In other words, we have a chance now to grab it?

Mr. STORER. I suppose that this might be a little arbitrary, but the Federal Communications Commission does set the standards for receivers and/or transmitting apparatus. It might be possible to insist that the color receivers generally be all-channel.

I don't know legally whether that can be done, but if it could be done, that would probably do more to insure the future of UHF than anything.

The CHAIRMAN. The FCC has not said so flatly, but in effect they felt that their authority to deal with this problem as far as the manufacture of sets was concerned, was somewhat vague or nebulous.

If that is true, of course, the place to come is here, to get the authority. Whether or not they would ask for the authority, I don't know. What I am trying to find out from you, from your long experience, is whether or not if this could be done—whether it be done voluntarily or by FCC ruling—wouldn't it go a long way insofar as the future is concerned, and the expansion of television service, to solve our problem?

Mr. STORER. Yes, it would, sir.

The CHAIRMAN. Now, Mr. Storer, we have another little problem, of course, of the tax involved. I am having that explored. Maybe we might find that color sets could be excluded from the excise tax without taking anything much away from the Treasury.

I am sure Mr. Humphrey won't like this, but I think if someone explains to those who are administering these taxes that it would be worthwhile to forego this small amount that may come in to solve a real economic problem that is existing in this big, new, growing industry in this country—would you agree with me on that?

Mr. STORER. I agree with you very much, Mr. Chairman. I doubt seriously whether that idea could be sold, but if it could, it would be a terrific boost.

The CHAIRMAN. Let's take the Treasury. If they really understood what this would do to this real problem—that actually the amount of taxes that may come in on color sets now is small—by helping to get this industry stable and on a basis where it knows where it is going, it might be that in the long run revenues would be added which would amount to more than the excise tax—would amount to a great deal more.

Mr. STORER. Just from the standpoint of income taxes——

The CHAIRMAN. Wages—everything that goes with it. It would seem to me that to let this industry grow like it should and give us really a competitive system in this country, that the Treasury might find itself, after a period of time, with more money than if it insists on an excise tax on the set.

Mr. STORER. I think it would be a very worthwhile objective, and if it could be accomplished it would be fine.

The CHAIRMAN. May I ask you this question: Do you agree with me on this, that if we are going to do something like this, now is the time to do it?

Mr. STORER. Yes, sir. I think everything that has to be done to save UHF has to be done yesterday.

The CHAIRMAN. Yes; that is right.

Mr. STORER. It is pretty far gone, in my book.

The CHAIRMAN. That is what we are hopeful that we can be helpful in trying to work out.

Let me ask another thing about the economics here. I was interested in the part of your statement where you said that the trade-ins in the Miami area, a lot of them were being sold to other countries just developing television.

Mr. STORER. Yes, sir.

The CHAIRMAN. That offers a possibility, too, for the investment the American people have in old sets.

Mr. STORER. Every week there are large numbers of television receivers that are shipped out of Miami to Cuba and other places. Those offer the people in those countries a lower-priced set at considerably reduced prices, and I think it is very constructive.

The CHAIRMAN. Do you have any questions? I think the counsel has some questions he wants to ask.

Mr. COX. Just a few.

Mr. Storer, is it your conclusion, then, that in your operation in Miami at the present tower height that an increase in your power above 185 kilowatts would not materially improve the service there—your coverage?

Mr. STORER. It would help; yes. But we felt that we should build a high tower first and then find out whether that helped the situation to the extent that we had to add additional power. We were quite surprised to see that the additional power, while desirable, is not nearly so important as the additional height of the tower.

Mr. COX. As I understood it, you said you felt that with this power and antenna height you now have achieved substantial equality with the VHF station in Miami?

Mr. STORER. Yes, sir.

Mr. COX. Consequently, then, with 90 percent conversion in the area, you offer an advertiser in Miami 90 percent of the coverage he could get with your VHF competitor?

Mr. STORER. Approximately. I said 85.

Senator POTTER. How far out can you get with your grade A signal?

Mr. STORER. That depends, Senator, on what you determine is a grade A signal. In that area, due to the flat terrain, it is almost all grade A until you get out to the point where the signal falls off substantially—which begins, incidentally, at about 65 to 70 miles. We had a firm of engineers, the Craven, Lohnes & Culver firm here in town, make a survey. I think this illustrates the grade A coverage.

I want to make myself clear. The additional power is desirable, and out at the fringe, for instance way down in the Keys, 60 miles down the Keys, you do get a better picture with higher power. It so happens that WITV on channel 17 has a radiated power of something on the order of half a million watts, I believe. At that point we notice that their signal has a little less snow than our signal, but we go out farther. Actually, you can get our signal on down the Keys—the case in point—where you can't get theirs.

So it would be desirable—and we planned if we could make an economic success of this station—to increase our power at Miami. But we first wanted to get a determination as to which was more important—the tower height or the power.

Mr. COX. The point I am trying to get at is: If you have substantially the same coverage as the V and you have, of course, coverage in the center of the metropolitan area around Miami, isn't it true that you offer to the national advertiser just about as satisfactory an outlet for his advertising as your competitor does?

Mr. STORER. Yes, sir.

Mr. COX. In your opinion.

Mr. STORER. Yes, sir; insofar as we have 85 to 90 percent conversion.

Mr. COX. Isn't it true that your card rate for class A time is only about half that which is charged by the V?

Mr. STORER. About 60 percent.

Mr. COX. Therefore, in terms of cost per thousand, your cost is competitive?

Mr. STORER. Yes, sir.

Mr. COX. Then is the advertiser resistance that you talk about a feeling that they have toward UHF generally, regardless of the particular situation in the market?

Mr. STORER. Yes; and they have it rightly. There is no gainsaying the fact that in the past we have had in UHF a receiver problem which in recent months has been greatly improved. In my own house—and my associates have all had this experience—we do have more service on UHF sets, until recently. Lately, the service from the UHF sets seems to be quite stable and satisfactory.

So in the earlier days of UHF, the converters were not as good as the later day converters, and all-channel sets weren't nearly as good. I understand that this new GE tube improves it to the point in the front end of the set, as they say, so that the UHF receiver is as good in every respect. How soon that will get into public usage, I don't know. I understand that they are shipping a lot of those tubes on an experimental basis for military production now.

But all we say is that there should be a holding operation somewhere here for UHF. Frankly, we haven't done very well with UHF. We are not too proud of our results. Economically, in Miami we broke in the black in November-December. Due to the Christmas checks, bonuses, and so on, we are in the red. I have not seen the January figure yet.

In Portland, we have economically done quite well. However, we have had an awful lot of expense to improve that facility, and if you took the amounts that we have poured back into UHF in Portland, we are still way behind the eight ball economically.

The CHAIRMAN. What would you do without a network?

Mr. STORER. We have a certain amount of pride in continuing, but I am afraid that with 4,000 stockholders at our backs, we would probably have to fold up. I do not think we have any choice. That is why we are so appreciative of NBC, as the case in point, in sticking with us.

The CHAIRMAN. But they don't have to stick with you?

Mr. STORER. No; they don't. In Miami, with the channel 7 grant there—and I want to say in passing in all fairness, that when we went into the Miami picture, we were told by NBC that when a VHF was granted down there and with the connection that Niles Trammel, formerly president of NBC had, that we would lose our affiliation. They have been completely square with us, and if we lose the affiliation in Miami, we will probably try to rock along for a while on a reduced basis.

But whether we can keep it going in my book, on the standards which we have set for our company generally, programwise, I doubt it.

The CHAIRMAN. But you would have a better chance of surviving in Miami as of now than any other place, because of the sets that you have?

Mr. STORER. Yes, sir.

Mr. COX. If, however, two V's come in, not only channel 7 but channel 10 that is still in hearing, isn't that going to substantially wipe out the investment which the people in that area have made in conversions or purchase of all-channel sets?

Mr. STORER. No doubt about it, sir.

Mr. COX. I assume that would be a very substantial figure, with the 120,000 sets converted?

Mr. STORER. Call it 250,000 times a minimum of $50.

Mr. COX. That would be the minimum conversion cost?

Mr. STORER. Yes. That would be roughly $12½ million.

Mr. COX. I gather that it is your opinion, based on a reading of your proposals to the Federal Communications Commission, that the chances of survival of the UHF station in a market with two V competitors is very slim unless that station is owned and operated by one of the networks; is that correct?

Mr. STORER. Yes.

Mr. COX. But you feel that one or more well-managed U's can compete successfully is there is only one V in the area?

Mr. STORER. Yes, I do, sir.

Mr. COX. Because primarily that permits still the possibility of network programing for the U's in the area in order to get conversion and maintain it?

Mr. STORER. Yes. I would say that it will take some time for the national advertiser to arrive at a point where he is completely sold on the U versus the V, even with just the one VHF. But we find that every month we have repeat orders. They come along on the basis of a very short-term contract, shall we say, just a week-to-week kind of existence. But we got a lot of repeat orders from good advertisers today that we didn't get last year at all.

Mr. COX. I think in your statement you indicate that about 56 percent of the present UHF sets in service are in the markets which would be covered by this holding operation you are proposing.

Mr. STORER. Yes; that is right.

Mr. COX. You are of the opinion that is a sufficiently broad economic basis to encourage the manufacturers to continue to produce effective equipment?

Mr. STORER. I would prefer to say I hope so. I do not really know. I don't think anyone does. But certainly at some point, if we are going to save UHF—we can talk about it a lot and have a lot of wishful thinking—but at some point we have got to find a way of at least demonstrating that UHF is a good service. That is the thing that bothers us the most.

Senator POTTER. I am sorry I wasn't here for your statement, Mr. Storer. I had an Appropriations Committee hearing this morning and I had to take that in too—but are you saying that in order to save UHF, the Commission will have to agree to an order to deintermix?

Mr. STORER. I think so. This little operation which I describe, Senator, in this statement, down in Palm Beach, where they have between 5 and 6 people, I believe, on the payroll and a very modest program schedule, may refute the idea that you have got to do something along the lines we suggest.

But I do not believe so. I think unless they get some advertising support from other than just their local operation—and I might say in Miami that the competition for local business from the VFH has been surprisingly active. We have found that they point out some of our deficiencies as good salesmen, continuously. It just isn't easy to sell the advertisers.

The only way we have been able to effectively sell the advertiser is to maintain very good programing in certain segments of the early evening hours where we don't get the network shows. By putting in film programing—which increases the cost of a UHF operation over a VHF operation——

Senator POTTER. It has been suggested that in case the Commission should decide to deintermix certain areas, that the areas that should be deintermixed should be your large metropolitan areas, to allocate your large cities such as New York, Los Angeles, Chicago, Philadelphia, and so forth, as the UHF areas. Then your VHF is more conducive to your smaller communities and your sparsely settled areas.

Mr. STORER. Yes, sir.

Senator POTTER. Would you care to comment on a suggestion of that kind?

Mr. STORER. I would especially like to comment on that one because we have a sales office in New York. It is sort of like the old country store idea. We found it was so hard to get hotel reservations that we rented this very small building. It is only 20 feet wide, but it is 5 stories high. It is situated on 57th Street behind a lot of other buildings.

Naturally we wanted to be able to show television and see television in our own office, in our own house, so to speak. So we put up an antenna on top of the roof. Even with the low-band channels—channels 2, 4, and 5—we had tremendous reflection problems. But on channels 7 to 13 we had difficulty getting the stations, even from the Empire State Building.

So we had to move three roof tops over. Fortunately we had a friend three doors away in the picture-framing business. He was kind enough to let us put an antenna up there. It wasn't until we got that antenna up there that we were able to get all the stations. We feel in any large city UHF is an awful headache, and that many, many people would be deprived—for instance in New York—of service if you made them into UHF centers.

Senator POTTER. In other words, because of the high buildings and so forth, UHF frequency is not conducive to that area?

Mr. STORER. Yes, sir. As a matter of fact, any time you get into a deep shadow, you must remember that up here at the top of a building, if you have a low-band VHF signal coming in, you get down in the shadow behind that building, you have got a loss of say 10 to 1. If you get up into the upper band, the 7 to 13 group, it doubles and even more. In other words, it might be a ratio of 20 to 1 fall-off.

But when you get a UHF that comes in down in this area behind that building, you have a 100 to 1 drop-off. In other words, at this point if you have 10 millivolts up here, and you get down in behind that building, you have a one-tenth millivolt with the UHF as opposed to a 1 millivolt signal, which is a good signal on low-band VHF.

So we feel very definitely that in the larger areas, with buildings and apartments—multiple dwellings—that that is a terrible problem.

Mr. Cox. Isn't it true that your plan, in addition to a holding operation for UHF, also adds first V channels in 10 of the top markets? Would you tell the committee why it is important to guarantee the availability of multiple outlets in these top markets?

Mr. Storer. The old saying is that 2 is company and 3 is a crowd. If you get three strong networks, you have for the American public better programing.

As has been said before your good committee before, one of the difficulties that ABC has found is in getting into a lot of these markets. If you can create some more 3-VHF markets, you have helped very materially increase the availability of better programing by helping the third network.

The Chairman. For ABC, for instance?

Mr. Storer. Yes, sir.

The Chairman. Mr. Storer, I still get back to this. I appreciate what you have said, but we are still talking about stations with networks, aren't we?

Mr. Storer. So often we are, yes, sir.

The Chairman. Is it possible, in your opinion, if the set situation was taken care of as it is now in Miami, practically, for a UHF to exist as a local station—or are we going to look to the future and have no local stations at all in television—whether they are VHF or UHF?

Mr. Storer. No, currently, Senator, I believe there is a market improvement in the large, independent television station operation.

Back in the early days of radio, I remember when a 100-watt station in a small town was something that nobody wanted, economically. As time went on, the independents in the large centers began to do pretty well. And while we have a totally different set of circumstances in television with the high cost of programing, yet there are some evidences that that is going to be solved because sooner or later these large film packages, so to speak, owned by these older film producing companies, will be released for sale, and they will be shown on the independent stations and after they have run them 2 or 3 times, those are going to be offered to the smaller stations and to smaller stations in smaller towns, and you are going to have some program sources.

The whole difficulty today in operating either an independent V or an independent U is the battle between the high cost of programing and the station's income.

The Chairman. I appreciate, of course, that the problem would always exist if the set problem is not solved. But if that is solved, what I am trying to say to myself: There must be some economic hope in the future. I appreciate the networks are going to do their programing, and that is one part of the procedure.

Mr. Storer. Yes, sir.

The Chairman. That involves the place of the national advertiser, of course, which is what makes the networks survive.

Mr. STORER. Yes, sir.

The CHAIRMAN. But I would feel quite dismal about this whole situation if I thought that with the technological advancements, the cost of building a station probably going down, that there was no room for a station in a given market to act independently without a network, because I am thinking of the local advertisers. If this would keep up this way, pretty soon you couldn't advertise anything but a national product.

Mr. STORER. There is room for development.

The CHAIRMAN. I am a little bit worried—more worried than ever, too—because there have been more mergers in the past 18 months in this country than any prior 18 years. The big ones are getting bigger, and there have been more bankruptcies in the past 18 months than in the prior 10 years, and 98 percent of them are little businesses.

Mr. STORER. Yes, sir.

The CHAIRMAN. I do not say there isn't a place for the network scheme of things. I mean that is going to be a great part of it. But it seems to me that we ought to be looking at this other problem, too—maybe the survival of UHF might help achieve this.

Mr. STORER. Yes, that is right, sir.

The CHAIRMAN. To maybe an independent UHF station in a given community. In my own town of Seattle, for instance, where the local fellow could come and advertise, even a few of us local politicians might get on.

But the way it is now, it is almost impossible.

Mr. STORER. It certainly is indicated by the improvement in the larger stations.

The CHAIRMAN. I might make a better mousetrap, but I would have no chance to tell anybody about it. I hoped we were going, in this expansion, to come to at least competitive independent stations in given communities. I see maybe a place for UHF in that, if the set situation is cleared up.

Mr. STORER. Senator, in the large areas such as New York, years ago the independent VHF's were having a serious problem. I believe that they are beginning to see much better figures from an earnings standpoint, and their circle of influence in the communities around New York, as well as in New York, has improved greatly.

As a matter of fact, I think that some of the networks—and not for 1 minute do I disparage the tremendous courage which the networks have shown in developing this whole——

The CHAIRMAN. Any station that would have to compete with a network program would have to have a good program.

Mr. STORER. That is right.

The CHAIRMAN. I hate to just sound the death knell to locals—what I call local programing and local stations. Just take baseball. What is happening? The network puts on the Yankees playing the Washington Senators on a given afternoon. The minor leagues are dead, aren't they?

Mr. STORER. Very dead, yes, sir.

The CHAIRMAN. That is a good example of it. I just deplore seeing that happen, and the local advertiser has no chance to get on these stations. The cost is too great and he has got to have some outlet because this is going to be, in my opinion, the greatest medium of expression of all time.

Mr. STORER. I think there is still some hope if you can keep a holding operation of this character.

The CHAIRMAN. I was going to say maybe this is where UHF fits into the picture. What do the Commissioners say—maybe pay-as-you-go might be put on the UHF band. Who said that—Lee, didn't he?

Senator POTTER. Isn't it true, Mr. Storer, they have reached more or less a breakthrough on this so-called picture tape?

Mr. STORER. Yes, sir.

Senator POTTER. If that is developed, that will allow any independent station on earth to have fairly cheap programing, which should be good programing.

Mr. STORER. Yes, I think that is true. As a matter of fact, I was very interested in reading a comment by General Sarnoff the other day that he felt the live programing on the networks was very important and the immediacy of a program was very appealing to the public.

The CHAIRMAN. And they do a good job. But it costs a great deal of money.

Mr. STORER. But the interesting part to me was—and is—that he commented that if everybody went to film, it would be lost—that immediacy, that live programing would be lost, which shows that in the general's mind, and certainly I don't believe there is anybody that knows more about this business or has thought more about it and pioneered more than he, there is a growing acceptance of film.

So there may be a place for the small independent element.

The CHAIRMAN. And they are making shorter films—half-hour films—and not the long features.

Let me ask you this: If you could build a UHF station—the cost could be gotten down to $200,000 capital investment—and get a channel in a given market area, couldn't you then, if the set situation was materially changed, couldn't that station with local programing be economically sound with that small investment?

Mr. STORER. I doubt it, sir. If you have a VHF market and you are invading that VHF market, and hope to convert all those receivers.

The CHAIRMAN. I am speaking a little bit about the future, where we hope that a set can take either band—maybe in this color thing. Couldn't he, with local programing, survive?

Mr. STORER. He might well. But it is in the future. In the meantime we have to have something to hold the band.

The CHAIRMAN. In the meantime we have this other. I am speaking always in terms that we hope we get this set situation cleared up a little. Then he has got a chance, hasn't he, as a local programing unit?

Mr. STORER. Yes.

Senator POTTER. How did you get such a high percentage, Mr. Storer, of conversion in your Miami market?

The CHAIRMAN. He went out and went after it, and he had NBC.

Mr. STORER. First we got a lot of additional network programs and we spend a very considerable amount of money on good film programs in those spots where we could not get the network advertisers to take our station. We employed a very substantial number of engineers to go around to all the dealers and promote the development of UHF.

Senator POTTER. Was there reluctance on the part of the dealers?

Mr. STORER. At first. But after a while they were our best helpers. I can tell you in just 1 month we spent $23,000 just on project 23.

It just happened to come out at the same figure, so I remember it very well. That was just the promotional end of the operation.

The CHAIRMAN. The reason you could do that was because they wanted to see the programing on NBC?

Mr. STORER. That is true, sir, no doubt about it.

The CHAIRMAN. You wouldn't have been able to do it if you were just having local programing, unless you had something very unusual?

Mr. STORER. If we had a lot of very expensive film programs, we might have.

The CHAIRMAN. It would have been more difficult, let's put it that way.

Mr. STORER. It would have been more difficult, yes, sir.

The CHAIRMAN. We will take about a 5-minute recess here to give the reporter a rest.

(A short recess was taken.)

The CHAIRMAN. The committee will come to order.

Mr. Storer, I would like to ask you one further question and get your opinion on this. It relates, of course, to the survival of UHF. It would apply, maybe, only to this type of condition. But supposing there is a market with 2 U's and 1 V. Would it substantially help the survival of the 2 U's if that 1 V was limited to 1 network?

Mr. STORER. Yes, sir.

The CHAIRMAN. In other words, not the way it is now in some cases. They take all of them.

Mr. STORER. In the first place, their own network has first call. Then after that, the next network vies with the other to see how many kinescope periods they can get, and as a result, you lose 30 to 40 percent of your traffics.

The CHAIRMAN. That sort of a policy might help considerably; wouldn't it?

Mr. STORER. Very much, sir.

The CHAIRMAN. The V's would be all right anyway; wouldn't they?

Mr. STORER. Yes, they do very well.

The CHAIRMAN. Thank you, unless there are some further questions. Do you have any?

Senator POTTER. No.

The CHAIRMAN. Thank you, Mr. Storer.

The next witness is Harold Thoms, who represents the UHF industry Coordinating Committee. We will be glad to hear from you, Mr. Thoms.

STATEMENT OF HAROLD THOMS, UHF INDUSTRY COORDINATING COMMITTEE, ACCOMPANIED BY BENEDICT COTTONE, THE COMMITTEE'S COUNSEL

Mr. THOMS. Mr. Chairman and members of the committee; I am president of radio station WISE and WISE-TV, a UHF station in Asheville, N. C.

I have served as chairman of the UHF Industry Coordinating Committee since the time it was organized in March of 1954. This is my second appearance before several of the gentlemen of this committee with respect to the UHF problem. I first appeared before you in May of 1954 in the hearings held by the subcommittee of this committee under the chairmanship of Senator Potter.

At the outset, I would like to bring the record up to date. When I appeared before Senator Potter's subcommittee almost 2 years ago, I was questioned at that time concerning my holdings in UHF television. I then stated that my television interests were confined to the UHF and that I held interests in stations WISE-TV, Asheville, N. C., WAYS-TV, Charlotte, N. C., WTSK-TV, Knoxville, Tenn., and WCOG, which held a construction permit for a UHF station in Greensboro, N. C.

In order that I may bring the record up to date, I would like to report that my television interests are still confined to UHF. However, my holdings in UHF television have radically altered since I last appeared before you. In September 1954, I surrendered the construction permit for WCOG and returned it to the Commission. In December 1954, station WAYS-TV was sold for the price of $4—and in March 1955 the station ceased operation and went off the air. In July 1954, station WTSK-TV was sold for $1. My holdings in television are, therefore, limited at this time to UHF station WISE-TV in Asheville.

So much for my personal UHF history. I would also like at this time to bring the record up to date in other respects. When the UHF Industry Coordinating Committee appeared before your subcommittee almost 2 years ago, testimony was presented through a number of witnesses representing operating UHF television stations. Many of the stations represented by witnesses who appeared before your committee 2 years ago are no longer in operation. The list of stations which have been compelled to cease operation since that time is, of course, much longer. The record should show that at the time of the hearings before your subcommittee, 10 stations which had commenced operation had been compelled to cease their operations and go off the air. At that time, 54 permits for construction had been relinquished and turned back to the Commission. The record should further show that, as of this morning, a total of 56 stations have been compelled to cease operation and go off the air, and 109 permits for construction have been relinquished and turned back to the Commission.

When we came before your subcommittee almost 2 years ago, we then predicted that unless effective remedial action was promptly taken, we were faced with the grave danger that this Nation's television broadcast industry would be reduced to a small hard core of superpower, multiple-market VHF stations providing a limited number of local outlets and services. It was clear, at that time, that unless effective and remedial action were taken, the existing allocation table and the rules would limit the television industry to the hands of a few with a concentration of monopolistic control rather than a television broadcast industry with a large number of stations owned and operated by many, providing a multiplicity of outlets and services.

These grave dangers and the consequent disservice to the public interest were established by numerous witnesses, extended testimony, and exhibits. The problem and our recommendations were summarized in the testimony presented in behalf of the UHF-ICC. The position that was stated at that time, much to our own surprise, is our position today.

In the interest of brevity I will merely restate the summary of our position.

First, the paramount consideration of public interest which should be recognized by the Senate subcommittee and the Commission is that the American public has a vital stake in the preservation of existing television stations as a competitive force in the industry.

This consideration is based upon the basic governmental determination which is implicit and explicit in the nationwide television allocation report and plan that the existing VHF channels are inadequate to assure the attainment of a truly nationwide competitive television service. Pertinent to this general public-interest factor are the great financial and economic stakes of UHF broadcasters, UHF station personnel, and television dealers, distributors, servicemen, and manufacturers.

Second, bitter experience has now proved that intermixture of UHF and VHF channels in the same market was based upon a misguided, though sincere, faith in the ability of UHF stations to achieve competitive equality of opportunity with VHF stations in the same service areas.

Therefore, administrative proceedings should immediately be instituted to explore methods of reallocation or reassignment of channels in such a manner that such equality of competitive opportunity is more readily available. Such plan should, of course, seek to safeguard against serious dislocation of public and industry investments in television.

Third, so that the problem of survival of a competitive television system will not have been rendered academic by the extinction of all UHF broadcasters in intermixed areas, and in order to avoid complicating a solution to the intermixture problem, pending completion of such proceedings, there should be an immediate suspension of any further grants of applications for new television permits and for changes in existing television authorizations affecting coverage.

The CHAIRMAN. By that, you still mean in the areas where this intermixture problem exists?

Mr. THOMS. That is right—only.

The CHAIRMAN. I think the record will show that.

Mr. THOMS. It was our hope, then, and indeed there was every reason to believe, even though reallocation proceedings by the Commission might consume a considerable period of time, that the mere institution of such proceedings by the Commission, with a sincere purpose in carrying them through to a decision on the merits, would in and of itself be a shot-in-the-arm for UHF operators. For if this had been done, the whole climate and attitude in the industry with respect to UHF would long ago have improved. That was just short of 2 years ago. Today, although scarcely a soul has questioned the crying need for the prompt institution and resolution of such administrative proceedings, we are actually no farther along this path than we were when I sat before Senator Potter's subcommittee 2 years ago.

I say this notwithstanding the fact that the Commission purported to open up rulemaking proceedings recently when it threw out some 30 deintermixture petitions. And the reason I say this is because although a minimum of a 2-year study period has been available to the Commission, which has the principal responsibility and the expertise to solve this problem—that agency has yet to come forward with a proposal of its own. But as I will soon show, the record of the past 2 years is one of shameful neglect of the problem, of building up hopes and expectations that solutions would soon be forthcoming, only to have every single such hope dashed to the ground when the chips were down.

Your committee, which has been standing on the sidelines during these 2 years, also with the expectation that something definite would be forthcoming from the Commission, has been treated to the spectacle of a Government agency—which it likes to call one of its arms—repeatedly "marching up the hill and then marching right down again." We have heard solemn proclamations from Congress and from the Commission that the UHF problem simply must be solved, but beyond these hortatory gestures, something tangible has yet to be produced.

The inaction of the past 2 years cannot be excused on the ground of lack of definite recommendations. UHF operators en masse came before the Potter subcommittee 2 years ago and urged prompt consideration of the feasibility of a long-range transition of television into the UHF band, under a program which would protect against serious public and industry dislocations. This plan was branded as too radical, despite the fact that even the former majority counsel of this committee could find no better reason against the plan than the utterly far-fetched one that some members of the public would still be paying installments on their present VHF sets 5 years from now.

The CHAIRMAN. Who was that?

Mr. THOMS. The majority counsel for Senator Potter's committee.

Senator POTTER. That wasn't my committee—that was the full committee. As a matter of fact, I think if the recommendations of our subcommittee had been carried out, if the full committee had accepted them, we would have been further along our way to getting some solution to this problem.

Mr. THOMS. You are so right, Senator.

The CHAIRMAN. Mr. Plotkin and Mr. Jones were employed by the committee, by Senator Bricker and Senator Johnson, as special counsel on radio and television matters.

Mr. THOMS. Be that as it may, UHF operators bowed to the resistance to consideration of an all-UHF plan. When such highly respected persons as the president of CBS came before Senator Potter's subcommittee to urge consideration of selective deintermixture, we came back to you before public hearings had been completed and said to you:

> We believe, however, that in the final analysis, Dr. Stanton's presentation was most forthright in that he recognized that a grave problem exists which can only be met by serious consideration of reallocation measures. We certainly accept his premise that reallocation is the proper method by which to achieve nationwide competitive service. We have felt and feel that this premise must lead logically to a single spectrum system, because the availabilities in VHF are so limited that UHF alone can bring about the equal opportunity to compete for the maximum possible public service.

Senator PASTORE. Do you mean by that you would do away completely with VHF?

Mr. THOMS. No.

Senator PASTORE. That is what you said there.

Mr. THOMS. We gave up insisting that VHF be given up and all television moved to the UHF band. We relinquished that position.

Senator PASTORE. You have receded from that position?

Mr. THOMS. Yes, sir.

Senator PASTORE. You have therefore urged selective deintermixture?

Mr. THOMS. That is right. We went on to say:

> But we nevertheless endorse Dr. Stanton's recommendation of a study to determine whether any feasible deintermixture plan can accomplish the necessary goal of a truly nationwide competitive system provided that such study is speedily accomplished so that it may promptly be determined whether it will or will not be necessary to go to a single spectrum system in order to provide a truly nationwide system providing equal competitive opportunity to broadcasters.

As will be further shown, there have been other proposals and recommendations which were urged upon the Commission throughout this 2-year period with the same result—inaction.

When we completed our presentation to Senator Potter's subcommittee, we believed that there was a very good likelihood that effective action would be taken to avoid a grave threat to the public interest. And we were not alone in that view. For example, the trade press reported in May of 1954 that "so impressed were Senate Communications Subcommittee members by the pleas of UHF operators for urgent action to alleviate their plight that as of now they seem inclined to use strong measures—possibly drastic enough to cut across the whole fabric of the TV structure." We now know, of course, that the hopes and expectations that were engendered at that time were wishful thinking.

From time to time, UHF operators have been given reason to hope that remedial measures would soon be forthcoming. But the fact is that the whole succession of events amounts to nothing more than repeated disappointments and failures to act. A report of that history was prepared by the Ultrahigh Frequency Industry Coordinating Committee. I have attached it to my statement, and I ask that it be made a part of this record.

Senator PASTORE (presiding). At this point, without objection, it is so ordered.

(The document referred to is as follows:)

REPORT ON THE HISTORY OF THE ACTIVITIES OF THE UHF INDUSTRY COORDINATING COMMITTEE AND ON THE HISTORY OF THE STRUGGLE FOR MEASURES TO RELIEVE THE CRITICAL UHF PROBLEM

The UHF-ICC was organized in April of 1954 after a wave of UHF failures and the worsening situation with respect to UHF throughout the country had prompted the Communications Subcommittee of the Senate Interstate and Foreign Commerce Committee, under the then chairman, Senator Potter of Michigan, to schedule hearings on the status and development of UHF channels in the United States. Within a short space of less than a month, over 80 UHF stations and permittees enthusiastically indicated their desire and willingess to join in a committee dedicated to the purpose of making a full, factual presentation of the relevant data in the forthcoming hearings before the Senate subcommittee and of pressing for effective governmental remedial measures which would assure nationwide competitive television service.

The hearings before the Senate subcommittee were held in May and June of 1954 and the record of the proceedings covered more than 1,000 pages. The UHF-ICC, through testimony by a large number of UHF broadcasters from all sections of the country, and by its chairman, vice chairman, legal counsel, and economic consultant, presented extensive data with respect to the situation then existing in the operation of UHF stations.

The basic objective urged by the UHF-ICC was the modification of the existing geographic television assignment plan upon a basis which would eliminate the gross competitive disparities inherent in the two-spectrum assignments made under that plan; and provision of sufficient equal compatible assignments in the same markets to insure fair and equal competitive opportunity among television broadcasters and networks as well as a diversity of national and local program services. To accomplish that objective the UHF-ICC urged that the public interest could only be served by the assignment of all stations within one portion of the spectrum with a "single market concept" as the basis for the establishment of a revised allocation plan in the public interest. The availability of 70 channels in the UHF portion of the spectrum as compared with only 12 channels in the VHF portion of the spectrum clearly dictated the wisdom of establishing such a revised plan by use of the UHF band solely. In view of the number of outstanding VHF receivers in the hands of the public the UHF-ICC recognized the need for, and accordingly urged that a reasonable transition period be provided to coincide with the period of obsolescence of such VHF receivers in the hands of the public. Many individual UHF broadcasters separately urged similar reallocation proposals.

The members of the FCC, in their presentation to the Senate committee, recognized the gravity of the existing problem but did not present any remedial measures and defended intermixture of VHF and UHF stations. It was apparent, however, that the members of the Senate subcommittee had been greatly impressed by the presentation of UHF broadcasters, that they recognized the urgent need for remedial action, and that they were not satisfied with the Commission's willingness to rest with the status quo. Thus, for example, it was reported in Television Digest on May 22, 1954 that—

"Senators lean to drastic UHF remedies: So impressed were Senate communications subcommittee members by the pleas of UHF operators for urgent action to alleviate their economic plight, that as of now they seem inclined to use strong measures—possibly drastic enough to cut across the whole fabric of the TV structure."

* * * * * * *

"Network representatives and old-time station operators—the few who bothered to pay attention—were taken aback at the way things were going."

The Potter subcommittee hearings were recessed, however, during the NARTB convention in Chicago. This recess was most unfortunate since it appeared that the considerable momentum which had built up for immediate and effective relief was dissipated not only by the passage of time but by the lobbying of powerful interests during the intervening period and particularly at the NARTB convention. At the conclusion of the hearing, Chairman Potter stated:

"I can assure you that we are not going to make any half-cocked decisions, but we are going to act immediately * * *. Not only the members of this committee, but all Members of Congress are greatly concerned about this problem, if the communications that I have received from the various Members of Congress are any indication."

More than a month elapsed, however, and no action of any kind was taken. Chairman Thoms and Vice Chairman Weber spent a week in Washington visiting with the Members of Congress in an attempt to determine what action was proposed to be taken. The results of their investigation were most disheartening. Chairman Thoms issued a report to the members of the UHF-ICC stating that in his view "* * * no sound relief is forthcoming now or in the foreseeable future."

The remainder of the year vindicated that view. Conduct of the investigation was removed from the jurisdiction of the Potter subcommittee as a result of differences between Senator Potter and Senator Bricker who was then chairman of the Committee on Interstate and Foreign Commerce, and taken over by the latter committee. Except for the selection of majority and minority counsel, however, for the alleged purpose of intensifying the study of the UHF problem, there were no visible signs of any activity from congressional quarters looking toward any definite action. Activity at the Commission level was similarly inconclusive. In two actions which the Commission professed to be taking in order to help UHF, it (1) issued a public notice stating that it would consider UHF satellite operation on a case-to-case basis; and (2) revised its multiple ownership rules to permit the ownership of a total of 7 television stations provide that 2 were UHF. The latter measure had been severely criticized by the UHF–ICC as one which would not ameliorate the UHF problem but on the contrary would promote further monopolistic concentration by networks and other already favored multiple VHF operators, in testimony by its counsel before the Potter subcommittee. In a letter to the FCC on August 16, 1954, the UHF–ICC, by its chairman and vice chairman, pointed out that the Commission's satellite proposal, to the extent that it would permit high-powered wide coverage VHF stations to operate satellites, "must prove disastrously injurious to independent station UHF operation," and further aggravate competitive disparity between VHF and UHF stations. It was urged that the FCC postpone the effectiveness of its announced satellite policy and institute proceedings on a rule which would limit satellite operation in a manner which would preclude further VHF encroachment in distant markets served by UHF stations. The Commission, however, rejected these comments and permitted its policy to become effective without limitation.[1]

[1] In a letter dated November 8, 1954, from the Commission's Secretary, the UHF–ICC was advised that the Commission desired to leave the satellite policy "flexible." It does not appear from this letter that the UHF–ICC's comments were formally considered by the Commission en banc.

On September 15, 1954, the Commission issued a notice of proposed rule-making looking toward the authorization of private microwave intercity relay stations by television broadcasters in apparent recognition of mounting clamor by UHF stations for relief from the crushing burden of exorbitant cable costs required to be paid the telephone company. The proposal was strongly opposed by the telephone company and by no one else. It was however supported vigorously by the UHF–ICC and by a great number of other parties. The UHF–ICC pointed out that (1) many stations and particularly small stations located in communities distantly removed from large urban centers are faced with the insurmountable barrier of exorbitant rates charged by the common carriers for interconnection; (2) that the public interest is seriously affected adversely by the inability of stations to obtain facilities for interconnection on a reasonable basis; (3) that it is vitally important for the successful operation of all stations (including noncommercial educational stations) that they be able to broadcast simultaneously the programs originated by any one of the stations; and (4) that it is important that stations serving a homogeneous area with common interests and needs, be enabled to link together for the broadcast of programs and particularly in times of national emergency. Although hope was aroused by the Commission's announcement of this rule change that some measure of relief would thereby be provided to heavily burdened UHF and small market VHF stations, it still remains unacted on, 16 months after the Commission proposed its adoption.

During the Potter hearings many parties urged that selective deintermixture should be undertaken. In rebuttal testimony the UHF–ICC endorsed selective deintermixture provided that prompt consideration of selective deintermixture be undertaken. Thus it was stated that the UHF–ICC favored "a study to determine whether any feasible deintermixture plan can accomplish the necessary goal of a truly nationwide competitive system provided that such study is speedily accomplished so that it may promptly be determined whether it will or will not be necessary to go to a single-spectrum system in order to provide a truly nationwide system providing equal competitive opportunity to broadcasters."

When it became apparent that no early remedial action could be expected upon the initiative of the Senate committee or the FCC, UHF operators were urged by the working group of the UHF–ICC to file individual proposals with the FCC for deintermixture or other change of the channel assignments in their own markets which would ameliorate the situation on a market-by-market basis. A number of proposals for selective deintermixture of particular markets were filed in the latter part of 1954. The Commission, however, denied these proposals giving as the reason its belief that it would be unfair to applicants for the VHF channels which would be deleted by the deintermixture proposals who had expended large sums of money to prosecute their applicants.

As a result of the change of party control in the 84th Congress Senator Bricker was replaced by Senator Magnuson as chairman of the Senate Interstate and Foreign Commerce Committee. Hopes of UHF operators were again aroused by public statements indicating that the committee expected to push for early remedial action with respect to the critical UHF situation. In February 1955 the reports of counsel to the Senate Committee on Interstate and Foreign Commerce on television network regulations and the UHF problem were released. The recommendations of the report of the majority counsel with respect to the UHF problem were timid and ambivalent. Although it was recognized that an all-UHF allocation was sound logic and was the only solution which could reasonably be expected to achieve nationwide competitive television service, it was concluded that such an allocation should not be attempted. The majority counsel report, while on the one hand urging that the Commission reconsider its denial of deintermixture, argued that broad-coverage VHF stations were the only means by which service to rural areas could be provided, and that it would not be fair to require the public to convert to UHF regardless of how long a period of transition was provided. The additional recommendations of the majority counsel to alleviate the UHF problem were that tax exemption should be provided for all-channel receivers, as proposed in pending legislation, and that certain regulatory restrictions be imposed on network operations and on the multiple ownership of stations. The minority report made extensive factual findings showing the seriousness of the UHF problem and recommended that additional investigation be conducted for the purpose of arriving at substantive recommendations. The reports of counsel were transmitted by the chairman of the committee to the Commission and the Department of Justice for comment.

In confirmation hearings before the Senate Committee on Interstate and Foreign Commerce on February 23, 1955, Chairman McConnaughey testified that "I think that very likely it would be wise, and thinking for myself now, not speaking for the Commission in these matters, I think that the Commission should consider rulemaking on a selective basis possibly in deintermixture."

On March 3, 1955, the expectation of early remedial measures regarding the UHF problem was again encouraged when the Commission granted the request of UHF station WKNX-TV, Saginaw, Mich., for proposed rule making, looking toward the amendment of its rules to limit the location of antennas to within 5 miles of the principal city to be served, unless strong public interest reasons to the contrary were shown by the applicant. In its notice the Commission recognized that the implementation of a fair, efficient, and equitable allocation plan required that a specific distance limitation should be observed unless such reasons were clearly shown. As will be pointed out below, however, the Commission discarded this proposal at about the same time that it decided to turn down selective deintermixture proposals.

On March 18, 1955, the Commission in its comments to the Senate in response to the staff reports on the network and UHF studies, urged no specific remedial measures, but stated that Congress could encourage production of all-channel sets by removal of excise tax and/or getting manufacturers to agree to produce such sets voluntarily and urged that Congress grant FCC extra funds to conduct a full study of networks, advertisers, agencies, talent, individual film producers, and distributors.

The Commission further stated that moving all stations to UHF "could involve such tremendous dislocation of existing operations" that such action should be taken only if Congress itself so determines. With respect to selective deintermixture the Commission stated that it was unable to advance any "definitive answer," but that it was "* * * considering the circumstances, if any, under which such limited deintermixture may be appropriate * * *." The Commission listed as the steps it had already taken to solve the existing problems (1) the relaxation of its multiple-ownership rules; (2) the announcement of the "satellite" policy; (3) the proposed 5-mile rule; (4) the proposed rule to authorize private microwaves.

Senator Magnuson stated his reaction to the Commission report as follows: "Failure to advocate immediate remedial action * * * could soak the householder millions of dollars. We can solve this thing without this expenditure, which I am sure everyone, FCC included, does not want to happen." He further stated that he had hoped that "FCC will move before it is too late to deintermix anything."

Shortly thereafter, the UHF-ICC announced the following 10-point formula in response to the statement of Senator Magnuson that the Senate Interstate and Foreign Commerce Committee would resume its investigation and study of the UHF problem: "(1) Deintermixture; (2) directional antennas; (3) power and antenna height adjustments; (4) mileage separation reductions; (5) confinement of TV stations to their own market; (6) common carrier cable cost reductions; (7) opportunity for competitive common carrier service in the field of transmission of network programs to TV stations; (8) opportunity for TV broadcasters to operate microwave relays for transmission of network and other programs; (9) receiving set performance standardization and elimination of cost differentials for all-band sets; (10) grant of funds for FCC for extensive investigation into entire field of network programing."

In the early part of 1955 the Commission instituted rulemaking proceedings on the controversial question of subscription television. The Commission took no position on the numerous difficult matters involved but rather was limited to the listing of questions of fact, law, and public policy on which comments were requested. Arrayed on one side of the controversy are the proponents of individual subscription systems, Zenith, International Telemeter, and Skiatron. On the other side are the opponents of subscription TV in any form, networks, movie interests and entrenched VHF stations. While the controversy was raging, the NARTB directorship took a position opposing subscription TV and the management of that association issued public statements against introduction of subscription TV even on a trial basis.

On April 28, 1955, the UHF-ICC, addressing itself to the NARTB's position, issued a statement pointing out that subscription television may develop in a manner that will provide beneficial results to the public and the industry and condemning the NARTB prejudgment of the issue before proper study of the matter had been conducted. It was urged that the Commission should give subscription TV a full hearing and investigation.

The foregoing developments in the early part of 1955 gave rise to renewed hope among UHF broadcasters that the FCC was now likely to be more favorably disposed toward effective remedial measures. Therefore, despite the previous turndown of deintermixture a series of deintermixture proposals were refiled, and additional deintermixture proposals were filed, in the early spring and summer of 1955. These hopes were fanned into optimistic expectation on March 31, 1955, when the Commission reconsidered its previous denials of the requests for deintermixture of four cities and instituted rulemaking proceedings looking toward channel reassignments in those cities (Peoria, Evansville, Madison, and Hartford) so as to make those cities all UHF. The Commission in its orders, called for extensive data with respect to enumerated matters which the Commission considered pertinent to its decision on the requested channel reassignments proceedings. Oral argument was held by the Commission on June 27 and 28, 1955.

On May 24, 1955, an address by Chairman George C. McConnaughey at the annual convention of the National Association of Radio and Television Broadcasters, provided additional basis for encouragement to UHF operators. The FCC Chairman stated that the Commission had taken the following steps to meet the UHF problem:

"(1) We have recently put out rulemaking proposals looking to the possibility of deintermixture of UHF and VHF in certain cities."

* * * * * * *

"(5) We have instituted a rulemaking proceeding which looks toward the setting of a 5-mile limit from the boundary of the city to be served where a television station may place its transmitter, with provision for exception upon a proper showing of public interest."

Because of the costs of travel to Washington, no general meetings of the UHF–ICC were held from the time of the Potter hearings until the spring of 1955. Several meetings of a working group were held in Washington during this period in connection with the developments described above.[3]

General meetings of the committe's membership were held in Washington May 22–25, 1955. Topics on the committee agenda included methods of relieving UHF broadcasters of the heavy financial burden of meeting equipment obligations, deintermixture, reduction of VHF power, antenna height and mileage separations, use of directional antennas, confinement of stations to their own markets, reduction of cable and microwave relay costs, and methods for obtaining network programs for UHF stations.

As a result of the meeting a group was organized for the purpose of conducting negotiations with manufacturers looking toward relief measures for UHF operators in serious financial distress. Additionally it was agreed that the UHF–ICC file a petition with the Commission urging the institution of general allocation rulemaking proceedings, the prompt resolution of pending deintermixture proposals, and the deferment, in the interim, of VHF grants which would aggravate intermixture. On June 21, 1955, a group of members of the UHF–ICC met with the Commission for the purpose of urging early action on the proposals in the UHF–ICC petition. The petition was filed on the same day.

It was specifically requested in this petition that the Commission—

(1) Immediately institute rulemaking proceedings looking toward the amendment of its rules so as to authorize on a case-by-case basis, upon consideration of individual applications therefor, the assignment of VHF stations at reduced mileage separations upon a showing that the public interest will be served thereby. More particularly it is requested that stations be authorized in the VHF portion of the spectrum at reduced separations where it can be established: (*a*) That the utilization of directional antennas or low power in the proposed operation would not result in more interference than would be caused at the heights, powers, and separations presently authorized under the Commission's rules and regulations; or (*b*) that if interference will be caused the need for the proposed service outweighs the needs for the service which will be lost by reason of such interference.

(2) Withhold for at least 90 days the grant of authorizations and modifications of authorizations of television facilities in every case where such authorizations will result in aggravation of intermixture of UHF and VHF stations.

(3) During the 90-day period resolve pending proposals for deintermixture.

During the early summer congressional hearings were held upon a bill recommended by the Commission which would modify the recently enacted protest

[3] The travel and other costs of attendance at these meetings were at all times borne by the individuals themselves and at no time has any participating member requested or received a penny in reimbursement of such costs.

provisions of the Communications Act so that, among other things, the Commission could permit a protested grant of a new service to become operative and effective even though the Commission determined that a hearing on such grant was required. The UHF–ICC appeared by its counsel before both the House and Senate Committees on Interstate and Foreign Commerce and supported those features of the bill which would give the Commission greater discretion in determining whether a hearing should be held on particular protests, but urged the retention of the existing automatic stay provisions of law or a revision which would permit a protested grant to become effective pending a hearing only where the public interest compellingly or imperatively required institution of service. The reasons urged against the Commission-sponsored proposal were that the present mandatory stay requirements of the protest provisions are most essential to protect the rights of UHF operators who are entitled to a hearing upon Commission VHF grants which result in market straddling, further encroachment on UHF service areas, and monopolistic concentration making it even more difficult for UHF stations to compete with VHF stations. It was pointed out that if such a VHF grant protested by a UHF station could be made effective and operative by the Commission during the period that a required hearing was being held, the hearing would be a virtual futility since the UHF station would be suffering the very injury which caused it to protest and there would be little or no reason for the UHF station to proceed with the hearing, at the great expense involved, under such conditions. The bill, with certain revisions, passed the House but failed to pass the Senate before the summer congressional adjournment, although it was reported out favorably by the Senate committee. The bill will undoubtedly pass the Senate and become law very early in 1956 unless strong senatorial opposition, which is presently unlikely, should suddenly develop.

It was during the hearings before the Senate committee on the protest amendment that further cause was provided for optimism among the UHF operators when it became publicly known that the Commission had decided on a policy of making no VHF grants in cases where deintermixture proposals were pending. During the testimony of Chairman McConnaughey, inqury was made as to whether the Commission was making VHF grants where deintermixture proposals were involved. The testimony was as follows:

"Senator POTTER. But are most of these protests on new grants or extension of facilities?

"Commissioner DOERFER. Mostly new grants.

"Mr. McCONNAUGHEY. Not all of them, but most of them.

"Senator PASTORE. How about in the deintermixture; is that still going on?

Commissioner DOERFER. Yes.

"Senator PASTORE. Has any policy been promulgated by the Commission as to whether or not it should continue in the public interest?

"Commissioner DOERFER. We just heard 2 days of oral argument last week.

"Senator PASTORE. Are you granting intermixtures in the meantime?

"Mr. McCONNAUGHEY. Under the sixth report they are; yes, sir.

"Senator PASTORE. Aren't we muddying up this soup a little more?

"Mr. McCONNAUGHEY. We have held up the grants in these cases which have been filed.

"Senator PASTORE. Everybody seems to be of accord here that one of the big problems is intermixture, and yet we go on doing it. At the same time we are investigating it to reach a decision as to whether or not it is good policy to have it.

"Mr. McCONNAUGHEY. We have not gone on. We have held them up. In these cases you are acquainted with we have held them up and not issued any grants at all, pending the outcome of the intermixture question" (hearing before a Subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, 84th Cong., 1st sess., on S. 1648, pp. 43–44).

Throughout the summer, no action was taken on the pending deintermixture proposals or the June 21 petition of the UHF–ICC. Nor was any other significant action taken by the FCC until July 20, 1955. On that date, by a vote of only three Commissioners,[3] the Commission adopted a report and order amending its rules, as requested about a year before by a VHF station in Buffalo, N. Y., to authorize VHF stations in zone 1 to operate with increased power over that previously permitted. This development was so shocking that a petition was filed in behalf of the UHF–ICC characterizing this action as literally incredible. It was asserted that it was inconceivable, at this crucial period while the Commission had under consideration measures and proposals designed to eliminate

[3] Of the other 4 Commissioners, 1 dissented, 1 refrained from voting, and the remaining 2 were absent.

or minimize intermixture to make it easier for UHF stations to compete with VHF stations, that the Commission could in good conscience take an action which on its face was designed to aggravate intermixture, result in further monopolistic concentration of VHF stations and cause further irreparable injury to the operation of UHF stations. It was urged that rather than increase the power of VHF stations it would seem compelling that the existing superpowers should be reduced.

Because of this and other objections, the Commission later postponed the effectiveness of this rule change four times. Following the action of July 20, 1955, authorizing VHF station power increases in zone 1, no Commission meetings were held from July 27 to August 31 and during this period only routine matters were acted upon. A glimmer of interest in the UHF problem and possible future activity was indicated during the month of September. In nonpublic statements which were nevertheless reported in the trade press, several Commissioners allegedly expressed the need for remedial action. Thus, individual Commissioners were reported to be in favor of less rigid separation standards and the obtaining of more VHF channels from the military. In an internal confidential memorandum which was published in Broadcasting-Telecasting magazine, Commissioner Doerfer, who later opposed deintermixture in an official public opinion, reportedly urged deintermixture of the major markets such as New York City by the assignment of only UHF channels to these communities. The press characterized this position as having been advanced by Commissioner Doerfer with "tongue in cheek."

Funds for a network investigation were appropriated to the Commission by Congress in the budget for the fiscal year 1955–56. This investigation was slow in getting under way. On September 22, 1955, the Commission announced the appointment of a staff director of the investigation and additional staff assignments were made later in the fall. The Commission announced on November 22, 1955, that the network study would concern itself with "* * * the broad question whether the present structure, composition, and operation of radio and television networks and their relationship with their affiliates and other components of the industry tend to foster or impede the maintenance and growth of a nationwide competitive television broadcasting industry." No announcement has been made by the Commission as to the procedure to be followed in the network investigation, namely, whether public hearings are to be held, whether the views of, or information from, individual station operators will be sought, or whether field investigation will be conducted as a means of obtaining pertinent information.

In early October the Commission held meetings to consider the television problem. Shortly thereafter reports were rampant in the trade press and industry circles that the Commission had met in private and secret sessions with some segments of the industry to discuss the UHF problem. It was reported that CBS had privately presented its own allocation plan to the Commission, which would reject all but two deintermixture proposals, and that the Commission had also had closed sessions with NBC and ABC to discuss the same problem. It was further reported that following those meetings, a majority of the Commission had decided to vote against all deintermixture requests.

Alarmed at this development, many UHF operators expressed concern that the rumored action would have devastating results to the entire UHF cause, unless prompt steps were taken. On October 10, 1955, the Chairman of the UHF–ICC sent a telegram to each Commissioner stating in part that:

"In all justice any critical decision which may further aggravate the plight of those who are most vitally concerned ought not be taken without equal opportunity to them to be heard. * * * We believe that the proper manner in which the substantive questions should be considered is by open hearing and argument * * *."

Further, it was requested that the Commission meet with UHF operators to hear their views. That request was granted and on October 13, 1955, 45 UHF permittees and operators who came to Washington from all over the country for the meeting with the Commission met to decide on a course of action in the light of the recent developments. A statement was prepared for presentation to the Commission and on the following day, in meeting with the Commission, the Chairman of the UHF–ICC reiterated "that it would be a serious blow to a nationwide allocation plan and grossly unfair to the UHF operators * * * if without further proceedings, any direct or indirect action is taken which would, in practical effect, make future deintermixture or any effective alternate remedies difficult or impossible." Further, it was stated that "All views on these grave problems should be made by formal, public proceedings in order that other interested parties may fairly address themselves to those recommendations. It is only in this way that problems that are most critical to the survival of many television stations throughout the country can be fairly resolved."

On October 17, 1955, pursuant to the action taken at a general meeting of the membership following the meeting with the Commission, the UHF–ICC filed a further petition with the Commission urging withholding of action on VHF grants pending determination of general rulemaking proceedings having the objective of a nationwide competitive television service. In that petition the UHF–ICC stated that:

"It is clear that the only sound way in which the Commission can properly resolve these questions is to institute broad rulemaking proceedings in the light of the many pending proposals for the solution of the problem, including not only the deintermixture proposals but the other various alternative and complementary proposals. Accordingly, it is requested that the Commission immediately institute such broad rulemaking proceedings setting forth its views and proposals in the light of the foregoing. Pending disposition of those proceedings, it is requested that the Commission take no action by way of granting authorizations and modifications of authorizations where the effect of such action would worsen or aggravate intermixture of UHF and VHF stations, and thereby render moot the many pending petitions for deintermixture."

The optimism among UHF operators engendered by the encouraging public pronouncements of the Commission in the spring and summer of 1955 was completely shattered by the about-face developments of the next few weeks. Initially, no specific actions were formally announced publicly by the FCC, but discouraging reports of unannounced Commission votes and actions appeared in the trade press. Thus, it was reported that on November 2, 1955, the Commission voted on the deintermixture proposals in Commissioner Bartley's absence, and had decided, by a vote of 4 to 2, Commissioners Hyde and Webster dissenting, to deny all deintermixture petitions, but, at the same time, to drop VHF channel 10 into Vail Mills, a locality having a population of approximately 250 persons. However, according to reports, Commissioner Bartley, who, at the time the matter was called up for a vote, was away from Washington, insisted that action be withheld until he could have an opportunity to be present and participate. It was next reported that a special meeting with all Commissioners present was called for Saturday, November 5, but action was deferred until Commissioner Mack (who had not yet been appointed to the Commission at the time oral arguments had been held) could familiarize himself with the record in the deintermixture proceedings.

On November 10 the Commission formally announced a series of actions which blacked out the last vestige of hope for early Commission remedial action assisting the UHF cause. Those actions were as follows:

1. In a 5-to-2 decision, with Commissioners Hyde and Bartley dissenting, the Commission denied the requests for deintermixture in the pending rulemaking proceedings in Peoria, Evansville, Madison, and Hartford, and summarily denied 30 other pending petitions for deintermixture and other relief.
2. In a 4-to-3 vote, with Commissioners Hyde, Bartley, and Webster dissenting, the Commission dropped in channel 10 in Vail Mills, N. Y.
3. By unanimous vote the Commission instituted overall rulemaking proceedings, requesting comments and data to serve as the basis for further rulemaking proceedings.

In addition, during the same week that the foregoing actions were taken, in the words of Television Digest, "another UHF hope, along with deintermixture, was dashed" by the Commission's rejection of the 5-mile rule which it had previously proposed to adopt as one of the measures to assist UHF.

It was made perfectly clear in the decisions released on November 10, 1955, that the purpose of these actions was to unleash actions making grants to VHF applications on which the Commission had previously committed itself to withhold action until the problem of deintermixture had been disposed of on its merits. Accordingly, shortly after November 10, numerous efforts were made by UHF stations to prevent such precipitous Commission action. UHF stations filed petitions with the Commission asking leave to intervene in the VHF contested proceedings, to withhold action on the grant of the applications pending resolution of the rulemaking proceedings, and to consolidate the rulemaking and application proceedings. At the court level, two UHF stations petitioned for review of the channel 10 drop-in in Vail Mills and asked the court to stay the effectiveness of that order. On December 9 the United States Court of Appeals for the District of Columbia granted that request and stayed the effectiveness of the drop-in of channel 10 to Vail Mills.

The Commission, nevertheless, soon proceeded to make final VHF grants in Corpus Christi, Madison, and Evansville. UHF stations in those cities promptly appealed those actions and requested the court to stay those grants. Decisions by the court on the requests for stays will very likely be made during the week of January 9, 1956. These decisions will have a profound effect upon the entire UHF problem. Depending upon which way these decisions go, many UHF stations still in operation may survive until the Commission's general rulemaking proceedings are concluded, or may succumb under the competition of the additional VHF operations which will commence throughout the country.

On November 18, 1955, the UHF-ICC filed a petition to set aside the Commission's report authorizing higher power for VHF stations in zone 1, pointing out that in view of its action instituting rulemaking proceedings it would now be most arbitrary to permit that proposal to become effective. The Commission on November 30, 1955, vacated that report, but in doing so appended an exception the effect of which would permit a single station in the entire country, namely, the VHF station in Buffalo, N. Y., which originally urged the power increase, to increase power above the maximum. The UHF-ICC thereupon filed a petition with the Commission, which is still pending, in which it attacked that exception as arbitrary and discriminatory.

On December 14, 1955, the Commission consolidated in the pending general rulemaking proceedings the UHF-ICC's petitions of June 21, 1955, and October 17, 1955, except for those portions of such petitions which requested withholding of action on VHF grants which would aggravate intermixture.

The UHF-ICC filed its comments in reply to the Commission's notice of proposed rulemaking. The UHF-ICC reiterated the views previously expressed and urged upon the Commission, stating that events since the Potter committee hearings have vindicated its judgment. Since the Commission has, however, steadfastly refused to entertain proposals for the assignment of all television stations to the UHF portion of the spectrum only, the UHF-ICC advanced other and alternative proposals in the hope that the Commission might take some action to correct and alleviate existing conditions in the broadcast television service. Three specific actions were recommended:

(1) Forthwith resolve pending proposals looking toward the elimination of intermixture of UHF and VHF television assignments by severing the question of selective deintermixture from the overall proceedings. Immediately grant the requests for deintermixture which have been the subject of rulemaking proceedings and immediately institute separate proceedings on the remaining deintermixture requests.

(2) The assignment of television stations at lower separations than those presently provided by the Commission's rules in order to provide additonal facilities for the establishment of mutiple local outlets and services. One factor which is absolutely critical to the implementation of the foregoing proposal in the public interest is the assignment of such additional stations in the VHF spectrum only where such additional assignments would not adversely affect the operation of any UHF station.

(3) The adoption of the single-market concept and the confinement of stations to their own community by the revision of the existing rules so as to permit the utilization of maximum power only on a special affirmative showing that the public interest will be served thereby: It was recommended that the Commission revise its rules to limit the permissive range of maximum power to 50 kilowatts for channels 2 to 6, and 100 kilowatts for channels 7 to 13, and that authorizations for operation with power in excess of the foregoing but not more than 100 kilowatts for channels 2 to 6 and 316 kilowatts for channels 7 to 13 not be granted unless it can be shown that television service to specific areas would not otherwise be available from any station operating with the maximum power.

Approximately 200 comments were filed. The most significant fact to emerge from the filings is the virtually complete unanimity of opinion shown in support of sweeping revisions of the allocations rules and standards. In addition, powerful support was won for some of the basic principles for which the UHF-ICC has been contending since its inception. Thus, for example, General Electric urged the consideration of an all-UHF system: RCA and NBC gave support to deintermixture. It urged that careful consideration be given to reduced separations by use of directional antennas, low power, et cetera. The only major broadcast interest which refused to lend any significant support to deintermixture was CBS which ironically, not only conceived the term "deintermixture," but warmly embraced it as a solution during the Potter hearings.

Reply comments are due to be filed on January 20, 1956. The nature of the reply comments which will be filed by the UHF–ICC will be determined upon completion of the study of the multitude of initial comments which have already been filed.

The most recent action of the UHF–ICC related to the matter of extension of outstanding UHF permits. During the year 1955, the Commission made it known that its existing liberal policy of extending UHF permits would be reconsidered in early January of 1956. On December 23, 1955, in an effort to assist UHF permittees who, although not in operation, desired to continue to retain their permits, the UHF–ICC filed a petition with the Commission urging the Commission to continue the previous liberal policy until the determination of the pending allocation rulemaking proceedings. At this writing, no action had been taken by the Commission upon this petition.

No congressional hearings have been held with respect to the critical UHF problem since the spring of 1954 when the Potter hearings were held. Subsequent to the issuance of the reports of the majority and minority counsel of the Senate Interstate and Foreign Commerce Committee in the early part of 1955 a number of public statements emanated from that committee indicating that the UHF problem would be further investigated by the committee. Because of the resignation of counsel, new counsel was appointed in the early spring, who remained for a few months only. After this post had been vacant several months, it was recently filled by a new appointment. Throughout the year, it was made known that certain investigations were being made by the committee staff and that hearings would be held. However no bearings were held and no further tangible recommendations or actions were forthcoming from the committee throughout the balance of the year 1955 except that during the summer the Senate committee organized an ad hoc engineering committee to study possible technical solutions to the existing serious televison allocation situation. No recommendations or actions have been forthcoming from this ad hoc committee and there have been no reports as to its activities.

Upon the return of Congress in the early part of 1956, it was indicated that hearings would definitely be begun by the Senate Committee on Interstate and Foreign Commerce on January 17, 1956, at which the FCC Commissioners would be called and questioned concerning the entire television allocation situation with particular referrence to the seriousness of the UHF problem and the failure of the Commission to take any remedial action.[4] It is understood that individual UHF operators will be afforded the opportunity to appear before the committee at a later time. It is, of course, the intention of the UHF Industry Coordinating Committee to appear in these hearings through its officers or counsel, as well as such UHF broadcasters who are interested in testifying, to make as vigorous a presentation as is possible in behalf of UHF operators throughout the country, and to urge prompt action revising the present television allocation plan so that nationwide competitive television service by means of equal competitive facilities for televison broadcasters wll be made possible.

Mr. Thoms. A careful effort was made to make this report purely factual. I am sure you will find that the mere recitation of the factual history of the UHF problem attests more eloquently than any commentary or argument the disappointing record of past governmental inaction, and the great necessity for prompt and effective relief.

I will not now take your time by reading that history, although I strongly urge the members of this committee to do so. I think it will be very helpful, however, to point out some of the salient matters in that history. One of the salient features of this past history is the deintermixture story. It is to this committee's credit that the desirability of considering selective deintermixture was urged upon the Commission in the report of its former majority counsel. Deintermixture had received considerable attention during the course of the past hearings. Deintermixture makes obvious good sense and clearly serves the public interest.

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[4] Because of the sudden death, on January 14, 1956, of the chief counsel to the Senate Committee, the hearings have been postponed to January 26, 1956.

Shortly after the conclusion of the subcommittee hearings a stream of petitions were filed by individual operators in particular markets, seeking relief by deintermixture. Actually such petitions were encouraged because of assertions made by the Commission Chairman to this committee, and other public statements, as well as assertions by the Commission itself.

Today, a score of months later—after initial denials by the Commission—reconsideration—further rulemaking—the Commission has denied all deintermixture proposals. The Commission stated that the reason for the denials is that it is considering the problem as a part of the overall UHF problem, and that deintermixture is part of the nationwide problem. But no explanation has been given to this committee why it suddenly became a nationwide problem a couple of months ago. Indeed, the only reason for the Commission's consideration of deintermixture "on a selective basis" was that nationwide reallocation was considered undesirable.

It is hard to believe that there was any other reason for the Commission's action than the desire to make VHF grants in areas affected by the pending deintermixture petitions, and to get around the commitment to this committee that until the deintermixture petitions were disposed of, such grants would be held up.

In any event, the Commission's position simply makes no sense. Deintermixture—by definition—is the assignment of VHF or UHF channels in selected areas. To assert that deintermixture in selected areas can only be considered on a nationwide basis is not merely unconvincing—it is silly. In the recent testimony before this committee by the Commissioners, you have been given a number of additional reasons why the majority felt it to be undesirable to grant the deintermixture petitions. One reason is the danger that rural areas will remain unserved if a VHF station is not authorized.

I am informed that in at least two of the deintermixture situations turned down by the Commission—Evansville and Hartford—it was undisputed that no area would be denied or lose service if the communities involved were made all UHF. Also, in the other situations turned down, all of the UHF operators involved were willing to commit themselves to increase their coverage by increasing power so as to remove any doubt that certain rural areas which would receive a first service from the VHF station in question would be assured of such service from the existing UFH stations. Moreover, as I will point out below, the claim of the need for superpower, supercoverage VHF stations in order to assure service to rural viewers is the age-old argument always used by the clear-channel lobby and is one which has never been convincing to this committee.

In a second significant, through somewhat less important, area, we have witnessed the same spectacle of the Commission marching up the hill and then right back again. In March of 1955 the Commission instituted rulemaking proceedings looking toward the amendment of its rules to limit the location of station antennas to within 5 miles of the principal city to be served, unless strong public interest reasons to the contrary were shown by the applicant.

In its report to this committee, later in the month of March, the Commission pointed with pride to this proposal as a measure which would benefit UHF stations. In its notice, the Commission recognized that the mandate of the Communications Act for a fair, efficient, and equitable allocation plan required that such limitation be observed unless such reasons were clearly shown. The proposal did not purport to make the 5-mile limit a hard and fast rule, but only used a mileage limitation as a convenient yardstick. The rule, if adopted, would still have required a case-by-case consideration. It would have also required that the applicant make an affirmative showing of facts or reasons why the public interest would be served by such a distant location. This is something which the Commission does not today require an applicant to show. That rule would have prevented applicants from moving their transmitters tremendous distances away from the home community, without showing anything more than the technical engineering fact that from such distance the home community would receive a bare minimum required signal.

Almost simultaneously with its rejection of deintermixture, the Commission threw out the proposed 5-mile rule, stating it would consider distant locations of transmitters on a case-to-case basis. The Commission's case-by-case consideration of applications involving distant VHF transmitter moves have played a substantial part in the worsening of the UHF problem. Such moves are commonly referred to as "market-hopping" or "market straddling."

The Chairman of the Commission testified here the other day that it was "a correct statement" that the Commission has a policy of favoring the location of transmitter sites within some reasonable distance of the community to which it is allocated. He also said that it "sometimes is true" that "the establishment of transmitter sites to remote locations results in describing the market so that the station which was allocated to city A ends in duplicating in part a station or channel allocated to city B."

But the fact is that, despite the apparent recognition of the desirability of limiting stations to a reasonable distance from their own "home" communities, the Commission has nevertheless merely given lip-service to this proposition. For in its day-to-day actions it has regularly permitted the location of station antennas at far distant points from these communities, without concern for the fact that such moves aggravate intermixture and further jeopardize the existence of UHF stations.

Senator PASTORE. Would you explain that by giving an example?

Mr. THOMS. I have an example following.

Senator PASTORE. All right.

Mr. THOMS. The fact is, as proven by actual results, that such moves have driven UHF stations out of existence. Let me mention two known instances to date. UHF television station KCEB in Tulsa, Okla., was forced off the air and another permittee never constructed as a result of the location of VHF station KTVX 23 miles from Muskogee, the community to which the channel was assigned, to a point closer to Tulsa than to Muskogee.

UHF station KNUZ-TV, Houston, Tex., was forced off the air chiefly because KGUL-TV, a station assigned to Galveston, was permitted to locate its transmitter close enough to Houston to make it a Houston station for all practical purposes. Recently, with two Commissioners dissenting—Chairman McConnaughey and Commissioner Lee—the Commission authorized a further transmitter move by this same Galveston station to a location even closer to Houston.

Senator POTTER. Isn't it true by doing that the UHF station that has a network affiliation normally loses its network affiliation?

Mr. THOMS. That is right.

Senator POTTER. If you have a UHF station in a market maybe with one V, and they have a network affiliation, and you move in another VHF station that covers that market, the UHF will lose its network affiliation to the VHF. Isn't that true?

Mr. THOMS. To the encroaching station.

There are now pending before the Commission other proceedings, on protest or objections from UHF stations, involving VHF transmitter moves. One case involves a pending move of a VHF station in Charleston, W. Va., to a point closer to UHF station WTAP in Parkersburg, W. Va. Another pending case involves a proposed move of an Enid, Okla., station to a point closer to Oklahoma City than to Enid. In another case, an examiner has issued an initial decision in which he actually found that a proposed move of a station assigned to Flint, Mich., to a point which would be closer to Saginaw than to Flint would not only put UHF station WKNX in Saginaw out of business, but would also destroy a small market VHF station located in Cadillac, Mich.

Still another case is the celebrated Spartanburg case with which this committee is familiar. It is, of course, not known whether in any or all of these pending cases the Commission will see fit to authorize the proposed transmitter moves involved, but it is to be hoped that the Commission agrees with its Chairman that the Commission's policy favors the location of transmitters within some reasonable distance from the "home" community.

In still another area, the Commission's efforts in the direction of remedial measures which would benefit small market stations, whether they be UHF or VHF, appear to have stalled. On September 15, 1954, 2 months after the hearings before your subcommittee, the Commission issued a notice of proposed rule-making, looking toward the authorization of private microwave intercity relay stations. That relief was urgently required, in view of the crushing burden of exorbitant cable cost required to be paid to the telephone company.

It was apparent that such a rule change was necessary so that stations, and particularly stations in small markets, would be able to continue to exist. Seventeen months have elapsed, however, and that proposal still remains unacted upon by the Commission. The Commission has advised this committee, however, that it expects to have some action on this in the near future. To the credit of the Commission, it is true that the Commission has in recent months been liberal in authorizing television broadcasters to have been their own private microwave relays, despite the strict requirements of its present rules. But such a liberal policy is not an adequate substitute for a rule, upon which broadcasters can rely, which will better guarantee them the right to obtain and continue to hold authorizations to operate their own facilities.

So far I have been discussing the Commission's failure to adopt amendments of its rules which might affirmatively benefit UHF stations. Let us look at the other side of the coin and examine measures which the Commission has been willing to adopt but which would aggravate the serious plight of UHF stations and further entrench large market VHF stations in a more favorable competitive position.

From June 1954 to July 1955, no action of any importance was taken by the Commission with respect to pending measures which would alleviate the UHF problems. By July 20, 1955, the five pilot deintermixture cases had been concluded, argument having been held on June 27 and 28. Those cases as well as some 25 other petitions for deintermixture were pending decision on July 20, 1955, when the Commission, by the bare vote of only 3 to 1, adopted a report and order amending its rules to authorize VHF stations in zone I to operate with greater power than was previously permitted under its rules.

As the UHF Industry Coordinating Committee stated in a formal petition, this was a shocking and incredible action. The Commission later suspended the effectiveness of its rule, but it nevertheless wrote an exception into its existing rule which would permit only a single station in the entire country, station WBEN, Buffalo, owned by the Buffalo Evening News, to increase its power even beyond the existing superpower limits to which other stations were subject. The further significance of this action is that station WBEN pleaded for this exception upon the ground that it had voluntarily located its transmitter about 25 miles away from the city of Buffalo before the freeze with the hope that the Commission would later adopt rules permitting greater power and antenna heights than it did.

As a result of having placed its transmitter so far away from Buffalo, it found that when a new VHF station was granted for Buffalo which located its transmitter within the city of Buffalo, the quality of its own signal in Buffalo suffered by comparison. Therefore, it pleaded hardship on the ground that it had been disappointed in its hopes. The Commission bought this plea, and created for the benefit of WBEN-TV the sole exception in the entire Northeast section of the country to the existing power and antenna height limits.

Senator Pastore. How did that affect the UHF station?

Mr. Thoms. I frankly am not familiar enough with the situation up there to answer that question. Maybe Mr. Cottone can.

Mr. Cottone. Senator Pastore, the authorization for the increased power meant the VHF stations could further enlarge their markets; and in a situation where a VHF station was to be able to increase its coverage with respect to a UHF station that might be in that same community, the competitive disparity was therefore increased. In addition, where a UHF station might be in an adjoining community, it would result in further overlap of the signal of the UHF station, a further encroachment on the market of the UHF station, putting it in an even more disadvantageous competitive position.

Senator Pastore. Is that a theory or is that a fact?

Mr. Cottone. I think it is an actual fact. We have heard here that one of the serious problems that UHF stations have to contend with is the fact that VHF stations have such tremendously greater coverage and therefore become more desirable——

Senator Pastore. I realize that, of course. When you increase the power, you disturb someone else, of necessity. But the argument was made that first they initiated this rule in zone I about increasing power. I think the Chairman of the Commission said it was revoked. I think the argument that is being made here is that it was revoked only after Buffalo had been granted more power.

Mr. Cottone. That is right.

Senator PASTORE. I would like to know what effect did this grant have in the Buffalo instance that lends credence to the weight of his case. That is the point I make. If you can be specific in that, I would appreciate it.

Mr. COTTONE. It does it in this way. The basis for the exception is one that cannot hold up as against similar claims that might be made by every other single VHF station in zone I. Already the Commission has been confronted with requests by other stations in zone I to make a similar exception or to expand the rule, to enlarge the rule, so that they are not put in a more discriminatory position, so that they are not discriminated against by having the rule apply only to this single situation.

Senator PASTORE. Therefore the argument that you are making here is that the instance of Buffalo should not be taken as a precedent.

Mr. COTTONE. But it can very well be used as a precedent. By virtue of the fact that they have permitted it one case, in effect the Commission is virtually forced on any long-range consideration of this question to do likewise for every other single VHF station in zone I.

Senator POTTER. Is there a UHF station in that market?

Mr. COTTONE. There was a UHF station. There still is. It was purchased by NBC.

Senator POTTER. Do they have a network?

Mr. COTTONE. By that time, the UHF station had, I believe, lost its network; but it may have had an ABC affiliation. The UHF station was WBUF-TV in Buffalo.

Senator POTTER. That is an NBC station?

Mr. COTTONE. It is now an NBC station.

Senator POTTER. So they do not have to worry about losing the network.

Mr. COTTONE. They do not have to worry about losing the network.

Senator POTTER. If they were a privately owned station, however, with this new station coming in—and two VHF's covering the Buffalo market—they might have a difficult time holding the network.

Mr. COTTONE. Yes. I do not know in this particular instance that it was critical to any particular UHF station, but it was the chain reaction effect that an authorization of this type was likely to have. It could spread all over the country and affect UHF stations that were already in serious condition as a result of being in the shadow of large VHF stations from other markets.

Senator PASTORE. I am not finding fault with the argument that is being made by the witness. I merely want to know what the point is. The point of the argument is what I was trying to get at, whether or not you, representing the UHF operators, are taking the position that this one exception has done some injury to some existing UHF facility in that region—merely to specify it on the record. Your answer is you do not know of any offhand?

Mr. COTTONE. I do not think it can fairly be stated that in that particular instance there was any injury. But the point of this recital, however, also is the fact that the Commission during this period, when it was presumably considering the feasibility of deintermixture, when deintermixture petitions were pending, the Commission's disposition was one to put out a proposal of this sort which was of course later suspended. And right in the very middle of this consideration, this deliberation on deintermixture, the kind of a proposal could have no other effect but to aggravate—that kind of a change in the rule could have no other effect but to aggravate—intermixture even more.

Mr. THOMS. I have attempted to cover only some of the salient facts and events which stand out in the history that has brought UHF to its present state. This record of inaction and adverse action was maintained and taken by the Commission in the face of repeated and insistent pleas for immediate effective action. Petition after petition was filed by individual UHF stations and by the UHF Industry Coordinating Committee asking that such action be taken. But these requests were either rebuffed or ignored. Included among these requests was the petition of the UHF Industry Coordinating Committee filed on June 21, 1955, which requested the immediate institution of proceedings looking toward the amendment of the Commission's rules to authorize the assignment of VHF stations at reduce mileage separations upon a showing that the public interest would be served thereby.

It was also requested that the Commission in the following 90-day period resolve pending proposals looking toward the elimination of intermixture of television assignments, and that the Commission withhold for at least 90 days the grants of authorizations and modifications in every case where such authorizations would result in the aggravation of intermixture of UHF and VHF stations. As has been pointed out above, the Commission ignored such requests but was quite ready, 1 month later, to take the action which I have described increasing VHF station coverage in zone I, with only four Commissioners voting, and thereby actually creating a condition which could only further aggravate intermixture and make the plight of UHF stations even worse.

Although no action was taken on the petitions of the UHF Industry Coordinating Committee and others, it nevertheless appeared on the basis of the testimony by Chairman McConnaughey before your committee in connection with the revision of section 309 (c) that the Commission would withhold grants of VHF stations in areas where there were pending proposals for deintermixture. But the fact is that, although the Commission now says that such proposals have not been denied by the Commission on the merits, the Commission has proceeded to make VHF grants in such areas.

I have the greatest difficulty in following the Commission's explanations on this point. I would assume that if it was necessary and proper for the Commission to hold up those VHF grants because of the pendency of the deintermixture petitions at the time the Commission was urging enactment of section 309 (c), it was equally necessary and proper to do so when it decided in November to deny thte deintermixture petitions without prejudice. Nor can I understand how the Commission, when it was urging enactment of the amendment of section 309 (c), could urge the sufferings of the public if a station were to be permitted to go on the air and then taken off, and not be equally concerned when it made the VHF grants in the face of its own recognition of the fact that later, if deintermixture were adopted, the public would have that service taken away.

The Commission has said, however, that in such a case the public would not lose because the VHF grantee would then get a UHF channel. But the Commission conveniently ignores its own argument that one reason for making the VHF grant was to reach areas which the

UHF stations would not reach. If that is true, then how can the Commission say that if deintermixture is later ordered, that part of the public will not suffer, just as in its section 309 (c) argument?

Senator PASTORE. Referring to the argument you have made previously, why couldn't the Commission give the UHF station, in that instance, more power and cover those members of the public involved in this argument you have just made?

Mr. THOMS. It could.

Senator PASTORE. Would not that be the answer to it if, later on, let's assume, they change the VHF station to a UHF station and the question arises as to whether or not such a station would reach the distance? They could increase the power, could they not?

So the record will be clear, counsel says that that is up to the station and not up to the Federal Communications Commission. Why couldn't the Commission make it a condition in changing to VHF—or UHF in that particular instance—by making it a condition upon the increase of power?

I don't see any objection on the part of the station in that event. Do you get the point I make, Mr. Thoms? The argument that you are making now is this: One of the arguments why the VHF should be granted by the Commission is that the Commission takes the position that the VHF will reach these distances ordinarily not being covered by the present UHF stations in that community.

Mr. THOMS. Right.

Senator PASTORE. And that later on, when the UHF is substituted for the VHF on this deintermixture proposition, then they would have a hiatus in this distance that was covered by the VHF grant.

The argument that I make is that when they did change it from VHF to UHF, they could increase the power of the UHF station; thereby you wouldn't have that difficulty at all.

Mr. THOMS. Right.

Mr. COX. Is it your opinion, Mr. Thoms, that in every case the U can, by increasing its power, provide equal coverage to that which may have been afforded by the V?

Mr. THOMS. I would not say in every case. I think it depends a lot upon terrain. In mountainous country, you simply cannot overcome completely the handicap of UHF with additional power.

Mr. COX. In those areas, then, would you get this problem of previous service which had been afforded under Commission authorization?

Mr. THOMS. That is right.

Senator POTTER. I believe we have had testimony that the antenna height is more important than the power.

Mr. THOMS. That is right.

Mr. COTTONE. Senator Pastore, may I address myself to the question of the authority of the Commission with respect to conditions. I believe it was asserted here that there is doubt as to the authority of the Commission to condition a grant so that the grantee may be required to serve greater areas than he is proposing.

I personally do not believe that there is any question as to the Commission's authority to do that, and I think we have had many instances in the past—in connection particularly with channels that have been assigned to the United States under treaties where they are permitted to be used to a certain maximum power—where the licensee has not utilized that channel to the fullest extent of the power permitted under the treaty, and the Commission has taken the position that the licensee must make a more efficient use of the channel that was contemplated—in other words, in effect requiring the licensee to increase its power. That is not, as I see it, a common-carrier concept.

Senator PASTORE. I realize that. But I have something else in mind. When the applicant for a VHF station files his application, which will result in intermixture in a locality that is already being serviced by UHF, he predicates that petition upon the ground that the VHF will serve a wider area.

Why can't the Commission at that point say: "In the consideration of this, and because we are getting into a nationwide rulemaking as to deintermixture, we will grant you this VHF station to allow you to service this wider area—provided, however, that should we later deintermix and compel you to take a UHF channel, you will apply for a UHF station that will give the same coverage"?

Mr. COTTONE. Yes, I agree with that. The point made here, however, Senator, is the consistency of the argument that you should not permit intermixture because there is a danger that rural areas would not be served. If the VHF might later go off the air, by that very same argument the part of the public in the rural areas who have not converted will lose that service. So the argument cuts against the reason given for denial of deintermixture. That was the only point that was made here—that there will be a later loss of service to the public if the Commission's argument is a sound one.

Senator PASTORE. How do you answer the argument that, under the Sixth Report, it was the policy of the Commission to grant these allocations that were already made, and that have not yet been changed, even in spite of the fact that we did have other reports?

What answer do you make to the argument that here is the public that wants this service, and wants this third station to come in, without regard to whether it is UHF or VHF, because in many instances where you already have an UHF area they can tune in VHF as well as UHF?

What argument do you make to the Commission that, after all, in the public interest this is being asked for, and they have no alternative but to grant it in the public interest?

Mr. COTTONE. The answer is that that is a short-range view of the public interest, if it is true that to permit that situation to develop is going to result in driving out existing UHF stations, and the contraction of the number of outlets that there are in the country for rendering service to the public.

If that be true, then the long-range public interest requires that the Commission reconsider the determination that it once made upon what it believed to be a different set of facts. That is the argument. It is the question of the long-range public interest. It may be true that there may be immediate, but possibly fleeting, benefits to the public; but if it is true that the long-range public interest requires a nationwide competitive service, and an individual action results in throwing impediments in the way of that goal, then the long-range public interest does require that the Commission should take a look at the situation and see if it should not try to avoid that result.

Senator PASTORE. In other words, what you are saying, Mr. Cottone, is this. Where you already have two UHF stations, by allowing a VHF station to come in, you want to give the people three chances. But unless those original 2 can live with the 1 V, you might ultimately have only 1 station because the 2 U's just may go out of business.

Mr. COTTONE. That is precisely the argument that was made in the intermixture petitions, sir.

Mr. COX. And the third station that was sought can be provided by substituting the U for an allocated V channel; is that correct?

Mr. COTTONE. Yes, I believe that is correct.

Senator PASTORE. In the instance we have been talking about, could the Federal Communications Commission have allowed a third UHF station right there and then?

Mr. COTTONE. Oh, yes. I believe there were channels that could readily have been assigned to those communities. I cannot answer the question as to whether there were allocated UHF channels that had not been applied for. There may very well have been in these cases. I am not sure whether in the Evansville case it would have been necessary to find a UHF channel to put in in place of the VHF channel. But concededly there was no particular problem on that score.

Mr. COX. That is, the UHF channels are plentiful now?

Mr. COTTONE. Yes, the UHF channels are relatively abundant.

Senator POTTER. There is no problem, then, in reality, in reallocating a UHF channel for a specific community.

Mr. COTTONE. That's right.

Senator PASTORE. Let us take the Hartford case, for instance. Would there have been any difficulty at all in the Commission giving the people of Hartford a third channel there and then, even if it had to be UHF?

Mr. COTTONE. The proposals that were made in that very proceeding, Senator Pastore, did provde, by several different alternative plans, for the substitution of UHF channels that would be available. There was no question drawn, as I understand it, as to the availability of UHF channels.

I must say that in the New England area, it is a little bit more difficult. But it is not impossible. The channels are available and the engineering that was done there did indicate that UHF channels could be allocated.

Senator PASTORE. The reason why I am bringing this up is—I regret I was in transit this morning—I understand a witness appeared here this morning, a Mr. Storer, who suggested that we have a third VHF station in Providence. I called that to the attention of Mr. Doerfer. That is very refershing news to me.

Mr. COTTONE. I might point out the UHF Industry Coordinating Committee had nothing whatsoever to do with Mr. Storer's statements.

Senator PASTORE. It is good news to me.

Mr. COX. I would like some clarification on your basic argument. Is it your position that it is fallacious to claim that granting the first V in Madison or Peoria is going to provide a first service for some people who are not now served either from U stations in those areas or from V's in other communities? Or is it your argument that it is unfair to give them this service if the Commission is thinking of later taking it away?

Mr. COTTONE. I think the argument comprises both. Part of the argument that Mr. Thoms has just read merely is in effect a pointing out of the inconsistency of the Commission's position.

Mr. COX. I appreciate that.

Mr. COTTONE. I do not believe it has necessarily been established, as a matter of fact, in this very proceeding—which is the only one upon which a record was made, with the five pilot deintermixture cases. But in those cases there was possibly a basis for a finding by the Commission that if there was a possibility of the UHF station not being able to reach areas that the VHF stations could reach, that could readily be taken care of. These were facts on the record. Commissioner Doerfer, I believe, stated the other day that he questioned those things, those facts. But they were facts of record.

In the situations where there was a doubt as to whether the UHF stations presently reached those areas—and I do not know that there was any more than one case where that question did arise, as to whether the white area would be greater, so to speak—there were commitments that were made on the record by the existing UHF stations that, if the cloud and uncertainty as to the possible advent of the VHF station into this community were removed, these people would be perfectly willing to invest more money and expend funds in enlarging their facility to reach the areas where conceivably service might not otherwise be provided. There were such commitments on the record of these proceedings.

Senator PASTORE. Mr. Thoms, you may proceed.

Mr. THOMS. There is a bitter irony in the situation in which we find ourselves today in the television field. We have had experience in the AM and FM field which should have steered television away from the same pitfalls. Unfortunately, the lesson taught by history has not been learned.

The members of this important Senate committee have traditionally been cognizant of the dangers of superpower, supermarket stations in the field of radio, and have frequently openly expressed their abhorrence of a radio broadcast system based on such a monopolistic concept.

On June 13, 1938——

Senator PASTORE. May I interrupt you just for a moment, Mr. Thoms. Do you desire—because if you so desire I think your desire should be paramount—to read the rest of this statement? It is now almost 20 minutes to 1 o'clock. You cannot possibly finish another 4 or 5 pages much before 20 minutes or so.

Mr. THOMS. I will be glad to come back.

Senator POTTER. I think we might just as well leave now and come back at 2.

Senator PASTORE. Why don't you finish the paragraph and then we will stop there.

Mr. THOMS. On June 13, 1938, when determined efforts were being made by clear-channel stations to obtain greater power and coverage, the Senate passed a resolution opposing the operation of AM stations with power in excess of 50 kilowatts (S. Res. 294, 75th Cong., 3d sess., vol. 83, Congressional Record, pt. 8, p. 8943).

Ten years later, when the danger of increased power for clear-channel stations again became acute in connection with the Commission's pending rulemaking proceedings, a bill was introduced by

Senator Ed Johnson in the 80th Congress to limit the power of AM stations to 50 kilowatts and to open the way to duplication of clear channels (S. 2231, 80th Cong., 2d sess.).

Extensive hearings were held by this committee on that bill. Prior to the commencement of those hearings, as Senator Magnuson will recall, this committee, which was then under the chairmanship of Senator Wallace White and the acting chairmanships of Senator Charles W. Tobey, by unanimous action requested the Commission to withhold action in its clear-channel proceedings until the completion of the congressional hearings (hearings before the Committee on Interstate and Foreign Commerce, U. S. Senate, 80th Cong., 2d sess., on S. 2237, pp. 2–4).

Senator PASTORE. We will pause at this point and we will resume again at 2 o'clock this afternoon.

(Thereupon, at 12:40, the committee recessed, to reconvene at 2 p. m., of the same day.)

AFTERNOON SESSION

Senator PASTORE. All right, Mr. Thoms.

Mr. THOMS. I would like to go back for just 1 minute to the question that came up this morning about the increase in power, and so forth, and what it does to existing UHF stations.

Senator PASTORE. You mean you are talking now about the Buffalo incident?

Mr. THOMS. For one, and Atlantic City, I guess, is the outstanding example of where—when power increases went into effect in Philadelphia—it put the UHF station in Atlantic City out of business.

In Buffalo we were not sure about that this morning. There was another U that went out of business in Buffalo besides the UHF that was bought by NBC.

Mr. COX. That was before the increase in power, I take it?

Mr. THOMS. That was before the increase in power.

Mr. COX. Do you want to go ahead with your statement?

Mr. THOMS. One year later, Senator Ed Johnson made a speech on the floor of the Senate designed to defeat the further efforts of the clear-channel lobby to perpetuate and increase the monopolistic grip on the broadcast industry threatened by superpower clear-channel stations. The dangers to a nationwide competitive broadcasting system were vividly and eloquently described by Senator Johnson. The principal argument of the clear-channel lobby was that superpower was needed to serve the farmers. Senator Johnson demolished that argument with devastating logic, and he was supported by the present chairman of this committee, Senator Magnuson. The ironic thing is that today we find the Commission leaning on that same age-old argument of the clear-channel lobby, as the reason for its hesitation to provide a greater number of smaller and equal television facilities.

I would like at this point to refer you to a portion of a very pertinent colloquy between Senator Johnson and Senator Magnuson which occurred during the speech of Senator Johnson to which I have referred. It is attached to my statement as an appendix.

(The document referred to is as follows:)

SELECTIONS FROM A REPORT ON COMMUNICATIONS—SPEECH OF HON. EDWIN C. JOHNSON OF COLORADO IN THE SENATE OF THE UNITED STATES APRIL 20, 1949

Mr. JOHNSON of Colorado * * *

Originally this country had 46 clear channels. But as the need grew for additional local and regional stations, the Commission began to duplicate clear-channel frequencies, placing additional stations on the same channel but sufficiently distant apart so there would be no interference.

CLEAR-CHANNEL LOBBY FORMED

Several years ago 16 clear-channel stations realizing that this sensible and necessary trend would eventually catch up with them banded together into a lobbying organization. This lobby filed a petition with the Commission demanding that the remaining clear-channel stations be granted 750,000 watts of power, contending the objective to be to give better service to 23 million rural listeners. They made this ridiculous argument with a poker face. That the 23 million farm people could be better served by local stations, the result of a wise use of duplication, is glossed over by the clear channels and the obedient Commission.

Mr. MAGNUSON. Mr. President will the Senator yield?

Mr. JOHNSON of Colorado. I yield.

Mr. MAGNUSON. I might illustrate what the Senator has just said by citing an example. I know the Senator could cite many other examples. For instance, in my home State, in the city of Spokane, Wash., a request has been made to the Commission informally—it was not a formal application—that a certain frequency be given to a station there so that the station might serve a radius of, say, another 25 or 30 miles, and include about 60,000 farmers who are not now served from the Spokane area by this particular station, which is a network station. The frequency available for the area, however, happens to be one of the clear channels that some station back on the east coast has. The Commission has consistently refused to act on this type of application. But here are these rural areas denied the right of local radio service, and the people are obliged to listen, whether they like it or not, to programs which come on a clear channel, which may originate in San Francisco or some other place.

Mr. President, I wish to ask the Senator from Colorado if he does not know that that situation is duplicated in many, many cases?

Mr. JOHNSON of Colorado. Yes; there are literally hundreds of such cases throughout the country. In my opinion there is absolutely no excuse for them.

Mr. MAGNUSON. The listener wants to listen to programs coming from his local station, just as we like to read our local newspapers, although we may read some out-of-town newspapers.

In Senator Johnson's speech he also warned, even as early as April of 1949, against the danger that television broadcasting was headed toward monopolistic control because of scarcity created by allocation policies. He expressly pointed to the serious inadequacy of the 12 VHF channels then assigned to television. He pleaded for the imperative need for the effective utilization of the UHF band as the only hope for averting a tight and dangerous monoply in television. In view of all the facts which we now know, Senator Johnson was indeed prophetic.

About everything that can be said for or against a two-spectrum system has already been said, and little more can come from further talk. The time is long past due for the Federal Communications Commission and Congress to stop talking and promising, and to come forth with a sharp knife to cut up the spectrum pie.

When a TV station picture goes beyond the normal trading area of its community it is merely denying possible service to other deserving cities from their own local stations. Certainly the fantastic overall TV revenues produced in 1955 have proved the ability of our economy to accommodate additional equal facilities to more communities, for greater service to the public.

Despite the propaganda (generated by those who wish to retain a favored economic position) to the effect that our economy will not accommodate more television stations than we now have, there are many veteran broadcasters who believe that the pie is large enough for many slices, if the slices were smaller, and who would therefore be willing to risk their capital in television if there were just a 50–50 chance for success—a chance which can be provided only by the availability of equal competitive facilities. This philosophy has been consistently expressed from the very beginning by the UHF–ICC, which has urged that what is required is a reallocation premised on the basic concept that television stations should be assigned to provide service to a single homogeneous market, with the principal and primary purpose of serving the local needs of specified communities. By definition, wide area stations cannot serve such a purpose.

We have also been of the view that while it would be desirable to explore the possibility of tighter regulation of networks in order to eliminate restrictive practices which deprive broadcasters of a fair opportunity to compete for network programs, such regulatory measures would merely attack the basic problem at its periphery rather than at its core. They would merely apply salve to a cancer that requires major surgery.

Senator PASTORE. At this point, Mr. Thoms, would you say that whatever remedial action is required is of a legislative nature or is it administrative?

Mr. THOMS. We have taken the position all the time—our group has—that basically the Federal Communications Commission has the authority to take all necessary remedial action.

The problem today is no longer simply one of disparities between UHF and VHF but one of a simple principle—namely, shall this country have many TV stations separately serving many communities or a few superpower stations each covering extensive areas and many communities. The old AM superpower fight has now been extended to TV.

The abnormal profits made in radio and TV have come about through the principle of scarcity, inherent in present allocation policies, creating the forces of "haves" and "have-nots."

Nineteen hundred and fifty-four and 1955 proved that it was not lack of finances, ingenuity, industry, or experience that caused UHF stations to fail when subjected to VHF competition. Deintermixed areas have rendered excellent TV service, and could continue to do so if given proper protection. If the powerful "haves" had not thrown effective roadblocks all along the way, we could by now have been well along the way to an effective nationwide competitive system based upon a sound reallocation.

I respectfully submit to this committee that the time has long since passed when we may permit ourselves the luxury of a wait and see attitude. The Commission has made it abundantly clear that it is disposed to temporize and not to act. If it is the view of this committee that the public interest does not require immediate remedial action—and that the present accelerated trend to a monopoly of superpower, multiple-market stations may be permitted to continue—then no action need be taken by this committee or the Congress. However, if it is the view of this committee that the public interest does require immediate remedial action and that the public interest requires that the national television structure must provide the potential of multiple services and multiple local outlets, then this committee or the Congress must act.

Perhaps Congress cannot feasibly legislate the specific details of a reallocation plan. However, where, in the face of the urgent need for prompt action, the administrative agency has delayed unreasonably even in proposing a solution, and where that agency is riddled with doubts as to the proper course to pursue, then it necessarily devolves upon the Congress to direct the way.

This it can do by enunciating as the policy of Congress, by resolution, that the Commission issue its own rulemaking proposal providing for reassignment of television channels on or before a specified date; and, pending the conclusion of such rulemaking proceedings, the effectiveness of television authorizations providing for new or changed facilities granted within 30 days previous thereto shall be suspended, and future grants of such authorizations shall be withheld.

We have already pointed out past precedents for such congressional action. In such a resolution, it should be declared to be congressional policy that such a reassignment of channels should have as its primary objective a multiplicity of equal competitive facilities limited to service of a single market unless unusual circumstances in any particular case require otherwise.

We believe that the following principles are necessary to the establishment of a nationwide competitive television service:

1. Deintermixture.
2. Reduction of the present permissive limits of power.
3. Reduction of the present permissive limits of antenna heights.
4. Reduction of presently prescribed VHF mileage separations.
5. Confinement of television stations to their home communities.
6. Provision for the use of directional antennas whenever necessary to accomplish the foregoing objectives.
7. Elimination of cost differentials for all-band sets.

Senator PASTORE. On that No. 7, what do you mean by that? It sounds good, but who would have the authority to effect that—the Commission or the Congress? We could not dictate to private industry to remove a differential in costs, could we, unless you are referring now to the excise tax. Is that what you have in mind?

Mr. THOMS. That is one means, yes.

Senator PASTORE. That is discriminatory legislation. The minute you do that, you fall back in your other six categories.

Mr. THOMS. And we are not all agreed on that.

Senator PASTORE. I just thought I would clear the record as to what you meant.

Mr. THOMS. This might be accomplished through congressional action in authorizing, or giving the Commission the authority to set standards for receiving sets.

Senator PASTORE. Provided you do not allow the viewer or the public to swallow up the additional cost here. I mean, in all this we have got to be very, very careful that the public itself is not being called upon to unscramble something they are not responsible for, either in the way of costs or inconvenience. That is absolutely important in all this discussion.

Senator ERVIN. Your idea there is fundamentally to change the revenue law with regard to the excise tax so as to make it advantageous, through a reduction of the tax, for manufacturers to equip their receivers to receive all TV signals.

Mr. THOMS. We think that is one possible way.

8. Reduction of common carrier cable and microwave relay costs.

Since the principle of deintermixture has been almost universally endorsed by substantial segments of this industry, including those which today have a great stake in VHF, deintermixture should be the basic criterion for a proper reallocation.

We believe that in the directive which we urge Congress to issue to the Commission, objectives (1) through (6) should be included as the specific standards upon which a proper allocation should be based.

A failure to accept the foregoing objectives can only result in a perpetuation of the present two-network monopoly which has been fostered by the existing television allocation plan.

Senator PASTORE. Thank you very much, Mr. Thoms. Any questions, Senator Ervin?

Senator ERVIN. No, sir. I would just like to say our folks in North Carolina have been following these hearings with a great deal of interest. It is unfortunate, and I think that Senator Pastore agrees with me, that the Federal Communications Commission has not moved a little faster in this field to try to solve this problem.

We are glad to see you fellow Tarheels up here.

Mr. Cox. I take it your basic proposal, then, is deintermixture almost on a nationwide basis, making use, in those areas where you have to substitute for UHF stations existing in a predominantly V market, of these drop-in V's, and you would make that possibly through reduction in the Commission's standards. Is that correct?

Mr. THOMS. Yes. I would say at this late date a long-range plan of solving the issue should incorporate a deintermixture. Taking away in some areas could have been done 2 years ago without much damage, but at this late date you will probably have to take away some V's and make those areas all U.

Mr. Cox. You are not suggesting a specific plan? You are just proposing to lay this down as a basic premise for the Commission?

Mr. THOMS. That is right. We feel that the Commission has the time, the brains, the money and the engineers—the know-how—to do this job if they were directed to do it.

Mr. Cox. You are asking, then, that this committee, or through the committee, the Congress, should adopt a resolution so directing the Commission?

Mr. THOMS. Yes, that is right.

Mr. Cox. Do you think that such a proposal could be worked out on terms which would provide this localized coverage of equal competitive facilities on a basis that would not create white areas in between the coverages of these somewhat smaller stations?

Mr. THOMS. Undoubtedly.

Mr. Cox. Isn't there some likelihood that, at least in some parts of the country where you don't have large population concentrations, you don't have substantial outlying cities, you would still need full power V stations in order to get an economical coverage of those areas?

Mr. THOMS. You are talking about the Middle West, for instance?

Mr. COX. And the Far West, the mountainous areas.

Mr. THOMS. I don't think there has been any major problem of finding enough V's to take care of those white areas out in the West.

Senator POTTER. You have not taken care of Cheboygan yet.

Mr. COX. They will give you a small drop-in V.

If you simply drop-in a V in an area which is now predominantly V, to provide a competitive channel for the U operator there today, unless you similarly reduce the power—as I understand you propose to do—for the existing V stations, you would still leave him with a noncompetitive facility, would you not?

Mr. THOMS. Not necessarily. There may be cases where a U operator would rather have a low-power V than a maximum-power U as provided under the present standards.

Mr. COX. He at least would get away from the conversion problem?

Mr. THOMS. He would get away from the conversion problem, and he at least will have a fighting chance with a competing type of facility. He will not be an outcast.

Mr. COX. Do you think he can persuade the advertisers at least to pay a reduced card rate for that kind of V coverage better than he can a more substantial U coverage?

Mr. THOMS. Just as a 250-watt station does very well in a community with a regional or clear-channel station; yes, sir.

Mr. COX. If you are going to have a lot of these small area coverage stations, either U or V, is it your position that their added cost—because each one of them is going to have a station, staff, and so on—that those costs can be economically borne by the present advertising revenues which go to the support of television on a nationwide basis?

Mr. THOMS. There isn't any doubt about it. I can use my own Asheville situation as an example. It is possible to pay all costs of an economical low-powered V, as I do with my U in Asheville, for as little money as it takes to operate a radio station. The industry has found out many, many shortcuts—we practice them and we do a good job with them—whereby you do not have to think of television in terms of millions of dollars all the time.

You can think in terms of revenue for a low-powered V in terms of $8,000, $10,000, or $12,000 a month and you can still make money in a hometown community.

Mr. COX. For the record, it is true, is it not, that in Asheville itself—disregarding possible competing signals from outside the community—you compete with 1 high-band V, and that you have 2 network affiliations and he has 1. Is that correct?

Mr. THOMS. Right.

Mr. COX. However, his card rate is double yours.

Mr. THOMS. That's right.

Mr. COX. What percentage of conversion do you have in the area?

Mr. THOMS. We had at one time, before the encroaching V's were started and before the local V opened up, around 60 percent conversion, which was considered pretty good.

Mr. COX. Now what would it be?

Mr. THOMS. I don't think we have particularly lost any conversion.

Mr. Cox. You are just holding on at that level?

Mr. THOMS. That's right. It's a holding process now.

Mr. Cox. Is your principal problem, you think, competition from the V in Asheville, or is it competition from the V's in surrounding communities?

Mr. THOMS. Both.

Senator PASTORE. In what way do you feel the competition? Do you lose out on a better type of program, or what? After all, fundamentally, if the people in a community can turn on a U as easily as they can turn on a V, or turn on a V as easily as they can turn on a U, then why is it the concern of Congress as to whether or not the stations live or don't live? Is it not a question of what kind of a program you can get?

Mr. THOMS. It isn't a question of programs with me.

Senator PASTORE. What is fundamentally your trouble? Do you mean the fact that other stations come into your area?

Mr. THOMS. It is the inequality of the facilities, to begin with. I am a U, and the others are V's. They have more extensive coverage. In my particular area, the Commission, when they originally made the allocation plan, did not take into consideration terrain. They just drew a bunch of circles on maps and fit them on a map, and that was it.

If you happen to be in a mountainous area where the UHF propagation is poor, that was something that time and technical development was supposed to overcome.

So far it has not been overcome. So I am constantly behind in circulation because I don't have the coverage, and the technical ability of the UHF transmitting equipment and receivers don't make me comparable with the V.

Senator PASTORE. How about the programs that you get? Do you get nationwide programs?

Mr. THOMS. Yes, sir.

Senator PASTORE. What do you carry—NBC?

Mr. THOMS. And CBS.

Mr. Cox. What percentage of your daily programing is network programs?

Mr. THOMS. I have no daily program. I have a limited operation 4 hours a night.

Mr. Cox. You are only on the air in the evening?

Mr. THOMS. That's right.

Mr. Cox. Let me ask you this. Are you making money or losing money?

Mr. THOMS. I am losing a little money. I cannot sell any local advertising and keep an advertiser on a UHF station.

Mr. Cox. Is your competitor able to sell advertisers on the proposition of buying time on this station during the days? Does he have a daytime operation?

Mr. THOMS. Yes, he has a salable product.

Senator POTTER. Can't you sell spots around the major programs?

Mr. THOMS. My circulation is so poor that I can't even sell, in good conscience, the spots around the national programs.

Senator PASTORE. Why not? Aren't you able to sell cheaper than the next fellow because your facilities are smaller?

Mr. THOMS. Yes. My rate is much lower.

Mr. Cox. But you still don't find purchasers?

Mr. Thoms. I can't deliver results. These advertisers stay on a station only so long as they get results for their advertising.

Senator Potter. What is the quality of your signal? Is your signal of good quality?

Mr. Thoms. Where it is received, it is excellent. But in the mountainous area, with all these deep shadows and all, most of the people live in the coves along the river bottoms. A few live on the mountain tops. But the UHF signal simply will not penetrate into those coves and those deep shadowed areas.

Senator Potter. That has been one of the problems I have always been concerned about—the fact as to the technical quality of UHF. I am thinking now of the public interest that is involved.

I had hoped—and probably there has been—a great deal of improvement in the engineering of the UHF or the all-channel receivers, and possibly the transmitting equipment. I do not know.

Mr. Thoms. There has been no improvement in the transmitting equipment.

Senator Potter. There has been no improvement in the transmission?

Mr. Thoms. None at all.

Mr. Cox. They have higher power available; do they not?

Mr. Thoms. Higher power, yes.

Mr. Cox. I take it that it is your feeling that that would not be a solution in your case; increasing your signal strength is still not going to take care of your shadowed areas?

Senator Potter. My point is this, that even if you had 100-percent conversion in your area, if you have these so-called shadows, I do not know what could be done from a rulemaking standpoint as far as the Commission is concerned, or by action of the Congress, to remedy that particular situation. I would like your comment on that point.

Mr. Cox. Have you given any thought to satellites, for instance? Mr. Storer was talking about that this morning.

Mr. Thoms. It would take about four satellites.

Senator Potter. For you to have complete coverage?

Mr. Thoms. An important limitation is the cost of satellites and the superpower—and additional power—in the small markets. They simply can't invest a million and a half dollars in a market the size of Asheville.

You not only have the availability of more power and its proven lack of, even with more power, filling in the deeper shadow areas; but you have the economics of it. It is not possible or practical to invest the necessary sums to increase the UHF power to get the coverage.

Senator Potter. We had testimony this morning by Mr. Storer, who stated that in a large city where you normally expect to have fairly flat terrain, UHF is not too successful because of the barriers from the high buildings. Now, if we find that from a technical standpoint it is not as good in rough country terrain, it presents a real question as far as the further development of UHF as a major factor in our nationwide competitive television system, as to how well the public interest will be served by UHF.

If you have that problem that was mentioned this morning in the major cities and we have problems like you mention this afternoon where you have rough terrain, I do not know how much selectivity could be worked out in the interest of the public, which is our concern.

Mr. THOMS. I think the major mistake was probably made in the original allocation plan, in that the Commission did not take into consideration terrain. They probably should never have allocated any UHF frequencies in extremely mountainous areas. I am not saying that I want one or that I am arguing for it because I am not arguing my own case.

Mr. COX. But in a case like yours, in the case of a U operating in mountainous terrain in competition with a V, the solution would more likely be to replace the U with a drop-in V than to deintermix in favor of all U's, in order to maintain service to the public?

Mr. THOMS. That is right.

Senator POTTER. Do you have any views on the question I asked Mr. Storer this morning on the suggestion that has been made in times past that if we have deintermixture, it should be confined in the large markets? Mr. Storer says that that does not work out too well because of the high buildings. Do you have any information on that?

Mr. THOMS. I did not hear all of Mr. Storer's testimony.

Senator POTTER. My question was, it has been suggested at times that your large metropolitan areas, such as New York, Los Angeles, Philadelphia, and Chicago, be made UHF communities, and allow your VHF to operate in your more remote areas where the distance is a factor.

Mr. THOMS. My answer is this, that I believe the Federal Communications Commission has enough data and information on hand now that they can determine where they can deintermix areas that will give perfectly satisfactory UHF service. There are areas in Indiana, Illinois, Ohio, and places like that, and in Florida, where deintermixing—where the U's do a beautiful job. UHF should not be cast aside, because that special spectrum is valuable and it is needed and should be kept in use.

Senator POTTER. My question is, Where should it be used?

Mr. THOMS. I think the Commission can find the places, where to use it and where not to use it. I think they know enough about it now.

Senator POTTER. If we cannot use it in our large cities and we cannot use it in rough terrain, then it does not leave too much of the country that is left. You have sections in Florida and the Central Midwest.

Mr. THOMS. I would say that it leaves better than half the country for them to work with.

Mr. COX. I think Mr. Storer's testimony this morning was that there would be about 25 areas which would be all UHF or predominantly UHF. Do you think that would be a substantial enough area of UHF strength to maintain the industry as far as manufacturing of transmitters is concerned?

Mr. THOMS. I think it would go a long way, yes.

Mr. COX. It would involve, would it not, some loss of areas in which there is a present sale of UHF receivers and transmitting equipment? That is, if for instance, in mountainous areas the shift is made to all V, you are then going to lose the set conversions that have been made in that area and you will have no replacement sales.

Mr. THOMS. We are going to lose them anyway.

Senator POTTER. Let me ask you one more question: If color television develops as we expect it will develop, wouldn't it be a big help to the UHF stations if the manufacturers of color television sets continue their policy of making all-channel sets?

Mr. THOMS. I think RCA is doing that. They say that they will give no guaranty that they will continue it.

Senator POTTER. But isn't it very desirable that all manufacturers make all-channel sets?

Mr. THOMS. Yes. You haven't got black and white solved yet.

Senator POTTER. If you are going into a new phase, black and white may be obsolete 10 years from now. We don't know.

Mr. THOMS. I mean if you are going to regulate it. RCA makes the statement that if, when other manufacturers come in the production of tubes and sets, it becomes necessary for them to drop their UHF in the color sets to be competitive they will drop them. I imagine that won't be too far off.

Senator POTTER. If they start selling color sets to a mass market, all the competitive factors will be operating, and 1 manufacturer who can save $20 by leaving the all-channel tuner off, from a competitive standpoint that might be done. But the point I want to bring out is, if they would refrain from doing that, it would be a big help to bring about this nationwide competitive television system we have been talking about, wouldn't it?

Mr. THOMS. Yes, sir; I agree with you.

Mr. COX. Thank you, Mr. Thoms.

Senator POTTER (presiding). Mr. Johnson, do you have a prepared statement?

Mr. JOHNSON. Yes.

Senator POTTER. You may proceed, Mr. Johnson.

STATEMENT OF JOHN G. JOHNSON, WTOB-TV, WINSTON-SALEM, N. C.

Mr. JOHNSON. My name is John G. Johnson and I am one of the owners and general manager of television station WTOB-TV at Winston-Salem, N. C. We operate on UHF channel 26 and have been continuously on the air since September 10, 1953. We do have a network. We are an affiliate of the American Broadcasting Co.'s television network. We have successfully operated a radio station in Winston-Salem for almost 9 years, and we also operate radio stations at Birmingham, Ala., and Norfolk, Va.

I want to thank you gentlemen for the opportunity of appearing here and make a few brief comments about a matter which, I am sure, is of deep concern to all of us.

I first appeared here about 2 years ago before this subcommittee, at which time Senator Potter was serving as chairman, and although we were at that time gravely concerned about the future of the UHF stations, the argument was made by many segments of the industry that we were merely experiencing growing pains, and it was not unusual that this should be true, because we represented a new segment in what was a relatively new industry. I believe that at that time about 10 stations in the UHF band had gone dark and ceased operation.

Now we come back some 2 years later, and we find not 10 stations, but some 56 have gone off the air as of today, I believe, which is almost 36 percent of the total aggregate number of UHF stations that were ever on the air, and I believe about 56 percent of the number of UHF stations now on the air.

Every time one of these stations has gone off the air, it, of course, has meant a loss of television service to the particular community. It has meant a loss of employment for a number of specially trained people who need these jobs, and this I think emphasizes the seriousness of this situation in every community where it has occurred. I feel certain if you gentlemen could have had an opportunity to have seen in any community, first hand, one of these situations, you would readily recognize it is a very desperate sort of thing.

I think the evidence is testified to by the number of stations and the high percentage of the UHF industry that has been decimated, which pretty clearly establishes that in most cases a UHF station cannot compete successfully in a VHF market. May I say in most cases, because there are a few exceptions. But if you analyze the exceptions, I believe by and large it is where the network owns and operates a station, or where there is an all-UHF market or some unusual circumstance that made that UHF station in that particular situation have advantages not normally enjoyed by the average UHF station in a multiple-market competing with the V.

Senator POTTER. Do you compete with a V?

Mr. JOHNSON. Yes, sir; two of them. One is in our home city, and the other one is 25 miles away. One services us with NBC, the other with CBS.

I don't want to take your time to review all the evidence; as you know we have submitted it, as Mr. Thoms has pointed out. Nor do I come here with a single plan which I think will cure all of the ills of the UHF stations. But for 2 years now the people who have been operating these stations, and who have their investment in these stations, have come here and to the FCC and to the industry at large, and have looked hopefully for some positive action.

I think, in all fairness, 2 years is a long time, particularly in view of the growing mortality of the UHF stations. And I think in all fairness we are not unreasonable in asking now that the FCC, or someone, take action in this matter.

To elaborate on that just a moment, most of these stations—and I have not surveyed them individually, but I have talked with a large number of them—most of the current operating UHF commercial stations—I think about 95—I believe without any doubt the majority of them are now losing money. I think most of them have probably lost money for anywhere from a year to 2 years, or longer.

Senator POTTER. Are you losing money?

Mr. JOHNSON. Yes, sir. When I say we have come hopefully, that is because of the statements about selective deintermixture. Because of some of the statements made by the Commission, these people have continued to lose money and continued to try to render a service to their communities, feeling that somewhere just around the corner is a chance that something might be done.

When I say that we feel we are entitled to an answer, it seems to me it is really a cruel thing to continue the indecision. Whatever the answer is, I think the people involved in this business are entitled to some definite solution, or some definite answer as to what the trend is going to be.

Senator POTTER. One way or the other.

Mr. JOHNSON. One way or the other; yes, sir; whatever it may be.

As I say here, many plans have been submitted to the Commission, and I think one of the problems has been—and I think I have talked with every Commissioner separately, collectively, and individually a number of times—that the plan itself is not a cure-all. It is not 100-percent perfect, and always there are some people who can find a deficiency in any plan that is submitted.

In fact, we are going to have to recognize and deal with the fact that we can't come up at this late date with a 100-percent cure. So if we are realistic and realize that, I think the thing to do is for the Commission to come up with as near to a 100-percent solution as they can. If it doesn't solve but 20 percent of the industry's problems, at least 20 percent will be saved. Because some percentage can still be saved.

However, I think if this situation that is now in existence is allowed to continue, we are going to reach the point, as Mr. Storer indicated this morning, when UHF will no longer be a factor in this industry. That is tied in not just with the station operation. As I say, if 56 percent of the present numbers of stations on the air are now gone, you can quickly see by simple arithmetic we are going to reach the point where RCA and Admiral and General Electric are going to say, "Let's not bother to produce or try to perfect UHF sets. It looks as though they are on the way out." The same thing happens on Madison Avenue with the advertisers. The same thing happens with any hoped-for improvements in television transmitters.

Senator POTTER. As a matter of fact, I think one of the reasons there is reluctance on the part of advertisers to place their advertising with UHF channels has been the fact that they haven't known whether UHF is going to continue or not.

Mr. JOHNSON. That is right, and we can't tell them. It has got to be told to everybody in the industry by the Federal Communications Commission or by you gentlemen or by someone who has the authority to say "Steps will be taken which will insure that some percent of it will live." Therefore the only request that I have to make is one that has been made before, and I repeat it only for emphasis, that I think it is now time that we must ask the FCC to come up with some plan to solve whatever percentage of it that they can solve in the best manner that they can solve it.

There have been a number of plans submitted to them. Maybe they can take a part of one and a part of another and patch together something that will tend to stabilize a certain percentage of the industry as it now is.

I think if some action is not taken soon—and I say that because the majority of these stations are losing money—it certainly will do no good to prescribe a remedy next year or year after next, or wait 2 more years until we have got only 4 UHF stations left on the air, because it is then too late.

I want to touch, if I may, on one problem that has been brought out, that you mentioned and Chairman Magnuson mentioned, about the effect of tying or hitching UHF sets to color. That unquestionably would be a big help. If the mechanics can be worked out, it would be a big boost. But it is 10 years from now. The UHF unit in that set, is there are no UHF stations, is of no value whatsoever. If something isn't done immediately to preserve some UHF stations, then that long-range plan is of no value at all.

So it looks to me as though there are two steps in that thinking. First, something must be done now to make it worthwhile to figure that it will pay later to have UHF in color sets, because if it isn't done now—Senator Magnuson talked about the local community. He said that he would hope that there could be a local television station in the long future that could operate without a network, because if it is tied to color, maybe all the sets will be UHF.

But I can assure you it seems logical to me that if approximately 156 UHF stations are gone, and 3 or 4 are left 10 years from now, no one is going to suddenly say, "I believe I will try it."

So we can point to a growing number of tombstones, deceased UHF stations, which I think alone testified to all of the other factors as to what is wrong. I think that speaks more eloquently than anything I can say that we are faced with the danger of losing what I think is an important part of our American way of life, and that is the same thing you are concerned about, and Senator Magnuson was concerned about. That is our hometown television station, because too many of them are in the UHF band and, once that is lost, our hometown television station, as such, all across America is gone.

Senator POTTER. Let me ask you this: What percentage of conversion do you have in your area?

Mr. JOHNSON. Approximately 60 percent.

Senator POTTER. Do you have any technical problems such as certain shadows within your area?

Mr. JOHNSON. We are not in rugged terrain, as Mr. Thoms would be in Asheville, but we are in rolling terrain.

Senator ERVIN. Lovely terrain.

Mr. JOHNSON. Lovely terrain. We have some problems, but standing alone they are not a serious factor.

Senator POTTER. The signal you send out is as good a signal as the VHF signal in that area?

Mr. JOHNSON. Within the limited area that we cover, and assuming that the set is fixed properly with the proper antenna and the proper type UHF receiver, I would say our signal is as good as the VHF. But it requires a lot of doing that the average viewer finds it difficult to do.

Mr. COX. Do you continue to have trouble with the installation of antennas and the maintenance of UHF sets?

Mr. JOHNSON. Yes, sir; it is definitely more critical.

Mr. COX. And therefore it is a greater expense to the viewer?

Mr. JOHNSON. A greater expense. Mr. Storer pointed out a tube which—all I know about it is about what he said. Somewhere somebody says GE has a tube which they hope in the future will help.

But what happens is about 6 months after a person buys a UHF set this particular critical tube that controls it will burn out. It has a very limited life. I can go to a meeting of the Rotary Club in Winston-Salem and half a dozen people say, "What happened to your station last night? You went off the air right in the middle of the fights." We didn't go off the air. That tube is getting weak and it fades, and maybe it burned out. They think we went off the air because they can tune in all the V stations but not us.

That itself is a critical problem which, as Mr. Storer said, I think the industry—if the industry believes that the UHF is going to live, I am sure the resources of General Electric and RCA and all the others can go to work, and will go to work, and find the answer to those technical problems.

But I think there is a grave amount of doubt in their own minds. I was in Camden talking with the RCA people 2 weeks ago. I get the impression that these people were not in production, but just from talking with them they are just like the rest of us. They say, "We have got UHF transmitters stacked up in the warehouse. We don't know what to do with them." If that is true, you can't expect them, as intelligent businessmen, to devote a lot of research to try to improve UHF transmitters.

Senator POTTER. Has there been any resistance on the part of the appliance dealers in your area to push UHF sets?

Mr. JOHNSON. Generally speaking, it has not been too bad. There are a number of cases where it is true, because they have so many service problems with the UHF installation. But the real smart appliance dealer sells that set for more; and if he has got a good service department, and we service him all the time, he does push them. But that is almost like a separate business, our relationship with the appliance dealers.

Senator ERVIN. Your terrain is much more favorable than that in Asheville?

Mr. JOHNSON. Yes, sir; very definitely.

Senator ERVIN. Although you have a good deal of rolling country and some pretty steep country. Do you agree that the FCC now has sufficient legal authority to take final action?

Mr. JOHNSON. Legal authority—if my understanding is correct, Senator Ervin, I think so. I think if this committee asks the FCC—and the FCC has had a tremendous problem, I do not discount that—I think if someone pointed the way, for someone has got to take the ball and say to the FCC, "We would like you to come back with some sort of a plan within a specified time."

Senator ERVIN. How long do you think they should reasonably be given? In other words, I sort of share the opinion you have. I think they have been sort of slow in this—terribly slow.

Mr. JOHNSON. I think in view of the fact that this problem is not new to the FCC—they have debated it for some 2 years and a half at least—I should think they could come up with a plan in a matter of weeks rather than months—maybe 8 weeks or 6 weeks or 10 weeks. But I don't think it is a matter of 6 or 12 months.

Mr. COX. Do you generally support Mr. Thomas' suggestion of a resolution setting out certain bases for such a decision by the Federal Communications Commission?

Mr. JOHNSON. I think so, to point the way—that here are certain things that appear logically can be done. Tell us what you can do in this area, and this area, and this area. For example, I understand that one of the engineering firms here in the city has submitted a deintermixture plan which takes care of some 60 markets out of 75 in 1 zone. I am sure the Commission created this allocation situation. I think it is their responsibility to do something about it. I think they have the know-how and I think they can do it.

Senator POTTER. I think we all appreciate the fact that whatever decision the Commission should make, it will be a painful decision to some and beneficial to others. It is not an easy decision.

Mr. JOHNSON. That is right.

Senator POTTER. But I agree with you a decision should be made, and has to be made.

Mr. JOHNSON. Regardless of what it is. Even if it was totally negative; that the people in the UHF industry know that nothing is going to be done, nothing can be done—which isn't the case—and then let them get out of business, because that is what most of them will do.

Senator ERVIN. In other words, you think it will be an act of kindness on the part of the Commission just to commit murder rather than to starve people to death slowly.

Mr. JOHNSON. That is right.

Mr. COX. Do you operate all day, Mr. Johnson?

Mr. JOHNSON. Yes, sir. Well, we operate from about 9:30 until 12 and then we come back on about 2:30 to 11.

Mr. COX. What percentage of your programing is network programing?

Mr. JOHNSON. I would say roughly 60 percent, maybe.

Mr. COX. You are apparently successful, then, in selling the sponsors—or do you get compensated for all of that, or is some of it carried without charge?

Mr. JOHNSON. A lot of it we carry out of faith alone. In an effort to render service to the community, we are doing a number of things that, if our station went off the air, could not be done in our community, because the other stations are so sold out. One of them is not in our city, and they are not interested in our community chest campaign, or our Red Cross, or whatever it might be.

So if we lose our service, our community will lose a lot of television service to the people that I think they deserve, and we are trying to give them that. But it is tough sledding.

Mr. COX. As I understand it, your fear is that if UHF stations continue to leave the air, and there is no incentive to manufacturers to develop equipment, and there is a continuing lack of faith on the part of the advertisers, these channels may to all intents and purposes become useless for all future time, because you could never interest anybody in using them again. Is that substantially correct?

Mr. JOHNSON. That is my opinion, and I honestly say I think there is very little argument to the contrary. There is very little evidence to the contrary—let me put it that way. Because when we were here 2 years ago, Senator Potter, there were people—and logically it made sense—who said, "Well, this UHF is a new thing. A lot of people who are not experienced in the broadcast business have gone into television, and it is reasonable to expect a certain amount of mortality."

Only 10 stations had ceased operation. That argument seemed logical. But to those of us who had some experience and could see this coming, we knew that it was very much deeper rooted than that, and I think now the facts are on our side. About 50 percent of the industry is gone. I don't think there is anyone—I haven't heard anyone—who doesn't think that if you allow this to continue, there is no doubt but what UHF as such will be virtually extinct. I think everybody at the Commission and everybody else would probably believe that is likely to happen.

Senator POTTER. That would be the same as FM in radio.

Mr. JOHNSON. Yes, sir.

Senator POTTER. Do you have any other questions, Senator Ervin?

Senator ERVIN. No.

Senator POTTER. Thank you, Mr. Johnson.

Mr. JOHNSON. Thank you.

Senator POTTER. Mr. Cottone?

Mr. COTTONE. I have arranged to spare you any further testimony in order to permit Mr. Lyman, who is anxious to get back, and who is a UHF operator, to make a short statement. He will not be longer than 10 minutes.

Senator POTTER. Thank you, Mr. Cottone. Mr. Lyman, you may proceed.

STATEMENT OF FRANK LYMAN, JR., PRESIDENT, MIDDLESEX BROADCASTING CORP., CAMBRIDGE, MASS.

Mr. LYMAN. Mr. Chairman and members of the committee, I am Frank Lyman, Jr., president of the Middlesex Broadcasting Corp., of Cambridge, Mass., one of the cities in metropolitan Boston. I have been in the broadcasting industry since 1934, when I bought an interest in station WNB in Vermont, later WKNE. I sold my interest in that in 1949, so I have seen a good many years of the broadcasting industry.

I am here today because I feel that I have a responsibility to apprise you of a serious situation which is rapidly worsening in the broadcast industry. I feel that I need not tell you how important television broadcasting is to the public interest, both on a national and local level.

I believe that we can quickly agree on some basic facts. We have thousands of newspapers throughout the United States which daily communicate to millions of people. We have thousands of radio stations. We have over 50 million telephones used by businesses and individuals. All the preceding means of communication depend upon either sight or sound; however, important as these means of communication are, I feel that it is a basic fact that television is the most powerful communications medium yet developed by man—because television combines both sight and sound.

In a few short years, over 35 million television receivers have been spread across our Nation. Television is well on its way to becoming this Nation's and the world's most important and most influential means of communication.

We currently operate WTAO–AM, WXHR–FM, and WTAO–TV. Our AM station, although only a daylight operation because it might possibly conflict at night with a Canadian clear-channel station, is able to render a fine local service and stand on its own two feet in a keenly competitive market. Let me tell you the story of our FM station, WXHR, which now programs classical music exclusively 17 hours a day. We put WXHR–FM on the air on an experimental basis in 1946. There were, of course, no FM receivers then in existence. We received our commercial permit late in 1947 and operated on a nominal commercial basis with substantially no advertising until the fall of 1950, at which time the receiver population had built up to a level which we felt justified actively soliciting advertising.

The advertising on WXHR has grown at a steady rate ever since, and there is no question that the population of FM receivers in the

Boston area has paralleled this growth. WXHR is a "good music" station, and we are extremely particular about the type and class of advertising we carry. All the musical selections on WXHR are long, of the order of 20 minutes or more, so you do not find any crowding of advertising. These high-grade commercial policies on WXHR have probably been responsible in a considerable measure for the widespread public acceptance and loyal audience of our FM station, WXHR.

We built this service where none had existed; we are anxious to do the same job with our WTAO–TV; however, up to the present time allocations problems have held us back.

WTAO–TV is a real problem. We have operated our UHF station for over 2 years in entrenched VHF territory. We entered upon television, because we considered the medium to be a natural extension of the fine local services which we already provided our community.

Senator POTTER. How many VHF stations are in your area?

Mr. LYMAN. In Boston there are two VHF stations.

Senator POTTER. Do you have a network affiliation?

Mr. LYMAN. We do not at at the present time. We had network service arranged with ABC, but then the station through which we were to get the service in Worcester folded up last fall—went off the air—and our method of getting a program service on such a basis as we could handle financially was cut off. So all we have is film, and some local originations.

Senator POTTER. Was that Worcester station a VHF?

Mr. LYMAN. That was a UHF station, as we are.

Senator POTTER. How were you to get them?

Mr. LYMAN. By air from Worcester.

Senator POTTER. You were going to be a satellite to the Worcester station, is that it?

Mr. LYMAN. We didn't call it that, but we would have relayed with an off-the-air pickup. This we had a firm agreement with ABC on, but this Worcester foldup prevented it.

In 1952 we took the Commission's allocation plan on good faith and placed our resources, experience, and effort into building a local television service for our community. In the time that has since gone by, it is now clearly recognized that the Commission's hope of successful intermixture of television channels was a dream. To us, it has been a nightmare. Intermixture of UHF channels with VHF channels has not worked out.

We feel that the solution to the present television intermixture problem will not be found by allowing the current trend toward monopoly to continue. On this point, if you squeeze this thing down to just 12 channels, there is not much chance for a real competitive system, at least in our part of the country. I don't know about the other sections. It limits it very sharply with 12 channels in a rather densely populated area such as New England. You can't have any variety of service.

While in the initial phases of television development, the large-coverage television station may have been a necessity. The need now is for more stations which will provide the maximum amount of free competition and program choice. Any further grants, or changes in grants, issued by the Commission should recognize the fundamental market-place economics involved in fostering a competitive television system.

I would like to get off on this. There seems to be a rather ludicrous development in this all, that in the planning of this television allocation problem the economics of the situation were almost completely ignored. I don't see how they could have been so beautifully bypassed, but there seems to have been no thought of it in the initial plan.

We believe that the basic hypothesis upon which any readjustment of the allocations should be made is that competition best protects the public interest.

Of the 56 UHF casualties, 4 are from New England: Portland, Lewiston, Providence, and Worcester. These stations died in that sequence. Each flickered out on a rim surrounding the Cambridge location of WTAO-TV. This fading of UHF so close to home has added considerably to our problem of developing a local television service. Every existing difficulty has been increased: network affiliation is less likely, advertiser and agency apathy is more pronounced, and conversions are more difficult to secure.

Senator POTTER. What percentage of conversion do you have?

Mr. LYMAN. I haven't got a good recent figure. It is definitely low. We have never been able to put the millions in that George Storer has been able to put into building conversion, and we are faced with a pretty tough VHF situation with two. Our neighbor out in Worcester did spend rather large sums and even there conversion was not too impressive to me. They had varying figures on it.

Senator POTTER. I assume because of lack of conversion, you haven't been able to get ABC on your own?

Mr. LYMAN. We couldn't possibly afford the cost that would be involved.

Mr. COX. Connection costs and like charges, you mean?

Mr. LYMAN. All of those things, yes; it would be completely out of line. We operate in very small fashion. Our TV is by far the smallest station of our three.

Mr. COX. I assume even if you got the programing, you would still have the problem of persuading the national sponsors to pay for its being broadcast over your station?

Mr. LYMAN. Yes; you certainly would.

Mr. COX. You tend more or less to carry it as a public service, rather than as a source of revenue?

Mr. LYMAN. I am afraid we would have to.

The Commission's Third Survey of Post-Freeze Television Stations confirms the nationwide extent of the intermixture problem. The basic issue involved is whether the people of Boston, New England, and the United States are better served by a few large-coverage stations or these same few large-coverage stations along with a larger number of smaller stations serving their own communities.

We feel that an allocations readjustment which will provide the maximum number of stations engaged in free competition will best protect the public interest. A station's ability to compete hinges upon access to receivers. We only ask for equal access to viewers who can be reached by our immediate competitors. This, we believe, is a fundamental tenet that the Congress and the Commission must recognize and act upon in any basic readjustment of the television allocations. For many agonizing months we have patiently waited for the Commission to take some positive action to permit the development of local community service.

We have written letters to individual Commissioners for their enlightenment in making a decision; we have made personal visits to the FCC to give them the fruits of our experience; we have filed formal petitions.

But all of these efforts have been fruitless since the Commission seems to have become more and more dedicated to preserving a monopoly of very few high-power, high-tower VHF stations serving huge areas, regions, and States—with local expression buried under the exclusive power of a very few men deciding that the national programs which bring them the largest revenue shall be the program that the people shall view and listen to.

Senator POTTER. Do you have any questions, Senator Ervin?

Senator ERVIN. No.

Senator POTTER. Senator Bricker?

Senator BRICKER. No.

Mr. COX. Is it your position, Mr. Lyman, that if you had a like facility in Cambridge—that is, either a drop-in V with a directional antenna, or, if you went the other way, and the area would be deintermixed and made all UHF, that you could operate a competitive station on a local basis in competition with the obviously more powerful stations in Boston?

Mr. LYMAN. Yes; that is exactly my feeling, and I think we pretty much proved that we have been able to do that kind of thing with our FM development. FM started with a zero population of receivers and we have gradually built up to the order of 300,000 receivers in the Boston area. It is a big market area, and this kind of thing can be done. The market will support it easily. It is reported that the television advertising amounts to around $10 million in the Boston area currently.

Senator POTTER. What type of programs do you put on?

Mr. LYMAN. We get film. That is our source, and some local—one cooking school type of program. Our budget is extremely small. The amount of advertising we are carrying on television is negligible.

Mr. COX. How long are you on each day?

Mr. LYMAN. About 2 hours a day.

Mr. COX. Do you think if you could get access to the viewers that you could provide a service that would not only take care of the local needs of Cambridge, but would find viewers in Boston itself?

Mr. LYMAN. In the Boston area—our city is set up a little different than some. We have a good many separate cities that make up metropolitan Boston. They have not been incorporated in the Boston unity. But it is a metropolitan area of around 3 million people. Yes; quite true. Other cities in our area require the same kind of local service, something different than the big New York network program which is about all else that is available.

Mr. COX. Do you subscribe to Mr. Thom's suggestion that this committee should seek by resolution to direct some action on the part of the FCC?

Mr. LYMAN. Yes; I do. I think that only by some congressional act of that sort—committee act—can anything be done about this. I feel this situation of TV becoming a very concentrated type of monopoly is extremely dangerous and only the Congress is in a position to take a firm hand.

Senator POTTER. Thank you, Mr. Lyman.

Senator POTTER. Mr. Patterson.

STATEMENT OF NORWOOD J. PATTERSON, GENERAL MANAGER, KSAN TELEVISION STATION, SAN FRANCISCO, CALIF.

Mr. PATTERSON. Honorable Chairman Magnuson and other members of the committee, I consider it indeed a pleasure to be able to testify this afternoon.

Senator POTTER. Would you identify yourself for the record and give the station you represent?

Mr. PATTERSON. My name is Norwood J. Patterson. I am the son of the owner, S. H. Patterson, of KSAN television, channel 32, in San Francisco, Calif. My father appeared before you some 2 years ago, and I am certainly sure he would rather be here today than where he is. Unfortunately he is in the hospital having a minor operation for a minor hernia.

Senator POTTER. I am sorry to hear that. Convey my best wishes to your father.

Mr. PATTERSON. Thank you. I would like to present this little folder along with the other few words I have to say, as I will be referring to it later on.

Senator POTTER. You may commence your statement. Do you care to read your statement?

Mr. PATTERSON. I would like to read my statement, and I would appreciate very much if you would be kind enough to bring up questions as we go through.

First of all, I would like to review just a little bit our operation in San Francisco. For the past 2 years my father, S. H. Patterson, has been licensee of KSAN television station, UHF channel 32, in San Francisco, Calif. I, Norwood J. Patterson, have been the general manager during this period of time.

KSAN television has been operated according to the rules, regulations, and policies of the Federal Communications Commission as set forth in its sixth order and report, being an intermixed market—that is, VHF television assignments and UHF television assignments assigned together in the San Francisco market. During these 2 years of operations there have been 3 competitive VHF television facilities, namely, channels 4, 5, and 7, operating in San Francisco, licensed for San Francisco; and 1 UHF channel in San Francisco, KSAN-TV, channel 32.

Thus, our 2 years' experience in the television industry has been in a mixed market, with three well-established competitive V's, and a fourth service to the area made possible by the proximity location of the transmitter of channel 13, licensed to serve Stockton, Calif., but in a sense doing the best they can to serve metropolitan San Francisco.

Senator POTTER. Where is their antenna placed?

Mr. PATTERSON. Their antenna is located on a 4,000-foot peak, Mount Diablo, which is considerably closer to San Francisco than it is to Stockton.

I would like to say briefly that my father has been a very successful operator in radio, having been in the radio business since 1926 and having owned and operated one or more radio stations since 1933.

During this 2-year period of time it has been the policy of KSAN-TV to program outstanding programs that were not available through any other television facility, and programs that were in demand to a sufficient extent that these programs would create a desire in the general public to the extent necessary to spend additional sums of money to have their existing television set converted, since there were approximately 1 million existing VHF-only television sets in circulation in the 6-county San Francisco Bay area metropolitan market at the time KSAN television went on the air.

Such programs during this 2-year period have been:

Pacific Coast League baseball nightly, of both Oakland Oaks and San Francisco Seals. These were live telecasts using three-camera coverage of the games.

Intercollegiate basketball—California, Stanford, University of San Francisco, St. Mary's, and other schools, both live and film.

High school football and basketball.

Pacific Coast Conference football—California, Stanford, and so forth.

Boxing—local and national and film.

Wrestling—on film basically.

Thoroughbred horse racing—live telecast with a feature race daily. Incidentally, this was the first time in the history of the United States that, during the entire meet, the feature race was televised.

Then we have played the films, the actual films, that evening of Tanforan, Bay Meadows, and Golden Gate Fields as races were run at their respective tracks.

In addition to this, we had many other local programs. I am not trying to list all of them, but just hitting some of the highlights. These are just a few of the programs, which are in more detail in exhibit A[1] attached, which have caused approximately 25 percent of the people in the San Francisco Bay area owning television sets to convert them to receive UHF television, KSAN-TV, channel 32.

During this period of 2 years, KSAN-TV, channel 32, has increased its effective radiated power from 20,000 to 200,000 watts. With this experience of 2 years, and at the expense of losing hundreds of thousands of dollars, we have proved without a question of doubt that UHF and VHF television cannot successfully compete in a mixed market due to the numerous outstanding advantages VHF has over UHF, such as considerably better propagation characteristics over mountainous terrain which San Francisco encompasses, from sea level to a thousand feet above sea level within the small area 7 miles on each side, thus enabling a VHF station to be received in most instances without an outside antenna, and in shadowed areas for VHF to produce a snow-free picture without the great added expense and careful installation that are necessary to produce a snow-free picture on UHF.

Senator PASTORE. Could I interrupt you at that point? How are you going to hold that against VHF?

Mr. PATTERSON. I beg your pardon?

Senator PASTORE. How are you going to hold it against VHF, the fact that it is superior? Or how are you going to deny it to the public?

Mr. PATTERSON. I am not trying to do either. I am trying to point out that, with the proper allocation, both can live together if they are not trying to survive in the same market.

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[1] The brochure referred to will be retained in the committee's files.

I will put it this way. If we were all UHF in San Francisco, the general public would in that instance not think it abnormal to have to be scrutinizingly careful with their installation because they would do it on all television stations. If we were all VHF, there would not be the same problem. It is when you mix the two together that the problem is created.

Senator PASTORE. That may be true. But the argument that was made here by one of the members of the Commission—and I think he is right here now this afternoon—was principally along the lines that in many of these locations they have already had both. They have already seen the superior VHF. Under what logic do you take it away from them?

Mr. PATTERSON. I do not propose to take it away from them, Senator. I propose that in areas such as San Francisco, this be made a VHF market; and that in areas which have flat terrain—Sacramento Valley, Stockton, Fresno, Bakersfield—where there is no problem, where UHF produces even a better picture than does VHF—and I will explain reasons why——

Senator PASTORE. I see. I get your argument, now.

Mr. PATTERSON. There should not be VHF in that area, because they do not give either added coverage, nor do they give as good a picture.

Senator POTTER. Do you agree with Mr. Storer's statement this morning that UHF is not desirable for your large metropolitan markets?

Mr. PATTERSON. I did not hear his statement this morning, but basically it is less advantageous in large metropolitan markets than is VHF, because you have more building shadow problems.

In flat terrain such as we have in the Sacramento Valley, in Fresno, Bakersfield, all through that area, all through the Middle West, through Kansas and the eastern part of Colorado and Nebraska and Wyoming, all of that flat terrain area, UHF will actually produce a better picture than will VHF. I say that because of these reasons. It is not subject to interference from manmade interference like electric shavers. When you turn on an electric shaver you can see the lines go through your television set on VHF and your picture has had it. On UHF, that is not the case.

Electric beaters do not bother UHF, but they do VHF. Airplanes going over producing a multiple path of the reflected signal produce a jumpy and a distorted picture on VHF, but does not on UHF. So UHF does have its advantages, and if you put that where it can best be utilized, it actually produces a superior picture and a coverage equal to VHF.

Mr. COX. Is that at maximum power, or can that be done at less than maximum power for a UHF station—to get the geographical coverage, I mean?

Mr. PATTERSON. To get the geographical coverage, you would have to compare maximum power on UHF with maximum power on VHF, if you are going to compare maximum powers both ways to get the coverage.

Mr. COX. Can you, with 1,000 kilowatts, provide the same coverage that a low-band V does at 100?

Mr. PATTERSON. In flat terrain, yes. One other point I would like to point out, and that is that the UHF can produce maximum power at about the same cost that a VHF can produce maximum power, because you can get maximum power in the antennas without the high cost that is necessary in VHF to go to a higher power transmitter. You can use a lower power transmitter and get maximum power.

Mr. Cox. Can you use a high gain antenna?

Mr. PATTERSON. Through the use of a high gain antenna, and those frequencies are much smaller and the antennas are actually less expensive to buy.

Senator PASTORE. In other words, you are actually making the argument, in your opinion one of the great assets to the solution of this problem is selective deintermixture.

Mr. PATTERSON. I think it should, and could, even go further than selective deintermixture.

Senator PASTORE. How far could you go?

Mr. PATTERSON. I believe it is within the Commission's power—I don't have an exact percentage figure, but I think it—I shouldn't say areawise, but marketwise, I think it can be deintermixed completely.

Areawise you will always have some small overlap. This has not been a problem in our particular market, where UHF has been in their own market of Sacramento. There they have been completely successful. Yet they have had service, and there was service from VHF San Francisco stations prior to the UHF station going on the air.

But they were in fringe areas and whenever you are in a fringe area the UHF picture is so much superior that they would much rather listen to the UHF rather than VHF. They will expend the money to convert because they have a poor VHF picture. But when you put it the other way around, when they are already getting a perfect VHF picture, they are very reticent to spend any money to get even a comparable UHF picture.

Senator PASTORE. What kind of a market do you run your UHF station in? How many V's are there in your market?

Mr. PATTERSON. We have three V's in our market licensed for San Francisco. We have one V located—their transmitter—about 30 miles away. It is licensed for Stockton, and it is doing its utmost to sell the San Francisco market. They have applied to the Commission to move to San Francisco, but they were turned down. They operate a remote studio out of San Francisco. So they are doing their utmost to take out the San Francisco dollar, even though the allocation and so forth were supposed to put them over in Stockton.

Senator PASTORE. Your UHF station is in San Francisco?

Mr. PATTERSON. Our UHF is in San Francisco. Our transmitter is located on the same tower that both 5 and 7 are located on.

Senator PASTORE. What networks do you carry?

Mr. PATTERSON. We are completely independent.

Senator PASTORE. What are some of the shows that you carry of national prominence?

Mr. PATTERSON. We do not feel that it is necessary to carry shows of national prominence. We feel that it is necessary to carry shows of local prominence. We carry those itemized in the early part of this program, and summarized a little more in detail in your little red and white brochure.

We brought baseball to the San Francisco market exclusively for the first time every night, both the Oakland Oaks and San Francisco Seals. This was a very costly project, yet we did it. We brought intercollegiate basketball from Stanford and St. Mary's to San Francisco, every night, for the first time to our area.

Senator PASTORE. Have you been running a profitable station?

Mr. PATTERSON. We have been losing considerable money, to the extent that now we have reached the conclusion that we cannot continue to lose the amount of money that we have, that it requires a deintermixing, not only in our market but in everybody else's market. That is this one problem. There is only one problem.

Senator PASTORE. Let me ask you a few more questions in order to be clear in my own mind, Mr. Patterson. At the time you started your UHF station, how many V's were there in the same area?

Mr. PATTERSON. There were three V's. At that time channel 13 was not on the air.

Senator PASTORE. When you say channel 13, is that yours?

Mr. PATTERSON. No, channel 13 is licensed for Stockton, Calif.

Senator PASTORE. That is the one that is trying to come into San Francisco?

Mr. PATTERSON. That is right. When we went on the air, they were not licensed.

Senator PASTORE. Why did you get into this, realizing the fact there were already three V's there? Why did you invest all this money?

Mr. PATTERSON. We invested all this money, no doubt, for the same reason that the Federal Communications Commission made their allocation plan. It has now been proven a mistake, but at the time I am convinced that they did not do it intentionally.

They used their best judgment at the time in creating the sixth report in that allocation plan. We did the same thing. We used our best judgment at the time. We had faith that all manufacturers were going to come out with UHF sets. We believed that the technical advancement of the art would be further along than it is after these 2 years of time.

Mr. COX. Do you think, Mr. Patterson, that if you had a comparable facility—a V in the San Francisco market—you could run a successful station and make a profit as an independent without a network affiliation?

Mr. PATTERSON. There is no question about it, for the very simple reason that with three V's in San Francisco, you cannot buy any time during the A hour when you could put on your own program.

The only time you could do it would be up at 10, 11, or 12 o'clock at night, or early in the afternoon. There is a clamoring for class A availabilities today. We were at one time successful in creating a volume of business, before the stigma of UHF developed as bad as it is now, of approximately $20,000 a month.

Senator PASTORE. Let me clear something up at this point. You already had three V's in San Francisco in addition to your own U station. You are an independent. You are not tied up with any of the three large networks. Am I right?

Mr. PATTERSON. That is correct.

Senator PASTORE. Why do you say that changing from the U to the V will change you from a losing proposition to a profit-making proposition?

Mr. PATTERSON. For the very simple reason that we will then have people that will be able to look at the programs we put on.

Senator PASTORE. You are talking about conversions?

Mr. PATTERSON. Yes.

Senator PASTORE. That is fundamentally——

Mr. PATTERSON. Fundamentally that is the problem.

Senator PASTORE. You have got how many?

Mr. PATTERSON. We have about 25 percent.

Mr. COX. Is it your view that if you could give the advertiser—and I assume there are many local advertisers who cannot buy time at all on the other three stations because it is taken up out of New York——

Mr. PATTERSON. They could neither afford it nor can they get the time.

Mr. COX. But if you could give these advertisers the same coverage in the sense that if your programing would attract viewers, the viewer could see it without added expense, then you could increase your card rates to the extent that your operation would become financially successful?

Mr. PATTERSON. At this stage of the game we wouldn't even have to increase our card rates. It could be that we could sell sufficient——

Mr. COX. You would have that much more business?

Mr. PATTERSON. That is correct.

Senator PASTORE. Did you not know when you applied for your U that you had to have conversion in your locality?

Mr. PATTERSON. That is correct, and that is why we spent over $250,000 for programing during this first 2 years.

Senator PASTORE. Tell me specifically what is the thing in your mind that more or less deceived you on this U business. What is it that caused you to make this tremendous investment in the hope that something would happen that has not happened?

Mr. PATTERSON. If transmitter manufacturers had taken the amount of money that they have lost as of now in their transmitter division and promoted the sale of UHF television sets, they would not have lost the money they lost in the transmitter division, and the UHF television stations would be successful.

But when the manufacturers will discriminate and actually go to the extent of advising their distributors to talk against UHF, that is the thing that kept us from getting the conversion rate that this amount of money and this type of programs would have gotten otherwise.

Senator PASTORE. Will you admit this, that it costs a little more money to manufacture an all-channel set than it does a straight V?

Mr. PATTERSON. There is no question but what it does cost more money.

Senator PASTORE. Then why should the manufacturer compel the consumer, or the buying public, to spend more money than it has to, unless it really has to?

Mr. PATTERSON. I don't feel that they should compel them to, but I feel that if we all are trying to create a nationwide competitive television system, then it behooves all of us to try to sell the public on buying what we are trying to create.

Senator PASTORE. Even if it does cost more money?

Mr. PATTERSON. Even if it costs more money. It costs money to buy the first television set.

Senator PASTORE. I am not quarreling with you. I am trying to get some of these questions answered in my own mind because, after all, we must take the position here that whatever your difficulty happens to be, you cannot push this responsibility on the backs of the buying public.

Mr. PATTERSON. That I agree with.

Senator PASTORE. They should not be placed in the position that they have got to unscramble this mess. They had nothing to do with it.

Mr. PATTERSON. That is correct.

Senator PASTORE. You take a person in a locality where it has been given service—take San Francisco, for instance, with three V's. If they can buy a set and see all 3 V stations and spend, let's say, $25 or $30 less, why should they be compelled to spend $25 or $30 more?

Mr. PATTERSON. Because we can, and have, and will continue to give them programs that the other stations have not.

Senator PASTORE. Is that not the choice that the person should make on whether or not he wants to convert rather than be compelled to the conversion?

Mr. PATTERSON. That is true. But my point is that there is a discrimination against stations that are endeavoring to be competitive, one with the other, that we have no control over. And whenever you are on equal grounds, you have an equal ground for success.

Senator POTTER. Isn't it true that when you buy a V set, you are buying just half of a television set?

Mr. PATTERSON. That is correct.

Senator POTTER. In this case, there is a U in the area, a U which gives them a great community service. Nevertheless, as far as the community is concerned, I think it is much better if the person who buys the set would be able to switch onto any channel. He gets a full set that way. By doing that, he encourages local stations to go on the air and furnish local programs.

Mr. PATTERSON. I feel it is just as erroneous to manufacture a television set that will only get the first 12 stations as it would be to manufacture a television set that would only get the low-band V's.

Since we cannot control the general public, which seems to be the contention here this afternoon, the only thing we do then is to get the general public to the point to where they have no objection to buying UHF.

If there is all UHF in the market—to give you an example, Sacramento, Calif., or Fresno, Calif.—and you can go to many other exclusive U markets—they have no objection, and as a matter of fact they clamor for it because they have been getting fringe VHF reception and here, with this, they get beautiful pictures.

Mr. COX. You think there is some chance that if the manufacture of all-channel sets were expanded, although there might continue to be a differential in cost between all-channel and VHF only, the actual ultimate cost to the consumer could be reduced by mass production?

Mr. PATTERSON. It has been reduced already. RCA has contended that it has reduced it from about $40 to $50, down to about $25. But even so, that does not overcome all of the problems. That helps it. That is curing the effect rather than the cause.

Senator ERVIN. Instead of conversion of sets, you were offering the conversion of market areas. In other words, you are advocating as a real remedy making a given area either all V or all U, depending upon the conditions which would bring out the best features of each set of circumstances.

Mr. PATTERSON. That is absolutely correct.

Senator PASTORE. If you can't get all-channel sets, you have two answers to your problem, don't you? Are you not suggesting two answers, either that we get down to the business of having all-channel sets or you have got to strictly have all V's or all U's?

Mr. PATTERSON. If you or I could control the buying habits of the general public, there would be an alternate solution and that would be to stimulate the purchase of all-channel sets.

But because of the period of time that has evolved and the status that we are in now, I do not believe that that is the solution to our problem.

Senator PASTORE. There are too many V's out now.

Mr. PATTERSON. Our only solution to the problem is a reallocation of the allocation plan that the Commission has put out. There was proposed to them before this time this possibility that might exist, that now does exist, which was presented to the Commission by the Radio Corporation of America. Later on in here I give you the letter and the time and so forth.

They were also advised of this possibility that might exist by DuMont Laboratories, by Dr. DuMont before the allocation plan was put out.

No one knew for sure what would happen. But these experts that had their research behind them and so forth came out and said, "You had better look out; you had better not mix the two in the markets."

Now we have found out by our sad experience over these past 2 or 3 years that they were right, and we should have paid more attention to them at the time. Therefore we have a cause and we have an effect.

Most of the proposals that have been presented to the Commission will correct or help to correct the effect. But if we take those and apply those—that is, directional antennas, reduce separations, utilizing possibly some of the educational channels—if we take all of those things and apply that against the purpose of deintermixture, then we can be successful.

Senator POTTER. I think, Mr. Patterson, one of the economic problems that the Commission is faced with and the committee is faced with, if you go in and deintermix a market—for example, make one market a U market and another market a V market—you have millions of dollars invested by citizens of this country in the V set and you force them if they are going to see television to buy an all-channel set.

Maybe the opposite would be true in another market, where they have money invested in a U set and it turns out to be a V market. They can still use their set but they have paid additional money that is not needed.

That is the economic problem on one hand. Then you have the economic problem on the other of the man who has his money invested in building up his transmitter and other equipment for his business.

So we have two economic problems: One as it affects the public, and the other as it affects the industry.

Do you have any suggestions as to how those two economic conditions could be met?

Mr. PATTERSON. Yes. Those conditions are not anywhere as near serious as looking at them on the outside looks like. Let's take the first case where you have an all UHF market. That condition exists in Fresno, Calif., today. It did exist in Sacramento, and it exists in many other markets throughout the country.

If you put in one VHF, which has been recently proposed—and I guess it is still in contested hearings in Fresno—you are going to already present an economic problem to that group of people to get the excellent reception.

To offer this V, particularly in our outlying areas, you are going to have to make an additional expenditure of a VHF antenna in order to get this television station.

So that economic problem already exists and is being created every day by the Commission as they allocate a VHF station in an all UHF market.

Now, supposing we take out a VHF from the UHF market and give them a UHF. We have not cost that man and the public any additional money. True, he is not using a piece of equipment that he bought, but he did not buy it for a piece of equipment. He bought it to get a facility, to get the programs.

Those programs he is going to get anyway, so he hasn't been deprived of anything.

Senator POTTER. Excepting he bought something that he cannot use. He bought a part of his set which he canont use.

Mr. PATTERSON. That is true, but he has used it for a period of time. He did not buy it to buy a piece of equipment; he bought it to look at a television signal, to look at a picture, so he has not been deprived.

What he spent his money for he is receiving. All he has to do is turn the button and get it at a different place on his television set.

Senator POTTER. Assuming the Commission should agree with your plan of having deintermixture on an area basis, would you recommend that there be a period of time, and if so, how long, for that change to take place?

Mr. PATTERSON. There are many areas currently where it could be done instantaneously. It could be done elsewhere. From past experience with the Commission when they have done such similar things—as the time in 1940 when they reallocated the broadcast band; we had a station at that time. We moved to another frequency. Directional antennas had to be changed and had to be moved, and new engineers had to put them over to new frequencies, and moneys were expended because the whole would be benefited by these moves.

We as the owner of a radio station at that time expended the money necessary to make that move, the move which was made by the Commission.

Usually the Commission in coming out with such new policies as that usually gives a period of from 6 months to a year to accomplish that.

Senator POTTER. The thing that disturbs me, I can see the roof coming off of the Capitol when you force a large portion of your citizens to purchase anything, which you would be doing in this case.

Mr. PATTERSON. That is where it is not true.

Senator PASTORE. It is a political impossibility.

Mr. PATTERSON. I don't think it is an impossibility.

Senator PASTORE. I say, a political impossibility.

Mr. PATTERSON. When you get RCA, NBC, and ABC all advocating the same plan—and I have reference to their comments as filed with the Federal Communications Commission later on in my report here——

Mr. COX. Isn't it it true, Mr. Patterson—to take an example—if the plan outlined by Mr. Storer this morning, which involved the creation of 6 all UHF markets and of a certain number of 1 VHF market, were followed, actually it would not require the expenditure of funds? That is, in UHF markets or areas in which V's are not now on the air, so no one had expended any money in reliance on that.

Mr. PATTERSON. That is what I have been trying to point out. I guess I haven't made it too clear. In the UHF market the public doesn't have to spend any money. You continue that UHF market.

In our market of San Francisco, which is a VHF market, they do not have to expend any money, because all of the television sets already have got VHF.

Mr. COX. Some of those who have made conversions would lose the money they have spent to get the conversion, but they will still be able to get the program now in a better way than they have been able to even with that expenditure.

Mr. PATTERSON. That is correct. They would get it even better than what they are currently getting.

Senator PASTORE. Before you start reading again, Mr. Patterson, one more question. Would subscription television allocated in your particular case alone to you be of any assistance to you?

Mr. PATTERSON. Let's say there again it would help to correct the effect, but wouldn't correct the basic fault.

Senator PASTORE. In other words, you wouldn't say that that would be an answer to your problem?

Mr. PATTERSON. I don't think it is an answer to the problem. I don't think that any time we correct the cause rather than the effect that we have really found the true answer to the problem.

I say we have a great problem whenever it gets to the point that we have to take up the time of all of you Senators here, for I am sure you have many more important things to do than listen to us talk.

Whenever it comes to the point that we have to take up your time, then we have a serious nationwide problem. When you have a serious nationwide problem, it takes drastic means to correct.

VHF is superior in the fact that it is not limited with respect to the television sets capable of receiving their signals, as all television sets ever sold receive VHF.

VHF is superior in that the present status of the art of receiving sets is considerably more sensitive on VHF than UHF, which means to receive a good picture on UHF comparable to VHF it takes much more signal to the UHF set.

UHF, however, has some advantages that makes it superior to VHF.

UHF is not subject to manmade interference from such household devices as electric shavers, vacuum cleaners, electric mixers, etc. UHF is not subjected to the distortion of signal from multipath transmission caused by reflections from terrain, and particularly noticeable from reflections of traveling airplanes. It is possible in the future that UHF may be considerably superior to VHF, but at the present stage of the art this is not the case.

All of this, gentlemen, proves that the deteriorating of a nationwide competitive television system today is caused simply by one thing, and one thing alone, and that is the allocation plan as set up by the Federal Communications Commission in its Sixth Order and Report, in that this report intermixes UHF television facilities with VHF television facilities.

I do not say that the Federal Communications Commission erred willingly in its Sixth Order and Report. I am sure that their decision was based on their best judgment and it was their belief that a mixed allocation plan would best serve the public and most readily create a nationwide competitive television service.

However, I would like to point out that the Commission was warned during the hearings, which culminated in the Sixth Order and Report, by many, that a mixture of UHF and VHF facilities in the same market should be avoided.

This was called to the Commission's attention by the Radio Corporation of America in a letter to the Federal Communications Commission on March 23, 1950, Docket No. 8736. It was also called to the attention of the Commission during these same proceedings by Dr. DuMont, wherein his overall allocation plan did not intermix UHF and VHF facilities.

These technical experts knew, because of their research, of the incompatability of UHF and VHF being successful competitors in the same market. Likewise, Federal Communications Commissioners Hyde and Bartly, who presently are in favor of deintermixture, were in favor of not mixing UHF and VHF in the proceedings that created the sixth order and report.

Incidentally, they are two of the oldest Commissioners on the Federal Communications Commission. I am not referring to their hair. I am referring to their age as Commissioners. Here now, some 2 years later, the one thing that the Commission was warned about by those with experience and know-how has proven in practice to be the downfall of a competitive nationwide television system.

It is not my intention to point a scornful finger at the Federal Communications Commission, as most of the Commissioners that are serving on the Federal Communications Commission now are not the same Commissioners who were responsible for the errors in the sixth order and report; but to point out here that the Federal Communications Commission does have within its power, if they so wanted to, to immediately facilitate a nationwide competitive television service by deintermixing the markets of the United States, making some all UHF where those are particularly well established, and others VHF.

Some have opposed facing this issue squarely in the face because they feel that it is too serious a problem.

Gentlemen, I say when a problem becomes so serious that it takes up the time of our honorable Senators of the United States Government and the Interstate Commerce Committee, then it is a problem that can only be corrected with drastic measures.

There have been many proposals submitted to the Federal Communications Commission, the majority of which are treatments that will help only the effect, and not correct the cause of the trouble. If these many corrective measures are utilized for the purpose of deintermixture, then they will become a correction of the cause rather than the effect, and be successful.

I am referring to reduced mileage separation of VHF transmitting facilities, cochannel as well as adjacent channel, the utilization of directional antenna, reduced power operations for new VHF facilities to minimize interference, to utilize the educational reservations and hours that are not used be available for commercial operations, and permit educational groups to apply on an equal status for the facilities available and to operate them either educational or commercial as they desire.

There are many VHF grants that have recently been made in areas that are 100 percent UHF equipped. These VHF facilties should be reallocated to VHF markets, and UHF facilities allocated to the UHF markets.

RCA—Radio Corporation of America—in their recent comments to the Federal Communications Commission, after discussing intermixture at considerable length, made the following statement:

> The Commission will want to consider whether deintermixture is not of such importance that it should be made a separate phase of this proceeding and given priority.

That was RCA's quotation.

Quoting again from RCA deintermixture:

> One of the contributions the Commission can make to UHF at this time is to deintermix on a sufficiently broad basis to create a number of predominantly UHF markets. Without this, the public may not purchase all channel receivers in such number to justify the continuance of their manufacture.

In the recent comments of the American Broadcasting Co. to the Federal Communications Commission in Docket No. 11532, they said in these comments relative to deintermixture:

> There is a pressing need for immediate action to relieve the acute shortage of comparable television stations in many of the major cities of the country and to preserve UHF until it has had an opportunity to achieve competitive equality with VHF. Failure to act promptly will mean a practical abandonment of UHF before we are in a position to determine that such abandonment will not permanently stunt the television industry and thereby indefinitely continue the existing economy of scarcity. The experience of the last 2 years demonstrates that unless prompt remedial action is taken, very few of the existing UHF stations in intermixed markets will be able to survive.

A further quote in their discussion of deintermixture, the American Broadcasting Co. had the following to say:

> The error in intermixture must therefore be corrected insofar as practicable.

I concur completely with RCA, NBC, and ABC that the deintermixture must take place immediately. However, I disagree with their theory that where there are three VHF's in a market they should not deintermix. I contend that if a UHF cannot survive against one VHF in a market, how can it survive against three VHF's in a market? Therefore, deintermixture must take place also in markets where there are three V's or more.

However, the deintermixture must be by making VHF's available to the UHF stations in those markets, whereas the opposite should occur in markets where there are fewer than three VHF stations; that is, they should become all UHF.

As I have pointed out, there are many tools that can be used to facilitate deintermixture, but unless the apparent attitude of the Federal Communications Commission is immediately changed toward deintermixture, a nationwide competitive television system is doomed, and the television industry will continue with an economy of scarcity and we will never have a nationwide competitive television system, and this scarcity will have been created by a branch of the Government of the United States, the Federal Communications Commission.

Since the Federal Communications Commission has refused in many instances to correct its error of intermixture, it seems that we, the UHF operator and the television industry as a whole, to grow to a large successful competitive enterprise, must rest our case in the hands of the Senate Interstate Committee, with the hope that you will recommend deintermixture to the Federal Communications Commission to such an extent that they will be obliged to follow the recommendations of either this committee or, if necessary, to have this committee cause to be passed legislation through the Congress of the United States, to require the Federal Communications Commission to deintermix UHF and VHF.

Mr. Cox. Just one question, Mr. Patterson. It is your position, as far as the necessity of deintermixing a market which has multiple V's in it, such as San Francisco, that, after your experience there, the availability of additional U's in that market for possible future allocation will never be taken advantage of because no one is going to undertake what you have tried and been unsuccessful at?

Mr. Patterson. I believe that is correct; and further evidence is that channel 20 has been a CP holder even longer than we have been a CP holder, and they have never constructed. With our experience, I don't feel that anyone else is going to try to utilize the other UHF facilities.

Mr. Cox. So the only way to get a fourth facility in San Francisco is to place some kind of a V channel there, whether it is one now in Fresno, or is a drop-in V, or whatever it may be?

Mr. Patterson. That is correct. There is one relatively simple way that one could be brought into San Francisco. Channel 12 has recently been allocated to Fresno. It can be moved to San Jose, which they are presently on 11. That is not much of a move from 11 to 12. Their present equipment could be readjusted. 11 can be moved to San Francisco, and thereby deintermix both Fresno and San Francisco. I am sure there are many such cases all over the country similar to that.

Mr. Cox. Would that meet the Commission's standards for adjacent channel separations?

Mr. Patterson. It is slightly under their present requirements of adjacent channels by a matter of relatively short distance; but it seems to be the contention of the Commission that they are going to reduce these separations in their present proceedings.

Senator Pastore. Any questions, Senator Ervin?

Senator ERVIN. No.
Senator PASTORE. Senator Thurmond?
Senator THURMOND. No.
Senator PASTORE. Thank you very much.[1]

Our next witness is John W. English. Certainly, it is not the purpose of this committee to tell you how you should present your papers here, but I am pretty much convinced that as time grinds on here, all those who are taking the position that has just been stated by the last witness are more or less all going to be saying the same thing in different words.

I mean, is there any way of getting these statements in the record and having summarization? I mean, pointing out the high spots, using more or less different language to express the same thoughts. Otherwise we have to sit here and listed to 12, or 13, or 14 pages read off. How many more witnesses?

Mr. COX. One.

Senator THURMOND. Mr. Chairman, I was rather impressed with the way Senator Ellender conducted the agriculture hearing down in South Carolina. All of them wanted to come up and air their opinions over, and it was just complete repetition. So he confined them to anything new. If you have got a new idea, give it to us. In that way he shortened the hearings tremendously.

Senator PASTORE. I would like to see these statements get in the record. Do you feel that you have got to read all your statement, sir?

STATEMENT OF JOHN W. ENGLISH, WNAO, RALEIGH, N. C., AND WSEE, ERIE, PA.

Mr. ENGLISH. Senator, I don't have to read it all by any means. But there are certain positions that we have taken here that I believe at least in part answer some of the questions that you have previously asked. Whether our answer is correct, of course, is perhaps a matter of opinion.

Senator PASTORE. And you can't do that without reading every word in the statement?

Mr. ENGLISH. I do not have to read every word in the statement, no, sir, and I will be happy to abridge it just as much as possible. Would that be agreeable to the Senator?

Senator PASTORE. It certainly would be convenient for the committee because we are trying to conclude this hearing to the advantage of all parties concerned. Of course the important thing here is to make a record. We make a record by allowing the statement to be printed in its entirety in the record, and then you can comment on the high spots, because it isn't a question of convincing these gentlemen who take the time to come here and listen to you, it is the idea of making the record here for the people who don't have the time to come here and can study the record.

Certainly the statement is going to be in the record whether you read it word for word or have it inserted.

Then that gives you a chance to actually emphasize the points that you think are more important.

Mr. ENGLISH. I will be very happy to do so.

Senator PASTORE. That will be all right? Without objection, this statement will be made a part of the record in its entirety.

[1] See p. 1009 for additional testimony of Mr. Patterson.

(The prepared statement of Mr. English is as follows:)

PREPARED STATEMENT OF JOHN W. ENGLISH, WNAO, RALEIGH, N. C., AND WSEE, ERIE, PA.

Mr. Chairman and members of the committee, please accept my appreciation for this opportunity to appear before the committee representing the stations in which I am interested.

For the sake of the record, I am president of Sir Walter Television Co., operating WNAO-TV on channel 28 in Raleigh, N. C., serving the Raleigh-Durham market. I am a stockholder, director, and general counsel of Great Lakes Television Co., operating WSEE, channel 35, Erie, Pa. As UHF operators in these 2 markets we face 2 different situations which, when described together, run the gamut of the problems of the UHF industry. Our case is thus particularly illustrative of the overall allocations problem, and it should be of great interest to this committee.

In Raleigh, we were the first station in the market, but we are now faced with dominant and destructive VHF competition. In Erie, on the other hand, we were the second station coming in against a prefreeze V, and we are also faced with dominant and destructive VHF competition.

In both markets, we are proud of excellent operational staffs, first-rate physical facilities and superior programing.

In both of these markets, our stations enjoy primary affiliation with and the wholehearted cooperation of the Columbia Broadcasting System, and we also have a secondary program arrangement with the American Broadcasting Co., and show certain programs of the National Broadcasting Co.

In Raleigh, we start programing at 6:45 in the morning until midnight, and have an almost solid network lineup. In Erie, we start programing at 11 in the morning and also enjoy an almost solid network lineup. I am submitting for the record as appendices A and B the program schedules of WNAO-TV and WSEE. And I am distributing 1 copy of pictorial views of our facilities.

[These items will be retained in the committee files.]

The combined Raleigh-Durham market is roughly the 80th market in the United States. The Erie market is the 89th market in the United States. In Raleigh itself, our conversion ratio is in excess of 90 percent and in Durham and the surrounding area, in excess of 60 percent. In Erie, our conversion ratio is in the neighborhood of 50 percent.

It cannot, therefore, be said that in either case we are in an inadequate market, have inadequate facilities, poor programing, an unbusinesslike staff or a failing in the will to fight.

In both markets, however, we have the dubious distinction of having accumulated losses for each station in excess of $300,000. In Erie, we are still losing money. In Raleigh, after tremendous efforts, we are little better than breaking even.

We went into this business in reliance upon the inherent promise of the sixth order and report, that UHF and VHF could exist side by side in the same areas. There has been much discussion here about what was meant by that report, but to us its meaning is typified by the Commission's language in paragraph 197 of that report, which reads as follows:

"Because television is in a stage of early development and the additional consideration that the limited number of VHF channels will prevent a nationwide competitive television service from developing wholly within the VHF band, we are convinced that the UHF band will be fully utilized and that UHF stations will eventually compete on a favorable basis with stations in the VHF. The UHF is not faced, as was FM, with a fully matured competing service.

"In many cases UHF will carry the complete burden of providing television service, while in other areas it will be essential for providing competitive service. In view of these circumstances, we are convinced that stations in the UHF band will constitute an integral part of a single, nationwide television service."

All of this has proved to be only wishful thinking.

Nevertheless, in reliance on that decision, we invested more than $1,300,000 in the two stations and we have lost more than $650,000 in trying to make UHF work in the areas of Raleigh and Erie.

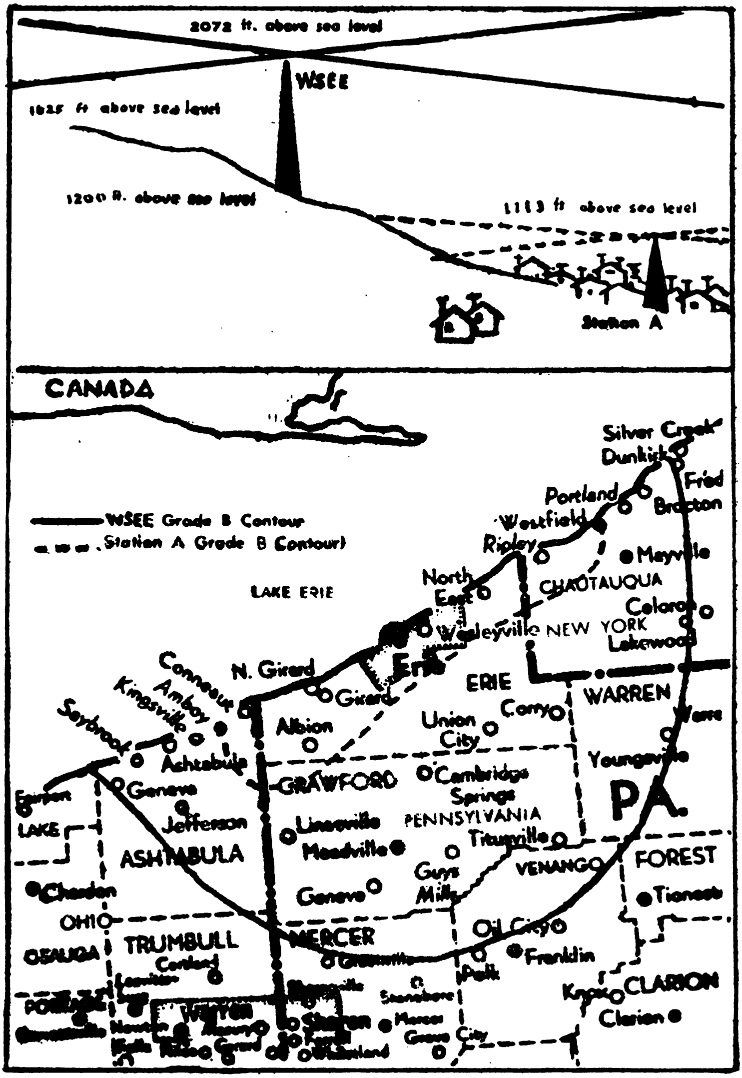
After we began operation in both Raleigh and Erie, we realized from actual experience that the receiver circulation and other problems inherent in intermixture were so great that a basic allocation change was required. Just what are these problems?

The basic problem faced by UHF stations is that most receivers can receive only VHF signals.

It is a question of set circulation since there are never as many converted receivers as there are VHF receivers. Also there is a tendency in the present atmosphere of skepticism about UHF to look with great doubt on UHF claims and at the same time to accept with almost childlike credulity the most exaggerated claims of VHF operators in the same markets.

This magnifies the real difference. Thus, while in Erie we claim 93,000 sets, the VHF station claims 222,000 sets. This is in face of the fact that in that market we cover a larger physical territory with superior facilities. You can see below comparable coverage maps of the two stations.

(The map referred to is as follows:)



In Raleigh our claim of 140,000 sets is contrasted with the VHF claim for Durham of 285,000 sets. This means that we must sell a better product at a savagely lower rate. Local advertisers know the truth and I submit herewith as appendix C the results of a recent drive in the Raleigh-Durham market. This shows incidentally that we are proved to serve many small merchants in the surrounding communities. But the mists generated in Washington have clouded the thinking of time buyers in New York.

(This item has been retained in the committee's files.)

The Commission has so little understood the basic problem that it has discussed yet other channels to be inserted in our picture. So-called VHF channels taken from the military and FM to be turned over to us as their concept of an answer. We are to abandon our hard-won UHF circulation and start over with no circulation. In malice I would like to suggest such a channel for the channel 5 applicants in Raleigh. But in charity I would not wish even my opponents to have such a disastrous assignment.

Suffice it to say that such a new channel could not survive against either an established VHF or UHF in the same market. So that we would then reach the truly fantastic solution that we would require not only deintermixture of UHF and VHF, but also a further category of deintermixture of the new V's, from the old V's and the U's. We would not only have a narrow gage and a broad-gage track but an intermediate gage besides.

The solution to the receiver circulation problem is principally in the hands of Congress. We ask you to create, in effect, a tariff for the protection of this industry, by reduction of the excise tax on all channel receivers (or an approximation thereof) to 5 percent, and by increase in the tax on VHF only receivers to 15 percent. This would mean that all sets manufactured in the future would be all-channel receivers.

As far as the consumer is concerned, by the testimony which was before this committee 2 years ago, he would have to pay no more, or perhaps less, for an all-channel set than he has to pay for a VHF only receiver at the present time.

This provision would cause no substantial tax loss in the long run. We believe that any minor losses to the Government inherent in tax reduction are justifiable for the preservation of this industry; and such losses would be only temporary because the greater circulation of sets resulting from the opening up of more and more TV service would rapidly reduce any revenue loss.

That is the long-range solution.

Equally necessary as a part of the whole plan is immediate action to make facilities in each market compatible. To accomplish this we recommend deintermixture in areas such as Raleigh and Erie. Where UHF is now strong and could grow yet stronger the market should be maintained as all UHF, but where UHF is at a standstill, the Commission by reverse deintermixture should make available more VHF channels in such markets.

WNAO-TV in Raleigh filed the first petition for deintermixture in the United States. Our petition was filed before any VHF station was on the air in that market. That petition was denied, and channel 11 in Durham was allowed to go on the air.

We subsequently filed for deintermixture for Raleigh alone where chanenl 5 is still in hearing status. That petition was also denied without reaching the merits of our petition. We have asked for permission to intervene in the Raleigh channel 5 case. That also has been denied.

We filed a petition for allocation of another VHF channel to Erie. This was also summarily denied.

We have filed our proposals again in the present so-called nationwide allocation proceeding. I am submitting as appendixes D and E, copies of these proposals.

(These items have been retained in the committee's files.)

We do not anticipate that our proposals will be considered in the proper atmosphere. Every action except one that the Commission has taken on petitions, proposing help for UHF, has been directed against UHF. The only exception was one much criticized—the right of networks to own some UHF stations. That slight reprieve for UHF can offer little solace to an independent operator.

Every other action of the Commission has evidenced an obstinate desire to destroy UHF, ever greater coverage for VHF, an ever greater attitude of discouragement for UHF. Either the Commission is ignorant of what it is doing, and on that I can, in charity, make no comment, or it is operating under the fundamental error that UHF should be eliminated.

If so, it should have the courage to come out and say so, and we can meet the issue squarely. In our markets and in many others every legal attempt has been made to obtain redress from the Commission. Every petition has been dismissed without judgment on the merits, with great tenderness for the equities of VHF applicants, with total disregard for the equities of VHF applicants, with total disregard for the equities of our own organization. I have never before realized how far administrative procedure can depart from commonsense due process.

It is significant that the thinking of the Commission has so far changed from the language in paragraph 197 of the sixth report that in the initial decision of the hearing examiner, in the Raleigh channel 5 case, handed down the 19th of April 1955, channel 5 was termed "the dominant TV medium" in the Raleigh area. That means that it is now taken for granted by the Commission that a potential VHF will be the dominant TV medium in a given area. I understand that certain Commissioners have advocated doing away with UHF altogether. That type of thinking is utterly wrong. UHF is every bit as good as VHF. It is subject to artificial disadvantages, however, that could be overcome by applying the principles advocated by us.

We believe that if the Commission does not take positive, immediate, and strong action to assure that UHF will survive and grow strong, the country will be left with only a handful of stations, and the fault will be squarely on the Commission.

What is the choice before Congress and the Commission? It is really the choice between a competitive TV system in the American way and a neat, orderly, regulated, assigned public-utility concept which would create inherent tragedy and ultimately destroy a great industry as we know it. In this fight we feel that we are fighting not only for our own stations in which we have a great stake, but we are fighting for a truly competitive, diversified, nationwide television system for the people.

Network investigations and network or station regulation will not be necessary if enough channels are available to insure competition. But if there are only a few regional stations, investigation, regulation, and an iron straitjacket will be found on our industry. I prefer my poker with reasonable rules, but I don't want to sit in a game where the cards are marked against me. UHF television is that type of game.

There has been much discussion of how to provide service to everyone, but service is not merely the picture on the screen. Service is the possibility of a local picture on the screen. If the Commission crucifies the United States on a V-shaped cross, it will forever deny to hundreds of communities the possibility of local TV stations, and in the development of the art that possibility clearly lies in the future, if UHF survives. Is the Commission so omniscient as to say that the United States will remain forever in its present pattern? There are small communities now in the South and in the West, particularly, which may soon be great communities. Such communities should be entitled to local television. These new areas, and many existing markets, will have that service denied them if UHF does not survive.

Let us make another thing clear, UHF cannot survive in a few isolated areas. There cannot be a few UHF islands in a sea of VHF. It must be some VHF islands in a sea of UHF. That is the way the spectrum is allocated, and that is the way the geography should be.

Finally, as to our specific recommendations for our cities, in Raleigh-Durham, we want the Commission to withhold a grant on channel 5 until it sets down the rules, the final rules, under which we have to operate. We do not care if another station comes in; let the winner of the present hearing come in as a "U," and we will meet their competition on equal terms. This will strengthen UHF. If later, in its ineffable wisdom, the Commission decides that eventually channel 5 should be in Raleigh, as part of an overall assignment, let them grant it, but give us justice at the same time.

In Erie, now a VHF market, the Commission should grant us permission, as we have requested, to operate with a directional antenna on channel 6. Fortunately, Erie, geographically, is an excellent market for such an operation.

But let's not tie these actions to a distant and nebulous future. We have hard business realities to face. We are running up losses that may never be recouped. We cannot long continue to suffer such losses. We want to know, are they going to do something or aren't they? We wanted to know it months ago. And we still want to know it.

Mr. English. Senator, at the outset, I am representing here two television stations, both of them UHF stations, one in Raleigh, N. C., and the other in Erie, Pa. I am president of the Raleigh station, and I am general counsel of the Erie station. They are both high-powered stations in the sense that they have some 185,000 watts effective radiated power.

In Raleigh we have about a 90 percent conversion ratio. We were the first station on the air there. In Erie we went on the air as the second station against a prefreeze V, and therefore we have all of the problems inherent in that situation.

In both stations we have staffs, facilities, physical and otherwise, and studios that are actually superior to the VHF competition.

Senator POTTER. What is your rate of conversion in Pennsylvania?

Mr. ENGLISH. In Pennsylvania it is roughly 50 percent, sir. When I say 90 percent in Raleigh, bear in mind that goes down to, say, some 60 to 65 percent in Durham, 22 miles away, and would vary, depending on the direction of the signal, because VHF competition gets stronger toward Greensboro and Greenville, N. C., where there is a VHF signal coming toward Raleigh.

Senator PASTORE. How much competition do you have in Raleigh? How many stations?

Mr. ENGISH. Channel 11 in Durham, 22 miles away.

Senator PASTORE. That is a V?

Mr. ENGLISH. That is a V, direct competition. We have secondary competition from channel 2 in Greensboro, which is, however, 65 miles away, and channel 7, I believe it is, in Greenville—again some 70 miles away. But it is a fringe proposition.

In Raleigh itself, channel 5 is in contest, and we are one of the stations which has taken the position that channel 5 should not be popped in on top of us after this period of time, but rather that the winner of the channel 5 situation should be given a U until at least we know the final rules we are going to operate under.

When those rules are solidified, you might say, then we will operate according to the rules as we know them now. Under the present state of the situation, sir, the uncertainty of the national situation is our biggest problem.

Senator PASTORE. Let me ask you this, Mr. English: If that new channel coming to Raleigh were a U instead of a V do you feel that the citizens of the area would be given the best type of television reception?

Mr. ENGLISH. Yes, sir, and I will explain that in several ways. First of all, we have an excellent terrain, a beautiful terrain, Senator.

Senator ERVIN. All of North Carolina is that way.

Mr. ENGLISH. We have an excellent terrain from the viewpoint of UHF. Our signal, we feel, is actually superior to a VHF signal under the same approximate given circumstances. If we are given the least modicum of encouragement, we will improve it yet further. But actually a U coming in there can be just as good a job as a V.

Senator PASTORE. Why will the V hurt you? If you have 90 percent conversion and the people who are seeing your programs now have sets on which they can either view a U or a V as they choose, and you say that the U gives you such wonderful reception, then why do you object to a V coming in? I am not being critical, I am just trying to get this on the record. What difference does it make to you?

Mr. ENGLISH. The largest hurt in the present state of the situation, you might say, is not a hurt as far as the local individual or as far as the local advertiser is concerned, but as far as the national advertiser is concerned.

Senator Ervin. It is difficult for a U station to get the national programs where there is a V station; isn't it?

Mr. English. Let me point out something of some interest. I would like not to trespass upon your patience, Senator, but——

Senator Pastore. I have all the time in the world. Don't apologize for our time. We are being paid to 6 o'clock. Don't apologize for taking up our time. That isn't the question at all. I hope we are not misunderstood on that.

Mr. English. I feel I have some things to say here that will be refreshing or otherwise.

Senator Pastore. Go ahead and say it.

Mr. English. Here is what we are talking about. The basic problem faced by UHF stations is that most receivers can receive only VHF signals. That is the general overall national problem. It is a question of sufficient circulation, since there are never as many converted receivers as there are VHF receivers. Even in Raleigh where we have 90 percent, you still have that 10 percent.

Also there is a tendency in the present atmosphere of skepticism about UHF to look with great doubt on UHF claims and at the same time to accept with almost childlike credulity the most exaggerated things that VHF operators say in the same market.

Senator Pastore. In other words, the argument you are making, Mr. English, is this: That even at best, even though you have 90-percent conversion, there is a margin of 10 percent, and that margin of 10 percent means that this new station that comes into the field brand new will have an advantage over you, who have been working that district, by getting better programs from the networks.

Mr. English. That is right. Let me go on. I think I can bear this out with specific examples. This magnifies the real difference. In other words, the acceptance of any UHF claim over a VHF claim actually magnifies the real difference.

Thus while in Erie we claim 93,000 sets, the VHF station claims 222,000. That is what you take to New York with you. This in the face of the fact that in that market, we cover a larger physical territory with superior facilities. You can see this from comparable coverage maps of the two stations which I have in my statement. Actually our tower is higher. Erie is surrounded by a ridge and our signal goes over the ridge and theirs doesn't. Yet the 222,000 claim is accepted, and our claim would be looked upon with great skepticism. That makes it not easy to sell.

Senator Pastore. In Erie, were you there with U before the V came in?

Mr. English. No, sir; that is where we are fighting the uphill fight. In Raleigh, our claim of 140,000 sets is contrasted with a VHF claim for Durham of 285,000 sets. This means that we must sell a better product at a lower rate. Local advertisers know the truth and I submit herewith an appendix C which reflects the results of a recent drive in the Raleigh-Durham market.

In this appendix C, which you all have, we have got 287 new accounts. It is interesting to point out that these are the places where the advertisers were located. In other words, there were advertisers buying our station from surrounding communities, so that there was a pretty good signal there, and these advertisers, local advertisers, were buying our station. But that doesn't sell us in New York.

We can sell locally, and as a matter of fact we are very proud of the fact that we have outsold our VHF competition on the local level consistently.

Senator POTTER. What network do you have there?

Mr. ENGLISH. CBS, sir, in both markets.

Senator POTTER. And Durham has NBC?

Mr. ENGLISH. NBC, that is correct, sir.

Senator POTTER. I assume your fear would be that if this new channel should be allocated in Raleigh, that you would lose your CBS affiliation?

Mr. ENGLISH. That would be a fear, but we have had every assurance that CBS will stay with us. We certainly hope that they will. They have been enormously cooperative with us. In both of these markets we would like to pay a tribute to the fact that CBS has done a terrific job for our UHF stations. They have done a great job, and as a matter of fact, in Erie they left the V, where they were primarily CBS, and came to us, which is a rather extraordinary situation.

Mr. COX. But business conditions might finally force them to make a change?

Mr. ENGLISH. Business conditions could very well change that, and of course without CBS, we could go bury ourselves someplace.

Mr. COX. Do you get paid for the CBS program that you carry?

Mr. ENGLISH. Yes, sir. And as a matter of fact, I submit on this point an appendix A, which is the program schedule of WNAO, which shows that we go on the air at 6:45 in the morning, and stay on until midnight, and we have a very substantial lineup—with two exceptions we have all of the major CBS programs.

In WSEE in Erie, which is another affiliate, we have all the CBS programs. Could we incorporate this?

Mr. COX. It can be incorporated by reference to the fact that it is in the files of the committee, so that anyone wishing to see it can come and pick up one of the copies.

Senator PASTORE. In other words, this exhibit that Mr. English is talking about will be a part of the record and be held in the files of the committee, and will be referred to in the record so that anyone that is interested in it could handily look at it.

Mr. ENGLISH. Yes, sir. Thank you, Senator.

(The document above referred to was incorporated by reference, and will be filed in the committee files.)

Senator ERVIN. What would you say as to the difference between the capacity of advertisers to buy advertising sold for a U station as contrasted with a V station?

Mr. ENGLISH. I am not sure that I understand your question. You mean the rate, sir?

Senator ERVIN. Yes.

Mr. ENGLISH. Our rate is substantially lower than the V.

Senator ERVIN. Your advertisers in these communities here, do you anticipate that if you had only a V station there that they would be able to get advertising at the same rate?

Mr. ENGLISH. I frankly believe, sir, they would find it almost impossible to afford to advertise on a V station, particularly because—the V station is a splendid operation. I don't mean in this testimony to attack either of the opponents. But the V station right now is loaded with national advertising. We are not. We have been fortunate in getting probably a fair share for a U station.

Senator PASTORE. In other words, what you are saying, Mr. English, is the your U gives you perfect reception in your locality?

Mr. ENGLISH. That is correct, sir.

Senator PASTORE. And that you are not objecting to the station coming in so that the public may have 2 instead of 1?

Mr. ENGLISH. Not at all.

Senator PASTORE. But your argument is that if it does come in, it ought to be the same kind of a station as you have. It ought to be another U.

Mr. ENGLISH. Senator, let us put it simply this way: We are perfectly willing to compete with anyone on an equal basis. But we don't want to have the cards marked against us, and in this game, right now, we are playing poker with marked cards against us in UHF television.

Senator PASTORE. Would you take the position that the viewer will be injured if the U makes it in Raleigh?

Mr. ENGLISH. No, sir. And let me tell you why again, because you have Greenville, you have Greensboro, you have a station in Bethel, which is a UHF station; you have a station in Wilmington; in rural North Carolina, for example, they can get us or they can get someone else with a beautiful picture. You have little Washington, N. C., so that actually North Carolina is covered like a tent, and it is well covered. It is a very fortunate State, certainly in the eastern part; we put it that way, because the western part, due to terrain difficulties, as was testified by Mr. Thoms, has many difficulties that are not inherent in the eastern part, the Piedmont, and the coast.

Senator PASTORE. Have you objected to channel 5 coming in?

Mr. ENGLISH. Yes, sir. I will review that for you.

Senator PASTORE. No. I don't want to get into a case here now.

Mr. ENGLISH. Let me say this, Senator: We were the first UHF station in the United States to put in a petition for deintermixture. For good or bad, we feel that we helped to hatch the egg. That was denied before channel 11 went on the air in Durham.

Then subsequently we filed a petition for deintermixture in Raleigh alone, and that was denied. Then we filed a petition to intervene in the channel 5 fight, and that was denied.

So we feel—and I will be perfectly frank, Senator, in saying that I have never felt before that administrative process could so far depart from commonsense due process, because we feel that we have used every legal procedure within our power other than this appeal to Congress, to have some opportunity of preserving our property.

Mr. COX. Did you ever get a hearing from the Commission on that matter?

Mr. ENGLISH. No; we have had no hearing on the merits whatsoever and no decision on the merits whatsoever.

Senator PASTORE. If the Commission decided to drop in a U instead of a V in Raleigh, you would remove your objections?

Mr. ENGLISH. Yes, certainly, as far as the U was concerned; absolutely. As a matter of fact, there is an available channel.

Senator, you have asked a number of questions here. We have certain specific recommendations which we would like to present to the Commission. On page 6 of the statement here, it is suggested that the solution to the receiver circulation problem is principally in the hands of Congress.

We ask you to create, in effect, a tariff for the protection of this industry, by reduction of excise taxes on all-channel receivers or an approximation thereof to 5 percent, and by an increase in the tax on VHF-only receivers to 15 percent.

This would mean that all sets manufactured in the future would be all-channel receivers.

If you recall, Senator, in the previous hearings before this committee, the suggestion was made to remove the excise tax from all-channel sets. Actually that was opposed, if I recall, by the Treasury Department on the basis of the fact that it would constitute too great a financial loss.

I am suggesting a reduction, not a removal, which would cushion the financial loss to the Government; but at the same time the 15 percent wouldn't mean anything because frankly they wouldn't manufacture any VHF-only sets with a 15-percent tax. They would manufacture all-channel.

As far as the consumer is concerned, by the testimony which was presented before this committee 2 years ago, he would have to pay no more or perhaps less for an all-channel set than he has to pay for a VHF-only receiver at the present time.

This provision would cause no substantial tax loss in the long run. We believe that any minor losses to the Government inherent in tax reduction are justifiable for the preservation of this industry, and such losses would be only temporary, because the greater circulation of sets resulting from the opening of more and more TV service would rapidly reduce any revenue loss.

That is the long-range solution. When I say long range, it is understandable that by the obsolescence of TV sets as they now exist, that would mean that all sets would be all-channel in roughly 5 to 7 years, although long prior to that time you would have a very substantial circulation of all-channel sets in all markets. So the other allocation problems would be substantially reduced.

But that is long range. Equally necessary is immediate action to make facilities in each market compatible. To accomplish this we recommend deintermixture again in areas such as Raleigh and Erie. Where UHF is now strong the market should be maintained as all UHF. That is our position in Raleigh. But where UHF is at a standstill, the Commission, by reverse deintermixture, should make available more VHF channels in such markets.

I am not going into the long history of what we have done in Raleigh to try to accomplish that. May I say this. We do not anticipate that our proposals—these proposals that have been offered as part of the record, that we filed with the Commission—will be considered in an altogether favorable atmosphere.

Every single action that the Commission has taken, except one, on UHF has been against UHF. The one is the matter that was much criticized of allowing networks and other large operators to have two more UHF stations. That helped UHF a bit, but it isn't much solace to an independent operator such as we are.

The Commission has had an obstinate desire to destroy UHF, certainly judging by its actions. It has given ever-greater coverage to

VHF—high towers—an ever-greater attitude of discouragement to UHF.

Either the Commission is ignorant of what it is doing—and on that point I make no comment—or it is operating under the fundamental error that UHF should be eliminated. If so, it should take the courage to come out and say so, and we can meet the issue squarely. In our markets and in many others we have taken every legal recourse and we have gotten nowhere.

Senator ERVIN. Let me ask you a question on that. If you could be granted a V station in Raleigh, would that remove your objections to channel 5?

Mr. ENGLISH. Of course it would remove our objections to channel 5, Senator. Frankly we would be very, very happy with a V station in Raleigh. Let me say, however, that the granting of a V station in Raleigh would take care of our problems and we would be very happy and very grateful to the Commission and anyone else who could help us.

But it would not solve the national problem.

Mr. COX. Doesn't it present some engineering problems that are a little greater than the reverse process would be?

Mr. ENGLISH. That is correct. It would present the separation problem. It would present the possible necessity of a directional antenna. Almost every V channel that would be available there would have a slight, not perhaps too serious, but a slight difference in the separation distances involved with cochannels elsewhere.

Mr. COX. Doesn't it also more or less create a top limit, then, of two stations unless you can squeeze in another V? Whereas with U's, there is room to grow because they are rather plentiful?

Mr. ENGLISH. That is correct, sir. Here is the basic thing you are faced with, and it is very basic. What is the choice before the Commission and before this Congress? It is the choice between a competitive television system as we hope it to be and a neat, orderly, regulated public-utility concept. That regulated public-utility concept will have in it inherent tragedy and would destroy television as we know it now.

The only way that you are going to have truly competitive television is to have sufficient channels available. We have discussed, Senator—you have discussed many times—the possibility of network investigations. Network investigations are not necessary. If you have sufficient channels available to allow for true competition between the various networks, to allow room for the growth of programs of another network, certainly to allow room for the growth of local television stations the way they should be allowed to grow——

Senator PASTORE. It stands to reason, doesn't it, that if every locality in this country had 4 channels and you had 3 networks, you would not have any problem about investigating the networks. The competition would take care of itself.

Mr. ENGLISH. Absolutely. They would be fighting for the business.

There has been much discussion about how to provide service, to offer everyone service; but service is not merely the picture on the screen. In other words, there has been a great deal of worrying about whether someone at a certain distance will get a signal and so forth. But it is a lot more than just having a signal. Service is the possibility of a local picture on the screen. If the Commission crucifies the United States on a V-shaped cross, it will forever deny to hundreds of communities the possibility of a local TV station; and in the development of the art, that possibility clearly lies in the future if UHF survives.

Let me say there, Senator, that with the development of all-channel tuners—those will develop with the ingenuity of the manufacturers if they have a reason to develop them—with the development of better antennas, they will also be developed; and incidentally, UHF antennas are not bad at all; in many ways they are better than VHF antennas.

Finally, with the development of modern methods of television, local telecasting, you can bring the cost of this thing down to the point where some communities in our area, Senator, in Goldsboro, in Rocky Mount, in a lot of other communities 50 miles from Raleigh, will never have local television unless UHF survives. They have all got UHF allocations, but they will not be worth the powder to blow them to kingdom come unless something is done about the national picture.

Another matter: UHF can't survive as a few little islands. If we do a fine job in Raleigh—and I think we have done it—we can't get anywhere in Raleigh and in Norfolk and in Wilkes-Barre and in South Bend and a number of other places where UHF has done pretty well; we can't get anywhere if that is UHF.

First of all, the UHF receiver, as I pointed out, has to be a nationwide thing and it can be, without costing any money to the consumer. That is item one.

Item two: If you preserve UHF as we know it now, and if you tell the advertiser in New York—and don't blame him because he has had every reason to be discouraged just as we have; we would be dead if we weren't bullheaded—if you give him some encouragement, he will advertise on UHF stations, particularly when he knows they are good. He does it now, but he doesn't do it often enough.

We want the Commission to withhold in Raleigh-Durham a grant on channel 5 until it sets down the rules, the final rules, under which we have to operate. We don't care if another station comes in.

In Erie, which is a VHF market, we want permission, as we have requested before, and were turned down by the Commission, to operate on a directional antenna on channel 6. Fortunately, Erie is a good place for that. There is only one other thing I would like to mention that I skipped over here, Senator, and that was that the Commission and a number of other people have talked about giving us some channels from the military, the FM. Actually, that is out of Alice in Wonderland, because if you have those channels, those channels couldn't compete with an established U.

If I had malice in my heart, I would suggest that you give that type of a V channel to our opponents on channel 5 in Raleigh. But I wouldn't even wish our opponents such a disastrous assignment. Let me say that you remember the old days in the railroad industry, we used to have narrow-gage and broad-gage tracks. Here they are giving us narrow-gage, broad-gage, and intermediate-gage tracks when they are talking about some of these peculiar V's, so-called.

I thank you for your courtesy.

Senator Pastore. You have been very nice, Mr. English, and have cooperated with the committee. We thank you very much.

Mr. Fillips? First of all, Mr. Fillips, do you want your statement to be made part of the record in its entirety?

STATEMENT OF NICK FILLIPS, WDAV, PITTSBURGH, PA.

Mr. FILLIPS. Yes, sir; both statements.

Senator PASTORE. Without objection, that will be done at this point.

(The prepared statement of Mr. Fillips is as follows:)

STATEMENT OF NICK FILLIPS, WDAV, PITTSBURGH, PA.

My name is Nick Fillips. I was born in Pennsylvania, and reside in the city of Pittsburgh.

First, I want to thank you for this chance to testify. We hope, from the matters presented in this forum, that there may be a better understanding of the problems confronting those broadcasters who operate television stations on what are commonly called the ultrahigh frequencies.

I have studied the UHF problem for the last 8 months. I have talked with station owners, Commissioners, and manufacturers of UHF equipment. I cannot see why UHF cannot be successful. According to a good many of these station owners and station representatives who come before the FCC Commissioners, they are all complaining about UHF and what are the FCC Commissioners going to do for them? As you know, UHF has problems, and the easiest way to solve these problems is to find out the main reason for this failure. I have talked to station owners in the different parts of Pennsylvania. In mixed markets where NBC and CBS carry the two stations, if a third station is in the area, he has no network affiliation, so in order to survive, he must solve the necessary problems to compete with the network shows. Therefore, this calls for a UHF network to produce shows to feed to the stations that are not network affiliated.

UHF's No. 1 problem is power for coverage. Now that the FCC has allowed UHF to go to a million watts, which costs around $250,000, it is more to be added to the station.

No. 2 is the problem of converters. Take, for instance, a market like Pittsburgh, Pa., where there are 700,000 VHF sets in the area and only 300,000 are UHF, so this is a question of conversion. To add a UHF converter and a UHF antenna to pull in the UHF station the average family must spend $50 to $60 more. Before they spend this kind of money they do without it. So UHF is at a standstill. I have contacted several companies who make UHF converters and antennas and they are able to come up with a converter and antenna to be sold to the local people for $5.95 and $9.95. This converter and antenna can be installed by the individual owner of the set without the cost of hiring a serviceman to connect it.

If the average station owners had worked these problems out in the beginning, and gone into these little details, such as converters, power, etc., they would not be in the position they are today. Although it is not the fault of the UHF station owner, it is the fault of the television manufacturer, who did not put UHF and VHF converters in the set when it was sold to the public.

I have also contacted a good many families, and you can go into 10 different homes and say to the average man and his wife, "What is the difference between UHF and VHF?" Eight out of ten will say, "I do not know." Therefore the public has not been educated to the difference between UHF and VHF. Had they been, they would surely demand a UHF and VHF converter on their sets when they purchase them.

It is the duty of the FCC Commission to allow one of the Commissioners to educate the people, so that when buying a television set they will be sure their sets will convert to UHF and VHF. Therefore the average person would not have to spend an extra $50 to $60 to pull in a UHF station.

Most families who are working in Pennsylvania and have 3 or 4 children can hardly afford to keep their families going on the salary they are making, let alone spend an extra $50 to $60 after having paid $200 to $300 for their television set.

I have personally spoken to the heads of families, and feel that, if the Commissioners would appoint somebody to do the same not only in the city but in the suburbs, and ask the family if they know the difference between UHF and VHF, and whether they could pay the difference to convert their sets, their answer would be "No." But if asked whether they could and would pay $5.95 and $9.95 for a converter, they would say the price was reasonable, and they would be happy to buy one.

The No. 3 problem is that a UHF station, after having power for coverage and converters to compete and match with the VHF sets, comes the problem of sponsors. The average sponsor when buying UHF time says, "I can get good shows on VHF stations."

Therefore, in order to survive we must produce terrific shows, and shows that can draw an audience, to be able to tell national accounts that we have shows that can draw a good audience because they have top rating, and also can go one step further. We can help a small account, who wants to get in an area, merchandise his product in the market by getting mass displays of their products in different stores.

I have a plan set up, but it is not for this record. I believe, by taking a station in Pittsburgh, Pa., and producing 8 hours of local shows and feature films, we can send our show from Pittsburgh into other parts of Pennsylvania, such as Johnstown, Harrisburg, Scranton, Allentown, and the stations who have a smaller market to work from, and who cannot afford to produce these live, big shows, until their station is equipped properly, and has converters to compete with the VHF market. Thus, they can sell the local accounts, and be able to compete against some of the big shows that are being put on the air by the networks.

A good many station owners, who came to the hearing of the subcommittee, told what was wrong with the UHF market and the UHF problem, but did not try to solve the problems by going out looking for the answers. I have taken 8 months of my time to study this problem, and to work it out. I believe I now have the answer to the UHF problems. Although NBC and CBS have monopoly in all the major markets, there is no reason why a UHF network could not give them a run for their money. Until the time comes that all manufacturing companies will come out with an all-round UHF and VHF set, which will be 2 or 3 years from now, for the time being we will be on the right track to prove UHF will go forward as long as we have the same standards and the same qualifications that a VHF station has.

To solve the biggest problems, (1) is coverage, (2) is converters, to get more listeners, and (3) good live shows and films. By giving the local public good shows of interest, I am sure the average American family will be happy to enjoy them. With a good merchandising plan that we have in mind, we are also sure that we can get our budget with the national accounts.

I feel that all applicants for television stations would either build the station or turn them back to FCC. They are just sitting and waiting for someone to come up with the answer to solve the UHF problems. For the people who drop in and out, there should be also a stop to that. I feel the FCC Commissioners should give a license to the small fellow to let him get started in a business such as the television field.

Also, I want to be able to put a station on the air, with the idea to help thousands of disabled American veterans to work there. Teaching them to operate a television station, and help themselves to forget their handicaps. I have talked to many disabled veterans, those who are in wheelchairs and those unable to get around. They would like very much to get started in this type of field. We can also open a training school to teach them television work and also for them to practice. In my study, I have run across a lot of talent among disabled veterans. We can find jobs for them to do as copywriters, program directors, technicals, or musicians. There is a lot of good talent among these veterans, and I am sure we will enjoy what we are doing for these disabled boys. All you have to do to prove this point is ask a disabled veteran, who is in a wheelchair, "Would you like to work in a television station?" and you will see what answer he gives. Most of these jobs in the television field are sitting-down jobs at the controls, and the average disabled veteran, who has to spend his life in a wheelchair, will be very glad to learn this exciting work.

I believe you should give the small man a chance in this television field to do something, not for the big companies, but for the American boys who need the help but don't have the kind of money to go into a television station, as it takes a million dollars or more.

I knew ex-Commissioner Hennock was strongly in favor of education, and to help the average American person to become better educated. I feel that if we follow some of Commissioner Hennock's ideas, a small man would be able to get a start.

I am not much for making speeches, but I am bringing out true facts, as the average person would bring them out if they were to appear before you. I wish you would weigh the contents of my statement, and I would be glad to point out and produce the converter and antenna I have talked about at the cost of $5.95 and $9.95 to the average American family, until the time comes that all manufacturers of television sets will have UHF–VHF. I would also like to point out that Senator Johnson's bill for the removal of the excise tax from all UHF receiver sets will also be a big help. Let's give the American people a chance to enjoy television in their homes at a real low cost. Also, have someone appointed or sent out to 10 homes in the area, even in Washington, D. C., to ask the average family about UHF and VHF. Prove these points to yourselves.

Remember, gentlemen, there are millions of people that are in the very low bracket as far as income, and their greatest pleasure and enjoyment is television. Also, old retired people can sit at home and enjoy television. The people in Pittsburgh, Pa., do not have enough television stations, so they can have their choice of different type shows to enjoy in an evening after a hard day's work. If you want to help the average American family, let's give them television at its best, and let them enjoy good entertainment.

I also feel that if everything is put on the UHF band, that would also solve part of this problem. However, it would take 4 or 5 years to convert this to all UHF. If the FCC Commissioners can see that this change is possible, it would also help solve the problem.

It is the firm intent of the founders of National UHF Television, Inc., to locate new and budding talent wherever it may exist in the field of singing, instrumental music, comedy, operas, musical comedy, and in fact, covering every branch of the field of entertainment and to convert this talent into lucrative, professional careers. For we sincerely believe that the unknown of today, given the proper opportunity by means of television will surely become the stars of tomorrow.

It is not our intention to spring this new talent on the viewing public over national television networks only 3 acts at a time, such as is now done, but rather 150 to 200 acts weekly. This new talent will be located by us through local newspapers, music teachers, voice and dramatic coaches and training schools for the theater and concert stages, etc. We will televise these stars of tomorrow, first, to their friends and neighbors in their own States, who will be rooting for them to make good nationally, if they have shown promise to the friendly eyes and ears of their neighbors. And so you will find the little girl from Tennessee finally being acclaimed by the Nation, including the North, while the youngster from Minnesota finds national acceptance throughout our great country, including the South.

There is a great to-do in newspapers and magazines these days about the juvenile delinquency problem. Our talent search I speak of in this announcement will go a long way toward wiping out this era of juvenile delinquency as just a bad memory. The youth of today and tomorrow will be helping to support their parents at earlier years than ever before, instead of being a problem to those loved ones who brought them into the world.

You cannot show me very many stations that carry colored entertainment. Oh, yes, you will find 2 or 3 on a show, but what I am referring to is an hour show of nothing but colored entertainers. There are many good colored singers, dancers, musicians, comedians, etc. You will find young, talented entertainers looking for a chance to show their friends and neighbors just what they can do. They, too, want to see people of their own race on TV shows.

The National UHF Television, Inc., will have headquarters in Pittsburgh for western Pennsylvania and Philadelphia for eastern Pennsylvania. We will televise our shows 8 hours a day to start with and gradually we hope to be able to double our broadcasting period. Of course, we will have professional entertainment field, which I referred to above, new discoveries and also programs of athletic events such as boxing, basketball, football, and baseball games, etc., and have a complete roundup of daily news events as they happen all over the world.

We have contacted many national and local advertisers and they are ready to go to the limit in sponsoring most of our programs. But many of our programs will carry no advertising at all at the beginning, but will be sustained by our own company in the public interest.

In other words, instead of confining ourselves to just making money, this company will pour back a great deal of the gross income we will collect from the sponsors for public services and to start the new talent off on the right foot, as few large business concerns will risk expenditures in sponsoring unknown people.

Now I come to one of the most important phases of these new plans with regard to public services and that is the educational field. We will have at least 1 hour daily of interesting educational programs for youngsters, for adults who have had no schooling, and for everybody in all age groups who have had schooling or not, with televised lectures given by the greatest authorities in every subject, history, science, medicine, domestic and economics, etc.

SOLUTIONS OF UHF PROBLEMS

1. The FCC Commissioners should appoint someone to educate the public in regard to the difference between UHF and VHF television. The people should be told, when buying a television set in a mixed market, to be sure that UHF converters are on the set instead of having the poor people spend extra money to convert their set over to both UHF and VHF.

2. The FCC Commissioners should not let a UHF station go on the air unless they have greater power. These steps will help to solve some of UHF problems.

3. If converters are put out at a low cost to the public, to those who already have sets, it will be easy for them to pull in UHF stations for better programs, more listeners for their money.

4. If the Fillips plan is put in effect, UHF will be on the way to surviving and being able to give the public better television.

5. As a good test for deintermixture, Pennsylvania would be a good State in which to start. There are 49 UHF television stations allocated to the State of Pennsylvania, with only 8 VHF now on the air and 2 more to go on, but not knowing when. These 2 can be stopped; therefore, there are only 8 VHF to worry about against 49 UHF. By giving the VHF stations a year or two to change over to UHF, this can solve some of the problems for deintermixture of UHF and VHF television stations, without going at the problem all over the country.

6. The FCC should consider freezing all applications and all contract permits until this thing is ironed out, which is a very, very important step. With a little cooperation, this thing can be worked very nicely. It is up to the people who make the rules of the FCC to put a few of these new rules in action.

(The witness' second statement, a memorandum coauthored by Norman Baum, is as follows:)

STATEMENT OF NICK FILLIPS, WDVA, PITTSBURGH, PA.

The purpose of this memorandum is to set out, in a concise, manifest form the UHF problem recognized in the Plotkin report and Jones report on the Investigation of Television Networks and the UHF-VHF Problem conducted by the Committee on Interstate and Foreign Commerce in the Senate of the 84th Congress.

The UHF problem set forth herein will be limited to the survival problem that faces the individual UHF station owners. The solutions to this problem, discussed herein, are those that are recommended by the Plotkin and Jones reports and a proposed solution by Mr. Nicholas Fillips for the UHF problem in the State of Pennsylvania.

Television stations are licensed to operate in the public interest, but in order for the station to sustain and maintain this obligation, they are permitted to protect their private interests by selling time on their facilities.

It is the sale of time which enables the station operator to survive economically and fulfill his obligation to serve the public interest. The future of UHF lies in economics. The stations are financial enterprises which exist only when the station owners can earn a profit and serve the public interest.

The specific problems faced by UHF are as follows:

1. Programing. The problem of programing consists of obtaining popular programs which would induce advertisers to sponsor or spot announce the program. The UHF station owner faces exorbitant costs to produce such a program.

2. Receivers. The problem of receivers is that the manufacturers are not producing a sufficient number of all-channel receivers, and the cost of converters is too expensive to induce VHF receiver owners to convert their sets to UHF.

3. Advertisers. Advertisers are not attracted to spend moneys because of the above two problems. Programs which do not attract the public do not induce advertisers to spend money for spot announcement on such programs Where there is poor circulation, advertisers will not spend money because the cost to them would be too exorbitant per receiver.

4. Transmission. The problem of UHF transmission is that the signals do not travel as far as VHF, with many holes occurring in the service, caused by a lack of better high power transmitting equipment.

5. Affiliation preference by network with VHF. Networks prefer affiliation with VHF. One of the principal reasons is that AM affiliates who enter VHF are given network affiliation preference.

Further, when a VHF transmits subsequent to a UHF station affiliate, the UHF affiliation is removed to VHF for several reasons, among which are more area coverage by VHF signal and more abundance of VHF receivers or more availability of VHF receivers.

The above problems are particularly faced by UHF stations in those areas served by two or more VHF sttaions. Where there is no VHF competition or one VHF station, the UHF station can be successful if the market is large and there is good management, in that popular programs and advertising revenues may be obtained from networks. But as soon as a VHF enters the same area, the UHF strangulation commences.

Some of the advantages that the VHF stations enjoy over a nonaffiliated UHF station are:

1. The VHF stations are affiliated with 1 of the 3 networks, that is, NBC, CBS. and ABC The affiliation enables receipt of popular programs from the network and of advertising revenues through the network.

2. All receivers can readily receive VHF signals which thereby enables the VHF station, in addition to receiving advertising revenues through the network, to better obtain national, regional, and local advertisers to spot advertise on their stations before and during nonsponsored network popular programs.

The very existence of UHF depends on profit, which must come solely through the sale of broadcast time. This sale is virtually impossible where there exists, in the same service area, network affiliated VHF stations.

Through lack of obtaining popular programing, there is no inducement for national, regional, or even at times local advertisers to purchase broadcast time, particularly when there is a lack of a sufficient amount of receivers. There can be no doubt that prospects for successful UHF operation under such circumstances are dim.

The solutions recommended by the Plotkin and Jones reports are briefly as follows:

1. Move all VHF to UHF. This is desirable over a long period of time, but cannot be done immediately because billions of dollars' worth of equipment would be rendered obsolete by such a move. This would not be an immediate aid for those UHF stations clinging to the last rung of the ladder before falling into the chasm of complete financial loss and defunct operation.

2. Deintermixture, that is, changing the allocation table. This does not appear practical for immediate aid based on the same reasons as stated above. Also, there are too many intermixed markets, and such a plan would cause tremendous confusion, resulting in many dollars being lost.

This plan can be accomplished in communities which do not yet have an existing VHF operation even though there has been VHF applications approved or permits issued; the moneys lost thereby would be small comparable to the enhancement of nationwide television operations by permitting UHF to be secured in these areas and not be faced with the above problems.

3. All-channel receivers. To encourage manufacturers to produce all-channel receivers, there is a proposal in Congress to remove from all channeled television receivers the excise tax presently levied on television receivers.

A form of this tax relief should be recommended to grant relief if the manufacturer undertakes to market only in the United States all-channel television receivers instead of granting an exemption for all-channel receivers only.

This form would offer more competition with VHF receiver manufacturers. However, removal of the tax is no assurance that this relief would induce manufacturers to make all-channel receivers, and even if they did, it would still take a great number of years before there would be a large circulation of such receivers. Therefore, it is of no immediate aid to the UHF stations presently suffering financial losses and on the brink of closing operations.

To overcome the dire need of programing, obtaining advertisers, and acquiring large circulation of receivers for the UHF signal, individual station owners must show a willingness and ability to underwrite extensive deficits for substantial indefinite periods of time, which is a Herculean task, evidenced by the fact that 118 UHF permits have been canceled or operations have been suspended because of such a devastating economic burden—figure 118 is taken from the Plotkin report.

There now appears an immediate solution for survival to the remaining UHF owners: This solution discussed herein below will be called the Fillips plan. The Fillips plan will overcome economic difficulties that burden the UHF station owner. The plan is as follows:

"All programing will be secured and transmitted by one station and chain broadcasted to several stations. All advertising will be solicited and broadcasted from the one station to the other stations. A converter will be manufactured at a very reasonable cost (at the present time to sell for no more than $5.90 to $9.95 complete, or may be given away free as an inducement to VHF set owners to receive UHF broadcasts, and can be simply self-installed by the owner) with antenna installation, if an antenna is not already installed."

This plan aptly and substantially covers the UHF specific problems discussed hereinabove; that is, programing, advertising, and receivers. The UHF stations will have an opportunity to compete on a favorable basis with the VHF stations for the sale of broadcast time.

The originator of this plan, Mr. Fillips, has the means, methods and procedures of obtaining through national theatrical agencies the necessary talent and management to produce live and interesting programs, both entertaining and educational, as well as film programs, over a sustaining period each day.

Further, Mr. Fillips, a specialist in advertising on national and regional basis, would be able, through this plan, to obtain national, regional, and local advertisers to sponsor programs or advertise on all stations who become a member of the UHF chain broadcasting system.

The various individual UHF station owners, under the Fillips plan, will be relieved of the cumbersome expense of obtaining or producing programs for their stations; they will receive profits from advertisers and be relieved of the burdensome responsibilities of competing for advertisers against popular programs which VHF stations enjoy.

Advertisers can be induced to spend millions of dollars yearly under this plan because their products will be advertised in large areas instead of in one particular locality with a limited number of receivers.

Further, with popular make converters, VHF received owners will be readily able to convert their receivers at nominal expense, and thereby increase their television entertainment.

Stations affiliated under the Fillips plan will have the assurance of a steady source of good programs which are appealing to the public, will have a better possibility for financial success by being relieved from deficit operation, and will have the assurance that their signals will be received.

The individual stations, together, will have a superior position to encourage advertisers to invest their money for advertising to the combined than to a single station.

The potentialities of television's growth are dependant on a healthy UHF system of television plan similar to the Fillips plan. Such a plan exercised throughout the country will serve the public interest by providing a large selection of entertainment to the public and will be a means of increasing the number of television stations in various communities through a reinvigoration of UHF operations by promoting individual stations and by mitigating the economic burdens and difficulties of the station.

The Fillips plan is the start in the right direction for the fastest destruction of the noose that is closing around and strangling UHF; the cycle of no programs—no listeners—no advertisers, by providing adequate programs, establishing receivers, hence listeners, obtaining advertisers.

As a good test for deintermixture, Pennsylvania would be a good State in which to start. There are 49 UHF television stations allocated to the State of Pennsylvania, with only 8 VHF now on the air and 2 more to go but not knowing when.

These two can be stopped, therefore there is only 8 VHF to worry about against 49 UHF. By giving the VHF stations a year or two to change over to UHF this can solve some of the problems for deintermixture of UHF and VHF television stations, without going at the problem all over the country.

The FCC should consider freezing all applications and all contract permits on VHF stations until this thing is ironed out, which is a very, very important step. With a little cooperation, this thing can be worked very nicely. It is up to the people who make the rules of the FCC to put a few of these new rules in action. I thank you.

Mr. Fillips. My name is Nick Fillips. I am from Pittsburgh. I am concerned with the UHF–VHF deintermixture problem.

In the State of Pennsylvania there are 49 UHF stations against 8 VHF stations. Two more V's have been allocated to Pittsburgh, but are not on the air as yet.

My study of the Pittsburgh market shows there are over a million population, with only one VHF station in the area, plus a half a station, which is on the air about 2 or 3 hours a day. One station is off the air, due to the power being off sometime ago. It operates only part time.

In the course of my study on Pennsylvania, I have talked to quite a few of the station owners. Of the 49 that are allocated to Pennsylvania, there are 7 that went off the air completely due to the fact that, like Scranton and Wilkes-Barre, there are 5 TV stations in the area, and only 3 of them are carrying network programs; the other 24 are just holding on.

The TV station in Scranton had to go off the air due to the fact that it had to make changes and tried to change around on local programing, but they are having a tough go of it.

There was the same problem in Allentown, Pa. Harrisburg is also allocated three stations in connection with the same problem. Our plan was to form a UHF network for the whole State of Pennsylvania, being that there are 4 or 5 times as many stations on U's as there are V's, and with Pennsylvania State as a testing State, we would demix the whole State of Pennsylvania and work out the details.

As far as converters, I have worked out some parts on converters, with antennas, that can be produced and delivered to the family for $5.95 and $9.95. This consists of also the antenna that can be attached to any roof that people already have, a VHF antenna.

I have contacted many families in the State of Pennsylvania who have spent $200 to $300 for their television set. When asked if they would pay $50 to $60 to pull another station in, they would definitely say "No, we can hardly afford to feed our families, let alone spend money to pull another station in that is only on the air part time."

I feel that if the FCC Commissioners I have talked to in person and by correspondence would take some of these steps in consideration—the public is not familiar with V's and U's. A lot of markets and a lot of homes I have talked to, Mrs. Jones said, "Are you familiar with V's and U's?" "We never heard of U's." Then they said, "What is UHF?" Then you have to explain to them.

Therefore a lot of people have not been educated to the fact that there is a difference between U's and V's.

The manufacturers of these sets that came out in Pittsburgh were bought by some people. One of our lawyers went into the store and asked for a television set. The storeman did not tell him that he could pull a UHF station in if he bought the all-around set. He bought the VHF set, not knowing that UHF is also on the same market.

The FCC should consider freezing all applications and contracts on the VHF until this thing is ironed out, which is a very important step.

With a little cooperation on the V, the deintermixture problem could be solved in a very short time.

Most of the stations in the State of Pennsylvania will go along and will deintermix the State, if it is possible.

Senator PASTORE. That is a very nice statement. Thanks very much, Mr. Fillips. We are going to study your statement very carefully. I think you feel very much like the other previous witnesses.

Mr. FILLIPS. That is right.

Senator PASTORE. Only you are citing, of course, your particular problem in your particular area, and that is all in the record. We want to thank you, Mr. Fillips.

This meeting is recessed until 10 o'clock tomorrow morning.

(Thereupon, at 4:35 p. m., the committee recessed, to reconvene Tuesday morning, 10 a. m., February 28, 1955, in room G–16, Capitol Building.)

TELEVISION INQUIRY
(UHF–VHF Allocations Problem)

TUESDAY, FEBRUARY 28, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:05 a. m., in room G–16, United States Capitol, Senator John O. Pastore, presiding.

Present: Senators Magnuson, Pastore (presiding), Potter, and Purtell.

Also present: Commissioner John Doerfer of the Federal Communications Commission.

Senator PASTORE. This hearing will please come to order.

May I caution the people in the audience, out of courtesy and convenience to the witness, that if we must whisper, that we keep it at a very, very low tone so that all who are interested can hear the remarks of the witness.

Mr. Barnes, we are very happy to have you here. You may proceed in any fashion you like.

STATEMENT OF HON. STANLEY N. BARNES, ASSISTANT ATTORNEY GENERAL, ACCOMPANIED BY R. A. BICKS, V. H. KRAMER, AND B. HOLLANDER, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

Mr. BARNES. Thank you, Mr. Chairman.

Senator PASTORE. Have you copies of your statement?

Mr. BARNES. No; I do not. I won't be very long.

I appear here today at the request of your chairman. My plan is to touch on first a few of the antitrust problems raised by last year's Plotkin and Jones reports. While on this issue, second, to discuss a few broadcasting matters over which this Department has some responsibility.

First, the Plotkin and Jones reports: A good beginning point, I think, is Deputy Attorney General William P. Rogers' comments on these reports to your chairman by letter dated March 4, 1955.

(A copy of this letter follows:)

DEPARTMENT OF JUSTICE,
Washington, D. C., March 4, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: By letter to the Attorney General dated February 1, 1955, you transmitted a memorandum prepared for the Committee on Interstate and Foreign Commerce entitled "Television Network Regulation and the UHF Problem," by Harry M. Plotkin, special counsel. Your letter requested a preliminary report containing the comments and suggestions of the Department of Justice with respect to that memorandum. Your letter of February 17, 1955, asked that comments and suggestions also be made concerning a progress report prepared for the committee entitled "Investigation of Television Networks and the UHF-VHF Problem" by Robert F. Jones, special counsel.

THE PLOTKIN MEMORANDUM

Although Mr. Plotkin's memorandum deals with both television network regulation and the problems of ultrahigh frequency transmission, we understand that the views of this Department are solicited only with respect to the network problem. Before undertaking to discuss this problem, we emphasize that we regard the questions raised by Mr. Plotkin's memorandum to be of great importance. It is essential in a free society that access to a medium of communication as influential as television be limited only by the public interest and the inherent nature of the phenomena that make broadcasting possible. It is also essential that those granted access to that medium compete without restraint, so that there will be a maximum of competition in the dissemination of ideas. Consequently, all Government agencies charged with jurisdiction in this field must be alert to any possible encroachments upon the broadcaster's ability to compete.

Mr. Plotkin's memorandum requests the Department to reply to three questions.

1. Are there any corrections or additions to make in the report? (P. 42.)

Because the report covers matters other than those of antitrust signficance, we think it inappropriate to comment on matters not hereinbelow specifically covered.

2. Would more effective regulation and promotion of free competition result if the chain broadcasting regulations were abolished and networks held accountable under the antitrust laws? (Pp. 42-43.)

The Department of Justice is not sufficiently informed to express a considered opinion on the question whether the chain broadcasting regulations of the Federal Communications Commission should be abolished. We believe this question should be answered, at least in the first instance, by the Commission rather than by this Department.

Parenthetically, we observe that the concepts "regulation" and "free competition" referred to by Mr. Plotkin (p. 42) are antithetical. Our system of free competitive enterprise rests upon the proposition that competition itself provides the regulatory mechanism; that if opportunity to compete is preserved through enforcement of the antitrust laws, Government regulation will not be necessary to maintain free competition.

Maintenance of a completely competitive market requires that opportunity to enter that market be unrestricted. The telecasting business is not an industry in which unrestrained freedom to enter exists. "There is a fixed natural limitation upon the number of stations that can operate without interfering with one another" (*National Broadcasting Co.* v. *United States*, 319 U. S. 190, 213 (1943)). Government regulation is thus essential to limit and select the applicants for entry into the broadcasting business. Consequently, the interpretation of the antitrust laws in cases involving telecasters must take into account the fact that entry is regulated by the Government.

Section 313 of the Communications Act (47 U. S. C., sec. 313, 48 Stat. 1087) provides that all Federal antitrust laws are "applicable" to interstate telecasting. Despite these provisions, the United States Court of Appeals for the Second Circuit in *Federal Broadcasting System, Inc.* v. *American Broadcasting Co., Inc.* (167 F. 2d 349 (1948)) intimated that different standards of accountability under the antitrust laws apply to networks because of the chain broadcasting regulations. Perhaps as a consequence of the opinion in this case, there is an implication in Mr. Plotkin's second question that, if the chain broadcasting regulations were abolished, the networks would be subject to higher standards of accountability under the antitrust laws than is presently the case. This Department, at the request of the Federal Communications Commission, joined with plaintiff in the above case in petitioning the Supreme Court for review of the ruling on the ground that section 313 rendered the antitrust laws fully applicable to networks. Certiorari was denied (335 U. S. 821 (1948)). This action, of course, was not an indication of the Supreme Court's views on the merits of the controversy.

3. Are proceedings under the antitrust laws against any network warranted? (P. 43.)

Since the Antitrust Division is charged with enforcement of the antitrust laws, it has been on the alert for information indicating that any network is engaged in a violation of those laws.

It would be inappropriate to report upon any particular complaints, but you may be assured that we will continue to investigate any complaints submitted to the Department to determine whether or not any violation of the antitrust laws is involved.

THE JONES PROGRESS REPORT

Mr. Jones' paramount conclusion appears to be that your committee has not as yet gathered sufficient information to allow the formulation of an "any comprehensive program of reform" (p. 29). Therefore, there is no necessity to deal with a comprehensive set of suggestions, such as those made by Mr. Plotkin.

Mr. Jones and Mr. Plotkin appear to be in substantial agreement regarding the basic problems involved; namely, that a sufficient number of desirable television stations is not available to support a satisfactory nationwide television network service. Additionally, they agree that the inability of UHF stations to compete effectively with VHF stations is in large part responsible for this shortage of acceptable stations.

CONCLUSION

Because the Antitrust Division of the Department of Justice is essentially a law-enforcement rather than a regulatory or rulemaking agency, we presume that your committee does not contemplate that the Division should assume any responsibilities involving the telecasting business beyond enforcement of the antitrust laws. The Division will, of course, continue to be alert to possible antitrust violations in the broadcasting field, including those areas encompassed in the reports of Messrs. Plotkin and Jones.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

At the outset, this Department and your committee start from the same premise. As Mr. Rogers put it in his letter:

It is essential in a free society that access to a medium of communication as influential as television be limited only by the public interest and the inherent nature of the phenomena that makes broadcasting possible. It is also essential—

he continued—

that those granted access to that medium compete without restraint so that there will be a maximum of competition in the dissemination of ideas.

Consequently, all Government agencies charged with jurisdiction in this field must be alert to any possible encroachments upon the broadcaster's ability to compete.

In achieving our mutual goal, this Department's role is essentially limited. As Mr. Rogers' letter to the chairman suggested, our responsibility touches only on the limited number of television-network problems.

For the sake of emphasis, let me repeat now what was then said: UHF broadcasting, Congress beyond doubt decided, is primarily a matter for the Federal Communications Commission. The problem is basically a technical one. Here the Commission has special responsibilities and peculiar expertise.

Acknowledging this fact, Congress established this expert body and delegated broad responsibilities for regulation. Against this background, any comment by me concerning the UHF problem would have small point.

Turning then to antitrust aspects of network broadcasting, we necessarily begin with the hard fact that here nature itself exercises a primary restraint on trade. I refer, of course, to the fact that the number of television stations that can broadcast at the same time in any given area is limited by the laws of physics.

This meant the Government regulation to determine who shall have that privilege of broadcasting is extremely important.

Congress settled this question by establishing the Federal Communications Commission and authorizing it, subject to broad statutory standards, to determine who shall have the privilege of using the airways. At the same time, Congress provided in section 313 of the Communications Act of 1934, that the antitrust laws shall apply to the broadcasting industry.

Despite the plain language of that section of the act, making the antitrust laws applicable to broadcasting, the courts in determining the reach of the antitrust law to network broadcasting have not ignored the fact that the Federal Communications Commission exercises regulatory power in the field. I refer at this point, of course, to *Federal Broadcasting System* v. *American Broadcasting Company* (167 F. (2d) 349), decided in 1948.

To an extent thus far not precisely delineated, this regulation serves to deflect the full impact of antitrust law strictures. In light of the limited role accorded antitrust, the chain-broadcasting regulations adopted by the Commission in 1941 and subsequently made applicable to telecasting, take on added importance.

Since the Supreme Court in the *National Broadcasting* case (319 U. S. 190) has sanctioned this Commission power, the Federal Communications Commission now reexamines its regulations with a view to determining whether or not they should be modified, enlarged, in order to more effectively promote the public interest in telecasting.

Obviously, until we have the report of the Federal Communications Commission on this subject, further comment by any representative of the Department of Justice would be inappropriate.

I wish to assure you, however, that the Antitrust Division has informed the Commission of its readiness to consult with and advise the Commission regarding antitrust aspects of network regulation. Last spring Chairman McConnaughey of the FCC and I informally discussed the problem of dividing responsibility between us as to the difficult problems raised in the committee reports.

At that time I took the position that problems of network affiliation were by and large better handled by the FCC regulations than by antitrust prosecution. However, I assured Mr. McConnaughey that, were the FCC to undertake the adoption of new rules, the Antitrust Division would stand ready to consult with the Commission as to any antitrust aspects involved.

So much for the Plotkin and Jones reports, as well as FCC projected rule revisions.

Beyond these, I think I should emphasize that the Department of Justice is fully cognizant of the fact that, irrespective of FCC regulation, there remains a substantial area in the broadcasting field where the Department of Justice has a primary responsibility to enforce the Sherman and Clayton Acts.

This responsibility we have endeavored to exercise within the limits of our professional abilities and the financial resources available to the Antitrust Division of the Department of Justice.

For example, we found it necessary to prosecute two newspapers for attempting to monopolize dissemination of news and advertising in their respective areas. In this Loraine Journal case we obtained an injunction, affirmed by the Supreme Court, preventing the publisher of that newspaper from attempting to drive a competing radio station off the air by denying newspaper ad space to advertisers that also frequented the rival radio station.

Within this past year a jury returned a verdict of guilty against the Kansas City Star Co. for attempting to monopolize news and advertising in the Kansas City area. The indictment charged that the company refused to give time to advertisers on its television station unless the advertiser was a constant user of the Star's newspaper advertising columns. That criminal case is pending on appeal. A civil case along the same lines is pending in the lower court until the higher court accepts or rejects the jury's verdict in the criminal conviction.

We have also proceeded against RCA in a very important civil case, charging it has monopolized patent licensing with consequent restraints on manufacture in the radio-television industry. This case is also pending.

In addition, we realize, as the Plotkin report emphasized, that one of the chief factors inhibiting the successful operation of new stations is the paucity of good programing material. Restraints on programing material were the subject of our suit in the National Football League and International Boxing Club cases. In the football case, the courts struck down a number of restrictions—that was tried in Philadelphia before Judge Grim—which the league had placed upon the broadcasting and telecasting of professional football games. And in the boxing case, still awaiting trial, which was dismissed in the lower court, and where it was necessary for us to take appeal to the Supreme Court to get it reinstated in the lower court, we attacked alleged restraints affecting the sale of broadcasting and telecasting rights of championship professional boxing matches.

Finally, only last month, after a rather careful investigation, a Federal grand jury indicted the International Boxing Guild and two of its principal officials and the local guild working under the International Boxing Guild in Ohio for engaging in a boycott of boxing exhibitions staged in, and televised directly from, broadcasting studios without an audience.

The CHAIRMAN. Judge, how does that work, actually—what are the facts involved? Do they say to certain stations "you can take this" or "you can't take it," or just how? I think we would be interested to know how they do operate.

Mr. BARNES. In that particular case, there was picketing of stations involved. The promoters of the boxing bouts want to get not only the revenue, very naturally, that comes from the paid admissions at the scene of the bout, but likewise they of course are interested in what has become increasingly important in the boxing industry, and that is the receipts from television.

Because there is such a lack of good programing material, particularly with regard to athletic events, this particular group desired to merely have their boxing matches televised, without any paid admission. They didn't have the facilities to have the paid admission. The International Boxing Guild, consisting primarily of managers, put up a picket line around the television studio to prevent their having that type of television existing.

The CHAIRMAN. Isn't that Boxing Managers Guild the group that have now been barred in New York State by the New York State Commission?

Mr. BARNES. Yes; that is correct. There have been many developments.

The CHAIRMAN. I have been reading a little about it.

Mr. BARNES. This is but one aspect of it. We have likewise some investigations going on in the wrestling aspect with relation, incidentally, to television.

Senator PASTORE. How does the antitrust phase of it enter into that situation?

Mr. BARNES. Through restraint of trade, boycott.

Senator PASTORE. Boycotting whom?

Mr. BARNES. The studio—they tried to prevent people from going to work in the studio.

Senator PASTORE. What has that to do with the viewing public having the availability of the program?

Mr. BARNES. Because if they wouldn't permit the boxers to go in, there could be no program. The public are deprived of any boxing program.

The CHAIRMAN. In other words, in this case, as I understand it, there was no audience. It was merely to get on television.

Mr. BARNES. Right, and the International Boxing Guild, in its wisdom, decided that wasn't the way they wanted to run boxing. So they took steps to try to prevent it.

The CHAIRMAN. What about wrestling?

Mr. BARNES. As I have said before, Senator——

The CHAIRMAN. Is that classified as a sport by the Supreme Court? [Laughter.]

Mr. BARNES. What I was going to say was, sometimes speaking on the subject of antitrust, I point out how it affects everyone in many phases of living. First we filed suit against the Shubert people—which was recently settled—and sought to open to competition true dramatic productions. Second, we have sought to promote competition in professional sports, for example in the International Boxing Club case. Sometimes we have a combination of two—theater and sport—in the wrestling investigation. That is in the investigatory phase at this time. I am not at liberty to go very much into detail, because there has been no grand jury or civil action trial.

The CHAIRMAN. But as I understand it, what you are looking into is the danger that wrestling could be an absolute monopoly insofar as bookings, and where matches take place, are concerned.

Mr. BARNES. Blacklisting. In fact there are all kinds of activities of that kind.

The CHAIRMAN. Blacklisting and all that goes with that. That I understand is what you are looking into. We don't expect you to testify as to what you have found.

Mr. BARNES. We are looking into various phases of the wrestling industry.

Senator PASTORE. There was a motive, Mr. Barnes, in my asking you the question I did ask you. Why, then, wouldn't the closed circuit be a modification, or a modified form of restraint of trade?

Mr. BARNES. That depends upon contract. I take it your closed circuit is a private matter, of private contract between parties, and does not purport to go to the public. It doesn't fall within the public regulation aspect of television.

Senator PASTORE. But don't you state in the first case that the public interest requires that there be no restraint as to the availability of certain programs to the public? You answered me by saying, "Yes, because if you don't do that, then you won't have a program."

Mr. BARNES. That is right.

Senator PASTORE. Insofar as the public is blocked from seeing this program that is on a closed circuit, why aren't they being improperly blocked from seeing the program?

Mr. BARNES. If you got into a situation where one organization, or one individual, monopolized the situation as far as any particular exhibition was concerned, by closed circuit or otherwise, then you might get into an antitrust violation.

Senator PASTORE. Don't they do that on the championship boxing fights?

Mr. BARNES. Yes.

Senator PASTORE. Doesn't one group come in and monopolize this whole thing?

Mr. BARNES. That is exactly why we have filed suit against them.

Senator PASTORE. You have filed a suit?

Mr. BARNES. We have filed a suit. Of course, we ran into the difficulty that was created by the baseball case, where the Supreme Court held that baseball was a sport and not a business, and hence cannot be a matter subject to interstate commerce.

The CHAIRMAN. You don't expect that trouble in wrestling, though, do you?

Mr. BARNES. No, I don't expect that trouble in wrestling, particularly because, as a result of that baseball case decision, a judge in New York—and a very fine judge—said, "Well, let's see if the Supreme Court means what it says." So he dismissed the International Boxing case, and later another judge in the same court dismissed the Shubert case. He said if this rule that baseball is not a business is really a good rule, let's apply it to boxing and to theatricals.

Both of those cases went to the Supreme Court, and there we successfully maintained our position that there was no exemption as far as boxing or as far as theatrical productions were concerned.

So baseball is sui generis. It is all by itself. I think that is probably where the exemption will stay.

Of course, the Supreme Court says that the reason it decided that way is because Congress didn't take any action, after its original decision for a period of 20 years, to change the rules. Therefore, it wouldn't be fair to now come along and say that, having once ruled that baseball was a sport, we will now rule it is a business.

I might say I think that anyone who has studied the matter will say that there are some inconsistencies in the general problem.

The CHAIRMAN. Of course, Judge, we did in this committee, on the baseball situation, hold some hearings, such as they were, when Senator Johnson was the chairman——

Mr. BARNES. Yes; I recall those.

The CHAIRMAN (continuing). Regarding the matter. But as you say, we didn't take any action. That was because the minor leagues were just disappearing, and are disappearing, because of this whole tangled up situation.

Mr. BARNES. It is a difficult problem.

The CHAIRMAN. Senator Johnson had a very personal interest in the matter.

Mr. BARNES. That is right. I have talked to him many an hour on it. It is a very serious problem, as is exemplified, I think, by the decision of Judge Grim in the football case, where we adopted a rule of reason as far as broadcasting professional football games is concerned, and said it was a restraint of trade if there was a restriction on the broadcasting in areas where the team was not playing but that it was perfectly proper to restrict it in the home area where the team was playing, because if they didn't so restrict it, there would be an effect upon the gate receipts. And hence, using the rule of reason, he said it was all right to restrict it in a limited area, but when you got beyond that, it wasn't a proper restriction; and likewise, that the restrictions could not apply to broadcasting as distinguished from telecasting, because the broadcasting of football games even in the home area did not have an effect upon the gate.

Beyond cases already filed, several investigations are now pending in the broadcasting field. Because they are pending, I am sure you understand I cannot name names or go into too much detail. I can, however, outline broadly the scope of some of our pending investigations.

First, we are currently studying the antitrust questions raised by the exchange between the National Broadcasting Co. and the Westinghouse Broadcasting Co. of radio and television stations in the Cleveland and Philadelphia areas.

Second, we have under study complaints that the networks insist on some occasions that sponsors use programs owned or controlled by the networks. The charge has been made that this is particularly the case in connection with prime time—that is, between 7:30 and 10:30 in the evening. You will recall that the Supreme Court, in the Paramount case, required the control over the exhibition of motion pictures be divorced from their production and distribution. We believe that if a similar situation is to be avoided in the telecasting industry, the networks must not condition access to the airways on use by the advertiser of a network-owned program—providing, of course, that the sponsor has a program which meets reasonable standards of merit in the public interest.

Just as a patentee may not extend the exclusive privilege granted to him by Congress so as to control competition beyond the scope of the patented invention, so telecasters, I think, should be careful to avoid seeking to use their broadcasting privilege to control commerce in an area beyond the scope of their license.

The Paramount case also condemned block booking of motion pictures, the practice whereby an exhibitor desiring to rent only the good pictures was nevertheless compelled to take the bad as well. The Antitrust Division has under current inquiry charges that feature films are being licensed to television stations under similar requirements.

Motion-picture programing is, as you know, especially important to unaffiliated television stations to enable them to meet the competition of network programs. The Antitrust Division thinks it has been, and proposes to be, alert to prevent a recurrence in the broadcasting branch of the entertainment industry of those practices which gave rise in the motion-picture industry to the Paramount case.

I am sure that the broadcasting industry itself will join with us in our efforts to prevent repetition in their industry of the litigation, in some respects almost ruinous, that has faced the motion-picture industry.

Senator PASTORE. What is the distinction that is to be made between the Paramount case, where the producers of moving pictures were not allowed to maintain their own exhibition houses, and a network that owns and operates a station in the locality?

Mr. BARNES. If we assume that there have been the same acts in the telecasting industry that existed in the motion-picture industry, and we assume that the court is going to determine what the remedy should be, then there should be no distinction. There could be the same results, assuming the same violations. In other words, we get into what the court can do to prevent the recurrence of the abuse.

Senator PASTORE. Is that matter now under study by your Department?

Mr. BARNES. We have, as I stated, what we call a preliminary inquiry into the matter. We have had complaints, and they have caused us to take that much of a step. I hesitate a little bit, because sometimes undue emphasis is given by the press and otherwise to words that to us are words of art.

We have, for example, some 307 investigations pending in the Department in the Antitrust Division at this time. Very obviously not all of those will lead to the litigation. So I don't want to infer that simply because we have started an investigation that necessarily means there will be litigation.

Senator PASTORE. It is for that reason I shall not press it any further.

Senator POTTER. Judge Barnes, I am sorry I was not here for most of your statement. Maybe you covered it in your statement. The committee was confronted with the situation a couple of years ago—and also last year—in meeting with television manufacturers in an effort to encourage them to manufacture all-channel sets. Some of the manufacturers were fearful of making any type of commitment for fear that they would be in violation of the Antitrust Act.

Would you care to comment on that?

Mr. BARNES. I recall, Senator Potter, that we conferred with you in the middle of 1954 regarding that question. After careful consideration, we declined to give the requested clearance to commit ourselves to nonprosecution in the event such a plan were worked out, because we believed that it might constitute a possible violation of the Sherman Act.

We felt it was for Congress—not the Attorney General—to amend the antitrust laws to permit such agreement between manufacturers. Further, we felt that the agreement might have had the effect of driving out of business small television manufacturers who would be unable to afford the production of all-wave receivers.

Since the proposed agreement would, in the opinion of the Antitrust Division, have constituted a violation of the Sherman Act, I felt we could not approach it, and I believe we so notified you. Even if we had cleared the agreement, of course, our agreement would not have protected the manufacturers from any possible third-party litigation—treble damage suits against them. I think that, of course, was the most deterring fact upon such possible joining together.

The CHAIRMAN. I think in that case we would have to take the initiative and act, because that precedent down there with you fellows—although all equities might be on the side of doing it—would be a very dangerous one.

Mr. BARNES. That is right. Furthermore, it is purely an advance statement of what the Department of Justice will probably think of a situation in the future. It might very well change with any subsequent Attorney General who has charge of the Department of Justice, and will in no event be binding upon any future holder of the office.

The CHAIRMAN. Might I ask this question, if it is proper, because we do have many pressing problems here in the industry, and the Department of Justice may have a part in helping in the solution of them. On this boxing and wrestling and other sport cases, do you think you could complete what you are doing in a very short time, or is it going to be dragged out a little bit?

Mr. BARNES. I cannot prognosticate, Senator; that is one thing I have learned. Even if I think it is going to be filed tomorrow, I never say so, because there are too many reasons why those things do not happen.

The CHAIRMAN. I understand that.

Mr. BARNES. You say "finished." Of course we started this International Boxing case several years ago, in 1952. We have two matters that have delayed it considerably. One is the fact that we had to go to the Supreme Court to establish the Sherman Act's application to aspects of professional boxing. The second one is that unfortunately we have to file our cases where the acts take place and where the defendants have their place of business.

In championship boxing contests—that means New York—and the southern district of New York, of course, had one of the worst calendar congestions of any Federal district of any place in the country.

I guess I had better be careful about that, for they have been speeding things up so much in the last few months that the situation may have changed somewhat.

But there has been delay there just because of the condition of the calendar. Our case is ready to go to trial up there. We still don't know when it will be tried.

The CHAIRMAN. The reason I asked that is because this committee has been asked on many occasions, by many of the fine sports writers in the country, why we would not go into this matter of boxing and wrestling. I think the majority opinion of the committee was that properly it was a matter that you folks could take hold of easier than by our getting into this problem of programing, because there are some other basic things that we are more concerned with.

We are concerned with that, too, because I have had many, many communications from people who are interested in clean sports along the lines of "Well, the home is open to television and the young boy goes to high school and his high-school coach tells him that you fight fair and sports are clean." Then he comes home and looks at some of these things on television, and looks at his father and probably says "What is this fellow telling me up there at high school?"

It has a serious impact, I think, upon good clean sports in the country.

Mr. BARNES. As a one-time football coach, I agree with you.

The CHAIRMAN. Me, too. Wrestling, of course, I don't know what you do about that.

Mr. BARNES. I think it has to be recognized for what it is—entertainment, not sport.

The CHAIRMAN. I am not against it, but I think something should be done to let everybody know, particularly youngsters, that this is not what it looks like. Maybe the Federal Trade Commission ought to get into that and label it.

Mr. BARNES. Wrestling is a very difficult subject, Senator, because of the fact that in boxing a fighter may have a fight every 3 months, or every 2 weeks at the most. You get into wrestling, and they are working every night in a different part of the country. Most of them are not televised.

We get our foot in the door on most of these things on the television angle, the broadcasting angle, and the interstate commerce that arises. We still can only deal with violations of matters in interstate commerce. So your local wrestling show presents problems to us from an enforcement standpoint.

Again, Senator, may I just say one other thing. It isn't only an antitrust question. Some of our investigation into wrestling, and to a limited extent boxing, indicates that the Criminal Division of the Department of Justice, in its Antiracketeering Division, must have a look at its antitrust features.

The CHAIRMAN. I am sure that none of us have any objection to people who want to go watch these wrestling matches, but when they start to come into the home, I think then they ought to be—the best word I can think of is "labeled," for what they are in some way. I don't know how we can do that. Maybe we ought to inquire of the Federal Trade Commission that handles labeling and advertising.

Senator Potter, as I recall last fall you attended the boxing convention, or whatever they had in Detroit, in which they evidenced some desire to see if they couldn't voluntarily do some of the things that have been suggested by the judge. Is that correct?

Senator POTTER. Yes. I would like to have the judge comment on that, if you would.

Mr. BARNES. I don't know enough to comment upon all the matters that are taking place in boxing particularly, but I can say that I think all of us realize that there has been a vast change in the boxing picture, particularly with regard to the control of the managers over the opportunities to appear in boxing matches within the last several months. In fact, very recent time.

Senator POTTER. Part of that time, unless they had the good word from a man in New York, they didn't box.

Mr. BARNES. There is no question about that, apparently, at least from the testimony of 1 individual who changed his manager and was out for some 3 years, I believe it was—2 years any way—one of the most likely prospects, I understand. He couldn't get a boxing match because he didn't have the right manager. I think there is a great deal that can be done within the industry on a voluntary basis. But there again we get into some of the uglier aspects of it, because there have been strong-arm methods.

In fact, some of my staff accuse me of spending too much time with some of the gentlemen who come in with cauliflower ears and have a tale to tell. But sometimes they don't tell it so well, but if you stay with it, you can get very interesting facts.

We have a lot of individuals who, as soon as they know we are interested, come in and tell us their personal experiences, and a lot of editors—sports editors of different newspapers—who are vitally concerned.

Senator POTTER. The Department of Justice is surveying that industry at the present time?

Mr. BARNES. We have no wholesale boxing investigation. I don't want to mislead you. In connection with our suit on championship professional fights, we have spilled over a lot of other areas, and we are gathering as much as we can and working in cooperation with other agencies and other divisions of the Department of Justice in gathering as much information as we can.

Senator POTTER. But it is your opinion that the industry is cleaning its own house to a certain degree?

Mr. BARNES. I think it is doing a great deal. As to whether or not it can ultimately clean its own house, that is a serious question. As long as some of this force exists, as long as managers get beaten up if they don't kunckle under to the demands, there is actually physical fear existing in the industry. Until that is eliminated, until the right-minded managers, those interested in the sport, believe that they have a chance at coming out on top, we are not going to get the whole story.

Senator POTTER. Unless that industry is cleaned up, the American people are going to lose, completely, respect for boxing, and it will be relegated to the same level as wrestling, unless some action is taken to clean up the sport.

Mr. BARNES. There is no question about that.

The CHAIRMAN. Judge, the point I wanted to make is that I am glad that you have this under active consideration. There have been many requests that we here go into some of these matters, and I think the committee feels we have many other things in this industry that are probably much more important, and that properly you people could put some checks down there on this thing.

Mr. BARNES. I think that is our duty, and we are trying to do it.

Senator PASTORE. Senator Purtell?

Senator PURTELL. No questions.

Senator PASTORE. Our counsel, I understand, has some questions.

Mr. COX. Mr. Barnes, would it be basically the position of the Department of Justice that it has the same fundamental duty to enforce the antitrust laws in the field of radio and television broadcasting as in other industries?

Mr. BARNES. Yes; taking into consideration the fact that all the regulated industries may have different statutory boundaries as to what is regulated. We get into this question of primary jurisdiction, which is a very difficult one. But in general, depending on the law that sets up the regulation, we do within limits have the general obligation to consider and control as best we can the antitrust aspects, even in the regulated industries.

Mr. COX. Isn't it true that in the Communications Act, in section 313, which you cited, there is an express statement of congressional policy that the antitrust laws are to apply in this field, despite the regulation authorized to be exercised by the FCC?

Mr. BARNES. That is correct. I think we have by congressional enactment a stronger or greater responsibility in this field than in some other regulated industries.

Mr. COX. Wouldn't you say that that is perhaps because of this situation: That despite the fact, as you pointed out, that nature has created a primary limitation upon the ordinary forces of free competition, on the other hand, because this is in the realm of expression, Congress has expressly stated a policy that restraints will not go to the extent of censorship, and as a result you you don't have this treated like a regulated utility in the sense, perhaps, that railroads or common carriers regulated by the ICC are handled. But in the television field, since there is an initial restraint, would you say that perhaps special care and vigilance is required in the enforcement of the antitrust laws there to prevent the creation of a monopoly?

Mr. BARNES. I would agree with that 100 percent.

Mr. COX. You mentioned the Federal Broadcasting Co. case, and it is referred to in Mr. Rogers' letter, as perhaps raising some problems, despite the language of section 313. Would the Department be of the opinion that perhaps some clarifying legislation is required to avoid the difficulties posed by that case, and to straighten out this question of primary and secondary jurisdiction?

Mr. BARNES. I would hesitate to give an opinion on that offhand. That case, of course, did not get to the Supreme Court. It might be that it would be better to have the Supreme Court pass on the question before you considered the necessity of legislation. However, I don't know enough about it to comment on that.

Mr. COX. Since it has never been finally approved by the Supreme Court, then is the department taking the position that, despite the decision in that case, it continues to have authority to act in the broadcasting field, even though it is in an area that is entirely under regulation of the FCC as far as certain aspects are concerned? In other words, you are still trying to get a case to the Supreme Court on that issue, if one arises?

Mr. BARNES. Yes; if one arises, we think it should go to the Supreme Court before we feel we are barred by the exact language of the lower court.

Mr. COX. As I understand it, in your testimony before a subcommittee of the House Judiciary Committee yesterday, you indicated, in connection with this matter of the exchange between Westinghouse and NBC, that one of the problems which had to be decided by the Department before going ahead was whether it was debarred from bringing an action by the approval granted to this transaction by the Federal Communications Commission.

Mr. BARNES. If we assume that the restrictive provision of the Communications Act applies only to the common carriers, then probably there is no problem about the finality of the act of the Federal Communications Commission. Under those circumstances, we feel we would be free to proceed.

Mr. COX. But that is a question that is still, I take it——

Mr. BARNES. We think that we have the answer, but sometimes we are wrong, you know. We don't want to be too positive and say this ends all our problems. I think we will have to have a fight to establish that.

Mr. Cox. Suppose the Department of Justice were of the opinion that a particular practice in the broadcasting industry—in the network field, let us say—was violative of the antitrust law. Would it institute an action to enforce the law, even though this practice had been explicitly approved by the Commission?

Mr. Barnes. I don't think I can answer that question directly. I don't think I could answer it in advance.

Mr. Cox. It would have to depend on the facts of the specific case?

Mr. Barnes. The circumstances and facts, yes.

Mr. Cox. In other words, you feel that there may be a possibility, under the present status of the statutory law, that the Federal Communications Commission, in a non-common-carrier field, could put its stamp of approval on a practice which the Department of Justice felt violated the antitrust laws?

Mr. Barnes. Yes. We do not concede that we would be helpless, and it would depend, I think, upon the nature of the stamp of approval that the Commission put upon the particular acts, as well as the particular acts which were approved.

Senator Pastore. Let's get that straight. Would this act be a violation of the antitrust laws that would be condoned because the stamp of approval was put on by a regulatory body? Or would it mean that it does not violate the antitrust law because it is a regulated matter?

Mr. Barnes. If it is a regulated matter and is taken, by the act, out of our jurisdiction, something that we do not have jurisdiction on, then obviously we can't proceed.

Senator Pastore. Who decides that?

Mr. Barnes. We are going to have to make the initial decision, whether we want to contest it. That is why I say we have to look at the facts, we have to look at the order and what it purports to cover, and the area in which it is.

Mr. Cox. But under the express language of section 313, wouldn't it be your feeling that, except possibly for provisions relating to common carriers, that very clearly Congress intended that the fact of——

Mr. Barnes. Concurrent jurisdiction, that is right.

Mr. Cox. The Commission regulation should not bar you?

Mr. Barnes. That is our attitude, that is right.

Mr. Cox. Does the Commission take the same position with regard, not to a continuing practice, but with regard to the grant of a license or of a permit by the Commission which the Department might, in a particular case, feel will result in a restraint of trade?

Mr. Barnes. I cannot answer that. As I have said in my statement, we tried to get together to work in cooperation, and we have had very little opportunity to have any disagreements.

Mr. Cox. Mr. Henley of the Office of the Chief Counsel of the Commission testified briefly last week about liaison which they maintained with the Antitrust Division. Could you tell us what the nature of that liaison practice is?

Mr. Barnes. Yes. The liaison with the Federal Communications Commission is on an informal basis whereby the Commission makes available to the Antitrust Division, upon request, any information in its possession which relates to Federal antitrust questions. Conversely, we agree to make available to the Commission all information which might help the Commission in its regulatory functions.

I have conferred with Mr. Connaughey and with several representatives of the Commission in my office. We have discussed some of our mutual problems—the division of responsibility that is set forth in the letter that Mr. Rogers sent to this committee.

In addition, I informed the Chairman of the Commission that we stood ready, on short notice, with individuals whom we thought were somewhat, at least, qualified to exercise discretion and judgment in the matter, to review any network regulations that the Commission proposed to issue, to advise and consult with them in drafting any such rules on any of the antitrust questions involved.

At one of these meetings we suggested that there be specific individuals designated, 1 on behalf of the Commission, 1 on behalf of the Antitrust Division of the Department of Justice, to stay in contact with each other so that this could be a vital arrangement rather than just a paper one.

I designated Mr. Hollander, who is here with me today, as the individual to represent the Antitrust Division, Department of Justice, in these communications with the Federal Communications Commission. The Federal Communications Commission designated Mr. J. Smith Henley, Assistant General Counsel, on their behalf, and those 2 gentlemen have been in contact when any matters have arisen, and I think that our informal contact has worked out pretty well.

Mr. Cox. Is this a matter of recurring scheduled conferences, or do I get the impression that it is handled on a case-by-case basis when one agency or the other feels that there is occasion for getting together?

Mr. Barnes. It is a case-by-case arrangement, with the caveat that I just put in there, that we have certain understandings that we are interested in these rules and regulations, and that they are interested in getting our opinion, and when that situation develops that they want our opinion or advice, that we will be consulted with regard to it.

Mr. Cox. In your opinion, has this liaison, for instance, worked effectively in connection with the matter of the NBC–Westinghouse exchange?

Mr. Barnes. That is a very difficult question. You are getting into a very involved state of facts.

Mr. Cox. I just wanted your thought.

Mr. Barnes. I would say on the whole I think it has worked pretty well; yes.

Mr. Cox. Is it your policy, where you are investigating a matter which you know is before the Commission for action, to request the Commission to defer action until you can complete your investigation?

Mr. Barnes. It is not. It is not, because of our concurrent primary jurisdiction on matters of that kind. If we think we have sufficient information to exercise our jurisdiction, we should do it. If we do not have, we are in no position to ask the Commission to delay any action on their part.

Mr. Cox. Would you notify the Commission that you were investigating the matter and advise them of the facts which gave rise in your mind to some question as to whether there was an antitrust issue?

Mr. BARNES. We would advise them if it came to our attention that there was any possibility of any action being taken by them which might have any effect upon the ultimate outcome of the matter which we then had under investigation.

Mr. COX. In other words, if there were a case in which you thought that their action might conceivably preclude your subsequent treatment of the case, you would advise them of this fact?

Mr. BARNES. Not necessarily preclude any action on our part, but necessarily have any effect, psychologically or otherwise, upon our action. We would just simply call the matter of our interest to their attention, without any expression of desire on our part that they take one action or another.

Mr. COX. Is this something you have done a number of times during this period of liaison with the Commission?

Mr. BARNES. It has been done, but it has not been done a number of times. We have only had this procedure in operation since last year. As a matter of fact, it was only formalized along in August or September of last year. We had negotiations and conferences prior to that time, but we settled down into a routine that we thought was satisfactory to us as of that date.

Mr. COX. Is this liaison comparable with that which you maintain with other regulatory agencies?

Mr. BARNES. Somewhat. Of course we have a very similar liaison with the Federal Trade Commission, but of course our liaison there is on a daily, or a half-daily, basis rather than the larger interval that exists in our relations with the Federal Communications Commission.

Mr. COX. Didn't you recently state in testimony before a House committee that it would be helpful if the various regulatory agencies would advise the Department of their consideration of matters in which possibly antitrust matters were presented?

Mr. BARNES. I do not recall that specific testimony, but I have no doubt that I might very well have said it because I think that the more information we have, the better job we can do.

Where we have a joint, or even a secondary, responsibility—concurrent or secondary responsibility—very obviously we are interested in what the other regulatory bodies do.

Mr. COX. I think this was again before the House Judiciary Subcommittee sometime late last month. You were testifying, possibly on legislation requiring advance notice of mergers, and you made reference to the fact that it would also be of assistance if the regulatory agencies advised you in advance of these matters.

Mr. BARNES. I have no doubt that is precisely what I said.

Mr. COX. Do you think that legislation could be adopted in this field which would be helpful to the Department in that connection?

Mr. BARNES. That is a question that I do not think I am competent to pass upon. I think we can sometimes have too many regulations. I am much more interested in some of the others we are trying to get on mergers than I am in something like this by statute.

The CHAIRMAN. And that depends upon the people running the departments. You can maintain a good liaison with people if they are anxious to maintain that.

Mr. BARNES. There is no question about it. If you get men of good will, they can do a lot more sometimes without the law than they can with it.

We have been, I think, very successful in maintaining that cooperation between various governmental agencies, including some where there has not been that cooperation in the past.

Mr. Cox. Mr. Plotkin in his report, which was submitted to the Department, recommended that you be asked whether a more effective promotion of free competition would result if the chain broadcasting regulations of the Federal Communications Commission were abolished and the networks simply held accountable under the antitrust laws.

Mr. Rogers replied that the Department was, as of March last year, not sufficiently informed to express a considered opinion on this question, and that it should be answered in the first instance by the Commission. Could you tell the committee whether the Department has, since that time, acquired additional information which would enable it to express an opinion?

Mr. Barnes. No, sir; that is still our position. We would like to see what the regulations are, what the Commission comes up with.

Mr. Cox. You are talking about prospective regulations and not about those which have been in effect since 1941?

Mr. Barnes. Yes, that is right.

Senator Potter. Mr. Cox, along that line, I am wondering, Mr. Barnes, if the Department of Justice, or particularly your division, has reported on a bill that is before the committee at the present time, introduced by Senator Bricker, which would regulate the networks? That is S. 825.

Mr. Barnes. I believe that that is a bill in which we made a comment similar to that made in the letter of Mr. Rogers' that has just been referred to.

Senator Potter. In other words, there has been no position taken by the Department of Justice on the bill at this time?

Mr. Barnes. That is right. That is my recollection. I do not have our records here on that, but I am pretty certain. One of my associates here gave me some of the facts and says that that is his recollection, so I am sure that is correct.

Senator Potter. There has been concern by some people, with the great effect that television has on mass public opinion, that the concentration of power into 2 main networks—or 3 networks—is a large concentration of power in the hands of a few people. Has the Antitrust Division made any investigation on that concentration of power?

Mr. Barnes. Not in this particular field, but from a general standpoint, very obviously, we believe that free enterprise and lack of monopoly—the greater the concentration toward the single monopolies, theoretically the worse the situation is.

Ordinarily, all things being equal, we would rather see 3 competitors than 2 or 1; or 6 rather than 3. Theoretically the public is going to be the gainer if that situation exists.

Senator Potter. It has been suggested that the networks be treated in the same manner as the Associated Press at one time—forcing them to make their programs available to any person that wanted them. Would you care to comment on that?

Mr. Barnes. No, I do not think I should because one came as a result of antitrust litigation. We do not have that as yet in this industry.

Sometimes under the theory that individuals who have violated the antitrust laws should be put in a position a little different than those who have not violated the antitrust laws, we might recommend one thing in one case where we would not recommend it to an industry where there has been no violation established as a matter of law.

I think that is better left unsaid at this time.

Mr. Cox. As I understand it, you have an arrangement, then, with the Commission that, with regard to any future revision of their chain broadcasting regulations, you are to be consulted. Have you, however——

Mr. Barnes. Just a minute. I do not think we have any definite promise. We understand that they propose to consult us, and we have expressed our willingness to be consulted and to cooperate with them to the fullest extent.

Mr. Cox. Have they to this date asked you to comment on their present regulations and give your opinion as to how they affect the Department's enforcement of the antitrust laws?

Mr. Barnes. They have not.

Mr. Cox. Mr. Rogers, in citing the Federal Broadcasting System case in his letter, intimated that, despite section 313, different standards of accountability apparently might be held to apply to the networks because of these chain broadcasting regulations. If in fact, then, these regulations are regarded as putting the Commission's stamp of approval on certain practices that are authorized there, and if in consultation with the Commission you decided that this was an obstacle to the enforcement of the antitrust laws, would the Department then recommend to the Commission that they be set aside or ask corrective legislation from the Congress?

Mr. Barnes. Of course it depends upon how large the area of difference is, how substantial, and how fundamental. If we attempt to negotiate our ideas into the regulations, or at least have careful consideration given to them, and if we at the conclusion thought there was an utter absence of antitrust considerations in these regulations, we would have no hesitancy in either going to Congress or instituting such action as we thought necessary to try to establish a free enterprise.

Mr. Cox. Mr. Henley, again, in his testimony last week suggested, I think, at one point that in the opinion of the Office of the Chief Counsel of the Commission, the Communications Act in setting up the standards of public convenience and interest went further than the antitrust laws in guarding against monopoly. Would you care to comment on that?

Mr. Barnes. I am afraid I could not agree with that because public interest—as I understand the various matters that are contained within that definition of what constitutes public interest—goes far beyond the antitrust laws. Antitrust law enforcement is part of the public interest, but your public interest goes to a larger area. I think I made some remarks on that yesterday.

I pointed out yesterday, in testifying before a House committee, that in construing the Federal Communications Act, the Supreme Court in *Federal Communications Commission* v. *RCA Communications*, which had to do with the establishment of overseas radio-telegraph service, discussed the Commission's finding that competition is—

that is, duplication of radio telegraph facilities would not impair the ability of existing radio carriers and cable carriers to render adequate service. For such reasons the Commission concludes that competition was reasonably feasible.

The courts felt it was improper for the Commission to suppose the standard as adopted was derived without a national policy defined by legislation in the courts. They said:

The trouble arises from the fact that, while the Commission recites that competition may have beneficial effects, it does so in an abstract, sterile way.

If the courts adopt that attitude, they pay practically no attention to the antitrust implications. And we were not happy with that type of decision because we do not think it gives the emphasis to antitrust.

That is part, and only a part, of the public interest that must be preserved.

Mr. Cox. But in your view it is, in its area, a more specific and a stronger statement than the general standard of the public interest?

Mr. Barnes. Yes; because by public interest there are 10 or a dozen other factors that may weigh against antitrust implications. Hence, antitrust law is stronger in preserving free enterprise than the larger public interest, which includes antitrust considerations.

Mr. Cox. You commented briefly on the block booking aspects of the Paramount case and their possible implications for the licensing of feature films over television. Mr. Plotkin, in his discussion of the employment of option time by the networks, suggests that possibly the entire practice, not limited to films, has many of the features of block booking as condemned in the Paramount case. I think this is one phase of his report that Mr. Rogers did not comment on in his letter of last March. Is the Department familiar with option time as it is used in the broadcasting field?

Mr. Barnes. In a general way; yes. I am not prepared to state at this time that a contract giving networks option for a station's time is, standing alone by itself, a violation of section 1 of the Sherman Act. That is our considered opinion at this time. We have not dismissed the problem, but we cannot say that, per se, in and of itself it violates the antitrust law.

The Chairman. I think maybe right here we had better give the reporter a rest, do you not think, of 10 minutes?

Senator Pastore. All right, if it is agreeable with the rest of the committee. Let us have a 5-minute recess.

The Chairman. All right.

(A short recess was taken.)

Senator Pastore. Mr. Cox?

Mr. Cox. I gather, then, at this stage, Mr. Barnes, the Department is not engaged in a broad investigation of the overall operations of option time in television?

Mr. Barnes. That is correct.

Mr. Cox. Has the Department analyzed Mr. Plotkin's description of the practice, and inquired of the FCC as to whether, so far as it knows, the basic factual analysis contained therein is accurate?

Mr. Barnes. We have had conferences and discussed it, and I can assure you that the Plotkin report has been read very carefully and studied in the Antitrust Division, as was the Jones matter. But I don't know that we have ever gone into formal consideration with the FCC as to whether the factual situation is valid, or whether it is not.

Mr. Cox. There is certainly, on the surface, some parallelism between the practice and the block booking system in respect to the theaters.

Mr. Barnes. Yes; as I pointed out in my opening statement, there certainly is, and that is one of the reasons we are concerned.

Mr. Cox. Is there also some possibiilty that the affiliate which is bound to take all programs during the option time is the victim of blind selling, which was also condemned in the Paramount case?

Mr. Barnes. That is my understanding of the possibility, and I believe we have had 1 or 2 complaints along those lines. I recall some correspondence to that effect.

Mr. Cox. And those, I take it, under your policy, are being investigated, as facilities permit?

Mr. Barnes. Yes; just let me say, as I frequently said before, in any matter as fundamental to our economy as television, we don't just put the letters in the wastebasket. On the other hand, we cannot start an investigation on a particular complaint in a particular locality every time we get a letter. We have a general accumulation of evidence that may not be designated as an investigation, which continues all the time on these troublesome subjects.

Mr. Cox. Is there any similarity between the position which the networks occupy by virtue of their time option rights and the master agreements and formula deals which were held illegal in the Paramount case?

Mr. Barnes. I don't think that I could answer that question without a good deal of study to cite a few cases, or find that there were none. So I don't think I should try to answer that question.

Mr. Cox. There has been testimony that NBC and CBS follow a must-buy policy, under which an advertiser, to get on the network at all, must buy time on a minimum of 50 or 55 stations, whether he wants to advertise in all these markets or not? Is there a possibility that this practice might violate the antitrust law?

Mr. Barnes. Yes.

Mr. Cox. Has the Department received complaints with respect to that practice?

The Chairman. I think the Department has knowledge of it. I don't know that there has been particularly one complaint; is that right, Judge?

Mr. Barnes. I recognize it as a problem. I don't specifically recall any complaints. I wouldn't be too certain of that.

Mr. Cox. That is all I have, Judge Barnes.

Senator Pastore. Any further questions?

Senator Purtell. No questions, except that your testimony was most informative and very helpful to us.

Senator PASTORE. Thank you very much for coming, Mr. Barnes.

Mr. BARNES. I should have said for the purpose of the record that I am accompanied here by, on my left, Mr. Robert Bicks, who is legal assistant to the Assistant Attorney General; on my right Mr. Victor Kramer, who is the section chief who has to do with general supervision over television matters; and next to him, Mr. Hollander, who is our liaison representative with the FCC, all of whom have been of aid to me here.

Thank you, sir.

Mr. COX. We appreciate your coming.

Senator PASTORE. We have Congressman Morano here who would like to make a statement for the record and then will leave. Congressman Morano?

STATEMENT OF HON. ALBERT P. MORANO, REPRESENTATIVE IN CONGRESS FROM THE FOURTH DISTRICT OF THE STATE OF CONNECTICUT

Mr. MORANO. Mr. Chairman, thank you for the opportunity to testify briefly. I represent the Fourth Congressional District of Connecticut, which has no local television. The people in my district, though interested in their community problems and activities, elections, and special events, are fed only by programs from New York and New Jersey.

I cannot appear on television in my own district. I cannot reach my constituents by this important medium. Local advertisers cannot reach those whom they would serve through this medium. Consequently, development of the community and the economic expansion in the community are thwarted. Business is directed more toward the cities from which the TV emanates.

I am appalled to find—I have been told this, I don't know whether it is true or not—that approximately one-third of the congressional districts in this country are in the same condition as mine.

Since this important means of public communication is lost to so many, who must depend on TV stations in other districts and in some cases even in other States, this inquiry into the situation is called for, because I believe that I, myself, and a lot of other Congressmen, would like to know the reasons why this situation exists today, and we would like to see some solution—some equitable solution—found, and the problem resolved.

That is all I have to say.

Senator PASTORE. Any questions of the Congressman? Thank you very much for appearing.

Our next witness is Mr. Philip Merryman. I understand that there are several distinguished people with him and they are all welcome to come forward. Mr. Merryman, have you some people with you who might testify?

Mr. MERRYMAN. Yes, sir.

Senator PASTORE. May we please have silence so that with your cooperation our witnesses may be heard.

STATEMENT OF PHILIP MERRYMAN, WICC-TV, BRIDGEPORT, CONN., PRESIDENT OF HOMETOWN TELEVISION, INC., ACCOMPANIED BY DUDLEY JEWELL, MANAGING DIRECTOR, BRIDGEPORT CHAMBER OF COMMERCE, BRIDGEPORT, CONN.; DR. WILLIAM H. ALDERSON, PASTOR OF THE FIRST METHODIST CHURCH OF BRIDGEPORT; THE REV. DAVID F. BANNON, REPRESENTING THE BISHOP OF BRIDGEPORT DIOCESE; MRS. STEPHANIE McCARTHY, DIRECTOR OF RED CROSS FOR BRIDGEPORT; AND MRS. SIMON FRANK, PARENT-TEACHERS ASSOCIATION OF BRIDGEPORT

Mr. MERRYMAN. Mr. Chairman, may I direct an inquiry before I begin?

Senator PASTORE. You may.

Mr. MERRYMAN. Is the record of the hearings before the Potter committee in April or May of 1954 to be incorporated by reference in this proceeding?

Senator PASTORE. It won't be incorporated by reference as a matter of formal incorporation. It is simply a part of the entire record and investigation on the part of this committee. You may rest assured that anything in that report is of notice to the committee.

Mr. MERRYMAN. Does that include the recommendations of the committee? I understand Senator Potter yesterday to say there were recommendations by the subcommittee.

Senator PASTORE. The entire report; yes, sir.

Mr. MERRYMAN. Another question, Mr. Chairman: I have heard that there will be a recess of this committee after tomorrow for about a month, after which the networks will appear.

Senator PASTORE. The chairman can answer that question.

The CHAIRMAN. No. We are setting the dates for these hearings as quickly as possible. We have yesterday and today, and what is the plan?

Mr. COX. We have one Friday.

The CHAIRMAN. One Friday, and then some next week again?

Mr. COX. Probably not next week, but we hope sometime in the middle of the month.

Mr. MERRYMAN. Will the participants in this testimony have an opportunity——

The CHAIRMAN. I might say the networks have written us to the effect that they would like to testify first on this engineering, UHF-VHF problem, and then they would like a few days to come again and testify on the network problem, which is another phase of it. So there may be an interval in between there.

Mr. MERRYMAN. Will there be an opportunity for the other participants to have rebuttal testimony after the networks?

The CHAIRMAN. Yes, you may have all the opportunity you want to testify.

Mr. MERRYMAN. Thank you, sir.

Mr. Chairman, I had expected to present all of these witnesses after I finished my testimony. Two of the gentlemen have planes to make. They have important engagements in Bridgeport this evening. I would like, if I may, to present Mr. Dudley Jewell and Dr. Alderson, first.

Senator PASTORE. All right, if you will identify yourselves and make your statement.

Mr. JEWELL. Mr. Chairman, my name is Dudley Jewell. I am manager of the Chamber of Commerce of Bridgeport, Conn.

We have a particularly exasperating problem, and a frustrating one, in our area, which is Fairfield County, with regard to television service. It is a problem that is difficult of solution, and we are certainly glad to see this committee giving some attention to it.

In Connecticut, we are a small State, but the last time I heard we were still rated as one of the sovereign States. We wonder why, or under what reasoning or what rhyme or reason, 7 television channels have been assigned to 1 city in 1 State, while 2 television channels have been assigned to the entire State of Connecticut.

Senator PASTORE. I am surprised you didn't know that. I have been asking the same question for 2 years.

Mr. JEWELL. Mr. Chairman, we have been asking the question, and we have been unable to get an answer. We have a television station in Bridgeport which has been on the air now for well over 2 years. I am sorry, Phil, I don't remember the exact time that WICC–TV went on the air.

It has been fighting a losing battle, because we have very few sets in the area with tuners to receive that station. Yet we are a metropolitan area of considerable proportion. In our immediate area we service something like 300,000 people in Bridgeport and 4 contiguous communities, a population of important size and consideration.

These people have access only to New York radio and New York television. They are well versed on all of the goings on in the State of New York, and they can tell you what the Governor of New York is doing, or the mayor of New York City, but they have little opportunity to view Connecticut problems.

From time to time we have people running for public office in our State. They have no opportunity to be seen by the voters in Connecticut and in Fairfield County. We have substantial business establishments in our community which have no access to television advertising on a competitive basis with New York stores, for example.

One of the arguments that is always raised against us is that a small area like ours, and with local television programing, perhaps some sacrifice of the New York channel would be required, or maybe the reception quality would be diminished to some extent, and that we can't equal that programing in the public interest.

I would submit to you, Mr. Chairman, that we have the same situation with radio. New York radioblankets our area. You can turn your radio dial just a few marks and you have a different station. But I would point out, and I think Mr. Merryman can support this, that even with that overwhelming type of blanket competition from New York radio, in our area at any given time almost, during the early morning broadcast hours, during the day, during the evening, almost any time, 80 percent of the radio sets in our area which are tuned in are tuned to WICC, Bridgeport.

The reason they are is because of good local programing. WICC is not a network station. Yet by good programing and local interest, they are able to attract by far the majority of the radio audience. We feel sure that a similar showing could be made on local programing by television.

Frankly, there is a channel vacant in our area, and for the life of me I can't see why it shouldn't be made available to WICC—channel 6.

Senator PURTELL. May I interrupt a minute, Mr. Chairman? When you speak of channels—WICC is an ultrahigh?

Mr. JEWELL. Yes, sir.

Senator PURTELL. Now you are talking about a very high frequency channel.

Mr. JEWELL. Yes.

Senator PURTELL. I think we ought to differentiate in talking about channels.

Mr. JEWELL. VHF channel 6. In our area, with 300,000 people, and many thousands of television sets, channel 6 is vacant. You tune to channel 6 and there is nothing.

Yet when we talk to the FCC about this, we are told about some possible interruption in service because Philadelphia is on channel 6 and Schenectady is on channel 6, and there are a few handfuls of people out in the middle somewhere, who get marginal reception at best with booster arrangements on their television sets. So their best service is unsatisfactory, and yet apparently there would be some interference with even that unsatisfactory service.

But we are denying television service to a much larger group of people. We feel that we are entitled to consideration for a regular television channel. We feel that our business people and our industries should have access to television. We have a television station, it is true, but its coverage is very light because, after all, when you talk to Joe Doakes who has a television set and can already receive seven channels of television, it is pretty hard to convince him that he should spend another $50 to add a strip tuner or something and make special alterations on his antenna.

Channel 8 reception, which is VHF—channel 8 reception, which comes out of New Haven, which is 1 of our 2 channels in all of Connecticut, gives us spotty reception in the Bridgeport area, primarily because all of the antennas are beamed toward the New York stations. So in some spots we do have some sets that receive channel 8, but for others, it is simply not available and it is marginal reception.

Our plea to this committee is to give some consideration to relief for our area so that we, too, can enjoy adequate television service, because for all practical purposes now, we have none available to us on a local basis.

Obviously our business people in Bridgeport cannot make use of the many New York channels, because the rates are prohibitive. They simply can't buy that kind of television time.

Senator PASTORE. Any questions?

Senator PURTELL. What you are asking for, then, is relief, as I understand it, Mr. Jewell, in the form of an assignment of a very high frequency to that area; is that correct?

Mr. JEWELL. That is right, Senator.

Senator PURTELL. You are telling the committee that the number of sets able to receive ultrahigh is rather small as compared to the total number of sets there. All sets can get very high. Very few sets—or am I correct in understanding that relatively few sets can get ultrahigh in the Bridgeport area?

Mr. JEWELL. That is right, very few sets.

Senator PURTELL. So they are limited entirely to New York stations, if they haven't a converter to get ultrahigh in the Bridgeport area; is that correct?

Mr. JEWELL. That is right. I might say that we are all indebted to Mr. Merryman for a rather valiant, but losing, battle that he has been putting up out there to maintain television service in the Bridgeport area, and try to service us. But it is almost an insurmountable problem.

Senator POTTER. Are you completely blanketed by the New York stations?

Mr. JEWELL. Yes, we are, Senator. And the reception comes in very strong on all channels. We seem to be in a kind of a contradictory situation. I know many people say, "Well, gentlemen, what are you complaining about? Seven television stations. Out where I live we only have 1 channel, or 2, and even here in Washington I think there are only 4."

So it would look, on the surface, as if we are suffering from a prosperity of television service, when actually we are not, you see. We are in a pocket. We are completely blanketed by New York stations.

The question we have been asking—the question the chairman asked—is: Why does one city rate 7 channels, while a whole State is given only 2 channels?

Senator PASTORE. And that is your frustration, because while it is true that the viewer has the advantage of seven national setups, he doesn't have the local community service that he is entitled to.

Mr. JEWELL. That is right, sir.

Senator PASTORE. I think in a very concise and simple fashion, you have pointed out what is the crux of this whole problem. Unless television begins to assume an aspect of community service, whereby people in a community who want to advertise on television can do so without paying the exhorbitant prices they must if they go to the New York market, eventually, of course, these communities are going to be without that service to which they are entitled.

Mr. COX. For the record, Mr. Jewell, you stated there are only two channels in Connecticut. You mean two VHF channels?

Mr. JEWELL. There are two VHF channels assigned, of which one has been on the air for some time at New Haven.

Mr. COX. The other one is still in contention before the Commission; is that right?

Mr. JEWELL. At Hartford.

Senator PURTELL. The contest is as to whom it shall be assigned.

Mr. JEWELL. But the committee should understand, Senator, regardless of who gets that channel, when it eventually goes on the air, it still doesn't give Bridgeport, and Fairfield County even, Connecticut television.

Mr. COX. That is, your statement was limited to VHF because there are in Connecticut, in addition to the channel on which Mr. Merryman operates, a number of other UHF allocations which are not in use.

Mr. JEWELL. That is right, sir.

Senator PURTELL. Mr. Chairman, may I ask this question? But what you want, if I understand your testimony—and I think I do—is that because VHF is coming out of New York and your people therefore have available to them these seven channels of very high frequency reception, they are therefore not disposed to change their sets to get the ultrahigh frequency which is available to them in Bridgeport.

The answer to that would be, in your opinion, the assignment of a very high frequency channel to Bridgeport, is that correct?

Mr. JEWELL. That is what we would like, Senator. We would like to have channel 6.

Mr. COX. Do you get a really satisfactory picture from these New York stations?

Mr. JEWELL. Yes.

Mr. COX. It is not a fringe service?

Mr. JEWELL. It is not a fringe service at all. It is a class A service.

Mr. COX. We are advised by the Commission you shouldn't do this because it is outside of the area covered, by their standards.

Senator PASTORE. Now if you wait long enough, justice does prevail.

Senator PURTELL. I might say to the distinguished and beloved acting chairman that certainly if we in Bridgeport had two very high frequency stations there we would feel very happy, would we not?

Mr. JEWELL. That is right.

Senator PASTORE. If Pastore had anything to do about it, you would have three of them.

Senator PURTELL. I hope that you do have something to do about it, so we might have three.

Mr. JEWELL. We will be happy with just one.

Senator POTTER. If Pastore and Purtell will work as hard for Cheboygan——

Senator PASTORE. Mr. Merryman, who is your next witness?

Mr. MERRYMAN. I would like to present Dr. William H. Alderson, who will speak for the Interchurch Council of Bridgeport.

Dr. ALDERSON. I am the pastor of the First Methodist Church in Bridgeport, and I have been for 17 years, lacking 2 or 3 months. I think I speak for most of the Protestant people in Bridgeport, and for the Council of Churches, which is our organized group.

In the light of what Dudley Jewell has said, I want to put in a good firm plug, if I may, for hometown television—that is the thing we are after. Primarily, I am interested in Bridgeport, because that is my hometown, but I am thinking of every community like Bridgeport across the country, and what I say applies there equally as it does to Bridgeport.

I think that we are on sound ground when we say that America is made up of a group of communities, and I think that our sense of national unity grows out of our loyalty to our own local community. That is the grassroots. That is where it starts.

If you are loyal to your own community, there is then a foundation on which you can be loyal to your State, or to your section, or to your country as a whole. Therefore, what helps the community helps the country as a whole. That is the point I want to make here.

I think that we will all agree that these large stations which send us programs that are nationally televised have excellent programs and all that. But there is a lack of community consciousness that we miss, that we are unable to get when we hear these large stations.

There is nothing that stirs your loyalty and enthusiasm like that which roots right in your own hometown. I read the New York Times every morning, but because I read the New York Times—which is a great newspaper and covers the whole world—that doesn't mean that I don't read any hometown paper. I am sure every member of this committee, and every Senator here, takes his own hometown paper, although he reads all the great dailies from across the country.

You never see as much enthusiasm generated for the Yankees or the Dodgers or the Cincinnati Reds or whatever they may be, as you do for the hometown team. We are all interested in organized baseball, and we follow it, and we follow it vigilantly. We are not American if we don't.

But when it comes to the old hometown team, the Dodgers aren't in it with that team, you see. Everybody is interested in what is doing in his own hometown.

The same thing is true in a local political fight. We never have a chance to see the faces of our politicians. That may be a blessing, I don't know. [Laughter.]

Senator PURTELL. But you do have a chance to see your statesmen, do you not? [Laughter.]

Dr. ALDERSON. That is right. The statesmen, of course, can command these larger stations, but the local politicians cannot. Therefore, when you only hear their voices—and if it wasn't for our fine radio station we wouldn't even be able to do that—we lose a sense of belonging to a community in which these men live, and of which they are a part.

I have had an unusual privilege for the last 10 years, I think it is, with respect to broadcasting on our local radio station, and also for a year, when Mr. Merryman was able to go down into his own pocket and the pockets of his supporters, and pay for it, we had a service, a Sunday afternoon service, on his television station.

I know—I speak from experience—when I say that there is a value to the people in the local community through religious channels, religious services, hearing the voices of men whom they know and seeing the faces of men whom they see in the community gatherings and whom they pass on the street.

It is not only valuable to the man who has that privilege, it is valuable to the community and it is a great service to the community.

The local station in the community does something which obviously the big station can't do—they do a measure of it, but in the local community, the station carries so much of what I understand is supporting time—although I am not a technician at this point. That is, free programs which they give as a service to the community. It costs nothing. Our religious programs in Bridgeport, which are on the air, cost nothing. For an entire year this station carried the cost of a television service where we have music and a sermon, such as it was, every Sunday afternoon, and without cost to us. It was a service to the community. It helped bring the people of the community together in spirit, where they felt our town is doing something here and doing it for us.

It has a grassroots connection that you don't get from the huge station that blankets the whole country, or that is on a network.

I don't want to take any more of your time. I think that I should have made the point that I want to make, which is that hometown television has a value in this country that can never be gained from the large station, and just as enthusiastically as I can, I want to request that those who are responsible for thinking this question through will arrive at some plan. I do not have the plan because I am not technically trained at this point, but some plan by which Bridgeport and hundreds of other communities across the country can have their hometown television, which in many, many of its programs means more to them than the national hookups can ever mean.

I am very grateful to Mr. Merryman for giving me a chance to say this. I didn't need to be urged to come and say it. I have been awaiting an opportunity to speak this word in behalf of my own community and other communities like it across the country.

The CHAIRMAN. Thank you.

Mr. MERRYMAN. Mr. Chairman, I think my statement will run beyond the recess period. So may I go ahead with the other witnesses?

The CHAIRMAN. Yes; go right ahead.

Mr. MERRYMAN. I would like to present the Reverend Bannon, who will represent the bishop of the diocese of Bridgeport.

Reverend BANNON. Mr. Chairman, my name is the Reverend David Bannon, from Bridgeport, and I come here at the request of His Excellency the Most Reverend Lawrence J. Sheean, bishop of the Diocese of Bridgeport.

I am sure that even way down here in Washington much has been heard about the new and very progressive diocese of Bridgeport, under the direction of the former Washingtonian, Bishop Sheean.

Bishop Sheean at this time is extremely concerned about the lack of a television facility for the benefit of his some 250,000 people living in Fairfield County. He is perfectly acquainted with the television facility that we have and knows very well the handicaps under which it has been laboring.

He is extremely aware of the power for good, in all his efforts to reach his people, that television of a proper kind might service.

I would just like to mention a few of the institutions or organizations directly under his leadership that he feels could benefit and prosper for the spiritual and moral well-being of his people if this new and very influential instrument of propaganda, TV, could be at his disposal.

I am thinking in terms of Catholic charities in the Bridgeport area, which I might say, by the way, is, I think, the No. 1 beneficiary of the United Fund.

Also, the Catholic Youth Organization, catering to the social, recreational, cultural, and religious needs and hungers of the modern youth in our community.

His diocesan school system which could benefit so much by a television time that would reach the people, the Society for the Propagation of the Faith, and mnay other organizations who have, fortunately, not only during his 2-year reign but for the past 10 years, benefited greatly by the hometown radio facilities that recognized a responsibility to, and were most responsive to, the needs of the Catholic population in the area.

Let me insert here that for the last 5 years, through the generous cooperation of Mr. Merryman, station WICC radio, we have been able to bring a daily presentation of the Rosary across the calendar year into countless homes.

I don't think that the diocese of Bridgeport has ever requested a courtesy or time or cooperation of our local radio services and found them wanting in a willingness to give cooperation.

Bishop Sheean assures me that at this moment he has many, many plans and programs that he would like to bring to a local TV service if he felt the local TV service was going to be in a position to serve his people. However, at the present time, as you have been made well aware, we are, on a hometown basis, finding ourselves in a position where we feel we are being terribly neglected—Fairfield County depending completely upon outside television.

Very little, nothing really, of a hometown interest can be brought into our homes, day after day or night after night, that is of local interest to our countless multitudes of people. Therefore I would consider this a privilege to have this opportunity, in the name of the bishop of the diocese of Bridgeport, to present to you a very earnest request, that whatever might be within your power, might be granted to our local TV outlet so that we might be put on a local basis on a par with the outside stations that are now serving our people.

I can assure you that the whole population—and speaking in the name of Bishop Sheean, surely the complete Catholic population of Fairfield County—will indeed be grateful for whatever you can do to help them to have a television service that will be serviceable to their many needs.

Thank you.

The CHAIRMAN. Thank you, Father. Any questions?

Senator PURTELL. No, except to thank the Father for coming down and giving us the information he has.

Mr. MERRYMAN. May I present Mrs. Stephanie McCarthy, director of Red Cross for Bridgeport, who will speak for the community services.

The CHAIRMAN. Before you start, may I ask this question: I don't know. Is there an application before the FCC for this channel?

Mr. MERRYMAN. We have had an application in for nearly 2 years. It is now tied up in this present rulemaking proceeding, the general proceeding.

Senator PURTELL. May I ask a question?

The CHAIRMAN. Yes, sir.

Senator PURTELL. Do I gather, Mr. Merryman, that what you feel is the answer now to your Bridgeport problem—and it is a problem—is a very high channel for Bridgeport?

Mr. MERRYMAN. That is the only solution that will give us immediate relief. We have a plan for long-term relief that we would like to suggest to the committee.

Senator PURTELL. That will be developed, however, in your testimony?

Mr. MERRYMAN. That is right, sir.

The CHAIRMAN. Go ahead, Mrs. McCarthy.

Mrs. MCCARTHY. I am Mrs. Stephanie McCarthy and I am here in a multiple capacity, I might say, representing the Red Cross. The Red Cross is part of the United Fund. I am representing the Council of Social Agencies. There are some 110 agencies in Bridgeport, and, may I add with pride, as a grandmother and a mother—of course I always have to get that in. As a group of social agencies we are extremely interested in providing services to the people of Bridgeport. We need to educate, we need to interpret, we need to promote.

We are making a very valiant effort, I might say, to develop safer living, better living, better civic consciousness. We have tried all the facilities available and feel now, and have felt for some time, that the need for a local hometown television is very, very great.

It has been an up-hill job. We feel sometimes hamstrung. Maybe I should not use that word, referring to television. Let us say we feel handicapped to a great degree; that we cannot put across to the public what we would like to.

Let's take education. What better way is there for us of the various social agencies and various groups in Bridgeport to present to the public what we are trying to do, and what we are giving to them, than the audiovisual facility of hometown television, which has been lost, of course, in Bridgeport.

Let me cite two examples, especially in Red Cross. We live in days of emergency. We never know what emergency the day might bring forth. On the 19th of last August we had the tremendous emergency of the Naugatuck Valley floods, the Eastern States floods. True, the radio supported us mightily, and is very powerful. But how much more powerful it might have been if we had depicted to the public what was happening up and down the valley and the need of immediate relief from everybody.

It is true the public responded very well, but they had a feeling that it was a kind of a long-distance presentation. It was the New York stations that showed pictures, and, of course, people were most anxious to see what the local situation was.

Another emergency that comes up repeatedly with Red Cross, in spite of our beautiful program of blood service, providing blood free for people in hospitals, we hit emergencies. When you hit that emergency there may be a man dying or a child being born, and that child and his mother might die because there is a shortage of a certain type of blood.

True, you can give it to the newspapers, and we do. They do well by it. We give it to the radio. But if you could depict that on your local hometown television—depict that need in an audio and a visual way, it would be much more effective.

I don't believe that there is any other means of education that receives as much time from the average individual as television. To repeat what Dr. Alderson has said, local people are interested in local happenings and local news and local personalities. Therefore a local hometown television, available to all people with sets, is what we need.

The person in Bridgeport is interested in what is going on in Bridgeport. We still get the national and the international activities, but the first interest is what is going on at home. We cannot get that unless we have the proper kind of television in the community.

We of the agencies need to reach hundreds of people. We need to educate them as to what we are doing. We have to picture to them the resources of the agency. Where will the serviceman in difficulty go? Where will—and I am including all agencies—a mentally disturbed person go? If this education could be carried on through television, it would make our job much easier and it would present to thousands upon thousands of people the resources that are available to them.

You may write, and you may speak over the radio, but still you must see things. We have to interpret what we do. People should be interested, if they are not, in what an agency does, and a good interpretation of what is done by an agency will result in what is all mighty important, and that is the raising of funds.

We can't exist without promoting our agencies. We can't exist without promoting the need for funds to carry on humanitarian work, and the best way to present it would be over television in a local capacity.

I am probably talking too long—I always do. At least my husband tells me that. [Laughter.] But you see, this is not merely an effort to get money. It is more important. It is an effort to develop a social and civic responsibility. And believe me, in industrial communities like Bridgeport and many others, it is a rough job to develop that social and civic responsibility among all people.

But when we can visually present to people a feeling for one's fellow men, then our problems can be solved and the results would be a higher caliber of people and a better community.

If you can sell soap or cornflakes, you certainly can sell humanity, and the pattern for decent American living. You see, through the local television, you can set the tone of culture and intelligence and the loyalties of the community.

I would like to say "amen" to everything that Dr. Alderson has said, and Father Bannon, but I would like to repeat also what they have said, that it is so important—terribly important—that we do this on a local basis.

In spite of all the resources of the nationwide networks, and I have all respect for them, there is still need for that effective use of local television. It is a chain—maybe I shouldn't say a chain—it is a bond which will improve local communities. It will improve and coordinate local units of government, and it will result in a better unit of national living and national thinking.

That is all I wish to say, except the one little addendum—if that is the proper word—that we are enormously grateful to Mr. Merryman and the facilities of the radio station which have been given to us at all times at any request.

But we would like to add that Mr. Merryman and Bridgeport need a local television station, as do other towns of the same size and capacity.

Thank you.

The CHAIRMAN. Thank you. Any questions?

Senator PURTELL. No; except again I want to express my appreciation for your coming down to give us this information you have given us.

Mrs. MCCARTHY. Thank you.

Mr. MERRYMAN. May I present Mrs. Simon Frank, who will speak for the parent-teachers' association.

The CHAIRMAN. Yes; we will be glad to hear from you.

Mrs. FRANK. You know, PTA has become the largest lay-professional organization in the world. We have 10 million members nationally. We have members in Alaska and Hawaii.

We have found that it has become a vital and integral part in the business of education. We feel that hometown TV would do a great deal of creating a large amount of interest in showing what our educational administrators do, what the board of education does.

Many people are not aware of the departments in our school administration. They just feel that if you need a band, it is up to the principal of the school. They do not realize that this goes through the board of education; that there are many things involved. If we had these people on hometown TV and planned something whereby they would hear these people speak and know that they are doing something that is actually a part of their children's education, it would stimulate their interest.

I myself do not have UHF because I do not feel I want to put the money out for this UHF. I feel I would like very much to see the programs that come on WICC-TV.

The CHAIRMAN. Is there a UHF channel there?

Mr. MERRYMAN. Yes; I operate a UHF station.

Mrs. FRANK. But still we would have to have special equipment, which is quite highly priced. For that, we have to give up seeing what our local TV does.

We want our hometown people informed and educated. We want to make our hometown people more aware of legislation, the things that go on in Hartford; and we in PTA have a very extensive legislative program.

We would like to make our people aware of the issues, so that they know when they vote what issue is of greater importance at the time.

I do not know what better way there is for children to learn than to learn by visual aids. In the schools we are now getting all types of visual aids. We in the PTA have spent a great deal of money putting in projectors and screens and sending films. We have started a film library.

What a child sees, he can remember. We feel if hometown TV were made available, they would never forget the things that they saw. If there were educational programs, they would really be retained for a greater period of time than just having to read something.

We feel that we could plan programs that would help the adults. We have an adult education program which is very difficult to put over on radio. When you see a person speaking, you pay attention; whereas when it is on the radio, you may be distracted by one thing and another.

Firstly and foremost, we would like to have the children realize that we are working for democracy and freedom and we are very grateful to Mr. Merryman. Many are the times that I have called up WICC and asked him to put on announcements for conventions, for very important pieces of legislation, and he has been very kind.

But by the same token, it does not reach as many people as it would if we had TV.

It is a great privilege to be here and present this to you.

Senator PURTELL. I would like to express my appreciation for your coming down. When you speak of WICC, of course, you are speaking now of the radio station, when you say these announcements can be carried to a great number of people.

Mrs. FRANK. Yes.

Senator PURTELL. When you talk about WICC, your feeling is, is it, because of the limited number of people with ultrahigh receiving sets, they cannot get those messages on television? Is that correct?

Mrs. FRANK. That is right. I myself would have liked to watch certain programs. We just cannot.

Senator PURTELL. Am I correct, then, in assuming that what you listen to, because you do not have an ultrahigh receiving set, is New York stations

Mrs. FRANK. Yes; we would have to put in this special equipment.

Senator PURTELL. Thank you.

The CHAIRMAN. Is most of your programing local for your U station?

Mr. MERRYMAN. It is; I would say, about 50 percent; either local film originations or local programs in the studio.

The CHAIRMAN. But the set situation is such in Bridgeport that that coverage would be very limited?

Mr. MERRYMAN. We have less than 10 percent of the receivers in the area.

The CHAIRMAN. So therefore that hometown programing would reach very few people.

Mr. MERRYMAN. That is right. It was our feeling, when we started the station, that by producing local programs we could convince the local viewers that it would pay them to invest this money in converters. Despite all the efforts we could make with the resources we had available, we still have not been able to persuade them.

Senator PURTELL. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Senator PURTELL. Is one of your reasons, Mr. Merryman—I do not wish to put words in your mouth; I am trying to find what the answer is, as is everybody on this committee—because the people in Bridgeport have available to them so many very high-frequency station programs out of other cities than Bridgeport, such as New York? Is that correct?

Mr. MERRYMAN. That is right, Senator.

Senator PURTELL. So you have a peculiar situation in that respect, or one that is not common, let me say, to all other ultrahigh stations.

Mr. MERRYMAN. I would say it is peculiar. It is perhaps as severe as any situation in the country. However, we have met the same in radio, and we are way out on top.

The CHAIRMAN. That gets down, of course, to the fact that every radio set can receive any radio station.

Mr. MERRYMAN. That is right, sir. A new radio station goes on the air and immediately every radio receiver can get that station.

The CHAIRMAN. It is down to the problem we have been wrestling with here for a long time—the problem of the set.

Mr. MERRYMAN. That is right, sir.

The CHAIRMAN. And the UHF–VHF problem.

Mr. MERRYMAN. I might add that at this moment, many people like Mrs. Frank have gone to the local retailers and specifically requested a set to get WICC–TV. The retailer, finding it not to his advantage to try to sell the UHF set, has endeavored to persuade them to buy a VHF only set.

Senator POTTER. That happens many places.

The CHAIRMAN. That is true in a lot of places.

I want to say to these good people who are here, we appreciate your coming. I do not think there is a one of us on the committee who also does not appreciate the value of local hometown programing. Many of us have the same complaint.

It is a big city like the one I live in, we are limited to only networks coming in. There are local stations, but network programs—the difficulty of local advertisers. But a lot of it gets on.

Under the FCC programing rules criteria, you would put on a great number of these local programs such as suggested here. Would that not be correct?

Mr. MERRYMAN. We would operate it the same way, sir, that we operate the radio station—in the local public interest.

Senator PURTELL. May I ask one more question. Do I understand, Mr. Merryman, that the conversions total only 10 percent of the total sets in that area?

Mr. MERRYMAN. That is the figure that I deem most reliable.

Senator PURTELL. So actually, then, local merchants attempting to advertise over TV would find it prohibitive in cost to try to do it out of New York, when they are trying to reach a very limited number of people that are out of New York in the Bridgeport market, would they not? They would therefore find it difficult to advertise over TV at all, would they not?

Mr. MERRYMAN. They find it impossible.

Senator PURTELL. Except nationally sold products.

Mr. MERRYMAN. The local merchant competing with the chain store setups—the chain stores can afford to buy the New York stations because they have outlets all over the New York area and they sell in Bridgeport as well in all the other areas, and pull the business to New York.

We do not even try to sell the local merchant our television station because we know that even the small amount of money we charge for it will not give him a return. He cannot, on the other hand, afford to pay the costs of the stations in New York City.

The CHAIRMAN. Let me ask one question for the record, too. You have your application. Are there other applicants for this channel 6?

Mr. MERRYMAN. No, sir; there were two UHF assignments to Bridgeport.

The CHAIRMAN. I meant on the V.

Mr. MERRYMAN. There are no other V applications at the present time.

The CHAIRMAN. There are no other applications? You are technically the only applicant now?

Senator POTTER. It is a rule-making procedure.

The CHAIRMAN. I see. In other words, they have not assigned the channel yet to that area. Then if the channel were assigned to that area, say, you could become an applicant?

Mr. MERRYMAN. That is right. I assume if the Commission did assign a channel to Bridgeport, there would be numerous applicants for that VHF channel.

Seantor POTTER. Then your fight would just begin.

The CHAIRMAN. We want to thank you again.

We will recess the committee now until 2:15.

(Thereupon, at 12:10 p. m., the committee recessed, to reconvene at 2:15 p. m., on the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

We will insert at this point in the record, without objection, a letter from the Governor of the Commonwealth of Massachusetts, dated February 1, 1956, addressed to the Honorable John F. Kennedy, Senate Office Building, Washington, D. C.

(The letter is as follows:)

THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE DEPARTMENT,
State House, Boston, February 1, 1956.

Hon. JOHN F. KENNEDY,
Senate Office Building, Washington, D. C.

DEAR SENATOR: It is my understanding that a Senate Interstate and Foreign Commerce Subcommitee is now conducting hearings on certain problems raised by the holders of ultra high frequency television licenses, some of whose stations are located in Massachusetts.

It is the claim of this group that recent rulings by the Federal Communications Commission, granting the holders of certain VHF licenses the right to increase their transmitting power and to increase the height of their transmitter towers, unfairly place the holders of UHF licenses in an unfavorable position.

It is held that these Commission rulings will act to centralize television broadcasting in the so-called large stations and to curtail or even wipe out the smaller "home town" stations holding UHF licenses.

In my opinion it is important that "home town" television be maintained on a more healthy basis than at present. Local television stations serving smaller areas can surely serve Massachusetts communities better than the larger stations blanketing wide areas from transmitters located in other States.

My warmest personal regards.

Sincerely,

CHRISTIAN A. HERTER.

The CHAIRMAN. At this point in the record, without objection, we will insert a letter from the Camden Broadcasting Corp., Camden, S. C., signed by H. S. Bowden, president, Camden Broadcasting Corp., dated February 20, 1956, and addressed to the chairman of this committee.

(The letter is as follows:)

CAMDEN BROADCASTING CORP.,
Camden, S. C., February 20, 1956.

Senator WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee, United States Senate, Washington, D. C.

HONORABLE SIR: I have your letter concerning hearings on television broadcasting.

Upon advice of my physician, apparently it would be impossible for me to appear as a witness.

However, I feel that I must not overlook this opportunity to express myself in the matter of UHF television. So, would you please consider this letter as a contribution to the hearing? Or at least, take the ideas contained here under advisement.

As a broadcaster and as a retail dealer in TV sales and service, I cannot help but feel that the American public has been "sold down the river" by the set manufacturers. We have seen in central South Carolina how UHF is superior in so many ways to VHF reception. And yet the set manufacturers have forced the public to say "premium" to see and hear UHF. In short, it costs the consumer from $15 to $80 more for a set which will receive both UHF and VHF. In consequence, the public considers UHF something "extra," but not necessary.

Consider this hypothetical case. Suppose the radio set makers would suddenly decide to make sets which had the radio spectrum only from 600 to 1600 kilocycles—and suppose they charged the public a "small fee" to add the lower 50 kilocycles. Virtually every radio station with assigned frequency under 600 kilocycles would go out of business.

Now, many thousands of American families have already made the investment needed to add UHF reception to their receivers, some of them paid the extra dollars when they bought a new set which would get both. Without immediate and strong measures, the UHF broadcasters are going out of business. In fact, the delay has already killed off many of them. That segment of American public who believed in their local broadcasters and their local service and repair men are left holding a useless bag.

Whether all broadcasters become UHF or all become VHF, the consumer is the loser.

I feel very strongly that UHF is as dead as FM radio for commercial purposes. Congress can correct it. But it will only be done when there is no such thing in the public mind as UHF or VHF. It must all be television from lower to higher numbers on the spectrum.

Radio set manufacturers are required to make sets with all standard frequencies on 1 dial, in 1 set.

Why not TV set markers?

Thank you, and the best of luck in the hearings. I earnestly hope you can come up with the right solution.

Sincerely,

H. S. BOWDEN, *President.*

The CHAIRMAN. Mr. Merryman, we will be glad to hear from you.

STATEMENT OF PHILIP MERRYMAN, WICC-TV, BRIDGEPORT, CONN., PRESIDENT, HOMETOWN TELEVISION, INC., ACCOMPANIED BY BEN ADLER, PRESIDENT, ADLER COMMUNICATIONS LABORATORIES, NEW ROCHELLE, N. Y.

Mr. MERRYMAN. I am here today as president of the Committee for Hometown Television, a group of station operators in New England. I might add we are a corporation organized under the laws of the State of Connecticut as a nonprofit corporation. Our members are largely confined to the States of Connecticut and Massachusetts, but we intend to extend the scope of operations of the Committee of Hometown Television on a nationwide basis.

Between us we represent just about every kind of television operation: VHF as well as UHF operators; hopeful holders of CP's and owners no longer on the air; stations linked with radio operations, and stations standing alone; companies in the black and in the red; stations with and without network affiliations.

The "hometown" in our title, I think, has been very well defined in this morning's testimony by the five witnesses who preceded me.

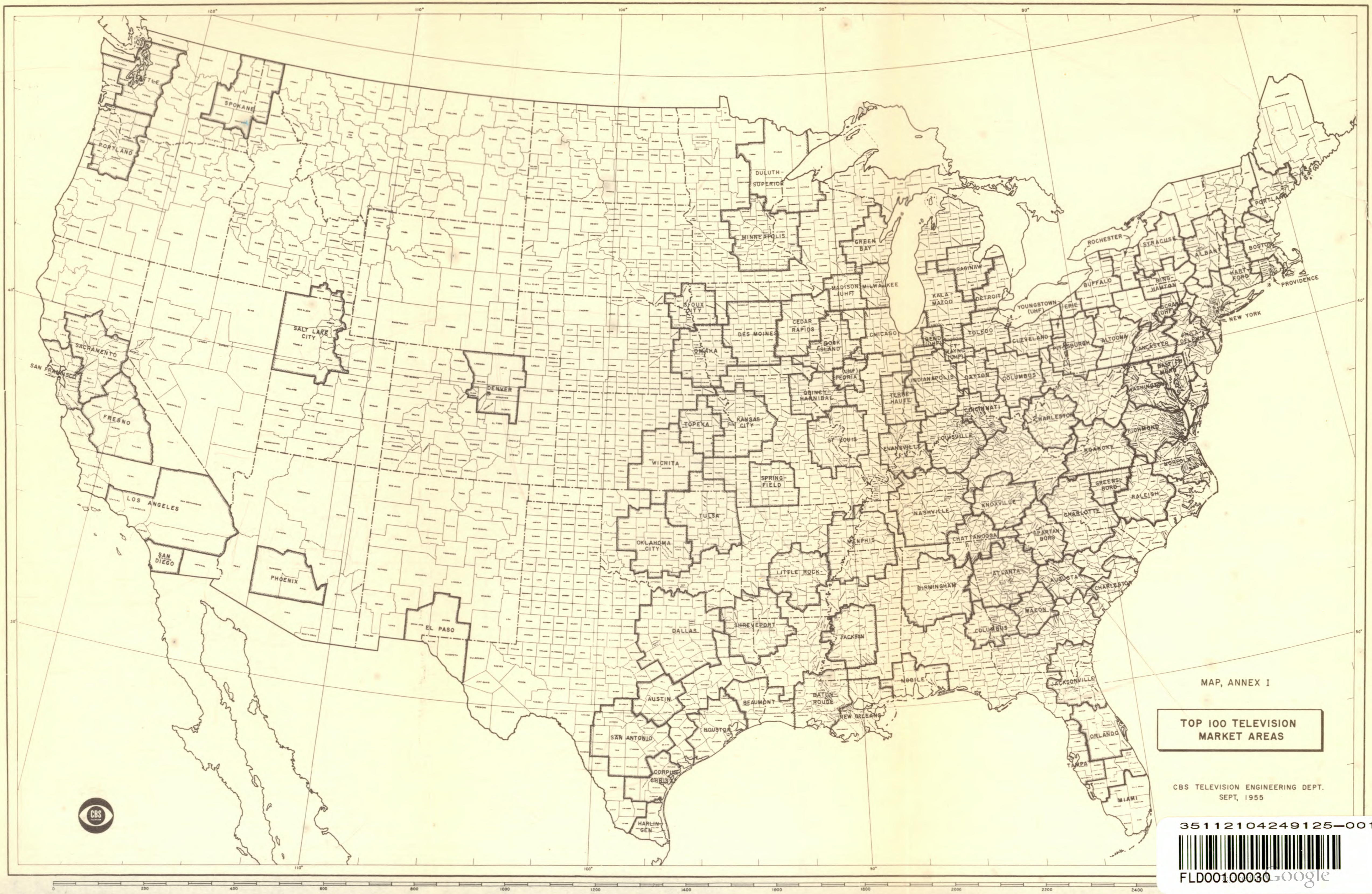
The one tie that binds us all together is this: We are all convinced that our national television system has now reached the point of no return.

What you gentlemen, the Congress as a whole, and the FCC make of our TV system this year will be its pattern for good. Later on there will be no chance to go back and reconsider the decisions of 1956, no use in "taking another look."

Pleaders for the status quo, and those who counsel us to go slow in making changes in the present setup—these people, whether they know it or not, are freezing our national television system forever in its present form, a form wholly inadequate to our country's needs.

What is that form? What are the chief characteristics of our present national television allocation system? Are they so bad, really?

The dominant fact about United States television today is quickly told: Only 295 communities have their own television facility. And



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for technical reasons which I will explore later, there is very general agreement that under our present allocations system, no more than 350 of our communities can ever have television facilities of their own.

For instance, only about 30 stations are presently scheduled to begin operation in 1956. In analyzing with the experts here in the last few days, we have changed the figure from 8 to 30; some 6 have been already authorized in 1956, and it would appear that about 25 more would be expected to go on the air in the balance of the year if nothing is done to change the present allocations setup.

Compare this with approximately 1,400 communities which do have their own daily newspaper, and with approximately 1,700 which do have their own radio station. Put another way, some 1,500 communities with populations of 2,500 and over would be barred for good from having TV stations of their own.

I think you will agree that this represents a disgraceful dead-end for what is without question the greatest means of communication yet to be developed. Imagine a regulatory system which limited motion-picture houses to 350 communities, or permitted railroad depots in only 350 towns.

But if that seems incredible, let me point out to you gentlemen that there are today people, both in and out of our own industry, who are prepared to settle for television in a mere 100 communities—and as of now they seem in a fair way to prevail. In this connection may I invite your attention to the comments recently filed with the FCC by the Columbia Broadcasting System.

You have before you this chart showing what CBS proposes as a national television system. You will note that in all of New England, CBS proposes that there be stations in Hartford, Providence, Boston, and Portland, Maine. In your own areas of the United States you can see what CBS proposes for you.

(The map referred to appears facing this page.)

I have mentioned only New England because that is the particular section that our committee is dealing with at this time.

I think this document of CBS is quite important in view of the question you, Mr. Chairman, asked the FCC, who were assembled here en banc last week, whether the story presented in Broadcasting-Telecasting that the chief interest of the Commissioners, after returning from their conversations with the networks in New York, was that there be 3 stations in each of the first 100 communities of the United States.

That indicates to me that the thinking in the Commission is in very close coherence with the proposition made by CBS that the television system of the United States be frozen in 100 markets.

It is not simply that CBS, in their presentation, has said that there should be 3 comparable stations, mostly VHF, in the leading 100 markets. But if you give them this, if you let them have it, then you are going to freeze out every other television station in every community that is not in those 100 markets; and that will be the end of your television system for the United States.

This CBS map I have used illustrates the operation of its plan for limiting television to the 100 major markets.

Since the preservation of the 1955 status quo appears to have strong support inside the FCC itself, their justification for this stand needs some attention. In very brief, it goes like this:

Premise 1: It is regrettable that we may have television stations in only 295 communities, but not too important because nearly everybody in the communities in between will be able to tune in one of the out-of-town stations.

Premise 2: Anyway, at this late date, to make it possible to have stations in more than 295 communities would be inconvenient to lots of people.

An examination of the main premise of the proponents of the status quo takes us right to the heart of the matter. In effect they say: It is not very important as national policy whether a TV viewer gets his program from his own community station or from some out-of-town station.

If we could agree to that premise, then, in fact, there would be very little urgency in these hearings, certainly not so much as recently produced over 350 statements to the FCC on the future of allocations.

What good is a television station to a community? Some of our local people felt so strongly about that they came down here this morning to tell you what good it was to the community.

Well, it provides a forum for local politics; an outlet for local fund raising, for the dissemination of local news, a medium for local advertisers, a channel for civic education, for the encouragement of civic enterprises.

Without a local station, for instance, a local viewer may—and frequently does—watch the political campaign of a man for whom he cannot vote while the local candidate must remain invisible. He may be—and frequently is—urged to contribute to another community's charities while his local organization goes poor.

Again, consider the plight of the local merchant. Without a television station in town, ht cannot use the medium for advertising, because, of course, he cannot afford to go to the wide-coverage, out-of-town station.

This is too bad, but not really so serious. What is serious is that the local merchant's competitor, the chain outlet, having stores in communities all through the area can—and does—afford plenty of time on that wide-coverage, out-of-town station.

Thus we enter on that old and vicious cycle where the big get bigger and the smaller go under. And as any student of urban growth can testify, one result of this cycle is to orient the consumer toward the big city at the expense of his own hometown community.

For illustration, refer to the community of Bridgeport, Conn., during October–November 1955. In Greater Bridgeport, the retail trading area of that city, live nearly 300,000 people. Since reception from New York is splendid, Bridgeport viewers during that period were able to watch such imports as Lassie, the $64,000 Question, Person to Person, and New York weather reports.

Meanwhile, however, these Bridgeporters were completely blacked out on television from such events as the worst flood in local history, the annual United Fund Drive—which fell 40 percent behind its goal, the biennial mayoralty election, the special session of the Connecticut Legislature, and the University of Bridgeport's football season.

Thus, so far as Bridgeporters are concerned, television is no more than the importer of secondhand goods. As of 1955, television has done nothing to serve the interests, meet the problems, or come to the aid of the people of Bridgeport. The question must be asked: How can this happen in a system of allocation and licensing based upon the statutory public-interest standard?

But the total good to the community is more than the sum of such services as I have just enumerated. Since the trial of John Peter Zenger in 1735, this country has recognized the intimate connection between communication and the practice of democracy. Facts are the currency of our freedom, and as the most immediate and vivid purveyor of facts ever devised, television can be withheld from America's hometowns only at our own peril.

But that's not all. There is the reverse of the coin. A television system limited to 295 communities must inevitably result in placing the whole system in the control of a monopoly. If this seems an extravagant statement, may I refer you once again to the CBS statement I mentioned before.

There you will find blueprinted the few easy steps by which our national television system can be reduced to 3 network stations on each of 100 communities. The steps are few and easy because the present FCC policy has brought us today so perilously close to that very pass; very little remains to be done.

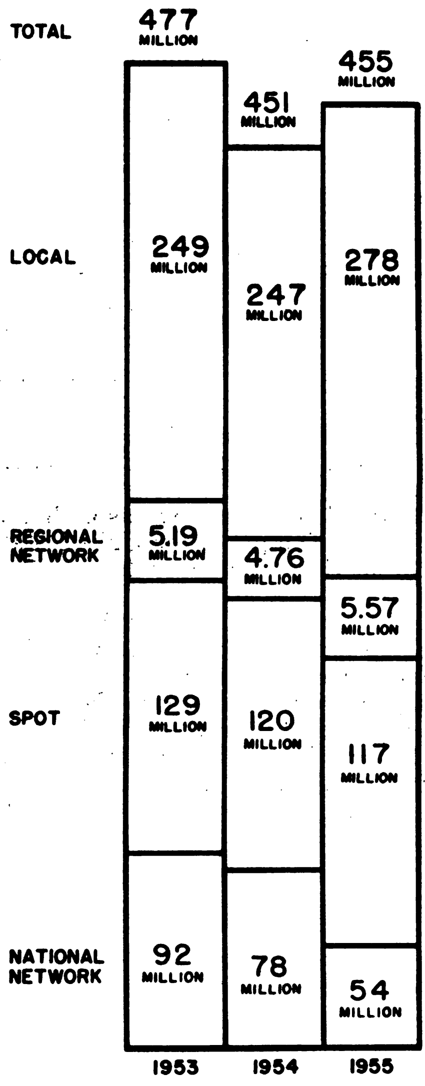
The boldness of the CBS plan makes you gasp. They are asking for one-third of the total television pie of the United States, and they want you to freeze it so that there can never develop the abilities of television as a whole force.

Over the long pull, considerations such as these have a way of asserting themselves and proving out, and the primacy of the community is no exception. Let me show you the record.

Here is a chart showing the sources of income for all radio stations in the United States for the last 3 years; that is, for 1953, 1954, and 1955. You will notice that radio gets income from local sales, from network sales, and from national spot sales. ("National spot sales" are commercial announcements placed directly with the local station, without the intervention of the network.)

A DIP & A RISE

RADIO'S TOTAL NET TIME SALES, AFTER AN ALLTIME HIGH IN 1953, SAGGED SLIGHTLY IN 1954 BUT RALLIED LAST YEAR TO RECOUP SOME LOSSES.



FROM BROADCASTING • TELECASTING
FEBRUARY 20, 1956 VOL 50, NO. 8

Look at the bottom, in the national network segment. See how in 1953 radio stations of the United States sold $92 million worth of network time; how in 1954 that figure dropped to $78 million; and in 1955, to $54 million, showing without question how the influence of the network on radio is rapidly passing out.

After more than 30 years of development, the radio system is finally coming to the point where it is meeting the goal, that was set for it in the beginning, of serving the local advertiser, the local community.

You will see this by looking at the top at the section marked "Local." While the network was going down, in 1953 we had $249 million in local sales. In 1954 it went down a little bit to $247 million—practically no difference. But in 1955 it climbed back up to $278 million.

You see, of course, the regional network, which is of comparatively no importance in the picture. What you see here is the evidence of a long-term curve—a curve representing the importance of networks in radio, a curve going continuously downward. At the same time, the relative importance of local business, of hometown accounts, is going up and up. Radio has been an operative commercial force in the United States for 34 years. As it now approaches maturity, we can perceive its true place in the community—it is obviously a local institution, a community force.

Lest you think this is a fortuitous conclusion, look if you will at this chart, which shows the sources of income for all newspapers in the United States. Here we are looking at the fruits of an evolution which antedates our Republic. Newspapers were published in this country well over 200 years ago. And today, it is patent that this medium finds its true role, its revenue, and its power as a local force, a community force.

(The chart will be found in the official files of the committee.)

There is no network in newspapers. As I said before, I think we are reaching the point where we will not have network in radio. I expect any time to see some entrepreneur come up with a plan whereby the national programs suitable for local broadcasting by radio stations will be furnished to us much in the same manner as we now buy news from the Associated Press or the United Press.

I think you gentlemen will agree with me that this demonstration of the overriding importance of the hometown in communications is no accident. Rather it is the assertion of a truth of which we are all aware: In a democracy, the closer we can get to the needs and aspirations of the individual, the firmer the ground on which we stand.

Finally, here is a chart showing the sources of income for radio as compared to television—television, the golden baby of communications. In its 10th year, television shows network income in the ascendancy, and going up all the time. But let me suggest to you that this curve is definitely not the curve on which to pin a long-term national policy. In its 10th year television shows the same pattern as did radio a quarter of a century ago; and I have no doubt that there was a day when newspaper revenue showed the same picture.

(The chart will be found in the official files of the committee.)

But to conclude that television is somehow to grow up to be the exception to this rule of history is both unwarranted and dangerous. Unwarranted, because all the facts—including my appearance here today—insist that the needs of the community must assert themselves over the long, or policy, run. Dangerous, because considerations based on the kind of country we want to build insist on reserving to the local citizen the basic use and control of his means of community communication. To ignore these factors, it seems to me, is to invite correction—and criticism—and in the very near future, at that.

The broad perspectives of history—and here we have only to go back to the last world war—show very clearly the great dangers inherent in any monopoly of the means of national communication. While I am not for a moment suggesting that the gentlemen in charge of our TV networks have any intention of placing our television system in jeopardy, I cannot refrain from making the point that their plans would unwittingly turn our feet down a perilous path.

From these considerations, I think it is fair to conclude that the limitation of television to 350 communities is a great deal more than "unfortunate" or "regrettable." Viewed as the result of a national policy, such a hamstringing of a great national asset is no less than catastrophic.

I have said that our national television system is at the point of no return, that there will be no chance later to remedy the mistakes of 1956 with the aid of hindsight. I have based my argument on the contention that under our present system no more than 350 communities can have their own television facilities. I would like to examine briefly the facts that make this so.

Previous testimony before you has explored the matter of incompatibility, that is, the impossibility of operating both UHF and VHF stations in the same area. Let me make here just two points on the subject of incompatibility. First, we cannot operate VHF stations under present FCC standards in more than about 350 communities. Second, if we are to raise our sights above that figure, we must resort to VHF drop-ins and ultimately to the UHF station. A revitalized UHF can supply us with television in approximately as many communities as now enjoy radio.

What has happened under the FCC's present policy is quite simply that the VHF stations have been allowed to crowd the UHF stations off the air and off the map, and out of business.

Thus we can make a simple equation: If we want a national television system able to serve our democratic tradition, then we must make wide use of UHF. Therefore, the problem faced by you gentlemen, by the FCC, and most of all by the station operators, comes down to this: How can we make United States television possible for the UHF operator?

Just how impossible UHF operation now is can readily be deduced from some vital statistics:

Since 1952, the total of UHF stations forced out of business is 56; 21 quit in 1955.

Of the 95 UHF commercial stations now in operation, about four-fifths are operating at a loss. A mere 18 are profitable.

One hundred and eleven recipients of construction permits for UHF stations have relinquished them. One hundred and four have construction permits but are sitting on them.

These statistics tell a plain story: UHF in the United States today is nearly dead. What's more, the impressive piles of financial wreckage that now cover the UHF landscape make it highly unlikely that any new capital for UHF will appear on the scene, now or ever—unless something is done about UHF right now, before the 95 stations still operating go under.

Just how urgent this situation is may be seen in the fact that in the last 90 days, 6 more UHF stations went off the air.

After all, neither you gentlemen nor the FCC can simply legislate new UHF stations into being. For every station there has to be a group of businessmen willing to risk their capital in what they consider to be a sound investment; and in the context we are discussing here, these businessmen have to be local businessmen, that is, investors, with limited funds. You can spread just so much business failure on the UHF record, and then these potential investors will turn their backs for good on TV as an investment possibility.

I think you will agree with me that investment in UHF operation has now been brought by FCC policy—or lack of it—very close to the untouchable class. This progress of UHF to the brink of extinction comes as no particular surprise; it had been widely anticipated among UHF operators for some time. In fact, it was just about 2 years ago that I testified before this same committee on this same topic, and made the point that immediate help was needed. Since then the FCC—far from extending us a helping hand—has made it even more difficult for the UHF station to survive.

This is all by way of enlarging on a statement with which I began my testimony here today: This is television's year of decision, and failure to act now on behalf of UHF will foreclose the possibility of any future resurrection.

Now, I have spoken several times of the need for helping the UHF operations, and I wish to make clear to you that what we seek is neither some sort of Federal bounty nor any special legislative dispensations. What we seek now is no more and no less than what the Congress has told the FCC to provide: "A fair, efficient, and equitable distribution of * * * service * * *." In implementing this congressional mandate, the FCC set up two main priorities for the granting of TV licenses:

First, to get some sort of TV signal to everybody.

Second, to put a TV station in every community.

The FCC got these priorities into print, but that is about as far as they went. Some time ago better than 80 percent of our population were able to get some TV signal, and at this point the FCC came to a dead stop. Progress registered toward Priority 2—a TV station in every community—has been virtually nil. The record of the FCC's failure is spread in their files, and in the briefs filed last December 15 with the Commission by TV operators. The story told there is complete, convincing—and disastrous. For as good a summary as any may I refer you to the statement filed by our own Committee for Hometown Television with the FCC in these proceedings.

At this point, Mr. Chairman, I would like to ask that this statement be incorporated into the record.

The CHAIRMAN. All right, it will be incorporated.

(The statement incorporated is as follows:)

THE COMMITTEE FOR HOMETOWN TELEVISION, INC.

Chairman: Charles DeRose, WHYN-TV
President: Philip Merryman, WICC-TV
Treasurer: Edward Taddei, WNHC-TV
Box 9140
Bridgeport, Conn.
Tel. Amherst 8-1601

The Committee for Hometown Television, Inc. has been organized by a group of TV station owners to defend the proposition that every community has the right to a local TV outlet able to provide that community with a local outlet for its own news, politics, charitable, and social and educational undertakings.

This right to hometown television was granted by Congress, reaffirmed by the Federal Communications Commission—and stands today on the brink of extinction.

In November 1955, the FCC acknowledged the imminent danger to hometown television, and invited industry comment. Following is the statement of this committee, filed December 9, 1955, in response to the FCC's request.

We urge you to read it carefully because—

This statement makes the case for the consumer the people's case.

This statement stands in opposition to the network presentation made by CBS, whose case is monopoly's case.

Survival of the principle of hometown television demands wide and immediate support.

On December 15, 1955, the FCC began deliberations which will determine without chance of recall or revision what television is to mean to the United States, whether—

United States television is to become the degraded carrier for network monopolies, or the servant of all the people.

This is your brief.

PHILIP MERRYMAN.

For this committee's articles of association and bylaws see pages 460-461.

THE CASE FOR HOMETOWN TELEVISION

These documents are filed by the Committee for Hometown Television, Inc., a nonprofit organization incorporated under the laws of Connecticut. Among the purposes of the organization as stated in the articles of association are the following:

(*a*) To promote and support the development of hometown television stations.

(*b*) To study and support means for the furtherance of hometown television as a public community service.

The committee presently comprises a group of television stations in New England, organized to defend the proposition that the primary function of a television station is to serve its community. Its membership is open to UHF and VHF stations alike and, in addition, to other persons interested in preserving to the various communities in the United States the maximum opportunity of having their own television stations to serve as outlets for local self-expression.

I. HOMETOWN TELEVISION DEFINED

1. Hometown television connotes the well-established principle—both in the allocation and licensing of communications facilities—that the various cities, towns, and communities in the United States need, and are entitled to have, local radio and television facilities to serve as outlets for local self-expression, and to provide the means for bringing local news, information, intelligence, culture, and entertainment to the residents of such communities.

2. The ability of communities to have their own television stations is important because television stations, like radio stations and newspapers, not only are means for bringing news, entertainment, and culture to the people, but they also serve as outlets for local self-expression. While programs from a distant radio or television station or features in the metropolitan daily are able to keep the people up to date on national and world affairs, only by having their own stations or newspapers can local communities be assured that local issues will get

an airing and that the local citizenry will have an opportunity to have matters of strictly local concern brought to the attention of the public.

3. For illustration, refer to the community of Bridgeport, Conn., during October–November 1955. In greater Bridgeport—the retail trading area of that city—live 49,000 families. Since reception from New York is splendid, Bridgeport viewers during that period were able to watch such imports as Lassie, the $64,000 Question, Person-to-Person, and New York weather reports.

4. Meanwhile, however, these Bridgeporters were completely blacked out on television from such events as the worst flood in local history; the annual United Fund drive (which fell 40 percent behind its goal); the biennial mayoralty election; the special session of the Connecticut Legislature; and the University of Bridgeport's football season.[1]

5. Thus, so far as Bridgeporters are concerned, television is no more than the importer of secondhand goods. As of 1955, television has done nothing to serve the interests, meet the problems, or come to the aid of the people of Bridgeport. This is the plight of hometown television today—not only Bridgeport—but in numerous communities throughout the Nation which lie in the shadow of the wide-coverage VHF stations: One might well question how this could occur in a system of allocation and licensing based upon the statutory public interest standard. We turn to an examination of the history of the hometown television concept and the manner in which its development has been thwarted.

A. Legislative origins

6. The concept underlying hometown television is a basic one finding its roots in the early Radio Act of 1927 wherein[2] the Congress declared:

"* * * the people of all the zones established by section 2 of this Act are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the licensing authority shall as nearly as possible make and maintain an equal allocation of broadcasting licenses, of bands of frequency or wavelengths, of periods of time for operation, and of station power, to each of said zones when and insofar as there are applications therefor; and shall make a fair and equitable allocation of licenses, wavelengths, time for operation, and station power to each of the States, the District of Columbia, the Territories and possessions of the United States within each zone, according to population. * * *"

7. The above language was carried over to the Communicattions Act of 1934 as section 307 (b) which, as amended in 1936, reads as follows:

"In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."[3]

8. The congressional mandates here set forth have repeatedly been implemented by the Commission in its licensing and regulation of AM broadcasting. In literally scores of cases the concept of providing a community with its first or second local outlet for self-expression has been the articulate premise upon which a choice has been made between qualified applicants.

B. Administrative precedents

9. When television came of age, it was this same principle that dominated the basic structure of the Commission's allocation thinking. After "freezing" action upon new and pending applications in 1948, the Commission on March 22, 1951, issued its third notice of further proposed rulemaking (FCC 51–244) proposing a new table of assignments which, it said:

"* * * endeavored to meet the twofold objective set forth in sections 1 and 307 (b) of the Communications Act of 1934, to provide television service, as far as possible to all people of the United States and to provide a fair, efficient, and

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[1] By contrast, Bridgeport's radio station WICC devoted 3 full days and nights to informing and helping the area during the floods; 5 weeks of continuous information about, and promotion of the United Fund campaign; night and day coverage and speechmaking for the elections; daily summaries of the special legislative session; and, of course, complete local football coverage.

[2] Radio Act of 1927, ch. 169, sec. 9, 44 Stat. 1166, as amended March 28, 1928, ch. 263, sec. 5, 45 Stat. 373, repealed by act of June 19, 1934, ch. 652, sec. 602 (a), 48 Stat. 1102; U. S. C. A., title 47, sec. 89, 1 RR 20:17.

[3] Communications Act of 1934, ch. 652, sec. 307 (b), 48 Stat. 1083, as amended June 5, 1936, ch. 511, sec. 2, 49 Stat. 1475; July 16, 1952, ch. 879, sec. 5, 66 Stat. 714; U. S. C. A., title 47, sec. 307 (b); 1 RR 10:85.

equitable distribution of television broadcast stations *to the several States and communities.*" [Emphasis supplied.]

10. To implement these objectives the Commission in its third notice adopted five priorities, as follows:

"Priority No. 1: To provide at least one television service to all parts of the United States.

"Priority No. 2: To provide each community with at least one television broadcast station.

"Priority No. 3: To provide a choice of at least two television services to all parts of the United States.

"Priority No. 4: To provide each community with at least two television broadcast stations.

"Priority No. 5: Any channels which remain unassigned to the various communities depending on the size of the population of each community, the geographical location of such community, and the number of television services available to such community from television stations located in other communities."

Note that priorities 2, 4, and 5 are all designed to provide one or more local television stations within each community of the United States.

11. Thereafter, in its sixth report and order,[4] in April of 1952, lifting the so-called freeze, the Commission reiterated its five priorities (par. 63 of sixth report) and, in discussing the general considerations underlying its adoption of the new table of assignments, concluded that the standards set forth in sections 1 and 307 (b) of the act could best be achieved by the adoption of the table because:

"A table of assignments makes for the most efficient technical use of the relatively limited number of channels available for the television service. It *protects the interests of the public residing in smaller cities and rural areas more adequately than any other system for distribution of service* and affords the most effective mechanism for providing for noncommercial educational television * * *" (par. 13, sixth report). [Emphasis supplied.]

12. The Commission likewise recognized that the table of assignments, based upon the aforementioned priorities, was necessary to protect the ultimate future demand for local stations by smaller communities. In paragraph 15 of the sixth report the point was stated thus:

"15. In our opinion there is an equally significant reason why a table of assignments should be established in our rules. For while the record in this proceeding demonstrates that the desire for broadcasting service from local stations, reflecting local needs and interest is widespread, experience has shown that many of the communities which cannot now support television stations but would eventually be able to do so, will in the absence of a fixed reservation of channels for their use, find that available frequencies have been preempted. * * *"

13. Later in the sixth report (par. 67) the Commission described its proposed allocation of UHF channels as implementing the priorities in the following manner:

"The assignment plan for UHF channels was coordinated with and made complementary to the VHF assignment plan. The Commission has always recognized that even with an extensive scattering of VHF assignments, the 12 channels available are not sufficient to meet the objective of providing television service to all the people. With the additional UHF channels, however, the Commission was able to formulate an assignment plan that has the potentiality of fulfilling the objective of section 1 of the Communications Act. If all the VHF and UHF channels are utilized, there should be few, if any, people of the United States residing beyond the areas of television service. (See priorities 1 and 3.) Moreover the table has gone far in fulfilling the needs of individual communities to obtain local television outlets. It has provided at least 1 assignment to over 1,250 communities. (See priority 2.) And it has attempted where possible to provide each community with at least two assignments. (See priority 4.3.)"

14. And, in discarding a DuMont proposal that the smaller communities should depend on the larger ones for service, the Commission forcefully recognized the importance of community-hometown television in these words (pars. 78, 79, and 81, sixth report):

"78. A second policy difference between the DuMont and Commission assignment plans lies in their contrasting views with respect to the importance of indi-

[4] Sixth report and order in FCC Docket No. 8736 et al., *In the Matter of the Amendment of Section 3.606 of the Commission's Rules and Regulations, etc.*, adopted Apr. 11, 1952, 1 RR 91:599.

vidual communities having television assignments. The DuMont view is that emphasis should be placed on locating the assignments, particularly VHF channels, so that the largest number of people will have television service but not necessariy that the largest number of communities should have one or more television stations of their own. This view derives from DuMont's premise that the major cities with their large populations are certain to be able to support expensive television facilities, and that smaller communities which are within appropriate range of these cities should obtain service from stations in the large cities, rather than attempt to support stations with their own less substantial economic resources.

"79. The Commission, on the other hand, believes that on the basis of the Communications Act it must recognize the importance of making it possible with any table of assignments for a large number of communities to obtain television assignments of their own. In the Commission's views as many communities as possible should have the opportunity of enjoying the advantages that derive from having local outlets that will be responsive to local needs. We believe with respect to the economic ability of the smaller communities to support television stations that it is not unreasonable to assume that enterprising individuals will come forward in such communities who will find the means of financing a television operation. The television are is relatively new and opportunity undoubtedly exists for initiating various methods of reducing television costs.

* * * * * * *

"81. The Commission finds that the principles of assignment which DuMont advocates are inadequate in that these principles do not recognize specifically the need to provide an equitable apportionment of channels among the separate States and communities and they do not provide adequately for the educational needs of the primarily educational centers."

15. Thus, as of April of 1952, when the freeze was lifted and the televison industry received the green light from the Commission to implement its new table of assignments by the application process, hometown television was clearly recognized as of paramount importance in the future development of television as, indeed, was required by the Commission's statutory mandates and its basic public interest standard.

C. Commission policy

16. But what has the Commission done since 1952 to implement priority 2? Some time ago the FCC reached an estimated 90 percent of its goal for the first of its priorities: about that much of our population is now within reach of some TV signal. And at this point the FCC came to a dead stop. Progress registered toward priority 2 has been virtually nil. Indeed, it has become obvious that the FCC, far from proceeding with priority 2, has been running backward, kidnapping hometown television as it fled.

17. For, despite the high priority assigned by the Commission to providing local television stations for each community, hometown television, after but 3 short years of experience since the lifting of the freeze finds itself in many important quarters of the Nation to be the stepchild of the Commission and of the television industry. Far from the confident predictions that within a short time after the full-scale advent of television 1,500 to 2,000 television stations would be on the air, the Nation finds itself, almost 10 years after the Commission began licensing television stations, with only 452 stations in 274 separate communities. As was pointed out by Chairman McConnaughey in his November 28 address before the Baseball Leagues Convention in Columbus, Ohio, the stations now on the air "represent fewer than 1 out of every 4 channel assignments which were made available by the Commission in 1952."

18. Moreover, in the absence of immediate and forthright remedial action, it is difficult to see how in the foreseeable future it will be possible to see have more than 75 additional outlets. Thus, in the absence of imaginative and bold steps by the Commission, television will be confined, for a long time to come, to the large cities, and all other communities will have to get along without their own hometown television stations. Any remedy for hometown television must, of necessity, come to grips with the problems of UHF, for the two are dependent and interrelated in their problems. The paragraphs to follow will discuss the part played by UHF in the hometown television problem.

II. HOMETOWN TV AND UHF

19. The role of UHF in hometown television is defined by the fact that it is possible to operate many more UHF than VHF stations in a given area. Consequently UHF is indispensable to hometown coverage; and although expediency has so far caused the UHF stations to be virtually ignored, prudent national policy will depend on them more and more as the indispensable vehicle for hometown television.

20. The reasons for the current plight of hometown television can be found (*a*) in the difficulties confronting UHF and (*b*) in the policies followed by the Commission with respect to UHF and other matters as will be hereinafter detailed.

21. UHF television has been authorized only since 1952. Before that only VHF stations were in existence. VHF had a 6-year head start on UHF. Before a single UHF station was authorized there were already 108 VHF stations in operation in 63 different cities containing about two-thirds of the entire population in the United States. More than 17 million VHF sets had already been sold before a single UHF station was authorized and not 1 of these sets could receive UHF programs. Nor did the opening of the UHF band improve the receiver situation. For it was based upon the monumental miscalculation that once the bands were opened, the set manufacturers would all produce all-channel sets capable of receiving both VHF and UHF signals. That the manufacturers did no such thing is now notorious. Finally, the existing VHF stations had affiliations with the networks; and UHF stations, because of their obvious inferior state, have been unable to secure such affiliations. Without network programs it is extremely difficult if not impossible for a television station to survive. Because of these miscalculations and the resulting economic facs of life, UHF stations in most markets were rendered obsolete almost before they opened.

A. FCC power policies

22. But the difficulties surrounding UHF afford only part of the answer for the small number of hometown television stations in existence today. Commission policies on maximum power also must bear a large share of the blame. Until 1952 VHF stations were limited to maximum power of 50 kilowatts at 500 feet. Stations with higher antennas were required to reduce power proportionately. In 1952 the Commission amended its rules so as to raise the maximum. For stations operating on VHF channels 2–6 the maximum was increased to 100 kilowatts at 1,000 feet, and for stations operating on VHF channels 7–13 the maximum was increased to 316 kilowatts at 1,000 feet.[5]

23. In assessing the impact of the power problem on hometown television it must be remembered that the 108 VHF stations are for the most part located in the large metropolitan centers and enjoy affiliations with the dominant networks—the lifeblood of television operations. New stations have to depend on their ability to acquire network programs which in turn depends on their ability to deliver unduplicated coverage. Obviously the networks are not interested in acquiring new affiliates if their service area is already largely served by an existing affiliate.

24. The following mileage table shows how the increase in power adversely affected the ability of many stations to acquire network programs:

[In miles]

Channel number	Grade A pre-1952	Grade B pre-1952	Grade A 1952	Grade B 1952
2 to 6	23	52	37	70
7 to 13	24	43	46	63

In other words, under the old maximum a community located, for example, 35 or 45 miles from a metropolitan center had every reasonable prospect of having its station acquire a network affiliation with which to support itself. Under the new 1952 maximum the prospects for network affiliation became very slim because too much overlap is involved, a much greater separation appearing to be necessary. Since cities in the Northeastern United States are placed close together, the 1952 maximum in power has very substantially adversely affected

[5] This is the limitation for zone I which includes the populous Northeastern United States. Higher antennas were permitted in other zones.

the ability of stations in many sizable communities to acquire network affiliations.[6]

25. The stifling effect of the Commission's tower and power policies on the development of hometown television is vividly revealed by the experience of New Jersey and Connecticut. In the whole State of New Jersey there is not a single operating television station at the present time.[7] Yet that State is able to support 30 radio stations. The reason for New Jersey being a television desert is that practically all of the population residing in New Jersey are within the range of the superpowered stations located either in New York or Pennsylvania.

26. Thus, when candidates for public office in New Jersey want to use television, they must go either to New York City or Philadelphia stations in order to reach their home constituencies. And in so doing, they must pay for coverage in New York State and Pennsylvania, which is of no earthly use to them in New Jersey. Moreover, if the citizens of Trenton, Passaic, New Brunswick, or any of the other New Jersey communities desire to have local issues aired on television stations, they must be able to convince the large metropolitan stations in New York and Philadelphia that the issues are of sufficient interest to their viewers to warrant carrying the programs.

27. The situation in Connecticut is scarcely better. Thirteen commercial channels are assigned to nine cities in Connecticut. However, lying between the powerful stations of New York, Providence, and Boston, only 5 stations are in operation in Connecticut at the present time, and all but 1 or 2 of them are having very great difficulty in surviving. This is in sharp contrast to the 31 radio stations operating in that State. In Massachusetts, 25 channels are assigned for use in 14 communities. Yet only 1 educational and 6 commercial stations are in operation, and 4 of these are in the metropolitan center of Boston-Cambridge. In radio Massachusetts has 73 stations.

28. The operators of UHF stations have attempted to secure relief but have had no success. The trade organization—dominated by the networks and the successful VHF stations—has done nothing to aid the cause of hometown television. The UHF stations organized last summer and made a strong presentation of their case to Congress. The FCC appeared to be sufficiently moved by the desperate straits of these operators to schedule an oral argument on a series of deintermixture petitions designed to alleviate the UHF problem. Although the FCC indicated that the matter had a high priority, it failed to take any action before beginning its long summer recess in July. It has since denied them, postponing their consideration for the instant rulemaking proceedings.

29. This attitude is in sharp contrast to the Commission's action in two other areas—areas which will help television in metropolitan areas at the expense of hometown television. The first of these moves relates to another increase in power for VHF stations in the northeastern part of the United States. Just before the long summer recess began, the Commission adopted an order which would increase power of VHF stations in zone I to 100 kilowatts at 1,250 feet for stations on channels 2 to 6 and to 316 kilowatts at 1,250 feet for stations on channels 7 to 13. This would mean that stations without antennas higher than 1,000 feet could increase their power in many cases more than twofold, and extend their service areas by 4 or 5 miles. In particular, all 7 stations on the Empire State Building could increase their power; in the case of 6 of the stations the increase in power would be more than twofold.

30. The impact of such an increase in power on television in Connecticut and New Jersey is obvious. For illustration, consider the effect of such a rule upon WNHC-TV, a VHF station serving New Haven, Conn. WNHC-TV, as a VHF station, had no conversion problem and no audience problem such as plague its UHF counterparts. It enjoyed an NBC affiliation. When the FCC asked for comments on a proposal to increase tower heights in zone 1, NBC got the point right away. In January it purchased WKNB in New Britain, Conn. In the latter part of June it gave notice of cancellation of its network contract to WNHC-TV, New Haven, and announced that henceforth WRCA-TV, New York, would give New Haven "coverage" to its advertisers. On July 20, sure enough, the FCC ruled that the maximum tower height in zone 1 could be increased to 1,250 feet.

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[6] Although the increase in power mainly affected UHF stations, VHF stations in smaller communities were also affected since they also must rely on network programs and their proximity to metropolitan areas adversely affects their ability to secure network programs.

[7] Station WATV is technically licensed to Newark but in practice it is a New York station since it is 1 of the 7 stations operating from the Empire State Building in New York.

31. To WNHC–TV, New Haven's hometown station, this meant that, thanks to this extraordinary action by the FCC, it would henceforth (*a*) be deprived of NBC network income; and (*b*) have to compete with a new station (WRCA–TV) which contributed absolutely nothing to New Haven as a community. A severe blow had been dealt not only to WNHC–TV but to the public of New Haven where the integrity of, and community benefits from, hometown television were scuttled.[8]

B. Superstations and satellites

32. Another FCC move that can have disastrous consequences so far as the fate of hometown television is concerned is the Commission's rulemaking proposal to increase maximum UHF power to 5 million watts. The cost of transmitters capable of producing 5 million watts is exceedingly high and only the large cities can possibly support such power. If this rule goes into effect, it will accelerate the tendency to center television in the large cities at the expense of small community operation.

33. Equally disastrous is the Commission's sanction of satellite operations for both VHF and UHF stations. Announced as a policy matter in a public notice of August 5, 1954 (FCC 54–991), the Commission stated that it would consider applications for UHF stations which did not propose to originate any local programs, where it appears that the economies of such operations would render feasible a station in a community where one might otherwise not be built. Although the policy specifically referred to UHF stations, applications have also been entertained and granted for the satellite operation of VHF stations. (See e. g., Lufkin-Houston, Tex., VHF satellite grant.)[9]

34. It is thus apparent that while the Commission has expressed great and continuing concern for the plight of UHF and hometown television, its proposals and actions have served to solidify and indeed magnify the already desperate situation in which UHF and hometown television find themselves. But even more alarming is the prospect that the Commission may take action on proposals which could forever deprive America's hometowns of their own television facilities. Several of the proposals which the Commission has had brought before it would undoubtedly reach this result.

III. THE CBS AND MULLANEY PLANS

A. The CBS plan

35. On October 6, 1955, in an extraordinary 2½-hour ex parte meeting with the FCC Commissioners, CBS's Dr. Frank Stanton presented an engineering and economic study designed, he declared, "to provide * * * an allocation under which there could be at least 3 competitive services in each of the 100 leading television markets"—the CBS magic supermarkets. Significantly, he defined the study's second objective as "to avoid * * * dislocations and injuries to existing station licenses." No mention was made of the FCC's priority 2. The study bases itself on two premises:

1. The bigger the area covered by a TV signal, the better the national television system; and
2. The smallest community capable of supporting its own television facility contains 22,000 families, or about 75,000 people.

This rather disingenuous document is significant not so much for what it proposes as for the network intentions it reveals. This intention is nothing less than the complete dismantling of hometown television.

36. The CBS proposal advances two alternative reallocation plants each of which spells the death knell for UHF and hometown television. As noted above, both plans have as their purported goal the establishment of 3 substantially competitive facilities in each of the 100 leading "markets" as defined by CBS.

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[8] While the Commission has recently vacated its July 20 order adopting the increased power and tower height rule for zone 1, its haste and willingness to adopt it in the first instance demonstrates the Commission's penchant for helping the large VHF stations at the expense of hometown television. Moreover, by including the rule as an area of consideration in the broad rulemaking in docket 11532 the proposal still hangs in threat over the heads of UHF and VHF hometown operators (see further report and order in dockets 11181 and 11532 released December 1, 1955).

[9] A recent Pennsylvania proposal underscores the problem. Broadcasting-Telecasting for October 24, 1955 (p. 80) reports a proposal by WGBI, Scranton, to operate experimentally with 5 megawatts power, feeding network programing to stations in Williamsport and Sunbury on a satellite basis. While the proposal may offer temporary benefit to all three stations and although the satellites will originate some local programs, the long-range effect of a continuing operation of this type will be to stifle the Williamsport and Sunbury operations as independent, local hometown television stations.

These markets are not cities or communities alone but large areas comprised of numerous counties and whose boundaries in some instances cross State lines to include parts of more than one State. The area markets are dominated by 100 large cities to which CBS would in practice, confine all television stations.

37. The CBS plan A purports to provide 3 "substantially equal facilities" to all but 16 of the 100 markets. Plan A would be achieved by abandoning all but a few UHF allocations and by dropping in additional VHF assignments to the major cities from smaller outlying hometown television communities.

38. The CBS plan B would utilize three additional VHF channels by taking them from present uses by other services. The UHF band would be completely abandoned. Under plan B all 100 markets would have 3 or more VHF services. Again, shorter mileage separations, drop-ins, and move-ins, are involved. However, CBS admits that channels could not be provided under plan B for 60 currently operating UHF stations. These would have to be abandoned.

39. CBS endeavors to supports its thesis that television stations should be concentrated in the 100 markets by asserting that 85 percent of the families of the United States fall within these markets. This fact, however, does not alleviate the need for or reduce the importance of hometown television. For the 85 percent are by no means located within or indeed in close proximity to the 100 major cities in which CBS would place stations. Rather they are scattered among the many cities and communities—ranging from small to substantial size—which lie within the large "market" areas defined by CBS. Rather they are scattered among the many cities and communities which need and deserve hometown television stations.

40. But the needs of the many small and medium sized communities are of no concern to CBS. The proper area of influence and coverage of the individual station matters not to CBS so long as its network programs reach the eyes and ears of the masses. This attitude completely ignores the vital issue of hometown television and the manner in which it is now smothered under the signals of the powerful VHF stations in the major markets. The optimum size of a station's coverage is, of course, the key question in any allocation system—the very question which has stalled the FCC. But the CBS report smuggles in its answer to this moot question—by disguising it as a premise—"the bigger the better." By so begging the question, Dr. Stanton is able to avoid the awkward task of justifying his theory of coverage; it's just there.

41. It is evident that if the FCC were to follow the CBS plan and equate a station's optimum coverage with its grade B contour at tower height of 1,250 feet and maximum power, then all of New England could be "covered" with signals from four cities. In point of fact, this is precisely what CBS does propose, the four New England cities in its plan being Hartford, Providence, Boston, and Portland; and, by extension, CBS finds that it can "cover" the whole United States from 100 cities.

42. It is evident that such a wide-coverage VHF signal forces the elimination of all UHF signals within its grade B contour; and the scarcity of VHF signals limits additional VHF signals in the same area just as drastically. Therefore the chief consequences of the CBS plan may be stated as an axiom: The wider the coverage, the less the service to the community. For illustration, refer to the fate of Bridgeport and New Haven, cited above. As expressed in terms of the FCC's two top priorities, CBS proposes to overfulfill priority 1 (a TV signal for everybody) by virtually eliminating priority 2 (a TV station for every community).

43. The second CBS premise is no less unusual. With it CBS attempts to bolster its allocation position by the advancement of a gloomy economic prospect for the future of television. Contained in an economic study by Sidney S. Alexander, CBS economic adviser (see text in October 17, 1955, issue of Broadcasting magazine, p. 27), the forecast contends that the country cannot now or in the immediate future support more than 600 television stations, thus denying the possibility of any further technological or economic progress in television. Based upon existing revenues and rates, CBS apparently believes that the status quo will not change and that therefore there is no need to worry about UHF or hometown television because the country cannot support them in any event.

44. By citing the financial status of TV stations in 1954—including those which current FCC policy has rendered in extremis—Dr. Stanton's experts conclude that stations in towns of less than 75,000 are having a hard time. Therefore, they proceed, national long-term policy must be based on the premise

that towns of 75,000 and under are not to have their own television facility—now or ever.

45. But the size of a community is by no means the primary cause for the financial difficulty of its television station. Crossroads aside, the first cause for most financial troubles is not the size of the community served but the nature of the television competition at hand. Today there are communities of less than 75,000 supporting television facilities; and—more to the point—there are many, many communities double and triple that size (e. g., Bridgeport and Worcester) where wide-coverage competition plus UHF signals make a community facility impossible.

46. But certainly there is a minimum size for communities below which a television facility cannot be supported as of 1955—competition or not. This minimum size is a function of the capital cost and operating budget of a minimal television station. The CBS experts assume that these costs—and hence the minimum market's size—will not decrease in the operating future. Such an assumption may appear to be merely silly. But erect on this premise a national allocations system and, technological advances or no, towns below 75,000 won't ever get their hometown stations. For what is planned today in television allocations must, by and large, be planned for good. To erect such a plan on the premise that television's technology is at the end of the road is, to say the very least, irresponsible.

47. Undoubtedly, had the same theoretical and shortsighted techniques been employed in the late thirties, an argument could have been made that the country would support only 800 or 900 radio stations instead of the over 2,500 stations now being supported by our economy. Those entrusted with the public interest cannot afford shortsightedness. Instead, it is their duty to assure that an overall, long-range plan is adopted which will permit the infant television industry to grow and expand and to flex its muscles. There is neither time nor place for the prophets of gloom in the expanding television industry. Instead a sturdy and wide base must be provided upon which to build for the future.

48. The reasons for the crepe-hanging efforts of CBS are not far to seek. With television virtually limited to 3 competitive facilities in each of the 100 markets, CBS can foresee its present dominant network position jelled and set firmly, never to be dislodged by competition. CBS can foresee its network operations—in No. 1 position—covering 97 percent of the families of the Nation from 100 markets with the assurance that competition can only be expected from NBC and the trailing ABC network. By preserving the comfortable status quo, CBS envisions itself as forever protected against the specter of competition from a fourth or fifth network.

49. It is not plausible to suppose that CBS takes its own proposal seriously. But what alarms the Committee for Hometown Television is that, unless the importance of preserving priority 2 is stressed and fully appreciated by the Commission, action may be taken in these proceedings which would give countenance to this shortsighted and wholly self-serving proposal. This is why the committee has found it necessary to band together to remind the Commission of two matters which must not go by the board in any reallocation of facilities; namely, the existence and importance of the FCC's priority 2 and the indispensable and irreplaceable nature of hometown television.

B. The Mullaney plan

50. A second proposal before the Commission is almost equally dangerous to the development of hometown television and to the full growth of a nationwide, competitive system of television. The so-called Mullaney plan, submitted to the Commission in August of 1955 and since supplemented by additional data, provides for at least 3 VHF stations in each of the 100 leading markets by discarding mileage separations and shoehorning VHF assignments into the allocation pattern by directional antennas and limitations upon power and antenna heights. In short, it proposes to convert the television allocation plan to an interference contour protection system as used in AM broadcasting. Under the Mullaney plan the UHF band would be discarded and hometown television would be left to the vagaries of the technical operating characteristics of individual stations. In some cases, local service would no doubt be made possible by the use of low-powered VHF stations of limited coverage, but with consequent loss of service to many who might otherwise receive service if full use were made of the spectrum, including the UHF band. And the Mullaney plan would leave no room for growth. The VHF band cannot possibly provide for a nationwide competitive system of television but the Mullaney plan would confine all television allocations to that band.

IV. THE COMMITTEE'S PLAN

A. General

51. Because the Committee for Hometown Television is engaged in the defense of an established FCC policy from attacks by the networks and others, most of the foregoing has had to be framed as "agin" other plans and pronouncements. In the preceding paragraphs we have set forth at length the difficulties which hometown television faces today. A solution is urgently needed. We realize that the problem is complex and that there are no easy solutions. However, a supreme effort must be made. To this end the committee advances a positive program of action designed to help salvage hometown television and the UHF television service.

52. The committee's platform, curiously enough, is original with the Commission rather than with the committee. Both the Congress and the Commission have agreed that it is categorical national policy to assure the future of hometown television (priority 2). To implement this policy, the Commission must restore its priority 2 as a current objective. Specifically, this means that in making its decisions as to allocations the Commission must guide itself by the criterion, Will it further hometown television? This is a criterion dictated by statutory mandate, yet one which the FCC has yet to fulfill. Furthermore, the Commission having ignored this criterion to the point where hometown television is sick, indeed, the Commission must now apply it rigorously, immediately, and, where possible, retroactively.

53. This is the broad perspective. This is the standard which the Commission has espoused in words but ignored in action. For, as has been indicated, the acts of the Commission discourage rather than implement the standard. Thus, if tower heights are to be changed, then they are increased. If UHF stations are to be given more power, then they are given a maximum out of reach of all but the biggest operations. If a coverage area is in dispute, then the dispute is resolved in favor of the bigger station. If New Jersey has no television stations at all, then let it listen to New York and Philadelphia signals. If a network proposes that hometown television be junked, then give it the in-camera attention of the full Commission. It is from this climate that hometown television must be relieved. In the view of the committee a shift in Commission intentions from do-nothing to enforcement would do more to assure its priority 2 than would any other measure.

B. UHF is necessary for a nationwide competitive system

54. We believe that it is axiomatic that it is not possible to have a nationwide and competitive system of television if only 12 VHF channels are utilized.

55. We also believe that the additional channels must be those in the UHF band. We are aware that much attention has been devoted to attempts to secure additional VHF channels in an effort to solve the problem. We do not believe that such efforts are the answer to the problem, for four reasons. First, it is very doubtful whether any additional VHF channels can be secured. Second, even if some VHF space is found, it is obvious that the new channels will be few in number and will take care of only a few hardship cases. While solving some hardship cases is a worthy objective, the price would be extremely high. It is inconceivable that enough VHF channels can be found to provide enough facilities for the various communities in the United States.[10] Third, any VHF channels that are found would be incompatible—present receivers could not tune to such channels. The difficulties which incompatible UHF channels have faced in competing with VHF channels would also be encountered by station owners operating an incompatible VHF station in competition with a compatible VHF station. A fourth reason against placing our hopes in additional VHF channels is the substantial loss which would be suffered by that portion of the public which has already paid for UHF service. Many of them would have to pay once more to receive a new incompatible service. Their willingness to do so a second time is bound to be diminished, for how can they have confidence that this new band will not be abandoned at an early date. In sum, it appears to us it will take extraordinary effort to make additional VHF channels work, and at best they will provide only an abbeviated nationwide service. We believe it is much

[10] It should be noted that the entire VHF band extends from 30 to 300 megacycles. Even if all these channels were made available for television they would provide for only 45 channels, 2 fewer than now contained in the present allocation table. Moreover, the frequency range of the band is 10 to 1 which would mean a tremendous disparity in propogation of television channels.

better to put the extraordinary effort into making UHF work where success will mean a truly nationwide competitive system of television.

C. The committee's proposal

56. First, let us recite the immediate premises for the committee's plan. A concrete policy for the Commission in its rescue mission begins and virtually ends with the definition of television's basic unit—the coverage area. So long as the Commission was preoccupied with its priority one, the basic unit was one listener; and the definition of a "proper" coverage area was regarded as so unimportant as to require no uniform description at all. But give hometown television its priority, and the Commission is forced to define the dimensions of the hometown, the area which contains all the people who can use a single station to mutual, local advantage.

57. Fortunately, this is a simple job performed many times by experts. A "community" in the sense used here is the precise equivalent of the standard retail trading area, a definition which both fits the needs of local buyers and sellers, and describes the boundaries of the common social endeavor. Beyond those boundaries lie TV's wonderland, where the Governor of New York urges the citizens of New Jersey to vote for him, Bridgeport citizens are importuned to support New York's United Fund, and all the news is foreign news.

58. If the standard retail trading area describes the optimum hometown station coverage, then the means for implementing priority 2 are at hand. The committee envisions the remedy in three basic steps, all interrelated:

Step 1: Each station's signal coverage must be conformed to the retail trading area of its community. In acting upon applications for new stations in other communities, any interference that does not invade this service area should not be considered objectionable. Hand in hand with this limitation must go rejection of any application for increase in tower height or power limit or for satellite stations.

Step 2: In the towns thus uncovered to local television, the Commission should license the operation of stations capable of providing hometown television. In deciding which communities can qualify for licenses in the uncovered areas, three criteria should be applied, namely, (1) Will the new license create a white area? (2) Will the new license provide hometown television? (3) Will the new license provide television to more people than will be deprived of television by the proposal? As a corollary action, an engineering study should be initiated to determine how to provide more signals with smaller separations—a study analogcus to the FCC reappraisal of radio's permissible separations.

Step 3: A policy of deintermixture, favoring UHF operation where practicable, should be instituted.

59. Application of the criteria for new stations listed under step 2 above may result in the retention of an existing VHF operation, in the conversion of an existing VHF to a UHF operation, in the reverse, or in the licensing of a new VHF or UHF station. For example, in an area of VHF saturation, that is, where there are three or more operating VHF stations, the committee would favor the drop-in of a VHF channel for the use of a UHF entrepreneur on a reduced mileage separation basis even though interference might result both to and from the dropped-in station, provided the addition of the new VHF station resulted in a gain of service to more people than would lose service as a result of the proposal.

60. The committee further proposes that when VHF drop-ins as above described are made, the Commission should consider making the VHF assignment temporary only, that is to say, the VHF channel would be authorized for use by a UHF permittee or licensee only until the expiration of 2 years after 85 percent or more of all receiver production is composed of all-channel receivers, or until the expiration of 5 years after the date of grant, whichever is the later. At the end of this period the licensee of the dropped-in VHF would be required to convert back to UHF. In the meantime and during the temporary assignment, the licensee would be required to operate both the UHF and VHF assignments. In this way, immediate help would be provided to the sinking UHF station in the VHF saturation area until such time as a healthful competitive climate could be created, at which time the full benefit of the UHF spectrum could be realized.

D. Compatability

61. But the moribund state of UHF today raises a special problem. The Commission cannot conjure up new UHF stations by fiat to serve the needs of America's hometowns. For each license there must be a group of investors, by and large local, ready to risk capital. At present the investors who might supply such capital are understandably appalled by (1) the fate of UHF oper-

ators who put their faith in the Commission's 1952 prediction that all-channel receivers were on the way; and (2) the Commission's repeated demonstrations that its major policies are based on the continued growth of the very wide coverage VHF stations.

62. The Commission must therefore not only modify its policy to give equal chance of survival to UHF operations; but it must also create an administrative climate favorable to UHF operators and investors. The equal chance UHF seeks translates itself into a demand for Commission help in getting around the incompatability between the UHF and VHF signal. It has been demonstrated time after heartbreaking time that without all-channel receivers a UHF station cannot survive if it must compete with more than one VHF station.

63. The Commission must therefore push forward to the day when the production of all-channel receivers will create a demand for UHF service equal to that enjoyed by VHF stations today. In the committee's view this day may be hastened only by the encouragement of UHF in every avenue of approach to the problem.

64. The reason UHF stations today find it possible to compete with a single VHF signal is that it has been shown that such a division of frequencies will induce most local viewers to buy all-channel receivers or converters, thus solving for them selves the problem of signal compatability. This fact, in turn, underlines the importance of converting all receiver manufacture to all-channel sets—the FCC's original, abandoned goal. Were the Commission by some magic able to transform all receivers in use to all-channel sets as of tomorrow morning, there would be no problem in attracting investors for UHF, in rescuing existing UHF operations, in achieving the goals of hometown television. Lacking magic, the Commission's problem is how to achieve enough of this goal now, and to make its eventual attainment sure enough now, before the indispensable UHF cascades down the drain for good and all.

65. In this context, the equation of station signals to retail trading areas is a major advance in the program of conversion to all-channel receivers since the reintroduction of the UHF signal to television on a competitive basis creates its own demand for such sets. A major guaranty of the same program is to be found in the creation of so-called islands of UHF, that is to say, concentrations of 100-percent UHF-served markets large enough to insure the continued production of all-channel receivers and, more importantly, to increase that production. The committee's opinion of the importance of such islands to the future of hometown television is reflected by the inclusion in its 3-point program of step 3 urging the adoption of a policy of deintermixture, in favor of UHF operation.

66. The committee is convinced that if enough UHF islands are created, manufacturers will begin turning out only all-channel television receivers. We have arrived at this conclusion after discussions with manufacturers' representatives who have indicated to us that when a sufficient number of all-channel receivers are being manufactured, it becomes economically desirable for the manufacturer to maintain only 1 production line turning out the same product—all-channel receivers—rather than 2 production lines—one for all-channel receivers and the other for VHF-only receivers. We do not pretend to know the specific point where is becomes economically worth while for manufacturers to utilize one production line only. We do know, however, that such a point is bound to come when sufficient all-channel sets are sold and that the creation of more UHF islands is one of the most effective methods the Commission possesses for achieving this result.

67. The benefits flowing from creation of UHF islands will be extensive. Not only will those UHF communities be assured of hometown television but, in addition, every community in the United States will be guaranteed an opportunity for expansion as to the number of television stations available to it. If all production becomes all-channel receivers, then UHF can become practicable at a future date in cities like New York, Chicago, Washington, and Baltimore, which have several VHF and UHF assignments, as well as in all-UHF communities. For American business history has shown that if the people in these communities have receivers capable of tuning to UHF channels, entrepreneurs will eventually be found who will risk their money in building such stations to serve them. We realize that it may take several years before this can take place. However, this is no reason for not starting the process which will make the objective possible. It is not necessary that all communities have their maximum number of stations from the outset. Additional growth is necessary for many communities to be able to support that number. What is needed is that type of planning which makes it possible for all communities eventually to have their maximum poten-

tial of television stations. As things now stand, that potential will never be realized.

68. The consumer has frequently been cited as the insurmountable barrier to any widespread conversion to UHF. The argument: The American public has already bought 30 million TV sets, most of them VHF receivers; and the people—burdened by this monstrous investment—must therefore unfortunately be barred forever from the benefits of UHF and hometown television.

69. Fortunately, the problem is not so great as it has been made to appear. In the first place, about 7 million sets will be sold this year, most of them to present users, assuming a replacement cycle which is completed within 5 years. Secondly, the current upsurge in technological advances—from color reception to the curved tube—are calculated to shorten appreciably this already short turnover period.

70. In the third and decisive place, the committee's program is expressly calculated to accommodate the owner of a VHF receiver until he is ready to trade his set in for an all-channel receiver. By guaranteeing the presence of VHF service in any cutback area formerly serviced on a VHF-only basis, the Commission can assure television to the owner of both the VHF set and the all-channel set, pending national conversion to all-channel receivers. By the same token, the committee's program explicitly provides that there shall be no net loss in the number of people able to receive a TV signal, it being understood that this is without the need to buy a new type of receiver.

71. The equity of the consumer in this TV set is, of course, just as important to the plans of the committee as it has been to the deliberations of the Commission. But whereas the Commission has evidently determined that there is no feasible way to get the consumer to relinquish his VHF receiver, the committee believes the conversion can be accomplished in a two-step process:

(1) A commercial inducement for the manufacturer to switch to the manufacture of all-channel sets by the introduction of UHF stations in VHF areas—UHF stations with an even economic chance of survival; and

(2) The normal replacement cycle of TV sets.

72. The same factors which will induce the manufacturer to switch to all-channel production will urge the consumer to trade in his precent UHF set for a new all-channel one. Furthermore, our commercial history attests to the fact that in the early developmental days of a new product the constant flow of radical improvements accelerates the normal cycle of replacement.

73. In the category of radical improvements, the role of color television cannot be too strongly stressed. If it is true that the future of television lies in color, it is just as impressively true that the future of color television under the concept of hometown television must base itself in the first instance on UHF reception. Faced with a consideration as strong as this, the entire industry would have no choice but to devote its best efforts to the improvement, manufacture, promotion, and sale of the all-channel receiver, night and day. Further to expedite conversion the committee has incorporated into its plan the UHF island theory of allocations.

74. In short, the committee is convinced that receiver compatability does not present an insoluable problem. On the contrary, if the committee's plan is adopted, useful and effective tools to remedy the problems caused by incompatability are at once at hand.

E. Other action recommended

75. In addition to the remedial steps heretofore set forth the committee urges the adoption of other action calculated to preserve UHF and hometown television and to establish a strong and healthy nationwide television system.

76. First, we urge the Commission to make the fullest use of the powers granted it by section 303 (i)—to make special regulations applicable to stations engaged in chain broadcasting—to aid hometown television. The experience of operating UHF stations shows that where they are able to carry NBC or CBS programs not otherwise available in the markets, successful UHF operation is possible. Thus far NBC and CBS programs have not generally been made available to UHF stations where VHF stations are available to carry them. A notable exception is the situation where NBC or CBS has contracted to buy a UHF station. In those situations, says CBS in its ex parte proposals, de intermixture is not necessary for UHF can succeed in competition with VHF. It appears to be the network position that the networks can make UHF work but that they will not do so unless they are permitted to own the UHF stations. We urge the Commission to consider that the statutory duty imposed upon it by section 303 (g) of the Communications Act—to encourage the larger and more

effective use of radio in the public interest—requires energic action to save UHF and that this obligation is not discharged unless the Commission uses to the full the authority "to make special regulation application to stations engaged in chain broadcasting" by compelling a greater availability of network programs to UHF stations.

77. Second, we urge the Commission to grant immediate relief to some of the UHF problems by making it possible for all UHF operating stations to operate in the lower part of the UHF band. In the present stage of the art, it is quite beneficial to have one of the lower UHF channels in contrast to the upper UHF channels. This objective is not possible in the use of many UHF stations because of the taboos set forth in section 3.610 of the Commission's rules and regulations. We believe the time has come to review these taboos. In our opinion, developments since the adoption of that rule now make it possible to eliminate or substantially mitigate many of these taboos.

78. Third, we urge the Commission in this proceeding firmly and finally to reject the proposal to permit an increase in antenna height to 1,250 feet for VHF stations in zone 1. Such a move will increase the already large service area of VHF stations located in the large metropolises and will further cripple the cause of hometown television.

79. Fourth, we urge the Commission to revise its polices with respect to satellite stations. The use of such stations is merely another device for extending the service potential of metropolitan stations. As a result of such stations, additional reception may be provided to some areas but their hopes for their own local outlets will be greatly lessened thereby.

80. Fifth. we recommend that the Commission should not permit an increase in UHF power above the 1-million-watt maximum now provided for. Such higher powers can be effectively utilized only by metropolitan stations to the disadvantage of the smaller communities.

81. Finally, we urge the Commission to create the type of psychological atmosphere which shows that the Commission is irrevocably committed to making UHF succeed. We are sorry to say that, although the words the Commission utilizes seems to say that this is the Commission's policy, the acts of the Commission more often point in the opposite direction. For example, the Commission indicated that the UHF deintermixture petitions had a high priority. Nevertheless, the Commission adjourned for a long summer recess without taking any action on them and has now denied them. Nevertheless, it did not permit the long recess to begin before it adopted its order increasing maximum antenna heights for VHF stations in zone 1. No urgency whatsoever existed for this action. Since deeds speak louder than words, it is only fair for a disinterested outsider to conclude that the Commission speaks kindly for UHF but its helping hand is for VHF. We urge the Commission in its action to give the highest priority to the matters affecting UHF so that the public can see that the helping hand as well as the helping word is for UHF.

V. Effects of the committee's plan on the industry

82. What then will be the effect of the committee's plan on the television industry? The CBS October 5 memorandum to the Commission is a good example of the wolf-crying in high places which has served so notably to confuse the issues involved in achieving the sixth report and order's priority 2; and the interest of clarity and sanity require the committee to examine the consequences of its program before someone else does it for them.

83. The wide-coverage VHF station loses audience by retracting its signal. The number of listeners lost will vary from case to case, but because the loss is always at the sparse fringe, never at the concentrated core, it is doubtful that the number will ever exceed 10 percent of the total. In point of economic fact, the elimination of this fringe audience will not diminish either the station's time rate or its income by 1 cent, and for a pertinent reason; the people comprising that fringe audience belong to another hometown, and they neither shop in nor look to that station's community.

84. The networks' hopes for the immediate future are well displayed in the CBS memo: they look forward to achieving maximum coverage with a minimum number of affiliates. Any reduction in affiliate coverage which the committee's plan might cause would require the networks to relinuish their present claim to "bonus" markets or to sign up more affiliates. Since network programing is highly desirable for fledgling stations, it would appear to be in the national interest to encourage the networks so to increase their affiliations. But maxi-

mum or minimum, the income from advertising to the networks under the committee's plan remains undiminished.

85. Indeed, the climate of plenty created by additional potential affiliates may spawn new, competitive networks providing new program sources for the expanding industry. Moreover, it is worth noting that the creation of more network affiliates must inevitably result in increased competition among TV stations at the local or operating level. And—in a cycle familiar to any observer of American competition—such sharpened competition will in turn result in better service to the advertiser, closer relations to the community, and better programing for everybody. Contrast this with the commercial sludge to be induced by the "supermarket" concept of coverage.

86. The national advertiser can hardly be said to have a bona fide standing in this consideration of a national television policy. But to the extent that he does, he is eligible for congratulations. Were the committee's plan in effect, it is just barely arguable that he would be forced to pay more money for the same audience for that brief period during which the networks transferred their giveaway "bonus" markets from an original affiliate to a newly acquired one. But as soon as the demands of local competition asserted themselves, he would be back at the same old cost per thousand, paid under the committee plan to stations laced twice as tight as before to their hometown audiences.

87. Finally, of course, it is the consumer who becomes the major beneficiary of the committees' plan. For only under this plan can the consumer—which is to say, the public—enjoy a television facility administered for his benefit, for his needs, and for his use.

VI. Perspectives and summary

88. It is generally conceded that if the FCC fails to take affirmative action at this juncture, UHF in the United States is dead. To this axiom we may now add a second one: If UHF is allowed to die, then with it will pass all chance we will ever have for hometown television. More than that, for the same reason that the end of UHF spells the death of hometown television, it also must mean the eventual ascendency of that sterile and dangerous concept—the "supermarket system." There is no halfway house.

89. We are, in fact, at a moment of crisis in the history of communications, and our duty now is to recognize that this is a crisis; the perspective of history will make this fact plain enough. The first step toward saving hometown television must be taken in the minds of the Commissioners. They must concede that UHF and hometown television can be rescued by a series of immediate, forthright, and affirmative actions well within the scope of their own authority. This done, the vista is fine:

1. The present retreat into a stifling and dangerous monopoly will be ended.
2. The television industry will obtain better and closer coverage, better programing, more return for the advertising dollar, and—in short—more television.
3. America will get hometown television, an essential aspect of its democratic tradition.

Respectfully submitted.

COMMITTEE FOR HOMETOWN TELEVISION, INC.
By PAUL A. PORTER,
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REED MILLER,
ARNOLD, FORTAS & PORTER,
Washington 6, D. C., Its Attorneys.

Dated: December 9, 1955.

COMMITTEE FOR HOMETOWN TELEVISION, INC.

ARTICLES OF ASSOCIATION

BE IT KNOWN, That we, the subscribers, do hereby associate ourselves as a body politic and corporate, pursuant to the statute laws of the State of Connecticut regulating the formation and organization of corporations without capital stock, and the following are our articles of association.

ARTICLE 1. The name of said corporation shall be COMMITTEE FOR HOMETOWN TELEVISION, INCORPORATED.

ARTICLE 2. The purposes for which said corporation is formed are the following, to wit:

(a) To promote and support the development of hometown television stations.

(b) To provide a medium for the mutual exchange of information and material concerning the television industry.

(c) To study and support means for the furtherance of hometown television as a public community service.

(d) To work for equal competitive rights among television stations.

(e) To support or oppose public or private plans, programs, legislation, regulations, administrative actions, or activities of any kind which would or might affect the television industry or any part thereof.

(f) In general to work for and promote any matter or action which would be for the general welfare of the television industry and its hometown television stations.

ARTICLE 3. (a) There shall be three classes of membership in this association, as follows:

(1) Station members—consisting of persons, firms, or corporations operating licensed television stations not owned or controlled by a national network.

(2) Industry members—consisting of persons, firms, or corporations engaged in the business of manufacturing, assembling, or distributing television equipment, or otherwise engaged in some branch of the television industry.

(3) Associate members—consisting of any other persons, firms, corporations, foundations, or other organizations interested in the general purpose of this association.

(b) Membership in any class shall be by vote of the board of directors, who shall have the power to exclude from membership any applicant whose business or activities do not qualify it for membership, or are not in harmony with the scope and purposes of this association. No television network shall be eligible for membership in any class.

(c) By vote of two-thirds of the station membership, membership in any class may be canceled for nonpayment of dues or assessments, a change in status rendering it ineligible for further membership, or for any act or course of conduct contrary to the purposes of this association.

(d) There shall be one membership only for each television station qualifying for membership, and the board of directors shall be the final judge of all questions concerning qualifications for and admission to membership. Notwithstanding common ownership of 2 or more stations, each of such stations shall be entitled to 1 membership.

ARTICLE 4. This association shall not be operated for profit and no part of its earnings, funds, or property shall inure to the benefit of any member or individual. No officer or director shall receive any compensation for services or expenses in the performance of his duties.

BYLAWS

Article I—Meetings

Section 1: There shall be an annual meeting of the association to be held at such time and place as the board of directors shall determine.

Section 2: Special meetings of the members of the association may be called by the president, the board of directors or upon written request, stating the reasons therefor, by five members of the association in good standing.

Section 3: Written notice of all regular and special meetings of the association stating the day, hour, place and purposes thereof, shall be mailed or personally delivered at least 5 days prior to the meeting to the address of each member of record.

Section 4: Representation of one-fourth of the membership shall constitute a quorum at all meetings of the association.

Section 5: At each meeting of the members all votes shall be taken by a show of hands, unless voted to be by written ballot, all elections shall be determined by plurality vote and all other matters by majority vote of those voting.

Section 6: Only station members in good standing shall be entitled to vote at any meeting of the association, and each station membership, as determined by the board of directors, shall have one vote. The vote of any firm or corporation holding a station membership may be cast by any authorized officer or member thereof, and any station member may be represented and vote by proxy.

Section 7: Any matter, proposal or project may be determined by mail ballot with the same force and effect as if determined at a regular meeting, at the discretion of the board of directors, the vote of one-third of the station membership being a quorum in such cases.

Article II—Board of directors

Section 1: The general management and control over the affairs, business and property of the association shall be vested in a board of directors consisting of not less than 3 nor more than 15 members, who may also be officers, provided that the station membership shall always hold a two-thirds majority on the board.

Section 2: The board of directors and a chairman thereof shall be elected at the annual meeting to hold office for 1 year or until others are elected in their stead.

Section 3: Meetings of the board of directors shall be held upon the call of the president or one-third of the directors, written notice of which, specifying the time and place, shall be mailed or personally delivered at least 3 days prior to the meeting. The chairman of the board of directors shall preside at its meetings, and a majority of the board shall constitute a quorum.

Section 4: A vacancy shall exist when any director, or the member organization which he represents, resigns from the association, ceases to qualify for membership, or has his membership canceled, and any vacancy for these or any other causes, may be filled by majority vote of the remaining directors for the balance of the term.

Section 5: No public statement of the policy or position of the association on any issue shall be made except on prior authorization of the board of directors.

Section 6: The board of directors may create any such standing or special committees as it may deem appropriate.

Article III—Officers

Section 1: The officers of the association shall be a president, vice president, secretary, assistant secretary, treasurer, and assistant treasurer, to be elected by the members of the association at the annual meeting, for 1 year or until others are elected in their stead. No person may hold two offices, except that the same person may be secretary and treasurer.

Section 2: The president shall preside at all meetings of the members of the association, shall have general management of the affairs of the association, subject to action of the membership and the directors, and shall have the powers and duties normally associated with his office.

Section 3: The vice president shall assist the president in his duties and serve in his stead in case of the absence of disability of the president.

Section 4: The secretary shall record the proceedings of the membership and the directors, give notice of all meetings as required, and keep the records and papers of the association, including a record of all members, and their addresses. The assistant secretary shall assist the secretary in his duties and serve in his absence.

Section 5: The treasurer shall receive all funds due the association and deposit the same as directed by the directors. Checks for the disbursement of funds of the association shall be signed by such officer or officers as the board of directors may from time to time direct. The treasurer shall keep accurate accounts of all receipts and disbursements and report on the same when required. The assistant treasurer shall assist the treasurer in his duties and serve in his absence.

Section 6: A vacancy shall exist when any officer, or the member organization which he represents, resigns from membership, ceases to qualify for membership, or has his membership canceled, and any vacancy for these or any other causes may be filled by majority vote of the board of directors for the balance of the term.

Article IV—Dues and assessments

Section 1: The fiscal year and membership year of the association shall be the calendar year.

Section 2: The dues of station members shall be $100 per station member per year. Dues for industry and associate members shall be as fixed by the board of directors.

Section 3: The voting membership of the association may at any meeting after due notice levy a special assessment upon the membership for the purposes of the association. Any such assessment shall be prorated among operating station members in the ratio of each station's highest published national class A hourly rate. Nonoperating stations shall not be assessed.

Article V—Amendments

These bylaws may be amended by majority vote at a meeting of the voting membership, after due notice, and may also be amended by a two-thirds vote at any meeting of the board of directors, after due notice, subject to changes adopted by the membership.

For copies of this brief:

Committee for Hometown Television,
Box 9140, Bridgeport, Conn.

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Mr. MERRYMAN. I believe you all have copies of it.

What all of us are seeking from the FCC, then, is that they accomplish the task the Congress set for them. This would certainly involve some changes in current FCC policy; some steps they have taken will have to be retraced. But I wish to make the point that such changes are needed only to return to the path the Congress set for the FCC in the first place.

The question now becomes: How can we put the FCC and our national television allocation policy back on the track for priority 2—a television facility for every community?

There is evident in testimony given here, and in statements recently filed with the FCC, a tendency to make this problem seem more complex than it really is. This seeming complexity is due largely to the fact that discussion has centered around the engineering problems involved rather than addressing itself to the fundamentals of policy.

If you or I set out to put up an office building, we don't start by calling in the plumber, and then design the building around his pipelines. We call in the architect, and require the plumber to figure out plumbing lines that will fit the architect's plan.

No more should we now let engineeering arguments shape the future of America's television. Policy comes first, and engineering is the servant of policy, not its master.

Long ago Congress, that is, you gentlemen, told the FCC to provide "an equitable distribution" of television facilities, and the FCC at that time set up its allocation priorities as a translation of that policy. But the Chairman of the FCC, in his recent appearance before you, spent most of his time discussing his engineering problems and virtually none defining what his Commission is—or should be—trying to accomplish.

The FCC has virtually abdicated as an instrument of Government policy; instead it seems to be attempting to rewrite your policy by a mystic and unprofessional estimation of which policy creates the least stubborn engineering problems.

I think I am right in saying that the function of these hearings is to reexamine Government policy in the light of television's most recent experiences. In one sense this is an easy task. If we agree with the Chairman of the FCC that priority 1—a TV signal for everybody—

has been about 90 percent fulfilled, then we will also agree th priority 2—a TV station for every community—is now the first or of business.

From there to the imperative need to sustain UHF is an easy st and we could stop right there. You gentlemen could simply say the FCC, "See to it that every town that can—or will be able to—affo a TV station can get one."

But the whole question of TV's future has been allowed to beco clouded in such a welter of special pleadings, has been so obscured indecisiveness, that it may be helpful to examine the terrain fro the perspective of policy.

Almost everybody agrees that television faces a crisis and the div sion of opinion is mainly on what is to be done. There are four gener solutions advanced:

To go all UHF
To reduce VHF coverage and go all VHF
To reduce VHF coverage and drop in V's and U's
To deintermix

All of these plans are based on the recognition of our need to advanc on priority 2. A fifth plan has been advanced by CBS, to reduc television to 100 markets, but since its effect would clearly be retro gressive—moving us even further from priority 2 than we now are—it does not appear to have any standing in these discussions.

It is in the technical arguments against one or another of these solutions that the industry itself and the FCC have lost themselves. And yet these rebuttals are neither so complicated nor so numerous as to resist a layman's analysis. All the counterarguments advanced against these solutions finally boil down to three points, and with your permission I will list them:

Plans involving any cutback in existing signals are criticized for eliminating rural coverage.

Plans involving drop-ins are criticized for eliminating service and for what is euphemistically called degradation of service.

All plans have at one time or another been attacked as violative of the precedent of radio's clear-channel broadcasting.

Now the plain fact is that these counterarguments lack the stature to warrant consideration on a policy level. On close examination, they turn out to be what I might describe as plumber problems.

To take the most often cited problem first, consider the matter of rural coverage. As you know, the objection to a cutback is existing signals, or the exchange of a VHF station for a UHF station under deintermixture, is that the resulting loss in wide coverage signals will deprive the people living away from towns and cities of a signal.

Now let me invite your attention again to this map. (Facing p. 439.) It is a copy of the CBS exhibit used by that company to illustrate how its 100-market plan would work out. I am very fond of this map because it provides a clear illustration of so many facets of the problem we are discussing.

CBS drew it to show the coverage that would result from putting 3 wide-coverage VHF stations in each of the 100 leading markets in the country. If you live inside one of the squares, you are presumed to be able to get a signal—and I guess you probably would. On the other hand, if you live in one of these white areas, you don't get any TV. Look at the size of the white areas. Look how much of the ited States is left uncovered under the CBS plan. The term "white as" may be exactly translated as rural coverage, as you can see from ir locations. So the plain fact is that under the most extreme n yet advanced for the use of wide-coverage stations we will get y nominal rural coverage. I will return to the matter of rural erage again, but let me note now that wide-coverage VHF stations ne obviously do not contain the answer to that problem, and, there-e, any argument based on the need to maintain present power limits nong VHF stations for the sake of rural coverage is either short-hted or something less than frank.

This leads me directly to the so-called clear-channel argument. ow, I have been in the radio-television business my whole life, start-g in 1922, when I built my first radio station, and I think I am as miliar with the history of this industry as anyone. I do not think here has ever been a stronger proponent of the clear-channel stations han I have been throughout my history. But listen as I will to the eople who drag the clear-channel concept into the question of tele-ision allocations, I am still only able to conclude that they are very areless thinkers.

Clear-channel broadcasting made its appearance in radio in 1926 as method of providing this rural coverage we are discussing. Briefly, what clear channel broadcasting describes is a system of allowing certain stations the right greatly to increase the range of their signal at night in order to reach people in isolated rural areas.

The economics strictly determined that that was the only way you could cover the western half of the United States with that service.

These signals reach out in the order of 710 miles in all directions from the sending station, and, of course, the stations permitted to have a clear-channel signal are thereby given a competitive advantage over their sister stations. The theory is that the evil of granting a competitive advantage is outweighed by the good in providing rural coverage—the conventional equation of public policy.

Now we come to television. In the face of a move to retract the signals of certain wide-coverage VHF stations, their owners have raised the cry of "clear channel."

The implication is that any cutback will cause a significant loss of rural coverage, as it would in clear-channel radio stations. Now, the normal maximum coverage of a TV station, according to FCC standards, is a circle with a radius of 60 miles, which means that its maximum coverage area is less than one one-hundredth of that of a clear-channel radio station, and its claim to the protection of public policy stands, I think, in about the same proportion—one to a hundred. So much for the clear-channel and the rural-coverage arguments.

Here is another map of television coverage. This one shows the total coverage of all VHF stations east of the Mississippi. You will notice that the contour lines, outlining station coverage, look quite different from those shown on the CBS map. This is due to the fact that CBS elected to outline its coverage areas by county lines, a method which unhappily masks the fact that there is present an enormous amount of overlap.

I might make this further observation, that these circles were figured on the present powers and antenna heights of every individual VHF station. They do not, by and large, correspond with the claims of coverage of the individual stations themselves.

The stations always claim much greater coverage than this. point is, if they have the greater coverage, the overlap is the grea

When you see this map, you are looking at the effect of having a where from 1 to 10 VHF services in 1 community. Careless anal has led many people to the assertion that unlimited licensing of w coverage VHF stations is the road to the fulfillment of priority TV signal for everybody; and in its pursuit of priority 1, the F seems to have been influenced to a great extent by this canard. As map plainly shows, 1 station per community will fulfill priority 1 j about as well as 10.

Certainly there is value in having competitive services available the viewer. But just as certainly the FCC should not have traveled far down this road that the multipurpose and invaluable UHF s tions were blocked out—as they most certainly have been. Here, seems to me, is a prime illustration of congressional policy bei thwarted simply by being ignored.

Once again, you will observe from this map—which shows how ma ters stand today—that rural coverage is negligible. But it also show something else: Consider for a moment the area covered by the Ne York TV stations, or the Chicago TV stations. Note the overlappin of coverage, composed of a number of stations operating on differen channels. Now suppose an application for a VHF drop-in within th shadow of this wide coverage. What is required for such a drop-in i that the signal of existing VHF stations on the same channel in thi area be pushed back by the signal of the drop-in.

Is the total coverage of the area reduced? Obviously not, since th area is still covered by the remaining stations on other channels. As suming there is any rural coverage, will it have been reduced Obviously not.

Will the station whose signal has been pushed back be put at a disadvantage? Yes, I think it will, though not nearly so great a one as might at first appear.

Is the imposition of such a disadvantage on one such station justifiable? It is here, I think, that we are able to find an honest analogy with the clear-channel argument of radio. Let us assume that the drop-in will provide hometown television to a community otherwise dependent on a foreign signal. Then surely the dictates of public policy will agree that the provision of hometown television to a community will justify whatever minimal hardship may result to the station that has been pushed back.

But that is not all. It is perfectly feasible to project a television allocations plan under which even this minimum hardship to a station will be temporary. This is so because any plan advanced for the salvage of hometown television is based ultimately on the universal use of the all-channel receiver, which permits the pushed-back signal once again to resume its old coverage without drowning hometown coverage.

Now let's look at this matter of drop-ins and elimination of service from a bit closer up. Here is another engineering map. It is the map of a hypothetical area containing 3 VHF stations on the same channel situated at the apexes of an equilateral triangle with sides 170 miles long. That distance, of course, is the minimum separation decreed by FCC rules; and this arrangement of perfectly equal separations between the three stations—an arrangement never found in fact


COMMERCIAL VHF GRADE B SERVICES
FOR
EASTERN UNITED STATES
JAMES BAY
Lake Mistassini
Gulf of St Lawrence
St Lawrence River
Saguenay River
Abitibi Lake
Ottawa River
Ottawa
Quebec
LAKE SUPERIOR
LAKE MICHIGAN
LAKE HURON
LAKE ONTARIO
LAKE ERIE
Duluth
Marquette
Green Bay
Milwaukee
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Battle Creek
South Bend
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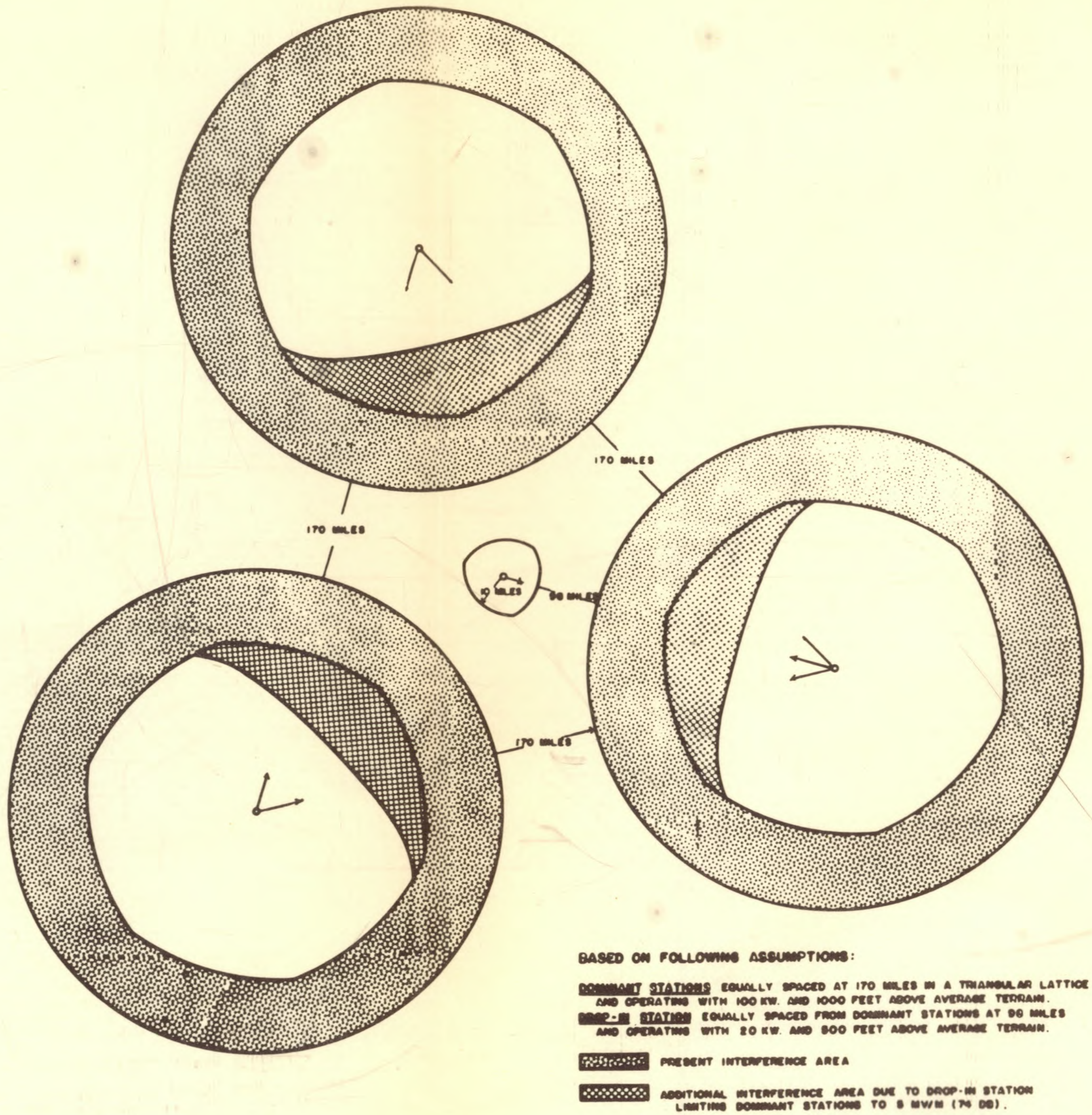
Columbus
Dayton
Cincinnati
Peoria
Bloomington
Burlington
Springfield
Williamsport
Scranton
Reading
Trenton
Albany
Troy
Hartford
New York
Philadelphia
Portland
Bangor
ATLANTIC OCEAN

75589 O - 56 Pt. 2 (Face p. 466) No. 1

LOW BAND GRADE B INTERFERENCE FREE SERVICE AREAS



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because cities are not placed that way—is the most unfavorable to a drop-in station that can be conceived. If it work here, it will work anywhere.

The point is, if the drop-ins will work in this situation, they will work in any situation now existing in our economy. You will see that equidistant from all the corners I have placed a hypothetical drop-in VHF station. Its own signal extends in a 10-mile radius without interference, a coverage area of about 300 square miles.

You will notice that the drop-in station creates interference with all 3 of the stations at the corners, pushing each of them back from a theoretical service area of 58 miles to 28 miles in the direction closest to the drop-in, and to lesser distances around the circle to the back end where no appreciable new interference exists.

However, before the dropin, the three stations at the corners interfered each with the other so that the actual new interference is relatively small. When we consider, in addition, the effects of other stations outside the triangle each located exactly 170 miles from the triangle stations, the interference of the dropin becomes even less significant.

But notice that this assumption is much more stringent than the facts are ever likely to be. In the first place, it is highly unlikely that there will not be in this area signals from some other city on a different channel—which signal will, of course, be affected not at all by the new dropin. In the second place, it is becoming increasingly likely that one or more of the three communities at the corners will have more than one station on different channels—and for these, too, the new dropins can create no interference.

Thus, in terms of priority 1—a signal for all—this area remains as it was—overfulfilled. In terms of priority 2—a station for every community—we have made a significant advance. As for elimination of service, practically there has been none. The people living in this area of interference can get their signal from at least as many sources as before.

This brings me to the catch-phrase, "degradation of service." This is a favorite bugaboo of the networks, and appears over and over again in their briefs. What they are talking about is the fact that the old existing signal will be pushed back along this line nearest the center in the circles. To the extent that the original station will serve public policy by having its signal pushed back, its service will have been degraded. However, even the extent of that interference gets exaggerated: The interference area shown on FCC charts do not in fact exist, since modern directional antennas have already reduced interference below the theoretical levels used by the Commission. Engineering considerations aside, this must be so, otherwise we would not find what exists in fact: Many VHF stations serve areas 100 miles or so distant, in contrast to the 60 miles the FCC says is the limit of their service areas.

The public's television will not have been degraded, but on the contrary, enhanced. In short, "degraded service" is an editorial word properly used to describe the feelings of an unwilling servant of the public's interest—and no more.

To return to this map: You will notice that once the underbrush of "clear channel" and "degradation of service" and so on is cleared away, it is possible to drop in many new VHF stations. In other words, without doing damage to any congressional policy or engineering precept, it is possible to increase significantly the number of operative TV stations on the VHF frequencies in any given area. I estimate that every one of the 95 commercial UHF stations now on the air can be accommodated by a VHF drop-in. And many of the 104 holders of construction permits that are now sitting on them can also be accommodated, given the incentive to build those stations.

So far, with these maps I have been discussing mainly the matter of dropping in VHF stations. This procedure does much to ameliorate the crisis of hometown television. But obviously, in terms of long-term, overall solutions, it is inadequate, and we must turn our attention also to the use of UHF.

If we wish to place a UHF hometown station here, where I had placed the hypothetical VHF drop-in, the fact is that evedybody in this area has sets which can receive VHF only, and so will probably never bother to spend the $50 to $100 needed to convert their sets and look at the new UHF station. In other words, even if you put the new UHF station there, who would watch its signal? The answer, as more than 350 UHF operators now know, is—practically nobody.

Therefore, we are faced with the need to take a second step, designed to make it possible for the public to watch the new station without buying converters for its sets.

In the last analysis, the purpose of any step taken at this point is to get all-channel sets in the hands of the public, getting them to buy them in their normal replacement cycle—now figured at about 5 years. With all-channel receivers, free competition is restored, and the provision of hometown service will go on those most competent to supply it.

Here is one method by which this can be achieved:

Step 1: Each station's signal coverage must be conformed, where necessary, to the retail trading area of its community.

Step 2: In the towns thus "uncovered" to local television, the Commission should license the operation of stations capable of providing hometown television.

Criteria for new stations listed under step 2 above can result in the retention of an existing VHF operation, in the conversion of an existing VHF to a UHF operation, in the reverse, or in the licensing of a new VHF or UHF station. For example, in an area of VHF saturation, i. e., where there are three or more operating VHF stations, we would favor the drop-in of a VHF channel for the use of a UHF entrepreneur on a reduced mileage separation basis, even though interference might result both to and from the dropped-in station, provided the addition of the new VHF station resulted in a gain of service to more people than would lose service as a result of the proposal.

The committee further proposes that when VHF drop-ins as above described are made, the Commission should consider making the VHF assignment temporary only, that is to say, the VHF channel would be authorized for use by a UHF permittee or licensee only until the expiration of 2 years after 85 percent or more of all receiver production is composed of all-channel receivers, or until the expiration of 5 years after the date of grant, whichever is the later. At the end of this period the licensee of the dropped-in VHF would be required to convert back to UHF. In the meantime and during the temporary assignment, the licensee would be required to operate both the UHF and VHF assignments. In this way, immediate help would be provided to the sinking UHF station in the VHF saturation area until such time as a healthful competitive climate could be created, at which time the full benefit of the UHF spectrum could be realized.

It is not my purpose here to argue for this or any other particular solution. Rather, I am interested in demonstrating that the arguments that have been raised on an engineering level as a counter to the fulfillment of the Congress' policy are not so weighty as to require abandonment of that policy. It is my own feeling that the engineering solutions now required to implement the congressional mandate for a national television system will probably consist of some combination of deintermixture, cutbacks, drop-ins, and simultaneous UHF-VHF telecasting. But whatever form they may take, all they require is technical ingenuity, some engineering imagination, not black magic. What they require, moreover, is a statement of policy by those responsible for fixing the policy.

I do not think there is a consulting engineer in Washington who practices before the FCC that would take this chair and say to you gentlemen that it is the engineer's responsibility to come up with a national allocations plan for television. I think those engineers almost without exception—if they say to you what they say to me privately—would like to have a policy decision from the Commission to tell them what kind of a television system it is this country needs; and given the policy incentive, the directive to go forward, they will design that television allocations system. They will put the pipelines in the building you put up.

So I think it is permissible to think of our national television system as consisting of a great many hometown stations, plus a great number of wide-coverage, big-town stations. Under such circumstances, let's take another look at the problem of rural coverage. With all-channel receivers for sale all over, we can assume a small, low-cost UHF station in any community that can afford it. And I think that here is where we can find a real and honest answer to the problem of providing rural coverage. How far out can we hope to put these small stations? In other words, how inexpensive can we hope to make them, how small the community that can afford them? Let me show you the trend in costs, and I think you will agree with me that it is not unreasonable to look forward to the day when we can have as many TV stations as we do radio stations—and that will mean five times the rural coverage we have today.

May I direct your attention to the last page of my statement? This is a table which we prepared, as a result of our experience, from presentations made to us by the manufacturers of what the capital costs would be for a small hometown television to serve a small hometown community.

	Tower	Transmitter building	200-watt transmitter (unless noted)	Video equipment	2 film projectors	Audio equipment	Lighting	Test equipment	Total
Adler Commercial Laboratories	10,000	10,000	11,175	19,190	3,990	2,890	1,000	2,125	60,370.
Dage TV division	10,000	10,000	12,875	17,615	4,770	3,110	1,000	2,125	61,495.
Dumont Laboratories	10,000	10,000	(500 watt) 38,850	26,385	4,770	4,254	1,000	2,125	(500 watt) 97,384.
Federal Telecommunications Laboratories	10,000	10,000	6,000 watt only	22,290	3,610	3,110	1,000	2,125	(Less Xmtr.) 52,135.
General Electric	10,000	10,000	5,000 watt only	22,535	9,400	4,747	1,000	2,125	(Less Xmtr.) 49,807.
Kay Laboratories	10,000	10,000	(100 watt) 7,010	15,080	3,990	3,620	1,000	2,125	(100-watt Xmtr.) 52,825.
RCA	10,000	10,000	Prices not listed	22,780	9,500	5,105	1,000	2,125	(Less Xmtr.) 60,510.
Sarkes Tarzian, Inc	10,000	10,000	12,225	18,540	7,390	3,925	1,000	2,125	65,205.

Initial cost less installation charges and taxes.

Those figures are quite different from the figures that have been talked about heretofore. We have listed proposals by eight different manufacturers, all of them, I think, well known to you.

I would like at this point—because I think this is a very great point to establish, that hometowns can afford television—I would like to introduce at this point Mr. Benjamin Adler, who has himself constructed 15 television stations and is certainly an expert who can tell you the facts you want to know about how much it costs to build these stations.

The CHAIRMAN. Go ahead, Mr. Adler.

STATEMENT OF BENJAMIN ADLER, PRESIDENT OF ADLER ELECTRONICS, INC., NEW ROCHELLE, N. Y., FOR THE COMMITTEE FOR HOMETOWN TELEVISION, INC.

Mr. ADLER. Mr. Chairman, I have a short statement here which I would like to read. My name is Benjamin Adler, president of Adler Electronics, Inc., manufacturers of transmission equipment for TV broadcasting stations. I hold the degree of electrical engineer and am licensed as a professional engineer in the State of New York. I have been associated in various degrees with TV broadcast engineering and construction since 1928 and have been personally responsible for the design construction of 15 TV stations in the United States during the past 5 years.

A number of these stations have been in smaller cities. Some of them, of course, have been in larger cities. Many of the cities have been in about the same category as Bridgeport insofar as population to be served is concerned. Some of the stations have been UHF; some have been VHF. They have been divided.

During this period our organization has specialized in facilities for low-cost construction and operation of TV stations. We recognize right from the start that as we were getting into the smaller cities, it was quite difficult to justify the large expenditures that were necessary in order to establish television broadcasting stations, and we started some time back attempting to cut costs and cut corners in order to arrive at economical prices.

It was very difficult to cut them very far because of FCC rules that prevailed at that time. Since then, the Commission has authorized a new set of rules which have not gone as far as we had hoped, but they have reduced the requirements to a point where you can operate with a 100-watt transmitter, provided you do maintain the coverage requirements for covering city limits, grade A and grade B service. It doesn't help us very much as far as reducing costs are concerned, but I do have some figures here, and I would like to go into them.

Reduced costs have been achieved through the combining of aural and visual transmitters into a single transmitter, the elimination of diplexers and vestigial sideband filters, the application of vidicon cameras for both live and film pickup, and the introduction of other mechanical and electrical design features to make equipment simpler and more compact, easier to manufacture, install, maintain, and operate. All this has been accomplished without degradation of performance and reliability.

A transmitter power of 100 to 200 watts has in most cases been found to be sufficient with inexpensive tower and low grain antenna to adequately cover a radius of 5 to 10 miles. I say in most cases; there have not yet been very many stations of that power built, but there have been a sufficient number built to justify the statement that I have made. A suitable hill for the antenna and a higher tower will easily double this range, without increasing the power of the transmitter or spending very much more money.

Simplified operational layout—that is, of the facilities within the building—with facilities for film, network, off-air pickup, and local studio origination has been devised to reduce the operating crew to 1, 2, or 3 people, depending upon the elaborateness of the live show being produced. For program material other than live, one man is sufficient. This has been made possible through the use of a combination audiovideo control console equipped with remote film start-stop and slide-advance facilities.

What we have tried to do here is to pattern the operating requirements of a small TV station after a small local AM radio station where one man does everything. We have been quite successful in doing so for certain types of programs.

Facilities incorporating such features have just recently been placed into operation in Juneau, Alaska, for KINY–TV where a population of 10,000 is being served on channel 8. The equipment used at KINY–TV and costs are shown in the attached schedule A.

SCHEDULE A

Equipment for typical low power TV broadcasting station

Item	Quantity	Description	Price
1	1	VST-150 VHF transmitter, 150 watts, specify VHF channel, including 1 set of operating tubes and crystals	$6,450.00
1A	1	Substitute for item 1 if station is to be UHF: UST-150 UHF transmitter, 150 watts, specify UHF channel, including 1 set of operating tubes and crystals, at $11,370	
2	1	AV12-DM demodulator, VHF. Add $10 for UHF channel, specify channel. Requires 7-inch rack space	275.00
3	2	Design 614 CBVM Bell-Howell 16 millimeters TV projectors, includes pedestal and remote operation facility, at $1,995	3,990.00
4	1	Gray Telojector, 2 by 2 slide projector	695.00
4A	1	Optional substitute for item 4, Selectro-Slide Jr., 2 by 2 slide projector, with 7-inch lens, Spindler & Sauppe, at $297	
5	1	VA-19 video clamp amplifier	185.00
6	1	2,200 TIC synchronizing generator, for rack mounting, including PS-12C regulated power supply and PS-14 bias power supply. Includes built-in linearity pattern generator. Requires 38½-inch rack space	2,650.00
6A	1	410-A synchronizing generator, for rack mounting binary counter type, includes built-in power supply. Requires 10½-inch rack space, at $1,850	
6B	1	Optional substitute for item 6, 400-B synchronizing generator, portable type, complete, at $1,500	
7	1	VSTA-4 VHF vee antenna, 4 stacked elements, omnidirectional, 5 decibel power gain, specify VHF channel	1,900.00

Equipment for typical low power TV broadcasting station—Continued

Item	Quantity	Description	Price
7A	1	Substitute for item 7 if station is to be UHF: USTA-8 UHF antenna, 8 stacked elements, omnidirectional, 9 decibel power gain, specify UHF channel, at $3,500	----------
8	2	300-D Vidicon camera chains, portable, per tabular listing I, at $4,600	$9,200.00
8A	2	Optional substitute for item 8, 300-D Vidicon camera chains, studio type, per tabular listing II, at $4,900	----------
9	1	A-069-3 film camera lens, 3-inch, F/2.5	88.00
10	1	A-069-1 live camera lens, 1-inch, F/1.5	98.00
10A	--------	Optional additional lenses: A-069-2 camera lens, ½-inch, F/1.5 at $99 A-069-4 camera lens, 2-inch, F/1.9 at $88	---------- ----------
11	1	B-052-1 interconnecting cable, pulse, 1 required per camera chain in excess of 10	60.00
12	1	C-077-1 optical multiplexer, complete with stand and single field lens	245.00
13	1	C-080 film camera mounting pedestal	120.00
14	1	Gray Telojector mounting pedestal	195.00
14A	1	Optional substitute for item 14, slide projector mounting pedestal for item 4A consisting of C-0922 base, C-022 pedestal, and B-541 adapter plate, at $100	----------
15	1	AVC-1 audio-video operating console providing audio, video, and projection switching control, with facilities for handling 4 audio and 4 video inputs with monitor and preview switching, and remote control of 2 film projectors and 2 slide projectors; includes CP-11, CP-14, and CP-15 panels, CH-2B console and audio amplifiers (2 preamps, 1 program amplifier and 1 monitor amplifier)	2,100.00
15A	1	Video mixing option: Add video fade and lap dissolve facilities, includes conversion of CP-15 to CP-15A by addition of switch row and fader mechanism, 2 VA-18 modular amplifiers for mixing and RA-8 rack mounting chassis (installed in AVC-1 at factory if ordered with AVC-1, otherwise available as a field modification kit), at $330	----------
15B	1	TT-14B 3-speed 12-inch transcription turntable with cabinet, 106SP tone arm, 2 reluctance cartridges and diamond stylii, 602B equalizer, complete	350.00
15C	1	Audio preamplifier option: Add preamplifier (5116) and tray (5106) to AVC-1 console for converting high-level input to low-level input; includes operating tubes (installed in AVC-1 at factory if ordered with AVC-1, otherwise supplied as field kit), at $109	----------
16	1	M16A master monitor	2,150.00
17	2	PS-12C regulated power supplies for M16A and audio-video amplifiers, requires 10½ inches rack space, at $280	560.00
18	1	CH-3A console housing with sliders, blower and filter; for M16A mater monitor	370.00
19	1	CH-2A console housing, flat top, for portable Vidicon camera controls and power supplies	160.00
20	1	Relay kit for remote control of slide projector, item 4A, at $30	----------
21	1	PS-13 low-voltage power supply, 24-volt direct current, 5 amperes, requires 7 inches rack space	235.00
22	2	K-56 Setchell-Carlson 17-inch picture monitors (camera monitors), at $199	398.00
23	1	K-568 Setchell-Carlson 17-inch picture and sound monitor (announce monitor)	214.00
24	2	R-1 racks, with rear doors	184.00
25	1	A-072-1 camera tripod and friction head, heavy duty	150.00
26	1	B-030-1 3-wheel dolly	45.00
27	1	Senior Colortran lighting kit, code KSR	265.00
28	1	TA-3 plug-in meter for checking power supplies and calibrating M16A master monitor	60.00
29	2	SP-2 side panels for operating console lineup, left and right, at $5	10.00
30	2	SP-1 side panels for R-1 rack, left and right, at $14	28.00
31	1	Hewlett-Packard model 335E TV station monitor, aural modulation, and aural/visual carrier frequency monitor	2,050.00
32	1	AV12 rebroadcast receiver, VHF. Add $10 for UHF channel, specify channel	225.00
33	2	635 EV microphone dynamic, omnidirectional, at $41.40	82.80
33A	2	420 EV desk stand for microphone, at $12	24.00
34	--------	Towers, on application	----------
35	--------	Transmission line, on application	----------
36	--------	Other accessories, on application	----------
		Total	35,811.80

TABULAR LISTING I

Portable broadcast equipment, single camera chain

Item	Quantity	Description
1	1	300-D camera, complete with electronic viewfinder, 3 lens turret, 6326 vidicon and all tubes.
2	1	700-D camera control, 3-inch waveform monitor.
3	1	800-A regulated power supply.
4	1	B-051-1 camera cable, 50 feet.
5	1	A-150-1 pulse terminating plug.
6	1	A-073-1 UG 260/U connector.
7	1	C-027-1 light shield.
8	1	A-357 power cord assembly.
9	1	B-249 cable assembly.
10	1	A-073-3 75-ohm termination.
11	1	A-247-1 pulse cable connector.
12	1	A-080-5 vided cable 4 feet.
13	1	300-D instruction manual (IM-300-D) and Warranty Card.
14	1	800-A instruction manual (IM-810-A) and Warranty Card.

TABULAR LISTING II

Studio broadcast equipment, single camera chain

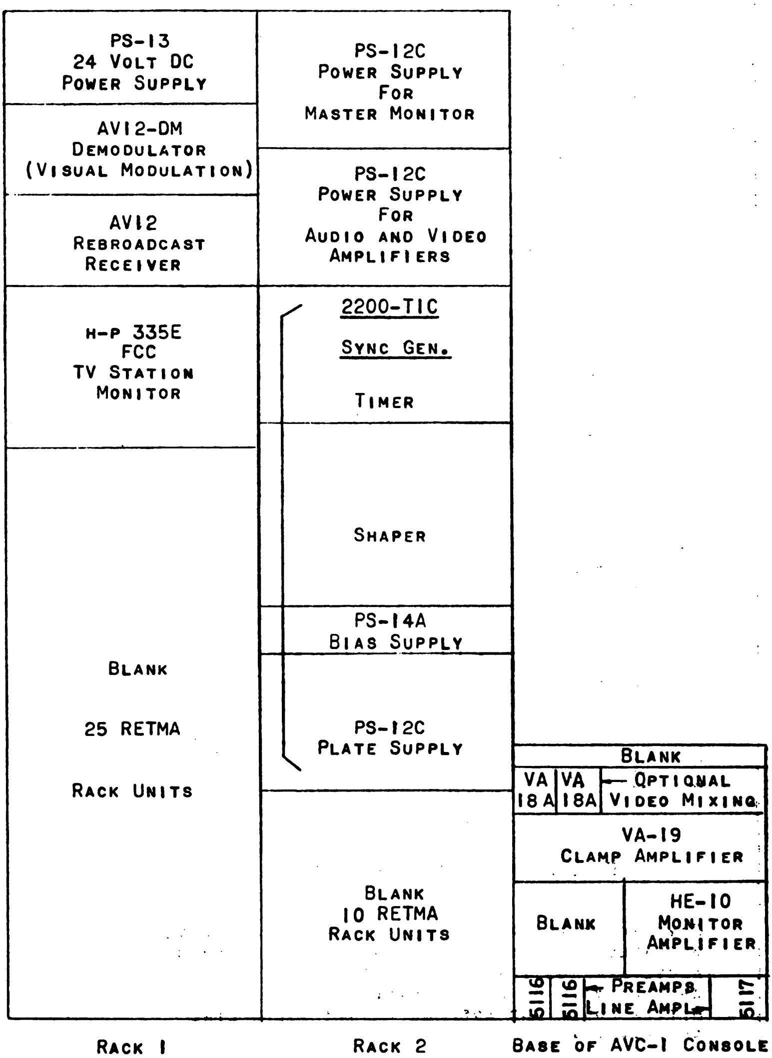
Item	Qty.	Description
1	1	300-D camera, complete with electronic viewfinder, 3 lens turret, 6326 Vidicon and all tubes.
2	1	710-A camera control console unit, complete with 10-inch picture monitor, 3-inch waveform monitor and electronically regulated power supply for camera, in console housing 13¼ inches wide by 36 inches deep.
3	1	B-051-1 50 feet camera cable (camera to camera control) complete with connectors.
4	1	A-150-1 pulse terminating plug.
5	1	A-073-1 UG 260/U connector.
6	1	C-027-1 light shield.
7	1	A-357 power cord assembly.
8	1	B-249 cable assembly.
9	1	A-187-1 AC cord.
10	1	A-073-3 75-ohm termination.
11	1	300-D-710-A instruction manual (IM-300D) and warranty card.
12	1	600-A instruction manual (IM-600A) and warranty card.
13	1	810-A instruction manual (IM-810A) and warranty card.
14	1	A-247-1 pulse cable connector.
15	1	A-080-5 video cable, 4 feet.

There is also shown a block diagram of the terminal facilities, an approximate floor plan layout and calculated distances to grade A and B contours on UHF and VHF for various antenna heights.

The curves shown do not apply to the KINY installation because obviously that is on VHF and UHF does not apply; but it was added to this exhibit as a matter of interest to show what can be done with a small, low-powered station.

DATE - 1 Nov. 1955

AUXILIARY EQUIPMENT LAYOUT PER SCHEDULE A

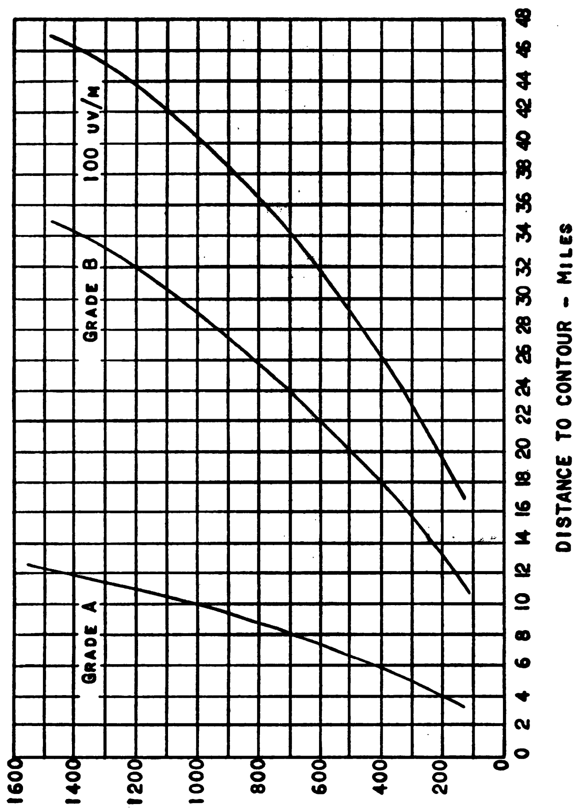


Scale 3/16" = 1 RETMA Rack Mounting Unit

REFERENCE: 5254

ADLER ELECTRONICS, INC.
New Rochelle, New York

DATE - 1 Nov. 1955 CHANNELS 2-6 COVERAGE WITH 250 WATTS ERP



ELEVATION

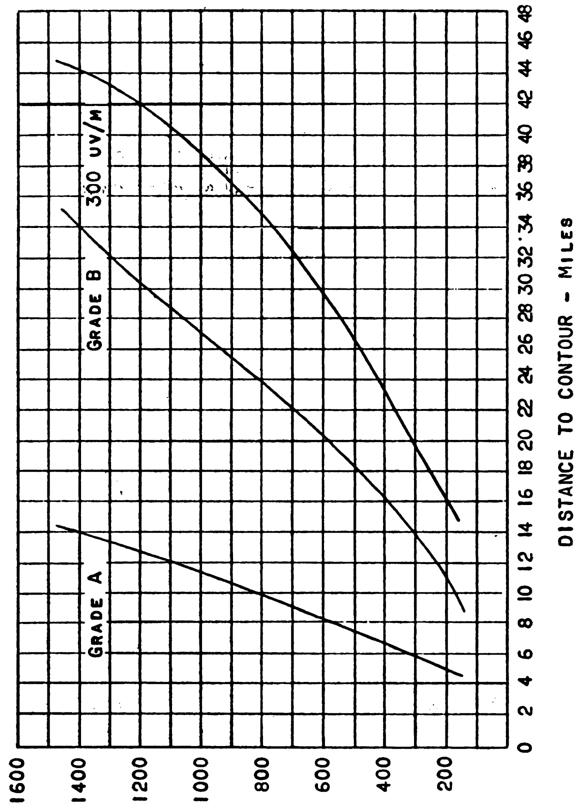
FEET ABOVE AVERAGE TERRAIN

COVERAGE OBTAINABLE WITH 250 WATTS EFFECTIVE RADIATED POWER AT INDICATED ANTENNA HEIGHTS ABOVE AVERAGE TERRAIN. ATTAINABLE WITH ANTENNA GAIN OF 2, 150 WATTS PEAK TRANSMITTER POWER AND AVERAGE TRANSMISSION LINE EFFICIENCY.

REFERENCE: 5254

ADLER ELECTRONICS, INC.
NEW ROCHELLE, NEW YORK

DATE - 1 Nov. 1955 CHANNELS 7-13 COVERAGE WITH 500 WATTS ERP



ELEVATION

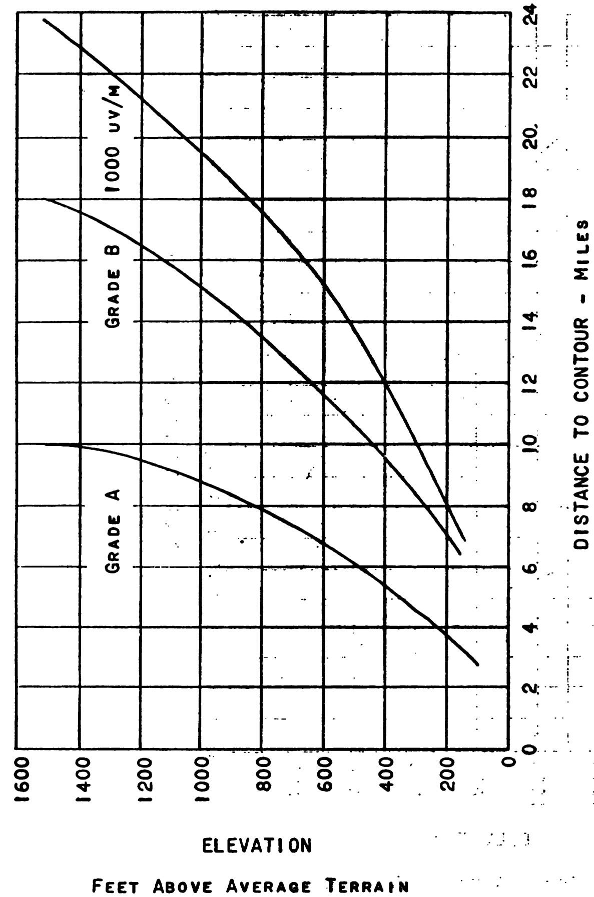
FEET ABOVE AVERAGE TERRAIN

COVERAGE OBTAINABLE WITH 500 WATTS EFFECTIVE RADIATED POWER AT INDICATED ANTENNA HEIGHTS ABOVE AVERAGE TERRAIN. ATTAINABLE WITH ANTENNA GAIN OF 4, 150 WATTS PEAK TRANSMITTER POWER AND AVERAGE TRANSMISSION LINE EFFICIENCY.

REFERENCE: 5254

ADLER ELECTRONICS, INC.
NEW ROCHELLE, NEW YORK

DATE - 1 Nov. 1955 CHANNELS 14-83 COVERAGE WITH 750 WATTS ERP

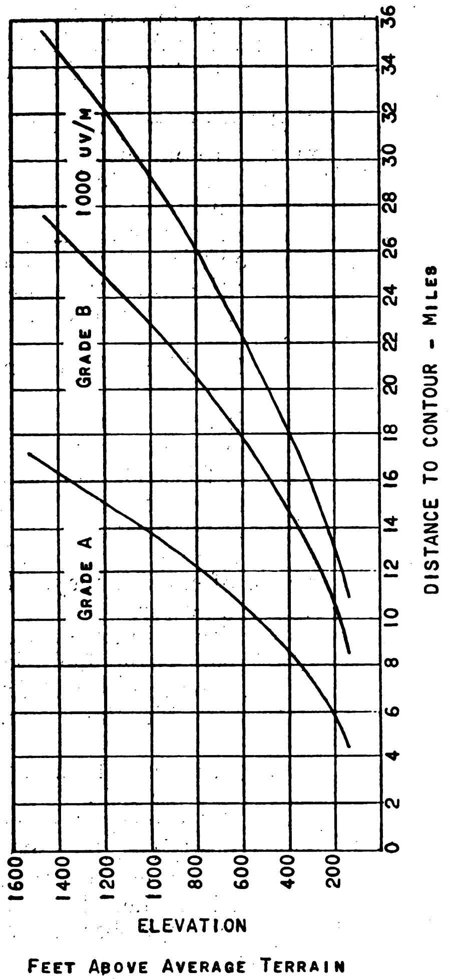


COVERAGE OBTAINABLE WITH 750 WATTS EFFECTIVE RADIATED POWER AT INDICATED ANTENNA HEIGHTS ABOVE AVERAGE TERRAIN.

REFERENCE: 5254

ADLER ELECTRONICS, INC.
NEW ROCHELLE, NEW YORK

DATE - 1 Nov. 1955 CHANNELS 14-83 COVERAGE WITH 5000 WATTS ERP



COVERAGE OBTAINABLE WITH 5000 WATTS EFFECTIVE RADIATED POWER AT INDICATED ANTENNA HEIGHTS ABOVE AVERAGE TERRAIN. ATTAINABLE WITH 150 WATT TRANSMITTER AND DIRECTIONAL ANTENNA, GAIN OF 50 IN MAXIMUM DIRECTION. HORIZONTAL RADIATION PATTERN 50° WIDE AT HALF-POWER POINTS.

REFERENCE: 5254

ADLER ELECTRONICS, INC.
NEW ROCHELLE, NEW YORK

To the equipment list shown totaling $35,811.80 there should be added the cost of a building and land or space in an existing building, a tower, transmission line, shipping and installation costs, furnishings and fixtures. These extra costs might be as low as $5,000, for a situation where TV is being added to an existing AM radio station; or as much as $30,000 to $100,000 where a new building and tower are being constructed for this purpose.

We recognize that you can lay out television programing and operating facilities for as much money as you want to put into it. The big trick is to keep the cost down. That is why I indicate here that it may go as high as $100,000, and I must truthfully say it may even go higher than that if you are not careful in planning and laying it out.

The CHAIRMAN. Are these prices the same on U's as they are on V's?

Mr. ADLER. The U is somewhat higher for the transmitter and the antenna only. All the rest of the equipment is the same. UHF is still somewhat higher for the same power.

Senator PURTELL. When you say "somewhat higher," percentagewise, what would that be?

Mr. ADLER. A case in point is the transmitter we offer. We have a VHF transmitter that sells for $6,450, the transmitter itself, 150 watts. The same power on UHF is about $11,000. That is the transmitter only, and you can see the transmitter represents about a third of the total outlay. The rest of it is approximately the same.

It so happens that on UHF it is a lot easier to get more gain in the transmitting antenna without spending a lot of extra money. In doing so, of course, we get more effective radiated power.

The information and data presented herewith is in support of my testimony to the effect that smalltown TV broadcasting facilities can be established with equipment readily available on the market for this purpose at costs that are, in my estimation, within the economical limitations of such operation.

The CHAIRMAN. This would apply, you say, to what Mr. Merryman discussed as a drop-in?

Mr. ADLER. It could be used as a drop-in. The particular instance that Mr. Merryman explained in his chart used, I believe, 20 kilowatts of effective radiated power. There are many places in the country where this type of station could be dropped in where lower power could be used and still obtain the 10-mile coverage, because of the wider separation between the existing stations.

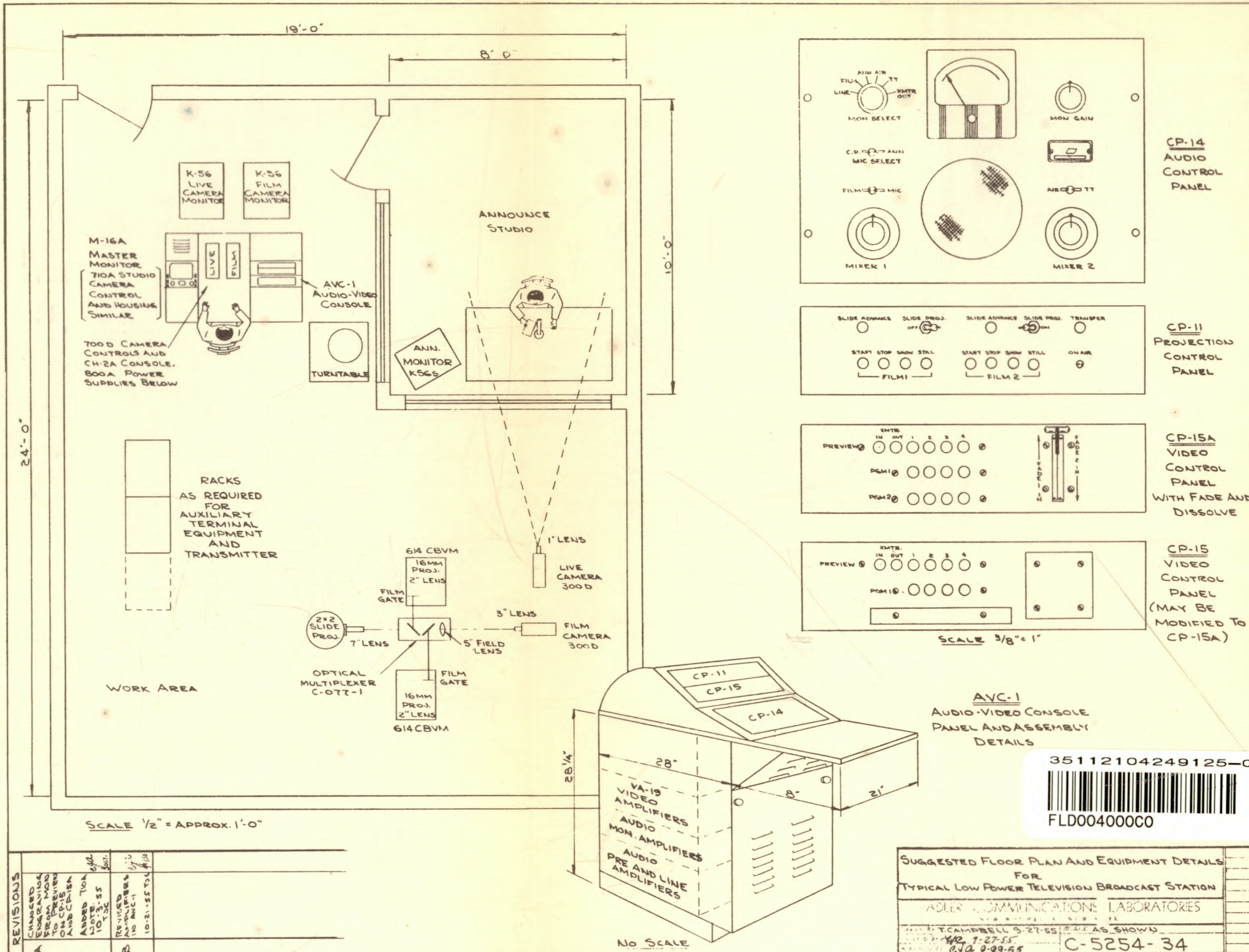
It is difficult to lay down a definite formula about the amount of coverage that you could get from a drop-in because of the spacing between existing stations in the flesh actually operating. Those allocated to the area are not spaced uniformly throughout the country.

The CHAIRMAN. It could be used probably more successfully in the western areas; could it not?

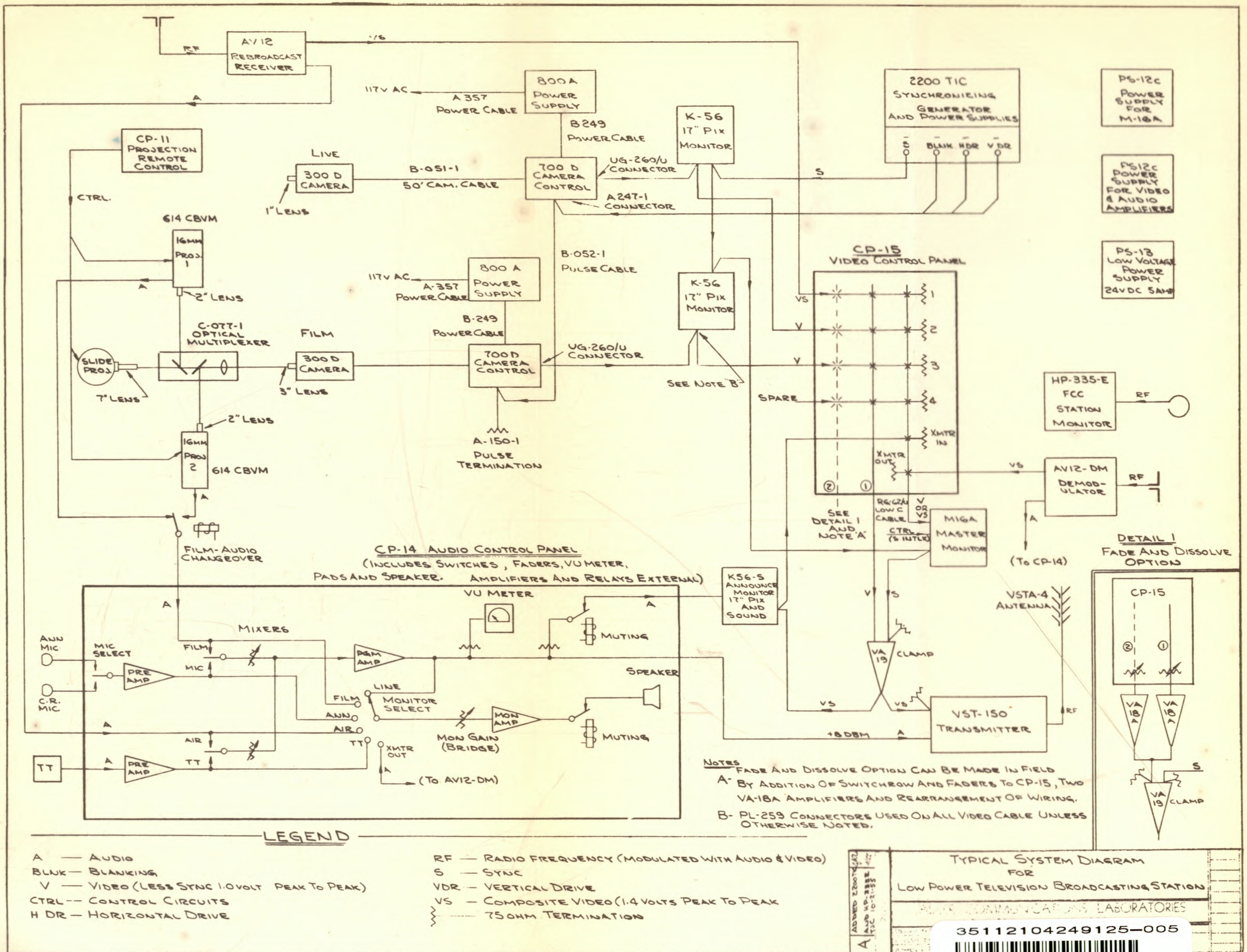
Mr. ADLER. That is probably true, where you do not have the overlap and where the existing VHF stations are not crowded as closely together.

Senator PURTELL. While it is economical in the light of what we know about stations of higher power and cost, still you have the problem, have you not, of profitable markets in which these may be located?

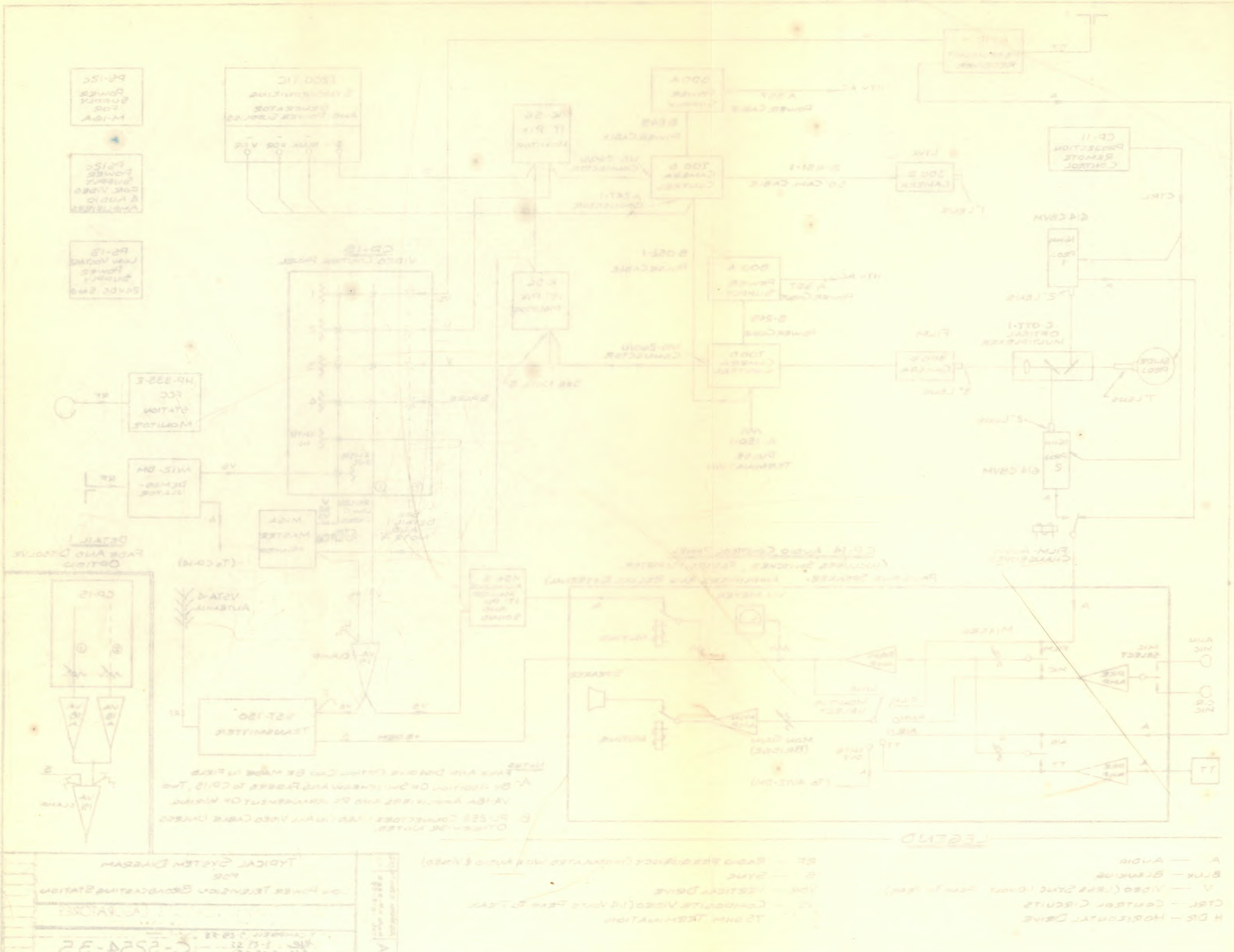
Mr. ADLER. That is a point that is a little beyond my capabilities and experience. I believe Mr. Merryman can answer that question a



75589 O-56 Pt. 2 (Face p. 480) No. 1



75589 O-56 Pt. 2 (Face p. 480) No. 2



little bit better because he, I think, has made a study of how big or small a market you need to produce the revenue required to support this type of station.

Senator PURTELL. I think it is an important question.

The CHAIRMAN. But as the costs come down with capital outlay, you can have the station in a smaller market, naturally.

Mr. ADLER. That is true.

The CHAIRMAN. It is like a newspaper and its market.

Mr. ADLER. That is exactly right. We have paid particular attention to attempting to bring the cost of operation down in relation to the initial costs, because that has been the thing that has broken the backs of a lot of stations that have not been able to develop enough of an audience to justify their existence.

Mr. MERRYMAN. When you operate at these small-town levels, you must necessarily do as the chairman says newspapers have done—tailor your operation to meet the economic ability of the community to support the operation. It is my opinion that the costs stated here by Mr. Adler can, in certain areas of the country, provide support for this type of station in a community of not more than 2,500 at its base.

Senator PURTELL. 2,500?

Mr. MERRYMAN. Population. That is assuming, of course, it is located in an area of high density, rural population around this small town. In the West where the rural population is less dense, the size of the basic community would have to be larger.

The CHAIRMAN. Does the Commission require so many hours on the air?

Mr. MERRYMAN. A minimum of 28 per week, I believe.

Mr. DOERFER. I think that there is some rulemaking under consideration to vary that.

The CHAIRMAN. But it could be made flexible, couldn't it? Supposing the cost of operating one of these stations is too great, say, for a 15-hour telecast. Even if they were only on the air for an 8-hour period, it would still be better than not being on at all—a one-shift operation I am thinking of.

Senator PURTELL. But this proposal fits in with another picture that you have been painting, Mr. Merryman. That is, not where they have no available television now, but in areas where they do have available television. Isn't that correct—drop-in stations?

Mr. MERRYMAN. Yes.

Senator PURTELL. So you really have an economic problem there.

The CHAIRMAN. Or both.

Senator PURTELL. You have both. But I think you just can't blind your eyes to one.

The CHAIRMAN. This could be done in small communities that do not have other stations. It could also be done in what you call the drop-in situation.

Mr. MERRYMAN. That is right.

Senator PURTELL. Where it would afford television in the areas where no television is presently available—of course that is one situation. Now you have got another situation, where you are fitting this to the area where there is television coverage, but you want to use it as a drop-in station. I think your economic problem there is one that will give you a great deal more trouble than it would in an area where there is no present coverage at all.

Mr. MERRYMAN. Senator, I agree that the logic would seem that way. But the important fact is that the local stations would generate such a great percentage of loyalty among the local people, that that problem, in my opinion, has been greatly exaggerated.

Senator PURTELL. It may well be. I don't know. However, I do think that it is something that should be further explored. I think perhaps you agree with me.

Mr. MERRYMAN. We have explored it in Bridgeport. And we are quite ready to operate both a UHF station and a VHF station.

Senator PURTELL. You have a large market area there. I wasn't thinking of that so much as I was in other areas where the market range is substantially less.

The CHAIRMAN. But there is a great deal of difference, I think, if this is possible. I can think of communities out in my area, that are isolated by mountains and otherwise, of from 10,000 to 20,000 people. Anyone might be willing to take a capital risk on serving that area, as a local station, if his investment was $100,000 or under, rather than if he had to make the investment that is now made in a regular television station.

Further, he would have a better chance, too, because those areas now are looking toward the idea that they might be served by cable, or by other means, which costs more and is practically subscription television. That is what it amounts to.

Mr. MERRYMAN. Senator, are those communities you are speaking of supporting radio stations or newspapers?

The CHAIRMAN. Yes.

Mr. COX. That is what I wanted to ask, Mr. Merryman. Could you or Mr. Adler give us some idea of what would be the comparison between these reduced costs of construction of a television station he has been discussing, and the present costs for constructing a radio station for one of these small markets—just roughly?

Mr. MERRYMAN. Roughly I would say about a third, wouldn't you, Ben?

Mr. ADLER. I would think so, for the initial cost. But you will probably find that using some of the new practices that have been adopted, the operating cost would not differ greatly, except for the cost of films and other programs.

The CHAIRMAN. Of course that is a big cost. But if it is a small radio station, some of the costs could be eliminated. They may have a little building and they may have a lot of the stuff around that would have to go into either radio or television, or both.

Mr. COX. That leads to the next question—in your opinion, if a radio station costing roughly a third as much to build is able to operate in a community of this size and make a profit, do you think that the greater advantages of television as an advertising medium and so on would enable an operator to get proportionately higher returns for his investment in television so that he could expect to make a profit and get a return on this greater investment?

Mr. MERRYMAN. Mr. Cox, let me say first of all that the original capital I don't believe is the important thing. After all, the interest on $60,000 a year is not an awful lot of money, and that is what your capital would cost you. Let's say 6 percent on $60,000 a year. That is the cost of your capital, provided you can find the people who are willing to invest their money in this.

What really is important is what does it cost you to operate this facility? I can corroborate Mr. Adler's statements that we have of necessity been forced to this type of operation in Bridgeport, and that for more than a year now our television station has had two full-time employees. We have the services of an announcer who works on the AM station, who comes in and takes the announcements that have to be made during the operating period. We have the services of a secretary or a clerk, who prepares the program schedules daily that are set up by the station. Aside from that, we have operated this station with two full-time employees. We do put on local programs. We do on occasions go out with cameras and film local scenes and bring them back to the television station and put them on.

As a matter of fact, we have actually got into the film-production business. We found that we can produce, particularly for the churches, a 15-minute film program at so much of a reduced cost over what they would have to pay with other film producers, that they can afford to prepare these film programs and use them on television stations in other areas.

The CHAIRMAN. In other words, what you say is that it is possible with new equipment—and I suppose it might even get better as we move along; we always progress—that the high cost of running a TV station, particularly for small coverage, a small operation, can be cut down considerably.

Mr. ADLER. There is no doubt about that.

Senator PURTELL. I was not finding fault, of course, with your statement. It is most intriguing—very interesting. However, isn't your coverage—I am talking about continuing costs—for a radio station, substantially greater than it would be for your TV station?

Mr. MERRYMAN. That is not important, Senator.

Senator PURTELL. Isn't it as far as market goes?

Mr. MERRYMAN. If you cover the retail trading area of your market, you serve the needs of the people in there. The coverage you get outside your retail areas is of very little importance to you. It does make a difference to networks. It does make a difference to people who buy spot advertising on a nationwide basis directly with the stations. But to your local merchant, so long as you are serving the retail trading area—and that is where your big revenue comes from—if you can meet the needs of the local merchant, that is all you need. It doesn't matter if you have X miles out beyond the area that your local merchant wants to draw trade from, or to serve the needs of the people in the community that need the service of television for that community.

Senator PASTORE. If that is the case, Mr. Merryman—and I regret I couldn't hear your statement because I had to attend another meeting; that is one of the problems we have around here of trying to be in two places at once—if what you say is true, then why it there so much pressure on the part of the station to ask for more and more power?

Mr. MERRYMAN. I think they are greedy, Senator. This national business—except for the network business which is relatively unprofitable to an independently-owned station—the national business is quite a bit more profitable than local business. You don't have to service the national business as much as you do the local merchant, and you generally sell the national business at higher rates. So your cost for putting it on the station is lower and you get more money for it. As I said, if you expand the service area of the station, you can convince the chainstore that wants to service all the stores that he owns in a particular area by one buy—naturally it is attractive to him.

The CHAIRMAN. Mr. Merryman, you mentioned simultaneously televising both VHF and UHF; if you put the two of them together, does that cost extra? I don't know the details of that.

Mr. MERRYMAN. It would cost more, Senator. We have either got to do it, or go under.

The CHAIRMAN. So the record will be straight, by that you mean the same program going out on both UHF and VHF?

Mr. MERRYMAN. That is right.

The CHAIRMAN. The studio setup would be the same, would it not?

Mr. MERRYMAN. That is right.

The CHAIRMAN. Would you have two different cameras?

Mr. MERRYMAN. You would have 2 different transmitters—1 for VHF.

The CHAIRMAN. Two transmitters?

Mr. MERRYMAN. That is right.

The CHAIRMAN. The program is the same until it gets up to the transmitters, and then one puts out the U signal of that program and the other the V signal.

Mr. ADLER. You could use a common tower which is quite satisfactory. You have to have separate antennas, separate transmission lines going up to the tower.

Mr. MERRYMAN. But you see, this adds capital cost to the station but it doesn't add operating cost, except for the power you use in the transmitter and the cost of keeping the transmitter in operating condition.

Senator PURTELL. This opens up another avenue of thought: If you were doing this simultaneously in a trading area—let's take in Bridgeport, for instance, where you tell us there is only 10 percent conversion—if simultaneous broadcasts were made both on ultra high and very high, would there not be reluctance to spend the money to make a conversion? Or do you think, however, that this would be a normal result of a desire to get newer sets in the course of time? Is that what you are thinking of?

Mr. MERRYMAN. Senator, you get down to that problem, and it is a problem that I have pondered long. As the chairman has said over and over again, what you finally get back to in this whole question is the all-channel receiver. What we are talking about is a competitive problem. When we say "monopoly," what we mean is that the Commission has allowed the big stations wide coverage so that they have covered the small communities. Then when you try to come in there with a UHF, which is the only thing available to you, you can't compete. Far from our asking for restrictions on competition, we are asking that restrictions on competition be lifted.

It is our hope that in this whole thing we can give the manufacturer sufficient incentive so that it will be to the manufacturer's interest to manufacture all-channel receivers.

Mr. Cox. I don't see how you have accomplished that in what you are discussing so far, Mr. Merryman. You are taking your station, for instance, and converting it to a V. There will be no incentive for the consumer, the viewer, to buy an all-channel set.

Mr. MERRYMAN. Exactly, and the problem is whether we can create sufficient predominantly UHF areas so that a sufficient percentage of the production of the manufacturer will make it profitable for him to shut down his VHF-only production lines, and manufacture nothing but all-UHF receivers. At that point—and that is why I say normal replacements—at that point every receiver that came into Bridgeport would be an all-channel receiver.

Mr. Cox. Then to do that, wouldn't it be true you would have to limit the use of drop-in V's to those areas which were already predominantly V, so that in effect you deintermix them to all-VHF, and require that a local station of this sort in the West should be on a U channel, even though there might be an available V channel there?

Mr. MERRYMAN. The first question, where there is a predominantly VHF area, you have to drop in a V. Where the area is predominantly U—and I don't mean by that all-U; I think you can have 1, and in some cases 2 VHF stations operating in the same community with UHF stations, and at the same time come out on top with a UHF operation. But if you were going to drop in additional stations in that community, you would drop in U's. You would not put in more V's which would retard this business of setting up an incentive for the manufacturer to manufacture all-channel receivers.

Senator PURTELL. May I pursue that a bit? I think maybe I have overlooked something in my questions to you. That may be what you intended to convey; it is not as clear as it might be. Am I correct in thinking that what you had in mind, if you had VHF and UHF simultaneously broadcast out of your local station, that you would then create a desire on the part of the listeners—because of the attractiveness of your local programs and the interest in your local things—to switch over to ultrahigh? Is that what you have in mind?

Mr. MERRYMAN. That is right. You heard these people here this morning. These are community leaders. They understand what the problems of the community are. They know what a local television station means to them. These people will spend the money to get our local channel—even though one of them said that she didn't spend the money, even as important as she thought it was.

How are we going to convince all the people in the Bridgeport area that we can give them a television service that will in most respects be much better than the service they are getting out of New York? You have got to prove it to them, and if you never have a chance to prove it to them, you just can't sell it.

Mr. Cox. Isn't this true, Mr. Merryman: The only incentive to the man in Bridgeport if he becomes interested in your program—that is, you are given a drop-in V for 5 years or some alternative period and you can operate simultaneously so he can get your program on a V—but he is put on public notice, as I get it, that at the end of 5 years, if he wants to continue to get your programs, he must at that time have an all-channel set.

Mr. MERRYMAN. No, sir. When 85 percent of the sets in the area can receive the UHF station, we are perfectly willing to go back to the U.

Mr. Cox. Yes; but throughout this period, as far as the first 5 years are concerned, he can get your programs. He can turn off the New York stations and get your programs on VHF.

Mr. MERRYMAN. That is right. I do not argue with you for a second that we are specifically in Bridgeport providing the incentive to purchase the all-channel receiver.

Mr. Cox. Except that, as I understand it, at the end of 5 years, with or without conversion under your proposal, you would go back to the U?

Mr. MERRYMAN. No, sir. If we get 85 percent before 5 years.

Senator PASTORE. But that is the question. I do not follow that. What inducement is there going to be to a person who has a V set to change or convert to a U, or go out and buy a U, if he can get your program on a V? I do not follow that. Someone will have to explain that to me.

I see your point. If tomorrow we could invent some gimmick whereby every set in this country now in existence, or every new set, would become an all-channel set, I don't think we would have very much of a problem. But the question is: How do you do this?

Mr. MERRYMAN. I understand your difficulty, Senator, and it is something that has given me a lot of difficulty, too.

Senator PASTORE. It isn't a difficulty with me, as much as it is understanding the point you are trying to make.

Mr. Cox. Isn't this what you said, Mr. Merryman? The VHF channel would be authorized for use by a VHF permitee or licensee, which is yourself, only until the expiration of 2 years after 85 percent or more of all receiver production is composed of all-channel receivers, or until the expiration of 5 years after the date of the grant? In other words, if in 5 years you do not get 85 percent, you are back on UHF anyway under these terms.

Mr. MERRYMAN. I am afraid there has been some text left out—that should be "whichever is longer."

Mr. Cox. It is in there. Five years is the cutoff.

The CHAIRMAN. It gives them 5 years——

Mr. Cox. I see. You say if within that time you don't have 85 percent, you go on indefinitely?

The CHAIRMAN. He goes on to explain that there later on. You are near the end of your statement here. You are getting into color now, and you are probably hopeful that at the end of 5 years everybody then will have the color set and probably it will be all-channel. What is the normal turnover—about 3½ or 4 years?

Mr. MERRYMAN. There have been so many advances made in the design of receivers that I think the normal replacement cycle is quite fast.

The CHAIRMAN. Let me ask you this—and you need not read this about color, because we have heard it.

Mr. MERRYMAN. May I, however, Mr. Chairman, on this subject of color, read you a letter and a telegram?

The CHAIRMAN. All right, but let me ask you this. We have been somewhat intrigued with the idea, as the Senator from Rhode Island pointed out, with the problem relating to sets, which is one of the real problems involved here. We do not know how we can handle it now. The manufacturers do not know how, except to take the tax off. It is most exasperating because it involves, from the best information I got from all the amnufacturers, between $8 and $12 a set in manufacturing costs at the factory on a production line. This whole problem is revolving around $10.

When it gets to the retail outlet it is a little different, but here is this small amount that is causing a great deal of this trouble. Now along comes color, and it will move just as fast, of course, as people acquire color sets. The more sets that are acquired, the more programs the networks will put on the air in color. If you have any ideas as to how we can get this little bud that is starting to bloom now and have it bloom right, then maybe in that 5-year period we might not have so many of these problems of UHF and VHF.

Senator PASTORE. Will the chairman yield at that point?

The CHAIRMAN. Yes.

Senator PASTORE. I think one of the Commissioners said that there is no guaranty that these color sets are going to be all-channel sets. That is the thing that is bothering me. We may be still with this same problem.

The CHAIRMAN. There is no guaranty, but I think maybe if we got started right here, we are getting down to the question of $8 or $10 and maybe less as we move on. There would not be much reason why a person buying a color television set, which would run X number of dollars, should not for his own protection pay that little extra amount for an all-channel set.

Mr. MERRYMAN. Senator, may I answer your question in two parts. First, I do not believe you were here yesterday when Mr. English, from Raleigh, N. H., testified.

The CHAIRMAN. I was not.

Mr. MERRYMAN. He came forth with a very novel suggestion. I do not know whether it would work or not. It would work if it were put into effect, I think. But what the legal proposition would be, I do not know.

He suggested that, instead of taking away the tax, you raise the tax on VHF-only receivers to 15 percent and reduce it to 5 percent on all-channel receivers.

The CHAIRMAN. That is not new. I suggested that to the Finance Committee as an alternative to taking the tax off altogether. But what I was thinking of was that, without changing the law, we might be able to eliminate color sets from the tax on sets. I do not know. We are exploring that idea.

But you are right. If we could do that, then the Treasury should not have too much complaint because the same amount would be coming in. But the incentive then would be to buy the other sets, and then the returns from the tax would gradually dwindle as we move up in the other. But that would be worthwhile.

I still repeat: I think if the people who run the finances of this Government knew what a little thing the tax is in comparison to the trouble this thing is causing the whole economy of this industry—what a little thing that tax amounts to, which would help clear it up—I think it would be fair to give a little.

Mr. MERRYMAN. I did some thinking about it last night, Senator, and it occurred to me that maybe you do not have to reduce the tax at all. Just raise the tax, say, 25 percent on VHF-only receivers, and very quickly you will find the manufacturers stopping the manufacture of them.

The CHAIRMAN. We could do that if we had only this problem to deal with. But when we amend a tax bill around here, we open up Pandora's box and everybody gets into the act.

That is frankly why the Finance Committee is reluctant. I think if we could take this problem all by itself we might be able to make some progress.

Mr. MERRYMAN. It was an intriguing idea. I do not have any faith in the excise tax being the solution to the problem. I think in our system of free private enterprise in this country, there might be considerable objection to that approach to the solution of the problem. What we really need to do is to provide the incentive to the manufacturer, to make it profitable for him to manufacture the all-channel receiver.

In connection with your question on color, I would like to read you a letter——

The CHAIRMAN. Or if it is not going to make too much difference to the manufacturer in the long run, since the difference is only $10 or $12, there ought to be some way we could provide the incentive so we could get these sets out.

Mr. MERRYMAN. As I said, Senator Pastore, I have pondered this problem long and diligently. Last Friday I called Dr. W. R. G. Baker, who is a vice president and general manager——

The CHAIRMAN. If you could speak a little louder, Mr. Merryman, I do not think a lot of the people in the back can hear what you are saying.

Mr. MERRYMAN. I wrote Dr. Baker, who is the vice president and general manager of the electronics division of the General Electric Co., and I think he is the chairman of the allocations committee of the Radio-Electronics-Television Manufacturers' Association. I had talked with him on the telephone Friday morning and discussed the proposition with him. As a result of discussing that with him, I sat down and wrote him this letter. It is dated February 24:

It was a pleasure to talk with you this morning on the general problem of how to provide for a wider distribution of UHF-equipped television receivers in our economy. I quite agree with you that it is unreasonable to expect manufacturers to market all-channel receivers unless there is a widespread incentive on the part of the consumer to buy the receivers and I further agree with you that the only real solution to this problem is to provide the incentive to the consumer so that the manufacturer in turn will have a market.

As I told you during our conversation we would expect that the UHF islands would provide such incentive but we also feel that this incentive would be substantially enhanced if color broadcasting were restricted to UHF. Thus, instead of saddling the public with additional billions of dollars invested in color television receivers that would not receive the UHF stations, we could insure that all color television receivers produced would be equipped for UHF. Since large-scale distribution of color receivers is only just beginning and since nearly all color receivers so far manufactured are equipped for UHF, such a plan would protect the public from an investment of doubtful value and would insure that the UHF frequencies could be restored to a useful status within at least the normal replacement cycle of the consumer.

An essential part of the success of this plan would be that the existing VHF stations be authorized a companion UHF station on which to broadcast the same programs in color that are broadcast on the VHF station in black and white. The restriction on the use of color to UHF only could be discontinued at some period in the future when there are sufficient television receivers equipped for UHF in any community to make UHF competitive with VHF.

This, of course, would work a temporary hardship on the existing VHF operations inasmuch as they would have to provide unscrambling equipment so that only the black and white portion of the color signal would go out on the VHF station, and that they would be required to simultaneously operate both UHF and VHF if they would broadcast color.

However, if UHF stations proposing a temporary VHF drop-in as a companion station are willing to undertake to broadcast on both UHF and VHF, this temporary concession in the interests of a healthy national television system is justified. The public, of course, would not lose since the receivers would receive color on either UHF or VHF.

I was pleased to have your endorsement of this proposal in view of the testimony last Tuesday of Commissioners Hyde and Webster, and of the chief engineer of the Commission, Ed Allen, that a better color picture is achieved through a UHF system than through a VHF system.

My purpose in writing you is to obtain your consent to my introducing this letter into the records of the Senate Interstate and Foreign Commerce Committee during my testimony on behalf of hometown television next Tuesday morning. I will call you some time Monday relative to this.

Late last night I received this telegram. The telegram is from Syracuse. It is addressed to me.

This will authorize you to express my general concurrence in the proposal that restricting color to UHF broadcast stations would be one way in which to give vitally needed support to the use of UHF channels. I do not understand your reference to the necessity for unscrambling equipment. I would not think this would be required as a technical matter. If you wish to express my concurrence, I request that it be done by submitting this telegram.

W. R. G. BAKER, *GE Co.*

The CHAIRMAN. Now, if you will proceed with your statement, Mr. Merryman.

Mr. MERRYMAN. Mr. Adler just tells me, with reference to the unscrambling equipment, that RCA sells a color killer filter for $25.

The CHAIRMAN. That would be in the transmitter?

Mr. MERRYMAN. That would be at the transmitter, you see. Under the compatible system, the receiver can take the black and white portion of the color picture and you get a picture.

The CHAIRMAN. I just want to ask one question. All of the color sets now, as far as we know, are being manufactured all-channel. Why would that not continue in the future?

Mr. MERRYMAN. Senator, you eventually get down to a local guy trying to sell a product to somebody who wants to buy it at the cheapest possible price. That is our system of free competition.

The CHAIRMAN. I understand that. That would come about if some manufacturer could make a set cheaper for sale, a color set, without making it all-channel. Is that not correct?

Mr. MERRYMAN. Some manufacturer who would not comply, let's say, with an expression of intent on the part of the big manufacturers and the association. Some other manufacturer sees his chance to get a big market all of a sudden by selling a cheaper color television receiver. So he forces the big manufacturers to also come out with the cheaper sets, and your UHF is then gone.

Senator PASTORE. Take New Haven, for instance. The only station in New Haven is a V station. If you followed your idea of having color go on only through U, what would the people in New Haven do?

Mr. MERRYMAN. As I said, part of this plan involves the necessity to authorize the V's to operate a companion UHF station.

Senator PASTORE. I see. In other words, in the example you have given, a station like the New Haven station would also be authorized to transmit in U?

Mr. MERRYMAN. Yes.

The CHAIRMAN. Somewhat like AM and FM in radio stations.

Mr. MERRYMAN. Yes; and may I remark here that, as I recall—and I do not recall all the circumstances specifically, because it has been a long time ago—I think the Federal Communications Commission spent years examining the proposition of what number of lines gave the best picture on television before they set the standards—the technical standards—for the picture to be produced. If, as the Commissioners and the chief engineer testified, technically you do have a better result through the UHF system, then I think that fact alone justifies the restriction of color to UHF.

The CHAIRMAN. It is getting late. If you would proceed, Mr. Merryman.

Mr. MERRYMAN. I am, happily, about through, Senator.

The CHAIRMAN. I think you can skip the color. We will put that all in the record. We talked about that quite a bit.

Mr. MERRYMAN. Still in terms of these longer perspectives, let me leave with you two final thoughts. Color television is today still in its infancy—about where VHF stood when the FCC froze it. It is possible now in the development of color television to avoid a repetition of the mistakes the FCC made with UHF. Color television belongs on the UHF band—and for the reason that an industry committed to color on UHF will work with greater energy and ingenuity and resources than any Government commission can ever summon to see to it that America is converted to the all-channel receiver.

Finally, I would like to repeat something I said earlier: I am the operator of a UHF station in a VHF area. I have lost money every month since we began operations back in 1953. For 2 years now we have existed on the hope that the Federal Communications Commission would do something about their rules and their engineering standards to give us some relief so we could compete.

We are still a noncompetitive system. As I said before, what I am kicking about is not that I care if the New York stations cover Bridgeport. We have licked them in radio. What I am kicking about is I canont compete with the New York stations in my own town.

I see no immediate prospect of making any money. All that keeps me in operation is the hope that something will be done to make it possible for me to compete on even terms with the VHF monopoly of the air. But hope, gentlemen, is a tender flower and my resources are very nearly at an end. I am quite sure in my own mind that unless there comes from these hearings some positive mandate to the FCC, my hope and my resources will give out very quickly. The only justification for pouring money down a rathole is the expectation that someday I will get it back. If I canont see how it will ever come back, I must close down—and I will.

I have just spoken in the first person singular—something I have tried to avoid in this testimony for hometown television. But I know, and you must also know, that my words are echoed to the last comma by very nearly every one of the 95 UHF operators still on the air. For the 75 or so stations, UHF stations, that are now losing money, I see nothing ahead but more losses, and they are going to shut down.

You have got, on the Commission's latest figures, 18 stations that are making a profit. You can't justify assigning all that vast frequency spectrum of the UHF in order to accommodate 18 stations. So the whole UHF is going down the drain.

What is needed now—by us, by the FCC, by the American public—is an affirmative statement of policy from you gentlemen—a statement of a policy which will give us what I might describe as the "business hope" to keep going until equity can catch up with us.

If I may paraphrase you, Mr. Chairman, in your statement at an earlier session of this committee, "There comes a point when you have to say 'Yes' or 'No.'" Now the point has come when somebody must tell the FCC what its policy is, what this country needs in the way of a national television system.

If no action is taken, then not only will we go under, not only will television be denied forever to America's hometowns, but we will by the sheer force of inertia be delivered into the hands of a monopoly of 3 men: The presidents of the 3 networks. Such a monopoly will, we know, freeze the whole industry; freeze the art of television; freeze the TV film industry. And such a monopoly will inevitably in the public interest require the most stringent type of Government regulation, Government legislation, Government policing.

We are, in fact, at a moment of crisis in the history of communications, and our duty now is to recognize that this is a crisis; the perspective of history will make this fact plain enough. The first step toward saving hometown television must be taken in the minds of the Commissioners. They must concede that UHF and hometown television can be rescued by a series of immediate, forthright, and affirmative actions well within the scope of their own authority. This done, the vista is fine:

1. The present retreat into a stifling and dangerous monopoly will be ended.

2. The television industry will obtain better and closer coverage, better programing, more return for the advertising dollar, and—in short—more television.

3. America will get hometown television, an essential aspect of its democratic tradition.

The CHAIRMAN. Mr. Merryman, I want to thank you. That is a very interesting and very well-prepared statement. We appreciate getting your views on this matter.

Mr. MERRYMAN. Thank you, Senator.

The CHAIRMAN. I think the counsel has some questions—just a few—and then the Senator from Connecticut.

We will take a short recess.

(A short recess was taken.)

Senator PURTELL. I wonder if I might make just one observation.

Mr. Merryman, what you have pointed out here in your testimony—and I might say it was most interesting and I think most informative—you pointed out you feel what you are asking for, are you not, is an opportunity to let the hometown, the local community, see what can be done with a television station operating so that at least more than 85 percent of the people will have that opportunity of judging that program? Is that it?

Mr. MERRYMAN. Well, Senator, that is right. But I might say that I have no doubt about the outcome. Give us the opportunity to compete. We know what the result will be.

Senator PURTELL. I think your whole testimony rather pointed out the fact that if the hometown can have the listeners there, that they would want to continue to get that hometown program.

Mr. MERRYMAN. Yes, I am sure they would. We have proved it in radio—newspapers have proved it—and I see no reason why the same philosophy wouldn't work with television.

Mr. COX. One point I would like to clear up, Mr. Merryman, for the record is this. You do not say, do you, because the map which CBS submitted, and which you have used, shows 100 markets, that those are the only areas in which CBS would contemplate that there would be television stations?

Mr. MERRYMAN. I thought I made that clear in my direct testimony, that the CBS proposal as such does not propose a restriction to those markets. What I did say was that the inevitable result of creating such a triopoly among three networks would freeze all other competition and as a practical result they would be the only stations that could survive and operate.

Mr. COX. Except that if there were V's in that large blank space in the upper Middle West and in the intermountain areas, they would presumably still be able to stay on the air because they are not in direct competition with any of the other principal markets.

Mr. MERRYMAN. That seems like a surface answer. It is one you immediately come to. But consider that this is a sterile concept; that here they are proposing that the only market for the output of television be in these 100 markets. That is, as far as the networks are concerned. So you freeze everything down the line. You kill all of the initiative of the creative thinkers in the field of programs, in the field of engineering, in the field of the television industry. You stop effectively the working of free private enterprise. In my opinion—and it is shared, I think, by a great many others—the practical operation with this sterile concept would be to freeze television at the point which we have now reached.

As I tried to point out when I was showing you the income situation as between newspapers, radio, and television, the ultimate destiny of both radio and television is where the newspapers now are. After a very full history of serving the public interests of communities throughout the land, after 34 years, radio is almost there. Television is only 10 years old. It may be another 25 years before television finally becomes fully practical as a strictly local medium. But that time is coming. It is coming inevitably if we put the machinery there for free private enterprise to operate in.

Mr. COX. That is, your feeling is that with this emphasis upon a television system designed to serve the 100 principal markets, there would be no incentive for independent film producers to go on producing programs other than those which could be absorbed by television networks, and that outside of that there would be no freedom for growth.

Mr. MERRYMAN. Exactly.

Mr. COX. As I understand it, it is your proposal that the power of existing V stations be cut back only where this is necessary to accommodate a V drop-in such as you propose on channel 6 in Bridgeport.

Mr. MERRYMAN. Let me clear that, sir. We do not propose that any VHF station reduce its power. What we are talking about in technical terms is the matter of interference. The chart is gone now, but we showed you how the drop-in station would push back the uninterfered service area of the V station.

We did this deliberately for a number of reasons. First of all, previous witnesses here have shown you that sometimes even a very strong VHF signal is inadequate, even in the market in which the TV station is located. So there is no justification for cutting back the power that the people in that hometown market—with what is now a wide-coverage VHF station—can enjoy.

Secondly, we wanted to leave their plants in such condition that when the time came that competition was restored, without any additional expense to them they would regain the service areas they lost temporarily in the interests of national policy.

Mr. COX. In other words, neither the station operating on channel 6 in Schenectady, nor the one in Philadelphia, would reduce its power. Each would simply lose some of its service area because interference would be created in a portion of that area.

Mr. MERRYMAN. According to the FCC standards. I say no one would lose service because the FCC standards do not take into account the effect of the antenna and the receiver.

Mr. COX. If you were permitted to operate in Bridgeport on channel 6, this would still leave the people in Bridgeport with the choice, if they wanted it, of tuning in the 7 stations in New York. That is true, is it not, sir?

Mr. MERRYMAN. That is true, if some other drop-in station doesn't cut back.

Mr. COX. Suppose the man in Waterbury—where there is a U station on the air—wants a channel, and the only channel available to him is one which is going to duplicate, or at least be adjacent to—as they all are—a channel in New York. Isn't there a danger that if you bring hometown television on these terms to 6 or 8 communities in Connecticut, all large enough to deserve it, that you will have created intereference which will block out the signals of those New York stations and will have reduced the choice of programing in the area?

Mr. MERRYMAN. First of all, sir, let me point out that only 7 of the channels are used in New York City, so it is not inevitable that Waterbury can find a berth only on a New York channel. However, if he could, then I think the public interest of the Waterbury population would justify cutting back the New York station, except that you don't cut it back inside its own trading area.

Mr. COX. What is the minimum separation in zone 1 for an adjacent channel?

Mr. MERRYMAN. Sixty miles.

Mr. COX. Would that permit the location of channels, spaced between those in New York, in central and western Connecticut?

Mr. MERRYMAN. I think, counsel, in view of the considerable advances that have been made in the technical considerations of the receiver, that that adjacent channel separation will also be substantially reduced. I would like you, if you would, Mr. Adler, to comment on that briefly.

Mr. ADLER. There are a lot of ramifications to the problem of channel separation. It seems that when the third order was prepared, which ultimately ended up with the sixth order and report which is now the bible of the industry, which sets forth all the rules, the separations for the various channels—that is adjacent channel and cochannel—were determined pretty much by several factors. One of the important factors was the ability of the receiver to reject an unwanted signal. We all know that receivers have improved tremendously since that original order was written. While we certainly wouldn't want to set up adjacent channels in the same town, I think there are a lot of us who firmly believe, based on measurements that have been made, that the separation of an adjacent channel could be made less than it is now—that is, the 60 miles for VHF and 55 for UHF.

To go a bit further on that matter of drop-ins and changing of separation of stations, I believe that a very important issue has been overlooked in connection with a lot of statements made about that in connection with UHF. We know now it is very difficult, even in the UHF channels, to find a drop-in UHF channel that will fall in line with FCC rules as they are now written. That is because there is a long list of what are called taboos on the location and spacing of stations.

Here again all of these spacings are based on receiver performance. Of course we know that UHF receiver performance has been pretty poor. But it is very difficult to find any of the receiver manufacturers who will admit that their receivers won't do better than the sixth order requires them to do, or states they will do. For instance, right now on UHF we can only space stations six channels apart in the same city. That all ties in with interference between IF's, sound and visual, and other stations. But the point that I want to bring out is that a lot of these so-called taboos on spacing which are now listed in the rules, certainly could be relaxed to a point of not degrading the signals to any extent whatsoever.

Some of us feel that separation between stations, for instance on VHF, 170 miles separation, is something that should probably be relaxed considerably because of directional receiving antennas. The receivers are a lot better.

Senator PASTORE. Let me ask you a question: Do you think that will straighten out the situation in the cities surrounding New York, or adjacent to New York, and still leave the seven channels in New York City?

Mr. ADLER. I haven't personally made a real study of it, but looking at other data that has been prepared by qualified people, I believe that it can be done, and leave the seven stations there; yes. Of course what will happen is that these stations will no longer cover places like Kingston, N. Y., 90 miles away.

Senator PASTORE. Don't you come down fundamentally to the question that was asked: That can only be done by reducing their power? Let's face it.

Mr. ADLER. I don't think you have to reduce the power, but it might be a help if they did.

Senator PASTORE. I am not quarreling about that. I say that maybe that is the desirable thing to do, but we have got to face the realities.

If you are going to begin to drop-in these stations, then I say they should be dropped-in. As a matter of fact, I have been asking them to drop one in Providence——

Senator PURTELL. A particular one. [Laughter.]

Senator PASTORE. You have got to face it. You have got to cut down some of the power of existing stations in adjacent cities. In my city, if you want channel 4 or 7, you have got to tune in Boston. Why does anybody who wants to tune in these channels in Providence have to tune in Boston? Why should Boston be servicing the city of Providence any more than New York should be servicing your city of Bridgeport?

Fundamentally, that is the question, and that young man who talked for the chamber of commerce, I think, put his finger on this whole problem. Unless we are talking about giving each community the right to equality of television service, then I am afraid that we will have to go on and forget the whole business.

Mr. MERRYMAN. Senator, I think Mr. Adler's difficulty—by reducing their power, you mean reducing their service area?

Senator PASTORE. That is right. Qualify it by any name you want it, it is still a rose to me. I want to thank you gentlemen, because I think you have made a fine presentation here. I don't know as you have given us the solution to the problem, because I will admit it is a very, very complex problem. It is not easy.

I know the problems that confront the Commissioners. I think they are approaching them in the proper spirit. I think they would like to adjust this if they can. I think a lot of mistakes were made from the beginning. But I am hoping that somewhere along the line, someone is paying attention to this whole problem and will do something about it. But I still say it will require a lot of courage and a lot of boldness. It can't be all things to all people, and get away with a solution to this problem.

Mr. MERRYMAN. Senator, it isn't difficult to make a policy decision.

Senator PASTORE. All right, we do make a policy decision and then you run into a lot of technical obstacles.

Mr. MERRYMAN. That is what I tried to tell you.

Senator PASTORE. The policy decision you could make, you could state a cliché right here this afternoon. Give everybody everything they want, in the public interest, and then where are you? The big question is: How are you going to do this?

Mr. MERRYMAN. The mistake that has been made, Senator, has been that the policy decision has been thrown to the engineers. What I am suggesting is: Tell the engineers what it is you want, and they will design the system that will give you what you want.

Senator PASTORE. I am hoping you are right. We have a distinguished member of the Commission here, who is making notes. I am hopeful that he will take them back. I have a lot of confidence in you, Mr. Doerfer. You had better straighten that out.

Mr. Fine, how long are you going to be? I am willing to stay here until 5 o'clock.

Mr. FINE. Not more than 10 minutes. I won't read my entire statement. I appreciate the opportunity to present it, if it can be put in the record together with my comments.

Senator PASTORE. Let me say this to you, Mr. Fine. You have got, I hope, a very clear statement that you desire to present to this committee for the purposes of the record. Surely your statement will be in the record for the advantage of all those who would like to read it. But don't try to repeat things that have already been said. Summarize your statement so that you can make your presentation in 10 minutes.

If you think it is going to take more than 10 minutes, I don't want to shut you off, but my suggestion is that you come back tomorrow.

Mr. FINE. I think I can complete it in 10 minutes.

Senator PASTORE. The way this has turned out, I am here all by myself.

Mr. FINE. I appreciate that. I am sure my remarks would fall on sympathetic ears.

STATEMENT OF JESSE D. FINE, WFIE, EVANSVILLE, IND.

Senator PASTORE. Mr. Fine, you go right ahead and summarize your statement, and we will place your prepared copy in the record so that we will have your presentation in full.

Mr. FINE. Thank you, sir.

Mr. Chairman and members of the committee; I am president of Premier Television, Inc., owner and operator of television station WFIE operating on UHF channel 62 in Evansville, Ind. There is another UHF television station serving the Evansville area and market. That is station WEHT operating on channel 50 in Henderson, Ky., some 12 to 15 miles from Evansville, Ind. Both WFIE and WEHT are UHF stations and provide the only appreciable signal in the Evansville market. In addition, beyond our market area UHF station WSIL is operating in Harrisburg, Ill., some 55 miles from Evansville, Ind., and there is an application pending for a UHF station in Owensboro, Ky., some 30 miles from Evansville, Ind.

In bringing the first television service to Evansville in 1953, WFIE invested in excess of $600,000 in facilities and equipment. From the time it went on the air in November 1953 until September 1, 1955, WFIE sustained operating losses approximating $100,000. Since September 1, 1955, the station has been operating profitably and has recouped a small part of its losses.

There are well over 100,000 UHF receivers in the Evansville-Henderson area, and the immediate area surrounding Evansville which is known as the tristate area.

Evansville is recognized as one of the successful UHF markets in the country. UHF circulation is 100 percent in Evansville-Henderson. VHF penetration averages less than 1 percent of the audience.

The people in the tristate area have been enjoying television service from the 2 UHF stations at Evansville for more than 2½ years. WFIE has affiliation contracts with NBC and ABC and WEHT is affiliated with CBS. WFIE operates daily Monday through Friday, 7 a. m., to 12 midnight; Saturdays from 9 a. m. to 12 midnight; and Sundays from 12 noon to 12 midnight. Both stations carried a majority of NBC and CBS programs, together with local live programs as well as local remote shows. We have our own microwave unit. According to all surveys, the percentage of television homes tuning in on programing of the two UHF stations exceeds the national average and this attests to the popularity of programing on our UHF stations as compared to VHF stations in other sections of the country. It also shows the ability of the public to receive a good signal from the UHF stations in our area.

This outstanding service, however, is threatened with destruction because of certain recent actions of the Federal Communications Commission which I desire to comment on today.

VHF channel 7 is allocated to Evansville, Ind., and VHF channel 9 is allocated to Hatfield, Ind., a village about 20 miles east of Evansville. Recently a final decision was issued granting channel 7 in Evansville to an organization known as Evansville Television, Inc. Two applications are pending for channel 9 in Hatfield.

When we began operating in Evansville 2½ years ago, we relied on the Commission's express finding in the Sixth Report and Order that UHF stations could exist in the same areas with VHF stations. As the entire industry and the Federal Communications Commission well know, that has proved to be completely fallacious.

When we realized in 1954 that our station could not exist if two VHF stations came into the market, we petitioned the Commission to delete the VHF allocations and make the area all UHF. We proposed that the Commission do away with 2 VHF allocations in the area in order to make the 6 or more UHF channels in the tristate region workable television assignments. The Commission denied our petition in December 1954, saying among other things that the applicants for channel 7 at Evansville had spent a great deal of money in the hearing. What the Commission did not say was that we had invested many times more money in providing actual television service to the people in an area which would not otherwise have had any kind of television service up to this time.

In January 1955, we again asked for deintermixture. After this committee, through its minority counsel, recommended that deintermixture be considered by the Commission, and after the Chairman of the Commission had made statements indicating that the merits of deintermixture should be explored, a rule-making proceeding was instituted in April 1955. We submitted hundreds of pages of evidence as to the desirability of deintermixture in our area, and we participated in the oral argument held by the Commission in this matter in June 1955. We showed conclusively by sworn statements and photographs that there were no white areas outside our perimeter that would be covered by a VHF station from Evansville and/or Hatfield that were not already covered by two or more TV services. Contrary to what Commissioner Doerfer testified to last week, this Evansville area is not a hilly portion of the country, but is generally flat and at worst is only gently rolling terrain. No problems arise in coverage because of shadows which exist in such rugged terrain as Portland, Oreg., West Virginia, Pittsburgh and the like.

We invite the committee, its staff members, and the Commission—if it wants to take the trouble—to visit our areas and to see that there are no "white areas" in our part of the country.

Despite our showings, no action was taken for several months. But in October 1955 we learned that the Commission intended to ignore our petitions and our extensive showings in the rulemaking proceedings, and to grant VHF stations in Evansville and Hatfield.

In October 1955 we filed petitions requesting stay of the proceedings in the VHF cases. We asked for leave to intervene and participate in such cases to show how the public would suffer if the two VHF stations destroyed UHF service in Evansville and surrounding areas, and we asked the Commission to consolidate the VHF hearings with our petitions for deintermixture.

On November 10, 1955, the majority of the Commission denied our petition for deintermixture without discussing any of the factual matters raised by us. The Commission ignored the informed opinion of many leaders of the industry that deintermixture was the desirable solution to the allocation problem in Evansville.

The next blow came on December 27, 1955, when the Commission granted channel 7 in Evansville and turned down our request for postponement of action on the channel 7 applications. The Commission majority turned us down flatly in our petitions to participate in the channel 7 matter, saying that we were too late.

The Commission said this despite the fact that the destructive effects of intermixture were not known at the time when, according to the Commission's rules, we could have intervened in the VHF proceedings.

The Commission said that the channel 7 grant was made because the rules then provided for channel 7 to be allocated to Evansville, but that in the future, if it was decided to delete channel 7 from Evansville in order to permit UHF to live, the channel 7 station could be required to operate on some other channel.

In other words, although the Commission had admitted that the allocation plan is wrong and should be changed, the majority of the Commission nevertheless sought to compound the errors in this allocation plan and to further complicate the situation by making grants based on a fallacious plan.

Such grants, we and many others contend, may kill UHF in areas such as Evansville before the Commission gets around to correcting the allocation plan, thereby rendering the whole question of UHF survival moot.

We have filed comments in the present nationwide rulemaking proceeding asking that Evansville and similar areas be maintained as exclusive UHF areas. We have proposed a more reasonable method of handling the channel 7 matter; namely, granting the winner of the channel 7 hearing the right to operate on a UHF channel until it is determined definitely whether or not Evansville will be deintermixed.

Gentlemen, we want to make it clear at this time that we have never attempted to stifle TV competition in the Evansville area—to the contrary, we welcome competition. In the future let our area have more service, but let that service and our competition be equal. Let us not create stations with special privileges which will stifle competition.

Based on our experience, the Commission will not now give us a prompt determination of our position. The Commission put us through one rulemaking proceeding in early 1955 and came out with a very brief order of denial of the relief we requested in that proceeding. Now a second proceeding is going on, but the Commission refuses to give us any relief pending the disposition of the second proceeding.

The Commission has had 2 years since the intermixture problem became generally known to take some action to help UHF stations.

But nothing has been done to remedy the intermixture situation. On the contrary, the Commission has taken a succession of actions which strengthen VHF television and, at the same time, weaken the structure of UHF. The hearings held last week by this committee prove my point. Some of the Commissioners are completely undecided, after all this time, about how to help UHF, but they are firmly convinced that there should be more and more VHF grants in UHF markets, and that there should be higher towers for VHF stations outside such markets.

It is utterly unreasonable to grant channel 7, or any other VHF channel, in a successful UHF market when it is known and admitted by the Commission that the UHF stations in such area will be destroyed by VHF. It is utterly unreasonable for the Commission to tell us that the VHF grant may soon be modified so as to provide for operation on another channel. We do not think the Commission would allow a broadcaster to invest tremendous sums in building a VHF station and then turn around and take it away from him.

We ask that this committee express to the Commission that it is desirable and essential to the fair and orderly disposition of the television allocation rulemaking proceeding to postpone the effectiveness of any VHF grant in an area which is presently a successful UHF market, and to postpone the effectiveness of such grants until the nationwide rulemaking proceeding has been definitely concluded and the future standards by which the industry will be governed have been finally adopted. This is the only reasonable thing to do.

It would also be reasonable for the Commission to permit interim operation of presently authorized VHF stations in areas like Evansville on UHF channels. The channels are available and the receivers are circulated in the area as a result of our pioneering, incidentally.

Let us not delude ourselves into thinking that UHF will survive if it is killed off in market after market. There is barely enough UHF television left now to justify the continued manufacture, development, and improvement of UHF transmitting and receiving equipment. If we diminish UHF service in this country instead of increasing it, the development and improvement of such equipment will cease and die.

Since the grant of VHF channel 7 is Evansville, a distributor of a well-known brand of TV sets in Evansville expressed his pleasure at such a grant. When asked the "why" of his position, he explained that this year only 2 of 21 models that his company is manufacturing are equipped with all-channel tuners—that the remaining 19 models would be capable of receiving only VHF signals. Previously his company had made all models available with all-channel tuners as had all other companies. What other TV set manufacturers plan to do we are not informed, but we think it is important that this committee be informed of these facts.

I might add that since the summer of 1953, no VHF-only sets have been shipped into or sold in the Evansville-Henderson area.

Gentlemen, what this committee and the Federal Communications Commission do today—not tomorrow or 6 months from now or 1 year from now—will determine the extent of the TV service the American people will have in the future. If we do not preserve the UHF portion of the spectrum for TV—and that is by far the largest portion available—we are going to have a very limited service for the rest of TV history in this country. If UHF is not saved, we are going to have a mere handful of VHF stations to cover the country.

I was quite impressed the other day with Senator Magnuson's apparent grave concern with the fate of the local advertisers. Believe me, gentlemen, if we don't preserve UHF, you will never have facilities available to the local advertiser—with limited facilities afforded by VHF, the big national advertiser will take up all the TV time available, and the small local advertiser will be deprived of the use of this great medium.

Years ago no one in the radio industry envisioned the growth of that medium to the extent that we would have local radio stations in towns of 5,000 or less. What if we would have limited the AM radio band from 800 to 1,200 kilocycles—we would not have these radio stations in small towns. Let us not limit TV. Let us leave room for it to grow just like radio.

I hope we can keep UHF alive.

(Mr. Fine's oral statement begins at this point.)

I have a little different story to tell than has been told up to this time. I am the president of Premier Television operating WFIE in Evansville. We are operating a successful UHF station in Evansville, and there is another successful UHF station in the area.

The only thing we want to do: We are performing a great service in the area, and we want to keep UHF alive. We think that Evansville is one of the areas where the hope of UHF lies. If we keep it alive in this area, we have saved UHF for further development in the country.

Senator Pastore. Have you any VHF competition?

Mr. Fine. VHF penetration in our area is less than 1 percent. We have 100-percent conversion to UHF in UHF receivers in our area.

Mr. Cox. But you have a V allocated?

Mr. Fine. A V is allocated and has been granted over our objection.

Senator Pastore. Did you oppose the VHF?

Mr. Fine. We did oppose by various means. We now have pending in the court of appeals an appeal from the order of the Commission denying our petition for deintermixing, denying our petition to stay. We have even gone further than that. We asked the circuit court of appeals for a stay pending our appeal, which was denied by a different group of judges than prevailed in the Vail Mills case. By a 2 to 1 vote, our petition to stay pending the appeal was denied.

However, I want to point out that we are doing a good service in this area. We are providing everybody within our service area with good television, network and otherwise, including local live, local remotes, and so forth.

However, this outstanding service is threatened with destruction because of certain recent actions of the Federal Communications Commission which I have outlined to you. They have granted channel 7, which was assigned to Evansville. There is an application pending for channel 9 in Hatfield, Ind., a hamlet of some 400 people which is 20 miles from Evansville.

Senator Pastore. Is that a V?

Mr. Fine. That is a V, too. It is a drop-in V. The reason we didn't oppose these channels sooner, or the granting of these channels, or the allocation of these channels sooner, was because we were led to believe by the sixth report and order that we could live side by side with VHF competition. This has been proven false, as we all know here.

As soon as we realized, in 1954, that our station could not exist if two VHF stations came into the market, we petitioned the Commission to delete the VHF allocations and make the area all UHF, and then we took these subsequent actions about which I just told you.

Senator PASTORE. What is the extent of your area, Mr. Fine?

Mr. FINE. The trading area of Evansville is an approximate circle of 40 miles, I would say.

Senator PASTORE. Would you say it is a grade A or a grade B area?

Mr. FINE. That is the grade A and B.

Senator PASTORE. Let me ask you: If an application were made for a new UHF, would you oppose it?

Mr. FINE. Definitely not. We welcome UHF competition in the Evansville area.

Senator PASTORE. I mean, your position is that you do not oppose another channel coming in order to give people more service. Your opposition is due to the fact that it is a different type of a channel, and for that reason you may lose certain advantages that you have in your contracts with the networks?

Mr. FINE. With the networks and with the national advertisers. We think we have provided a good service. We have sworn documentation to the fact that there are no white areas beyond our perimeter. These areas beyond our perimeter have at least two television services.

Senator PASTORE. The reason I say that, Mr. Fine, is this: You started your remarks by saying your situation is different. After asking you a few questions, I think you state it about the same way as most of those who have come here to testify.

Mr. FINE. The reason I say it is different is that we are operating successfully now. We are performing a good service.

Senator PASTORE. Only because you don't have V competition.

Mr. FINE. Definitely.

Senator PASTORE. That is the point you make. I don't state that as a fact.

Mr. FINE. The next point that I want to make is that I think we are all agreed that we cannot have a nationwide, competitive, and diversified service unless we retain this great UHF spectrum in our field.

Let's keep it alive. We are going to need it. If you kill it now, as the recent Commission's actions are likely to do and as their expected future actions are likely to do, you are going to kill UHF and you will never have it.

Senator PASTORE. I make this statement: I can't for the life of me understand why in areas where they have U and only U, and everyone seems to be happy with it, why, if it is a question of giving more service to the people they don't bring in more U's, to which there seems to be no objection. Only because the argument is made here of the sixth order and report. If that is the fact, they ought to change the sixth order and report.

The fact of the matter is this, where you already have a U established and everybody seems to be happy with it, and it is easy enough to bring in more U's, why do they want to scramble this thing all up and cause all this dissatisfaction and trouble when everyone seems to be happy with their U, provided they leave it U and give them all U's?

I can't for the life of me understand it. If it is the sixth order and report, then change it.

Mr. FINE. Senator, that has been our stand for the last 2 years. You leave me almost speechless when you take the words out of my mouth.

Senator PASTORE. Here is a further argument, then, Mr. Fine. Do you think that if a V was allowed in Evansville, the type of service that the people would get from that V would be better than the type of service that they are getting from you?

Mr. FINE. Definitely not. We are providing all service now.

Senator PASTORE. I mean the quality of the signal.

Mr. FINE. We have a beautiful picture. People who come in from other areas say, "This is a better signal than we are getting from VHF in Chicago," or Indianapolis, and so forth. We have just started operating in the black after 2 years in the red. Otherwise I would say, "Gentlemen, I will pay your expenses. Come out and see it." But I invite you to come out and see it anyway.

Senator PASTORE. Is that all you wanted to say, Mr. Fine?

Mr. FINE. I do want to quote from my statement here just a minute. I want to say that the Commission has had 2 years, since the intermixture problem has come up, to take some action to help UHF stations. But nothing has been done to remedy the intermixture situation. On the contrary, the Commission has taken a succession of actions which strengthen VHF television and at the same time weaken the structure of UHF.

Hearings held last week by this committee proved my point. Some of the Commissioners, you will remember, are completely undecided after all this time—it has been over 2 years—about how to help UHF. But they are firmly convinced that there should be more and more VHF grants in UHF markets, and that there should be high towers for VHF stations outside such markets to poach on the local market.

I want to point out this, that this thing has to be done quickly, if you are going to save UHF.

Senator PASTORE. You say that in your statement.

Mr. FINE. I say that in here. I say this, that let this VHF grant come on. In the interim they could operate on a UHF channel until this question is solved. It will not cost them any more.

I am sure they can go to GE or RCA—they have got plenty of old UHF transmitters on hand that they will gladly loan them, or they will gladly give them full credit on it if they ever change to VHF.

Let's not delude ourselves into thinking that UHF will survive if it is killed off in market after market. Here is one thing that is happening here. Since the grant of the VHF channel 7 in Evansville, a distributor of a well-known brand of TV sets in Evansville expressed his pleasure at such a grant. When asked the "why" of his position, he explained that this year only 2 of 21 models that his company is manufacturing are equipped with all-channel tuners; that the remaining 19 models would be capable of receiving only VHF channels.

Previously this company had made all models available with all-channel tuners, as had all other companies. In other words, what I am afraid of now, if a V is granted, is that the person who wants to buy an all-channel set will have little selection of sets. He may not want the set that is made with an all-channel tuner, and he may be forced to buy a set that gets VHF only.

I just want to emphasize this, if I may read this conclusion. It is two paragraphs.

Senator PASTORE. But I can read that conclusion from your written statement.

Mr. FINE. All right, I want to emphasize this fact. What we will do today—not tomorrow or 6 months from now or a year from now—will determine the extent of the TV service the American people will have in the future. This is it. If we do not preserve the UHF portion of the spectrum for TV—and that is by far the largest portion available—we are going to have a very limited service for the rest of TV history in this country. If UHF is not saved, we are going to have a mere handful of VHF stations to cover the country.

I was quite impressed the other day with Senator Magnuson's apparent grave concern with the fate of the local advertisers. Believe me, gentlemen, if we don't preserve UHF, you will never have facilities available to the local advertiser. With limited facilities afforded by VHF, the big national advertiser will take up all the TV time available, and the small local advertiser will be deprived of the use of this great medium.

Years ago no one in the radio industry envisioned the growth of that medium to the extent that we would have local radio stations in towns of 5,00 or less. What if we would have limited the AM radio band from 800 to 1,200 kilocycles. We would not have these radio stations in small towns. Let us not limit TV. Let us leave room for it to grow just like radio. I hope we can keep UHF alive.

Mr. COX. I have just one question, for Mr. Doerfer's benefit. Do I understand you to say that you had introduced sworn testimony, in certain of these proceedings you referred to, to the effect that in the areas around the perimeter of your UHF service area, viewers in those areas have a choice of at least two acceptable signals, and that there are no white areas?

Mr. FINE. We have documented proof in our comments in our proceedings before the Commission.

Mr. COX. That is based on actual surveys conducted in those areas?

Mr. FINE. Actual surveys taken, with photographs of the signal as it comes over the air from two or more service areas.

Senator, I would like to have our comments in the proceedings before the Commission included in the record.

Senator PASTORE. We will not include it in the record. We will put it in the file and refer to it in the record as an exhibit.

Thank you, Mr. Fine.

(The document—Comments of Premier Television, Inc., and Ohio Valley Television Co., FCC Docket Nos. 11181 and 11532—has been retained in the committee's files.)

Senator PASTORE. At this point we will include in the record, without objection, the statement of Mr. Frank S. Ketcham, representing the Broadcasting and Film Commission of the National Council of the Churches of Christ in the United States of America; and the statement of Rev. Everett C. Parker, director of the office of communication of the Congregational Christian Churches.

STATEMENT OF FRANK S. KETCHAM, THE BROADCASTING AND FILM COMMISSION OF THE NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

My name is Frank S. Ketcham. I am general counsel of the Broadcasting and Film Commission of the National Council of the Churches of Christ in the United States of America.

The Broadcasting and Film Commission was organized a few years ago upon the merger of the Protestant Radio Commission and the Protestant Film Commission into one department of the National Council which represents Protestant and Eastern Orthodox Communions having a total membership of almost 36 million individuals in the United States. The function of the Broadcasting and Film Commission is to encourage the utilization of the media of mass communication by their constituency, to win converts, and to create good will among people of different beliefs.

The development of education has always been of deep interest to Protestant churches. They have been the chief exponents of the free public school, tax-supported and open to all persons, regardless of creed. The first free public schools in this country were started by congregational groups in New England prior to 1700.

The use of audiovisual media in the field of education affords a new emancipation to millions of people around the world who have not had the opportunity of learning the printed word and in some instances are unable to learn the printed word. We subscribe to the fact that radio, television and films represent the newest revolution by mankind in the age-old fight against the tyranny of ignorance.

We, as a people, have always known that education is not confined to the field of curriculum. We are great ones for continuing to study long after we have left school and college. Adult education is important in almost every community in the United States. Now, through educational television, we have a new tool of major importance in furthering the adult education movement. Thousands of people who are eager for new knowledge but are unable to attend extension classes can now continue their education in their homes. The prospect is especially significant in view of the situation of our generation. Our formal education tends to make us specialists in very small areas, yet we are faced with the necessity of knowing more about more things than any other generation of mankind. Modern man needs some knowledge of such diversified things as nuclear physics, geopolitics, and the social and cultural practices of remote people.

The modern world is characterized by our ability to communicate with each other almost instantaneously through the mass media. In television where one can both see and hear, we have the most effective media ever perfected for meeting the problem of transmitting and interpreting information and ideas quickly and accurately. Upon our ability to use television successfully for this purpose may depend our survival as a democratic community. A people which can meet with adequacy the recurring crises of our century must be a people which has a mature understanding of its problems.

It is unthinkable that television should be used solely for commercial purposes or should be controlled entirely by persons who, of necessity, must operate a television station for profit. It has been our experience that commercial broadcasters will not—and possibly cannot—concern themselves with the special needs of the American people for education and information. The history of standard radio shows conclusively that education cannot compete with commercial enterprises. Provision must, therefore, be made for the special situation of education. This the Federal Communications Commission has done in its reservation of channels for educational purposes.

The granting of the reservation for educational purposes was opposed before its inception and is still opposed by many interests which are desirous of obtaining the reserved channels for commercial purposes. Television broadcasting in general apparently is encountering difficulties. It is not within our province to suggest remedies. It is within our responsibility, however, to urge that no remedy be adopted that will have a destructive effect upon the development of educational television by the elimination of the reservation of channels for this purpose.

From time to time the growth of educational television has been criticized as being too slow. Traditionally, institutions of education do not prepare themselves for emergencies in advance of their occurence. As with buildings and facilities, so also with staff and faculties, the needs will be met, or steps will be taken to meet them, only after the needs and consequent demands make possible the necessary actions to solve the problems. Perhaps this must be so because of the order of events inherent in methods of administering and financing education in the United States. Unlike large industries or Federal Government operations, it is exceedingly difficult for educational institutions to justify to their constituencies the provision of buildings and facilities, or staffs and faculties, preparatory for use even in the near future.

With these thoughts in mind, imagine with what educators were confronted when, as if overnight, there emerged television, the greatest medium of mass communication man has ever known. Were educators slow in putting it to use?

In 1950 there was only one television station in the country owned and operated by an educational institution. Today there are 20 educational television stations, 18 of them operating on reserved channels. It is expected that at least 30 such stations will be in operation by the latter part of 1956 with 40 million people living within their coverage areas. Documentary evidence shows that more than $50 million have been raised by public and private interests during the past three years to finance studies throughout the country and to build and operate those stations.

During the past 3 years, 23 State legislatures or governors have appointed committees or commissions to study educational television. These States are: Alabama, California, Connecticut, Florida, Louisiana, Maine, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, and Wisconsin; 18 of these States have spent close to $4 million to finance studies and/or help defray construction and operating costs of educational stations.

Alabama has spent about $1.5 million to put a State educational television network into operation. Another State network is under construction in Oklahoma, that State already having spent close to $1 million on construction.

Four other States have enacted permissive legislation enabling educational institutions to provide educational television facilities, and nine other States have appropriated funds as follows for constructing or operating educational television stations or program production centers:

Florida	$100,000	Rhode Island	$150,000
Georgia	400,000	South Dakota	17,500
Louisiana	150,000	Tennessee	100,000
New Jersey	75,000	Wisconsin	75,000
North Carolina	215,200		

These are specific illustrations of increasing interest on the part of the general public in the use of the channels reserved for education. They are by no means inclusive of all that is being done in the field.

Educational television may have been slow in starting. It is well on its way today.

For these reasons we urge your committee, as elected Representatives of the people of our Nation, to use its good offices to see to it that the table of assignments, including the reservation of all television channels presently reserved for educational purposes, be maintained intact by the Federal Communications Commission.

We point out to your committee that two-thirds of the channels reserved for educational purposes are in the UHF band. The development of UHF is, thus, of particular concern to the educational stations. And we urge your committee to see to it that all steps necessary are taken to encourage its growth.

STATEMENT OF REV. EVERETT C. PARKER, DIRECTOR, OFFICE OF COMMUNICATION OF THE CONGREGATIONAL CHRISTIAN CHURCHES

My name is Everett C. Parker. I am director of the office of communication of the Congregational Christian Churches.

Congregational Christian Churches have a membership of 1,310,572 Protestants in 5,536 churches, with a ministry of 5,879 pastors. Church-school membership is composed of 743,532 individuals. Congregational Christian Churches have always been interested in education and active on its behalf. They are responsible for the development of the free public-school system in this country with the organization of the first public-supported free school at Dedham, Mass. The first college, Harvard College, organized in this country was created by Congregationalists. Congregationalists also organized Yale, Dartmouth, and numerous other major institutions of learning, and participated in founding Vassar and Wellesley Colleges. The colleges and universities listed below, though not now denominational in character, have been historically associated with Congregational Christian Churches. Those which have taken official action signify-ing recognition as colleges or universities related to the Congregational Christian Churches are indicated with an asterisk (*).

*Amherst College	1821	Atlanta University	1865
*Beloit College	1865	Bowdoin College	1794
*Carleton College	1866	Colorado College	1874
Dartmouth College	1769	*Defiance College	1850
*Dillard University	1930	*Doane College	1872
*Drury College	1873	*Elon College	1889
*Fisk University	1866	*Grinnell College	1846
Harvard University	1636	Howard University	1867
Huston-Tillotson College	1952	*Illinois College	1829
*Knox College	1837	*LeMoyne College	1871
*Marietta College	1835	*Maunaolu Commercial College	1950
Middlebury College	1800	Mount Holyoke College	1837
Milwaukee-Downer College	1851	*Northland College	1892
Oberlin College	1833	*Olivet College	1844
*Pacific University	1849	*Piedmont College	1897
*Pomona College	1887	Ripon College	1851
*Rockford College	1847	*Rocky Mountain College	1883
Rollins College	1885	Scripps College	1926
Smith College	1871	*Southern Union College	1922
*Talladega College	1867	*Tougaloo College	1869
Washburn University	1865	Wellesley College	1870
Wheaton College	1860	Whitman College	1859
Williams College	1793	Yale University	1701
*Yankton College	1881		

The Congregational Christian Churches are members of the National Council of the Churches of Christ in the United States of America and support without reservation the testimony of Frank S. Ketcham, its general counsel, given today before this committee. It is solely because of the great historical background of the Congregational Christian Churches in the field of education in this country that they have felt impelled to express their individual views.

Among the functions of our office of communications is the responsibility for coordinating and administering the work of the Congregational Christian Churches in radio, television, and films. Consequently, we work closely with others interested in the media of mass communication.

Much of my own experience in these media has been in the field of programing. Prior to my present position as director of the office of communication I served during the years 1951 through 1954 as director of the communications research project, which was sponsored and largely supported by the National Council of the Churches of Christ in the U. S. A., under the supervision of the Yale University Divinity School. The primary purpose of this project was to attempt to understand the effects of religious programs broadcast over radio and television. As an incident to my work in this project, and in my present position, it has been necessary for me to be closely in touch with the activities of educational television stations and to view many of their programs. What I have seen has impressed me greatly. Additionally, I have discussed the programing of educational television stations with individuals living within their service areas and have had the opportunity of hearing their impressions firsthand. Educational television has become a reality for several million Americans living within range of the educational television stations. For them it has added another dimension to the educational and cultural resources of their communities. Live broadcasts to the inhabitants of the areas served by the stations render to them easy access to the institutions of higher learning in their communities. Viewers of the educational television programs in the communities of Detroit, Pittsburgh, Boston, St. Louis, San Francisco, and other cities have become almost part-time students of the universities and colleges in those areas.

Films, too, have played a great part in the development of educational television. Grants totaling about $10 million from the Fund for Adult Education to the Educational and Television Center have made it possible for the center to finance the production of educational programs on educational television stations and also to distribute them on films to all of the educational stations in the country. By this method, the best productions are made available to the greatest number of stations. My information is that the center distributes at the present time about 5 hours a week of program material to educational stations and that plans have been made to increase this service within the next 2 years to about 10 hours a week.

While the center has sought to provide programs of value to a relatively large number of persons, both at the adult and child level, the fundamental interest always has been in what happens to those who view the programs. Numbers of viewers are important in the pragmatic sense, but the success of educational television can never be measured in terms of nose counting. It can only be evaluated in terms of educational results, that is, the degree to which the viewer's information, skills, understandings, or behavior, for example, are changed as a result of the experience.

With these thoughts in mind, I shall comment on a few of the programs distributed by the center with which I have some familiarity.

MUSIC AS A LANGUAGE

Featuring Dr. Howard Hanson, director of the University of Rochester's Eastman School of Music and winner of the Pulitzer Prize for his Fourth Symphony, Music as a Language is a series of 13 half-hour programs designed to show how a composer communicates through his music to an audience. Dr. Hanson demonstrates a number of aspects of composition, orchestration, and instrumentation. In great detail he shows how he and other composers use consonant and dissonant rhythms and harmonies, and he gives a prescription for folk songs and seven differently "colored" white key scales. Most of the material used in the series is a result of nearly 30 years of research and performance in the field of music by one of America's outstanding composers.

LOYALTIES

Undoubtedly one of the most thought-provoking television programs of the current season, Loyalties attempts to answer the question: What motivates men to die for their religion, their country, their ideals? Dr. John W. Dodds, director of humanities, Stanford University, discusses with dignity and warmth the distinctly human character of loyalty; the element of choice in loyalty; and the dilemma of conflicting loyalties. He illustrates his points with objects of art—figures by Rodin, a painting by Breugel, and some early American prints. Highlight of the program is Dr. Dodd's reading of excepts from Steven Vincent Benet's poem, Darkness at Noon. He concludes that today we are fashioning a new loyalty—a worldwide loyalty to the humanity of man. He suggests that unless we do so, there will be nobody to be loyal to.

THE PAINTING

Educational television achieves another first in the serious of seven programs entitled "The Painting," originated over KETC in St. Louis. It's the first time, said a St. Louis reviewer, that an artist has produced a painting before the glaring lights and grinding cameras of the television studio and before a multitude of viewers. Working a rigid, inflexible, split-second deadline, Siegfried Reinhardt turns out a painting entitled "The Man of Sorrows" in the seven half-hour programs, a religious work whose central figure is Christ. Reinhardt brings the painting from bare concept to completion without benefit of "gimmicks." The entire work was done before the cameras strictly on an "ad lib" basis. The series is intended to show, step by step, the way a good painting is produced. It is designed to bring viewers closer to all good paintings and artists by providing insight into the problems and hopes, the frustrations and rewards, which the painter must undergo. Reinhardt enjoys the reputation of being one of America's leading young artists. He teaches some classes at Washington University but spends most of is time creating. The Painting was produced by KETC Production Supervisor Vincent Park, assisted by J. Joseph Leonard.

THE ATOM

Featuring atomic physcist Dr. Edward Teller, The Atom seeks to explain clearly to nonscientists what is known about the nature and structure of the atom. Through charts and other devices Dr. Teller, who has been associated with such atomic developments as the Manhattan Project, demonstrates how and why physicists and chemists were forced to abandon their original simple picture of an atom as they discovered and tried to integrate more and more subtle and ambiguous facts. The series of three programs reveals not only how much, but also how little, science knows; the programs dramatically illustrate how many physical theories are reflected in everyday experience. The series was produced by educational television station KQED in San Francisco.

RELIGIONS OF MAN

The first college accredited course given on TV in St. Louis, this series features Dr. Huston Smith, associate professor of philosophy at Washington University. A survey of the great living religions of the world and how they influenced human history, the course covers Hinduism, Buddhism, Confucianism, Taoism, Judaism, Christianity (Protestant and Catholic), and Islam. Lectures trace the start of these religions, their founders, and what each teaches as life's meaning and the way to its fulfillment. Born in China of missionary parents, Dr. Smith has had firsthand acquaintance with the religions of both East and West. He took his graduate study at the University of California and the University of Chicago, receiving a doctor of philsosopy from the latter in 1945. Dr. Smith is the author of The Purposes of Higher Education, published in 1955 by Harper & Bros.

CHILDREN'S CORNER

The Children's Corner is a half-hour program directed specifically to an audience in the 2 to 12 age bracket, but is also amusing and intriguing to sophisticated adult audiences. Its hostess is a young girl in her twenties, vivacious Josie Carey, who invites viewers into a whimsical world of imaginary friends. These characters, with their appealing idiosyncrasies and original charm, range from the engaging Daniel S. Tiger, who lives in a clock, to Grandpere, who lives in the Eiffel Tower and speaks only French. Others of Josie's friends include: the dignified King Friday of Calendarland, who's in charge of all dates; Henrietta the cat, who is governess of 17 mice; and X Scape. Sometimes Josie takes her young audience to see how life goes on in Small World, where Gramaphone, Rhoda, and Phil Dendren and others reveal their engaging and spritelike personalities. Special guests visit "The Corner" from time to time—Tony Greco, a versatile artist who draws stories; Pat Hamilton who can make flowers from paper towels; Stu Reynolds, a juggler; and Vivian Richman who sings folksongs.

The tone of the series, with songs, riddles, patter, and make-believe, is excellent fare for youngsters whose parents are opposed to currently available wild west programs, yet who want to encourage imagination and creative thinking.

PARENTS AND DR. SPOCK

Informality and spontaneity are the key words in describing this informative series which runs the gamut of problems which mother and father face as they rear their children. With Dr. Benjamin Spock, already a household name across the Nation as a result of his widely read book, Baby and Child Care, guiding the discussions, a group of parents talk about problems of a general nature in each program. Instead of bombarding the doctor with questions, the parents themselves discuss their problems and how they have settled them—with Dr. Spock adding helpful hints. Problems considered range from how much attention should be given children to how they should be disciplined and to those inevitable questions about how the facts of life should be answered. The show is produced by Mrs. John W. Ziegler and directed by Carl Freeborn.

* * * * * * *

The programs that I have discussed are only a sample of what goes on in educational television. Prior to its advent, it was inconceivable that programs of such content and value could be available as a portion of the general diet of television viewers. Certainly, they are beyond the scope of commercial broadcasters. Only the unfettered opportunity for those interested in the educational, cultural and social well-being of our people has made possible this great step forward in our efforts to develop as a mature nation.

The experiences of religious organizations in dealing with commercial interests for the broadcasting of religious programs cause me to view with envy the advantages of educators who have educational television broadcasting at their command—but it is appropriate that it be that way.

It is incomprehensible to us that there could be serious consideration given to suggestions that the precious channels reserved for education be turned over to the influence of Madison Avenue. We urge that it is in the public interest and convenience that the public be assured of the opportunity to view educational programs freed of commercial aspects. We are confident that your committee will agree that the reservation of channels for educational purposes must be maintained.

We reaffirm the views of the Broadcasting and Film Commission of the National Council of the Churches of Christ in the United States of America on this matter as presented to you by Mr. Ketcham.

Senator PASTORE. The committee will recess until 10 o'clock tomorrow morning.

(Thereupon, at 4:50 p. m., the committee recessed, to reconvene Wednesday morning, 10 a. m., February 29, 1956.)

TELEVISION INQUIRY

(UHF–VHF Allocations Problem)

WEDNESDAY, FEBRUARY 29, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, in room G–16, United States Capitol, Senator Warren G. Magnuson (chairman) presiding.

Present: Senator Magnuson.

The CHAIRMAN. The committee will come to order.

Mr. Buchan, we will be glad to hear from you.

STATEMENT OF ALEXANDER BUCHAN, VICE PRESIDENT, MID-AMERICA BROADCASTING CORP., LOUISVILLE, KY.

Mr. BUCHAN. Mr. Chairman and members of the committee. My name is Alexander Buchan. I am vice president of Mid-America Broadcasting Corp., which owns radio station WKLO in Louisville, Ky., and which operated UHF station WKLO–TV on channel 21 during part of 1953 and 1954. During that time our company learned one lesson extremely thoroughly. It is impossible, under existing conditions, for a UHF to compete in a market—even a major market—which already contains two or more established VHF stations. We learned this lesson to the tune of half a million dollars, and we learned it the hard way—through the disinterest of national advertisers and networks to cooperate in any way with the much-needed third television outlet in the Nation's 27th market.

And, to be completely fair, I hold no malice against these advertisers and network officials, since their decisions were based on sound economics, and confirmed fully by recent and continuing curtailment of UHF operations in the mixed markets.

No officer in my company feels that there is any advantage to the public in having subsidies or artificial legislative aides offered to support UHF stations. We all feel, as I am sure you gentlemen do, that in the long run a business, whether it be broadcasting or banking, will only succeed when it can pay its own way and stand on its own feet competitively. For these reasons, I have been somewhat alarmed at complicated plans and schemes worked out to force UHF down the throats of people who neither need it nor want it—just as I have been alarmed at the apparent willingness of some members of the Federal Communications Commission to throw successful UHF stations to the wolves.

In other words, under certain conditions UHF cannot exist. But as was brought out by a witness yesterday afternoon, it can do an excellent job and even return an eventual profit where it does not have to compete with VHF. I refer to the testimony of Mr. Jesse Fine of Evansville, Ind., who indicated that acceptance of his UHF station is extremely good because both Evansville television services are now UHF.

My own current concern is with Lousville, Ky., where no amount of dedicated effort was able to make UHF successful and where no other applicant has been foolhardy enough to risk the gamble that we took, and lost.

The CHAIRMAN. Let me ask you this: Were you in there first, or were the VHF's in there first?

Mr. BUCHAN. The VHF's were in first, sir.

The CHAIRMAN. So when you established UHF in Louisville, you had knowledge that there were two VHF's there?

Mr. BUCHAN. That is quite right.

The CHAIRMAN. I suppose you explored the economic situation in relation to that?

Mr. BUCHAN. That is right. On the surface, it was a fair chance. All this means, very simply, that the present table of allocations has reached the limit of its usefulness, and that any further effort to force further compliance with its provisions will result in two things. First, a complete waste of assigned but unusable UHF channels—and I am speaking practically, now—and second, a withering of some successfully operating UHF stations through placing them in the position of having to compete with forthcoming VHF's in their markets.

As I said before, we do not believe in subsidies or special privileges, but neither do we believe in running counter to the dictates of good judgment and business experience.

There is, perhaps, a simple answer which has already been suggested to this committee. If all sets manufactured were all-channel receivers, then there would, for all practical purposes, be no different between UHF and VHF—or at least no differences other than relatively minor ones of engineering.

The CHAIRMAN. Right there, how many UHF sets are there in your area, percentagewise?

Mr. BUCHAN. At the time we ceased operations, the maximum estimate was 80,000. I rather think it was smaller than that.

The CHAIRMAN. As compared to what total?

Mr. BUCHAN. Set circulation in the Louisville area now, I believe, is around 400,000. That may not be a completely accurate figure.

The CHAIRMAN. We just want it generally.

Mr. BUCHAN. I would say it was about 20 percent.

Here again, if you have all-channel receivers, you have a situation where television is television. It isn't U or it isn't V. But in facing the economics of that matter, I don't believe set manufacturers will manufacture all-channel receivers if the handwriting on the wall indicates that this more expensive commodity is scarcely going to be necessary. And the present trend, if allowed to continue, tells the manufacturers just that. This point may be taken a step further, by adding the obvious corollary that even if all-channel sets are in general supply within a few years, it will be too late, because by that time, there will be remarkably little use for an all-channel set. No more use than there is now for about $4 million worth of converters and antennas in the Louisville area alone.

Which brings me to the printed comments which Mid-America has filed in connection with the present nationwide allocation hearing. These comments describe in detail our proposal for solving a serious lack of television service in Louisville in a manner which is consistent with overall nationwide allocation revision. I have attached a copy of these comments [1] to this statement for your reference, so I will not presume on your time to cover the material orally. These were distributed yesterday afternoon. Instead I will confine myself to a few salient points.

There is a shortage of television service in Louisville. Although it is the Nation's 27th market, and growing fast, there are only 2 VHF stations; many smaller cities have more. For this reason, there is scarcely any local programing in the better broadcast hours. One network, ABC, is represented by only 3 out of 21 available programs in the market, and local advertisers find they cannot use the present stations in any except time periods rejected by national advertisers.

The CHAIRMAN. There are only two VHF channels assigned to the Louisville area?

Mr. BUCHAN. That is correct; yes, sir.

The CHAIRMAN. Only the two?

Mr. BACHAN. Two VHF's. There are four UHF channels. We tried one; the other three have never been in operation.

The CHAIRMAN. There has not been assigned any third VHF channel to the area.

Mr. BACHAN. That is what we are asking at the present time.

The CHAIRMAN. In other words, what you are saying, in effect, is that you would switch over yourselves to VHF if you were now in operation—you would just switch over?

Mr. BACHAN. We have maintained our physical property—our land, tower, and equipment. We are ready to go at any time, except for the transmitter.

The CHAIRMAN. I understand you still run a radio station?

Mr. BUCHAN. That is correct. Incidentally, we are not asking only that one VHF be allocated, as I will point out later. We are asking that two additional channels—three, in all, in addition to the two presently operating ones, be assigned to Louisville.

The CHAIRMAN. How long has your request been on file with the Commission on that?

Mr. BUCHAN. Since July 1, 1954.

The CHAIRMAN. Was that prior to the time you went off the air with your U?

Mr. BUCHAN. It was about 2 months subsequent to our going off. You see, presently there are four unused UHF allocations in Louisville.

The CHAIRMAN. Understand, I am speaking only of the V.

Mr. BUCHAN. Yes. The reason that these U's are useless is that we lost $300,000 capital investment, $197,000 in operating expenses, and the public invested and lost about $4 million in converters and UHF antennas.

[1] The comments referred to have been retained in the committee's files.

The CHAIRMAN. I think the testimony here has been pretty much the same, that the economic possibilities, with the present set situation and network situation, for any U to survive in a market in which there are two V's is somewhat difficult. I think everybody agrees to that.

Mr. BUCHAN. I won't belabor that point any further.

The CHAIRMAN. But they get to a difference of opinion as to whether they can do it with one V. But once you get two V's, the experience has been that the U either had a most difficult time to make it or that it must have a network, as in Mr. Storer's Miami and Portland situation, or else it absolutely goes under.

Mr. BUCHAN. That is correct. This isn't only the city of Louisville that has a shortage of television. It is the entire State of Kentucky. I compared it with neighboring States.

The CHAIRMAN. You probably agree with the premise of Mr. Merryman, then, yesterday, that he thought that the goal of the FCC should be, first, to put at least one television station in every community in the United States—that is the second priority, the first one being service for everyone.

Mr. BUCHAN. I agree with Mr. Merryman to a point. As a basis of comparison, very quickly, Illinois has 18 television stations on the air now. There are 12 in Indiana. There are 20 in Ohio.

In the entire State of Kentucky there are only four—four television services operating. One of those is located at Henderson, and it is living with a pistol at its head, because if the grant that is presently proposed for channel 7 in Evansville goes in, Henderson, which is a U, will probably go under.

The CHAIRMAN. Let us get this. You had had some experience. Let us get this straight here. When you applied for a UHF, I don't think any of the UHF operators will deny the fact that they knew they were taking a calculated economic risk.

Mr. BUCHAN. At the beginning, sir, I don't believe that was the case.

The CHAIRMAN. I was going to come to that. But you knew that there would be a possibility of this happening. But since you started, these other things have happened to change the circumstances, which has made the economic situation more deplorable; is that correct?

Mr. BUCHAN. That is true. In fact, there are just literally——

The CHAIRMAN. In other words, if you went in now and applied for a UHF, no one could weep any particular crocodile tears over what might happen, could they?

Mr. BUCHAN. I believe that is the fact.

The CHAIRMAN. Because you have taken cognizance of the situation.

Mr. BUCHAN. The only place in which I would even consider——

The CHAIRMAN. It is a set of circumstances that have developed, as I understand from the testimony here, subsequent to the application for many of these UHF stations.

Mr. BUCHAN. That is true, Senator. The only place I would consider applying for a UHF now would be a place in which there is no VHF allocation whatsoever, and a complete lack of service. The terrible thing about this is we predicate a system of television for the entire country on the basis of VHF and UHF channels, and now there are literally dozens of UHF frequencies or facilities that will never be applied for.

I can think of one in Connecticut—more than one in Connecticut. There is one at Meriden, Conn., for example, halfway between New Haven and Hartford. There is a transmitter site, a tower, and a building sitting on top of a mountain there. Nobody is ever going to apply for it, because they can't make a go of it. It could cover Hartford and New Haven perfectly well.

So your point is exactly right, that no one would weep tears for the man who tried it now.

The CHAIRMAN. I don't mean literally crocodile tears. I mean economic tears. [Laughter.]

Mr. BUCHAN. To move on to what we consider a solution for this shortage of service, we ask that more VHF channels be allocated to Louisville. By that I mean current VHF between 2 and 13, rather than the so-called military VHF.

The CHAIRMAN. Has the Commission ever indicated to you why they have not done this, or why they haven't acted upon this? What is your understanding as to why they haven't made a decision—let's put it that way—on the question of another V for Louisville?

Mr. BUCHAN. Mainly and very simply——

The CHAIRMAN. I don't suppose you would know, actually, but what is the general reason?

Mr. BUCHAN. The general reason is that the Commission apparently is still going down the line with the present table of allocations. I am informed by Mr. Bader (the witness' counsel) that probably the best answer is that we were denied, on November 10 of last year, with a simple statement that consideration of this would be postponed until there was overall rulemaking.

The CHAIRMAN. In other words, would you say it is the general understanding in the industry that the reason that no decisions have been made in some of these cases—or a denial has been made—is that they are waiting for some rulemaking on the whole matter?

Mr. BUCHAN. Yes, sir. I will point out later that this idea which has generally been called deintermixture was accepted some time ago, but it has gone by the boards now.

Let us see how this works out in practice. We are asking, for example, that channels 7, 9, and 13 be assigned to Louisville to replace the current assignment, not being used, of UHF channels 15, 21, 41, and 51. Of these, only channel 21 was ever constructed and put in operation. To effect this change, channel 13, which we would like to see end up in Louisville, would be moved from Bowling Green, Ky. It hasn't even been applied for there, so that doesn't seem like a bad change. We would replace it with two UHF channels that would be available—17 and 54.

We ask that channel 7 be replaced by channel 39 in Evansville. Thereby we would maintain the integrity of the currently successful UHF operation in Evansville. And we would move channel 9 from Hatfield, Ind.—that has a population of 400 people—and we would replace it there with channel 78. So we would then have all these V's in addition to the two current ones in Louisville, and in the other areas we would have U's where they would be useful.

The CHAIRMAN. In other words, switch them around a little.

Mr. BUCHAN. That is right. Obviously, with two U's operating currently in Evansville, the adidtion of a third U up there in Evansville is only going to make everybody compete on the same level, whereas the V's are going to kill the U's.

First of all, this would provide much-needed service for Louisville. Secondly, it would maintain and preserve the current service at Evansville and still let it expand as their economy grew.

The CHAIRMAN. How far away is Evansville from you?

Mr. BUCHAN. It is about 100 miles. We feel that this proposal would also make much more efficient use of channels 7 and 9 than now is proposed. For example, it is hard to see how channel 9, which is a very desirable channel, would be efficiently used in a town of 400 people—not realistically. And channel 7 certainly would be used better in Louisville, where we are prepared to go on immediately, than it would in Evansville where there would be a V and U conflict.

We can do this without destroying any existing stations. Yet, if the channels were allowed to remain where they are now, in Evansville and Hatfield, they might easily destroy 1 or possibly 2 of the existing U's up there in Evansville.

We also feel that this would mean that Louisville could have a workable and usable educational channel, because we are proposing that channel 9 be reserved for educational use. Then educational organizations would really have a valuable channel that people could get on their sets and could see, if they had good programs.

There are some cochannel stations involved, and there would be a very slight amount of interference with the grade B coverage of one other station, if we move channel 7 down to Louisville. But that interference lies right in the city of Cincinnati, and there are plenty of other local services available in that area. In other words, we would have a little interference on channel 7 from a Dayton station, but it wouldn't be within their market area.

Then you might say up to this point it has been sort of a special pleading for one city, or even for one interested licensee. But we believe sincerely that it is on the basis of realistic plans like this that some relief from the growing allocation problems may be found most quickly.

The CHAIRMAN. I would suggest that a similar situation must exist in other places throughout the United States.

Mr. BUCHAN. Proposals of this type have been sought by leaders in the field. For example, the Chairman of the Federal Communications Commission, on last May 24, told the broadcasting industry right here in Washington that one of the most difficult problems is to devise ways and means of enabling UHF stations to operate on a comparable basis with VHF stations, and that rulemaking proposals had been put out looking to the possibility of deintermixture in certain cities.

Up to this time, no one of these proposals has been carried through. Yet this was thought most urgent about a year ago, for the Nation as a whole. You can consider how urgent it is for us broadcasters, because we have studios, we have towers, we have property waiting to be used. And the people in Louisville are very honestly begging for more service. Yet the Commission has granted channel 7 for operation in Evansville, where two existing stations may be put off the air as a result, and no relief has been granted to Louisville.

The CHAIRMAN. Has anyone applied for channel 7 in Evansville.

Mr. BUCHAN. Oh, yes.

The CHAIRMAN. Was it granted?

Mr. BUCHAN. That has been applied for and has been granted.

The CHAIRMAN. They have made a grant?

Mr. BUCHAN. And that is the face of at least a proposal to delay any grant there—delay any construction—until these changes in rule-making could be considered.

We suggest in the interest of providing service, rather than shackling service, that the Federal Communications Commission allow us to operate WKLO–TV on a temporary basis in Louisville on channel 7. We would willingly do this during the interim period in which these changes in allocation are brought about. Or, if that is too simple, then we could say at least that no further final action be taken——

The CHAIRMAN. You do not want to make anything simple. [Laughter.]

Mr. BUCHAN. If we can't do that, then we suggest that no final action be taken which would prevent our proposal from receiving serious consideration. Even this wouldn't have to prevent the present channel 7 grantee in Evansville from going on the air, because he could go on with a UHF, which would put him right in fair competition with the current stations there, and there would be no problem.

I would like very much to express my appreciation for the chance to address your committee, but I also would like to say that I realize it is a lot easier to elaborate on one or two phases of a problem than it is to weigh all the merits of all the arguments and come up with a final answer. But as a working broadcaster, I am hopeful that this committee will call to the attention of the Commission the tragic results that are flowing from the Commission's present allocation policies. I also hope that the committee will see fit to point out the tremendous need for prompt action in this connection.

Otherwise, major markets like Louisville, and hundreds of lesser markets throughout the country which have inadequate television service now, will be faced with continuing and probably increasing scarcity of viewing.

If there has been any good derived from the present allocations policy—and I believe there has, in the sense that some service has been brought to most of the people of the country—then we must not be hypnotized by this partial achievement of the goals. We must, all of us, be watchful for new ways to increase and improve television service, and I submit that our proposal is the only one which realistically attacks the present problem in Louisville.

Thank you.

The CHAIRMAN. I appreciate your statement. The chairman wants to say again, on all of these matters, what I said at the outset last year at the National Association of Radio and Television Broadcasters convention—that it has been hoped that the fact that this committee has had this inquiry going on for some time—long before I was chairman—that that should not be used as a reason by the Commission not going ahead and doing, as I put it, business as usual.

I think the Commission understands that, too, very clearly.

So with reference to matters such as you suggest, if they have some merit and can be worked out, it is hoped that the Commission will act on some of these things, despite the fact that we still may not have come to all our policy conclusions up here.

I always want to get that straight, so that there will be no suggestion that the fact that we are going into this and many other matters—not only allocation matters—could be any reason for delay if the Commission sees fit to act.

Mr. BUCHAN. I realize that.

The CHAIRMAN. Thank you. Counsel has some questions.

Mr. COX. Mr. Buchan, as I understand it, under the present situation, under the sixth report, for Louisville there are two V channels allocated and four U's. Is that what you said?

Mr. BUCHAN. That is correct.

Mr. COX. Then in the light of your experience, and of the experience of UHF operators throughout the country, showing that this is an impossible competitive situation, despite the fact that there are 6 channels allocated, for all practical purposes an artificial ceiling has been placed on television service in Louisville at 2 channels only.

Mr. BUCHAN. That is exactly the condition as it stands today.

Mr. COX. And your view is that the only way in which this can be dealt with is to add channels that will be fully competitive with those that are already on the air, by reallocating additional V channels in Louisville?

Mr. BUCHAN. That is true. There was a reference made by the Chair to Mr. Merryman's testimony yesterday, in which he was talking about reduced cost installations in small towns. There comes a time when you can reduce the cost down to the point where it isn't practical to put any station on—and particularly in a major market such as Louisville. If you are going to be competitive, you have to be willing to invest, and you have to be willing to invest operating capital to make it competitive with the other two stations.

Mr. COX. I think Mr. Merryman was speaking about a little different situation where that would perhaps be the only local service in the area and would be competing on a different basis.

How about this as a hypothetical matter: What is your own opinion as to the chances of one or more UHF stations competing in a sizable market if there is only one V on the air?

Mr. BUCHAN. The immediate situation is this: If there is one V on the air, it can be taken for granted that that will be affiliated with either NBC or CBS. That is automatic. The chances are that that V will also get the cream of ABC programs.

So if there is only one V on the air, and more than one U, the most favorably situated U will probably have the other major network, and in that case may be able to compete. But even above the network affiliation standpoint, there is a tremendous block in trying to sell time, especially to national advertisers, when you mention U's. Mention channel 22 and they will clam up, but if you mention channel 2, they smile.

Mr. COX. Would it have helped you in your particular situation, or would it help in this hypothetical situation of just one V in a market, if the stations in a particular area were limited to a single primary network affiliation?

Mr. BUCHAN. I think I partially answered that in the sense that if there are only two stations in an area, one V and one U, the U will have a network affiliation. It will manage to get one. But it will have more difficulty in getting national spot business, which is a major factor in television.

Mr. Cox. In your situation, as I understand it, where there are two V's on the air, they divided the network affiliations and you had none; is that correct?

Mr. BUCHAN. We not only had no network affiliation—except that we have a radio affiliation with ABC and we hope to have ABC television—we weren't even allowed to carry the programs with no charge.

Mr. Cox. They preferred to put it on the V?

Mr. BUCHAN. They preferred to put it on the V.

Mr. Cox. Even if they could get only one-seventh of their programs on the air?

Mr. BUCHAN. They sometimes preferred not to have the program on the air, because they were hopeful of getting it on the V eventually.

Mr. Cox. I take it, then, that this petition that you filed for the allocation of additional V channels in Louisville shortly after you went off the air was the product, and based upon, your experience in an effort to compete in that kind of a situation?

Mr. BUCHAN. That is correct.

Mr. Cox. As I understand it, the V's that you are talking about—that you are suggesting be allocated to Louisville—are not presently on the air anywhere?

Mr. BUCHAN. That is correct, yes.

Mr. Cox. So there would be no deprivation of an existing V service to anyone in other markets?

Mr. BUCHAN. I checked late last night. There has been no attempt to start construction of channel 7 in Evansville. The V in Bowling Green has not been applied for, nor is there any construction on the V in Hatfield.

Mr. Cox. Would you be in favor of some action such as was recommended by witnesses, I think on Monday, suggesting that this committee, or the Congress, adopt a resolution directing the Commission to reach an appropriate decision on reallocation matters upon certain suggested bases.

Mr. BUCHAN. If I understand that correctly; yes. I believe that promptness is one of the most important factors in this whole situation.

We were listening yesterday to testimony given, outlining the 2 major goals or 2 major directives to the Commission. We have achieved one of those, which is some service to almost everybody in the country.

Now we are at the point where that is going to crystallize and harden in that situation, without spreading out and giving multiple services. So if promptness is not instituted now, the set manufacturers, of their own accord, are not going to manufacture an all-channel set that costs them several more dollars per set to build. There has to be a reason for it.

If we freeze now, with the U's gradually dwindling, there is less and less reason for the set manufacturers to make all-channel sets, and they are going to make what they can sell.

The CHAIRMAN. Do you think it will ever be possible to make an all-channel set just as cheaply as a V, so it will make no difference?

Mr. BUCHAN. I am not an engineer.

The CHAIRMAN. They are down to only $10 or $12 now.

Mr. BUCHAN. I am not an engineer, Senator, but I will say this, that if we had been able—and this is wishful thinking—if we had been able to start television as television, and not as UHF and VHF (in other words, the same as a radio dial), we wouldn't be having any of this problem, because there is not, basically, enough difference, from the viewer's standpoint, between UHF and VHF. The viewer just wants to see a picture.

The CHAIRMAN. With color, he can get it even better.

Mr. BUCHAN. Even better.

The CHAIRMAN. Of course, that is what I said right at the beginning of this thing. I said that the real problem is the set, and the first thing we did was to call in all the set manufacturers and the makers of tuners, hoping we could do something about it, or help do something about it.

Mr. BUCHAN. But I believe Mr. Merryman indicated—or Mr. Fine indicated—there was going to be less production of all-channel sets in the major lines in this coming year than there has been in the past. Two lines out of 21 models are going to be all-channel.

The CHAIRMAN. What would you think of an amendment to the Communications Act giving the Commission authority to deal with receivers as well as transmitters?

Mr. BUCHAN. If that were done, and it were simply stated that all-channel sets must be manufactured——

The CHAIRMAN. It would give them authority to act in the field, and then if they did, they could make a regulation to that effect.

Mr. BUCHAN. If that action were prompt, it would be very useful.

The CHAIRMAN. I don't know whether they would or not, but they claim now that they do not have the authority to enforce such a regulation, if it were made.

Mr. BUCHAN. It might, on the surface, be difficult to enforce it, but on the other hand, most receivers are made by a few leading manufacturers. It is not a business that has a lot of small manufacturers in it, and in a concentrated group like that, it should not be too hard to enforce that.

The CHAIRMAN. It seems to be something that could be solved. For instance, I do not know what color sets will be costing—maybe $300 or $400 now, the cheapest ones. And here we are with this problem, and we are dealing—the manufacturers say—with a difference of between $8 and $12 per set on the production level. It may be cheaper now. That was last summer.

Mr. BUCHAN. There was one topic yesterday, that of possibly limiting color broadcasting to UHF. I would like to say that that seems a very artificial way of attacking the problem. If you have good stations operating now, and you have plenty of them, for goodness sake let's not artificially go to them and say, "You can't do this."

People want color. Let them see color however they can get it. But let us make it possible for them to get more and more of all broadcasting.

The CHAIRMAN. That is leaving the cause down here with the set, and trying to do it in reverse up above, which is probably not the practical way.

Mr. BUCHAN. I agree with you.

The CHAIRMAN. Thank you.

Mr. BUCHAN. Thank you, sir.

The CHAIRMAN. Mr. Tarzian. You are a manufacturer and owner of WTTV, Bloomington. What Bloomington is that?

Mr. TARZIAN. Indiana.

The CHAIRMAN. There are two Bloomingtons, one in Illinois and one in Indiana.

Mr. TARZIAN. Bloomington, Ind., is a better town. [Laughter.]

STATEMENT OF SARKES TARZIAN, STATION WTTV, BLOOMINGTON, IND.

Mr. TARZIAN. My name is Sarkes Tarzian. I am president of Sarkes Tarzian, Inc., Bloomington, Ind., a corporation engaged in the following:

(1) One of the largest manufacturers of TV tuners;

(2) Operator of TV station WTTV, a pioneer in its field;

(3) Manufacture of low-cost TV station equipment.

All of these three activities have a direct bearing on the subject of this committee's investigation. We are probably unique in covering the various facets of the TV field.

From our TV tuner manufacturing experience—which extends over 10 years—we know that the lowest price full-range UHF tuner that can be mass produced, and meet fringe area and FCC requirements, costs the TV set manufacturer about $7.50. This price is higher now than over a year ago because of increased material and labor costs as well as more stringent radiation limits set by the FCC to present interference between UHF sets, as well as interference to other services. A good VHF tuner in combination with a full-range UHF tuner will cost a TV set manufacturer about $17. The lowest price VHF-only tuner that a TV set manufacturer can buy is $7.60.

From this it is evident that a full-range VHF–UHF set carries a maximum additional cost of $9.40. With transportation charges, et cetera, we can say that this added cost of UHF, when compared with the lowest price VHF receiver, is approximately $10.

In 1954 the percentage of UHF tuners sold by us to manufacturers was 31 percent. In 1955, this percentage dropped to 26 percent. I estimate that, due to popularity of low-priced portable TV receivers, this percentage will drop again in 1956.

I also feel that the price differential in cost of $10, between straight VHF and full-range VHF–UHF sets, will not be materially reduced in the next 3 to 5 years.

I have samples here of a low-price VHF tuner—$7.60—and a combination VHF–UHF tuner, price $17.10.

The CHAIRMAN. What is the difference? Which one do you put on the VHF set to make it an all-channel set?

Mr. TARZIAN. This is a straight VHF tuner, the simplest low-priced VHF tuner. It will go in a straight VHF set, 12 channels only.

This one that we have here is a combination VHF–UHF, in which this is the VHF part [demonstrating], and later on you can put the U on if you wish, or you can ship it out, the two together. But this package, as I have said, costs $17.10.

The CHAIRMAN. If I had a V set—take the other one off—if I had a V set, I would have this, wouldn't I [indicating]?

Mr. TARZIAN. Yes, that costs $9.60.

The CHAIRMAN. How much does this cost [indicating the other portion]?

Mr. TARZIAN. This one, then, will cost about $7.50.

The CHAIRMAN. So I can convert my set for $7?

Mr. TARZIAN. Provided you had a V tuner that could accept the U, you see. You have to pay—now this tuner [pointing to the low-price VHF tuner] costs $7.60, but it can't accept UHF at all in the future, except through a converter.

Here is a VHF tuner that can accept UHF, but it sells for $9.60. So there is $2 that goes into making this tuner so that later on it can accept UHF.

The CHAIRMAN. It can't accept U, the $7.60 one?

Mr. TARZIAN. That is right. That is the problem. You just cannot take a U tuner and stick it alongside a V tuner and have the U tuner cost $7.50 and do the job.

When you go to converters, and use the regular V tuner that is in the set, then of course it costs a lot more—maybe $20 or $25 to buy a converter and put it on your regular set so you can get UHF. So this is really the most economical way, and the best way performancewise, to do it.

We all realize that for a TV station to be successful, it must give a service that people want, regardless of whether the type of transmission is VHF or UHF. I believe we have ample proof of this in the successful UHF operations in Fort Wayne, Ind., for example, where this is the only service available.

We also know that in order to have a free and adequate TV service we need a relatively large number of channels available. VHF channels—of which there are only 12—are not sufficient to give satisfactory, competitive TV service. After much investigation and advice from the industry, the FCC adopted the 82-channel system, in order to give a fully nationwide, free and competitive TV service which would last for a long time.

Unfortunately, due to misinformation, or disregard of the advice given to the FCC, the following factors have hindered the rapid growth of UHF broadcasting:

(1) Inadequate power of earlier UHF broadcasting stations.

(2) An eagerness and anticipation on the part of new broadcasters that profits would be available at once. They overlooked the experience of early VHF broadcasters, who lost money for at least 2 to 3 years.

(3) The inadequate performance and higher price—$30 to $50 more to the people—of earlier VHF-UHF receivers.

(4) Inadequate amount and quality of programing material at reasonable cost to meet the needs of a large number of TV stations.

(5) No large number of sets available for reception of UHF broadcasts.

What is the situation today?

(1) We now have higher power UHF transmitters and amplifiers available—although the cost is still high.

(2) Those who now go into UHF broadcasting know more of the facts of life and therefore have a better chance of survival.

(3) We now have UHF tuners and receivers that give as good fringe-area performance as the average VHF set. About 2 years ago their performance was one-third that of VHF sets. The price differential of manufacturers has been lowered.

(4) We now have more programing material available, and TV film producers are learning how to produce and distribute film programs at much lower prices. Also the stock of older films of the major movie producers is being made available for TV use.

(5) We still do not have a large number of sets in use that can receive UHF broadcasts. Of the almost 8 million sets produced annually, only a small percentage can receive UHF signals satisfactorily. This still remains our unsolved problem.

How can we, practically, solve the UHF receiver circulation problem so that more sets will be built with full-range tuners? That is the real crux of our dilemma.

Unfortunately there is no fast solution to this problem. It is going to take at least 4 or 5 years to put into circulation about 30 million sets that can receive UHF signals as well as the present sets now can receive VHF broadcasts. To accomplish this it is going to take action by Congress to equalize the cost to the consumer of a full-range TV set compared to a VHF-only receiver. This can be done, as recommended about 2 years ago, by lowering the excise tax on full-range TV receivers.

If Congress had done this then, there would now be in use over 15 million full-range receivers, and our problem would have been half solved by now. Since no action of a practical and fundamental nature was taken then, we still continue to haggle and hold hearings.

There is no easy and fast solution to UHF, except a long-range one of governmental help through tax assistance. We have spent tens of billions of dollars abroad to buy friends—why don't we spend a few millions at home to assure a free, competitive TV system? This Government subsidy to assure a free, competitive TV system will not benefit any one group at the expense of the United States Treasury. This subsidy will mean more jobs, more TV stations, and more taxable income so that the Government, over a period of years, will collect more than it loses in tax revenue.

I thank you for the opportunity of appearing before your committee.

The CHAIRMAN. We thank you for your testimony.

The last suggestion was one that was made by the manufacturers when they were here, I think, 8 months ago. Of course, we needn't spend any money for this. It just means that the Treasury would get less.

Mr. TARZIAN. That is right.

The CHAIRMAN. But I am inclined to agree with you that the broadening of our free, competitive TV system through other methods of taxation than now exist would result in the creation of more jobs and more business activity within the system and might adequately make up—or more than make up—to the Treasury for the loss of revenue from this excise tax.

Mr. TARZIAN. That is right.

The CHAIRMAN. Counsel has some questions.

Mr. COX. Mr. Tarzian, will this all-channel tuner that you demonstrated here receive all 82 channels?

Mr. TARZIAN. Yes.

Mr. COX. It is a full-channel receiver?

Mr. TARZIAN. That is right—full range.

Mr. Cox. How many manufacturers are using your all-channel tuner, in general terms?

Mr. TARZIAN. I would say that outside of those manufacturers who build their own tuners we supply most of the others—practically all of the others.

Mr. Cox. Are all major manufacturers of television sets manufacturing at least a limited line of all-channel receivers?

Mr. TARZIAN. Absolutely. They all have it in their line. I do not know of any manufacturer who doesn't produce a line of receivers with full-range tuners in them.

Mr. Cox. Is there much use today of strip converters, or is the practice now, if a man lives in an area with U service, to buy an all-channel set?

Mr. TARZIAN. That strip conversion has been a sham and a delusion. It led, I am sure, a lot of the UHF broadcasters who went into broadcasting to believe that as soon as they got on the air it would be very easy to convert these sets by putting strips in them and they would have a viewing audience.

But, unfortunately, to do that, you see, you have to get a serviceman. It would cost, with the serviceman and the cost for 1 or 2 strips—the charge would probably come to between $20 and $25.

If people were already getting adequate VHF service, if they were getting the programs that they wanted, and the UHF station coming on the air didn't have anything particularly new to offer that they would be interested in spending $25 for, they just didn't convert.

I know the figures for last year. One major manufacturer who uses turret tuners where the strips can be changed—their experience was that only 1 percent of their sets in the field are converted over to accept UHF. So it is a very, very small percentage.

Where you have new UHF service, you need good performance, just like we have on VHF. The only way you can get it is, not through strips but through a full-range tuner of the type we make or other people make.

Mr. Cox. Does this full-range tuner—as I understand your testimony—give as good service in the UHF frequencies as it does in the VHF?

Mr. TARZIAN. That is right. This tuner that we have, which we have had now for over a year and a half, gives on the average as good service as the average VHF set. So now a UHF broadcaster is not at a disadvantage from the standpoint of performance of UHF receivers. Before, he was.

Two years ago, the performance of these UHF receivers, full range or otherwise, with or without converters or strips, was only one-third to one-fifth as good. So as a result, coupled with low power of the UHF stations themselves, they just had no service area. That was another major problem.

Mr. Cox. Do you sell many of the more expensive type of VHF-only tuners that you demonstrated there without the front section?

Mr. TARZIAN. Without the U. We don't sell, relatively, large numbers of the V tuner itself that are later on adaptable to UHF. I would say that our business is probably 10 or 15 percent on that type alone.

Mr. Cox. That is, the decision is usually made initially either to make it only V or to make it all channel?

Mr. TARZIAN. That is right. I think that is the general tendency now. I feel that this year, 1956, we are going to sell less of those V tuners that can later on accept UHF; relatively, percentagewise we are going to sell less of those than we did in 1955, because the thing is now settling down, so that a manufacturer will either make straight VHF sets or he is going to make combination sets, because they realize now that in areas where they need UHF, they have got to have performance.

In those areas where they have VHF service, the way UHF has been going, they don't see any need for putting in something which later on can accept UHF.

Mr. COX. As far as your own operations are concerned, what percentage of the tuners you sell are now the all-channel type?

Mr. TARZIAN. I just gave you that.

Mr. COX. Twenty-six percent in 1955—was that your figure?

Mr. TARZIAN. That is right. In 1954 it was 31 percent. I estimate in 1956 it will be nearer 20 percent.

Mr. COX. Does the construction of a color set present any tuning problems, or does this tuner, or its equivalent, work equally well in a color receiver?

Mr. TARZIAN. We still have some engineering problems to work on to adapt UHF to color, but they are not insurmountable. I feel we have the answer.

So there won't be any problems from an engineering standpoint that would hinder color on UHF. But as things get more competitive, as color sets get more competitive, as more manufacturers make color sets and they lower their prices, I think you are going to find that they are going to make straight VHF color sets. In fact, we have a lot of requests now for samples of straight VHF color tuners. So I think you folks should not labor under the delusion that all color sets are going to be full-range sets.

Mr. COX. That is, the desirable situation in that respect, you think, will change under competitive influence?

Mr. TARZIAN. That is right, just as it has had to change with black and white sets, because of competitive conditions.

Some people labor under the delusion that manufacturers are in collusion not to make full-range sets. That is the most ridiculous thing that anyone can suppose. The reason for it is this: A manufacturer is in business to sell what the public wants. He has to compete with the other manufacturers. If the public wants to pay $20 to $25 more and get a full-range set, the manufacturers are very happy to do it—to build them. But if the public isn't interested in paying for it, how can a manufacturer, with the competition that he has, go out on the market and penalize himself. For every set he sells, his set is going to be $25 higher, when markets like New York, Chicago, and the like don't need this UHF full-range.

So there is no collusion or anything of that kind amongst the manufacturers. The same accusation was made of the manufacturers when we had FM. They thought that the manufacturers were trying to hinder FM, and that if they would just build FM sets, FM would go like a house on fire. Well, the economics were against FM. The manufacturers are in business to build what the public wants. We would be very happy to build all full-range tuners, but the manufacturers don't want full-range tuners. They don't want to pay the $10 more that it costs. So as a result we build 26 percent full-range.

They likewise are in the same situation as we are. The public doesn't want it. They don't want to pay the $20 to $25 more that a full-range set would cost by the time they went to the dealer's store to buy it.

Mr. Cox. That additional cost, over the $10 figure you quote, is because of normal wholesale-retail markups?

Mr. TARZIAN. Markups. But the way I feel about it is this: If Congress would make it possible to lift the excise tax from the lower price UHF sets—let's set a limit of about $15 excise tax credit on a full-range set—then I am sure that the manufacturers will go along and absorb this additional $10, and the dealers will go along and absorb it, so that you will be able to have out on the market full-range sets that will be the same price as VHF sets, which of course then would carry the standard excise tax.

Then in that way you will increase your circulation. The answer to this whole problem is a matter of circulation of UHF. Technically, and from every other standpoint, UHF is a satisfactory service, if we only had the sets out in the field.

We can look at it in this way: Suppose in the early days of television, instead of having VHF, we only had 12 channels of UHF, and all the sets that were out on the market were just UHF. Later on the Commission opened up VHF channels, 70 of them. Those VHF channels would have the same problem that the UHF's are having now. It isn't something that is inherent in VHF or UHF, as such. It is just a matter of working out a means whereby we can get these sets into circulation, so that when a broadcaster goes on the air with his U station, the receivers are there. He knows he has the audience, if he has the programs. Then the advertiser or the network knows that that station can do just as good a job as anyone else, because the circulation is there.

I know the suggestion has come up that in areas where there are already two U's in operation, that is a bad thing for a V to come on the air, that it is going to hurt the U's. But it my feeling is this, that if those two U's have been progressive and aggressive at the same time, and the people have good UHF service which they have had now for 2 or 3 years, that the V is going to have a tough time getting people to watch it, just like in those areas where you have 2 V's, the U has a tough time getting the U station to be watched by the V listeners.

From a technical standpoint, the services are comparable. And if the circulation is there—and it is already there where you have had two U's there in operation over a period of years—then that V is going to have hot competition.

The CHAIRMAN. Of course, in that case where you have, say, 2 or 3 V's or U's, I think the economic experience has been that if a U has a network, it gets along all right.

Mr. TARZIAN. If it has the programing, whether it is network or its own independent—whatever it has in the way of programing, the people want to watch, and it has been there on the air for a number of years——

The CHAIRMAN. You have got to have the type of program that will make the people want to go out and spend that extra money to convert or buy an all-channel set.

Mr. TARZIAN. They have already spent it in the U area. I am talking about where you have two U's on the air. I know the Commission has been criticized for putting another V in an area where there are already two U's. But what I am saying is this, since those U's have been on the air for a number of years now, and all the sets in that area can get now—they have the circulation, they have the full range receivers —a V going in there is going to have a tough time. It isn't going to put the U's out of business.

Mr. Cox. It doesn't have the set-conversion problem because, of course, the all-channel set can receive the signal.

Mr. TARZIAN. That is right.

Mr. Cox. Hasn't there been some evidence, in some of these areas where there are one or more U's on the air and a V is allocated and on the verge of coming in, that the U operators are given advance notice that their network affiliations will or may be terminated?

Mr. TARZIAN. Here is what I would say: If those U's have high towers and have full power, they can do just as good a job as that V is going to do. I think you will find that in those cases that you are talking about where they have got notice of termination, the U has not had a good facility.

Mr. Cox. How many U stations, if you know, are operating at full power in the country?

Mr. TARZIAN. I don't know exactly how many there are, but there are quite a number of them. But there are a lot more who are not operating at the maximum. You will find that most of the V's have gone to the full power and full tower height that is allowed by the FCC rules and regulations.

Mr. Cox. Transmitters for full power V operation were available much earlier, and at much lower cost, than for a U; isn't that right?

Mr. TARZIAN. I think that is true, but the U costs will come down. For instance, a 100-kilowatt UHF transmitter sold by RCA was priced, 3 or 4 years ago, for about $85,000. You can buy that same transmitter now, a new one, for $25,000.

Mr. Cox. What is the price for a 1,000-kilowatt UHF transmitter, which is full power?

Mr. TARZANIAN. Since it is new, it is going to be high. But in time it will come down, too.

Mr. Cox. Will it come down fast enough for this fellow to be able to go to full power, to compete with the V that comes into the market, before he loses his shirt?

Mr. TARZIAN. It all depends on how many of them want to go into it, and do it, you see. If you only build one, the price is very high. If you can build 25 or 30 of them, the price will go down.

Mr. Cox. The maximum market would be about 99; wouldn't it, because that is the total number of U stations on the air?

Mr. TARZIAN. That is a big market for that type of a product, and prices will drop. The other thing is this: These UHF broadcasters would do this—they'd take heart and do it—if they knew that in some way or other, either through this tax proposal or some other proposal, there would be the set circulation for them.

Mr. Cox. Why is it that in a place like Pittsburgh, Pa., with one V and one U on the air, the V has all of the networks and the U is having a terrific time making a go of it?

Mr. TARZIAN. Does the U station in Pittsburgh, Pa., have a high tower and full power so that it does as good a job as the V? It could do that if it wants to do it. When it does that, and when it has the circulation, it can compete on an equal footing.

Mr. COX. Doesn't it have terrain difficulties in Pittsburgh which perhaps it cannot overcome?

Mr. TARZIAN. I don't agree with you on that. With a high tower and full power, you can overcome all those terrain difficulties.

Mr. COX. Mr. Storer seemed to think they would still have trouble in Portland, even with a 1,000-kilowatt transmitter and the highest tower in the area. He still got serious shadow in the hilly terrain there.

Mr. TARZIAN. We have, of course, for instance, around Evansville, Ind.—it isn't the flattest country in the world—but I have gone down there and looked over that terrain, and they get satisfactory reception in that area without too much trouble.

The answer to all this is, I think, you can go to 2,000 feet on UHF and you can go to a million watts. Any station that does that will have just as good service as any of the V's that we are talking about, competitively.

Mr. COX. If the U can give as good service, including the area of coverage, as the V that is coming into the market, is there any affirmative reason for putting the V in there? Why not just put another U in and use the service that is there now?

Mr. TARZIAN. I am not arguing, you see, that they should do this thing. All I am saying is that from a technical standpoint, if you have the circulation, the U's are not at a disadvantage if they have been aggressive and they have been on their toes, and haven't just sat back and waited.

For instance, we are a VHF operator. We started out with a 200-foot tower and a 1-kilowatt transmitter, because we just couldn't buy a bigger transmitter when we went on the air in 1947—when we first started. Our next step was to go to a 600-foot tower and a 5-kilowatt transmitter when we could buy it. Later on we went to a 1,000-foot tower and effective radiated power of 100 kilowatts.

All that costs money. But if you want to stay in business and be competitive, you have to do it. The same thing is true of the U's. If they want to stay in business and compete, they have to do these things.

Mr. COX. There seems to be some sentiment on the Commission that they have to put a V in these places because it will give greater service than even a full power U.

Mr. TARZIAN. I don't think they are correct on that premise. If that is their reason for doing it, they are not correct in their premise, because I think a 1,000- or a 1,500- or a 2,000-foot facility in Evansville, Ind., with a million watts will do as good a job as any V that they can put down.

Mr. COX. Isn't it true as long as the impression prevails, particularly among advertisers, that the V gives greater coverage, that if it appears in the market, it is going to have an advantage over its competitors in selling national advertising?

Mr. TARZIAN. All right, but impressions can be changed. I think a lot of these impressions are created by the UHF people themselves.

They say they have got terrible service. If you were buying advertising, and you heard their stories, what would you say?

Mr. Cox. My understanding is they say they have got a good service, but that they don't think it goes as far out, perhaps, as you seem to think it does.

Mr. TARZIAN. It does if they spend the money and put up the facilities. It will do that. And it is the object of the Commission, in their engineering standards, to set it up that way.

For instance, you take the low channels on VHF—channels 2 to 6. They have set that up as a maximum of 100,000 watts effective radiated power. Then you go to channels 7 to 13, they have set it up as 316,000 watts to equalize it. On UHF they have set it up at 2,000 feet and somebody was telling me about 2 million watts effective radiated power.

They have done that, from an engineering standpoint, to equalize those services. So you can do it. It is feasible from a technical angle to do it, and if you want to stay in the UHF business, you have to do it.

Mr. Cox. You didn't mention any figure—you said it would be high because there were so few of them. Do you have any idea what the cost of a 1,000-kilowatt transmitter for UHF is?

Mr. TARZIAN. I don't, no. I haven't checked up on it, because I personally haven't been interested, at the moment, in going into high-power UHF broadcasting, even though we are interested and have applied for a UHF station at Roanoke, Ind. We believe in UHF. UHF has a future. It is maybe not as good as people thought, in the early days, it would be, nor is it as bad as people now make it out to be. It is a good service, if it is properly handled, and you have the circulation. That is the problem, to get that circulation.

The CHAIRMAN. Thank you, Mr. Tarzian. I appreciate your coming.

We will take a 5-minute recess.

(A short recess was taken.)

The CHAIRMAN. The committee will come to order.

Mr. Steetle, we will be glad to hear from you.

STATEMENT OF RALPH STEETLE, EXECUTIVE DIRECTOR, JOINT COUNCIL ON EDUCATIONAL TELEVISION

Mr. STEETLE. Thank you, sir.

My name is Ralph Steetle, and I am the executive director of the Joint Council on Educational Television. The joint council is a representative body, the 11 constituent organizations of which represent every important segment of American education, at all levels, public and private. The headquarters of the joint council is here in Washington. The predecessor of the joint council is the Joint Committee on Educational Television; the change in name to the Joint Council on Educational Television occurred in December 1955.

I am grateful for this opportunity to report to your committee concerning the development of educational television stations throughout the United States, with particular reference to the manner in which these developments relate to the functions of this committee.

The joint council originally consisted of 7 organizations, all of which had participated in the hearings before the FCC in 1949 and

1950 on which the sixth report and order were based. During 1955 3 additional organizations joined the joint council and this month the 11th organization became a member so that at the present time there are 11 members, as follows:

American Association of School Administrators (joined March, 1955).

American Council on Education.

Association for Education by Radio-Television.

Association of Land-Grant Colleges and State Universities.

Educational Television and Radio Center (joined December 1955).

National Association of Educational Broadcasters.

National Association of State Universities.

National Citizens Committee for Educational Television (joined February 1956).

National Congress of Parents and Teachers (joined July 1955).

National Council of Chief State School Officers.

National Education Association of the United States.

During the hearings on which the sixth report and order were based, the joint council, representing education's interest in television, requested the reservation of channels, both VHF and UHF, for noncommercial educational use. The FCC found that such reservations would be in the public interest, and they were accomplished by earmarking for educational stations 80 VHF and 162 UHF channels—subsequently increased to 86 VHF and 172 UHF channels—located in the principal metropolitan areas and educational centers of the continental United States and its Territorial possessions.

For this reason, educational television has a vitally important stake in both VHF and UHF service. Because VHF television was already a going concern at the time of the sixth report in April 1952, the VHF educational reservations were more immediately valuable than those in the UHF band. The VHF reservations included such major cities as Chicago, St. Louis, Boston, San Francisco, Pittsburgh, Milwaukee, Houston, New Orleans, Minneapolis, and Seattle—and I could name more except I would sound like a train announcer—to mention only those among the first 20 markets in the country. Noncommercial educational stations are now broadcasting on the reserved channels in all of those cities except Milwaukee, New Orleans, and Minneapolis.

In Milwaukee, on February 9, 1956, one of the two applicants for reserved VHF channel 10 has withdrawn its application and it appears that the FCC will shortly grant a construction permit to the remaining applicant, the Board of Vocational and Adult Education. At New Orleans, on February 17, 1956, the Commission granted a construction permit to the Greater New Orleans Educational Television Foundation for an educational station on reserved VHF channel 8. And in Minneapolis-St. Paul, the Twin City Area Educational Television Corp. filed its application for reserved VHF channel 2 on February 9, 1956. Funds are on hand for these three stations and, accordingly, it may be expected that by the end of this year educational stations will be on the air in all of the cities in the first 20 markets in the country where VHF channels have been reserved for educational purposes.

It is the stations on these VHF channels in the largest cities, with their financial resources, that have enabled us to turn educational television from dream to reality, and to begin acquiring the practical experience which is the basis of any highly developed art. In the major metropolitan areas below the first 20, the local situations vary, but good progress toward full use of the reserved channels is being made. In summary, the VHF educational reservations have been, and continue to be, of major significance in the development of educational television in its early stages.

In view of the fact that precisely two-thirds of the educational reservations are in the UHF band, the development of UHF television is of vital importance to the long-range development of educational television.

The CHAIRMAN. By that, you mean you have about absorbed, as I understand it now, the available VHF channels?

Mr. STEETLE. This is where the quick operations have taken place.

The CHAIRMAN. And if we are to look toward the expansion of educational television into communities other than these large centers you mentioned, we will probably have to look toward the UHF band?

Mr. STEETLE. That is true, or else find VHF's for those educational areas, sir.

The CHAIRMAN. That poses a very difficult problem, I think. In other words, if we could work out the availability of educational programing and educational channels in the UHF band, we would have an easier long pull on this thing; wouldn't we?

Mr. STEETLE. And yet this is alined, also, to the successful commercial use of UHF, because we need assistance in encouraging the purchase of sets. In many of the larger cities, especially in the east, all available VHF channels were already occupied by commercial stations before the "freeze" of 1948, and the hearings which led to the sixth report. In these metropolitan areas, no new VHF channels were available for educational use, and, accordingly, the Commission reserved a newly assigned UHF channel.

In 7 of the first 10, and 10 of the first 20 metropolitan areas—including New York City, Philadelphia, Los Angeles, Detroit, Baltimore, Cleveland, and Washington—the present prospects of full-scale educational television are dependent upon the future of UHF service, because it is a UHF channel that is reserved for educational use.

A good example of this, Mr. Chairman: There has been a half a million dollars set aside in Cleveland for the development of an educational television station. Yet the educators there are not proceeding to build this station until they find out whether or not someone else in Cleveland will come along and utilize UHF, so there can be a widespread service to the total population.

The CHAIRMAN. In other words, sound economical UHF stations in these areas would be a great help to a UHF educational station?

Mr. STEETLE. That is true, sir. If UHF languishes and eventually dies, there will be either no educational television service in these cities—which is unthinkable—or VHF facilities will have to be made available for exclusive educational use. It is, therefore, clear that educational television has a vital stake in both VHF and UHF, and with no reason to favor one at the expense of the other, because both are essential.

I should like to emphasize that, although one of the joint council's main tasks has been to request and support educational reservations, education's stake in the television system as a whole extends far beyond the reserved channels. The reservations must be an integral part of a sound television structure, or their worth, as we have already discussed, will be seriously diminished. Educators have never taken the view that the noncommercial stations can or should be the sole medium of education in television. If you can provide educational values by television, it is just as important to provide them through networks or commercial stations as it is through the noncommercial station.

On the contrary, the education and cultural implications and potentialities of the commercial television service are enormous. A multiple, varied television service on a nationwide basis is as important to educators as to any other part of the citizenry. Local television outlets for community use and as a medium of local self-expression are likewise vital to education, and this is especially true in smaller communities that are unable to support more than one television station. Without a healthy UHF service, it is difficult to see how these basic national necessities in the field of telecommunications can possibly be achieved.

The extent to which educators have already made use of the reserved channels is commonly and grossly understated, whether by accident or design. There is attached hereto as exhibit A a list of the 20 educational television stations now on the air.

(The list referred to is as follows:)

EXHIBIT A. EDUCATIONAL TELEVISION ON THE AIR, FEBRUARY 29, 1956

Twenty communities now have noncommercial educational television stations. All 20 stations listed below operate on reserve channels except WKAR–TV at East Lansing, Mich., and KUON–TV at Lincoln, Nebr., which operate on a noncommercial educational basis on channels which are not reserved. These stations and the institutions operating them are:

Date programing commenced	Location	Call letters	Operating institution	Channel No.
Apr. 28, 1955	Birmingham, Ala	WBIQ	Alabama Educational TV Commission.	VHF 10.[1]
May 2, 1955	Boston, Mass	WGBH–TV	WGBH–TV Educational Foundation.	VHF 2.[1]
Aug. 1, 1955	Champaign-Urbana, Ill.	WILL–TV	University of Illinois	VHF 12.[1]
Jan. 8, 1955	Chapel Hill, N. C	WUNC–TV	Consolidated University of North Carolina.	VHF 4.[1]
Sept. 19, 1955	Chicago, Ill	WTTW	Chicago Educational TV Association.	VHF 11.[1]
July 26, 1954	Cincinnati, Ohio	WCET	Greater Cincinnati TV Educational Foundation.	UHF 48.[1]
Sept. 19, 1955[2]	Columbus, Ohio	WOSU–TV	Ohio State University	UHF 34.[1]
Jan. 30, 1956	Denver, Colo	KRMA–TV	Denver Public Schools	VHF 6.[1]
Oct. 3, 1955	Detroit, Mich	WTVS	Detroit Educational TV Foundation.	UHF 56.[1]
Jan. 5, 1954	East Lansing, Mich	WKAR–TV	Michigan State University	UHF 60.
May 25, 1953	Houston, Tex	KUHT	University of Houston and Houston Independent School District.	VHF 8.[1]
Nov. 1, 1954	Lincoln, Nebr	KUON–TV	University of Nebraska	VHF 12.
May 3, 1954	Madison, Wis	WHA–TV	Wisconsin State Radio Council	UHF 21
Aug. 12, 1955	Miami, Fla	WTHS–TV	Lindsey-Hopkins Vocational School of the Dade County Board of Public Instruction.	VHF 2.[1]
Jan. 7, 1955	Munford, Ala	WTIQ	Alabama Educational TV Commission.	VHF 7.[1]
Feb. 13, 1956[2]	Oklahoma City, Okla	KETA	Oklahoma Educational TV Authority.	VHF 13.[1]
Apr. 1, 1955	Pittsburgh, Pa	WQED	Metropolitan Pittsburgh Educational TV Station.	Do.[1]
Sept. 20, 1954	St. Louis, Mo	KETC	St. Louis Educational TV Commission.	VHF 9.[1]
June 10, 1954	San Francisco, Calif	KQED	Bay Area Educational TV Association.	Do.[1]
May 1, 1955	Seattle, Wash	KCTS–TV	University of Washington	Do.[1]

[1] Reserved channels.
[2] Testing.

The nature of the allocation plan and the diverse characteristics of the reserved channels lend themselves to misinterpretation of statistics and percentages. The result has been a prevalent misconception that educators have been slow if not backward in exploiting the opportunity given them by the FCC reservation of numerous channels. It is, indeed, the fact that they are so numerous that gives rise to the misconception.

Within the entire allocation plan there are now 258 reserved channels. Since only 18 educational stations are actually in operation on the reserved channels, and 2 more are operating on nonreserved channels, it is easy for critics of educational television to resort to percentages and exploit the mathematical fact that less than 10 percent of all reserved channels have been taken up in the period of more than 3 years since the reservations were made.

But the answer is, of course, that the reserved channels are not all alike. To begin with, 172 of them are in the UHF band, and educational use of these has encountered obstacles similar to the commercial UHF stations. It is no accident that, in the largest 20 markets, 7 of the 10 VHF reservations are already in use and the other 3 soon will be, while of the 172 UHF reservations, only 4—Cincinnati, Columbus, Madison, and Detroit—are presently in use. True, noncommercial UHF stations, unlike the commercial stations, do not suffer from lack of advertising income which they do not and cannot receive or depend upon. But the educational UHF stations do suffer, just as do the commercial stations, from lack of receivers and audience; for this discourages both the educational broadcaster and his potential subsidizers.

Despite all this, determined and courageous efforts are being made to use several of the UHF reserved channels even under present adverse circumstances, and it is safe to assume that if the Commission now takes action to preserve and stimulate UHF service, the reserved UHF channels will come into rapidly increasing use. In any event, so far as the immediate crisis in television is concerned, it is apparent that the reserved UHF channels are victims rather than cause; and no one has suggested that these reserved UHF channels could be used more advantageously for commercial purposes.

The Commission, in its sixth report and order of 1952, reserved television channels for educational purposes because it was convinced, on the basis of the record made in the hearings, that there was a need for noncommercial educational television stations based upon the important contributions which such stations could make in educating the people both in school—at all levels—and also the adult public. The need for such stations was justified upon the high-quality type of programing which would be available over such stations—programing of an entirely different character from that available on most commercial stations.

It is my opinion, from having personally visited most of the educational stations and having viewed a number of their representative programs, that the programing service now being offered by the educational television stations in operation justifies the conclusions reached by the Commission in 1952 in reserving channels for educational stations. Educational television programing is, in my opinion, already distinctive, generally competent, and sometimes distinguished. The educational resources of the various areas throughout the country are being mobilized through the live programing offerings of the various educational television stations.

Furthermore, through the facilities of the Educational Television and Radio Center at Ann Arbor, Mich., the best programs developed by any of the educational television stations are being made available to all stations. There appears at pages 26 through 68 of exhibit B[2] attached hereto a series of sketches of the principal programing undertakings of each of the educational stations on the air in November 1955. Insofar as written words alone can convey an impression of what is designed for the eye as well as the ear, we think these schedules show that a new and significant and useful dimension has been added to television.

A word about educational television's network. The educational Television and Radio Center was established in December of 1952, and received a grant of $3 million at that time from the fund for adult education to begin its operations. The center not only made available for national distribution the better local programs developed over the educational television stations, but also encouraged and brought to fruition program ideas of educational merit from all available sources. The center began furnishing program service to the Nation's educational stations on an informal basis on January 1, 1954, and inaugurated a formal program service of 5 hours a week in May of 1954. On December 19, 1955, the Ford Foundation announced another grant in the amount of $6,265,000 to the Educational Television and Radio Center for the further development of its programing service to noncommercial educational television stations. At the present time the center is making available to educational television stations 5 hours of programing each week in the fields of history, public affairs, literature, music, the arts, science, and children's programs. The center expects shortly to increase its distribution of programs to approximately 10 hours per week. For example, Mr. Teller, of hydrogen energy fame, describes atomic energy. Howard Hanson, of the Eastman School of Music, discusses music appreciation. Robert Penn Warren discusses literature. They are of this nature. I have seen a number of these programs, and it is my opinion that they are not only well done and interesting, but also educationally significant.

The purpose of the FCC in reserving channels for educational stations was to take these channels from the commercial market place and make possible the development of a truly educational television service. The reservation plan has actually resulted in a real start in the development of such a service, which now consists of 20 educational television stations. Abolition of the VHF reservations would destroy educational television's immediate prospects for growth which lie chiefly—because of the problems that we have been discussing here in the UHF—in the VHF band. Abandonment or deterioration of UHF would destroy educational television's long-range prospects of full development which, like those of the television industry as a whole, must depend upon vigorous exploitation of the UHF frequencies. Once UHF development is assured the UHF reservations, which comprise two-thirds of all of the reservations, will again be of practical importance.

[2] A copy of exhibit B, Comments of Joint Committee on Educational Television in FCC Docket No. 11532, dated December 15, 1955, has been retained in the committee's files.

The CHAIRMAN. Thank you, Mr. Steetle. Do you have some questions?

Mr. COX. Yes. Mr. Steetle, just for the record, could you give us a brief explanation for the delays that have taken place in exercising the rights to reserved channels because of some of the special problems of educators in getting underway on a project that involves an expenditure of money?

Mr. STEETLE. Unlike the commercial entrepreneur who can step around to the bank and establish credit and immediately proceed to establish a station, educational policy develops somewhat more slowly. You have to inform the entire community. You have to gain support for the use of this medium. You have to experiment to see whether or not this is important to education. So you have an awful lot of work to do before you decide this is something that you really want to do.

Then, having made that decision, you have to explore the sources of financing it: How much will come from public gifts, what foundations can you tap, how much will come from the university, what will the school systems chip in, what is the role of the library and the museum? To me, it is somewhat astounding that this process has taken place in so many communities in this short a time.

Mr. COX. Wasn't it actually the purpose of this system of reservations to allow time for that process to work itself out?

Mr. STEETLE. That is precisely the basis upon which the reservations were made, recognizing that educational——

The CHAIRMAN. The Commission, I think, had quite an understanding of the problems of financing educational TV in allowing longer construction time after they had given a permit; did they not?

Mr. STEETLE. I think the Commission has been most sympathetic, Mr. Chairman.

The CHAIRMAN. In many cases, take where a State university is involved, a land-grant school, sometimes the legislature don't meet except every 2 years. You might get the grant and have to wait possibly 2 years before the legislature would make an appropriation, or would work out some problem for the State university to enable it to have educational TV.

Mr. STEETLE. Yet in the long run this is going to have real meaning to the legislatures. The manager of your Seattle station was in a meeting with me in Iowa yesterday, and we got to discussing before this group of educators, talking about educational television, what meaning it had to the University of Washington, for example.

They have a problem there that many major universities have with the need for science training and youngsters coming out of high school without the basic algebra and the mathematical requirements. You either take your entire mathematics department and break them up into sections, all of these incoming students—so-called bonehead math—and then how do you teach your higher levels of mathematics.

The educational station in Seattle is putting the bonehead mathematics on television and, in cooperation with the correspondence division of the University, they are upgrading these incoming youngsters so that they are able to take scientific training, which is one of our major needs.

The CHAIRMAN. And they are creating an interest among younger people to go into this field.

Mr. STEETLE. That is indeed right.

The CHAIRMAN. That is the most important thing they are doing, creating an interest. I think more of these stations, if you can be helpful, ought to do that—put more emphasis on that—because if there is a crying need in this country, it is for people to go into that field.

Mr. STEETLE. Not only that, but I think, Mr. Chairman, if we are going to remain a strong and free country, it is important that all of us have an education—adults as well as the youngsters.

In Pittsburgh, for example, I think they found that the average attainment educationally was about the eighth grade among the adult population. How does an adult who wants a high-school diploma go about doing it? There are night schools, but there is baby-sitting, there is parking. So they put a high-school course specifically for adults on the educational television station, and they are finding that this is so important that the men in industry who are on swing shifts and can't take these, are demanding that they be placed again at another hour.

This always interest me, that in addition to the adults that were free, some of those in the penitentiary also tuned in on these high-school diploma courses; and amazingly enough—or maybe it isn't amazing, because of their greater powers and freedom for concentration—a higher percentage of the convicts finished their courses.

The CHAIRMAN. They had more time. [Laughter.]

Mr. STEETLE. They had more time, I think, and less distraction.

Mr. Cox. What has been the general public response, in and out of penitentiaries, to your educational programing? Have you had evidence of a considerable public interest all across the country where these stations are on the air?

Mr. STEETLE. I think we do indeed. At St. Louis, Prof. Houston Smith of Washington University gave his regeular course in the comparative religions of mankind, but dressed up attractively for television. He had a classroom of 100,000 people in St. Louis who were quite excited about this. Professor Smith says, "I walk down the street, and as I pass the haberdashery the man comes out and says 'Your tie looked a little rough on that television program. Come in and get a new one.'" He said "My secretary went down to reserve a normal academic upper berth for me on a trip, and the girl at the railroad station said 'I can tell on television his legs are too long for that. Get him a roomette.'"

In San Francisco, where they made an audience survey, about 50 percent of the people interviewed were able to identify specific programs on the educational station there. This I think, for a station that has not been on the air for a long time, this is very encouraging, very stimulating.

One more thing here. They did a teen-age program called The Finder on the St. Louis station. An attractive young man in a sports car takes the children, by television, to see how aviation works, to see what the various things of importance are around the St. Louis area. They got to wondering: Do the teen-agers for which this is intended really look at this program? So the next week's program was to be a visit, by television, to a cave about 70 miles outside of St. Louis. So they casually said at the end of the program "Any of you that would like to do this in person are welcome to attend."

They made provisions for the accommodation of 100 or so teen-agers. They had 4,000 of them who showed up ready to go through this cave. They say at St. Louis that while they are quite impressed with what educational television has done, they think that the single most significant accomplishment of the station was that of the 4,000 children that went in, 4,000 came out.

Mr. Cox. Is it true that in a number of instances programs developed on educational stations have been put on the networks?

Mr. STEETLE. Yes, this is true, and it is one of the things we said when we were testifying for these channels. We said this would be stimulating and useful to the industry; that there could be some pace-making programs.

One of the children's programs developed at the educational station in Pittsburgh is carried now on Saturdays at NBC, the Children's Corner, a very effective, no-murder, no-violence, "let's speak French and learn manners" type of program. I think there will be more and more of that kind of thing take place, where the educational station develops a program and then sometimes it is given wider circulation, wider use. I think we welcome that kind of switching of our programs and our ideas.

Mr. Cox. Could you tell us, just approximately, how many of the unused VHF educational reservations are in cities of substantial size, where there seems to be any demand for their release for commercial use?

Mr. STEETLE. I think if you took the first 100 markets and you examined what were the possibilities of finding additional VHF channels for commercial use by taking those unused reservations, I think that the most you could gain would be 6 or 7 out of the first 100 markets. So our belief is that while there is a problem in getting sufficient outlets in our major cities, this would be no answer to it, and you would destroy something which is of immeasurable value and significance to this country.

The CHAIRMAN. Thank you. I have no further questions.

Mr. STEETLE. Thank you. I enjoyed it very much.

The CHAIRMAN. Is John Gunther here? Mr. Reed? Mr. Gunther and Mr. Reed can submit statements for the record.

That winds up our witnesses for today. We meet again at 10 o'clock Friday morning. The committee will recess until 10 o'clock on that day.

(Whereupon, at 11:55 a. m., the committee adjourned, to reconvene at 10 a. m., Friday, March 2, 1956.)

TELEVISION INQUIRY

(UHF–VHF Allocations Problem)

FRIDAY, MARCH 2, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room G–16, United States Capitol, Senator John O. Pastore presiding.

Present: Senators Pastore (presiding) and Bible.

Senator PASTORE. The hearing will please come to order.

Our first witness is Mr. Reed.

STATEMENT OF RANDOLPH REED, KBMT, BEAUMONT, TEX.

Mr. REED. My name is Randolph C. Reed. I am president of Television Broadcasters, Inc., Beaumont, Tex., operating UHF channel 31.

Our station went on the air in April 1954, serving the 90th market in this country, comprising primarily the tricities of Beaumont, Port Arthur, and Orange, with an estimated population of 260,000 people, occupying approximately 100,000 wired homes.

At the time we began broadcasting, our market was served by unsatisfactory programs from channel 2 in Houston and channel 11 in Galveston. The cost of an antenna installation to make reception possible from those 2 distant stations was approximately $150.

At the time we began broadcasting we had an affiliation with NBC, CBS, and ABC, but due to the fact that we had no live interconnection, therefore, all programs must be filmed, we receive very few contracts from these three channels.

My reason for not spending the necessary money for microwave connections was the uncertainty of what additional stations would enter our market.

At the time we went on the air there were no other stations in the area; however, channel 4 and channel 6 had been assigned to the Beaumont-Port Arthur territory. A few months later channel 6 was granted to the Beaumont Broadcasting Co., and in April 1955 they went on the air.

With microwave connections they are now showing in excess of 70 CBS and ABC shows each week, and it is my opinion that they must have approximately 80 percent of the listening audience. In the meantime, our revenue has declined each month, until today we have one local advertiser and a few national advertisers for a total gross income of approximately $1,600 per month, compared to approximately $20,000 per month income when we started operations.

I believe that the prime problem for the majority of UHF operators is the delay and indecision of the FCC, and the inability of all of us to anticipate any of their actions. I believe that commonsense and sound business judgment could be applied to a majority of the areas where UHF–VHF problems exist, and satisfactory results could be obtained quickly.

May I hurriedly give you the details of our individual problem and our thoughts toward correction of these problems, not knowing whether or not these facts apply to other areas.

We have an affiliation with NBC wherein we carry about 5 hours of their film programs each week. Were we to have interconnection facilities wherein we could broadcast live, we believe this figure would increase from 5 hours per week to probably 20 hours each week. With this additional programing we could, no doubt, greatly increase our audience and thereby increase our advertising spot sales.

We find it impractical to spend the money for interconnection when the FCC might choose to grant channel 4 at any time. We are quite confident that NBC would move their affiliation to channel 4, because they would then have access to all of the sets in the territory, instead of just those capable of receiving UHF signals.

The Beaumont-Port Arthur-Orange area is not big enough for more than 2 television stations, and I am confident that should there be more than 2, it would be impossible for a third station to operate at a profit.

Were we to receive consent from the FCC to change to channel 12, which I believe was recommended in the CBS report, as well as some others, we could convert in less than 60 days and become interconnected for live broadcast in about the same period of time. It is my personal opinion, should this grant be made, the applicants for channel 4 would not go through with their construction plans.

Having had almost 2 years in the UHF television business, I am convinced that it is almost impossible to make a profit in such a venture without all television sets being equipped for all-channel reception at the point of manufacture.

I also hold the office of president of the Reed Co., in Beaumont, which company serves as distributor for one of the largest manufacturers of television sets in America, and I am fully familiar with the converter, tuner, and all-channel installation problems.

Senator PASTORE. Has anybody applied for channel 12?

Mr. REED. No, sir; it has never been allocated to that area. It was recommended in this report by a number of people.

Senator PASTORE. Let me ask you another question: At the time that you applied for your UHF permit, did you know that channel 4 had been allocated to that city?

Mr. REED. I knew channels 4 and 6 had been assigned but never allocated.

Senator PASTORE. Had been assigned, that is right. You knew that the day was coming when they would come on the air?

Mr. REED. Yes, sir.

Senator PASTORE. Did you protest the granting of the license to channel 4?

Mr. REED. You mean channel 6, probably, because channel 4 has never been granted. Channel 6 is on the air.

Senator PASTORE. Channel 6.

Mr. REED. No, sir.

Senator PASTORE. All right, sir, go ahead.

Mr. REED. It seems to me that the recommendation made long ago regarding excise tax relief on all-channel television sets would have been the greatest and surest solution to the UHF problem.

The sands of time are running out for UHF operators, and I know the days are numbered for our small operation. But I believe that in the not too distant future this committee, the FCC, and all people interested in the future of television will regret the loss of UHF stations. The educational service, the community value, the religious and social benefits of television have only been scratched, but with the very limited number of VHF channels, it will be impossible for television broadcasting to keep up with the demands and progress of the American people.

I am most appreciative of the privilege of being here today, and I trust that I have not overimposed on your valuable time, and may I thank you personally for your efforts in behalf of the UHF industry.

Mr. COX. You were the first station on the air, then, in Beaumont?

Mr. REED. Yes, sir; approximately a year ahead of the others.

Mr. COX. Consequently, at the time channel 6 went on the air, you had no conversion problem up to then?

Mr. REED. That is right.

Mr. COX. Any sets in the area received your signal?

Mr. REED. Not all of them. I would say probably 65 percent of them.

Mr. COX. Some of them made the expenditure to get distant reception from other points?

Mr. REED. There were sets prior to our construction in 1951 and 1952 that didn't have tuners.

Mr. COX. Were you able to get them to convert?

Mr. REED. A great many of them, but not all of them. At that time converter sets cost about $75.

Mr. COX. How do you feel your coverage, areawise, compares with that of the channel 6 station?

Mr. REED. I believe that 95 percent of the people served by channel 6 are in this tricity area that we can serve beautifully. The farthest point from our transmitter is 18 miles in those 3 cities. When you leave those, you get into the piney woods of east Texas, and there are not very many people.

Mr. COX. So far as the economics of the area are concerned, you can serve it fully as well as the V station?

Mr. REED. Yes, sir.

Mr. COX. Yet despite the fact that you have substantial conversions and no real difference in the area to be served, the appearance of the one V station has virtually wiped out the income that you had received up to that time?

Mr. REED. That is correct.

Mr. COX. In your opinion, a second station would be the absolute death knell for your station?

Mr. REED. Yes, sir.

Mr. Cox. Are all-channel sets being sold in Beaumont, or has the appearance of the V tended to induce people to buy only VHF sets?

Mr. Reed. It has fallen from ninety-odd percent to twenty-odd percent.

Mr. Cox. That is all, Mr. Reed. Thank you.

Senator Pastore. Have you anything to document that last statement?

Mr. Reed. About the 90 percent?

Senator Pastore. Yes.

Mr. Reed. Yes, sir. I happen to be a distributor. I have a pretty close tab on set sales without tuners.

Mr. Cox. Could you send us some figures which we can insert in the record?

Mr. Reed. The Association of TV Manufacturers puts out a very precise monthly report.

Senator Pastore. You can realize that is a very important part of your testimony here. If you can document it, it will have some effect in the record.

Mr. Reed. I certainly can.

(This material has not been received by the commitee.)

Senator Pastore. Mr. Putnam. How are you, Mr. Putnam?

Mr. Putnam. I don't have to be sworn in this case; do I?

Senator Pastore. No.

STATEMENT OF ROGER L. PUTNAM, STATION WWLP, SPRINGFIELD, MASS.

Mr. Putnam. My name is Roger L. Putnam.

Senator Pastore. May we have quiet in the room, please, so that the witness may be heard? Thank you very much. You may proceed.

Mr. Putnam. My name is Roger L. Putnam. I am the president of Springfield Television Broadcasting Corp., which is the licensee of WWLP, a UHF television station in Springfield, Mass.

WWLP went on the air March 17, 1953. We are a medium-sized station in a medium-sized community, owned by local people and endeavoring to provide good service to the community to which we are assigned by the FCC. In so doing, we have been severely handicapped by being forced to compete with WNHC–TV, a VHF station licensed to serve New Haven, Conn., far to the south of us. Because it got a headstart during the freeze, and because of the preference of networks and advertisers for VHF stations, WNHC–TV has had a great competitive advantage. Despite our handicaps, we have made good progress in establishing ourselves as a part of our community. UHF receiver conversion in Springfield is now better than 90 percent. I think it is 100 percent, because the latest survey shows that as many people can reach us as the VHF. There are about 5 percent that can't get the VHF, and about 5 percent that can get the VHF but can't get us.

However, the Commission in the near future intends to force us to compete with a second VHF station on channel 3 at Hartford, which, because it will be somewhat closer, will be an even stronger competitor than WNHC–TV. Based upon our observation of what has happened to other UHF stations forced to compete against two VHF stations, we do not expect that WWLP will be able to survive very long after channel 3 goes on the air at Hartford. As a part owner of WWLP, I, of course, have a personal interest in the UHF–VHF problem, but what is far more important to me is that, unless UHF survives, Springfield, Mass., will have no local TV service whatever. As a resident of Springfield, I don't relish the thought of being forced to rely for TV service on distant stations in Hartford or New Haven, any more than Providence would like to be served by a TV station in Boston, which is much nearer to Providence than New Haven is to Springfield.

Senator PASTORE. You took the words right out of my mouth. [Laughter.]

Mr. PUTNAM. Excuse me, sir. I am sorry I didn't let you say it yourself.

Senator PASTORE. I have said it here.

Mr. PUTNAM. As a former mayor of Springfield, from 1938 to 1944, I believe that local officials and candidates should have access to local TV stations, too; and as a Springfield businessman, I would be concerned if the Springfield merchants had no opportunity to advertise over a local TV station. As I have said, that is just what will happen to Springfield if UHF TV does not survive, and the same fate faces most of the other cities in my home State of Massachusetts. There is not a single VHF channel allocated in Massachusetts west of Boston.

I know that I am not alone in believing that Springfield is entitled to its own local TV station—most if not all of the citizens of Springfield agree with me. They have shown their willingness to support a local station by spending substantial sums on UHF conversion and UHF antennas. Recently my son, in a brief appearance on WWLP, explained the threat to local TV in Springfield and asked his listeners to write or wire the Commission about it. I am told that this single short broadcast produced over 600 communications to the Commission.

I think it is more, however, than just a question of Springfield. It seems to me that it is a question of the whole country, of how we want to grow. Do we want to keep medium- and small-sized communities alive as communities, or are we trying to force people into a straitjacket? I think that the Congress, in its basic aim in the FCC legislation, wanted to encourage community TV stations; not big monopolies that were going to make everybody get into a straitjacket, but local communities in the local trading areas.

It is apparently the avowed purpose of FCC to do it, but it is not what their regulations are making come about. I think it is important, because we are a nation of separate communities. We are a Federal Union, in a sense. We have community pride. We have all sorts of community needs—community communications is an example of community needs. We have community newspapers; we have community radio. TV is becoming the most important medium of all for reaching people, and I think it is vitally important to the country that we have community TV.

Take just one example: Local merchants can afford to advertise on a local TV station that reaches their community, because they are getting the listeners they want and they can choose it. If they have to go out of town to advertise on a big station, they can't possibly afford it. They are giving the chainstores and people of that sort the advantage from concentration, and the local merchants are penalized. I think small business is an important backbone of this country, and if we force people into a few big areas we deny local merchants what is obviously one of their most important ways of getting business.

We also deny the local politicians a chance. We in Springfield have no interest in the elections in Hartford, except as neighbors, and except when it is a national election. But think of our Congressman from Springfield having to go to Hartford or New Haven to put his broadcast on the air to reach Springfield people. In the first place, it is putting him to unnecessary expense, and people aren't going to listen in the same way. I think that even more important——

Senator PASTORE. Don't you agree that somewhere along the line we will have to reach a definitive policy as to whether or not TV is going to be used merely to bring to the homes of people national network programs, or whether it is going to be a community service.

Mr. PUTNAM. I think it can be both; I don't see any reason why not. Of course, people want the national programs, but the national programs don't go on all day. There are times in between for the other things. People are going to want to see Groucho Marx, and they shouldn't be denied that privilege.

Senator PASTORE. I think you agree with me, Mr. Putnam, there has got to be a little more than allowing people just to see Groucho Marx or some other national network program. We can't sit back and say, "You have got enough TV because you can see that." There has to be more to it than that. Otherwise I think we have failed in using this tremendous medium of communication.

Mr. PUTNAM. I agree. That is in the act. We feel it ourselves very strongly. One of the reasons we have so many conversions is because we don't go only for Groucho Marx.

Senator PASTORE. We need equitable distribution.

Mr. PUTNAM. We believe that, and we are supposed to do community-service programs as well. We have tried to very hard. I think that is one of the reasons we have been so successful in getting conversions. It is not just an entertainment; it is a community service. I tried to say your own words, Senator; you said them better than I did.

Senator PASTORE. You are gracious, as always, but we both said the same thing.

Mr. PUTNAM. Well, local charities are another example. If our hospital wants to raise money, does it have to go to New Haven and put it on the air? New Haven doesn't want to put it on the air.

Senator PASTORE. Or do without TV.

Mr. PUTNAM. Yes, and the great advantages TV can give them. I won't stress that point. What is happening, I think we all know: Stations are being abandoned, lots of construction permits are not being used, others aren't even applied for in local communities, because it just has turned out not to be profitable, in the local communities, for UHF to compete, in most cases, with VHF. I can say that because I think we are one of the ones who have been able to do so. We are one of the relatively few who are, at the moment, in the black—not much, but a little bit.

Now I have got two suggestions. One of them I am sure is the right one, but I am sure nobody will do it, but I will just say it for the record: I think the right one is for stations to be given only the wattage and the tower height to cover the areas they are assigned for. There is no need that New Haven, for instance, should have coverage reaching up beyond Springfield, 65 miles away, when there are stations allocated for Hartford, Middletown, New Britain, and Springfield. I think that all stations should be given only the power to cover the area they are allotted for. That, I think, is the right solution. I don't think it will be done.

Senator PASTORE. I have been talking with members of the Commission. I am not a technician, but their problem in that direction, and I would like your comment on it, is essentially this: First of all, of course, there is a desire to see that everyone gets TV. There are certain gray areas where you cannot come in unless you give the station a little more power. In other words, if you could tell these radio waves, "You stop at the city line of Springfield and don't go further than that," it would be easy. After all, you are dealing here with the elements of nature. The minute you throw out this wave, something happens to it and it spreads. How far it will go depends upon how much impetus you give it with power.

The argument that the Commission makes—and I am trying to get your opinion on this—is this: That it is not really a question of drawing a circle this way, and drawing a circle that touches it there [indicating], because somehow you get into trouble in here, where you get the clash between the two signals. What they try to do is this sort of thing [indicating again] so that these people, while they may have twice as much as these people, yet no one is being hurt by a confused signal. What do you have to say to that in regard to this problem of confining signals more closely?

Mr. PUTNAM. I would say this on that: That I agree completely with the Commission's philosophy as you drew those pictures, and if the allocation that the Commission made in 1952 was all taken up, there would be no gray areas. What they are doing now, however, is putting a circle as big as that whole block in the middle of it.

Senator PASTORE. In other words, if they take 2 or 3 stations out of New York City, they have got the New England problem solved?

Mr. PUTNAM. That is not what I am saying. I am saying—for instance you drew a circle that interlocked another circle like this [indicating], and what they are doing is putting another circle that covers all of them. That is what I think is wrong. I mean, for instance, again, taking New Haven—they have got allocations for New Britain, Waterbury, New London, 2 for Hartford, 2 for Springfield, and yet they let New Haven have power enough to cover all that area. If channel 3 goes into Hartford, it will have power to cover or blanket at least 6 UHF possible allocations—I think 8.

Senator PASTORE. Let me ask you this question, Mr. Putnam: If you did not intermix the Connecticut Valley, do you think that everyone could be serviced through UHF satisfactorily?

Mr. PUTNAM. I think if you look at a map, Senator, there isn't anybody that wouldn't have at least class A coverage from 2 stations, and most people will have 3 or 4 stations. They can get class A coverage out of the UHF allocations in the Connecticut Valley if they are all taken up. I think there is nobody anywhere who cannot get class A service from at least two stations, and many of them from more. The technicians tell me that. I am not a technician, either.

Senator PASTORE. Yes, sir.

Mr. PUTNAM. Does that answer your question?

Senator PASTORE. Yes.

Mr. PUTNAM. I think, too, there is a difference between the crowded Northeast and the rather open western part of the country. I think Denver, for instance, maybe needs a lot more area to cover than Hartford does, because it is a much bigger trading area. People come from hundreds of miles to trade in Denver. They come from only 30 or 40 miles to trade in Springfield or Hartford.

Senator PASTORE. In other words, you could get more and more overlapping of these circles that I have just drawn on this pad if you would cut down the power and grant a few more permits.

Mr. PUTNAM. That is right; so all the places that have been allocated would find it profitable, or would be capable of putting up stations. Those grants have not all been taken up, because the way the thing is going it has not been possible or profitable for people to do so. It has to be profitable to be possible. So I think they all ought to be cut down.

Senator PASTORE. I have to leave, sir, and Senator Bible will take this meeting over. You be good to our witness. [Laughter.]

Mr. PUTNAM. I want you to know what I think should be done in the Connecticut Valley. Channel 3 should be taken from Hartford and given to Providence. Providence is a VHF area, and the Connecticut Valley is a UHF valley.

Senator PASTORE. You are a diplomat. I will read the testimony.

Mr. PUTNAM. All right, sir.

I was saying, Senator Bible, that I thought the important thing was to keep local community television possible, and that the simplest way to do it was to cut stations down to the size for what they were originally granted for. I said I didn't think that would be done, so I have a second suggestion, and I can see no reason why it should not be done. I have to use our own station somewhat as an example, but I think it applies.

WWLP is one of four stations which, in a case which I understand has been mentioned here before, have urged the Commission to deintermix the Connecticut Valley. This case is usually referred to as the Hartford case, but, as I have indicated, much more than the city of Hartford is involved. I would like to take a few minutes to tell you some of the details of what I call the Connecticut Valley case, because I think I can explain the merits of deintermixture best by showing just what it can accomplish in a particular case, rather than talking generalities. This deintermixture proposal involves the entire Connecticut Valley, from Long Island Sound to the New Hampshire border and possibly north of that. Within this area are the television markets of Holyoke-Springfield, Mass., and Hartford-New Britain, Conn., with a total of 716,200 families and retail sales in 1953 of almost $3 billion. On the border of the area are the television markets of New Haven and Waterbury, Conn., and Adams-Pittsfield, Mass., with about 1,300,000 families and retail sales in excess of $5 billion.

Six television stations presently serve the Connecticut Valley. Five of these are UHF stations. They are, in addition to WWLP, WHYN-TV, Springfield, WGTH-TV, Hartford, WKNB-TV, New Britain, and WATR-TV, Waterbury. The sixth station is WNHC-TV, a prefreeze VHF station which is licensed to New Haven. As you can see, the Connecticut Valley is a predominantly UHF area, with five UHF stations, against a single VHF station. The valley receives no significant VHF service from outside. This is shown by the predicted service contours of the outside VHF stations, confirmed by listener surveys in the area. Channel 3 at Hartford is the only VHF channel which remains available for assignment in the Connecticut Valley.

The five UHF stations which are now on the air provide at least one grade A service to practically all of the valley. Most of the valley receives two or more grade A services from these stations. Other UHF stations situated slightly outside the valley area provide service to substantial portions of the valley. These stations are: WMGT, Adams-Pittsfield, Mass., and WICC-TV, Bridgeport, Conn. When the coverage of these stations is taken into consideration, virtually all of the valley receives at least two grade A UHF services. There are two other channels allocated to the valley that haven't been taken up.

A study of the potential UHF service in this area, based upon the present assignment table, indicates that the entire area would have access to a minimum of eight grade A UHF services. On the basis of grade B coverage, a veritable maze of service is indicated, with the entire area receiving a minimum of 13, and some sectors as many as 27, services.

The valley residents are in general well satisfied with their UHF service. UHF conversion is better than 90 percent in all of the valley, except the area close to New Haven. The relatively favorable position of the valley UHF stations has made it possible for them to obtain network affiliations. WGTH-TV is affiliated with CBS; WKNB-TV is affiliated with NBC; WHYN-TV is affiliated with CBS; and WWLP is affiliated with NBC and ABC.

Notwithstanding the modest success of UHF stations in the valley and their ability to offer a substantial quantity of popular network programs, the New Haven VHF station remained up to recently the dominant station in the valley, not only in its own city, but throughout the area. I am glad to say that in the last 6 or 8 months that situation is improving, and recent surveys show that, I think, we are the dominant station in our area at the moment—but we only have 1 VHF station to compete with, not 2.

Believing that the establishment of a commercial station on channel 3 at Hartford would threaten the continued existence of all of the UHF stations in the valley, as well as absolutely preclude the establishment of any additional stations, four of these stations (WWLP, WHYN-TV, WGTH-TV, and WKNB-TV), petitioned the Commission for the removal of channel 3 from Hartford, giving them another UHF channel instead.

After first denying our petition, the Commission later reconsidered and ordered formal rulemaking on our proposal, as well as on four other similar proposals. Written comments were filed in May of 1955. As requested by the Commission, we submitted a detailed showing, which included extensive engineering and economic data as well as additional information on viewer surveys, network affiliations, and the complete history of the experience of UHF television stations in intermixed markets throughout the country.

Oral arguments was held before the Commission in July of 1955, in which the deintermixture proponents, as well as reviewing the merits of the five specific proposals which were before the Commission, also submitted a plan of selective deintermixture, which showed what could be accomplished by deintermixture on a national basis. I have attached a copy of this plan to my statement and request that it be received for the record.

Senator BIBLE. That will be the order.

(The document referred to is as follows:)

A PLAN OF SELECTIVE DEINTERMIXTURE

The purpose of this memorandum is to explore the possibilities and results of a plan of selective deintermixture "to be uniformly followed, wherever possible, in the effectuation of our allocation table for a nationwide television system." [1] The plan would be limited to substituting UHF channels for ungranted VHF channels in areas now being served by UHF stations and where the conversion to UHF has been substantial enough to provide assurance that the UHF stations will be able to compete effectively if new VHF stations are not authorized.

The plan would keep UHF alive and vigorous in about 25 of the top 100 markets, with the expectation that, through excise-tax relief or otherwise, all-channel receivers will ultimately become universally available, thereby permitting the fulfillment of the objective of a fully competitive nationwide television service and mass utilization of the UHF band over a 3- to 7-year period.

Under the plan, which for illustrative purposes has been limited to the top 100 markets, approximately 14 ungranted VHF channels in 13 markets would be affected. These channels could be reallocated to other areas where additional VHF channels are needed because the VHF stations have so substantial an advantage that UHF cannot compete. (See illustrations which follow.)

The plan of limited deintermixture here proposed would accomplish the following:

(*a*) Maintain and create a substantial number of UHF strongholds in order to provide a continuing market for UHF receivers and give UHF a further opportunity to demonstrate that it can provide a service satisfactory to the public and the advertiser.

(*b*) Bearing in mind the present limitations of economic support for television in the smaller markets, maintain competitive local television in as many markets as possible.

(*c*) Save as many existing UHF stations as possible to preserve the value of current investment in UHF equipment, particularly the public's investment in receiving equipment.

(*d*) Maintain enough UHF stations to justify the manufacture of and improvements in UHF receivers and transmitters, removal of the excise tax, and retention of the 70 UHF channels.

The following propositions are regarded as established by experience to date:

(*a*) No matter what the size of the market, UHF has not been able to compete against two or more local VHF stations or strong VHF signals from outside stations serving the same community.[2]

(*b*) In markets of sufficient size UHF can survive where no more than 1 local VHF station or strong outside VHF signal is present, since this means that 2 of the 3 major networks will have their programs on UHF in these markets.

(*c*) In the smaller markets a single VHF station or strong outside VHF signal is fatal to UHF.

The plan is based on the following principles:

(*a*) No authorized VHF station will be required to shift to UHF. The plan will be limited to ungranted VHF channels, i. e., those now in hearing where final grants have not yet been made.

(*b*) In those markets in the top 75 or 100 that are now served by UHF only or by UHF and not more than one grade A VHF signal, deintermixture will be under taken by not granting the unassigned VHF channels that are still in hearing status and by replacing them with UHF.

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[1] The quotation is from the Notice of Further Rulemaking, Albany-Schenectady-Troy Assignments, docket 11238, FCC mimeo 18282, April 21, 1955.

[2] There may be 1 or 2 exceptions to this, such as Worcester (32d market) and Akron (45th market), which have no VHF stations of their own but receive 2 or 3 strong VHF signals from outside stations (Boston and Cleveland, respectively). Even in Worcester and Akron, however, conversion to UHF has lagged.

(c) Where two VHF stations now serve an area, deintermixture will be undertaken where a third VHF channel can be added.

(d) In the smaller intermixed markets, additional VHF channels will be allocated where possible, either by "dropins" or by using VHF channels made available through deintermixture of other markets.

(e) Before an ungranted VHF channel is removed from a market, it must be shown that approximately 40 percent or greater conversion to UHF has been accomplished and that adequate additional VHF channels cannot be allocated to take care of all existing UHF stations.

(f) UHF channels will be substituted for the deleted VHF channels, thereby making available for the VHF applicant a channel on which he can compete on equal terms with the existing UHF stations that have pioneered the market.

Applying this plan to the top 100 markets would have the following advantages:

(a) About 25 of the first 100 markets would be either UHF only or markets with 2 or more UHF stations and not more than 1 grade A VHF service. There would be a total of approximately 65 UHF stations in these markets.[8] (See attached map.) About 8 million television families reside in these markets (Television Magazine. Data Book, 1955, pp. 79–87).

(b) The 22 markets which are now allocated only 2 VHF channels would be reduced to about 10.

UHF ONLY

1. Allentown-Bethlehem-Easton, Pa. (2 and probably 3 stations.)
2. Scranton, Pa. (three stations).
3. Wilkes-Barre, Pa. (two stations).
4. Springfield-Holyoke, Mass. (two stations).
5. Springfield-Decatur, Ill. (2 and probably 3 stations).
6. Peoria-Bloomington, Ill. (3 and probably 4 stations).
7. Evansville, Ind.-Henderson, Ky. (2 and probably 3 stations).
8. Fort Wayne, Ind. (three stations).
9. Madison, Wis. (three stations).
10. Youngstown, Ohio-New Castle, Pa. (three stations).
11. Fresno-Tulare, Calif. (3 and probably 4 stations).
12. South Bend-Elkhart, Ind. (three stations).

Total: 36 UHF stations.

TWO OR MORE UHF STATIONS AND NOT MORE THAN ONE GRADE A VHF SERVICE

1. Hartford-New Britain-Waterbury (four UHF stations).
2. Albany-Schenectady-Troy, N. Y.-Pittsfield, Mass. (three UHF stations).
3. Norfolk (three UHF stations).
4. Jacksonville (three UHF stations).
5. Miami-Fort Lauderdale (three UHF stations).
6. Harrisburg, Pa. (three UHF stations).
7. York, Pa. (two UHF stations).
8. Reading, Pa. (two UHF stations).
9. Raleigh-Durham (two UHF stations).
10. New Orleans (three UHF stations).
11. Beaumont-Port Arthur (two UHF stations).

Total: 30 UHF stations.

The plan would require the deletion of 14 ungranted VHF channels in Hartford, Fresno, Peoria, Jacksonville, Miami, Springfield (Ill.), Evansville, Hatfield, New Orleans, Raleigh, Norfolk, Port Arthur, and Madison. It would also make the VHF channels deleted available for use in areas where additional television service is needed but where, because of VHF predominance, UHF cannot do the job. For instance—

1. The Hartford VHF channel could be utilized in the Westerly, Rhode Island area to make Providence a three-VHF market.
2. The Fresno VHF channel could be allocated to Bakersfield to make it a two-VHF station market.
3. The two Miami VHF channels could be utilized to provide a third VHF station in Tampa-St. Petersburg and another VHF channel in one or more of several other Florida cities. If the Miami channel change were tied in

[8] There are an additional approximately 25 UHF stations now in operation in other markets (mostly below the top 100) that also have a reasonable chance to succeed, and approximately 20 other UHF stations that probably will be unable to survive as UHF stations even if this plan of deintermixture is adopted.

with the Jacksonville change, other underserved Florida cities could also get additional VHF channels.

4. The Peoria channel could be allocated to provide a third VHF station in the Rock Island-Davenport-Moline area.

5. The Springfield, Ill., channel could be allocated to provide a fourth VHF channel in St. Louis and a second VHF in the Terre Haute area.

6. The New Orleans VHF channel and the Port Arthur VHF channel could be allocated so as to make Baton Rouge, Lake Charles, and Pensacola each two-VHF station markets.

7. The Madison channel could be reallocated to make the Rockford area a two-VHF area.

June 27, 1955.

Mr. PUTNAM. On November 10, 1955, the Commission decided that notwithstanding the great quantity of material which had been submitted in the five deintermixture cases, it still did not have sufficient information, and that it must start a new and more general rulemaking proceeding in which it would consider various plans, including deintermixture, for a nationwide television reallocation. In the meantime, our proposal to deintermix the Connecticut Valley was "denied without prejudice," with leave to resubmit it at some stage in the general proceeding.

The first and second round of comments in the general rulemaking proceeding were filed on December 15, 1955, and February 8, 1956. About 400 comments and reply comments were filed, but there is little or nothing new in them.

The suggestions that have been made to the Commission boil down to these:

(*a*) Deintermixture—which has widespread support. Most of the major organization in the industry have endorsed deintermixture of one sort or another, including American Broadcasting Co., National Broadcasting Co., and Radio Corporation of America, Columbia Broadcasting System, General Electric Co., and Storer Broadcasting Co.

(*b*) Abandon the UHF entirely and get along with the existing 12 VHF channels—which has almost no support.

(*c*) Move all television to the UHF—which also has almost no support.

(*d*) Abandon UHF and replace it with some additional VHF channels, which would have to come either from frequency bands which are now devoted to national-defense purposes of from bands which are being used by other important services which have made very substantial investments in them.

Because this last proposal has some surface appeal, there is quite a little support for it. It has some substantial drawbacks, however.

First, a station operating on a new VHF channel would be worse off than a UHF station, because to begin with, at least, there would not be a single television set in its area which could receive it. And having started a UHF station in what was a VHF area, I do not think anybody wants to get people to go through a second set of conversions. We had to make everybody spend from $75 to $100 in our area to be able to receive us. We have succeeded in doing that. I would hate to have to do that over again, and think of what the people who have got UHF receivers would feel if they had to convert again.

Senator BIBLE. Is that pretty well established cost of conversion, $75?

Mr. PUTNAM. I think that is a good average; if you are an electrician yourself and can do your own work, you can stick an antenna on your roof, and probably do it for $15 or $20. For the man who isn't a mechanic or electrician it is from $50 to $75.

Senator BIBLE. I understood you to say $75.

Mr. PUTNAM. I should have said $50 to $100, depending on the kind of antenna you use. I think the minimum is $50 and the maximum over $100. I did say $75 as sort of an average, sir.

Second, it is now pretty well recognized that only a handful, if any, additional VHF channels could be made available to television. Let us take a look at what will happen to local television in Springfield and elsewhere if the Commission junks the UHF and adds a few VHF channels. The leading proponent of such a course of action is CBS. CBS has submitted two plans for television reallocation. In its plan II, which it says is the better plan, it recommends the addition of three new VHF television channels.

Springfield falls in what CBS calls the Hartford television market, which is approximately the same area that I have referred to here as the Connecticut Valley. Within the CBS Hartford market are the counties of New Haven, Middlesex, Tolland, Litchfield, and Hartford, in Connecticut, and Hampden and Hampshire in Massachusetts. Its area is 5,606 square miles. It includes 4 cities of over 100,000 population, 2 cities with over 50,000, 2 others with over 40,000, and 9 more with populations between 8,000 and 36,000. Within this area 22 daily newspapers are published and 30 standard and 8 FM radio stations are in operation.

Yet, CBS plan II makes provision for just 3 television stations: 1 on channel 3, 1 on channel 8, and 1 on a new VHF channel, 6C—and all to be located in Hartford or New Haven. This is the sort of television service which the Connecticut Valley will be limited to if the Commission follows the recommendations of CBS. As monopolistic an idea as I think I have ever heard.

While the Commission is pondering how to solve the UHF–VHF problem, it is going right ahead making additional VHF assignments which aggravate that problem. In justification of this action the majority of the Commission asserts that the additional VHF grants will not prejudice its ultimate decision on deintermixture and that, in any case, the decision whether to deintermix a particular city should not turn on the fortuitous circumstance of whether VHF stations are or are not on the air there. I submit that that is arrant nonsense. I submit that both of these reasons are arrant nonsense. The Commission has always been reluctant, and properly so, to disturb existing operations. When in the sixth report it framed the present allocation plan, it went way out of its way to avoid requiring the prefreeze stations to shift frequencies, even from the high to the low VHF band, or vice versa, and not a single station was shifted to the UHF.

Besides, in many areas where additional VFH service is being established, the public, in reliance on that service, will start buying VHF-only receivers. Under such circumstances, taking the VHF service away would became a very serious matter, a matter affecting the public interest in that area, which the Commission could not ignore even if it wanted to. For these reasons, the additional grants now being made are bound to prejudice the eventual decision.

Now, the Commission may be right in suggesting that we will not get enough deintermixture merely by withholding the relatively few VHF channels that are not yet granted. But it is perfectly clear that the first places to deintermix are those in which UHF is already reasonably well established. Those are the places where deintermixture makes the most sense. And high UHF receiver circulation is simply not to be found where two or more VHF stations are on the air. It would be utterly ridiculous to make the Connecticut Valley, which has plenty of UHF receivers, a VHF area, and New York City, which does not have a single UHF receiver, a UHF area.

Whether we have a little deintermixture or a lot, the first places we will have it will be those, like the Connecticut Valley, where UHF receiver circulation is well above 50 percent. I think except for New Haven it is 90 percent north of that. That is, we will have it if there are any such places left when the Commission gets around to deciding on deintermixture.

We pointed these things out in a petition asking the Commission not to make a grant on channel 3 at Hartford until it has been decided where we are going in television allocations and whether the Connecticut Valley is to be deintermixed. Recently the Commission denied the petition and scheduled oral argument on the channel 3 Hartford applications. In our petition we requested the Commission to reconsider its denial of our deintermixture proposal. I understand this request was denied yesterday.

I would like to go back to our proposal to deintermix the Connecticut Valley and discuss its merits briefly. The following are the more significant points favoring the proposal:

(*a*) Unless the valley is deintermixed, it will be limited to a maximum of two grade A VHF services, and a substantial portion will receive no grade A service. No cities in the valley will have local television stations except Hartford and New Haven.

(*b*) Deintermixture in the Connecticut Valley would not result in any "white areas." The UHF stations now operating in the valley provide grade B service to all of the valley and grade A service to all but an insignificant portion. Increase in the powers and antenna heights of the existing stations would wipe out any theoretical grade A "white area" which now exists. If UHF is permitted to prosper in the valley, the stations which could be established on presently allocated UHF channels would provide a multiplicity of services throughout the valley.

(*c*) Deintermixture in Hartford would benefit a large area. The Connecticut Valley, an area approximately 40 miles wide and running 100 miles generally northward from Long Island Sound to the Massachusetts-Vermont border, is a predominantly UHF area which can never hope for adequate VHF service. Competitive and local television in this area depends upon the success of UHF. The existing VHF station in New Haven and the proposed VHF station in Hartford would provide listenable signals throughout the area seriously threatening the existence of all UHF stations in the valley, as well as precluding the establishment of new stations.

(*d*) Deintermixture in Hartford has been supported by a total of 10 stations. The four UHF stations in Holyoke and Springfield, Mass., and Hartford and New Britain, Conn., have petitioned for deintermixture. In addition, letters favoring deintermixture have been filed by WATR, Waterbury, Conn.; WMTG-TV, Adams, Mass.; WWOR-TV, Worcester, Mass.; and WICC, Bridgeport, Conn. These four stations lie outside the Connecticut Valley proper but would be greatly benefited by the success of UHF in the valley. Further support for deintermixture in the Connecticut Valley has been expressed by WNET, Providence, R. I.; WICH (AM), Norwich, Conn.; and WNLC-TV, New London, Conn. Opposition to deintermixture in the Connecticut Valley has been expressed only by the two applicants for channel 3 at Hartford.

(*e*) Deintermixture of the Connecticut Valley would not result in the waste of a VHF channel. If channel 3 is removed from the commercial service at Hartford it can be used to relieve the shortage of VHF channels in Providence and the coastal area south of Providence where UHF has no chance of survival for the foreseeable future. The city of Providence now has two VHF stations on the air and no other VHF channels available. A UHF station operated there for a while until driven off the air by the advent of the second VHF station. The only way to bring competitive television to Providence and the surrounding area is through an additional VHF channel. Channel 3, if removed from Hartford, can serve this purpose.

Now, what are the arguments that have been made against deintermixture in the Connecticut Valley? First, it is claimed that we need the service from channel 3 at Hartford. We agree that the Connecticut Valley needs more television service. But, is putting 1 additional station on the air at the risk of taking 5 off any way to get more television service? As we have shown the Commission by uncontroverted evidence, channel 3 is not needed to erase any "white areas." There are no "white areas." What the Connecticut Valley needs is additional local service in Hartford and in other cities which now have no stations. Channel 3 can provide local service to Hartford, but only at the cost of precluding any local stations in most, if not all, of the other cities in the valley. The answer to more television service in the Connecticut Valley is to strengthen the UHF. In the Providence area more television service is also needed, and here UHF cannot supply the answer, but deintermixture will, by releasing channel 3 for assignment to Providence.

Next, it is argued that deintermixture would be unfair to the channel 3 applicants who have spent a lot of money in a comparative hearing for that channel. Undoubtedly the VHF applicants would be disappointed if channel 3 is moved from Hartford. But unlike the UHF stations which will be forced off the air if channel 3 is granted, the VHF applicants are not faced with the possibility that they will be excluded entirely from the television industry. UHF channels could easily be made available for them, and as UHF operators they would enjoy the benefits of the pioneering work which has been done by the existing UHF stations. Why, then, are they so anxious for channel 3? They want it because they know that with channel 3 they will have an overwhelming competitive advantage, and, in fact, will enjoy a virtual monopoly. I submit that no amount of hearing expenditures would entitle them to such a monopoly. A fair opportunity to compete on an equal basis, which they would have on UHF, is all that any broadcaster should have a right to expect.

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Finally, it is argued that deintermixture is unnecessary—that the UHF stations can survive without it. This flies in the face of all UHF experience to date. A consensus in the industry is that UHF stations cannot survive against the competition of two VHF stations except under very unusual circumstances. I know the question has been covered extensively by earlier witnesses, and I do not believe I should weary you with any more on it.

Thank you very much for listening patiently to this.

Senator BIBLE. Thank you very much, Mr. Putnam. I think your statement certainly is very exhaustive, and I cannot help but comment that it is rather an unusual happenstance that the present chairman comes from the State of Nevada, where our main problem is just to try to get one little feeble signal from one little VHF station wherever we can find it. We have 3 stations, 1 in Reno and 2 in Las Vegas. We have a problem trying to get one little feeble signal. Not to say it is refreshing, but at least your statement poses the other side of the problem.

Mr. PUTNAM. I understand your problem somewhat because I am nearly half a citizen of Arizona, and——

Senator BIBLE. I can't see why you ever went back to Massachusetts. [Laughter.]

Mr. PUTNAM. I go to Flagstaff a great deal. I like it in Massachusetts, too.

Senator BIBLE. They are both great States.

Mr. PUTNAM. It is a completely different problem. I think what is needed in the crowded congested areas may be very different from what may be needed in the more squarsely settled areas.

Senator BIBLE. I recognize that fully.

Mr. PUTNAM. I know the problem Flagstaff has. They have solved it for the moment by piped-in television. They have on the hill a receiver to get the Phoenix stations, and you can get a connection through the telephone company for wires from that receiver down to your home. They are working it in sort of a backhanded way.

Senator BIBLE. Even though we are a small and lightly populated area, the people of Nevada are just as interested in receiving TV as your great populous areas. My main problem at the present time is to see whether we will take a little booster or translator to take a signal from VHF channel 4, San Francisco, to allow some three or four thousand people to see TV. So it does have complex problems. I just couldn't help but comment on the difference in approach.

Mr. PUTNAM. I think the people of Nevada are just as entitled to get TV as the people of Springfield.

Senator BIBLE. I am sure that is so.

Mr. PUTNAM. I think they are entitled to get it as close to home as can possibly support it, because then it will have more of their interest at heart, as we said earlier. I think everybody is entitled to see Groucho Marx, but they also want to know of their own community problems.

Senator BIBLE. Certainly.

Mr. PUTNAM. And what is the right answer in Nevada I do not pretend to know. I think I do know what is the right answer in the Connecticut Valley, and I am quite sure it is different from the right answer to Nevada.

Senator BIBLE. I answered that by way of qualifying the chairman. His problem today does not involve getting too many channels.

Mr. PUTNAM. Please do not let your feeling as to Nevada prejudice you against New England.

Senator BIBLE. I am sympathetic. I hope it can be worked out. I think possibly the committee's counsel may have some questions.

Mr. COX. Thank you, Senator Bible. As I understand it, Mr. Putnam, there are two existing UHF stations in Springfield.

Mr. PUTNAM. Plus the Holyoke station. That is right.

Mr. COX. You mentioned network affiliation for a number of stations in the area. Does your station have a network affiliation?

Mr. PUTNAM. Yes, NBC and ABC, and we have been very fairly treated by all of them.

Mr. COX. Are you interconnected so that you receive live programs?

Mr. PUTNAM. We receive live programs.

Mr. COX. Have you found that the coverage of your area by the station from New Haven impairs your ability to sell national spot advertising in your own market?

Mr. PUTNAM. It did for a long, long while. It has become better, because recently, by spending much more money than we had in local programing and local news and local interests—religious, charitable, and so forth, we have got people gradually to convert. Now we get a very good listening audience. We have just gotten into the black by about that much [indicating] for the moment.

Mr. COX. Are you finding that the local businessmen in the Springfield area do want to advertise over TV and are supporting your station?

Mr. PUTNAM. They do. Actually, our local advertising revenues are now just about equal to what we call our national—that is the national spot. I am not counting what we get from the network, but our local is just about equal to our spot. I have the figures, if you want them, for last year. It is just almost exactly equal.

Mr. COX. Would you feel that if the threat of channel 3 were removed from the valley there would be a development, or an inclination to use the remaining unallocated UHF channels in the area, and that there would be economic support from local and national advertising for those stations as well?

Mr. PUTNAM. I think it would come slowly. I am not sure it would come right away. The experience we have had of 2 years of very substantial losses—and I think our other stations have had the same—would, I think, make people hesitate until they saw us really making money until they jumped in, where our heads are just breathing a little air now. We are not really swimming around enjoying ourselves yet.

Mr. COX. This distinction between your situation and Senator Bible's situation, doesn't that point up the fact that UHF is particularly important in these more densely populated areas, because if you are to get local services on any basis you require more channels than are available in the VHF band?

Mr. PUTNAM. That is what I am trying to say. The populous areas, I think, should be deintermixed; the ones that are predominantly VHF, allocate another VHF channel if they need it, take it away from places in the middle of UHF areas which are well converted.

The Senator's problem is not one of deintermixture at all. It is getting enough. Where we have too many, don't put VHF in. When I say too many, I mean too many to be profitable. The thing I am afraid of, as I said earlier, in our area the local merchants will be put to great disadvantage to the chains if only an area station dominates the whole thing. The Springfield merchant cannot afford to advertise on a station that blankets Hartford, New Haven, and Springfield because the rates will be too high. The chains can.

Senator BIBLE. I think that is all. Thank you very much for your presentation.

Our next witness is Mr. Paul Chamberlain, General Electric Company of Syracuse, N. Y. Before you start your testimony, Mr. Chamberlain, there are a number of insertions for the record:

(1) A letter from Mrs. Kate Hevner Mueller, chairman of the education committee of the American Association of University Women, regarding educational TV.

(2) A letter dated February 15, 1956, from Senator Magnuson to the Chairman of the Federal Trade Commission, Washington, D. C., regarding radio advertising, and the Federal Trade Commission's reply, both of which will be printed in connection with earlier materials on this subject (see pt. I, pp. 250–252).

(3) An editorial on misleading advertising from Variety, under date of February 22, which will be printed in connection with other similar materials (see pt. I, p. 260).

(4) Letters from Senator Styles Bridges and Senator Norris Cotton, of New Hampshire, asking that identical telegrams received by them from Mr. Joseph K. Close, operator of a UHF television station, be inserted in the record.

(5) A letter from Senator Wayne Morse and two statements from Oregon residents;

(6) The statement of J. E. O'Neill, the operator of UHF station KJEO, Fresco, Calif.; and

(7) The Statement of Thomas E. Howard, of the Jefferson Standard Broadcasting Co., WBTV, Charlotte, N. C. These can be inserted in the record at this point, except as noted with respect to items 2 and 3.

(The information referred to is as follows:)

ITEM 1

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
HEADQUARTERS OFFICE,
Washington, D. C., January 31, 1956.

Senator WARREN G. MAGNUSON,
Chairman of the Senate Committee on
Interstate and Foreign Commerce, Washington, D. C.

MY DEAR SENATOR MAGNUSON: For many years the American Association of University Women has maintained an active interest in the development of the resources of radio and television for the educational and cultural needs of the American people. For that reason members of the association are deeply interested in the hearings being conducted by your committee on TV Network Regulation and the UHF Problem. We realize that the educational television problem is only one of the many being considered by your committee, but because of the tremendous importance of this medium for education we respectfully urge your committee to continue to protect the interests of education.

The education committee of the AAUW wishes to call to your attention the association's stand as set forth in the attached letter addressed to Miss Mary Jane Morris, secretary, Federal Communications Commission, dated December 14, 1955, in response to its request for comment on the possible amendment of part 3 of the Commission's Rules and Regulations Governing Television Broadcast Stations (docket No. 11532).

May we request that this correspondence be made part of the official record of the hearings?

Respectfully yours,

KATE HEVNER MUELLER,
Chairman, Education Committee.

DECEMBER 14, 1955.

Miss MARY JANE MORRIS,
Secretary, Federal Communications Commission,
Washington, D. C.

DEAR MISS MORRIS: The American Association of University Women, through this letter, wishes to accept the invitation extended by the Federal Communications Commission to comment on the possible amendment of part 3 of the Commission's Rules and Regulations Governing Television Broadcast Stations (docket No. 11532). The association desires to confine its comments to the importance of reservations for educational noncommercial television in the educational and cultural development of the American people.

The American Association of University Women, which was established in 1882 as an educational organization (see exhibit A), is an organization having a membership from all over the United States, of more than 136,000 women, all of whom are college graduates. The AAUW has 1,332 branches, with a minimum of 5 in every State except Rhode Island, and Alaska, Hawaii, and Guam. It has been estimated that about one-third of the members are single and that nearly one-half are married and have children. Furthermore, well over one-half are, or have been, teachers.

The association's program to improve American education has been on a year-in-year-out basis, nationally and internationally, with special efforts wherever and whenever circumstances required. The association has been alert to new developments, including radio and television, which could benefit education and has been prompt in advocating their employment for educational and cultural improvement. At least since 1945, AAUW has had a national policy supporting the educational and cultural use of the new techniques of communication. This policy was reaffirmed at the June 1955 biennial convention as follows:

"We recognize the important effect which libraries, films, radio, and television have upon the education of American children, youth, and adults, and we will continue to work to extend and to improve their educational and cultural use."

The association in 1950 presented, through its education committee, testimony which requested the Federal Communications Commission to set aside specific channels for the development of educational noncommercial television. The committee was pleased when the Federal Communications Commission found it desirable to make these allocations. Further, insofar as refusing to delete any of these reservations, the committee believes that the FCC has followed a policy which is in the public interest.

The education committee has followed very carefully the efforts of the FCC to foster the development of a nationwide competitive television system, and is also aware of the many problems, including those which center around the use of UHF channels, which the FCC has faced and will face as it studies and determines its future policy. However, for the sake of American education, the committee earnestly requests that the FCC continue at this critical time the policy of fixed reservation of channels specifically for educational noncommercial television.

This request is made on the basis of the record of activity to get educational television stations on the air, of AAUW experience in the use of both commercial and noncommercial television and radio over a number of years, experience which has convinced the committee that the fullest development of television for the educational and cultural needs of the people can only be brought about through continued specific television reservations for educational use. The committee wants to make it clear that this recommendation is not an attempt to freeze unthinkingly the status quo, but that it is made particularly in the interest of scientific and educational progress of television for the benefit of future generations.

In recommending the retention of educational noncommercial reservations, the education committee of AAUW is cognizant that only 18 stations of the 258 possibilities are on the air. However, we believe that it is only fair to education to record additional use of reservations in terms of 35 construction permits granted, some of which have already reached a testing stage, and 15 other applications filed. This full record shows that education has been active in taking advantage of the resource put at its disposal.

Education, including AAUW, maintains that this is a case where a mere quantitative evalution will not tell the whole story, and that policy for continuing reservations should be based on an evaluation of all factors in the situation.

By its nature, education is not geared to respond easily or quickly to projects which require extensive financing. This alone would account in part for the seeming delay of educators to take advantage of a priceless opportunity for educational development, but in this case there were in addition many other factors which made it difficult to respond quickly to their opportunity. For example, the very idea of television was still new in 1950, not only to education but to the community and taxpayers and other educational financiers. The importance of this invention as a method of teaching had to be demonstrated both to educators and to the public, and such demonstration could not get underway until after education had some assurance that it would have an opportunity to develop a share of the allocations. This assurance did not come until very late in the academic year 1951–52, which again delayed the educators. Another factor which is an important part of the development story is that about two-thirds of all educational reservations are UHF channels, the critical area on whose development commercial television is asking help.

All points being considered, there seems to be a good deal of evidence to indicate that education had peculiar problems to face in order to take advantage of the educational noncommercial reservations and that it has made significant progress which has already brought great benefit to the public.

AAUW members have been active or leading participants in governmental, citizen, faculty, and interorganizational committees, and have seen these and other factors limiting the speed with which the reservations could be turned into operating stations. To get these stations on the air, AAUW members are hard at work all over the country. A few of the States where they have been active in the last year include Washington, Louisiana, Oklahoma, Pennsylvania, Maryland, Kansas, California, Michigan, Wisconsin, Alabama, New York, Maine, Virginia, and the District of Columbia. Members have contributed time, money, study, and writing and speaking ability; they have carried on information campaigns and conducted surveys; they have supported legislation in favor of establishing educational television. On the basis of such activity it is clear that AAUW would like to see many more educational noncommercial stations in operation; it is also clear why the education committee is presently much concerned lest action taken by the FCC should cut the momentum of public appreciation, understanding, and support now gained for the use of these reservations.

When in 1950 the chairman of the education committee of AAUW testified in favor of reservations for educational noncommercial television, she mentioned the unfortunate experience education had had in getting enough time and appropriate time for educational needs from commercial radio. She also said that similarity of objectives and motivation would likely result in similar problems in commercial television. In the intervenng years, AAUW members have often found this to be so. AAUW has developed television programs of good quality for all ages. One such is the Leaves and Dials project (see exhibit B; also exhibits C and D) for children which has greatly stimulated children's reading. This is the type of program which the AAUW would like to encourage but for which not enough or appropriate time is available on commercial television alone.

Members have reported also, through the Look-Listen project (see exhibit E), which covers many States and to which AAUW contributes, that the quality of commercial programs was often below standards they wished to see in their homes. This reporting is based on years of program evaluation on the basis of carefully developed criteria. The committee realizes that commercial television provides some educational programing, but it believes that because of the nature of the industry and because it must provide for the entertainment needs of the people, it is unfair or even impossible to expect commercial stations to meet all education needs. On the basis of experience, therefore, it seems clear to the committee that if the country is to get the maximum educational benefits from television it is necessary to have educational stations and to encourage them by continuing reserved channels for their creation.

The AAUW educational committee requests continuation of the reservations for another reason: the future needs of the American public for educational and cultural advancement through television. Like other parents and educators, the AAUW members realize that television has a tremendous and increasing power as a teacher. But they also are aware that television is only at the beginning of its development both technologically and in terms of its usefulness. Time is needed for the maturing of both. The committee knows, as do most Americans, that it takes sometimes more than a school or college generation of 4 years to change even a course; in this case, education is confronted with a possibility of changes which could affect the entire educational process and is criticized for not taking full advantage of it in 3 years. This does not seem reasonable to the education committee of AAUW, and, since it seems unwise to expect commercial television to carry this responsibility, the committee believes the needs of the future to be another strong reason for advocating continued reservations for educational noncommercial television.

Finally, the major barrier which the education committee sees to the development of a nationwide competitive system of television lies not in the continuation of reservations for educational television, but in developing UHF channels—a barrier which limits both educational and commercial television. It is clear that deletion of the educational channels will not solve the UHF problem and it is equally clear that it would greatly hinder the cause of public education.

The education committee wishes to summarize its comments thus: In view of the fact that progress in educational television has been substantial and because more time is needed to explore and develop educational television, the committee strongly urges that the Federal Communications Commission confirm the reservations for educational noncommercial television.

Very truly yours,

KATE HEVNER MUELLER,
Chairman, Education Committee.

Exhibits attached.[1]

(Item 2 printed in pt. I at pp. 250–252; item 3 printed in pt. I at p. 260.)

ITEM 4

UNITED STATES SENATE,
February 29, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce,
Washington, D. C.

DEAR MR. CHAIRMAN: I am enclosing herewith a copy of a telegram I have received from Mr. Joseph K. Close, president of radio station WKNE, relating to the radio and television problem now being considered by your committee.

I would appreciate very much the committee's consideration of Mr. Close's telegram and to have it made a part of the printed record.

Sincerely yours,

STYLES BRIDGES.

KEENE, N. H.

Senator STYLES BRIDGES,
United States Senate, Washington, D. C.:

Will you please call to the attention of the Magnuson committee the necessity of taking prompt action to preserve UHF and small market television. As holders of a construction permit for UHF for Keene and operators of a UHF station in Kingston, N. Y., we know that unless positive and concrete steps are soon taken it is unlikely the United States will have a truly representative television service in the sense that they have a nationwide radio service. In Kingston we have borne staggering losses since June 1, 1954. We cannot carry this load indefinitely unless we see tangible evidence that the FCC is going to give UHF and small markets a real chance to survive and prosper.

JOSEPH K. CLOSE, WKNE.

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[1] None of the exhibits referred to were forwarded to the committee.

UNITED STATES SENATE,
COMMITTEE ON PUBLIC WORKS,
February 28, 1956.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I would appreciate it if the attached communication from Mr. Joseph K. Close, of Keene, N. H., could be made a part of your hearings on UHF problems.

Mr. Close has firsthand experience in the operation of UHF television stations and I believe his views may be helpful to the committee.

With every good wish,

Yours sincerely,

NORRIS COTTON.

(Telegram same as above.)

ITEM 5

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
February 28, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

DEAR SENATOR: Enclosed are two statements from residents of Oregon to be included in the testimony on TV network regulations and UHF problems during the present hearings before your committee.

The first is from Mr. H. E. Prickett, of Wheeler, Oreg., and the other from Eldon J. Letsom, of Drain, Oreg.

With kindest regards,

Sincerely,

WAYNE MORSE.

STATEMENT OF H. E. PRICKETT OF WHEELER, OREG.

1. I am operating a small TV system in Wheeler, Oreg., with very good success and recently started construction on a like system in Rockaway, Oreg. (population 1,100). Then booster problem appeared and all construction was stopped pending information as to regulation of said device. As public subscription money builds the cable system, I feel a position of trust which is in no way safe at present.

2. Relief of point-to-point microwave restrictions would lower cable TV cost and improve coverage and still create no radiation problems.

3. What method of financing can the proposed translators or boosters depend on? I feel that free riders would eventually destroy public subscription to such support.

4. Excise tax on wired TV seems a little out of line with other low-cost proposals.

5. Translators would require alteration of nearly all sets in fringe areas such as Portland, Oreg., and UHF stations are fast leaving the air.

6. I do not feel that the booster or translator is as well suited to many areas as it may be to a few such as central Washington where population is unduly scattered.

TELEGRAM DATED FEBRUARY 27, 1956, FROM ELDON J. LETSOM RADIO & TV, DRAIN, OREG.

Happy to report Scottsburg, Elkton, and Drain are receiving good TV reception from boosters. All channels received and TV sets are on low frequency. Would cost thousands of dollars to change everything to channels 70 to 83. We have no interference. These community sponsors would like permission to operate without change.

LETSOM RADIO & TV,
By ELDON J. LETSOM.

ITEM 6

STATEMENT OF J. E. O'NEILL, KJEO, FRESNO, CALIF.

Mr. Chairman and members of the committee, my name is J. E. O'Neill; my office address is Shaw and Cedar Streets, Fresno, Calif.; I am the sole owner of O'Neill Broadcasting Co., the permittee of UHF television station KJEO operating on channel 47 at Fresno, Calif.

I am pleased to have been given this opportunity to express my views on two matters which you have under consideration which I believe will have an important effect on the television broadcast service. The first is the deintermixture problem and the second subscription television.

Fresno, up to January 12 of this year, was an all-UHF community and had been so since the inception of telecasting in Fresno more than 2 years ago. On January 12, the Federal Communications Commission granted a VHF permit in Fresno. O'Neill Broadcasting Co. has, as have many other UHF stations similarly situated, sought to have the Commission stay the VHF grants until there could be a determination by the Commission in the general television allocations proceeding.

Although the Commission had earlier, at congressional hearings similar to this, expressed a policy that such grants would be held up, the Commission departed from this policy commencing in November of last year. O'Neill Broadcasting Co. has sought review of these actions by the appellate court and the case is now pending before the court. In similar cases, however, the court has indicated that such matters are the responsibility of the Commission. In a recent case before the court in one of the deintermixture appeals, the court said, "If extinction of UHF stations results from the Commission's policies and actions, the responsibility must lie at the Commission's door."

Despite the fact that Fresno presents an ideal situation for deintermixture, and in face of pending rulemaking proceedings before the Commission designed to consider the reallocation of television channels to provide, among other things, for the possible deintermixture of UHF and VHF, the Commission has, by its action, placed itself beyond the power to provide a deintermixed community. This is for the reason that irreparable damage will accrue in the interval to both the UHF stations and to the public. Any relief that the Commission may deem appropriate is apt to come far too late to be of any value.

I wish to present the following as a picture of the Fresno television community.

Station KJEO has been in actual operation on channel 47 for more than 2 years. Another station, KMJ-TV, operates on UHF channel 24 at Fresno; that station has also been in operation for more than 2 years. In addition, a construction permit on UHF channel 53 at Fresno is outstanding. That station was constructed and was in operation for a brief period, but is now off the air, having encountered economic difficulties.

The nearest community with an operating television station is Tulare, Calif., approximately 45 miles from Fresno. The station there (KVVG) operates on UHF channel 27. The nearest community with either an assigned or operating VHF station is Bakersfield, Calif., 103 miles airline distant from Fresno, where KERO-TV operates on VHF channel 10. Bakersfield has also assigned to it a UHF channel (29) upon which KBAK-TV operates.

Fresno is therefore presently an all UHF community with the 2 operating and 1 nonoperating UHF stations. Only one VHF channel, 12, is assigned to Fresno. An educational station reservation is held on channel 18 but no application has been made for it.

There is no VHF service in Fresno from either local or outside stations, and there will be no commercial VHF service if channel 12 is reassigned.

Fresno received its first television service as a UHF service and there is, consequently, no problem of conversion.

There are at present approximately 175,000 UHF receivers, which are predominantly all channel UHF-VHF receivers as distinguished from converted VHF sets.

Station KJEO transmits from a site approximately 4,300 feet above the level of the community it serves with an effective radiated power of 427 kilowatts.

All of the Fresno trading and market area, including all of the Fresno metropolitan area and considerable additional territory, receives excellent technical service. The signal of KJEO is satisfactorily received at distances of more than 90 miles from Fresno.

There will be no "white" areas in the service at Fresno for the reason that any VHF coverage which might be greater than that of UHF will be in either rugged, sparsely populated, mountainous areas or in areas of population which receive better service from other stations more closely located to them. All of such excess coverage from the VHF station would be in other market and trading areas with their own television stations.

All of the television networks are served by the two UHF stations in Fresno and said stations are operating on a successful commercial basis, but that position has been achieved only after periods of substantial loss in building a UHF community.

Both of the existing stations in Fresno, KJEO and KMJ, operate on full schedules from approximately 6:30 a. m. to midnight, and between them bring to the Fresno area substantially all of the available network programs in addition to a well-balanced schedule of programs of local interest. In addition, KJEO has been devoting approximately 8 hours per week in originating its own local, live, color programs.

O'Neill Broadcasting Co. has a capital investment in its UHF station to date of $615,000. Its accumulated deficit to June 30, 1955, was $335,000.

The grantee of channel 12 would not be harmed or prejudiced by the substitution of channel 18, the most desirable UHF channel in Fresno, or some other UHF channel, and would receive the full benefits of the efforts and expenditures of the existing UHF stations in creating and building a substantial all-UHF audience.

The assignment of channel 12 for educational television would effect a substantial saving in construction and operating costs for the educational broadcasters without any loss in service, and would thus make possible the establishment and maintenance at much lower cost of the non-revenue-producing educational television station than would otherwise be the case.

The assignment of channel 12 to Bakersfield, Calif., would permit both operating stations there to operate on VHF channels and will convert that community to an all-VHF city, thus creating deintermixture in that city.

Station KJEO commenced operation as an ABC network affiliate. It now is also affiliated with the CBS television network. The station's affiliation agreement, however, with the CBS television network is subject to 90-day cancellation.

The grantee in the VHF channel 12 proceedings, California Inland Broadcasting Co., has had, by reason of a historical radio affiliation with CBS, a long-standing commitment for television affiliation in the event it should be the successful applicant on VHF channel 12. California Inland has announced that this commitment has been renewed within the past year, and that the nature of the commitment was such that CBS television network is bound to affiliate with it.

As a consequence of the above reported contractual commitments, KJEO is in immediate danger of losing its CBS affiliation agreement now that the grant of VHF channel 12 to said applicant has been made. With the network will go the national advertisers, for the reasons set forth below.

A situation exists in connection with the placement of advertising business whereby VHF stations are selected over UHF stations. This situation exists not on the basis of any real difference between the services of the stations but on an artificial concept of the values of VHF versus UHF, and has become a custom of time buyers and a tradition of the trade. The present attitude and policy of national and regional buyers of spot advertising upon which KJEO relies for a substantial portion of its revenue is to place their advertising upon a VHF station when that station commences operation in a community. Such advertisers are anxious to place their spot advertising adjacent to the programs of one of the major networks on a VHF station. Thus, a VHF station with a major network, competing with a UHF station, attracts most of such business and becomes the dominant station upon which the bulk of all advertisers seek availabilities.

Under such circumstances, the inception of operation of a VHF station with one of the major networks can result in such a severe loss of revenue to the UHF station that KJEO may be forced to curtail operations. This has been the history of many similarly situated UHF stations when a VHF commences operations in the same community. KJEO can compete with additional UHF stations in the area, with or without network affiliations, but operation of a VHF station, under the circumstances of the present very real, although unjustified, policy of placement of advertising business, constitutes unfair competition to UHF stations in the community; such unfair competition ultimately destroys and terminates UHF television service in the community, to the detriment of the public interest, and this has been the actual case of a number of UHF stations in recent months. While I may have a self-interest in attempting to preserve my UHF station, this interest parallels the public interest, for if the UHF stations must terminate operations in Fresno, the public will be left with 1 VHF station with no choice of programs as against the likelihood of 3 UHF stations, each serving a different network. With the disappearance of the UHF stations the aggregate public investment in the more expensive all-channel receivers will be lost. This investment was made in reliance that the interest of the public in UHF receivers would be safeguarded by the surveillance and protection of the agency of the United States Government charged with jurisdiction over communication matters.

The Commission has knowledge of these problems. This appears not only from the original proposed notice of rulemaking and from the questions designated therein as pertinent in the first deintermixture matter designated for formal rulemaking proceedings, but also from the voluminous data and comments filed in the docketed proceedings and from the oral argument. Furthermore, the Commission has had before it the some 30 petitions seeking reallocation relief and has studied the question in connection with congressional inquiries and statements. In the latest notice of proposed rulemaking in docket No. 11532, the Commission refers to these problems as the familiar difficulties presently facing television broadcasters.

I believe that the prime requirement of a nationwide allocation plan is the establishment of facilities in as many communities as possible on equal competitive footing. This is the backbone of the establishment and continuation of a nationwide competitive system with multiple television services and multiple program choice to the public. There is a great difference between allocation of channels and the allocation of competitive channels to the communities. It has been amply demonstrated that lack of equal or competitive facilities in a market leads to the curtailment of service and the denial of free choice in selection of program, and tends to a monopolistic situation.

The principle of a nationwide competitive television system, therefore, finds its roots in competitive facilities in each individual area. Experience has now amply shown that where UHF and VHF stations are intermixed in a community, the UHF is at a severe competitive disadvantage and the intermixed allocations create an ultimate dimunition of service. In some cases this disadvantage may perhaps arise for technical reasons, but in the vast majority of cases it appears that this disadvantage lies only in psychological concepts, quite real in impact. In numerous communities, UHF, for all practical purposes, will equal and in many respects be superior to VHF, yet the attitude of the advertiser creates a barrier with which the Commission is now familiar and places the UHF station at an artificial but practical competitive disadvantage.

Where UHF can supply completely satisfactory service, the answer is obvious, and that is the establishment of a truly competitive television area on an equal basis by making all outlets UHF; that stations in an all UHF community can operate satisfactorily from the standpoint of both the viewer and the station operator is demonstrated by the current situation in Fresno and by other successful UHF communities. This type of deintermixture not only places the community on a sound basis for competitive television services, but releases VHF channels for use in other areas where the circumstances require that deintermixture be achieved by creating all VHF areas—again, to achieve the same end of equal competitive facilities.

The UHF stations which stand in a position of being obliterated by VHF grants have exhausted their remedies before the Federal Communications Commission. They are now before the courts, but the courts have indicated that such matters are the responsibility of the Commission. It appears that the proper course in order to save the UHF television service and, consequently, a nationwide competitive television service, is some appropriate action by this committee or by the Congress.

With reference to the matter of subscription television, KJEO supports and endorses the position of the Columbia Broadcasting System and believes that neither the public interest nor the interest of television stations would be served by the establishment at this time of a subscription television service.

I believe I would be unnecessarily imposing on the time of the committee if I were to repeat at length the reasons which have been so excellently presented by the Columbia Broadcasting System and I therefore refer to the statement of CBS for material in support of this view.

Thank you for this courtesy and for your interest.

Respectfully submitted.

J. E. O'NEILL.[1]

ITEM 7

STATEMENT OF THOMAS E. HOWARD, VICE PRESIDENT, JEFFERSON STANDARD BROADCASTING CO.

I. INTRODUCTORY

My name is Thomas E. Howard and I am vice president and managing director of the engineering and general services divisions of the Jefferson Standard Broadcasting Co. This statement is submitted in connection with the hearings which commenced on January 26, 1956, concerning the Federal Communications Commission and television developments. It is respectfully requested that this statement be made a part of the hearing record.

II. JEFFERSON STANDARD BROADCASTING CO.

Our company is the owner and operator of television station WBTV, which operates on channel 3 at Charlotte, N. C., with authorized maximum effective radiated power of 100 kilowatts and an antenna height of 1,090 feet above average terrain. Jefferson Standard Broadcasting Co. is also the owner and operator of television station WBTW, which operates on channel 8 at Florence, S. C., with authorized maximum effective radiated power of 316 kilowatts and and an antenna height of 790 feet above average terrain.

Jefferson Standard Broadcasting Co. is wholly owned by the Jefferson Standard Life Insurance Co., which owns 16.59 percent of the Greensboro News Co., which owns 100 percent of the licensee of television station WFMY-TV, which operates on channel 2 at Greensboro, N. C., with maximum effective radiated power of 100 kilowatts and an antenna height of 720 feet above average terrain.

In addition to serving the communities of Charlotte and Florence, WBTV and WBTW provide satisfactory television service to wide areas surrounding the cities. As an operator of television stations, our company is vitally interested in the current committee hearings.

III. EXPERIENCE AND PRESENT DUTIES

I first became associated with the broadcasting industry in 1925 as an engineer and since that time have been continuously engaged in engineering activities associated with broadcasting and communications. The highlights of my activities include the design and installation of the transmitting equipment of the St. Louis Metropolitan Police Department; installation of KSD-TV, St. Louis, which commenced operation in February of 1947 as the Nation's first postwar commercial television station; the design and installation of television station WPIX, New York; supervision of all phases of WPIX's participation in the Empire State Building multiple-antenna project; and the design and installation of television station WBTW, Florence, S. C.

My military service was in the field of communications, both at home and abroad. I entered the service as a first lieutenant and was separated with rank of colonel.

In October of 1953 I became a director of engineering for radio and television of Jefferson Standard Broadcasting Co., and in 1955 I was elected a vice president.

IV. TELEVISION ALLOCATIONS

A. Sixth report and order

As set forth in section 1 of the Communications Act of 1934, the primary duty of the Federal Communications Commission is to regulate "interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, *to all the people of the United States* a rapid, efficient, nationwide, and worldwide wire and radio communication *service* * * *" [Emphasis added.]

[1] See p. 633 for a further statement by Mr. O'Neill. See p. 679 for a controverting statement by Paul R. Bartlett, California Inland Broadcasting Co., Fresno, Calif.

The act directs the Commission to allocate broadcasting frequencies "among the several States and communities as to provide a fair, efficient, and equitable distribution of radio *service* to each of the same." (Sec. 307 (b), emphasis added.) The act expressly states that persons engaged in broadcasting shall not be deemed to be common carriers (sec. 3 (h)).

In accordance with the above-noted statutory provisions, the Commission, in its sixth report and order released April 14, 1952, promulgated a national television allocation plan. A résumé of the history of television demonstrates that this plan was the result of intensive and comprehensive studies and hearings.

The first application for a commercial television station was filed in 1939. This application led to hearings commencing in 1940, which resulted in the authorization of commercial television under date of April 30, 1941. By May of 1942, 10 commercial television stations were in operation, but World War II halted further expansion.

In 1945 the Commission allocated 13 VHF channels to commercial television broadcasting.[1] At that time, the Commission made clear its opinion that there was insufficient VHF frequency space to provide for an adequate nationwide television broadcasting system.

The Commission imposed the freeze in September of 1948 primarily because of the fact that operating experience indicated that the operation of stations at the then permissible mileage separations was creating unanticipated interference problems.

Shortly after the institution of the freeze, the Commission appointed an ad hoc committee composed of industry and Government experts for the purpose of assisting the Commission in compiling and analyzing propagation information and other matters concerned with an allocation plan. Some of the members of the above-mentioned ad hoc committee (Messrs, Harmon, Lodge, and Wakeman) are now serving on the ad hoc committee recently appointed by this committee.

In July of 1949 the Commission issued a notice of proposed rulemaking setting forth its proposals for a national television assignment plan. Based on a study of the comments received in response to its notice and the evidence received in a hearing held between October of 1950 and January of 1951, the Commission issued its third notice of further proposed rulemaking in March of 1951. After reviewing written and oral responses to the third notice, and upon consideration of the entire record, the Commission issued its sixth[2] report and order in April of 1952 and commenced processing applications for new television stations in July of 1952.

Although notable achievements have been realized in the short period of time since the sixth report and order was released, certain elements in the industry are urging that basic changes in the allocation plan are necessary. Our view is that the basic features of the allocation plan promulgated by the sixth report and order are sound and should be maintained.

B. Accomplishments of statutory objectives under the sixth report and order

Although the allocation plan promulgated in the sixth report and order has been in effect for less than 4 years, tremendous strides have been taken toward accomplishing the statutory objectives of providing service to all the people of the United States and distributing television service fairly, efficiently, and equitably among the several States and communities. In July of 1952 there were only 108 television stations on the air in 63 communities. Today there are some 440 stations in operation in 278 communities. In July of 1952 there were only 23 markets with 2 or more local stations. Today there are 113 markets with 2 or more stations. As the Chairman of the Commission stated before this committee on January 26, 1956, it has been estimated that over 90 percent of the people now receive service from at least 1 television station and perhaps as much as 75 percent of the people receive service from 2 or more stations. As the Chairman of the Commission stated, research estimates place the total number of television receivers in the hands of the public at some 37 million sets at an investment cost of more than $15 billion, and "the annual volume in television advertising, set sales, and servicing, runs close to $3 billion a year" (January 26, 1956, statement to this committee).

The tremendous growth of the television industry indicated by these statistics attests to the basic soundness of the current television allocation plan. It is submitted that television as a service to the public will continue to grow and

[1] In 1948, one of the 13 VHF channels was assigned to nonbroadcast services.
[2] The remaining reports issued by the Commission during the proceeding were of such a nature as to require no discussion at the present time.

prosper under this plan, which to date has not been fully tried or tested. For the reasons set forth below, it is believed that the various proposals to alter the basic television allocation plan are without merit and that any major alterations will result in deterioration rather than improvement of television service to the people of the United States.

C. Reduced separations, etc.

Our company objects to and opposes any revision of the current television plan which would result in an abridgment of the service areas of existing stations, or encroach upon the future service potential of stations utilizing high power and antennas to provide effective service to outlying rural areas. A number of the proposals submitted to this committee and to the Commission in connection with its current television allocation proceeding (docket 11532), would have this undesirable effect. These include various plans for the assignment of additional television channels by reducing the present minimum cochannel and adjacent channel separation requirements; the use of directional antennas or other restrictive devices; reduced maximum operating powers; and a number of other proposals, most of which were considered and rejected by the Commission 4 years ago in its sixth report and order. The sixth report considered and properly rejected, among other proposals, reduced mileage separation (pars. 109, 111–113, 115, 126), reductions in power (pars. 136 to 140), and the use of directional antennas (par. 220).

The wide area coverage which may be effectively obtained through resourceful use of television frequencies is a fundamental and salutary concept of the present national television allocation table, of which the first and most important objective is to provide at least one television service to all parts of the United States. Until there are no longer any television "white areas" (i. e., areas without at least one adequate television signal) in the country, this objective should be the paramount and overriding goal of the Commission's television allocation provisions. In the 3½ years since the promulgation of the sixth report and order, substantial progress has been made in realizing this primary objective. However, based on the Commission's estimate of present coverage, it appears that some 16 million people in this country are still without adequate television service from 1 station. Undoubtedly, a significant portion of the 16 million people residing in the television desert are located in rural and small-town America. It is an engineering and economic fact that wide area coverage by stations located in urban centers is necessary to bring service to many of these people whose needs for the cultural, educational, and entertainment benefits of television exceed the needs of city dwellers. Television service to these areas should be improved rather than degraded, as has been suggested by a number of witnesses who have appeared before you.

According to a recent survey of television farm penetration undertaken by the United States Bureau of Census, approximately 1,700,000 of the Nation's 4,782,000 farms had television sets in operation during October and November 1954. Although this figure represents only slightly more than a third of the entire rural farm market, the investment in television by farmers it reflects is substantial, and amounts in the aggregate to approximately $500 million, assuming an average retail price per television set of $250,[3] and taking into account the well-known fact that television installation costs are considerably higher on farms than in cities because of the special tower and antenna structures required to pick up satisfactory signals from stations in distant cities. Naturally, this entire sum is not at stake, since many farmers live close enough to metropolitan areas to receive adequate service. However, it is of the utmost importance that the immense investment by the rural populace, many of whom even today receive in return only one television signal, of doubtful quality, be recognized and protected by the Commission in any future action it may take looking toward revision of its present television allocation standards. No restriction should be placed on the future efforts of television licensees to provide, through improvement of their facilities, more and better television service to outlying rural regions on the fringe of their service areas. Likewise, no action should be taken which would in any way encroach upon the rural service which has been established to date.

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[3] This figure is a conservative estimate, based on data reported in the trade press. For instance, Television Digest for January 29, 1955 (p. 9), estimated that the average retail price of the 33⅓ million sets in use on January 1, 1955, was $270. The same publication on November 19, 1955 (p. 1), contained an estimate, based on figures supplied by the statistical department of Radio-Electronics-Television Manufacturers Association, that a total of 7,900,000 new sets would be sold during 1955 for approximately $1.95 billion, or an average retail price of about $247.

D. Status of UHF

It is recognized that the highly publicized plight of the UHF broadcasters is the basic reason for the current review of television allocations by the Commission and this committee. It is claimed that the present plan does not permit competitive coexistence of UHF and VHF operations. It is stressed that although 152 UHF stations commenced operating since the lifting of the freeze in July of 1952, only some 97 commercial stations were on the air in January of 1956 and that a number of the UHF stations presently on the air are operating at a loss.

To some extent the difficulties of UHF have been the result of economic pressures inherent in any competitive industry and which are not within the control of the Commission. It is submitted, however, that these difficulties are not necessarily of a permanent character and that one cannot write off as impractical the objectives embodied in the sixth report and order, or assume that stations in the UHF band are inherently incapable of competing on a successful basis, under present television allocation plans, with stations in the VHF part of the spectrum.

It should be remembered that UHF television operators are at this date going through an initial stage of growth and expansion similar to that which faced the pioneers in VHF television service during the years prior to and during the freeze. Indeed, UHF difficulties during the years since the lifting of the freeze have been in many respects comparable to those faced by the VHF pioneers in the prefreeze period. The basic problem, then as now, was receiver distribution. An examination of the Commission's financial reports for VHF television stations during the years 1948, 1949, and 1950 in comparison with similar information for the UHF television industry for the years 1953 and 1954 shows that a smaller number of VHF stations sustained much larger operating losses during the initial period when set distribution was being built up than UHF stations have sustained during the corresponding postfreeze period of set conversion.

In 1948 the 50 television stations in operation, including those owned and operated by the networks, had aggregate revenues of $8.7 million, aggregate expenses of $23.6 million, and operating losses of $14.9 million. During this year not one television station had an overall profitable operation. During 1949, by which time 98 television stations were on the air, aggregate revenues were $34.3 million, expenses were $59.6 million, and operating losses had grown to $25.3 million. During this year only four television stations operated at a profit. In 1950, more than a year after the freeze had gone into effect, the television industry, with 107 television stations on the air, reported revenues of $105.9 million, expenses of $115.1 million, and overall operating losses of $9.2 million. During that year only half of the stations in operation showed operating profits. Thus in an initial period of 3 years scarcely more than a hundred VHF television pioneers sustained total losses of some $49 million during the period when receiver distribution throughout the country was being built up.

In contrast to the massive operating losses suffered by the relatively few prefreeze television stations during the period when set circulation throughout the country was being built up, the average losses suffered by UHF stations authorized since the sixth report and order have been relatively small, despite the intervening depreciation of dollar values. Thus, according to the Commission's summary of financial conditions during 1953, the first full year of postfreeze operation, a total of 112 UHF stations in operation had total revenues of $10.4 million, expenses of $16.7 million, and operating losses of $6.3 million. For the following year, 1954, a total of 125 UHF stations in operation had revenues of $25.4 million, expenses of $35.4 million, and total operating losses of $10 million. For the first 10 months of 1954, 18 of the UHF stations in operation had an overall profit. Although comparable figures for the year 1955 are not yet available, it is apparent that during the first 2 years after the freeze the UHF television industry, faced with the same set distribution problem as that which originally confronted VHF operators in 1948 and 1949, has suffered nothing like the overall operating losses experienced by the VHF pioneers and that, in addition, the UHF loss has been distributed over a greater number of operators. Whereas less than 100 operating VHF stations sustained total losses of more than $40 million in the calendar years 1948 and 1949, the total operating losses of a larger number of UHF stations during the year 1953 and 1954 amounted to only slightly more than $16 million, or approximately one-third of those sustained in the early days of the VHF service.

The foregoing comparative financial data for UHF and VHF are set forth in a chart attached hereto as exhibit A.

The operating losses suffered by UHF television stations may reasonably be expected to decrease with the gradual process of conversion throughout the country.

In the proceedings leading to the sixth report, the Commission specifically recognized that:

"It is reasonable to assume that economic problems will be faced by UHF broadcasters in areas where VHF broadcasting exists. Similar problems confronted the VHF broadcasters prior to increased receiver distribution in their respective areas." (Sixth report and order, par. 189.)

Because experience since the lifting of the freeze has borne out the above prediction is no reason for abandoning at this early stage the principles of the current allocation plan which was adopted by the Commission, after exhaustive consideration, in a rulemaking proceeding extending over several years.

It is submitted that no serious attempt has been made by most UHF broadcasters to become competitive with VHF broadcasters by utilizing the facilities available to them under the current television allocation plan. The current allocation plan provides that stations in the lower VHF band (channels 2 to 6) may operate with maximum power of 100 kilowatts e. r. p.;[4] that stations in the upper VHF band (channels 7 to 13) may operate with maximum power of 316 kilowatts e. r. p. and that stations in the UHF band (channels 14 to 83) may operate with a maximum power of 1,000 kilowatts e. r. p. Of the 97 UHF stations on the air in January of 1956 only 4 of these stations were using maximum power and 90 were using less than 30 percent of the maximum authorized power with 30 of these 90 operating with 2 percent or less of maximum authorized power.

On the other hand, of the 341 commercial VHF stations, 217 were operating with maximum authorized power. Only 5 of the VHF stations were operating with 2 percent or less of the maximum authorized power. These facts are depicted graphically on the chart attached hereto as exhibit B.

It is submitted that any station, UHF or VHF, which chooses to utilize only 1 percent or 2 percent of available maximum power can hardly be expected to compete successfully with stations utilizing 100 percent of available maximum power.

We maintain that the real crux of the so-called UHF problem is the UHF broadcasters' failure to utilize fully and effectively the facilities offered to them by the Commission and that this fact is mainly responsible for the difficulties experienced in securing set conversions and network affiliations.

The question naturally arises as to whether it would be economically feasible for UHF stations to install the equipment necessary to achieve maximum power. It is submitted that the cost figures set forth below demonstrate that UHF stations can be as competitive with respect to VHF stations as upper band VHF stations are with respect to low-band VHF stations.

The usual antenna-transmitter combination used to achieve 100 kilowatts e. r. p. for channels 2 to 6 is a 25-kilowatt transmitter and an antenna with a gain in the order of 5.9 to 6.5. The usual combination used to achieve 316 kilowatts e. r. p. for channels 7 to 13 is a 50-kilowatt transmitter and an antenna with a gain in the order of 10 to 12. A combination which will achieve 1,000 kilowatts e. r. p. for channels 14 to 83 is a 25-kilowatt transmitter and an antenna with a gain of between 46 to 60, depending on the channel employed.

The cost to broadcasters for the above combinations is as follows:[5]

Channel and ERP	Transmitter	Antenna	Total
Channels 2 to 6, 100-kilowatt ERP	$145,500	$30,750	$176,250
Channels 7 to 13, 316-kilowatt ERP	212,000	38,500	250,500
Channels 14 to 83, 1,000-kilowatt ERP	186,000	49,500	235,500

Thus, from a capital investment viewpoint, the combination necessary to achieve 1,000 kilowatts e. r. p. on UHF channels is cheaper than that used to achieve 316 kilowatts e. r. p. on upper band VHF channels.

With respect to operating costs, the major items are power consumption and tube replacement. From a standpoint of power consumption it is cheaper to operate the 25-kilowatt UHF transmitter (108-kilowatt power consumption) than

[4] E. r. p. is an abbreviation for effective radiated power, which is a combination of transmitter power output, less transmission line losses, multiplied by antenna gain.
[5] Based on RCA catalog prices.

it is to operate the 50-kilowatt VHF transmitter (140-kilowatt power consumption). The cost of complete sets of replacement tubes for each of the transmitters mentioned above is listed below, based on RCA catalog prices:

Channels 2 to 6	$5,505.22
Channels 7 to 13	13,123.85
Channels 14 to 83	13,100.00

In view of the fact that it is reasonable to assume that tube life for UHF 25-kilowatt transmitters will be substantially the same as the tube life of upper band VHF 50-kilowatt transmitters, there appears to be no significant difference in tube replacement cost as between UHF and upper band VHF stations.

The above statistics indicate that there is no reason why UHF stations cannot make the capital and operating expenditures necessary to achieve maximum power and to become competitive with VHF stations in terms of service and coverage. In this connection, it is recognized that in areas of unusually rugged terrain there will be more "white areas" within the normal service areas of UHF stations than within the normal service areas of VHF stations. However, in most cases these areas can be served through the use of low-cost boosters or translators and there is nothing to indicate that a UHF station operating with maximum power of 1,000 kilowatts e. r. p. with adequate antenna height will not be able to cover effectively its market area and thus be competitive with VHF stations. In addition, the Commission has recently issued a proposal to amend its rules so as to authorize maximum power of 5,000 kilowatts e. r. p. for UHF stations. One UHF station (WJMR–TV, New Orleans) now operating with the presently authorized maximum of 1,000 kilowatts e. r. p. has applied for and received permission for experimental operation using 5,000 kilowatts e. r. p. This experienced UHF broadcaster (2⅓ years on the air) is evidently satisfied that UHF is practical, that it is here to stay, and he is taking positive steps to become and to remain competitive. Unfortunately, such a realistic approach to the problems of becoming an effective part of the industry is the exception rather than the rule among UHF broadcasters.

An effective radiated power of 5,000 kilowatts can be reached by employing a transmitter capable of 100-kilowatt output together with the currently available high power, high gain UHF antennas. RCA recently announced successful on-the-air tests on a new type of UHF amplifier tube which produced an effective radiated power of approximately 4,500 kilowatts during these tests. The RCA announcement stated that this power is more than four times the output of the most powerful existing UHF station and that:

"This test of tube and antenna establishes the engineering validity of ultra-high-power, ultra-high-frequency broadcasting. Radiated power in the order of 4 million to 5 million watts would enable UHF TV stations, so equipped, to extend the area of primary coverage and offer improved television service throughout the present so-called fringe or weak-signal areas" (Broadcasting-Telecasting, Feb. 20, 1956, p. 102).

In view of the above, there is every reason to believe that UHF can be competitive with VHF and that no basic changes in the present television allocation plan should be made at this time.

V. CONCLUSION

In reference to the sixth report and order, we believe that there is not too much wrong with a plan (as yet not fully implemented or tested) which today allows more than 440 stations to provide television programs to more than 37 million receivers serving some 90 percent of the population of the United States. No one has quarreled seriously with the proposition inherent in the sixth report and order that UHF as well as VHF channels are needed in order to realize the statutory objectives of providing television service to all the people and distributing such service among the several States and communities in a fair, efficient, and equitable manner. We believe it is apparent that these objectives are being accomplished under the current allocation plan and that no basic changes should be made in the plan. The present allocation plan should be implemented rather than changed, and UHF stations should be urged to achieve the maximum operating powers and antenna heights currently authorized in order to provide their share of the service contemplated under the sixth report and order.

We believe that the current unsavory reputation of UHF television is, in the main, a result of inadequate use of these facilities rather than the result of inherent deficiencies in the virtually untried UHF system itself. Up until the

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present time we have been prone to compare only the front side of the tags on the various stations. The front side of these tags read "UHF station" or "VHF station." This is a misleading comparison. We have not looked at the reverse side of these tags which all too often read "1 percent UHF station" and "100 percent VHF station." Many of us have been led to believe that the cost of purchasing and operating equipment necessary to achieve maximum powered UHF is prohibitive and places the UHF operator at a great financial disadvantage. This is not so. It costs no more to purchase and operate equipment for UHF 1,000 kilowatt effective radiated power than it does to purchase and operate equipment for VHF 316 kilowatts effective radiated power. We are told of the enormous and unbearable losses of many of the UHF stations without being told that it is written in the history of the industry that it is normal for stations (UHF or VHF) to suffer operational losses in the early stages of operation.

In our own case we found this to be true in the early years of WBTV and we are finding it true today. Our VHF station WBTW in Florence, S. C., has been on the air 1⅓ years and is still operating at a loss. It should be remembered that some VHF broadcasters suffered heavy losses for periods longer than 5 years before they enjoyed the privilege of buying their first bottle of black ink.

All television stations now operate within the provisions of the sixth report and order. However, as is evidenced by many of the proposals that have been submitted, some UHF broadcasters are demanding a new set of standards based solely on their reluctance to invest the amount of money in equipment necessary to participate effectively in the industry. In doing so, they completely disregard the effects such a plan would have on the efforts to develop a truly nationwide service and disregard the interests of the public residing in rural and small-town areas. The standards proposed call for a patchwork of low cost, minimum service, and interference-ridden operations to the detriment of the American public. For example, the proposal to limit the coverage area of each television station to one community would practically eliminate television service to rural and small-town America.

Shall we close our eyes to the big picture and adopt a new plan that will hamstring a great and growing service and industry in order to allow a few broadcasters who choose to be noncompetitive to stay in this business a little longer, or shall we maintain a plan that is adding proof of its effectiveness every day in providing service to all of the people?

We believe that full and aggressive use of the facilities available to UHF broadcasters will result in elimination of many of the current difficulties of UHF stations in securing set conversions and program material. Such action would provide UHF stations with the circulation necessary to effective competition. In addition, this action would serve to create confidence in UHF and its future. The emphasis, by action and by word, should be placed on the positive rather than the negative.

In the final analysis, the Federal Communications Commission under existing law and congressional directives has the responsibility for allocating television channels. This is a problem of tremendous scope and complexity. Our view is that the Commission has faithfully carried out its responsibility in providing the present allocation plan and that this plan, if given the necessary time, implementation, and industry cooperation, will lead to truly nationwide competitive television service for the people of the United States.

Respectfully submitted.

THOMAS E. HOWARD,
Vice President and Managing Director of the Engineering and General Services Divisions of Jefferson Standard Broadcasting Co.

FEBRUARY 29, 1956.

(The exhibits referred to in Mr. Howard's statement are as follows:)

EXHIBIT A
Data from
FCC files

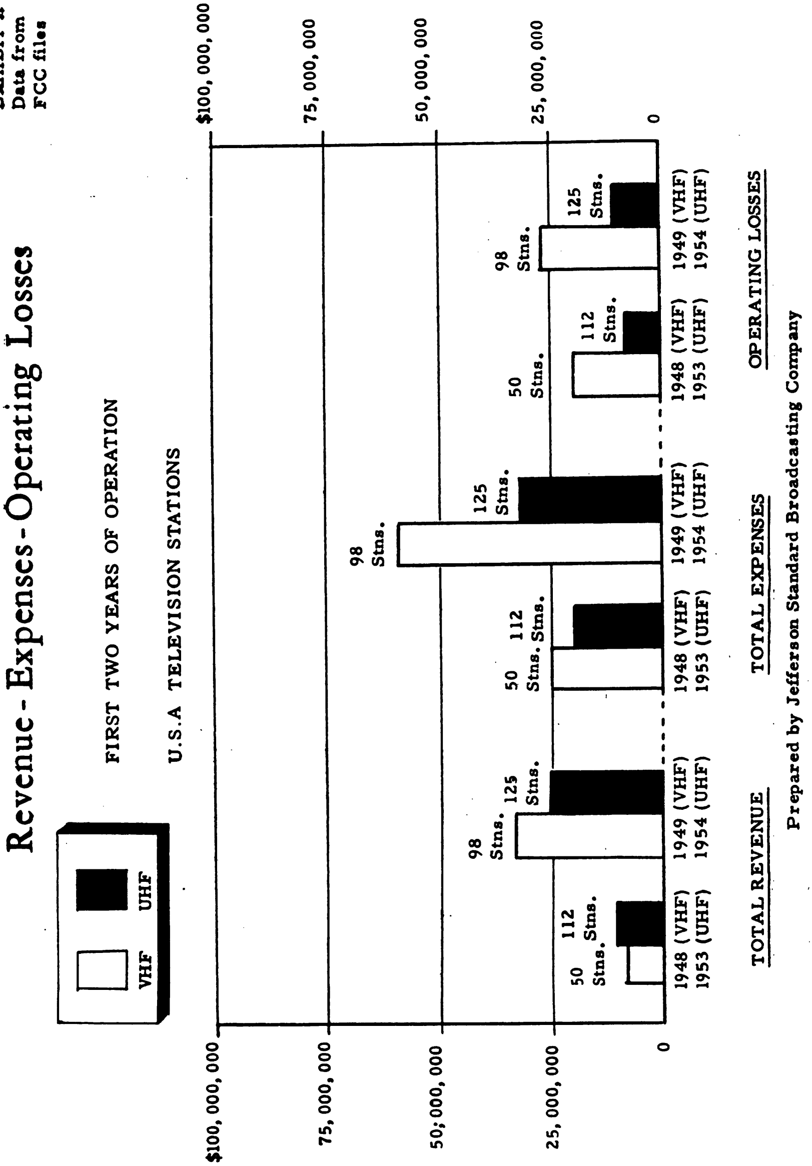
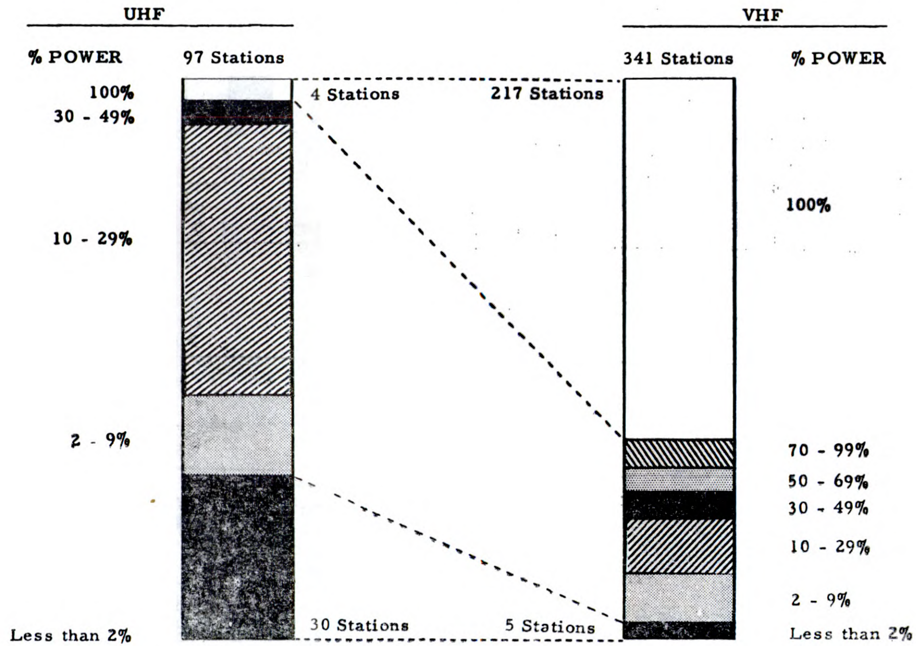


EXHIBIT B

U. S. A. Television Stations

Showing % of Authorized Power Now Used *



* January 1956, TV Factbook

Prepared by Jefferson Standard Broadcasting Company

Senator BIBLE. Pardon my interruption, Mr. Chamberlain. You may proceed. Will you identify yourself for the record? And may we have quiet in the room?

STATEMENT OF PAUL L. CHAMBERLAIN, GENERAL MANAGER, BROADCAST EQUIPMENT, TECHNICAL PRODUCTS DEPARTMENT, ELECTRONICS DIVISION, GENERAL ELECTRIC CO.

Mr. CHAMBERLAIN. Thank you, Senator.

My name is Paul L. Chamberlain. I am general manager for broadcast equipment, electronics division, General Electric Co., in Syracuse, N. Y.

I am appearing here today as a representative of a television-equipment manufacturer. My testimony will be concerning UHF broadcasting and receiving equipment and technical problems which have a bearing on UHF broadcasting. For the information of the committee members, the General Electric Co. is one of the pioneers in the television field. We manufacture both UHF and VHF television-broadcast transmitters and studio equipment, television receivers, picture tubes, and receiving tubes. The company conducts an extensive research program in the entire area of communications through the facilities of the General Electric research laboratory in Schenectady, N. Y., and the electronics laboratory in Syracuse, N. Y. The scientists of these laboratories and our extensive engineering organization have been making important basic contributions to the television art in a number of areas, not the least of which is the ultra-high-frequency area.

In my appearance before the Communications Subcommittee on May 20, 1954, I outlined in some detail the technical contribution of the General Electric Co. in developing and producing VHF and UHF broadcast equipment. At that time I was accompanied by two associates who similarly outlined the company's contributions with respect to VHF and UHF receivers and tubes. I would hesitate to take the committee's time to review this record other than to emphasize again that our company delivered the first 12-kilowatt UHF transmitters less than 6 months after the first construction permit was issued by the Commission. At the time I testified we had delivered 44 UHF transmitters, of which 34 were 12-kilowatt transmitters; and we had equipped 100 percent of all stations operating with more than 5 kilowatts of transmitter power and more than 90 percent of all stations over 1 kilowatt.

At that time I predicted delivery of a 60-kilowatt UHF transmitter by the spring or summer of 1956. Despite the fact that economic problems of the UHF broadcasters necessarily affected the incentive to press these developments, the ingenuity of our engineers had enabled us to meet and exceed the predicted effective radiated power. For example, we have had in operation since January 1955 a transmitter/amplifier and antenna operating at WILK, Wilkes-Barre, Pa., producing 1,000 kilowatts of effective radiated power; and we have produced equipment for WGBI, Scranton, Pa., capable of effective radiated power of 2,000 kilowatts. This equipment is currently being installed.

I review these facts as a foundation for the statement that the broadcast equipment industry in general, and General Electric in particular, has utilized every available bit of engineering and research talent to provide successful high-power UHF broadcasting equipment to the broadcast stations, and that, although this effort has been made infinitely more difficult by the economic problems of the industry, nevertheless resourcefulness and ingenuity have been brought to bear to make a substantial technical contribution.

In the company's receiver story, told by Dr. Fink in 1954, the noise factor for UHF receivers was outlined. He reported a then industry average of 20 to 24 decibels, with General Electric UHF receivers closing the previous year at 16 to 20 decibels and then currently running at 12 to 16 decibels. In charts which are a part of the record of that hearing, he demonstrated the significance of this noise factor in terms of received picture on the UHF receiver. He predicted that further gains could be expected from set manufacturers.

In reviewing this situation with my associates of the receiver operation of the company, prior to appearing before you today, I was advised that further progress in the state of the art has, in fact, been made. It is now possible to achieve a noise factor three decibels better than our last report to you by using a radically different receiver tube developed by our engineers. This tiny tube, which could go in the front end of a UHF receiver, is an offshoot of a classified military type.

If you will forget decibels for a moment—and I know most of you are not engineers—I would like to express it in this next sentence: That this improvement in receivers is as effective, as far as the looker and listener is concerned, as quadrupling the effective radiated power of the transmitter. I just happen to have a tube here in my pocket——

Senator BIBLE. That was very thoughtful of you. [Laughter.]

Mr. CHAMBERLAIN. A tiny little fellow, Senator [showing tube].

Senator BIBLE. It certainly is.

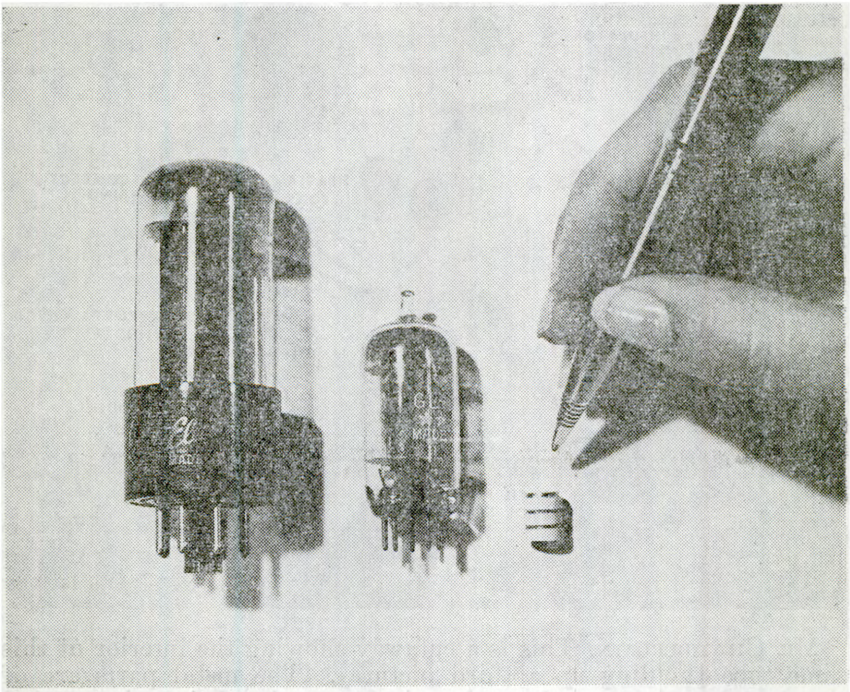
Mr. CHAMBERLAIN. Again, departing slightly from this prepared text, and in an attempt to clarify this just a little bit——

Senator BIBLE. You could almost make that tube a part of the record.

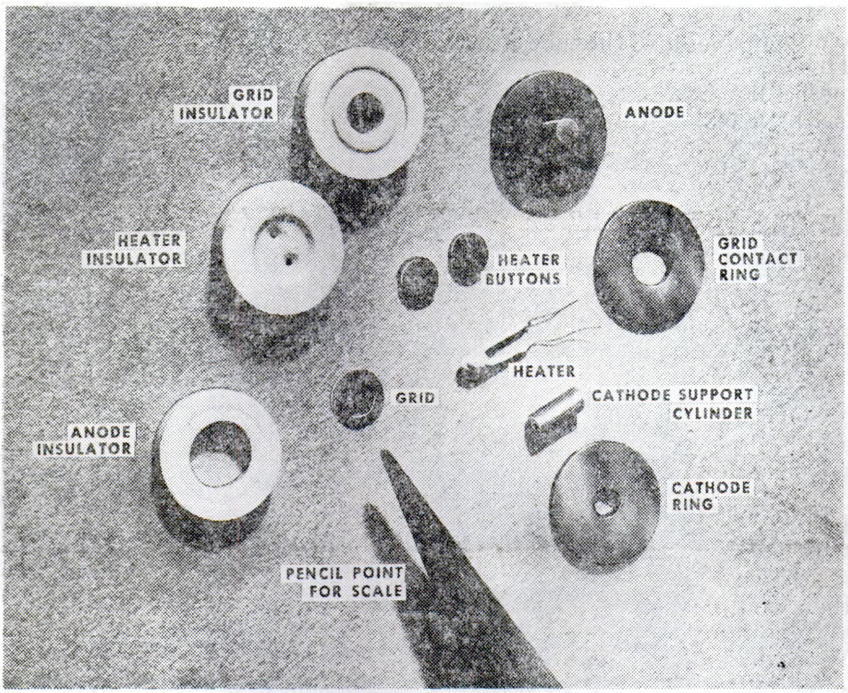
Mr. CHAMBERLAIN. That is right. Here is a picture of that tube compared to a miniature glass tube and the standard-sized glass tube and with the lead pencil in there, as a matter of scale.

Senator BIBLE. It certainly illustrates the point very well. This can be made a part of the record, for the benefit of the committee.

(The picture referred to, together with an enlarged photograph of the components of the tube, are as follows:)



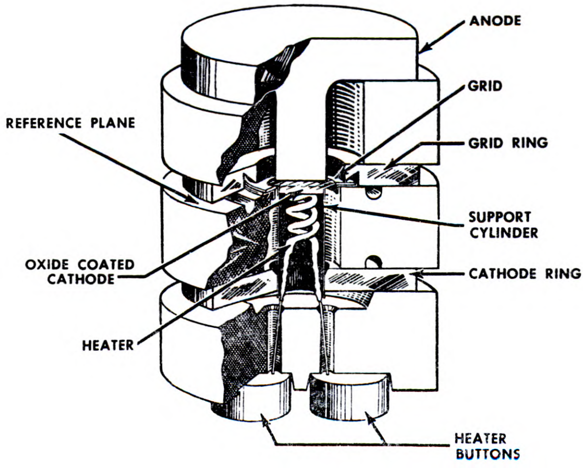
Milestones in radio and television receiving tube development. At left, conventional glass type with plastic base; center, miniature-type tube; right, new ceramic microminiature introduced by General Electric.



Mr. CHAMBERLAIN. This is a cutaway showing the interior of this same tube [holding up a third picture]. The metal parts are of titanium, largely, the body of the tube is ceramic. It is an interesting thing. This tube can be used in certain classified work, including missiles. It is capable of full operation, at great exalted temperatures—temperatures in excess of 700° C.

Senator BIBLE. Let's likewise make this part of the record.

(The picture is as follows:)



G-E MICRO-MINIATURE CERAMIC TUBE, TYPE 6BY4

Mr. CHAMBERLAIN. It looks like a blowtorch at that point. Here are some of the parts that go in there. I will touch on one of them. This structure labeled "grid" in the center portion of this tube is a mesh, like a fly screen, if you want to think of it that way. There is a little bit of difference, though. The wires are four ten-thousands of an inch in diameter. That is about one-fifth as thick as a human hair, and they are spaced 1,000 to the inch.

Mr. COX. Could you tell us, if it is not classified, just generally how the cost of manufacture and of operation of a set with this in it would compare with the present sets?

Mr. CHAMBERLAIN. Would you like me to talk on that now?

Mr. COX. If you have it in the statement later, that will be all right.

Mr. CHAMBERLAIN. I would like to defer that, if I may.

Mr. COX. All right.

Senator BIBLE. I would be interested in that because I just got a bill on my little TV set yesterday for a tube. If it isn't classified, you may develop it in the course of your testimony.

Mr. CHAMBERLAIN. Our tube operation sampled every tuner manufacturer in the industry and every set manufacturer in the industry with free samples of this radical, new tube, offering them our assistance toward the development, by them, of successful applications in their equipment. These initial samples were shipped without cost, and we have made additional samples available at nominal charges. We understand that many companies in the industry have devoted considerable time and effort toward achieving successful applications of this new tube.

We can summarize our receiver story in substantially the words used by Dr. Fink to the effect that the noise factor has been the fundamental limitation on UHF receiver performance and that, although television set manufacturers cannot be complacent, gratifying progress has been and is being made.

I would be the first to concede that I am not qualified to pass on the broader issues involved in this allocations dilemma. My experience has been primarily in the development, manufacture, and marketing of equipment. From that standpoint, it is my unqualified opinion that there is available today UHF transmitting and receiving equipments capable of furnishing an adequate service so far as the technical considerations of the equipment are concerned.

The General Electric Co. did file a statement in the FCC's pending Allocations Rule Making Proceeding, docket 11532. I would like to file with this committee a copy of that statement without taking the time to read it into the record.

Senator BIBLE. How long a statement is that? It can be made a part of the record. Is that attached to your statement?

Mr. CHAMBERLAIN. Yes.

Senator BIBLE. It will be made a part of the record.

(The information is as follows:)

FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON 25, D. C.

Docket No. 11532

In the Matter of Amendment of Part 3 of the Commission's Rules and Regulations Governing Television Broadcasting Stations

COMMENTS OF THE GENERAL ELECTRIC CO.

As a manufacturer of both UHF and VHF transmitters and receivers, the General Electric Co. has from the beginning been closely associated with the matters covered in docket 11532, and it is in this capacity that these comments are being filed.

To those of us who have more particularly developed, manufactured, installed, and checked out UHF transmitter and antenna systems, it is of vital concern that if UHF is to be abandoned, it is not

(1) given up under the mistaken impression that it is incapable of giving an adequate service;

(2) lost by default—through failure to recognize that without positive prompt action to help UHF now, it may soon become economically impossible for UHF to continue as a television service.

If UHF is to be abandoned, we urge that such a drastic irretrievable step be taken only with a full awareness of the consequences, based on a thorough examination of all the critical facts.

In our judgment, based on an intimate day-to-day association with many UHF and VHF stations through our capacity as the supplier of equipment, all that has been established by television operations from the sixth report and order to date is that UHF stations have generally not survived competition with VHF stations in the same markets. Taken to its logical conclusion, this may then force a choice between an all-VHF television service or an all-UHF television service. Although there may appear to be some intermediate solutions, we suggest that any compromise between these two positions will in the long run ultimately prove to require the abandonment, for economic reasons, of the UHF channels. It is for this reason that we conclude that it is essential to examine carefully the ultimate issue at this time.

In any choice between an all-VHF or an all-UHF service, the availability of 70 UHF channels would, in the absence of very special circumstances, tend to weight the balance almost conclusively in the direction of UHF, keeping in mind the Commission's broad objectives as expressed in the sixth report. However, the trend at the moment discloses an almost exclusive preoccupation with the infinitely more limited VHF channels, or compromises based on the use of VHF. The purpose of our comments is to urge that any consideration of the issues in this rulemaking proceeding should start with a thorough objective inquiry into the possibility of an adequate all-UHF television service.

We suggest that although such a study appears to be both the obvious and the logical first step, it has never been the subject of any intensive inquiry[1] and therefore it may well be that no one is today properly qualified to state whether UHF can or cannot give an adequate nationwide competitive TV service.

We wish to make it clear that the General Electric Co. is not supporting (or attacking) the concept of an all-UHF service. Our position is only that the first and primary question to be resolved by the Commission in this rulemaking is whether it is possible to have an adequate television service utilizing UHF channels. Not until this question is definitely settled can it be possible to proceed with assurance to a consideration of the other alternatives—each of which involves infinitely more far-reaching compromises of FCC principles.

An all-UHF television service was in fact originally contemplated by the FCC (Chairman Hyde's testimony before the Communications Subcommittee, p. 132). It has more recently been said that "In theory very significant gains would accrue to the public if this were to happen. And indeed if the decision on television allocations were being made for the first time, it would be difficult to conceive of a good argument against having all television in the UHF * * *" (the Harry M. Plotkin memorandum of February 1, 1955, prepared for the Senate Committee on Interstate and Foreign Commerce: p. 10).

[1] See, for example, par. 25 of the sixth report and the testimony of then Chairman Hyde before the Communications Subcommittee at p. 141 (May 1954).

A major objection has been said to be the cost to the public of converting its receivers.[2] However, any study would presumably include an examination of proposals for a transition period which would be coextensive with the useful life of the great majority of existing television receivers. A move of the television service to UHF over such a 5- to 7-year period, with stations permitted in the meantime both a VHF and a UHF channel, could greatly reduce the economic impact on the public. Such a period would also coincide with the volume sale of color receivers and the peak of the normal monochrome replacement purchases—both of which factors could be helpful in easing the conversion problem. The public would in effect have adequate notice, so that when individuals in the normal course of events came to purchase a color set or a second set or a replacement for their wornout monochrome set, they would buy either a VHF–UHF set or a UHF-only receiver. In this sense at least theoretically there would be no major economic loss suffered by the public. Station operators would in general have time enough to fully depreciate their VHF transmitters, and to use VHF income to cover their investment in UHF equipment. We do not represent that the net effect would be to please every interest: we are faced with a true dilemma where there is no one satisfactory solution. It is necessary for some interests to be intruded upon, and the question is to make sure that all of the interests are adequately evaluated. A transition period of this nature would not seem to foreclose further consideration of this approach when we consider the critical nature of the problem; the 10 years already devoted toward attempting to realize the basic objectives; and the advantages offered by a 70-channel service compared to a 12- or 15-channel service.[3] Furthermore, though it seems essential to program any such conversion over such a period of time, the study may disclose that many major advantages would be realized almost immediately, in the event that such an approach is deemed to be feasible.

Assuming then that there is no controlling reason foreclosing the consideration of an all-UHF service, we wish to express our conviction that a thorough objective study of the performance characteristics of UHF equipment would bring into existence for the first time sufficient evidence to permit a conclusion to be drawn on the technical ability of such equipment to give an adequate television service.

There are respects in which VHF is capable of providing a better television service than UHF.[4] We suggest, however, that this would not necessarily warrant a conclusion that the Commission is, therefore, limited to VHF channels for its television service. A cadillac is superior to a Chevrolet in several respects, but the Chevrolet is capable of providing a more than adequate transportation service. If it were necessary to abandon production of 1 of the 2, it is

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[2] Note in this respect that since the sixth report many proposals designed to help achieve the objectives of that report and order sought indirectly to require the public to buy all-channel receivers. It was, for example, suggested that manufacturers be required to manufacture only all-channel receivers—either by agreement or statute. The objection made to most of these proposals was not the cost to the public—it was that the proposals were either not practical or not effective. Particularly when viewed over the transition period which has been suggested, the cost to the public—rather than being considered an absolute bar to a move to an all-UHF service—should perhaps be considered and weighed as one of the investments required to achieve the most efficient and effective utilization of a great national natural resource, the spectrum.

[3] We suggest that of all the current proposals, the all-UHF approach could be said to have the highest value potential:

(1) It is the solution most likely to produce the fewest continuing conflicts in the constant struggle for space in the spectrum.

(2) It would both conserve spectrum space and represent an efficient utilization of the spectrum.

(3) It will enable equipment manufacturers to concentrate on accelerating the development and production of advanced designs of transmitters and receivers.

(4) It will serve the anticipated needs of many other critically needed existing FCC services, as well as the military for additional VHF space.

(5) In contrast to the complexity of engineering and administering VHF drop-in programs, it would provide a simple, fundamental, long-term solution to the overall allocation problem.

(6) All television stations would then be on a basis of substantial equality in terms of their ability to compete with each other both for programs and audience.

(7) By the same token, there will be room for one or more additional strong networks since there will be outlets available in key markets having equal desirability, each with the other in those markets.

(8) Long-range future expansion would be more easily facilitated through the use of 70 channels, compared to the severely limited spectrum space available in the very high frequency area.

[4] Note in this connection that the VHF drop-in proposals would inherently appear to destroy at least some of the very characteristic as to which the VHF superiority is most advertised—coverage. There are of course some respects in which UHF is inherently superior to VHF. See in this connection the October 7, 1955, petition of the American Broadcasting Co., pp. 9 and 10.

conceivable that considerations of maximum economy and efficiency in utilization of critical materials might tip the balance toward the Chevrolet—even though it is inferior to the Cadillac in much the same sense that UHF is inferior to VHF. The study we propose of the technical capabilities of UHF would be designed not to compare it with VHF, but to determine whether despite some disparities in that comparative respect, UHF still has an absolute capacity for adequate service which justifies the FCC in considering retaining the 70 UHF channels for the television service.

There is, of course, the problem of whether sufficient assignments could be made in an all-UHF allocation table to permit realization of the objective of a nationwide competitive service. While this would obviously have to be explored, we have a less acute allocation problem with a 70-channel service than with a 12- or 15-channel service, so this does not seem to be the critical consideration at this stage.

Consistent with our approach to this rulemaking proceeding, we refrain from comment on VHF drop-in proposals, proposals for additional VHF channels, and other alternatives, consideration of which must necessarily proceed on the unproven assumption that an all-UHF service is economically or technically impossible, and favorable action on which would probably lead to the practical abandonment of the UHF channels. Disposition of deintermixture proposals also would depend on a determination of the adequacy of UHF.

It would seem of critical importance that existing UHF stations be encouraged to remain in operation during the period of any study such as that suggested in these comments. Should such a study affirmatively establish that UHF is capable of giving an adequate service, we suggest that it is particularly important that there be a nucleus of operating UHF stations to serve as the base on which to build the transition period previously outlined. On the basis of our close association with many of the currently operating UHF stations, it is our firm conviction that it will take some affirmative action from the Commission at this time, if many of these UHF stations are to continue in operation. Whenever the Commission acts to authorize a VHF station whose signal inevitably will enter a market now served by UHF stations, the ability of such UHF stations to continue is definitely jeopardized. We strongly urge that if the Commission concludes that a study should be inaugurated to establish the facts with respect to the ability of UHF to give an adequate television service, it should at the same time adopt a policy of not authorizing any additional VHF stations during such period where the effect of the operation of such a VHF station would be to enter a market now served by UHF stations.

In closing our comments, we again wish to emphasize that the General Electric Co. is definitely not proposing an all-UHF television service. We are urging that before the UHF channels are lost to the television service either by intent or by default, there should be a major effort to determine what the facts are with respect to ability of UHF to furnish an adequate service. We do not, ourselves, know the final answer although we are convinced that there is considerable misunderstanding in this area. We would, therefore, propose that the Commission accept the offer of the RETMA Frequency Allocation Study Committee to conduct those technical studies which the Commission may determine are essential to its consideration of the issues in this rulemaking proceeding; and that the first such inquiry should ideally be into the effective coverage of UHF broadcasting under various conditions of terrain and power. In our opinion, there should be sufficient data fairly readily available on this specific inquiry to permit a highly informative report to be made within 60 to 90 days.

Respectfully submitted.

W. J. Morlock,
General Manager, Technical Products Department, General Electric Co.

Syracuse, N. Y., *December 12, 1955.*

Mr. Chamberlain. However, since this statement has apparently been misunderstood in some quarters, I would like to take time enough to summarize the company's position as outlined in this statement.

To those of us who have developed, manufactured, installed, and checked out UHF transmitter and antenna systems, it is of vital concern that if UHF is to be abandoned it is not—

(1) given up under the mistaken impression that it is incapable of giving an adequate service;

(2) lost by default—through failure to recognize that without positive prompt action to help UHF now, it may soon become economically impossible for UHF to continue as a television service.

If UHF is to be abandoned, we urge that such a drastic, irretrievable step be taken only with a full awareness of the consequences, based on a thorough examination of all the critical facts.

In our judgment, based on an intimate day-to-day association with many UHF and VHF stations through our capacity as a supplier of equipment, all that has been established by television operations from the FCC's sixth report and order to date is that UHF stations have generally not survived competition with VHF stations in the same markets.

It would seem reasonable under these circumstances for a major effort to be directed toward developing and strengthening the use of the 70 channels available in the UHF part of the spectrum. However, to our deep concern, the trend for the past few months has disclosed an amazing preoccupation with the infinitely more limited VHF channels or compromises based on the use of VHF.

The real purpose of our comments before the Commission was to urge that any consideration of the issues in that rulemaking proceeding should start with a thorough, objective inquiry into the possibilities of the more effective use of the UHF frequencies as a condition precedent to achieving an adequate nationwide television service.

We suggest that although such a study appears to be both the obvious and the logical first step, it has never been the subject of any intensive inquiry, and therefore it may well be that no one is today properly qualified to state whether UHF can or cannot give an adequate television service.

Effective utilization of the UHF channels—

(1) offers the solution most likely to produce the fewest continuing conflicts in the constant struggle for space in the spectrum;

(2) would enable equipment manufacturers to concentrate on accelerating the development and production of advanced design of UHF transmitters and UHF/VHF receivers;

(3) would provide a fundamental, long-term solution to the overall allocation problem;

(4) would provide room for one or more additional networks;

(5) would facilitate long-range future expansion.

Assuming there is no overall controlling reason for avoiding use of the ultra high frequencies, it is our conviction that a thorough, objective study of the performance characteristics of UHF equipment would bring into existence, for the first time, sufficient evidence to permit a conclusion to be drawn on the technical ability of such equipment to give an adequate television service.

The study we propose of the technical capabilities of UHF would be designed not to compare it with VHF, but to determine whether, despite some disparities in that comparative respect, UHF still has an absolute capacity for adequate service which justifies the FCC in taking the steps necessary to retain the effective use of the UHF channels for the television service, however radical these steps may initially appear to be.

In closing my comments, I wish to emphasize that the General Electric Co. is definitely not now proposing an all-UHF television service.

We are urging that, before the UHF channels are lost to the television service either by intent or by default, there should be a major effort to determine what the facts are with respect to the ability of UHF to furnish an adequate nationwide service.

Senator BIBLE. Thank you very much, Mr. Chamberlain.

Do you have any questions?

Mr. COX. Yes, sir.

Senator BIBLE. You may proceed.

Mr. COX. Could you comment now, then, on that cost item that we raised a while ago?

Mr. CHAMBERLAIN. The cost of the tube—the selling price, the retail selling price has not been definitely established. Assuming that it is well accepted, and that volume production can be achieved, we think it will be priced under $5 at list, and I hasten to point out that list prices on tubes generally only prevail where the serviceman puts them in the socket. When go you to the store and buy them, generally speaking you buy them for somewhat less than list.

Mr. COX. How does that compare with the existing glass tubes that are in use?

Mr. CHAMBERLAIN. There is no directly comparable existing glass tube. It is certainly higher in price than many tubes used for TV purposes.

Mr. COX. How does its life compare and its performance, powerwise, and so forth?

Mr. CHAMBERLAIN. It is too early to tell about life except in the laboratory. Sometimes those tests are not conclusive. I see no reason why it should not be as long lived as existing tubes. In many respects it is a more stable, rugged tube. It will stand acceleration sufficient to adapt it to missile work, for example. It is entirely free from microphonics. It is built like a brick house, shall we say.

Mr. COX. Does it enter into this problem of whether or not you can get the same service in the high ranges of the UHF band of spectrum as in the lower ranges, or doesn't it relate to that problem?

Mr. CHAMBERLAIN. It does definitely. It is a high-frequency tube. The noise measurements I mentioned were taken at 900 megacycles, which is just above channel 84 in the UHF band. It is designed with this purpose in mind.

Mr. COX. Could you tell us just in general terms what the percentage of all-channel sets now being manufactured is?

Mr. CHAMBERLAIN. I am not sure I could give you the industry figures. I took a reading on it with our own people just the first of this week, and we are currently manufacturing and shipping 18 percent of our production in all-band sets.

Mr. COX. Is that more or less than you have done in the past?

Mr. CHAMBERLAIN. We have been as high as 25 percent at times, and usually found them backing up in the warehouses when that occurred. We have been, I think, as low as 15 percent, so it is pretty close to being an average, I would say.

Mr. COX. Does that include both color and black-and-white sets?

Mr. CHAMBERLAIN. We are not currently building any color receivers.

Mr. COX. Could you tell us what is the cost differential between your VHF-only and your all-channel sets, approximately?

Mr. CHAMBERLAIN. Between $20 and $30, depending on whether it is in the higher price range or the lower price range.

Mr. COX. Is that to the consumer?

Mr. CHAMBERLAIN. Yes. All of these are consumer prices. I think, if I may say so, there has been too much confusion in people quoting manufacturing prices at times, rather than selling prices, and you get a distorted view since we are on the incentive system in this country.

Mr. COX. It is this differential which makes a man make up his mind whether he buys it or not?

Mr. CHAMBERLAIN. Yes, sir.

Mr. COX. In a statement of Mr. Howard which was inserted in the record he quotes some costs for transmitters and antennas which show that the combined cost for transmitter and antenna for the low-band V channels would be about $176,000, for the high-band V channels, about $250,000, and for the UHF band something less than that, around $235,000. Now, that doesn't quite agree with some information we have had. Would that be, in your opinion, more or less accurate?

Mr. CHAMBERLAIN. I assume, Mr. Cox, that these are for the maximum effective radiated powers that are permitted in these bands?

Mr. COX. Yes; 100, 316, and 1,000 kilowatts, respectively.

Mr. CHAMBERLAIN. I can tell you what our list prices are.

Mr. COX. That would be very helpful.

Mr. CHAMBERLAIN. VHF channels for 100 kilowatts, ERP, a 35-kilowatt transmitter with a 3-bay antenna with a gain of somewhat over 3, the selling price is $163,000. In the high channels, 7 through 13, for 316 kilowatts, ERP, using a 50-kilowatt transmitter and the proper antenna, it would amount to $253,000. We can achieve a megawatt of power two ways, and have done so: In WILK we are using a 23-kilowatt transmitter, and an antenna with a gain of 50—the price tag is $226,000. We can get the same megawatt with a 45-kilowatt transmitter and a 25 gain antenna—that comes out to $244,000. I can add one more while you are at it.

Mr. COX. All right.

Mr. CHAMBERLAIN. We can go to 2 megawatts, which is what WGBI has requested permission to use on a temporary experimental basis, at a cost of $270,000.

Mr. COX. How would the power costs of operation in these three categories compare? Are they roughly the same, or do they get more expensive as you go up the spectrum?

Mr. CHAMBERLAIN. It gets progressively higher. I would hasten to point out, however, that when you consider the total operating cost per hour of a TV station, including the investment and talent, programing, and manpower necessary to handle it, and all the rest of it, the power cost is not a large percentage of the total.

Mr. COX. It can cost more than that?

Mr. CHAMBERLAIN. That is right.

Mr. COX. Could you tell us something in general terms about the area coverage efficiency of transmitters in these three categories, assuming, let us say, you are in a region where the terrain is not unfavorable to UHF—that is, where there are not a lot of hills?

Mr. CHAMBERLAIN. That gets to be kind of a tough one to answer, Mr. Cox. The closest I can come, I think, to giving you a factual story on it will not answer your question exactly as you have expressed it, but it will give a measure of comparison on power.

I would like to go back and refer to a chart which was part of my testimony before the subcommittee in 1954 in which I attempted to do just that. This chart was drawn to illustrate the comparative power necessary for given coverage on channels 7 through 13 in the case of a VHF station, and channels 14 through 83 in the case of a UHF station, both stations located in Washington, both stations using the identical tower height of 500 feet.

In order to get grade A coverage for a radious of 10 miles we needed 1.6 kilowatts ERP for VHF and 5 kilowatts for UHF. For a grade A coverage of 24 miles we needed 60 kilowatts ERP on VHF, high channel, and 250 kilowatts on UHF. For 32-mile grade A coverage, 200 kilowatts for VHF and 1,000 kilowatts for UHF. Now, the ratios in power—effective radiated power—as compared between a U and a V vary on these 3 distances from 3 to 1 in the case of the shorter range coverage to 5 to 1 in the case of the longer range coverage.

There should be one thing pointed out, and that is that you can achieve, economically, much higher gain, as we term it, in a UHF antenna than you can in a VHF antenna. Gains of 50 are entirely practical on a UHF antenna. Gains much in excess of 12 are very expensive and difficult to get on VHF, in an economically sound structure, so the disparity between transmitter powers is not as great as the disparity in effective radiated power.

Mr. Cox. In the figures that you gave there, you had gotten the UHF station up to its then permissible maximum power of a thousand kilowatts?

Mr. Chamberlain. That is right.

Mr. Cox. You had the high band V up to 200 kilowatts but it could still go up another 116 kilowatts?

Mr. Chamberlain. That is correct.

Mr. Cox. So that that would have given it some additiinal coverage which could not then be duplicated with the permissible power of the U station?

Mr. Chamberlain. That is correct, as long as you continue the spacings that were set up by the sixth report and order. By that I mean that if you go to any drop-in proposition, such as has been proposed, you will artificially limit in many cases——

Mr. Cox. Interference will enter the picture?

Mr. Chamberlain. Interference will be the governing factor rather than the ability of the transmitter to lay down a signal at a distance. I submit that you can get the same effect any time by examining the AM spectrum. We have had broadcasters using 250 watts on AM who can see their tower lights farther at night than they can hear their stations without interference.

Mr. Cox. Changing our assumptions to allow for some hilly terrain, or for foliage, and so forth, does the differential as between the effective area of the two types of stations become much greater there?

Mr. Chamberlain. I beg your pardon; would you restate that?

Mr. Cox. Let us move it to Pennsylvania where you have hilly terrain. Is the differential between the effective area coverage of a high band V and a U station going to be more unfavorable as far as the U is concerned?

Mr. CHAMBERLAIN. You will have deeper shadow areas if you are on the shadow side of a mountain or something of that sort. It takes more power to fill in satisfactorily. I hasten to point out, though, that as Senator Bible said earlier, translaters, repeaters, satellites, whatever you want to call them, furnish a very economical means of filling in such areas, and probably can be licensed to be operated unattended. I would expect that would be the case.

Mr. COX. With regard to this 2,000-kilowatt transmitter at Wilkes-Barre, has your experience been such as to lead you to believe that that can duplicate the coverage, reasonably closely, of a V station operating at maximum power?

Mr. CHAMBERLAIN. For two reasons, I can't answer that. The first is that the station is not on the air yet with the 2,000 kilowatts, and the second is that there is no V in the area to compare it to.

Mr. COX. Those are two good reasons.

Shifting to another point, there has been some suggestion that UHF has certain advantages over VHF as far as color transmission is concerned. Could you comment on that?

Mr. CHAMBERLAIN. I have heard that statement made. I cannot speak from full knowledge. I have not seen a UHF transmission and a VHF transmission side by side, and I think you would have to see quite a few under varying circumstances, and under controlled conditions, before you could make that statement, and have it proved one way or the other.

There are some slight advantages or disadvantages—paper advantages and disadvantages, at least—on one over the other. The people I have talked to—in both our transmitting and our receiving areas—the engineers doubt if there is any significant difference. They frankly think it is pretty much of a standoff. Now, we do know that on UHF certain types of interference, such as automobile ignition and lightning, are not factors, and they are sometimes bad factors on VHF. That would apply either to black and white or to color.

Mr. COX. You talked about the economics of the broadcasting industry as affecting the development of new equipment, et cetera. Mr. Storer testified regarding a proposal that his company had made for detintermixture and other allocation changes which, in his opinion, would create some 25 markets in the top 100 which would be either all UHF or with only one V station, which he thought would permit the U's to continue to operate. He estimated this would comprise some 20 million families and some 4 million sets. Do you think the preservation, on a sound continuing basis, of that much of a UHF operation would afford sufficient incentive to equipment manufacturers to continue to develop the transmitters and receiving equipment and continue the progress you have been outlining?

Mr. CHAMBERLAIN. I do.

Mr. COX. That is all.

Senator BIBLE. Thank you very much, Mr. Chamberlain, for your very helpful analysis.

The chairman has to make a rather urgent phone call. We will take a 5-minute station break and be back at 11:25.

(There was a short recess taken.)

Senator BIBLE. The committee will come to order, please.

Our next witness is Martin F. Malarkey of the National Community Television Association.

We are very happy to have you with us, Mr. Malarkey. You may proceed.

STATEMENT OF MARTIN F. MALARKEY, JR., PRESIDENT, NATIONAL COMMUNITY TELEVISION ASSOCIATION

Mr. MALARKEY. Thank you very much, Senator.

Mr. Chairman, members of the committee, at the outset I wish to express my sincere appreciation and that of the National Community Television Association for the opportunity you have given to us to appear and present certain facts about the community antenna television reception available in those areas having little or no television service.

The National Community Television Association, as the name implies, is a national organization of community antenna television operators and affiliated manufacturers and suppliers of community antenna television equipment, formed for the purpose of promoting the development of community antenna television. At the present time it represents more than 200 operating companies throughout the United States, as well as 15 manufacturers and suppliers of community antenna television equipment.

During the course of my remarks I will briefly describe the short history, scope, and functions of the community antenna industry, referring to the mode community which has been set up in the hearing room. Then I will discuss the basic problem of securing adequate television reception in fringe reception areas, remote from television broadcast stations.

Senator BIBLE. That I am glad to hear. Go right ahead.

Mr. MALARKEY. Thank you.

I will make certain recommendations toward a solution of these problems. I will also address myself to certain matters which, I understand, have been raised before this committee regarding the legal status of community antenna television and the extent to which, if any, the Federal Communicationss Commission or State regulatory agencies should exercise control over the community antenna industry. I will, of course, welcome any questions from the committee or its counsel.

In the hearing room with me are E. Stratford Smith, general counsel and executive secretary of the National Community Television Association; Mr. Fitzroy Kennedy, chairman of the board of Spencer-Kennedy Laboratories, Inc., of Boston, Mass.; and Mr. Donald-Spencer, president of that company. Spencer-Kennedy Laboratories is a prominent manufacturer and supplier of community antenna television equipment. Mr. Kennedy is also the chairman of an advisory committee of such manufacturers and suppliers affiliated with the association.

Also present is Mr. Milton J. Shapp, president of the Jerrold Electronics Corp., of Philadelphia, Pa., another prominent manufacturer of community television equipment. Mr. Shapp will testify in his own behalf on the fringe area reception problem. I may, with the permission of the committee, call upon these gentlemen to assist me in responding to some of the legal and technical questions which may be addressed to me.

The concept of community antenna television is quite simple. It involves an extension of the apartment house and hotel master antenna systems to an entire community, or part of a community. Generally, community antenna systems will be found in communities where topographic or geographic conditions preclude, or seriously limit, reception from existing stations, and, secondly, where only limited local television service, in terms of network services and number of stations, is available. The model village in the committee room illustrates the basic principle of a community antenna system. In the typical case a master receiving antenna is located on a mountain top where signals of distant stations are to be received. [Indicating on the model.]

You will notice separate antennas are constructed for each channel. Signals are received at this point, amplified and transmitted by means of a coaxial cable down into the community to be served, and at a distribution point within the area suitable line amplifiers, which you see represented in small models here on different poles, are used to amplify the signal. Then the coaxial cable is used to distribute the signal into the individual homes of the public desiring the service.

Senator BIBLE. That cable isn't kept above ground, though?

Mr. MALARKEY. Yes, sir. The cable is mounted on telephone poles and power company poles within the community.

Senator BIBLE. Ordinarily don't you go underground?

Mr. MALARKEY. There have been 1 or 2 systems constructed underground. The majority of them are above ground.

Senator BIBLE. I see. Thank you.

Mr. MALARKEY. It is the usual practice to require an initial payment, sometimes called a connection charge, from each subscriber. This is used to defray, in part, the cost of building the system.

Senator BIBLE. Do you have an average figure on that?

Mr. MALARKEY. The average figure, sir, is about $125.

A monthly maintenance charge, which will average $3.50 per month, is collected from each individual subscriber. Basically, a community system provides an antenna service that delivers to its customers all the program content, without alteration or deletion in any way, of the signals it receives at the master antenna site. It cannot guarantee to bring to its subscribers any particular program, or series of programs. We are not in the business of furnishing a program service. The basic function is that of a master receiving antenna, almost wholly analogous to those found in apartment houses and hotels in large cities.

The industry is hardly more than 5 years old. It dates from the first system installed at Astoria, Oreg., in 1949, which was, as far as we have been able to learn, a noncommercial operation. The first commercial community antenna system is believed to be the one installed at Lansford, Pa., in May 1950. From this beginning the industry has grown to an estimated 465 community antenna systems throughout the United States, serving more than 1,250,000 people. The investment in the industry has been estimated to range from $30 to $50 million. This, of course, is only a very, very small part of the public investment in television, and it is not contended that community antennas constitute a large segment of the television economy. Community antenna television is simply one facet of the overall television industry, but one which plays a very significant part in making television reception available on a truly nationwide basis.

The question into which the committee is inquiring today relates to the development of ways and means for meeting the requirements of what, for the most part, are small cities and towns, for either their first, improved, or additional television service. In these cases, broadcast stations have either not been considered economically practical, or more service than the community could provide through available stations is desired.

The demand of the public for television in these areas is such that it cannot be ignored or denied. The problem, of course, is not new. It has existed almost from the day the first television station went into operation. The community antenna television industry was born out of this requirement for service. In fact, it is the only method, up to this time, which has made significant progress in the direction of making fringe area reception possible. The community antenna industry agrees wholeheartedly with what it knows is the sentiment of this committee—that every reasonable effort must be made to reach communities not now having adequate, or any, service. Moreover, the community antenna industry does not oppose any legal and technically sound methods of bringing television service to remote areas, whether they be translators, satellite stations, or other means. Such other methods will not sound the death knell for community antenna television. We are completely confident that community antenna television systems are, and will remain for a long time, a necessary and significant factor in the fringe area television picture. In fact, we believe that in most instances, if not hampered by unnecessary restrictions, community antenna television can do a superior job at a cost which the public will be willing to pay in exchange for the assurance of continued, high-quality service, furnished by responsible management, financially and technically qualified to serve the public.

Therefore, I wish to emphasize the fact that our industry is not opposed to the establishment by the Federal Communications Commission of a technically and financially sound translator service; and it is our earnest hope that the Commission will be able to finalize its rules and regulations for such a service in the near future. The fact that sound standards should be adopted would seem elementary, since the public should not be misled into purchasing television receivers in situations where the translator operator is neither technically nor financially qualified to furnish and maintain consistent high-quality service.

The community antenna television industry has been, and is continually devoting its energies toward the development of new, low-cost, high-quality equipment to make community antenna television service practical in an increasing number of communities. I do not refer merely to research programs in making this statement. Much of this equipment is now available and more will shortly be announced.

There are ways in which the Federal Government could assist this industry in its endeavors to bring service to more communities at reduced cost. It is the intention of the industry shortly to petition the Federal Communications Commission for permission to utilize certain microwave frequency bands suitable for television transmission to serve community antenna television systems. This can be done without in any way interfering with other users of microwave frequencies. Approval by the Commission of this proposal, when it is presented, could substantially improve the ability of the community antenna industry to serve many more television-starved communities in cases where terrain and distance factors have heretofore made antenna systems impractical. Legislation is not necessary. There is nothing to inhibit amendment by the Commission of its rules to give the community antenna industry direct access to microwave service, once it has been convinced of the practicability of our proposal.

Another matter upon which I wish to touch briefly is the question which, I understand, has been raised before this committee regarding the jurisdiction of the Federal Communications Commission, if any, with respect to community antenna television. The suggestion has been made that the investment in community antenna television systems is "in a more or less dubious state until the question is decided."

I would like to say that the community antenna television industry does not regard its investment in this service to be in a dubious state, or in any way unsound, by virtue of the absence of any ruling by the Federal Communications Commission on the subject. A ruling by the Commission that community television systems are subject to its jurisdiction certainly would not destroy the community television industry. On the other hand, I wish to make it clear that community television operators do not believe that they are, or should be, subject to public utility type regulation by either the Federal or State governments. Community television service, while it is a public service, as are many private businesses which serve the public, is not, in our opinion, a public utility type industry.

Community television systems do not have the protection normally afforded to utilities. They are subject to competition from television stations, satellites, translators, and so forth, and such other methods of providing television service as may be authorized. An increase of power or the relocation of a television transmitter can change the competitive picture for a community antenna television operator by throwing a strong signal into a community which was never before reached. Competition and the threat of competition may be expected to maintain rates and charges at a reasonable level.

With the advent of the translator service, for example, there unquestionably will be even greater competition than exists today, and the proponents of each service will endeavor to convince the public that theirs is the most economical and practical. Accordingly charges must be established by community antenna television operators on a competitive basis. Obviously, also, for competitive reasons, service standards must be kept high. Regulation is only justified where a monopoly is permitted. Community antenna television systems do not enjoy a monopoly in the furnishing of television service. To place the community antenna television systems under utility-type regulations would, in our opinion, have the immediate effect of discouraging the flow of investment capital into the industry, and of equal importance, would substantially impair the ability of existing operators to maintain, improve, or extend their services.

The investing public must be assured of a reasonable opportunity to recover their investment, together with an adequate profit in a business so fraught with change as television. It is doubtful that governmental agencies could or would wish to give to community television the traditional protection against competition that utilities generally enjoy, and which justifies regulation of their rates and services. Utility-type regulations would make investment in community antenna systems unattractive and could be expected to materially retard the further progress of this industry. The loser, of course, would be the public.

Gentlemen, I have endeavored to make this statement brief and to the point. By way of summary, we want the committee to know that the community television industry is as anxious as the committee to provide ways and means to bring television reception to the maximum number of people. We are pleased that the Commission is finally proposing to establish rules of the road governing the operation of low-cost translator stations to assist in resolving this problem. We have not opposed, and do not oppose, such a service if founded on a sound technical and economic basis which will assure to the public continuous, reliable service.

We also plan to develop the use of microwave transmission links on a non-common-carrier basis. As I stated just a moment ago, we believe that the community antenna television industry is a public-service industry, but that it is not a public utility type industry and that it can best flourish and serve the public interest under a concept of free competition with other methods of providing television service.

Thank you very kindly for your courtesy in granting me this time this morning, and I will be pleased to answer to the best of my ability any questions which members of the committee or counsel may have.

Senator BIBLE. Thank you very much, Mr. Malarkey. I am rather interested in what your studies have shown as to the size community which a community antenna system can economically serve.

Mr. MALARKEY. That, Senator Bible, depends entirely on several factors: How close is that community to a signal source. A community of 500 to 1,000 homes—as small as 500 to 1,000 homes—could economically be served by a community antenna TV system if the signal source were a mile or two away on the top of a mountain.

Senator BIBLE. By 500 homes do you mean 500 homes with TV? Is that 500 receiving sets?

Mr. MALARKEY. 500 potential receiving sets.

Senator BIBLE. 500 potential receiving sets?

Mr. MALARKEY. Yes, sir.

Senator BIBLE. Thank you.

Mr. MALARKEY. Yes, sir.

Senator BIBLE. Do you have, in your operation throughout your 200 operating companies, towns of that small population that have community antennas?

Mr. MALARKEY. Yes, sir; there are operations in West Virginia, for example, that serve as few as 25 and 30 homes.

Senator BIBLE. And that is economic?

Mr. MALARKEY. It is economic, because of the fact that the signal is available within a few hundred feet or a half mile away on top of the mountain. You run a coaxial line down into the homes. Usually the systems are built on a cooperative basis.

Senator BIBLE. If you are in an area that is truly an isolated area—and I am pinpointing my own State and thinking of Tonopah Valley, which is hundreds of miles from anywhere. It is 200 miles from Las

Vegas, 200 miles from Los Angeles, 400 miles from San Francisco, and they have the rather sizable Sierra Nevada range, which breaks it off from the coast. Would it be possible to operate a community antenna system in a community like Tonopah, which has about 700 homes? I don't know if I have assumed all the factors necessary for an intelligent answer.

Mr. MALARKEY. It is possible that a community television system would be feasible in Tonopah providing microwave service were made available to us so we wouldn't have the long overland haul into that community.

Senator BIBLE. The size of the community, then—in attempting to sum up what you are saying—the size of the community to be served depends a great deal upon the expense in receiving the signal?

Mr. MALARKEY. Yes, sir; that is correct.

Senator BIBLE. Thank you. You may proceed.

Mr. COX. Are you able, when you go into a community of this sort, to extend service to everyone there who wants it, or do you find that the extension of your lines within the community to serve certain more or less isolated people on the fringes would be uneconomic?

Mr. MALARKEY. No, sir. The standard practice has been to extend the service into the remotest parts of town. If a town grants a franchise, or permission to develop the system, it is usually done on the basis that the system will provide service to all within the confines of the appropriate limits of the town.

Mr. COX. If you have to run a special line out to a man who lives, say, a half a mile or a mile beyond anyone else, does he have any additional connection charge because of that fact, or does he pay just the charge that is paid by everyone else in the community?

Mr. MALARKEY. There have been cases that I am familiar with where that question has been raised. Usually we revert back to the old public utility company concept of contribution in aid of construction, and if a chap who is 2 or 3 blocks or a half a mile away from the end of the line desires the services, we will make it available to him upon his paying a connection charge that would be higher than what the people would pay that are along the regular lines, with the understanding that any homes that desire the service in between his home and the end of the system, when they connect to it, he would be refunded the money. That is usually the case.

Mr. COX. You mentioned a franchise. When you go into a community, you have to then get permission from the governmental authorities to establish your system?

Mr. MALARKEY. Yes, sir.

Mr. COX. Is that usually an exclusive franchise?

Mr. MALARKEY. No, it is not.

Mr. COX. That is, if another operator wanted to come in, the city would still be free to grant him similar permission?

Mr. MALARKEY. That is correct.

Mr. COX. Then you enter into some sort of contractual permissive arangements with the telephone company or power company to permit stringing of your cables?

Mr. MALARKEY. Yes, sir.

Mr. COX. Do any of these systems which have been installed emit radiation in the sense that might, for that limited purpose at least, bring them within the control of the FCC?

Mr. MALARKEY. I would like, if I may, to refer that question to Mr. Smith.

Mr. COX. Certainly. Mr. Smith?

Mr. SMITH. Yes, Mr. Cox. There have been from time to time, problems arise because of the spurious radiation from the components of community antenna systems, and it is possible—technically possible—to minimize this radiation to a point where it does not interfere with off-the-air reception, and the Federal Communications Commission has instituted rulemaking procedures proposeing to limit the amount of radiation from any point on a community antenna system. The Community Television Association has helped the Commission formulate the proposed regulation and filed comments in the proceeding.

We would say that they certainly have whatever jurisdiction they have to control the emissions or radiations from diathermy equipment, TV sets, etc. That would equally be applicable, I think, to community antenna systems. That is not the utility type regulation, however.

Mr. COX. Did you have something further?

Mr. MALARKEY. No, sir.

Mr. COX. You mentioned the average connection cost and average monthly charges. Could you tell us, at least approximately, what would be probably the maximum charge in each of those categories by a member of your association?

Mr. MALARKEY. There are systems that have chraged as high as $160 for a connection, and there are systems who have charged as high as $7.50 per month, as their service and maintenance charge, but in those remote instances I would like to point out that the systems were usually located in communities that were spread wide apart, required tremendous investment in cable and equipment, and in the case of the system that charged $7.50 monthly, they had contracted for microwave from the American Telephone & Telegraph Co., upon which they had to pay an $8,000 or $9,000 monthly rental; and the greater majority of that $7.50 monthly charge was, of course, to pay for the microwave——

Mr. COX. To get the signal into the community?

Mr. MALARKEY. Yes, sir; to enable the people to enjoy reception.

Mr. COX. Would it be reasonable to say that generally both the connection charge and the current monthly charge bear a relation, in the first instance, to the system's capital expenditures and, in the second instance, to its own operating expenses?

Mr. MALARKEY. That is correct.

Mr. COX. Now, doesn't there come a point in time, however, where the system will have recouped its investment in full?

Mr. MALARKEY. Yes, sir.

Mr. COX. Does it continue, either through the initial connection charge or through excess current charges, to take in revenue beyond that point? Is there any reduction then made in the current charge, or is that continued at an even rate for the future?

Mr. MALARKEY. The pattern that has developed over the past 3 years is a pattern of continually lowered connection charges to the customers. The system will charge $125 originally for its initial connections; possibly after the first 500 they will see fit to drop it to $95 and then to $65, then to $35. There is one system that now makes connections at no cost. They just pay the monthly charge.

Mr. Cox. When these are reduced, is there a credit back to the people who paid the higher rate? They pay that for the first service?

Mr. Malarkey. Yes, sir.

Mr. Cox. Do you obtain permission from the originating stations to distribute the signals which you receive?

Mr. Malarkey. No, sir. It is not our practice to ask for permission to receive the signals.

Mr. Cox. Has this ever been challenged by the operator of a station?

Mr. Malarkey. Since we are getting into the legal end of it, I would like to refer that to Mr. Smith.

Mr. Cox. Mr. Smith?

Mr. Smith. Yes, Mr. Cox. I would like first just to amplify Mr. Malarkey's preliminary answer. We do not as a matter of official policy go to TV broadcast stations and say, "Will you please give us permission to receive your signals?" This was done in the early stages of the industry on several occasions, and in some instances the stations immediately wrote out permission because they wanted the additional coverage that could come as a result. However, a lot of station operators realized they didn't know themselves exactly where the property rights, if there are any in a broadcast signal, would lie. For example, a lot of the programs are network programs. The station necessarily wouldn't have authority to grant any property-right permissions, if that issue is basically involved here.

Also, artists' and performers' societies, unions, sponsors, ad agencies, all manner of persons, might very well claim property rights, and the stations really were not in a position to grant any and all necessary permissions, if any permissions were required—and I want to keep emphasizing that. And on several occasions stations, including one of the prominent networks, said, "Don't bother to ask us. We want the additional coverage that your industry provides, but we are not in position to give you formal statements in writing." So we did adopt this practice of not going and officially requesting permission.

In almost every instance, however, the stations are well aware of the fact that their signals are being received, and in a majority of cases they furnish our operators copies of their program schedules, so that they can indicate what is going to be on their particular channel, at what particular time of day.

Now there have been a few isolated instances where broadcasters have undertaken to challenge the right of community systems to pick up their signals. They are so few that I can mention them specifically, if you would like me to.

Mr. Cox. That is unnecessary.

Mr. Smith. All right. The uniform response of the community antenna operators in those instances has been to the effect that the community antenna is operating nothing but a master antenna system, and that once a signal is broadcast into the air, any member of the public has a right to the reception of it in his own home for his private consumption, and that the question of how the signal is received—whether it be on a master antenna, in an apartment house, on a mountain-top, from a pair of rabbit ears on the top of somebody's TV set, or a roof-top antenna—has nothing to do with property rights.

If any rights exist in the broadcast signals, the community antenna operator does not infringe them because he is only exercising the rights of the public to receive the service, and he is only being paid for the purpose of furnishing an antenna system. Briefly, that is the answer that our operators have always given, and thus far we have not actually been taken to litigation on the question.

Mr. Cox. Would you say, then, that that makes a distinction between the FCC's treatment of this question in the Bridgeport booster case, on the ground that you are not providing a rebroadcast, and the booster there was?

Mr. Smith. I would certainly think that that would be the basis for treating, or putting, us in a different category. If we were in a position to have participated in that case and the issue were before us, that is precisely the argument that we would have made. We do not broadcast. We just furnish an antenna service. In the case of the boosters, it is a rebroadcast and the Communications Act itself requires permission of the originating stations for a rebroadcast.

Mr. Cox. Have boosters or translators been installed in areas where community antenna systems are in operation, Mr. Malarkey?

Mr. Malarkey. Yes. There have been several instances, Mr. Cox.

Mr. Cox. Has there been any effect on the quality of your service from such operations?

Mr. Malarkey. We have heard that there have been records of interference, interference signals from the boosters into the receiving antennas of the community antenna systems in that area.

Mr. Cox. That is, they get a second image on the screen?

Mr. Malarkey. A double image, yes, sir.

Mr. Cox. Perhaps this is something on which you would not have any reliable figures, but could you express an opinion as to whether or not the citizens of a community could install and maintain a booster or translator for more, or less, than the average cost of installing and operating a community antenna system?

Mr. Malarkey. I believe Mr. Smith would be more familiar with the economics of that question that I would be.

Mr. Cox. Fine.

Mr. Smith. That, Mr. Cox—and I am also going to take that ball and toss it to another witness you are going to have this afternoon, who is devoting a substantial amount of his presentation to that matter—but it would depend on the individual communities involved to a great extent. We think that over a period of a year or two, in many communities, that it can be demonstrated that the antenna systems will furnish a service at less cost to the public, but Mr. Shapp this afternoon can elaborate on it at length, I think.

Senator Bible. I hope this afternoon is not too many minutes away. [Laughter.]

Mr. Cox. Do your operations tend to discourage the development of a local TV station in the area, or have you primarily operated in areas which, in your opinion, would never support a station?

Mr. Malarkey. We operate primarily in those areas that economically would not support a TV station.

Mr. Smith. Might I supplement that? This is a development that has just been evident through FCC public releases during the last month or two. There is a substantial indication today that potential broadcasters are not hesitating to apply for satellite construction permits in areas occupied, or being served, by community antenna systems. We are seeing more and more of it every day. I really do not believe that we are a substantial hindrance to the development of broadcast service.

Mr. Cox. Do you not in some instances actually operate in areas where there is a local station, where your service consists of additional program choices?

Mr. MALARKEY. That is correct.

Mr. Cox. If that station in that area is a UHF station, and you are able to provide your service without conversion of the viewer's set, do you not possibly impede his attainment of conversion in that area?

Mr. MALARKEY. No, sir. That has not been the case. I can give you a specific instance of a UHF-TV station that today depends primarily upon the coverage given to it, or provided it, through 22 or 25 community antenna systems in the area. If it weren't for those community TV systems, the president of the station tells me that his coverage wouldn't be nearly as great as it is.

Mr. Cox. Could you tell us what station that is?

Mr. MALARKEY. That is WHUM-TV, channel 61, in Reading, Pa.

Mr. Cox. I take it none of your systems provide any locally originated programing at all?

Mr. MALARKEY. There have been systems who have attempted to originate local programs—not because of the commercial value, but because they were endeavoring to supplement the lone signal, or the signals, that they were able to receive at their mountain, and give their customers some additional entertainment on the third channel in the system.

Mr. Cox. In connection with that, do they sell advertising or derive revenues in addition to the monthly charges?

Mr. MALARKEY. Mr. Smith can correct me in this statement if I am wrong, but I understand that of the 2 or 3 operators who have attempted closed-circuit operations on a commercial basis, they have stopped operations.

Mr. SMITH. There are just a limited few still in operation, and going specifically to your question, 1 or 2 of them have attempted to sell commercials for their closed circuit operation. I don't want anybody to get confused on this point, however: They do not sell commercials and interrupt, or in any way alter, the broadcast signals that they receive and insert commercials on those channels. And my understanding also is that the few who have attempted to sell local spots to support their own third channel, or second channel, whatever it may be, haven't found it to be a too successful venture; and most of them do it just for the purpose of making—when I say "most", the few who do—do it for the purpose of making the basic antenna service more attractive to the community and more serviceable to the community.

Senator BIBLE. Mr. Malarkey, just a couple of questions occurred to me. I am wondering how long a contract a subscriber signs when he asks for the community installations in his home.

Mr. MALARKEY. Senator——

Senator BIBLE. A year, or 2 or 3 years?

Mr. MALARKEY. It varies from system to system. There are some contracts that are cancelable by either party on 30 or 60 days' notice.

There are contracts that provide guaranteed service for a year, and there are some for 2 years. There are 1 or 2 that I know of for 3 years.

Senator BIBLE. And what type of enforcement problems do you run into in cancellation of contracts? If they don't pay the bill, you cut off the service—is that correct?

Mr. MALARKEY. Yes, sir.

Senator BIBLE. And you say you represent 200 operating companies. Are they all in active operation today?

Mr. MALARKEY. Yes, sir, they are all in active operation today.

Senator BIBLE. What has been their pattern of success? I mean, are they successful? The reason I ask the question is this: We have a community antenna in Reno. It is competitive, of course, with one live station there, and I have heard rumblings constantly that the community antenna system is on shaky ground, or that they are about to go out of business. I don't know how accurate that is. I am wondering what your experience has been. When you named the highest cost for installation, as well as the highest monthly cost, I think you are referring to my hometown, because I think that is true of Reno, Nev. I am wondering what the experience has been.

Mr. MALARKEY. It is a coincidence that you happened to mention Reno. Reno is one of the very few unsuccessful systems in operation in the country today.

Senator BIBLE. It is a coincidence I happen to be the chairman when it comes up.

Mr. MALARKEY. There are very, very few community systems who haven't been able to deliver a needed service and have had to, for one reason or another, cease and desist operation. They have all continued to grow, even in those areas where there are 2 or 3 signals available from the local stations.

Senator BIBLE. That is why I was asking earlier as to how many homes you had to have to sustain a community antenna. It may be the cost of bringing this from the high Sierra Mountains down to Reno. It may be due to the microwave.

Mr. MALARKEY. Yes, sir.

Senator BIBLE. Reno is, today, a community of 50,000 people. So it baffles me that they are having such great difficulties in making it financially sound.

Mr. MALARKEY. Well, if I might express a personal opinion, the Reno problem could be solved if microwave facilities were available to bring into Mountain Slide the signals from the originating stations, so that they could be microwaved down into the community. The problem in Reno has been one of poor original signal receiving up in Mountain Slide. I have been up there.

Mr. COX. Could you tell us what percentage of these community antenna systems are cooperative and what percentage is commercial, roughly?

Mr. MALARKEY. We don't have figures to support what I am going to say, but it is my impression that the greater majority of the systems in operation are commercial systems.

Mr. COX. All of the larger systems?

Mr. MALARKEY. All of the larger systems are commercially operated systems.

Senator BIBLE. I don't know that I got a direct answer to my question. My understanding is that the 200 operating companies that are in existence today are original companies and have stayed in existence throughout the period of development of the industry.

Mr. MALARKEY. There are 200 operating companies which are members of our association. There are 450 or 465 operating companies.

Senator BIBLE. I had reference to the 200 operating companies of which your association was the representative.

Mr. MALARKEY. You are asking whether they are all operating companies today?

Senator BIBLE. Yes, and are they in existence today.

Mr. SMITH. Yes, sir.

Mr. MALARKEY. Yes, sir; 195 or 196 of them are companies that are in operation today. The other 3 or 4 companies are companies who are just developing their antenna and building their transmission lines and are in the process of going into the business.

Senator BIBLE. So your statement is that where you do start community antenna systems, that with very, very few exceptions, they stay in business; is that a correct statement?

Mr. MALARKEY. That has been our experience.

Senator BIBLE. There are just a few isolated instances where they have had financial reverses?

Mr. MALARKEY. Yes, sir.

Mr. COX. Have any of them actually ceased service, do you know?

Mr. MALARKEY. One that I know of, in Maine.

Senator BIBLE. I think that is fine, Mr. Malarkey.

It is my understanding that we have one more witness and that he has asked that he be given just a little more additional time to put his statement in final form. With that in mind we will stand in recess until 2:15.

(Whereupon, at 12:07 p. m., a recess was taken to 2:15 p. m. of the same day.)

AFTERNOON SESSION

Present: Senators Magnuson (presiding), Duff, Thurmond.

The CHAIRMAN. The committee will be in order.

Our first witness this afternoon is Mr. Milton J. Shapp, president of Jerrold Electronics Corp.

You may proceed, Mr. Shapp.

STATEMENT OF MILTON SHAPP, PRESIDENT OF JERROLD ELECTRONICS CORP., PHILADELPHIA, PA.

Mr. SHAPP. Mr. Chairman, members of the committee, I am Milton J. Shapp, president of Jerrold Electronics Corp., of Philadelphia. Pa. I am here this afternoon to outline the details of a new plan that will speed the extension of television service to every town of over 1,000 population in the United States. If the Federal Communications Commission approves a proposal that we will file with them on Monday, there is no technical nor economic reason why multichannel television service cannot be made available to every such community in the United States before the end of this calendar year.

Jerrold is prepared today to furnish multichannel service to any of the communities in the Northwest States presently served by unauthorized reradiators. We have done sufficient engineering already to quote specific prices for providing three-channel service to Bridgeport and Quincy, Wash., with construction to start immediately. We are prepared to undertake projects for bringing television to any of the almost 600 communities shown on this map [indicating]—communities that today are virtually devoid of television reception. Over 5 million Americans live in television-starved areas—2 million of them in these 600 towns.

Gentlemen, the plan I shall present to you this afternoon is not nebulous. It is quite specific. We are prepared to quote prices on equipment already in production and to undertake installation of systems anywhere within the United States. This new Jerrold plan (that has been dubbed by our engineers as the "Peashooter") is in our opinion the real answer to providing multichannel television coverage to all of the present blacked-out areas in the United States; television of a high order of quality and consistency at a price well within the reach of the citizens who live in these communities.

First, let me give you a brief background of the Jerrold organization, and a brief description of our experience in the field of bringing television to remote areas. Ever since our company was founded in 1948, our primary business has been to make television reception possible in fringe and isolated areas of the country. In 1948 and 1949, we produced television boosters for individual set owners. In 1950, we pioneered the development of community antenna systems. In the past 5 years, our company has equipped more than 300 cities and towns throughout the United States with community antenna systems. We are the leading manufacturer in the community antenna industry today—an industry that serves approximately 1,500,000 citizens with television reception.

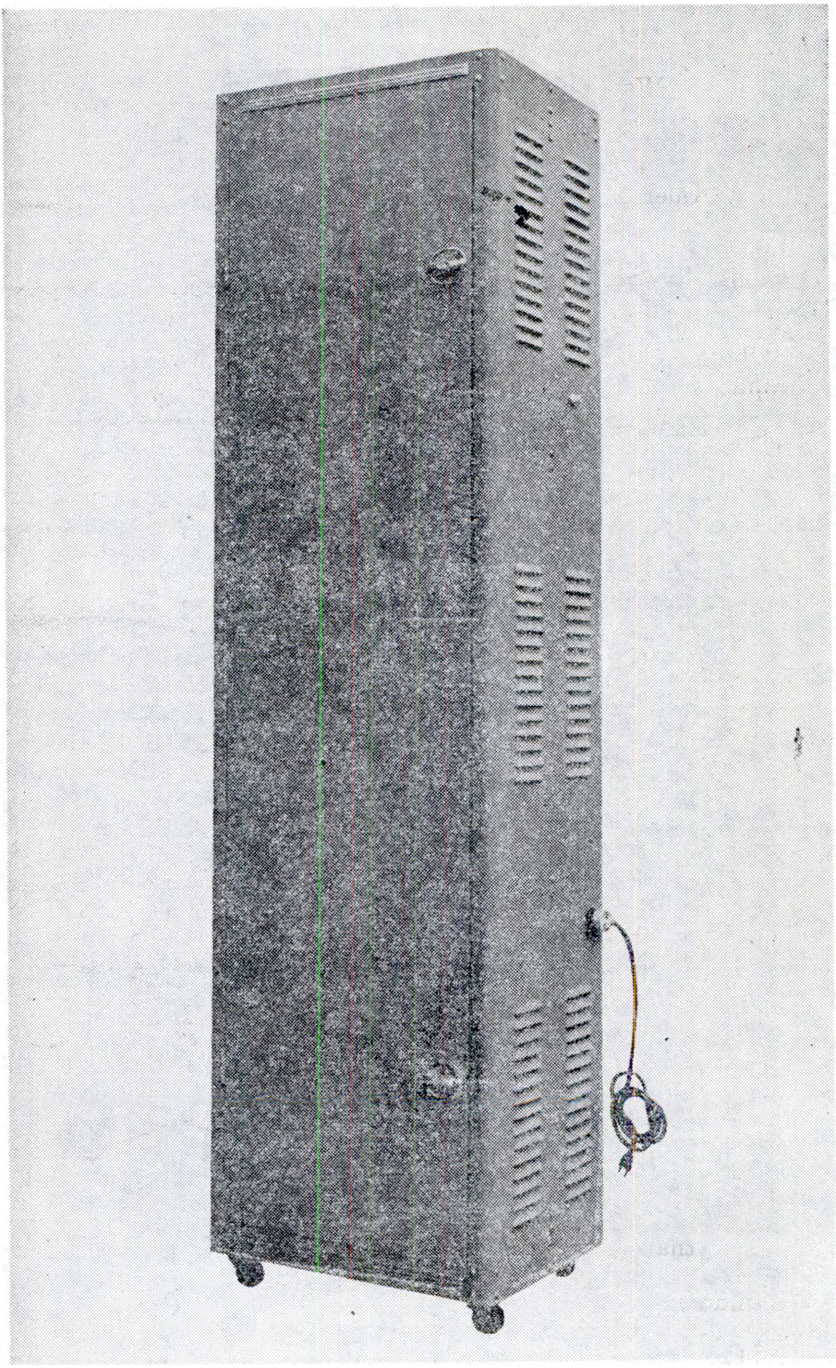
During the past 3 years, we have designed, manufactured, and installed a fairly substantial number of satellites and translators in the Latin and South American countries. Our engineers are at this very moment completing the installation of six translators in Venezuela.

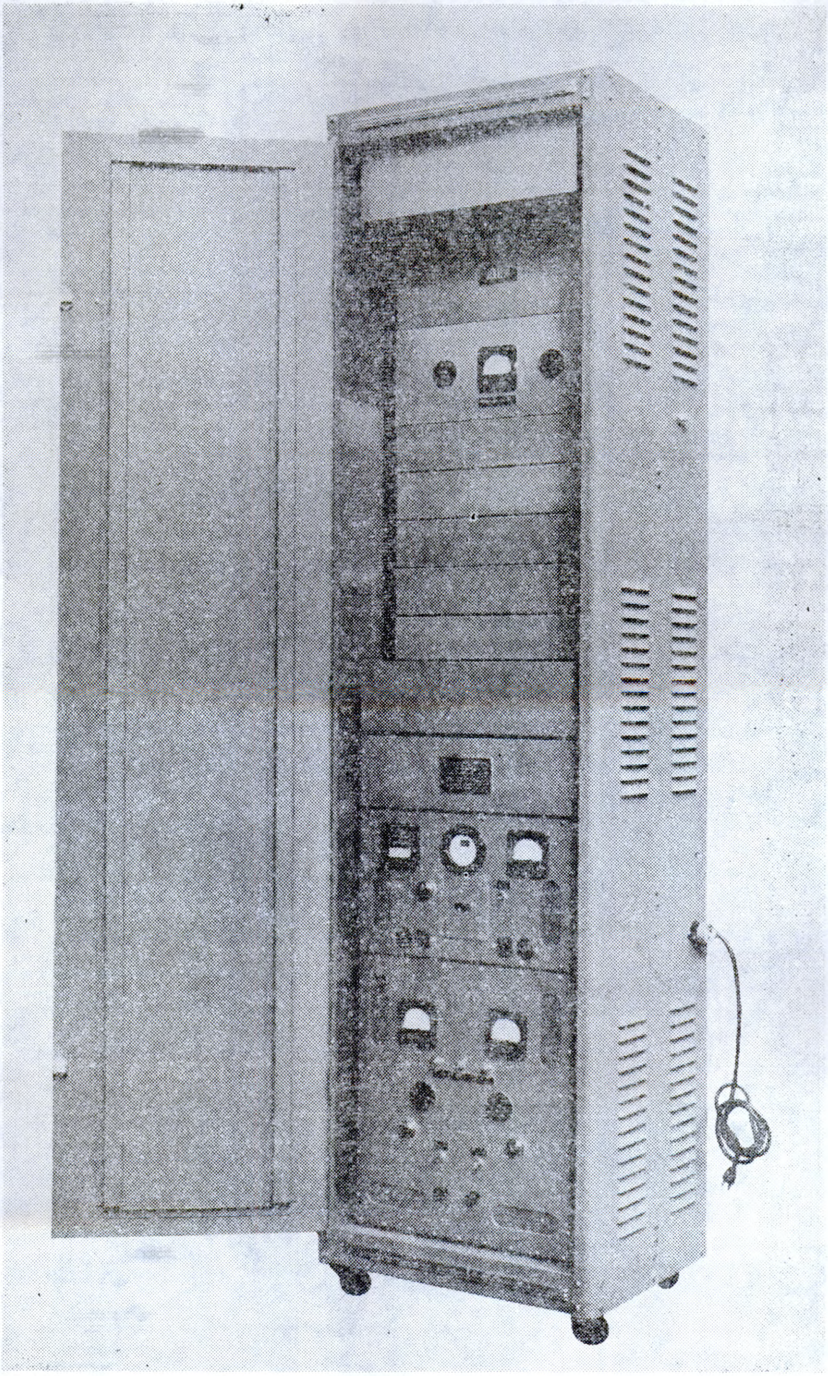
I have here, as exhibits for the committee, some photographs[1] of the translator equipment we are installing in Venezuela right now. I cite this to show that our basic work, Senator, is in the field of bringing television to remote areas by whatever means is the most practical, by community systems, by satellite, or whatever means is the most economic and technically the most feasible for the given area.

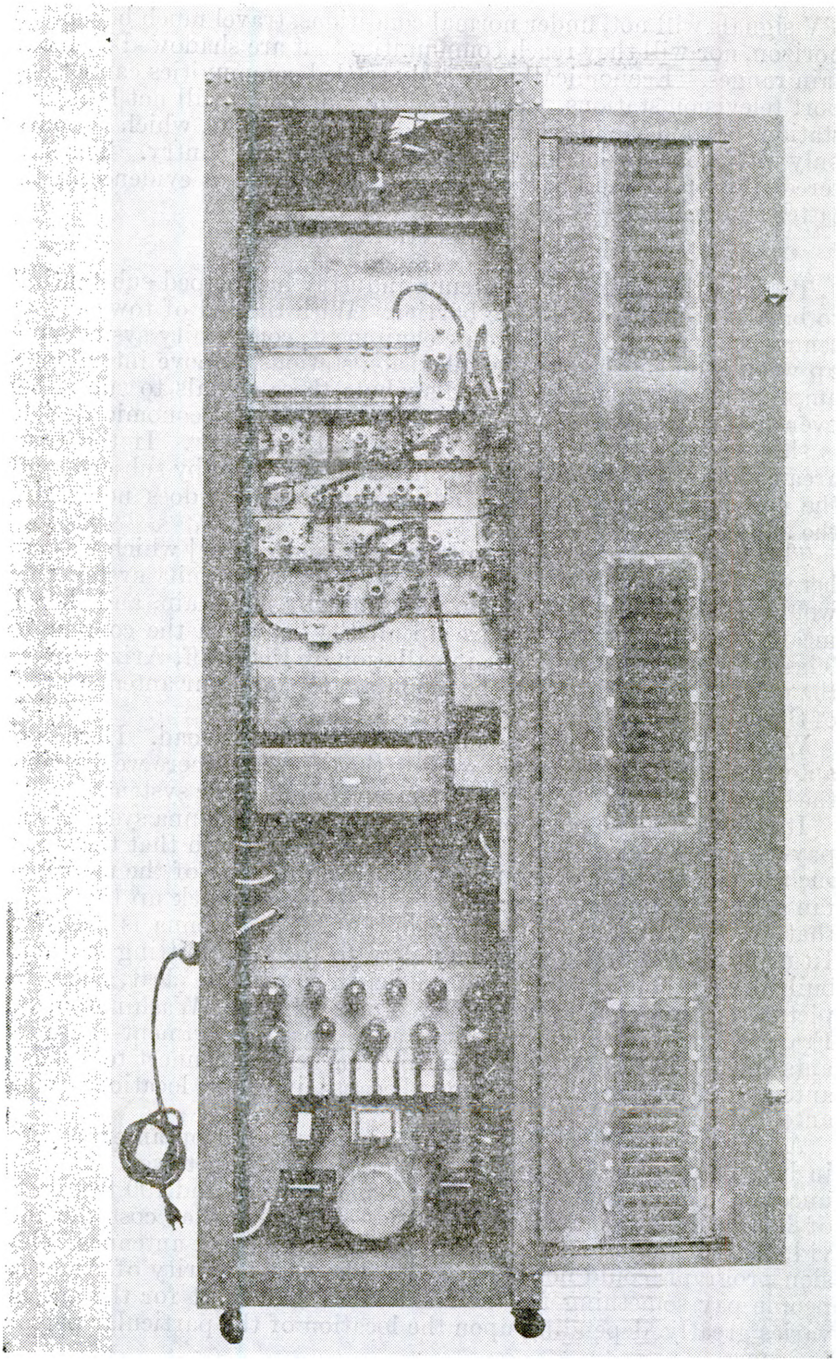
Our company has probably done more research, study, and development on the problems of extending television coverage to remote fringe areas than any other single company in the United States. The "Peashooter" plan which we have developed for extending television coverage to all communities in the United States is based upon the experience that our organization has gained in this highly specialized industry.

To understand the nature of the Jerrold proposals, it is necessary first to understand the technical and economic factors that have prevented the spread of television into the small isolated and fringe areas.

[1] The photographs referred to are reproduced on the following pages.







The limits of television reception are both technological and economic. TV signals will not, under normal conditions, travel much beyond the horizon, nor will they reach communities that are shadowed by mountain ranges. Economically, sparsely settled communities cannot support television stations. Television entrepreneurs will not build new stations beyond the horizon of the advertising dollar, which is poured only into the more densely populated areas of the country. The shattered illusion of the UHF allocation program bears evidence of this latter statement.

COMMUNITY ANTENNA SYSTEMS

To date, the community antenna industry has helped substantially to break through this double barrier. With the aid of towering antennas and specialized electronic equipment, community systems pick up weak signals broadcast by television stations, remove interference, amplify the signals, and then distribute these signals to subscribers over coaxial cable systems. By this method, the economic decision is shifted from the advertiser to the final consumer. If the fringe area citizen wants television, it is his choice to do so by subscribing to the community system. The advertiser generally does not sustain the added costs.

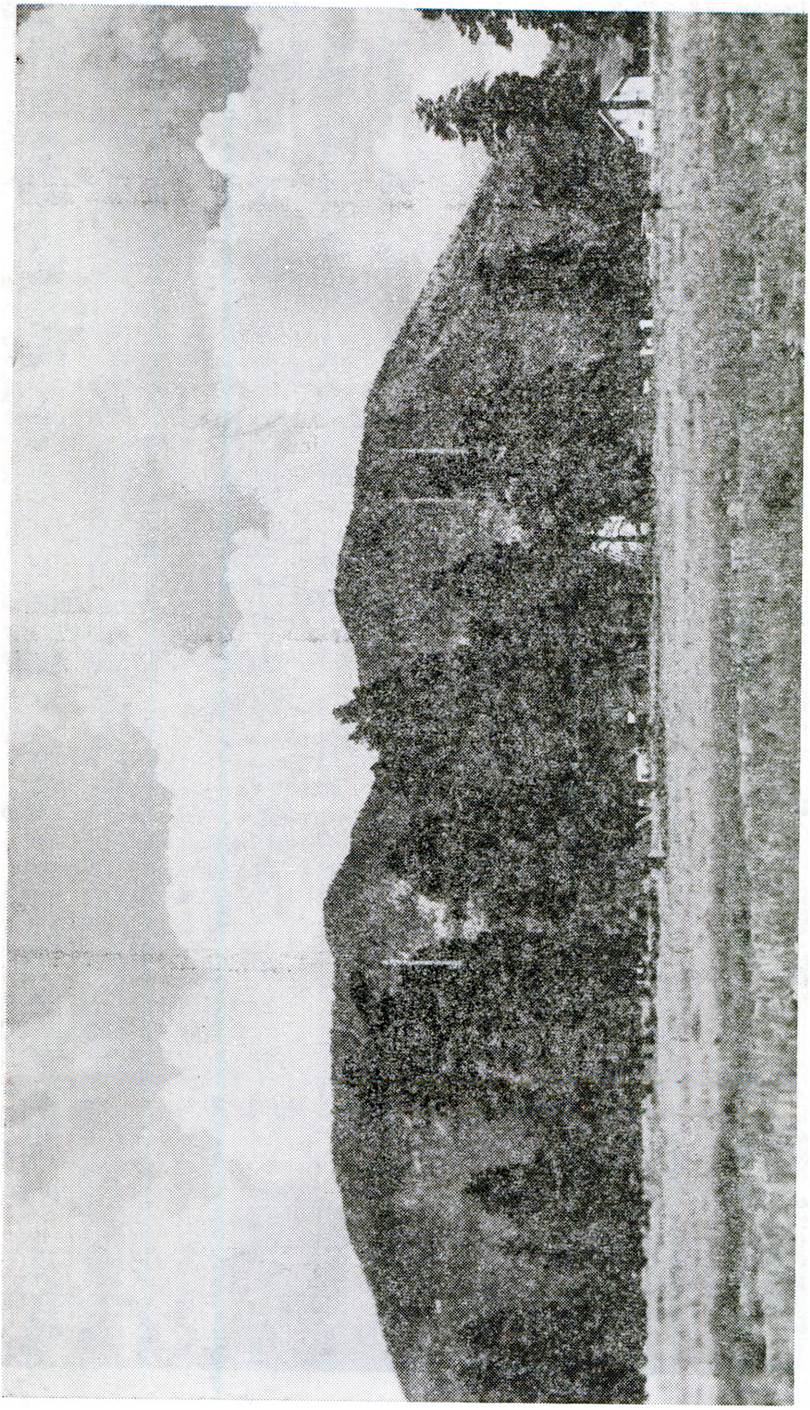
This is a model of a community system [indicating] which was used here this morning. Generally in the average community system there would be an antenna site on top of a nearby mountain, and then by means of cable we would wire up all the homes in the community. These photographs show our installation at Flagstaff, Ariz. This is the mountain at Flagstaff—the mountain top, and our antenna on top of the mountain.

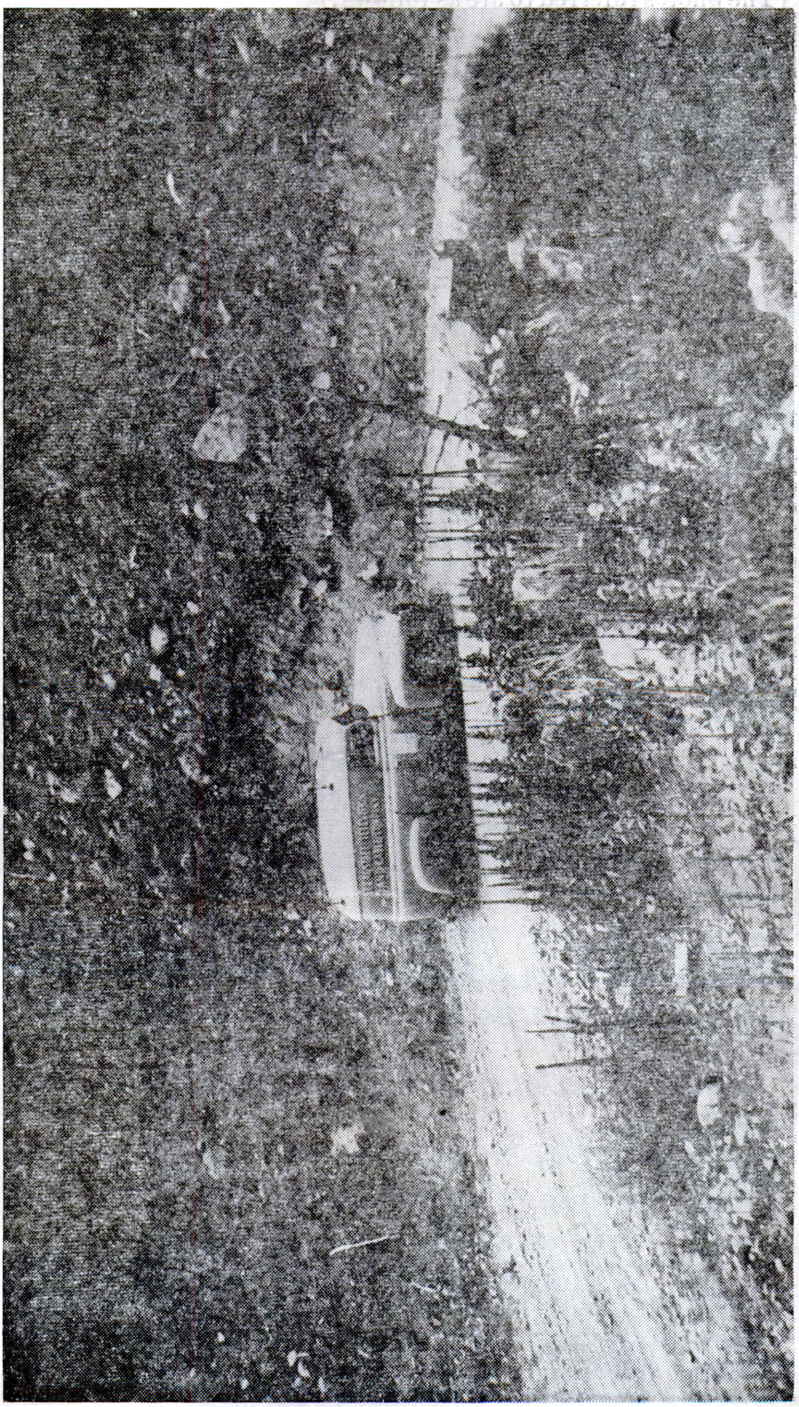
We run by cable down this mountain along this road. Here is the antenna at the top. It goes down into the town, and there we distribute the signals into the community by means of our cable system.

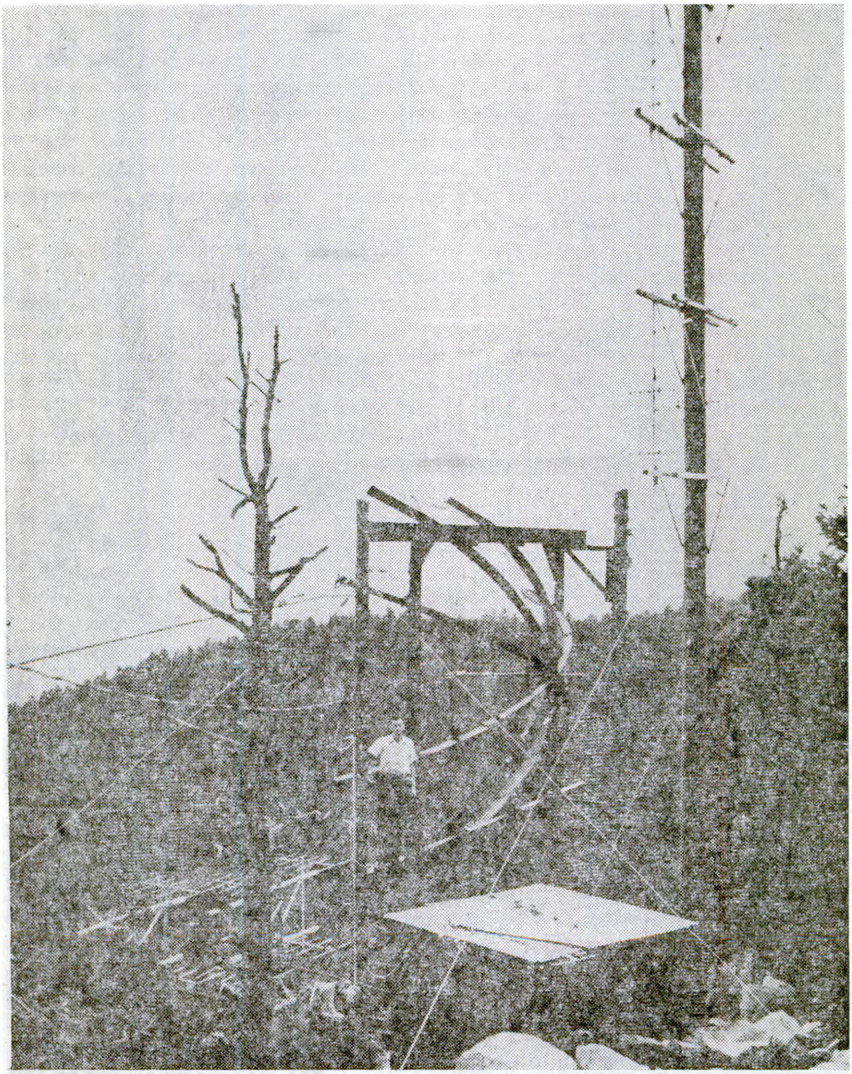
It is important to point out that a community antenna system is not pay-as-you-see television. It is an unfortunate truth that theer is no such thing as free television reception, even in most of the metropolitan areas. A television receiver by itself cannot pick up the signals that are broadcast from the transmitters. An antenna is necessary. In many homes and apartments close to the transmitting station, a built-in or rabbit-ear antenna is sufficient to provide clear, ghost-free pictures. However, even in New York, Chicago, Washington, San Francisco, and other metropolitan areas, many apartment-house tenants spend $50 to $75 (plus monthly charges) to connect to a master antenna system in the building, because in these locations indoor antennas do not suffice.

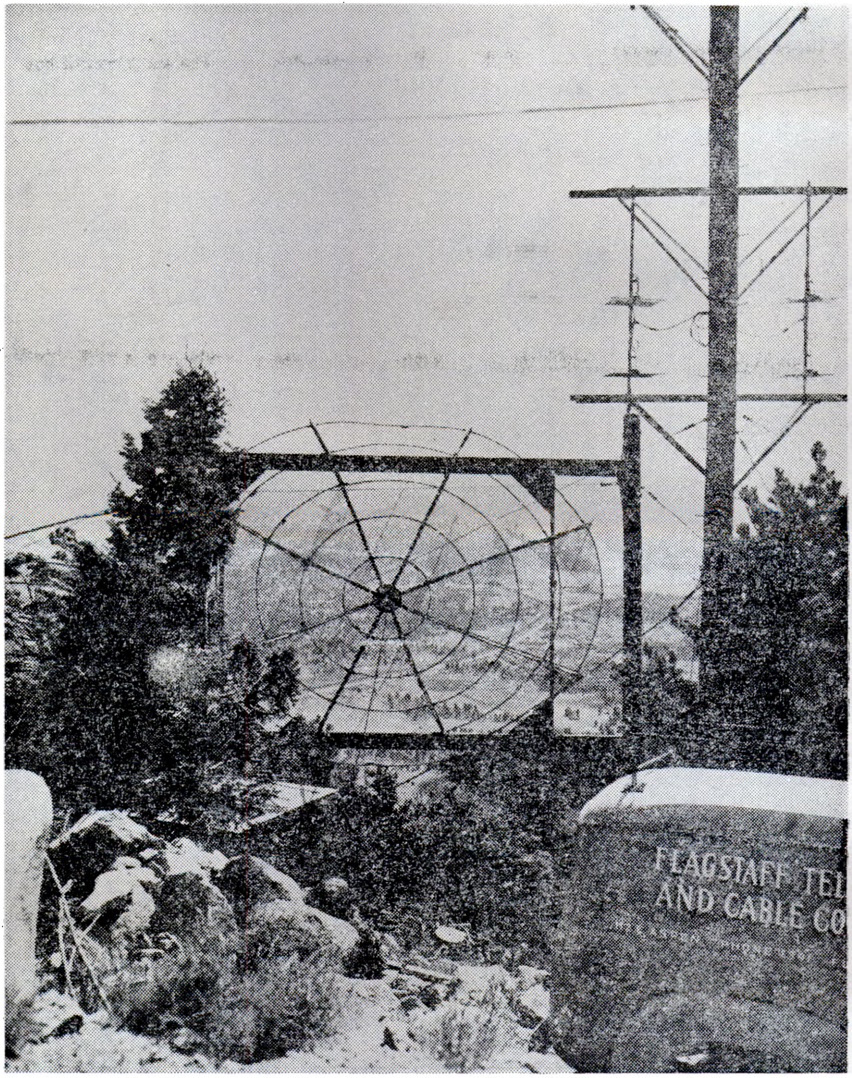
As one travels away from the transmitters, rooftop antennas grow in height with the distance from the transmitting tower. It is not uncommon at all to find antenna towers of 50 feet and 100 feet on top of homes in fringe-area communities—antennas that cost the individuals from $100 to $300. Without these high-cost antennas, television programs could not be viewed. The vast majority of American people pay something for their antennas. The cost for the antenna varies greatly, depending upon the location of the particular person's residence.

(The photos referred to are as follows:)

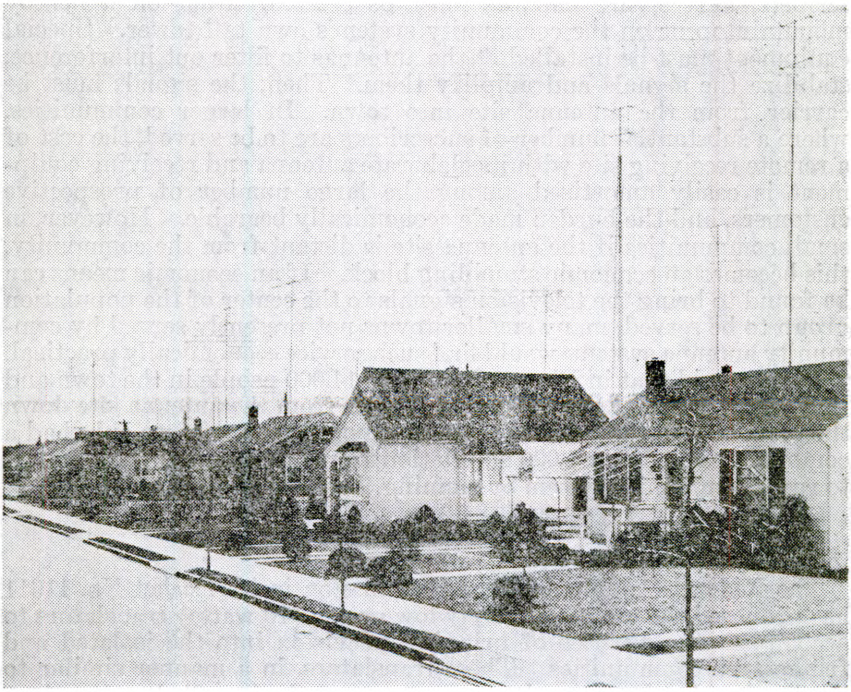







FLAGSTAFF TEL
AND CABLE CO

I have here some photographs of a fringe area community that show the antennas in some of these towns where the people have paid from $75 to $150 or $300 for their individual towers. I might add that



in that particular town—which is Ventnor, N. J.—we have a community antenna system, and people are taking these towers down to connect to the system rather than have an individual tower in their home. They get better pictures and the cost is lower.

A community antenna is, as its name implies, an antenna that is shared by a community. Instead of everybody in town putting up their own towers of 300 feet, 400 feet or 500 feet, as would be necessary in the flatlands of Texas or Mississippi to receive programs, or instead of everyone putting an antenna on top of the nearest mountain and running his own lead-in from that site to his receiver, 1 giant tower or 1 antenna is erected, with resultant economies.

Each person who desires to receive television then pays a connection charge and a monthly maintenance fee to the owner or operator of this community antenna. In this manner, the consumer attains far better television reception at a lower cost than he would obtain in that community by installing his own antenna. In most cases to date, the installation of community antenna systems has been privately financed and the companies are operated to produce a profit. In a number of cases, the systems are cooperatively owned, and since the capital expenditure and risk is shared by the viewers, and since these cooperatives are normally operated on a no-profit basis, the connection and monthly rates may be somewhat lower.

As I shall show later, these rates can be as low as $74 a connection and $2 a month for many of the cities in the Northwest area.

However, community systems, too, face an economic barrier. Regardless of the density of population or the number of potential subscribers, a receiving antenna must be erected, either on a nearby mountaintop or on the community system's own tall tower. Special equipment must be installed at the antennas to filter out interference, stabilize the signals and amplify them. Then, the signals must be carrier from the antenna site into town. In larger communities, where a substantial number of subscribers are to be served, the cost of a remote receiving site with its elaborate antenna and receiving equipment is easily amortized among the large number of prospective customers, and the burden made economically bearable. However, in small communities if the antenna site is distant from the community, this becomes an economic stumbling block. If an economic means can be found to bring the television signals to the center of the population group to be served, many smaller towns not presently served by community antenna systems would find such service economically practical.

I might add that in Flagstaff we have 14,000 people in the town and they could afford to run this cable 7 miles from the antenna site down the mountain to the town to serve that population. If we only had a community of 3,000 or 4,000 population there, it would be uneconomical to run a community system by running the cable off the mountain.

TRANSLATORS

The Federal Communications Commission in its Docket No. 11611 has proposed the use of relatively low power (10 watts) translators to accomplish the purpose of bringing television into the isolated and fringe area communities. These translators, in a manner similar to the head-ends of community systems, are to be installed at locations where broadcast television signals can be received. Instead of bringing these signals to town and distributing them through the community by means of cable, it is proposed that the translator simply rebroadcast the programs picked up, utilizing the now unused top 14 UHF frequencies for this purpose.

Whereas the translator will find application in some communities, it is not a cure-all for the small community problem. Its use has economic and technical limitations. The proposed translator has all the costs usually associated with the receiving site or head-end equipment for a community system. These costs are determined by the nature of the signal reception and have little to do with what is done with the signal thereafter. Therefore, it is important to understand that the UHF transmitter portion of the proposed translator merely replaces the transportation system necessary to get the television signals from the receiving site to the population area to be served.

Most descriptions of the proposed translator system assume that the cost of the system ends at this point. However, this is not the case. The individual set owner is still faced with the cost of installing and maintaining a good UHF antenna and a converter for his own television receiver. Of necessity, the total cost of installation and operation of most translators must be supported by their viewers.

Arranging the economic support of the proposed translators is by no means as straightforward as in the case of a wired community system. In a cable system only those who subscribe to the service and thus pay their share of the cost are able to obtain television reception. With the translator, a signal is broadcast toward a population area and anyone who provides himself with the proper UHF receiving equipment can receive the signals. In many of the communities in the northwest section of the United States, where unauthorized reradiators have been in operation, various arrangements have been made to divide the cost of operating the transmitter equipment among the viewers. These arrangements have taken the form of some civic action, but there are many accounts in the newspapers to indicate the difficulties of obtaining a truly cooperative program. Unauthorized reradiators have had to be shut down by their operators for periods of time in order to "pass the collection hat" around the community in order to obtain operating funds. There are within any group, those individuals who are willing to "let George pay it." The financial problems of installing and operating a translator service, with costs much higher than the unauthorized reradiators, may well prove to be a very difficult community problem to resolve.

Technically, the translators may provide good service in some types of communities. Bridgeport, Wash., is typical of a community which, in our opinion, can be best served by this means. The community is close to the signal receiving point. I might add that in Bridgeport there are some 270 to 280 homes spread out over about 8 miles of the city, so that the density is slightly over 30 homes per mile, which makes cabling in the town rather expensive per residence unit. That is why we say that Bridgeport is typical of a community which can best be served by translators.

The CHAIRMAN. You have an unusual situation in Bridgeport, because we are building a huge dam there and when the dam is finished then there is going to be a rearrangement of their economic factors, which might then make it good for cabling.

Mr. SHAPP. Yes.

However, because of the very nature of UHF frequencies, there will be many communities that cannot be covered properly by the proposed translators. People living behind hills or large buildings within the community may find themselves shadowed and unable to receive the translator signals. Furthermore, because of the low power transmitted and because of the relative inefficiency of UHF tuners and converters at the high frequency—top 14 channels—of the UHF band, the area of coverage for reliable reception will be limited. Further, due to the more rapid failing in efficiency of tubes at the higher frequencies, the service cost of maintaining snow-free reception at these frequencies will be higher than normally experienced in other UHF areas.

From an economic standpoint, it appears that the cost of installing a UHF antenna and converter to receive signals from a translator will be no less than $70 per home. In many cases, because of low signals or because of terrain features, this cost may be higher. In addition, each individual will be asked to bear his share of the cost of the translator itself.

As in the case of the unauthorized booster, in my opinion it is doubtful that any translator equipment will be placed on the market in the near future that will sell for much less than $2,000 a channel. This price does not include the engineering surveys, nor does it include the cost of installation. It does not include the cost for many specialized filters or other equipment that may be necessary in many areas in order to obtain clear, interference-free pictures. It does not include housing shelter for the equipment, nor does it include the cost for running power up to the proposed transmitter site. Based upon the experience of our company in installing front-end equipment at antenna sites in over 300 community antenna systems, it is doubtful if any translators can be installed to provide 3 channels into a community—the minimum service furnished by most community antenna systems today—for less than $10,000. In many cases the cost will be greater.

I might add that in the case of some of the northwest cities this can be reduced because they have had power run up to the antenna sites; they do have shacks and some buildings, so that equipment can be utilized for installation of translators.

When the $70 cost per individual receiver is added to the share of the cost for the installation of translators that must be borne by each subscriber, it becomes fairly obvious that the translator proposal in itself will not bring "free," or even low cost, TV reception to small communities.

I just point out at this time that these communities, in that respect then, are no different than remote fringe area communities in other sections of the country who have to install their own big antennas, and so forth.

THE JERROLD PEASHOOTER PLAN

However, there are features of the proposed translators which, if combined with community antenna systems, would offer a very practical solution to the problem of bringing television to the majority of small, isolated communities on a more economical basis. As stated previously, the main barrier to community antenna systems is the cost of bringing the signals from the mountain top to the town by means of cable. Further, as stated above, the chief advantage of the translator is that it offers a rather economical method of conveying the signals from the mountain top to the community.

Jerrold proposes that the Federal Communications Commission consider a combination of the translator service and a modified type of wired community service as a means of bringing television to the fringe area communities. Jerrold is filing such a proposal with the Federal Communications Commission, and we have asked for an experimental license to test and demonstrate immediately the feasibility of this proposal in Ellenburg, Wash.

The CHAIRMAN. What authority does the FCC have to give you to do this?

Mr. SHAPP. We are asking to use the top 14 UHF frequencies, such as is proposed in their translator service, for this point-to-point type of service from our mountain top into town, with these signals.

The CHAIRMAN. Through a cable?

Mr. SHAPP. No; through the air.

The CHAIRMAN. Why do you have to ask the Communications Commission for that authority?

Mr. SHAPP. Because these frequencies have been assigned, at the present time, for broadcast purposes, and we do not have the authority to just go ahead and use those frequencies.

The CHAIRMAN. So what you are asking, then, is to use frequencies in this particular case, say in Ellensburg, that are not being used anyway?

Mr. SHAPP. That is correct, sir. Back here by the airport [indicating on model] we have a horn up on top of the mountain. Here is our receiving horn in Ellensburg. We would propose that the antenna site beam the signal through the air right down here.

The CHAIRMAN. That would use only one frequency?

Mr. SHAPP. We would have three channels.

The CHAIRMAN. Three channels coming off there down here?

Mr. SHAPP. Yes.

The CHAIRMAN. They would be UHF?

Mr. SHAPP. Yes, sir; say, channel 72, 74 and 76.

The CHAIRMAN. What about the sets?

Mr. SHAPP. We would then have one converter at our horn location in town, convert to the low band VHF frequencies of 2, 4, and 6, and distribute by means of cable throughout the city.

The CHAIRMAN. In other words, you do the translating into the V?

Mr. SHAPP. That is right, 1 converter, 1 big antenna, which gives us better reception.

In accordance with our plan, the desired television signals at a receiving site would be picked up, filtered, stabilized, amplified, and converted in much the same way as necessary under the proposed translator service. However, by means of a highly directional antenna system—which our engineers have dubbed the "peashooter"—the UHF signals will be beamed directly to the center of the population group to be served. Maximum transmitter power of less than 0.1 watt is required for this service. At the central point in the community, the signals would be received by another high gain, highly directional antenna, and then converted to low-band VHF frequencies, channels 2 through 6. These signals will then be fed into a wired distribution system to serve the population group.

The CHAIRMAN. Let me understand this—which I don't. With the antenna on top of the mountain, you are picking up V signals; aren't you?

Mr. SHAPP. That is correct.

The CHAIRMAN. You are translating them into U signals?

Mr. SHAPP. That is right.

The CHAIRMAN. Then you are reconverting them, or reversing it back to V?

Mr. SHAPP. We are beaming them into the town as UHF, picking them up, reversing them back into V for distribution by cable.

The CHAIRMAN. The V station that originates the signal comes into the home exactly as it originated the signal, but you convert it on the way back?

Mr. SHAPP. That is right.

Mr. COX. Or on another V channel?

Mr. SHAPP. That is right.

Mr. COX. It makes no difference which channel is being used.

The CHAIRMAN. Supposing you had a town that had all U sets, or all-channel sets. You wouldn't have to do that; would you?

Mr. SHAPP. Actually anybody in Ellensburg, or any other city where we put the system, who wants to put up their own UHF antenna and pick up the signals can do so if they want. It is our opinion, as I shall go forward here to show, that the cost of doing it by cable, with 1 converter and 1 big antenna, is less than everybody buying their own UHF antenna and UHF converter.

Mr. COX. Would that signal be available to everybody in the community, or would they have to be pretty much in the direct line of sight between the two horns?

Mr. SHAPP. It is a line-of-sight proposition. At 12 miles, which happens to be the distance in Ellensburg from antenna to town, with the antennas we will use, it will be about a mile and a half across. We cannot pinpoint it like a searchlight.

The CHAIRMAN. I can buy an all-channel set and pick you up anyway?

Mr. SHAPP. That is correct.

Mr. COX. Within a certain range.

The CHAIRMAN. I would put up my own antenna.

Mr. SHAPP. I think you will find—as I will attempt to prove here—the cost and the performance is superior.

The CHAIRMAN. Why did you pick Ellensburg?

Mr. SHAPP. It so happens we have a community antenna system in Ellensburg. We have a 12-mile run that has been very costly to maintain, and also we can go to work immediately to run this test in Ellensburg. If any other city is desirous of the test, we will be glad to do it there.

Technically, this combination peashooter-cable system offers many advantages over either the straight community system or a straight translator service. By this method, only 1 UHF antenna and only 1 UHF converter are needed to serve the entire community, as contrasted with the current proposal requiring each home to have an antenna and converter. This antenna will be extremely high gain—on the order of 25 to 30 decibels—that means it is picking up signals on the order of a hundred times better than the normal UHF antenna will do it—and will feed into a relatively low-noise input UHF converter of a crystal-controlled type. The resultant signal will be far superior than would normally be received at these frequencies of an individual antenna and individual home converter.

The CHAIRMAN. Let's get this into the record. You pick it up there in the center of town, and you put your cables around. Now suppose I am living in Ellensburg, what are you going to charge me to get this cable?

Mr. SHAPP. At the present time the rate in Ellensburg is $125 and $3.50 a month.

The CHAIRMAN. That is for installation?

Mr. SHAPP. $125 for installation, $3.50 a month for the service.

The CHAIRMAN. Then, of course, your suggestion is that if I wanted to pick up those signals anyway, I would have to spend almost that much for my own antenna?

Mr. SHAPP. In Ellensburg you would probably have to spend about $100 to $110 to pick up your own signal.

The CHAIRMAN. So I am getting a little better signal—I think that is your contention?

Mr. SHAPP. That is right.

The CHAIRMAN. For approximately the same price?

Mr. SHAPP. That is right.

The CHAIRMAN. Then you have a service unit that services the place?

Mr. SHAPP. We have a company—like a small telephone company—in Ellensburg that takes care of maintenance. I might add for the record, too, sir, that the installation——

The CHAIRMAN. Where do you put these cables—underground?

Mr. SHAPP. No; on the telephone poles. We have contracts with the telephone and power companies for attaching them to their poles.

The CHAIRMAN. Just like it is here [indicating the model]?

Mr. SHAPP. That is right.

The CHAIRMAN. What would you do in Washington, where you couldn't have telephone poles?

Mr. SHAPP. Washington, D. C.?

The CHAIRMAN. Yes; right here.

Mr. SHAPP. It isn't necessary in Washington.

The CHAIRMAN. I am a great believer in abolishing telephone poles and putting everything underground.

Mr. SHAPP. They use a lot of fir, sir. [Laughter.]

The CHAIRMAN. No; they don't use fir.

Mr. SHAPP. I started to say that we have a lot of economies to affect in a community system this way, too. In the normal community system, where we come in from the edge of town, we come in from one side and then wire through the town. We have a lot of amplifiers in cascade, including those off the mountain.

The CHAIRMAN. All you are trying to say, in this whole thing, is that you think in a community similar to Ellensburg or Flagstaff, or wherever we have these peculiar terrain problems—which is mainly out in the West, although there are some places in the East, too—that you are able, through this system that you are describing, to do a better job as economically as if the individual resident tried to do it himself?

Mr. SHAPP. That is one thing, sir. In the mountainous terrain; that is the point I intend to make. However, in the flat areas, which are covered by all those pins throughout the area [indicating large map], the translator service will not provide the coverage that is proposed, and the only way that you are going to get low-cost television into all of those areas in the United States—from the Dakotas down through Texas, down in the South, and up the eastern coast—is by means of using these UHF frequencies at these places, peashooting them in, and wiring the town.

The CHAIRMAN. If you do that, maybe the individual is going to make a bigger initial investment, but in the long run, he will get better television and service—and you will sell the equipment?

Mr. SHAPP. We will sell the equipment.

The CHAIRMAN. You think you have a better system?

Mr. SHAPP. Our salesman comes into a town with three books in his briefcase and asks them which they want.

The CHAIRMAN. As I understand it, it has worked out very well in some communities?

Mr. SHAPP. Yes.

The CHAIRMAN. Now you want to go ahead in a town like Ellensburg, experimentally, and try out the shifting of the V to the U and back to the V in a community about the size of Ellensburg, which would be about 20,000 people?

Mr. SHAPP. No, it is about 12,000.

The CHAIRMAN. Your customers would number about 20,000 altogether, including surrounding areas?

Mr. SHAPP. That is right. We are prepared to go into Quincy at this time with such a system also. I have the costs worked out for Quincy, to show the relative cost of this type of service as against the translator service.

Mr. COX. How big is Quincy?

Mr. SHAPP. About 2,500.

The CHAIRMAN. Quincy grows so fast every week we can't keep track of it. [Laughter.]

Mr. SHAPP. We had trouble getting the population figures. This is a pictorial of what is described [referring to a large chart]. Here are the figures on Quincy that compare the cost of bringing television—three channels of television—by means of this peashooter-cable deal, as against just a translator.

The CHAIRMAN. What stations would you pick up in Quincy—those in Spokane?

Mr. SHAPP. The Spokane stations.

The CHAIRMAN. In Ellensburg, you pick up Seattle?

Mr. SHAPP. Two Spokane and one Seattle.

The CHAIRMAN. Which one out of Seattle?

Mr. SHAPP. I think it is channel 5.

The CHAIRMAN. KING.

Mr. SHAPP. Yes.

The CHAIRMAN. Why could you pick up KING and not pick up the rest of them?

Mr. SHAPP. There is a duplication of programs on channel 4 from Spokane and channel 4 from Seattle, and also we have a cochannel problem with the two systems and the stronger signal is Spokane.

The CHAIRMAN. It isn't because KING has a difficult signal—it is because of the programing?

Mr. SHAPP. Yes. We give NBC, CBS, and ABC programing in this manner. Here, on a cooperative basis—we have already contacted one of the leading banks out in Seattle, who is willing to finance, on a cooperative basis, the installation of cable systems in conjunction with this peashooter plan, whereby the people in a town form a cooperative, and put up whatever may be the cost per subscriber, say, $75 a person. They put up $25, with $50 advanced to the co-op by the bank for each person and paid back on a regular bank-loan basis. We have the details of the exact forms and everything else in a rough-draft form with this bank now. This plan is entirely bankable on a cooperative basis. That is the reason I said before that it is entirely likely the initial cost, on a cooperative basis, can be even under what it would cost each person to buy the converter and UHF antenna.

The CHAIRMAN. You are giving Ellensburg two Spokane stations and a Seattle station, which provide mainly national network programs?

Mr. SHAPP. That is correct.

The CHAIRMAN. What if somebody wanted to start a local station in Ellensburg?

Mr. SHAPP. Fine.

The CHAIRMAN. Does your system interfere? I am just asking this engineeringwise. That wouldn't interfere with your thinking at all?

Mr. SHAPP. Not at all.

The CHAIRMAN. How could I have a set in Ellensburg to get the local station?

Mr. SHAPP. We could put the local station on the system, as we do in many cases—make it four channels in town—or depending upon what frequency it was, say it was a high VHF channel, we could throw a switch on the back of the set and they could pick it up on rabbit ears and throw it in on the set. It works both ways.

The CHAIRMAN. So if we encourage local stations, and get their costs down, it wouldn't interfere with this system at all?

Mr. SHAPP. No, sir.

The CHAIRMAN. Well, it would interfere to the extent it might join it.

Mr. SHAPP. Some broadcasters have expressed a fear that the extension of community systems would preclude the development of new broadcast stations. Just in the past 3 weeks, there has been a station grant at Clovis, N. Mex., and Victoria, Tex., and a CP filed in Pocatello, and all 3 of these towns have community systems. The spread of community systems——

The CHAIRMAN. They are not incompatible, are they?

Mr. SHAPP. They are not. They both perform a needed service for the community.

Senator DUFF. In other words, if you get what you want from the Federal Communications Commission here, you are not going to be in a place where you have the situation preempted so that nobody else can come in afterward?

Mr. SHAPP. No, sir, Senator. In most places where this system would be used—the larger communities, frankly, can afford a cable off the mountain anyway, and in the smaller communities of one or two thousand population, they can't afford stations anyway. We will bring television into those areas in a manner that they can't get in any other way; and then if any other station—if a station does come on the air, this will not in any way interfere with the local station. It will speed the spread of television throughout the whole country.

Senator DUFF. What possible objection would there be to your getting a right of this kind, since you don't preempt any situation?

Mr. SHAPP. I would hate to make a forecast of what the Federal Communications Commission may decide.

Senator DUFF. I understand that, but I understand they move in mysterious ways in all commissions at times.

The CHAIRMAN. The Senator from Pennsylvania in trying to ascertain what possible objection could there be to this.

Mr. SHAPP. I can see none, sir. In fact, there are two precedents for this: A. T. & T. applied for, and received, permission to use the top 14 UHF frequencies for experimental purposes on their scatter tests in Florida. Also, there is a precedent in that the FM band has been used for commercial music broadcasts, and so the frequencies assigned for that purpose have been used for another purpose, because the FM frequencies were not taken up.

Mr. COX. Would this use by you of some of these top 14 UHF channels interfere with the use of those channels for the general translator purposes that the FCC has in mind?

Mr. SHAPP. No, sir. In fact, it will expand the use of translators for this reason: A translator operates on low power and must of necessity spread out. It is limited to 60 watts e. r. p. It is not directional. Ours will be a very directional—as directional as possible, at low power. We will not be subject to the interference that you will get from a number of translators in a given area. You can put a greater number of these systems to work in an area than you can on the regular translators in those top 14 frequencies. Furthermore, we would be willing to take these frequencies on a nonexclusive basis, even a secondary basis——

Senator DUFF. I think that is the important thing.

Mr. SHAPP. If some broadcaster wants to use it at a future time, fine. Let him have it.

The CHAIRMAN. In this case, there are enough of them available that are not being used. It wouldn't interfere particularly.

Mr. SHAPP. That is right.

Mr. COX. In other words, this present proposal is broad enough to permit concurrent use by you and by a translator in the pure form as well?

Mr. SHAPP. The answer is "Yes." Mr. Smith is proposing, in our application, that they just change a few words in the proposed rulemaking, and that would accommodate this peashooter plan. That is all it would take. There is no congressional legislation necessary for it. It is entirely up to them to do this.

The CHAIRMAN. Go ahead if you want to finish any more of your statement.

Mr. SHAPP. I have pretty well covered most of the things I have here.

The CHAIRMAN. We will put the whole statement in the record.

(The balance of the statement is as follows:)

The UHF signals picked up are converted, as I stated previously, to VHF channels at a central point in town. Since they will be carried out to all sections of the community via cable from this central hub, great economy in the community system layout can be effected over the conventional community antenna system. The number of amplifiers in cascade normally needed can be greatly reduced. This not only increases the quality of reception throughout the community, but also reduces the complexity of equipment and makes it easier to maintain the system at a high operating level. The cable will serve all homes in the area. Thus, there will be no shadow areas caused by hills or tall buildings.

Economically, it can be shown that for any community that has a density of 60 or more homes per mile, the cost per subscriber with normal expected television saturation in the community will be less by this means than for each person to install his own individual UHF antenna and converter. The cost of the 0.1 watt peashooter on top of the mountain will be substantially less than the cost of the 10-watt proposed translator. Thus, the overall cost per subscriber will be much less when connected to the combination cable-peashooter system than when receiving UHF signals direct from a translator.

The accompanying chart (having reference to a large chart displayed in the hearing room) shows these relative cost figures for 40, 50, 60, 70, 75, and 80 percent saturations worked out for comparative translator and cable-peashooter systems that might be installed in Quincy, Wash. You will note that at only 50 percent saturation (and more than 50 percent of the people in Quincy already have VHF television sets) the cost per subscriber on a cooperative basis for installing and connecting to a combination cable-peashooter system is $80, whereas the cost of installing a UHF antenna and converter and bearing a proportionate share of the translator cost is $83 per subscriber. As saturation increases, the cost differential per subscriber becomes even more favorable for the cable-peashooter system. For example at 80 percent saturation, these figures become $65 to $80 in favor of the peashooter.

The Jerrold plan has another very great advantage in that each person connected to the system will of necessity carry his fair share of the cost for the entire system. Because of this, it is possible to obtain bank financing for the citizens of the community to install a system of this sort on a cooperative basis. Our company has been in contact with one of the leading banks of the Northwest which is willing to loan approximately two-thirds of the money necessary to install cooperative systems in these communities. Contracts for handling the paperwork on these loans have already been drafted.

Our company is prepared to work with the citizens of any community in the Northwest States to install either a community antenna system, or a translator or a peashooter system to bring quality television reception to them at the lowest possible prices. In most communities, as in Quincy, the cost per subscriber for a cooperatively owned peashooter system will not exceed $75 for the connection. Service can be rendered on a cooperative basis for less than $2 a month.

For technical and economical reasons, it is our belief that the translators proposed in FCC Docket 11611 will find application primarily in those communities that are situated close to a receiving location and where the density of population within the community is so low that distribution of signals to the viewers by means of cable would prove uneconomical.

There are many areas of the country now without television wherein the proposed translator alone cannot be effective at all. This map of the United States [having reference to a large map on display in the hearing room] shows almost 600 communities which, according to the latest figures published by Television Digest in January of 1956, have less than 10-percent television saturation. This low saturation is indicative of only one thing, lack of adequate reception. This is only a partial list of television deficient areas throughout the country. So great is the public's desire for television that even in areas where reception is very poor, even with high-cost roof antennas, saturation often exceeds 10 percent.

In most of these areas, there are no favorable mountaintops to provide receiving sites for television signals and to provide transmitting sites for the translated UHF signals. Thus, there is little, if any, application for the proposed translators in these areas. All through the South, Mississippi, Alabama, Florida, Georgia, et cetera, through the great Midwest plains of Nebraska, Kansas, Iowa, and on up through the Dakotas and back down into the southwest of Texas and Arizona, one finds that great distance is the barrier and not mountainous terrain.

To bring television to these communities, once again we propose the use of UHF peashooters, this time serving as milliwave links instead of more expensive microwave common carrier links. These smaller communities cannot afford the cost of bringing television signals to their communities by means of microwave.

The upper 14 UHF channels are not being used today for any broadcast purpose. A. T. & T. has already received permission to utilize these frequencies for experimental purposes relative to scatter broadcast. We will request permission from the FCC to use the top 14 UHF frequencies for UHF Peashooters to supply signals for community systems all over the United States. With high directional antennas and limited power, there is no danger of interference to be caused by this service. Our proposal is to supplement the translator service, not supplant it.

The granting of this proposal would make it economically and technically feasible for any community of over 1,000 population anywhere in the United States to have television reception—in most cases of a multichannel nature—by the end of 1956. There need be no blacked-out television areas in this country.

The equipment to do this job is already developed and most of it is already in large-scale production. With FCC approval, the UHF Peashooter program can start immediately. There need be no area in the United States without television by the end of the year.

Mr. SHAPP. Would you care to go over the costs to show how the costs are lower off this plan than off the translator?

The CHAIRMAN. I think you should say something about that, because it was my understanding, when the Commission was here, that they were inclined to lean toward a solution of this problem through the translator. We queried them at some length as to the cost of translators. There were varied answers as to the costs, and as to whether the service would be as economical as alternatives such as the one you propose, but I would think they might run about the same. I think what you are trying to say—and what you have perhaps proven—is that in some communities you can give a better service.

Mr. SHAPP. That is correct. Also there has been a lot of misconception on the price.

The CHAIRMAN. If I lived in Ellensburg, which is a nice place to live, incidentally—— [Laughter.]

Senator DUFF. I believe you stated it pretty well.

The CHAIRMAN. Yes; it is a beautiful town—I probably would want this. Suppose it might cost me a little more to have this service, still I would know I was getting good service and, therefore, I would be willing to pay this extra cost.

Mr. SHAPP. And you know the service is there to stay.

The CHAIRMAN. And I have got some maintenance, too.

Mr. SHAPP. You have more maintenance on a UHF converter and antenna than you do off the system.

The CHAIRMAN. As the Senator from Pennsylvania just mentioned to me, what was maybe bothering him, and surely would bother me, too, is whether or not you are getting something exclusive, but in this case you are not.

Mr. SHAPP. No, sir.

The CHAIRMAN. In other words, I can take it or leave it, can I?

Mr. SHAPP. That is right. If anybody in the town wants to put up their own antenna to pick up the signals, they could do that, too.

The CHAIRMAN. You couldn't stop them from doing that. I would say, going back to Ellensburg, that 9 chances out of 10, they probably wouldn't want to.

Mr. SHAPP. That is right. I think we can prove that quite easily.

The CHAIRMAN. There would be no objection of a public policy nature, because you are not taking an exclusive right at all.

Mr. SHAPP. In most of these towns through here, I believe that you will find the cooperatives will form in these towns, and they will operate this peashooter service themselves, to bring the service into the town. They will hop from town A to B to C.

The CHAIRMAN. Let me ask you this now. How many cooperatives have been formed in the United States?

Mr. SHAPP. In the United States, I am familiar with about 10 or 15 of them, sir.

The CHAIRMAN. How many other systems do you have that you service now?

Mr. SHAPP. Systems?

The CHAIRMAN. Yes; about 300?

Mr. SHAPP. Altogether, about 400 systems in the country.

The CHAIRMAN. The bulk of them are now being operated as a local corporation for profit—and there is certainly nothing wrong with that.

Mr. SHAPP. That is correct.

The CHAIRMAN. There is a movement to form cooperatives?

Mr. SHAPP. It will be a lower cost, and this movement is definitely on. The price has been proven, and people will form these cooperatives. The banks can step in and finance it.

The CHAIRMAN. Take Walla Walla. That is a private company, isn't it?

Mr. SHAPP. Yes, sir.

The CHAIRMAN. You charge so much and make a profit?

Mr. SHAPP. It cost about $230,000 to put in that system in Walla Walla.

The CHAIRMAN. I think people are entitled to a reasonable profit if they put up their money for these systems.

Mr. SHAPP. It is a great risk business.

The CHAIRMAN. But there is a chance that there will be more and more cooperatives formed; and, as you say, financial institutions may loan the money for the initial capital cost, and then you could go on from there.

Mr. SHAPP. That is right.

The CHAIRMAN. That is entirely a matter of choice of the people in the area.

Mr. SHAPP. I think this plan here will further because it makes a low-cost project. You can say it is going to cost X dollars. Each person coming in the cooperative will pay so much. When you get above a certain saturation, they can pay the money into the cooperative for expanding the system or reducing charges.

Mr. COX. Would there be some chance, if you started a cooperative in one of these areas of reasonable size, that you could build up the set circulation to the point that, if the cost of operation of TV stations is reduced, you might create a situation where a TV station could go in where it couldn't if it had to go in cold and build up set circulation itself?

Mr. SHAPP. I believe that happened, frankly, in Victoria and in Clovis, N. Mex. They are getting enough sets there now so the risk of putting in their own station is reduced.

The CHAIRMAN. What about Walla Walla? There would be no chance for a cooperative there as long as the other fellow is there?

Mr. SHAPP. No. In these bigger cities it is entirely possible the cooperatives will not be practical anyway. It is too much money and too much bother. But, frankly, this plan is designed to bring it into the smaller communities. There it is. We can get the finances to wire up these big communities. It is in the small communities that, frankly, it is uneconomical for a man to invest his money, because he can't make enough out of it anyway, it is a big-risk deal, and it is lower cost for the people to pay out.

The CHAIRMAN. The Commission just ruled against the Bridgeport booster, didn't they?

Mr. SHAPP. Yes.

The CHAIRMAN. Do you think you are offering an alternative solution to that service?

Mr. SHAPP. Yes, sir.

The CHAIRMAN. In a town like Bridgeport?

Mr. SHAPP. Yes, sir.

The CHAIRMAN. Or Quincy?

Mr. SHAPP. My recommendation for Bridgeport at this time would be a translator—with 230 homes, and spread way out. If you say it is growing, it is possible that the people know this.

The CHAIRMAN. Quincy is good for this?

Mr. SHAPP. Yes, sir, for the peashooter and a cooperative deal on wiring, because the costs would much less than they would be otherwise, and the service would be far superior. This is a map of Bridgeport, by the way, an aerial photograph [indicating] which we took, which shows how sparsely settled the area is.

The CHAIRMAN. That is because of the dam construction. That is a little different case. Quincy is growing to be a solid community, and as the Columbia Basin lands come in, it will get bigger and bigger. It will be a long time, however, before it will be big enough to support a TV station.

Mr. SHAPP. That is correct. If the people in Quincy would want to, they could have TV on this principle starting tomorrow, by depositing $75—and the bank will put up $50 to his $25. He signs up, and gets service at less than $2 a month on a cooperative basis. We will take a contract on that.

The CHAIRMAN. Quincy is technically off the air right now, with the booster. The FCC would have to act on your application very quickly?

Mr. SHAPP. Yes, sir.

The CHAIRMAN. You think you offer the alternative—what they should do in Quincy? You use that as an example?

Mr. SHAPP. Yes, sir.

Mr. COX. Their time for comments closes on March 15 in that translator proceeding?

Mr. SMITH. That is right. Mr. Shapp's proposal will be part of those comments and will be filed right away.

The CHAIRMAN. When did you file your applications?

Mr. COX. Monday.

The CHAIRMAN. You are going to file it Monday?

Mr. SHAPP. We will file it Monday. We hoped to file it yesterday, but we got tied up.

The CHAIRMAN. I do not think the weekend will make much difference.

We are interested in this because it so happens that there is this problem in my own area—but it is equally true, I think, in many areas west of the Mississippi River.

Mr. SHAPP. The problem exists right now, out in your area, as how to get TV to these people because many of them have bought sets, have spent a lot of money on it, and it is necessary to fill the vacuum.

The CHAIRMAN. I think the problem you have is that you are in the nature of a common carrier under Government license, and, therefore, you have to be sure that you are giving the service that the people pay for.

Mr. SHAPP. Senator, was that a statement or a question, about the common carrier?

The CHAIRMAN. You are in the nature of a common carrier, aren't you? You are operating under a Government license, and coming into the people's homes like electricity, water, and all these other things.

Mr. SHAPP. We are a public service company.

The CHAIRMAN. As long as you are giving the people what they pay for, I do not think anybody would get mad about that. I think you would give them better service. I think that is your point.

Mr. COX. If it were set up on a cooperative basis there would be no problem of regulation at all, because there would be no profit by anyone.

Mr. SHAPP. There is no profit.

Mr. COX. If there were an override on costs, it would be applied to future costs to reduce carrying charges?

Mr. SHAPP. They might add another channel or do a lot of things. Maybe the cooperative some day will put the local TV station on the air. These things would be determined by the local group who formed the cooperative.

The CHAIRMAN. Yes. Out in my State, under our State laws, they can easily form these cooperatives.

Mr. COX. Would there be any chance, once you have beamed the converted signal down the mountain, to reconvert it down here and to broadcast it—not transmit it by cable—on another low V channel? Is the nature of some of these areas such that that could be done free of interference? At least, I suppose it would require an FCC license for it?

Mr. SHAPP. It would call for an FCC license also. I think you would have the problem of financing this, sir, because when there is a cable each person who gets a signal is getting it because he is connected to the cable. There is none of this passing the buck—"Let my neighbor do it, or let somebody else in town support this thing."

Mr. COX. The costs can be fairly distributed to all those actually benefited?

Mr. SHAPP. That is right.

The CHAIRMAN. The cable is connected right to the home. You don't have an antenna there at all?

Mr. SHAPP. No. The cable goes right in. There is a terminal board, like a telephone terminal, that goes in the wall behind the set. It is wired directly to the receiver. There is no antenna—no antenna or converter problems.

The CHAIRMAN. Let me ask you this question: What problem do you think you will have with the originating station? You have to get their permission to pick that signal up; don't you?

Mr. SHAPP. No, sir.

The CHAIRMAN. Why not?

Mr. SHAPP. We are providing an antenna service, and not a program service, and it is our contention—although I should let our attorney speak, I guess.

(Discussion off the record.)

Mr. SMITH. Our point, Senator, as to why we do not think it would be necessary to receive permission in this instance is that Mr. Shapp's peashooter idea is what one of his engineers called "the poor man's microwave." The telephone company, when it furnishes off-the-air pickup service of this variety, using microwaves for an antenna system, doesn't have to get permission from the broadcaster to do it. We are actually substituting a radio technique for a wire technique here. Our transmission is not in the nature of a broadcast, and therefore we do not think the provisions of the Communications Act prohibiting rebroadcasting without permission of the originating station would be applicable.

The CHAIRMAN. You would have to be very careful that when you pick it up you do not interfere with it in any respect, so that it comes out just the way you pick it up.

Mr. SMITH. That is correct, absolutely.

The CHAIRMAN. Because sometimes, in some of these cases—not in my State, but this happened down in Nevada—a booster operator started putting in his own local advertising. Of course, the advertiser wouldn't care in your case, because he is just getting bigger coverage.

Mr. SHAPP. The stations don't care, either, because they are getting better coverage.

The CHAIRMAN. I would think you would have to have permission from the station.

Mr. SMITH. We do not feel so. We may have a point that we have to clarify.

The CHAIRMAN. Don't you get permission sometimes?

Mr. SMITH. Only on an informal basis. We went into it this morning. Briefly, the stations, many of them, are not in a position to grant permission because they do not own all of the property rights—if they have any, once the signal is broadcast——

The CHAIRMAN. Some of them feel they can't delegate it.

Mr. SMITH. That is right. I do not want any misleading statements on the record, but generally the attitude of the broadcaster is, "We are happy to have the additional coverage that comes out of these systems." They cooperate, send their programs out so we know what is going to be on the air, but they say, "Go ahead and do it, and don't ask us for permission."

The CHAIRMAN. In other words, as I understand it, you have had no objection to date from the originating stations.

Mr. SMITH. We have had 4 or 5 objections in the 5-year history of the industry. None has ever been litigated.

The CHAIRMAN. What are they about?

Mr. SMITH. They challenge us as infringing their property rights in their broadcast programs. Whenever that question has arisen, we have had conferences with the people involved. Up to now we have never been taken to litigation on the question. We think an antenna does not infringe any property rights.

The CHAIRMAN. What would be the reason for objecting, basically?

Mr. SMITH. We are at a complete loss to understand.

The CHAIRMAN. Unless somebody wanted to be stubborn.

Mr. SMITH. They might feel they wanted us to pay them for use of their programs. I think the reason they haven't made a real issue out of it is that as a practical matter there isn't enough for it to create any problem for them. None of them have really demanded litigation.

The NARTB recently said that if any broadcaster wanted to litigate this problem, they would file a brief in support of the broadcaster in court, but so far it has not come to a legal issue.

Mr. COX. You mentioned that maintenance would be taken care of as part of this system. That, however, is maintenance of the system, of the amplifiers in the system, etc. It does not have anything to do with the maintenance of the individual set?

Mr. SHAPP. No. Our maintenance would go to the maintenance up to the wall behind the set, and the TV serviceman in the town would take care of the servicing of the set.

Mr. COX. Your installation charge is the charge for carrying the cable down to the plate behind the set, and it is not a charge the serviceman might make when he first puts the set in and puts it in operation?

Mr. SHAPP. That is correct.

The CHAIRMAN. In other words, you are an antenna service?

Mr. SHAPP. That is all we are. That is all we hope to be. We would like to extend this antenna service into many, many more communities throughout the country.

The CHAIRMAN. Well, I do not know—if you are not exclusive and are not interfering with anybody else's right to do what he wants to do—why you shouldn't be allowed to do it.

Mr. SHAPP. I hope so, too.

The CHAIRMAN. In other words, I have the choice. I can take you or leave you if I live in a given community. If I think you are not giving me the service I am paying for, I can drop the service and put up my own antenna.

Mr. SHAPP. Yes; or you can put up a translator. There is nothing to give an exclusive to the peashooter.

The CHAIRMAN. You are not interfering with anybody starting a local TV station?

Mr. SHAPP. Not at all. I sincerely feel, Senator, that this plan could be put into operation, with the approval of the FCC, and within a very short period of time you would have no more problems with blacked-out areas in the country. It would be covered.

The CHAIRMAN. Of course I want you to know I am giving you a curbstone opinion here. The FCC may have a lot of reasons why you should not be allowed to do this.

Mr. SHAPP. You may be on the curbstone, sir, and I am down in the gutter looking up. [Laughter.]

The CHAIRMAN. After all, I think you are contributing an idea, because what we are trying to do is get television to the small communities. We think they need it, we think they are entitled to it, and we want to do everything we can to pursue that goal. You are in effect contributing an idea as to the way in which you think it can be done.

Mr. SHAPP. That is correct.

The CHAIRMAN. Offhand, I say I do not know of any reason why they shouldn't allow you to do this, or give you the authority to do it, if you do not get into what Senator Duff mentioned—exclusiveness of right in a given situation.

Mr. SHAPP. I do not think we need it, nor would we want it.

The CHAIRMAN. Anybody can take your service or leave it.

Mr. COX. Is there a possibility that there might be services other than broadcast services that would be interested in these frequencies if the use you propose were not to be made of them?

Mr. SHAPP. There is no use for it at the present time. In fact, they are called the useless UHF frequencies.

The CHAIRMAN. As I understand it, you would be touching only frequencies that are not being used anyway?

Mr. SHAPP. They are not being used. They are up in space.

The CHAIRMAN. If there is any conflict, there are all sorts of frequencies left?

Mr. SHAPP. Yes, sir.

The CHAIRMAN. Well, thank you very much. Can you take care of South Carolina?

Mr. SHAPP. Well, it just so happens that in South Carolina we have got one.

The CHAIRMAN. Well, tell us about South Carolina. The Senator from South Carolina just showed up.

Mr. SHAPP. I happen to have my South Carolina salesman here. Jerry, do you want to take over and talk about South Carolina?

The CHAIRMAN. Senator Thurmond, he was talking about their plan to make television available to the smaller communities. They have what they call a community antenna system, which can be run as a cooperative or any other way they want to handle it. They put an antenna and a transmitter up on a mountaintop and bring the signals down and retransmit them on cables to the different homes. South Carolina is one of the places where you have kind of a rugged terrain, in spots, where they can't get television.

Senator THURMOND. The upper part of our State is rather hilly.

Mr. SHAPP. Here is an area in North Carolina and South Carolina [indicating on the map] where the red pins represents towns of one to five thousand population, and the green dots are over 5,000 population. These towns have practically no television today, and there is very little likelihood that they will.

Senator THURMOND. None of these towns have television?

Mr. SHAPP. That is right. They may have 10 percent saturation.

Senator THURMOND. You have some of those right by Columbia; haven't you?

Mr. SHAPP. Here is Columbia here—these are about a hundred miles from Columbia.

Senator THURMOND. Where you have got those pins would not be a hundred miles.

Mr. SHAPP. We have just put these in the center of the county. Actually, on a map of this size, we have made no attempt to pinpoint the exact town.

Mr. ZAPPLE. Why don't you have your salesman indicate the figures showing what communities do not have television?

Mr. SHAPP. We are getting the figures here now. We have the map of South Carolina, that shows the counties and shows the saturation of television.

Senator THURMOND. You will notice in the eastern part of the State there is Florence. They have a station in Jefferson County now.

Mr. SHAPP. This area here seems to be getting television [indicating].

Senator THURMOND. I mean the eastern part.

Mr. SHAPP. Down through here?

Senator THURMOND. No; that is the southern. Right along where you are now.

Mr. SHAPP. In Florence?

Senator THURMOND. They have a big TV station there now in Jefferson County.

Mr. SHAPP. They just went on the air. These figures are for December. They went on in February.

Senator THURMOND. They have a good station there.

The CHAIRMAN. That is the only one in eastern North Carolina?

Mr. SHAPP. No, these do not have television. Some of this area is getting it because the station just went on the air.

Senator THURMOND. This Florence station will go out for 75 miles.

Mr. SHAPP. It is possible most of these areas will get coverage from the Florence station.

Senator THURMOND. Florence will cover this whole area.

The CHAIRMAN. Yes, but your problem is up in those mountainous areas. They will have to have this system, or some other type.

Senator THURMOND. Greenville has some coverage in the mountains up there. They have one on a mountaintop, and Spartanburg will soon have one on the mountain.

The CHAIRMAN. That is what you are doing.

Mr. SHAPP. It is entirely possible there will be no need for a system of this type in that area.

Senator THURMOND. Charlotte, Greenville, and Spartanburg will take clear down to Columbia, and Florence and Charleston will take care of this area you have got shaded.

Mr. SHAPP. As the stations come on the air in some territories of this sort it is entirely possible that these pins will have to be pulled off the map. However, I might also add that there are a lot of places that are not shown on this map that actually do not have television, because these figures are based upon counties. You might have 1 city in a county getting television, which would raise the percentage of that county over 10 percent, and there might be some other outlying towns in the county who would not be getting any television.

Senator THURMOND. Savannah covers our area, too.

Mr. SHAPP. In the flat country, stations can get out quite a way.

The CHAIRMAN. I have no further questions, Mr. Shapp.

Senator THURMOND. I am glad you are interested in improving coverage. We can always use better coverage.

The CHAIRMAN. You get your application in Monday or Tuesday and we will inquire of the Commission what they think about it and hope that they act promptly on the matter—as promptly as possible, so that we can get some of these matters settled, because out in my State, now that they declared the boosters illegal, we want those people to get television, and maybe you have the solution. Maybe you have the answer. I don't know.

Mr. SHAPP. I think we have, sir, and we will certainly be glad to get out there and talk to the people and show them what we have. I think we can solve their problems.

The CHAIRMAN. I am sure the Commission will take a look at this proposal because it seems to me to suggest an alternative for some of the things they are discussing. However, they did put a great deal of emphasis on translators when they were here.

Thank you very much.

Mr. SHAPP. Thank you, sir.

The CHAIRMAN. We have no further witnesses today. We will leave the date open. The committee will resume at the call of the Chair.

(Whereupon, at 3:10 p. m., the committee adjourned.)

TELEVISION INQUIRY

WEDNESDAY, MARCH 14, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to notice, at 2 p. m., in room P-63, United States Capitol, Senator John O. Pastore, presiding.

Present: Senators Pastore (presiding) and Purtell.

Senator PASTORE. The hearing will come to order.

Before hearing from the first witness, there is a statement that I am going to make for the record.

We are resuming hearings this afternoon on the UHF problem and the general question of allocations. Before calling our first witness, there are a number of items to be placed in the record.

1. Letter dated March 6, 1956, from Paul M. Butler, Chairman of the Democratic National Committee, to Senator Magnuson, regarding his request to the major television and radio networks for time for a reply to President Eisenhower's announcement of his willingness to run for office again. Mr. Butler sugests that the committee ask the networks to explain their refusal of equal time. Senator Magnuson has asked me to announce that he hopes the networks will give careful consideration to the issues raised in Mr. Butler's second telegram, and to state again that questions regarding political time will be gone into at a later date.

2. Letter from Richard S. Salant, chairman of the television transmission tariffs committee of the National Association of Radio and Television Broadcasters, clarifying the status of that committee's study of the reasonableness of the telephone company's charges for intercity relays and correcting any misunderstanding that might have arisen as a result of the testimony of Mr. McConnaughey on February 21, 1956, to the effect that the industry had studied such rates and they were likely to go up.

(NOTE.—This letter should be read in connection with Mr. McConnaughey's testimony, pt. I, p. 181. See also letter from Mr. McConnaughey dated March 23, 1956, with regard to this matter, which is printed at p. 785.)

3. A further statement by J. E. O'Neill, of Station KJEO, Fresno, Calif., supplementing his statement filed March 2, 1956, and pointing out that, as he had prophesied, when his application for a stay holding in abeyance the grant of a V in Fresno pending appeal was denied, he was immediately notified by CBS that it was canceling his affiliation contract effective next June, when it is expected that the V station will be on the air.

4. Letters from (a) the National Grange and (b) the National Council of Farmers Cooperatives opposing any reduction in television service to rural areas.

5. A letter from the National Legislative Committee of the American Legion, forwarding a resolution of the national executive committee of the American Legion on continuation of free television broadcasts in the interest of hospitalized veterans.

(NOTE.—Pursuant to later request by said committee, this letter is printed in connection with other material relating to subscription television and will be found at p. 1054.)

6. Petition addressed to Senator Wayne L. Morse by a group of residents in Scottsburg, Oreg., urging licensing of television reflectors.

7. Two letters from UHF station operators, (a) Leo B. Keegan of station WNLC of New London, Conn., and (b) O. E. Richards of WFAM-TV, Lafayette, Ind.

8. Statement of Stewart Watson, president of Monona Broadcasting Co. of Madison, Wis.

(NOTE.—See, in connection with this statement, the counterstatement of Arthur W. Scharfeld on behalf of Radio Wisconsin, Inc., of Madison, Wis., printed at p. 749.)

(The matter referred to is as follows:)

ITEM I

DEMOCRATIC NATIONAL COMMITTEE,
Washington, D. C., March 6, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee,
Washington, D. C.

DEAR SENATOR MAGNUSON: Immediately upon the announcement that Mr. Eisenhower again would be a candidate, I dispatched the following telegram to each of the major television and radio networks:

"Since Mr. Eisenhower has requested and received all radio and television networks tonight to discuss his candidacy for reelection, I respectfully request, in keeping with established procedures, equal facilities for the Democratic Party. Kindly advise at your earliest convenience."

This request was promptly rejected by all four of the networks. I sent a second telegram, as follows:

"I have received your refusal to provide public service time to the Democratic Party to balance the time which was given to Mr. Eisenhower's political address last night. May I respectfully suggest that you reconsider your arbitrary decision, which appears to have been based upon the advice of your lawyers that we have no legal recourse to force you to grant fair treatment to the Democratic Party. In support of my suggestion that you reconsider your decision, let me cite these facts:

"(1) Mr. Eisenhower's address was political. He spoke as a candidate. He outlined his program. His radio and TV talk produced such headlines as that in the Washington Post this morning: 'Ike opens 2d term drive in TV talk,' and that in the Washington Evening Star today: 'President launches his campaign.'

"(2) My request for time for the Democratic Party was based not upon legal grounds but upon the moral responsibilities of the networks to give the same treatment to both political parties. I contend that when the President makes a political talk, which is carried by the networks without charge, the other party has a moral right to an equal amount of free time.

"(3) Your position that your network has no obligation to give the Democratic Party equal time when free time is given to the President for a political talk sets the precedent that the President can campaign free of charge from now to the convention. The only opportunity open to the Democratic Party to obtain equal airing of its views would be to purchase expensive time. Such a situation would constitute, I must point out, a corporate contribution of hundreds of thousands of dollars to the Republican cause.

"(4) Some representatives of the networks are currently seeking for a relaxation of present laws which are designed to protect the parties and their candidates from arbitrary favoritism by the networks. It is argued that the networks can be trusted to act fairly without the force of law to compel them to do so. Your action today seems to me to greatly weaken the case for relaxation of the existing rules.

"(5) If the networks persist in the position that the Democratic Party can expect fair treatment only when there is a law to compel fair treatment, I feel confident that the Congress will want to explore this problem fully and take whatever steps the Congress deems necessary to assure fair treatment to both major political parties.

"In conclusion, I should like to suggest that the clear legislative intent of the Congress has been that networks and the member stations which our Federal Government licenses are intended to serve all of the people, not merely whatever party may happen to be in control of the executive branch. Your action today seems to me to be in clear violation of the spirit of the present law and the intent of the Congress. Your action today does not merely deprive the Democratic National Committee of an opportunity to present the views of the Democratic Party: It also deprives the millions of Americans who belong to the Democratic Party of the right to hear from their leadership—a right which you gave last night to the millions of Americans who are Republicans. In the name of fair play, I call upon you again to reconsider your hasty decision."

In response to the second telegram, the Mutual Broadcasting System offered equal time on March 7 from 10 to 10:20 p. m. to a Democratic spokesman who is not a candidate for public office this year.

I respectfully suggest that you might want to consider asking the presidents of the other three networks to appear before your committee and explain in detail for you their refusal of our request for equal time.

I will advise you further as soon as these networks have replied to our second telegrams.

With warm personal regards, I am

Sincerely,

PAUL M. BUTLER.

ITEM 2

NATIONAL ASSOCIATION OF RADIO AND TELEVISION BROADCASTERS,
Washington, D. C., March 7, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: It has come to my attention that on February 21, 1956, the Honorable George C. McConnaughey, Chairman of the Federal Communications Commission, in testifying before your committee concerning the American Telephone & Telegraph charges for intercity television transmission, stated (mimeographed transcript, p. 552):

"I think we might tell you they are very apt to go up. The television industry has made a very close study of it at a number of conferences which were had, and I think from the standpoint of costs they are apt to go in the opposite direction."

While Mr. McConnaughey's statement concerning the "television industry" and its views concerning television transmission tariffs is not wholly clear, this testimony has given rise to considerable misunderstanding concerning the status of a study currently being conducted by a committee, established by the National Association of Radio and Television Broadcasters, and known as the Television Transmission Tariffs Committee, of which I am chairman. Accordingly, I am writing this letter in order to report on the status of this committee's study.

The Television Transmission Tariffs Committee was established by the Television Board of Directors of the National Association of Radio and Television Broadcasters at a meeting of the board, January 26, 1955. To quote from the resolution, it was "created for the purpose of investigating the reasonableness and validity of common-carrier tariffs relating to intercity relay filed with the FCC." After preliminary organization meetings, the committee met on March 21, 1955, and April 7, 8, 1955, with representatives of American Telephone & Telegraph. It soon became apparent, as a result of these meetings, that a determination of the reasonableness of A. T. & T. intercity television transmission charges was exceedingly complex and that the committee could itself reach no conclusions. Accordingly, on May 5, 1955, the committee recommended to the National Association of Radio and Television Broadcasters that, because of the complexity of the issues, and their transcendent importance to the industry, a fund be raised from voluntary contributions by television stations and networks, in order that outside experts could be retained to make a comprehensive study of the A. T. & T. rates and the basis therefor. A copy of the committee's report and recommendation to the NARTB is attached hereto.

The NARTB approved the committee's recommendation, and the stations and networks have contributed in excess of $50,000. The law firm of Cravath, Swaine & Moore, New York City, has been retained to make the study recommended and to report to the committee, and the industry concerning the basis of A. T. & T.'s rates, its costs, and the reasonableness of the rates. The law firm is now only in the earliest stages of its study, and is currently seeking to obtain necessary information from A. T. & T. Because some questions have arisen concerning the information which Cravath, Swaine & Moore have requested of A. T. & T., a meeting between the committee and A. T. & T. representatives is scheduled for March 16, 1956.

It is apparent from these facts, therefore, that the question of A. T. & T.'s charges and costs is now under intensive, but still very preliminary, study by the television industry. Certainly, no conclusion, tentative or otherwise, has been reached by the committee, or the television industry, that A. T. & T.'s costs have risen or that any rate increase is warranted.

In order that there be no misunderstanding about the work of this committee, to which the television industry has so generously contributed in both confidence and funds, we would appreciate your placing this letter in the record of the current hearings of your committee.

Yours very sincerely,

RICHARD S. SALANT,
Chairman, Television Transmission Tariffs Committee, National Association of Radio and Television Broadcasters.

RESOLUTION BY THE TELEVISION TRANSMISSION TARIFFS COMMITTEE, WASHINGTON, D. C., MAY 5, 1955

Whereas the issue of tariff rates is of transcendent importance to the whole structure of the television broadcasting industry, and a rate increase might have disastrous consequences to that structure; and

Whereas it appears from the subcommittee report that it is extremely difficult to reach a conclusion as to whether present tariff rates are reasonable or unreasonable; and

Whereas a proper approach to the resolution of the problem would be very costly and time consuming, involving the engagement of outside experts and the expenditure of several hundred thousands of dollars, even without litigation; and

Whereas because of the difficulties described in the subcommittee report, the committee can give no assurance that an expenditure of as much as half a million dollars would result in action which would either reduce or even maintain present rates; and

Whereas since the establishment of this committee and the preparation of the subcommittee report, the A. T. & T. has postponed a rate increase for 6 months; and

Whereas this 6 months' period provides the opportunity for additional organizational and preparatory efforts: Therefore be it

Resolved (as a recommendation to the TV board of the NARTB), That an all-industry committee be formed; and that this all-industry committee take all steps necessary and desirable to assure the availability of funds and expert judgment to resist any requested rate increase; and that this all-industry committee meet regularly in order to keep informed of the situation and to keep the public and the industry apprised of the current status of A. T. & T. intercity video rates.

ITEM 3

FURTHER STATEMENT OF J. E. O'NEILL, STATION KJEO, FRESNO, CALIF.

Mr. Chairman and members of the committee, my name is J. E. O'Neill, and I am the operator, through the O'Neill Broadcasting Co., of UHF television station KJEO at Fresno, Calif.

On Friday, March 2, 1956, my statement regarding the deintermixture situation at Fresno, Calif., was filed with this committee and inserted in the record. In that statement I referred to the fact that UHF station KJEO at Fresno was in immediate danger of losing its CBS affiliation to the newly granted VHF station; that all of our requests to the Federal Communications Commission for relief had been turned down; that we had sought review in the appellate court of the Commission's action in making the VHF grant in an all-UHF community, and that the matter was now pending in the court. I pointed out that in similar cases the court had indicated that such matters were the responsibility of the Commission. The court in that case had said, "If extinction of UHF stations results from the Commission's policy and actions, the responsibility must lie at the Commission's door."

What I stated in my former statement that I feared would happen has, in fact, happened.

On Friday, March 2, 1956, the date of the presentation of my previous statement, the appellate court denied our application for a stay order to hold the VHF grant in abeyance pending a final determination by the Commission and the courts. This means that the VHF station can now undertake construction. Within several hours of this decision I received notice from CBS of cancellation of KJEO's affiliation agreement, effective in June of this year, by which time it is estimated the construction of the VHF station will be completed.

Thus, after 2½ years of service to the community and an investment of over $600,000 and great effort and money in building up a UHF listening audience, we now face extinction because the Commission has permitted the injection at this time of a VHF station in a UHF community. While we suffer the loss of the network and face possible loss of our station and investment, the public interest will suffer even more in the possible creation of a one-station VHF community. You are familiar with stories of other UHF stations in the same situation.

Only quick and decisive action by this committee and by the Commission can stave off the disaster which we, as well as the other stations, face in attempting to operate against the unfair competition of a VHF station. This relief must come within the next few months, either by way of definite deintermixture of UHF communities or of the drop-in of VHF channels for the use of stations such as ours.

As I stated in my earlier statement, the facilities provided must be on a competitive basis. It has already been amply demonstrated that lack of equal or competitive facilities in a market leads to the curtailment of service and the denial to the public of free choice in the selection of programs. This committee and the Commission should immediately take proper steps to make communities such as Fresno either all-UHF or all-VHF; otherwise, there will be complete obliteration of UHF stations—the very real future we now face in Fresno unless prompt relief can be brought us.

Respectfully submitted.

J. E. O'NEILL.

March 6, 1956.

ITEM 4 (A)

THE NATIONAL GRANGE,
Washington, D. C., March 5, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: As an organization representing nearly 1 million farm people, the National Grange is vitally interested in the hearings inquiring into television problems now being held before your committee.

Your committee is fully aware of the fact that farmers and other rural people depend more on radio and television, where it is available, for entertainment, news, information vital to the conduct of their business and cultural and educational material than do the citizens of our country residing in large cities. This is obviously so because they live in remote areas and do not have readily available to them the many sources of news, education and culture that are available to the inhabitants of our cities.

The last annual meeting of the National Grange was held in Cleveland, Ohio, in November of last year, and at that meeting the following resolution was unanimously adopted:

"The Grange, realizing the growing importance of television, opposes any action by the Government which would in any way reduce existing television service to rural areas or would prevent maximum expansion of service to the areas."

We understand that a number of witnesses appearing before your committee, speaking principally on behalf of UHF station operators, have urged upon you changes in our national television allocation plan which, if adopted, would unquestionably accomplish exactly the contrary to the objectives set forth in the above-quoted resolution. We do not question the sincerity or good faith of those making the suggestions, but simply to state them makes it obvious that they would reduce existing television service to rural areas and would prevent expansion of such service. For example, we have in mind such proposals as to reduce the present limits of power; reduce the present limits of antenna heights; reduce the presently required mileage separations between television stations; and the confinement of television stations to their home communities.

We have been instructed to oppose vigorously any action by the Government contrary to the objectives set forth in the above-quoted resolution, and we intend to carry out these instructions.

We request that you make this letter a part of the record of the hearing now being held by your committee.

Respectfully,

HERSCHEL D. NEWSOM,
Master.

ITEM 4 (B)

NATIONAL COUNCIL OF FARMER COOPERATIVES,
Washington, D. C., March 8, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: We have noted with considerable concern some of the views expressed during the hearings currently being conducted by the Committee on Interstate and Foreign Commerce relative to proposals directly affecting television broadcasting.

The National Council of Farmer Cooperatives wishes to take this means of registering with the committee its strong protest against any action by the Government which in any manner would reduce existing television service in rural areas, or which would prevent further expansion of television service in the future.

The National Council is a national organization of farmers' marketing and purchasing associations which represents some 5,000 farmer cooperatives serving a membership of nearly 3 million. The council for many years has recognized the dependence of farmers upon radio, and more recently upon television, not only as a source of entertainment but also as a working tool which makes available to them timely reports on weather and market conditions and other valuable information needed in efficient farming operations. Since the range of television broadcasting is more limited than that of radio, television service to rural areas is even more restricted than radio service. For this reason, we vigorously oppose any actions which would reduce this service; and we strongly urge, instead, that the committee give consideration to steps which will improve rural television service.

On a number of occasions in the past, the National Council has testified before or has filed statements with the committee. Our special interest in communications stems from the fact that the people we represent live in small towns and rural areas. Because they are more isolated than urban residents, their need for the best possible communications service is substantially increased.

While our interest in adequate television service for rural areas is deep rooted and we have some understanding of the general principles of broadcasting, we lay no claims to being experts in the technical aspects of broadcasting. It is apparent, however, that some proposals advanced to the committee and also to the Federal Communications Commission would result in depriving many farm people and small-town residents of some of the television service which now is available to them. It appears such proposals also would hamper the most equitable distribution of television service in the future.

Any congressional or executive agency action which would deprive the Nation's farmers of badly needed television service in order to bring additional service to large urban centers would not be in the best interest of agriculture. We respectfully recommend that members of the committee keep uppermost in their minds the needs of those farmers who are relatively far removed from other sources of information and entertainment and who, therefore, deserve the best possible television service on the most economical basis.

We request that this communication be made a part of the record of this hearing.

Sincerely yours,

HOMER L. BRINKLEY,
Executive Vice President.

(NOTE.—Item 5, as indicated, is printed at p. 1054.)

ITEM 6

MARCH 2, 1956.

Hon. WAYNE L. MORSE,
United States Senate,
Washington, D. C.

We, the undersigned, all residents of the community of Scottsburg, Oreg., wish you to continue in your position for licensing or regulation by the Federal Communication Commission of the various community flash television systems, similar to our community system.

By voluntary contribution we have erected an antenna, and purchased and are operating a booster unit, which rebroadcasts the TV programs. Our system has been inspected by a FCC representative, who stated that our present method is the only way we could have television in Scottsburg. He further stated that the FCC is contemplating increasing the frequencies into the 70 and 80 category, which change would eliminate our reception, since our system can only operate on a low frequency, we having to convert from a 13 down to a 3 frequency.

The population of the Scottsburg area, able to be served, is about 400, and since the operation of our community flash system the sets number close to 200. Prior to the installation of the system there were but 14 sets in the area.

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Our situation is identical to numerous other small communities through the State, and probably the Nation, which can only avail themselves of television by utilization of the type of equipment we are operating. The neighbor towns of Drain and Elkton are receiving television via flash systems. If we are to be deprived of such privilege through Federal regulation, we will have lost television indefinitely.

Any further information desired will be readily and eagerly furnished.

Members of Scottsburg Community Television (represented by Howard Ruben, R. B. Smith, Scottsburg, Oreg.): Clarence W. Miller, William Juniewicz, Robert Parsons, Robert J. Jackson, Edwin J. Romberg, R. J. Dietrich, J. B. Tharp, Althea Priem, Mrs. Dale R. Waddell, Mrs. Merle Vertheen, Mrs. Harvey Bishop, Mrs. Henry Priem, Edward H. Stauffer, Jack Galinger, Kenneth H. Thayer, Claude Jorgeneen, Merle R. Vertheen, Paul Winters, Chas. M. Cory, Mrs. J. G. White, S. B. Hendrix, N. F. Krebs, Paul W. Jackson, Carl B. Wilcox, S. G. Robbins, Howard Reuben, Dorothy Workman, W. R. McDonald, Arlene L. Cook, Andy J. Mackey, Eunice Hedden, Mrs. Lee Mathews, Fannie L. Smith, R. B. Smith, Art Smith.

ITEM 7 (A)

THAMES BROADCASTING CORP.,
New London, Conn., March 5, 1956.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: I am extremely grateful for your kind letter of February 13.

Because of a recent illness, I have been away from my office and will be unable to attend the current hearings to which you made reference.

The purpose of my letter to you, dated March 30, 1955, was to point up the multiple failings and gross inadequacies of the existing television allocation. In reviewing that letter, I find that its contents are as applicable today as they were at that time.

However, all of us within the industry have taken heart from your own unflagging efforts to effect remedial action, and there is mounting hope that at long last a new or greatly modified allocation will be a direct consequence of the present hearing.

In lieu of personal testimony, may I humbly request that my letter of March 30, 1955, be entered into the official records of the current hearing?

And, once again, please accept my thanks for your attention and for the sincere effort you are making to establish a fair, feasible, and farsighted television allocation to correct the inequities, physical faults, and myopic limitations of the present allocation.

For your convenience, I am enclosing a copy of my original letter.

Respectfully submitted.

LEO B. KEEGAN,
Commercial Manager.

THAMES BROADCASTING CORP.,
New London, Conn., March 30, 1955.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: As chairman of the committee investigating various phases of our industry's ills, you are doubtless being buried under a barrage of material concerning the UHF question—pro and con. At the risk of adding further to your mail burden, I wish to comment on the recent editorial contained in the March 14 edition of Broadcasting-Telecasting, entitled, "Another Freeze." Such an article might well go unnoticed and unchallenged, except that this magazine poses as the industry's leading publication, and some of the remarks made seem calculated to scare certain individuals and groups which are vitally concerned with the problem.

The following statements in this editorial are open to argument:

The statement

1. "It should be evident that neither UHF nor VHF, standing alone, can provide optimum, saturation, service."

The argument

While it is true that VHF, standing alone, as it is presently allocated, cannot render such service, it has never been proven that VHF, with proper mileage separations, directional antennas, low-power transmitters, etc., cannot do the job—or at least, a much better job than both VHF and UHF are now doing.

The statement

2. "The FCC should forget about schemes that would artificially curtail or eliminate service. The 'public-interest' yardstick should be reason enough."

The argument

In the light of present-day conditions (not applicable when the present allocation was conceived), serious doubt exists as to whether the public interest is being served, presently, by the existing VHF allocation.

The statement

3. "More than two dozen (VHF permits) previously authorized have been turned back. The reasons are economic. And so it is with UHF."

The argument

This tendency to compare UHF economic difficulties with VHF financial troubles hardly deserves an answer. The theory that the two are in any way comparable was expunged, very effectively, during the Potter subcommittee hearings last year. Only the completely gullible, or the wholly uninitiated, could still subscribe to this theory. (And Sol Taishoff falls into neither of these two categories.)

The statement

4. "And so it is with UHF. There are quite a few UHF stations that not only are not complaining, but wish the breast beating would cease. They are doing well even with VHF competition." * * *

The argument

One cannot help but wish that these UHF stations which are doing so well, would come out into the open. Best available information seems to indicate that, for every UHF breaking even, or better, there are 10 UHF's in the red. Most UHF operators hope for a better fate for UHF, through new rulemaking, or legislation, or both. But, how long can UHF, as a whole, survive, on this structure?

The statement

5. "First Storer, and now NBC acquires its second UHF station, while CBS is surveying the field for its second. This certainly supports the theory that UHF is technically adequate."

The argument

The acquisition of 1, or 2, UHF stations, by the big powers is not, per se, indicative of an improved future for UHF. Many specious explanations might be advanced for their sudden interest in UHF. Suffice to say, however, that, if a millionaire possesses 5 Cadillacs, 6 Packards, 4 Lincolns, and 2 yachts, he might not be adverse to acquiring a hot rod, for his backyard.

The statement

6. "Meanwhile, the FCC would be well-advised to stick to its assigned task of allocating channels, both VHF and UHF, consistent with the demand and with its rules."

The argument

This contention that everything should be left as is, and the present allocation unchanged, or never modified—in short, a "status quo is, of course, the nub of the whole question. This theory is not, necessarily, in the "public interest," but is definitely in the interest of the networks; the big magazines and newspapers; and the big equipment companies, who collectively control 75 percent of the existing VHF stations.

The statement

7. "It is not the function of Government to wet-nurse citizens who venture into unfamiliar fields unprepared to weather the red-ink stretch, as did all of the pioneer VHF's. Broadcasting epitomizes free, competitive enterprise, and the risks it entails."

The argument

That a publication which ostensibly represents the entire broadcasting and telecasting industry could present such as unilateral argument as this, couched in such unsavory language, is hardly commendable. Further, the assumption that all UHF station owners are in "unfamiliar fields" just isn't so. Unless, of course, you completely segregate the television industry from the radio industry. In a sense, all television station owners are in "unfamiliar fields," since the industry still is less than a decade in age.

Far be it from this writer to suggest any course of action to the FCC, as does Broadcasting, or to any individual, such as yourself.

Simultaneously, certain truths anent the television industry, are self-evident, such as:

1. UHF as a whole, was a failure in 1953.
2. UHF as a whole, was a failure in 1954.
3. Judging by the mortality rate, UHF still is a failure in 1955.
4. It will also be a failure well into the foreseeable future, under present conditions.

Measures, such as "all channel sets," "pay-as-you-go" TV, tax-free legislation, etc., all come under the heading of "partial helps" and, also, I fear, "Too little, and too late."

Actually, and frankly, there is no overall cure or even any effective remedial help, in sight for UHF. For this reason, it would seem only logical to point out that the present VHF allocation should not be considered an an unchangeable assignment—nor a pattern to be unmarred by modification.

In justice to everyone, continuing consideration should be given to the following VHF changes, consideration commensurate with the past, present, and future, mortality rate of UHF stations:

1. Lowering of mileage standards for cochannel, and adjacent-channel, VHF stations.
2. Directional antennas, where necessary, to bring this about.
3. Adjustment of power, and adjustment of antenna heights, where necessary, based on present-day conditions.
4. Serious, continuous consideration for use of certain FM bands for TV; conversion to be based upon practical, realistic, application of these bands, in the light of present-day conditions, consistent with the public interest.

It is understandable, of course, that any proposal to change, or modify, the present VHF allocation, runs afoul of powerful financial opposition. One has only to bear in mind the ownership of the present VHF station lineup, to realize that the job almost seems insurmountable. Nonetheless, it is a decision that will have to be made—this year, next year, or some year—when Congress will, at long last, feel the moral obligation to establish a truly competitive television industry in this country.

As of late last year, the VHF station lineup shaped up, thus (some changes have taken place since then, but these do not alter the general VHF alinement):

1. Excluding Texas (left out because its vast terrain, and large number of VHF stations, throw the whole picture out of focus) only about 60 stations (in 47 States) were privately owned. All the remaining VHF's were owned by one of the following groups:
   1. NBC.
   2. CBS.
   3. Big newspaper or big magazine publishers.
   4. ABC-Paramount.
   5. Dumont network.
   6. MBS.
2. Of the approximately 60 stations listed above as privately owned, the following owners were included:
   1. Westinghouse.
   2. General Electric.
   3. Philco (has since disposed of its VHF properties).
   4. Stromberg-Carlson.

The conclusion? Just about 75 percent of the VHF stations in 47 States were owned by big corporations which collectively control all 4 networks, many large newspapers, and most of the communications-equipment companies.

Speaking of public interest, do you think that, if the public were ever really aware of this situation, there would not be a public clamor?

In short, may I humbly suggest that—

(1) Weighty, continuing consideration be given to the UHF plight.

(2) The door to a possible new VHF allocation, or possible modification of the present allocation, not be slammed shut.

It is not a question of the country, or the advertising industry, being unable to support more television stations. The ever-increasing millions of advertising dollars annually pouring into the television industry—now in its second billion annually (time and talent)—prove beyond doubt that the country, the economy, and the advertising industry could well support over a thousand television stations—provided, of course, there is some fairness to the allocation, and adequate power and engineering are made available to all.

It is a sad commentary to relate that America, with the world's strongest economy, the world's No. 1 advertising industry, and, what should be advertising's strongest medium—television—is able to adequately support only a few hundred television stations. It is a matter of simple mathematics to realize that countless thousands of workers—television station employees, and agency folks, additional network people, writers, actors, and others—are being denied a livelihood in advertising, solely because the big interests block any and all attempts to challenge the present VHF allocation.

Respectfully submitted.

LEO B. KEEGAN,
Commercial Manager, Station WNLC.

ITEM 7 (B)

WFAM–TV,
Lafayette, Ind., March 8, 1956.

Senator WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: While I did not testify, I did attend the UHF-VHF hearing before your committee on February 27 and 28, and, according to our understanding, all of the information and all of the witnesses' testimony would be sent each of you gentlemen for study and action.

We are a UHF station owner and have been in operation since June 1953. We feel that the FCC encouraged us to go into this business, and we feel also that they should offer recommendations and encouragement of the continued operation of the UHF spectrum, its use making possible the only complete national television coverage for the United States today. Without it, we will find a monopolistic, high-powered, high-towered situation similar to that of the WLW AM station when they operated at 500,000 watts in Cincinnati and were reduced to 50,000 watts in 1938.

We urge your committee to bring pressure to bear upon the FCC to see that a definite and reasonable solution is offered to the faithful UHF operators who have invested their life savings and struggled with this medium for 2 to 3 years with no return or even a word of encouragement from the FCC for the last 2 years.

Very truly yours,

O. E. RICHARDSON, *President.*

ITEM 8

STATEMENT OF STEWART WATSON, PRESIDENT OF MONONA BROADCASTING CO., PERMITTEE OF TELEVISION STATION WKOW–TV, MADISON, WIS.

I am president of Monona Broadcasting Co., which operates television station WKOW–TV on UHF channel 27 in Madison, Wis. This statement is being filed in order to document this record with further proof of how the Federal Communications Commission is shuffling its processes so as to favor the VHF stations, and so as to kill off the UHF by delay, by inaction, and by the use of administrative sleight of hand.

Monona Broadcasting Co. was formed in 1946 in order to provide the people of Madison and the surrounding area with a new outlet for local self-expression and for advertising through radio. We are composed of over 100 stockholders, over 95 percent of whom reside within our service area. Not one of us owns more than 11 percent of the stock of this company. We are justly proud of the radio service which we have made available to our community and area since the formation of Monona Broadcasting Co.

In 1952, we applied for and received a construction permit for UHF channel 27 in Madison. We made the application based upon our understanding that UHF and VHF stations could coexist in the same community. We based this understanding upon the expert opinion of the Commission to this effect, as explicitly stated in its sixth report and order. We built our station expeditiously and we have been on the air since July 9, 1953. We believe that we have rendered an excellent service to Madison and to its surrounding area. We base this belief upon the acceptance of our station by the viewers, by the community service agencies, and by the advertisers.

Early in 1954, it became evident through the cessation of operation of many UHF stations throughout the country, that the purported competitive quality of UHF and VHF stations was not actually feasible. This was proved beyond peradventure of doubt by the voluminous testimony and evidence presented to this committee in hearings before Senator Potter's Subcommittee on Communications. We, therefore, in August of 1954, petitioned the Commission to "deintermix" Madison by allocating VHF channel 3 to the educational station, and by making the educational channel commercial. It should be noted that we did not propose the deletion of any channel from the area—nor did we lessen the number of channels from which service could be obtained. This proposal, we told the Commission, would place all three of the commercial UHF channels upon an equal competitive basis. It would permit all three to compete for the viewer, for the advertiser, and for a network on the basis of service and of excellence of performance. Our petition was denied by the Commission on the grounds that applicants for the VHF channel had already spent time and money pursuing the assignment. The effect on the area, and on the public interest, was not even considered by the Commission in denying our petition.

Shortly thereafter, this committee again considered the plight of the UHF stations and its minority counsel indicated the need for exploration of all avenues in order to assure a nationwide competitive television system. Selective deintermixture was one of the methods suggested and the committee's counsel pointed out to the Commission that private interest considerations alone were insufficient to preclude the adoption of such relief.

In February of 1955, we resubmitted our petition to deterintermix Madison. This time the Commission initiated rulemaking proceedings looking toward the deintermixture of Madison, and requested us and the opponents to the proposal to produce voluminous evidence on all of the pertinent points involved.

We went through a long, involved and expensive proceeding. We submitted to the Commission evidence concerning the beneficial effects of deintermixture. We proved to the Commission, through competent evidence, that no area would be deprived of television signals should the deintermixture proposal be adopted. We committed ourselves to increase the height of our antenna and the power of our signal in order to fill in any possible gaps in service, should the area be deintermixed.

Many months after the hearings were concluded, the Commission issued a decision which refused to pass upon the merits of our petition. At the same time, we were shunted off into still another proceeding where, allegedly, our proposal would be considered again. This proceeding is still pending and the date of its determination, in the words of the chairman before this committee, cannot be foretold. However, in the intervening period, the Commission granted the pending application for VHF channel 3 in Madison, thus opening the way for immediate intermixture of the Madison area.

The effect of such an action upon the public interest was pointed out in detail in the proceedings before the Commission. The effect of intermixture need not be detailed again before this committee. The story has been told too often and too forcibly to require repetition. As a practical matter, while continuing to delay and to stall, the Commission effectively dug the grave for UHF service in the Madison area. In addition, it has clearly indicated to this committee and to the television industry that it is more perturbed about the private interests of VHF applicants than about the type of service to which local communities may look forward to obtaining, and to means which would lead to the fulfillment of a national competitive television plan.

Specifically, I would like to answer one statement made by Commissioner Doerfer to this committee. The inference was raised that in Wisconsin some 50,000 people might be deprived of television service if the VHF grant in Madison were not made. We have presented specific facts to the contrary. We offered to the Commission to make a house-by-house canvass of the areas in question in the event the Commission was not satisfied with the studies already completed. But all this to no avail. Our proof has not been considered by Commissioner Doerfer, and obviously he is willing to make an unsubstantiated prediction in the face of the evidence of record, and despite the reluctance of the Commission to rule upon such record.

We have taken every possible step open to us to have the Commission consider the effect of intermixture on the Madison area. We allege, and we are ready to prove, that this effect is detrimental to the public interest. We are fortunate in that, in this instance, the public interest, and our own private interests, coincide. But the action we urge be taken by the Commission is not in order to preserve our position, but in order to meet the overall public needs.

We are in court at the present time in the pursuance of this effort. We feel that it would not be proper for us to attempt to try the pending court case before this committee. This we are not trying to do. We are merely presenting to the committee additional evidence of the Commission's willful disregard of the public interest while it pursues its own bent to aid the already powerful VHF interests to the detriment of the public good.

I respectfully request this committee to require the Commission to take prompt action upon the needs of the viewing public, while there still is some possibility that UHF and all that it represents may be saved. I request this committee to admonish the Commission to preserve the status quo in Madison until such time as the Commission has made its final decision as to what action it will take with respect of the allocation of television channels. To do otherwise is to prejudge the very matters the Commission is allegedly considering in the pending rule-making proceedings.

The Chairman of the Commission once advised the committee that the Commission would take no steps which would further confuse the intermixture question. The Commission has not lived up to those representations. It is respectfully submitted that, unless the Commission does so, UHF will be dead and any prospect for a nationwide competitive television system will have died with it.

Senator Pastore. Our first witness this afternoon is Mr. John Englebrecht, WTVK, Knoxville, Tenn.

You may proceed, Mr. Engelbrecht.

STATEMENT OF JOHN ENGELBRECHT, WTVK, KNOXVILLE, TENN.

Mr. Engelbrecht. Mr. Chairman and members of the committee, my name is John A. Engelbrecht. I am president of South Central Broadcasting Corp., owner and operator of UHF television station WTVK, Knoxville, Tenn.

My statement is in the form of this petition which I am submitting to this committee at the present time with the intent of saving time. I will summarize some of the details in connection with the statement rather than read it completely.

Senator Pastore. Well, let's do it this way, Mr. Englebrecht, if it meets with your approval. And I want to thank you for that consideration, because we have quite a number of witnesses. We will order that your statement be included in the record at this point in its entirety. And you may summarize your statement as you wish.

(The statement of John A. Engelbrecht follows:)

In submitting this brief statement for your consideration in connection with your investigation of UHF-VHF allocation matters, it is my hope that I can make clear to you the pressing problem of economic survival which confronts WTVK as a UHF station in a multiple VHF market where it must compete with two

VHF stations. The problem results from intermixture of one commercial UHF channel with two VHF channels. It is submitted that the inequitable situation which exists in Knoxville can be readily eliminated through deintermixture in accordance with any one of several proposals presented to the Federal Communications Commission .

Under the Commission's present table of assignments (sixth report and order) VHF channels 6 and 10 and UHF channels 20 and 26 (with 20 reserved for educational use) are assigned to Knoxville, Tenn. WTVK operates on UHF channel 26. Greater East Tennessee TV, Inc., owns and operates television station WATE on VHF channel 6. The Commission on January 13, 1956, released its decision granting the application of radio station WBIR, Inc., for a new stationon VHF channel 10. This station is not yet on the air. No application has yet been made for educational use of UHF channel 20.

UHF station WTVK, which commenced operation October 18, 1953, was acquired by my company on July 28, 1954, pursuant to Commission approval, after the station was in strained financial circumstances and was contemplating the cessation of operation. At the time of the acquisition of station WTVK, television station WATE on VHF channel 6 was the only other television station in operation in Knoxville. VHF channel 10 was involved in a competitive proceeding before the Commission. In acquiring station WTVK my company assumed a heavy burden of existing financial obligations in order to give the people in the Knoxville area a choice of a second television service in accordance with the allocation principles laid down by the Commission.

In addition, WTVK, at great expense, has made major improvements in its facilities by increasing the effective radiated power of the station to visual 316 kilowatts and aural 158 kilowatts, installing new transmitters and making other equipment changes. It has also constructed a large and modern studio and transmitter building. The establishment and improvement of station WTVK has cost in the neighborhood of a half million dollars. WTVK incurred this great expense for the purpose of providing the viewing public in Knoxville with the best possible program service and for the purpose of improving its competitive position.

Station WATE on VHF channel 6 is affiliated with the NBC network. WTVK has been, and is now, providing the public with CBS network programs and the substantial portion of its revenue is derived from this program source and the national spot adjacencies to such network programs. WTVK's experience in 18 months of operation in competition with VHF station WATE on channel 6 has demonstrated that UHF station WTVK with network program service can survive on a marginal basis against competition from 1 VHF, but this experience has also clearly established that WTVK cannot survive against competition from 2 VHF stations if it loses its present network program source to the second VHF station.

The following circumstances show the precarious position in which WTVK has been placed as the result of the Commission's recent decision granting a second VHF station on channel 10 in Knoxville. As I previously stated, WTVK has been carrying CBS network programs. In October 1955, CBS forwarded to WTVK for signature a regular affiliation agreement with a 6-month cancellation provision, which I executed and returned. In response to subsequent inquiries as to the status of the contract, I was advised that the contract was in line for completion of processing and would eventually be reached for acceptance. Upon release of the Commission's decision granting a new station on channel 10, I immediately discussed with CBS representatives in New York the present status of the contract and was advised that it was being withheld pending a review of the Knoxville market and a determination of the potentialities of having a VHF or UHF station outlet in the area. I was also advised that WTVK was not a CBS affiliate but could continue to carry network programs on a per program basis pending a final decision by CBS.

As far as is known, CBS has not as yet made its final decision. It may be appropriate for this committee, during the appearance of the networks in these hearings, to ascertain the policy underlying such affiliation decisions and the factors upon which such policies and decisions are based. I want it clearly understood that I say this not for the purpose of criticizing CBS, but for the purpose of bringing the facts before you so that you will know some of the critical problems confronting a UHF station in a multiple VHF market. My relationships with CBS have always been very cordial and I hope that they will continue that way.

In addition to NBC and CBS there is, of course, the ABC network. As of the present time, this network claims affiliation with station WATE on VHF channel 6 and is placing on WTVK only four programs, on a per program basis, that cannot be cleared on channel 6. Here, again, this committee may be able to ascertain and clarify during these hearings what the policy of ABC will be upon the commencement of operation of channel 10 in Knoxville.

WTVK has attempted time and time again to get the Commission to take action remedying the inequitable allocation in Knoxville by assigning a comparable and competitive VHF facility to the area for use by the station.

On October 28, 1955, WTVK filed with the Commission a petition requesting the Commission (1) to institute rulemaking proceedings looking toward the amendment of section 3.606 (b) of the rules by the assignment of VHF channel 7 to Knoxville, and (2) to issue appropriate orders to show cause why the outstanding authorization affected should not be modified to specify operation in accordance therewith. WTVK demonstrated that with two VHF stations in operation, Knoxville will become predominantly a VHF television market and that the Commission, itself, has recognized the impossibility of continued and successful operation of a UHF station in the face of competition from multiple VHF stations. On November 10, 1955, the Commission by memorandum opinion and order (FCC 55–1126) denied WTVK's petition without consideration on the merits on the ground that it was instituting general rulemaking proceedings to consider amendments to its present television-allocation plan and rules on a nationwide basis.

As you know, the Commission on November 10, 1955, instituted a general rulemaking proceeding to consider amendments to its present television-allocation plan and rules on a nationwide basis (Docket No. 11532), and its notice of proposed rulemaking makes clear that deintermixture is one of the possible solutions to the problem before it and is to be considered in the proceeding. Complete deintermixture in Knoxville could obviously be effected by making the market an all-VHF area or an all-UHF area. The market could also be converted effectively from a predominantly VHF market to a predominantly UHF market by partial deintermixture reserving channel 10 for educational use and making UHF channel 20 available for commercial use.

On December 15, 1955, WTVK filed comments for consideration by the Commission in the general rulemaking proceeding. WTVK pointed out that plans suggested to the Commission have recognized the inequitable distribution of VHF channels in the large metropolitan areas and have proposed that VHF channels be used to provide at least 3 equivalent television services in as many of the top 100 markets in the United States as possible. WTVK urged that consideration of proposals in the proceeding would establish the need on a broad basis for the adoption of regulations in the public interest which would permit the assignment of a third comparable and competitive VHF facility to Knoxville.

An examination of the various comments and proposals filed in the general rulemaking proceeding indicates that a third VHF facility can be assigned to Knoxville through the adoption of some of the plans proposed. For example, the adoption of the proposals and comments filed by Columbia Broadcasting System, Inc., would make possible the assignment of VHF channel 8 to Knoxville. WTVK favors the adoption by the Commission of any plan which would make available for its use a comparable and competitive VHF facility.

Knoxville, Tenn., is the second largest market in the State of Tennessee and is located in a standard metropolitan area comprised of Knox, Blount, and Anderson Counties, for which the total population is 337,105. This area ranks 50th in population among all the metropolitan areas, and showed an increase in population from 1940 to 1950 of 37 percent. Within 20 miles of Knoxville, and consequently within the principal city coverage area of a Knoxville VHF station, is the community of Oak Ridge, a vital center of the United States Government's tremendously important atomic energy program. It is to be noted, also, that Oak Ridge is situated considerably closer to Knoxville than to any other major city in Tennessee. The population figure for Knoxville, Tenn., does not include the population of Oak Ridge, which in 1950 was 30,229, or the urbanized area outside of the city which contains an additional population of 23,397 (Census of Population, vol. 1, pp. 42–19, 42–21). In its Sixth Report and Order, the Commission recognized that geographic, economic, and population conditions vary from area to area and must be considered in assigning channels, and stated that in arriving at an equitable distribution of assignments throughout the country, consideration must be given to "population as one of the important criteria for distribution of assignments" (pars. 65 and 68).

A fair, efficient, and equitable distribution of available frequencies, in accordance with the mandate of section 307 (b) of the Communications Act, requires that the Commission assign to Knoxville for use by WTVK a third comparable and competitive VHF facility for the purpose of serving the substantial areas and populations involved.

WTVK has petitioned the Commission in the alternative that, if the television allocation plan and rules are not changed so as to permit the assignment of a third comparable VHF facility to Knoxville, the Commission recognize the impossible competitive situation confronting a single UHF station in a multiple VHF market and substitute UHF channel 20 for VHF channel 10 as a commercial assignment. Since channel 10 is still involved in litigation and no station has yet been constructed or operated on that channel, a substitution of UHF channel 20 for channel 10 could be made without injury to the successful applicant or to the public.

Another solution would appear to lie in the abandonment of the Commission's fixed table of television assignments. The table of assignments was adopted for the purpose of expediting the establishment of television service throughout the country. This objective has now been accomplished for the most part. The abandonment of the fixed table of assignments and the establishment of appropriate standards of service would result in sufficient flexibility to permit the use of either VHF channel 7 or 8 in Knoxville without disrupting the service of any existing station. The abandonment of the table of assignments would undoubtedly take care of the problem of deintermixture in a substantial number of areas throughout the country.

South Central Broadcasting Corp. recommends that unless the Commission has readily available a nationwide reallocation plan which would solve most of the problems involved, the committee require the Commission forthwith to take immediate action to make reallocations in the public interest on a case-to-case basis. Such action can be taken with reference to Knoxville and with respect to a large number of other areas.

This committee, of course, recognizes the need for immediate action.

Mr. ENGELBRECHT. In the statement we point out that WTVK, as a UHF station, is operating in a VHF market consisting of channel 6 with channel 10 to be built this year—it has been approved. It is still being contested by the other applicants. We are the second owners of this operation, the previous operation having failed. They sold it to us before going off the air.

We have managed to improve the property over a period of 18 months, increasing power and service. We are a CBS affiliate—or rather we are on a per-program basis with CBS at the present time—and we have managed to actually broadcast approximately 70 hours of network per week and approximately 30 on film and in live programing on a local basis. Our progress has been slow and painful in competition with a VHF operation, and it promises to be worse with the advent of the second VHF station in the market.

We have no assurance of what our network future might be, and we think, as we have explained in this statement, that we should make every effort to try to deintermix the market so that either we could have 3 VHF's, or 2 UHF's commercial and 1 VHF commercial.

Senator PASTORE. May I ask a question, Mr. Engelbrecht—and this is a matter that disturbs me no end—at the time that you made your application and made your purchase, Knoxville was already a mixed market?

Mr. ENGELBRECHT. That is correct, sir. At the time that we applied for the purchase of this station—applied for approval of our purchase of the station—it was back in the early part of 1954. The situation in respect to the competition between UHF and VHF and their facilities and their coverage and the service that they could render in a market such as Knoxville was not as evident as it is at the present time. In other words, we thought at that time that the market was a 3-station market and still believe that 3 competitive facilities would be successful in the market. However, we did not realize at the time that a UHF facility was not competitive to a VHF.

The result is that our problem lies largely with the matter of being able to sell the national advertisers and continue our network affiliation.

Senator PASTORE. Well, now, your second V has not gone on the air as yet. Have you objected to that grant?

Mr. ENGELBRECHT. No. We have not filed a formal protest trying to get a stay of construction. We have not done that. What we have petitioned for is that the market be—that in the market we be given a comparable V facility, either 7 or 8, or whatever would work, or that channel 10 would be reallocated to education, and that channel 20 which is presently allocated to education be assigned to them for commercial use.

We believe this: That as a U in competition with one V we could be successful, and we are at the present time.

Senator PASTORE. Let me ask you this: Do you have as much coverage with your U as the present V in your locality?

Mr. ENGELBRECHT. No, sir.

Senator PASTORE. And will the new V reach as far as the existing V reaches now?

Mr. ENGELBRECHT. Not quite.

Senator PASTORE. You mean it will have less power?

Mr. ENGELBRECHT. No, sir. The present V in the market is channel 6 with a hundred kilowatts on, I would say, about a thousand foot above average terrain installation. The new V going in is an upper band VHF on channel 10 with 316 kilowatts. There will be a very close—it will be very close in there as to the total coverages according to engineering standards, but they may not be the same, or are not going to be quite the same.

Senator PASTORE. Essentially, your desire is to change your own station to V rather than to stop this other channel—what did you call it—channel what?

Mr. ENGELBRECHT. Channel 10.

Senator PASTORE. Yes—rather than stop from coming in?

Mr. ENGELBRECHT. We do not propose to lessen the service in the market. What we want to do is make a competitive service in the market. The market is such that two stations would hardly serve the local advertisers, because of the potential volume of business that might go in there. It has ranged somewhere around 54th nationally as a market—that is, according to J. Walter Thompson's figures of 1951.

Senator PASTORE. What is the extent of the conversion in your community?

Mr. ENGELBRECHT. Conversion in the immediate city, or immediate area around the city, was surveyed by the ARB people—American Research Bureau—and in the spring of 1955 showed approximately 89 percent conversion. That was in the home county. Now, at that time the plant was operating with 21,000 watts of power. At the present time, since January 21, we have been operating with increased power trying to reach a larger area and serve a bigger market. I would guess that the outlying counties do not have nearly as much conversion in them as in the home county. I am sure there is not.

Senator PASTORE. But in the home county you say about what?

Mr. ENGELBRECHT. About 89 percent, which is an indication that if a station has programing, and they have no choice of other facilities to see it on, that there is a very good chance of making an operation successful in spite of some of its limitations on coverage, or the costs that might be incurred in trying to convert to the use of that facility.

Because it means that they have got to spend a little more money for their tuner, a little more money for their antenna installation. It means that the public, in order to enjoy UHF service, would spend a small amount of extra money which they normally would not spend unless there was a service that they could enjoy or wanted.

Senator PASTORE. Have you any apprehension that your relationship with CBS would change if channel 10 comes in?

Mr. ENGELBRECHT. In my statement here I discuss that problem. When we bought the plant, there was in existence a letter of understanding, or a form of contract, which expired in October of 1955. In September of 1955, we received from CBS station relations a letter which said they were enclosing a network contract for our signature—an affiliation agreement with a 6-month cancellation privilege. This we signed in the latter part of September and returned to CBS. We waited a month or two for our copy to come back, and it did not come back to us. Then we made some inquiry as to what had happened. We were advised that the contract was in line for completion of processing, and it might be a little time before we eventually reached acceptance.

There was no indication that it might be turned down. However, upon the completion of the Commission's decision granting a new station on channel 10, I went to New York the following week and discussed our affiliation relationship at that time and was told that our contract, which had been signed 4 or 5 months previous to that by us, was still withheld pending a review now of the Knoxville market and a determination of the potentialities of either a V or U facility for CBS in the market. At that time I was also told that we were no longer an affiliate and were on a per program basis with CBS.

I say here that the final decision has not been made and it might be appropriate for this committee to ascertain the policy underlying such affiliation decisions with the network and the factors which determine those affiliations. I am not doing this for the purpose of criticizing CBS but to bring the facts before the committee and perhaps solve the problems in our market and other markets of similar nature.

Senator PASTORE. We know precisely what you mean and what your relationship is and what your fears are. But your case is somewhat different from some of the others that we had for the reason, as I have already brought out, that apparently at the time you purchased your station you knew it was a mixed market and there had already been an allocation of an additional V station which had not been yet assigned.

Mr. ENGELBRECHT. The situation was exactly the same as it had previously been with the previous ownership who had applied for it. I do not know whether it is unfortunate, or a matter of judgment in our buying of the property from those people, that we did not at the time show any better realization of the problem than they did.

The one thing we did determine in our mind before going into that market was that there existed a good, growing future market for television and radio. We want the expansion, and we looked at it from the standpoint of the opportunity that existed in the service in that community. I still believe that 3 competitive facilities with 3 competitive networks would be economically sound, and it would better serve the public interest.

Senator PASTORE. Provided they were all V?

Mr. ENGELBRECHT. All U's might be the answer.

Senator PASTORE. What are you going to do with the 11 percent who have not converted? How are you going to compel the viewer to sustain responsibility for this scrambled mess?

Mr. ENGLEBRECHT. I am not advocating that as a decision other than to say this: I think that when you have to take the total general interest of the public as a whole, there I think it would better serve the general interest to have 3 properties there, regardless of whether it is all U or V or 2 U's and 1 V, than it would be to have only 2 V's in the market because of the limitations that it would impose upon the amount of service that you could render in that community.

The community is right in the valley between the Smoky Mountains and the Cumberland Mountains, and it is fairly rough terrain. At the top of that valley is Johnson City, with a CBS service primarily but with some other network facility, too. At the bottom of that valley is Chattanooga, with CBS and some secondary service. Knoxville sits in the hub of that thing.

The service that comes in there is from those two ends of the valley. I think there is going to be plenty of coverage of the outlying portions of the metropolitan area from many sources. But in the area of Anderson, Knox, and Blount Counties—which is Oak Ridge, Alcoa, and Maryville, and the city of Knoxville and Fountain City, which is a market of 337,000, or perhaps a half million people when you take in Oak Ridge and some of its outlying environs—your need for a third facility is very definite. First of all may I point out this: We are today operating in competition with a V at a rate card, nationally, of $250. Their rate card goes to $600 the 1st of April. I do not think there is any question that two V's in that market could share rate cards of $600, without too much problem of charging that rate.

Now, we do not find it easy to do business at half the operating charge of our competitor. But let's say that we are showing a small profit at the present time, which is being used on a local basis. Now, our revenue has been as much as 35 or 40 percent from the local market. I would say that our number of advertisers locally is greater than that of the V station in the market.

Senator PASTORE. These arguments that you are making now, have they ever been formally presented to the Commission either in a petition or a protest?

Mr. ENGELBRECHT. Trying to present economic arguments in the form of a petition has not been, I think, too successful. I don't know.

Senator PASTORE. Well, I mean have you ever appealed in any way to the Commission itself and presented these arguments?

Mr. ENGELBRECHT. Our applications and petitions have been directed, I think, toward that end without specifically just saying that.

Senator PASTORE. But I mean you have filed a petition seeking deintermixture. Have you made these arguments that you are presenting here now, more or less?

Mr. ENGELBRECHT. Yes, sir.

Senator PASTORE. And has any decision been made by the Commission?

Mr. ENGELBRECHT. Well——

Senator PASTORE. Was your petition rejected, in other words?

Mr. ENGELBRECHT. Our petition was rejected without consideration of its merits, as a part of a group. The problem is one that they have thrown into a general rulemaking proceeding. And the problem of getting into that is, of course, one of time.

Senator PASTORE. I am not quarreling with you. I am trying to establish the record, that is all, as to whether or not this has been called to the attention of the Commission for their consideration. Of course you realize that this committee cannot decide what community is going to get what kind of station. I mean that is an administrative function that has to be determined by the Commission itself.

Now, I am wondering if the facts that you are presenting to us today have already been presented to the Commission for their consideration—whether they are going to consider it on a selective basis or whether they do it on a nationwide scale. I am wondering whether or not they have the information that you present here now?

Mr. ENGELBRECHT. Well, we have——

Senator PASTORE. And your answer is in the affirmative?

Mr. ENGELBRECHT. My answer is in the affirmative, because what we have said is that there are several plans that advocate changes for the Knoxville market. CBS has advocated, in their plan to the Commission, adding channel 8, with some difference in spacing. ABC has advocated channel 8 for the market in the place of channel 26.

We have said that we would support any plan that would provide a competitive facility in the market, and that if that were not possible, we would suggest that 2 commercial U's with a change of channel 10 to education would probably work better than to have 2 commercial V's and 1 commercial U.

Senator PASTORE. Are you competent enough to say whether or not that particular locality, technically, can be made into a three-V station area?

Mr. ENGELBRECHT. I am not an engineer; however, I am familiar with the engineering problems. On channel 7 in order to get the minimum spacing as proposed in the Sixth Report and Order, it would necessitate moving channel 7 from Spartanburg to either Columbia, S. C. or Augusta, Ga. In that manner, you could put 7 into Knoxville and into a different city in South Carolina or in Georgia, thus getting a greater usage of the frequency.

Channel 8 is now in use at Nashville with WSIX–TV. The spacing there would be just a little less than the minimum spacing provided in the Sixth Report and Order, and could probably be worked out with a directional antenna or a lowering of the power, especially since there is very rugged terrain between Nashville and Knoxville, which is the Cumberland Mountains. I think one or both of them are possible in the potential.

Senator PASTORE. Now, has that been presented to the Commission?

Mr. ENGELBRECHT. That has been, yes.

Senator PASTORE. Your answer is in the affirmative on that?

Mr. ENGELBRECHT. Yes, sir.

Senator PASTORE. Let me ask you this question: With the existing V station and your U station now, are you making money or losing money?

Mr. ENGELBRECHT. We are making a profit, sir, and have for some months.

Senator PASTORE. And if the channel 10 station comes in—if the new V comes in—with two V's and the one U that you are running now, what do you expect your prospects to be?

Mr. ENGELBRECHT. Of course, part of that is based on the problem of network affiliation, so I will have to answer it two ways. Without the proper network affiliation, with its programing and its revenues and its adjacencies to the sell, why I might as well say that the business would fail. There would be no reason to expect that it will continue to operate channel 26 in a satisfactory manner.

Senator PASTORE. As far as I am concerned, your presentation is now complete. Are there any questions?

Senator PURTELL. I would like to ask 1 or 2 questions. No. 1: I was interested in hearing you say, sir, that you have 89 percent conversion there.

Mr. ENGELBRECHT. Right.

Senator PURTELL. Which in many areas would be considered satisfactory to ultrahigh operators. Obviously, then, your problem is not one as to a listening audience, if they wish to listen—is that correct? They have the sets to listen to your station or to the very high stations—is that correct?

Mr. ENGELBRECHT. That is correct, in the immediate metropolitan area. During the present period we are expanding that listenership into the rural areas which we did not serve previous to our increase in power; but given a period of time, it would be correct, sir.

Senator PURTELL. If you have 89 percent conversion there right now, where your listeners can listen to your programs or the programs from the other existing operating station, and you anticipate another station will come in, would your position be much better off if you had a very high and you had 3 stations operating? Would your problem not be one of network affiliation then?

Mr. ENGELBRECHT. Certainly we would have some problem of network affiliation—except that our opportunity for network affiliation would be much better.

Senator PURTELL. With 89 percent conversion you have got pretty high conversion right now; haven't you?

Mr. ENGELBRECHT. In the immediate market.

Senator PURTELL. But you tell us in the fringe area there is much overlapping there—is that correct?

Mr. ENGELBRECHT. Quite a bit.

Senator PURTELL. So, actually, the amount that you might enjoy of that market is a question; isn't that right?

Mr. ENGELBRECHT. Well, of course, the decision is not ours. In other words, what we think and what we think the network should believe are two different things.

A rejection of a U over a V by the network in certain markets is something that we do not control. In other words, even if we advocated the network's continuing with us—saying that this exists and that exists and we think that they should because of this potential—that does not mean that necessarily they are going to agree with that, in service and coverage.

The market is a pretty rough terrain. The area down there is geographically quite rugged, and there are definitely going to be certain shadow areas. And there is a lot of argumentation to show that perhaps even with 316 kilowatts e. r. p. in that market we are still going to be at a considerable disadvantage in comparison with a V service.

Senator PURTELL. The point I was trying to make was that usually the complaint from ultrahigh frequency stations that have come in before this committee is as to the lack of conversion—we have heard that repeatedly—and that was the reason they wanted deintermixture. Now, you tell us that is not a problem with you; that you have 89 percent conversion at the present. So where would deintermixture help you to the extent that it would appear that you think it might? Is it a question, therefore, of network affiliation?

Mr. ENGELBRECHT. I did not say that conversion was not a problem. I said that it was not as much of a problem as it was for other areas. I said we had a high percent of conversation, but even 11 percent disadvantage is a disadvantage—especially when you increase that disadvantage as you go out further in your area. But even so, I think that if we were able to keep a major network with a major portion of its schedule as a UHF in that market, there might be some hope of survival. The problem gets itself right down to the basic problem of being able to take in enough money and have enough programing so that you can afford to carry the operation until such a time as all these other obstacles are overcome—improvements in equipment, conversions, sales resistance, and other problems that exist with operation of a TV station.

Senator PURTELL. You have answered my question. Thank you. I have finished with my questioning.

Mr. COX. About these rates, Mr. Engelbrecht: Do I understand that the national card rate for your V competitor is shortly going to be $600 for an hour of class A time and that yours is $250?

Mr. ENGELBRECHT. That is correct. Presently on their AA time they have a $500 rate, and I have been told that that is increasing to $600 on April 1.

Mr. COX. Is it fair to say that the fixing of your rate has been in large part determined by the network?

Mr. ENGELBRECHT. No, I wouldn't say that. Our rate has been determined largely from what we could charge for it.

Senator PURTELL. Senator Pastore, I must go at this point. I am most anxious to be here when the other witnesses appear, and so I will come back as quickly as I can, Mr. Chairman.

Mr. ENGELBRECHT. Certainly the network has told us that; as a matter of fact, I approached them and asked them if they could consider changing our rate to $300 instead of $250, and they had that under advisement with that affiliation contract. I do not want to create the impression that they established our national $250 rate.

Mr. COX. What is your national spot rate?

Mr. ENGELBRECHT. It is the same.

Mr. COX. It is the same?

Mr. ENGELBRECHT. Yes, sir.

Mr. Cox. Now, applying your 89 percent of conversion in the metropolitan area, shading off somewhat as you go out further, what do you think is the ratio of the sets that you can reach to the number of the sets that your V competitor can reach?

Mr. ENGELBRECHT. First, I am going to say that there has been no survey that specifically covered that situation, so anything that I am going to say is based upon projected thinking or guesswork. Our competition in the market had a tele-pulse made during the month of December, prior to our increase in power. The circulation in the outlying counties as to listenership was rather disappointing to us. We have had county surveys or local telephone surveys made on some of our better programs such as Sunday evening and Tuesday—Ed Sullivan, $64,000 Question, CBS baseball on Saturday afternoon.

In the metropolitan telephone exchange we have at times been able to outdraw, in listenership, the V station. But when you take the total market and evaluate it as a sales potential for a national advertiser, and you get into the outlying counties, we are at a considerable disadvantage until this increase in power creates conversion and listenership and viewers.

Mr. Cox. As I understand it, even with your increase in power, your V competitor can cover somewhat more area than you can. Now, in that somewhat larger area, he can reach every set there because he has no conversion problem. The point I am trying to get to is this: In your best judgment, would you feel that he has a potential listenership—assuming he can get the programs to attract them—that is more than double yours?

Mr. ENGELBRECHT. We have felt that as evidenced by charging on that basis in order to be competitive—in other words, we have indicated that.

Mr. Cox. You think it is actually based on the facts as they exist, or on the facts as you think they are understood?

Mr. ENGELBRECHT. I think that the answer is both. I think I am influenced by the national advertisers' thinking and by the local advertiser as well as our own evaluation.

Mr. Cox. In other words, do you feel that if you got your rate up to $300 you would be receiving a fair competitive price for your time, because of your more limited audience?

Mr. ENGELBRECHT. I think so at the present time. However, I think that our increase in facilities may enable us to better that as we get more penetration into the outlying areas. In other words, I do not anticipate being able to reach a rate anywhere near their rate, but I do think we won't have to operate at, say, 40 or 50 percent of that rate.

Mr. Cox. If you eventually get 89 percent of conversion in the entire area that you can now reach, will that give you substantially 60 percent, say, of his audience?

Mr. ENGELBRECHT. I would think so; yes.

Mr. Cox. As I understand it, you feel that Knoxville, as the 54th market in the country, could support three stations if they are competitive, or even if possibly one of them were a V and the other two were U's?

Mr. ENGELBRECHT. Yes, sir.

Mr. Cox. But is it your position that if two V's are to be in the market that that substantially creates an artificial ceiling, so that no third station can exist there until a third V is made available to the area?

Mr. ENGELBRECHT. Especially if it is—qualifying it to say that that third station is a U and it is without network affiliation.

Mr. Cox. Isn't that normally the situation that the third station is in, that is, if is a U?

Mr. ENGELBRECHT. Yes, sir.

Senator PASTORE. A little bit on this rate fixing. At the time that you instituted your rate of $250—is that what you said it is?

Mr. ENGELBRECHT. It has been a rate that was established for the stations from the time it was——

Senator PASTORE. Established by whom?

Mr. ENGELBRECHT. It was established by the previous ownership and was continued by our ownership subsequently to that.

Senator PASTORE. But is the establishment of this rate made in consultation with the national network?

Mr. ENGELBRECHT. They may have discussed it with the network.

Senator PASTORE. I mean what is your relationship?

Mr. ENGELBRECHT. My relationship with the network is that I am trying to get an affiliation, and keep one, and that I would like to have the highest rate that they feel that they can pay us. I think that is being rather obviously blunt.

Senator PASTORE. You asked for the $300 rate?

Mr. ENGELBRECHT. I suggested they consider it.

Senator PASTORE. Whom did you ask it of?

Mr. ENGELBRECHT. Station relations.

Senator PASTORE. Of the network?

Mr. ENGELBRECHIT. Of the network; yes, sir.

Senator PASTORE. In other words, before you establish a rate, you have to take it up with the network and the rate you fix has to be satisfactory to the network? Now, that is a very simple question.

Mr. ENGELBRECHT. The national spot rate does not necessarily have to be the same as your network rate; no, sir.

Senator PASTORE. But whatever the rate is, it has to be agreed to with the network?

Mr. ENGELBRECHT. For the network rate; yes, sir.

Senator PASTORE. That is all I have. Thank you.

Mr. ENGELBRECHT. There is only one thing I said as a recommendation at the end of my statement, and that was that the South Central Broadcasting Corp. recommends that unless the Commission has readily available a nationwide reallocation plan which would solve most of the problems, that the committee here require the Commission to take immediate action to make reallocations in the public interest on a case-to-case basis. Such action can be taken with reference to Knoxville and in respect to a large number of areas. It is only in the form of a suggestion. And I certainly appreciate the opportunity of appearing before this committee.

Thank you.

Senator PASTORE. The next witness is Mr. John H. DeWitt, Jr.

Mr. ROLLO. My name is Reed T. Rollo. I am legal counsel for John DeWitt, the next witness. I have supplied counsel with copies of his prepared statement, and rather than take the time of the committee to have him read the statement, I would like to ask that it be incorporated into the record. Mr. DeWitt, however, is here and will be glad to answer any questions you may have.

Senator PASTORE. Without objection, that request will be complied with. We will have the statement inserted in the record in its entirety at this point.

(The statement of Mr. John H. DeWitt, Jr., is as follows:)

My name is John H. DeWitt, Jr. I am president of WSM, Inc., which owns and operates television station WSM-TV and standard broadcast station WSM in Nashville, Tenn. WSM-TV operates on channel 4 with the maximum effective radiated power of 100 kilowatts. We have a construction permit authorizing the installation of a 1,379-foot tower to be located in Nashville. WSM is a class 1-A station operating with 50 kilowatts of power. It commenced operation in October 1925, and WSM-TV commenced operation in September 1950.

My experience embraces both the managerial and engineering fields of radio and television broadcasting. I have been active in the engineering field since 1922, when I constructed the first broadcasting station in Nashville. I attended the Vanderbilt University School of Engineering and upon leaving there became a member of the technical staff of the Bell Telephone Laboratories in New York. I became chief engineer of station WSM in 1932 and retained that position until 1942. I entered the military service in 1943. In the service I was director of the Evans Signal Laboratory near Fort Monmouth, N. J., which directed ground radar development for the Army and Air Force. I am a fellow of the Institute of Radio Engineers and a member of the American Physical Society, as well as other scientific organizations. I have actively engaged in allocation matters before the Federal Communications Commission, and its predecessor, for many years.

In the managerial field, I have been active manager of station WSM since 1947 and of both WSM and WSM-TV since WSM-TV commenced operation in 1950.

THE IMPORTANCE OF UHF

Although I am here as a representative of a VHF station, I wish to make it clear at the outset that I consider the development of the UHF frequencies as being essential to full development of our television potential. Some seem to think of UHF as an entirely separate part of the television spectrum. Actually, it is simply an extension of a band which is now called VHF and which ultimately could be integrated so that when one thinks of television, one thinks of channels 2 through 83, inclusive, rather than UHF and VHF.

UHF has been pictured here as an inferior method of bringing television service to the people, but instead, it is merely not yet a fully developed means of extending the spectrum. So what we are talking about is a matter of degree rather than saying that one part of the spectrum is bad and the other good. As one goes up the spectrum, propagation effects develop gradually. As a matter of fact, there is a large jump in frequency between channels 6 and 7 in the VHF region, and between channels 13 and 14, even though many people who do not know the allocation structure think of these channels as being adjacent. There is little difference in the ratio between channels 6 and 7 in the VHF band, and channels 13 and 14 which is the jump between VHF and UHF. (Channel 6 is 82 to 88 megacycles, and channel 7 is 174 to 180 megacycles. Channel 13 is 210 to 216 megacycles, and channel 14 is 470 to 476 megacycles, a ratio of approximately 2 to 1 as compared with a ratio of 2.2 to 1.)

It is a fact that in hilly terrain the higher the frequency the poorer the coverage. On the other hand, there are some advantages of UHF over VHF which are not generally realized. There is less manmade and cosmic noise in the UHF band, so that a UHF picture is likely to be a cleaner picture than a VHF picture. Since it is much easier to construct a highly directional receiving antenna for UHF frequencies, it is much easier to eliminate ghosts in this band. It turns out also that with the development of high-power klystron tubes, it is easy to generate high transmitter power for transmission in the UHF band, and I believe it costs no more than equal power in the upper part of the VHF band.

There is a very close parallel to the VHF-UHF situation in the lower and upper parts of the standard broadcast band. Here, frequency, power, and soil conductivity determine coverage. There are 5-kilowatt stations in North Dakota operating on low frequencies which have far greater daytime coverage than 50-kilowatt stations operating on higher frequencies in other parts of the country. Generally, 1,500 kilocycles is far inferior to 600 kilocycles in point of coverage, and yet the economics have turned out such that some stations operating on higher frequencies are in better financial condition than ones operating on lower frequencies.

I have reviewed most, if not all, of the statements that have been submitted to you and I find that no one has said that there will be a scarcity of channels if the UHF portion of the spectrum develops. There will be plenty of channels available for hometown television. I find, also, that no manufacturer who has had experience in the development of UHF equipment has said from a technical standpoint it cannot be developed into a perfectly usable service. There seems to be no engineering disagreement on this point.

The economics of the present situation with regard to UHF are not too different from the situation in which VHF operators found themselves in the early days. Even WSM-TV, which is one of the latecomers in VHF, found it necessary to invest $200,000 in a microwave system to bring network service into Nashville from Louisville, and to lose a very large amount of money before the operation could be successful from an economic standpoint. The UHF operators must be willing to expend substantial sums in their initial installation in order to provide the coverage necessary to attract advertisers. For the present, it does not appear prudent for UHF operators to make the required investment except in markets of a size adequate to support a VHF station.

The real crux of the UHF problem is getting all-channel receivers into the hands of the public. Since it is not prudent from an economic point of view for a UHF station to operate in a smaller community and go through the expensive process of building up circulation, some other method must be found. My suggested solution is that VHF stations be permitted to install translators in smaller communities operating on UHF frequencies, thereby providing the public within the range of the translator stations with programing which will create the incentive to purchase all-channel receiving sets. We have almost an exact analogy in our experience with standard broadcasting. Clear channel stations operating in the larger cities of the country deliver the only receivable radio signals to many small towns and rural areas. These signals provided the incentive to people residing in these areas to purchase receiving sets. As the number of sets increased, it became economically feasible for radio stations to operate in many of these smaller towns, since they already had a readymade audience. A review of the history of the development of radio stations will confirm this.

PRESENT ALLOCATION PLAN

It is my view that an allocation plan is essential to proper development of a nationwide competitive television system. We shall obtain a much more efficient use of the spectrum by this method than we would by allocation on a case-to-case basis.

The plan embodied in the Commission's Sixth Report and Order is the result of years of study by experts of Government and industry and except for some possible minor modifications, should be allowed to stand.

Any allocation plan requires accurate propagation information on the frequencies involved. The present allocation plan of the Commission is based upon the best propagation information available and as knowledge is added with time, it may be possible to improve upon it.

A substantial amount of intermixture will, in my opinion, be necessary to develop fully the UHF channels. As I have already stated, there must be incentive for the public to acquire all-channel receiving sets. This incentive will be created in part by translators as I have mentioned, in part by high-power UHF operations, and in part by intermixture.

What is needed more than anything else at the present time is an affirmative expression of confidence in the future development of UHF. The pioneer VHF stations invested huge sums for plant investment and operated at substantial losses over a long period of time. They continued this operation, however, as prudent businessmen, expecting that the time would come when they could operate at a profit. If, at that time, the station operators, members of the Commission, or other people in high places, had publicly complained about the financial losses they were incurring or that the allocation structure might be changed, unquestionably the acquisition of television receivers by the public would have slowed down considerably or might have come to a complete halt.

ADDITIONAL VHF CHANNELS WILL NOT SOLVE THE PROBLEM

If additional VHF channels were to be added from the military or that portion of the band now allocated to FM, as has been suggested, those stations would be faced with the same conversion problem with which UHF stations have been faced. Nor would the number of VHF channels possibly available from these sources meet the requirements for additional television channels. UHF channels would still be required to meet the needs of the country.

DROP-INS, DIRECTIONAL ANTENNAS, REDUCTIONS IN MILEAGE SEPARATIONS, REDUCTIONS IN POWER, REDUCTIONS IN ANTENNA HEIGHTS, ETC., ARE NO SOLUTION

All of these suggestions, while offering possibilities of some additional stations, are purely devices which would result in inefficient use of spectrum space and in most instances will probably deprive many more people of service than would be provided a service with the full development of the present allocation plan.

Here, again, we have an analogous situation in the development of AM broadcasting. From time to time since the creation of the Federal Radio Commission in 1927, the engineering standards have been lowered because of pressures for additional stations. The result, as of today, is that all classes of standard broadcast stations are receiving much more interference than was originally contemplated.

With television having made substantial strides in the few short years of its existence, and with the benefit of the hindsight we have in AM broadcasting, we should not take steps which would result in increased interference to the existing television service. This is particularly true in that the development of UHF channels will provide channel space for the additional stations required as economic conditions permit. The additional VHF stations added through any of the methods we are discussing will adversely affect the development of the UHF because it further reduces the incentives of all concerned, including the broadcaster, the public, and receiver manufacturers.

CONCLUSIONS

For the reasons already covered, I believe that this committee should agree with the following:

1. An allocation plan is needed and the present allocation plan of the Commission, except for possibly some minor shifts such as have already been made since its adoption, is satisfactory and should not be substantially modified.
2. This committee and the Commission should announce publicly, with as much dispatch as possible, that their studies and deliberations show that the UHF channels are capable of rendering satisfactory television service and that no change in the general allocation structure is contemplated; and
3. This committee and the Commission should do everything possible to encourage manufacturers to produce all-channel receiving sets.

Senator PASTORE. I have not read your statement, Mr. DeWitt. I don't know what you have said. If you want to make some summary of what you have told us, then I could ask you questions. But I have no prepared questions to ask you, unless you tell me what you have said.

Mr. DEWITT. I wouldn't expect you to, Senator. This is not a long statement, and I think I can summarize it fairly quickly.

Senator PASTORE. Yes. You just take the salient items and point them out to us.

Mr. DEWITT. All right, sir. I feel that I am qualified as an engineer as well as in the management field——

Senator PASTORE. Let me ask you one question before you go any further. Has your situation anything to do with the situation of the previous witness?

Mr. DEWITT. No, sir.

Senator PASTORE. All right.

Mr. DEWITT. I am an operator of a VHF channel 4 station in Nashville, Tenn., which was the pioneer station in Nashville.

Senator PASTORE. All right, sir.

Mr. DEWITT. I am just expressing some views here really on allocation matters.

Senator PASTORE. Yes.

Mr. DEWITT. More than anything else.

Senator PASTORE. All right.

STATEMENT OF JOHN H. DeWITT, JR., PRESIDENT OF WSM, INC.

Mr. DEWITT. I feel that I want to make it clear that the development of UHF is essential to full development of our television potential. Some seem to think of UHF as an entirely separate part of the spectrum. Actually it is an extension of a band which we now call VHF but which ultimately could be developed into one television service which would be channel 2 through channel 83. You would think of it as just one broad television service.

UHF has been pictured as an inferior method of bringing television to the people. I feel, on the contrary, that it is an undeveloped or not fully developed method of doing so. As we go up in the spectrum, we do not suddenly come to a point where everything becomes bad. Physics is not like that. As we go up in the spectrum, the frequencies are affected more adversely by hills, so that you do not have as wide coverage for the same power on UHF as you do on VHF. But on the other hand, there are some advantages that UHF has over VHF, which I point out here. One is that there is less manmade noise on the UHF band. There is less cosmic noise, and cosmic noise does limit VHF reception at times. There are fewer ghosts on UHF. It is possible to get a cleaner, prettier picture on UHF under many circumstances than it is on VHF. So, there are some advantages. Another advantage is that now that we have high-power tubes developed—I believe the military sponsored the development—these are mainly klystron tubes—it is possible to generate high powers in the UHF, which we need to develop this service.

We have a fairly close parallel here between the VHF–UHF situation and the broadcasting situation in the standard band. There are great disparities in the propagation characteristics of broadcast frequencies. 1,500 kilocycles in New England is certainly far inferior to 600 kilocycles—or I have an example here. In North Dakota there is a 5-kilowatt station on a low frequency which has much greater daytime coverage than higher frequency stations with 50 kilowatts in other parts of the country. So there are disparities which the broadcast business has had to live with, and does live with.

Now, I notice in reading the statements that have been put in that no one has said that if UHF is fully developed there won't be enough channels for everybody. Now, that is a very comforting thought, and it makes you think that you should strive even more to make UHF go.

The situation here is not too different from the VHF situation 5 to 8 years ago. My station invested $200,000 in a microwave system just to bring network service from Louisville to Nashville, and it took us a long time to get that money back. We are now in the black, but we spent an awful lot of money on VHF broadcasting before we got it back. And I remember in one board meeting I predicted that in the first year of operation we would have 500 sets in the Nashville area.

This was in 1948 and 1949 when we were talking about it—that we would build up 500 sets. Of course, that was all wrong, because no one anticipated how television would go.

The crux of this whole matter, in my opinion, is to find a means of getting all-wave or all-channel receivers in the hands of the public. That is really the meat of the matter. I think that some incentive has to be provided.

One possibility is this: We have made some experiments with satellite stations. It is all in the record of the FCC. Presumably you could create a market by allowing VHF operators to put in translator stations on the fringe of their coverage area. Let's say a kilowatt radiated power on UHF—it would have to be UHF. These would translate the signal of the VHF station. Then people in those markets and in those small towns would want to buy all-wave receivers. This would give you a market which the receiver manufacturers might be interested in.

Now, there is a very close parallel here between this proposal and the broadcast business—radio. Years ago it was not possible for small towns to support radio stations. The clear channel signals were out there. Our station, for example, in middle Tennessee—WSM Radio—put a signal into these towns and caused people to want to buy radio sets. And they bought them and build up a market in these towns. So then the local operator could come in and put in his own radio station and capture part of this audience. He could not possibly have afforded to do it if the sets had not been there. He could not have put in this little 250 watt or 1,000 watt station in the town. Now, the same could be true here, I think. You could provide a signal in UHF which would cause people to buy receivers, and then later on the UHF operator could come in and you might have what some people call home-town television.

Now, I feel on the allocation plan some people have proposed to handle this thing on a case-by-case basis. I do not think you can do that. I think you need an allocation plan, and it seems to me that the sixth report and order of the Commission is a pretty good one. Maybe there should be some minor changes, but it is a pretty good plan. Any plan that you make has to be based on some assumptions as to what you want to accomplish, but also it has to be based on very solid technical information on the propagation of radio waves. And this plan is based I think on very sound information which the Commission had.

I think what we need with UHF more than anything else is an affirmative expression of confidence in its future development. If at the time the VHF operators went on the air, members of the Commission or other people in high places had publicly complained about the financial losses, or if the station operators had done that, or if the Commission had indicated the allocation structure might have been changed, unquestionably the acquisition of TV receivers by the public would have slowed down completely or might have come to a complete halt.

Now, I do not believe that the addition of a few VHF channels will solve this problem. I have made no careful study to see where they might come from, but people who have, tell me that there is very little chance of getting more than a few VHF channels from FM or from the military. This won't solve the problem. Actually, in my opinion, it would slow down the overall development of television, because to have this fully developed service you have got to have the UHF band. And if you throw in a few channels, you will stop the cries momentarily, but you will slow down UHF development.

Now, the same is true of "drop-ins" and the use of directional antennas, reduction of mileage separations, reduction of power, and so on. I would not propose to discuss these individually, but they certainly will not solve this problem. In conclusion, I would like to make three points. One, an allocation plan is needed, and the present allocation plan of the Commission, except for possibly some minor shifts such as have already been made since its adoption, is satisfactory and should not be substantially modified. Two, this committee and the Commission should announce publicly, with as much dispatch as possible, that their studies and deliberations show that the UHF channels are capable of rendering satisfactory TV service and that no change in the general allocation structure is contemplated. And, three, the committee and the Commission should do everything possible to encourage manufacturers to produce all-channel receiving sets.

That is all I have.

Senator PASTORE. I will have to call a recess for half an hour. We will meet again approximately at 3: 30.

(Whereupon, at 2:50 p. m., the hearing was recessed until 3:20 p. m.)

Senator PASTORE. When Mr. DeWitt concludes his testimony, our next witness will be Mr. Paul W. Morency of Hartford. Senator Purtell desires to be here when Mr. Morency testifies. So if we conclude with this witness before Senator Purtell returns, we will wait for him, if that is satisfactory to Mr. Morency.

Mr. COX. Mr. DeWitt, as I understand it, you said that the sixth report and order is substantially valid because it is based on very careful information and on the best propagation data available. In your opinion, is that propagation information reliable as a basis for predicting the actual service area that can be achieved by television stations?

Mr. DEWITT. I think it is. I think it is the best. Now, this is a very complicated, technical problem, to predict exactly the service area of any given station. The methods sought in the sixth report and order allow you to depict the average situation. Of course, the information is being improved all the time—propagation information is being improved. I do not believe that the Commission has reached the point where they would modify their present method appreciably, so I think they would let it stand.

Mr. COX. Do you have what you think is accurate information as to the coverage area of WSM-TV?

Mr. DEWITT. Yes, sir.

Mr. COX. Is it larger or smaller than that which would be predicted based on the Commission's——

Mr. DEWITT. I believe it is pretty close to what would be predicted, very close to it.

Mr. COX. What is the terrain around Nashville? Do you have mountainous terrain there which would limit your signal more than would be the case on level terrain?

Mr. DEWITT. A little more. But it is rolling. It is rolling terrain, about like Virginia over here before you reach the mountains.

Mr. Cox. So that actually you feel that the circumference of your service area is substantially as would be predicted by the Commission staff?

Mr. DeWitt. I think so; yes, sir.

Mr. Cox. Now, in your opinion, could a UHF station come on the air in Nashville and compete with the three established V's there?

Mr. DeWitt. I don't think so; no, sir.

Mr. Cox. Could a fourth V come on the air and compete now or in the reasonably forseeable future?

Mr. DeWitt. I would say that it could not in the reasonably foreseeable future.

Mr. Cox. That is, you think that Nashville now has the maximum television service that it can support?

Mr. DeWitt. At the present time. Now, sometime way off perhaps it can support more.

Mr. Cox. Are all three of the V stations in Nashville operating at a profit, to the best of your knowledge?

Mr. DeWitt. Are they what, sir?

Mr. Cox. Are they operating at a profit?

Mr. DeWitt. At a profit?

Mr. Cox. Yes.

Mr. DeWitt. I believe they all three are. I know that two are. I believe that the third one has turned the corner. That is hearsay, of course, but I believe it has turned the corner. It was operating at a loss for some time.

Mr. Cox. I realize this question is hypothetical, but suppose that 1 of these 3 V allocations in Nashville were a U, do you think that a station operating on that channel could survive in Nashville, even though it has been demonstrated that Nashville apparently will support 3 V stations?

Mr. DeWitt. I think that now that Nashville is established as a V market and the receivers in our coverage area—the 200,000 receivers or more on our coverage area—they are buying V receivers, not all-channel receivers—and I believe if one of these stations would change to a U that it would have a very, very hard time.

Mr. Cox. Well, suppose then that originally there had been a U allocated there, and that the V stations were on the air first. Would you have thought that a U could then come into existence? The point I am getting to is this: If you have V stations established in an area, certainly if there are more than one of them, even if there are additional U allocations available, so that on the allocations table there is room for growth, isn't it true that the established position of the V's makes it competitively impossible for any other station to come into the area?

Mr. DeWitt. I don't think so. I think my answer has to be highly qualified. But I would say this: Suppose 6 months after we went on the air on channel 4 a U had come on. At that time I believe we had perhaps 25,000 to 50,000 sets in the area. If when the U came on at that time, all-channel receivers were available generally, and if the U had a good program service—we are on NBC now, let's say the U came on with CBS—then he would, I think, ultimately come out all right.

Mr. Cox. By "good program service" do you mean necessarily network service?

Mr. DeWitt. I am afraid so; yes, sir.

Mr. Cox. Is there a tendency on the part of the networks and the national advertisers to prefer a V station if there is one in the area?

Mr. DeWitt. I don't really know that, because we don't have any U's in Nashville. And I am familiar with our own market and not with other markets necessarily.

Mr. Cox. I think you said it cost no more for equal power to operate a U station.

Mr. DeWitt. That is right.

Mr. Cox. Are you speaking there of construction costs or operating cost?

Mr. DeWitt. I am speaking of both.

Mr. Cox. Both?

Mr. DeWitt. Yes. I am speaking of a U versus a high-band V.

Mr. Cox. Now, that is the high-band V operating at 316,000 watts?

Mr. DeWitt. That is right.

Mr. Cox. And the U operating at what, a million watts?

Mr. DeWitt. A million watts; yes.

Mr. Cox. I think you said that it doesn't appear prudent for U operators to make additional investments at the present time. Is that the way you put it? You made the point that UHF operators must be willing to spend substantial sums in initial installations in order to provide the coverage necessary to attract advertisers, and pointed to the fact that your station lost money initially, and eventually was able to turn the corner. Now do you think that, viewed realistically, the present climate is such as to encourage anyone either to make an initial investment in UHF television stations or to spend substantial money in improving an existing station unless they are given some assurance that some relief to their present situation is going to be forthcoming?

Mr. DeWitt. I think, of course, it depends entirely on the individual market that we are talking about. I think a lot of U operators went into places in which they could never come out. And I think that if a VHF goes in under the circumstances under which some of the U's went in that they would have had trouble too. It is a very complicated problem. I think, though, that under certain circumstances—well, let's take the Knoxville situation that we were talking about here a few minutes ago. I believe two V's are allocated to Knoxville.

Mr. Cox. That is right.

Mr. DeWitt. If one V were allocated to Knoxville, if I were running the U, I would go ahead and pour the power on. And I would up my rate—if I had 89 percent conversion I would up my rate, and I would say I have got the finest picture in Knoxville, and I would try to put it over. And I think I could.

Mr. Cox. Would you make that expenditure if there were two V's?

Mr. DeWitt. I am not sure that I would in Knoxville. And I am not sure that I would in Knoxville if there were a third V. In other words, I believe that three V's in Nashville have a marginal situation—the third one does. And I believe that in Knoxville the third V would have a marginal situation.

Mr. Cox. Isn't there a substantial difference between the situation that faced the V's when they went on the air and were losing money and the situation that now faces the U operator is in that, at the very least, the V operator in the initial loss period had the assurance that he had a facility that suffered no competitive disadvantage with his competitor, and that that is not true of the U operator?

Mr. DeWitt. Well, there is something to that.

Mr. Cox. That is all I have.

Senator Pastore. I am not suggesting that you should, but you are in a three V area. You wouldn't want to trade your V for a U, would you?

Mr. DeWitt. No, sir; I certainly would not.

Senator Pastore. All right.

That is all. Thank you.

STATEMENT OF PAUL W. MORENCY, TRAVELERS BROADCASTING SERVICE CORP., HARTFORD, CONN.

Mr. Morency. Mr. Chairman and members of the committee, my name is Paul W. Morency. I am president and general manager of WTIC in Hartford, Conn.

Our company has been operating a radio station for some 30 years. In 1947 we applied for a television station. We thought then, and we think now, that the experience that we gained in broadcasting to the people of New England over that long period of years qualified us to know what the New England people want and need in the way of broadcast service, and we think that we can do a good job in television.

I appreciate the opportunity of presenting our views to this committee and I have a written statement which I would like to have incorporated into the record. If it pleases you, I would like to just digest some of the points for the committee.

Senator Pastore. If there is no objection, the statement will be printed in its entirety.

(The prepared statement of Mr. Paul W. Morency follows:)

My name is Paul W. Morency. I am president and general manager of the Travelers Broadcasting Service Corp., which has been for more than 30 years the owner and operator of station WTIC at Hartford, Conn. I have been in radio broadcasting since 1925, and I have been general manager of WTIC since 1930. I think my experience in radio broadcasting in New England, and the studies and observations which I have made of television, qualify me to comment on the television situation in Connecticut and the Connecticut River Valley.

I appreciate this opportunity to present my views on Connecticut's urgent need for additional television service and on the prospects for future television development in this area.

I would like to summarize briefly the efforts of our company to obtain an authorization from the Federal Communications Commission to build and operate a television station in Hartford, because I think the long delay in bringing television to the people of the Hartford area from a local VHF station is pertinent at this time.

Our company commenced the operation of WTIC in Hartford in 1925, and we applied for a television station in Hartford on September 10, 1947. We believe that our experience and success in broadcasting to the people of Connecticut, and our understanding of their needs acquired over a long period of time, render us well qualified to do a good job in television. Our application was designated for hearing in 1947, due to competing applications for the same channel. At that time, there were two VHF channels allocated to the Hartford-New Britain area, channels 8 and 10. Before the hearing started the Commission was confronted with a petition to move channel 10, for which we had applied, to Bridgeport, Conn., and the Commission imposed its 3-year freeze on the industry in order to restudy its countrywide allocation plan.

We participated extensively in the Commission's long allocation proceeding. During the course of the rulemaking proceeding, channel 3 had been tentatively assigned to New London, but in the Sixth Report and Order of 1952, the Commission adopted our proposal for its assignment to Hartford. In allocating channel 3 to Hartford, the Commission noted that the population of Hartford was more than five times that of New London, and that Hartford, being the capital and central population area of the State, deserved the VHF assignment. The Commission also noted that the coastal area to the south and east of Hartford, including New London, would receive service from channel 3 in Hartford and would also receive additional VHF service from channels allocated to Providence and New Haven.

After the release of the Sixth Report and Order, and relying on that decision which had been so long in the making, we amended our pending application to specify channel 3 instead of channel 10. Subsequently, two other applications for the same channel were filed. One of the applicants, station WDRC at Hartford, dismissed its application after entering into a contract with our company to purchase an interest in our television station if our application were granted.

However, a hearing was still necessary because of the third applicant. This hearing, which began in October 1953, was not concluded until April 13, 1954. More than a year later, in May 1955, the examiner issued her initial decision in the case recommending a grant of the station to my company. Exceptions were taken to this initial decision, and oral argument was held before the full Commission 2 days ago. We are very hopeful that a final decision will be released within the near future authorizing us at last to go on the air with the television station for which we applied almost 9 years ago.

We are fully prepared to bring television on channel 3 to the Hartford area in from 60 to 90 days from the date of a favorable decision on our application. We have already made extensive preparations for building and equipping what will become one of the finest television plants in the country. For instance, we will have color equipment which will bring not only network but local color programs to the Hartford area. We have made extensive contacts with religious, educational, and civic groups and organizations in our territory which assure us of the participation of these organizations on a regular basis in our television programs.

The four UHF statons in the Connecticut River Valley which have petitioned the Commission to delete channel 3 from Hartford, WKNB-TV, New Britain; WWLP, Springfield; WHYN-TV, Springfield-Holyoke; WGTH-TV, Hartford, went on the air without competitive hearings, with the full knowledge that channel 3 was coming on later, and they have been very successful in solving the conversion problem. In addition, all sets sold in this area now and for the past several years are all-channel sets. A newletter that WKNB-TV issued 3 weeks ago used a headline: "The Biggest, Healthiest, 3-Year-Old You've Ever Seen." The release also stated: "When WKNB went on the air there were only 13,000 sets in its area which were equipped to receive its signal. In 3 years, the channel 30 family has grown to 375,000 homes. The American Research Bureau reported last month that 93 percent of the television sets in Hartford County are equipped for UHF, a conversion rate almost unmatched elsewhere in the country."

This conversion rate is the same for the four television stations in the area which have asked that channel 3 be deleted from the commercial service. There has been testimony both before the FCC and before this committee by the UHF operators that the big problem which they must surmount to be successful is the conversion of existing sets to receive UHF signals and the sale of all-wave sets in their territories. It can be seen from the above that both of these problems have been solved in the Connecticut River Valley. A recent release from WWLP, of Springfield, whose president, Mr. Roger L. Putnam, recently testified before this committee, states that this station had had an increase of 30 percent in its total billings in 1955 over 1954, including 50 percent increase in the number of national advertisers and a constantly growing list of blue-chip accounts.

At the present time, these four stations are broadcasting substantially the full schedules of either the Columbia Broadcasting System or the National Broadcasting Co., that is, WKNB-TV, New Britain, on channel 30, and WWLP, Springfield, on channel 22, carry substantially complete schedules of NBC, and WGTH-TV, Hartford, channel 18, and WHYN-TV, Springfield-Holyoke, channel 55, authorized to shift to channel 40, carry a substantially complete schedule from CBS. Parenthetically, the Commission has given favorable consideration to the requests of WWLP and WHYN-TV to improve their coverage in the area by changing their assignments to lower frequencies. WWLP was permitted to change from channel 60 to channel 22, and WHYN-TV has been authorized to operate on the lower channel 40 in lieu of channel 55.

WKNB-TV, channel 30, and WGTH-TV, channel 18, have entered into contracts for the sale of their stations to NBC and CBS, respectively, subject only to the approval of FCC. Even while filing briefs before the FCC predicting the ultimate failure of UHF broadcasting in the Hartford area if channel 3 were allowed to commence operations there, these 2 stations signed highly profitable sales agreements with the 2 networks. On February 23, 1956, the Commission approved the sale of WGTH-TV to CBS. The application for the sale of WKNB-TV to NBC is still pending before the Commission.

Let us examine what will result from the acquisition by CBS of WGTH-TV. Obviously, all CBS programs will be carried on this station and that of itself will guarantee the economic success of the station. This purchase also has an immediate and obvious effect upon UHF station WHYN-TV because it is necessary for CBS to have both stations on its network to give proper coverage to their advertisers in these populous and important markets.

If and when the approval of the FCC is given to the NBC-WKNB-TV purchase, the same reasoning will apply to WKNB-TV and to WWLP. Both of these stations will then carry full NBC schedules because both stations will be necessary to cover the Hartford and Springfield markets.

Mr. Putnam, of WWLP in his recent testimony before this committee stated that in his opinion WWLP—in fact, all of the UHF stations in the valley—could not long survive the advent of a channel 3 station at Hartford. In my opinion this statement is completely fallacious. Each of the networks will schedule their programs over UHF stations in the Hartford-New Britain and Springfield-Holyoke markets. There is no other way that coverage in these markets could be obtained.

We have a similar situation right here in Washington, D. C., and Baltimore, Md. Washington and Baltimore are roughly the same distance apart as are Hartford and Springfield, yet all networks carry full program schedules on stations in both Washington and Baltimore; they will do the same in Hartford and Springfield, as indeed they are now doing.

Dr. Frank Stanton, president of CBS, has testified that if WGTH-TV on channel 18 in Hartford were transferred to his company, it would not be necessary or desirable to delete channel 3 from Hartford. This transfer has now been approved by the Commission, and the new owner of the station, that is CBS, does not want, much less request, that channel 3 be taken out of Hartford.

Financial data filed with the Commission by WKNB-TV shows that as long ago as October 1954 the station operated at a net profit of over $20,000 for that month. WKNB-TV sold its station to NBC for $1,100,000, plus a lucrative long-term lease on the studio building owned by WKNB-TV, plus the retention with the station for a number of years of certain management officials.

The sales price of WGTH-TV, which had less equipment and a smaller investment, was $650,000. In both instances the sales price was approximately double the value of the assets of the stations. It would seem that these UHF operators valued their properties quite highly even with the imminent operation in the area of a station on channel 3.

In fact, WKNB-TV in a prospectus dated December 22, 1954, relating to the public offering of its stock, stated as follows:

"The current affiliation agreement with CBS is for a 2-year period, beginning January 28, 1953, and will automatically be renewed for an additional 2-year period, beginning January 28, 1955. The terms of the contract include a provision that neither party can cancel except on 1 year's notice. The affiliation with CBS provides WKNB-TV with many excellent programs. Revenue from network programs accounts for approximately 15 percent of the net billings, compared to 25 percent from national spot advertising and 60 percent from local advertisers. The management believes that in the event the affiliation were discontinued, the company could continue to operate at a profit by using local programs, film and such network programs as were available."

None of the 4 UHF stations of which I have spoken is operated at anywhere near the maximum power—1 million watts—permitted by the Commission. The actual operating powers are:

	Power (kilowatts)	Percent of maximum power
WGTH-TV	187	19
WKNB-TV	210	21
WWLP	206	21
WHYN-TV	182	18

Testimony before this committee shows that equipment is now available to obtain the maximum of 1 million watts at less than the cost incurred by a VHF channel in obtaining 316,000 watts.

It seems to me that these UHF stations, by failing to utilize their maximum facilities and by proclaiming the inadequacy of their existing service, have gone far toward convincing advertisers and advertising agencies that their stations should not be used.

A number of proposals have been presented to the Commission, starting as far back as October 1954, to delete channel 3 from its present assignment in Hartford and substitute instead a UHF channel. The first of these proposals, filed more than a year and a half ago by the four UHF stations which I have just discussed, would have changed the status of channel 3 so that it could be used only for noncommercial educational purposes.

In effect, this would have removed the channel from any use at all in the foreseeable future, since the educational interests of the State have no plans to build and operate a television station. When this became apparent, the UHF petitioners amended the proposal so as to adopt a request made by another party to remove channel 3 from Connecticut entirely and reassign it to the small town of Westerly, R. I., from which place it would be used, in effect, as a third Providence VHF outlet. In addition to the request to delete channel 3 from commercial service altogether and the request to remove it to Westerly, there have been proposals to reassign it to Norwich or New London, Conn.

All of these proposals lack justification from the public-interest standpoint. Hartford has a population of 177,000, and the population of Hartford County is 540,000.

The State of Connecticut had in 1950 a populatio nof 2 million and in 1955, was 2,250,000. Not only is Hartford the capital of Connecticut, but it also is the social and economic center of the very heavily populated and important industrial and agricultural region.

The terrain in a large portion of our area is rough and hilly and as a result contains many sections where penetration by UHF service is very spotty, due to shadowing. Therefore, the assignment of channel 3 to our area is essential in order to provide all of the people living in our service area an adequate television service.

The reassignment of channel 3 to Westerly, Norwich, or New London would result in 50 percent or more of the signal being wasted over water, thus resulting in a much less efficient use of the channel than at Hartford. Connecticut was allocated only two VHF frequencies. One of these is in New Haven on Long Island Sound, the other being channel 3 in Hartford. We believe that it would be grossly unfair and inequitable to deprice the people of Connecticut of local television service from channel 3 in order to give this frequency to the smaller State of Rhode Island with a 1950 population of approximately 800,000 (1955, 853,000), a State which is already served by two VHF signals from Providence and by additional stations from Boston.

The primary reason advanced for the removal of channel 3 to Westerly, New London, or Norwich is to deintermix the Connecticut River Valley, but it is clear that such deintermixture would in no sense result. Although television set conversion in and around the Connecticut Valley is an accomplished fact and receiver set sales are 100 percent all-wave, there are still a substantial number of viewers in the northwestern and northeastern sections of Connecticut who have VHF sets only for the simple reason that no good UHF signal is available to them. Channel 3 would bring to the people in these areas either their first good television service, or would bring them their second usable signal.

If it is deemed desirable to allocate another VHF channel to Providence, there is no need to deprive Hartford and the State of Connecticut of channel 3. Our consulting engineer has advised me that channel 6 can be allocated to Newport, R. I., with but the need for a very minor relaxation of the Commission's rules insofar as minimum mileage separations are concerned. Channel 6 can operate at Newport with maximum power and antenna height and deliver an excellent (city grade) signal over Providence, fully competitive with the two existing VHF stations in Providence.

In conclusion, it is conceded that the UHF stations in the Connecticut River Valley have no conversion problem. The area is almost 100 percent converted to UHF and every receiver now being sold is an all-wave set. It has been said before this committee that if the conversion matter were solved there would be no problem of deintermixture for the UHF stations because listeners would be attracted to stations having the best program schedules. There is thus no reason to deintermix the area. The terrain is hilly, rough, or mountainous through much of the area that will be covered by channel 3, with resulting shadow areas inevitable for UHF signals. The UHF stations in Hartford and Springfield-Holyoke are all operating at a profit and would continue to do so even with the advent of competition from channel 3. The Hartford and New Britain stations have been sold at a good profit to NBC and CBS, and these companies are extremely well qualified by experience, know-how, and adequate financial resources to assure the successful operation of the stations. The Springfield and Holyoke television stations will not lose their network affiliations. Although the UHF stations in the area are operating with only a small fraction of the 1 million watts allowed, they can procure equipment necessary to bring the power of their stations to 1 million watts by an expenditure of a sum no larger than would be required for a VHF operator to build a station with maximum power. The moving of channel 3 to New London, Norwich, or Westerly would not deintermix the area and would waste substantially half the signal over water.

In view of all of the above, I most strongly urge the retention of channel 3 in Hartford.

Senator PASTORE. We appreciate that concession on your part.

Mr. MORENCY. Thank you.

As I say, we applied in 1947, in September to be exact, and we were required to prepare for a hearing because there were other applications for the frequency. At that time channels 8 and 10 were assigned to Hartford. We prepared for that hearing.

Just as it was to commence—it had been assigned a date early in January 1948—an application was made by one of the applicants to remove the channel from Hartford to Bridgeport, Conn.

The Commission considered this application and found that it was necessary to substitute rulemaking, and that led to one consideration, and one delay of our hearing after another, until we ran into the freeze which was imposed on the whole industry by the Commission, in order that they study the nationwide allocation plan.

So, actually, it seems that this is a second time around for us. After the sixth report and order, when channel 3 and other channels were assigned to Hartford, we made that application, and we also had other applicants for the channel.

Senator PURTELL. May I interrupt. That was back in 1952 when channel 3 was——

Mr. MORENCY. Yes, sir. The sixth report and order was issued in April, I believe, of 1952, and therefore that was already 5 years after we had applied for television in Hartford.

So there were two other applications for the channel. One of them joined with us and withdrew their application and executed a contract whereby they would become part owner of our organization in case our application was a successful one.

Now, our hearing actually didn't begin until October of 1953 and wasn't concluded until the following April of 1954. It was a lengthy hearing, an arduous one; and the examiner took a year, or a year and a month, to render a decision which was favorable to my company.

Exceptions were taken to this initial decision, and the oral argument on this case was held just Monday of this week before the Commission. Now we are hopeful that a final decision will be released in the near future which will authorize us to go ahead and get on the air with a television station which we applied for almost 9 years ago. It will be 9 years in September.

Senator PASTORE. What is the status of your application now? Have you been granted by the Commission, the——

Mr. MORENCY. No, Senator; they just heard the argument 2 days ago. So normally I would think it would take them from 90 to 120 days to render a decision on it. At that point, if it is favorable to us, we would be at the point where we could build.

Senator PASTORE. How many petitioners or applicants are there for that channel?

Mr. MORENCY. Two. There were three. One joined with us; so the hearing was held just with two parties.

Senator PASTORE. All right.

Mr. MORENCY. Now, we are prepared to get on the air with our TV station, if we are granted it, in from 60 to 90 days. It just happens that our transmitter location will be the same as our AM transmitter so we have a building facility. Other things are so that we can get on the air quickly.

We have made preparations in that area. We are going to have color equipment both for local and network programing. We have made extensive contacts with religious, educational, and civic groups and organizations, so we know they will participate on a regular basis in our program schedule on television.

Now, the 4 UHF stations in the Connecticut River Valley—that is 1 in the New Britain, channel 32; 1 in Hartford, channel 18, and 1 in Springfield, and 1 in Springfield-Holyoke, petitioned the Commission some time ago to delete channel 3 as a commercial television facility in Hartford and change it over to the educational category.

Well, after it became apparent that the educators in the State were not going to build, they reversed their field a bit and adopted a proposal from Westerly, R. I., that would remove the channel from Hartford and Connecticut entirely and put it in Rhode Island.

Then after that we also had two other applications for its removal from Hartford, one from Norwich, Conn., and one from New London. The hearings, of course, as the committee members know, were held on those petitions; they were denied.

Well, now, I would like to examine just a little bit the position of the UHF stations in the Connecticut River Valley.

They had no contest on their channel, so they were able to get on the air early. Let me see: In Connecticut, New Britain got on the air, I think in February of 1953; and in Springfield, one got on the air in March, and I think one in April of 1953. The last 1 of these 4 got on the air, I believe, early in 1954. That was channel 18, in Hartford.

Now, they had, as I say, no contest. They got on the air early.

There was a great need for television service up there and they have done a fine job in the conversion factor.

In fact, I think they all agree, and it has been so testified before this committee, that the conversion factor in this area for these 4 stations is about 93 percent. But even more important than the 93 percent is the fact that all of the sets sold in this area for the past several years, and continuing now, are of the all-wave variety.

There is no problem here of circulation, in other words. We have a densely populated, prosperous area of New England and they are all able to—practically all in this area—able to receive the UHF channels.

I would like to quote, for instance, from a little newsletter that WKNB-TV issued 3 weeks ago. The headline on their news release was: "The Biggest, Healthiest, Three-Year Old You Have Even Seen." They also stated: "When WKNB went on the air, there were only 13,000 sets in its area which were equipped to receive its signals. In 3 years, the channel-30 family has grown to 375,000 homes."

Apparently they completely—I think Mr. DeWitt just testified that in the area of WSM-TV, there are only 200,000 VHF sets in his whole territory. It gives you an idea of what condition exists in this Connecticut River Valley where one UHF station has a circulation double the station of Mr. DeWitt's in Nashville.

To continue the quote:

The American Research Bureau reported last month that 93 percent of the television sets in Hartford County are equipped for UHF—a conversion rate almost unmatched elsewhere in the country.

Well, that is the conversion problem which most people have conceded in the particular problem of UHF.

If they have circulation they have the prime requisite for a successful television station. Only one other ingredient, to my mind, is necessary, and that is good programing. So, if we concede that they have the circulation, and if we concede that that is the prime requisite and only a second factor is necessary, then let us examine just what they have in the way of programs in this area.

Well, at the present time WKNB-TV in New Britain, on channel 30, and WWLP, Springfield, on channel 22, carry substanially all the schedules of the National Broadcasting Co. The other two stations, channel 18, WGTH-TV in Hartford, and WHYN-TV, Springfield-Holyoke, channel 55, carry substantially complete schedules of CBS. In addition, I believe, WWLP carries some programs of the American Broadcasting Co.

I would just like to insert here that these Springfield stations—Springfield-Holyoke—had higher frequencies in the UHF band. They had 60 and 55, I believe. They petitioned the Commission, and the Commission granted them the right to go to lower frequencies. So now one is on channel 22 and one has been granted the right to go to channel 40, though it hasn't made the move yet.

So they have the full schedules of the two top networks. They have full conversion. They have a hundred percent sale of all-channel sets.

Senator PASTORE. And what network will you be affiliated with, or don't you know?

Mr. MORENCY. We don't know for this reason, Senator; we won't be able to get CBS or NBC, because they are tied up with these four UHF stations.

Senator PASTORE. Well, do they own them?

Mr. MORENCY. The CBS has just had approved, by the Federal Communications Commission, the purchase of channel 18, WGTH in Hartford. That is an accomplished fact. The other one, WKNB-TV, has been purchased by NBC. That contract is before the Commission for approval. It lacks only the FCC approval to become a fact.

Senator PASTORE. Is that a Hartford station, too?

Mr. MORENCY. Well, it is called New Britain. But, it is built to serve New Britain and Hartford and the same area in a channel 18 service, that it right.

In the original allocation, the Commission called New Britain-Hartford one market. In the sixth report and order, they are now called two markets, and New Britain is assigned a UHF station and Hartford is assigned a different one.

Senator PASTORE. Therefore, it cannot be argued, in your particular case, that if you get the permit to operate your TV station, that you will prejudice, in any way, contracts that CBS and NBC have with the UHF stations.

Mr. MORENCY. I can't see how we could, Senator, because I doubt whether they would make a contract with us when they own stations in the area.

Senator PASTORE. Well, that is an unusual situation.

Mr. MORENCY. Actually I think the Hartford situation is unique in the country, perhaps, because of that situation—that and the conversion and sale of sets factor. So, now, we have the 2 top-rated networks—ABC is coming on fast, but certainly doesn't compete now in program quality with the other 2—and they are giving their full schedules to these 4 stations. There has been a sale approval of one to CBS.

Now, I would like to comment that even if the Commission did not approve—and I have no information on it—even if they didn't approve the sale of the New Britain station to NBC, it would not affect the UHF problem of circulation here, because CBS will have to use their station in Hartford and also the station in Holyoke-Springfield to cover those two markets.

There is an analogous situation here, right here in Washington and Baltimore. Here we have 2 cities about 30 miles apart or so, and each network carries the full program in Washington and also on a station in Baltimore.

The same thing would be true up there.

Now, no one in this area would buy a set which was incapable of receiving the CBS programs; because it would be like buying a set that would be capable of receiving only half of the top programs of the country. So we can say that they will be—we can say that there will be guaranteed sale of all-wave sets in this territory from now on. That has also been true for the past several years.

Now, I just want to comment on the fact that Mr. Putnam of WWLP—he was a recent witness before this committee, and he stated among other things, that he didn't think that his station, nor in fact, any of these UHF stations, could long survive the advent of channel 3 on the air in Hartford.

Now, I must admit in the light of the conditions and the facts as they are, and the ownership of one of these stations by a network, that that statement just does not hold water. It just isn't so.

In fact, let's see what Mr. Putnam, also through his publicity department, released about 10 days or 2 weeks ago—a statement to the effect—it is here in my statement—that for 1955, over 1954, his total billings were 30 percent better, and his national accounts were 50 percent greater in number; and that he had an increasing number—if I am quoting him correctly—of "blue chip" accounts. I don't think the statement he made before this committee, upon examination, could stand up.

Now, a further point: Since the transfer of this—actually I don't think the transfer of this channel 18 to CBS has physically been made, but the approval is out—and Dr. Frank Stanton, before the Commission, stated that if that transfer were made to his company, he would not want, or expect or find desirable, the deletion of channel 3 from Hartford.

Just one comment on what appears on page 7 of my statement: That these stations were sold for substantial sums; in fact, about twice the value of their assets. They were held quite highly by their owners and I would like also to refer specifically there to the quote from a prospectus relating to the public offering of stock by WKNB-TV that appears on the top of page 8. This refers specifically to the conceivable loss of network program service.

On the bottom, where we have supplied emphasis, you will note this one sentence. It says:

> Management believes that in the event of affiliation contract is discontinued—

in this case he is talking about a CBS affiliation—it is now an NBC affiliation—same effect—

> the company could continue to operate at a profit by using local programs, film, and such network programs as were available.

There is undoubtedly—and I believe that is a true statement—I believe it is factual—he is now speaking of the fact that you can program a station in his opinion, that is, in the WKNB management's opinion, without network service and still have a good service and a profitable, economically sound service. I believe he is right. It is being demonstrated in cities where there are allocations of 6 and 7 frequencies. They have to be good markets, I grant, but this is a good one.

Now, all of these things that we have been saying about UHF, the conversions, the sale of all-wave sets, the economic soundness of their present operation—have accomplished all this without even going to the power which has been allowed them under their license.

The table on page 8 shows just what that power is that they have been operating with.

Senator PASTORE. Mr. Morency, could I ask you a question. I have been curious about this: What would be the disadvantage to you, in the public interest, in service to your community, if the station which you are applying for, a V, were a U instead, which would be consonant with all of the activities within that valley? I mean, that is what I am curious about. I wish you could answer that question, if you can.

Mr. MORENCY. I will be glad to answer it.

Senator PASTORE. You see, the objections made by those who operate UHF stations within that area take the position that somehow you are going to have an advantage over them—you will have more power or your range will be greater; whereas, if you were given a UHF station, you would have no more than they have, and people are already equipped with sets to receive your signal, and that for that reason it would be in the public interest. Then that VHF channel, the chances are, could go in service in another area where it would be all of one type.

Now, I realize I have said here several times that channel 3 ought to go to Providence. Senator Purtell has perhaps resented that. I don't say even Westerly. Let it go to Poquonock—that is still in Connecticut, right across the river. But the thing that we have been troubled about is this. If you could have all 1 type of frequencies in 1 area and serve everyone with 3 channels, and have all of the other type in Hartford and still have 3 channels, what would be the hardship in that particular case?

If you can't answer it, or if you feel you don't want to——

Mr. MORENCY. I would be delighted to. I think I can.

Senator PASTORE. All right.

Mr. MORENCY. First, you said that they say that there is a difference in power. Well, there is no difference in power, Senator. The Commission, and the engineers of the Commission, and the industry, decided the differences in power. On the low VHF channels, you are allowed 100,000 watts. On the higher VHF channels, you are allowed 316,000 watts. On the UHF channels you are allowed 1,000,000 watts. Those changes in powers, in what you call effective radiated power, are to compensate for the differences in propagation characteristics of the various frequencies. So there is no change and no difference in power.

Now, as to why we shouldn't have a UHF—and I don't think we should. Let's take the public interest, which is paramount here, first. This is quite a hilly and mountainous country northwest and northeast of Hartford. We get into the Berkshires on the northwest, as you know; and we have a great deal of real rough terrain.

Now, regardless of what the "slip-stick" says, or the extension of the service says, for UHF—and they will draw a circle out there—but in the interstices behind the hills and under certain conditions there is spotty coverage. I think all engineers who have studied the matter say so. They all agree on that.

Channel 3 on the other hand will give good service to those areas. Now, that is the principal thing. There are areas here in our State, Senator, where even now—where the UHF signal says it is there—but those are the few sets that are not converted, or the comparatively few, because actually there is no signal there that they can take advantage of.

I was about to say that even these UHF channels have not used their high power. They haven't used the power that they are allowed to use. They could improve the picture somewhat. They will not, however, be able to get behind the hills and into the valleys where UHF has a weakness—it is spotty.

Now, I think that the public in Connecticut and western Massachusetts, in this very rough terrain—and we have rough terrain even in between, even in eastern Connecticut, and in northern Connecticut—they have a right to a good signal, or 2 good signals, before other people get 3 or 4 signals.

I agree with you, because I heard you say it, that New York City should not have 7 channels—never should have had 7 channels. I think the citizens of Rhode Island and Connecticut are just as first-class as those in New York City, and they should have the same availability of service. I think the citizens of Connecticut should have this channel 3 service, because it will do some things that these UHF channels will not do.

Now, I want to make another point. In bringing, now, television service to this area, which they do not now have, we have been through a long and arduous hearing. I have asked about this. Our legal counsel says that there is nothing about the hearing we just went through that would apply to a change—if you deleted channel 3 and put in a UHF. This hearing would go for naught, as far as we know. Everybody else could get in the act then. We could go through it again and come back here in 1959.

I think that the—I have been at this 9 years now, and I could stay at it another 9—but I think the people of Connecticut deserve to have this channel acted on, and have it stay here where it has been allocated after a long, really a long, study.

Did I answer your question, Senator?

Senator PASTORE. Yes; I think you have.

Mr. MORENCY. Thank you. I think I mentioned that there were proposals from Norwich and from New London as well as Westerly, R. I.

One of the prime justifications for all three proposals was that it was going to deintermix this area. Well, it won't. In the hearings before the Commission, the maps and everything submitted there show clearly, for instance, that from Norwich, channel 3 gives grade A service to the city of Hartford and most of Connecticut.

From New London, grade A service comes right on the door. From Westerly, grade B service, to Hartford and all of eastern Connecticut. You don't deintermix this valley by changing the location. All you do is take this channel out of Hartford, and out of Connecticut, and take away the ability of the Hartford people to program their own station.

I want to point out that with the transfer of one of our stations to CBS, and the possible transfer of the other to NBC—as well as those networks will run the stations; they won't run them like Connecticut people run them.

Senator PASTORE. Well, I don't go along exactly with that. I can understand your first argument that this clear signal would come to certain parts of Massachusetts and Connecticut which cannot be reached by UHF channels now existing. That is the first argument that you made.

Your argument, I think, in essence was that in the public interest, it would be bringing service to people who are not now enjoying it, and could not enjoy it even with the third U in Hartford.

But as far as the programing is concerned for the people in Hartford, why would that make any difference? The third U would give them a third program with a clear signal.

Mr. MORENCY. I used the wrong area there, Senator, because—well, I see your point.

Senator PASTORE. So far as Hartford is concerned, you would have an argument that there may be some areas that cannot now be reached by an existing U, or even a third U, in Hartford. I can understand the potency of that argument. But insofar as programing in Hartford itself is concerned, it would not, essentially, make any difference whether you had a third V or whether you had a third U.

Mr. MORENCY. Operated by Connecticut people.

Senator PASTORE. There would be a third channel available to people who have all-channels sets.

Mr. MORENCY. That is right. If it is operated by Connecticut people.

Senator PASTORE. Yes.

Mr. MORENCY. But to get Connecticut programing to Connecticut people, channel 3 should be operated as we are planning to operate it; or somebody from Connecticut, and not a network organization remotely controlled from New York City. That is my point.

Senator PASTORE. Oh, from New York City.

Mr. MORENCY. That is my point.

Senator PASTORE. Well, I go along with you, Mr. Morency. I think that that is where the basic trouble lies. You have too many channels in New York City, and if you could only move 2 or 3 out of New York City, you would improve the whole New England area by reallocation of those channels, which would give everyone more stations to enjoy, and more services to receive. But it is all concentrated down there. And the fact of the matter is that the lower part of Connecticut suffers because of it. That is, from a local point of view.

If a local merchant wants to advertise in sections of Connecticut adjoining the city of New York, he has to go to the New York station and pay the New York prices, in many instances for a patronage that is only local. And for that reason, of course, he is denied the services of television advertising, which is a serious problem.

Mr. MORENCY. That is right. One of the things on which I haven't made too much of a point here in my statement is this. We are trying to judge a brandnew industry at the end of actually only 3 or 4 years of expansion. We are trying to say that it has now set a mature pattern and we should judge all things on what now seems to be the fact. That never was true in radio. Radio took years and years and years, and is still changing.

For instance, just in the last few months, the dams have seemed to burst in the direction of program material available from Hollywood, due to consent decrees and willingness of the big companies to contract for the distribution of their product, and so on.

It is going to be much different in the next few years. The manufacturers are going to automation, in great degree, in the operation of television stations. It now takes a great many men to put on one simple program. It is going to be much different in the future years. I do not think it is going to be forever denied for Knoxville, for example, to be able to support 3 stations or 4 stations. That judgment is being made on what it costs to run a station now. I do not think that is going to be forever the truth. And yet this industry is only a very few years old. I think we are making judgments a little quickly.

Well, that about concludes my statement, with the conclusive statement on pages 11 and 12.

For the reasons that I guess I have outlined and digested, I think that our claim on channel 3 for service in Connecticut is a strong one, and it should be retained there. I would like to speak just a second, Senator Pastore, if I might, on the situation which you have in Rhode Island. We gave that some thought, too.

Senator PASTORE. Yes. I am very much interested. And I don't think there is any desire on the part of anyone to take anything away from Hartford. I mean I am merely arguing this on the question of intermixture. What I am anxious to get is a third station in our own locality, just as you are going to have a third station in Hartford.

Mr. MORENCY. Well, we don't have a third station.

Senator PASTORE. The only possibility of having a third station in Rhode Island is to have a third V, merely because you don't have the conversion and it won't be of any useful purpose to the people of the metropolitan Providence area unless you have a third V. Now, I am not saying it has to be 3; it could be 6, as you have suggested here. It could be anything. But apparently that has got to be ironed out, just as you have pointed out, because we are going in the direction now where large metropolitan areas should not be confined to two stations. They ought to have three channels and maybe more, if possible, so that you can bring the prices of advertising down to a competitive level. Otherwise, in time, it is only going to be for the big operators. And that is not fair.

Mr. MORENCY. I am not an engineer. What I know of engineering is what has rubbed off on me in the last 25 years or so. But I asked our consulting engineer, who is A. D. Ring and who was formerly the chief broadcast engineer for the Commission some years ago, and he gave me this memorandum, and also a map on the use of channel 6 in the Rhode Island area. We have had a few copies of that made, and I will be glad to furnish the committee with that statement.

Senator PASTORE. Yes. We would appreciate it.

(The document above referred to is as follows:)

A. D. RING & ASSOCIATES,
Washington, D. C., March 12, 1956.

Memorandum to Mr. Paul W. Morency.
Subject: Additional VHF television channel for Providence, R. I.

In accordance with you request, we have made a study of the various proposals and the possibility of assigning another VHF television station to render service to Providence, R. I., and the surrounding areas.

It was found that channel 6 may be assigned to Newport, with the transmitter at the point indicated on figure 1. Figure 1 is a map on which we have shown the transmitter site near Newport, the city boundaries of Providence, and the coverage contours; namely, city-grade service, grade A and grade B. This study discloses that the city service contour includes all of the city limits of Providence. The grade A contour includes substantially all of Rhode Island and a small portion of Massachusetts and Connecticut. There are several substantial towns in the portion of Massachusetts included. The grade B contour includes a substantial part of Connecticut, Massachusetts, and all of Rhode Island.

The location specified for the transmitter for operation on channel 6 with maximum power and antenna height (100 kilowatts, 1,000 feet) does not comply with all the mileage separations specified by the Commission. The attached table I shows the specified mileage separations, actual mileage and shortage.

In the case of adjacent channel 5, there are five applications pending for this channel at Boston. The transmitter site proposed by each is considered separately in the mileages.

A. D. Ring,
Registered Professional Engineer, District of Columbia Registration No. 790.

Table I.—*Separations on channel 6 at Newport Neck site*

[In miles]

Channel No.	Station or applicant	Specified separation	Actual separation	Shortage
6	WCSH-TV, Portland, Maine	170	167.5	2.5
6	WRGB, Schenectady, N. Y	170	159.5	10.5
5	Applications at Boston, Mass.:			
	Greater Boston Television Corp.[1]	60	59.0	1.0
	Allen B. Dumont Laboratories, Inc	60	61.5	None
	Massachusetts Bay Telecasters, Inc	60	61.0	None
	WHDH, Inc	60	59.0	1.0
	Post Publishing Co	60	59.0	1.0

[1] Initial decision recommending grant.

Mr. Morency. Mr. Ring says that channel 6 can be used, the transmitter to be at Newport. And the map which he furnished shows that not only will it cover Providence, but the transmitter will give a signal in Providence of what is called city-grade service, which is the top-grade service. It would be fully competitive with the two V's which are now assigned there and would solve the problem for the State of Rhode Island. It requires a slight deviation from the Commission's mileage standards. But they are slight, we think, and it would not take much to make that change.

Senator Pastore. I would appreciate having that. Are there any questions?

Senator Purtell. No; except that while there is a question as to who shall get channel 3, channel 3 was allocated to the Hartford area a long while ago, many years ago. And the people that are presently engaged in this controversy as to the assignment of the station itself, both parties are in agreement that it should be retained there regardless of who ultimately gets it; is that correct?

Mr. Morency. I am sure that is right.

Senator Purtell. There is no question on the part of those presently engaged in trying to have this matter determined as to the need, in Hartford, for a very high-frequency station?

Mr. Morency. There is no disagreement on that.

Senator Pastore. Mr. Cox would like to ask some questions.

Mr. Cox. Yes. I can quite sympathize with your difficulties in this very protracted proceeding. But it would not be your position, would it, that your legal difficulties have given you any legal claim upon the channel now in Hartford?

Mr. Morency. Not at all. I think that over the years—certainly we had no equity as such. But certainly consideration should be given, and there should be no lightly considered decision which would delete this channel and delay, for another 3 or 4 years, even the acquisition of a UHF channel.

Mr. Cox. When a third station goes on the air, whether it is on channel 3 or on a U if one were substituted for it, the operator on that channel would have an established set circulation of, I think you said,

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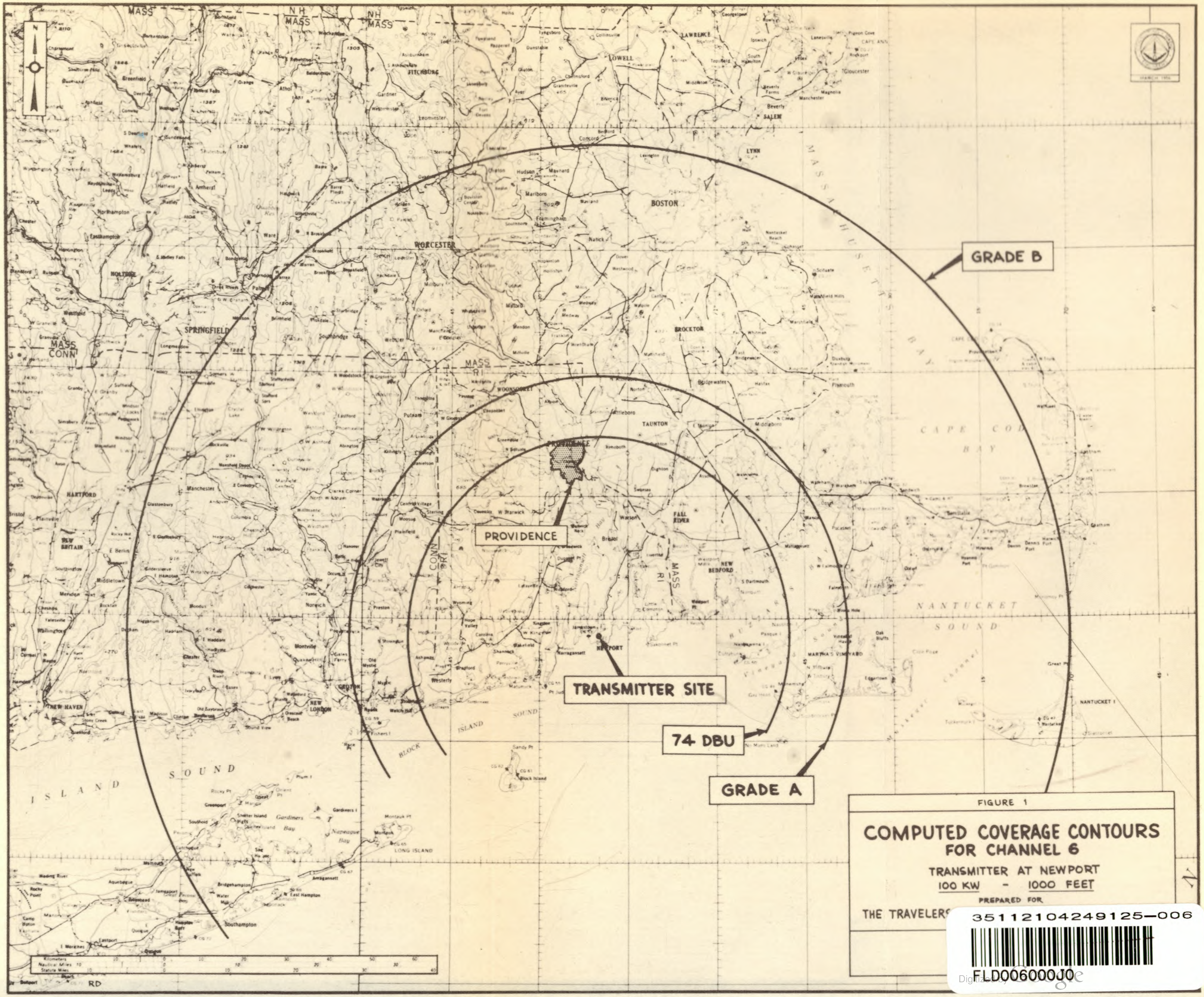

375,000 sets which was not there, certainly, when the first U went on the air.

Mr. MORENCY. That is true. WKNB's statement is that there were 13,000.

Mr. Cox. In other words, a latecomer at this stage, regardless of how he gets there and what channel he gets, already has a substantial number of sets, and they are all-channel sets, so it makes no difference what channel he gets?

Mr. MORENCY. Mr. Cox, I really don't like to be designated a latecomer.

Mr. Cox. No, you are a firstcomer—the last one on the air perhaps.

Now, is it your position that channel 3 operated in Hartford will provide a first service?

Mr. MORENCY. Yes, a first good service, definitely, in lots of areas in this northwest section and southwest section of Massachusetts of which I speak.

Mr. Cox. You mention, though, that there are VHF only sets in that area. So, I assume they are getting a signal from more distant points?

Mr. MORENCY. Yes, mostly from channel 8 in New Haven. But I would like to differentiate between a good signal and what people will say is a watchable signal. Most of these people in these areas of which we are now speaking have never see a good television signal, and they deserve to see one.

Mr. Cox. Are these areas within the predictable coverage of your station under the Commission's standards?

Mr. MORENCY. Yes, they are.

Mr. Cox. I think you said there is no difference, really, in power between VHF and UHF stations because of the fact that the Commission had stepped the power up for the higher channels.

Mr. MORENCY. Yes.

Mr. Cox. How about coverage, though? Would a UHF station, operating even at a million watts, have coverage equal to yours at a hundred thousand watts?

Mr. MORENCY. Not quite, no; not in the B coverage. But, as a matter of fact, I think the projections show that they have a greater radius in the A coverage than does channel 3.

Mr. Cox. Class A coverage is somewhat greater geographically, but they drop off more quickly in the other contours?

Mr. MORENCY. The class A coverage is farther, yes.

Mr. Cox. You have pointed out that the four U stations now operating in the Connecticut Valley are not at maximum authorized power. If they were to step up their power to 1,000 kilowatts, would they get substantial additional coverage?

Mr. MORENCY. Substantially what?

Mr. Cox. Additional coverage?

Mr. MORENCY. They would do several things, I think. First, they would make their signal, within the territory they now claim as good coverage, much better.

Mr. Cox. Would it be enough better to overcome the shadow effect that you talked about behind the hills?

Mr. MORENCY. No, sir.

Mr. Cox. It would provide a more sharply defined picture in the area which is not shadowed?

Mr. MORENCY. That is correct. And the difference between a good picture and one that is passable—in my own home, for example, if I want to listen or watch a particular program that is on no other place, I will watch a certain UHF channel which delivers to my house a third-rate signal. If I could get it on a better picture, I would never watch that station.

They need to up their power to give a better picture within their coverage area. I am not talking about beyond. They could do a much better job with a megawatt, a million watts, than they are now doing with 200,000 watts.

Mr. COX. However, this does not give them—there is little or no economic incentive for that, wouldn't that be true in your area?

Mr. MORENCY. Oh, no, that would not be true at all, because what they are suffering from now is a great many second- and third-rate pictures in households where they ought to be first rate, because they don't have power. What would you think of the VHF channel if they had one-fifth the power of these UHF channels? I don't think we would think much of a VHF channel that operated with only 20 kilowatts.

Mr. COX. Would that give you coverage on channel 3 at a lower grade of service?

Mr. MORENCY. Twenty kilowatts would give you coverage of a sort. I am not prepared to tell you just how much less it would give you than the hundred kilowatts, but substantially less.

Mr. COX. Is your statement in your testimony here to the effect that equipment is now available at this maximum of 1,000 kilowatts at less cost than is incurred by VHF channels in obtaining 316,000 watts? Was that based on the testimony before this committee, or do you have independent information on that?

Mr. MORENCY. No. That is based on what I heard here and knew was to be presented.

Mr. COX. You mentioned the fact that there are areas in Connecticut that are shadowed from the present U stations and would be shadowed from your station if you were given a U channel in lieu of channel 3. Isn't it possible to fill those areas in by the use of translators or some other devices, without having a V station in the area to provide that?

Mr. MORENCY. You are now getting over my head, because I am not an engineer. There have been some moves in this direction, in the direction you are talking about. But none of that has—no determinations have been made in that area to my knowledge, and I have watched it pretty carefully. And, so, I would be unable to answer you. I think if you put in a hundred and fifty "kickers" you could cure most of the shadow areas, maybe. But I am talking about small spots where maybe for 700 yards in 1 valley you can't get these UHF signals. Maybe skip a mile; then there are 2 miles that you can't get it.

It is a very difficult problem of solution if you don't do it with VHF from one point; and there is no reason not to, in my opinion.

Mr. COX. I think it is clear, as Senator Pastore said, that you are in a rather unusual position as far as the network affiliation picture is concerned, in that the two U stations there are likely to be owned by networks. I don't know whether you ever indicated, in answer to his question, what your status was with regard to ABC. Have you been negotiating for an affiliation?

Mr. MORENCY. No, we haven't. We have in our grant from the Commission—before the hearing we talked to all the networks, practically. You are now asking me what affiliation channel 3 would have?

Mr. COX. Partly that. And in connection with this quotation that you make from the prospectus of one of these stations in selling stock, you indicated you agreed with him. That is, is it your position, for instance, that channel 3—that you could operate on channel 3 in Hartford without a network and find sufficient programing sources, either from the third network or from independent film sources, to provide a good class of service to the people of the area and a good operation?

Mr. MORENCY. That is our position precisely. We would try to get the best that we could get from ABC. And we would then do a real job on what is available for our major programs on film, and then, thirdly, we would do a maximum local job with local live programing.

Senator PASTORE. What is this about selling stock? Isn't the Travelers Broadcasting Service a subsidiary of the Travelers Insurance Co.?

Mr. MORENCY. It is.

Mr. COX. This was a sale by one of the other stations. They sold some stock.

I take it, then, that you feel that the continued allocation of channel 3 to Hartford, for the reasons you have given, is in the public interest in the sense of providing a good service to people who do not now see it. Is it also a condition to your being interested in a station in the area? In other words, would a UHF channel be as attractive to you economically as the V channel, quite aside from whether certain people would get that service?

In other words, would you not be fully competitive in the area?

Mr. MORENCY. It would be fully as competitive, perhaps. But remember, channel 3 is going to start out without the major network program service, and it is a condition that not many people in the country have really leaped at, even in the VHF cities where they have had, we will say, 3 channels. Some cities where the fourth VHF grant has been made—I think it has not been built in some places.

Mr. COX. Well, now what is Hartford's rank among the national markets?

Mr. MORENCY. Well, it depends on what you include. We will say around 28 or 30.

Mr. COX. Well, now, do most of the markets in that area now support 3 stations, either 3 U's or 3 V's, or do you know that?

Mr. MORENCY. Well, I know that there aren't that many television stations in New England. Boston has only—because of hearings, I think they have only 2 V's on the air, and Providence has 2 on the air, and New Haven has 1 VHF.

Mr. COX. Well, then, your position substantially is that you think that Hartford will support 3 stations if 1 of them is a V, but that it might not support 3 stations if they were all U's?

Mr. MORENCY. No; I didn't mean to say that. I think Hartford will support 3 or 4 stations, period. And——

Senator PASTORE. May I interrupt to say I agree with you?

Mr. MORENCY. Thank you.

Senator PASTORE. And so can Providence.

Mr. MORENCY. Good. [Laughter.]

Senator PASTORE. We are only hoping that we can get them.

Mr. COX. That is all I have.

Senator PURTELL. Well, actually, aside from your particular direct interest in this matter, it is a fact that the Communications Act itself provides that there be an equitable—fair and equitable—distribution of these channels. I understand also, from your testimony here, that there are spots in the State of Connecticut—and I have it from other sources too—that cannot get a good signal except from any very high frequency station. Is that correct?

Mr. MORENCY. That is right.

Senator PURTELL. So in addition to having another station, your testimony indicated you would not only have another station, but you would have a station that would be a very high frequency station, which would be able to cover more people in the State of Connecticut who are presently not getting good signals, and would serve a better purpose in the public interest.

Mr. MORENCY. That is true. Section 307 (b) of the statute calls for equitable distribution.

Senator PASTORE. The reason why I raised that question about New York—as long as you have seven in New York and a scarcity of them in other parts within the radius that can be serviced from there, you have a problem. If you had more equitable distribution, I think that that would be a step in the right direction. How you are ever going to do it, I don't know. That is the problem.

Thank you very much, Mr. Morency.

Senator PURTELL. I might say, before you go, that in the light of the fact that we have had many most pleasant passages between Senator Pastore and the junior Senator from Connecticut, I was very happy to have you offer what appears to be a very fine solution to the problem of the Senator from Rhode Island, by suggesting that channel 6 be allocated there.

Mr. MORENCY. Thank you.

Senator PASTORE. I hope he is right. We will adjourn at this time until tomorrow morning at 10 o'clock.

(Whereupon, at 4:17 p. m., the committee was recessed, to reconvene 10 a. m., Thursday, March 15, 1956.)

TELEVISION INQUIRY

THURSDAY, MARCH 15, 1956

United States Senate,
Committee on Interstate and Foreign Commerce,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:50 a. m. in room P-38, United States Capitol, Senator Andrew F. Schoeppel, presiding.

Present: Senator Schoeppel.

Senator Schoeppel. Let the committee come to order, please. The record will show we are reconvening on this series of hearings this morning.

Let the record also show that the statement of Paul R. Bartlett, California Inland Broadcasting Co. of Fresno, Calif., has been submitted and will become a part of the record.

STATEMENT OF PAUL R. BARTLETT, PRESIDENT, CALIFORNIA INLAND BROADCASTING CO., FRESNO, CALIF.

Mr. Bartlett. My name is Paul R. Bartlett. I am president of California Inland Broadcasting Co., permittee of channel 12 at Fresno, Calif.

We filed for VHF channel 12 in 1952. As another applicant also applied for channel 12, we had to go through lengthy comparative hearings and it was not until January 11, 1956, that we were finally granted a permit to operate on channel 12. We plan to be on the air within the next 3 or 4 months.

During the 4 years which we were going through a lengthy and expensive comparative hearing for VHF channel 12, three applicants for UHF stations in Fresno received grants without going through a hearing, and as a result have had a 2- to 3-year head start. McClatchy Broadcasting Co. was granted its construction permit on UHF channel 24 on September 17, 1952; O'Neill Broadcasting Co. was granted its construction permit on UHF channel 47 on April 8, 1953; and John Poole Broadcasting Co. was granted its construction permit on UHF channel 53 on August 12, 1953. After a short period of operation on UHF channel 53, the John Poole Broadcasting Co. closed down its operations. Therefore, at the present time there are only two UHF stations and no VHF stations operating in Fresno.

To date, Fresno has been a so-called UHF island. There is no conversion problem there, as all receivers can receive UHF as well as VHF. Advocates of UHF have argued that deintermixture of markets such as Fresno into UHF islands is the cure for UHF's problems. I disagree with these arguments, since I believe that it is clear that deintermixture will not accomplish the objectives of creating a greater number of stations in communities such as Fresno, nor will deintermixture enhance the prestige of UHF with national advertisers. Indeed, deintermixture in all probability may cause exactly the opposite result.

The situation in Fresno well illustrates the proposition that deintermixture will not increase the amount of service available to the public, but in all probability will permit less service. As already noted, at the present time there are only two UHF stations operating in Fresno, with a third UHF having gone off the air. Our VHF service on channel 12 will bring a new third service to Fresno which was not possible with UHF. Certainly, with all receivers in the area converted to UHF and with a 3-year head start in operations, the 2 existing UHF stations should have little difficulty in competing with our new VHF service, and the public will benefit from a new and additional service, which will be the only VHF service possible in the Fresno area under the allocation plan. However, even if we cannot succeed with our VHF operation in competition with the 2 UHF stations or if 1 of the UHF stations should subsequently fail, Fresno will still have 2 services, which is exactly what it has now. In any event, our new VHF service is the only chance that Fresno has for a third service. Furthermore, our VHF station will make available service to sparsely settled areas in the Fresno area which admittedly are not now covered by the existing UHF stations.

To recapitulate, if Fresno cannot support three television stations, it is not because of any competitive technical advantages or disadvantages between VHF and UHF, since a third UHF station has already failed there without any competition whatsoever from VHF. If Fresno can support only 2 stations, it will make little difference to the public whether they are UHF or VHF or a combination thereof, with the exception that with at least 1 VHF station, some members of the public in the Fresno area will receive television service who would not receive such service if it were limited to all UHF.

In answer to those who have predicted in this hearing that UHF service may fail in Fresno when we start our VHF service in the near future, I would like to state that our VHF service will have very formidable competition from the existing UHF stations. Thus, the McClatchy interests, which own 1 of the operating UHF stations in Fresno, also own and operate 5 radio stations and several newspapers in the central California area in which Fresno is located. The McClatchy group with their powerful backing and dominant position over communications media of all forms in this area can undoubtedly meet any competitor, VHF or UHF, on more than equal terms. The O'Neill Broadcasting Co., the other UHF operator in Fresno, is owned by one of the major industrialists in the central California area, who has numerous other business interests and operates his television station more or less as a sideline.

Mr. O'Neill's manifold business interests in the Fresno area also give him unusual opportunities to obtain the inside on local advertising in Fresno. As compared to our two UHF competitors, who have numerous other business interests in the central California area, our interests are limited to that of running a radio and television station in Fresno.

As numerous UHF witnesses have testified in this proceeding, in communities such as Fresno where only one VHF station is allocated, UHF stations can survive and prosper. I do not believe that anyone can argue with logic or persuasion that our new operation on VHF channel 12 will cause both of the other operating UHF stations to go off the air. Certainly Fresno, with a metropolitan population of approximately 150,000 and a market area population of almost 1 million, which supports 6 radio stations, can support more than 1 television station.

I find it equally difficult to understand testimony in this hearing to the effect that the creation of UHF islands would enhance the prestige of UHF and thus give it a psychological boost with national advertisers. As an illustration, in the State of California, the markets of San Francisco-Oakland, Sacramento, Bakersfield, and Fresno are each allocated UHF and VHF channels on an intermixed basis. With the exception of Fresno, all markets now receive service from both VHF and UHF stations. In Fresno there are now two operating UHF stations, and we have recently received a grant on a VHF channel. In these four markets, there has been a substantial measure of conversion to UHF, ranging from approximately 25 percent in 1 year in San Francisco-Oakland to nearly 100 percent in Fresno and Bakersfield.

Suggestions have been made by UHF proponents that these 4 markets be deintermixed by making Fresno an all-UHF market and the other 3 cities all-VHF markets. Now it is difficult for me to conceive how the prestige of UHF will be in any way enhanced with national advertisers if UHF is deleted from San Francisco-Oakland with 707,358 television households, from Sacramento with 82,773 television households, and from Bakersfield with 10,884 television households, which would leave Fresno as the only UHF island in this California area with 80,380 television households. These figures represent only the metropolitan area, and figures for the total coverage area would be relatively larger. If San Francisco-Oakland, Sacramento, and Bakersfield become deintermixed to all-VHF markets, then the number of television households which would be potential UHF homes in the 4 markets would be reduced from 881,395 to 80,380. Clearly, the elimination of UHF from such important markets as San Francisco-Oakland, Sacramento, and Bakersfield would serve to diminish, rather than enhance, the importance or stability of UHF in the minds of national advertisers. The few UHF islands created by deintermixture would in effect be branded as the leper colonies of television requiring complete isolation.

We must also consider that if the four markets of San Francisco, Sacramento, Bakersfield, and Fresno are deintermixed by making the first three all-VHF and Fresno all-UHF, that Bakersfield and Sacramento for all time in the future would be limited to 2 stations each and San Francisco-Oakland to 5 stations, since this appears to be the maximum possibility of VHF channels for these 3 communities. There does not appear to be any justification for artificially restricting these markets to this limited number of stations. I am also optimistic enough to believe that there are numerous markets in which new UHF stations will come into being within the next few years, despite some of the pessimism which has been expressed here. The networks require additional outlets in many markets, and if UHF is left alone, it will undoubtedly be utilized and receive network affiliations.

Deintermixture and the creation of UHF islands would also reduce the incentive of the manufacturers of receivers to standardize upon one type of all-channel receiver capable of receiving both UHF and VHF. It is readily apparent that the greater the number of markets and buyers that demand UHF the more incentive there will be for manufacturers to meet this demand. However, selective deintermixture would reduce the number of markets for which manufacturers will have to supply all-channel sets and will reduce the overall national demand for such UHF sets. This result can be demonstrated in connection with the previously mentioned markets of San Francisco-Oakland, Sacramento, Bakersfield, and Fresno.

All four of these markets are now intermixed and have, or will have in the near future, both UHF and VHF operating stations. Therefore, under present circumstances, manufacturers have a potential market for all-channel receivers in these 4 markets of $881,395 households in the metropolitan areas alone. However, if Fresno were made a UHF island and the other 3 markets became all-VHF markets, the potential market for UHF receivers would be reduced by approximately 91 percent from 881,395 to 80,380 television households. Under such circumstances, the only market to which manufacturers would send UHF sets would be Fresno. Aside from this, a substantial number of viewers in San Francisco-Oakland, Sacramento, and Bakersfield who have invested in UHF sets to date will have lost their investment if these three markets are deintermixed. If this should happen, it is clear that the reputation of UHF would be blackened for all time with those persons in these three markets whose UHF sets were made obsolete by deintermixture.

Despite some apparent contradictions in isolated situations, I believe no one can seriously challenge that, if we are to have a television system providing service to all people of the United States which at the same time permits the greatest number of competitive stations to the largest possible number of communities, intermixture of UHF and VHF must continue. In my opinion, the mere fact that a number of UHF stations have failed, or are threatened with failure, does not repudiate this conclusion, for, after all, a substantial number of VHF stations have also failed. Thus, the Commission's most recent financial data shows that 92 VHF stations were in financial distress, as compared to 104 UHF stations suffering such distress. It is apparent, therefore, that, insofar as this hearing is concerned with business failures and financial distress, both UHF and VHF have problems in common.

Economic studies of the industry made by such eminent authorities as Dr. Alexander of CBS indicate that the problem of these business failures would undoubtedly still be with us even though television were all VHF or all UHF. In any event, the problem confronting both UHF and VHF cannot be solved by separating one from the other by deintermixture.

All of us, of course, are interested in new ways to increase and improve the present television service to the public. However, I believe that the testimony in this proceeding to date reveals all too clearly that deintermixture would not serve to improve or increase service but, rather, would tend to destroy the potential which UHF has of ultimately making important contributions to a national competitive television system.

Thank you.

Senator SCHOEPPEL. The next witness to be heard is Elmer Engstrom, senior executive vice president, Radio Corporation of America. We will be glad to hear from you, sir.

STATEMENT OF DR. ELMER W. ENGSTROM, SENIOR EXECUTIVE VICE PRESIDENT, RADIO CORPORATION OF AMERICA

Mr. ENGSTROM. My name is Elmer W. Engstrom and I appear on behalf of the Radio Corporation of America. I am senior executive vice president of RCA and my office is at 30 Rockefeller Plaza, New York City. I am appearing at the invitation of this committee to discuss the status of transmitting and receiving equipment for UHF television.

First I want to express to this committee RCA's appreciation for affording us the opportunity to come before you and give testimony. We believe that this hearing can serve a very useful and constructive purpose in developing the facts regarding UHF television, its problems and its possibilities.

It may be helpful to the committee if I first summarize the subjects that I propose to cover in my statement. An understanding of the development of the UHF frequency band is important, it seems to me, in order to appraise in its true perspective the present technical position of UHF television. I propose, therefore, to review briefly some of RCA's work in the UHF.

Conditions of propagation of radio waves at UHF differ from the conditions existing at VHF. Performance of apparatus at UHF differs from performance at VHF. UHF, being more recently developed than VHF, is still to some extent in the pioneering stage.

I shall review the present status of transmitting equipment and receivers for UHF television. Then I shall point out some of the important differences between UHF and VHF for television service. I shall indicate whether or not current apparatus is limiting and what significant improvements may be expected. Finally, I shall propose certain matters for consideration and decision which, in my opinion, might aid UHF television. I shall do this against a background of experience as related to the technical performance of television on the UHF channels.

Mr. Chairman, as I indicated earlier in my statement, I do feel that a recitation of the history of the early work in developing UHF and RCA's part—because we have had an important part in this—is important to the record. But in order to save the committee's time, I should like to have that included in the record, but so far as my oral presentation is concerned, I should like to move to page 7 of my statement because we get more directly into the problem that concerns this committee.

Senator SCHOEPPEL. That will be quite all right, and let the record show that the entire statement will be included in the record. I understand you are moving now to page 7?

Mr. ENGSTROM. I am moving to page 7 and I am beginning with the section which is entitled "Television's need for more channels."

Senator SCHOEPPEL. Proceed.

RCA'S WORK IN DEVELOPING UHF

Mr. ENGSTROM. RCA has been engaged in development work in the ultra-high frequencies for more than 20 years. We know of no other organization which has devoted as much time and as much engineering effort to the development of the UHF band. This expenditure involved the utilization of more than 2 million engineering man-hours by RCA scientists and engineers.

The UHF television band, as you may know, is only a part of the band of frequencies which is called the UHF. The UHF portion of the spectrum extends from 300 to 3,000 megacycles. The television band in the UHF covers from 470 to 890 megacycles.

Many radio services operate in the UHF. Some of these services, in addition to television, are aeronautical radio navigation; remote pickup for broadcast stations; land transportation, which includes trucking; public safety, which includes such services as police and fire departments; citizens radio; many Government radio services and radio relays such as those for turnpikes and telephone companies. Many of the components used in transmitting and receiving equipment for one UHF service may be the same as or similar to those used in equipment for another UHF service. Thus, RCA's extensive development work in the UHF band has had application to many radio services.

SEARCH FOR SPECTRUM SPACE

The search for space in the radio spectrum to accommodate the constantly increasing number of radio services has been going on since shortly after the invention of the three-element electron tube. Before the appearance of that tube, radio communications were limited mainly to contacts between ship-and-shore stations. The need for more spectrum space for this purpose was not critical and radio traffic congestion, when it did exist, could be blamed more properly on the crude apparatus in use rather than on any real scarcity of available wave lengths. The coming of the versatile electron tube, however, opened up a wide variety of uses for radio signals, many of them far removed from the original marine wireless applications.

Prior to the early 1930's, the UHF spectrum was a no-man's land presenting formidable obstacles to those who attempted to examine and utilize its widespread areas. Actually, however, these obstacles were not unexpected. For many years substantial technical problems had been anticipated whenever the theory of wave propagation at high frequencies was examined by scientists. Because the possibilities of this portion of the radio spectrum were admittedly tremendous, the UHF became a challenge to scientists and engineers despite the magnitude of the problems to be faced.

RCA DEVELOPS FIRST SUCCESSFUL UHF RECEIVING TUBE

Early technical progress was slow. Electrons, which were easily controlled when generated for the lower frequencies, were difficult to regulate at UHF. Tubes that functioned well at lower frequencies were practically useless in the higher frequency parts of the spectrum. Components and circuits, which had been developed for use at frequencies up to 300 megacycles, could not be depended upon to function at higher frequencies.

The first practical receiving type electron tube to operate successfully in the UHF was a unique "acorn" tube developed by RCA engineers in 1933. The production of this tube was an important factor in breaking the logjam which theretofore had held up UHF development.

Also in 1933, RCA engineers working in laboratories at Rocky Point and Riverhead, Long Island, produced 2 UHF transmitters which would operate on 462 megacycles with a power of several watts. After preliminary local tests, communication was established between the 2 towns, a distance of 14 miles. Later, when a 100-watt transmitter was developed, steps were taken to study the effect of greater distances on UHF transmissions, using a frequency of 411 megacycles. A small portable receiver and antenna were devised and mounted in an automobile to permit signal tests at greater distances from Rocky Point.

The experience and data obtained as a result of these early tests, particularly as they related to the sending of signals over the terrain involved and the relation of output power to reliable communications, marked an important step forward.

RCA-NBC OPERATE FIRST UHF RADIO RELAY FOR TELEVISION

RCA and NBC engineers built and operated a radio relay which was used in January 1941 to transmit for the first time a television program picked up at a remote point and relayed by the use of UHF frequencies. An NBC mobile television truck at Camp Upton, Long Island, picked up scenes of Army recruits in training, transmitting the resulting signals over a radio circuit, operating on frequencies near 500 megacycles, to a tower near Hauppauge, Long Island, a jump of 17 miles, thence to a second relay at Bellmore, Long Island, 22 miles distant, and finally direct to New York City, another hop of 28 miles.

In April 1945, an experimental 2-way microwave circuit, using frequencies in the order of 3,300 megacycles, was placed in operation between Philadelphia and New York City. Two relay points for the 84-mile span were selected, one 37½ miles from New York and the other 26½ miles from Philadelphia. Hundred-foot towers were erected at the repeater stations with experimental equipment housed in enclosures on each tower top.

UHF SYSTEMS DESIGNED BY RCA

RCA has designed and manufactured UHF microwave equipment for various trunpikes including the New Jersey Turnpike, the Ohio Turnpike, and the Pennsylvania Turnpike. Utilizing radio channels higher in frequency than the UHF television band, these systems employ a number of UHF relay stations to pass the signals from one end of the highway to the other.

Interconnections between various field headquarters of Allied Air Forces in Central Europe utilize RCA-built UHF equipment.

RCA has also manufactured and sold UHF microwave communications systems for various municipal, State, and other governmental agencies, pipeline companies, electric utilities, and telephone companies.

I have briefly outlined these various diverse facets of work by RCA engineers in the UHF preliminary to discussing our work specifically directed to television broadcasting in the UHF. I have done this because, in considering and evaluating the present status of UHF television broadcasting, it is important to remember that, only a short time ago, any radio use of the portion of the spectrum above 300 megacycles was not commercially feasible. Only within compartively recent years has it been possible to utilize the UHF band commercially.

TELEVISION'S NEED FOR MORE CHANNELS

The Federal Communications Commision early realized it would have to find additional space into which television service could expand. Because a television signal takes about 600 times as much space in the frequency spectrum as a standard sound broadcast signal, the promise that television would expand as a postwar service to the public was a major factor in bringing the higher frequencies to the forefront.

In 1945 the Commission tentatively set aside the UHF band from 480 to 290 megacycles for experimental television broadcasting.

As part of its report of May 25, 1945, providing for this allocation, the Commission stated:

> The Commission repeats the hope * * * that all persons interested in the future of television will undertake comprehensive and adequate experimentation in the upper portion of the spectrum. The importance of an adequate program of experimentation in this portion of the spectrum cannot be overemphasized, for it is obvious from the allocations which the Commission is making for television below 300 megacycles [VHF] that in the present state of the art the development of the upper portion of the spectrum is necessary for the establishment of a truly nationwide and competitive television system.

PROMPT RESPONSE OF RCA AND NBC

RCA and NBC promptly undertook further tests at these higher frequencies. In 1946 and 1947 there were tests using frequencies of 288, 510, and 910 megacycles.

These tests showed the necessity of increasing the radiated power with any increase in frequency. Accordingly, our engineers designed and installed high-gain unidirectional antennas on the 97th floor of the Empire State Building. In addition, new and improved models of UHF transmitting equipment were designed and installed. Although not of broadcast caliber, these transmitters served to extend the propagation studies through the UHF television range before better transmitters were available.

The tests and surveys also indicated that more power would be necessary for a UHF station to serve the same relative area as a VHF station. Nevertheless, it was also apparent that UHF could be developed so that, under proper conditions, it could render service to the public as a broadcasting medium.

UHF TELEVISION SYSTEM INSTALLED IN WASHINGTON

After the May 1948 announcement of the Commission that hearings would be held to obtain information on possible utilization of 475 to 890 megacycles in the UHF band for television broadcasting, RCA and NBC decided to continue the tests in Washington rather than in New York so that the experience would be directly available to those participating in the hearings. A complete television system operating in a 504 to 510 megacycle channel was installed at what is now the Sheraton-Park Hotel. Fifty home receiver installations were made throughout the Washington area to check the results of these transmissions. With antennas on the WNBW (WRC–TV) tower radiating the same program at both the UHF and the VHF, it was possible for us for the first time to compare directly results at the UHF and at the VHF under similar conditions.

Analysis of the data corroborated the conclusions reached as a result of previous tests that significantly higher radiated power would be required for television at the UHF than at the VHF. In addition, it was evident that shadow effects, because of buildings and rugged terrain, were more pronounced in the UHF than in the VHF frequency band.

RCA BUILDS FIRST COMMERCIAL-TYPE UHF STATION

In 1949 RCA and NBC established near Bridgeport, Conn., the first commercial-type UHF television broadcasting station. The station went on the air December 29, 1949, using the band of ultrahigh frequencies between 529 and 535 megacycles. Later a second transmitter, operating on 850 megacycles, was also installed by us at Bridgeport to permit a study of transmission and antenna techniques at the upper end of the UHF television band.

For more than 2 years this experimental station rebroadcast on a regular basis programs picked up from WNBT (WRCA–TV) in New York by means of a 2,000 megacycle microwave relay direct from the Empire State Building. UHF television receivers were built and placed in homes in and around Bridgeport. To supplement the data derived from reports of home viewers, we also equipped a mobile receiving unit to make additional tests.

The data obtained were analyzed and prepared as a full report, copies of which were filed with the Federal Communications Commission. In addition, RCA and NBC engineers published the data in technical papers so that all segments of the television industry would have access to the information.

Representatives of the FCC, of virtually every electronics manufacturer, and many broadcasters came to Bridgeport to visit this experimental station and to observe for themselves what it could do. Many manufacturers utilized the Bridgeport UHF signals as an aid in their development of UHF receivers and antennas.

On April 14, 1952, the FCC issued its new allocation plan, effective July 1, 1952, setting aside 70 UHF channels for television.

The first commercial UHF station to go on the air following this action of the Commission was Station KPTV in Portland, Oreg., equipped by RCA. The equipment was that which had been used by the Bridgeport experimental UHF television broadcasting station, and the station commenced operation in September 1952.

UHF TRANSMITTING EQUIPMENT

RCA work in developing improved UHF transmitters was well underway at the time the Commission in 1952 authorized UHF broadcasting on a commercial basis. The first UHF transmitters sold by RCA for commercial television had a power of 1 kilowatt. The effective radiated power provided by this transmitter was greater than 1 kilowatt, however, because of the gain provided by the transmitting antenna.

Transmitting antennas may be built so that the signal transmitted is concentrated in the region just above the surface of the earth. Thus, signal energy is not wasted by useless transmission upward. This effectively provides a signal which is stronger than would be the case with a simple antenna. Such antennas are rated in terms of a gain factor which expresses the signal transmitted as though it came from a transmitter of a power greater by this gain factor. For the period I am now discussing, RCA transmitting antennas for the UHF were available with a power gain of 20 or more. Thus, with the 1-kilowatt UHF transmitter, an effective radiated power of more than 20 kilowatts could be provided.

Meantime, development work was in progress at RCA with respect to higher power transmitter tubes together with the unique circuitry required for each, looking toward higher transmitter power. As a result of intensive development work, an appropriate power tube and a 12-kilowatt UHF transmitter were produced by RCA. A number of these UHF transmitters have been sold by RCA and are operating with effective radiated powers in the order of 250 kilowatts.

HIGH-GAIN UHF TRANSMITTING ANTENNAS

At the same time, development work on UHF transmitting antennas was in progress. Efforts were first directed toward contouring the pattern of the antenna which was used with the 1-kilowatt and 12-kilowatt UHF transmitters. Knowledge gained in this work led to the possibility that omnidirectional antennas with gains in the order of 50 could be built. Utilizing such an antenna and 2 RCA 12-kilowatt amplifiers operating in parallel, the first equipment of 1,000 kilowatt effective radiated power went on the air in December 1954, at Station WBRE–TV, Wilkes-Barre, Pa.

There have been new developments in addition to the high-gain UHF transmitting antenna. For example, early last year RCA announced a UHF 25-kilowatt transmitter utilizing a 25-kilowatt tube. This transmitter, when used with the high-gain antenna to which I have just referred, provides an effective radiated power of 1,000 kilowatts. The new transmitter also provides improved operating efficiency and a lower initial capital investment per kilowatt of output power as contrasted with our earlier transmitters.

At the present time, the maximum effective radiated power permitteed by the rules of the Federal Communications Commission is 316 kilowatts for high band VHF stations and 1,000 kilowatts for UHF stations. Equipment costs for such a maximum power VHF station and such a maximum power UHF station are approximately the same and operating costs for power and tubes are likewise of the same order.

HIGHER POWER PROPOSED FOR UHF TELEVISION

In a notice released June 24, 1955, the Commission proposed to amend its rules to increase the maximum permissible effective ratiated power for UHF stations from 1,000 kilowatts to 5,000 kilowatts.[1] RCA supported the proposal of the Commission and stated

[1] FCC Docket No. 11433. By Commission order released December 15, 1955, Docket No. 11433 was terminated and the record made a part of Docket No. 11532.

in its comments of August 31, 1955, that in its opinion the higher power proposed by the Commission for UHF would result in improving coverage and service provided by UHF television stations. RCA advised the Commission it was continuing its development work on higher power UHF tubes, circuits, filterplexers and antennas. This was with the objective of providing equipment necessary for UHF television stations to operate at higher effective radiated power levels, such as 5,000 kilowatts, if such power levels were authorized by the Commission. It was further stated by RCA that early approval of higher power by the Commission and customer demand would, of course, accelerate the time when commercial models of such equipment would be available. The Commission still has this matter under consideration.

HIGHEST POWER ACHIEVED FOR UHF TELEVISION

In recent months RCA's development work on higher power has resulted in achieving, to the best of our knowledge, the highest power ever developed for UHF television. On January 13 this year, a test was conducted at the RCA tube plant at Lancaster, Pa., coupling an RCA high-gain UHF antenna to an experimental transmitter using a developmental superpower tube to produce 4,500 kilowatts of UHF television effective radiated power at a frequency of 527 megacycles. This power was obtained by feeding approximately 100 kilowatts, generated by this new tube, into the antenna which had a gain of about 46.

Several weeks later further tests were made operating the transmitter at an average power of 100 kilowatts and intermittently pulsing it up to a level of 175 kilowatts. This is an approximation of operating conditions using a television signal. With an antenna gain of 46, this gave a peak effective radiated power of approximately 8,000 kilowatts.

UHF BOOSTER STATIONS

In 1954, RCA made plans to conduct tests to determine the extent to which booster operation could aid in the coverage of UHF television stations.

After a lengthy study of a number of areas in order to find a site for carrying out a full scale booster operation, RCA selected station WJTV, channel 25, in Jackson, Miss., as appropriate for these tests. This station, with an effective radiated power at that time of 17.7 kilowatts, was reported to be having trouble in covering Vicksburg, Miss., located about 35 miles west of the station. A substantial portion of Vicksburg was shielded from the station by a ridge of hills.

A survey was made in the neighborhood of Vicksburg to determine whether there were any receiving sites where a reasonably noise-free picture could be obtained to feed the booster station. Several such locations were found and one of these was chosen as the site for the booster. Equipment we had developed was installed at this site in cooperation with station WJTV.

A detailed report concerning the Vicksburg tests entitled "An Experimental Investigation of the Engineering Aspects of a UHF Booster Installation," was sent by us to the Federal Communications Commission on August 4, 1954.

These tests were referred to in RCA's comments of July 20, 1955, filed in a rulemaking proceeding which was instituted by the Federal Communications Commission by notice released March 31, 1955 (FCC Docket No. 11331). The purpose of the proceeding, the Commission stated, was to determine whether booster stations would constitute a feasible means for increasing the effective coverage of UHF television stations by filling in shadow areas within the nominal service areas of such stations. We stated our conclusion to be that, although conditions in the particular area and other technical means of providing statisfactory coverage must be carefully considered, in certain locations booster operation can aid in increasing the effective coverage of UHF television stations in their service areas. The Commission still has this matter under consideration.

UHF RECEIVING EQUIPMENT

While RCA was engaged in development work on UHF transmitting equipment, work was also in progress at RCA on the further development of UHF television receivers and receiving antennas.

When the first commercial UHF television station began operation in Portland, Oreg., in September 1952, we manufactured and sold three types of converters for existing VHF receivers. These were a continuous all-channel converter, a two-channel converter and a single-channel converter. In addition, we manufactured a VHF–UHF receiver which employed a 16 channel step-type tuner with separate circuit elements for each channel, any number of which might be provided with UHF tuning elements. In June 1953, we introduced a continuous all-channel UHF tuner which, in conjunction with the step-type VHF tuner, provided complete coverage of all television channels. We introduced a new and improved UHF tuner in June 1954, which also provided for continuous coverage of all UHF channels. The RCA line of receivers introduced in mid-1944 included receivers having all-wave tuners which incorporated further improvements.

Senator SCHOEPPEL. Might I interrupt there, sir. What was the differential in costs on those?

Mr. ENGSTROM. I am going to come to that, at least so far as the present situation is concerned.

Senator SCHOEPPEL. Thank you.

IMPROVEMENTS IN UHF RECEIVER PERFORMANCE

Mr. ENGSTROM. Substantial improvements in UHF receiver performance have been made during the past few years.

One measure of this improved performance relates to the strength of signal required to produce a noise-free picture, that is, a picture free of a noise effect which has the appearance of snow. This in technical terms is referred to as noise factor and is defined in terms of decibels of noise above an arbitrary level. On this scale, the lower the numerical figure in decibels the better the performance of the receiver in this regard.

Noise factors on production units, which ran as high as 18 to 25 decibels in some early receiver designs, now average from 11 to 14 decibels in such units. This means that UHF receivers we build today will give a satisfactory picture on a weaker signal than would earlier models. However, noise factors of UHF receivers, even though they have improved, are still not comparable to those of VHF receivers. In VHF receivers we manufacture at the present time noise factors average between 4 and 7 decibels.

Another improvement in performance relates to the spurious radiation from the receiver itself. Such spurious radiation affects other television receivers in the immediate neighborhood. The Commission has specified levels for this spurious radiation, which are 500 microvolts per meter at 100 feet for the UHF band, to be effective at a future date.

In RCA receivers, spurious radiation has been reduced from about 3,000 microvolts per meter at 100 feet 3 years ago to a level of about 500 microvolts per meter at 100 feet in UHF television receivers presently being manufactured.

Through experience gained from customer use of UHF receivers, design changes have brought about improvements. For example, we feel that the ease of tuning a UHF receiver has been improved.

Development work has proceeded on special types of receiving antennas for UHF and on improving the performance of transmission lines between a UHF antenna and the receiver. This improved equipment is now in customer use.

RCA is continuing its development work with regard to circuits, tuner design for VHF and UHF channels, receiving tubes and antennas, with a view to bringing about further improvement in the performance of UHF television receivers.

RCA PROMOTES SALE OF UHF RECEIVERS

It has been the policy of RCA to promote the sale of all-channel VHF-UHF television receivers. All color television sets we have manufactured up to the present time can receive all VHF and UHF television channels. Our black-and-white television receivers can be purchased by customers, if they desire to do so, as all-channel VHF-UHF receivers.

When we introduced our line of black-and-white television receivers during mid-1955, we reduced the nationally advertised retail-price differential between our all-channel set and a VHF only set to $25. This compared with the $50 to $60 differential which existed when we first introduced UHF tuners in our sets, and represented a reduction of more than 50 percent. The price differential which will apply to the new line of black-and-white television sets which we will introduce during mid-1956 has not as yet been determined.

The percentage of RCA's total production of black-and-white television receivers which is all-channel VHF–UHF is well above the average of the balance of the industry, in fact, approximately 40 percent above for the year 1955. However, the year-by-year industry trend with respect to the percentage of production of all-channel receivers is not encouraging. For the total yearly industry production of black-and-white receivers, the percentage of all-channel sets was 19.6 percent in 1953, 19.9 percent in 1954, and 15.2 percent in 1955.

NECESSARY TO UNDERSTAND TELEVISION PERFORMANCE AT UHF

It is necessary to understand how television performs at UHF in order to be certain, or at least confident, of practical success in tackling UHF problems. In general it is not proper to assume performance equal to VHF for reasons I have already outlined. This is not a new concept; it is one which became clear during the pioneering test period of television at UHF.

As I have already indicated in my statement, the Federal Communications Commission, at an early date, encouraged development work above 300 megacycles. This region was at one time thought to be the part of the frequency spectrum where color might have its beginning. Our experience during the late 1940's indicated, however, that color should have its start in VHF and expand to UHF.

In this connection on September 29, 1949, I testified before the Federal Communications Commission as follows:[2]

During the period of our UHF propagation tests and surveys, I held frequent discussions with two of my associates, Dr. Brown and Mr. Kell, because we became increasingly cognizant of the magnitude of the problem of broadcasting color television at UHF. This problem we saw was one for which the solution would surely come but would be slow in coming. We also saw that it would be necessary to make appropriate changes in the concepts of what UHF would do and that direct comparison to or equivalence with the low VHF channels was not appropriate. In presenting our data on the UHF tests we were careful to be realistic but at the same time avoid any overemphasis of the difficulties. Even so, we knew that others considered and said that we were too pessimistic in our statements. On this point, however, the passage of time is making clear what the real situation is.

There are differences between the propagation characteristics of the lower group of VHF channels as compared to the higher group of VHF channels. There are likewise differences between the VHF channels and the UHF channels and, again, between the UHF channels at the lower end of the band as compared to those of the upper end of the band. These differences are such that it is progressively more difficult, as the channel number or frequency becomes higher, to provide a usable signal in areas of tall buildings, rugged terrain and hills and valleys. It is more difficult for the higher frequency signals to penetrate, and there is less tendency for the signal to fill in or heal on the other side of an obstruction. These are conditions of nature. Increases in transmitter power are in the right direction to help, but cannot completely compensate for the very difficult situations.

A practical UHF receiving antenna is smaller in size than a VHF receiving antenna. A UHF antenna, therefore, intercepts less signal than a VHF receiving antenna. As I have already explained, UHF receivers require a stronger signal, particularly in any fringe or low signal area, than do VHF receivers if the picture is to be free of noise interference. Here again increases in transmitter power move in the right direction to aid in UHF.

In discussing the status of UHF television transmitters, I indicated that transmitters and antennas are available today which go to the top limit permitted under the existing FCC rules. I also indicated that RCA has developed new UHF tubes which may be used in transmitters and which may have effective radiated powers of the higher levels contemplated by an FCC proposal on which final action has not yet been taken.

Tubes and circuits for UHF television receivers will continue to be improved. Here it is my opinion that progress will be gradual and slow. There are modest improvements in sight, but there is no sig-

[2] FCC Docket Nos. 8736 et al., transcript of hearings, p. 2657.

nificantly large improvement on the immediate horizon. This is a research and development area which has received much attention during the past 10 or more years. It is from this experience that the above statements are made. One must, therefore, proceed to use performance characteristics of the general order of today's receivers, keeping in mind gradual improvements, in defining UHF service areas.

When VHF and UHF television stations serve in the same area the differences I have just been discussing are highlighted. The commercial and competitive aspects come into play, including the difference in cost between a VHF- only and an all-channel receiver. During the formative days of the television allocation plan, parties in industry cautioned against the mixing of UHF and VHF channels in the same service area wherever this could be avoided. There are practical limits to what can be done today because of the freezing effect of an allocation plan which has been in operation for several years; yet it is not too late to provide some remedy.

Subsidiary transmitters such as boosters and translators fed from the prime transmitter are helpful in filling the signal void behind a hill or obstruction and in supplying an area for any reason not penetrated by the prime signal. Here the particular broadcasting area and terrain situation must be carefully considered and each situation must be decided upon merit.

Freedom to use a directional antenna at the transmitter might in some cases be an effective aid. It is not always possible for UHF stations to utilize the best transmitter sites with an omnidirectional antenna and provide the best possible service at the least cost. The technical problems associated with the use of a high-gain UHF directional antenna are, in some instances, simpler than for an omnidirectional antenna.

The last matter on my list in this area is receiver cost. An all-channel television receiver capable of receiving UHF stations costs more than a receiver designed to receive VHF stations only. A customer naturally will not buy the more expensive all-channel receiver unless he knows from experience that the all-channel receiver will give him an enlarged service and one which appeals to him as having value. This is a handicap for UHF that goes to the grassroots level.

WHAT CAN BE DONE TO AID UHF TELEVISION?

In my testimony up to this point I have been laying the groundwork for certain suggestions which I shall now make to this committee. In making these suggestions, I do so in the belief that I do not have, nor do I believe that anyone has, a complete answer to all of the questions which have been raised during the start-up period of UHF. It seems clear that there is no single plan or solution which will be fully effective. Rather, one must consider and act upon all of the valid proposals.

When one takes into account the differences and limitations which I have outlined and uses good engineering judgment as to environmental conditions, UHF stations can provide an adequate and satisfactory signal service. As I have already stated, it is necessary to understand television performance at UHF. It is necessary to make a correct application for each situation. There is no known alternative, for we need the UHF channels in addition to the VHF channels for our still growing black-and-white television service and for the color service which is the newest of the mass communications mediums.

I therefore include in my list of suggestions several areas in which action might be taken to aid UHF television. My suggestions are:

Authorization by the FCC of higher power for UHF stations.

Senator SCHOEPPEL. Would you care to indicate—and you may not be able to—how much higher power?

Mr. ENGSTROM. I think, sir, that one has to move between what one might like to have and what it is practical to have, both from the point of view of the apparatus itself and the use of that apparatus by a broadcaster. The Commission has proposed for consideration an increase in power from 1,000 kilowatts to 5,000 kilowatts of effective radiated power. I concur in that proposal.

I think at a later time, when economic factors are better known, the Commission might again be well advised to consider an increase even in that power to something of the order of 10,000 kilowatts or more. But I think the first step is clear, that it should go from 1,000 to 5,000 kilowatts of effective radiated power. My further suggestions are:

Authorization by the FCC of the use of directional antennas by UHF stations.

Authorization by the FCC of the use of booster and translator type stations.

Action by the FCC to deintermix on a sufficiently broad basis to create a nucleus of predominantly UHF service areas from which UHF may grow and expand.

Encourage multiple owners and others with resources and know-how to undertake the operation of UHF stations.

Repeal by Congress of the excise tax on all-channel color television receivers.

I will discuss further some of these suggestions which I have not already dealt with in my testimony.

DEINTERMIXTURE

We believe that one of the contributions which the FCC can make to UHF television is to deintermix on a sufficiently broad basis to create a number of predominantly UHF markets. Without this, the public may not purchase all-channel receivers in sufficient number to justify the continuance of their manufacture. With deintermixture on such a basis, however, UHF is provided a nucleus of areas from which it can spread to others.

Prior to the adoption by the FCC in April 1952, of its present television allocation plan, RCA recommended that the Commission—

> * * * avoid, insofar as practical, the mixing of VHF and UHF channels in the same service area. (RCA letter of March 23, 1950, to the Commission in Docket Nos. 8736 et al.)

The Commision, in dealing with proposals for mixture or nonmixture of UHF and VHF channel assignments, in its report of April 14, 1952, stated that—

> * * * UHF is not faced, as was FM, with a fully matured competing service. In many cases UHF will carry the complete burden of providing television service, while in other areas it will be essential for providing competitive service. In view of these circumstances, we are convinced that stations in the UHF band will constitute an integral part of a single, nationwide television service. (Sixth

Report on Television Allocations, 1 Pike and Fischer Radio Regulation 91:601, at 91:664.)

However, by the time the television freeze was lifted and UHF stations actually began to come on the air, VHF had a circulation lead over UHF of 21 million sets.

It is these facts which raise grave doubts as to the wisdom of intermixture, as provided in the sixth report. The Chairman of the FCC put it this way in an address on December 6, 1955:

> * * * It was assumed that the initial technical and economic handicaps of UHF would be overcome eventually, and, therefore, the Commission intermixed VHF and UHF assignments in various cities and areas.
>
> Up to the present, this basic assumption has not proved out * * *.

Some criteria, which it was suggested the Commission might want to apply with respect to deintermixture, were set forth in comments which RCA and NBC filed with the Commission on December 15, 1955. (FCC Docket No. 11532.)

MULTIPLE OWNERS SHOULD BE ENCOURAGED TO ACQUIRE UHF STATIONS

In January 1952, even before UHF channels were made available for commercial use, the National Broadcasting Co. asked the FCC to amend its rules to permit NBC and other multiple owners of television stations having the knowhow, experience, and resources to undertake part of the task of furthering the commercial development of UHF. More than a year ago the Commission so amended its rules.

Owners with experience in research, engineering, manufacturing, or broadcasting could show the way in establishing a UHF television service either in an intermixed or nonintermixed market. Persons who have a substantial stake in television and electronics should be encouraged to enter the UHF field.

REPEAL OF EXCISE TAX ON ALL-CHANNEL COLOR TELEVISION RECEIVERS

If UHF television is to succeed, it is essential that the public have greater numbers of UHF receivers. This is necessary entirely apart from anything else that is done to aid UHF.

Proposals have been made in the past that the excise tax be removed on all-channel black-and-white television receivers. This proposal was made in the interest of increasing the number of receivers capable of being tuned to the UHF channels. For example, had the excise tax been removed a year ago, there would today be a substantially larger number of receivers in use with all-channel tuners. I understand this proposal did not meet with favor because of the loss of tax revenue.

Now we are on the threshold of a new television service, television in color. We therefore have the opportunity to assure the growth of receivers with all-channel tuners as a part of this new service. The development of color television as a national service in the interest of the public and the Nation's economy requires the production of color receivers which can be priced to the consumer at the lowest possible level. This, together with considerations of price competition, make it necessary to do everything possible to bring receiver prices down.

Up to the present time, RCA color receivers have included all-channel tuners. Thus, every RCA color receiver made to date can be used for any of the UHF channels as well as the VHF channels. However, recognizing the realities of the situation and the competitive picture, as we move into higher rates of production we must plan to make VHF-only color receivers as well as all-channel color receivers. This is our current plan for the new line of color receivers which we will announce within a few months.

If the buying habits of the public for color television receivers prove to be the same as for black and white, we would then expect that something of the order of four-fifths of our production would be VHF only and the remainder would be receivers with all-channel tuners.

Congress now has the opportunity to aid in getting color television off the ground and at the same time assure an increased audience for UHF.

If the Congress exempts all-channel color sets from excise tax, we would then take appropriate steps to provide for the production of only all-channel color receivers as soon as practicable thereafter.

For us time is of the essence, because, as I have just stated, we are preparing soon to announce a new line of color receivers. These new color receivers will be moving through our factory within a month.

We believe that removal of the excise tax would be sufficient reason for all manufacturers to make all-color receivers tunable to both VHF and UHF; in other words, all-channel receivers. As color receivers replace black-and-white receivers, which they are bound to do, the UHF audience for both black-and-white and color transmissions would grow. That the UHF audience grow is basic to the success of UHF.

THE NEED FOR UHF TELEVISION CHANNELS

In conclusion, it is my opinion that the battle for UHF television is well worth fighting in the public interest. The stature of television today has been built upon the 12 VHF channels and only a partial use of the 70 UHF channels. Television needs more than 12 VHF channels in order to fulfill its promise. The UHF channels were provided to meet this need. We must work, therefore, toward solutions of the UHF growth problems which have appeared in order that television may come to fulfillment.

Mr. Chairman, that completes my statement.

Senator SCHOEPPEL. Thank you very much, Mr. Engstrom, for a most enlightening statement. I think our counsel has a series of questions that he desires to ask you.

Mr. COX. Thank you, Senator. Dr. Engstrom, I gather in 1952 when UHF stations first went on the air, it was quite clear at that time that the transmitting equipment available for them was not fully competitive with the V stations then on the air at their maximum authorized powers. Is that correct?

Mr. ENGSTROM. My answer is that it was clear to all of us who had experience. I do not remember exactly how you phrased the question. You used the word "them." In the Commission's records, in all the technical literature, it was adequately clear that more power than 1 kilowatt would be needed in order for UHF to operate on any kind of a competitive basis with VHF; yes, sir.

Mr. COX. We have been given to understand that the early U-operators believed from the position taken by the Commission—and, I gather, from certain statements of manufacturers—that that condition would be rather rapidly improved. Was there basis in the proceedings leading up to the sixth report for such a feeling of confidence on their part, in your opinion?

Mr. ENGSTROM. When you say that the situation would be rapidly improved, you mean by the construction of higher power transmitters?

Mr. Cox. Yes.

Mr. ENGSTROM. I think everyone did have the concept that that would happen, and that is what has happened. But it is also clear that higher power transmitters are not available in the first instance. They have come along since that time.

Mr. Cox. As I gather it, though, actually even a transmitter with an effective radiated power of 1,000 kilowatts has been available only for about a year and 4 or 5 months.

Mr. ENGSTROM. Yes; I believe that is correct.

Mr. Cox. I also gather that a good many UHF operators—in fact, a great majority of them—have not taken advantage of this higher power for economic or other reasons. If they were to increase from an effective radiated power of 250 kilowatts to 1,000 kilowatts, would they achieve a substantial increase in their service area coverage, or simply an improvement of the picture within their present area?

Mr. ENGSTROM. They would do both, of course. An increase in transmitter power to the maximum permitted would, within the basic service area of the station, fill in some of these low-signal areas which might be caused by hills or by buildings or by obstructions of one form or another. It would increase the distance that the signal would travel and therefore would, by the same token, increase the total service area of the station.

I think, however, one has to be careful that if in a particular environment one has a low channel VHF station in direct competition, one cannot say that they would be equivalent. The low-channel VHF station operating at maximum power of 100 kilowatts would have a larger service area and would be freer from whatever dead spots remain.

Mr. Cox. Assume that the U-station is operating at 250 kilowatts and it is considering going to 1,000 kilowatts. As it increases its service area, it again encounters a conversion problem which it may have solved in its present service area, does it not, as it now reaches out to people who have been getting television service but who have gotten it only from V stations?

Mr. ENGSTROM. I am sure you are correct, but I would assume also, in addition, that in an environment which had both VHF and UHF, even though the UHF station did not reach far enough to interest people on what might be the fringe area of the VHF station, they would have had some incentive to have purchased a receiver that would tune to all channels in anticipation of what might happen, you see, later. So except for that, I am in agreement.

Mr. Cox. Then do you not have the problem that, as the coverage is broadened, he then is getting into areas of sparse population, and there arises a very serious question as to whether the potential increase in the receivers that he can reach is going to make worth while the initial capital outlay that will be necessary to make the increase in power?

Mr. ENGSTROM. Surely. But I think that we may be going along diverging paths, you see, because I personally would not apply a UHF channel in an area which was difficult to serve because of terrain or because one wanted to get the extreme of distance. That is the job to be done by a VHF station.

Mr. COX. That was one of the points I wanted to bring up. That is, in your opinion there are now, based on experience today, certain areas in which very clearly it is almost useless to allocate UHF channels?

Mr. ENGSTROM. I can think of one—New York City.

Mr. COX. Yes; because of the problems of high buildings. And in certain other areas of rugged terrain, would you feel that it would be better, if a thoroughgoing reallocation were undertaken, to try to concentrate enough V's there to give the kind of competitive services required and to leave U's in areas of better terrain for that kind of service?

Mr. ENGSTROM. Yes, sir; I would do that. And I would try to make the U-locations, insofar as is possible or practicable, to be all U-locations. I know that one cannot do that in all cases.

Mr. COX. Could you give us, just roughly, an idea of what it would cost a U-operator to go from 250 to 1,000 kilowatts of effective radiated power?

Mr. ENGSTROM. I have some indications as to the cost of the basic equipment, but I do not have the incremental costs. I can provide this information for the committee.

Mr. COX. Would you do that?

Mr. ENGSTROM. I shall do that.

(This information was furnished by letter dated April 2, 1956, and was made a part of the record on April 23, 1956. The letter reads as follows:)

RADIO CORPORATION OF AMERICA,
New York, N. Y., April 2, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: During my testimony on March 15 before the Senate Interstate and Foreign Commerce Committee, I was asked to provide for the committee an estimate of how much it would cost a UHF television station operator to increase the effective radiated power of his station from 250 kilowatts to 1,000 kilowatts.

Such a conversion would involve the transmitter, the antenna, and, in some cases, the tower and transmission line. The total cost of the conversion could vary considerably depending upon the equipment the station now has.

I will assume in my answer that the equipment to be used to attain 1,000 kilowatts effective radiated power will be a 25-kilowatt transmitter and an antenna with a power gain in the order of 50. In addition, I will assume that the station is now equipped with an RCA TTU-12A (12-kilowatt) transmitter. Equipment to convert this transmitter to an RCA TTU-25B (25-kilowatt) transmitter would cost approximately $75,000. The present cost of a new RCA TFU-46AL high-gain UHF antenna would be $49,500. Additional transmitter and antenna cost, therefore, would be in the order of $124,500.

Transmitter and antenna cost for initial installation of UHF stations would be approximately $137,500 for a station with an effective radiated power of 250 kilowatts and $235,500 for a station with an effective radiated power of 1,000 kilowatts, or a difference of $98,000. This figure of $98,000 compares with the figure of $124,500, above, when a changeover to increased power is made following the initial installation.

In some cases the station might need a new tower to support the high-gain antenna and a new transmission line. The cost of a 500-foot tower, for example, would be in the order of $30,500 and new transmission line from the antenna to the transmitter, if required, would cost about $15,500.

The above figures of course do not include transportation and installation costs which vary with the particular circumstances.

Very truly yours,

E. W. ENGSTROM.

Mr. ENGSTROM. The figures which I have before me indicate that so far as the transmitter apparatus is concerned and the antenna—I am talking about apparatus cost now—it is $235,500 for a UHF transmitter having 1,000 kilowatts of effective radiated power. In comparison, a VHF high-band transmitter—this is in the upper group of VHF channels—where the Commission permits a maximum power of 316 kilowatts of effective radiated power, the cost of that equipment is $250,500.

The reason for the cost differential is basically this, that at the VHF channels it is more difficult for practical reasons to build a transmitting antenna that has high gain; whereas as one gets to the UHF channels, where the wavelength is shorter physically in inches, one may more readily build a high-gain transmitting antenna. Therefore, in order to obtain, at least by our design concepts today, 316 kilowatts at the high-band VHF, we use a transmitter, proper, which produces 50 kilowatts of power; whereas in order to obtain the 1,000 kilowatts of effective radiated power at the UHF, we use a 25-kilowatt transmitter.

Mr. COX. You indicated that the equipment costs and the operating costs for this high-band VHF station and for a UHF station are about the same?

Mr. ENGSTROM. Yes, sir.

Mr. COX. I take it that that is speaking as of today?

Mr. ENGSTROM. Yes.

Mr. COX. When most of the U-stations were built in 1952, 1953 and early 1954, were the costs, then, of constructing a UHF station more in comparison with a V-station than is true today, because you have been able to bring the costs down?

Mr. ENGSTROM. May I refer to one of my associates?

Mr. COX. Yes.

Mr. ENGSTROM. Mr. Hopkins has said that in the beginning a 1-kilowatt UHF transmitter cost approximately $25,000 more than a 1-kilowatt VHF transmitter.

Mr. COX. Were 1-kilowatt VHF transmitters being used in substantial quantities? That is, with high-gain antenna? Were they being used, so this actually would be a fair competitive comparison?

Mr. ENGSTROM. No, I do not believe it is a fair competitive comparison, because there was a rather rapid drive for the operators of VHF stations to go on increasing their power.

Mr. COX. That is, most successful VHF stations are now operating at their maximum permitted power, whereas only 3 or 4 UHF operators are using 1,000 kilowatts?

Mr. ENGSTROM. It is certainly a very much larger percentage, yes, sir.

Mr. Cox. We have heard figures—I do not believe any of them are on the record—that indicate that, to build a UHF station—this may include the studios as well—it costs $500,000 to $600,000, and that this represented, in the days when those stations were going on the air, a substantially higher cost than was required for a VHF station that could actually outcompete them as to coverage. Do you think that was likely to have been true in those earlier days?

Mr. Engstrom. I am not sure I can answer the question, as I understand it, because in the beginning all that was available to the UHF station operator was a 1-kilowatt transmitter. Therefore, he was not in a position to start out competing signal area for signal area with a VHF station.

The total cost of a broadcasting station varies widely for different operators because of the amount of studio equipment or program generating facilities which he has. If one gets down to the basic cost of the transmitter itself, then the differences are certainly very much less; and as I have indicated today, for the two powers that I have outlined, the cost is essentially the same.

It would cost a UHF operator less, in the beginning, to set up a 1-kilowatt station certainly than it would cost a VHF operator to set up a station of higher power.

Mr. Cox. Do you know whether the UHF stations now operating at 1,000 kilowatts are able to achieve, if not as wide coverage as a V competitor in that area, at least nearly enough so as to make them competitive, if their rates are right?

Mr. Engstrom. I do not believe that I am really in a position to answer that question because that is the kind of information which really should come from a broadcaster who has the experience. But in terms of the technical information which I have outlined, I think that it is a little dangerous to talk about direct competition unless one knows exactly the environment in which the stations are located.

Mr. Cox. You mentioned the development of this experimental 4,500-kilowatt transmitter at Wilkes-Barre, I believe it was. I assume these are not yet in commercial production in any sense?

Mr. Engstrom. No, sir, they are not in commercial production because it is common that, while basic development work is done in advance of permission to use such apparatus, practical apparatus designs are not finished, nor is apparatus made, until the exact requirements are known.

Mr. Cox. Do you know whether UHF operators have in general supported this proposal to increase their maximum power?

Mr. Engstrom. I personally do not know that. I understand that Mr. DeWitt, who appeared yesterday, supported the move to higher power.

Mr. Cox. Could you, looking to the future, give us any idea of what might be the cost of such a transmitter, assuming favorable action by the FCC? I am trying to get at the point whether the moving on to higher power for a UHF operator is ever going to be economically feasible in the face, at least, of their present economic situation.

Mr. Engstrom. I can give you a very crude guess——

Mr. Cox. That will be all right.

Mr. Engstrom. Since we haven't designed the apparatus and do not know its manufacturing cost. It would cost something in the order of $550,000 for that type of transmitter.

Mr. Cox. Would the cost of operation, because of the power tubes, be substantially greater for that than for a 1,000-kilowatt transmitter?

Mr. ENGSTROM. It would be just a little over two times the cost of operating a 1,000-kilowatt UHF transmitter.

Mr. Cox. Do you think that a UHF station operating at 4,500 kilowatts—assuming ideal conditions with no high buildings, at least not a great concentration of high buildings, and not too rough terrain—could achieve substantial competitive equality with a VHF station operating at its present authorized maximum?

Mr. ENGSTROM. I believe, sir, we are getting back into the area where I have difficulty. You see, when you start talking about competitive—and may I tell you why. We have these factors of propagation where there are differences, and where the difference becomes more pronounced the higher one goes in the UHF band—that is, the higher channel numbers. We have the differences with respect to a practical receiving antenna to collect as much signal. We have today's situation—and one which I indicated will improve, but only slowly—of the difference in performance on a UHF receiver as compared to a VHF receiver. All of these find a solution, at least a partial solution, which goes in the direction of increasing the amount of power.

Now, by engineering terms one can—and we have, and this information is in the technical record and in the Commission's record—put together all of these differences and add them up, and one gets a ratio of power required to be competitive, for example. But in 70 or 80 percent of all cases in all service areas that becomes fantastically high. It is in the order of thousands.

Now, let me however go back and be practical and give you a rule of thumb ratio which I think would work out if, as you say, you select an area which is reasonably favorable for UHF. If one makes a 10 times gain in the power of a UHF transmitter, one makes a noticeable improvement. If one makes a hundred times gain in transmitter power in UHF—I am saying now you have first a UHF transmitter of 1 kilowatt or whatever we use as a base—and 1 goes a hundred times, and if we then make that hundred times to be whatever is the maximum possible today—which might be 1,000 or 5,000 kilowatts—then one has the possibility of doing a very excellent job in serving an average good area.

Then the competition, you see, doesn't quite come up in the same way, because you have a good enough signal. The only thing you might not have with a UHF transmitter is the ability to go to great distances.

Mr. Cox. You discussed the operation of this experimental booster at Jackson, Miss. Was that a booster which reflected the signal on the same channel or did it involve translating it to another channel?

Mr. ENGSTROM. On the same channel.

Mr. Cox. Did you discover any difficulties with interference in the area with direct reception of the mother signal, or was that pretty well spent?

Mr. Cox. Not in that particular setup, because it was the hill which obstructed the prime signal. By putting the amplified second transmitter signal on the far side of the hill from the prime signal and making it sufficiently strong, we did not have interference between the two.

Mr. Cox. Then your general conclusion was that in some areas, at least, on-channel boosters can serve to fill in.

Mr. Engstrom. Same channel boosters; yes.

Mr. Cox. In discussing the development in reducing the noise factor in receiving sets, you indicated the UHF receivers were still not as satisfactory as the V receivers. In your opinion, is further progress along those lines likely to take place if there is any incentive to manufacturers?

Mr. Engstrom. Oh, yes; if there is incentive to do this for reasons other than television, because these same tubes, you see, are useful in communications equipment and military equipment, and the work is going forward. The point I wanted to make is that it is an area which has already received very extensive coverage, and progress is being made, but the progress is incremental in terms of the final objective.

Mr. Cox. You proposed the authorization of directional antennas?

Mr. Engstrom. Yes.

Mr. Cox. Could you tell us very briefly what advantage that would have for a UHF station?

Mr. Engstrom. Suppose we have, for an example, an area to be served which is on a seacoast; or to make my example ridiculously simple, we have an area which is built up to a certain edge and beyond that there is desert, and there is no need to serve it. One might then put a directional antenna toward the sea, but with the signal faced away from the sea so as to cover the area by that process.

This means, then, that one would concentrate the signal over the area where people live and wish to have service and not waste the signal over on the other side. There are a number of instances where that would be helpful. It is also helpful, in some conditions, to reduce the interference which this transmitter would create with respect to another on-channel transmitter at some other location behind the antenna.

Mr. Cox. So it might permit the use of this channel at less than the present minimum separations?

Mr. Engstrom. That is very dangerous to answer "Yes" to, because the present allocation plan was very carefull thought out as to station separations and there are some cases where this would be effective; but it is certainly not generally applicable because one, of course, in going to a directional antenna, in going to maximum powers, does lay down a very strong signal.

Mr. Cox. You discussed the desirability of encouraging the production of all-channel color sets through elimination of the excise tax or otherwise.

Mr. Engstrom. Yes.

Mr. Cox. I think this should be made clear for the record. My understanding would be, of course, that those sets, being compatible, would be all-channel black-and-white sets as well.

Mr. Engstrom. Yes, sir.

Mr. Cox. In other words, the color sets that RCA is now manufacturing receive all 82 channels, regardless of whether it is broadcast in color or black-and-white?

Mr. Engstrom. Yes, sir. I have only one set in my home. It is a color set, and we use it for both black-and-white and color.

Mr. Cox. You indicated that you felt that deintermixture was advisable, at least in enough areas to provide a substantial base for the continued growth of UHF. A witness who appeared before the committee earlier—Mr. Storer, of Storer Broadcasting Co.—outlined a plan which would, as I recall it, lead to the development of 25 markets which would either be all UHF or with only 1 V, and which would contain 20 million people and 4 million sets. Could you give us any opinion as to whether or not that would be such a substantial foundation as to provide continued incentive for the development of UHF receivers and transmitters?

Mr. Engstrom. I will have to limit my response to the numerical figures which you have outlined, because I am not directly familiar with Mr. Storer's presentation. I think so, yes, because what one needs is a base which is large enough to encourage the manufacturers and those who sell the receivers to put on a drive to see that more receivers are sold.

Mr. Cox. On the contrary, I assume that you would feel that if something of this sort isn't done, and if UHF stations continue to go off the air, this is likely to have a deadening effect upon the development of equipment for use on these frequencies?

Mr. Engstrom. Yes. I indicated that the trend with respect to the percentage of receivers made by industry is not encouraging, because one would have expected that if we were on the upgrade, the percentage would have gone up during 1955. Rather, the percentage went down during 1955, and the promise for this year may not be as good as for 1955.

Mr. Cox. In connection with the possible development of translators, the FCC now has a proposal for using the channels from 70 to 83. Are there any special problems in the operation of television receivers in connection with the use of those channels?

Mr. Engstrom. None that are not a part of the characteristics which I have already outlined. That is, one must have a signal strong enough to operate in the area to be served.

Mr. Cox. Is there any tendency for the oscillator tube or other elements of the set to be less effective, or to wear out more quickly, as far as reception in that part of the band is concerned?

Mr. Engstrom. Not to wear out more quickly; but again, as one goes to the higher frequencies, oscillator stability problems become more difficult, the signal and noise become less favorable, and things of that kind. But otherwise, no differences.

Mr. Cox. However, perhaps those problems would not be so serious where the translated signal would just be broadcast within a limited range?

Mr. Engstrom. And strong enough to cover the particular area; yes, sir.

Mr. Cox. Just one other point. There has been some suggestion, of course, of the possibility of getting additional spectrum space from other services in the VHF band. I think one of the members of the Commission expressed the opinion that if that were done, the cost of converting existing sets to receive these channels would be very, very slight—perhaps $1. Would you have any information which would permit you to tell the committee whether that is reasonable or whether these conversions would probably cost as much as a conversion from V to U?

Mr. ENGSTROM. I think I have to borrow from my general experience of knowledge of what people do in respect to conversions of any kind. There are probably a small percentage of receivers on the market which have strip tuners and which therefore might be changed. But the average tuner as it is now built may not readily be changed.

I think therefore we would begin with a situation which would differ from the UHF situation in that we would have 37 million sets today which could not receive the new channel. Users would convert a few, but I think that those channels would become available primarily through a change on the part of manufacturers, so that new receivers after the date of such decision would come equipped with those channels.

There is this difference. To add a channel or two in the VHF band costs something, but it does not cost as much as to add a UHF channel; but the compatibility problem remains. I do not, for one, believe that the American people will buy enough converters to change what they have to make that very significant.

Senator SCHOEPPEL. Thank you, Dr. Engstrom.

I understand Mr. Ferman is here. You have a short statement, I understand. We will hear from you now because I must alert everyone that, with the Senate in session, if there is a vote, we will have to recess or close.

You may proceed, sir.

STATEMENT OF IRVING FERMAN, DIRECTOR, WASHINGTON, D. C., OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. FERMAN. My name is Irving Ferman. I speak in behalf of the American Civil Liberties Union as its Washington, D. C., director. The American Civil Liberties Union is a private, nonpartisan organization devoted to the promotion of the Bill of Rights. Much of our work very naturally involves the protection of the individual rights guaranteed by the first 10 amendments. However, our concern likewise extends, particularly in matters relating to free expression, to the social utility of these freedoms.

In America, we protect the individual's right to express himself for a very simple reason—because we believe in the solemnity and dignity and worth of man. This unshakable belief is part of the basic religious fabric not only of the great American community, but of Western civilization itself.

A flourishing of expression and communications in a society reflects not only the moral strength in the individual, but the moral strength of society itself.

It is not without significance that, in these critical times, freedom of expression promises to become the great weapon in democracy's arsenal of defense in its life-death struggle with Communist totalitarianism. If we have indeed reached an armaments stalemate, it is our distinctive powers of freedom upon which we must rely, and it is with these very same powers that we shall win.

The responsiveness of a free nation to truth and intelligence is its secret source of health and nurture. Our ability to maintain this responsiveness, this flexibility, may well spell the difference between victory and defeat for the free world.

And we know such responsiveness can thrive only in a field where many diverse and different ideas are able to grow and mingle, struggle, and survive.

The great sinews of American individual expression lie in our mediums of mass communications. Upon the health and vitality of our mass mediums there depend the health and vitality of our culture and our life. This is why the television mediums constitute one of the great promises of our free society, for it is the most extensive and penetrating ever devised by man. Because of this, the American Civil Liberties Union is deeply concerned with the wise formulation of licensing policies for the television as well as the radio spectrum, lest the overriding public interest be lost from sight.

The television mediums, as well as the radio, present special problems because of the technical questions concerning allocation of space on the spectrum. Contrary to the mediums which present the printed word—there is no limit to the number and variety of publications so long as paper and printing presses are available—the assignment of space on the spectrum offers real challenges to diversity of expression. The problem of ultrahigh frequency, with which this committee is now wrestling, only highlights the seriousness of the problem.

The American Civil Liberties Union in terms of its interest has noted with grave concern the competitive disadvantage of UHF channels in relation to VHF channels.

The facts of the competitive disadvantage of UHF have been ably explored by this committee under its present chairman and under Senator Potter.

The Federal Communications Commission's distribution of channels over 2 frequencies has made it economically impractical for almost 85 percent of the television spectrum to continue in existence. This has resulted in a sharp limitation of diversified program sources and an inadequate number of stations, particularly at the significant grass-roots level.

The present usable television broadcasting channels are entirely inadequate to supply a diversified, free, and competitive communications service for the entire needs of the public.

Approximately 15 percent of the total radio frequency spectrum is now allocated to public AM, FM, and TV broadcasting. But of the 82 channels allocated to TV broadcasting, the 70 UHF channels have proven to be unusable in all but a small proportion of exclusive UHF areas because of the initial licensing of the 12 VHF channels and the high costs of conversion to the public.

The great social impact of TV broadcasting may justify even radical measures of channel reallocation and expansion at the expense, if necessary, of some of the Government and private services which now occupy 85 percent of the spectrum.

The 12 usable VHF channels provide a wholly inadequate diversity of services as well as opportunity for free development of television for the public's total needs. Based on data from the A. C. Nielsen Co., it is estimated that 5 percent of the population can receive no stations; 9 percent, only 1 station; 10 percent, 2 stations; and 21, 3 stations.

The average choice of stations is only 3½. A recent Federal Communications Commission report acknowledged that 25 percent of the population had access to none, or only 1, station.

This lack of freedom of choice is also reflected in the present usage of television. Thirty percent of United States homes are still not equipped with receivers. An average of 40 percent of United States homes do not use their television sets even in the popular evening hours.

Recognition of the need for expansion has been recognized in the Federal Communications Commission. Commissioner Lee has proposed expanding the VHF band to 45 channels. Ex-Commissioner Craven has called for a minimum of 65 channels. As Commissioner Hyde recently stated:

> The basic issue is whether the United States, with its growing economy and its expanding need for communication service, and particularly for television service, is going to have a system with low ceilings built in or whether or not it is going to have a system with sufficient number of channels to give opportunity for development of a comprehensive, competitive free enterprise system.

Proponents of pay television emphasize that if adequate channels were available and exclusively licensed for pay use to avoid displacement of free broadcasting, the broadcast communications mediums could have the same opportunity to develop diversified smaller audiences as the paid print mediums. While the union has not taken any position on the problem of subscription TV, an expansion of TV channels could certainly meet one of the major objections of subscription TV opponents, that it will cut into existing free TV service.

The public interest dictates that underlying the policy of licensing and allocating channels there be an attempt to insure the greatest number of economically secure outlets, so that we can achieve and maintain within the framework of the mediums the widest diversity of views, of expression, indeed, even of cultures.

All of these factors point clearly to one direction—that before the Senate considers the specific proposals suggested to relieve the TV problem, a basic congressional study of the inadequacy of present service and the present and future public needs for broadcasting services be made. In such a study, the Congress should be guided by authorities from all institutions which conduct or are served by the communications mediums. Independent representation from journalism, publishing, education, social and political science would be vital. Needless to say, the proposed study should not concern itself with the content of programs, for program review could lead to undesired Government interference with opinion, but solely with the issue of multiplicity of channels.

We further urge that the present study by the Federal Communications Commission of its allocating policies be pursued to a conclusion as quickly as possible so that present licensing will be conducted more in line with the public interest.

What should be emphasized, however, is that the leaders of American television industry thus far have displayed a high degree of social responsibility, so that the mediums in its short life has contributed much to American thought, suggesting an even greater promise.

Senator SCHOEPPEL. Thank you, Mr. Ferman.

Mr. COX. Thank you very much, Mr. Ferman.

Senator SCHOEPPEL. Mr. Biemiller.

STATEMENT OF ANDREW J. BIEMILLER, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. BIEMILLER. Senator, with your permission, I will summarize the first three pages if you will consider them as read for the record, and then will concentrate on the last couple of pages.

Senator SCHOEPPEL. That will be helpful indeed. You may proceed in your own way, sir.

Mr. BIEMILLER. Mr. Chairman, my name is Andrew J. Biemiller. I am a legislative representative for the American Federation of Labor and Congress of Industrial Organizations, with offices at 901 Massachusetts NW., Washington, D. C.

We welcome the opportunity to appear here today and place in the record certain views of the labor movement on some of the questions within the scope of this hearing. I further understand that when this committee reaches the item of pay-as-you-see television, we will be given additional time to set forth our views on that question.

First, I wish to place in the record a letter sent on December 15, 1955, to the Chairman and the members of the Federal Communications Commission by President Meany of the AFL-CIO. That letter read:

The AFL-CIO, an organization of 15 million Americans, joins with the Federal Communications Commission in its concern over the present state of the development of television. Pursuant to your general invitation of November 10, 1955, I welcome this opportunity of submitting preliminary comments concerning this important problem.

The American public has made television possible. It has purchased over 37 million TV sets. It spends its valuable leisure time at these sets. Organized labor has a great stake in the sound development of our TV system which your notice of proposed rulemaking indicates you intend to reconsider on an overall basis.

The phenomenal growth of TV and its widespread acceptance has outstripped all expectation. At stake here is whether the American people are to eventually have a nationwide system of 2,000 TV stations, or to be cut down to a system of scarcity of stations with time available only to the largest corporations in industry.

The basic premise on which we all agree is that TV spectrum space is in the public domain. It is therefore the Commission's obligation to plan and allocate enough channels in such a manner as to avoid hampering future growth. This proceeding, in my judgment, should be geared to having as many channels as possible, for as many TV stations as possible, in as many communities as possible.

In 1952, the Commission's allocation plan recognized this need and allocated 82 TV channels for the development of a nationwide competitive system. It is a source of deep disappointment to me to read in your notice that this system is not being developed.

I agree with the three objectives summarized in your notice as constituting the basic philosophy of establishing such a system. You stated these objectives as follows:

(*a*) At least one service to all areas;

(*b*) At least one station in the largest possible number of communities;

(*c*) Multiple services in as many communities as possible to provide program choice, and to facilitate competition.

To accomplish this goal, I believe the Commission should preserve and encourage as full use as possible of the 82 channels provided for in the 1952 decision.

In addition to the use of these 82 TV channels for commercial purposes, the future of educational TV also is at stake. You know, of course, the role of organized labor in the development of the American public-school system. Labor has for many years also been vitally concerned with educational radio and TV. It has vigorously supported the educational TV reservation made by your Commission, by appearing in those hearings.

Any proposed cutback in the number of TV channels will threaten these reserved channels and endanger the future of a nationwide educational TV system. Needless to say, with the critical condition in which American education finds itself today, any curtailment in the educational reservation would be a disastrous blow to the American people.

The merger convention of the AFL-CIO adopted a resolution on education which contains a section on educational TV. That section reads:

We believe that educational TV has proved its value where stations have been established and we insist the Federal Communications Commission continue to reserve the channels set aside exclusively for educational purposes.

All TV educational stations should have an operating committee fully representative of all interests in the community.

Mr. Chairman, our membership is vitally interested in protecting the channels reserved for educational TV. When this question was before the FCC in 1950, President Meany, then secretary-treasurer of the AFL, made a statement before the Commission. He said in part:

It has frequently been said that in spite of the many avenues of communication that have been developed in the modern world, we continue to be poorly informed on many vital problems. We believe the best way to guard against this is to give every possible assurance that the avenues of communication are made available to all groups in society. It is important for members of labor organizations to obtain information regarding the problems, conditions of work and viewpoint of farmers, businessmen, housewives, and governmental and professional leaders. It is no less important that members of such groups should have the opportunity to learn of the experiences, problems and conditions of work and aspirations of the 16 million members of organized labor.

The interests of labor and the interests of the broader community are for the most part identical. It is essential in these days and in the days ahead that our common interests should be emphasized and the basis of our differences be understood.

Radio and television have made some contribution to establishing a common basis of understanding. The history of the last 25 years, however, has shown that radio has not played the great role educationally that was expected of it. Television offers even broader areas of appeal and possibilities of utilization in developing educational programs. Indeed, there is the real possibility that radio and television may be used to supplement each other for educational purposes. It is that hope that impels us to urge that the maximum possible provision for the use of television in education be made by your Commission.

In the event your Commission approves this request, we urge (1) that sponsorship of such facilities be encouraged on the widest possible basis. We favor the sponsorship of such stations by broadly representative committees, or under the joint auspices of several educational institutions. In metropolitan areas, there are usually a number of colleges, universities and nonprofit institutions which carry active educational programs.

(2) The quality and scope of the educational station should be improved and constantly widened. The experience in the development of programs should be made available to other stations.

(3) We urge that your Commission require stations licensed for educational purposes to give reasonably adequate reports of the nature and purpose of the programs offered. Such public reports would assist your Commission in appraising the work of the stations and would result in an exchange of techniques, ideas and material among stations and, above all, it would bring the station closer to the community it serves.

That statement is as valid today as it was in 1950. We trust that this committee will take all necessary steps to protect the present reservations for educational channels. The data we have submitted in this statement, Senator, points out that we hope there will not have to be a curtailment of the UHF side of the spectrum. We are concerned that there has been talk of cutting back the number of stations that will be available to the American people. We are anxious to see the original program of two-thousand-odd stations maintained, and we trust that the FCC and your committee between you are going to find the proper solutions that make certain a competitive system is maintained and that the greatest possible service is made available to the American people.

We also are very anxious that the reservations that have been made in both VHF and UHF for educational channels should be continued. Our convention went out of its way—the merger convention of the AFL-CIO—insisting that educational TV has already proven its worth; that we think it has a great potential for the future; and we trust that those channels will be maintained as educational channels.

We believe that there is in these stations a potential that is badly needed for strengthening our educational system in America. I am sure no one has to argue that we have grave deficiencies at the present time in education in America, and we think this is one way of taking care of some of the difficulties which do confront us.

I would, sir, like to call your attention to our statement starting at the bottom of page 3.

We also desire to direct the attention of the committee to the Biscayne Television Corp. case. This case involves the grant of channel 7 in Miami, Fla., to this corporation.

The executive council of the American Federation of Labor protested the examiner's decision favoring this grant in letters to the chairman and members of the FCC on March 4, 1955. The action of the executive council was taken at the request of the Dade County, Fla., Central Labor Union.

We objected on the grounds that (1) 85 percent of the stock of the Biscayne Television Corp. is equally owned by the owner and key personnel of the Miami Daily News and the owner and key personnel of the Miami Herald; (2) the Miami Herald and the Miami Daily News own and control two large radio stations in the area; (3) the ownership of the newspapers and the radio stations are both absentee as none of the major stockholders reside in Miami; and (4) both newspapers have had antilabor news and editorial policy.

However, the Commission made the grant in January 1956. The grant has been appealed and the matter is now before the courts.

The labor movement has been concerned for some time over the tendency in the newspaper and radio field toward combination of large interests which would result in this most important phase of American life, dissemination of news, being in complete control of a few individuals in any given area.

It is our considered opinion that ownership of three kinds of mass media—newspapers, radio, and television—by the same group of people in any area is against the public interest. The key personnel of the 2 newspapers in the Miami area own between them 85 percent of the new television corporation, which will also have title to the most powerful radio station. This is an obvious concentration of control of all types of media in the hands of a very few people.

As an indication of community of interest between these Miami papers, we find that when the typographical employees of the Miami

Herald went on strike some 7 years ago, the management of the Daily News immediately locked out its typographical employees. Now we find the key personnel of these papers joined together in control of an important television channel. The vast population of this area will for all practical purposes have to rely on a very few individuals for the dissemination of news by all media.

Organized labor has always been in the forefront of the fight for freedom of the press. It is our belief that nothing could be more detrimental to the maintenance of freedom of the press than to have control of the media for news dissemination go into the hands of a monopoly. If monopolistic control of news media should become widespread throughout the country, it is inevitable there will be an eventual public demand for Government control of news dissemination media, if not for Government ownership. This is an eventuality we should not like to see occur.

We respectfully request that this committee carefully investigate all aspects of the circumstances surrounding the granting of the license to the Biscayne Corp. and the probable effects of this decision on the growth of monopoly trends in the news media field. We also urge that the committee request the FCC to stay a construction permit to the Biscayne Corp. until the committee has an opportunity to consider the monopoly implication of this grant and the courts have had an opportunity to rule on the issues under appeal. It is all too plain from past experiences that once a station is constructed, it is almost impossible to obtain reversal of a grant by any procedure.

That, sir, concludes our testimony.

Senator SCHOEPPEL. Thank you, Mr. Biemiller. The counsel desires to ask some questions.

Mr. COX. With regard to this last matter that you have discussed, Mr. Biemiller, did you seek formally to intervene in the FCC procedure?

Mr. BIEMILLER. Yes; we did so seek and were turned down on the grounds that the rules would not permit a third party intervenor, in effect.

Mr. COX. Then you are not involved in the current court test?

Mr. BIEMILLER. We are not in the current court test. Our membership, which is roughly 50,000 in the Miami area—Dade County Central Labor Union—has repeatedly, however, insisted that it believes the public interest is not being served. It is in that guise that we are still trying to find someway of getting a thorough examination of what we consider to be a dangerous monopolistic trend in this area.

Mr. COX. Are you by any chance familiar with the testimony that was given before this committee earlier in this series of hearings on the question of the antitrust laws by members of the Commission and by Judge Barnes from the Antitrust Division of Justice?

Mr. BIEMILLER. No, sir; I am not.

Mr. COX. They presented to the committee certain views as to their respective roles in enforcing the antitrust laws in the communications field. I was leading up to a question as to whether or not any sort of approach had been made to the Department of Justice itself on the ground that you had reason to believe that this was leading to an undesirable monopoly in the mediums of expression in this particular area?

Mr. BIEMILLER. To the best of my knowledge, no. We have approached the Antimonopoly Committee of the Senate Judiciary Committee, but to the best of my knowledge there has been no direct approach made to the Department of Justice.

Mr. Cox. In the nature of things, of course, with this matter now before the court of appeals, would it be fair to say that substantially what you are asking the committee and Congress to do is to give consideration to this problem, at least in general, so that if legislation for the future seemed desirable, it might be taken? In other words, legislatively, it would be a little difficult to do something about a fait accompli in a particular area. You are looking to the general problem of concentration in the medium of mass communications?

Mr. BIEMILLER. Yes, plus, however, Mr. Cox, the fact that in the opinion of some of our people who have looked at this case, they are not so sure but what the Commission hasn't in effect changed its own rules. That, I recognize, is probably a court matter. But it is something this committee might want to take a look at and see whether there has been a substantial change in the earlier rules of procedure of the Commission itself.

Senator SCHOEPPEL. Thank you very much, Mr. Biemiller. I regret the delay this morning, but it was absolutely unavoidable.

The hearings will be recessed until Friday, at 10 o'clock in this room.

(Thereupon, at 12:17 p. m., the subcommittee recessed, to reconvene Friday morning, 10 a. m., March 16, 1956, in room P-38, Capitol Building.)

TELEVISION INQUIRY

(UHF-VHF Allocation Problem)

FRIDAY, MARCH 16, 1956

United States Senate,
Committee on Interstate and Foreign Commerce,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:20 a. m., in room P–38, United States Capitol, Senator John O. Pastore presiding.

Present: Senators Pastore and Thurmond.

Senator Pastore. Our first witness this morning is Mr. H. Leslie Hoffman. Mr. Hoffman, we want to thank you for coming. You may proceed to deal with your statement in any fashion you may desire.

STATEMENT OF H. LESLIE HOFFMAN, PRESIDENT OF RADIO-ELECTRONICS-TELEVISION MANUFACTURERS ASSOCIATION

Mr. Hoffman. Mr. Senator, my name is H. Leslie Hoffman. I am president of the Radio-Electronics-Television Manufacturers Association, which has its headquarters in Washington, and I am also president of the Hoffman Electronics Corp., a manufacturer of television receivers and other electronic products, located in Los Angeles, Calif.

This particular company is a company founded 15 years ago and it has grown from a small company of 3 people to 3,800 people. I am also chairman of the board of KOVR, a broadcasting station allocated to Stockton, Calif., and serving northern California.

However, my testimony as president of RETMA covers the manufacturing end of our business. If there are any questions regarding broadcasting, I would like to carry on that testimony as an individual, not as a representative of the industry.

Since 1924 RETMA has been the only national trade association representing the manufacturers of equipment and components now used in radio, television, and electronic devices. Its membership presently consists of 374 companies, many of which are engaged in the manufacture of television sets or their components.

We appreciate this opportunity to appear before the Senate Interstate and Foreign Commerce Committee and to explain the position of the equipment manufacturers in this highly important problem involving UHF and VHF television.

My statement will be based on the following facts:

(1) The ratio of UHF or all-channel television receivers to total TV set production is determined by public demand and is closely related to the ratio of UHF to VHF broadcasting services.

(2) The cost of all-channel TV sets is higher than that of VHF-only sets, because of certain more expensive components and a smaller production volume.

(3) The only practical means of equalizing the sales prices of all-channel receivers and VHF sets is to remove the 10-percent excise tax on UHF-VHF receivers.

(4) Manufacturers of television receivers, like other industrial producers, are in business to make a profit and dividends for their stockholders.

We manufacturers have a deep and obvious interest in the development and growth of television into a nationwide service, and, through our industry association, we have had an important part in bringing this about.

Two of our major all-industry contributions, effected through two national television system committees, were the development of transmission standards, first for black-and-white television and subsequently for color television. These standards, which were made possible by the cooperation of manufacturers and broadcasters, were subsequently made possible by the cooperation of manufacturers and broadcasters, were subsequently approved by the Federal Communications Commission and provided the technical basis for the compatible television system in operation today throughout the United States.

It has been estimated that the engineers under NTSC guidance voluntarily contributed 10 million man-hours toward the development of the color television standards alone. In addition, manufacturers willingly pooled the results of their research, without concern for patent rights, in order to bring color television as quickly as possible to the American public.

RETMA sponsored the first industry demonstration of UHF receiving equipment for members and the staff of the Federal Communications Commission in Bridgeport, Conn., in June 1951. The purpose of this demonstration was to convince the FCC and UHF broadcasters that reliable and satisfactory UHF reception was possible. Included in the demonstration were several types of UHF converters which subsequently were put on the market.

Set manufacturers have consistenly made and sold as many all-channel receivers as the public would buy. They actually overestimated the market for these sets and the public interest in UHF during the first year or so following the lifting of the freeze.

I can testify to that myself, because we had an excess inventory.

When the purchase of these receivers did not measure up to the manufacturer's expectations and inventories got out of balance, manufacturers naturally reduced their production accordingly.

Senator PASTORE. Wasn't that more or less cause and effect? The fact of the matter was that UHF had not panned out economically—

Mr. HOFFMAN. It didn't get started, Senator, as far as we thought it would.

Senator PASTORE. Principally because of representations made by the members of the Commission themselves. I do not want you to comment on that, but I wanted to make that observation.

Mr. HOFFMAN. I won't comment on it.
Shall I go on?
Senator PASTORE. Yes.

UHF PRODUCTION RECORD

Mr. HOFFMAN. The industry's record of UHF production and conversion, particularly during the first 2 years, is rather remarkable for a new product. I think these figures are rather significant in that respect. Manufacturers through February 24, 1956, had produced 4,500,000 all-channel receivers, or approximately 15.8 percent of the 28,236,000 television receivers manufactured since the debut of UHF.

In addition, approximately 4 million television receivers, both new and old, have been converted outside the factory, either in the home or by distributors or dealers. Thus the total number of television receivers equipped for UHF reception since the first commercial UHF station was licensed in the summer of 1952 is 8,500,000. This represents approximately 22 percent of the total television receivers in use.

Senator PASTORE. Will you stop there just a moment? I will need just 2 minutes to get myself on the quorum and I will be right back.

(A short recess was taken.)

Mr. HOFFMAN. While no accurate figures are available on the number of households within the actual range of UHF stations, the RETMA statistical department has estimated that the maximum is 21 percent, and the actual number of homes able to receive a good UHF signal is probably substantially less.

People cannot be expected to buy UHF sets, however, unless there are UHF programs they want to see. When UHF stations go off the air, sales are adversely affected.

It is significant that 108 VHF television stations now on the air were approved by the FCC before UHF entered the picture. Since that time 264 VHF stations and 156 UHF stations have gone on the air. However, 58 UHF stations have discontinued operations as against 8 VHF stations.

It certainly must be obvious to members of this committee that television manufacturers have every reason to want as many TV stations in operation throughout the country as the economy will support. The more stations that are on the air, the more programs there are available, and the greater incentive there is for the purchase of a television receiver. While some set manufacturers—including myself—are also engaged in television broadcasting, the manufacturing operations of these companies are separate from broadcasting activities and are all stimulated by the same natural desire to sell as many television receivers as possible.

It never ceases to amaze me when I hear or read comments—sometimes by responsible Members of Congress—which state or imply that some manufacturers or the industry as a whole is engaged in a conspiracy to keep a new product, such as UHF, off the market.

Senator PASTORE. I don't think anybody in the Congress ever said that.

Mr. HOFFMAN. Yes, sir, they have, unfortunately.

Senator PASTORE. They have?

Mr. HOFFMAN. Yes, sir.

Senator PASTORE. That is news to me. Go ahead.

Mr. HOFFMAN. To anyone like myself who has encountered the intense competition and the aggressive salesmanship that is found in the radio-television industry, such a charge is absurd. I doubt that there is an industry in the United States today that is more competitive than ours. Each manufacturer is constantly striving to improve his product, to offer some additional sales appeal, and to undersell his competitors.

Unfortunately, I think we spend too much time on the last point.

Consequently when the Federal Communications Commission lifted the freeze and began licensing UHF television stations in the summer of 1952, manufacturers already had started producing all-channel receivers. Most of us envisioned a new stimulant to the television boom, particularly in the opening of new UHF markets. Many manufacturers felt that there would be a sharp trend away from VHF-only sets and toward all-channel receivers. In fact, there were predictions at the time that the VHF-only set would gradually disappear.

RETMA statistics, which are accepted as reliable by both industry and the Government, show that in the last quarter of 1953 the factory sales of UHF–VHF receivers, in proportion to all TV-set production, was 28 percent. However, by the second quarter of 1955 these sales had declined to about 13 percent.

RETMA statistics on UHF production and sales did not get underway until the third quarter of 1953. Attached are tabulations which trace the rise and decline of UHF in (1) factory sales, and (2) factory inventories, while the third table shows the relation between UHF-set inventories and sales.

(These tabulations will be found beginning on p. 724.)

Mr. HOFFMAN. It is apparent from these statistics that manufacturers generally have maintained a more than adequate supply of UHF sets. For example, in January 1956, 16.4 percent of the total TV sets on hand were equipped for UHF reception. However, only 13.4 percent of total TV sales were UHF. These figures would indicate that manufacturers provide a greater supply of UHF sets than consumers demand.

I am going to ask Mr. Long, who heads up our statistical department, to explain this chart, Senator, if I may, which graphically portrays that.

Mr. LONG. This chart, sir, will illustrate Mr. Hoffman's remarks. There is a two-bar chart [indicating] for each quarter running from 1953 to 1955. The gray bar here is inventories; the blue one is sales. Both of these are presented as a percent of the total. For example here, the first quarter of 1953, UHF inventories were something less than 20 percent of all inventories. For this quarter, UHF sales were slightly more than the inventories.

You can observe here that, generally, manufacturers have maintained a more than adequate supply. Inventories have been greater than sales in terms of total percentages.

We had an overinventory situation of great magnitude in the first quarter of 1954, and that was corrected—overcorrected to some extent. With the exception of the fourth quarter of 1954, manufacturers have maintained more inventories than the public has demanded.

Mr. HOFFMAN. I might explain, Senator, that these figures include the inventories at the manufacturing level, at the distributor level, and at the retail level. So it is total pipeline inventories, rather than just one segment of the pipelines.

UHF SET COSTS MORE

The manufacture and sale of all-channel television receivers, like UHF broadcasting itself, is almost entirely a commercial or economic problem. The all-channel receiver costs more to manufacture than the VHF set for two reasons: The first is that it requires some more expensive components, and the second is that the higher unit cost is aggravated by the smaller volume of production. However, no increase in volume would eliminate the differential in cost.

The set manufacturer would have been happy when UHF began, and would be equally happy today, if he could convert all TV set production to the all-channel receiver. Such a conversion would reduce production operations and lower manufacturing costs. This saving would be passed on to the consumer in reduced retail prices. However, under our present pattern of TV broadcasting, such a practice would impose an additional and unnecessary cost on set purchasers in VHF-only areas, which, going back to our figures, would amount to 79 percent of the population.

From the beginning of UHF broadcasting, UHF converters were readily available at reasonable prices. Moreover, some types of VHF sets could be easily converted to UHF reception in the home at a moderate cost. Where UHF stations were successful in affiliating with one of the major networks, such conversions were made in substantial numbers. However, in other areas where independent UHF stations were attempting to compete with network VHF outlets, the rate of conversion was very small.

Our industry has had long and frustrating experiences with converters. When FM radio was in its heyday, many FM converters were on the market, but the lack of public interest eventually led to their disappearance. Very nearly the same thing has occurred with UHF converters. In addition to the public apathy toward conversion, the average housewife seems to have an aversion to disfiguring her television or radio receiver with any sort of gadget such as an exterior converter.

I would like to refer to our second chart here on this matter of conversions which I think is rather interesting.

Mr. LONG. This chart shows the situation monthly from July 1953, through January of 1956. The blue area represents the number of sets sold which were factory equipped for UHF. The gray area represents the number of sets that were converted for UHF reception. Of course the total of the two would represent the total consumer acquisitions of sets able to receive the UHF signal.

What I would like to call to your attention is that, generally, factory sales of UHF-equipped sets have remained fairly constant. It is this conversion that has shown a marked decrease. Here [indicating] the consumer conversions of VHF sets to UHF were quite substantial. We find that currently it is almost insignificant.

Senator PASTORE. Would you go a step further on that? Would the blue represent the markets that were originally UHF exclusively, and the gray, the VHF markets where a U came in and the viewers wanted to adapt themselves to that new channel?

Mr. LONG. No sir; I don't believe you can draw that conclusion. We could say that the gray are VHF sets that consumers had attached a strip or converter to, and converted them to UHF reception.

Senator PASTORE. But I am asking the question: Why do you think so?

Mr. HOFFMAN. I would like to take that question on, perhaps, Senator.

Senator PASTORE. All right.

Mr. HOFFMAN. I think what happened, in the early days when we had the 108 stations, is that many stations were in what we call fringe areas and had VHF sets, and they had these big, tall 100-foot towers and so forth. Then when a UHF station was put in their market, they already had the receiver and their antenna up, and so forth, so they merely adapted it to get the UHF channel in that particular market. I think that occurred in many places.

Senator PASTORE. Let me ask you this other question, man to man: Has the industry any interest in preserving the UHF system of broadcasting in any way?

Mr. HOFFMAN. We have an intense interest to preserve it.

Senator PASTORE. Why?

Mr. HOFFMAN. No. 1, we are vitally interested in establishing the objective of the frequency allocations system, and that is a fully competitive nationwide service.

Senator PASTORE. Why do you say then, that you will only manufacture those units the public will buy?

Mr. HOFFMAN. Because our business is an economic business.

Senator PASTORE. Then you have no particular interest in preserving the UHF as a broadcasting system. You are only interested in making the sets that the public will buy?

Mr. HOFFMAN. Well, I think our businesses are commercial enterprises, Senator.

Senator PASTORE. I am not being critical of you. I just want to find out if you have any interest in the preservation of this UHF system other than making only those sets that the public itself is willing to buy, which is something beyond you.

Mr. HOFFMAN. Senator, let me answer your question this way: I think, No. 1, I have tried to prove through my previous remarks—and we have some other facts here that we will put before you—that the industry, and the individual manufacturers collectively, have done a great deal as far as trying to preserve UHF in the development of the proper equipment to get a good signal, both in the broadcasting and the receiving end of it.

Our end of it happens to be the receiving end of it. We think that we have made very material technical contributions.

Senator PASTORE. I think you are entitled to know, Mr. Hoffman, why I am asking you this question. I am not trying to put you on the spot in any way, because, after all, I am one of those who has been around long enough to know that industry, of course, is going to manufacture these sets only as long as they can sell them. They are going to manufacture the sets that the public is willing to buy. I think that a lot of us are running off with the idea that they are going to begin to manufacture these all-channel sets, come what may, just for the love of preserving the UHF band—and I don't think that is in the minds of the manufacturers at all.

Mr. HOFFMAN. We wouldn't be able to keep the love of our stockholders, Senator. [Laughter.]

Senator PASTORE. That is right. We ought to face the realities of life. I think too many people in this whole problem are kidding themselves about what is going to happen. I think you have developed the idea here that about the only thing that will equalize this disparity in cost is this thing of the excise tax.

Mr. HOFFMAN. Yes, sir; you are absolutely right.

Senator PASTORE. If, economically, you are going to absorb the difference in the rate that you might get from a tax consideration, you might consider it. Doesn't it boil down to that?

Mr. HOFFMAN. To answer your question directly, I can give you a definite "Yes"; that we would build all-wave if the tax was taken off of all-wave sets.

Senator PASTORE. In other words, if UHF is going to be saved, the Commission better save it itself, because the industry isn't going to save it.

Mr. HOFFMAN. The Commission does not have the right, nor the power, to remove the excise tax on all these sets.

Senator PASTORE. I am not saying that. I am just saying that they could develop a competitive system of integration—I don't mean "integration," but intermixture and deintermixture.

Mr. HOFFMAN. I am glad to see that a Senator gets mixed up in these Washington words as well as myself.

Mr. COX. Would it be fair to say, Mr. Hoffman, that you would feel that the set manufacturers have an interest in UHF in that if UHF could be made a viable part of the television system, it would develop a broader base for broadcasting and there would be more sets sold, so that to that extent you have such interest?

Mr. HOFFMAN. Yes, you are absolutely correct, Mr. Cox.

Senator PASTORE. But before you get to answering that question, the basis for that is going to come from a public demand and not from the manufacturer.

Mr. HOFFMAN. That's correct.

Senator PASTORE. Let's face it.

Mr. HOFFMAN. We are the suppliers of equipment that the public uses. I think that—if I may use my own words—this may perhaps be pertinent to your question. A television set is a set to receive a show. That is all it is. We sell the set to get the show. If the people are interested in the show, they will buy the set. If they are not interested in the show, they won't buy the set. We are in that business.

Senator PASTORE. You can only sell the set if they are willing to buy it.

Mr. HOFFMAN. That's right.

Mr. COX. And if there is no UHF signal in the area, there is no show for which they would have any incentive to buy the set?

Mr. HOFFMAN. There is no reason for them to buy that particular set.

Senator PASTORE. But if the demand is strictly VHF, the manufacturers are not going to go to the trouble of developing and spending time on research for UHF or all-channel sets and for improving them, if there isn't going to be a demand in the market for the purchase of these sets.

Mr. HOFFMAN. As we pointed out here, Senator, we have done a great deal of work and original pioneering and developing of equipment to utilize the spectrum that the Commission has allocated for this—this additional spectrum for these UHF channels. I know in our own particular instance and our own companies, we went ahead as many other companies did and ordered strips for a lot of channels we thought were going on the air, but that did not go on the air, and we have taken a pretty sizable writeoff for 3 years on those particular strips.

Senator PASTORE. Would you venture an opinion on this: A lot of people are saying around here that the answer to this problem would be all-channel sets. As a matter of fact, all-channel sets may be an answer to the problem. Would you venture an opinion on this question: Insofar as the manufacturers are concerned, they are not going to get into manufacturing all-channel sets unless, from the standpoint of economics, it is profitable for them to do so?

Mr. HOFFMAN. That is correct.

Senator PASTORE. And for that reason, it is only a question of profits.

Mr. HOFFMAN. It is a matter of responsibility to our stockholders.

Senator PASTORE. I can understand that.

Mr. HOFFMAN. Shall I go on?

Senator PASTORE. Yes, please.

UHF AND COLOR SETS

Mr. HOFFMAN. A question has been raised in this committee as to whether set manufacturers are now producing, or planning to produce, all color TV receivers with UHF reception facilities. At the request of your staff, RETMA has polled all of the set manufacturers in its membership and has come up with the following data based on an estimated 95 percent of color TV production in 1956: 66.5 percent of the color television receivers manufactured in January and February of this year were factory equipped to receive UHF signals.

However, the same companies which reported production during this period stated, in answer to a question, that only 10.6 percent of the color sets they plan to produce during the remainder of 1956 will be equipped to receive UHF telecasts.

The following comments, taken from responses to the RETMA questionnaires, explain why these manufacturers are planning to reduce drastically their ratios of all-channel color TV sets:

> For the remainder of 1956 we will incorporate UHF tuners in 5 to 10 percent of our UHF (color) sets unless the excise tax is removed from all-channel color sets. In that case we will go 100 percent UHF–VHF.
>
> Our percent of color sets containing UHF is primarily determined by the substantial inventory we now have of unsold UHF monochrome TV sets. There has been a very disappointing sales volume of monochrome in UHF markets.
>
> If there is appropriate excise tax legislation to remove the present price differential due to cost as between all-channel and VHF-only receivers, we would expect that our entire color receiver production during 1956 would be all-channel receiver sets. Failing this legislation, competitive reasons will require that our production of all-channel color sets be about 20 percent of our total output and VHF-only color sets about 80 percent of our output.

THE EXCISE-TAX PROPOSAL

There is no single or quick solution to the television-allocation problem. Any solution is likely to involve a number of measures and to take considerable time. Many measures that are under consideration are highly controversial. There is one proposal, however, which has met with widespread approval. It is the proposal to encourage UHF broadcasting by removing the 10 percent manufacturers' excise tax from all-channel sets and thereby put it on a par pricewise with VHF.

This proposal was made by RETMA on May 19, 1954, before the hearings being held at that time by a subcommittee of this committee. It was endorsed immediately by then Chairman Hyde on behalf of the Federal Communications Commission. Since that time the proposal has been supported by many spokesmen in industry and Government. The subcommittee, we understand, requested the Senate Finance Committee, following the RETMA testimony of May 1954, to remove the excise tax from all-channel sets. Senator Johnson introduced a proposed amendment on the subject to be made part of the Internal Revenue Code of 1954. The Senate Interstate and Foreign Commerce Committee approved it. The Senate Finance Committee concurred in principle, but, on the advice of the Treasury, altered the tax proposal to a less desirable \$7 credit on each all-channel receiver. The legislation, however, died in the adjournment rush. In January of 1955, Representative Ikard revived the original tax-removal proposal in H. R. 4070, but it was rejected by the House Ways and Means Committee. That sort of gives you the background of this particular situation.

No one contends that the removal of the excise tax would be a panacea for all the ills of UHF. Everyone must admit, however, that it would go a long way toward stopping the deadly downward drift of UHF which our statistics have just shown. It is unfortunate that Congress did not adopt our recommendation 2 years ago. If it had done so, it is our supposition that virtually the entire manufacture of television receiving sets would have been shifted promptly to all-channel sets. In round numbers that would have meant the entire 2 years' production, of 15½ million sets, would have been capable of receiving UHF. Instead, only 2½ million all-channel sets have been sold during the period. The impetus that an additional 13 million UHF sets in the hands of the public would give to UHF broadcasting today is incalculable. (RETMA Statistical Department figures show factory production of 15,401,220 TV sets during period March 1, 1954, to February 24, 1956, of which 2,512,807 were VHF–UHF.)

While it is unfortunate that these 2 years have been lost, it is still not too late, and we renew our recommendation as the only realistic method of inducing customers to buy all-channel receivers.

The manufacturers' excise tax should never have been imposed on television sets in the first place. The Treasury recommendations for imposition of the tax were rejected by Congress on three separate occasions, and were adopted only at the outbreak of the Korean war, and then as an emergency revenue measure. Television is an instrument of public education and enlightenment, and is an important means of the mass education so crucial to the preservation of American freedom and self-government in these times. There is every reason that the distribution of sets should be encouraged by our Government—not penalized. There is no logic to selecting such an instrument for the imposition of a selective and discriminatory excise tax.

It is time for the Government to stop discriminating against the television industry. I doubt that the members of the committee are fully aware of the extent of this discrimination. The history of our Government's recent tax policy has been replete with it:

(1) Two years ago Congress reduced from 10 percent to 5 percent the tax on virtually all products of the American home that were subject to tax except television sets and radios. Now refrigerators and other appliances pay a 5 percent tax, while television sets and phonographs pay 60 percent of the excise tax on durable home products subject to tax, although they represent only 44 percent of factory sales of such products.

(2) Great damage is being done today by the imposition of the 10-percent tax to the infant product—color television. This is being done despite the fact that Congress has traditionally withheld the heavy hand of excise taxation from new products until they had a chance to reach mass production. No reason has been given to explain why color television should not have the same chance as other infant products. At least color television should have the same breathing spell that was given the other products of our own industry—radios, phonographs, records, and black-and-white television. That means taking the tax off color sets now.

I would like to comment off of this particular prepared script just for a moment on that—and that is this comment: I think this idea of taxing new products by the Government is most unfortunate for the economy at large, because our industry has grown from a $400 million industry prewar to a $2 billion industry today—75 percent of the employment in our industry is on products that 10 years ago we didn't even know about.

In addition to that, this employment has been a great stimulant to the economy as well. Everybody—the financial advisers, the boys that are going through school—everybody that is looking to the future knows there is a great future in electronics. Why burden this new industry with discriminatory taxes?

There is another factor on this, and I can speak with a certain amount of feeling on this particular phase of it, and that is that in a new industry—as a new industry gets started—it gives birth to new companies. It gives opportunity to smaller companies. A smaller company can move faster than a large company, particularly in the early days of a new industry. As a matter of fact, that is how I got started in this business. I was able to move faster than some of the large people in the industry, and I got my start, and I have held on. But this industry is a great stimulant to the economy, and to put discriminatory taxes on these various things is like taking a yearling colt and saddling him with a handicap of 132 pounds. It is just all wrong.

(3) Only last Tuesday, March 13, the Forand subcommittee of the House Ways and Means Committee invited the attention of the full committee to the possibility of cutting the tax on cabarets in half. The subcommittee also announced that it had decided to recommend raising additional revenue from our industry by imposing the full 10-percent tax on transistors, record players, and wire and tape recorders. The conclusion to be drawn from these announcements is

that our industry may be asked to pay more discriminatory excise taxes in order to provide relief for nightclubs.

The point I am trying to make is this: Since the public will be benefited by removal of the tax from all-channel sets, it is very appropriate that such relief be enacted because this industry is bearing more than its fair share of excise taxes.

However, let me make one thing crystal clear: The manufacturers are not asking for removal of the tax from all-channel sets in order to benefit the manufacturing industry. We have proposed to Congress that the tax be removed from color sets and that the rate on black-and-white be reduced to 5 percent to eliminate the discrimination against our industry as compared to other home products. It is only because of the Government's need for revenue that we have not gone all the way at this time and asked for entire elimination of the tax, which is our fundamental position.

In the case of UHF, however, the question is whether it is important to the public to have a system of television that will assure room for future growth, community self-expression, educational television, and a fully competitive system. If Congress removes the tax from all-channel sets, it will be because these goals are important to the public. We believe they are important and that is the reason we urge removal of the tax from all-channel sets.

Before leaving the tax subject, I would like to comment on the remark made by one broadcasting representative before this committee on February 27. It was that the tax on VHF-only sets should be raised to 15 percent and the tax on all-channel sets reduced to 5 percent as a means of helping UHF. I doubt that this was put forward as a serious proposal, but for the record I must say that RETMA is strenuously opposed to it.

First, since it is wrong in principle to levy a selective excise tax on television sets, it is wrong to increase the rate of tax on any television set.

Secondly, if the purpose of the suggestion was to offset the revenue loss expected from the reduction of the tax on all-channel sets, it would not achieve that objective because the sale of VHF sets would decline sharply under such a heavy penalty tax.

Third, the public interest would not be served by a law which, in effect, penalized the manufacture of VHF sets in comparison with other household appliances. There may be areas in which VHF-only sets should be continued. The problem is how to encourage UHF, not to destroy VHF. If we want to encourage the use of rye bread, we should not go to length of putting poison in the white bread.

ALLOCATION PROBLEMS

RETMA filed a statement with the Federal Communications Commission last fall saying that in our opinion no one has proved that the TV allocation plan now existing under the Commission's sixth report and order is inadequate or defective. We repeat that view now. We think that a system of combined VHF–UHF broadcasting should be preserved. Twelve channels are not enough for a nationwide competitive system, and we doubt that sufficient additional VHF channels could be obtained from other services to assure a healthy system on an all-VHF basis. We strongly urge that the portions of the UHF spectrum presently allocated to television be preserved for television. It is only in this way that the Nation can provide for the future growth of television, for essential local self-expression, and for educational television.

We do not say that the present plan is perfect. The 3 years of experience since its issuance should reveal many improvements that could be made. We urge that all reasonable and useful methods be employed, and all adjustments to the plan made, which would help achieve a healthy combined VHF-UHF television system. The tax relief measure should be enacted by Congress immediately. The FCC should explore all promising measures and take action as soon as possible.

We believe that the hearings being held by this committee are contributing much to the solution of this difficult problem and we hope very much that the committee will call upon RETMA if we can furnish any further information that might be helpful to the committee in its deliberations.

(The appendixes to Mr. Hoffman's statement, containing the tabulations referred to in his testimony, are as follows:)

UHF set statistics

A. FACTORY SALES

Period	UHF TV set sales	Total TV set sales	UHF as percent of total
3d quarter 1953	360, 381	1, 862, 849	19. 3
4th quarter 1953	491, 602	1, 747, 101	28. 1
1st quarter 1954	379, 192	1, 610, 320	23. 5
2d quarter 1954	263, 705	1, 151, 612	22. 9
3d quarter 1954	349, 724	1, 997, 875	17. 5
4th quarter 1954	478, 859	2, 644, 771	18. 1
1st quarter 1955	316, 153	2, 140, 977	14. 8
2d quarter 1955	151, 142	1, 175, 766	12. 9
3d quarter 1955	377, 882	2, 348, 197	16. 1
4th quarter 1955	330, 251	2, 073, 122	15. 9
January 1956	83, 344	622, 741	13. 4

Compiled by RETMA statistical department.

B. FACTORY INVENTORY

Period	UHF TV set inventory	Total TV set inventory	UHF as percent of total
2d quarter 1953	23, 135	693, 490	3. 3
3d quarter 1953	99, 571	520, 748	19. 1
4th quarter 1953	147, 542	465, 104	31. 7
1st quarter 1954	105, 779	301, 894	35. 0
2d quarter 1954	141, 101	548, 319	25. 7
3d quarter 1954	79, 232	438, 612	18. 1
4th quarter 1954	59, 548	407, 241	14. 6
1st quarter 1955	77, 433	454, 516	17. 0
2d quarter 1955	150, 735	919, 291	16. 4
3d quarter 1955	82, 014	502, 807	16. 3
4th quarter 1955	65, 588	425, 700	15. 4
January 1956	64, 351	391, 306	16. 4

C. UHF TV SET INVENTORIES VERSUS SALES

Period	UHF inventory as percent of total	UHF sales as percent of total	Period	UHF inventory as percent of total	UHF sales as percent of total
3d quarter 1953	19. 1	19. 3	1st quarter 1955	17. 0	14. 8
4th quarter 1953	31. 7	28. 1	2d quarter 1955	16. 4	12. 9
1st quarter 1954	35. 0	23. 5	3d quarter 1955	16. 3	16. 1
2d quarter 1954	25. 7	22. 9	4th quarter 1955	15. 4	15. 9
3d quarter 1954	18. 1	17. 5	January 1956	16. 4	13. 4
4th quarter 1954	14. 6	18. 1			

Mr. Cox. Mr. Hoffman, as I understand it you feel that the elimination of the excise tax on all-channel sets would substantially serve to induce manufacturers to manufacture all-channel sets exclusively. Is that so?

Mr. Hoffman. Yes, sir.

Mr. Cox. However, if you were to take the excise tax off all television sets, that would still leave an incentive to the manufacturers, under the forces of competition, to manufacture VHF-only sets to the extent that the market demanded it.

Mr. Hoffman. I think that your pattern, Mr. Cox, would be pretty much what it is today. It would be established by demand.

Mr. Cox. In other words, if this excise-tax relief is to have any effect on the UHF-only problem, it should be done by taking, initially at least, the step of eliminating only the tox on all-channel sets.

Mr. Hoffman. Yes, sir, that is correct.

Mr. Cox. I think you pointed out that RETMA demonstrated to the FCC, and to people potentially interested in UHF broadcasting in the early days, that UHF could be an effective broadcast vehicle. Do you think that people who were going on the air on UHF in those days were induced to believe that it was going to be somewhat more effective competitively than it turned out to be?

Mr. Hoffman. I think, Mr. Cox, that I might speak as a manufacturer, if I may, on that score——

Mr. Cox. Yes.

Mr. Hoffman. I think that if you follow the history of television itstlf, you get perhaps the answer to your question. Television, from 1946 on through 1950, was an unprofitable pioneering job. I know personally that very few of the broadcasters in thoses particular periods up until 1950 made any money.

Then in 1950 the picture abruptly changed. The black figures started coming in across the board. So by 1952, when the freeze was lifted, many people felt that just getting a channel allocation was like hitting an oil well. I think that there was too much enthusiasm on everybody's part, and not enough analysis of the real problem of broadcasting.

I think that the manufacturers looked at this thing primarily, "Well, here is a big new market." You see, at that particular time with 108 stations, I believe, in 62 markets—if I am not mistaken—our market was limited. We are an aggressive industry. We are trying to serve the public, and we saw this big new market coming up. We have 36 members of our association that build sets, whereas we only have 6 members that build broadcasting equipment. So our enthusiasm was to serve this new market that came up. I don't think that the set-manufacturing division did much to encourage people to get into UHF broadcasting, other than a general idea that here was a big market to serve.

I think that the encouragement of people to get into this was predicated on a track record—not that I want to sound as if I follow the horses, but some of these terms come in pretty handy—the track record of television broadcasting up to that time. The previous 2 years had been very favorable. So they thought it would be a profitable venture. So everybody surged into it.

Mr. Cox. Wasn't there, in addition to the fact that it seemed that television broadcasting was becoming profitable, also explicit in the sixth report the indication that this new UHF group of frequencies that were being made available were very shortly going to be fully competitive, so that an intermixed system of allocations would provide the people who were taking UHF allocations with a facility that could survive in the market?

Mr. HOFFMAN. I think, Mr. Cox, my comment on that would be that I think that the people—and I don't know exactly what you are driving at—but I think that the people in Washington, and specifically the Commission, were thinking in overall enthusiasm and not in a particular market. This varied by particular markets.

Mr. Cox. Let's get down to the specific situation. You suggested at the conclusion of your statement that you think that basically the sixth report and its allocation plan is sound?

Mr. HOFFMAN. We do.

Mr. Cox. And that the intermixing, or at least the joint use of both VHF and UHF channels, continues to be desirable? Can you suggest to the committee how the present intermixed allocations can be made to work if, in all of the major markets at least, there are VHF stations on the air which people can receive without the extra expense of buying an all-channel set, and if the networks—also impelled by economic considerations just like the manufacturers—have by and large chosen the VHF cutlets for affiliation? Even if there are 3 or 4 UHF channels in such a market, how can anyone be induced to take them up and to go on the air and try to make it pay in the face of the experience to date?

Mr. HOFFMAN. I am speaking now from RETMA's viewpoint. We appointed a frequency allocation systems committee to study this particular thing—to get at the very problem that you are posing. It was felt that this problem is both technical and economic, and that our activities should primarily be directed at the technical phase of it rather than the economic phase of it.

From a technical phase, we ran into the dilemma that deintermixture and many of the other things that had been recommended were controversial within the association itself. We felt, also, that a good many propositions had been forwarded in desperation rather than based on sound engineering principles.

We offered RETMA's services at that time to evaluate any of these proposals, from a technical viewpoint, to see whether or not they would be useful—that is, to assist the Commission in the engineering phase of this problem. That offer still holds.

Mr. Cox. You would agree, wouldn't you, that at the present time, even with the development in UHF transmitters and receivers that has taken place since 1952, still the likelihood of an additional UHF station surviving, if it were foolhardy enough to go on the air in a V market, is very slight?

Mr. HOFFMAN. I wouldn't want to say that as a general statement, Mr. Cox. I think you make a mistake here in trying to get a general statement. It is a desirable thing, but not a very pertinent thing at times. That is very pertinent in a market like Los Angeles that has seven VHF channels. A UHF channel in that market surely would have a hard time getting going. There are 2½ million sets already out in the area.

However, in some of the markets that have not been served since 1946 or 1947, and some of the markets where there may be 1 or 2 stations and there is enough of a market to support a 3-station market, then I think the UHF station would have a very good chance of survival.

Mr. Cox. How about Pittsburgh, Pa., where, as I recall it, there is one V on the air and one U. There is another V allocated, but not yet granted, and the U station, we are informed, is having a difficult time and is in fact broadcasting only part time?

Mr. HOFFMAN. Frankly I am not familiar with that situation. I don't know the peculiar problems involved in that specific instance. But I think the problem of any broadcasting station is the problem of programing and advertising. If they have an economic problem it is probably involved in that. I think the problem in Pittsburgh, I am sure, is an economic problem rather than a technical problem.

Mr. Cox. Doesn't it perhaps start with technical difficulties in terms of coverage?

Mr. HOFFMAN. You see, what happened is that this whole problem has been sort of a cumulative problem. The freeze itself contributed to this problem. After all, we had 3 years of a freeze where we froze these 108 stations in 62 markets. Of course during that particular time, people were establishing their habits of viewing. A new station, whether it was VHF or UHF, that came on after that time had to change the habits of viewing of that particular part of the population. So the freeze itself that was imposed by FCC operated against UHF.

Then we come along and we finally put these channels on the air to develop greater coverage and a competitive system, and we suggested that we take the tax off of all-wave receivers so we could get distribution fast, and that was denied. So I think we have made constructive suggestions all the way along here to help this UHF problem, but there hasn't been very much attention paid to them. I think—to go back to your question—a new station going on the air is like a new business going into a community. If it is a grocery store and there are three grocery stores in that particular community and the other grocery stores have got the people going to them and they are doing a good job of servicing, and they have got all the groceries the people want and the prices are competitive, it is hard for the new grocery store to get started, whether it has got a red front or a white front.

Mr. Cox. I would like, if I may, to ask you now a few questions about the other phase of your activities as a broadcaster. You are the owner of a station that is allocated to Stockton; isn't that correct?

Mr. HOFFMAN. Yes, that was an idiosyncrasy of the frequency allocation.

Mr. Cox. It could serve there better than somewhere else?

Mr. HOFFMAN. Our transmitter is actually located on Mount Diablo which is 20 miles from San Francisco, and actually 30 miles from Stockton. However, it was located there because it serves a greater area of the population than would be true if it were to be located nearer Stockton, without any reduction of the service to Stockton there.

Mr. Cox. There are 3 VHF stations on the air in San Francisco and 1 U, is that correct?

Mr. HOFFMAN. Yes, sir, that is correct.

Mr. Cox. Are there any other stations on the air in Stockton?

Mr. HOFFMAN. There was one U and it went off the air.

Mr. Cox. Your station is a VHF station?

Mr. HOFFMAN. Yes, sir.

Mr. Cox. It is the only V allocated to Stockton?

Mr. HOFFMAN. Yes, sir. However, there are two VHF stations in Sacramento, which is close by Stockton, and they also serve Stockton.

Mr. Cox. Do the signals of the San Francisco stations serve Stockton?

Mr. HOFFMAN. Yes, sir.

Mr. Cox. Do you have an affiliation with a network?

Mr. HOFFMAN. No, sir.

Mr. Cox. The three V stations in San Francisco are each affiliated with a network?

Mr. HOFFMAN. There is 1 company-owned station and 2 affiliates, yes, sir.

Mr. Cox. Do you know whether or not there are network programs made available to those stations which are not used by the stations?

Mr. HOFFMAN. I believe there are.

Mr. Cox. Have you ever tried to get the right——

Mr. HOFFMAN. We have asked for the right to take those programs. We have also asked for the right for second runs of the shows that the networks have, and both of them have been denied.

Mr. Cox. Both have been denied?

Mr. HOFFMAN. Yes, sir.

Mr. Cox. Do you find that, operating as an independent, you have a problem in obtaining desirable programing because of public preference for network programing?

Mr. HOFFMAN. I think that the problem is not necessarily whether it is network programing or not. It is quality of programing, and of course appeal to public interest. Of course I can talk as an independent station which has put a substantial amount of money in developing a station. It is sort of a cycle. A basic problem of any business is to take in more than you put out. To take in more than you put out, you have got to get advertising dollars. That is the basic fundamental concept of our broadcasting—it is supported by advertisers, the same as our newspapers are.

For the advertisers to support your station, you have to have an audience, and to get an audience, you have to have programs. The amount of the audience is determined by ratings. Many people think that the ratings are inaccurate, but nevertheless that is the yardstick. If you don't get the ratings, you don't get the advertisers' dollars, so you don't take in more than you put out.

So the problem becomes a very serious problem as far as programing is concerned. Of course, also, at the present time there is a variation from 6 to 13 hours a day of network programing being offered the affiliates. So an independent station has got to develop the programing to offset that, both in quality and quantity.

Mr. Cox. Do you find that an independent station even has difficulty getting the right to show the product of independent film producers because of the fact that they are interested in selling this particular film series in as many markets as possible, and they may find, therefore, that the network is the best potential customer for that?

Mr. HOFFMAN. I think that that again is an economic problem as far as the film producer is concerned. He has got so much money tied up in his films, and he has to get X number of dollars out. If he can go to a network and sell that film, it is a much easier sale, and it is a lower cost sale and probably he gets more out of it.

If he has to go out and pick off the independent stations, or get into a time spot of a network affiliate that is not now being occupied by the network, and do it on a patchwork basis, it is more difficult. So as a consequence, the network indirectly affects the independent station as far as the independent film producer is concerned.

Mr. Cox. Because it in effect competes with the independent station for the purchase——

Mr. HOFFMAN. That is right; again it is the economic problem.

Mr. Cox. Have the networks, in declining to permit you to use either programs that have not been used by their local affiliates or to permit you to run them at a later date, given any explanation for this? Or has it just been a bare refusal?

Mr. HOFFMAN. No; it has been a bare refusal.

Mr. Cox. Isn't it true that the Federal Communications Commission, a year or so ago, changed its chain broadcasting regulations as far as the rights to first refusal are concerned, to limit them to refusal as far as another station operating in the same community was concerned, whereas previously they had applied to stations in the same area?

Mr. HOFFMAN. I think that is true. We haven't pressed the point. I must go on record this way: I think I was a little more knowledgeable when I went into this business than some of the people who went in the UHF business. At least I knew some of the problems I was going to face. However, it turned out in some cases to have cost me more money than I figured they would cost originally.

Mr. Cox. Thank you, Mr. Hoffman.

Senator THURMOND (presiding). Mr. Hoffman, I want to thank you for your contribution to the committee.

Mr. HOFFMAN. Thank you, Senator.

Senator THURMOND. Our next witness is Mr. Clifford F. Rothery. Is he here?

Come around, Mr. Rothery. Proceed with your statement.

STATEMENT OF CLIFFORD F. ROTHERY, INTERNATIONAL PRESIDENT, NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO-CCL

Mr. ROTHERY. My name is Clifford F. Rothery, of San Francisco, Calif. I appear before your committee in my capacity as international president of the National Association of Broadcast Employees and Technicians, AFL-CIO-CCL, commonly referred to as NABET. We are the largest trade union operating exclusively in the radio and television field. We hold collective bargaining agreements with two of the three major American networks and with independent radio and TV stations from coast to coast covering radio and TV engineers, technicians, and other operating personnel. We have a very keen interest in these proceedings and their outcome.

First let me say this: While I represent a labor organization, I do not come here as a proponent of any special labor interest, but rather on behalf of an organization that feels deeply the responsibility that all of us have who are directly engaged in radio and TV activities. Our first responsibility is to the public, whether we function in the industry as labor or management, or, I submit, as an arm of Government, since the Federal Communications Act binds the FCC to serve the public interest no less than it does the station licensee or its personnel.

I think the principal question today is just how is the public interest being served by the present policies of the FCC? To what extent is the FCC itself being governed by the standard which is supposed to govern the granting of licenses, namely, the "public interest, convenience, or necessity"? I think these are pertinent questions on the record.

We in NABET—the men and women who bring radio and TV to the public—have viewed with growing dismay the many FCC deviations from the public interest standard set up under the Federal Communications Act. We have ourselves felt the effect of policies which we are convinced are the result of a fundamental confusion as to the end purpose of the Federal Communications Act so far as it bears on the use of the airwaves.

I think the FCC has lost sight of its basic responsibility to promote a free and competitive national system of radio and television devoted to high standards of service and meeting the local community needs of the people. For how else are we to explain the steady trend to monopoly in radio and television, the deterioration of the content of radio and television broadcasting, and the near collapse of UHF?

What explanation is there for the widespread speculation in radio and TV properties which has made this industry such a lush field of operation for quick-profit takers, if it is not that the FCC has misinterpreted its function? And how else are we to explain the fact that in the United States today there aren't more than 20 educational TV stations on the air leaving the Nation to the mercies of the national advertisers to determine what, if any, forms of entertainment the 35 million owners of television sets shall enjoy?

And how, for example, does FCC discharge its duty to the public when in the vital area of civilian radio and national defense it permits an industry guided principally by money considerations to determine, for all practical purposes, whether or not civilian radio shall be employed at all? I am referring, of course, to FCC policies respecting the use of Conelrad, about which I shall have more to say at a later point.

I think, gentlemen, that the principal reason for the sorry state in which television finds itself today is the fact that the public interest has been tossed overboard and the private desires of individual businessmen have been made paramount. They have literally been given a field day.

Consider the effect of FCC policies concerning the assignment of radio or TV station licenses by the original licensees. There are presently few restrictions on the sale and resale of the station license or franchise, which, to begin with, is granted without charge by the Government to the holder on the understanding that the public interest, convenience, and necessity will be served. As a result, there is a very active traffic in FCC licenses after the original grants, and it is a common experience for stations to sell at several times the original investment in station physical assets. The profits are, of course, attributable to the value of the FCC license. The "business goodwill" thus capitalized is entirely due to the privilege granted the licensee to do business on the airwaves—a free grant. And this capitalization of the FCC license by private businessmen is ordinarily accomplished very shortly after the original license is granted—but, of course, not less than 6 months after, to avoid the impact of the normal income-tax rates and have the advantage, instead, of the lesser capital-gains tax.

Thus any day you can pick up the trade papers and see new notices of station transfers approved by the FCC, at prices substantially in excess of original investment, and usually after a holding period that would be uncommonly short in other fields of business enterprise, but which has come to characterize the radio and TV business. For example, in my own home city, San Francisco, TV station KPIX, a Westinghouse operation, was reputedly purchased for $7½ million from the original licensee, who had about a million and a half invested, and who had held the license for hardly more than 4 years. The FCC approved this sale.

Within the past several weeks the trade papers report the sales of WIRI–TV in Plattsburgh, N. Y., for $500,000 plus; WRDW and WRDW–TV in Augusta, Ga., to South Eastern Newspapers for $1 million plus; WGTH–TV in Hartford, Conn., for $650,000, and so on and so forth. These transfers are garden-variety transactions. I haven't run down the figures to determine what profits have been taken on these sales, but I know sales like these ordinarily represent substantial profits to the original licensees, and that FCC policies encourage the traffic.

It is a significant fact, I think, that in the past 5 years at least 100 TV stations have changed hands, having been sold once or more than once, with FCC approval. This represents 20 to 25 percent of the total number of TV stations now operating, a surprising rate of station ownership turnover—but not surprising when you consider the remarkable profits to be made in the sale and purchase of TV stations, particularly under present conditions of near-monopoly of the airwaves by a limited number of VHF channel licensees. Plainly the FCC's present policy respecting UHF, which discourages active competition with VHF, assures high capital gains to the fortunate holders of VHF licenses who decide to sell out fast, or high returns to those who decide to stay in.

Let me cite to you what the industry thinks in this regard, quoting from a broker in the business who spoke before the California Radio-TV Broadcasters Association recently. He said:

> Pick any investment stock on today's market that will compare even remotely with radio station or television station return and you've found a bonanza. The only investment sources outside radio and television where you may get a higher return are in oil, minerals, or lumber, where the speculation is infinitely greater.

He then goes on to compare the advantages of operating radio-TV properties at 25 to 30 percent return on capital with the advantages of selling them to take the capital gain at lower tax rates.

It is elementary economics that a high demand for a necessary commodity in limited supply bids up the price and conduces to monopoly. This in a nutshell is the present situation in television, and it is directly due to FCC policies, which place no curb on the process of purchase and sale of station licenses and pyramiding capital investments.

But the effects on the future of television are serious. One effect, plainly, is to price out of the market the local enterpriser with limited means, the community-minded citizen who wishes to operate a community-based station. Where he might have the means to build and operate a station starting with the original license, he cannot afford to buy from a licensee in competition with the big money available from large group interests operating from outside. Multiple ownerships and newspaper ownerships are encouraged by the FCC, which allows a single company or individual to own up to seven TV stations. Consequently, the number of independent owners has steadily contracted, pushing out local interests in favor of the big-moneyed groups. And this process toward concentration is continuing, and at the expense of hometown television which, I submit, is one of the objects of Federal policy under the Communications Act.

Another necessary effect of this FCC policy allowing wide-open trafficking in television licenses is the lowering of licensee qualifications. At the time of the original grant the FCC presumably selects the best suited among the competing applicants for the license, and the size of an applicant's pocketbook is not the principal consideration—but plainly it becomes so when the license is sold by the first holder, for then price becomes the criterion, and the market place and not the FCC ultimately decides who is to hold the license.

A third effect of this process of quick and profitable sales of television licenses is to siphon off future earnings in the form of present capital gains. The seller realizes an immediate windfall, and is taxed at capital gains rates only. The purchaser, on the other hand, starts out with a considerable initial investment, on which he expects to earn a return. To do so, he may have to increase his advertising rates, which ultimately reflect in higher prices to the consumer, or cut his operating costs, which will reflect in heavier burdens on his employees, as members of my union can testify. Or he may lower the quality of his service. In other words, FCC policy here encourages tax avoidance with loss in tax revenues, a more costly or inferior product to the public, and reduced employment or underpaid employees in the industry.

Another effect is the increased control, though indirect, of the airways by national advertisers. This follows, first, from the fact of multiple ownership, and second, from the ability of big advertisers to pay the kind of rates which keep high-cost stations operating. As a result, community control is diminished, local advertising is subordinated, and the direct service product—namely, the communication and entertainment presumably to be furnished—becomes debased by the station owner's total dependence on the big commercial sponsor.

And just in case anyone has any illusions about the devotion of big advertisers to culture and high-level entertainment, permit me to quote, without naming, the director of a big New York advertising agency. The advertising director was speaking of color, and is quoted in the trade press as follows:

> Color TV will be the biggest advertising medium ever. The worst program looks good in color. For promotion and public relations, color is the best thing that has happened * * *.

Now I ask you! But that's the way they think, and this is not just an augury of how bad our programs will be with color, but an indication of how bad they already are with black and white.

UHF is clearly affected by this FCC policy which allows station costs to be pyramided by the sale and resale of station licenses. And perhaps this FCC policy is one of the keys to the whole sad UHF situation. Obviously there is every incentive on the part of VHF holders to limit competition, particularly since this assures that the market value of their properties will be enhanced several times over. Here are rich pickings, gentlemen, so why let UHF interfere?

And while I am on the subject of UHF, permit me to point out that what the profit-seeking industry is doing looks very much like what was done to FM in radio. The radio industry killed FM. And the operators in television will, if allowed, kill UHF in the same way. And the public will again be the loser.

You remember FM—frequency modulation? It promised high-fidelity broadcasting and a new world of enjoyment to the public. AM license-holders rushed, and got, the FM licenses; for a short while they offered separate programing, and then shifted over to complete duplication on FM of the AM programs. The result was that FM went by the boards, since from the standpoint of the public there was no sense to buying FM sets when they could get the same programs on their AM sets. Today, the great bulk of some 500 FM licenses outstanding are held by AM licensees—and very few are in actual service. Instead, FM licensees are in many cases using their high-quality FM signals to feed programs from their AM studios to their transmitters, thus cutting out the cost of suitable transmission lines. This final abasement and destruction of FM must be laid squarely on the doorstep of the FCC, which failed to save FM from the profit seekers in the industry.

We are rapidly approaching a like situation with UHF. The present ill-conceived pattern is due at least to FCC's lack of foresight, if not to an excessive tenderness for monopoly-minded operators in VHF. It is clear that television's future lies in the UHF portion of the spectrum, and it is equally clear that congressional action may be necessary to get FCC to apply policies, such as deintermixture, to save UHF. Ultimately UHF must prevail throughout, in order to bring more television stations into the communities, and the right policies will encourage the conversion of sets to receive UHF.

Educational TV is fated to remain an unrealized dream unless action is taken to implement the full intent of national policy under the Federal Communications Act. It is a striking fact, I think, that although 258 TV channel assignments have been reserved for noncommercial educational use, barely a handful of stations have been able to take to the air, and this although the private sector of the television industry has been able to generate over half a billion dollars of revenue during this past year, together with radio having become the wealthiest advertising medium in the country. Over a billion dollars a year are now being spent to reach and sell the radio and TV audience. But very little of this goes for high-quality programing. A high proportion of radio-TV time is straight commercials, and too high a proportion is taken up with second-rate motion-picture films. In fact, television is a principal consumer of old pictures, and the sale of pre-1948 films for TV use is estimated to amount to $50 million this year. Yet, as one motion picture magnate has admitted, the public wouldn't pay at the box office to see the very pictures which are unloaded on it in the TV living rooms of the Nation.

All of which points up the deficiency in high-level programing, the failure of the industry, and the duty of the FCC to find alternatives through effective promotion of educational TV. Either the industry must be made to pay for educational TV, or Government must directly subsidize it, to bring to the public the rich possibilities of television. And, certainly, the FCC should emphatically reject any suggestion from private industry that educational channels not yet taken up be made available for commercial use.

Of course, educational TV and the promotion of local television go together, and it appears to be the policy of FCC to favor the reverse. The dilution of hometown control is manifested also in the case of the daytime broadcasters, who for years have sought to stabilize their broadcasting day on a basis that would accommodate local needs instead of varying with the sun. The plea of the daytime broadcasters would assure stability of operations, certainly something to be desired in any industry which is to be genuinely competitive. But their pleas have fallen on deaf ears. The FCC continues to ignore the local need for local services, with the result that more distant stations of sufficient power and wealth continue to be favored, once again pointing up the submergence of local expression by absentee television ownership.

The sensitivity of the FCC to the industry's financial calculations can have dangerous consequences, and I suggest that this committee might well inquire into how far the industry may be served at the risk of national defense. I have here specific reference to the question of CONELRAD, which is a radio communication system devised to be used in time of enemy attack and which depends on the cooperation of private radio-station owners. This calls for manually operated transmitters, since manual adjustments must be made to change the station's frequency as required for CONELRAD. The necessary adjustments cannot be made in radio stations which are telemetered, that is to say, which operate their transmitters by remote control.

Consequently, when a radio station is given authority to operate by telemetering, it just drops out of CONELRAD. The more stations that are allowed to telemeter, the less effective CONELRAD becomes, since the whole point of CONELRAD is to confuse enemy aircraft attempting to home in on some station's signal. A multiplicity of signal points through CONELRAD would render this difficult, if not impossible.

Telemetering, also known as remote control or automation, is a cheaper form of operation than manual operation of transmitters. Hence, the industry would like to have it. This was originally permitted for small stations (10 kilowatts, nondirectional), with the result that a large number of small stations dropped out of CONELRAD. Now the larger stations hope to get FCC authority to do the same. If they get it, the result will be the practical scrapping of CONELRAD, and once again the profit motive will have been placed above public need.

Unfortunately the FCC's whole tendency is to allow precisely what this profit-oriented industry wants. It has now authorized test telemetering of a 50-kilowatt directional radio station under the financial sponsorship of NARTB, the industry's trade association. The purpose of the test is to determine the engineering feasibility of remote control of transmitters in large stations, about which there is, anyway, little question; the real question is what will happen to CONEL-

RAD when and if FCC submits to industry pressure for universal telemetering.

NARTB has already proposed that FCC amend its rules to allow telemetering in 50-kilowatt directional stations, recalling—and I quote from the industry's magazine Broadcasting-Telecasting for February 20—that—

the Commission stated the most important consideration was whether the revision in question would result in any degradation of the Commission's technical standards.

Perhaps this is the technical consideration which, also, it so happens, squares with the industry's financial considerations—but what of the consideration of nationl defense? Hasn't the licensee assumed some obligation to the general public and the Government when he was granted an FCC license, and isn't he under a duty to carry out this obligation? Or is he to be permitted to take a "calculated risk" with the Nation's safety by demanning his transmitter? It is, regrettably, not too hard to understand a station licensee taking such a "calculated risk," but it is indeed hard to understand that the FCC should allow him to do so.

Of course, it must be acknowledged that Government can pay for CONELRAD participation, which, in fact, it is doing today in some cases. But it is then pertinent to inquire why Government should subsidize this rich industry's participation in national defense, when its very riches are the direct result of a Government grant of the privilege to do business on the air waves.

Finally, I would like to ask this committee to consider how far the FCC carries out the public purposes of the Federal Communications Act in still another area in which it has, it would seem, recently undertaken to function. I have in mind the recent involvement of the FCC in labor controversies, which I had hitherto supposed to be exclusively within the province of other agencies of Government and subject to other laws. My union has, on occasion, been compelled to take strike action against radio or television station operators in pursuit of lawful collective-bargaining objectives. Not long ago, in two such strike situations, the FCC responded to claims of "sabotage" leveled against NABET members by the strike-bound employers. In one of these situations the charges were ultimately dismissed, but in another an FCC examiner, by some peculiar reading of the Communications Act, succeeded in equating a lawful work stoppage with "willful damage of radio apparatus" under the act.

It is not my intention, of course, to appeal the FCC examiner's decision before your committee, but I do consider that this committee should be concerned when the FCC enters the labor-management relations field, since under the law it is confined to regulation of communications. Or does regulation of communications carry with it the right to regulate labor-management relations? If the FCC can justify this on the ground of its right to license radio operators, it will be the only regulatory agency which, by such an expedient, injects itself into labor disputes, and a matter of great interest to other labor organizations functioning in industries where technical personnel are licensed.

But of course what is really important about FCC's intervention in labor-management disputes is the further evidence it offers of the Commission's undue sensitivity to the requirements of the businessmen in the industry, regardless of effect on other areas of public interest, whether it be national defense or public policy respecting labor-management relations. And I submit that perhaps Congress needs to redefine, in sharp terms, the purposes of the Communications Act and the function of the FCC to protect the public interest in monopoly-free radio-television and in the quality product, regardless of the profit seekers who presently seek to concentrate control of the airwaves in their own hands.

Thank you for the opportunity to express these views before your committee. If there is any way in which NABET can be of assistance in your further inquiries, we shall be only too happy to cooperate.

Senator THURMOND. Would you please answer a few questions?

Mr. ROTHERY. Certainly.

Mr. COX. Mr. Rothery, in this matter of the assignment of station licenses, do I understand that it is your position that the FCC has approved the transfer of licenses from the original licensee without applying the same standards and safeguards that are applied in the initial comparative hearing where they are selected mong several applicants?

Mr. ROTHERY. I think so. It would be difficult to apply the same standards to a competitive group as to one person.

Mr. COX. In other words, where a licensee seeks approval of a transfer, he comes in with a proposed transaction which has been concluded satisfactorily between himself and the prospective purchaser and simply asks the FCC to approve this, without at that time in any way opening up for general consideration the question of whether someone else would be better qualified to provide service.

Mr. ROTHERY. That question never enters.

Mr. COX. Would this be possible: As I understand it, in a comparative hearing the FCC looks to the question of whether the applicant has local residents in its organization, to the question of integration of ownership and management, to the civic record of the people connected with the applicant, and decides, on the basis of the evidence, which of these applicants is best qualified. Having gotten the license, can that license then be transferred to someone who meets none of those standards, if the FCC simply finds that, at a minimum, the proposed transferee is technically and financially qualified?

Mr. ROTHERY. Technically and financially, some minimum requirements as to citizenship—the very minimum of requirements.

Mr. COX. Have there been, to your knowledge, any significant number of cases in which such proposed transfers have been refused by the FCC?

Mr. ROTHERY. Very few have been refused.

Mr. COX. Do I gather from what you say that a good many of these sales have been made to multiple owners who are gradually accumulating television holdings in various parts of the country?

Mr. ROTHERY. Yes, because of the price involved, mainly.

Mr. COX. That is, they are the people most likely to be able to come up with the largest offer? Does your organization have any concrete proposal to make as to what should be done about this? That is, is it your view that it requires legislation, or that it simply requires a tightening up of FCC practices?

Mr. ROTHERY. I think the FCC practices under its rules could do so. However, they may be overruled by the courts. Many things enter the mind—high taxes, a transfer tax upon such sales, possibly the use of such money to support educational TV, which is a need.

In many ways—there have been regulatory agencies in States, for instance, that have set limits upon the price of certain licenses, such as the license of a bar or saloon, where there is trafficking in such licenses because of their limited number. In southern California they have stopped it by setting a top price that can be obtained for a license.

Mr. Cox. I think at one point you quoted a business broker who discussed, I think you said, a rate of return of something like 25 to 30 percent on capital in television operations. That wouldn't be general, would it—a rate that high?

Mr. Rothery. It wouldn't be difficult to say that it was general. Dropping out the UHF stations, there are various instances where I would say it would be low on a capital investment.

Mr. Cox. Exclusive of the UHF stations?

Mr. Rothery. Exclusive of the UHF stations.

Mr. Cox. Only at VHF?

Mr. Rothery. Only VHF.

Mr. Cox. Do I gather from what you say, that you feel that, under the impact of present policies of advertisers, perhaps educational television is the only real possibility that remains for a quality type of programing on television?

Mr. Rothery. No, I don't say a quality type. I say the main purpose of television as an educational, informational medium is better served when it is not controlled by advertisers.

Mr. Cox. Wouldn't you agree that the networks and some stations independently, with the support of advertisers, have provided, certainly in many instances, a high degree of programing quality for the public?

Mr. Rothery. I say you could go over a broadcast day and select programs out of it that are outstandingly cultural, informational, educational, or entertaining. But in general, taking the broadcast day, I think if a person sat down in front of a television receiver and was forced to listen to everything that went on it for any considerable length of time, he would eventually wind up in a nuthouse.

Mr. Cox. In other words, there are high spots, but you feel the general average of performance——

Mr. Rothery. The high spots are very far between.

Mr. Cox. You referred to the matter of daytime broadcasters in radio and their efforts to get fixed hours for their operations. Isn't it true that if you permit them to operate outside this shifting time period, which is fixed by sunrise and sunset, that you do develop an interference factor with distant stations broadcasting on the same channel?

Mr. Rothery. There is an area between stations on the same frequency which would have interference.

Mr. Cox. Isn't there a chance that that might result in a substantial reduction of service in that area of interference?

Mr. Rothery. No. I think, technically, the problem can be solved by directional rays so as to minimize the interference, and, with the economic feasibility of an extended-day operation, the Commission rules would be served.

Mr. Cox. That is primarily the problem of the daytime broadcaster, isn't it, that he wants to be able to sell advertising and provide programing on a steady basis, rather than on one that ends at odd times in the afternoon?

Mr. ROTHERY. Yes. His day varies all around. His employment goes from sunup until sundown, which is several hours different. And, naturally, what I am thinking of is that the good part of the year when you can sell radio time is during the winter. In the summertime, of course, which is his longest day, is what you might call sustaining time.

Mr. Cox. People aren't in the house?

Mr. ROTHERY. No.

Mr. Cox. With respect to conelrad, that, as I gather it, is a strictly voluntary program, isn't it?

Mr. ROTHERY. Strictly voluntary.

Mr. Cox. This telemetering that you discuss, I gather, eliminates at least one man, or is it more, from attendance on the transmitter?

Mr. ROTHERY. It eliminates complete human attendance at the transmitter, except in the case of emergencies.

Mr. Cox. Where you don't have telemetering—where it is manned—how many employees are concerned?

Mr. ROTHERY. One—one at a time.

Mr. Cox. That may mean two shifts?

Mr. ROTHERY. Depending upon the broadcast day—two shifts normally.

Mr. Cox. If the station is not on conelrad because it doesn't have a manned transmitter and can't make these manual adjustments, is it, under the program, supposed then to go off the air?

Mr. ROTHERY. It goes off the air.

Mr. Cox. Then there won't be any danger that it will serve as a beacon to possible enemy attack forces?

Mr. ROTHERY. There is only this about it. The transmitter is then controlled by a person who is busily engaged in a commercial activity in the studio—an announcer who may be playing records and doing considerable other work around the studio. He is also, in addition to listening to what he is putting on the air, supposed to monitor. This is a confusing thing, and you can't monitor very well. The usual practice would be to turn the monitor down to a point where he could hear it under all conditions, but there may come the condition where he would not hear it.

Mr. Cox. This monitor is the channel through which he would be advised of the emergency?

Mr. ROTHERY. This would be the conelrad key station that he listens to; the other station who is also broadcasting a commercial program.

Mr. Cox. But they superimpose some signal, do they?

Mr. ROTHERY. They superimpose a signal on that, upon the receipt of which all stations not on conelrad are supposed to get off the air.

Mr. Cox. It is your feeling that the personnel manning the transmitter, if it is manned, would be more alert to that than perhaps the busily engaged individual at the studio itself?

Mr. ROTHERY. Yes. They constantly run tests to keep them on the alert. Several times a week a conelrad test is put into effect just to see if they are on their feet.

Mr. Cox. Has there been any demonstrable difference, or aren't these telemetering stations included in those tests if they simply drop out?

Mr. ROTHERY. No, there is no signal on the air for them to hear.

Mr. Cox. They are no longer a part of the system, then?

Mr. ROTHERY. No, they are no longer a part.

Mr. Cox. Is it my understanding, also, that having changed their frequency, the stations that are on conelrad are then supposed to broadcast instructions of a civil-defense nature and things of that sort?

Mr. ROTHERY. Yes, sir.

Mr. Cox. So that this station which has dropped out of conelrad because it doesn't man its transmitter would not be able, at least, to take part in that affirmative part of the program.

Mr. ROTHERY. When you say "broadcast," the entire conelrad unit in an area becomes a single broadcasting station at that point, no one station broadcasting all the time. But by mechanical means, a station may be on the air a momentary portion of the time, and then it goes to the other stations around.

The central conelrad control point then broadcasts. A person listening at home on this frequency hears the complete message, but no station will deliver more than a word or so of it.

Mr. Cox. As to a station that has gone off conelrad, if there remains no station in a community which is still a part of the system, is there some possibility that the citizens of that area will be without information which they otherwise——

Mr. ROTHERY. They would have to get it from some other area. If they were too far away for signals, they wouldn't get it.

Mr. Cox. With respect to this matter of labor disputes in which you feel the FCC has injected itself, that was not in the area of the actual negotiations or anything of that sort between your union and the employer?

Mr. ROTHERY. No.

Mr. Cox. These sabotage charges you referred to in two instances: were those brought during or after the labor dispute had ended?

Mr. ROTHERY. After it had started—before it had ended.

Mr. Cox. During the progress of the strike?

Mr. ROTHERY. During the progress of the strike.

Mr. Cox. Do I understand that you are appealing the one case in which the charge was made?

Mr. ROTHERY. Yes.

Mr. Cox. Are all of your members licensed by the FCC, or do you include also nontechnical personnel of the station?

Mr. ROTHERY. We include nontechnical, but not all technicians are licensed.

Mr. Cox. Just the——

Mr. ROTHERY. Transmitter operators.

Mr. Cox. Only the transmitter operators?

Mr. ROTHERY. That is all that is required by the law.

Mr. Cox. That is, your cameramen and personnel in the studio are not licensed?

Mr. ROTHERY. That is not required.

Senator THURMOND. Mr. Rothery, I wish to thank you for your statement here and for your coming.

There is a statement that has been offered by Mr. Mortimer W. Loewi, vice president of Gerico Investment Co. That will be admitted into the record.

STATEMENT OF MORTIMER W. LOEWI, VICE PRESIDENT, GERICO INVESTMENT CO.

Mr. LOEWI. My name is Mortimer W. Loewi. I am a director and vice president of Gerico Investment Co., permittee of station WITV, operating on UHF channel 17, Fort Lauderdale, Fla. I have heretofore testified before the Potter subcommittee on the problems confronting UHF operators.

My background in television dates back about 22 years, at which time I jointly with Dr. Allen B. Du Mont organized Allen B. Du Mont Laboratories, Inc. For a number of years, until the end of 1951, I was director of the Du Mont Television Network. I have thus had experience in the pioneering of both VHF and UHF.

In its sixth report in April 1952, despite contrary recommendations by Du Mont, the Commission decided to intermix VHF and UHF channels in the same major markets. At that time the Commission allocated 3 commercial VHF channels and 2 commercial UHF channels to Miami, Fla. It allocated 2 UHF channels to Fort Lauderdale, a rapidly growing city approximately 25 miles north of Miami. These allocations were made on the assumption, since proved false, that VHF and UHF stations could coexist side by side in the same markets, and that by intermixing the two types of frequencies, UHF would become an integral part of a single nationwide competitive system.

Gerico Investment Co. applied for and obtained a grant of channel 17 in Fort Lauderdale in 1952. We constructed a 752-foot tower as the so-called Miami "antenna farm" and went on the air in November 1953. We had our difficulties. By reason of the prefreeze headstart of station WTVJ, operating on VHF channel 4 in Miami, almost no sets in the Miami-Fort Lauderdale area (at the time we went on the air) were capable of picking up UHF signals. We were confronted with a terrific conversion problem—getting existing set owners to add UHF converters and getting new-set buyers to spend extra money ($30 to $50) to purchase all-channel receivers.

VHF station WTVJ (channel 4), at the time we went on the air, took its choice of the programs of all four networks (CBS, NBC, ABC, and Du Mont). There were inadequate cable facilities to permit the receipt and transmission of two network shows simultaneously in the Miami area.

However, with only 1 VHF station in operation (the other 2 being tied up in hearing), the people in the area were hungry for a wider choice of programs. Additional cable facilities were installed. With only 3 stations on the air, 2 on UHF, the people in the area soon realized that they had only "half a set" unless they could also pick up UHF programs. The VHF station (WTVJ), as a basic affiliate of CBS, carried the programs of that network. It also had first call on the programs of ABC, but since it could not carry ABC programs at the same time it was carrying CBS shows, we obtained a secondary affiliation with ABC. The other UHF station in the area (WGBS-TV), operated by Storer Broadcasting Co. on channel 23 since December of 1954, had first call on the programs of NBC. Thus, with

NBC and numerous ABC programs available only on UHF, we have made tremendous strides in the past year toward "licking" the UHF-VHF problem. By November of 1955, according to figures released by the Florida Power & Light Co., 90.6 percent of the 300,000 sets in the Miami-Fort Lauderdale area were able to pick up UHF programs. The people in that area, in order to pick up UHF signals, have expended an extra $10 million on UHF converters, bow-tie antennas, and the price differential between VHF-only and all-channel receivers.

Station WITV is now operating with 536 kilowatts of power, directionalized north and south, with an antenna 762 feet above mean sea level. WGBS-TV is operating with an effective radialed power of 186 kilowatts and an antenna 943 feet above mean sea level. Because of the flat terrain and uniform year-round foliage in the area, the UHF stations are providing coverage comparable to that obtainable on high-band VHF (channels 7-13). Because of manmade noise, which has a lesser effect on UHF than on VHF, and particularly because of interference from operations in Habana, Cuba, on two of the same channels assigned to Miami, the UHF stations are providing at least as good a picture in the area as the VHF operation on channel 4, a point which I cannot emphasize too strongly to this committee.

Thus by the end of 1955 the UHF stations in Miami-Fort Lauderdale, facing only one VHF competitor, were doing an excellent job. The area was approaching all-channel saturation. Station WITV, with capital investment and operating losses in excess of $1 million, reached the break-even point.

All this was changed by the Commission's action of January 20, 1956, granting channel 7 to Biscayne Television Corp., and its refusal to stay the channel 10 grant in Miami until deintermixture problems now under investigation by the Commission have been resolved.

The grant to Biscayne, a corporation controlled by a former president of NBC, and by two large newspaper chains, has created an almost unbelievable monopolistic situation. These 2 newspaper chains publish the only 2 metropolitan dailies in Miami; they own the 2 most powerful radio stations in the area (stations WQAM and WIOD); they now have channel 7 in Miami, along with numerous other television interests elsewhere. Against such a combine, an independent UHF operation is at a hopeless disadvantage. Experience has shown that UHF stations have not been able to survive, except at a financial loss, in markets served by 2 or more VHF stations affiliated with the 2 principal networks (CBS and NBC). With the January 20 grant to Biscayne, Storer's UHF station (WGBS-TV) will lose its NBC affiliation, and when channel 10 is granted, WITV will be deprived of such ABC programs as have not in the meantime gone to the VHF stations on channels 4 and 7.

Experience has further shown that when the programs of the two leading networks (CBS and NBC), along with high-rated programs of ABC, are obtainable on VHF, the UHF stations lose their audience. With the loss of audience they lose their national and local spot business, and with the loss of revenues they can no longer operate in the public interest. With most of the network programs on VHF, the public has no particular incentive to pay another $30 to $50 for all-channel sets or UHF converters. There is no reason to keep existing UHF converters in repair.

The market soon becomes flooded with new VHF-only sets and conversion problems (which we have almost licked during the past

2 years) start all over again, and with 3 VHF stations in operation the UHF stations no longer have the good programs to induce the public to reconvert to all-channel receivers.

After heavy initial capital expenditures and substantial operating losses during the early conversion period, and seeing what was happening in other markets upon the advent of a second or third VHF station, we foresaw what was coming in Miami if the Commission adhered to its 1952 decision to grant three VHF stations in that area. Accordingly, on April 14, 1955, within 15 days after the Commission decided to hold hearings on certain deintermixture proposals, my company joined Storer Broadcasting Co. in petitioning the Commission to deintermix Miami-Fort Lauderdale. Our proposal as amended included the 6 principal cities of Florida and 2 cities in Georgia.

Our joint proposal, as we pointed out to the Commission, had certain definite advantages.

At the present time, cities like Orlando, Jacksonville, Tampa-St. Petersburg, and Savannah, are limited, as a practical matter, to 2 equally competitive television services, an insufficient number to take care of the 3 national networks.

Under our proposal, by removing channels 7 and 10 from Miami, each of these cities—Orlando, Jacksonville, Tampa-St. Petersburg, and Savannah—would be assured a third equally competitive facility; Brunswick, Ga., would obtain a second; Miami-Fort Lauderdale would still have 3 stations—1 VHF and 2 UHF—with room for additional UHF stations now and in the years ahead.

In contending that Miami-Fort Lauderdale should become a predominantly UHF market, limited to a single VHF channel, we pointed out the following advantages:

(1) By reason of WITV's and WGBS's pioneering, Miami-Fort Lauderdale is rapidly being transformed into an all-channel market, in line with desires expressed by the Commission in its sixth report.

(2) The public has a vast investment in UHF receivers and antennas in the Miami area, currently in excess of $10 million, which will go for naught with the advent of additional VHF operations in that market.

(3) Miami, because of its proximity to Habana and tropospheric problems in the South, is suffering serious interference on VHF which will be avoided entirely on UHF.

(4) The flat terrain and uniform year-round foliage in Miami is ideally suited for UHF.

(5) The coverage on UHF is roughly comparable to that which can be had on channels 7 and 10 in the Miami area.

(6) Successful UHF operations in Miami will have a tremendously beneficial impact on UHF development nationwide. Miami is rapidly becoming an important originating point for network programing. Successful UHF operations in Miami would go a long way in overcoming the present skepticism of some advertising agencies, network officials, time buyers, and set manufacturers after they have seen at first hand the potentials and advantages of UHF in this area.

In order that our deintermixture proposal for Florida and a portion of Georgia would not be rendered moot by intervening VHF grants in Miami, we asked the Commission not to grant channels 7 or 10 until it had taken final action on our deintermixture proposal. In July 1955 Chairman McConnaughey assured this committee that no grants would be made in cities where deintermixture proposals were pending until the deintermixture problem was settled.

However, on November 10, 1955, the Commission dismissed some 35 such petitions, without prejudice to their subsequent reconsideration on the merits in a general rulemaking proceeding ordered that same day. Our petition was not considered on its overall merits. The Commission, as Chairman McConnaughey advised you on February 20, has not yet rejected deintermixture. But with the general rulemaking proceeding going on and with my company presenting its views in that proceeding, the Commission is going ahead with VHF grants which foreclose favorable action at a later date on our deintermixture proposal.

The grants of channels 7 and 10 in Miami will not mean additional television service in that market. The people in that area are already receiving the programs of all three existing networks (CBS, NBC, and ABC). The coverages of UHF stations in the Miami-Fort Lauderdale area are roughly comparable to the coverage which the VHF stations will have. The two new VHF stations will simply replace existing services now being provided by the two UHF stations. The public will receive no benefits. In fact, Fort Lauderdale will be left without a station of its own.

Once the public buys sets and makes highband installation in reliance on channels 7 and 10, deintermixture in Miami is no longer feasible. With the Commission assuring this committee that it will reach a decision within the next few months on deintermixture, the Commission should refrain from making additional VHF grants in markets where deintermixture proposals are pending. If those VHF stations are allowed to go on the air, it will not be in the public interest to require those stations to move to UHF at a later date. The public will have made extensive investments in reliance upon those new grants.

In order that the Commission may tackle the problem on its merits, unfettered by intervening VHF grants which it has made since November 10, 1955, in markets where deintermixture has been proposed, it is my recommendation that this committee direct the Commission, a legislative arm of Congress, to suspend such grants until it reaches a decision within the next few months on the overall problem of deintermixture.

The vast majority of comments filed to date in the general rulemaking proceeding now in progress favor deintermixture in some form. Deintermixture is endorsed by such organizations as NBC, ABC, General Electric, Westinghouse, General Teleradio, Storer Broadcasting Co. If the Commission still has an open mind in these matters, as it professes to have, it should not be making VHF grants today in areas where, a few months from now, it may be required to institute involved legal proceedings to compel such grantees to shift to UHF.

I thank the committee for this opportunity to state my company's views regarding the desirability of deintermixing the Miami-Fort Lauderdale area.

Senator THURMOND. Are there any other statements to be offered in evidence this morning?

The next meeting of the committee will be held in the caucus room on March 26 at 10 o'clock.

The committee now stands adjourned until that time.

(Whereupon, at 11:50 a. m., the committee adjourned, to reconvene at 10 a. m., Monday, March 26, 1956.)

TELEVISION INQUIRY

(UHF-VHF Allocations Problem)

MONDAY, MARCH 26, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room 318, Senate Office Building, Washington, D. C., Senator Charles E. Potter presiding.

Present: Senators Potter, Pastore, Schoeppel, and Bricker.

Also present: Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel.

Senator POTTER. The committee will come to order.

We are resuming our hearing this morning on the television-allocation problem, although our first witness is going to discuss other matters. We have had testimony from UHF and VHF licensees and now we are going to hear from representatives of the networks. Before calling on our first witness, however, we have a number of items for insertion in the record.

First, a letter dated March 15, 1956, from the American Farm Bureau Federation, urging continuation and extension of radio and television service to rural areas.

Second, a letter dated March 16, 1956, from Benedict P. Cottone, enclosing a copy of a letter to Hon. George C. McConnaughey, Chairman of the Federal Communications Commission, from Frank Lyman, Jr., of Middlesex Broadcasting Corp., advising that UHF station WTAO-TV, of Cambridge, Mass., will go off the air on March 30, 1956, and outlining the reasons for such action. Mr. Lyman testified before this committee on February 27, 1956, regarding the problems of a UHF station operating in the shadow of a large city with multiple VHF services.

Third, a statement of Arthur W. Scharfeld on behalf of Radio Wisconsin, Inc., permittee of Madison, Wis., television station WISC-TV.

(The documents referred to are as follows:)

AMERICAN FARM BUREAU FEDERATION,
Washington, D. C., March 15, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce,
Senate Office Building, Washington 25, D. C.

DEAR SENATOR MAGNUSON: The American Farm Bureau Federation—a general farm organization with 1,623,222 member families in the 48 States and Puerto

Rico—is concerned about proposals to increase the number of television channel allocations currently under consideration.

Your committee, in the conduct of hearings on this subject, will, of course, give thoughtful consideration to the effects of any proposal which might reduce the effectiveness and power of television stations bringing education and entertainment into rural homes.

Many farm people, particularly those far removed from urban centers, depend on communications media such as television for information and recreation even more than do city and suburban residents. A recent survey by the industry indicates that 40 percent of the rural residents of the Nation now have television sets.

Any move which might retard the growth of TV service to rural areas by a reduction in the transmission effectiveness of existing stations would seriously impair the increasing value of this media to farm families.

At the December 1955 annual meeting of the American Farm Bureau Federation, the following policy resolution was adopted by the official voting delegates of the State farm bureaus:

"Radio and television broadcasting provides an invaluable service to rural areas and farmers. We strongly support the efforts made by the industry to expand and improve its coverage of news and farm affairs.

"We urge that the Federal Communications Commission give close scrutiny to the issuance of licenses and guard against any lowering of high standards of public service which might vitally affect programing and reception for farm families.

"Reduction of broadcasting interference, particularly as it applies to clear channel stations, is a constant challenge to governmental agencies and industry groups. We are firmly opposed to any Government regulations which might reduce, or threaten to reduce, service to rural listeners."

We respectfully request that this letter be made a part of the record of the hearings being conducted with regard to this matter.

Yours very truly,

JOHN C. LYNN,
Legislative Director.

COTTONE & SCHEINER,
Washington, D. C., March 16, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR MAGNUSON: I am transmitting herewith a letter dated March 13, 1956, from station WTAO–TV, Cambridge, Mass., to the FCC advising of the necessity of termination of the station's operation as of March 30, 1956.

It would be appreciated if this letter and the attachments thereto could be made a part of the record in the hearings which are now being conducted by your committee with respect to the UHF problem.

Sincerely yours,

BENEDICT P. COTTONE.

MARCH 13, 1956.

Hon. GEORGE C. MCCONNAUGHEY,
Federal Communications Commission, Washington 25, D. C.

DEAR MR. CHAIRMAN: This is to advise you that effective as of March 30, 1956, UHF station WTAO–TV will suspend operations pending further developments in the current UHF crisis.

For me to detail for your information the reasons why we are forced to take this step would be carrying coals to Newcastle. Our story has its counterpart in the stories of the 57 UHF stations that have been forced to the wall since the adoption of the ill-fated television allocation plan which intermixed VHF and UHF channels in the same markets.

Our situation differs from the case of those who have gone dark before us, only in the fact that we should probably have taken this step months ago. We have refrained from doing so only because we thought we had reason to hope, during the past 2-year period, that the UHF problem was under careful study and that there would soon be forthcoming constructive proposals which would make it possible for UHF operators to continue to serve the public. However, hope ceases to spring eternal when a certain point in suffering is reached. I regret to advise you that in the case of WTAO–TV that point has been reached.

Middlesex Broadcasting Corp. has been rooted in the Cambridge community for many, many years, through its operation of AM station WTAO and its FM station WXHR. These have been modest operations; for it has been our chief objective to provide the city of Cambridge with service that more particularly meets its needs and tastes. We went into television with this same basic objective. When we did so, we placed our faith in the Commission's allocation plan and in pronouncements holding out rosy expectations as to UHF's capacity to serve as an effective public medium. Fortified by this faith, we placed our resources, experience, and effort into building a worthwhile television service for our community. Brief but eloquent testimony to that effect is attached to this letter. Two factors have now demonstrated that faith and those expectations to have been ephemeral. The first is the almost insuperable obstacle of incompatibility created by the Commission's intermixture in the Boston market of VHF with UHF channels. The second is the tremendously superior coverage and other economic advantages which the Commission's allocation plan gives to VHF stations. With respect to this second factor, we have found that we have hopelessly been trying to compete with two superpower commercial VHF stations in Boston (with a third on the way). We have been trying to compete for programs, revenues, and audience under the terrific handicap that our signal, even if it could be received by all receivers within our service area, could not reach the tremendously greater areas reached by each of the Boston VHF stations. Indeed, this inequality of competitive opportunity has recently been further aggravated. In addition to the competition of the Boston VHF stations, we now must contend with a Manchester VHF station, whose home community is about 50 miles from Boston, and which has been openly wooing national and local Boston area advertisers with proud claims as to how effectively the station serves the Boston area. This, of course, has resulted from the tremendous coverage areas which the Commission's present superpower, superheight rules have staked out for VHF stations.

To our way of thinking, the Commission's allocation plan, plus the types of day-to-day action which the Commission has been taking over the period of the past 2 years, have been breeding a dangerous monopoly in the most powerful medium of mass communications ever yet devised. The present trend must inevitably lead to disastrous consequences to the public and to the small-business entrepreneur. We take pride in the fact, perhaps foolishly, that we have had only small-business pretensions. We now see no possible way that we may continue to hold even such modest pretensions in the television field since we foresee no early and tangible indication that the climate will change sufficiently to make small-business aspirations worth while. We trust that we are wrong.

There have been some indications that the next 6-month period should produce developments which will (*a*) either create such a more favorable atmosphere for development of nationwide competitive television system in which the small operator can live; or (*b*) seal the perpetual doom of any such television system. Insofar as our situation is concerned, we have advanced to the Commission, in its pending reallocation proceedings, a deintermixture proposal which appears to offer some hope of a more truly competitive television situation in the Boston-Cambridge area. Although we are forced to suspend our operations, we will continue to hope and press for such developments to the end that we may be able, in such period, to resume television service on a basis whereby we could more effectively serve the public than has been possible in the past.

Very truly yours,

MIDDLESEX BROADCASTING CORP.,
FRANK LAYMAN, Jr., *President.*

EXTRACTS FROM LETTERS ON FILE AT WTAO–TV

"The Cambridge old age and survivors insurance district office serves some half million people in Middlesex County. WTAO–TV is the only commercial television station abailable for the important local tie-in."—Gerald J. Murphy, district manager, Social Security Administration.

"We were pleased to know that an attempt is being made to move WTAO–TV to a regular VHF channel. We feel that stations such as WTAO–TV contribute tremendously to the Commonwealth in all aspects of public relations as well as education."—Edith Povar Schneider, executive director, United Cerebral Palsy of Boston, Inc.

"I want to express my deep appreciation to you for the splendid civic interest displayed by WTAO–TV. I was delighted to participate in the series of programs you ran on State affairs. It was my deep regret that these shows did not have a wider audience."—Sumner G. Whittier, Lieutenant Governor, the Commonwealth of Massachusetts.

"We wish you well in your attempt to bring WTAO–TV to the regular television channels feeling that the same attitudes shown in your radio work will contribute to our community through your television programing."—George E. Gardner, pastor, Cambridge Baptist Church.

"I have heard recently of WTAO's attempt to move to a regular VHF channel. I can only say that everyone at United Community Services is behind you in this new effort. It would be a boon to every person in Greater Boston for a station as public spirited and cooperative as WTAO to obtain a VHF channel."—June E. Lord, radio-television director, United Community Services of Greater Boston.

"I understand you are making every effort to move WTAO-TV to a regular VHF channel. I certainly hope your efforts will be successful. In our opinion there is room and a real need for favorable action on your application."—Charles S. Wilson, executive director, Bay State Society for the Crippled and Handicapped, Inc.

"If you can obtain a regular VHF channel in the near future there is no doubt that the folks of the Cambridge area will be pleased. A VHF channel will lend itself to building a bigger and better Cambridge. May you have success in your endeavors."—Edwin J. Freeh, captain, Salvation Army.

"I feel sure that if a VHF license is granted, WTAO–TV will continue its outstanding record of public service."—Maj. Jay V. Poage, officer in charge, United States Marine Corps.

"The city of Cambridge should have a television voice such as your which can devote its attention to local endeavors."—William E. Maxson, head master, Lesley-Ellis School.

"We wish a successful attempt to have your station moved to a regular VHF channel."—Doris M. F. Mack, district director, Campfire Girls.

"While I am thanking you for what you did for the the heart fund during the campaign, I want to add my congratulations for the part WTAO–TV took in presenting a pioneer project initiated by the Massachusetts Health Council, of which group I am vice president. Your station exhibited courage and leadership in a new field of health education which participating agencies value highly."—Charles A. Gates, executive director, Massachusetts Heart Association, Inc.

"* * * so be assured of our good wishes and prayers for the success of your efforts to secure for WTAO–TV from the Federal Communications Commission a regular VHF channel so as to be on the truly equitable basis which the American system of broadcasting strives to maintain."—Father Matthew Hale, S. J., director, Sacred Heart program, Boston.

"I sincerely hope that station WTAO–TV can be moved to a regular VHF channel and remain on the air."—Ruth S. Signor, associate director, Girls' Clubs of Boston.

"We know we need at least the number of stations which have been allocated so that we might avoid the problems of the pre-1946 radio situation when a market cornered by a few did not promote good competitive programing and engineering practices and yet it is not an equitable situation when the ability to compete is not equalized. This the Federal Communications Commission in all justice and fairness must solve. We certainly wish you well."—Joseph E. Porter, acting director, Massachusetts Council of Churches.

"It goes without saying that the chapter wishes you well in your attempt to secure a regular VHF channel."—John F. Bean, executive director, Cambridge Chapter, American Red Cross.

"This letter is to present my thanks to you and your staff at WTAO–TV for your very able assistance to the Cambridge Civil Defense Agency and thereby to the citizens of Cambridge during the hurricane seasons of 1954 and 1955. I hope you will be successful in obtaining a regular VHF channel so that you can compete on a more equal basis with other stations thereby extending your range of public service to a greater number of people in this area."—Deputy Chief Edmund N. Burke, Director of Civil Defense, Cambridge, Mass.

"I want you to know that the department wishes you well in your effort to secure a regular VHF channel."—Charles E. Downe, acting commissioner, department of commerce, Commonwealth of Massachusetts.

"I want to take this opportunity to thank you and station WTAO–TV for its fine cooperation with the World Affairs Council. I hope you will take every step possible to become a regular VHF channel. I am convinced Boston needs another VHF channel and I certainly hope it goes to WTAO–TV."—John S. Gibson, executive director, World Affairs Council.

"Word has reached us that station WTAO–TV has applied for a VHF channel and we want to go on record as wishing you success."—Francis A. Hunt, information service representative for New England Veterans' Administration.

"We do wish you success in your attempt to move WTAO–TV to a regular VHF channel. Whatever you can do to stabilize your own situation will be an asset to the Greater Boston area."—Alden Eberly, assistant general secretary, YMCA.

"You and your associates may be proud of the way you have handled the UHF situation under severe difficulties and I know from personal experience that there is great respect for your operation. I have watched with a degree of sadness the loss of UHF operations in Maine, Providence, and Worcester and can only hope that your attempt to move WTAO–TV to a regular VHF channel will be considered with favor by the Federal Communications Commission."—Robert A. Price, publicity director National Association of Manufacturers.

"In spite of the limitations which circumstances have placed upon WTAO–TV in the past you have given the public schools every possible consideration. We feel with a regular VHF channel you will be able to provide us a far greater opportunity to present programs of educational and civic work."—Dennis C. Haley, superintendent of public schools, Boston.

STATEMENT OF ARTHUR W. SCHARFELD ON BEHALF OF RADIO WISCONSIN, INC., PERMITTEE OF MADISON (WIS.) TELEVISION STATION WISC–TV [1]

My name is Arthur W. Scharfeld, and I am submitting this statement today as attorney for Radio Wisconsin, Inc., licensee of Madison radio stations WISC and WISC–FM, and permittee of television station WISC–TV now under construction on channel 3 at Madison, Wis. I have been active in communications law practice before the Federal Communications Commission and its predecessor, the Federal Radio Commission, for over 25 years and have represented Radio Wisconsin during the more than 8 years it has actively sought an authorization to operate a TV station to serve Madison and the surrounding area of south-central Wisconsin.

I would like to clarify the many misleading and inaccurate seatements made in the present hearings before this committee in the statement filed on behalf of Monona Broadcasting Co., licensee of television station WKOW–TV, Madison, Wis. Monona operates 1 of 3 UHF television stations in Madison and participated in the rulemaking proceedings leading to the adoption of the sixth report and order, as well as in subsequent proceedings of recent date when it did an about-face on its previous representations to the Commission.

Monona seeks to create the impression that it applied for its UHF assignment at the instigation of the Commission and without knowledge of the general superiority of VHF operation; it would lead you to believe that it virtually received a guaranty from the Commission of successful commercial operation and that it would be insulated from local VHF competition. Such are not the true facts, since the Commission did neither.

Paradoxically, Radio Wisconsin originally proposed in the proceedings which resulted in the allocation plan that all Madison commercial television assignments be placed in the UHF. This was proposed to avoid the unheathly situation of having stations in the UHF band (then being opened up for the first time) face the disadvantage of substantial ownership of VHF-only sets should a VHF station go on the air first. Under the circumstances then existing of unavailability of UHF transmitters, equipment, or receivers, this was a serious threat to the possible successful operation of UHF stations which got on the air subsequent to the VHF for which both equipment and receivers were available. Monona, however, in its pleading filed at that time with the Commission, attacked such proposal as "a gross subversion of the public interest and a waste of natural resources" and insisted that VHF channel 3 be retained in Madison as specified in the allocations plan. It further argued that our proposal could not be applied on a limited, local basis—i. e., only to Madison—but must be applied, if at all, upon a national scale. This, incidentally, is precisely the ground upon

[1] In connection with this statement, see contrary statement of Stewart Watson, president of Monona Broadcasting Co., of Madison, Wis., printed on p. 639.

which the Commission denied Monona's recent belated proposal for so-called selective deintermixture.

Monona has had full opportunity to present its views to the Commission beginning in 1951—and it has exercised that opportunity by first taking one position which it deemed to be personally beneficial and then taking the opposite view when that seemed to serve its purpose—even to the extent that it would perform a public disservice. Not satisfied with the Commission's refusal to sanction its tactics for delaying television service to the people of Madison and the State of Wisconsin, it has appealed to the courts, as it may properly do under the statute, but now, despite its purported disclaimer, it is urging this committee to determine the very same issues presented to the court of appeals.

In neglecting to detail or describe the basic characteristics of its proposal for selective deintermixture Monona endeavors to leave the impression that this is a very simple matter to be accomplished without difficulty under the Commission's allocations plan. It proposes that VHF channel 3, allocated under the sixth report and order for service to Madison and surrounding area, should not be used as assigned merely in order to protect WKOW–TV from economic competition of a VHF station that was assigned to Madison and available to Monona at the same time as Monona accepted its UHF assignment. This proposal represents then a drastic reallocations technique, running counter to significant principles of television development heretofore applied by the Commission under congressional mandate. Here I have reference to section 1 of the Communications Act calling for the widest possible extension of television service, section 307 of the act requiring a fair, efficient, and equitable allocation of TV channels to the several States and communities, and to that equally fundamental principle, enunciated by the Supreme Court in the *Sanders Bros.* case (309 U. S. 470) (and now imbedded in the Communications Act) that broadcasting's economy is one of free competition.

The Commission's sixth report and order set up the present nationwide table of TV assignments based on certain underlying allocations principles. Intermixture of VHF and UHF was such a major principle and it was applied both generally as well as specifically in Madison. The Commission then repeatedly stressed VHF's many advantages over UHF, ranging from VHF's established nature and the ready availability of VHF equipment through VHF's superior propagation characteristics and lower operating costs. No one then doubted VHF's greater superiority from economic as well as technical points of view, as shown alone by the emphasis on VHF by hundreds of parties first seeking VHF allocations and then filing VHF applications. Almost all of the protracted comparative hearings were for VHF stations, while in UHF quick, cheap, and uncontested grants were the rule. Because of intermixture of VHF and UHF in Madison and the concentration of 3 of 5 Madison applicants on its one VHF channel, Monona and the other Madison commercial UHF station, WMTV, obtained just such UHF grants. Going on the air in mid-1953, they have had a 3-year head start over Madison's VHF just recently emerged from a long, arduous, and expensive comparative hearing.

This substantial head start by three Madison UHF stations (including an educational station) where there was no preestablished VHF has enabled UHF to achieve a uniquely entrenched status in that city, perhaps unequaled anywhere else in the United States. Among the factors so responsible is the admittedly complete (99 percent) UHF set saturation in the area (i. e., all sets but 1 percent are UHF sets), plus the acceptance of Madison UHF by the viewing audience, advertisers, and national networks. WKOW–TV has a major network affiliation and station WMTV has two. Indicative also are recent news stories in both the trade and local Madison press indicating that station WMTV is to be sold to the two Madison newspapers for approximately $600,000 for a two-thirds interest in that station (the Madison Capital Times, March 7, 1956, p. 1; Broadcasting-Telecasting, March 12, 1956, p. 79). Madison is perhaps the classic city in the United States in which intermixture should work effectively as the Commission contemplated. In short, no intermixture problem has been shown to exist there.

Not satisfied with its entrenched position as an operating TV station in Madison, WKOW–TV as well as WMTV, have sought through the device of selective deintermixture to abort the competition anticipated since 1952 from the local VHF. To do so, Monona claims inability to compete with a local VHF station solely in reliance upon ambiguous data from the experiences of UHF stations elsewhere in the United States that are totally irrelevant and inapplicable to the Madison situation. These instances occurred mainly in dissimilar circumstances where UHF sought to compete with preestablished VHF stations, VHF service, and large numbers of outstanding VHF-only receivers. Substantially different results have obtained where the UHF stations, as here, have had a head start over VHF. In fact, no adverse competitive effects from VHF, as such, have ever been shown for UHF stations as deeply entrenched as they are in Madison.

Monona alleged economic insecurity but never offered the Commission a single financial statement as proof. Its assertion (without detailed sustaining data) of an overall operating deficit, has little meaning since FCC data shows that all postfreeze VHF stations have, in the aggregate, also suffered substantial overall operating deficits. Today's allocation problems are not confined to the UHF alone, since postfreeze VHF stations have also gone off the air and certainly are not caused by intermixture per se, since many failing UHF stations had no competition whatever from a local VHF.

The Commission afforded Monona and other UHF stations a careful and comprehensive rulemaking proceeding on their proposals for selective deintermixture in Madison and four other cities. The Commission, on the record of that proceeding, found no merit in these proposals and denied them on the basis that selective deintermixture was an unsound and defective approach to the problem. Such major departures from existing standards and principles, it concluded, could not meaningfully be considered on that limited and isolated city basis but only on the nationwide basis invariably used for general TV reallocations. Accordingly, it simultaneously commenced such a general proceeding in docket 11532 which is now underway. In it the Commission is considering a vast variety of proposals running the gamut of possible allocations actions, including as one possibility proposals for deintermixture on a nationwide basis.

In attacking the Commission's action granting a station on Madison channel 3, Monona incorrectly makes it appear that this was a hasty action, whereas actually the matter has been under consideration in one form or another since 1948 when applications for Madison's VHF station were first filed. The hearing on competing VHF applications for Madison's channel 3 commenced in August 1953, and its record closed in December of 1953. Radio Wisconsin, as well as any applicant for VHF channel 3, had statutory rilghts on its own part to a full, fair, and reasonably expeditious determination of its application, and the delay has already deprived the people of Madison and surrounding area for too long a time of their first VHF service authorized by the 1952 sixth report and order.

VHF service has provided the mainstay for our nationwide TV system, particularly in serving rural and agricultural areas remote from population centers. WISC-TV on Madison channel 3 will provide 80,000 people in Wisconsin with their first and only recognized TV service, as well as bring a second, alternative recognized service to additional tens of thousands. WISC-TV's service to "white areas," otherwise without any recognized service, is a conclusive fact, established in the proceedings before the Commission by reliable data utilizing established engineering standards. While Monona disputed such data before the Commission and again in its statement to this committee, it never offered anything having the slightest reliability to the contrary. Its contentions—based on unrecognized, skimpy, and incredible statistics—were untenable, if not nonsensical.

To show that there was some (nonrecognized) TV service given to these 80,000 persons in an area of 2,631 square miles, Monona relied on a total of 408 responses to 976 phone calls made to residents of 9 towns on the area's periphery. From these, it sought to evolve data allegedly applicable to the entire area, including the incredible assertion that people 125 miles away from a TV station received what Monona deemed satisfactory service. Monona's purported offer of a house-to-house canvass was only made out of hand by its counsel when faced with disproof of its existing data during final oral argument as late as July before the Commission; this itself admitted the inadequacy of its data. Similarly meaningless is Monona's statement that it committed itself to increase its facilities should the area be deintermixed. This, too, admits that channel 3 coverage is greater. In any event, the use of increased facilities has been available to Monona from the commencement of the proceedings, and it is a poor excuse at this time to offer to provide more service if the Commission deletes VHF from Madison; there is scarcely a businessman who would not so expand to fill the vacuum created by the Government's aborting of its rightful competition.

I might point out that no competitive equalization of facilities exists in AM radio which utilizes several distinct grades of service to meet the country's overall radio needs. For example, Madison has three AM radio stations, of which Monona's WKOW has the widest coverage and regularly advertises its higher power on a more favorable frequency that Radio Wisconsin's WISC. Both stations operate, however, with differences in audience, advertising, and programing related to coverage differences. Much, if not precisely the same, situation will develop in Madison television with both VHF and UHF stations on the air. Monona, however, seeks the equalization of TV facilities only—at the expense of the viewing public as well as of the successful VHF applicant for channel 3.

The Commission, in my opinion, has properly discharged its statutory obligations as to television development in Madison in the light of existing facts and circumstances. It has properly prevented further unreasonable delay in bringing new television service to Madison and to a substantial segment of the State of Wisconsin now without recognized service. Monona challenges these administrative actions before the committee but the distorted and incomplete statement made on Monona's behalf has provided nothing upon which the committee can or should rely in attempting to evolve policies that will promote the further development of television service.

Senator POTTER. Our first witness this morning will be Mr. Richard A. Moore of station KTTV, Los Angeles, Calif., who will discuss, I understand, the matter of certain network practices as they affect the operation of independent stations and the public interest in general.

(For the testimony of Mr. Moore and of Prof. Donald F. Turner of Cambridge, Mass., who addressed himself to the legal aspects of these problems, see the testimony for this date set out in the later volume on Network Practices.

(During the afternoon session, testimony was heard from Mr. Ernest Lee Jahncke, Jr., vice president and assistant to the president of the American Broadcasting Co. His testimony was as follows:)

Senator POTTER. Mr. Jahncke, vice president and assistant to the president of the American Broadcasting Co.

STATEMENT OF ERNEST L. JAHNCKE, JR., VICE PRESIDENT AND ASSISTANT TO THE PRESIDENT, AMERICAN BROADCASTING CO.

Mr. Jahncke, we are delighted to have you appear before the committee. About 2 years ago you were here in a similar capacity, I recall.

Mr. JAHNCKE. Yes, sir, Mr. Chairman. I am very happy to have the opportunity, again, to express the point of view of American Broadcasting Co. I might say I hope this is my last appearance on this subject and that the problem will be solved in the next 2 years, sir.

Senator POTTER. We had that hope 2 years ago, didn't we?

Mr. JAHNCKE. Yes, sir.

Senator POTTER. Mr. Jahncke, do you have some associates with you who might be testifying? If you would care to introduce them now for the record, you may do so.

Mr. JAHNCKE. Yes, sir.

May I introduce, on my left, Mr. Frank Marx, vice president in charge of engineering of the ABC, who is qualified to speak on any engineering questions or aspects that may come up; behind me, Mr. James McKenna, ABC's Washington attorney, and Mr. Joseph Jacobs, of ABC's New York legal staff.

Senator POTTER. I notice you have a prepared statement here. What is your pleasure? Do you care to go through the statement without interruption and have the questions at the conclusion of your statement?

Mr. JAHNCKE. No, sir; that wasn't my intention, Mr. Chairman, not that I wouldn't be most willing to be interrupted at any time. I hope I can complete my testimony, with interruptions and questions, rather than being recessed and called back later.

Senator POTTER. All right. You may proceed.

Mr. JAHNCKE. My name is Ernest Lee Jahncke, Jr. I am vice president and assistant to the president of the American Broadcasting Co. ABC welcomes again the opportunity of testifying before this distinguished committee on the grave problem of television allocations.

In connection with the testimony of Mr. Moore,[1] I would like to say that ABC would like to have the opportunity to speak to that testimony and I understand we will have that opportunity at a later date when network practices are discussed.

Senator POTTER. That is correct.

Mr. JAHNCKE. However, I would like to make 1 or 2 observations at this time, if I may, as they relate to allocations, first of all—and they will all be made under the general point that I disagree completely with Mr. Moore's statement.

I think Mr. Moore has in great part presented the opinions of ABC, but he arrived at the wrong conclusions. I think everything he said is an effect, not a cause. I think it all stems from the economy of scarcity, of not enough outlets—from the position of monopoly and duopoly that exists because we have not been able to have free access to the market place or enough TV stations to serve the public interest.

He cited that in radio you don't have these pressures only because the scarcity has been eliminated. I submit that the main concern of this committee is to eliminate that same scarcity. I submit that the various plans that have been proposed to solve this problem are not as different as has been suggested and that immediate action is absolutely essential.

Senator PASTORE. In other words, what you are saying, Mr. Jahncke, is that a lack of competition exists because of lack of facility rather than lack of regulation?

Mr. JAHNCKE. I think, Senator Pastore, that regulation stems from scarcity. You eliminate the scarcity, you eliminate the necessity for regulation—and free competition will act in the traditional American Government situation.

For example, ABC owns its own TV stations, but we operate only in markets that have at least 3 competitors, in addition to ourselves, and have since 1948. As a network operating individual TV stations we are just as concerned with our obligation to serve the public interest locally and nationally as any other licensee. We have competed in New York against 6 competitors; in Los Angeles against 6 competitors; in Chicago against 3; in San Francisco against 2 and now 3; and in Detroit originally against 2 and now 3.

Senator PASTORE. As contrasted with the situation in New York, what is your predicament in relation to localities where they only have 1 station or 2 stations?

Mr. JAHNCKE. We don't own any stations in such markets, sir, and we rarely, if ever, have the opportunity to have an affiliate in such a market.

Senator PASTORE. I am not speaking of affiliates. I mean insofar as your network activities are concerned.

[1] See note on p. 752 above. The portions of Mr. Jahncke's testimony relating to Mr. Moore's testimony are also printed in connection with the latter in the volume on Network Practices.

Mr. JAHNCKE. Our network activity in respect to 1- or 2-station markets is a ceaseless activity, usually futile, to get access or persuade these duopoly markets to even schedule an ABC program.

I would like to refer to a couple of specifics in Mr. Moore's testimony. On page 11 of his testimony he listed 40 markets in discussing "must buy" policies. I only mention it because I would like to read the 16 markets that are neither "must buys," nor any other buys on ABC. They are the 16 markets to which we don't even have access. They are Boston, St. Louis, San Diego, Louisvile, San Antonio, Tampa, Rochester, Omaha, Syracuse, Oklahoma City, Sacramento, Norfolk, Providence, Davenport, Dayton, and Birmingham.

When we talk about competition—we don't compete in these places. We don't have equal access to these market places. I would like to refer to another part of Mr. Moore's testimony, on page 5, where he refers to his operation in connection with the Salk broadcast. I think KTTV's operation on that date was most commendable, but I make two observations: One, had it not been for the regular network use of A. T. and T. facilities, those facilities would not have been there, available and waiting, for Mr. Moore to buy them from Michigan to Los Angeles on that 1 particular occasion for 4 hours. A. T. and T. cannot maintain their lines for 4 hours a year. Secondly, I suggest that perhaps Mr. Moore's operation at that point was more in the nature of a temporary network, rather than as a poor, lone, independent station. We of ABC were happy to join in that network in both our Los Angeles and San Francisco stations, and, as my memory recalls, we did pay our proper share of the cost involved.

Senator PASTORE. With relation to these markets that you have just recited, including the city of Providence, how would that 75-percent rule that was suggested by Mr. Moore affect your network? Would it be bad, or wouldn't it have any effect at all?

Mr. JAHNCKE. Senator, I refer to that in my statement. I think any percentage figure is arbitrary. Mr. Moore chose 75 percent of 3 evening hours. Perhaps there are 4 or 5 or 6 evening hours, if we get 75 percent for 5 hours, perhaps it is more than any network is using today. I think, therefore, that any percentage figure subjects you to the arbitrary trap of substituting numerology for commonsense. As to whether—I don't think it is a question of whether the network uses too much. I think the network programs—I disagree with Mr. Moore, I don't think they are inferior. I think they are in the public interest.

I don't think that stations are fighting not to take network programs. Quite the reverse, as I understand it. Of course it is not my network, but stations find the privilege of being listed as a "must buy" an important asset, which is another way of saying that they are very desirous and happy to take network programs. The very popularity of network programs seems to me suggests they are in the public interest.

Mr. COX. If they are listed as a "must buy," it relieves them of the obligation of selling their prime time, doesn't it, substantially—95 percent at least?

Mr. JAHNCKE. I didn't quite get that, Mr. Cox.

Mr. COX. If the individual affiliate is listed as a "must buy," by either NBC or CBS, to the extent that Mr. Moore's statistics are reliable as to the percentage of time cleared, they have been relieved of the necessity of selling their prime time?

Mr. JAHNCKE. In my opinion it is not a question of being relieved of necessity. When a station affiliates with a network, part of that arrangement is that the network acts as the national sales agent. And to be listed as a "must buy" is a device between the sales agent and the advertiser, saying that the advertiser has to order. The station reserves its regular right as a licensee to accept or reject a program, depending upon whether, in its opinion as licensee, it is in the public interest. The "must buy" is a pressure on the advertiser, not on the affiliate, who merely is in a position to enjoy the advantages and benefits, if it so wishes, as a licensee.

Mr. COX. The right reserved to the affiliate to reject, however, is not just that he doesn't think this is the most in the public interest, but that he thinks it is affirmatively contrary to the public interest, or that there is some peculiar local occasion which he feels requires the displacement of the program. Wouldn't that be a better description of the extent to which he can reject programs in option time?

Mr. JAHNCKE. I don't think that any stations have ever been reluctant to eliminate any program, network or local, for a program that, in its opinion, is more in the public interest.

Senator PASTORE. Let's get these things in their proper perspective. What you are actually saying, Mr. Jahncke, is this, that this "must buy" aspect of this situation affects relationship between the network and the advertiser insofar as it regulates the amount of money that the advertiser has to pay and the quality of the program that you can put on the air, as to the distribution you can make of that program?

Mr. JAHNCKE. Well, Senator Pastore, I think that you do have economics coming in here.

Senator PASTORE. That is what I mean.

Mr. JAHNCKE. In that the number of outlets needed to justify the cost of a program—the number of outlets which, may I hasten to point out, practically every advertiser wants, because he needs a distribution—all are factors in this situation, but I would like also to point out that we are discussing "must buy," which is a practice that doesn't obtain on ABC. I feel perhaps I should retreat from this discussion.

One last comment on Mr. Moore's testimony. On page 39 he speaks about the Lawrence Welk Show, which we are very happy to have the privilege of broadcasting in the public interest, and he says he regrets the public was deprived of the opportunity to hear and see this program because of network reluctance to schedule it. We are happy to schedule it, and I only regret that the public is still deprived in a great many places of the privilege of seeing the Lawrence Welk Show because we do not have access to quite a few markets for that program, which even Mr. Moore admits is completely in the public interest.

If I may return to my prepared statement——

Senator POTTER. What percentage of your class A option time do you program? I mean, what percentage of a class A time on your affiliate stations do you provide?

Mr. JAHNCKE. We——

Senator POTTER. I notice the percentage in Mr. Moore's statement of the four networks. I was wondering if your network was using up all of its option time.

Mr. JAHNCKE. No, sir, we are not using all of the option time. I think class A time is limited to those 3 hours that are optioned by law to the network. There is nothing illegal about network option time. Both the FCC and Justice Department, as I understand it, have ruled this is a perfectly legal arrangement. May I say I think we are innocent until proved guilty in this respect. Of the 3 hours that are optioned to us, we are not using all of them. Perhaps we could use more, if we were able to compete more totally with the other two networks—and by "compete" I mean have access to the market place. For example, Senator Pastore, we do not have access to Providence, R. I., and Mr. Chairman, we do not have access, or at least equal access, to places like Lansing, Grand Rapids, or Kalamazoo, Mich. We do compete, for example, in the Detroit area.

Mr. Cox. Of the programing which you do provide in option time between 7:30 and 10:30 or 7 and 10 in the evening, what percentage of that programing is normally cleared for you by the ordinary affiliate?

Mr. JAHNCKE. I do not like to identify any affiliate as ordinary. We love them all. We only regret we do not have enough of them. [Laughter.]

Mr. Cox. By a typical affiliate—or aren't they typical, either?

Mr. JAHNCHE. Our clearance on affiliates where we have full access to the market place is good, and comparable to the other two networks. I think it is good only because we program in the public interest.

Mr. Cox. Do you think that you would clear as high a percentage of that program time if your affiliate had the option to replace the program you offer with one from another source which he happened to think was better?

Mr. JAHNCKE. I do not quite follow that, sir.

Mr. Cox. That is, suppose that instead of having a clause in your agreement which says that you can, subject to very minor restrictions, require the affiliate to accept the programing you offer during option time, you didn't have that; do you think that there is a real possibility that some of your affiliates might find programs from other sources which they thought would attract more viewers and would be more in the public interest—not as a general rule, but as against certain programs which you offer?

Mr. JAHNCKE. Any program schedule is an average of its best and its worst. Perhaps it is reasonable to assume that any one person might be able to develop a program better than the worst of a given list of programs, but I think we get back, basically, to allocations here. We are talking about the fact that we only use 6 hours a day, or only have 6 hours a day option in the practical area, afternoon and evening. This is far from 90 percent of the station's time. I mean, after all, most stations are on the air from 8 in the morning until midnight. It is against this projection of 16 hours that maybe we should talk about 6 hours, or even 9 hours. It is not that great a percentage of the station's time.

Mr. Cox. We will reserve other questions. You may go on to your statement now.

Mr. JAHNCKE. My statement today supplements the statement which I made on behalf of ABC 2 years ago before the Communications Subcommittee of this committee under the chairmanship of Senator Potter, which at that time was considering the status of UHF stations.

ABC then warned of the dire fate of UHF television if corrective action was not taken immediately by that committee and the FCC. I regret that the record of the past 2 years shows that we were accurate prophets.

I cannot overemphasize the importance of immediate positive action by your committee in shaping the future course of this country's most dynamic industry.

Television broadcasting faces an existing and future shortage of stations which prevents effective competition today and forecloses significant improvement in the future.

In addition to the scarcity of television stations, inherent defects in the existing allocation plan, principally the intermixture of UHF and VHF, preclude effective use of all available channels. Unless changes are made quickly UHF will disappear and television will be limited to only 12 VHF channels. These have always been recognized as grossly inadequate for a nationwide competitive system.

ABC has participated in each television allocation proceeding and has sought an allocation framework which would permit a truly competitive system. We looked forward to the lifting of the freeze—that was 1952—and the opening up of the UHF band. We hoped that the availability of additional channels in this band would enable us to attain equality of access to television outlets. But first the backlog of competitive applications bogged the Commission processes and prolonged the scarcity of outlets in major markets. Now the failure of UHF in intermixed markets threatens to make the scarcity permanent.

As the third network striving to reach equality with CBS and NBC, ABC has been the victim of this unnatural and unnecessary shortage of television outlets. With many of the most important markets of the country limited to one or two stations, ABC has been unable to obtain a national audience for all its programs and the public has been deprived of the freedom of choice of at least three program services.

Although ABC stands to gain a great deal by achieving competitive equality the real beneficiaries will be the public who in many areas cannot see outstanding ABC programs, for example, Disneyland, Voice of Firestone, John Daly, Danny Thomas, Bishop Sheen, Lawrence Welk, and many others.

ABC is itself the result of congressional mandate to the FCC to foster competition. The predecessor company of ABC, the Blue Network, was originally established by NBC to provide its radio listeners with a diversity of program selection. In 1941 the FCC in its Report on Chain Broadcasting found that it was contrary to the public interest for NBC to own both the Red and the Blue Networks and ordered that one be sold. The Commission in its order approving the sale of the Blue Network to ABC expressed the hope that the sale would mean a much fuller measure of competition among the radio networks.

Unfortunately the degree of competition envisioned by the FCC in radio has been severely hampered by the fact that almost all the key clear-channel stations are affiliated with CBS and NBC. The question of how to make the most efficient use of these clear-channel stations was the subject of extensive hearings commenced by the FCC in 1945, 11 years ago. The FCC has not yet rendered a decision in that proceeding. Will the same restrictive pattern of inaction, indecision, and delay for a decade be repeated in television?

The competitive advantage enjoyed by NBC and CBS in radio as a result of their preponderance of clear-channel affiliates has been extended to television. Most of the operators of these clear-channel stations are today the owners and operators of the VHF television stations located in monopoly and duopoly markets.

The competitive handicap under which we operate in radio is far less severe than that in television. In radio we have been able to obtain affiliates in all important markets even though their coverage is more restricted than that of the NBC and CBS stations. In television, however, there are 39 of the top 100 markets, including Boston and Pittsburgh, where monopoly conditions do not permit us to have an affiliate at all.

It is undeniably true that our inability to compete with the other two networks in radio and during the early days of television was in some measure due to our lack of capital with which to develop programing. That problem, however, was solved by our merger in February 1953, with United Paramount Theatres, Inc., to form our present corporation, American Broadcasting-Paramount Theatres, Inc.

It is our firm conviction that the major problems facing the television industry are the lack of at least three competitive facilities in the major markets and the preservation of UHF television.

The solution of both of these closely interrelated problems is essential to the development of a truly national, fully competitive television system—the opening up of the present monopoly and duopoly markets to free competition.

We had hoped that the sixth report and order of the FCC would solve our problem of competitive access to these monopoly markets. Experience has proven conclusively, however, that a UHF television station cannot compete against multiple VHF competition even when the UHF station is in the market first and a high rate of conversion exists. This is an indisputable fact, which must be used as the starting point for the correction of the inadequacies of the present allocations system.

I therefore take exception to that portion of the FCC's testimony before this committee in which UHF stations in West Palm Beach, Tampa-St. Petersburg, Wichita and Sacramento are cited as exceptions to the maxim that UHF stations are unable to survive against multiple VHF competition.

In the case of West Palm Beach, less than a month after the FCC testimony was given, WIRK-TV, the UHF station, discontinued operations.

In Wichita, UHF station KEDD commenced operations on August 15, 1953, as the NBC affiliate. At approximately the same time a VHF station also commenced operation in the market. Within 1 year there were 124,000 VHF homes as compared to 74,000 UHF homes.

By the end of a 2-year period this disparity had grown to 222,000 VHF homes as compared to 126,000 UHF homes. Subsequently, two other VHF stations also commenced operation in this market. Recognizing the desperateness of its competitive situation, KEDD petitioned the Commission on February 2, 1955, to deintermix the Wichita market by assigning another VHF channel in place of the UHF channel. The petition was denied. I understood effective May 1, 1956, KEDD will lose its NBC affiliation to a VHF station. The rest of the story you can guess.[1]

Senator PASTORE. At that point, do you take the position that it was feasible to give KEDD a VHF station?

Mr. JAHNCKE. I do not know from an engineering point of view whether a VHF channel was available under any existing set of engineering standards, but I take the position that at this point it is hopeless to expect a UHF station to try to survive against three VHF signals in that market.

Mr. Cox. I would suppose it fair to assume that if a formal petition for deintermixture was filed there must have been engineering support for the proposition that at least a reduced-coverage V could be dropped into that market, which at least would get around this conversion problem.

Mr. JAHNCKE. I am not familiar with their application. I do not know the engineering aspect.

Mr. Cox. Mr. McKenna, do you have some knowledge of that?

Mr. McKENNA. I am advised, Mr. Cox, that the petition contained with it an engineering statement showing how an additional VHF station could be assigned to the area.

Mr. JAHNCKE. In Sacramento, Calif., UHF station KCCC-TV was on the air for almost a year and a half before the two VHF stations started. Prior to that time KCCC-TV operated at a profit. It now operates at a loss. It has applied to the FCC for a VHF channel as the only means of survival. This is not intermixed prosperity, as was suggested by the FCC.

The story in Tampa-St. Petersburg is tragically similar. WSUN-TV, the UHF station in this market, was on the air for 2 years before the 2 VHF stations commenced operation. I was advised by the manager of this station last week that its overall time sales now show a 42.5-percent decrease.

I have discussed these specific cases for two reasons. First, I think they prove ABC's contention that UHF cannot prosper against multiple VHF competition. Second, the fact that these markets were selected by the FCC to illustrate UHF's ability to compete with multiple VHF stations suggests a lack of knowledge of the problem or an unwillingness to face facts.

In view of the desperate urgency of the allocations problem, we do not feel that this committee or the FCC should allow itself to be sidetracked from the central allocation issue by such subsidiary matters as tower heights, boosters, translators, satellites, power increases, etc. While these proposals all have undeniable merit, they are of value only if the UHF station is in a market in which it can survive from an allocation point of view in the first place.

The matter of the high cost of A. T. & T. television transmission facilities has also been raised. There is no doubt that the extremely high cost of this service limits the ability of many stations to receive live network program service.

ABC's television line charges are now over $6 million a year. We are in no position to know if this is too high. However, I would like to point out that the A. T. & T. is a common-carrier monopoly which

[1] EDITORIAL NOTE: KEDD left the air in April 1956.

comes under the regulation of the FCC. The tariffs governing the charges for television lines were filed with the FCC in 1948. We agree that it is time that the FCC determined the fairness of these charges.

Mr. Cox. Are you yet in a position, Mr' Jahncke, to take advantage of the A. T. & T. tariffs for a minimum 8-hour usage per day? That is, these bulk rates which apparently prevail as far as NBC and CBS are concerned?

Mr. Jahncke. We are in a much better position than we were 2 years ago, and in some cases we are using more than 8 hours a day. I think it is of interest that the basic service only provides an 8-hour distribution system. Already all 3 networks have requirements above 8 hours a day on the average and, therefore, normal operations automatically put you in an excess or premium bracket as far as tariffs are concerned. We are all paying overtime for normal operations, as contrasted with radio broadcast tariff, which provides 16 hours of service for the base rate; television transmission facilities only provide for 8 hours and you pay overtime above that.

Mr. Cox. As I recall your testimony 2 years ago, you indicated that your rates were proportionately higher for the amount of cable service you got than those of the other two networks. Does that continue to be true, even though to a lesser degree?

Mr. Jahncke. It continues to be true, but to a lesser degree. Let's put it this way: Because of a smaller use, our purchase relatively is less efficient, although we all operate under the same tariff.

With respect to subscription television, which has also been mentioned, we do not believe that it will provide an answer to the UHF problem. Certainly the creation of a competitive, free television service should take precedence over any pay television device. We are pleased to read that this was also the position of Chairman McConnaughey of the FCC in his testimony before this committee.

We do not believe that positive action on television allocations should await the conclusion of the present FCC network study which, according to the estimate of Chairman McConnaughey, will not be completed until sometime in 1957. I might point out that the last study of networks took over 3 years to complete and so perhaps even the 1957 date might be optimistic.

This committee should consider interim regulation of VHF stations in monopoly and duopoly markets by a variation of the plan suggested by Dr. DuMont in the Potter hearings 2 years ago. This would require VHF stations in a market where there are less than 3 competitive outlets to share their service equally and equitably among the 3 networks.

Mr. Cox. How would you do it?

Mr. Jahncke. The suggestion has been made there is an undue amount of control among the three networks. I suggest there is an even greater undue control in a market such as Providence where there are only 2 stations, and 2 managers determine everything that is available for the citizens of that community.

Senator Pastore. Have you any suggestion as to how it should be regulated?

Mr. Jahncke. I certainly think the regulation should be one in effect only until the basic end of sufficient facilities is available. I think it should operate to provide positive entry rather than operate as an additional barrier to an additional program service common to the market. We have places where Disneyland is not available. I submit that, by any program standard, that program is in the public interest, regardless of what time of day it is broadcast, and if we cannot get into a market with that program, this is the operation of monopoly and duepoly against the public interest. These operators—I am not suggesting that they connive to create or perpetuate monopoly. They enjoy the benefits at the moment, which have gone on too long. We would prefer to have our own station in Providence.

Senator PASTORE. The point I am getting at is this. Of course it is easy to make a platitudinous statement, but to give us a specific cure for it is another problem entirely. Are you suggesting that the Federal Communications Commission be given the authority to evaluate the quality of the program, to determine whether or not it should come in?

Mr. JAHNCKE. No, sir. I disagree completely with the concept of Senator Bricker, for example, that broadcasting is a public utility. I disagree completely with the concept that there should be any governmental control over program content as abridgement of free speech and censorship. I say this: I think if a network such as NBC broadcasts a program from coast to coast and it is broadcast by its affiliates around the country, it is fair to say that that program is in the public interest, and therefore, without the FCC entering into the dangerous area of judging program content, it can accept and assume that the broadcast of that program is not against the public interest, and therefore, in the public interest.

Senator PASTORE. That is all right. I follow you.

Mr. JAHNCKE. Therefore, may I suggest this possibility: A regulation limited only to the areas where there is a scarcity—let's take Providence, where there are 2 stations—by which each of the 2 stations would be required to make available 1 hour, for example, of their prime time to a third program service. This would not give the third program service parity. It would give it some reasonable representation in the market. If you just used that example in the evening hours, where a station lawfully grants a 3-hour network option time period, if 1 of those 3 hours were made available to a third program service, the primary network would still have a 2 to 1 advantage. Therefore, I am not talking about parity, I am talking about just a reasonable representation until the basic problem is solved.

Mr. COX. Is it your position that the FCC now has authority, in its regulation of the contracts its licensees enter into with networks, to impose such an overall time limitation in those areas where there are not available three fully competitive facilities, and that they could do that under this present existing authority?

Mr. JAHNCKE. Mr. Cox, I think they can, but as a practical matter, I think that if there is merit to the suggestion, they will, most probably, if they receive a suggestion, mandate or directive from this committee so to do.

Senator POTTER. I recall Dr. Du Mont's proposal that in a 1- or 2-market community—at that time there were 4 networks—that they allow the networks who have no affiliation to have 25 percent of the time on the other station. Is that what you are making reference to?

Mr. JAHNCKE. Yes, sir; only I am making reference to a positive suggestion that when a program is broadcast coast to coast, by licensees, each of whom in their individual communities has the responsibility to broadcast in the public interest—if they schedule these programs, that is evidence enough that the program is in the public interest, and, therefore, the FCC does not have to concern itself as to whether, if such a station in a duopoly or monopoly market schedules it, it would be control of program.

Senator POTTER. Let me ask you this: Assuming that I have a station in a one-station community. I have an NBC or CBS affiliation. I wanted to show Disneyland. Could I, as a manager of a station, secure Disneyland from you to show on that station?

Mr. JAHNCKE. Senator, we have spent the last 8 years trying to persuade stations in 1- or 2-station markets to carry our programs. To give you an idea——

Senator POTTER. Some do it, don't they?

Mr. JAHNCKE. Certainly some do, fortunately, sir. That is perhaps why we are still in business. Over the whole country, if you will just take, let's say, the top hundred markets, as an example—this is not the whole country, but it is the heart of it—the degree to which NBC and CBS can obtain live clearance normally is in the order of around 85–90 percent. Our figure would be about 55 to 60 percent compared to that. This is access to the marketplace. This is not whether our programs rate higher or lower than any other person's programs. This is physical access. This is places where, as in Lansing or Grand Rapids, or Providence, we do not have an affiliate.

Senator PASTORE. How do you show your programs in Providence? Disneyland does show in Providence. Please explain that.

Mr. JAHNCKE. In addition to their NBC schedule, the NBC station, I think it is, Senator Pastore, schedules Disneyland around its NBC schedule.

Senator PASTORE. In other words, that shows in Providence not through any agreement with you?

Mr. JAHNCKE. There is an agreement; yes, sir.

Senator PASTORE. But through the NBC station?

Mr. JAHNCKE. No, sir. The NBC station has a secondary, subsidiary arrangement with us to carry our programs in addition to their basic arrangement with NBC.

Senator PASTORE. If they are tied up with NBC, where do they get the latitude to make an agreement with you? That is what isn't clear in my mind.

Mr. JAHNCKE. Senator, the network option time rules provide that a station is permitted to grant no more than 3 hours in any segment of the broadcast day to a network, but there is no prohibition on a station from taking more than 3 hours if they consider the programing in the public interest. That is why, in addition to 3 hours, some stations take more than one network. In addition, there is nothing to prevent a station from having an affiliation with more than one network; for example, in the case of Providence, this NBC arrangement, they have a secondary arrangement with ABC and take some of our programs. In effect, we are in a position where we peddle our programs in Providence, we try to get——

Senator PASTORE. If I may follow this through, please, because this it quite important to me. I want to understand this. You say on page 7:

> This would require VHF stations in a market where there are less than 3 competitive outlets, to share their services equally among the 3 networks.

Now, if what you say here is true, then how do you reconcile it with this fact that you can negotiate with the third station as you have already suggested?

Mr. JAHNCKE. I do not negotiate, sir, with the third station. I negotiate with 1 of the 2 existing stations. I do not negotiate equally with the other two networks.

Senator PASTORE. When I say "they," I mean the two existing stations in Providence can negotiate with you as to the showing of a special program that they would like to show in the public interest.

Mr. JAHNCKE. That is almost what we usually refer to as a per program arrangement, which is something less than a full affiliation, sir. I do not have the same opportunity, nor do I negotiate with these stations, nor have the same prospect of getting my programs scheduled, particularly at the correct time, as do the other two networks. I frankly do not know when the Disneyland program is broadcast in Providence, but I know it is not at the scheduled time of 7:30 to 8:30, Wednesday evenings. I know that is true.

Senator PASTORE. No. It shows on Sunday afternoon.

Mr. COX. It is not in option time then; is it?

Mr. JAHNCKE. It is either not in option time or else it is in some option time that the station is not giving to NBC. It is assuming not an equal access to the market place.

Senator POTTER. Would you comment on the statement made by Mr. Moore? If it is all right for you as a network to go into a two-channel market to sell programs, why isn't it equally justifiable for an independent producer to go into that market?

Mr. JAHNCKE. Nothing prevents the independent producer right now, Mr. Chairman.

Mr. COX. Except the option?

Mr. JAHNCKE. I do not have any option time in Providence and I still get Disneyland in there. I go in with the Disneyland program and a sponsor and I would say, "Would you carry the program, I would like it carried at 7:30 Wednesday." I end up on Sunday afternoon, with the best hour I can do. Any packager that wants to go in and say he has one of these high-rated blood and thunder shows that Mr. Moore cited, and has got a sponsor for it, and if the station wants to carry it on Sunday afternoon, there is nothing to prevent the station from doing it, either.

Senator PASTORE. But it is a rebroadcast?

Mr. JAHNCKE. Yes, a delayed proposition.

Senator PASTORE. I think you have explained that to my satisfaction.

Mr. JAHNCKE. We have programs such as Voice of Firestone, John Daly, news, coverage of conventions, and a lot of programs which, by their nature, have to be broadcast live or not at all; as to which we are automatically denied access to the market.

Senator PASTORE. There is another point I would like to clear up now. Let's assume your suggestion, as you have illustrated it on page 7, were carried out. How does that affect the relationship between the network and the advertiser as to the quality of the program and the amount of money it might cost? Will that impede it in any way? I think in the beginning of your statement you said that fundamentally you could not do too much along the line of dictating how many distribution points you should have because that is a contractual relationship between the network and the advertiser. In other words, in dealing for a particular program, it it vitally important to the advertiser how many outlets he is going to have.

Mr. JAHNCKE. As a practical matter, sir, rather than the advertiser being put upon and forced to buy something like 50 markets, I think the facts would prove that the advertiser, in practically all cases, wants to buy many more than that minimum because the advertiser has a national advertising job to do, and this automatically means he needs many more than 50 stations.

Senator PASTORE. Your plan would bring more advertisers into the field and into these facilities?

Mr. JAHNCKE. No, sir. I am not suggesting this as a basic solution. The basic solution is to move channel 3 to Providence in my opinion.

Senator PASTORE. Everybody knows Pastore is from Providence. [Laughter.]

Mr. JAHNCKE. If I may, Senator, for this one afternoon may I say that is ABC's problem, not yours, because we feel equally strongly about it.

Mr. COX. Do I understand your position on this two station market situation to be that, if a proposal such as Dr. Du Mont suggested were effectuated, instead of having to deal hat in hand with a station that is basically affiliated with one of your competing networks, you would then have, under FCC regulations, the opportunity to place your programs, at least to the extent of one-third of their prime time, onto each of those two stations?

Mr. JAHNCKE. That is correct, sir. Let me hasten to say, I just want to deal with them hat in hand or otherwise. I just want to deal with them.

We opposed proposals of this kind during the Potter hearings, principally because we thought that these monopoly and duopoly markets would be eliminated by reallocation to permit free competition. However, experience of the past 2 years has convinced us that this plan, whatever its drawbacks, would be a preferable alternative to further inaction.

Regulation of this type, however, does not go to the heart of the problem. Broad reallocation is essential.

The FCC has recently reaffirmed, in the current reallocation proceedings (Docket 11532) the objectives of its 1952 Sixth Report and Order as follows:—(1) at least one service to all areas; (2) at least one station in the largest possible number of communities; (3) multiple services in as many communities as possible to provide program choice and to facilitate competition. Since priorities 1 and 2 have, on the whole, been achieved, ABC believes that the FCC should now make priority No. 3 its first order of business.

Therefore, the objective of providing multiple service should be handled first. The real deterrent to the development of a nationwide competitive system is the lack of at least three comparable television facilities in the major markets. Unless this is corrected, the economy of scarcity will continue and television broadcasting will fall far short of realizing its full potential. Equally serious is that the industry wil be confronted with a virtual monopoly which will inevitably result in rate and other regulations.

The interrelation between the existence of three or more competitive program services and the survival of UHF television has become abundantly clear. A UHF station cannot survive without attractive programing. At the present time national networks are the primary source of this programing. Since national advertisers are interested in their programs' receiving the widest possible circulation, they are reluctant, and in many cases unwilling, to have their programs on a noncompetitive UHF station.

Clearly, therefore, the public interest requires immediate reallocations. This has not been done. Administrative delay by the FCC, which is an arm of Congress and the responsibility of this committee, has prevented the solution of the allocation problems in the time which has elapsed since the Potter hearings.

Even where no reallocation is involved the industry has been the victim of FCC delay. To illustrate what I mean, final decisions have not yet been reached in Seattle, the 21st market; Miami, the 22d market; Norfolk, the 50th market; Omaha, the 51st market; or Jacksonville, the 60th market. Oral argument has not yet been had in the competitive hearings pending for Boston, the 6th market; St. Louis, the 11th market; Buffalo, the 14th market; Indianapolis, the 25th market; New Orleans, the 28th market; or San Antonio, the 43d market. Initial decisions have not as yet been reached in Pittsburgh, the 8th market, or Toledo, the 45th market. Some of the applications have been pending for 8 years.

Mr. JAHNCKE. There is a partial answer to Mr. Moore. All of these stations, if they ever commence operations, will be looking for programing that film syndicators can provide in addition to networks. There is only one solution and that is to overcome the scarcity of stations. As long as you have 1- or 2-station markets around the country, how can any film packager expect them to need the same amount of program service as is necessary to supply the needs of a market like Los Angeles, which has seven stations that have to be programed? The mathematics of it are simple.

Senator PASTORE. On that point, Mr. Jahncke, are you familiar with the background of these pending cases? Would you say the delays are due to the people involved, or does the fault lie with the cumbersome machinery of hearings that we have?

Mr. JAHNCKE. Both, sir, in my opinion. Certainly, there is a limit to the expediting that the FCC can do, because of their basic administrative process, but certainly there is fault if you don't start hearing a case until 6 years after the application has been submitted to the FCC. I submit that is rather undue delay.

Senator PASTORE. Where did that happen—hearings started 6 years after the application was put in?

Mr. JAHNCKE. We have applications still pending. Some of them have been pending over 8 years.

Senator PASTORE. That has been a matter of no little concern to the members of this committee. We have been very much concerned with that situation, but we are told continuously by the members of the Commission that it is not their fault—it is because of the machinery and the procedures that they are subjected to in holding their hearings and having these matters decided by the courts.

Mr. JAHNCKE. Certainly there is a great——

Senator PASTORE. We agree, it is a matter of concern to us as well as to you.

Mr. JAHNCKE. It is a question of the amount of speeding up that can go on at any given point. I would say, certainly, that to set up a system of priorities that leaves important markets such as Boston to the end of the processing line might be criticized. I suggest that when an initial decision is made and it takes over 12 months before a final decision is rendered, perhaps that is an awful long time for any administrative process to take place.

Mr. COX. These are all cases in which no court intervention has been involved, to the best of your knowledge?

Mr. JAHNCKE. Sir?

Mr. COX. These are all instances in which they have not become involved in courts?

Mr. JAHNCKE. These are all instances of contested applications that haven't reached the courts, because they haven't been decided by the FCC.

Mr. COX. They are cases, with the exception of the Seattle case, in which the record has been closed—and in that case it was closed and then reopened?

Mr. JAHNCKE. I am not sure whether all the records have been closed.

Mr. MCKENNA. I believe that is correct, Mr. Cox.

Mr. JAHNCKE. The FCC, in its testimony before this committee, pointed with pride to the fact that during the year 1955 the Commission had granted 53 construction permits for new television stations. Of these 13 were UHF stations, 3 were educational VHF stations, 2 were satellites, and 5 of the grants were located in Alaska, Puerto Rico, or Hawaii. Only 10 of the 53 grants were commercial VHF grants in the top 100 markets. In every instance but one, the applications for these VHF grants were filed between 1948 and 1952. Thirteen of the fifty-three grants were in markets below the top 300 markets, and in several cases the markets were so small they were not even classified.

I might observe that of this record, only 15 of these cases were contested at all in the first place. The rest were merely a question of the applicant qualifying and receiving an uncontested grant.

The FCC has coupled its inaction in the matter of granting additional VHF stations in monopoly and duopoly VHF markets with its denial of deintermixture in UHF markets. The only affirmative action which the Commission has taken on the allocations problem during the past 2 years will, if not reversed immediately, relegate UHF to an inferior position in such markets as Hartford, Peoria, Evansville, Albany, and Madison, if it survives at all.

Mr. COX. Does that mean you would favor deintermixture in those areas to make those all UHF markets?

Mr. JAHNCKE. I would like to describe it in this way if I may, Mr. Cox. I think that the full utilization of UHF is absolutely essential if we are going to develop a truly competitive, truly national TV system. Now, we have got a situation here where they don't have to describe the UHF problem any more. We all know it by heart. I think what we have to do is consider it like an infant industry that needs a protective tariff around it. You have got to stop hurting it, you have got to give it some special protection just like you do for other industries, and permit it to grow and develop until it can be cast off on its own.

After all, this isn't unique in American history. Newspapers and magazines today enjoy a mail subsidy that amounts to millions of dollars, even after they mature.

Senator POTTER. We probably wouldn't have had the airlines if they hadn't had a subsidy.

Mr. JAHNCKE. That is right.

You have got to, it seems to me, stop killing the patient. You have got to put it through a period of convalescence and you have got to—even this isn't enough, you have got to ultimately work out some arrangement whereby you can look forward to the day, however distant, when every receiver in this system will be an all-channel tuner.

It is no good to check UHF during a holding period if you are not pointing to an ultimate full solution. If you don't get an ultimate full solution you will always have this economy of scarcity and you will always have the problems Mr. Moore suggested. You will have the problem of access to the market place and you will have the atmosphere, if you will, under which perhaps much more regulation will be needed than should be needed, and will be necessary, if the full potential of free television is permitted to grow.

Mr. COX. Would you say this: That if there is any validity to the concept of developing markets which are all UHF, that these five areas would represent as likely candidates for that as any?

Mr. JAHNCKE. Mr. Cox, I believe that you have got to protect UHF (*a*) in as many markets as possible, and (*b*) in the largest possible markets. No one will say "If you let it grow in X number of cities that is enough; and if you don't—it is only Y cities—that is not enough." It is a matter of degree. The more places where you can permit UHF not only to survive but to grow, the greater your chances of having it take its proper place as a part of a single national television system.

Mr. COX. Would you say the first step to protect UHF in these areas or any others would be to stop making grants of ungranted V channels in these areas?

Mr. JAHNCKE. I would say, Mr. Cox, I think that deintermixture is an inevitable first step. I don't undertsand how you deintermix by intermixing. Certainly, the situation should not be aggravated in these cases. Certainly a stop should be put on all further entry of VHF into these areas, until the basic allocation problem is decided by the FCC.

Senator POTTER. In other words, you can't go in two directions at the same time?

Mr. JAHNCKE. That is correct, sir.

Senator PASTORE. Have you an answer to the contention being made by some of the Commissioners that the spirit of the sixth report and order requires them to continue to intermix and grant as many of these allocations as possible, and that there is a reason for doing it. I am just asking for your comment on this. Their reason for doing it is that unless they allow these VHF's to go into some of these localities—let's take Hartford, for instance—their argument is that unless that VHF station goes in there, there will be certain gray areas that will not be properly serviced. Now, what is the answer to that? I would like someone to comment on that.

Mr. JAHNCKE. Senator, first of all, it is our belief that the gray areas, or the areas to which service would be added, are insignificant. That includes the Connecticut Valley, No. 1.

No. 2, I submit that this problem is of sufficient seriousness that the overall public good must be the consideration, rather than a slavish following of the sixth report which, however well intentioned, is admittedly antiquated today.

Suppose a few people in Connecticut or Rhode Island don't get service for another 6 months. That is a reasonable price to pay to solve this problem, which is very serious and fully national in scope in my opinion. I don't think it is valid at all to suggest that the national problem has to be set aside some 80 more homes in Connecticut—and I speak as a resident of Connecticut, I might add, sir—can get service that presumably is not available to them today.

Senator PASTORE. Are you convinced that unless some solution is found along that line, UHF might very well disappear entirely from the TV scene?

Mr. JAHNCKE. I am, sir. It is merely a question of time. I think the record of the past 2 years shows this. As I recall, the chairman read another letter into the record regarding WTAO–TV, Cambridge. It has gotten to where we are now announcing the burial dates ahead of time. That is the next one to go, leaving the air next week, or the end of this week. It is just bound to happen. It doesn't have to happen. That is the thing that is important.

Senator PASTORE. Do you envision as the ultimate solution to this entire problem that one day we are going to have all-channel sets, 100 percent?

Mr. JAHNCKE. Yes, sir; I do. Senator Pastore, may I use this specific example to illustrate. I think that taking channel 3 from Hartford and putting it in Providence does not take anything away from the State of Connecticut and does not give anything undue to the State of Rhode Island. It solves a problem in one market, Providence, without causing a problem in another market, Hartford. Hartford has a perfectly reasonable TV program service at the moment. The people of Hartford have a choice of three different programs. Why shouldn't the people of Providence have the same privilege?

Senator PASTORE. I like to hear you make that argument, because that is the argument that I have made, too. But of course the argument that they use in refutation of that is this: That there are certain gray areas in Connecticut that can only be serviced by granting that additional VHF station on channel 3 in Connecticut. Your answer to that is that the number of people affected is small, and that they may have to sacrifice for the general good. That is a good argument, depending upon which foot the shoe is on.

Mr. JAHNCKE. It is my understanding, Senator, that first of all, the argument is made based on present UHF signals available. Now, I suggest that any analysis should be based on future UHF signals, or full implementation. Let's assume UHF is given the atmosphere of survival and permitted to grow. Then, if the UHF stations in the Connecticut Valley go to maximum power of at least a megawatt—as is the plan, as I understand, of both NBC and CBS in that area, and I think Mr. Putnam of Springfield testified that he had increased his power and probably will increase it more. I wonder how many people would be left without service if UHF was permitted to realize its full potential in this area, with maximum power and maximum tower height.

Now, I speak from my understanding. If you would like an engineering comment I am sure Mr. Marx can document this thing from an engineering point of view.

Mr. MARX. Well, I don't believe it needs documentation, but to emphasize just a moment: In the first place, there is no UHF station today that is truly using a megawatt. They are doing it by relatively low power transmitters and very high gain antennas, which means that you have a narrow wedge-shaped signal that in many cases passes over certain of the areas you would like to serve.

Secondly, there is no UHF receiver presently available today, or band receiver, that even remotely approaches the sensitivity of the VHF receivers. This, again, is something which will continue unless the facilities are made available to truly allow the UHF stations to operate on their own, so that they are not competing against the V.

Senator PASTORE. I am inclined to agree with you. Once you intermix, I don't see how in the world you will later on be able to deintermix.

Mr. JAHNCKE. There is one way you deintermix later, if I may suggest it, sir—through the death of UHF. That is the way future deintermixture will take place.

Senator PASTORE. You are speaking now of a total demise.

Mr. JAHNCKE. Yes, sir.

Mr. COX. That is, you would be left with only 12 VHF channels for a national system, on the basis of deintermixed VHF service, with a reduction of service and concentration of service.

Mr. JAHNCKE. That is correct.

Mr. MCKENNA. Senator, with respect to the Hartford case, about which you questioned specifically, I am familiar with the engineering evidence that was submitted in that case, and it showed that even with existing powers and heights, that there was no white area in the area that would be deintermixed if channel 3 were moved to Providence. It so happens in the Connecticut Valley you have a large concentration of existing UHF stations, which at the present time provide a grade B or better service to all areas and it was agreed, I recall, by the persons who were opposing the removal of channel 3 from Hartford, that the white-area argument was not available in that particular situation.

Senator PASTORE. It strikes me that that is the only argument that they could reasonably have. Do you agree with that?

Mr. MCKENNA. I agree with that, sir. I agree that even that is not a complete argument in opposition, because, as Mr. Marx pointed out, as UHF power is increased, and as these stations reach their full potential, they will cover these areas.

Senator POTTER. I would like to ask Mr. Marx a question.

We had testimony before this committee by the Chief Engineer of the Federal Communications Commission, Mr. Allen, where he testified that UHF in metropolitan areas just didn't work out; that the buildings served as a means to block the reception.

Now, it is my understanding that UHF could be, with proper power and proper engineering, as effective as the UHF. The testimony that we received from Mr. Allen indicated many problems that would certainly lead you to believe otherwise.

What is your engineering judgment on that?

Mr. MARX. I think I can go back a few years to answer that for you, Senator.

There used to be only low channel VHF stations, going up to channel 6. Among the first few grantees of the high channel stations—before one of the grantees was in Washington, channel 7—one thought very seriously of carrying his grant to the courts in order to force the Commission to give him a low channel VHF station, because channel 7 at that time was believed to be no good—that you could not get the service out of it that you wished to.

ABC took the opposite position in the early days. We believed that channel 7 was one of the better of the VHF channels, starting with channel 2—as a matter of fact, channel 1, when we made that decision.

We have seen nothing to date to prove the contrary. The point is that 7 years ago the reception of channels 7 to 13 was almost an impossible situation in many areas in this country, and certainly in the metropolitan areas. With the improvement of VHF receivers, and the improvement in the power-handling capacities of transmitters and new transmitting antennas, you find that the high channels do an equally good job as the low channels, and in some cases superior. It is my opinion as an engineer that history is going to repeat itself—and let me again state that there has been no UHF station on the air to date that has used a megawatt, or a million watts, in the true sense of using the power.

What he has done is to use 50,000-watt transmitters, and then made up the difference by high gain antennas. Now, what you are doing there is directing your signal, because you are taking the energy and squashing it into a very narrow beam, so that instead of getting the true value of 1 megawatt, you are getting some small portion of it in large areas, and only out here somewhere [indicating] do you feel the impact of it.

Senator POTTER. Do you think that if your UHF were given a healthy climate, the engineering problems would solve themselves?

Mr. MARX. I am convinced of that because we have seen it too often. You couldn't build 50,000-watt transmitters on VHF 10 years ago. No one knew how to do it. You certainly could not get powers in the order of 100,000 watts. A million watts was unthought of—as a matter of fact, unheard of—and you could prove very readily, I think, that you couldn't achieve such powers. We are coming close to it. As a matter of fact, the Commission now has before it a proposal to allow UHF 5 million watts. Yes. Once these things are granted they will be used, providing they can be used in a healthy atmosphere.

Senator POTTER. All right. You continue.

Mr. JAHNCKE. Inaction, however, is not the exclusive province of the FCC. Failure by this committee to take affirmative action and to supply the FCC with guidance is unquestionably a major factor in the present allocation crisis.

Since the Potter committee hearings we have had questionnaires, reports, press releases, studies, postponements, meetings, and the formation of ad hoc committees, whose only conclusion to date has been that a problem exists. ABC's representative on the Bowles ad hoc

Advisory Committee on Allocations resigned last week, giving as his reason the fact that the Committee had held only one meeting since its formation on June 21, 1955—and that meeting was the organization meeting held on June 21—and had "utterly failed to discharge its responsibilities." In short, no progress has been made in the past 2 years and our national television system has been made poorer by the UHF stations which have gone off the air during that period.

Regardless of this negative record, prompt action by Congress and the FCC can still insure a truly national, fully competitive television system and a truly national educational television service.

May I point out that there cannot be any sort of a reasonable educational TV service without the survival and utilization of UHF.

To accomplish this, the FCC must first stop the present deterioration of UHF.

Senator PASTORE. Could I interrupt you at that point, Mr. Jahncke?

I feel very much as you do as to the fact that this thing has been delayed and delayed, and actually we are no better off today than we might have been 2 years ago. There has been inaction throughout, and it strikes me that everyone does recognize the problem, but no one suggests the remedy. The Commission has already taken the position that it must carry out the sixth report and order—I think that is the majority opinion of the Commission.

Mr. JAHNCKE. That is my understanding, sir.

Senator PASTORE. As they have testified here. But now how do you justify—and this is the question that I direct to your attention specifically—under what pretext could the Congress of the United States require, command, or direct an administrative body like the FCC, on an engineering problem, to do thus and so? I mean, what would be the justification for Congress, and how would you, practically, work out that problem?

Mr. JAHNCKE. Well, it seems to me first of all that the FCC is merely an arm of the Congress, to execute its will.

Senator PASTORE. I realize that. Now, we are getting into a reality. The Commission is the administrative agency that determines these technical problems. Now, right, wrong, or indifferent, the problem that has bothered me is: How do you convince the Congress of the United States, in both branches, to take this bull by the horns, on a question that is not a political question—a question which is purely a technical question—and tell the Commission what it should do? I mean, facing the realities of the situation, I wonder if the solution that is being proposed by the many witnesses here—who are all of good intention, and chances are frustrated somewhat because of the attitude of some administrative agency, but I wonder if we are not all overstepping a little bit by suggesting that the Congress decide whether or not there should be intermixture or deintermixture. Is that really a congressional problem?

Mr. JAHNCKE. Senator, I think it is not a technical problem, a technical engineering problem. I think it is a problem of national public interest, and that is the concern and proper area of the Congress. I am not suggesting that the Congress pose as a group of superior engineers. I am suggesting that there is sufficient evidence—and I don't know of anyone who has seriously questioned the logic of deintermixture, with the exception of those who treat the sixth report as a sacred cow, but I don't know of anybody who has seriously questioned the desirability of deintermixture.

I suggest, therefore, that perhaps this is an emergency area. UHF stations are dying. A great future is possibly being jeopardized. Perhaps that is the atmosphere where the Congress can overlook technicalities and take some emergency action, only for a temporary period. This isn't saying that the whole thing is abolished. Just stop, hold everything, until we take a look, and then direct them to take a look promptly, now.

Senator PASTORE. I realize what you say, but the mechanics or the practical realities of every situation, as I have been able to understand it—and I have been here now for a little more than 5 years—usually the recommendations of an administrative body are taken quite seriously by a congressional committee. Now, we have had testimony here from the Commissioners, who have said that they want to see these allocations granted and these assignments made—and then later on they will decide as to whether or not we should have deintermixture. Now, in view of that recommendation, how do we supersede it or overrule it as purely legislative body? That is the thing that is troubling me.

Mr. JAHNCKE. Well, it is my understanding that—or the suggestion has been made that perhaps a Senate resolution, whereas it wouldn't be an automatic order, would be very effective in accomplishing the result.

As I understand, when the suggestion was made for superpower in radio—that is, for stations to go to 750,000 watts—a Senate resolution, which I believe was introduced by Senator Wheeler at that time, had the practical effect of stopping it right now, until a look could be taken. This was not an order to the FCC, but it had the practical effect of——

Senator PASTORE. Was that resolution passed by the Congress?

Mr. JAHNCKE. By the Senate. It had the practical effect of the FCC following the suggestions in the resolution.

Senator PASTORE. But you will admit this. From what you have been able to hear from witnesses that have testified at this hearing, and what you have been able to read, that resolution that you would pass would be tantamount to overruling a decision already made by the Commission. Are we agreed on that?

Mr. JAHNCKE. We are agreed on that, sir. I think the time has come to overrule the Commission.

Senator PASTORE. I just wanted to know your position.

Mr. JAHNCKE. I don't think it would be a lonely ruling, sir. The majority of the industry, even before the sixth report and order was issued, favored deintermixture; and certainly not only a majority, but virtually the entire industry that has testified in the Potter hearings and before this hearing to date, has testified in favor of deintermixture.

Senator PASTORE. For the purposes of the record, you will admit that the Commission has taken a view opposite to the one the industry has taken?

Mr. JAHNCKE. The majority of the Commission; yes, sir.

Mr. COX. I take it your suggestion is limited to a declaration of broad policy on the part of the Senate, not any specific decision as to deintermixture in this area or that area, or how many areas should be deintermixed, or anything of that sort?

Mr. JAHNCKE. My suggestion is that the FCC be directed, through whatever device, not to make the problem worse. Don't put any more VHF stations in any area that is a reasonable area to consider as one of these UHF areas, to be protected while we build.

Senator PASTORE. In essence, what you are saying, Mr. Jahncke, is that the Commission forget for the time being, until this problem is settled, the sixth report and order, and hold everything in suspension until the issue is decided?

Mr. JAHNCKE. To the extent that the sixth report and order does not appear to serve the public interest in this particular area, yes, set it aside. The public interest should always overrule any given report.

Senator PASTORE. Thank you very much. I just wanted your categorical answer on that.

Mr. JAHNCKE. To do this, the FCC must prevent additional VHF stations from going on the air in all areas where deintermixture to create predominantly UHF markets has been proposed. The FCC should continue to do this until such time as it has completed and implemented its present overall television allocations study.

The prime objective of this action is to create an atmosphere of survival for UHF television. This atmosphere would, of necessity, be reflected in increased public interest in UHF, increased advertiser support of UHF, and increased manufacture of all-channel receivers.

The arresting of further deterioration of UHF is the necessary first step. However, this will serve no useful purpose unless the allocation plan ultimately adopted by the FCC provides a framework for a truly national television system. This framework must include strong UHF areas and provide facilities for at least three competitive national program services in each of the major markets.

ABC has proposed to the FCC a plan by which this can be done. This plan is contained in our original petition for reallocation dated October 7, 1955, our comments in the overall allocation proceeding, dated December 15, 1955, and our reply comments dated February 8, 1956, copies of which I would like to submit for the record. The illustrative channel changes which we recommended in our reply comments are set forth in appendix A of this statement.

Senator POTTER. Without objection appendix A will be included in the printed record and the other documents will be retained in the committee's files and incorporated in this record by reference.

(The information is as follows:)

APPENDIX A

SPECIFIC REALLOCATION RECOMMENDATIONS

ABC recommendations for allocation revisions in major markets are hereinafter outlined. These proposals are for markets that are presently capable of supporting more than the number of stations now in operation and where the only obstacle to additional service is the allocations plan. Accordingly, they are limited to those changes which are necessary to achieve competitive three-station service, to avoid destruction of existing UHF stations, and to permit at least some deleted UHF stations to return to the air.

A. Two VHF station markets

The most critical group of markets are those now served by 2 VHF stations, for experience has demonstrated that UHF cannot survive in competition with

2 or more VHF stations. Without adequate competitive outlets for all three networks these markets are denied their full share of network programs. Moreover, the existence of such markets among the first 100, which are important in network operations, weakens ABC and through it, its affiliates, and thus hinders the growth of a competitive television service nationally. In the two VHF-station markets the only possible solution which would not require substantial disturbance of existing services with resulting hardship on the public is to find additional commercial VHF channels. Fortunately this can be done in most of the major markets in this category. A list of these cities with suggested solutions follows:[1]

(*a*) Providence-Pawtucket, R. I. is the 29th market. It has operating VHF stations on channels 10 and 12, and no other VHF channels allocated. A UHF station was in operation, but has been forced off the air. This market could be made competitive by removing ungranted channel 3 from Hartford, thus deintermixing the Connecticut Valley and assigning it to the Providence area.

(*b*) Louisville, Ky., is the 32d market. It has operating VHF stations on channels 3 and 11, and no other VHF channels allocated A UHF station was in operation but has been forced off the air. A second UHF station has been granted but never built. A third competitive service can be provided in Louisville by removing VHF channel 7 from Evansville, Ind., which is now an all-UHF area,[2] and assigning it to Louisville.

(*c*) Rochester, N. Y., is the 36th market. It has operating VHF stations on channels 5 and 10, and no other VHF channels allocated. Four UHF construction permits, including one educational permit, have been granted. None of these stations have been built. The Rochester market could be made competitive by the assignment of channel 13.

(*d*) Dayton, Ohio, is the 41st market. It has operating VHF stations on channels 2 and 7, and no other VHF channels allocated. A UHF station was on the air for a brief period but has closed down. A third service could be provided for Dayton by the assignment of channel 11.

(*e*) Birmingham, Ala., is the 42d market. It has operating commercial VHF stations on channels 6 and 13, and a noncommercial educational station on channel 10. No other VHF channels are allocated. Construction permits for two UHF stations have been granted, but the stations have not been built. A third commercial service could be provided for Birmingham by the assignment of channel 3.

(*f*) Tampa-St. Petersburg, Fla., is the 44th market. It has operating VHF stations on channels 8 and 13. It is also allocated channel 3, which is reserved for educational use, but has not been applied for. A UHF station is on the air on channel 38. Tampa-St. Petersburg could be provided with additional commercial VHF service by releasing channel 3 for commercial use, or by the assignment of channels 5 and 10.

(*g*) Syracuse, N. Y., is the 52d market. It has operating VHF stations on channels 3 and 8, and no other VHF channels allocated. A construction permit has been granted for an educational UHF station, but the station has not been built. Competitive services could be estblished in Syracuse by exchanging channel 8 for channel 7 at Carthage, N. Y. This change would permit the move of channel 9 from Elmira, N. Y., to Syracuse, making Elmira once again an all-UHF market. A second alternative would be to permit the move of channel 6 from Schenectady, N. Y., to Syracuse as part of a plan to make Albany-Schenectady-Troy UHF only.

(*h*) Oklahoma City, Okla., is the 55th market. It has operating commercial VHF stations on channels 4 and 9. Channel 13 is also allocated, but reserved for educational use. A construction permit has been granted on this channel. Two UHF stations have been in operation in Oklahoma City, but both have been forced off the air. This city could be provided with a third commercial service by permitting the move of channel 5 from Enid, Okla., to Oklahoma City.

(*i*) Sacramento, Calif., is the 56th market. It has operating commercial VHF stations on channels 3 and 10. It is also allocated channel 6, which is reserved for educational use. A UHF station is on the air on channel 40. This city could be provided with a third commercial VHF service by releasing channel 6

[1] Since the objective of this solution is to solve the immediate need for a minimum of 3 services in the larger markets, cities with 2 local VHF stations which also receive good quality service from at least 1 nonlocal VHF station have been omitted. Cities with 2 VHF stations which have a third commercial VHF channel awaiting assignment have also been omitted.

[2] A grant was recently made on channel 7, but the station has not yet been constructed.

for commercial use or by permitting the move of channel 13 from Stockton, Calif., to Sacramento.

(*j*) Grand Rapids, Mich., is the 58th market. It now has a single VHF station on channel 8, with no other VHF channels allocated. It should be considered a two-VHF-station market, however, since it receives service from a VHF station on channel 3 at Kalamazoo. A construction permit for a UHF station in Grand Rapids has been granted, but the station has not been built. Grand Rapids could be provided with a third commercial service by removal of ungranted VHF channel 11 from Toledo and its assignment to Grand Rapids.

(*k*) Wheeling, W. Va.-Steubenville, Ohio, is the 75th market. It has operating VHF stations on channels 7 and 9, with no other VHF channels allocated. A UHF construction permit has been granted for Wheeling, but the station has not been built. ABC has been unable to find a satisfactory solution for immediate application in this market.

(*l*) Davenport, Iowa-Rock Island-Moline, Ill., is the 76th market. It has operating VHF stations on channels 4 and 6, with no other VHF channels allocated. A construction permit for a UHF station was granted, but the station was never built and the permit was deleted on November 18, 1953. This market could be made competitive by the addition of ungranted channel 8, which would be removed from Peoria, leaving the latter city UHF only.

(*m*) Duluth, Minn.-Superior, Wis., is the 82d market. It has operating VHF stations on channels 3 and 6. It is also allocated channel 8, which is reserved for educational use, but has not been applied for. A UHF station operated in this market for more than a year, but was forced off the air on July 11, 1954. This market could be made competitive by the release of channel 8 for commercial use, or the assignment of channel 11.

(*n*) Greensboro-High Point, N. C., is the 92d market. It has an operating VHF station on channel 2, with no other VHF channels allocated. It should be considered a two-VHF-station market, however, since it also receives service from the VHF station on channel 12 at Winston-Salem. A UHF construction permit for Greensboro-High Point has been granted, but the station has not been built. A UHF station is in operation at Winston-Salem. This market could be made competitive by the assignment of channels 6 and 8.

(*o*) Brownsville-Harlingen-Weslaco, Tex., is the 93d market. It has operating VHF stations on channels 4 and 5, with no other VHF channels allocated. No construction permits for UHF stations have been granted. This market could be made competitive by the assignment of channels 2 and 10.

(*p*) Shreveport, La., is the 95th market. It has operating VHF stations on channels 3 and 12, with no other VHF channels allocated. No UHF construction permits have been granted. A third service could be provided for this market by permitting the move of channel 9 from Lufkin, Tex., which now operates as a satellite, to Shreveport.

B. One-VHF-station markets

The next most critical group of markets are those which are now served by a single VHF station and which either have no other VHF channels allocated or an insufficient number to satisfy present demand. In many of these markets UHF stations have been able to accomplish substantial UHF conversion, since the programs of at least one network have been available on UHF only. There are three possible solutions to competitive television in these markets: First, not to grant additional VHF stations, leaving the market with its single VHF and multiple VHF services; second, to change the existing VHF service to UHF, so that the market will be UHF only; or, third, to allocate additional VHF channels in place of the UHF channels now in use. A list of markets with the solutions recommended by ABC follows:

(*a*) Miami, Fla., is the 22d market. It has an operating VHF station on channel 4. It is also allocated VHF channels 7 and 10, which are the subject of comparative hearings.[3] VHF channel 2, which is also allocated to Miami, but reserved for educational purposes, has been assigned and is in operation. One UHF station operates in Miami on channel 23. Another UHF station operates on channel 17 in nearby Fort Lauderdale, which must be considered as part of the same market. A second UHF station was in operation at Fort Lauderdale, but left the air December 23, 1954. Since the Miami-Fort Lauderdale area is allocated 3 VHF commercial channels it does not present the same critical problem which is present in those markets with only 2 commercial VHF chan-

[3] A final decision in the channel 7 case was released January 20, 1956.

nels. However, two UHF stations are on the air and substantial UHF conversions have been achieved. The terrain in this area is excellent for UHF propagation. Miami-Fort Lauderdale is one of the few major markets in which UHF has an excellent chance of success, and the establishment of this area as a UHF island would be very beneficial to the future development of UHF nationally. Accordingly, consideration should be given to deintermixture of the Miami-Fort Lauderdale area. The VHF channels removed from Miami-Fort Lauderdale would make possible additional VHF assignments in other Florida cities where UHF has no immediate hope of success.

(b) Hartford-New Britain, Conn., is the 27th market. It has no operating VHF stations, but it must be considered a one-VHF-station market since it receives from the VHF station on channel 8 at New Haven. UHF stations are in operation in both Hartford and New Britain. A construction permit for an educational UHF station at Hartford has been granted, but the station has not been built. VHF channel 3 is allocated to Hartford, and is now the subject of a comparative hearing which is awaiting a final decision. The replacement of channel 3 at Hartford with a UHF channel and the allocation of channel 3 to the Providence area would permit the continuation of a competitive television service in Hartford-New Britain-New Haven, and would also provide a third VHF channel for Providence.

(c) New Orleans is the 28th market. It has an operating VHF station on channel 6. A second VHF channel, channel 4, is now the subject of a comparative hearing awaiting a final decision. New Orleans is also allocated VHF channel 8, which is reserved for educational use. One UHF station has been in operation in New Orleans since October 15, 1953. Construction permits for three other UHF stations have been granted but the stations have not been built. It appears that New Orleans could be provided with three VHF services by releasing channel 8 for commercial use, by assigning channel 11, or by permitting the move of channel 2 from Baton Rouge. However, as noted, a UHF station has been in operation in New Orleans for a considerable period. The terrain in the New Orleans area is eminently suitable for UHF propagation. New Orleans, like Miami, could be made an important UHF island. Accordingly, consideration should be given to the alternative of deintermixing New Orleans.

(d) Albany-Schenectady-Troy, N. Y., is the 30th market. There is an operating VHF station on channel 6 at Schenectady. VHF channel 10 has recently been allocated to Vail Mills, where it would serve the Albany-Schenectady-Troy area, but the effective date of this allocation has been stayed by the court of appeals. One UHF station is in operation at Albany, and a second UHF station was in operation, but left the air January 31, 1955. Two other construction permits for UHF stations have been granted, but the stations have not been built. If the channel 10 Vail Mills allocation becomes effective a third VHF channel could be provided for Albany-Schenectady-Troy by permitting channel 8 to be moved from New Haven, leaving New Haven-Hartford an all-UHF area. An alternative solution is to make Albany-Schenectady-Troy an all-UHF area by deleting channel 10 from Vail Mills and permitting the move of channel 6 from Schenectady to Syracuse. As noted, one UHF station is now on the air in Albany. The second UHF station which is now off the air has stated that it will resume operation if the area is deintermixed. The area also receives UHF service from outside. UHF receiver circulation is high in Albany-Schenectady-Troy, and UHF has made a fair start in this area despite the existence of a prefreeze VHF station on channel 6. This is evidenced by CBS's recent decision to affiliate WROW-TV, channel 41, on a regular basis. Consideration should be given to making this area an important UHF island.

(e) Toledo, Ohio, is the 45th market. It has an operating VHF station on channel 13. Channel 10, which is also allocated to Toledo, is now the subject of a comparative hearing. A construction permit for a UHF station has been granted, but the station has not been built. It has been recommended above that ungranted channel 11 be removed from Toledo and allocated to Grand Rapids, Mich., in order to provide a third competitive service for the latter market. The removal of chanel 10 may also encourage the establishment of UHF stations in Toledo. ABC has been unable to find a complete solution for immediate application in the Toledo market.

(f) Norfolk-Portsmouth, Va., is the 50th market. It has an operating VHF station on channel 3. It is also allocated VHF channel 10, which is now the subject of a comparative hearing. UHF stations are in operation at Norfolk and in the nearby city of Hampton. Competitive television service could be established in this area by the addition of channels 5 and 13.

(g) Jacksonville, Fla., is the 60th market. It has an operating VHF station on channel 4. It is also allocated VHF channels 12 for commercial use and 7 for noncommercial educational use. Channel 12 is now the subject of a comparative hearing awaiting a final decision. An application is pending for channel 7. One UHF station is in operation at Jacksonville, and a construction permit for a second UHF station has been granted, but the station is not yet on the air. Jacksonville could be given competitive television service by the addition of channels 6 and 10. Channel 7 could also be released for commercial use.

(h) Knoxville, Tenn. is the 73d market. It has an operating VHF station on channel 6 and is also allocated VHF channel 10 which is the subject of a comparative hearing in which a final decision was recently released. One UHF station is in operation at Knoxville. Unused educational channed 2 at Sneadville could be moved to Knoxville and released for commercial use, and channel 8 also could be allocated.

(i) Chattanooga, Tenn., is the 83d market. It has an operating VHF station on channel 12. It is also allocated channel 3, which is the subject of a comparative hearing which is awaiting final decision. Two construction permits for UHF stations in Chattanooga have been granted, but neither station has been built. This market can be made competitive by permitting the station on channel 9 at Rome, Ga., to move to Chattanooga.

(j) Bakersfield, Calif., is the 84th market. It has an operating VHF station on channel 10 with no other VHF channels allocated. A UHF station has been in operation at Bakersfield since August 21, 1953. No other UHF construction permits are outstanding. The Bakersfield market could be made competitive by adding channels 8 and 12, deleting the latter from Fresno and replacing it with a UHF channel.[4]

(k) Beaumont-Port Arthur, Tex., is the 90th market. It has an operating VHF station on channel 6. It is also allocated channel 4, which is the subject of a comparative hearing. A UHF station has been in operation in Beaumont since April 9, 1954. This market could be made competitive by the addition of channel 9 if channel 9 is moved from Lufkin, Tex., to Shreveport, La.

(l) Johnstown, Pa., is the 94th market. It has an operating VHF station on channel 6 with no other VHF channels allocated. A UHF station has been in operation at Johnstown since October 15, 1953. The Johnstown market could be made competitive by the addition of channels 3 and 8.

(m) Charlotte, N. C., is the 97th market. It has an operating VHF station on channel 3. It is also allocated channel 9, which is the subject of a comparative hearing, awaiting a final decision. A UHF station was in operation in Charlotte but was forced off the air on March 15, 1955. A third service could be provided for Charlotte by the addition of channel 11.

C. UHF only markets

There is another group of markets—those which at present have UHF stations only, but in which VHF channels are available for grants. In these markets grants on the VHF channels should be withheld pending a final decision in this proceeding. In those instances where grants have been made since the notice of proposed rulemaking in docket No. 11532, the grants should be set aside. The markets in the first 100 which fall in this category are Fresno, the 65th market, and Peoria, the 79th market.

Mr. JAHNCKE. The administrative changes which we recommend are set forth in appendix A to this statement.

The ABC plan is based on a combination of three principles: Deintermixture to create homogeneous UHF or VHF markets; move-ins or drop-ins of additional VHF channels with appropriate engineering safeguards to protect the quality of existing services; and the use of some VHF channels presently assigned to education.

Since these principles were the keystone of our proposals, ABC was shocked by the decision of the FCC in November 1955, denying deintermixture. Pursuant to this decision, the FCC continues to grant additional VHF stations in UHF markets despite the irreparable damage which these grants will do.

[4] A grant was recently made on channel 12 at Fresno but the station has not been constructed.

Under the principles of ABC's proposal, detintermixture could be accomplished in markets such as New Orleans, Albany, Miami, Hartford, Fresno, Peoria, Baton Rouge, Springfield, Ill., to name a few of the more important ones.

The drop-in or move-in of additional VHF channels in accordance with the ABC proposals will enable many monopoly markets to become competitive. For example, additional VHF channels can be assigned to Providence, Louisville, Rochester, Syracuse, Dayton, and Oklahoma City, to mention some of the more important markets which are now restricted to two stations.

Although ABC's plan showed solutions only in the top 100 markets where the core of the problem exists, it is equally applicable to smaller markets. For example, in Louisville, Ky., the 32d market, we have proposed the addition of channel 7, which would be deleted from Evansville, Ind., the 111th market. An additional UHF station would be added in Evansville, making it an all-UHF market. Not only making it an all-UHF market, but maintaining it as a UHF market as of the moment. There is no VHF station in Evansville. It is doing fine. It should be permitted to continue in its present arrangement as an all-UHF area.

The third principle on which ABC's proposal rests is the reallocation to commercial use of some VHF channels now reserved for educational purposes.

In a letter dated December 14, 1955, from Mrs. Kate Hevner Mueller, chairman of the education committee of the American Association of University Women, addressed to the Secretary of the FCC, which has been introduced in this record, Mrs. Mueller states that the "major barrier" to the "development of a nationwide competitive system of television lies not in the continuation of reservations for educational television, but in developing UHF channels—a barrier which limits both educational and commercial television." We are in complete agreement with this statement. However, unlike Mrs. Mueller who is opposed to the use of any reserved VHF educational channels for commercial purposes, we favor such use where it is necessary to make monopoly and duopoly markets competitive.

Examples of monopoly markets which could be made competitive by the use of VHF educational channels are New Orleans, Birmingham, Tampa, Oklahoma City, Sacramento, Jacksonville, Knoxville, and Duluth.

The statement that there are only 10, as I recall, VHF assignments for educational use in the top 20 markets of the country shows conclusively, in my opinion, that there can be no educational system of a national nature without UHF. For example, in New York City, education is assigned a UHF channel. If we can't make UHF work, the largest market in the country will never have educational television. I submit this: That in a great many areas, for understandable reasons, the educational groups are not yet ready to utilize the reservations that have been made for them.

Why not, therefore, permit those VHF channels—which are gathering dust—permit them to be used for commercial purposes, which will further the general overall status of television. This will make an important contribution to the survival and growth of UHF, so that at some future date, when we have a single TV service and there won't be any difference between UHF and VHF, educational TV will be the gainer—if you will lend-lease these VHF channels at this time to commercial TV where they are so urgently and immediately needed, as distinct from the future use of TV.

We don't deny the proper requirement of educational TV, but it is in the future; our urgent need is right now.

Senator POTTER. In other words, it is your statement that the VHF channels that are allocated for educational TV and are not being used, should be opened up for commercial use, with the understanding that when we secure a nationwide television system by the utilization of UHF, there will be channels available for all of our educational needs. Is that the essence of your statement?

Mr. JAHNCKE. That is correct, sir. Not only that, but during the interim I am certain that it would be awfully easy to find someone to operate such a VHF TV station with the agreement and understanding that a reasonable amount of time, as well as facilities be made available to the educators now, when they can't take on the whole job. Let somebody put up and spend all the money. They can still use the money right now. Take New Orleans—I think it is channel 8 that is assigned to education, and the terrain is perfect for UHF. Let channel 8 become a commercial—1 of 3 V's in that market right now.

Mr. COX. Aren't they now building an educational station?

Mr. JAHNCKE. No, sir. It is my understanding they have finally gotten a group together and received contributions from various community groups—including, I believe, the present VHF operators—and have just secured a grant last month.

Mr. COX. They have the construction permit.

Mr. JAHNCKE. The construction permit, I think, was issued in February 1956. Now if that is used, let's say, 5 years from now, when through a replacement of present sets, you have all-channel tuners well underway, it won't make much difference whether you give channel 8 back to the educators and take channel 20, for example, back for commercial use or vice versa. If you, by that time, have got an all-channel system well underway it will be a rather minor problem. Take either one you want.

Mr. COX. If you never get the all-channel set, though, what becomes of educational TV in New Orleans? They are never going to be able to get conversion on educational programs.

Mr. JAHNCKE. What becomes of educational TV—it is just one more area of the failure of a nationwide system, or concept. The same thing will happen as happened in New York City.

Mr. COX. Isn't it true that in each of these typical instances that you have set forth here where you recommend the release of an educational VHF reservation, that you also propose, as an alternative, the drop-in of a V as a possible solution, if that reservation cannot be made available?

Mr. JAHNCKE. I would like to look over the statement. There is the alternative of a move-in or drop-in of a V in New Orleans, in Oklahoma City, I am not sure about Birmingham.

I think at Tampa they drop in channel 10. Channel 3 is the educational in Tampa. I think channel 10 in Tampa would work; in Sacramento they could move in, if they wished to, the present channel 13 on the air assigned to Stockton. Otherwise, it would have to be the use of the educational reservation channel 6, in Sacramento.

In Jacksonville, yes, I think a drop-in would work there. In Knox-ville, which is, may I say, my favorite example, the unused reservatio of channel 2 for Sneedville, Tenn., could be moved to Knoxville. I can only assume it was assigned to Sneedville because it came out righ on the engineering drawing board and because there is an educationa institution there. I also assume that these channels are assigned b the FCC to serve people rather than any other concept.

Senator POTTER. We have an educational channel allocated in m State to a town of about 10,000, and the largest educational institutio is a high school. It is allocated and, of course, not being used.

Mr. JAHNCKE. If there are enough channels left over, there is noth-ing wrong with that, sir. When you are dealing with the pressure o a very scarce national resource, it raises a question. The spectru space in which all television channels operate represents a valuabl natural resource. Unlike mineral or timber resources, however, it nonuse is complete waste and an irretrievable loss.

We have, therefore, suggested to the FCC that the time has com when reservations for educational use should be abolished and re-placed by the system in standard broadcasting, under which there ar no reservations and educational institutions apply on the same statu as all other applicants. If an educational institution, after participa-tion in a competitive hearing, received a television grant, it would hav the right to operate on a commercial basis to the extent deemed neces-sary. This would enable many smaller educational institutions wit limited financial resources to operate a television station.

Furthermore, a cursory glance at the channels reserved for educa-tional use shows that many of them are in very small towns such a Amherst, Mass.; Hanover, N. H.; Oxford, Ohio; and Sneedville, Tenn. because these towns are the locations of educational institutions. I instances such as these the educator's needs would be as well served b campus television and the channels can be reallocated for more efficien use in large markets.

In television today there are too many artificial distinctions based o the frequency upon which a station operates. We have UHF as com-pared with VHF. When television started, we had low band VHF's a compared to high band VHF's. There are proposals now before th Commission which would create low-power VHF stations which woul then be contrasted with high-power VHF stations. There is anothe proposal which would create the classification between horizonta antennas and vertical antennas on the receiving sets.

The ultimate objective of a workable allocation plan should be t eliminate all artificial categories of channels. There should be n more difference between UHF and VHF than there is between 540 an 1600 on the radio dial. From an engineering point of view it is com-pletely practicable.

The objective, therefore, is a compatible television service. On area for corrective action is in the field of excise taxes. All who hav testified on this subject agree that the cost disparity between all-chan-nel receivers and VHF-only receivers should be eliminated by th reduction of excise tax on all-channel television receivers. AB endorses this proposal as we did 2 years ago in the Potter hearings.

In summary, ABC suggests that a congressional mandate be issue to the FCC, either by a memorandum from this committee or by

Senate resolution that the FCC take the following steps to insure a truly national competitive television service:

1. Issue its reallocation plan by June 1, 1956. We were invited on November 10 of last year to submit our suggestions and we were given 35 days to do it, which was ample because we had been studying it for a long time. I suggest that is a reasonable time period for the FCC.

2. Prevent additional VHF stations from going on the air in areas where deintermixture, to create predominantly UHF markets, has been proposed, until the reallocation plan has been issued and implemented.

3. Complete the processing of all pending applications, whose disposition would not be precluded by the foregoing, by September 1, 1956.

In conclusion, I would like to quote from my testimony 2 years ago in the Potter hearings, to you, sir.

> The proposals made above are designed to speed the difficult period of transition during which competitive facilities will become available. When that occurs, ABC will take its competitive chances in the market place of public good will with full confidence in its ability to originate and develop a television service second to none. ABC believes that it has a television-program service comparable in quality to those of its competitors and desires only a fair opportunity to demonstrate that fact.
>
> In conclusion, ABC again desires to point out that it is now an independent network because of the FCC's recognition 13 years ago that the public interest would not be served by concentration of radio stations under the dominance and control of a single network organization.
>
> For reasons unrelated to the merits of its television service, ABC finds itself handicapped due to the lack of competitive television outlets.
>
> The competitive advantages enjoyed by NBC and CBS are basically attributed to denial of fair opportunity for access to the market, rather than to the superiority of their program offerings.
>
> If we can't get our programs into a market, we are not even judged; we are not even in the game.
>
> This committee, therefore, is faced with an extraordinary decision of policy, for determinations reached now in the present period of television development will determine the availability and quality of competitive service in the future.
>
> There may be those who will oppose any remedial action by this committee or by the Federal Communications Commission on the ground that it might deprive those who were first in the field of the fruits of their resourcefulness and labors.
>
> The fruits currently enjoyed in limited-facilities communities are not as much the result of individual initiative or superior ability as they are of VHF channel scarcities and the artificial freeze imposed between 1948 and 1952.
>
> It is one thing to be the first in the field where competitors are free to follow. It is another thing to enjoy a clear field because competitors are enjoined from pursuit.

That was my concluding statement when I testified during the Potter hearings 2 years ago. That is ABC's conclusion today.

Senator POTTER. Mr. Cox?

Mr. COX. Are these drop-in V's that you propose in your suggestion to be fully competitive VHF stations, or are they to operate with limited power, reduced antenna heights, or directional antenna?

Mr. JAHNCKE. As I understand, they would be fully competitive. I would like Mr. Marx to speak to that.

Mr. MARX. It has been proposed in certain of the markets where they are not fully competitive with existing stations, but they do not take advantage of any future engineering developments, such as what might be proved in the use of directional antennas, for example, which would then make them equally competitive.

Mr. Cox. They would, however, provide stations which ABC would find it desirable to affiliate with?

Mr. Marx. They would provide class A service over the city and over the area to be served, but they would not, however, provide the large area of certain existing VHF stations going beyond, for example, protections afforded even within the sixth report.

Mr. Cox. This would materially, however, you feel, improve ABC's chances to develop competitively with the other two networks.

Mr. Marx. It is a question of getting into the market or not getting in at all.

Mr. Cox. In certain of the proposals to this committee it is still suggested that in, I believe, 12 of the top 100 markets the third facility would be a U station in competition with 2 V's. I take it it is your definite opinion that that is not anywhere near a competitive facility, or one which would permit ABC to enter into that market on anything like an equal footing; is that correct?

Mr. Marx. Well, our proposal does not consider a U station in the top 100 markets to be competitive with the V station.

That is true.

Mr. Cox. As I understand it, Mr. Jahncke, your analysis is that there are two primary problems facing the FCC, the industry, and the committee: Those are the provision of a minimum of three competitive facilities in the top markets; and, secondly, the preservation for the long-time growth of television of the UHF part of the spectrum.

Now I think that the proposals that you are making here, and some proposals that others have made, hold out the hope of perhaps achieving the first. Now with respect, however, to guaranteeing any kind of a future for UHF, it seems to me that your proposal boils down to a suggestion for the long-range development of all-channel tuners through the elimination of the excise tax on such receivers, and the deintermixture of certain specified areas.

Do you feel that, first of all, deintermixture can be effected on a wide enough basis to serve as an effective present holding operation for UHF; and that using that as a base, in time, the excise-tax proposal, if adopted alone, would accomplish the long-range result of making all sets able to receive all channels?

Mr. Jahncke. Yes. I believe there has been previous testimony that the turnover of TV sets is approximately 5 years. If that is true, you can project in 5 years, if they started making all-channel tuners now, at 5 years from now you would be over the hump of the problem. You wouldn't have 100 percent, but you would be well on your way. The majority of the sets would be all-channel tuners.

I think that both the excise tax, as well as the establishment of sufficient UHF areas, would be the two incentives to manufacturers to make all-channel tuners.

Mr. Cox. Do you think that some substantial good would be accomplished if the excise tax were eliminated only from all-channel color sets, with the replacement of sets that the advent of color may bring on?

Mr. Jahncke. I certainly think that the time to put out the fire is before it starts. There are 37 million black-and-white sets in this country and, as I understand it, about 50,000 color receivers. Therefore, color isn't here yet. It is several years away. If any arrangement can be made so that as color comes, as it will inevitably, it will arrive only in an all-channel atmosphere, that, like the excise-tax device, would insure that the problem is not perpetuated; but I was very alarmed to read the testimony of Mr. Hoffman here recently, in which he said that although the great bulk of the few color sets that have been produced to date were all-channel receivers, that the projection as a result of a questionnaire he sent out, as I recall, said that only about 11 percent from here out were going to be equipped for all-channel reception, which is discouraging. It means that here we have the classic pattern beginning all over again.

I will admit at the beginning is the time to do it. How you get—how you persuade them to make all-channel receivers for color, I don't know. That is the desirable thing to do. That is the ultimate, last, necessary step to complete the solution, without which the first two steps are useless.

Mr. Cox. And the maintenance in the meanwhile of at least certain areas in which UHF is given reasonable assurance of continued existence is necessary, first, to provide a market for such sets, even without excise tax or other incentives, and, secondly, to promote the development of the better sets and better transmitters, which Mr. Marx was talking about awhile ago. Is that your position?

Mr. Jahncke. Let me give you an example. Take the capital district of New York—Albany. A year ago there were 2 UHF stations and 1 VHF station on the air. One of the UHF's ceased operation. They have testified publicly, if they could be assured that the channel 10 drop-in which the FCC recently approved in Vail Mills, which is in effect the Albany area—if they were sure that wouldn't happen, and, therefore, instead of UHF having to fight multiple VHF competition, if they could receive assurance that the only VHF in the area would be the GE station, channel 6, they would go back to the air. They would take their chances.

I am happy to report that, within the month, ABC has negotiated an affiliation with this station, which will go back on the air—July 1—I think perhaps the first UHF to go back on the air.

Mr. Cox. That is WTRI?

Mr. Jahncke. WTRI. They will be the ABC affiliate in the capital district and they will have 2 UHF stations and 1 V. That is not an easy road for UHF, but in that atmosphere with network support, those 2 UHF stations will survive, but if you permit channel 10, a second VHF signal, to come into that area, they will not.

As far as WTRI going back on the air, if there is going to be a question about channel 10, I understand they will also apply for it, as will everybody else in the area. We say a UHF will survive, these 2 U's against 1 V in a market as large as Albany.

I don't think you can project it down the line to smaller points, but we say there is even a more complete solution for the Albany market. You can make it an all-V market or make it an all-U market. Proposal has been made that, if permissive moves are allowed by the FCC under change of rules, perhaps GE might request to move their channel 6 to Syracuse, which is also in New York, and request a substitution of a UHF channel for their operation in Schenectady. That would make it an all-UHF market, which would be even better, without hurting or penalizing GE for its pioneering in that area. That is another possibility, but it is important, certainly, to create as many areas like Albany where UHF can survive, because only through the maintenance of a lot of UHF areas will the manufacturers be interested in serving the UHF market with receivers and developing them.

Senator POTTER. Mr. Jahncke, what would you do about areas that are already mixed—would it be your recommendation that the Commission should deintermix the mixed markets?

Mr. JAHNCKE. Yes, sir; I think they should.

Senator POTTER. How would that be done?

Mr. JAHNCKE. Whether it is practical or not, I am not sure. You deintermix a market by 1 of 2 processes, sir. You either take the VHF out or take the UHF out. The consideration there is—the problem there is the automatic penalty to the person, say, suppose you have an area where you decide you can eliminate the V. The problem is to take away from a VHF pioneer his dominant channel, his class A position, even if you give him a UHF and take the position that at least he has competitive parity. You have taken something away from him because you have taken away his special advantage he has enjoyed since he has been a V. This is a problem.

Senator POTTER. It has been suggested.

Mr. JAHNCKE. In theory you can argue no one should object just to have an opportunity to compete equally. I can assure you that is all ABC wants. I am speaking about the theory.

Senator POTTER. I know. It has been suggested that there be a time limit involved—say 7 years, maybe longer—to allow a person to convert. If he has a V, to convert to a U, or maybe the other way around if they want to make it a U market and this happens to be a V in that market—allow him a period of time to make the conversion, not so much in the interest of the owner of the station as in the interest of the public who have money invested in sets, to allow them to make replacement of their sets with all-channel tuners. That has been suggested.

Mr. JAHNCKE. It seems reasonable, in any such arrangement, that the present VHF operator be required to put a UHF transmitter on the air promptly, and also he be permitted, as well as required, to operate both UHF and VHF during a period—any period of time is arbitrary. I don't know. It seems to me 7 years is a long time, but there certainly should be that period, and certainly it shouldn't be unreasonable. The VHF station in that community, I am sure, has made enough money in the past 5 years to afford it.

Senator POTTER. I want to thank you for your comprehensive statement and your views. I hope we do not have another 2 years without any improvement in the situation.

Mr. JAHNCKE. I hope this is my last appearance for ABC, sir.

(At this point Senator Potter inserted into the record 37 questions for which Senator Bricker wanted Mr. Moore and Dr. Turner to provide the answers. These questions are set forth in the subsequent volume on network practices in connection with Mr. Moore's testimony.)

Senator POTTER. We will stand in recess until 10 o'clock tomorrow morning, and we will meet in room 457. CBS will be the first witness tomorrow morning.

(Whereupon, at 5:03 p. m., the committee adjourned until 10 a. m., Tuesday, March 27, 1956.)

TELEVISION INQUIRY

(UHF–VHF Allocations Problem)

TUESDAY, MARCH 27, 1956

United States Senate,
Committee on Interstate and Foreign Commerce,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room 457, Senate Office Building, Washington, D. C.

Present: Senators Pastore (presiding), Potter (later presiding).

Senator Pastore. The hearing will come to order.

We have a letter here for the record. It is a letter from Mr. George C. McConnaughey, Chairman of the Federal Communications Commission, dated March 23.

(The letter referred to is as follows:)

Federal Communications Commission,
Washington, D. C., March 23, 1956.

Hon. Warren G. Magnuson,
United States Senate,
Washington, D. C.

Dear Senator Magnuson: This is in reply to your letter of March 16, 1956, enclosing a letter from Mr. Richard S. Salant dated March 7, 1956, relative to my testimony before the Interstate and Foreign Commerce Committee on February 21, 1956, concerning the charges of the telephone companies for intercity television program transmission. Mr. Salant's letter refers to a statement made by me before the committee to the effect that these charges "are very apt to go up." Specifically you inquire as to whether any hearings are scheduled or contemplated with respect to such charges.

My testimony referred to was not intended to mean that the Commission had reached any conclusions as to the reasonableness of the rates of the telephone companies for television program transmission service. In the testimony immediately preceding my statement, certain informal studies of the cost of furnishing television transmission service made by American Telephone & Telegraph Co. were mentioned. The most recent of these studies, which were completed last August and which reflect the situation as of the end of 1954, on its face purports to show that A. T. & T. is earning considerably less return on television transmission service than on its communication services as a whole. Under such circumstances, if the validity of A. T. & T.'s study be assumed, there would be little likelihood of reduced rates. It was this thought that my statement was intended to convey.

The Commission cannot, of course, make any firm conclusions as to the validity of A. T. & T.'s study and the results indicated thereby without a more thorough investigation of that study. Since the completion of the study, the Commission's staff has been engaged in an informal inquiry as to various aspects of the study. It is expected that the results of the staff's inquiry will be submitted to the Commission for its consideration in the near future. Whether or not formal hearings should be instituted will depend to a large degree on the information developed by this inquiry.

With respect to the further statement in my testimony alluded to by Mr. Salant, to the effect that the television industry has made a close study of the rates, I did not intend to convey that the committee of which Mr. Salant is chairman had reached any conclusion as to the propriety of the rates. My statement was only intended to indicate that we were aware that his committee also had this matter under consideration and had met with representatives of A. T. & T. with respect thereto.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*[1]

Senator PASTORE. Our first witness this morning is Mr. William Lodge, vice president of Columbia Broadcasting System. Mr. Lodge, before you begin, can you give us some kind of an indication as to how long you might be?

Mr. LODGE. Yes; my statement is about 30 pages long and I would judge that would possibly go an hour to an hour and a half.

Senator PASTORE. Then we have Mr. Heffernam, vice president, National Broadcasting Co. Is he in the room?

Mr. ERVIN. He is not here now. I would estimate his statement would take about an hour.

Senator PASTORE. The reason I am asking these questions, we are on the constitutional amendment on limited time today. We start immediately after the morning hour, which might mean around 11 or 11:15. We are too far removed from the Senate Chamber for us to get into a serious hearing here that might be a prolonged one unless we get closer to that Chamber. Many of us, of course, want to hear these debates.

We will proceed with Mr. Lodge. If this is going to take an hour or an hour and a half, and unless Mr.Heffernam is interesting in listening to this hearing, if there isnt anything else to do, we will recess at 12 o'clock. I dislike to have busy people wait around here 3 or 4 hours for their turn. I merely make that suggestion so you will know how the Chair feels.

All right, Mr. Lodge.

STATEMENT OF WILLIAM B. LODGE, VICE PRESIDENT IN CHARGE OF ENGINEERING, CBS TELEVISION DIVISION, COLUMBIA BROADCASTING SYSTEM, INC.; ACCOMPANIED BY RICHARD S. SALANT, VICE PRESIDENT, CBS, INC., AND SIDNEY A. ALEXANDER, CBS ECONOMIC ADVISER

Mr. LODGE. Mr. Chairman and members of the committee, my name is William B. Lodge. Because, as will be seen, many of the issues before you are primarily economic, I have with me today Sidney Alexander, CBS economic adviser. I am vice president in charge of engineering of the CBS television division, the division of the Columbia Broadcasting System which is engaged in television broadcasting—both through operation of four television stations owned by CBS, including a UHF station in Milwaukee, and through operation of a television network. I have bachelor of science and master of science degrees in electrical engineering from Massachusetts Institute of Technology. I am a fellow of the Institute of Radio Engineers and of the Society of Motion Picture and Television Engineers.

Except for a period during World War II, I have been continuously employed by CBS since 1931, and have spent much of that time on

[1] Mr. McConnaughey's testimony referred to in this letter appears at p. 181, pt. I, of these hearings. For Mr. Salant's letter, see p. 805.

problems concerning coverage and frequency allocations. My earlier experience had to do with radio (AM and FM) broadcasting, but since 1946 I have been most concerned with television broadcasting. My work in the past 10 years has included planning nationwide coverage by the CBS television network, determining the service areas of individual television stations, design of transmitting and receiving antennas, and choice of television transmitter locations. I work closely with CBS television audience research specialists and have had an opportunity to compare engineering contours with actual viewing. My experience includes personal investigations of VHF and UHF reception conditions in many parts of the country.

I am here to present the views of CBS concerning the perplexing problem of allocations. I shall try to present these views as simply and briefly as possible. You have before you, and I am submitting for the record, the CBS proposals and comments and our reply comments which have recently been filed by us in the current FCC allocation proceeding (docket No. 11532); these formal documents set out our views in far greater technical detail.[1]

The problem which confronts you and the FCC, as well as the entire television industry, is of extraordinary complexity. It has, quite understandably, given rise to many conflicting views, solutions, claims, and counterclaims. The conflicting proposals and contentions include risks of forcing either of two extreme courses: On the one hand, the course of continued inaction, or, on the other hand, the course of yielding to the tremendous pressures and taking ill-advised action for the sake of doing something.

CBS believes that neither of these courses is inevitable. We believe that action should be taken by the FCC and that the opportunity is presented to improve substantially the present allocation plan without threatening the whole structure of television. As we stated in our proposals and comments in the FCC allocation proceeding:

> CBS believes that experience under the sixth report and order has demonstrated an urgent need for revision of the present allocation plan in order to meet more satisfactorily the imperative present demands for additional competitive facilities while at the same time allowing for expansion of television services in the future and avoiding any significant reduction of existing services.

Senator PASTORE. I do not want to anticipate you in any way, Mr. Lodge, but the thing that concerns me at this very point is this: Apparently the FCC has already made a decision to go forward with the spirit of the sixth report and order. Now are you going to discuss the inadvisability of that anywhere along in your statement, or do you want to comment on a direct question that I might propound to you now.

Mr. LODGE. I would be glad to answer your question.

Senator PASTORE. In view of what you have said up to this juncture, unless I am anticipating it—I do not want to do that because it prolongs the hearing—are you prepared to give an opinion as to what you think of the decision on the part of the FCC already taken, to go forward with the sixth report and order and await this general survey and study that they are going to make, and which is going to take about 6 or 7 months, in order to determine what they should do as a permanent solution?

[1] The information referred to will be retained in the committee's files.

Mr. LODGE. Yes; though I discuss it later, my response to your question is that we recommend that there are certain changes that can be made within the confines of the sixth report and order, that probably they would not be in position to make until they have completed their study, though.

Senator PASTORE. What do you suggest that they do in the meantime; that they suspend the granting of these assignments, or do you feel that they can go forward and then determine later on what they ought to do—or don't you want to comment on that phase yet?

Mr. LODGE. We have not categorically stated that. We are definitely not of the opinion they should hold up action in the future and have a freeze in the meantime.

Mr. COX. Not?

Mr. LODGE. Not.

Senator PASTORE. The only way, sometimes, I can get a specific answer to a specific question is to cite a specific case. Are you familiar with the situation in Hartford?

Mr. LODGE. Yes.

Senator PASTORE. Now there was a representative of the ABC here yesterday who made the statement that he did not think that channel 3 ought to be granted to Hartford in the meantime; that possibly they ought to go someplace else. I do not want to get into that phase of where it ought to go, but along the lines of the question I have already asked you now, do you feel that it would be inadvisable at this time to go forward and to begin making grants and mixing these UHF areas with VHF, and then expect to unscramble it later on? If you are prepared to make a comment on that, if you do not feel you should——

Mr. LODGE. My comment is along further in my testimony.

I do touch on that further along.

Senator PASTORE. All right.

Mr. LODGE. But while emphasizing our view that there is need for revision of the present allocations, I should equally emphasize what must be exceedingly apparent to this committee—what indeed, may be the clearest point in this whole complex of issues—that there is no solution which will, or can, please everybody and hurt no one. To quote the statement of Dr. Stanton, president of CBS, in a letter to the Chairman of the FCC:

> At this stage of television's development in the United States—with a public investment of $15.6 billion and 453 stations on the air serving 36 million receivers—we believe it is imperative to recognize that there is no panacea which can increase the opportunities for a truly competitive nationwide television service without hurting someone to some degree. It is our opinion that many previous attempts to remedy the sixth report have foundered on the failure to recognize this basic fact. The result has been a continuing search to solve the problems which have developed since the sixth report by trying to find some formula under which everyone would get something and no one would lose anything. This is wishful thinking. We are convinced that no such formula exists.

It is clear, therefore, that the decisions which must be made are hard ones. Principles which are wholly desirable in the abstract may, and often do, result in irreconcilably conflicting allocation plans when reduced to practice. Indeed, one of the most dangerous games that can be played in this field is to state and accept general principles—with which, on their face, no man of good will could disagree—without demonstrating exactly what happens when these principles are reduced to a specific nationwide allocation plan.

I noticed yesterday you asked a question very much on that point, Senator.

For what I hope to make clear as we get down to specifics in this statement, is that principles are meaningless, useless and often misleading, until their application is precisely determined. In this field of allocations, everything has a price. To get A, you must give up B—or sometimes, B, C, and D. I cannot overemphasize, therefore, the importance of testing the general by the specific. Until you see the entire practical application of a particular proposal, with all of its side effects, you cannot tell whether you can afford the structure you are planning—or, inded, whether it will work at all.

Thus, and it is this lesson which above all must be learned before going forward with an allocation plan, it will not do simply to state principles, no matter what their surface attraction. These principles can only be tested by translating them, precisely and explicitly, in terms not only of who gets what, but even more important because in this field, as I've noted, you cannot get something for nothing—who loses what.

One more generality before I get to a specific analysis of the problems and the various plans or proposals which have been advanced: In determining the practicality of any plan, and finding its price, the primary touchstone must be the public. Harsh as it may sound, the first test against which to evaluate the several proposals cannot be a handful, or even a hundred, station operators or potential station operators, and their economic survival. Rather, in testing any plan, the questions must be, How does it affect the services to the public? Do they get more or less? Are they being forced to give up what they have demonstrated they like, and what they have gone to considerable lengths to get, in exchange for no service at all, or less service, or a different service which somebody has decided they ought to like, or ought to have.

We believe that some of the proposals which have been advanced here, and which appear on their face so attractive, are in fact fatally defective because they have ignored these basic considerations. They are rationalizations built out of the difficulties of individual station operators; and in their understandable anxiety to improve their own unhappy position, they have overlooked the public and the cost to the public of their proposals.

So much for generalities. I turn now to a more specific discussion of the problems and the proposals.

THE NATURE OF THE PROBLEM

Before we seek to solve the allocation problem, it is well first to try to isolate and define its precise nature. What the present difficulties are can, perhaps, best be defined by determining first just what the purposes, the objectives, of a television allocation plan should be; second, how far the current television pattern of service has gone in achieving those objectives; and third, the reasons why those objectives have not been met. Only after such a diagnosis is it possible intelligently to remedy whatever it is that ails the system.

So first to the question of the objectives of a television plan. They have been well summarized by the FCC itself in its recent notice of proposed rulemaking:

(*a*) At least one service to all areas.
(*b*) At least one station in the largest possible number of communities.
(*c*) Multiple services in as many communities as possible to provide program choice and to facilitate competition.

If these objectives are thus properly stated—and there has been no serious quarrel with them—we come to the second question: How nearly has each been achieved? The sixth report did, on paper, realize these objectives in this order of priority. By its allocation table issued in the sixth report and order, the FCC provided for assignments of television channels which theoretically would have (*a*) given a signal to virtually all areas in the United States; (*b*) given 1,240 United States communities their own stations; and (*c*) provided the opportunity for at least four competing nationwide television networks and many hundreds of independent stations in large and small markets, as well.

But, in fact, television has not worked out that way. Our television system as it has developed has attained only the first of these objectives. It has fallen short of the other two.

Objective (*a*), at least one signal to all areas, has been substantially achieved, since service has been brought to over 96 percent of the families in the United States. The small population currently unserved will increasingly come to be served by the erection of satellites and translators which give promise of bringing television service to those sparsely populated areas that cannot support program-originating television stations.

Objective (*b*), community stations, is being attained in only about 350 of the 1,240 cities in the continental United States to which channels have been assigned.

Objective (*c*), multiplicity of services, has only partially been achieved. About 84 percent of the families of the United States live in television markets which can, in fact, support 3 or more equally competitive television stations, but only 63 percent of the families live in markets which have been assigned 3 or more equally competitive stations under the sixth report. We estimate that the 100 leading television markets, which have been assigned 263 competitive commercial television channels, could actually support at least 400 stations. True, in these markets there are enough channels for 400 stations, but many are unused because they are not competitive—a subject to which I will turn in a moment.

And so, having determined the purposes of an allocation plan, and the respects in which the current plan has, in fact, proven to be defective, we can go to our third inquiry: Why have the second and third objectives not been met? Why has there been such a gap between the allocation plan's achievement of the second and third objectives on paper and its failings in practice?

The answer would seem to be obvious: Had all the channels assigned by the sixth report been taken up for use by stations, there would be no gap, the objectives would have been achieved, and none of us would be here today. The stark fact, however, is that the channels have not been taken up. The next question, therefore, which we must answer before we can seek solutions is: Why have they not been taken up?

Again, the answer to this question seems simple and clear: The channels have not been taken up, or where taken up have been abandoned, because they were not economically supportable. And it is here that we come to the critical questions, the answers to which must chart the course to any solutions: What are the factors which create this problem of economic unsupportability, and which of these factors can and should be alleviated by a revised allocation plan? For it is not enough to assign the channels where they would fulfill the objectives if they are taken up; it is necessary to assign them where they will be taken up and be supported. After all, the allocation problem now is primarily an economic one, secondarily a political one, and only in a limited sense an engineering one.

There are three principal, but separate, factors that render actual or potential stations incapable, in current circumstances, of operating at a profit. One factor is the competitive disadvantage which a UHF station suffers as against a VHF station. After all the testimony that this committee has heard I need not elaborate on the competitive inequality of a UHF station with respect to a VHF station. It is a problem both of conversion and of signal propagation.

A second factor militating against profitability is the disadvantage suffered by a station which is located in a smaller city whose viewers also receive service from other television stations in a larger neighboring city.

The third factor leading toward unprofitability occurs where the market area which the signal can reach is, in any event, too small to support a station.

Some stations suffer from a combination of these disabilities. Bridgeport, on which so much attention has been focused here, is an example of a station which suffers severely from the combination of the first two factors. Nevertheless, each of these is a separate and distinct source of economic trouble. One is the problem of UHF intermixture, the second that of the overshadowed city, the third that of the submarginal market. They are frequently, but should not be, confused.

Two of these factors—the second and third—are inherent characteristics of the geography of the location of population in the United States, in relation to the coverage areas of television stations. Many of the 1,240 communities in the United States to which television assignments have been made could not support stations in the immediate future. Of course, a day may come when it will be possible to operate a television station profitably in many communities that cannot now support one. But this is a problem which does not yield to a revised allocation table. To the extent that many of the 1,240 communities were assigned channels for the distant rather than for the immediate future, the failure of the channels to go on the air immediately should not be counted as a problem requiring solution right now.

And so there remains, insofar as a modified allocations plan is concerned, the problem of remedying those defects which are the result of the intermixture of UHF and VHF channel assignments in the same or overlapping markets. There is insufficient multiplicity of services (objective (*c*)) because the UHF channels assigned to the leading markets are unable to compete with the VHF channels in those markets. Similarly, the opportunity of smaller communities served with good signals from outside cities to have their own television stations (objective (*b*)) is usually limited because they are assigned UHF channels which would have to compete against VHF signals from the larger cities.

An allocation problem exists today, therefore, principally because, as hindsight has proved, a basic mistake has been made in the nationwide pattern of television assignments. That mistake is the intermixture of UHF and VHF channel assignments in the same or overlapping television markets. While the mistake is clearer now than when the sixth report was issued, and while, as of that time, it could not be said the Commission was wholly unreasonable in its hopes and expectations, I must point out that CBS, as well as others in the industry, consistently warned against intermixture throughout the formative period of our national television system. See exhibit 1, attached herewith: It is a brief summary of our consistent opposition to intermixture during the formative period of the present allocation plan.

Exhibit 1 is a loose sheet—of which there are three—contained in the same envelope as my statement. It is a brief chronological summary of our opposition to intermixture. I won't go through and read all the quotes.

Senator PASTORE. I think it ought to be inserted in the record at this point.

(The information referred to is as follows:)

CHRONOLOGICAL SUMMARY OF CBS OPPOSITION TO INTERMIXTURE

December 1948: "* * * should both VHF and UHF assignments be planned for the same city?" (Lodge, FCC Engineering Conference).

August 1949: "* * * the proposed table of allocation * * * is unsound to the extent that it establishes widespread mixing of VHF and UHF channels in individual communities" (CBS statement re FCC Report 49–948).

September 1949: "* * * An increase in the number of cities which would have both VHF and UHF television transmitters would not appear to be in the public interest * * * the projected UHF stations would be required to operate at a serious competitive disadvantage with the VHF stations. * * *" (CBS comments, docket No. 8736 et al.).

October 1950: "* * * UHF television stations are capable of rendering a real public service, but our present limited experience indicates that stations assigned to these frequencies should be expected to compete most effectively with other UHF stations in the same area. * * * Columbia believes that mixing of UHF and VHF channels in individual communities should be avoided wherever possible" (Lodge, in docket No. 8736 et al.).

September 1951: "It is generally agreed, and the Commission itself has recognized, that for a considerable period, perhaps 5 years, perhaps more, a commercial UHF station cannot compete on anything like an equal basis with a commercial VHF station in the same community" (Ream, in docket No. 8736 et al.).

June 1954: "We are persuaded that the events since the lifting of the freeze confirm the correctness of our view, expressed in 1950–52, that the UHF portion of the spectrum should not be used in such a way as to require it to compete with the VHF portion of the spectrum in the same markets" (Stanton, before Potter Senate subcommittee).

December 1955: "There is now, however, ample evidence that, normally, UHF stations are not competitively equal to VHF stations" (CBS comments, docket No. 11532).

Mr. LODGE. I point this out not because "I told you so" helps the problem or gives us any satisfaction. I point it out only because there have been some implications that the networks are somehow responsible for the present situation. The accurate fact is that the real culprits are the physical laws governing signal propagation and the expensive conversion required to receive UHF signals.

CONFLICTING OBJECTIVES

Thus, I believe we have answered the three threshold questions: (1) What are the objectives of an allocation system; (2) how nearly have these objectives been met by the current plan; and (3) to the extent that it has failed, why has it failed? By thus isolating and identifying the disease, I believe that I can now go on to discuss and evaluate the possible remedies. But before doing so, we must face another hard but inescapable fact: Given limited spectrum space and the competitive disadvantage of UHF, these three objectives, each so wholly important, appropriate, and desirable, are, in considerable degree, mutually exclusive and conflicting.

Remedies that serve to achieve one of them will usually be found to injure another. Any evaluation of a proposed action to meet the allocation problem, therefore, involves exceedingly hard choices—a delicate balancing of its contribution toward one objective as against any loss to the others, as well as the cost of adoption of the proposed action.

Senator PASTORE. At this point, Mr. Lodge—this may be a rather unfair question to you, particularly, but I am going to ask it anyway, and if you feel it isn't within your purview to answer it, you don't have to: Much of the complaint that has been made by some of the UHF operators is the fact that they have a contract with a network and the relationship seems to be fine. Then a VHF assignment is made in that community, and their complaint is that they lose their contract with the network, and the network picks up a contract with the new VHF assignment.

The first question I ask you: Would you agree with that statement?

Mr. LODGE. I have heard that; yes.

Senator PASTORE. Is the statement true?

Mr. LODGE. It is true in some cases. We have dropped UHF's and picked up VHF's.

Senator PASTORE. I think it is important for the record for you to tell us why.

Mr. LODGE. I think I can answer that.

Senator PASTORE. Yes. I think you should. I think we ought to have an answer from your point of view.

Mr. LODGE. I don't want to pretend to give all the business reasons, but I can give you the engineering reasons.

Senator PASTORE. I think some of the business reasons are important, too. I mean, if we have any witnesses here who can testify to them we will be glad to hear them, because when any charges or countercharges are made against the networks, I think we ought to get their side of the question too.

Mr. LODGE. The answer is a very simple one. We believe we would serve a larger audience and deliver more homes to an advertiser by making such a shift, just in attempting to improve the coverage of our network.

Mr. COX. Do you believe in the case of Fresno that by dropping affiliation with KJEO, and taking an affiliation with KFRE, you will actually provide service to people who do not now receive television service—in substantial numbers?

Mr. LODGE. I do.

Mr. Cox. That is, areas which are white, in the true sense that they receive no signals, either from Fresno or from outside areas?

Mr. Lodge. Yes. I am sure we will serve homes with KFRE that we do not serve presently.

Mr. Cox. Can you tell us to what extent?

Mr. Lodge. I don't have the quantitative number of homes, but my recollection is that there would be a strip, a ring, which in theory is about 20 miles in extent; in other words, our service area would be extended to the extent that we can theorize on paper by about 20 miles in radius, but in actual practice, particularly in the coastal side of the California Valley, there are many rugged declivities in which there are homes—living in river bottoms—who I am sure now fail to get UHF at all, and who will get the new VHF station.

Mr. Cox. Are your estimates as to added coverage based upon predicted coverage for the present UHF station and predicted coverage for the VHF station, under FCC engineering standards, or are they based upon actual measurements of present UHF service?

Mr. Lodge. They are based upon the sum total of our best judgment of what our service is at the present time and would be after the VHF is built. Obviously, we have no measured information on the VHF because it still is not on the air. So I have to make my appraisal of how the service will compare from the station not yet on the air with the one that is now on the air; and based on all the information we have, we will improve and increase the number of homes that we serve.

Mr. Cox. I am not sure you answered part of my question.

Mr. Lodge. I am sorry if I didn't. I tried to.

Mr. Cox. That was as to whether or not this estimate that you extend your service 20 miles, is that beyond measured coverage of the present UHF station?

Mr. Lodge. I do not believe we have a measured survey on KJEO, so it would not be based upon a measured contour of either station since, as I said, the V is not on the air, and I do not believe we have a measured contour of KJEO. It would be an estimate to project, with the best information we have, the extent to which the service area would be expanded.

Mr. Cox. Are your calculations of service areas, where you lack actual measurements, based on standards which give you a wider coverage than is obtained under FCC calculations?

Mr. Lodge. In some cases they are wider; in many cases they are not as wide as those of the FCC's standards, because we have found that in practice they do not match what we have found to be the exact natural pattern of listening. I can give you an example.

Senator Pastore. Well, before you go any further, Mr. Lodge, let's face it: Every operator of every station and every network, academically, is interested in the public interest. We start on that score; but from a practical point of view, every operator and every network is in the business to make profits, which is a legitimate objective. I am not being critical, and whether or not you are right, at least you are making your new contracts with the VHF stations because you think it is more profitable to do so. Am I right?

Mr. Lodge. We think we will serve a larger audience, and that that, in the long run, is desirable.

Senator Pastore. I am trying to get away from academics.

Mr. LODGE. Sure. We want to be the best network.

Senator PASTORE. Where you can get the best deal?

Mr. LODGE. I don't know. We want to serve more people than our competitor.

Senator PASTORE. Let me change that way of putting the question. In other words, you think it is better from an economic point of view for CBS to make a contract with a new VHF station, as against renewing an existing contract with a UHF station, because you feel that it will service more people and it will bring a better economic relationship between the two parties in the new contract.

Mr. LODGE. I do know about the last part of your question, and I am not trying to avoid it, but we certainly feel we will serve more people that way.

Mr. COX. That will bring more advertising revenues to you in competition with another network or with the local station in that area?

Mr. LODGE. It is a very competitive business. We would like to do the best we can in opposition to our——

Senator PASTORE. I want a categorical answer on this. I think we are all being too cagey on this. I understand it. I am not critical. The big question is why, when a VHF assignment is made—and I think this is important for the members of Congress that have to decide these questions. I think we should get truthful answers; not that I am saying anyone is giving false testimony, don't get we wrong on that—but I think we should have direct answers. The reason why the networks are making contracts with the new VHF assignments is because they think it is better for them to do it that way, economically and otherwise, and let's face it. I think we ought to get direct answers on it——

Mr. LODGE. Well——

Senator PASTORE. Because the UHF stations come in and say they are being pushed around—are they being pushed around? In other words, if the tables were reversed, would the UHF operators do the same things themselves?

Mr. LODGE. I think they would.

Mr. COX. Have you had any complaints as to the service that has heretofore been afforded by the UHF station in Fresno? That is, within the limits of the propogation characteristics of its channel, has it provided a good TV service?

Mr. LODGE. I personally know of no letters from the public, if that is what you mean, complaining of poor service.

Mr. COX. Has it achieved substantial coverage within the outer limits of the range of its signal?

Mr. LODGE. The data that I have are not very complete as to the outer range. Within Fresno and its immediate environs, there is good reception on UHF.

Mr. COX. Do they get a good signal into Merced?

Mr. LODGE. I have only hearsay comments on that, which indicate that it is marginal in Merced and that some people get good service and others do not get snow-free service on UHF.

Senator PASTORE. May I pursue this a little further, Mr. Lodge?

How would the public interest be affected in the event that the Congress allowed authority to the FCC to interfere in this liberality on the part of the networks in changing from UHF contracts to VHF contracts in a particular locality?

Mr. LODGE. I am afraid I can't answer that question, sir. Mr. Salant might be able to.

Mr. SALANT. Sir——

Senator PASTORE. Do you understand my question?

Mr. SALANT. Yes. This is a subject which we plan to deal with rather comprehensively in the last phase of these hearings dealing with network practices. We will then discuss in full the whole issue of our criteria in affiliating with stations: Why we affiliate with some stations, why we don't affiliate with others. There is a fixed policy and pattern which we will describe in full at that time.

Senator PASTORE. All right. That satisfies me. I think that the record ought to be made clear on that, because one will get the impression sometimes in listening to some of these operators that maybe we ought to interfere in that sphere. Now the question I asked for the record is how will that affect the public interest one way or the other?

Mr. SALANT. We will address ourselves specifically to that question.

Senator PASTORE. I think that is a very important phase of it.

Mr. SALANT. Yes, sir.

Senator PASTORE. You were on page 10.

Mr. LODGE. Three main factors cause the objectives to come into conflict. The first, and the most important is the fact that a UHF station at full power usually has a coverage area substantially smaller than a VHF station at the same location. Consequently, those solutions which involve the substitution of UHF for VHF service in a particular area in order either to promote community stations or multiplicity of services will usually involve some reduction in the total area served—thus impairing objective (*a*)—at least one service to all.

The second factor leading to conflict of objectives is the physical fact that when a new station is dropped in among stations assigned by the sixth report its area of interference will generally greatly exceed its area of service. Consequently, the use of such drop-ins for community television stations will frequently reduce the multiplicity of service (objective (*c*)) and possibly the number of families receiving at least one signal (objective (*a*)).

The third important basis of conflict among the objectives is the scarcity of VHF channels. If a VHF channel is available for assignment in any area, its use for the community station objective will generally preclude its use for the multiplicity objective, and vice versa.

With these conflicts in mind, let us now examine the various solutions proposed, to see how they serve or disserve the objectives of our national television policy, and at what cost.

PROPOSED SOLUTIONS

Many proposals submitted to the FCC and described in testimony before this committee aim at specific changes in particular markets. The cumulative effect of these proposals, plus similar ones that would be forthcoming if these were adopted, would lead to a general modification of the basic structure of the allocation system as laid out in the sixth report and order. Other proposals have attacked the problems in greater generality. All these proposed solutions can, I believe, be summarized in three broad groups.

1. Deintermixture;
2. VHF drop-ins on present VHF channels;
3. New VHF channels.

I shall consider each of these groups of proposed solutions in turn.

DEINTERMIXTURE

Since the present allocation problem largely arises from intermixture, it might seem that the most obvious remedy would be to eliminate intermixture by a procedure that has come to be called deintermixture.

Senator PASTORE. May I interrupt you, please? This is a little bit far afield from the present point that you are discussing, but yesterday—and I am directing my question now to Mr. Salant—Mr. Jahncke, in testifying before the committee, in his remarks yesterday on page 7 made this statement:

> This committee should consider interim regulation of VHF stations in monopoly and duopoly markets by a variation of the plan suggested by Dr. DuMont in the Potter hearings 2 years ago. This would require—

this is the important part of it—

> this would require VHF stations in a market where there are less than 3 competitive outlets to share their service equally among the 3 networks.

I should like to have a comment—not now, but later on—from CBS and NBC on that point.

Mr. LODGE (resuming). That procedure (deintermixture) involves the shift of VHF station assignments in certain television markets to UHF so that the markets concerned will have only UHF stations competing with each other. The cancellation of the VHF assignments will usually permit additional VHF assignments elsewhere.

Just how far deintermixture might be pushed depends on the extent to which we are willing to incur its considerable cost to the public in terms both of dollars for set and antenna conversion and of service loss to fringe areas which can be reached by VHF signals but not by UHF signals. Let us consider in turn various degrees of deintermixture from the most modest to the most extreme, and assess the extent to which each serves or disserves the objectives of the allocation plan. I shall also try to indicate the dollar cost to the public of conversion under each plan considered.

In making this evaluation of various deinteximture plans, a fundamental fact is the difference in the coverage of VHF and UHF stations. In general, UHF gives less coverage than VHF. Just how much smaller the service area of a UHF station will be as compared with that of a VHF station depends upon the local conditions governing radio wave propagation, principally the terrain. In some localities, Florida for example, the two types of signal may be fairly nearly equal in service range. In other areas, where conditions are less favorable, the radius of coverage of the UHF station may in some directions be a small fraction of that of the VHF station. As a broad general average, I would judge that while a full power VHF station can be expected to have a service radius of at least 60 and frequently more than 75 miles, a UHF station at full power will do well to have a service radius of 35 miles and very well indeed to have one of 50 miles. Translated into terms of area, this means that, on the average, a VHF station may serve 2 to 4 times the area of a UHF station. But UHF has another drawback: If the terrain is rough, or if there are large buildings or other high objects casting a shadow, a UHF station will have many local pockets of poor service creating a "swiss cheese" effect in its coverage pattern.

In any actual case of the substitution of UHF for VHF service at a market center, some of the lost service area can be made up by the appearance of new stations in outlying cities. But the area that loses service may frequently not have a population large enough to support a station by itself, even though it may represent a substantial addition to the population served by the VHF station at the market center.

Mr. Cox. In that connection, Mr. Lodge, you suggest that a VHF station may serve 2 to 4 times the area of the UHF station. Now in many areas, because of population concentration, the difference in number of homes served would be substantially less—isn't that true?

Mr. Lodge. On two factors: First, because you might be penetrating into other markets well served from within, and also because the population density tends to fall off as one goes into rural areas. But I would like to add, however, that the shadow areas—and you have them even in rolling terrain such as surrounding Washington, New York or Providence—that back of the hills, if a person lives 200 feet down behind a rolling hill, his service from UHF would be quite inferior, so the loss is not confined just to a theoretical range.

Mr. Cox. We were advised, I think yesterday, that it was agreed in the Hartford deintermixture case that the issue of white areas was not involved.

Mr. Lodge. I believe that was based more on theory than on fact.

Senator Pastore. How are you going to overcome this argument on intermixture if that is the case? If you happen to be behind one of these rolling hills and you won't get UHF so well, then how are you going to argue against a VHF being assigned by the Federal Communications Commission, if they take the position "We feel that the public interest requires our assignment of a VHF station to give them a better quality of signal"? How are you going to argue against that?

Mr. Lodge. You get right down to a choice of choosing the lesser of several evils: A limited number of competitive assignments, on the one hand, or equal competition, and a few people would lose service in achieving that.

Senator Pastore. Would you make the categorical statement that unless something is done about deintermixture, it might well mean, in time, the complete disappearance of UHF from the TV scene?

Mr. Lodge. No; I don't believe that would necessarily happen, unless there are additional VHF channels made available. I believe that the pockets of UHF operation—such as Scranton, Wilkes-Barre, Youngstown, South Bend, and there are others—where you have UHF operating successfully today, and where they are not suffering from competition from VHF—I see no reason, as long as the channels remain available to those stations, why they cannot continue to give satisfactory service to the people now receiving it.

Mr. Cox. Would that provide a sufficient economic base for the future development of better transmitting and receiving equipment in the UHF area, and would it in any sense stimulate the production on a nationwide basis of all-channel receivers, which would eventually, perhaps, contribute to ability to intermix allocations?

Mr. LODGE. I don't believe those pockets would stimulate nationwide distribution of all-channel receivers. I don't pretend to be an expert on manufacturing, as to how many potential buyers you have to have to keep the market flowing with UHF receivers, but I feel quite sure that if there is a hundred thousand or two hundred thousand potential receiver sales in UHF markets, that there are plenty of manufacturers who would be glad to try to sell those sets. In other words, there will be UHF sets continued to be available even for this smaller number of markets.

Senator PASTORE. But following it a step further, we are not actually talking about a nationwide competitive TV system, though, are we, insofar as UHF is concerned? What we are actually talking about is either the establishment, or the maintenance, of a UHF island, so to speak.

Mr. LODGE. That, I believe, is the trend that is going on now. There has been a great deal of talk about the excise tax. That could well be a tool which, if used, would encourage the spread of all-channel receivers.

Mr. COX. If you have UHF continuing in existence only in Wilkes-Barre, Youngstown, South Bend, and the areas where there are, as I understand it, not even any allocations of V channels to compete with them, how is that ever going to permit UHF to function as a part of the development of a nationwide competitive TV system? Aren't you going to be limited for all time, unless additional V channels are obtained, to the number of multiple services in the number of markets which can be accommodated by the present 12 VHF channels?

Mr. LODGE. I believe there are some improvements that can be made in the utilization of the present 12 channels, but I agree with you that if UHF is limited to, let us say Scranton and the other cities, it is not going to have people buying UHF receivers here in Washington, D. C.

Senator PASTORE. May I interrupt at this point?

This is off the record.

(Discussion off the record.)

Senator PASTORE. Let me call a recess until 11:20, and if in the meantime Senator Potter comes in he can resume the hearings before that time. Is that satisfactory to the witnesses? I hate to do this to you, but I have to go to this presentation.

(Short recess.)

Senator POTTER (presiding). Mr. Lodge, we have a free substitution rule here in the Senate. [Laughter.]

Mr. LODGE. The two-platoon system.

Senator POTTER. I personally regret that I had another committee responsibility that kept me from being here when you began your statement, but you may proceed now.

Mr. COX. I have a question, Senator.

Senator POTTER. Yes.

Mr. COX. The point I am trying to make, Mr. Lodge, is that if UHF can provide a satisfactory service only in the three communities you mentioned, and maybe a couple of more——

Mr. LODGE. There are more than that. I didn't list them completely.

Mr. Cox. That means that for the balance of the country we can look only to VHF to provide us with a competitive nationwide TV system—is that right?

Mr. Lodge. Unless something is done to encourage the sale of UHF receivers.

Mr. Cox. Which you say will not come on any nationwide basis just from the maintenance of these limited markets.

Mr. Lodge. I would think not, unless the excise tax change is made.

Mr. Cox. Why is UHF able to provide a satisfactory service in Scranton and Youngstown and not in other areas? Aren't those areas rather rugged terrain?

Mr. Lodge. You have to say what satisfactory is. It is satisfactory to the people who live there, and the people who are beyond the range of the stations do not know that they are missing something.

Mr. Cox. Isn't it true that the service that you talk about losing through deintermixture is largely service that has not yet been received?

Mr. Lodge. No. If you deintermixed, that would mean taking away some VHF service that had already been established there, and in that case, you would really hear about it.

Mr. Cox. That isn't true in Hartford, Madison, Peoria, Evansville, Fresno, and a number of other areas, is it?

Mr. Lodge. If the stations are not yet on the air. That is correct.

Mr. Cox. And with respect to the Fresno situation where you said you thought you were going to serve additional areas, isn't it true that signals from Salinas and Bakersfield do come into the marginal coverage area of the Fresno stations?

Mr. Lodge. There is service coming in from outside of a marginal nature, but it is not as good as the high-grade quality picture that could be achieved from the local Fresno V.

Mr. Cox. If UHF is not going to be a satisfactory service in certain areas, why is it that CBS is buying a UHF station at Hartford? Aren't you going to have a problem giving satisfactory service there to viewers, if there are hills and shadowed areas?

Mr. Lodge. Again, we feel it can serve a substantial number of homes with a good signal there. True, we would like to serve more, but the number that we can serve is a substantial number.

Senator Potter. How much power will you have in your new UHF station in Hartford?

Mr. Lodge. The application we have filed is to continue the power at present, as I recall, around 250 kilowatts ERP.

Senator Potter. Do you have any plans for increasing your power to the maximum amount?

Mr. Lodge. We have not filed such an application with the FCC in the initial stages. Normally, in the development of the station I imagine we would.

Senator Potter. Do you agree with the testimony of Mr. Moore, or his engineering representative, that the engineering required for a UHF station can be developed to bring in a signal——

Mr. Cox. Mr. Jahncke——

Senator Potter. Yes; Mr. Jahncke's engineer.

Mr. Cox. Mr. Marx.

Senator Potter. Which is comparable to VHF?

Mr. LODGE. I am afraid I cannot agree with him on that. Where the service is good, near the center and out for a certain distance, they will be quite comparable; but there will come a time, both for the people who live down in valleys and behind hills, and as you get out behind the curvature of the earth, 30, 40, 50, 60 miles out, where I know of no way of making them equal.

Senator POTTER. Even with increased power?

Mr. LODGE. Even with increased power. If you want to presume towers that are 3 or 4 thousand feet high, then, theoretically, it could be done; but given the same tower heights, I know of no way of making them equal.

Senator POTTER. Then it is your position that UHF is an inferior signal?

Mr. LODGE. Its signal is just as good as the VHF within confined areas. It cannot equal VHF in service range.

Senator POTTER. What would be the maximum range under maximum power?

Mr. LODGE. It depends entirely on the terrain. Before you came in I mentioned Florida as a case that is extremely favorable to UHF, and under those conditions, many people, and I among others, have seen a good signal 50 and 60 miles away from a UHF station. You mentioned Hartford. I would like to use that as an example on the other side. The town of Waterbury is 19 miles from the transmitter of the station we have been discussing, and which we are hoping to purchase—and in Waterbury, 19 miles from that station, you cannot find a picture—19 miles away. So you have the two extremes: 60 miles, pretty good in flat territory; 19 miles away you can't even find a picture in another condition.

Mr. Cox. Are those people without TV service, or do they get service from other stations?

Mr. LODGE. They get marginal service from New York, 75 miles away, rather than service 19 miles away just because of the terrain and the difficulties of UHF bending over the hilltops.

Mr. Cox. If you think you can provide a substantial service in Hartford, then that same service could be provided by UHF stations in any area that might be deintermixed to all UHF service?

Mr. LODGE. Yes. The problem, of course, becomes whether or not in that restricted fringe there is enough population to support other stations so that you will replace the lost fringe service with new stations.

Mr. Cox. I would like to raise this question: Is there some danger that in trying to get the maximum coverage from one signal—to get a service to everyone, even in outlying areas—we will, in insisting on carrying out all of the provisions of the sixth report, effectively kill off any substantial UHF development, so that for all time the people of this country are going to suffer under the limitations of a TV system that can only grow to a certain point, and then has to stop.

Mr. LODGE. Definitely. That is what I meant earlier when I said there was a basic conflict between the three objectives—the objective of getting competition on the one hand, and the objective of getting one signal throughout the country on the other.

Mr. Cox. Would you care to say which of these conflicting objectives you think is the more important—to get one service, at all costs, to everybody, or to maintain some flexibility and room for growth in a TV system so that the 85 percent of the people who may be within reach of larger communites can have multiple services?

Mr. LODGE. I think that has to be answered two ways. One, if we were starting from scratch—and the other starting in the year 1956. I do touch on this further on in my testimony.

Mr. COX. Well, fine.

Mr. LODGE. I am not trying to avoid answering your question now.

Mr. COX. Wait and cover it then.

Mr. LODGE. The conclusion, just to anticipate it, is that it is a little late for deintermixture; that it is too difficult to take away from people the service they have.

Mr. COX. This, however, would apply only to deintermixture which involves the deletion of existing VHF stations?

Mr. LODGE. Yes.

Senator POTTER. You may continue, sir.

Mr. LODGE. Keeping this in mind, let us now turn, gentlemen, to the consideration of the most modest general deintermixture plan. That may be termed nondisruptive deintermixture. By that I mean deintermixture that does not involve taking any operating VHF service off the air but merely preventing new VHF services from going on the air where UHF has a good chance of surviving in their absence. By means of nondisruptive deintermixture in a few markets, a few more islands of UHF operations may be preserved. In most cases these would involve UHF stations surviving in a somewhat unequal competition with one VHF station. Experience to date indicates that, in general, UHF stations can survive in competition with one VHF. They have much greater trouble surviving in competition with 2 VHF's, and except in extraordinary circumstances virtually no chance against 3 VHF's.

Mr. COX. Isn't the trouble that they have in surviving in competition with 2 VHF's such that only about 3 stations are presently surviving and, as Mr. Jahncke pointed out yesterday, they are hanging on by the skin of their teeth?

Mr. LODGE. It is darned tough.

Mr. COX. It is so tough as to be almost impossible unless something is done?

Mr. LODGE. I would agree.

Mr. COX. Now, in connection with this nondisruptive deintermixture you are talking about, are you familiar with the plan which was outlined to the committee by Mr. Storer?

Mr. LODGE. That was the term I used of a general nature to describe the Storer plan and several others of a similar nature.

Mr. COX. Substantially this plan—either Mr. Storer's or any other that doesn't involve the elimination of existing V stations—is simply an effort to extend these islands that you talk about in Youngstown and Wilkes-Barre into other communities, so that whatever good could come from that would be increased?

Mr. LODGE. I think "preserve" is a better word than "extend." He was not intending to open up new markets that did not now have UHF.

Mr. COX. I think that is a point well taken, but it would, in effect, give continuity to a number of these areas which otherwise are going to go by the board.

Mr. LODGE. That is right. That was the purpose of his plan as I understand it.

It is a close decision whether the sixth report should be so modified as to prevent additional VHF stations going on the air where such a bar would preserve UHF islands. In my judgment, it depends on what other action is being taken on a larger scale to meet the allocation problem. Nondisruptive deintermixture by itself would apply to too few markets to make a significant contribution to the overall problem. Let us next consider deintermixture with a more systematic basis for selecting markets to be deintermixed, as part of a broader attack on the allocation problem.

Mr. COX. How many would be needed?

Mr. LODGE. More than this would provide in any event.

Mr. COX. Mr. Storer estimated, I think, that the areas which he was discussing included 20 million people and 4 million UHF sets, and I think both Mr. Chamberlain of GE and Mr. Engstrom of RCA indicated that in their opinion that much preservation, for all time, of UHF would provide a substantial incentive to manufacturers to develop improved transmitting and receiving equipment.

Mr. LODGE. Well, I don't think that is the problem so much as how do you get UHF receivers in all homes.

Mr. COX. Don't you start by trying to keep some homes where everybody has to buy a UHF receiver? That is one way to keep UHF stations in operation, by providing them with receivers?

Mr. LODGE. But that makes no improvement over what we have today. That merely preserves the status quo.

Mr. COX. But isn't there some possibility that preserving the status quo, as far as UHF is concerned, will be better than permitting the present trend to continue, which will substantially destroy the status quo?

Mr. LODGE. Well, first of all, we have to go back to the 3 objectives which I spelled out 5 or 6 pages back, which is national service.

Mr. COX. Local service?

Mr. LODGE. A number of signals available in each area, and local service. Now, Mr. Storer's plan, constructive though it is, does not cut into the local station problem one bit. It makes very, very little progress there, and if you gentlemen are anxious to have that third objective—if you want the local station to grow and become a factor in service to the public—there has to be some way to get receivers into all of the towns that these little stations would like to operate in.

Mr. COX. Isn't it true, though, that local service can develop on the margin of an area that is served by all UHF stations, or with only one V, much better than it can on the margin of an area served by all V stations, because there are far more UHF channels that can be allocated for such local services as they become economically supportable?

Mr. LODGE. That was the very point I had in mind, because there are very few cases in point like that—towns where you would get local stations under such a plan. You see it doesn't go to Bridgeport, to Trenton, Asbury Park—I mention these along later on—it doesn't open up towns.

Mr. COX. The only solution that would make possible the development of a local station in those areas is that you find some means to put a V channel in those areas, on whatever basis it may be. Isn't that true?

Mr. LODGE. Well, you could theorize, and I certainly don't advocate shifting everything to UHF. That would also do it, however.

Mr. Cox. In other words, the only way a local station can ever exist in Bridgeport is to be a V.

Mr. LODGE. Or to have all receivers with the UHF band in them. Under those conditions the ability to tune in is no longer a hardship to the local station.

Mr. Cox. You have to either have some device that is going to produce all-channel sets on a nationwide basis or you have to have some sort of a V channel in a market that is overshadowed by a multiple-service V market?

Mr. LODGE. I think that is right.

As an example of a minimum systematic deintermixture plan combined with a broader measure to remedy the allocation problem, we might imagine a deintermixture plan aimed at providing 3 or more competitive stations in those 16 of the 100 leading television markets which could not be assigned 3 or more competitive channels in a controlled VHF drop-in plan, CBS plan I, which I shall describe shortly. I am not proposing this deintermixture plan, but am merely using it here as a convenient example to illustrate the nature and effects of a minimum systematic deintermixture plan.

Such a deintermixture plan would involve a shift to UHF of 27 VHF channels in 16 markets. Twenty-four of these VHF channels are already occupied by operating stations. These 16 markets contain about 4 million families; about 3 million of them already have sets, 2½ million have VHF only. The extra cost of conversion to these families would probably be of the order of $125 million, and more than 300,000 people would be deprived of all television service because of the lower UHF coverage compared to VHF.

This is the responsibility, Mr. Cox, you and I were discussing a moment ago.

Mr. Cox. In that connection, I take it that in these 16 markets you are talking about there are also already UHF stations on the air?

Mr. LODGE. Yes; there are.

Mr. Cox. How many of them—do you know?

Mr. LODGE. No; I don't. I would have to go back to the chart, unless Mr. Alexander has it.

Mr. ALEXANDER. I don't have the total. You can count them up from this. They are listed.

Mr. LODGE. Can you tell me what the cities are?

Mr. ALEXANDER. Yes. The ones in table III, the ones that have on the right-hand side the statement saying "UHF."

Mr. Cox. That is on page III-1.

Mr. LODGE. I have it here if you would like them in the record.

Mr. Cox. That would be San Diego.

Mr. LODGE. That is right.

Mr. Cox. Hartford.

Mr. ALEXANDER. That is right.

Senator POTTER. What page is that?

Mr. ALEXANDER. Page 3 dash 2—Roman III, Arabic 2.

Mr. Cox. Columbus, Augusta, Topeka, Louisville, Baton Rouge, Kalamazoo-Grand Rapids, Rochester, Charlotte, Greensboro, Raleigh, Dayton, Toledo, Erie, and Providence?

Mr. LODGE. That is correct. I want it thoroughly understood we are not proposing such a plan. We merely use it for illustrative purposes to see what would happen.

Mr. COX. You selected those markets not because they are particularly apt for all UHF development, but because they are the ones in which you could not find enough V allocations to provide three competitive V services?

Mr. LODGE. Purely an arbitrary choice to see how much you accomplish with a little bit of deintermixture.

Mr. COX. Do you know—when you say that there would be more than 300,000 people deprived of TV service—that in the areas from which V service would be withdrawn, there are 300,000 people not receiving signals from any other communities?

Mr. LODGE. I am sorry. I did not get your question.

Mr. COX. That is, is your estimate of loss of service to 300,000 people simply based on recalculating the coverage of a UHF station in Hartford as compared to the theoretical coverage of the V, without regard to whether they are getting some kind of V service from New York, from New Haven, or a U service from some other community?

Mr. LODGE. No. These 300,000 people are those who would get no other service at all, because of the shrinkage of the total service.

Mr. COX. That is, you look not only to the service coverage from this market, but all surrounding markets?

Mr. LODGE. All surrounding markets as well. This is new white area, to use the common phrase. Even this plan would bring relatively little relief to overshadowed community stations, however.

Mr. COX. Some of them, at least, are in fairly populous areas where there may be satellite communities which in time could support their own TV stations?

Mr. LODGE. Yes; but again, only 26 out of 800.

Mr. ALEXANDER. If I may respond to that one: In these particular cases, however, these 26 mostly do not lie in communities that would be good prospects for their local television stations. Perhaps the easiest way to indicate that is that only three of them have ever been applied for, and, as you know, early in the days of the sixth report applications were made for most of the communities that had any prospects at all, because at that time it wasn't so clearly recognized under what disadvantages UHF stations would operate. So that, just as a note on these 26, I would say we can furnish you the list if you like, but they are not very large.

(The list was furnished later and is as follows:)

COLUMBIA BROADCASTING SYSTEM

OFFICE COMMUNICATION

October 25, 1956

To: Mr. Salant.
From: Mr. Blank.
Re the 26 communities that would be freed from overshadowing VHF competition if 16 of the 100 leading markets were deintermixed.
Reference: Page 1817 Magnuson committee hearings.

The attached table lists the 26 communities which were referred to on page 1817 of the Senate committee hearings. These communities are communities which have been assigned only UHF stations, but which lie within the 16 television markets which Mr. Lodge was hypothetically considering for deintermixture at the point in the Senate hearings referred to. If that deintermixture, which was not recommended by Mr. Lodge, but was merely being analyzed for purposes of illustration, were actually to be carried out, these 26 communities, to which 29 UHF channels have been allocated, would be relieved of VHF competition.

DAVID M. BLANK.

CBS-Ec/Ad
October 24, 1956.

Overshadowed communities with UHF channel assignments that would be relieved of VHF competition if 16 of the 100 leading television markets were deintermixed (Re Magnuson committee transcript, p. 1817)

[Population (1950 census), in thousands]

Overshadowed communities:		Overshadowed communities—Con.	
Albermarle, N. C	11.8	High Point, N. C	40.0
Angola, Ind	5.1	Junction City, Kans	13.5
Burlington, N. C	24.6	Kannapolis, N. C	28.4
Campbellsville, Ky	3.5	Lima, Ohio	50.2
Danville, Ky	8.7	Manhattan, Kans	19.0
Defiance, Ohio	11.3	Meadville, Pa	19.0
Elberton, Ga	6.8	Muskegon, Mich	48.4
Elizabethtown, Ky	5.8	Salisbury, N. C	20.1
Elkhart, Ind	35.6	Sanford, N. C	10.0
Emporia, Kans	15.7	Shamokin, Pa	16.9
Fayetteville, N. C	34.7	Sunbury, Pa	15.6
Findlay, Ohio	23.8	Statesville, N. C	16.9
Hazleton, Pa	35.5	Tiffin, Ohio	19.0

Mr. COX. What would be their average population?

Mr. ALEXANDER. I wouldn't be able to judge that now, but we could work that up.

Mr. COX. Can you tell us what is the smallest community to which the FCC made an allocation in the sixth report?

Mr. ALEXANDER. The smallest in the sixth report?

Mr. LODGE. I believe now it was Goldfield, Nev., which had 267 population.

Mr. COX. What would it be for areas in the East and Midwest, for example?

Mr. ALEXANDER. I would have to look that up. In general, the cities follow where the radio stations were, and they go to pretty small communities—in the few thousands.

Mr. COX. All right, Mr. Lodge.

Mr. LODGE. So it will be seen that a minimum systematic deintermixture plan accomplishes relatively little at a fairly high cost. Let us next consider a more sweeping deintermixture proposal. An example of such a plan is that proposed by DuMont in September 1949. Its target was 4 competitive channels in as many as possible of the 326 leading television markets.

At the time DuMont proposed this plan, it involved a shift of 12 operating VHF stations to UHF. Its adoption now would require, in the 100 leading television markets alone, the shift of 53 VHF stations to UHF, 41 of which are already on the air. In the entire 326 cities specified in the DuMont plan, 155 VHF station assignments would have to be shifted to UHF; 105 of these are already on the air.

In the 100 leading television markets alone, almost 7 million families live in those television markets which would lose their VHF service and switch to UHF under the DuMont plan. About 4.7 million of these families now have television receivers, and about 3.6 million of these have VHF-only receivers. The cost of set and antenna conversion to these 3.6 million families would be of the order of $200 million.

While I have not calculated the population which would lose service entirely under the DuMont plan, because of the shorter range of service of UHF as compared with VHF, I believe it would be about a million people.

This would mean going completely white, and not merely deprived of home service.

This plan would clearly serve objective (*c*) since it would provide for four nationwide television services. It was designed to do just this. But despite extensive use of deintermixture, however, this plan still falls short of solving many of the difficult UHF overshadowed community problems. For example, Bridgeport, Trenton, New Brunswick, Akron, Asbury Park, Atlantic City, Reading, Easton, Allentown, Bethlehem, and Worcester, to choose some of the prominent examples, would still be UHF-only cities overshadowed by VHF's, as they are at present. Indeed, the ranks of the overshadowed UHF cities would be joined, under the DuMont plan, by a number of other cities presently assigned VHF stations, such as Providence, New Haven, Wilmington, Del., Johnstown, and many others.

We must conclude, therefore, that while this plan would make a major improvement toward the multiple-service objective, it would make a relatively small contribution to the community-station objective. Further, it would be detrimental to the national-coverage objective to the extent of losing service to about 1 million people, and its dollar cost to the public for receiver conversion would be about $200 million. And this does not include the costs of conversion of established VHF stations, which may be estimated at $30 million, nor their losses from business disruption.

If deintermixture is to satisfy both the multiplicity of service and community objectives, it would have to be even more massive than the DuMont plan—extreme as that plan is in the light of today's circumstances. A deintermixture plan that would permit all of the 1,240 communities assigned channels under the sixth report to be assigned either VHF channels or UHF channels free from competition of VHF, would have to consist of a relatively few islands of VHF in a general sea of UHF. Under such a plan, in order to avoid intermixture at the fringes, the VHF community stations in the outlying fringes of VHF stations in large market centers would have to have their power limited so that their service areas would not expand VHF islands into UHF areas. Otherwise, the outlying community VHF stations would themselves overshadow UHF communities.

I have not worked out the details of such a plan, nor has anyone else to my knowledge. It would, I am sure, involve the loss of service to several millions of people. The cost of conversion to the public would probably be of the order of a billion dollars. So even though such a plan could possibly be devised to meet the multiplicity and community objectives, I believe it would be too injurious to the first-priority objective of at least one service to all areas, and it would involve too high a cost of conversion to the public.

As the extreme case of deintermixture, there has been some talk of shifting the whole television system to UHF. I must say that I see no sense to that talk at this date. If we are considering an ideal allocation system, one using 12 VHF and 70 UHF channels can be designed far superior to one using 70 UHF channels alone.

Mr. Cox. Is that true with respect to any of the objectives other than the first one? I mean, can a system using only 70 UHF channels provide multiple services and permit the development of community stations as they become economically supportable, as well as 1 with 12 V and 70 U?

Mr. LODGE. I would say probably on that score it could, although the service of any one of the individual stations would probably be smaller than many would be under the other system, but you would lose tremendously in terms of people who would have no TV service whatsoever.

Mr. Cox. Because if stations are only going to be located in large communities of a certain minimum size, the only way you can get maximum reach from those points is through the use of a V?

Mr. LODGE. I use the concept it is a byproduct—that the people who are picked up in the fringe of the big city VHF station are picked up more or less as a byproduct of the service to the big city, and those are the people who would lose out. There are millions of them involved.

Furthermore, the transition to an all-UHF system would cost the public and broadcasters between $1½ billion and $2½ billion. It would result in a total loss of service to about 8 million people, even after allowing for more stations to go on the air after the shift to UHF. Since a superior system can be obtained at less cost in money and loss of service, it does not seem sensible to me to consider an all-UHF system now.

Senator POTTER. Mr. Lodge, in your consideration of the loss of service to people by the transition from VHF to UHF, are you speaking of UHF stations as they operate today, or are you speaking of maximum power for the UHF stations?

Mr. LODGE. I am assuming that they improve their power to the full that is allowed at the present time, and I would say in connection with the proposal that they might use five times as much power, that that in practice makes very little difference on the total service. It would not change the answer appreciably.

Mr. Cox. Does it at least serve to eliminate this "Swiss cheese" effect you are talking about?

Mr. LODGE. Again, if you should look at a TV screen with a picture you think is snowy and have that station increase its power by a factor of 5, you certainly would not consider the improvement in service great. A factor of 5 to 1 in power sounds big to the layman; to one used to looking at the picture on the TV screen it is not very impressive.

Mr. Cox. Would you agree with Mr. Marx that some of this high power has not been achieved in a desirable way, in that they have used minimum-power generators or powerplants and high-gain antennas, and they could have gotten a more effective signal if they had used higher power in the first place?

Mr. LODGE. I think some of the UHF stations have had some of their service area poorly served because of overshooting people who might live close to the base of the tower; yes.

Mr. Cox. Is the answer to getting more complete and more satisfactory service within their areas of general coverage to be found in the development of more sensitive receivers rather than higher power, then?

Mr. LODGE. Again, I am afraid that the facts of life are that within the foreseeable improvements in receiver redesign that the amount of improvement cannot eliminate the "swiss cheese" effect completely.

Senator POTTER. I think one of the problems the committee has been faced with has been the conflicting testimony concerning the engineering potential of UHF. Now, if it is an inferior television band as compared with VHF, I think consideration would have to be based upon the inferior quality of the service. If it is a band which can give as good reception and coverage, with certain engineering designs, why I think that is a question that the committee or the Commission, whoever makes decisions in this field, will have to resolve. But we have had engineers here that would tell us that we can look forward in the future to revolutionary things in the field of transmission and receiving, which would make the UHF band competitive and comparable to the VHF band. You state that you don't believe that is so.

Mr. LODGE. I think any engineer who denies the possibility of future progress and blinds himself to that is a very poor engineer, but I don't think that just hope and wishful thinking is going to overcome certain basic physical limitations that mother nature built into the propagation laws of radio signals. I see no way of overcoming completely the deficiency of UHF with regard to VHF.

Mr. COX. In that connection, just for the record, CBS manufactures receivers but does not manufacture transmitters; is that correct?

Mr. LODGE. That is correct.

Senator POTTER. You may continue, Mr. Lodge.

Mr. LODGE. Thus, it seems clear that any systematic large-scale deintermixture would involve such a tremendous cost to the public in dollars and in loss of service that its adoption cannot be seriously considered.

The members of the committee have already experienced, in contemplating the choice between Hartford and Providence for the location of a single VHF station, some of the difficulties of arriving at a decision involving conflicting interests of different cities and States. Any large-scale deintermixture plan would offer dozens or even hundreds of such problems. While some of these choices might be dictated by overriding engineering considerations, an arbitrary choice would frequently be involved. One market would have to lose its VHF services and be shifted to all-UHF, and another would gain some VHF services. From an engineering standpoint, it might be immaterial which market was to be UHF and which VHF, but the political problems and repercussions could reach staggering proportions.

One can easily imagine the reaction of VHF set owners in deintermixed markets when they learn that their present sets will no longer receive a usable signal; that in order to continue to receive television they will have to purchase a converter and UHF antenna at an installed cost of $50 to $100 per home. One can also imagine the reaction of those millions of people who find that they will be unable to receive television at all. This picture of the public reaction to deintermixture has led me to dismiss large-scale systematic deintermixture from consideration as a practical possibility at this late stage of television's development.

In short, various degrees of systematic deintermixture offer various degrees of solution of the multiplicity and community-station objective, with corresponding sacrifice of the nationwide coverage objective, and with corresponding dollar costs of conversion. But as of 1956, deintermixture does not appear to be a practical solution if only because of the public opposition that could be expected.

Senator POTTER. When you speak of existing services, are you also speaking of existing UHF service?

Mr. LODGE. These were drop-ins on VHF and I did not intend to cover the economic effects on the UHF's that were on the air. This was the technical interference effects to the VHF's.

Senator POTTER. Just to existing VHF stations?

Mr. LODGE. Yes.

Senator POTTER. Of course, by VHF drop-ins, you would further complicate the problem of saving the UHF band?

Mr. LODGE. Yes. I was trying to confine myself more to the technical area, but certainly I know there are economic effects to the use.

VHF DROP-INS

Let us, then, next examine those proposed solutions which involve dropping new VHF assignments in among the assignments of the sixth report, by departing from the separation standards of that report. We shall consider the extent to which they serve or injure the objectives of our national television policy.

How many stations can be dropped in, where they can be located, and what restrictions need be imposed on the power, directivity or polarization of their signals depend on what interference to the services authorized in the sixth order is to be allowed. We may accordingly consider first those proposals for drop-ins under which substantial interference would be caused to existing services. Then we may consider drop-in proposals under which existing services would not be impaired.

DROP-INS AT THE EXPENSE OF EXISTING SERVICES

There are a number of proposals for VHF drop-ins which involve substantial interference to the television services provided for in the sixth report. The proposals of Hometown Television, Inc., and Mullaney & Associates are among these. While some of these plans are vague and therefore hard to evaluate, there is no doubt that VHF drop-ins could be assigned to many cities in need of VHF assignments. The cost in loss of service may be illustrated by an example furnished by the president of Hometown Television, Inc.

Mr. Merryman showed you an exhibit[1] of a VHF drop-in added at the center of a 170-mile equilateral triangle, at each apex of which there was located a full-power low-band television station. That exhibit showed a loss of some 3,770 square miles of television service to obtain about 310 square miles of new service for the drop-in station. This exhibit failed to take into account the fact that the drop-in station would not be offset to one of the 3 existing stations under the present 3-frequency offset system.

[1] See second exhibit facing p. 466.

Again, Senator Potter, you came in a little late, but there was attached an exhibit.

Senator POTTER. This is the exhibit?

Mr. LODGE. This is the exhibit; yes.[2] I will read my testimony and return to the exhibit in a moment.

If this is taken into account, exhibit 2, attached, shows what would happen. The loss of service from the existing stations as a result of the drop-in would increase to 6,720 or to 9,750 square miles, depending on whether the offset carrier operation used was a 3-frequency, used today, or a 4-frequency method. The service area of the drop-in station under these circumstances would be either 150 square miles or 285 square miles, depending on the offset method used. Consequently, for every square mile of service added by the drop-in station, 35 to 40 square miles of existing service would be destroyed.

I think maybe an exhibit like this is a little confusing, so if we can just look at it, I will indicate that the white area at the center, in both case I and case II, indicates the service that would be left to the existing VHF station after the effects of the drop-in had taken place. The double crosshatched area is the new interference that would be caused by the drop-in, and the more lightly and outer crosshatched area is that which is occasioned mutually between the stations at the present time.

You will see that right in the center of the triangle is the very little white area enclosed by a black circle, with "drop-in" written underneath it, indicating the relative size of the new area of service that is achieved by the drop-in.

Mr. Cox. For the record, Mr. Lodge, when you talk about these offset carrier frequencies, you refer to the fact that a frequency, such as channel 6, is not only channel 6 but can be channel 6 plus and channel 6 minus, by some minor variation in the frequency used?

Mr. LODGE. Yes. It has been found that stations operating on almost exactly the same frequency create much worse interference to each other than if they are separated by a nominal frequency of eight or ten thousand cycles. This is used in the present allocations structure to extend the interference-free area of stations. When one adds 4 stations in a signal area, it would be necessary to change from the present system that has one of 3 stations exactly on the frequency, one would be slightly higher, and the other slightly lower at the present time. We would have to devise 4 different frequencies instead of 3, if you had 4 neighbors living in the same block, as it were.

Mr. Cox. As I understand Mr. Merryman's proposal, even conceding the limited area that would be served by the drop-in—which he showed as some 310 square miles and you reduced to 150 or 285—that was necessary, in his view, in order to provide a local TV service in Bridgeport, which has a substantial population.

Mr. LODGE. I don't believe that these exact mileages refer to the Bridgeport case. He used it as a theoretical case, just as I did, to indicate the theoretical approximate effect you would get from this.

Mr. Cox. Would it apply more or less to dropping in channel 6 in Bridgeport, with existing stations operating on that channel at Schenectady and Philadelphia?

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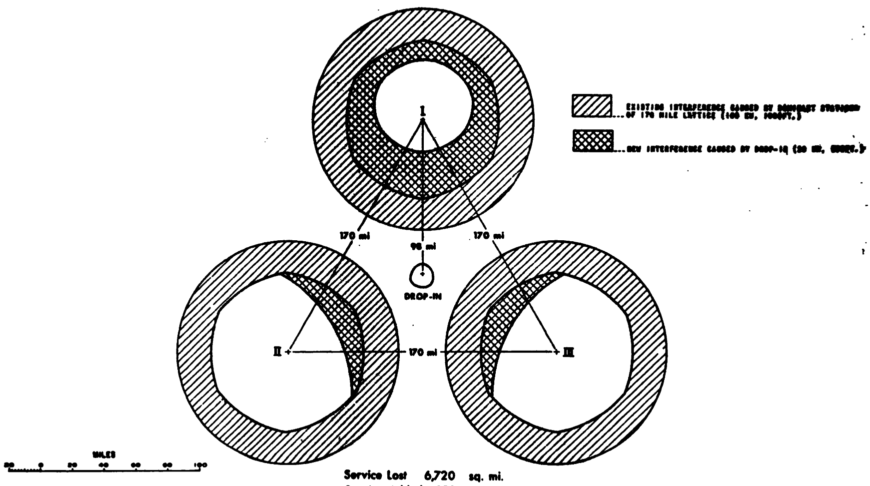
[2] The exhibit referred to appears on the following page.

EXHIBIT 2

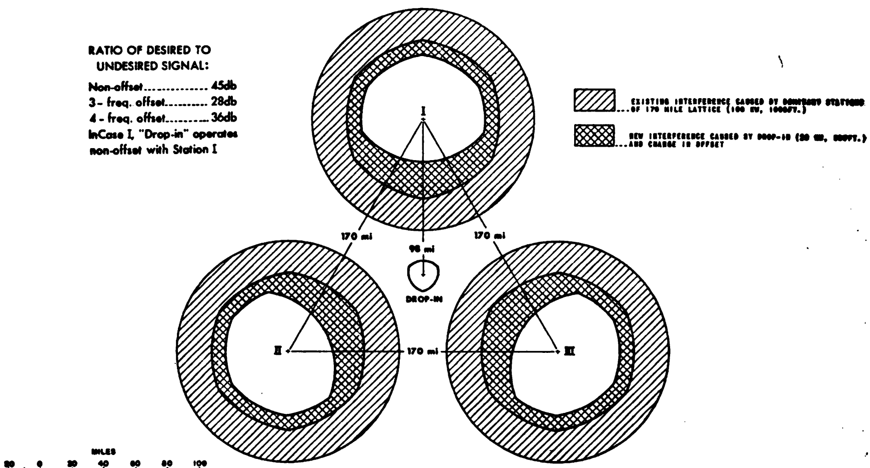
COMPUTED GRADE B INTERFERENCE FREE AREAS

CASE I - PRESENT (THREE) OFFSET CARRIER FREQUENCIES



Service Lost 6,720 sq. mi.
Service Added 150 sq. mi.

CASE II - MODIFIED (FOUR) OFFSET CARRIER FREQUENCIES



Service Lost 9,750 sq. mi.
Service Added 285 sq. mi.

CBS TELEVI

Mr. LODGE. It illustrates the type of thing that would happen on the drop-in's; yes, sir.

Mr. COX. I take it, since this is a purely theoretical proposition, then, that you have no idea whatsoever as to how many people live in these various areas described, or as to whether or not they would still continue to receive interference-free service from some other station not on the channel in question?

Mr. LODGE. That is right. This is confined to the use of a single channel and there could be a second service available. Of course, the service lost to these people might be a very desirable service. They might lose their most popular features.

Mr. COX. When the Commission adopted the sixth report, it eliminated some services by dropping in channels which created interference; didn't it?

Mr. LODGE. I don't believe that the sixth report deprived many people of television service as it went into effect. I don't recall any cases of that nature.

Mr. COX. Commissioner Bartley tells me his uncle in Texas could no longer get Oklahoma City because they put another station somewhere else in Texas that interfered with it.

Mr. LODGE. There may be cases that are out in the distant fringe, but if we confine ourselves to the reasonably confined service area, and not the very, very distant fringe, I don't believe there were very serious inroads made on that.

Senator POTTER. When you mentioned low-power drop-in stations, how low power do you mean?

Mr. LODGE. This particular example, as I recall it, was the order of 20 kilowatts at 500 feet.

Senator POTTER. What grade A service would a station like that provide?

Mr. LODGE. The order of 10 miles, 15 miles.

Senator POTTER. But their interference range would be——

Mr. LODGE. That is the point. Unfortunately there is much more interference than there is in a new served area.

Senator POTTER. It is not a matter of just lowering the power to a low area that is caught in the middle of 2 or 3 stations?

Mr. LODGE. No; if you reduce the power to the point where it would not create any interference, I am afraid you might not serve more than 10 blocks or something of that order.

Senator POTTER. Would you receive the same type of interference from a booster station?

Mr. LODGE. Boosters in general create much less interference, because I believe by "booster" you mean a very low-power booster?

Senator POTTER. Yes.

Mr. LODGE. In that case it would tend to create less interference than a station of the power indicated here of 20 kilowatts.

Senator POTTER. You may continue.

Mr. LODGE. The Hometown Television witness testified that, in this example, the "actual new interference is relatively small." Somehow, the loss of 35 to 40 square miles of existing service for each square mile of new service doesn't seem to me to qualify as "relatively small" even in cases where the loss is confined to rural and smalltown areas.

Some drop-ins would be less destructive of existing service than this hypothetical case, but the Hometown example does illustrate the danger of permitting numerous drop-ins which cause extensive interference to existing services. It will in general be true that the area of loss of service will be a large multiple of the area of service gained. Consequently, the general adoption of drop-ins not safeguarding existing services would result in a great loss of service to the public, and would violate the first objective of the allocation plan, national service. It would represent a step back to the conditions that led to the freeze in 1948.

CBS PLAN I

I come now to the CBS proposals as made to the FCC. Some witnesses before your committee have commented on the CBS plan. One witness has described it as a monopoly plan for television and has alleged that under the CBS plan all those who live outside the 100 top television markets would be deprived of all television service. I submit that an examination of the CBS plan will prove that these criticisms are unjustified and that, on the contrary, our chief motivation was to increase competition—competition, incidentally, to ourselves—in the 100 leading television markets, at the same time improving the prospects for television service outside of these markets.

CBS plan I represents an attempt to repair, within the spectrum space devoted to television in the sixth report, one of the most serious defects of the present allocation plan. That is its failure to provide at least 3 competitive stations in each of the 100 leading television markets. It seemed appropriate to inquire how far one could go toward remedying this defect by the use of VHF drop-ins without depriving any significant number of families of television services they would get in the absence of these drop-ins. The result was CBS plan I, included in the CBS proposals and comments submitted to the FCC.

The plan involves a total of 37 new VHF assignments to 31 markets. It proposes 26 drop-ins of VHF stations, 7 stations to be permitted to move from small communities to adjacent larger communities, and 4 unapplied-for VHF assignments to be shifted to markets which need them. The use of directional transmitting antennas and cross polarization is also contemplated.

Plan I would increase by over 60 percent—from 52 to 84—the number of the 100 leading television markets with 3 or more substantially competitive television stations. This increase can be accomplished without significantly reducing the service areas of existing or currently assigned stations. Thus, we believe, we have taken a significant step toward objective (*c*), multiplicity of service.

I have since studied other plans submitted in the current rulemaking proceeding of the FCC, and some of these, principally those of ABC, Storer, and station WWLP, contain features that can be used to improve plan I. Subject to these improvements, plan I, or something like it, is in my opinion the best immediate action that can be taken to relieve the allocation problem.

This plan has been sharply attacked on the basis of a misunderstanding which I hope was not willful. It is alleged that the CBS plan would take care only of the 100 leading television markets, leaving the rest of the country unserved, as a white area. Mr. Merryman testified before this committee on February 28, 1956, that—

If you live inside one of the (100) squares, you are presumed to be able to get a signal—and I guess you probably would. On the other hand, if you live in one of these white areas, you don't get any TV. Look at the size of the white areas. Look at how much of the United States is left uncovered under the CBS plan.

Probably the best answer to the charge that CBS is interested only in the 100 leading television markets and is ready to have the rest of the country go unserved is the fact that the CBS television network has affiliated with stations not in the 100 leading television markets only, but in 178 markets, covering as much of the country as we can. We have affiliates not only in Detroit and Philadelphia but in Grand Junction, Colo., and Twin Falls, Idaho, with 5,300 and 6,300 families, respectively.

Mr. Cox. Isn't it true that according to Dr. Alexander's study, neither of those communities can support a television station?

Mr. Lodge. I don't know.

Mr. Alexander. If I can reply to that, these are the number of families within the community and not within their TV market.

Mr. Cox. Just in the incorporated limits?

Mr. Alexander. These are the city limits.

Mr. Cox. Do you have any idea what the population of the service areas would be?

Mr. Alexander. I don't have it with me. I would suggest they would probably be about 20,000.

Senator Potter. We are still trying to get TV in Cheboygan. We don't have many people, but we have a lot of good country. [Laughter.]

Mr. Lodge. In fact, the CBS plans did not propose any alteration in the assignments outside the centers of the 100 leading television markets except for the 4 channels so far unapplied for and the 7 channels permitted to move toward larger cities. In all except these 11 instances, the community assignments were left unaffected. It certainly does not extend the white areas.

Our emphasis on the 100 leading television markets was a result of the fact that it was in those markets that we were proposing changes. As noted in Columbia's December 14, 1955, comments to the FCC:

* * * the imperative present and identifiable need is to increase the number of competitive assignments in larger markets.

For this reason plan I and plan II have been worked out in complete detail only to take care of urgent present needs in the 100 largest television markets. *There are currently a large number of assignments to smaller television markets and additional assignments could be made to them*" (p. 14; emphasis added).

Those markets outside the coverage areas of television stations in the 100 leading television markets and large enough to support one or more program-originating stations do not, in general, offer a serious assignment problem. Because they are situated at some distance from the leading markets they can usually be assigned channels which do not conflict with the assignments to the leading markets. These smaller markets cannot, in general, support more than two television stations (p. II-3).

Senator Potter. In other words, what you are saying in your plan here is that they should have, or try to have, at least 3 different TV stations in your first 100 markets?

Mr. Lodge. Yes.

Senator Potter. But it doesn't exclude your other markets from having 1 or 2 stations; you can't expect to have——

Mr. LODGE. Or 3 or 4, as far as that goes.

Senator POTTER. You can't expect to have 3 stations in a town of 20,000, for example?

Mr. LODGE. Well, if it doesn't take channels away from some larger market, there is no harm in assigning them there. In practice it doesn't appear they can support that many, you are right.

Mr. COX. Isn't it true that the comment that they are situated some distance from leading markets, so that channels are available, is not true in zone I, for instance?

Mr. LODGE. In general, that is correct. That was the reason that we had to make a choice in trying to apply the drop-in principles that we use in our plan as to whether we would assign a channel that could be dug up to one of the larger markets to give a third outlet there. You could possibly have it assigned to some smaller community. We thought the need for three assignments in the big markets was the important pressing one. That was our only reason for being concerned with the top 100 markets; not that we wanted to ignore service throughout the rest of the country.

Senator POTTER. You feel you could do that without taking away an appreciable amount of service in the outlying areas?

Mr. LODGE. That is correct.

CBS Plan I can make a major contribution toward realization of the multiple-service objective without any detriment to the two objectives of national coverage or community stations. Indeed, while making no direct contribution to the community station objective, it does make an indirect contribution. By providing substantially equal competitive facilities for three networks, plan I should strengthen a third network in the critical markets. By so doing, it will encourage construction in smaller markets. For it is to be noted that network service to smaller stations, to which such service is particularly important, is in fact a byproduct of a strong network service to the larger television markets.

The plan involves no cost or loss of service to the public or to existing stations. It does involve a decision to focus efforts on objective (c), multiplicity of services, rather than on objective (b), community stations. As I will discuss after an analysis of the proposal for community stations, we believe that there are most compelling reasons to justify this decision.

ADDITIONAL VHF SPECTRUM SPACE

CBS Plan I, improved by incorporation of suggestions of others, is probably a fair measure of what it is practical to accomplish within the spectrum space now allotted to television broadcasting.

Mr. COX. In that connection, Mr. Lodge, can your plan, with these suggestions which you think improve it, become a reality if the FCC continues to intermix by making grants of V's in areas which are affected by your plan?

Mr. LODGE. There are some cases where the passage of time would eliminate possibilities that we could achieve now.

Mr. COX. You propose deintermixture in favor of all UHF in Madison and Peoria?

Mr. LODGE. That is correct.

Mr. Cox. Where there is either a grant issued or a pending application?

Mr. LODGE. Yes.

Any major advance on that plan, consistent with all three objectives, requires more VHF frequencies.

The procurement of seven additional VHF channels and their devotion to television broadcasting would provide a long-run solution for just about the entire allocation problem. CBS plan II, submitted to the FCC in our proposals and comments, indicates how 3 additional VHF channels would suffice, in connection with some of the other devices used in plan I, to provide 3 or more competitive channels in each of the 100 leading markets, without exception. Four more new television channels, making seven in all, would also suffice for VHF television assignments to substantially all the cities which would be likely candidates for local community television stations. I assume that these four channels would be used for local assignments with such power and separation as to provide a service radius considerably smaller than that of standard television stations.

Mr. Cox. Isn't it true, when you say this will give you, without exception, 3 competitive channels in each of the markets, that all of those markets to which the new channels, 6A, 6B, and 6C, are allocated, would be faced with a form of the conversion problem which faced UHF?

Mr. LODGE. Yes, they would.

Mr. Cox. In other words, if you dropped channel 6A into a community which had two existing channels, the proprietor of that station would have the same problem of persuading people to spend money to convert the set in order to be able to get his signal?

Mr. LODGE. Yes. In the next paragraph I touch on that very point.

While the addition of these new VHF channels would eventually solve the allocation problem, it would do so only gradually. Initially converters would be required at a cost roughly comparable to UHF converters. Those UHF operators who have achieved good UHF conversion understandably wince at a second conversion. But the new VHF channels, unlike UHF, could be received on existing VHF antennas. The severe shadowing of UHF would be avoided. And the extra cost of a 19-channel VHF instead of a 12-channel VHF receiver should be smaller than the extra cost of a VHF–UHF receiver.

How much it will cost the public to be able to receive the new as well as the old VHF channels depends on whether the route is fast via conversion of existing sets, or slow via gradual replacement of 12-channel VHF receivers by 15- or 19-channel VHF sets. The fast route would be more expensive than the slow. The slow route is likely to be the more commonly followed. During a transitional period, existing UHF stations shifting to a new VHF channel would probably broadcast simultaneously on both channels. Entirely new stations on the new channels would usually furnish the second or third service in the market. In either case, the incentive to convert would not be strong enough to inspire any but a gradual process. Consequently, the eventual cost to the public of being able to receive the new channels would probably be low, principally because the process would be slow.

Senator POTTER. Do you think, Mr. Lodge, that the set manufacturers would start manufacturing an all-V set then to take in the new channels?

Mr. LODGE. There would have to be some indication that the broadcasters were willing to go ahead with the use of the channels, but I see no reason why, with assurance that they would be used, there would not be available the 19-channel or 15-channel, instead of 12-channel VHF.

Senator POTTER. With all the problems that we have had with UHF, I shudder to think of having another band of a super-VHF to cause consternation to the public.

Mr. LODGE. I don't blame you for that, but at least you would have a future that you could look forward to as being reasonably probable; namely, sets that wouldn't be too dissimilar from those today, performance that would be analogous to what we get on the VHF channels, and at least a sound future ground.

Senator POTTER. You think there would be more incentive to convert to one of these new VHF channels than there is at the present time to convert for UHF?

Mr. LODGE. I believe so. The cost differential in the receiver would be much less.

Mr. COX. As long as there is any differential, isn't it demonstrated pretty clearly that as long as there remain some areas which have none of these new channels, that there will be an incentive to manufacturers to manufacture sets that will receive only the existing 12 channels, and that to the extent that those sets get into the market where there are new channels on the air or provided for, that you have got the conversion problem in just about its present terms?

Mr. LODGE. Unless you can get the differential in cost between the two types of receivers so low that it is cheaper to make them all that way than to have two models, I believe you are right.

Senator POTTER. How much would it cost to convert?

Mr. LODGE. Converting would be expensive, just about as expensive as UHF; but to go into production on a tuner that had, say, 15 or 19 instead of 12—I don't have exact costs, but I would guess that it might be the order of $1.50 or $2 extra at the manufacturing level in place of the $7 or $8 it is now.

Mr. COX. And possibly to get the advantages of mass production, they would produce only all-channel V sets, even though they were going to be selling a substantial number of these in New York, Los Angeles, and other areas where the extra 3 or 7 channels would be unneeded?

Mr. LODGE. It is the only way I can see we can get small stations that can have channels to be tuned in.

Senator POTTER. How many of your first hundred markets would these channels be in?

Mr. LODGE. As I recall it, some 12 or 15.

Senator POTTER. That would be sufficient, I assume, to warrant the manufacturers to manufacture an all-V set to take care of it.

Mr. LODGE. I would hope it would; yes.

Mr. COX. Twenty-three communities, I think.

Mr. ALEXANDER. I wonder if I might be permitted to elaborate on one point, where Mr. Lodge said conversion would be about the same cost as in the case of UHF. He was referring to the set only. There would still be the differential that in UHF you have to put up a new and different antenna, while for these VHF channels——

Senator POTTER. You use your regular antenna.

Mr. ALEXANDER. Yes, sir. So the actual cost, the way it would look to a consumer, would be about half as much in this case, even if he converted immediately, because as a rough order of magnitude, half of $50 to $75 goes into the converter and half into the antenna.

Senator POTTER. Well, you may continue.

Mr. LODGE. The major difficulty in achieving this long-term solution to the allocation problem is that of actually getting the seven additional channels. I do not have information concerning the expense involved in transferring other services from VHF channels now being used to higher UHF channels. Nor is there publicly available any indication of whether the Government purposes could be as well served by the higher frequencies as by the VHF. I hope that this committee will be able to explore the conditions of availability of additional VHF channels. The complete long-term solution of the allocation problem does require, in my judgment, seven additional VHF channels.

Senator POTTER. Mr. Lodge, in the CBS report to the Commission, did you make any recommendation about utilizing some of the unused educational VHF channels?

Mr. LODGE. We did not mention that, sir.

Senator POTTER. That is not part of your plan?

Mr. LODGE. It was not contemplated in our plan.

Senator POTTER. To disturb the VHF stations for educational purposes.

Mr. LODGE. No.

Mr. COX. Your plan envisages all of the allocations in the top 100 markets?

Mr. LODGE. Yes, sir.

Mr. COX. The only impact of that would be on the educational UHF allocations in those markets and in other markets, which would quite possibly for all time be rendered useless?

Mr. LODGE. If the UHF did not develop.

Mr. COX. In other words, your plan, since it does not alter the all-time dominance of VHF in certain of the top markets like Detroit, Washington, New York, Los Angeles, and so forth, where there are no V educational assignments at present, means that no educational stations can ever go on the air in those communities?

Mr. LODGE. We had enough trouble trying to patch up the competitive picture without patching up educational as well.

THE PROBLEM OF COMMUNITY STATIONS

I come, finally, to the question of community stations. At the outset, I want to make it perfectly clear that CBS shares the desire of this committee, and the witnesses who have appeared before this committee, for a sound and prosperous system of local community stations. The ideal television system would permit the people of local communities such as Bridgeport freely to choose, with the switch of a dial and with no added expenditures for conversion, between the programs which come from the Bridgeport station and those that come from New Haven and New York.

That is the way it should be. Just as the people of a small town can read both the local paper and the metropolitan daily, and listen to both the local and the big-city radio stations, so they should be able to watch both the local and the big-city television stations.

This is the ideal. But the painful question is whether, in present circumstances, it is possible to realize the ideal.

As we have just noted, if something like 7 additional VHF channels could be procured for television use, so that 4 of them could be devoted to community stations, there would be ample provision for community stations. But if these additional VHF channels are not available, alternative approaches do not seem promising.

I have, in the testimony to this point, examined each of the major approaches which have been proposed for the solution of the allocation problem, and in each case I have tried to evaluate how close these plans bring us to achieving each of the three objectives, and the price which must be paid for the advances which might be made. As you may have noted, it is clear that the most extreme degree of deintermixture or drop-ins is required to approach the objective of community stations, and the price of the progress is so huge that they must be rejected on the ground of cost and impracticality.

Indeed, the unyielding nature of the community station problem seems at least to be implicity admitted even by the champions of the community television concept. For the proposals which they have made have been vague and changing. Thus, the Committee for Hometown Television, Inc., in its original proposals to the FCC, confined itself to the vague generality that "each station's signal coverage must be conformed to the retail trading area of its community." The committee did not specify how this objective was to be accomplished. Mr. Merryman, testifying before your committee, stated that "we do not propose that any VHF station reduce its power." He did propose VHF drop-ins which would, if generally adopted, greatly reduce not only multiplicity of service but national coverage, through their extensive and excessive interference with existing signals. The adverse effects of this line of action on the Nation's television system are so great that it must be rejected.

Some further measure of the difficulties which the Committee for Hometown Television, Inc. itself has met in finding a sensible solution is illustrated by the obvious fallacy of their most recent proposal. You will recall that, apparently disturbed by the amount of interference which their plan entailed, they proposed a scheme which is novel, to say the least. They proposed that the VHF drop-ins be permitted only if the use of the channels thus dropped in would simultaneously operate on UHF. Then, Mr. Merryman proposed, at the end of 5 years or after 85 percent conversion to UHF has been accomplished, whichever is later, the operator would be compelled to abandon his VHF transmission and operate only on UHF. At that point, existing VHF stations, whose service had been contracted because of the interference from the VHF drop-ins, would again be able to expand to their normal coverage areas.

The folly of such a proposal only underscores the difficulties of finding a proper solution to the problem. For it is perfectly obvious that dual operation would hardly encourage UHF receivers; if a viewer can receive precisely the same programs on VHF, why would he spend $50 to $100 to get those programs on UHF? That is like a prescription on a whisky bottle, directing the user to take 1 drink every 5 minutes until sober. Obviously, this is no 5-year limitation, since 85 percent conversion could never be accomplished. It is a permanent provision subjecting existing stations to excessive interference.

Still another proposal to aid the community stations would eliminate the competition of stations in larger cities by attempting to forbid the outside signal from entering the area of the smaller city. I cannot believe that this proposal for an electronic tariff wall, State by State, and community by community, can be seriously considered in a nation such as ours, where the choice of the public is regarded as decisive. I doubt that the people of Bridgeport would appreciate being barred from the 8 signals they are now receiving from New York and New Haven in order to force them to look at 1 or 2 local stations located in Bridgeport.

And, in any event, I should note that, wholly apart from the way that such a proposal would turn its back on the fundamentals of free enterprise, it would adversely affect, to a serious degree, both objective (*a*) and objective (*c*). The same effects, caused by indiscriminate drop-ins, of depriving many areas of service altogether and many more areas of the number of multiple choices they now have would result from such an electronic embargo. Thus, many people would lose service althogether. Others would have their choice of services radically reduced. For example, if the service from 8 outside VHF stations into Bridgeport were to be cut back to protect the Bridgeport station, the people of Bridgeport will get 1 or possibly 2 Bridgeport signals instead of the 7 from New York and the 1 from New Haven. Further, the 1 or 2 local stations would be ordered by the advertiser for many fewer of the popular network shows than are carried on the larger big-city stations.

I submit, as exhibit 3,[1] a chart showing the total commercial hours of CBS network programs ordered and carried in various markets. It appears that the 100th market is ordered for only about 2 out of every 5 programs for which the largest market is ordered. The fractionation of the audience that would result from cutting back the service areas of the larger stations would result not only in a reduction of the multiplicity of service, but also of the richness of service in terms of program fare.

And if it were to be decided that the service areas of the television stations in the larger market centers should be cut back in order to force-feed stations in smaller cities, there is hardly any end to the process. If Bridgeport is to be protected from New York, should not Wilson, Conn., be protected from Bridgeport, and South Wilton from Wilton? Obviously the line must be drawn somewhere. It seems to me it should be drawn where it will give the public the programs for which it has indicated a preference and the structure under which it can exercise its preference.

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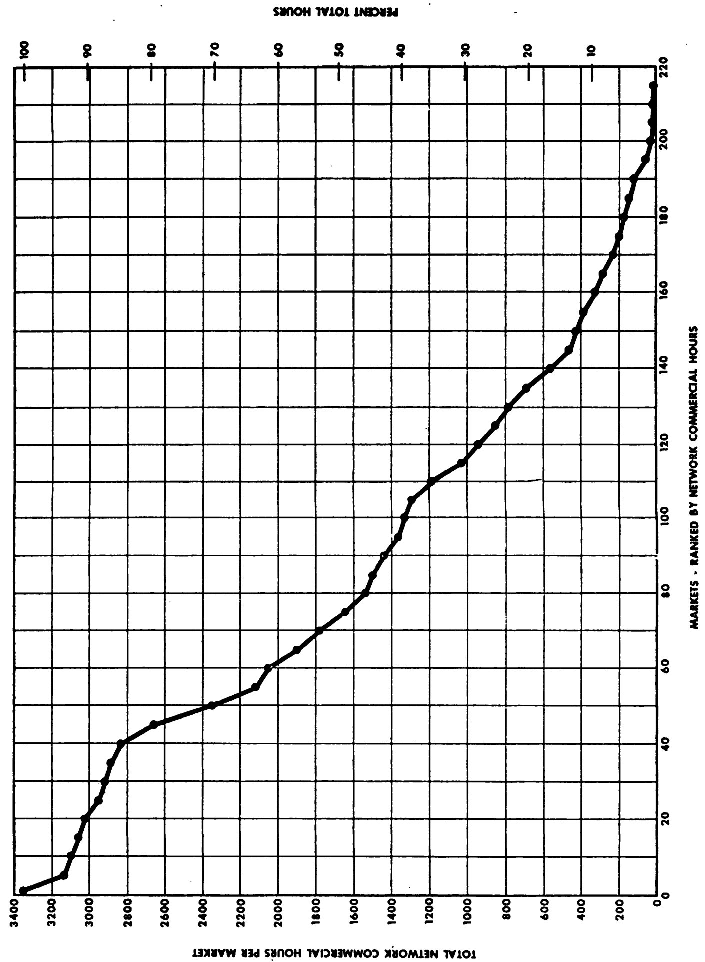
[1] The chart referred to is reproduced on the following page.

EXHIBIT 3

TOTAL CBS TELEVISION NETWORK COMMERCIAL HOURS FOR 1955



CBS TELEVISION
ENG. DEPARTMENT
3 - 19 - 56 E2103 - 12

Thus, it is clear that, short of additional VHF channels, no comprehensive allocation solution of the community station problem is available. Hence, CBS plans I and II were based on the fundamental fact, which I hope I have made clear in all my preceding testimony, that objective (*c*) can be achieved without substantial cost or detriment to the other objectives, while objective (*b*) can only be achieved at enormous cost and dislocation to the public, and at the expense of both objectives (*a*) and (*c*).

This is not to say that we need give up hope for some further development of community stations.

Mr. Cox. How about this, Mr. Lodge: Assuming that you are going to provide 3 competitive services in the top 100 markets, the present tendency seems to be, of course, that all 3 of those stations, their transmitters, their studios, are located in the same community, which is the largest community in the area. Would it be engineeringly possible to have the 3 V channels that you allocate to the Houston market, or to any other market, located at more than 1 community within that general market area, if there are communities large enough to deserve and to require the kind of local service that Mr. Merryman wants for Bridgeport—and all the people he brought down with him?

Mr. Lodge. By that you mean to leave the transmitters where they would still serve the major metropolitan area well?

Mr. Cox. Yes.

Mr. Lodge. I wouldn't think the moving of the transmitters was necessary. If you are going to strive to serve, say, the half million people, or however many need the service, and want to concentrate on a smaller community, that could be done within the programing of the station, but it would not require you to move the transmitter.

Mr. Cox. But it would require at least some public identification of this station with community A and of the other one with community C, so that the people in those communities would feel that they could look to those stations to provide local service in addition to the multiple network service that all three stations are providing for the area?

Mr. Lodge. Well, I am not sure I am too qualified to comment on that proposal. It would mean, of course, that the entire metropolitan area would also be required to view the local programs, as well as the ones in which they were interested.

Mr. Cox. Now they are required to view the local programs of whatever sort the stations from New York put on the air, aren't they?

Mr. Lodge. Yes.

Mr. Cox. This would give them a choice of three types of local programing to choose among; and quite probably the local programing would be placed opposite, in some cases, network service, so if they weren't interested in that they could switch.

Mr. Lodge. On this matter of programing maybe Mr. Salant might wish to comment on that. This is out of my field.

Mr. Cox. We can take the matter up later.

Senator Potter. We have a case in Michigan where the channel allocated for Flint will serve the Detroit market, and also it can serve other areas; where if the transmitter were located right in Detroit, it couldn't serve them. It would serve Detroit from the Flint area.

Mr. Cox. Aren't they trying to locate the transmitter so it won't serve Detroit?

Senator POTTER. Yes. I do not know whether it would serve Detroit from the location they are now considering or not.

Mr. Cox. If they move from south of Flint to north of Flint, they end up serving Bay City, don't they, instead of Detroit? In connection with this possibility of community service, I am impressed by the fact that you keep insisting in your comments to the FCC that this concept of drop-in V's should be limited only to the specific instances that you have included in the plan.

Mr. LODGE. Yes.

Mr. Cox. If your conception is valid, and if interference-free service can be provided in this way, isn't there a possibility that other V's could be dropped in on the periphery of some of these large markets, which would not cause interference with the local stations, but which would raise the possibility of local service in those areas?

Mr. LODGE. It is a very good point, Mr. Cox, and in going over this work, we, of course, considered that possibility. What you get into ultimately is this problem: That we cannot map out as accurately as we would like to the full extent of the service of television stations. It goes beyond any rhyme or reason, and there are people who depend on very distant areas. You mentioned earlier somebody down in Texas who had lost his service. There are a lot of cases like that. We felt that the need for a competitive service in the big markets was very great and justified making the changes we proposed, which were conservative and would protect service within any reasonable definition of it; but if the same principle were allowed to be used on a wide scale basis, and even though it did protect the roughly defined service areas, I think the end result would be real damage to the rural person who may have to get his only service from the station that may be 100 or 120 miles away. Still, if that is the only service he is going to be able to get, I think it would be wrong for us to take it away from him.

Mr. Cox. Without being critical, I think it is worthy of comment that another thing that you have emphasized throughout, normally by the use of italics, is that your proposal is not going to interfere in any way with the service area of existing stations, and that means, as Senator Potter pointed out, existing V stations—and you state that your proposal is a conservative one. Isn't it actually designed to reassure the present operators of V stations, who are your major affiliates, that this proposal is not one which could conceivably injure them?

Mr. LODGE. I would say that the real objective was not to damage service to the public.

Mr. Cox. This gets back to your colloquy with Senator Pastore.

Mr. LODGE. Yes.

Mr. Cox. In other words, you quoted Dr. Stanton, I believe, to the effect that there is no proposal which will help everybody and not hurt somebody. Your proposal is one which is very well calculated to provide extensive service, multiplicity of service in the major markets, and to preserve the present economic position of existing VHF operators, and to that extent to protect and preserve your network operation—isn't that true?

Mr. LODGE. To protect the existing service. It has the other label on it just as well. It does protect existing service, and in so doing I think it is good for us as well as the other people.

Mr. COX. That is, the one substantial addition that it makes is to provide the possibility of multiple service, and concurrently the possibility of a third equivalent network?

Mr. LODGE. That is correct. The major objective was to improve the situation for ABC.

Mr. COX. However, doesn't it put a ceiling at that point, in the absence of additional V channels, and make it impossible for a fourth network to develop?

Mr. LODGE. It would be wonderful if there were space for a fourth. Somewhere we had to ask ouselves: "How far can you go without too much damage to service?" It seemed that that was as far as we could go.

Mr. COX. In other words, your opinion is that unless we get additional VHF spectrum space, UHF cannot be salvaged to the extent that it can be made the means of obtaining a fourth and fifth outlet in major markets?

Mr. LODGE. It looks very pessimistic for it now.

Senator POTTER. In other words, if you had enough V channels for, say, the top 50 markets, could you reallocate those V channels in the top 50 markets for an additional network, with 4 networks in those top 50 markets, without seriously disrupting the service that now exists?

Mr. LODGE. No, I don't believe so. You get into a situation right here in Washington, D. C., and Baltimore, where I know of no way, with the present channels, to get 4 VHF stations in Washington and 4 VHF stations in Baltimore.

Senator POTTER. You may continue, sir.

Mr. LODGE. This is not to say that we need give up hope—I should, incidentally, return to one of my answers earlier. The excise tax, of course, does give hope that you could spread the set ownership, but barring some method by which you infuse every home with an all-channel set, I saw no very optimistic trend of the effect of using it in all markets.

Mr. COX. Even if you get an all-channel set in every home, as long as you leave 2 V's in the major markets, or 3 V's, and look to UHF for further expansion of the service, you are not going to get it because they can't compete coveragewise, quite apart from the ability to reach the set?

Mr. LODGE. I think you can take a certain amount of coverage deficiency and compete, providing you have access to 100 percent, or a large percentage, of the people who are in the central core that you serve; but if you throw in both deficiencies; namely, coverage and inability even to have all of those in the central core tune you in, then it is really a backbreaker.

As I have said, when we have a sound, competitive, multiple nationwide service, I believe that will also advance community service. And I believe that the technological and economic frontiers, as well as the frontiers of ingenuity of men like Mr. Merryman, have not yet been reached. As program sources continue to increase—and they are doing so now with remarkable rapidity—as new inventions and developments decrease costs of construction, operation, and programing, and as the community operators devote their ingenuity and energies to finding new methods of buying programs and operating their stations, I believe that there is real hope of some further growth of community stations without destroying the whole structure of television. I believe it is too soon to give up. Twenty years ago it might have been difficult to visualize the success of the operations of community stations in radio. Equally, now, it may be difficult to visualize that the same technological and programing developments and the same ingenuity will have similar beneficial results for independent community television stations. But I think it foolish and premature to believe that today's limitations are limitations for the future.

Senator POTTER. I think your conclusions restate your recommendations fairly well. It might be desirable to stop here and then when we resume this afternoon, in G–16, we can take up your conclusions at ~~that time~~ as a basis for any further questions that might be asked. The committee will be——

Mr. LODGE. Senator, before we break, I would like to return just to one of my answers, that we did attempt to show how a fourth channel could be obtained in as many as possible of the top 100 TV markets in our filing with the FCC. I forgot to answer that, Mr. Cox, earlier.

Mr. COX. However, isn't the problem there, Mr. Lodge, that you succeed in adding them in all the wrong places?

Mr. LODGE. That was the bottleneck.

Mr. COX. You get an additional service for the 8th city and 30th city, and you start with the 36th and work down to the 96th, but you leave Boston, Detroit, Cleveland, St. Louis, Indianapolis, Kansas City, Buffalo, and Milwaukee, with 3 stations, and you still leave Providence with substantially 2 stations?

Mr. LODGE. Not having any desire to do so, however.

Mr. COX. All right.

Senator POTTER. We will meet this afternoon in G–16, the regular committee room over in the Capitol, at 2:30.

(Whereupon, at 12:25 p. m., a recess was taken to 2:30 p. m.)

AFTERNOON SESSION

Senator POTTER. The committee will come to order. I want to apologize to Mr. Lodge and to the other of our guests and members of the press who have been waiting.

The Senate, as you know, is an unpredictable body. We had assumed that we would be voting during the past hour. We still haven't voted. I assume as soon as we get started the bells will ring. But I think that in order that you may make your plans for today, unless something transpires that I do not know of, we will conclude the testimony of Mr. Lodge and whatever colleagues he might have, and we will recess until 10 o'clock tomorrow.

All right, Mr. Lodge.

STATEMENT OF WILLIAM B. LODGE—Resumed

Mr. LODGE. At the recess, I had come to page 29 of my prepared statement and was about to read my conclusions, which are only about 2 pages in length.

I began my testimony with a warning against generalizations. Now, however, having examined various solutions in detail, I would like to summarize the results of our studies in a few general conclusions.

1. Of the three objectives—nationwide coverage, community stations, and multiplicity of service—the first is already substantially attained. Beyond a certain point, further progress toward fulfilling either of the two still-unattained objectives can be achieved within the presently allotted spectrum space only at the expense of the other objectives.

2. A minimum systematic deintermixture could, in conjunction with other measures, attain the multiple-service objective with some loss in the nationwide service objective, and appreciable dollar cost to the public. Very widespread application of deintermixture would be required to achieve the community objective, but this would reduce nationwide service and involve a tremendous dollar cost to the public. From a practical point of view, however, neither moderate nor widespread application of systematic deintermixture seems feasible.

3. A controlled plan of VHF drop-ins, such as CBS plan I, would greatly help the multiple-service objective by increasing the number of television markets having three or more competitive stations, and at negligible cost to the nationwide service objective. Very widespread use of drop-ins would be required to achieve the community objective, and would be counter to the nationwide service objective. Because of the adverse effect on the public, wide-scale use of drop-ins does not seem feasible.

4. Under CBS plan II, addition of three VHF channels would achieve the multiple-service objective with no loss in nationwide coverage. That objective would, of course, be achieved only after some time, not only because of delays to be expected in obtaining and assigning the channels, but also because the number of sets capable of receiving the new channels would increase only gradually. But three added VHF channels are insufficient to achieve both the multiple-service objective and the community objective. A total of some 7 additional VHF channels (with, say, 4 reserved for small-coverage community stations), would come close to achieving all 3 objectives: Nationwide coverage, multiple services, and community stations.

5. Thus it becomes apparent that whether deintermixture, dropins, or additional VHF channels are considered, the price of obtaining community outlets is much greater than the price of obtaining multiple services. It seems unrealistic to contemplate use of deintermixture or VHF dropins to the extent necessary to achieve the community objective; within the present spectrum a major increase in community stations is attainable only at too great a cost to the public. But it is possible, without appreciable cost to the public, to make multiple services available in many areas. For that reason, I believe CBS plan I was right in concentrating on an increase in competitive stations in the larger markets.

6. In addition to recommending a specific course of action which could be followed by the FCC, I believe that CBS plan I has considerable value in indicating the approximate increase in station assignments that can be made without depriving some areas of all television service. It also indicates, I fear, that unless additional VHF channels can be assigned to television, many community stations can look

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forward only to painful and possibly slow development of UHF channels.

7. Finally, since a reasonably complete long-term solution to the allocation problem seems dependent upon an increase in VHF channels, the full authority of your committee should be used to insure vigorous exploration of every possible method of obtaining such channels.

Senator POTTER. Mr. Lodge, is it your feeling that UHF is done, or dying fast?

Mr. LODGE. It is certainly not going forward, and as I said earlier, barring some step which will increase the flow of all-channel receivers into the homes, I see nothing but sliding backward from this point on.

Mr. COX. Certainly your plan doesn't do anything to actively promote the future of UHF?

Mr. LODGE. No; our plan does not, except to the extent that three networks would make—three successful and prosperous networks with more programs would help stations in the smaller communities.

Mr. COX. But those would be largely stations in smaller communities in the West where there are available allocations. They would not be small communities in zone I, where there would be nothing available for their use except UHF channels?

Mr. LODGE. With a few exceptions that is absolutely right.

Senator POTTER. What comment would you have to make on the testimony that was presented to the committee yesterday by Mr. Moore, concerning, first, option time and the other, the must-buy provision?

Mr. COX. Actually that will be discussed later.

Mr. LODGE. I am not the witness who should answer that.

Mr. COX. Dr. Stanton will be down.

Senator POTTER. I have no further questions, then.

Mr. COX. I have some.

Senator POTTER. All right, Mr. Cox.

Mr. COX. Mr. Lodge, you say, of course, that the public interest is the test in this matter. Wouldn't it be fair to say, however, that the public interest involves not just presently available TV service, but a capacity for future expansion of that service if it is at all possible?

Mr. LODGE. Yes. I would agree with that.

Mr. COX. Your plan is based upon 100 markets which would comprise the service areas of 3 stations in each of 100 major communities. How do you determine the service area of any of these stations which you have projected in this plan?

Mr. LODGE. The method is one of approximation. Some of it is engineering contours, not, incidentally, the same contours that are used in the Commission's standards, but a standard of approximately one-half the intensity used by the Commission——

Mr. COX. Which results in an increased——

Mr. LODGE. A somewhat larger service area than the Commission's coverage computations indicate. In other areas, however, where there is overlap—and we are right here in a good example between Baltimore and Washington—we would presume that the Baltimore stations are not listened to much in the city of Washington and vice versa, so a study of our map will indicate a cutting off of the service area between Baltimore and Washington.

Mr. COX. In general, then, your calculations, whether based upon actual engineering measurements or upon these computations using different values, produce service areas for VHF stations that are somewhat larger than those that would be predicted by the FCC engineering standards?

Mr. LODGE. Yes.

Mr. COX. Now, I think that you indicated this morning a possible range for VHF stations of 75 miles. What would be the maximum that you would get for grade B coverage under the FCC standards?

Mr. LODGE. The Commission's standards take into account power, antenna height, et cetera, so that there are even in existence today some VHF stations that have a B contour in excess of 75 miles. I am thinking, for instance, of those in Salt Lake City, Albuquerque, and Los Angeles, where they are located on mountaintops, where the B contour may be of the order of 80, 90, or 100 miles. These are exceptions.

In general, the difference between the contour we use and the contour the Commission would use is about 10 miles in radius.

Mr. COX. Now, I think you indicated that Florida is a desirable area for UHF. In general, would you say that the coverage of Mr. Storer's UHF station there compares favorably with that of the channel 4 station?

Mr. LODGE. In some directions it does. I have not personally observed it in some of the more built-up areas north of Miami. I would imagine in those cases there might be some minor deficiency, UHF as compared to V.

Senator POTTER. You mean because of the building obstructions?

Mr. LODGE. Yes, sir.

Mr. COX. How does your coverage of your station WXIX in Milwaukee compare with WTMJ?

Mr. LODGE. Not as favorably as Mr. Storer's UHF station compares with WTVJ in Miami.

Mr. COX. Why is that—again, buildings—or are there terrain factors there?

Mr. LODGE. There are buildings; there are terrain factors; but then you get into a very difficult area here, namely, what the public does about it. If the public buys a good outdoor antenna each time it attempts to tune in UHF, you get one situation, which is pretty generally good reception, assuming that the signal is strong and consistent. But if in a particular city the general custom is to use an indoor antenna or no antenna at all, then UHF has a tougher time than VHF does, over and above the other deficiencies, and Milwaukee is a city where outdoor antennas are not the rule.

Mr. COX. According to your computations or measurements, does WCBS-TV in New York serve Bridgeport, Conn.?

Mr. LODGE. Yes; it does serve it quite well by test, by observation, and by audience.

Mr. COX. I haven't checked your map. Do you include it within the New York market?

Mr. LODGE. Yes. It includes the Bridgeport service area.

Mr. COX. Who exactly decides what area you are going to use for station coverage, where a station is affiliated with the network? Is that basically determined by the station, or does the network make the decision as to what will be the claimed coverage of the station?

Mr. LODGE. The station is free to make any claim it may wish. In our own appraisal of how effective that station would be as an addition to the network, two groups—if you are speaking of CBS—attempt to make the best judgment they can. Our audience research group, using the data they have on popularity and amount of listening make their estimate, and the engineering department makes its estimate. We try to adjust the two.

Mr. Cox. I realize, of course, that in radio the distances are much greater, but possibly there might be some parallel. As I understand it, the AM station with which you were affiliated in Milwaukee has terminated that relationship and you now claim that your owned-and-operated station in Chicago, I believe, provides coverage for that area. Is there any parallel in TV coverage? Do you get situations where you can either say "This station provides the coverage" or "That station provides the coverage"? If so, has that affected these markets that you have outlined on your map?

Mr. Lodge. I see your point.

Mr. Cox. That is a complicated question.

Mr. Lodge. It is certainly true that, absent any CBS affiliate in a particular city that may be way out on the fringe, the effort by the listeners may be to pick up the distant station, and that if there were an affiliate in that particular community, the tendency might be for them to swing over to the local station. Certainly that is a type of consideration that comes up frequently in affiliation problems.

Mr. Cox. If you have two stations applying for affiliation which are somewhat close together, you either get a resulting overlap, which has to be adjusted between them, as far as claimed additional coverage is concerned in selling the network, or an adjustment has to be made in the location of the transmitter which will eliminate it. Is that true?

Mr. Lodge. Well, we would attempt to pick the affiliate that fitted best into our pattern. That is true.

Mr. Cox. Now, for instance, you list Spartanburg, S. C., as the 50th market. Was the determination of its service area and of the number of homes that would be served there based on the location of its transmitter on Hog Back Mountain or on Paris Mountain?

Mr. Lodge. I don't recall which one it was. I believe it would make very little difference which of the two sites was used for those computations, sir.

Mr. Cox. That is, you think equal population coverage would be attained from either?

Mr. Lodge. I think it would have swung possibly 1 or 2 counties one way or the other, but I don't believe it would have greatly affected the total service that would have been credited to that station.

Mr. Cox. Well, taking 1 station rather than the 3 stations which are allocated to the market under your plan, you would want one, I take it, that is removed to the south, so that you would not get overlap with your affiliate in Charlotte, N. C.?

Mr. Lodge. Well, either that or if there is another affiliate, another station there, we would try to ask ourselves which one would fit best in the network, and I believe it would be true that we would prefer one that did not have the maximum amount of overlap.

Mr. Cox. Even if this involved a removal of the transmitter some distance from the community to which the channel was allocated?

Mr. Lodge. Well, the station owner might make such move as he could under the FCC regulations.

Senator POTTER. Mr. Lodge, I have a vote. I have no further questions, but so the record will be complete, if Mr. Cox—if it will be all right with you for Mr. Cox to conclude with your questioning this afternoon, at the conclusion of the questions we will reconvene tomorrow at 10 o'clock. I am awfully sorry we have had this interruption, because I would like to have been here longer.

I understand Senator Bricker has some further questions he would like to have submitted for the record to be answered by Mr. Moore.[1] They will be placed in the record at this time. I know Senator Pastore had planned to be here, but he is engaged in a debate to save the Nation. [Laughter.]

Mr. COX. As far as a network operation is concerned, is it more economical and simpler, just in terms of business, to operate with relatively few high-powered stations than it would be to operate with more stations of less power, providing equal coverage, if that were possible?

Mr. LODGE. I am not sure I could answer that question categorically. It would be simpler, obviously.

Mr. COX. You would just have fewer people to deal with?

Mr. LODGE. Yes. As to the economics, I don't think I could answer that offhand; I don't believe I am the best witness for that.

Mr. COX. Isn't it substantially true that your plan I provides, first of all, substantial coverage of the Nation—85 percent, I think you said, even in these markets, plus the additional coverage in the areas you are not dealing with—and it does this with an absolute minimum possible number of stations?

Mr. LODGE. It does it with only a hundred stations, that is correct. You could predicate it with—you could imagine a network would have still fewer stations than that, but this seemed to be a very practical way of trying to do the first 85 percent of the country.

Mr. COX. Isn't it true that CBS has some kind of affiliate, or soon will have, in every one of these 100 markets?

Mr. LODGE. Certainly the vast majority. I would not want to answer on every particular one. I would have to go through the list to be sure I answered you correctly.

Mr. COX. There are 51 of them in your basic required group; there are 34 of them in your basic optional group; you have 9 more in your supplementary group (one noninterconnected), and you apparently have affiliates that are not on any of your lists in Rock Island and in Evansville. You get joint service with one or more other networks in three markets. You are due to get an affiliation with the new V allocation in Richmond. I think that takes care of the 100.

Now, my point is that both of your plans, both plan I and II, would guarantee continued availability of desirable stations for at least two networks, and an improved, but still not quite equal, availability for a third—is that correct?

Mr. LODGE. Yes. The intention was to try to get as many stations as possible in the top 100 markets.

Mr. COX. Your plan II would eliminate all use of UHF stations in the top 100 markets, and your plan I would, as I understand it, reduce your UHF affiliates from 23 to 8, of which 2 would be your

[1] The questions referred to relate to nonallocations matters and will be found under this date in the later volume on Network Practices.

owned-and-operated stations in Hartford (if that is approved) and in Milwaukee, and 6 would be stations in the 6 all-U markets that you contemplate?

Mr. LODGE. That is not strictly true. I believe there would be 1 or 2 other cities in which it would be necessary for one network or another to have a U affiliate.

Mr. COX. I am talking about CBS's position. In other words, you now have 23 UHF affiliates in the top 100 markets, I believe, and this would improve your position—coveragewise, at least—to the extent that you would now be down to your 2 owned-and-operated stations, and to the 6 markets in which there would be all-UHF service. In all the other markets there would be available 2 V stations at a minimum, or 1 V station, which you would have a good chance of affiliating with?

Mr. LODGE. Let me have Mr. Alexander check the figures.

Mr. ALEXANDER. Erie, for example, would be an exception. There might very well be some other markets in which we might continue our affiliation.

Mr. COX. I think you indicated you affiliated with the U station in Erie because it gave you less overlap than if you affiliated with the V?

Mr. LODGE. That is right. There might be other stations like that. I believe that the Lancaster-Harrisburg-York area is a similar case, too, where we would have to use a multiple number of UHF stations, just glancing through the list here.

Mr. COX. Are there as many as five, do you think, in which that would be true?

Mr. ALEXANDER. There might very well be more.

Mr. COX. There are only 4 markets in which there are only 1 V, and therefore in the other 12 markets where there is an intermixture of V's and U's, there are at least 2 V's and presumably CBS would have one affiliation and NBC the other?

Mr. LODGE. Presumably ABC has a chance to get it, too.

Mr. COX. They have that chance now?

Mr. LODGE. Yes.

Mr. COX. I think that someplace in your comments—not in your presentation this morning—you indicated that as far as individual UHF operators were concerned, some of them would be applicants for the drop-in V's that you propose, and you suggest legislation or regulation which would give them a favored status in that connection?

Mr. LODGE. I did not make that suggestion. That is one possible way in which it could be done, though.

Mr. COX. However, as I recall, there are not going to be as many facilities under this plan that are upgraded to competitive status as there are now UHF stations in existence?

Mr. LODGE. That is correct. They would not all be accommodated.

Mr. COX. This morning you were discussing this drop-in diagram of Mr. Merryman and you suggested a correction to that because of the offset operation. Isn't it true that the concept there is the worst possible degree of interference between VHF stations in zone I in that it presupposes the absolute minimum separation, whereas most of the stations actually in operation in the zone are at somewhat greater separations?

Mr. LODGE. I stated that. This was the example that Mr. Merryman used.

Mr. Cox. Himself.

Mr. Lodge. Yes. It indicated the effects of a drop-in. I indicated it was an extreme case. Others would be less than that.

Mr. Cox. I take it that these drop-in V's, while having certain very real competitive advantages over a U in the market, are not fully competitive with a full power V in the market.

Mr. Lodge. That is true, that in some directions at the closest spacings their power will be limited and they would be subject to some more interference, but I believe in all cases they would be quite effective stations. They would not be by any means a "dog" station, to use a colloquial term.

Mr. Cox. Would they provide simply a better grade of service, because they are V's within an area, or would they actually provide an area coverage that would be more nearly competitive with the full power V than is possible with a U in these areas?

Mr. Lodge. In most of the cases of the drop ins we suggested, their coverage would in most directions be quite comparable with that of a full-power VHF station. They would be restricted in certain directions by directional antennas.

Mr. Cox. Using a directional antenna they will get an elongated service area which is narrow from one side to the other?

Mr. Lodge. It will be pulled in a few miles—by that I mean 15, 20, 30 miles even—in certain directions, but I believe the service would be larger and better, and, of course, it would reach all receivers, which is not the case with the U's that are now there.

Mr. Cox. As I recall it, there are, I think, 14 markets in which these drop-in V's would be competing with 2 full-power V's.

Mr. Lodge. That sounds about right; yes.

Mr. Cox. Also, of course, your plan I recalls for 14 markets with 2 V's and 1 or 2 U's. I take it that those clearly are not fully competitive facilities, and you don't so classify them in your plan?

Mr. Lodge. No. Those are what I call the failure cases.

Mr. Cox. In other words, when you establish Louisville and Providence with 2 V's and a U, essentially that makes them, for the foreseeable future, 2 station markets?

Mr. Lodge. Except to the extent that I indicated that some of the work of others—in both of the cities you mentioned I think the ABC plan and the Storer plan had suggested other devices that might have effected a third VHF in those particular communities, so I was by no means inferring that I had all the final answers in that particular plan.

Mr. Cox. If they can find a V to put in there, it will be a drop-in V that would presumably then interfere with a V that you dropped in some place else?

Mr. Lodge. I think in both of those particular cases that would not be true.

Mr. Cox. As a matter of fact, I was interested to note that apparently the whole State of North Carolina—perhaps by accident of allocations—ends up with a series of 2 V-1 U markets, so that substantially, unless history reverses itself, that area would be dependent upon 2-network service?

Mr. Lodge. I think it would depend on the size of the market. You will recall I had another chart this morning, chart No. 3, which indicated the number of hours of network programing per market, and you will notice as you get down to the smaller markets you do not have 100 percent of the network schedule being carried in such markets. In fact, I suspect that if you get down to about market No. 90, or market No. 100, you would be pretty hard put to keep 2 stations pretty well loaded down with network business, with 3 networks.

Mr. Cox. From the standpoint of their being ordered by advertisers?

Mr. Lodge. Yes.

Mr. Cox. So that would, in effect, rather than giving simply 2-network coverage, it would give partial coverage of 3, plus local?

Mr. Lodge. Yes.

Mr. Cox. Now, your plant I calls for 6 all-U markets, and for 4 one-V and two-U markets, with, I believe you say, a total of 3.1 percent of the families in the country. Do you think that that is going to be enough to sustain UHF as a really important part of broadcasting, and to provide any incentive to further technical development?

Mr. Lodge. I indicated this morning that I thought a market of that size was sufficient to keep several manufacturers interested in trying to sell receivers in those markets, and that means developing them and having them available for sale. I don't know how much pressure there would be to improve transmitting equipment with that limited a market, so I would rather refrain from answering that question. I don't know.

Mr. Cox. I think you indicated, in answer to Senator Potter's question awhile ago, that the hopes of preserving UHF, except on this rather limited basis, are very slim. Don't you think that even this nondisruptive deintermixture that you discussed, and indicated didn't contribute much to the overall problem, would at least increase whatever benefits can be derived from this limited number of markets that you have left for UHF?

Mr. Lodge. It would certainly increase the number of islands of UHF by half a dozen or a dozen, whatever the figure was in the Storer plan. There have been several others. It falls far short, however, of meeting the community-station concept.

Mr. Cox. Well, your plan, of course, doesn't take care of the community-station concept either.

Mr. Lodge. Not unless you go to plan II.

Mr. Cox. Yes. So that if, through some deintermixture proposal such as Mr. Storer made, or through withholding additional V grants in UHF areas, you could increase the number of islands, you would have done that much more to stimulate manufacturing, you would have done that much more to guarantee a future for UHF, and at least in those limited areas you would have permitted the growth of community stations, if they were to become economically supportable?

Mr. Lodge. I believe that is correct.

Mr. Cox. I think in your second conclusion you state that deintermixture would reduce nationwide service and would involve a tremendous dollar cost. I suppose this is basically a widespread deintermixture that you are talking about?

Mr. Lodge. Mr. Storer, as I understand it, did not propose deintermixture in the sense of taking away service now on the air.

Mr. Cox. I think that is right.

Mr. Lodge. In the case of deintermixture as I used it, I meant taking stations off the air.

Mr. Cox. Well, then, would you be in favor of deintermixture in the sense of simply withholding V service where it doesn't involve eliminating stations not yet on the air?

Mr. Lodge. That is a very difficult question, and I don't think I can indicate a strong preference one way or the other.

Mr. Cox. I notice you state on page 13 of your statement that it is a close decision whether it should be modified.

Mr. Lodge. Yes.

Mr. Cox. Can you tell us any arguments against it, other than the fact that it is not a complete answer?

Mr. Lodge. Well, you always have the position of the men who have gone to the expense of going through hearings—some of them are under construction. I know of several who actually have made expenditures to build stations. They now have construction permits that have been issued.

Mr. Cox. That is strictly a personal consideration, which weighs only against the personal consideration, let's say, of the UHF operator, and which in both cases is completely subsidiary to public interest?

Mr. Lodge. You asked me if—for objections. I feel that it is kind of hard to forget the man who has fought through for 3 or 4 years to try to get a VHF, now has a construction permit, and may be under construction. If you rule that one out, I can't think of any very strong objections.

Mr. Cox. Basically, it gets down to the personal interest of the applicant?

Mr. Lodge. Yes.

Mr. Cox. Now, you indicated this morning, I think, that in a number of these areas, such as Fresno and Hartford, you thought that the bringing in of a V would provide additional coverage that is not provided either by U stations in those communities or by V stations from other markets.

Mr. Lodge. I should have included that in my answer earlier because that is a problem that is raised in all deintermixture—the price you pay in peripheral service that would be rendered. However, in the case of most of Mr. Storer's proposals, I did not include that because I believe that most of them already had one V on the air.

Mr. Cox. A great many of them did.

Mr. Lodge. Yes.

Mr. Cox. That would give at least one service in the area?

Mr. Lodge. Yes.

Mr. Cox. Now, are you familiar with the evidence in some of these deintermixture proceedings in which—at least it would appear—strong showings were made, or strong efforts were made to make factual showings that these white areas did not exist, and that therefore no additional coverage would be provided—particularly in the one case we have mentioned in the committee hearings here, the case of Evansville?

Mr. Lodge. I am sorry I have not followed those individual hearings.

Mr. Cox. As I recall it, there were uncontroverted affidavits in that case that, through actual survey, it was found that there were two acceptable signals in the areas which the V applicant claimed were white areas not served. Now, it is quite possible, isn't it, that in any fairly closely developed area, that despite the inability of the U station to reach that far, there may be usable signals coming in from other places?

Mr. LODGE. Certainly.

Mr. COX. You have tied these plans of yours in with the economics, which certainly provide a sound basis, but isn't it true that plan I doesn't even provide for as many competitive stations in these top markets as Dr. Alexander says they can support?

Mr. LODGE. Mr. Alexander is here.

Mr. ALEXANDER. It is true. They make a step in that direction. They do not go the whole way.

Mr. COX. In other words, as I recall your tabulations, you felt that 3- and 4-station markets could support 422 stations, whereas I believe your plan I provides for 323—but some of which are U's in 2-V markets which would have a very limited life.

Mr. ALEXANDER. That is approximately correct, although 24 of those 422 are beyond the hundred leading markets, so the hundred leading markets, naturally—these figures shouldn't be taken to the last digit anyway. The hundred leading markets can, in that computation, support 398.

Mr. COX. Also, I think that you indicated that there were 78 communities which could support 4 stations.

Mr. ALEXANDER. That is right, 4 or more; the first 20—and that is a very rough estimate, rougher than the others—I presume could do with more than 4.

Mr. COX. Actually, plan I provides for 4 or more channels in only 12 of those, doesn't it?

Mr. ALEXANDER. I don't remember the exact number, but far fewer than could support it. That is why, in the submission to the FCC, there are these two appendixes—I believe, appendixes 7 and 8—which indicate, under each of plan I and plan II, how much further you could go within those plans toward 4 stations in each of the 100 leading markets. As you pointed out, many of the hardest cases occur in the top, not quite the top markets, because you can make New York and Los Angeles—Chicago already has 4—but just a little bit beyond that, you start running into trouble until you get down to about, I think, the 26th.

Mr. COX. The 26th.

Mr. ALEXANDER. That is, again, under the initial assumptions that Mr. Lodge made, that certain other assumptions that ABC made, for example, or others, might permit a few more markets, through moving in stations, and so forth, that we did not assume. There is a good deal of flexibility in smaller modifications, naturally, of these plans.

Mr. COX. Your plan, of course, is obviously and quite frankly designed to provide for the possible development of three nationwide networks of a fairly competitive character?

Mr. LODGE. That was our objective.

Mr. COX. I take it, though, that except for these possible fourth stations that could be put into some of the smaller markets, that your feeling is that with the present number of VHF channels available—and having substantially written off the UHF channels, except in a limited number of instances——

Mr. LODGE. Excuse me, to the extent that the excise tax might be dropped and ultimately give a means of getting UHF tuners in all homes, that hope I have to hold out.

Mr. COX. With those reservations, this is just about as far as you can go, and having gotten these three networks, the possibility of a fourth, the possibility of the development of substantial independent stations which would provide an outlet for independent program sources, those are quite remote?

Mr. LODGE. I am afraid that is the straitjacket we are in.

Mr. COX. I am interested in what our TV system would look like outside the 100 top markets. You made this morning the very valid point that you certainly have not denied television service to the areas not covered on your map, and I think if you check our hearings, you will find that that point was clarified at the time Mr. Merryman made it. What is going to be the situation outside of these 100 top markets? Will there be 166 competitive assignments that will be available to take care of the 1- and 2-station markets that Dr. Alexander says can support that many stations?

Mr. LODGE. I don't believe there is any great shortage of channels in the smaller markets at the present time, but how great that would become in the future is something only the future can tell. It could be there would be demand for a very, very large number.

Mr. COX. I think at this point, maybe, I had better ask Dr. Alexander what it is exactly he means by one of these markets. You indicate in your tables that there are only 217 markets with the necessary minimum 22,000 homes which can support TV stations. Does this mean that there are only that many which are within the range of a strategically located TV transmitter?

Mr. ALEXANDER. No, sir. The basis—and you can, as I said before, change the figures around by varying definitions by 5 or 10 either way—but within that margin, for variation, with differing definitions these markets were determined, first, by going over the list of all station points for which an application had ever been made, determining how many families were within various distances of such points, and not within the corresponding distance of points higher on the list.

In short, the concept of that last point is that the word "unduplicated" should really be before the statement that this includes all station points that can bring in 22,000 or more "unduplicated" homes, so that the principle—that word "unduplicated" is the principal factor which brings about that point, which is what one starts with if you start with th e continental United States and the allocation plan, down to something in the order of 350 points. When you take those 350 where applications have been made, you then will shrink further by the so-called overshadowed points, leaving you substantially, and depending on how you define it, 220, let's say, 220 points, which are neither overshadowed nor have fewer than 22,000 families in their service area, defining again, there was one characteristic that I may point out that in defining overshadowing, I permitted any smaller station to have duplicated families that were more than 50 miles from the primary service point.

In other words, just not to incur an error there, I assumed that a station in a smaller community would have a fair share of families that were within its service area that were closer to it and outside the 50-mile range of a larger station, even though possibly covered by the larger station. That is a special quirk of TV, but it gives you some idea of the basic philosophy involved in making that estimate.

Mr. Cox. Would it be fair to say that there are a good many communities, in the conventional sense of the word, which are large enough to support a television station by your standards, but which are not considered by you because of the fact that they also fall within the possibility of coverage from a larger population point to which you then allocate the three stations?

Mr. Alexander. Well, I think that if I may state that a little bit differently, I would say that my interpretation of the economics of television today is that a station that covers let us say 50,000 families, all of which were well served from another larger station point, will not have an economic chance of survival. That is the point that I indicate. I do not indicate that some time in the future such stations will not. This goes both for VHF and UHF, incidentally. Remember, Mr. Lodge made the distinction that three different circumstances can operate to prevent a station from earning profits. One of those was the competitive disadvantage of UHF; the second was overshadow, and even if you take it independently, you may find places like St. Cloud, Minn., where VHF is assigned, where even by my computation that place could support a station, but the applicant has dropped his application because I believe he was convinced that he probably couldn't, because he is right on the edge of service from another larger station and felt that that competition would be too keen, so that to cut down in the number of communities from the 1,240 down around to my 220 includes this factor of the so-called overshadowing effect.

Mr. Cox. Isn't it true that the reason you say that this community, of sufficient size in and of itself to support a station, is not economically feasible is that it is not economically feasible for support through national advertising because the national advertiser will not buy that station if he can obtain coverage from New York?

Mr. Alexander. That is not the reason why I selected it. That may be an explanation. That is an inference that may be drawn. I selected it merely from an empirical study of where stations could survive and where they could not. In other words, it is a much more difficult analytic problem to ask whether the support or failure of support of a station in St. Cloud was because national advertisers were not forthcoming.

I will say local advertising in TV, as in radio, is slower in coming than the other. At some time in the future perhaps this difficulty may be surmounted. I am not in the position to say it is only because of national advertising not being forthcoming that these overshadowed stations cannot do well. I think that there are a number of them which have VHF's. They might be able to say why they are having trouble. One of their reasons certainly will be because of a shortage of national advertising. I presume another one will be—and this is a presumption—that local advertisers or national spot advertisers, as well, are not attracted to the station unless there are some national programs there to attract the audience first. In other words, there is a value to adjacencies. There is a whole complex there which is very difficult to analyze, naturally, which would prevent these stations from being as commercially successful as those.

Mr. Cox. Since it is overshadowed, the network doesn't affiliate with the station in that market, and therefore the national advertiser on a network basis never gets a chance to buy that market independently. He can only buy the larger market which is served by the metropolitan station?

Mr. ALEXANDER. That would be one consequence of not being affiliated. If affiliated, it would be doubtful if many advertisers would want it, which is the basis why, in the individual case, it would not get its affiliation.

Mr. Cox. Isn't it true that at the present time there are, aside from the stations in your top 100 markets, only some 160 program-originating stations in the country, as against the 166 that Dr. Alexander says can be supported in 1- or 2-station markets, so that unless your plan includes some method of survival for these, a good part of which are UHF stations, it is actually going to reduce service below the supportable levels, or at least provide no remedy that will preserve service fully to the extent that seems economically supportable?

Mr. LODGE. I think Mr. Alexander ought to reply to that more than I would. I would like to point out some you are speaking of are undoubtedly in the overshadowed areas and not in the distant areas, a number of the stations.

Mr. ALEXANDER. I am not sure I got your question. I would certainly not say that Mr. Lodge's plan would reduce any station. I think what the content of your question, as I understood it, is that the sixth report assigned channels to certain communities, and application have been put in for those channels where the present economics will not support stations. I mean I think there has been ample testimony before this committee and elsewhere to indicate that that has in fact transpired. In short, there is a problem in some communities of supporting a station; yes.

Mr. Cox. However, by your concentration on the development of 3 V stations in the top 100 markets, don't you doom, perhaps, a station in an overshadowed market which can survive as long as it doesn't have multiple competition from outside?

Mr. ALEXANDER. Well, frankly, I just don't know the answer to that, but if you want my opinion, you are asking: Will a station in a small community served by 2 VHF's from a large adjoining community be able to survive, but not if there are 3 VHF's in that large one?

I would say that my general feeling would be that there would not be a significant difference in such a case, where it is really an overshadowed market; that frequently 1 VHF is enough to overshadow a UHF station, and that the difference between 1 and 3 is not likely to be as significant as your question would imply. But, again, this is just an opinion; there aren't enough cases in which you can test that empirically.

Mr. Cox. Do you think Enid, Okla., is an overshadowed area?

Mr. ALEXANDER. I would have to check.

Mr. Cox. What you propose to do is to move the VHF station that is now in Enid to Oklahoma City. Now that clearly deprives Enid of a community service. It, I assume, does not give Enid an additional service because it is already served from the two Oklahoma stations.

All it does is to provide a multiple service for a slightly altered geographic area; isn't that true?

Mr. ALEXANDER. That is true. That is Mr. Lodge's question.

Mr. LODGE. That is absolutely right. It would shift from a community service station to one serving a much larger population.

Mr. COX. I assume this, of course, will be welcome to the owner of the station, but perhaps not so welcome to the people who live in Enid or in Eldorado, Ark., or the other places where you propose to move these?

Mr. LODGE. That is presuming they don't want the programs; they would get them on the Enid station after they move. I am not sure you can make that assumption.

Mr. COX. In other words, you don't think the desire for a local TV service is equal to that for network service?

Mr. LODGE. No. I don't quite see that you could conclude that the programs are not acceptable to the people after the move.

Mr. COX. Is it likely that a station located in Oklahoma City will support community projects in Enid, Okla., as well as one that is physically located in Enid?

Mr. LODGE. It would depend on a lot of things. If the station now signed on at 4 p. m. in the afternoon because they couldn't carry a very extensive program schedule, and if it ran 16 hours a day after the move, it could well be it would be better.

Mr. COX. Do you know, Dr. Alexander, whether there are any cities with less than 22,000 homes which now have television stations which are operating at a profit?

Mr. ALEXANDER. First of all, I want to point out that these are not cities of 22,000 homes. These are television markets. This is a very important point because a number of critics of my paper have frequently used that error to make it seem as though many cities with fewer than 22,000 homes would not have stations, when in fact they would, because their market would have 22,000 homes, so that I don't know, I don't know of any individual cases. You see, I work largely from statistics which are made public by the Federal Communications Commission, which do not reveal the individual station's operation. They are very careful not to reveal that.

Mr. COX. Do you know whether Grand Junction, Colo., or Twin Falls, Idaho, are buried someplace within the one-station markets that you calculate can support stations?

Mr. ALEXANDER. No. I can tell you by looking up my records whether these stations are computed by need to support. I am quite sure they can. They are able to, even though they are such small communities. They can go out 75 to 100 miles. When you draw a 100-mile circle that is a very large area, even is those States where the density of population is low. But I would guess, however, that—I want to make clear that my computation was designed to try to get the number of stations and not to apply to any individual instance. There will be instances, I am sure, where a community whose total TV area contains possibly 10,000 homes, it might make a go of the station—another one with 30,000 might not.

This was taken from an average relationship, which says essentially that, if you cut off at 22,000, you will have as many communities above it that cannot as you will have below it that can, so that it is an average relationship; and like any other average, it is made up of a composition of different quantities, so that I by no means want to be in the position of saying that no community with fewer than 22,000 families within, let's say, 75 miles, if it is a VHF station point—I do not want to say that no such community can support a station. What I want to say is, if you tally all such communities, you will find that as many of them can as cannot, so that that is the line which would give you the best estimate of how many, in fact, can support a station.

Mr. Cox. You indicated, I think, this morning, Mr. Lodge, that CBS is affiliated with 178 stations, or some number in that neighborhood.

Mr. Lodge. One hundred and seventy-eight markets. It is a larger number of stations than that.

Mr. Cox. In any event, in excess of the hundred markets that you are dealing with here. I take it, though, that presently and in the future, until those markets grow in size, the affiliation they get is of a lower order in terms of both revenue and programing than that which would be possible in the top 100 markets?

Mr. Lodge. Well, that, of course, is what the advertisers buy, and not what we limit them to artificially, or in any way.

Mr. Cox. In other words, you are going to be providing network service outside these 100 markets, but not on the same basis that it might well be feasible to supply it within the 100 markets?

Mr. Lodge. No. We actually have the same service available within and without. The number of hours per week of programing that a particular station gets flows from the desire of the individual advertiser.

Mr. Cox. As I understand this third exhibit you had, as you go down the scale, even within the top 100 markets, you decrease the number of hours that are ordered on these stations, and that that would extend well beyond the 100 markets, so that unless they get service through your program extension plan—is that yours or is that NBC's?

Mr. Lodge. Extended program service, I believe, is ours.

Mr. Cox. Extended program service. Unless they get benefits in that way, the network service that they get is on a more limited basis than that which is attainable in the top hundred markets?

Mr. Lodge. Yes. You said in asking the question, "You limit the number of hours," inferring that we limited the number of hours. That is not the case. It is the advertiser who does not buy.

Mr. Cox. I didn't mean that. The service that is made available, even though you are perfectly willing to provide it——

Mr. Lodge. And anxious to.

Mr. Cox. Is limited by the advertiser's willingness to buy these markets that are outside the hundred markets that you concentrated on here for your three services?

Mr. Lodge. Yes.

Mr. Cox. I notice that in your comments, although not in your statement this morning, you made a suggestion for further increasing the height of antennas in zone I. Do you still feel that that is desirable?

Mr. Lodge. I feel it is a desirable thing. I believe it would reduce the white areas in the country some.

Mr. Cox. By increasing the service area of the presently existing V's it will also increase the area of overshadow and also it will possibly reduce the future service areas of the drop-ins that you contemplate?

Mr. LODGE. It would have all of those effects. I believe that the magnitude of either the improvement, on the one hand, or the damage in the cases that you mentioned is greatly exaggerated. As far as I personally am concerned, I do not believe it makes an awful lot of difference whether it is or is not adopted.

Mr. COX. You urge your plan II for the long range because you feel that the addition of a minimum of 7 V channels is perhaps the only solution that would permit the achievement of all 3 of these objectives that you have been discussing. Now that, I take it, would involve no loss in service, but it would involve dollar costs to the other services of a magnitude perhaps even greater than some of the costs that you outlined, but that this is a cost which would be borne by the viewer as taxpayer rather than as the owner of a TV set—doesn't it amount to that?

Mr. LODGE. I indicated carefully in my testimony I had no direct knowledge of what these costs might be. It could be the costs are too great to be considered. I do not know.

Mr. COX. That is, quite clearly there would be a problem of relocation of services and the purchase of, in some instances, quite different equipment to permit the same thing to be done that is now being done on the VHF channels that would be necessary for this plan?

Mr. LODGE. That is the area in which we are not in good position to inquire, and I believe your committee is in much better position to find the facts.

Mr. COX. Thank you very much, Mr. Lodge. I am sorry we have kept you all here so late in the day. We will convene in the morning at 10 o'clock in this room and hear Mr. Heffernan.

(Whereupon, at 4:32 p. m., the committee adjourned, to reconvene Wednesday, March 28, 1956, at 10 a. m.)

TELEVISION INQUIRY

(UHF-VHF Allocation Problem)

WEDNESDAY, MARCH 28, 1956

United States Senate,
Committee on Interstate and Foreign Commerce,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room G-16, The Capitol, Washington, D. C.

Present: Senators Pastore (presiding), Schoeppel, and Potter.

Senator Pastore. The hearing will come to order.

Our first witness today is Mr. Joseph Heffernan, vice president of the National Broadcasting Co.

STATEMENT OF JOSEPH V. HEFFERNAN, VICE PRESIDENT, NATIONAL BROADCASTING CO., INC.; ACCOMPANIED BY WILLIAM DUTTERA, MANAGER, ALLOCATIONS ENGINEERING, NBC; DAVID ADAMS, VICE PRESIDENT, NBC; THOMAS ERVIN, VICE PRESIDENT, NBC; JOHN SONNET, COUNSEL; AND JAMES GREELEY, COUNSEL

Mr. Heffernan. Mr. Chairman, members of the committee, my name is Joseph V. Heffernan. I am a vice president of the National Broadcasting Co. I appear here at the invitation of the committee to furnish information with respect to the frequency allocation phase of the committee's hearing.

At the outset I want to express to the committee NBC's appreciation for affording us the opportunity to come before you and state our position. We believe this hearing can serve a constructive purpose in developing the facts relating to UHF television, its potentials for public service if rightly handled, and the large measure of its promise which can be lost to the public if not so handled.

TV ALLOCATIONS AND THE SIXTH REPORT

We believe the Chairman of the Federal Communications Commission stated the fundamental issue at stake in the allocation of frequencies to television broadcasting when he said in December:

> Basically at issue is how widespread a service can television become? (The Dynamics of a Dynamic Industry, an address at the Poor Richard Club, Philadelphia, Pa., December 6, 1955 (FCC 26209).)

We believe that full utilization of the 82 channels now allocated for television—the 70 UHF channels and the 12 VHF channels—offers the best prospect for the growth of television as a nationwide competitive system. This is the objective of the Commission and a goal which NBC strongly supports.

In the notice of proposed rulemaking for its current frequency allocation proceeding—FCC Docket No. 11532, instituted by notice of November 10, 1955—the Commission stated that the objectives of the sixth report and order issued in 1952 were:

(*a*) At least one service to all areas.

(*b*) At least one station in the largest possible number of communities.

(*c*) Multiple services in as many communities as possible to provide program choice and to facilitate competition.

As a means to fulfill these objectives, the Commission allocated for television service the 70 UHF channels in addition to the 12 VHF channels.

Since the time the Commission's sixth report was issued, RCA and NBC have aggressively acted to improve transmitting apparatus, receiving apparatus, and television transmissions at UHF to assist in the expansion of the television service contemplated by the Commission's order. As a result of these actions advances have been made in the technical performance and in the techniques related to both VHF and UHF operation and experience have accumulated on the matters relating to television broadcasting encompassed by the sixth report.

In the allocation proceeding currently pending before the Commission a variety of proposals have been made suggesting changes in the allocation plan adopted in the sixth report. We have submitted comments in that proceeding suggesting measures we believe would be helpful in maintaining and strengthening the UHF service. We have taken this approach because we believe that the effective use of the 70 UHF channels, together with the 12 VHF channels, offers the best prospect for encouraging the growth of television as a nationwide competitive service.

In his testimony before you, Dr. Engstrom of RCA discussed allocation considerations against a background which he presented relating to technical development in the UHF field and the contributions to that development made by RCA and NBC. I shall deal with allocation considerations as they relate to broadcasting. In doing so I will refer to steps which can be taken now to help the situation and will indicate what we believe are limitations in some of the proposals advanced by others.

ACTION WHICH CAN BE TAKEN NOW

We believe that each proposal which offers promise of significant improvement in this field should be thoroughly and carefully evaluated by the Commission, so that it can develop a broadly based plan of affirmative action. This will take time, since it calls for considered analysis and resolution of detailed issues and for decisions based upon the long-range implications of these issues.

There are, however, some actions which relate to UHF which Congress and the Commission can take at once. While no single step taken now offers a magic solution, the actions we urge will help significantly in realizing the potential of UHF.

I shall state first in outline form the nature of the actions which can be taken now, and then I will discuss them in greater detail.

The Congress can:

Declare as national policy the goal of maintaining and strengthening the UHF service, in order to encourage the continued development of television on a nationwide competitive basis.

In aid of this policy, repeal the excise tax on all-channel color receivers. This would progressively relieve the circulation handicap which has been the greatest single drawback to UHF development.

In order to facilitate a Commission policy of deintermixture in implementation of this policy, the Commission should be in a position to permit the holder of a VHF grant to receive, without further proceedings, a grant for a substituted UHF channel resulting from deintermixture. If the Commission believes there is substantial question of its authority to follow such a course, Congress should enact the necessary legislation.

Senator PASTORE. On this very point, what do you think of the suggestion that has been advanced by some individuals that a possible solution along the first point your raised might be a resolution to the effect that all color TV broadcasting should be on the UHF band? Where woud that lead? Would you want to make a comment on that?

Mr. HEFFERNAN. Yes, sir, Mr. Chairman. I am afraid that would lead to stopping color broadcasting, because color has not had an easy time getting off the ground, although it is now coming along fairly well; and the stations which, for the most part, are doing color broadcasting are the VHF stations, and if you limit it to UHF, there would be very few stations at the moment who could broadcast in color. It would just stop color in its tracks.

Mr. COX. There is considerable expense, is there, in connection with equipping a station for color broadcast?

Mr. HEFFERNAN. Not, Mr. Cox, to broadcast network color.

Mr. COX. But to originate their own?

Mr. HEFFERNAN. To actually pick it up in the studio does involve considerable expense, but the networks—that is, NBC and CBS—are equipped to do that at considerable expense, but once we feed it out to a local station, affiliated, there is relatively little expense involved in that station modifying its transmitter so that the transmitter will feed out the color signals, because that is all it has to do.

Senator PASTORE. Its progress in its development will be measured in terms of the quality and quantity of distribution at the broadcasting point, the local level?

Mr. HEFFERNAN. That is correct.

Mr. COX. The problem, actually, for color now is the sale of color sets so that color TV programs that are made available will have an outlet?

Mr. HEFFERNAN. Yes. It is a circulation problem.

Mr. COX. You feel, therefore, the best use that could be made of the shift to color would be to have all those color sets as they come into the market all-channel, if that can be encouraged through tax policy?

Mr. HEFFERNAN. I do, Mr. Cox. I discuss that in some detail later.

The Commission can:

Deintermix on a sufficiently broad basis to create a nucleus of predominantly UHF service areas from which UHF may grow and expand.

Encourage multiple owners with resources and know-how to undertake the operation of UHF stations in intermixed markets.

Encourage other qualified persons to undertake UHF operation in such markets.

Permit UHF stations to use directional antennas.

Permit UHF stations to use on-channel boosters and translators to more nearly equalize coverage with their VHF competitors.

Permit UHF stations to us 5 megawatts of power as an additional means to improve their competitive position with VHF.

REPEAL OF EXCISE TAX ON ALL-CHANNEL COLOR RECEIVERS

In the past 2 years active consideration has been given, with this committee's support, to the repeal of the excise tax on all-channel receivers. That would be black and white at this stage. The removal of this tax would have made such receivers competitive in price with VHF-only receivers and would mean that the circulation handicap under which UHF has labored would progressively diminish.

A more limited approach to excise tax relief is now proposed. This would provide such relief for all-channel color sets.

This limited proposal would mean little revenue loss to the Treasury at this time. It therefore avoids the principal basis on which the Treasury has opposed tax action while maintaining the compelling considerations of national policy which support tax relief for UHF. At the same time, it aids the development of the new industry of color television.

If all television sets now in the hands of the public could receive all UHF stations, as they can receive all VHF stations, it is safe to say we would not be here today. There would still be some technological differences in the extent and nature of coverage between a UHF and VHF station, but these differences would not present a fundamental obstacle to the maintenance and growth of UHF as a basic part of a national television system.

The obstacle to the development of UHF as an extensive national service is the circulation problem, which arises from the fact that in many intermixed markets only a portion of the sets can receive UHF while all can receive VHF. If the excise tax were removed on all-channel color receivers, it is reasonable to believe that all color receivers would be equipped at the factory to receive all channels. Thus, as color sets replaced or supplemented black and white sets now in the hands of the public, there would be a progressive growth in UHF set circulation on a national basis.

There is every reason to believe that color TV is at the threshold of rapid development. Taking NBC alone, the volume of color programing broadcast on the network during the current season is five times the volume of our color schedule during the past broadcast season. And for the coming broadcast season of 1956–57, commencing this fall, NBC is pointing to the goal of color programing every evening.

In addition, our Chicago TV station is being converted to color 100 percent, so that commencing just 3 weeks from now, all of its local programs which are regularly broadcast live will be presented in color.

With network color programing growing in frequency and volume, and with the growth in local color programing on the part of stations equipped to originate color, color set circulation will be stimulated to grow at a cumulative rate.

Exercise tax relief for all-channel color receivers would therefore mean that the growth of UHF set circulation would be directly associated with the growth of color sets. If the growing circulation of color sets becomes also available for UHF, which would follow from the excise tax action now proposed, this would be a vital contribution to the preservation and development of UHF.

If such tax action were taken now the very prospect of this progressive increase in UHF circulation would give a big lift to the development of UHF. There would, of course, be some revenue loss, but there are these points which heavily outweigh the loss.

In the first place, we should consider the tremendous help which excise tax action would give to the preservation of UHF as a critically scarce national resource, since it is only through the preservation of UHF that the Nation can have the extensive television service it needs and deserves.

This point depends in turn on the complexities of frequency allocation and frequency scarcity which are understood by this committee and the Commission by reason of their long experience in such matters, but it is not reasonable to expect that other Members of Congress and the executive branch of the Government would have anything like the same background in this area, and without it, are not in a position to realize the vital public considerations which establish the need to help UHF.

We refer to public considerations favoring excise tax repeal because they are and should be stated as public considerations. The relief is not sought to help manufacturers. Nor is it sought to help broadcasters as such. It is sought to help the public get the kind of television service it can get in only one way—the preservation and use of UHF.

I might say here that the discussion yesterday was helpful in clarifying that point, I believe, and I think the position of CBS is to be admired in the clarity and forthrightness with which they brought out that their proposals to develop three V stations in more big markets could be at the expense of the desirability of having more community stations in smaller markets.

They were forthright in that position and they therefore helped clarify the situation. Our position is a different one. We feel it practical to attain both objectives.

Senator Pastore. Don't answer this question if you do not want to, but what is your feeling with relation to the number of stations in New York City? Don't you think you are overloaded in New York City?

Mr. Heffernan. I should like to say, Senator, in respect of that, that New York City is allocated 1 station per 2 million people in the metropolitan area. I know of no city that has so few per people involved. I know of no city of 2 million people that has only 1 station.

Senator PASTORE. Is it fair to measure it that way? Do you mean that for equitable distribution you have got to have a certain number of stations per people? Isn't it really the number of channels that may be available to any one person really an equitable way of measuring it? In other words, as a whole, people in New York City—any 1 patron of TV can turn on 7 channels. Yet you come to Providence and the best you can do is to tune in two channels. Why should the individual in Providence be deprived of the facility of seeing the third network shows at all times, and yet the person in Washington and the person in New York have the availability of so many different channels? I mean I do not see how you are going to effect an equitable distribution based upon so many channels per millions of people.

Mr. HEFFERNAN. Mr. Chairman——

Senator PASTORE (interrupting). Because it actually works out to a denial of overall availability to people in other parts of the country. I realize the sixth report set down as priority No. 1: "We will give at least one station to everybody." That is admirable as far as it goes, but as long as you have other people enjoying 7 channels, you are not going to get much content from people who are going to be confined to 1. In time there is going to be a little howl on the part of those people, and it is to be expected.

I don't know, technically, how you are going to unscramble it. I am not getting into that. I think basically the trouble started—of course it is easy enough to realize how we did start—but that is basically, I think, back of the trouble in New England where you have such terrific concentration in large cities, namely, New York, that raises havoc in making new assignments in parts of New England. Do you disagree with me?

Mr. HEFFERNAN. I do not disagree with your analysis of it as it relates to present operative stations in Providence. It was the intention of the Commission, the objective of the Commission—and it certainly is an objective we strongly support—that Providence should not be limited to two stations. Providence should have more than 2 stations, and if our proposals, and the action of this committee, and the Commission, and Congress would make UHF go and succeed, Providence will not be limited to 2. Now I would say this: That if, however, we are remitted to a system under which we have only 12 channels for TV broadcasting, as compared with 106 for AM broadcasting, and 100 for FM broadcasting, 12 marbles are not enough to play the game with and have the kind of a distribution that various communities deserves—12 channels are not enough. The Commission realized that from the start. I think everybody realizes it. If you have 82 channels you can do the job. That is why, in our view, it is so important that UHF be preserved and strengthened so that we can play this game with 82 channels and not with 12 channels.

Senator PASTORE. What do you have to say on the argument that has been raised here continuously with reference to the superiority of the VHF channel over the UHF channel in that there may be some places, like behind a hill or what have you, where you do not get such clear reception on UHF as you might get on VHF?

Mr. HEFFERNAN. Well, Mr. Chairman, Dr. Engstrom—I am not a technical man—Dr. Engstrom testified for RCA in respect to the technical aspects, and I stand on his testimony 100 percent. As I understand it, again, we must distinguish between today's circumstance and tomorrow's circumstance and developments. VHF has been commercially authorized and in operation for 15 years; UHF, less than 4 years. Now there is bound to be a distinction, if we can take a human analogy between the performance of the 15-year-old and a 4-year-old, and I do not imply the analogy, like all analogies, is perfect; but UHF should—and it is expected by the technical people—improve its relative performance. I think it fair to face right up to it that as of today there is a difference.

Senator PASTORE. What do you have to say with reference to the expressed attitude of some of the members of the Commission—and I think it is the majority viewpoint—that they should go on carrying out the spirit of the sixth report and order in allowing intermixture, with the understanding that if later on it becomes advisable to deintermix, that they would deintermix at that time. Do you think that is going to work out?

Mr. HEFFERNAN. They have announced that policy, and most of the grants which were in contest on the basis of that have been made so that the point is somewhat academic now. The Commission is in the position that they are either going to deintermix in respect to those grants already made or they are not, and we are past the point of whether they should be granted. They have been granted.

Mr. Cox. There are still a few pending.

Mr. HEFFERNAN. I think that is correct.

Mr. Cox. Don't you think the point posed by Senator Pastore will be very clearly raised as to whether this view of the majority is realistic, that they can make the grant and then, if at a later time they decide that they want to deintermix in Madison or Fresno, that they can reverse their position?

Mr. HEFFERNAN. There is no doubt they have the power to change it. It may be, from a practical standpoint, more difficult to do so.

Mr. Cox. In terms of the remedies available to the grantee, it may take some time to do so?

Mr. HEFFERNAN. It may take more time than if they had not done so. We discuss deintermixture. I will come to it. We are for deintermixture.

Senator PASTORE. I know you are. The thing that is troubling me is whether or not there is going to be any chance at all—I am speaking now of black and white. I agree with you on the suggestion that you have made with reference to this excise tax on color TV, but speaking now of black and white, do you see any immediate solution to the problem, really?

Mr. HEFFERNAN. I would say this, Senator—you mean to help UHF?

Senator PASTORE. Yes.

Mr. HEFFERNAN. I would say——

Senator PASTORE. I mean I am afraid, Mr. Heffernan—and I am not going to push you any more than anybody else has been pushed—but I am convinced that we are more or less kidding ourselves about this. Everybody skirts around this problem, but no one comes out and directly says "Look, let's face it." If you are going to keep on intermixing, because the problem is now academic, and we know that this intermixing is actually destroying UHF, as such, in your black and white field, aren't we actually kidding ourselves by maintaining a further hope that this is going to survive? I realize if the entire TV world turns to be color TV—and it might well be one day—and if UHF can't be saved until such time as the manufacturers can be encouraged to manufacture all-channel sets through this excise suggestion that you have made—I can see some hope there. I can see some real hope, but what is going to happen to UHF until that day comes, if we have the process of 152 UHF stations dwindling down to 92, I understand, and with the represenation made here that every day they are closing up shop, and the only ones that seem to have any prospect of surviving are those which are owned by the large networks.

Mr. HEFFERNAN. I would say this. I do think we are not kidding ourselves to say there is hope if the twin action suggested by us can be brought about. Deintermixture would have the effect of a holding operation. It would give a beachhead of substantial areas where UHF could operate successfully, and from that beachhead it could grow and expand. Excise tax relief, even more important in our view to the development and growth of UHF, would offer what the UHF people are looking for, light at the end of the tunnel. They do not need, they say, immediate profitability today. They need to be able to see the long-term solution, and the long-term solution would be offered by excise tax relief because then they would know that every day they keep slugging away at it, their circulation is gradually growing and the circulation gap between them and their V competitors is gradually diminishing, and the solution is there and it is only a matter of working at it in time. The problem today is they do not see a solution, whereas excise tax relief would give a solution.

Senator PASTORE. Would you want to comment on this: That unless the Treasury Department sees this suggestion in a favorable light—this eliminating excise taxes on all-channel color sets—that this whole thing might be lost?

Mr. HEFFERNAN. I would think that is fair to say, though I do not want to get in the midst of a constitutional situation. Obviously, Congress has power to pass such tax action as they want to take without Treasury approval.

Senator PASTORE. I am not asking you to pass any law now. [Laughter.]

Mr. HEFFERNAN. As a practical matter you are right, Mr. Chairman.

Senator PASTORE. Those of us on this committee have very strong feelings along that line, but when you speak to a man who has the responsibility of deciding where and how a tax should be levied and he is so far removed from this very pressing problem that we have, even on a very personal basis, through witnesses who come here and tell us very emphatically that unless some relief is given, "I have got to close down because I am losing money every month"—that leads me to the conclusion that we have got to make a very strong representation.

Mr. HEFFERNAN. That is exactly right.

Senator PASTORE. The only strong recommendation we can make must be predicated upon the principles expressed here by people of responsibility such as yourself.

If I ask you a direct question it is only to get a direct answer on the record, because I am afraid that unless we can do that this will be lost. Otherwise, it will be considered merely as a gimmick. I realize that the Treasury Department does not want to make indiscriminate exceptions on these rules, because every time you do that, you run yourself into trouble. The minute you eliminate an excise tax, let's say on an all-channel color TV set, you have the jeweler in my State who says, "Well, if you remove the excise tax on jewelry, I can sell more jewelry;" and you have the theater owner who says, "If you remove the admission tax at the theater maybe we can survive in showing moving pictures, because we are in competition with TV."

So you see, when you get down to making exceptions you have to have a pretty strong case. I like this argument that has been made here, that this exception is not being asked by the manufacturer. He is not asking for this relief. He is only saying this: "Look, if you expect me to put the added cost in the development of an all-channel set, the only encouragement that you can give me to do that—because after all, I am dealing with stockholders' money—you have got to give me some relief on this excise tax. Otherwise, I just cannot undertake it economically because I do not think it is the responsibility of the manufacturer to save this industry." I think he is willing to, and wants to, play his part, but he wants a little encouragement from Government, too.

Mr. HEFFERNAN. That is a most realistic observation, and a most encouraging one.

Senator PASTORE. You are saying categorically that unless we find some solution in connection with the development of color TV so that we develop all-channel sets—which the manufacturers cannot do economically unless we equalize this added cost by elimination of the excise tax on all-channel sets—it is your considered opinion that we might well see the demise of UHF?

Mr. HEFFERNAN. That is right, sir. Of course, we hope that will not happen. It could very well.

Senator PASTORE. We all hope and pray that that will not happen. That seems to be the likely prospect as we sit here this morning.

Mr. HEFFERNAN. I think it is fair to say that, and therefore, may I make one specific suggestion in respect to that? That possibly when we conclude this phase, which is the allocation phase, that your committee might want to come out with an interim report which the Treasury would have as the expression of the views of this committee, that would enable them to consider the thing definitively.

Senator PASTORE. Well, I am not letting out any secrets. We have already directed a communication to the Treasury Department. The chairman of this committee has graciously and very thoughtfully, I think, made it his responsibility and his business to have a talk with Mr. Humphrey about the matter. We are now talking to the various Members of Congress who have the responsibility of deciding whether this should or should not be done, but I think our position would be fortified if we had these very responsible people like yourself. and like the representatives of CBS and ABC, come here and say: "Look, this is not a frivolous suggestion, and unless you do this the likelihood of saving UHF on the TV scene will wane, and unless this is done in the public interest, we may end up with 12 marbles—instead of these 82 marbles that you are talking about and which are needed to play the game." Once UHF disappears, I do not think you are going to revive it again.

Mr. HEFFERNAN. That is right, sir.

Senator PASTORE. It is disappearing so fast it isn't even funny; from 152 stations I think they have got it down to 90 or 95 or so. That is not very encouraging. It it continues at that rate, you are going to find the day when even the manufacturer of the set is going to say, "Look, we cannot get into the business of doing this, because we are not going to spend money on research and technical development on something that we can sell only at a ratio of one to a hundred of other sets." They are going to concentrate where the profits are. I don't blame them.

Mr. HEFFERNAN. That is exactly right, sir. The effect is cumulative once you start to roll down hill. I am very encouraged and appreciate the efforts which your committee has taken already along this line.

Senator PASTORE. We are not sitting on this thing. We are very much disturbed, but of course, whether or not we can sell it, or convince somebody else, is another problem. What problems will be posed for that committee, and for those people who have that responsibility, we do not know—because the minute they begin to make an exception, of course, then that snowball starts rolling, too.

Mr. HEFFERNAN. Yes, sir. May I say, in behalf of the point, that has in the past been the traditional approach of Congress and the Treasury not to place an excise tax on a new industry until it got started. VHF television was not taxed for 4 or 5 years during the period that it got on its feet, and it was not until the Korean war came along in 1950 that the tax was put on black and white TV. It got on its feet. It got strength. Now if color is given a chance to get on its feet and get strength, and the Treasury can come back someday, 5 years from now, and put the tax on when the thing is on its feet and when UHF is on its feet. That will be a different situation. It is not an irrevocable step. Congress sits every year.

Senator PASTORE. I am very grateful to you for those points.

Mr. HEFFERNAN. Just one last point on that: I appreciate, also, the fact that your committee is taking an interest in dealing with the Treasury, and I would hope that in addition to Treasury, other elements of the executive department would interest themselves, because they do make recommendations to Congress in respect to tax relief, because these considerations, as I have pointed out, are public considerations. It is the public which stands to lose if UHF goes down.

Senator PASTORE. Along that line, let me say this: There would be no better agency of the executive department than the Federal Communications Commission. Now whether or not they have done it, I do not know, but if they haven't done it it strikes me that they, together with the members of the committee, ought to join in this action and make a strong recommendation.

Mr. HEFFERNAN. They should.

Mr. COX. They have said they favored it.

Senator PASTORE. They have said they favored it, but whether or not they have made a strong representation is a horse of another color. I do not know if there is anybody from the Commission here, but I do say this——

Mr. COX. Mr. L'Heureux is here.

Senator PASTORE. Mr. L'Heureux, I say it for your benefit. It might be well for you to take this matter up with the FCC and tell them what our committee has done, and tell them of these representations made here, and it might be well and advisable for them, if they so feel, to direct a communication to the Treasury Department to explain to them the representations made here and that they ought to undertake, possibly, the suggestion of writing directly to the Treasury Department and say that they ought to consider this exception at this time, for the reasons already advanced.

Mr. L'HEUREUX. Mr. Chairman, I do not know just what has been done in the way of putting extra pressures upon the Treasury, but I shall carry your urgent message to the Chairman today.

Senator PASTORE. Well, that is right, and I do not like the word "pressure." No one is talking about pressure here but a strong recommendation that amounts to that probably.

Mr. HEFFERNAN. Such excise tax relief would of course have the incidental effect of helping some broadcasters—those in UHF. But as it does, as it helps them become established and profitable operators, it provides an offset to the revenue loss in excise tax relief through the revenue gain in corporate income-tax collections.

We therefore hope that the committee will continue its constructive efforts to obtain a repeal of the excise tax on the limited basis now proposed, and that it will bring to the attention of the Ways and Means and Finance Committees of the Congress, as well as the executive branch of the Government, the considerations of national policy which require support of such legislation.

DEINTERMIXTURE

At this point I do not want to burden the committee with semantics but I think it is important that we define what we mean by deintermixture. In this statement we use deintermixture in the sense in which it is now generally used in the industry. In that context, we do not suggest that any existing service be eliminated.

Mr. COX. Would it be fair to say, however, Mr. Heffernan, that channels granted but not yet on the air could be deleted without reducing existing service in the sense that you are using it here?

Mr. HEFFERNAN. That is right. They are not existing service. They are granted but not existing service. By existing, we mean on the air.

Mr. COX. So that you would be in favor of deintermixture to the fullest extent possible without actually depriving someone now receiving a signal of that type.

Mr. HEFFERNAN. That is substantially right. We favor it on a broad basis. There might be some local consideration that the Commission knows about which we don't know about, where in some situations they might not do it. We will leave that to the Commission because they are acquainted with local conditions. We do favor it on a broad basis. I think we are speaking of the same thing.

One of the important affirmative steps the Commission can take now to preserve and support UHF is to deintermix on a sufficiently broad basis to create a number of predominantly UHF markets. Without this, the public may not purchase all-channel black and white receivers in sufficient number to provide a market for the continuance of manufacture of such receivers. But with deintermixture on the basis we suggest, UHF will grow in a nucleus of areas from which it can spread to others.

Deintermixture on the basis we have suggested would give immediate support for UHF, and excise tax relief as now proposed would complement this immediate support by providing encouragement now and assurance of progressive improvement in the long range. The two actions taken together would constitute an ideal combination for the maintenance of UHF as an indispensable part of the national TV service.

In suggesting deintermixture to the Commission in our comments filed in the Commission's current allocation proceeding, we proposed a number of specific criteria on the basis of which deintermixture could be applied advantageously and without disrupting or degrading existing service to the public. These criteria are:

The areas to which attention should first be directed for deintermixture are those which have considerable UHF circulation now in existence.

Mr. Cox. Would those be substantially areas like Madison, Evansville, Fresno, Miami, Springfield, Corpus Christi, and places like that where there are either no VHF stations on the air, or there is only one V and the U's in the area have been able to achieve a fairly high degree of conversion?

Mr. Heffernan. There is another category as well, the category of areas to which two V's are assigned, but only one is now on the air, such as Albany-Troy-Schenectady. Those are candidates for deintermixture as well. They are a category of candidates, but in those, in accordance with our definition, the one V would remain, but only one, because if it becomes two V's——

Mr. Cox. The problem becomes too difficult?

Mr. Heffernan. Then the problem becomes too difficult. There are the two categories, and by the way, on the white area point which was discussed yesterday, to the extent there is validity to that, and there is some validity to it, currently, by virtue of the present superiority in coverage of VHF over UHF, the existence of this second category diminishes that problem of white area, because in all those areas, there is one V existing, so that the white area problem, to the extent it is a problem, does not exist because there is a V there already and it would remain. Therefore, to the extent that white area point has validity it applies only to the other category of candidates for deintermixture which are presently all U and are proposed to remain all U.

Mr. Cox. In those areas, however, the loss of additional coverage which might be sought under the Commission's first priority in the sixth report would be a price that would be paid, on the other hand, in order to preserve UHF so that its other priorities of local community service and of multiple service could be more easily attained?

Mr. Heffernan. I think that states it fairly, but I think you would have these further compensating values, that it states it as it is currently. If UHF progressively improves, as it is believed and hoped that it will, then you progressively diminish the discrepancy in coverage; and secondly, there are other devices by which UHF stations can reach out to cover areas, if they are significant population areas, that are not covered from the main transmitter, such as boosters, satellites—

proposals which are now before the Commission for adoption in part, some of which have already been adopted. To take the upper Connecticut Valley for example, we have an affiliate in Springfield, a UHF affiliate. He covers Holyoke, but going on up the Connecticut Valley by use of a booster or a satellite, he might reach into Amherst, he might reach into Greenfield, he might reach into Brattleboro, Vt., continuing up the Connecticut Valley. Where you have cities of that sort that wouldn't be covered from the main transmitter, devices exist, at relatively low cost in relation to the additional coverage attained, by which the UHF could diminish that difference.

Mr. Cox. So that even the present failure to extend the service as fully as might be possible by granting an additional V is only a temporary failure to expand service?

Mr. Heffernan. It is believed and hoped to be, but then I am referring to these other devices which are currently available to pick up significant population areas, such as boosters, satellites. I say currently available—currently proposed by the Commission in respect to boosters, presently available in respect to satellites.

VHF channels which would be displaced as a result of deintermixture would be used, whenever practical, to increase competition and service to the public in major VHF markets.

I think the significance of that is clear. It means you get a double dividend from deintermixture; namely, not only do you improve the chances of UHF to survive and grow in the areas deintermixed, but the V channel, which is displaced by deintermixture is not thrown away. It is used in another area to increase V competition in that area and make that a three-V market in many instances.

Mr. Cox. If you take a V from Hatfield, you can place it in Louisville and give that a third service, or you can take a V from Madison and put it someplace else where it will be useful in expanding service.

Mr. Heffernan. Without regard to those specific instances, in general, that can be done. I think in the case of Louisville it can be accomplished without any degradation of service, not in the particular way in which you spoke. I think that is important, because Louisville is one of the largest markets in the United States that has only 2 V's assigned, and it would be possible, we believe, to assign three V's to Louisville without degradation of service.

In markets to which at least three commercial VHF channels are now allocated, no deintermixture would be undertaken.

In any market which becomes a predominantly UHF market as a result of deintermixture or which now has considerable UHF circulation, no new commercial VHF allocations would be made.

In connection with deintermixture on this basis, situations will arise where a UHF channel will be substituted for a VHF channel which has been granted to a CP holder who is not yet in operation or who commenced operation since the institution of the Commission's current allocation proceeding. In these circumstances it would be desirable if the holder of such a CP could be granted a CP for the substituted UHF channel without further proceedings. This would enable the additional service to the area to be instituted without delay. If the Commission believes that it needs additional authority to follow such a course, we recommend that the Congress enact legislation specifically providing for such authority under these circumstances.

MULTIPLE OWNERS AND OTHERS SHOULD BE ENCOURAGED TO ACQUIRE UHF STATIONS IN INTERMIXED MARKETS

NBC's views on the importance, from the standpoint of the public's interest, of permitting multiple owners of television stations to acquire UHF stations are well known. Even before UHF channels were made available for commercial use, NBC asked the Commission to amend its rules to permit owners with know-how, experience, and resources to undertake part of the task of furthering the commercial development of UHF.

More than a year ago the Commission did so amend its rules and shortly thereafter NBC contracted to purchase UHF stations in two intermixed markets—Buffalo and New Britain. The station in Buffalo had gone off the air and was literally raised from the dead by our action. Three VHF stations are assigned to Buffalo, so the going will not be easy. However, it is significant to note that following the Commission's approval of our acquisition of the Buffalo UHF station, an application for another UHF station in Buffalo was filed and has been approved—indicating the confidence in UHF's future in this market as a result of our activties in support of UHF.

Mr. Cox. Would that be largely because it is felt you would be able to achieve a degree of conversion which would then be available to additional UHF operators?

Mr. Heffernan. I think that is a fair statement; but you also notice that Mr. English, testifying here before, I believe, another committee in Washington last week, stated that our going in Buffalo would also be helpful to his UHF operation in Erie, because Erie, as you know, is to the west of Buffalo, so that as UHF circulation grows westward from Buffalo, it will tend to come to an area between the two cities, which will be helpful to him.

Mr. Cox. That is, people will convert to get a choice of 2 signals where they might not for 1?

Mr. Heffernan. That is right; people midway between; plus the fact that the word will get around from Buffalo, down to Erie, which is relatively close by.

We took over the UHF station in Buffalo on December 30 last, and moved at once into a vigorous campaign to lift the circulation of the station and thus cut down the disparity in circulation between it and its VHF competitors. We are building new studios, going to the full power of a megawatt permitted under present rules, installing color equipment for both network programs and local color originations, expanding hours of programing, and bringing these facts to the attention of the people of Buffalo with an extensive promotional campaign.

As I mentioned before, we have also contracted to purchase a UHF station in New Britain, and our application on this matter, which has been designated for hearing, is before the Commission. When our New Britain application was filed, two holders of CP's for UHF stations in the Connecticut Valley filed statements with the Commission in support of our application, pointing out how our operation there would help all UHF. We expect that a hearing date on our application will soon be set and believe that the hearing can be expeditiously concluded.

As soon as we are in a position to operate in New Britain, we intend to conduct the same type of aggressive campaign to help UHF that is already underway in Buffalo, and we believe that the results will not only be beneficial to UHF in the Connecticut area but will be an encouragement to UHF throughout the country.

In this connection I would like to point out that there are many other broadcasters who currently own and operate multiple VHF stations. A few of these are helping UHF by the operation of at least one UHF station in intermixed markets, but the great majority of them do not have any UHF stations. A strong declaration of national policy in support of UHF, followed by specific steps by the Commission to implement that policy, should in itself encourage these broadcasters to undertake UHF operation, and thus lend their know-how and resources to assist in UHF development. Some of these broadcasters are also prominent publishers, who could provide the additional assistance of widespread promotiton of their entry into UHF.

In our view, those who have experience, resources, and basic interests in television and electronics should be encouraged to help the cause of UHF by undertaking the operation of at least one UHF station.

Mr. Cox. Is it your major point in this connection that these other multiple owners, or people in strong positions, should be encouraged to do this, or that further relaxation of the Commission's multiple ownership rules would be desirable?

Mr. Heffernan. The latter is not my point, sir.

Mr. Cox. In other words, you think the present rule allowing 5 V's and 2 U's is ample, and that some others should carry part of the burden that NBC and CBS have undertaken by attempting to promote UHF through operation of their stations in intermixed markets?

Mr. Heffernan. That is generally correct. I do not want to limit the credit, however, to NBC and CBS.

Mr. Cox. Mr. Storer also?

Mr. Heffernan. Mr. Storer has undertaken one in Miami.

Mr. Cox. And one in Portland?

Mr. Heffernan. Which was not a prefreeze market, and WDSU, which is not, however, a multiple owner, but it is to its credit that although it is not, it has undertaken a U in Baton Rouge, and there are a few others who are doing so, and to their credit. But my point is that there are a number of VHF operators, multiple owners, who have profitable V operations, who could well afford, who have the resources, who have the know-how—they are experienced broadcasters, they know how to operate a broadcast station so they are not going to slip for lack of know-how; if they got in and publicized their efforts, the very fact that they are going in—in this industry, the word gets around very rapidly—the fact they are going in is an encouragement to UHF as a whole.

Mr. Cox. I take it that in that connection you would feel that the effort should be made to encourage multiple owners, or other people in a strong position, to go into intermixed markets with U's rather than to simply purchase a station in an area which is already all UHF, where conversion is already achieved; that is, their special contribution can be in extending this service in areas where it either now doesn't exist or where it is having difficulty?

Mr. HEFFERNAN. That is correct, Mr. Cox. They should do a pioneering job, is my point. There is really no great difficulty in making a success of UHF in a market that doesn't have V competition, because UHF technically does a good job in those markets and they are doing all right. The problem is to make a go of it where the circulation problem exists, but my point is they can afford to ride it through.

A point further on encouragement is that if we got the excise-tax relief and the deintermixture action, those points themselves would be the encouragement to people to jump in and, I think you might see, if those two actions came about, I think you might see a scramble for UHF channels that would rival the Oklahoma land scramble. You might see it, because television stations are something that people very much want to get into, where they are successful, and they don't have to be presently successful. It is the prospect of success that will bring them in. While it is true that a number of stations have gone off the air, every fellow who is in a position to hold on to his grant has done so, because he realizes the potential for the future is there, if these actions come about.

In that connection, Mr. Cox, of course, time is of the essence, because our point on deintermixture is that we need a beachhead from which we can grow and expand, and we need excise-tax action. Unless these actions occur soon, it may be too late.

BOOSTERS AND INCREASED POWER FOR UHF

The Commission's proposals with respect to boosters and maximum power of 5 megawatts for UHF would permit UHF stations, where they desire to do so, to improve their coverage position in relation to their VHF competitors. These are desirable objectives, and ones for which the Commission deserves credit.

If the Commission authorizes the operation of UHF stations with maximum power of 5 megawatts, it would, of course, accelerate the time when commercial models of equipment for such operation would be available. The Commission has rightly proposed that its rules should not stand in the way of an improvement in UHF station coverage.

As far as boosters and translators are concerned, such technical auxiliaries can, under certain circumstances, aid UHF stations in providing more effective coverage by filling in shadow areas which fall within their service areas, thus helping on the so-called white area point.

Although the application of these devices requires analysis of the specific conditions in the particular area which may be involved, we believe that the authorization of booster and translator stations, under suitable circumstances, offers an additional technical means of improving the effectiveness of UHF operations.

Mr. Cox. I take it you feel, Mr. Heffernan, that this proposed increase to 5 megawatts of power would substantially improve the performance of UHF?

Mr. HEFFERNAN. It would.

Mr. Cox. That is, both in terms of some extension of its coverage area, and of improvement of the quality of service within the area?

Mr. HEFFERNAN. That is right, both aspects are important.

I have now covered the affirmative steps we have recommended to the Commission and which we present to this committee as measures in aid of UHF and the development of a national television system based on a multiplicity of facilities. I would like now to comment briefly on other proposals which we believe have questionable or limited value.

PROPOSALS TO OBTAIN ADDITIONAL VHF CHANNELS FOR THE BROADCAST SERVICE

This proposal looks to the possibility of obtaining the allocation of additional VHF channels from other users of spectrum space, particularly the military. While we agree that this and related proposals should be examined, we feel that this particular suggestion has little promise, for several reasons:

In the first place, even if several additional VHF channels could be obtained, these plus the existing 12 VHF channels would fall short of the number needed. In adopting the Sixth Report it was the Commission's aim to provide at least 3 stations in the first 140 markets. In the crowded northeast section of the United States this could not be fully accomplished, however, even with 82 channels. It is obvious from this how inadequate a plan would be based on 12 or 15 channels.

While a few more VHF channels would provide some improvement in a limited number of markets, it seems unlikely that such additional channels could be made available soon enough to provide any immediate, or even near-term relief.

If additional channels were made available, they would pose a new conversion problem with respect to the sets already in the hands of the public, which now number over 37 million and which would have increased in number by the time any such additional channels were available for operation.

And finally, if a few more VHF channels were made available, the preoccupation of the industry with how and where to use these would inevitably prejudice the further development of the 70 UHF channels during the entire time that the allocation and disposition of these few VHF channels were in contest.

Mr. Cox. So that you would exchange for a relatively inadequate group of additional V channels the much more numerous UHF channels, if only these other problems can be dealt with?

Mr. Heffernan. We are fearful that would be the inevitable effect, and I think in comparing this numbers game we should look to the fact that in radio, in AM radio, we have 106 channels, and constant demand for more. In FM, 100. The concept of 12 or 15 is one that the Commission knew from the beginning wouldn't work, and won't work in terms of satisfying the need.

PROPOSALS FOR VHF "DROP-INS" BY REDUCTION IN MINIMUM MILEAGE SEPARATIONS AND USE OF VHF DIRECTIONAL ANTENNAS

Another series of proposals before the Commission looks toward making room for additional assignments of the present 12 VHF channels by reducing the minimum separation between stations. Various methods have been suggested to reduce the interference which would result, including the use of directional antennas, cross-polarization, and reduced antenna heights and power.

In our comments to the Commission in its allocation proceeding, we urged that before any action along these lines is taken, the subject should be thoroughly studied and experimental data assembled on actual performance in various types of situations.

We come now to "drop-ins," and here again we have a definition. We define a "drop-in" as meaning a station which does not conform to the present rules with respect to station separation, which we think is the commonly used meaning of that word, though sometimes "drop-in" is used in the sense of putting in one that does conform, while one which does not conform is called a "slug-in."

The danger exists that the use of VHF "drop-ins," with reduced separations between stations, will result in a degradation of service or a deprivation of service, particularly to millions of rural and small-town viewers in populated areas between metropolitan centers.

Some who advocate drop-ins frankly concede this, but seek to minimize it by reference to service to the farm and smalltown populace as—I am quoting their comments—"fringe" service. In our view this is one of the major policy questions for resolution by the Commission and cannot be dismissed, as do these advocates of drop-ins, by characterization of rural service as fringe.

A principal defect of the several drop-in proposals is common to all of them. They would so prejudice the development of UHF, by transferring the industry drive to the discovery of how to squeeze new stations into the 12 VHF channels, that the 70 UHF channels could be lost to television broadcasting. Thus the drop-in approach could have the effect of eliminating UHF without providing a satisfactory substitute, since the VHF-only system which would be left after the loss of UHF would be both inadequate in number of channels and degraded as to quality of service to rural and small-community viewers.

Mr. Cox. Isn't it also true that not only would effort to concentrate on this occupy much of the attention of the industry, but that in tending to increase the concentration of VHF stations, particularly in zone I, it would still further complicate the chances of survival of even existing UHF stations in those areas and almost completely rule out the development of additional U outlets?

Mr. Heffernan. I think that point is very well taken, extremely well taken. It could very well have the effect of killing UHF and thereby eliminating the potential for community service which UHF provides today—actually provides in some operating stations, and the great potential is there for development, once we lick this circulation problem, to which excise tax relief is the key.

Certain comments filed in connection with the Commission's allocation proceeding and in part repeated before this committee indicate considerably more optimism about decreasing mileage separations by the use of drop-ins than we believe is warranted. For example, the comments of one company state in bold heading that VHF mileage separations can be reduced "slightly." But the text of its comments and reply comments make clear that it favors in some instances a reduction of cochannel separations of more than 45 percent.

On this subject we have recommended to the Commission that proposals involving a change of standards to permit VHF drop-ins be analyzed with great care, so that action designed to obtain a greater utilization of the VHF channels will not have the byproduct effect of producing an overall degradation of service.

We have also urged that any modification in the present standards should be accomplished only by the adoption of a new plan. A case by case approach, in which the present standards would be relaxed to solve individual problems, will inevitably result in a progressive deterioration of service to the public. We have, therefore, suggested that the Commission deal with a revision of the present allocation plan in terms of a modified overall plan based upon the following principles:

A modified plan should be predicated upon channels actually available for commercial television use at the time of the plan's adoption.

A modified plan should allow for substantial expansion of television service over a considerable number of years.

No modified plan should be adopted which results in degrading or destroying rural and small community service.

The paramount consideration in the adoption of any plan should be the interest of the public.

I want to say, in dealing with this subject of drop-ins, that we are not opposed, and we are sympathetic, to the desire of expanding the number of markets to which three VHF channels can be assigned, but as I indicated earlier, that can be done in substantial part as a byproduct of deintermixture, by virtue of the V channels displaced by deintermixture which move to larger markets.

Further, I think it important to recognize that the need for three VHF outlets in many markets, which has been referred to, is in part an allocation problem and in part a problem of getting cases decided before the Commission. For example, last fall, a petition was filed, styled: "Petition To Revise Television Allocations Standards and the Table of Assignments." That petition was based on an exhibit—there was an exhibit attached to that petition, referring to clearing in various markets.

The first four of those markets were Boston, St. Louis, Indianapolis, and Buffalo. In all of those markets, three V's are assigned, though not now on the air. Now that, I submit, is not an allocation problem. But again I want to say I am sympathetic with the need to increase, wherever practical, the number of three V's in major markets, provided that is not done to the prejudice of a long-range, sound allocation plan, including the importance of the maintenance of the concept of community stations.

CONCLUSION

In its allocation proceeding the Commission is faced with immediate problems. But an allocation proceeding looks to the future as well. The sixth report sought to do this by the allocation of 70 channels in UHF.

UHF has now had a commercial trial of a little more than 3 years. In that time some UHF stations have proved a success; some have not. The Commission has recognized that in the latter instances economics may have been a factor. It is naturally concerned whether its current allocation plan may also have been a factor, and it acted wisely, we believe, in asking comments from all interested persons in respect of that plan.

The comments which have now been filed with the Commission, taken as a whole, reflect a broad awareness of the important public reasons for preserving the 70 UHF channels, as well as the 12 VHF. We believe those who have spoken out for this position have taken the long-range and statesmanlike view.

An example is the letter of President George Meany to the Chairman of the Commission, filed as the comments of the AFL–CIO. He said in part:

> * * * At stake here is whether the American people are to eventually have a nationwide system of 2,000 TV stations, or to be cut down to a system of scarcity of stations. * * *
>
> * * * the Commission should preserve and encourage as full use as possible of the 82 channels. * * * Anything else would be a disservice to the American public.

If he, President Meany, and the many others who have taken this position are right, it follows a course that an allocation plan based on 12 or 15 channels, with or without lowered standards, is of doubtful utility as a long-range policy of allocations.

The national policy with respect to television broadcasting calls for a nationwide competitive system based on the maximum practical number of facilities. The full and effective use of the UHF channels offers the best prospect for realizing this goal.

The decisions to be made now with respect to the future of UHF television are not decisions for the next 5 or even 10 years. The effects of these decisions will be felt throughout the foreseeable future.

If our generation fails to lay a broad foundation for UHF service in the 70 channels reserved for that purpose, then other communication services will move in and make use of that part of the spectrum. If this happens, this spectrum space will forever be lost to broadcasting and no other band of frequencies anywhere near as well suited for television is available. The issue, simply stated, is shall the 70 UHF channels continue to be available to broadcasting or shall they be lost to other radio services?

We believe the Commission showed great foresight in earmarking this frequency band for the expansion of television. It is needed for that purpose, and the Government and the broadcasting industry can and must find a way of preserving UHF as a broadcasting service in the interest of all the people. This will not be easy, but when we look back on the miracles already accomplished in this country in the field of radio and television, we are encouraged to believe that this, too, can be done.

We do not suggest that Congress and the Commission alone have the power to establish UHF. The future success of television broadcasting in the UHF requires active support by the Congress, the executive branch of the Government, the Commission, the broadcaster, and the public.

However, there are actions which can be initiated at once by the Congress and the Commission. The Congress can make a vital contribution by promptly declaring that the national policy calls for preserving and strengthening the UHF service, and by enactment of the limited excise tax relief to which we have referred.

These actions would be of immediate and incalculable value to the cause of UHF.

For its part, the Commission can act at once to preserve and strengthen UHF by deintermixture and the other steps we have suggested, and it can at the same time proceed with its detailed analysis for other action in the light of its expert knowledge of allocation principles.

Thank you very much.

Mr. Cox. Are you familiar in general, Mr. Heffernan, with the testimony of George Storer, before the committee, with regard to his plan, which I think was substantially encompassed in his comments to this allocation proceeding?

Mr. HEFFERNAN. I have read Mr. Storer's plan, or have been told of it.

Mr. Cox. The only point I was interested in was whether you thought, not in all details, but whether a program of that order of magnitude would hold real promise, if it could be effectuated, of providing the sort of stimulus and guaranteed continued existence for UHF and incentive to the development of better equipment, which would be necessary to really keep the thing moving along?

Mr. HEFFERNAN. I will come to your question. I want to say generally, our position is that the Commission should deintermix on a broad basis, by which we mean to give a substantial basis. I think there has been a slight misinterpretation of Mr. Storer's proposal. There was a reference here to 25 markets. Actually 24 markets are affected in the Storer plan. However, 14—6 to all UHF, 8 to 1 VHF—are the so-called strictly deintermixed markets, and the other 10 are markets which become—9 become 3-V's and one 4-V's. So that 24 markets are affected, but actually 14 markets under the Storer plan are direct beneficiaries of deintermixture in the strict sense.

Mr. Cox. It is in those markets that he says there are 20 million people and 4 million sets, I believe.

Mr. HEFFERNAN. I am not sure he makes that statement, but I would say this: That taking the successful UHF markets of today and adding 14 or more markets—it could well be that more markets than 14 can be found for deintermixture—in my opinion, that would be a substantial beachhead from which UHF could grow and expand. Because the problem here, the beachhead problem, is this: That unless there is a sufficient public demand for all-channel sets, manufacturers won't continue to make all-channel sets, if the public is not broadly asking for them. There is no point in making them and putting them in the warehouse in inventory. If they are not sold and put into the hands of the public, they don't do any good. But my answer to the question of "Would 14 plus existing successful markets be a substantial beachhead?"—I think it would, and I would hope, however, that the 14 could be increased somewhat because our own view is that the Storer plan—that alternatives to the Storer plan are available which are better.

Mr. Cox. Have you made any study of the number of other markets in which this might be done?

Mr. HEFFERNAN. We do not have a precise number, no, because we frankly have felt we should stay away from that for two reasons: We are personally interested, for example, in the Connecticut Valley area, and it seems a little unseemly for us to come here speaking, as we want to speak, of the considerations of public interest that generally relate to this problem, and at the same time plead our cause in an area where we have a personal interest. If we plead for deintermixture in the Connecticut Valley, that detracts from the general value of our testimony, because they say: "They have a personal interest. They have got an ax to grind, and that is why they want deintermixture." That is not the reason we suggest deintermixture. We suggest it as a general policy in the interest of UHF and its growth and development. But I would say this, Mr. Cox, I don't really think the basic question on deintermixture that has faced the Commission has been "where"—it has rather been "whether"—whether to deintermix. Hamlet's question, and the difficult one, "To be or not to be," was not how to take his life, but whether to take his life.

Mr. Cox. Do you know—this, of course, is asking perhaps the question of the wrong person, but do you know what the arguments are advanced against deintermixture on the kind of basis that you are proposing, not on an overall basis, but on a basis sufficient to provide a substantial UHF or safe UHF area?

Mr. Heffernan. I thought that Mr. Lodge yesterday referred to the point that a fellow who has presented a case for a single channel that is assigned, let's say, in a market and has pursued an application before the Commission for a number of years and spent a lot of money on engineering and lawyer fees, has built up a certain equity in his own favor, and I think it is fair to recognize that he has. It is a policy question to weigh that, plus other local considerations which may exist, which he didn't mention, but I am sure would recognize, that other local conditions may exist in favor of a grant as against the considerations, of which I think you are aware, which favor deintermixture. That is a balancing. That is a policy decision to be made by Government representatives themselves, by the Commissioners. It is a policy decision as to whether the equities of the one outweigh the equities of the other.

Mr. Cox. This personal situation of the individual V applicants, plus the claim of added service on the fringes of an all-U area, would be, so far as you know, about the only factors that enter into the calculation in opposition to deintermixture?

Mr. Heffernan. There is the situation that would apply to us in Buffalo, where three V's are assigned to the market. I don't think there is any logic—or put it this way, I don't think a persuasive case can be made to deintermix a market where three V's are assigned in the allocation table, because there is no serious problem of getting equally competitive service in that market.

That applies to Buffalo, perhaps—it applies to Buffalo and elsewhere. We would not urge, for example, that Buffalo be deintermixed, even though on the first of our criteria there is substantial UHF circulation in Buffalo, roughly 25 percent. It is a long way to go, but it is substantial in that sense. There is that argument on the other side, appropriateness.

Mr. Cox. Could you tell us, generally, how many UHF affiliates NBC has now?

Mr. Heffernan. Thirty-nine.

Mr. Cox. How many of those are included in your first hundred markets?

Mr. Heffernan. It is 15, possibly 17, the other 2 being on a somewhat occasional basis.

Mr. Cox. I realize, of course, your problem there is one of being competitive with the other networks; but I think there has been considerable testimony, of course, that one of the problems faced by UHF stations in intermixed markets is their difficulty in getting a full affiliation, even where they may be the third station in the area, because of an attitude which they may attribute to the network, but which perhaps may be more properly attributable to the advertiser in turn, but is there any possibility of revision in affiliation practices which might contribute to the well-being of UHF?

Mr. HEFFERNAN. I want to say on behalf of NBC and our policy on affiliation, I think we have—and I don't say this critically of others, but I do think we are entitled to credit for being willing to accept, in view of present disparity in coverage between UHF and VHF, we have been willing to accept a certain handicap, measured handicap, to our network in UHF affiliations that I think is to our credit.

We have, for example, affiliated the UHF station in Norfolk. It was on the air down there. It was available to others, and when the VHF station, on which both NBC and CBS had been putting their programs—we on a first basis, and CBS on a secondary basis—when it went off to CBS on a first basis, instead of our taking second place on the pole as they had done, we went to the UHF station. We went in with a promotional campaign to help it, and we have been with it ever since, and we have helped it build circulation; and we have on 2 separate occasions torn up our contract with it, and given it a new, 2-year contract from that date, which we were not obligated to do. We have done that in spite of the fact that another V is assigned to the market and may come on at any time. We have shown, we have been willing to stay with that U and have committed ourselves by contract to do so for the maximum period permitted.

We also, I think, deserve credit for the fact that we have in our basic lineup situation six UHF stations. No other network has any basic UHF affiliates. We have six.

Mr. COX. Does your contract in Norfolk have a provision that permits you to cancel it if and when the V comes on the air?

Mr. HEFFERNAN. It does not.

Mr. COX. There can be no question, can there, that the possession of a strong affiliation is a good part of the solution of the circulation problem of a UHF station?

Mr. HEFFERNAN. It is helpful, but I would say this: That it is not the full—and I wish I could say that it were—it is not the full solution.

Mr. COX. You have your problems in Buffalo?

Mr. HEFFERNAN. More than that. After 3 years—2½ years of operation in Norfolk, we are substantially handicapped in circulation there, a handicap, as I say, that NBC has been willing to accept to help UHF. But the circulation in Norfolk after 2½ years of NBC programing, things like the world series, is substantially below that of its VHF competitor. I don't want to sit here and prejudice that fellow's competitive position by putting something on the record that his competitor will use against him on Madison Avenue. This is very delicate, but it is realistic that he is at a substantial circulation competitive disadvantage today after 2½ years of NBC network programs. So network programing is not the entire solution.

He is, as I indicated, 1 of those 6 who are a basic station, so he has had all the network programs that he wanted to take; and he has wanted to take most of them—nearly all of them, so that he has had all the advantages of network programing, but that has not in and of itself overcome the circulation handicap. It helps. You are unquestionably right. I would not want you to get the view, however, that that alone is the solution, and I don't want to be too persistent about the point, but our position is that the key to this solution is the excise-tax relief on all-channel color sets, because then all operators, network affiliated and not network affiliated, will see light at the end of the tunnel. They will know that a solution does exist, and it is a matter of time. Their difficulty today is they do not see any clear solution. They will then see such a solution.

Mr. Cox. Norfolk is one of the areas in which a deintermixture proposal has been made, isn't it, since there is only one V on the air there?

Mr. Heffernan. It may well be included on the list.

Senator Schoeppel (presiding). I would like to ask you a question with reference to the excise tax. Time, you indicated in this statement, is a pretty important factor to take into consideration. We are presently in session now. Let's assume that in the wisdom or the judgment of the Congress—sometimes it doesn't go according to Hoyle—that we are unable to get some relief. Personally, I think it is a much needed relief. Say this thing should drag out for 2 or 3 more years. In your candid opinion, would that be a serious prejudicing of the situation?

Mr. Heffernan. Most serious, Senator. In fact, it would raise the question as to whether UHF could survive.

Senator Schoeppel. That was the point I was coming to.

Mr. Heffernan. Most serious. I would hope—while we are most hopeful of cooperation from Congress on the excise-tax point for the industry, for the benefit of the public we hope that the executive branch would understand the importance of this as well, because we are speaking here of something of incalculable value to the Nation, namely, a communications system under which the President of the United States, for example, in times of national emergency can go on the air and speak and be seen by all the people, and not just those who happen to have service within the range of the big city markets, but all the people, in all communities. It is most important. It is a national service, a national communications service, a national problem, and the amount of revenue involved under the proposal that is now made is relatively small, quite small.

Now, the executive branch has, as you know, Senator Schoeppel, interested itself in this Congress in making a recommendation for relief in one area in the excise tax. I agree with that. I think it was sound, but the executive department considered that, came to Congress, recommended it, Congress did it.

I agree with everything they did. To my mind—and of course we are in this industry—this is of equally vital importance to the Nation, this particular excise tax relief, to give the Nation the kind of communications service, vital service it needs and it deserves. The reason I keep bringing the point up from the standpoint of public consideration is that if we go to the Treasury, or to the Ways and Means or the Finance Committee, they say, "You fellows are broadcasters and every fellow is on our doorstep, wanting excise tax relief"—and they can understand our wanting it—"but you are here to promote your own personal interest, and while you talk in terms of public considerations, everybody does that." But this committee, I believe, based on its past actions and its actions at this time in writing to the Treasury, of which

Senator Pastore spoke to us, you do realize that these are public considerations and not private considerations.

You do realize that. You, therefore, are in a position to present to the executive branch, to the White House I would hope, these public considerations and enlist their sympathy and aid and help in this matter, because if you get the cooperation of Treasury, you are a long way down the road, as you know.

Senator POTTER. If you will recall it was 2 years ago when, I believe, Senator Johnson and myself, appeared before the Finance Committee to try to get the tax removed, in an effort to promote the all-channel tuner. At that time, the main objection, of course, was from the Treasury Department, the Bureau of Internal Revenue, that we would lose the funds involved. I think you are absolutely right. I think the administration would have to see it in the light, not just of the matter of revenue that might be lost, but an industry that is vital to our national defense. It is going to be greatly hampered unless this excise tax is removed so that we could have all-channel tuners on a nationwide basis.

Mr. HEFFERNAN. I am glad you brought that point out because I do think you, Senator Schoeppel, and the other members of the committee at that time deserve credit. You not only appeared before them, you adopted a resolution of the Senate Interstate and Foreign Committee. You appeared before them. We had a fortunate happening at that time. Senator Edwin Johnson was a member not only of this committee but of the Finance Committee, so he was able to point out to them the considerations of national policy, and the Finance Committee at that time did actually adopt a proposal which went part way down the road to give the relief.

That proposal was adopted and favored by the Finance Committee but it was lost in the adjournment rush, because we met, if you remember, in May and June, and it was in June before we got to this point, and it was lost in the rush.

This time—I am not sure you were here, Senator Potter, when I made the point about excise tax relief—partially to meet the Treasury's objections—and I have seen their letter to the Ways and Means Committee which was solely on the basis of diminishing the revenues—we are limiting the proposal for excise tax relief to all-channel color sets. Well, it happens that all-channel color sets are not being made in great volume today.

Senator POTTER. They are not losing revenue.

Mr. HEFFERNAN. They are not losing a great amount of revenue. Therefore, we have sidestepped the principal objection of the Treasury, whereas the public advantages of the proposal are still there, and the disadvantages are not there. We have the further argument that color, being a new industry, the Treasury and Congress have traditionally refrained from putting an excise tax on a new industry until it gets on its feet.

For example, black and white TV sets were not taxed, were not subject to an excise tax during the first 4 or 5 years of their growth. It was not until the Korean war came along that the tax was put on black and white sets; so that black and white got a chance to grow and develop as an industry and get on its feet before being subjected to tax.

Further, if Congress would now exempt all-channel color sets from the tax, it is not an irrevocable step. If color mushrooms and grows, as we all hope it will, and UHF is tied to the kite of that growth, Congress at some time, some future Congress, can reimpose the tax. This is not an irrevocable step. It is a step taken now in the interest of national policy so the President, in time of emergency and at other times, and other public officials can go on TV and speak to all the people; those served by the large city stations and those served in the smaller communities, and we can have both objectives, and I support the objective of CBS and of ABC to have three V's in more markets.

We are for that, but we think there is a means of having both objectives the Commission laid down. That is, both the community service and three V's in more markets.

Senator SCHOEPPEL. I am glad to hear you make this analysis, because from a practical standpoint the Congress, what the Congress and I am sure the departments have been confronted with, follows something along this line. They say, "Well, if you remove the excise tax, then there are other excise taxes in certain industries and they say we should have them removed." But particularly this situation, as I view it, is entirely different because here we are building something for the future.

We are trying to preserve a greater overall sphere of use or activity which, if we stifle it now, is going to sort of freeze it, so to speak, and we will inevitably lose a lot of it. Therefore, I was especially interested in your judgment as to the time limits of this action. I personally feel that it is something that I am hopeful that we can take care of in this session of the Congress.

Mr. COX. That is all I have, Senator.

Senator SCHOEPPEL. Senator Potter, do you have anything?

Senator POTTER. I would first like to apologize to Mr. Heffernan for not being here to hear your statement. I had planned on it, but I had to utilize your television facilities in my schedule for today.

Mr. HEFFERNAN. We appreciate your interest in coming, Senator. We have tried to present a proposal under which the objective that was discussed yesterday of increasing the number of markets where three VHF stations could be assigned is possible as byproduct of deintermixture, but at the same time preserve a system under which communities could be taken care of with UHF stations, so that both objectives and not just one could be attained. And we do think that is possible if we get the key to the solution, which is excise tax relief, which in turn is the key to the circulation problem, which is the problem of UHF.

Senator POTTER. Do you have the same doubts as Mr. Lodge, of CBS, as to the engineering potential of UHF; that is, it is an inferior type of television reception?

Mr. HEFFERNAN. Well, Dr. Engstrom testified before this committee. I did not have an opportunity to be present. He is the senior executive vice president and engineering official of RCA, and we stand on his testimony as to the technological differences. I think I correctly summarize them in saying that we must be realistic in recognizing that, as of today, VHF does give you superior area coverage to UHF. However, Dr. Engstrom pointed out that based on the whole history of technical development of the electronic industry, we can expect that difference will diminish as new improvements come in. The rate at which it diminishes may be slow. We don't promise miracles are coming out of the laboratory tomorrow. But in addition to that point, there is before the Commission now a proposal under which the UHF stations could extend their coverage by the use, for example, of boosters. Satellites have already been authorized, so that if there are additional areas of significant population that a UHF station wants to go out and reach for, he is not limited to doing so from his main transmitter. He can use a booster, or a satellite. As you know up in your area, Traverse City is operating as a satellite now, of Grand Rapids and very successfully, I hope.

Senator POTTER. We hope we can use it in Cheboygan.

Mr. HEFFERNAN. We are hopeful, too. We have interested ourselves in that area because we think northern Michigan should have TV service, and it should have the type of TV service to the extent it is practical to get it economically, that the rest of the country has, and we think ingenuity should be used, and in that situation has been used to get it. Boosters are technically successful. They are used in other communications services. They are available here. I am not claiming that that alone today means that a UHF station is technologically equal to a V because it is not.

Senator POTTER. If all receivers could receive a UHF signal, there would be more emphasis upon the technological development of both the transmission and the receivers to receive the signal.

Mr. HEFFERNAN. That is right.

Senator POTTER. To give the signal and receive it.

Mr. HEFFERNAN. That is exactly right, sir. As we said in our statement, if all receivers today could receive all UHF stations as they can receive all VHF stations, I do not think we would be here.

Senator POTTER. That is correct.

Mr. HEFFERNAN. The problem is circulation; the principal problem of UHF is circulation. That is the principal problem, and the key to that is excise tax relief because that will mean that in the long range that problem will be licked.

But time is of the essence. I am glad Senator Schoeppel brought out that unless we act at this session of Congress there may not be anything to act on later.

Senator POTTER. What would happen if Congress did not act in this session on the excise tax problem? You folks manufacture sets. Would the competitive forces operate so that you would have to manufacture your color TV sets in just the V channels?

Mr. HEFFERNAN. Dr. Engstrom has pointed out that the competitive forces are already driving us to that. You see, one reason that we, up to this year, were able to manufacture all-channel color sets is that there weren't, really, virtually any manufacturers that were making color sets except RCA, so that the competitive factor was not operating, but now it is operating. He pointed out in his statement that that factor is already here, so it is no longer possible to expect that all color sets made in the future will be all-channel unless we get excise tax relief, because we are tooling up for production right now on the basis of V-only color sets as well as volume production of all-channel color sets. We are tooling up now, but if we get excise tax relief soon, we would retool and sell nothing but all-channel color sets.

Senator POTTER. And I assume competitors would have to do the same thing.

Mr. HEFFERNAN. If we got excise tax relief there is every reason to suppose it would then be uneconomic to make anything other than all-channel color sets, which is just the reason this proposal is made. The result is then automatic, and the UHF operator, while he is not presently out in the clear, he sees light, he sees the solution. It is there. It is a matter of time.

Senator SCHOEPPEL. Anything further, Senator?

Senator POTTER. No, sir.

Senator SCHOEPPEL. Thank you very much for this most enlightening statement. As I understand, these proceedings will be recessed, or at least subject to the call of the chairman, until the week of April 23, and at that time I understand those interested in the subscription television situation will be given an opportunity to be heard.

Mr. HEFFERNAN. Thank you very much, gentlemen.

(Whereupon, at 11:59 a. m., the committee adjourned subject to the call of the Chair.)

ALLOCATIONS TESTIMONY RECEIVED IN LATER HEARINGS

At the conclusion of the testimony on March 28, 1956, the major bulk of the testimony on allocations matters had been completed. However, certain additional testimony relating to these problems was heard during subsequent hearings which were devoted primarily to questions concerning subscription television and certain network practices. This later testimony is printed at this point in order to bring all the material on allocations into as close relation as possible.

For written statements filed with the committee and other communications pertaining to allocations see the appendix at the end of this volume, beginning on page 1009.

The testimony of each later witness who addressed himself to allocations and related matters is set out below, with such notes or surrounding material as may be necessary to fix its setting. The witnessess are:

1. Bill Hoover, KTEN, Ada, Okla., who appeared on May 14, 1956 (and in connection with his testimony, a letter from P. A. Sugg, WKY-TV, Oklahoma City, Okla.).
2. Benedict Gimbel, Jr., Philadelphia Broadcasting Co., who appeared on May 15, 1956 (and in connection with his testimony:
   (*a*) Testimony of Leonard H. Marks, counsel for FM Broadcasters, who appeared on June 11, 1956;
   (*b*) Letter from Mr. Marks inserted in record on July 17, 1956; and
   (*c*) Letter from Morton H. Wilner, counsel for Triangle Publications, Inc., inserted in the record on June 11, 1956).
3. Henry B. Walker, Jr., On the Air, Inc., Evansville, Ind., who appeared on May 15, 1956.
4. Chairman George C. McConnaughey and other members of the Federal Communications Commission and its staff, who appeared on July 17, 1956.
5. John W. Boler, North Dakota Broadcasting Co., who appeared on July 18, 1956.

TELEVISION INQUIRY

MONDAY, MAY 14, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to notice, at 10 a. m., in room G-16, the Capitol, Hon. Thomas A. Wofford presiding.

Present: Senator Thomas A. Wofford.

Senator WOFFORD. The committee will come to order.

The first witness we are supposed to hear this morning has notified the committee that he cannot come at this time—Mr. Skouras. The committee may hear him later. He is unavailable today.

I want to state for the record, before I call the first witness, that Senator Monroney expressed to me his desire to be here today at this hearing, but it was impossible for him to do so because he had a speaking engagement elsewhere. He said that he would be particularly interested in reading the testimony of Mr. Bill Hoover, who is a constituent of his, and a very close personal friend of the Senator.

Will you come around, Mr. Hoover? You are from Ada, Okla., as I understand it.

Mr. HOOVER. Yes, sir.

STATEMENT OF BILL HOOVER, ADA, OKLA., OPERATOR AND MANAGER OF TELEVISION STATION KTEN

Mr. HOOVER. Senator, Bill Hoover is my name. I am from Ada, Okla. I am the operator and manager of television station KTEN; that is, channel 10, designated for Ada, Okla.

The comments and statements that I am going to make this morning in this testimony are based on about 2 years' experience as the manager and operator of a regional or area television station, built and designed originally to serve a wide agrarian area of southern and eastern Oklahoma, which is basically beyond the practical service area of surrounding metropolitan stations. In addition to this experience, I have also managed and operated radio and television stations for the past 10 years.

Now, based on this short history in this industry—or comparatively short history—I know that the suggestions that I will make here today are not an overall cure-all, nor do I at all kid myself that the comments that I will make will solve all of these problems of this vast industry, or that I know all there is to know about this thing—not by any manner of means. But after these statements that I make are improved upon by probably much better minds in this industry, we may have some improvement in the television industry for both the industry itself and the American citizenry.

My appearance before this committee this morning is not designed to be unduly critical of the Federal Communications Commission, as such, and is only to state facts as I see them with regard to network practices and those practices in their behavior toward station affiliation.

Now we will delve into thr~~ee differen~~t areas of consideration: (1) Satellite station operations, its ills, and effects; (2) the coverage quotation practices and how they, as well as the misrepresentations involved, should be corrected; (3) the struggles of an area television station and how the proposals presented in this testimony would insure faster growth and development of television service for all the citizens of our country.

A new evil has reared its ugly head in the television industry. Unless properly controlled, it will soon become a monster of such proportions that none of us within the industry will be able to cope with it. This new evil is the development of satellite television stations. During the thirty-odd years of radio history the satellite station operation was not developed. But, due to the enormous cost of installation and day-to-day operation of a television station, there are those in our country who prefer to run a satellite operation rather than expend the tremendous amount of energy and finances necessary for the development of legitimate local television service as we now know it.

Because the satellite operation is new, the Federal Communications Act of 1934, as amended, to my knowledge, does not contain adequate rules and regulations to cope with the proper policing and development of satellite stations. Of course, where rules do not exist, or you have vague or inadequate rules, there are always those willing to proceed with action based on the vague or inadequate rules, particularly when such action will serve their needs and desires.

There is no successful industry in our American way of life that has attained its success by giving away its product or services, or by selling those products and services at a rate far below the actual cost of production and development. Yet the basic theory and principle behind a satellite television station is just that.

Mr. Cox. In what way would that be true, Mr. Hoover? In order to make it economic at all, since there is some investment involved in the construction of a satellite station, even though their costs of operation are reduced, they must receive revenue in order to make this an economic operation.

Mr. Hoover. True. But the origination of the programing itself—a satellite, due to the low cost of operation, will sell spot announcements, next to the programs that it is carrying on a satellite basis from a parent station. Therefore, not having to delve into the expenses of program origination or negotiations, many times with networks or film companies, they only sell the spots between the shows.

Mr. Cox. In other words, they would derive most of their revenue from spot announcements on their own account carried adjacent to programs of the network station?

Mr. Hoover. That is the basic theory on which they are constructed.

Mr. Cox. Isn't it true in a number of instances the satellites have been constructed by the same interests owning the parent station and they have then adopted the practice of selling the coverage of the two stations as an entity, both for sponsored programs as well as for spot announcements?

Mr. HOOVER. That is true, but the additional cost for the satellite is not proportionate to the charges that would be necessary if that satellite had to maintain its own sales organizations, if it had to generate its own local shows, and so forth.

In other words, it is only a percentage—in many instances a small percentage—of additional charge for the satellite, something that couldn't be coped with by a local competitive station.

Mr. COX. And by that you mean by a station that was going to make a real effort to provide a local program service?

Mr. HOOVER. That is right. Now there is one other point about satellites which was basically covered by the question, and that is that the big television station who finds a weakness—a metropolitan basic network station who finds a weakness in his coverage area, a soft spot someplace, is the one fellow in this industry who is in the best position to develop a satellite operation. And that only leads to the one big problem that is before this committee, and frankly, before the entire industry, and that is the fact that the big ones keep getting bigger and the little ones find it next to impossible to exist.

Now here, for example—and I think this will show the point that you wanted to clarify—how a satellite operation will work: Let's take, for example, there is a basic network affiliate in a metropolitan area that has a tremendous tower—1,000 or 1,500 feet—with maximum power on its given channel, and this station finds that its signal, in a given segment of its fringe area, is being squelched or being interfered with by a signal generated by another station either on his channel or on an adjacent channel.

Now this basic network affiliate does not become particularly concerned about this loss in coverage initially. But about the time that a local or regional television station is built to serve this area that is in the interference segment of the metropolitan station's coverage, and about the time this local or regional station begins to point out the weaknesses of the metropolitan station and begins to attract regional, national and local business, about that time is when the basic metropolitan station really begins to get around. He becomes concerned about the service in the interference area and he is completely sympathetic with the unfortunate people who have been losing the programing that they justly deserve. In fact, he becomes so concerned that he is willing to make his programing available to persons who would like to own and operate a television station, and to whom possibly a channel has already been allocated, in the questionable fringe area.

He then encourages the development of this second station in the fringe area, and offers—for the public good, of course—to feed his fine network programing to the newly developed station on a satellite basis. He may even allow the advertiser to be charged a small rate for this additional coverage, but since the satellite is receiving so much programing and services and sales energy from the basic station, there generally goes along with all of this service a small service charge through which, in the final analysis, the major portion, if not all, of the profits from the satellite go back to the basic station.

Mr. Cox. This is a charge, you mean, that is exacted by the parent station for providing this?

Mr. HOOVER. It could be, and generally—well, you can see the business arrangement: "We will make these available to you and we will sell for you. We are doing all of this. We need a little service charge out of this thing."

Therefore, the satellite gets money, a small amount of money, but by the time he has paid back his service charge to the basic station for the energy it was going to expend selling itself anyway, then a good percentage of the profits of the satellite have accrued back to the basic station. Consequently, the essence of this whole thing is that the basic station has found itself a crutch whereby it can cover an additional area, control the satellite, and break the back and spirit of a local or area station in the questionable fringe area.

Now this, to my way of thinking, is unfair competition, and is not in accordance with the intent and spirit of the Federal Communications Act, as amended.

Mr. Cox. Are you going to develop later the way in which the creation of this satellite has an impact upon the operations of a truly local station in the area? Do you discuss that at a later point in your statement?

Mr. HOOVER. Yes; I will.

Now with regard to the networks and their attitude concerning satellite operations. I believe it has been conclusively proved by this committee that the networks are dedicated to the proposition of covering the United States with as few stations as possible. If there is some sparsely populated area which does not receive service, then that area will just have to struggle along without service.

Mr. Cox. What of their argument, Mr. Hoover, that it is necessary to attempt to get this coverage from a few powerful stations in order to make television a competitive medium, as far as advertising generally is concerned?

Mr. HOOVER. What is wrong with having competition out in the sparsely settled areas, just as well as having competition in the metropolitan areas? It doesn't add up that competition can only exist in just the metropolitan areas, sir.

Mr. Cox. I think the point they try to make is that the cost per thousand goes up in a more sparsely populated area, and that this renders television competitively unequal, as far as magazine, newspaper, or radio is concerned; and that it is, therefore, impossible to develop a television service on as broad a basis, for instance, as we now have radio service.

Mr. HOOVER. I would like to answer that a little bit later when I get into coverages, because I will show how, if each station is paid for its actual coverage, then there will be some left for the fringe area. I would like to get into that in the second phase, if you don't mind.

Mr. Cox. Fine.

Mr. HOOVER. Since the basic station in the metropolitan area is such a lucrative property for the network, the network, rather than offend its affiliate, will readily agree to allow the affiliate to feed its fine programs to the newly born satellite, in the public interest, convenience, and necessity. In doing so, the network knows full well that the actual profit and coverage of the satellite will ultimately accrue to the basic network station, which will enable the network to maintain its principle of "coverage of the United States with as few stations as possible," because the 2 then are considered as 1, as you see.

Of course, the local station, which had been knocking on the doors of the networks for months and months and months, requesting affiliation as a legitimate local service to the citizens of the area in question, can be told: "We don't need you; we have coverage in that area," and the big squeeze is on.

Mr. Cox. Now is it the current practice of the networks to regard satellites as additional affiliates of the network, or do they——

Mr. Hoover. Well, it can be molded into the coverage of the basic station. It is a lump, if you please; or filling out a hollow spot. There is one thing I would like to point out right here in favor of the networks right along this line, and that is that I sincerely believe that in many instances, the networks would prefer to affiliate the local or area independent station in preference to a satellite station, if it were not for the tremendous pressure applied to the network by the basic affiliate, and particularly by a basic affiliate in a city where there are less than three VHF outlets.

A network, you know, must get along with its affiliates in the principle cities, or the affiliate in a principal city where there are less than three VHF outlets can reject the network's programing in favor of another network which is anxiously waiting just to get his programing into that market. So all of the ills of the satellite problem cannot honestly be laid at the door of the networks. In fact, if the proposals that I will present here later were adopted, the networks would seldom be put in the awkward position described above. And they are definitely put in a very awkward position.

Now there are those who will point out that the satellite arrangement is a desirable one to help a new station get started with good programing, thereby enabling that station to develop a larger, more loyal listening audience. And when the day comes that finances will permit, the satellite can then convert to a legitimate local operation.

In my opinion, this is a supposition and will not happen for two reasons. First, the basic network affiliate does not intend to allow the satellite to get from under its control and domination. Second, a new station is much like a new baby—unless it exercises and remains active, it will not grow. The same is true of a satellite station. Unless it actually endeavors to render the local service it should—producing its own newscasts, weather programs, farm programs, and local-service programs—how can it ever expect to grow strong and self-sufficient? This promise of future growth and development to an independent status is shallow.

The comments made to this point might lead the committee to believe that I feel there is no situation where a satellite station operation is justified. That is not necessarily so. There are, no doubt, areas in the United States which cannot honestly support or justify a full-fledged television station. In those instances, where the people have no service at all, then the satellite type of operation may be the answer. However, my position is this: That the FCC should immediately develop specific rules and regulations with regard to the granting of construction permits for such operations.

Mr. Cox. Now in that connection, Mr. Hoover, is it your position that if an area has one local station, and it could support an additional station of its own, that it would be improper by means of a satellite station to bring in further program choices to this area by feeding in the programing provided by stations in remoter cities?

Mr. HOOVER. That is right. In other words, where one station can exist in an area and render good solid local service, not only in programing—network programing, and all types of programing—but the local service that every area or community of any size at all should have, by bringing in or allowing a second station to come into this area as a satellite, not on an open competitive basis—anybody has a right to get in there and just wade right down the middle competitively—but as a satellite, developing unfair competition to the point that the satellite can ultimately kill the local services, then are the people any better off? Not at all. In fact, I think they are not as well off.

Mr. COX. Would it be your position that this one local station can at least provide the cream of the programing normally, because if it is recognized it will be able to get a selection of programs from all three of the networks?

Mr. HOOVER. That is one thing. The other thing is that as the area then grows and develops and becomes more saturated with sets, you know and I know that there is always an opportunity for a second independent, legitimate facility to be developed, because, sure, one station cannot handle all of the programing from 2 or 3 networks. And as the area becomes more recognized nationally, there will be the available space and opportunity for the development of your second local, legitimate, competitive, television station.

Mr. COX. Now on this point of the development of the satellite station into a true local station, would you care to comment on the position, I believe, of the Federal Communications Commission, that they feel that in the future years they could condition the renewal of the license of the satellite by requiring it to institute increasing degrees of local programing services?

Mr. HOOVER. Well, I would like to point out that actually there are such loopholes in the rules as they now stand—of course, understanding that these satellites are a new problem—there are such loopholes in our existing rules that literally and actually a station can be developed, apply for a regular construction permit as a legitimate station, it can build a little studio, actually buy a camera and have all the appearances of a local legitimate station—but principally and basically and for all practical purposes it is a satellite—and never call itself a satellite. That is the point that I am getting ready to make here in the suggested rules that would control this thing, sir.

Mr. COX. Well, now, however, when it comes up for a renewal of its license, isn't it going to be required to make a showing as to the nature of the programing it is furnishing?

Mr. HOOVER. That is right.

Mr. COX. And that would reveal the fact that it had actually been operating as a statellite and might then involve it in difficulties about renewal?

Mr. HOOVER. Except for the fact that the rules delving into—and the program percentages on the present FCC application delve into network programing and local programing, and educational, and talks, and news and that sort of thing. The programing will be balanced. It will be just as balanced as the basic station. It will make a fine report as far as being balanced, fine service. The only thing is it has siphoned this fine programing from the basic station—except for that occasional local show that it will fire at the studio, with loaned personnel, and do an occasional show to justify local service, you see.

In essence, it is still satellite to the principal metropolitan station, the basic metropolitan station, and it is a crutch to that station.

Mr. Cox. For the record, however, isn't it true that satellites are presently recognized and licensed by the FCC under a rule that was instituted, or adopted, in August of 1954 or 1955? They do have a rule under which these stations are recognized?

Mr. Hoover. There was a rule change proposed—a rule proposal made at the FCC. The final adoption of that rule, I am not sure of.

Mr. Cox. Well, that may be it. It may be that this is simply a proposed rulemaking proceeding at this stage.

Mr. Hoover. That is right. In other words, even if we were to get what rules they are planning on making final finalized, that would be something, at least, toward stopping the development of satellites as a crutch to a basic network affiliate that wants to add to its coverage and break the spirit of local service that is beginning to encroach upon his vast domain. Now here is my proposal to solve this problem.

In the first place, many people find fault but if you ask them for an answer, there isn't any. Well, I don't want to be among that number. It is my opinion that FCC rules and regulations should be developed and adopted which call for official FCC approval for any station to operate as a satellite to another station. The definition of a satellite should be construed to mean——

Senator Wofford. May I interrupt for a minute? Do you have any objection to these photographs being taken? [Indicating photographers.]

Mr. Hoover. No, sir.

Senator Wofford. All right, go ahead.

Mr. Hoover. The definition of a satellite should be construed to mean that when any station accepts programing, either network, local, live, or film, from another television station via any connecting facility, whether it is off-the-air pickup, microwave relay, or coaxial cable, in excess of—and here is the meat of it—in excess of 8 hours of programing per week, the station receiving such programing in excess of 8 hours must declare itself a satellite and obtain FCC authority to operate as such.

Now let's analyze just this one point. If an application is made by Station X to operate as a satellite to Station Y, and this service can be delivered without developing unfair and undue competition to already existing local operations, naturally there would be no one to protest the granting of the application by the Federal Communications Commission, because the people weren't getting any service in the first place. They would want some. So the application would go right on through.

On the contrary, if Station X's application to operate as a satellite is actually an effort on the part of a basic network metropolitan station to increase or improve its coverage, using the satellite as a crutch to do so, and this action would work to the detriment of an existing local station in the area, to be sure, upon public notice of the intent of Station X to operate as a satellite to Station Y, there will be a vigorous protest on the part of the local station that will be hurt in the process. Then, after proper FCC hearings on the matter, the Federal Communications Commission must decide whether the satellite proposal is in the public interest, convenience, and necessity. In other words, we just should have a day in court to determine whether the development of this satellite is really in the public interest. Then if the Commission feels it is, fine; but there ought to be a way to bring the thing up for hearing. And this would surely be an opportunity to do that.

The reason for using 8 hours of programing per week as the basis for determining whether a station should be classified as a satellite is because many times there are public service programs originated by one station which can be picked up by another station in the same general locality. This particular public service program could be delivered to the public with convenience and to the overall good of the public. There are times when special sporting events are originated, and arrangements are made whereby a second and third station may carry the same program. It is my feeling that the 8 hours per week would allow for the normal amount of cross-station feeding of programing that exists today. Therefore, when you get over that you begin to get into this satellite thing.

There are those who will say that such a rule will be destroying the principle of network programing because, in essence, they try to stretch this thing that network programing is taking programing from one station to another. But I am sure as the details of the rule would be written, they could be definitely differentiated between network programing. Further, they contend that delving into network programing and station programing in general—the FCC just should not delve into that sort of thing.

On the contrary, the FCC in my opinion has a positive and specific responsibility, under the Federal Communications Act, to police the allocation and operation of any and all radio and/or television stations utilizing frequencies now designated and allocated to the United States, and to make sure that these facilities are utilized to the fullest extent for the good of the American people under the American free-competitive enterprise system. Actually, this proposed rule to police the development of satellite stations would be an effort on the part of the Federal Communications Commission to make certain that the spirit and intent of the FCC Act of 1934, as amended, are carried out to the letter, and that as many citizens as possible will have local television service. I, therefore, believe that the adoption of such rules by the Federal Communications Commission is in the public interest, convenience, and necessity.

If you find the statements and thinking in this testimony to be true, correct, and logical, I believe this committee should take immediate steps to request of the Federal Communications Commission that it develop and place in action, at an early date, specific rules and regulations with regard to satellite operation of television stations.

I do not know whether this committee intends to complete its investigation before making certain specific recommendations to the Federal Communications Commission, or whether the committee has considered making a series of interim recommendations and proposals to the FCC for immediate action. I am inclined, as were many who have appeared before this committee, whose testimonies I have read, to urge quick and immediate action. I, therefore, join my voice with theirs, to request that this committee take under advisement the possibility of development of interim suggestions and proposals to the FCC for immediate action, prior to the development of its final report, remembering that time is of the essence in this fast-moving television industry.

So I want to request that this committee consider the possibility of filing a request with the FCC at an early date based on this satellite problem. That basically concludes my comments with respect to the satellite stations and their ills.

Mr. Cox. Now, in that connection, Mr. Hoover, you have, of course, developed this in general terms. Could you tell us whether such a situation actually exists in your area in Oklahoma and actually affects your station, or potentially could affect your station?

Mr. HOOVER. The answer to that question is "yes"; there is a situation developing in our area.

Mr. Cox. Could you tell us something about the details so we could pinpoint the case?

Mr. HOOVER. When we get into our maps here in just a few minutes, I will ask you to make a special note to look at the maps of WKY–TV, Oklahoma City, and in that way, I can show you in a graphic manner what I am talking about, or I could go into it now, whichever you prefer.

Mr. Cox. I think you can reserve it, except I take it that the situation is that WKY is a station which you feel proposes to assist in the development of a satellite, and that that satellite would then have injurious effects economically upon the operation of KTEN.

Mr. HOOVER. That is right. But I want to further amplify it with the maps here in just a minute.

Mr. Cox. All right.

Mr. HOOVER. Now the second area of consideration, on the surface, seems far removed from this first consideration. Actually, it attaches itself to the first problem, as well as many other problems now before this committee and the television industry. There are only so many advertising dollars in America, and, frankly, they make a very, very nice pie. The television industry's slice of that pie is quite large, but as Senator Bricker in his report of a week or so ago pointed out, only the crumbs of the crust of the pie ever seem to reach the hands of the area or local television station. Consequently, without income, local and area television stations have not grown and developed as they should have. Their future growth and development is being impaired, and it naturally follows that the American public is not getting the television service it could and should have.

One of the elementary reasons why the advertising dollars are not reaching the area and local stations is because the presently existing coverage maps and standards, submitted to the Federal Communications Commission—and used in the selling of time by the television industry—are theoretical in scope. They are not factual, and in many instances are basically misrepresentations of coverage. In the beginning of the development of the rules, regulations, and standards with regard to the television industry, the FCC maintained an official attitude of making the filing of applications and the engineering data pertaining thereto as simple as possible. I believe it is an official attitude of the FCC that they do not intend that their standards be construed as specific coverage areas of stations, but rather that these coverages be used as a basis for determining overlap and duopoly and that sort of thing, for administrative purposes of the FCC. However, regardless of what the FCC's intention was for the present standards, the fact remains that the coverage areas filed with the Federal Communications Commission in accordance with the present standards are used as sales vehicles and are used as a basis of having FCC sanction and approval. In other words, whether the Commission wants to be charged with the responsibility of designating the coverage area of stations or not is beside the point. They are, just because they are in an official capacity which they have with regard to this industry. Even though in many instances it is an established fact that the perfect circle shown on these maps does not accurately represent the actual coverage of the stations involved.

In the beginning of the television industry, I am sure the FCC thought that each station would send out a signal from its antenna in a uniform manner in all directions. I am also sure that the FCC thought a signal could not be received with any degree of satisfaction beyond the class B contour. Now that we have had several years of experience and we now know the facts, why should we, as the television industry, continue to operate under antiquated and inaccurate theory. There were those in the FCC, in the early days of television, who were actually on the right track, but lost the battle because standards of engineering practice with regard to the coverage area of stations as set out in the third report, issued March 22, 1951, were not adopted as the standards to be used.

The standards set forth in the third notice were not developed overnight, and were not developed by people unfamiliar with the facts of this industry. Actually, the third report required nearly 2 years of research, hundreds of man-hours of work, and involved the finest technical minds in the industry and in the Commission, working as a team. The standards set forth in the third report took into consideration cochannel and adjacent channel interference factors. Today, with the growth and development of more and more television stations, as well as increase in height—increase in antenna height and things of that sort—these factors prove to be an important problem to the advertiser and the industry.

In fact, a close check will reveal that a large percentage of the television stations in the United States do not put out a receivable signal uniformly in all directions from its antenna, even though the coverage maps submitted by stations to the advertisers and their agencies will, 9 times out of 10, show such uniform coverage. The majority of these maps are given to the advertiser on the statement that this is the coverage of the station, according to the FCC and the maps on file there. So long as such misleading maps are given official sanction—whether intentional or unintentional, as far as the Federal Communications Commission is concerned—just so long will stations continue to sell on these misrepresentations of coverage.

Mr. Cox. Now isn't it true, Mr. Hoover, that actually the service area which can be served by a station operating at full power and full antenna height is greater than the area which would be enclosed within the calculations made upon the basis of the FCC standards?

Mr. Hoover. Yes, that is true, and I think testimony has already been presented to this committee in the past stating pretty good evidence to the fact that a 100-microvolt contour out here [indicating], interference free, is a good receivable signal on the average home receiver.

Mr. Cox. Now that is less than actually contemplated by the FCC?

Mr. Hoover. Yes, but here is the catch. The maps filed with the FCC are only shown out to contour B, but the standards of measurement to determine B are also the standards of measurement to determine this 100 microvolt, which everybody has bought now as being an actual thing; so they still just make the circle and make it a hundred microvolts all around, uniform in every direction.

Mr. Cox. That is the circle on their map used for selling?

Mr. Hoover. Yes, but they use this circle and show that the hundred microvolt goes all around, which enlarges the coverage of each station. And it is true where a hundred microvolts is interference free it is a good legitimate signal and a station, I personally think, has a legitimate right to charge an advertiser for coverage out to that point.

Here is how the thing actually works. Station A with maximum power for its channel, located in a metropolitan area, is a network affiliate. This station, according to present coverage maps, has a class C or 100-microvolt contour out, let us say, as far as a hundred miles. I am not using anything specific here; I am using an example. Say it goes out a hundred miles. The station calculates all of the homes inside this hundred microvolt contour. The network also makes the same calculation, and the rate charged the advertiser by the station and/or the network is based on all of these homes inside this contour.

Actually, 75 miles away, let us say, there is station B, on an adjacent channel, with maximum power and a 1,000-foot tower.

Mr. Cox. Would that be the minimum separation required?

Mr. Hoover. 65 miles is the minimum. I will have to qualify that: 65 miles is the minimum in zone II; I do not know about the other zones. That is, where I operate. This station's signal—that is, station B's signal—actually interferes with the signal of station A in a segment of station A's coverage area. In fact, some of the less expensive table-model sets in the fringe area are equipped with a relatively inexpensive antenna system, which is also quite broad-banded in reception. Consequently, station A's signal cannot be received with any degree of satisfaction because of continuous interference from station B, the local or regional station on the adjacent channel. Yet, the networks refuse to accept the fact of interference. Certainly the basic network station A will not admit the interference. The advertiser is misled into thinking he is getting coverage over all of station A's coverage area; he is paying for that coverage, and, basically, he is being cheated.

Mr. Cox. Well, have you, or the operators of other stations who feel they are filling in an area that is interfered with, been able to convince advertisers of the facts as you believe they actually exist?

Mr. Hoover. It is a slow and a tough and a very hard process. It can be done, and there are those—both network people and advertisers—who know of our efforts at KTEN, and it can be done. But it would be a lot simpler for the entire industry just to make the maps factual to start with, and then everybody could receive money for the area they actually cover. That is the point I am making. It isn't right for a station that is first in a sparsely settled area, and has limited income, to have to battle to the extent that we have had to battle to even make a little bit of headway. We are a long way from being there. I assure you of that.

And even worse, in this instance, than the advertiser being cheated, the viewers in the adjacent channel interference area are being deprived of some of the better network programs because the network will not make those programs available to the area station.

Whereas, if coverage maps were developed, based on the station's coverage out to the 100-microvolt contour of interference free area, from both cochannel and adjacent channel factors, the advertiser could then buy and pay for the coverage he is actually receiving from the basic network affiliate. With the reduction in cost of the basic network station, he could take the dollars he has saved by paying for actual coverage only, and buy the same program on the area or local station, thereby giving the advertiser better coverage. And, without excessive increases in advertising expenditures on the part of the advertiser, more people could receive better television service.

Mr. Cox. In other words, you are suggesting that this would produce a reallocation of the dollars spent for television advertising so that the basic affiliate in a metropolitan area would receive only its fair share, but that the diversion of part of those funds to the area station would still not raise the total television advertising expense to an uneconomic point?

Mr. Hoover. Yes; in other words, an advertiser basically thinks of spending X number of dollars to cover a thousand homes in the country. Now if the metropolitan station is actually delivering coverage to only two-thirds of the homes that this advertiser is paying for—actually delivering coverage—although it is getting money for a hundred percent of them, that other one-third, diverted into in-between or local or area stations, would just about cut the mustard as far as giving the advertiser coverage all over the area, dollars-and-cents-wise.

Mr. Cox. Would the funds thus diverted from the metropolitan stations be enough to support stations out here on this fringe, and keep them in business?

Mr. Hoover. Well, I think yes. For example, in my own operation we keep the expenses down quite low. We are operating with a smaller staff. We don't have to have all of the show that a metropolitan station does have to have. We can actually get along on less dollars in our operation.

Mr. Cox. Would this serve to fill in the gap between what you can raise from national spot and local advertising?

Mr. Hoover. That is right; it would aid in the basic problem of any station, better programing. If you get that, you can solve most everything else in this industry.

I am sure all of you gentlemen know that there is a limit to the number of advertising dollars which can be generated for use in television. It is my firm conviction and belief that if those dollars were spent for actual coverage, rather than for theoretical coverage, the television industry would be much stronger financially today; the possibility of the development of better regional and local stations would increase 10 percent; and the American people would have the opportunity to receive more and better television programing than ever before.

To this point I have only described to you what happens in the instance of adjacent channel interference factors. The same situation, basically, exists in the instance of cochannel interference factors. Take, for example, 2 stations 200 miles apart in zone II, both in metropolitan marketing areas, operating on maximum power, utilizing tremendous antenna heights. Almost without exception there is an area between those two stations which receives a signal from both stations. The viewer is trying to receive this direction, and his antenna is headed in this direction [indicating], and at the same time there is a program from another station, on the same channel, on the same set. You cannot receive two programs on the same set on the same channel at the same time, so there is tremendous interference.

But when a local or area station is developed and built to serve the in-between area, the advertiser is not disposed to buy the area station because he has been misled into believing that he already has bought, paid for, and has coverage in the area in question. And he will pull out one of these coverage maps I have referred to, with the big vast circles, and use that as his proof and evidence to you that he has coverage in the area. Therefore, he has no logical reason to buy the local station.

The networks, dedicated to the proposition of covering America with the smallest number of stations, aren't going to go to the advertiser and tell him this interference exists, because the advertiser would then expect the rate on the basic station to be reduced. To be sure, the basic network station isn't going to tell the advertiser the truth, because he fears the loss of revenue. And, as a result, under the cochannel interference situation, the advertiser and the American public are still being cheated. Then, when an area station begins to prove to the advertiser that he is being cheated, we have such situations as I described earlier in the satellite operation, where they begin to develop and fill this hole with a satellite operation.

With these facts before you, I am sure you can readily see why local and area television stations are being strangled to death. They are being deprived of any save the few crumbs from the advertising-dollar pie. If they were being deprived of these dollars justly, it would be a different thing, but actually they are being deprived of them in the most dishonest approach yet conceived in this industry. In my personal contact with advertising agencies up and down Madison Avenue in New York City—when I point out by both map and surveys the interference situation and how they are being hoodwinked—nearly without exception every agency says: "We need so badly this sort of factual information with regard to the coverage of stations." Of course, the local or regional station, struggling for existence, with small revenue and limited personnel, has few dollars to spend in advertising, and only on occasional visits to the advertising agencies is able to tell his story. On the other hand, the metropolitan network basic affiliate station spends enormous sums of money advertising and promoting his tremendous coverage, based on the maps now filed with the FCC. He further has ample funds to send personnel up and down Madison Avenue spreading inaccurate propaganda.

Each network, through its respective sales personnel, wishes to boast of the most powerful station, and the most coverage for its affiliates, in each of the basic markets. So the network salesmen start beating the drum for this tremendous coverage, inaccurate though it may be. What is the advertiser to think? Who is he to listen to? The loud screams of the network affiliates in metropolitan areas, or the tiny voice of the local and area station that is telling the logical and truthful story regarding coverage? Place yourselves in the position of those time buyers, gentlemen. Which story would you listen to? These are the reasons why this committee, if it does nothing else throughout its entire investigation, should force the development of coverage maps based on actual coverage to the 100 microvolt contour of interference free signal. This would accomplish more toward the growth and development of the television industry for the service of all the people of the United States than anything else this committee can do.

Mr. Cox. Is this 100-microvolt contour as satisfactory for stations in the high bands as it is for stations in the low VHF band?

Mr. HOOVER. I operate a high-band channel 10-VHF station. I do find that the viewers out at my hundred microvolt contour say they receive a satisfactory and adequate signal. Now you are asking me an engineering question which, frankly, I am not capable of answering, except to say that in our own experience, viewers state that they are satisfied that they can get a receivable signal at a hundred microvolts.

Mr. Cox. Does this require a more sensitive receiver and any additional expenditure for antenna, or can this be done with medium-priced equipment?

Mr. HOOVER. Pretty well standard equipment.

Now I have had our consulting engineers, Vandivere, Cohen & Wearn, prepare for me coverage maps under the present standards for certain existing areas, and superimposed on those coverage maps, each station's coverage based on the standards set forth in the third notice, which take into consideration cochannel and adjacent-channel interference factors. If you will turn with me to the exhibits attached to the back of this statement, you will quickly see what I am talking about in a very graphic manner.

Now for ease of understanding—and something that you can drive out in your car and check, you folks who live here in Washington—we did a map on your own local station, WRC–TV, right here in Washington, channel 4. Now the outer circle [indicating the map] [1] is the 100-microvolt contour. You will notice that to the northeast WRCA–TV, on channel 4 in New York, renders interference to quite a slice of territory; and there is one point that I have not made through these maps that I would like to make here. If we had the coverage of WRCA–TV's map, we would find the same sort of interference being applied on WRCA as on coverage by WRC.

Now to the southeast you can notice that WUNC–TV down at Chapel Hill, N. C., operating on channel 4, provides interference, and WUNC has interference from WRC. Both of those are cochannel interference factors. Now for adjacent channel interference factors, WSVA–TV over here at Harrisonburg, Va., on channel 3, interferes to a great extent on the west side. Now the number of homes in the white area inside is considerably less than the number of homes in the overall large circle.

Mr. Cox. Actually, this is an unusual circumstance, Mr. Hoover, in that included in even the remaining white area is the city of Baltimore which has its full complement of three television stations, and actually advertisers, in buying coverage in this area, buy both the Baltimore and Washington stations.

Mr. HOOVER. That is right, but it does not necessarily hold when you get out West and in many other areas of the country.

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[1] It was not possible to reproduce any of Mr. Hoover's maps. However, they will be retained in the committee's files.

Now we went up to Boston [referring to map]. There you have a pretty true circle except for the one big slice taken out of the southwest side—interference also from WRCA-TV.

The next map [referring to map] we dropped out to the Southwest, my part of the country. We have a map here of KRLD-TV, channel 4 at Dallas. You will notice that it receives interference from WKY-TV in Oklahoma City. Both stations are on channel 4, and the 2 stations are basically about 200 air-miles apart, just over the minimum necessary separation for 2 stations on cochannels.

The next map [referring to map] is WKY-TV, Oklahoma City. You will notice the interference from KRLD-TV, the map we just looked at here. It goes up to the city of Pauls Valley. Now my hometown—you will notice Pauls Valley is in the shaded area due south of Oklahoma City—my home is Ada, some 20 or 30 miles east of Pauls Valley. Now compare the population area from north of Pauls Valley down to Sulphur, in the southern stream of the hundred-microvolt contour. Do you see that slice in there [indicating]? Now there is a station on channel 12 that is being developed at Ardmore, Okla. That station is going to operate on about 25,000 watts, which basically will give it about 30 miles' coverage, which will just about reach up to Pauls Valley there—from Ardmore to Pauls Valley. It will just fill in that gap real nice for a fellow by the name of WKY, and Ardmore is going to be an off-the-air pickup from WKY. It is already stated in the newspapers.

Now they have got a studio—they are going to have a studio and they are going to do a newscast once in a while, but it is already openly said that they are going to be carrying the programing—both locally originated, film and network—from WKY.

Mr. Cox. When this Ardmore station received its construction permit, at that time was there——

Mr. Hoover. It was 2 years ago, the same time I got mine.

Mr. Cox. Was there at that time any representation to the FCC that the station would be operated as a satellite?

Mr. Hoover. On the contrary, it states that it will be a legitimate local station. Now the point I am getting ready to make here is this: If the coverage standards as proposed here were adopted, then Ardmore, sitting down here in its position, wouldn't have to go into a satellite operation to WKY or me or anybody else. They could make a legitimate deal with, certainly, one of the three networks and operate a legitimate station.

Mr. Cox. Do you mean because they would be able to sell coverage in this cross-hatched area [indicating]?

Mr. Hoover. That is right, because the advertiser would be told in the beginning, "WKY comes down here to north of Pauls Valley. This is our interference area. Now if you want the rest of this, here is a station you can buy."

Mr. Cox. Now does KTEN provide coverage in at least part of this shaded area?

Mr. Hoover. It provides coverage in the majority of the shaded area. I have saved the worst till last. It is the last map we will look at. You can take a look at the last map [referring to the map] and I think you will see the point we are talking about.

My statement with regard to my own coverage is this: I couldn't show everybody else's weakness and not show my own. I am cut off at least a third, or maybe more, in my coverage area there by KWTV. But if I can only get credit for two-thirds of my service area—and I legitimately deliver service to two-thirds of my coverage area—and I get more for two-thirds of my coverage area, then that is well and good. When you make a rule it has to cut right down the middle and take a little shave off everybody. As you can well see, Ardmore is well inside our coverage area in this Pauls Valley thing [indicating], and I have been getting a good deal of network programs—NBC network programing—on a per-program basis.

Mr. Cox. WKY is a basic NBC affiliate?

Mr. Hoover. Yes. That is why I think this arrangement has grown so rapidly—because we are making tremendous headway in pointing out and proving to the advertiser, "Well, you need us down here." But I have to do it all myself, and have to unsell them on one coverage and sell them on another.

Mr. Cox. Do you concede this interference with your own signal in your sales efforts?

Mr. Hoover. I absolutely do. I have sales coverage maps—my normal sales coverage maps—that I would be glad to show you. In fact, in our market data we only count 18 counties in southern Oklahoma. Our transmitter is at the northern extreme of Pontotoc County and we don't even count Pottawatomie County, which is 10 miles to the northwest.

Now every time I get out on a limb, they saw it off behind me, so I have to tell them exactly what we do cover. All right, you can see the WKY problem. And then here are a couple of other stations in Oklahoma: KTVX, an ABC affiliate, between Muskogee and Tulsa, which suffers interference; and KWTV, the CBA station in Oklahoma City, which gives me interference, and I give him interference, and Muskogee gives him interference, and he gets just a little bit from Wichita, Kans. But you can see from these maps what I am talking about, gentlemen [referring to maps].

Mr. Cox. Now these, I take it, Mr. Hoover, are still, however, simply engineering calculations based on average standards, without reference to actual conditions in the field?

Mr. Hoover. These are calculations as set forth in the third notice—the standards of calculating the figures based on the station's antenna height, its power, the interfering station's antenna height and power. All of that is already set out in this third report.

Now, for me to argue that this is the exact figure and ratios to be used that were set up in the third report—and whether they hit the line just exactly right or not, I am not capable of making that statement. I am simply saying that interference factors—both cochannel and adjacent channel—do exist and they should be calculated, and the third report looks to me like a mighty good start in that direction.

Mr. Cox. It still would be possible that no matter how these standards were refined, under actual conditions, reception could be obtained in areas which would apparently be in interference zones, and in other cases the interference zones might be larger?

Mr. Hoover. I submit to you the fact that radio for 30 years has been figured that way, and they hit it pretty close.

Mr. Cox. I note on your map for the coverage of KWTV, in Oklahoma City, you indicate that the interference by KTEN is sufficient to prevent that signal from being satisfactorily received in Ada. Now, are there sets in Ada which actually get a picture from KWTV?

Mr. Hoover. That is true. There are sets in Ada that can actually receive KWTV, even though this interference line shows that they cannot. Now, these sets are the fellows who have an exceptionally good television set—an expensive one—with an exceptionally good antenna system with a rotor, whereby they can do sufficient turning and adjusting to cut KTEN out. Now, I believe the last survey, taken in January, shows about one-third of the people can watch KWTV. Another thing about this one-third percentage, that was actually taken by telephone survey, it was based on an all-day proposition, and we weren't even on in the morning. So naturally when we are not on, it is just as true as can be. When KTEN is not on, it is just clear as a bell in Ada. But we are on from noon on, and we expect to get back to sign-on in the morning, just like any other station, as we grow and progress.

Mr. Cox. In other words, there is an additional factor which is not taken into account in these calculations, which is the angle between the two transmitters?

Mr. Hoover. Absolutely. In other words, an antenna faced basically toward Oklahoma City that is in such a location that KTEN's signal hits the front of that signal, KTEN will render tremendously more interference to KWTV, or vice versa, in either instance, than it would render if this home set were around so that KTEN's signal only hit the little round end of the antenna instead of the face of the antenna, where it should hit. So to stay up to this line is one thing, and from here on is another; you cannot do that in this industry. It is shades of gray down to black from white to black. You can't make any one flatfooted statement. But when in doubt—the way it sets now—when in doubt, give it all to the basic network affiliate. and then if there is any more doubt, we will add a little bit more to them.

All I am saying is: Let's get some facts on this coverage area, and then let the advertiser pay for the coverage he legitimately is getting from each station, and this industry will be healthier.

Mr. Cox. Now, these calculations that have been made here by your engineers are based on the standards of the third notice?

Mr. Hoover. Yes, sir.

Mr. Cox. Which, as I recall it, are based on the assumption that interference exists where the signal strength received from the two stations is equal. Now, is there a possibility that that standard is too conservative; that you could get interference-free service in this shaded area because of the application of a different factor—a factor, say, that if the ratio of the desired to the undesired signal were such that there was 10 decibels greater strength—that you could get a reduction in this shaded area?

Mr. Hoover. Well, I think you are trying to get across to me and ask me are these standards exactly precise and correct, or can they be improved upon, due to better equipment today I am not an engineer. I can't answer positively. I am inclined to believe that the standards set forth in the third report, it would be well to reevaluate them. But whatever that reevaluation is, in the light of all of the experience since 1951 and the improvement in reception and antenna gains, and that sort of thing—whatever that is, let's find out what the interference factor is and put it down and sell on that basis.

As I started previously, anyone can put his finger on a problem. The thing needed here is to aid in the solution of the problem. I, therefore, respectfully request that this committee take immediate steps to aid and encourage the FCC to immediately adopt the standards of engineering with regard to coverage area as set out in the third report—and I should qualify that by adding, studies made based on the third report and in the light of new developments—taking into consideration cochannel and adjacent channel interference factors.

Now, there are those who will say that such action will throw the television industry into a turmoil, and will call for a complete new set of market evaluations, and so forth—they can give you many reasons. It is true that the development of honest coverage maps would necessitate the addition of a number of television stations to various networks, in order to deliver to the advertiser the coverage he has been led to believe he is now receiving. It is also true that it may be necessary to reduce the rate now enjoyed by some of the metropolitan basic network stations, because they are charging for coverage they are not now delivering. It is also true that this will make for a headache for the advertising agencies, their research departments, media directors, and time buyers; but I believe that almost without exception these people, charged with the responsibility of buying the most coverage for the advertiser's dollar, will be most happy to be furnished with honest coverage maps rather than misleading big fat circles.

Just watch, gentlemen. Those who will cry the loudest and fight the hardest against the adoption of the proposal here today will be the ones who stand to lose a buck. They will be the ones who lack foresight in the growth and development of this tremendous industry. They will be the ones who will label themselves completely disinterested as to whether all of the citizens of America should have good television service. The ones fighting this proposal will be the fellows who have got the buck—the big piece of the advertising pie—and who do not want to share it with any one, nor do they intend to if they can help it.

Gentlemen, you can expect the networks to throw their support behind them, because the opposition will be from the basic network affiliates in most instances. I am not necessarily saying that the networks will throw their support behind the opposition of this proposal because they want to, but because they feel they must support the fellows on their team.

In summarizing the first two points of this testimony—it is human to make errors. At this point I want to say that I, personally, do not believe that the Federal Communications Commission, in the errors it has made, has made them intentionally. In fact, I believe the rules and regulations as they are written today were written in good faith. But when new problems arise, new rules must be written to correct them.

The problem of satellite operation has been basically nonexistent until now. But the satellite problem exists because of present loopholes in the FCC rules which allow an applicant to apply for a legitimate television station, and then, after receiving his construction permit, arrange for programing on a satellite basis through a letter of agreement, which does not have to come before the scrutiny of the Federal Communications Commission, and go on the air as a satellite—thereby operating as a crutch, in many instances, to a basic network affiliate, as described at the beginning of this testimony, and not in the manner he promised the FCC he would operate his station in his original application-for-construction permit.

To say that the loopholes exist due to error or lack of foresight would be incorrect, but to allow such error to prevail in the face of the points made here today would certainly be a lack of foresight. Due to the normally slow development of FCC rule changes and additions, it is of the utmost importance that this committee encourage the FCC to move with extreme rapidity toward the solution of the satellite problem.

The same statements made with regard to satellites can also be applied to the FCC rules regarding station coverage. Now that fact and experience are available to the FCC, it is sheer folly for this industry to continue to operate under theoretical coverage maps instead of accurate, honest maps; and unless this committee, through official action, pushes hard on the FCC to take immediate action on this very important problem, more and more damage will result to our industry.

In summary of these points, human error can be understood and forgiven, but to allow human error to prevail when conclusive evidence is available and changes must be made, is sheer folly.

The third and final area of consideration in this testimony is one near and dear to my heart, namely, the struggles of an area or rural station for existence under the present standards. Whether one is operating a rural station or a basic network affiliate, there is one factor upon which the success or failure of any station depends. That one thing is programing—quality programing that will attract and hold the interest of the public. The public will tolerate an exceedingly poor picture in order to see the program it desires. A local or area station does not have the talent, nor money, available to independently initiate programing of the quality to captivate the interest and attention of the viewing audience for long periods of time. Therefore, the availability of network programing is of the utmost importance in the success of a rural or local station.

With the attitude of the networks in general, and particularly those described by Senator Bricker in his report, it is virtually impossible, for an area station to develop a satisfactory network contract. This statement is particularly true when the area station lies within the fringe area of a basic network affiliate, because then the area station must fight not only the "few station attitude" of the networks, but it must also fight the power and prestige of the basic network affiliate which has the ear of network personnel. Then, of course, as I have pointed out previously, as long as a metropolitan station can, through inaccurate coverage maps, mislead the advertisers into thinking the coverage of the metropolitan station is one big perfect circle, why should the advertiser pay for the same audience twice—once on the metropolitan station and again on the local station? As long as coverage maps based on the present standards are used as official coverage areas of stations, the area or rural station will have a tough time convincing the advertiser of the truth.

Another problem which an area or local station is forced to cope with in regard to selling network advertisers is this: After the station has successfully completed a selling job and the network advertiser has agreed to buy the program on the local station, in many instances the network sales personnel will actually endeavor to "unsell" the advertiser on placing the program on the local station.

Mr. Cox. Has this been actually reported to you in cases involving your station?

Mr. Hoover. I will simply say that it was official at one time—and I will later cover that—that that was going to be the intention. "You can go out and sell all you want to, but we are going to counsel with the advertiser to see if it is really wise to buy your station."

Mr. Cox. Which network made these statements?

Mr. Hoover. That was CBS. However, they have changed that—and I am making that point later. They point out to the advertiser the folly of spending the extra money for coverage which—according to network figures, maps, and their research departments—the advertiser already has through the purchase of the basic affiliated station. And at this point the network sales personnel will pull out the maps referred to earlier, showing a tremendous circle of coverage, but which does not take into consideration adjacent channel and cochannel interference factors, and show the advertiser why he need not buy the local station.

Naturally, the advertiser, having done business with the network for so many years, finds it difficult to believe the sales talk of the local station as against the word of the network's research department, and thereby many, many times orders will be killed even after a good selling job has been done.

At this point I should like to say that just recently the CBS network has amended its attitude toward the local or area stations. They now point out to the advertiser that the local or area station will, according to their calculations, add only X number of homes to the advertiser's viewing audience, and they leave the ultimate decision to the advertiser as to whether the extra number of homes—which I believe is minimized by the network—is worthy of an order.

Mr. Cox. What is the station rate which your station now charges for programing?

Mr. Hoover. $150 per nighttime hour for network.

Mr. Cox. Now, do you know what set count is conceded to your station by the various networks?

Mr. Hoover. They change from time to time and, of course, in most instances, I am not notified of the network's calculations.

Mr. Cox. What is your claimed set count for your effective service?

Mr. Hoover. I have made a practice of utilizing the figures set out in Television magazine, sir. When I first started selling advertising, I got the Manufacturers Association's figures, county by county, and would add them up, and that sort of thing, and I would go into New York and quote such and such a figure that I thought to be correct. And people would pull out a magazine and look back through there and say, "Well, this says you have only got so much." So I gave up trying to argue and qualify that. I just use the other figures and seem to get along with TV nicely, sir. In other words, if I use the other fellow's figures, I don't have to justify them, in the first place, and if

I deliver more than the other fellow says I am going to, I have a happy advertiser and I keep him.

Mr. Cox. What figure does Television give you?

Mr. Hoover. It gave me 91,000 sets in the most recent issue I can remember.

Mr. Cox. Is that based on the full circle or does that take into consideration interference?

Mr. Hoover. They do take into consideration programing and other signals coming into the area, and that sort of thing. I am not qualified to go into the formula that they use to determine these sets, but it must have some authenticity because so many of the folk of the industry will accept the figure as a reasonable one—and after all, that is the true value of the thing.

One other point in this regard—the networks, in taking this action of unselling the advertiser, do not always necessarily do so because they want to, but because they feel they must in order to maintain harmonious relations with their basic affiliate. And, in theory, they point out that it is not fair to charge an advertiser twice for the same coverage. To this point I agree. But it is fair to let the advertiser pay the station which delivers the coverage, rather than pay the network's basic station and let the area station go hungry.

Then there is the agency that buys time in behalf of the advertiser. The agency's personnel is human—just like you and me. They are subject to human habits, such as you and I. Yes, advertising agencies, time buyers, and research departments many times buy on a habit basis—and that habit buying has been on the basis of metropolitan basic network affiliates. It is as hard to break a buying habit at the advertising agency as it is to break yourself of a personal habit. This tends to become a problem for the local station. But if, after perseverance, the local station begins to make too much headway—begins to get too many national advertisers—begins to drive the truth home about metropolitan coverage—then he must worry about the development of a satellite operation in his own backyard which will be controlled by the basic network affiliate. Then all of the truth and fact which he has presented to the advertiser goes out the window in favor of the satellite.

At this point, I will simply say that it takes a brave soul to apply for, build, and operate a legitimate local or regional television station in the face of such odds. However, if the suggestions and proposals set forth here today were expedited and developed into official acts by the FCC, the life of the local or regional television station would be a more tolerable one. Certainly the prospects of success would be increased enough to justify more citizens of the United States to invest their dollars in the building and operation of local and regional television service—and that, I believe, is the basic goal of the FCC Act, namely, to have as many people as possible over the United States receiving good, local television programing and service.

As a regional television operator, already caught in the vicious vice previously described, I have dedicated myself to the proposition of doing all within my power to get the rules and standards by which we must operate our stations adjusted and amended to the point that local television service can be developed community by community over this country.

Gentlemen, I wish to express my sincere appreciation and thanks for the time and interest given me in behalf of rural, area, and local television operators. Only in America, under our form of government, could the underdog be heard—and under the present standards, the rural and area television stations certainly are the underdog. Only in America could our problems be presented, and could we expect serious, wholehearted cooperation and consideration to be expended in the solution of our problems. It is my sincere and honest belief that a quick adoption of the proposals I have discussed would help materially in a rapid and successful growth of television service to many, many more citizens of these United States, and none of the proposals will be at the expense of any just person, cause, station, or network.

Thank you.

Senator WOFFORD. Thank you very much, Mr. Hoover, for coming to testify. We shall take a recess for about 5 minutes.

(Recess taken.)

(The maps referred to by Mr. Hoover are on file with the committee.)

[Inserted on June 11, 1956, with its enclosures]

TELEVISION STATION WKY-TV,
Oklahoma City, Okla., May 22, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: It has come to the attention of WKY Radiophone Co., licensee of WKY-TV, Oklahoma City, Okla., that on May 14, 1956, Mr. Bill Hoover, representing KTEN, Ada, Okla., appeared before your committee. In Mr. Hoover's statement inference was made that KVSO-TV, Ardmore, Okla., would pay our company a service charge for the permission we have granted KVSO-TV to rebroadcast our transmission.

This inference is incorrect and without foundation of fact as are other references to WKY-TV made by Mr. Hoover as indicated in the report of proceedings.

WKY-TV will not receive directly or indirectly any financial return from the operation of KVSO-TV.

For the information of the committee we are furnishing herewith, as enclosures 1 and 2, copies of letters covering our authorization to KVSO-TV, and our permission to do so from the National Broadcasting Co. Copies of these letters were filed with the Federal Communications Commission on April 26, and May 4, 1956, respectively.

It is requested that this letter and enclosures be made a part of the record of the hearings before your committee.

Respectfully,

WKY RADIOPHONE CO.,
P. A. SUGG,
Executive Vice President.

ENCLOSURE 1

OKLAHOMA CITY, OKLA., *April 26, 1956.*

KVSO-TV,
Ardmore, Okla.

GENTLEMEN: This letter will confirm our conversation and understanding that until further notice to the contrary is given, KVSO-TV may rebroadcast the programs of WKY-TV, Oklahoma City. The permission granted herein is subject, of course, to KVSO-TV securing direct from the originating network specific authority to rebroadcast the programs of that network which are transmitted by WKY-TV. Insofar as the locally originated programs of WKY-TV are concerned, it is understood and agreed that KVSO-TV will receive no compensation whatsoever from WKY-TV for the rebroadcast of the programs in question, and that KVSO-TV will make independent arrangements with ASCAP and BMI for the payment of any and all royalties which may be due as a result of the programs rebroadcast by KVSO–TV and that your station will take all steps necessary to secure permission from the owners and distributors of film programs transmitted by WKY–TV prior to the rebroadcast by KVSO–TV.

It is further agreed that KVSO–TV shall pay all charges and fees that may be imposed by the owners of film and syndicated programs rebroadcast by your station and that KVSO–TV will hold WKY–TV harmless from any liability that may result from the actions of your station in the rebroadcast of programs originating over the facilities of WKY–TV.

It is requested you acknowledge receipt of this letter by signing the enclosed copy and returning it at your convenience.

Very truly yours,

WKY RADIOPHONE CO.,
By P. A. SUGG,
Executive Vice President.

Accepted this 26th day of April 1956.

KVSO–TV,
By JOHN EASLEY RIESEN,
Authorized Signature.

ENCLOSURE 2

NEW YORK, N. Y., *May 1, 1956.*

WKY RADIOPHONE CO.,
Oklahoma City, Okla.

GENTLEMEN: We hereby consent to your giving permission to the operators of station KVSO–TV, Ardmore, Okla., to pick up and rebroadcast over their television transmitter KVSO–TV such NBC television network programs broadcast by WKY–TV as we may from time to time designate.

The permission hereby granted may be revoked by us at any time upon notice to you of our intention to do so.

Very truly yours,

NATIONAL BROADCASTING CO., INC.,
By DONAL J. MERCER.

TELEVISION INQUIRY

TUESDAY, MAY 15, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to notice, at 10 a. m., in room G-16, the Capitol, Senator Frederick G. Payne, presiding.

(The first two witnesses heard at this time, Wilbur M. Havens and Murray Carpenter, testified with respect to network practices and their testimony is therefore printed in the volume concerned with that subject.

(In the afternoon the committee heard Benedict Gimbel, Jr., and Henry B. Walker, Jr., testify with respect to allocations and related matters. Their testimony, together with certain other material in connection therewith, is therefore printed at this point.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., Senator John O. Pastore, presiding.)

Senator PASTORE. You may proceed, Mr. Gimbel.

STATEMENT OF BENEDICT GIMBEL, JR., PRESIDENT, PHILADELPHIA BROADCASTING CO. LICENSEE WIP, WIP-FM

Mr. GIMBEL. My name is Benedict Gimbel, Jr., and I am president of the Philadelphia Broadcasting Co., licensee of WIP and WIP-FM, of which I am the general manager.

Mr. Chairman, I deeply appreciate the courtesy extended to me by your committee to appear before you this afternoon and furnish information concerning the establishment of a new VHF channel for the United States. Let me preface my remarks by stating that the Radio station WIP, operated by the Pennsylvania Broadcasting Co., of which I am president, has filed comments with the Federal Communications Commission concerning this particular matter in docket 11532.

I also want to state that I am not an electronics expert. I have been in this business of broadcasting for almost 30 years, and it is still all mystifying to me. I listen to my radio, and I still don't understand it—I don't understand how these things are possible. I watch television, and now I watch color television, and it is all magic. I don't believe it is possible, but it is there, and it is happening. I want you to know that I am not a technical man; I am completely untechnical in my approach to this thing.

First, I would like you to know that the interest of WIP in television is not purely academic. As far back as November 1944, we filed the first TV application in Philadelphia. In 1946 the FCC designated four VHF channels for Philadelphia. In 1948 we went through a competitive hearing for a television station. Before a decision was handed down, the TV freeze was imposed, and when it was lifted some 4 years later, by the FCC's Sixth Report, we found to our dismay that the fourth VHF channel, for which we had gone through hearing, had been removed from Philadelphia and reassigned elsewhere.

As you know, the sixth report also established UHF. We immediately applied for and secured a UHF grant. However, after obtaining options on property and ordering equipment, it became apparent before building could commence that it would cost the people of Philadelphia at least $50 million to convert their sets to tune in our UHF station because there were almost a million VHF sets already in the area, none of them equipped to receive UHF. This being the case, an advertiser would hardly be expected to buy time on a UHF station to present his commercial messages if there was no audience.

Now, I think the committee should know there are three UHF grants outstanding in Philadelphia right now. None have been constructed—as a matter of fact, as far as I know, no construction of any nature has taken place, although one of these construction permits has been outstanding for almost 4 years. It is evident that these UHF permitholders are just as conscious of the dangers involved in operating a UHF station in an established VHF market as we were when we surrendered our UHF permit in 1954.

Even after we surrendered our UHF permit we persisted in our efforts to secure additional TV service for Philadelphia. We made a thorough search of all possibilities and the result is the 6–A plan which we are presenting to you this afternoon.

Your committee, I know, is well aware of the problems that beset television broadcasting in the United States. You have heard a number of persons and organizations tell of the various ills and any reiteration of these ills by me at this time would be an obvious waste of your time. Let me say, too, the FCC is well aware of these problems. As a matter of fact, this 6–A plan of my company was submitted in answer to a request by the Commission for suggestions to alleviate the present television allocation situation which if unchanged will prevent a truly competitive nationwide television service.

Something must be done about this—and immediately. Let me also state that the solution will not be a simple one. This committee, the FCC—in fact, no one can present an easy solution to these problems. I don't think there is a panacea. The plan which I propose to discuss in my testimony, let me admit quite freely, is not a complete solution. But it is a very necessary and quick step in the right direction.

It is now evident that 12 VHF channels are completely inadequate for nationwide service. An additional VHF channel—channel 6–A—will provide definite relief. Why? Because:

1. It will result in 54 additional VHF stations nationally.
2. It can be done almost immediately.
3. It can be tuned in on most present sets.
4. It will add an additional program service for 30 million people.
5. It will add a first VHF service to 17 cities.

6. It will add a second VHF service to 17 more cities.
7. It will add a third or more VHF service to 20 additional cities.
8. It will provide opportunity for increased network competition in these cities.
9. It is clearly within the jurisdiction of the Federal Communications Commission.
10. It requires no negotiation with, or permission from, any other Government agency.
11. It presents no obstacle to any plan presently before the FCC.
12. It causes minimum dislocation to existing TV stations.
13. It will provide an additional TV station for such major cities and trouble areas, as: Little Rock; San Diego; Miami; Chicago; Ames, Iowa; Great Bend, Kans.; Louisville; Bangor, Maine; Bay City, Mich.; Minneapolis-St. Paul; Kansas City; St. Louis; Rochester; Oklahoma City; Philadelphia; Amarillo; Dallas; San Antonio; Charleston, W. Va.; Utica-Rome, N. Y.—I sound like a train caller. [Laughter.]

Senator PASTORE. Let me ask you a question. You say you are not a technician. What would be the technical aspects of this channel that you are talking about?

Mr. GIMBEL. I am coming to that, sir.

Senator PASTORE. You are going to discuss the technical aspects of it, too?

Mr. GIMBEL. Yes, sir.

Senator PASTORE. All right. Then you are a technician?

Mr. GIMBEL. Well, when you see this, you won't think I am a technician. (Continuing.) The plan calls for a VHF station in Philadelphia as well as a VHF station for 34 other important cities.

It will, moreover, augment a number of meritorious plans which at this moment are receiving consideration by the FCC. We are convinced that in these plans the Commission has before it information which, when combined with the 6–A plan, will go far to supply the needs of the public with adequate nationwide service.

Perhaps the real dilemma of the problems besetting television can best be illustrated by considering the situation in Philadelphia. The Commission originally assigned to New York, only 90 miles away, 7 out of the total 12 television channels This automatically caused underallocation of VHF stations in many cities along the eastern seaboard of the United States.

For example, Philadelphia—with a population of 4½ million people—wound up with only 3 VHF channels. Compare this to Washington, the Nation's Capital, a city approximately one-third the size of Philadelphia, which has 4 VHF channels. I have no thought of condemning the allocation of four VHF channels to Washington. I mention it only to point up the disparity which exists in Philadelphia because of its proximity to New York. The result has been to deny to the people of Philadelphia sufficient television service to fill their needs. By reason of this underallocation, television time in the Philadelphia area is at a premium, so that it becomes increasingly more difficult for meritorious local programs to find good air time.

As an example, the night baseball games of the Philadelphia "Phillies"—of great interest to the people of Philadelphia—can find their way to the homes of Philadelphia viewers only through a Wilmington, Del., station—this is "secondary" reception at best. The three Philadelphia stations have network commitments which preclude their presenting the night baseball games.

Of necessity the Philadelphia advertiser has the same problem, and due to the limited television facilities available, he must compete for time against the huge budget of the national advertiser. The peak viewing hours on Philadelphia television stations are now occupied by either network commitments or by package programs purchased primarily by national advertisers. Obviously, a fourth VHF television channel, adding over 100 hours of programs weekly, would provide air time for many additional local programs. I am sure that this is true of all the major markets I have named.

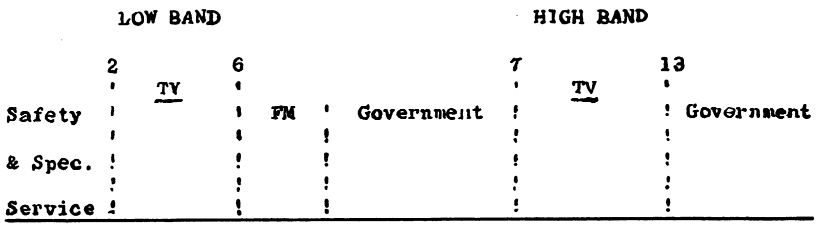
6–A is not an ingenious plan. As a matter of fact, the plan is so simple you might question why consideration has not been given to this before.

Gentlemen, it must be evident to everyone concerned with the problem that the major markets of this country are already saturated with VHF rceivers which are not readily adaptable to UHF because UHF needs a separate antenna and a separate tuning mechanism.

The only ready solution, then, to providing the public in these markets with more television service, is to take advantage of existing sets—and since almost 100 percent of all television sets in these markets will tune only VHF, it is only logical that this additional service has to come from the VHF channels themselves, or an adjacency to them.

Now here comes the technical part. This chart, I think, will demonstrate the simplicity of the 6–A plan.

POSITION OF VHF TELEVISION CHANNELS IN SPECTRUM



On this exhibit you will note the low band TV, channels 2 through 6, and the high band, 7 through 13. Any channel to be added, which could be tuned on present receivers, had to lie adjacent to these bands. Now directly above channel 13 and below channel 7 are Government frequencies which are untouchable because of national-defense requirements. Immediately below channel 2 are safety and special services, which are also unavailable. This leaves only the space immediately above channel 6, which is presently occupied by FM.

Now, our particular interest in finding space immediately adjacent to existing television channels was because we believed that the tuning range of many existing sets would permit tuning a given channel to either the next higher or next lower channel. In other words, if your set were turned to the channel 6 position, and channel 6 position had sufficient tuning range, it could be adjusted to receive channel 6–A. Experimentally we found this was true. We enlisted the aid of RCA, Philco, and two of the largest service organizations in Philadelphia.

We now have conclusive evidence that about 63 percent of all sets now in use will readily permit tuning of the channel 6 position to 6–A. If one well-known make of set is excluded, the percentage of sets tunable to 6–A rises to 93 percent. This means that no converters—no adaptors, no trick antennas—will be required to receive 6–A on most existing sets.

Mr. Cox. Does it require an adjustment in the set?

Mr. GIMBEL. Yes; it does.

Mr. Cox. What is the nature of that, the extent of it, or the cost?

Mr. GIMBEL. The cost—a service call and the possibility of the cost of a strip. That is not always the case, however.

Mr. Cox. That would depend on the individual set?

Mr. GIMBEL. That is right, sir.

Mr. Cox. And a single service call would be enough, with the possible addition of a strip, to permit the substitution of 6–A for 6 on the existing dial of the set?

Mr. GIMBEL. That is right; yes, sir.

Senator PASTORE. Let me ask you another question. Would this be of concern only to those localities where they presently have channel 6?

Mr. GIMBEL. I don't quite understand that question.

Senator PASTORE. Well, there is your chart there. Must you be adjacent to 6 in order to have 6–A?

Mr. GIMBEL. Oh, no. I will develop that a little later.

Senator PASTORE. I would like to have it developed now, if you don't mind, sir. I was reading your train stops here. Why did you leave out Providence, R. I.?

Mr. GIMBEL. It doesn't fit in there.

Senator PASTORE. Well, why doesn't it fit in there; that is the point I am getting at.

Mr. GIMBEL. I believe that under the FCC rules——

Senator PASTORE. In Rhode Island we have channels 10 and 12. Why can't we have 6–A, too?

Mr. GIMBEL. I believe because of mileage separation.

Senator PASTORE. Mileage separation from what?

Mr. GIMBEL. To existing channels—Boston is one. I will have to ask an engineer.

Senator PASTORE. Well, that is the reason why I ask that question about engineering. Is there someone competent to answer that question here?

Mr. STEEL. Yes, sir. I am David Steel. It is because of the mileage separation requirements of FCC rules. If some reduced mileage separations were tolerated, it would be possible to use that station at Providence.

Mr. Cox. You could not put it in any market in which there is an existing channel 6 without deleting that channel?

Mr. GIMBEL. Changing to another channel, yes.

Mr. Cox. Could you say you propose to use that spot on the dial for another purpose?

Mr. GIMBEL. That is correct.

Mr. Cox. As I understand it, your proposal contemplates the shifting of channel 6 for channel 5 in a number of instances?

Mr. GIMBEL. That is correct.

Mr. STEEL. It could be used in any town where channel 5 was allocated.

Senator PASTORE. Have you presented this to the Commission?

Mr. GIMBEL. Oh, yes; this is on file.

Senator PASTORE. Have you had any reaction?

Mr. GIMBEL. No, sir; nobody has had any reaction, that I know of, sir, because I believe that there are some 250 proposals in answer to these comments at the Commission presently, and I haven't heard of any reaction to any of them.

Senator PASTORE. Has there been any remonstrance on the part of FM people in the area that would be affected?

Mr. GIMBEL. No.

Mr. COX. Has there, however, been considerable evidence that even a comparatively minor expenditure—in the neighborhood of $5 to $10, which I think you suggest as the maximum charge of this adjustment—is enough to discourage a substantial part of the public from making that change as long as there is any other service available?

Mr. GIMBEL. I don't know that there has been that experience.

Mr. COX. In other words, you would have this situation if you dropped channel 6–A into Philadelphia: The people who have asked to spend $5 to $10 to get this new channel already have available to them the programing of the three national networks through the local Philadelphia stations and they have an independent station at Wilmington that they can receive?

Mr. GIMBEL. Yes.

Mr. COX. Now, isn't there great danger that at least several hundred thousand of them are not going to be willing to spend even $10?

Mr. GIMBEL. That I think is correct. That is a calculated risk.

Mr. COX. This is a risk that anybody applying for such a channel would have to take?

Mr. GIMBEL. That is correct, because as I pointed out earlier, there are programs that are unable to come into Philadelphia and get satisfactory service. The baseball games, for one—I think many people are willing to pay six bucks to see even the Phillies. That is one of the problems, and that is a risk we have to take, but I feel sure that a lot of people wouldn't pay that.

Senator PASTORE. Well, there is no imposition upon the viewer—this is something in addition to what he already has, and if he is willing to receive this new opportunity of a channel, then of course he can undergo this expense you are talking about?

Mr. GIMBEL. That is right.

Senator PASTORE. It isn't injuring him in any way?

Mr. GIMBEL. It isn't, no. It is like a person using a toll road. He doesn't have to use the toll road, he can get to where he is going without paying the additional 50 cents; but it is sometimes better and you get more service—you get more program service if you get another channel.

One problem remained. If we used 6 megacycles taken from the FM band, what would we do with the FM stations displaced? Our consulting radio engineers were directed to explore this problem. They found that all existing FM stations could easily be accommodated in the remaining portion of the FM band, requiring no more than replacing the crystal and retuning the transmitter. In addition, room for expansion still would exist in the FM band. In our comments to the FCC we supplied a table showing where each FM station affected could be reassigned. It is therefore obvious that channel 6–A can be utilized right now without deleting any FM station.

Mr. Cox. Are these changes you propose only necessary in the transmitter? Could you continue to receive all of these adjustments without any change in the sets?

Mr. GIMBEL. In the sets themselves, yes; there is no change required in the set at all.

Mr. Cox. All that you are doing is shifting these stations about within the existing allocations to the FM service?

Mr. GIMBEL. Except possibly in such a service as storecasting, there might be a change.

Mr. Cox. Isn't it true that 4 of the 6 megacycles are permanently reserved to FM educational service?

Mr. GIMBEL. Yes.

Mr. Cox. Now, is it your position that those can also adequately be taken care of?

Mr. GIMBEL. Yes, adequately, and we have provided such a plan. It is on file right now with the Commission, with our comments.

The committee should be reminded here that the channel 6–A plan is entirely within the jurisdiction of the FCC without negotiation with, or permission from, any other Government agency.

I do not want this committee to get the impression that there are no problems which will result from the adoption of this plan. Any solution is bound to raise some problems. In fact, every plan pending before the FCC presents some difficulties. However, we believe the 6–A plan problems are minor.

We have told you some FM stations would require relocating within the present FM band. This could be done with small expense. Although one television station in Richmond, Va., one in Johnstown, Pa., and one in Plattsburg, N. Y., will be required to shift to channel 6–A, this problem simply resolves itself into the arithmetical consideration of 3 markets as opposed to 54. In balancing the equities there can be no doubt that service to 54 markets with 30 million people is paramount to the temporary inconvenience, in 3 markets, of 1,200,000 people.

Mr. Cox. However, in those instances you would not be providing channel 6–A as an additional service—you would provide it as a substitute for existing service?

Mr. GIMBEL. That is correct.

Mr. Cox. And you would, therefore, require all the viewers in Richmond and the other two markets you have named to make this minor expense to continue to receive the same service they presently have?

Mr. GIMBEL. That is right, but some of them could get it. I think by and large it would require some readjustment, yes, sir.

Senator PASTORE. Sir, the thing that is disturbing me at this point—I don't know whether it is really a disturbance—you say here you were invited by the committee to appear here to make this presentation.

Mr. GIMBEL. Yes, sir.

Senator PASTORE. Who invited you?

Mr. GIMBEL. I was told by our attorneys we were invited.

Mr. Cox. They asked to be heard and then we communicated with them.

Senator PASTORE. I don't mind hearing this, but wherein do you think this matter that you are bringing up falls within the jurisdiction or the province of the Congress? Isn't this a matter to be decided by the FCC?

Mr. GIMBEL. It is in the hands of the FCC presently.

Senator PASTORE. That is why I asked you whether or not there was a response to the presentation that you made. You wouldn't expect us to introduce a law here to allow 6–A, would you?

Mr. GIMBEL. I feel this way about it, Senator. This is so important that I want to take every opportunity to express this plan—any forum I can—to express this plan to expedite its development. Now, the FCC has got lots of plans. We think this is a very good one.

Senator PASTORE. Yes, but you have explored it with the proper agency of the Government that has jurisdiction to determine it, and I am asking you, in what respect do you think that we can guide this on 6–A? You are familiar with the function of the Congress?

Mr. GIMBEL. Well, I feel this way——

Senator PASTORE. You feel if you say it twice, it is going to be stronger?

Mr. GIMBEL. Possibly.

Senator PASTORE. Well, all right, then, say it.

Mr. GIMBEL. In four other markets—namely New York, Washington, D. C., Schenectady, and Philadelphia—the station assigned to channel 6 must move to channel 5 and the station presently on 5 to 6. Again, this can be accomplished at inconsequential expense. It could be done overnight and the following morning the public would simply tune to channel 5 instead of 6, and vice versa.

For a moment, let me touch on the receiver questions with respect to channel 6–A. We have determined, through our own resources and with expert advice, that most existing receivers can be readily tuned to the new channel. The remainder will require minor modifications. However, it should be borne in mind that every new television set now on the production line could readily include provision for channel 6–A as soon as the plan was adopted.

You should be mindful of the following statements of the Chairman of the FCC, Mr. McConnaughey, and I quote:

> * * * there are not enough competitive facilities in the largest centers to completely serve the needs of the public or of advertisers. * * * we cannot delay consideration of *every constructive suggestion* for making available at the earliest possible date, competitive assignments in those communities where the economic potential already exists and where entrepreneurs are ready, willing, and able to build new stations. [Emphasis supplied.]

We are mindful of the FCC's desire to provide a nationwide, competitive television broadcast service, and are further mindful that the Commission has been beseiged with plans requiring wholesale reallocation and widespread receiver conversion or replacement.

Before permitting such disruption to the television industry and the public, it would seem more logical to put into operation a plan for securing additional VHF television service in that area of the spectrum which is readily adaptable to present day receivers. Furthermore, space for 6–A would be taken from that portion of the spectrum which is not now fully utilized. Therefore, in line with the philosophy of the Commission and its Chairman, we have submitted this morning to the FCC a petition asking that immediate rulemaking proceedings be instituted to incorporate channel 6–A as part of the television broadcast service.

In conclusion, let me emphasize that it seems a crime to waste such valuable potential VHF channel space, so readily available. This committee and the FCC have indicated that they want an immediate and practical solution to this problem. We are convinced, from all indications both of this committee and of the Commission, that the solution reached this time will be final and permanent.

Summarizing quickly, the 6–A plan should be adopted by the FCC because:

1. It supplies additional VHF service to 54 markets totaling 30 million people throughout the Nation.

2. Most receivers will tune readily to the new 6–A channel. The remainder will require minor modification.

3. The 6–A plan conforms to all present standards including mileage separations.

4. It increases competition by providing additional outlets for network service.

5. It increases competition between stations, which results in better programs.

6. The 6–A plan is entirely within the jurisdiction and rulemaking power of the Federal Communications Commission.

We feel that this is the last trip to the well. If this plan is not adopted, we are convinced that the city of Philadelphia as well as other major markets will be forever deprived of adequate television service.

Let me say again, that I appreciate sincrely the opportunity to appear before this committee. If there are any questions the committee would like to ask of me, I'll do the best I can to give you an answer.

Senator PASTORE. Well, let me say to you, Mr. Gimbel, that you make a rather persuasive argument. Of course I am not competent or qualified to determine the technical aspects of it. Your advisers agree with you that this can be done technically.

The matter has been submitted to the FCC. They have the facilities, they have the technicians, and they have the rulemaking power to give this the consideration that it deserves. I feel—and of course this is where the Congress comes in—that if this is a plan that doesn't disturb any existing facility, but adds thereto and means more service, better service to the people of Philadelphia and other parts of the country, they ought to adopt it, or ought to at least give it serious consideration.

Mr. GIMBEL. Thank you, sir.

Senator PASTORE. Thank you very much for appearing before us.

(COMMITTEE NOTE: Leonard H. Marks, general counsel for the FM Broadcasters, appeared before the committee on June 11, 1956, to testify in reply to Mr. Gimbel. He requested that his testimony appear following that of Mr. Gimbel, so it is printed at this point, together with a letter dated June 12, 1956, correcting one point in his testimony. (This last was inserted in the record on July 17, 1956, see page 935 below.))

(There is also printed in connection with Mr. Gimbel's testimony a letter dated May 22, 1956, from Morton H. Wilner, counsel for Triangle Publications, Inc., with reference to Mr. Gimbel's proposal. (This letter was inserted in the record on June 11, 1956.))

(After the insertions, the record resumes with the testimony of Henry B. Walker, Jr., at p. 912.)

STATEMENT OF LEONARD H. MARKS, GENERAL COUNSEL, FM BROADCASTERS

Mr. Marks. Thank you. Before I begin my statement, I would like to ask that my testimony appear following the testimony of Benedict Gimbel of Philadelphia, Pa., who appeared recently before this committee and made suggestions which I oppose. I have written a letter to the committee clerk to that effect.

Senator Ervin. That request will be granted, if it is technically possible.

Mr. Marks. Thank you, Senator.

I have a prepared statement which I have made available to the stenographer and I would prefer to speak at this time extemporaneously and give you the gist of our contentions.

I am Leonard H. Marks and I am an attorney with offices at the Cafritz Building, in Washington, D. C. As you have noted, I appear today as general counsel of the FM Broadcasters, a trade organization which was recently organized for the purpose of educating the public on the benefits of FM broadcasting and of protecting the interests of those engaged in FM broadcasting from those who would like to acquire the spectrum space which it has assigned to it.

Now Mr. Gimbel, who testified before this committee recently, has a radio station in Philadelphia, Pa., and desires to engage in television broadcasting. He does not believe that the UHF opportunities in that community would permit him to operate a station successfully, so therefore he has recommended that a new channel be carved out of the spectrum to be known as channel 6–A and that this be made available to those who would like to apply for television broadcasting in certain communities throughout the United States.

Now, in order to get channel 6–A, Mr. Gimbel recommends that six megacycles be taken from the FM band and that the FM stations who might be operating in those frequencies be put elsewhere. He recognizes in his statement that the suggestion is a serious one, that it will cause a certain amount of dislocation, but with true self-interest, Mr. Gimbel feels that it is better to accommodate people like himself who want television channels than to allow FM broadcasting to continue.

Needless to say, we vigorously oppose any such recommendation. Now, I would like to tell you a little bit about the problems of FM, as they have existed for the past 15 years, in order that you might appreciate how serious this suggestion would be. First, let me point out that at the present time there are approximately 550 stations operating commercially on FM. In the State of North Carolina, for example, you may have a personal acquaintance with the fact that no reliable service is available at night on AM broadcasting and that the bulk of the service is rendered through FM. This is true throughout many States in the United States. In addition, there are 125 stations that operate noncommercially and are licensed to schools and nonprofit organizations engaged in educational work. There are 250 manufacturers engaged in the manufacture of hi-fi FM equipment.

Now, FM was the invention of Maj. Edwin H. Armstrong, who has been recognized as one of the truly great American inventors. He was an electronic genius, and when he discovered FM, those in the broadcasting industry recognized—this was about 1939—that at long last here was a solution to the atmospheric interference problems and the other problems of engineering which had beset the radio industry; and so those who were the leaders of the field applied for and received permission to build FM stations. Well, about 50 stations were built and then Pearl Harbor came along. During the time that we were engaged in war, it was not possible to manufacture civilian FM receivers. It was not possible to take the production of the electronic manufacturers and use them for new FM stations, so the 50 stations limped along with a minimum schedule. The public that had sets enjoyed whatever programs were available, but they could not increase the audience.

Now that was fine, as far as it went, until 1945. We all recognized it was necessary for the war effort. In 1945 the FCC started an allocation hearing and they had to find a place for commercial television, and so the engineers had various committees and the industry contributed the best of its thinking. The industry recommended that FM be kept where it was on the 42- to 50-megacycle band, and that television be placed in what is now the UHF. The industry pointed out that FM would not function as satisfactorily in the UHF band, or the 88- to 108-megacycle band, which is now assigned. Major Armstrong, the inventor, and all of the prominent scientists, so testified, but the Commission said "No, we want television to begin to operate where FM now is, and so we are going to move FM," and that was done.

The 50 stations that had been built had to change their equipment to move to new frequencies. Everybody that had an FM set had to scrap it and start all over again. Now, despite that, FM managed to grow so that at the present time there are more than 500 commercial stations operating. Unfortunately, FM stations have not been as prosperous as those engaged in AM broadcasting, or certainly those engaged in television broadcasting, but the public has learned to recognize the importance of this service and has maintained it commercially in those markets where FM stations have been able to operate on a full-time basis. At the present time, at the very minimum, there are 12 million FM sets, having an original cost in excess of $500 million. Now, Mr. Gimbel's suggestion is that we take 6 magacycles from this band and give it to television and those stations that might be operating in those 6 megacycles will then either be deleted—there will be no service at all—or that they be changed to new assignments.

Now, if they are changed to new assignments, this means getting new transmitting equipment. It means reeducating the public as to where these programs will be found on the dial. In addition to that, some of these FM stations have been able to derive additional revenue by operating specialized services. Two of the more prominent specialized services are functional music or background music and the other is store broadcasting. Functional music is a background music service where receivers are installed in stores, factories, and offices, and all day long appropriate background music is presented and they pay a fee for the privilege of having this type of service.

The same thing is true in stores like grocery chains, where announcements are made of the products available in the grocery chains. This has been authorized by the FCC and this is a means that FM stations have used to supplement meager revenues and enable them to operate in the black. In order to operate that system, you have to have special receivers in every factory, office, or store that will be tuned to this particular channel. Now, if Mr. Gimbel's suggestion is adopted, those receivers are practically obsolete. The cost of converting them would be almost as great as replacing them with new receivers. Now, we are talking about an industry which has struggled from 1939 to the present time to achieve its proper place in the broadcasting world, an industry that has had more than its usual share of problems—first the war and second the problems created by the FCC's allocation to take care of television.

Mr. Gimbel's suggestion will satisfy the selfish needs, perhaps, in 54 markets of the United States. He recognizes, although he does not tell you, that there will be a number of FM stations that will suffer as a result. Presumably he recognizes that the public will be deprived of FM service in these localities.

In addition to that, three existing television stations located in Richmond, Va., Johnstown, Pa., and Plattsburg, N. Y., will have to give up their present operating assignments in order to accommodate Mr. Gimbel's plan. Now this committee is interested in a solution to the UHF problem, and certainly our organization and anybody in the broadcasting industry wants a solution to the UHF problem; but the Gimbel plan will not solve the UHF problem. It will create an FM problem. The UHF problem is nationwide. It cannot be solved by the addition of one channel. The FCC Commissioners have said that, and every important person in the engineering or broadcasting field that has studied the problem recognizes it; and I don't believe that it would be in the public interest, to the detriment of the FM industry, to try to carve out a new channel that will at best satisfy the limited needs in a few markets.

Let me also point out that channel 6–A will bring with it all of the problems of conversion that UHF has. Mr. Gimbel says they will not be as great as the existing conversion problems, but when you have channel 6–A, every receiver will have to have a tuning strip installed—every person that has a set will have to go to the additional expense of adapting it—so we don't think that that solution is going to be an answer to the UHF problem. And what is far more important to us, the FM industry cannot stand another dislocation such as was caused in 1945, when FM was moved from 42 megacycles to 88 megacycles.

For these reasons, we oppose Mr. Gimbel's suggestion.

Mr. Cox. Can you tell us, Mr. Marks, approximately how many of the FM stations in existence would be in the particular 6 megacycle section that he is concerned with?

Mr. Marks. Mr. Gimbel has not furnished an engineering plan. He merely mentions 54 markets where channel 6–A might be assigned. There would be a chain reaction when you move stations, and I would not know how many FM stations or cities would be involved. There is no way of knowing without seeing Mr. Gimbel's engineering.

Mr. Cox. As I recall it, he had attached to his comments to the Commission an engineering study which showed the reallocations that would be made in the FM band, as far as television was concerned.

Mr. Marks. I am not aware of that, Mr. Cox. I knew that he had referred to three television stations and their new assignments, but I do not recall any FM reallocation.

Mr. Cox. There was some reference, I believe, in his testimony to educational FM stations. Perhaps those were the ones for which he was making some special provision in terms of his engineer's conclusions.

Mr. Marks. That is possible, but I do not recall any engineering on commercial FM.

Mr. Cox. This represents a third of the FM space; is that correct?

Mr. Marks. Yes, 88 to 108 is the present band, and this would be a little less than one-third.

Mr. Cox. Are the stations pretty evenly distributed throughout the spectrum?

Mr. Marks. Yes, and in the large markets such as in the East you cannot find an FM channel, they are all taken; so if you took away 6 megacycles, you would have a serious dislocation and some stations would have to be deleted.

Senator Ervin. The thing that has impressed me above all else in these hearings is that every remedy illustrates the old adage that "One man's meat is another man's poison." I wish somebody would come up with a remedy that would solve all of these problems that confront this committee about this matter and not dislocate anybody.

Mr. Marks. That would be ideal, and of course the suggestion has been made that UHF be developed. That would not take away anything from anybody. It might be a slower process, but it would be one way of answering it.

Senator Ervin. Well, we are certainly indebted to you for the very clear exposition of your views in respect of this matter.

Mr. Marks. Thank you, indeed, Senator.

(The statement of Mr. Marks, also his letter and Wilner's letter are as follows:)

Statement of Leonard H. Marks, General Counsel, FM Broadcasters

My name is Leonard H. Marks, and I am an attorney, with offices at the Cafritz Building, Washington, D. C. I appear today as general counsel of FM Broadcasters, a group which has recently been organized for the purpose of educating the public on the benefits of FM broadcasting, and of protecting the interests of those engaged in this field from encroachment by those who covet the spectrum space assigned for FM.

You recently heard testimony from Mr. Benedict Gimbel, Jr., of Station WIP, Philadelphia, Pa., in which the suggestion was made that 6 megacycles be deleted from the existing FM band in order to provide a new television channel, channel 6–A. This suggestion has been made as a solution to the serious problems which now confront those engaged in UHF broadcasting. We vigorously oppose this recommendation and submit that instead of solving the UHF problem, this suggested change would create a new FM problem.

In order that you may appreciate the serious dislocation that would result from Mr. Gimbel's suggestion, I would like to give you a brief history of FM broadcasting.

1. After a period of intensive and painstaking electronic research, the late Maj. Edwin H. Armstrong, one of America's truly great electronic inventors, developed the art of FM broadcasting. Those who were engaged in the broadcasting field recognized Major Armstrong's invention as the event which could herald a new day for radio reception. Through the medium of FM, a new and

improved service could be presented to the whole country; static-free service would be made available to the many areas which have for long suffered from atmospheric and other interference problems. Musical programs could now be presented via FM with high fidelity never possible on the standard broadcast band. In fact, for the first time, music lovers would be able to hear symphonic and other musical presentations with the same clarity of tone achieved in the music hall. That is what Major Armstrong's invention was capable of performing.

Based upon Major Armstrong's recommendation, the Commission assigned the 42–50 megacycle band for this new and improved service. Pioneer broadcasters then proceeded to invest large sums of money to build FM stations throughout the country.

2. Before the FM industry could really get started, the war intervened in 1941, and the approximately 50 stations which had been built at that time maintained a minimum schedule. It was difficult to expand FM service since military requirements prevented the manufacture of transmitters for civilian use; receiver manufacturers were unable to make FM receivers for civilian consumption. Accordingly, during the war years FM did not and could not progress.

3. At the end of the war the Commission reexamined the allocation of frequencies and determined that the FM band must be moved from the 42–50 megacycle location to the present 88–108 megacycle band. This move was made necessary in order to accommodate the needs of commercial television.

4. It is significant to note that in the allocation hearing before the FCC, Major Armstrong and other industry engineers vigorously opposed any such move and pointed out that the dislocation would seriously hamper the development of FM broadcasting. Moreover, with great prophetic vision they predicted that television could not be accommodated in the limited spectrum space that was contemplated and that the natural home of television was in the UHF band. Nevertheless, the Commission determined that the 50 existing FM stations must be moved to the new band, not to help FM, but other services in need of spectrum space.

5. As a result of this change in the allocation table, the thousands who had purchased FM receivers found that their sets were obsolete, and these FM stations had to purchase new transmitting equipment in order to comply with the Commission's requirements. This conversion process not only involved the expenditure of substantial sums of money by broadcasters, but it also required extensive retooling by the manufacturers of FM receivers. Moreover, as predicted by Major Armstrong and others, this conversion process was a difficult, as well as a costly, experience. As a result, FM was set back for years.

6. Despite these obstacles, the FM industry advanced so that today there are in existence approximately 550 commercial FM stations and an additional 125 noncommercial, educational stations. At the very minimum, there are 12 million FM receivers capable of receiving FM programs on the new band. These receivers have an original cost evaluation of approximately $500 million. The members of this committee can call on their own experience in listening to FM programs here in Washington, D. C., but I thought that you might be interested in a survey made by Pulse, Inc., during the week of April 1 to 7, 1955, to show the extent to which FM has gained wide public acceptance. In the Washington area there are 475,000 radio homes, and the survey disclosed that 39.1 percent of those homes had FM sets. This means that there are in the Washington area 190,000 sets equipped for FM listening.

The survey showed that 62.9 percent, or approximately two-thirds of these families, used their FM set during the preceding week of the study, and that the number of hours which they listened was comparable to AM as follows:

32.5 percent listened less than 1 hour
19.7 percent listened for 1 hour
23 percent listened for 2 hours
4.7 percent listened for 3 hours
7.7 percent listened for 4 hours
3.3 percent listened for 5 hours
2.3 percent listened for 6 hours
2.8 percent listened for 7 or more hours

The listening audience embraced primarily families with a higher income level than average, as follows:

33 percent were in the upper quarter;
35 percent were in the second quarter;
24 percent were in the third quarter; and
Only 8 percent were in the low end of the scale.

7. The public, having been exposed to the superior qualities of FM broadcasting, has learned to appreciate the advantages which it affords and has responded by supporting these stations generously with great appreciation for the program service being presented. As a result, the FM industry presents today, for the first time, a picture of health and growth; there is a stability which had not been possible before because of the various incidents which I have related.

8. Some FM stations entered into allied fields by providing a general background music service or a store-cast service to chainstores in their area. These services are provided through a system of multiplex transmission so that the public receives a general program service consisting of news, religious programs, educational features, public service interviews, as well as entertainment. In addition, simultaneously, through the use of certain engineering devices or multiplex, it is possible to present a background music service to individual subscribers, or a store-cast service, in particular stores. These specialized services have enabled FM stations to realize sufficient additional income to permit a successful commercial operation.

Now that you have heard the background of the development of the FM industry, I want to point out to you how Mr. Gimbel's suggestion would affect it. If 6 megacycles are taken from the existing commercial FM band throughout the United States, the following will result:

1. Some FM statitons would have to be deleted or changed to radically inferior frequency assignments;
2. The public would be deprived of some FM service where a station was deleted;
3. All affected FM stations would have to change frequencies and make the necessary equipment modifications;
4. Those FM stations engaged in specialized service, such as background music and store-casting, would be required to convert the receivers which were preset, or to replace them with new equipment;
5. Three existing television stations would be required to change their frequency to channel 6–A; and
6. Persons residing within the coverage of these three stations would be deprived of their existing service unless they adapted their receivers for the use of channel 6–A.

Mr. Gimbel recognized the seriousness of this problem when he stated in his testimony:

"I do not want this committee to get the impression that there are no problems which will result from the adoption of this plan. Any solution is bound to raise some problems. In fact, every plan pending before the FCC presents some difficulties. However, we believe the 6–A plan problems are minor.

"We have told you some FM stations would require relocating. This could be done with small expense. Although 1 television station in Richmond, Va., 1 in Johnstown, Pa., and 1 in Plattsburg, N. Y., will be required to shift to channel 6–A, this problem simply resolves itself to an arithmetical consideration of 3 markets as opposed to 54 markets."

To say the least, Mr. Gimbel has understated the nature of the problem. The disruption that would be caused to the public and the FM broadcasters would be major and, in some cases, catastrophic.

I am certain that this committee realizes that the addition of channel 6–A to the television band would not be a solution to all of television's ills. In fact, channel 6–A would bring with it the same problems of conversion that now exist with the UHF band. We would, in effect, be trading one type of conversion difficulty for another. We would not be solving the television problem; we would merely be creating a new FM problem.

When a comparison is made of the great benefits which the public now derives from FM broadcasting with the problematical service which could be afforded under the Gimbel plan, it becomes apparent that this suggestion leaves much to be desired.

Of course, this committee and the FCC are under great pressure to find a solution to the UHF problems. This country needs a nationwide competitive television service but it will not be sufficient via the Gimbel plan to provide for 54 markets, or any other small number, by dislocating a major part of a very substantial industry. For these reasons, I oppose the suggestions that have been made to add channel 6–A to the television band at the expense of the FM broadcasting industry.

(The following is a letter correcting Mr. Marks' testimony on one point. It was inserted in the record on July 17, 1956; see p. 935 below.)

COHN & MARKS,
Washington, D. C., June 12, 1956.

Senator WARREN G. MAGNUSON,
Senate Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.
(Attention: Nick Zapple, clerk.)

DEAR SENATOR MAGNUSON: Since testifying before your committee on June 11, 1956, I have discovered that station WIP, Philadelphia, Pa., did submit an engineering study to the FCC in support of its plan to delete certain portions of the FM band in order that channel 6–A might be used.

I have checked this study and find that under the specific plan proposed, it would not be necessary to delete any FM stations, but that a number of channel changes would be required.

You are requested to associate this letter with the testimony which I have presented.

Very truly yours,

LEONARD H. MARKS.

(The following letter, relative to Mr. Gimbel's testimony, was inserted in the record on June 11, 1956.)

LYON, WILNER & BERGSON,
Washington, D. C., May 22, 1956.

Senator WARREN MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: We are concerned at this time with the limited proposal submitted before your committee by the Pennsylvania Broadcasting Co. (WIP) recommending the creation of a new channel 6A. In this connection, your attention is respectfully directed to paragraph 3 of the attached comments submitted by Triangle Publications, Inc. (radio and television division) to the Federal Communications Commission in docket No. 11532, on February 8, 1956, which clearly establishes the impractical and wholly undesirable nature of the WIP proposal. As counsel for Triangle Publications, Inc., I have attached herewith a copy of these comments and respectfully request that said copy be incorporated, by reference, in the record of your present television hearing.

It is not my purpose to encumber the record, and accordingly I have not recommended that the document be inserted in the record proper. However, it is my belief that you and your staff at least should have Triangle's comments for ready reference.

Very sincerely yours,

MORTON H. WILNER.

(Returning to the proceedings on the afternoon of May 15, 1956, the following transpired:)

Senator PASTORE. Mr. Walker, how long will your statement take?

Mr. WALKER. I think about 15 minutes, sir.

I want to express my appreciation, Mr. Chairman, for being allowed to be here, today.

STATEMENT OF HENRY B. WALKER, JR., SECRETARY AND TREASURER OF ON THE AIR, INC., EVANSVILLE, IND.

Mr. WALKER. My name is Henry B. Walker, Jr. I am the secretary and treasurer of On the Air, Inc., of Evansville, Ind., which operates radio stations WGBF in Evansville and WTMV in East St. Louis, Ill. On the Air, Inc., also is affiliated with a company which operates radio station WBOW in Terre Haute, Ind.

My appearance here is authorized by my board of directors for two purposes: First, to advise this committee of a decision by the Federal

Communications Commission which is discriminatory and contrary to all policies as previously stated by the Commission to this committee and to the equivalent committee of the House; and second, to advise this committee briefly of the desparate economic plight of a large segment of the radio industry resulting from the shortsighted and unrealistic policies of the Federal Communications Commission.

When the television freeze was lifted by the FCC on April 14, 1952, 1 VHF channel (channel 7) and 3 UHF channels (channels 50, 56 and 62) were allocated to Evansville. Of these, channel 56 was reserved for educational use.

The two commercial UHF channels were granted without comparative hearings, and the successful applicants, Ohio Valley Television, Inc., for channel 50 (now WEHT–TV) and Premier Television, Inc., for channel 62 (now WFIE–TV), went on the air in September and November of 1953, respectively. Each of these companies is owned by the owners of a chain of movie theaters. These two companies which applied for UHF channels after the allocation of a VHF channel to Evansville and which received their grants without a contest have been among the leaders in the fight of the UHF stations for deintermixture.

Four applicants considered the VHF channel sufficiently superior to UHF to risk a fight for it: On the Air, Inc., which is sometimes referred to herein by its corporate name and sometimes by its call letters, WGBF; WFBM, Inc. (WEOA); South Central Broadcasting Corp. (WIKY); and Evansville Television, Inc., a new company formed for this purpose. To determine which of these applicants should receive the grant, the FCC set the applications for comparative hearing. The hearing began in May 1953, and continued intermittently until March 1954. During the course of the hearing, WIKY withdrew its application.

In October 1954, the FCC examiner released his initial decision favoring Evansville Television, Inc., on the basis that an applicant without any radio broadcasting interests should be favored over one which does have such interests. In his initial decision, the hearing examiner used this language:

> * * * were it not for the fact of ownership of other media we might very reasonably have preferred WGBF and it is perhaps unfortunate that the very facilities whose long and successful operation naturally lays claim to our approval should furnish the basis for our ultimate determination against WGBF.

An excerpt from the conclusions of this initial decision is attached hereto and designated "schedule A," appendix, page 1.

WGBF, WEOA and the Broadcast Bureau of the FCC filed exceptions to the initial decision, and briefs in support thereof, and asked for oral argument before the full Commission. As you know, the Broadcast Bureau is that part of the FCC charged with the responsibility of representing the interests of the general public by attempting to insure that the actions of the Commission are in conformity with the spirit as well as the letter of the Communications Act. The Broadcast Bureau referred in its exceptions and at oral argument to "the fine past record of performance" of WGBF and recommended that the grant be given to WGBF rather than Evansville Television, Inc. An excerpt from the brief and exceptions filed by the Chief of the Broadcast Bureau of the FCC in this case is attached hereto and designated "schedule B", appendix, page 3.

In an article entitled "Diversification: Its Case History" by Earl B. Abrams in Broadcasting-Telecasting, November 1, 1954, the examiner's decision in the Evansville case is characterized as "the reductio ad absurdium of the Commission's diversification policy."

Subsequent to the oral argument, the owners of WEOA sold their station and withdrew their application for channel 7. That left WGBF and Evansville Television as the only remaining contestants.

In February 1955, WFIE-TV and WEHT-TV, the two UHF stations allocated to Evansville, petitioned the FCC to institute rulemaking proceedings changing the channel allocations for Evansville by reserving channel 7 for noncommercial educational use and releasing channel 56 for commercial use. WGBF and Evansville Television filed oppositions and asked for oral argument, which was held in June 1955.

On December 27, 1955, the FCC denied the petitions of the UHF stations and granted channel 7 to Evansville Television, Inc. The final decision in favor of Evansville Television, Inc., differed somewhat from the examiner's initial decision. In addition to the factor of diversification of control of media of mass communication, the final decision also gave weight to what it declared to be the greater integration of ownership with management on the part of Evansville Television than it found in the WGBF case, and it discounted the past broadcast record of WGBF which the examiner and the FCC Broadcast Bureau had praised. The decision found that WGBF's proposed television programing plans were superior to those of Evansville Television, but that this factor was outweighed by the factors of integration of ownership with management and the diversification of control of media of mass communication.

On January 26, 1956, WGBF filed a petition with the FCC asking for reconsideration of its decision. Although no public announcement has as yet been made of any action on our petition, we have been advised that the Commission has voted to deny the petition for rehearing.

After such a decision, it might be expected that the District of Columbia Court of Appeals could be expected to reverse the FCC if the case was wrongly decided. But the record of appeals to that court shows that it has virtually given the Commission carte blanche in its power to choose between applicants, and the opinion of the legal fraternity here is almost unanimous that such appeals are virtually hopeless.

I wish that I might have the time to discuss in detail the merits of this decision. I realize that it would be an imposition to attempt to do so. However, I will presume to make one broad statement and I am willing to let the record substantiate it in any and every particular. Without using the principle of diversification of ownership of media of mass communication as a point against WGBF, the Commission could not possibly have rendered its decision against WGBF. Any point based solely on the merits of the case could not have been sustained, in my opinion, even in the court of appeals. Most of you are probably somewhat familiar with the various criteria which are used in evaluating applicants for broadcast or television facilities. These include such factors as local programing, past broadcast experience, local residence, civic participation, diversification of business interests as well as integration of ownership with management and diversification of control of media of mass communication.

The Commission conceded the superiority of WGBF as to the factor of local programing.

The Commission attempted to discount the fine past record of performance of WGBF which had been praised by the examiner and the Broadcast Bureau.

The Commission gave a preference to WGBF as to the factor of local residence because it had no alternative. It then unjustly attempted to discount the value of this preference by implying it was of little weight, although all of the officers and directors of On the Air are lifelong or longtime residents of Evansville and own more than 75 percent of the stock of the parent company; while only one officer or director or voting stockholder with 13.5 percent of the voting stock of Evansville Television has ever lived in Evansville.

As to the factors of civic participation and diversification of business interests, the Commission concluded that the applicants are equal. These conclusions and the findings on which they were based are flagrant examples of distortion and bias by the omission of relevant facts and the overemphasis of trivial ones. Rex Schepp and his wife, who own 55 percent of all the stock of Evansville Television, have no other business interests of any kind, and the Commission found only one civic activity in which either of them had participated during their entire lives. The next largest stockholder, having 13.5 percent of the voting stock and 16.1 percent of the nonvoting stock, is Dr. B. F. Schepp, a brother of Rex Schepp, who has no other business interest except the practice of optometry. The Commission devoted a great deal of space to describe his five civic activities which included his church, the Elks, the chamber of commerce, the Evansville Council of Clubs, and the National Society for the Prevention of Blindness. No more than one outside business interest was found for a single other voting stockholder and not even one single civic activity was listed for any of them. The Commission described in detail the business interests and civic activities of 6 stockholders owning nothing but nonvoting stock who were neither officers nor directors of the corporation nor were to be paid members of its staff, and 4 of whom owned only $1,000 of nonvoting stock apiece. As a matter of fact, the 6 together own only 5.2 percent of Evansville Television's total stock subscription. The entire case for Evansville Television on these points was based on these 5.2 percent nonvoting stockholders.

In applying these two factors to the officers and directors of On the Air, the Commission had some difficulty in minimizing facts which were overwhelmingly in On the Air's favor. Alvin Q. Eades, president and director, was shown to have 7 other business interests and 7 civic activities. Martin L. Leich, executive vice president and director, was shown to have other business interests in radio broadcasting, to have had 4 years of active duty with the United States Navy, and to have participated in 17 civic organizations. Even so, there were omitted several items including active participation in Red Cross drives, being awarded the Bronze Star and receiving the Junior Chamber of Commerce Award for outstanding young man of the year.

In their findings in regard to Henry B. Walker—my father—vice president and director, his military record was dismissed with this comment:

* * * (he) has been a lifelong resident of this city except for his periods of active duty with the United States Army in World Wars I and II.

No mention was made of his having attained the rank of full colonel or of his having served as executive officer of Subsistence Division of Quartermaster General. His other business interests were dismissed without enumeration with the comment:

He holds extensive and varied business interests in Evansville and in other cities.

While these interests did not seem to impress the FCC, they have been partially responsible for his having been listed in Who's Who for a number of years.

The Commission revealed Mr. Walker's participation in 23 civic organizations but failed to mention his having been an officer or director in a number of others included in the record. The phrase "In addition to professional and social organizations * * *" successfully hid the fact of presidencies of the Evansville Bar Association, the Indiana State Bar Association, and the Federation of Insurance Counsel, a national organization, although mere past memberships in two of these organizations were enumerated for a nonvoting stockholder of Evansville Television.

Senator PASTORE. May I interrupt you at this point?

Mr. WALKER. Yes, sir.

Senator PASTORE. Was an appeal taken in this case?

Mr. WALKER. No, sir.

Senator PASTORE. Why not?

Mr. WALKER. Because the rejection or denying of our petition for a rehearing has not been publicly announced. We have been told that the vote was taken 3 weeks ago, which was to deny it.

Senator PASTORE. Is this case still pending?

Mr. WALKER. It is technically pending; yes.

Mr. COX. As you indicated awhile ago, however, I think you stated that your counsel advised——

Mr. WALKER. The opinion in Washington is practically unanimous that an appeal from the FCC is hopeless.

Mr. COX. Is that largely because of——

Senator PASTORE. Now, wait a minute. Let's get this cleared up. What do you mean it is hopeless—that our courts are a hopeless institution?

Mr. WALKER. No. The apparent power that has been given to the FCC to choose between applicants will not be upset by a court of appeals in most cases. There has to be almost a case of fraud.

Senator PASTORE. Do you expect the Congress to overrule the FCC?

Mr. WALKER. No, sir.

Senator PASTORE. Then why do you bring it here?

Mr. WALKER. I am going to go into the question of diversification of control of media of mass communication.

Senator PASTORE. I am not being critical of you, I am trying to get at your point here. You have 15 or 16 pages that I have to listen to, and I would like to get at the point.

Mr. WALKER. Over half of it, sir, is appendix.

Senator PASTORE. Apart from that, what is actually the point you are trying to develop before this committee?

Mr. WALKER. Our case is the only case in which an applicant for a TV station has been denied because of ownership of radio stations.

The Commission has appeared before this committee and has appeared before the House Committee on Interstate and Foreign Commerce and has stated that there would be no discrimination. They have stated, as I will develop later, that a radio station would be favored, and yet they have stated—or the examiner stated—that the very fact that we had operated a radio station and had done a good job and had been a service was the reason we were being denied.

Senator PASTORE. Is there anything more than that that you desire to present? Do you have any evidence that the Commission went beyond its realm in ruling against you because of ownership of a radio station?

Mr. WALKER. I have no evidence, no.

Senator PASTORE. Is there a representative of the FCC in this room? (No response.)

Well, I think the attorney of this committee ought to call this brief to the attention of the Commission, and we ought to have at least an answer to the subject matter that is being preferred here—let them make an answer.

You take the position that the only ground upon which your application was denied is because you were already in the radio business?

Mr. WALKER. Yes, sir.

Senator PASTORE. And they took other people in preference to you, as newcomers, who hadn't been in this field at all?

Mr. WALKER. It isn't even true in that respect. Rex Schepp——

Senator PASTORE. I would like to have you refine it, please, as much as you can.

Mr. WALKER. I would be glad to, sir. There were so many things that I could not condense it into a short statement.

Rex Schepp, who was to be 55 percent owner of all the stock of this corporation, has promoted and sold interests in 3 radio and television stations—1 television station in Phoenix, Ariz., 1 in Paterson, N. J., and a radio station in Phoenix, Ariz.

Senator PASTORE. Let me get this straight. This man actually applied for licenses other places, which were granted, and then he sold the facilities?

Mr. WALKER. Yes, sir; he has been a 25-percent or greater stockholder in 3; he was never a 100-percent stockholder.

Senator PASTORE. Then he came to your town where you were operating?

Mr. WALKER. Yes, sir.

Senator PASTORE. Was he a resident of that town?

Mr. WALKER. He was not a resident of that town. His brother had lived there and been an optometrist for about 10 years when he started this.

Senator PASTORE. And, without any previous business experience in this community, he formed a corporation and applied for this license?

Mr. WALKER. Yes, sir.

Senator PASTORE. And they told you that you had done a good job in rendering radio service, but because you were in the radio business they preferred this other newcomer to you in running a television station?

Mr. WALKER. Yes, sir.

Senator PASTORE. I think this brief ought to be referred to them, and we ought to get an answer on it.

Mr. Cox. Isn't it true that the only previous instances in which the FCC has applied its diversification standards have been to hold against newspapers who sought to acquire television licenses in areas where they controlled a dominating position in the dissemination of news?

Mr. WALKER. In newspapers, or a combination of newspapers and radio, or a combination of newspapers, radio, and TV.

Mr. Cox. But never radio alone?

Mr. WALKER. No case where it was radio alone.

Mr. Cox. And your company has no interest in other means of mass communication aside from WGBF, WTMV, and this association with WBOW?

Mr. WALKER. None whatsoever. WTMV is a local 250-watt station in East St. Louis. WBOW is a local station in Terre Haute, and, with the tremendous crowding that the radio spectrum has had in the last 10 years, they don't even get good reception on the outskirts of their own town.

Mr. Cox. How many radio stations are there in Evansville?

Mr. WALKER. Four in Evansville, 1 in Henderson, which is in the metropolitan area; 2 UHF stations in Evansville, and this VHF was to be a third. There is another VHF, channel 9, which is 18 miles from Evansville, and was brought in after the hearing started on channel 7. The only applicants for it are out-of-State owners in Kentucky. It is being applied for by two Owensboro, Ky., applicants with no Evansville person. It is closer to Evansville—or as close to Evansville as it is to Owensboro.

Mr. Cox. How many newspapers are there in Evansville?

Mr. WALKER. Two daily newspapers, and one daily newspaper in Henderson.

Mr. Cox. Do any people connected with your company have any interest in those newspapers?

Mr. WALKER. None whatsoever, nor with the motion pictures.

Senator PASTORE. I would appreciate it if you would allow us to put this entire document in the record, as you have presented it, including your appendix, and if you would more or less summarize, because what you are actually doing here, as I understand it, is stating a specific case.

Mr. WALKER. Yes, sir. There is no other case I know as well.

Senator PASTORE. I realize that, but I was wondering if you were going to persist in the desire of reading the entire background and history of the case. I think we understand it pretty much, and it ought to be in the record.

Mr. WALKER. I would appreciate it, for one reason, that I think a few things I am going to bring up might very well elicit some questions.

Senator PASTORE. Can't you point that out to me and put it in the record, because I have another meeting to attend, which is the reason I am asking. I am the only member of the committee here listening to you, and your interest, of course, is to bring it to the attention of the entire committee, and inserting it in the record will do precisely that. Then you can point out the salient points to me, and we can discuss it to and fro, without reading about 10 more pages of a written statement.

If there were more people here I would say it would be perfectly all right, and yet I am not shutting you off if you desire to do it that way; but I think, myself, it would serve our purpose better if we would insert the remainder of the statement in the record, and have it included in the record in its entirety, and then you can pick out the important points that you would like to bring out to me, consonant with the interrogation that has already transpired, because that is the crux of the matter; isn't it?

Mr. WALKER. Yes. The only reason I attempted to go into any questions on the merits was because I felt that I must go into it enough to convince you that the diversification of ownership of media of mass communication was the point on which they made the decision.

Senator PASTORE. I am not saying you are right, and I am not saying you are wrong—I am not getting into that—but you have made a rather important presentation here, and I think it deserves at least some answer on the part of the Commission to us.

Mr. WALKER. All right, sir.

Senator PASTORE. Apparently the presentation you are making here is that the man who is granted the license is more or less a professional applicant who goes around different parts of the country and then sells his interests outright.

Mr. WALKER. He has a record as a promoter.

Senator PASTORE. And this is the third time, and they granted him the license the fourth time in preference to a local operator who had already established a reputation, on the grounds that he was already in the radio business and for that reason they ought to give it to a stranger. Isn't that in essence what you are saying?

Mr. WALKER. That is it, sir.

Senator PASTORE. And that is your criticism of the Commission?

Mr. WALKER. Yes.

Senator PASTORE. I think the Commission ought to explain its position. We will have it understood on the part of the stenographer that the statement will go in the record in its entirety, including the appendix.

(The balance of Mr. Walker's statement is as follows:)

Mr. WALKER. In my own case as secretary and treasurer, the facts were also slanted. It was not found that I served as assistant military attaché to China during World War II although I modestly feel it might have some significance in regard to my own qualifications. No other business interests except radio and law were mentioned by the Commission although the record shows that I was an officer in at least 8 corporations in 5 lines of business not connected with radio and a director in another. In fact, my business activities have been sufficiently extensive that I have been listed in Who's Who in Commerce and Industry for a number of years.

The Commission found my participation in nine civic organizations but failed to mention participation in Red Cross and Community Chest drives, a directorship in Rotary, the presidency for 2 years of the Evansville Philharmonic Orchestra, the secretaryship of the Evansville Bar Association or my membership on the executive committee of the American Counsel Association. It is hardly necessary to go on and enumerate the activities of the remaining director who has died since the hearing.

WGBF introduced evidence of the business interests and civic activities of its voting stockholders and showed them engaged in 17 or more broad fields of business and participating in 46 different local civic organizations. The Commission chose to ignore these facts but to include the activities of all owners of nonvoting stock of Evansville Television. On the Air was so vastly superior to Evansville Television in regard to the factors of civic participation and diversification of business interests that any conclusion by the Commission that they were equal is not merely arbitrary and capricious but completely unconscionable.

As to the factor of integratiton of ownership with management a preference was given to Evansville Television because Rex Schepp, the controlling stockholder, a nonresident with no civic activities or other business interests, is to be the general manager of the company. There was every reason for the Commission to hold that On the Air, with its officers and directors owning more than 75 percent of the stock and with a long and fine record of performance, had definite superiority with respect to the integration of ownership with management.

I have gone into these other factors in some detail in order to substantiate my previous statement that without relying on the principle of diversification of ownership of media of mass communication as a point against WGBF, the Commission could not possibly have rendered its decision against WGBF.

This principle of diversification of ownership is not a requirement of law and can be supported only on the theory of preventing monopoly or as a form of share-the-wealth program.

A VHF station in Evansville could be expected to cover an area having approximately a 50-mile radius. Within that area today there are 19 AM radio and television stations and 19 daily newspapers. In the Evansville metropolitan area alone—Evansville and Henderson, Ky.—there are 5 AM radio stations, 2 television stations, 3 daily newspapers, and numerous other media of mass communication from without which saturate the area. Monopoly, therefore, is not an issue.

On the Air has operated WGBF in Evansville since 1928. At that time it was the only station within a 50-mile radius of Evansville. In 1935 this company established WEOA in Evansville which was also the second station within this area. On the Air continued to operate it until 1946 when it was required to sell the station under the FCC's so-called duopoly rules. Attached hereto and designated "schedule C," appendix, page 5, is a list of the AM radio and television stations within a 50-mile radius of Evansville as existing at 5-year intervals from 1930 to 1955. In 1930 and 1935, On the Air owned the only station in the area. In 1940, On the Air owned 2 out of the 4 in the area. In 1945 it owned 2 out of the 5 in the area. In 1950 it owned 1 out of 15, and in 1955, 1 out of 19 in the area. At one time On the Air had absolute control of broadcast media in this area. This control has dwindled to a point where it is ridiculous to apply the diversification rule as a reason to deprive On the Air of a television grant.

The Evansville case is the first decision in history in which the Commission has applied the diversification of ownership principle in denying an applicant a grant for a television station when the applicant owned radio stations only. The principle had formerly been applied at times when there were applicants with newspaper interests or newspaper and radio interests or a combination of newspaper, radio, and television interests. The use of this principle against On the Air is in absolute conflict with all announced policies of the Commission. The policy in this regard has been stated to this committee in the past as well as to the equivalent House committee.

Attached hereto and designated "Schedule D," appendix, page 7, is an excerpt from an article entitled "Diversification of Control of the Media of Mass Communication—Policy or Fallacy?" by Jerome H. Heckman, Georgetown Law Journal, volume 42, page 378, March 1954. This article reviews the legislative history of the McFarland Act and other legislation introduced in both the Senate and the House which would have specifically prevented discrimination by the FCC against any applicant for a license because of ownership of newspapers, radio stations, or other media of mass communication. Chairman Hyde of the FCC testified that the Commission had no objection and that there should be no discrimination. The antidiscrimination section was eliminated because this committee reported that the Commission was following a policy of no discrimination, intended to continue to follow such a policy, and has no legal or constitutional authority to follow any other procedure. The use of the diversification principle in the Evansville case is an absolute refutation of this announced policy.

Attached thereto and designated "Schedule E," appendix, page 11, are excerpts from the testimony of Chairman Paul Walker before the House Committee on Interstate and Foreign Commerce on February 20, 1953. Chairman Walker answered questions prefaced by this statement of Congressman Springer, "I think it is awfully important that your whole question of public policy be rather clear to people who are petitioning for stations." The Chairman's answers reveal a Commission attitude and policy identical with our own. Among other things, he said:

> * * * and it would be a pretty severe rule to say a man who has rendered a fine service in broadcasting that he was prohibited from going into television, particularly if television in a measure supplants the radio industry in the broadcast field.

When asked what the policy would be between an applicant with a radio station and one without, he implied that the broadcaster would be given preference in this language:

> I would say if you had a much better applicant who was not in radio that he would get the station.

Later he said:

> My fundamental philosophy is that the more competition you can get, provided the operators can exist and make a reasonable profit, the better. Again I say—and this is more a matter of innate justice to the man who has gone in

and developed a service to the community—to shut out a radio operator from getting into television simply because he has a radio station does not seem to me quite just.

The decision in the Evansville case is totally contrary to the policy thus declared. What short memories the Commissioners seem to have.

In its decision the Commission pointed out that On the Air owns or is affiliated with three radio stations. Certainly the fact has no bearing on any question of monopoly since the East St. Louis station and the affiliated Terre Haute station are local 250-watt stations whose listening areas are separated by many miles from the listening area of WGBF. Here again the diversification policy is insupportable. It overlooks the fact that television is a development and a refinement of the broadcasting industry and not a brandnew field.

As Chairman Walker pointed out, "television in a measure supplants the radio interest in the broadcast field." WGBF has been on the air since 1923, 2 years after KDKA, the first station in the country. On the Air has owned and operated it for 27 years and has a record of excellent service. To deny it the right to expand and grow with the industry is unfair and is economically disastrous. Because of the growth of TV, radio is a declining industry. From 1946 through 1954, net earnings, before taxes, for the whole radio industry declined steadily from $76.5 million to $41.8 million. During the same period the number of stations increased from 1,025 to 2,598, so that the average earnings per station declined from $74,634 to $16,089 or a decline of 78½ percent. Attached hereto and designated "schedule F," appendix, page 14, is a table showing this decline in radio earnings and the attendant rise in television earnings. In the same period On the Air's Evansville income—AM and FM—declined from $98,224 to a loss of $20,012. The 4 AM and 2 FM radio stations in Evansville declined from earnings of $142,700 in 1951 to a loss of $82,900 in 1954. These figures are set out in a table attached hereto and designated "schedule G," appendix, page 15. All of these figures are from figures filed with or published by the FCC.

I mentioned earlier the possibility that the diversification policy might be based on a "share the wealth" idea. The figures I have given should quickly dispel the possibility that a radio-station owner has any wealth to share. To illustrate even more graphically the situation with our three affiliated stations, there is attached hereto and designated "schedule H," appendix, page 16, a table showing comparative earnings for the first 2 months of 1956 and the same period of 1953. Our companies are faced with continuing losses which can only be mitigated by decreasing the services offered. Whether this will prevent eventual failure only time will tell.

The problem is not ours alone. According to the 1954 figures, 30 percent of the stations which had been operating prior to World War II were operating at a loss. There is no free enterprise in an industry which is subject to the controls of the FCC. The policies which have contributed to this critical situation should be reviewed from a realistic standpoint. The broadcast industry should not be led to the brink of ruin by some ivory-towered economists who say, as the Commissioners do, that they are not concerned with the economics of their licensees.

We have felt that we must have television to exist. We are faced with a choice of appealing the Commission's decision, with the resultant expenditure of additional large amounts of time and money and with only the slightest possible chance of success, or of attempting to buy an existing facility. In attempting to determine our future course of action we have talked to a staff member of the FCC. We are advised that the present plans of the FCC involve deintermixing Evansville and removing channel 7 to Louisville, which would make our 3-year fight a completely futile effort and the question of who wins a moot one; this after an expenditure for this channel which we estimate at over $300,000. At the same time VHF channel 9, which was allocated to Hatfield, Ind., a distance of 18 miles from Evansville, long after the channel 7 hearing began, would be left and would be owned by 1 of the 2 Owensboro, Ky., applicants fighting for it.

If a UHF channel is then allocated to Evansville to replace channel 7 it would leave Evansville dominated by a VHF station, channel 9, operated by an out-of-State owner, leaving three UHF stations in an already overcrowded broadcast market. Add to that the fact that the two existing UHF stations will have the advantage of more than 3 years of operation and have major chain affiliations at present, then one can see what a hopeless and confused and dismal picture is in prospect.

If the Federal Communications Commission is not concerned with the inequities and injustices of its actions and policies, it is time that someone becomes concerned before the broadcast industry suffers even more. If my appearance here results in bringing any benefits to the industry as a whole, we shall feel well repaid in having been of service to the industry. If by any chance it results in bringing any benefits to us, we shall be delighted.

SCHEDULE A

EXCERPT FROM CONCLUSIONS OF INITIAL DECISION BY EXAMINER SHARFMAN IN EVANSVILLE CHANNEL 7 TELEVISION CASE

(Docket No. 10462, 10463, 10464)

Between WGBF and Evansville Television, Inc., we must also evaluate the competitive significance of concentration of control of mass communication media, since WGBF, though it has no television stations, is substantially identified with aural broadcast facilities in the Indiana-Illinois area. While in a television case ownership of other communication media may not be as disadvantageous to an applicant in the comparative process as ownership of television facilities, it must be given its appropriate weight. Here WGBF owns 1 of the 2 most powerful AM stations in Evansville, an FM station there, and the only station (AM) in East St. Louis, Ill.; and its parent corporation owns all the stock of the licensee of an AM and an FM station in Terre Haute, Ind. Speaking of Evansville alone, a grant to WGBF would give it control over facilities in 3 commercial broadcasting media in 1 community, AM, FM, and TV. It would not have a monopoly of radio facilities in any of these fields, nor has it any newspaper interests, and the area is well supplied with both radio and newspaper services from other sources. Evansville Television, Inc., on the other hand, has no connection with any communication service other than in its pending application. As with WEOA, we must determine the significance of WGBF's involvement with communication interests, here vis-a-vis Evansville Television, Inc.

It is not farfetched to say that Evansville Television, Inc., as already indicated, has deliberately fashioned its presentation so as to take advantage of the con-keen eye upon the Commission, surrounded himself with a group of local "coun-ventional criteria. We have no doubt that Mr. Schepp, an entrepreneur with a selors," for competitive purposes; and although we do not consider that they would have been nonowners because they had subscribed only to nonvoting stock, the fact that their participation in ownership was limited in this way throws some light upon Mr. Schepp's intentions. Evansville Television, Inc., program misclassification is another indication of its competitive spirit, and although it is not by any means a major element in this comparison complex, it should be given some consideration.

Granted these unfavorable aspects of Evansville Television, Inc.'s proposal, it is by no means bested in a comparison with WGBF. The black marks placed against it do not affect the basic virtues of its projected operation. There is not so great a difference between its case and WGBF's as to neutralize the importance of the factor of media diversification. In short, here again we must conclude that the applicant not identified with other communication facilities should be preferred. We do not come to this determination without some misgivings because of the somewhat pedestrian nature of Evansville Television, Inc.'s presentation, a matter which has only been hinted at previously and which we see no need to elaborate upon further now. We hesitate to penalize Evansville Television, Inc., after it manifested enough concern to bring to the hearing most of its principals, and afforded us an opportunity to observe and appraise in the flesh the possibilities of its successful operation. Yet we must confess that were it not for the fact of ownership of other media we might very reasonably have preferred WGBF, and it is perhaps unfortunate that the very facilities whose long and successful operation naturally lays claim to our approval should furnish the basis for our ultimate determination against WGBF.

SCHEDULE B

EXCERPT FROM BRIEF AND EXCEPTION FILED BY CHIEF OF BROADCAST BUREAU OF FCC IN EVANSVILLE CHANNEL 7 TELEVISION CASE (DOCKET No. 10462, 10463, 10464)

The initial decision in the instant proceeding deprecates the mechanical application of the time-honored criteria utilized by the Commission in its quest for the applicant which is to be preferred in a comparative processing upon mutually exclusive broadcast applications. (See par. 6, conclusions, initial decision.) We are of the view, however, that after expounding this well-established truism the initial decision in this case itself falls into the very pit which it sought so studiously to avoid. Its failure to give proper weight to "countervailing considerations" in respect to its appraisal of the applicants here involved in the light of the Commission's recent pronouncements concerning the policies on concentration of media ownership and the diversification of control of mass communications media, led, in our view, to a mechanistic and incorrect result. Two of the three applicants, On the Air, Inc. (referred to herein as "WGBF") and WFBM, Inc. (referred to as "WFBM") are existing licensees with equally good performance records in the public interest insofar as the record of this case is concerned. The applicant which the initial decision prefers, Evansville Television, Inc. (herein referred to as "ETV") is a newcomer to broadcasting. Because neither ETV itself nor any of its principals own media interests at present the examiner applied the test of diversification of control of communications media, giving no weight to the differences, which we believe are significant, between the three applicants relating to local residence and community activities of their respective stockholders and directorates in the Evansville community. Similarly he did not consider the tried records of performance of the existing licensees of sufficient importance to influence the end result. We believe that these two factors, considered together, suffice to militate against a grant to ETV and in favor of a grant to WGBF and that the failure to give proper weight to such factors was error. Our rationale is set forth in detail below.

Schedule C

List of AM radio and television stations within 50-mile radius of Evansville

	Approximate distance from Evansville—miles
1930—WGBF, Evansville	
1935—WGBF, Evansville	
1940—WGBF, Evansville	
WEOA, Evansville (owned by WGBT)	
WOMI, Owensboro, Ky	28
WAOV, Vincennes, Ind	47
1945—WGBF, Evansville	
WEOA, Evansville (owned by WGBF)	
WOMI, Owensboro, Ky	28
WAOV, Vincennes, Ind	47
WSON, Henderson, Ky	8
1950—WGBF, Evansville	
WEOA, Evansville (no longer owned by WGBF)	
WIKY, Evansville	
WJPS, Evansville	
WOMI, Owensboro, Ky	28
WAOV, Vincennes, Ind	47
WSON, Henderson, Ky	8
WRAY, Princeton, Ind	23
WITZ, Jasper, Ind	44
WTCJ, Tell City, Ind	45
WBNL, Boonville, Ind	18
WROY, Carmi, Ill	32
WVMC, Mount Carmel, Ill	30
WFMW, Madisonville, Ky	50
WVJS, Owensboro, Ky	28
1955—WGBF, Evansville	
WEOA, Evansville (owned by WEHT-TV)	
WIKY, Evansville	
WJPS, Evansville	
WEHT-TV, Evansville, Ind.-Henderson, Ky.	
WFIE-TV, Evansville	
WOMI, Owensboro, Ky	28
WAOV, Vincennes, Ind	47
WSON, Henderson, Ky	8
WRAY, Princeton, Ind	23
WITZ, Jasper, Ind	44
WTCJ, Tell City, Ind	45
WBNL, Boonville, Ind	18
WROY, Carmi, Ill	32
WVMC, Mount Carmel, Ill	30
WFMW, Madisonville, Ky	50
WVJS, Owensboro, Ky	28
WPCO, Mount Vernon, Ind	15
WAMW, Washington, Ind	48

Schedule D

(Excerpts from Diversification of Control of the Media of Mass Communication—Policy or Fallacy? by Jerome H. Heckman, Georgetown Law Journal, vol. 42, p. 378, March 1954.)

The Legislative History of the McFarland Act and the Problem of Diversification of the Media of Mass Communication

Unlike the case law which leaves some doubt as to how the newspaper problem affects decisions on license matters, the legislative history of the communications amendments of 1952 gives a very lucid picture of congressional feeling on the subject.[1] The McFarland bill, the basis of these amendments, was, in most of its

[1] Communications Act amendment of 1952, 66 Stat. 711 (1952), 47 U. S. C. §§ 307 et seq. (supp. 1953).

important aspects, the same as a predecessor bill introduced into the 81st Congress and reported out of the Senate Committee on Interstate and Foreign Commerce.[2] This bill, S. 1973, read in s14:[3]

"Section 332. * * * The Commission shall make or promulgate no rule or regulation of substance or procedure, the purpose or result of which is to effect a discrimination between persons based upon race. religious or political affiliation, or kind of lawful occupation or business association." In the hearings on this bill, acting Chairman Hyde made this statement as to the Commission's position on the proposed new section:[4]

"This section proposes to add section 332. It is the so-called antidiscrimination section. the effect of which would be to prohibit the adoption of any rule which would prevent any person from securing a license because of race, religious or political affiliation, or business affiliation. The principal intent of the section is, of course, to outlaw the possibility of any rule excluding newspaper owners from owning radio stations. *There is no objection to this section.*" [Emphasis supplied.]

On further questioning as to s14 of S. 1973, Mr. Hyde stated:[5]

"I would like to say our comment on this section is 'No objection.' We mean by that that we feel there should be no discriminations, of course. Now, whether or not you wish to enact that kind of legislation is, of course, a matter for your consideration. I am just giving my own personal views, but I see no necessity for it because I think in principle *there should be none of these discriminations*, and I am not going to object to the legislation." [Emphasis supplied.]

Because of the strong denial of discrimination made by the Commission, section 14 was dropped from S. 1973 and this explanation was given in the committee report:[6]

The committee deems it important to point out why this section was dropped from the bill. This language was first proposed nearly 6 years ago during hearings on a Communications Act amendment bill, solely because the Federal Communications Commission at that time had under consideration a rule which would prohibit newspapers from becoming holders of radio licenses. While the Commission may have been motivated, in part at least, by the best intentions in seeking to prevent monopolistic control of organs of public expression in a community, the threatened action was of questionable constitutional validity, particularly in the absence of specific authority in the basic act to adopt such a rule. * * *

"*It should be distinctly understood that in eliminating this section the committee has done so solely because the Commission is now following the procedure which was outlined in the section, has testified that it intends to follow that procedure, and that it is of the opinion that it has no legal or constitutional authority to follow any other procedure.* [Emphasis supplied.]

When S. 1973 was reintroduced as S. 658 in the 82d Congress, the House version added to the bill the so-called newspaper amendment which read:[7]

"The Commission shall not make or promulgate any rule or regulation of substance or procedure, the purpose or result of which is to affect a discrimination between persons based upon interest in, association with, or ownership or any medium primarily engaged in the gathering and dissemination of information and that no application for a construction permit or station license, or for the renewal, modification, or transfer of such a permit or license, shall be denied by the Commission solely because of any such interest, association, or ownership."

This provision was accorded a lengthy airing on the floor of the House. Said Mr. Harris of the House Committee on Interstate and Foreign Commerce in reporting on the newspaper amendment:[8]

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[2] S. 658, 82d Cong., 2d sess. (1952).

[3] S. 1973, 81st Cong., 1st sess. (1949), p. 14.

[4] Hearings before subcommittee of Committee on Foreign and Interstate Commerce on S. 1973, 81st Cong., 1st sess. (1949), pp. 20–21.

[5] See, e. g., Town Talk Broadcasting Co., 3 Pike & Fischer, R. R. 769 (1947); Capital Broadcasting Co., 3 Pike & Fischer, R. R. 702 (1947); Hanford Publishing Co., 3 Pike & Fischer, R. R. 1281 (1947); Midland Broadcasting Co., 3 Pike & Fischer, R. R. 1961 (1948); Hampden-Hampshire Corp. (WHYN), 4 Pike & Fischer, R. R. 504 (1949); Belleville News Democrat, 4 Pike & Fischer, R. R. 1043 (1950); Hearst Radio, Inc., 6 Pike & Fischer, R. R. 994 (1951).

[6] S. Rept. No. 751, 81st Cong., 1st sess. 2 (1950).

[7] Conference report on Communications Act amendments, H. Rept. No. 2426, 82d Cong., 2d sess. 18 (1952).

[8] 98 Congressional Record 7524 (June 17, 1952).

"It was the sole purpose of the amendment inserted by the House committee to make sure that newspaper applicants *will be treated on a par* with other applicants for radio and television licenses and that the Commission does not follow any abritrary policy which discriminates against those who are engaged in the gathering and dissemination of information." [Emphasis supplied.]

Representative Priest of the same committee further emphasized the legislative intent in stating:[9]

"Not only shall the Commission determine it (the granting of licenses, etc.) solely on the basis of public interest, but, on the other hand, no applicant shall have two strikes against him solely because of his interest in a news-gathering organization, corporation, or partnership, or whatever it might be."

And perhaps the best picture of the congressional state of mind can be obtained from a statement by Representative Rogers of Florida during the same House debate. Said Representative Rogers:[10]

"Mr. Chairman, we discussed this problem in detail in the Interstate and Foreign Commerce Committee. As stated by the gentleman from Tennessee (Mr. Priest) he offered the amendment and after long discussion of it I do not believe there was any opposition at all when it came to a final vote on the amendment. All of us concurred in the viewpoint that there should be *no discrimination against newspapers*. That is all it means. It is simple. It says that the Commission shall issue no rules or regulations that will discriminate in any way against newspapers, newspaper owners, or those associated with the newspaper business. That is all that is provided. It is in the negative; it states they shall not refuse to issue a license solely because of the fact that one may have an interest in a newspaper. I think that is a fair provision. If a man owns a newspaper and shows that it is in the public convenience and necessity for him to operate a station in his vicinity I do not think that the Commission should hold that against him. I do not think they should say to him: 'You have a newspaper down here so we will not give you a license to operate a radio station.'" [Emphasis added.]

These were clear expressions of congressional attitude. The Commission convinced Congress that this attitude corresponded to the position the Commission intended to maintain. For this reason the conference committee on the McFarland bill decided to drop the newspaper amendment after a careful reiteration of the congressional position, and a full explanation as to the reason for deleting the amendment. The conference report reads as follows:[11]

"The Senate bill contained no such provision, and the provision is not included in the conference substitute because the committee of conference felt that it was unnnecessary. It is the view of the conference committee that under the present law the Commission is not authorized to make or promulgate any rule or regulation the effect of which would be to discriminate against any person because such person has an interest in, or association with, a newspaper or other medium for gathering and disseminating information. Also the Commission could not arbitrarily deny any application solely because of any such interest or association."

From all this it may be concluded that Congress stands squarely in accord with the Court's ruling in the Stahlman case.[12] It would seem that the strong position taken by Congress would have settled the newspaper issue on a "no discrimination" basis but recent developments belie the truth of such a conclusion.

SCHEDULE E

During hearings before the House Committee on Interstate and Foreign Commerce, 83d Congress, 1st session, Friday, February 20, 1953

EXCERPTS OF TESTIMONY OF PAUL A. WALKER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. SPRINGER. I think it is awfully important then that your whole question of public policy be rather clear to people who are petitioning for stations. It is my understanding that you did in the so-called public interest deny applications of newspaper owners who were in competition with nonnewspaper owners for the same radio facilities.

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[9] Id., at 7530.
[10] Id., at 7551.
[11] See N. 60, supra.
[12] 75 U. S. App. D. C. 176, 179, 126 F. 2d 124, 127 (1942).

Commissioner WALKER. I would not go quite that far.[13] I think in our radio broadcasting cases, particularly in our earlier decisions, where we had two applicants equally qualified, in the interest of diversity, that we preferred the nonnewspaper applicant to the newspaper applicant, and as I say, to get diversity of community of interest operating in the community.

Mr. SPRINGER. That was in order that the news outlets in the community or the sources of information would be in separate hands; am I right on that?

Commissioner WALKER. That is right.

Mr. SPRINGER. Have you adopted the same policy with reference to television?

Commissioner WALKER. No; we have not had a case before us in which that question was raised, so that we have not had to pass on that policy. However, there has been certain proposed legislation in Congress, and certain debates and reports that probably would make us more conservative along this line, and I am not sure that there is not some provision, or at least some consideration in the McFarland Act. I am advised that the Congress did not make any definite provision in the law, making any direction to the Commission in reference to newspaper applicants.

* * * * * * *

Mr. SPRINGER. Now, let me ask you this: Have you adopted this same public policy where radio and nonradio interests have been competing for television facilities?

Commissioner WALKER. No; we have not. Television is going to play such a tremendous role in communications that I think that if some of these broadcasters found themselves out in the cold, so to speak, not being able to apply for some of the television stations, that they would be up against it in broadcasting, and it would be a pretty severe rule to say to a man who has rendered a fine service in broadcasting that he was prohibited from going into television, particularly if television in a measure supplants the radio interest in the broadcast field. I do not mean by that to disparage radio broadcasting. There will always be radio broadcasting, in my opinion. Further, in my mind, I do not believe that the radio broadcasters will be forced out of business by television. But as I say, it would be a pretty severe rule which would say to a competent radio broadcaster that he could not get into the television field. You have to have fairness toward the operator and the public interest, fairness to the operator on the one hand, and a diverse opinion about the public interest on the other. I would not say that we should not grant to a broadcaster a telvision station just simply on that factor.

Mr. SPRINGER. My question was only where you had those who were seeking it who were in radio and those who were not seeking it in radio [sic].

Commissioner WALKER. I would say if you had a much better applicant who was not in radio that he would get the station. But I cannot figure the fact that a man has a radio station would weigh much against him at the moment, because I think he would feel that he was pretty much being put out of business if he knew he could not get a television station because he was in the radio broadcasting business.

Mr. SPRINGER. Are you arriving at that on economic interest or on a question of public policy?

Commissioner WALKER. Not on economic interest. I just have a feeling of innate justness about the thing. I cannot feel that you would deny a man a television station simply because he was in the radio broadcasting business.

* * * * * * *

Mr. SPRINGER. I am trying to get your fundamental philosophy of what you think of placing television and radio under the some people.

Commissioner WALKER. My fundamental philisophy is that the more competition you can get, provided the operators can exist and make a reasonable profit, the better. Again I say—and this is more a matter of innate justice to the man who has gone in and developed a service to the community—to shut out a radio operator from getting into television simply because he has a radio station does not seem to me quite just. I would like to see in the community another television station. I think in any community which is large enough to support the stations that you always get better results with the competition; that is, a reasonable amount of competition.

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[13] 68 App. D. C. 292, 294; 96 F. 2d 564, 566 (1938).

SCHEDULE F

Radio and television—Earnings before Federal taxes

RADIO

	Earnings	Number of stations	Average per station
1946	$76,500,000	1,025	74,634
1947	71,800,000	1,464	49,044
1948	64,100,000	1,824	35,142
1949	56,300,000	2,021	27,857
1950	68,200,000	2,229	30,637
1951	57,500,000	2,266	24,896
1952	60,100,000	2,380	25,252
1953	55,000,000	2,479	22,186
1954	41,800,000	2,598	16,089

TELEVISION

	Earnings	Number of stations	Average per station
1948	($14,900,000)	50	
1949	(25,300,000)	98	
1950	(9,200,000)	107	
1951	41,600,000	108	
1952	55,500,000	122	
1953	68,000,000	334	
1954	90,300,000	410	

SCHEDULE G

Revenue and income from all AM-FM stations in Evansville compared with revenue and income from On the Air, Inc., stations in Evansville

Year (1)	Gross broadcasting revenue for all AM-FM stations in Evansville (2)	Gross broadcasting revenue of On the Air, Inc. AM-FM stations in Evansville (3)	Total number AM-FM stations in Evansville (4)	Number of On the Air, Inc. AM-FM stations in Evansville (5)	Net income (or loss) of all stations in Evansville (6)	Net income (or loss) of On the Air Inc. stations (7)
1945		$343,031	3	3		$104,251
1946	$440,579	361,740	3	3	$131,070	98,224
1947	624,137	291,792	4	2	141,601	54,408
1948	790,020	323,853	6	2	127,453	56,833
1949	807,101	290,690	6	2	66,824	16,743
1950	929,850	317,000	6	2	128,153	39,724
1951	907,856	311,616	6	2	142,737	44,749
1952	943,142	304,728	6	2	125,870	50,413
1953	987,641	312,855	6	2	36,061	33,106
1954	761,615	243,586	6	2	(82,917)	(20,014)
1955	671,424	216,315	6	2	(62,624)	(17,947)

NOTES.—Figures in cols. (2) and (6) for years 1945 to 1950, inclusive, include amounts for Henderson, Ky., as well as Evansville stations. Beginning with 1951 the figures are for Evansville only.

In 1953, 2 television stations, 1 at Evansville and 1 at Henderson, went on the air (WFIE and WEHT).

AM-FM stations in Evansville for 1945-46 were WGBF, WEOA and WMLL (FM); in 1947 WIKY was added; in 1948 WJPS and WIKY-FM were added.

SCHEDULE H

Table showing profit and loss for first 2 months of 1953 and 1956 for On the Air and affiliated companies

	1953	1956
Evansville operation:		
January profit or (loss)	2,697.33	(2,434.68)
February profit or (loss)	3,357.91	(3,701.84)
Total	6,055.24	(6,136.52)
Terre Haute operation:		
January profit or (loss)	1,108.85	(4,048.12)
February profit or (loss)	1,304.04	(2,668.90)
Total	2,412.89	(6,717.02)
Total for Evansville and Terre Haute	8,468.13	(12,853.54)
St. Louis operation:		
January profit or (loss)	3,317.40	1,213.54
February profit or (loss)	2,302.05	743.24
Total	5,619.45	1,956.78
Total for Evansville, Terre Haute and St. Louis	14,087.58	(10,896.76)
Parent corporation:		
January profit or (loss)	433.21	567.68
February profit or (loss)	433.21	650.38
Total	866.42	1,218.06
Consolidated net profit or (loss)	14,954.00	(9,678.70)

SCHEDULE I

Radio station DGBF, Evansville, Ind.—Revenue from NBC network affiliation

1945	$58,323.51	1951	50,652.78
1946	66,428.09	1952	42,514.15
1947	66,981.26	1953	30,031.32
1948	69,248.20	1954	17,810.47
1949	58,387.32	1955	9,981.27
1950	58,451.91		

Corresponding revenue for first 4 months of 1956 was $1,055.89, or an annual rate of $3,167.67.

(The oral colloquy proceeded as follows:)

Senator PASTORE. You may proceed.

Mr. WALKER. The principle of diversification of ownership is not a requirement of law and can be supported only on the theory of preventing monopoly, or as a form of share the wealth program.

Now, I would like to say, by the questions you have brought out, there are 19 radio and television stations within an area of 50 miles of Evansville, which is the approximate area this station would cover. There are 19 daily newspapers in the area. There are many other weekly newspapers in small towns, and there are many other media which impinge upon that area from the outside, so there cannot be any question of monopoly of any kind.

The Evansville case is the first decision in history in which the Commission has applied the diversification of ownership principle in denying an applicant a grant for a television station when the applicant owned radio stations only.

Senator PASTORE. Well, let me say this to you. In my community we have two channels, channel 10 and channel 12, and the operators of each of the channels had radio stations before they took on their TV licenses. Now, that is precisely the situation in my State.

Mr. Cox. And in most places.

Senator PASTORE. And now you are making the presentation here that that was the one point they used to rule against you?

Mr. WALKER. That this policy is in absolute contradiction.

Senator PASTORE. I think it needs explanation; I think you have made your point, and I think it ought to be explained.

Mr. WALKER. I refer to statements in the appendix by Chairman Hyde of the FCC when he appeared before this committee, and I think he also appeared before the House committee. I have in the appendix excerpts from the committee reports as to why the antidiscrimination section was left out of the bill.

Senator PASTORE. Let me ask you this question, sir. The examiner ruled against you?

Mr. WALKER. Yes, sir.

Senator PASTORE. And ruled for this other group that got it. Was the examiner's report reviewed by the Commission, and did they rule thereon?

Mr. WALKER. There was oral argument on that.

Senator PASTORE. And have they made a decision on it?

Mr. WALKER. Yes, sir.

Senator PASTORE. And they agreed with the examiner?

Mr. WALKER. Yes, sir; even though the Broadcast Bureau filed a brief and exceptions, and recommended that it be granted to us, and the examiner in his record used this language:

> Were it not for the fact of ownership of other media we might reasonably have preferred WGBF, and it is perhaps unfortunate that the very facilities whose long and successful operation naturally lays claim to our approval should furnish the basis for ultimate determination against WGBF.

Senator PASTORE. Was it brought out in the case that this man had already established a TV station in three other places before, and then sold out?

Mr. WALKER. Mr. Chairman, we not only brought that out, but brought out another point, that he has been in absolute violation of the Commission's rules three times, was subpenaed to Washington——

Senator PASTORE. I am not interested in that. I am interested in the point that the man has already applied three other places—got a license, sold it out; went to a new place, got another one, then did it again; and then came to your place and did it again.

Mr. WALKER. Yes, sir; and did not report his transfer of control in three cases, too, and the Commission was aware of that.

Senator PASTORE. The Commission was aware of that?

Mr. WALKER. They certainly were aware of that.

Senator PASTORE. I think we should bring this to the attention of the FCC and get something in the record explaining it.

Mr. WALKER. I would like to go on—I would like to read 2 pages, if I may.

Senator PASTORE. All right, go ahead.

Mr. WALKER. This gets into another overall question, aside from this, beginning at the bottom of page 13.

In its decision, the Commission pointed out that On the Air owns or is affiliated with three radio stations. Certainly the fact has no bearing on any question of monopoly, since the East St. Louis station and the affiliated Terre Haute station are local 250-watt stations whose existing areas are separated many miles from the listening area of

WGFB. Herein the policy is unsupportable. It overlooks the fact that television is a development and a refinement of the broadcast industry, and not a brandnew field.

As Chairman Walker pointed out, television in a measure supplants the radio interest in the broadcast field. WGBF has been on the air since 1923, 2 years after KDKA, the first station in the country. On the Air has owned and operated it for 27 years and has a record of excellent service. To deny it the right to expand and grow with the industry is unfair and is economically disastrous.

Because of the growth of TV, radio is a declining industry. From 1946 through 1954, net earnings before taxes for the whole radio industry declined steadily from $76.5 million to $41.8 million. During the same period, the number of stations increased from 1,025 to 2,598, so that the average earnings per station declined from $74,634 to $16,089, or a decline of 78.5 percent.

Attached hereto, and designated as "schedule F," appendix, page 14, is a table showing this decline in radio earnings, and the attendant rise in television earnings. In the same period, On the Air's Evansville income from AM and FM declined from $98,224 to a loss of $20,012. The 4 AM and 2 FM radio stations in Evansville declined from earnings of $142,700 in 1951 to a loss of $82,900 in 1954. These figures are set out in a table attached hereto and designated "schedule G," appendix, page 5. All of these figures are figures filed with or published by the FCC.

I mentioned earlier the possibility that the diversification policy might be based on a share-the-wealth idea. The figures I have given should quickly dispel the possibility that a radio-station owner has any wealth to share. To illustrate even more graphically the situation with our 3 affiliated stations, there is attached hereto and designated as "schedule H," appendix, page 16, a table showing comparative earnings for the first 2 months of 1956 and the same period in 1953. Our companies are faced with continuing losses which can be only slightly mitigated by decreasing the services offered. Whether this will prevent eventual failure only time will tell. The problem is not ours alone. According to the 1954 figures, 30 percent of the stations which had been operating prior to World War II were operating at a loss. There is no free enterprise in an industry which is subject to the control of the FCC.

The policies which have contributed to this critical situation should be reviewed from a realistic standpoint. The broadcast industry should not be led to the brink of ruin by some ivory-towered economists who say, as the Commissioners do, that they are not concerned with the economics of their licensees.

We have felt that we must have television to exist. We are faced with the choice of appealing the Commission's decision with a resultant expenditure of additional large amounts of time and money——

Senator Pastore. You are not actually saying that the Commission ought to grant you a TV license only because you are losing money running a radio station?

Mr. Walker. No.

Senator Pastore. You don't mean that; do you?

Mr. Walker. No, but I will say that Commissioner Walker, in his testimony before the House committee, said that very thing, that it was unfair to deny a radio station a license to operate because TV supplants in a large measure the radio interest in the broadcast field.

Senator PASTORE. I don't think they ought to hold it against you, that is the thing that I resent in the matter you have brought up. I don't think the fact that you owned a radio facility should have been held against you. That is the point I make. That is a horse of a different color. I go along with that thinking and that logic.

I don't think that a man who—I don't know whether it is true, now, and I hope the record will show that very clearly—but if what you say is true, that a man has become, so to speak, and I use the word in the broad sense, a professional applicant for TV stations which are granted and then sold, I suppose there—when you do sell it—it is capital gains you pay; and I tell you very frankly a fellow like that, within a few years, could write a book on how to become a millionaire.

Mr. WALKER. That is true.

Senator PASTORE. If he can get away with that—if what you say is true—I think that this committee is entitled to an explanation from the Federal Communications Commission; but I don't go along with the idea that just because a man who is operating a radio station goes in and shows he has been losing money that that, itself, ought to entitle him to be preferred over some qualified group.

Mr. WALKER. We didn't attempt to show that to the Commission at all. That has never been brought up. My point in bringing this up is to show the radio industry is a sick industry, and the policies of the Commission are largely responsible for it having become sick.

In 1946, there were 1,025 stations. In 1954, there were over two and a half times that many, so that beside the incoming of television there has been a tremendous increase in the number of radio stations. But a radio station cannot increase its power, or put up a higher tower, or do what a business under free enterprise can do.

Senator PASTORE. That probably should be given consideration, that that is part of the evidence before the Commission. However, I don't presume to try to decide their cases for them, and I don't think any Member of the Congress does. I think they should give weight to all the factors that go to promote the public interest, and a license should be granted in the public interest, and I will repeat again what I said before, that the matter that you have raised is one of very serious import and implication, and I think we ought to have an answer before we criticize any further.

Thank you very much, sir.

Are there any further witnesses before us this afternoon for or against?

Mr. WALKER. Mr. Chairman, may I make one point? I am sorry to be so persistent.

Senator PASTORE. Yes.

Mr. WALKER. Channel 7 was allocated to Evansville. The Commission is now advising that channel 7 will be deintermixed, or taken out of Evansville.

Long after the applicants for channel 7 started in hearing, channel 9 was allocated to Hatfield, Ind. 18 miles from Evansville, and the present proposal of the Commission is to leave channel 9 18 miles from Evansville—which will dominate Evansville with a VHF station—and remove channel 7.

Now, that isn't our case, because at the present time we are the unsuccessful applicant; but if they put a UHF channel in in place of channel 7, it will leave Evansville dominated by a VHF channel owned by out-of-State owners—operated by out-of-State owners—and that is something I think that should be given some consideration.

Senator PASTORE. You have raised that point in your statement, and that is the reason I suggest it ought to be answered before we go further.

Mr. WALKER. Thank you for your courtesy, sir.

Mr. COX. Will you let the record show that the statements of Mr. Gimbel and Mr. Walker will be published in the report of the hearings in connection with the testimony of the other witnesses regarding allocations matters?

Senator PASTORE. Very well. We are recessed, subject to call.

(Whereupon, at 3:40 p. m., the committee adjourned, to be reconvened subject to call.)

(Pursuant to the wishes of Senator Pastore, a copy of Mr. Walker's statement was sent to the Federal Communications Commission for its comments. Since the Commission had not yet ruled on a pending petition for reconsideration, the committee's letter was withheld pending final decision. However, Warren E. Baker, general counsel of the Commission, wrote to the chairman of the committee on June 8, 1956, with respect to this case.

(After the Commission's final decision in the case, Senator Magnuson again wrote to Chairman McConnaughey with respect to this matter. On July 17, 1956, the members of the Commission again appeared before the committee and at that time testified briefly with respect to Mr. Walker's testimony. (See p. 966 below.) At that time Mr. Baker's letter of June 8, 1956, was inserted in the record.

(Thereafter the committee received a letter dated August 30, 1956, from Chairman McConnaughey with reference to this case. This letter is printed at p. 971 below.)

TELEVISION INQUIRY

TUESDAY, JULY 17, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., Senator George A. Smathers, presiding.

Present: Senators Smathers, Pastore, Purtel, and Wofford.

Also present: Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel.

Senator SMATHERS. Gentlemen, if the meeting will come to order, I might say I am pinch-hitting temporarily for Senator Pastore, who is having to attend a meeting of the Post Office and Civil Service Committee, but who shortly will be here. By way of introduction, I will read this prepared statement.

We are now nearing the conclusion of our television inquiry, for this session of Congress. We are glad to have the members of the Federal Communications Commission, who were our first witnesses, back with us again to again consider some of these problems in the light of what has happened since they last appeared. Before hearing them, however, we have a number of items to be inserted in the record. These are:

First, a letter from Congressman Donald W. Nicholson requesting that the listing of his name with those of other members of the Massachusetts delegation in connection with telegram published at page 52 in the first volume of our hearings be disregarded.

Second, an exchange of correspondence between Senator Magnuson and the Firestone Tire & Rubber Co., which will be published in connection with the testimony of Wilbur M. Havens. (See volume on Network Practices.)

Third, an exchange of correspondence between Senator Magnuson and the Federal Trade Commission as to whether the latter has authority to encourage the manufacture and sale of all-channel sets through labeling requirements or otherwise.

Fourth, a letter from Leonard H. Marks, who appeared before the committee on June 11, 1956, correcting one phase of his testimony. This will be printed in connection with his testimony. (See p. 912.)

Fifth, a letter from the Federal Communications Commission regarding the status of channel 21 in Louisville, Ky., pursuant to an inquiry directed by Senator Pastore as a result of the testimony of Sarkes Tarzian. (This is printed in connection with the latter's testimony in the volume on Network Practices.)

Six, 3 letters from Dr. Frank Stanton: (*a*) One dated June 14, 1956, regarding certain of his testimony touching on clearance for national spot film programs as reported by the Television Bureau of Advertising; (*b*) one dated June 27, 1956, regarding certain of his testimony on affiliation coverage in the Fresno-Bakersfield area; (*c*) one dated June 22, 1956, commenting on six bills relating to political time, pursuant to the request of Senator Magnuson. (These are printed in the volume on Network Practices.)

Seven, a statement on network practices by Paul R. Bartlett of KFRE-TV. This will be printed in connection with the testimony of other CBS affiliates on June 18, 1956. (See volume on Network Practices.)

Eight, statements or letters on network practices submitted by nine affiliates of NBC, which will be printed in connection with the testimony of other NBC affiliates on June 20, 1956. (See volume on Network Practices.) The nine are: Robert B. Ferguson, WTRF-TV, Wheeling, W. Va.; Les Biederman, WPBN-TV, Traverse City, Mich.; Walter J. Damm, WTMJ-TV, Milwaukee, Wis.; Harold P. See, KRON-TV, San Francisco, Calif.; Douglas L. Manship, WBRZ-TV, Baton Rouge, La.; David M. Baltimore, WBRE-TV, Wilkes-Barre, Pa.; Nathan Lord, WAVE, Inc., Louisville, Ky.; Ralph J. McElroy, KWWL-TV, Waterloo, Iowa; and Harold C. Stuart, KVOO-TV, Tulsa, Okla.

(The documents referred to except for those shown to be printed elsewhere, are as follows:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., June 26, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: It is my understanding that my name is listed with other Members of the House of Representatives from Massachusetts on page 52 of the testimony before your committee on the television inquiry.

I would appreciate it if you would disregard my name on this petition.

With kindest regards, I am,

Sincerely,

DONALD W. NICHOLSON.

JUNE 1, 1956.

Hon. JOHN W. GWYNNE,
Chairman, Federal Trade Commission,
Washington, D. C.

DEAR MR. GWYNNE: As you know, the Senate Interstate and Foreign Commerce Committee has been conducting an inquiry in regard to television allocations. From the testimony heard it is clear that one of the major obstacles to the development of UHF broadcasting has been the fact that the manufacturers of television receiving sets find it in their own interest to manufacture sets capable of receiving only the 12 VHF channels. As a result, some 85 percent of the sets now being manufactured are thus incapable of receiving 72 UHF channels, so that a UHF broadcaster must persuade the public in his area to make an additional expenditure to convert his set to receive the UHF signal. A somewhat similar problem may have arisen, it would appear to me, when the AM radio band was expanded to 1600 kilocycles. I would be interested in knowing what, if any, steps the Federal Trade Commission may have taken at that time to insure that no sets were offered to the public which were not capable of receiving all broadcast radio signals.

In particular, I would like to know whether the Commission either required full reception through some sort of labeling requirement or whether it proceeded against manufacturers for an unfair trade practice or for false and fraudulent advertising if they attempted to sell sets which could not receive the full range of radio signals. The reason for my inquiry, of course, is that it has occurred to me that you might possibly be able to assist us in promoting the manufacture of all-channel television sets exclusively. The difference in cost to the manufacturer between a VHF-only and an all-channel set can be as low as $10. However, this means a difference in retail price of $25 or $35 so that as long as VHF-only sets are available a certain percentage of the public will buy them, particularly where no UHF service is yet available. Then when a UHF station later goes on the air it is faced with the fact that its VHF competition has 100 percent circulation, while the new station starts off with a circulation of anywhere from zero to 15 percent.

I am wondering whether the Federal Trade Commission would have the power to require either that all sets offered to the public be capable of receiving all of the channels now allocated to the television service by the Federal Communications Commission, or alternatively, whether you would have the power to require a VHF-only set to be clearly labeled to indicate to the public that this particular receiver is incapable of receiving 75 percent of the channels on which television broadcasts may be received.

Such a label should spell out in some detail the fact that if the owner of the set moved to another area he might find that only UHF signals are available, and the fact that additional service in his community can be made available only on UHF channels. It seems to me that this might reduce the percentage of VHF sets now being purchased. Apparently one problem in this connection is that the average television receiver salesman has no real understanding of the UHF problem and is so anxious to make a sale that he is quite willing to push the VHF-only receiver if it appears that the purchaser is reluctant to pay the somewhat higher price of an all-channel set.

It is perfectly clear from the testimony which has been heard by our committee that the UHF frequencies must be preserved and promoted if this country is ever going to have the kind of nationwide competitive television it needs. Anything which the Federal Trade Commission could do to promote the sale of all-channel television receivers would be a real contribution toward the solution of this very difficult problem.

May I please have your comment on these matters at your earliest convenience? Thank you for your cooperation.

Sincerely yours,

WARREN G. MAGNUSON.

FEDERAL TRADE COMMISSION,
Washington, D. C., July 6, 1956.

Hon. WARREN G. MAGNUSON,
United States Senate,
Washington, D. C.

DEAR SENATOR MAGNUSON: This is in further reference to your letter of June 1, 1956, relating to the competitive handicaps being encountered by UHF television broadcasting, as revealed in the investigation now being conducted by the Committee on Interstate and Foreign Commerce. You inquire in those connections as to any legal machinery available under statutes administered by the Commission for promoting sales of all-channel television sets as a means of minimizing those obstacles to the growth of UHF broadcasting and furthering the development of nationwide competitive television.

It thus appears that manufacturers of television receivers find it to their interest to emphasize the production of sets capable of receiving the 12 VHF channels rather than all-channel sets; that approximately 85 percent of the receivers now being manufactured are incapable of receiving the 72 UHF channels; and that a new UHF station, when it begins operation in an area already served by a VHF station, has the competitive handicap of a circulation of anywhere from zero to 15 percent and the burden of persuading the public to incur expense in converting their sets to receive the UHF signal. You also call attention to another relevant factor, namely, the general lack of understanding of the UHF problem existing among retail salesmen and their consequent willingness to push sales of VHF receivers when the purchaser evidences reluctance to pay the price of an all-channel set which ranges $25 to $35 above the other type.

The AM radio band was expanded from 1,500 kilocycles to 1,600 kilocycles prior to the war and you inquire as to any Commission proceedings instituted in that era which challenged the promotional practices for radio sets incapable of receiving the full range of signals afforded by that expansion of the bank. My inquiry into the matter does not indicate that the Commission was the receipient of any complaints, from consumers or the trade, relating to the marketing of sets which were so deficient. Our records disclose no action or proceeding in that regard.

Your letter also inquires if the Commission has the power to require that all sets offered to the public be capable of receiving all channels now allocated to television service. Under the Federal Trade Commission Act, the Commission's mandate is to prevent the use in commerce of unfair methods of competition and unfair and deceptive acts and practices. Hence, the Commission's jurisdiction ordinarily does not extend to forbidding introduction into or the sale in commerce of an article of merchandise. Its corrective action instead is directed against further use of the unlawful acts or methods under which distribution of the merchandise was promoted in the first instance.

This holds true save in exceptional cases where the questioned practices appear violative of some statutory expression of national policy additional to that contained in the Federal Trade Commission Act. An example of a proceeding in this categry is one directed against violations of the Flammable Fabrics Act, the statute which protects the public from dangers resulting from the marketing and use of highly flammable wearing apparel produced for shipment in commerce. However, the principle controlling in those types of cases is absent in the situation to which your letter relates. Even assuming that the merchandising of VHF receivers has been characterized by practices violative of the Federal Trade Commission Act, it is believed nonetheless that the Commission would lack the power to require that the shipment and sale in commerce of television sets be limited to the all-channel category of receivers.

Your letter also inquires as to the Commission's basic authority to require that a set limited only to VHF reception be clearly labeled to indicate that the receiver is incapable of receiving 75 percent of the channels on which television broadcasts may be received; and it requests similar comment by me on requirements for further disclosures by television manufacturers to the effect that the purchaser might find only UHF signals available should he move to another area and that expanded service in his community may be made available only on UHF channels. The Commission has the power to require inclusion of an appropriate statement on the label of an article being offered for sale in commerce concerning its limitations under normal conditions of use when the circumstances are such that the failure to disclose material facts in respect thereto results in deception to the consuming public. Thus, if evidence were available which supported informed determinations that sets limited to reception of VHF signals were being passed off as all-channel receivers, without any affirmative misrepresentations being resorted to for effecting that result, the failure by the seller to reveal the material facts as to his sets' limitations in that respect clearly might be actionable under the Federal Trade Commission Act.

This legal principle underlies rule 2 (d) of the Trade Practice Rules for the Radio and Television Industry as promulgated by the Commission on June 28, 1955. Copies of the rules are enclosed. Under that rule, the term "television receiver," as descriptive of a set, "shall not be used in such manner as to lead the public to believe that such set is constructed for, and capable of receiving with reasonable or adequate consistency, a greater number of * * * television frequency signals or channels than is in fact true of such set."

The revealing statements noted in your letter look to explaining certain potential consequences which may result from purchase of sets which do not afford UHF reception. The Commission has not received any complaints indicating that purchasers living in areas which already have UHF stations are buying VHF receivers under the impression that their sets will receive, without modification or adaptation, all television signals currently broadcast in their areas. Furthermore, the information secured at the time when the aforementioned trade practice conference was being conducted did not afford adequate support for conclusions that the term "television receiver" has been understood by the public to connote sets thus capable of receiving all channels allocated by the Federal Communications Commission to broadcasting purposes.

Nor is the Commission in receipt of information indicating that, in addition to his obvious desire to view current local programing, the purchaser likewise buys his television receiver under an impression or belief that he will be enabled to receive all programs afforded as a result of television's expansion in his community and those to be presented wherever he subsequently may take up residence. In the absence of evidence supporting informed determinations that a substantial segment of the public is in one or both respects so motivated in its

purchases, there would be no valid legal basis for requiring a disclosure in advertising or labeling of the matters noted in your letter in reference to potential limitations attending use of sets which are not all-channel receivers.

Please be assured of the Commission's desire to cooperate with the committee. The committee's published report on the hearings will be noted with great interest.

Very sincerely yours,

JOHN W. GWYNNE, *Chairman.*

Senator SMATHERS. I might say that the record will be kept open, after the conclusion of these hearings, until September 15, so that if anyone wishes to file a statement he can do so up to that time.

Our first witness this morning, and we are very happy to have him over here again, is the Chairman of the Federal Communications Commission, Chairman McConnaughey.

Mr. Chairman, when you are ready.

Mr. MCCONNAUGHEY. I am ready.

Senator SMATHERS. Do you have a prepared statement?

Mr. MCCONNAUGHEY. No.

STATEMENT OF GEORGE C. McCONNAUGHEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, ACCOMPANIED BY COMMISSIONERS ROSEL HYDE, ROBERT BARTLEY, ROBERT E. LEE, RICHARD MACK, T. A. M. CRAVENS, AND WARREN BAKER, GENERAL COUNSEL, MR. LOUIS STEPHENS, AND MR. HART S. COWPERTHWAIT

Mr. COX. Mr. McConnaughey, I would like to ask a number of questions initially in the light of your action on June 25, in your allocations proceeding.

Would it be fair to say that, as a result of considering all of the proposals that were made to the Commission in your allocations proceeding, the Commission has either reached or has reaffirmed these conclusions: First, that 12 VHF channels are not adequate to provide a nationwide competitive system?

Mr. MCCONNAUGHEY. That is correct.

Mr. COX. Second, that no additional VHF channels can be obtained from other services, at least in sufficient quantities to provide such a service?

Mr. MCCONNAUGHEY. None that we know of today.

Mr. COX. Third, that it is not possible, without serious degradation of service, to squeeze in enough VHF channels through reduction of separations or otherwise to provide a desirable service?

Mr. MCCONNAUGHEY. To provide what?

Mr. COX. A desirable service.

Mr. MCCONNAUGHEY. Well, I think that is true; yes.

Mr. COX. So that taking these three together, it is implicit in the Commission's conclusions that there does not seem to be a possibility of an all-VHF service of the magnitude that the country requires?

Mr. MCCONNAUGHEY. That is correct.

Mr. COX. Now going on from that, the Commission concluded, did it not, that as a consequence it is imperative that we make full use of the UHF portion of the television band in order to develop such a service?

Mr. MCCONNAUGHEY. That is correct.

Mr. Cox. You concluded, as I understand it, that it did not appear that this could be accomplished through deintermixture alone, without serious and abrupt disruption of existing service?

Mr. McConnaughey. That is correct.

Mr. Cox. So it seemed to you that the only real long-range alternative which was left was to try for an all-UHF service—in the whole country or in a major portion of the country—with interim deintermixture on a selective basis to maintain UHF in the meanwhile?

Mr. McConnaughey. I think that should be the ultimate objective; yes, sir.

Mr. Cox. And in that connection, you called for an increased, a stepped-up program of research and development in order to promote the most rapid possible development of UHF to a condition of equality, or near equality, with VHF?

Mr. McConnaughey. That is correct.

Mr. Cox. Is it fair to say that your conclusion was reinforced, in this connection, by the growing demands of other services which might possibly, if you effect this shift to all UHF, be accommodated in some of the present VHF?

Mr. McConnaughey. That was certainly in our thinking.

Mr. Cox. And in addition was this conclusion reinforced by the fact that there would seem to be certain inherent advantages in an all-UHF service in the nature of the service—the all-band service—in having a completely contiguous service with a minimum variation in frequencies, and things of that kind?

Mr. McConnaughey. That is correct, if the developments can come along.

Mr. Cox. Now, as I understand it, the Commission has not, however, presently decided to transfer all television to UHF?

Mr. McConnaughey. Oh, no.

Mr. Cox. It has decided, however, has it, to do this at the earliest possible future date, if its expectations as to the possibility of improving UHF technically turn out well?

Mr. McConnaughey. I think that the order indicates that the Commission—the majority of the Commission—if the developments occur with reference to UHF developments, that they would look toward moving a portion of the country, or all of the country, to UHF in the final analysis. I think that is inherent in the order itself.

Mr. Cox. Would you say that the only——

Mr. McConnaughey. Providing there would be a transition period there for amortization and a period of time where the public would not be disrupted to an inordinate extent.

Mr. Cox. Yes, indeed.

Well, then, is it accurate to say that the only condition remaining to be satisfied before such a shift, either on a nationwide basis or on a regional basis, is the technical development of UHF to a point where it seems clear to the Commission that it can provide an adequate television service alone?

Mr. McConnaughey. I think fundamentally that is true, that we must await the developments to see what can be done toward moving toward UHF.

Mr. Cox. Now, is it the feeling of the Commission—based on the progress that has been made in UHF technology in the last 4 years—that the chances are good that this can be done, and that therefore in the foreseeable future the Commission would expect actually to effectuate this program?

Mr. McCONNAUGHEY. Mr. Cox, I do not know whether there have been sufficient developments to make that appear possible very—I mean real soon. I do think that there have been developments made that are very encouraging from the standpoint of the UHF transmitters and receivers.

Mr. Cox. That is, the Commission knows of no fundamental characteristics of UHF which makes it impossible to develop it—through improved transmitters, receivers, tubes, antenna, and so forth—to develop an all-UHF service which would provide either the same, or very nearly the same, service now being provided by VHF?

Mr. McCONNAUGHEY. I am not, as you know, Mr. Cox, a technician, but I do understand that the UHF so far will not give the distance signal as clear, there are shadow areas, there are interruptions from trees and leaves, and in certain mountainous countries—mountainous parts of our country—there are a great many difficulties to be encountered.

Those are technical things which I just cannot answer. I know there are a lot of those things that UHF is going to have to overcome. It is not, as of today, a service comparable to the VHF.

Mr. Cox. Do your engineers advise you, though, that it has the potentiality to become such within the foreseeable future?

Mr. McCONNAUGHEY. I don't think Mr. Allen is here—he is the chief engineer. I don't know as he would go that far, because the developments in the shadow areas and the propagation characteristics have not, as I understand it, been yet developed to where it is a service that can begin to do the same job as the VHF service. It does a good job for short distances, I think, if we had the receivers properly developed and the antennas.

Mr. Cox. In that connection, you suggested, did you not, that attention be given to further development of satellites for use in trying to fill in shadow areas and things of that sort?

Mr. McCONNAUGHEY. That is right; that is right.

Mr. Cox. Now, I take it that this was the reason for calling for this program of expedited research and development?

Mr. McCONNAUGHEY. Yes, sir.

Mr. Cox. To try to bring UHF along to the point where, it is hoped by the Commission, it could provide a service—an all-UHF service—at least in the more densely populated parts of the country?

Mr. McCONNAUGHEY. To where it would be a satisfactory service to the public.

Senator SMATHERS. Counsel, let me ask a question there. I am somewhat uninformed on this particular problem. But following the lines of thinking of Mr. Cox there, if you are able to make the UHF competitive then what would be the necessity of making everything all-UHF? Why, then, would you not be able to permit UHF and VHF to operate, you might say, contemporaneously if they are competitive, one with the other?

Mr. McCONNAUGHEY. So far, Senator Smathers, the UHF has not developed to the place where they are able to compete with the VHF.

Senator SMATHERS. But if, as Mr. Cox' questions suggest, it is possible, through research and improved technical media, to make UHF competitive by improving, as you say, the further range of it and the delivery of it over the airways, and so on—if that is possible, is that not, itself, a sufficient answer, or somewhat of an answer alone? Or is that not an answer? That is what I am trying to get at.

Mr. McCONNAUGHEY. If it could be made comparable, so it could be equally competitive, there would be no good reason for not utilizing both the V and the U. So far, that has not developed.

Mr. COX. Except, of course, for the possibility that you may find a need for the VHF channels for other services?

Mr. McCONNAUGHEY. That is right.

Mr. COX. Now, as I recall the terminology in your report, you indicated that——

Mr. McCONNAUGHEY. Let me complete my answer to Senator Smathers.

Mr. COX. Certainly, sir.

Mr. McCONNAUGHEY. There is one thing that is known, Senator Smathers, with reference to the V and the U, which so far as I know—and again I must say I am not a technician—so far as I know there is nothing to indicate that the UHF can get the same range as a VHF. I know of nothing in the offing to indicate that.

That means merely this: That difficulty is encountered—from what we know today, from what is in the foreseeable future—with reference to the U obtaining the same range as the V. Therefore, I am the Coca-Cola Co., and I won't buy the U because I can get a V which will give me the coverage of a lot more people. And that is something that exists today in a very substantial way, and is something that I do not know whether that, in itself, can ever be overcome.

Senator SMATHERS. So, then, your conclusion, as I gather—the Commission's general conclusion—is that, presuming that inequality can never be made up as between UHF and VHF, then your general suggestion was that there may be a possibility of doing away, as far as the public is concerned, with the VHF's and making everything UHF?

Mr. McCONAUGHEY. That is correct, sir.

Senator SMATHERS. In that connection, what would happen to all the folks who bought VHF sets and things of that nature?

Mr. McCONNAUGHEY. As indicated in our order of June 25, that would be taken care of by an amortization period of 5 to 7 years, we will say, for example, whereby the stations could operate on both the V and the U for a period of time to give the receivers—the people who own the receivers—time to amortize their investment.

Senator SMATHERS. How would you recompense the owners of the VHF stations; what sort of arrangement would be made with them?

Mr. McCONNAUGHEY. We would not recompense them. They would also have a period of time to amortize—which they are already doing. They naturally depreciate their equipment, and they would have a period of time to amortize that in order that——

Senator SMATHERS. Do you think you might run into a constitutional question of depriving people of property without due process of law?

Mr. McCONNAUGHEY. No, I don't think so. Do you want to answer that, General Counsel?

Mr. BAKER. The statute, itself, gives them no right to the frequency after the 3-year period, so obviously they have no constitutional right to a renewal beyond that period on the same frequency. I think the

Commission's contemplation would be longer than what the law, itself, would necessarily require.

Mr. Cox. Through a stepped-up depreciation they would be permitted to recapture the entire cost of their equipment out of income during that period?

Mr. McConnaughey. That is correct, Mr. Cox.

Senator Purtell. May I pursue that question a little further? When you spoke of range, you were not speaking only in the sense of range in the mileage covered, but also the manner in which it is covered? For instance, the terrain of the area covered would have a great deal to do with your so-called range?

Mr. McConnaughey. Yes. Before you came in, Senator Purtell, I mentioned that in some areas of the country UHF, so far, has had a very difficult time in obtaining any substantial proper reception.

Senator Purtell. Because of the terrain?

Mr. McConnaughey. Yes; in certain mountainous sections of the United States.

Mr. Cox. There are successful operations of UHF, however, in fairly rugged terrain—Scranton, Wilkes-Barre, places like that?

Mr. McConnaughey. That is correct, and there we get into a highly technical discussion, that I have talked to our chief engineer about, and we all have. Peculiar things happen, such as in the Wilkes-Barre situation where that is rugged country, and they seem to get pretty good reception. You can take in other sections where it is rugged, and they have encountered very serious difficulties.

Mr. Cox. Am I correct in my understanding, as you indicate, that there probably will be, for all time, a difference in the range to which these signals can reach out?

Mr. McConnaughey. I shouldn't make that statement, but that is my understanding from the engineers.

Mr. Cox. But even contemplating that, it is the position of the Commission that at least in the more densely populated areas—with foreseeable technical improvements—UHF could be brought to the point where, if it was not forced to compete with the greater range V stations, it could provide an adequate service by itself?

Mr. McConnaughey. That certainly is our hope and expectation.

Senator Purtell. May I ask what do you mean by "foreseeable"? Have we any reason to believe that this crash program, this contemplated development, will in fact be realized?

Mr. McConnaughey. Senator Purtell, I have not seen the demonstration, but I understand the General Electric Co. has developed a tube which will be on the market before long which is going to be a very substantial assistance. I also note that, in the statements they made in answer to our rulemaking—they are not manufacturers. Well, yes, they are manufacturers, such as RCA, and people of that kind. They all say that the U must be utilized. And I believe that the ingenuity of the American inventive genius, I call it—I have enough confidence in it to believe that they can and will make developments so there can be a proper coverage and proper utilization of UHF.

Senator Purtell. My reason for asking about "foreseeable"—actually we are hopeful that it can be done, but we cannot foresee it being done as yet, can we?

Mr. McConnaughey. I think that is a very fair statement. We can't foresee it; we can't sit here and foresee it today. But I certainly hope, and I believe that the Commission is going to use every effort that it possibly can to try to foster and promulgate the development with the manufacturers, coordinating with them in the development of the UHF antennas, transmitters, and receivers. And I made the statement on several occasions that I think we are going to have to ask the help of Congress. I can't sit here today and tell you exactly in what sphere, but I think it is serious enough with only 12 channels being utilized—you cannot get a nationwide television system. You have got to start on that premise. That being the case, you have to, in order to get a nationwide television system, in order to get rid of all this cry of monopoly, and all that sort of thing—and it is dangerous, I will admit, because you are dealing with something that is extremely sensitive and important when you are dealing with mass communications by voice and by picture—I believe that we may have to ask Congress to face up to it, and it is not going to be easy. It is going to take a lot of fortitude. I can't point my finger at the way. I don't know whether it is going to have to be that no receivers can be sent in interstate commerce unless they are all-channel receivers. I don't know whether that is constitutional, or whether it isn't.

The tax situation is something else. But I think along the line, when we get the comments of this rulemaking proceeding of June 27, we are going to have to come to you folks and ask your help.

Senator PURTELL. I want to say this, Mr. Chairman, that I have a great sympathy with, and a great respect for, this Commission. I know of no Commission faced with so many perplexing problems as this Commission is. And I am delighted to know, and hopeful with you, that this crash program will bring the results. I can think of nothing, in my opinion, that would probably help more to solve the problem, if it is successful. But there is an awfully big "if" there. What bothers me is what will happen in the meantime.

But I do think that your crash program is an excellent idea, and I hope that it is realized. But I think—my own thinking, sir, is that it is going to be quite a while before it is realized. In the meantime, I am very much concerned with what will happen.

Senator SMATHERS. May I ask a question right along that line: What is the Commission actually doing, specifically, with respect to helping bring about these improvements in UHF? What is it that you can do, what is it that Congress can do? What specifically can be done?

Mr. McCONNAUGHEY. I think I made the statement that the Commission, what it can do will have to depend upon the comments that it gets from this rulemaking proceeding. Then I think we can figure what we can do, and we can come to you folks and tell you what we think should be done in order to assist.

Senator SMATHERS. In other words, it looks like we appropriate considerable money for research and development in all kinds of fields, munitions fields, things of that nature.

Mr. McCONNAUGHEY. Yes.

Senator SMATHERS. It might be that you people would ask us for some assistance for these various companies that might enter into research in this particular field of improving UHF?

Mr. McCONNAUGHEY. Absolutely.

Senator SMATHERS. Something of that nature?

Mr. McCONNAUGHEY. Absolutely.

Senator SMATHERS. Up to this point you have not decided specically what recommendation you are going to make?

Mr. MCCONNAUGHEY. No, sir. We are going to have to wait to get our comments from this rulemaking proceeding.

Senator SMATHERS. Have you gone far enough in your thinking to determine whether or not, if you decided that you were going to adopt this program of an all-UHF service all over the country, would you give any extra consideration to those operators of VHF stations who might be making applications for UHF stations, or things of that nature? Have you gone that far in your thinking yet? Probably you haven't; I just wondered.

Mr. MCCONNAUGHEY. No.

Senator SMATHERS. All right, Senator, do you want to ask a question?

Senator WOFFORD. Yes; I would like to ask a question. Mr. McConnaughey—I believe that is correct, isn't it?

Mr. MCCONNAUGHEY. Yes, sir.

Senator WOFFORD. You used the words "expect in the foreseeable future." Can you give us any more definite idea than just the general phrase "foreseeable future" as to this possible development?

Mr. MCCONNAUGHEY. No, I don't believe so, sir.

Senator WOFFORD. In other words, you have no idea how many years that you can anticipate it would take for the scientific development to make UHF truly equal to VHF, do you?

Mr. MCCONNAUGHEY. I certainly do not, no, sir. That depends upon the developments, Senator.

Senator WOFFORD. Certainly at the present time to do it all at once certainly would not give the coverage that you presently have, would it?

Mr. MCCONNAUGHEY. Oh, no.

Senator WOFFORD. That is not your contemplation, is it?

Mr. MCCONNAUGHEY. No; heavens no. There is one thing I want to make very clear. This Commission, in my opinion—I am speaking for myself and I am quite sure I am speaking for the whole Commission—are not going to do anything, Senator, that is going to take away service from the people in this country. The only thing we are interested in is the public. We are not interested in this station owner or that station owner, or this individual or that individual; we are only interested in the public. That is what we are charged with, that responsibility, and we are not going to take away service from the public.

Senator WOFFORD. In that connection may I ask you: Even at the present time, with the developments we now have in UHF, at best you have at the present time a spotty coverage—even, in some cities, on different sides of the streets you can get a signal plain and on the other side you can't; isn't that true?

Mr. MCCONNAUGHEY. That is true in some places. However, take in the Fort Wayne, Ind., area, where it is all-UHF—and very fine coverage and no complaints and very fine picture—and they are doing an excellent job; Youngstown, Ohio, my state, which is all-UHF, they are doing an excellent job.

Senator WOFFORD. Wouldn't you have the same situation where you had only VHF, and you are getting fine coverage?

Mr. McCONNAUGHEY. Same situation where? Oh, yes, and you get better coverage with the V.

Senator WOFFORD. There is no question about that.

Mr. McCONNAUGHEY. There isn't any question about that.

Senator WOFFORD. You want to change it to make it all, eventually, UHF—that is what the intention of the Commission is at the present time?

Mr. McCONNAUGHEY. If the developments come.

Senator WOFFORD. Yes.

Mr. McCONNAUGHEY. If the receivers are developed, the antennas and the transmitters—if they develop them sufficiently so you and I, as people sitting in our living room, can get an adequate picture.

Senator WOFFORD. Yes. Now, certainly during the period of time when you would change over you would not deprive any present listeners—viewers, rather—and listeners of the TV programs that they are getting?

Mr. McCONNAUGHEY. No, sir; no, sir.

Senator WOFFORD. Now let me ask you just one further question, sir: Has the Commission taken into consideration fully the interests of the public in this matter?

Mr. McCONNAUGHEY. I think that has been the principal thing that the Commission has done, is to take into consideration the interest of the public. That has been the primary thing they have done.

Senator WOFFORD. Have you made any survey, or has any survey been attempted, to determine the public's view? You see, after all, they have a terrific investment in these television sets.

Mr. McCONNAUGHEY. You mean the public's view. What do you mean?

Senator WOFFORD. With reference to the public's ideas and views on the changes that you all contemplate—you realize that they have a terrific investment in television sets?

Mr. McCONNAUGHEY. Yes; I see what you are talking about.

Senator WOFFORD. That would be worn out by the time you get through. But some people have to use kind of wornout television sets. Or else they would have to convert; wouldn't they?

Mr. McCONNAUGHEY. As I said before you came in, sir, what is contemplated would be an ample period of time for an amortization period to exist, where they would operate on both V and U, and an ample period of time would be given for the receiver sets to be amortized completely.

Senator WOFFORD. Yes. The receiver sets.

Mr. McCONNAUGHEY. Yes.

Senator WOFFORD. To be amortized in the home.

Mr. McCONNAUGHEY. You understand what I mean, that they do replace them.

Senator WOFFORD. Oh, yes——

Mr. McCONNAUGHEY. They do replace them after a period of 4 or 5 years.

Senator WOFFORD. Mostly on credit——

Mr. McCONNAUGHEY. I don't know about that. I expect so, maybe.

Senator WOFFORD. So that the point I am getting at is that the man who has the television set now, that can only receive VHF, if you put a UHF in over that, he has got to either convert or buy a new television set; hasn't he?

Mr. McCONNAUGHEY. That is right.

Senator WOFFORD. That is of a great deal of interest to the public generally; isn't it? Have you ever taken that into consideration?

Mr. McCONNAUGHEY. Oh, yes. Yes, sir; that is the reason we are going to allow for this amortization period.

Senator WOFFORD. That is with reference to the television stations themselves. I am talking about the man who owns the set.

Mr. McCONNAUGHEY. I am talking about the receivers, too. I mean not amortization from the standpoint—well, useful life is a better word.

Senator WOFFORD. Useful life.

Mr. McCONNAUGHEY. Yes; that is a better word.

Mr. COX. Your understanding is that during this transition period, in the normal replacement cycle for these sets, the public would be turning over their present equipment, and that under the impact of this program, plus possibly legislative assistance from the Congress, the only sets available for them to buy at that time would be all-channel sets?

Mr. McCONNAUGHEY. That is correct.

Mr. COX. So that they would, in the normal course of replacement and at no added expense to themselves, be in a position to receive the UHF signals?

Mr. McCONNAUGHEY. That is correct.

Senator WOFFORD. May I finish my inquiry?

Senator PURTELL. Would you yield to me for a moment, Senator?

You say the only set they would be able to buy. May I inquire: Do we intend to try to pass a law saying they can only buy all-channel sets at that point? Have we any guaranty that the manufacturer will supply only all-channel sets? I don't know that we have, at that time or at any other time. If you have islands of V stations around the country, you are going to ask the people then to convert when they are getting pretty good reception with a V? I think you have a problem there.

Now I want to make it clear that I think you fellows are trying to solve a problem that, in my opinion, as I said before, is probably as complex a problem as ever came before any commission. And I have great admiration for the way in which you are going about it. I don't agree with some of your conclusions and I intend to state so. But I certainly think you are trying to find the answer. However, in finding that answer, I hope we are not going to hurt a lot of people simply because an easier answer appears to be available.

But I do inquire again: What assurance have we got, where we have all these islands of V's which will be the result of any deintermixture, what right do we have to expect that those people have to buy all-channel sets during this period of transition that you speak about, Mr. Chairman? You have V and you have ultra; and you are going to have them simultaneously broadcast, is that right—if this crash program develops successfully; is that right?

Mr. McCONNAUGHEY. That is right.

Senator PURTELL. Are we going to say to those people who have V sets—take an area with all V—are we going to say to these people: You must buy at the end of 2 years or 3 years, or whatever the period is—in the meantime you will get simultaneously ultra and V transmission—but at the end of that time you are going to have to buy ultra receiving apparatus? Are we going to say that?

Mr. McCONNAUGHEY. Yes.

Senator PURTELL. Aren't we then in the process of building up a tremendous resistance toward that movement by setting up these islands of V's?

Mr. McCONNAUGHEY. I don't think so; I say, I don't believe so, Senator. I think, if given a proper period of time, and if the developments come along properly, I don't think we are going to build up any resistance. I can assure you that, as far as I am concerned, I don't propose to be a party to doing anything that is going to actually injure the public.

Senator PURTELL. I am sure of that; I am sure of that.

Mr. McCONNAUGHEY. And I think that if the developments come along, this thing can move to the UHF gradually, slowly in this country. If they get the proper coverage, they are going to get more channels, have more local programing; it is going to inure to the benefit of the public. In other words, in my little State of Ohio, where you have only got Cleveland, Columbus, Cincinnati, Dayton, Toledo, Youngstown, and Akron, and you have got cities like Mansfield, Portsmouth, Warren—I can go on and on and on, cities of 40,000 to 75,000, with no possibility of having their own local outlet—to me we are going to have to do something, this country, to utilize those 70 U channels to let local expression come into existence; and I know of no other way to do it than by the development of UHF. I think the public is going to benefit. I think the public is—they are going to be the beneficiaries. There will be a period of time when, as the development occurs, there will be come people that would have a set that might have to replace it after 3 or 4 years, or convert it and spend $20 to convert it. To me that is not a very serious problem when you think of the overall possibilities of the development of the UHF sphere.

Senator PURTELL. That is the very problem that we are faced with now, where people won't convert, where they have ultra high and very high. Isn't that one of the problems facing your Commission?

Mr. McCONNAUGHEY. It sure is. And one of the reasons is that the converters haven't been so good. They haven't had good experience with the converters in an awful lot of instances. I can understand why.

Another is this: It is human nature, I guess—we talk about competitive system and as many outlets as we can have—but it is a peculiar thing that people convert and then the converter goes bad, but they can still get one station, and they won't even have it fixed. In other words, people seem to just go along and follow the lines of least resistance.

All I am trying to point out is that the converters, like a great deal of this situation, have not been developed to where they are doing a very good job.

Senator PURTELL. I want to say I am imposing upon my colleague from South Carolina. He was asking questions and I asked him to yield. So I appreciate it. I appreciate your yielding.

Senator SMATHERS. The Senator from South Carolina.

Senator WOFFORD. That is the very point I was getting at, or attempting to. I will go back to my original question. Has any poll been made of the public, or any attempt, as to their desires in the matter?

Mr. McCONNAUGHEY. No, Senator Wofford. There was no poll taken of the public. It is a strange thing. We go through all these investigations up here on the Hill, all these appearances, and I pointed out before we are interested in the public, and the public hasn't screamed. It is UHF operator who is unhappy, or somebody unhappy about a network operation or monopoly, or this, that, and the other thing. The public hasn't been screaming. The public frequently does not scream, but I think we owe an obligation——

Senator WOFFORD. Do you mean—may I interrupt? Do you mean by screaming coming up here before this committee and testifying? How many people do you think from South Carolina have the money to come to Washington and present their case?

Mr. McCONNAUGHEY. No; I meant letters to us, complaints of any description, letters of any kind to the Commission. We get very few complaints about anything in this sphere. But I think we owe an obligation—an aggressive obligation—to the public to give them, if it is possible, the utilization of a broader service in this country. I think we owe that obligation. I think that is the reason we were established by Congress.

Senator WOFFORD. You spoke of $20. Do you know how you can put up a converter and an antenna for $20?

Mr. McCONNAUGHEY. Not an antenna.

Senator WOFFORD. You have to put an antenna up, too?

Mr. McCONNAUGHEY. In most cases.

Senator WOFFORD. And even if you have a perfect converter—and I have never seen or heard of one—it would cost you more money than that, wouldn't it?

Mr. McCONNAUGHEY. That is right, if you start with the antenna.

Senator WOFFORD. About $75 or $80?

Mr. McCONAUGHEY. In some places. I have talked to people; they say they do it for $45, $60, some of them $70.

Senator WOFFORD. That is not counting getting back to repair it often, too, isn't it?

Mr. McCONNAUGHEY. Yes.

Senator SMATHERS. Mr. Chairman, isn't, as I understand it, what the purpose is, by converting to all-UHF channels, is to make it possible so that more people, whether they live in a big city or whether they live in a small city, would have the opportunity of enjoying television?

Mr. McCONNAUGHEY. And local expression, sir.

Senator SMATHERS. To use all of the channels which are available—and obviously there being more UHF channels than there are VHF channels, then you believe there would be a better service, and that overall the people would generally be better served; is that not the purpose of this whole thing?

Mr. McCONNAUGHEY. I don't think there is any doubt about that.

Senator SMATHERS. So that what I am trying to get at, where some people in the cities who already have VHF sets—and they may not like it particularly—it is like anything else, you give way in some respects to what is the overall need? That seems to be the general policy of the Congress in the country all the way through.

Mr. McCONNAUGHEY. I think so.

Senator PURTELL. Except, of course, we must make this exception at the present moment, that our research hasn't developed the fact, as yet, that this is the answer, and it will not until we have completed the research; isn't that correct?

Mr. McCONNAUGHEY. That is correct.

Senator SMATHERS. But the reason why you are thinking of this whole matter is for the purpose of trying to serve more of the general public.

Mr. McCONNAUGHEY. That is certainly true; that is what I have tried to say.

Senator PURTELL. Actually, if the crash program is successful, this is the way to do it, I agree with you. The only thing that bothers me, and continues to bother me, is what is going to happen to the crash program if it isn't successful. What is going to happen to those stations, or places to which stations should have been given on an equitable and fair basis, what would happen if it doesn't develop that it is successful?

Mr. COX. In connection with this crash program, Mr. McConnaughey, is it the purpose of the FCC to try to provide guidance and supervision for that, to keep it moving so that it can be accomplished as rapidly as possible?

Mr. McCONNAUGHEY. Yes; it is, Mr. Cox.

Mr. COX. I had assumed, though, that the actual research and the actual development of new and improved forms of equipment would depend largely upon the efforts of manufacturers in the field?

Mr. McCONNAUGHEY. That is correct.

Mr. COX. And it is hoped, through these comments that you are going to receive in this proceeding you have instituted, that the industry generally will make suggestions as to how this can best be channeled for the development of this U equipment.

Mr. McCONNAUGHEY. Yes; and I think I would go further than that: I feel that the Commission must become aggressive and ask the manufacturers to set up an organization—or a group, or however, they care to do it—and let the Commission help and assist, if it is possible, and the Commission kind of take the leadership in this matter.

That is not in any order; that is not something that I have discussed with the Commission; that is just my own personal opinion that I think the Commission should become very aggressive and attempt to do everything to encourage the several people to expedite the crash program.

Mr. COX. Won't this have a kind of cumulative effect? That is, as it appears that the chances of working out some kind of all-UHF service are increasing, that then it becomes to the self-interest of the manufacturers to as rapidly as possible develop equipment which will make them competitive with others in the field.

Mr. McCONNAUGHEY. There isn't any question about that. I think we all recognize the manufacturer's position. He is manufacturing the VHF sets today; he is in business to make a profit, thank goodness.

But I think that as they see this direction that the Commission is moving—and I think they already feel that—as they see the direction we are moving in, it is going to encourage them to expedite the development of the UHF.

I think they are very cognizant of it. I think they are extremely cognizant of it.

Mr. Cox. Is it possible, even with real improvement in UHF equipment, that there may be some areas or some conditions of terrain and so on where VHF will still have to be employed in order to provide the present quality of service?

Mr. McConnaughey. I think so. I say I believe so; I believe that is correct.

Mr. Cox. Would this be more likely to be in areas of sparser population, where there are greater intervals between the cities which would be capable of supporting a television service?

Mr. McConnaughey. I think you could say in certain sections outside of zone I—when you get into the western part of the United States, where your distances are great, your communities are extremely small—that the V may always have to be utilized in those wide comerage areas.

Mr. Cox. But you have found, have you not, generally that in that area you don't have the same problem? In other words, the VHF channels there provide an adequate service?

Mr. McConnaughey. Yes; and we have quite a number of them in the western part of the United States.

Mr. Cox. Now, it is basic to your approach, is it not, that while you're implementing this shift to all UHF—if and when it appears that the technical improvement is coming along in a satisfactory fashion—that meanwhile you are going to try to improve opportunities for effective competition among a greater number of stations?

Mr. McConnaughey. That is right; I say that is correct.

Mr. Cox. And you propose to do this through this program of selective deintermixture?

Mr. McConnaughey. Through the interim program that we have proposed here.

Mr. Cox. And this has the dual characteristic you point out in your report of deleting certain V channels in some areas and then either making use of those in other areas or dropping in additional V's where, under your new rules as to separation from transmitter sites, it is possible to do so.

Mr. McConnaughey. That is a proposal which is made in the rule-making proceedings, for which we will await comments.

Mr. Cox. Yes. To get this under way you have instituted rule-making proceedings to accomplish proposed allocation changes in 13 areas.

Mr. McConnaughey. To date, that is correct.

Mr. Cox. Yes. Now, you have some other proposals for deintermixture which are already before the Commission, have you not, which are in a position to be disposed of; and in fact, the Commission acted on some since issuing this report.

Mr. McConnaughey. That is correct; I say that is correct, Mr. Cox.

Mr. Cox. And you have indicated, have you not, that you will entertain additional petitions for deintermixture if parties come to you and say that they feel that there is another area in which in this interim deintermixture would help to preserve UHF and to promote UHF service?

Mr. McConnaughey. That certainly is true.

Senator PURTELL. I would like to ask a question along that line.

Senator SMATHERS. All right, sir.

Senator PURTELL. On this question of deintermixture, is it done to provide a better competitive position always? And if it is, on what do you predicate the criteria that you establish for that? Is it usual—Mr. Chairman, what I am getting at, is it usually in those areas where the people have resisted conversion to ultra high.

Mr. McCONNAUGHEY. No, no. Again, I can't speak for the whole Commission. I think what was attempted to be done was where the UHF was assigned and in operation, generally speaking, and the V assignment had been made but was not on the air, that generally speaking there was a rulemaking proceeding put out looking toward that being an all-UHF area, such as Fort Wayne and such as Youngstown, Ohio; but bearing in mind, Senator Purtell, that when the comments come in, we must be cognizant of the service that is going to be given. If people are going to lose service, that is one thing. If they are not——

Senator PURTELL. Or be denied service?

Mr. McCONNAUGHEY. Or be denied service; yes. And I think, to be perfectly frank about it, I think that—I don't think, I know—it is a tremendous boon to the UHF, to the development of UHF.

Senator PURTELL. This is all part of the ultimate pattern, as I understand it, from the report. This is all part of an ultimate pattern that will fit into this complete deintermixture of, let's say, areas east of the Mississippi, if—and again, it is a big "if," and I stress it, because in my mind it is—if this crash program is successful. But Mr. Chairman, in the meantime, if it isn't successful—and we have no reason to believe—any more reason to believe that it will be than it won't be, we just don't know—will it not be true then that certain parts of the country in which deintermixture has been established, that those places will be denied a V channel—bearing in mind what the act said "equitable and fair"—will they not be denied forever a V channel because they have already been denied it on the basis that ultimately we are going to make ultrahigh everything east of the Mississippi?

Mr. McCONNAUGHEY. You mean that it would all be——

Senator PURTELL. Let's take a city——

Mr. McCONNAUGHEY. I don't understand.

Senator PURTELL. Maybe I wasn't clear. Let's take a city that has had an assignment of a V channel.

Mr. McCONNAUGHEY. Yes.

Senator PURTELL. And the Commission decides that they will deny that application, if it is an application, on the basis that they are making it all ultrahigh, and also on the basis that ultimately you hope to have all ultra and this is one step toward it, which if you ultimately accomplish your purpose would probably be—would be a step forward.

But in the meantime that V channel is assigned elsewhere. Now, the crash program doesn't work out successfully—and I hope it does, but I have no assurance it will. Then isn't that particular area forever denied that V station, or channel, because you have taken and assigned it elsewhere? Can they come back and say to you: "Well, gentlemen, your crash program didn't work out and now we would like that V that we are entitled to."

Mr. McCONNAUGHEY. Well, I see what you are talking about all right. [Laughter.] I get what you are talking about.

Senator PURTELL. I can assure you, sir, that it is just simply those questions that come up that I would like you to answer.

Mr. McCONNAUGHEY. And I think I can answer it; I say I think I can answer it, Senator Purtell. I don't think that that will present any problem because you can still move V's if it is necessary. In other words, there would be nothing—let's take a theoretical case. You must have in mind Hartford, Conn.

Senator PURTELL. I do. [Laughter.]

Let me make this clear, Mr. Chairman, because I think this is important——

Mr. McCONNAUGHEY. I know it.

Senator PURTELL. I am from Connecticut, and obviously I am interested in Hartford, but I am more interested in the whole country.

Mr. McCONNAUGHEY. I know you are, sir, I know you are. But what I was going to say is because of Hartford—to answer your question—it would not be impossible or too difficult to move a V channel from someplace else to Hartford; New York City, I will take as an example, where there are seven of them. I just give that as an example.

Senator PURTELL. Yes.

Mr. McCONNAUGHEY. In other words, I don't—in my judgment I don't think there would be any problem with reference to giving a given place, where a V would be taken out of, giving that place proper protection.

Senator PURTELL. Aren't we multiplying our problems in the event the crash program doesn't work out, then?

Mr. McCONNAUGHEY. I don't think so.

Senator PURTELL. If we don't, then, Mr. Chairman, it would appear to me the only answer is that they would be forever denied a V.

Senator SMATHERS. May I ask a question which I am not clear on, if the Senator will excuse me. Does the Commission now have a rule that while they are considering this so-called crash program they are no longer going to grant any application for V channels, which may have already been allocated?

Senator PURTELL. They are granting the application—making a grant—but withholding the construction until such time as they decide whether to deintermix a certain place.

Senator SMATHERS. Let me just put it one other way——

Mr. McCONNAUGHEY. We are not holding up any other V's.

Senator SMATHERS. If I get it completely clear, you mean in an area—take Hartford, Conn., for example—I don't know what situation is there; maybe there has been an allocation, or there has been a determination that there is a V channel available.

Mr. McCONNAUGHEY. That is correct.

Senator SMATHERS. Now, there is Mr. A, Mr. B, and Mr. C who are applying for that V channel.

Mr. McCONNAUGHEY. That is correct, and we are going to give it to Mr. A, Mr. B, or Mr. C.

Senator SMATHERS. Mr. A, Mr. B, or Mr. C will get it in the determination of the Commission as to which one will render the best public service.

Mr. McCONNAUGHEY. Yes, sir.

Senator SMATHERS. Do you withhold, however, the construction permit?

Mr. McCONNAUGHEY. That is right, until we finish rulemaking.

Senator SMATHERS. Until such time as you finish rulemaking.

Mr. McCONNAUGHEY. Which is going to be very soon. In that city, which is going to be very soon.

Senator PURTELL. You take each city, that particular city; is that right, instead of the whole picture?

Mr. McCONNAUGHEY. Yes.

Senator SMATHERS. That is what I am trying to get. In other words, we should, in our mind, distinguish what you are talking about, this overall crash program, from a deintermixture in a particular area.

Mr. McCONNAUGHEY. Yes, sir.

Senator SMATHERS. And where you have under consideration deintermixture in a particular area, you will then hold up the construction permit until a determination is made as to whether or not that specific area should be all UHF or VHF?

Mr. McCONNAUGHEY. Yes; we have already done it, in Peoria, Ill., for example.

Senator SMATHERS. But this whole general program of making everything UHF, you are not going to hold up construction permits for VHF channels——

Mr. McCONNAUGHEY. No, no.

Senator SMATHERS. Until that matter has been decided?

Mr. McCONNAUGHEY. No, no, no, no.

Senator SMATHERS. I think we have maybe gotten a little bit crossed.

Mr. McCONNAUGHEY. We certainly are not. We are not putting any freeze on.

Senator SMATHERS. Until you decide, you are going ahead as you have been in the past.

Mr. McCONNAUGHEY. That is right, except in the individual places where we proposed deintermixture. We are making grants—for example, Peoria, we did a week ago: we made a grant to Mr. A, who was the preferred individual—no construction to begin until we decide whether Peoria should be, after this rulemaking upon which comments are to be filed by October 1 or September 10, I don't know, one of those two dates—September 10 is the date——

Senator SMATHERS. But the only question to be yet decided in that particular area is whether or not that specific area, limited as it is, is to be deintermixed; is that right? All UHF——

Mr. McCONNAUGHEY. That is right. In other words, in that case whether you move the V to Davenport.

Senator SMATHERS. Is that the same situation that obtains in Hartford, Conn.?

Mr. McCONNAUGHEY. Exactly.

Senator PURTELL. But isn't this all part of a picture, Mr. Chairman, that you hope will fit into this ultimate by making all of large areas, such as east of the Mississippi, ultra?

Mr. McCONNAUGHEY. No; I couldn't say that it is part of the whole picture. Well, part of it from the standpoint that it is an encouragement to the UHF, to the development of UHF. I think to me it comes down to this: As I said, we have areas in this country where UHF is doing an excellent job, and the public is not suffering from any standpoint. If we can have enough areas, added areas, that can have the UHF—let's take your section up there at Hartford for a minute. I believe that there are applications for NBC and CBS to own the UHF stations up there.

Senator PURTELL. I have read that.

Mr. McCONNAUGHEY. All right. The people in that area—if that comes about, that they get the two UHF stations up there—will certainly not lack for fine programing; will they?

Senator PURTELL. Those that get it?

Mr. McCONNAUGHEY. Yes.

Senator PURTELL. That is right.

Mr. McCONNAUGHEY. That is right.

Senator PURTELL. Those that get it.

Mr. McCONNAUGHEY. I mean the people that will get excellent programing.

So I don't think—I think this: That when the rulemaking answers come in, the Federal Communications—I will go back to my original statement—is not going to let any of the public suffer from want of service. That is the only thing that you, sir, are actually interested in.

Senator PURTELL. That is right. But that takes in all of the public in the area served.

Mr. McCONNAUGHEY. That is right; that is right, that they have adequate service.

Senator PURTELL. You wouldn't tie in, however, would you, Mr. Chairman—I am sure that you wouldn't, at least I have every reason to believe, from your statements and from your actions, that you wouldn't—tie in the idea that simply because there were 2 ultrahigh's up there that carried the 2 big networks that that was sufficient for the people there?

Mr. McCONNAUGHEY. No, no.

Senator PURTELL. There may well be a public service to be rendered by either an ultra or a V that is necessary at the local level for the people.

Mr. McCONNAUGHEY. As a matter of fact, I think it is very essential to the people, I think very essential to the people.

Senator PURTELL. The reason I mention that it because you did mention about the reports and—and you would know, I don't—that NBC and CBS wish to, or indicated a desire to, or have contracted to buy stations up there.

Mr. McCONNAUGHEY. They have contracted to buy them.

Senator PURTELL. All right. If they have contracted to buy those stations, then certainly the fact that those two stations up there, which are ultrahigh and, therefore, could give NBC and CBS program would not be a determining factor in what else should go in there.

Mr. McCONNAUGHEY. Oh, no, I should say not.

Senator PURTELL. I thought we ought to clear it up because of your reply.

Mr. McCONNAUGHEY. You are right; I say you are right.

Senator PURTELL. Is it a correct statement to say that the Commission intends to proceed, under their present rules, in granting applications and starting television stations, as they have in the past, until such time—we don't know when it will be, but in the indefinite future—a final determination has been made with respect to this whole program of deintermixture throughout the country. Is that a correct statement?

Mr. McCONNAUGHEY. That is correct, Senator.

Mr. Cox. Isn't it true, Mr. McConnaughey, wherever you have proposed deletion of a VHF channel in a selected area of deintermixture you would substitute a UHF channel, so that an additional station to those already on the air in the community would be available for service to the public?

Mr. McCONNAUGHEY. My answer to that is, "One or more."

Mr. Cox. Due to the greater number of the UHF stations, if it later developed there was a possibility of these communities supporting a fourth or fifth station, there is more room for expansion in the UHF than in VHF?

Mr. McCONNAUGHEY. That is correct, sir.

Senator PURTELL. Along that line, I didn't think we were going to get into so extensive a questioning here. We have a meeting at 2:30 this afternoon where a report will be distributed. I have some questions that have not been answered—not because the answers have been denied, but because I haven't sought them.

Since we want to preserve ultra high, what about the fellows that are suffering—ultra-high operations—surrounding areas such as New York, where there are all V's? We have a situation in Bridgeport—I am mentioning it as an example; I don't think, however, what happens to any one particular area shouldn't enter, and I am sure doesn't enter into either the consideration of your committee or ours. But here we have places where ultra's are not able to survive because V's are covering the area in which they are established. What are we doing to help those fellows? There is a question where your U's are apparently dying on the vine, and we are talking about trying to bolster the U's up.

Mr. McCONNAUGHEY. That is right; that is right. Well, I think you have to go back. They went into business. This is an open, free competitive enterprise business. This isn't a regulated public utility. The Commission doesn't guarantee—and the Congress doesn't guarantee—anybody going into business that they are going to make money. I can own a gas station here, you can own one over here; you make money and I don't. But, nothing can be done to guarantee the man at Bridgeport that he is going to make money. We can't do that.

Senator PURTELL. I am sorry that we have selected—I had to select it to indicate the area that I was talking about. But I want to say this, that we are talking now about competitive—in your deliberations you used the word "competitive" situation. And here is a competitive situation.

Mr. McCONNAUGHEY. That is the reason for the long-range program. If they had comparable facilities at Bridgeport—let's not take an individual, but let's take Bridgeport—if you had the UHF, all UHF, if it was all UHF, we will say, then it appears to us that places like Bridgeport and like Mansfield, Ohio, and like any number of places, could have their own television stations where the people in those communities would have their own local programing, which is the most desirable thing in the world to me.

Senator PURTELL. What I am trying to point out, Mr. Chairman, is that your efforts to preserve ultra high have been evidenced by your desire, for instance, to make certain areas all ultra high.

Now, we are talking about preserving ultra high stations. Well, here are groups of stations that are surrounding the larger cities where there are all V's that are not being preserved, apparently, because they are going to die. I would think they can't stand this strain long, from what I have heard—financial strain.

Mr. MCCONNAUGHEY. There is nothing anybody can do to preserve them, except eventually go to UHF.

Mr. COX. Would the Commission—during this interim period when it is considering these allocations changes pending decision whether they can go to all UHF—consider a proposal from such an overshadowed area—Bridgeport or Akron, Ohio, or any other area with UHF stations operating under the shadow of multiple V services in a larger center—would they consider an application from the operator of that station for the dropping-in of a low-powered V, which at least would get him away from the problem of set incompatability and would permit him to provide a local service if he can provide programs which will attract viewers?

Mr. MCCONNAUGHEY. No, I don't think so. You get into that and you meet yourself coming home. You start squeezing in and you get beyond me there, beyond you and me both. You get into this engineering proposition. You get into squeeze-ins, and you start squeezing in a low-powered V here, squeezing out a U over here. You are just running around in a set circle. I don't think the Commission has come to a place yet where they look with very much favor upon that type of an operation. I am not saying they wouldn't do it, if it is feasible engineeringwise, if it can be done. But I say that it presents a lot of problems, Mr. Cox.

Mr. COX. I was asking about this restricted largely to this area of a smaller community overshadowed by VHF service from a larger community. Now, since you are not proposing to deintermix New York at this stage—you are waiting to see whether this will ever be feasible—for the next few years the area of western Connecticut is going to be blanketed with VHF signals, and that has led to a condition where the operator in Bridgeport cannot get people to convert their sets because they have ample program choices.

Now my question was whether, simply in those situations, if the operator came in with an engineering report which said that he could place a V channel in here, at such and such a power and antenna height, and it would not cause interference with existing VHF stations, whether that might be considered as an interim measure while the Commission is trying to work out the shift to all UHF.

Mr. MCCONNAUGHEY. I think it certainly would be considered.

Senator PURTELL. I think this is important. We are talking about western Connecticut. I want to make it clear that these conditions, I don't think, are peculiar to any one area of the country. I think they are all over the country and we have simply cited these, or they have been cited as illustrative of a situation. Now, what they are trying to find out is not only what might happen to western Connecticut or eastern Connecticut, but we are trying to find out what will happen to all like areas in the country.

Mr. Cox. What happens at Everett, Wash., for example.

Senator PURTELL. This situation isn't peculiar at all to the area around New York, by all means.

Mr. McCONNAUGHEY. It is much more accentuated because of seven stations in New York.

Senator PURTELL. That is correct. But it is also true in many other large areas where you have only V's.

Mr. McCONNAUGHEY. That is correct.

Senator SMATHERS. Does the Commission have any policy or precedent, we might say, where, for example, a new drop-in channel is found, or one has been gotten maybe by the engineer of some UHF man, does the Commission, as a precedent, give more weight to that UHF application for the new channel, than they do just new people who come in, or do they not? Or haven't you made a determination on that? I am not trying to get anything on the record——

[Laughter.]

Mr. McCONNAUGHEY. Let me try to answer it this way: His experience is going to be of substantial benefit to him.

Senator SMATHERS. That satisfies me. Let's move on, Mr. Cox.

Mr. Cox. You indicated, Mr. McConnaughey, that you thought that action would be taken quite soon in these deintermixture proceedings—that is, in other words, you have called for comments by September 10 and reply comments by September 25. Could you give us any estimate as to the time thereafter when decisions might be reached in this first group, at least?

Mr. McCONNAUGHEY. No. All I can say is just we are going to expedite it just as fast as we possible can.

Mr. Cox. Do you feel that if this interim program is to be successful that there is going to have to be a fairly substantial number of markets which are deintermixed, and not just a token few?

Mr. McCONNAUGHEY. Well, as many as the Commission thinks is feasible and possible.

Mr. Cox. Now in this deintermixture proceeding, is this a correct statement: Let's take Peoria, where there are two UHF stations, I believe, on the air, and a V allocated which you recently granted, but stayed the construction of the station. Now, if it is finally decided to deintermix Peoria, and to place the third U in there instead of a V, this will be after the Commission has determined that this action is not going to result in depriving anyone of service—of at least a first television service.

Mr. McCONNAUGHEY. That is certainly true.

Mr. Cox. Now, do you feel, generally, that where a VHF channel is deleted from one community, it should be assigned to another community, having a predominantly VHF service, where it can be fitted in with the Commission's existing engineering standards?

Mr. McCONNAUGHEY. Basically I feel that; yes, sir. I don't think it should go to waste, in a predominantly V area.

Mr. Cox. So that it provides greater possibilities for competition both in any all-U area and in an area where the V can be fitted in?

Mr. McCONNAUGHEY. Yes, sir.

Senator PURTELL. Let's fit this into an overall pattern. We are hoping to get ultimately—with the crash program successful, assuming it will be, and I am not ready to assume that—but just for the sake of pointing up what I wish to say, you have got these areas that you have established only V's by transferring V's from one area to another, making all ultras and all V's. Aren't we again making it even more difficult to become all ultra, if and when this crash program proves successful? Because we are building up these islands, all over, of V stations, in which only V——

Mr. McCONNAUGHEY. No, no.

Senator PURTELL. You don't mind if I finish, please?

Mr. McCONNAUGHEY. I am awfully sorry.

Senator PURTELL. Where we build up only V stations and the receivers necessary therein are only V's. Take this city right here, we only get V's. Now, as an example, I live in Hartford, as you already know, and we up there went from very to ultra, so I had to change. I had to buy an ultra set. I moved my V set down here. Why? Because it would have been foolish for me to invest in an ultra high V set down here when I could use, for every purpose available to me on television, a V receiver. So I have used it.

Now we are building up these areas, therefore, in which people only have V's, and in which your senders will only be V stations. And aren't we multiplying the problems that you are going to be confronted with? We are in fact preventing, to that extent, intermixture.

Mr. McCONNAUGHEY. I feel, Senator, when you speak of moving a V—we will say from Peoria, for example, where there are two U's on the air—if we would move that V assignment to a place where there was already all V's, everybody has the V. I don't personally think that you expand anything of any description, because you put another V in where everybody has VHF already. And in the Peoria area most of the people have UHF now, and you are just giving them another UHF service.

Senator PURTELL. What we are doing, as a matter of fact, is not encouraging the use, in those areas where you only have V, of ultra high receivers.

Mr. McCONNAUGHEY. Oh, no.

Senator PURTELL. That is what we are talking about, the big plan—trying to get everybody ready to go through this transition period; isn't it?

Mr. McCONNAUGHEY. Well, that is much better, it seems to me, than letting the UHF die. It is simple—if we don't do what we propose to do here, it is going to die.

Senator PURTELL. That is correct. But I think we have to determine whether or not, in these areas in which we are talking about now, where there would be deaths of ultra——

Mr. McCONNAUGHEY. Where there would be ultra deaths?

Senator PURTELL. Yes; where they would die.

Mr. McCONNAUGHEY. That is sure.

Senator PURTELL. Just to make it ultra, because it is a nice thing to be ultra, or a V, because it is a nice thing, is, I am sure, not the way you intend to operate.

Mr. McCONNAUGHEY. You are correct.

Senator PURTELL. All right. So it is a question whether or not—there are these economic factors that apparently you are now taking into a greater extent, I would assume, than was originally—I would assume all those are weighed; are they not?

Mr. McCONNAUGHEY. They have to be.

Senator PURTELL. In the determination of whether deintermixture will take place?

Mr. McCONNAUGHEY. They have to be.

Senator PURTELL. All right.

Mr. COX. Wouldn't one other way of improving this competitive situation during this interim period be to grant as promptly as possible, the long-contested VHF channels in such major markets as Boston, St. Louis, Pittsburgh—places of that kind?

Mr. McCONNAUGHEY. Yes.

Mr. COX. Are most of those now at a point where they are awaiting decisions, or are they, some of them, still prior to argument?

Mr. McCONNAUGHEY. There are a few of them left. We have disposed of most of them.

I have never known, and I want to make this statement on the record before this committee, to whom we are primarily and basically responsible, before whom we are very happy to appear:

We have had hundreds of hours eaten up, of our staff people, during this session of Congress, by committees up here on the Hill. I am not talking about this committee, before whom we are happy to appear and whom we have a responsibility to. I point that out because it has taken the time—and when it is all computed it is going to be thousands of hours—of our important staff people who have been working day and night on getting stuff ready to get up here, and conferences, and testimony, and evidence, when they should have been working on getting out important business of this Commission. I just found that the head of my Opinions and Reviews staff, just the other night, the other day, has been working until 3 or 4 o'clock in the morning getting out these cases that you are talking about, and he is just about ready to have a nervous breakdown; and what applies to him applies to this General Counsel's staff, and right straight down the line. And if any outfit has ever worked—overworked—the staff of this Commission has done a magnificent job under very trying circumstances.

Those few cases that are left will be out of the way, I am satisfied, by the 1st of January, practically all of them. We will have nothing left.

Senator SMATHERS. Right on that point, Mr. Chairman, I think it might be advisable to have you submit for the record how much time you people, as a Commission, have spent up here on the Hill before the Congress. And I think it might be informative for the record to have an estimate, if you can get it, as to how much time your staff people have had to put in getting ready for appearances before the Congress.

Now I know that, of course, you recognize that this particular agency, as other agencies, is set up as an arm of the Congress.

Mr. McCONNAUGHEY. I sure appreciate that.

Senator SMATHERS. But we have given you a job to do, and I completely agree with you that it is a little bit nonsensical, for instance, to spend so much of your time up here that you cannot do the job. It may be that we should provide for you some more assistants, which could be done. I think if that is the case, we can do it.

As you know, however, there have been some cases in certain areas which have been pending quite a long time. They are difficult cases. As Senator Purtell has so well stated, there is probably no other agency in the Government today which has such a complex and difficult set of problems confronting them as yourself. And we appreciate that.

But if you put this matter, to support your statement that you have just made, the matter of hours that you have spent on the Hill—which again will take a little time of somebody's, but we are getting ready to go out of session—it would be very helpful.

Mr. McCONNAUGHEY. I would be happy to do that.

Senator PURTELL. Somebody told me that you are having to appear before 10 or 11 committees, is that correct? Is that a fact?

Mr. McCONNAUGHEY. There have been quite a few.

Senator SMATHERS. There might be something basically wrong in our procedure here. After all, the Interstate and Foreign Commerce Committee is supposed to have primary jurisdiction over this, and yet other committees have the right, and frequently they do want, to hear these people and yet they are pulling you and tugging you back and forth and you have to go. Now I think it would be interesting if you will get the statistical information as to how much time you have spent, what committees you appeared before this year. I think it might give us some insight where we might, in some effects, change our rules—where we could have joint committee hearings and things like that, saving everybody's time. So support your statement with some statistics and it would be helpful.

Senator PURTELL. As a matter of fact you spoke about your staff being on the verge of a nervous breakdown—I sometimes wonder why you fellows aren't on the verge.

Senator SMATHERS. In particular, what would be of interest to us is how much duplication was there. In other words, the testimony that you gave to us, was that exactly or almost the same as the testimony you gave to another committee? If it was, we might be able to work out a system to save everybody's time.

Mr. McCONNAUGHEY. I would be very happy to do that, sir. We are primarily responsible, I feel, to the Senate and House Committees on Interstate and Foreign Commerce. We are an arm of the Congress—have never had any other feeling. And I did not mean to say anything disrespectful about Congress. But it has been rather time-consuming.

Senator SMATHERS. We accept your statement as completely respectful and very informative, and it may be that we can work in a procedure which will actually let both of us do a better job. If you will get that information, it could be helpful.[1]

Mr. McCONNAUGHEY. Thank you, sir.

Mr. COX. In your report and order of June 25 you set forth some new propagation data; do you not?

Mr. McCONNAUGHLEY. Yes.

Mr. COX. Does this recognize an expanded grade B service? That is, does this now recognize a somewhat increased coverage of television stations, based on experience since the sixth report and order?

Mr. McCONNAUGHLEY. Yes; it does, Mr. Cox.

Mr. COX. Does this report—at least in connection with the pending rulemaking proceedings—require the filing of maps of computed coverage on this new basis, and on an interference-free basis?

Mr. McCONNAUGHEY. That is correct.

Mr. COX. As I understand it, however, you require them to show only cochannel, and not adjacent channel, interference.

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[1] This information was furnished by letter dated August 30, 1956, and is printed at the conclusion of the Commission's testimony, on p. 978.

Mr. McCONNAUGHEY. That is right.

Mr. COX. The committee heard some testimony from a witness a month or so ago who was suggesting the desirability, as a general practice, of requiring the filing of maps showing completely interference-free coverage, based on such more realistic standards. Would you feel that this would be a good general policy?

Mr. McCONNAUGHEY. I would like for Mr. Cowperthwait, who is an expert in that matter, to answer that question.

Mr. COWPERTHWAIT. There are some very complicated problems associated with coverage. Actually we should go out in the field and measure, but that is almost impossible. And as a result we thought we would set up some standards which are not accurate in any particular case, but they would serve as a comparative basis, so that in any particular area we could compare the various stations in the area—try to determine what the white areas were with relation to other areas. For what it is worth, that is what we tried to do in this report.

Mr. COX. Is it possible, however—again without measuring it, but just on these computations based on the standards—to determine on an average basis what would be the probable areas of cochannel and adjacent-channel interference in any particular arrangement of stations?

Mr. COWPERTHWAIT. Yes, roughly.

Mr. COX. Roughly, subject to correction based on actual field surveys?

Mr. COWPERTHWAIT. Yes, sir.

Mr. COX. Would you feel it would be desirable, both for the purposes of the Commission and for the information of the public, if maps of that kind were required of various television stations?

Mr. COWPERTHWAIT. Yes. May I add that in this information that we are requesting we are including tables which will give us roughly the service area, taking into consideration interference.

Mr. COX. Now, there are a number of matters, Mr. McConnaughey, that I think we might touch on that relate back to the earlier testimony of the Commission when you appeared before the committee in January and February.

You reported at that time on a rulemaking which was being conducted by the Commission directed toward relaxing rules as to private intercity relays. Could you report to the committee what the present status of that proceeding is?

Mr. McCONNAUGHEY. We have that matter under consideration in the rulemaking. We have been granting these licenses, as you probably know, to permit these intercity relay facilities to be put up, generally, where they couldn't afford to have the connections with the Telephone Co.

And, as I understand from the Bureau, they should have those up for finalization before us by the time we come back here at the end of August.

Mr. COX. Fine. How about the matter, which you also touched on in your earlier testimony, of the charges for microwave and cable service of the Telephone Co.? I believe Mr. Cowgill indicated at that time that the staff was reviewing a third study of the Telephone Co.'s costs which had been prepared by the company, and that he thought there was some chance of a reasonably prompt conclusion of this proceeding which has been going on for some time.

Mr. McCONNAUGHEY. I just talked to Mr. Cowgill about it yesterday, and he tells me that these cost studies which have been made are about to the completion of analysis, and he feels that he can have those before the Commission by the time we come back.

Mr. Cox. Now, you also discussed the possible use of boosters to extend, initially, UHF service, and then, as I understand it, it was broadened to include VHF service, as well. The committee has noted, of course, that the Commission has completed its translator rulemaking proceeding, and has issued rules for authorizing a translator service in the top UHF bands.

Now, I believe, in that connection, there were some proposals filed in the form of comments, suggesting that the Commission likewise authorize VHF boosters and translators, and that in its decision the Commission did not dispose of those on the merits, but said that they would be taken care of in this pending booster proceeding. Now, could you report on the status of that proceeding?

Mr. McCONNAUGHEY. The staff tell me that they are working on that, and they will, within the next 30 to 60 days, be ready to report to the Commission.

Mr. Cox. Has the staff, in that proceeding, been considering whether it would be engineeringly possible to authorize a limited VHF booster and translator service on an interference-free basis?

Mr. McCONNAUGHEY. They say they are considering it. They say it is an extremely complicated area; that possibly in some certain places it can be done. But they are studying it, as I understand it.

Mr. Cox. As I understand it, of course, giving first attention to the translator proposal was, of course, because this permitted a completely interference-free service all by itself?

Mr. McCONNAUGHEY. That is right; that was not difficult, Mr. Cox.

Mr. Cox. I think, of course, in that connection that the reason, perhaps, for the continued consideration of these may arise from matters of cost. Now, as I recall it, the Commission indicated, when they appeared before the committee earlier in the year, that they have been advised by manufacturers that the cost of one of these translators would be approximately a thousand dollars. Now, isn't it correct that the price now being quoted by the manufacturers is in the range of $2,500 to $3,000 per channel for the translator equipment?

Mr. McCONNAUGHEY. Maybe Mr. Cowperthwait could answer that.

Mr. Cox. Yes.

Mr. COWPERTHWAIT. It all depends on how elaborate antennas are required. If the receiving antenna can be relatively simple—in other words, it has a relativley clear shot at the transmitting antenna—of course, the expense is not so great. Likewise, if the booster transmitting antenna can be a simple array, rather than a directive antenna, the costs are reduced.

I think that thousand dollars referred primarily to the transmitter itself. So that in depending upon the——

Mr. Cox. Well, I am talking now primarily about just the device which translates the received VHF signal to a high band U, which sends out this periodic signal required by your rules, which contains the automatic or remote control shutoff required by your rules; isn't that piece of equipment, in the cabinet which encloses it, quoted now on the market at $2,750 by one manufacturer, at least?

Mr. COWPERTHWAIT. I have heard that figure. I have heard others that can do it for much less.

Mr. COX. You have?

Mr. COWPERTHWAIT. Yes.

Mr. COX. That would certainly be helpful, because it seems to me that this translator proposal, while very healthy and very satisfactory in a community of sufficient size, still may leave the smaller community, where the number of sets spread over a cost of this kind might present a problem. Wouldn't that be true?

Mr. COWPERTHWAIT. Yes.

Mr. COX. Some of these areas where boosters have developed there is literally just a handful of houses.

Mr. COWPERTHWAIT. Of course if the booster is constructed on the same engineering principles as the translator, the cost would not be too greatly different.

Mr. COX. In other words, the present relatively cheap boosters that they are using would, under no circumstances, even if you developed rules for an interference-free service, be satisfactory? That is, they would have to have more elaborate equipment which would then approach in cost the figure that is now being cited in connection with translators?

Mr. COWPERTHWAIT. That is correct.

Mr. COX. You also discussed, Mr. McConnaughey, when you were here before, the use of the satellites as a means of extending service. Is it true that the stations which have been authorized to operate as satellites have been specifically authorized so to operate on a petition in which they asked that they be licensed to operate as satellites?

Mr. MCCONNAUGHEY. I think that is right; yes.

Mr. COX. Now, can a station which is licensed to be a regular program-originating station in practice enter into arrangements with other stations by which it becomes a satellite to the other stations, without the consent of the Commission?

Mr. BAKER. May I answer?

Mr. COX. Yes, sir.

Mr. BAKER. Just briefly, and that is this: When a station is licensed, it initially makes proposals for programing which contain certain local programing originations. If, after it is licensed, it should decide not to live up to those promises, of course, it can do so without consulting the Commission. That might be at the risk, however, of not being renewed ultimately. Generally speaking, that would not take place. Generaly they would come in, and at a specific time request permission so that they would not be risking having failed to live up to their promises.

Mr. COX. I see. Now, does the Commission have any definition of what constitutes a satellite, in terms of percentage of programs repeated from another station, or anything of that kind?

Mr. BAKER. I don't think the Commission has a definition of it, as it termed a satellite. What it did was it allowed grants where people did not propose to make any local programing, and they called those satellites.

Mr. COX. With, as I understand it from the Commission's testimony when they were here before, the hope that as these licenses were renewed, that they could phase into more and more of the local operation after the operation of the satellite had developed local circulation?

Mr. BAKER. That was contemplated.

Mr. COX. You indicated earlier that the Commission might take interim action on certain phases of the work of its Network Study Group if it was found possible. Have there been any situations in which the study group has developed information on which the Commission to date has taken any action?

Mr. McCONNAUGHEY. No, not as yet; no.

Mr. COX. You still expect to have the work of the study group completed next year?

Mr. McCONNAUGHEY. June 30, 1957.

Mr. COX. Has the study progressed to the point where, on any of its phases, the group is going to be holding open hearings with respect to its findings or its proposals?

Mr. McCONNAUGHEY. Where the Network Group is——

Mr. COX. Study group.

Mr. McCONNAUGHEY. Not to my knowledge.

Mr. COX. I believe when you were here before you indicated that at some stage in this proceeding there would be—in addition to the investigative type of proceedings that they were following—there would be public hearings at which there would be spread on the record material on any—at least on any contested issues.

Mr. McCONNAUGHEY. I think that that would be contemplated, yes. Nothing—no hearings have been set yet; no, sir.

Mr. COX. Nothing has been done?

Mr. McCONNAUGHEY. No, sir.

Mr. COX. You discussed when you were here, also, the policy of the Commission of continuing to renew outstanding construction permits for UHF stations, which either had never built or had been on the air and left the air.

Mr. McCONNAUGHEY. Yes, sir.

Mr. COX. As I recall it they expired yesterday. Has the Commission taken action on this matter?

Mr. McCONNAUGHEY. They have been renewed.

Mr. COX. They have been renewed. Now, the question was raised——

Senator PASTORE. On that very point, Mr. McConnaughey, we had an individual who testified here, I can't put my finger on it here——

Mr. COX. We have a letter submitted into the record on that.

Senator PASTORE. All right.

Mr. COX. The question was raised by one or more of the Senators when you were here last as to whether the Commission needed any legislation to help it with this allocations problem. Now aside from your indication a while ago that perhaps some help on the set problem might be needed—aside from that, does the Commission at this time have any suggestions for legislation which they think would be of help to them in dealing with the allocations situation?

Mr. McCONNAUGHEY. Not specific. I hope by the first—before the 1st of January that we can have some legislation prepared along that line.

Mr. COX. I think also Senator Magnuson earlier raised a similar question as to whether or not the Commission had any further suggestions, above and beyond the amendment of section 309 (c), with respect to procedural reforms which might expedite its work. Does the Commission have any such recommendations to make at this time?

Mr. McConnaughey. We will have some, sir, but I would prefer to make them when the Congress comes back in January.

Senator Pastore. How has that change worked out thus far, Mr. Chairman?

Mr. McConnaughey. Not too well.

Senator Pastore. Not too well?

Mr. McConnaughey. It has been successful in a number of cases, it is just a question of whether we went far enough.

Senator Pastore. I see.

Mr. McConnaughey. I shouldn't have answered you, sir, the way I did.

Senator Pastore. You can withdraw it.

Mr. McConnaughey. It has been of substantial help; I say it has been of substantial help. Maybe I have been a little bit disappointed because I felt it didn't go all the way.

Mr. Cox. I hesitate to ask this after your statement a moment ago about the obviously hard-pressed condition of your staff, but I wonder if it would be possible, before the date which was indicated earlier for the closing of the record, to have someone in the Broadcast Bureau prepare for the record a list of the various criteria which are considered by the Commission in comparative proceedings, and if there is any ranking of importance, a discussion of the way in which those criteria are applied?

Mr. McConnaughey. We would be very happy to do that, sir.

Mr. Cox. Now, in that connection, could you give some consideration to the question of whether or not some of these criteria are contradictory to each other? That is, in other words, you have, as I understand it, a criterion which emphasizes local ownership of the station, and on the other hand, of course, you have a criterion which emphasizes prior broadcast experience.

Mr. McConnaughey. Right.

Mr. Cox. Obviously you might, for instance, find that a multiple owner would have a very fine record of past experience, but then he would find that he is almost automatically ruled out if he is opposed by an applicant made up largely of local people. So if you could give some consideration to that——

Mr. McConnaughey. Be glad to do that.[1]

Mr. Cox. Now then as you will recall, the committee heard testimony from Mr. Henry Walker, of Evansville, Ind., with regard to the proceeding in which he and certain others were the unsuccessful applicants for channel 7. At Senator Pastore's request, we wrote to you—but rather late, because you had it, until recently, on a motion for reconsideration—asking you to comment to the statements which he made at that time. The record should, of course, show that in the interval, while you were still considering this matter, Mr. Baker did supply us with some comments on this particular case.

Does the Commission have any further comments on the suggestion made by Mr. Walker that this case was the first one in which the ownership of AM stations was apparently, in his view, held to disqualify an applicant for a TV license?

Mr. McConnaughey. Mr. Cox, the ownership of the AM stations did not disqualify the man. That is something that the Commission,

[1] The information requested was submitted in a letter dated August 30, 1956, which is printed at the conclusion of the Commission's testimony, on p. 979.

as I understand it, always takes into consideration with reference to a concentration of mass media.

As I recall, he was the loser in that Evansville case, and he had AM stations, or FM, in Evansville, Terre Haute, and as I recall, in East St. Louis, Ill., which formed a small triangle. That did not disqualify him, but that was one of the considerations which the Commission considered, as it does in many cases. Whereas it was a factor that was balanced in favor of the people who got the grant. I think that is the best way that I can describe it.

Mr. Cox. Would it be accurate to say that, aside from this issue of diversification of media of mass communication, the Commission found the applicants balanced on other factors, so that this was perhaps decisive in the case?

Mr. McConnaughey. I think that it ended up that there was no preference awarded either party on the basis of seven different criteria; that preference was awarded to this individual, who is complaining, in local programing, but the differences there were not considered major; and that he had a slight preference on local residency of stockholders. Those were the two preferences that he had.

The individuals who got the award had three preferences. They had a clear preference in the criterion of integration of ownership with management—and that is very important because that is the people who are going to run the station. And I think we look at that very carefully. Another one, a second preference, was with respect to likelihood of effectuation of television proposals. The individuals that got the grant had that. The third was diversification of media of mass communication, the one he was complaining about.

Mr. Cox. Isn't it true that the importance of the criterion of integration of ownership with management is largely that it leads you to conclude that there is greater likelihood of the effectuation of proposals?

Mr. McConnaughey. I think that would be considered along with it, I don't know.

Mr. Cox. In other words, the reason you feel it is important that the people actually in day-to-day charge of this station also have an ownership interest, is that you feel that this makes it more likely that the representations they have made to the Commission as to programing, studio plans and so on, would be carried out?

Mr. McConnaughey. I think so.

Mr. Cox. So that, therefore, these other two preferences that were given to Evansville Television more or less merged—one leads to the other?

Mr. McConnaughey. I don't know whether the Commission felt that or not. I don't know.

Senator Pastore. I would like to ask the question a lot more simply: The impression that this gentleman left with me—right or wrong, the impression definitely that he left was that this man who apparently was favored, or was on the verge of being favored, was more or less a professional applicant who had applied in several other localities before, been granted licenses, and then he sold his licenses. And then he came to this locality, where this man had already established, for a long time, radio facilities and was also an applicant; and that apparently this fellow who was a stranger to the locality was able to come in and be preferred by the Commission.

Now I thought that was rather a serious impression. I mean I like to give it to you straight, and I would like to get a straight answer. I mean it didn't sound too good the way it was presented. I am not saying what he said was exactly an accurate presentation of the facts, but that is the impression he left with us.

Here is a fellow that had already had licenses before; after he got these licenses he sold them; then he went to this locality and apparently he was in a preferred position. If a fellow could maintain that position, he could become a millionaire overnight. That is giving it to you straight. I am not asking you to give an answer now. But my goodness gracious, something ought to be cleared up on that.

Mr. McCONNAUGHEY. All I can say with reference to that case or any other case, and I can only speak for myself——

Senator PASTORE. Not any other case, that case; the impression was left on that case, Mr. Chairman. And I think the Commission owes it to itself, inasmuch as it was said publicly, to give a public explanation that it either is so or it isn't so. I am not asking you to do it today. But I think something ought to be there.

Mr. McCONNAUGHEY. We will be glad to write you a letter on the subject.

Senator PASTORE. All right, fine. I think we ought to put it in the record.[1]

Mr. McCONNAUGHEY. Yes; I say I think you should. I want it in the record.

Mr. COX. I think we can also incorporate Mr. Baker's letter of June 8, 1956, which discussed some of these items.

(The document referred to is as follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., June 8, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: Further reference is made to our correspondence concerning the Evansville case. In your May 22, 1956, letter you state that you did not receive a copy of the initial decision and the original Commission order. This material was transmitted to your office under separate cover. However, under the assumption that it may have been lost en route, I am sending that material attached to this letter. When the Commission hands down a decision on the petition for reconsideration a copy will be sent to you.

As you recognized when you previously requested my personal comments, under the separation of functions provisions of section 409 of the Communications Act, I was not able to make a presentation of any of this matter before the Commission nor was I able to consult with the Commission. Consequently the views expressed in this letter can only be termed my own personal views. With this caveat, I am submitting the following analysis.

You request my comments on the statement of Mr. Henry Walker, Jr., secretary-treasurer of On The Air, Inc., an unsuccessful applicant in the Evansville comparative proceeding at the May 15, 1956, television inquiry before your committee. This statement reads as follows:

"The Evansville case is the first decision in history in which the Commission has applied the diversification of ownership principle in denying an applicant a grant for a television station when the applicant owned radio stations only."

I have attached hereto a synopsis of the comparative conclusions of the Commission in this case. As the chart indicates, On The Air was awarded a preference on the basis of the local residency of its stockholders and a slight preference in regard to local programing. On the other hand, Evansville was awarded a clear preference in the criterion of integration of ownership with

[1] The Commission submitted its answer in a letter dated August 30, 1956, which is published at p. 971 below, immediately after the earlier letter from its General Counsel.

management, a narrow preference with respect to the likelihood of effectuating its proposals and a preference as to the diversification of the mediums of mass communications. All other relevant comparative factors were found to be substantially equal with neither party being granted preference.

As background for my analysis of the way in which the Commission selected the applicant in this case which it believed would better serve the public interest, it is necessary to note the case of *Johnston Broadcasting Company* v. *Federal Communications Commisison* (85 U. S. App. D. C. 40, 175 F. 2d 251 (1949)). There the court of appeals said: "The Commission cannot ignore a material difference between two applicants and make findings in respect to selected characteristics only. Neither can it base its conclusion upon a selection from among its findings of differences and ignore all other findings. It must take into account all the characteristics which indicate differences and reach an overall relative determination upon an evaluation of all factors, conflicting in many cases." Diversification of the mediums of mass communications, on which Evansville TV was awarded a preference, was simply one of the many comparative factors considered by the Commission. This is not to say that a permit should be withheld from an applicant because it is otherwise engaged in the dissemination of the news. But where one applicant is free of association with existing mediums of communication and the other is not the Commission, in the interest of competition and consequent diversity, may be derelict if it does not weigh this factor, along with others, and award a preference to the deserving party on the basis of it. The court of appeals in *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission* (see 4 R. R. 525) stated "in considering the public interest the Commission is well within the law when in choosing between two applicants it attaches significance to the fact that one in contrast to the other is dissociated from existing mediums of mass communication in the area affected." (See also *Plains Radio Broadcasting* v. *Federal Communications Commission*, 85 U. S. App. D. C. 48, 52, 175 F. 2d 359, 363 (1949), and *Stahlman* v. *Federal Communications Commission*, 75 U. S. App. D. C. 176, 126 F. 2d 124 (1942)).

Although diversification is an important factor, it is weighed along with all other considerations to determine which of the competing applicants, if awarded the constructon permit, would better serve the public interest. Of course, being only one consideration, the diversification factor may be counterbalanced by other factors. (See *Alladin Radio and Television, Inc.*, 9 R. R. 1 (1953): *The Tampa Tribune Co.*, 9 R. R. 719 (1954)). In reference to Mr. Walker's statement, you have specifically requested:

"Can you tell me whether the Commission has ever before, in a comparative proceeding, held that a holder of an AM license should be penalized on that account, and that that factor should be controlling against such a licensee, all other things being equal? I am sure that you can advise me on this matter at this time without recourse to the members of the Commission."

Mr. Walker's statement on page 11, since it includes a number of conditions, may be fundamentally correct, but it presents an incomplete picture. Thus, in answering your question in this regard, I must point out that "all other things" were not found to be equal in the Evansville case. (See attached synopsis.) Ownership of radio stations has traditionally been a factor given weight in comparative proceedings for a construction permit for another radio or television station. Similarly, ownership of newspapers, other television stations, magazines, theaters, and, in fact, any medium of mass communication, would be taken into account by the Commission in comparing applicants. Ownership of the various mediums has been considered in a variety of combinations. Thus, it was inevitable that eventually a situation would arise that ownership of radio stations would be the significant factor which struck the balance in a television case.

Sometimes the ownership of radio stations has been counterbalanced by the ownership of other media of mass communication. (See *Radio Fort Wayne, Inc.*, 9 R. R. 1221). There have been, of course, more comparative proceedings concerning applicants for radio stations than there have been for television stations, and in many cases where radio ownership was a factor to be weighed, because of countervailing considerations, grants were awarded and not denied.

In addition, radio ownership in a comparative proceeding may have two aspects. To the extent that it demonstrates a good record of broadcast experience and likelihood of future effectuation of program proposals, it is an advantage. To the extent that it demonstrates a concentration of control of the media of mass communication, it is adverse. It cannot be said that the Commission is "penalizing" an applicant for having engaged in a certain business, but rather that the Commission is obliged to weigh all the relevant factors flowing from having been in that business, both advantageous and adverse. This is exactly what was done in the Evansville case.

I hope that this letter answers your questions fully; however, if you have any further problems in connection with this matter, do not hesitate to inquire.

Sincerely yours,

WARREN E. BAKER, *General Counsel.*

IN RE APPLICATIONS OF EVANSVILLE TELEVISION, INC., AND ON THE AIR, INC., EVANSVILLE, IND.

For Construction Permits for New Television Stations (Channel 7) Evansville, Ind.

I. INITIAL DECISION

Looked toward a grant to Evansville TV.

II. FINAL DECISION OF THE COMMISSION

The Commission considered all factors relevant in a comparative proceeding and found both applicants legally, technically, and financially qualified to construct, own, and operate the proposed television station. The Commission also found that, on the basis of the proposed policies, program service, staffing, management, and operational proposals, a grant to either applicant would be in the public interest. Certain weight was given to On The Air for past radio experience which was found to be counterbalanced by similar considerations in favor of Evansville. After absolving Mr. Rex Schepp, a stockholder in Evansville TV, of certain lack of candor charges propounded by On The Air in disclosing certain information to the Commission, the Commission then turned to the points of differences urged by the parties as entitling them to substantial preferences.

III. NO PREFERENCES AWARDED EITHER PARTY ON BASIS OF

1. Network proposals
2. Local programs
3. Staff proposals
4. Studios and technical equipment
5. Previous broadcast experience
6. Diversification of business interests
7. Participation in civic activities

IV. PREFERENCE AWARDED TO ON THE AIR

1. Slight preference in local programing but differences not considered major in nature.
2. Local residency of stockholders.

V. PREFERENCE AWARDED TO EVANSVILLE TV

1. Clear preference in criterion of integration of ownership with management.
2. Narrow preference with respect to likelihood of effectuation of television proposals.
3. Diversification of media of mass communication.

VI. FACTS UNDERLYING THE DIVERSIFICATION PREFERENCE

Evansville TV presently holds no interest in any media, whereas On The Air is the licensee of 1 of 4 standard broadcast stations in East St. Louis, Ill. Another wholly owned subsidiary of Curtis Radiocasting Corp. is the licensee of 1 of 2 standard, broadcast stations in Terre Haute, Ind. On The Air also is the licensee of FM station WMLL, Evansville, and the other subsidiary of Curtis Radiocasting Corp. is the licensee of WBOW-FM. These facilities are concentrated in a relatively small triangular area.

(The further letter from the Commission on this matter is as follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., August 30, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: Reference is made to your letter of July 13, 1956, and to the earlier exchange of correspondence between Mr. Warren E. Baker, General Counsel of the Commission, and yourself, regarding the testimony of Mr. Henry B. Walker, of Evansville, Ind., before your committee on May 15, 1956.

You may recall that your letter of July 13 was sent only several days prior to my appearance before the committee on July 17, 1956. In that letter, you inquired whether I had any comments additional to those which Mr. Baker had expressed earlier regarding application of the diversification doctrine in the comparative proceeding for channel 7, Evansville, Ind. Following denial of the petition for rehearing in this case, the General Counsel's Office forwarded to the Commission the correspondence which had passed between you and Mr. Baker. I have examined these letters, and wish to state that I am completely in accord with the views expressed by Mr. Baker. My agreement with Mr. Baker's views was made clear in my testimony of July 17, 1956, at which time, you may recall, I also made my additional comments on the channel 7 proceeding.

However, there is one aspect of the Evansville proceeding which remains to be commented on. It appears that Mr. Walker's testimony on May 15, 1956, left Senator Pastore with the impression that one of the principals in the successful applicant was a professional applicant. At that time, Senator Pastore seemed to be concerned that the Commission's licensing processes might be abused by persons who were, in effect, nothing but professional applicant[s] for TV stations. (Transcript of the hearings, May 15, 1956, p. 3043. See also pp. 2998–3003; 3039–3040.) When I last appeared before this committee on the television hearings, Senator Pastore again expressed his concern on this matter, and also wondered whether it was possible for such a professional applicant, after disposition of prior interests, to move to another locale, apply for a license there, and then be preferred on a comparative basis because of his experience gained through previous operations (transcript of hearings, July 17, 1956, pp. 4815–4817). At that time, I assured Senator Pastore that the Commission would write this committee, explaining the facts underlying this aspect of the Evansville proceeding.

Apparently Senator Pastore, in asking this question of the Commission, had reference to Mr. Rex Shepp, president and director of Evansville Television, Inc., the successful applicant in the channel 7 hearings. After reexamining the record, it is my belief, as well as that of the other members of the Commission, that nothing therein justifies the assumption that Mr. Shepp was a professional applicant, interested mainly in short-term trading in television licenses.

Before reaching the facts of record supporting this conclusion, it would be helpful first to discuss certain Commission policies which have a bearing on this point. In the exercise of its licensing functions, the Commission has long had a policy against trafficking in licenses. Prior to articulation of this policy in its present form, the Commission had been called on a number of times to determine whether it would be in the public interest to grant an application of one who intended subsequently to assign an instrument of authorization to third persons on whose qualifications the Commission had been afforded no opportunity to pass. It early adopted a policy against refusing to grant applications to such "strawmen," *Replogle* (1 F. C. C. 256, 258); *Advertiser Publishing Company, Ltd.* (4 F. C. C. 498, 501), on the rationale that failure to disclose the identity of a real party in interest militated against the personal relationship between the Commission and its licensees, which was contemplated by the Communications Act. *Porter and Eversole* (4 F. C. C. 680, 682). See also *Hearst Radio, Inc.* (7 F. C. C. 292, 295).

The Commission's policy against trafficking in licenses, as such, received expression in later cases. One of the first of these cases where that policy was discussed is *Powel Crosley, Jr.* (6 Pike & Fischer, Radio Regulation 6, 26). There, it was decided that "[t]here could be little dispute that sound public policy will not permit us to countenance speculation in the public domain," and that, as had been stated earlier in certain letters to Congress, it was "the Commission's policy to disapprove of transfers which obviously represent the activities of a promoter or broker, who is simply acquiring licenses and trafficking in them."

Senator Pastore's concern over the possibility of abuse of the Commission's licensing processes by short-term traders in licenses raises, in our opinion, principally the question of whether Mr. Rex Shepp was guilty of trafficking in licenses.

At the outset, I should like first to correct a mistaken impression of the facts which Senator Pastore may unfortunately have received from Mr. Walker's testimony before this committee. From certain remarks made by Senator Pastore during the course of the May 15 hearings, it appears that he believed Mr. Shepp had previously procured three television grants prior to applying for the Evansville channel. (See transcript of hearings for May 15, 1956, pp. 3039–3040.) However this impression may have arisen, the facts are, of course, otherwise. For the record on which the Commission based its grant to Evansville Television, Inc., shows that two of the past licenses in which Mr. Shepp had an interest (but never wholly owned) were for radio facilities, and that Mr. Shepp's only interest in a television station prior to the instant grant was a derivative one, stemming from the fact that the broadcast station in which he last held an interest in turn owned stock in a television licensee.

The facts on this point appear in paragraphs 6 to 9, inclusive, of the Commission's decision. Although a copy of this decision has been sent to this committee previously, we have attached another copy to this letter, for your convenience in referring to these basic facts.

The facts show that from 1940 to 1947, Mr. Shepp was employed as the general manager of station WIRE, Indianapolis, Ind. Shortly before taking this position, during 1939, he had become associated as vice president and a 25-percent stockholder in North Jersey Broadcasting Co., an applicant for a radio station in Paterson, N. J. After a grant of North Jersey's application, Mr. Shepp assisted in supervising construction and initial operation of that licensee's station. In 1942, he disposed of his stock interest in North Jersey (decision, par. 6).

While still employed as the general manager of WIRE, in Indianapolis, Mr. Shepp, in 1944, organized and became president and a director of, and a 28-percent stockholder in Phoenix Broadcasting, Inc., which then purchased radio station KPHO, Phoenix, Ariz. In 1945, Mr. Shepp became the majority stockholder of this licensee by acquisition of additional stock. In 1947, he resigned his position as general manager of WIRE and moved to Phoenix to manage station KPHO, a position he held until 1950, when he disposed of his interest in Phoenix Broadcasting, Inc. His 51-percent interest in Phoenix Broadcasting was reduced in 1949 by the sale of unissued stock to third persons. In 1950, Mr. Shepp disposed of his interest in Phoenix Broadcasting (decision, pars. 7 and 9).

Prior to the disposition of his interest in Phoenix Broadcasting, Mr. Shepp acquired a derivative interest in television station KTXL (whose call letters were subsequently changed to KPHO–TV), Phoenix, Ariz., by reason of Phoenix Broadcasting's acquisition of a stock interest in Phoenix Television, Inc., the holder of a construction permit for station KTXL. The record shows that Phoenix Broadcasting acquired its stock interest in November of 1949, and since Mr. Shepp disposed of his interest in Phoenix Broadcasting on April 29, 1950, this would naturally mean his derivative interest in Phoenix Television was simultaneousily terminated (decision, pars. 8 and 9).

In the judgment of the Commission, we do not believe that Mr. Shepp's acquisition of his prior broadcast interests and subsequent disposal of them involves the type of short-term profiteering in stations which is proscribed by our policy against trafficking in licenses. You will recall from the facts discussed previously that Mr. Shepp's first interest (in North Jersey Broadcasting Co.) amounted to only 25 percent, and that this interest was held from 1939 until 1942. The second broadcast interest which Mr. Shepp held, his interest in Phoenix Broadcasting, Inc., extended from 1944 through 1950. We do not believe that the holding of either of these interests was of such an unreasonably short duration as to justify the conclusion these interests were acquired on short-term considerations alone. With respect to Mr. Shepp's derivative interest in Phoenix Television, Inc. (which extended from November 16, 1949, the date on which Phoenix Broadcasting, Inc., subscribed to stock in Phoenix Television to April 29, 1950, the date on which Mr. Shepp sold his interest in Phoenix Broadcasting, Inc.), it is true, of course, that the holding period is relatively short

But considering the derivative nature of the interest held, and the fact that at the time Phoenix Broadcasting, Inc., acquired its interest in Phoenix Television, Inc., Mr. Shepp owned only 43.7 percent of Phoenix Broadcasting's stock, we do not feel that there is involved here the activities of a professional applicant.

I am sure that a moment's reflection on the basic problems involved in applying the policy against trafficking will convince you of this. What is needed essentially in applying this doctrine is a balancing of conflicting considerations. On the one hand, the Commission is naturally interested in seeing that its licensing processes are not made the vehicle for speculation in a resource which lies in the public domain; it is to this end that our policy against trafficking in licenses was developed. On the other hand, it is obviously equally in the public interest, in order to permit the free flow of risk capital into the broadcast industry, not to bar experienced station owners who have disposed of prior interests from reentering the broadcasting field by an overly rigid application of the policy against trafficking. It goes without saying, of course, that in every case, the balance which will ultimately be struck must rest on the facts and circumstances before us in any particular case. It is my feeling that the adjustment of the competing interests arrived at here is correct and rests on unimpeached record facts.

Senator Pastore also seemed to be concerned over the possibility of a professional applicant's moving to a new locale, after divestiture of prior interests, and subsequently, in a comparative proceeding, being accorded a preference on the basis of the past broadcast experience gained through operation of former stations.

Apropos of this problem, I think it is clear from the Commission's decision that Evansville Television, Inc., was not accorded a preference because of Mr. Shepp's past experience in radio and television. Paragraph 87 of the decision, which discusses the comparative aspects of the applicants' past broadcast experience, shows the Commission found that On the Air, Inc. (the applicant in which Mr. Walker had an interest), and Evansville Television, Inc., were equally balanced on this factor. The Commission adherred to this position in ruling on the petition for rehearing filed by On the Air, Inc. (A copy of the memorandum opinion and order disposing of the petition for rehearing has already been sent to this committee.)

I trust that I have answered the questions asked by Senator Pastore. However, in the event you have any further questions you may wish to ask on these problems, please do not hesitate to let me know.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*

Mr. COX. Is it a fair statement with regard to that letter, Mr. Baker, that although this has been considered in other cases, perhaps, that it is accurate to say that this was the first case in which a ruling on this diversification criterion was made adverse to one party solely on the grounds of the ownership of AM licenses, and not upon a combination of radio and newspapers, and usually centering down on the very community in which the television license is being sought?

Mr. BAKER. I think my letter speaks for itself in that area. That is with respect to a television case this is the first case in which radio ownership only has been a controlling factor, adverse to the individual. In many instances, however, it has been weighed and has merely been offset by other things.

Mr. COX. Yes. In other words, again, isn't this one of these situations where you get a slight conflict in your criteria? That is, you are interested in prior broadcast experience and in an area where television stations are coming into existence for the first time, the only people who can qualify are owners of radio stations; and that you now have working against that a criterion that says if you do find a man who has divested himself of all prior broadcast commitments, he comes in with the benefit of the experience and can assert a preference because he has no present holding?

Mr. BAKER. Yes. I can think of one other case, for example, in Tampa, in which one of the exhibits—one of the principal stockholders in the application—contributed broadcasting experience to the successful applicant. But because he had divested himself of his radio facilities, or was proposing to divest himself, they were preferred. Now, it so happened on the other side of the case that the other applicant happened to have newspaper ownerships in addition. But I mean, but for that you would have had a rather similar situation. What I am saying is that this is a factor which the courts have held the Commission must consider. Any time there is any factor which must be weighed, it is conceivable that at sometime that particular factor will be the one which you will say is the controlling one, if everything else balances out. I mean it just stands to reason, you either must weigh it or you don't. If you weigh it, it ultimately, in some case, is going to come up to be the one which swings the balance.

Mr. COX. All right. With reference to the matter of subscription television, that is another proceeding which the Commission has had under consideration. Is there anything to report with respect to the status of that?

Mr. McCONNAUGHEY. I think I can answer that very quickly, by stating we have been devoting our time on this allocation matter—practically all the staff, day and night, and I mean night, too—and we have not gotten any further on subscription television.

Mr. COX. I think, of course, the committee indicated they wanted the allocations matter treated with priority.

Mr. McCONNAUGHEY. That is what your committee told us, and what we have tried to do.

Mr. COX. Am I correct in my understanding that while you have been, therefore, waiting to give further consideration to this issue, that petitions have been filed with the Commission for experimental use of a subscription service in connection with UHF stations now off the air, and that the Commission has denied those, almost at the outset, on the ground that they are premature; is that correct?

Mr. McCONNAUGHEY. That is correct, Mr. Cox.

Mr. COX. In other words, the Commission is of the opinion that not even experimental use of subscription television should be authorized until it has reached its final conclusion on the general soundness of the proposals that have been made?

Mr. McCONNAUGHEY. I can only answer for myself in that regard. Since this matter is before us, I feel that possibly along the line, that we should, personally speaking, consider permitting experimental subscription television operation someplace. I say that is just my own thinking, offhand. I haven't studied it too much. I think we possibly should permit an experimental operation of subscription television. And I am not going to be tied to that, either.

Mr. COX. Now, it has, I suspect, been quite clear, both in your appearances before this committee and in your more recent appearances before certain of the House committees, that there is a good deal of concern over the question of the division of responsibility between the Commission and the Antitrust Division of the Department of Justice with respect to antitrust matters, in terms of primary jurisdiction and concurrent jurisdiction with respect to possible violations of the antitrust laws. You will recall that the committee wrote to the Commission and to the Department of Justice asking for comments upon testimony of Mr. Moore regarding his opinions as to the validity of certain network practices. The replies of both agencies were put into the record, and indicate, still, a feeling on the part of each that perhaps this is something that the other one should be looking into.

I think since that time the committee has again written to each of the agencies urging renewed efforts to try to mark out the divisions of responsibility. Is the Commission presently pursuing any course of discussion with the Department trying to achieve that end? Maybe Mr. Baker can answer that.

Mr. McCONNAUGHEY. General Counsel can answer that.

Mr. BAKER. I can answer that, in this sense: That, as you know, Senator Magnuson wrote us a letter and we are in the process of replying to that. That reply is just about ready, but because of the fact that it only represents my viewpoint and has not yet been coordinated with the Chairman and the Commissioners, I can't tell you whether that is actually the view. I expect that it will be in your hands in the very near future.

Mr. Cox. We will have it then for the record. Thank you.[1]

Now, turning to one matter that is perhaps new to our deliberations. Since you appeared here last, Senator Bricker has submitted a proposal—I don't know whether the bill has actually been introduced or not—with respect to a change in the Commission's multiple-ownership rule. Now, is there pending now before the Commission any rulemaking proceeding in which such changes are being considered?

Mr. McCONNAUGHEY. No, sir.

Mr. Cox. Has the Commission given consideration to the questions posed by such a suggestion?

Mr. McCONNAUGHEY. Only to this extent, Mr. Cox: Nothing other than, I think it is—since the Supreme Court has sustained the Commission's rulemaking power with reference to multiple-ownership—that I think it is the feeling of the Commission that any changes that would be made should be made by the Commission rather than by congressional action. If any changes should be contemplated, it should be by the Commission rather than by congressional action.

Mr. Cox. So the Commission would then give thought to whether this was desirable, and if so would initiate a rulemaking proceeding?

Mr. McCONNAUGHEY. I think so. The reason I can say that is I think the Commission is much more flexible—can make itself more flexible as to changing conditions—than you can by enacting a statute and then trying to repeal it if conditions change too fast.

Mr. Cox. Is it correct to say that the argument in support of some such shift from a fixed number to a percentage of population is based on the feeling that one man may own 7 stations and the other man may own 7 stations, and yet they are far different in terms of their coverage, in terms of their impact and importance?

Mr. McCONNAUGHEY. That is right. It is a matter that I think the Commission is going to be cognizant of, and it involves a lot of problems. When you speak of percentages you have to be very careful about getting a concentration. You might have 25 percent, and that might pretty well control 2 or 3 States. I think you have to consider what you would have in individual States, in individual territories.

[1] This letter is published in the volume on Network Practices.

I mean there are a lot of problems. That is all I am trying to point out.

Mr. Cox. Isn't it possible that while you might be achieving an equalization between the position of a multiple owner of smaller stations and the more fortunate, perhaps, owner of larger stations, that this whole thing would contribute, however, to an increased concentration of ownership in the entire broadcast field?

Mr. McConnaughey. I think that is correct. And that might be good or it might be bad; I don't know.

Mr. Cox. I believe you told the Celler committee recently that you had on the average of about 30 transfers of control per month in both radio and television.

Mr. McConnaughey. I think that is about what they run. That is radio and television.

Mr. Cox. Now, of course——

Mr. McConnaughey. There aren't many in television; most all of them are in radio.

Mr. Cox. I recognize in many instances there is a shift of stock ownership, not a real shift in the individuals concerned.

Mr. McConnaughey. That is right.

Mr. Cox. But isn't it true where there is an outright sale that, generally speaking, these have been moving, not from the hands of one single owner into another single owner, but from a single owner into the hands of multiple owners?

Mr. McConnaughey. I don't know what the general rule is, but there have been quite a number of them that that has been the case.

Mr. Cox. Now, in connection with furnishing us with these criteria used in comparative cases, can you also furnish us with the criteria, if any, which are used in connection with passing upon the application for a transfer?

Mr. McConnaughey. Criteria?

Mr. Cox. Yes. In other words, you have a question of possible duopoly; do you not?

Mr. McConnaughey. Yes, yes, yes. We will be very happy to.[1]

Mr. Cox. Isn't it true, though, that at this point you apply a completely different set of criteria than you applied when the original grant was made?

Mr. McConnaughey. Yes; that is because of the congressional act, section 319 (b), or 310 (b), maybe.

Mr. Cox. 310 (b)?

Mr. McConnaughey. Yes.

Mr. Cox. What is the operation of that, Mr. Baker?

Mr. Baker. Just read the last sentence of it, and it answers it, Mr. Cox. It speaks for itself.

Mr. Cox. You are simply permitted to determine the legal, technical, and financial qualification of the proposed transferee?

Mr. Baker. Let me read for the record that language.

Mr. Cox. All right.

Mr. Baker. And this relates to applications for transfer of construction permits, or transfer. It says:

> Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 for the permit or license in

[1] The Commission later advised the committee staff, however, that it had nothing to add to its testimony given at this time.

question, but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

That is a specific prohibition in the law. Therefore, that means that you must consider it only on whether the particular applicant meets the minimum qualifications of meeting the public interest. You may not say it would be better for someone else to own it?

Mr. Cox. I take it, though, that the Commission would still be permitted, even under that language, if it felt that there were others—or that the public interest would be better served, if this particular transferee was not permitted to operate the station, it can simply deny the transfer and then permit the transferor to seek another purchaser and then pass upon the application for that transfer? In other words, at this point you simply consider whether or not you will approve the transfer to this individual who has reached an agreement with the present owner?

Mr. Baker. The first part of your statement, I don't think the legislative history of this particular amendment would bear out. That is, I don't think you can take into consideration the abstract that someone else might be better and might apply.

Senator Pastore. That is right. In other words, according to the law all you have to consider is the qualification of that transferee. There may be somebody better qualified, but that isn't the question.

Mr. Baker. That is right. That is what the Congress decided in 1952.

Mr. Cox. I think that when you were here before the chairman indicated that he might like to have you comment upon the problem of political time. To this point, no separate hearings have been held on this. Does the Commission have any comments to make in terms either of problems which it now faces, or recommendations for changes of section 315, which it feels might be desirable?

Mr. McConnaughey. General counsel would be glad to expound on that subject.

Mr. Baker. I can only state the Commission's position in this sense. The Commission has commented on half a dozen bills with respect to section 315, and I don't think that I could in any short statement improve on the comments. They more or less covered the situation.

Mr. Cox. These will be part of the records in the hearings held on the House side?

Mr. Baker. And in the Senate. We have commented in both places.

Senator Pastore. Any further testimony on the part of any other member of the Commission? We are very delighted to have you here. We will welcome your comments or observations if you desire to make them.

Off the record.

(Discussion off the record.)

Senator Pastore. Mr. Lee?

Mr. Lee. Off the record.

(Discussion off the record.)

Senator Pastore. Very well, we will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12:10 p. m., the committee adjourned.)

(Matter referred to earlier as being printed at the conclusion of the Commission's testimony is as follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., August 30, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: In the Commission's July 17, 1956, appearance before your committee's television inquiry I was asked to furnish for the committee approximate figures on the amount of time Federal Communications Commission personnel had spent, during the 2d session of the 84th Congress, on congressional hearings, giving special attention to any duplication of work.

Comparatively little duplication was involved in the hearings on specific legislative proposals. However, we did find considerable duplication in the preparation, attendance, and followup involved in congressional investigative hearings. Three of the investigatory bodies before whom the Commission was asked to appear and/or furnish extensive information were, the Small Business Subcommittee of the House Government Operations Committee, the Anti-Monopoly Subcommittee of the House Committee on the Judiciary, and, of course, your committee's television inquiry. Much of the information requested from the Commission for all three of these investigative hearings was duplicate. I do feel that a considerable amount of time could be saved if some system were instituted in which this kind of duplication could be avoided. However, it is my opinion that such a procedure should be initiated by the Congress and not the agencies involved.

Most of the duplication involved in legislative hearing matters could be avoided if the procedure, suggested by your committee, of requesting only new information or information not already available were more widely practiced.

Attached is a copy of the final Commission figures, in man-hours, devoted to congressional hearings. If we can be of further assistance please feel free to call on us.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION—2D SESS., 84TH CONG.

Man-hours devoted to congressional hearings

	Preparation	Attendance	Followup	Total
Grade 14 and above (48):				
House ... man-hours	1,306	448	237	1,991
Senate ... do	983	478½	106½	1,568
Total ... do	2,289	926½	343½	3,559
Days	286	116	43	445
Man-years	1.1	0.4	0.2	1.7
Grade 13 and below (78):				
House ... man-hours	1,896	201	486	2,583
Senate ... do	1,058	170	62	1,290
Total ... do	2,954	371	548	3,873
Days	369	46	69	484
Man-years	1.4	0.2	0.3	1.9
Total, all grades (126):				
House ... man-hours	3,202	649	723	4,574
Senate ... do	2,041	648½	168½	2,858
Total ... do	5,243	1,297½	891½	7,432
Days	655	162	112	929
Man-years	2.5	0.6	0.5	3.6

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., August 30, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: At the hearing before your committee on Tuesday, July 17, 1956, it was requested that we supply the commitee with a list of the various criteria which are considered by the Commission in comparative television licensing procedings. A discussion of the relative importance of the criteria, if such difference exist, and whether some of the criteria are contradictory to each other, was also requested (transcript, p. 4812, vol. 30). We will try in the succeeding discussion to set out as definitively as possible the information responsive to their requests.

As to your first request, Congress in the Communications Act of 1934 or its several amendments refrained from laying down definitive criteria to guide the Commission in selecting the best qualified applicant among several competing for a particular channel or facility. Instead, it has left that task to the Commission to work out under the applicable standard, the public interest, convenience, and necessity.

A list of the comparative criteria, which have been evolved and employed by the Commission in the comparative television cases, would include the following: Proposed programing and policies, local ownership, integration of ownership and management, participation in civic activities, record of past broadcast performance, broadcast experience, relative likelihood of effectuation of proposals as shown by the contacts made with local groups and similar efforts, carefulness of operational planning for television, staffing, diversification of the background of the persons controlling, diversification of control of the mediums of mass communications.

In considering the above list, two points should be kept in mind. The list is not the final, absolutely complete delineation of all the criteria which will be considered in the determination of the better qualified applicant from the viewpoint of the public interest. As the Commission gains added insight into its complex and difficult processing task, new factors may be included or a particular factor may be dropped as having been found to have no real decisional vitality. The factors on the above list did not present themselves to the Commission simultaneously in the Commission's first or even first hundred comparative decisions They were worked out by the agency gradually and laboriously over its years of licensing since 1927. An example in the present period may point up the dynamic nature of the task: The Commission, in the recent television cases, has not bestowed any preference to applicants on the factor of greater comparative coverage because of its conclusion that the tools now available or employed for the prediction of TV coverage are not sufficiently reliable to enable the Commission to make coverage findings which would have decisional significance. (See *Television Spokane, Inc.*, 9 Pike & Fischer, R. R. 713.) But as the tools become perfected or new methods are employed, comparative coverage might become a pertinent issue in the television proceedings. (See *Midwestern Broadcasting Co.*, 13 Pike & Fischer, R. R. 613.)

The second point is that a particular case may present facts pertinent to and perhaps decisive of the public interest determination, which do not, strictly speaking, fall within any of the above listed categories. For example, one applicant may have engaged in trade practices or violations of law outside of the broadcast field to an extent which, while not disqualifying, does raise doubt as to the likelihood of his operating completely in the public interest—a doubt which does not exist in the case of his rival who has no such adverse record. (See, e. g., *Radio Fort Wayne, Inc.*, 9 Pike & Fischer, R. R. 1221). Similarly, there may be marked differences in a case in the applicants' particular policies of service to the area involved. (See *Petersbury Television Corp.*, 10 Pike & Fischer, R. R. 567). Or the case may be decided, under section 307 (b), upon the basis of the relative needs of two closely located but distinct communities for the single channel available to them.

In short, it is impossible to detail or foresee all the facts that could be pertinent to the public interest determination. As the court of appeals stated in the leading case (*Johnston Broadcasting Co.* v. *Federal Communications Commission*, 175 F. 2d 351, 357–358):

"In sum, we think that there are no established criteria by which a choice between the applicants must be made. In this respect, a comparative determination differs from the determination of each applicant's qualifications for a permit. A choice can properly be made upon those differences advanced by the parties as reasons for the choice * * * It is true that a few items upon which comparisons could be made might be prescribed, but such a list could not encompass every factual possibility * * *"

In keeping with this directive, the Commission permits the adducement by the parties of all facts pertinent to the comparative judgment. And in the final decisional process, the Commission must, in discharging its function under the public interest standard, consider all points based on such record facts—even though falling outside one of the criteria in the above list. This duty has been made clear by judicial interpretation of the Communications Act. (See *Johnston Broadcasting Co.* v. *Federal Communications Commission*, 175 F. 2d 351.)

Turning to your second request—the relative importance of the criteria—we point out that a precise delineation is even more inappropriate on this score. Thus, we could say that three factors on the list, diversification of the background of the persons controlling, participation in civic activities, or carefulness of operational planning for television, do not carry the same weight as the others. But in given circumstances this would not hold true. For example, taking the last-named factor (carefulness of planning), normally the difference in the applicants' planning, while it may be decisionally significant, does not entitle one applicant to a very important preference over its rivals. (See, e. g., *Tampa Times Co.*, 10 Pike & Fischer, R. R. 77, 136–7.) But imagine the case of an applicant whose plans are completely confused and muddled. Serious doubt might arise as to the likelihood of effectuation of that applicant's programing proposals, and thus the applicant would be at a distinct, not a minor, disadvantage. Further, the applicants may be so evenly matched on all other criteria that a preference in any of the three listed categories could be decisive of the whole case.

As to the other criteria listed, we do not believe any ranking in order of importance is advisable, or indeed, possible. We have stated repeatedly that "there is no all-embracing, absolute criterion" (*Tampa Times Co.*, *supra*, at 126). Proposed programing has been called the essence of service to the public, but that proposal must be viewed in conjunction with the factors going to the likelihood of its effectuation. We cannot say that the proposal is of greater importance than the assurance of its effectuation. Further, the grant of a license is for a considerable period. Accordingly, factors going to the likelihood of continued sensitivity to the area's changing needs cannot properly be given a subordinate role. Nor can the important public-interest consideration of diversification of control of media of mass communications be labeled secondary to the other factors.

We are firmly of the opinion that the only proper approach is to look to the facts of each case. An example may best point up the wisdom of this approach. The normally important factors of local residence and integration of ownership and management (and also participation in civic activities), usually are of lesser significance when dealing with applicants who both have past broadcast records. For such records, being in the nature of an actual demonstration, are more persuasive evidence on the question of effectuation of proposals or continued sensitivity than can be gleaned from the three mentioned criteria—integration, local residence, and civic participation (*The Tribune Co.*, 9 Pike & Fischer, R. R. 719, 770 a-c). However, in the case of the newcomer to the broadcast field, these criteria are of great significance since there is no other way to evaluate such an applicant in this important decisional area (*The Radio Station KFH Co.*, 11 Pike & Fischer, R. R. 1, 103–4). And finally, the evaluation of the newcomer with integration and local residence against the established broadcaster depends on the nature of the particular past record and the integration and local residence showings involved. (Compare *McClatchy Broadcasting Co.*, 9 Pike & Fischer, R. R. 1190, with *The Radio Station KHF Co.*, *supra*.)

In short, here again the facts are controlling. As stated by the court of appeals in its stricture against a mechanical or numerical approach, "a slight degree of superiority in several factors might be more than offset by substantial inferiority in one" (*Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 189 F. 2d 677, 680, *cert. denied* 342 U. S. 830).

Your final request is an inquiry whether certain of the factors considered by the Commission are contradictory. By "contradictory," I understand you to mean an attribute of an applicant which may lead to both a preference in one area of comparison and a disadvantage in another. The nswer to this question is "Yes."

Thus, such a situation exists in the case of the applicant who, at the time of his television application, controls other media of mass communications. Such an applicant, if the operator of a radio or television station, may obtain a preference in the categories of past broadcast record and broadcast experience; or if the mass media instrument in question is located in the area where application has been made, the applicant may obtain a preference because of his knowledge of/or insight into the needs of that area (the factors of local residence or participation in civic activities). But the same applicant might be at a disadvantage on the factor of diversification of control of the media of mass communications. It is, of course, impossible to delineate outside the facts of a particular case the relative advantages or disadvantages. We do not believe there is anything amiss in this "contradictory" situation; the Commission is simply discharging its duty, under the statute, to take into acount all facets of the public interest judgment.

In concluding, I express my regret that a more definitive answer to your inquiries is not possible. I think you will agree, however, that a mechanical or preordained approach to the television licensing process, since it would not permit proper evaluation of all pertinent facts, would be in derogation of the public interest standard.

If I can be of any further assistance to you in this matter, please do not hesitate to call on me.

By direction of the Commission:

GEORGE C. MCCONNAUGHEY, *Chairman.*

TELEVISION INQUIRY

(UHF-VHF Allocation Problem)

WEDNESDAY, JULY 18, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10:30 a. m., Senator Frederick G. Payne, presiding.

Present: Senator Payne.

Also present: Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel.

Senator PAYNE. The hearing will be in order.

The witness this morning is John W. Boler, president of the North Dakota Broadcasting Co. Mr. Boler, we will be very happy indeed to hear from you, sir.

I apologize, as far as I am concerned, for not getting here ahead of time, but it so happens that I just learned about the fact that there was a shortage of people up here just a couple of minutes ago.

Mr. BOLER. I appreciate the opportunity of being here. This is a rather lengthy statement.

Senator PAYNE. You may proceed.

Mr. BOLER. I will read the statement without the exhibits, or I will read the entire statement, or we can put it in the record and we can have questioning.

Senator PAYNE. Proceed any way you care to. The statement, I understand, is 10 pages.

Mr. BOLER. That is right.

Senator PAYNE. Why don't you go ahead with the statement, with the understanding that the exhibits will all be made a part of the record.

Mr. BOLER. Fine.

STATEMENT OF JOHN W. BOLER, PRESIDENT OF THE NORTH DAKOTA BROADCASTING CO.

Mr. BOLER. My name is John Boler. I am president of the North Dakota Broadcasting Co. This company owns and operates KXJB-TV, Valley City; KBMB-TV, Bismarck; KCJB-TV, Minot; KCJB radio, Minot; KSJB radio, Jamestown, all located in the State of North Dakota.

I appreciate being given the opportunity to appear before you today to discuss American Telephone & Telegraph Co. tariff and general business practices. I hope that I can submit sufficient evidence to convince you that a very thorough investigation should be made of A. T. & T. tariffs and of the general business practices of the A. T. & T. I do not believe the Federal Communications Commission has the funds to make such an investigation, and I hope that this committee may be able to remedy this situation.

First, in reference to business practices, it refuses services, except at its convenience, and then at arbitrary tariffs dictated by it. To be specific, let me tell you of my experience with A. T. & T., which I believe will confirm these facts.

Over a period of 3 years, from the fall of 1951 through June 1954, I made numerous inquiries of A. T. & T. relative to television network service facilities, and in most instances they did not even have the courtesy to respond. At this time the telephone company did not have facilities to extend network programs into our State. The closest city for interconnection was Minneapolis, Minn. An inquiry was made of the telephone company when and if such facilities would be available to extend television programs into North Dakota. The first such inquiry was made of the phone company in October 1951. Its answer was that it could give no date; further, it had no plans whatsoever for such service in the immediate future. Later, we inquired again to see if there were any new developments, and received similar reports. The latest inquiries, made through our local telephone company, brought us the response that it would be 1956 or 1957 before it could have service to Fargo, and 1958 or 1959 before they could serve Bismarck or Minot.

We made inquiry of the FCC as to whether or not we could obtain construction permits to build a private relay link between Minneapolis and Fargo, N. Dak., to obtain live television service. We based our inquiry on our understanding that FCC rules provided that if a common carrier has no facilities, a private system may be licensed; further, we informed the Commission we could not afford the common carrier service even if it were available. Members of the Commission staff informed my attorney that we had to obtain a letter from the common carrier confirming that they did not have facilities and/or that they had no immediate plans for installation of such facilities. We were so naive as to believe that the A. T. & T. would confirm its lack of interest and/or inability to furnish facilities.

A. T. & T. officials did not respond directly in writing to our inquiries, but their representatives got word to us to the effect that in their opinion it was economically impractical to establish television stations in North Dakota, and that anyone considering such a venture should have his head examined.

In view of this attitude, we anticipated no problems in obtaining the necessary permits from the FCC to install our own private system between Minneapolis and Fargo and proceeded therefore to obtain all of the necessary engineering data and financing to build such a private system to service our own stations. After 4 months of fieldwork, determining sites for the microwave towers, making leases, and so forth, we completed our application and filed it with the FCC for the necessary microwave relay links between Minneapolis and Fargo to interconnect us with the networks. The FCC staff requested that we obtain a formal letter from the A. T. & T. stating its intent re establishing service parallel to our planned system. The commercial manager in the Fargo office of the telephone company advised that the could get no response from the A. T. & T. This was in February 1954. I told this representative that either I get a response immediately or I would call the president of A. T. & T. or file a formal complaint with the FCC.

The following day I received a call from him asking for an appointment for a representative of A. T. & T. Mr. Edward Laird, Jr., commercial manager of A. T. & T. long lines division for our area, arrived in North Dakota for this appointment. Mr. Laird questioned the wisdom of establishing television stations in North Dakota and wanted to know if we would be able to pay the bill if the phone company put in such facilities. We advised him that we did not want their facilities or their advice; we wanted to build our own private system and needed a letter from him advising A. T. & T. lack of interest and/or inability to furnish service. When he was asked why he did not reply to all previous requests during the past several months, he stated that he could not believe it was a serious inquiry. He said the company received numerous inquiries nationwide from people who were dreaming about going into television and they simply could not pay attention to all such requests.

Senator PAYNE. In other words, am I to understand you started making the inquiries on this back in 1951?

Mr. BOLER. That is correct, sir.

Senator PAYNE. And in 1954 there was suddenly enough interest to apparently come and talk with you?

Mr. BOLER. They found out that we had been engineering our system from Minneapolis to Fargo. We started in late October, in 1953. They found out finally—they were told, tipped off by the Northwestern office in Fargo—that we actually were surveying and were going to apply for a permit. And that one of the reasons primarily, now that we were putting the pressure on to get a response, is because the FCC rules required that we had to show evidence that there were no facilities, or they would not put them in. They stalled, delayed, wouldn't write a letter.

Finally, when they discovered that we had our engineering all done and were going after our private system, then they immediately came right up.

Mr. COX. When did your stations go on the air?

Mr. BOLER. Our first station went on the air in April 1953, in Minot. And prior to that, of course, our application had been on file for many months before.

In other words, in 1952 we actually did the engineering for our first station, and we were operating a closed circuit television system in Minot training our staff because of the shortage of television employees. So actually, in October 1951, is when we decided to plan financing and go into TV.

Mr. COX. When was your Fargo station——

Mr. BOLER. The Fargo station went on the air August 12, 1954.

Mr. Laird then advised us that A. T. & T. would be willing to push its construction schedule up to meet our demand providing we would be willing to pay an expediting charge of $22,000, and then it promptly notified the FCC of its offer to us in order to block our application for the private system. They notified our competitor simultaneously, and our competitor accepted A. T. & T.'s offer and therefore we were forced to accept common-carrier service. We refused to pay the expediting charge and now the A. T. & T. is suing us for it, right now. (See exhibit 1, page 992).

Now, I ask you: Is it your intent that A. T. & T. be the agency that advises the broadcaster whether or not it is economically feasible to have television service in North Dakota, instead of the licensing agency? Is it your intent that the common carrier ignore all verbal and written requests for information as to availability of facilities, and do so continuously for a period of months on end and/or until such time as it is threatened with the installation of a private system? Is it your intent that this Government-protected monopoly put a broadcaster to the expense of engineering a private system at a cost of thousands of dollars, only to have the permits for the private system denied because the common carrier changes its mind at the last minute when it sees that the broadcaster intends to install his own private system? Under the existing FCC regulations, A. T. & T. can automatically block the installation of a private system through reversing its decision at will and offering to give service, thereby preventing the FCC from granting a permit for a private system.

This, gentlemen, is what is going on today, and has been the practice of the common carrier ever since the inception of television. This same procedure has been experienced by a great number of broadcasters. I have talked to dozens of broadcasters.

Senator PAYNE. You happen to come from North Dakota, but I have a close personal friend of mine who is a broadcaster in the State of Maine, which is quite far removed, and I know he ran up against the same situation.

Mr. BOLER. I see. Well, we have a petition on file with the FCC to amend part 4 of the Commission's rules governing television auxiliary stations, which, if adopted, would stop some of this flagrant abuse by A. T. & T. It has been on file since August 1954, but has not been adopted. We have been advised that the FCC has this petition under active consideration and I ask your help to get action on this. (See exhibit 2, p. 992.)

Attached you will find a schedule of our payments to A. T. & T. which shows payments over a period of 21 months totaling $234,996.34. Attached find a letter from my competitor, WDAY–TV Fargo, indicating they have paid A. T. & T. $204,000 during the same period of time, and we are served by A. T. & T. from the same facilities. (See exhibits Nos. 3 and 4, pp. 994 and 995.) Payments to A. T. & T. over this period of 21 months total $439,000. The A. T. & T. investment in facilities to serve us, we believe, is less than $500,000. In other words, A. T. & T. is recovering its total investment in 3 years or less. I wish this committee would subpena the records and confirm the actual investment.

Our payments to A. T. & T. represent 18.7 percent of our total operating cost. Our gross sales for 1955 for KXJB–TV were $523,000 and we paid A. T. & T. $124,000. For the same period we suffered a loss of over $130,000. If we had been authorized to install our own microwave system, our operating costs to date could have been reduced approximately $100,000 and our loss reduced to the amount normally experienced by any new television operation. We can install our own microwave system for less than $200,000 and maintain it at a maximum cost of $42,000 per year, or 30 percent of A. T. & T.'s tariff. This includes depreciation, service, parts, insurance, and two full-time engineers to service the equipment. (Details shown on exhibits 5 and 6, pp. 995 and 996.)

I have no right to expend the money demanded by A. T. & T. to bring live television service into North Dakota. The public, however, has the right to expect the same television service in North Dakota as is available in Washington, D. C., or any other place. They want to see President Eisenhower and the world series and other outstanding events—and they are entitled to this service.

This is the realization of the FCC Priority No. 1, Sixth Report and Order, of providing "at least one television service to all parts of these United States."

A clear-cut policy on licensing of such private facilities is necessary to accomplish this goal of the FCC. The FCC should be the agency that determines whether duplication of facilities by the common carrier and private enterprise is justified in the instance of financial hardship, and not A. T. & T. The broadcasters are capable of operating, maintaining, and providing quality service. Provisions in the rules for private relay systems to serve the remote areas should effect a more desirable concentration of common-carrier facilities on main trunk and branch lines with resulting economies to all. The common carrier would not be forced to maintain its rates to cover risk capital which might be lost if smaller market stations enter into, or, I should say, are forced into, economically unsound contracts with the common carrier.

We understand that one of the reasons the FCC has delayed acting on our petition to amend the rules, or its primary concern, is "economy of frequencies." We do not believe that this argument or contention of A. T. & T. is applicable to relay facilities that would be licensed for a single user. Privately owned facilities would not require greater band widths, according to our engineers, and no additional channels would be required. The use of existing allocated intercity and STL channels would be adequate for this service.

Everyone knows that the growth of television is related to economics. If a television station is located in the area of existing carrier network routes, economy may determine the use of the common carrier. The farther away the station is from the major market the higher the connection cost. Common-carrier rates, we understand, are based on averages, and when they are trying to reach areas like North Dakota it may even affect the average rate formula.

If provisions for privately owned relays are adopted by the Commission, the matter of getting the service into smaller markets can be assumed by the broadcaster, and at a rate that he can afford.

Privately owned systems will not jeopardize the common-carrier service. If the common carrier can provide service or instant communication to three-fourths of the Nation's population now in case of a national emergency, privately owned relays could supplement this same service to a large portion of the population not now served. This would include normal daily service as well as emergency service which otherwise would not be available for many years to come.

Now, A. T. & T. maintains that the off-the-air pickup, which service it now offers, is the solution to all of the small television broadcasters' problems, but it is not. (See exhibits Nos. 7 and 8, p. 998.) I know from personal observation that the off-the-air installation made by A. T. & T. for one of my competitors in North Dakota is very unsatisfactory, and they have been operating the system since October 1955, and that broadcaster has constantly complained to A. T. & T. They deliver a bad picture and they have numerous outages. A. T. & T. is charging this station approximately $4,700 per month, even though the broadcaster furnished the tower and buildings to A. T. & T. specifications. This broadcaster could have put in his own system, were he allowed to, and could have maintained it for $1,000 to $1,200 per month and have had a much better quality service.

I know of another installation made by the telephone company for a broadcaster in South Dakota where an off-the-air service is being used. I talked to this broadcaster on the phone before I left home and asked him if he was pleased with his service. He said that he was having a miserable experience with it. One thing he pointed out in particular was the service. When they have a failure, A. T. & T. contracts allow them 2 hours to get an engineer to the location. He has had a tremendous number of outages and a substantial loss of air time. A. T. & T. told him a standby generator was needed and it would take them 6 weeks to put it in to cut down the outages by power failure. He advised them that he could not wait 6 weeks or tolerate these outages, and that he could have a local company put in a standby unit and could do so within 48 hours, but the phone company would not allow him to do it. He is now demanding that A. T. & T. put in TD–2 type equipment instead of the type of equipment used, because losses by power failure were only a part of the trouble.

These two examples of A. T. & T. off-the-air service point up several things. A. T. & T. charges for its off-the-air pickup service are exorbitant for the quality of picture and the service given. (See exhibit No. 9, p. 999.) It is 65 to 70 percent of their charge for first-class service. Further, as to the service, the broadcaster could install a system and have attended service of a staff engineer of his own system at a cost of 50 percent of A. T. & T. tariff for their unattended service off the air.

It is not in the public interest to restrict the opportunity to provide off-the-air service to A. T. & T. when, where, as, and if it decides it wants to and/or has the right to provide it, as the case is under the present regulations.

The Commission rules should be amended to give the FCC discretion to grant applications for private television intercity relay stations or off-the-air pickup notwithstanding the fact that the common carrier facilities may be available. This would encourage a more completely satisfactory solution to dozens of broadcasters' problems in practically every State in the Union, including UHF stations. Such a rule, properly administered, would not jeopardize the A. T. & T. network nor impair its ability to—

> meet the requirements of the television broadcast industry for network transmission facilities.

The FCC recognizes that in order to exist, a television station must provide live programing, must interconnect with network facilities or with other television stations. This procedure is economically feasible, however, only if interconnection charges are consistent with the station's revenue. We cannot exist if our payments to A. T. & T.

continue to be 18 to 20 percent of our total operating cost. I repeat, I paid A. T. & T. $124,000 in 1955, and our gross sales were $523,000 and our operating loss was $139,000. We could have and should have had our own microwave system, and if we did we could have saved at least $100,000. (See A. T. & T. contract attached, exhibit No. 1.)

Our petition to the FCC, filed in August 1954, to amend part 4 of the Commission's rules and regulations governing television auxiliary broadcast stations (Docket No. 11164) has the support of more than 70 broadcasters from different areas of the country, as evidenced by their comments filed with the FCC. I understand CBS, NBC, and ABC have also filed supporting comments. The Radio-Electronics-Television Manufacturing Association has filed supporting comments, and I wish to quote a synopsis of the conclusions of Mr. McDaniel, president of the Radio-Electronics-Television Manufacturing Association:

> RETMA believes the success of the Commission's proposed extension of television service to remote areas through low power, relaxed rules, and satellites depends upon two basic factors. First, ability of industry to develop adequate equipment economically within the resources of smaller communities, and, second, the ability of such communities to receive and rebroadcast, at low cost, network and other live programs. One cannot succeed without the other.
>
> Delay in establishment of effective rules covering the subject matter of this proceeding will prevent full realization of the Commission's plan of extension of television service to remote areas, utilization of the UHF frequencies, and the establishment of a nationwide competitive television service.

Now, A. T. & T. has vigorously opposed our petition to change the rules on the basis that their "off-the-air pickup service is the solution." Incidentally, at this point I would like to add that they did not come out with this off-the-air pickup proposition until a few months after we had filed our petition to change the rules. Then, and not until then, did they try to figure out some camouflage to supposedly solve our problems.

I refer you to the installations it has in North and South Dakota that contradict their theory. This so-called new and cheaper interconnection service furnished by A. T. & T. is subject to limitations specified by A. T. & T., and not by the Commission. Presumably, the decision to furnish cheaper service would be at the discretion of A. T. & T. and it would be provided only in the absence of other facilities. Although the proposal of A. T. & T. is not specifically described as a common-carrier service, the right to provide it in practical effect would be restricted to A. T. & T. Each channel furnished would be at the exclusive service of a single customer.

A. T. & T. does not want the FCC to have the discretionary authority for use in intercity television relay situations in which present policies of the proposed cheaper A. T. & T. service may impose a prohibitive economic burden upon the particular broadcaster. Under the present FCC rules, there is no provision for the FCC to determine whether a cheaper service should be furnished in any particular situation. In A. T. & T.'s proposal for off-the-air service, there is no criteria for use by A. T. & T. in making a decision as to who can or who cannot have this so-called utility grade service offered by them. A. T. & T. is well aware of the tremendous hardship caused North Dakota Broadcasting Co. by the cost of service provided by it between Fargo and Minneapolis, but it has done nothing about it, except to extend us time when we cannot pay the bill. It admits that the off-the-air service is no solution to our problem. As long as other stations in tandem also do off-the-air pickup from our facilities—at this point I would like to explain what I mean here. We have two additional television stations in North Dakota beyond our pickup point from A. T. & T. And these two stations are currently taking off-the-air pickup from our big station and thereby preventing us from doing an off-the-air pickup out of Minneapolis. In other words, if we do one off-the-air pickup, the A. T. & T. admit themselves that a second or third off-the-air pickup is not practical, technically.

Mr. Cox. This off-the-air pickup service that you provide to your stations in Minot and Bismarck is a private system?

Mr. Boler. A private system that we have installed; that is right.

The Telephone Co. admits that the first long hop (213 miles) between Minneapolis and Fargo must be a direct connection on a city-to-city basis. They have quoted us a tariff of $16,130 per month on a minimum contract of 3 years, and termination charges totaling $274,395, with no guaranty of performance of the equipment. (See letter attached from A. T. & T. and letter dated August 31, 1955, p. 3). A. T. & T. has now withdrawn this offer and agrees that tandem operation is not technically possible.

The determination as to whether we should be forced to take service from A. T. & T. or be allowed to operate our own microwave facilities between Minneapolis and Fargo should be made by the FCC and not the common carrier. Evidence shows A. T. & T. lack of interest in a broadcaster's financial problems due to its high tariff, and if a broadcaster attempts to obtain permits for private facilities A. T. & T. shows an arrogance that could only come from management of a moponoly which is not properly controlled, primarily because the rules and regulations make control impossible.

We are not attempting to undermine the sound Commission policy regarding protection of the common carrier's role of providing long-haul, through route service to several customers simultaneously. We agree that A. T. & T. should maintain the backbone service coast-to-coast, and branch service into important tributaries such as Minneapolis. The television stations along these routes have advertising rates from $1,200 an hour to $6,000 per hour, and their revenue from the networks and advertisers far exceeds the sum paid to A. T. & T. I am talking about television stations like ours. Our largest station went on the air in August 1954, with a network rate of $150 per hour, but we still were forced into A. T. & T. service by our competitor. The first 4 months we took in $15,000 from networks and we were billed for over $40,000 by A. T & T. Incidentally, that $40,000 doesn't include the expediting charge. In the ensuing 12 months we received from networks $70,000 and were billed $124,000 by A. T. & T. The largest city in our area is Fargo, with a population of less than 50,000 people.

A. T. & T. is not using the installation serving us for any other purposes to the best of our knowledge. The city-to-city service between Minneapolis and Fargo is a dead end link. FCC should be in the position to license private enterprise in situations like this.

In our attempt to establish television in North Dakota we have suffered a loss of over $400,000. We expected to lose some money, but we did not expect to have to pay A. T. & T. $234,996. With the discretion in A. T. & T.'s hands, it is obvious that it does not care whether a community has service or whether a broadcaster goes bankrupt attempting to establish the service. Its interest is primarily in paying its dividends so that it can do billions and billions of dollars of new financing. I have over 400 stockholders who have not had a dividend in 2½ years. They are entitled to dividends too, whereas, instead of receiving dividends, their investment has been jeopardized by A. T. & T. forcing its service and its tariff on us. I would like to add that those 400 stockholders are citizens of the State of North Dakota only. They invested their money with North Dakota Broadcasting Co. because they were interested in seeing television brought to North Dakota. Therefore, they invested with us to accomplish this purpose. As I say, when they invested the money we had planned to put in a private relay system, we had our budget setup planned on that basis, because of A. T. & T.'s statements that they were interested, and so forth. Actually, our stockholders invested with us on the basis of planned operation at that time. And then at the last minute we were forced into taking A. T. & T.'s service. We had invested some $650,000 in the station anticipating immediate live connection with a network. And then our competitor had to—he had no plans for putting in a private system—so when A. T. & T. came up with this proposition, they immediately grabbed it, because they knew we would either get a permit, which was on file—so we were actually forced into it.

If you will give George McConnaughey, FCC Chairman, a sufficient appropriation to allow him to hire a staff of experts, including accountants, engineers, and economists, who will make a thorough investigation of A. T. & T. tariffs and its business practices, it is my firm belief that the FCC will give the broadcaster the necessary relief from the present exorbitant tariffs.

In the meantime, I beg of you to call upon the FCC to act on our petition to amend the rules (docket 11164) so that we and other broadcasters can live during this interim of investigation.

(The exhibits referred to are as follows:)

Description of Exhibits Attached

1. A. T. & T. letter of agreement dated July 20, 1954.
2. Copy of petition to amend rules.
3. Schedule of payments made to A. T. & T. between October 1954 through June 1956.
4. Letter from WDAY–TV re payments to A. T. & T.
5. Estimate of installation and operating cost of private system between Minneapolis and Fargo, N. Dak.
6. Letter to Hon. Warren Magnuson re private microwave operating cost.
7. Letter from A. T. & T. March 10, 1955, giving quotations and contract conditions re Off-the-Air.
8. Letter to A. T. & T. requesting Minneapolis-Fargo off-the-air tariff, and clarification re "tandem" operation.
9. Letter from A. T. & T. advising that "tandem" off-the-air operation is not possible.

EXHIBIT No. 1

AMERICAN TELEPHONE & TELEGRAPH CO.,
LONG LINES DEPARTMENT,
Kansas City, Mo., July 20, 1954.

Mr. JOHN W. BOLER,
President, North Dakota Broadcasting Co., Inc.,
Hampshire House, Central Park South,
New York, N. Y.

DEAR MR. BOLER: This is to confirm our telephone conversation of July 19, 1954, during which I told you that we were still willing to uphold the commitment made to you on May 27 by Mr. Botkin of our company that we could provide 2 channels from Minneapolis to Fargo by the latter part of September, and that the $22,000 charge for expediting the construction would cover the cost of providing 2 channels.

On this basis, the special charge to you would be $11,000 for providing a channel for your exclusive use by the end of September 1954, and it is my understanding that you are willing to pay the special charge in order to obtain service at that time.

Monthly service charges to you will be approximately $8,825 per month for the video service and $1,371 per month for the audio service, making a total of about $10,200 per month, in accordance with our present filed tariff rates.

The above quotation contemplates 8 hours per day contract service for the video portion and 16 hours per day contract service for the audio portion. Service periods in addition to the 8 hours contract period for the video portion will be billed at the published tariff rates for consecutive and nonconsecutive hours.

I am forwarding two copies of this letter to you with the request that you signify your acceptance hereon and return one copy to me at your earliest convenience.

Yours very truly,

E. C. LAIRD, Jr.

Accepted, pursuant to notation below.

NORTH DAKOTA BROADCASTING CO., INC.,
BY JOHN W. BOLER, President.

JULY 23, 1954.

I accept the aforesaid terms under compulsion and duress and reserve the right to seek other means of securing service at a lower tariff.

JOHN W. BOLER.

EXHIBIT No. 2

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

In re Amendment of Sections 4.631 and 4.632 of Commission's Rules and Regulations

PETITION FOR PROPOSED RULEMAKING

This petition is filed by North Dakota Broadcasting Co., Inc., permittee of television station KXJB–TV, Valley City, N. Dak. It requests the Commission to institute rulemaking proceeding to amend sections 4.631 and 4.632 of its rules to permit the grant of private intercity relay facilities on a case-by-case basis. In support thereof, the following matters are shown:

1. The Commission's rules (secs. 4.631 and 4.632) provide for grants of private intercity relay facilities only in the event common carrier fixed intercity video facilities are not available, and then upon an interim basis only, or until such time as common carrier facilities become available. Under the present rules a broadcaster is placed at the mercy of the common carrier as to whether he can get authority to operate an intercity relay, as to how long he may operate a private facility, and as to whether the license therefor will be renewed.

2. Petitioner is permittee of television station KCJB–TV, Minot, N. Dak., and KXJB–TV, Valley City, N. Dak., and is vitally concerned with the cost of bringing live television network shows to North Dakota residents. The closest point at which petitioner can interconnect with live network shows is Minneapolis,

Minn., a distance of approximately 550 miles from Minot and 263 miles from Valley City. The cost of common-carrier service over this distance at $41 per mile per month is such that petitioner cannot hope to bring live television network shows to North Dakota residents for an extended period of time by means of this service. The charge of $41 per mile per month is for 8 consecutive hours per day for the video portion and 16 hours per day contract service for the audio portion. Service periods in addition to the 8 hours for the video portion are billed at the published tariff rates for consecutive and nonconsecutive hours. If a broadcaster should desire network service for 8 nonconsecutive hours in addition to the initial 8 hours the cost would be $73 per mile per month, plus a connection charge of $1,060 per month, or a total monthly charge for a 263-mile haul in excess of $20,000 per month, if petitioner has correctly interpreted the tariff.

If a broadcaster is authorized to construct and operate a private facility, it will have no concern over nonconsecutive hours above the initial 8. It could easily carry 16 hours of network shows per day at less cost than it would have to pay for common-carrier facilities for 8 consecutive hours.

3. The population density of North Dakota, according to the 1950 census, was approximately 8.8 persons per square mile. The revenues which petitioner can reasonably hope to derive from television operation in this area cannot compare with that available to operators in the more densely populated areas of the country. If petitioner is to bring his viewers live network shows he must obtain them at a cost reasonably related to the broadcast revenues available in the North Dakota area. Petitioner is prepared to demonstrate on appropriate application that it can construct and operate a private intercity relay facility between Minneapolis and Valley City, N. Dak., at a cost of approximately one-half that of common-carrier service.

4. Petitioner respectfully submits that it is in the public interest for the Commission to amend its rules and regulations as herein requested to provide a more economical means of bringing live network shows to the less densely populated areas of the country, such as North Dakota, Idaho, Wyoming, Montana, and similar areas.

5. The granting of authority to television licensees to operate intercity relay facilities, on a case-by-case basis, where the need for such service is reasonably demonstrated, will not result in the inefficient and uneconomical use of spectrum space. This is especially true in the Minneapolis-to-Fargo area.

Section 4.602 of the Commission's rules provides 7 channels in the 2,000-megacycle band and 7 channels in the 7,000-megacycle band which may be assigned for use by television pickup stations, STL stations and television intercity relay stations. Four of the 7,000-megacycle channels are assigned to St. Paul-Minneapolis and three are assigned to Fargo, thus seven 2,000-megacycle channels are presently available for intercity relay assignment between Minneapolis and Fargo. This situation will obtain for the foreseeable future due to the thinness of the population in this area.

It should also be noted that one channel is needed to transmit a video signal whether on common-carrier frequency or television station-auxiliary frequency. The common-carrier channel which will handle one video signal will handle several hundred messages if devoted to message service use. It is apparent, therefore, that it is a waste of spectrum space to require a television broadcaster to use common-carrier service for intercity relay when seven television auxiliary channels are available and not used.

Petitioner is concerned about the present rules and regulations sought to be amended in that the Commission has tied its hands to the point where it has no discretion to grant authority to a broadcaster to operate a private intercity relay facility if common carrier service is available. In the Commission's letter of July 14, 1954 (FCC 54-880-8136-8320) to petitioner, after discussing petitioner's contention that it is not economically feasible for it to use A. T. & T. service between Minneapolis and Fargo, this statement was made (p. 2, line 22):

> "* * *, it appears that common-carrier service is available to you and, therefore, the Commission is unable to determine that a grant of your application would be *consistent with the provisions of the Commission's rules quoted above and its policies promulgated thereunder*." [Emphasis supplied.]

Petitioner respectfully submits that the Commission should amend its rules and regulations so that it can, where the facts warrant, grant authority to a television broadcaster to operate a private intercity relay facility, despite the availability of common-carrier facilities. The Commission should not be foreclosed in the exercise of its discretion in this matter. As the rules now provide, the television broadcaster in the rural areas must buy A. T. & T. service, pay a bonus for expediting the service if A. T. & T. has not planned to connect the points desired, regardless of the fact that A. T. & T.'s charges are absolutely prohibitive, and the Commission is impotent to act because of its rules and "its policies promulgated thereunder." Petitioner respectfully submits that if live television service with network programing is to be made available in the wide open spaces of the country the Commission must have the power and discretion, under its own rules, to grant authority to broadcasters in such areas to operate intercity relay facilities. Such action the Commission cannot now take without contravening the rules herein complained of. Such restriction upon its power prevents the Commission carrying out its statutory duty of rendering public interest convenience and necessity.

6. The suggested amendment to section 4.631 (c) reads as follows:

"Television intercity relay stations provide a means on an interim basis whereby television broadcast licensees may provide their own intercity television transmission services in connection with the operation of their television broadcast statons. Provided, however, that the Commission may grant authority to television broadcast licensees to operate intercity television transmission facilities where, in the opinion of the Commission, the cost of common carrier facilities compared to the cost of constructing and operating private intercity relay facilities justifies such action.

"This proviso is designed to permit the Commission, in its discretion, to authorize private intercity relay transmission facilities, to stimulate the development of live television network service in the less densely populated areas of the country."

Section 4.632 (b) amended to delete subparagraph (2) thereof.

Respectfully submitted.

North Dakota Broadcasting Co., Inc.
By D. F. Prince, *Its Attorney.*

Exhibit No. 3

North Dakota Broadcasting Co., KXJB-TV, Valley City, N. Dak.

Schedule of payments to A. T. & T., 1954 through June 1956

Date	Check No.	Amount	Date	Check No.	Amount
1954—Oct. 7	9442	$11,765.60	1955—Dec. 12	10764	$9,956.75
Nov. 16	9569	11,096.89	Dec. 30	10624	10,474.75
Dec. 8	9677	11,189.00			
Dec. 14	30	1,000.00	Total		117,561.45
Total		35,051.49	1956—Jan. 12	745	9,956.75
			Jan. 30	780	657.39
1955—Jan. 17	9948	11,644.41	Feb. 11	795	10,912.09
Feb. 12	9975	11,171.53	Apr. 19	11194	11,533.13
Feb. 14	9979	1,618.33	May 23	906	9,955.18
Apr. 20	10105	11,937.65	June 6	11212	15,271.65
May 10	10228	12,022.67	June 10	874	2,100.07
June 14	10279	10,474.75	June 26	11491	10,785.09
Sept. 5	10549	5,237.38	July 10	11213	11,212.08
Aug. 25	440	5,237.37			
Oct. 13	10624	7,249.37	Total		82,383.43
Nov. 7	10622	10,474.75			
Nov. 21	10716	10,061.74	Grand total		234,996.37

WDAY Exhibit No. 4

WDAY, Inc.,
Fargo, N. Dak., July 11, 1956.

Mr. John W. Boler,
President, North Dakota Broadcasting Co., Fargo, N. Dak.

Dear Mr. Boler: In response to your request I have checked our records and find that we have paid A. T. & T. the following amount since inaugurating live television service: September 25, 1954, through May 31, 1956, $192,942.11. This amount represents payment for slightly over 8 consecutive hours per day of microwave service from Minneapolis to Fargo and includes charges for terminal connections and switching. Also we paid $11,000 to A. T. & T. for an additional "expediting" fee for them to advance their date for construction of the microwave facility from Fargo to Minneapolis. This fee represents half the cost for expediting that construction.

I would like, if I may, to pass along one additional comment: Our current contract with A. T. & T. specifies a minimum of 8 consecutive hours of service per day. Thus we are paying for service even though during that 8-hour period we program local news, weather, sports, or other public interest or public service shows. It would be much to the advantage of the public if we could take service of a minimum of 8 hours a day, but could spread the 8-hour period over, say 16 hours. In other words, eliminate the consecutive-hour portion of the 8-hour daily minimum contract. As it stands now, we are actually penalized if we use a nonconsecutive hour over and above the 8-hour minimum, inasmuch as the consecutive [sic] hour is charged at double the rate of a consecutive hour.

Sincerely,

TOM BARNES, *General Manager.*

EXHIBIT No. 5

The following data is based upon Philco equipment. Equipment prices are from the current listings or quotations. Operating cost is based upon estimates of the manufacturer and upon experience gained in operating long-hop microwave relays. This particular microwave layout between Minneapolis and Fargo is based upon a survey made by Philco Corp., which calls for a nine-hop system. Such a system would be comprised of 1 terminal transmitting station and located on the Foshay Tower in Minneapolis; 8 repeater stations, 1 terminal receiver station located at Fargo, N. Dak.

The cost of the various stations would be as follows:

Terminal transmitting station

Transmitter	$6,825
Parabolic dish	415
Voltage regulator	175
Waveguide	96
Installation cost	400
Total	7,911

Receiver terminal

1 receiver	$4,800
Waveguide	48
1 parabolic dish	285
1 voltage regulator	175
1 8-by-12-foot reflector	420
Installation cost	300
Total	6,028

Receiver station

1 receiver transmitter receiver	$10,500
Waveguide	96
2 parabolic dishes	570
1 voltage regulator	175
2 8- by 12-foot reflectors	1,080
1 8- by 12-foot building	1,205
Installation cost	300
Total	13,926

Towers

Cost of 8 towers, erected	$26,000

(Towers consist of two 260-foot, two 200-foot, one 130-foot, one 110-foot, one 100-foot, and one 70-foot.)

Summary of installed cost

1 transmitter terminal	$7,911
1 receiver terminal	6,028
8 towers	26,000
8 receiver stations	111,408
Total	151,347

In arriving at monthly operating cost, it is assumed there would be 2 maintenance men permanently assigned to the system and 1 man on a part-time basis assigned to the transmitter terminal station. Car expense is figured at 7 cents per mile; and tube cost, which is included in repairs and maintenance, is based upon a tube life of 15,000 hours which the Philco Corp. states is a conservative estimate.

Monthly operating cost:

Labor	$775.00
Car expense	152.00
Repairs and maintenance	710.00
Power	200.00
Leases and rentals	300.00
Total	2,137.00

Annual cost of system:

Operating cost	$25,644.00
Depreciation	15,134.70
Insurance	1,160.00
Total	41,938.70

COMPARISON OF COSTS: A. T. & T. VERSUS PRIVATE RELAY SYSTEM

The KXJB–TV contract with the American Telephone & Telegraph Co. calls for a monthly cost of $10,500 per month for 8 continuous hours' daily service. For overtime service over and beyond 8 hours, the extra charge is $51 per hour.

It has long been the desire of KXJB–TV to extend network service to 15 hours daily Monday through Friday, with the present hours on Saturday and Sunday. This would amount to 7 hours' daily extra service Monday through Friday, or 154 hours monthly additional service, which, at $51 per hour, $7,854 per month additional payment, or a total of $18,354 per month for service as outlined above.

This figure would run to $220,248 annually, as compared to the cost of operating a privately owned microwave system at $41,938 per year. There would be a savings of $178,310 annually in network costs. Reduced to percentages, the A. T. & T. annual charge would be 117 percent of the installed cost of a privately owned microwave system based upon 15 hours' daily operation Monday through Friday and 8 hours daily on Saturday and Sunday.

Additionally, the privately owned microwave system would be capable of operating 24 hours a day at the above-mentioned operating costs, which are figured on a 24-hour basis. This will allow pickup of special events at any time of day without special telephone or telegraphic orders being transmitted and without additional cost.

EXHIBIT NO. 6

FARGO, N. DAK., *January 23, 1956.*

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
Senate Office Building, Washington, D. C.

DEAR SENATOR MAGNUSON: I note that your special committee has commenced hearings in connection with investigation of the radio and television industry.

I sincerely hope that the investigation will include A. T. & T. tariff for television program transmission facilities.

I have some information that may be of considerable interest to your committee in reference to the operating cost of private microwave systems. It consists of facts and figures which I challenge A. T. & T. to compete with.

We installed this system in October 1954, to transmit programs between Valley City, N. Dak., and Minot, N. Dak., a distance of approximately 180 miles. Airline distance between the point of origination (off-the-air from Valley City) and Minot, N. Dak., is 120 miles, and we use three microwave relay stations.

The installation cost of this system was $51,088.11.

The operating cost of this system for the 12-month period commencing January 1955 through December 1955, is as follows:

Salaries	$2,920.32
Traveling expenses	2,779.68
Tri County Electric Power	512.14
Verendry Electric Power	423.72
Insurance	338.85
Tube cost	2,720.40
Depreciation (10-year basis)	5,108.81
Total	14,804.14
A. T. & T.	67,440.00

You will note the average cost per month of operation for 1955 is $1,233.51. This facility enabled us to connect our 2 television stations which are a distance of 160 miles apart, and shows that our costs average $6.85 per airline-mile per month.

If you base the cost on the actual length of the system, which is 120 miles, the operating cost is $10.28 per mile per month. These costs are based upon an operating period which is unlimited, or 24 hours per day, as opposed to A. T. & T. tariff which is established on 8 hours per day. For the purpose of comparing these operating costs to A. T. & T., we submit a letter from A. T. & T., dated March 10, 1955, wherein A. T. & T. submitted a quotation of approximately $5,620 per month to give us a similar off-the-air pickup service between our Valley City station and our Minot station. We are unable to understand why A. T. & T. are allowed to charge a tariff of 400 percent greater for use of their facilities for the equivalent service, regardless of how de luxe their facilities may be.

The operating expenses of the private system which we have submitted herein, we will supply in affidavit form to your committee and we will submit it in maximum detail to the extent that we are confident that A. T. & T. will be unable to justify the tariff currently being charged.

We also invite your committee to designate an expert independent engineer whose testimony would be accepted by your committee and the FCC to come to North Dakota at our expense for the purpose of examining our system and examining our records.

Also enclosed find a copy of a letter from A. T. & T. dated August 12, 1955, wherein they set forth a quotation of "termination charges," were they to install a system to replace the private microwave, in which instance the termination charges that they request more than double total installation cost of the private system. While we operate our own private system within the State of North Dakota, we are still forced to contract with A. T. & T. for facilities between Minneapolis, Minn., and Fargo, N. Dak., to connect with the National networks. For this service we are forced to pay A. T. & T. approximately $11,000 per month, and we are unable to obtain licenses to operate a private system in this area because the present FCC rules will not allow a private system to parallel a common carrier. Our other alternatives would be to take the so-called utility grade service from A. T. & T. between Minneapolis and Fargo and for this service (off the air from Minneapolis) A. T. & T. have submitted quotations of $6,750 per month, plus an exorbitant termination fee of $105,215, were we to drop the service. The amount of the termination charge would be reduced monthly over a period of 36 months.

In comparison, we could install and operate a private system between Minneapolis and Fargo, N. Dak., at a cost of less than $2,000 per month, in comparison to A. T. & T. $6,750 per month.

In reference to the above, we again request your assistance to cause the FCC to act on docket No. 11164, a petition of North Dakota Broadcasting Co., Inc., for a proposed rulemaking to allow private television intercity relay systems, notwithstanding availability of the common-carrier system.

We will sincerely appreciate your consideration of the facts submitted herein, and we hope that the evidence is sufficient to justify drastic action on the part of your committee in reference to these problems.

Respectfully yours,

JOHN W. BOLER,
President, North Dakota Broadcasting Co., Inc.

EXHIBIT No. 7

AMERICAN TELEPHONE & TELEGRAPH CO.,

LONG LINES DEPARTMENT,
Omaha, Nebr., March 10, 1955.

Mr. JOHN W. BOLER,
President, North Dakota Broadcasting Co.,
Fargo, N. Dak.

DEAR MR. BOLER: This is to confirm my telephone conversation with your Mr. William Hurley on March 10, 1955, regarding the provision of the off-the-air channel offerings from your station KXJB-TV at Valley City, to Minot and Bismarck, N. Dak.

For an off-the-air channel from your station KXJB-TV to Bismarck, the monthly charge would be $2,660 and a minimum 3-year-term contract for $48,900 would apply with a provision for service within 4 months from date of order.

For an off-the-air channel to both Bismarck and Minot from your station KXJB-TV, the monthly charge would be $5,620 and a minimum 3-year-term contract for $104,000 would apply with a provision for service of 5 months from date of order.

The above off-the-air arrangement involves the pickup of broadcast signals (video and audio) at a receiver and the transmission of these signals to the customer at a distant location.

It is to be understood that the quality or reliability of this off-the-air channel will be of lower caliber than a combined audio and video channel now furnished under the standard tariff offering and utilized by the major network.

The design of the physical facilities, e. g., the type of equipment, the spacing between relay towers, and the location of the pickup point, will be determined by the telephone company, reflecting to the fullest extent practicable the customer's views in each case.

The provision of all facilities, including the receiving equipment at the pickup point, will be the responsibility of the telephone company; except that the provision of all station equipment and station wiring, other than that necessary for the suitable termination of the channel facilities at your transmitting site will be your responsibility.

No central office operation, monitoring, or supervision will be provided.

Emergency power arrangements will be more limited than those furnished with regular interconnected facilities.

Channels for both monochrome and color services will be available.

The channels will be furnished for your full-time use, subject to release for maintenance.

Reasonable diligence will be exercised by the company in restoring service in the event of interruption or failures; it is expected that you will recognize the probability of greater delays than experienced with the normal directly connected facilities. No credit will be allowed for interruptions of less than 2 hours.

You will be responsible for making all arrangements with stations, networks, or other parties for the necessary authorizations for this off-the-air pickup and use for rebroadcast of television program material, and the telephone company shall be indemnified and saved harmless by you from any liability arising out of failure to make such arrangements.

If you have other questions regarding this service, we will be pleased to discuss them with you.

Yours very truly,

ARTHUR V. HOLMAN,
Communications Engineer.

EXHIBIT No. 8

AUGUST 1, 1955.

Mr. E. C. LAIRD, Jr.,
Vice President, American Telephone & Telegraph Co.,
Kansas City, Mo.

DEAR MR. LAIRD: In accordance with our most recent conversation in Chicago on July 27, you have agreed to submit a new tariff quotation for the "off the air" utility-grade mircowave facilities for transmission of television programs from Minneapolis to Fargo, N. Dak. We would like to have this quotation include all of the terms and conditions immediately.

Will you also give us a quotation for facilities to extend the service from Fargo to Bismarck, N. Dak., and for further extension of service from Bismarck to Minot, N. Dak. In reference to these facilities, it is my understanding from information given to us by Vernon Holman, your district manager in Minneapolis, that "off the air" pickup in tandem is not practical; therefore, the facilities or service between Fargo and Bismarck and between Bismarck and Minot would have to be directly interconnected from city to city. If this is true, please give us the quotation for grade A facilities between Fargo, Bismarck, and Minot. If there is any alternative, please give us quotation for both grade A and utility grade service within the State of North Dakota, based on premise that we use "off the air" from Minneapolis.

It is imperative that we be advised when each type of service could be made available to us in all areas.

I recall that we made a request for quotation from one of your offices in a previous instance and you failed to submit the information for a period of 2 months. I trust that you will not find it necessary to delay submitting information requested herein. You have been apprised of our financial problems and it is important that we reduce our cost of "live" network facilities between Minneapolis and Fargo immediately. At the same time, we must know what alternatives we have to continue network service to Minot and to add our Bismarck station, which will go on the air October 1 of this year.

I will sincerely appreciate it if you can give me the information requested herein within the next 10 days.

Respectfully yours,

JOHN W. BOLER,
President, North Dakota Broadcasting Co., Inc.

EXHIBIT NO. 9

AMERICAN TELEPHONE & TELEGRAPH CO.,
LONG LINES DEPARTMENT,
Omaha, Nebr., August 31, 1955.

Mr. JOHN W. BOLER,
President, North Dakota Broadcasting Co.,
Fargo, N. Dak.

DEAR MR. BOLER: I believe that the attached diagrams will answer the questions covering charges for "off the air" television channels which were raised in your letter of August 26.

The television channels quoted in our letter of August 12 are shown schematically in figure 1. The signal of WCCO, Minneapolis, would be picked up at a point some 60 miles west of that city and carried by a 4-link microwave system to your Fargo studio. The charge quoted for this was $6,025 per month. To carry the signal to Bismarck from the tower immediately south of Fargo would require a 7-link microwave system. The charge quoted for this was $7,380 per month. To further carry the signal to Minot from a junction point near Woodworth (tower No. 5) would require a 3-link microwave system. The charge quoted for this was $2,725 per month. The physical junction of these channels at the tower south of Fargo and at the tower near Woodworth would be necessary since, as has been explained to you, an unsatisfactory picture would result from an attempt to take "off the air" a signal from KXJB which had been derived from an "off the air" signal from WCCO. Likewise an unsatisfactory picture would result from an attempt to take "off the air" a signal from KBMB which had been derived from an "off the air" pickup.

In engineering these channels, the route to Bismarck was so chosen that the addition of both Bismarck and Minot could be made at the lowest total charges to you.

The service quoted to KFYR is illustrated in figure 3. It provides for an "off the air" pickup of WDAY's signal. The pickup point would be near Valley City (tower No. 1) and a 4-link microwave system would be required to carry the signal to Bismarck. The relationship between charges of $7,380 a month for a 7-link addition to an "off the air" channel and charges of $4,640 for a 4-link "off the air" pickup and channel appear to us to be proper.

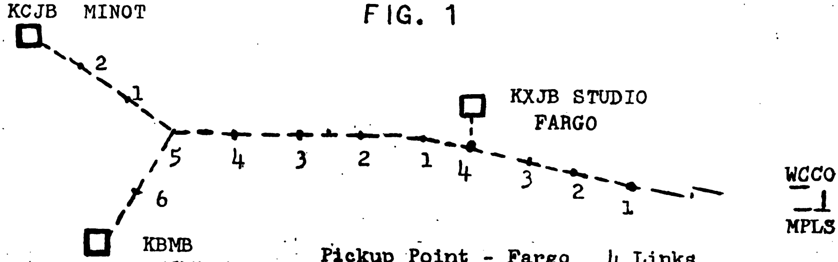
The quotation formerly made to you of $3,890 for an "off the air" pickup and channel to Minot covered the arrangement shown schematically in figure 2. The signal from KXJB would be picked up at a point near Woodworth (tower No. 1) and carried by a 3-link microwave system to KCJB at Minot. The difference between the charge for this pickup and channel and the charge for the extenison channel to Minot as shown in figure 1 is occasioned primarily by the fact that in the latter case the tower near Woodworth would be already in existence as part of the Bismarck service. Taking this into consideration the relationship of the charges of $3,890 and $2,735 appears to be proper.

Yours very truly,

L. L. GADDIS.

(The attachments referred to follow:)

FIG. 1

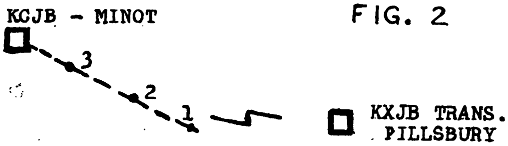


Pickup Point - Fargo 4 Links
$6,025 per month

Extend to Bismarck 7 Links
$7,380 per month

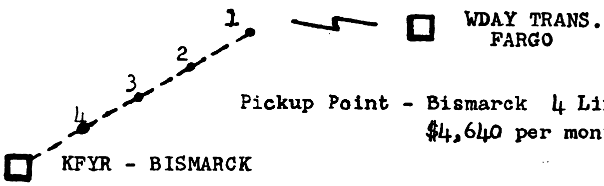
Extend to Fargo 3 Links
$2,725 per month

FIG. 2



Pickup Point - Minot 3 Links
$3,890 per month

FIG. 3



Pickup Point - Bismarck 4 Links
$4,640 per month

Mr. BOLER. I thank you sincerely for allowing me to present this statement.

Senator PAYNE. Do you have any questions? Yes, Mr. Boler.

Mr. BOLER. If I may, I would like to read the highlights of this rule change that we have. The present FCC regulation reads as follows:

Television intercity relay stations provide a means on an interim basis whereby television broadcast licensees may provide their own intercity television transmission service in connection with the operation of their television broadcast stations.

The provision for this service is a purely temporary measure, designed to assist the television industry until such time as adequate common carrier facilities are available. And the broadcaster who ventures into the business of relaying television programs by means of television intercity relay stations should plan to amortize their investment at the earliest possible date.

Now we would like that all amended to read as follows:

Television intercity relay stations provide a means on an interim basis whereby television broadcast licensees may provide their own intercity relay television transmission service, in connection with the operation of their television broadcast stations. Provided, however, that the Commission may grant authority to television broadcast licensees to operate intercity television transmission facilities where, in the opinion of the Commission, the cost of the common carrier facilities compared to the cost of constructing and operating a private intercity relay facility justifies such action.

This proviso is designed to permit the Commission, in its discretion, to authorize private intercity relay transmission facilities, to substitute the development of live television network service in the less densely populated areas of the country.

Senator PAYNE. That is "stimulate" instead of "substitute"?

Mr. BOLER. "Stimulate," I'm sorry.

We are operating a private relay system within the State of North Dakota, taking service from our station at Valley City to Minot, 183 miles away, and we have a similar installation serving our Bismarck station. We have been operating the Minot off-the-air pickup relay now since October 1954. In 1955 we kept a very accurate record of the operating cost of this relay system and found that our average cost per month was $1,248. This information is contained in an exhibit here in the form of a letter that I wrote to Senator Magnuson. A. T. & T. gave me a quotation of $5,900 a month for a similar off-the-air service to Minot.

Now that is the difference between their tariff and what we can actually operate our own system. And we can provide, ourselves, a better quality service than A. T. & T. does. We have proven that.

Senator PAYNE. You can provide it 24 hours a day whereas they provide only 8?

Mr. BOLER. That is right, they provide only 8.

Now, if A. T. & T. even knocked off the 8 hours' minimum service charge, and at the present tariff allowed 24-hour service, that would be some relief. I mean if we wanted to open up at 7 o'clock in the morning, which we would like to do in October, and take service—take network service—our bill to A. T. & T. would be $15,000 to $16,000 a month; whereas now even opening up and taking network service as early as 10:30, it has gotten up to—in February it was $14,000. And we simply cannot afford to take network service earlier in view of the tariff.

Senator PAYNE. In other words, what you are asking for is consideration to be given, very similar to that which an individual enjoys.

Let's assume that a utility, a water company, is furnishing water service in a community and their mains end at a certain point. The individual who is building, let's say, a mile from the end of that point wants service. But the cost of putting that service from the end of that installation out to your installation has to be measured against whether or not you can drill and establish your own system of providing water at a more reasonable rate than what the utility would have to charge you for putting the line out, amortizing the cost over a period of time, and the service that goes with it.

Mr. BOLER. Yes.

Senator PAYNE. Isn't it somewhat similar?

Mr. BOLER. It is somewhat similar to that. I would like to describe it in a different way.

The number of customers at the other end of that line would have a bearing as to how much the tariff can carry to bring the service out there. Now our problem in North Dakota is that the total population of the State is some 660,000. The national advertiser is never going to pay any more than a certain number of dollars per thousand television homes.

We probably have the longest hop between cities—intercity system, between Minnesota, or Minneapolis and North Dakota—of any place in the United States. And then on top of that—I mean when you get out there, if there was a couple of million people that would be something else again, but instead of that you have that tremendous long haul and when you get out there you have a limit to the circulation that we will ever be able to develop. I do not feel like operating television stations for the benefit of the A. T. & T. and the stockholders.

Actually, the people in North Dakota are not only entitled to service but they are entitled to a return on their investment.

Now A. T. & T. are actually hiding behind this FCC rule now. I mean they hide behind it—they do not come up with a proposition to give service, because they do not have to. The FCC rules: We cannot parallel. I will just bet you cannot find a broadcaster that ever has gotten a letter out of A. T. & T. in reference to whether or not they would give them service, and so forth. So this rule change, No. 1, I think would certainly have an effect as far as A. T. & T.'s—what I call their arrogance right now. In other words, if a broadcaster is in business—I have been in business in radio and television now, all told about 25 years. And the problem in North Dakota has always been the A. T. & T. charges as far as radio is concerned. I mean we have to pay $910 a month, for example—our Minot station has to bring CBS network service from Jamestown to Minot, $910 a month. This is for class C service, not class A service. We cannot get good quality from a symphony when it is on, because it is their cheaper service. So it has been our problem in radio, but of course it is 10 times with television because their tariff is that much higher.

Senator PAYNE. Any questions?

Mr. COX. Yes. When did you install your private relay system from Valley City to Bismarck?

Mr. BOLER. We put that in in the fall of 1955. We went on with it on the 19th of November 1955.

Mr. COX. Have your cost experiences there been comparable?

Mr. BOLER. Yes, they have. We use the same type of equipment and we have very few outages; and a comparison of our picture in

Bismarck to our competitor taking service from A. T. & T. is tremendously different. We have a beautiful picture on our system, on our own system.

Mr. Cox. It is a better picture than he is getting through their off-the-air system.

Mr. Boler. That is right. There are technical reasons for it. Actually, A. T. & T. didn't have any experience in this off-the-air pickup, and they are using a different type of equipment than they use in their normal installation.

Mr. Cox. Is the equipment that you use in your system comparable to that that they use in their interconnecting facilities?

Mr. Boler. Yes, they could buy the same type of equipment we have if they wanted to.

Mr. Cox. In your letter to Senator Magnuson of January 23, were the figures which you quote there for installation cost and operating cost only for the link between Valley City and Minot?

Mr. Boler. Yes; that is right.

Mr. Cox. Now, are the figures which you cite for the monthly charges of A. T. & T. for that service, or do they also include the service to Bismarck.

Mr. Boler. Oh, no, they are just for that service. They wanted another $2,700—$2,600 or $2,700 a month to feed Bismarck, if they were feeding Bismarck and Minot also.

There is one exhibit, the last exhibit, that is in here, the last page. It shows the telephone company's proposition when they were going to do an off-the-air out of Minneapolis, and then have it direct to Minot and to Bismarck. I believe that would explain it to you better than I can. It is the last page.

Mr. Cox. You attached to your letter to Senator Magnuson a copy of a letter of March 10, 1955, to you from Mr. Arthur V. Holman. I don't know whether that is an exhibit to your statement here. Which exhibit it that?

Mr. Boler. Exhibit 7.

Mr. Cox. Now, in that letter they quote a monthly charge of $2,660 for the service from Valley City to Bismarck; is that right?

Mr. Boler. That is right.

Mr. Cox. And then an additional charge of $3,890 for the service from Valley City to Minot?

Mr. Boler. Yes.

Mr. Cox. So that it is—those figures are the ones that would be compared, then, with your experience on your Minot service?

Mr. Boler. Well, yes; that is right. The $5,900 I referred to is if they were only serving Minot.

Mr. Cox. Only Minot.

Mr. Boler. Yes.

Mr. Cox. I see.

Mr. Boler. At that time, our Bismarck station, we didn't even have the permit. So that was prior to the time that we applied for our own permit to serve Minot. You see what they have done, as you will see on this map we have here; the reason for the difference in the cost where they are serving two stations, that they would branch off part way and go into Bismarck thereby cutting down the miles. That is the reason for the discrepancy in the figures.

Mr. Cox. You say something about the quality of your picture as compared to the service of your competitor in Minot. What have your respective experiences been on outages?

Mr. BOLER. Well, I would say that theirs has been 5 to 1 over ours.

Mr. Cox. Does this involve not only interruption of service to the public, but loss of revenue to the station?

Mr. BOLER. Yes, a very substantial loss of revenue.

Mr. Cox. As I understand their terms, unless this interruption lasts for 2 hours it does not, however, result in any reduction of the charge to you?

Mr. BOLER. That is right. They don't even have to give you any credit.

And the other thing: Without any guaranties as to service or quality or anything else, they demand a 3-year contract, with a penalty on cancellation, and that is reducible among the number of months of service. In other words, if you signed up with A. T. & T. and took their service for 6 or 8 months and then couldn't take it any longer for one reason or another, you would still have to pay the full 3-year contract.

Mr. Cox. After the 3 years has elapsed, however, that ceases to be.

Mr. BOLER. Yes; that is right.

In this letter from Holman—this same exhibit, March 10—they don't make any guaranties, or any commitments. I mean they decide everything. They even tell you what kind of buildings to put up, what kind of towers to put up, and everything else. I mean, it is completely one-sided.

Mr. Cox. How does the system which you proposed from Minneapolis to Fargo, which I understand you engineered——

Mr. BOLER. Yes.

Mr. Cox. Compare in terms of number of towers and the equipment to be employed with the system which the telephone company has actually installed?

Mr. BOLER. I believe they are currently using 7 relay stations and our proposal includes 9.

Mr. Cox. You actually have more stations?

Mr. BOLER. We would actually have more stations, that is right.

Mr. Cox. Now, is the equipment at each of those stations comparable in your system with that which they have in use?

Mr. BOLER. We don't know what they have inside of those buildings; what they are using now. That is why I say I would like to have you come out and see what is in the buildings. They are using the D–2 equipment, I presume, like they use on their main line. But they are just serving WDAY at Fargo, and ourselves. So the equipment that we would put in, I presume, would not be similar equipment they have now for their city to city.

Mr. Cox. Theirs is multichannel equipment?

Mr. BOLER. Yes.

Mr. Cox. Would your equipment be limited to serving just one channel?

Mr. BOLER. Yes; that is right.

However, manufacturers are talking about a traveling wave guide tube that may be put on the market within a matter of a few months wherein more than one network can be carried on this type of equipment. There are 2 manufacturers that are talking about a traveling wave guide tube that will actually carry 2 networks, and the cost is not too much greater than the present tube that is used.

Mr. Cox. At present, however, the system that you would propose to install between Minneapolis and Fargo would simply serve your station?

Mr. Boler. Yes; that is correct.

Mr. Cox. That would mean that WDAY, your competitor, would either have to install a similar system of its own or continue to bear the entire charge of the telephone company's tariff?

Mr. Boler. That is right, except if we were allowed to, WDAY management will join us and we will do like A. T. & T. We will put in the same buildings and same towers; put in an installation. We can do it cheaper as a matter of fact, and the management of the station have said that if anything can be done on this—you can get any relief—we will join you in establishing a system.

Mr. Cox. Have they supported your position in this proceeding before the FCC?

Mr. Boler. Yes. They have a letter in here giving me the information as to what they have paid the telephone company, and they are 100 percent behind it.

Mr. Cox. Do I understand that there is a channel available, according to your engineers, to provide this service for you between Minneapolis and Fargo?

Mr. Boler. Yes; there is.

Mr. Cox. Would that be true also of WDAY?

Mr. Boler. Yes.

Mr. Cox. What is the basis of your estimate of your installation cost, this engineering research that was done some years ago?

Mr. Boler. Yes. We know, we have got new prices. Our figures that we have submitted herein are current bids from companies now. There are two different companies that have facilities that would serve our purpose, and these prices are based on the present market price.

Mr. Cox. Do you have any basis for this estimate, I think you give here, of less than half a million dollars for the cost of A. T. & T. and the installation?

Mr. Boler. The only basis I have is that I have gone out and looked at one of their installations from the outside. They have two rows of wire fence around it like a concentration camp, and you cannot get any closer to it.

I can only go by the size of the building as to how much equipment can actually be in there. And the type of a tower that they use. We have no way of estimating the cost of the type of an antenna that they use—transmitting and receiving antenna that they use—because it is a privately manufactured one by A. T. & T. So our figures here are merely rough guesses.

Mr. Cox. Now, are the telephone company's rates to you based on the same air-mile rate as applied to other stations?

Mr. Boler. Yes; that is as we understand it.

Mr. Cox. In other words, you and WDAY pay a rate based on the mileage from Fargo to Minneapolis?

Mr. Boler. That is correct.

Mr. Cox. Multiplied by a rate which is more or less standard?

Mr. BOLER. That is correct.

Mr. COX. And the greater burden on this on your operations is occasioned by the combination of the distance involved and the low set circulation which you can possibly achieve in your area?

Mr. BOLER. That is right. The discrepancy in the amount that we paid—they paid $204,000 as against our $234,000—is that we had more network service in the morning than they did. In other words, we had to take more hours of service, and that is why we actually paid A. T. & T. more money because we got beyond that 8 hours. As a matter of fact, we took 11 hours of service.

Mr. COX. Now, when the Commission appeared before the committee, and were asked about this matter, I believe it was Commissioner Bartley indicated, of course, that they had some concern about the development of transcontinental common-carrier links for general use. Do you know whether the telephone company has ever indicated any plans, or any interest, in the establishment of a transcontinental link running west from Minneapolis through North Dakota, Montana, and into the Pacific Northwest?

Mr. BOLER. I think the installation, as it is with the addition of equipment, would accommodate other types of service. But at the present time, to the best of my knowledge, the only thing they have got in those buildings is the necessary equipment to serve television.

Mr. COX. They are not carrying any telephone circuits?

Mr. BOLER. As I understand they are carrying nothing more than the service to our two stations.

Mr. COX. So that substantially you bear the entire cost.

Mr. BOLER. That is correct, sir.

Mr. COX. Of the service.

Mr. BOLER. That is why I say, I would like to have someone come out there and actually examine that installation. They are getting the same tariff as they are between San Francisco and New York where they are carrying hundreds and hundreds of telephone messages and they have got an installation—maybe each installation cost them $150,000, but I know that these installations out there did not.

I don't want to get into the common-carrier business. I really don't. I mean I am all for the telephone company giving the service. But their attitude is entirely wrong, as a public utility with the protection they have to give public service. Their attitude is wrong, and the rules that exist now are not sufficient. There hasn't been an investigation for years of A. T. & T. And believe me, one is long overdue. I feel that if there was an investigation made that you would find a tremendous lot wrong with their whole tariff setup as far as television is concerned.

Mr. COX. I think the Commission testimony indicated that this proceeding involving the rates of the telephone company has been in the process for over 7 years.

Mr. BOLER. That is right.

Mr. COX. Without a determination. Although I believe they indicated yesterday that they expected to have some conclusions on that in the near future, and the same they said was true of your petition, or of the general proceeding, at least, with regard to private intercity relays.

Mr. BOLER. Those reports have been being made repetitiously over quite a long period of time. Now, I am not criticizing the FCC. I feel that it is lack of budget, perhaps.

Mr. COX. To the best of your knowledge, though, no one either in the industry or in the FCC is in a position to know what the installation costs or the operating expenses, properly attributable to the television services they are providing really are?

Mr. BOLER. To the best of my knowledge, that is the true situation—that is the situation.

Senator PAYNE. Unless you have something else that you would like to offer, we thank you very much indeed, Mr. Boler, for your statement and the information that you have given.

Mr. BOLER. Thank you very much for allowing me.

Senator PAYNE. Without objection there will be placed in the record a statement submitted by Miss Elizabeth A. Smart in behalf of the National Woman's Christian Temperance Union in support of Senate bill 825.

(This statement pertains to network regulation and is therefore printed in the volume on Network Practices.)

(COMMITTEE NOTE: For other testimony with respect to private intercity relays and A. T. & T. rates, see statement of Murray Carpenter, W–TWO, Bangor, Maine, which is printed in the volume of Network Practices.)

Senator PAYNE. And the record will remain open until September 25 for the introduction of any statements that anybody might wish to give before the record is complete.

And with the exception of hearings that may be scheduled with regard to legislation concerning political time, this will conclude the hearings at this time.

(Whereupon, at 11:21 a. m., the committee adjourned.)

APPENDIX

Additional Materials on Allocations Inserted Into Record in Later Phases of the Hearings

A number of letters and written statements relating to allocations matters were received by the committee and ordered inserted in the record during later phases of the inquiry concerning subscription television and network practices. These are printed in this appendix in order to bring them together with the other testimony and materials on the allocations problem. These materials are set forth below in the order in which they were inserted in the record. In each case the date on which they were thus inserted is shown, so that reference can be made, if desired, to the point at which they were actually received.

[Inserted on April 23, 1956]

Additional Testimony of Norwood J. Patterson, General Manager, KSAN Television Station, Channel 32, San Francisco, Calif.

In response to your question relative to the economic conditions imposed upon a station operator, should the Commission deintermix markets of the United States I would like to make the following comments:

Since the principal manufacturers of television transmitting equipment, General Electric and RCA, have millions of dollars at stake in the future of UHF television, I am confident that they would be very eager to operate as an intermediator between stations in exchange of VHF equipment for UHF equipment where the occasion requires under deintermixture and the opposite when such is required.

As an example we have received an agreement with the GE Co., wherein if under deintermixture San Francisco is made a VHF market that they will exchange used VHF equipment for our used UHF equipment, thus you can readily see that the GE Co. will have on hand used UHF equipment that they could again exchange to a station in a market where a VHF facility was taken out and made all UHF. Thus you can see that if the manufacturers, and I am sure that they would be glad to, would be an intermediator, they could exchange equipment between TV stations, thus not imposing an unreasonable economic situation on either manufacturer or the stations involved in deintermixture. Furthermore, I am sure that most television stations would be agreeable to paying a small charge to the manufacturer for reconditioning the equipment on an exchange basis. Thus you can see under this plan no adverse economic situation is presented upon any individual.

[Inserted on April 23, 1956]

Statement of Louis Lubin, Chairman, Businessmen's Council of Americans for Democratic Action

I am Louis Lubin, chairman, Businessmen's Council of Americans for Democratic Action. I submit this statement on behalf of the council.

The Businessmen's Council of ADA is an organization of businessmen concerned with giving expression to the liberal point of view within the business community. We believe that there is a liberal view on the question of this

Nation's television policy. The views set forth in this statement represent a cross-section of the council's opinion and experience rather than the view of any individual member.

The present availability of usable television stations and networks is now wholly inadequate for free competition, and flexible use of this powerful advertising medium by smaller and medium size, as well as large, businesses. Advertisers must buy low-cost mass audiences in order for television advertising to be profitable. On this basis, the number of VHF stations with large audiences is so few that their time is largely sold out and their rates and terms are no longer determined by competition, which is essential to a self-regulating industry. There are only 12 markets in the United States with 4 or more stations, and only another 22 markets with 3 stations in the same VHF or UHF frequency band. Only 57 additional markets have a choice of 2 stations in the same frequency band.

This lack of usable stations has similarly limited advertisers' choice to only two live networks which can give reasonably adequate national coverage. These two networks are sold out of evening time. Like the stations, the networks have taken advantage of this shortage to inflate rates, take over control of programing by selling programs in forced combination with their time, improperly influence local affiliations, promote their film, talent, and station representative subsidiaries, etc.

These conditions have resulted in a very high concentration of television advertising usage by a relatively small number of very large businesses. These large advertisers are able to preempt preferred times, programs, and stations under highly favorable quantity discounts and terms of options and renewals with which smaller advertisers cannot compete. The net effect is that these few large television advertisers can buy advertising audiences in terms of cost per viewer per minute of commercial time that may be as little as one-tenth of the net circulation cost of smaller advertisers who can only secure small audience programs at high open rates.

We favor the restoration of free and open media competition as the only basic solution to this situation. In our opinion, there is need for at least 4 national live networks, supplemented by additional independent stations in the 125 largest markets.

We would first favor a high level study by the Congress of the present and future needs of advertisers as well as all other groups in the population. We favor the development of other forms of economic support for broadcasting, such as pay television, provided they will be assigned additional, exclusively licensed channels so as not to displace or restrict the growth of free commercial television.

In our opinion, it will require at least as many as the 70 UHF channels to provide an adequate television communication system for the total needs of business as well as other services. The ultimate gradual transfer of all broadcasting to the UHF band should be considered. As an interim measure only, we would favor deintermixture of the UHF-VHF markets, each on its own merits.

Finally, we deplore the fact that the Senate committee's ad hoc group of advisers does not include representatives of business, journalism, publishing, entertainment, education, social and political institutions, etc., who are actual or potential users of television, as opposed to its present makeup which is dominated by the representatives of the networks, and station owners who have large vested interests in maintaining the present scarcity of facilities.

We would appreciate it if this statement could be made a part of your committee's record in this matter.

[Inserted on April 23, 1956]

Statement of Dr. Edward C. Lambert, Director of Television of the University of Missouri

This Senate committee now has before it the perplexing and difficult problems of what legislation, if any, should be enacted by the Congress of the United States to assist in alleviating the difficult problems now confronting the television industry. The particular difficulties to which we refer are the financial and operational difficulties facing the ultra high frequency television stations.

The University of Missouri owns television station KOMU-TV, which operates on VHF channel 8 with 250-kilowatt power at a height above average terrain of 794 feet; the station is located in the center of the State, at Columbia, Mo. It is not the university's purpose or interest to take sides in the great dispute now going on between various segments of the industry, nor is it the university's position that UHF generally is not entitled to any relief. The university feels that the hearings being conducted by this committee should quite properly seek means of solving the difficulties of the UHF operators generally.

There are some disturbing suggestions, however, which are being made to this committee, suggestions which we at the University of Missouri feel are very shortsighted and improperly conceived. Specifically, we refer to the position of some UHF operators who urge that the coverage of all television stations should be limited to serving the principal community or possibly some undefined retail trading area around such a community. Part and parcel of this proposal is the plea made by some, that stations should serve almost solely as an outlet for local self-expression—indeed, that our entire television system should be nothing more than "hometown" television.

One group which expressed this view was the UHF Industry Coordinating Committee, through its chairman, Mr. Harold H. Thoms, on February 27, 1956. He specifically decried the development of "superpower, supermarket" stations and stated that stations with wide area coverage cannot serve the principal and primary purpose of a television station, namely, serving local needs. So also the Committee for Hometown Television, Inc., took a similar position, through its president, Mr. Philip Merryman, on February 28, 1956. It is interesting to note that both of these individuals, Mr. Merryman and Mr. Thoms, request that the solution to their own particular local problems is the assignment of an additional VHF channel, through a reduction in television station separations, thus permitting "drop-ins" of additional VHF channels.

It is respectfully suggested to this committee that the proposals of these groups constitute very serious threats to the development of a truly nationwide television service and overlook important considerations. The operation of station KOMU–TV by the University of Missouri, it is believed, points out the fallacies inherent in the position taken by such groups. The fallacy is this—there are a number of stations in the country which are specifically designed to afford wide area coverage so as to serve specific and important needs.

A brief description of the programs offered by KOMU–TV will be set forth here, so that this committee can get some understanding of the needs for area-wide service such as provided by KOMU–TV. Station KOMU–TV operates commercially, and it utilizes the proceeds received from its commercial programing to help defray the cost of operation and help to defray the cost of producing educational and other public-service programs. KOMU–TV is a network affiliate of the National Broadcasting Co. and the American Broadcasting Co. Knowing that the networks will explain and justify their position, we will concentrate here solely on describing locally produced programs.

KOMU–TV offers the usual news, weather, and sports programs around suppertime and also again around 10 o'clock each evening. From 5 to 6 p. m. daily, Monday through Friday, there is a program entitled "Time for Adventure," which is designed to entertain and also educate the youngsters. Also on Monday evening, there is a half-hour program entitled "Missouri Forum," which is a panel-type program featuring important public figures, including, among others, Senator Stuart Symington, Senator Thomas C. Hennings, Senator Hubert Humphrey, and Lt. Gov. James Blair. This program is specifically designed to reach as large an audience as possible and to bring before the citizens of the State of Missouri important and controversial issues, featuring the finest possible advocates representing all sides.

Also, once a month KOMU–TV presents Mizzou Riview, which is an hour-long "spectacular." Here again the purpose of this program is to bring entertainment and enjoyment to as many Missourians as possible and to acquaint them with the functions and activities of the university. Once a week, normally on Tuesday evening, the university presents a farm show, R. F. D., produced and presented by the university's college of agriculture and designed to bring information and education to the farmers and rural population of Missouri. On Wednesday evenings, KOMU–TV presents a program entitled "Not in Our Stars," which features an outstanding university psychologist dealing with current topics of interest to the adult audience. Also the station presents a weekly program entitled "Sewing Basket," a program designed to present sewing hints for the ladies.

Occasionally, KOMU–TV presents an afternoon musical program featuring an instrumental group from nearby Christian College. Right now, a series of afternoon programs are being produced for the League of Women Voters, the purpose being to educate the public as to voting procedure, and to introduce the personalities and issues involved in this election year. Later, a series of programs will be presented by the Internal Revenue Service for the purpose of educating the public on the proper procedure for filing of income tax forms. All of these programs are designed to reach as large an audience as possible.

Another program now appearing is the M. U. Farm and Home Show, which is produced by the college of agriculture and its extension division. The first half of this program is devoted to developing better farm practices and methods. The second half of the program is designed to teach both city and farm housewives the techniques of better living. In both of these cases, the university, through its extension service, accomplishes a major educational objective; but it can do so only by utilizing broad coverage television so as to reach the rural and small town population.

The use of television as a means of stimulating adult education and as a means of bringing interesting and educational programs into the home has not been fully developed by any means. The university is constantly experimenting with new techniques and further expanding its educational programing. For example, the university is now working on a project, whereby KOMU–TV will be originating 5 days a week, high school classes in Missouri history and plane geometry. These programs will be produced, if the project goes through, for the schools in 30 counties served by the station. The courses will be offered for credit in the participating schools, and also for credit to those interested in high school extension courses; they will be noncredit remedial courses for colleges throughout the area. Obviously, the use of television for such purposes, however, requires that the programs reach as many people as possible.

Of course, there are many other programs offered by KOMU–TV which are important to the State of Missouri and its citizens. Only a few will be mentioned, so as not to burden this record. The State conservation commission has a half hour program on Thursday evening, entitled "Sportsman's Club," which concerns various facets of the State's wildlife program. The university has a number of local activities which it televises on a regular basis. For example, every Friday night, the station carries the program Show Case. Each week a different university department or division is featured. This program shows the people of the State their university in action.

There are a number of special functions which occur during the year, which also are televised. For example, the entire university commencement exercise is carried. Also during March of this year, there will be an hour long student production, Savitar Frolics. Television offers a unique means of bringing this popular student program to the entire State.

These programs, as well as the regular features described above, constitute an important aspect of the university's efforts to discharge its educational objective. The university feels strongly that television affords a marvelous and unlimited medium for the discharge of the university's functions. Wide area coverage is essential to an effective utilization of the facilites and a corresponding effective and efficient accomplishment of the objectives. We are confident that this committee will carefully study the various programs and views presented to it. We are further confident that no unfortunate or ill-advised action will be taken, the effect of which will be to seriously impair the ability of station KOMU–TV to discharge effectively its educational objectives. Station KOMU–TV is but one station out of many which, in a unique way, is serving the needs of a large area. Wide area coverage is essential if such stations are to meet these compelling needs.

[Inserted on May 15, 1956]

Statement of the Helm Coal Co., Permittee of UHF Station WNOW–TV, York, Pa.; Susquehanna Broadcasting Co., Permittee of UHF Station WSBA–TV, York, Pa.; Rossmoyne Corp., Permittee of UHF Station WVMB–TV, Harrisburg, Pa.; WHP, Inc., Permittee of Station WHP–TV, Harrisburg, Pa.; and the Patriot-News Co., Permittee of Station WTPA, Harrisburg, Pa.

Deintermixture of VHF and UHF channels to the greatest extent possible without disrupting existing television operations has been urged in very many of the comments and reply comments which have been filed in the Commission's general rulemaking proceeding. Most of the major organizations in the industry have endorsed deintermixture of one sort or another, including the American Broadcasting Co., National Broadcasting Co., Radio Corporation of America, Columbia

Broadcasting System, General Electric Co., Storer Broadcasting Co., Westinghouse, and General Teleradio.

The problems confronting UHF broadcasters are so well known to this committee that discussion would serve no useful purpose. In short, intermixture has not worked. It has not resulted in the development of a fully competitive nationwide television service. The south-central Pennsylvania area is an excellent example of the shortcomings of the practice of intermixture of VHF and UHF channels.

At the present time the vast south-central Pennsylvania area, consisting of 18 counties with a total population in excess of 2 million, and including the cities of Harrisburg, York, Reading, Lebanon, Lancaster, Chambersburg, Lewistown, Sunbury, Shamokin, and Hazleton, has 14 UHF allocations and only 1 VHF allocation, channel 8 in Lancaster. Six UHF stations are now on the air in the area—3 in Harrisburg, 2 in York, and 1 in Reading. Three other UHF stations were formerly on the air in the same area, but for economic reasons have been forced to cease operations. These are stations WEEU–TV, Reading (on air April 15, 1953, off air June 30, 1955), WCHA–TV, Chambersburg (on air September 3, 1953, off air July 14, 1954), and WLBR–TV, Lebanon (on air October 22, 1953, off air October 16, 1954). WLBR–TV hopes to resume operations under new management (as a satellite or quasi-satellite of VHF station WFIL–TV, Philadelphia). Three other UHF construction permits have been issued for the same area, one of which is still outstanding.

By far the greatest obstacle to the development of television as a medium of local expression in the south-central Pennsylvania region is the existence in that otherwise UHF-only area of a maximum power VHF television station, WGAL–TV. The history of television operations in the region discloses how the Commission's present VHF allocations and rules have been used—or more accurately "misused"—to place multiple UHF stations at an insuperable disadvantage in competing with a single, high-powered, regional VHF station.

Station WGAL–TV, in Lancaster, Pa., was fortunate enough to obtain a VHF assignment prior to the television freeze. Three of the five Harrisburg and York UHF stations and two Reading UHF stations were also applicants for VHF stations in their respective cities prior to the freeze, but unlike WGAL–TV were held up in their VHF applications because there were more applicants than channels in Harrisburg, York, and Reading. The present allocation plan, issued after the freeze, did not assign VHF channels to Harrisburg and York, thereby making it necessary for the Harrisburg and York stations either to operate on UHF or forego bringing television to their cities. VHF, however, was continued in Lancaster by moving prefreeze channel 8 from York to Lancaster for use by WGAL–TV. Originally WGAL–TV operated on channel 4 as a community station. In its sixth report and order which terminated the freeze the Commission proposed to shift WGAL–TV to channel 8 under a special temporary authorization, operating with a relatively modest power and antenna height from a site close to Lancaster. In connection with this change in frequency WGAL–TV filed an application for authority to increase its power and antenna height to the maximum permissible; that is, to 316 kilowatts and 1,000 feet above average terrain, and to change its transmitter location. This application was granted January 28, 1954, and WGAL–TV began operating with these new facilities on June 28, 1954. The new transmitter location of WGAL–TV was more than 15 miles closer to York, Pa., than its original transmitter site, almost 14 miles closer to Harrisburg, and more than 16.5 miles more distant from Lancaster. As the following table shows, the new operation of WGAL–TV resulted in a substantial increase in the strength of the signals which were received in York and Harrisburg, Pa.

Field intensities delivered to the most distant parts of cities from station WGAL–TV, before and after June 28, 1954

City	Before June 28, 1954	After June 28, 1954
York	56.2 dbu	104.0 dbu.
Harrisburg	48.1 dbu	90.8 dbu.
Lancaster	103.6 dbu	92.5 dbu.

It will be noted that the increased WGAL–TV signal is stronger in York than it is in Lancaster, and in Harrisburg it is only insignificantly weaker than in

Lancaster. It is also to be noted that with the increased power and height, WGAL–TV provides a weaker signal to Lancaster than with its old station, solely because it has moved its transmitter closer to York and Harrisburg so as to serve those cities.

It is clear that WGAL–TV's primary, if not sole, purpose in seeking greater power and greater height and a new location for its antenna was to establish an areawide coverage embracing Harrisburg and York, as well as other cities, rather than to improve its service to Lancaster. Advertisements of WGAL–TV in the trade press have emphasized that this was its purpose and intention. These advertisements include claims that WGAL–TV serves Harrisburg, York, Lebanon, and Reading as well as Lancaster. WGAL–TV boldly emphasizes that in addition to its entrenched position gained through 7 years of monopoly operation it has a service area far greater than that of any of its present UHF competitors in York, Harrisburg, and Reading. Perhaps the best evidence of the adverse effect which WGAL–TV, with its areawide coverage, has had upon UHF operations and growth is the fact that, since WGAL–TV has increased its power and tower height, 3 UHF stations in the area have been forced to sign off the air, and permittees of 3 other stations in the same area have never gone on the air.

WGAL–TV has a primary affiliation with NBC and a secondary affiliation with CBS. Because of its powerful signal and top network programs, well over half of the television homes in York are tuned to WGAL–TV during all time segments. The dominance of WGAL–TV in the York and Harrisburg markets, as well as in other south-central Pennsylvania markets, is precisely what the York and Harrisburg UHF stations predicted when on March 1, 1954, they filed with the Commission a joint petition for rehearing of the then recently granted application to move the WGAL–TV transmitter closer to York and Harrisburg and to make it a regional station by increasing antenna height and power. This joint petition was subsequently denied. *In re WGAL, Inc.* (10 Pike & Fischer R. R. 1209 (1954)).

With WGAL–TV operating as it does as a broad, regional station, the networks and their advertisers now have the opportunity of selecting merely one station to reach all of south-central Pennsylvania, instead of several UHF community-type stations in separate cities. For example, station WHP–TV, a CBS affiliate in Harrisburg, does not carry the following top CBS programs though station WGAL–TV does: Toast of the Town, Arthur Godfrey's Talent Scouts, I Love Lucy, and the Jack Benny Show.

The Commission has heretofore made allocations of television channels primarily to communities—not to areas and regions. Fundamentally, therefore, the assignment plan requires that a station primarily serve a given community, meet its local needs and be a source of local expression. In their joint petition for rehearing of the WGAL–TV grant, and also in their statement before the Potter committee, the York and Harrisburg UHF permittees pointed out that WGAL–TV's purpose in seeking greater power and tower height and a new antenna location was to establish areawide coverage embracing York, Harrisburg, and other cities, rather than to improve its service to Lancaster. The UHF stations also pointed out that the WGAL–TV grant severely limited the opportunity of UHF stations in the area to secure network affiliations and national spot revenue. Unfortunately, these predictions have been proved 100 percent accurate. Before the WGAL–TV grant, WTPA in Harrisburg had an NBC affiliation, which it has now lost to WGAL–TV. In fact, there is only one NBC affiliate in the entire York-Harrisburg-Lancaster-Lebanon-Reading area, WGAL–TV.

Channel 8 should be deleted from Lancaster, leaving south-central Pennsylvania a large, populous, UHF-only "island." Among the reasons for this move are the following:

(*a*) WGAL–TV could continue to operate on a UHF channel. Channel 21, allocated to Lancaster, is presently unassigned. Other UHF channels are also available.

(*b*) There would be little, if any, inconvenience to the general public resulting from the deletion of channel 8, since there is a high degree of all-channel set saturation in the entire area now served by WGAL–TV.

(*c*) There would be no television "white area" created by the suggested channel move, since all of the WGAL–TV grade A service area receives grade A service from at least one UHF station and since all of the present WGAL–TV grade B service area is within the grade B service area of at least one UHF or VHF station. All but the extreme southern and southeastern portions of the WGAL–TV grade B service area receive grade A or grade B service from one or more UHF stations, while the extreme southern and southeastern portions of the WGAL-TV grade B service area receive grade A service from VHF stations in Baltimore, Philadelphia, and Wilmington.

(d) If deintermixture is effected in south-central Pennsylvania, all UHF stations in the area will be able to compete on an equal basis for network affiliations and programs; local, regional, and national advertisers; for listeners; for syndicated film; for local talent; for news services; and for personnel.

(e) The deletion of channel 8 would encourage the now defunct UHF stations in Lebanon, Reading, and Chambersburg to return to the air. There would also be greater incentive to apply for and construct additional UHF stations in Hazleton, Lancaster, Lewistown, and Sunbury on presently available UHF channels.

[Inserted on May 15, 1956]

STATEMENT BY PLAINS TELEVISION CORP., LICENSEE OF UHF TELEVISION STATION WICS, SPRINGFIELD, ILL.

WICS, a UHF television station in Springfield, Ill., has been on the air continuously since September 17, 1953. On March 30, 1955, WICS filed with the Federal Communications Commission a petition for rulemaking looking toward the elimination of intermixture in Springfield, either by reserving for educational use the VHF channel allocated to that city (channel 2) or by the reallocation of channel 2 from Springfield to St. Louis, Mo., and the substitution of a new UHF channel in Springfield.

On November 10, 1955, the Commission dismissed some 35 deintermixture petitions without prejudice to their subsequent reconsideration on the merits in a general rulemaking proceeding ordered that same day. The WICS petition was not considered on its overall merits. The Commission, as Chairman McConnaughey told you on February 20, 1956, has not yet rejected deintermixture. WICS filed comments in the Commission's general rulemaking proceeding on December 15, 1955, and reply comments on February 8, 1956.

Deintermixture of VHF and UHF channels to the greatest extent possible without disrupting existing television operations has been urged in very many of the comments and reply comments which have been filed in the Commission's general rulemaking proceeding. Most of the major organizations in the industry have endorsed deintermixture of one sort or another, including the American Broadcasting Co., National Broadcasting Co., Radio Corporation of America, Columbia Broadcasting System, General Electric Co., Storer Broadcasting Co., Westinghouse, and General Teleradio.

The problems confronting UHF broadcasters are so well known to this committee that discussion would serve no useful purpose. In short, intermixture has not worked. It has not resulted in the development of a fully competitive nationwide television service. By way of example, WICS refers you to the Springfield, Ill., and St. Louis, Mo., areas with which it is very familiar.

At the present time, Springfield is allocated channels 2 and 20 for commercial use and channel 66 for noncommercial use. Channel 20 has been assigned to WICS. Channel 2 is presently the subject of a comparative hearing in which an initial decision was released December 3, 1954. Channel 66 has not been assigned and no applications for it are pending.

St. Louis is allocated channels 4, 5, 11, 30, 36, and 42 for commercial use and channel 9 for noncommercial educational use. Channel 5 has been assigned to KSD-TV, a prefreeze station which commenced operation February 8, 1947. Channel 4 is assigned to KWK-TV which went on the air July 7, 1954. Channel 9, the educational channel, has been assigned to KECT which commenced operation September 13, 1954. Construction permits are now outstanding for two of the UHF channels. The Lutheran Church—Missouri Synod—holds a construction permit for a station on channel 30 at Clayton, Mo., a suburb of St. Louis. This permit was granted February 4, 1953. Construction of the station has not been commenced. Missouri Broadcasting Corp. holds a construction permit for a station on channel 42 at St. Louis. This permit was granted February 11, 1953. Again, no construction has been undertaken. Channel 36 was assigned to Broadcast House, Inc. (KSTM-TV) which commenced operation October 20, 1953, but left the air August 3, 1954, and surrendered its construction permit on August 26, 1954. WTVI, a UHF station which once operated on channel 54 at Belleville, Ill. (within the St. Louis metropolitan area) has moved to channel 36 in St. Louis. One other UHF station has been in operation in the St. Louis vicinity. This station, KACY, which operated on channel 14 at Festus, Mo. (with transmitter within a few miles of St. Louis) went on the air October 31, 1953, but ceased operation April 2, 1954. The remaining VHF channel (11) in St. Louis is now the subject of a comparative hearing among four applicants.

WICS is a rarity, a successful UHF television station. Commencing operation September 17, 1953, it has worked diligently to promote UHF. It has succeeded to the extent that now 99 percent of the television receivers in Sangamon County, where Springfield is located, are capable of receiving UHF signals. Every set now sold in Springfield is equipped for UHF reception. Its programing is designed to appeal to every segment of its diverse audience of commerce, agriculture, industry, and Government. Each day WICS features local faces on the channel 20 screen and its facilities have been made available to virtually every public service organization in the area. Its local programs include a story time for children 2 to 6, a teen-age series, a farm program, shopping and household hints, kitchen tips, record potpourri, interviews, news, sports, and weather. It also televises a forum on religion in conjunction with the Illinois Church Council, a program of job opportunities in association with the Illinois State Employment Service, a documentary series in cooperation with the mayor's commission on human relations, recreation and hobby shows, and programs produced in cooperation with local educational institutions. Special events have included a cerebral palsy telethon (18 consecutive hours), Christmas parades, 4 hours of daily remotes from the Illinois State Fair, a series for the blind, fashion premiers, and salutes to local industry. Local shows in WICS's 14-hour daily schedule are, of course, built around a nucleus of top network and film attractions. WICS is a primary interconnected affiliate of the NBC–TV network, has a secondary affiliation with ABC, and carries, in addition, occasional CBS programs. The availability to WICS of popular network programs has, of course, been of great assistance in building a listening audience. WICS has also been fortunate in that it has faced limited VHF competition. As will be seen below, the majority of the WICS service area receives no grade A VFH service.

The experience of UHF stations in other markets the approximate size of Springfield shows conclusively that WICS could not have accomplished what it has if it had been operating in an intermixed market. While WICS believes that it deserves credit for the energetic way in which it has developed local programs and identified itself with its community in the mind of its audience, it recognizes that these efforts would have had to have been on a much smaller scale if it had not had substantial revenue available. Moreover, without its network shows as a nucleus, it could not have achieved a program schedule of sufficient length and quality to build an adequate UHF audience. The advent of a VHF station in the Springfield market may radically change the picture. Experience in other areas has shown that an initial head start is not sufficient to guarantee the success of UHF operations. Springfield, Ill., is a relatively small market. The population of the city is only 81,628 and of Sangamon County, 131,484. Markets of this size can successfully support two and perhaps three television stations if all are either UHF or VHF. In intermixed markets, however, the competitive advantage of a VHF station is such that it absorbs too large a proportiton of the total available advertising revenues to permit successful operation by the UHF station. It is evident, therefore, that if television is to remain healthy and competitive in Springfield, deletion of the yet to be assigned VHF channel and its replacement by a UHF channel are essential.

Deintermixture of Springfield will not only keep UHF alive in Springfield, and Sangamon County, but in more than a dozen other counties in central Illinois as well, thereby deintermixing an entire area, not merely a single city. Central Illinois is ideally suited for deintermixture. The VHF stations nearest to Springfield are WCIA, Champaign, Ill., approximately 75 miles distant; KSD–TV and KWK–TV, St. Louis, Mo., approximately 85 miles distant; KHQA, Hannibal, Mo., approximately 85 miles distant; and WGEM, Quincy, Ill., approximately 90 miles distant. In contrast, there are four close-by UHF stations, WTVP in Decatur, Ill., about 40 miles from Springfield, WBLN in Bloomington, Ill., 60 miles from Springfield, and WEEK and WTVH in Peoria, Ill., approximately 65 miles from Springfield. Further, if Peoria were also deintermixed, all of central Illinois would receive multiple service from fully competitive UHF stations. The overall result would be to make central Illinois an all-UHF area, with VHF service concentrated in the border Illinois, Indiana, Missouri, and Iowa cities; i. e., Chicago, Champaign, Terre Haute, Cape Girardeau, Hannibal, Quincy, Davenport-Rock Island-Moline, and Rockford-Beloit.

St. Louis, in contrast to Springfield, is a predominantly VHF market. Two commercial VHF stations are already in operation there—one since before the freeze—and a third VHF will eventually take the air. The noncommercial educational station in St. Louis is also a VHF station and provides no incentive for the purchase of UHF converters or all-channel receivers. Two UHF stations serving St. Louis have already succumbed to VHF competition. A third UHF station is hanging on temporarily but its demise appears inevitable when the third VHF station is established. St. Louis will thus be condemned to have no more than three television stations. This is inadequate for a metropolitan area of that size (population 1,681,281). The deletion of channel 2 from Springfield and its assignment to St. Louis will permit that city to enjoy four commercial television services.

If channel 2 is deleted from Springfield and removed to St. Louis, it may be concurrently assigned to the Terre Haute, Ind., area, which is now served by only one station, thereby providing a second service to Terre Haute as well as a fourth service to St. Louis.

[Inserted on May 15, 1956]

STATEMENT OF TELECASTING INC., PERMITTEE OF UHF TELEVISION STATION WENS, PITTSBURGH, PA.

Telecasting, Inc., has been operating UHF station WENS, Pittsburgh, Pa., since August 25, 1953. It welcomes the opportunity to present its views, gleaned from almost 3 years of operating experience, to this committee.

At the present time, Pittsburgh, Pa., is allocated VHF channels 2 and 11 and UHF channels 16, 47, and 53 for commercial use and VHF channel 13 for noncommercial educational use. Channel 4 is allocated to Irwin, Pa., a town of 4,200 persons on the outskirts of Pittsburgh. Thus, for all practical purposes 3 commercial VHF's, 3 commercial and 1 noncommercial educational VHF are allocated to Pittsburgh. Of the three commercial VHF channels, channel 2 has been assigned to KDKA-TV (formerly WDTV), a prefreeze station which has been in operation since January 11, 1949. WWSW, Inc., has been granted a construction permit for station WIIC on channel 11, a grant on which a further hearing is being held. Channel 4, the other commercial VHF channel, is presently the subject of a comparative hearing. At one time grants were outstanding for all three commercial UHF channels. Two stations, WENS on channel 16 and WKJF-TV on channel 53, were constructed and went on the air in July and August of 1953. WKJF-TV ceased operations on July 2, 1954, and has not returned to the air. WENS understands that construction on the remaining UHF channel is unlikely, the permit having been outstanding for almost 3 years. Noncommercial educational station WQED, operating on channel 13, has been on the air since March 19, 1954. Thus, at the present time there are two operating commercial television stations in Pittsburgh, KDKA-TV which has pioneered VHF on channel 2 and WENS which has pioneered UHF on channel 16.

The initial application of WENS for a construction permit was filed September 29, 1952, when only 2 VHF and 3 UHF channels were allocated to Pittsburgh, and before an additional VHF channel was assigned to the nearby suburb of Irwin. The application was granted on December 23, 1952, and the station went on the air August 29, 1953. Its construction costs were in excess of $700,000. Its operating losses, as of the end of last year, were in excess of $400,000.

The programing of WENS has been attuned to meet the needs, desires, aims, and aspirations of the persons within its service area. It has established a reputation for television firsts in the area, marshalling an aggressive force for education, information, and entertainment programing. In 6 months time WENS completed more hours of remote telecasting—major sports and special events—than had been accomplished in the metropolitan area during the previous 5 years. WENS has telecast special sporting events from New York City and on occasion has provided originating service to a regional network consisting of both VHF and UHF stations. This was done at considerable cost in equipment expenditures and rights charges. It gave complete on-the-spot coverage of Pittsburgh's municipal elections in 1953, utilizing several remote crews. In May 1954, WENS remote crews climbed the city's rugged Mount Washington to carry a special program emphasizing the value of municipal smoke control. WENS inaugurated a full schedule of University of Pittsburgh and Duquesne University sporting events. It has also carried educational remotes featuring faculty members from these universities. One season its cameramen followed the Pittsburgh Pirates during their out-of-town games and sent back closeups of the hometown team. It has presented on a regular basis from its studios, news, sports, variety, panel, and religious programs designed to appeal to every taste. It has produced the Band Wagon in cooperation with the Allegheny County Board of Education, a program which has brought together in the WENS studios hundreds of teenagers. It conducted Way of the Cross, a half-hour special Lenten season series produced in cooperation with the Knights of Columbus. WENS has received letters of commendation in recognition of its service to the community from a vast number of religious, social service, and civic agencies. In short, WENS sincerely believes that it has worked diligently to become a vital instrument of local self-expression.

When the WENS principals applied for a UHF television station, they had confidence in the ultimate success of their operations. Since then, however, the basic VHF–UHF balance was changed. After making its original allocation for 2 VHF's and 3 UHF's for Pittsburgh, the Commission allocated another VHF channel to the town of Irwin, Pa., on the outskirts of Pittsburgh.

Competition which WENS faces from station KDKA–TV is a formidable obstacle to its success. During the years when KDKA–TV (then WDTV) was Pittsburgh's only station, the area became heavily saturated with VHF–only receiving sets. During the past year and a half it has become apparent that WENS is faced not only with this local competition but has been forced to compete with other VHF stations located outside of Pittsburgh. The substantial coverage advantages which VHF stations have by reason of their lower frequencies and more powerful equipment coupled with power increases permitted by the Commission's Rules have made it possible for VHF stations in Steubenville, Ohio, and Johnstown, Pa., to claim a saleable signal in the city of Pittsburgh. Their coverage claims have been sufficiently convincing to cause WENS to lose a number of valuable network programs to these out-of-town stations. These stations have carried advertisements in national trade publications devoted primarily to an exploitation of their coverage claims for Pittsburgh. Yet none of these out-of-town stations has contributed anything in the way of public service to the city of Pittsburgh and to its immediate environs. Their contribution is rather to extract advertising dollars from Pittsburgh to the detriment of a Pittsburgh UHF station.

Although WENS has done everything feasible to make its station a popular medium of public expression in its community, it has not been financially successful. UHF set circulation has been the chief difficulty in obtaining sufficient advertising revenue for the station. Diligent efforts to promote all-channel set circulation have met with very little success. The market is already near set saturation (now about 90 percent) with VHF-only sets, many of which were purchased during the 5 years before WENS went on the air. Further, during the last 2 years, instead of significantly increasing the number of all-channel sets, receiver manufacturers have been making fewer and fewer. The majority of converters have been found to be faulty and expensive. Finally, WENS, through no fault of its own, has time after time lost valuable network shows to out-of-town VHF stations viewed in Pittsburgh.

An interesting revelation of how much better VHF fares than UHF in the Pittsburgh market is shown by the financial improvement which WENS enjoyed during the period from March 13, 1955, to May 1, 1955. The WENS tower was completely destroyed by a windstorm on March 11, 1955. During the next 6 weeks WENS used on a temporary basis the facilities of the VHF (channel 13) educational station in Pittsburgh, WQED. Even though this station operates on very low power, spot surveys taken before and after the temporary switch to channel 13 revealed that ratings tripled on the surveyed shows. Further, national spot advertisers not heard from during the almost 2 years that WENS had been on the air began making inquiries. New orders were received, but only for the duration of the time that WENS was on channel 13. Other advertisers informed the station that they would be happy to enter into long-term contracts if WENS could stay on a VHF channel.

Pittsburgh is one of the largest markets in the Nation. Under the principles enunciated in the Commission's sixth report, the Pittsburgh metropolitan area, with a population of 2,213,236, should have at least 4 commercial television stations, each of which will be able to compete with the others without facing unnatural handicaps. As things stand, when stations get on the air on channels 4 and 11, there will be three operating VHF stations in the Pittsburgh area. Faced with this competition, WENS could not hope to survive as a UHF station.

If it should cease to operate, the Nation's eighth market would be limited to three television stations, each carrying principally network programs. If, however, WENS were permitted to operate on a VHF channel, it is prepared, if necessary, to operate as an independent. While a network affiliation is preferable, WENS does not believe that a network affiliation will be an indispensable requisite to successful operation on VHF.

WENS believes that the principal corrective measure which must be taken is the deintermixture of UHF and VHF channels throughout the country to the greatest extent possible without disrupting existing television operations. This view has been urged in many of the comments and reply comments which have been filed in the Commission's general rulemaking proceeding. Most of the major organizations in the industry have endorsed deintermixture of one sort or another, including the American Broadcasting Co., National Broadcasting Co., Radio Corporation of America, Columbia Broadcasting System, General Electric Co., Storer Broadcasting Co., Westinghouse, and General Teleradio.

The problems confronting UHF broadcasters are so well known that discussion would serve no useful purpose. In short, intermixture has not worked. It has not, as predicted in the sixth report, resulted in the development of a fully competitive nationwide television service. For example, there are no UHF stations on the air in the top five markets. Only 4 UHF's operate in the first 13 markets, and each of these has disclosed to the Commission or to the Potter committee that it is in financial distress.

Since all the very large markets have VHF stations in operation and relatively low UHF receiver circulation, or none at all, the only way to accomplish deintermixture in these markets without imposing substantial hardships on existing stations and the public is to allocate additional VHF channels where four or more VHF's are not already assigned for commercial use.

On December 5, 1955, WENS filed comments in an FCC rulemaking proceeding (docket No. 11514) showing how Pittsburgh could receive an additional VHF channel allocation without deleting a VHF allocation for another locality. This could be accomplished by placing height and power limitations on the use of certain channels in Pittsburgh and in Weston, W. Va., and by the installation of directional antennas to protect existing cochannel stations. WENS appended to its comments an engineering affidavit showing that its proposals are feasible from a technical standpoint. WENS believes that by similar techniques additional VHF channels can also be allocated to other principal markets which do not now have four or more commercial VHF assignments. In this way all major markets can have sufficient competitive television channels—all VHF or all UHF—to meet at least their minimum requirements.

[Inserted on May 15, 1956]

Statement of Charles W. Lamar, Jr., Permittee of UHF Television Station WPFA-TV, Pensacola, Fla., and of KTAG Associates, Permittee of UHF Television Station KTAG-TV, Lake Charles, La.

WPFA-TV, a UHF television station in Pensacola, Fla., went on the air on October 16, 1953, and signed off the air because of continuing financial losses on December 19, 1955. KTAG-TV, a UHF station in Lake Charles, La., has been on the air continuously since November 2, 1953.

On October 18, 1955, WPFA-TV and KTAG-TV filed with the Federal Communications Commission a petition for rulemaking to accomplish deintermixture in several markets along the gulf coast by (1) deleting from Beaumont-Port Arthur, Tex., and New Orleans, La., VHF channels which are in hearing status; (2) adding second commercial VHF channels to Pensacola, Fla., and Lake Charles, La.; and (3) substituting one VHF channel for another VHF channel which is in hearing status for Biloxi, Miss.

On November 10, 1955, the Commission dismissed some 35 deintermixture petitions without prejudice to their subsequent reconsideration on the merits in a general rulemaking proceeding ordered that same day. The WPFA-TV and KTAG-TV petition was not considered on its overall merits. The Commission, as Chairman McConnaughey told you on February 20, 1956, has not yet rejected deintermixture. WPFA-TV and KTAG-TV filed comments in the Commission's general rulemaking proceeding on December 15, 1955, and reply comments on February 8, 1956.

Deintermixture of VHF and UHF channels to the greatest extent possible without disrupting existing television operations has been urged in very many of the comments and reply comments which have been filed in the Commission's general rulemaking proceeding. Most of the major organizations in the industry have endorsed deintermixture of one sort or another, including the American Broadcasting Co., National Broadcasting Co., Radio Corporation of America, Columbia Broadcasting System, General Electric Co., Stoner Broadcasting Co., Westinghouse, and General Teleradio.

The problems confronting UHF broadcasters are so well known to this committee that discussion would serve no useful purpose. In short, intermixture has not worked. It has not resulted in the development of a fully competitive nationwide television service. By way of example, WPFA-TV and KTAG-TV refer you to the gulf coast area with which they are familiar.

At the present time, the Beaumont-Port Arthur, Tex., area is allocated channels 4, 6, and 31 for commercial use and channel 34 for noncommercial educational use. Channel 6 is assigned for use by KFDM-TV, which began operation on April 24, 1955. Channel 31 is assigned for use by KBMT-TV which began operation on May 9, 1954, approximately 1 year before KFDM-TV. The remaining commercial assignment, channel 4, is the subject of a comparative proceeding. The hearing on the merits in this case was delayed pending the outcome of preliminary Commission proceedings to determine whether a third application should be dismissed. The educational reservation has never been applied for.

New Orleans, La., is allocated channels 4, 6, 20, 26, 32, and 61 for commercial use and channel 8 for noncommercial educational use. Channel 6 is assigned to WDSU-TV which began operating on December 18, 1948. The other VHF channel is the subject of a comparative hearing. The initial decision of July 7, 1955, granted the application of Times-Picayune Publishing Co. and denied the competing applications of Loyola University and James A. Noe & Co.; exceptions have been filed with the Commission. At one time grants were outstanding for all four commercial UHF channels. Subsequently, construction permits for channels 20 and 32 were surrendered. The permit for channel 26 has been outstanding for approximately 2½ years. The only UHF station in New Orleans which has been built and which now is in operation is WJMR-TV. This station commenced operations on October 15, 1953, on channel 61, but following the surrender of the permit for channel 20, it applied for that channel and is presently operating on it. No application has been filed for channel 8, the educational reservation. Thus, New Orleans television service at the present time consists only of WDSU-TV on channel 6 and WJMR-TV on channel 20. The nearest outside service is from Baton Rouge, La., approximately 75 miles away.

Lake Charles, La., is assigned channels 7, 25, and 60 for commercial use and channel 19 for noncommercial educational use. The only channels presently in use are 7 and 25. KPLC-TV has been operating on channel 7 since September 29, 1954. KTAG-TV, Inc., is assigned channel 25 and has been operating station KTAG-TV on that channel since November 15, 1953. No applications have been filed for the remaining commercial assignment, channel 60, or for the educational reservation, channel 19.

Pensacola, Fla., is allocated channels 3, 15, and 46 for commercial use and channel 21 for noncommercial educational use. Channel 3 is assigned for use by WEAR-TV which began operating on January 13, 1954. Channel 15 was used by station WPFA-TV from October 16, 1953, to December 19, 1955. No applications have been filed for either channel 46, the other commercial assignment, or channel 21, the educational reservation.

Lake Charles, La., and Pensacola, Fla., are independent markets approximately 285 miles apart. However, to a large extent the same considerations apply to both. Each is well below the top 100 markets in the Nation—Pensacola being ranked as 183 and Lake Charles as 206 (J. Walter Thompson Co.). In Pensacola UHF station WPFA-TV has been required to compete with VHF station WEAR-TV, while in Lake Charles UHF station KTAG-TV has had to compete with VHF station KPLC-TV. Experience has demonstrated that in these 2 markets UHF cannot compete successfully with VHF, even though only 1 VHF station provides competition to the UHF operation. As smaller markets, Pensacola and Lake Charles have not been in great demand by national advertisers (either on a network or spot basis) and when coverage has been sought the VHF channel has been preferred. WPFA-TV has already had to suspend operations. If the present television assignments in these two cities are continued, KTAG-TV will also inevitably be forced to abandon its UHF operation, resulting in television service to this community from only the remaining VHF station. The public interest could not be served by such a result, and, unfortunately, if existing allocations are continued, VHF monopolies in each of these cities are virtually certain. For protection of the public interest a way must be found to permit the operation of more than one station in both Pensacola and Lake Charles. This would be possible if stations could compete on an equal basis—all UHF or all VHF. Making the markets all UHF would entail lengthy and time-consuming proceedings involving the modification of the permits of WEAR–TV, Pensacola, and KPLC–TV, Lake Charles, and expense to these stations if they were ultimately required to move to UHF frequencies. The practical and realistic solution is the addition of a second VHF channel to Pensacola and Lake Charles.

WPFA–TV (channel 15) was the first station on the air in Pensacola, Fla., starting operations on October 16, 1953. WEAR–TV (channel 3) began operations approximately 3 months later. WEAR–TV has been affiliated with ABC, Du Mont, and CBS. WPFA–TV has been unable to secure a network affiliation. Notwithstanding WPFA–TV's diligent advertising campaign to promote UHF, UHF receiver conversion in Pensacola fell far short of expectations. Indicative of the inferior competitive position which WPFA–TV occupied was its top hourly rate of $120 as compared with $225 for WEAR–TV. The Pensacola market, ranked 183 in the Nation, has a population of 112,706 persons and 1948 retail sales totaled $75,872,000 (J. Walter Thompson). This area can support more than one television station, provided each starts from an equal competitive position. The nearest community in which other television stations are operating is Mobile, Ala., ranked as the 83d market in the Nation, approximately 55 miles away. There, WALA–TV, affiliated with ABC, CBS, and NBC, has been operating on channel 10 since January 14, 1953. WKRG–TV, a CBS affiliate, began operations on channel 5 on September 4, 1955.

KTAG–TV (channel 25) went on the air in Lake Charles on November 15, 1953, and was followed by KPLC–TV (channel 7) approximately 1 year later. KTAG–TV has made assiduous efforts to obtain a high degree of UHF conversion, but there too the results have been disappointing. KTAG–TV has had the benefit of affiliation with CBS, but its location in the 206th market in the Nation has meant a reluctance on the part of network advertisers to buy it. Because of the minor standing of the market and because of the mere fact that KTAG–TV is a UHF station, there also has been little incentive on the part of national advertisers to place spot business on it. The VHF station in Lake Charles, KPLC–TV, is affiliated with NBC and ABC. Indicative of the competitive inequality between KTAG–TV and KPLC–TV is the top hourly rate of $180 for the former and $262.50 for the latter. The population of the Lake Charles market is 89,635 and 1948 retail sales totaled $71,104,000. While experience has demonstrated that a UHF station in this market cannot compete successfully against the existing VHF station, the market is capable of supporting two VHF's. The nearest community in which television stations are operating is Beaumont-Port Arthur, Tex., ranked as the 94th market in the Nation, approximately 55 miles away. As noted above, one VHF station and one UHF station are operating in that market, with a second VHF channel the subject of a comparative proceeding.

KTAG-TV's and WPFA-TV's experience in Lake Charles and Pensacola is similar to that of other UHF stations in medium and small markets faced with the competition of a single VHF station. For example, WKAB–TV, in Mobile, Ala. (population 129,009), commenced operation December 29, 1952, but was forced to quit the air August 1, 1954, although its only competitor was VHF station WALA-TV. Similarly, KFAZ, Monroe. La. (city population 38,572; county population 74,713), commenced operation August 11, 1953. A VHF competitor, KNOE-TV, took the air September 26, 1953, and KFAZ was forced to cease operation May 1, 1954. (The Commission has since deintermixed Monroe by assigning an additional VHF channel there.) Other two-station, intermixed markets in which UHF stations have been unsuccessful are: Flint, Mich. (population 41,893); Tyler, Tex. (population 38,968); and Roanoke, Va. (population 91,921).

New Orleans, La., is ranked as the 22d market. Its population is 685,405 and its 1948 retail sales totaled $553,211,000. WDSU-TV, the VHF pioneer in that market, is affiliated with NBC; its top hourly rate is $800. WJMR-TV, the only UHF station which has been built in New Orleans, is affiliated with ABC and CBS; its top hourly rate is $330. Experience throughout the Nation has demonstrated that, once a second VHF channel enters this market (through a grant of channel 4), UHF will be doomed. However, limiting the number of VHF channels in New Orleans to one will enable the existing UHF stations to survive and in time achieve competition equality with the VHF, and will allow an increase in the number of television services in this community. As the 22d market in this country, New Orleans is a place where UHF can prosper and grow. Survival of UHF in this market will be a boon to the UHF television service as a whole and will aid it in eventually gaining acceptance and equal status with VHF. New Orleans contrasts sharply with Pensacola and Lake Charles, both of which are well below the first 100 markets. In neither of these two latter communities is there any reasonable chance of UHF survival or growth.

Beaumont-Port Arthur, Tex., presents similar considerations to New Orleans. It too is within the first 100 markets in the Nation, being ranked 94. It too can be used as a vehicle for preservation of UHF. The population of this market is 195,083 persons and its 1948 retail sales totaled $193,671,000. The UHF station presently operating in this market, KBMT (TV) (channel 31) could survive and prosper if it were not forced into competition with two VHF stations. It is affiliated with ABC and NBC, while KFDM-TV (channel 6) has ABC and CBS affiliations. KBMT presently occupies an inferior competitive position—a top hourly rate of $220 as compared with $360 for KFDM-TV. It seems certain of extinction if channel 4 is granted, but removal of that channel should keep KBMT alive and thus aid in the general preservation of UHF as a going television service.

Accordingly, the recommended solution for the cities discussed above is the removal of the ungranted VHF channels from New Orleans and Beaumont-Port Arthur (channel 4 in each instance), the substitution of channel 4 for ungranted channel 13 at Biloxi, Miss., and the addition of channel 13 to Pensacola and channel 4 to Lake Charles. These changes would comply with existing separations. An alternative solution would be the addition of VHF channels on a reduced mileage basis at Pensacola and Lake Charles.

[Inserted on May 15, 1956]

STATEMENT OF CARMEN MACRI, PERMITTEE OF UHF TELEVISION STATION WQIK-TV, JACKSONVILLE, FLA.

On July 29, 1955, WQIK-TV (then WOBS-TV) filed with the Federal Communications Commission a petition for rulemaking to partially deintermix Jacksonville, Fla., to UHF predominant and to increase the number of commercial VHF channels allocated to Savannah, Ga., from 2 to 3. On August 30, 1955, WQIK-TV filed a supplement to its rulemaking petition, pointing out that, as a result of its deintermixture proposal, a VHF channel also be allocated to Brunswick, Ga., WQIK-TV's proposal dovetailed in with the deintermixture petition, filed April 14, 1955, of Storer Broadcasting Co. and Gerico Investment Co. for Miami-Fort Lauderdale, Orlando, and Tampa-St. Petersburg, Fla.

On November 10, 1955, the Commission dismissed some 35 deintermixture petitions without prejudice to their subsequent reconsideration on the merits in a general rulemaking proceeding ordered that same day. WQIK-TV's petition was not considered on its overall merits. The Commission, as Chairman McConnaughey told you on February 20, 1956, has not yet rejected deintermixture. WQIK-TV filed comments in the Commission's general rulemaking proceeding on December 15, 1955, and reply comments on February 8, 1956.

Deintermixture of VHF and UHF channels to the greatest extent possible without disrupting existing television operations has been urged in very many of the comments and reply comments which have been filed in the Commission's general rulemaking proceeding. Most of the major organizations in the industry have endorsed deintermixture of one sort or another, including the American Broadcasting Co., National Broadcasting Co., Radio Corporation of America, Columbia Broadcasting System, General Electric Co., Storer Broadcasting Co., Westinghouse, and RKO Teleradio.

The problems confronting UHF broadcasters are so well known to this committee that discussion would serve no useful purpose. In short, intermixture has not worked. It has not resulted in the development of a fully competitive nationwide television service. By way of example, WQIK-TV calls attention to the Jacksonville, Fla., and Savannah, Ga., areas with which it is very familiar.

At the present time, Jacksonville is allocated channels 4, 12, 30, and 36 for commercial use and channel 7 for noncommercial educational use. Channel 4 is assigned for use by station WMBR-TV, which began operation on October 16, 1949. Station WJHP-TV has operated on channel 36 since December 13, 1953. WQIK-TV holds a construction permit for channel 30. An application for a noncommercial educational television station on channel 7 was filed on November 18, 1953, but no final action has been taken on that application. Channel 12 is presently the subject of a comparative hearing in which an initial decision was released April 4, 1955.

Savannah, Ga., is allocated channels 3 and 11 for commercial use and channel 9 for noncommercial educational use. Channel 11 is assigned to station WTOC–TV, which began operation on February 2, 1954. On January 26, 1955, the Commission made a final grant after hearing to WSAV, Inc., for operation on channel 3, and operation thereon should commence in the near future. On May 25, 1953, the board of public education for the city of Savannah and the county of Chatham filed an application for a noncommercial educational station on channel 9, which application is still pending.

The city of Brunswick, Ga., has a population of 17,954 (1950 U. S. census). It is presently allocated UHF channels 28 and 34, but no applications have been filed for either of these channels. Brunswick and its environs is a VHF-only area. It receives VHF fringe service from stations WMBR–TV, Jacksonville, Fla. (channel 4), 57 miles away and from WTOC–TV, Savannah, Ga. (channel 11), 68 miles away. If the city of Brunswick is to have its own local television station at any time in the immediately foreseeable future, such station must be on a VHF channel.

During the past 2 years WQIK–TV has surveyed the Jacksonville market and studied the progress of UHF stations in other areas to determine whether it would be economically feasible to construct and operate its proposed UHF station in Jacksonville. It has reluctantly concluded that probably no UHF station and certainly no two UHF stations can hope to survive in a market which already has a prefreeze VHF station on the air, and which, after the conclusion of the channel 12 hearing, will have a second local VHF station. At the present state of television development, an affiliation with one or more strong national networks is of great importance to the economic survival of any television station and an absolute necessity to a UHF station in an intermixed market which must provide popular programs to develop and maintain UHF receiver circulation. In Jacksonville the prefreeze VHF station now carries the network programs of CBS and ABC. The existing UHF station carries NBC and occasional ABC programs. Judging from experience in other markets, the second VHF station will probably obtain a basic NBC affiliation shortly after it goes on the air. ABC, in order to remain competitive with the 2 dominant networks, will seek to place at least its better programs on 1 of the 2 VHF stations. The VHF stations will thus absorb the bulk of the better network programs, leaving only secondary affiliations and the less desirable programs for their UHF competitors, if in fact they still have any UHF competitors. The pattern already established over the country whereby CBS and NBC enjoy the lion's share of far-reaching VHF facilities will thus be extended to the very serious detriment of the third network and the general public.

In view of the overwhelming evidence that the advent of a second VHF station in a market, no matter how large (Jacksonville is the 60th in the Nation), is inevitably followed by the demise of the UHF stations in that area, WQIK–TV has been forced to the conclusion that construction and operation of a UHF station in Jacksonville, under the present television allocations for that city, would be most foolhardy. The station would be foredoomed to failure.

Jacksonville could be partially deintermixed by changing the educational reservation from channel 7 to channel 12 and the removal of channel 7. This would not produce complete deintermixture. There would still be the one prefreeze VHF station. Deintermixture, however, is not a goal in and of itself. The desired aim is to reduce VHF competition to a level which will permit the survival of UHF stations. It is believed that, in a market as large as Jacksonville, the removal of one commercial VHF channel from the market is adequate to insure the success of UHF service.

WQIK–TV fully appreciates the fact that the removal of a VHF channel from Jacksonville would not guarantee the financial success of UHF stations in that market. Nevertheless, WQIK–TV is confident that, through efficient operating procedures, including the joint use of AM–TV facilities and personnel, and without sacrificing program quality, multiple UHF stations in the Jacksonville market can achieve modest financial success. If Jacksonville is partially deintermixed, WQIK–TV will proceed expeditiously with the construction of its station, and will begin the operation of that station at the earliest practicable date.

Partial deintermixture of Jacksonville can be achieved quite simply and in full compliance with all the mileage separation and other requirements of the Commission's rules. The public would not be injured by such deintermixture.

The owner of each television receiver in the Jacksonville area would continue to receive as many signals as he now receives. The number of receivers in the Jacksonville metropolitan area (Duval County) capable of receiving UHF as well as VHF stations is now more than 60 percent of the total number of television homes in the area. Thus, as a result of the proposed change, a large majority of the set owners in the market would receive service from more stations than they can now hope to receive.

The removal of channel 7 from Jacksonville would permit its assignment to Savannah (which has no UHF channel and in any case could not support a UHF station), and would also permit the assignment of channel 8 to Brunswick. As shown above, Brunswick cannot have a local television station unless it gets a VHF channel.

The Jacksonville and Savannah markets are the 60th and 115th in the Nation, respectively. Each of these markets needs at least three fully competitive television stations so that residents of the respective service areas can have a choice of the national network offerings of all the networks. Similarly, Brunswick needs at least one local television outlet.

In addition to the above, partial deintermixture of Jacksonville when combined with deintermixture of the Miami-Fort Lauderdale area would permit the assignment of a third VHF channel to Orlando (channel 7) and Tampa-St. Petersburg (channel 10), both of which cities will otherwise be limited to 2 stations. Thus, deintermixture in Florida will substantially improve television allocations in six separate markets without dislocation of existing stations or hardship on the public. Clearly deintermixture is the recommended solution in this area.

[Inserted on May 15, 1956 (with its enclosures)]

UNITED STATES SENATE,
Washington, D. C., April 26, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

DEAR SENATOR: I am enclosing copies of letters and telegrams I have received in regard to the television broadcasting study you are presently conducting.

I would appreciate very much your committee incorporating these letters into your study since they represent the thinking of constituents of my State.

Regards.

Sincerely,

HOMER E. CAPEHART.

HOOSIER STATE BANK OF HAMMOND,
Hammond, Ind., April 24, 1956.

Senator HOMER CAPEHART,
Washington, D. C.

DEAR MR. CAPEHART: I would like to express my support toward the bill now in Congress, which will permit the great expanse in the future of television and all-channel system comprising 12 VHF channels and 70 UHF channels.

Please register my support in favor of this bill.

Very truly yours,

JOHN F. WILHELM, *President.*

WAGNER & MALO,
Hammond, Ind., April 23, 1956.

Hon. HOMER CAPEHART,
United States Senate, Washington, D. C.

DEAR SENATOR CAPEHART: As a private citizen interested in the complete and democratic progress of the television industry, will you please use your influence with Senator Magnuson and his committee to recommend utilization of the UHF band or all channel system. I am reliably informed that if Lake County and other sections of our State are to ever have its own television system, the UHF band must be used.

Sincerely,

HAROLD C. WAGNER.

DELPHI HIGH SCHOOL,
Delphi, Ind., April 24, 1956.

Hon. HOMER E. CAPEHART,
The United States Senate, Washington, D. C.

DEAR SIR: I have recently read where the Federal Communications Commission has been refused additional high frequency channels now reserved for governmental use. Also that the Magnuson committee has had hearings on the UHF-VHF situation.

Due to the fact that the FCC is awaiting recommendations from the Magnuson committee before going ahead with a competitive television system for the United States, I strongly recommend that you use your powers to get the Magnuson committee to act on this all-important matter.

We need a competitive all-channel television system so that small towns such as ours will continue to operate a television station for their home audience.

Sincerely yours,

EDWARD J. CASASSA.

HOUSE OF REPRESENTATIVES,
STATE OF INDIANA,
Indianapolis, April 24, 1956.

Hon. HOMER E. CAPEHART,
Senate Office Building,
Washington, D. C.

DEAR HOMER: It appears that there is a matter before the Magnuson committee in which WFAM-TV is very much interested and I am told by them that a little insistence from the House and Senate to the Magnuson committee will bring about recommendations to the FCC for an all-channel competitive television system in America. Such action would, as I understand it, provide a fair and equitable climate for all operators including WFAM-TV. I know anything you can do to bring about such a recommendation would be very much appreciated by our local station.

Very sincerely yours,

C. G. BALL,
Joint Representative, Tippecanoe and Warren Counties.

COLUMBIAN PARK,
Lafayette, Ind., April 24, 1956.

Hon. HOMER E. CAPEHART,
United States Senate Building,
Washington, D. C.

DEAR MR. CAPEHART: From recent publicity we have noted that the Federal Communications Commission have been refused additional very high frequency channels now reserved for governmental use. We have also noted that the Magnuson committee have had extensive hearings on the UHF-VHF situation.

We also understand that the FCC is awaiting recommendations from the Magnuson committee before establishing a competitive television system for the United States.

We, therefore, strongly recommend that you use your influence to get the Magnuson committee to act rapidly on this all-important matter so that we will have in the very near future a competitive all-channel television system so that small towns such as ours will continue to operate a television station for their home audience.

MRS. ELIZABETH SHARPLESS.

JEFFERSON HIGH SCHOOL ATHLETIC DEPARTMENT,
Lafayette, Ind., April 24, 1956.

Senator HOMER CAPEHART,
Senate Office Building,
Washington, D. C.

DEAR MR. CAPEHART: I am of the understanding that the FCC is awaiting recommendations from the Magnuson committee before establishing a competitive television system for the United States.

Since I am a member of the athletic department of the local high school, I strongly recommend that you use your influence to get the Magnuson committee to act rapidly on this all-important matter so that we will have in the very near future a competitive all-channel television system so that small towns such as ours will continue to operate a television station for their home audience. I feel that the use of television for school sports activities is very important.

Sincerely,

J. C. LYBOULT, *Ticket Manager.*

LAFAYETTE NATIONAL BANK,
Lafayette, Ind., April 23, 1956.

Hon. HOMER E. CAPEHART,
Senate Office Building, Washington, D. C

DEAR SENATOR CAPEHART: According to recent publicity I have noticed that the Federal Communications Commission have been denied additional very high frequency channels now reserved for governmental use. I have noted also that the Magnuson committee have had extensive hearings on the UHF–VHF situation. It is my understanding that the FCC will have to wait recommendations from the Magnuson committee before establishing a competitive television system for the United States.

I would appreciate it very much if you would use your influence to urge the Magnuson committee to act rapidly on the all-important matter so that we will be able to have a competitive all-channel television system in the very near future so that small towns, such as ours, will continue to operate a television station for their home audince.

With kindest regards.

Sincerely yours,

BURR S. SWEZEY, Jr., *Vice President.*

[Telegram]

BLOOMINGTON, ILL.

Senator CAPEHART,
Senate Building, Washington, D. C.:

Will greatly appreciate any help you can give in getting the FCC to take some sort of action on the UHF situation by June 1.

Best regards.

WORTH S. ROUGH, *Manager, WBLN–TV.*

[Telegram]

MUNCIE, IND.

Senator HOMER CAPEHART,
United States Senate, Washington, D. C.:

Retel concerning our request that you contact members of FCC concerning action on allocations problem, we now also urgently request that you contact all members of Senate Interstate and Foreign Commerce Committee asking them also to write to the FCC Commissioners urging them to take some action on allocations problem.

DON BURTON,
BILL CRAIG,
Station WLBC–TV, Muncie, Ind.

TRI-CITY RADIO CORP.,
Muncie, Ind., April 13, 1956.

Senator HOMER E. CAPEHART,
Senate Office Building, Washington, D. C.

DEAR SENATOR CAPEHART: We are writing to you with respect to the hearings now being held before the Senate Committee on Interstate and Foreign Commerce in Washington, D. C., to determine the remedial action to be taken to provide a nationwide competitive television system.

At the present time there are now in operation 464 television stations in the United States. Of these 464 television stations, 365 are very high frequency (VHF) stations operating on channels 2 to 13 inclusive, and the remainder are ultrahigh frequency (UHF) stations operating on channels 14 to 82, inclusive.

All television stations which commenced operation prior to April 1952 are VHF stations (channels 2 to 13), and UHF television stations (channels 14 to 82) were authorized by the Federal Communications Commission's sixth report and order of April 11, 1952.

For a nationwide competitive television system UHF stations are necessary because there are 70 UHF channels and only 12 VHF channels. There are certain technical problems, however, facing UHF stations. In the first place, the great majority of receiving sets being built in the United States today are equipped to receive VHF stations only, and a relatively small percentage are equipped at the factory to receive UHF television stations. This is due in major part because of the fiercely competitive situation in the receiving set business, and the fact that it costs $15 to $35 more to construct a television set which will receive both the VHF and UHF stations. Also, in order to receive UHF stations, it is necessary for the receiving set owner to install a special UHF television receiving antenna which costs from $25 to $50, depending upon the distance from the operating UHF stations. For those television sets not constructed at the factory to receive UHF television stations there must be a set conversion in the field when desired by the set owner at a cost of from $20 to $50 in addition to the UHF antenna installation previously mentioned.

Furthermore, VHF stations are able to transmit the signals for a longer distance than UHF stations with a similar amount of power because of the fact that the higher frequencies for UHF television stations do not follow the curvature of the earth to the same extent as the VHF frequencies, but travel on a nearly straight line from the transmitting antenna. This means that a UHF station in order to have comparable coverage with a VHF station, if possible at all, must have a great deal more power which, of course, means a considerably more expensive installation. The situation is somewhat tantamount to two automobiles—one of which requires more gasoline (UHF) than the other (VHF) to travel the same distance.

UHF television stations were provided for in the Federal Communications Commission's sixth report and order in April 1952 because it was recognized that only 12 VHF channels with required minimum spacing of 170 miles utilizing the antenna heights and powers then contemplated could not possibly provide for enough television stations to have a truly nationwide competitive television system. This means that only 12 VHF channels do not permit many of the sizable communities of the United States to have their own television station for the presentation of entertainment, news, and local public expression, including a platform for the presentation of viewpoints of the legal representatives of our Nation to their constituents.

The plight of the UHF television stations has become increasingly more serious with the increase of power and antenna heights by VHF stations with the result that these VHF stations extend their signals more deeply into the towns and communities previously served by UHF-only stations. Moreover, as the FCC has authorized VHF stations to move their antenna sites away from the communities originally assigned so as to cover a variety of markets it has encroached upon the UHF television stations' service areas and ability to survive. This is known as market straddling and we can list two specific examples. UHF station KCEB in Tulsa, Okla., was forced off the air, and another UHF permittee never constructed the station as a result of VHF station KTVX, which was allocated to Muskogee rather than Tulsa, Okla., locating its antenna site 23 miles from Muskogee and actually closer to Tulsa than to Muskogee. UHF station KNUZ–TV, Houston, Tex., also was required to terminate operations chiefly because VHF station KGUL–TV (which had been assigned to Galveston) was permitted to locate its transmitter close enough to Houston to make it a Houston station for all practical purposes. This was further aggravated recently by the FCC authorizing a further transmitter move by this same Galveston station to a location even closer to Houston.

In all, the present problems for UHF stations arise from the following aspects:

(1) *The FCC's sixth report provided for both UHF and VHF stations in the same city and in areas within 60 miles from VHF stations.*—VHF stations with maximum power and antenna height put viewable signals in areas as far distant as 60 miles so that a viewer in many instances is content to limit himself to that signal rather than to spend the additional amount of money to convert his set or erect an antenna to receive the local UHF stations.

(2) *Networks have favored VHF stations rather than UHF stations as affiliates,* and have switched from a UHF to a VHF station when the latter came on the air after the former had been in operation for some time. Contracts with

UHF stations usually have a short cancellation clause, so that the UHF television station operates with the sword of Damocles dangling over its head. Network programs are the lifeblood for the successful operation of a television station and its very existence can be eliminated with the deprivation of network programs. By reason of the encroachment of the VHF stations' signals into UHF stations' service areas, some 58 UHF stations have been compelled to leave the air, and 109 UHF permits have been returned by the permitees. This, of course, has both direct and indirect adverse effects upon the remaining UHF television stations now in operation which presently number slightly less than 100.

(3) *The FCC has not taken any positive action for VHF–UHF deintermixture.*—During the hearings before the Potter subcommittee of the Senate Committee on Interstate and Foreign Commerce, in 1954, there were encouraging statements by the then Chairman of the Federal Communications Commission with respect to selective deintermixture for VHF and UHF stations. A number of applications were filed by various stations in then exclusive UHF markets (but where VHF allocations had been made and no VHF station was on the air) by reason of such encouragement of the possibility of selective deintermixture. This deintermixture for elimination of local VHF stations from UHF communities so that the latter stations could survive, however, has not materialized. In fact, the FCC has denied all petitions for deintermixture and granted VHF applications for certain of those areas in which only UHF stations had been in operation. While allegedly these petitions were denied without prejudice to the parties renewing their requests in a general television rulemaking proceeding now pending before the Commission, it is obvious that for all practical purposes, the "denial without prejudice" is one in name only.

Station WLBC–TV is one of the so-called successful television stations in operation in the United States at the present time. We have viewed with growing concern, however, the many UHF television stations which have been forced to suspend operation, and know of a number that "are hanging on by the skin of their teeth" awaiting some remedial action by either the FCC or the Congress.

From experience in operating a UHF television station for nearly 3 years as well as our active participation in the broadcast industry for more than 30 years, we feel that the following remedial steps should be taken:

(1) *Deintermixture.*—This would provide for a reallocation of channels so that only all VHF or all UHF stations would be grouped together in the same community or the same area.

(2) *Reduction of present VHF powers.*—This would reduce the coverage of present high-powered VHF stations, and enable UHF stations to compete more successfully.

(3) *Reduction of present VHF stations' tower heights.*—In those cases where it would not be practical to reduce the tower height itself, a corresponding reduction of power could be accomplished, thus further enabling the UHF stations to compete more effectively with VHF stations.

(4) *Reduction of presently prescribed minimum VHF mileage separations.*—With the reduction of such mileage separations, additional VHF stations could be granted to increase the number of television stations in the United States.

(5) *Limitation of television coverage areas to their own communities.*—With such a limitation television stations would compete against each other in the same community and would not encroach upon the service areas of stations in far distant communities.

(6) *Use of directional antenna systems for allocation purposes.*—With the use of directional antennas for allocation purposes many more VHF stations could be allocated at closer distances than now prescribed.

(7) *Elimination of the excise tax on all-channel receivers.*—With the elimination of the excise tax on all-channel receivers, the ultimate cost to the consumer for an all-channel set would be substantially the same as for a VHF-only set with the result that the distribution of all-channel sets which could receive both UHF and VHF stations would be encouraged.

(8) *Reduction of common-carrier cable and microwave-relay costs.*—A reduction of such costs would enable extension of network service to stations which cannot now afford such network programing because the market does not warrant the cost to the network of having that station as an interconnected affiliate.

Unquestionably, unless positive and early remedial action is taken, as many as 50 more UHF television stations will soon be required to suspend operations with the result that millions of dollars will have been wasted in television transmitting equipment and the cost to the public of converting receiving sets, thousands of persons employed by UHF stations are already and will be without jobs, and, most important of all, the communities concerned will be without those stations for local outlets over which civic and community leaders and their congressional representatives can discuss important local, national, and international subjects.

We feel that the Congress which supervises the actions of administrative agencies such as the Federal Communications Commission should take the necessary action to assure that there will be a truly nationwide competitive television system rather than a handful of powerful VHF television stations constituting a monopoly of the media of mass communication by television—unquestionably the most important communications media of our time. If we can supply any further information do not hesitate to let us know, and we will await hearing from you with respect to action taken from your end to remedy the present television situation in the interest both of your constituents and the country as a whole.

Sincerely,

DONALD A. BURTON,
President.
WILLIAM F. CRAIG,
Vice President.

CITY OF LAFAYETTE, IND.,
MAYOR'S OFFICE,
April 20, 1956.

Hon. HOMER E. CAPEHART,
Senate Building, Washington, D. C.

DEAR HOMER: I have been informed that the Federal Communications Commission has turned down application of any additional very high frequency stations.

It would therefore be necessary, in order to have cooperation in the United States, to utilize the ultra high frequency bands.

It seems that the Magnuson committee has voted to act favorably on an all-channel system.

I will most certainly appreciate your support in getting the Magnuson committee to act immediately.

Sincerely,

K. R. SNYDER, *Mayor.*

FIRST MERCHANTS NATIONAL BANK
& TRUST COMPANY OF LAFAYETTE, IND.,
April 20, 1956.

Hon. HOMER E. CAPEHART,
United States Senate, Washington, D. C.

MY DEAR SENATOR CAPEHART: It is my understanding that the Warren G. Magnuson committee has completed the investigation of VHF and UHF television.

I request that you urge the Magnuson committee to make recommendations for an all-channel competitive television system in this country.

This will enable cities like Lafayette to have a television station of their own.

Respectfully yours,

M. J. FERRITER, *Assistant Cashier.*

CHARLES L. SNYDER, INC.,
Lafayette, Ind., April 18, 1956.

Senator HOMER E. CAPEHART,
United States Senate, Washington, D. C.

DEAR SIR: We urge you to recommend positive and immediate action on the proposals set forth by the Committee for Competitive Television.

Thank you for your attention on this matter.

Sincerely,

C. L. SNYDER, *President.*

LAFAYETTE, IND., *April 20, 1956.*

Hon. HOMER E. CAPEHART,
Senate Office Building, Washington, D. C.

DEAR SENATOR: I understand now that the Federal Communications Commission has been refused and additional very high frequency television channels from the Government. This means that in order to have a competitive television system in America, FCC must utilize the ultra-high-frequency station band.

Therefore, we urgently request that you use your influence with the Magnuson committee for recommendation to the FCC for a competitive all-channel television system for America. This will enable many cities, such as our own, to have its own television station.

With kindest personal regards, I am,

Yours very truly,

GLENN C. NEIDIGH,
Chairman, Republican City Committee.

LAFAYETTE COOPERATIVE ELEVATOR CO.,
Lafayette, Ind., April 20, 1956.

Hon. HOMER E. CAPEHART,
Washington, D. C.

DEAR SIR: From recent publicity we have noted that the Federal Communications Commission have been refused additional very high frequency channels now reserved for governmental use. We have also noted that the Magnuson committee have had extensive hearings on the UHF-VHF situation.

We also understand that the FCC is awaiting recommendations from the Magnuson committee before establishing a competitive television system for the United States.

We, therefore, strongly recommend that you use your influence to get the Magnuson committee to act rapidly on this all-important matter so that we will have in the very near future a competitive all-channel television system, so that small towns such as ours will continue to operate a television station for their home audience.

Yours truly,

W. L. WOODFIELD, *Manager.*

WFAM-TV,
Lafayette, Ind., April 18, 1956.

Senator HOMER E. CAPEHART,
United States Senate,
Washington, D. C.

DEAR HOMER: I would appreciate it very much if you would request of each member of the Magnuson committee, who are investigating the UHF-VHF situation, to offer definite recommendations to the FCC within the next 10 days. We hope the Commission will make recommendations to the trade within the next month and a half. They have sat on their hands for more than 2 years, and many of the UHF's have fallen by the wayside, but we now believe we have a fighting group and at last, according to Chairman George McConnaughey's talk at the convention in Chicago, are causing the FCC to wake up and follow the line of procedure that we outlined to them.

We should also like for you to write the members of the FCC requesting that they come out with a recommendation for a competitive television system for the country now. This will save many UHF operators. It's the logical solution, and it's the FCC's duty to see that this is brought about.

Thanking you and kindest regards.

Your very truly,

O E. RICHARDSON, *President.*

TEMPLE ISRAEL,
Lafayette, Ind., April 25, 1956.

Hon. HOMER E. CAPEHART,
Senator from Indiana,
Washington, D. C.

DEAR SIR: From recent publicity it has been noted that the Federal Communications Commission has been refused additional very high frequency channels now reserved for governmental use. It has also been noted that the Magnuson committee has had extensive hearings on the UHF–VHF situation. We understand that the FCC is awaiting a recommendation from the Magnuson committee before establishing a competitive television system for the United States.

We, therefore, strongly recommend that you use your influence to get the Magnuson committee to act rapidly on this all-important matter so that we will have in the very near future a competitive all-channel television system so that small towns such as ours will continue to operate a television station for their hometown audience.

I have the honor to remain,

Very truly yours,

Rabbi N. WILLIAM SCHWARTZ.

[Telegram]

EVANSVILLE, IND., *April 26, 1956.*

Hon HOMER E. CAPEHART,
Senate Office Building,
Washington, D. C.:

Imperative that FCC be urged immediately by you and Senate Interstate Commerce Committee to take prompt action to resolve a definite policy with regard to future TV allocations system in this country. FCC has had over 2 years to study problem and has all necessary information and opinion to decide question. Nevertheless all pronouncements by FCC have indicated a policy of indecision and inaction. Failure of FCC to act endangers future development of TV in this country. Public and entire TV and electronics industry have great stake in future of TV and are entitled to know now which way we are headed in order to determine set buying and further expansion and improvement of a competitive TV system. We are not asking you to take a stand for or against us or anyone else. Only asking that you take a stand against FCC's indecision and inaction. Whole country and entire industry entitled to a verdict now before further delay causes irreparable harm. Respectfully request that you so communicate to the FCC and Senate Interstate Commerce Committee and advise us of results.

Kindest regards and best wishes.

JESSE D. FINE,
President, WFIE–TV.

[This letter and the one following were inserted on June 11, 1956]

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
May 1, 1956

Hon. GEORGE C. MCCONNAUGHEY,
Chairman, Federal Communications Commission,
Washington, D. C.

DEAR MR. MCCONNAUGHEY: I have read with interest a copy of the speech which you delivered to the 34th annual convention of the National Radio & Television Broadcasters in Chicago on April 17.

I was particularly interested in your suggestion of a crash research development program on UHF. If this proposal is designed to stimulate a concentrated effort on the part of the industry to develop more efficient UHF transmitters and receivers to the end that UHF be made more nearly competitive with VHF, I would think that this was very constructive.

However, my attention has been drawn to one sentence in which you say—"Once this development program has been completed, the Commission and the industry will have a sound technical basis for making a long-term decision on the merits of UHF."

To the extent that this might be construed as indicating the Commission would postpone decisions on allocation changes designed to preserve UHF until such a program is completed, I would think that this would be unsound. The Commission has long since decided that UHF must play a vital part in a nationwide, competitive television system, and this is strongly reinforced by the action of the Office of Defense Mobilization in indicating that no additional VHF channels could be made available by the military.

It would seem to me that the Commission should go ahead with its consideration of changes in the allocations plan and I should hope that some kind of initial decision on this matter, laying down policies to be followed in preserving UHF, could be arrived at within a matter of a very few weeks. All the members of the committee have been receiving a tremendous volume of correspondence from not only UHF broadcasters but influential persons in communities now served by UHF, urging the committee to instruct the Commission to take some affirmative action not later than June 1, 1956. While it is quite clear that detailed changes in allocations cannot be made by that time, it would seem to me that the Commission could announce its preliminary conclusions before that date and then institute whatever proceedings may be necessary to implement these policies.

I would very greatly appreciate your comments on the proper interpretation to be placed on your remarks at Chicago as well as your best estimate as to the time when some action by the Commission on UHF can be expected.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., May 14, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: In my recent speech before the convention of the National Association of Radio & Television Broadcasters, I urged that a crash research development program on UHF be undertaken immediately. Once this development program has been completed, the Commission and the industry will have a sound technical basis for making a long-term decision on the merits of UHF.

In your letter of May 1, 1956, concerning my recent remarks, you state that if the crash research program is designed to stimulate a concentrated effort on the part of the industry to develop more efficient UHF transmitters and receivers, it is a constructive one. However, to the extent that such a program would postpone decisions on changes in TV allocations designed to preserve UHF until such a program is completed, you submit that it would be unsound. You urge that the Commission proceed with its consideration of allocation changes and that some kind of initial decision be reached in the next few weeks.

In urging a crash development program for UHF, I in no way intended that other possible actions be held in abeyance. On the contrary, I contemplated that as a necessary adjunct to the research program, the Commission would be doing everything possible to improve the immediate television situation and to assist UHF. I certainly agree with you that it would not be in the public interest to withhold action until the research program can be completed.

The Commission, as you know, is now actively considering the matter of television allocations and is devoting a great portion of its time to this complex problem. We are aware of the necessity of taking action at the earliest possible time and will do everything in our power to do so. However, we want to make sure that we afford careful and detailed consideration to all of the many proposals that have been urged upon us in order that we may determine which offer the most promise.

You suggest that while the Commission clearly cannot accomplish detailed allocation changes by June 1—the date by which a number of parties urge that action be taken—the Commission announce its preliminary conclusions before that date and then institute whatever proceedings may be necessary to implement them. While I cannot predict precisely when the Commission will take action, the highest order of priority is being given the subject, and I am confident that we will be able to take the next step in our proceeding within the next few weeks. As you point out, we will not be able to make final allocation changes at this stage in the proceeding, but we will be in a position to issue a proposal for specific allocation changes, as well as suggestions contemplating longer range solutions to the television problem.

Sincerely yours,

GEORGE C. McCONNAUGHEY, *Chairman.*

[Inserted on June 11, 1956]

JOINT COUNCIL ON EDUCATIONAL TELEVISION,
Washington, D. C., May 22, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee,
Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: Your committee has been studying current problems in the field of telecommunications, including the obstacles that are being encountered in utilization of the ultra-high frequency (UHF) channels allocated for television broadcasting. The Federal Communications Commission has likewise taken official cognizance of the UHF difficulties, and is presently engaged in a rulemaking proceeding to determine what action might be taken to improve the situation.

The Joint Council on Educational Television (JCET) is directly and deeply concerned with the UHF problem, and has participated both in the hearings conducted by your committee and in the proceedings before the Commission. Our most immediate interest, of course, lies in the channels that the Commission has reserved for noncommercial educational television, but we are fully aware that the future of educational television is dependent upon a sound allocations policy for the Nation as a whole.

Of the 258 channel assignments reserved for educational television, 86 are in the VHF and 172 are in the UHF range. There are 21 noncommercial educational television stations now in operation: 16 of these are VHF and only 5 are UHF. In addition to the five communities where educational UHF stations are already on the air, UHF channels have been reserved in New York, Los Angeles, Philadelphia, Baltimore, Washington, Cleveland, Buffalo, Atlanta, Kansas City, and many other communities in which large universities or other important educational institutions are located. It is apparent, therefore, that both the VHF and the UHF channels are of vital importance to educational television, and that its future development is seriously threatened by the adverse factors that have plagued and delayed the development of UHF television generally.

Accordingly, the JCET has followed with close attention the testimony before your committee and the comments that have been filed in the Commission's rulemaking proceeding. We believe that both inquiries are of great value, and in their light we have come to certain conclusions about the UHF problem, which are embodied in this letter.

Above all, we are convinced that the development of a satisfactory national television service, ample for the expanding and varied requirements of the American future, cannot possibly be achieved without vigorous and extensive exploitation of the UHF channels. Several proposals have been advanced which envisage the concentration of television broadcasting in the VHF channels, but these offer only a restricted and incomplete service wholly inadequate for our foreseeable needs.

The converse suggestion, that the VHF channels should be abandoned in favor of a purely UHF allocations system, is perhaps closer to the mark. Nevertheless, it does not appear feasible or desirable in the present state of the art. Certain technical problems in the UHF field, and the enormous investment by the public in VHF receivers and by broadcasters in VHF transmitters, alike dictate caution before so radical a shift is settled upon. If, in the course of scientific advance, a purely UHF service should emerge as the best solution, still there would necessarily be a considerable period of transition and conversion, to minimize capital sacrifices and avoid the loss of service to millions of viewers.

But whether the ultimate allocations basis of television broadcasting be purely UHF or both VHF and UHF, it is plain that the UHF channels must be a stable and vigorous if not the dominant component. "There is no known alternative," Dr. E. W. Engstrom of the Radio Corporation of America pointed out in the course of your hearings, "for we need the UHF channels in addition to the VHF channels for our still-growing black-and-white service and for the color service which is the newest of the mass communications media."

From the time of its inception as a broadcasting service in the Commission's 1952 television allocations plan, UHF television has confronted two primary obstacles: The existence of millions of receivers equipped only for VHF viewing, and slower technical development of UHF. These adverse factors have badly undermined UHF's ability to compete with VHF, and have tended to "snowball" so that UHF troubles are aggravated today far beyond what they were 2 years ago. The manufacture of all-channel receivers has declined, the viewing public has been slow to spend the money for conversion of VHF receivers to all-channel reception, networks have been reluctant to affiliate with UHF stations, and many UHF broadcasters have found it necessary to suspend operations.

If the present dangerous trend is to be checked, and UHF television put back on the road to health and growth, it appears to us that three basic steps must be taken:

(1) The manufacture of all-channel receivers must increase sharply, and substantially all receivers offered for purchase must be capable of all-channel reception;

(2) The competitive position of UHF must be bolstered by the creation and preservation of substantial geographical areas in which UHF is the sole or predominant television service; and

(3) The technical problems of UHF transmission and reception must be promptly and vigorously attacked, and the frontiers of the art pushed forward so that UHF will be as familiar as VHF to television engineers and servicemen.

It will be noted that the first of these measures is primarily the responsibility of the Congress, the second of the Commission, and the third of the telecommunications industry. In our opinion, each of the three is vital to the sound development of our national television system, and only by such a broad plan, and with the joint participation of Government and private industry, can a favorable resolution of this dangerous dilemma be achieved.

All-channel receivers.—At the inception of the UHF television service, it was hoped and widely expected that its growth would be sufficiently rapid so that the manufacturers of television receivers would, as a matter of enlightened self-interest, "push" the sales of all-channel receivers. For reasons which are common knowledge in the industry, these expectations have not been fulfilled. It is our understanding that fewer than 15 percent of the receivers currently being manufactured are equipped for all-channel reception, as compared with about 30 percent 3 years ago.

Of all the threats to the survival of UHF television, this is by far the most serious, for it is making a bad situation constantly worse. Nevertheless, in a highly competitive field such as the manufacture and sale of television receivers, it is unrealistic to expect that all-channel receivers will be produced in quantity under present circumstances. The only possible solution appears to be some governmental act that will make it economically advantageous for the manufacturers to abandon VHF-only models, and thus insure the distribution of all-channel receivers. We believe that this will require action by the Congress.

It has been proposed, for example, that the 10 percent Federal excise tax should be lifted from all-channel television receivers, and left applicable to VHF-only sets. Budgetary objections to this course of action may be insuperable, and suggest the alternative of raising the rate of tax on VHF-only sets, perhaps to 20 percent. Obviously, there are many possible variants of the basic proposition. One which might warrant consideration is reduction of the rate on all-channel receivers to 5 percent, the same as is applicable to most other comparable commodities.

Objection may be raised to such proposals on the ground that they would involve a tax discrimination against the inhabitants of areas served only by VHF stations. As we understand it, the purpose of the differential would be simply to insure that purchasers of new television receivers would obtain an instrument capable of receiving the UHF transmissions which, as a matter of national policy, will be a major component of television service throughout the Nation. However, the same objective might be accomplished without altering the tax situation, by an outright statutory prohibition—based upon the Federal Government's constitutional powers in such fields as interstate commerce and national defense—of the manufacture for public sale and distribution of television receivers not equipped for all-channel reception.

We have been reluctant to reach the conclusion that Federal legislation is called for. Whether by tax differential or penal provisions, the effect of the proposal will be to furnish an economic subsidy or statutory monopoly for all-channel television receivers. Fortunately, and unlike the subsidies that have been granted in certain other fields, it may be reasonably expected that the need of preferential legislation for UHF television receivers would endure for only a few years.

Deintermixture.—Under the Commission's 1952 allocation plan, the VHF and UHF channels are intermingled throughout the country, and both types are often assigned side by side within the same communities. From an engineering standpoint this is an efficient basis, for any zonal or regional limitations on the use of frequencies leads to waste through their nonuse in the areas from which they are excluded. From an economic standpoint, however, the intermingling of VHF and UHF has subjected UHF television everywhere to the direct competition of VHF stations, on terms extremely favorable to VHF, and customarily disadvantageous or even fatal to UHF.

We do not believe that it is necessary or would be desirable to tear up the present allocations scheme and substitute one based on complete geographical segregation of UHF and VHF stations. We do believe, however, that UHF must be given a certain amount of protection against the competitive incursions of VHF, in particular areas where VHF service can be dispensed with or limited in quantity, without detriment to the quality or variety of program service available to the public. Such protection can be given by an allocations policy commonly referred to as "selective deintermixture."

In communities where three or more VHF stations have already been established, there is little that can be done for the protection of competing UHF stations, and their main hope will lie in the distribution of all-channel receivers and technical progress in UHF transmission and reception. But where UHF stations have acquired a foothold and are either free from the competition of VHF or have a chance to survive the competition of 1 or even 2 existing VHF stations, surely their prospects should not now be darkened by the establishment of additional VHF stations. So, too, there may well be particular areas in which a single existing VHF station could be required to shift to a UHF channel without unreasonable hardship to the viewing public and with considerable benefit to UHF service as a whole.

The Federal Communications Commission, to which Congress has delegated the authority and responsibility for television allocations, now has this problem under consideration in its current rulemaking proceeding. We are aware that the Commission's task is a delicate and difficult one. But it seems to us that the facts and logic of the present situation, and the serious plight of the UHF stations that are now threatened with even more extensive competition from VHF rivals, must inevitably lead the Commission to adopt a limited policy of deintermixture. Such deintermixture, to be most effective, should provide adequate separation of UHF and VHF markets.

Technical research.—In his recent address at the annual convention of the National Association of Radio and Television Broadcasters, the Chairman of the Federal Communications Commission proposed an immediate "crash research development program on UHF" to the furtherance of which all sections of the telecommunications industry would contribute. Chairman McConnaughey proposed a "twofold approach * * * concentrating on both the UHF receiver and the UHF transmitter" and gave voice to the hope that better UHF receivers could be designated.

We believe that an intensive and broad-scale UHF research program is vital to both the rapid amelioration and the long-term solution of the UHF problem. Fortunately, there are encouraging signs that the telecommunications industry is aware of its responsibilities in their respect. For example, the Radio-Electronics-Television Manufacturers' Association has informed the Commission of their availability to "organize a program of study which * * * might encompass, for example (*a*) measurements to indicate the effective coverage of UHF broadcasting under various conditions of terrain and power; authoritative information of this kind has never been available; and (*b*) reliability and cost of receiving equipment in the UHF together with potentials for improvement."

Of course, such a research program, although the primary responsibility of the industry, should be undertaken in close consultation with the Commission and other interested Government agencies. Indeed, the entire UHF problem calls for cooperation between Congress, the executive branch, and the industry. To be sure, each of the three major steps that we have proposed is the primary concern of Congress, Commission, or the private companies, as the case may be.

Nevertheless, each of the three likewise requires mutual support from all sides if speedy and effective results are to be forthcoming.

We have mentioned, and wish to stress in conclusion, the need for prompt action. A critical situation has arisen, the resolution of which will inevitably be costly and, in some respects, painful. It would have been helpful if these or comparable steps had been taken earlier, but further delay will make the situation even more difficult.

A nation's capacity for growth and even for survival may be gaged by the vigor and resilience with which it treats its ailments and grasps its opportunities. How to achieve an ample and flexible system of television broadcasting is certainly not the smallest of the social challenges we face today. We strongly urge that your committee now take action on the basis of the useful inquiry that it is conducting, and we hope that our suggestions may be of assistance in the shaping of an effective program for the salvation and growth of UHF television.

On February 29, 1956, Ralph Steetle, executive director of the Joint Council on Educational Television, made an appearance before your committee in connection with the current proceedings relating to UHF. This statement is presented by the Joint Council on Educational Television as a supplement to the one presented by Mr. Steetle, and it is requested that it be incorporated as a part of the record of these proceedings.

Respectfully submitted.

ALBERT N. JORGENSEN, *Chairman.*

[Inserted on June 11, 1956 (with one enclosure]

O'NEILL BROADCASTING CO.,
TELEVISION STATION KJEO,
Fresno, Calif., June 1, 1956.

Mr. KENNETH A. COX,
Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR KEN: I am sending you, under separate cover, a coverage map of many of California's television stations which reach the Central Valley. These are actual station coverage maps received from the stations indicated on the map.

I would appreciate it if you would enter this map as a part of the record should there be more discussion as to whether or not white areas will be served by channel 12 in Fresno.

Also, enlcosed is a copy of the 1956 ARB Metropolitan Area television coverage survey. I am sure the report for the city of Merced will stand to dispute the testimony given by Bill Lodge of the Columbia Broadcasting System as to the KJEO and UHF coverage in the city of Merced.

Please accept my thanks for the courtesies shown me on my trip to Washington, and I wish to commend you and your committee for the job you are doing for the salvation of UHF television.

Kindest regards.

Sincerely,

JOE DRILLING, *Vice President.*

1956 ARB METROPOLITAN AREA TELEVISION COVERAGE

TO OUR CLIENTS

The information contained in this report gives you a very material advantage over organizations to whom it is not available. If these firms obtain access to copies of the study, it not only represents a complete violation of ARB's regulations, but it greatly decreases your competitive superiority. Also, of course, any organization using this material without sharing the cost of obtaining it is unfairly creating higher costs for all subscribers.

In your own interest as well as ARB's, we, therefore, urgently request your cooperation in observing our regulations covering use of this report. These regulations are detailed on the introductory page.

Thank you very much.

AMERICAN RESEARCH BUREAU, INC.

Introduction

On the following pages are detailed results of studies conducted to determine television saturation, coverage, and viewing preference in 225 key markets (including 234 different cities) largely untouched in television audience research. The survey was conducted during the period January 10–February 5, 1956. Also appended are saturation data from the regular ARB metropolitan area reports in additional markets covered by these surveys.

The information was secured by calling approximately 500 families selected by random pattern from the appropriate telephone directories (including toll calls) in each city and asking the following questions:

1. Do you have a television set?

2. (*a*) Which TV channels can you receive on your set, and from which cities do they come?

(*b*) Are there any other channels you can get?

For each channel received, ask:

(*c*) About how often did your family turn on channel (give number) during the past 7 days—less than 3 times, or more than 3 times?

3. (*a*) Which channel is viewed the most in your home after 6 in the evening?

(*b*) Which the next most?

4. (*a*) Which channel is viewed the most in your home on weekdays before 6?

(*b*) Which the next most?

Interviewers were trained to probe sufficiently (especially on question 2), so that full information would be received. All markets were surveyed in exactly the same manner, and may be compared with each other. In some markets, where many different TV stations are available, interviewers had difficulty in obtaining responses to the "station viewed most and next most" questions, giving rise to high "no choice" figures. Whenever given, multiple answers were accepted with the results apportioned equally among the stations mentioned.

ARB has attempted to distribute the sample in each area within the standard metropolitan district, which in most cases is the home county. In some instances, for geographical reasons, this has not been feasible, and a modified area has been used. In stating the area covered if, in ARB's opinion, more than 80 percent of a county by population has been covered, the entire county is shown. In all other cases the area covered has been described as precisely as possible, omitting mention of any county which was covered by less than 10 percent of the sample. In cases where more than one city is contained in the local telephone directory, these other cities are listed and the aggregate population covered is estimated in the coverage statement.

All stations reported under "able to receive" by less than 20 percent of the television families in the area are not shown separately in this column or the "viewed more than 3 times" column. Only stations with more than 5 percent in any one of the "viewed most" or "next most" columns are shown in these categories. It is felt that this policy will lead to much more realistic coverage analysis.

All material in this report is based on directory sampling and is, of course, subject to sampling deviations and other factors beyond ARB's control. Every precaution has been taken to insure accuracy of the material. Beyond this, ARB can assume no further responsibility other than to correct errors, if any, as promptly as possible.

It is our belief that the results, although limited to telephone homes within the total directory zone, should be more than sufficient for practical business decisions.

Due to the fact that the following material is highly confidential and its possession by subscribers gives them a material advantage in the purchase and sale of television time, rather severe restrictions must be placed on the dissemination of the information contained in this report. All material is copyrighted and must be used only within the subscriber's own organization (including branch offices). No further copies may be made for outside distribution and, although personal presentations may be made using the report, no copies of the information may be left with outsiders. Any public issue of all or any part of this report to the press or any other outlet is strictly forbidden. Inasmuch as the subscribers to the report have carried the cost of the study, these restrictions must be applied out of fairness to them.

For further information about this or succeeding studies, please contact the nearest ARB office.

SAMPLE 520—MERCED, CALIF., JANUARY 1956

Television saturation

Percent of all homes ---- 78

UHF saturation

Percent of all homes ---- 77
Percent of TV homes ---- 98

Channels being received

Channel	City	Percent of TV homes able to receive	Percent of TV homes which view station more than 3 times a week
KJEO 47	Fresno	98	96
KMJ 24	do	97	94
KVVG 27	Tulare	79	38
KOVR 13	Stockton	76	51
KPIX 5	San Francisco	23	5
KRON 4	do	22	3

NOTE.—Others less than 20 percent.

Channel viewed most and next most

Channel	City	Percent of TV homes station viewed—			
		Before 6 p. m.		After 6 p. m.	
		Most	Next most	Most	Next most
KJEO 47	Fresno	49	23	64	26
KMJ 24	do	25	43	26	56
KVVG 27	Tulare	2	4	2	5
KOVR 13	Stockton	3	4	7	9
Others		1	1	1	
No choice		20	25		4

NOTE.—Measurements based on sampling in Merced County, Calif.

SAMPLE: 520—TULARE, CALIF., JANUARY 1956

Television saturation

Percent of all homes ---- 81

UHF saturation

Percent of all homes ---- 79
Percent of TV homes ---- 97

Channels being received

Channel	City	Percent of TV homes able to receive	Percent of TV homes which view station more than 3 times a week
KERO 10	Bakersfield	99	73
KMJ 24	Fresno	97	89
KVVG 27	Tulare	96	51
KJEO 47	Fresno	95	86

NOTE.—Others less than 20 percent.

Channel viewed most and next most

Channel	City	Percent of TV homes station viewed— Before 6 p. m. Most	Before 6 p. m. Next most	After 6 p. m. Most	After 6 p. m. Next most
KERO 10	Bakersfield	13	14	22	19
KMJ 24	Fresno	26	25	34	31
KVVG 27	Tulare	5	10	7	14
KJEO 47	Fresno	33	26	35	13
Others		2	1	2	3
No choice		21	24		2

NOTE.—Measurements based on sampling in the city of Tulare, Calif., and its immediate suburban area.

[Received after the conclusion of the hearings]

STATEMENT BY PHILIP MERRYMAN, PRESIDENT OF THE COMMITTEE FOR HOMETOWN TELEVISION, FILED WITH THE SENATE INTERSTATE AND FOREIGN COMMERCE COMMITTEE IN CONNECTION WITH THE COMMITTEE'S HEARINGS ON NATIONAL TELEVISION ALLOCATIONS

First, may I express the thanks of the Committee for Hometown Television for the opportunity to file this statement with your committee. Having presented the case for our committee at a previous hearing, my purpose now is to assess the recent testimony of the networks and the allocations proposals of the Federal Communications Commission as published June 25, 1956.

The FCC's recent hearings lasted 7 months. The real, rock-bottom net of these hearings—as shown in the FCC's June 25 proposals—is sad and simple: The FCC Commissioners have downgraded their original priority 2 in favor of achieving "* * * a nationwide, competitive television system," a goal which is not even mentioned in the Federal Communications Act, which speaks rather of a "fair, efficient, and equitable" distribution of facilities.

You will recall that the FCC translated its congressional mandate into a series of priorities. Priority 1 was to provide all areas with at least 1 service, now about 90 percent attained. Priority 2 was to provide the largest possible number of communities with at least 1 television station, a priority still about 90 percent short of attainment. Priority 3 was to provide as many communities as possible with multiple service. It is worth noting in passing that the FCC considered the priorities as just that—goals to be sought in a descending order of preference.

But in its June 25 proposals, the FCC orders a series of deintermixture hearings forthwith—and, after concurring that conversion to all-UHF is the only way to achieve priority 2 (hometown television), it relegates that whole matter to the status of a long-term "study." I submit that "study" is most often the polite synonym for "stall."

As for deintermixture as presently applied by the FCC, it has almost nothing to do with priority 2. I can count on the fingers of one hand the number of communities which will get their first television facility as the result of such deintermixture. On the contrary, what the FCC's deintermixture is obviously aimed at is to increase competition in those areas already supplied with television. While this is an objective with which I can take no exception, it has nothing to do with the Communications Act's demand for a "fair, efficient, and equitable" distribution of facilities, and in any case ranks well below the requirement to supply as many communities as possible with television facilities of their own.

I think there is now no significant disagreement with the thesis that the future of United States television must be based on an all-UHF system. Consequently, all actions taken by the FCC from this point on must be judged by this criterion: Do these actions have as their primary objective the advance of United States television toward an all-UHF system? At this juncture, any administrative action with a lesser goal is merely obstructive.

What happened? How could the FCC spend 8 months considering hundreds of written comments and listening to millions of words of testimony before this committee with the avowed objective of implementing priority 2, only to bypass it in favor of this contraband concept of "competitive" television?

The answer lies partly, I think, in those "millions of words" I just referred to, words spoken mostly by the representatives of networks. The network heads testified on the defensive, under attack for the practices of option time and "must buy" and monopoly. Pressed on the latter point—monopoly—Mr. Kintner for ABC and Mr. Sarnoff for NBC both took the position that there was nothing wrong with TV that more outlets wouldn't cure, a position with which the FCC also agrees publicly in its proposals of June 25. The trouble was, however, that these admissions were soon lost to view in the networks' vigorous campaign for what they called more competition, by which they meant more competition between networks, no matter with the price to be paid by the loss of local network facilities, the loss of what I might term "priority 2 stations."

Let me say parenthetically that the Committee for Hometown Television has never advocated the destruction of networks, nor Federal legislation controlling network operation. Nor have we advocated elimination or reduction of option time. We recognize that so long as networks are a primary necessity for the national distribution of programs, they must have adequate option time privileges. We do deny that networks are the only possible means of distribution; and we do maintain that they should not be artificially sustained by Government policy to the detriment of competing systems of program distribution. But it was not difficult to see that when the networks preached "competition" within this context, what they were in fact seeking would simply bypass priority 2 and the locally owned facility.

Unfortunately, in its search for a solution, the FCC appears to have lost its way. "A nationwide, competitive television system" has been substituted for the original "fair, efficient, and equitable" distribution of facilities as the primary goal. Deintermixture has received immediate action, while conversion to all-UHF has been slowed down to a study. In a pattern with which the FCC has already made us uncomfortably familiar, the words are for hometown television but the deeds are for the networks. However good its intentions may be, the effect of the FCC's latest proposals is to line it up once again on the side of the networks and monopoly.

In television allocations, the truest test of intentions today is to be found in the answer to the question: Will this action give another community is own elevision facility? When we put this test to the FCC's latest actions, the answer is "No."

I would not pretend that each witness before the FCC is not in some sense a special pleader, and if I make the impeachment to the networks, I must also accept it for the Committee for Hometown Television. Of course, one reason that we have fought for the implementation of priority 2 is that it will benefit the UHF operators and independent VHF operators whom we represent. But I must make a distinction between our special pleadings and those advanced by the networks. Our's correspond precisely with the public interest, with the burden of the Communications Act, with the FCC's own avowed policy for protecting the public interest. The pleadings of the networks, on the contrary, run counter to the public interest, reaching their nadir, I submit, in the submissions of CBS. Here we had Mr. Frank Stanton basing his case for the networks on repeated assertions that the public interest required adoption of his views and defense of his practices; yet Mr. Stanton is also the spokesman for the network which seriously advanced as its solution to the allocations problem the complete jettisoning of UHF in favor of its all-network, 100-market concept; and Mr. Stanton is also the gentleman who has recently been quoted in the press to the effect that he did not propose to leave the committee's hearings with less than he went in. I submit that in the special pleadings you gentlemen are bound to hear, it makes a vast difference whether a position corresponds to, or is inimical to, the public interest.

You may perhaps recall that when the Committee for Hometown Television first advocated wide-ranging deintermixture, we stood alone. Today, we are, of course, gratified to see that the FCC has adopted this much of our program. But if we favor deintermixture, and the FCC has given us deintermixture, you may wonder why we now seem to belabor the FCC. The reason is simple: we favor deintermixture as an interim, ameliorative measure, the first step on the road to conversion to UHF. Without the second and bigger step of conversion to UHF, deintermixture—while welcome—is not enough; it gets us only part way to priority 2, half way to hometown television.

But the FCC, in its June 25 proposal, treats deintermixture as an end in itself, as a step to insure that "* * * nationwide competitive system." In other words, the FCC looks on deintermixture as a means for satisfying the networks' spurious and self-serving cries for more duplicating outlets for the use of the networks. This kind of deintermixture corresponds much more closely to the demands of priority 3, than to those of priority 2.

The FCC's report, having dealt with deintermixture as a thing-in-itself, then changes the subject and proposes its study of UHF conversion in such language that it is clear that implementing action isn't even yet on its agenda.

What then does our committee propose as the correct course of action?

First, and above all, I might repeat what we said in our original comments before the FCC, filed last December 9: "Both the Congress and the FCC have agreed that it is categorical national policy to assure the future of hometown television, priority 2. To implement this policy, the Commission must restore its priority 2 as a current objective." Which is to say, deintermixture must be treated, judged and granted only as part of an overall plan to convert to UHF, and not as a sop to the aspirations of networking.

Second, since conversion to UHF now seems inextricably tied up with the hearings proposed by the FCC, let the FCC make haste. Speed is essential at this stage of the operation, essential to rescue the UHF stations still hanging on, essential to preserve the integrity of the plan from the attacks which the networks will continue to mount, essential because FCC Commissioners come and go, administrations come and go.

It seems to me that, in one way, American television has come a long way in the last 7 months. At least we have mined out one essential truth: The only way to achieve a real national television system is through the unrestricted use of UHF. Let us not fritter this discovery away, let us not allow it to be watered down, dissipated in a torrent of words, confused by specious counsel. Let's hang on to it, protect it, and so be able to use it.

To this end, I say that nothing will be as useful, indeed as essential, as simple administrative speed. If the FCC must hold its hearings, let it hold them now, and finish them soon, while the momentum built up by these hearings is still an effective force.

Opponents of priority 2 have already revealed at least one tactic they propose to use: Delay. If we should go all UHF, goes the new line, we must be careful not to rob the set-owning public. Agreed. Now let me quote you the words of Mr. Henry C. Bonfig, president of CBS—Columbia Broadcasting System—as reported in the Wall Street Journal of January 9, 1956. Says the Journal "Mr. Bonfig said during the last quarter of 1955 nearly 1 out of every 3 TV sets sold was a replacement."

Our third proposal is that the FCC proceed with UHF conversion on a case-by-case basis.

Ever since the FCC issued its sixth report and order, it has been evident that the Commissioners had committed themselves to an erroneous policy, and that policy has been under steady and mounting attack. Under these circumstances, the Commissioners have quite understandably come to rely more and more on their engineering standards, less and less on their policy in making decisions. Policy has been debatable; but engineering standards are immutable and can be cited without recourse.

The result is that today the Commission is using a set of standards wholly inapplicable to the facts, in lieu of policy. A case in point is the table of separations, which has been invoked time and again to deny applications, as though the table were a sacred truth. But it is now evident to everybody—including the FCC, which proposes to amend it—that this table is unrealistic.

To overcome this lag between fact and policy with the least possible dislocation, we recommend that the FCC approach each application on a case-by-case basis, that is, on its own merits. The intent here, of course, is that in all applications which could bring television to a new community, the FCC occupy itself as a matter of policy in searching for reasons or methods by which the licenses can be granted rather than in applying with an even, judicial hand some totally in applicable rule simply because the sixth report and order created it.

Finally, let me speak for the UHF stations still lost in a sea of V's. Today we are no better off than we were 7 months ago; in fact, about a dozen UHF operators have given up in that period. The FCC now holds out the prospects of all UHF conversion, but to us this may be useless boon. We will all be dead and gone unless the FCC acts soon.

It has been suggested in these hearings that the main reason UHF operators find themselves in trouble today is not because of the failure of FCC policy but because they are poor businessmen, inexperienced in the field of entertainment. The facts speak otherwise. For instance, the four stations which originated the Committee for Hometown Television all operate very successful radio stations, and have for long periods. For instance, my own station, 30 years old this year, is now enjoying the most prosperous year in its history, is also the current winner of the national DuPont Award for Public Service.

We find ourselves in the present dilemma largely because we relied on the FCC to implement the policy it established, specifically priority 2. We are the casualties of an administrative failure.

We agree that the public's investment in VHF sets must be protected. But by the same token, we feel that the UHF stations which the FCC led down the garden path also have their claim to administrative dispensation.

It is not enough, I submit, to say with the FCC that we should have all UHF and maybe some day we will. It seems to us that the 100 UHF stations now facing or through bankruptcy should not summarily be dismissed; within the bounds of the public interest, speed and ingenuity and good will should be enlisted in the effort to bring hometown television to our own communities.

By this we mean—

> If an existing UHF station is the only television facility in its community (and therefore a means of implementing priority 2) it should receive all the administrative help it needs to survive.
>
> If that administrative help must include a temporary VHF license, pending conversion to all-UHF, then the FCC should do its utmost to grant it.
>
> If granting a temporary VHF license would involve some viable and temporary modifications of the FCC's antiquated engineering standards, then the FCC should undertake them.

And by this we mean: The way to build the UHF system we want is to protect the UHF stations we've got.

[Received after the conclusion of the hearings]

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., July 24, 1956.

Mr. KENNETH COX,
Counsel, Senate Interstate and Foreign Commerce Committee,
Washington, D. C.

MY DEAR MR. COX: In keeping with informal conversation with our office, enclosed are three tables:

Fifteen communities in which UHF stations continued to operate after VHF went on the air.

Sixteen communities in which UHF stations suspended operation after VHF went on the air.

Number of postfreeze TV stations in operation, July 1952 through June 1956.

Very truly yours,

DEE W. PINCOCK, *Acting Secretary.*

15 communities in which UHF stations continued to operate after VHF went on the air

State	City	Commercial assignments		On air		Off air, UHF
		VHF	UHF	UHF	VHF	
Alabama	Montgomery	1	2	Apr. 22, 1953	Nov. 6, 1954	
California	Bakersfield	1	1	Aug. 20, 1953	Sept. 26, 1953	
	Fresno	1	3	May 26, 1953	May 10, 1956	
				Sept. 20, 1953		
				Feb. 13, 1954		July 15, 1954
	Sacramento	2	2	Sept. 30, 1953	Mar. 7, 1955 Sept. 2, 1955	
Florida	Tampa-St. Petersburg.	2	3	May 16, 1953	Jan. 26, 1955 Mar. 14, 1955	
Georgia	Columbus	1	1	Aug. 27, 1953	Nov. 8, 1953	
Illinois	Rockford	1	1	Apr. 29, 1953	Sept. 18, 1953	
Louisiana	Baton Rouge	1	2	Apr. 14, 1953	Mar. 30, 1955	
	Lake Charles	1	2	Nov. 2, 1953	Sept. 21, 1954	
North Carolina	Asheville	1	2	July 5, 1953	Sept. 18, 1954	
	Winston-Salem	1	1	Sept. 18, 1953	Sept. 29, 1953	
Oregon	Portland	3	2	Sept. 19, 1952	do Mar. 5, 1955	
South Carolina	Columbia	1	2	Apr. 23, 1953 Sept. 1, 1953	Oct. 24, 1953	Jan. 21, 1956
Texas	Beaumont-Port Arthur.	2	1	Apr. 9, 1954	Apr. 1, 1955	
	Corpus Christi	2	2	June 9, 1954	May 6, 1956	

16 communities in which UHF stations suspended operation after VHF went on the air

State	City	Commercial assignments		On air		Off air, UHF
		VHF	UHF	UHF	VHF	
Alabama	Mobile	2	1	Dec. 29, 1952	Jan. 14, 1953; Aug. 29, 1955	Aug. 1, 1954
Arkansas	Little Rock-North Little Rock.	2	2	Apr. 4, 1953	Mar. 24, 1954; Nov. 14, 1955	Mar. 13, 1954
California	Stockton	1	2	Dec. 18, 1953	Aug. 29, 1954	Apr. 30, 1955
Florida	Pensacola	1	2	Dec. 10, 1954 [1]; Oct. 16, 1953	Jan. 13, 1954	Dec. 18, 1955; Oct. 31, 1954
	West Palm Beach	2	1	Aug. 31, 1953	Aug. 19, 1954; Dec. 27, 1954	Mar. 1, 1956
Georgia	Macon	1	1	July 25, 1953	Aug. 29, 1953	May 31, 1955
Kansas	Wichita	2	1	Aug. 15, 1953	Oct. 16, 1954; Aug. 30, 1955	Apr. 30, 1956
Louisiana	Monroe	1	1	Aug. 11, 1953	Sept. 27, 1953	May 1, 1954
Missouri	Lewiston	1	1	Nov. 25, 1953	Aug. 3, 1954	Mar. 25, 1955
	Portland	2	1	Aug. 27, 1953	Dec. 1, 1953; Apr. 21, 1954	Dec. 16, 1954
Minnesota	Duluth-Superior	3	4	May 31, 1953	Feb. 23, 1954	July 15, 1954
Mississippi	Jackson	2	2	Jan. 20, 1953	Dec. 20, 1953; Mar. 15, 1954	May 31, 1955
South Carolina	Greenville	1	1	July 15, 1953	Dec. 26, 1953	Apr. 29, 1956
Texas	Tyler	1	2	Aug. 24, 1953	Oct. 14, 1954	Oct. 23, 1954
	Waco	1	1	Oct. 17, 1953	Mar. 30, 1955	Dec. 31, 1955
West Virginia	Charleston	1	1	Sept. 17, 1953	Aug. 16, 1954	Feb. 12, 1955

[1] Station resumed operation on this date.

Number of postfreeze TV stations in operation, July 1952–June 1956

	Number of VHF stations			Number of UHF stations		
	Going on the air	Going off the air	Total on air end of period	Going on the air	Going off the air	Going on air end of period
July–December 1952	11	0	11	6	0	6
January–December 1953	110	1	120	117	2	121
January–December 1954	69	3	186	25	29	117
January–December 1955	49	0	235	9	27	99
January–June 1956	20	0	255	4	9	94
Total	259	4	255	[1] 153	[1] 59	94

[1] These totals refer to the number of different UHF stations which went on the air and off the air during the above period. The columns do not add to the totals shown since 8 UHF stations went on the air twice during this period; of these 8, 3 went off the air a second time while 5 were still on the air as of June 1956

[Received after the conclusion of the hearings]

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
July 27, 1956.

Hon. WARREN G. MAGNUSON,
United States Senate, Washington, D. C.

DEAR SENATOR: Thank you very much for your letter of July 16, urging the elimination of the excise tax on all-channel color television sets

Let me assure you that I shall keep your interest in mind and in the event hearings are held on this subject next session, you will be notified and given an opportunity to personally present your views.

With kindest regards, I am,

Cordially yours,

HARRY F. BYRD,
Chairman.

[Received after the conclusion of the hearings]

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., August 6, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: This is in reply to your letter of July 16, 1956, which refers to my letter of June 6, 1956, to you, in which was enclosed an exchange of correspondence between Senator Bricker and myself together with a copy of certain financial data for 1955.

This same information was submitted to Congressman Celler on the same basis as that on which it was furnished to you, for his use in connection with hearings before the Antimonopoly Subcommittee of the House Judiciary Committee. You have been correctly informed that it has now been made a part of the record before that subcommittee.

Sincerely yours,

GEORGE C. MCCONNAUGHEY,
Chairman.

×

TELEVISION INQUIRY

HEARINGS

BEFORE THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 13 and S. Res. 163

AUTHORIZING INVESTIGATIONS OF CERTAIN PROBLEMS RELATING TO INTERSTATE AND FOREIGN COMMERCE

(Including testimony on S. 825, by Mr. Bricker, to authorize the Federal Communications Commission to establish rules and regulations and make orders with respect to networks and their activities)

APRIL 23, 24, 25, 26, 27, AND JULY 17, 1956

PART III

SUBSCRIPTION TELEVISION

Printed for the use of the Interstate and Foreign Commerce Committee

UNITED STATES
GOVERNMENT PRINTING OFFICE
75589 WASHINGTON : 1956

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KENNETH A. COX, *Special Counsel on Television Inquiry*

WAYNE T. GEISSINGER, *Special Counsel*

[1] Appointed April 18, 1956, to succeed Strom Thurmond, South Carolina, who resigned on April 4, 1956.

CONTENTS

APPENDIX

Hearings held in connection with this Television Inquiry are being printed in four volumes, as follows:

Part I. UHF-VHF Allocation Problem (testimony of Federal Communications Commission).
Part II. UHF-VHF Allocations Problem.
Part III. Subscription Television.
Part IV. Network Practices.

TELEVISION INQUIRY

(Subscription Television)

MONDAY, APRIL 23, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to notice, at 10 a. m., in room G–16, the Capitol, the Honorable Senator Alan Bible presiding.

Present: Senators Bible, Potter, and Purtell.

Senator BIBLE. The committee will come to order.

The committee is now turning its attention to a somewhat different phase of its television inquiry, the question of subscription television. Before calling on our first witness, however, we have received a number of items which should be inserted in the record:

First, is the additional testimony of Norwood J. Patterson, the general manager of KSAN–TV, channel 32, San Francisco, Calif., who originally appeared before this committee on February 27, 1956. His additional statement relates to the economic consequences of deintermixture to operators of stations affected.

Second, is a letter, dated April 2, 1956, from Dr. E. W. Engstrom, senior executive vice president, Radio Corporation of America, who testified before this committee on March 15, 1956. This letter furnishes data requested by the committee as to the cost of increasing the effective radiated power of a UHF station from 250 kilowatts to a thousand kilowatts.

Third, is a statement of Louis Lubin, the chairman of the businessmen's council of Americans for Democratic Action, commenting on the insufficiency of competitive channels, on the resulting lack of advertising time for small-business men, on certain network practices, favoring deintermixture as an interim measure, suggesting that this committee's ad hoc committee of engineers should have been broadened to represent business, and so forth.

Fourth, is a statement of Dr. Edward Lambert, of the University of Missouri, which operates KOMU–TV, who outlines the station's locally originated programs and emphasizes the importance of wide-area coverage in relation to its operations, in reply to testimony of Mr. Harold Thomas and Mr. Philip Merryman on February 27 and 28, 1956. This statement will be inserted in the record and printed in conjunction with such earlier testimony.

NOTE.—Staff members assigned to this hearing: Kenneth A. Cox and Wayne T. Geissinger, special counsel; Nicholas Zapple, communications counsel.

Fifth, is a statement by Sidney W. Dean, Jr., of New York City, supporting subscription television and proposing to limit it to a class of stations especially licensed for that purpose.

(This material will be found as follows:

(Items 1, 2, and 4 are printed in the second volume on the UHF–VHF Allocation Problem at pp. 1009, 698, and 1010, respectively.

(Item 3, because it refers to both allocations and subscription television, is printed at p. 1009 in the second volume on the UHF–VHF Allocation Problem, and is also set forth below.

(Item 5 is set forth below.)

(In addition, a letter from the national legislative committee of the American Legion, forwarding a resolution of the national executive committee of the American Legion urging the continuation of free television broadcasts in the interests of hospitalized veterans, which was inserted into the record on March 14, 1956 (see p. 630 of second volume on the UHF–VHF Allocation Problem), is printed at this point at the request of said committee.)

STATEMENT OF LOUIS LUBIN, CHAIRMAN, BUSINESSMEN'S COUNCIL OF AMERICANS FOR DEMOCRATIC ACTION

I am Louis Lubin, chairman, Businessmen's Council of Americans for Democratic Action. I submit this statement on behalf of the council.

The Businessmen's Council of ADA is an organization of businessmen concerned with giving expression to the liberal point of view within the business community. We believe that there is a liberal view on the question of this Nation's television policy. The views set forth in this statement represent a cross section of the council's opinion and experience rather than the view of any individual member.

The present availability of usable television stations and networks is now wholly inadequate for free competition, and flexible use of this powerful advertising medium by smaller and medium size, as well as large, businesses. Advertisers must buy low-cost mass audiences in order for television advertising to be profitable. On this basis, the number of VHF stations with large audiences is so few that their time is largely sold out and their rates and terms are no longer determined by competition, which is essential to a self-regulating industry. There are only 12 markets in the United States with 4 or more stations, and only another 22 markets with 3 stations in the same VHF or UHF frequency band. Only 57 additional markets have a choice of 2 stations in the same frequency band.

This lack of usable stations has similarly limited advertisers' choice to only two live networks which can give reasonably adequate national coverage. These two networks are sold out of evening time. Like the stations, the networks have taken advantage of this shortage to inflate rates, take over control of programing by selling programs in forced combination with their time, improperly influence local affiliations, promote their film, talent, and station representative subsidiaries, etc.

These conditions have resulted in a very high concentration of television advertising usage by a relatively small number of very large businesses. These large advertisers are able to preempt preferred times, programs, and stations under highly favorable quantity discounts and terms of options and renewals with which smaller advertisers cannot compete. The net effect is that these few large television advertisers can buy advertising audiences in terms of cost per viewer per minute of commercial time that may be as little as one-tenth of the net circulation cost of smaller advertisers who can only secure small audience programs at high open rates.

We favor the restoration of free and open media competition as the only basic solution to this situation. In our opinion, there is need for at least 4 national live networks, supplemented by additional independent stations in the 125 largest markets.

We would first favor a high-level study by the Congress of the present and future needs of advertisers as well as all other groups in the population. We favor the development of other forms of economic support for broadcasting, such as pay television, provided they will be assigned additional, exclusively licensed channels so as not to displace or restrict the growth of free commercial television.

In our opinion, it will require at least as many as the 70 UHF channels to provide an adequate television communication system for the total needs of business as well as other services. The ultimate gradual transfer of all broadcasting to the UHF band should be considered. As an interim measure, only, we would favor deintermixture of the UHF and VHF markets, each on its own merits.

Finally, we deplore the fact that the Senate committee's "ad hoc" group of advisers does not include representatives of business, journalism, publishing, entertainment, education, social and political institutions, etc., who are actual or potential users of television, as opposed to its present makeup which is dominated by the representatives of the networks, and station owners who have large vested interests in maintaining the present scarcity of facilities.

We would appreciate it if this statement could be made a part of your committee's record in this matter.

APRIL 20, 1956.

From: Sidney W. Dean, Jr., 94 MacDougal Street, New York 12, N. Y.
To: The Interstate and Foreign Commerce Committee, United States Senate.
Subject: Testimony on subscription[1] television.

FOREWORD

I address these comments to the Commission entirely out of my interests and responsibilities as a private citizen. My qualifications include 20 years of business experience in communications and media planning, marketing management and consulting, and various positions in civic and educational organizations. I have no investments in broadcasting or related equipment firms; I have no business gain or private interests to express beyond my long and carefully considered conviction that a proper system of audience payment for broadcasting will serve an indispensable role in attaining a free and diversified way of life for our Nation.

A. SUMMARY OF TESTIMONY

1. Subscription television is entirely in the public interest. Without an optional, competitive system of audience payment, broadcasting can never be a truly free and diversified medium like print, and can never serve the variety and essentiality of needs of the public, the creative professions, and the legitimate enterpriser.

2. Subscription television should be immediately licensed for exclusive, full-time station usage. But it should not be licensed for mixture with commercial, noncoded, sponsored television, in order not to interfere with its useful growth or deprive the public of "free" advertiser-sponsored television.

3. The present usable TV spectrum is wholly inadequate for the potential of commercial television, let alone new subscription stations. The foreseeable future need is for not less than the 70 UHF channels. Only a radical remedy, like the gradual transfer of all TV to UHF, will solve the problem.

4. The Congress should immediately establish a select committee on the total problems and opportunities of both sponsor-paid and public-paid broadcasting. As a first step, it should appoint an advisory council of journalists, educators, entertainers, writers, artists, political and social scientists, publishers, motion picture producers, businessmen, and advertisers to define present and potential total needs and opportunities for broadcasting services by all types of economic support, both free sponsored, educational, and public service, and audience payment.

B. SUBSCRIPTION TELEVISION IS IN THE PUBLIC INTEREST

The very structure of a free society is formed by the nature and controls of the communications systems which give it self-expression and cohesion. Democracy, as a system of representative self-government, has been most successful, and defensively most secure from external and internal attack, where a high level of literacy through universal education combined with a comprehensive,

[1] Terminology: In conformity with the Commission's language, the phrase "subscription television" is employed by me as a generic term for any system which permits a voluntary payment by the public for selected individual programs whose length and program charge may be varied by the program's sponsor.

diversified system of communications has given "the consent of the governed" its most effective expression.

The goals of our American way of life also seek to assure that individual self-expression and self-realization, in their widest political, economic, and cultural meanings, have the fullest scope consistent with justice and national security.

To realize these objectives, our constitutional tradition requires that the press and media of communications be freed to the greatest possible extent of technical or regulatory restrictions which might impede the flow and competition of ideas and services or obstruct free personal and business enterprise in the profitable development of innovations and improved services.

Our printed press is remarkably free to new ideas and services, since creative writers and publishers have relatively unlimited access to paper, ink, presses, and many channels of distribution to the public. It is responsive to the wants of practically every segment of the public, since small editions or units of circulation can be profitably sold to the public as books, pamphlets, or magazines in a variety of formats and prices.

In the print media, also, there has been ample opportunity for free circulation of literature, even books and magazines, which could be profitably conducted by advertisers, educational and social organizations, religious institutions, and frankly avowed political groups and lobbies. This mixed system of print communications has been responsive to our incredibly diversified and expanding communications needs and a thoroughly healthy influence on our lives.

But this situation has not existed in broadcasting. Its inflexible economic structure led to the almost accidental development of advertising as its only source of income—contrary to the opinion of Secretary of Commerce Herbert Hoover in 1926, who predicted that it would be supported by public subscriptions. Without the benefit of foresight, the licensing of radio frequency channels expressly prohibited the coding of broadcasts which is necessary for public payment systems. In fact, most of the radio frequency spectrum is now licensed for coded signals which the public cannot utilize. It would do no damage to the principle of the best use of the air in the public interest to permit the use of an additional portion of the broadcast band to coded broadcasting for pay and private profit. The present "free" broadcasting channels, like all the rest of the spectrum used by private firms and individuals, is in fact, and properly, licensed for private profit.

May I respectfully submit that both the public and our governmental agencies need to reexamine the validity of the so-called freedom-of-the-air issue? To the extent to which freedom of the air is equated with the constitutional privileges of freedom of the press, there is no precedent for assuming that freedom of the air requires free circulation, or no payment by the recipient. By analogy, this would equate freedom of the press with a requirement for free public circulation of our newspapers and magazines, which have permits to use the public mails at a public financial loss.

I therefore submit that a system of subscription broadcasting regulated to insure free access and free competition is completely consistent with traditional American freedom of the press. As is the case in the press, exemplified by shopping newspapers and free-circulation business magazines, it is best assured by a mixed system in which the publisher, sponsor, or producer is free to charge or not to charge, and in which the channels of distribution, mail, express, stores, carriers, etc., are eqally accessible to all.

The objection that there are not sufficient broadcast channels in the radio frequency spectrum to permit free access to all would-be broadcasters is not a pertinent argument for restricting broadcasting to free circulation, any more than it is a valid reason for restricting broadcasting to paid circulation. It is an unfortunate technical limitation that makes it all the more important that our public broadcasting policy require that our systems—pay, free, and educational—be diversified and open to competition between systems, as well as within systems, for both public audiences and public revenue.

If necessary to satisfy a semantic or regulatory technicality, an adjacent portion of the broadcast band could be ruled a commercial band for the purpose of subscription broadcasting. In either case, the objective is to free public broadcasting for both free and paid circulation, as is print and every other medium of communication.

A broadcasting policy for the United States must also deal with the realities of power and control. A communications system which does not provide the maximum of free access to ideas and services based upon providing equal opportunties to people for self-expression, and capital for profit, invites undemocratic forms of distribution and control of power over our minds and institutions.

In the photographic exhibit entitled "The Family of Man," now being shown in museums, there is a graphic vista of rooftops with their forests of television antennae to lend meaning to the quotation of Thomas Jefferson displayed below: "I know of no safe repository for the ultimate powers of society but the people themselves."

A direct public payment for a product or service is a voluntary, selective ballot which not only measures the usefulness of that service but provides the economic incentive for invention, competition, and expansion. As in other fields, free competition between systems, as well as between individual products or services, provides yardsticks of value as well as stimulants and assurances of enterprise.

Free broadcasting, due to its inescapable economic limitations, has lacked these essential elements and benefits of competition; free broadcasting has lacked a practical economic mechanism for profitably serving the multitude of less-than-majority tastes and interest; free broadcasting has been a force for social, cultural, and political conformity rather than of diversity; free broadcasting has provided inadequate rewards for innovation and penalized risk-taking; free broadcasting has tended to reward the facilities operator rather than the risk-taking producer and creative writers and artists; free broadcasting is a static and conservative force rather than a stimulant to growth and progress.

No other system of private communications or institutions which serve these many purposes has developed without this essential element of direct public payment and responsiveness. Not even Government itself, when it established free public education, regulated against paid private systems of education.

Many of our wisest and most objective men in public life, including educators, social scientists, creative writers, and artists, now believe that the past 30 years of experience in radio, and a few years of television, have proved by demonstration that the present economic system of broadcasting cannot satisfy the great and expanding needs for information, education, cultural, and entertainment services which could be provided by a diversified broadcasting structure with a wider economic base and greater opportunities for new ideas, people, and capital.

For these and many other reasons, it is in the highest public interest to establish a system of broadcasting providing for public payment. This system should be added to, but not displace, the already established systems of free commercial and educational broadcasting.

The following sections of these comments are intended to demonstrate that a new additional system of subscription television is now practical, and suggest standards for such a system. The questions and issues asked by the Commission's notice are answered in context.

C. PRINCIPLES FOR ESTABLISHING SUBSCRIPTION TELEVISION WITHIN A MIXED SYSTEM OF COMMERCIAL-SUBSCRIPTION-EDUCATIONAL BROADCASTING

There are three requirements essential to the public interest for the accommodation of a system into the present structure of broadcasting. The basis of these three requirements will be expanded in later sections of these comments.

1. Three classes of licenses must be established to define and regulate the services of each of the three types of stations: Commercal, subscription, and educational.

2. There must be a greater number of stations available in every area of the country in order to give each of the three systems of broadcasting free scope for audience and revenue development and maintain competition between stations, networks, and services.

3. Each station, whether it is commercial, subscription, or educational, must have equal access to the public.

To comment upon these requirements more fully:

1. Three types of licenses should be established:

(*a*) Commercial stations will broadcast uncoded sponsored or sustaining programs, but may not employ coded or subscription television systems.

(*b*) Subscription stations will broadcast coded subscription (see "definition") programs, as well as uncoded sustaining programs, but may not broadcast uncoded, sponsored programs.

(*c*) Educational stations will broadcast uncoded programs but may not employ coded subscription systems nor accept payments from noneducational sponsors. They will retain their present right to solicit funds or sell teaching aids, etc., on a voluntary basis.

(Educational institutions or firms may sponsor coded subscription broadcasts on subscription stations.)

The purpose of this program is to maintain not less than the present amount and kind of free commercial broadcasting now available, and prevent, through unrestricted licensing, the possibility that subscription television might displace free television even in the popular listening hours. By the separate licensing system proposed, all advertising revenues will be reserved for a permanent system of free, uncoded, broadcasting adequate to support not less than the present number of commercial stations, and undoubtedly more.

2. The channel requirements of such a mixed system may vary from 6 or 8 up to 12 to 20 stations per area, depending upon the ability to pay and the advertising productivity of the areas served. Since this is principally a function of the population, this range will vary with the population of each area. The following table is purely for illustration:

	A large population area	A small population area
Commercial stations	7	4
Subscription stations	7	4
Educational stations	2	1
Total	16	9

I am informed by engineers that the UHF band will provide a minimum of service from ten or more station channels for each and every area in the United States. By some variance to favor the heavily populated areas which contain two-thirds of the United States population, this number might be increased up to 20 channels in these large areas.

3. All television stations must ultimately move to the UHF band to satisfy the requirements of equal access to the public for each and every station.

I am informed that the additional cost and problems to the public involved in all-band VHF-UHF reception are a serious, if not an insuperable, obstacle to giving each station in every area equal access to the public. The record of UHF stations seems to prove this.

Therefore, to meet the requirements for equal access and opportunity for 8 up to 20 stations in a given area, 1 band allocation seems essential, although advocated by me solely on the basis of the technical counsel I have received, rather than as a matter of principle.

4. The timetabling and regulation of eventual discontinuance of VHF and transfer to UHF must be fairly, carefully, and slowly carried out. Some of the principles of such a shift might be:

(*a*) The establishment of a cutoff date for VHF 3 to 5 years in the future.

(*b*) The immediate granting of UHF licenses to VHF stations, with incentives to construct UHF transmitters to provide dual VHF–UHF services, as dual AM-FM services are now provided.

(*c*) Accelerated technical and marketing research programs with Federal funds, to minimize both the public's and the broadcaster's costs and burdens of conversion.

5. Safeguards and incentives for the investors and operators of exclusive subscription television stations must also be fairly and carefully developed. Some of the principles might be:

(*a*) Trial licensing of subscription stations in only a few large markets.

(*b*) Permitting, for an interim period, acceptance of advertiser sponsored, uncoded programs in those areas served by fewer than four, for example, commercial stations.

6. Methods of safeguarding the investments of commercial stations must also be fairly and carefully developed. Such principles might include:

(*a*) The setting of a cutoff date before which a commercial station might freely convert to a subscription license.

(*b*) After that date, the establishment of criteria for permissive conversion from a commercial to a subscription license.

(*c*) Incentives, such as tax writeoffs, to VHF stations to finance the construction of UHF transmitters to provide dual service during the transitional period.

7. Methods of safeguarding and compensating the public who have VHF-only receivers must be fairly and carefully developed. Such methods might include:

(*a*) Federally aided technical and marketing research to assist in developing minimum cost UHF conversion.

(*b*) Waiver of excise taxes, etc., on UHF receivers and converters.

(*c*) Possible income tax writeoffs on an amortized basis for obsolescent VHF receivers.

D. THE PUBLIC NEEDS, AND WILL PROFITABLY SUPPORT, A NATIONAL SYSTEM OF SUBSCRIPTION TELEVISION

My analysis of United States Department of Commerce studies of consumer expenditures indicates that the public is now spending about $15 billion a year for recreation, private education, and other outlays which are roughly equivalent to the services that a developed, national system of subscription television might provide. Excluded from this are $8 billion expenditures for public education, $2 billion for private education, and such speculative but potentially large sources of new revenue as the employment of subscription television for fund-raising by philanthropic, religious, and political organizations.

I will not document the variety of programing that the unprecedented convenience of subscription television will tap nor quote from the public surveys that have been made of its popularity where tested. I believe that the program services of subscription television will be substantially noncompetitive in both types and variety with commercial television.

In my judgment, a national subscription television system can attain an annual rate of gross revenue of four to five billion dollars by the end of its second year. This is equivalent to about $100 per set per year, or $2 per set per week.

This compares with the present annual rate of television advertising expenditures for facilities and programs of $1 billion. In the foreseeable 5- to 10-year future, it is unlikely that the economics of advertising will give television an annual revenue in excess of $2 billion.

A potential of 4 to 5 billion dollars annual revenue provides adequate profit incentives for the capital investment to establish subscription television. The following comparison between the present financial structure of the telephone industry and that of a potential subscription television industry supplies some basis for confidence in the availability of capital.

	Present telephone system	Potential subscription television
Telephones and sets, total	53,000,000	
Residential	32,000,000	40,000,000.
Revenue, annual	$5.4 billion	$4 to $5 billion.
Revenue per phone or set	$100	$100.
Investments, total	$16.2 billion	$15 billion.[1]
Investment per phone or set	$300	

[1] Rough estimate of present gross public and industry investment, unadjusted for depreciation, replacement, obsolescence, price deflation, etc.

I conclude that there is every reason to believe that creative American capitalism can and will supply the dynamics and leadership for a new industry of this magnitude and profit opportunity.

E. THE TECHNICAL SOLUTIONS FOR SUBSCRIPTION TELEVISION ARE NOW AVAILABLE

I am not qualified to evaluate the merits of the various proprietary systems now offered. However, it seems to me that many of the essential technical elements for a uniform, low-cost, dependable system are either in the public domain or available for patent pooling. These elements would appear to consist of a decoder plus a recording device like the A. C. Nielsen Audimeter which registers upon a tape the channel, day, and time of use. These elements lend themselves to an integrated system of tape collection and low-cost electronic computing, accounting, and billing operations.

It must be a requirement of any licensed system that it be uniform nationally, with a minimum service and maintenance load. It should also be a requirement that the public could rent all equipment on a telephone-type service basis so that nothing would need to be bought, or obsolescence risked. With a revenue potential of $100 per home per year such a system is financially feasible.

F. THE OPPORTUNITY TO PRODUCE OF SPONSOR SUBSCRIPTION PROGRAMS MUST BE FREELY AND EQUALLY AVAILABLE TO ALL, AND BE SUBJECT TO FEDERAL REGULATION

The regulatory structure of a subscription television system should have as a goal free, competitive, and identical access to any and all types of producers or sponsors. Such producers might include present motion-picture and theatrical producers, broadcasting network organizations, talent organizations, package houses, sports organizations and promoters, educational institutions, charitable organizations, churches, political parties and civic organizations, United States and foreign governments and agencies, publishers of books and magazines, lecture, concert, and musical groups, recreational and hobby groups, museums and art organizations, news and editorial syndicates, film and recording organizations, private individuals and business firms, etc.

To assure free and equal opportunity of access to all prospective "producers" (sponsors, publishers, program promoters, etc.) the services of the stations, their interconnecting networks, and the public collection system should be available on a flat rental fee basis, with the same rate, terms, and services for all. No brokerage, bulk wholesaling, or preemption of facilities should be permitted by anyone, including the station or networks. The program unit should be held to a reasonable maximum length (perhaps 2 hours) and sold only on an individual program or weekly cycle basis. No stations, interconnecting networks, or public collection system can be permitted to preempt time, secure preferential rates or services, or enforce "package deals" requiring purchase of talent, services, etc. If these distributive services also decide to establish program-producing organizations, there must be no preferential or preemptive controls over time or facilities.

Equal opportunities to secure and pay for time must be available to political opponents and opposing sides of controversial issues.

It is an important feature of this proposal that the capital risk for each program be assumed by the producer or sponsor, rather than by the station, interconnecting network, or public collection system. These latter distributive and collection services would set a flat rental which would give them a fair rate of return governed by competition from other subscription stations and criteria established by complete disclosure of financial results. The major profit opportunities and risks would thus accrue to the program producer or sponsor, and his creative personnel—writers, directors, artists, teachers, etc. The producer's gross profit solutions would be a function of the anticipated audiences available at the variable choice of prices which he may set. For example, a selective interest program, like a lecture or chamber music concert, might be as profitable a venture with 2 percent share of audience at $1 as a popular sports event with 10 percent at 25 cents.

Such a system should multiply present levels of personnel as well as the business incomes of these creative arts. Our enterprise system will respond with the new talent, ideas, and services for richer, more stimulating, and rewarding communications in education, entertainment, information, throughout our daily lives.

THE AMERICAN LEGION,
NATIONAL LEGISLATIVE COMMISSION,
Washington, D. C., March 6, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee,
Washington, D. C.

DEAR SENATOR MAGNUSON: Referring to the hearings now being conducted by the Committee on Interstate and Foreign Commerce relative to TV network regulation and UHF problems, I understand that no particular bills are under consideration but that the attendant problems are being studied by the committee.

I am taking the liberty of enclosing copy of resolution No. 105 adopted at the May 4–6, 1955, meeting of the national executive committee of the American Legion, urging the continuation of free television broadcasts, especially in the interests of hospitalized veterans.

I would indeed appreciate it if you would be good enough to have the enclosed resolution given consideration by the members of your committee during their deliberations on this problem. If possible, I would also appreciate the resolution being incorporated in the record of the committee's hearings.

Thanking you for your cooperation and consideration, I am,

Sincerely yours,

MILES D. KENNEDY, *Director*.

NATIONAL EXECUTIVE COMMITTEE OF THE AMERICAN LEGION

Meeting held May 4–6, 1955

RESOLUTION NO. 105

Committee: Department of New York.
Subject: Continue free television broadcasts in interest of hospitalized veterans.

Whereas the Federal Communications Commission is considering applications by patent holders seeking approval of systems whereby hitherto free television broadcast channels would be diverted to programs requiring payment by owners of receiving sets for the privilege of watching said programs; and

Whereas approval of any system requiring payment by the viewer for TV programs constitutes a definite threat to free programs now enjoyed by thousands of veterans in Government and private hospitals in all parts of the country; and

Whereas in many instances where it was permitted, American Legion posts and units of the auxiliary donated radio and television sets for the use and enjoyment of hospitalized veterans as a contribution to the morale and recreational therapy of those veterans; and

Whereas the American Legion has the responsibility for maintenance and repair of these television sets which would include the responsibility of installing decoders, coin boxes, or other gadgets under the pay-to-see-TV system; and

Whereas petitioners for pay-to-see TV are making definite statements that popular sporting events such as championship boxing bouts, world series baseball games, college and professional football games, and other attractions will be among their programs; and

Whereas this particular type of entertainment is enjoyed perhaps more than any other by the hospitalized veterans; and

Whereas suggestions have been made that Federal legislation might be sought to gain approval of pay-to-see TV; and

Whereas the Federal Communications Commission has asked all interested parties to file written reports dealing with the legal, factual, and public-interest aspects of pay-to-see TV on or before May 9, 1955; and

Whereas the national rehabilitation commission of the American Legion has taken this matter under advisement: Now, therefore, be it

Resolved, That the national executive committee of the American Legion requests the Federal Communications Commission and the Congress to make no rulings, nor pass any legislation changing the fundamental system of broadcasting and telecasting in the United States, hitherto devoted to free entertainment, information, educational, and other programs, which bring unlimited hours of enjoyment to millions of Americans including the hospitalized veterans whose welfare has been and always will be the prime concern of the American Legion.

Senator BIBLE. Our first witness this morning will be Mr. James Landis, the counsel of the Skiatron Electronics & Television Corp., and these various letters and statements to which I have just referred can be inserted in the record.

Mr. Landis, we are very happy to have you with us.

STATEMENT OF JAMES M. LANDIS, SPECIAL COUNSEL, SKIATRON ELECTRONICS & TELEVISION CORP.

Mr. LANDIS. Thank you. May it please the committee, for some 5 years now I have acted as special counsel for Skiatron Electronics & Television Corp., a New York corporation engaged in research activities in the television field.

Skiatron is one of three American companies which have actively developed and promoted subscription television systems, sometimes called pay-as-you-see television. These three systems have a number of differences with regard to the mechanical details of their operation. All of them, however, are basically alike in that they code or scramble the television signal at the point where it is broadcast over the air. The viewer thus receives upon his set an image that is utterly scrambled and audio signals that are unintelligible. However, at his receiving set the viewer will have a device known as a decoder, which, given the right combination, can be set automatically or otherwise to decode the signal being transmitted.

It is proposed that a consideration be asked of the viewer for providing him, program by program or week by week, with the right combination. A prime difference between the three systems lies in the manner in which the decoding combination is provided the viewer. One would do it by a coin-slot machine, another originally by the use of the telephone and presently, as I understand it, by the transmission of a key number to which dials in the receiving apparatus would be set. Skiatron has developed a card system upon which an electronic code is imprinted which, when inserted into the decoder, will automatically clear the image.

Skiatron has spent a great deal of time, effort, and money in developing what it conceives to be a simple and flexible method for decoding scrambled television programs. In this connection it has worked actively with International Business Machines to produce a simple and cheaply electronically printed card, together with methods for distributing the card and methods for accurately and automatically billing customers on the basis of how many programs on the card the customer chooses to use. These develpoments are at the point where they are ready to be put into commercial use.

Mr. Cox. Do I understand, Mr. Landis, that the same electronically printed card can be used to receive more than one program, then?

Mr. LANDIS. Yes; the card will have a series of programs for 2 weeks or 3 weeks or a month, and then the viewer who wishes to see a particular program will punch that particular program and that will record the fact that he has seen that program.

Mr. Cox. And that requires, then, the return of the card so that your organization can check the number of items punched and determine the amount that should be billed?

Mr. LANDIS. That is right. That is the way in which we have worked it out with the IBM people. The mechanical methods for encoding and decoding programs, though mechanically complex, are essentially simple to the user. The encoding mechanism is portable. It can be carried in two large suitcases. It can be installed in an hour or so at any broadcasting station so as to enable that station to code any program it chooses to transmit.

Mr. Cox. Is it proposed to sell these to the broadcaster or to license them to him?

Mr. LANDIS. It is not proposed to sell the encoding mechanism. It is proposed to rent it or lease it to a telecasting station. It is proposed to sell the decoding apparatus.

Mr. Cox. Now the complete encoding operation, then, is carried on at the television licensee's headquarters—at his transmitter or at the studio?

Mr. LANDIS. At the transmitter is where it is carried on. The decoding apparatus in the home of the receiver is a small enclosed box which can be installed by any trained television mechanic in a half hour or so. It can be manufactured to include within the box a UHF converter so that the consumer, with the acquisition of the box, will have available in one instrument both a decoder and a UHF converter. On the basis of mass production these decoder-converters can be produced so as to retail in the neighborhood of $40.

Senator BIBLE. Who pays the $40—the man that has the TV set?

Mr. LANDIS. The man that has the TV set.

Senator BIBLE. Very well.

Mr. COX. Do you propose to manufacture them yourself or to license the manufacture by others?

Mr. LANDIS. License the manufacture by as many as we can possibly get.

Mr. COX. Do you have a commitment from manufacturers to support this ultimate cost of $40 that you mentioned?

Mr. LANDIS. Yes; this figure is based on estimates given to us by 5 manufacturers who have examined the entire decoding apparatus, and they have come up with figures that average, as I say, in the neighborhood of $40 based upon a hundred thousand decoders.

Mr. COX. I take it, though, that even though this decoding apparatus may include a UHF converter, it would still be necessary for a set owner to purchase a tuner which would permit him to tune UHF channels, assuming the set he has purchased presently is only capable of tuning channels 2 through 13?

Mr. LANDIS. Yes; I suppose it would. It is hoped, however, that with the adoption of the system new television sets will be manufactured with decoder-converters already built in to the receiver in the same manner that converters now are available at the time of the purchase of the set.

Mr. COX. Do you have any estimate, then, as to the total cost to a man owning a VHF-only set who might desire to purchase your decoder and be able to receive encoded signals from a UHF station—that is, in terms of the decoder, the new tuner, and the installation of the UHF antenna if he doesn't already have one?

Mr. LANDIS. I do not have in my figures an estimate as to the tuner. The decoder and converter would run $40. Is Mr. Shanahan, your engineer, in the audience? Would you have an estimate on the tuner?

Mr. SHANAHAN. I think you probably misunderstood the question there. The tuner is the UHF converter we were talking about. There is no additional tuner required.

Mr. COX. This is a tuner that appears on the front or some easily accessible part of the set?

Mr. SHANAHAN. All standard television sets already have a tuner, from 2 to 13. The UHF converter will bring the signal down to one of the unused VHF channels.

Mr. COX. Well, if I understand you then, Mr. Shanahan, the converter converts a received UHF channel to one of the VHF channels, so it is only necessary to use the VHF tuner that is already available on the set?

Mr. SHANAHAN. Yes.

Mr. Cox. However, it would be necessary to have a UHF antenna, I take it?

Mr. SHANAHAN. That is correct.

Mr. Cox. And those cost, for installation, in the neighborhood of what?

Mr. SHANAHAN. I would not care to commit myself on that right now.

Senator BIBLE. Could you supply it for the record? We are trying to find out how much does this additional mechanism cost the actual user. I think that is a rather important question. Could you supply it for the record?

Mr. SHANAHAN. Right now?

Mr. Cox. No, at a later date.

Mr. SHANAHAN. Yes; we will.

Mr. Cox. Does this $40 figure which you quote include installation, or is there going to be added an installation charge for actually installing this decoder-converter on the set?

Mr. LANDIS. The $40 figure does not include the installation. We figured that the installation cost may be around $5 or thereabouts. The installation process is very simple.

Mr. Cox. How long does it take to install it?

Mr. LANDIS. About a half hour.

Mr. SHANAHAN. That is reasonably conservative, a half hour. That includes taking the back of the set off, pulling off a couple of tubes, installing adapters between the tube sockets and the tubes themselves. There is no actual wiring involved.

Mr. Cox. How many connections to the set are required?

Mr. SHANAHAN. On the average set, four connections, and these are all available by unplugging tubes in the set, sticking an adapter between the tube socket and the tube itself, and replacing the back of the receiver.

Mr. Cox. Now does this require that the serviceman making installation check the decoder in operation?

Mr. SHANAHAN. Let's say if a scrambled test pattern is available on the air, he can check it. However, the installation is so simple that, in general, it is not necessary for him to do that.

Mr. Cox. You may go ahead.

Mr. LANDIS. One more word with regard to the mechanics of the operation. The mechanical feasibility of subscription television has been proved beyond any doubt. For years Skiatron and Zenith have been on the air on an experimental basis, coding programs generally transmitted over the air and decoding them effectively at various points within the area of reception by these stations. Furthermore, the coding and encoding is a secure process, secure in the sense that the codes cannot be broken by outsiders except at an enormous and unprofitable expense. Skiatron's code, for example, of which there are at least a half million variations available, is contained in its electronically printed card so that even discovery of what the code on a particular card may be would be useless without reprinting and distributing cards containing this code—a process as to which both know-how and appropriate machinery is in the possession of Skiatron.

Mr. Cox. Now do I understand that the same identical card would be issued to all subscribers for the programs of a given month?

Mr. LANDIS. That is right.

Mr. Cox. And the decoder installed on every set is the same?

Mr. Landis. Yes; when I said the same identical card, there are variations possible. You might want, for example, to send a card to a particular group of people, a particular professional group, but I do not think that varies the nature of the question you tendered me.

Mr. Cox. Then if someone were to be desirous of trying to pirate the program, it would be a simple matter to get the card for the current month, and he would then have in his possession at least the information which, if he can interpret it, would make it possible for him to substitute electronically the impulses which will be transmitted by the circuit?

Mr. Landis. It is theoretically possible, but then to sell and distribute them he would have to sell and distribute a card containing that particular code.

Mr. Cox. And you would rely basically on the honesty of the public, the reasonableness of your prices, and the possibility of restraining such activities as unfair competition—or how are you going to protect yourself against a man who sets himself up to sell these?

Mr. Landis. We have certain legal remedies that would be available under the circumstances, but I think that the practical remedy is that the difficulty—the problem of detection is enormously expensive. These cards, to get at the combination you really have to tear them to pieces and probably the way to get at the combination would be by some device of finding exactly what the code is and what the electronic responses are that would be necessary to do the decoding.

Now then to duplicate that, once you have got the formula, to duplicate that in the type of card that we would distribute seems to me—in the first place, it is a species of larceny, and for that to go on in a mass way seems to me impossible.

You see, if we had just a simple dial setting for every decoding, it would then be easy for somebody to simply print the number and everybody would set his dial to that number without any cost, but here you actually have to have the type of card inserted into the machine, and to be in possession of a card of that type and to duplicate that in any mass volume seems utterly uneconomic and unprofitable for whoever might engage in it.

Mr. Cox. So you would concede the possibility of the matter being deciphered, but you think as a practical matter it is a risk that your company is willing to accept?

Mr. Landis. Oh, yes. We have gone into that quite a bit. The purpose of presenting the situation of subscription television to this committee is, however, not to demonstrate the mechanical feasibility of any particular system.

This committee, as I understand it, is concerned with the general economic and social phases of the existing television industry, the dominance of the networks in that industry, the practices they have pursued and still pursue to retain and increase that dominant position, the consequences that ensue to independent and nonaffiliated television stations, particularly in the UHF area.

Subscription television has a place in this inquiry insofar as the opening of television to a system of this type may introduce new and effective competitive forces that may open television broadcasting to independent enterprise and independent entrepreneurs, who presently, as a result of the economic structure of the industry, are effectively excluded from participation.

One way to combat monopoly and monopolistic practices is to restrain them by the strict enforcement of our antitrust laws. A second way is to create an economic atmosphere that will allow the introduction of competitive forces that can effectively dissipate the control hitherto exercised by a highly concentrated industry. Indeed, a comparison might be made between our antitrust problem and the conservation of wild game and fowl. In the latter field we have rigorous laws limiting the time and manner of hunting. At the same time, however, we create game and bird sanctuaries where the breeding of new life and new flocks can go on unimpeded.

Mr. Cox. In connection with your concern for monopoly, I would like to ask whether or not it is Skiatron's position that the Federal Communications Commission should license all three of the proposed systems, and any others that might be developed, or whether it is suggested that the Commission should select the best available system and license that exclusively, or authorize that exclusively.

Mr. Landis. I speak of that later here, and I show that we do not desire any exclusivity in the matter at all.

Mr. Cox. Fine, I will wait until that point.

Mr. Landis. Subscription television's position before this committee is not to complain about practices presently pursued by the networks and seek their abolition. It is to impress upon this committee the need for aiding it to have a small place in the sun so that it will have a chance with its own money and its own ingenuity to compete with the operations presently concentrated in the hands of the networks. That it can probably do so in an effective manner is perhaps as eloquently evidenced by the concentrated opposition of the networks to the introduction of subscription television.

Before the FCC, before other governmental bodies, in the press and before the public, the networks have consistently and persistently opposed every plea by subscription television for an opportunity to be permitted to sell its system to the public. This unanimous, concentrated and bitter opposition would not have absorbed the time and energy of these networks, did they not believe that in subscription television there was a serious threat to the dominant and controlling position that the networks now occupy in the field of television.

I pass by at this time lightly the opposition of the motion picture exhibitors. Their opposition stems from a different source. They happen to be in the same camp as the networks but for utterly different reasons. Forced to accept the fact of television, they wish to limit its effectiveness, for their fundamental desire is to choke off any further competition for the amusement dollar. In the past decade they have experienced the impact of television upon movie attendance and any improvement in telecasting would obviously increase that impact to their economic detriment. Indeed, their opposition boils down to one simple fact, an opposition to the improvement of home entertainment so as to force people to seek their entertainment on a mass basis, preferably in their theaters.

Mr. Cox. You would agree, then, that the authorization of subscription television might substantially impair the revenues of theater operators?

Mr. LANDIS. It would cut in. It would be another competitive force cutting in on the amusement dollar—by that I mean the amount of money that people have available for entertainment. We would be competing with that, and its impact would be felt in every field where the amusement dollar is being spent, probably in the moving picture field, as well as elsewhere. Maybe more so there.

Mr. COX. Does Skiatron propose, as do some of the other proponents of subscription television, to purchase outright the moving pictures produced in Hollywood or elsewhere, or would it simply seek limited exhibition rights?

Mr. LANDIS. I do not think one can answer that question definitively at this stage. We are too far from the economics of operation to be capable of answering a thing of that nature. I think, though, that your beginnings of course would be in purchasing limited licensing rights. The extent to which you could get them for any particular picture would depend, of course, upon the size of your pocketbook and the ability of your system to return enough revenue to justify a price that might be paid.

Eventually you may get into the problem of production yourself but in my experience, and I have had considerable experience in the moving picture field, the combination of production with other factors is not a wise thing. Somebody usually suffers as a result of that.

Mr. COX. Don't you have, though, in this situation, in addition to the present competition between television service offering one kind of program, with some movie fare, and the moving picture theater, you have here a situation where, if you buy the motion picture outright, you have cut the theater owner off from a supply of a commodity in which he deals; and if you simply purchase limited rights of exhibition, as I understand it, it is intended to do this early in the game so that it is still attractive to the public, you then are competing with him with the very thing that he proposes to show in his theater.

Mr. LANDIS. Well, if you bought the motion picture outright you would be foolish not to preserve what we call the residual value in a motion picture. In other words, after exhibiting it on television, then you would try to sell it down the line in theaters so as to get those residual values out. If you licensed it for a particular exhibition, you might license it as a first run or as a neighborhood run or as a second neighborhood run, cost determining, because these runs have great differences in value.

Now, if you had it as a first neighborhood run, obviously it would still have had its Broadway or its downtown run before that time, and you might come in at that stage. Just where you would come in is a matter of economics which has to be judged when you really get into operation.

Mr. COX. But you feel that it would be economic to offer first-class film product at a much earlier time than it is now being offered by television?

Mr. LANDIS. I think so, because I think we can produce the revenue along that line which is incapable of being produced at the present time under the existing system.

Mr. COX. Isn't that fact basic to any system of subscription television, in the sense that feature films will be the one most reliable and most available source of entertainment?

Mr. LANDIS. Yes, it is always there. You can always put it on. You don't have to wait for a good day like an athletic event. You can always stage a movie in the way in which you want to. It is a stable source of entertainment today—even on television or anywhere else.

The basic challenge that subscription television offers is a challenge to the very foundations upon which the television industry today rests. So far as broadcasting goes, television broadcasting has only one source of revenue—the advertising dollar. Its entire base rests upon that portion of the advertising budgets, broadly speaking of manufacturers of products for mass consumption, that is devoted to television. Subscription television, like the theater and the movies, seeks to derive its sustaining revenue directly from the consumer, and thus depends upon its existence for its ability to furnish entertainment for which, because of its quality or its character, the consumer is willing to pay

It is not my function nor my purpose to criticize existing television programing. Indeed, I think the industry as a whole is to be congratulated on its achievements. With the mass markets that we in America possess, capable of sustaining vast and expensive advertising campaigns, the television industry has succeeded in capturing sufficient revenue to bring the American public a program fare of which the Nation can rightly be proud. Nor is it my function to criticize or comment upon the interspersing of telecasting with so-called commercials. This, after all, is a matter of taste and there are many people who read the advertisements of Life and Fortune with an avidity equal to that with which they read the text.

Mr. Cox. Is it your proposal that subscription television be free of commercials?

Mr. LANDIS. It is our proposal that subscription television should be free of commercials. We believe that it would be better, and in accord with our general concept of programing, to eliminate the commercial from the screen.

Mr. Cox. And you would propose that the FCC so provide by rule?

Mr. LANDIS. We would not object to that at all. Whether the FCC should take action of that nature and make that a requirement is up to them, of course, but we certainly would not object and we would urge it.

Good as our programing fare is, there are recognized gaps in telecasting. I shall discuss them in a few minutes and point out the ability of subscription television to fill these gaps.

Before doing so, however, I feel it is essential to dispel certain myths that have grown up about subscription television, or been inspired by those whose self-interest has led them to oppose it. The common objection voiced to subscription television, and I could almost guarantee that you will hear that objection voiced before the committee, is that subscription television will require people to pay for what they now receive free and without charge.

Nothing is further from the fact. The proposals of the proponents of subscription television do not seek to convert channels now being effectively utilized for so-called free telecasting to a pay-as-you-see basis. They seek instead to utilize channels and frequencies incapable of being effectively employed under our existing system, to offer the public a supplementary television service which the public may or may not choose to buy.

Substantially every community today possesses channels of this type. New York City, for example, has three frequencies still unutilized. Philadelphia has also three, and so on down the line. Indeed, less than one-third of the available frequencies, of which there are 1,875, are being utilized today. Worse than this, expert testimony by CBS, never yet disputed, states that the economics of our present television system will permit the economic use of only 588 out of these 1,875 available channels.

True, most of these unutilized channels are in the UHF band, although a considerable number are VHF frequencies. It is the UHF channels that Skiatron has requested permission to use and only such VHF stations that the Commission finds cannot continue to use the frequency assigned to them.

I need not, before this committee, detail the plight of the UHF stations. Their basic difficulty stems from the absence of any programing sufficient to induce an audience chiefly equipped with VHF receivers to spend the money necessary to add converters to their sets so that UHF telecasting is able to reach them. Substantially speaking they have succeeded only in communities where no television was theretofore available, so that the initial purchase of a receiving set by a consumer had to include the cost of conversion. True, the engineers have said that VHF broadcasting has advantages in coverage as against UHF broadcasting. The basic problem, however, is a matter of economics and not engineering. The few sops that have been thrown to UHF thus far have not even begun to effect a cure of the situation.

Subscription television, however, has much to offer in the UHF field and with that in mind Skiatron shaped its proposal to the Federal Communications Commission with the purpose of aiding the UHF situation in a significant way. But before I present just how such aid can be effective, let me indicate the prime areas in which subscription television would and could operate.

Programing by the existing advertiser sponsored stations is controlled by one outstanding economic principle, which is, that the cost of programing plus the cost of transmission must not exceed the value to the manufacturer of the advertising contained in or surrounding the program. Different manufacturers, because of the nature of their goods, will evaluate the cost differently. The average, however, is admittedly about seven-tenths of 1 cent per household reached by the program. This means that a program costing $50,000 must, as a matter of economics, draw a listening audience of over 7 million people, or one that costs $100,000 must draw about 15 million people. There have been programs broadcast which have, according to the rating services, attracted up to 25 million and 30 million listeners.

The figures that I have given are the figures for black and white transmission. The costs for color broadcasting are still in the realm of speculation, but it seems agreed they will be in the neighborhood of 1½ to 2 times as much.

Mr. Cox. That would apply only to the actual cost of transmission, not to the matter of programing?

Mr. LANDIS. No, I do not think so, because the nature of the sets, the cost of the sets, the requirements for color and what not——

Mr. Cox. Costumes?

Mr. LANDIS. Yes, it means you have to increase that cost too.

These figures alone determine the limitations of present television programing. It must as an economic matter have a broad mass appeal and reach for a common denominator which will appeal to audiences of millions of people. It should contain nothing that would offend against the sensibilities or prejudices of any substantial group of people. For example, a producer recently told me that his sponsor insisted that in a certain historical skit he was producing, the presentation of General Grant as an efficient and humane general should be subdued because too many people, particularly in the southern section of this country, still held a different picture of him.

Mr. Cox. Well, wouldn't you find that the producers of subscription programs would also seek the largest available mass audience in order to increase the revenues that they can obtain from this service and that, therefore, they will also seek to find entertainment attractions that will appeal to as many people as possible?

Mr. Landis. They will naturally have a series of programs which will be devoted to a mass appeal, but I think when you analyze the situation you can recognize that subscription television, to operate effectively, cannot rest alone upon that concept. It has to rest, and I think myself more largely, upon the concept of appealing to specialized audiences rather than to mass audiences. Not that it won't appeal to mass audiences. A thing like a prizefight obviously does, but there is a range of programing possibly with regard to specialized audiences that can be both profitable to subscription television and, I think, of tremendous public importance to the system as a whole.

Mr. Cox. That is based on the premise that when you reach a smaller audience you will charge a higher fee in order to produce the same revenue, if the costs are the same, or that programs for these specialized audiences may be less expensive so they can be provided at the same fee?

Mr. Landis. I think I answer that in these next few paragraphs if I may continue.

Mr. Cox. Fine.

Mr. Landis. This basic economic limitation on programing does two things. It places a top limit on the cost of programing, and it also requires that, given a cost from $30,000 to $50,000, the program must be of the type that has a mass appeal to millions of viewers. A third subsidiary effect of these economic requirements, effective particularly in fields where contemporaneous presentation of a scene is of vital importance, such as athletics where the uncertainty of the outcome is a primary factor in audience appeal, is the danger that the available box office to the producer will be radically reduced without any compensating advantage to him.

Subscription television rests upon a different set of economic requirements. If we assume that the cost to the viewer of a particular program is $1, 1 consumer under this type of programing is economically equivalent to 140 consumers under the existing advertiser-sponsored system. In other words, if an audience of 7 million people is required to support a particular program under the existing system, an audience of 50,000 would support the same program given subscription television.

Mr. Cox. That would be only, however, if you did not propose to take care of the operations of the subscription system. In other words, you are using here the costs of broadcasting an unscrambled picture for that comparison.

Mr. LANDIS. Yes; you may say I ought to add something between 10 and 15 percent to that for the administrative costs of operating the subscription television system.

Mr. COX. And there must, of course, be a profit, I assume, for the manufacture of the equipment, the local agency which is handling the administration of this matter, and for the programer as well.

Mr. LANDIS. Well, I think that is all present in the normal program anyway. There is an element of profit to the advertising agency, to the entertainers, all that is present in that estimate.

This is where the value of subscription television, in my opinion, lies. It permits a flexibility of approach simply impossible under the existing system. If more money is required for programing that has a mass appeal, more money for this purpose will be available. The first run of any outstanding feature motion picture on Broadway at one theater can easily gross a million dollars. Oklahoma, for example, has already topped a million dollars at its showing at the Rivoli Theater on Broadway, and is still going strong. No sponsor can afford a price of that type, and if a producer sells a picture for less than that price to television he cuts in directly not only on its Broadway but its neighborhood grosses. Outstanding prizefights and other athletic events suffer from the same consequences. The loss to the box office is not compensated for by the revenues derivable from television. This is the reason why these events are commonly blacked out in the area where they take place, such as prizefights, professional football games, baseball games such as those played by the Braves in Milwaukee.

But the economic implication of subscription television has, perhaps, fundamentally more important consequences from the public interest standpoint than the fact that it will be able to provide mass entertainment of the type described, not now available on television. With the ability of subscription television to subsist on limited audiences, it can devote itself to programs having only a specialized appeal. Opera and ballet, for example, have not demonstrated their ability to attract mass audiences of 5 to 7 million people. But I am confident that in the New York area alone, with its more than 3,500,000 television sets—which I understand is now about 4½ million—programs of this character could easily attract an audience of 100,000, sufficient to support their presentation. The same thing would be true of music and classic theater presentations, while the tentacles of one's imagination slip as they try to grasp the impact of subscription television in the field of education.

Mr. COX. It is not conceivable though, is it, that you can put on a program for an audience of a hundred thousand in New York City with as much return to all those concerned in subscription television as you can by putting on an entertainment which would appeal to millions of people all over the country? There could not possibly be as much differential in the charge between one program and another as to allow for all that.

Mr. LANDIS. I am not sure that I get your point now.

Mr. COX. I take it there would be a top limit beyond which you would not propose to charge anyone for subscription television. Do you have any such figure in mind?

Mr. LANDIS. I doubt whether you could collect four or five dollars.

Mr. COX. I understand that the telemeter coin box will only go to $2. Do you have some such limit in mind?

Mr. LANDIS. No, there is no limit of that nature of a mechanical type. What you can get for a television performance is rather hard to guess. I do know, and I did make a personal examination of this, that in the last Rocky Marciano fight they were charging at drive-in theaters as high as $15 a car and individual seats in individual theaters were running at $4 to $6.

Some people pay under certain circumstances. Now, of course, if you disseminate that entertainment more widely than we do with so-called theater television, the likelihood is that the price will drop because that sense of exclusivity—sort of special privilege—loses its value. I do not know what you can get for a television program.

Mr. COX. As you take this program out of New York, however, in order to broaden your audience, then you are going to run into the telephone companies' cable charges.

Mr. LANDIS. That is right.

Mr. COX. And the expenses of purchasing time on stations in additional markets, so that you will increase all of your costs except the original programing costs which is a fixed item.

Mr. LANDIS. That is a fixed item but at the same time the amount of revenue that you are likely to get from taking it out would probably beat the line charges considerably, and since you have no more additional program cost it might be available for that purpose and you might even, we will say, sell the program, if you could sell it in Pittsburgh and Cincinnati, at a lower price than you sell it in New York.

Mr. COX. Do you have any idea what would be a cost to a subscription consumer of a typical program of, say, the Metropolitan Opera?

Mr. LANDIS. Yes; I do have an idea. We spent considerable time with the Metropolitan people inquiring as to what it would be, and I think for around from twenty-five to thirty thousand dollars, provided that it was not an intermittent affair so that you had a regular schedule for it, you could carry opera in reasonable fashion.

Mr. COX. And you think that that figure, plus the costs of transmission, could be supported by this audience of a hundred thousand?

Mr. LANDIS. I think it could be supported in the New York City area alone. You cannot get a seat today at the Metropolitan Opera for the balance of the season—well, you probably cannot get one next fall. The demand is there.

Mr. COX. Well, I return now to my original question. Suppose you charge this audience of a hundred thousand viewers $3 so that you have a gross income of $300,000 of which you are going to have to spend twenty-five or thirty thousand dollars for the program, plus the administrative charges, the time charges, the station and other technical expenses.

Mr. LANDIS. Which would probably run very high there because you would have an hour there, that may be sixty or seventy thousand dollars.

Mr. COX. So you get your basic costs up to at least a third of your expected gross in New York City. Now aren't there other programs of a broader appeal which you could offer to the owners of these four and a half million sets which would produce higher net revenues to the subscription programer than he can ever hope to get from catering to the tastes of a hundred thousand opera lovers?

Mr. LANDIS. Yes; I imagine there would be, but they would be limited. They would be rather limited—I am not sure that we can produce entertainment that will be—that 15 million or 25 million people will pay for at 50 cents or a dollar a throw. That type of entertainment is pretty rare.

Mr. COX. To the extent it exists it would be natural to suppose that the subscription programer will provide that type of programing, simply from an economic compulsion, unless it is proposed there be some type of limitation imposed by the Federal Communications Commission on the type of program that can be offered.

Mr. LANDIS. I would think the same principles—even more radical principles—would apply to the licensing of subscription television as to ordinary television, namely, that you cannot present a program without having some reference to programing for the public interest as well as for private profit.

Mr. COX. As I understand your suggestion, one of your arguments for subscrpition television is not that it will provide the same thing, but a higher type of programing, and in order to do that it will have to furnish programing that will appeal to more restricted audiences. The point I am trying to get at is whether this can ever be achieved unless the Commission adopts limitations on the kind of programing that subscription television can furnish by specifying that it will be of certain types and in certain proportions.

Mr. LANDIS. My point there is this: Say you have 40 hours of programing to fill a week. I do not believe you could fill 40 hours of programing of that nature with the kind of programing that would appeal to millions of people and for which millions of people would pay a certain sum of money.

You might be able to fill 6 hours of the 40 hours. You would then have a balance of thirty-odd hours. Now that thirty-odd hours can be used, in my judgment, economically by this type of specialized programing that I have been talking about. It can be used profitably that way and that type of programing cannot be put on today profitably.

Mr. COX. Now you mentioned the figure of 40 hours. That is roughly one-third of the program time of a typical television station per week. Is it your suggestion that the number of hours of subscription programing offered by a television licensee shall be unlimited by the Commission, or that the Commission might impose restrictions upon the maximum amounts of such programing that can be made available?

Mr. LANDIS. In our proposal to the FCC we have suggested a time limitation of this character and we also suggested, not a time limitation, but a limitation as to what time of day would be available.

Mr. COX. Well, was it this 40 hours?

Mr. LANDIS. It was 40 hours.

Mr. COX. And what were your limitations as to periods of the day?

Mr. LANDIS. I think about a third of it was to be not during what might be called the evening quadrant.

Mr. COX. That is that would leave two-thirds or somewhere in the neighborhood of 25 hours, which would be 3 hours a night, 7 days a week.

Mr. LANDIS. Yes.

Mr. Cox. Which would substantially absorb all of the prime time of the station offering this program.

Mr. Landis. Yes, of that particular station.

I would like to cite one actual instance to illustrate my point. Advances in medical science in recent years have been rapid and significant. There is, however, a definite social problem in educating the mass of doctors to the developments that have taken place with regard to new drugs, new methods of treatment, and new operating techniques.

A year or so ago Skiatron, with the help of the New York Academy of Medicine, put on an hour's show over WOR, all of which was done by eminent medical practitioners and half of which was devoted to an operation. The program was scrambled and decoders were placed at various points in the New York area where doctors were invited to assemble. The program was such a success that the New York Academy of Medicine and other professional associations supported the pending petition before the Federal Communications Commission in support of subscription television.

The question that arises is why a program of this nature cannot be carried by the existing system. The answer to this is twofold. In the first place, there are only about 20,000 doctors in the New York area. This is too small an audience to attract an advertising sponsor; even too thin to justify a sustaining program. It is sufficient, however, to support a subscription program, and few doctors would hesitate to subscribe to a continuing program of this character that they can view at their homes and at a convenient hour. Secondly, some of the programing, such as an abdominal operation, is not of the type that should be generally broadcast. But broadcast in a scrambled fashion, and limiting the decoding cards to professional men, just as subscriptions to medical journals are limited, offends no one and permits the type of dissemination of modern medical knowledge that a community so desperately needs.

Mr. Cox. Now this, then, is the situation you referred to earlier where you would issue during the current month a special card available only to medical practitioners which would make available this particular series of programs.

Mr. Landis. That is exactly what I had in mind.

Mr. Cox. It is also true though, isn't it, that at the time that you are taking care of the requirement of these 20,000 doctors, the particular television licensee broadcasting this program will provide nothing for the rest of the public.

Mr. Landis. He cannot do it at the present time, I suppose, until some device of multiplex comes into existence and that seems quite a ways away as yet. Obviously, you cannot carry two programs at the same time on the same screen.

Mr. Cox. So that at the same time that you have economic pressures to put on programs with broader appeal to the extent that they are available, you would also have some pressure from viewers, at least during prime evening hours, to provide a kind of programing that they would be interested in?

Mr. Landis. Yes; you would have that pressure, undoubtedly. In the medical field, curiously enough, a time that seems to be rather preferable to the doctors is around 11 o'clock in the morning. They seem to be assembled in the hospitals or at their officers or something of that type and the evening is not regarded by the men who did that programing for us as a particularly desirable time.

Mr. Cox. You cannot get too many of them together in one place, though, or it is going to reduce the revenues?

Mr. Landis. They would be in their homes. We only had available a certain number of limited decoders which we spread around in a limited area.

How many audiences of that type can be economically served by subscription television is any man's guess, but it is not beyond the bounds of realistic imagination to envisage audiences large enough to support a course even in differential calculus. The evidence of a widespread demand for adult education is overwhelming, and the contributions that subscription television can make to the fulfillment, fires, as I have said before, the imagination.

The objections that the networks make to the authorization of this system do not, except for propaganda purposes, rest on the intrusion of subscription television on "free air" broadcasting, for, as I said before, subscription television is perfectly willing to limit itself, at least for a reasonable period, to channels not now capable of effective utilization.

Mr. Cox. What would such a reasonable period be?

Mr. Landis. We suggested that the limitation be absolute for a period of from 3 to 5 years. After that it might be desirable to reconsider the entire situation and see whether or not that limitation should be changed, altered, or abandoned.

The real objection that the networks have rests upon the fact that a day possesses only 24 hours. What is limited is audience time and not air frequencies. The networks, for all practical purposes, are today absorbing this audience time, and the vast television audiences of the Nation are in a very true sense their captives. They fear and resent any effective competition for this audience time, and they fear any fractionalization of that audience time by the capacity of a competitive television station to appeal to specialized groups, who instead of viewing westerns, crime stories, and I Love Lucy, might be potential buyers of toothpaste or cosmetics or beer. Their basic plea is to maintain their existing dominance in the field of telecasting—a dominance that approached oligopoly if not monopoly.

Mr. Cox. Well, at the present time they are competing, in at least 2 markets, with 4 independent television stations for the attention of the audience and I assume it is only because you feel you can offer attractions of a kind that are not now available to those four stations that you feel that they would suffer any injury from your entrance into the market?

Mr. Landis. That is exactly it.

Mr. Cox. Well, now I assume that one consequence of any dilution of their audience would be that the figure—the cost per home tuned in—which you have quoted, of some seven-tenths of a cent would be increased.

Mr. Landis. It might very well.

Mr. Cox. To the extent that you were able to divert their audience. Now is there a danger, in so doing, that you will render the advertising service which they perform uneconomic so that the funds now channeled into television advertising would be diverted to other mediums?

Mr. LANDIS. You see the danger that they face is this: Say today they can appeal by a particular program to 15 million people. If we intrude and take say 2 million of those people away, their potential audience is limited to 13 million people. Therefore, I as an advertiser would pay less for a program that only reaches 13 million people than 15 million people. That in turn has its effect upon the amount of money that they can put into the program. It does. It will have that type of effect.

Mr. COX. In other words, as the audience available to this sponsored program is reduced, either costs must be reduced, which means the program becomes even less able to hold its audience, or the charge made to the advertiser must be increased and may eventually reach a point where he will not pay it?

Mr. LANDIS. That, of course, must be qualified by one other thought. I do not want to dodge this fact because we should face it, but I think it has to be qualified by another thought, namely, that the type of programing that we envisage may very well appeal to groups of people who are not tuning in on the existing system, the existing programs. I think there is a vast group of people of that type.

No one can size it up or tell you how many millions there are, or hundreds of thousands, or anything of that type. Only experience will show. I recognize, and I do not think one can dodge the fact, that if we successfully compete for an audience that remains static, naturally we reduce the value of the programing to the advertiser and he will pay less. That after all is a doctrine of competition. I think it is in the public interest that the public be able to choose between the various different fares that are offered to it.

Mr. COX. Would the public interest be served, though, if in the process of choosing, to the extent of buying a certain limited program of particular attraction at the outset, you set in operation a chain of consequences which will gradually weaken sponsored support of television to the extent that either the programs made available without charge are reduced or that sponsors in large numbers start abandoning the medium, either going to others or perhaps petitioning the FCC to eliminate the restriction that you suggest on commercials so that they can ask to be permitted to commercialize on your programs, since that is where the audience is?

Mr. LANDIS. That might happen. I think that is somewhat pushing the potential consequences of the introduction of subscription television too far.

The degree to which it will effectively reduce what you might call the circulation of the networks at the present time—I doubt whether it will be too heavy. It may be one night, or at any particular time, but when you consider that the prime fare of subscription television, day in, day out, will be the specialized audience type of thing, the impact of that upon the networks' audiences cannot be too severe.

Mr. COX. But as a matter of fact, no one really knows.

Mr. LANDIS. No; no one can tell you one way or the other.

No proponent of subscription television, to my knowledge, seeks any exclusivity for his particular system. We in Skiatron would willingly see as many manufacturers as possible turn out decoders.

Like Gillette, our prime sources of revenue will be the programs or blades and not the razors. We have told the Federal Communications Commission that such patents as we possess in the manufacture of decoders will be freely licensed to all comers on a reasonable royalty basis. We welcome the thought of competition, not merely with the existing television broadcasters but among ourselves. We know that our survival will depend not upon how much toothpaste or cereal our programs will sell, but upon our ability to create and transmit programs for which viewers will pay a price despite the fact that they will continue to receive other programs without charge. On this gamble, we are asking for the right to risk our money—not that of the public.

Mr. Cox. Now does that mean then that you would contemplate that Zenith, Telemeter, and Skiatron might all be authorized by the Commission to put their systems into operation?

Mr. Landis. Yes; just as we have different manufacturers now manufacturing different radio sets.

Mr. Cox. Now can one set be subject to three of these decoders?

Mr. Landis. That is clearly possible and also it may be that the Federal Communications Commission would establish certain standards which everyone would have to meet, the way it has done in the television field.

Mr. Cox. And sometimes those standards result in only one patent holder being able to meet them; don't they?

Mr. Landis. Well, they shouldn't. With adequate cross-licensing you should be able to protect against that situation.

Mr. Cox. Isn't there danger that the public will be adversely affected if three separate systems are offered for sale in the market in a given community? Wouldn't at least some local specialization be desirable in order at least to eliminate confusion and the duplication of cost?

Mr. Landis. I doubt that. Take New York City: You have three baseball clubs in there offering their services to that public. You have your Brooklyn fans. You have your Bronx fans, and you have the Polo Ground fans. I cannot see anything radically wrong with three different systems competing within a single area for entertainment. They may or may not survive, one of them.

Mr. Cox. Well, in the first place, though, at least to the extent that the cost of a decoder is passed on to the set owner, if he has to buy three decoders in order to get all of the subscription programs available, you have multiplied his expense.

Mr. Landis. Yes; you have, if that is the eventual answer, but he does not have to buy all three. He may, if he chooses, buy all three, and then there is the other possibility that, just as today you have one instrument capable of receiving both VHF and UHF, you may develop exactly this kind of thing in that field, too.

Mr. Cox. You contemplate the manufacture of a system which can differentiate between all of these different broadcasts to the extent that it can actually apportion out the funds.

Mr. Landis. No; what I contemplate is this: There may be standardization in the field of reception. That does not mean that you might not have a few, or enough frequencies in the particular area, to have competitive subscription television in that area.

In other words, I can tune in on, we will say, station X which is broadcasting Skiatron's system. Then my revenue would go into

Skiatron. I can tune into station Y which is broadcasting Zenith's program. Then my revenue would turn into Zenith.

Mr. Cox. But, to divide that revenue, there has to be something in the set to determine which the man is watching.

Mr. Landis. We have that.

Mr. Cox. But you have it in your set—in the decoder you manufacture, and Zenith has it in the decoder they manufacture.

Mr. Landis. I do not think there would be too much ingenuity required to standardize the thing so as to enable it to be a useful device for the transmission of any subscription television program.

Mr. Cox. Now as I understand it, it is proposed that each one of these companies is going to go into each community. Each company has to set up its own local franchise holder, who will either sell or install the decoders. Each has to make contractual arrangements with television licensees for broadcast time, and each has to have connections with some kind of a local or national program source which will feed the programs into the system. And if you have three of these instead of one, then you will have trebled, approximately, the costs of providing subscription fare to the public.

Mr. Landis. I do not see why you say that, that it would increase the cost. Of course, one community, a particular community may not be able to stand more than one movie theater. New York, for example, can stand a great many different theaters. They all have their different means of buying tickets. I do not think that that is a discouraging matter.

Programing of the subscription television type, which has to depend upon public acceptance, seems to me to have a very distinct public virtue. Its content and its appeal will not be controlled by considerations of advertising value that may have little relationship to art or culture or education. And it is not unfair to suggest that under these circumstances a new approach to programing may come into being. If newspapers today were limited to the throwaway type, or the theater or the movies had no box office but only were gatherings for the intermittent hawking of products—a sort of glorified series of medicine shows—we would have an atmosphere in these fields somewhat akin to that which prevails in television today. The consequences of creating a new atmosphere, a new plane of reference, may very well be permeating but are certainly not to be feared.

I shall not go into the proposed methods of operation of subscription television, or the reaction of the public to our proposals as gaged by numerous surveys and experiments, as other proponents of subscription television will touch on these. But I do, in closing, wish to say a word on the position of our proposals before the Federal Communications Commission. Inasmuch as that Commission only a year or so ago, in a letter to Chairman Crosser of the Committee of the House of Representatives on Interstate and Foreign Commerce, stated that they had the power under the Federal Communications Act to authorize the encoding of television signals as a phase of broadcasting, and inasmuch as this same opinion was voiced before this committee by the present Chairman of that Commission and Commissioner Lee, I think it is unnecessary to dwell on the legal issue of whether subscription television can be authorized as a broadcasting service under the present law. I have, however, prepared a short brief on this point which I would like to leave with the committee.

Senator BIBLE. It may be included in the record at this point, Mr. Landis.

Mr. LANDIS. Thank you.

(The information is as follows:)

THE JURISDICTION OF THE FEDERAL COMMUNICATIONS COMMISSION OVER SUBSCRIPTION TELEVISION

THE COMMISSION CAN ACT NOW

1. On September 13, 1954, Skiatron, in its petition to the Federal Communications Commission, stated:

"The Commission has authority under title III of the Communications Act of 1934, as amended, to adopt such regulations as might be required with respect to matters such as the number and type of hours during which subscription programs could be broadcast by any station, the number of stations in any community which could engage in subscritpion operations at any one time. It has authority also to approve transmission standards for such operations.

"The Commission can therefore mold the use of subscription television to meet the urgencies of the UHF station. Only a determination to act and to act promptly is required. Technically the problem has been solved. All that is needed now is the authority to employ subscription television in the area of its greatest need."

Even today, there can be no reasonable dispute concerning the Commission's power to authorize subscription television. (Chairman McConnaughey's statement before this committee, February 21, 1956, transcript 611, printed record, p. 204.) That power is invested in the Federal Communications Commission by the Communications Act of 1934, as amended; accordingly, there is no necessity for further congressional legislation to establish this authority.

Congress, by creating the Federal Communications Commission, established a body of skilled experts in the field of radio communication with broad jurisdiction over all channels of interstate and foreign radio transmission. (Sec. 1 of the Communications Act of 1934 creates the FCC and authorizes it to "execute and enforce the provisions of the act." Sec. 301 prohibits the use of any apparatus for the transmission of communications by radio in interstate commerce, except in accordance with the provisions of the act and pursuant to a license granted under the act.) Within this broad jurisdiction, the Commission has not only the authority to act, but also the obligation to act on subscription television.

2. Further, the Federal Communications Commission has received certain directions from the Communications Act of 1934, as amended, which clearly substantiate the Commission's jurisdiction over subscription television.

Section 303, in setting forth the Commission's general powers, directs the Commission "* * * from time to time, as public convenience, interest, or necessity requires," to prescribe the nature of service to be rendered by each class of stations (303 (b)); regulate the kind of transmitting apparatus to be used (303 (e)); encourage the larger and more effective use of radio in the public interest (303 (g)); and make such rules and regulations not inconsistent with law as may be necessary to carry out the provisions of the act (303 (r)).

Section 4 (i), in broad terms, authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this act, as may be necessary in the execution of its functions." Skiatron's proposal accomplishes these purposes not only by improving the quality and range of television programing, but also by creating a means for UHF and nonaffiliated VHF stations to secure that economic support so essential to their survival as part of our economic system. In fact, the Commission would be remiss in its duties if it ignored the potential of subscription television in creating a truly nationwide competitive television service.

SUBSCRIPTION TELEVISION IS BROADCASTING

3. Under these broad statutory powers, the Commission has the authority to approve and regulate subscription television whether subscription television be classified as a broadcast or nonbroadcast service. (The Commission recently authorized nonbroadcast services in the broadcast band as an economic measure to help FM licensees. (Functional Music, see FCC public notice 17751, March 22, 1955, and report and order in docket No. 10832, released March 22, 1955.)) However, subscription television, as proposed by Skiatron, clearly constitutes a broadcast service within the meaning of section 3 (o) of the Communications Act, as

amended. This section defined "broadcasting" as "the dissemination of radio communications intended to be received by the public directly or by the intermediary of relay stations." Neither this definition nor any other provision in the Communications Act of 1934 makes the absence of a charge to the listeners a prerequisite of broadcasting. The Commission has already recognized this by authorizing a radio subscription service as a broadcast operation.

Muzak Corporation (8 F. C. C. 581). Therein, the Commission stated:

"The service which this applicant proposes will be available to the general public; any member of the public, without discrimination may lease the equipment to receive the service. The distinguishing feature will be that those receiving the programs will pay directly rather than indirectly therefor. Operation of a station in this manner is within the definition of broadcasting" (8 F. C. C. at p. 582).

Like reasoning requires a determination that subscription television constitutes broadcasting.

4. Skiatron's programs are intended to be received by the general public; in fact, the very success of subscription television is dependent upon its ability to serve the general public. Further, Skiatron proposes to transmit a high quality program service for the public as distinguished from individualized messages. Under such circumstances, Skiatron's proposal satisfies all the requirements of broadcasting under section 3 (o) of the Communications Act of 1934, as amended. As the Commission stated in its comments on H. R. 6431, 83d Congress (a bill introduced by Representative Hinshaw to redefine "broadcasting" so as to make the absence of a charge to the general public a prerequisite to broadcasting; the bill died in committee).

"It would appear that the primary touchstone of a broadcast service is the intent of the broadcaster to provide radio or television program service without discrimination to as many members of the general public as can be interested in the particular program as distinguished from a point-to-point message service to specified individuals. If this is true, subscription services should properly be characterized as a type of broadcast service. For while particular subscription programs might have a special appeal to some segment of the potential audience, this is equally true of a substantial portion of the programing now transmitted by broadcasting stations."

5. A review of the early history of the radio industry, as well as the legislative history to the Radio Act of 1927, supports the premise that broadcasting is not to be restricted to programing received by the public without charge.

In 1927 radio was still young, and the means of remuneration for broadcasting had not, as yet, become established. Accordingly, Congress left it up to the broadcasters themselves to determine the source of their revenues and clearly contemplated that broadcasters might select as one of their choices a direct charge to listeners, and under the Radio Act of 1927, the questions of charging listeners was left solely to the individual licensees. The development of advertiser-sponsored television was the result of business practice and at no time stemmed from any legislative requirement. No change in this policy is evident in either the 1934 Communications Act or in the 1952 amendment to the Communications Act.

6. This congressional intent to free broadcasters from strict Government regulation over their business decisions has been recognized by the Supreme Court in the Sanders case (*Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470). There the Court stated:

"But the act does not assay to regulate the business of the licensee. The Commission is given no supervisory control of the programs, of business management, or of policy. In short, the broadcasting field is open to anyone, provided there be an available frequency over which he can broadcast without interference to others, if he shows his competency, the adequacy of his equipment, and financial ability to make good use of the assigned channel."

7. The business of broadcasting was left in the hands of the individual licensees. FCC Commissioner Robert E. Lee recognized this when he recently publicly recommended that subscription television be subjected to the trial of the free market price See also Commissioner Lee's testimony before this committee, January 26, 1955, transcript, page 66. There is no reason in law or fact to reject the viewpoint that the public be given the opportunity to test the merits of subscription television.

Report of proceedings held before the Committee on Interstate and Foreign Commerce Television Inquiry:

January 26, 1956, transcripht, volume 1, page 66 (printed record, p. 27):

"Commissioner LEE. I believe that you should give some consideration, for example, to subscription television as a related problem. That might sound strange, but after looking over the docket and discussing this thing with about everyone I could find, I feel there is some merit to considering subscription television on the UHF only under certain limitations, since their problem [the UHF] is a matter of revenue.

"If this thing is good, I feel that maybe it should be given a trial on UHF only, and under controls such as a percentage of the broadcast time. If you can broadcast on subscription television 10 percent of the time you are on the air, if you want more time for subscription, you have to give more free, and that sort of thing. Perhaps even consideration on some kind of limitation on the rates, and certainly not permit it where there is only one service; and that sort of thing. But I would hope that you would give it some consideration."

Transcript, volume 1, page 68 (printed record, p. 28):

"Commissioner LEE (continuing). My suggestion is to consider the limitations [to UHF] only as a beginning, perhaps eliminating the restrictions later. If this thing is in the public interest, you would presumably extend it, so that everyone could see it. It just occurred to me, reading these petitions, that since it is a matter of revenue, and the proponents say this is like Coca-Cola, there are so many millions of people even at a dime, if you can give them revenue they can stay on the air and provide a free service as well as the subscription service.

"Senator PASTORE. Until you decide the overall policy?

"Mr. LEE. That's right, sir.

"Senator PASTORE. I see."

February 21, 1956, transcript, volume 4, pages 515–516 (printed record, p. 166):

"Chairman George McConnaughey submitted written answers to questions raised by Senator Andrew F. Schoeppel on January 26, 1956.

"'Question. What is the status of subscription television, and what are your views?

"'Answer. The Commission instituted the subscription television proceeding on February 11 of last year to explore the question of whether it would be in the public interest to permit television stations to engage in subscription television operations on a regular commercial basis. Interested parties were invited to submit their comments in order to assist us in resolving the numerous legal, technical, and policy questions involved. When the time for filing comments expired, on September 9, 1955, the Commission found that the comments received totaled approximately 25,000 formal pleadings and less formal submissions which filled nearly 80 reference volumes. This is more than has been filed in any other docketed case in the Commission's history. Because of the nature of this proposal and the many questions and problems to be resolved, including the question of whether legislation by the Congress is called for, I am unable to promise the early conclusion of this proceeding. Moreover, our consideration of this matter must always yield to the need for the earliest possible resolution of the question before us in our current review of the established system of television allocations.'"

February 21, 1956, transcript volume 4, page 611 (printed record, p. 204):

"Mr. Cox. Without regard to the merits of the proposals, in the light of Mr. Lee's statement during the first day's hearing that subscription television might be a possible answer to the UHF problem, I would like to ask whether the Commission is still of the opinion expressed to the House Committee on Interstate Commerce in May 1954—that if it were to decide that a subscription service was in the public interest, does it feel it has legal authority to approve and to adopt a rule so providing?

"Mr. MCCONNAUGHEY. I think so.

"Mr. Cox. You are still of that view?

"Mr. MCCONNAUGHEY. I think so."

February 21, 1956, transcript volume 4, pages 622–623 (printed record, p. 207):

"Senator PASTORE. Isn't one of the important issues in this rulemaking process that you are undergoing now, with reference to subscription television the question as to whether or not you have the authority under the law?

"Mr. MCCONNAUGHEY. That question certainly does come into it, Senator. I say it does come into it. I think the general feeling is that possibly we do have the authority. But it is not too clear cut."

Mr. McConnaughey then refused to allow his staff legal adviser to answer a question as to whether or not the Commission had the authority to regulate subscription television.

Mr. LANDIS. There is an administrative phase of this problem that, however, should not be overlooked. Our own petition for an amendment of the existing rules was filed in September of 1954. Other petitions were filed shortly prior and subsequent to ours. A rulemaking proceeding on this subject was instituted by the Commission in February of 1955. Briefs and counterbriefs were filed with a closing date of September 9, 1955. Since then there have been 7 long months of silence.

As a former bureaucrat, I realize the loads of work that an administrative agency may be called upon to assume. I realize also that this proceeding has brought many comments from the public, due largely to the efforts of proponents and opponents to engender support from the public for a particular viewpoint. The value of the vast majority of these, if they have any value, can be extracted by the simple process of enumeration.

The delay to date is not too significant, but a continuation of this delay will have serious consequences. Not only is the institution and conduct of a proceeding of this character an expensive proposition, but maintaining in existence while the proceeding is pending a group of engineers, scientists, and executives, is practically essential if one wants to be in the position to go ahead full blast, if, as, and when the green signal is given. We are a small company, financed primarily with public money that has been openly invested on a known speculation. That, in my opinion, is right and in the tradition of our system of private enterprise. But, as delay continues, we find ourselves in a position where this financial drain continues and, if continued too long, the investors can easily end up without even having had a run for their money. The opponents unfortunately are not in that situation. Their aim is to maintain the status quo, and the status quo provides them with continuing revenues. No decision, in short, is as good as a decision in their favor.

What this committee can do about this situation, I do not know. But besides us—the proponents of subscription television—there is the UHF broadcasting industry. Like us the absence of any relief and the continuing pendency of their problem has already driven many of them to the wall. Perhaps there is no ultimate sound relief for the UHF situation. Our own proposals, however, we believe will afford a substantial measure of relief. Certainly, action and not inaction is called for and we hope devoutly that this committee will agree with us in that viewpoint and exert at least its moral influence in behalf of the formulation of a program now.

In closing, I want to express my thanks to this committee and its staff for this opportunity to lay before them the cause of subscription television, a cause which I believe is intertwined with those problems whose solution is the committee's major concern.

Senator BIBLE. We are very happy to have your statement, Mr. Landis.

Senator Purtell, do you have any questions?

Senator PURTELL. No questions.

Senator BIBLE. Senator Potter?

Senator POTTER. Mr. Landis, I regret I wasn't here earlier to hear the majority of your statement. I assume—Are you recommending a subscription plan similar to the Zenith plan?

Mr. LANDIS. Basically similar to the Zenith plan. As I indicated, there are certain mechanical differences between Zenith, ourselves, and Telemeter. The basic principles of operation are, however, the same, and as I said before, certainly we are not seeking a monopoly or an exclusive position here. We are in a sense joining with them in the hope that the Commission will amend its regulations so as to permit the encoding of the television signal.

Senator POTTER. How much would this cost the consumer or the receiver?

Mr. LANDIS. We figured, on the basis of estimates that we have gotten from manufacturers, and we have been rather careful on these estimates, these aren't just casual things, that it would cost the viewer $40 for a combination decoder and UHF converter. That does not count, however, the cost of any new antenna, if he needs those.

Senator POTTER. That is the cost for conversion of the individual set?

Mr. LANDIS. Conversion plus a decoding unit.

Senator POTTER. Then how much would it cost—say Mrs. Jones wants to see an opera in the evening? Is it a card system that you use?

Mr. LANDIS. Yes.

Senator POTTER. How much would that cost her to see the opera?

Mr. LANDIS. That is something you have to work out. We have figured on charges running anywhere from 25 cents to $1.50 or $2 for various type programs.

As to operas, it would depend upon the estimated audience that you have; your estimate of revenue has naturally got to be large enough to deal with the cost of the programing. Opera is a fairly expensive type of programing.

Senator POTTER. Of course the question that always comes up in considering this type of television is whether the public interest is being served if they pay for the service, and also the amount they would have to pay. Now, there would be a lot of difference between a program that might cost 25 cents for an hour and a program that would cost $2 for an hour, and I would think that that question is one that would have to be resolved.

Mr. LANDIS. I don't see how you can resolve it in advance. How much do we pay for a good show? How much do you pay extra for a musical as against an average drama? There are variations in price because musicals are more expensive to put on. How much do you pay for a road show like the Robe as against the ordinary A picture? Those are matters that are determined in our economy by the counterbalancing forces of demand——

Senator POTTER. I would like to observe that you would be taking a frequency that is now being used for actually free television.

Mr. LANDIS. No; that is our point; we wouldn't. We are asking to work on frequencies that are not being used at the present time, so that your Mrs. Smith, who might be interested in seeing the opera, if she didn't want to see it, all the other free programs would still be available.

Senator POTTER. You would have to have an allocation of a frequency, if it is not one being used, it is one that could be used.

Mr. LANDIS. It is certainly one that could be used, and under our present economic situation they are not being used, and there are hundreds of those available throughout the country.

Senator POTTER. Of course, sometimes I think that the advertising is much more entertaining than the program which we are watching.

Mr. LANDIS. That I don't dispute. I get a kick out of some of the advertising on cosmetics occasionally.

Senator POTTER. I do agree, however, I think that there is a tendency on the part of either the network or the individual station to try to squeeze in too much advertising, and I think they are killing the goose that laid the golden egg by continuing that practice. I don't think it is good advertising.

Mr. LANDIS. Well, some of it, I quite agree with you, is not good advertising. On the other hand, there is certain of it that is quite effective.

Senator POTTER. When you break into a show every 5 minutes for a minute spot it is disturbing, to say the least.

Mr. LANDIS. Yes.

Senator BIBLE. Mr. Landis, as I understand you from your first statement, the consumer's investment in this subscription television experiment would be approximately $45 plus a high antenna if you are using UHF; is that correct?

Mr. LANDIS. Yes; if he needs the high antenna. That depends upon the particular circumstances. He may or may not need the antenna. It would be about $45.

Senator BIBLE. The one thing I am not clear on is whether or not you have any general indication of what the public would be paying for these programs on a month's basis. You say you would limit your broadcasting to a 40-hour week. That is all you are asking.

Mr. LANDIS. I doubt whether we could fill 40 hours a week for a considerable period of time, and you as a consumer might not be interested in this particular type of program. You might only buy 1 or 2 hours, or 3 hours of time, per week.

Senator BIBLE. The thing that baffles me in your statement is this: You say that before I can enter this subscription television field I must invest $45 in the decoder and converter. Now, before I invest that $45, it seems to me that I should have some indication of what I am going to pay for the programs which I am going to be receiving.

Mr. LANDIS. Oh, unquestionably, Senator, you will, because you won't shove out $45 without knowing what your chances are, what you are going to get, and at what price.

Senator BIBLE. But you have no indication as to what those prices would be as of now?

Mr. LANDIS. We have estimated. None of our prices have ever gone over $2. But we have estimated potential audiences in the New York City area for these various types of entertainment and estimated costs with regard to it, and then come out with what we thought was a reasonable price.

Senator BIBLE. Does your study go beyond the field of opera, where you say it is a specialized field?

Mr. LANDIS. Oh, yes; we have gone into athletic events of all types.

Senator BIBLE. Attempting to tie up a world-series game exclusively, for instance?

Mr. LANDIS. No; actually what we are interested in is primarily in dealing with those events that you don't now see in New York City, like the pro football games. I believe you can get quite an audience for that purpose, and at the same time not damage severely the box office at the arenas. We have gone through a series of programs of this type, estimating costs, potential audiences, and the like, and, therefore what prices the public would have to pay in order to see them.

Of course, all of that depends upon the area that you serve. If you serve, say, Cincinnati as against New York, you have a different problem on your hands. You have that in the entertainment field today. You cannot get the prices in Cleveland, or even in Chicago, that you can in New York for theaters and movies.

Senator BIBLE. I recognize what you are saying, but when you are talking about any type of a sizable audience you still have a sizable investment by each television viewer, to the extent of $45 a person or a set.

Mr. LANDIS. That is right. Yet, I don't think it is sizable from the standpoint of an owner of a television set. He not uncommonly will spend $20 or $25 for some gadget that he thinks will improve his sense of vision.

Senator BIBLE. Of course, what you are saying is you are perfectly willing to take the risk, from the standpoint of Skiatron, to go ahead and see whether or not this does prove out profitably.

The thing that bothers me is, after you sell it to the television viewer on a subscription basis, and then he puts out $45, how far ahead does he have an indication of these programs he is going to pay for, for which he has already paid $45?

Mr. LANDIS. We have considered, and we may eventually turn to the idea of leasing these decoders rather than suggesting their purchase. Admittedly, the problem of leasing carries with it a considerably greater burden than of outright purchase, and it involves a larger capital investment on the part of the subscription television operator if he has to carry the large inventory of television decoders that otherwise he might dispose of to the public.

So I say our present plans are that we think that purchasing is perhaps the best move in this direction, but it may be that when we actually have a chance to operate we will be able to gather together sufficient capital and run a leasing scheme instead. I cannot guarantee any of these things, because you can't tell.

Senator BIBLE. I realize you are in a new field.

Mr. LANDIS. You cannot tell what the economics of a situation will demand of you.

Senator BIBLE. As I understand your statement, you have completely submitted your case before the FCC some 7 months ago.

Mr. LANDIS. That is right.

Senator BIBLE. It has been under submission for some 7 months. Do you have any indication of when you might possibly have a decision from them?

Mr. LANDIS. None whatever. When I say we have completely submitted it, we have submitted everything that the FCC has asked for.

Senator BIBLE. You have rested your case; is that a fair statement?

Mr. LANDIS. I wouldn't be at all disturbed if the FCC would say: "Well, yes, you have submitted all this material, but here is one area we want to know something more about; we would like to reopen the hearing on this point." I think that is a perfectly intelligible admission, and nobody would have any objection to that, but what we fear is a delay of, say, 4, 5, 6 years, as happened in color television. By that time our tongues will be hanging so far out we will be completely parched.

Senator BIBLE. The stockholders will be a little unhappy.

Mr. LANDIS. Yes; I think they would be.

Senator BIBLE. Fine, Mr. Landis. Thank you.

Senator POTTER. Do you envision a nationwide coverage?

Mr. LANDIS. Yes, eventually. Of course you would have to start off in one area and, hopefully, in an area that would be sizable enough. We couldn't start off and have much of a chance, we will say, starting off in Grand Rapids, but give us Cleveland or the Philadelphia area or the New York area—those areas would be a fair test of how this operation could go.

Senator Potter. Of course, you always have a problem that enters into a question of this kind. If a person buys a ticket to the opera or the theater, that is private property. It is a private undertaking, a private capital investment; but you are using public property when you are using the airways. To charge the public for the use of that property presents another question.

I have never been able to answer to my own personal satisfaction as to whether the public interest would be served by charging the public for the use of public property. Now, it is true, you would be furnishing the programs. The programs are also utilized by people furnishing advertising. But I do believe there is a difference between selling that property to somebody to put on a program and to use part of it to advertise his product, and to take it for a program and to charge the consumer just for the program. I don't know whether there is a difference or not, but it does raise a question.

Mr. Landis. I have never worried about that too much. After all, we use the power of eminent domain to get property for the railroads, and the railroads sell tickets, and they charge for their services, and it is all in the public interest. The basic thing is whether this is in the public interest, and if the public doesn't like it we won't survive; that is obvious.

Mr. Cox. In connection with your suggestion that perhaps subscription can help save UHF, approximately how long do you think it would take for you to get into effective operation, assuming the FCC granted authorization?

Mr. Landis. We have estimated that we could be into effective operation—that is, operation to the degree of, say, a hundred thousand decoders to start with—within 9 months after getting the signal light.

Mr. Cox. All right; now, what markets would you propose to go into first? Are you going into those areas that have UHF stations on the air losing money?

Mr. Landis. Preferably there, because you may have an audience that is half sold already. Those would be attractive areas, provided that you had enough consumers there to pay the cost of programing. You have to have that base in order to get good programing, or you have to have enough consumers so that you have enough of a specialized audience in order to meet the cost of programing.

Now, areas where that would be possible, and where you have UHF already operating—there are some areas in the Middle West that I think of around through Kansas City and St. Louis where you already have UHF operations, where you might move in initially with a type of subscription television that might be effective.

Mr. Cox. How long do you think it would take before you would have enough decoders out and in use that you could actually start to carry the kind of programing that you are talking about?

Mr. Landis. You mean carry it economically?

Mr. Cox. Yes.

Mr. Landis. Of course, we would have to operate in the red for a considerable period of time. There is no doubt about that, just as television itself had to do that when it started. We have figured that within a year and a half to 2 years—take an area such as the New York City area—if the demand was there we could have anywhere from 1½ million to 2½ million decoders available, from a manufacturing standpoint.

Mr. Cox. That was a year and a half to 2 years?

Mr. Landis. Yes.

Mr. Cox. In that case, of course, you are going to have to get a new station to go on the air. There is no UHF station in operation in New York.

Mr. Landis. There is a frequency open. There are 3 frequencies open, 1 which is commercial, 1 which is educational, and the third which is sort of semieducational, reserved there at the moment, but not too strongly.

Mr. Cox. This would require the construction of a new station?

Mr. Landis. Yes.

Mr. Cox. And isn't it true that engineers predict some difficulties in New York City on account of the buildings which might interfere?

Mr. Landis. It might; and yet one doubts as to whether it is quite as serious as indicated; not perfect reception but still reception sufficient to justify the operation of it in that area.

Mr. Cox. Have you proposed to the Commission not only that you limit your initial operations to UHF but that you make your initial efforts in any specified localities, or class of localities?

Mr. Landis. No; we haven't done that. We have just indicated the UHF field, but I see no reason why the Commission shouldn't suggest operation in those areas.

Senator Bible. Thank you very much for your statement, Mr. Landis.[1]

Our next witness is Mr. Raibourn.

Would you state your name for the record, please?

STATEMENT OF PAUL RAIBOURN, INTERNATIONAL TELEMETER CORP.

Mr. Raibourn. My name is Paul Raibourn; I reside in Southport, Conn.

Senator Bible. I note that your statement is very voluminous. Now, I certainly have no objection to having the statement incorporated in full in the record. I am wondering if it might not be just as effective if you could highlight that statement, hit the high points on it? I don't want to in any way curtail your presentation, but if you feel that you can make as effective a presentation by having the statement incorporated in the record, and then highlighting it in your oral testimony, that would be appreciated.

Mr. Raibourn. I think I can probably do best by taking the first 4 or 5 pages, and excerpts from the rest of it.

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[1] By letter dated April 25, 1956, Mr. Landis requested that certain documents filed by Skiatron with the Federal Communications Commission be incorporated in this record by reference. Accordingly, the following items, which have been retained in the committee's files, are hereby incorporated in the record of these hearings by reference:

1. Petition for institution of rulemaking, dated September 13, 1954.
2. Comments in response to notice of proposed rulemaking, docket No. 11279, filed June 9, 1955.
3. Reply comments, docket No. 11279, filed September 9, 1955.
4. Comments, docket No. 11532, filed December 14, 1955.

Senator BIBLE. That would be very satisfactory, Mr. Raibourn. Thank you.

Mr. RAIBOURN. I have been connected with television broadcasting since before the late World War, having helped start television station KTLA in Los Angeles and station WBKB in Chicago. I am still president of station KTLA. In addition, I am a director and treasurer of the licensee corporation which operates television stations WABD in New York and WTTG in Washington, D. C. I participated as one of the founders of the Television Broadcasters Association which subsequently merged with the National Association of Radio and Television Broadcasters in which I have continuously served as a director until the present time. In addition, I am vice president and director of Paramount Pictures Corp., and also chairman of the board of directors of the International Telemeter Corp.

I appreciate the opportunity your committee has afforded me to appear before you and discuss the potentials of subscription television. I wish to state at the outset that I have tremendous faith in television as a medium for public service, and the further economic development of our Nation's resources. The power and impact of television upon public attitudes is in my judgment only beginning to be understood. I have been an enthusiast for television for years. The same cannot be said of all of the organizations, even the largest ones, which will appear before you on this question.

If we look back only 7 years we will find one of the largest networks dragging its feet in television professing lack of faith and one proponent of subscription television saying that sponsored broadcast television could never get off the ground. They have both since served ably and well in helping television along, but the existence of such differences of opinion in the not too distant past should point out to everybody that there is nothing sure with respect to television except its growth and that, in considering its future, one must return to the basic fundamentals of the situation to be sure that he is drawing inferences which the future will bear out.

This committee, I am sure, recognizes that basic to every consideration in evaluating the problems relating to television is the public's stake in this medium. Those in the limelight of television who appear before you in opposition to pay-as-you-see television represent total investments of around a billion dollars in facilities and plant. According to the Commission's latest economic report on television investments, the investment by the networks and all television stations as of 1954 was only about $315 million. When the public fully converts to color, as it will do, the total investment of American citizens in this service through the purchase of receivers will be close to $30 billion. So I appear today to make the obvious appeal that the interest of the public whose investment will be at least 30 times that of the very vocal group which presently dominates television should control our thinking. In brief, I do not believe that the control of the bark should determine what the dog shall do. The preferred position of the vested interests, particularly the networks, should not determine public policy in this important and dynamic field.

The Federal Communications Commission has probably told you that the volume of paper and sound which has been presented for and against pay television far exceeds that on any other subject with which it has had to deal. I find it a staggering job to keep up with it myself, but I can boil my reaction down to amazement that this very simple proposal that the public, with its huge investment in receiving sets, should not be permitted to choose.

We are here making a fundamental and I think truly an American appeal for the doctrine of competition. I can understand the position of the networks in resisting change and progress. Their present preferred position through restrictive covenants and exclusive arrangements with their affiliates when combined with the existing limited channels of broadcasting affords them the opportunity to determine, by and large, not only what the public shall see and hear, but what shall not be made available. I plead for access by the public to any and all programs and events it may want, and access by any and all producers to the sets for which the public has expended so much. I contend that the authorization of pay-as-you-see television is progress. If it succeeds, it will inject a much-needed competitive force into this industry; and the public, with $30 billion of potential investment, will benefit.

As I shall develop later, if subscription television does not win public acceptance, only those companies which invest their funds and energies in making it available will suffer. If the existing network structure cannot face this new form of competition, I raise the question as to whether it deserves to survive in its present form.

Mr. Cox. In your opinion, do you think that there is substantial danger that this competition might drive them out of business?

Mr. Raibourn. I don't think there is the slightest chance of it happening. The networks have rendered a great service to the public so far, but I insist that in this dynamic field the status quo should not be irrevocably fixed and that the networks, like every other American commercial institution, should be subjected to as much vigorous and healthy competition as the limited facilities in this field permit. In short, the umbrella of governmental sanctions, through approval of exclusive contracts, option time, and other artificial restrictions, should be removed, and I think this committee should reaffirm and make clear that network organizations are subject to antimonopoly laws just as other American businesses are.

Mr. Cox. Mr. Raibourn, are you familiar with the testimony offered recently by Mr. Richard A. Moore, of Los Angeles?

Mr. Raibourn. Mr. Moore sent me a copy.

Mr. Cox. Have you read it?

Mr. Raibourn. Yes.

Mr. Cox. I take it then, that this is in partial agreement with the conclusions he draws as to the factor of option time and desirable policy with respect to restrictions on that?

Mr. Raibourn. It is a partial agreement with his point of view. I am president of the station next door to his, and I have a great many of the problems.

Mr. Cox. You compete with him and with the 3 network-owned-and-operated stations there, as well as the other 2 independents?

Mr. Raibourn. That is correct.

In this connection, I oppose the licensing of networks for the simple reason that this might provide further insulation from competition and give them possible immunity to continue the present restraints which, in my judgment, must and should be removed if subscription television has a fair opportunity to develop as a genuine force in this industry.

For some time I have been at a loss to understand the attitude of my associates in the NARTB in opposing these new and intriguing opportunities for its television broadcast constituents. This organization, of which I have been a director, to my mind is not representing the best interests of the stations or the public. In spite of the many fine things which broadcasters and network organizations have done and are doing, this industry, in my judgment, will not attain its full potential and the statutory status of which it is capable so long as 2 or 3 organizations dominate and control the vast majority of television stations and the substantial part of the program content which is broadcast by these stations.

Further, I believe it would be a salutary project if this committee, in cooperation with the Federal Communications Commission, would take appropriate measures to require the American Telephone & Telegraph Co. to expand and improve interconnection transmission facilities and offer them to all seeking their use at tariffs which are reasonable and nondiscriminatory. If the American people are investing $30 billion, our great common-carrier system should be persuaded that it has a duty to organize its service so that the maximum use can be made by the public of their tremendous investment in receiving sets, and that facilities are available to all at any time who want access to these sets, anywhere in the Nation.

Senator POTTER. How is A. T. & T. discriminatory at the present time?

Mr. RAIBOURN. The rate structure is not based on individual broadcasts. The rate structure is based on the renting of services by the networks who can furnish programs over a period of time.

Senator POTTER. In other words, the networks get lower rates?

Mr. RAIBOURN. They automatically do through the fact they use the service so much.

Now, this paragraph probably should be modified today on the basis of some of the developments that were shown in Chicago last week, and I am referring to the use of the magnetic tape. For the first time it was possible to use magnetic tape.

Senator POTTER. Is that a reality now?

Mr. RAIBOURN. Yes, it is a reality now. The reality was best demonstrated by 78 orders for magnetic-tape recorders in Chicago last week. That is going to change this situation with respect to the telephone company to some extent. I am not prepared to say how much, and I don't suppose anybody else is, either.

Senator POTTER. And that should be a real challenge to the networks, shouldn't it?

Mr. RAIBOURN. It is a great help to the networks.

Senator POTTER. It should be a great challenge to the networks, because the independents now should be able to secure good programing.

Mr. RAIBOURN. In a much easier way.

Mr. COX. To the extent, though, that you would propose to provide sports you would still need live broadcasting which would require the facilities of A. T. & T.?

Mr. RAIBOURN. That is right.

Mr. COX. Isn't it true that in order to continue the usage of those facilities, it requires high-load usage in order to support them?

Mr. RAIBOURN. That is the way the rate structure has been set up.

The point I am making here is I question whether that is the best rate structure for the growth of television in the future, and also from the standpoint of the producers and the public.

Mr. Cox. You are proposing a limited amount of subscription programing?

Mr. RAIBOURN. I think there can only be a limited amount of subscription programing.

Mr. Cox. And to the extent it is limited you would not be able to feed into the telephone facilities programs on a sufficient volume to make their maintenance of these circuits economical?

Mr. RAIBOURN. I question whether that is something which actually exists, or something that exists in the rate structure.

Mr. Cox. Isn't there a limitation upon the number of circuits actually available as presently constructed?

Mr. RAIBOURN. There is.

Mr. Cox. Which would place you in competition with the existing networks for circuits in the event you wished to broadcast a program at a particular time?

Mr. RAIBOURN. There is.

Mr. Cox. Are there enough circuits so that you could have a circuit in addition to those occupied by the existing three television networks?

Mr. RAIBOURN. Not without a great deal of planning.

Now there is a lot of material remaining in this document. I can go ahead and read excerpts of it.

Senator BIBLE. You develop it in your own way, Mr. Raibourn, because the chairman certainly hasn't any disposition to cut you short on what you want to say.

Mr. RAIBOURN. The most important point, I think, that remains in this situation is the fact that here we have such an enormous present investment by the public in television receivers, we have a potential investment of approximately double that to convert to color, and the public may or may not have access to a great number of programs which otherwise it could have access to. Now when we look at these figures, if we take the total number of motion pictures that are produced in Hollywood at the present time, if we take the legitimate shows, the opera, the important sports events of the country—baseball, professional football, in fact all of them—and add them together and find out how much time they take up in a year, you reach a total of less than 2,000 hours.

Now in New York City we have seven stations on the air competing for the attention of the public. Those 7 stations are producing between 30,000 and 35,000 hours of entertainment a year; so at least in New York the possibility of subscription television removing from the public the access it has, through these stations, to sponsored and sustaining programs just does not exist. Your problem would be a little more acute in Washington because you haven't got 35,000 hours in Washington. But in my judgment from 35 years in show business I do not believe that you can get the public to pay for more than 1,500 or 2,000 hours of the material that is now available.

Senator POTTER. How much would the public pay per show?

Mr. RAIBOURN. The public pays per show in proportion to their desire to see the show. We at Telemeter figured at first that a dollar limit might be a fair limit.

Senator POTTER. Is that an hour, or per show?

Mr. RAIBOURN. Per show. When considering that for a show, you are considering a show that would last an hour and a half to 2 hours. We finally set the upper limit at $2, based on the inflationary movement up of admission prices to various events in the country. That is guesswork. I still must say that we have an aphorism in the show business—"The public is always right." They determine finally what you do and what you can do. Now if you start looking at this situation in terms of money, the amount of money that is taken in as film rentals for motion pictures in this country—that is not admissions to the box office, that is the amount they pay for the shows themselves—is in the neighborhood of $400 million a year. If you add to that the approximately 50 or 60 million dollars that is paid for legitimate shows, the $30 million for professional baseball, the $30 million for professional football, and then try to pick out a number of entertainments which could be added to that, you probably can get up to a figure of about $600 million a year that is paid for those things at the present time. When you compare that with the amount of money that the public is investing in television—that they have invested—they probably have invested $15 billion between their sets, their antennas, the service that they had to get them to work right—and it is probably going to be 1½ to 2 times that for color—I have to say to myself, I don't understand the amount of objection to the injection of this small area into this situation when it is going to add to the public's enjoyment.

Senator POTTER. What would be the mechanics involved assuming you wanted to broadcast the Washington Senators baseball game? Would the baseball company put on—would they receive the entire revenue?

Mr. RAIBOURN. The revenue would go to the broadcasting station. They would buy the time. There would have to be a service charge paid for the collection of the money, for all of the problems that will go in connection with this situation. We have discussed a great many ways of organizing this business, to get people interested in it. Our problem at the present time would be to get people interested and make them invest in it and get it started.

Senator POTTER. What has been the reaction of your sports promoters?

Mr. RAIBOURN. Can I introduce Mr. Paul MacNamara, who has spent a great deal of time on that?

Mr. MACNAMARA. The management of baseball are all for some sort of pay-as-you-see television because the baseball business, as a business, in America is being crippled with television. Twenty-two leagues did not start this year—were put out of business. Last year in Houston, Tex., at the minor league meeting, we went down there with a plan because it is that critical that they are looking for ways and means. I am getting to the answer to your question. But the background, I think, is important. Our plan for Cleveland, for instance, was that the minor leagues that come under the umbrella of telecasts originating in Cleveland—for instance, Cleveland is playing the Yankees and that game is going out over parts of Ohio where minor league baseball games are playing the same day. Very few people want to see Sandusky play when they can look at Mickey Mantle, so nobody shows up at the baseball park and the minor league goes out of business.

Now with the telemeter plan of metering, if the telecast of the Cleveland game was going out under the same umbrella method and you, as a fan in Sandusky living in the area of the baseball franchise for Sandusky, tuned into the Cleveland game and put in a quarter to see the game, some part of that quarter would stay in Sandusky and go to the owners of the Sandusky franchise, just as the Sandusky franchise holder for Coca-Cola would object if a red truck came up from Cleveland into that franchise area to sell Coca-Cola—but that is what is happening with the telecasting of baseball with minor league baseball.

But the question was, this would be very good for minor league baseball but how would Cleveland feel about it? So we suggested—Mr. Trautman, who is president, suggested that we meet with members of the National League and the American League to ask the question. They are supplying the entertainment for Sandusky in this case, but they also are well aware of the importance for baseball of the continuing existence of minor league baseball. The whole idea of baseball has to exist with a base of minor league baseball and at the present time it is getting knocked off.

For instance—and this illustration was given, in the Chicago meeting—Albany is playing New Haven in the Eastern League, late September night. This is the final game—if they win this game, they win the pennant, the flag in their race. I think the field in Albany seats 10,000 people. It is going to be played under lights, in perfect weather conditions. The same night in New York the Giants are playing the Dodgers and it is telecast. How many people paid to see this game, the final game? There were 34 paid admissions.

Now you go down to see Mr. O'Malley or Mr. Topping, the management people, and they are favorable toward it for another reason. If they can reduce the number of people that are getting it for nothing, they have a greater chance of selling it, and they are after all in the business of manufacturing a product like anyone else. They are manufacturing baseball entertainment and yet they are giving it away.

Now the advertiser, on the other hand, is getting very close to saturation as to what he can pay for these games. Well, if he is unable to pay any more, and what he is able to pay does not make up for the difference of the loss at the box office, then you have a problem where I don't think it will be too far in the distant future that baseball will be going off the air. It is beginning to go off the air a little now in certain situations in the United States.

The Hollywood Stars aren't telecasting their games this year. Cleveland has cut the number of games. So while the public may want it, and feel that they are entitled to it because they bought a set, there was nothing in the contract when they bought the set that said the Hollywood Stars have to go out of business, and I think that is a part of the economics of sports where pay-as-you-see television can make a contribution to keep it on the air for the public to see it.

Senator POTTER. Of course, I assume you could follow that to a conclusion that eventually they may be playing before empty stands.

Mr. MACNAMARA. No, on the other hand, they would be playing before more people because now let's say there are 3 million sets in New York, and whatever the rating might be might give them a million free admissions now. So with a million people seeing it—some of them interested, some of them very interested, and some of them only faintly interested—the people who were very interested might be willing to pay a quarter, although some of them would say "Well, if I have to pay money I am going up to the stadium," so we would reduce probably the number of people that would see the telecast, but we might increase the admission at the gate.

Mr. Cox. You feel, then, that in this instance the imposition of a charge for seeing something that is now, at least to some degree, available free is necessary in order to preserve the very medium that the people are enjoying.

Mr. MacNamara. I do not think there is any question about it, and I think if you talk to the heads of baseball who are very familiar with the economics of the thing, they will make the point real strong that they are getting killed.

Brooklyn won the pennant and is now playing 8 games or 6 games in Jersey City. You cannot do any better than win the pennant.

Senator Potter. It is going to be a great drain, though, on a husband who has a baseball fan as a wife home in the afternoon and these games are televised and she pays for them. It is going to be hard on the family budget. [Laughter.]

Mr. MacNamara. Well, maybe they will go to see the game. I do not think that the drain on the budget will be as bad a blow to the baseball fan as the elimination of baseball from television.

Senator Bible. What charge do you propose for seeing the New York Yankees and the Cleveland Indians play on a Sunday afternoon in Sandusky?

Mr. MacNamara. I think that will be determined by the number of seats available, but I would guess at somewhere from 25 to 50 cents.

Senator Bible. You may proceed.

Mr. Raibourn. I think I can conclude everything I have to say and leave the rest for the record with two statements: One based on a study made by the Columbia Broadcasting System and reported to the Federal Communications Commission, which is described at some length in here, in which they say they think a maximum of 585 stations is the maximum possibility in this country at the present time, under the present broadcasting setup. That, of course, is not what the Federal Communications Commission envisaged, nor what I think the people who dream of what television can do have envisaged. We have dreamed of television being something for the small town as well as the large city.

Subscription television is just another way of adding to the income and adding it in proportion to the desirability of the programs to the smaller groups of people.

Senator Bible. Mr. Raibourn, what type of specialized programs do you mention in your presentation? I notice, in running through it, you mention opera and stage presentations.

Mr. Raibourn. Sports.

Senator Bible. New movies?

Mr. Raibourn. Yes.

Mr. Cox. Education?

Mr. Raibourn. Education. To that one point I would just like to add the further point that I think the people who will benefit greatly by this are the broadcasters. They become a more general medium of reaching the public and in becoming a more general medium they have the possibility of higher revenue and more demand for their facilities.

Senator POTTER. What effect would this have on a neighborhood theater?

Mr. RAIBOURN. I think it would be very difficult for the neighborhood theater, but I think television is making it difficult for a great many neighborhood theaters now—especially those that play the secondary types of pictures.

Mr. COX. You suggested a while ago that in broadcasting a baseball game, quite possibly the baseball management might buy the time. Now if it was handled in that way so that the broadcaster can receive no more than his class A time charge, or whatever time charge is applicable at that time of the day, what incentive is there to him to disrupt his present arrangements and to broadcast this rather than a national spot program on which he can derive exactly the same revenue, with perhaps less difficulties?

Mr. RAIBOURN. Well, if he can derive the same revenue, there perhaps is no incentive. I think that any increased demand for his facilities is bound to allow him to make a larger charge for his time.

Mr. COX. If it is a better program he may get a better rating for it?

Mr. RAIBOURN. Yes.

Mr. COX. The point I am making is do you propose that the broadcaster will share in the revenue from the subscription program, in any way other than the present time charges?

Mr. RAIBOURN. I think you are going to have an adjustment here, and I cannot tell you exactly how it is going to be made. To the extent that the broadcaster is an entrepreneur himself and willing to invest his money to speculate on what the results will be, to that extent he should share in it. If he is unwilling to do that and merely wants to sit there and sell his time, he should not share.

Mr. COX. In other words, he has the option to reverse it. He can go to the baseball club and buy the game?

Mr. RAIBOURN. That is right.

Mr. COX. And then exact whatever is a fair share, over and above the administrative costs, out of the revenue that is derived?

Mr. RAIBOURN. That is correct.

Senator BIBLE. Mr. Raibourn, I think Mr. Landis developed the fact that—take the converter-decoder that he was testifying about—that it would cost the individual user something in the neighborhood of $45 per set. Now to take advantage of your device—does it have a specific name? You probably have developed it in the testimony.

Mr. RAIBOURN. The telemeter.

Senator BIBLE. How much would it cost the user to buy the telemeter?

Mr. RAIBOURN. Let me tell you where we stand on that question. We have made a great deal of studies. We conducted an extensive test in Palm Springs, Calif., over the wire, on this situation. This is our conclusion. That at $25 these would move like hot cakes. At $100 they would move with great difficulty. We expect to be able to sell our device, installed in the home, at somewhere between $30 and $50.

Senator POTTER. Is yours the type where you can pick up a telephone and call a certain number——

Mr. RAIBOURN. No; we are the ones that have the coin box where you put the money in.

Senator POTTER. The coin box?

Mr. RAIBOURN. Yes; we have great enthusiasm for that approach since we have always had great difficulty in the amusement business collecting for amusement after a person has had it.

Senator BIBLE. I think that is true not only of the amusement world. Let me develop that a little more thoroughly, though. I pay $30 to $50 for this telemeter that I put on my set. Now do you have any general estimate of what it would cost me per week? I notice you say here that you made the survey at Palm Springs, and I think that might be helpful. The thing I am interested in is after I have invested $50 in this telemeter, how much does it cost me to see what type of programs? Have you developed anything along that line?

Mr. RAIBOURN. We think most programs that would be an hour to 2 hours long would probably sell under $1. We expect, on the basis of what experience we have had and the study of the Zenith results in Chicago, for the amount that is paid per home to run in the neighborhood of $4 to $10 a month.

Senator BIBLE. That would be $4 to $10 a month, and that would entitle me to see how many hours of subscription television?

Mr. RAIBOURN. We would expect that that would probably entitle you to see on an average of about 20 hours.

Senator BIBLE. You believe that the maximum at this stage would be about 40 hours a week. Does that seem to be a fair figure?

Mr. RAIBOURN. I don't think you could find more programs that you could charge for than that amount.

Senator BIBLE. That would be the maximum?

Mr. RAIBOURN. Yes; that would be the maximum available to people. The use they would make of it would be somewhat less.

Senator POTTER. Then you would have people go round and collect from the coin box, and so forth?

Mr. RAIBOURN. Well, there are several ways this can be done. The coins finally fall into a small drawer-type of device which has a decoding mechanism connected with it, and that can be slipped in and out. You have two ways of moving, then. You can have somebody go around and collect them, or you can have a central station at a drug store, for example, where you put one in and get another one out.

Senator POTTER. Don't you think American ingenuity could devise a slug for that coin box pretty well?

Mr. RAIBOURN. I suspect so. But I think we are up against the same problem the telephone company is. When they find too many slugs in a pay station they take it out.

(Discussion off the record.)

Mr. COX. If you are going to sell the telemeter to a man, how can you ta'-e it out of his home?

Mr. RAIBOURN. We don't remove the telemeter. It is just a little drawer.

Mr. COX. But you substantially destroy the value. If you are going to stop it because he has put in too many slugs, you are going to leave him with a $30 investment.

Mr. RAIBOURN. Don't you think if he puts in too many slugs, we are entitled to do that?

Mr. COX. You could always demand that he substitute a nickel for a slug at that point, but you might have some trouble with him.

You mentioned the use of films and stage plays. Isn't it true that there is a fairly substantial portion of the entertainment made available in those forms which would not be suitable for use on television because you are taking it out of a restricted location and putting it into a living room at home, where it would be exposed to people who don't ordinarily go to a movie or a play?

Mr. RAIBOURN. Well, money enters into the question. You have a different type of supervision from what you have in the free sets. In free sets that you have in the home now, the parental supervision is sometimes a little difficult to exercise. There is a great deal of discussion in the television field at the present time as to how much of that is the broadcaster's responsibility and how much of it is the parents' responsibility.

Mr. COX. The point I have in mind is that if you broadcast a first-run movie at 7 o'clock at night, or 7:30, when the younger members of the family are still up, you may run into the problem that either it is paid for and is received and is found not to be suitable for all members of the family, or they simply bypass the product because they anticipate that it is not what they want for their children.

Mr. RAIBOURN. I have helped write both codes, and I am perfectly familiar with them, and they are not too different.

Mr. COX. You think that a movie which passes the code in Hollywood would satisfy the requirements of the NARTB?

Mr. RAIBOURN. I think most of them would.

Mr. COX. And you think it would be something that the public would be happy to have in the living room?

Mr. RAIBOURN. I think it would be something the public would like. We try to keep our motion pictures of that type.

Mr. COX. I take it, though, that there are certain themes——

Mr. RAIBOURN. And the most successful ones are that type.

Mr. COX. There are certain themes which can be treated on Broadway which would not be home entertainment.

Mr. RAIBOURN. I think that is quite true.

Mr. COX. You do not, as Mr. Landis did, suggest a limitation of availability of subscription programing to UHF stations; do you?

Mr. RAIBOURN. No; I do not. I am very disappointed as a broadcaster in the failure of the UHF stations to develop in the way that I hoped they would. We have a very difficult problem in this situation, and to some extent I must place the responsibility on the failure of the Federal Communications Commission to authorize UHF fast enough. You see, what happended was this: The lower channels were authorized, and they developed so fast while the Communications Commission was studying the problem of what to do about the additional channels that too many sets were in use by the time the authorizations were made.

Now, we are going to have a change in the sets in this country. That is going to arise with color. I hesitate even to suggest anything with respect to this, but certainly some thought should be given to the question of whether those new sets should not be available to both groups of stations.

Mr. COX. I take it, then, you don't contend that this is going to be of any substantial assistance to UHF other than in providing it, perhaps, with a type of programing which will attract people to convert so they can receive the U signals?

Mr. RAIBOURN. Yes; and the only assistance that UHF needs is two things. It needs money to live on, and that money only arises when there are sets that are available.

Mr. COX. Don't you face the problem that the subscription programer, when he goes into the market, is going to have the same desire as the advertiser to reach the maximum possible number of sets, and that if there is a low conversion rates he is going to try to make arrangements to broadcast his program on the VHF station?

Mr. RAIBOURN. I think that is entirely true.

Mr. COX. Then to the extent you broadcast programs on VHF stations you run into the point raised by Senator Potter. At that time, like Skiatron, you are displacing a program that otherwise would have been there free of charge?

Mr. RAIBOURN. That maybe can go over onto the UHF station.

Mr. COX. Well, presumably it hasn't been attractive to the subscription programer, so it may not be attractive to anyone.

Mr. RAIBOURN. Well, I think it is the responsibility of everyone in the television business—and I must include this committee and the Federal Communications Commission in it—to try to make those channels useful and available, because I don't see otherwise how a goal of a national system of television in which a smaller community has a chance to express itself can be realized.

Mr. COX. Now, do you have any proposed policy as to entrance into particular types of markets? Would you propose to undertake to provide subscription service in a 2- to 3-station market?

Mr. RAIBOURN. I certainly think it ought to be made available everywhere. I don't think it is going to develop that fast, and I think it will move into limited markets at the start.

Gentlemen, may I add something to this situation? I am not one of those who believes that subscription television could be put into existence tomorrow. There are too many interests involved. I think it is necessary for the Federal Communications Commission to make quite a study of this matter and to allow a great many people to be heard on this matter, including the manufacturers of sets who have not been heard as yet.

But prior to the time they do that it is necessary for them to say that subscription television fits into the present system of broadcasting, or some system of broadcasting which they devise, so that the whole industry can move together in setting up this situation and making it possible for the American public to have these advantages.

Now, until that is done—and we have not got over that point yet, that is the point at which discussion centers at the present minute—until that decision is made that this does fit in, and that studies are going to be made as to how to make it practical, from then on there is going to be a lot of people heard, and these problems of just how this is to be developed become the paramount ones at that moment.

The real hurdle now is the decision that this should be a part of the American broadcasting system.

Mr. COX. If you propose to go into a 2- or 3-station market, and it is of a substantial size, I assume that these stations have affiliations with the networks, so that you would require, actually, the suggestion you made a while ago of elimination or limiting option time in order to be able to get prime time in those markets?

Mr. RAIBOURN. That is right.

Mr. COX. Now, to the extent that you do into a two-station market and get prime time in the evening on one, we will say, of the stations, you have, during the period that program is being offered, reduced the choice of the viewing audience in this way: They still have 2 choices, as they had before, but 1 of them is available free of direct charge and the other requires the payment of 25 to 50 cents to a dollar?

Mr. RAIBOURN. That is correct.

Mr. COX. So that if there exists any substantial portion of the television- set-owning population who do not feel that they can bear this additional burden, you will have cut their choice in half by force of economics?

Mr. RAIBOURN. Yes.

Senator POTTER. Of course, it could go further. If this were carried out there is no reason for not having 2 subscription television broadcasts at the same time in a 2-station market.

Mr. RAIBOURN. I think it would be very possible for the Federal Communications Commission to put restrictions on the amount of this. I think the total restriction that exists because of the economics of the situation is one that is going to work pretty favorably to sponsored television, anyway. But you have this situation now which is one of the things that is causing the development of the community antenna situation around the country. There are a great many programs available from the networks which never reach communities unless somebody is willing to bring them in from some other source other than the stations, and in going around the country you find, amazingly, that there are certain programs which don't reach certain areas to any extent hardly at all.

Senator POTTER. You think the Commission should restrict it if the Commission should concur in allowing subscription television to develop?

Mr. RAIBOURN. I think it is a very possible thing for the Commission to do. I think they should study the matter before they make a decision with respect to it.

Mr. COX. Do you think that there is any possibility that, in order to supplement the available sources of programing that you have referred to, subscription programers will try to draw on the existing television talent and try to create for them new programs of a general entertainment character which they could offer?

Mr. RAIBOURN. That is the growth of entertainment, anyway. You start with a subject matter, or a talent which is comparatively unknown, and you build them up from there. Certainly, the motion picture is growing on television. Television is growing on the motion picture, and that process is still going to continue. That is utterly independent of what kind of systems you have.

Mr. COX. The point I have in mind is that in order to supplement movies, Broadway shows, sports, you might eventually create productions which are put on in a studio as networks presently do, using talent, stars, who are now on television, and compete with the networks with that kind of programing as well?

Mr. RAIBOURN. Absolutely. I don't think we are going to exclude Bob Hope from any one of these sets of facilities.

Senator POTTER. It is going to be rough on politicians, though, on subscription television. [Laughter.]

Mr. Cox. Don't you think they will pay to see you, Senator?

Senator POTTER. Maybe the Republican and Democratic hundred-dollar dinners could be converted to subscription TV.

Mr. RAIBOURN. That is something that has been mentioned that might appeal to the politician.

Mr. Cox. How do you propose to provide public-interest programs to the public through the subcription medium—that is, matters that are not entertainment in the sense that people are accustomed to paying for them, but things which are obviously of interest to them such as discussion of public issues? Would you try to provide that sort of feature?

Mr. RAIBOURN. Oh, certainly. I have received a great many letters on this subject since I started talking about it some years ago, and I find that there are quite a few people in the country who feel they would like to determine what they see on television. A great many of them have ideas about programs which are essentially of the character of being informative to them, to know what is going on, but which may not be of sufficiently wide interest to have them get on sponsored television, and those now are usually furnished by the networks on a sustaining basis.

Mr. Cox. You would have to make a charge for this, though?

Mr. RAIBOURN. Yes; you would have to make a charge if you furnished this. We still don't have any penny slots in the telemeter, but we do have nickel slots and dimes and quarters, and I think there would be quite a field for that kind of thing for people who were interested in that kind of matter.

Mr. Cox. Then suppose the President makes a report on the state of the Nation. Are you going to furnish that, or provide a facility for furnishing that, which is in any way comparable to that which is furnished by the present networks; and, if so, are you going to make a charge for it?

Mr. RAIBOURN. I don't think any one of us wants to charge for the President's speeches.

Mr. Cox. Well, are you going to provide them?

Mr. RAIBOURN. What do you mean by that? Are you expressing the idea that I think this will drive the present networks out of business, and we will have an entirely different structure? I don't believe that.

Mr. Cox. No; I am asking, though, that to the extent that you create a programing source which to some extent, at least, is going to feed these programs over the existing cable facilities, so that you in effect are operating a network—whether in that connection you propose to provide this wide range of programing now available, from the completely commercial to the completely sustaining, to the stations which have entered into arrangements with you; or do you think that they will take from you for pay and then turn to the network for a free sustaining program?

Mr. RAIBOURN. I think they will do both, and I suspect that the programs will be provided by the organizations which are engaged in subscription television and will be sustaining in character, and I am not so sure they might not use them to advertise their products.

They are going to have to advertise their products over the air, too, to get people to pay for them.

Mr. Cox. Do you propose to furnish this educational programing that you talk about on noncommercial stations only, or do you think that such educational programing could be made attractive for commercial stations and appealing to particular audiences?

Mr. Raibourn. I think it can be made attractive for commercial stations.

Mr. Cox. I assume that you are asking the Federal Communications Commission for a change in its rules to permit an educational station to make some charge for these programs, since, as I understand it, they would be in violation of their present regulations?

Mr. Raibourn. I think that is in our request. Our request is quite a long involved document.

Senator Bible. Senator Potter?

Senator Potter. I have no more.

Senator Bible. Thank you very much, Mr. Raibourn. We appreciate your testimony. I think it has been helpful to the committee.

Mr. Porter. Mr. Chairman, can Mr. Raibourn's statement be incorporated in the record as though read?

Senator Bible. Yes; that was my earlier order. It will be incorporated in the record as though read.

(The balance of Mr. Raibourn's statement is as follows:)

At first blush, it might appear anomalous for me to be here discussing subscription television in a hearing which is devoted primarily to the UHF problem and questions of network monopoly. But when I have concluded, I am confident that you will agree with me that subscription television is very relevant to the subject matter of your deliberations. For subscription television promises to make available new sources of programs and revenues, and, what is more, UHF stations will be on an equal footing with VHF stations in being able to earn the revenues which these new programs will make possible.

Moreover, the new programs thus made available will come from a myriad of sources which will mean a restoration of independence to the station operators. For when station owners can bargain with a score or more of sources for programs, they are beholden to no one source. The television broadcast field today is dominated by the networks because under our present system 2 or 3 networks are the principal sources of popular programs. The stations must stay on good terms with the networks and do their bidding or else they find themselves without network programs.

But I am a little ahead of my story. Let me start at the beginning by discussing some of the basic economic facts of television broadcasting.

Television broadcasting as we know it today is supported solely by advertising revenues. Business concerns use television for advertising because it is the most effective medium thus far developed for promoting the sale of products and services. Advertising expenditures, of course, represent only one item in the overall expense of doing business. These expenditures are deemed justified by business concerns only if they produce results. And it is axiomatic that results cannot be produced unless people are watching the program, for people who do not watch cannot be influenced by the advertising message and thus cannot be persuaded to buy the sponsor's product.

A study of current data on this subject is revealing as is shown by the following tables:

TABLE 1.—*Average cost per home tuned in per telecast for 59 sample 1954 programs (adjusted for half-hour basis)*

Cost per set: Less than—	*Number of programs*
1 cent	20
1½ cents	43
2 cents	50
2½ cents	55
3 cents	55
3½ cents	56
4 cents	57
4½ cents	58
5 cents	58
5½ cents	58
6 cents	59

Observe that 43 out of the 59 programs had an expenditures of less than 1½ cents per home tuned in for each half hour. This figure is for a wide cross section of television programs, some of which had large audiences and some of which had relatively small audiences. If we consider the top-rated programs, the figures per set tuned in drop sharply as the following table shows:

TABLE 2.—*Cost per TV home tuned in per telecast for top rated programs* [1]

Program	Cost per telecast	Number of homes tuned in	Cost per home reached adjusted to half hour
HALF-HOUR PROGRAMS			*Cents*
I Love Lucy	$88,600	17,892,000	0.5
Dragnet	78,077	14,658,000	.5
You Bet Your Life	80,562	14,468,000	.6
Jack Benny	95,110	14,399,000	.7
ONE-HOUR PROGRAMS			
Jackie Gleason	130,789	16,986,000	.4
Toast of the Town	115,615	16,130,000	.7
Disneyland	146,144	15,772,000	.45
Bob Hope	141,735	14,398,000	.5
Buick Berle Show	162,040	13,892,000	.6

[1] Covers the 9 top-rated shows for 2-week period ending Mar. 12, 1955. Peter Pan, the top-rated show, is excluded because it was a 1-time performance.

For the most popular programs, the cost per set tuned in, on a half-hour basis, is one-half cent. We thus have a range from a low of 0.4 cent per set tuned in to approximately 6 cents, with the greater majority falling in the category below 1½ cents per home tuned in.

These figures teach us two things: First, advertisers can afford to sponsor only programs which appeal to the largest possible audience. Shows which have limited audience appeal are unattractive to the advertiser, since the cost per set tuned in becomes prohibitively high. Second, the expenditure per home tuned in is abnormally low when judged by entertainment-expenditure standards. Multiply the 1½ cent figure by 3 to cover the average running time of a movie, 90 minutes, we arrive at an expenditure of 4½ cents for 90 minutes' entertainment. This compares with the 50-cent admission figure for most neighborhood theaters.

What lesson do these figures teach us? First, so long as advertising revenues are the sole support of television operations, commercial programs of necessity must be geared to the mass audiences. The advertiser can afford to present programs which appeal to the lowest common denominator of the mass audience, and which eschew any controversial topics which might offend the sensibilities of any portion of the audience. For wounded sensibilities mean not only a loss of audience, but what is more important to the sponsor, a transfer of irritation to the sponsor and his wares. The advertiser, as a matter of business economics, cannot afford to risk a program or a scene in a program which may irritate even a small portion of the audience, thus repelling rather than attracting customers. He has no choice, therefore, but to play it safe.

Each program must be carefully scrutinized to make sure that it will appeal to all people and that nothing in it will be considered controversial by any group. If there be a doubt, the doubt must be resolved in favor of exclusion rather than inclusion. This may be a fine dictum for the sponsor. It means an impossible obstacle to truly mature and artistic creativity.

The problem of presenting quality programs on television is complicated by the fact that almost all of the top TV network advertisers sell a variety of products—some appeal to men, some to women, and some to children. In this area of merchandising the product name is more important than the manufacturer's name. A variety of programs are required to push a variety of products. Thus, to sell Supersuds to women, Colgate chooses a daytime program, while a nighttime vehicle is used to encourage men to use Palmolive shaving cream. Similarly Gillette sells razor blades with the boxing matches at night, and Toni permanent waves in the daytime.

A great deal of this type of advertising depends upon repeated impressions for effectiveness. Thus, rather than splurge upon a high-budget, mass-appeal production, the advertiser will turn to a series of low-cost daytime soap operas where repetition of the sales message is more effective than a single high-cost promotion. For example, in 1954 Procter & Gamble ran 22 programs, including such fare as Welcome Travelers, The Seeking Heart and Three Steps to Heaven. Out of $31 million total TV network advertising expenditures by Procter & Gamble in 1954, about $23 million went for daytime programs, and about $8 million for nighttime programs. This pattern was repeated by other advertisers with the same sales objectives.

The second effect of television being dependent solely upon advertising revenues, is that educational programs, artistic programs, opera, good music, and other programs of high cultural value can get an airing only on a sustaining basis. The availability of such programs depends upon the willingness and ability of stations to present these programs on a sustaining basis. The station operator must not only be willing to forego commercial revenue in order to carry these sustaining programs, but in addition he must be willing and able to pay some of the expenses involved in presenting the programs—expenses which are borne by the sponsor in the case of commercial programs.

Moreover, the availability of such programs depends upon the existence of opera companies, symphony orchestras, repertory theaters, and so forth. Even in the largest cities these nonprofit organizations have great difficulties in supporting themselves. With television grounded upon advertiser support only, no vehicle exists for enabling the large television audience to contribute to the support of these nonprofit organizations. The advertisers cannot underwrite these programs, because their appeal is not broad enough on a cost per home basis to justify the expenditures. The viewer cannot help, because there is no means to elicit that help.

A third consequence is that the viewer is in no position to improve his lot. In the nonbroadcast world, if his tastes are not satisfied by the movie in the neighborhood theater, he can, by paying more money, go to an art theater, the legitimate theater, opera, concert, and so forth. His choice is bounded only by his taste and his pocketbook. In television he has no such choice. No matter what his taste; no matter what he is willing to pay; he can receive only what the advertiser can afford to bring him; he must accept the type of entertainment which can be bought for 1½ cents per half hour per home and which is acceptable to the mass audience.

The opponents of pay TV argue that the public gets what it wants on sponsored television. I agree that the public gets many fine programs on television and I want the public to continue receiving those programs. However, there are many fine high-caliber programs which sponsored television cannot possibly afford to bring in television. What we seek is simply to give the public an opportunity to indicate whether they desire to have such programs by paying for them. We do not seek a monopoly. We are happy to compete with sponsored television for audience, with the full knowledge that our entry in the field will spur sponsored television to produce better and better programs so that the audience will stay tuned to sponsored programs rather than tuned to a program for which a charge will be made. In turn, this competition will spur us on to produce distinctive programs for which the public will be happy to pay. Obviously, the public will not pay for a program if equal or superior fare is available without charge on a sponsored program. The competition between the two types of television will benefit the public.

The point has been made that pay television probably will dominate and drive out sponsored television. For two reasons I doubt that such a development is possible. The first one is that in New York City, for example, there are approximately 35,000 hours per year of free television.

The total of all of the programs, which, it seems to me, the public might be charged for should not exceed more than 2,000 hours per year at a maximum. Secondly, it should be remembered that the gross film rentals paid to producers in the United States is only about $400 million per year. This $400 million, with the revenues from admissions for legitimate theater, baseball, football, and boxing, probably do not exceed $600 million per year. Thus, there are certain economic limitations on the product available for pay television. It should be emphasized that these revenues appear relatively small compared with the public investment, particularly when it is considered that receiving sets become obsolete or must be replaced every 5 years or so.

Thus far, I have discussed in general terms the type of programs which pay TV can make available to the public on a regular basis. Let me now be more specific.

NEW MOVIES

Among the most important types of entertainment which could become available at home to the TV public if the financial base of TV broadcasting is broadened through pay TV are current motion pictures of high quality. Just a word as to why these are not now available—except on an irregular basis.

The Motion Picture and TV Almanac estimates the average cost per feature film in 1953 at about $900,000. In fact, the cost range varies widely—roughly from a minimum of $300,000 per picture to a maximum in excess of $6 million per picture. When television-station time charges are added the cost in increased by another $100,000. Assuming the $900,000 average cost plus $100,000 time charges, the total cost to the advertiser under sponsored TV would be about $1 million—a cost nearly 3 times the cost of the single most expensive TV show in 1954—Producers Showcase.

For a single firm to undertake to bring to the public 52 current average cost movies per year at the rate of 1 per week would involve an expenditure exceeding the combined TV expenditure in 1954 of the 2 largest TV advertisers, Colgate and Proctor & Gamble, who, in 1954, presented 31 different and separate programs conveying their sales messages many times weekly. The impracticality of presenting current motion pictures by sponsored TV is obvious. But what would happen under pay-as-you-see television?

From data collected by Telemeter it is estimated that average feature films could be presented on pay TV at a price range, depending on the number of sets tuned in, of 25 to 40 cents; good class A features at a price range of 30 to 60 cents; and exceptionally expensive films at a price of 55 cents to $1.20. With these price ranges, based upon the number of sets tuned in varying from 10 to 25 million, pay TV could produce the $2 million required to meet the producers' and distributors' costs for an average feature, the $4 million required for a good class A feature and the $10 million required for the exceptional film—costs that are obviously prohibitive under today's system of advertiser-sponsored television.

I can almost hear the proponents of status quo ask, "But what about Richard III? Did not this magnificent spectacle appear on sponsored television?" Of course, it did, and a well-deserved tribute to the television industry for this noteworthy event. My answer, however, to Richard III is that it is a noteworthy event not only because of the quality of the program but also because it is exceptional. Sponsored television can afford this kind of luxury only at rare intervals.

In pay TV, high quality feature films will be a regular occurrence. My company is willing to invest substantial sums of money in bringing such programs to the television audience willing to pay for them. Our decision is based upon our opinion that sponsored television is not set up to do the job. If we are wrong—if sponsored television is able to bring pictures like Richard III to the public on a regular basis—obviously we are going to lose a lot of money. We are willing to take that risk. If we are right, the public will be the gainer. If we are wrong, our company will be the loser. If our management and stockholders are willing to take this risk, why should our opponents be concerned?

STAGE PRESENTATIONS

Pay TV could also bring at a reasonable cost legitimate theater and Broadway shows to a larger audience than now has the opportunity of seeing them. Relatively few people can see such presentations under present arrangements and facilities.

Typical costs for musicals—normally the most expensive types of Broadway productions—are about $250,000 and range from a low of about $200,000 to as high as $350,000; $350,000 to $500,000 may be taken as a very rough range for the cost of purchasing many Broadway presentations after a reasonable run. Total adaptation costs may run up to about $150,000. The time charges for a 2½-hour musical would normally be covered by about $200,000. Thus, the costs of putting a Broadway presentation on TV might frequently run from $700,000 to $850,000—a financial undertaking which advertisers would only rarely assume.

By comparison, pay TV would find the Broadway show an economic "shoo-in." If about 8 million sets in use, or about one-quarter of the present total number of sets in use were tuned in, these costs would amount to about 9 or 10 cents per set; if 16 million sets tuned in, they would be about 4 or 5 cents per set. With an allowance for administrative and collection charges and profits, the total price required per set for pay TV might be about 30 cents to 40 cents. This compares with an admission price range of $4 to $9 for seeing most such presentations on the stage.

OPERA

While it is difficult to gage the extent of popular interest in opera, pay TV certainly would offer an opportunity for the presentation of opera to broader audiences than at present. An estimated 70,000 people paid up to $7 per seat for the theater-telecast of the opening of the Metropolitan Opera in 1954.

During the 1953–54 season, two 1½-hour operas were telecast on Omnibus. Total program costs of these Sunday afternoon operas were $65,000 each, including costs, among others, of adaptation, staging, and a small fee to the Metropolitan Opera. Time charges for Omnibus programs are $70,000, making a total cost of about $135,000. If the operas had been telecast during the most favorable TV times, the time charges would have been about $115,000. Total time and program costs under such circumstances would have been about $180,000.

While Omnibus presented these two operas at no direct charge to the public, there has been no regular presentation of opera on sponsored TV. The number of sets tuned in on Omnibus ranges from about 2½ million to 3⅓ million. If 1 million sets were to tune in regularly on a pay TV presentation of opera, a price of only 25 to 30 cents per set would make regular presentations economically possible.

SPORTS

Pay TV could bring into millions of homes the fights and football games which are now being restricted to theater TV with limited audience. It could insure home TV against the further loss of other sporting events to theater TV. By making available an alternate source of revenue to producers of sporting events whose attendance is being hurt by sponsored TV, it could prevent many sporting events from going off TV altogether, and bring new additional sporting events to the TV screen.

Attendance at major league baseball parks in recent years has declined. Sponsored TV is generally believed to be one of the major factors behind this decline.

Minor league attendance has slumped still more and minor leagues have been steadily reduced in number since 1946. Reflecting concern with the effect of TV, the major league teams in some cases limit the number of games they will permit to be telecast while playing at home.

By providing an additional source of revenue, pay TV can strengthen the financial base of baseball and reduce the necessity of limiting TV baseball presentations that compete with the normal gate. For example, the total Washington attendance in 1954 was about 500,000, or an average of about 7,000 per game (counting doubleheaders as one game), at admission charges ranging from 75 cents to $2.50. There are approximately 650,000 TV sets in the Washington area. If the Washington club could obtain an average of 15 cents net per set tuned in, it would need to reach only about 10 to 12 percent of the total sets in the area in order to recoup from pay-as-you-see TV as much as it ordinarily takes in at the box office.

In 1953 and 1954, the Notre Dame football games were shown only on theater TV and not on home TV. They were available in only about 10 theaters. There have been agreements by college athletic authorities not to show their games in certain areas in order not to curtail the gate of other institutions. There are various local blackouts on the games that are presented on home TV, both professional and college.

The fact that most football games are of regional rather than national interest has often meant that the advertiser is not willing to pay enough to compensate for the loss of revenue at the gate. But while the interest in many football games is local it is often intense. With pay TV, substantial numbers of viewers would be willing to pay higher prices per set than the advertiser pays. This additional revenue would alter the balance between the yield from TV and the loss in gate revenues, making it possible to give the public a wider range of TV football entertainment.

Even the world series, which from the outset has been a mainstay of sponsored television, shows signs of unrest so far as home audiences are concerned. It has been economically feasible for sponsored television to underwrite the world series largely because a long-term contract fixed the cost at the extremely low figure of $1 million per year. This is the last year of that contract. All indications to date are that the cost will jump to at least $3 million per year. Television Digest for April 7, 1956, reports that Gillette—the perennial sponsor of the series—does not feel justified in underwriting this heavy cost. According to the news account:

> Gillette this week informed NBC-TV it's not interested in paying $3 million for sponsorship of world series when new contract is negotiated starting in 1957. Baseball commissioner's office, at behest of players (who will get 60 percent of world series TV receipts), reportedly is seeking $3 million per year for the

rights. NBC spokesman said it was extremely doubtful that it would bid for rights at that price—especially in view of Gillette's position.

What are the alternatives? The world series may disappear entirely from home television and be available only in theaters, or organized baseball will have to cut the price to a point where sponsors can afford to underwrite the costs—thus depriving the baseball players' pension fund of sorely needed revenue. Neither alternative is pleasant. Pay TV offers a happier solution. Through pay TV the world series can be assured for home television and the players' fund can receive the $3 million per year if organized baseball receives as little as 8 cents per set per game—assuming a 4-game series and 10 million fans per game.

EDUCATION

Pay TV can create a situation in which the potentialities of TV as an educational medium would be far more fully exploited than at present. There is a need for programs which are avowedly and systematically educational. Sponsored television cannot adequately discharge this obligation because the potential audience is small. Pay TV could increase the number of such programs and provide additional educational opportunities at reasonable cost to people, such as housewives, who are not ordinarily in a position to pursue educational objectives.

The interest of the United States public in education is clear. About $10 to $12 billion are spent on direct education every year. There is a large interest in adult education; it has been estimated that over 5 million Americans are enrolled in adult education courses of one sort or another; there are about 650,000 adults in private correspondence school courses.

Pay TV offers many educational possibilities. There might be high school or college courses offered on television with or without credit; the Pittsburgh educational TV station is currently working on a TV high school course. Correspondence schools might use TV either to give separate courses or as an adjunct to regular courses. Or stations and networks might present courses ranging from Shakespeare readings to how to dance, automobile mechanics, child psychology, and other subjects.

The FCC has made 251 channel assignments for "noncommercial educational TV stations." Up to March 28, 1956, the Commission had granted construction permits for only 38 noncommercial educational TV stations; at that time only 19 educational TV stations were on the air. The precise pattern that educational TV programs will take as between educational TV stations, ordinary local stations, and networks is impossible to predict. But just as it will tend to increase educational programs, pay TV will tend to increase the number of educational TV stations.

These are examples of the benefits to the viewing public from pay-as-you-see television in terms of programing. Given the economic ability to produce, there is literally no limit to the imaginative and creative ability of America's entertainment industry. With the broadening of the economic base provided by pay TV, "spectacular" can become descriptive of the average rather than the best.

NEW TELEVISION STATIONS

Under sponsored television there are today fewer than 450 commercial television stations and it is exceedingly difficult to see how there can ever be more than 600 television stations so long as their sole support must come from advertising revenues. This is not my pessimistic prediction. My authority for this is probably the most vocal opponent of pay television—Dr. Frank Stanton, of Columbia Broadcasting System. CBS has submitted to the FCC a detailed study which shows that even if we were not troubled by incompatible UHF channels—even if all channels were compatible VHF channels—sponsored television cannot support more than 588 stations in the entire country. CBS is doubtful even as to this figure. It describes its estimates as "conservative" and that the results are likely, if anything, to be lower.

How does CBS arrive at these figures? It obtained figures from the FCC which enabled it to estimate the minimum revenue necessary to support television stations in 1-, 2-, 3-, and 4-station markets, respectively. These figures—stated on the low side—are $200,000 per year for 1-station markets, $300,000 for 2-station markets, $400,000 for 3-station markets, and $500,000 for 4-station markets.

Next, CBS made a study for the years 1951–54 to ascertain the total advertising expenditures per TV home for each year. The figures—which according to CBS do not fluctuate materially from year to year—show a high of $16 expenditure per TV home for 3- or 4-station markets, with correspondingly lower figures for 1- and 2-station markets. The average for the entire country is $11 or $12 per TV home. Correcting this to total homes, on the assumption of 90-percent television saturation, the following interesting statistics emerge. We are reproducing them exactly as CBS presented them:

TABLE 3

	4-station markets	3-station markets	2-station markets	1-station markets	Total
Minimum revenues per station	$500,000	$400,000	$300,000	$200,000	
Minimum TV homes per market	125,000	75,000	45,000	20,000	
Minimum total homes per market	139,000	83,000	50,000	22,000	
Number of markets	78	30	57	52	217
Number of stations	332	90	114	52	588

A truly gloomy picture emerges. Whereas the FCC allocated some 1,800 channels to about 1,300 communities, CBS states that under sponsored television we cannot look forward to more than 588 stations in 217 markets. All the high hopes of communities for their own hometown stations are bound to be frustrated if economic support can come only from advertising. Not a very pretty picture—except for CBS and NBC, who do very well under this system since their revenue comes principally from sales in the top 100 markets.

This fate need not befall television. If pay television is authorized, a new and supplemental income becomes available to help carry the load. Based upon the figures set forth in table 3, it is apparent that the 20,000 homes in the 1-station market would need to pay for subscription programs less than $1 per month to produce the $200,000 minimum revenue required to support the station. In the 2-station market, the 45,000 homes would need to contribute only slightly over $1 per month to produce the minimum revenue necessary to support both stations. The sum of $1.34 per month from the 75,000 homes in the 3-station market and from the 125,000 homes in the 4-station market would produce the $1,200,000 and $2 million minimum revenues necessary for all of the stations in those markets.

Is the public willing to expend these sums for pay TV? Telemeter's experience indicates that these sums are a small fraction of what the public is willing to pay for superior programing.

Surveys in Palm Springs (where Telemeter conducted a pay-television experiment) and elsewhere indicate that viewers individually are willing to pay for high-quality programs presented without commercials. The Palm Springs survey indicates that the average subscriber to pay TV is willing to spend directly on TV entertainment about $1.50 to $2 per week, or roughly, $75 to $100 per year.

Sums of this magnitude can be obtained without using more than a small portion of the total hours available for TV broadcasting. Of the 126 hours during which a typical TV station is on the air per week, only 8 hours at an average charge of 25 cents an hour would be required to bring in from the average family a return of $2 per week or roughly $100 per year.

Using this figure, it is seen that 2,000 rather than 20,000 TV homes per market, as estimated by CBS, could produce the minimum revenue to support a station in a 1-station market; 6,000 rather than 45,000 TV homes could produce the minimum revenue for both stations in the 2-station market; 12,000 TV homes instead of 75,000 could produce the minimum revenues necessary for the 3-station market; and only 20,000 TV homes rather than 125,000 would be required to produce the minimum revenue for the 4-station market.

Imagine how our television horizons can be expanded with the additional support from pay television. Communities of 10,000 to 15,000 could look forward to their own television station just as they have their own radio station. The 1,800 television stations envisaged by the FCC need no longer be a mirage. It can come true.

We are not so naive as to believe that all of the revenue derived from pay TV would go to the station. Some of it must go for program costs and for administrative expenses. But, as we pointed out, these figures are based upon only 8 hours per week of programing. If pay TV consumed as little as 15 percent of the station's time, more than 18 hours per week would be available to help the station meet its operating expenses. Moreover, the bulk of the time would still be available for sponsorship, and revenue could be expected from this source. The fact that the public would pay for some programs would not detract from television's effectiveness as an advertising medium. The New York Times is an effective advertising medium, even though the reader must buy it. There is no reason why television should be any different.

The pattern most likely to prevail is that pay TV will concentrate where it has its greatest relative strength; that is, on a relatively few high-quality or special audience-appeal programs occupying a relatively small portion of the total TV air time. Advertisers, on the other hand, will concentrate where they in turn are strongest; that is, on programs for low per-viewer cost that will convey advertising messages with frequency and effectiveness and that will take up the bulk of viewer time. The composite would be a more varied, wider range of programs for the public to view.

Exactly how much aggregate revenue pay-as-you-see TV might produce cannot be forecast with accuracy. However, on the modest assumption that by 1960 only 25 percent of TV households will have installed pay TV and spend an average of $1 per week on it, the aggregate revenue would be about $600 million. On the high assumption that 90 percent of TV households will have installed pay TV and spend about $2.50 per week on it, the aggregate return would be over $5 billion. For 1965 the low figure is $700 million and the high figure is over $6 billion.

NEW HORIZONS IN TELEVISION

This new source of income should open up new horizons for television broadcasting. No longer need television be confined to some 200 markets, as CBS admits will happen under sponsored television. Communities which are capable of suporting their own radio stations or local newspapers will be able to have their own television stations. Medium-size communities will be able to have 3 or 4 stations instead of 1 under sponsored television. And large metropolitan areas should be able to support 10 or more stations.

The new source of revenue will also help immeasurably in the solution of a vexing problem which has been plaguing the FCC and this committee for several years. I refer, of course, to UHF. Now that the FCC has been finally and unequivocally advised that it cannot expect any new VHF channels for television, it must find a way to made UHF work lest television find itself forever confined to 12 channels. Pay TV offers the most hopeful solution to this problem. The reason is simple. The many witnesses who have appeared before you have all been in agreement on the following facts as to UHF:

One, there are no technical reasons why UHF service should not succeed.

Two, the problems plaguing UHF are incompatibility—that is, all television sets sold before 1952 were VHF only. A fairly substantial expenditure is required to enable VHF sets to receive UHF signals.

Three, where most of the popular programs are available on VHF stations, the public will not convert. Where many of the popular programs are available on UHF only, the public will convert.

This is where pay TV comes in. Many popular programs are going to be available only on the pay TV channel. No television set in existence today, whether VHF or UHF, can receive these pay TV programs without having some modification in the set. Thus, UHF stations start out at the same point as VHF stations. The supplier of pay programs will not have the predilection to deal with VHF stations that the networks do because those stations will not have a headstart in circulation. Similarly, the prejudice which now exists on Madison Avenue against UHF stations will not carry over to suppliers of pay TV programs. Both classes of stations thus start out even. That is all the UHF stations have ever sought. Pay TV gives them that opportunity. No one has yet found a way for sponsored television to meet this challenge.

Pay TV also offers a new-found freedom to all television stations.

Under sponsored television the television networks are the principal sources of popular programs. In most instances it is sheer economic folly for stations to attempt to operate unless they can secure a network affiliation. A network affiliation is the difference between success and failure, and the stations know it. These stations must therefore stay on good terms with the networks and do their bidding. If they displease the networks, the stations can lose their affiliation and find themselves without program sources.

With pay TV the picture will change. No longer will program sources be confined to the networks. All of the creative sources will be producing programs for television. With a dozen sources from which to choose programs rather than the present 2 or 3, stations will have a new freedom. They can then program their stations to meet the needs of their communities rather than delegate programing responsibility to network officials in New York.

Our counsel have advised us that no legislative amendments to the Communications Act are necessary to permit or empower the Commission to authorize pay-as-you see television. I am not a lawyer and I will not attempt to detail our counsel's reasoning and conclusions. These are set forth in detail in Telemeter's comments in FCC Docket 11279. What then does Telemeter want from your committee and the Congress?

All that we ask is an immediate and forthright declaration from you that the Commission should take immediate steps to give pay-as-you-see television a chance; that the Commission should place no artificial barriers in its path and no artificial restrictions upon its use; and that the air waves should be freely available to those entrepreneurs who are willing to risk the substantial sums of money that will be entailed in producing and distributing pay-as-you-see equipment and the superior programing which it will make possible.

Not so long ago the Reader's Digest decided to make a major shift in its policy by accepting advertising. Up to then its sole support was what subscribers paid for the magazine. Also not so long ago the publishers of magazines which are available in food stores decided to charge for their magazines, which up to then had been free to the customers—the costs were borne by advertising. These organizations did not have to engage in speculation with Government agencies as to whether these changes would increase or decrease circulation or would aid or impair competitive publications. These companies were permitted to risk their money and let the public decide whether the decision was wise or foolish. That is the American way. All we seek is the same opportunity. Let the public decide whether they want to pay for television programs.

Senator BIBLE. There is one more witness to be heard. I cannot be here as early as 2. I can be here at 3. There is a possibility that some other member of the committee might be available at an earlier time. I think in order to be safe we ought to stand in recess until 3 o'clock.

(Whereupon, at 12:25 p. m., a recess was taken until 3 p. m. of the same day.)

AFTERNOON SESSION

Senator BIBLE. The committee will come to order, please. When we recessed this morning, we had one further witness to be heard, Mr. Ray Kohn, of Allentown, Pa. We are happy to have you with us, Mr. Kohn. You may proceed.

Mr. KOHN. Thank you, Mr. Chairman.

STATEMENT OF RAY KOHN, OF ALLENTOWN, PA.

Mr. KOHN. Mr. Chairman, after your remark about the volume of one of the witnesses this morning, these are exhibits in here and not a written statement. So the volume is nowhere near as long in wording as it might seem.

Senator BIBLE. Proceed, in your own manner, with the interest of time in mind, as well.

Mr. KOHN. I have no written statement. I am speaking from notes.

Senator BIBLE. Very well.

Mr. KOHN. And I would really appreciate it if I get hung up—I am not a professional witness—and if I get hung up, if there is a convenient question that counsel can ask, I would appreciate it.

Senator BIBLE. It is most refreshing to find someone who is not a professional witness. You ought to do very well.

Mr. KOHN. You have found one, sir.

My name is Raymond F. Kohn, and I am president and general manager of the Penn-Allen Broadcasting Co., of Allentown, Pa. Penn-Allen is the licensee of an exclusively FM station, WFMZ, and the construction permittee of WFMZ-TV. That construction permit—we did build and we went on the air with our station. However, it was suspended with the permission of the FCC and our CP kept in force. It was suspended last April 15 of 1955. We had been on the air approximately 4½ months.

I would at this time like to identify my colleagues who are here with me to help me with the exhibits. Horace W. Gross, of Allentown, who is a member of our board of directors and who is responsible for the artwork on our exhibits; and my brother, Earl Kohn, of Washington, who is also a member of my board of directors.

Senator BIBLE. We are very happy to have both of you with us. You may proceed.

Mr. KOHN. I have been in this chair before—in fact, 2 years ago under the subcommittee of this committee; Senator Potter was chairman at that time, and we presented exhibits similar to these, but with a different objective in mind. At that time we felt, and still feel today, that this is a television hearing and therefore the committee ought to have some pictures to look at.

Senator BIBLE. I think they are helpful.

Mr. KOHN. So we have gone quite extensively into giving picture stories of this problem as we have seen it. I would like to mention right here at the outset, also, that the cost of reproducing these exhibits and the preparing of them is being borne by one of the proponents of subscription TV. We could not afford it ourselves. Two years ago we did it at our own expense. Frankly, after our demise in UHF broadcasting, we could not appear here and go to the expense that we did 2 years ago. However, our exhibits are our own. Our thoughts are our own, and everything we say here represents my company's viewpoint and no one else's.

The reason why we are here is because my company is in agreement with the present proposal made by the proponents some months ago, that subscription TV be given a trial for UHF stations that are in distress. In that regard, a year ago in June Penn-Allen presented to the Commission in a formal petition which I have here in my hand, and if by reference it could be incorporated——

Senator BIBLE. It may be incorporated by reference into the record, and will be retained in the committee's files.

Mr. KOHN. Showing a detailed analysis of what subscription TV means to an individual market, an individual station, how it would be put on, how much revenues and so forth—and I will show that in much briefer form than this in one of the exhibits we will show today. But at that time we felt—in fact, it was when the NARTB was meeting in Washington last year—that everybody was talking about subscription TV—voluminous documents, propaganda back and forth, arguments—but nobody had any real facts.

Nobody knew whether the public would take to this or not. Nobody knew whether it was in the public's interest because you cannot determine that until there is some way for the public to judge whether or not it is in the public interest. The second thing, is it going to be successful? Well, nobody knows whether this is the answer to the UHF problem, but it can be, it may well be, and if it is we are in favor of it. We can frankly say we do not know whether we are in favor of subscription TV but we will know after it has been given a fair trial, and I think a great many companies and my colleagues in the broadcast industry are in that same position. They don't know whether this is a Frankenstein or whether it is a savior, as far as that is concerned, and we are surprised that those opponents of the system have already made up their minds it is a Frankenstein that is going to destroy practically everything we know in civilization today.

I would like to say that since I sat in this chair before, 2 years ago, that we speak from more experience now because we have had a community television station on the air. At that time, we did not have one on the air. We were constructing at that time, and we have known what that thrill is of putting a community television on the air, in a local market—a local station, no network; everything was of our own making in the way of programing and what film we were able to purchase.

Senator BIBLE. This is Allentown, is it?

Mr. KOHN. Allentown, Pa.; yes, sir. It is not a small community. The population is 106,000 by the 1950 census, but it is a three-city market—Allentown, Bethlehem, and Easton, as you can see on the exhibit.

There are half a million people that live within the circle encompassed by our signal when we were on the air with television, and the fact that we were not able to make it with a half million I do not think bodes well for a great many communities that cannot possibly have that many people. However, we hope to prove, before our testimony is over here, that there may be a chance even beyond our realization now to get what everybody foremost here, and in fact for the past 2 years, has been trying to get, and that is the solution to a nationwide system that will utilize at least a far greater number of the television channels than are now presently operating.

I think there is a good possibility of that if this thing is given a try.

We had the thrill of opening a station, but I will admit here that the night that we closed down our station that I watched a lot of young people—grown men and women—with the tears running down their cheeks, because that signal had to go off the air. That is my own staff and quite a number of people we worked with in the community that came up to bid us farewell, hoping we would get back on the air somehow. We think there is something singularly peculiar about serving the public. Anybody that has the responsibility of a television license, or for that matter anybody in the chair, including a Senate chair, knows when he is serving the public, and when he is not. Those most on the defensive are the ones that certainly have something to be defensive about.

It would be possible for us to be entirely bitter at this point because we went through this whole thing in the last 10 years in an exclusive FM broadcast station. It does not take too much for me to remember vividly the wild acclaim given to FM back in 1946—1945 and 1946—as soon as the war was over. Here was a brandnew type of broadcasting, far superior to the present standard aural service that was being given, and we believed that, because many of us who started this company used it during the war and we knew the technical difference and superiority. FM is still head and shoulders technically above any AM service being rendered the public. We have lived by—I don't know how to word it, but we used to joke up in our studios that we heated the place with the sheriff's breath for about 8 years, as far as the FM operation was concerned.

Now, I might mention that our interest in television is not new or confined to our UHF application 2 years ago. In 1948, when television was first opened under the Third Report, there was a VHF channel allocated to Allentown-Bethlehem-Easton, just 1 VHF channel for that whole populous area. We were one of those who contested for that channel. We have no one behind us in the way of a manufacturer or manufacturing concern or newspaper or an AM station. All of our money was raised by ourselves among the people of our community to finance the venture. They did it in 1948, and we went through complete hearings before the Federal Communications Commission, battling 2 newspapers and the Philco Radio Corp., and if we had had a couple more months we would have had a V in Allentown right now, but the freeze went in before an initial discussion was handed down.

However, we cannot kick at that, and at that time, our attorney in Washington wanted to know if we wanted to fight changing the channel to UHF, and I say this without any sense of self-service that we believed then, and we believe today, that 4 channels in the Allentown-Bethlehem-Easton area of a half million people are better than just 1 V that would be available there.

We did not fight the moving of that 1 VHF channel over to Lancaster. In our statement 2 years ago we based every bit of our emphasis upon the need for local expression and its rightful emphasis in this whole question. Our position has not changed. I would like to make a short quotation from our testimony of 2 years ago before the Potter committee:

Before we present what we believe is a sound and workable approach to the UHF dilemma we would like to bring out briefly and emphasize with all the vigor at our command one aspect of this problem that in our opinion should have precedence over all other considerations. It has been touched upon in other testi-

mony but has not yet been given the emphasis it so surely deserves. We refer now to the 2 words "local expression." We think it pertinent, but not material to this controversy who utilizes what channels, but that all channels necessary to a nationwide truly competitive system be utilized. To achieve this objective, a fair and proper climate must be provided so that television on the local level shall have a reasonable chance to grow in all communities across this Nation wherever the economic soil is rich enough to nurture it.

Our position is the same today, only emphasized a thousand times over by our experience of operating a community television station which, we think, bore out what we said before we went on the air and told the Commission we would do in this matter of bringing out local expression with our local live programing in our community.

We think that the unused and abandoned TV channels constitute, right now, the greatest and most tragic waste of one of the most important natural resources that exists in this country today. It is just one man's opinion, but I think that the decisions that are made today by those in responsibility to make them have as great an influence on the social and political development of this country as some of the things that have happened in the past, like the industrial revolution. We are dealing now with communities, and the tremendous impact on tomorrow will be decided, in some part for sure, by the decisions that are made by the Federal Communication Commission, and whatever recommendations this committee makes to them.

I think it is almost impossible to visualize the difference between 1,500 television stations across this country, and 4 or 5 hundred, as to its impact for the good of the country or the evil of the country. We know what the telephone itself did as far as the social behavior of our people is concerned, bringing them together. Now, we have sight and sound together, and it is just a logical extension of the radio service which has developed to a great degree in this country, where you find that there is a lot of local expression and many of the local people get before radio that will never have the opportunity to get on television.

Now, in order to show our belief and our sincerity in these two words "local expression," we have prepared an exhibit, and that exhibit is Exhibit A [3] which is the first exhibit in our folder. It is not a map exhibit. We prepared this for the benefit of the committee, who may never have had a detailed look at the possibility of what a local station can do in the matter of presenting local programs, and the type of programs that exemplify what we mean by local expression. In this exhibit we have taken just one 2-hour show which, with FM, is put on the air every night from 7 o'clock in the evening until 9.

Needless to say, if we had network we would have had a hard time getting those 2 hours in there, but we did not, and the fact that we did not have a network did not keep us from going on the air. Maybe we were stubborn or maybe we were foolish, or both, but we think we have now proven something, at least to ourselves, and I hope in some way in some small measure I can prove it to this committee.

In this exhibit everyone of the people that you see here, and the civic organizations and the features, the hobbies, the occupations, the special events, the medical societies, the red-feather agency—77 hours

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[3] This exhibit and others referred to by the witness are set forth at the end of his testimony, starting at p. 1129. See p. 1203, below, for the formal order inserting them in the record.

are represented in educational programs alone in that 2 hours every night on WFMS-TV. In addition to that, we have listed here—none of these people, of course, does anyone know, with the possible exception of Gene Autry and a few other celebrities that came to town that we, of course, got on the air. But we think wrapped up in having these people come and tell their stories and show their talent in front of our cameras did more for Allentown than certainly the Philadelphia stations—were of more worth to it than the Philadelphia network programs that are now servicing Allentown. And there is no television station in Allentown now doing this sort of thing. The logical question arises—before I go into that, though, if you will turn to page 7 of this exhibit A, and just break down in that 4½ months of programing, you will see that we had 77 hours of educational features and 123 hours of entertainment on this 7 to 9 show.

Now, the most surprising thing, and it will be a surprise, I think, to a lot of our colleagues, because I have certainly read the testimony of those—I have tried to keep conscientiously up with it, and I have sat here for many days listening to broadcasters saying that you have to have network programing to make a station go. I was very much impressed with the testimony of Mr. Moore of Los Angeles who, in a big market, testified that local live programing certainly was salable programing, that it could be successful that way and it can compete against network programs. We think we showed that, because this 2 hours in the evening, even though it contained a tremendous amount of educational features in it, was our most salable program during the entire broadcast schedule.

Thirty-six percent of the revenue—in those 4 months we billed some $21,000 in round numbers—and 36 percent of that revenue, the spot announcements, were placed on this 2-hour show every night. Even public service can pay off, and I am not against having public service pay its own way, if you can do a good job of it, and at the same time I think it bodes well for your advertisers.

Mr. Cox. Was this local advertising?

Mr. Kohn. Yes, with one exception; we have one national account in that respect.

Mr. Cox. Do you have any idea what rate of viewership you achieved with this?

Mr. Kohn. Only insofar as there was enough talk around the time that the merchants asked to have their announcements placed in that period, and strangely enough, even though we were about 56 percent local live of our entire schedule—we believed in it wholeheartedly; and in fact we started out with more film, and as time went on we substituted local live programs in place of film—but 94 percent of the revenue of our station in our first 4 months of operation was all placed in our local live shows as opposed to the film shows.

Mr. Cox. Do you have any ratings of comparable audience to the other stations in this area at the time you had this program on?

Mr. Kohn. Unfortunately, at the time, we had set our schedule to take our first ratings 6 months after we were on the air, so we never got an opportunity to actually put a yardstick. We did have a good indication from the number of converters that were sold. We do know that our Saturday night hoedown—which would match in its excitement and real spontaneity any live television—we had a 2-hour hoedown on Saturday night in our studio; we had three or four hundred people in there. We do know that it was reminescent of the early days of television when only the pubs had a television set, because in the upcountry north of Allentown they tell us that the UHF-converted pubs up there were behind. They just couldn't accommodate all of the people that came in from around the countryside just to watch that hoedown.

We were tremendously encouraged by the fact that local-live programing had been sold down the river too much, I think, in these hearings. For instance, in this show we used the hometown newspaper concept. Certainly, we gave them international and national news as part of it. We gave them the national sports. But we had the society page in there, and we had the entertainment section. We had the classified ads represented by our advertisements. Putting local people in place of your network personality—I still believe that more people in Allentown would rather watch their own people than they would watch personalities from outside; at least a good portion of their time, and at least they will turn to us as much as they will turn to a network show.

Local live programing can compete with network programs and outcompete a lot of the film programs that we had. That we knew for sure. In that respect there is a residual benefit that maybe I should have mentioned briefly in passing. We had a staff of 28 people for television. It took about 20 of them to run this show in the evening. It would be impossible to keep it up too long because we had salesmen pulling cable and every member of the staff was appointed to dig up material to put into this 7 to 9 show.

Steve Allen had an easy-to-get 2 hours in evening compared to putting on our 2 hours of material which we had to dig up. There was something I saw happen to my staff up here. Not a single one of them was in favor of this thing when it started out, but by the time that program had gone on for a month, they really became a dedicated bunch. They really say that this hometown material that we brought in and put on television, and the tremendous response—I might mention we received in that period of 4 months between 4,000 and 5,000 letters from the public, and I am not sure that that is a great amount or not. There are no box tops or anything connected with it, but I do think that it is significant that it was a different type of letters. Very few of them were criticizing. They just liked the idea of this, being able to see all of the various features. We had fire engines running around our studio putting out fires from a voluntary fire department. As to the 4-H Club, if a kid had raised a bull that won a prize, that bull would come into the studio that night.

We tried to make news before the camera. We had a lot of fun with it because the newspaper, to get a picture for the next day, had to come into our studio to take the pictures. That is the real spirit of competition, which I think again we should have in a lot more cities across the country. Television is a competitor of newspapers and brings about a healthy competition, which is fast disappearing as far as the newspaper industry is concerned, even in the cities like Washington, which is a very large city, but the newspaper ownership—the mergers are taking place every day.

As I said, none of the members of this committee, or nobody in this room, knows these people or anything else, but I think you multiply this type of programing clear across the country in towns of 10,000 and up and you have got one of the basic worths and the real grassroots approach to communications, the real worth of the future of television, if it is going to serve the public. And I have been impressed a great deal that we have too much self-interest testimony, and not enough public interest, as far as the whole scope of the United States.

It isn't important whether we exist in Allentown or not, but it is important that a television station exists in Allentown. And I also would like to bring out here that we think it far more important that television exists in Allentown than it is to have Philadelphia just claim another half-million people to their already 4 million people that they have, which enables them to take another couple of hundred dollars onto their rate card. I think it far more important for us to get $200 up in Allentown than it is for the rate in Philadelphia to be $2,000 an hour rather than $1,800 an hour.

In the previous hearing—I am sure if Senator Potter were here he would remember it—we threw out a challenge to our Philadelphia stations, that if they would promise under oath to the Commission to serve our community in Allentown the same way we promised under oath to do it, that we would tear up our testimony and forget all about any protest whatsoever, and just to bring the record up to date, nobody has as of yet accepted our challenge, even in the matter of one-thousandth of 1 percent as far as serving Allentown on a local basis.

Another aspect of the need for local television stations hasn't been brought up, to my knowledge, before these hearings, but it is important to every citizen in the country, and that is the matter of talent. We have dug up talent in 4½ months that had a very good chance to go on and become talent networkwise. I am sure that any of us that watch television, or have been on a regular basis for a number of years, are convinced that we can use some new faces now and then on television. I think the mortality rate of comedians is growing faster every month, but in radio, practically all of your big-name stars in radio started in such stations as Allentown or in Pueblo, Colo., or in places such as Reno, Nev.

Senator Bible. I was going to say Waukegan. [Laughter.]

Mr. Kohn. But I don't think that has been brought up, and emphasized. This includes what everybody sees on television, developing the talent in the country, which will be our future stars on television; and not only that, but in editorial work, public service work, and other things as well.

The sports director that we had on our station has since, in just a year's time, gone up to where this year he is going to be one of those participating in bringing major league baseball to the city of Philadelphia. So if he had not had that break, so to speak, on a smaller station—and I was able to recommend him highly, he got the chance, he made good on the chance, and that is where your talent for the future is coming up in television. It is not going to be the NBC page boys, although some of them make it. It is going to be those who have learned their trade in the smaller stations, and it is a great satisfaction to my manager to see one of his boys go up the ladder and make a real success. It is one of the compensations, I guess, that you get in place of money.

Mr. Cox. Is there any local service being supplied to Allentown by either the Philadelphia or Lancaster stations in the sense of support for your community chest or editorial projects or anything of the sort?

Mr. KOHN. No; there is none whatsoever. The extent of the participation of our people in the area, on the Philadelphia stations, are participants on quiz shows, things of that nature.

The extent that our advertisers participate is in these stringers at the end of a television commercial: "In Allentown, see so and so," and they rattle off about six names, and that is about the extent that an Allentown merchant could possibly participate. He cannot pay the rates. We do have one other, for the record. We have a large department store that is publicity minded that actually sponsors a 5-minute program every night on a Philadelphia station, but I won't give my opinion as to why he does that. It is certainly not to justify the expense versus the worth because it comes at 11:30 at night anyhow.

We had another boy who had never had a single bit of commercial television experience who today is program director of a station in Arizona. It is possible to discover real talent that will otherwise never get to the top, and I will go on record as saying that there is more talent undiscovered by 1,000 percent, than you now see on television today, real good talent.

You read about these Cinderella stories every once in awhile, but they go more by happenstance in the movies and so forth than they do by the way our industry works. They make their name in a small market, and you can't keep them and you don't want to keep them. You want them to get out where they can serve more people.

Now, I would like to present—I will start talking with pictures now.

Senator BIBLE. Fine. You just proceed.

Mr. KOHN. I would like to show you why Allentown does not now have local expression in its community. The solution, 2 years ago, that we presented and which I can show rather forcefully, I think—our solution to this UHF–VHF problem 2 years ago was cutting back the powers and antenna heights of stations. We believe that is still the only solution, drastic as it is, that will allow hundreds more stations to get on the air. In other words, confining the signals of all stations, V's or U's, to approximately the area of influence which you might call their local influence, their market, so to speak, and that all of them have a market which most communities are capable of supporting.

I was sitting here in this room 2 or 3 weeks ago and heard Senator Pastore remark, in speaking of Providence and Boston, "Why should Boston serve Providence and vice versa; why isn't it enough for Boston to serve Boston," and he came out with a rather flat remark, "Isn't the whole solution to this problem just cutting these signals back to their own sphere of influence." But then he added, which is our despair, also, "Who has nerve enough to do it at this point," whether the Commission—it is a terribly drastic remedy. We would still like to see somebody with nerve enough to do it, but that is major surgery.

I think we can show you why all of the minor surgery that has been proposed, before we finish here, is going to have little or no effect upon bringing a lot more stations on the air. Since we despaired of this happening, 2 years have gone by. We put our mind to an economic solution, and that is where this pay television comes in, the reason why we are appearing here today.

As I mentioned before, a year ago we conceived the idea of a pilot station to establish the merits and benefits of subscription TV, or vice versa. That was submitted to the FCC in June, and we made a very detailed analysis on how it would work. The FCC, a couple of months ago, rejected this petition as premature since they had rulemaking decisions pending before the Commission on this whole subject.

Senator BIBLE. This was a petition asking to put in pay-as-you-go TV or subscription TV?

Mr. KOHN. That is correct.

Senator BIBLE. They ruled it out because there was no general rule on the subject; is that correct?

Mr. KOHN. It is a very controversial thing, and they said there were several serious questions to be decided before they thought it should be even put on an experimental basis. The idea was not turned down, but they said that it was premature.

Senator BIBLE. I understand.

Mr. KOHN. We just thought it made a lot of sense, before decisions are made, to ascertain some facts to guide you in the making of those decisions, and it is in detail in our petition before the Commission, which we are incorporating by reference. Subscription TV may be the answer, but certainly we are not going to know unless it is tried on a fair, realistic basis.

Now let's take a look and see why all present seriously considered proposals for solution of the UHF–VHF dilemma will not be the answer. It is very possible that some small number of stations may benefit. Television on a healthy, nationwide, really grassroots basis will never be realized by any drop-in procedure or deintermixture unless it is done on a drastic scale, and I have not seen that proposed as yet. I have heard of selective deintermixture, I have heard of limited drop-ins, and CBS proposes their two plans. None of them come close to giving us what we are looking for, I hope, on the priority 2 basis—and I think it should be priority 1—the whole expression idea that every community has the right to its own self-expression through this new electronic miracle medium. This is a map (referring to exhibit A–1—see p. 1135 below), this is a map of southeastern Pennsylvania. That is our home area. Allentown is up there near the New Jersey border. Bethlehem and Easton comprise the three-city market.

The UHF stations are shown in yellow. The yellow dots (shown as lighter colored dots in the maps herein) are the UHF stations. Those on the air are ringed with a black outline. The VHF stations are shown in red (appearing as darker dots on the maps herein). As you know, even in just that southeastern section there, the yellows have it as far as allocations are concerned. There are 5 VHF allocations, in 3 cities, in southern Pennsylvania. All five of them are on the air and all of the allocations are taken in VHF. There are 20 UHF allocations in that same area, in 13 cities: 8 on the air, 4 U construction permits, 3 U's suspended (were on the air but suspended), and 5 got grants from the Commission (construction permits) but relinquished them back to the Commission. That is a pretty sorry story, at least as far as carrying out the sixth report, for just one small area of Pennsylvania. A great many people live in that area. It is one of the most highly populated areas in the United States.

The smallest city there is 15,570, and that is Sunbury, way up in the left-hand corner. We say that Sunbury should have a station even for 15,000 people, and that it is possible. We will try to at least give some measure of proof to that a little later on. Now let's look at the coverage of those eight UHF stations that are on the air right now (referring to exhibit A-2—see p. 1136 below). As you see UHF—even if VHF never developed—UHF gives pretty good coverage to that area, excellent coverage. In fact, if you put UHF in those 3 red dots there, you have a far better television system than we proposed 2 years ago eventually, but UHF can do the job. The Commission did not err at all in picking the places to put the allocations, they just intermixed them, and our solution, or our contention, is that a deintermixture of Philadelphia or Wilmington or Lancaster is not the answer to this problem.

The answer, unless you want to go to an all-UHF type of operation—but to put one more V in Philadelphia, to give more competition for one city, is just going to complicate the whole area that we are talking about now. It does seem a terrible shame that over there at Lancaster there is 1 VHF station that is spoiling the development of 8 UHF stations. I hope that if nothing else is done, at least for the sake of our own section of Pennsylvania that that will be one of the deintermixed cities, and let all of those U's compete together there. Ironically, that channel there in Lancaster is the one that in 1948 was up in Allentown. They moved it to Lancaster in the sixth report.

Senator BIBLE. What is the population of Lancaster, just roughly? You say Allentown is 100,000; how many in Lancaster?

Mr. KOHN. About 125,000.

Senator BIBLE. A comparable city.

Mr. KOHN. I have it here.

Senator BIBLE. That is all right, that is close enough.

Mr. KOHN. Oh, Lancaster is much smaller than that, it is 63,774.

Senator BIBLE. You said Allentown was 100,000.

Mr. KOHN. 106,000. That is the 1950 population, 106,756 for Allentown.

Senator BIBLE. You may proceed.

Mr. KOHN. These are all 1950 census figures, any figures that we give. Now you have seen the UHF coverage. This is the coverage of stations now on the air and, mind you, there are 12 UHF stations that are not on the air. There are only eight UHF stations on the air. Now let's see what happens when we drop in just five VHF stations and their coverage (referring to exhibit A-3—see p. 1137 below). In 3 cities, 3 cities are covering that whole area, there, of 16 cities, and it is rough going for those U's that are on the air. I doubt if there is a single one of them making money at the present time, and some of them have been on for 2 years now. But that is what we mean by saying that deintermixing and giving another VHF station to Philadelphia only complicates the problem. Our contention is that those 16 cities, all with a television station, would certainly serve the public and serve the future of television and the future growth of this country far greater than limiting it to a VHF service in Lancaster, Philadelphia, and Wilmington. I might say here that these coverages are all actual coverages today, based upon their antenna heights and their powers. We plotted every one on the basis of the FCC contours. If we were to take the coverage that they claim on some of their rate cards, we would go off the map here on many of those.

Senator BIBLE. I think you have done a very effective job now of presenting the problem. Now give us the solution.

Mr. KOHN. First, may I show you, so that you will not think that this is an abstract example—can we go over to Ohio now and see what happens in Ohio, which is even more of a dramatic exhibit?

Senator BIBLE. This is designed to show the same thing in a different place; is that correct?

Mr. KOHN. That is correct; just to show you that it exists in many places in the country.

Senator BIBLE. I think we should be able to move through this part of your testimony very quickly——

Mr. KOHN. I will move this very fast and just give you totals on here without explaining them. These (referring to exhibit B-1—see p. 1139 below), are all the sixth report allocations for Ohio and the southern part of Michigan and, as you see, a litle bit of Indiana, Kentucky, West Virginia, and Pennsylvania. In all there are 24 VHF allocations, and 22 of those VHF's are on the air. In that same area there are 67 UHF allocations, and of that number there are only 11 out of 67 on the air. There is a great disparity there. And I might add, too, that those 14 VHF's are contained in only 6 cities in Ohio, and the 41 UHF's are in 14 cities, so when you are talking about local expression, we are getting just areawide expression from the VHF's now.

Senator BIBLE. How many U's now in operation?

Mr. KOHN. Eleven out of 67 that were allocated, and there are 10 that have either suspended operation or relinquished their grants—all UHF.

Now this (referring to exhibit B-2—see p. 1140 below) again is the plotted coverage of the UHF stations on the air that we show, those 11 stations. Now if you take the VHF coverage of those six cities (referring to exhibit B-3—see p. 1141 below), there goes all of your yellow coverage. The overlap—you just cannot get away from it in the whole State of Ohio and Michigan. There is Fort Wayne out there, which has become the object of pride of the UHF because it is the only city in the country that is not overlapped by VHF coverage. But here we have plotted out—and that is why I just do not see how you are going to, with selective deintermixture or drop-ins or however, you are going to get rid of the overlap. Our solution is to cut those red circles back to their own communities in order to let the other communities live with local television, but that, as I say, is a very drastic solution.

There is no question about it, the reds have it as far as coverage is concerned. I would like to point out, too, this is present coverage. Many of those were seeking higher antennas and greater power: going to full power, that coverage will increase. That is true, of course, of the UHF as well as the VHF's.

Now let's take a quick look, finally, at New England, and we will do that very rapidly, Mr. Chairman.

Senator BIBLE. I think you have made very effective exhibits. I think they point up your problem.

Mr. KOHN. The red dots are very few and far between as far as the New England area is concerned (referring to exhibit C-1—see

p. 1144 below), and for this area we have—if you want me to recap it or I will just go through it——

Senator BIBLE. It looks as if you have six V's, if I add correctly.

Mr. KOHN. You have a total of 8 V's, in 6 cities, the total—or rather 4 cities I beg your pardon.

Senator BIBLE. And you have how many VHF's?

Mr. KOHN. Eight in that area; eight allocations.

Senator BIBLE. Six on the air?

Mr. KOHN. Yes, the others are in contention; they are applied for and being contested. There are 34 UHF allocations shown there, and of those there are only 7 on the air. Priority 2, as far as the sixth report is concerned, to get the greatest amount of local expression, at the present time it is—I hate to use the word—but it is a farce as far as getting local expression in those communities which really need it most. And as far as local expression is concerned in these VHF stations, there is so much network time on them that the local expression time is limited either to off hours, certainly not in the good hours. Now if you will flip, we will see the UHF stations.

Even with that number on the air (referring to exhibit C-2—see p. 1145 below), they do a fairly good job on the western part of southern New England there. Boston, of course, is shown up there. These are as of January 16. We had to take the cutoff date somewhere, and our source for these, I must mention, is Television Digest Fact Book. I'm sorry I didn't mention that fact before.

Now, let us see how the VHF—even with the 8 VHF stations in the 4 cities (referring to exihibit C-3—see p. 1146 beliow), goodby UHF coverage as far as not being overlapped. There is no such thing as any station. Now, up there in the left-hand corner, around Albany, is where this controversial drop-in is. I don't see what good it will do, other than to complicate things for all of the UHF stations around there.

Mr. COX. This is one area where at least some of the local UHF broadcasters have indicated that they thought deintermixture would be helpful—that is, to deintermix the Hartford and Providence markets, and to provide an additional V, by whatever means, in the Boston area for service in Cambridge or Worcester—that would be of some help?

Mr. KOHN. If I were living in those cities, and had a UHF, or vice versa, I would be arguing the same thing. I am talking now nationwide without any regard at all to whether one operator is affected or not. Certainly helping out one operator in Hartford, or Worcester, is not going to help the whole Western part of the United States, or the Midwest, or the South. This problem is prevalent all over, and that is what we are going to show you now.

We will extend these regional areas into a complete map of the United States (referring to exhibit D-1). (This map could not be reproduced. It has been retained in the committee files.) There are all of the sixth report allocations in cities 10,000 and over throughout the United States. It is impossible to get it in an exhibit big enough to show more there than a general impression. But there are all of the U's and all of the V's, and if you are interested in totals on this, or if you are interested in impressions, the totals can be read later——

Senator BIBLE. If you have them at your fingertips you can read them into the record now.

Mr. KOHN. Certainly.

In all of these States there are 518 VHF sixth report allocations of 10,000 or over—located in communities of 10,000 or over. There are 1,323 UHF stations allocated through the United States.

Senator BIBLE. How many operating of that number?

Mr. KOHN. Of the VHF there are 443.

Senator BIBLE. 443 VHF's operating?

Mr. KOHN. That is right.

Senator BIBLE. How many UHF's are operating?

Mr. KOHN. No, that is the total number of stations operating; I beg your pardon. There are 348 VHF and 95 UHF, or 67 percent of the VHF stations are on the air, and only 7 percent of the UHF stations are on the air. Even though you have many, many more UHF allocations than VHF's—and that is the whole purpose to get us a nationwide system of television. In other words, 24 percent of all of the stations are all that have been allocated—or all that are on the air. And this is in towns of 10,000 and over. I am not talking about one little town out in your State, Senator, Goldfield, which has an allocation.

Senator BIBLE. It couldn't support TV for a good many years.

Mr. KOHN. It will take some time. We hope some day we will get television there for the benefit of the people in Goldfield.

Senator BIBLE. I don't kid myself into thinking that that is in the immediate future, so it is perfectly all right.

Mr. KOHN. We will admit there are many like that, and that is the reason we did not include them in this. We used 10,000, which we think has the possibility of being able to support a television station.

Senator BIBLE. I think you are making an effective case. You have given us the problem. You have taken exactly 1 hour to present the problem. Now, can you give us some idea of your suggested solution? Could you highlight that for us?

Mr. KOHN. Could I finish with this map as far as to show you the UHF——

Senator BIBLE. Certainly. I am not trying to cut you off, except that we do have some limitations on our time.

Mr. KOHN. I know that, Senator, and I am aware of the fact. However, I don't want to leave a wrong impression here as far as the United States picture is concerned, so if we may have the first overlay here (referring to exhibit D-2). (This map could not be reproduced. It has been retained in the committee files.) This shows the UHF stations that are on the air, those 95, and their coverage.

I might mention that a great many of those that show that they are on the air, there is a red dot in the middle that says that there is a V that is not yet on the air; and it is very possible that it will have a very serious effect upon the U when it does get on the air. They are usually inherent.

Senator BIBLE. This is the UHF coverage?

Mr. KOHN. Yes; this is the UHF coverage, but in many of those cities that are now on the air with UHF a V will soon be on the air, and with the consequences that—we have already had a tremendous amount in the record as to the consequences of that.

Now, if we can show the VHF (referring to exhibit D-3). This map could not be reproduced. It has been retained in the committee files.) There are 348 stations, and the amount of area that they cover. I must say that the Commission, in meeting priority 1, can do it with practically entirely VHF. On the other hand, if it gets to priority 2—we may not ever have a priority 2 if we put too much emphasis on this priority 1, that everybody should have just one signal. I say that every city of 10,000 or over, or any city that can support television, should have its own television station to view in its own community, and for local expression.

A bit more graphically, we would like to show you here (referring to exhibit E). (This map could not be reproduced. It has been retained in the committee files.) These are pie charts, the circles have no bearing on coverage; however, the slices in the pie indicate—the hundred percent of the circle indicates the allocations. The red pie slices there indicate the percentage of the allocations that are being used, and that, again, in cities 10,000 or over. It is quite effective to see here that when you get down to only an average of 24 percent for the whole United States, after 3 or 4 years here now, and stations going off the air faster than they are going on, that we are backwatering here rather than making progress.

Here is something certainly recognizable by every Member of Congress in this next exhibit, probably more so in the House than in the Senate, but these are counties that are affected. If we may show the first map first (referring to exhibit F-1). (This map could not be reproduced. It has been retained in the committee files.). That first map—and this is the local expression as we now have it throughout the country—these are the counties in which the main studios of existing television stations are located. And as you can see there, and I have a recap of those, there are only 281 counties in the whole United States that have local expression; that is, a television studio that people of that county—and not to say the political aspirants and so forth of that county—can go to their own station to reach their own people.

Now, let us look at what might happen if we can get television in every city of 10,000 or over. You would see that we have filled in there (referring to exhibit F-2). (This map could not be reproduced. It has been retained in the committee files.) There are 686 counties in the United States which will have the medium of local self-expression through their own television studios located within their own political subdivision. We thought counties would show it effectively.

Senator BIBLE. Do you have anything that indicates how many people in the United States today have television available to them, either UHF or VHF?

Mr. KOHN. Available to them, sir, or available to them from a local source?

Senator BIBLE. No; available to them from any source.

Mr. KOHN. I do not have those figures, but I am certain that there aren't too many——

Senator BIBLE. Mr. Cox advises me that probably 95 percent of the people have some form of television available to them.

Mr. KOHN. Yes; they are getting at least one signal from somewhere, or they are getting it by a community cable system or something of that nature; but the point remains here that if we can get television on a nationwide basis in cities that can support it economically, we will add some 26 million people that will have their own means of self-expression through their own nearby television station.

Senator BIBLE. Yes; I think your exhibits have effectively demonstrated that.

Mr. KOHN. The next one is one I don't think the committee has seen, or has had any indication of in the testimony thus far. This (referring to exhibit G-1—see p. 1151 below) is our State—or excuse me, our Commonwealth—of Pennsylvania. We do not call this the State of Pennsylvania. [Laughter].

These are the community antenna systems that exist in the State of Pennsylvania alone.

Senator BIBLE. How many are there by number?

Mr. KOHN. Seventy-seven community antenna systems that exist in the State of Pennsylvania alone. I heard the word, in connection with either Mr. Landis or Mr. Raibourn's testimony this morning, about pirating. This, I think, is the best modern-day pirating that we have got in our industry today, where these community antenna systems can pick up the station—whether it be a network or a local station, or anything else—can pick it up and then funnel it on down the line for their own profit. I think I would be just as entitled to take off the air—and I am close enough to do it—the Philadelphia programs and put them on my UHF station and play them for free, as these fellows are to take them and sell them down the line.

Senator BIBLE. Did you ever try it?

Mr. KOHN. No, sir; I haven't, because I don't believe in it.

Senator BIBLE. I am wondering if there are any lawsuits involving this community antenna problem?

Mr. KOHN. There is a petition that has just been put in before the Commission, as I understand it.

Senator BIBLE. That has not been determined as yet?

Mr. KOHN. To determine whether or not they are illegal, or they should be designated as a common carrier.

Mr. COX. Your rebroadcast of the Philadelphia signals would be a clear violation of the Communications Act, whereas, up to now, it has been a debated legal question as to whether their operation violates anyone's property rights?

Mr. KOHN. I think the application is synonymous, although it is spelled out in the case of a broadcaster and has not been spelled out here.

Senator BIBLE. I think it is for the courts to determine, and that is why I ask whether there has been any decision on the point.

Mr. KOHN. But the point that we would like to make here—and now we are getting to the application of all this that you have seen now—the point we are trying to make here is that all of this talk about whether the people will pay for their television or not is beautifully illustrated in our own State of Pennsylvania where there are at present 74,664 people paying for television, and not squawking about it—and you are going to hear a great deal the rest of this week about this idea of free television, and so forth.

We maintain that there are people now that are willing to pay for it. In my own apartment house I paid a hundred dollars for a guy to connect two wires—he already had the thing in—and $25 a year to get television, and never thought a second about it. We wanted television that bad.

Mr. COX. This is not, however, a payment on a per program basis.

Mr. KOHN. No; but they do not have the choice, either, that they would get on a program basis.

Senator BIBLE. How many people in Pennsylvania pay?

Mr. KOHN. 74,662, and by the estimates of the community antenna operators, themselves, they have a potential of 109,750.

Senator BIBLE. 75,000 people pay how much for community antenna per year, after installation, in Pennsylvania?

Mr. KOHN. I do not have the figures on that, Senator, but I understand there is to be a representative from Jerrold testify here later, and I can tell you that at least 95 percent of the operations in Pennsylvania were put in by Jerrold.

Mr. COX. There was previous testimony by the operators of one of these systems to the effect that their monthly service charges ran from $3.50 to $7.50, and the installation charge was from $100 to $165, I believe.

Mr. KOHN. It is quite expensive, I believe.

Senator BIBLE. Your point is if they can pay for this, they can pay for a subscription?

Mr. KOHN. My point is we don't know. We are trying to sit here and determine whether the people out there will pay for it or not, or whether they are going to rise up in arms if asked to pay for it.

Senator BIBLE. But you point to this as an example?

Mr. KOHN. This is an example of what is existing today—that people are paying for their television programing.

Senator BIBLE. I understand your point. Thank you.

Mr. KOHN. For the matter of the record, we have dropped in here now (referring to exhibit G–2, see p. 1152 below) the television coverage of Pennsylvania to show—in relation to these, if television does develop the way it should in Pennsylvania, in the whole State of Pennsylvania—that rather than just get on a line, on a cable, at those places, where if they go away for 6 months they are still going to pay for their television programs on that rate—it is a contract rate, as I understand it, on the community antenna system, and whether you watch television or not you pay for it; but if subscription TV were allowed to operate in all of these television stations shown here—particularly the UHF, and I think it should be done on a trial basis first—these people will have their own choice, and they can pick up and choose what they want as far as their channels are concerned

We know, for instance, that when we were operating, the community antenna people came to us and said "Do you want to install the equipment? It is expensive, but if you want to get on our cable you are going to have to pay us.' I said, "If you want to pick up our programs you are going to pay us," and I think if we had been on the air another 6 months we would probably have had one of these operators in court by now, determining whether or not it is right that they should be able to pick up these signals, at least without some kind of common carrier designation, or without paying the producer of the program.

Now, let us look at the coverage here (referring to exhibit G–3, see p. 1153 below). I want to show you a real example of local expression. These are all radio stations. This is how radio has developed in the State of Pennsylvania. We have excellent radio coverage in every city—even in cities smaller than 10,000 we have radio stations, and a great number of them—and in these towns we have theaters, and we feel that subscription TV in any town that can support two theaters—subscription TV can be supported, along with the local revenue that stations on the regular broadcast schedules will carry.

Mr. Cox. Can they do that and still support the two theaters?

Mr. KOHN. Not necessarily support the two theaters, but it may be a logical extension, rather than having two theaters, you will have theater in the home, yet; and I have never seen yet why the theater people do not recognize this as the ultimate in box office. Rather than fight it, they should be in here pitching for it as an opportunity, and even on a franchised basis.

Needless to say, we have 134 AM stations and 43 FM stations in Pennsylvania, doing an excellent service. Television is nothing more than a logical extension of our electronic medium. We have got sight now put with sound, and we feel that wherever possible in the United States the logical extension from radio to television should be made, and that maybe this pay TV is the answer to it.

Senator BIBLE. Well, now, right there at that point, you have developed this local expression. I think you have a lot of merit in what you say, but will the average listener in Allentown put a dollar in the meter to listen to a program of local expression?

Mr. KOHN. We don't propose, Senator, to charge for our local expressions. My company is more interested, say, in the 85 percent that we will be allowed to put on for our own community than we are in the 15 percent of pay TV, but the pay TV is the opportunity to get the 85 percent which is now silent.

Senator BIBLE. I am very glad to have you clear up that point, because I don't know that that was clear in the record.

Mr. KOHN. I am sorry I didn't make it earlier.

Mr. Cox. In other words, your position is that if subscription television were authorized to the extent of 15 percent of your station's time, that it would provide you with programs that would compete with the networks and would bring you in enough revenue so that, with local advertising revenues you could provide local programing on your station for the balance of your day's operation—is that it?

Mr. KOHN. That is correct, and I think we could be on many more hours a day. I think we could do the programs we did before with the limited budget on, now, an even larger budget, and have a better program to serve the community.

Senator BIBLE. What type of pay program would you put on?

Mr. KOHN. I have a full exhibit of each program schedule as we would propose to put it on.

Senator BIBLE. On a subscription basis?

Mr. KOHN. On exhibit H (see p. 1159 below).

Senator BIBLE. I would say you have done a very, very thorough job of presenting the case.

Mr. KOHN. I think it is the first time anybody has introduced an exhibit of how this will actually work out on an hour-by-hour basis on a television station; and this, after all, is the meat of the matter: What kind of programing is going to be done, what is the revenue that is going to be derived from it? Is it going to do what the proponents have said it is going to do, or that the opponents said it is going to do? Is it going to ruin all free television, and so forth?

Personally, we felt that this was necessary, to get down and analyze it on the basis of, let us say, that you have already authorized it, who is going to go ahead, and on what basis, tomorrow? This is the proposed schedule that WFMZ-TV would use.

Senator BIBLE. What do you pay for on your exhibit H, page 1?

Mr. KOHN. All of those that are blocked off, the blocked lines are pay-TV programs, subscription television programs; those that are blocked off with the black line there. At 1 o'clock in the afternoon, and 2 o'clock in the afternoon, is educational television—purely and simply educational television.

I must remark here that the Allentown-Bethlehem-Easton area, with 7 colleges and universities, and with the 3 cities' public school systems, and so forth, we have no educational allocation to that area. I feel that it would be incumbent upon any station there to substitute itself, at least in some measure, in taking over the responsibilities of an educational station if one had been allocated to that area.

Mr. COX. Would this programing, for which you are going to make a charge, be live based upon personnel from these colleges or would you propose to get filmed instructional materials for this?

Mr. KOHN. I suppose, Mr. Cox, that it would be done—I have seen quite a bit of the material produced by the Ann Arbor Film Center, which is interspersed—it is part live, it is part film, for illustrative purposes, and so forth. Mind you, if a great number of stations were doing this, that in no time at all you would have the best from these stations, which is happening already in educational stations, such as the Pittsburgh station is supplying one of their very best programs to Ann Arbor where, in turn, they turn it out to be used on educational stations throughout the country. I think this is the answer to educational television, this subscription-type tuition. We will call it tuition television, as far as educational television is concerned.

Senator BIBLE. Then on page 2 you get to something that is a little more my type. You have some college-type football games blocked in there, and professional football games—how do you propose handling that?

Mr. KOHN. That would necessarily have to be handled on a live basis. It is impossible to take a film without destroying the suspense of it. Those people that watch the game are the ones that watch the filmed game, too, to pick up an interest in it. But this would require, as was brought out this morning, a network. It requires a network to get college football.

Senator BIBLE. I appreciate that. If I am in Allentown and want to tune into your station, how much am I going to pay to see that college football game on the first Saturday in September at 2 o'clock?

Mr. KOHN. In the pages that follow we have reduced these to the individual charges, at various set installation figures.

Senator BIBLE. Well, could you indicate approximately—put 50 cents in the meter or what?

Mr. KOHN. We propose here a dollar for a college football game and for professional football and we based that, toward the end of our economic exhibit which follows this—and then we took everything and halved the charges, and we still found out that we could make a profit that scares you.

It is economically feasible, and that is why we think stations in all of the towns of 10,000 and over can be supported by this method. Now mind you, here we only have 19 percent of commercial pay TV out of a schedule starting at 12 o'clock noon.

Senator BIBLE. Come again with that statement. Would you repeat that?

Mr. KOHN. Only 19 percent of our programing is taken up with commercial subscription television in a week, and we have set this schedule from noon on. We would propose—if this were successful, we would propose, of course, to go on and match any other station and go on at 7 o'clock in the morning, so that that 19 percent would be even less than the 15 percent of other proposals that have been made here. Now there is 19 additional percent in here for educational television, but in those cities where there is an educational television station that would be taken out of there. I would hate to go on record as being charged, as a commercial operator, for those educational television hours.

To get to the summary, we have 15 hours per week of commercial subscription.

Senator BIBLE. What exhibit and page are you reading from now?

Mr. KOHN. Exhibit H, page 5.

Senator BIBLE. Thank you.

Mr. KOHN. This is a breakdown, in percentages and hours, of this weekly program schedule which we have just shown you here.

Maybe I should have pointed out in there that we do include such programs as our Allentown Symphony, our high-school football games—we heard too much about New York City today, and not enough about these towns that are really going to benefit. New York City already has the Metropolitan Opera that the people can go to see. We are concerned about the people that it costs a great deal of money to get on the train, or fly into New York, and see a Metropolitan opera. I think it should be the concern here—not the big cities but the smaller cities, at least at the outset, to bring these benefits of subscription television to them first, and you can only do that through the UHF stations. On exhibit H, page 5, we have a total of 15 hours of commercial subscription per week, or 19 percent; educational, we have 15 hours or 19 percent; so-called free—and I want to emphasize that I would never use that word "free" without putting quotation marks around it, because it is a misnomer to say that there is anything called free television today except in the loose sense of the word as we use it.

Senator BIBLE. What you are saying there is that you would operate your station for 30 hours of subscription TV per week; is that right?

Mr. KOHN. That is right.

Senator BIBLE. Fifteen commercial and 15 educational?

Mr. KOHN. That is correct. In cities that had their own educational station that would not hold true. They would do their own but we have none in our area. Now here is the answer to the $64 million question. Applying to this weekly program schedule, which we have just presented here, we have reduced it now, to what kind of income can be expected from just that few programs on subscription TV—and our top, remember, was $1 for football games, for sports, and our top was $2 for a Metropolitan opera coming into the community. For the Philadelphia Orchestra, the Allentown Symphony, $1; but here this is the thing that startled us, that there is such a potential in this pay TV, and just because there is I see no reason for anybody to be afraid of it. It just seems to me that the industry, instead of wobbling along, is going to find a cure here that all of a sudden is going to make it become a full-blown industry over a period of a decade, rather than perhaps slipping backward and never achieving that full potential.

I personally do not see that there is a bit of difference between subscription TV and advertising TV. That is one thing that I have never been able to draw a difference on, except that with this pay TV, it is the honest way of extracting the money from the public rather than the hidden way of extracting the money from the public. For instance, our people in Allentown, every time they buy a car, they are still paying $25 advertising expense on each one of those cars. They do not know it because it is not broken down for them when the dealer sells it to them, but they still are doing it. If you do not own a car you are paying for it anyhow on the television show.

Senator BIBLE. I drive a Mercury, and I have looked at Ed Sullivan's Sunday night shows long enough to know that he has a few dollars invested in my Mercury—or rather I have the investment in him. [Laughter.]

Now, how much is this going to cost the user in Allentown, Pa., who wants to look at 30 hours' worth of TV per week on a pay schedule?

Mr. KOHN. You have embarrassed me now, Senator, because that is the one thing that I should have figured out, and I haven't, but I will get it and make sure that you have it. I haven't reduced it to actually what the average family would have to come up with each week.

Senator BIBLE. You tell me if I want to look at the Saturday afternoon football game it will cost me $1 for 2 hours; correct?

Mr. KOHN. Yes. It depends on how many shows you watch a week.

Mr. COX. I suppose you would not expect any one family to watch all of these at a time?

Mr. KOHN. Maybe at the start, just like in the early days we watched television even though there was a snowstorm running across the picture. But I think it will boil down entirely to what is the program content of the shows, and the kind of reputation pay TV gets will be entirely based upon the word of mouth, and so forth, that will spread this thing very rapidly.

Senator BIBLE. How can you come up with any adequate study, or estimate, of the potential income unless you have some agreed percentage of the time which the people are going to be looking at this subscription TV?

Mr. KOHN. Well, all we can present here, Senator, is a breakdown of the types of programs and the general viewing habits of people at the present time, and whether or not they would pay to see something better than they are getting now.

That is my whole point. It has to be tried, and we should lose no time at all in trying this thing to see exactly whether or not this is one of the answers to getting a nationwide television system. If it isn't tried, we may be sitting here making decisions that will set the Nation back for all time as far as this wonderful communications system that we have.

I can show you how we arrived at this summary, the individual charges for classes—we would suggest a 50-cent tuition fee. As you see here (referring to exhibit I; see p. 1160 below), we have broken this down for the benefit of, we figure, 5,000 families for a community of 10,000 people, the immediate environs of that 10,000 being stretched out maybe to 17,000 or 15,000. We took the actual urban population here, but showing the potential of this medium, in the various brackets of installation, such as 5,000 families, 25,000, and on up to 200,000, which would be the potential of our own Allentown area, when we have a complete saturation, which may never be reached.

Mr. Cox. That is 200,000 television homes in a population of a half a million.

Mr. Kohn. Yes; at our present antenna height of 871 feet. That is the high estimate.

Now, we anticipate that a lot of people can quarrel as to how you make estimates, so we took a high estimate, we took an average estimate, and we took a low estimate, so that anybody, in his individual opinion, can pick any one of them.

I don't think anybody can go below the low estimate, and we prove in our summary of the income potential that—for instance, here is a high school football game. Even at the very lowest level estimate, if we have 200,000 families that are equipped to receive the game, you get $30,000 out of 1 game of high school football, with only 15 percent of the people tuned in. It is rather staggering when you figure that——

Mr. Cox. This is page 4 of exhibit I?

Mr. Kohn. Yes.

Senator Bible. What do you base the 15 percent on? That is where I am confused. Is that what the ratings show?

Mr. Kohn. Fifteen percent of the people that have sets that could pick it up—15 percent would tune into the game.

Senator Bible. A high-school football game?

Mr. Kohn. Yes. Now, high-school football will rate above professional or college.

Senator Bible. Is that statistically correct?

Mr. Kohn. Yes; in our community, high-school football and high-school basketball has for years outdrawn college and professional.

Senator Bible. But you base these ratings you have in your exhibit upon your own experience with Allentown?

Mr. Kohn. Yes; and nationally. In this exhibit, Senator, that we we presented before the Commission, we did a very exhaustive study on comparative ratings of existing shows on the air, such as feature film, and so forth, and from that we deduced, and I have taken those figures—and I think that scientifically no one can quarrel with the figures as far as the ratings are concerned. The only thing they can quarrel with is, Will 15 percent of the people tune into it?

We maintain that if they don't, we are wasting a lot of time here, but we ought to find out by allowing this to be used where it will have a double impact. You will get the facts on whether it should be used on a nationwide basis, and at the same time you will breathe a lot of hope into the UHF stations at the present time.

Just the mere fact that anybody comes out in favor of trying this, such as the committee here, or the FCC authorizes it, is immediately going to reestablish a tremendous amount of hope throughout all of the United States for those who have been in the UHF operation. It is worth holding on to your CP to see what happens.

Mr. Cox. Not all of this revenue you project is going to come to the station operator; is it?

Mr. KOHN. No; it is not, but if you will notice these figures on the summary, when you get to a point of $10 million, there is enough in that pot to divide up among all of the fingers that will want to get into it, including the producers of the films, the baseball people, the franchise holder, and so forth.

Mr. COX. Now, is it your understanding that you, as a station operator, would, or could, in such an operation get more than your straight-time charge for the period on which these programs are broadcast?

Mr. KOHN. There isn't going to be any franchise holder that is going to try to pay me a one-time rate. If he is going into a contract with our station, it will be on equality of the importance of each medium to each other. In other words, without us they can't carry it, and it would be foolish to go into this on the idea that you are only going to get your 1-time rate card and let 99 percent of the profits go out to people that just furnish it to you. That would be a terrible inequity, and it would hurt the whole television industry.

Mr. COX. They could put it over all of these cable systems if they have a spare circuit; couldn't they?

Mr. KOHN. He certainly can, and he can put a charge on top of a charge.

Mr. COX. They will pay their $3.50, or whatever it is, for the service, and then the $1 for the football game?

Mr. KOHN. Yes.

Mr. COX. They are already paying the $3.50 for the service, and if they want the football game they would pay additional?

Mr. KOHN. Yes. Mind you, these people are already paying $3.50 a month, and if you get just $3.50 a month out of this 19 percent of programing in a weekly schedule here you have got WFMZ stockholders very happy—if we were in operation on that basis.

Mr. COX. Do you think that you would get enough revenue net to the station itself to permit you, with what additional local advertising revenue you got, to carry on a satisfactory scale of operation here in terms of local expression?

Mr. KOHN. Let's just say we only reach half our potential, Mr. Cox, and there, even on the low estimate, the yearly income from that 19 percent of commercial TV is $5,330,000. Never in our wildest imagination did we think we would draw that from a hundred-percent commercial schedule and advertising income. We figured that we had a potential of about a million dollars a year in the Allentown area, as far as reaching a full potential is concerned.

Here let's knock the games down to 10 cents apiece and we are still on an equity of advertising-produced revenue, if that many people watch it. The lower the price, the more people are going to watch it, and the more people are going to want to have their sets installed with these devices.

Mr. COX. Now, of course, that cost you haven't reflected here—the cost of actual installation of a decoder?

Mr. KOHN. We are only concerned with the broadcast. However, we did reflect decoder costs and everything in our application that we put in to the FCC a year ago.

Senator BIBLE. Did you reflect $45—does that seem to be fairly agreed in the industry, $30 to $50?

Mr. KOHN. Yes; we put it again on the basis of three different scales, and then showed how it came out. We showed it at $25, $50, and $75, I believe. A high, medium, and low estimate.

Again, take your pick, and you are bound to fall somewhere within that range. Everybody's opinion is bound to fall within that range. I don't see any reason at all why it should not be tried. I don't see anything here that is contrary to the Constitution or to the public interest or anything. It is up to the people. They are going to decide whether it is going to fail, whether they are going to do it, or whether they are not going to do it.

Senator BIBLE. I don't think anybody has been accused of violating the Constitution so far.

Mr. COX. Do you have assurance from Zenith that if such an experimental operation were authorized, decoders would be made available for a market of the size of Allentown for that purpose?

Mr. KOHN. I certainly hope I am not here under false pretenses, that it isn't ready to go into operation.

Mr. COX. I understand that. The next question was going to be how long would it take, in your opinion, to get such a program going on a substantial basis in a market the size of Allentown-Easton?

Mr. KOHN. I understand there are going to be Zenith representatives. I know as far as our local installations that we can put them in, or the franchise holder, whoever has them, but I am sure that on the basis of just the publicity—I was going to say the notoriety—of this application that we put in that our town is probably more pay TV conscious than any city presently in the United States.

Senator BIBLE. Any further questions?

Thank you very much, Mr. Kohn, for your very able presentation. I think your exhibits have been most helpful and will be most helpful to this committee.

We will stand in recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:35 p. m., the committee adjourned, to reconvene at 10 a. m., Tuesday, April 24, 1956.)

(Mr. Kohn's exhibits are as follows:)

EXHIBIT A

Documentary exhibit of WFMZ-TV's community interest and public service conscience as indicated by just one daily (Monday through Friday) program and during only the 4-month period WFMZ-TV was on the air

WFMZ-TV "7–9 SHOW" EDUCATIONAL AND ENTERTAINMENT FEATURES

(Daily (Monday-Friday) 7–9 p. m., local live—December 1954–April 1955)

Feature

1. Lehigh County Medical Society (15 minutes per):
   - (*a*) Dr. Eddinger—The County Health Unit
   - (*b*) Dr. Eddinger—How a CHU Operates
   - (*c*) Dr. Gabriel—Cancer of the Stomach
   - (*d*) Dr. Gabriel—Treatment of Stomach Cancer
   - (*e*) Dr. Hyman—Stomach Ulcers
   - (*f*) Dr. Marger—Diseases of the Heart
   - (*g*) Dr. Marger—Treatment of Heart Diseases
   - (*h*) Dr. Cunin—The Ear and How It Works
   - (*i*) Dr. Cunin—The Ear (continued)
   - (*j*) Dr. Lachman—Diseases of the Eye
   - (*k*) Dr. Lachman—Treatment of Eye Diseases

WFMZ-TV "7-9 SHOW" EDUCATIONAL AND ENTERTAINMENT FEATURES—Continued

Feature

2. Red Feather Agency (25 minutes per):
   (*a*) YMCA
   (*b*) Boy Scouts
   (*c*) YWCA
   (*d*) Public Health Nursing Association
   (*e*) Jewish Community Center
   (*f*) Child Guidance Clinic
   (*g*) Girl Scouts
   (*h*) Girls Club.
   (*i*) Wiley House
   (*j*) Family Service
   (*k*) Osteopathic Hospital
   (*l*) Lehigh Community Council
   (*m*) Lehigh Community Chest
   (*n*) Boys Club
3. Lehigh Valley Industry (25 minutes per):
   (*a*) Vale Chemical Co.
   (*b*) Bethlehem Furniture Manufacturing Co.
   (*c*) Reichard's Fertilizer Co.
   (*d*) Lehigh Portland Cement Association
   (*e*) J. M. Glowatsky Trucking
   (*f*) Lehigh Structural Steel
   (*g*) Lehigh Valley Gas Division
   (*h*) Bell Telephone Co.
   (*i*) Pennsylvania Power & Light Co.
   (*j*) Palmerton (N. J.) Zinco Co.
   (*k*) Palmerton Cable Co.
   (*l*) Slatington Kern Antenna System
   (*m*) Bid Red Slate Co.
   (*n*) Clayton Dress Manufacturing Co.
   (*o*) A & B Meats—"Selecting a Grand Champion Steer"
4. Other campaigns (20 minutes per):
   (*a*) Lehigh Crippled Children's Society (Easter Seals)
   (*b*) Lehigh Chapter American Red Cross
   (*c*) American Heart Association Heart Fund
   (*d*) March of Dimes Drive
   (*e*) Lehigh Valley Safety Council
   (*f*) Air Force Recruitment Demonstration
5. Sports features (30 minutes per):
   (*a*) Show dogs (5)
   (*b*) Archery demonstrations (12)
   (*c*) Studio rifle shoots (16)
   (*d*) Boys Club boxing (6)
   (*e*) Hunting and fishing talks (4)
   (*f*) Table tennis tourneys (3)
   (*g*) College fencing demonstrations (3)
   (*h*) College and high school wrestling demonstrations (7)
   (*i*) Lehigh Valley Chess Club (1)
   (*j*) High school and collegt basketball demonstrations (6)
   (*k*) Bowling demonstrations (2)
   (*l*) In-studio meeting of Little League Baseball (1)
   (*m*) Bicycle racing demonstration (1)
   (*n*) Ice Vogues Stars, interview (1)
   (*o*) Model plane demonstration (1)
   (*p*) Model train races—YMCA—Y's Men's Association
6. Other weekly features (10 minutes per):
   (*a*) Book reviews (9)
   (*b*) Know Your Civil Servants:
      (1) Mayor Diefenderfer (Allentown)
      (2) Mayor Morse (Easton)
      (3) Lieutenant Thomas (police department)
      (4) Chief Reilly (police department)
      (5) Burgess of Palmerton
      (6) Russell Bender, fire chief

WFMZ-TV "7-9 SHOW" EDUCATIONAL AND ENTERTAINMENT FEATURES—Continued

6. Other weekly features (10 minutes per)—Continued
   (b) Know Your Civil Servants—Continued
      (7) Walter Flores, fire chief
      (8) Lieutenant Geisinger, traffic control
   (c) Reading Is Fun—9 programs (30 minutes per) presenting panels of first through ninth grade schoolchildren in cooperation with the Allentown Public Library and the American Association of University Women.
7. Travel features (15 minutes per):
   (a) John Zamborsky—Allentown's Good Will Ambassador to Greece
   (b) Australians John Burke and Colin Smith, visitors
   (c) Fred Coleman—Travel abroad
   (d) Judge Henninger—My European trip
   (e) Andrew Gih—Chinese Christian evangelist
   (f) Prof. Leon Godshall—Student travel abroad
   (g) Mrs. Jenson—How a travel bureau operates
   (h) Mrs. Roth—Travel to South America
   (i) Fred Blume—TWA transportation agent
   (j) Alfred Wenz—How AAA operates
8. Hobby features (15 minutes per):
   (a) Mrs. William Guth—Doll collecting
   (b) Moulton Franz—Raising champagne rabbits
   (c) Chas. Renfrew—Hunting uranium
   (d) Bernie Alper—How to write a salable story
   (e) Jack Heinz—How to write a song and publish it
   (f) Doris Blanchard—Bell collecting and playing same
   (g) Mrs. Helen Kickline—Doll collecting
   (h) Frank Saurman—Typewriters, old and new
   (i) Rev. Norman Cressman—Stamps as a hobby
   (j) Willard Otto—Raising chinchillas
   (k) Wendling Bros.—Old cars as a hobby
   (l) William Behler—Dry brush painting
9. Occupations (20 minutes per):
   (a) John Heyl, architect
   (b) John Klaus, modern burglar alarm
   (c) Auctioneers, Quakertown Farmers' Market
   (d) Don Dix, business manager, minor league ball club
   (e) Mr. Beveridge, gem cutting
   (f) Bob Smith, stockbroker
   (g) Rev. Arthur Sherman, ministerial association
   (h) George Reinert, banker
   (i) Alberta Moffa, theater owner
   (j) Dr. John Weinlick, history of Moravian Church
   (k) Abe Benioff, furrier
   (l) Joy Manger, window dressing
   (m) James Musselman, high school art teacher
   (n) Jack Berliant, TV equipment dealer
   (o) Bob Dilient, high school driver training teacher
10. Special events:

	Minutes
(a) Special Easter service—Choir and minister	25
(b) St. Catherine of Sienna RC Boys Choir—50 voices	25
(c) Bethlehem Civic Little Theater promotion	15
(d) Special appearance of Sloan Simpson and Ted Lawrence	15
(e) Mrs. American Lehigh Valley winner and finalists	10
(f) Guest appearance of Gene Autry and Annie Oakley	20
(g) Easter seals interview with Ted Berger	10
(h) History of Slatington	8
(i) Emmaus Magic Show promotion	10
(j) Gay Nineties promotion for Sears, Roebuck	10
(k) Art contest sponsored by Pennsylvania Power & Light	15
(l) Coplay Rotary Club	10
(m) JCC Voice of Democracy winners and awards	30
(n) Flag raising at Iwo Jima, film and interview	10
(o) Brotherhood Week observance, JCC	15

WFMZ-TV "7-9 SHOW" EDUCATIONAL AND ENTERTAINMENT FEATURES—Continued

	Minutes
10. Special events—Continued	
(p) Crime Prevention Week, Judge Henninger	10
(q) National Boy Scout Week	10
(r) National VFW Week	10
(s) Junior Chamber of Commerce Week	10
(t) YWCA centennial observance	10
(u) Municipal opera interview	10
(v) Lehigh Valley Blind Association sewing demonstration	15
(w) Willkie Foundation tool demonstration	20
(x) Culligan soft-water demonstration	15
(y) Thomas Mullen, president of Lehigh Structural Steel, the Kift Mullen Foundation	15
(z) SPCA—How it operates	10
(aa) Black & Decker do-it-yourself demonstration	10
(bb) Allentown Business Club	10
(cc) Allentown Civic Little Theater promotion	10
(dd) Change in social-security law—Mr. Irwin	10
(ee) PTA comic book panel	15
(ff) Thomas Ferrell—Father of first born of 1955	5
(gg) Boy Scout eagle court of honor	20
Total, 77 hours	

LEHIGH VALLEY MUSICAL ORGANIZATIONS AND TALENT APPEARING ON WFMZ "7-9 SHOW" DURING PERIOD DECEMBER 1954–APRIL 1955

1. John Oberle—Organ
2. Joe Simon—Accordion
3. Earl Keller Orchestra—Hillbilly
4. Tune Dusters Band—Hillbilly
5. All Girl Orchestra—Pop
6. Harmony Kings Orchestra—Polka
7. Diane Beitler—Vocal
8. Frank Sevak Trio
9. Three Chords and Three Coeds—Vocal
10. Harrison Morton Junior High School Band
11. Miles Batt—Vocal
12. Jerry Bender Orchestra—Pop
13. Allentown String Band
14. Richard Tarnow—Accordion
15. Lindy Calvert—Vocal
16. Frances Salvagio—Vocal
17. Phyllis Litzenberger—Organ
18. Martha Hill—Vocal
19. Shirley Dietz—Irish harp
20. Eleanor Keim Mengal—Marimba
21. Polka Teens Band
22. Judith Ann Heyer—Vocal
23. Lydia Kleintop—Tap dancer
24. Karl Braun—Comedian
25. Kal's Kids—Pantomime
26. Delores Wasilowsky—Acrobatic
27. Ron Scheirer—Vocal
28. Margaret Lilly—Organ
29. Pat Lynch—Vocal
30. Robert Vogel—Vocal
31. Meltzer Western Band
32. Mrs. Lawrence Coons—Trick drawing
33. Phyllis Gruenstein—Vocal
34. Fenstermacher Rube Band
35. Lloyd Anderson—Organ
36. Pat Floyd—Vocal
37. Betty Pollitt—Vocal
38. Ruth Wren—Impressionist
39. Woodlawners—Pantomime

LEHIGH VALLEY MUSICAL ORGANIZATIONS AND TALENT APPEARING ON WFMZ "7-9 SHOW" DURING PERIOD DECEMBER 1954–APRIL 1955—Continued

40. Carl Schreider—Vocal
41. Kitty Webber—Vocal and organ
42. Dorothea Costa—Vocal
43. Lucy Meck—Vocal and dance
44. Ken Zimmerman—Vocal
45. Mark Bader—Piano
46. Natille Levitt—Piano
47. EC Boys' Gospel Team—Vocal
48. Margaret Varga—Vocal
49. Ron Scheirer—Vocal
50. Brown Brothers—Accordion
51. BeeBoppers Kids Orchestra
52. Allen Green—Accordion
53. Tonettes—Vocal
54. Edmund Kresley—Dancer
55. Slatington High School Band
56. Paige LeSavoy—Pantomime and dance
57. Russ Yarchak—Harmonica
58. Kid McCoy and His Saddle Pals—Western
59. Slatington High School Girls Trio—Vocal
60. Merle Becker and Kids—Square dancing
61. Flora Haines—Vocal
62. Glenwood Quartet—Vocal
63. JCC Chorus and Dancers
64. Mary Lou Heffley—Vocal
65. Phillips Accordion Band
66. Walt Groller and Orchestra—Polka
67. Bill Feldman—Vocal
68. Masquerade String Band
69. Doc Herbert—Pantomime
70. Marie Morrow—Vocal
71. Whitehall Township High School Chorus
72. Bill Cooper Orchestra—Pop and polka
73. Betty Pollitt—Vocal
74. Bruce Kinkel—Vocal
75. Society Six—Combo
76 Bill Hawk's Merrymakers—Western
77. Northampton High School Band
78. Robert Daughters—Vocal
79. Night Owls Orchestra—Pop
80. Lorraine Brandt—Vocal
81. Allentown Canaries Orchestra—Pop
82. Polka Teens Band
83. Joe Basilone—Accordion
84. Hill Twins—Vocal
85. Cynthia Johnson—Vocal
86. Jim Smith and Square Dancers
87. Accordionaires Band
88. Jack Green—Magician
89. Edward Greenawald—Pantomime
90. Ruth Ann Greenawald
91. American Legion Drum and Bugle Corps
92. Polka Hops Band
93. Pop Joe and His Mountaineers—Western
94. Lance Johnson—Vocal
95. Jolly Cavaliets Orchestra—Pop and polka
96. Tim Bortz Orchestra—Pop and polka
97. Riverside Seven—Combo
98. Cordella Quigg—Twirler
99. Ukranian Male Chorus
100. Joe Timmer Orchestra—Pop and polka
101. Neil Klein and Kids—Pantomime
102. Merle Letout—Vocal
103. Raoul Shorr—Vocal

LEHIGH VALLEY MUSICAL ORGANIZATIONS AND TALENT APPEARING ON WFMZ "7-9 SHOW" DURING PERIOD DECEMBER 1954–APRIL 1955—Continued

104. Harmony Kings—Polka band
105. Women's Club Octette—Vocal
106. Delores Parvel—Vocal
107. Joanne Vettle—Vocal
108. Shirley Kline—Piano
109. Catherine Engler—Marimba
110. St. Elizabeth Roman Catholic Church Choir
111. Western Electric Male Choir
112. Pennsylvania Power & Light Chorus
113. Beethoven Mannechor.
114. Allentown High School Drum Majorettes

Hours breakdown of "7-9 Show"

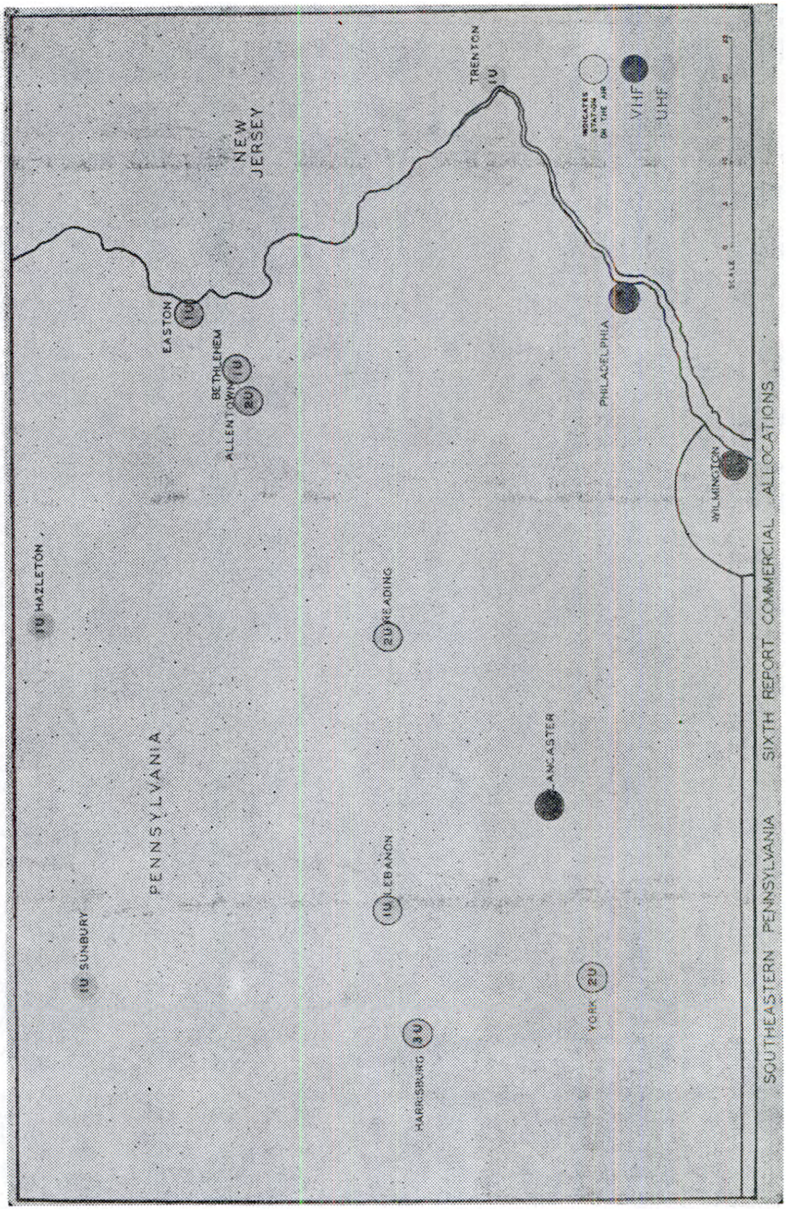
	December 1954–April 1955	Yearly projection
Educational features	77	231
Entertainment	123	396

Summary of WFMZ-TV past operation[1]—Numbers of hours devoted to specific program types

Program type	September-October-November 1954 (13 weeks)	December-January-February 1955 (13 weeks)	March-April-May 1955[1] (6 weeks)	June-July-August 1955 (13 weeks)	Total hours	Percent of total
Education	(2)	130	60	(2)	190	14½
News and sports	(2)	39	18	(2)	57	4½
Feature film	(2)	461	213	(2)	674	52
Live entertainment	(2)	254	117	(2)	371	29
Total	(2)	884	408	(2)	1,292	100

[1] WFMZ-TV operated from Dec. 5, 1954, to Apr. 15, 1955, at which date it suspended its operation.
[2] No service.

EXHIBIT A–1



SOUTHEASTERN PENNSYLVANIA SIXTH REPORT COMMERCIAL ALLOCATIONS

EXHIBIT A-2

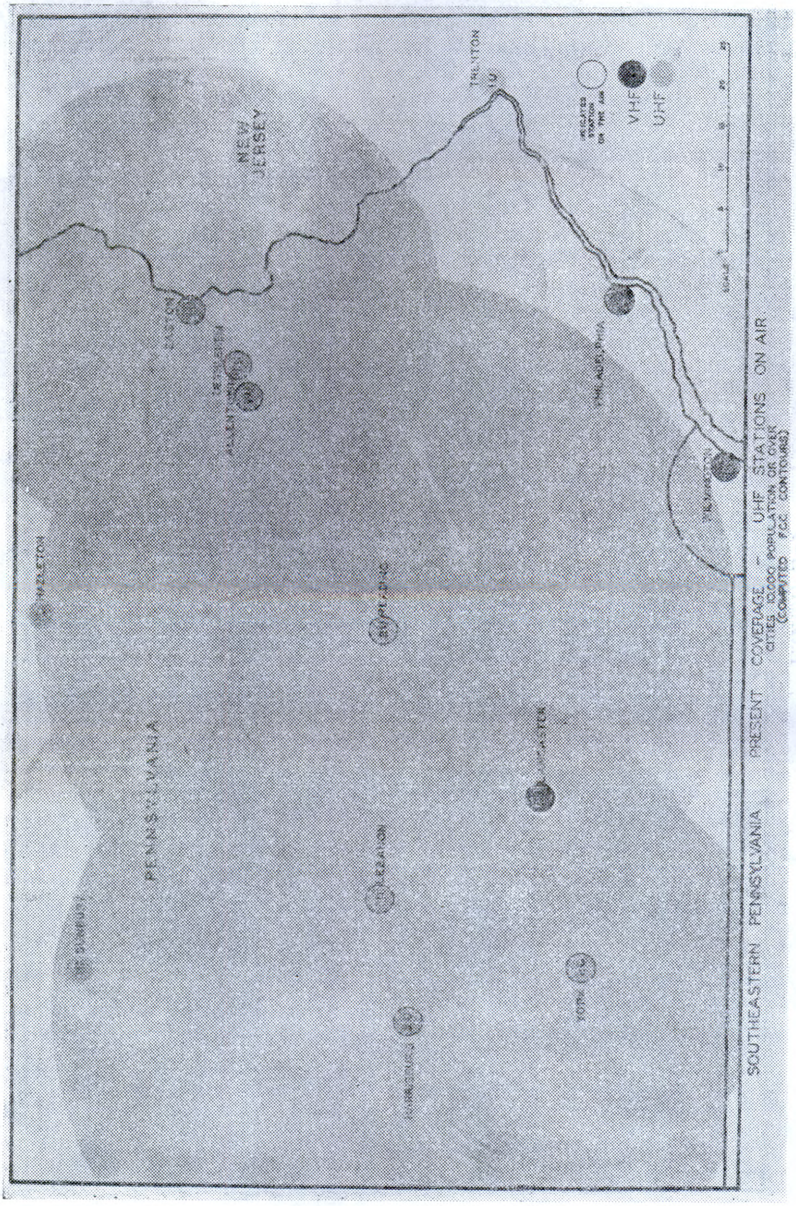

PENNSYLVANIA
NEW JERSEY
EASTON
PHILADELPHIA
VHF
UHF
SOUTHEASTERN PENNSYLVANIA PRESENT COVERAGE — UHF STATIONS ON AIR
CITIES 10,000 POPULATION OR OVER
(COMPUTED FCC CONTOURS)

EXHIBIT A-3

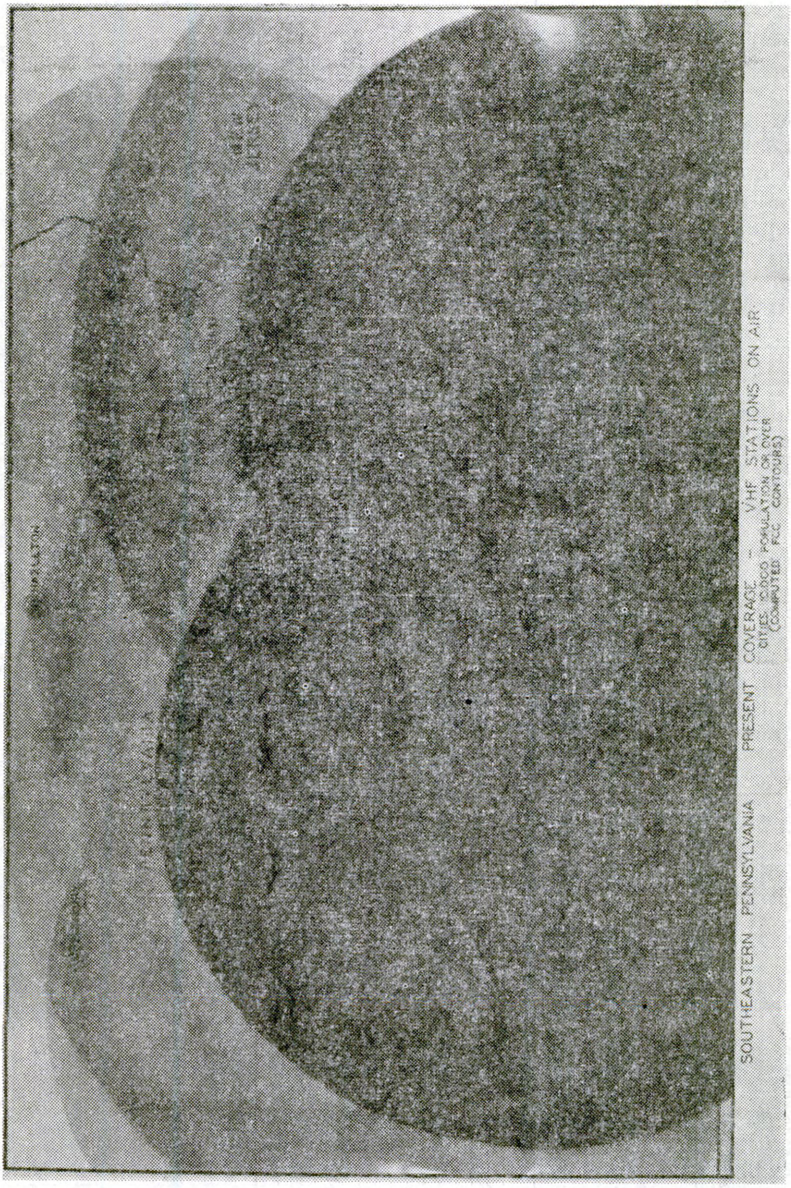
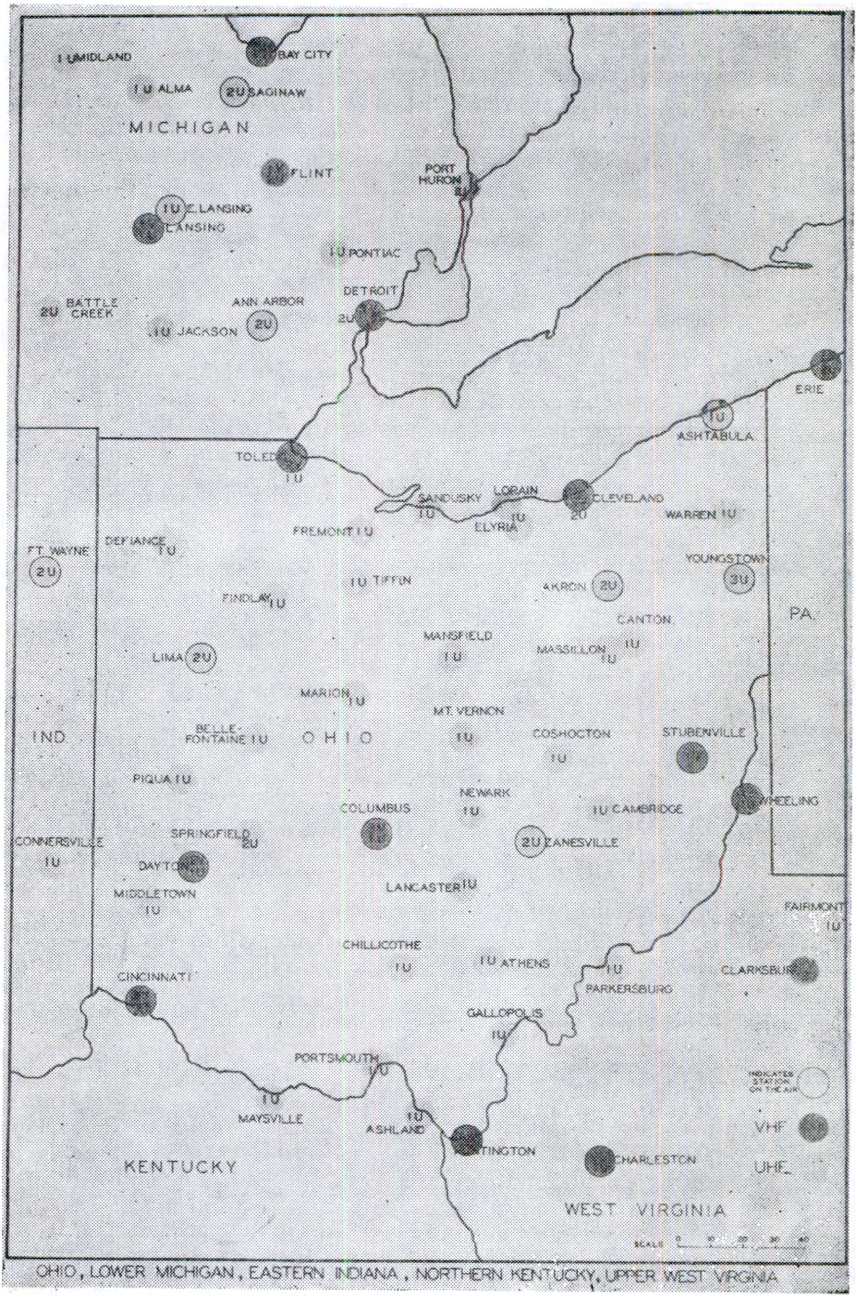

SOUTHEASTERN PENNSYLVANIA PRESENT COVERAGE - VHF STATIONS ON AIR
CITIES 10,000 POPULATION OR OVER
(COMPUTED F.C.C. CONTOURS)

EXHIBIT A-4

The vital need for local expression in more communities—Analytical study of commercial television situation in southeastern Pennsylvania

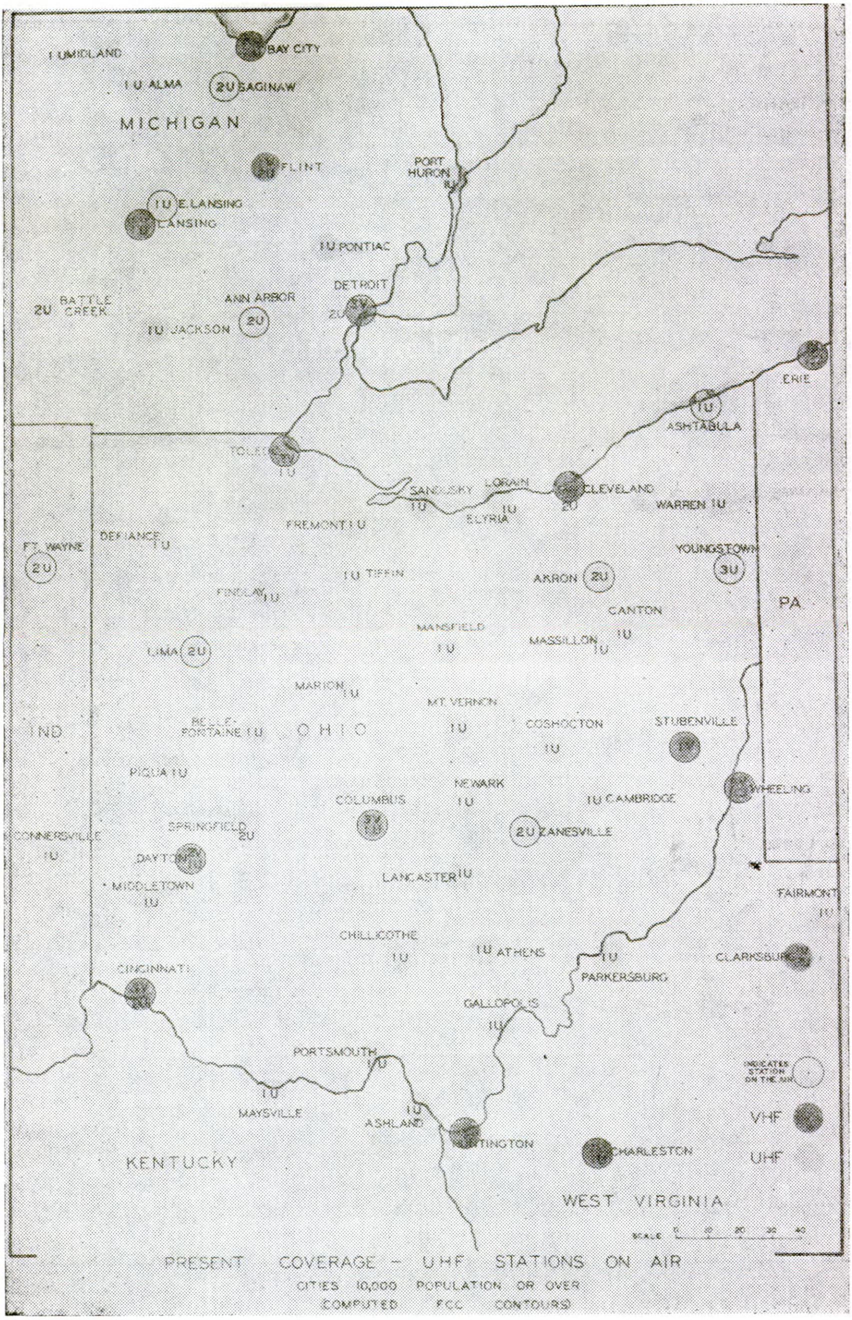
Cities shown on map	Population (city)	6th report allocations		Present status of allocations											
				On air		CP		Applications		No applications		On air but suspended		Granted but relinquished	
		VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF
Allentown	106,756		2				1						1		
Bethlehem	66,340		1		1										
Easton	35,632		1		1										
Hazleton	35,491		1				1								
Harrisburg	89,544		3		3										
Lancaster	63,774	1	1	1											1
Lebanon	28,156		1										1		
Philadelphia	2,071,605	3	3	3			1								2
Reading	109,320		2		1								1		
Sunbury	15,570		1				1								
York	59,953		2		2										
Wilmington, Del	110,356	1	1	1											1
Trenton, N. J	128,009		1												1
Total	2,920,506	5	20	5	8		4						3		5

EXHIBIT B-1



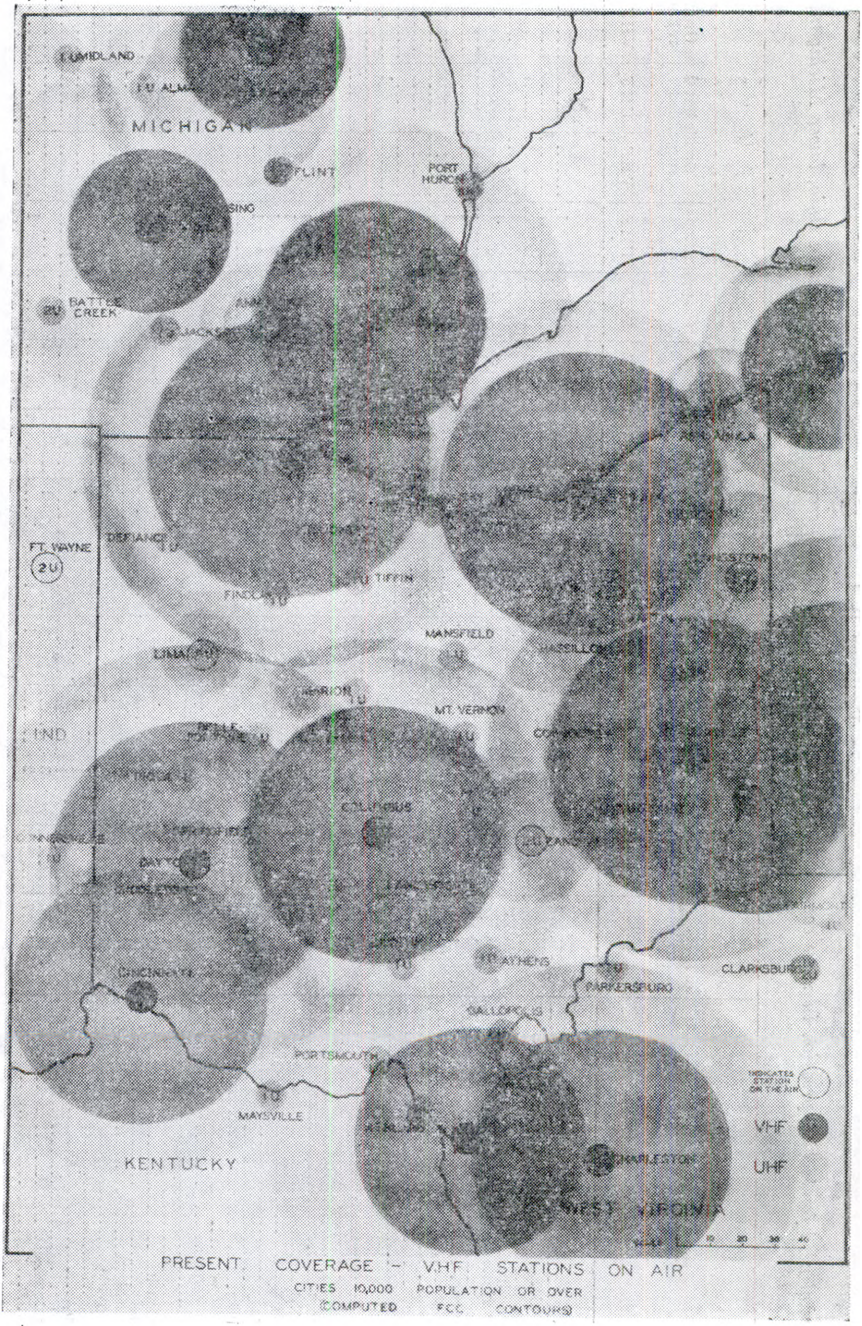
OHIO, LOWER MICHIGAN, EASTERN INDIANA, NORTHERN KENTUCKY, UPPER WEST VIRGINIA

EXHIBIT B-2



PRESENT COVERAGE – UHF STATIONS ON AIR
CITIES 10,000 POPULATION OR OVER
COMPUTED FCC CONTOURS)

EXHIBIT B-3



PRESENT COVERAGE – VHF STATIONS ON AIR
CITIES 10,000 POPULATION OR OVER
(COMPUTED FCC CONTOURS)

Exhibit B-4

The vital need for local expression in more communities—Analytical study of commercial television situation in Ohio, lower Michigan, eastern Indiana, northern Kentucky, upper West Virginia

Cities shown on map	Population (city)	6th report allocations		Present status of allocations											
				On air		CP		Applications		No applications		On air but suspended		Granted but relinquished	
		VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF
OHIO															
Akron	274,605		2		1						1				
Ashtabula	23,696		1		1										
Athens	11,660		1						1						
Bellefontaine	10,232		1								1				
Cambridge	14,739		1								1				
Canton	116,912		1						1						
Chillicothe	20,133		1								1				
Cincinnati	503,998	3	2	3			1				1				
Cleveland	914,808	3	2	3			2								
Columbus	375,901	3	1	3							1				
Coshocton	11,675		1								1				
Dayton	243,872	2	1	2									1		
Defiance	11,265		1								1				
Elyria	30,307		1				1								
Findlay	23,845		1								1				
Freemont	16,537		1								1				
Gallipolis	7,871		1								1				
Lancaster	24,180		1								1				
Lima	50,246		2		1						1				
Marion	38,817		1								1				
Massillon	29,594		1				1								
Middletown	33,695		1								1				
Mount Vernon	12,185		1								1				
Newark	34,275		1								1				
Piqua	17,447		1								1				
Portsmouth	36,798		1								1				
Sandusky	29,375		1												1
Springfield	78,508		2								2				
Steubenville	35,872	1		1											
Tiffin	18,952		1								1				
Toledo	303,616	2	1	1			1	1							
Warren	49,856		1												
Youngstown	168,330		3		2		1								
Zanesville	40,517		2		1						1				

MICHIGAN															
Alma	8, 341		1								1				
Ann Arbor	48, 251		1		1										
Battle Creek	48, 666		2										1		1
Bay City	52, 523	1	1	1							1				
Detroit	1, 849, 568	3	2	3			1								1
Jackson	51, 088		1												1
Lansing	92, 129	1	1	1	1										
East Lansing	20, 325		1								1				
Midland	14, 285		1								1				
Pontiac	73, 681		1								1				
Port Huron	35, 725		1								1				
Saginaw	92, 918		2		1										1
WEST VIRGINIA															
Charleston	73, 501	1	1	1									1		
Clarksburg	32. 014	1	2			1					2				
Fairmont	29, 346		1										1		
Huntington	86, 353	2		2											
Parkersburg	40. 492		1		1										
Wheeling	58, 891	1	1	1			1								
INDIANA															
Connersville	15, 550		1								1				
Fort Wayne	133, 607		2		1		1								
KENTUCKY															
Ashland	31, 131		1				1								
Maysville	8, 632		1								1				
Total	6, 511, 336	24	67	22	11	1	11	1	2		33		4		6

EXHIBIT C-1

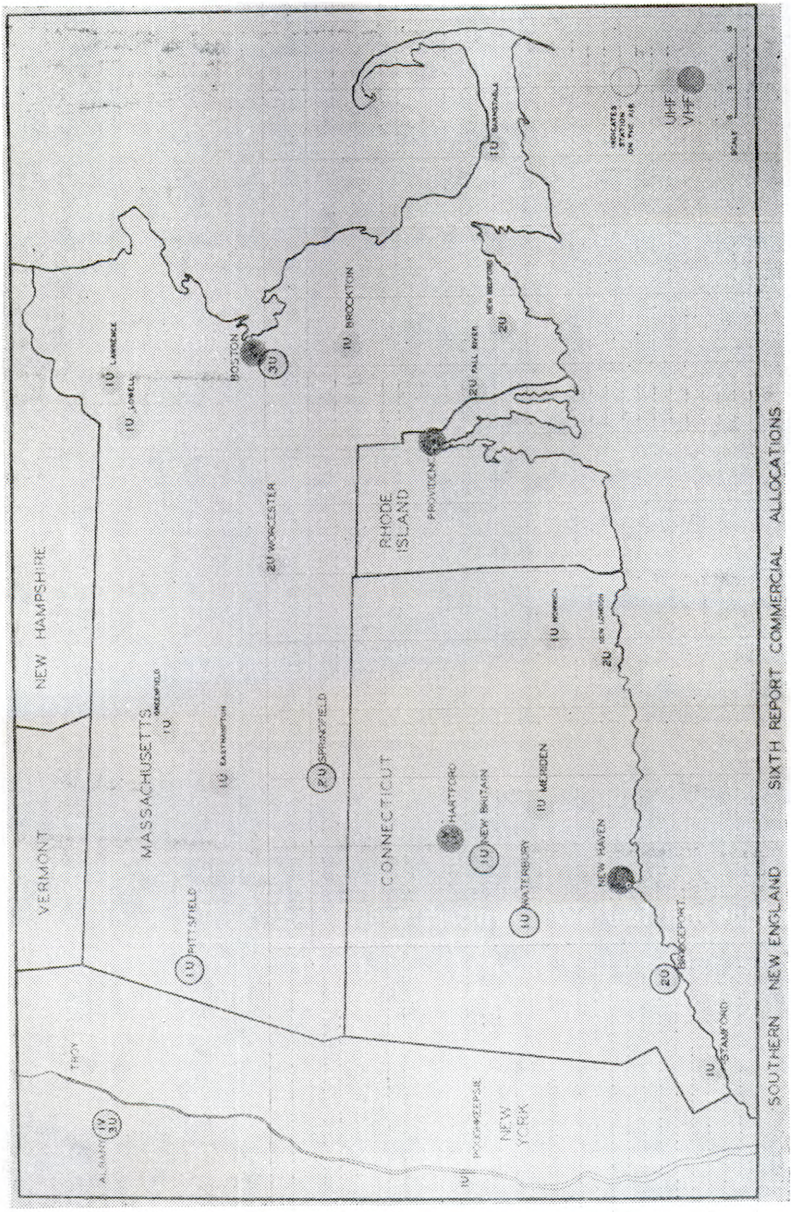

SOUTHERN NEW ENGLAND SIXTH REPORT COMMERCIAL ALLOCATIONS
VERMONT
NEW HAMPSHIRE
MASSACHUSETTS
RHODE ISLAND
CONNECTICUT
NEW YORK
BOSTON
3U
1U BROCKTON
1U LAWRENCE
1U LOWELL
2U WORCESTER
1U GREENFIELD
1U EASTHAMPTON
2U SPRINGFIELD
1U PITTSFIELD
PROVIDENCE
2U FALL RIVER
2U NEW BEDFORD
1U BARNSTABLE
HARTFORD
1U NEW BRITAIN
1U MERIDEN
1U WATERBURY
NEW HAVEN
2U NEW LONDON
2U BRIDGEPORT
1U STAMFORD
TROY
ALBANY
POUGHKEEPSIE
1U
UHF
VHF

EXHIBIT C–2

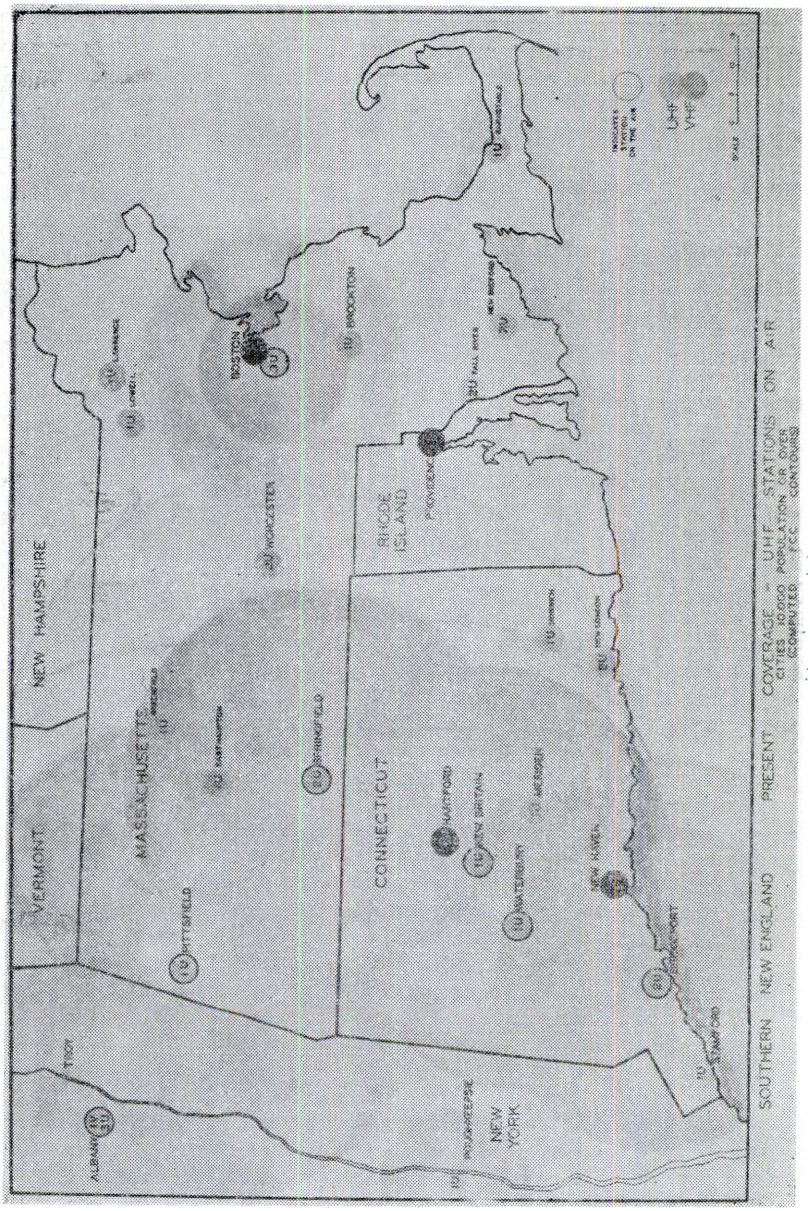

SOUTHERN NEW ENGLAND PRESENT COVERAGE - UHF STATIONS ON AIR
CITIES 10,000 POPULATION OR OVER
(COMPUTED FCC CONTOURS)
NEW HAMPSHIRE
VERMONT
MASSACHUSETTS
CONNECTICUT
RHODE ISLAND
NEW YORK
BOSTON
BROCKTON
WORCESTER
SPRINGFIELD
PITTSFIELD
HARTFORD
NEW BRITAIN
WATERBURY
NEW HAVEN
BRIDGEPORT
STAMFORD
PROVIDENCE
FALL RIVER
NEW BEDFORD
ALBANY
TROY
POUGHKEEPSIE
UHF
VHF

EXHIBIT C-3

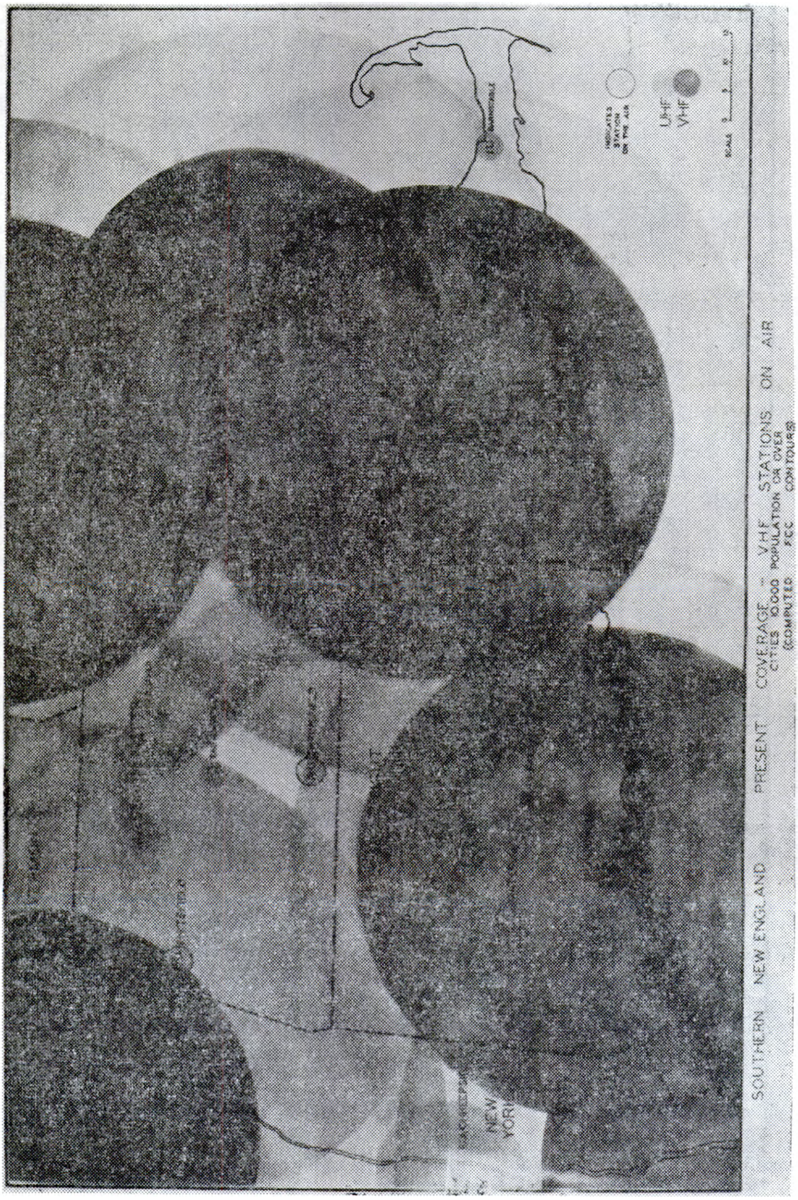

SOUTHERN NEW ENGLAND PRESENT COVERAGE - VHF STATIONS ON AIR
CITIES 10,000 POPULATION OR OVER
(COMPUTED F.C.C. CONTOURS)
UHF
VHF
INDICATES STATION ON THE AIR

EXHIBIT C-4

The vital need for local expression in more communities—Analytical study of commercial television situation in southern New England

Cities shown on map	Population (city)	6th report allocations		Present status of allocations											
				On air		CP		Applications		No applications		On air but suspended		Granted but relinquished	
		VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF	VHF	UHF
CONNECTICUT															
Bridgeport	158,709		2		1										1
Hartford	177,397	1	1		1			1							
Meriden	44,088		1								1				
New Britain	73,726		1		1										
New Haven	164,443	1	1	1			1								
New London	30,551		2				1				1				
Norwich	23,429		1								1				
Stamford	74,293		1				1								
Waterbury	104,477		1		1										
RHODE ISLAND															
Providence	248,674	2	1	2									1		
MASSACHUSETTS															
Barnstable	10,480		1								1				
Boston	801,444	3	3	2			2	1							1
Brockton	62,860		1				1								
Easthampton	10,694		1								1				
Fall River	111,963		2								1				1
Greenfield	17,349		1								1				
Lawrence	80,536		1												1
Lowell	97,249		1								1				
New Bedford	109,185		2								1				1
Pittsfield	55,348		1												1
Springfield	162,399		2		2										
Worcester	203,486		2				1						1		
NEW YORK															
Albany, Schenectady, and Troy	134,995	1	3	1	1		1						1		
Poughkeepsie	41,023		1												1
Total	2,998,798	8	34	6	7		8	2			9		3		7

[Exhibits D-1, D-2, D-3, and E could not be reproduced but are on file with the committee]

Exhibit E-1

The vital need for local expression in more communities—State by State analysis of allocated commercial channels actually in operation

State	6th report allocations		Commercial channels in operation					
	VHF	UHF	VHF	Percent	UHF	Percent	Total	Percent
Alabama	7	34	6	86	2	6	8	20
Arizona	13	15	7	54	0	0	7	25
Arkansas	7	29	4	57	1	3	5	14
California	28	58	23	82	6	10	29	34
Colorado	11	25	8	73	0	0	8	22
Connecticut	2	11	1	50	4	36	5	38
Delaware	1	2	1	100	0	0	1	33
Florida	14	38	10	71	5	13	15	29
Georgia	13	35	12	92	1	3	13	27
Idaho	14	12	5	36	0	0	5	19
Illinois	9	44	9	100	8	18	17	32
Indiana	7	36	4	57	8	22	12	28
Iowa	11	44	10	91	1	2	11	20
Kansas	11	35	6	55	1	3	7	15
Kentucky	4	32	2	50	2	6	4	11
Louisiana	9	34	8	89	3	9	11	26
Maine	8	18	5	63	0	0	5	19
Maryland	3	10	3	100	1	10	4	31
Massachusetts	3	19	2	67	4	21	6	27
Michigan	21	44	11	52	3	7	14	22
Minnesota	13	34	8	62	0	0	8	17
Mississippi	9	28	6	67	0	0	6	16
Missouri	16	35	15	94	1	3	16	31
Montana	17	17	4	24	0	0	4	11
Nebraska	14	19	7	50	0	0	7	21
Nevada	13	7	3	23	0	0	3	15
New Hampshire	1	10	1	100	0	0	1	9
New Jersey [1]	0	8	0	0	0	0	0	0
New Mexico	12	20	4	33	0	0	4	13
New York	21	35	19	90	3	9	22	39
North Carolina	12	37	9	75	4	11	13	27
North Dakota	14	13	6	43	0	0	6	22
Ohio	13	42	13	100	6	14	19	35
Oklahoma	10	40	8	80	0	0	8	16
Oregon	9	22	4	44	1	5	5	16
Pennsylvania	10	46	9	90	14	30	23	41
Rhode Island	2	1	2	100	0	0	2	67
South Carolina	6	23	5	83	3	13	8	28
South Dakota	11	16	3	27	0	0	3	11
Tennessee	13	36	11	85	1	3	12	24
Texas	44	121	34	77	3	2	37	22
Utah	10	8	3	30	0	0	3	17
Vermont	1	8	1	100	0	0	1	11
Virginia	9	25	8	89	2	8	10	29
Washington	11	28	8	73	2	7	10	27
West Virginia	8	16	6	75	1	6	7	29
Wisconsin	10	33	9	90	4	12	13	30
Wyoming	9	17	1	11	0	0	1	4
District of Columbia	4	3	4	100	0	0	4	57
Total	518	1,323	348	67	95	7	443	24

[1] New Jersey channel 13 included in New York totals for V allocations.

The map accompanying this table is on file with the committee.

[Exhibits F-1 and F-2 could not be reproduced but are on file with the committee]

EXHIBIT F-3

The vital need for local expression in more communities—State-by-State analysis showing counties containing main studios of television stations now in operation versus potential expansion possible if subscription TV can provide economic means necessary to support all stations located in cities of 10,000 or more population

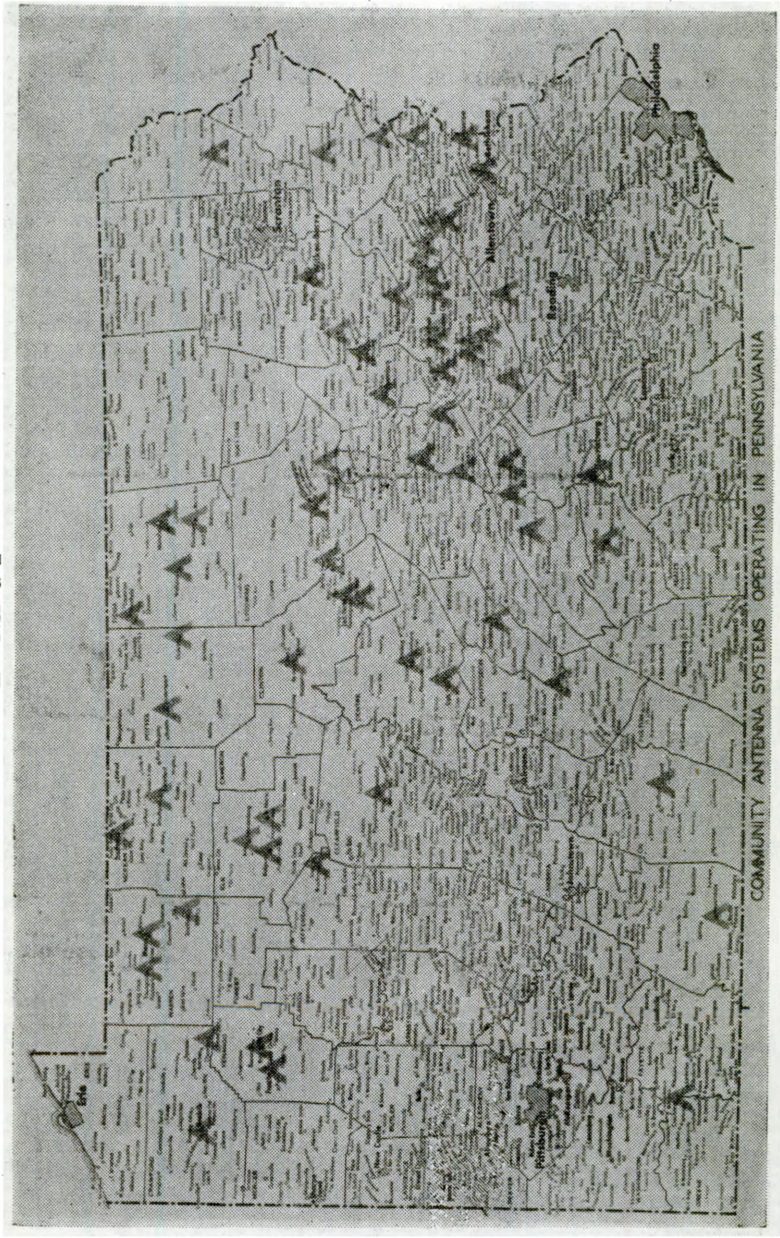
State	Total counties	Total population	Present counties with TV stations in operation	Population served	Percent of total	Potential counties possible	Population that would be served	Percent of total	Added service: Number of counties	Added service: Population	Added service: Percent
Alabama	67	3,061,743	5	1,020,444	33	15	1,663,358	54	10	642,914	+21
Arizona	14	749,587	3	500,992	67	3	500,992	67			
Arkansas	75	1,909,511	4	386,648	20	11	687,161	35	7	300,513	+15
California	58	10,586,223	14	7,320,683	69	28	9,528,990	90	14	2,208,307	+21
Colorado	63	1,325,089	4	619,471	47	8	804,727	61	4	185,256	+14
Connecticut	8	2,007,280	3	1,589,787	79	4	1,734,608	86	1	144,821	+7
Delaware	3	318,085	1	218,879	68	2	256,749	80	1	37,870	+12
Florida	67	2,771,305	10	1,700,626	61	16	2,072,683	75	6	372,057	+14
Georgia	159	3,444,578	8	1,106,484	32	18	1,436,731	41	10	330,247	+9
Idaho	45	588,637	4	164,496	28	10	310,720	60	6	146,224	+32
Illinois	102	8,712,176	11	5,567,285	64	32	7,145,498	82	21	1,578,213	+18
Indiana	92	3,934,224	10	1,531,479	39	25	2,548,832	65	15	1,017,353	+26
Iowa	99	2,621,073	8	769,935	29	20	1,243,637	47	12	473,702	+18
Kansas	105	1,905,299	5	436,819	23	22	924,468	49	17	487,649	+26
Kentucky	120	2,944,806	3	616,076	21	13	1,069,224	36	10	453,148	+15
Louisiana	64	2,683,516	7	1,217,967	45	11	1,224,800	49	4	6,833	+4
Maine	16	913,774	3	360,993	40	5	463,573	51	2	102,580	+11
Maryland	24	2,343,001	2	989,349	42	7	1,365,285	58	5	375,936	+16
Massachusetts	14	4,690,514	4	2,462,121	52	11	4,288,909	91	7	1,826,791	+38
Michigan	83	6,371,766	9	3,396,680	53	23	4,861,241	76	14	1,464,561	+23
Minnesota	87	2,982,483	4	976,146	33	14	1,613,818	54	10	637,672	+21
Mississippi	82	2,178,914	2	206,335	10	14	778,875	36	12	572,540	+26
Missouri	115	3,954,653	11	1,431,462	37	20	2,381,745	60	9	950,283	+23
Montana	57	591,024	4	192,817	33	7	255,812	43	3	62,995	+10
Nebraska	93	1,325,510	5	488,690	37	9	592,972	44	4	104,282	+7
Nevada	17	160,083	2	98,494	62	2	98,494	62			
New Hampshire	10	533,242	1	156,987	29	8	469,451	88	7	312,464	+59
New Jersey	21	4,835,329	1	905,949	18	7	1,578,812	32	6	672,863	+14
New Mexico	32	681,187	2	186,278	27	7	358,696	52	5	172,418	+25
New York	62	14,830,192	14	10,360,191	69	30	11,721,244	79	16	1,361,053	+10
North Carolina	100	4,061,929	10	1,156,937	28	25	1,963,724	48	15	806,787	+20
North Dakota	53	619,636	5	182,943	29	5	182,943	29			
Ohio	88	7,946,627	11	4,416,455	58	33	6,132,182	78	22	1,715,727	+20
Oklahoma	77	2,233,351	6	781,471	35	22	1,378,469	61	16	596,998	+26

EXHIBIT F-3—Continued

The vital need for local expression in more communities—State-by-State analysis showing counties containing main studios of television stations now in operation versus potential expansion possible if subscription TV can provide economic means necessary to support all stations located in cities of 10,000 or more population—Continued

State	Total counties	Total population	Present counties with TV stations in operation	Population served	Percent of total	Potential counties possible	Population that would be served	Percent of total	Added service: Number of counties	Added service: Population	Added service: Percent
Oregon	36	1,521,341	5	736,689	48	10	979,552	64	5	242,863	+16
Pennsylvania	67	10,498,012	12	6,781,143	64	29	7,716,850	73	17	935,707	+9
Rhode Island	5	791,896	1	574,973	72	1	574,973	72			
South Carolina	46	2,117,027	5	645,947	30	13	1,183,327	56	8	537,380	+26
South Dakota	67	652,740	3	127,907	19	5	160,075	24	2	32,168	+5
Tennessee	95	3,291,718	6	1,355,512	41	16	1,745,106	53	10	389,594	+12
Texas	254	7,711,194	23	4,133,368	53	50	5,154,838	66	27	1,021,470	+13
Utah	29	688,862	1	274,895	38	4	473,662	69	3	198,767	+31
Vermont	14	377,747	1	62,570	16	3	137,224	36	2	74,654	+20
Virginia	100	3,318,680	6	281,558	8	14	520,583	15	8	239,025	+7
Washington	39	2,378,963	6	1,446,448	60	16	1,984,813	83	10	538,365	+23
West Virginia	55	2,005,552	6	644,134	32	10	980,781	48	4	336,647	+16
Wisconsin	71	3,434,575	8	1,423,292	41	22	2,308,366	67	14	885,074	+26
Wyoming	24	290,529	1	47,662	16	5	140,356	49	4	92,694	+33
District of Columbia	1	1,281,572	1	1,281,572	100	1	1,281,572	100			
Total	3,075	150,697,361	281	73,336,039	49	686	98,981,501	66	405	25,645,462	+17

EXHIBIT G-1



COMMUNITY ANTENNA SYSTEMS OPERATING IN PENNSYLVANIA

EXHIBIT G-2

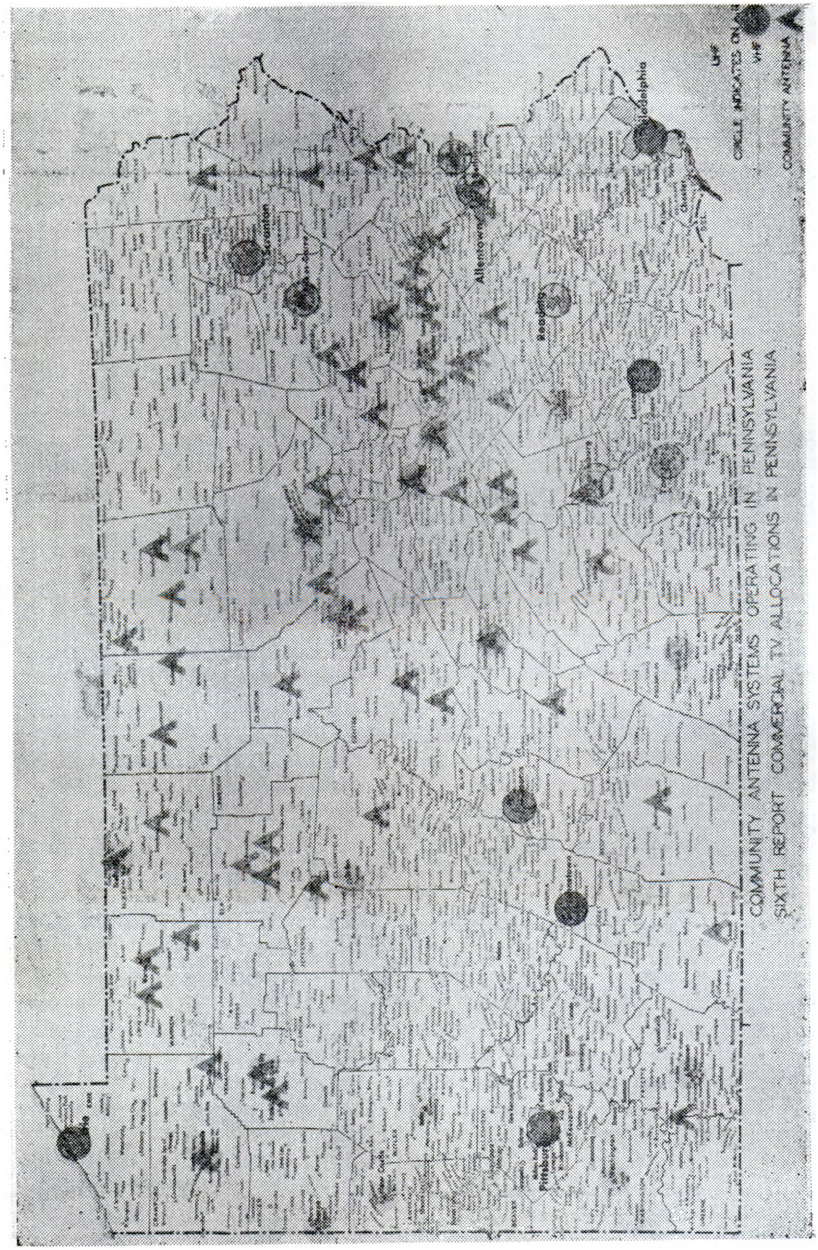

COMMUNITY ANTENNA SYSTEMS OPERATING IN PENNSYLVANIA
SIXTH REPORT COMMERCIAL TV ALLOCATIONS IN PENNSYLVANIA
Scranton
Allentown
Reading
Philadelphia
UHF
VHF
COMMUNITY ANTENNA

EXHIBIT G–3

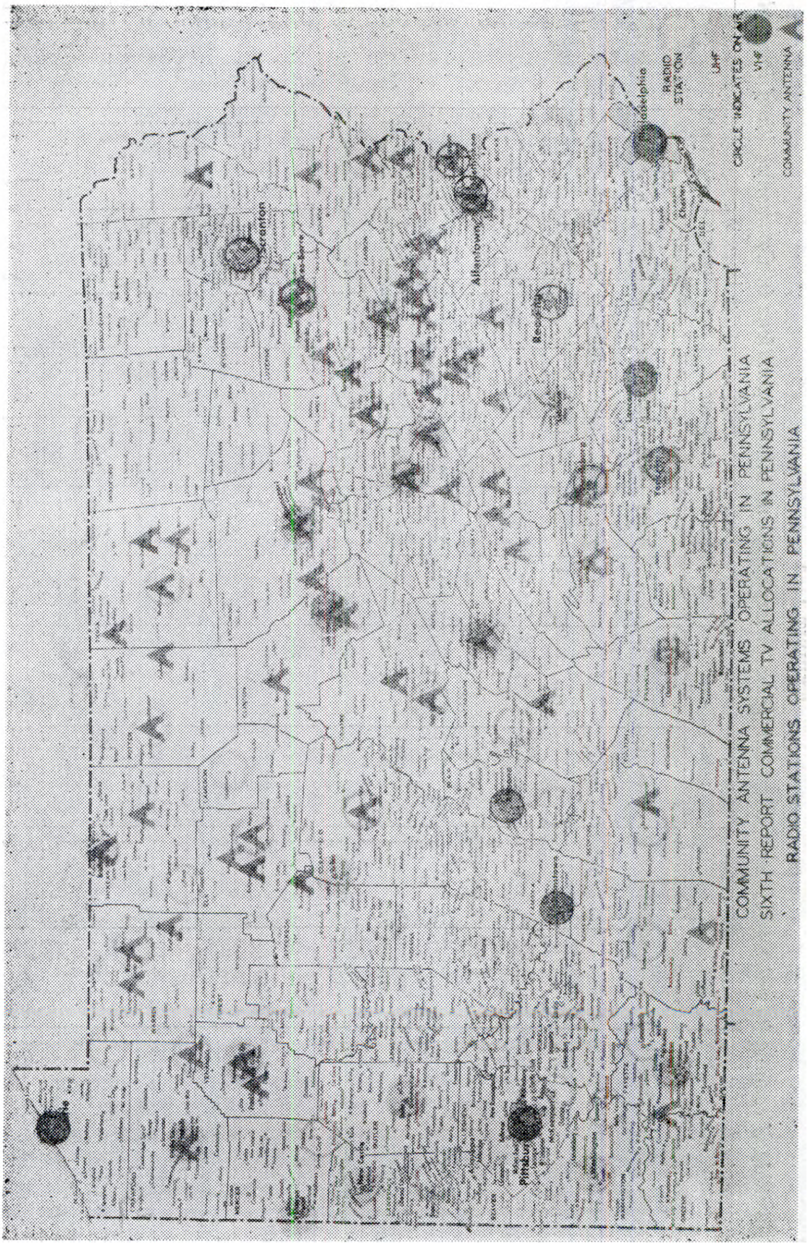

COMMUNITY ANTENNA SYSTEMS OPERATING IN PENNSYLVANIA
SIXTH REPORT COMMERCIAL TV ALLOCATIONS IN PENNSYLVANIA
RADIO STATIONS OPERATING IN PENNSYLVANIA
CIRCLE INDICATES ON AIR
VHF
UHF
RADIO STATION
COMMUNITY ANTENNA
Scranton
Allentown
Philadelphia
Pittsburgh

EXHIBIT G-4

Analytical study of community antenna systems, television, radio, newspaper, and theater operations in Commonwealth of Pennsylvania

Cities	Population	Community antenna systems	Number subscribers		TV allocations		On air		Radio stations		Newspapers, daily	Theaters	Seating capacity
			Present	Estimated potential	VHF	UHF	VHF	UHF	AM	FM			
Allentown	106,756					2			4	2	2	14	11,326
Altoona	77,177				1	2	1		3	1	2	6	5,655
Apollo	3,015								1			1	368
Ashland	6,192	1	400	400							1	1	1,000
Avis	1,193	1	130	200									
Bangor	6,050	1	300	1,000							1	1	466
Barnesboro	3,442								1			2	1,300
Beaver Falls	17,375								1				
Bedford	3,521								1		1	3	2,600
Bellefonte	5,651	1	770	1,500								3	936
Berwick	14,010	1									1	2	1,599
Bethlehem	66,340	1	1,182	5,000		1		1	1	1	1	6	6,920
Bloomsburg	10,633	1		2,500					2		1	2	1,537
Blossburg	1,954	1										1	232
Braddock	16,488								1			3	2,903
Bradford	17,354	1	900	3,000		1			1		1	3	3,226
Brandonville		1											
Brockton		1											
Brockway	2,650	1	420	500								1	588
Buck Hill Falls		1										1	930
Butler	23,482					1			2	1	1	2	2,525
Carbondale	16,296								1		1	1	1,776
Carlisle	16,812	1							1		1	2	2,380
Chambersburg	17,212					1			2	2	1	2	2,300
Charleroi	9,872								1		1	2	1,150
Chester	66,039								2		1	7	6,566
Clearfield	9,357	1	1,000	1,500					1		1	3	2,250
Coatesville	13,826								1		1	2	2,000
Conemaugh	5,000	1		1,400									
Connellsville	13,293								1		1		
Corry	7,911								1		1	1	1,000
Coudersport	3,210	1	500	600					1	1		1	530
Cressona	1,758	1	90	200								1	2,500
Doylestown	5,262								1		1	1	682
DuBois	11,497					1			1	1	1	2	1,391
Easton	35,632	1				1		1	1	2	1	5	6,071
Elizabethville	1,506	1										1	475
Emporium	3,646					1			1			1	500
Ephrata	7,027								1			2	1,350

Everett	2,297	1										1	500
Erie	130,803				1	2	1	1	4	1	2	12	10,584
Farrell	13,644								1			2	800
Franklin	1,833	1									1	1	1,027
Galeton	1,646	1	300	600								1	482
Gettysburg	7,046								1		1	2	1,516
Greensburg	16,923								1		2	2	2,917
Grove City	7,411								1			2	1,320
Hamburg	3,805	1	350	500								1	500
Hanover	14,048								1		1	2	1,537
Harrisburg	89,544	1	1,500			3		3	4	1	2	14	12,439
Hazleton	35,491	1	3,700	5,000		1			1	1	2	5	4,673
Herndon	677	1											
Homestead	10,046								1		1	1	1,100
Honesdale	5,662	1	485	1,200							1	1	717
Huntingdon	7,330								1		1	2	1,803
Indiana	11,743								1		1	2	1,934
Isabella		1											
Jersey Shore	5,595	1	758	1,900								1	578
Johnsonburg	4,567	1	950	1,000									
Johnstown	92,780				1	1	1	1	3	2	1	10	8,430
Kane	5,706								1		1	2	1,661
Kittanning	7,731								1		1	2	1,284
Lancaster	76,087				1	1	1		2	2	2	7	7,304
Lansford	7,487	1	2,200	3,000					1		1	1	800
Latrobe	11,811								2		1	3	1,886
Lebanon	28,156					1			1	1	1	3	2,768
New Kensington	25,146								1		1	3	2,588
Newport	1,893	1										1	360
Norristown	38,126								1		1	1	2,360
Oil City	19,581	1	3,000	4,000		1			1		1	2	3,501
Palmerton	6,646	1	1,035	1,400								2	1,376
Philadelphia	2,071,605				3	3	3		9	7	4	132	158,024
Pine Grove	2,237	1	285	600								1	550
Pittsburgh	676,806				2	3	1	1	8	4	3	59	49,170
Pittston	15,012								1		2	1	1,972
Pottstown	22,589								1		1	3	3,287
Pottsville	23,640	2	5,300	8,200					2	1	1	2	3,404
Punxsutawney	8,969								1		1	1	961
Reading	109,320					2		1	3		2	6	10,541
Red Lion	5,119								1			2	1,753
Renovo	3,751	1	510	700							1	1	662
Ridgway	6,244	1	868	1,500							1	1	937
Roaring Spring	2,771								1			1	400
St. Clair	5,856	1	620	1,200								1	310
St. Marys	7,846	1							1		1	1	915
Salona	500	1											
Sayre	7,735								1		1	1	876
Schuylkill Haven	6,597	1	1,500	2,000									
Scranton	125,536					3		2	5	1	2	11	13,298
Lehighton	6,565	1	1,200	2,500							1	2	1,275

EXHIBIT G-4—Continued

Analytical study of community antenna systems, television, radio, newspaper, and theater operations in Commonwealth of Pennsylvania—Con

Cities	Population	Community antenna systems	Number subscribers		TV allocations		On air		Radio stations		Newspapers, daily	Theaters	Seating capacity
			Present	Estimated potential	VHF	UHF	VHF	UHF	AM	FM			
Lewistown	13,894	1	1,500			1			2		1	2	1,315
Lock Haven	11,381	1	1,550	2,500		1			1		1	3	2,425
Lykens	2,735	1	1,253	1,500								1	486
McKeesport	51,502								2		1	4	4,755
Mahoney City	10,934	2	11,550	12,550							1	1	1,599
Mansfield	2,657	1	350	450								1	300
Meadville	18,927	1	2,500	4,000		1			1	1	1	1	1,503
Mexico	275								1				
Meyersdale	3,137	1	230	300								2	992
Millersburg	2,861	1	388	1,200								1	499
Milton	8,578								2	1	1	1	1,126
Minersville	7,783	1	900	2,000								1	525
Montgomery	2,166	1	400									1	499
Montrose	2,075								1			1	305
Mount Union	4,690	1	400	600								1	600
Muncy	2,756	1	330	500								1	350
Nanticoke	20,160								1		1	2	1,430
Nesquehoning		1											
New Castle	48,834					1			1		1	4	2,305
Selinsgrove	3,514	1										1	484
Shamokin	16,879	2	4,900	8,000		1			1		1	2	2,761
Sharon	26,454					1			1	1	1	4	3,863
Steelton	12,574	1										1	300
Somerset	5,936								1		1	2	1,412
State College	17,227								1		1	3	2,442
Stroudsburg	6,361	1	450	2,000					1		1	1	1,140
Sunbury	15,570	1	3,000			1			1	1	1	2	1,716
Tamaqua	11,508	1	1,758	2,000							1	1	781
Titusville	8,923	1	500	1,000					1		1	1	938
Tyrone	8,214								1		1	2	1,524

Uniontown	20,471					1			1		2	2	2,512
Warren	14,849	2	1,325	2,500					1	1	1	2	1,792
Washington	26,280					1			1	1	2	3	3,047
Waynesboro	10,344								1		1	2	1,350
Wellesboro	4,215	1	600	800					1			1	852
Westfield	1,357	1										1	445
Wilkes-Barre	76,826	1				2		2	3	2	2	9	9,014
Williamsport	45,047	4	10,340	14,500		1			3	2	2	5	7,303
York	59,953					2		2	3	1	2	7	6,014
Youngsville	1,944	1	185	250									
Total	5,035,919	77	74,662	109,750	9	46	8	15	134	43	98	480	471,426

EXHIBIT G-5

Analytical study of community antenna systems in the United States (by States)

States	Population	Number of systems	Number of subscribers	
			Present	Estimated potential
Alabama	52,554	4	2,750	12,000
Arizona	41,428	7	4,200	9,200
Arkansas	33,931	6	2,770	5,500
California	774,937	26	13,318	32,050
Colorado	52,556	12	3,790	7,100
Florida	26,433	1		6,000
Idaho	77,357	11	4,206	8,205
Illinois	20,567	3	1,950	6,050
Indiana	2,027	1	100	175
Iowa	64,625	2	2,900	3,300
Kansas	1,634	3		
Kentucky	78,568	20	2,942	5,317
Maine	8,377	1		1,000
Maryland	41,538	4	5,378	15,550
Massachusetts	15,052	3	1,495	4,750
Michigan	178,306	5	1,160	6,150
Minnesota	12,808	2	100	3,000
Mississippi	111,160	6	2,617	17,200
Missouri	15,064	1		
Montana	78,896	10	5,942	19,950
Nebraska	23,973	3	1,155	2,200
Nevada	46,093	3	1,000	11,750
New Hampshire	46,998	3	600	2,000
New Jersey	8,185	1	210	2,000
New Mexico	37,964	4	3,450	11,400
New York	266,887	28	10,434	41,700
Ohio	64,226	9	5,728	10,550
Oklahoma	29,567	4	2,240	5,800
Oregon	473,662	16	8,040	20,945
Pennsylvania	5,035,919	77	74,662	109,750
South Dakota	13,315	2	30	3,700
Tennessee	47,935	3	1,925	4,500
Texas	209,075	20	11,390	27,550
Utah	190,012	3	700	2,420
Vermont	89,192	12	8,065	17,950
Virginia	39,666	4	1,850	6,700
Washington	685,374	26	19,467	47,575
West Virginia	271,096	36	15,375	34,750
Wisconsin	45,818	4	730	3,550
Wyoming	61,545	11	6,455	18,400
Total	9,374,320	397	229,124	549,812

EXHIBIT H

PROPOSED TYPICAL WFMZ-TV WEEKLY PROGRAM SCHEDULE FOR REGULAR AND SUBSCRIPTION TELEVISION SERVICE

(Portions that are shown in blocks are subscription programs)

TYPICAL WEEKLY PROGRAM SCHEDULE
September-October-November
Monday Thru Friday

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
1:00	Child Psychology Class	Comparative Religion Class	Child Psychology Class	Comparative Religion Class	Child Psychology Class
2:00	Spanish Class	Homemaking Class	Spanish Class	Homemaking Class	Spanish Class
3:00	Movie Matinee	Movie Matinee	Movie Matinee	Movie Matinee	Movie Matinee
4:30	Bandstand 67 Local-Live	Bandstand 67 Local-Live	Bandstand 67 Local-Live	Bandstand 67 Local-Live	Bandstand 67 Local-Live
5:30	Children's Pro. Local-Live	Children's Pro. Local-Live	Children's Pro. Local-Live	Children's Pro. Local-Live	Children's Pro. Local-Live
6:00	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live
6:30	Syndicated Film	Syndicated Film	Syndicated Film	Syndicated Film	Syndicated Film
7:00	High School At Home	High School At Home	High School At Home	High School At Home	High School At Home
8:00	"8-10" Show Local-Live	"8-10" Show Local-Live	"8-10" Show Local-Live	"8-10" Show Local-Live	High School Football Game
10:00	Feature Film	Feature Film	Feature Film	Feature Film	Feature Film
11:30	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live
12:00	SIGN OFF	SIGN OFF	SIGN OFF	SIGN OFF	SIGN OFF

TYPICAL WEEKLY PROGRAM SCHEDULE
September - October - November
Saturday

TIME	1st. SATURDAY	2nd. SATURDAY	3rd. SATURDAY	4th. SATURDAY
12:00	News Local-Live	News Local-Live	News Local-Live	News Local-Live
12:15	Movie Matinee	Movie Matinee	Movie Matinee	Movie Matinee
1:45	Football Preview Local-Live	Football Preview Local-Live	Football Preview Local-Live	Football Preview Local-Live
2:00	College Football Game	College Football Game	College Football Game	College Football Game
4:00	Bandstand 67 Local-Live	Bandstand 67 Local-Live	Bandstand 67 Local-Live	Bandstand 67 Local-Live
5:30	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live
5:45	Western Film	Western Film	Western Film	Western Film
7:00	Sports Show Local-Live	Sports Show Local-Live	Sports Show Local-Live	Sports Show Local-Live
7:30	Panel Show Local-Live	Football Preview Local-Live	Panel Show Local-Live	Football Preview Local-Live
8:00	Feature Film	Professional Football Game	Feature Film	Professional Football Game
10:00	Lehigh Valley Jamboree Local-Live	Lehigh Valley Jamboree Local-Live	Lehigh Valley Jamboree Local-Live	Lehigh Valley Jamboree Local-Live
12:00	Feature Film	Feature Film	Feature Film	Feature Film
1:30	SIGN OFF	SIGN OFF	SIGN OFF	SIGN OFF

TYPICAL WEEKLY PROGRAM SCHEDULE
September - October - November
Sunday

TIME	1st. SUNDAY	2nd. SUNDAY	3rd. SUNDAY	4th. SUNDAY
1:30	News Local-Live	News Local-Live	News Local-Live	News Local-Live
1:45	Football Preview	This is the Life Relig. Film	Football Preview	This is the Life Relig. Film
2:00	Professional Football Game	The Big Picture Army Film.	Professional Football Game	The Big Picture Army Film
2:30	"	Symphony Preview Local-Live	"	Symphony Preview
3:00	"	Allentown Symphony Orch.	"	Phila. or N.Y. Phil. Orch.
4:00	"	"	"	"
4:30	This if the Life Relig. Film	"	This is the Life Relig. Film	"
5:00	The Big Picture Army Film	Syndicated Film	The Big Picture	Syndicated Film
6:00	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live
6:30	Week in Review Local-Live	Week in Review Local-Live	Week In Review Local-Live	Week in Review Local-Live
7:00	Syndicated Film	Syndicated Film	Syndicated Film	Syndicated Film
7:30	"	"	"	"
8:00	Broadway Preview	"	Met. Opera Preview	"
8:30	Broadway Play	High School Football Film - Friday's Game	Met. Opera Gala Performance	High School Football Film - Friday's Game
10:00	Feature Film	Feature Film	Feature Film	Feature Film
11:30	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live	News - Sports Local-Live
12:00	SIGN OFF	SIGN OFF	SIGN OFF	SIGN OFF

Analysis of hours of typical week devoted to subscription TV

	Commercial subscription	Educational subscription	Free	Total
Hours per week	15	15	49	79
Percent of total hours	19	19	62	100

EXHIBIT I

Summary of income potential

SUBSCRIPTION TV PROGRAMS

	Families					
	5,000	25,000	75,000	100,000	150,000	200,000
HIGH ESTIMATE						
Average weekly	$15,625	$78,125	$234,375	$312,500	$468,750	$625,000
Average monthly	67,708	338,540	1,015,620	1,354,160	2,031,240	2,708,320
Average yearly	812,500	4,062,500	12,187,500	16,250,000	24,375,000	32,500,000
AVERAGE ESTIMATE						
Average weekly	10,625	53,125	159,375	212,500	318,750	425,000
Average monthly	46,041	230,205	690,615	920,820	1,381,230	1,841,640
Average yearly	552,500	2,762,500	8,287,500	11,050,000	16,575,000	22,100,000

EXHIBIT I—Continued

Summary of income potential—Continued

SUBSCRIPTION TV PROGRAMS—Continued

	Families					
	5,000	25,000	75,000	100,000	150,000	200,000
LOW ESTIMATE						
Average weekly	$5,125	$25,625	$76,975	$102,500	$153,950	$205,000
Average monthly	22,208	111,040	333,120	444,160	666,240	888,320
Average yearly	266,500	1,332,500	3,997,500	5,330,000	7,995,000	10,660,000

REFLECTING 50 PERCENT REDUCTION IN CHARGES

	5,000	25,000	75,000	100,000	150,000	200,000
HIGH ESTIMATE						
Average yearly	$401,250	$2,031,250	$6,093,500	$8,125,000	$12,187,500	$16,250,000
AVERAGE ESTIMATE						
Average yearly	276,250	1,381,250	4,143,750	5,525,000	8,287,500	11,050,000
LOW ESTIMATE						
Average yearly	133,250	666,250	1,998,750	2,665,000	3,997,500	5,330,000

Income potential, September, October, November—Monday through Friday

HIGH ESTIMATE

Time	Families						
	Rating	5,000	25,000	75,000	100,000	150,000	200,000
TV classes:	*Percent*						
1 to 2 p. m. (fee, $0.50)	5	$125	$625	$1,875	$2,500	$3,750	$5,000
2 to 3 p. m. (fee, $0.50)	5	125	625	1,875	2,500	3,750	5,000
7 to 8 p. m. (fee, $0.50)	5	125	625	1,875	2,500	3,750	5,000
Evening feature film: 10 to 11:30 p. m. (fee, $1)	30	1,500	7,500	22,500	30,000	45,000	60,000
High school football: Friday, 8 to 10 p. m. (fee, $1)	35	1,750	8,750	26,250	35,000	52,500	70,000

AVERAGE ESTIMATE

TV classes:							
1 to 2 p. m. (fee, $0.50)	3	75	375	1,125	1,500	2,250	3,000
2 to 3 p. m. (fee, $0.50)	3	75	375	1,125	1,500	2,250	3,000
7 to 8 p. m. (fee, $0.50)	3	75	375	1,125	1,500	2,250	3,000
Evening feature film: 10 to 11:30 p. m. (fee, $1)	20	1,000	5,000	15,000	20,000	30,000	40,000
High-school football: Friday, 8 to 10 p. m. (fee, $1)	25	1,250	6,250	18,750	25,000	37,500	50,000

LOW ESTIMATE

TV classes:							
1 to 2 p. m. (fee, $0.50)	1	25	125	375	500	750	1,000
2 to 3 p. m. (fee, $0.50)	1	25	125	375	500	750	1,000
7 to 8 p. m. (fee, $0.50)	1	25	125	375	500	750	1,000
Evening feature film: 10 to 11:30 p. m. (fee, $1)	10	500	2,500	7,500	10,000	15,000	20,000
High-school football: Friday, 8 to 10 p. m. (fee, $1)	15	750	3,750	11,250	15,000	22,500	30,000

Income potential, comparative program rating bases, September, October, November—Saturday

	High	Average	Low
	Percent	*Percent*	*Percent*
College football (local): 2 to 4 p. m.; fee, $1	20	15	10
Evening feature film: 8 to 10 p. m.; fee, $1	30	20	10
Professional football: 8 to 10 p. m.; fee, $1	20	15	10

Income potential, September, October, November—1st and 3d Saturdays

Time	Rating (percent)	Families 5,000	25,000	75,000	100,000	150,000	200,000
HIGH ESTIMATE							
College football: 2 to 4 p. m.; fee, $1	20	$1,000	$5,000	$15,000	$20,000	$30,000	$40,000
Evening feature film: 8 to 10 p. m., 2d and 4th Saturdays, fee, $1	30	1,500	7,500	22,500	30,000	45,000	60,000
College football: 2 to 4 p. m.. fee, $1	20	1,000	5,000	15,000	20,000	30,000	40,000
Professional football: 8 to 10 p. m.; fee, $1	20	1,000	5,000	15,000	20,000	30,000	40,000
AVERAGE ESTIMATE							
College football: 2 to 4 p. m.; fee $1	15	750	3,750	11,250	15,000	22,500	30,000
Evening feature film: 8 to 10 p. m., 2d and 4th Saturdays; fee, $1	20	1,000	5,000	15,000	20,000	30,000	40,000
College football: 2 to 4 p. m.; fee, $1	15	750	3,750	11,250	15,000	22,500	30,000
Professional football: 8 to 10 p. m.; fee, $1	15	750	3,750	11,250	15,000	22,500	30,000
LOW ESTIMATE							
College football: 2 to 4 p. m.; fee, $1	10	500	2,500	7,500	10,000	15,000	20,000
Evening feature film: 8 to 10 p. m.; 2d and 4th Saturdays; fee, $1	10	500	2,500	7,500	10,000	15,000	20,000
College football: 2 to 4 p. m.; fee, $1	10	500	2,500	7,500	10,000	15,000	20,000
Professional football: 8 to 10 p. m.; fee, $1	10	500	2,500	7,500	10,000	15,000	20,000

Income potential, comparative program rating bases—September, October, November—Sunday

	High	Average	Low
	Percent	*Percent*	*Percent*
Professional football: 2 to 4:30 p. m.; fee, $1	20	15	10
Allentown Symphony: 3 to 5 p. m.; fee, $1	15	10	5
Philadelphia or New York Philharmonic Orchestra: 3 to 5 p. m.; fee, $1	15	10	5
Broadway play: 8:30 to 10 p. m.; fee, $2	40	30	20
High-school football (film): 8:30 to 10 p. m.; fee, $0.50	15	10	5
Metropolitan Opera gala performance: 8:30 to 10 p. m.; fee, $1	15	10	5

Income potential, September, October, November

HIGH ESTIMATE

Time	Families						
	Rating (percent)	5,000	25,000	75,000	100,000	150,000	200,000
1st Sunday:							
Professional football game, 2-4:30 p. m. Fee, $1	20	$1,000	$5,000	$15,000	$20,000	$30,000	$40,000
Broadway play, 8:30-10 p. m. Fee, $2	40	4,000	20,000	60,000	80,000	120,000	160,000
2d Sunday:							
Allentown Symphony, 3-5 p. m. Fee, $1	15	750	3,750	11,250	15,000	22,500	30,000
High school football film, 8:30-10 p. m. Fee, $0.50	15	375	1,875	5,625	7,500	11,250	15,000
3d Sunday:							
Professional football, 2-4:30 p. m. Fee, $1	20	1,000	5,000	15,000	20,000	30,000	40,000
Metropolitan Opera gala performance, 8:30-10 p. m. Fee, $1	15	750	3,750	11,250	15,000	22,500	30,000
4th Sunday:							
Philadelphia or New York Philharmonic Orchestra, 3-5 p. m. Fee, $1	15	750	3,750	11,250	15,000	22,500	30,000
High school football film, 8:30-10 p. m. Fee, $0.50	15	375	1,875	5,625	7,500	11,250	15,000

AVERAGE ESTIMATE

1st Sunday:							
Professional football, 2-4:30 p. m. Fee, $1	15	750	3,750	11,250	15,000	22,500	30,000
Broadway play, 8:30-10 p. m. Fee, $2	30	3,000	15,000	45,000	60,000	90,000	120,000
2d Sunday:							
Allentown Symphony, 3-5 p. m. Fee, $1	10	500	2,500	7,500	10,000	15,000	20,000
High school football film, 8:30-10 p. m. Fee, $0.50	10	250	1,250	3,750	5,000	7,500	10,000
3d Sunday:							
Professional football, 2-4:30 p. m. Fee, $1	15	750	3,750	11,250	15,000	22,500	30,000
Metropolitan Opera gala performance, 8:30-10 p. m. Fee, $1	10	500	2,500	7,500	10,000	15,000	20,000
4th Sunday:							
Philadelphia or New York Philharmonic Orchestra, 3-5 p. m. Fee, $1	10	500	2,500	7,500	10,000	15,000	20,000
High school football film, 8:30-10 p. m. Fee, $0.50	10	250	1,250	3,750	5,000	7,500	10,000

LOW ESTIMATE

1st Sunday:							
Professional football, 2-4:30 p. m. Fee, $1	10	500	2,500	7,500	10,000	15,000	20,000
Broadway play, 8:30-10 p. m. Fee, $2	20	2,000	10,000	30,000	40,000	60,000	80,000
2d Sunday:							
Allentown Symphony, 3-5 p. m. Fee, $1	5	250	1,250	3,750	5,000	7,500	10,000
High school football film, 8:30-10 p. m. Fee, $0.50	5	125	625	1,875	2,500	3,750	5,000
3d Sunday:							
Professional football, 2-4:30 p. m. Fee, $1	10	500	2,500	7,500	10,000	15,000	20,000
Metropolitan Opera gala performance, 8:30-10 p. m. Fee, $1	5	250	1,250	3,750	5,000	7,500	10,000
4th Sunday:							
Philadelphia or New York Philharmonic Orchestra, 3-5 p. m. Fee, $1	5	250	1,250	3,750	5,000	7,500	10,000
High-school football film, 8:30-10 p. m. Fee, $0.50	5	125	625	1,875	2,500	3,750	5,000

TELEVISION INQUIRY

(Subscription TV)

TUESDAY, APRIL 24, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room G-16, the Capitol, Hon. John O. Pastore presiding.

Present: Senators Pastore and Schoeppel.

Senator PASTORE. If we are all ready, we will commence these hearings.

To begin with, the distinguished former chairman of this committee, and the present Governor of Colorado, Edwin C. Johnson, had intended to appear and offer a statement to the committee on subscription television. Because of circumstances beyond his control he is unable to appear in person but has forwarded his statement as he prepared it, and as he intended to submit it to this committee.

Governor Johnson's leadership and interest in the field of communications, particularly broadcasting, are well known, and the committee is most fortunate indeed to have the benefit of his views.

Without objection, Governor Johnson's statement will be made a part of the record.

The chairman of the committee, Senator Warren G. Magnuson, had intended to read a general summary at this time, but unfortunately he is detained and unable to be present, and Mr. Cox will read the statement, or the summary, in his stead.

Mr. COX. Governor Johnson's statement was motivated by the fact that the present television system falls far short of filling the potential of serving the public which it has the technical ability to accomplish—a failure prominent in Colorado and the Western States.

He believes it imperative that the Nation shall have: First, an equitable and fair distribution of television facilities; second, a competitive system that will avoid monopolies in the industry, and among the big advertisers that use it; third, a system of television that will advance baseball, a field in which he has particular interest, instead of killing it; fourth, a system of television which would provide the public with many educational and high quality television programs which advertising is unable or unwilling to bring, for economic or other reasons; and, finally, a system of television which by virtue of competition may eliminate advertising excesses and tend to improve the quality of programs.

He expresses concern about the lack of local competitive stations. Only 275 communities now have local television stations, and 60 percent of these cities have only one local television station.

In Colorado, he points out, 4 of 23 cities allocated channels have local television stations; in Montana only 4 of the 26 cities allocated TV channels have local stations; in Wyoming, only 1 of 23; in Idaho, 4 of 21; in Utah, 1 of 11; in Arizona, 4 of 22. The impact of this is illustrated in connection with the various proposed amendments to the Communications Act which would make television more freely available for use by political candidates. He points out that these are worthy objectives but of little practical significance in the States in the Rocky Mountain area because of the limited number of local television stations available for such purposes.

Under the present system of advertising support, the people of Colorado pay the same price for a bar of soap or a tube of toothpaste as the people elsewhere in the Nation, but they are receiving very little television service in return. National advertisers tend to broadcast programs into an average of only 60 to 65 top markets. Denver is the only city in Colorado which is a "must buy" market on CBS or NBC, while Wyoming, Nevada, Montana, Arizona, and New Mexico do not have a single "must buy" market on any of the national network lists. With the limited number of stations now available, the preemptive use of television time by large advertisers tends to make big business bigger and small business smaller, all to the detriment of the development of local community economics and forms of expression.

The inadequate number of competitive television stations in markets under present circumstances leaves the small-business man without a television outlet for his advertising. Governor Johnson does not criticize the national advertisers' use of television, but emphasize the necessity for outlets available on a local level for the local advertisers, the local charitable, religious, and educational organizations.

In discussing the allocations plan and the various suggestions concerning its change, Governor Johnson states that whatever the allocations plan that may be adopted, it will have meaning to the public only if the stations made technically possible on paper can actually be brought to life. The provision of additional sources of economic support carries far more hope than a mere technical change, in his view. He does not dispute the impact certain allocation changes would have in particular markets now without adequate competitive facilities.

However, he is concerned as to how television service will get to small communities in the Rocky Mountain area, and similar areas in the country, where the problem is not UHF or VHF but, rather, the need for a new source of revenue and high quality programs to supplement limited advertising support, and to make up for lack of network programing. Something supplemental is needed, he says, because even if all of the markets were either UHF or VHF, according to CBS, advertising could support less than 600 stations in 217 markets in the foreseeable future.

Governor Johnson believes, therefore, that subscription television is the only source of additional revenue and high quality programs available which has the potential of increasing the limited amount of service now in existence. He was favorably impressed by Commissioner Lee's proposal in Look magazine, wherein it was suggested that subscription television programs be limited to 10 or 15 percent of a station's time on the air. Thus 85 percent of its time would be available to the public for other purposes—for instance, for local advertisers, who now do not have an opportunity to use this medium.

More new stations would give independent producers of programs outlets for their products. New stations and competitive sources of programs would substantially reduce the possibility of monopolies and highly concentrated power in the television industry, and at the same time offer the public greater program choices than are now available.

It appears to Governor Johnson that two basic types of television stations will ultimately develop: First, the network affiliate, which will be primarily a vehicle for the big national advertiser, and carry few, if any, subscription programs; second, the hometown station in a small community which would devote a relatively small portion of its time to subscription service, and the balance to local commercial, religious, charitable, and educational programs.

From a practical standpoint, in the opinion of Governor Johnson, the needs of the network and national advertiser are substantially satisfied under the present system, and there is little indication that they will go outside the top 100 markets. In addition, it appears that in the markets where there are a limited number of stations, the networks' right to preempt time leaves little opportunity for local programs.

A television system which provides both advertising and subscription programs would give the public the opportunity freely to choose between subscription programs and the advertising programs, and quality would prevail.

Both FCC Chairman McConnaughey and FTC Commissioner Mason commented recently on overcommercialization and excesses in advertising. While he was a member of Congress, Governor Johnson says, he always stressed the fact that it was impossible to legislate good taste or sound judgment in television programs or advertising copy, but that this could best be solved by competition—in this case, competition between subscription television and present advertising programs, which he thinks would tend to eliminate excesses in advertising or low quality television programing.

Turning to the sports field, Governor Johnson emphasizes the impact television is having on gate attendance. Major league attendance has steadily declined, and many owners and managers have stated they cannot survive on what sponsors are paying for televising major league games in view of the resulting loss of gate receipts. Milwaukee, Pittsburgh, and Kansas City have refused to permit their games to be televised.

In the minor leagues, the situation is worse. The losses in the minor leagues have been so great and have reached such proportions, according to Governor Johnson, that something must be done if baseball is to survive outside the major leagues. In 1950 there were over 58 minor leagues to entertain 35 million fans. In 1955 there were only 33 leagues, and attendance had fallen off 46 percent since 1950. In boxing, the heavyweight title fights have not been seen on television in 5 years. The NCAA has found it necessary strictly to control the televising of college football because of the effect it has had on gate attendance.

In connection with many sporting events, Governor Johnson believes that the American public will be confronted with two choices: Either to pay for the viewing of many of the major sports events through subscription television, or, on the other hand, to go without the convenience of seeing such events at home.

In conclusion, Governor Johnson states that it is his opinion that the FCC has all legal authority needed to authorize subscription television now, and recommends that this committee could serve a useful purpose by informing the FCC that the financial distress of the television industry and the inadequacy in terms of a competitive national system make it imperative for the Commission to act, and to act immediately.

The Government should be the last agency to attempt to prevent the television industry from taking the new product of subscription television to the market place to compete for a share of the American public's entertainment budget. His views are given after careful consideration of all factors weighed by many years of experience he has had in this field.

(Governor Johnson's full statement is a follows:)

Statement of Gov. Edwin C. Johnson, of Colorado

My name is Edwin C. Johnson, Governor of Colorado.

It is with many fond memories that I appear before this committee upon which I was once honored to serve as a member and as chairman. I hold all of my former colleagues in the fondest memory. I hope you may forgive me for expressing some views I hold with respect to TV for your consideration. While serving on this committee, I found no single problem more engrossing or challenging than the development of a sound nationwide competitive television system because of my firm conviction that television has the potential of making a greater contribution to the way we live than any other invention of modern times. My appearance here today has been motivated by the fact that our present television system falls far short of fulfilling the potential of serving the public which it has the technical ability to accomplish—a failure which is particularly pronounced in Colorado and other Western States. At least that is the excuse I offer for imposing on your time and patience.

Moreover, as Governor of my beloved State of Colorado, I am vitally concerned in establishing television as a medium of local expression in her larger domain which, under present circumstances, is limited to four communities.

Beyond my official responsibilities, I have long had a personal interest in the development of broadcasting and television by virtue of my former service on this committee. I believe, as I am sure every member of this committee does, that it is imperative that this Nation shall have:

1. An equitable and fair distribution of television facilities, and
2. A competitive system that will avoid monopolies in the industry and among the big advertisers that use it.

An avocation very close to my heart has been the national pastime of baseball. For a number of years I have acted as the nonsalaried president of the Western Baseball League. Therefore, if I may inject this purely personal note, I am also vitally interested in seeing that television advance this great national sport instead of killing it.

Finally, I am interested in seeing that the public has available many educational and high quality programs which advertising is unable or unwilling to bring to them for economic or other reasons. There is obviously a burning desire on the part of the public for many types of programs not now available. If such programs can be made available to the public on a nonadvertising basis, they will not only serve to fulfill a public need, but by virtue of their competition will tend to improve the quality of advertising programs and to eliminate many of the advertising excesses which now exist.

The Communications Act and the Commission's allocation plan contemplate television service, so far as possible, to all people of the United States under circumstances which would provide the greatest number of competitive services to the largest possible number of communities. It is readily apparent that our present television system falls far short of these objectives. Of the 1,238 communities to which the Commission allocated television channels, only 275 now have local television stations and there is little prospect at the present time that this number will be increased greatly under our present system of dependence on advertising support. Less than 25 percent of the 1,882 commercial channels allocated by the Commission are now in use. As compared to over 2,000 radio stations, we now have only 440 television stations. There is little local television competition in even the limited 275 cities which do have television stations since in over 60 percent of these 275 cities, there is only 1 local television station.

In the Rocky Mountain area, conditions are even worse than these nationwide figures indicate. Thus, in my own State of Colorado, only 4 of the 23 cities allocated television channels have local television stations, and of the 36 channels allocated to Colorado only 8 are in use. Colorado's sister States in the Rocky Mountain area have a similar lack of television service. Thus, only 4 of the 26 cities in Montana allocated television channels have any local television stations; in Wyoming, only 1 of 23 allocated cities; in Idaho, only 4 of 21 allocated cities; in Utah, only 1 of 11 allocated cities; in Arizona, only 4 of 22 allocated cities; in New Mexico, only 2 of 25 allocated cities; in Oklahoma, only 6 of 38 allocated cities; and in Texas, only 23 of 115 allocated cities.

Senator Pastore, for whom I have great affection and respect, has voiced a legitimate complaint that, while the people in Rhode Island are blanketed with service and commercials from Boston and the people of Connecticut by the seven New York City stations, they have very little opportunity to receive any local programs or the commercials of local concerns. However, the people in our Western States are not even as fortunate as the Senator's constituents, since they are without outlets for local expression and receive very little service and practically no choice of service from outside sources. Parenthetically, I might further add that the various proposed amendments of section 315 of the act to permit greater latitude in providing free television time for political candidates, while worthy in their objectives of providing information to the public concerning candidates and issues of the day, are of little practical significance in the States of the Rocky Mountain area. As an illustration, in Colorado only four communities have local television stations which could be used for this purpose.

In such States as Wyoming and Utah, political candidates could reach the voters of only one city in their State over existing television facilities.

Under present circumstances, the vast majority of communities in Colorado and the other Rocky Mountain States do not have television service available for local expression by government, advertisers, charities, education and sports. While a member of this committee, I stated, "with the technical means available, the huge task confronting the television industry was to actually bring local television service of excellent and even superior quality to the farms, country towns and smaller communities." Any television system which does otherwise is clearly divisive and discriminatory against large numbers of people.

As an illustration, under the present system of advertising support, the people of Colorado pay the same price for a bar of soap or a tube of toothpaste as the people elsewhere in the Nation, but they are receiving very little television service in return. In effect, therefore, many people in Colorado and other Rocky Mountain States without television service are subsidizing the television programs received by the public in other areas since their purchases of nationally advertised products help support these programs.

Furthermore, the national advertisers tend to broadcast the programs which they supply to the public "free" in an average of only 60 to 65 top markets. In this connection, Denver is the only city in Colorado which is a "must buy" market on either CBS's or NBC's "must buy" list. Even then, we are relatively better off than some of our sister States, since Wyoming, Montana, Nevada, Arizona, and New Mexico do not have even one "must buy" market on any national network's list and many national advertisers tend to ignore these States when given the option to do so.

With the limited number of stations now available, the preemptive use by large advertisers of television time tends to make big business bigger and small business smaller, all to the detriment of the development of local community economies and expression. As already noted by Mr. Moore in this proceedings, fewer than 20 large national advertisers contribute over 50 percent of the national network revenues. The inadequate number of competitive stations in markets under present circumstances leaves the small-business man without any television outlet for his advertisements. Under our system of distribution where advertising is such an important factor, this monopoly of limited television time by a handful of national advertisers is a very fertile ground for the growth of monopolies and the concentration of tremendous power in the hands of a few, not only in the television industry, but in all the large industries that advertise over television. I do not mean to imply any criticism of national advertisers using television. I merely wish to emphasize that if we are to give small business equal opportunity to utilize television in the distribution of its products, more stations in more communities must be made available.

In focusing our attention upon how we may increase the amount of television service and the number of communities having such service, there appears to be almost universal agreement that under our present system of advertising television, the number of stations and the number of television communities that this Nation can have are limited to the number that national networks and their advertisers can use or support. Under existing circumstances, nonnetwork stations have been unable to survive except in the top 3 or 4 markets.

One of the most optimistic estimates of television's future under a system of advertising support has recently been made by CBS which has estimated that no more than 588 stations in 217 markets can be supported by advertising in the foreseeable future. There is a serious question at the present time whether or not even this gloomy projection of television's future by CBS is not in fact overly optimistic in view of the fact that of the limited number of 440 television stations now operating in 275 communities, approximately 50 percent of the stations are losing money and the continued operation of many of them is in serious doubt.

Over the past several years this committee and the Federal Communications Commission have devoted a substantial amount of time and effort in ferreting out technical defects in the present allocation plan. While it was my belief at the time the Commission adopted a policy of intermixture of UHF and VHF that such intermixture would create needless problems, a great deal of water has gone over the dam since I expressed that opinion. Therefore, I have not come here to vindicate by hindsight the judgment which I expressed at the time the policy of intermixture was adopted.

I believe that under the existing situation, it is far more relevant to emphasize that so long as economic support of television is limited to advertising, mere technical changes will not substantially increase the amount of television service available to the public or the number of communities which will have television service. Since our ultimate object is to establish as many television stations as possible in as many markets as possible, mere technical changes in the allocation plan would only be quarter measures. Witness after witness has come before this committee and stated that their greatest problem was an inadequate source of high-quality programs and revenue. Under this circumstance, we will be deluding ourselves and the public if we publish an allocation plan which provides 3 or 4 times the number of stations and the number of television cities than will ever be used. As CBS has so forcibly brought out, even if there were no spectrum limitations and all television stations were either VHF or UHF, advertising could support less than 600 stations in 217 markets in the foreseeable future.

It is obviously a vain and empty act to provide for several thousand television stations in a "paper" allocation plan if the economic facts of life show that only several hundred can be supported by advertising. Whatever the allocation plan, it will have meaning and content to the public only if the stations made technically possible on paper by some rule of the Commission are brought to life. The provision of additional sources of economic support carries far more hope that the amount of television service possible under the allocation plan will become a reality than any mere technical change.

It is of course possible that in some markets technical allocation changes might make possible an additional station. This undoubtedly would have a practical effect only in a few of the larger markets where the networks can and will support more stations than now operate. In view of the limited needs of national network advertisers, this effect would apparently be limited to a relatively few stations in the first 60 to 100 markets in the Nation. However, in areas such as the Rocky Mountain States, in which few of the top 100 markets exist, such changes in the allocation plan would be of little, if any, help in increasing television service. The problem of these small communities in the western area is not so much whether they have VHF or UHF channels allocated, but rather, the need of a source of high-quality programs and a new source of revenue to supplement limited advertising support.

I believe subscription television is the only source of additional revenue and high-quality programs proposed which has the potential of increasing the limited amount of service now available to the public. If successful, subscription television would add a new source of local revenue which, together with local advertising, would make it possible for new television stations to be established in many smaller communities in spite of the lack of interest of the networks and the large national advertisers. In this respect, I was favorably impressed by Commissioner Lee's recent article in Look magazine in which he proposed the authorization of subscription television under circumstances which would limit the time devoted to subscription programs to 10 or 15 percent of a station's time on the air. Such a practical limitation would leave 85 percent or more of the programs broadcast by a station available free to the public and at the same time give opportunities to many local advertisers who now have no opportunity whatsoever to utilize television. Certainly, the public would be better off having 85 percent of their programs broadcast free with 15 percent subscription than to have no television service at all. It would appear to be commonsense, as well as an integral part of the American tradition of freedom of the market place, to at least give the public the opportunity to choose between paying for approximately 15 percent of their programs and having no television service at all.

The success of community antenna systems for which the public directly pays indicates a willingness upon their part to directly help pay the freight of television service. Thus, in my own State, the public in 8 cities are paying for community service and 4 more cities are planning such service. Several of these Colorado cities, however, must rely upon programs coming from stations out of the State. As beneficial as such community antenna service is, it gives these communities no outlet for local expression which I am certain they would be just as willing to help support as they are to pay for national and out-of-State programs in which they have no direct personal interest.

If, as I believe, the American public would be willing to devote part of their entertainment budget for television service which would not otherwise be available, it is clear that practically every major problem which has been discussed before this committee in the last few months would be eliminated.

The additional sources of revenue which subscription television would provide would mean more television stations in more potential television communities. It would alleviate the problem of those stations that are now unable to obtain network affiliations, since subscription television would supply a source of economic support and high-quality programs which would make it possible for them to compete with network programs and stations.

The new stations which subscription television would make possible would increase the demand for program sources independent of the networks. In this respect, many of the problems discussed by Mr. Moore in this hearing would be solved without the need for artificial Government interference. While I agree with Mr. Moore that the monopolization of time on the existing limited number of television stations by the networks tends to restrict competition from independent program sources, I believe the cure may more properly be the making possible of more television stations by the authorization of subscription television than by new and additional Government regulation of the networks. New and additional stations will give the independent producers of programs outlets for their product, which would appear to be far more important than a mere attempt to split up the limited amount of time on existing television stations between independent program producers and the networks.

By making possible new stations and new competitive sources of programs, subscription television would substantially reduce the possibility of monopolies and highly concentrated power in the television industry and other business and social organizations that now preempt it. The new stations would not only have time for subscription programs, but would devote the major portion of their time to free programs supported by local advertisers. Furthermore, the new and additional stations which subscription television would make possible would give the public a greater program choice and would provide more outlets for divergent viewpoints than is presently possible.

Television's leading competitors in the communications field, such as newspapers and magazines, all receive economic support both from the advertiser and from the subscriber. If we provide television with this same opportunity to obtain economic support directly from the public, as well as from advertisers, it appears to me that two basic types of television stations will ultimately develop in this country. First, there will be the network affiliate which will be primarily a vehicle for the big national advertisers and would carry few, if any, subscription programs because of conflicting time requirements. On the other hand, there will be hometown stations in the same and many new small communities which would devote a relatively small portion of their time to presenting subscription programs and the balance to serving local commercial, Government, charitable, religious, and educational programs on the present basis.

From a practical viewpoint, the needs of the networks and the national advertisers are substantially satisfied under the present system since their needs and requirements do not extend much beyond the top 100 markets. However, there is a great need for hometown stations in many communities in which the networks and the national advertisers have little, if any, interest. Furthermore, even in the larger communities having network stations, the time of the limited number of stations is so preempted by national network programs and national advertisers that there is little opportunity for local programs or local advertisers to use the medium. The record in this proceeding makes clear that it is the need for outlets for local expression and small-business men in both large and small communities that our present system fails to serve. The social and political significance of this failure is clearly something which cannot be ignored.

A television system which provided both advertising and subscription programs would give the public the opportunity to freely choose between high-quality advertising-free subscription programs and advertising programs. The competition which would thus exist for the public's attention would undoubtedly tend to improve the quality of advertising programs and make both the stations and the advertisers much more careful of excessive advertising and other advertising abuses. In this connection, I was interested to note that the Chairman of the Federal Communications Commission recently stated that "the trend in these changing times seems to be toward overcommercialization to the prejudice of public service." The criticism recently directed to television advertising abuses by Mr. Lowell Mason of the Federal Trade Commission, a long time very dear friend and devoted public servant, also emphasizes the problem in this connection. However, with the expense of television operation being what it is and with little competition, it is obviously difficult to correct these abuses under present circumstances as pressure upon the television stations for any kind of economic support is apparently too great to permit them to exercise free judgment in selecting or refusing the commercial advertising copy they carry.

Through the many years in which it was my privilege and delight to serve in Congress, I consistently took the position that it is almost impossible to legislate good taste or sound judgment in connection with the selection of television programs or advertising copy and that this problem could best be solved by a competitive system which would give the public the choice of ignoring those stations which abused their privileges. In line with this view, I sincerely believe that the competition which subscription television would give to the present advertising programs would tend to be far more effective than any conceivable Government regulation in eliminating the excesses and abuses of advertising and low-quality television programs about which there is such a wide complaint at the present time.

I would like to turn briefly to the very serious problem which has been facing the promoters of sporting events ever since the advent of television. While many sporting events have been sponsored by advertisers, it has become increasingly evident that the amount the advertisers are willing or able to pay does not make up for the loss of gate attendance. Now, sporting events simply are not free since somebody has to pay for them or the promoters will go out of business.

We are all aware of the fact that there has not been a heavyweight title fight on television over the past 5 years. The NCAA has found it necessary to exercise strict control of television broadcasts of college football because of the tremendous effect the televising of even a few games had upon the attendance at all other college games. However, perhaps no sport has suffered as much from the impact of television as professional baseball.

Major league baseball attendance has shown an almost steady decline since television and the owners and managers of many major league teams have stated they cannot survive on what sponsors are willing to pay for the televising of their major league games in view of the resulting loss of gate attendance. In fact, this matter has become so serious that in three major league cities—Milwaukee, Pittsburgh, and Kansas City—the owners of the clubs have refused to permit their games to be televised.

The impact of television has been even greater upon the minor leagues, since the network televising of a major league game in a minor league city cuts down the attendance and interest of the public in the local team. The catastrophes sweeping the minor leagues have reached such proportions that something simply must be done if baseball is to survive outside of the major leagues. As an illustration, in the year 1950 there were 58 minor leagues who entertained over 35 million fans. By 1955, 25 minor leagues had been forced out of business and the attendance of the surviving 33 leagues had fallen off by 46 percent over the minor league attendance of 1950.

If the public desires to continue viewing sporting events in the comfort of their homes, they are going to have to pay for it since advertisers simply cannot pay enough to make up for the ensuing losses in gate attendance. In this respect, subscription television would be a boon to many local and national sports which are now suffering severe economic losses as a result of the impact of television.

The minor leagues could also benefit substantially from subscription television. In the first place, the convenience of having minor league games available over subscription television would place the minor league team in the position of overcoming the law of inertia on the part of the public which tends to keep them glued to their sets at home, watching various types of less interesting entertainment rather than going to the ball park. Equally important, to the extent that major league games are broadcast by subscription television in minor league cities, arrangements could undoubtedly be made with the major leagues which would give the minor league city a share of the subscription receipts in its city resulting from the subscription telecast of the major league game. This income would compensate the minor league team to some extent for the loss of gate attendance resulting from the television broadcast of the major league game in its community. Since the existence of strong minor league teams is essential to the existence and quality of the major leagues and because of the general interest in baseball which the minor leagues generate, it would obviously be in the self-interest of the major leagues to permit the minor leagues to participate in the income resulting from the subscription telecasts of their games.

Under present circumstances, advertisers are unable to pay any more than they are now paying for sporting events. In this connection, I have been given to understand that the networks are having extreme difficulty in finding a sponsor who is willing to meet the $3 million demand (an increase of $2 million over previous years) of the major league clubs for the televising of the world series. The day is rapidly approaching, and indeed has arrived in connection with many sporting events, when the American public will be confronted with one of two choices—either to pay for the viewing of major sporting events through the medium of subscription television or go without viewing such sporting events in the convenience of their homes. In my opinion, faced with this choice, the public will willingly support sporting events through the medium of subscription television, which in the long run would be much more economic than if the public is forced to attend all major sporting events at the stadium or arena.

In conclusion, I would like to state that in my opinion the Commission has all the legal authority under the present Communications Act which it needs to authorize subscription television and that, therefore, no further legislation is required. However, I believe that this committee can serve a useful purpose by making clear to the Commission that in its opinion the present financial distress of the television industry and its inadequacies in terms of a competitive national system serving all of the people and in providing outlets for local expression in the smaller communities make it imperative that the Commission take immediate action. This could be done if the Commission will lift all artificial restrictions which prevent the television industry from obtaining the new and supplementary source of economic support which subscription television makes possible. As Commissioner Robert E. Lee has so appropriately noted, the ultimate acceptance of subscription television properly rests with the American public. Certainly, under our system of free enterprise, government should be the last to attempt to prevent the television industry from taking the new product of subscription television to the market place to compete for a share of the American public's entertainment budget.

I thank you for this opportunity of presenting views which I have accumulated over a considerable period and which are the product of much thinking on this intriguing controversial question.

Senator PASTORE. Our first witness this morning is Dean Charles C. Caveny, of the undergraduate division of the University of Illinois.

Would you identify yourself for the record and show what interest you have, and then proceed in any way you like?

STATEMENT OF CHARLES C. CAVENY, DEAN, UNDERGRADUATE DIVISION, UNIVERSITY OF ILLINOIS

Mr. CAVENY. Thank you, sir.

My name is Charles C. Caveny, and I am interested in subscription television because of my experience. My experience is in State planning for higher education, also the experience I have had in research in the use of this device for educational purposes.

I should like to try to clarify a few technicalities and misconceptions about educational television. I also am concerned as a member of a board of one of the channels assigned for educational purposes—1 of the 252 channels that have been assigned by the Federal Communications Commission.

I am sorry to say I have no script except a few notes which I have. I do have a small statement which I would like to relate.

Mr. COX. Is this station to which you refer—the educational station—now on the air?

Mr. CAVENY. Yes, sir; it is 1 of the 15 of the 252 which is on the air, and my concern has always been, from the beginning, as to how are we going to keep these channels on the air, even if we are successful in getting them on the air.

In the first place, we haven't been too successful in using the channels to date. That is understandable.

Senator PASTORE. Now, on that point, Mr. Caveny—and I think the American people are very much interested in this phase of the problem that you have just raised—is it an economic question, or is it lack of interest on the part of the public in this type of program? Essentially, that is the question that confronts the American people. The economic problem which results is a consequence, but fundamentally educational television was instituted for the purpose of promoting the welfare of the people of this Nation. Now, if these stations are not surviving, is it because there is a lack of interest which results in an economic depression, or is it something else? Are you going to develop that?

Mr. CAVENY. I would like to develop that.

Senator PASTORE. I hoped that you would because we are very much concerned with this. There have been certain allocations to educational television, and I have always thought it was a magnificent thing. Now, if it doesn't turn out to be that because of lack of interest, I was wondering whether it needs a shot in the arm, or whether or not it is a fundamental question.

Mr. CAVENY. Well, sir, I wanted to say that I believe the assignment of the channels was a very wonderful thing for the general welfare and for educational purposes, but it is something like planning for this great tidal wave of students that are coming in the future, that are on their way now. It is so difficult to convince the public in general of the needs in advance of the actual utilization of these channels. For instance, in higher education, we have what you might call four different student bodies. The first group are the college youth—the full-time day, as we refer to it, college-age youth. Well, we all know that the increased birthrates have been very high, and we all know that most of the institutions of higher education are predicting—and there is pretty good authority for that with the increased number that are attending college, in addition to the increased birthrates of those that are moving into college age. The enrollments in our own State, for instance, we anticipate will double by 1970—that they alone will double over the 1954 enrollment. At the present time, the enrollments in higher education in our State are 5,000 greater than they were at any other time in the history of the State. Now, that is the first group.

The second group is the part-time group, the employed people who wish to pursue a college degree, or a college education.

Then we have a third group, which is the graduate field, graduate education. That is for advanced degrees.

Then we have a fourth group which could be classified as the terminal group—terminal education, and extension education, and correspondence education.

Now, those four groups are somewhat of a responsibility for programs of institutions of higher education, and because of the tremendous increase in the college-age youth—in the first group—it is going to require a considerable expansion of facilities, a considerable expansion of the staff; that is, the teaching staff. And actually there is an inverse movement—as the need is getting greater, the number of qualified staff is getting less, as we know, in that field.

Now I see televised education as a device for helping with not only the shortage of supply of trained staff, but also as a means of expanding the tuition-paying groups that will help to afford the cost of these total programs. It is so difficult, of course—when you haven't reached that large segment to be served—it is so difficult to convince those that provide the funds that these preparations and these facilities must be prepared for meeting this expansion as it comes along.

Now I want to qualify this matter of televised education. I refer to it as televised education rather than educational television. The reason I say that is that at the present time we are engaged in research in the use of television so that it can be used as a device for televising education of the kind that is needed to carry on organized, systematic study under a qualified professor—one that is a scholar, one that is an authority in his field, and one that is articulate enough and well enough schooled in the techniques to do a good job of education. Now these channels are—the channels that we are using now are doing a fine job of educational television, which is somewhat of a different purpose than the type of thing that we are going to need very shortly—and when I say "need," I mean televised education—the difference being this: Educational television is not the organized—it does not have as its purpose organized, systematic study leading toward an attainment which would be measured in terms of educational standards. Rather, it must be presented by educators—an educator-broadcaster, rather. It serves the purpose of general education and is somewhat along what we would classify as something that requires techniques of showmanship and appealing to the public in general and in support of these programs. In other words——

Senator PASTORE. Now just so that the record will be clear on this point, because I tell you very frankly, coming from you, Mr. Caveny, dean of the undergraduate division of the University of Illinois, I am rather intrigued at the presentation that you have made thus far. Maybe I do not completely understand it.

Now you speak first of your first category, and you have pointed out the fact that because of the increase in population we are facing a situation now which will become much more aggravated in the months to come; that there aren't college facilities enough to accommodate all our college eligibles—is that the argument that you are developing, and that this will be a way of bringing education to this great vast group of young people; is that the argument being made here?

Mr. CAVENY. No, the argument is this: It is a matter of financing these channels, a matter of affording to operate these channels; and because of the demand for funds for this great surge of college-age youth in the full-time program, the other programs will have to be self-supporting, meaning that they will have to have resources, financial resources from some other source. The colleges are going to find themselves, and do now find themselves, in need of funds to operate or to utilize these channels for televising education.

Senator PASTORE. But are we talking about extension courses now or are we talking about the fundamentals that we consider in an organized college of today? Will a young boy who gets to be 18 and graduates from high school be placed in the position that he can go to classes in his own parlor and finally work himself up to a degree—is that what we are talking about?

Mr. CAVENY. No, sir.

Senator PASTORE. Because we do not have facilities?

Mr. CAVENY. No, sir.

Senator PASTORE. What kind of education are we talking about?

Mr. CAVENY. Now the colleges and universities will serve the college-age youth; they will use their resources to serve the college-age youth. But in addition to the college-age youth, they have these programs of part-time evening—that is, the later evening portions—for more than the college-age youth, for those that are employed, adults that are employed, also for graduate teaching.

Senator PASTORE. What is usually known as an extension course?

Mr. CAVENY. That is the fourth group. The terminal, correspondence and extension courses have always been self-supporting; the students pay most of the costs.

Mr. Cox. Isn't your basic point that in order to provide service to these four classes in the more or less traditional way, the legislatures of the various States, or the other sources of revenue of private institutions, are going to be so taxed that they will not have the funds to also carry on the function of educational television unless that function can be made to support itself, as through subscription?

Mr. CAVENY. As through subscription; that is right.

Senator PASTORE. Well, the impression I do not want to leave here—and I hope that we make it abundantly clear on the record—that we are not speaking in terms of lack of facilities for the development of a good staff, or a good faculty, to the point where this is going to be a substitution for our usual concept of a college education.

Mr. CAVENY. That is right.

Senator PASTORE. I do not think we ought to leave that on the record, because that would be awful if we are going to say, "Well, now, you don't have to go to college anymore; you go to class in your own bedroom."

Mr. CAVENY. Oh, no; I had no intention of giving that impression. What I was really trying to say, as the gentleman brought out here, is it is a matter of having the resources to do all of these jobs.

Now actually speaking of televising education and extending this service, generally in many accredited institutions, it is possible for adult students and others to earn about one-half of a degree—that is, they may earn one-half of the essentials for a degree. Now also in terminal education we feel that we have an obligation there, and that is usually given to the students that do not attain a degree. For instance, the mortality rate of those students that matriculate toward a degree is as high as 62 percent in the only study that has been made of any great extent. That is, 62 percent of those that matriculated in about 1,200 of the 1,400 accredited institutions that were studied, 62 percent never attained a degree.

Now those young people usually carry on their work by either extension or part-time work, or they are served by what we classify as terminal education which means that they are not carried to the degree level but they are given work toward vocational or technician objectives. In other words, it is a means of serving those students that do not have the capacity for earning a professional degree.

Senator PASTORE. And is it your understanding, then, that the system of subscription television will tend to broaden the base of education on the part of certain individuals who ordinarily would not get this education unless it was through this opportunity; is that the argument that you are developing?

Mr. CAVENY. That is right.

Senator PASTORE. It would not detract from nor change our present system?

Mr. CAVENY. Oh, no; it would supplement it.

Senator PASTORE. It would not discourage attendance at college?

Mr. CAVENY. Oh, no.

Senator PASTORE. It won't discourage endowment to colleges in order to sustain this great institution of voluntary education and private education?

Mr. CAVENY. That is right; it is just another source.

Senator PASTORE. But it would more or less broaden the base of education on the part of certain people who ordinarily wouldn't have the opportunity, unless it was because of this medium; is that the argument that you are developing here today?

Mr. CAVENY. Yes; that is right.

Senator PASTORE. And consequently the fact that they might have to pay some small amount for it, would produce better educators in order to give them this kind of education?

Mr. CAVENY. It is another resource, in other words. It is a resource which means that it can be used for televising education, not just for entertaining through educational subjects, but by televising education to serve an educational objective.

Now the device also will make it possible to extend the services of a qualified professor; that is, to utilize his services on a broader scale, because his program can be televised, and he can serve more people at the same time. In other words, you can extend his services by what we might classify as—in research they do it by closed-circuit work at the present time; that is for experimentation purposes.

Senator PASTORE. Well, for the purpose of the record, what tendency would this have, for good or for bad, on our prevailing educational system?

Mr. CAVENY. Well, it is another resource. In other words, it is another resource for teaching purposes, for televising education; and it is also another income resource for helping to finance this type of program of education, other than the regular college-age youth group.

Now I have a statement that would require a few minutes to make, if I may.

Senator PASTORE. Yes.

Mr. CAVENY. Perhaps it would give us some grounds of understanding what I am trying to develop.

For instance, the position taken recently, right here in Washington, D. C., by the members of the American Council on Education—they made this statement last month, and it is, incidentally, typical of the educators' concern over this possibility of using television for televising education. They said that to meet the demands for training intelligence which comes from every segment of our society—the professions and vocations, business and industry, Government, agriculture, and labor—the opportunity must be given to every American citizen to attain the righest level of education and training of which he is capable. We must be concerned with individuals at all levels of ability. We must also provide educational opportunities over a continually increasing span of life, and hence we must continue to develop new educational resources, diverse types of institutions, and additional courses of study, and new techniques of instruction such as educational television.

Now that was a statement that was made by this group. Then the statement has often been made that if it is true that what happens to American education will happen to America, the deficit in dollars, teachers, classrooms, and services in meeting the load of today alone—without considering new members and new numbers of tomorrow—mark out a national concern as serious as how to defend ourselves in a world of international tensions.

They stress that to defend ourselves effectively we shall have to depend upon brain power more than manpower, upon new ideas more than arsenals, upon the morale of people more than regimentation, and upon economic strength more than diplomacy; in other words, that education is becoming an integral part of our whole social need.

Now, then, for a personal observation I believe that I should be able to testify to the needs in educational resources because of my present responsibilities as an administrator, in which I am trying to actually convince people that our need is not so great immediately, but our need is going to approach us more rapidly than we are going to be prepared to meet it, and because of past experience. Now I have had considerable experience—and without going into that, I might say that it includes teaching in all levels, high schools, colleges, universities, State supervisor as well as a representative of the Office of Education—and I can attest to the fact that we need more highly skilled teachers, and we need all of the resources we can get to meet these varying needs, if we are going to meet the needs of the youth in college today and meet these other needs that are essential.

Now during the war it was my responsibility, in charge of one of the programs in electronics, to produce technicians for the Navy's use in a speeded-up, very intensive program. In doing that we had to develop new techniques, and particularly one using visual aids, so that we could not only produce well-trained technicians to take over this electronic gear on board ships but also so that they would be able to handle any type or any kinds of equipment in their application.

So we, by the use of a special testing method which is too lengthy to go into in detail, but by the development of special testing methods and by the development of visual aids, we were able to increase the perception of the individual student about 90 percent, that is over the traditional method of teaching.

In other words, these techniques added up to a matter of speeding up the comprehension on the part of the individual student by 90 percent over the conventional methods that we had used previous to the development of these visual aids. I stress the importance here of television as a teaching medium, because of that visual aid factor as well. It is because of this experience that I come here to testify in behalf of the device which I believe to offer great hope in making televised education a reality, and I firmly believe that we shall need subscription television to help finance the use of this great communicative device, and especially for educational purposes.

World War II found us woefully lacking in our ability to train technicians fast enough for our needs, and we used a new technique which involved visual aids which can be used more effectively—these visual aids can be used more effectively through television than what we used them for without television.

Senator PASTORE. Now would you explain, at this point, how you would envision that subscription television would meet this need?

Mr. CAVENY. Well, sir, in that case I would have to say that television itself is the device I am speaking of, regardless of whether it is subscription television or not. But subscription television would make the equipment available out in the field that could be used for televised education, meaning it makes it available for use and, therefore, I speak of television as televising education. Subscription television fits into the picture in this way: It would make these people tuition-paying students in an organized, systematic method of study rather than just watching television to get educational recreation or educational information.

Mr. Cox. You would contemplate, then, the televising of formal courses of instruction?

Mr. Caveny. Yes.

Mr. Cox. Followed up by examinations?

Mr. Caveny. Indeed, yes. Now we have experimented with courses already by following up—that is with textbooks and the writing of examinations and the formal type of education, and it has been responded to very well.

Mr. Cox. So the subscription payment would, in effect, be a substitute for payment of tuition?

Mr. Caveny. Yes.

Mr. Cox. And the device of television would multiply the effectiveness of the instructor by enabling him to be present in many communities, whereas if he were to pursue the normal methods of extension teaching he would have to actually travel physically to all of these points?

Mr. Caveny. Right, like he does in extension education. In other words, it is just a supplement to extension education, or to correspondence, but more effective, and would also reduce the cost because an individual now, in my prediction, pays much more for a course than he will have to pay if the device is usable for that extension education.

Senator Pastore. Well, I am glad, Dean, that you made the last statement as to a supplement to extension or correspondence education, because I am one of those who feels that we are fast reaching a crisis in our educational opportunities in this country, if we are not already there.

We hear time and time again that the Russians are producing 54,000 scientists or engineers a year, and we are producing scarcely 17,000. We are not producing quite the number of doctors that we need in this country, and we find many of our students are attending graduate schools or medical schools in foreign countries that have to rely on us for foreign aid to prop up their economy, and that is a paradox. I cannot understand why it is necessary for an American boy to seek a medical education in a foreign country when that foreign country has to look to us for economic aid.

If we have to help these people, and they can sustain these institutions, and we cannot sustain them ourselves, I wonder if we are meeting our obligations on the educational line. I have felt for a long time that the Federal Government, without interfering with the curriculum of colleges, could do more in the way of financial aid, even by way of scholarships, in order to encourage these institutions to attract better qualified teachers and professors to give us the opportunities we need for our young people. I do not think we want to leave an impression here—and I do not think you intended to, and I wanted to clarify that—that this is going to be a substitution for a responsibility that we have to meet along organized orthodox lines.

Mr. Caveny. You are so right, sir.

Senator Pastore. We do not want to leave that impression. What you are talking about is a broader base of extension or correspondence education, people who could not go to a college anyway if the opportunity was there.

Mr. CAVENY. That is right.

Senator PASTORE. But we do not want to do anything to detract from that opportunity for our young people, boys and girls who want an education, either in the graduate phase of education or even in the elementary phase of education, to get that education, if they really want it.

Mr. CAVENY. You are right.

Senator PASTORE. That would be a sad day for America if we drifted into that.

Mr. CAVENY. I am lamenting the fact that we are unable to serve adequately the demands now, and I am saying that this is one device that I see as a possibility of supplementing and spreading the cost over a larger number of tuition-paying students that will help the institutions, private as well as public, to serve those needs. Actually, most people think that private institutions get their resources from tuition. Well, actually what has happened is that the cost of education has increased in much greater proportion than they have been able to increase tuition, and also the cost of education has increased so much that every student is subsidized the minute he enters an institution, regardless of whether it is public or private. I mean that students' education is being subsidized from some source.

Senator PASTORE. In other words, what you are actually talking about is this. Let's assume that in the line of law—after all, I speak of that because I happen to be a lawyer—if, for instance, a lawyer felt that he would want to subscribe to a course, a special course, let us say, in one of the specialized fields like taxation or trust law, then that course could be held out by a very reputable college or professor, and those who desired to take it could actually subscribe to it and have the advantage of having that course in the evening in their own home—or in their own office if they had a television set in their office—without the requirement of maybe traveling down to Washington or going to New York to get it; is that what you are talking about?

Mr. CAVENY. Yes, I am; and at less cost, as well.

For instance, we have extended dental education to thousands by long lines telephone, but it is very expensive. And also this device would offer better technique for putting over an organized study program.

Senator PASTORE. In other words, we would not be making doctors and lawyers over television, but we would be making better lawyers or better doctors or better dentists by the use of subscription television?

Mr. CAVENY. That is right. That is what we mean by extension, or what we mean by part-time education. It is one of the four programs that we have not done an adequate job on, in my opinion. We haven't served that need to the extent that we should. Our peacetime educational needs, for security purposes and for living in our industrial economy, is greater than ever before, because actually more people are seeking more education.

It must be recognized that there is a great misconception on the part of the layman as to just what we mean by televised education, and I would like to clear this up. Let me assert that televised education is not the same as educational television. I should also like to add that there is confusion about the difference in the knowledge and skills needed to operate these two programs, which have entirely different objectives.

Briefly, educational television and televised education have different purposes. One entertains and is measured by numbers of viewers attracted, whereas the other teaches and is measured by educational standards.

Educational television requires a great amount of showmanship on the part of the producer, whereas televised education requires participation of a well-informed scholar, skilled in teaching techniques. We humorously say that one counts ears and the other counts minds. What I am trying to emphasize is the fact that we need television for televised education as well as educational television, and that this device, subscription television, would make the equipment, which is complementary equipment to our needs, available for actual formal televised educational programs.

Now there is a common ground on which the commercial and educational broadcasting meet, and that is they must both be expert in the use of the television equipment. Commercial broadcasting equipment is essential and, as I mentioned, it is complementary to the educational broadcasting in the same way that the transportation systems are complementary to national defense or to the mail service, and so forth.

Educators see televised education as a great hope toward the extension of their inadequate facilities, as a device for improving techniques of teaching, and as a means of serving a great need in adult education, which has been lagging in adequate service for some time. They are already busily engaged in research to find the best ways to use television, particularly for closed-circuit use—and, incidentally, closed-circuit use means extending the classroom or the laboratory to remote places through television receivers. Now it is true that the research is being done somewhat through coaxial cable, but I am thinking in terms of closed circuit between the institution and the home, because it can be closed circuit regardless of whether it is transmitted over a cable or whether it is transmitted over the air.

Now in this research, there have been some very fascinating experiences, such as color television, which will still make it more suitable for teaching chemistry, for instance, or doing demonstration work, using this visual-aid technique. But another factor has been that in an ordinary lecture—I recall of one incident where they permitted the students to choose whether they wished to come into the lecture room or whether they wished to go to one of the remote rooms where they had television receivers, and those back of the ninth row all chose to go to a television room rather than in the lecture room, which is indicative of the fact that they did not have the same advantages as the people in the front row, which means to say that television is a device for giving everyone a front-row seat, as a technique for teaching, as a teaching device.

Senator PASTORE. What do you do if you want to ask a question, though?

Mr. CAVENY. Sir, that is one of the techniques. In developing the use of education by television, or televised education, most of the questions that should be asked—and in many cases in formal classes they are not asked— the two-way communication is with the projecting class, and the questions are always arranged so that they are asked to bring out the salient points of instruction, and that is one of the techniques. Not only do you bring out the salient points, by questions and answers, but by illustration and by visual demonstration, using schematic diagrams and many other means.

The use of televised education, which means serving greater numbers, to us, of tuition-paying students, will spread the cost among greater numbers and will reduce the cost to both the institution and the students served.

Now as you know, as I mentioned, the Federal Communications Commission recognized the importance of televised education by allocating these 252 channels, for nonprofit educational stations. Unfortunately, to date there have only been about 15 of those stations put into operation. They were intended for televised education, according to my contention. The ones that are being used today are being used for educational television, which means that they have not as yet—even the 15 that are in operation—have not as yet launched into televising education, which means the serving of the people that have needs for this organized systematic type of study which will make our professors that are well qualified more available to them than has been true heretofore. And it is for the simple reason that funds have not been available to erect the stations and to put them into operation, and I do not see how—with the great surge of students that are coming toward us, of the college-age youth, plus the great demand by these other three groups that I mentioned—I do not see how the financial plight is going to get better. In fact, it is going to get worse, meaning that it will take all of our financial resources for doing the job at hand.

Senator PASTORE. Is your institution now utilizing an educational facility, a television channel?

Mr. CAVENY. Sir, we are a member of channel 11, which is one of the channels in operation. I will put it that way. The institution itself is not using the channel as an educational institution, but we are engaged with other institutions in the use of one channel.

Senator PASTORE. How has it worked out?

Mr. CAVENY. Well, it is working out very well, as far as the programs are concerned. It has a very fine program in educational television, but the amount of televised education of the type of thing that I am speaking of, that is the formal type study, has not been developed, because if you would do all—if you would limit it to that at the present time, that is to that type, the formal-study type, we would not have adequate facilities available for charging tuition and making the programs sustaining.

Senator PASTORE. Well, I mean apart from the fact of charging tuitions and sustaining programs; I am interested in the efficacy of the system itself—I want to direct myself to that specifically. In your opinion, can this opportunity of educational television be really effective without some formal organized system of education?

Mr. CAVENY. I think it can serve a great purpose through two kinds of programs. One I call educational television, and the other I call televising education.

In other words, if I understand you correctly, I am trying to say that you could not limit it entirely to just formal courses. You must have the general type of educational programs that will serve a purpose also, but I think that it is woefully lacking, and will be, without subscription television. That is really my main point. It is woefully lacking at the present time, and will be, unless we have some way of making these people tuition-paying students.

Mr. Cox. What is the present basis of support of channel 11?

Mr. Caveny. Sir, I personally help to solicit funds. We solicit from industry, we have an organization for going out and speaking to clubs, and we are passing the hat, so to speak, and my point is that if we have to rely upon that completely we are losing a great resource over here which would be available to us through subscription television.

Mr. Cox. Which you are not now able to take advantage of because it is not authorized and the equipment is not available?

Mr. Caveny. It is not available and it is not authorized.

Mr. Cox. What rates would you propose to charge for a typical course of the kind you are considering?

Mr. Caveny. We are just in the process now of research in the use of this device, and, therefore, it would be impossible for us to get into the economics of it, because we have been engaged merely in how this device can be used most effectively, and I couldn't answer that question.

Mr. Cox. Have you conducted any experiments, such as some educational stations have, where they provided a formal course—not as formal as you are contemplating—over an educational station, and they provide a syllabus if the viewer writes in and sends them a certain amount of money? Have you any basis on which you could project an estimate of what the public would be willing to pay?

Mr. Caveny. Well, we have done that over a commercial station, and on the commercial station the appeal was very good for the type of course that we offered. I think they paid $5 to participate in the course without written examinations, without credit, and for the course with credit they paid something between $12 and $15, and then they wrote the examinations, and were able to get the credit for that work.

I would say that that was in a very experimental stage, also, and that we have not yet developed the technique of using this equipment to the place where it will be by the time that it is needed.

I should say that at the present time the colleges are able to meet all of these four programs fairly well, but I am speaking of convincing the public, or the people, the powers that be, in advance of the need, because we know from demographers that the need is going to be great in all of these four fields that must be served. We are having a difficult time convincing our public that we shall need certain facilities, and certain staff, and other things, and funds, to be prepared to meet this great group when the time comes.

Now, the same is true with television.

Senator Pastore. Now, a question at that point. You mentioned channel 11. Without getting into the technical aspects of it, which I don't know, and which can be developed later on, can you see a combination of both free and subscription service with reference to channel 11, for instance?

Mr. Caveny. Definitely, sir.

Senator Pastore. You could have part of it without subscription and part of it with subscription?

Mr. Caveny. That is exactly what I mean. Again, the income will supplement the program, not only to sustain what we have now, but to add the televised education, the formal type education, and do a better job.

Senator PASTORE. In other words, what you are saying is: Here is channel 11 in your community now, which is strictly an educational channel.

Mr. CAVENY. Yes, sir.

Senator PASTORE. Now, if part of the services of that particular channel were devoted, even, to subscription television, so to speak, in order to give a more formal type of course, you can see that as a very helpful and healthful situation?

Mr. CAVENY. That is right.

Senator PASTORE. Without destroying the other element of it?

Mr. CAVENY. In fact, it will improve the other element of it, and the other element needs improving. In other words, that is fundamentally the vision that we have as subscription television's contribution.

Mr. COX. How many hours a day does this station program now?

Mr. CAVENY. I think it runs 5 days a week, or 6 days a week, from 10 to—I think it is a 6-hour program daily; I am not sure.

Mr. COX. And you think perhaps this might permit extension of that, so you could give a fuller schedule?

Mr. CAVENY. Not only an extension, but a higher quality program, more emphasis on the education and less on the entertainment phase of the program.

Mr. COX. Now, do you see this kind of program as confined primarily to utilization by the noncommercial educational stations presently provided for, or would this also be a source of programing for commercial stations?

Mr. CAVENY. As far as I am concerned, as an educator, it makes no difference whether it is used over the 252 channels, or all of the other channels. The main thing is that this system will be out there that will be usable for educational purposes.

Mr. COX. But your need for a device for getting in revenue in connection with this is greater in connection with the educational channel than in connection with the commercial station?

Mr. CAVENY. Yes, and to raise funds now, you have to put the emphasis on the appeal and on the showmanship and on the entertainment, and what I am talking about is formal education and the need for it.

We all recognize it, but we are not recognizing resources and means of doing it. Also we mustn't lose sight of the fact—you mentioned engineering, and what Russia is doing. Well, I happened to be an engineer in my undergraduate work, and I have done a great amount of work in teaching in engineering, and as an administrator, and I would say that we have a shortage. We are competing with industry. We are competing with Government. We are competing for staff, for our trained personnel. We are losing some of our best personnel.

For those that we have that are good scholars, well-trained authorities—and personal appeal is a factor in teaching as we all know—that will make those people more useful through television extension. It will make them more useful to us. We can use them for our class obligations, college-age youth, as well as make their valuable services available through televised education to adults and these young people that are not able to finish.

Now, that 62 percent, the mortality we refer to that never attain a degree, they are not dropping out of school because of scholastic reasons. It is true that the majority of them, a high percentage of them, drop out for scholastic reasons; but many of them drop out for many other reasons, and, therefore, they deserve an opportunity to continue their education if they can have the opportunity.

Senator PASTORE. Mr. Caveny, we want to thank you for appearing here this morning. You have been very instructive.

Mr. CAVENY. Thank you, sir.

Senator PASTORE. Now, I have two witnesses listed for this morning's session, and we are going to stop here at 12:30. I was going to direct my question to Mr. Lou Poller and to Mr. Theodore Pierson. I don't want to cut any witness short, but I was wondering if we couldn't determine at this time exactly how long you might take, so that we may fit you both in so that when we recess by 12:30 we would have completed. Now, Mr. Poller, how long do you expect to be?

Mr. POLLER. Ten or fifteen minutes.

Senator PASTORE. Is Mr. Pierson in the room?

Mr. PIERSON. Yes, Senator; I will not be more than 10 minutes.

Senator PASTORE. Well, that sounds good. The rest of it, of course, depends on how long we delay you.

Mr. PIERSON. I will say, to the extent that I have control.

Senator PASTORE. All right, we will try to complete, at best, Mr. Poller, by 10 minutes to 12, and then the remainder of the time we will give to Mr. Pierson.

Mr. POLLER. Thank you.

STATEMENT OF LOU POLLER, PRESIDENT, TELEVISION EXHIBITORS, INC.

Mr. POLLER. My name is Lou Poller; I am president of Television Exhibitors, Inc.

Television Exhibitors, Inc., is about to file an application with the Federal Communications Commission for authority to construct and operate a number of television stations in various cities and to be authorized to present some programs for which the public will be asked to pay an admission price, which should be considerably less than they now pay for comparable entertainment.

We are asking the FCC to authorize these stations in cities now being served by multiple signals of at least the 3 networks on 3 separate channels. We are further asking that the stations authorized to charge for programs be confined to the UHF band for a period of at least 5 years. The public will, therefore, continue to have the choice of the same programs they now receive as well as the choice of additional programs not now available to the public on the UHF stations proposed.

Mr. COX. This, then, is strictly a proposal for supplementing available programing, and would not in any case involve the blacking out of an existing program service?

Mr. POLLER. It will not in any way interfere with the present programing.

A great deal has been written and argued about the failure to properly utilize 85 percent of the TV spectrum which is represented by 70 UHF channels. The most capable people in the industry have wrestled with the problem for 3 or 4 years, and we are just as far away from a solution as we ever were. The merits of VHF and the inadequacies of UHF served for a time to emphasize, by argument only, the advisability of scuttling UHF completely. It should, therefore, be obvious that our application requests facilities that are not now very popular, and that have been returned to the FCC faster and in greater numbers than have been utilized.

Since there are no statistics upon which to base a legal argument for or against pay TV, all arguments presented must necessarily be based upon conjecture and opinion. One of the arguments against the adoption of pay TV has been the effect on existing programs and performers. Naturally, when a performer such as Grace Kelly, who was seen free on TV, was promoted to the movies as a great star and was no longer available without paying an admission price, the networks did not close down, nor ask the Congress to take action against the movies.

Mr. Cox. Isn't it true, though, that if a television performer were hired away, in effect, from present sponsored television by the offer of higher rewards on subscription television, you would get a little more acute and direct competition in that he would now be competing on the very same medium in which he formerly engaged?

Mr. POLLER. I would think so, and I would think that condition exists today, not as between paid-TV and TV, but between all other means of entertainment and expression.

Mr. Cox. But the point I am making is that at least when Miss Kelly entered the movies rather than television, the competition required the person who wanted to view her to leave his home, go to the theater, and pay the higher charges.

Mr. POLLER. Surely.

Mr. Cox. Now, if she had transferred her allegiance to subscription television instead, all of this would have been available, presumably at reduced prices, in the living room and, therefore, the impact upon sponsored television would have been more direct and more acute.

Mr. POLLER. If the Prince will permit us, we will try to bring her back in the living room. [Laughter.]

Only a few years ago, I presented on radio, free to the public, Bill Haley and his Comets, and also the Four Aces. Bill Haley appeared daily for over 5 years on station WPWA in Chester, and his followers could see and hear him in the local nightclub by merely buying some refreshments. Today Bill Haley gets $2,500 an appearance, and I must say that his early, loyal fans and I are very happy for him, and are not asking for legislation or other actions to prohibit Mr. Haley from rocking and rolling for a fee, nor do we disagree with the Four Aces that Love is a Many Splendored Thing.

Therefore, any threat in whatever form to one type of free enterprise inducing talent to achieve greater public acceptance by means of another free enterprise is a healthy American system. Only the public can bring about a change which they wish and that is as it should be.

During the 5-year period that we are asking the FCC to permit this kind of programing, we are suggesting that only 25 percent of our programs will be presented for a charge, and the 75 percent will be just as competitive for audiences without charge as are the other TV stations. We anticipate that the revenue of such a free-enterprise system will be adequate to enable us to do far more public-service programing in more desirable times than is possible under the present system.

Mr. Cox. Well, now, if you have 25 percent of your programing devoted to subscription service won't you tend to concentrate that in the evening hours, when the largest audiences are available?

Mr. Poller. I would think so.

Mr. Cox. Therefore, those hours would still be pretty well denied to public-service programing.

Mr. Poller. We are not quite that optimistic that the public will keep spending all night long. We believe there is a limit to how much they will spend, and after they have seen a feature in the evening, which should take less than 2 hours, we feel that they have had it.

Senator Pastore. How much supervision would you expect from the FCC with relation to the type of program and the charges to be made?

Mr. Poller. Well, there are two questions there, Senator, as——

Senator Pastore. I will ask them one at a time, then.

Mr. Poller. As to the type of programing, I don't believe the FCC has attempted to police or censor programing.

Senator Pastore. Don't you believe that after all this is a medium that belongs to all of the people of the country, and if you are going to begin to charge a specific price that somehow there ought to be some kind of supervision as to the fairness of the price?

Mr. Poller. I think I cover that.

Senator Pastore. Well, I am anticipating then. You may go forward.

Mr. Poller. The application we are filing with the FCC contains a proposed program called Citizens Day. Let me read from the application:

> At least twice each year the station will declare Citizens Day. During these days a feature presentation consisting either of a sport program, a feature film, a Broadway play, or a musical comedy, will be offered for a standard charge to the public.
>
> It will be publicized that the public, in paying to see the feature, will actually be making a political contribution to either a specified candidate or political party of the listeners' choice. The proceeds from Citizens Day will then be turned over by the station as designated by the listener. The station will not charge for its air time or facilities.
>
> Allowing that there is a potential audience in the country of 50 million receivers, and that the average gross charge for a feature will be $1, it can be expected that the proceeds of $100 million contributed by the viewing audience would go far in underwriting the campaigns on every level from mayor to the President of the United States. The station is prepared to offer additional time to reach this goal.

Senator Pastore. Let me say one thing to you, Mr. Poller. You couldn't have read that quotation before a more receptive group than the Congress of the United States. [Laughter.]

Mr. Poller. I would almost think the Senate has anticipated my statement.

As part of our application, this commitment is a contract that we agree to perform and will be happy to.

Incidentally, Senator, every application to the FCC sets forth a schedule of balanced programing which constitutes a contract with the Commission, and this constitutes the supervision by the Commission. If the application does not represent good public service programing, good balanced programing, the Commission would not authorize it to start with. If you deviate from it, they have the same authority to prosecute you for breaking a contract as any other violation.

Mr. Cox. It is a matter of historical fact that they very seldom have done that, though; have they?

Mr. POLLER. In the past.

Mr. Cox. A lot of these "contracts" that have been made with regard to balanced programing have been breached from the date the station went on the air?

Mr. POLLER. They have been breached from the inception, as an idea. It was a question of who could outpromise who.

We are not confining our responsibility to the public to cease with a plan that is sure to meet with favor by political candidates who have experienced the agony of raising funds and the further pain of dispensing those funds for TV time. Permit me to quote again from our application:

Program policy: It is proposed that during the first 2 years of test programing, the station will restrict programs offered to the public for a charge, to an average of 25 percent of the annual broadcast time of the station. The remaining 75 percent of broadcast time, as shown on the typical week schedule, will consist of well-balanced commercial-type standard operation.

It will be possible to schedule public-service programs in more desirable times since no network affiliation is contemplated. Consequently, no block time commitments will be made by the station.

The station does not propose to sell time for political broadcasts but, in fact, will set aside sufficient time to present the views of the candidates as a public service in keeping with balanced programing.

The station will make available its facilities and ample time for educational programs in both the standard and paid segments of the broadcast day. Educational institutions desiring to offer special courses for a charge will be given time free on the station. This will enable schools to augment their income and broaden their attendance. Similar services will be offered to hosptails, charitable, and civic organizations.

Local advertisers will be given equal opportunity with national advertisers to present programs or announcements in desirable times. It is not anticipated that programs, offered to the public for a charge, will also have commercial sponsorship. However, if as a result of ample research it is found that the public will accept sponsorship on programs for which they pay and the result would be a considerably lower charge to the public, the station would consider offering such a plan for some programs to the public.

The station anticipates that the origin of programs will be numerous and varied. Feature films now produced in Hollywood will increase in both numbers and producers as the need of the public dictates. Stage productions now chiefly confined to New York may as well originate in any city in the country. Sport programs will have many points of origination and as many producers. The station, therefore, will not be under contract to, or obliged to rely upon a single or limited program source. The station will contract on a free and open market for its product. Program origination will therefore be competitive and not controlled.

Mr. Cox. In order to make plans for this programing, however, you are going to have to make arrangements considerably in advance, and it will be essential, if you are going to have programs originating from multiple points, to have pretty standard arrangements for the use of the telephone company's facilities, won't it?

Mr. POLLER. I am quite sure that is so, and I am sure that the telephone company will have to provide more facilities to handle the additional programing from the various sources.

Mr. Cox. In effect, as subscription television grew, if it were authorized in this or any other form, a network would have to be created for the purpose of providing transcontinental transmission or programs?

Mr. POLLER. Or a dozen networks, or two dozen networks. One network might specialize in presenting sports from one area. Another network might be doing Broadway shows only. Another network might do the Metropolitan Opera and related programing.

Mr. Cox. Neither one providing a complete service, all being available upon the selection of a broadcaster?

Mr. POLLER. The same as a department store must have many sources.

Senator PASTORE. Now, may I ask the second phase of the question I first asked you. If you say that one network will, let us say, supervise the sports activities, and another the entertainment, moving pictures, or stage shows, there you have the substance of monopoly, so to speak, over and above the individual broadcasting stations. Now, who is going to supervise the price that is to be paid?

Mr. POLLER. I believe the Senator arrived at a conclusion that was not based on what I said. I said if one network delivers sports, they may deliver sports from the east coast or the northeast section of the east coast, and it will only be baseball or some baseball games. It will be so competitive and it will not be confined——

Senator PASTORE. Well, where will the competition be, that is what I would like to find out. Where is all of this competition?

Mr. POLLER. There will be 4 or 5 pay TV stations in each city, each of whom are trying to get the product. There will be a dozen sources of sports programs alone trying to get the 4 or 5 to buy their particular product.

I may be using this gentleman's baseball games this week, a particular presentation of it, and another's next ieek, whereas the other station in the community would be using his 1 week and somebody else's another week. It will be no different from selling merchandise to a department store. Everybody will be trying to get the merchandise into the department store, and then there are enough department stores trying to get the customer to buy from them in place of somebody else.

This will create the competition that is so vitally necessary in business.

Mr. Cox. Is it your view that competition among program suppliers will control the cost there and competition among television broadcasters will control the cost charged the public?

Mr. POLLER. Yes, and ultimately the public still has the choice between the present free programing and what they will pay for.

I can cover part of that, as I go along. The fact that there will probably be 5 or 6 times as many stations, as I am going to show now——

Senator PASTORE. Are you suggesting in the presentation here that there is no requirement for control or supervision on the part of the Federal Communications Commission as to what you charge the viewer?

Mr. POLLER. I don't see any, Senator; however, the Commission has that authority, and if there are abuses I expect that they will certainly apply the authority.

Senator PASTORE. Do you mean that the Federal Communications Commission has the authority under your system? Let us assume that you sold me a card for a dollar and a half that entitles me to see three shows on your proposal, and the argument you have made here is, because this is more or less a mass-basis price, it will necessarily be smaller than if you had to go to a movie house or had to go to the championship boxing fights.

Mr. POLLER. Certainly.

Senator PASTORE. But, after all, whether you made a 50 percent return on that deal, charging me $1.50, or you made a 200 percent return, would be nobody's business but your own.

Mr. POLLER. I would think so, because at the present time the Commission has before it statements from television stations—one that I know of, that does a little better than $4 million a year volume, and shows a $3 million profit. I don't know that the FCC has asked them to change their rates to advertisers.

Senator PASTORE. Well, because the Congress of the United States isn't too much concerned about rates to advertisers, inasmuch as the viewer sees it free.

Now, we are talking about a different problem. I can turn on my television set, and I don't care what the agreement is between the network and the advertiser. The fact is, when I turn on my set in my parlor I don't pay anything for it, and the Congress of the United States is dedicated to the proposition that it must protect the consumers' interest and the public interest.

Now, in this particular case you are charging the public. Don't you think, essentially, inasmuch as you are using either waves in order to bring this service to the public, and the public is paying for this service, that it becomes a matter of public interest and responsibility to determine just about how much the consumer is paying for this service?

Mr. POLLER. After the Senate discovers why an automobile costs $4,000 and what percentage of that is paid by the public for its television show——

Senator PASTORE. But you are using ether waves here. We are talking about the Federal Communications Commission. Henry Ford, when he makes an automobile, doesn't have to go to the Federal Communications Commission, nor any other agency, because it is not a supervised industry. Now, we are talking about a supervised industry, and the question I asked is, if it is going to be a supervised industry, at what point do you begin and at what point do you end?

Now, you may be talking again about natural gas, but you know how I feel about this. [Laughter.]

Mr. POLLER. Henry Ford, in making his automobile, and advertising it on TV, has to charge me, the buyer, for the program that he shows me. He makes somebody else the collecting agent for it. It isn't quite as direct as this would be, but it nevertheless is there.

The television industry is a billion-dollar industry. Somebody is paying for that. It cannot be free. The gentleman who proceded me talked about something free, and that is why only 15 out of 252 stations are struggling to attempt to get it on the air.

This is free, but the television system and the radio system as I know it has never been free. The billion-dollar industry is collecting money from somebody. If the Senator says that the method of collecting it, whether via an advertiser through an agent into a station, or a network, is one that the Commission should not supervise, whereas one directly from the public should be supervised, and if there are violations which warrant that, I am sure that will happen.

But it is a common carrier, what the Senator is talking about, and if they have the kind of control that A. T. & T. or any other common carrier enjoys, I am sure it should be regulated, and will.

Senator PASTORE. Well, now, wait a minute. Why must we wait for the abuse? It is the principle of which I speak. We control the rates that are being charged. We supervise the rates that are being charged by railroads and other transportation facilities because it is an industry that must be supervised in the public interest. Now, why is this any different?

Mr. POLLER. I don't think it is any different. I don't believe A. T. & T. was supervised until it matured. There is no way to supervise, as far as I can see, and I believe I cover it a little later. If the FCC were, today, to designate 49 cents as the price of admission, they might ultimately find it is way too low or way too high. I think the industry going into a new phase ought to be permitted to shake down to see if it is a service the public wants, and if it is a service the public wants whether it is competitive enough, which might give it a much better break in the long run if it is competitive. If it is not, then step in and say this is a common carrier.

Senator PASTORE. Well, I get your point, whether I agree with it or not. I get the point that you are trying to make, but here is the story. You start producing a film. Let us say it costs you a million dollars. And you are going to show that film to 50 million people. Now, the price that you charge depends entirely upon the number of people who might be in a position to afford the reception of that service.

Now, after all, it isn't the question of take it or leave it, I think, inasmuch as you are using a facility that belongs to all of the people of the Nation—you are using the airwaves, and they belong to everybody. That is the reason why we supervise it. And we have to supervise these things in the public interest.

Now, why isn't it important, in the public interest, to determine a fair charge that is being made, so that rather than 50 million people being able to see it, maybe 100 million people can see it. Why isn't that important?

Mr. POLLER. As I understand a common carrier, Senator, it is a controlled monopoly. Rates for common carriers were regulated at a time when they were given exclusion. Now, I am quite sure if I were to be fortunate enough to get exclusion for Washington, D. C., so that I were to be the only one, then it could pretty well be determined what rate in advance ought to be charged, and I would be given the same protection of monopoly, the same return on investment, as is given a common carrier.

On the other hand, Senator, if you were to say, today—a million-dollar picture you cannot charge more than 35 cents for, and we are now a common carrier regulated, and we charge 35 cents, and the picture lays an egg, and it only brings in a half million dollars—nowhere, as far as I know in the annals of regulation, are the rates regulated so that the common carrier operates at a loss. I would immediately come back and say this is fine, I can prove now I am entitled to a larger rate, as the buses do, and the streetcars and all of the others.

Mr. Cox. Well, haven't you just illustrated one of the problems of trying to impose common-carrier regulations here, because the service performed by the telephone company or by a railroad is more or less a standardized service which people are familiar with, and demand is foreseeable. You are going to introduce here, though, an element of choice, and an element of taste and of preference, which would make it impossible to predict the results.

Mr. POLLER. Impossible.

Mr. Cox. Isn't it also true, though——

Senator PASTORE. Now, wait a minute. I don't let go of this one too easily.

Mr. POLLER. I would like to go into this thoroughly.

Senator PASTORE. There is nothing I like more than a debate. We are talking here about a monopoly. After all, you raised the question that the reason why we regulate the railroads, and so on and so forth, is because they have a monopoly, so to speak.

Mr. POLLER. Precisely.

Senator PASTORE. You don't have a monopoly in the sense that you don't have two transportation facilities in one community. First of all, your reception is being confined solely and strictly to a UHF station, in a community.

Mr. POLLER. Or stations.

Senator PASTORE. In a community there may be only one.

Mr. POLLER. Precisely.

Senator PASTORE. Insofar as the viewer is concerned, he can only turn on that particular channel to see that particular show, take it or leave it; am I right or wrong?

Mr. POLLER. Certainly.

Senator PASTORE. Now, not everybody in the world can go and build up a new UHF station. They have to show a necessity and a convenience for that community in order to establish a new channel—before the FCC—am I right or wrong?

Mr. POLLER. Correct.

Senator PASTORE. Therefore, insofar as the little viewer is concerned, the only outlet that he has in that community is one, that UHF station. Whether or not he can avail himself of that particular service will depend upon the cost. Now, why isn't that a matter of public regulation?

Mr. POLLER. Because 2,000 communities do not even have that one today, and if that one does get there—there is no shortage of UHF channels—and if that one station does get there, he is still better off getting his choice, if he wants it, or what they offer for whatever price, or not patronizing it at all, and letting them go back out of business again. It is a competitive business. A UHF station for pay is still competing with the theaters and all of the other media of entertainment, and he is not confined a 100 percent of the time.

Now he gets nothing. In that particular community he has no station at all. He is now going to have 75 percent of the station free, if that is the way it finally settles; the other 25 percent of the time he can get a choice of programing which he has absolutely no chance of seeing, and he can still deny buying that one program.

Senator PASTORE. I am speaking from the point of view of the viewer.

Mr. POLLER. I say the viewer still has nothing in those communities today, not even the 75-percent free time that will be available to him. A little community of 15,000—and there are a thousand of them in the country today who have allocations—they have no station.

Now, this is approved. It now gets a pay-TV station. The viewer now has a station which 75 percent of the time gives him standard programing, 25 percent of the time gives him what we might call deluxe programing, for a charge. Now, he can select at that time not to view if he so chooses.

Senator PASTORE. Yes; but you want to change that. You are applying to have the FCC allow you, by regulation, to change that situation.

Mr. POLLER. To institute it.

Senator PASTORE. But you don't want them to change this idea of supervising a fair return or a reasonable profit that you should make on this program, in the interest of the viewer. Now, that is the thing that is bothering me.

Mr. POLLER. I have misled the Senator if I say I am against regulating it. If, I say, it requires regulation, by all means regulate it.

Senator PASTORE. Well, what would be the harm in regulating it from your point of view?

Mr. POLLER. If the Senator has a plan—I haven't been able to devise one. I will give the Senator the best example of it. Let us assume that we regulate baseball games at 50 cents.

Senator PASTORE. The reason I am asking these questions is because these questions are going to be asked, and I think we might as well get these answers on the record, because it is our responsibility here to develop a complete record. Any question that I ask you now I hope is not a frivolous one, and later on, of course, will be asked by others who are not here.

Mr. POLLER. For example, let us take baseball and say that a baseball game lasting 2 hours is bringing a charge of 50 cents. Well, in Washington I doubt very much that anybody would pay a quarter. In Milwaukee they happily pay a dollar. They are very happy to.

Senator PASTORE. For the same game?

Mr. POLLER. It would be the Milwaukee team. I have been in Milwaukee 2½ years; I know what they would do. We would break all attendance records on pay TV in Milwaukee. We would have the privilege of losing a half a million dollars a year.

Senator PASTORE. But if it costs me $6.60 to see a play on Broadway, do you think you are doing me a big favor just because you may be showing that to a million people, so that you can charge me—you can say, "Well, if you went to Broadway it would cost you $6.60; I will sell it to you for $5." Now, you might think you are giving me a big break because if I went to Broadway I would have to pay $6.60; but if I went to Broadway I would buy a ticket, and maybe only a thousand people could see the show. You may be selling it to 10 million people.

Mr. POLLER. The only break I would be giving you would be giving you the choice to turn it down, which you don't have.

Senator PASTORE. That is what I don't like about the argument you are making. Here you are coming before us and saying this is something the public ought to take now. In arguing that point I don't like to see you say, "Well, you can take it or leave it."

Mr. Cox. Won't it be to your advantage to try so to fix the price that it will be taken, and taken by substantial numbers?

Mr. POLLER. I think I cover that.

Mr. Cox. So you try to find a price which will get you the maximum possible number of viewers?

Mr. POLLER. I think competition would do that even if I were silly enough to try to get more, and I believe I cover that in the rest of it.

Senator PASTORE. All right, go ahead.

Mr. POLLER. There are eight times as many radio stations on the air in this country as there are TV stations. The shortage created by the fact that there are only 12 VHF channels with which the FCC is expected to establish a nationwide, truly competitive TV system also means that television rates in Chicago are as much as $750 for 1 announcement lasting but 20 seconds, whereas radio, covering a far greater area, is less than $25 for the same type of announcement. In Minneapolis, a 20-second announcement on television costs $320 whereas on radio, in the same city, it is as little as $10. You therefore have a ratio of over 30 to 1 between the cost of television time over radio time. This can't possibly be in the public interest since, directly or indirectly, the public bears the cost. Likewise, the cost is so high as to preclude participation by local merchants.

The high cost of television creates another and more serious problem, that of balanced programing. An advertiser having a huge investment in a television program must rely on the greatest number of listeners per dollar spent to adequately justify the cost. The result is obvious; 1 advertiser gives away $64,000 to attract an audience and gets a popularity rating of 35 percent of all the listeners; the next program gives away $100,000 trying to get a greater percentage of popularity; 1 program has 4 murders within a half hour and gets a good rating; the next program raises the ante and mows down 6 culprits in a half hour. Silly as it sounds it still means that even the most popular program catering to 1 out of every 3 people fails to reach two-thirds of the public whose tastes are ignored when they do not vote in a pack for a particular program.

Under pay-TV, when you do not have to rely on sponsored programs for all of the income, and when even a minority audience can amply support a program, it will be possible to diversify programing to a point where all segments of the public will be served. Utilizing the 70 UHF channels would mean as many as 2,000 TV stations instead of 400. It will mean more reasonable rates and more competitive programs.

Television Exhibitors would like to present a schedule of rates it proposes to charge the public for various features, but unfortunately there are few statistics in an industry not yet born upon which we can draw, other than the fact that the public will have sufficient choice of programs so as not to have to pay for any program they do not feel worthy of the price.

This, Senator, is a little different from what the Senator put on a take-it-or-leave-it-basis. It is based entirely on the fact that there will be so many stations that they will have a choice. As long as they have a choice, it is not take it or leave it. Where you have one, it is take it or leave it, which is the case in many, many places today.

Just last fall we wanted to see Notre Dame play Miami on closed-circuit TV, and 10 of us paid a total of $40, or $4 each, to witness the game. This I can say, those same 10 people will be table to enjoy an equal presentation at my home if pay TV is approved and the cost will more likely be $1 in place of the $40, and Notre Dame and Miami will not suffer any more deficits in their athletic programs, because they will also share in the income.

As much as we enjoyed Peter Pan and the other spectaculars for free—it's been a long time between drinks, and in the meantime my wife and I and another couple have spent about $150 to see Damn Yankees, Kismet, Affairs of Honor, and a few other fine plays. I am sure that the thousands of people who paid as we did will be very happy to see these same plays at that price who were unable to afford the $150 that it cost. Of course, the performers and the producers will share in the added benefits of mass viewing. All this will be possible when pay TV is presented for public approval—where it belongs.

We will be very happy to come back before this committee a year or two from now and present the statistics of how much it cost to install the gadget so that the public can participate in pay TV, and also present statistics as to how many millions have bought the gadget and on what terms. Trying to prognosticate such figures at this time disregards the intelligence of this and any other committee. The greater the acceptance of pay TV by the public, the less the conversion and cost will be. The better the product, the greater the acceptance.

I often regret the money I spent on the 10-inch, the 12-inch, the 17-inch, and now my fourth, the 21-inch color television set, all in a space of less than 5 years. During the same time, my trusty $199 set has, for only a fraction of the cost, given me thousands of more hours of programs than my color set has. It would have been tragic, however, if the FCC withheld authority for color TV in trying to protect people like myself from squandering our money on what we thought was good value, or if some Government agency prevented Reynolds from selling his ballpoint pen for a quarter today. Strangely enough, pay TV is just the reverse, in the early stages it will be possible to buy a feature that we paid $40 for as little as $1.

Senator PASTORE. Now, that may be true. It may be hard to prognosticate as to a distinct or special formula to initiate as a matter of legislation. But essentially, what would be the harm to the public interest if, in the allowing of this, certain reports, periodic reports, were made by these new operations, reporting to the FCC just about how it is going and compelling the FCC to report back to the Congress, just so that this whole thing may be supervised? Because your contest here is going to be—and you know what the arguments are against subscription television—that one day it might put free entertainment out of business, and the big concern of the Members of Congress is that in no way shall the public be injured. In other words, if this is good for the public, the public ought to have it. If it is a little something more than they have already gotten, they ought to have that additional, too; but, on the other hand, you cannot come in the back door and actually destroy this whole setup of free entertainment. Now, if this thing is not going to be reduced to a level where most of our people are going to have the opportunity of viewing it, don't you see the harm that could ultimately result, because you might detract from the free entertainment. To a certain segment of our people that will make free entertainment uncommercial, and then once you have done the damage, once the damage has been done, there is no way of recouping the status quo. Now, that is the big problem that concerns us.

Mr. POLLER. Senator, the Congress of the United States could be great heroes if they discovered, when pay TV has been launched, that they were taking advantage of the public, and they came in and made them cut the rates down, this would be the equivalent of a tax reduction.

Senator PASTORE. I do not say you would do it deliberately, but you could divert from free entertainment a certain segment of that viewing public which would make free entertainment no longer of the quality that it is, if you detracted enough from it. In other words, a lot of people who could afford to buy subscription television today look a free entertainment, and they have a Hooper rating, or whatever you call it, and they say so many people view it, and for that reason we will put on this class of show free—Perry Como, what-have-you; Grace Kelly, as you have mentioned. Now, the minute you have detracted a certain segment of your viewing public from free entertainment because they were diverted to subscription television, that would automatically, possibly, have the effect of lowering the quality of free entertainment. Now, if it got too much out of control, it could destroy it, unless you had the proper governmental supervision that would hold the two in balance.

Now, that is what I am talking about.

Mr. POLLER. I do not believe anybody would object to that kind of supervision.

Senator PASTORE. Well, I am not prognosticating as to what the formula should be. I am talking about supervision as a principle.

Mr. POLLER. I believe that the Senator would probably discover that, from trial and error, that could be determined a lot easier than to try to set regulation.

Senator PASTORE. I would not want to set it because it may be hard to fix it, but I would like to leave the supervision there, at least, to watch it in the public interest.

Mr. POLLER. There should be supervision. If that is what the Senator is saying, I heartily agree, that there should be supervision. It could turn out to be very fancy oil wells if there weren't supervision.

Senator PASTORE. That is right.

Mr. POLLER. Television exhibitors are asking the FCC to approve an application embodying a potential audience that will be the inducement needed for Hollywood, Broadway, and other producers of entertainment to cast an eye in the direction of this new great market.

A feature film that costs $2 million can hardly be offered to the public on present-day television which depends on sponsorship of only 25 advertisers having such a television budget for an entire year. Consequently, such features are not now available to the public—will not ever be available to the public unless a means like pay-TV makes it possible for the public to pay for proper value received. Fifty million television receivers in the country could make possible the production of a $2 million Hollywood production if only one-third of the people paid as little as 50 cents per set—not per viewer. Will the public pay 50 cents for a $2 million Hollywood production? The public has the right at least to decide whether they want to pay for it.

It is not compulsory and they will still have the choice of paying 2 or 3 percent of the items that they purchase as advertised on free TV and accept gratuitously what the advertiser chooses to give them as a prize in the Crackerjack box, in the form of programs.

Pay TV will, by its very competitive nature, result in better programs on the present TV system—in fact, the mere shadow of pay TV has already brought about better spectaculars.

Competition is the lifeblood of trade and competition in the pay-TV field will result in better programs for less money. It will take hundreds of program sources to feed pay TV instead of the 3 networks and the few independent producers who now decide what the public may see. Many of these sources are now in existence and many more will develop as the needs of the public demand. If the product offered the public on pay TV is not good value they will have the prerogative of not paying to view it and pay TV will be enacted out of existence by the public in the most democratic process known. There is little danger that a $40 value will be turned down by the public for as little as $1.

The mechanical method by which a program will be available only on the television set of those who pay is not of consequence. There are three methods now on file with the FCC and obviously many more will be developed. If the product for which a charge is made is deemed good value by the public, they will pay a fair price for the product. Whether it be by coin box, prepaid tickets, or monthly billing—it is the program that will decide the issue and not the device.

May I summarize briefly by saying that no one seems to want UHF—we do. No listener will be denied anything he now has unless it be that he chooses what we offer for money in place of a program for free—but he will have that choice. This is all we are asking the FCC to permit us to do. To let the American people choose the program, whether it is free or for a charge—but they should be given the right to make the choice.

Senator Pastore. Senator Schoeppel.

Senator Schoeppel. No questions.

Senator Pastore. Thank you very much, and I hope as this hearing develops and the arguments are made, that you may feel free to come back at some other time, because sometimes it is pretty hard to anticipate the arguments on the other side of the question. And that same courtesy will be extended, of course, to those who are opposed to it, because what we are trying to do here is develop a complete record.

Mr. Pierson.

STATEMENT OF W. THEODORE PIERSON, COUNSEL OF THE ZENITH RADIO CORP.

Mr. Pierson. If the committee please, I represent the Zenith Radio Corp. Thus far it has not been heard in the proceeding. I do desire to take a few moments of the committee's time for some rather formal procedures. I would like to introduce in the record comments and reply comments, which are in substantial volume, that we have filed with the Commission so that they will be available to the staff and the members of the committee for whatever references might be desirable. I would think it will fully demonstrate our position before the Commission and also provide answers to any detailed questions that we might not be able to cover in the course of the hearing.

Senator PASTORE. On the question of admissibility, may I ask you this: Is it a document that ought to be in our files for reference, and referred to in the record, or do you think it ought to be included in the record?

Mr. PIERSON. I do not think it is necessary to include it in the record. I think it is sufficient if it is merely in your files.

Senator PASTORE. All right, because I wouldn't want to encumber the record any more than need be, but we shall incorporate it by reference and it will be in our files, and the record will indicate that it is in our files if anyone desires to refer to it.

Senator SCHOEPPEL. Could we have at the proper place in the record the demarcation of the instruments by name?

Senator PASTORE. Yes; would you identify them for the record? That is a very fine suggestion.

Mr. PIERSON. The first document is a joint substitute petition concerning subscription television, filed on November 29, 1954, which was a substitute petition for one filed in 1951, when this matter was first instituted at the Commission.

The second document is the comments of Zenith Radio Corp. and Teco, Inc., in the rulemaking proceedings in docket 11279, filed on June 9, 1955.

The third document is the reply comments of the same parties in the same docket, 11279, filed on September 9, 1955. Now docket 11279 was the Commission's rulemaking proceedings on subscription television which was concluded, as far as presently ordered, on September 9, 1955.

The fourth document is the comments of Zenith Radio Corp and Teco, Inc., docket No. 11532, filed on December 15, 1955.

The fifth document was filed by the same parties in the same docket, 11532, and it consists of reply comments. That date was January 20, 1956. Docket 11532 concerned the reallocation matter, the UHF controversy, and all of the proposals to modify the Sixth Report and Order of the Commission.

Now we had hoped to have other witnesses present. For one, the written statement was sent directly to the committee, that of Governor Johnson; he was unable to be here. Another witness was Ralph Bellamy, an actor, who is president of the Actor's Equity, a labor association of actors engaged in the legitimate theater. Mr. Bellamy was on location out in Hollywood and found it impossible to get here, but he did forward to me his statement. I would like to have his statement entered in the record as though presented in person.

Senator PASTORE. Without objection, we will do that.

STATEMENT OF RALPH BELLAMY

Mr. BELLAMY. In view of my long interest in subscription television I had hoped to present this statement personally, but due to other commitments I have unfortunately found this to be impossible. I would appreciate it, however, if this statement will be considered the same as if I had made it personally.

My first interest in pay-as-you-see, or subscription television was motivated by the serious lack of employment and the general economic condition of the theater, and because I am president of Actors' Equity Association, whose members are actors in the legitimate theater. An analysis of the possibilities of subscription TV with respect to employment seemed to me to reveal unlimited possibilities, not only for actors, but for all the talent pools, as well as craftsmen and technicians, and extending even to employees in the manufacturing and distribution field of television sets, and the construction and franchising of new stations.

Present programing is tied budgetwise and policywise to the national industrial economy which pays for it. Some twenty-odd sponsors control some 90 percent of the programs currently on the air. The local station owner receives desirable programing only at the discretion of the national advertiser and the networks. The viewer must select his entertainment from what is available under this system. There are two kinds of programs the viewer is being denied: (*a*) The kind that is too costly to be supported on a regular basis by an advertising budget; and (*b*) the kind that might seem to have too limited an appeal to warrant advertising budget expenditure on a cost-per-person basis. I believe the televising of Broadway plays would fall into either or both of these categories. And the possibility of such televising would certainly help to alleviate the serious unemployment condition in our membership, as well as the increasingly precarious financial position of the theater as a business.

The theater as a whole has undergone an economic metamorphosis in the past 10 years, which seriously threatens it as a continuing vital part of our culture. A play which could have been produced some 10 to 15 years ago for $25,000, now costs $75,000. And the price of tickets has necessarily increased over this period to the extent that a play must be a hit before it can attract sufficient audience to make it a good business venture. And "risk capital" in the theater is more wary than it has ever been. If it were possible to televise a play at a nominal price of from 10 cents to 25 cents per set on any kind of substantial basis, it can readily be seen that it could encourage more production and probably at the same time prolong the run of the play which is being televised.

Road shows have become almost extinct because of the economics of the theater. This shortens the extent of employment of individuals concerned in any given show, and also denies people living away from production centers the opportunity of seeing plays. It is possible that subscription TV is the answer to the road, both as a sounder basis for original capitalization of a play, and because it will take the theater from production centers to the homes of those who might otherwise not see plays.

In addition to these benefits which the theater would derive, employment of actors would certainly increase through their use in other kinds of entertainment programs, such as educational and historical programs, craft and trade programs, language lessons, musical and literary programs, et cetera, many of which would have perhaps limited appeal, but would make profitable business ventures, at a very small cost to the set owner who wished to pay for them.

I believe that the cost per set for subscription television would find its own competitive level and would not in any way interfere with present programing or the availability of star performers. The most popular programs and performers in the present commercial field would be held in that field because of their very popularity. There would be nothing to gain by their converting to subscription TV for the reason that their very popularity assures them a wider and a larger audience than they could have on subscription TV.

I earnestly hope that subscription TV will be allowed a trial. Its acceptance will be the viewer's choice, and his decision. It is highly probable that the public will welcome a wider variety of TV fare. And it is highly probable that they are willing to pay a small charge for it. We will never know if it isn't tried.

Mr. PIERSON. I would like to inquire also whether the exhibits that Mr. Kohn worked from yesterday have been admitted into the record, because I think the record would be quite unintelligible unless those exhibits are in.

Senator PASTORE. They were not, I'm informed, but the staff informs me that they are essential to the record. Is there any objection to their being included in the record?

Senator SCHOEPPEL. I think they ought to be included in the record.

Senator PASTORE. Without objection, so ordered.

(The exhibits referred to are set forth following Mr. Kohn's testimony, starting at p. 1129.)

Mr. PIERSON. If the committee please, there are a few distinctions in the proposals and the positions of the proponents. I do not think it is important that they be emphasized here, except to the extent that they may provide somewhat different answers to questions that have been raised by the committee, so I would like to limit my discussion, which will be very brief, to those distinctions which it appears, from questions asked so far, would provide a different type of answer than was indicated by the other proponents. Now Zenith alone among the 3 present proponents, or 3 present owners of a system, proposes to lease its equipment to the subscriber. Both Telemeter and Skiatron testified that they intended to sell them for a price of from $40 to $45. Zenith proposes to install the decoder in the subscriber's home for an installation charge which, under our best estimate, ranges somewhere around $4, plus a charge per month for having the equipment in their home. Now the best estimate that we have been able to make to date as to that charge is $1 per month. Also the arrangement with the subscriber would be that he can terminate that service at any time.

Now the reason I think this provides a somewhat different answer from the proposals of the other two proponents refers to questions asked yesterday by both Senator Potter and Senator Bible. Senator Bible, I believe, particularly wanted to know what assurance, if he paid $45 for this gadget, that he would get any service out of it at all, and wasn't the public likely to be very seriously damaged, at least in the early stages before it is an established service, by these expenditures. That was one of the reasons that Zenith felt that the investment to the public should be kept at a very small amount until the service is fully established; and, of course, no one can predict today whether this thing will succeed or fail, and it was our feeling that the public should be protected in that interim period.

I should add, in candor, that there were other reasons that were purely business in nature that dictated the desirability of controlling the equipment, in terms of service, in terms of a collection instrument, so that if a party did not pay, for example, what he owed for the programs that he took, you could remove the instrument itself and it would still be your property. So the maximum, I would say, gamble that anyone would take on this service when it starts would be between $5 and $6. That would be the most that they would be committed in terms of funds.

We have also proposed that the Commission prohibit the use of advertising on subscription television. We feel that the industry, if it ever develops—the subscription television industry—would not be too wise in inserting advertising, and certainly as far as Zenith is concerned we would like to see it prohibited to preserve the full quality of the product, for one reason, and second, because 75 to 85 or 90 percent of the time is going to be available for advertisers and that revenue, and that use should go into the free time and not the pay time.

Senator PASTORE. May I ask you a question at this point?

Mr. PIERSON. Surely.

Senator PASTORE. If I understand you correctly, Zenith would own the equipment and would have an agreement with the subscriber to service it and to pay a rental for it. Let's assume that I became dissatisfied with the equipment of Zenith, could I still get paid subscription television by going to Mr. Poller and doing business with him, or where am I?

Mr. PIERSON. As I understand, Mr. Poller does not have a system. As I understand the proposal, from his statement this morning, is that he intends to be the broadcaster. He wants someone else to put in the actual subscription television system. Now what Zenith proposes, first, is that the Commission permit all owners of systems—this would be Skiatron, Telemeter, Zenith, and even RCA, if they have got one locked up somewhere—to enter into any market and put in their system. We propose that our system will be available for use by any broadcast station in the community that is authorized by the Commission to engage in subscription television. We propose also that our charge will be the same to any broadcasters who use it. In other words, our charge must be nondiscriminatory.

Consequently, the subscription system, in the manner that we propose it, would not be engaged itself in telecasting, except in the initial stages as strictly promotion. It would probably not be engaged in the procurement or distribution of programs. All this system is is a service that it furnishes to two people: a broadcaster who has program product that he wants to get to the people, and people that want to see his program product, and product that would not otherwise move through the television system.

Now this brings me to a question with which Mr. Poller was dealing.

I think some of the questions addressed to him overlooked the stage at which we now are in subscription television. It is not an industry. It is yet unborn. It has been laboratory perfected. Technically it has been field tested. Now I think it is beyond the capacity or the prescience of any individual or group of individuals—no matter how well informed technically or economically or in this industry—to determine as a fact whether the competition will be sufficient to protect the public as to the price; or if it is not, what measures you would have available to determine what regulations should be made. Because if you want to set a rate to protect the public, we presume it would be a rate that would be an intelligent rate and would follow the purposes of most ratemaking, namely, not to kill the service, but to make sure that the business exists and that the person operating the business does not get an unconscionable return, being in a monopolistic business.

Now the facts that would be necessary for any ratemaking body following classical ratemaking procedures cannot possibly be determined today, because there are no facts. There is no empirical knowledge of any kind as to what this will do. Our position before the Commission has been this: We cannot at this time conjure up all of these facts. What will happen, a proponent thinks, is very beautiful and rosy—an opponent thinks it is very bad. I submit none of us know because it is a fact we have not been able to learn. We have asked the Commission for this one privilege, and I claim it is an ordinary and common American right—to start with this service to the public, obtain the empirical knowledge and the experience that is necessary to determine, (1) whether we as a business are making a wise investment to continue it, and (2) whether if we do, certain abuses or evils have been shown to exist that will require regulation in this area or that area.

Now I submit that only then can intelligent regulation be applied. And I submit that the reason that it cannot be now is because the facts are not established, and will not be.

Senator PASTORE. Well, I follow you very clearly, Mr. Pierson, but then wouldn't you subscribe to this argument, also? Maybe I put that wrongly, about subscribing to it. I do not want anyone that represents an interest here to subscribe to anything that might be somewhat in opposition to his position. But look at it this way, let me say: Here you have a service that is being rendered to the public at large on a gratis basis. Substantial arguments are being made before the Federal Communications Commission—and they are going to be made here, if they haven't already been made—that the tendency, or the likelihood, exists here that this new medium of service to the public, of paid TV, might in some way affect the bounty that the public now enjoys on a gratis basis; and that if this became to prevalent, it might well mean that the quality of entertainment that is now being enjoyed by the average viewer might be somewhat injured or affected.

Now were that problem facing the Congress, and the issue facing the Federal Communications Commission—which is a substantial question—you say that will never happen. You are talking about prognostication. Look at the prognostication that is going on right on this issue. You say you are going to help the industry. Those who are opposed to it say you are going to ruin the industry. So even there we do not know the answer. We are in a nebulous state as it now exists.

Mr. PIERSON. Right.

Senator PASTORE. Well, now, because of all of these uncertainties, don't you think there ought to be some type of supervision on the part of the FCC, not in any specific formula of rate of return, or what have you, because it might be hard to judge it now, and you might not reach the right formula; but somehow there ought to be some strict supervision so as to hold these two conflicting interests in balance so that the public will not be injured.

Mr. PIERSON. I am in full agreement.

Senator PASTORE. Now what it is going to be, I do not know, but I do not think we can say that free competition will do it.

Mr. PIERSON. I have never understood, Senator, that any proponent proposed anything else, and much less have I ever understood that the Federal Communications Commission, conscious of its responsibilities, would turn this thing free and let it go its own way with never a care as to what was happening, or what they were doing. But you must remember this: that when the Government says we can enter the market place, it is going to be a substantial period of time—and I probably should add, if ever—that we will be in 2, 3, or 4 markets in the country.

In the first place, to equip a market with 100,000 receiving sets, to give this thing a fair test—assuming that is—I would judge that it would be well toward the end of a period of 2 years before one market was established in that fashion by a single proponent. Now, it might be possible toward the end of the 2 years to have started in a second market. If you take the present 3 owners of systems, that would be 6 markets in the country.

Now I have assumed that, through that period of time, the Federal Communications Commission will be very carefully watching what develops, and they have proposed that their authorization for this initial period—whether it be 2, 3, 4, or 5 years—be tentative and supervisory in nature, so that during that period of time this committee, as responsible and sensitive as it is to all problems involving the public and broadcasting particularly, and the Commission, with the same sensitive responsibilities, will be quick to move, and will have much time to move while they are getting facts—not just someone's speculative predictions that are colored, consciously or unconsciously, by their own interest in the matter.

Now I can tell you frankly I do not believe that the things that they predict will come true. I cannot think of tougher competition for anyone going into business than competing with someone who is giving something free. I cannot think of any tougher competition, with reference to price or to quality of product or the value of your service, but I must admit that even if I tried to be objective, and as an advocate I probably have not that particular office——

Senator PASTORE. I have always found you at least attempt to be objective, let me say that, Mr. Pierson.

Mr. PIERSON. Thank you, I must admit that you are no more entitled to believe me than you are them, and I cannot prove to your satisfaction that they are wrong, and they cannot prove that I am wrong—but experience will. The important factor here is that while that experience is being gained there will be governmental bodies who will be supervising it and watching it diligently, and I do not think the public is going to suffer even if we are pirates, because I do not think the members of the Commission or this committee would permit it.

Senator PASTORE. Well, I am very happy to hear you say that, and I repeat again, naturally there are so many uncertainties involved in this situation that it is pretty hard for anyone. If you ask me, "Well, all right, what should the formula be?" I couldn't answer that question, and if we had to call in experts we might have to call in the same people who are addressing us now who are not in a position of knowing because the facts have not been developed through experience.

But, on the other hand, there ought to be some broad authority on the part of the FCC whereby they would be in constant touch with this and reports would be made as to the progress, so that the Congress would be apprised, and the public interest of the situation as it develops from day to day, so that ultimately, if any regulation should be made, it can be done judiciously; and, on the other hand, if it should not be made, it could be explained to the public why, in the public interest, it should not be undertaken.

That is all I am saying. I am not too much impressed that there is going to be so much competition here that competition is going to take care of it, because just as you say, we are all more or less swinging in the dark here, and what competition are you going to have here when we don't even know what the competing forces are.

Mr. PIERSON. You see, Senator, my great concern is I know, were I an advocate on the other side, that I would urge the Commission, and this committee, never to let this get off the ground until all of the evils have been discovered and regulations have been adopted to avoid them. And the reason I would advocate that is I would know that it would be impossible for it ever to get off the ground, because the condition that they impose for its start is absolutely impossible of human attainment. That is why I want to emphasize that we do not preclude proper Government control.

For example, the application from Allentown that Mr. Kohn spoke about yesterday, and a copy of which was filed in the record, had provisions for extensive weekly reports to the Commission on every possible phase of the operation, and I just cannot assume that the Commission would not deal intelligently with that material. Zenith obviously will do the same thing, and I am sure that every telecaster is under an obligation to furnish such reports as the Commission demands.

Senator SCHOEPPEL. Well, Mr. Pierson, what you are saying—and what I understand you would have no objection to seeing done—would be that the Commission, or the proper agencies of the Government, retain jurisdictional control—or regulation, maybe I should say, a better word—during this trial run period, during which period of time facts and circumstances and scientific data will be available, reportedly available, openly available, for the purpose of seeing if regulation is needed to curb some evil results or monopolistic tendencies.

Mr. PIERSON. Yes, Senator, that is precisely our position.

For example, the first transcontinental railroad was completed in 1869, but we didn't have the Interstate Commerce Act until 1887. Now, it would be interesting to know what would have happened to that development if, before they could lay the first track, they had to anticipate all of the regulations that would be necessary. It was impossible; and no one stopped the Wrights from flying at Kitty Hawk until they showed all of the CAA regulations and the laws that would have to be passed.

As a matter of fact, the networks started in business in 1925 before we even had a law regulating the industry. Now, also at that time, advertising started taking hold, and was used as a means for support. Now, Mr. Sarnoff didn't suggest that it should be an issue in a presidential election, or that we should have a detailed study of what regulations of networks there should be, or what regulations of advertising; and no one can say from hindsight that you couldn't have predicted evil along with the good.

It was 1939 before evils grew in the network industry that required Government to act. In 1943 they finally effected regulations, and those regulations were designed to meet the evils established by facts that were then existent.

Now, the mere fact that something may require a future law or a future regulation does not mean that we should not do it. That is a denial of progress. That is a refusal to meet the challenge of the new, and we certainly are conceding, and are in no way maintaining—we are not maintaining that it will never be in a position to require some type of regulation. We are maintaining that no type of regulation can be adopted until we have some experience, and the only purpose of those suggestions is to make sure that we never get a start.

Senator PASTORE. Well, I subscribe to that completely, and all I desire to say in rejoinder is this: I am pretty well convinced—after all, I have been at this for a couple of years on this UHF and VHF problem—and I am pretty well convinced that had we had the vision in the early stages to step in at the proper time, much of the abuses that have developed would not exist today. And we don't want that to happen here. Had the UHF–VHF situation, and this whole business of concentrating 7 stations in 1 area, been avoided from the start, we wouldn't be in the trouble we are in today. And we want to avoid that before it happens, because once it happens it is pretty tough to return to the status quo ante.

Mr. PIERSON. I think, Senator, the type of supervision that you and Senator Schoeppel have discussed will adequately avoid any such repetition of those problems.

Senator PASTORE. You may proceed, and I want to thank you for the observations you have made, Mr. Pierson.

Mr. PIERSON. Senator Potter, and I believe Senator Bible, yesterday both inquired as to the charge that would be made of the viewer, and I believe there were some questions of the chairman this morning in that connection.

The one thing that I think perhaps has not been made too clear, is that in the proposal so far we are not comparing a dollar paid in the home to a dollar paid as admission to a theater. In other words, when we speak of charging a dollar for a feature picture on subscription television, we have no control over the number of persons that see it—it can be 4, 5, 1, 10, 15, or 20.

Now, you cannot determine the charge per person until you know precisely how many people would see it. When a theater charges, or a ball park charges, they charge on the basis of each person. Now, I would say if it cost you a dollar to go to the movies, and we charged the same dollar at home, and an average of 4 or 5 people in the family saw it, we would get down to a figure of 20 or 25 cents. I think there has been a tendency to use the theater frame of reference of per person admission when we are dealing with a per home admission which may involve any number of people.

Senator PASTORE. Well, now, another question, and this to me is very important, Mr. Pierson.

You have a mechanical apparatus that is affixed to your television set that unscrambles a scrambled picture, and gives you a clear picture.

Now, on this question of the competition in the field, and the right of choice on the part of the viewer, how many of these services are existing today, or do you have a patent on that particular type of apparatus so that, unless they use your apparatus, they cannot see it?

Mr. PIERSON. Of course, there are none existing today, but the systems that have been developed—Zenith, and Skiatron, and Telemeter—each have filed patents covering their particular systems.

Now, we have patent rights on our own system, and they claim patent rights on their systems. As far as I know, the chances of any one of us coming out on top is going to depend much more on the effectiveness of our system than on any patent protection; and in any event Zenith proposes to permit, for instance in the manufacture of the equipment, to freely license the manufacturer of the equipment. They propose to grant franchises for its use. They are not going to operate it themselves. They will operate it on a franchise basis.

Senator PASTORE. But can you move from one to the other and still see the program? That is the point I make. Will there be competition in there? For instance, you said you are going to charge a dollar a month. Now, is there someone else that might come along and say, "Look, if you take mine and don't take Zenith's you will see the same picture and I will charge 50 cents a month." Will there be that competition?

Mr. PIERSON. I think there will come competition between systems. This is only for the technical perfection. The competition for programs will come from the stations competing with each other. I assume there is some limitation upon the amount any family will pay in a week for subscription programs. The tests in Chicago indicated a dollar and a half. Now, if you have 3 stations each putting on 15 hours a week of subscription programs, they are each competing for that dollar and a half average from that home. Now, it is not competition that is restricted to a certain given time, because one station may be putting on a motion-picture feature, and the other a sports feature, and the other the Metropolitan Opera. Now what the family has to decide, having a dollar and a half, is which one of those will it take in this particular week, and it could happen that those 3 programs are all on 5 nights. They are not competing in terms, spatially, with each other, in terms of time. They are on different nights. The expense competition is from the program producers and broadcasting station owners, in inducing the subscriber to spend his dollar and a half on their programs. And, I believe, again with the color of advocacy probably offending my vision a little bit, but this is why I believe that there will be competition among programs and among stations.

Senator PASTORE. But merely to get this on the record, because I anticipate these arguments being made, let us assume that you put your apparatus on 75,000 of 100,000 television sets in one community, and you charged them $1 a month. Those people are receiving that service. Now, when you have reached this point of 75 percent, leaving only a residue of 25 percent for the other competitive service, let us assume that you decided on your own to raise the price to $5 a month. What is my remedy, just to say "All right, take it out?" What do I do about seeing this pay television; where do I go?

For instance, like the telephone in my house. If I become dissatisfied with the rate it is a case of pay the rate or do without. Now, is that what is going to happen here?

Mr. PIERSON. Well, if we have a prior assumption that any intelligent businessman would so reduce his subscribers by increasing the price constantly——

Senator PASTORE. But you already have them.

Mr. COX. Didn't you install this under a written contract originally?

Mr. PIERSON. Yes; but I say this: Just like Gillette sells its razors almost at cost to sell the blades, we are not going to make our profit out of the monthly charge for the machine, to have it in the home. We want to make the lowest possible charge so we will have as many people as possible put the equipment in that will enable them to receive this program that they want to see.

Mr. COX. Where, precisely, will Zenith get its return—in royalties on the manufacture of decoders?

Mr. PIERSON. Well, Zenith anticipates its major return in term of royalties from the franchise holders who use the equipment or use the patent.

Mr. COX. Is this, then, going to be a percentage of his gross, net, or some agreed basis?

Mr. PIERSON. It hasn't been refined that far because it is hard to figure out what kind of arrangement you will make when you are dealing unilaterally. We know what we might want from the franchise holder, but we haven't been able to sit down with any of them and see what they would require from us, and it is essentially going to be a question of bargaining, and I have no real grasp. I don't know how we can get a determination.

I will say this: The return to Zenith from the franchise holders' take, or from the subscribers, will be a very, very small percentage of the total, obviously.

Mr. COX. The franchise holder will be getting his return simply for the continued maintenance of the service and the continued encoding service he performs for the broadcast stations?

Mr. PIERSON. That is correct.

Mr. COX. And he has certain expenses in connection with that?

Mr. PIERSON. Yes.

Mr. COX. And these must be deducted from whatever override he gets on the program charge?

Mr. PIERSON. I would say our principal cost would be the amortization on the equipment. Because in Washington, where there are 600,000 television homes, if you assumed 50 percent were subscription television homes, it would cost $15 million to the franchise holder to get the equipment for all of them. His principal cost is going to be the amortization figure which may be in the early years, 3 or 5 or 8. Now, the rest of his cost is going to be primarily in collections and what promotion he does with his subscribers to let them know what shows are coming on.

Senator PASTORE. Well, isn't the system somewhat like the service charge on a gas or electric meter that you are talking about?

Mr. PIERSON. Yes, it is. Except Zenith doesn't propose to use a metering device. It has one.

Senator PASTORE. I know that, but I mean what you are going to do is actually sell the programs, over the course of a week; and they receive this program by the use of this apparatus on which they pay a service charge while it is in the house; and then, in addition to that service charge, will they have to buy the program, too?

Mr. PIERSON. Well, each program has its own charge in addition to that.

Senator PASTORE. In addition to the charge for the apparatus?

Mr. PIERSON. We have spoken of charging them initially maybe $4 or $5 for installation, and then $1 a month, which would amortize the equipment over 50 months. It may well be, since our interest is to encourage as many people as possible to put in this equipment, that we will make no installation charges or even a monthly charge.

Senator PASTORE. But this is what I would like to get on the record, if such is the case. If you go too far with this subscriber, there is always the likelihood that he could ask you to take the whole equipment out and go to somebody else's equipment. Is that there?

Mr. PIERSON. That is correct.

Senator PASTORE. That is what I am trying to establish. Is he stuck with what he has got, or can be, at any time, say, "Look, you have gone too far, and I think I will take somebody else's equipment and see the same programs"?

Mr. COX. He can do this only if there is a Telemeter or Skiatron or RCA franchise holder in the area who has the equipment available and has made the arrangements with a broadcaster to provide programs encoded in that system.

Mr. PIERSON. That is correct, Mr. Cox, but I would think, operating as a franchise holder, my greatest fear would be—let us assume that I am at this time the only one in the market. The greatest fear I would have, having that nice cozy little situation, would be that I would so abuse the public and overcharge it, that I would plow very favorable ground for bringing Skiatron and Telemeter in.

Now, maybe my idea of a wise businessman is wrong. Maybe I cannot understand it. I don't think they would do that, but if they do do that, and if they do abuse the public, and the competitors do not jump in the breach when they are abusing the public, to take over their business, it is at that point that I am very satisfied that the Commission and the Congress of the United States would act to protect the public.

Mr. COX. I think the record perhaps should show this: Who actually, in this setup, would determine the price to be charged to a viewer for a particular program? Is it going to be the franchise holder or the telecaster over whose station the program is broadcast?

Mr. PIERSON. Well, it seems to me the major responsibility for price must rest with the television broadcaster, because he is the one who must procure the product. He knows its cost. He is the one competing with other programs, and other broadcasters.

Mr. COX. He buys a product from a program source. He buys a service from the franchise holder. He has his own costs and profit to be concerned with. And based on all of these considerations, he determines a price which also must reflect his competitive position vis-a-vis free television and other forms of entertainment media with which he must compete.

Mr. PIERSON. That is correct. I think he would be the major determiner of the price.

Senator PASTORE. But before the viewer could go from one system to another, there would have to be a new broadcasting network; wouldn't there?

Mr. PIERSON. I am not sure I understand, Senator. You mean there would have to be another system?

Senator PASTORE. Another system, from production to reception.

Mr. PIERSON. No.

Senator PASTORE. Well, at what stage, that is what I am trying to determine?

Mr. PIERSON. I have assumed, first, that no broadcaster can possibly be committed to use only Zenith's system, that a broadcaster will pick, for any program he has, a system that he thinks will bring him the largest return in his community. Now, since that is true the broadcaster will determine on the basis of each program, if they are competing systems, which system he will release it over.

Assuming that, in Washington, Skiatron and Zenith both had systems in operation, and Zenith had 300,000 homes, and Skiatron 400,000 homes, I would suspect that the broadcaster would select the Skiatron system.

Senator PASTORE. But there couldn't be the two?

Mr. PIERSON. The same program simultaneously over two systems, no, because the scrambling and unscrambling methods are different.

Mr. COX. You have supposed, there, that you would have more decoders in existence than there are television homes in the area. Is it possible to have a set equipped to receive more than one system at the same time?

Mr. PIERSON. Oh, yes.

Mr. COX. That is, if there is space on the back of the cabinet you can install 3 decoders on 1 receiver?

Mr. PIERSON. Well, I think the thing that goes on the back of the cabinet for Zenith, by the time we hope to get into operation, can fit in your coat pocket. It is larger than that now.

Mr. COX. How about the connections? Isn't it possible that some of these systems connect at either the same point in the internal mechanism of the receiver or at a point so close that it would create interference, shortings, things of that kind?

Mr. PIERSON. I don't know whether there is a problem of connections, personally. I remember Mr. Raibourn's engineer yesterday stating that there would be no problems, and I can't dispute it. I suppose he is correct.

Mr. COX. As a simple matter, though, of overall economics, assuming that the system first in the market was wisely administered, wouldn't the natural tendency be that Community A would have one system—Telemeter, Skiatron, or Zenith—and that the competition would be for communities rather than within communities?

Mr. PIERSON. I think that is almost undeniable, as nearly as we can speculate how this thing will come about.

Mr. COX. It would be economically wasteful to try to superimpose one on the other in the same area?

Mr. PIERSON. I believe that is correct, and I certainly think this is true, that the public is not going to live with much inconvenience. They are not going to hang a lot of gadgets around their set if they don't want to.

It may well be when this thing settles down, in 5 or 10 years, that you will find each community having a single system. At that point it may well then be necessary for the Government to say, since the broadcasters and the subscribers have only one system available, "We must regulate just so much of this price as is under a monopolistic control; namely, the price that the franchise holder charges."

Now, that doesn't mean that the television station has to be regulated in any of its operations because it is a customer—just like now you regulate the telephone company, but the fact that the networks and the broadcast stations use the telephone company doesn't mean that you have to regulate them, also.

To me that is the area that is most likely to require, ultimately, common carrier regulation, and then this, I claim, cannot be established for certain cities in advance. But one who has the system, and it is the only system in the market, and everyone must use that system, broadcasters or subscribers, or do without. Now I think there is the field where it is most likely that regulation would ultimately be needed. But I think we can afford to wait as long as the railroads and the networks did.

Senator PASTORE. The reason we keep asking these questions is not to satisfy our own minds, Mr. Pierson, but to make this record as complete as we can in order to develop any questions and answers that may be asked later on.

Mr. PIERSON. I believe that that fairly well concludes my 10 minutes.

Mr. COX. I have one question. In your comments filed in the Commission's allocations proceedings you suggest that initially, at least for a period, I believe, of 2 years, that the Commission's authorization of subscription service should be limited either to UHF stations or to VHF stations which are in financial difficulty, and propose as an empirical test their receipt of less than 7½ hours a month of network programing; is that correct?

Mr. PIERSON. That is correct.

Mr. COX. Now, do you suggest this as a possible way in which UHF television could be rehabilitated, through giving it a headstart on this additional source of revenue?

Mr. PIERSON. That is correct, plus, I think, Mr. Cox, it was a bit of realism on our part. I am satisfied if subscription television started tomorrow it would be a long period of time before any basic network affiliate would give up its first half hour or hour to subscription television. If an independent producer cannot get in with a free program, and a local advertiser cannot get in with his program, and the local organizations cannot get in with theirs, I don't think, the way they start out feeling about us, that any network affiliate would chance a loss of his network affiliation by accommodating our requirements for time.

Now, secondly, I think that there is a basic conflict between time requirements of a network and subscription television in terms of the hours when no station could really accommodate both. We felt, therefore, that it was a certainty, without any regulation or restriction by the Commission, that we would have to get along initially, and probably for a long time, and probably for all time, with the stations that the network don't want, with the ones they cannot support. With apologies to those stations, I think we must in effect use the network rejects.

Now, since this is true, we certainly do not have any objection to a regulation that will face up to that reality and puts no greater limitation upon our ability to do business.

Now, the reason we did not limit it specifically to UHF was this: We felt that our greatest contribution to the industry, and the one upon which we pin our right to use a television channel, is that we can increase the number of stations in the country. Now, there are many areas in which local expression under the allocation plan, and a new station under the allocation plan, can only be established if it is on VHF. In other words, in Governor Johnson's State of Colorado, in Senator Schoeppel's State of Kansas, a great number of the stations that are not on the air are VHF.

Now, I think that what we wanted to do was have the opportunity to establish a new station wherever the networks and the national advertisers had given up, and were not doing the job.

Mr. Cox. That is long range, though, of course.

Mr. Pierson. Yes. For the immediate 2-year period, since I cannot conceive of there being more than six markets involved, I don't think that makes much difference.

Senator Pastore. Well, on that point, if you will permit me, Mr. Cox, what do you mean, establish new stations? Take Providence, for instance; we have two VHF stations. We did have a UHF, but it is off the air. Now, how would this work in with Providence? I just cite that as an example.

Mr. Pierson. As I understand the situation in Providence—and I am not sure that I am fully informed or accurate about it—the third station, the UHF station, went off the air in Providence because it couldn't get sufficient revenue, and I understand that resulted primarily from their inability to get a network affiliation. Now, the thing is, there was obviously a conversion problem which I understand they were well on the way to meeting when they ran out of money. Now, I would suggest that subscription television on that local station would supply the revenue that they cannot get from the network, and then with local advertising revenue, the station would become economically feasible for operation.

Senator Pastore. Well, would it be a VHF or a UHF? It would be a UHF?

Mr. Pierson. As far as we are concerned, it could be either. The right to use our system would depend entirely, under our proposal, our initial proposal, on whether they needed it in order to continue in operation, whether it is V or U.

Senator Pastore. Well, I mean, is there something in your plan of pay television that is completely divorced from the technical setup in the network itself, which would allow an additional station to come in if it were exclusively devoted to pay television without disturbing all of the other technical problems of existing stations?

Mr. Pierson. That is precisely our proposal. We say that we should be permitted to use those stations which now are not economically feasible to operate, and all new stations that come on the air, figuring that our very economic support would bring new stations on the air.

Mr. Cox. But those would have to be stations that would operate on channels allocated, or to be allocated, to those areas by the FCC?

Mr. PIERSON. Well, they are already allocated. In most instances they are UHF channels. In one instance like in Garden City, Kans., I believe they have a VHF. I think just because Garden City did not have the good fortune to get a UHF assignment, if this thing works they should still be permitted to have a station there, even though it is VHF.

This is a long term, as Senator Pastore pointed out, or you, Mr. Cox. I think, immediately, there are enough good test markets or trial markets, since we would not be concerned with more than 4 or 5 or 6 in the first 2 or 3 years in any event.

Mr. COX. But how much help can that give to struggling UHF broadcasters, if you can only hold out hope to them that 6 or 8 of them are going to be benefited by this in the course of next 2 years?

Mr. PIERSON. I think Mr. Kohn answered that yesterday when he said even if he weren't the first one to get into business—which I believe he devoutly hopes, and I sort of hope, too—it would give them hope, and as he says it, they would hang onto their CP and they would see a hope in the future of a valuable facility. But this is what disturbs me about the proposals to go into all kinds of considerations of regulations, and have all sorts of other proceedings, because this thing can be killed easily with procedure. Certainly there can never be an earlier time when it will help UHF.

Mr. COX. But as a practical matter at present, even its immediate adoption would not be, in and of itself, a complete solution to the problem of maintaining UHF as an integral part of our broadcasting system?

Mr. PIERSON. I think it would be a very substantial solution if, in the initial operation, it showed that there was a great source of revenue for any existing or prospective UHF stations that wanted to go into operation.

Senator PASTORE. But the sum up of that argument is the conclusion that, after all, you are not taking anything away from what is already existing, you are willing to gamble on the chance that there is UHF that is seriously faltering for economic reasons, and you are perfectly willing to send your shows over these particular stations because you feel that you are willing to take that chance in order to build them up and because your product is going to be such an attractive thing to the public itself.

Mr. PIERSON. Precisely.

Senator PASTORE. We will adjourn until 2 o'clock tomorrow.

(Whereupon, at 12:45 p. m., the committee adjourned to reconvene at 2 p. m., Wednesday, April 25, 1956.)

TELEVISION INQUIRY

WEDNESDAY, APRIL 25, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 2 p. m., in room G–16, the Capitol, Hon. John O. Pastore presiding.

Present: Senator Pastore.

Senator PASTORE. We have three witnesses on our list today: Mr. Marcus Cohn, Mr. Abe Stark, and Mr. Harold Fellows. I will address myself to Mr. Cohn first. Is he here?

Mr. COHN. Yes, sir, I am.

Senator PASTORE. How long do you expect to be, sir?

Mr. COHN. Forty-five to fifty minutes, sir.

Senator PASTORE. Forty-five to fifty minutes. Is Mr. Abe Stark here?

Mr. STARK. Yes, sir.

Senator PASTORE. Mr. Stark, how long do you expect to be?

Mr. STARK. I would say about a half hour or less.

Senator PASTORE. Mr. Harold Fellows; is he here?

Mr. FELLOWS. Yes.

Senator PASTORE. How long do you expect to be?

Mr. FELLOWS. I would say about 20 minutes.

Senator PASTORE. Well, I think we ought to finish up comfortably by 4:30. All right, Mr. Cohn, we will hear you first.

STATEMENT OF MARCUS COHN, COUNSEL, COMMITTEE AGAINST PAY-TO-SEE TV

Mr. COHN. My name is Marcus Cohn. I am a member of the law firm of Cohn & Marks which represents the Committee Against Pay-To-See TV. This committee consists of independent motion-picture exhibitors scattered throughout all of the 48 States in the United States and represents approximately 75 percent of the 16,000 exhibitors in the United States. This commiteee is part of a national group, Organizations for Free TV, which consists of various types of organizations: Chambers of commerce, American Legion posts, women's clubs, small-business associations, theater groups, radio and television station owners and employees, labor unions, and trade associations, as well as individuals who, on their own behalf, believe that people should not have to pay to see television programs.

The Committee Against Pay-To-See TV has actively participated in the subscription television rulemaking proceedings at the Federal Communications Commission.

I have previously sent to each of the members of this committee, as well as its staff, copies of the various documents which we have filed with the Commission, and at this time, Senator, I would like to ask that there be incorporated by reference the documents which we have filed with the Commission.

Senator PASTORE. Just a moment, is this just by reference?

Mr. COHN. Yes, sir.

Senator PASTORE. All right, and then what you will do is identify them on the record?

Mr. COHN. All right.

Senator PASTORE. You needn't do it, our staff will do it for the stenographer.

(The documents above referred to are as follows:)

1. Opposition of Joint Committee on Toll TV to joint substitute petition concerning subscription television of Zenith and TECO, filed January 6, 1955.
2. Comments of Joint Committee on Toll Television (Committee Against Pay-As-You-See TV) filed June 6, 1955, in FCC docket No. 11279.
3. Reply of Joint Committee on Toll TV to comments filed by subscription television proponents, filed September 9, 1955, in FCC docket No. 11279.
4. Reply of Joint Committee on Toll TV to comments of Zenith Radio Corp. filed February 8, 1956, in FCC docket No. 11532.

(They have been retained in the committee's files and are incorporated in this record by this reference.)

Mr. COHN. In connection with the statement which I have distributed, I do not propose to take up the last 4 pages, beginning on page 17. That is a digest of the legal problem involved insofar as the Communications Act is concerned. In our comments to the Commission, we have exhausted that subject considerably and this was only an attempt to digest it, and I don't think in the light of the questions or the interest of the commitee on Monday and Tuesday, it is particularly pertinent here today.

Senator PASTORE. Well, it is to me, though, because I am very much intrigued with that element of the discussion. Tell me just a brief résumé. What is your opinion, the legal opinion, on the Communications Act as to pay-as-you-go television?

Mr. COHN. We believe, one, under the Communications Act of 1934, as amended, it was not Congress' intent, and the Communications Act does not provide for the type of service which the subscription television people are offering, or attempting to offer, to the public, and to this committee and the Commission today. It is neither, on the one hand, broadcasting, which is one type of service under the Communications Act, nor is it common carrier which is really the other type of commercial operation authorized by the Communications Act.

It is both broadcasting and common carrier and yet neither. It is really a hybrid of both, and I don't think in the history of the discussions on the act, itself, or any of the amendments, was it ever contemplated that this type of service would be authorized by the Commission through the delegation of power from Congress.

Senator PASTORE. But you draw your conclusion from inference of the intent of Congress with reference to the act itself. Is there any specific prohibition in the law?

Mr. COHN. There is no specific prohibition in the law as such, sir.

Senator PASTORE. And it is your opinion, therefore, that before it could be permitted, an act of Congress would have to be passed to amend the law?

Mr. COHN. That is correct.

Senator PASTORE. All right, sir, now you may proceed.

Mr. COX. I would like to ask this question, Mr. Cohn. Isn't it true the Federal Communications Commission has authorized one service, functional music, which the majority of the Commission regarded as neither broadcasting nor common carrier?

Mr. COHN. That is correct, and it authorized as subsidiary service of an existing FM service. Insofar as that is concerned, we cover that exhaustively in the comments which we filed with the Commission, where we point out that that really is not the basis upon which you can authorize subscription television today.

Mr. COX. I would assume that in the proceedings now pending before the Commission, this would be the initial question that the Commission would have to decide, and that following such a decision, the accuracy of its legal conclusion could be challenged in the courts if anyone were so inclined.

Mr. COHN. I think that is true.

I. BACKGROUND

Radio and television broadcasting, as we know it today, is the rendition of a free program service intended for the general public. On both Monday and Tuesday there were witnesses who testified before this committee that television today is really not free, that you pay for it by buying a Mercury car—that was one of the illustrations—or another product of advertising. I think it is an accepted common fact in economics that as the mass production of items increases, the unit cost goes down, and what has actually happened through free television is that the cost of products, each in competition with the other, has gone down on a per-unit basis.

It may be true that indirectly you are contributing to advertising, but at the same time you are raising mass purchasing power and mass distribution of commodities. It is also important to bear in mind that television today is as free as the public parks, and you don't have to buy popcorn when you are in the public park. You don't have to buy a Mercury if you don't want to. You can either buy it or not, or you can buy a competitive car.

It is free in the sense that there is no direct charge to the viewer and in addition to that——

Senator PASTORE. Well, I don't think any member of the committee seriously is going to subscribe to the argument that it is not free.

Mr. COHN. I am very glad to hear you say that, Senator, because that is the contention that Zenith has made before the Commission and one of the arguments made here yesterday.

Senator PASTORE. It is one of the arguments. I don't think the whole issue rests on that. You turn on your television set as you please and you buy the product if you want. It is still free as far as I am concerned. I think most everybody looks at it that way.

Mr. Cox. Of course, it is true that if you buy the product and don't watch the program, whatever indirect contribution you referred to is made whether you are getting a program in return or not.

Mr. COHN. That is correct, but on the other hand, by the use of the advertising, the per unit cost is considerably less than it would have been otherwise.

Mr. Cox. That is true only so long as advertising serves to increase overall consumption and not to the extent that it is devoted to simply trying to capture a larger share of an already saturated market.

Mr. COHN. That is true.

The public listens and watches as it sees fit—without regard to its income level. Programs are enjoyed and shared equally, on the same basis, by the farmer in Kansas and the Wall Street broker, and I might parenthetically add by the disabled veteran in a hospital. These two media—just as our free public schools and libraries—have established themselves as indigenous characteristics of this great democracy. As I travel around this country and our neighboring countries to the south, I am always struck by the large number of television receiving antenna which one sees on the lower economic income homes.

Subscription television is nothing more nor less than an attempt to install a turnstile in every television home; put differently, to charge an admission fee in order to go through Rock Creek Park or view the Lincoln Memorial. Its ultimate objective is to force the public to pay for what it is presently receiving free.

I think it is important to bear in mind that the subscription television proponents are not interested in establishing, and do not propose to establish, either new stations or a new program service. What they want to do is to use and profit from the stations—and the programs—that are already established.

Mr. Cox. Well, as I understand their testimony, they propose to do both of those things. Now you may argue with whether they can deliver on the proposal, but it is my understanding that they wish to provide types of programs which, in part at least, are not offered on a regular basis by existing sponsored television and that they hope that this method of additional raising of revenue will make possible either the continued existence of stations now in financial difficulty, or the ultimate encouragement of additional stations.

Mr. COHN. I was struck by the fact, Mr. Cox, that as far as Zenith was concerned yesterday, it didn't deal with the issues at all involved in this particular question which you have posed to me, and you have nothing before you as far as their position is concerned, outside of what they have told the Commission, incorporated here by reference, as to what types of programing they really intend to bring to the American people.

I think I will demonstrate in the course of my remarks that unless they are businessmen of the astuteness far less than I really believe they are, the only types of programs which they intend to bring to the American people are the most popular, with the greatest mass appeal. The specific reference to the new stations that I had here in the prepared remarks referred to the fact that they, themselves, don't propose to be licensees of any stations as such.

I think it is significant that one of the proponents has never been the licensee of a television station and is today (through affiliated companies) offering the public good programs which it sees free; Zenith once was an applicant for a television station and once sponsored a fine program which the public saw free, which had a large audience, I might add. Paramount owns a television station and today renders a fine free programing over that station.

Interest in subscription television goes back a number of years. About a decade ago—when free television was just reaching adolescence—Zenith was gloomily prophesying that free television could never succeed because advertisers could not and would not support television production; at the same time Zenith became one of the leading manufacturers of television receiving sets and advertised the wonders to be seen upon them. It sold millions of its fine sets—and it made millions of dollars for its stockholders—on the basis of representations that those sets would bring to their owners (on a free basis) the very best of sports, entertainment, and culture. As history has demonstrated, their advertising representations were far more accurate than their economic foresight. It is amazing to me that Zenith is today making the same arguments which it made 10 years ago—advertising cannot support free television—despite the fact that in 1955 advertisers spent over a billion dollars on television programing.

Mr. Cox. Well, they have changed their argument to this extent: They are now urging that it cannot support enough television in terms of stations providing multiple service and local service, and that it does not to this date, at least, provide on a regular basis certain types of programs that they contend they could furnish.

Mr. Cohn. That is their argument and it is our contention that astute businessmen like them will not furnish the type of programing which they visualize could conceivably be furnished on subscription television.

Mr. Cox. Aren't they going to have to furnish it in order to get the people to subscribe, at least initially?

Mr. Cohn. Yes—well, not necessarily, because if you take the world series and put it on subscription television, you don't have to take a program with a minor attraction to a minor group of people, but you take the world series, itself. They do not propose any kinds of rules which would prohibit them from taking the world series or I Love Lucy, or Jackie Gleason, or any of the other popular programs and putting them on subscription television.

Mr. Cox. I thought they proposed—at least in the case of Zenith—their comments with the Commission indicated that they favored rules limiting this programing to so-called box-office-type attractions for which the public is already accustomed to make a payment.

Mr. Cohn. They have resisted any type of regulation by the Commission which prohibits them from carrying those programs which have the greatest mass audience today. What they said to you yesterday was "Just give us a chance to experiment. Just give us a chance to put our foot in the door. Just give us a chance to tie up the world series on subscription television, and then if there are regulations that you have to put in, go ahead and put them in."

We have proposed to the Commission that there be some kind of a standard whereby, if a program becomes too popular, that it can no longer be on subscription television, and this has been met with deafening silence by all of the proponents of subscription television.

Senator Pastore. Well, what would be the legal justification for that proposal and who would measure it?

Mr. COHN. The legal justification, sir, would arise from the fact that the Communications Commission has the obligation to protect the public interest, and I don't think——

Senator PASTORE. Which is a fundamental question from the beginning, but I don't see how you reach that justification anywhere along the line. That is the reason why I am questioning you. Your public interest begins at the beginning. It doesn't begin anywhere along the line at a different notch from the bottle. It starts right from the beginning.

Here you have a fundamental question of public interest. It is either public interest from the beginning or not public interest at all, as I look upon it. Now this idea that when it becomes definitely popular to a certain extent, then it must necessarily become free, aren't you getting into a regimented state situation there?

Mr. COHN. I would not prefer to have that kind of system at all, sir. I think it all should continue to be free, but if we are to hold their feet to the fire and take them up on their representation that they want to appeal to minority tastes, the only way you can do that is to enact into some kind of regulation an obligation that they must continue to appeal to minority tastes and not to the mass audience in terms of programing which the audience is getting today.

Mr. COX. Well, as I understand it, this program could have achieved this overwhelming popularity only if it was of high quality and offered at a sufficiently reasonable rate to attract viewers on a fee basis. Now that would indicate that the people at that point were apparently perfectly willing to make the payment and felt they were getting their money's worth in so doing, so like Senator Pastore, I am a little confused as to why, when it gets to some arbitrary percentage of the public or some fixed number of viewers, you are going to turn this over to an advertiser for sponsored television when perhaps the costs would be excessive in terms of the average rate per home tuned in.

Mr. COHN. On the other hand, you must concede that there must be some kind of a mechanism whereby the pay-as-you-go television is not of such astronomical proportions that it deprives free television of the popular programs which we are getting today.

Senator PASTORE. Well, that is the issue in the whole business. That is what I mean. It is right there from the start. Now it either is or it isn't, right from the very start. Now if you are going to develop the argument here that pay television in time will take away from free entertainment, the highest quality of entertainment, and thereby leave what they don't take for the public to consume gratis, and that practically everything that is good is going to be pay TV, that is one argument.

I am not saying it is the right side or the wrong side. I am not getting into decisions here. I am merely pointing up the problem. I could understand that position, but this idea that you are going to allow them to use the program and then when it gets to a certain level of popularity, you say then it becomes the public domain in that sense, I wonder what is the legal justification—you are a lawyer and I am a lawyer, that is why I ask you the question. How would you ever get away with that?

Mr. COHN. Senator, we take the position, first of all, that the two are incompatible and both cannot survive, in answer to your first question. The reason we threw out the suggestion as we did on the question of popularity, is to take up and test, as far as the proponents are concerned here, some kind of a test in order to preclude them from doing the very thing which is threatened by the very fact that they are astute businessmen.

Senator PASTORE. All right, but now let me ask you this question. You are showing a lot of beautiful pictures in your theaters, and I am an ardent supporter of moving pictures—I go 2 or 3 times a week, and you have to pay about a dollar to get in. You decide the price that is to be paid. Now, by the same token, what if the same picture can be shown in a man's parlor for 25 cents. Why should the customer be denied that reduction, between 25 cents and a dollar, using your argument, if you are going to make this an economic question for the consumer?

Mr. COHN. As far as that specific question is concerned, Senator, the picture which is produced for motion-picture exhibition does not have its greatest impact nor enjoyment in the home. This has been tested out innumerable times.

Senator PASTORE. I wouldn't expect you to say any differently, but I disagree with you. I could stand seeing Grace Kelly in The Swan in my parlor and enjoy it just as much as seeing it in one of your seats.

Mr. COHN. It wasn't designed, Senator, in terms of its production for television presentation—in terms of the nature of the shots, the background, the dialog, the scenery—and, also, it wasn't designed to have a telephone interrupt or someone knocking on the door. It was designed for motion-picture exhibition where there are no distractions. So, it is true that if you could see it for 25 cents, rather than a dollar, it would be cheaper, but I don't think you would enjoy it as much.

Senator PASTORE. You mean I wouldn't get cinemascope and all that sort of thing.

Mr. COHN. I am not talking about cinemascope, I am talking about the Ten Commandments, I am talking about the nature of programs which, by their very nature, do not have the same impact and the same enjoyment when you see them at home as when you see them on the screen.

Senator PASTORE. Well, the reason I ask these questions is to get your answers on the record because these questions will pop up. All right, you may proceed.

Mr. COHN. During the past 10 years over $17 billion have been invested in television sets, production, and stations. Of this amount, the consumer public spent over $10 billion on sets, antenna, and repairs. This is the largest amount of money which was ever invested by the consumer public in a new industry in such a short span of time. All of this money was invested on the implied representation of the Government, manufacturers, and stations that the owners of sets would receive programs on a free—and not a fee—basis.

Mr. COX. Well, any such implied representation was that it would be so continued only so long as advertisers found it economical to do so, and there certainly was no warranty that advertisers would support any specific amount of programing or for any specific period of time.

Mr. COHN. That is true, of course, Mr. Cox, but yet on the other hand, you see today, as you say 10 years ago or 5 years ago, the ads of Zenith, RCA, Philco, and all of them: "See on your own television receiving set, free, the following things." This is the way they sold the sets.

Now, of course, to a person versed in the economics of the industry, they would recognize the point which you are making; but as far as the mass public is concerned, they bought that set expecting and hoping to see what they are presently seeing.

Mr. Cox. The man who bought a set in a one-station market—which station is now going off the air—also bought it on an implied representation that he was going to get a service, which he is not getting. There is the implied possibility, although remote at this time, that the sheer costs of television production might reach a point where at least some part of the advertising funds now going into television might be diverted to more economic channels, and that you might get, as a consequence, a reduction. These things cannot be held against the Goevrnment in terms of any implied warranty it has made.

Mr. Cohn. I am not holding them against the Government, sir. I am only suggesting to you that the public assumed that these programs would be free.

Senator Pastore. Along the lines of this recent argument that you have just made, what do you think of the argument that has been made here—have you been following these hearings, I suppose that you have?

Mr. Cohn. Yes; I have.

Senator Pastore. That, after all, UHF in some places is in a bad way. We could take judicial notice of that. What the reasons for it are, and whether this is going to improve it is another question. They say, "All we are asking is to be allowed to experiment with this new vehicle on UHF, realizing that people will have to first of all convert, if they want to see our pay-as-you-go, and will have to buy our equipment to see pay-as-you-go."

Is this an answer to your argument that the public bought the set and they are expecting to see it free? Now you can't see a UHF station in my locality for the simple reason that you have a VHF set. Now answering your argument that the people have bought their set and they expect to see that program—they can't see that program on UHF now because the set they bought is VHF. But they are willing to convert, and they are willing to put on this new apparatus in order to unscramble this picture that comes on pay TV. Now would you say then that your argument applies or does not apply?

Mr. Cohn. It applies, because a I think I demonstrate——

Senator Pastore. Well, you tell me why.

Mr. Cohn. First of all, as far as Zenith is concerned, and as far as all three of the proponents are concerned, in the documents that they filed before the Commission it is clear that they propose to inaugurate subscription television in the major markets of the United States—New York, Chicago, Los Angeles, and so forth. It is true that Mr. Ray Kohn testified here about Allentown, but all you have to do is to look at those documents which those companies themselves, filed before the Commission, and they aren't interested in Allentown. As a matter of fact, Zenith has made public statements—responsible officials of Zenith—that their interest is not in the small community, it is in the large communities.

Senator Pastore. Well, you are arguing motive to me, and I am arguing the substance of the logic that you have raised here, as the point that you make here, that the public has bought a certain number of sets, and invested a certain number of dollars, and they bought them under the assumption that they were entitled to see these programs free. Now the sets that I am talking about cannot see this program, because it is UHF. I am asking you a direct question, and you are getting into the motives of these people—that they don't mean what they are saying. Maybe they do, and maybe they don't.

I am not getting into that; but just taking your argument, would you say that the viewer is being denied some facility or some service that he was under the impression he was receiving when he bought his set, if that VHF set that he bought has actually got to be changed to UHF performance, and he has to buy the apparatus to put on there? Then would you say your argument applies? Do I make myself clear?

Mr. COHN. I think you do, Senator. If you are suggesting that a person who bought a set in a community where there was a station, and there is no station today——

Senator PASTORE. Or there is a UHF station, but he has a VHF set.

Mr. COHN. And has this subsequently been converted?

Senator PASTORE. He hasn't converted yet.

Mr. COHN. Well, he certainly knew that there was a UHF facility there.

Mr. COX. Perhaps he has moved in from another community.

Senator PASTORE. Well, don't let us complicate the question, because then I will never get an answer. [Laughter.]

Mr. COHN. If he bought a VHF set, certainly where he bought it he inquired, or somebody told him there was going to be only a UHF station in the market, and apparently he converted.

Senator PASTORE. No; I am not talking about that.

Mr. COHN. Then I don't understand you, sir; I am sorry.

Senator PASTORE. The argument that you made here is that you cannot impose this upon the consumer who has invested in the set, for the simple reason that when he bought that set he bought it under the implied assumption that he was entitled to a free performance. Now, I am imagining or supposing the situation of a viewer who is in possession of a VHF set, and that is all he can see, a VHF performance.

Now, if the Federal Communications Commission should allot this, or allocate pay-as-you-go television to UHF, insofar as that viewer that I am talking about—if that man has to convert in order to receive the UHF channel, and has to put on the apparatus in order to unscramble this picture so that he can see it, would you say that there would be a breach of some representation, either expressed or implied, insofar as he is concerned?

Mr. COHN. Yes; because he didn't buy a set on the theory that he would have to pay on a per-program basis.

Senator PASTORE. Well, you are just against this thing.

Mr. COHN. Why, of course, Senator. [Laughter.]

Senator PASTORE. No; but you are not answering my question. You made the argument here that the reason why this thing should never be—and I am not saying that I am with you or against you; you may be surprised how I feel—but all the point I want to make out is this: You have made the argument here; here we have the viewer who has invested in a set; and he has bought this set with the implied representation that he would see all of these programs free.

Now, when he took that set home he couldn't see a UHF performance, could he? He knew that when he bought it, otherwise he would have bought an all-channel set. Now, he bought a VHF set to see a

VHF performance. This that we are talking about will be a UHF performance, and he will have to buy the converter in order to do it. Now, why is there any mispreprentation as to that individual?

Mr. COHN. If subscription television is authorized?

Senator PASTORE. Yes. If he is willing to go ahead and go into this expense in order to see it, and to put on the apparatus, why isn't he doing it with his eyes wide open?

Mr. COHN. Of course, he is doing it with his eyes wide open.

Senator PASTORE. And why is he being deceived in any way when he bought his VHF set?

Mr. COHN. I assume when he bought his VHF set there was a signal in the market.

Senator PASTORE. If there were he couldn't use it without conversion.

Mr. COHN. Then the only thing that he had in mind when he bought it was the necessity of the one conversion to UHF.

Senator PASTORE. Well, he can do that, of course, and not buy up the equipment for pay as you go.

Mr. COHN. Right.

Senator PASTORE. And see the free performances that come over.

Mr. COHN. Right.

Senator PASTORE. But we are talking now about misrepresentation.

Mr. COHN. Well, during these evening hours of 7 to 10, he is going to have to pay per program, and he didn't buy his set on the theory that he would have to pay on a per-program basis.

Senator PASTORE. Then he would have bought an all-channel set in the beginning, wouldn't he, if he thought that he was going to use UHF? He could have bought an all-channel set?

Mr. COHN. Well, of course, he could have.

Senator PASTORE. But he didn't buy that. He bought VHF because that was all he wanted to see; isn't that so?

Mr. COHN. Right.

Senator PASTORE. Now, something new comes along, and he purposely converts and puts on this apparatus in order to come in on the pay-as-you-go market. You couldn't say that in that particular case there was any deception; could you?

Mr. COHN. If this were an additional service where he voluntarily is going out and doing it, and it isn't depriving him in any way of the free programs, then there wouldn't be any deception.

Mr. COX. Well, how is anyone ever going to compel one viewer, or a million viewers, to make an expenditure that he doesn't want to make?

Mr. COHN. The compulsion comes from the fact, as is developed further in the statement, that the programs, themselves, will necessarily go into subscription, pay-as-you-see television, rather than remain on free television.

Mr. COX. They will not go into subscription television unless enough set owners have voluntarily made this payment to purchase a decoder, or undertake to pay for programs, to hold out the promise of substantial revenues which would attract the programing you are talking about. Now, that choice would be made voluntarily by the public on the basis of programs offered to them, and which they could accept or reject; wouldn't that be true?

Mr. COHN. That is correct.

Mr. Cox. So that they can—even if the FCC authorizes subscription television, the public can reject it at the first instance by never buying a decoder?

Mr. COHN. That is correct.

Mr. Cox. Or having purchased a decoder, or having installed one in their home on lease, if they find that the programs are not as advertised in advance, that they do not enjoy them, or that they would rather go to the theater and see the movie, then they have that option.

Mr. COHN. That is correct, but that is all on the assumption that they want to give up the popular programs which they want to look at, which must, of necessity, in my judgment, go to pay-as-you-see television. They don't have to watch the world series. They don't have to watch Peter Pan. They don't have to watch the Rose Bowl games. Of course not. It is something like Victor Hugo's remark about the French democracy. He says it is a wonderful place. Everyone doesn't have to sleep under the bridge at night unless he wants to. It is the same thing here. People don't have to subscribe to television and pay for it. They have a choice, to pay or not to pay, but if the finest of the things go to pay-as-you-see television, then it automatically follows that there is the compulsion for them to convert their set to pay as you see.

Mr. Cox. But that going to pay-as-you-see television could have come about only after a substantial part of the public had, of its own volition, made investments and acquired viewing habits which will support it on that basis?

Mr. COHN. When you say "substantial part," it is certainly nothing like the audience which a television program of a popular nature has today. All you have to have is a small segment of that audience in order to make it profitable for the pay-as-you-see people to put it on.

As Commander MacDonald pointed out in connection with the Peter Pan program, he said isn't it a shame that that wasn't on—this is Mary Martin's Peter Pan—on pay as you see, because at 25 cents, if we only had 25 percent of the total number of people who saw it free, we would have made far more money than the network or the television stations had made by giving it away free.

You don't have to have a hundred percent of the present audience.

Mr. Cox. Well, wasn't the point Commander MacDonald was actually making that if you were in a position to make a charge of 25 cents, that the public would be offered that type of program more often than it has in the past?

Mr. COHN. I don't think that was his letter. It was an appeal to people who were interested in this particular problem to support subscription television because that is where the big money was, and that is the way to charge the public instead of giving it to them free.

Senator PASTORE. How does your association justify the showing of the professional heavyweight fights? Isn't that a form of pay as you see?

Mr. COHN. You mean on theater television?

Senator PASTORE. Yes.

Mr. COHN. No; it is not pay as you see.

Senator PASTORE. Why not?

Mr. COHN. May I explain? First, the frequencies which are used are not broadcasting frequencies—they are point-to-point communications, the same, Senator, as you pick up a telephone and talk to New York from here.

I do not have the right to listen in and to hear what is said on that telephone communication. What has happened with theater television is the frequencies which are used are rented from A. T. & T., the same as we rent a film or anything else. So right at the outset they are not frequencies that the public has a right to listen to.

Secondly, when there is a theater television fight in Washington on a particular night, the four television stations in this city continue to operate and give free programs. If one of those television stations put on a pay-as-you-see program, over the television station on that particular night, you would not have a choice of 4 free programs, you would have a choice of 3. There would be a substitution of pay as you see for free.

We are, in fact, through theater television, supplementing and giving you a fifth choice. Those, I think, are the two market distinctions.

Senator PASTORE. Well, can't these other boys who are interested in pay-as-you-see television make the same argument, that this is something you are not getting now, and you can only see it if you put the quarter in the machine, or you buy the card that is sold, and we are not interfering with anything else because, after all, your free entertainment is going on anyway?

You can slice this pretty thin at certain angles, but why isn't the principle more or less the same?

Mr. COHN. Let us take a one-station market, sir, in order to dramatize the point. If that one-station market exists, and there are a number of them, and they put on the fight, they are actually substituting, for the only service in that particular community, pay for free television, while if it is on theater television you have a choice. You either can see whatever is on the television station free, or you can go to the theater and see the fight.

Senator PASTORE. Of course, that is the extreme case, but I doubt very much that the FCC would ever tolerate that situation. I mean, for instance, you come down to the toll-road idea. You can have a toll road provided there is another way of going. It may be the hard way of going, but unless you have a private domain you cannot usurp the public domain by saying you have to pay a price to get from this point to that point, unless there is some other way of getting around to it.

Now, I don't think they would ever allow that kind of situation. That, to me, would be the worst kind of supervisory dereliction that one could imagine, if the public that has a set and only has one vehicle, or one channel, would have to subscribe to the idea that at times they would have to pay to see any performance, because otherwise there would be a blank screen. I don't think that would even be permitted.

We are talking about these situations where you already have everything that people presently have, and then you add to it something else. Now, I go along with the idea that the serious question here is to determine, in the long run, what this is going to do to free entertainment. That is the thing that concerns us all. All of these economic questions, of course, are all offshoots of the main issue. The main issue that will confront this Congress, of course, if we have to take action, is: Here is this something that will promote and add to the public interest; or is it something that is destined to be attractive in the beginning and the long-run effect of which will be to destroy free entertainment? I mean that is the main issue.

Now, we can dress it up with a lot of arguments, and that is the only reason why I questioned you on this argument of the television set, because the argument has been made here that in a market like Providence, where you have 2 VHF and 1 UHF—that UHF is presently closed in Providence. I am only pointing that out as a typical case.

Now, there are some people who think that if you had pay as you go on that particular station, you would be reviving a dead station. Now, there isn't much conversion in Rhode Island. But if people wanted to buy that kind of entertainment, and they wanted to convert in order to have it, and they wanted to buy this equipment that these gentlemen are talking about, then if that doesn't hurt the free entertainment that is presently going on on channel 12 and channel 10, then what harm is there in it? That is the main issue.

Well, your argument is that in the long run it might hurt it anyway. I can understand the argument that you are trying to make. But, fundamentally, it isn't being presented here in ridiculous arguments. These people that have come forward recognize the fact that they, too, are interest in the public interest, and, of course, they are interested in profits, too. I think about every witness that comes here is interested in profits in one way or another. But the point that we have to decide here is whether or not this thing can be done, in order not to hurt or injure anybody else, not to put other people out of business. I can understand that your apprehension here is that it might actually destroy the whole local theater market, which is a pretty well depressed market as it is. I can understand the economic plight that you are concerned about.

Well, those are the questions that we have to weigh, and those are the decisions we have to make. But I can't possibly imagine the Federal Communications Commission coming along and, in a locality where they have one station, or one channel, allowing that one channel to be devoted to pay-as-you-see and also free entertainment, because it would never go. I can understand that, but we are talking about these other situations.

Mr. Cohn. But, Senator, you had a spokesman for Zenith yesterday make the basic argument: "Let us not have any regulation at the outset. The regulations will come later. We don't know what is going to happen with this pay-as-you-see. We don't know what kind of problems are going to arise, and, therefore, neither the Commission nor Congress should interfere at this time. Just let us get a toehold in the door, and then in the years to come, if you want to regulate us, regulate us then."

I agree with you, that it would be an abominable situation in a one-station market, for pay-as-you-see television to be established; and yet apparently the plea yesterday was for no regulation at all, of any kind, to begin with.

Senator Pastore. No, no. They didn't quite go that far. What they did say yesterday, in justice to them, is this: "It may be impossible now to set a formula that would be a workable one. We admit that we must be under supervision, but you couldn't, in the beginning, set a hard and fast rule because we haven't had the experience, but this thing should be watched from day to day."

Now, they did make that admission, and I tell you very frankly, I don't know whether this is going to be allowed or not, but if it ever is, of course, it has to be very strictly supervised, in the public interest, on the part of the FCC—if only to do one thing, not to get us in the present mess that we are in on television.

Mr. Cox. Isn't it true that they do propose to the Commission a restriction in stations that would be initially authorized to provide subscription service, and that they also propose a limitation on the percentage of hours to be devoted by those stations to subscription service?

Mr. Cohn. As far as the second point is concerned, yes, and the limit, as already pointed out, allows them as a practical matter to take the hours from 7 to 10 in the evening, 7 days a week.

As far as what type of stations are concerned, there is a dispute or a difference between the three different proponents, and I don't think there is any uniformity as to what their objective is.

Senator Pastore. All right, now, you may proceed. I am sorry we had to interrupt you this way, but sometimes I think we get more definite answers when we do.

Mr. Cohn. Of course, sir.

II. PAY-AS-YOU-SEE TV WILL NOT BRING NEW PROGRAMS

In order to sell their wares, the pay-as-you-see-TV salesmen—and this really should be pay-before-you-see-television salesmen—have dangled before the public and the Commission the prospect of new programs. Without this lure they recognize that their ultimate objective—charging for the programs which the public sees free today—would become too obvious. However, the cold hard facts are that pay-as-you-see TV cannot and will not provide, to any appreciable extent, programing that is not now available on free television and in the process of providing, perhaps, a new program here and there it will end up by forcing the public to pay for the programs which they see free today.

The free programing on television during the past year—the demonstrated record of what the industry has, in fact, done, and not promises for the future is the most effective reply to the glib future promises of these salesmen. There is nothing which they can promise which is not already there. Tens of millions of people in these United States saw Richard III premiered over television even prior to its first showing in the motion-picture theater; they saw Katherine Cornell make her television debut in the theater classic The Barretts of Wimpole Street.

Senator Pastore. Was that propaganda against pay-as-you-go television, the timing of this? Isn't that the first time in the history of the theater business that anything like this was done?

Mr. Cohn. No, sir.

Senator Pastore. All right, to get that on the record—because I have heard that accusation made—would you tell us the other times?

Mr. Cohn. I will be glad to supply memoradums on that.[1]

[1] The information was furnished by Mr. Cohn in a letter dated May 11, 1956, which was ordered inserted in the record on May 15, 1956. It will be found in the appendix to this volume at p. 1467.

Mr. Cox. Isn't it true that the reason these are so worthy of comment is that they are above the average level of regular performance on television?

Mr. COHN. You are talking about an industry, Mr. Cox, which has really reached its bloom in a period of 4 or 5 years, and I think it is one of the great things that has happened in this country that an industry in its infancy, just started literally yesterday, has been able in such a short space of time to do the things which it is presently doing.

Of course, 8, 10, or 12 years ago you didn't have television programing like this; but in such a short space of time to have the magnificent programing which we are having today, with the stars which we are having today, the type of programing, is one of the greatest things which is happening in this country.

Mr. Cox. Was Richard III carried by the network at a loss?

Mr. COHN. I am not prepared to testify on that.

Mr. Cox. Hasn't it been so reported in the press?

Mr. COHN. I didn't see any such report on that, sir.

You saw Mary Martin in Peter Pan; The Sadler's Wells Ballet; discussion and analysis of the farm and Middle East problems on See It Now. There was hardly a sport that was not regularly televised; not only such popular sports as baseball, football, and golf, but also sports which do not appeal to large audiences, tennis, billiards, ping-pong, track, swimming, and hockey. As a matter of fact, the major problem that every football fan faced on January 1 was the dilemma of which one of the multitude of bowl games to watch. It was a year when a movie version of the television play Marty was voted the best motion picture of the year. With 1 or 2 minor exceptions, the larger motion-picture-production companies are making available their product for television programing.

Mr. Cox. Today. That is largely pre-1948 film, isn't it?

Mr. COHN. Yes. In addition to that, I should add that they are producing special types of film, specially designed for television production and television presentation.

Mr. Cox. Those, however, are customarily half-hour programs of a kind that, at least at the outset, subscription proponents do not propose to offer?

Mr. COHN. I don't know whether the subscription television proponents propose to offer it or not.

Senator PASTORE. Mr. Cohn, don't answer this question if you don't want to, I won't hold it against you. Has television actually hurt your industry? I don't mean to be funny with this question. I hoped that the people in the audience wouldn't be snickering or laughing at these questions. We are trying to formulate a record here.

There are divergent points of view, and they are all honest men that come here that have an interest in legislation, and we don't want anyone ridiculed or chuckled at just because he doesn't represent our particular point of view. It is our job here to be impartial and to be fair. If we ask a question we don't ask it to be frivolous. We are trying to compile a record, and I am very serious when I ask you the question: Has television, in and of itself, hurt the motion picture industry in the exhibitor point of view?

Mr. COHN. The answer to the question, I think, is yes; but may I say a few words on that?

Senator PASTORE. Yes; go ahead.

Mr. COHN. The greatest problem that the motion picture exhibitionist faces today is a shortage of product. That shortage of product arises from the fact that the producers of film, themselves, do not produce a sufficient amount of film whereby exhibitors have the product which they can show to the public and make a profit from it.

Of course, every amusement is in competition with a different amusement. There are all kinds of industries which are competing for leisure time, and certainly television, just as baseball or football or any other thing, competes with the motion picture theater.

In one sense television, free television, has helped the motion picture, and the picture Marty that I referred to here is a perfect illustration. I think there is more of a marriage today between the television and motion picture industry than there has ever been before, and I think that marriage will continue to progress, in terms of artists, stars, writers, and all that. But as long as there has been established a competing medium; namely, television, it is inevitable that there is a competition for leisure time there.

Does that answer your question, sir?

Senator PASTORE. Yes; it does. In other words, what you are saying is that even though the quality of picture that you may show on your screen may be much superior to a performance that one could see on television in his home, you have two elements—the first, of course, is the fact that the individual remains in the comfort of his home to see it at his convenience, and, second, the fact that he is seeing it free?

Mr. COHN. Yes; and, on the other hand, as I pointed out a moment ago, the enjoyment of such a thing as a motion-picture film in the theater—just as any other thing that you go to a designated place to view, down at Constitution Hall, or the National Theater here in Washington—requires the undivided attention of the audience, and it is built upon the concept that it will have the undivided attention of the audience, and not upon either a 10-, 20-, or 21-inch screen, but upon a whole panoramic view of the events taking place. Consequently, although, of course, there is a tremendous enjoyment in watching free television——

Senator PASTORE. You know it makes me laugh when you say that. You have children of your own?

Mr. COHN. I do.

Senator PASTORE. I can't even breathe in my house when Cheyenne is on. [Laughter.] You are talking about undivided attention. I get your point, though. You may proceed.

Mr. COHN. During this year telecasts of the two political conventions will be seen on a free basis, just as they were 4 years ago. There is no reason to believe Ed Sullivan, I Love Lucy, Roy Rogers, Disneyland, Omnibus, and Jackie Gleason will not continue to appear throughout the year on a free basis—except for the fact that insofar as Jackie Gleason is concerned he has already publicly stated that he would switch to pay-as-you-see television programing if it were authorized since a television turnstile would provide him with greater income.

Mr. COX. Well, he is free to take his talents to any other medium. He can make a movie, unless he is bound by contract not to, or he could appear in night clubs?

Mr. COHN. That is correct.

Mr. COX. And he could, in fact, appear on both sponsored and subscription television, if he were not contractually prevented from doing so.

Mr. COHN. But I don't think he would want to appear on sponsored and pay-as-you-see television at the same time, because obviously if he wanted to get the greatest amount of income, the greatest amount would be to have the captive audience put the quarter or dollar in the slot for each one of his programs.

Senator PASTORE. What do you think of the question of pay-as-you-see television contesting with the advertisers on free television—as to what the situation would be there for the better programs. Who do you think would be able to outbid the other?

Mr. COHN. I think pay-as-you-see will be able to outbid. There is very little question in my mind about it. They are talking about wanting $3 million from the Gillette Co. for the world series. I think $3 million is a drop in the bucket compared to what you can get on pay-as-you-see television for the world series.

Senator PASTORE. Do you think there is any way of controlling that?

Mr. COHN. Yes, sir; by not establishing pay-as-you-see television. [Laughter.]

Mr. COX. Well, if you do not establish it, isn't there a reasonable chance, at least in the view stated by Governor Johnson in his statement filed yesterday, that perhaps you will not be able to see it on television at all—that the only way that you can see it will be either to go to the park or to go to a theater on closed circuit?

Mr. COHN. That is for the minor leagues he was talking about.

Senator PASTORE. Yes.

Mr. COX. Well, isn't there also a possibility that Gillette will not pay $3 million for the worlds' series?

Mr. COHN. That is a possibility.

Mr. COX. And that no one else will pay it?

Mr. COHN. That is a possibility.

Mr. COX. Then you have the choice between the major leagues reducing the price to a point which they regard as perhaps uneconomic or the program not being broadcast at all.

Mr. COHN. I don't understand your point of it not being economic. It would appear to me that whether they got $1 million or $3 million, it would be economic in terms that they would be getting something which they wouldn't otherwise get.

Mr. COX. Unless they got a sellout for this event, then anything they received would be economic.

Mr. COHN. Yes; it is not a question of economics, it is a question of what they would like to get. What they would like to get is far more than they are getting now for which I don't blame them—but not at the expense of the public.

Senator PASTORE. Do you think this could be controlled in the public interest on the allocation of time; I mean that you could only use it so much, at certain hours in the evening, and so much at certain hours during the day, to make sure that you have an overabundance of free time and that there couldn't be an infringement, or a raid, upon the best kind of programs because you wouldn't have the time to show them?

Mr. COHN. That certainly would be cutting the baby in half, if I might use the expression, Senator, but it is our contention that once the camel gets his nose under the tent here——

Senator PASTORE. Well, without good supervision, of course, much of this boils down to that. Of course, this could be a runaway thing, if it were just let go without some kind of supervision. My personal feeling—I am not saying it is going to happen, I don't say it isn't going to happen, I know nothing about the answer that the Congress of the United States will ultimately reach—but I do know this: If it ever comes about, it will have to be very strictly supervised to see that the public which is receiving free entertainment isn't injured in that respect.

Mr. COHN. Right.

Senator PASTORE. You can't disturb that. That even would be politically unwise.

Mr. COHN. We are told that pay-as-you-see TV will make Broadway plays available to the home viewer. This is an illusion. There are actually only an isolated few Broadway plays suitable for the living room. A moment's thought and recollection of some of the words or songs or scenes in Damn Yankee—which, by the way, Mr. Poller referred to yesterday—Cat on a Hot Tin Roof or Tea and Sympathy should make this abundantly clear.

This is true not only in terms of the type of plays but, also, in the basic differences between the two media—the stage and the television screen. It is obvious that television cameras could not simply walk in and photograph a stage production. If the play is to be of interest to the home screen viewer, it must be restaged and rewritten to conform to the different medium. Actually, the promise of Broadway plays is, at best, a promise of dramatic programs—which is not a particularly new or novel type of television programing.

The sudden interest of Telemeter and Skiatron—both of which, through affiliated companies, have been involved in motion-picture production—in presenting ballets, symphonies, and other cultural fare for isolated minority groups over pay-as-you-see does not bear analysis. The same reasons that force them today to search for mass appeal products, will compel them to present pay-as-you-see programs that have the largest and not the smallest mass appeal: Economics. They argue that only through a home box office can television provide the kind of programing which the majority does not appear to desire but which a significant portion of the minority of the population appears to want.

This is just not so. If 10,000 people were willing to pay $2 a person for an algebra lesson—and I know that Professor Landis referred to it now as differential calculus—and a million people were willing to pay 50 cents a person for Perry Como, the audience would be shown Perry Como and not taught algebra. This is particularly true because of the fact that most of the costs of subscription television—the cost of manufacturing, installing, and servicing the decoder attached to the home set, and the cost of converting the television station so that it can send out an undecipherable signal—are fixed costs.

As the diversity and quality of the types of television programing have continued to expand, the pay-as-you-see TV proponents have continued to shift their ground and now they plead on behalf of that segment of the public which would pay a dollar a night to be taught algebra or the fundamentals of astronomy. There is no question but what such programing would fulfill the isolated needs of a minute minority. I am not persuaded, however, that pay-as-you-see TV should be established in order to supply the needs of these isolated and minute minorities.

In the first place, it is inconceivable to me that the proponents, if, as, and when pay-as-you-see TV is established, will desire to serve such relatively insignificant minority tastes when Jackie Gleason and the baseball owners will be clamoring for the right to present their products over the system. I assume that these three proponents, as any other businessman would, will consistently seek that type of programing which will have the greatest—and not the least—public appeal. We have suggested, in our comments to the Commission, a formula, to which I have already referred in the course of my previous comments here, whereby it would preclude, if pay-as-you-see television is authorized, the taking away of the popular programs from free television, or some kind of system which would enforce a policy where pay-as-you-see would be designed only for minority tastes. As might be expected, the suggestion has been met with a deafening silence.

Even assuming that the proponents, in fact, ultimately program in order to appeal to minority tastes, it must be borne in mind, throughout this hearing, that a television station can present only 1 program at 1 time. No matter how many times the proponents repeat the fact that their plans envisage supplementing existing television programs, the cold, hard fact remains that whatever program they would put on an existing station today would have to be a substitute of what appears on that particular station today. If such programs are to be put on, in choice evening hours, it is axiomatic that such a program would displace one of the far more popular programs which the public views today.

The answer of the proponents to this cold factual situation is that their programing would enable new stations to arise in isolated communities which do not have a television station today. This, once again, is the glib talk of the salesmen. They have no interest in establishing or providing a service to a pay-as-you-see television station in Goldfield, Nev., a city of less than a thousand people, where the Commission has allocated channel 5, a VHF channel, and no one has applied for it. If they were really concerned with establishing additional television service they would voluntarily take a position which would prohibit them from programing in the first 100 markets in the United States over existing television facilities.

I want to close this portion of the comments which I have here with this quotation from Elmo Roper, in an article in the Saturday Review of Literature——

Senator Pastore. But you want this whole statement in the record exactly as it appears in your prepared statement.

Mr. Cohn. That is correct, sir.

Senator Pastore. All right.

Mr. Cohn. He was commenting on the fact that the Saturday Review of Literature had taken a poll and shown the majority, or substantial portion, of its readers who were interested in pay-as-you-see television programing based upon the theory that they would have literary things on the programing for pay-as-you-see and things which would appeal to those minority tastes, and Elmo Roper commented, and I think it is a great statement:

It is a truism that an important function of the democratic system is to accommodate minority needs. However, just as integral a part is to make certain that in meeting the needs of the more articulate, more privileged minority we do not risk the chance of the majority to find cultural outlets within the economic limits they can afford.

I also want to comment on the fact, as set forth on page 8 of the statement, that using our calculations, Senator, which are predicated upon the Zenith estimate of costs per program, and the average time spent by a family watching programing, and assuming that the family will continue watching pay programs at the present rate that they are watching free programs, the average family would spend $1,156 per year. You should bear in mind that 60 percent of the television sets which have been purchased were purchased by families with an income of less than $5,000 per year.

Mr. Cox. That calculation is based as you indicate upon the assumption that free television is completely eliminated.

Mr. Cohn. That is correct. I am saying that using the Zenith figures what they estimated the cost to the public would be for pay-as-you-see television and assuming that the public continues to watch pay-as-you-see television at the same rate the cost will be $1,156 per year.

Mr. Cox. That is based upon an assumption that the FCC would have undertaken no regulation upon maximum pay programing.

Mr. Cohn. That is correct. Or it also is true that perhaps Zenith would be able to demonstrate to the Commission that those figures which they had supplied are fair and reasonable and therefore, if that is true, this figure would still be valid.

Mr. Cox. Now, this $1 figure per 90-minute program, which you use as your basis for determining the 66-cents-an-hour multiple—was that their estimate as to the cost of all of their programs? Hasn't there been an indication that they thought there would be variation—that some programs could be offered at 10 cents, some at a quarter, depending primarily upon the number of viewers who could be attracted?

Mr. Cohn. These figures which we used were the figures which Zenith supplied the Commission in connection with its Chicago experimentation.

Mr. Cox. That was primarily the showing of feature films; wasn't it?

Mr. Cohn. That is correct.

Mr. Cox. For other programs they might have lower costs, or they might be able to achieve larger audiences which would make other figures applicable?

Mr. Cohn. Yes, and they might have higher costs, also.

Mr. Cox. Yes, in the case of opera, and so forth.

Mr. Cohn. Yes, I would also like to point out that 60 percent of the sets that exist in the United States today were bought on the installment plan.

III. FEE TV WILL KILL FREE TV

The authorization of pay-as-you-see television on broadcast frequencies is the creation of a competitor to free television that can and will outbid it for the best of its talent and program material and, consequently for audiences and ultimately revenue. The bulk of the programing which pay TV will present must of necessity be the very kind of entertainment which has found favor on free television.

The potentialities of the raid on free television has already become apparent; organized baseball and other sports' promoters are avid pay-TV fans. Their programs are currently shown on television, but they have been frank enough to state publicly that they could make far larger sums if the public were required to pay to see their sporting events. And, frankly, one cannot really blame them—if the problem is viewed without any regard for the public interest. Why should they depend on the paltry hundreds of thousands of dollars from Gillette for the sponsorship of the world series, when they can be guaranteed millions if 30 million people are required to pay a dollar for each telecast of the world series, if they want to see it.

Mr. Cox. Doesn't the public have an interest in the survival of organized sport? You are familiar with the statement of Governor Johnson?

Mr. Cohn. I am, sir.

Mr. Cox. Wouldn't you feel that perhaps a necessary compromise would have to be reached here where, in order to have these sports available to them in their homes, they would have to make payments, part of which could be channeled into the hands of the promoters of the sports simply to guarantee their continued existence?

Mr. Cohn. Not necessarily. I think, with due respect to Senator Johnson's statement, that the thing has worked out in a way today where, through a series of adjustments and compromises, it is not quite as dire as the prediction that the Senator has made. I recognize that there are problems created by free television for the baseball industry, and yet we find, as far as the major leagues are concerned, attendance, with Mr. Poller talking about the attendance in Milwaukee reaching new heights, some dropoff in the normal question of the competition for leisure hours, and yet the baseball clubs are making money. I can't blame them for wanting to make more money and prosper even more under pay-as-you-see television, but I don't think it is in the public interest, particularly with the dangers which are inherent in the pay-as-you-see television as far as the total impact upon the interest of the public.

Sports are but an illustration. Every program that has a proven audience appeal is in danger of being subverted to the coinbox. Sports programs merely illustrate the fact that any program which is now a success on television is suitable for and must inevitably—by the very law of economics—be used by pay-as-you-see television.

Subscription television and free television are not only basically competitive, but the competition is unequal and the two cannot both survive side by side. The huge revenue potential of pay-as-you-see television is multiplied with every successful subscription program. Successful pay-as-you-see TV would deprive free television of program resources, of audiences, and, consequently, of income; and the effects will pyramid. Not only will subscription television be able to outbid free television for programing by being able to offer more money, but, also, diminished audiences for free television will make less money available from the sponsors.

Senator, I realized when I sat down that there were others who also were to appear and I don't want to appear to be hogging the light in terms of other people from out of own here who have been scheduled to appear.

Senator PASTORE. We will put the entire statement in the record and I would appreciate very much if you would summarize from now until the conclusion of your statement.

Mr. COHN. I was going to make that suggestion to you, Senator.

Senator PASTORE. All right, we appreciate that.

Mr. COHN. In the fourth portion of the statement I take up the question, and I think demonstrate that pay-to-see television will not solve the UHF problem. First of all, if a person has a converter today which has been converted to UHF he is now required to buy, if it is either Skiatron or Telemeter, a new converter, or lease from Zenith a converter, in order to see pay-as-you-see. He is going to have to convert his converter, so to speak. In the comments which have been filed with the Commission, and I keep referring back to those, Senator, comments which were filed prior to the time that the UHF problem became as critical as it is today, the proponents of pay-as-you-see television laid their principal emphasis on the point that they wanted to establish their system in the major markets in the United States—and when I say major, I mean the top 5 or 10. I suggest to you that it is because the problem of UHF is a critical problem today, and I am familiar with it as I am sure you are, and you have demonstrated your interest in it, Senator—but it is because it has that appeal today and needs a solution, that they are today talking about subscription television as being the answer for the solution of the UHF problem.

They want the largest audiences and they want the audiences which they can get with the least expenditure as far as the public is concerned, and those audiences are in the major markets of the United States which have VHF stations. And I repeat once again, all you need do is to look back at the public statements of all of these proponents, and you will find repeatedly—not during the past 3 or 4 months, but I am talking about 1953 and 1954—the statements that they want subscription television on VHF stations in the major markets in the United States.

I want to summarize briefly our contention that pay-to-see television will, in fact, establish a monopolistic situation in the broadcast industry which is staggering in its scope. As of today, a telecaster does not have to have an RCA transmitter to transmit an NBC program, nor does a viewer have to have an RCA receiving set in order to receive an NBC program. With pay-as-you-see television—and assuming for the sake of the illustration, it is the Zenith proposal which is adopted—Zenith will manufacture the equipment, which will code, encode, make the picture scrambled for the telecaster. Zenith will manufacture this equipment which you have to lease and put on your set in order to get what program, the program that is supplied to the station by TECO—Television Entertainment Co., which is an affiliated company of Zenith. Now, there have been no comments, either on Monday or Tuesday, about where TECO fits into this whole picture. But if you will look at the corporation of TECO and its relationship to Zenith; you will find that TECO was organized by the stockholders of Zenith, and the principal officers and stockholders and directors are all interrelated between the two, and according to the stock offering agreement of TECO, and its publicity—and it is a matter of common knowledge—it will be TECO who will set the price which the public will pay for its pay-as-you-see television.

There was a statement made here yesterday and on Monday, by representatives of the various companies, that the telecaster would set the price that is to be paid by the public. That is not what the agreement between TECO and Zenith provides for. It provides that TECO, being an affiliated company of Zenith, fixes the prices that the public will have to pay for its programs.

Senator PASTORE. Is that an existing written agreement?

Mr. COHN. Yes, sir.

Senator PASTORE. Do you have it there?

Mr. COHN. I have the statement—the offering of the TECO stock to the Zenith stockholders—where for every 5 shares of Zenith stock, you are permitted to buy 1 share of TECO stock, TECO having been organized by the officers of Zenith Corp. And in stating the purposes, and how the two organizations are to operate, it is clearly set forth that one of the obligations of TECO will be, "Fixing of the fees to be charged users of television service who subscribe for programs broadcast by means of Phonevision"—Phonevision being the type of pay-as-you-see.

Mr. COX. Would that be the fee for the decoder or the fee for the program?

Mr. COHN. I assume it is the program, because they talk about the program throughout this, and in the representations to the Commission there is no hiding of the rọle of TECO. As a matter of fact, TECO is a party in the proceedings before the Commission, but what you have here in my judgment——

Senator PASTORE. But that agreement, of course, is before the Commission.

Mr. COHN. The agreement, itself, is not. It is before the Securities and Exchange Commission, and approval of the Securities and Exchange Commission was received.

Senator PASTORE. But you are familiar with the proceedings that took place before the Commission on this matter?

Mr. COHN. Yes, sir.

Senator PASTORE. Do you have any knowledge as to whether or not that agreement was introduced?

Mr. COHN. I have no recollection. I do not think that the agreement itself was introduced. I don't think it was called for. I think description of the functioning between the two corporations was described in the Zenith and TECO pleadings.

Senator PASTORE. Without commenting on that, inasmuch as you raised it and I suppose there would be some rebuttal to it, would you mind if we placed it in the record, in our files, and then gave it back to you?

Mr. COHN. Not at all. It is a public document on file with the Securities and Exchange Commission.

Senator PASTORE. If you don't mind leaving it, we would like to have it referred to in our record because that will be discussed by people in interest.[2]

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[2] The document was furnished by Mr. Cohn on April 27, 1956, and ordered inserted in the record at that time. It is printed at p. 1450 below.

Mr. COHN. I don't mean to imply, in what I said, that this was not a matter of public information and that Zenith has hidden this in any kind of way.

Senator PASTORE. No; we understand the point that you are making.

Mr. COHN. But the only point I am making is in terms of a perpendicular monopoly. The proponents will manufacture and sell, or lease, the encoding and decoding equipment, and in addition to that they also will provide the programing—be the agent for providing the programing—to the telecaster and set the rate at which the public will pay for the programs.

As far as Skiatron is concerned, it also suggested in its pleadings before the Commission that there be only 1 of the 3 systems for any one city, which would mean that you would not only have the perpendicular kind of monopoly that I referred to, but you would have an exclusivity kind of monopoly where there wouldn't be the competition of the 3 systems between one another in any one locality. I assume, Senator, that the entire statement will be in the record.

Senator PASTORE. The entire statement will be made a part of the record, including the part where you discuss the legal aspect of this. We want to thank you very much, Mr. Cohn, for appearing here.

(The remainder of Mr. Cohn's prepared statement, including one portion which was touched on but not completely covered, follows:)

Because the proponents of pay-to-see TV have not released any definite figures which would indicate what they expect to charge the public there is no way of estimating, with exactitude, how much the public will have to pay to see their programs. However, utilizing the Zenith estimates of probable average price per program, we have calculated that it would cost the average viewer $1,156 a year to continue to watch television at his present rate of just under 5 hours per day. That figure becomes very significant when we remember that 60 percent of the television sets now in the hands of the public were purchased by families with annual income of less than $5,000, and that 60 percent of 40 million sets were bought on the installment plan. As of April 1955 the unpaid balance on sets which were sold on the installment plan was $700 million.

Television has, in fact, become the primary entertainment and cultural medium for the lower income groups, and it is precisely those groups that will be most directly affected by any pay-to-see television scheme. In this connection I would like to quote from an article by Elmo Roper in the August 14, 1955, issue of the Saturday Review of Literature where he was commenting on the fact that the majority of the readers of that literary magazine favored pay-to-see TV:

"It is a truism that an important function of the democratic system is to accommodate minority needs. However, just as integral a part is to make certain that in meeting the needs of the more articulate, more privileged minority we do not risk the chance of the majority to find cultural outlets within the economic limits they can afford."

The position of the major television networks makes this point clear. While now opposing any form of pay-to-see TV, they have stated to the Commission that the two systems cannot live side by side and, if the Commission authorizes any type of pay-to-see TV, they will be forced, in the long run, to abandon their present system of programing and adopt the pay-to-see system.

As I previously pointed out, the consumer public has invested over $10 billion in television receiving sets, antenna, and repairs on the representation of the Government and manufacturers that there would be no charge for the programs it would receive. If the public were ever told that they will have to pay for their television programs, the Boston Tea Party will fade into an insignificant private skirmish.

During the past several months the principal thrust of the proponents has been the cry: "Give us a chance; let us experiment; what harm can there be in experimentation? Let the public decide." Such a plea generally strikes a responsible chord in America, because we are a nation of pioneers and experimenters.

However, the proponents do not really desire to be pioneers. What they desire to do is to take an established market which was created by the pioneering efforts of others—television stations, networks, and receiving-set manufacturers—and to convert this market to their own selfish purposes. Their plea is tantamount to someone crying "experimentation" and "pioneering" in order to attempt to sell Congress an idea whereby he would be enabled to charge for the use of the existing drinking fountains in Rock Creek Park or the Smithsonian Museum.

The proponents have compared themselves to the Wright brothers. I think the analogy is misplaced. The Wright brothers did, in fact, invent something new and gave us an additional—and not a substitute—means of transportation. They did not come up with a system whereby they would install and control turnstiles on all the highways and roads.

If the proponents were really sincere, what they ought to do is to inaugurate a type of community antenna system whereby additional channels and additional programing would be made available to the public. Here they could test out whether the public would pay to see the allegedly new type of programing which they proposed.

The danger of the type of experimentation which the proponents propose lies in the basic fact that free and fee television cannot exist side by side and if the experimentation works, then free television is doomed. It is one thing to experiment and to pioneer where the public benefits; it is another thing to experiment in a field where, if the experiment works, the public must suffer. It is at this very point that the Government has an obligation to preclude such type of experimentation.

IV. PAY-TO-SEE TV WILL NOT SOLVE THE UHF PROBLEM

As this committee knows only too well, many of the television stations in the UHF band are now facing a severe crisis. Obviously some action must be taken and taken immediately. Pay-to-see TV, however, is not the answer.

At the heart of the UHF problem lies the fact that most television receivers are capable of receiving only VHF channels. This has meant that in order to receive UHF transmission television set owners have had to purchase a converter—a device to enable him to pick up the signal of the UHF station.

Pay-as-you-see TV would compound the conversion problem; they propose to solve the UHF problem by adding 2 rather than 1 converter to each receiving set.

In order for a set owner to view a pay-to-see television program, he must install a new gadget: A decorder, so that upon payment of the required fee the television set will make a complete picture out of what had been a jumbled mess. We are now asked to believe that by superimposing the conversion problems of pay-to-see television upon the conversion problems of UHF stations, we can solve the UHF conversion problem.

Zenith, the most vocal of the pay-to-see television proponents, until recently, also looked askance at any proposal which would limit the system to UHF stations. On November 29, 1954, Zenith (and its subsidiary, TECO) filed a petition with the Federal Communications Commission entitled "Joint Substitute Petition Concerning Subscription Television," requesting the Commission to authorize subscription television. At pages 11–12 of that petition it stated:

> Petitioners do not suggest restricting subscription television to either UHF or VHF and in fact believe that proposals that subscription television be limited to UHF are impractical and dangerous. We believe that subscription television should be made available, without discrimination, to all television broadcasters, UHF and VHF * * *
>
> * * * * * * *
>
> Subscription television is even more of an infant than UHF. Like UHF it will also have the tremendous problem of set conversion * * * It appears undesirable to compound the problems of the embryonic subscription television by adding the conversion problems of UHF * * *

The substance of these remarks was repeated by Zenith in the comments which it filed with the Commission on June 9, 1955. The current emphasis on pay-to-see television as the panacea for the problems now facing UHF stations is an attempt by the proponents of subscription television to capitalize, for their own private benefit, upon the public interest in and sympathy with these current problems. And, even assuming that pay-to-see TV would aid some UHF broadcasters, that aid must be weighed on the scales of public interest. The mere fact that some book publishers lose money each year is no reason why a pay-to-read system should be inaugurated by public libraries.

As Zenith has admitted, in its pleadings before the Commission, the proponents of pay-to-see TV will be primarily interested in the larger markets in the United States. In order to stimulate the flow of investment capital, subscription television must demonstrate its profit potential, and this means the establishment of the system where there is the largest audience at the lowest per capita cost—New York, Chicago, San Francisco, Los Angeles. The profit and loss statements from New York and the other top markets will provide the capital for the subsequent expansion of the system.

However, there is actually very little, if any, UHF problem in large metropolitan areas such as New York, Los Angeles, and San Francisco. That Zenith is aware of this is attested to by the fact that it has not, in its recent pleading filed before the Commission, suggested that subscription television actually be limited to UHF stations only, but rather phrased its request in terms of making subscription television available to those stations that can demonstrate a need for additional revenues.

Ostensibly, this limitation is intended to cover the UHF problem. However, when read in the light of Zenith's prior statements in connection with UHF and with Zenith's analyses of how it expects subscription television to develop, it is apparent that the language is well conceived. The purpose is to insure to Zenith the availability of the major metropolitan areas, most of which do not have existing UHF stations. At any given time, at least 1 of the 7 VHF stations in New York will be able to demonstrate that under the rather loose standards suggested by Zenith, it has a need for additional revenue.

The subscription television proponents have not indicated how long it would take to establish a system of toll television. It does appear, however, that they expect it will take at least a year to develop a system, in even a trial market. It is inconceivable that a nationwide system of subscription television could be developed in less than 3 to 5 years. The UHF problem needs an answer now. To refrain from taking any positive action now to help the UHF, on the theory that subscription television will solve the problem in the future, is to do another injustice to the UHF.

But even assuming that pay-to-see TV offered a possible solution to the current UHF problem, this advantage must be weighed against the disadvantages to the public at large. It will not be sufficient to tell a Detroit baseball fan that the reason he has to pay to see the world series on television is because Congress or the Commission wanted to help a man in Illinois who owned a UHF television station.

V. PAY-TO-SEE TV AND MONOPOLY

The advocates of pay-to-see TV have, time to time, intimated or suggested that the adoption of their systems affords the answer to certain alleged monopolistic industry practices. This argument—just as the UHF argument—is another attempt to offer a panacea—at the expense of the public—for whatever industry problems (real or imagined) do exist. Parenthetically, it should be noted that Zenith has not only offered its system as the panacea of all industry problems, but has also argued that its system would increase newspaper circulation and display advertising, increase magazine advertising, increase attendance at motion-picture theaters, and make the operation of radio stations more profitable.

The proponents of pay-to-see TV envisage a plan of operation which cannot help but result in the worst type of monoply. Skiatron proposes that the Commission adopt specific standards under which a single pay-equipment organization might reasonably expect to develop its business in a community, unhindered by rivalry from other systems. The determination of what programs will be transmitted will be made by Skiatron. Skiatron will establish the price to be charged to the public and the basis for compensating the broadcast stations for transmitting programs. The monopolistic pattern is clear.

Zenith's proposal is essentially the same, except that it would permit more than one system to be utilized. Paramount, the parent of the third subscription-television proponent, International Telemeter, has infused its offspring with more caution. The memories of the various antitrust prosecutions apparently are still sharp—and so Telemeter has been more noncommittal as to the role it expects to play if pay-to-see TV is authorized.

Most important of all, however, is the fact that nowhere have any of the proponents even suggested that there be any regulation of the amount which they—and their allied television stations—will be able to charge the public. It is one thing for stations to be free to charge commercial advertisers what the traffic will bear; it is altogether another thing for stations to charge the viewing public what the traffic will bear in order to see the telecast of political conventions, the World Series, Jackie Gleason, and Peter Pan, which is just exactly what the proponents propose to do.

VI. THE COMMUNICATIONS ACT AND PAY-TO-SEE TV

There is a very serious question as to (*a*) whether or not the Commission has the authority under the Communications Act of 1934, as amended, to permit subscription television; and (*b*) assuming (1) that some form of subscription television were found to be in the public interest; and (2) that the present Communications Act could be tortured into a construction that would permit the authorization of subscription television, whether or not that statute is adequate to insure that the public interest would be protected and continuously served by the authorization of subscription television.

In our written comments before the Commission, I think we have demonstrated that the Commission does not now have the authority to permit subscription television. The act is clearly devoid of any specific authorization. The Communications Act contemplates only two types of commercial usages—a "broadcast" use and a "common-carrier" use. Subscription television is neither and, yet, both. Broadcasting is, by definition, a service for all the public, and not for that segment of the public that can afford to pay. Common carriage has become a word of art to describe such operation as the American Telephone Co. and Western Union. A common carrier is one who provides a facility, rather than a program service which is transmitted over the facility.

It is our position that this act which was passed and amended in the light of the existing broadcast industry—an advertiser-supported industry—cannot and should not be construed to permit the authorization of a new concept of broadcasting, which clearly could not have been in the minds of the legislators at the time the act was passed and amended.

The proponents of subscription television look for support to the legislative history, and in this case the legislative history goes back to 1927. What they find is pathetic. We are shown words of individual legislators taken completely out of context. I do not intend to duplicate here what we did in the formal pleadings in this matter filed with the Commission; namely, to reinsert the words back into their historical context. I can only say to you, gentlemen, that any attempt to contort a statute to permit the usurpation of authoriy in an area that was clearly not within the contemplation of Congress, that depends upon ancient history of a dubious sort—individual remarks of Congressmen and Senators on the floor of the House and Senate—is pathetically weak.

I suggest to you that a regulatory statute has meaning only in light of the structure of the industry that it was intended to regulate and that, in the absence of specific authority, the Commission does not have the power to authorize subscription television.

Even assuming for a moment that the statute could be contorted to permit a subscription-television authorization, is the present Communications Act the proper vehicle for this purpose? Is this statute, enacted to regulate a broadcast industry which provided a service without charge to the public, a sufficient basis to insure that the public interest will be served by a broadcast industry that depends for its support upon a direct charge to the public and involves a direct and personal contact with the home viewer?

Let me mention just one problem. The Communications Act required that the Commission give detailed and careful scrutiny to the qualifications of prospective licensees. In the present industry, the product, and not the broadcaster itself, comes into your living room. Subscription television contemplates the issuing of franchises in every community for the installation and maintaining of its equipment, the billing to and collection from listeners, and the making of all the necessary local arrangements for the transmission of programs. This is a direct and immediate contact with the broadcaster and the home viewer. Yet, although the broadcaster is licensed by the Commission, the Communications Act does not appear to permit or require the licensing of these franchise dealers.

What about the rates that the home viewer will be charged? Should the subscription-television promoter be able to levy whatever toll he desires? Every enterprise that I can think of that utilizes the public domain for private profit and involves a direct charge to the listener carries with its operating privileges a duty to charge reasonable rates, and this duty is enforced by statutory rate regulation. I suggest to you that it is doubtful whether the Commission now has the authority to regulate television subscription rates. The Communications Act does not have a clear answer. In fact, these questions are questions of basic policy which it is the function of this Congress, the elected representatives of the people, to determine, rather than properly within the administrative discretion of the Commission. If there is ever to be any kind of a subscription-television operation, that determination should be made by the Congress, and the Congress should provide the administrative agency with sufficient powers to enforce the congressional mandate. Legislation is required. The present Communications Act is insufficient for this purpose.

Senator PASTORE. Are you through?

Mr. COHN. I am.

Mr. COX. You indicated, Mr. Cohn, that you felt subscription would be forced to make a mass appeal for audiences and, in order to deliver on this proposal, that they could not appeal to specialized audiences by providing entertainment which would not have the same breadth of appeal as free television. Now, that, of course, is something that only time could demonstrate. Isn't it true that it would be mechanically possible, and economically possible, for a subscription programer to provide a program of more limited appeal and still make the same return by increasing the charge made for the program, as long as the public was willing to pay for it?

Mr. COHN. That is theoretically possible, but as a practical matter I still suggest that the astute businessmen who operate the three companies will always seek the greatest amount of money—for which I don't blame them—on their programing, and inevitably it comes back to the most popular programing.

Mr. COX. The point I am making is this: If this is possible, this is different from sponsored programs, because there the sponsor is impelled by economics to offer the mass-appeal type of program.

Mr. COHN. That is generally true. Of course, all I was going to say is that you have programs such as Omnibus; you have programs which don't necessarily appeal to the greatest mass of audience, which are a part of the operations of every free television station that we have today, both those associated with networks where they get either their network programs of that type, or those not associated with networks which do programing of their own of that type—and, of course, those associated with networks do some of their own of that type, too.

Mr. Cox. You make the point that only one program can be offered by a particular station at one time and that therefore, a subscription program will be a substitution for, rather than an addition to, existing programing. The point I would like to ask is: What is the situation where a station now on the air, and therefore offering programs, is in financial difficulties and perhaps going to leave the air? Now, if it could stay on by raising revenue from subscription service, where it has been unable to get it through advertising support, that programing would be in addition to what the public would eventually get if the present economic forces are permitted to play.

Mr. Cohn. That is obviously true, in the same sense as if you were going to establish a new station and that new station was going to be pay-as-you-see television; it would be an additional service. But you should bear in mind and take cognizance of the fact of what kind of programing is this new station going to put on, which raises in turn the question of whether or not we might be creating a situation whereby the establishment of a new station which does not exist today, or is in financial trouble—you are creating a problem for those existing stations which are today not in financial trouble, but face serious financial trouble by having pay-as-you-see television.

Mr. Cox. Do you think if Mr. Kohn got a pay-as-you-see television station in Easton, thus remedying his economic difficulties, this would in any way imperil the economics of the Philadelphia stations which are blanketing his area now with network programs?

Mr. Cohn. If I had, on my new station that you are talking about, the world series, Jackie Gleason, I Love Lucy—go down the line on all of these—the answer to your question is "Yes"; I could very easily cause very serious financial difficulties as far as—not the station in Philadelphia, because you gave me the Easton-Allentown situation—but the two stations in Bethlehem and Easton which are existing today. Mr. Ray Kohn spoke of the fact that his station in Allentown had trouble, and that he was competing with Philadelphia and Lancaster. But there are 2 stations there today, 1 in Easton and 1 in Bethlehem, in that area, and you permit a new station, or a revived station, to go on the air and put subscription on, what you might end up doing is killing off the 2 existing stations in Easton and Bethlehem.

Mr. Cox. Do you know whether those two stations are presently making money so they will be there 3 or 4 years from now?

Mr. Cohn. I don't know, except what I bear, and I hear one of them is having difficulty.

Mr. Cox. Now, you suggested, I believe, that if they were serious about this proposal of increasing service, they should offer to exclude themselves from the top 100 markets.

Mr. Cohn. That is right.

Mr. Cox. Now, in the top 100 markets, with 11 exceptions, there are 3 or fewer services, so that the existing stations in those markets are affiliated with the 3 networks. How do you suppose a subscription programer would, in the initial stages of inaugurating such service, get time on any one of those stations in evening hours?

Mr. COHN. You are talking about the top hundred markets?

Mr. COX. Yes.

Mr. COHN. Well, in those cities where there are stations other than network stations, I assume your question doesn't apply.

Mr. COX. Quite obviously the four extra stations in New York would be available to him there.

Mr. COHN. One of the ways would be to negotiate with the particular station involved and attempt to demonstrate to the station that the station could make more money by being affiliated with them—at the expense of the public, I might add.

Mr. COX. In other words, you would suppose that any one of the operators of these existing stations could be persuaded that an affiliation with a still unborn network to provide a still untried type of service—could persuade any one of those broadcasters to cancel his affiliation with 1 of the 3 existing networks?

Mr. COHN. As of today, no; but certainly in the future.

Mr. COX. We are talking about how they are going to get started.

Mr. COHN. I would assume they would start, Mr. Cox, with the unaffiliated stations in those major markets, which there are in places like New York, Los Angeles, Chicago.

Mr. COX. Of course, the larger the market they start in, the more substantial the investment required on the part of the local franchise holder to get the situation underway; isn't that true?

Mr. COHN. You mean because there are more people in these particular things?

Mr. COX. Yes; because it would cost much more to equip 50 percent of the homes in New York with decoders than the fairly substantial figure given for equipping 50 percent of the television homes in Washington.

Mr. COHN. Right.

Mr. COX. Is it your position that they are going to start in these major markets, make this investment, before they have had an actual experience with public acceptance of their product?

Mr. COHN. That is what they have said.

Mr. COX. In your closing argument about UHF you said they are going to the large cities and they will not help UHF because there are VHF stations there. If they made a success in larger cities, would they not be required by the FCC to make this same system available—the same programs and the same decoding equipment—in any area with UHF allocations where a local franchise holder was willing to make the necessary investment?

Mr. COHN. Probably, when I was younger, I would have been able, because I had more intelligence then, to prognosticate as to what the Commission was going to do in any given situation. As I grow older, I find myself less able to do that and consequently, what you are really asking me is what would the Commission do under a given set of circumstances and, frankly, I can't tell you.

Mr. COX. No; I am just asking you, based on your experience with the Commission, whether you think it is conceivable that the Commission would authorize a service of this kind and would not require anyone authorized to furnish this service to furnish it to all comers on equal terms?

Mr. COHN. Generally speaking, I would agree with that.

Mr. COX. That is all I have.

Senator PASTORE. Thank you very much, Mr. Cohn.

Mr. Abe Stark.

Mr. STARK. Mr. Stavisky is assisting me.

Senator PASTORE. You may bring anyone you like.

STATEMENT OF ABE STARK, PRESIDENT, NEW YORK CITY COUNCIL; ACCOMPANIED BY LEONARD P. STAVISKY, ASSISTANT TO THE PRESIDENT, NEW YORK CITY COUNCIL

Mr. STARK. Mr. Chairman, and gentlemen, first I would like to place on the record a resolution calling upon the Federal Communications Commission to protect the public against any threat to free television viewing which was passed, 19 to 3—there were 3 abstaining from voting and 19 completely against pay-as-you-see television—by the City Council of New York

Senator PASTORE. Without objection, the resolution will be made a part of the record at this point.

Mr. STARK. Thank you very much.

(The document above referred to is as follows:)

MARCH 1, 1955.

THE COUNCIL RESOLUTION NO. 410—RESOLUTION CALLING UPON THE FEDERAL COMMUNICATIONS COMMISSION TO PROTECT THE PUBLIC AGAINST ANY THREAT TO FREE TELEVISION VIEWING

By the president (Mr. Stark)—

Whereas applications have been filed with the Federal Communications Commission for approval of pay-as-you-watch television in violation of the right of the American people to free access to the air waves; and

Whereas the Federal Communications Commission has asked for written comments as to the advisability of adopting subscription television; and

Whereas there are 4,290,000 television sets in New York City and 34 million sets throughout the Nation which will be directly affected by any threat to free television viewing, and

Whereas there is danger that better programs will be purchased by subscription syndicates and limited to families who can afford to pay for this service; and

Whereas there are countless families of moderate means who will be unable to afford subscription television and will have little more than mediocre shows and antiquated movies available to them without charge; and

Whereas many of these families bought television sets with the belief that the tradition of free access to broadcasting channels would be held inviolate; and

Whereas coin-box television is a violation of the spirit and intent of section 303 (g) of the Communications Act of 1934 which directed the FCC to encourage the larger and more effective use of broadcasting in the public interest; and

Whereas the tradition of free broadcasting must not be lightly cast aside or threatened with extinction by the unfair competition of well-financed syndicates: Now, therefore, be it

Resolved, That the Council of the City of New York call upon the Federal Communications Commission to withhold approval of pay-as-you-watch television on the grounds that it will create hardship for many families; and be it further

Resolved, That this resolution be in no way construed to interfere with prompt approval of limited audience television designed to transmit police lineups, medical operations, and related community services, provided they are regulated in the public interest; and be it further

Resolved, That the Council of the City of New York transmit a copy of this resolution to the members of the Federal Communications Commission.

Referred to the committee on rules, privileges, and elections.

Mr. STARK. I appreciate this opportunity to appear before this committee of the United States Senate on the subject of subscription television. The issue before us not only involves the public interest, it also represent a flagrant attempt to usurp powers which rightfully belong to Congress.

Over two-thirds of all American households now have one or more television sets. These families look to Congress for protection of their natural and legal rights to uninterrupted access to their own property. Although the Nation's airwaves have always been free, today there is conspiracy in the air. By influence and affluence, a powerful and self-seeking syndicate is bent upon destroying free television as we know it in this country.

Free television is the best form of low-cost entertainment available to the average American family in the average American home. Free television represents a public investment of more than $10 billion. It affects 37 million American families. It concerns over 100 million American people. This tremendous public investment must not be sacrificed to benefit the selfish interests of any syndicate.

There is a clique of monopolists in this country now seeking to destroy free public access to the airwaves. I accuse them of violating the spirit and intent of the Communications Act of 1934. I accuse them of attempting an unwarranted invasion into the privacy of the American home. I accuse them of supporting a system which borders on illegal confiscation of private property. And I accuse them of ignoring the hardship to millions of low-income families who cannot afford the cost of luxury entertainment and who would suffer most from the inroads of pay-as-you-see television.

It is time that someone told the people the truth about toll TV, and unmasked it completely and openly. Its advocates have promised all sorts of inducements—plays, movies, sports events, forums, variety shows, and even the opera. But all of these are available now, free of charge, under existing commercial and foundation sponsorship. Pay-as-you-see television would give the public nothing new, except a bill at the end of the month. No monopolist and no syndicate should be permited to charge people for the privilege of watching their own television sets.

Mr. Cox. If they don't offer anything new, Mr. Stark, who will then subscribe to the service they are offering?

Mr. Stark. I think that could be very easily overcome by these companies, unfortunately, through promotion, publicity, selling the families the ideas that they are giving them something better than they are getting on free television. It can be brought about terrifically at tremendous expense to the average family, by the children, themselves, at home, who might be told of a certain program, where there may be stories that appear in some of the comic books that should be banned; many other ways such as that, where the children will be continuously begging their parents for the additional pennies to pay for that kind of program which they cannot afford, and the parents as usual have no alternative but to give them the program they want.

Then, again, even among the adults, through promotion, most anything in this world—and it has been proven time and again—can be sold, and I think that can be sold.

Mr. Cox. You assume, then, in effect, a campaign of deceptive advertising as to the content and value of the programs?

Mr. Stark. We don't have to be deceptive. It may be, and there is plenty of deceptive advertising right now on programs on the air which should be stopped, but it can be done in such a way to make this particular picture look better than that picture that we get free, some such way as that. It is very easily done.

Thirty-seven million American families are involved in this issue. In many instances these are poor people, people who had to scrimp and save in order to buy their television sets. Many are still paying installments. They bought these sets with the clear understanding that there would be no interference with the principle of free television viewing. In New York City alone there is a public investment of $1½ billion, involving 4½ million set owners. Almost 1 set for every 2 people in the city of New York.

In a single year the average family spends approximately $87 on servicing and amortizing the cost of existing television sets. Toll TV would cost an estimated 66 cents an hour, which means that each family would be required to pay an additional $100 a year in order to watch 3 hours of pay-as-you-see programs a week. Since the average television set is in use 4 hours a day, the cost of toll TV might, in some cases, be as much as $1,100 a year.

Mr. Cox. I take it that that is the same calculation that Mr. Cohn is talking about, which assumes complete displacement of free television?

Mr. Stark. Yes. We have gotten the figures from the various agencies.

Let me cite the example of New York City. Our average family income is only $3,500 a year. We have three-quarters of a million New Yorkers over 65 years of age. We have 1 million 60 years and over, one-eighth of our population. Seventy-four percent of these aged men and women have incomes of less than $1,000 a year, and half of them have no income at all. Furthermore, children, housewives, hospitalized servicemen, shut-ins, and other disabled persons have come to rely upon free television as an essential form of recreation and entertainment. They have no other means of getting it, these people in these brackets. They canont afford to pay for luxury entertainment, and that is why they bought television sets, probably deprived themselves quite often of things that they need so that they have that little entertainment within their own home.

I would like to quote a newspaper, just 1 day of programs on the air free. This took place on January 15 of this year.

The reason I have this paper is because at some time thereabouts we started to talk about the resolution that was introduced in the city of New York.

Here are some of the programs:

Seven o'clock in the morning, arthritis and rheumatism benefit show with stars of stage and screen, and so forth. I am sure none of those monopolies would want to do that.

Another one, Lamp Unto My Feet, a tribute to the missions of the Lutheran Church.

"Look Up and Live;" "Nothing to Do," by Harold Fonder—cause and effect theme on juvenile delinquency; "Camera Three"—final episode of "Crime and Punishment"; "Let Us Take a Trip to a Seminole Indian Vilage" with Sonny Fox; "The American Foreman;" "What is Ahead for the New Congress"; "The Catholic Hour"; "Communist Materialism"; "Youth Wants To Know"—Senator Carl Mundt interviewed; "Dr. Spock"—pediatrics, talks about differences in training of single children as opposed to twins.

Here is a program that was on for 2 hours that day, 3:30 to 5:30, NBC Opera Theatre, Mozart, "The Magic Flute." "Front Row

Center"; "Strange Suspicion"; "College Press Conference"—Secretary of the Army Wilber Brucker will be interviewed; "Ominbus"; "The Great Forgery"; "Super Circus"; "Meet the Press"—Senator William Knowland; "You Are There"—V-J Day; the New York Times Youth Program, "How Should Political Campaigns Be Conducted"; Governor Meyner of New Jersey discusses the Armed Forces Reserves; the Ed Sullivan Show—a tremendous show; a play, "The Ballad of Mender McClure"; "Alfred Hitchcock Presents"; "You Have Got To Have Luck."

This is 1 day, I am sure by taking away, and it will have to come some day, free television, much of this will be lost to the public who cannot pay.

Gentlemen, no other issue in recent years strikes so directly into the American home. Unlike any other form of entertainment, broadcasting was conceived and developed within a framework of free access to the airwaves. That tradition must not be lightly cast aside. Pay-as-you-see television is like the camel at the tent. Once it is admitted in principle it will destroy free broadcasting as we know it in this country, usurping the best programs, the best channels, and the best available hours.

Congress established the principle of free broadcasting under the Communications Act of 1934. But what you and your predecessors have guaranteed by just law is now being undermined by influence peddling and undue pressure. The advocates of toll TV are spending vast amounts of money on costly propaganda distributed on a nationwide basis. They are printing thousands of advertisements, leaflets and brochures advocating immediate approval of pay television without further authorization from Congress. And what is more deadly, they have their friends in "court;" they have their advocates in Washington; they have their own propagandist now sitting as a member of the Federal Communications Commission, the agency which is pledged to uphold the principles of free broadcasting in this country.

I maintain that it is impossible for the Federal Communications Commission to render a just decision on toll TV so long as one of its members, Robert E. Lee, is permitted to serve in an official capacity. In a speech delivered on February 21, 1956, and in an article prepared for the March 20, 1956, issue of Look magazine, he has prejudged the issue. He has expressed himself in favor of subscription television, even though the matter is still pending before the FCC and no public hearing has yet been held.

Mr. Cox. On that point, Mr. Stark, isn't it true that in many of the proceedings before the Commission in quasi-legislative matters, where rules are proposed or changes in rules are proposed as here, that the Commission may or may not hold a public hearing at their discretion?

Mr. Stark. I agree with you, that is so, but when we stop to think that 25,000 communications have been sent to the FCC—I think it is the largest on record—do we not owe it to the people to have hearings?

Mr. Cox. Well, now, as I understand it, a number of the parties have requested hearings, and that is something still being considered by the Commission, but it is true, as I understand it, that as of this date the record in this matter is closed. All comments are in, and when the Commission was before this committee they indicated that they were now giving consideration to these comments, and to the question of whether they could reach a decision or whether hearings would be required.

Mr. STARK. Well, I am not too sure whether a decision hasn't been reached, but I know this much: There is no reason in the world why that had to be done and why it is even too late now to have hearings that are demanded, and why it was necessary for Robert E. Lee to write an article and to speak on behalf of doing away with the hearings and to go right through it and give it the O.K. And evidently the decision in his mind has been reached, if in no one else's.

Senator PASTORE. Now, in justice to Mr. Lee—we disagree on many points with Mr. Lee—you don't see anything illegal in that?

Mr. STARK. Let us not call it illegal. It is certainly improper.

Senator PASTORE. Many of us in public life have opinions that we formulate on the facts that are available to us. I haven't read the article of which you speak, but did he go so far as to say "Let us do away with hearings and let us have this thing?"

Mr. STARK. He asked for immediate approval. It is right here. We will show it to you.

Senator PASTORE. Will you leave that for the record?

Mr. STARK. Yes, we will.[3]

Mr. COX. The point I would raise along the same line is this: Isn't it a practice in legislative proceedings—in the city council, in the Congress, at all levels—for members of these bodies to express their views on controversial questions pending before the agency before a vote is reached?

Mr. STARK. It is so in bodies like your own, in bodies like the one I serve on, but not in the FCC, in my opinion, for him to prejudge, no more than we would expect any judge in a court to prejudge a case such as this.

Mr. COX. Don't we have to maintain a clear distinction between the function of the Federal Communications Commission in a quasi-judicial proceeding in which it is considering arguments presented to it by many parties as to changes in rules?

Mr. STARK. I would consider this definitely was judicial, and in my opinion that should never have taken place; and now that he has declared himself, which I will explain further——

Senator PASTORE. Then I think it preferable that you proceed, Mr. Stark.

Mr. STARK. Thank you very much.

Gentlemen, there is need for public confirmation or denial of reports that Commissioner Lee has received substantial payment for that magazine article. As enacted by Congress, the Communications Act of 1934 clearly states that "no Commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest." Furthermore, the FCC is considered to be a quasi-judicial body and, under law, judges are traditionally required to disqualify themselves on matters in which they have previously testified. In spite of this, Mr. Lee has become an avowed propagandist for pay-as-you-see television while holding quasi-judicial office.

A man can either advocate or judge a case. He should not serve in both capacities. I question the wisdom of allowing Commissioner

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[3] The article in question is printed at the conclusion of Mr. Stark's testimony, beginning at p. 1259.

Lee to have any further responsibility in the proceedings over coinbox television. In the interests of justice, Congress should undertake an immediate investigation to determine whether any Federal laws have been violated by Mr. Lee's ill-conceived action in prejudging the case and propagandizing for a cause.

Mr. Cox. You don't suggest any specific law that in your opinion has been violated?

Mr. STARK. The law of 1934, section 154.

Mr. Cox. Is it this reference to interest?

Mr. STARK. That is right.

Mr. Cox. Is it your view that a man who received pay for the preparation of an article has an interest in the outcome of the proceeding on which he comments? Wouldn't that require that he own an interest—ownership in some one of the parties to the proceeding—before he could be held to have an interest in the eventual outcome?

Mr. STARK. Well, not necessarily. He doesn't have to own an interest in the companies, and I am not making any accusations against Robert Lee in that sense, or in any other sense; but for many reasons, there may be reasons for a man taking a position like that, and certainly there was no necessity, at a time like this, when there were 25,000 communications within that body, for him or anyone else associated with that body to speak about that in a speech, and to write about it in a magazine.

Senator PASTORE. Well, now, let me ask you this question, Mr. Stark: I hope that this doesn't tend to confuse our record, because I think you are making a very sincere and serious presentation here, and there are many people who agree with you as to what effect this pay as you see might have on free entertainment, and that is the serious question that the Congress has to decide.

Mr. STARK. And that is what I am hoping for, may I say.

Senator PASTORE. In other words, whether we are giving the public a little more in addition to what we are already receiving, or whether this may be an instrumentality by which we may weaken his existing privilege of free entertainment. That is the serious question involved.

But now once all of the facts have been presented to the FCC, and one of the Commissioners sees fit to go on a public forum and state his opinion as he looks at the problem, and even though he receives, let us say, an honorarium for that, would you say that he committed an act of impropriety, or that he committed an illegal act in violation of an existing law, because he expressed his opinion?

Mr. STARK. Senator, in my opinion, I would say "Yes." He could have his opinion if he wanted to, but he should keep it to himself and not go out making speeches. No one would permit a judge to do that, in my opinion.

Senator PASTORE. Well, is this exactly that? Is this the situation of a judge who is deciding issues between two people, or is this a matter that actually plays into the public interest that has to be determined?

Now, this is not a case. This is a rulemaking proceeding. And I think our record ought to be clear on that because, after all, it is our function to see that these administrative officers carry out their responsibility, consistent with law. But you have said here, and you make the blank arguments, and I hope that you would consider that, that no Commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest.

Now, do you take the position that that is what he did when he expressed his opinion on a rulemaking procedure? Having heard all of the sides, he got up and he said "I think this is a good thing," like I might go out of this room now and say "I think this is a good thing." I can't represent clients in matters that involve Federal agencies under the Constitution, and statutory provisions, but I can state my opinion on a matter of this kind that comes before us, and so can you as a member of the council. You can't represent a client in any business before the City Council of the City of New York, but if a matter comes before you on the changing of an ordinance, and you get up in a public forum and you say that you feel it is a good thing, and ought to be done, that is no pecuniary interest because you stated an opinion.

Mr. STARK. Senator, in the first place——

Senator PASTORE. If we are wrong about that, we want to be corrected. But you are actually making an accusation here that Commissioner Lee has actually taken money for an opinion.

Mr. STARK. Well, he has expressed an opinion, and bear this in mind: He has not only expressed this opinion, but he has expressed this opinion without permitting the right of hearing of 25,000 groups or individuals. And he has expressed that opinion and in my opinion that is certainly far more serious than even if he would be involved in the company itself.

Senator PASTORE. Well, you can disagree with it, but the serious question is whether or not he violated a law—whether or not he had a pecuniary interest.

Mr. STARK. That is not up to me to decide, and you may be completely right. I don't know. I am just giving you my opinion. But I do believe that your committee should check into that seriously.

Senator PASTORE. Well, I want to read this to you, because after all, you see, the Congress of the United States has been alert to all of these situations, and naturally we want the record to be abundantly clear in view of the strong presentation that you make here.

I am reading from section 4, subsection (b) of the Communications Act of 1934, as amended.

> Such Commissioners shall not engage in any other business, vocation, profession, or employment; but this shall not apply to the presentation or delivery of publications or papers for which a reasonable honorarium or compensation may be accepted.

Mr. STAVISKY. May I comment on that?

Senator PASTORE. Yes; I want you to.

Mr. STAVISKY. I think though it is proper for a man serving on the Federal Communications Commission to be permitted to write magazine articles, I do not think it proper for him to be permitted to write magazine articles about a matter still pending before the FCC, and on which the FCC has not arrived at a decision.

Furthermore——

Senator PASTORE. You mean he has no right to express his decision?

Mr. STAVISKY. Before the decision is handed down, I think it is improper.

Senator PASTORE. Would you say it is illegal? You are saying here it is illegal and should be investigated.

Mr. STAVISKY. If it is still pending before the FCC, sir.

Senator PASTORE. Well, how do you construe this section I have just read?

Mr. STAVISKY. In the sense that it permits him to write magazine articles on general subjects, but not necessarily on a matter still current. In other words, he may write something about the FCC which has already been decided, but not a matter which is still current, in my opinion.

Senator PASTORE. Well, I am not going to quarrel about it.

Mr. STAVISKY. Furthermore, could I make this observation: It is standard practice for Look magazine to pay all contributors of magazine articles, exclusive of their own staff members, for any article published by Look magazine. We have charged Commissioner Lee with receiving an honorarium and payment for this magazine article. He has refused comment on that accusation, which we made a month ago. I believe he should be asked publicly by the United States Senate—by this committee, if in your opinion it is proper—to confirm or deny reports that he has received a substantial payment for the publication of that magazine article.

Senator PASTORE. Well, let us assume that he has received compensation, or an honorarium. The question before us is, Is that a violation of the law, and I have just read the law to you?

Mr. STAVISKY. I believe that if you check——

Senator PASTORE. In view of the temerity of your accusation—he could say, "Admitting what you say is true, I have done nothing wrong."

Mr. STAVISKY. Of course, he can say that.

Senator PASTORE. I know. When I say "I have done nothing wrong," I am putting it rather graphically. He could say he didn't violate the law: "Admitting what you say to be true, I didn't violate the law."

Mr. STAVISKY. Reading section 154 (j), the one on pecuniary interest, I think it is subject to further interpretation and clarification by this committee—section 154 (j), which declares that no Commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest.

Senator PASTORE. No Commissioner shall participate in a hearing or proceeding in which he has a pecuniary interest. Now, the mere fact that a man expresses an opinion, and is paid for an article, is that a pecuniary interest?

Mr. STAVISKY. I think it is something this committee might look into, sir.

Senator PASTORE. All right.

Mr. Stark, you may proceed.

Mr. STARK. You know, he even goes further in this magazine article——

Senator PASTORE. I want the record clear. I may be diametrically opposed to the opinion stated by Mr. Lee. Maybe I am.

Mr. STARK. Yes, you have been very fair. You have said that to the previous speaker.

Senator PASTORE. We are discussing another problem here. And I don't think that anything ought to happen, short of violating a law, that ought to circumscribe the expression of opinions and ideas, because that is the reason why we hold these public hearings. If a man is paid to do something that is inconsistent, incompatible, and inimical to his public trust, that is one thing; but if a man expresses an opinion, honestly and fairly—whether or not I agree with it—and the law says that he can do it and receive an honorarium—if he appears in public to make that speech or receives compensation if he writes an article in the expression of that opinion—if the law permits it, we certainly shouldn't accuse the man of having violated the law. That is the only point I make.

Mr. STARK. Well, Senator, I would say he would have the right to say all that, and more, if he wants to, and whatever he would want to say, in voting on a matter after it is over—give his reasons why he is voting for it, or against it.

Senator PASTORE. But it would have been in better taste if the Commission itself had decided the issue; is that correct?

Mr. STARK. Correct, absolutely.

Senator PASTORE. Now we are talking about better taste. Now we are getting into another field. We are not talking about congressional investigations, no more than I think anyone should ridicule you for expressing your opinion as you see it, because I applaud you for it, Mr. Stark. You have every right to come here as an American citizen and express your opinion.

Mr. STARK. And I wouldn't come here unless I felt that way.

Senator PASTORE. Very well.

Mr. STARK. He goes further and suggests approval of subscription television on a "broad basis, leaving to the promoter the choice of the system he wishes." He further suggested that if the early tests indicate public acceptance, we could perhaps remove all restrictions and let the buyer beware.

I don't think it is up to a member of that Commission to make statements of that kind prior to this thing having a hearing.

Senator PASTORE. Well, I want you to know that Mr. Lee is a Republican, and I am a Democrat. But I still want you to know that I seriously feel we ought to be rather cautious, and if there are any circumstances far beyond what is already presented here—but if it is merely a publicly written article of this type and the expression of an opinion, I think we ought to go rather slowly in characterizing the man's reputation.

Mr. STARK. I personally would go still further than that if it were possible, and I would say this:

It makes no difference whether one like you and myself are Democrats or Republicans. This is something, in my humble opinion, and strong opinion, that should be completely nonpartisan, as free as the air we breathe.

Senator PASTORE. I say "Amen" to that.

Mr. STARK. And so this concept of letting the buyer beware is a total denial of the need for Government regulation of utilities and a return to the jungle theory of dog eat dog in business dealings with the public. His idea is a senseless repudiation of the spirit and intent of the Communications Act of 1934 which directed the FCC to regulate broadcasting in the public interest.

If Commissioner Lee has his way, 37 million American families will be brushed aside without a hearing in order to satisfy a handful of monopoly-minded syndicates. A public investment of over $10 billion will be sacrificed without reason. Congress has an obligation to the American people to answer this challenge and demonstrate to all concerned that our Government is guided by just law rather than impulsive fiat.

I urge you to——

Senator PASTORE. Well, go ahead and say it.

Mr. STARK. I do not want to be antagonistic. I don't know your opinion for or against pay TV. I have expressed my opinion here strongly, and in the city council where we had hearings on that—we permitted hearings on that—and not a single person—it is unbelievable—not a single person appeared before the city of New York speaking on behalf of it. Everyone was against it. Even they, themselves, their representative who was supposed to be there, at the last moment somehow boycotted this thing by sending a statement to the mayor of the city of New York attacking me for going through with this without giving him sufficient time to appear at the hearing. He had 3 weeks' time, but the very next day he said that he urged the FCC to vote on it immediately. For that he was in a hurry, but to appear before us, he had no time.

These are the actual facts, and so, my friends, I urge you to summon Commissioner Lee before this committee of the Senate to answer charges, if you want to call it that, of conduct unbecoming a public official, and to investigate the underground movement which is now being waged to destroy free television viewing in the United States.

Senator PASTORE. Well, I want to say to you, Mr. Stark, and Mr. Stavisky, that we appreciate your coming forward here, especially because of the fact that you are president of the city council of the largest city in the world, that embodies the destinies, the hopes and aspirations, and the dreams of maybe 8 million people, which is a very very large part of our entire American population. And I am one of those who might have to make the self-serving statement that I am intensely interested in the consumer interest in every cause, and our responsibility here, of course, is to protect the public interest.

Fundamentally, you feel strongly about this matter because you feel that somehow pay-as-you-go television will injure the privilege and the opportunity that people now have in free entertainment by the use of television. You seriously believe that, and I have the highest regard and respect for your belief. Now, there are some other people who maybe look at it differently, and they will appear here also. Our job is to hear both sides of the question, and to protect the public interest.

Naturally, a man who comes here representing a large metropolitan area such as you do, with so many people, carries a tremendous amount of weight as to his opinions on these subjects, and the record is clear. It is an open record. People who don't agree with you can come here and rebut or refute any statements that you have made. I am not here to protect or defend Mr. Lee.

Mr. STARK. I know that.

Senator PASTORE. On the other hand, I think that for the maintenance of orderly process, it was necessary for me to point out that according to everything that is presented here so far, I don't see the harm in the situation, although I do see the fact that you people could very seriously disagree with him. The chances are that he spoke about it before an official decision was made, but that was not a controversy, as I understand it, between two conflicting interests. They are trying to make a rule at the FCC to determine, first of all, whether they have the authority under the law to do this thing, and if they do have the authority, whether or not it should be done at all.

I think Congress will play a very important part in the decision that is ultimately made.

Mr. STARK. I am glad to hear that.

Senator PASTORE. Maybe sometimes some of us become so enthusiastic or imbued with our own point of view that we would like to go around telling everybody about it. I don't think for 1 minute that Mr. Lee is the kind of man who would take compensation to make up his mind. He might take compensation, or an honorarium, as he is permitted to do under the law, possibly to write an article expressing his opinion. Whether or not that opinion is influenced for compensation, I doubt that very very much.

You people have your point of view, and naturally I have mine. I somewhat resisted the appointment of Mr. Lee when it was made at the time. However, since he has become a member of the Commission, I have found him to be a very honorable person, dedicated to public service. He said here in this room precisely what he said in this article. He said it to us, and it was no secret to me when you revealed what the article was all about.

As a matter of fact, talking about expressing an opinion, let me say this: Maybe I am just as much at fault as the rest, because I asked him his opinion when he came here.

Mr. STARK . That is all right.

Senator PASTORE. But I want to thank you, Mr. Stark, for coming here, because I realize that you come here and present your views on this issue on behalf of the people of your city.

Mr. STARK. I would just like to say this, Senator, in closing. In my opinion, in fact, I have never expressed anything here that I said he has taken compensation outside of for writing the article, which is only hearsay. I don't know that for a fact——

The CHAIRMAN. He might have been paid. I don't know.

Mr. STARK. But I cannot get myself to feel different about the entire setup due to the fact, whether he has legally a right or legally no right to do what he has done. The fact that he sits on that Commission, as an American, in decency to every person in our country, he should not have done it. That is my opinion.

I go further; I say this too: As far as the three companies involved, in my opinion, too, there this is nothing but cold hard business of the toughest kind, and I am sure when it will come down to dollars and cents on this problem, of giving choice to a pamphlet or to a comic book—a pamphlet that may bring them in $10,000 or a comic book that may bring them in millions—the comic book will win out. And being elected as a representative of the city of New York, outside of my own personal feeling toward that, which I have fought on behalf of voluntary organizations for 35 years of my life—if I must mention just one thing, I am president of the largest boys' club in America, the Brownsville Boys Club in the Borough of Brooklyn, where besides the boys club we are building a golden age center for men and women over 60 years of age who need recreation and have no place to go. I am concerned about those children and those old people, and if I have to put a bite or a tax in the city of New York, or put a bite or a tax in the city of Washington, you feel the same about it, on behalf of the people that have sets, I know much better places to put that bite than on this.

Thank you very much.

Senator PASTORE. Mr. Stark, I haven't had the privilege of having met you before, but I have heard a lot about you, and if you weren't the kind of man you are, you never would have been the president of the city council.

Mr. STARK. That is very kind of you. Thank you very much.

Senator PASTORE. I only want to say this in conclusion. This was a hearing on a rulemaking procedure, and the questions that he answered in that article, we ourselves on the committee asked him questions about it because we were interested to know how they might feel about these things.

Now, I will admit to you, there are situations that the FCC deals with that do tend to be quasi-judicial or strictly judicial, where you have two conflicting interests, and it is up before them to decide the rights of various people.

Now, if before a decision was made they went out and talked about it, that would be completely wrong, but this was an opinion on a rule-making procedure.

Mr. STARK. I accept that. Thank you very much.

Senator PASTORE. Nice to have seen you, too, Mr. Stavisky.

Mr. STAVISKY. Thank you very much.

(The article referred to by Mr. Stark, which appeared at pp. 104 to 108 of the March 20, 1956, issue of Look magazine, is as follows:)

LET'S GIVE THE PUBLIC A CHANCE AT PAID TV

By Robert E. Lee, member, Federal Communications Commission

When I was a boy, my father advised me to stay out of needless controversy. "Never argue about religion or baseball teams," he said. "There is no point in arguing when there is no hope of changing opinion." If my father were living today, I have no doubt that he would add subscription television to the list of topics that should not be argued.

"Subscription television"—more simply known as paid TV—is the name applied to all systems by which TV viewers can select a program being broadcast in garbled form and, through a code furnished to them for a fee, unscramble the program and see it. Those who pay can see the program; those who do not pay cannot see it.

Various systems have been proposed for subscription television, and it is not my purpose, here, to argue the relative merits or demerits of one system over the other. The fact is that these systems have been perfected and can provide a reasonably foolproof method for viewers who might want to pay for programs they wished to see, in preference to, or in addition to, programs they now get free.

Since subscription television is now pending before the Federal Communications Commission, I hasten to remind the reader that the views expressed here are my own and do not reflect the opinion of the Commission. Nor do they indicate what action, if any, the Commission will ultimately take.

Subscription television has been argued at length before the Commission. The record is now closed. Nearly 24,000 individual comments have been received—the most ever received by the Commission on any proposal. These proposals and counterproposals fill 69 volumes, each 3 or 4 inches thick. If placed in a pile, these volumes would reach a height of more than 18 feet.

I have labored through this testimony and found nothing that I did not know before the Commission asked for it. The pros are still for and the cons against. Neither side, it seems to me, has presented anything new or novel. I am convinced that endless legal procedures, hearings, and studies will never answer the questions: Does the public want subscription television? Will the public support it? I submit that the only way to answer these questions is to let the public answer them. Experts on what the public wants, or what the public will do, have been wrong too often. Nor can a Government commission, despite all the hearings in the world, determine the public's wishes. I believe the only way to learn the public's desire is to give paid TV a trial—in the tradition of our free American system. If investors are willing to gamble the huge sums that paid TV will require, why not let them make the attempt and put a lot of people to work? Six months might give us the answer. In any case, I feel that the issue can be settled only by putting the show on the road and letting the box office tell the tale.

Is subscription TV consistent with the public interest? I believe it may very well be. Don't let anyone kid you about this being a contest between something you now receive free and something you will pay for under these proposals. Broadcasting is not now literally free. Your investment in your set is a cost to you. In a sense, the products you buy include the cost of the advertising which pays for the programs you see. But I do not dispute the argument that this "cost" for advertising actually lowers the final price to the consumer by insuring mass markets, mass production, and therefore lower prices. As I see it, this argument over "cost" is irrelevant. Under a free system, people should be free to pay for goods they want—including television entertainment.

My contention, simply, is that the public may not only wish to view the free programs they now see. The public may also be glad to pay for the pleasure of seeing programs they do not now receive—current Broadway plays, major sporting events, superior film productions, and the like.

It is true that many paid TV programs would be beamed at only relatively small segments of our population which have a particular interest in some subject, for example, the Metropolitan Opera. However, a small segment of our 37,500,000 receivers would support such programs at modest fees, and indeed contribute to our cultural requirements—an objective devoutly to be desired.

Consider, too, the educational applications: correspondence courses by air. I saw a film exhibited by one of the proponents of subscription TV in New York City illustrating this point. This particular film was a half-hour portrayal of an actual surgical operation demonstrating a new technique for heart surgery. With the exception of perhaps 2 minutes, the film was palatable and instructive to the lay audience. At the point of the actual incision, the picture was scrambled so that only the subscribers could see the surgical technique.

TRIAL-AND-ERROR METHOD HAS WORKED

I am told there are approximately 20,000 doctors in the Greater New York area. No medical arena could hold more than a handful, yet all of them could view such an operation on their sets at home or in the office. What a boon to medicine. Imagine the value of such a program on a national hookup to doctors around the country. Medical education could be advanced broadly overnight and many lives might be saved. Certainly any system so potentially valuable is worth a trial.

American enterprise has prospered through trial and error, and there is no reason why television should not benefit from that ages-old method. The advent of television gave a terrific impetus to our economy. The TV peak has passed, however, and the industry is beginning a settling process that is squeezing more and more TV stations off the air for lack of financial support. One of the major networks recently issued a study indicating that the economy of the country could not support more than 600 TV stations in the foreseeable future, despite the fact that there are still 1,200 possible stations available for assignment.

TV stations, like radio stations, have to be assigned by the Federal Communications Commission, just as airplanes have to be assigned to certain routes and altitudes to keep them from flying into each other. In the case of radio and TV, these assignments are made to prevent overlapping of signals between two or more stations in a given area. In TV, particularly, this presents a problem. Imagine the available radio spectrum as a very long vertical ruler whose markings are the frequencies to which various users of the spectrum are assigned. Since the number of users of the spectrum grew like Topsy, and since the ruler is not tall enough to accommodate all who want the best parts of it, assignments have been made all up and down it.

Now it is a scientific fact that the lower you are on the ruler the better signal you have. Those stations on the upper part (UHF or ultrahigh frequency) have difficulty competing with the better signals on the lower part of the ruler or spectrum (VHF or very high frequency). Since there is a scarcity of space on the lower part, it has been necessary for the Commission to assign television stations on the higher part (channels 14 through 83), in addition to the relatively few channels in the lower frequency (channels 2 through 13), in an attempt to provide a nationwide, competitive system.

As these channels have come on the air, the stronger signal characteristics of the lower channels have compelled the programing sources (mainly networks) to prefer them, leaving broadcasters on the higher channels at a serious disadvantage in coping with their competitors. Naturally, the national advertiser (the primary financial support of TV) wants his program on these lower channels. To compound the problem, the manufacturers of TV receiving sets are loath to make sets which will receive all channels. Since the better programs and coverage are principally on the lower channels, there is little demand for an all-channel receiver. Moreover, an all-channel receiver is more expensive to make. This higher cost and smaller demand mean that the manufacturer with a more expensive set that has little market cannot meet his competition.

LOCAL STATIONS HANDICAPPED

The result is that if a citizen wants to receive the higher signals, he must first buy a set, then buy a separate converter for the same set and a special outdoor antenna. Since the programing on the higher channels is less attractive (being poorly financed), there is no incentive for the citizen to make the costly conversion. Hence, for the most part, those stations on the higher channels are in dire straits. I say "for the most part" because I do not want to create the impression that the higher-channel service is a complete failure. It is doing very well in a few markets where good programing is available.

Good TV programs cost money, and the cost of first-rate entertainment is well beyond the resources of local independent stations which have to rely on local advertisers who cannot afford to use network TV shows that are seeking a mass market for products. A 10-second spot announcement in a major market can cost an advertiser $600 to $1,200.

Thus the high-channel station not only suffers the handicap of a poorer signal, it also suffers the handicap of a smaller sales potential and, consequently, a much more modest program budget. Even in those cases where a local station has been able to develop a hit show, that station soon loses its talent to the lure of Broadway and Hollywood. Recently, local stations have benefited from a change in movie producers' opposition to the release of good films for television. The Walt Disney productions, Million Dollar Movie, and other similar programs are on the march. But the promise of adequate programing in the future, from other than networks, is small solace right now to the station operating in the red.

This is not a healthy situation, since it tends to centralize the control of programing in relatively few hands. While I believe the years ahead may correct whatever evil lies herein, a more immediate solution may be within our grasp if we seriously consider paid TV. Subscription TV could be a boon to the independent station. More stations mean more competition and encouragement of local outlets.

An equally compelling reason for more TV stations is the American tradition of competition and freedom in the field of public opinion. I believe that TV cameras do mold public opinion through their treatment of current events, political personalities, and campaigns. The persuasive voice and compelling personality leave a mark on the public mind. There is a public interest, therefore, in fostering the utmost possible competition in TV to make sure that all viewpoints have an outlet.

At present, a Senate committee is examining the problems of TV stations whose demise is imminent in many, many communities. The problems of these stations can be traced directly to lack of revenue—an inevitable result of poorer signals, smaller audiences, smaller markets and, therefore, insufficient income. Subscription TV, it seems to me, provides a great possibility for exploration, since it would, if successful, provide an additional source of revenue. Again, I say if successful. Paid TV would, of course, fail if the public does not want it. It will have to be very good to compete with some of the fine free TV that is now available. I do not believe the public will pay for what it now gets free.

FOUR-POINT PROGRAM OFFERED

Therefore, I suggest a program be initiated by the Federal Communications Commission, under which the Nation and its television stations and viewers may test the public acceptability of paid TV. I leave open the question as to whether or not congressional action is necessary. While I personally believe it is not, the Congress can provide it if needed. I suggest the Commission:

1. Approve subscription TV on a broad basis, leaving to the entrepreneur the choice of the system he wishes to use.

2. Apply some temporary restrictions until we know where we are going. For example, we might consider limiting it, in the intial statges, to the UHF portion of the band, with perhaps some further restrictions on the amount of time which could be charged for, in order to protect free broadcasting. If the early tests indicate public acceptance, we could perhaps remove all restrictions and "let the buyer beware," as he must in any other purchase.

3. Permit this test of paid TV to continue for a period long enough to truly test public reaction, give stations and programing facilities time to work out the necessary changes in their operations and test public reaction to a variety of paid programs.

4. Permit stations to drop paid TV if they find to their own satisfaction that it does not fill a market need in their own area. If subscription television has all the drawbacks that its detractors say it has, the public will reject it and no further action will be necessary by the Federal Government to dispense with it. On the other hand, if it fills a public need, and the public shows by its patronage that it wants paid TV, then permanent Government approval in the form of a Commission ruling or legislation should be enacted to formalize what the public has already shown it desires.

The television industry—in the manufacturing and sale of TV receivers, in the vast operations of programing, broadcasting, and advertising—is too big and too important to the economic and cultural welfare of the American people to be limited, unnecessarily, to a system subsidized solely by advertising. The industry, and the country, would benefit, I believe, by a fair trial of paid TV. Such a trial would be in the tradition of our free system in which customers are free to choose in the open market. I would like to see our television audiences given the opportunity to cast their vote for or against paid TV.

(Short recess taken.)

Senator PASTORE. Mr. Fellows, we are ready if you are.

Mr. FELLOWS. Fine, Senator.

STATEMENT OF HAROLD E. FELLOWS, PRESIDENT AND CHAIRMAN OF THE BOARD, NATIONAL ASSOCIATION OF RADIO AND TELEVISION BROADCASTERS

Mr. FELLOWS. My name is Harold E. Fellows. I am president and chairman of the board of directors of the National Association of Radio and Television Broadcasters, the business association of the broadcasting industry whose membership is composed of radio and television broadcasting licensees and networks. We have in the membership of the association 305 television stations. All of the three television networks are members of the association.

I appear here today to present the opposition of the association to the utilization within the television broadcasting bands of a pay-as-you-see, or pay-to-see television system. I appear here pursuant to a resolution adopted April 12, 1955, by the association's television board of directors, directing the management of the association to "appear and participate in all hearings and proceedings and take any and all necessary and proper steps to preserve unlimited public reception within the television broadcast bands." The complete text of the resolution is attached as an appendix.

The National Association of Radio and Television Broadcasters is opposed to any form of pay television which, through the use of channels allocated for free television, will jeopardize the right of the public to receive a full, free service.

I appreciate the opportunity afforded to me today to present the association's views on this subject for you have wisely, it seems to me, made available to both opponents and proponents of pay television the proper forum in which the decision should be made as to whether this new system should be authorized.

Obviously, I am not here today to suggest to the Congress that it has no authority to authorize this new system of communication. I am here, however, to urge, with all sincerity, that you, the elected representatives of the people, are the only ones who should make the judgment.

We hear a lot these days about "free" and "fee" (or subscription) television. These 2 words, "free" and "fee" sharply delineate the gulf between the 2 systems of communication. I shall not attempt to go into the legislative history which led to the present Communications Act, other than to stress the fact that we firmly believe it quite clear that Congress founded our present broadcast regulatory system in the clear context of free reception of programs by American listeners and viewers. You, as well as I, know that our people own this great national asset, our airwaves, and that from the inception of broadcasting in this country, radio reception has been rendered free to the people. Moreover, this same principle has always applied to television. This has been done on a mutual basis, that is, the people have licensed stations to use their airwaves (by virtue of which many have made money and many have lost it), and in turn the industry has made available to the listeners and viewers, at no charge, the finest programing fare of its kind in the world. This has been done in the traditional American pattern of free and open competition. We have succeeded or failed as in any other free enterprise—but never, either in success or failure, has our industry levied 1 cent of tribute from the American people to see or hear our broadcast performances. The only thing required of the American listener or viewer is that he own a receiving set.

The point-to-point system of pay television now proposed is one which is diametrically opposed in concept to the present system of free broadcasting. The basic premise of the proposed system is that if the American public does not put a coin in its television set, it will receive no television. Its justification for this new concept is based on the fallacious promise that, through the revenues accruing to the system, the American public will receive a type of programing superior to that which it now receives free.

Let me, at this juncture, make one point clear: Do not assume that if pay television is authorized and is successful, that the broadcasting industry, which I represent, will be standoffish. As businessmen, we would be foolish to turn our backs on a successful business venture. I make this point for the simple reason that I do not want you to be under the impression that I am here under false pretenses, for, if this system is authorized and should succeed, the free broadcaster, whether he desires to or not, will be forced to jump on the bandwagon.

Mr. Cox. Is it your position that if subscription television were authorized and became successful for the stations which first initiated it, the entire industry would, to whatever extent might be permitted by the FCC, also offer subscription programing?

Mr. Fellows. If pay television, Mr. Cox, it is our belief, became successful financially, it would do so at the expense of free television, very much in the manner of some of the testimony which has been given here today. It would quite quickly usurp the major attractions that are on the air, leaving very little for free television, and those already established in the television business—stations and networks—would be, as I said, forced to jump on the bandwagon, because they would have to transfer their business activities to that point where there was a better opportunity to make a success of it economically.

Mr. Cox. So this shift would not be occasioned by the mere fact that it would be more remunerative but because it was the only choice open to them.

Mr. Fellows. Fundamentally it would be because it would be more remunerative, because if you bring it to that point there would be little chance to stay alive without the major talents and the big events that free television is now offering and which are being sponsored by advertisers.

Senator Pastore. And because you are not ready to commit econonic suicide.

Mr. Fellows. Yes; that is a very good way of putting it, Senator.

Just what does this mean? It means simply this: That, in the overall, the members of the broadcasting industry will become an important component of this new pay-television system and in this respect will derive financial sustenance from direct levy on the American listener and viewer. No longer, however, will they be broadcasters, and no longer will they be fulfilling what we conceive to be their prime purpose, namely rendition, in the public interest, of a free service. A paying minority of the public will be able to outbid—and thus deprive—the vast majority of the American public of those programs which hitherto had been made available to all the people at no cost.

If, therefore, this system is authorized, and even though it ultimately might financially benefit our industry, it would set up an unfair and divisive force among the American people which I believe is completely incompatible with our traditional democratic system. Millions upon millions of Americans, because of their economic condition, would be foreclosed from viewing. The shattering fact which lies beneath this whole matter is that these people would literally be deprived from utilizing that which is legally theirs, namely, the air waves.

Let me illustrate what I mean: It is estimated that some 65 million people recently watched the fine performance, Peter Pan. It did not cost them a cent. Let us examine this situation in the light of pay television. Commander McDonald, of Zenith, has stated:

> On subscription television, and with the same audience paying only 25 cents per set to watch the attraction at home, the box office would have amounted to $5 million for division among producers, distributors, and broadcasters.

If we assume an outstanding program such as this as costing an advertiser anywhere from $200,000 to $400,000, the buying potential of pay television is an amazing thing to envision. A free program of this caliber can be expected to have an audience of 40 to 60 million. This audience would view the program on an estimated 15 to 20 million sets. The owners of 400,000 sets under pay television, who would be willing to pay $1 per set for the privilege of viewing, could equal the entire cost of the production under free television, and thereby preclude the rest of the public from watching the show free.

Mr. Cox. Wouldn't sound business judgment require that if you were going to put on programs of this kind, which have the potentiality of pleasing a large portion of the public—require you to so price it that you could get that maximum coverage and therefore possibly make available to the public more shows of similar caliber at the 25-cent charge?

Mr. FELLOWS. In other words, follow the philosophy that the right price is that which brings in most.

Mr. COX. You find the price that will be paid by that increasing number.

Mr. FELLOWS. If we start at a dollar which 400,000 people pay and we get up to 4 times that, or 1,600,000, which are paying 25 cents, we are still taking the same amount of money from the public pocket for something they are getting for free.

Mr. COX. The question I am asking is would this provision of means of raising revenue for broadcasting permit the presentation of 20 such shows in a year, rather than the 2 appearances of Peter Pan?

Mr. FELLOWS. Yes; for 400,000 people at a dollar or for 1,600,000 people at 25 cents, leaving the other 35 million people out in the cold.

Mr. COX. Well, is it your calculated judgment that not more than 1,600,000 people would be willing to pay 25 cents for a production of the caliber of Peter Pan?

Mr. FELLOWS. The more people who are willing to pay, whether or not they can afford it, the more who do pay, the faster and the greater rapidity, the top shows, the top things that we are talking about, like Peter Pan, like these various events, will go to pay television and go away from free television, and the public is not going to get anything of any consequence for nothing, for free, as we know it.

Mr. COX. Now isn't it true that not all of these large sums that are mentioned as box office—$5 million here for instance—would actually represent a net return to anyone? In other words, there are expenses incidental to the operation of a fee system.

Mr. FELLOWS. Certainly. The $5 million would have to be distributed. Part of it goes to the program source. Part of it goes, as now, to the facility or station or combination of stations which are carrying it; and part of it, of course, must go to the organization which operates, installs, and from there on operates the so-called pay television system.

Mr. COX. That takes care of amortization of their equipment, collection costs, administrative charges?

Mr. FELLOWS. Yes; the public has to finance this whole business in the first place, and then has to pay for it after it has financed it.

Senator PASTORE. Are you ready to admit that pay television could render a better quality of program than now, sir?

Mr. FELLOWS. No, sir; I am not at all ready to admit that.

Senator PASTORE. What would be the alternative to you if such were the case—that you would either have to increase the quality of your show and compete against those who are charging for it, or you would have to go to pay-as-you-see yourself?

Mr. FELLOWS. I think you would have to go to pay-as-you-see by the time it got to the point where the major attractions had gone to pay-as-you-see, the top talent had been able to quadruple its income by moving over to pay TV and serving a small audience.

Senator PASTORE. What is your reaction, sir, to the argument that has been made here—and of course, all we are trying to do here is develop a record as I have said before—what is your reaction to the argument made here that after all this is a specialized thing, and it is something that the public is not now getting and it would be something in addition to what they are now receiving free, and would not be an infringement upon free entertainment. What is your reaction to that?

Mr. FELLOWS. We believe that it is a complete infringement, if it is done over what we now term "free television facilities." I say later if it were done by closed circuit, if it would be attempted in something other than the broadcast band, over which we are now getting free television, we would not be here sir, because we would have no contention with that regard. If the great minority wants to be served, or if a small minority wants to be served, then there must be a way to serve 5 percent of them, but not at the expense of the other 95 percent. That is the basis of our argument, sir. If I may be permitted this intrusion, you made basically what to my mind was the essence of this whole project, or the whole dicussion. Is it in the public's interest, in the public service? It either is or it isn't. In other words, it is either all good or all bad, and we believe it is all bad.

Mr. COX. Do you think that by a limitation as to the type of programing to be offered, in terms of something for which the public is already accustomed to be paying, and in terms of limitation on the maximum hours that any station could be permitted to offer subscription programing, that you could reach a reasonable balance between the two types of service?

Mr. FELLOWS. Not within the structure of free television as we know it, Mr. Cox. I do not believe that you can appeal, with pay television, to limited audiences and make it pay economically. I doubt that it is possible to do that. It is bound to be a pretty expensive proposition to get underway. I think it would be necessary to move into the fields of pretty popular entertainment, and I do not think that would work. I think because of the economics and the necessity of getting the thing off the road and then attempting to get it as large as you can, that they are bound to move into the peak evening hours of 7 to 10 when the greatest portion of our population in this country is dependent upon free television for entertainment, information, and sometimes education in their own homes. Therefore, the encroachment, if I may term it that, is likely to be, and probably will be, from the first, in such a place in the day's programing that it makes the greatest infringement upon the free rights of the television viewer. It will take from him some facilities, some stations, some program service which he enjoys the most, at the time when he is best able to listen. So it constitutes a very deep infringement, in our opinion.

Now we had the example of 400,000 sets. The owners of 1 million receiving sets, by paying the same figure of $1 each, could more than double the return to producers, distributors, and stations. Thus, they could very easily deny the opportunity to the owners of the other 35 to 36 million sets of the privilege of watching such a production on a free basis.

Thus, it is not difficult to understand why many promoters of sporting events, outstanding entertainers and producers of stage and screen shows are extolling the virtues of pay television. They are able to envision a bigger pot of gold at the end of the rainbow, realizing that even if only a small percentage of the number of people who regularly watch an outstanding program paid for the privilege on pay television, the total gross receipts from the presentation would surpass by far the present cost to an advertiser.

The fact that somebody would stand to benefit monetarily should not be of any relevance whatsoever in one's analysis of the pay television proposals. The sole criterion, I submit, is the interest of the public.

The interests of the public—and I am talking about all of the public—cannot be benefited by a system requiring them to pay for programing at a "cashbox" in their home—programing which by the very economics of our system would be, for all practical purposes, the same as now comes to them free.

At this point, I want to make it eminently clear that I am a deep and firm believer in the basic principles of free and open competition. If this system were being initiated on a wire-line system, we, of course, would not be here, because there would be no encroachment on broadcast channels and there would be no necessity for this hearing.

The proponents of pay television propose to utilize frequencies already allocated to a free broadcasting service and convert them to a point-to-point service. In so doing, they realize that the roadway and the vehicles are already there—the roadway being the public's channels and the vehicle the public's investment of over $15 billion in 37 million television receivers. They realize that by placing pay television on these channels, the free channels are partially or wholly blacked out, and the television receiver would no longer pick up a free program on these channels. The free highway would be converted to a toll road.

As we have seen, the proponents of pay television are seeking the authority to use that portion of the spectrum already allocated to free television broadcasting for what in reality is a point-to-point service. The signal they propose to send is one that will be unintelligible on a normal television set, and one that will remain unintelligible—a hodgepodge of scrambled images and sound—until the owner of the set inserts his tribute in the coinbox (or has made some other arrangement for payment to the authorized individual to receive same). The sender of that signal agrees to unscramble the signal only for those who pay for that service. In the sense of payment for service, it is not unlike one's payments to the telephone company. If you pay the telephone company at the end of the month for your local and long-distance telephone service, you may then use your telephone for the ensuing time period.

Mr. Cox. Now, Mr. Fellows, you have several times used this concept of a point-to-point service. Isn't the typical case of point-to-point service the microwave service of the telephone company, that is a beamed signal which goes from one fixed point to another?

Mr. Fellows. That is right.

Mr. Cox. Now, in the subscription systems proposed, even though the signal may be capable of reception by less than the total number of sets in the area, nonetheless, it will be a signal which is broadcast in a very literal sense of the word, going out to large numbers of receiving points?

Mr. Fellows. Making it available to those who will pay. The parallel, if there be a parallel, with regard to microwave service, is simply that that becomes the vehicle and again you can't use it without paying for it, and the pay television use of a free television facility is, I think in very much of the same concept of a point-to-point service, in that you have got to pay for it to get it through.

Mr. Cox. It is the payment that is critical, not the lessening of the ability of reception?

Mr. Fellows. That is quite fundamental, but there is a second angle on the point to point which I shall bring up shortly.

Mr. Cox. All right.

Mr. Fellows. The service also is similar in some respects to a taxicab dispatching service. The message in the latter case is directed to and intended only for designated individuals. Pay television is directed to and intended for only designated individuals—namely, those who will pay.

Nor is pay television dissimilar from radio communication in the industrial services. These services are utilized for traffic control, shipping instructions, inplant communications, pipeline operations, and a myriad of other functions. The messages transmitted on these frequencies are not directed to nor intended for each and every member of the public—nor is the message on pay television.

These other services, however, all have their particular allocation of frequencies in the spectrum at places other than that reserved for broadcasting—an allocation made because of the public interest surrounding their operation. Pay television, like these other services, is nothing more nor less than a point-to-point communication service. Yet, pay television is seeking authority for its point-to-point operation in the broadcast band. I believe it is general knowledge that all the other radio services (safety and special services, industrial, and so forth) are expanding at a tremendous rate, and everybody concerned is looking around for additional usable space.

To allow one point-to-point communication service to operate in the broadcast band undoubtedly would supply reason for others to seek frequency space in those bands. To allow the utilization of this point-to-point pay television service in the broadcast band would, therefore, create an unfortunate precedent for further attempted inroads into a band presently set aside for the public's free enjoyment.

This is a band the extent of whose ultimate utilization is impossible to predict. I realize that this committee is concerned with the problem of television, but I do not believe that we should ever overlook the fact that in the overall, they are "growing pains." By so categorizing them I do not intend to underemphasize in the slightest the importance of this hearing, and the questions here propounded. Television, however, is still in its infancy, and the extent of its ultimate growth under a free system of free reception is a matter on which I could not hazard a guess.

I do know, though, that television is destined to expand. At the moment, commercial television may be regarded as no more than 10 years old. At the comparable age in the life of radio (1932), there were 601 AM stations on the air. As of March 31, 1956, there were 2,858 commercial AM stations on the air, and in addition, 536 commercial FM stations. In 1932—10 years after the inauguration of radio broadcasting—it would have been regarded as economic suicide to start a station where some two-thirds of them now operate. It was regarded as impossible for a small town to support a local station. And as we look back on those days, we realize now that even the most ardent dreamer never contemplated the magnitude of the commercial radio broadcasting industry of today. Yet, today, small towns do support radio stations, and the reason, I believe, lies more than just in our continuously expanding economy.

As a result, we now have more than three times the number of radio stations in the country that we had prior to World War II.

I am firmly convinced that our economy and this dynamic business of broadcasting will result in a similar expansion of television. For that reason, if nothing more, we contend that a point-to-point system of pay television should not be allowed to encroach, and to establish a precedent for other encroachment, on the free broadcasting bands.

I have noted before that pay television will without doubt engender a divisive force among the American people. And I mean by that simply that the economically well-to-do will be enabled to control a public asset. Imagine an overwhelming majority of the American people approaching their television set, having to accept whatever free programing may be left after the flight to pay television. It is only commonsense to recognize the fact that the moneys accruing to pay television will, naturally, siphon off the talent, programs, authors, and producers who have hitherto been available with our present free system of broadcasting. Perhaps such a situation might be deemed proper and merely symptomatic of changing business conditions. Perhaps the situation might be likened to the fact that anyone can take in a Broadway show if he has $4.40. But how many of our citizenry, relatively, ever pay $4.40 for a show, or for that matter, $3 or $2? We all know that the proportion of the American people who can afford this kind of entertainment is meager. However, I must say that this is a pattern that American economic life has followed since its inception, namely: If you can make the money, well and good; if you cannot make it, you simply cannot enjoy the things that your next-door neighbor, who can make it, does.

There is a vast difference, however, between this economic pattern of American life and that which would result from the proposals of the pay television proponents. In the former, the Government has only a passive interest, but in the latter, the Government, if pay television were authorized, would be responsible for the taking of the public's air waves, and regulation of their utilization for the private entertainment of a privileged few.

In this connection, various polls conducted by newspapers on the question of whether or not the public desires pay television are highly illuminating. The published results of these surveys show, for example, that, according to the Minneapolis Star and Tribune, 72 percent of those polled opposed pay television. The New York Herald Tribune's poll showed 76 percent in opposition, while the Houston Post poll showed 88 percent against pay television. The El Paso Herald-Post showed 94 percent opposition, and the Cincinnati Post, 98 percent. The Knoxville News-Sentinel hit a high of 99 percent.

Mr. Cox. Do you know in what form the questions answered were stated?

Mr. Fellows. I do not exactly know. The results are available and we would be very glad to furnish them to the committee, Mr. Cox. We will do so.[4]

[4] The materials referred to were furnished by Mr. Fellows at a later date and inserted in the record on June 11, 1956. As directed at that time (in the volume on "Network practices") they are set forth at the conclusion of Mr. Fellows' testimony, at p. 1273.

Free television brings to the American viewing public the world series; it brings great Shakespearean drama, musicals, symphonies; it brings the world's most outstanding performers into the American home. Its record of achievement in a decade is, I believe, unmatched by any other industry. Television will continue to bring the best in entertainment to the American people and, at the same time, provide the educational, informational, and cultural programs for which it is famous. New horizons in programing will be reached. Indeed, it would be illogical to assume otherwise because television today is in its infancy.

Programing material which today may be unavailable to free television will be available tomorrow, if free television is allowed to continue its present expansion and serve the interests of the public. Obviously, the public will be the beneficiaries—I am convinced that that same public will be the losers if pay television is authorized, for under such an authorization I firmly believe that the sources of programing for free television will quickly wither. Under pay television, I am convinced, there will be no more free world series, dramas, musicals, and so forth—and the only loser will be the public.

I have spoken at length as a representative of the television industry. We have attempted to demonstrate to you that despite the financial gain which might accrue to us under pay television, we wish no part of it within the free television bands. Let me, however, quote a spokesman. A Florida woman viewer, who in writing to the Federal Communications Commission to protest pay television, spoke, I think, for America when she said:

> I am writing to strongly protest the idea of having to pay to see television. It simply means that the poor man will be forced off the air entirely, and I am very sure that if all the people really had an opportunity to express their feelings there would be no doubt of the outcome. As it now stands hordes of people to whom money is no object claim they have already won at the ratio of 6 to 1. Now I submit that your Commission is fully aware that if the entire voice of the people could be heard, the result would be reversed in favor of free air; as if it were not enough to have to pay out hundreds of dollars for a set, without having to be forced to pay extra millions into the coffers of the al eady well to do. Again I say you are well aware that the poor owners of television sets are strictly against any plan of forced payments for the privilege of viewing television. These poor people will be forced to sell their sets at a loss to them as they will all stand firm in refusing to allow their sets to be converted to slot machines.
>
> Thanking you for your cooperation in the matter, I am,
>
> Very truly yours.

Thank you, sir.

Senator PASTORE. Mr. Fellows, thank you very much. I asked you questions during the time you were reading. I have no further questions.

Mr. COX. I have just a couple. You stated, Mr. Fellows, that in your view television was expanding and, you thought, would continue to expand.

Mr. FELLOWS. Yes, sir.

Mr. COX. Now this is true, certainly, in the terms of revenues being received, their share of the advertising budgets, and so on. It is equally true, is it not, that that is not clearly the picture as far as the development of additional stations is concerned?

Mr. FELLOWS. Well, certainly not for the time being, Mr. Cox. I think we should take into account the fact that you folks, your committee, and the Commission are both engaged in attempting to solve the big problem of VHF–UHF. I think they are going pretty exhaustively into the whole thing. And I think we should remember that something like only 10 percent of our Nation is not served with at least one good signal, and this is only after 10 years of engineering and development and the other things that bring this about.

Now that development is likely to come rapidly, both with regard to VHF and UHF, once you come out of these present hearings and investigations. And I think it is not unbecoming to remind you that Ampex film was introduced just 10 days ago, which completely revolutionizes the small-market problem. Also, not too long ago one of the big electric companies announced a $50,000 packaged transmitter—that you could go into the television business for $50,000. These things can happen overnight and I don't believe that we should discuss or, rather, contemplate the breaking up of an allocation system utilizing any facilities which were originally allocated for free television, by abruptly putting them into something else, until there has been an opportunity to find out how much further television can go under the present system.

Mr. Cox. Are you familiar with the study that was made by Dr. Sidney Alexander for CBS?

Mr. Fellows. No; I am not, sir.

Mr. Cox. There has been testimony about it. He came to the conclusion that even if all of the channels allocated were VHF, so that you did not have the compatibility problem—the converter problem—advertising support at the present time would be sufficient, in his view, to maintain something like 588 stations in 217 markets.

Mr. Fellows. In the first place, I personally doubt, and it is the opinion of many broadcasters, that you can't do it all with VHF. That there has to be UHF to have a nationwide, coast-to-coast, free competitive system. I imagine that I am not as much of an authority as the good doctor, but I believe, and am on record as stating so publicly, that it is quite possible that there would be at least a thousand television stations in this country in the next 5 years. That is what I believe. I believe that the development is going to be such that television will move successfully in its present form into much smaller markets than it has been able to do at the present time. I believe that the manufacturing interests are going faster and more and more toward the business of an all-purpose set which will take both UHF and VHF. I believe we are closer to some of these solutions than we may seem to have been. Because I know the extent to which the Commission is working on it, and perhaps you have noticed, or did not notice, that the Chairman of the Commission, in his speech at the convention, asked for a pretty thorough survey with regard to the UHF survey—asked that people get behind seeing if they couldn't get the solution to it, and come out with how we could utilize UHF throughout the country.

I think it is inevitable that the smaller markets are going to get television. I cannot say how quickly, because we have been at it about 9 years at the present time, and we already have service up to within 10 percent of the population. And with American science, as we know it, it won't be too long before anybody in the country—whether he be in a small cabin in the Rockies, or 500 miles from Phoenix, Ariz., on a ranch—will have a television set in his home on a free basis, if that idea is not intruded on by the business of people having an opportunity to pay for it.

Mr. Cox. You indicated these newspaper surveys show an overwhelming resistance to pay-as-you-see television. If this truly represents the attitude of the public, what is there to fear, as far as free television is concerned, from the introduction of such a system? How can you persuade the 99 percent of the people in Houston who are opposed to it to spend money—first of all to buy a decoder, and, second, to pay for programs—if they seem at this stage to feel that that is against their interest?

Mr. Fellows. I think if I were the average citizen my decision to do that would depend entirely on what I was told I would get if I did it. If I were told I was going to get the world series and heavens knows how many other great productions; if I had set myself up for $40 or $50 in order to be able to put a quarter or a half-dollar in the slot, I think that would interest me, particularly if I didn't find myself strapped or starving, or anything like that, and I think I might very well succumb to the business of putting money in a coinbox.

Mr. Cox. Then you think that these people have not been advised as to the kind of programing that the proponents of subscription television at least claim they would furnish?

Mr. Fellows. That is right. I think it is very debatable whether or not pay television would start out and propose programs specifically. I think there has been a great amount of generality in all of the proposals that they have made.

Mr. Cox. Well, they would have to become reasonably specific in order to induce people to part with any money.

Mr. Fellows. Yes. For some people they wouldn't have to be very specific. I think if the question were asked whether you wanted television free or to have to pay for it you would get a pretty pointed answer.

Mr. Cox. In that form, yes.

Mr. Fellows. And I think if you were a Congressman running for reelection, and you had to take the position of whether you stood for free television or pay television, that broadly, you wouldn't have a hard time deciding which you would say without any more explanation than we have had up to this point.

Senator Pastore. Do you want this resolution included in the record, Mr. Fellows?

Mr. Fellows. Yes.

Senator Pastore. It will be included in the record.

(The resolution is as follows:)

RESOLUTION OF THE TELEVISION BOARD OF THE NATIONAL ASSOCIATION OF RADIO AND TELEVISION BROADCASTERS

(Adopted April 12, 1955)

Whereas, FCC Public Notice Docket No. 11279 invited comments with regard to the petitions on behalf of certain subscription of pay-as-you-see television proponents seeking the establishment of rules and standards for the introduction of a service limited to subscription or pay-as-you-see within the television broadcast bands; and

Whereas the television broadcast bands and channels therein are presently allocated and assigned exclusively for unlimited television broadcast; and

Whereas the American public (including the owners of 34 million television sets) is not now subject to governmental or private assessment for television reception within the television broadcast bands; and

Whereas the ability of the present system of free television to bring the finest in diversified programing, including news, public events, and entertainment to all of the public is hereby reaffirmed; and

Whereas is is our belief that the legislative history of its enabling legislation does not clearly extend to the Federal Communications Commission the authority and guidance sufficient to allocate or assign any portion of the television broadcast bands to the limited purpose sought by the proponents; and

Whereas the proposal as made, if adopted, would necessarily diminish and encumber unlimited free reception by the public in order to provide this limited use; and

Whereas subscription television could be provided by other means without detriment to unlimited public reception of the present system of free television: Therefore be it

Resolved, That the proposals as made are opposed as contrary to the public interest; and further

Resolved, That the management of the NARTB record by appropriate comments this resolution, appear and participate in all hearings and proceedings and take any and all necessary and proper steps to preserve unlimited public reception within the television broadcast bands.

(The materials furnished later by Mr. Fellows (see p. 1269 above) are as follows:)

NATIONAL ASSOCIATION OF RADIO AND TELEVISION BROADCASTERS,
Washington, D. C., May 16, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: During testimony by Harold E. Fellows before your committee in opposition to pay television, he referenced various newspaper-conducted polls on the question of pay television. At that time, Mr. Cox requested that the committee be supplied with these polls.

I am including, herewith, the newspapers' stories as they appeared in the Minneapolis Star and Tribune, Houston Post, Cincinnati Post, and Knoxville News-Sentinel. Our copy of the El Paso Herald Post story has been misplaced, and although we have attempted diligently to obtain another copy, we have been unable to do so as yet. As soon as we do obtain a copy from that paper, we will supply it to the committee.

Also, in order to complete the record of these proceedings, there is enclosed a copy of a letter from Mr. Fred Houwink, general manager, station WMAL-TV, Washington, D. C., to the Chairman of the Federal Communications Commission, reporting on his observations on the experimental Zenith phonevision system for pay television conducted by WMAL-TV during the period May 25, 1955, through June 24, 1955. This letter was mentioned during the course of the hearing before the committee, but was not produced for the record. In order that it be available to the committee, the enclosed document, which is in the files of the FCC, is respectfully submitted.

Sincerely,

VINCENT T. WASILEWSKI,

SEPTEMBER 9, 1955.

Hon. GEORGE C. MCCONNAUGHEY,
Chairman, Federal Communications Commission,
Washington, D. C.

DEAR SIR: Your records reflect the fact that the Evening Star Broadcasting Co. recently made nonstandard television transmissions that employed the Zenith Radio Corp. phonevision system. These transmissions were made during the period May 25 through June 24, 1955, in accordance with the special temporary authority granted to us in your telegram dated May 18, 1955.

It is the purpose of this letter to give you our observations on these transmissions. These are presented as an explanation of our objectives in making these transmissions and as our conclusions reached after their completion.

The Evening Star Broadcasting Co. petitioned you for this special grant and undertook these nonstandard television transmissions for four reasons:

1. We wished to give the Federal Communications Commission, and interested Members of Congress an opportunity to view a typical "fee TV" coded and decoded signal in the convenience of their own homes. We felt this to be particularly desirable because certain members of the Commission and of the Congress either had not had an opportunity to witness the previous experimental transmissions of this type or had not previously had the special interest in such television signals that they do today.

2. We wished to give the developers of coding and decoding apparatus such as that used in fee TV an opportunity to demonstrate such a system here in Washington. We made transmissions of the phonevision system because the Zenith Radio Corp. asked our cooperation in making such transmission, because Zenith provided certain apparatus essential for such transmissions and because we felt that the phonevision signal is typical of those utilized in fee TV systems.

3. We wished to give the broadcasting industry an opportunity to observe typical fee TV transmissions when the National Association of Radio and Television Broadcasters convened in Washington during the last week of May 1955.

4. We wanted to determine at firsthand what our own course should be with regard to fee TV. This company's television station, WMAL-TV, needs more high quality programing. This condition prevails because our network affiliate, the American Broadcasting Co., does not provide as many hours of network service as do its competitive television networks, Columbia and National. As a result, fee TV appeared to offer possibilities for acquisition of additional programs at a profit as opposed to our own provision of programs at considerable expense.

It is our sincere hope that our experimental transmissions have been of assistance to you and Members of Congress, to the developers of fee TV systems and to the broadcasting industry. We have found that they were of considerable benefit to us in clarifying our own views on fee TV.

After careful consideration, we have concluded that fee TV is completely incompatible with the operation of a regular broadcasting station. We have taken adequate time to reach this conclusion. We have waited out the storm of claims and counterclaims that broke during our experimental transmissions.

Our conclusion that fee TV is incompatible within regular broadcasting station operation is not based upon technical nor economical grounds, but upon philosophical and ethical grounds:

1. Both the theoretical and the practical technical problems of fee TV are either already solved or clearly solvable.

2. There do not appear to be any economical barriers to fee TV, either from the standpoint of the equipment, of the program distributor or of the transmitting station. In fact, the transmitting station stands to make more money than could be made by regular broadcasting. The only requirement for fee TV transmission is a television transmitter. There is no need for studios or other local station program sources. This condition would create opportunities for large economies and resultant increased profit.

3. Regular television broadcasting stations cannot intermingle fee TV in their present programing because this would create a conflict of purpose that would make it impossible to operate equitably in the public interest, convenience, and necessity.

It would be impossible for us, as a station, to operate in the public interest, convenience, and necessity, as between regular broadcasting and fee TV, even if our income from time sales were the same per hour for both types of transmission. This is so because our acceptance of a fee TV program would deny service to those people who either did not have a decoding device or could not afford the fee. We could not restore this preempted service at acceptable times of the day.

Our difficulties with fee TV would increase enormously when fee TV outbids others for our air time. It is clear that this condition would develop quickly. There are approximately 750,000 television receivers in the Washington area. A good fee TV program would capture at least one-third of this audience and ring up a gate of from $125,000 at 50 cents per home to as much as $500,000 at $2 per home. The fee TV distributor could easily outbid all others for station time, even after paying handsome royalties to the program producer and after retaining an adequate margin for himself. The rates charged by the Evening Star Broadcasting Co. for prime evening time are a matter of published record:

WMAL–TV rate card—7:30 to 10:30 p. m.

Class of service:	*Rate for 1 hour*
Local retail	$600
National spot	900
Network	1,100

A fee TV distributor would be able to pay many times these rates, and still make huge profits. In fact, fee TV's potential profits are so enormous that fee TV could outbid present sponsors for both time and programs. We, as a station, would be unable to resist the economic and competitive pressure that would be brought to bear under such circumstances. We would have no choice but to accept a substantial volume of fee TV programing. This could hardly be considered as operating in the public interest, convenience, and necessity.

Our conclusions are predicated upon the assumption that fee TV would be intermingled with our regular broadcasting on our assigned channel 7. These conclusions would not prevail if we were assigned an additional channel for fee TV transmissions.

We consider it a privilege to have been permitted to make these experimental television transmissions in your behalf. We shall be available for your questions if there is any particular in which you desire additional information.

Yours very truly,

F. S. HOUWINK, *General Manager.*

[Minneapolis Star and Tribune, June 19, 1955]

THROUGHOUT MINNESOTA—MAJORITY OPPOSED TO TOLL TV

People throughout Minnesota who have television sets in their homes are opposed to subscription or toll TV in the United States in more than 7 out of every 10 cases.

A Minnesota poll study of TV householders in cities and towns and on farms throughout the State shows strong opposition to the pay-as-you-see proposal.

The Federal Communications Commission is considering the requests of several firms for authority to establish toll television. The idea has created a major furor in the television industry, and the FCC has been receiving large amounts of mail from the public on the subject.

In Minnesota homes with TV sets, poll interviewers asked this question:

"Several companies want to start subscription, or pay-as-you-see, television in the United States. They think many people would pay 50 cents or a dollar to see a new movie, a play, a big sports event, or some other type of attraction on their TV sets at home. Those who did not pay would not be able to see that particular event on their sets.

"Are you in favor of some sort of subscription TV system in the United States, or are you against it?"

The answers:

[Percent]

	All adults	City people	Town people	Farm people
In favor of it	22	23	20	17
Against it	72	70	70	83
Qualified	2	3	4	
No opinion	4	4	6	
Total	100	100	100	100

These are the explanations people give for their stands:

In favor: "I'd be willing to pay for better programs; that's the only way programs will improve; I'm tired of old movies; that would be cheaper than attending the events in person—we wouldn't have to pay babysitters, for example."

Against: "The initial cost and upkeep of the TV set are expensive, and it's unfair to buy a set and then have to pay to see programs on it; I'm satisfied with present program selections; we couldn't afford subscription TV; I'd rather go to the event in person if I had to pay; the present method is fine—I'm willing to look at commercials; that plan would lead to further controls."

Ranged against the 30 percent of the college-educated Minnesotans who favor subscription TV are 61 percent who oppose it and 9 percent who give other answers or are undecided.

The toll TV idea has a little more appeal to younger adults than it does to older people, but in all age groups the opponents far outnumber the proponents.

[Houston Post, June 11, 1956]

Sound-Off—Post Readers Express Themselves Vividly on Free-or-Fee TV Question

(The Post recently polled its readers on the free TV or subscription TV question. Many sent in letters with their votes. Sound-Off today devotes its space to a few of those letters:)

THERE'S NOT GOING TO BE A JUKE BOX IN THE HOWELL HOUSE

To the Houston Post:

* * * I would like to say to you, as I have said to the FCC in Washington, that no one is going to make a jukebox out of the TV in my home. * * *

L. D. Howell, *Baytown.*

PAY TV WOULD BE BLOW TO OLD FOLKS, SAYS EMMA COPPINGER

To the Houston Post:

Pay TV programs would deprive thousands of old people (mostly pensioners) of the pleasure they get from TV, as they could not afford to pay for TV programs. Let those who can afford to pay have their special programs if they wish and pay for them.

Emma J. Coppinger, *Pearland.*

EARL D. KRANNIG MAKES AN OFFER

To the Houston Post:

If we do get subscription TV you can have my set. Couldn't sell it. There will be no market.

Earl D. Krannig, *Houston.*

ADVERTISING DOESN'T BOTHER MRS. TENBERG

To the Houston Post:

* * * It would turn me back to radio, which I still enjoy during the daytime. Advertising does not especially bother me. In fact, I've learned of many good products by it. Have you ever noticed how children enjoy the TV commercials? My niece, at 2½ years of age, could pick the coffee brands off the shelf and parrot the commercial. * * *

Mrs. B. E. Tenberg.

MRS. HAINES O. K.'S PAY SYSTEM BUT WITH DIFFERENT CHANNELS

To the Houston Post:

I feel it is all right to have pay TV if the pay system uses their own channels, but would not like them to use regular network channels and then leave the public nothing at all to watch free.

Mrs. Harry Haines.

MR. VANECEK ASKS SOME QUESTIONS ABOUT PAY TV

To the Houston Post:

* * * How would they fix the TV's now owned? * * * It would be a lot of trouble to do this * * *.

Who would get the money from this?

Michael T. Vanecek, *Pasadena.*

MR. WILLIAMS ADVOCATES A COMBINATION SYSTEM

To the Houston Post:

* * * I have often thought that it would be nice to have closed-circuit TV if it were to offer high-quality programs. I would like to see the Metropolitan Opera and other musical and dramatic shows. It would be very nice and worth a substantial fee to be able to see a Broadway play or to see an Alley Theater play (or one from another of our local houses). I would even be willing to pay a small price to see a first-run movie. It would have to be borne in mind in setting the fee on first-run movies that the TV performance would not have a wide screen and (for the present at least) would not be in color.

I would like to add that I would not under any circumstances favor the doing away with the free commercial TV. This is not because I like to see the commercials but because there are many programs which we like to watch occasionally for relaxation, but which we could not afford to pay to see * * *.

E. R. WILLIAMS, Jr., *Houston.*

IT'S ALREADY PAY TV, CONTENDS MRS. SAWYER

To the Houston Post:

In regards to the pay-as-you-see TV, why the people already pay to see TV * * * the set * * * the expense of keeping it up and so on * * *.

Mrs. LOUISE SAWYER, *Glenflora.*

YOU CAN PUT THE SCOTT FAMILY DOWN AS VOTING "NO"

To the Houston Post:

My family and I are very much against subscription TV. My 3-year-old brother has been sick most of his life and Mom and Dad very seldom ever get to go anywhere and TV is about the only way they have of getting any entertainment. So, I feel that subscription TV is very unfair * * *.

MYRNA JEANETTE SCOTT, *Huffman.*

THE RUSSELLS EXPLAIN THE SITUATION QUITE CLEARLY

To the Houston Post:

Please don't change TV. For if you do I will have to let my set go back, as I don't make enough salary to meet the notes on the set and pay to see it, too * * *.

NAOMI AND JESSIE RUSSELL, *Humble.*

PAY-AS-YOU-GO TV WOULD SAVE MR. LEE MONEY

To the Houston Post:

I do not own a TV at the present time but plan to do so in the near future as it is very enjoyable for the home.

If they start pay-as-you-go TV, then they will save me money, because I will not buy one but will stick with radio.

JOHN C. LEE.

EVERYTHING'S BACKWARD, COMPLAINS MR. KILLI

To the Houston Post:

Pay for watching TV? I've been misinformed. I thought we were going to be paid for watching almost any of them. So few are worth a person's time, let alone their money.

ALBERT KILLI, *Houston.*

IT WOULD COST TO TURN IT OFF, MR. RUST LAMENTS

To the Houston Post:

I'm strictly against pay TV, because if you have pay TV and deposit your money for a show, you might not like it and then to turn it off your money would be thrown away * * *

R. A. RUST.

MRS. ABSHIER DOESN'T BELIEVE IT'D HELP QUALITY

To the Houston Post:

* * * I don't believe pay TV would make much difference in the quality of TV fare * * *

PATRICIA ABSHIER.

THE POYES FIND THE COMMERCIALS EDUCATIONAL

To the Houston Post:

* * * We have no objections to commercials—we learn much from them * * *

Mr. and Mrs. CHARLIE POYE AND FAMILY, *Hemphill.*

MRS. WHITESIDE, A MOVIE FAN, CONSIDERS AND RECONSIDERS

To the Houston Post:

Being an avid movie fan, I was quick to mark "yes" in agreeing to pay for first-run films on TV, but after further thought I know this isn't true. The theater screen size, color, and sound are such today that TV cannot compete with us, on movies * * * We want to pay for things we have no other means of seeing: sports, theater, opera.

Mrs. G. C. WHITESIDE.

COMMERCIALS BECOMING MORE OBNOXIOUS, BRIGGSES SAY

To the Houston Post:

We believe the combination as we know it and subscription TV should be given a trial. Some, or I should say many, commercials have become (and are becoming more so) downright obnoxious and nauseating to say the least * * *

Mr. and Mrs. A. O. BRIGGS AND ROSE,
Highlands.

OUTRAGEOUS, MONEY-MAD, PROTESTS MRS. BENNETT

To the Houston Post:

This scheme of paying for your own television is the most outrageous, money-mad stunt I have ever heard of * * *

Mrs. R. P. BENNETT, *Bellaire.*

RECEPTION IS AWFUL AT NAVASOTA, SAYS MR. IVEY

To the Houston Post:

I want to state that the reception on TV received here at Navasota, Tex., from 4 to 9 p. m., is something awful * * * I still like my radio, and I may discard the TV and stay with the radio * * *

J. T. IVEY, *Navasota.*

MR. EVANS NEVER HEARD OF ANYTHING SO RIDICULOUS

To the Houston Post:

* * * pay television * * * I have never heard of anything so ridiculous in my life!

JERRY EVANS, *Houston.*

MRS. MARSH OF PASADENA WILL GO TO THE MOVIES

To the Houston Post:

When it comes to paying to watch my own TV, I'll junk it and go to the movies.

Mrs. ROBERT F. MARSH, *Pasadena.*

SOME WOULD PAY WELL—PUBLIC VOTES 856 TO 115 AGAINST FEE TV PROGRAMS

Eleven hundred people in Houston and neighboring towns and cities have expressed their opinions on the subject of subscription TV.

The consensus is a resounding "No" to the question, "Would you prefer a combination of TV as we now know it and subscription TV which would offer attractions now unavailable?"

Of 1,092 questionnaires received in the Post's informal survey (a few arrived after the answers were tabulated and were not processed), 856 said "No" to this question, 115 said "Yes." Apparently indifferent to the whole subject were 121 individuals who, nevertheless, wanted to say a few words about TV in general if not about subscription TV in particular.

This indicates that Post subscribers are against subscription TV by about 7.5 to 1. Those opposing subscription TV watch television an average of 32 hours a week. Those in favor of it watch an average of 28 hours a week. Those who can take it or leave it watch a little less—23 hours.

One of the most interesting developments of the poll was an indication that those in favor of subscription TV generally are willing to pay well for it. While 41 respondents in favor of pay TV did not indicate how much they would be willing to spend a week, only 9 of the 74 who did make an estimate set the figure at less than $1 and 32 of them were willing to pay from $2.50 to $10 a week for TV shows in their homes.

As for the types of shows the prosubscription TV fans want to see for pay, first-run movies lead the pack. Eighty of them said they would pay to see such films. Next came dramatic productions, with 61, then sports, with 55, and last, opera with 37.

More than half of those in favor of subscription TV said they would not be willing to pay for attractions now available on TV minus the commercials.

[The Cincinnati Post, July 6, 1955]

MARY WOOD'S VIEWS ON TV AND RADIO—2,132 POST READERS AGAINST PAY TV; 68 FOR

Judging from the latest tabulation of the votes on pay-as-you-see TV—yes or no—Greater Cincinnati viewers are overwhelmingly against "buy" television programs.

The results were: against pay TV, 2,132; for, 68.

Here are a few quotes from some letters which accompanied many of the ballots:

From Wilbur G. Kellis: "This is a brainstorm that someone thought up to make life just a little more miserable for the low-income class. We are taxed to death now. Why more? I have $450 invested in my TV set already. I think it is time the public fought back."

From Mrs. J. B.: "I think it is awful that they want to make us pay to see TV after we paid good money for our sets. What will they think of next?"

From Mrs. G. Jones: "Here's hoping we never have pay TV."

From Mrs. Ralph Grogg: "If pay TV comes we'll turn our TV set to the wall and go back to the good old radio, which has never asked us to put in a coin to hear."

From Tony Fries: "I am 15 years old, and I haven't the money to pay to see TV program. It would be a shame to deprive children and poor people of their only enjoyment."

From Verna M. Van Ness: "What will happen to the many retired folk who have managed to get a TV set and whose income does not keep growing as prices do?"

From Mrs. L. B. Shaw: "No, I don't want pay TV. When I have to pay to see something, I want to go some place. I stay at home enough the way it is. The only time I get to go out is when I go to the movies, and if pay TV comes out I'll have to sit at home, along with a million other housewives."

From Ida M. Erb: "It seems a shame that the public has never had a voice in the deciding factor 'to pay or not to pay to see TV.' If it goes to the affirmative, soon all the good shows will be on the pay list instead of free, as they are now.

"Mary, I remember when TV was a new-born baby, and many a time I read in your column that TV was the best thing since running water and how you wished everyone had a set. I could hardly wait to get one, and I'm so glad we did, 'way back in 1950. It is a source of constant joy to me. * * * What a shame if we had to pay to see our favorite programs. And what about the poor (and there are thousands and thousands of us) who could not afford to pay? Would their sets just sit there dark, or would there be junk to see?

"Let's keep TV free and all of us help to make it better."

From John Meyer: "I think the idea of pay TV is one of the most selfish outrages ever heard of. What money-mad monopolist is trying to put it over? The next move will be to charge the public for the air they breathe."

From Mrs. B. D. B.: "A few weeks ago, when I saw the See It Now program on pay-TV, I wanted to write you my opinion but I heard we wouldn't have too much to say about it. I have my TV set on for about 12 hours a day, but I think the average home would have a lot less TV if the pay system should come into being. If it were up to me. I would keep it just as it is."

From C. E. Hathaway: "If these private industry thieves get control of TV and I have to pay to watch my own set, you'll hear a war whoop from me. What robbery. Even Jesse James wasn't that bad."

From James D. Johnson: "The very idea of pay-as-you-see television violates the American concept of freedom to look and listen. If we allow this monster to get a beachhead on the free airways, it will degrade or even destroy our present system by outbidding our advertisers who have given us high standards of entertainment, information, religion, and cultural programs for many years without charge.

"On the surface it might appear harmless, but within a year or two it would have such a stronghold on the American purse that we would be paying exorbitant fees and could do absolutely nothing about it."

[Knoxville News-Sentinel]

814 OF 820 ASSAIL TOLL TV AS UNJUST

OVERWHELMING PROTESTS LABEL SLOT-MACHINE PAYMENTS AS TOO COSTLY AND MONOPOLISTIC

The idea of slot-machine payment for premium television programs (toll TV) has been assailed overwhelmingly by News-Sentinel readers who wrote their opinions on free TV versus toll TV.

Of 820 comments, 814 scored toll TV as too costly, un-American, smacking of business monopoly or ruinous to TV set manufacturers.

"If toll TV is passed, I think my 21-inch Zenith will make a good hen nest," wrote one irate viewer. (Zenith Radio Corp. and Teco Inc. petitioned the Federal Communications Commission last February for approval to operate pay-to-see television.)

ANOTHER JUICY PLUM

Said a toll-TV opponent at Pressmen's Home: "Is this another juicy plum the present administration is trying to throw to its friends, Big Business? * * * I do not object to commercials, I find some educational."

Toll TV's advocates say its special programs would take away annoying commercials and offer such telecasts as Broadway plays, opera and more cultural events not ordinarily afforded TV viewers.

"As for commercials," says a woman opponent, "we rather like them and the children love them. My little girl will watch commercials when she won't look at a program * * * The companies can afford the commercials but we sure can't (afford) the toll. We have a free country; let's keep it that way."

SEES SALES DECLINE

Volume sales of TV sets would be damaged by toll TV, says one man, and it would indirectly hurt TV manufacturers.

"There wouldn't be nearly as many people buying TV sets if they knew they would have to pay extra to see the programs. Also, if the volume sales of TV sets were reduced over the country, that would mean more unemployed people * * * laid off from the TV manufacturing plants, TV service shops and TV sales stores."

The added cost is a frequent reason cited for opposition to toll TV. "I have a large family and cannot afford to pay tolls," says a Heiskell housewife.

"I bought a TV set I could ill afford, to give my children entertainment at home, to keep them off the streets * * * If I am asked to pay a toll, I can soon junk it, because TV repairs are costly enough.

"I'LL PLAY CHECKERS, FIRST

"I want my children to have entertainment at home," she continues, "but I won't pay a toll to give entertainment. I'll set my TV set aside first and play checkers with the children."

Another argument runs thus: "These toll TV companies state that only special event programs would appeal on toll TV * * * but there is still a possibility that toll TV would eventually monopolize all the good programs we now see free."

"Un-American hijacking which a few greedy hoodlums are attempting to cram down our throats," writes a railroad official. "If a deal like this was ever placed upon the people of free America, we need never shoot off our heads about democracy or individual freedom.

"KEEP THEM FREE

"The big business of this Nation has done a good job of furnishing us with good TV programs. Let's keep them at it * * *. Don't let this hijacking outfit survive. Let them sell this idea to Russia where no one can speak his own mind."

A comment signed by "One that has lived on both sides of the fence": "Why in ——— should people who are not able to buy necessities of life help pay for programs for people that are able to buy $400 and $500 TV sets? Have we lost all sense of justice?"

But an Oak Ridge scientist who lives here says he feels the News-Sentinel poll was worded incorrectly.

"The ballot is set up on the basis of an either-or proposition. This is not necessarily the case.

"PREFER BOTH

"I prefer to have both free TV and toll TV. Why not have 2 or 3 free TV channels then a toll TV channel for special programs?"

A female reader agrees. "The choice is between free TV as we now have it and free TV plus the privilege of choosing to see other TV shows for which we would be willing to pay.

"Few people would say, 'I prefer toll TV to free TV.' But I think a great many would prefer to have a choice between the two, based on the programs being offered at a given time."

[New York Herald Tribune, June 26, 1955]

READERS REPLY TO QUESTIONNAIRE: 24 PERCENT SAY YES, 76 PERCENT NO TO PAY-SEE TELEVISION

Seventy-six percent of persons who responded to the questionnaire printed June 12 in the Herald Tribune TV and Radio magazine have declared their unwillingness to pay for special television programs while 24 percent said that they would be willing to pay.

Most of the 24 percent, however, attached qualifications to their willingness and by far the most recurring of these was the demand that commercial announcements would have to be abolished. All told 1,650 ballots were cast.

When it came to the question of how much money people offered to budget in a week for pay-as-you-see television, there was great divergence among those who signified willingness to pay. The lowest figure was 25 cents and the highest was $35. The average was $2.46.

A number of viewers who were opposed to subscription television said, nevertheless, that they might be willing to pay and suggested fees from 25 cents up to $5 a week.

The Herald Tribune TV and Radio magazine, which printed the questionnaire, is included in all copies of the Sunday paper distributed in areas within the radius of the New York and New Haven television stations.

On many aspects of matters raised by the questionnaire, the viewers who responded showed considerable emotion, through letters attached to the questionnaire or through marginal jottings.

"An outrageous idea!" exclaimed J. F. Harris, of Cranford, N. J., in announcing opposition to any paying to watch television in his own home on his own set. And Frank Morris, of Paterson, N. J., wrote, "When I pay, the set goes out."

One of the most repeated thoughts offered by those in opposition raised the problem of shut-ins, the aged, and persons living on pensions who, it appears, have become widely addicted to television as their principal diversion and entertainment. Many responders in these groups said that their economic position was marginal and that if they had to pay for television, they would have to give it up.

A few viewers said they would be willing to pay for better programs but a note from the Hollwitz family, of Brooklyn, was typical of those who would like to pay to get rid of commercials. On the question of pay-as-you-see, the letter said, "Yes, yes, a thousand times yes," and then after citing commercials, went on to say, "There are times when I have all I can do to prevent myself from hurling an ashtray * * * straight through the TV tube."

SOME LIKE THEM

Several viewers, on the other hand, said that they actually liked commercials and then there was a fair-sized school which thought as did Mrs. Allen P. Thurston, of 605 West 111th Street:

"Most TV commercials are completely bearable, certainly a fair way to pay for the entertainment they accompany. * * * If I have a choice among several products, all of which I like, and find useful, I choose the one that may be represented on one of my favorite TV shows."

The questionnaires, which constituted a survey throwing considerable light on the television habits and attitudes of the metropolitan area population, presented the viewer with eight questions.

TWENTY-SEVEN-HOUR AVERAGE

The first question asked how many hours a week the family television set is in use. The average proved to be 27 hours with normal extremes running from 10 hours to 92 hours. There were, however, exceptional extremes of one-half hour to well over 100 hours.

The second asked about willingness to pay for special TV broadcasts. This produced the ratio of 76 percent opposed and 24 percent giving qualified approval.

The third asked how much a viewer thought he might budget a week for such shows. Here was the average of $2.35 for those answering the second question affirmatively.

The fourth asked about willingness to pay for specially selected children's programs. It appeared that having settled the principle of the issue by their replies to the second question, the viewers did not want to go into refinements because while 9 percent responded in the affirmative, 91 percent were negative or gave no answer.

TYPES OF SHOWS

The fifth asked what types of shows viewers might be willing to pay to see. A total of 70 percent refused to specify, but the following categories were mentioned by the following percentages of viewers: sports, 15; theater, 28; opera, 15; first-run films, 25. Sixty-four percent of questionnaires did not specify any of these categories.

The sixth asked what would be a fair fee for one of these shows. Among those who had expressed in question No. 2 a willingness to pay, the following amounts were stipulated by the following percentages of viewers: Up to 25 cents, 31; 50 cents, 32; 75 cents, 12; $1.21; and $2 or more, 4.

Some who replied in the negative to question No. 2 nevertheless submitted amounts for question No. 6 and these were stipulated by the following percentage of viewers: up to 25 cents, 70; 50 cents, 21; 75 cents, 4; $1, 3; and $2 or more, 2 percent.

COMBINATION CHOICE

The seventh asked if viewers would prefer a combination of TV as it is now and as it would be under subscription. The result, in a finding that does not appear to dovetail perfectly with the answer to the second question, showed 27 percent replying affirmative and 73 percent negative or not giving an answer.

The eighth question asked whether viewers would be willing to pay for current attractions without commercials. Eleven percent of responders said "Yes" and 89 percent said "No" or gave no answer.

Among those who replied to the questionnaire, 42 percent were men and 44 percent women; 14 percent were from Mr. and Mrs. By origin, the replies came from New York City, 34 percent; elsewhere in New York State, 27 percent; New Jersey, 30 percent; Connecticut, 8 percent; Pennsylvania, one-half percent; and elsewhere, one-half percent.

FADEOUT PROBLEM

An unusual problem was presented by Elaine Grey. She has good reception in her summer home on Bellmore, Long Island, but in the winter when she lives on the east coast of Florida, she is in a fringe area and programs often fade out. Over the country, many are in the same plight, she said, and asked, "Do you think these millions of people will pay when they have no way of knowing if they will be able to get the show?"

A recurring theme among viewers opposed to pay-as-you-see TV seemed to be just plain downright indignation. They spend several hundred dollars for a television set, they say. They install it in their own house and now somebody has the nerve to suggest that they have to start putting coins into it in order to watch it.

Senator Pastore. Now, our next session will be tomorrow morning at 10 o'clock in the caucus room of the Senate Office Building, room 318.

(Whereupon, at 5:50 p. m., the committee adjourned until Thursday, April 26, 1956, at 10 a. m.)

TELEVISION INQUIRY

THURSDAY, APRIL 26, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room 318, Senate Office Building, Hon. John O. Pastore, presiding.

Present: Senators Pastore and Schoeppel.

Senator PASTORE. Just so that we may be able to better gage our time for this hearing, I should like to ask Mr. Richard S. Salant how long he expects to be?

Mr. SALANT. About 30 minutes, sir.

Senator PASTORE. Is Mr. Lawrence H. Rogers in this room?

Mr. ROGERS. Yes, sir.

Senator PASTORE. How long do you expect to be, Mr. Rogers?

Mr. ROGERS. Perhaps 25 minutes.

Senator PASTORE. Is Mr. Biemiller here?

(No response.)

Senator PASTORE. Is Mr. Farr here?

Mr. FARR. Yes.

Senator PASTORE. How long do you expect to take?

Mr. FARR. Less than 15 minutes.

Senator PASTORE. Is Mr. Tibbetts here?

(No response.)

Senator PASTORE. Is Mr. Radford here?

Mr. RADFORD. I would like to speak less than 15 minutes; about 10 or 15 minutes.

Senator PASTORE. All right, Mr. Salant.

STATEMENT OF RICHARD S. SALANT, VICE PRESIDENT, COLUMBIA BROADCASTING SYSTEM, INC.

Mr. SALANT. My name is Richard S. Salant, vice president of Columbia Broadcasting System, Inc. I am appearing today to report the position of CBS in favor of free television. And because of the incompatibility of the two, since we are for free television, we are against pay television.

I shall try to state the case for free television, and against pay television, as we see it, as briefly as possible. I would like permission to submit for the files a memorandum, which I think you have before you, which deals a little more comprehensively with the issues.

Senator PASTORE. The memorandum [1] will be printed in the record, and will also be filed with the committee.

Mr. SALANT. Thank you, sir. Also for the files of the committee, I would like to submit the comments [1] and reply comments [1] which we filed with the FCC, which deal with these issues very comprehensively.

Senator PASTORE. They will be identified in the record, and referred to in the record, and held in our files.

Mr. SALANT. Thank you, sir.

In this statement I shall cover in broad strokes four points: (1) What free television is today; (2) how pay television threatens this free service; (3) the fallacies of the claims that pay television will be additive, either in terms of programing or in terms of more television stations; and (4) the illusory and unsound nature of the proposal that the issue of pay television could be resolved by an alleged trial in the public market place.

1. A PROFILE OF FREE TELEVISION

First, let me turn to what we are fighting for, free television.

The public itself has decided that free television is worth preserving. Over 34 million families, 7 out of 10 United States families, have invested more than $16 billion in television receivers. Today, 99.2 percent of American families live in areas within range of at least 1 free television signal, and about 9 out of 10 television families have the free choice of 3 or more stations. The average family now watches free television about 6 hours a day. If ever any industry has had an explicit and direct public stamp of approval, it is the free television industry. There can be only one explanation for its growth and the public's devotion to it—the quality and diversity of its programing.

In order to give some idea of the range of what free television is giving to the American people, we have prepared an appendix entitled "Some Highlights of the Current Television Season—September 1955 to June 1956." [2]

That is attached to my statement. That appendix shows that in a single season, free television has provided the viewing audience with a large selection of the best of the plays originally produced for theater audiences, a selection far exceeding in number a full season of Broadway hits. As Newsweek recently pointed out in an article on the influence of television on the Broadway theater, before television, a Broadway hit was an experience inaccessible to most Americans; but now television is attracting the leading playwrights, producers, and directors, and 90 million people have a chance to see outstanding stars in the greatest plays ranging from Shakespeare to the works of current playwrights.

But, as the appendix shows, television drama has done more than just borrow from Broadway; it has created its own plays, some of them so excellent—like the prize-winning Marty—that they have

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[1] The memorandum referred to is set forth at the conclusion of Mr. Salant's testimony starting at p. 1313. The comments and reply comments of CBS in F. C. C. Docket No. 11279, having been filed with the Commission, are incorporated in this record by this reference and have been retained in the committee files.

[2] The appendix referred to is set forth beginning at p.1308.

broken the bonds of the medium for which they have been created and have been adapted for showing in motion-picture theaters and on the stage. As John Crosby has stated:

> As far as plays go, I feel strongly that television has had more worthwhile dramatic material on it than Broadway has.

The appendix shows, too, that television is already presenting an impressive flow of feature motion pictures, and is getting more and more of them sooner and sooner. In the last 6 months alone major film companies have released to the television market almost 2,000 feature pictures and 6,000 cartoons and shorts.

Mr. Cox. What was the approximate date of the production of those films, Mr. Salant?

Mr. Salant. It varies, Mr. Cox; the English pictures are recent, in the fifties, many of them; the American pictures, with a few exceptions, are pre-1948.

The New York Times recently commented on this trend in this way:

> As newer films reach the home without charge, the toll television advocates are going to sound very forlorn urging viewers to pay for them. Pay-as-you-see had a stronger case 5 years ago than it has today.

The appendix also shows the great range of sports events which free television has brought to the public—leading football games, boxing, baseball, horse racing, tennis, basketball, bowling, and golf. In the current season, no less than 860 major league baseball games will be broadcast on television free. This is an increase of 45 games over last season.

And, as appears in the appendix, free television has presented not only drama, motion pictures, and sports, but also a wide range of programs in the field of public affairs and the arts, music and ballet, poetry and painting, education and religion, past and current history.

Mr. Cox. If I could, at this point, Mr. Salant, I would like to ask you a number of questions about this appendix. In relation to the plays and musicals you listed there, which appeared at the rate of three a month, were these broadcast at full length or were they adapted and cut down for television purposes?

Mr. Salant. Each of them was adapted in the sense that they are different media, and you just cannot transfer them intact and have a meaningful performance. They were——

Mr. Cox. Are most of these 90-minute or 1-hour features, or do you know what the time periods were?

Mr. Salant. Most of them were 90 minutes, as my eye runs over them: The Skin of Our Teeth, Our Town, Heidi were 90 minutes. Time Out for Ginger was an hour. The Cain Mutiny Courtmartial, The Devil's Disciple, She Stoops To Conquer were an hour and a half, as was Salome; Peter Pan, I believe, was 2 hours.

Mr. Cox. I notice, running down the networks, that none of these were produced by ABC. Would this be because its difficulty in procuring time in the major markets has made the cost per homes tuned in too high for it for this kind of entertainment?

Mr. Salant. I doubt that, Mr. Cox. The press reports are that ABC will have a series of hour and a half programs next year—actually 2 series, 1 of drama and 1 Omnibus.

Mr. Cox. Now, I notice in the list of movies that you give, beginning on page 4, that all but 2 of these were shown over ABC. Now, isn't this the group of English movies that ABC is showing on Sunday afternoon in an effort to build viewers during that period?

Mr. SALANT. I don't know whether these are the Sunday afternoon pictures. They also have a Monday series, as I recall it, in the evening.

Mr. COX. Now, except for Richard III, I take it, although these were recent movies they were not first-run movies?

Mr. SALANT. The Constant Husband is also first run. I don't know whether Davy Crockett is listed here. Of course that was released to television, and then later to the theaters.

Senator PASTORE. A strong impression has been left here with the committee—and I should hope to have your observation on this impression—that much of this improvement of which you speak was used merely as a propaganda vehicle against this new drive on the part of pay-as-you-see television. No, I would like to get your impression on the record.

Mr. SALANT. Senator, I can only answer for CBS. In our program, pay television has played no part at all. Our programing has developed, and will continue to develop, because that is the way we think is the best way.

As to our schedule, we want it to be the best possible, and it is not designed for any other purpose; and our program people—our program board—have not devised their schedule as a counterirritant to pay television at all.

I would be reasonably sure that is so in NBC and ABC, too, but I cannot speak for them.

Mr. COX. Go ahead.

Mr. SALANT. It is always a little embarrassing and unpersuasive for a spokesman of a company or an industry to talk of its accomplishments. But outside observers are just as emphatic. There was, for example, an article in the April issue of Harper's magazine, entitled "Out Where the Tall Antennas Grow," by William K. Zinsser, motion picture critic of the New York Herald Tribune. Mr. Zinsser does not own a television set. Recently he visited friends in Iowa who had a set. He tells how he felt left out of the conversation which covered matters which his friends had learned from television—from the story of the filming of Moby Dick to how a Bach fugue was assembled. The New York Times Sunday Magazine put it this way a few weeks ago in analyzing television programing:

> The economic and geographical barriers that once separated the mass from the arts have simply been taken down.

I do not mean to suggest that we who are in free television are satisfied or that we can rest with what has been accomplished. Rather, I suggest only that there has been a constant broadening and improvement in free television's program content—beyond the prophecies not only of its pessimistic foes but also of its optimistic friends. And free television's frontiers have not yet been reached.

2. PAY TELEVISION'S THREAT AGAINST FREE TELEVISION

Pay television would, however, interrupt this progress. It is not invention: It is disinvention. It proposes to take that which is intelligible to all and to make it unintelligible. It is not adding; it is taking away. It proposes to introduce the turnstile into the American living room, blocking off free access to the best that television offers.

We believe that pay television will gravely hurt, if not destroy, free television as we know it. It will do this by (1) the blackout; and (2) the siphon.

That pay television proposes a blackout seems indisputable. As I will discuss more fully later, pay television does not propose to confine itself to new or unused portions of the spectrum; it proposes, rather, to use the portion of the spectrum now dedicated to, and used by, free television. It is a simple fact of today's electronics that a television station cannot broadcast two programs at the same time. Therefore, the moment a station broadcasts pay television's scrambled signal, that station is blacked out for the free viewer, for that period of time.

Senator PASTORE. Do you take the position, sir, that some of the best performances that the public is now enjoying on a free basis—that those performances will, of necessity, go on the auction block as between advertisers and pay-as-you-see television?

Mr. SALANT. Yes, sir; we do. I will develop that a little more fully as we go along.

Senator PASTORE. Well, I think that that is a very, very significant point, and should not be slid over too lightly, because I think that there we have the crux of the entire matter. You say that you are going to cover it fully in your presentation?

Mr. SALANT. Yes; as you say, it is the crux of the matter.

Pay television has, for that period of time, blacked out free television.

Mr. COX. Now, what would be the case, Mr. Salant, if the station showing subscription programing were one that, at this point in time, is just hanging on in the hopes that something will develop which will permit to to conduct a profitable operation, and it seemed to its managers that subscription television was the solution? If such a program would keep this station on the air, even though portions of its time would be devoted to programing which could be viewed only if the viewer made a payment, would not there be a net addition to even the free programing that would be available in that market?

Mr. SALANT. For that station, for that market, for that period of time, there would be an addition. For all stations, and for all homes, there would be a very large net loss.

Mr. COX. Now, you suggest, I think, at a later point, that the subscription television proponents have indicated that they wish to start in the major markets—New York, Los Angeles, Chicago. Now, clearly, in the case of New York, with 7 stations on the air, at least 2 of which are reportedly operating at a loss, if 1 of these stations, or even 2 of them, were to devote 15 percent of their time, or 20 percent of their time, to subscription programing, there would still remain a greater selection of television fare than is offered to people of any other part of the country, wouldn't there, on a free basis?

Mr. SALANT. I would doubt it. I would think that if 1 or 2 stations were permitted to go to subscription television in New York there would be 2 consequences. One, it couldn't be contained in terms of stations. There couldn't be a restriction to 1 station or 2 stations.

Mr. COX. Well, the three stations carrying network programing in New York are owned and operated by the networks, and I presume in view of your statements here that you would not, except in extremities, devote your facilities to subscription television?

Mr. SALANT. I don't know how we could answer to the stockholders if you can make $32 million in Allentown. [Laughter.]

Mr. Cox. That is very attractive?

Mr. SALANT. It is.

Senator PASTORE. But more important than all this—and taking Mr. Cox's hypothetical question—let us assume that in his case the program that went on pay-as-you-see happened to be I Love Lucy, there would be a deprivation on the part of the free viewer to see I Love Lucy.

Mr. SALANT. That is correct.

Senator PASTORE. It is taking something out of the free market and putting it into the pay market.

Mr. SALANT. That was the second part of the answer.

Senator PASTORE. Now, the reason why I am saying this here is because we have representatives of both sides of this issue who are appearing before us, and I say this in order to provoke their rebuttal on these arguments that we are raising, if they can be rebutted. Because as I am beginning to get the impression now, and I think that these people who are appearing here—inasmuch as I happen to be the only member of the committee here now, the impression I am beginning to get is that the best quality will drift to pay-as-you-see. The free public will be left with what is left.

Now, that is an important question that somehow someone will have to answer for the people of this country. If we are going to make it so attractive on pay-as-you-see that they are going to siphon off all of the good programs, then what will be left to the public in free entertainment? That is the important question that I hope, in these papers that are rather voluminous—and I sit here patiently listening to them all—that somehow we would get at the crux of these issues and pinpoint the important parts of the issue.

I don't mind sitting here, but I have been doing it now for weeks, and there are long speeches here—17 and 18 pages long—and this, to me, is a very simple issue. I think we ought to get to the meat of the whole question and talk about that, and not all of this window dressing that more or less submerges the real issue.

Mr. SALANT. Senator, I deal with precisely that issue at this point, of what we think will be left, and what we think will be taken away by pay television.

Not only will this blackout operate, but pay television will take away programs and talent which the public now enjoys free and which will then be available only on payment by the viewer.

The proponents of pay television themselves have conceded that they would take away free programs. Some time ago Zenith sent out an estimate of what it would have been able to make from "Peter Pan"—$5 million, Zenith said, at 25 cents a receiver—if pay television had only been in existence. Skiatron, too, has admitted that pay television would bid against free television for talent and programs. Telemeter has said that it will seek any free television program for which it can induce the public to pay. And the New York Times reported:

> An official of one pay-as-you-see system said competition would force a toll operator to shop around anywhere he could for stellar attractions, including existing television shows.

All of the proponents have been frank in stating their desire to move sports events from free to pay television. How concrete these siphoning plans are in the field of sports is illustrated by the statements of the sports promoters. The president of the Brooklyn Dodgers announced that he intends to move the Dodger ball games to pay television as soon as he can; he says he will get 50 cents per receiver for each Dodger ball game.

The president of the Madison Square Garden Corp. has listed the sports events which he expects to be on pay television—in a filing with the Commission he listed these events: Boxing championships, the world series, hockey, basketball, the Westminster Kennel Club Show, track meets, the Army-Navy game, professional football, tennis, and horseraces. As our appendix shows, precisely these events are now on free television.

Senator PASTORE. Now are you saying this—I think you inferred it, but I would like to get it on the record categorically. That game you are talking about is now coming over free television?

Mr. SALANT. That is right, as the appendix shows precisely these events are on free television, every one of them.

Senator PASTORE. And the likelihood is that those programs will go to pay-as-you-see?

Mr. SALANT. The pay-as-you-see promoters so state.

Mr. COX. Isn't it true that in your listing of sports events you listed 6 football games, 4 of which occurred on the same day, the others being the Army-Navy game and the professional championship game. You list a number of championship fights not including the rarely held heavyweight fights?

Mr. SALANT. Were there any in 1955? I don't know.

Mr. COX. I wouldn't know myself. But in other words, these sports were available. The question is whether they would be available to a greater degree on a more regular basis if a charge could be made for furnishing them to the public—a direct charge?

Mr. SALANT. Mr. Cox, in examining this appendix, I think it ought to be kept in mind that my recollection is that there were football games on every Saturday and there were also professional football games Saturday nights or Sundays—I am not quite sure when they played.

Mr. COX. I see. All right.

Mr. SALANT. Most of these events are also on free radio, and I cannot refrain from pointing out that radio also would be deprived of them. It is not reasonable to assume that the box-office operator will endanger his gate receipts by permitting people to have the alternative of listening for free or watching for pay.

Mr. Kohn, testifying for Penn-Allen included in his schedule the New York Philharmonic as pay television. As you know, the New York Philharmonic is carried by the CBS radio network every Sunday and has been for many, many years. I would think it unlikely if the New York Philharmonic were ever taken over to pay television that the audience would be afforded the opportunity, the alternative, of listening to it on radio where it now is free, and in the same home having to pay for it. The only way they could be driven to pay for it would be to shut it off radio.

A little exercise in economics and arithmetic demonstrates that pay television can implement its desire to siphon with a clear power to do so. Indeed, the entire basis of the proposal before us is that pay television could spend more money for programs than is being paid now.

I shall use the Ed Sullivan Show to illustrate this power to siphon programs.

If only one-tenth of the 17 million families who now watch the program free each week were willing to pay 50 cents to be able to continue to see it, the gross revenues would be $850,000, as compared to the $150,000 which the advertiser now pays for it. After paying the networks and stations for their time and facilities, and even after pocketing half of the balance for their own profits and expenses, the pay television promoters could still offer to the performers and talent on the Ed Sullivan Show more than six times as much money for each show as they are now getting—and nine-tenths of the present audience will be deprived of the program.

Mr. Cox. Now in that connection, Mr. Salant, is it your suggestion that this 1,700,000 people would not only pay 50 cents to see the Ed Sullivan Show as a novelty the first time but that they would pay it 52 times a year, totaling some $44 million for the privilege of watching Ed Sullivan on television?

Mr. Salant. Every piece of evidence we have so indicates. I will take that up. The indications are that the public, which has come to enjoy this—has come to expect it on Sunday nights—if they must, some of them will pay to keep on seeing it.

You are a father, I am sure, and you know what happens when you give a lollypop to a child, or a child gets a lollypop. It is much harder to take it away after it has a few licks than it is not to give it in the first place.

Mr. Cox. I assume, of course, if you are ever going to get these 1,700,000 paid viewers in one or more markets that that would require that there be substantially more than that number of decoders in use?

Mr. Salant. Mr. Cox, it is 1,700,000 families, not viewers. It is more viewers than that.

Mr. Cox. But that would be the number of decoders, one per family.

Mr. Salant. Correct.

Mr. Cox. And let's assume it would require 2 million decoders to get that number of homes tuned in at 50 cents. That would represent, on the basis of $50 a decoder, something in the neighborhood of $100 million which someone would have to invest, either the public or the franchise holders of subscription service. In addition to this there would, of course, be investments in terms of promotion, administrative expense, and things of that kind. Now, is it your view that people are going to invest that kind of money only on the supposition that their first offering—and the mainstay of their offering to the public—will be a charge for something the public has been getting free?

Mr. Salant. It is difficult to predict the pattern which this will follow. I think that it could happen in either 1 or 2 ways. The public can be forced to make these expenditures when things disappear from free television and they hear that they are going to turn up on pay. Or, more likely, I would suppose, at the outset the pay television people would begin with a few recent movies, and whatever the then equivalent of The Pajama Game may be. That will be the cart in front of the donkey.

Senator Pastore. Here is another question that I throw out to you; I hope the other side is listening and will give us an answer on it.

Can you imagine a situation where, insofar as quality of programing is concerned, there will not be an element of competition between free and pay? Do I make my question clear?

Mr. SALANT. I think so.

Senator PASTORE. In other words, can free television survive if all of the best is on pay-as-you-see, any more than pay-as-you-see can survive if all the best is on free television? How do you separate these two competing forces for the best quality of television, and what will be the ultimate consequences? Is my question clear?

Mr. SALANT. Yes. I think that there is no way of devising any set of rules or regulations which can be enforced which will parcel out this for free and this for pay. You cannot do it in terms of program concepts, and you certainly cannot do it in terms of talent.

It would be impossible to say to Ed Sullivan, to Jackie Gleason, to George Gobel, or to anyone else: "You have been on free; therefore, you are blacklisted; you can never go on pay." Or take the talent of the future. How are you going to say: "Wherever he is developed, he goes to free, he goes to pay. Wherever he starts, he cannot go to the other." You cannot do that. You cannot predict as of today what free television might put on tomorrow. If anybody had predicted 3 years ago that free television would be putting on some of the programs it is putting on today, they would have been laughed out of the industry.

Senator PASTORE. Can free television survive, in the long run, predicated upon the assumption that they can get away with an inferior program only because it happens to be free; or will they have to compete in the market to raise the quality of their program even to match the pay-as-you-see, even though you pay for the latter?

Mr. SALANT. They would be obliged, of course, to compete to try to increase their quality. Yet at the same time that you created that obligation, which already exists, you are hobbling by making it impossible to compete, because free television will no longer have the ability—the audiences will be taken away, the prime time will be taken away, the talent and programs will be taken away. At the very moment when they must try to compete with these programs which are being talked about, for which such huge sums can be paid, free television will have less money.

Senator PASTORE. Can you give us some kind of observation as to why the professional championship fights are not on free entertainment? Why is that happening? Why does it seem that about everything but that comes on?

Mr. SALANT. It is only the heavyweight fights which are blocked.

Senator PASTORE. Yes. Why is that above American advertising ingenuity to bring that to the public?

Mr. SALANT. Sir, I do not think it is above the ingenuity. I think that, once you put pay television to bed and put it away, things we are not getting now, we will get. It is no accident that the things that we are not getting, we are not getting from sources who are hopeful——

Senator PASTORE. I would not want it as a result of diplomatic blackmail. I do not want you to "put anything to bed" to bring something to the public that is good. I am just asking you why hasn't it come to the public? What has been the stumbling block? I know a lot of people are dissatisfied about that.

Mr. SALANT. It originally was on free television. Then the heavyweight championship fights were blacked out. I think it was in part because the promoters felt they could make more money out of theater television. I do not think that has been successful. Nothing is scheduled in theater television this year. I think that if theater television disappears as a means of distributing those programs, the likelihood is that much greater that it is coming back to free. We want it back on free. We will do everything we can to get it back on free.

Senator PASTORE. Well, what if that happens to baseball—the world series—then where are we?

Mr. SALANT. I think that it is very unlikely that we are going to lose the world series. There have been some witnesses here who have read things in the trade press which are simply not justified. The world series will be on free television.

Senator PASTORE. Well, I hope you could say the same thing about the championship heavyweight fights, too.

Mr. SALANT. Well, we will do our best, Senator. I do not know where the next fight is coming from, from what I read in the paper.

Mr. COX. You indicate that you think that subscription television would take away from free television prime time. Now this would be impossible in the 50 top markets in the country except for stations which are not affiliated with networks, isn't that true?

Mr. SALANT. No, sir.

Mr. COX. That is, you are assuming that one—either the elimination of option time, or complete termination of the affiliation relationship because of the attractions of subscription television?

Mr. SALANT. No, sir; I am not assuming either. I assume that if pay television operates with these great programs which must have nationwide distribution, the programs—particularly the sports programs—have to originate from one source. To originate from one source and to be carried nationwide there must be a network to carry them, if it is to be carried simultaneously at all. If it is a network, somebody is going to have to invent one for pay television. Option time does not apply.

Mr. COX. In other words, you would feel that the exclusionary provisions in the option-time rules would permit that network, newly created for this service, to displace your present rights to control that time?

Mr. SALANT. I would suppose so, Mr. Cox; and the second answer is even if the option-time provision applies—which is something we have not faced, and my guess is it does not—if it is this profitable to the station and our affiliates want to carry it, nothing in the world that we could do, legal rights or no legal rights, could hold them.

Mr. COX. Well, I am interested and bothered by this factor. It is quite clear, I think, from the testimony of everyone that subscription television could not come into existence on a nationwide basis overnight, or even over a period of many years.

I think it was stated by 1 witness that it would take 2 years to get 6 stations on the air, in 3 markets. Now it is this factor which, it seems to me, makes it unlikely that top talent and top draw shows on free television can be attracted to the new medium. In other words, you are suggesting, it seems to me, that for the supposed increased monetary return, Ed Sullivan would, in effect, terminate his relations with his sponsor—that he would prefer to present himself and the talent that he offers in 3 markets, before 1,700,000 people, rather than in the top 100 markets before 17 million people; and that his only motivation in this would be monetary, and that he would accept this on faith, in effect, before it is even demonstrated that pay television is ever going to come into existence, or if it does, that it is going to last?

Mr. SALANT. Perhaps what you are suggesting is a chicken and egg argument. We believe that there is a reasonable chance that pay television will never get off the ground. Our analysis of what will happen is on the assumption of success. We do not have to worry about pay television at all if it fails, but I assume that it is being brought here on the assumption that it will succeed—otherwise why bother? If we accept the assumption of success, then these are the consequences.

Mr. COX. Then, is there a possibility that it might succeed to a degree, but not succeed to the degree that you seem to fear?

Mr. SALANT. Mr. Cox, if it succeeds only to a degree, that degree being less than the degree necessary to perform the siphoning function, it won't succeed at all, because it cannot put on the things that they are saying they will put on. If they can put on first-run movies, if they can put on the heavyweight boxing championships, they can take Jackie Gleason, who wants to go; they can take Ed Sullivan, and they can take anybody else.

Mr. COX. They could, perhaps, if this were a matured system which had succeeded in getting outlets in all of the markets of the country, but that, of course, is a thing that is going to require years. It is my understanding, from the filings of the proponents, that they expect to have to subsidize programing, at least in the initial stages, in order to persuade people to buy, or permit the installation of, decoders—and the point I am making is that it seems to me unlikely that all of a sudden this thing is going to catch hold so completely that all of the people who for years have had satisfactory relations with free television are going to desert it, and turn to this new and untried intruder into the industry.

Mr. SALANT. You are quite right, Mr. Cox. I am not talking about what is going to happen overnight. We are considering pay television; the Commission and the Congress must consider pay television for the long run. I do not think that free television is going to die the day after tomorrow or 2 days after pay television starts.

Mr. COX. Do you think if, as time went on, it began to appear that these dangers which you foresee are coming about—do you conceive for a minute that the FCC and the Congress would not step in at that point and prevent that happening?

Mr. SALANT. I certainly assume that the Commission and the Congress would want to step in. I cannot see how they can step in effectively. I do not know how you could devise rules that can contain this. There aren't enough people in the world to sit here in Washington and say "This kind of program would not have been on free television, so it can go to pay."

You have to make predictions that are impossible to make. You have to make analyses, program by program, performer by performer, idea by idea. Zenith took a shot at it, and they are competent people. They made a proposal before the Commission on how to contain the program flow.

Well, you can drive through that proposal with a truckload of seven Commissioners. It is meaningless. You could adopt that regulation and nothing which is on free television would be prevented from flowing to pay television without violating the regulation.

Mr. Cox. Well, I have heard your analysis of their proposal, and it seems to me that on two points you are quite likely right. But it seems to me that there could be defined a concept of "box office attraction" which could be applied and limit subscription television to the sort of programing that its proponents say they really want to offer.

Mr. Salant. But Mr. Cox, if you draft that today, you are assuming that the frontiers of free television have been reached. If anybody tried to draft a regulation 3 years ago which was based on what was not on free television, there were many things that have come on since then.

Mr. Cox. This would be a restriction only on the subscription television operator. It would not be a proscription on what free television itself might do in the future, and I would assume, to the extent that free television could duplicate what is offered on subscription television, that you would have a competitive advantage.

Mr. Salant. In order to duplicate what might be on pay television takes money.

Mr. Cox. Well, I take it even if you pay $650,000 for the Ed Sullivan show you are not going to cram 5 times as much talent into it as the sponsor gets for $150,000. Money only buys so much talent and so much time.

Mr. Salant. You are quite right.

Mr. Cox. Therefore, because they get higher revenues doesn't mean their quality is going to be out of reach of free television.

Mr. Salant. I do not think it will be out of the reach of free television, but I think there will be enough money for the talent in pay television that they won't have to bother with free television. If you can make all of that money out of pay television, you can go to Los Vegas for the rest of the year.

It is clear that, with this economic power accumulated from the money of the public, free television's programs and talent will be siphoned to pay television. It is not likely that, in contrast to almost all other human beings, the producers, writers, and performers, the owners of motion pictures, or the promoters of sports events, will turn down more money in favor of less. As the New York Times pointed out last year:

> The stars would switch from free television to pay television just as they switched to television from radio.

The proponents of pay television fall back on the speculative argument that they could not siphon because the public would not be willing to pay for the same thing that it is now getting free. This argument is contradicted by their announced plans to take away some of the very programs now offered by free television. But in any event, all the available evidence indicates that enough people would pay to see those programs which pay television siphons away if that became the only way they could continue to see them.

A recent study prepared for major league baseball owners showed that if baseball fans could no longer see a game on free television, and had to pay 25 to 50 cents for the game on pay television, almost 40 percent would pay rather than do without. A Gallup study found that 31 percent of the people interviewed said that they would pay to watch the Ed Sullivan show if they could not see it free. A third survey, one conducted at our request by Elmo Roper in Columbus, Ohio, reaches the same result. The Roper survey showed the interviewees a hypothetical schedule of the three television stations in Columbus. One station's schedule was devoted to popular first-run motion pictures and similar programs for which the hypothetical charge ranged from 50 cents to $1. The schedules of the other two stations were the actual current CBS and NBC television network schedules—except that there was a charge of 25 cents a half-hour and 50 cents an hour. Enough people said that they would be willing to pay to see the programs on the CBS and NBC schedules—even against the competition of the first station—to provide a sufficient return to pay television promoters to make it economically worthwhile for them to put on pay television those programs which are now free.

Mr. Cox. I assume in that instance, though, they were given the choice only between one pay program and another pay program; that they were not given the choice between a pay program and a free program?

Mr. Salant. That is correct. There were various stages of questioning. In some cases there was a free program, in some cases a pay program.

If you like, I will submit that study for the record. It is a series of 18 or 19 possible schedules.

Mr. Cox. We would like to have it.

Mr. Salant. The pay television promoters' own statements and the public's direct answers establish, therefore, that if the public were ever required to make the unhappy choice, enough of a minority would pay for what it is now getting free to make it profitable for the pay-television promoters.

The cost to the public of retaining what it is now getting free will be enormous. A family would either have to buy an unscrambler for at least $40, or rent one for at least $20 a year. Then it will have to pay for each separate program. The pay television promoters have said that they would like to collect program charges of $2 or more each week from the average family. That is about three times as much as the average American family now pays for admission charges to all movies, theaters, sports, and other events.

Pay television will thus be doing a real disservice to this Nation. Free television has been a cohesive force, within the reach of almost every person. Everyone with a television set can, without any further payment, enjoy what every other set owner enjoys. But where free television is cohesive, to the same extent pay television is divisive. For the first time, the present unified television audience will be divided along economic lines. For the first time, the wealthy or the extravagant family will see programs which the average American family will not be able to see. In free television there are no second-class citizens; in pay television there will be.

Mr. Cox. Isn't it true, of course, that in other fields of entertainment this divisiveness already exists in that many people cannot afford first-run movies, Broadway plays, and so forth?

Mr. Salant. You are quite right.

Mr. Cox. So if subscription television could bring these programs to the public at a charge of 25 or 50 cents, then in that area there would be a reduction of this divisiveness of which you speak?

Mr. SALANT. What you mean is that more people will be divided than were before.

Mr. Cox. No; what I mean is that although you might establish a class of people who had been receiving free television and were unable to pay for pay, you would also, in the area of those who could pay for subscription television, have people who would be getting programing that at least hypothetically they have been unable to get because of the higher charges at the present sources of that kind of program.

Mr. SALANT. Yes, that is true; but in return for that, you are for the first time dividing the television audience which has never been divided before.

Mr. Cox. Although, by hypothesis, it is divided from that portion of the population that cannot even afford a receiver?

Mr. SALANT. The indications are that there are not many. We should ont talk in terms of "afford." Apparently everybody can get one.

THE ILLUSORY PROMISES OF PAY TELEVISION

Those are the evils of pay television. But sometimes there may be a balance; sometimes the bad may be outweighed by the good. We think that is clearly not the case with pay television.

The advocates of pay television contend that their service will be additive, not subtractive. We believe they are wrong. Pay television is certainly subtractive in its inevitable creation of a blackout, in its siphoning away free programs, and in its exclusion from its audience of those who cannot pay. But the pay television advocates promise in return that they will add new programs and new stations. We don't think they will. Let me show you why we think that.

A. The promise of new programs

The proponents of pay television have promised Broadway plays, major sports events, and feature films.

Free television, itself, as we have seen, has already carried such programing beyond the stage of promise and into actuality. Broadway plays, major sports events, feature films—that is precisely what free television is providing now.

I suspect that the pay television proponents themselves have recognized that their promises of what pay television will bring in these areas have already been matched by what free television has actually brought. That recognition may underlie the shift in their emphasis to additional cultural and educational programs—for pay, of course.

But we doubt that pay television's promise of more educational and cultural programing will be kept. Nothing in the history of those mass entertainment media which are dependent for their revenues on direct payment by the public supports the likelihood of more culture and more education. One need only look at the history of Hollywood and its motion pictures.

Exactly the same factor of the economic necessity for mass audiences are operative in pay television, which will be dependent on obtaining the most dollars directly from the largest possible audience. As Zenith itself has stated:

> Can there be any possible doubt that the subscription television broadcaster and his program supplier can logically have any other business purpose, desire, or hope than to obtain as widespread public reception of their programs as is practically possible?

The unlikelihood of the pay television promoters presenting programs for minority tastes is accentuated by the suggestion of the pay television proponents that they operate either for 15 percent of the broadcast day, or for 35 hours a week. Such limitations would restrict the time available to the pay television promoter to amortize his investment and make his profits. It seems unlikely that the pay-television promoter will devote very much of this limited time to chamber music and courses in differential calculus.

Mr. Cox. Now isn't it true, of course, that the content of programing, both in free and in pay time, would be determined by the broadcast licensee himself, and that he would continue to have the same responsibility for balanced programing that he has now?

Mr. Salant. That is true. I think that the understanding, though, is that the pay-television promoters do not propose themselves to present an overall schedule. They would leave the balance to come from free.

Mr. Cox. And the profit to come from pay?

Mr. Salant. That is correct.

This is particularly true since the proponents have conceded that, in these limited hours, they will have to repeat performances of some of their expensive mass-audience programs in order to realize their full economic potential. Zenith, for example, has stated that Hollywood motion pictures would be a bulwark of their program offerings, and that it would have to show each motion picture more than three times on a station. Such repeats would leave little time and less incentive for minority programs; for if the showing of a motion picture could produce $500,000 and a course in foreign languages could produce $5,000, it isn't hard to predict which program pay television would broadcast.

Even if pay television's promise of cultural and educational programs were likely of fulfillment, I doubt that it would be a good thing. It is even more important that education be free than that entertainment be free. If a public-library system does not have enough readers, charging admission to the library and rental for each book provides no remedy. The vital function of free television in these areas is to stimulate and awaken interest in viewers who might not otherwise be exposed to education and culture, and not to charge those who are already interested and who can afford to pay.

Mr. Cox. Now educational television cannot, in a final sense, be free any more than sponsored television is. The expenses must be paid by someone, and as I understand it, since an educational station is now prevented from making any charge for selling time, the only source of revenue up to this point has been public funds, public subscription, and things of that sort. Now isn't it true that a subscription service, if offered on a broad enough basis—and obviously it could not be confined to educational stations—but if it became successful the presence of decoders in the homes of the public might give educational stations the chance to attract revenues from those who would be willing to pay no more than they must now pay for a course of any particular kind?

Mr. SALANT. There is no question about that. I doubt whether that is a desirable use of free air waves.

Mr. COX. Your view is that if the man wants it, he must go to a classroom?

Mr. SALANT. Or get it free by staying in his home. There are other ways. If the audience is so limited, as is suggested by Skiatron—so limited that you not only have to scramble the free signal but you have to scramble the scrambled signal and limit it to doctors and other people, that is a misuse of the air waves. There comes a point of diminishing returns and it really does become point to point.

Millions of people probably had their first exposure to a Shakespearian play when Richard III was broadcast by NBC. As long as the show was free, these viewers were encouraged to shop around on their dials and to have a look at something which many of them never had seen before. But if it had cost a dollar to tune in on the program, it is probable that only a small fraction of the people would have been exposed to Richard III—and most of those would have been the very people who had already developed an appetite for Shakespeare's plays. It is only human nature that more people will try something for the first time when it is free than when they have to pay for it even before they know whether they will like it.

We are convinced, in sum, that pay television will make no significant addition to the programing now available free and that there will be less education and culture for fewer people instead of more for more people.

B. The promise of more station service

The proponents of pay television are flexible in their arguments. Perhaps conscious of how much ground has been cut out from under them by the record of free television's programing performance, the pay-television proponents now stress it as a nostrum to cure the allocations and the UHF problems.

I do not think that the proponents themselves believe this. This claim of aid to UHF has been effectively analyzed and I would like to quote that analysis at some length:

Limiting subscription television to UHF stations would also practically eliminate subscription television from the top 50 markets in the United States as there are only 22 UHF stations operating in the top 50 markets in the United States and only 6 UHF stations operating in the top 20 markets. Confining subscription television solely to secondary markets could make subscription television economically unsound * * *

Taking New York as an illustration, * * * It is doubtful that the most optimistic UHF operator would, under present conditions, attempt to go into competition with the six existing VHF stations, even though he was given a monopoly on subscription television. Such an UHF operator would have the dual problem of getting the New York public to convert their sets to UHF and to acquire subscription-television attachments, and he would be further confronted with the limitations on substantial quantities of program product suitable for subscription television * * * It appears undesirable to compound the problems of embryonic subscription television by adding the conversion problem of UHF.

In short, according to that analysis, pay television will not add UHF stations to the major markets, and pay television cannot add them to the secondary markets.

Or let me quote this conclusion:

Any attempt to limit subscription television to UHF stations would be impractical and dangerous * * *

In our opinion, to restrict subscription television to UHF only, at least during the early stages of subscription television development, would place an unreasonable and almost impossible burden upon the infant subscription television industry.

The first analysis which I have quoted comes from the joint substitute petition concerning subscription television filed by Zenith with the FCC in 1954. The second quotation comes from Zenith's FCC comments, June 9, 1955.

Zenith has thus forcefully stated in the past that to restrict pay television to UHF would be fatal to pay television, which, therefore, would do UHF no good. In fact, it is difficult seriously to expect that any artificial rules which would limit pay television to one class of stations and deny it to others would be either effective or permanent. It is not reasonable to expect that the most expensive and desirable programs will be consistently channeled over a long period of time through one group of needy stations, which will then become less needy, so that a new group can be created who will in turn press for relief.

As a matter of fact, if the actual proposals of Telemeter, Zenith, and Skiatron are analyzed, it becomes immediately apparent that they do not propose a limitation of pay television to UHF at all. Telemeter insists that pay television be authorized for all stations, and its witness at these hearings testified that it would seek to broadcast its programs on VHF stations. Actually, even Zenith's and Skiatron's purported succor to UHF is form, not substance. For they do not urge that pay television should be confined only to UHF stations. Their proposal, rather, is to limit pay television temporarily—for 2 or 3 years—to UHF stations, and to what they call needy VHF stations.

The interim nature of the limitation and the open door to needy VHF stations are two large loopholes indeed. The proponents have said that they expect to start pay television in, and, in fact, to limit it for a period of years to, the larger markets. By coincidence, in New York City, Chicago, and Los Angeles—the three largest markets—there are no operating UHF stations but there are VHF stations which come within their definition of "needy." And it is these very VHF's—not nonoperating UHF's—which Zenith, as just noted, proposes to use. And Skiatron's plan is similarly to begin with VHF. That company has reported to its stockholders that it has a 99-year contract with Mr. Matthew Fox under which he is obligated to begin operations in New York City and "to get a VHF television station to initiate the necessary applications before the FCC" in that area.

So, just as they have always proposed, the proponents of pay television could get started where they would have started in any event—on VHF's in major markets—and as they have said, it would take some time before they could move on to other markets. By then, again by strange coincidence, the time limitation would have expired and pay television could go right ahead, as the proponents have scheduled it, without limitations.

And if the limitations to UHF are not complete and permanent, exactly the same facts of economics will operate against UHF in pay television as operate in free television. We believe it demonstrable that pay television offers no solution to the problem of unutilized channels. Let us see what these unutilized channels are.

Less than 100 of the 1,200 unutilized channels are in areas—in which less than 1 percent of the population lives—not now receiving television service. The problem of this less than 1 percent of our population will much more likely be solved by boosters and satellites than by pay television, which is unlikely to be of any help because of the difficulty of operating it in such thinly settled areas.

Almost all of the remaining unutilized channels are UHF which have been unable to compete with local or nearby VHF stations either because (1) many of the television sets in their areas have not been converted, or (2) their coverage is not so great as that of VHF stations, or (3) they are in the shadow of the signals of stations from larger markets—or almost always a combination of two or more of these situations.

Mr. Cox. All right, let us take the case of Allentown, which Mr. Kohn talked about. This is a station now off the air. If anything could be done to put it back on the air, it would add programing, unless another station was eliminated. It is overshadowed by the Philadelphia area. It cannot compete with them programwise, and may have had difficulty in getting conversion. Now, if it can offer a high quality of programing through subscription service, of the sort which you say at least would be dangerous competitively to the network service, would it not give this station a chance to exist under circumstances where, apparently, it has not been able to do so today?

Mr. Salant. No, sir; I do not think so. My explicit assumption is that it will not be limited to UHF because nobody has proposed it.

Mr. Cox. I am just assuming that Mr. Kohn can make arrangements with one of the proponents that they would install this service in Allentown, which is not an insignificant market, although clearly not as large as your market.

Mr. Salant. I understand that, but the proposals of the proponents is to take VHF stations in the major markets wherever they can get them.

Mr. Cox. When they have taken those, do you think they will stop?

Mr. Salant. I think if they get a V in Philadelphia, and put pay programs on a V in Philadelphia, Mr. Kohn will be in precisely the same situation he is in now.

Mr. Cox. This is on your assumption that subscription television will displace presently operating network stations, which are apparently satisfied with their present circumstances—one of which is a station owned and operated by NBC.

Mr. Salant. If pay television is a success, pay television programs will come from Philadelphia, and not Allentown, yes.

Thus the competitive position of these channels will be no better under pay television. For the probable events will constitute an act of singular cruelty to UHF. Under an illusory cover of protection, the hope will be held out that it will have something which others will not. The already large investments in UHF could be multiplied many times if it seeks the cure of pay television. After 2 or 3 years, UHF will be deprived of its theoretical advantages, and its problems will have been compounded, because their investments will have been so much larger, and—3 or 4 years from now—they, plus some new ones, will be back in this hearing room again.

Mr. Cox, when I say affiliates in the larger markets will not hold still if pay television is thus successful, I would like to refer you to a filing with the Commission by station WMAL here in Washington, a station owned by the Evening Star, an ABC affiliate. It conducted 30-day experiments with subscription television. It filed with the Commission, stating that it believed that this was a bad service, but that if ever authorized, and it ever took hold, much as they disliked it the economic pressures would force them to go over to pay television.

Mr. Cox. Now, in this general connection, I take it that you, perhaps unlike Mr. Fellows, have read Dr. Alexander's study and are, therefore, familiar with the fact that he concludes that there is a maximum possible support from advertising revenues, in the foreseeable future, for only 588 stations operating in 217 markets?

Mr. Salant. Yes; I have read that.

Mr. Cox. Now, if this analysis is correct, then is it your position that there is no hope at all in the additional revenue that might be derived from this source—to permit a broadening of the base of our broadcasting system beyond the limits which Dr. Alexander sees there?

Mr. Salant. No hope at all is a little bit too much for me to say. There may be a few extra stations, but at the cost of less service, and less entertainment and education in the average home, and in most places.

But let me address myself to Dr. Alexander's study. I would like to make two comments on that. Dr. Alexander is our economist. This is his economic study, and we accept his conclusions. It is our job to prove that Dr. Alexander is wrong.

Mr. Cox. However, your engineers, in their testimony on allocations, come up with a system that produces even less stations—isn't that so?

Mr. Salant. No, sir; most certainly not. The allocations proposed by our engineers propose more allocations than the present FCC allocations.

Mr. Cox. In markets which can support them?

Mr. Salant. Nationwide. That allocation did not put channels only in markets where Dr. Alexander thought they could be supported. There are allocations in hundreds and hundreds and hundreds of other places.

Mr. Cox. You left the FCC allocations in the markets which, to date, have been unable to support stations, and which, according to Dr. Alexander's analysis, will not be able to support stations.

Mr. Salant. Let me address myself to that, because I ought to get that out of the way. I have read the Alexander report, and on page 1 it says: "in the long-run future, of course, the economics of the industry may, and indeed probably will, change so that a larger number of stations can eventually be supported. The minimum cost of running a station may decline, and increased advertising revenues, particularly from local sources, will undoubtedly be forthcoming. Such was the history of radio broadcasting, and a similar development may be expected in television."

This was written on October 5, 1955. Those developments have almost come.

Mr. Cox. You are referring to the Ampex tape recorder, and things of that sort?

Mr. Salant. And the automation; the $50,000 package.

As I say, it isn't an economist's job to invent, to push to new frontiers. That is the job of the industry, and we are going to do that.

Mr. Cox. I certainly hope so.

Mr. Salant. In sum, pay television will not be additive in terms either of programs or of stations. But even if perhaps there might be a few new stations, the price of loss of free television is far too high for the limited good that might be accomplished. What the pay television proponents suggest requires the more than 99 percent of the American people who are now receiving television service (almost 9 out of 10 of whom get a choice of 3 or more signals) to sacrifice all of the benefits of the free television system. Even those persons in areas where the few wholly hypothetical new services might be created would get less service rather than more. Clearly a family gets less television service when it must pay for programs during the most desirable hours of the viewing day.

Upon analysis, it develops that pay television would add neither new programs nor new service. It is simply what its name implies, a system for extracting pay.

4. THE FALLACY OF THE PUBLIC TRIAL

Failing all other arguments, the pay television proponents have urged that there be an end to this discussion and that the decision be left to the public by trial of pay television in the market place. In substance, they say that the Congress and the Commission should stop bothering about the question whether it is in the public interest to use the air waves to black out free television. They want nothing more than a victory in advance, without hearing or decision.

At first glance, the proposal to let the public decide has a surface attraction. Its attraction dissolves on analysis. None of the advocates of this concept of a public trial has ever specified just what they are proposing to test, what the public is supposed to choose between, and how much of the public will make the decision. What are the ground rules, and how is it proposed to tell whether pay television has won or lost?

Actually, the proposal does not involve a trial at all of whether the American people would rather pay or not pay to see television. We know the answer to that one in advance. If the public is given the choice of seeing any program free or paying for it, it will choose to see it free. But this so-called trial of subscription television does not propose to give the people that choice at all. It will give them only the choice of paying for the program or not seeing it. And we have seen there are many programs now being offered free which some of the public would pay for rather than go without them. Surely that does not mean that the public prefers to pay for them rather than get them free.

At this point, the lesson in economics which I went through before becomes so relevant again. We have seen how if one-tenth of the families now watching the Ed Sullivan show paid 50 cents for it, the program would be lost to free television and 90 percent of the viewing families would be deprived of it. We have estimated that, generally, if one-twentieth of the people who watch a popular half-hour show were willing to pay 25 cents to keep on seeing it rather than losing it altogether, the revenues from that one-twentieth would be enough to take it away from the remaining nineteen-twentieths.

All such a test in the market place would prove, therefore, is that pay television promoters can succeed economically on the money that a small minority of the people will pay—because they must to keep on seeing what they are now seeing free.

Mr. Cox. You presuppose that you cannot devise or discover any other offered entertainment which would win their support, particularly on the basis of the differential in cost. That is, I assume, if subscription television went on the air in Chicago, New York, and Los Angeles, that neither CBS nor the other networks would go out of business just because Ed Sullivan might have been lured away, and that you would do your best to discover new talent, to shift talent you already have available, and to compete on a program-for-program basis at that time in those markets?

Mr. Salant. Of course, Ed Sullivan is generic. I don't mean just Ed Sullivan. Again, this is long run. I would think that if this test were to be run you could satisfy the proponents of pay television—and I don't blame them—only if you gave them a long enough time to get into enough markets to create the opportunity to get a large enough audience so that they could give you the kind of programs they are talking about. Once that happens your siphon is there.

I don't think that you can test whether the public wants it or doesn't want it by taking 1 or 2 markets, because they could say "This isn't a fair test. We don't have a large enough audience here. What pay television has to be tested by, and on, is on a nationwide basis."

Mr. Cox. I take it advertisers have found television a very effective medium, and they would not wish to lose the advantages they get from its use merely because of the development of subscription service. And if they were excluded from advertising on subscription stations by the FCC they would be willing to pay what they now pay, and perhaps a little more, to back you up in your efforts to continue to provide free program service that would continue to attract the great majority of the viewers in the country to whom they want to sell their products?

Mr. Salant. I would hope so, Mr. Cox, but I have no confidence in that. You have your audiences fractionalized to begin with. You have enough money. I don't think that advertising, with $150,000 that it spends now, will up that budget to $850,000 in order to compete. Even advertisers have a limit on their purses, I am afraid.

Mr. Cox. But this, again, presupposes, it seems to me, that Ed Sullivan is irreplaceable.

Mr. Salant. That is why I make Ed Sullivan generic. Of course he is not irreplaceable, but in the public mind there are stars, and there are always stars who cannot be matched. They may disappear 4 years from now, or 5 years from now. But at the moment they are irreplaceable, and those irreplaceable ones who give you the primary attraction—the thing that brings people to turn on their sets, the thing that gets people to buy television sets in the first place—those you must have to survive.

This proposal is, in fact, wholly antithetical to our traditions of free choice by the majority. The proposed public trial does nothing more than give the pay television promoters a chance to get rich and one wealthy televiewer a chance to take away a program from 19 of his neighbors.

Such a public trial would not measure the usefulness of pay television in the public interest at all. It would measure only the economic power of the pay television promoter to deprive the American public of an attraction which it wants. I would suppose that if a coin attachment were to be put on public water fountains during a hot day in July, so that it would cost a nickel to get a glass of water, some proportion of the public would put nickels in the slot. This would not prove that putting a coin slot on public water fountains is in the public interest. It would only prove that some people are so thirsty that they would pay for the water if they could not get it free. In that sense, pay television will be "successful"—that is, profitable—in the precise measure that it deprives the public of television programs that, except for pay television, they would have enjoyed free.

CONCLUSION

Because CBS is in favor of free television, we are against pay television. We are for the best entertainment, and the greatest amount of information, education, and enlightenment for the most people. This objective can best be attained through free television; it will be wholly frustrated by pay television.

Perhaps the networks, which have been most successful in providing the kind of home entertainment and information which people want, could make a fortune out of pay television. We do not know. We do know that free television has provided an important service to the people, and that we owe it our fullest support. Whether or not our business judgment is correct, it does seem that our moral judgment is impeccable and that our position lies most clearly on the side of the public interest. We see no justification for taking a great natural public resource and limiting its enjoyment to those who can pay.

So far, pay television has largely been an abstract issue to much of the public; it is only a cloud no bigger than a man's hand.

The more the people learn about pay television, the less they think of it. We are persuaded that if the people are ever confronted with pay television as a reality, if they are ever faced with the choice of not watching programs and stations or paying for the privilege of using their television sets in their own living rooms, there will be an enormous resentment. If the people are ever faced with the necessity of attaching a gadget to their television sets at their own expense and then paying for each program that they want to see, their hopes, expectations, and their rights would be betrayed. We believe that families have made their investment in their television sets on the reasonable assumption that they would be able to enjoy without further payment whatever signals are within range of that set.

The Government would be breaking faith with the public if it deprived them of the realization of that expectation.

Mr. Cox. Would you agree with Mr. Fellows in his testimony yesterday that this would not be objectionable if subscription service were offered by a cable?

Mr. SALANT. We could have no objection to that.

Mr. Cox. That, however, would still raise the possibility that if it were extensively enough installed it would siphon away your programs and dilute your audiences?

Mr. SALANT. You are quite right. We can only object, and do object, to using the free waves for performing this undesirable consequence.

Mr. Cox. Isn't there also a possible distinction—as is pointed out in your comments in the proceedings before the Commission—that you do not regard it as feasible to install it on cable, because of the expense?

Mr. SALANT. We are confused by that, Mr. Cox. We have reached no conclusion. It has been impossible to study it thoroughly. Mr. Shapp says that it is more economical. We take no position because Mr. Alexander has been too busy.

Mr. Cox. Isn't it true that some three hundred or four hundred thousand families are now paying from \$3.50 to \$7.50 per month for television service, not on a program basis, but through the use of community antenna facilities?

Mr. SALANT. I don't know the figures, but I will accept that for the purposes of discussion. Yes, there are undoubtedly many families who are paying to get their signals through community antennas because that is the only way they can get them. It is our hope, and it is our expectation, that boosters, satellites, new inventions, will wither away the community antenna so that people who are now paying for that service will get it free.

Mr. Cox. But it does indicate a willingness to pay in order to get the programing that is now being offered?

Mr. SALANT. You are quite right. That is a basic assumption I make: That they are willing to pay, and our own poll showed that they will pay—a minority of them pay—enough of them to make a go of it.

Senator SCHOEPPEL (presiding). Thank you, sir.

(The appendix and the supplemental memorandum referred to earlier in Mr. Salant's testimony are as follows:)

APPENDIX

Some Highlights of the Current Television Season, September 1955 to June 1956

Plays and musicals

ORIGINALLY PRODUCED FOR THEATER AUDIENCES

Production	Cast	Network	Date
The Skin of Our Teeth	Helen Hayes, Mary Martin, George Abbott, Florence Reed.	NBC	Sept. 11, 1955
Our Town (musical adaptation)	Frank Sinatra, Eva Marie Saint	NBC	Sept. 19, 1955
Heidi	Jeannie Carson, Wally Cox, Bill and Cora Baird.	NBC	Oct. 1, 1955
Time Out For Ginger	Jack Benny, Ruth Hussey	CBS	Oct. 6, 1955
Cyrano de Bergerac	Jose Ferrer, Claire Bloom	NBC	Oct 17, 1955
Alice in Wonderland	Eva Le Gallienne, Martyn Green	NBC	Oct. 23, 1955
The Caine Mutiny Court Martial	Lloyd Nolan, Barry Sullivan, Frank Lovejoy.	CBS	Nov. 19, 1955
The Devil's Disciple	Maurice Evans, Teresa Wright, Ralph Bellamy.	NBC	Nov. 20, 1955
She Stoops To Conquer	Michael Redgrave, Hermione Gingold.	CBS	Do.
Dearest Enemy	Anne Jeffreys, Robert Sterling, Cyril Ritchard, Cornelia Otis Skinner.	NBC	Nov. 26, 1955
Dream Girl	Vivian Blaine, Hal March	NBC	Dec. 11, 1955
Salome	Eartha Kitt, Leo Genn, Patricia Neal	CBS	Dec. 18, 1955
The Corn Is Green	Eva Le Gallienne, John Kerr, Joan Lorring.	NBC	Jan. 8, 1956
Dear Brutus	Helen Hayes, Franchot Tone	CBS	Jan. 8, 1956
Peter Pan	Mary Martin, Cyril Ritchard	NBC	Jan. 9, 1956
Blithe Spirit	Noel Coward, Claudette Colbert, Lauren Bacall.	CBS	Jan. 14, 1956
The Good Fairy	Julie Harris, Walter Slezak, Cyril Ritchard, Roddy McDowall.	NBC	Feb. 5, 1956
Caesar and Cleopatra	Sir Cedric Hardwicke, Claire Bloom, Jack Hawkins, Judith Anderson, Cyril Ritchard.	NBC	Mar. 5, 1956
High Tor (muscial adaptation)	Bing Crosby, Julie Andrews	CBS	Mar. 10, 1956
The Taming of the Shrew	Maurice Evans, Lilli Palmer	NBC	Mar. 18, 1956
The Barretts of Wimpole Street	Katharine Cornell, Anthony Quayle	NBC	Apr. 2, 1956
Twentieth Century	Betty Grable, Orson Welles	CBS	Apr. 7, 1956
Dodsworth	Fredric March, Claire Trevor	NBC	Apr. 30, 1956
This Happy Breed	Noel Coward, Edna Best	CBS	May 5, 1956
Up in Central Park	Cast not yet announced	NBC	May 12, 1956
The Old Lady Shows Her Medals	Gracie Fields, Jackie Cooper	CBS	May 23, 1956
Bloomer Girl	Cast not yet announced	NBC	May 28, 1956
A Bell for Adano (musical adaptation)	do	CBS	June 2, 1956
Sweethearts	do	NBC	June 9, 1956
The Victor Borge Show (highlights from Comedy in Music).	Victor Borge	CBS	June 14, 1956

ESPECIALLY CREATED FOR TELEVISION

Production	Cast	Network	Date
Judy Garland Show	Judy Garland, David Wayne	CBS	Sept. 24, 1955
The Man is 10 Feet Tall	Sidney Poitier	NBC	Oct. 2, 1955
The Expendable House	John Cassavetes, Glenda Farrell	CBS	Oct. 9, 1955
Together With Music	Mary Martin, Noel Coward	CBS	Oct. 22, 1955
Incident in an Alley	Farley Granger	CBS	Nov. 23, 1955
The Maurice Chevalier Show	Maurice Chevalier, Marcel Marceau, Jeannie Carson.	NBC	Dec. 4, 1955
A Christmas Carol	Fredric March, Basil Rathbone	CBS	Dec. 15, 1955
Christmas With the Greatest Show on Earth (a 1 hour remote from the winter quarters of the Ringling Bros. Barnum & Bailey Circus).		CBS	Dec. 16, 1955
Dino	Ralph Meeker, Sal Mineo	CBS	Jan. 2, 1956
The Great Adventure	Hume Cronyn, Jessica Tandy	CBS	Jan. 18, 1956
The Day Lincoln Was Shot	Raymond Massey, Lillian Gish, Jack Lemmon.	CBS	Feb. 11, 1956
Tragedy in a Temporary Town	Lloyd Bridges	NBC	Feb. 19, 1956
Flight	Ruth Hussey, Kim Stanley	NBC	Feb. 28, 1956
Doll Face	Glenda Farrell, Frank McHugh	NBC	Mar. 18, 1956
Joey	Kim Stanley, Anthony Perkins	NBC	Mar. 25, 1956
A Night To Remember (story of the sinking of the Titanic).	Claude Rains, narrator	NBC	Mar. 28, 1956
The Arena	Wendell Corey	CBS	Apr. 9, 1956

Movies

HIGHLIGHTS OF NETWORK SHOWINGS

Production	Cast	Network	Date
The Constant Husband	Rex Harrison, Kay Kendall, Margaret Leighton.	NBC	Nov. 6, 1955
Caesar and Cleopatra	Claude Rains, Vivien Leigh	ABC	Do.
A Double Life	Ronald Colman	ABC	Nov. 14, 1955
The Lavender Hill Mob	Alec Guinness	ABC	Nov. 20, 1955
The Promoter	do	ABC	Dec. 11, 1955
The Red Shoes	Moira Shearer, Anton Walbrook	ABC	Dec. 25, 1955
Ivory Hunter	Anthony Steel	ABC	Jan. 15, 1956
The Cruel Sea	Jack Hawkins	ABC	Jan. 17, 1956
The Mikado	Martyn Green, Kenny Baker	ABC	Jan. 29, 1956
Stairway to Heaven	David Niven, Kim Hunter	ABC	Feb. 5, 1956
The Importance of Being Earnest	Michael Redgrave, Joan Greenwood	ABC	Feb. 12, 1956
Odd Man Out	James Mason, Robert Newton	ABC	Feb. 19, 1956
Adam and Evalyn	Stewart Granger, Jean Simmons	ABC	Feb. 26, 1956
Richard III	Sir Laurence Olivier, Claire Bloom	NBC	Mar. 11, 1956
Madonna of the Seven Moons	Phyllis Calvert, Stewart Granger	ABC	Mar. 25, 1956

HIGHLIGHTS OF LOCAL STATION SHOWINGS

Breaking the Sound Barrier	Sir Ralph Richardson, Ann Todd		
The Captain's Paradise	Alec Guinness, Yvonne de Carlo		
The Man in the White Suit	Alec Guinness, Joan Greenwood		
Great Expectations	John Mills, Valerie Hobson, Jean Simmons.		
The Fallen Idol	Sir Ralph Richardson, Michele Morgan.		
Kind Hearts and Coronets	Alec Guinness, Dennis Price		
Quartet, 4 Somerset Maugham stories	Dirk Bogarde, Mai Zetterling		
The Browning Version	Michael Redgrave, Jean Kent		
Tales of Hoffman	Moira Shearer, Robert Rounseville, Pamela Brown.		
The Great Gilbert and Sullivan	Maurice Evans, Robert Morley		
The Seventh Veil	James Mason, Ann Todd		
Black Narcissus	Deborah Kerr, Jean Simmons		
Mourning Becomes Electra	Rosalind Russell, Michael Redgrave		

Public affairs and other informational programs

HIGHLIGHTS FROM PROGRAM SERIES

Series	Subject	Network	Date
Adventure	The 1st chapter in the story of the West, with Bernard De Voto and Dr. George Gaylord Simpson.	CBS	Oct. 9, 1955
	1st in a series on the world's waters describing physical and geographical aspects of the sea.	CBS	Oct. 30, 1955
	Rebroadcast of the Family of Man which won 2d prize for TV films at the Venice Film Festival.	CBS	Nov. 6, 1955
	The 2d in the western series (Mesa Verde National Park, Colo.), with Bernard De Voto and archeologists Jesse Nussbaum and David Watson.	CBS	Nov. 13, 1955
	The search for oil	CBS	Nov. 20, 1955
	The Universe and the Solar System, a remote broadcast from New York's Hayden Planetarium.	CBS	Nov. 27, 1955
	A remote from the Catalina Reef in California examining sea life of the area.	CBS	Feb. 19, 1956
Face the Nation	Henry Cabot Lodge, Jr., Chief of United States delegation to the U. N.	CBS	Sept. 18, 1955
	Gen. Eduardo Lonardi, provisional President of Argentina.	CBS	Oct. 23, 1955
	George Meany, president of AFL-CIO.	CBS	Dec. 11, 1955
	Gen. Maxwell D. Taylor, Chief of Staff, U. S. Army.	CBC	Feb. 12, 1956
	Adm. Lewis Strauss, Chairman, Atomic Energy Commission.	CBS	Feb. 26, 1956

Public affairs and other informational programs—Continued

HIGHLIGHTS FROM PROGRAM SERIES—Continued

Series	Subject	Network	Date
Let's Take a Trip	To Chicago Museum of Science and Industry.	CBS	Nov. 20, 1955
	To Washington, D. C., to attend Christmas for Peace pageant.	CBS	Dec. 25, 1955
	To the American School of Ballet (New York).	CBS	Feb. 26, 1956
	To New York International Airport	CBS	Mar. 11, 1956
	To an Arabian horse ranch (California).	CBS	Apr. 8, 1956
	To the Oakland Bay Ferry (California).	CBS	Apr. 15, 1956
Medical Horizons	Treatment of infectious diseases	ABC	Dec. 26, 1955
	Live telecast from Cook County Hospital, Chicago, showing the treatment of an accident victim.	ABC	Jan. 16, 1956
	From U. S. Public Health Service Hospital at Lexington, Ky., the study and cure of a narcotic addict.	ABC	Feb. 13, 1956
Medic	Glass of Fear, deals with hypochrondria with Richard Boone as Dr. Konrad Styner.	NBC	Nov. 28, 1955
	If Tomorrow Be Sad, study on multiple sclerosis with Richard Boone as Dr. Konrad Styner.	NBC	Feb. 6, 1956
	Awaken to Spring, dramatizes the problem of euthanasia, or mercy killing.	NBC	Mar. 26, 1956
Meet the Press	Abba Eban, Ambassador from Israel	NBC	Oct. 2, 1955
	Gov. Goodwin J. Knight, of California	NBC	Oct. 23, 1955
	Sinclair Weeks, Secretary of Commerce.	NBC	Nov. 1, 1955
	V. K. Krishna Menon, U. N. Ambassador at Large from India.	NBC	Nov. 27, 1955
	Former President Herbert Hoover	NBC	Dec. 11, 1955
	Thomas E. Dewey	NBC	Apr. 15, 1956
Omnibus	Series of 3 programs on the United States Constitution; with Joseph Welch, narrator.	CBS	Feb. 5, 1956 Feb. 19, 1956 Mar. 4, 1956
	A boyhood reminiscence with James Thurber.	CBS	Mar. 4, 1956
	Visit to Harvard University describing the contributions made by the American University and college with Harvard President Nathan M. Pusey, Senators Leverett Saltonstall and John Kennedy, and Dr. W. Barry Wood, Jr., physician.	CBS	Mar. 25, 1956
Report Card	Series of 5 programs presented in connection with the White House Conference on Education.	CBS	Oct. 30, 1955 Nov. 6, 1955 Nov. 13, 1955 Nov. 20, 1955 Nov. 27, 1955
See It Now, with Edward R. Murrow	The Vice Presidency, the Great American Lottery.	CBS	Oct. 26, 1955
	The Nation's Schools, Ballots at Bear Creek.	CBS	Nov. 27, 1955
	The Farm Problem, A Crisis of Abundance.	CBS	Jan. 26, 1956
	Egypt and Israel	CBS	Mar. 13, 1956
	Report from Africa (in 2 parts)	CBS	Apr. 23, 1956 May 17, 1956
You]Are there	Surrender of Lee to Grant at Appomattox.	CBS	Oct. 30, 1955
	The Chicago Fire	CBS	Dec. 11, 1955
	The Discovery of Radium	CBS	Dec. 18, 1955
	Washington Crosses the Delaware	CBS	Dec. 25, 1955
	The Capture of John Wilkes Booth	CBS	Feb. 5, 1956
	The Discovery of Anesthesia	CBS	Mar. 4, 1956
Wide Wide World	A live TV pickup from Habana, Cuba; with Dave Garroway, narrator.	NBC	Nov. 13, 1955
	Juarez, Mexico; 30th anniversary celebration, with Aztec dancers, Mexican hat dancers, parades, marathon runners; with Dave Garroway, narrator.	NBC	Dec. 4, 1955
	Quebec, Canada; Juarez, Mexico; Habana, Cuba; how do people prepare for Christmas; with Dave Garroway, narrator.	NBC	Dec. 18, 1955

Public affairs and other informational programs—Continued

HIGHLIGHTS FROM PROGRAM SERIES—Continued

Series	Subject	Network	Date
Wide Wide World	The Bahamas, British crown colony; with Dave Garroway, narrator.	NBC	Jan. 29, 1956
	Ensenada, Mexico; New Orleans for the Mardi Gras; Quebec, Canada, for their Mardi Gras: Tampa, Fla., for the Gasparilla Pirate Festival; with Dave Garroway, narrator.	NBC	Feb. 12, 1956

HIGHLIGHTS OF SPECIAL BROADCASTS

Look at Russia	Special film report on the life of the ordinary citizens of Moscow and rural Russia.	NBC	Oct. 23, 1955
Conversations	Informal discussions with leading figures from the world of government, letters, and other fields. With former President Herbert Hoover as a recent guest.	NBC	Nov. 6, 1955
Conquest	A documentary on great achievements of the 20th Century.	CBS	Nov. 19, 1955
Assignment India	With Chester Bowles, former American Ambassador to India.	NBC	Nov. 24, 1955
Nightmare in Red	Special film report on the Russian Revolution and the Soviet regime.	NBC	Dec. 27, 1955
Antarctica—The Third World	Special film report on the expedition led by Admiral Byrd, with Bill Hartigan, who went with the expedition as narrator.	NBC	Feb. 26, 1956
The twisted Cross	A study of the rise and fall of Adolfh Hitler.	NBC	Mar. 14, 1956
Out of Darkness	A study of the problem of mental illness, with comments by Dr. W. C. Menninger and with Orson Welles as narrator.	CBS	Mar. 18, 1956
Hall-Butler debate	Leonard Hall and Paul Butler, chairmen of the Republican and Democratic National Committees, respectively.	CBS	Mar. 25, 1956

Other cultural programs

	Network	Date
MUSIC AND DANCE		
"Griffelkin," with Adelaide Bishop and Mary Kreste (NBC Opera Theater)	NBC	Nov. 6, 1955
The history of music from Beethoven to jazz, with Leonard Bernstein (Omnibus)	CBS	Dec. 4, 1955
"Madame Butterfly," with Elaine Malbin (NBC Opera Theater)	NBC	Do.
"The Sleeping Beauty," presented by The Sadler's Wells Company of England, with Margot Fonteyn (Producer's Showcase)	NBC	Dec. 12, 1955
"Amahl and the Night Visitors," with Bill McIver (The Alcoa Hour)	NBC	Dec. 25, 1955
Handel's oratorio, "The Messiah," featuring William Warfield, Gloria Lane, and David Lloyd (Omnibus)	CBS	Do.
The Azuma Kabuki Dancers (Omnibus)	CBS	Jan. 1, 1956
"The Magic Flute," with Leontyne Price and William Lewis (NBC Opera Theater)	NBC	Jan. 15, 1956
"Festival of Music," with Marian Anderson, Jussi Bjoerling, Zinka Milanov, Jan Peerce, Roberta Peters, Gregor Piatigorsky, Arthur Rubinstein (Producer's Showcase)	NBC	Jan. 30, 1956
"The Story of a Ballet," Maria Tallchief and Nicholas Magallanes demonstrating how a ballet is created (Camera Three)	CBS	Feb. 19, 1956
"History of the Ballet," narrated by Agnes de Mille. Classic ballet illustrated by Andre Eglevsky, Diana Adams (Swan Lake) and scenes from Agnes de Mille's ballets for "Oklahoma" and "Paint Your Wagon" (Omnibus)	CBS	Feb. 26, 1956
"The Trial at Rouen," with Elaine Malbin (NBC Opera Theater)	NBC	Apr. 8, 1956
"Marco Polo," with Alfred Drake, Doretta Morrow (Max Liebman Presents)	NBC	Apr. 14, 1956

Other cultural programs—Continued

	Network	Date
POETRY AND ART		
The Renaissance (Omnibus)	CBS	Oct. 9, 1955
A Child Is Born, musical version of Benet's play in blank verse (GE Theater)	CBS	Dec. 25, 1955
Programs on painting and peotry with examples from the works of Toulouse-Lautrec and Dylan Thomas (Camera Three)	CBS	Mar. 18, 1956 Mar. 25, 1956
Reading of Walt Whitman's prose work Democratic Vistas. This essay, with some of Whitman's verse, was narrated by Ted Pearson and featured reading by Lois Nettleton and Jean Stapleton (Camera Three)	CBS	Feb. 26, 1956
Readings of the poetry of Emily Dickinson by Lois Nettleton (Camera Three)	CBS	Mar. 4, 1956
The Intricate Image of Dylan Thomas, John Ciaradi, poet and critic, analyzes the Welshman's peotry (Camera Three)	CBS	Mar. 25, 1956
Even the Weariest River, with Franchot Tone and Boris Karloff (The Alcoa Hour)	NBC	Apr. 15, 1956
James Mason reading Jenny Kissed Me, by Leigh Hunt, and Porphyria's Lover, by Robert Browning. Pamela Mason reading How Do I Love Thee, by Elizabeth Barrett Browning. Richard Burton reading Oh Happy Love, by Robert Burns (Trio)	(1)	
James Mason reading excerpts from The Ocean, by Lord Byron, and In Cabined Ships at Sea, by Walt Whitman. Richard Burton reading Songs for All Ships, by Walt Whitman (Trio)	(1)	

1 Syndicated film.

Religion

HIGHLIGHTS FROM SERIES

Series	Subject	Network	Date
Lamp Unto My Feet	A special Yom Kippur program, with Rabbi Charles Shulman.	CBS	Sept. 25, 1955
	Readings from the Bible, Old and New Testaments in connection with Bible Sunday, with William S. Asbury.	CBS	Dec. 11, 1955
	Foundation, celebrating the 250th anniversary of the Tranquebar Mission founded by German Lutherans in India, with Dr. George F. Hall.	CBS	Jan. 15, 1956
Look Up and Live	A special Thanksgiving program with Michael Kane	CBS	Nov. 20, 1955
	The Christmas Carol Show, with the Reverend Alvin Kershaw.	CBS	Dec. 18, 1955
	The symbolism of Lent, with Msgr. John J. Dougherty	CBS	Mar. 4, 1956

HIGHLIGHTS OF SPECIAL BROADCASTS

		Network	Date
	Christmas Eve Service from Washington, D. C. National Cathedral.	CBS	Dec. 24, 1955
	Midnight Mass from St. Patrick's Cathedral in New York.	NBC	Do.
	For God and Country, presented by the American Legion.	NBC	Feb. 5, 1956
	The Easter Story, in cooperation with the Protestant Council of the City of New York.	CBS	Apr. 1, 1956
	The Miracle of Love (film telling the story of Easter, presented by the National Council of Churches of Christ in America).	ABC	Do.
	Easter service with Dean James A. Pike celebrating the Evening Office of Easter Day at the Cathedral of St. John The Divine in New York.	ABC	Do.

Sports

	Event	Network	Date
Boxing	Archie Moore versus Carl "Bobo" Olson (light-heavyweight championship).	ABC	June 22, 1955
Do	Jimmy Carter versus Wallace (Bud) Smith (lightweight championship).	ABC	June 27, 1955 Oct. 19, 1955
Horseracing	Swaps versus Nashua (The Dream Match)	CBS	Aug. 31, 1955
Tennis	National singles championships, from Forest Hills	NBC	Sept. 10, 1955 Sept. 11, 1955
Baseball	World series (Brooklyn Dodgers and New York Yankees).	NBC	Sept. 28, 1955 through Oct. 4, 1955

Sports—Continued

	Event	Network	Date
Football	Army-Navy game	NBC	Nov. 26, 1955
Boxing	Carmen Basilio versus Tony De Marco (welterweight championship).	ABC	Nov. 30, 1955
Do	Carl "Bobo" Olson versus Sugar Ray Robinson (middleweight championship).	NBC	Dec. 9, 1955
Football	Professional football championship (Cleveland Browns versus Los Angeles Rams).	NBC	Dec. 26, 1955
Do	Cotton Bowl (Texas Christian University versus Mississippi).	NBC	Jan. 2, 1956
Do	Sugar Bowl (Pittsburgh versus Georgia Tech)	ABC	Do.
Do	Orange Bowl (Oklahoma versus Maryland)	CBS	Do.
Do	Rose Bowl (Michigan State versus UCLA)	ABC	Do.
Boxing	Sandy Saddler versus Gabriel "Flash" Elorde (featherweight championship).	ABC	Jan. 18, 1956
Bowling	Championship (Don Ellis versus Ray Schanen)	NBC	Feb. 18, 1956
Horseracing	Widener Handicap from Hialeah Park, Miami	NBC	Do.
Boxing	Carmen Basilio versus Johnny Saxton (welterweight championship).	ABC	Mar. 14, 1956
Basketball	National Invitation Tournament (Duquesne versus Oklahoma).	CBS	Mar. 17, 1956
Horseracing	Gulfstream Handicap from Hallandale, Fla	CBS	Do.
Golf	Masters Golf Tournament	CBS	Apr. 6, 1956 Apr. 7, 1956 Apr. 8, 1956
Bowling	Ned Day, of Milwaukee, versus Buddy Bomar, of Chicago (both former United States match champions).	NBC	Do.
Horseracing	Kentucky Derby, from Churchill Downs	CBS	May 5, 1956
Do	The Preakness, from Pimlico	CBS	May 19, 1956
Do	The Belmont Stakes, from Belmont	CBS	June 16, 1956

Memorandum Supplementing Statement of Richard S. Salant, Vice President, Columbia Broadcasting System, Inc., on Pay Television

Prepared for the
Senate Committee on Interstate and Foreign Commerce, April 26, 1956

INTRODUCTION

Three groups—Zenith Radio Corp. and Teco Inc., Skiatron Electronics & Television Corp. and Skiatron TV, Inc., and International Telemeter Corp.—have requested the Federal Communications Commission to authorize subscription television operations.[1] The arguments which those parties urged before the Commission, they now urge before this committee. Those arguments are in part self-contradictory, and in many points they are in conflict with each other. All of the arguments, however, make it clear that any system of pay television would spell the destruction of the best values of free television.

We shall show (point I) that pay television is inherently adverse to the public interest because it would blackout free channels, divide the viewing audience along economic lines, and siphon program material away from free television and radio.

The pay television promoters attempt to overcome those adverse consequences by claiming that their systems would: (*a*) Offer programs not presently available on free television; and (*b*) provide a solution to the problem of unutilized channels which now faces this committee and the Commission. We shall demonstrate (point II) that pay television would not accomplish either of its purported objectives. We shall also show that one of the proponents, Zenith, apparently recognizes that free television's growth has made obsolete its promise of new programs, and that it is now attempting to bolster the contention that pay television would be a panacea for the allocation problem by making claims for its system which it branded as unsound only a short while ago.

We shall also deal with the proponents' argument that pay television should be given a trial in the market place so that the American public can decide whether

[1] Those requests have been made in the pending rulemaking proceedings *In the Matter of Amendment of Part 3 of the Commission's Rules and Regulations (Radio Broadcast Service) to provide for Subscription Television Service*, docket No. 11279, hereinafter referred to as the "pay television proceeding." The proponents will hereinafter be referred to as Zenith, Skiatron, and Telemeter.

it wants such a system. We shall show (point III) that the commercial success of a pay television trial would not prove that the majority of American families wanted a pay system; it would merely prove that a small minority, presumably those in the upper income bracket, would pay enough for the most popular programs, if they were no longer available free, to deprive the rest of the public of those attractions.

I. PAY TELEVISION WOULD INEVITABLY HAVE EFFECTS ADVERSE TO THE PUBLIC INTEREST

Pay television would have three consequences which are clearly adverse to the public interest: (1) A blackout of channels dedicated to free broadcasting; (2) A division of the viewing audience along economic lines; and (3) A siphoning of present and prospective program material from free television and radio.

(1) The blackout of free channels

The pay television promoters propose to use channels now allocated to free broadcasting. While any station was carrying one of their programs, it would be blacked out for all those viewers who lacked decoders and for all equipped set owners who were unable or unwilling to pay for the program. Under the Zenith and Skiatron system, the viewer would receive a garbled picture and unintelligible sound. Under the Telemeter system, he would receive a "billboard" and "barker" informing him what program he could view if he were able and willing to pay.

If pay television were instituted in one-station markets, there would be a total blackout of free service while pay programs were being offered. In multistation markets, it is also likely that the blackout would be complete since all stations would strive to offer pay programs at the same time—during the evening hours when most people want to watch television.[2] Those hours would offer the greatest opportunities for profit. Even if initially only one station were to carry pay programs, there would still be blackouts ranging from 50 percent to 33⅓ percent of the channels in all 2- and 3-station markets.

The promoters of pay television have attempted to dismiss the seriousness of the blackout by arguing that they would use only a small portion of the broadcast day and that free service would be available at all other times.[3] That claim assumes that all viewing hours are alike as far as the public is concerned. The proponents apparently consider it immaterial that pay television would preempt peak-viewing periods and leave for free television those hours when working people are away from home or sleeping.

(2) The division of the audience along economic lines

Today, any family that has purchased a television receiver can watch any and all available programs. The taxi driver can view the same programs as the millionaire, and he does. Pay television would change this. Ability to watch would, for the first time, depend on ability to pay. Those who had sufficient money and were willing to pay would be able to see any programs that they desired. Those less fortunate—those families in the lower income groups who are most dependent on television—would become second-class citizens so far as television was concerned. If they lived in a market where pay television blacked out all free service during the prime evening hours, they would be forced to go without television service during those hours. If there were free service available from some station in their community, they would have to watch the less desirable programs left to free television after the cream had been skimmed off by pay television. Thus, pay television would divide the American viewing public along economic lines and destroy the democratic and unifying influence of our present system which serves rich and poor alike.

The extent to which pay television would divide the viewing audience is shown by a consideration of the prices which the proponents would seek. To watch

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[2] Telemeter, stating that its system would not "be limited to a single broadcasting station in a city," adds that "it might be expected that several Telemetered programs over different stations might be presented during an evening." Questions and answers about Telemeter, the only pay-as-you-see TV system. Skiatron has also admitted that "favorite times for commercially sponsored programs" would be affected by its proposal (principal comments in pay television proceeding, p. 65), and a sample weekly program schedule distributed by that company listed 5 of the 7 programs during prime evening hours.

[3] In its principal comments in the pay television proceeding, Zenith suggests that the Federal Communications Commission limit the hours of pay broadcasting to 15 percent of a station's annual broadcast time (p. 49) while Skiatron proposes a 35-hour-per-week restriction (pp. 13–14, 65). Telemeter does not propose a time limitation but predicts that pay programs would occupy a "small percentage of the time on television stations" (reply comments, p. 13).

pay programs, a family would first have to buy a decoder for $50 or more, or rent one for $20 or more a year.[4] A separate fee would then have to be paid for each program, with charges running as high as $1 or $2 per show.[5] The pay television promoters have stated that they expect to collect $2 or more per week, or more than $100 per year, in program charges from the average television family.[6] This is almost three times as much as the average family spent for admission charges to movies, theaters, and sports events in 1954.[7]

The proponents' cost estimates are accompanied by assertions that the forces of the market place would always protect the public from unfair charges. Those assertions do not withstand analysis. It is clear that normal economic factors would keep any family from buying or renting more than one decoding device to attach to its receiver. If more than one system operated in any community, therefore, each family could get some programs but not others—one family could get the ball games but not the plays, another could get the plays but not the ball games. The natural and inevitable consequence would be that in each community only one system would function. Set owners, station licensees and program suppliers would all be forced to yield to the demands of the operator of that system in order to participate in pay television. Monopoly is a built-in feature of a pay system.

(3) The siphoning of free programs

The pay television promoters would inevitably seek to appropriate the most popular programs now presented on television as well as the outstanding attractions that would otherwise come to television.

Economic forces would drive pay television to seek free programs.—A consideration of the economic forces which must of necessity prevail demonstrates that the box-office operators of pay television would seek the most attractive programs of free television. The proponents have staked their case on the ability of pay television to extract from the public more money than advertisers spend for programs.[8] They have conceded that the huge revenues which they envisage can be obtained only by selling programs to mass audiences.[9] And they have asserted that there is a scarcity of attractive mass-audience programs.[10] Free television, however, offers a rich store of programs with built-in mass audiences. The programing of free television has induced 35 million families to purchase receivers and they watch that programing on an average of about 6 hours a day. It would be impossible to build a system of pay television which did not utilize the same types of programs.

The proponents have admitted that they want to take programs from free television for their systems.—The proponents have admitted that they will seek such programs. An analysis of their program promises (pp. 16–28, infra) shows that they plan to offer the same type of attractions for pay as are now available to the American public without cost.

All the proponents frankly admit that they would attempt to appropriate the most popular sports programs now presented on free television. For example, Matthew Fox, president of Skiatron TV, is reported to have said: "The only thing we want that's now on free television are the top sports events—and the

[4] Skiatron proposes that decoders be sold and estimates that the initial retail price would be about $40 or $50; that price does not include the cost of installation or of an installed UHF antenna. The other proponents intend to rent decoders to the public. Zenith states that monthly rental rates might be between $1 and $2, while Telemeter indicates that the rental would probably be a percentage of the receipts in a viewer's coinbox. Principal comments in pay television proceeding: Skiatron, pp. 26–27; Zenith, p. 36; Telemeter, p. 31.

[5] Principal comments in pay television proceeding: Skiatron, p. 27; Zenith, p. 37; Telemeter, pp. 26–28.

[6] Telemeter's principal comments in pay television proceeding, p. 29; statement by the president of Skiatron Electronics, the New York Times, June 9, 1953, p. 35; Millard C. Faught, economic consultant to Zenith, address before the National Press Club, April 14, 1955.

[7] The average expenditure on admissions was $35.60, based on total expenditures on admissions in United States, U. S. Department of Commerce, O. B. E., Survey of Current Business, July 1955, p. 19, divided by average of sales management estimates of total United States families, interpolated to mid-1954.

[8] Principal comments in pay television proceeding: Zenith, pp. 44–43, 56; Skiatron, pp. 41–43, 48; Telemeter, pp. 23–24, 29. Telemeter estimates that television advertising revenues will reach $1,450 million in 1960 and about $1,850 million in 1965. For the same 2 years it forecasts possible revenues from pay television exceeding $5 billion and $6 billion, respectively. (Id., p. 29.)

[9] See p. 27, infra [p. 1325].

[10] Pay television proceeding: Zenith's principal comments, pp. 4, 49; Skiatron's reply comments, p. 19; Telemeter's reply comments, p. 13.

sports promoters agree with us on this." [11] Paul MacNamara, Telemeter vice president is quoted as having said: "The first programs we'll offer will be sports. Big-league baseball, NCAA football, the International Boxing Club—they've all committed themselves to come in at the beginning." [12] Zenith has promised the world series,[13] and the Rose Bowl and Army-Navy games,[14] all of which are available on free television; and it has stated that the "promoters of fights, football, baseball, and other top sports attractions are urging us to get going." [15]

The proponents have conceded, however, that they desire more than just the top sports attractions now shown on free television. Skiatron does not limit itself to sports events when it concedes that "subscription television will compete with the networks for talent." [16] Similarly, Telemeter has stated: [17]

"The third objection which is voiced against pay-as-you-see television is that it will siphon desirable programs away from free television. The answer is that pay-as-you-see television will siphon programs only if it gives customers their money's worth. And free television will be doing its utmost to keep its viewers and programs. Again competition will determine who is able to attract the best programs."

Telemeter here clearly admits that it would "siphon programs" if it could (1) give "customers their money's worth" and (2) successfully compete with free television for those programs. Both conditions would be met. We shall show (pp. 9–10, 12, *infra*) that a sufficient number of customers would be willing to pay for programs if they were not otherwise available. As for the second condition, Telemeter and the other proponents have repeatedly boasted that they would be able to spend more for programs than advertisers; consequetly, free television would lose its best programs.

Zenith is less indirect than Telemeter about its desire to appropriate the most popular programs of free television. For example, the president of Zenith made the following wistful estimate of what the American public would have paid to see Peter Pan if pay television had been able to bid it away from free television.[18]

"Approximately 20 million television receivers were tuned to this program. with the same show on subscription television, and the same audience paying 25 cents per set to watch the attraction at home, the box office would have received $5 million to be divided between the producer, the distributors, and the broadcasting stations."

If Zenith admits that it wants programs like Peter Pan, it is clear that it would also try to appropriate programs like the following attractions which were seen on free television during the past year:

The Caine Mutiny Court-Martial (with Lloyd Nolan, Barry Sullivan, and Frank Lovejoy)
The Mary Martin-Noel Coward Show.
Blithe Spirit (with Noel Coward, Claudette Colbert, and Lauren Bacall)
Richard III (starring Sir Laurence Olivier, Sir Ralph Richardson, Sir John Gielgud, Sir Cedric Hardwicke, Claire Bloom, and Pamela Brown)
The Judy Garland Show
The Maurice Chevalier Show
Heidi (with Jeannie Carson and Wally Cox)
Our Town (with Frank Sinatra and Eva Marie-Saint)
Cyrao de Bergerac (starring Jose Ferrer and Claire Bloom)
Babes in Toyland (with Wally Cox, Dennis Day, and Jeannie Carson)
Caesar and Cleopatra (with Sir Cedric Hardwicke, Claire Bloom, Judith Anderson, and Jack Hawkins)
The Taming of the Shrew (with Maurice Evans and Lilli Palmer)
The Skin of Our Teeth (with Helen Hayes, Mary Martin, George Abbott, and Florence Reed)
Salome (starring Eartha Kitt)
Sleeping Beauty Ballet (with Sadlers Wells Ballet)

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[11] Saturday Evening Post, October 29, 1955, p. 130.
[12] Collier's, September 16, 1955, p. 55.
[13] Millard C. Faught, economic consultant to Zenith, address before the New York Society of Security Analysts, April 19, 1954.
[14] Report of interview with Eugene F. McDonald, Jr., president of Zenith, Variety, February 10, 1954, p. 18.
[15] Annual report for 1953, p. 23.
[16] Reply comments in pay television proceeding, p. 21.
[17] Reply comments in pay television proceeding, p. 15.
[18] Letter from E. F. McDonald, Jr., to all Zenith franchised dealers, March 30, 1955; also see letter from Ted Leitzell, director of public relations for Zenith to broadcasters, March 25, 1955.

The Devil's Disciple (with Maurice Evans, Dennis King, Ralph Bellamy, and Teresa Wright)
The Constant Husband (starring Rex Harrison)
Edward My Son (with Robert Morley)
High Tor (starring Bing Crosby)
Twentieth Century (with Orson Welles and Betty Grable)
The Barretts of Wimpole Street (starring Katherine Cornell)
Dream Girl (with Vivian Blaine and Hal March)
The Corn is Green (starring Eva Le Galliene)
Dear Brutus (with Helen Hayes and Franchot Tone)
Time Out for Ginger (starring Jack Benny and Ruth Hussey)
The Lavender Hill Mob (with Alec Guinness)
The Red Shoes (with Moira Shearer)
Odd Man Out (with James Mason)
Stairway to Heaven (with David Niven and Kim Hunter)

It is also clear that the promoters of pay television would seek to appropriate some of free television's favorite regular programs and performers like The Ed Sullivan Show, I Love Lucy, the Phil Silvers Show, Disneyland, Jackie Gleason, and Jack Benny. These regular features generally attract larger audiences than television's special events and they hold those audiences on a weekly basis.

The proponents would have the power to take programs away from free television.—There is no doubt that pay television would have the economic power to bid those programs and stars away from f ee television. The promoters of pay television continually flaunt the fact that the money which they would receive from the public would enable them to spend more money for programs than advertisers do.

A simple illustration demonstrates how the pay television promoters could take away free programs. At the present time, the total cost of the Ed Sullivan Show is about $150,000 a program and the show is seen in 17 million homes. If one-tenth of the families who now watch The Ed Sullivan Show were willing and able to pay 50 cents to see it if it were no longer available on a free basis, the amount collected would be about $850,000. If all the money that the network and stations receive for their time and the use of their facilities is subtracted from that amount and if it is assumed that the promoters of pay television pocket half of what remains for their profits and expenses, pay television would still have more than six times as much money to bid for the attraction as is paid by free television. The same arithmetic could be applied to any other popular show.

It is significant to note that a small minority could pay enough to deprive the majority of families of programs now available free.[19] This will be discussed below (pp. 35–36, infra) in connection with the proponents' argument that pay television should be given a trial in the market place so that the American public can decide whether it wants pay television.

The top stars and the owners of the most popular attractions have admitted that they would switch from free to fee television.—It is obvious that free television's most popular stars and those controlling many of its top attractions would not be able to resist the rich rewards of pay television. Jack Gould, of the New York Times, noted:[20]

"Some of the big television stars already are casting envious glances at toll TV. If toll TV can bring in fabulous grosses, the stars are going to switch to that medium, just as they switched to TV from radio. And, as businessmen, the toll operators certainly are not going to turn them away.

"This prospect is no idle theory. An official of one pay-as-you-see system said competition would force a toll operator to shop around anywhere he could for stellar attractions, including existing television shows."

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[19] The proponents concede that they can make money if only a small portion of the audience is willing to pay for programs. Joseph Wright, vice president and general counsel of Zenith, is reported to have said that pay television could afford the greatest shows in history even if those attractions get one of TV's lowest ratings—say, a 3—that means that 1 million people will be looking in. Collier's, September 16, 1955, p. 52. Ted Leitzell, public relations director for Zenith, stated: "Revenue per viewer to the broadcaster will be far greater from subscription than from sponsored TV. It is therefore axiomatic that subscription TV can operate profitably with a much smaller audience than can sponsored TV." Address before the Minneapolis Advertising Club, November 23, 1955. James M. Landis, counsel for Skiatron, has also stated that "our audiences would be naturally smaller than the free-television audiences." Debate before Eastern Annual Conference of the American Association of Advertising Agencies, October 19, 1955.

[20] The New York Times, May 8, 1955, sec. II, p. 11.

One of the "envious glances" has apparently been cast by Jackie Gleason, who is quoted as having said: "There's a future in this business for anyone who's had any time in television * * * I don't think there'll be any other kind of television." [21]

The promoters of the most popular sports events—of baseball games, prize fights, basketball games and the like—have openly admitted that they want to switch to pay television.[22] They have made no secret of the enormous revenue which they expect to derive by selling the sports events that are now available on a free basis.

The effect of the siphon would be felt by radio as well as television.—The serious consequences of pay television would extend to radio as well as free television. For example, if the pay television operators acquired the rights to baseball games, prize fights or operas, they would certainly insist on eliminating competition to their box office which would be created by the free radio broadcasts of those same events. Surely, some of the people who are interested in a prize fight would rather listen to the radio free than pay for the privilege of watching it on television. Even if pay television were to offer the 1 or 2 heavyweight championship fights a year that are not now available on free television, the number of people for whom those unique events would be added to television would be a small fraction of the number who would be deprived of radio coverage.

The proponents unsuccessfully attempt to allay the fears that pay television would appropriate free programs.—The proponents recognize that an attempt to charge American families for program material now available free would be contrary to the public interest and would arouse violent public reaction. That is clear from the repeated emphasis which they all place on the claim that their systems would merely supplement existing program fare. Zenith makes this explicit when it says that "Sound business *as well as public policy* requires that subscription television be limited to supplementing and augmenting existing program fare of the advertising type with new and unique program product which is primarily box office in nature." [23] The proponents have, therefore, attempted to allay the fears that they would take over free programs.

Their most persistent argument is that they would not do this because the public would not pay for the type of programs which it now receives free.[24] But, people would pay if these programs were not available on a free basis. The proponents' argument is completely refuted by their own promises to present programs and talent now available on free television. Aside from this inconsistency, however, it requires no elaborate argument to show that people are more likely to pay to see a program for which they have developed an affection than to see a relatively unknown attraction. If proof were needed, it is provided by a Gallup poll of last summer which showed that 40 percent of those interviewed would pay to see a world series game and over 30 percent would pay for the Ed Sullivan show if those programs were not telecast free.[25] A study prepared for the major league baseball owners last summer revealed similar results—it showed that almost 40 percent of the fans interviewed would pay 25 to 50 cents to see a baseball game.[26]

The proponents apparently recognize the fallacious nature of their claim that the public would not pay for many of the popular programs now available free. Accordingly, they have suggested certain so-called safeguards to prevent pay television from appropriating those programs. There would be no need for those suggestions if the proponents really believed that the public would not pay.

In the pay-television proceeding pending before the Federal Communications Commission, Zenith suggested that a pay system be limited to programs (1) of "the box-office type," (2) "which will supplement existing types of program fare," and (3) "which, except for subscription television, would otherwise be unavailable to the public on a regular or unrestricted basis." [27] We demonstrated, in that proceeding, that each of the elements of Zenith's test involves a wholly unworkable standard.[28] It is inconceivable that the Commission could

[21] Newsweek, May 23, 1955, p. 99.
[22] See pp. 24–25 infra. [pp. 1323–1324].
[23] Principal comments in pay television proceeding, p. 2. [Emphasis added.]
[24] Principal comments of Zenith in pay television proceeding, p. 2; James M. Landis, counsel for Skiatron, debate before eastern annual conference of the American Association of Advertising Agencies, October 19, 1955.
[25] The Philadelphia Bulletin, July 31, 1955, sec. 5, p. 5.
[26] Broadcasting-Telecasting, December 12, 1955, p. 98.
[27] Principal comments, p. 3.
[28] CBS reply comments, pp. 29–32.

be expected to undertake a watchdog operation to make sure that programs appearing on pay television were only of the "box office" type.

Any effort to administer Zenith's proposed "limitation" would require predictions as to (*a*) whether particular programs now available on free television would have remained available if pay television had not been authorized and (*b*) whether particular new attractions would have come to television if a pay system had not been approved. If there were any doubt about the impossibility of making such predictions, it would be dispelled by viewing, from the standpoint of only 5 years ago, such a list of programs as that appearing on pages 7–9, *supra*. Moreover, even if such predictions could be made, a limitation on programs alone would not prevent the operation of the siphon. Programs are people. Even if it were decided that The Ed Sullivan Show could not be put on pay television, the elements of that program—Ed Sullivan, the orchestra, the producer, the director, the various acts, etc.—could not be ruled out of pay television without creating a blacklist of people who have worked on free television. The loss of the top talent on free television would spell the demise of the medium's most popular programs.

We pointed out, in the pay-television proceeding, that Zenith's own statements indicated that it lacked confidence in the effectiveness of the safeguard which it had proposed.[29] The passage of time has apparently not restored Zenith's confidence—if, indeed, such confidence ever existed. In the comments that it recently filed in the Commission's general allocation proceeding, Zenith made no mention of its "box office" safeguard. Instead, it merely claimed that pay television could be prevented from siphoning programs if the Commission (1) limited the amount of time that broadcasters could devote to pay operations and (2) temporarily restricted the right to conduct such operations to "needy" stations.[30] Skiatron has made similar suggestions.[31] Such restrictions, however, are no restrictions at all—they give the proponents everything that they want and do not impair their ability to appropriate free television's most popular programs.

Zenith proposes that pay operations be limited to 15 percent of a station's annual broadcasting time, while Skiatron suggests that no station be permitted to broadcast on a pay basis for more than 35 hours per week.[32] Under Zenith's proposal, pay television could preempt the air waves between 7:30 p. m. and 10:30 p. m. almost every night of the week; and under Skiatron's proposal, that could be done every night, with time to spare. These "limitations" would allow the proponents to operate at the times they most want, the choice evening hours when television viewing is most popular.[33] They would not weaken pay television's ability to bid the most popular programs away from free television. They would merely mean that the outbidding would be restricted to the hours when most people want to watch television.

The so-called station limitations would be equally ineffective. Skiatron suggests that, for an initial period of 3 years, the right to transmit pay programs be restricted to UHF stations and those VHF stations which can show special need.[34] Zenith proposes a 2-year limitation under which both UHF and VHF stations would have to establish special need; the fact that a station carries less than 7½ hours of commercial network programing per week would constitute a prima facie showing of such need.[35] It should be noted that these restrictions would last for only 2 or 3 years—after that period all stations could operate on a pay basis. Thus, these restrictions would not affect pay television's ability to siphon after the temporary limitation period had expired.

Nor would they prevent the operation of the siphon even during that period. The pay-television promoters have indicated that they intend to concentrate their initial efforts in the largest markets.[36] Under their so-called limitations, they

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[29] CBS reply comments, pp. 4, 29.

[30] Reply comments, pp. 2–3, *In the Matter of Amendment of Part 3 of the Commission's Rules and Regulations Governing Television Broadcast Stations*, docket No. 11532.

[31] Principal comments in pay television proceeding, pp. 13–14, 40, 70–72.

[32] Principal comments in pay television proceeding: Zenith (p. 4); Skiatron (pp. 13–14).

[33] See footnote 2, supra.

[34] See footnote 31, supra.

[35] Principal comments in allocation proceeding, pp. 14–15, 17.

[36] The president of Zenith is quoted as having stated that subscription television can start in two "big markets" within a year after Commission approval. Newsweek, February 28, 1955, p. 72. This view was repeated in the Zenith release Some Capsule Facts About Phonevision and Subscription TV, p. 1. Skiatron TV, Inc., is required to meet a stipulated schedule calling for 500,000 installations in New York City to fulfill its agreement with Skiatron Electronics & Television Corp., Variety, April 27, 1955, p. 16. Paul MacNamara, Telemeter vice president, is reported to have said, "We'll concentrate our initial efforts in New York, Chicago, and Los Angeles." Collier's, September 1955, p. 55. He

could place pay programs on VHF stations in New York, Los Angeles and Chicago, stations which reach 26 percent of all United States television homes. Those stations alone would give the promoters the power to appropriate free television's most popular attractions. If only 20 percent of the present viewers of the Ed Sullivan show in those markets were willing and able to pay 50 cents to see that program, $450,000 would be collected. If the stations' time charges were deducted and the promoters kept half of the balance for expenses and profits, about three times as much money would be available as is now paid for talent and production on that program. Thus, pay television could make enough money from a small minority in just those three markets to outbid advertisers for the most popular programs which they now sponsor.

Pay television would split the American viewing audience along economic lines and destroy the democratic and unifying influence of our present system. It would take away the most popular programs from free television and black out free channels at the hours when most people wanted to watch. The American public has invested more than $16 billion in television receivers and service. Members of the public were justified in believing, when they purchased sets, that they could receive the signal of any station in their areas without the expense of additional equipment and a program-by-program charge. They were justified in believing that they could receive—without additional expense—the very attractions which the pay television promoters openly covet. The appropriation of free channels and free programs by pay television would thwart the public's justifiable expectations and depreciate its huge investment in television receivers.

II. PURPORTED JUSTIFICATION FOR PAY TELEVISION

We have shown that pay television's basic influence would be adverse to the public interest. What do the proponents offer to compensate for those adverse consequences? They promise (1) new and better programs and (2) an increased utilization of television channels. Even if the proponents could keep those promises, that would not compensate the American public for the adverse effects which pay television would impose. We shall show, however, that the proponents could not keep those promises—that there is grave doubt that they even intend to do so.

(1) Program promises

The proponents repeatedly describe pay television as offering a "supplemental" program service. In determining what is supplemental, however, it is necessary to have a frame of reference—to determine what it is that is to be supplemented. A supplemental diet is one thing to a man who has lived on stale bread for a month; it is another thing to one who has had caviar and steak.

The basic fallacy of the promise of supplemental service is its premise that free television has offered nothing but stale bread. Zenith has described the program fare of free television as a "continuous stream of 20-year-old horse operas and other hackneyed programs that now fill in most of the short spaces between the long commercials." [37] The president of Skiatron TV is quoted as having said: "Except for an occasional moment like Peter Pan, everything on TV is second-rate." [38]

No group of reasonably intelligent and unbiased citizens familiar with free television could honestly conclude that those descriptions of present programing are fair or accurate. Even a cursory examination of the programs presented on television during the past season, some of which are listed in this memorandum,[39] demonstrates that those descriptions are based on willful blindness or deliberate misrepresentation.

We turn now to an examination of the proponents' vague promises about the programing that a pay system would provide. Those promises fall into four categories: motion pictures, Broadway plays, sports, and cultural and educational programs. We shall show that, in each of those categories, pay television would not furnish any significant addition to what the public is now receiving free; that, on the contrary, it would siphon most of the popular attractions now available without cost.

(*a*) *Motion pictures.*—The proponents intend to begin their operations with feature films that have already been distributed to theaters. First-run pictures,

has singled New York out as the logical place for Telemeter to begin operations. The New York Times, April 29, 1953, p. 19.

[37] Zenith press release, dated June 6, 1955.

[38] Collier's, September 16, 1955, p. 52.

[39] See pp. 7–9, 23, 24, 26, 27 [pp. 1316–1317, 1323, 1324–1325].

they indicate, may become available some time in the distant future depending upon the growth and success of pay television. Skiatron, for example, promises to seek the release of producers' "inventories of feature films" and their libraries of pictures, many of which were outstanding productions." [40] It cautiously states: As the capacity of subscription television to pay becomes established, it may well be able to compete with theaters for motion pictures of the type that can be shown equally well on television as on a theater screen." [41] Similarly, Zenith promises "first-class," not first-run features, "in the interim period while the service is growing and before it has become fully established." [42] Telemeter also talks of "older good pictures," claiming that "the dam will break when we get up to 2 million sets," that "until then, the movie producers will be afraid to antagonize the theater owners." [43]

Free television, however, is now offering a rich variety of recent motion pictures which have already had theatrical runs. In the past 6 months, Hollywood producers have placed an unprecedented amount of product on the television market—almost 2,000 features and 6,000 short subjects and cartoons.[44] Warner Bros. and RKO have sold backlogs of 850 and 740 feature films for $21 million and $12 million, respectively.[45] And there are reports that other major producers are preparing to release sizable blocks of additional films.[46] Attorney General Herbert Brownell, Jr., recently announced that the Department of Justice would not appeal the judgment in *U. S.* v. *Twentieth Century-Fox Film Corp. et al.*, holding that the motion-picture producer-distributors had not conspired to restrain the distribution of 16-millimeter feature films to television. He stated that continuation of the litigation would serve no practical purpose inasmuch as a substantial flow of feature motion pictures to television had started.[47]

This deluge of feature films has been described as causing "the virtual scuttling of pay-as-you-see television" by Jack Gould, TV-radio critic of the New York Times, who stated: [48]

"The favorite argument of the eager champions of toll TV has been that a home box office would mean new feature-length pictures. But it is becoming obvious that, while toll TV has become ensnarled in all sorts of legal, technical, and economic complications, advertising-sponsored TV is going to move ahead and satisfy the viewer's appetite for better film fare. As newer films reach the home without charge, the toll advocates are going to sound very forlorn urging viewers to pay for them. Pay-as-you-see had a stronger case 5 years ago than it has today."

In a similar vein Abel Green of Variety wrote: [49]

"Television's sights on 'the public will be delighted to pay for good product' seems to have been eclipsed by this unleashing of a wealth of Hollywood backlog product for sponsored video programs."

As far as first-run films are concerned, while the proponents make vague statements about the possibility of presenting such attractions some time in the distant future after pay television has matured, free television has already taken the initiative. Three films, Richard III, The Constant Husband, and Adventures of Davy Crockett, have been shown on television prior to their release to American theaters. Zenith has quoted a statement by a "motion picture authority" to the effect that the showing of a feature on pay television might increase its audience at the theater box office.[50] This possibility is just as real under free television as under pay television. If it is demonstrated that the

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[40] Principal comments in pay television proceeding, pp. 51, 56.
[41] Id., at p. 50.
[42] Phonevision and the Broadcaster, p. 7.
[43] Statement by Paul MacNamara, Telemeter vice president, reported in Collier's, September 16, 1955, p. 55.
[44] The New York Times, March 2, 1956, p. 18; TV Digest, January 14, 1956, pp. 2–3; Variety, January 11, 1956, pp. 43–48.
[45] The New York Times, March 2, 1956, p. 18.
[46] Statement by Herbert Brownell, Jr., Attorney General, Department of Justice price release, March 6, 1956; Variety, April 18, 1956, p. 1; March 14, 1956, p. 40; March 7, 1956, pp. 1, 23; The New York Times, March 11, 1956, sec. II, p. 1.
[47] Department of Justice press release, March 6, 1956. This flow would undoubtedly have started sooner were it not for pay television proposals. Motion picture executives, testifying during the course of the Government's suit, admitted that they had held pictures back from television in the hope of higher prices from pay television. Testimony of Ralph M. Cohn, Screen Gems vice president, and Abe Montague, Columbia Pictures vice president, at pp. 2417–2418 and 2494–2495 of the transcript of trial, *U. S.* v. *Twentieth Century-Fox Film Corp. et al.* (U. S. D. C. S. D. Cal.). Also see statement by Abe Schneider, vice president of Columbia Pictures, at annual stockholders' meeting, reported in Variety, December 22, 1954, p. 5.
[48] The New York Times, January 1, 1956, sec. II, p. 9.
[49] Variety, January 11, 1956, p. 5.
[50] Principal comments in pay television proceeding, pp. 52, 53.

telecasting of a motion picture would increase its subsequent theater run, motion picture producers and exhibitors would agree to have "openings" on television, and there would be no necessity for charging the public to see them on television.

(*b*) *Broadway plays.*—While Zenith has sometimes promised to present the opening nights of Broadway plays on pay television,[51] the other proponents realistically promise those productions only after they have been presented on Broadway and only after they have been adapted to the unique requirements of television. The president of Skiatron TV, Matthew Fox, is reported to have stated:[52]

"It's unrealistic to think in terms of Broadway opening nights, not only because of the technical problems but because you never know if a show is a hit until after it opens."

Similarly, Telemeter, in promising Broadway attractions after their theatrical runs, recognizes the problems of "adapting a Broadway show to television * * * whether the telecast can be shot from the theater and whether it is necessary to redesign and build new sets."[53]

The impracticability of televising opening nights has also been recognized by newspaper critics.[54] The views of those critics were affirmed last summer when officials of the Metropolitan Opera announced that its opening night production would not be televised because a normal operatic production is marred by television trappings and is not suitable for television unless specially staged.[55]

Thus, it is highly unlikely that Zenith would keep its sometime promise to present "opening nights" of Broadway plays. Like Telemeter and Skiatron, it would offer those plays after they had completed their Broadway runs and been adapted for television. This, however, is just the type of product now being offered on free television. Pay television would put an end to this; the Peter Pans and Caine Mutinys of the future would not be seen free but only for pay.

A recent article in Newsweek described the current relationship between Broadway and television in the following manner:[56]

"Broadway artists, thanks to the all but insatiable needs of television, had never been busier. The Broadway theater, flourishing under the same well-heeled influence, was at the same time undergoing a transformation that might shortly affect a multitude of other stages across the country and was already being seen in millions of American living rooms.

"Before TV, the Broadway hit was an experience inaccessible to most Americans; at best, they had to settle for a Holywood mutilation—or copy of the original. Now, the full-length Broadway play is becoming a standard (if still infrequent) feature on TV channels and seems certain to become much more.

"* * * What is not generally known is that television is financing Broadway productions. The industry has become a big backer on Broadway simply to secure for itself the rights to hits—that is, in order to beat Hollywood moviemakers to the punch. What this means for TV audiences is the chance to see, regularly, Broadway productions little altered from their original form, played by the original Broadway casts, and played live, rather than filmed. By introducing large numbers of people to the special excitement of watching

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[51] Zenith Annual Report for 1955, p. 20; Joint Substitute Petition Concerning Subscription Television, p. 9. No such promise, however, is made in Zenith's principal comments in the pay television proceeding. There, Zenith merely stated that pay television would supply any program for which the public would pay and that a 1951 survey showed that a portion of the public would pay for "legitimate theater, Broadway plays, musicals, etc." (p. 56).

[52] Collier's, September 16, 1955, p. 52.

[53] Principal comments in pay television proceeding, p. 27.

[54] For example, Jo Coppola of Newsday, branding the promise of first nights as "ridiculous," asked: "What first night audience is going to buy tickets just for the privilege of viewing the rear anatomy of a cameraman?" Newsday, May 11, 1955, p. 87. John McClain, drama critic of the New York Journal-American, reacted to the promise to televise opening nights with a plea for recognition of "the fact that the two media are diametrically opposed." He wrote (New York Journal-American, June 3, 1955, p. 21):

"In the first place, how many plays currently on Broadway could be safely brought into the living room? Would you, as a parent with your children grouped around you, have enjoyed an unexpurgated showing of Cat on a Hot Tin Roof, Tea and Sympathy, Bus Stop, House of Flowers, or Lunatics and Lovers? And what author or producer would submit to an opening-night censorship to satisfy the TV audience? Their months of effort in creating a live theatrical production would go down the drain to comply with a code which has no relation to the Broadway theater.

"Technically the problems of televising an opening night would seem to me to be insurmountable. It took weeks of special rehearsal, an army of TV technicians, special sets and lighting, and enough equipment to fill half a theater to televise Peter Pan, for instance. And this was a show that had completed a successful run."

[55] Broadcasting-Telecasting, July 25, 1955, p. 5.

[56] Newsweek, February 27, 1956, p. 84.

successful dramas being played out on the spot by topnotch actors, TV may well change the present extent of the American stage. It will, in the view of some experts, create a new and unprecedented large demand for live theater, thereby reviving the somnolent road business."

Television's increasing use of Broadway productions and talent has been acclaimed by other critics. For example, Jack O'Brian, of the New York Journal-American, recently wrote:[57]

"* * * Talents from Shakespeare and Shaw to Herman Wouk and Maxwell Anderson, Thornton Wilder and William Saroyan to Sir James M. Barrie and Paddy Chayevsky, have given our TV air distinction, satisfaction and diversion. * * * There are all manner of fine TV moments to choose from; too darned many is the problem, TV's a hungry electronic beast, so it's eaten everything in sight whether prepared just for it (such as Patterns and the Catered Affair), borrowed from the stage (Caine Mutiny, Peter Pan, Skin of Our Teeth, Cyrano), or warmed over with new gravies in the way of musical scores (Our Town and High Tor)."

In addition to presenting Broadway productions and plays written for the living theater, free television has been developing a rich store of dramatic material especially fashioned for its unique requirements. Critics have acclaimed these dramatic productions as equal, if not superior, to the best plays of Broadway. John Crosby, for example, stated: "As far as plays go, I feel strongly that TV has had more worthwhile dramatic material on it than Broadway has."[58] Producers of motion pictures and Broadway plays are turning increasingly to television for dramatic material. Variety recently reported that 45 television plays had been acquired by these producers.[59] Among those plays was Marty by Paddy Chayefsky which was made into a motion picture that won the Academy Award and the Grand Prix at the Cannes International Film Festival.

(*c*) *Sports.*—The American public now views a wide variety of sports events on free television. In the coming season, it will see 860 major league baseball games—abount 45 more than last year.[60] It can watch three prizefights almost every week on the networks alone, and in the past year it has seen exciting championship fights between Ray Robinson and Bobo Olson, Carmen Basilio and Tony DeMarco, Jimmy Carter and Wallace "Bud" Smith, Carmen Basilio and Johnny Saxton, and Archie Moore, and Bobo Olson. Top horseraces, including the Kentucky Derby, Preakness, and Belmont stakes, are presented. Football, hockey, and basketball are seen in many cities. During the past year, free television has offered, in addition to its regular schedule of sports events, the Davis Cup matches, the national tennis singles championship, the dream race between Swaps and Nashua, the all-star baseball game, the world series, the masters golf tournament, the football bowl games, the Army-Navy game, the professional football championship game, the College All-Star–Cleveland Browns football game, and the national invitation basketball tournament.

The extensive sports coverage of free television leaves little for the proponents to add. When they promise to present events not now available, they generally mention heavyweight championship fights, which take place once or twice a year, and a limited number of football games. The proponents readily admit, however, that the promise of those infrequent events carries with it the price tag of payment for all of free television's popular sports attractions.[61] Nor have the promoters of those attractions attempted to conceal their desire to switch from free to fee television. Ford Frick, commissioner of baseball, is reported to have announced that he favors pay broadcasts of major league games.[62] Frank Lane, when general manager of the Chicago White Sox,[63] and Walter O'Malley, president of the Brooklyn Dodgers,[64] have also come out in support of pay television. Mr. O'Malley stated that 50 cents is "a good square fee that I'm sure no fan would object to paying." He added that he favors advertising on pay television "because I think that would help to bring the price down to the average viewer."[65]

John Reed Kilpatrick, president of Madison Square Garden Corp., stated:[66]

"The type of show that the public could be expected to pay for will always

[57] New York Journal-American, March 23, 1956, p. 26.
[58] New York Herald Tribune, June 10, 1955, p. 17.
[59] Variety, February 22, 1956, p. 21.
[60] Television Age, March 1956, p. 41.
[61] See p. 6, supra [pp. 1315–1316].
[62] New York World Telegram, February 16, 1956, p. 32.
[63] Collier's, September 16, 1955.
[64] Statement made on See It Now, June 14, 1955.
[65] Ibid.
[66] Memorandum submitted by pay-television proceeding, p. 5.

be somewhat limited, such as, for example, boxing championships; the baseball world series; hockey playoffs; basketball championships; the Westminster Kennel Club championships; the national horse show; the great indoor and outdoor track meets; the Olympic games; football features such as the Army-Navy game and the various postseason bowl games; the professional football championships and all-star games; the Davis Cup and Forest Hills championships; the Derby and other great horseraces—a list of events of national and international importance that may be expanded."

Of the events mentioned by Mr. Kilpatrick, all but heavyweight championship fights (and the Olympic games, which have not taken place in this country since television was introduced) are now brought to the public by free television.

Nor would the siphoning of sports attractions be limited to national events. The proponents have admitted that they would also seek sports programs of local and regional interest.[67]

Two arguments have been advanced to justify charging the public for sports events which are now seen free. The first is that pay television would furnish economic support to sports promoters.[68] But it is patently not in the public interest to tax the Nation's viewers for all the entertainment now available free in order to subsidize fight promoters or baseball clubs. The proponents' second argument is that theater television threatens to appropriate free television's most popular sports attractions and that pay television offers the only hope of keeping those events in the American home.[69] This is simply not true. The threat of theater television exists in the proponents' minds, nowhere else. In more than 5 years, theater television has presented only 29 sports events—12 in 1951, 2 in 1952, 6 in 1953, 4 in 1954, 5 in 1955, and none so far in 1956. And theater television interests have indicated that it is not likely that they will expand their sports coverage in the future.[70] It is on such defiance of the facts that the proponents attempt to justify their proposal to charge viewers for the popular sports attractions now seen on television on a free basis.

(*d*) *Cultural and educational programs.*—In promising to present more than free television now offers of cultural and educational programs, the proponents have deliberately ignored the accomplishments of free television. In less than a decade, television has opened vast new vistas of education and culture to the Nation's millions of viewers. A recent New York Times' review of television's growth concluded:[71]

"Quietly but steadily, television has wiped out 'the sticks' and 'the road' from show business. The erstwhile hayseed is looking at the same things as the supposedly more sophisticated resident of Park Avenue. The economic and geographical barriers that once separated the mass from the arts have simply been taken down."

During the past season alone, television has presented outstanding programs in the field of music and dance like Madam Butterfly, The Magic Flute, The Messiah, The Nutcracker Suite, Amahl and the Night Visitors, The Mikado, Swan Lake, Tales of Hoffmann, The Red Shoes, The Sleeping Beauty with the Sadlers Wells Ballet Company, the Azuma Kabuki Dancers, the world premiere of the operas Griffelkin and The Trial at Rouen which were written specially for television, the history of the ballet narrated by Agnes de Mille, and the history of music from Beethoven to jazz narrated by Leonard Bernstein. Viewers have been offered readings of the poetry of Walt Whitman, Emily Dickinson, and Dylan Thomas; and performances of classics like Shakespeare's Richard III and The Taming of the Shrew, Shaw's The Devil's Disciple and Caesar and Cleopatra, Dickens' Great Expectations, and The Christmas Carol, Thornton Wilder's The Skin of Our Teeth, Rostand's Cyrano de Bergerac, Oliver Goldsmith's She Stoops To Conquer, and Dostoevsky's Crime and Punishment. Television has also presented a wide variety of public affairs and informational programs, including special studies dealing with the Israel-Egypt crisis, the farm problem, the institution of the vice presidency, the Nation's schools, India, life in Russia today,

[67] Zenith (Newsweek, Feb. 28, 1953, p. 72): Skiatron (principal comments in pay television proceeding, p. 54, appendix A, p. 75): Telemeter (Questions and Answers About Telemeter the Only Pay-As-You-See System, p. 3.)

[68] Principal comments in pay-television proceeding: Zenith (p. 47); Telemeter (pp. 5, 29).

[69] Principal comments in pay-television proceeding: Zenith (pp. 44–46); Skiatron (pp. 43, 57); Telemeter (pp. 24–25).

[70] Nathan Halpern, president of Theatre Network Television, 1 of the 2 firms active in this field, has stated that there are few sports events that can be presented profitably on theater television. Broadcasting-Telecasting, November 7, 1955, p. 105; Variety, November 9, 1955, p. 23. Notre Dame's Father Edmund Joyce is reported to have stated that his school "barely broke even" on last season's closed-circuit telecasts of three football games. TV Digest, January 14, 1956, p. 7.

[71] April 8, 1956, magazine section, pp. 12, 38.

the rise of communism, the United States Constitution, the history of Adolf Hitler, the Renaissance, Harvard University, the universe and the solar system, the American West, waters of the world, the search for oil, mental health, the cure of narcotic addiction, the treatment of infectious diseases, multiple sclerosis, and the human body and its functions.

The proponents ignore what free television has done in the field of education and culture. They refuse to see what they do not care to see. Moreover, it is clear that they would have little interest in presenting educational and cultural programs which cater to minority tastes. The box-office operator would seek big audiences and big profits, not small audiences and small profits. Zenith quite frankly states, "Can there be any possible doubt that the subscription television broadcaster and his program supplier can logically have any other business purpose, desire, or hope than to obtain as widespread public reception of their programs as is practically possible?" [72] Zenith adds that "it will always be more profitable for the program producers and television broadcasters to have 5 million subscribers viewing a program at 50 cents than to have 2 million view the same program at a dollar." [73] Telemeter also concedes that "it is through the mass market that the maximum potential can be obtained." [74]

The possibility of cultural and educational programs on pay television is further reduced by the fact that the proponents all propose operations for only a small portion of the broadcast day.[75] During such limited periods, huge investments would have to be amortized. It is hardly likely that those scarce and valuable hours would be used for chamber music and courses in literature rather than for programs of mass audience appeal. The unlikelihood of pay television catering to minority audiences is further accentuated by the proponents' admissions that—in the limited number of hours during which pay programs could be broadcast—they would be forced to give repeat performances of the most costly programs, like motion pictures, in order to realize their full economic potential.[76] Thus it seems clear that the box-office operators of pay television would not provide a substantial amount of cultural programs.

Moreover, even the limited programing of this type that they might present would not fulfill the vital educational function of television. That function is to stimulate and awaken interest in viewers who are apathetic about education. As long as television is free, those viewers are encouraged to experiment—to twist the dial and sample new and different programs and, perhaps, to become interested in cultural material to which they had not previously been exposed. This is shown strikingly by the recent telecast of Sir Laurence Olivier's Richard III. Between 40 and 50 million viewers—almost one-third of the American population—tuned in that program.[77] Certainly many people with no previous interest in Shakespeare watched part of that performance, and some undoubtedly became interested enough to watch the entire presentation. Few of those viewers would have tuned in Richard III if it cost $1 or $2 to discover whether they would enjoy that program. On pay television, Richard III would have played to a much smaller audience, and an audience composed largely of those who had already developed an appetite for programs of that type.

(2) *Promise of increased utilization of television channels*

(*A*) *Zenith's change of position.*—The dynamic growth of free television—the enormous strides being made in the quality and quantity of its programing—have given a hollow ring to the proponent's promises to present new and different programs. Zenith apparently recognizes this, for it has recently been changing the emphasis which it gives to the purported justifications for pay television. It talks less and less of bright new program prospects and falls back more and more on the claim that pay television would be a panacea for the economic ills besetting the television industry. The extent to which Zenith has been forced to fall back on that claim is shown by the fact that it now makes proposals and promises which it recently rejected as unsound. These changes in Zenith's position have occurred in three areas: (1) The desirability of making pay television

[72] Principal comments in pay-television proceeding, p. 17.
[73] Id., p. 38.
[74] Principal comments in pay-television proceeding, p. 32.
[75] See footnote 3, supra.
[76] In reporting on its Phonevision test in Chicago in 1951, Zenith stated that the full potential of a motion picture would not be realized by only 3 showings. Some Significant Highlights of the Phonevision Test, April 23, 1951. Telemeter has raised the possibility of showing the same motion picture anywhere from 3 to 7 times. Principal comments in pay television proceeding, p. 26.
[77] New York Times, March 18, 1956, sec. II, p. 11.

available to all stations; (2) the ability of pay television to help UHF; and (3) the pattern of growth of pay television if it is authorized.

Desirability of making pay television available to all stations: When Zenith asked the Commission for immediate authorization of pay television in November 1954, it stated, "The proper encouragement and development of subscription television requires that it be made available immediately to all VHF and UHF licensees without discrimination."[78] It adhered to that position in the comments which it submitted to the Commission in the pay television rulemaking proceeding in June and September 1955.[79] But 3 months later, in the general allocation proceeding pending before the Commission, Zenith proposed that pay television be limited, for an initial period of 2 years, to stations that could show special need. In that short period of time, Zenith apparently changed its ideas about "discrimination" and about what was required for "the proper encouragement and development of subscription television."

The ability of pay television to help UHF: An even more drastic change has taken place in Zenith's attitude about pay television's ability to help UHF stations. In November 1954 Zenith took the position that pay television would not lead to the growth of stations on unutilized UHF channels in the Nation's large markets. It stated:[80]

"Limiting subscription television to UHF stations would also practically eliminate subscription television from the top 50 markets in the United States as there are only 22 UHF stations operating in the top 50 markets and only 6 UHF stations operating in the top 20 markets. Confining subscription television solely to secondary markets could make subscription television economically unsound.

"New York, Chicago, Los Angeles, Philadelphia, Detroit, and Boston, the Nation's top six markets have no operating UHF stations. The elimination of these six major markets would not only deprive a substantial portion of the public of subscription service, but it would also deprive subscription television of its major economic potential and sources of program product.

"Taking New York as an illustration, there are 6 VHF stations operating, 2 of which have no network affiliation and are in need of additional economic and program resources. It is doubtful that the most optimistic UHF operator would, under present conditions, attempt to go into competition with the six existing VHF stations, even though he was given a monopoly on subscription television. Such a UHF operator would have the dual problem of getting the New York public to convert their sets to UHF and to acquire subscription television attachments and he would be further confronted with the limitations on substantial quantities of program product suitable for subscription television."

In the pay television proceeding in June 1955, Zenith took an equally dismal view of the potential of its system to build UHF stations in major markets.[81]

But less than 6 months later, it sent one of its representatives into 2 large markets—markets falling within "the top 50 markets" to which it had referred—and promised that pay television would put stations on the unutilized UHF channels in those areas. Ted Leitzell, director of public relations for Zenith, told an audience in Philadelphia, one of the cities specifically named by Zenith:[82]

"Right here in Philadelphia there are 3 stations on the air, but there are 4 channels vacant, including 1 educational. [The three noneducational channels are UHF.] The networks say that these vacant channels cannot be occupied for economic reasons. They are right, so far as present economics is concerned. But, with the addition of subscription television, these stations could operate profitably, and Philadelphia would have an abundance of new sponsored and sustaining programs. The same situation exists throughout the State of Pennsylvania, and all over the nation."

In Minneapolis, Mr. Leitzell made the following promise:[83]

"Right here in Minneapolis you have 4 stations on the air, plus 2 vacant channels, which Mr. Salant said cannot be operated because of economic reasons. [There are 2 vacant UHF channels and 1 vacant VHF educational channel in Minneapolis.] He is right, so far as present economics are concerned. But with the addition of subscription TV these stations could operate profitably, which would give an abundance of new sponsored and sustaining programs to Minneapolis."

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[78] Joint Substitute Petition Concerning Subscription Television, p. 11.
[79] Principal comments, p. 66; reply comments, p. 20.
[80] Joint Substitute Petition Concerning Subscription Television, p. 11.
[81] Principal comments, p. 66.
[82] Address before Poor Richard Club, November 29, 1955.
[83] Address before Minneapolis Advertising Club, November 23, 1955.

Thus, in a matter of months, Zenith has radically altered its view about the likelihood of its system fostering the growth of UHF stations in major markets.

The pattern of growth of pay television: The third basic change in Zenith's attitude is just as drastic—and its motives are just as transparent. In the past, Zenith has consistently stated that it inends to commence pay television operations in two big markets,[84] and that it does not intend to expand to other areas until about 2 years thereafter.[85] Yet in the Commission's general allocation proceeding, Zenith recently claimed that its suggestion to limit pay television to needy stations for an initial period of 2 years would help hundreds of stations and bring service to small markets.[86]

(*B*) *Fallacy of promise of more television service.*—It is in the light of these conflicting claims—of this transparent effort by Zenith to bolster its case as free television makes its program promises obsolete—that we must judge Zenith's contentions about the potential of its system to foster increased utilization of television channels. The other proponents have made similar promises about increased television service. All the proponents point to the disparity between the number of channels authorized and the number being used; and they claim that the cause of the problem is economic, that lack of sufficient revenue is the only reason that channels remain vacant.

An analysis of the characteristics of the unused channels, however, will show that the same factors which make those channels unattractive economically under our present system would also make them unattractive under pay operations.

About 160 of the unutilized channels are in areas not now receiving television service. Those areas, which now include less than 1 percent of the population, have been unable to support stations because they are thinly settled. Pay television, by its very nature, could operate in those areas only with great difficulty and expense. The proponents have admitted, moreover, that they are interested in large markets and mass audiences.[87] Thus, pay television offers little hope of activating unused channels in areas that are now without television service.[88]

The remaining unutilized channels, almost 1,100, are in areas now being served or about to be served. Almost all are UHF channels. Those channels are the heart of the allocation problem now facing this committee and the Commission. Pay television offers no solution for this problem: it would not promote the utilization of UHF. The same factors which make UHF channels unattractive to advertisers make them unattractive to pay television promoters. Zenith has admitted that this is so. It has stated:[89]

"Subscription television is even more of an infant than UHF. Like UHF it will also have the tremendous problem of set conversion. * * * It appears undesirable to compound the problems of embryonic subscription television by adding the conversion problem of UHF."

The promoters of pay television, searching for maximum profits, would seek out large-market VHF stations. In such markets, they would certainly not attempt to activate dormant UHF channels.

Skiatron and Zenith, recognizing that general adoption of pay television offers little hope of solving the allocation problem, have suggested certain restrictive measures purportedly designed to accomplish that objective. Skiatron

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[84] See footnote 36, supra.

[85] In its principal comments in the pay-television proceeding (pp. 49–50), Zenith indicated that it would take 6 months after Commission authorization of pay television to start actual production of necessary equipment; that thereafer it would "commence operations in several markets," and that, "after approximately 1 year's operation in several markets, expansion into the remaining markets could be made as rapidly as circumstances require." In its pamphlet Phonevision and the Broadcaster, Zenith stated (p. 9) that in the event of FCC approval, "* * * we intend to organize a few pilot operations which can serve as proving grounds for the business organizations and problems we have discussed. We feel confident that the results of these initial operations will show the feasibility and desirability of the service so that it can be expanded within a few years on a national basis."

Telemeter has made similar predictions about the growth pattern of pay television. Paul MacNamara, Telemeter vice president, is quoted as having said: "It won't be an overnight revolution. We need a year of pumping to attract viewers and capital. We'll concentrate our initial effort in New York, Chicago, and Los Angeles, where there are some 9 million TV sets. We can probably only manufacture 250,000 coin boxes in that first year, but as soon as we place them in homes, we're in business." Collier's, September 16, 1955, p. 55.

[86] Principal comments in general allocation proceeding, pp. 11–12.

[87] See footnote 36 and p. 27, supra.

[88] The more realistic prospect for the extension of television to those areas lies in the further development of low-power stations, booster and satellite stations, and community antenna systems. The use of such techniques will bring service to the less than 1 percent of the population presently not served and will not affect the present free service being received by the more than 99 percent of the population.

[89] Joint substitute petition concerning subscription television, pp. 11–12.

proposes that, for an initial period of 3 years, the right to transmit pay programs be restricted to UHF stations and those VHF stations which can make a showing of special need. Zenith suggests a 2-year limitation and proposes that both UHF and VHF stations be required to show special need. Such need would be established prima facie by the fact that a station carries less than 7½ hours of commercial network programing.

The suggested limitations offer little hope of solving the allocation problem. It is clear that economic forces would drive the proponents to utilize existing VHF stations in the largest markets. The 2- and 3-year restrictions to needy stations fit their plans perfectly. They would be able to find, in leading markets, existing VHF stations that met their test of special need, and they do not intend to expand service beyond those markets for a few years. Under the Zenith test—stations carrying less than 7½ hours of commercial network programs—pay television operations could be established on existing VHF stations in New York, Los Angeles, and Chicago. While Skiatron has been less precise than Zenith about what a station must show to establish special need, there is little doubt that it could also find existing VHF stations in leading markets that would qualify under its vague standard.

Even if it be assumed, however, that pay television would encourage the construction of a few new UHF stations in the large markets during the limitation period, that would not solve the allocation problem; it would aggravate it. At the end of the temporary limitation period in which those UHF stations had been artificially protected, they would be faced with competition from VHF stations which could offer larger audiences for pay programs. The proponents would then turn their backs on the UHF operators whom they had induced to go on the air and transfer their programs to VHF stations.

More important, even if pay television were to result in the establishment of a few new stations during the limitation period or afterwards, that would not mean more service for viewers; it would mean less. It would be small consolation to the viewer that he could receive the signals of an additional station if the cost to him were that he had to pay for the most popular programs on all of the stations from which he had previously received free service. To attempt to create a few new stations at such enormous cost to the American public is clearly not in the public interest.

III. THE PUBLIC CHOICE

The proponents make the superficially attractive argument that pay television should be given a trial in the market place so that the public may have a free choice between pay television and free television.

What is the choice that would face the public under that trial? It would not be a choice between (1) viewing for pay new channels and new programs and (2) watching without charge the channels and programs that were formerly available. The public could have such a choice only if both the channels used for free television and the program carried on those channels would be left unaffected by pay television. We have demonstrated, however, that pay television would not be a supplemental service, that it would encroach upon existing channels and would draw away the best of free programs. Thus, American families would have the choice of paying to watch programs that they now see free or of not seeing them. This is no choice at all.

But even if some people could be coerced into paying enough money to make pay television profitable, that would not prove that a pay system was in the public interest. All that it would prove is that a small minority could make pay television profitable for its promoters.

As we have pointed out, and as the proponents themselves readily concede,[90] pay television could be successful if only a small portion of the present television audience were able and willing to pay for programs. For example, if only 10 percent of the families who now watch the Ed Sullivan show were willing to pay 50 cents to see that program if it were no longer available free, the promoters of pay television would make a handsome profit and could black out the show to the other 90 percent of the viewers. Thus, success in the market place would merely prove that a minority, presumably composed of those in the higher income brackets, was willing to pay for programs that were no longer available on a free basis. That minority would pay enough to deprive the majority of American families of the programs and channels upon which it now depends for free service. That is the democratic test of the market place which the proponents seek.

[90] See footnote 19, supra.

Senator SCHOEPPEL. Mr. Rogers is our next witness. You may proceed, sir.

I note you have a written statement here?

Mr. ROGERS. Yes, sir.

Senator SCHOEPPEL. You may proceed in your own way.

Mr. ROGERS. Very well, sir.

STATEMENT OF LAWRENCE H. ROGERS II, VICE PRESIDENT AND GENERAL MANAGER, WSAZ, INC.

Senator Schoeppel, gentlemen, I have a prepared statement which has been distributed to you, and I would prefer to save the time of the committee in reading this entire statement and instead address myself to some of the highlights of it in order to tell you who I am and why I am here and answer perhaps some of the questions that were specifically brought up by Senator Pastore earlier.

Senator SCHOEPPEL. That will be quite all right, and we will let the record show that your entire statement will be printed in the record as though you had read it.

Mr. ROGERS. I appreciate that, sir.

(Mr. Rogers' prepared statement is as follows—his oral testimony begins on p. 1338:)

Mr. Chairman, distinguished Senators, my name is Lawrence H. Rogers, and I am vice president and general manager of WSAZ, Inc., Huntington, W. Va., licensee of television station WSAZ–TV and radio station WSAZ, a position I have held since 1951. I am also president of radio station WGKV, in Charleston. I am under 35 years of age and a combat veteran of World War II, in which I attained the rank of captain of armored field artillery.

I have been engaged in broadcasting sales and management for the entire 10 years since I left the armed service. I have been station manager of WSAZ–TV since before it was built in 1949. I am sincerely grateful for the opportunity to address remarks to this great body and am somewhat overawed by this display of representative government in action. I presume to offer this personal background because I am speaking as an individual broadcaster on a subject of vital concern to all who are daily a part of television broadcasting—most important of all, the nearly 40 million families whose television receivers are of no earthly use to them except through the reception of programs from stations such as I represent. While I cannot speak for the operators or licensees of any other TV stations, I feel certain that what I have to say must necessarily be reflective of the station licensee's point of view.

What I have to say here today springs from deep conviction and is neither motivated nor contributed by any outside agency or the selfish interests of any pressure group. I feel that this is of paramount importance because the preponderance of the attacks made on the established patterns of free American broadcasting, whether in this action or dozens of others, spring from the hope of personal or corporate gains on the part of those who can see a fertile field for profit and self-aggrandizement in attaching themselves parasitically to a phenomenon that has captured the hearts and imagination of the whole American people. In almost every case the proponents of toll television and the defenders of free broadcasting are engaged in a tug of war over the cash registers of the Nation's four-hundred-odd TV-station transmitters. I think it is a safe assumption that those of us who like to be called professional broadcasters could as easily make a comfortable living off any system of TV-program distribution.

THE ISSUES

The issues, then, can be pared down to the very substance of the licensing and operation of broadcasting stations, namely, the public interest, convenience, and necessity. If it can be shown that free broadcasting is not fulfilling this basic charge of the Communications Act, or, conversely, that a system of toll television can do so in a more efficient manner consistent with the rights and prerogatives of the whole public, then fee TV should, indeed, be substituted for free TV.

No one, not even the proponents of toll television, has seriously undertaken to challenge this statement by David Sarnoff: "The American people now receive, free, the best television service available anywhere in the world. There are more television broadcast stations in the United States than in all the rest of the world combined. There are more television receivers in the United States than in all the rest of the world combined. American television stations offer the American people more television programs and a wider choice of television programing than ony other television service in the world." (David Sarnoff, chairman, NBC, Inc., June 6, 1955, before FCC, docket No. 11279.)

It is noteworthy that this statement stands as an apparent fact for all to see in spite of the cries of doom of all the principal proponents of toll TV, notably Eugene F. MacDonald, the high priest of Phonevision. Of his many tirades against free broadcasting of television, this is perhaps the classic because it was written by Mr. MacDonald immediately before the miracle decade of free television's development began in 1946: "There is nothing wrong with television that money won't cure * * * the sooner we can convince televisionaries that the advertisers haven't sufficient money to pay for the type of continuous programs that will be necessary to make the public buy television receivers by the millions, the sooner the industry will start applying its brains to a technical solution to obtain a box office." (Television Will Cost Big Money, by E. F. MacDonald, Jr., Colliers, June 29, 1946.)

A complete answer to this prediction is contained, somewhat frivolously, in this little booklet prepared by the Television Bureau of Advertising—of which I have the honor to be treasurer and member of the board of directors. It purports to show, through statistics arrived at by the United States Bureau of the Census on television receiver ownership and by the TV Department of Eugenic Statistics, that not even rabbits, with their prodigious ability to multiply under optimum conditions, could equal the rapidity with which United States television homes have mutiplied in the short space of 8 years. (Even Rabbits Couldn't Do This Well, Television Bureau of Advertising, 1955. This booklet has been retained in committee's files.) It is interesting to note that the figure of 32 million television homes—as against a mere 24,078,402 rabbits in the same length of time—has since been undated to a figure approaching 40 million television-equipped United States homes.

DEFINITIONS AND SCOPE OF TOLL TV

What is this toll TV that its proponents claim is so necessary to our way of life? Since you are already fully qualified to answer this question by virtue of a complete presentation by its proponents, I shall limit myself to a few of the salient features mentioned prominently by all the various members of the coin-box brigade.[1]

1. Toll TV should be put into operation by and presumably at the cost of the existing licensed stations under standards set forth by the FCC.
2. As a slight variation to No. 1, the suggestion has come forward that the toll TV licenses be restricted to UHF licensees as a stimulus to broadcasting in the upper reaches of the spectrum.
3. Hours of operation should be a portion of the present schedules—perhaps the "not more than 20 hours a week between 6 and 11 p. m." being typical.
4. Broadcasters' license responsibilities to remain unchanged.
5. Equipment to make toll systems possible to be leased by proponents.
6. Programs to cost viewer estimated 25 cents to $2.
7. Service to be complementary to advertiser-supported free TV and in no sense a replacement.
8. Programs to be presented for pay to include current motion pictures, dramatic and musical stage shows, educational and cultural programs, sporting events, operas, Broadway hits, programs to specialized groups only—technical, medical programs, etc.—not designed for general public consumption.

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[1] This compendium is drawn from the proposals of the three major proponents of toll TV as filed with the FCC, June 9, 1955: International Telemeter Corp., Skiatron TV, Inc., and Zenith Radio Corp.

1. TOLL AS STATION RESPONSIBILITY

That the proponents of toll TV should suggest that the more than 400 television stations of the Nation embrace this idea and install the system themselves is as ingenious a technique as has been seen since the monkey in Aesop's Fables talked the cat into burning his paws by reaching into the fire after hot chestnuts. If anyone's hair is to be singed it is most assuredly not that of Zenith, Skiatron, or Telemeter. The really surprising part of this is that these people—adult and successful businessmen—should believe the Nation's broadcasters to be so incredibly naive.

In the short space of 7 years my company has explored, developed, installed, rejected, experimented with, and operated every development in the television equipment, transmission, and programing field that has been made available to the local television broadcasting art. We take some perhaps pardonable pride in an overall investment in facilities in the neighborhood of $2 million in a city of 100,000 population, where by Mr. MacDonald's myopic standards advertising revenues were not available and could not become available to underwrite a project of this magnitude, much less program it in such a way as to attract a major audience. The entire project has been conceived and executed under the single broad policy of providing the greatest possible television service to the greatest possible number of people, with a single rallying point in the admonition of our license from the FCC to operate in the public interest, convenience, and necessity. If you will forgive a minor digression, I believe it is germane to outline our operations.

WSAZ–TV began operations in 1949 in a Sahara of television, opening a small oasis in the form of a station fully equipped to provide local live, film, and remote programs since there was no source of network. The Zenith view that this was impossible did not dampen our enthusiasm for providing programing. It is true that the circulation base was not broad enough to attract major advertising money. Accordingly, we lost nearly a quarter of a million dollars in a year's time. We adopted two avenues of attack: One was to provide the network service, the other to provide the maximum geographical coverage that FCC standards and our engineering brains would permit.

In the absence of common-carrier facilities we invested an additional $150,000 to build our own microwave relay system from Cincinnati to Huntington in 1950. Our faith in the future was rewarded by a contract with the National Broadcasting Co. which assured us of sufficient revenues to amortize the relay investment while providing a program base, in addition to our heavy local schedules, to attract a great audience. As soon as new FCC standards were announced, we became the first station in the United States to install and operate maximum effective radiated power. It developed that this was still far from sufficient to bring adequate reception to the vast areas of West Virginia, eastern Kentucky, southern Ohio, and western Virginia, where the need for TV service is underscored by great separation from modern city advantages, and terrain conditions which make transportation facilities almost primitive. Thus we went to the next most logical step. This involved the erection at fearful cost of an entirely new transmitter installation and a giant tower 1,100 feet in height which could send a viewable picture to the very depths of the mountain country just described as well as to the vast, but remote, industrial complex of the Ohio and Kanawha River Valleys. I will spare further details in reaching my major premise.

What has been the reaction of the public to these efforts to bring them a superior service? Over half a million families in nearly 100 counties have responded by making an estimated $150 million investment in TV receivers alone. The boom in the area served by this station, when contemplating sales, service, and allied employment attributable to the coming of television, amounts to a quarter billion dollars—equal to the total retail sales of our home city in a year.

Has this miracle been made possible by a second-rate program service that needs to be replaced by a coin-operated jukebox, the output of which is neither the concern nor the responsibility of the operator? The question is so obviously ridiculous as to supply its own answer.

Do any of the toll TV proponents know what free broadcast television means to people of this segment of the United States? Certainly not. If they did they would be embarrassed to suggest asking them to trade it for their shoddy promise of better programs on a pay-as-you-look basis. The people of our great Middle South mountain areas are not second-class citizens, even if they do have second-class comforts in point of travel, entertainment availability, educational facilities, and all the modern conveniences of urban life. Thus, when the living TV screen invaded these territories in such awesome numbers, it was because the people were for the first time on a par with their big-city brethren in watching the world go by and choosing what part of it is for them. For the first time in America's history all citizens everywhere, including the West Virginia-Kentucky mountaineers, have a front-row seat for the great events of the Nation and the world. Their enlightenment, and, therefore, their participation in the processes of democracy, is no further from them than the switch on their television sets.

What does this mean to a mountaineer? Let me give you one firsthand example: I visited 2 years ago the home of a coal-mine foreman in the Buffalo Creek area of Logan County, W. Va. A graduate of an eastern engineering college, this man lives with his wife and two boys in a modest frame house literally hung from a steep mountainside. The center of their home life is their television set—on which, incidentally, the reception is more nearly perfect than any of thousands I have seen in the homes of city dwellers, my own friends included. Their home is reached by a mud road which most of the year is passable only by jeep and, when Buffalo Creek is up, is not passable at all. When I asked for the location of his TV antenna, this man showed me proudly a firebreak he and his sons had hacked 4,000 feet up the side of the adjacent mountain to install an open-wire transmission line for a mountaintop receiving location. A junction box on his back fence fed a signal also to the TV sets of his two nearest neighbors. This technique is in common use in hundreds of communities in this region. The measure of the importance of free TV to this young American family was graphically underscored by the grisly exhibit hanging on the back fence with the line amplifier. There were the skins of 27 rattlesnakes killed by this citizen and his son while erecting their antenna.

Who will explain to this man the necessity for having his nightly TV service blacked out unless he chooses to pay 25 cents to $2 per program? Who will explain to these half million, indeed, to the Nation's nearly 40 million set owners that they made a grievous error in buying a TV set which can only be rectified by paying a program-by-program tribute to the barons of toll TV?

2. TOLL TV ONLY ON UHF

The proposal of some of the toll TV proponents that UHF be exclusively reserved for this purpose suggests that they acknowledge their utter disregard for the public. Since the crux of the so-called UHF dilemma is the inability to date of most UHF stations to provide an adequate coverage base, the very fact of limiting toll TV to these frequencies presupposes excluding the overwhelming majority of the Nation from participation. It sounds suspiciously as if Skiatron believes there may be some political popularity in a thinly veiled proposal to "help UHF." Once, again, we see that approach of the pressure group, rather than the serious public servant.

3. HOURS OF OPERATION

Naivete rides again in the hours of operations proposals. All of them might be boiled down to this thesis on the part of the box-office boys: "Since we are only concerned with those shows we have been able to lure away from the broadcasters, and which will bring us the biggest bonanza, heaven forbid we should be responsible for programing these odious little transmitters during the other 70 to 85 percent of the work they are required to operate them." Concern for the public presupposes having a worthwhile service available at any time it can be reasonably expected that there will be an audience. Concern with only the peak 15 percent viewing times bespeaks concern only for the click of the turnstile and the click of coins.

4. BROADCASTERS' RESPONSIBILITIES

It is fitting that any such proposals as have been advanced by the proponents here be accompanied by a disclaimer for any responsibility to account for the welfare of the public. In short, the proponents of toll TV have said to us broadcasters that if we like this responsibility to operate in the public interest, we are welcome to it. They are only asking for a comfortable seat by the cash drawer.

5. EQUIPMENT LEASED BY PROPONENTS

The leasing of Phonevision decoders or other toll TV devices for collecting money is another example of the generosity that is common to the proponents while they are dividing the spoils of free broadcasting television. It has perhaps occurred to all of them that even their suggested minimum figures like $2 per month collected from all the TV families of the Nation amounts to a staggering $9 billion per year—a very creditable figure for "feecasters" who have yet to produce their first television program for the public interest, or for the interest of anyone else, for that matter. Additional revenues derived from the broadcasters for transmitter conversion and terminal equipment will add to the haul, of course. It is inconceivable to a broadcaster that serious consideration may be given to a requirement that he make further investments in equipment designed to reverse the very accomplishment of the past 7 years, to eliminate the ability of thousands of families to view TV except under special, and paid, conditions.

6. PROGRAM COST TO VIEWERS

Of course, the proposals, running from 25 cents to $2 per program for toll TV viewing, are as variable as the winds of March. The one fact that is certain is that if the American public wanted to pay so much as a thin dime above its present equipment investment it would have expressed itself through reluctance to buy and use television receivers in such staggering quantities. The well-known research firm of Elmo Roper & Associates prepared a comprehensive study on this subject entitled "A Study of People's Attitudes Toward Subscription Television in Columbus, Ohio," in May 1955. Inte views were conducted in 504 homes, selected with most careful consideration to reflect an economic and cultural cross-section of the community. Of these, 449 were television-equipped homes. In the final question, when people were asked how they would vote on the question of whether or not to authorize the system (subscription television) the answers were 13 percent in favor, 65 percent against, 12 percent with reservations, and 10 percent just didn't know what they would do.

The Television Bureau of Advertising in recent research in Chicago, comparing television use with newspaper reading, found that the average of 7,000 Chicago families use its TV set for nearly 70 hours per week. Translating this average in terms of the proposed minimum of 25 cents per toll program, we are talking about $17.50 per week. This is a very sizable amount of the average American family's food budget, and is way beyond proportion of anything it could or would contemplate for entertainment, on or off of television. It is apparent that only the "haul" is of any concern to those who would charge for TV.

7. TOLL TV ONLY COMPLEMENTARY

The claim that toll TV is an additional service and will not replace free broadcasting, is probably the most preposterous of all. On the contrary, it is my belief that the proposals to authorize toll TV on existing broadcasting channels is a calculated attempt to supplant the existing nationwide free TV service. Contrary to the assertions of the proponents, peaceful coexistence between free TV and fee TV is like companionship with the Comintern. The long-range goal of both is to devour the world. The two systems are economically incompatible, since they are directly competitive for program sources, talent, and audience. If indeed toll TV were as successful as its proponents claim it would be, free TV could not compete. The vast sums of money that could be realized from a direct tax upon all the public as against the indirect support provided broadcasting by everyone through use of the sponsor's products would supply the fee TV operators with a war chest against which no broadcasters or advertisers could hope to compete. The result would be merely to charge the public for what it now receives free. President Walter O'Malley of the Brooklyn Dodgers tore the mask off the pious claims of the toll proponents that they do not intend to disturb the present free program structure. Dissatisfied with the revenue the Dodgers now receive from free television, he stated that if toll TV were authorized by the FCC he would sell his club's ballgames on the TV coinboxes at 50 cents a game. While he envisioned as much as $50,000 from a single game via subscription TV,[2] he did not point out that an audience of 100,000 sets is but a small fraction of the number who now watch such events free. In any such case the yardstick is not the service to the whole public, it is the size of the box office return.

As for promises that new and wonderful educational programs will be aimed by toll TV at small minorities, this is merely perfume sprayed at the United States Senate, the FCC, and the public to prevent a careful scrutiny of the most gigantic raid on the public pocketbook ever conceived under free enterprise The promises are made by patent holders who have said they will only lease equipment, while the station operator must remain responsible for program choices and station operations. If, as you have stated, installation of toll TV in a single major city will cost tens of millions of dollars, this money can only be recovered by putting on shows which will attract the largest audiences, not educational features for small minorities.

8. PROPOSED TOLL TV PROGRAMING

It is at this point that the whole toll TV house of cards must collapse, since it has been built over the years on the contention that only through toll TV, with the viewer footing the bill, can television bring worthwhile programing to the air. One of the original aces in the hole of the Hollywood motion picture industry when TV came along was the hope that fee TV would provide a new market for vaults loaded with grade A pictures never seen on TV.

Hollywood's ace has become a deuce according to an editorial in its important trade publication Film Daily. Commenting on the network spectaculars and other 60- and 90-minute special programs, Film Daily shouted:

"Toll TV is here now—for free—mark this down in your book. The TV competition that was only to come with the advent of the pay-as-you-see variety is actually here—for the mere twisting of the dial, and no charge." [3]

After a complete résumé of the program plans of all three networks, the movie trade paper examined ABC's plans for hour-and-a-half and 2-hour filmed dramas next season with these comments:

"Do you have to be told that to all intents and purposes, these will be new motion pictures? And, of course, for free—

"The advent of the 90-minute dramatic show—and the looming 2-hour dramatic telefilm later—suggests a highly interesting question: What happens now to the value of the major studio libraries?" [4]

The crux of the entire controversy over toll TV must in the final analysis rest on the public interest; that in turn must be articulated in the form of programing available to the public. Not the wildest dreams of the toll proponents could have envisioned either the quality or the frequency of really great television as it is today, much less the ability of the dynamic American market place to provide a solid financial base for it. The fact is, it is time for us operators, if this toll nonsense is not soon turned off, to assume the attack instead of the defensive.

As a recent case in point, the National Broadcasting Co. bought Laurence Olivier's 3-hour epic film of Shakespeare's Richard III for $500,000 and showed it free, to the largest television audience ever to see a daytime feature. Not only did it receive critical acclaim from press and audience alike, but it was also sponsored. No more clearcut answer is needed to the cries of Zenith Radio Corp. that the FCC should authorize subscription television "premised upon the public need for programs of true box-office caliber to supplement existing types of programs." [5]

I will not extend these already lengthy remarks by citing for you all the splendid programs that form a daily increasing panorama on the screens of America's free TV sets. You are as familiar with them as I. However, I should like to point out an article in a recent issue of Newsweek, entitled "TV, Big Hearted Angel, Makes Broadway Bloom"—as if chiding the toll TV soothsayers, Newsweek says "Broadway artists, thanks to the all but insatiable needs of television, had never been busier, the Broadway theater, flourishing under the same well-heeled influence, was at the same time undergoing a transformation that might shortly affect a multitude of other stages across the country and was already being seen in millions of living rooms.

[2] Radio Daily, March 5, 1955.
[3] Film Daily, November 22, 1955.
[4] Film Daily, November 23, 1955.
[5] Zenith Radio Corp. press release, June 9, 1955.

"Before TV, the Broadway hit was an experience inaccessible to most Americans; at best they had to settle for a Hollywood multilation—or copy of the original. Now, the full-length Broadway play is becoming a standard (if still infrequent) feature on TV channels and seems certain to become much more." [6]

Thus it will be easily seen that the effort of the Zenith Radio Corp. and others to differentiate between what they describe as box-office programs and advertising programs falls apart of its own weight. I will readily admit that 2 or more years ago it was impossible to get the producers of many major events to permit them to be shown over television, just as it was impossible to secure sufficient advertising support for them. Both the former facts were attributable to a lack of sufficient circulation to make the showing either desirable for the producer or profitable for the advertiser. The rabbitlike multiplication of free TV's audience has solved both these problems together. Now that the toll titans have irrevocably lost this major phase of the battle their tactic has changed. They now loudly petition the FCC to set up standards for a so-called experimental operation in one major city, and they have unfortunately received some support within the Commission. This experimental arrangement with cost running into tens of millions reminds one of the ancient Moslem fable of the camel allowed to have his nose in the tent. And the proponents know perfectly well that their experiment will be merely a bridgehead from which to launch a full-scale attack on free American television.

Mr. MacDonald and his cohorts have said that Broadway, opera, and features movies could not be brought to free TV. Mr. Weaver, of NBC, and others, have proved him wrong. Taking the one example of Richard III as a premise, let us see what would happen with a subscription TV experiment. The price is $500,000 for one showing. This we know because we have already done it.

But let us suppose the people did not have the opportunity to see it free and that the FCC has authorized Washington, D. C., as the city of experiment for a toll TV installaion. There are nearly three-quarter million families who depend upon the TV service of Washington's four stations.[7] Let us suppose that the subscription crew can succeed in installing coinboxes, meters, or telephone paystation lines on a third of them (which in itself is preposterous). Then let us say that the day Richard III is shown for these 250,000 cash-register set owners that we succeed in getting the unheard-of total of half of them tuned in for the whole show. This means that 125,000 viewing homes will have to pay $4 each (or double the maximum suggested by the proponents) just to defray the one-half million-dollar cost of the film alone, before one penny is applied to amortizing the staggering installation expense at the homes and the television station, not to mention the operating expense of the station whose service has been denied the other half-million families in the interim. Most important of all, this does not include the royalty of the patent and license holder nor the rental of the equipment. How much then—$10 per show; $15 for Richard III? We gave it to our audience free.

But now the camel inches into the tent. Mr. MacDonald and his friends will cry "Unfair. If we had not been limited to Washington, D. C., with its measly quarter-million coinboxes, we could have reduced the price and raised the take. Just let us add Philadelphia, Milwaukee, Denver, St. Louis, and yes, even Huntington, W. Va., then we'll make it pay."

Surely I need not labor further the classic gambit of boring from within.

The greatest object of fear of Mr. MacDonald and the coinbox brigade has constantly been the networks, upon which the whole foundation of television's creative programing structure rests. That the networks were a just object of terror is well demonstrated by the massive array of so-called box-office attractions that daily and nightly parade through the living rooms of America free through the program ingenuity and total advertising effectiveness of ABC, CBS, and NBC. Despite the huge investment in local facilities and the forty-odd hours a week of local interest programing undertaken by WSAZ-TV (of which, incidentally, almost half is now being presented locally in compatible color), I would be the last in the world to suggest that this would be possible without a dynamic and competitive network structure. It is no wonder that the toll proponents have seized eagerly on the allies it can find in the fields of Hollywood motion pictures, syndicated films, and their spokesmen, to join them in their frontal assault on networks and their operating principles. Mr. MacDonald pleaded in his last

[6] Newsweek, February 27. 1956.
[7] Television Age set count, April 1956, p. 135.

petition to the FCC for recognition of what he called a two-network monopoly over the programs and revenue of the broadcast industry.[8]

Taking these points in order, the Television Bureau of Advertising has just released new research showing that network television is only half the picture. Network programs provide only 53 percent of total telecast hours on the stations of the Nation, the remaining 47 percent being local and syndicated film originations.[9] Similarly, local and national spot revenues account for more than half the advertising revenues of the stations. These are facts, so newly arrived at that the source material is not yet in general distribution.

Since we know the network monopoly charge to be a myth, let us examine the two-network monopoly fiction. Here, Zenith uses the popular technique of attacking the presumably rich and powerful in the hope that the traditional American sympathy for the underdog will help him to divide and conquer. It is not to be denied that until the past year the law of supply and demand for TV station facilities has made an exceedingly difficult time for the American Broadcasting Co. and its television network. Did ABC join the throng in attacking networks, in the hope of improving its position? Most emphatically not. Instead it has embarked on a bold venture into new and imaginative programing that has drawn acclaim from viewers and widespread acceptance of its programing by stations. There there is a truly competitive race between three networks with consequent gains to all the public is amply testified to by the recent award (April 18, 1956) by Variety, the magazine of show business, to Robert E. Kintner, ABC president.

With your indulgence, I should like to make the Annual Variety Show Management Award for 1956 a part of this record:

"Little more than 3 years ago, Robert E. Kintner was in the position of a captain going down with his sinking ship in an ocean of calm. The ship was the ABC network, and the sea was a peaceful ocean of expanding prosperity for television. Nobody should have been sinking, but the network was like a steamer that needed repairs but couldn't afford to have them made. Things had gone from bad to impossible.

"In February of 1953, the FCC approved the merger of ABC and United Paramount Theatres. In the past year, the regeneration of ABC has become a fact. Its television billings rose to $50 million; radio held its own as much as the other networks. It was nudging the powerfully entrenched NBC and CBS in traditionally tough time periods; it was actually pushing them in others, and it was well out in front and on its own in a selected few. If anyone had dreamed 3 years ago that ABC programing would be the cause of cancellations on NBC and CBS, or that brand-new afternoon programing on ABC would be giving years-old CBS and NBC shows a run for their money, he wouldn't have admitted it to his psychiatrist.

"But that's the picture today, and with a base to work from, ABC can go nowhere but up. With ever-increasing resources at its command, with a black-ink operation on its hands, with a pioneer relationship with Hollywood's holdouts to its advantage, and with dozens of attractive adjacencies for exposure-hungry sponsors, the network's future seems assured.

"It's relevant to note that for better or for worse, ABC is fundamentally a one-man operation. In spite of the Paramount Theatres relationship, in spite of an expanding staff and workload, Kintner is still running the show and running it himself. When there are mistakes to be made, they are usually Kintner's mistakes. When there are bows to be taken, they belong to Bob Kintner.

"That the mistakes are rarities and the bows are frequent is a tribute to Kintner's astuteness as an all-round broadcaster—as Kintner the programer, the salesman, the administrator, the planner (and, incidentally, this year's NARTB keynoter). It is difficult to visuadize ABC's remarkable progress as the work of one man, but essentially it is. The bold step into contracts with Disney, Warner Bros., and Metro, the 7:30 cross the board kidstripping, the emphasis on feature films, and particularly the b. o.-poison British pictures—all may have been suggested and put into work by his aides, but the responsibilities, the risks, and the final payoffs all belong to Kintner.

"For accomplishing the Herculean task of building a hard-pressed network, in a literal sense as well as in the figurative areas of programing, affiliates, and sales, into a powerful competitive force with all that such competition means for

[8] Comments of Zenith Radio Corp. and Teco, Inc., before the FCC, docket No. 11270, June 9, 1955.

[9] TV Business, Television Bureau of Advertising, vol. 1, No. 2, April 1956.

viewers, advertisers, and stations, Bob Kintner is the outstanding choice as show manager of the year." [10]

CONTEMPORARY COMMENTS

Your own colleagues, past and present, in the Congress of the United States have called to mind some of the accomplishments of television. The late Senator Charles Tobey said in November 1952, "Certainly the Nation's radio and television broadcasters went beyond the call of duty in serving the public interest. They gave unstintingly of their facilities to sell an ideal—that of good citizenship—and the record vote is a testimonial to both the responsibility of American broadcasters and the impact of their media."

What is the position of the telecaster in political campaigns if he is programing for the coin boxes? Will he still be able to sell good citizenship to a citizenry that has to pay extra for it?

What of the public servant who wants to run for office and is advised that he can buy time if he wants to, but his constituents will have to pay to see him and hear what he says? Is this so farfetched? Not at all, unless you believe that this industry—or any industry—can endure half-fee and half-free. I maintain that it cannot, that a house divided against itself cannot stand now any more than it could when President Abraham Lincoln first immortalized those words.

The Honorable Edwin Johnson, himself a member of this body during his many years in the Senate, said on June 16, 1954, "Television is the most remarkable, and certainly the most widely appreciated of the handmaidens of electronics * * *. In my judgment it will have a far greater impact on the way we live than any other invention or development of modern times. It has restored the home to its rightful place as the center of family entertainment and pleasure. * * * Any institution that makes the American home more than a place to eat and sleep is precious to national welfare and life generally." Could Senator Johnson have made these remarks about a machine which, once installed, would eat constantly and insidiously into the family pocketbook? Gentlemen, I maintain he could not—that the greatest glory of American broadcasting is that its fruit is available to rich and poor alike without discrimination save by the viewer's choice. To degrade, indeed destroy, this magnificent machinery for the public good to the benefit of a few holders of patents and licenses would be a crime against the Nation and the people.

SUMMARY

The proponents of toll TV played no part in the development of a national television service through investment in programing, facilities, and stations—all the things that provide a national circulation base of nearly 40 million television-equipped homes, covering over 96 percent of the entire continental United States. This communications system having been already created by others, the proponents of toll TV, like other elements in the industry—for example the Hollywood motion-picture industry and the film syndicators—would seize upon the system already developed for free service to all the public in order to find a substitute for the theater box office serving but a small fraction of that same public—and on a paid basis. More significantly, because of its effect upon the public interest, in doing so they would destroy the ability of the free TV service to meet the interests of the entire public.

A perfect biological parallel exists in the example of the parasite which attaches itself to the body of a living organism. The parasite grows fat and happy, but in so doing invariably and inevitably destroys its host.

I have already enumerated the accomplishments and creations of the free TV system, predicated upon its foundation of network broadcasting. It is significant, indeed the crux of the entire matter, that the proponents of toll TV have created nothing, nor do they intend to create anything, except a captive market for sales and royalties from techniques of distribution and marketable mechanical contrivances for which they hold patents and upon which they intend to maintain a monopoly. That these techniques and devices will be installed at a cost of billions to a national public already enjoying the fruits of the free system; that they have neither made nor intend to make a contribution to the development of the art of television programing; that they have been mysteriously silent on the subject of assuming any of the licensee responsibilities to the public

[10] Variety, April 18, 1956, p. 26.

of the broadcasters; these and many other evidences point to the clear-cut conclusion that the proponents of toll TV are both prepared to and intend to enlist the aid of the Congress of the United States in crippling the greatest force for enlightenment, entertainment, and through free choice of free programing for safeguarding our constitutional government, that has ever been conceived by the mind of man. It is my conviction that this committee will bring such an effort to an immediate halt.

Thank you, gentlemen, for your patience, and for extending me this opportunity to appear before you.

Senator SCHOEPPEL. Now you may address yourself to whatever phases of your statement you desire to, and discuss whatever matters you choose.

Mr. ROGERS. Thank you. My name is Lawrence H. Rogers, and I am the vice president and general manager of WSAZ and WSAZ-TV, and I have held this position since 1951. I am also president of radio station WGKV in Charleston.

Mr. COX. This is a VHF station?

Mr. ROGERS. Yes, sir.

Mr. COX. Is it affiliated with a network?

Mr. ROGERS. It was put on the air first in 1949, and it is affiliated with the National Broadcasting Co.

Mr. COX. How many stations are in the Huntington market?

Mr. ROGERS. There are 3 stations serving our market; 2 of the stations' main studios are located in Huntington, 1 in Charleston. They are affiliates of all three networks.

I have been engaged in the broadcasting, sales, and management business for the entire 10 years since I left the Armed Forces, and I supervised the construction and have been the manager of WSAZ since before it was built, in 1948.

I am grateful for this opportunity to address these remarks to this body and I appreciate the display of representative government here. I want to give you some personal background only because I am speaking in the role of an individual broadcaster and operator on a subject which is of concern to all of us who are in the television operation picture daily, most important the public of nearly 40 million families whose television receivers are of no earthly use to them except for the reception of programs from stations such as I represent.

Obviously, I cannot speak for any other stations. I feel, however, that what I say is reflective of the station licensee's point of view. I am speaking from personal conviction and I am neither motivated by, nor have my remarks been contributed by, any outside agency. That this is important I think is testified to by the fact that I am part of that body of professional broadcasters. Regardless of what system of distribution of programing might be adopted in the public interest and designated by Congress, I feel no question but that I and others in my position will be able to obtain a livelihood in that distribution. It is my personal feeling that the proposals to turn television over to a pay-as-you-see system would probably result in greater economic benefit to a person such as myself, rather than lesser. Therefore, I have no ax to grind as far as the present system is concerned from a percentage standpoint.

I feel that the issues in this question can be pared down to the substance of our license, namely, the public convenience and necessity. If it can be shown that free broadcasting is not fulfilling its basic charge of the Communications Act, or conversely that toll television can do so in a more efficient manner consistent with the rights and prerogatives of the whole public, then I will agree that fee TV should be substituted for free TV. It has been stated here, and no one connected with either side of the question has undertaken to challenge the statement of David Sarnoff, that the American people now receive free the best television service available anywhere in the world.

In spite of this statement and in spite of no denials, Mr. MacDonald, the high priest of phonevision, has written many articles to the contrary, a notable one in which he said:

> The advertisers haven't sufficient money to pay for the type of continuous programs that will be necessary to make the public buy television receivers by the millions * * *.

I would like to answer this statement by Mr. MacDonald, somewhat frivolously, with a little booklet which I have here which was prepared by the Television Bureau of Advertising. I happen to be the treasurer and a member of the board of directors of this organization, which is an all-industry business league to promote the sale of advertising through television. This little fantasy is called Even Rabbits Couldn't Do This Well, and it takes the supposition that a handsome buck rabbit set up housekeeping with a young doe rabbit in 1947. It says you could count on the patter of little feet—average litter, four rabbits. I will precede this a little bit—if they are half males, half females, all romantically inclined, they will produce 4 to 8 litters. We will have to assume that they all survive in the best of health. Neither hassenpfeffer nor shotguns have been invented yet. All of the rabbits mate at the normal age of 6 months. Their new litters arrive in 11 weeks. We give these little creatures every break that might send their production to new heights. The outcome would be an awful lot of rabbits.

After a few years millions and millions, and yet even with their prodigious ability to multiply, even under optimum conditions, they still couldn't begin to equal the rapidity with which the total of United States television homes has been accomplished. The best rabbit crop that might be accomplished during the 8 years from 1947 to 1955 is a total crop of some 24 million flopsies, mopsies, and cottontails. In the same period of time the fantastic growth of television homes has actually zoomed from a few thousand in 1947 to over 32 million in mid-1955. This is based on statistics of the United States Bureau of the Census, and this figure has been updated since that time to a figure approaching 40 million.

The Bureau goes on to say, "Nothing has ever grown so big so fast." With this cute little demonstration [indicating], I would attempt here to analyze for a moment why this is happening. How did it get so big so fast, and how did we get nearly 40 million television receivers in the hands of the American public?

I would presume to give you some of the background of my own station's experience in reaching this conclusion. In these same 7 years, my company, supported entirely by advertising revenue in a town of a hundred thousand or less, has explored, developed, installed, rejected, experimented with, and operated every development in the television-transmission field that has been made available to the local television art. We have made an investment totaling some $2 million to date, in an area where, by Mr. MacDonald's myopic standards, advertising revenues were not available and could not become available to underwrite a project of this magnitude, much less program it in such a way as to attract a major audience.

This entire project has been conceived and executed under the single broad policy of providing the greatest possible television service to the greatest number of people, with one single rallying point—to operate in the public interest, convenience, and necessity. I might interject, at this point, that it has been the concept of our operation with WSAZ-TV that the public interest, convenience, and necessity, are synonymous with successful commercial operation.

WSAZ began in 1949 in a Sahara of television, opening a small oasis in the form of a small station fully equipped to present local live, filmed, and remote programs, since there was no network source available. Zenith viewed this as impossible, but that did not dampen our enthusiasm, though it was true that the base was not broad enough to attract major advertising money—by actual count we had only 154 sets in our area at that time. We lost nearly a quarter of a million dollars in a year's time, and adopted two avenues of attack. One was to provide the network service we felt necessary for the base of our program, and the other was the maximum geographical coverage that FCC standards and our engineering brains would permit.

There were no common carrier facilities and we were advised that there would be none, so we invested an additional $150,000 in 1950 to build our own microwave relay system from Cincinnati to Huntington. Our faith in the future was rewarded by a contract with the National Broadcasting Co. This assured us of only enough revenues to amortize the relay investment, but it provided a program base in addition to our heavy local schedules with which we could attract a great audience.

As soon as new FCC standards were announced, we became the first station in the United States to install and operate maximum effective radiated power. This was still far from sufficient to bring adequate reception to vast areas in West Virginia, eastern Kentucky, southern Ohio, and western Virginia, where the need for television service is underscored by the great separation from modern city advantages, with terrain conditions which make transportation facilities almost primitive. Thus we went to the next most logical step. This involved the erection, at fearful cost, last year of an entirely new transmitter installation and a giant tower 1,100 feet in height which could send a viewable picture to the very depths of the mountain country just described, as well as to the industrial complex of the Ohio and Kanawha River Valleys. What has been the reaction of the public to these efforts to bring this superior service? Over a half million families in nearly 100 counties have responded by making an estimated $150 million investment in TV receivers alone.

I might point out that this investment is in addition to complicated antennas which were referred to by Mr. Cox a moment ago, some of which are on a community or group basis, so that people pay a service charge in some instances of $3.50 a month to receive service.

As an example—and I hope in answer to your question, Mr. Cox—this $3.50 a month that some people in some of these areas pay for a community or group antenna service is actually less, in substanace, than what the city dweller pays to have his antenna put up and repaired and recurrent calls of servicemen. In one little town in our area alone—Williamson, W. Va.—where most of the viewing is done with group antennas, there are 5 free television services being received, the 5 being the stations in Huntington, Charleston, Oakville, and Bluefield. These people pay only a service charge which their city brothers would have to pay as well to keep their sets in proper repair, but they can switch the dial and get five competitive services.

The boom in our area served by this station—when contemplating sales, service, and allied employment attributable to the coming of television—amounts to a quarter-billion dollars, which is greater than the total retail sales of our home city in a year. Has this miracle been made possible by a second-rate program service that needs to be replaced by a coin-operated jukebox, the output of which is neither the concern nor the responsibility of the operator? The question is so obviously ridiculous as to supply it own answer.

I wonder if the proponents of toll television know what free television means to the people in these areas.

Senator SCHOEPPEL. Might I ask a question? In these hearings you are talking about free, free, free all the time. Certainly you do not assume that the man who buys a television set or the man who buys the product of the advertisers—whether it is automobiles, refrigerators, or what you might buy—he certainly shouldn't be left under the delusion that he isn't paying for this advertising that goes out and is collected for by one means or another. Has there been any emphasis put on that? I don't think so. Why? These people aren't getting free service; they are paying for it by increasing the commodity price; aren't they?

Mr. ROGERS. Yes, sir; I think that that is a justifiable point and I think that everyone pays for every service he receives.

Senator SCHOEPPEL. That is correct. Now we are getting to the point where we are even paying for parking spaces in all of the city streets of any consequence, for checking accounts, and everything else, and the public is not running completely away from it. They are getting pretty good service. But this illusion of everything being free as against something that you pay for, I do not think has been put in proper perspective, and I would like to hear some analysis made of that sometime down the line.

Mr. ROGERS. Yes, sir, I think I can answer your question. There is no question but that the public contributes with this money to the cost of this television system that we have. I would be foolish to say otherwise.

However, the impact of television on upwards of 40 million homes in the Nation now, through a system which reaches in excess of 96 percent of the area, and the fantastic impact of this medium as an informational, educational, cultural, entertainment, and advertising sales medium, is such that the average advertiser is able to distribute fantastically greater quantities of goods at less price than he was ever able to do before the development of the concept of advertising under the free-enterprise system.

Senator SCHOEPPEL. That is correct, and it is one of the finest things that has happened to this country. It has made more employment, more genius has gone into the competitive channels, and better products have come out and it shows that the American people are willing to pay for it. But they are not getting this thing free. It is tacked onto the bill some place, and they are willing to assume it.

Mr. ROGERS. It is tacked onto the bill in the sense that they are buying the products and expressing their appreciation to the manufacturers of the products for the entertainment they have brought, but in this process they are paying less for these products than they would otherwise have to pay were this method of distribution and preselling not available to them.

In short, I believe a point that is not contained in my statement—and I haven't seen it in other statements—is that the total service of television to the total public includes this tremendous marketing ability, this preselling, if you will, that makes the broadest problem of American industry now that of marketing, in much the same that the broadest problem of American industry in the first half of the century was that of manufacturing and distribution.

I believe that television in its present form is vital to the ability of American manufacturing genius to get these tremendous quantities of goods out to the American people by acquainting them with them.

I believe that it is on the point to suggest that no attack has ever been made upon the free press of the United States or the magazine industry, wherein a very large percentage, in fact a majority, of the printed pages that are distributed by the magazines and newspapers is advertising content. An average daily newspaper will have a 70–30 ratio. It will present its editorial content on the ability to print pages having been supported by 70 percent of the pages in a given day of advertising, so that they can devote 30 percent of the pages that day to editorial content. If they get a double-truck ad they can add another three-quarters of a page editorial content to that paper. I am not attacking the newspapers, but I am suggesting that the reasons the great daily newspapers of the United States reach most of the people in most of the cities is the fact that the housewife, in particular, looks upon the advertising content of the paper as its principal program attraction, and I maintain that the same thing is true of television.

That this is true of television is underscored by the fact that in most consumer products, the distributor organizations and retail organizations—and drug and grocery stores particularly—will not stock an item that does not have television support, because they know people will bypass the items that are not familiar to them on television in order to buy the ones that are familiar.

I hope that goes somewhat to the point of the question.

Senator SCHOEPPEL. I am glad to get some of this in the record so we do not say it is for free all of the time, because it is paid for in the end product and the price, but it does show a great expansion of the industry of this country, and the people of this country are willing to pay for it.

Mr. ROGERS. Yes, the people of the country are willing to pay for it and our contention, as an opponent of subscription television, is that a subscription television system will destroy what we know as free programing, by substituting a system where they have to pay per individual program unit.

Further, in my prepared statement—and I was not intending to read this part of it—I make a short analysis of what the per program cost is likely to be. The proponents have made comments about it being $4, $5, or $20 a month, but our Television Bureau of Advertising, as I have stated a little bit later has done some recent research in which they find in the city of Chicago, for example, the average family views its television set—this is based on a 7,000-family sample; it is not shotgun research—the average family in Chicago spends something like 69 hours a week with its television set.

Obviously the service programs that go on all day outside of these cream hours we are talking about, to put the toll programs in, are of interest to them, because they look at them 69 hours a week. If we were to apply the principles that have been presented by even the most modest proponents of toll television to, say, a cost of 25 cents an hour for programing—much less $2 a show—this would build up, at the rate of 70 hours a week or 69 hours a week, to about $17.50 a week worth of paid entertainment. This $17.50 is over and above any prices that these people are paying for commodities which are currently bringing them the same programs on television.

It is our contention that these same programs will not be brought to the public by advertisers simply because of the fact that they will be siphoned off by toll television, where fantastically greater amounts of money can be realized by the program producers, or more importantly the box manufacturers, from a very much smaller segment of the public. The question has been asked—and I am way off my statement now, Senator Schoeppel—the question has been asked this morning, do we think we can survive with advertising-supported television as against toll or subscription television, and I say unequivocally, no, we cannot survive, because if we decide to give the 15 percent heaviest viewing time of our station over, or if a competing station gives 15 percent of its heaviest viewing time over, to toll programing, we will necessarily have to follow the same course.

If, conversely, this 15 percent of our cream time—or, say, the 3 hours from 7 to 10 p. m.—were subtracted from our station, we would be completely unable to provide the round-the-clock service that we now provide. We would be completely unable to support a news operation, for example, that covers largely this hundred-county territory that I am talking about, which involves a field-stringer force of some 25 people feeding film and story material to us. We would be completely unable to carry on the forty-odd hours a week of local programing which we carry on, largely outside of this 7-to-10 period, because all of this is, if you examine it on a program-for-program basis, a loss operation. My board of directors would be out of its mind if they allowed me to do the programing that we do if we were not making a profit from our 7 to 11 p. m. period. Possibly 60 percent of our revenue, for operations, will be derived from the prime evening hours.

This means that a show like Current that we do from 1 to 2 o'clock every day across the board, which involves local personalities and local feature stories from all over our area—and which, incidentally, is done every day of the week in color television now—this program couldn't conceivably support itself on our low daytime advertising rate structure. But it is an important part of our function to make our station a necessity for the people of this area, and it is made that way; it is made possible by the revenues that we derive from the three evening hours of top-audience programs.

Mr. Cox. Is it my understanding, Mr. Rogers, then, that you suggest if one of your competitors instituted subscription programing in these prime hours in the evening, even if you did not do likewise, that you would be unable to derive any significant part of the present revenues you get from advertising in those hours?

Mr. ROGERS. In the long run, Mr. Cox, that is exactly what I imply. Immediately, of course, no; this would not be the case. But if one of my competitors were to run from 7 to 10 p. m. every night with subscription programs, this presupposes that the Congress has seen fit to call this in the public interest and that all stations throughout the country would be permitted to do the same thing. If this were the case, the attractions which now make the backbone of our audience schedule—the schedule which promotes the biggest audience—would necessarily be siphoned off into these other pay operations.

The only way we could conceivably compete would be to go into the same pay-as-you-see system.

Mr. COX. I gather from what you say that you would then derive as much, or more, revenue as you now get and you could, therefore, carry on these public-service, less-profitable programs.

Mr. ROGERS. Presumably, but I would like to steer ourselves back to the public interest. I am not concerned with my interest at the moment. We would be drawing this increased revenue from a greatly decreased audience simply because of the fact that the technical problem of installing machinery that will work this half million homes audience base will take time, and during that time the major attractions that will be transferred to toll will be removed from the nonpay variety, and in the final analysis, if you give a man a choice of paying for what he is now receiving free, a lesser number of them, obviously, are going to see these programs. Let me take the case of the fights, for example.

The question has been asked, "Why don't we have the heavyweight championship fights on free, advertising-supported television at the moment?" The answer is very simple. It is because a very small crowd at $4 a head will provide very much more money than the Gillette Safety Razor Co. or any other sponsor would be able to pay for the same attraction. The question was asked, "Will we lose the world series?" I do not have any question in the world but that we would lose the world series, for the simple reason that even a minimum of people at $1 a head, again, would provide so much more money than is presently able to be supplied to buy this feature that it would dry up and disappear from advertiser-supported, free-for-the-flick-of-a-switch television. I might also point out, in reference to Senator Schoeppel's earlier question, that the sixty-odd million people who are reputed to have seen the world series the last couple of times on television, include large numbers of women and children, who do not pay a penny for Gillette safety razors and blades. However, the Gillette Safety Razor Corp. is able to make this attraction available on the basis of selling these products to a lesser number of people. Everyone gets the benefit. I think everyone will be the loser if we take this away from them and make them pay on a per program basis.

In the matter of what this service now means to people in our area, we are not talking so much of the public in New York and Washington now. We are talking about the West Virginia and Kentucky mountaineers—an area of the country that I think would be well for most of the people in this room to get a look at some day. The people in this great middle-south mountain area are not second-class citizens but they do have second-class comforts in point of travel, entertainment, availability, educational facilities, and all of the modern conveniences of urban life.

When the living television screen invaded these areas in such awesome numbers it was because these people were, for the first time, on a par with their big city brethren in watching the world go by. For the first time in America's history, all citizens have a front-row seat for the great events in the Nation and the world, events that are brought to them because of their purchase of daily necessities, not which are brought to them because they pay extra for them. Their enlightenment, and therefore their participation in the processes of democracy, is no further from them than the switch on their television sets.

I would like to tell you what this means to a mountaineer in the case of a single example. I visited a place called Buffalo Creek in Logan County, W. Va., and Buffalo Creek is exactly what the name implies. It is a deep canyon, a sort of miniature version of the Royal Gorge of the Arkansas River, with steep mountains on each side, but this is where the coal resides from which the whole economy of the central Ohio Valley is drawn.

In a little shack—you would call it a shack—it is a modest frame house that looks dirty only because of the fact that if it is painted on Tuesday, it is covered with coal dust on Saturday, so you assume it is dirty, it really isn't, it is literally hung from the side of the hill. There lives there a mine foreman, a graduate of MIT, strange to say, and he moved to this area with his wife, a little Boston girl, and they have 2 children, 2 boys. The center of their home life is television, and it was the difference between night and day to this family when this television set became available to them.

Let me tell you how it became available to them. This man and his two sons took a camping expedition on the side of the mountain in back of their home that took an entire summer. He hacked a path through the woods—4,000 feet up the side of this mountain, which has an average angle of better than 45° at this particular point—and installed, in this fire break in the woods that he hacked out, an open-wire transmission line—two pieces of copper connected together with a bobby winkler so as to minimize the possibility of the destruction of the insulation on a piece of ordinary antenna lead, and therefore it is much more durable for heavy weather. He runs this line 4,000 feet from an ordinary housetop antenna, which is fastened in the top of a tree on the top of the mountain, down to his home; and because of the fact that this means so much to all of the neighbors, he has a distribution amplifier hanging on his back fence and he feeds the signal from his own household current, which runs the distribution amplifier, to 2 or 3 families on each side of his house so they, too, get television.

I might point out that when I first saw him he had a channel 3 directional antenna which picked up only our station. I am pleased, for the record, but unhappy for the permanent connection, that he now has a fancy array with a channel 8 antenna aiming at one station and a channel 13 antenna aimed at another station, and still the old one—and all you do to operate this thing with the 3 antennas is flip a switch on the front of the set. His reception is perfect because he labors to get perfect reception. He doesn't just buy a television set like a city dweller does, and put it in his room and plug it in like a waffle iron, and when it doesn't work, kick it. He has studied circuitry so it works, and he is typical of these people.

Let me get to the point: Hanging on the back fence with the line amplifier is grim testimony of what this means. There were 27 rattlesnakes on the back fence—skins of snakes he and his sons killed putting up the antenna. I have heard friends in big cities complaining about grumpy landlords, because of the fact they wanted to put up a television antenna. This man went to more trouble than that.

I, for one, Senator, don't want to have to explain to this man the necessity of paying anywhere from 25 cents to $2 to receive each program he is now receiving free from my station. I don't think anybody wants the job of explaining it to all of the other people in the country.

I had a recent experience in a restaurant where a waiter who knew I was in television asked this question: "I hear some fellows come in talking about this pay-as-you-go stuff. Now, as far as I am concerned, I don't know anything about television except that it is the center of my homelife. When I come home at night, the wife and kids, we gather around the set, and this is what we do—this is how we save money on going places we used to go. Places we couldn't go because we didn't have the money. When something comes on the air—whether it is a commercial or whether it is part of a program, whether it is a whole program sequence—that we don't want our children to see, we merely flip the switch; maybe the children have become so selective"—he didn't say it quite that way—"that they flip the switch for us and pick out a lot of programs we wouldn't otherwise see."

He says, "What happens if I come home and we have this new system, and all of a sudden in the middle of a big dramatic sequence we have some delicate family quarrel going on that leads to a subject that we don't want the kids to hear about, how can I go and switch this thing off when I already have a 75-cent investment in this particular show; I can't get my money back."

The suggestion that the hours of operation for toll television be limited to 15 percent, I think, is a very naive one. It presupposes that the toll television people say: "We are only concerned with the top shows that we have been able to lure away from the broadcaster, which will bring us the biggest bonanza. We certainly don't want to be responsible for operating those transmitters for the other 70 or 85 percent of the time." Our concern for the public presupposes that we have a worthwhile service available any time of day or night when there is some part of the public to watch it.

This concern with only the peak 15 percent viewing time bespeaks a concern for the economics of the turnstile and the clink of coins. They have said we should keep all responsibilities for operating the station, and I think, in light of the spirit that these proposals have been made as regards the public, that it is fitting that the toll proponents should disclaim responsibility to account for the welfare of the public. The proponents of toll TV have said to us broadcasters, in effect, that if we like this responsibility to operate in the public interest we are welcome to it. They only want a comfortable seat by the cash drawer.

As for the leasing of equipment and the installation of equipment at stations to scramble a picture, with the brief background on our station, and the development and cost of it, to me and to any broadcaster, it is inconceivable that we should make an additional investment the accomplishment of which is for the specific purpose of eliminating the ability of thousands of families to view our programs except under special conditions.

I don't want to go into the cost per program too much or many of the other things that other speakers are more qualified to talk about and have talked to you about; but I think the crux of this thing is in the claim that toll television is only complementary, and it is my opinion that the claim that toll TV will not displace existing television is the most preposterous claim of all.

As a matter of fact, this is a calculated attempt to supplant the existing nationwide service. Contrary to the assertions of the proponents, peaceful coexistence between free and fee TV is like companionship with the Comintern. The long-range goal of each of the systems is to devour the world. They are incompatible because they are in direct competition for program sources and talent.

If toll television were to be as successful as its proponents claim, free TV could not compete. Free operators could not hope to compete.

I will digress here on a question asked about Ed Sullivan—an experiment in three markets. I believe the figure used earlier was that 1,700,000 people could be reached by an Ed Sullivan show in 3 markets and, therefore, this would not be a worthwhile experiment, so why should we worry about losing Ed Sullivan. Let me point out that 1,700,000 homes at $1 a head for 1 show will pay Ed Sullivan more money than he now gets for 52 shows aimed at the 30 million people per week. The result of any such thing would mean merely to charge the public for what it now receives free.

There has been a reference to President O'Malley of the Brooklyn Dodgers. He actually made the statement that he was dissatisfied with the roughly half a million dollars that the Dodgers get from advertiser-supported television now, and that if toll TV were authorized he will sell his club's ball games on TV coin boxes at 50 cents a game. He envisioned as much as $50,000 from a game at this rate. Now, examine, please, $50,000 a game at 50 cents a head, and I think you will arrive at the conclusion that he is talking about serving 100,000 homes. This is only a small fraction of the number of people who now see these games because the Liggett & Myers Tobacco Co. buys them over WOR—and certainly not everybody buys Chesterfield cigarettes. The yardstick in this case is not service to the whole public. It is the size of the box-office return and only the size of the box-office return.

As for promises that new and wonderful educational programs will be aimed by toll TV at small minorities, this is merely perfume sprayed at the Senate, the FCC, and the public to prevent careful scrutiny of the most gigantic raid on the public pocketbook that has ever been conceived under the free-enterprise system. These promises are made by patent holders who have said they will only lease or draw royalties from equipment, but the station operator is to remain responsible for the program choices.

It has been stated that installation of toll TV in a single major city will cost tens of millions of dollars. This money can only be recovered by putting on shows which will attract the largest audiences, not educational features for small minorities.

I think it is time for the operators of the stations to get on the offensive and off the defensive. I think that the same thing is true of statements that have been made that there is a limit to the number of stations that can be supported by advertising-paid television. I think it shortsighted to say that 588 stations, or any other number of stations, is the limit. If someone had asked me 7 years ago whether I might expect to reach as many as 588,000 television homes on a given opportunity I would have told him he was crazy. If someone had asked me 7 years ago if we could have made the whole thing work at all I would have only had to give him a vague answer based on fate.

I think the parallel in the radio business is an excellent one. If somebody asked you 25 years ago whether we would have in excess of 2,000 radio stations serving the public and making a profit he would have said you are out of your head; it couldn't be done. But it has been done. I believe we are only on the threshold of the development of this business.

I might digress again, in our own operation here, the development in the past couple of weeks of a usable video tape recorder opens a whole new vista of operational possibilities to the television stations in the United States and, therefore, to the public. It means, for example, that no longer will the small-town station have to stand the onerous cost of tremendously expensive film operations in order to cover local events of one kind or another, or, more important, in order to record programs for later playback. Many times when dignitaries come through our hometown they come through by plane or train in the middle of the day, and we will interview them on our daily programs.

I might point out that we operate a microwave relay system between our 2 principal cities, Huntington and Charleston, whereby we are enabled to give daily live programing from 2 cities, because there is admittedly a scarcity of stations covering these areas, so we give local interest live programing daily from both places. With a video tape recorder, for example, if we have a delegation of visiting dignitaries we can put this at a midday spot, tape-record it at ridiculously low cost, and play it back in the evening when the maximum audience is available. We are already doing that with sound film, but it is tremendously expensive, and something that is made possible only by large advertising revenues from national advertisers who want to reach a huge audience.

The video tape development will make it possible to do that exactly the same as the 250-watt community radio station now uses a magnetic tape which is a relatively modest cost. It will enable us in the future to see television stations and communities which are unheard of today but which will never be developed if the principal program attractions are siphoned off and put on fee television.

Mr. Cox. But can that tape development, in and of itself, make possible the existence of a station, overshadowed by your station presenting network programing, when it can offer only what film series trickle down on a syndicated basis?

Mr. Rogers. Yes; I believe that without any question.

Mr. Cox. It is not being done now, and you would attribute that solely to lack of equipment to do it?

Mr. Rogers. Yes, sir. I would attribute that to the same situation which applied when I went to WSAZ as a radio salesman in 1946 when we had very little in the way of daily local programing of a community-interest nature, and we had very little local live news in a regional sense of the word. The reason was our area was adequately covered by 50-kilowatt radio stations from outside on sky wave.

For a long period of time—as a matter of fact between 1946 and 1948—I can recall having gone to elaborate lengths to listen to stations like WSM in Nashville, and even WSB in Atlanta, literally hundreds of miles away, because the economic development of radio at a local level, even 7 or 8 years ago, had not reached its present state.

Now, I am not trying to derogate the job these big stations have done. It has been tremendous, but it is the technical development. It is like the application of automation to the local area that has enabled 250-watt stations in towns of two and three thousand to operate with a significant service. In radio, of course, you had the ability to take a clever young man and a stack of records, and fill a lot of time. It is not surprising that the public will not look at that kind of thing on television, because you can close your eyes and possibly dream up something better than the average young disc jockey wondering what to do with himself in a television studio. This is an evolutionary process, and somebody is trying to force us into revolution; but they are trying to force us into revolution for their own personal profit, and, again, not for the benefit of the public.

Mr. Cox. Well, they would recognize such a profit just as a station operator hopes or does recognize a profit from the use of the air waves, and just as the advertiser does recognize a profit, or he discontinues the advertising.

Mr. Rogers. That is correct.

Mr. Cox. The question is whether they would, in so doing, provide a program service that the public would be willing to pay for and which perhaps they are not now getting, and whether it would provide revenue for a class of stations which are not now able to support operations on sponsored programing alone.

Mr. Rogers. Mr. Cox, if I may, I think I would like to take issue with you a little bit on that. I don't think that that is the basic question. At least it isn't the basic question that I understood when I came here. The basic quesion is whether this technique would provide a greater service to the public than is now being provided. I don't feel that any of the things that you just outlined to me will.

Mr. Cox. One of the arguments that they advance to establish that this is in the public good is the contention, as was made by former Senator Johnson, that this would provide a source of revenue for new stations in the Rocky Mountain area, in regions where local advertising is not sufficient alone to support stations, and where national advertisers are not interested because they reach a point of diminishing returns in something from 60 to 65 of the top markets.

Mr. Rogers. Yes, sir; I think the answer to that is contained in the proposal to establish boosters and satellites. Our station has had some minor experience with that kind of thing, including one installation of a booster station that was put in in our area for the purpose of finding out how people in this particular community could get better service from our station due to a low antenna height and lower power at that time. The problem was solved at that time through the increase in power and increase in antenna height on the part of our own station, plus the erection of 2 or 3 stations closer to this community so that they now get an adequate service.

Nevertheless, while the problem was being solved, this community actually did receive a service that was totally impossible, through the use of a low-cost, low-power repeater station, which created no objectionable interference to WSAZ-TV.

Mr. Cox. But the use of satellites or boosters will not bring a local station serving the local area.

Mr. Rogers. Yes, sir; it most certainly can be developed. I feel that there is no question but that we have to apply the principles of walking before running to this as to other developments, and if you were to install, let us say, for the purposes of example—if you were to install a low-power UHF transmitter station in a small town 100 to 150 miles away from a major town, you would then be providing the initial service upon which the circulation base will be built, as a result of which, with the fantastic new developments that are coming along right now, you have only the problem of buying a single generator and a switching system to feed a local signal into this same transmitter.

The fact of the matter is today it would cost something in the neighborhood of maybe $15,000 at the outside to buy a portable sending generator, a film chain, and projection equipment, as a result of which you could originate a local signal from a satellite operation, through which you could sell local area merchants low-cost advertising over this satellite station.

As far as I know, there is nothing even contemplated in the proposed rules to the Commission for the authorization of booster and satellites that would prevent this. Certainly in terms of what those of us who have been through, and have seen this thing develop over the past 8 years, that is a very modest cost and one which could be realistically applied to small towns.

Mr. Cox. But in something approaching 2 years, under authorization from the Commission, something less than a dozen, I think, satellite stations have been established, and those mostly in cities of fairly substantial size; and the Commission has not yet decided whether it is going to authorize boosters, and, in fact, in testimony before this committee has indicated that they are greatly concerned about the problems of interference that they present. So that it would appear that with satellites available there still remains a limiting factor, not only in terms of the cost of operation but in terms of revenues that could be derived from that operation, and I think it is at this point, of course, that the proponents of subscription television direct the argument that they could furnish this basis of economic support which would make possible the development of stations which, they contend, advertising has not and cannot support.

Mr. Rogers. Well, they contend that they have not and cannot only on the basis of past performance, but 7 years is a mighty small development period for an entire industry.

However, not to beg your question, it seems to me that this proposal is ridiculous on its face when you consider that you are talking about the very communities where you have the least earning power, the least amount of potential audience with which to support these so-called toll program attractions. Therefore, we get back into the matter of experiments, and somewhere in this torn-up statement I have a reference to experiments, and I think an example that answers your question.

It seems to me that in essence the matter of experimental operation of toll television in underprivileged areas, if you will—it reminds me of the old Moslem fable of the camel getting his nose in the tent. The proponents know perfectly well that the experiment is merely a bridgehead from which to launch a full-scale attack, and get this thing established elsewhere.

I took an example here of not a little town, but let me give you this example and see if it answers the question. It has been said that Broadway, opera, feature movies, cannot be brought to free television. Mr. Weaver and others have proved this is wrong. They have been and are continually doing it. Suppose we take the popular example of Richard III as a premise, and see what would happen with a TV experiment in Washington.

The price of the film was $500,000. We know that because that is what we had to pay for it. Let us suppose the people did not have the opportunity to see it as free as the General Motors advertising that supported it allowed it to be, and that the FCC has authorized Washington as a city of experiment. There are nearly three-quarters of a million families who depend upon the TV service of the Washington stations. Let us suppose that the subscription people succeeded in installing coinboxes, meters, telephone pay-station lines, or decoders, on a third of these 750,000, for example.

Let us say that the day Richard III is showing for what I referred to as 250,000 cash-register set owners, that we succeed in getting half of them tuned in for the whole show, that we get even bigger attendance for the paid version than we did for the advertising supported version. This means we would have 125,000 viewing homes that would have to pay $4 each for this show, or double the maximum I have heard suggested so far, just to defray the half-million-dollar cost of the film alone. This is before one penny is applied to amortization of the staggering installation expense in the homes or the television station, not to mention the operating expense of the station whose service has been denied the other half million families. Most important, this does not include the royalty of the patent and license holder nor the rental of the equipment, so follow it from there. How much do we charge for this show—$10, $20?

Mr. Cox. Well, this is based on the assumption you showed it only in one city?

Mr. Rogers. Right, so this is the experiment.

Now, the camel starts to inch his way into the tent, and Mr. MacDonald and his friends yell: "This is unfair. We were limited to Washington, D. C. We only had a quarter of a million seats, and it wouldn't pay the freight. So our interest has been hurt. I don't know the public has been hurt the least bit, other than that half million dollars they had to pay to get the film, but our interest has been hurt, so let us add Philadelphia, Denver, St. Louis, Milwaukee, and even Huntington, W. Va., and this thing will pay."

But who is it paying? It is paying them, not the public.

Mr. Cox. Is it your view they would have had to pay $500,000 for limited exhibition rights in this 1 market?

Mr. Rogers. That is problematical. I think they will have to pay whatever the traffic will bear.

Mr. Cox. But that price was attached to showing this on a nationwide basis, wasn't it?

Mr. ROGERS. Yes, and it was paid.

I would like to go into one more item here, and that is the matter of these low audience and cultural shows that we are talking about, and an area where television has perhaps reached its finest hour, and that is the coverage of the national political scene, the importance of television as a campaign medium to candidates for public office.

It is well known to any operator that the Jackie Gleasons and the Groucho Marxes attract many millions more people than do the so-called cultural, informational, and uplift shows. I believe members of this committee, in fact virtually all of Congress, have appeared regularly on shows like "Youth Wants to Know," "American Forum of the Air," "Meet the Press," "Face the Nation."

I would like to ask the question as to how many people are going to pay to see the great figures of our Nation on programs of this kind when it is a well-known fact that a minority of people, as it is, will watch them even though they are coming free. This inevitably leads into the question of what happens to the candidate for public office who wants to go on television to tell his story for election in the cream program times, only to find that this is the time when the audience has to pay for it. There is a good deal of good-natured banter about political broadcasting already, and some that is not so very good natured. I think that we might examine the question of how many people are going to pay for the privilege of listening to somebody say why he should be voted for.

The matter of enlightening the citizenry through television brings up the matter of whether the citizenry is going to want to pay for the privilege of being enlightened every time it happens. I think that the rest of the material that I have here in sufficiently in line with what has been presented that I would not like to take your time with it.

I would like to suggest one further thought, that in this overall umbrella of attacks on the advertising-supported television system, one thing that has bothered me a great deal is the whipping boys that are made out of the networks. Mr. MacDonald always refers to a network monopoly. Again, referring to our new research and sales organization, we did some research in an effort to help sell what we call national spot television. We found, incidentally, that surveying the buyer nation at the present time, the people of the United States are watching 53 percent network programs and 47 percent local and syndicated film originations; in other words, network is only half the picture of American television. It isn't all of the picture.

Mr. Cox. What percentage is it in the hours 7 to 10 p. m. or 7:30 to 10:30?

Mr. ROGERS. I cannot give you an educated answer on the breakdown as for all stations; some of them being nonaffiliated and some of them having a greater or lesser amount of network traffic.

In the case of our own station, substantially 100 percent of the service from 7:30 to 10:30 is NBC network service, except during those periods when we feel there is something that needs to go in there to reach our people, as a result of which we preempt under the public-service provisions of our contract.

Mr. Cox. Those are the hours, though, in which the largest audience is watching, and from which you derive the major part of your revenues?

Mr. Rogers. Yes, sir; from which we derive the greatest part of our revenue—but strange to say, from the national spot advertiser not from the national advertiser. Our research goes further and shows that local and national spot revenues account for 50.5 percent of the revenue, more than half. I cannot hand you the research data on this because it hasn't been circulated, but it will be directly.

The fact is that the network monopoly charge is a myth. They move on to the two-network monopoly charge, and they say CBS and NBC run this thing, terrorize the stations. There is no question, because of the law of supply and demand of stations, that ABC has had a rough time over the past few years, but did they join the throng and attack the other networks? No; they didn't. They did just the opposite. They embarked on a bold venture in new programing and they have drawn acclaim and revenue from the public and the advertisers alike. They have attractions as famous as Disneyland and Mickey Mouse. They took United States Steel away from one of the other networks. Just last week we were notified that our network was unsuccessful in outbidding ABC for Omnibus, which was moved over from CBS, and I have on my desk at home now notice that the Eastman Kodak show has been moved from our network to the ABC network.

Mr. Cox. Did they take it away, or was it evicted—was it unable to get what it considered desirable time on the network with which it was then connected?

Mr. Rogers. I think this question presupposes some background on the free competitive enterprise system. I don't know that there was any eviction, and I don't know that there was any ability, the point is that competition does exist, and that ABC was able to pull this thing off.

Mr. Cox. Does ABC have more evening time available than NBC?

Mr. Rogers. Well, this will always be true in any given situation where you have competition. As soon as ABC has all of its evening or daytime hours sold out, one presumes that maybe a fourth entrepreneur will come along and suddenly scream that he doesn't have as much. I think it is a normal condition.

Insofar as what network has meant to building of these sets, it is best exemplified by what we are doing this week. We originated yesterday and the day before the entire NBC Today show, live remote, on an Ohio River steamboat moving up and down the Ohio Valley—a development which harks back to 1949 when Pat Weaver stated that he wanted this network to reflect all of America, and all of its activities, to all the rest of America. When I say we originated this, I mean that our station's technicians, program people, and production people put these two 3-hour programs together complete, using only the network talent. This was done, as far as I know, for the first time on any network, but it was only made possible because of this network development, and the coequal status of the network and its affiliates in developing these things.

I invite your attention to a followup on that next Sunday afternoon. We are going to hold what may well be the last race in the history of the oldtime stern-wheel Mississippi steamboats. We are going to have two of these things, with cameras and crews aboard each one, racing on the Ohio River in front of Huntington. Now, there are only 10 of them left in existence that I know of, and they are dwindling fast, and this thing will be part of the Wide, Wide World feature. We thought of it. We got the boys to go out and put on the race. We think it is a priceless bit of Americana, but only the network system and the networks' ability to foot the bill for this kind of thing makes it possible.

Nobody terrorized anybody. We think it is a great thing.

I would like to summarize and wind up, Mr. Cox and Senator Schoeppel, with this thought: This toll television attack against the present system has a perfect biological parallel in the example of the parasite that attaches itself to the body of a living organism. The parasite grows fat and happy, but inevitably destroys the host.

I have enumerated the accomplishments and creations of what we call a free system predicated upon its foundation of network broadcasting. It is significant—indeed, the crux of this entire matter—that the proponents of toll TV have created nothing, nor do they intend to create anything except a captive market for the sales and royalties from the techniques and distribution of marketable mechanical marvels and contrivances.

These contrivances will be installed at a cost of billions to a national public already enjoying the fruits of the free system; that they have neither made nor intend to make a contribution to the development of the art of television programing; that they have been mysteriously silent on the subject of assuming any of the licensee responsibilities to the public of the broadcasters; these and many other evidences point to the clear-cut conclusion that the proponents of toll TV are both prepared to, and intend to, enlist the aid of the Congress of the United States in crippling the greatest force for enlightenment, entertainment, and through free choice of free programing for safeguarding our constitutional government, that has ever been conceived by the mind of man. It is my conviction that this committee will bring such an effort to an immediate halt. Thank you, sir.

Senator SCHOEPPEL. Thank you, Mr. Rogers.

Mr. Biemiller, how long will you take?

Mr. BIEMILLER. I think I can be through in 10 or 12 minutes unless there are some problems the committee would be interested in.

Senator SCHOEPPEL. We are trying to figure out our schedule, too, and want to hear all of these people, naturally, in the record. If you can finish by 12:30, because the gavel goes down at 12:30, you will have to put the rest of your statement in the record. We will stay that long, because we have some floor work over there and other matters to take care of.

STATEMENT OF ANDREW J. BIEMILLER, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. BIEMILLER. Mr. Chairman, my name is Andrew J. Biemiller. I am a legislative representative for the American Federation of Labor and Congress of Industrial Organizations, with offices at 815 16th Street NW., Washington, D. C. I appreciate this opportunity to appear before this committee to present the views of the AFL-CIO regarding the problems raised by the proposal to introduce a system of paid television.

We do not appear here as experts in the technical or engineering aspects of television. Rather, we appear here today as representatives of the workers employed in the great entertainment industry and of the over 35 million Americans who have bought sets, and inivested over $16 billion in them, and are continuing to buy them at the rate of 580,000 a month at the present time. The more than 15 million members of unions affiliated with the AFL-CIO represent a major cross section of the television viewing public.

The proposals for paid television that have been put before this committee would have a profound effect on the television habits of our members. In effect, paid television would require the viewer to contribute a specific sum for the privilege of enjoying certain television programs. Estimates of the cost of paid television to the viewer run from a minimum of $100 a year to over $1,100.

Certainly, this drastic proposal runs directly contrary to the basic tenets of the American system of broadcasting. At no time has the American public, whose investment in television sets has reached $16 billion, been told it would have to pay for the privilege of watching television programs.

The introduction of this new concept would have serious repercussions on the employment of workers throughout the entertainment industry. It would drastically change the present system of competitive programs. Instead of having many programs to select from each night, we would have only 1 or 2 at a time. The advent of this new form of television would also undoubtedly deal a further blow at the already hard hit independent, community movie theaters throughout the country.

In any debate over the merits of this proposal, the burden of proof must lie with the proponents of this plan. I would like to examine a few of the arguments that the proponents have used in order to determine whether they have developed a plausible case for their proposals.

Perhaps the primary emphasis in the proponents' arguments has been that paid television would supply vastly improved programs over those now available. Howeer, despite the many obvious faults of today's television programs, there is serious question concerning what specific improvement paid television could bring. For example, in the world of sport, virtually every major event, with the exception of a once-a-year heavyweight championship bout, is now telecast without charge over a coast-to-coast network. Daily baseball game broadcasts are available in most cities. In terms of entertainment, the recent series of "spectaculars" have added immeasurably to the program fare now offered to television viewers. It even seems that Shakespeare, ballet, and serious music have now become commercially acceptable television fare.

What might happen under a paid television system is that certain types of programs which are now offered free of charge would be transferred to the new system which would require payments from viewers. In effect, this would seem to be transferring the cost of the television programs from the commercial advertisers to the viewing public. Certainly the 35 million set owners in America would not accept this drastic shift without protest.

Although there may be many faults in the present system of television programing, these are not faults that can be corrected by paid television. They are faults that must be corrected by an alert public which makes its views known to the television industry. They can be corrected by an alert congressional committee which carries on investigations as you are now doing, Mr. Chairman. They can be corrected by the Federal Communications Commission if it is diligent in looking after viewers' interests.

The second argument used by the proponents of this plan is that paid television might be a method for helping new stations get started in areas where television broadcasting has so far been limited only to 1 or 2 stations. However, in this case it is hard to say how paid television would operate. In areas where only 1 or 2 stations are now broadcasting, the introduction of a new station operating under the paid system would serve to deprive existing stations of the available programs that they now carry. This seems to be simply robbing Peter to pay Paul. Moreover, the proponents have not made clear how such a system could operate alongside the presently operating system of network and individual station programing.

The same point could be made even if the new paid television system were confined to UHF channels. It is true that a problem now exists in a number of localities of gaining acceptance for newly organized UHF stations. There is a natural reluctance by owners of VHF receivers to purchase the necessary equipment to permit conversion to UHF. The expenditure of $50 or more to convert present sets to UHF, either with or without a paid television gimmick, will not meet with great favor. The answer to this problem is not to introduce a new television gimmick to subsidize new UHF stations.

It seems clear to us that the best interests of the public lies in the continuance and improvement of the present system of free television. It is true that the paid television scheme might benefit a few stations and a few promoters. It would, however, at the same time add a costly burden to the expenses of owning a television set for the dubious pleasure of watching certain programs which, in effect, are not likely to vary in content from the programs now being offered to the American public. If every set were to be converted the cost would exceed $1½ billion.

It is for these reasons that the First Constitutional Convention of the AFL–CIO adopted the following resolution:

> There are now pending before the Federal Communications Commission certain applications which would provide for and permit the granting by that Commission to specified interests, exclusive licenses to broadcast, and charge for, television programs which are now being received without charge in the private homes of America.
>
> It is our sincere belief that such a plan known as pay television would constitute and become an infringement on the property right now enjoyed by the general public on a no-fee basis. Such a plan would be an intrusion into and a violation of the privacy of the home, and would curtail greatly the free use of a medium which has become a part of the American home: Now, therefore, be it
>
> *Resolved,* That the AFL–CIO opposes the granting by the Federal Communications Commission of licenses permitting pay television and request the officers of the AFL–CIO to make known to the members of the Federal Communications Commission and to the Members of the Congress of the United States the position expressed in this resolution.

This resolution, originated by the California State Theatrical Federation, was given careful attention by the resolutions committee and on their recommendation unanimously adopted by the delegates.

We trust this committee will concur with our views and recommend that the FCC does not license any system of paid television.

Senator SCHOEPPEL. Thank you, Mr. Biemiller.

Mr. BIEMILLER. Thank you, Mr. Chairman.

Senator SCHOEPPEL. This committee will recess until 2:30 this afternoon.

(Whereupon, at 12:30 p. m., the committee recessed, to reconvene at 2:30 p. m. the same day.)

AFTERNOON SESSION

Senator SCHOEPPEL. Is Mr. Conaway here, and Miss Falkenburg, and Lawrence Tibbett?

If you folks will all come up, and please be seated. Mr. Conaway, I understand that you desire to be the first witness, this afternoon.

Mr. CONAWAY. Yes, Mr. Chairman.

Senator SCHOEPPEL. You may proceed in any way you desire. We would be glad to hear you.

Mr. CONAWAY. I would like, Mr. Chairman, if I may, to read a prepared statement.

Senator SCHOEPPEL. That is quite all right.

STATEMENT OF DONALD F. CONAWAY, NATIONAL EXECUTIVE SECRETARY OF THE AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

Mr. CONAWAY. The American Federation of Television and Radio Artists, popularly known as AFTRA, was formed September 20, 1952, as a result of a merger between the American Federation of Radio Artists and Television Authority. AFTRA is a branch of the Associated Actors and Artists of America, its international parent organization, which is affiliated with the American Federation of Labor-Congress of Industrial Organizations.

AFTRA is composed of 32 locals and 7 chapters extending throughout the entire United States and with a membership totaling approximately 20,000 performers, that is, actors, announcers, singers, dancers, specialty acts, sportscasters, walk-ons and extras. Its national headquarters are located at 15 West 44th Street, New York City.

AFTRA has officially opposed pay-television since its national convention in July 1955, believing among other things that employment opportunities of our members will be reduced, that not only the members of AFTRA but members of the entire entertainment industry will be adversely affected, such as the American Guild of Variety Artists, American Guild of Musical Artists, Screen Actors Guild, not to mention the unions representing stagehands, scenic designers, engineers, and others. Upon what grounds does AFTRA believe that employment opportunities for our members will be reduced, is a question which should be of concern to all members of this committee.

Briefly, it has been reported that there are approximately 38 million television sets in American homes, representing an investment of some $16 to $17 billion, and these owners are entertained or educated by free programs received on their screens, done in whole or in part by members of AFTRA. Both the industry and AFTRA have dedicated themselves to bringing the best available entertainment and programs into the American home, and with 1 or 2 rare exceptions, every national event, be it sports, politics, or otherwise, has been made available through the combined efforts of AFTRA members and the industry.

With pay-television, some of the free time presently underwritten by a sponsor would be siphoned off by a paid program. For instance, the Ed Sullivan show, if on a paid program consisting of only 10 percent of its present audience paying 50 cents, would amount to some $800,000, or approximately six times what the sponsor now pays. The net result would be that pay television, supported by a very small minority of viewers, in contrast to the total number of potential viewers, would drive from the screens free programs and in turn decrease the employment of AFTRA members, since it follows, as does the day the night, that a program wherein a million families were willing to pay $1 to see its performance, as opposed to a larger number of viewers not willing to pay, the smaller number would not only command that particular program, but it would be prohibitive for a sponsor to compete economically against that paid program.

Another reason that AFTRA feels that employment of its members will be reduced is the fact that the concept of pay television, in AFTRA's opinion, will make every American living room a miniature theater in which the present distributive cost factor of motion pictures would, to a large extent, be eliminated, and consequently the problem of producer-distributor would be solved and greater profits would inure to the producing companies. And a corollary of distribution cost factor, increased profit to producing companies would mean less and less sponsored programs on free television, and consequently the industry, as it is now known, could no longer exist in that climate and jobs would be eliminated.

Much has been said concerning the choice which should be made available to the general public; yet, in the surveys known to me, they clearly demonstrate that, if the general public are forced to, enough of a minority to make pay television economically visible would pay, despite the fact that a great majority of the American television-set owners would be opposed to paying to see a program, and in many instances would be unable to afford the luxury, especially when it is considered that the average American family watches television on an average of 5 hours per day.

Aside from AFTRA's interest in pay television, aside from the interest of promoters of pay television, aside from the industry interest in this problem, I believe that the real concern of everyone should be the public interest. Television has brought to the American home a tremendous sociological impact, not only in changing the habits of most of us but in bringing entertainment, national events, and literally the world, to the average American home.

These American citizens, many at great financial hardship, purchased sets with the complete and full expectation that they would enjoy them without any additional charge to be made. A quick trip around the country will reveal that the familiar TV antenna is in the main the only entertainment which can be afforded.

And it is in the public interest that I would urge this committee to act, because in the final analysis the rights of the American public should be respected and, wherever possible, protected to the fullest extent. Adequate supervision of air communications exists and will, from time to time, with technological changes, be amended or altered, but the right of the individual to enjoy his freedom and general welfare should never be restricted by promoters seeking to invade that which exists as free and available to all. Pay television, in my opinion, is comparable to placing a turnstile on a public library or granting a 99-year lease to a promoter to control the admission and enjoyment of national parks or monuments.

And, finally, pay television would create an unequal and discriminatory problem, since it would be available only to those who could afford to pay, while endangering the programing of public events and items of national interest.

I feel confident, as the public learns more and more about the basic threat of pay television, that they, acting in their God-given commonsense, will become increasingly vocal against it and will demand that the public interest be maintained by free choice of television programing.

Mr. Cox. Mr. Conway, wouldn't you expect that there would be the same total number of hours of entertainment provided over television under a system making some limited use of subscription television programing as there is now provided at the present time?

Mr. Conway. Initially at the outset I would say yes, but I think that, as the pay television continued, the economics of both concepts would force one or the other to extinction.

Mr. Cox. Well, even if the system became completely subscription, still the stations providing the service are required by the FCC to provide a minimum daily programing schedule. Someone is going to have to provide this entertainment. It is still not quite clear to me in what way there is going to be a loss of employment for members of your organization unless this entertainment is going to tap other sources, such as the movie industry, which I think you referred to in passing.

Mr. Conaway. Well, I believe that basically once pay television comes in under any of the various plans which I have read, that for that portion of the time that pay television is going in an area—in a viewable area—it will command a certain amount of the audience. If this were not so, then I see no reason to even propose pay television.

Then, on the basis of programing, anyone who is sponsoring a program at the same time would be unable to continue so that is what would happen. And again I think box-office appeal has to be somewhere in this picture of pay television. If it is going to be very dull and dreary subjects, I cannot visualize anyone paying a dime for it, if they can see dull and dreary things on certain types of programing now. Therefore, you would be in this area where many of our performers would not be in any type of sustaining programs or any type of the variety of programing that now exists in free television.

Mr. Cox. In other words, you would feel that there would be danger of an overall contraction of television service, the elimination of stations, so that there would be less programing available and less programing to offer employment to your members?

Mr. Conaway. I would feel with pay television, even on a trial basis, it will create a tremendous economic adjustment to be made. Now whether it takes the form of elimination of stations or some other form, my concern is it will reduce employment for our members.

Mr. Cox. But I would assume that quite probably the bulk of your members find employment in the network programing originated in New York or Los Angeles; is that correct?

Mr. CONAWAY. Well, let's say that a large majority does. However, we also have a considerable percentage of our some 20,000 members, and I think that I should say this to you: It is difficult in the entertainment unions to say at any one given moment that we have, per se, a fixed number of people, because there is, as you undoubtedly are aware, an interchangeability rule, so that if a particular form is at a moment attracting more work, the people, through the interchangeability, are there. But I believe that what would happen in many of these instances, the so-called free-lance person on other than a network would never be able to compete on a paid program utilizing, for example, some hour between 7:30 and 10:30. He simply would not be able to compete because there would be no employer to utilize his services.

Mr. Cox. The point I was trying to make is that at least as long as the networks maintain anything like the scope of the operations that they now conduct, that your members would find employment in the programs originating over the free networks or any others that might come into existence.

Mr. CONAWAY. That is right.

Mr. Cox. And it would only be (1) if subscription television resulted in the decrease in the number of stations and, therefore, a decrease in the total number of hours of programing necessary or (2) that your members were excluded in some way from participating in the programing service provided by subscription television, only in one or the other of those cases would there actually be a serious reduction in work availability for your members.

Mr. CONAWAY. Well, as I say, it would be facetious on my part to say that it is going to curtail stations, but whether it curtails new stations, the net result as far as AFTRA is concerned is a reduction in employment.

Senator SCHOEPPEL. Thank you very much. I appreciate your appearing here today.

Miss Falkenburg, I believe that you are listed next. You may proceed in any way that you desire. I notice that you have a written statement. We will be glad to hear from you.

Miss FALKENBURG. Well, I would like to have this written statement, which has been prepared as a performing member of AFTRA, included in the record, if that is all right, and I would like to add my own personal ad lib postscript.

Senator SCHOEPPEL. That will be quite all right, and it will be so indicated in the record.

STATEMENT OF JINX FALKENBURG ON BEHALF OF AFTRA

Miss FALKENBURG. As a performer and member of AFTRA, I would like to apprise the committee of my feelings for all of the performers in the television field. Too often performers in television are associated with astronomical salaries, and though I must confess this is most desirable, at least from the individual's standpoint, the facts are sadly to the contrary.

As you know, AFTRA concluded with the television industry a pension and welfare plan at its last negotiations, and the prime consideration for eligibility was for the performer to have earned at least $1,000 in television between November of 1954 and November 30, 1955. Based upon this criteria, there were 1,700 members from a total paid-up membership of approximately 5,000 eligible in New York; 560 eligible out of a paid-up membership of approximately 4,500 in Los Angeles; and 165 eligible out of a paid-up membership of approximately 600 in Chicago. In other words, based upon $1,000 earnings for a 12-month period, there were 2,425 members eligible out of a total of approximately 10,000.

It is my opinion, as a performer who has worked in both radio, television, and motion pictures, that pay television will decrease considerably the opportunities for the rank-and-file members in obtaining sufficient work to qualify in a $1,000 a year category. While it is true that stars will receive large sums of money for a single pay-television appearance, the vast number of performers in supporting or walk-on roles will have incomes even more meager than at the present time.

Mr. Conaway was talking about the work for performers—for the some 20,000 members of AFTRA—and as one of those, and as a performer on television regularly, 5 days a week, for what is known as a woman-type audience, I have the feeling that if there were pay-as-you-go television, and if we happened to be up against a pay-as-you-go television program which was carried network and which had a million dollars a week budget, nobody would tune into what happens to be channel 4 in New York, the NBC station, so we would lose our audience and lose the show, and lose the revenue.

The same thing would happen with the actors on competing programs, on a Sunday night opposite big pay-as-you-go network television shows, because as Mr. Conaway said, no sponsor would want to come on and sponsor a competing program, knowing that the audience would tune away to a million-dollar spectacular. I have gotten quite used to doing commercials. I enjoy doing them very much. Maybe there wouldn't be commercials with pay-as-you-go. There probably would not be. I would like to go on doing commercials and working and having an audience who are able to tune in and see it for nothing, except for from time to time buying the sponsor's product.

I would also not like to see a family that has saved and spent quite a lot of money on a television set have to decide, on certain nights of the week, what program what member of the family wants most to watch and how much money they can spend during an evening, or during a week, to watch that particular pay-as-you-go program.

I think they will have spent enough on the set, and maybe that is not paid for. I do not think they should have to pay to watch anything, and besides I think it was mentioned this morning, the best programs have been on through the past few years and they will continue to come: Peter Pan, Richard III, and political conventions and baseball games—and I do not know that they can do much better with pay as you go. I like it this way, as a performer, as a giver of commercials.

Mr. Cox. Well, we have had filed with the committee—on Tuesday, I believe—a brief statement by Mr. Ralph Bellamy, who is, as I understand, the president of the Actors Equity. He felt that since subscription television at least holds out the offer of possibly more stage-type entertainment, that this would offer added possibilities of employment.

Now, in other words, this again, I think, is the same sort of thing I was discussing with Mr. Conaway—that as long as stations are on the air and are providing a certain number of hours of entertainment, the entertainment must be furnished by someone, either the members of your organization or the members of Actors Equity, the members of musical unions connected with opera, ballet (if they have like organizations), or in the form of film entertainment, which would be covered by the unions in Hollywood.

So wouldn't it be fair to say that it is more or less a question of who is going to provide this entertainment and whether there would be a serious shift if subscription television were added to our present television system?

Miss Falkenburg. Well, I think they have already succeeded in televising plays that have either currently been running on Broadway or have just closed. That was the case of Peter Pan, and The Skin of Our Teeth. They were both tremendous successes on television.

I do not see that having a pay-as-you-go television having a play produced on television, and having the audience pay 10 cents or a quarter to see it that night would encourage the audience who has already seen it to go and see it if it were running on Broadway, and I think that is what Mr. Bellamy meant by saying that the actors would have a longer and more successful run and more revenue.

I still think it would be a one-shot deal, and the actor would just have to make what might have been a 40-week run on Broadway on that 1 appearance on television, and unless they paid him accordingly it would not be worth his while to be on just 1 night on pay-as-you-go.

Mr. Cox. I think he was looking for what we have had described, by both the proponents and opponents, as the actor's share in the tremendous income that could be derived from pay-as-you-go television, and that, added to the proceeds from the normal run plus some possible increased interest in the drama in remote areas, might provide employment in that particular area.

Mr. Conaway. Mr. Cox, Mr. Chairman, I would like to answer in part, too, this question, if I may, if it doesn't do violence with the rules here.

I am not familiar with whether Mr. Bellamy was testifying as an individual or whether he was testifying as the president of Actors' Equity. To my knowledge, Actors' Equity has never officially taken any position on pay television.

Mr. Cox. He simply recites that he is president.

Mr. Conaway. Yes; so I assume that he is speaking as an individual, and as an aside he is also a member of AFTRA and has appeared on numerous very popular 1-hour television shows.

In connection with what Miss Falkenburg has said, there probably is no doubt that the great-name star would command a sizable figure, but, based upon a union viewpoint, our members not only are comprised of the great-name stars but many of the so-called rank-and-file people; and when you say that you are going to take a Broadway production and put it on, you are in substance saying that the American people are going to assume the below-line cost as to whether this is a smash hit or not. Now, if it is absolutely dull and not interesting, someone has made some money to help the theater recoup.

Now, what happens to the road companies, what happens to the traveling-show versions, for example, of Inherit the Wind, and that type of thing? No one in Omaha or Dallas or Birmingham, Ala., is going to pay $4.80 or $5.60 or $6.60 to see this show if they have seen it a week or 2 weeks prior for a quarter or 50 cents, or whatever it might be on pay television.

Senator SCHOEPPEL. Thank you very much, Miss Falkenburg.

The next gentleman we have is Mr. Lawrence Tibbett. I might say on a number of occasions—a good many occasions—I have had the pleasure of being present when you were swinging out through the midsections of our great Nation. We are happy to have you here today. I know you have a written statement. You may proceed in your own way.

Mr. TIBBETT. Thank you, Mr. Chairman. My statement, unlike that of Mr. Bellamy, is an official statement. I shall read a copy of the unanimously passed resolution passed at the AFTRA convention last year, 1955.

STATEMENT OF LAWRENCE TIBBETT ON BEHALF OF AFTRA

Mr. TIBBETT. The resolution follows:

AFTRA is opposed to pay television because, in our judgment, it will reduce the employment opportunities of our members, will adversely affect the entire entertainment industry, and is not in the public interest.

Although pay television might benefit a limited group, AFTRA believes it would reduce both the number of performers employed and the average income of all performers.

If a fee is to be charged the set owner for the privilege of viewing important television programs broadcast during the choice evening hours, it follows that the total free television audience would be substantially reduced. Reduced audiences would result in less expenditure for sponsored programs and less money available for public service and sustaining programs. Such a reduction in the free-television audience would discourage national advertisers from attempting to reach the large markets now available to free-television stations. Pay television would not, in our opinion, make up for the loss of employment in free television which it would cause. Its promoters intend to concentrate on repetitious showings of motion pictures and on televising numerous sports events for pay.

In addition to the self-interest of our own members, we must view the effect of pay television on other branches of the entertainment world. The amount of money which its promoters say they expect to extract from American families in their own homes is greater than the entire amount presently spent for admission to all forms of entertainment in the United States. If, therefore, the expectations of the pay-television promoters were realized, every branch of the entertainment industry would suffer.

Finally, we have a duty as citizens to view the interests of the American people as a whole. Many millions of families have bought television sets in the reasonable expectation that they would thereby be able to enjoy television without having to pay further for the privilege of viewing programs. We have the best television service in the world. It is making good and constantly improving use of the performing talents of our country. It is now being proposed that many television stations should, during the evening viewing hours, be closed to everyone who is unwilling or unable to pay. We must oppose a proposal which threatens such an injustice not only to the members of our profession but to the general public as well.

That is the end of the AFTRA resolution.

Mr. Cox. I take it, then, that it is the position of your organization that this reduction in employment would result largely from displacement of existing types of programs in favor of this recurrent showing of films and reliance upon sports as it actually occurs?

Mr. Tibbett. That is true.

Senator Schoeppel. Thank you very much, Mr. Tibbett, and you folks for appearing here today.

The next witness we have is Mr. Mort Farr. We shall be glad to hear from you, sir. You may proceed, sir.

Mr. Farr. Thank you, Mr. Chairman, members of the committee.

Senator Schoeppel. If you desire to read your entire statement, that will be all right. If you desire to have it included in the record and elaborate on any part of it, that is all right; however you desire. The chair is yours.

Mr. Farr. Thank you, very much. It is not long. There may be a few things that are repetitive in here in view of the previous testimony, but I think that I have covered each of my points rather briefly. I would say that I am certainly no authority on the broadcasting end, but if there is any way that I might be of service in regard to the retailing of television and servicing, I would be pleased to answer any questions.

STATEMENT OF MORT FARR, CHAIRMAN OF THE BOARD, NATIONAL APPLIANCE AND RADIO-TV DEALERS ASSOCIATION

Mr. Farr. My name is Mort Farr. I am a retailer from Upper Darby, Pa., and have been in the radio and TV business for over 30 years, but I appear here today as chairman of the board of the National Appliance & Radio-TV Dealers Association, to represent over 100,000 TV dealers who employ hundreds of thousands of salesmen and servicemen.

I might say here why I am here. About a year ago, I had an attorney from Washington who was going to represent the proponents of subscription television call me in Philadelphia to see if he might enlist the support of myself and my organization in the furthering of subscription television. I told him that I would look into it. I told him that I would study it and see if it was in the interest of either our dealers or the public we serve, and after going into this question of subscription television and making a thorough inquiry and study, I concluded that it was not in the best interests of the dealers and, rather, that it would hurt the dealer.

I do a column for a leading trade publication and for the dealers every month, under my own byline, and I did this column, last July, Subscription Television Will Hurt the Dealer. I want to say, too, that I did not have a single letter or reply from any dealers across the country, from this national publication, differing with my views, so that I feel that I am expressing, certainly not the unanimous opinion, but the opinion of many retail dealers, because I think we dealers have an obligation to the 36 million people who have paid us over $15 billion for over 40 million TV sets, on the promise of free entertainment. These people bought these sets on the assumption that the service would be free and full.

When you look at it, it hardly seems right to charge someone for the privilege of looking at his own TV set in which he already has a sizable investment. It is almost like buying a washing machine and having to drop a coin in to make it work. It does not seem proper either to charge for the use of our skyways that belong to all the people.

We dealers did not go on record with the FCC in regard to toll TV, as we felt that that body in its wisdom would certainly agree and appreciate the fact that under our present system of free TV that we had an excellent record of progress. Our growth has been phenomenal and healthy and has been the result of natural evolution without need for legislation or congressional action. We now feel that our Congress should see to it that this system is maintained and that the best interest of all the people will be served by continuing to allow this system to progress.

It was so effective that it created a new industry in faster time than any known. Cars took 30 years to reach the same saturation as TV. Refrigerators, 25; radio, 25; and so forth, and so forth.

TV advertising is a new business. An industry that in 1946 had 10 stations and only 10,000 sets. In less than 10 years telecasting has leaped from nothing to over a billion dollars a year, most of which has been in addition to what had been spent on other media, and all of which gained, except radio, which was largely owned by TV interests, who had faith enough in TV to set up their own competition. Actually, it is the advertising industry's fastest growing baby. This advertising is having a terrific impact on our economy.

And, Senator, if I may just remark, you spoke about this word "free," and perhaps because of the advertising bill, that the public is paying more for products. Very forcibly it was brought to my attention just 2 weeks ago in Philadelphia when the Campbell Soup Co. received the Howard G. Ford award for advertising merit, and it was indicated in spite of the tremendous sums—and they have a very popular TV program—spent on advertising, that the cost per can of soup is almost infinitesimal, and that the people are still buying that popular soup for just about the same price they did 25 years ago—a very unusual thing.

And then when you find cigarettes—practically the only way they are sold is through this medium of advertising—that they keep the price down, and it requires no selling on anyone's part.

I, as a salesman, have told my salesmen that we would certainly not have the opportunity for profit in selling if our groups were presold as many of these things are, and yet it is only a small part. In fact, I think it has been well stated today that it keeps the price of these commodities down by the very quantities in which we can produce them.

With the coming of color TV, which should be this year, we have the perfect advertising media when we combine sight and sound with motion and demonstration—and then add the realism of natural color. The sale of these sets and their effect on the economy, both from the standpoint of new volume for manufacturers and dealers in the sets, and the additional impetus given to promoting other products could well take up the slack in business occasioned by a softening in the automobile market.

By 1960 it is predicted that TV advertising expenditures will reach $3 billion, and by 1965 we can expect they will top $5 billion. This should certainly provide viewers with a lot of entertainment.

At the rate of progress of the past 2 or 3 years, during which the networks have greatly improved the scope of their offerings—there is really no limit to the quality of entertainment which will be telecast free in years to come.

The toll proponents are attempting to devise a remedy for a disease which does not exist. They say there are bigger things in store for TV audiences which cannot be provided by the current system. They have yet to come up with anything beyond the stature of a cinemascope movie that will lose its chief virtue of big screen, color, and detail when it is televised.

What's wrong with a medium that has already provided us with entertainment and culture and education—news and sports?

What are these great shows we are to have on toll TV? What is more exciting than the Rose Bowl—the Tournament of Roses—the Army-Navy game—the world series—fights and local sporting events—fine news services—comedy and drama with the top stars of stage and screen? Culture such as the complete Macbeth, Richard the Third, and the Sadlers Wells Ballet.

What more could we ask for?

How toll TV works is getting to be pretty well understood. The hard economics of the entertainment world are less clearly understood, particularly in the role they would likely play in the pay as you see.

Pay as you see is going to be driven by the profit motive that is the same as present day TV. That will not change. Some of the big TV stars are already casting envious glances at toll TV. If toll TV can bring in the grosses they hear about, they are going to switch to that medium much as they switched from radio to TV.

Would a sponsor be able to outbid the toll boys for future Kentucky Derbies? Mr. Walter O'Malley, president of the Brooklyn Dodgers, gave the proponents of pay as you see considerable ammunition when he envisioned a 50-cent charge for every set tuning in on a Brooklyn game. It would not be hard to imagine the club receiving $50,000 a game for these home viewers alone. Likewise the world series could gross at least 5 or 6 million dollars a game, and in a 7-game series, it would make the million dollars now paid by a sponsor insignificant. Sports seem like an important part of TV programing but actually baseball and football consume relatively few hours out of the annual program time, and today there are few championship fights.

How about these Broadway plays we hear about? There are only a few hits per year and many times these hits could not be brought into our living rooms. The most recent Pulitzer prize winner of Tennessee Williams' Cat on a Hot Tin Roof is hardly fare for small fry.

We hear a lot about culture and the opera, but keeping in mind the profit motive—if a popular variety show would bring in $10 million at the home box office and the opera, ballet or the symphony would bring in $1 million, which would the toll operator bring to his audience? The same as our present system does with its mass medium, it will try to please most people most of the time, and after all a station can only put on one program at a time and there are only a few choice viewing hours in a day.

I believe that the public needs to be informed about the costs of subscription TV. First, there is the cost of the decoder and coin box which might well run around $50 per set, plus $30 installation, which would cost the 36 million present owners some $1,800 million which, whether bought or rented, will have to be paid for by the user. This may cost more with the complications of compatible color TV. Pay television promoters say they will be satisfied if they get $100 a year from the average family. This is only $2 per week, and would not provide much entertainment at the fees mentioned. However, on this basis, today's TV audience would pay some $3½ billion a year. This is three times the amount now being paid by the public for all spectator admissions. It is more than they pay for shoes, doctors, or electricity. This, for viewing far fewer programs than it now watches without charge.

Under the present system of American TV, no set owner is deprived of a program because he is not as prosperous as his neighbor, but once the turnstile is placed in his living room, the families who rely most on TV entertainment and information would be hit the hardest because they are the ones who for economic reasons would have to restrict their viewing most. TV would no longer belong to all the people all of the time.

We may have to further enlighten these customers about the true facts of pay-as-you-see systems. First, it is important that the shallow nature of the research that has been done be exposed. The polls and questionnaires have been weighted to favor toll TV in that they ask, "Would you be willing to pay $1 to see a first-run movie in your home on TV?" If this question was followed by something like this, if the ability to get and pay for first-run pictures on home TV also involved the loss of your privilege to see the Rose Bowl, world series, and Gleason shows free, would you still be willing to accept toll TV?—the answer would be vastly different. Toll TV advocates say that the public want it. Sure! Based on the first part of the question. The favorable reactions were obtained from biased groups and from people who could not possibly have any conception of toll TV as it would actually work by swallowing up the free competitive system.

These surveys which seem to prove that the public is quite willing to pay for television entertainment are weighted heavily toward upper income groups who need television the least. It is the poor man with no money to spare and lots of kids to provide for who relies on TV for nearly 100 percent of his entertainment. By being deprived of the choicest free events—the Rose Bowl, the world series, and spectaculars—he will be the greatest sufferer; while those who can afford an evening out, rely on TV to a lesser degree, are the ones who have expressed their willingness to pay.

There has been a great deal of talk about testing procedures for pay TV. The fatal flaw in these proposals is that none of the evils of this potential talent monopoly would become apparent in any limited test. Even with a test conducted on a very major scale—such as in all UHF markets, which might be available to one-third of all set owners, who would convert to UHF—it would not test the basic proposition.

It is reasonable to guess that such a test would prove there was a good bit of money to be made by Hollywood and baseball teams, but it would not prove or disprove whether or not every top audience attraction would ultimately be sucked into the new system.

There can be no adequate test short of a situation in which the promoters of the Rose Bowl football game, for example, would have a clear opportunity to charge the television set owners anything that the traffic will bear. With a price tag of $3 million or more on the world series telecasts, those promoters will not withhold the games from television, until the box-office potential amounts to over $3 million. This would not happen during the test nor immediately upon adoption of this system, but would be inevitable as the toll system grows.

In short, these limited tests would be Trojan horses and would falsely prove that the toll system is a harmless addition to the current one.

If toll TV is tried but is found unsuccessful, there would be a loss to the public. An immediate effect would be that nearly every major sports event would be withdrawn from the free system in order to get ready for the box office. Television producers with good show ideas, the best actors, comedians, and playrights would all make themselves comparatively unavailable for free TV. Even a highly restricted type of toll TV would have this effect because of anticipation of big profits.

Television the American way has been a wonderful disseminator of news. It is a great molder of public opinion. It is a positive force to combat subversives. Television provides a vast audience for the great leaders who shape the destiny of America—Congressmen, Senators, Presidents, doctors, scientists, clergymen, and candidates. Our future elections will probably be more influenced by the appearance on television of the candidates than by any other single factor.

I feel that toll TV will hurt the public and hurt the dealer. In a comparison between the ability of free TV and toll TV to sell sets, it would be hard to conceive of a greater success than has already been achieved. Do the proponents of toll TV presume that a subscription system could have sold over 40 million sets in less than 10 years?

Why kill the goose that is still laying golden eggs? With color TV coming, there is a large certain market ahead created by commercial advertising programs. Toll TV could only complicate this situation and would be a parasite upon the industry expenditures to develop color.

We dealers have an obligation to see to it that we do not create another sales slump like the one that followed the first publicity on color television. If this question of free versus fee continues, there will be much confusion in the minds of our customers.

Let's continue the good old American way—the free way.

Mr. Cox. Could you tell us, Mr. Farr, again, what was that figure you gave for the estimated cost of installation of a decoder and subscription service?

Mr. Farr. Yes.

Mr. Cox. I think your statement says $30. I thought you said $50.

Mr. Farr. I said about $50 a set for the decoder and as much as $30 for installation.

Mr. Cox. Now, upon what do you base that estimate for the installation charge? The description of the device, as it has been given here by the proponents, is that the installation simply involves affixing it to the set in some way, the removal of 4 to 6 tubes, the insertion of an adapter plug, and the reinsertion of the tubes; now, why would that involve a cost on the order that you have listed here?

Mr. Farr. Well, in the first place, I think that the subscription television people have now found, through the first flaws in the demonstrations of these decoding devices, that it was so easy to bootleg the programs, that the thing had to be made more foolproof. When it went to UHF frequencies, it was complicated still further; and now that we are approaching compatible color, it is more complicated yet, and it isn't quite as simple.

In other words, we may go in and install a decoder device for a customer whose set wasn't working too good when we did it, who may blame the installation of that for poor reception, and that will have to be corrected; or it may actually not work as good after they have hooked that up, and servicemen today, with the wages they are commanding, it is going to be a costly thing. It isn't the type of thing that consumers would be able to do themselves.

Mr. Cox. In other words, this figure would include perhaps more than the initial installation—further calls in order to get the thing actually working in an acceptable way?

Mr. Farr. That is right, and maintain it. I would say that that cost would include what it would take to maintain that device for a year.

Mr. Cox. Now, do you anticipate, as you suggest here, that there might well be disputes as between the subscription franchise holder, who either owns or has sold the decoder, and the set owner, as to what is responsible for any defects that develop?

Mr. Farr. In fact, our dealers are of the opinion that perhaps there will be disputes also between the persons servicing the decoder device and the set—one blaming it on the other—unless both were being serviced by the same serviceman. We already are experiencing, in our own service organizations, an antenna man saying it is the set, or the set serviceman blaming the antenna. When we get to this new device the dealers are a little apprehensive, if they wouldn't get the franchise for the decoding device, that they may eventually lose the service business also, because it might be in the public interest, or in the best interests of service, to have a single firm servicing both.

Mr. Cox. And you would assume that the franchise holder of the subscription system would control the service on the decoders, and that therefore might exclude present service organizations?

Mr. Farr. From servicing the sets.

Mr. Cox. Well, of course, he is going to have to have a reservoir of trained people. I would assume that it would be easier to train your servicemen to service his decoder than to go out and train a completely new body of people to do this?

Mr. Farr. I would say so, but I have been rather apprehensive about some of the remarks of Commander MacDonald—particularly one when someone asked him about the capital for this subscription television service. He indicated that these franchises would go to amusement people who knew something about amusements, and who had the capital to take a franchise for an area and go through with the installation and the rental or sale of these decoders. So far I haven't seen any evidence from any of the proponents indicating that this was a television dealer's province; that the business would come to him.

Mr. Cox. Are you apprehensive that if subscription service were started, and had some of the consequences that you suggest, that this would result in a lessened demand for additional television sets, and for replacement of television sets? Because certain programs no longer became available on a free basis, a certain part of the market would no longer be interested in television?

Mr. FARR. Most certainly. The fact of the matter is, people spend money for entertainment, and I believe they have spent, now, out of proportion to their income for television. But if they are going to have to spend it for the programing, it is going to be much longer before they can buy a new one; and I believe even some of the other money which should go into buying appliances, and other things that make the American way of life, would be put into that box office in the home.

I can conceive of men being so interested in sports that they would actually let their family go hungry to be sure to get the sporting events that they would be interested in.

Senator PASTORE. Well, now, that is going pretty far, isn't it?

Mr. FARR. Well, it isn't going a bit far when you recollect that I sold television sets in South Philadelphia during the early days, when the cheapest set was about $375, where a family sat on an orange crate to watch it; and where many times we have put $600 and $700 sets in a home where you didn't think the home was worth that, and they will do more so—you appeared to be a sports fan this morning. You indicated to me you would like championship fights on television, and I know men in Philadelphia, back in the days when workingmen made $30 a week, who spent a good portion of it to go out for fights because they were fight fans.

Senator PASTORE. I know, but it is rather ironical to argue against this and say this thing is so good people would cut out smoking to use the money to get subscription TV.

Mr. FARR. I didn't say smoking. [Laughter.]

Senator PASTORE. Or what have you.

Senator SCHOPPEL. I have no further questions.

Senator PASTORE. Now, let me ask you this question: You raised the subject of repair. I think you ought to clarify the record just a little bit on that. This mechanism, of course, is not too well understood by most people. You say that a situation may arise where the public interest may be injured, because a contest might arise between the set maker, or the set seller, and the decoder as to whose responsibility it is in the case of a breakdown.

Mr. FARR. No, sir, you misunderstood—between the retailer or the service department or a service organization who are servicing today—an existing set—and after this decoder is placed on it, if the set would fail—and it could, mathematically it could—or just coincidentally, or it might be due to something that was touched, then the set wouldn't be operating properly and the responsibility might be placed by the viewer. He would say, "It was the decoder"; and that man would come back and say, "No, that is your set; there was something wrong with the set." I am talking about who would accept the responsibility for the set not operating as it did previously on free programs, say, if we had part toll and part free; and if that was the case, it might be that the franchise operator of the devices might want also to service the set—to assume the entire responsibility, rather than split it.

Senator PASTORE. Mr. Farr, I am sorry I wasn't here at the beginning of your testimony. I was on the floor of the Senate at the time, but I have just picked up your manuscript and it says here that you appear here as the chairman of the board of the National Appliance and Radio-TV Dealers Association. Are they the ones opposed to this?

Mr. FARR. I also write an article each month about things that affect dealers. Last July I wrote this one on subscription TV hurting the dealer.

Senator PASTORE. Is that your personal opinion?

Mr. FARR. I clarified that. My first introduction of this was by an attorney in Washington asking me to have the dealers lend their support to subscription television, and I looked into it, studied it, talked to dealers, looked over the entire situation, then wrote this article, for which I haven't received a single dealer's comments indicating that my views were wrong. I don't say there aren't some dealers who might feel the other way, but no one wrote to me or communicated with me.

Senator PASTORE. I don't question you. I am just trying to get it on the record whether your appearance here is in an official capacity.

Mr. FARR. Oh, yes, sir.

Senator PASTORE. Speaking for all of the dealers in the association?

Mr. FARR. I suppose as much any anyone in an elective job. I am a past president of the association; I have represented our association in Washington on excise tax matters and all related matters for some years.

Senator PASTORE. I see. And did they pass any resolution to this effect?

Mr. FARR. No, we haven't passed any resolution. Also, in the beginning of my testimony, we kind of felt that the FCC would well take care of this. We didn't think that this thing could ever come.

Senator PASTORE. I don't want you to be apologetic. What I am trying to get on the record here, because it will be of interest to people who read this record, is whether or not this is a concerted action or merely an expression on your part, even though you may be a leader of the organization expressing your own opinion. I would like to have that on the record, whether there has been a concerted effort or an organized effort; whether this is the organized feeling of the association of dealers, because there are a lot of them in my State, and there are a lot of them in every State, and we would like to know whether this is an official action on the part of this association, or whether you are merely appearing here as an individual, while you may be the chairman of the board.

Mr. FARR. Well, of course, we are not very cohesive. We are coast to coast, but we have a few thousand members. Last July we put out a questionnaire on which, again, I didn't receive any comments which didn't agree with the statements that I have made; and I have many—I have a number of letters with me, from dealers who indicated that they felt that this attitude was the correct one as far as the dealer was concerned.

Senator PASTORE. In your manuscript you say, "I appear here today as chairman of the board of the National Appliance and Radio and TV Dealers Association to represent over 100,000 TV dealers who employ hundreds of thousands of salesmen and servicemen." Now, you realize, of course, that the opposition doesn't have the opportunity to cross-examine witnesses, and sometimes we have to conduct that ourselves—not expressing our own point of view, but merely to develop the record. Now, are you here today representing 100,000 dealers who feel that this is as you say?

Mr. FARR. Well, there is no other dealer organization. We speak for the dealer with the Federal Trade Commission in helping to promulgate rules. We did on excise tax matters and before the Federal Reserve Board. I wouldn't say it was unanimous. There might have been some dealers who wanted regulation W continued.

Mr. COX. I think what the Senator is getting at is that there has not been any formal action by a convention, by an official meeting of your board, or anything of that sort which has officially put the entire organization on record as opposed to pay-as-you-see television?

Mr. FARR. No, sir; except this questionnaire was sent to all of the board for comments and none came back adverse.

Mr. COX. That was sent to the members of the board rather than to the general members?

Mr. FARR. That is right. We have 22 members of the board. I would say that our dealers have been subjected to considerable material from proponents, of which I have many things here.

Senator PASTORE. Have you discussed this matter with many people who are interested in television?

Mr. FARR. It has been a matter of——

Senator PASTORE. Customers?

Mr. FARR. It has been a matter of considerable interest to me. It was a year ago that I got interested in it, and I have followed it and watched its progress—talked to customers, talked to dealers, and kept myself abreast of what was happening.

Senator PASTORE. I want to thank you, Mr. Farr.

Senator SCHOEPPEL. I would like to ask one question for the record. I notice what you had to say about some disputes or different points of view of the servicing organizations, and with reference to particular makes and types of sets. Don't you still have that very same situation prevalent today; haven't you run across that very same situation today?

Mr. FARR. You bet I have. I am just apprehensive that it may further complicate it.

Senator SCHOEPPEL. I can recall on three distinct occasions—I have a television set; I was told a tube went out; I called a service organization, a reputable one. They came out. They allegedly made some changes. I paid the bill. It flicked off, it didn't work. I said, "I would like to have those parts. I don't know anything about it, I am just curious about it, so let me keep them." I called another one. He came in and he said, "Well, what went on here?" He made it work. Then he said, "Well, it ought to be moved to another place in your apartment." It worked there all right before, and apparently the two of them there, allegedly as reputable as possible, didn't agree on the same thing. Well, now I have got it, and the public paid the bill—just 1 part of 164 million, part of the public, we paid the bill. So I can't quite envision too much difficulty developing that we already haven't some of us experienced in the ordinary run of things.

Mr. FARR. Senator, if I may remind you, this is the most complicated piece of apparatus in your home. I marvel. I am one of the pioneers. I was an old hand. I had a license issued to me in 1923, 3 M. E. And when we get into television and take a look at that chassis, we don't wonder it breaks down; we wonder it ever works.

There were over 2,000 components in the first television set, a lot of connections. I don't know how we have trained men to take care of them. Occasionally the man may be professional, he may do his best. After 6 weeks of work, I had a doctor ask me for a recall—he wanted me to fix it after that. If I go to a doctor today and next week develop pneumonia, I pay the fee; and if he makes a mistake he buries it.

Senator SCHOEPPEL. I agree that the scientists have done a phenomenal job. They tell us the same thing is going to happen in color television, much more complicated, but nobody is getting scared about trying to make it work. We make these things work in free enterprise America. We will whip that thing after awhile, and I rather envision that we will have some hearings—some of us will be around here, maybe I won't, but there will always be Senators here. We will be hearing again about something new and something different, and then we are going to look back on some of these records and say, "Well, the boys sure missed a bet back there, but it is this thing called evolution."

I believe that we have got to be realistic about this thing and we have to have the broadest gage approach on the record—the most practical approach based on experience. And we are getting a lot of conjecture in these hearings, because all phases of it have not been tried. I just rather envision that some rather obscure individuals, now today, in a few years will be the experts; and they will come up with something, and simplify a lot of these things and make it look awfully sick—what we were worrying about today, in the years to come. I hope that is the case. I believe it is the possibility. But, frankly, when you mentioned about this packing it on the set—maybe on the antenna and something else—we have that with us today. It may be aggravated and multiplied, I don't know. But if you can get away with that and get the perfection in this thing, you are going to be a miracle man.

I don't think we will ever get to that point with our appliances of any type or character. I just took my Buick automobile down; I have been having some trouble with brakes. I drive on stretches and under the speed limits, and then something goes wrong with the brakes. I take it down to a reputable dealer and he says, "You need this and that," and he gave me a bill for $65. I paid it. The same thing happened the next week. I take it to another one because I was caught, I couldn't go; and he said, "What the Sam Hill did they do?" He says, "Why, you've got a cylinder in each one of these wheels; that was your trouble." So we have disagreements and disputes as to who the experts are and what is the reason for a lot of these things. So we have to take it and smile. We don't like to pay these bills, but I guess we have to do that for experimentation, for progress. So I think you are a little farfetched when you say there is going to be a lot of difficulty develop there.

Mr. FARR. Senator, I am not afraid of progress, and I am a proponent of color television. I am probably, at the moment, the biggest retail dealer of color television in America, of which I am justly proud. I have had my men trained. I have learned what I can.

Senator PASTORE. Stop right there. What does a set really cost? My kiddies are getting after me. What does a color television set cost?

Mr. FARR. Senator, what is your address? [Laughter.] At the moment $695 will buy a very good 21-inch set, but I would say to you—I guess RCA wouldn't like me for this—by June it will be a hundred dollars less. So let the kids wait for Howdy Doody until June, and you will probably get it at $595. It is well worth it. It is perfected. It is beautiful. And I have no fear about that, Senator. The only thing I was worrying about was this divided responsibility for this decoder device—who would have the responsibility, my serviceman or the other one—and I think your explanations of this lack of responsibility, of acknowledging responsibility, as to who guessed right or what was really the trouble. A man diagnoses in all good faith, and you know sometimes a doctor's diagnosis looks identical with the last point, but that isn't what is wrong with it.

Senator SCHOEPPEL. I recognize that, but I just thought I would throw that in, because that is what happened to Andy Schoeppel. I regret having to leave, but there are matters on the floor of the Senate.

Senator PASTORE (presiding). All right, Mr. Farr. Our next witness is Mr. Radford.

STATEMENT OF WILTON D. RADFORD, NEW YORK CITY

Mr. RADFORD. Mr. Chairman, I have this brief statement I have written.

Mr. Chairman and gentlemen of this committee, as a preface to my remarks I wish to read the following statement:

I am one of the 38 million television set owners in this country who have an investment in television sets amounting to $13½ billion. Of course, I took those figures from expert testimony that I have read about.

At the present time I am retired. I have never been connected with radio or television, my business before retirement being connected with the building industry. I have watched television since December 1948, have enjoyed the many programs furnished, have enjoyed the programs on all public questions, have listened through television to both sides of all political questions, particularly enjoyed studying the personalities during the Army-McCarthy hearings—and drew my own personal conclusions: That if all of the public hearings, like this present one now being held, could be televised or broadcast, more voters would take interest and in time they would have the effect of a personal referendum.

As a private citizen, I recognize that this question of pay-as-you-see television is nonpartisan, and that both Democrats and Republicans are primarily interested in the people's side of this question.

I am somewhat amazed at the small amount of publicity which the press has given on this subject, and to the best of my humble ability I have alerted my friends and neighbors to get busy and ask their representatives where they stand on this important issue which affects their constitutional property rights and their rights of free press and free speech.

I was fortunate to have listened to Mr. Edward R. Murrow's broadcast on June 14 last covering the subject of free television viewing, and he gave the statements of the people who were advocating subscription television and those who were opposed to pay-as-you-see television. I requested a copy of this See It Now program, and my sentiments, and probably the sentiments of many more set owners, were best expressed by the words of Dr. Frank M. Stanton, president of Columbia Broadcasting System, Inc., who stated as follows, and I quote:

CBS opposes pay television because it would hijack the American public into paying for the privilege of looking at its own television sets. This is a betrayal of 34 million families who have already spent $13½ billion for their sets in the expectation that they would be able to use them as they wanted without paying for the prerogative of watching.

I would like to add a few remarks and observations to qualify my statement to this committee.

This vital issue will be settled by the people; this is my reason for appearing personally.

Mr. Chairman, I was fortunate in listening that night, because I have always listened very attentively to those speeches or those broadcasts of Mr. Murrow, and also all political speeches, and I want to say this: It was quite remarkable to me that after that McCarthy-Army hearing every man on the street that you met—or woman—regardless of their politics, thought that there was nobody like Hon. Carl Mundt for his fairness and his presiding qualifications. I mention that, because I think he deserves that compliment, and I am glad to say it in public.

Now, Mr. Chairman, I read—it was about a one-line publicity notice, the first part of February; I threw this aside and filed it—that there was going to be a resolution introduced by the president of the New York City Council about 2 days after I read this notice, and just by chance I got into it, and I don't know but I might be the only single set owner here today, and I am sure I was the only one at that meeting. It is surprising to me how little the public knows about this. I met a lady the other day—and a highly intelligent neighbor—and she said she wasn't opposed to pay-as-you-see television because "I am paying $6 and $7 a seat for a first-class Broadway show, and I understand that they are going to put a meter on my set and I will be able to put a dollar in the set and look at the show." I didn't argue with her, but before I——

Senator Pastore. You didn't argue with her, but did you agree or disagree?

Mr. Radford. I didn't want to make her feel that small, because those were not the facts. I just said, "I can't do anything about it." I treated it in an offhand way.

One of the presidents of a baseball club in this Murrow speech which I have quoted stated that baseball could not survive without television receipts, and he thought 50 cents a game would be a fair price.

Now, a great many of you honorable gentlemen of the Senate have been interested in a subject that I have been reading in the newspapers for the past 2 years—juvenile delinquency. And if by any chance pay television ever went over, there is one place where the youth who must see a game—and if their parents couldn't afford to put the 50 cents in—could go: Every tavern and bar in the land would have free television of baseball, and the bartender would drop in 50 cents. That is something I speak about.

That isn't going to win this case, and before I go too far, and so that you Senators and members of this committee will understand, that I don't take life too seriously, I don't think this will ever go over, because I think that there are men of both parties in Congress and in the Senate who have too much commonsense to upset this whole lineup. I think that the television people and the advertising people together have done a pretty good job, and it is quite significant to me that even in the last 48 hours before I left New York City one of the fine newspapers has an editorial about the terrible commercials, and the fact that the people are being fooled all of the time. Now, the people that would criticize the commercials the most would be the ones that would scream the loudest if pay-as-you-see television is ever put over.

Now, just the little that I have learned from this I have learned from experts, and I quoted—I wouldn't know these men that I quoted if I stumbled over them, and I don't know anybody in this room, but my good wife, whom I brought down with me—but I do think——

Senator PASTORE. Let me ask you, sir, because I am very much interested in this—and this to me, if what I am thinking is true, symbolizes the very efficacy and vitality of our system of government—Did you come down here on your own expense?

Mr. RADFORD. Yes, sir; definitely.

Senator PASTORE. Just representing yourself, out of your own pocket?

Mr. RADFORD. Representing myself, but I will tell you why I did that.

Senator PASTORE. I am not quarreling with you. I just wanted to find out.

Mr. RADFORD. I am going to tell you. You have asked me a question, and I don't want you to misunderstand this. This isn't self-praise. From the time of Theodore Roosevelt I became an independent thinker. I voted for both sides of the party. I happen to be an enrolled Democrat. I am going to mention this because you asked me a question.

Now, I have been interested, and I came down to hearings here on the Home Owners' Loan Corporation when a Senator introduced a resolution to turn it back to the very people that caused it to be created to save homes, and it finally qualified and the Government didn't lose a dollar.

Now, if you will let me stick on this subject a minute, I have read between the lines, and I may be wrong, but I think I am right. Every once in a while somebody knocks the Federal Housing Administration insurance end of mortgages. I was in the building-material business, and in Greater New York City and metropolitan Long Island, before that law was put on the statute books, the financing of individual homes was a highly organized racket. That is a strong statement, and I can prove it, for I was put out of business by it.

But every once in a while lately, if you read through the lines, some real-estate man will say—some of the mortgage companies stand up for it; they will say, "Well, you can do without this insurance; it isn't necessary any more." That is some of the second-mortgage fellows trying to get back in business.

Now, Mr. Chairman, I have given you a brief outline of why I came down here. I was in civics in the county of Queens, where I lived from 1913 to 1948, and I made this statement brief for two reasons: I don't think anybody will misunderstand what it is about, and when I leave here at my own leisure I am going to send one of these to all of the civic groups around the metropolitan district that I know of.

Senator PASTORE. Do you do this all out of your own pocket?

Mr. RADFORD. Yes, sir; but this didn't cost me a lot of money.

Senator PASTORE. I shouldn't think so; but it cost some money.

Mr. RADFORD. This statement that I got up I typewrote myself originally and paid about $4.50 to get a hundred copies.

Senator PASTORE. I just think it is marvelous; that is all. I think it exemplifies the spirit of America—an individual who becomes so intent on the problem that he actually writes out his own speech and comes down here as an independent citizen and is given the opportunity to express his opinion—and we are honored to listen to you.

Mr. RADFORD. I am not ashamed of the fact that I haven't too much of the worldly goods, but I am rich in spirit—I will put it that way.

Senator PASTORE. Well, no one can ever question that.

Mr. RADFORD. Now, I have 2 sons, and I have 4 fine grandchildren. They live in the suburbs. They cannot always take these children to a movie because they would have to get a babysitter for one of the children. Their greatest diversion is television.

As far as I am concerned, if the pay-as-you-see goes over, I will just pull the plug and it won't bother me a bit, although I am against it, but I think it is absurd.

Now, here is another thing: I think if the Commerce Committee of the Senate advocates fee television it will create unfair competition in restraint of trade, and I will tell you why I think that: Because just 1 expert said—and he named the television program—that I Love Lucy program costs today about $85,000 to put over. If one-third of the people listen to that they will take in three times the amount of money. Now, I would just like to see if I am reasoning along the right lines. Suppose if the pay-television people come along and say to the sponsors, "Look, you give us $85,000, and we will give you 5 percent of the monthly take." Well, if they are human, they will throw over the free end of I Love Lucy and take it.

Let us be practical and honest with ourselves. That would be business. I think it is economically unsound, and I think it will demoralize the entire industry and put many thousands out of jobs, and also demoralize advertising to some extent. There would be a curtailment of free speech and free press; and I say again, commercial TV has done a good job and commercial TV has improved since the day I started listening to them.

Now, one of the good Senators, and there is some publicity on this, a piece about that high [indicating] in the New York Times, quoted the Senator from Ohio——

Mr. COX. Senator Bricker?

Mr. RADFORD. No; that other Senator.

Mr. COX. Senator Bender?

Mr. RADFORD. No; you know his name. He was co-Senator with the late Senator Taft; he was Governor of Ohio—Senator Bricker—and he is afraid they will get too much political power.

My goodness, they have given all sides of the questions and it is marvelous. The reason I spoke about televising these meetings that you have, these hearings. I never knew him; everybody respected the late Senator Taft for one reason. When Mr. Taft was on television—and I observed it the first time I ever saw him on television—he never indulged in doubletalk. Senator Taft gave direct answers and everything was right to the point, and if he thought a question was foolish, he told the whole Meet the Press so.

I mention those things because I think it is important for you to know. Now——

Senator PASTORE. Well, I want to subscribe to that. He was on the other side of the political fence and I disagreed with him most often, but I will agree with you that he had the courage of his convictions and whatever he believed, he said.

Mr. RADFORD. He was never a doubletalker, and neither was Truman ever a doubletalker on television.

Senator PASTORE. Now we are all even. [Laughter.]

Mr. RADFORD. But, Mr. Chairman and members of this committee, I want to bring up the point what a wonderful thing it is to have all of these things televised. It is really marvelous, because you would be surprised that me in the living room, and you in your living room, see the fellow; you can tell in a minute. You could tell at that hearing I mentioned when somebody was trying to get over that side of the truth.

Mr. Chairman, I do not want to take up too much of your time. I have spoken briefly. There isn't a single question on the technical side of this question that I could answer. I know nothing about it, except that when in 1948 I bought a television and asked the chief engineer of the company to show me how to run it, I ran it for 8 years and spent $25 expense money to have it fixed, and it is still running. I cannot answer any questions technically, but I hope that I have left you some food for thought. And I thank you for your courtesy.

Senator PASTORE. All right, thank you very much. Now that is the last witness that we have and I understand that we will meet at G–16 tomorrow at 10 o'clock.

Thank you all for appearing.

(Whereupon, at 3:55 p. m., the committee adjourned to reconvene at 10 a. m. Friday, April 27, 1956.)

TELEVISION INQUIRY

FRIDAY, APRIL 27, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room G-16, the Capitol, Hon. Charles E. Potter, presiding.

Present: Senator Potter.

Also present: Wayne T. Geissinger, assistant chief counsel; Kenneth Cox, special counsel; Nicholas Zapple, staff communications counsel.

Senator POTTER. The Committee will come to order.

This is the continuation of the hearing on television, and this week it has been primarily on the question of subscription television. I would like to submit for the record a statement by ABC which will be made a part of the record at this point.

(The statement referred to is as follows:)

STATEMENT OF AMERICAN BROADCASTING CO.

American Broadcasting Co. welcomes the opportunity of submitting a statement to this distinguished committee on the question of pay television, particularly so because it is ABC's position that this question is one which Congress, rather than the Federal Communications Commission, should decide.

The pay-television proposals have provoked much argument about whether the FCC has authority, under existing legislation, to approve any form of subscription television and how, if pay television is authorized, this mechanical-electronic device, so fundamentally at odds with basic ideas concerning the permissible uses of the public domain in the radio spectrum, could be accommodated within the existing regulatory framework. Briefly, it is ABC's position that the Communications Act of 1934, as amended, does not give the FCC the authority to establish a subscription television system and that subscription television is a hybrid which defies classification within any of the categories of radio and television service recognized in the Communications Act.

THE CONGRESS SHOULD ASSERT ITS JURISDICTION OVER PAY TELEVISION

Pay television raises complex and difficult legal and policy questions. So far as the legal questions are concerned,[1] their difficulty arises in large part from the fact that in this area the intent and desire of the Congress has not been made clear. In the absence of a clear expression of national policy by the Congress, there exists, in effect, a legal vacuum. This is a field, therefore, in which the Congress should assert its jurisdiction whether or not the existing statutes can, by tortured construction, be interpreted as giving the Commission present authority.

Briefly, the legal arguments concerning the FCC's authority to establish a subscription television system center around the legislative history of the Federal Radio Act of 1927. At that time, radio broadcasting was in its infancy (television was only a laboratory dream) and its further development was a

[1] There are attached as appendix A, the memorandum of law submitted by ABC as part of its comments in the FCC's pay television rulemaking proceeding, docket No. 11279, and as appendix B, the further memorandum of law submitted by ABC with its reply comments in the same proceeding. (These appear beginning at pp. 1386 and 1393.)

matter of speculation. The congressional debates on the 1927 act included some comment on the possibility of a radio service in which a direct charge might be made to listeners. Some statements were made which can be construed as approving such a service; other statements clearly disapprove it.

At the time of the passage of the Communications Act in 1934, the pattern of the broadcasting industry as a free service to the American public was well established. It is not surprising, therefore, that the debates on the 1934 act contained no reference whatever to subscription radio, much less subscription television.

This meager legislative history has been subjected to extensive analysis. Elaborate legal theories have been erected with no basis other than casual comments by 1927 Senators and Congressmen and unexplained deletions from the 1927 act. No amount of legal theorizing can supply what is not there. The facts are clear that subscription radio and television is a subject on which the Congress has not spoken its mind for approximately 30 years, and then only in the most incidental and inconclusive manner.

The FCC in common with other similar agencies is an arm of Congress. The purpose of such agencies is not the making of national policy but its detailed application. The limitations on their functions are well recognized. A leading authority on administrative law has said, "The legislative process is especially qualified and the administrative process is especially unfit for the determination of major policies that depend more upon emotional bent and political instincts than upon investigation, hearing, and analysis" (Davis, Administrative Law (1951), p. 57). Mr. James M. Landis, who is counsel for Skiatron TV, Inc., one of the proponents of pay television, has written "The responsibility for fashioning a policy not only of great economic importance but also one that has divided the faiths and loyalties of classes of people cannot appropriately be entrusted to the administrative" (Landis, The Administrative Process (1938), p. 55).

No one can say that to abandon the very basis upon which our radio and television industries have, from their inception, been built would involve a major policy decision "of great economic importance." Nor can anyone deny that pay television is highly controversial. As Commissioner Lee points out in his article in Look magazine favoring pay television, the FCC subscription television processing has produced thus far nearly 24,000 individual comments, filling 69 volumes, or more than 18 feet of proposals, counterproposals, and controversy. No other proceeding which the Commission has ever conducted has produced anywhere near this volume of comments.

Thus pay television is precisely the type of question which, the authorities agree, should not be left to the administrative but requires resolution by the Congress. ABC urges that Congress assert its jurisdiction in the matter.

THE ACCOMPLISHMENTS OF FREE TELEVISION

The American system of free television, in the short space of 10 years, has provided the people of the United States with more television broadcast stations, more television receivers, and more television programs than are available to all other peoples in the world combined. Notwithstanding the 4-year "freeze" on new stations and the shackles imposed by unfortunate allocation errors which the FCC has failed to correct.[2]

Free television can be seen today by 90 percent of the American public, in approximately 35 million homes. This remarkable growth, which no other industry can claim in as brief a period of time, has been accomplished without a charge on the viewer—without a coin-grabbing gadget in the home. Those who have contended that television was doomed to failure without a box office have been proved false prophets.

Progress in television programing has kept pace with the expansion of television circulation. Television has brought the worlds of entertainment, sports, news, government and education visually into the American home. In the field of government, television has shown the American people the efforts of their elected representatives engaged in committee hearings on matters of national importance; the President's state of the Union and other messages to the people;

[2] ABC's plan for the correction of these errors has been discussed in earlier testimony before this committee by Ernest Lee Jahncke, Jr., vice president and assistant to the president of ABC. The adoption of this plan would make possible 3 or more television stations in practically all the first 100 markets in the country, as well as substantially increasing the possibilities for competitive television service in the smaller markets.

various addresses by leading personages in government; extensive pictorial reports of national, State, and local elections creating fuller understanding of this most important demonstration of democracy in action; day-by-day news coverage, both film and live, of the happenings which mark our times; weekly panel discussions in which the vital issues of both domestic and foreign policy are analytically presented to the forum of public opinion. Plans are presently being made for televising the political conventions which will take place during the summer of 1956. The American system of television has created better informed citizens with a greater awareness of their responsibilities.

Through television, the children of America have been awakened to the world outside. Carefully selected educational programs have exposed these growing minds to new and wondrous experiences previously unencountered within the narrow confines of a child's life. Through weekly programs, children are visually taken to the zoo, the science laboratory, historic points of interest; exposed to the fascination of books and music; stimulated to make toys and other playthings with their hands; and, of course, entertained. Entertainment of children occupies a substantial position in the American system of television, and efforts are constantly made to insure proper quality. Many children's programs have received commendations from groups throughout the country interested in child welfare and development. ABC's the Mickey Mouse Club indicates the type of presentation which satisfies a child's needs for entertainment in a constructive manner.

Television presents an extensive selection of dramatic programs weekly. During the course of its dramatic development, television has utilized material from the legitimate stage, classic, and current short stories and novels and material from an entirely new school of writers who have grown with the industry. Dramatic material written for and first presented on television may now be seen on the legitimate stage and in motion pictures. In like manner, television has developed new and refreshing talented actors and actresses who have carried their now recognized abilities successfully into other areas of entertainment. This is indeed an accomplishment for so young an industry and a major contribution to the dramatic arts.

Motion pictures and dramatic presentations of the legitimate stage, after realizing their theater potential, become available on free television. Other dramatic presentations are immediately available on films especially made for television. A perusal of the program schedules of ABC and the other networks shows that the American public is being furnished a countless number of successful dramatic plays as well as music and other entertainment.

American television has presented an impressive schedule of sports events from the time that remote telecasts first became feasible up to the present. During the past 2 years practically every phase of sports activity has been available on the television screen. Coverage ranged from the famous Bannister mile in Vancouver to the world series; from the Run for the Roses at the Kentucky Derby to the traditional bowl games on New Year's Day; from basketball to baseball to boxing with seven championship bouts during 1955. Each Saturday afternoon during the fall, network television has brought college football games into television homes.

It is not, of course, our position that there is no room for improvement in television programing. But the important fact is that improvement is taking place daily and this improvement will continue. There is no occasion to levy a tribute upon the American public in order to accomplish it.

The proponents of pay television would have you ignore this continuing improvement. They persist in comparing their grandiose plans with television programing, not as it is today, but as it was a few years ago. They also persist in asserting, in the face of overwhelming evidence to the contrary, that television must have a box office.

PAY TELEVISION WOULD ADD NOTHING BUT A PRICE TAG

What will pay television offer in the way of program fare that is not already available? Its proponents are in fact hard-pressed for an answer, but they speak glibly of first-run movies, Broadway plays, and championship fights.

As to movies, ABC is now providing three high-quality movie series, Afternoon Film Festival, Famous Film Festival, and Film Fair. Famous Film Festival has included such excellent films as The Red Shoes and The Cruel Sea. The audience ratings of ABC's film series indicate that they are eminently acceptable to the public. Recent developments in Hollywood have enlarged the number of first-quality movies available to free television.

So far as championship boxing is concerned, ABC's Wednesday night fights series included, on October 19, 1955, the lightweight championship fight between Wallace (Bud) Smith and Jimmy Carter, and on November 30, 1955, a welterweight championship fight between Carmen Basilio and Tony DeMarco. On March 14, 1956, Basilio and Johnny Saxton met in second welterweight championship match. Of the 11 championship bouts in 1955, 7 appeared on free television. As has been noted above, free television provides other sporting events in profusion.

In the field of drama, free television now provides several hour-long dramatic shows each week. In addition, there are frequent 90-minute shows. The people of the Nation now have the opportunity to see without charge many more plays in a year than a professional Broadway drama critic.

To obtain the support of the lovers of opera and ballet, and of those who decry the failure of television to make fuller use of its educational potentialities, the proponents of pay television cite these areas of programing with the implication that subscription television will result in more programs of these types. Because of the capital investment necessarily involved in attaching coin-grabbing gadgets to 35 million receivers, it is important to the success of pay television that the turnstiles be kept moving. If the proponents are sincere in their demand for only a limited number of hours on existing facilities, it will be vital to the success of their system that the garbled programs have mass appeal.

If a ballet will gross X dollars and a situation comedy 10 times that amount, it would be naive to suppose that the ballet would be presented by pay television in preference to the comedy. Consequently it is difficult to understand how cultural and educational programs will receive any attention from a system financially dependent on the number of viewers, if restricted to a few hours a week. There are also situations where many will watch for free but will not pay to see.

With a limitation on the amount of time in which subscription programs may be presented, only those with a mass appeal and thus a high revenue potential will be carried. Pay television, to keep the turnstiles clicking, must program for the largest possible audience. So long as more profitable material was available, pay television could not be expected to present such persons as 1955 Peabody Award-winning Quincy Howe of ABC, who won his award for a program series promoting international understanding, and Dr. Frank Baxter, who won his award for an educational series on Shakespearian drama.

Only when the last possible dollar was being wrung from mass audiences would pay television seek to till the less fertile fields of minority tastes. This would not occur until pay television had most of the broadcast day and existing facilities to itself. But when that day arrives there would be no free television.

Thus it is clear that pay television will add nothing, except a price tag, to what the public already enjoys.

TELEVISION NEEDS MORE OUTLETS TO PERMIT COMPETITIVE GROWTH, NOT A BOX OFFICE

Recent statistics of the television industry establish clearly that it is not more economic potential which television needs, but more outlets to permit television more adequately to realize the tremendous potential of advertising revenues that are already available. In the final quarter of 1955, national advertisers were buying television time at the rate of more than $880 million a year. By now that figure is undoubtedly considerably higher. And it does not include the sizable sum being spent for television advertising on the local level. These revenues of free television are being produced by a national system of only about 450 stations, with markets which could obviously support 3 or more stations still limited to only 2 and in some cases to only 1 station. (By the most conservative estimates, free television could now support more than 600 stations. It is only allocations, deficiencies, and delays which prevent this number of stations from being on the air today.)

The lack of an adequate number of outlets for nationwide distribution of programs is seriously handicapping ABC in its competitive struggle with CBS and NBC. ABC's accomplishments in the program field are not inconsiderable, as witness the fact that in the last 2 years, eight of the major awards by the Academy of Television Arts and Sciences, the so-called Emmy awards, went to ABC programs and talent. But good programs must have national audiences to justify their expense. ABC's inability to obtain a fully national audience limits its ability to produce programs and to retain the outstanding programs which it has already developed. That an increase in the competitive opportunities for ABC and for other program producers would result in more and better television programs is well recognized. Jack Gould, the television critic of the New York Times, had this to say in the April 8, 1956, issue of that newspaper:

"What is at the root of all the difficulty? Fundamentally, it is broadcasting's oldest problem: an inadequate number of desirable stations. The number of outlets capable of being received on present sets is subject to a technical limitation; in many cities there are still only two stations of consequence. The high hopes of providing a truly national TV service, with 3 or 4 networks reaching almost everywhere, as with radio, simply haven't been realized.

"It is the lack of additional good stations that has handicapped the American Broadcasting Co. Considering this technical problem, which it is powerless by itself to correct, ABC's progress in battling NBC and CBS is little short of miraculous. With the aid of Walt Disney and British movies it is giving the two titans some anxious moments and seems certain to go much further. *But if it were possible for ABC to have truly adequate outlets across the country, then the fur really would fly in the whole programing setup.*

* * * * * * *

"The long-range solution to assuring maximum competition in TV will come only when ABC and perhaps even regional networks can really give battle to CBS and NBC. The only way to do this is to fit in more stations within the existing channels, a difficult task but one that needs to be pressed with maximum vigor and engineering imagination." [Emphasis supplied.]

The proponents of pay television profess to be concerned with the lack of competition in the television field. Zenith Radio Corp. devoted the bulk of its reply comments filed with the FCC in docket No. 11279 to an attack on CBS and NBC. They would have the FCC and the public believe that pay television is the knight in shining armor which will slay the television monopoly dragon.

In actual fact, pay television would serve only to aggravate the existing shortage of television outlets and to worsen the position of ABC and other competitors of CBS and NBC. Every hour devoted to garbled transmissions during good viewing periods (which are equally essential to pay television) will render more acute the problem of obtaining clearances for nationwide programs and thereby further curtail the opportunity of ABC and other networks and program producers to compete for new outlets on a nationwide scale.

PAY TELEVISION WOULD DESTROY FREE TELEVISION

The promoters of pay television assert that they want free television to continue, that theirs will be a "supplementary service," and that the two systems can coexist on the same facilities. This is just to get the cuckoo's egg into the nest. Once the inevitable consequences of pay television, superimposed upon existing television stations, are fully appreciated, there is no choice but to reject the pay television proposals unless we are prepared to junk the American system of broadcasting as not being in the public interest. It requires no power of prophecy to foresee some of the inevitable consequences:

(*a*) *Partial blotting out of free television.*—The pay-television proponents ask that existing stations be permitted to discontinue broadcasting in the traditional American fashion [3] and to substitute a scrambled signal which would become usable only upon payment of a fee. In the 131 markets of the United States with only 1 station in operation, this means that during those hours, be they few or many, when scrambled signals are being transmitted, the public will not be able to receive free television. Similarly, in the 65 markets with only 2 television stations, inasmuch as it is not contemplated that all subscription programs will be the monopoly of a single entrepreneur, the same blot out will exist if both stations are permitted to carry subscription programs simultaneously. Even in multiple station markets, if as many competitive program sources are permitted to develop in the subscription field as there are in free television, all stations could be transmitting scrambled signals at the same time, with the result that free television would be blotted out during those periods.

(*b*) *Loss of programs and talent.*—If the click of the turnstile produces the bonanza which the proponents of pay television visualize, the effect on the programs and talent now furnished free to the viewer can hardly be exaggerated. The impact can be most clearly visualized in the field of sports. The proponents of pay television publicly admit that they could gross $25 million on the world series, 25 times what the sponsor paid for the television rights in 1954. If this

[3] Since pay television, even more than free television, would require large revenues which only substantial audiences could produce, it would not, as some suppose, encourage the establishment of small-city television stations.

is permitted, the American public will cease to have at no charge the "best seat in the park" for the world series or even for games presently provided free to the public throughout the baseball season. Other sporting events will be similarly lost to free radio and television—the Kentucky Derby, the football classics, etc.

Nor would such inroads be confined to sports. The profit motive being what it is, backed by the tolls assessed against the public, the proponents of pay television could outbid the television industry for talent and other programs presently viewable without charge by the American public. As good shows, with audience appeal, were developed on free television, their transfer to pay television would be only a matter of time. With the loss of sports, other outstanding programs and their star performers, the present programing on free television would soon deteriorate to the point that it would lose both advertising and audience appeal. The attendant loss of revenues will also have a deleterious effect on unsponsored public-service programing now furnished free by the networks—educational features, religious programs, public discussion, congressional hearings, Presidential addresses, and news. Without revenues from the sponsors of sports and entertainment feature with mass appeal, the public service thus provided by the networks would have to be substantially reduced.

(c) *Shifting of advertising revenue to subscription television.*—One need not be a cynic, whatever be the proponents' position today, to share the view that subscription television, if authorized, would not long forego the opportunity to tap a fertile source for additional revenue. Just as the Reader's Digest recently decided to carry advertising, in order to avoid charging the reader a higher price, so the pay-television entrepreneurs would contend that the charges which they exacted from the public for the world series, championship fights, and football games, could be reduced if advertising were carried on the programs. No administrative agency, confronted with such pressures, could long sustain a ban on the use of advertising on subscription programs. The public would then be paying to see commercials and the advertisers would be paying also. With the loss of its sole support, sponsored radio and television, furnished free to the public, would soon become a matter of history.

(d) *Gradual usurpation by pay television of time now utilized for free television.*—Unless regulated in minute detail by a Government agency, subscription television operators would utilize as much time as could profitably be used—as much as the traffic would bear. With clearance and other problems, the time left for free television would have less and less appeal to the advertising sponsor. As commercial advertising dropped off, the broadcaster would in turn be forced to rely more and more on subscription television for financial support. The hours left on broadcast stations for free television would be few and far between. To permit the first inroad on frequencies and facilities devoted to free television is to sow the first seed for destruction of the American way of broadcasting.

(e) *The effect on the American public.*—Today more than 90 percent of the American public is able to watch free television. In many areas they have access to a number of program services. The entertainment, educational, sports, and public-service programs now available to the American public on free television are unexcelled. No country, with a government-financed or any other system, has evolved a superior program service. The privilege of viewing these programs, transmitted over publicly owned airways, is not restricted to those who can afford the "per program" exactions which the proponents of pay television seek to levy on the natural right to hear and see what goes out over the air. Frequencies allocated to broadcast use should serve the general public, not merely those who can afford to pay the tolls imposed and determined by persons who may not even be accountable to the FCC. Little Johnny or Mary should not be precluded from seeing the Mickey Mouse Club, which would inevitably gravitate to pay television, because the family budget requires a choice between that program and the later evening movie. There are millions of families whose weekly budgets for entertainment are limited, and that fact cannot be overlooked in determining what decision in this proceeding will best serve the public interest.

For the foregoing reasons, ABC is firmly of the view that pay television and free television cannot coexist. The moment the problem of time clearance is aggravated, over what it is today, by reason of the loss of existing facilities during the hours garbled programs are transmitted, the downward spiral sets in. With the inability to clear time during good viewing hours (equally essential to pay television), free television loses advertising sponsorship. The resulting reduced revenues will affect programing. Pay television with its box office will siphon off sporting events of national interest. Better programs and better talent will gravitate to the medium with the larger checkbook. Free broadcasting, on airways owned by the public, would deteriorate if not disappear. If the American way of broadcasting were "just a business," its replacement by a new and better industry could not be criticized. But broadcasting has developed in the United States on the concept that the people own the airways, that they have a natural right to see whatever goes out over the air, and that this intelligence is available free of charge to all the public, and not simply those who have the ability to pay—as basic a concept as the American principle of free public schools, free libraries, free parks, and free playgrounds. Not even the proponents of pay television dare suggest that free television should be discontinued. Presented in that garb they know what the answer would be. But pay television superimposed upon frequencies and facilities now devoted to free broadcasting will have that precise result. Governmental regulation might postpone but not preclude the inevitable relegation of free broadcasting to the limbo of history.

THERE IS NO ROOM FOR AN ELECTRONIC BOX OFFICE IN THE RADIO SPECTRUM

Pay television, whatever its merits, cannot be considered a public service in the sense that broadcasting is. In essence it is merely a new and complex system of program distribution using, for private purposes, a part of the public domain which ought to be devoted to the benefit of the people as a whole, not just those with financial resources.

The increasingly severe shortage of space in the radio spectrum was recently highlighted by the announcement of the Office of Defense Mobilization that no additional VHF channels could be made available to television. Because of spectrum shortage, it has become a cardinal principle of allocation that persons seeking to use radio frequencies must show first that it is impractical to achieve their purpose without the use of radio. The proponents of pay television have made no such showing. Whether or not community antenna systems, as they now operate, are in the public interest, their success has proved that it is feasible to deliver television signals to individual homes by wire.

WE CANNOT AFFORD TO EXPERIMENT WITH PAY TELEVISION

Lately the cry has arisen: Let us end the controversy by the trial-and-error method; let pay television be authorized and let the public say whether it wants it or not. This has a deceptively alluring sound. Trial and error it is asserted is in the American tradition.

At the outset it may be said that our television system, already the finest in the world, is, with all its deficiencies, too valuable a national asset to risk its destruction by needless experimentation. It is not an incident of our system of free enterprise that advocates of all proposals have, as a matter of right, an opportunity to try them out. There is no concept in our theory of free enterprise which bestows a "right to try" any and all schemes for the exploitation of public property. Congress has declared that the ownership of the spectrum is vested in the people and held in trust for them and has directed the FCC to authorize only those uses which are consistent with the public interest. Contentions that their proposals must be approved or the proponents of pay television will be deprived of their right to compete under our system of free enterprise are unfounded.

Moreover there are situations where the trial-and-error method is not appropriate. Once 35 million television receivers (or even a substantial part of them) are equipped with pay television turnstiles at $50 or more apiece, pay television would be here to stay regardless of the consequences. Someone would have to pay for all that equipment, and the only way it could be paid for would be by continuing the pay-television authorization.

CONCLUSIONS

In conclusion, ABC calls attention once again to the more immediate and more important problem facing television, about which this committee has already heard so much, the problem of television allocations and unnecessary shortage of television outlets. This is a problem clearly within the FCC's jurisdiction—one on which it should have but has not acted. When that problem has been solved and free television has been given a full and fair opportunity to show what it can do, and if it fails to fulfill the public's need, then, and only then, will it be time to consider abandoning the traditional basis of our broadcast system. ABC suggests that the Congress so instruct the FCC.

APPENDIX A—MEMORANDUM OF LAW

In its notice of proposed rulemaking in the instant proceeding the Commission invited comments on the following questions of law:

(*a*) Whether the Commission has the authority under the Communications Act of 1934, as amended, to authorize and regulate subscription television operations.

(*b*) Whether subscription television constitutes "broadcasting" within the meaning of section 3 (o) of the Communications Act of 1934, as amended; and if it is not broadcasting, whether subscription television constitutes a common carrier or other type of service, and whether the Commission has the authority to permit subscription television to employ channels assigned to television broadcasting.

THE COMMISSION LACKS STATUTORY AUTHORITY TO AUTHORIZE SUBSCRIPTION TELEVISION OR REGULATE ITS OPERATIONS

Television broadcasting, as we know it today, and subscription television, as proposed by petitioners in this proceeding, were for the most part undeveloped arts at the time Congress adopted the Radio Act of 1927 and subsequently incorporated its principal provisions into the Communications Act of 1934. This fact alone does not place them beyond the purview of a basic statute designed to encourage new and more effective uses of radio, where such uses are "in the public interest" (Section 303 [g]). For example, FM, facsimile, and television, though not mentioned by name in either statute, are forms of "communication by radio" and thus embraced in the broad general language of these basic statutes. However, the Commission's authority over "radio communication" varies markedly, depending on the use to which the frequencies are put—whether for "broadcasting," "common carrier," or other purposes.

The legal questions posed by the Commission thus cannot be answered in the abstract. They must be considered in the light of petitioners' proposals. Petitioners ask that stations presently licensed in the television broadcast band be permitted, during unspecified portions of the day, to discontinue broadcasting in the traditional American fashion (advertising sponsorship with no charge to the viewers), and to substitute a schambled signal which becomes usable only upon payment of a fee. The adequacy of the Commission's existing authority over "radio communications" in general must be analyzed in the light of the problems (so far as they can be presently visualized) which this superimposed system presents, bearing in mind that if not adequately reuglated and if it possess the economic potential claimed by its proponents, subscription TV could replace free television.

The Communications Act itself neither expressly bans nor expressly authorizes a broadcasting system in which the listener or viewer is charged a fee for the program he receives. The act does contemplate the charging of fees for certain "common carrier services" employing radio frequencies. With the act largely silent on many of the legal problems posed by the instant petitions, resort must be had to various aids to statutory construction to answer the legal questions posed by the Commission in its notice in this proceeding.

The intent of Congress, if that intent can be ascertained, is of course controlling. But neither the courts nor administrative agencies, under the guise of statutory construction, have authority to legislate—to cover maters not reasonably embraced within the statute itself. In ascertaining the intent of Congress, recourse may be had to legislative history—to ascertain the overall purpose, of Congress, the reasons for the statute, the mischief to be prevented or remedied, and the meaning of particular provisions. In fact, in construing a statute a court or administrative agency "may with propriety recur to the history of the times when it was passed" (*Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 273 (1942)). We think that history is not without significance here.

Broadcasting, as we know it today, did not develop until after World War I. In 1919 broadcasts were classified as "limited commercial stations," licensed by the Department of Commerce. The growth of broadcasting during 1920 and 1921, and the resulting interference reached a point of 1922 that Secretary Hoover convened the First National Radio Conference in Washington to consider technical and social problems created by this new communications medium. In his opening address, Secretary Hoover called the Conference's attention to the following problem:

"One of the problems * * * is who is to support the sending stations. In certain countries the government has prohibited the use of receiving instruments except upon payment of a fee out of which are supported government sending stations. I believe that such a plan would most seriously limit the development of the art and its social possibilities. * * * There is in all this the necessity to establish public right over the ether roads. * * * There must be no national regret that we have parted with a great national asset."

At the third Conference, in October 1924, he made these statements:

"Radio has passed from the field of an adventure to that of a public utility. * * * I believe that the quickest way to kill broadcasting would be to use it for direct advertising. * * * To what extent it may be employed for what we now call indirect advertising I do not know, and only experience with the reaction of the listeners can tell. * * * Nor do I believe there is any practical method of payment from the listeners."

At the fourth Conference, in November 1925, Secretary Hoover was able to report:

"The decision that we should not imitate some of our foreign colleagues with governmentally controlled broadcasting supported by a tax upon the listener has secured for us a far greater variety of programs and excellence in service free of cost to the listener. * * *

"* * * The desire for publicity is the basic motive and the financial support for almost all the broadcasting in the country today. Publicity largely provides the cost of broadcasting which might otherwise fall upon the listeners, who now pay nothing, as the advertiser does in the case of the newspaper or magazine. * * *

"The ether is a public medium and its use must be for public benefit * * *."

It was in this atmosphere and with this background, after rulings that the Secretary of Commerce lacked authority to regulate radio broadcasting under the 1912 act (*Hoover* v. *Intercity Radio Co.*, 286 Fed. 1003 (App. D. C. 1923); *United States* v. *Zenith Radio Corporation*, 12 F. 2d 614 (CCA 7, 1926); 35 Op. A. G. 1926), that Congress undertook the task of enacting more effective legislation, which culminated in the Radio Act of 1927.

Paul Klugh, speaking for the National Association of Broadcasters in hearings on H. R. 7357 (68th Cong.) when asked whether his association was "committed to the policy that the public ought to be charged for the broadcasting service that goes into every home in the land," stated: "No, sir: I refer to making a charge for the use of the station broadcasting plant. * * * We see no method of getting support to continue broadcasting excepting through the type of advertising which will be listened to by the public, and advertising will pay * * * it is the only source * * * at the present time that money can actually be collected from to continue this broadcasting."

David Sarnoff, then vice president of RCA, stated at the hearings on H. R. 7357:

"In foreign countries the tendency has been toward licensing and taxing the owners of radio receiving sets. I am now, and have been from the beginning, opposed to any flareback in this country against the freedom of radio. I believe, frankly, in the freedom of broadcasting, and also in free speech from the broadcast studios.

"While I recognize that there may be perfectly honest differences of opinion on these two propositions: first, that anyone who owns a radio receiving set should be entitled to anything that comes through the air * * *

"It has been said by a great many people and a great many corporations, some very large and able, that broadcasting depends upon a solution of the problem whereby the consumer will pay for the entertainment which he receives. In other words, it has be said that unless some method is provided whereby a means is created for collecting revenues from the user of a broadcast receiver, that the whole industry is founded on sand, and that it is bound to collapse in time, because there will be no means of supporting it.

"I want to go on record very definitely today * * * in saying to you that it is my firm conviction that that sort of solution to the problem is not necessary, that broadcasting can be made commercially practicable without any means being found for collecting from the consumer, that the greatest advantage of radio lies in its universality, in its ability to reach everybody, everywhere, anywhere, in giving free entertainment, culture, instruction, and all the items which constitute a program, in doing what no other agency has yet been able to do, and it is up to us in radio art and industry, with intelligence and technique and broadness of spirit and vision as to the future, to preserve that most delightful element in the whole situation—freedom of radio.

"Just as soon as we destroy that freedom and universality of radio and confine it to only those who pay it—those who pay for the service, in other words—just as soon as we make of broadcasting 'narrowcasting' we destroy the fundamental of the whole situation. And, therefore, I believe very definitely that broadcasting as constituted today is commercially sound, and that it will remain so in the future, although there may be selective methods and narrowcast methods which will do no harm.

"I cannot help feeling that not only should the public be left free from the payment of any license fee to the Government or others for the privilege of listening on a broadcast receiver, but that it should also be free from fees or tolls of any kind in the field of broadcasting through space. Furthermore, I believe the expressions of educators and statesmen should reach them uncensored and uncontrolled. The air belongs to the people. It should be regulated by the will of a majority of the people. Its main highways should be maintained for the main travel. To collect a tax from the radio audience would be a reversion to the days of toll roads and bridges, to the days when schools were not public or free, and when public libraries were unknown.

" * * * I believe that the radio audience alone should be the final judge of interest in every radio program * * *

"I believe in freedom of that service without any charge to the consumer. In saying that, I do not mean that the consumer is not really paying for what he is getting, because he is paying partly in the purchase price of the apparatus. A part of the purchase price of the apparatus goes toward paying the cost of broadcasting.

"* * * We have no program in contemplation, no technical means I am familiar with, whereby the listener or purchaser of a broadcast receiver might be made to pay; and I have gone on record very definitely against that policy" (hearings on H. R. 7357, 68 Cong., 1st sess.).

During the hearings on S. 1754, 69th Congress (1926), Stephen B. Davis testified, in response to a question from the author of the bill (Senator Dill), as follows:

"I think the United States is perhaps the only important country where there is no direct contribution to broadcasting. In England, for instance, the broadcasting is financed through a tax on receiver sets. Every person who desires to operate a receiving set in Great Britain must pay an annual listener's tax of a certain amount. That money is then taken and a certain proportion of it, I think the bulk of it, perhaps all of it, goes to what is called the British Broadcasting Co., I think it is, which controls the station in Great Britain, and is used for the operation of those stations and for the obtaining of programs and matters of that sort.

"The same system exists in Germany and, I believe, in most other countries. In other words, as I said from the start, aside from the United States and Canada, broadcasting as a rule is supported by a direct tax on receiving sets; that is, a direct tax on the listener."

The Senate version of the bill which became the Radio Act of 1927 (H. R. 9971) contained the following provision:

"Section k. Regulate and control any and all methods of transmitting energy, communications, or signals by radio where a charge is made to the listeners by the use of any apparatus, device, or connection by wire, and prohibit all unjust and unreasonable charges to listeners."

Fearing that this provision would be construed as authorizing the broadcaster to charge the listener a fee (see 68 Congressional Record 2880–2881), Representative Bloom, of New York, introduced the following bill (H. R. 16867):

"*Be it enacted* * * *, That after the passage of this act no broadcasting station shall be used to broadcast any matter (a) that can be heard only by a receiving set equipped with a special device or attachment without which such matter cannot otherwise be heard; (b) for which a charge, fee subscription or penalty is made by such station to the public for the privilege of receiving such matter. Nor shall any broadcasting station either directly or indirectly charge or exact any fee or subscription from the operator of any receiving set for the right to receive matters broadcast from such stations."

Throughout the debates on the Radio Act, repeated references were made to the fact that radio was free in the United States—no license fee or charge to the listener (67 Congressional Record 5490–5491, 12335). Senator Walsh (of Massachusetts) and Senator Copeland queried Senator Dill at length whether a charge on receivers should not be prohibited (68 Congressional Record 2880–2881, 4149). Senator Dill opposed an absolute ban on listeners being charged a fee (68 Congressional Record 2880–2881). However, for economic reasons, he did not "think there is any probability of that being done" (ibid.).

The joint conference which considered the House and Senate versions of H. R. 9971 deleted section k, the section which would have authorized the Commission to regulate any charges imposed on listeners. With this deletion no further action was taken on Representative Bloom's separate bill banning the exaction of any charges from listeners, Representative White, of Maine, author of the House bill, having given assurance that the "legislation gives no such authority as he (Congressman Bloom) fears" (68 Congressional Record 2580).

Following the adoption of the Radio Act of 1927, bills were introduced in succeeding Congresses to consolidate all communications by radio in one agency. In the hearings on S. 6 (71st Cong.), Chairman Robinson, of the Radio Commission, testified as follows on whether or not broadcasting stations should be made "common carriers" or "public utilities":

"* * * It is fortunate in this country that people get this service free; it is a wonderful thing along some lines and very depreciating along some others, and sometimes I think the offset makes it about equal, the good with the bad. But the license is not issued for the receiving set * * * I am entitled, for instance, to hear what the chairman says here, not because he speaks by the aid of a transmitter, but within my hearing; and it is the same natural right of a man to hear what goes over the air."

In a message to the NAB in 1931, President Hoover, while S. 6 was under consideration by Congress, stated:

"As Secretary of Commerce I had the pleasure of wide acquaintance with the purposes of your association in the annual national radio conferences which were called at that time for the development of the national policies in relation to radio.

"The decisions reached at that early date have been of unending importance. The determination that radio channels were public property and should be controlled by the Government; the determination that we should not have governmental broadcasting supported by a tax upon the listener, but that we should give license to use of these channels under private enterprise where there would be no restraint upon programs, has secured for us far greater variety of programs and excellence of service without cost to the listener. This decision has avoided the pitfalls of political and social conflicts in the use of speech over the radio which would have been involved in Government broadcasting. It has preserved free speech to the country.

"These principles are now strongly imbedded in our law and in our entire public system" (Broadcasting Telecasting, May 23, 1955, p. 40).

In due course, with additional definitions and other changes, the basic provisions of the Radio Act of 1927 were incorporated in title III of the Communications Act of 1934. The act centralized in one Commission common-carrier jurisdiction over telephone and telegraph (whether by wire or radio), and non-common-carrier jurisdiction over broadcasting.

From the foregoing background facts the following conclusions emerge: By 1927, and even more convincingly, by 1934, broadcasting in the United States had taken on a definite pattern—with costs borne by the sponsor and with no charges levied on the public. That pattern, now denominated the American system of broadcasting, was fully known to Congress when it enacted the basic 1927 and 1934 statutes. It is clear that Congress was not enacting legislation designed to substitute a governmentally controlled broadcast system supported by a tax upon the listener for the one then prevailing—financed by the sponsor. Likewise, just as Churchill did not take office to preside over the dismemberment of the British Empire, neither did Congress establish the Radio Commission or the present Commission for the purpose of eliminating a pattern of broadcasting which (by 1925) had secured for the American people "a far greater variety of programs and excellence in service free of cost to the listeners" than had the tax supported and government controlled systems of Great Britain and other foreign countries. While Congress conferred on the Commission broad authority to "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest" (sec. 303 [g]), this language cannot be construed as empowering the Commission to change the basic concepts of the American broadcasting system. If the Commission has authority to take away from the American public 2 hours between 6 and 11 p. m. for the showing of a first-run movie on pay TV (40 percent of these choice hours), it has the power to substitute pay TV for free TV during all hours of the broadcast day. This would mean that the Commission, under the guise of rulemaking, could wipe out the American system of broadcasting as we know it today, and as it was known to Congress in

1927 and 1934, and substitute a new system supported by direct charges levied on the American public. Congress did not confer, and had no intention of conferring, any such authority on the administrative agency which it thus established.

A number of legislators, taking their cues from other institutions indigenous to the American soil (e. g., free public schools and free libraries, free roads and free bridges), desired an express prohibition against the exaction of any fees or tolls from the listening (or viewing) public. They were assured by the sponsors of the 1927 act that such a prohibition was unnecessary: first, because it would not make economic sense for the broadcaster to limit the size of his audience by special gadgets and, secondly, because no technically feasible method of exacting and collecting a fee had been devised. A provision which would have authorized the Commission to regulate fees for radio service was deleted without official explanation. With no express authorization, and mindful of this deletion, the Commission should refer the matter to Congress for an expression of legislative policy and any necessary statutory clarification.

Administrative agencies have been criticized in the past for attempting to expand their basic statutes rather than seeking more specific legislation from Congress. When construing a dead man's will it is not possible to query the decedent as to his intent; the courts in such situations determine as best they can his intent. But with Congress in session almost continuously, doubts regarding an agency's authority can best be resolved, in line with traditions of a democracy, by requesting legislative clarification. It cannot be gainsaid that petitioners present proposal to superimpose subscription television on broadcast frequencies was not passed upon by Congress when it adopted the 1927 and 1934 basic statutes. Nor can it be denied that there was substantial opposition in Congress in 1927 to the levying of charges against the public when exercising their "natural right to hear what goes over the air"—on frequencies which the people themselves own.

Advocates of an express prohibition were assured that the question was academic. Now that the matter is apparently no longer academic, Congress should be afforded an opportunity of stating its views before irrevocable changes are made in the system which the Commission was established to foster and develop. The policy problems should be referred to the direct representatives of the people for resolution by appropriate legislation. This is true whether petitioners' system or systems of pay TV be deemed "broadcasting," "common carrier," or "other type" of operation—or a combination of all three.

SUBSCRIPTION TELEVISION IS A HYBRID NOT ENVISAGED BY CONGRESS

An attempt to label subscription television as "broadcasting," "common carrier," or "other service," in view of the vague and uncertain "pattern" of operation contemplated by its proponents, is a difficult one. "Broadcasting" was not defined in the 1927 act. In the hearings on S. 6 (71st Cong.), a forerunner of the 1934 act, Commissioner Eastman (in response to formal questions submitted by the Senate committee regarding the power of the Interstate Commerce Commission to regulate "rates of broadcasting stations"), replied as follows:

"* * * my understanding of the words 'broadcasting stations' as they are used in this question is that they refer to radio stations which transmit spoken words or music by wireless electric impulses to all within effective range of those impulses who possess and use suitable receiving apparatus, and which do not transmit messages from a definite sender to a definite receiver * * *. The question being so understood, I am of the opinion that there is now no power in the Interstate Commerce Commission to regulate rates of broadcasting stations or the so-called chains, for the reason that such station or chains are not engaged in the transmission of intelligence by wire or wireless as common carrier for hire."

Two provisions ultimately included in the 1934 act are highly significant in view of the opinion thus expressed by Commissioner Eastman. "Broadcasting" was defined in the 1934 act as "the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay systems" (sec. 3 (o)). The act further states that "a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier" (sec. 3 (h)). A "broadcasting service" is defined in the Commission's rules (sec. 2.1) as "a radio-communication service of transmissions to be received directly by the general public."

Is it intended by petitioners that their proposed programs "be received by the general public" or is it intended that they be received only by those members of the public who are willing to pay a special fee for the program in question?

Clearly the latter is their intent. While broadcasting, under the traditional American system, requires the public to have a receiver, in order to hear or view the transmissions, the broadcaster intends his programs to be available to the general public—by anyone possessing a receiver. The proponents of pay TV would impose a further condition—not only that the person have equipment to translate the garbled signal into an intelligible communication, but that he pay a fee for each program he elects to view. Considering the system of broadcasting with which Congress was familiar in 1934, the type of program transmission proposed by petitioners does not meet the statutory definition.

That subscription programs designed only for those who pay, and not for each and every person otherwise willing to watch them, is not broadcasting is further borne out by early Commission decisions.

In *Scroggin & Co. Bank* (1 F. C. C. 194, 196 (1935)), the Commission noted that "broadcasting is by definition and essential characteristics a service for the general public. The use of a broadcast station for the point-to-point delivery of messages is inconsistent with the terms of the station license and the regulations under which licenses are issued." Likewise, in *Standard Cahill Co., Inc.* (1 F. C. C. 227, 230 (1935)), it was held that a series of programs sponsored by a horseracing publication and of special interest to its patrons "was point-to-point communication rather than broadcasting" since it would have "little general appeal for the listening public other than those who subscribed to the publication in question." See also *Adelaide Lillian Carrell* (7 F. C. C. 219, 222 (1939)). The transmission of television programs to persons who subscribe for such service (pay television) could well be construed as "the point-to-point delivery" of messages, differing only in degree from omnidirectional transmission of information by radio for cabs, police officials, mobile telephone users, etc. Scrambled signals, such as petitioners propose to transmit would have no appeal to the public "other than those who subscribed" to the decoding device (punch-cards, etc.).

In *Bremer Broadcasting Company* (2 F. C. C. 79, 83 (1935)), the Commission held that the use of "a code system in broadcasting horserace results," resulting in the intelligible reception thereof "to a particular group which had subscribed to a so-called scratch sheet containing interpretations of the code" was a violation of the station's license "which authorized dissemination to the general public and not particular individuals or classes thereof." The contemporaneous construction thus placed on a statute, by the agency charged with its administration, at a time when its provisions were untried and new, is especially persuasive (*Brewster* v. *Gage*, 280 U. S. 327, 336 (1930)).

Early contemporaneous precedents are more persuasive, in interpreting the language of a statute, than those of later vintage. Thus, broad statements uttered by the Commission in 1941 in *Muzak Corporation* (8 F. C. C. 581) are less significant than the more restricted interpretation adopted in the Bremer case almost contemporaneously with the enactment of the 1934 statute. In the Muzak case the Commission stated (pp. 581–582):

"The proposal advanced in this application is unique in the annals of radio broadcasting in this country. The applicant proposes to experiment with what may be termed a subscriber service, for the purpose of determining whether the public, or a sufficiently large proportion of the public to make the service feasible, would finance the broadcasting of programs by direct payment therefor. This is to be accomplished through the presentation of a diversified high-quality program service which will be available to the public generally upon subscription and payment therefor. The applicant will broadcast no commercially sponsored programs, and no advertising continuity whatever will be used. Special receiving equipment will be leased by the applicant to those who subscribe for its service. Reception by persons other than subscribers will be presented by means of the transmission of a discordant sound (referred to sometimes as a pig-squeal signal) which can be eliminated only by the use of such special receiving equipment.

"Inasmuch as the applicant's proposal is a marked departure from the usually accepted method of providing broadcast service in this country, a brief reference may be made to the definition and history of broadcast service. A broadcast station is defined, both by treaty and statute, as one licensed for the transmission by radiotelephone emissions primarily intended to be received by the general public. The first such stations licensed in this country were sought and obtained by individuals or organizations engaged in manufacturing or similar enterprises who desired either to advertise their own products or to promote good will in their own behalf. Licensees, in order to meet the increasing cost of providing broadcast programs, gradually entered into the practice of transmitting, for a fee, advertising matter for other persons. As the effectiveness of radio as an advertising medium developed, broadcasting became a business in its own right. Thus arose the practice in this country of public support of broadcast service, not through any direct charge, but through the purchase of articles and services advertised by radio. This is not true in all countries of the world.

"The service which this applicant proposed will be available to the general public; any member of the public, without discrimination, may lease the equipment to receive the service. The distinguishing feature will be that those receiving the programs will pay directly rather than indirectly therefor. Operation of a station in this manner is within the definition of broadcasting."

As the Commission officially pointed out to Congress in 1951 (98 Congressional Record 9030–9032), the above-quoted language must be read in the light of the facts there presented:

"* * * It is important to note, however, that in that case the decision pointed out that the frequency assigned, 117.35 megacycles, was in a part of the spectrum devoted to other than broadcast services and the Commission stated that '* * * if it should develop that a service of this nature is practicable, frequencies therefor would probably have to be allocated from other portions of the radio spectrum.' Accordingly, the grant was conditioned expressly that it 'is not to be construed as a finding by the Commission that the operation of the proposed station upon the frequency authorized is or will be in the public interest beyond the express terms of the grant,' and that it was on an experimental basis only and subject to change or cancellation without advance notice or hearing."

Aware of the conflict between the Bremer and Muzak cases, the Commission in this same communication advised Congress as follows: "The question whether a subscription service is 'broadcasting' as that term is presently defined in the Communications Act has not been finally determined." (Compare similar statement in Commission comments on the Henshaw bill (F. C. C. 54–601).) And in enacting the 1952 amendments to the Communications Act, to which the foregoing communication appertained, Congress made it clear that it was leaving the "law just exactly as it is" (98 Congressional Record 9051).

Any changes in the definition of "broadcasting," being a controversial matter, was to await subsequent congressional action. Certainly the dicta in the Muzak case, authorizing as it did experimentation on nonbroadcast frequencies, is not a holding that the superimposing of a fee system on stations, frequencies, and equipment presently devoted to free television, comes within the statutory definition of "broadcasting." The Muzak case must likewise be read in the light of the Commission's recent FM decision where it seems to revert more closely to its concept of "broadcasting" as enunciated in the Bremer case (docket No. 10832). There the Commission had before it a "simplex system" whereby all the intelligence broadcast by an FM station was receivable on an ordinary FM set, but special receivers could be purchased which would eliminate or accentuate portions thereof, depending on the desires of the subscriber. The Commission concluded that such operations were not "broadcasting" as defined by section 3 (o) of the Communications Act. In authorizing a "nonbroadcast" service on the FM broadcast band, limited to 1 year by "simplexing," the Commission was careful to add the following caveat:

"The rules here finalized do not contemplate subscription broadcast operations to the extent that such operations involve the transmission of entirely scrambled or coded programs which can only become intelligible through utilization of special unscrambling or decoding devices at the receiver. The nature and advisability of such operation as contrasted with operations in which a minor portion of the program is specially 'beeped' in or out—is expressly reserved for further consideration in connection with the pending proceeding to authorize such subscription program services."

If the addition of a "beep" at the transmitter, which in no way affects the normal receiver and in no way precludes the general public from enjoying the programs transmitted, is sufficient to render such operations "nonbroadcasting" in character, it would seem to follow that a garbled signal, unintelligible on the normal receiver and utilizable only by a person subscribing to a decoding device, is likewise not "broadcasting."

In short, subscription television is not "broadcasting" as Congress understood that term at the time it adopted section 3 (o) of the Communications Act of 1934. Although the service is available for a price to the public, it is not intended that the public shall receive such service unless and until they pay a specified toll or fee.

If subscription television is not "broadcasting," is it a "common carrier" service? If it were "broadcasting," it would, of course, not be a "common carrier" (sec. 3 (h)). The converse, however, is not necessarily true. A "common carrier" is defined in the Communications Act of 1934 as a "person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio." The proponents are by no means certain of the precise pattern which subscription television, if sanctioned by the Commission, may take. Zenith contemplates a "transmission service" (existing TV broadcasters), a "reception service" (the installation and maintenance of decoding attachments to home receivers), an "administrative service" (an organization to supply punchcards and decoding data and to collect the tolls which are imposed upon the viewer), and a "program service" (an "entrepreneur" who will arrange for program material—prizefights, movies, et cetera). The proponents at this point are uncertain whether these 4 services would all be performed by 1 person (e. g., the broadcaster) or by 4 separate organizations, or by varying combinations thereof.

If all four of these functions were handled by the television station, it is certainly arguable that the transmission of subscription programs, the exacting of a fee for the intelligence thus submitted, and the making of such service available to anyone willing to pay the price would have "common carrier" aspects. While the proponents intend that the program service shall be available to all persons who are willing to pay the fees imposed, they are not suggesting that the broadcaster must accept all "subscription programs" tendered to him by various entrepreneurs. Therefore, if the "program service" is supplied by a separate entity, the television licensee would not be a traditional "common carrier" since he would not (presumably) be required to transmit all programs which are tendered. However, at the receiving end it would be contemplated that "all takers" would be entitled to the service—for a price. Just as a gas or electric utility is required to serve all its patrons, so the "scrambled picture" and decoding devices would presumably be made available to all persons expressing a desire for the service. In short, the system envisioned by the proponents of subscription television has "broadcasting" and "common carrier" aspects. It is a hybrid not envisaged by Congress when it enacted the 1934 statute. It defies classification—as either "broadcasting" or "common carrier" unless existing statutes are modified and special legislation enacted.

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APPENDIX B—FURTHER MEMORANDUM OF LAW

In its notice of proposed rulemaking the Commission invited comments on the following questions of law: (*a*) whether the Commission has the authority under the Communications Act of 1934, as amended, to authorize and regulate subscription television operations; (*b*) whether subscription television constitutes "broadcasting" within the meaning of section 3 (o) of the Communications Act of 1934, as amended, and if it is not "broadcasting", whether subscription television constitutes a common carrier or other type of service, and whether the Commission has the authority to permit subscription television to employ channels assigned to television broadcasting. Most of the principal comments in this proceeding, those submitted by NARTB, ABC, CBS, the Joint Committee on Toll Television, Zenith, Skiatron and Telemeter, contain briefs or memorandums of law addressed to the foregoing questions. Without exception the opponents of pay television conclude that the Commission has no authority to authorize subscription television and that it is not broadcasting. The proponents of pay television, likewise without exception, conclude the opposite.

With respect to the Commission's authority to authorize and regulate subscription television, both sides have relied upon legislative history of the Communications Act and of the Radio Act of 1927. Since neither the committee reports nor the debates concerning the 1934 act contain any discussion whatever of the possibility of a subscription radio or television service, the proponents of pay television assume that the legislative history of the 1934 act may be disregarded and devote virtually their entire attention to the 1927 act. Since much of the 1934 act was by reenactment of provisions already appearing in the 1927 act, they assume that the 1934 act can be interpreted on the basis of statements made in the debates on the 1927 act. This, however, ignores significant differences between the 1934 and 1927 acts. The 1927 act contained no definition of broadcasting, whereas the 1934 act includes such a definition. The 1927 act gave the Commission no authority to regulate rates, whereas the 1934 act gives the Commission authority to regulate the rates of communications common carriers including radio carriers.

The proponents of pay television base almost their entire argument on statements made during the debates on the 1927 act, which indicate that some Congressmen and Senators viewed the act as permitting the Commission to authorize a radio service which would involve direct charges to listeners. As has been noted, the 1927 act contained no definition of broadcasting and for this and other reasons it is not clear what sort of service was envisaged by those speakers who conceded the possibility of a radio service which would make direct charges to its listeners. Moreover, it certainly cannot be said that there was any agreement as to whether the act would permit charges to listeners. Senator Dill, when questioned as to whether such charges were permissible, made it clear that he thought the question essentially academic.

The 1927 debates must be viewed in the light of the state of the radio art and the development of the broadcast industry as of that time. The radio broadcast service was then, as it is now, a free service to the listeners. No concrete proposal for a subscription service such as is now before the Commission had been put forward, and, in fact, the technical feasibility of such a service could then only be guessed at. The only type of broadcast service then known which in any way resembled a subscription service was that employed in England and elsewhere, which involved a Government tax rather than a listening fee. Congress made plain that it did not favor that type of service. Thus, the discussion of radio services which might possibly impose charges on their listeners was essentially academic and no firm conclusions can be based thereon.

Unlike the uncertainty concerning Congress' view of a hypothetical subscription radio service in 1927, its intent in other areas was made clear. First, Congress emphasized that the radio spectrum was a part of the public domain and that it should so remain. It set forth in section 301 of the act that its purpose was "to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license."

It was also clear that Congress considered that all radio rates would be subject to Government regulation, under authority previously granted to the Interstate Commerce Commission. The Senate draft of the Radio Act contained a provision: "Section k. Regulate and control any and all methods of transmitting energy, communications, or signals by radio where a charge is made to the listeners by the use of any apapratus, device, or connection by wire, and prohibit all unjust and unreasonable charges to listeners." This provision was deleted in conference without explanation. Senator Dill made clear, however, that its deletion was insisted upon by the House, which desired that authority to regulate radio rates remain "lodged in the Interstate Commerce Commission."

At the time of the passage of the Communications Act of 1934, the pattern of the American broadcast industry, in which there are no direct charges to listeners and commercial broadcast stations are supported exclusively by advertising, had become established. No one at that time was giving any thought to a subcription service and the Congress had no occasion to consider or discuss such a service. Two actions taken by Congress at that time, however, clearly indicate that it was proceeding upon the assumption that the broadcast service would remain a free service to the public. In the 1934 act the Federal Communications Commission, unlike the Federal Radio Commission, was granted authority to regulate radio rates of common carriers. The act also contained a definition of broadcasting and a definition of common carrier which specifically excluded broadcast operations and thus exempted broadcasting from the Commission's rate jurisdiction.

There is general agreement that subscription television does not fall within the statutory definition of a common carrier communications service. That being the case, the Commission would have no jurisdiction over the rates charged in connection with a subscription service. Two types of radio service are now known in which the public is the consumer. One is broadcasting, which is not subject to rate regulation, and the other, common carrier, which is subject. There can be little doubt but that Congress' willingness to exclude broadcasting from rate regulation was based upon an assumption fully justified by the nature of the broadcast industry in 1934 that all broadcast transmissions would be available for public reception without charge. It seems inconceivable that Congress could have intended to authorize the use of a portion of the public's property for the direct benefit of the public without giving the public some protection against rate gouging. Certainly no such intent can be inferred from debates on an earlier act which did not purport to disturb existing law with respect to rate regulation.

We come now to the second question of whether subscription television would be a broadcast service, a common carrier service, or an "other type of service." The Communications Act defines broadcasting as "the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations." The key question is whether the words "intended to be received by the public" mean intended to be received by the public without direct charge therefor. There is strong indication that this was the congressional intent. At the time the definition was adopted no system of broadcasting other than free broadcasting was in existence or proposed to be established.

Presumably, Congress used the word "broadcasting" in its commonly accepted meaning and that meaning in the United States at that time included the concept of free reception. Surely Congress cannot be presumed to have excluded from the meaning of "broadcasting" one of the most significant elements of the American broadcasting industry as it then existed and still exists. Moreover, as has been noted, Congress excluded broadcasting from the rate regulating authority of the Commission. Surely if Congress had understood its definition of broadcasting to include a system making a direct charge upon the listener, the failure to provide for rate regulation and, even more, the exclusion of broadcasting from rate regulation, would at the least have occasioned some congressional comment.

The proponents of pay television argue that if the intent is that the public shall receive the broadcast, although it must pay a fee therefor, the definition is satisfied. Aside from the considerations set forth above, this leaves only insignificant content in the definition of broadcasting. All parties agree that the actual size or generality of the intended audience is not the test. A program designed to interest a very limited audience is still a broadcast, because it has no specific addressee or addressees and because the public generally is free to listen to it if it so desires. A subscription television service would meet neither requirement. It would be addressed to specific persons, albeit presumably a large group, those who have subscribed to the service, and the members of the public would be "free" to listen only if they take steps to become one of the multiple addressees.

The proponents of pay television would analogize the distinction between a broadcast and a nonbroadcast service to that between a private and a public performance. The analogy is faulty because of significant differences between dramatic or other performances and radio transmissions. The producer of any performance retains physical control by which he can limit attendance to an invited group (a private performance) or to those who pay admissions (a public performance in the sense that within limitation and under certain conditions, the public may attend). A radio transmission, however, like a speech made on a street corner, is necessarily public in that there is no way in which the transmitter operator or the speaker can designate the persons who will be able to hear the speech or receive the radio signals. Having abandoned any physical control of this transmission, the radio sender can rely only upon legal sanctions to prevent unauthorized listening or use. True, he can encode as the street-corner speaker can elect to orate in a foreign language, but in the absence of section 605 of the Communications Act, the public would be free to break the code if it could do so. Turning to section 605 of the act, we find that "any radio communication broadcast or transmitted by amateurs or others for the use of the general public" is specifically exempted from any protection against unauthorized use. This is clear indication that Congress intended that there be no let or hindrance upon the reception of broadcast transmissions. Subscription television, therefore, cannot consistently with the Communications Act be classified as a broadcast service.

With respect to whether subscription television could properly be classified as a common-carrier service, we find for the first time that the proponents and opponents of pay television are in agreement, that it could not. Very apparently, pay television's anxiety that it not be classified as a common carrier stems from its desire to avoid any possibility of rate regulation, but whatever the reason the agreement is there, and the question has been adequately covered in the comments originally filed. Assuming that subscription television could not be called a broadcast service and could not be called a common-carrier service, can it properly be classified as an other type of service? Obviously, if the term "other type of service" is defined solely by exclusion, as encompassing all services not broadcast or common carrier, subscription television would fall within this classification. This is far too simple a view, however, for it assumes that the Congress gave the Commission carte blanche to authorize any conceivable type of service.

The Communications Act defines the broadcasting, common carrier, and amateur radio services and also contains specific provisions relating to ship radio. No other type of service is defined in the act. The Commission has, under its mandate in section 303 (g) to "study new uses for radio * * * and generally encourage the larger and more effective use of radio in the public interest," established many different types of nonbroadcast and non-common-carrier services, all of which fall under the jurisdiction of the Commission's Safety and Special Services Bureau.

All these services have one thing in common, which clearly distinguishes them from both broadcasting and common carrier. They are all private communications systems with which the public is not directly concerned. Broadcasting and common carrier, on the other hand, are public services—common carrier because it offers its facilities to the public for hire and broadcasting because its transmissions are intended for public reception. Clearly, subscription television is also a public service which cannot be classified with other nonbroadcast and non-common-carrier services. But for reasons set forth above, it also cannot be classified as either broadcasting or a common-carrier service. It must therefore be considered a hybrid, partaking of both broadcast and common-carrier aspects, which does not fall into the regulatory framework of the Communications Act. This fact confirms the conclusions heretofore reached that Congress did not intend that the Commission should authorize a subscription radio or television service.

In summary, we find there is grave doubt that Congress has authorized the Commission to establish a pay-television service and would not be a common-carrier service, nor a broadcast service and yet would be more like both than like other types of services thus far established.

Whatever uncertainty there may be in these conclusions, stemming from rather misty congressional comment more than 20 years old, it seems clear that the question of the Commission's authority and of the proper classification and regulation is so clouded with doubt that the Commission should, as a matter of policy, consult Congress before proceeding.

Administrative agencies, insofar as they have legislative functions, are creatures of Congress, acting only within the sphere of authority delegated to them by Congress. Their function in rulemaking is to carry out the will of Congress.

Here the very least that can be said is that Congress' will is not clear. The solution is simplicity itself—the Commission should request Congress to make its will more explicit. In *FCC* v. *Pottsville Broadcasting Company* (309 U. S. 134 (1940)), Mr. Justice Frankfurter stated.

"* * * The present case makes timely the reminder that 'legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.' * * * Congress which creates and sustains these agencies must be trusted to correct whatever defects experience may reveal" (309 U. S. at 146).

This admonition was even more forcibly stated by Judge Prettyman of the United States Court of Appeals for the District of Columbia Circuit in a case involving an attempt by the Federal Power Commission to extend its powers beyond the limits that it reasonably could be inferred Congress intended them to be exercised. In *Border Pipe Line Co.* v. *FPC* (84 U. S. App. D. C. 142, 171 F. 2d 149 (1948)), Judge Prettyman held that agencies should not rely on strained and complex assumptions and deductions to obtain desired authority, but, if they think that the real intent and purpose of a statute is broader or different from its terms, should ask Congress for an enlargement or clarification. His statement is hereinafter reproduced at length:

"We add a further word upon the subject, because the situation with which we are here confronted is of general importance. Questions such as the one presented in this case are properly for the Congress. The circumstances upon which they arise are familiar. Congress uses expressions of established meaning. It takes action of recognized implications; e. g., it strikes from a pending bill a clause of clear import. But the administrative body finds a sufficient penumbra of meaning to justify a claim to more authority than appears upon the face of its grant. It asserts the extended authority and thus forces the issue upon the courts. It asks the courts to divine an intent on the part of Congress and then to decree that the words of the statute spell that intent.

"Of course, if there be a plain intent, or purpose, or objective, the statute must be deemed to be in pursuit of it, and the courts will enforce that view. But where relatively plain language and congressional conduct of accepted implications point one way and the contrary appears only through strained and complex assumptions and deductions, questions which the administrators may have as to the full intent and desirable scope of the congressional action ought to be addressed to the Congress.

"The prime responsibility for making statutory meaning clear is on the Congress. It is bad from the viewpoint of sound government for the courts to twist strange results out of otherwise understood expressions of the legislature. If, perchance, the judiciary does not reach the objective at which the legislature aimed, there is a most undesirable confusion of functions of the two branches.

"Such practice by the judiciary is also bad from the viewpoint of the law generally.

"Words of established meaning are given an unnatural significance, and thereafter whenever they appear the law is uncertain. The interpretation of statutes is not like the interpretation of a will, where the person whose intent is to be ascertained no longer lives and some meaning must be given his expressions, however meaningless, or of a contract as to which the sole parties differ in their assertions of intent or meaning. In those situations in interpretation is the only available procedure, and once had is irretrievable. Not so in the case of a statute; the Congress is in frequent session, its doors open and its committees available. Its procedure is no more complicated than that of the courts. If an administrative agency thinks that the real intent and purpose of a statute is broader than or different from its terms, it needs only ask Congress for an enlargement or clarification. We are no longer in an age when such inquiry is impractical. The wise and sound course for the courts is to give to the terms of a statute their plain meaning, so long as the resultant effect is sensible and not in conflict with a discernible purpose" (84 U. S. App. D. C. at pp. 145–146).

And another statement on the same subject by Justice Frankfurter:

"* * * While the judicial function in construing legislation is not a mechanical process from which judgment is excluded, it is, nevertheless, very different from the legislative function. Construction is not legislation and must avoid 'that retrospective expansion of meaning which properly deserves the stigma of judicial legislation' (*A. B. Kirschbaum Co.* v. *Walling* (316 U. S. 517, 522, 86 L. Ed. 1638, 1646, 62 S. Ct. 1116)). To blur the distinctive functions of the legislative and judicial processes is not conducive to responsible legislation" (*Addison* v. *Holly Hill Fruit Products, Inc.* (322 U. S. 607, 618, (1944))). (See also *Federal Communications Commission* v. *American Broadcasting Company* (347 U. S. 284, 296–297 (1954)); *Federal Power Commission* v. *Panhandle Eastern Pipeline Co.* (337 U. S. 498, 515–516 (1949)); Task Force Report on Legal Service and Procedure, Commission on Organization of the Executive Branch of Government (1955), pp. 220–222).

There is a constant interchange between administrative agencies and Congress through which the agencies inform and advise Congress and Congress establishes for agency guidance the national policy. A review of the Commission's annual reports will show that in nearly every year of its existence the Commission has made recommendations to Congress for legislation and Congress has requested comments on numerous bills which might affect matters under the Commission's jurisdiction. This interchange between Congress and the administrative agencies is an important part of the administrative function, serving to keep the activity of the agencies closer in tune with the will of the people than would otherwise be possible.

In this process, the establishment of basic policies is the function of Congress. A leading authority on administrative law has said: "The legislative process is especially qualified and the administrative process is especially unfit for the determination of major policies that depend more upon emotional bent and political instincts than upon investigation, hearing, and analysis" (Davis, Administrative Law (1951), p. 57). James M. Landis, of counsel for Skiatron TV, Inc., has written: "The responsibility for fashioning a policy, not only of great economic importance, but also one that has divided the faiths and loyalties of classes of people, cannot appropriately be entrusted to the administrative" (Landis, The Administrative Process (1938), p. 55). It is clear that the question of the authorization of subscription television involves a major policy decision about a highly controversial matter and must in the long run be determined by political processes. (During the 84th Cong., 1st sess., several bills were introduced on the subject of pay television: H. R. 524 by Congressman Hinshaw, to classify subscription television as a common carrier service; H. R. 6899 by Congressman Celler to prohibit subscription television on broadcast frequencies; H. R. 6913 by Congressman Chelf to prohibit the Federal Communications Commission from making a decision on subscription television which would be contrary to the "express will and desire" of the public.) The orderly procedure to accomplish this end is for the Commission to seek the guidance of Congress.

There is ample precedent for such action. Aside from recommending special legislation and commenting on bills referred to it, the Commission has several times requested congressional guidance and advice.

In 1944, following an extensive investigation of the effect of newspaper ownership of radio stations, the Commission determined that because of "Grave legal and policy questions involved," the Commission would not adopt any general rule with respect to newspaper ownership of radio stations.

A summary of the evidence received in the Commission's investigation was, however, forwarded to the appropriate committees of the Senate and the House of Representatives for such consideration as the Congress might desire to give the matter. (See FCC Annual Report No. 10, p. 7 (1944).)

In its 11th annual report, the Commission noted that it had become concerned with the sale prices of radio stations which were far in excess of the value of the physical assets transferred and that in letters to the Senate Interstate Commerce Committee and the House Interstate and Foreign Commerce Committee the Commission had "called attention to this trend and requested congressional direction as to the policy it should follow in passing on the sale of radio stations where the sale prices are in excess of the going concern and physical property values." (See FCC Annual Report No. 11, pp. 12–13 (1945).) In its 19th annual report, the Commission stated that because of the uncertainty with respect to congressional intent in the enactment of section 112m of the Internal Revenue Code, it was presenting the question of the proper interpretation of that section to Congress, in connection with the overall study of the Internal Revenue Code. (See FCC Annual Report No. 19, p. 17 (1953).)

Congress also has on occasion requested the Commission to investigate and report to Congress or to withhold Commission action until the national policy had been clarified by Congress. Section 307 (c) of the Communications Act directed the Commission to "Study the proposal that Congress by statute allocate fixed percentages of radio broadcasting facilities to particular types or kinds of nonprofit radio programs or to persons identified with particular types or kinds of nonprofit activities" and to report thereon to Congress with recommendations and reasons for the same. And in its 15th annual report, the Commission reported that it had withheld action in the *Clear Channel* case (Docket 6741) at the request of the Senate Committee on Interstate and Foreign Commerce, which had had under consideration a bill providing for limitation of power to 50 kilowatts and duplicate operation on clear channels. (See FCC Annual Report No. 15, p. 37 (1949).)

As the expert agency in the radio and television field, the Commission has an important function to perform which will not infringe upon the congressional prerogative to establish national policy. Much information can be gathered to aid the Commission and Congress in satisfactorily resolving the questions raised by the proposal to establish a pay television service. This factfinding work can appropriately be done by the Commission.

For instance, as in the case of the newspaper investigation, the Commission might appoint a Board of Commissioners to conduct a full investigation, including an evidentiary hearing, into all aspects of the pay television question and to prepare findings to be transmitted to Congress. By this or a similar procedure, the difficult questions facing the Commission and the Congress performing their appropriate functions in the public interest.

AMERICAN BROADCASTING CO.,
A Division of American Broadcasting-Paramount Theatres, Inc.
By GERALDINE B. ZORBAUGH,
New York, N. Y.,
JAMES A. MCKENNA, Jr.,
VERNON L. WILKINSON,
DAVID S. STEVENS,
Washington, D. C.,
Its Attorneys.

Senator POTTER. The first witness will be Mr. Garfield.

Mr. GARFIELD. Good morning.

Senator POTTER. We are happy to have you here, Mr. Garfield. Will you identify yourself for the record?

STATEMENT OF ZALMON GARFIELD, ASSISTANT TO THE PRESIDENT, JERROLD ELECTRONICS CORP.

Mr. GARFIELD. My name is Zalmon Garfield; I am assistant to the president of Jerrold Electronics Corp., of Philadelphia. Let me thank you gentlemen for permission to appear before the committee on behalf of Mr. Milton J. Shapp, the president of Jerrold Electronics Corp., who deeply regrets his inability to appear in person because of longstanding previous business commitments on this date. The material which follows is the result of approximately 10 months of intensive study and development work by our company in the field of subscription television.

It is our purpose here today to present to this committee a report both of our progress and problems in establishing a sound subscription television service, and if I may, I would like to make very clear at the outset of this report what side of the fence we are on. It seems that in a sense we are a little bit in the middle, in that we strongly believe that the scrambled broadcast method is completely impractical, and I will develop that further in this report. We are, nonetheless, very much in favor of subscription television, and in that sense we are certainly very clearly in the group of proponents, and not opponents, of subscription television. I don't know how that affects my position on the agenda here.

Senator POTTER. You should be a politician. [Laughter.]

Mr. GARFIELD. I did want to make that point clear. We shall submit our opinion to the committee this morning as to the proper solution of the problems we have encountered. The subject matter covered will be as follows:

1. The Jerrold cable theater, a wired system for the distribution of television signals, is the only practical method of disseminating box office quality entertainment into the American home. With a low-cost theater built of cable and electronic equipment instead of steel and concrete, the consumer becomes the beneficiary of lowered prices per unit of entertainment.

2. Major forces in the entertainment industry, including motion picture exhibitors, network representatives and broadcasters, have been confused and alarmed by the utterly unrealistic proposals made

by Zenith, Telemeter, and Skiatron. Their scrambled broadcast transmission technique has been projected on a grandoise scale and founded on concepts which are technically impractical, economically unfeasible, and securitywise unsound. We have presented in the past and will briefly restate later in this testimony the essential logic back of these strong statements. It is our respectful proposal to this committee that the mythology of these scrambled broadcast proposals can once and for all be exploded only by submitting them to public tests at the earliest possible date.

Now, let me make clear what our intention is on this particular point. It is not our intention to recommend or suggest to the committee that there should be widespread scrambled broadcasting of subscription television throughout the country. It is, however, our feeling that these methods should be exposed to public test, and it is our further opinion that when they are so exposed, both the scrambled broadcasters and the public will see their defects as clearly as we believe they exist, and these proposals at that time will, in our opinion, fall of their own weight. We are not suggesting, and do not propose to suggest, to the committee that tests on such a scale as to disrupt any existing service or to create any public disinterest should be permitted. We do feel that testing is in point.

Senator POTTER. In other words, you believe that there should be a major public test of the scrambled system for subscription?

Mr. GARFIELD. On a controlled basis, Senator; yes.

Mr. COX. Mr. Kohn testified that he would be happy to have this conducted in Allentown, Pa. Would you feel that this would be a reasonable type of community in which to conduct experiments of this sort?

Mr. GARFIELD. Allentown is a fairly sizable market, and I would think a properly conducted test subject to the proper control conditions there would serve a useful purpose.

Mr. COX. I think the proponents generally have indicated that, even if authorization were granted, it would take them upward of 2 years to install systems in 6 markets; assuming that each of the proponents were entitled to conduct tests, this would give them 2 apiece. Would you feel that experiments over that length of time and in that number of markets would be disruptive or would be the sort of thing that you have in mind?

Mr. GARFIELD. It strikes me as a longer than necessary time and it bears on a point I will come to a little bit later with reference to the economics of the scrambled broadcast method versus the wired method. We have contended, and I will contend somewhat more elaborately in a few minutes, that the economics of the cable theater—the wired systems distribution method—using no broadcast facility at all, is far more economical, in addition to being sounder and more secure. Once we can obtain programing, and I will come to that, of a safe nature, we can be in test and have demonstrable results in considerably under 2 years, and I think that bears on the economics of this situation as well. I can't see why such a long period of time would be required, although I can understand that the problems encountered are going to take maybe 2 to 20 years to resolve, and I rather doubt that they will ever be resolved.

Mr. Cox. You would suggest, then, subject to this question of obtaining programing, that your proposals would be subjected to test during this same period, generally?

Mr. GARFIELD. For from opposing such tests, as I have interjected here, it is our earnest recommendation that if legislative enactment or FCC rulemaking is required, it be accomplished promptly. We are satisfied that once submitted to such tests, the proposals of Zenith, Telemeter, and Skiatron will fall of their own weight.

Gentlemen, it is our purpose here to be stating that we are speaking here of performance tests, essentially, ability to perform, both technically and businesswise. Public acceptance tests, I think, are required for any form of subscription television. We feel that the cable theater has proved itself in a number of ways already, as I will state, and has been said in not quite such flattering language, earlier, by the community antenna system, and I would like to comment on that at the end, if I may.

3. Such a clearing of the air will in our opinion open the way to the wedding of the cable theater technique with motion picture exhibitors and producers. Only then will this new medium be developed in the interest of the public as well as in the interest of the entertainment and sports world. In fact, major producers of film as well as major sports promoters with whom we have had numerous discussions are uniformly in favor of the cable theater public acceptance test. Film producers, however, have feared that their cooperation would jeopardize relations with their major customers, the motion picture exhibitors. The exhibitor has been intimidated by the apparent efforts of the scrambled broadcast proponents to dominate this vast new medium by controlling both the transmission facility and the entertainment merchandising itself.

We are convinced that with the scrambled broadcast wrangle out of the way, the large progressive elements among motion-picture exhibitors will become in fact the natural allies and supporters, not the opponents, for the development of cable theaters throughout the Nation.

4. In our presentation to the FCC last fall, Jerrold stated that it would be ready in the spring to wire up several communities for public acceptance tests of subscription television. Technically, we are ready. Construction could begin tomorrow. As a matter of fact, in February 1956, at the formal dedication of the new Jerrold Laboratory at Southampton, Pa., a public demonstration of the Jerrold cable theater was presented for the first time. Equipment such as I have here for your inspection—on my right and left [indicating]—was utilized in this demonstration. This equipment was a combination of facilities used in community antenna services, and has been adapted for subscription television service. It has been adapted specifically for this purpose.

Mr. Cox. Where would this equipment be installed—in a central studio from which service originates?

Mr. GARFIELD. No; this equipment, spread in a much different manner, would be located on a public-utility pole, and spread through the city, in much the same as a power company or telephone company covers a city. A portion of it is equipment that would be utilized right at the studio as the signal is fed into the cable.

Mr. Cox. This, then, is largely transmission and amplification equipment?

Mr. GARFIELD. That is precisely right. I would like, if I may, at this time, to invite the committee or their representatives, if they so desire, to be our guests at our laboratory where we can show you this equipment in performance and how it would work.

Senator POTTER. Where is your laboratory located?

Mr. GARFIELD. Southampton, Pa., just a few miles outside Philadelphia.

Senator POTTER. We thank you for your invitation. I am sure the committee or members of the staff, if time is available, would like to take you up on that offer.

Mr. GARFIELD. We would be pleased to have you do so. Unfortunately, the antagonism which I have just described has to date prevented us from obtaining the top-quality box-office entertainment of all sorts, including first-run motion-picture film, top sports events and other major special shows, necessary to conduct meaningful public acceptance tests. When such tests are held, and if they are positive as we expect them to be, a vast new industry will be launched.

Now, let us examine the facts behind the conclusions I have stated.

First, what is a cable theater?

A cable theater takes programing originating live or filmed in a studio, or received via microwave from a distant point, and distributes it by cable or wire to any population area—be it large or small. This wired system is then tapped and a thin cable or wire lead is taken directly to the television received in the subscriber's home.

I think the contrasts here are rather apparent in terms of the scrambled broadcast technique, and for brevity I am not drawing those comparisons with which I am sure wou are familiar. Security is guaranteed since the programing is available only in those homes into which the lead is brought. Unauthorized taps are readily detected and eliminated.

Mr. Cox. What connection with the set is necessary in this system?

Mr. GARFIELD. A coaxial cable lead is taken from the system itself, fed into the home in much the same ways as a telephone wire is brought in, and connected to the tuner terminals of the set. That is all.

Mr. Cox. Then this would be available by turning the tuner to a channel not otherwise occupied in the area?

Mr. GARFIELD. That is correct, and as we developed in our presentation to the FCC some time ago, we have developed two alternative methods: One which we have entitled the season ticket method, in which a consumer would pay a given rate per month or per year or per quarter and get all of the programing; the other, if it appeared desirable, a method by which program-by-program selection could be had by the consumer, whichever appeared more desirable.

Mr. Cox. How do you determine, under the later system, what programs have been used and therefore should be charged for?

Mr. GARFIELD. We have a recording device outside the home, measuring 500 or 1,000 homes. The consumer pushes a button in his home which feeds the signal into the receiver, and simultaneously a signal is fed back into the recording device, and at the end of a month or quarter or whatever billing period, it is fed into an IBM machine.

Mr. Cox. And with this arrangement he cannot tune in the program until he has punched the button.

Mr. GARFIELD. That is correct.

Because the signal carrying the entertainment is piped directly from the studio into the cable and is never transmitted through the air, there is no interference of any kind with presently authorized broadcast spectrum. No Federal Communications Commission allocations or new rules are required; no legislative enactment is necessary.

Mr. COX. It is your position, then, that you are lawfully entitled to install these systems at the present time; your only delay has been due to the difficulty in obtaining programing?

Mr. GARFIELD. That is correct.

The Jerrold cable theater with its specially designed electronic amplifying and distributing equipment is a direct evolution from the community antenna system principle, which our company pioneered. Jerrold has installed community antenna systems in more than 300 fringe area communities. In these systems, television signals are picked up by giant television antenna arrays, usually on nearby elevated points, and are delivered to the subscriber's home over coaxial cable. The techniques utilized in wiring these communities have been adapted and improved for application to the cable theater. This, then, is not an untried principle for signal distribution—and that, I might add, is true both technically and economically. It has been tested and proved in literally hundreds of communities.

Now, then, you may logically ask if Jerrold has developed its cable theater system; if this system requires no governmental license or authorization; if no legislative action is necessary; if it is economically feasible; why, then, is Jerrold here rather than out in the field building cable theaters? Permit me to repeat: to date, our efforts to obtain the proper quality, quantity, and variety of programing necessary for an effective cable theater public acceptance test has been handicapped by the tremendous confusion and opposition engendered by the unrealistic proposals of Zenith, Telemeter, and Skiatron.

It is not without reason that we have used such strong terms in describing these proposals as "impractical," "unfeasible," and "unrealistic."

Senator POTTER. So your programs have been all film programs?

Mr. GARFIELD. No, sir; they can be live. Also, they can be remote and delivered by microwave by some more distant point from the particular studio involved.

Senator POTTER. Have you made an effort at all to establish this system in any community?

Mr. GARFIELD. The cable theater subscription television?

Senator POTTER. Yes.

Mr. GARFIELD. We have not attempted actually to conduct these tests only because we have not been able to get programs.

Mr. COX. What efforts have you made, just in general terms, to obtain programs? Has it been primarily along the lines of trying to get feature pictures, or have you also explored the possibility of getting sports programing?

Mr. GARFIELD. Yes, sir, we have talked to several major producers of film, a number of exhibitor groups, interestingly enough, and also sports promoters, heads of ball clubs in some cases, and so forth.

The request of these individuals, because of what you probably know to be the somewhat controversial nature of this question, has been that we not refer to them by name. However, the responses, I can assure you, have been uniformly favorable. They would like to try it. It appears to them to be a medium which offers great promise for them.

Mr. Cox. Wouldn't you have the problem, in instigating a test of any such system that it would be uneconomic to furnish the kind of programing that you seem to feel is necessary unless you can get a very high degree of cooperation from these people, because you certainly would not be in the position to buy any of these entertainment features outright for offering in one or two small areas, would you?

Mr. Garfield. Well, it is a complex question, and doesn't permit of a direct yes or no answer. It would be expensive. Certainly no initial test operations covering, let us say, a twenty to thirty thousand population area in several parts of the country, and using a variety of cable theater techniques, would be profitable. That is certainly true. However, we would not expect them to be, and as in the development of any new project, you expect to make an investment in order to prove your point and be able to expand to a point where it becomes a commercially practical venture. We had exactly the same experience in the pioneering of the community antenna system industry about 5 years ago.

Mr. Cox. Now, is it Jerrold's purpose itself to capitalize the installation of these systems, or do you have there the same problem that Zenith, Telemeter, and Skiatron have, of locating some local entrepreneur who will actually provide the capital with which such a cable theater will be installed in a particular community, after you get beyond the test phase?

Mr. Garfield. It would be my expectation that this thing would develop in a variety of ways. It would also be our expectation—and I might as well develop it specifically here—that the most logical persons to develop this new theater form are the theater owners of America and the exhibitors today. They are the ones who know the theater business best, and it is our expectation that they might have logically been the persons to move ahead. Our position on this is quite flexible. We might attempt an installation or two ourselves. We will be happy to work with outside capital. We will be happy to work with local entrepreneurs, as you suggest.

Attached to this report this morning is a documented technical analysis of the critical deficiencies of these scrambled broadcast systems presented to the FCC on September 8, 1955.[1] Also, attached is an additional summary and presentation of facts[2] prepared by Mr. Shapp for presentation in a telethon debate on this issue with representatives of Zenith, Telemeter, and Skiatron recently held over station WCPO-TV, Cincinnati. Permit me to summarize these facts briefly, with some additional comments by the scrambled broadcasts proponents themselves, on the key question of code security.

I say the key question of code security, gentlemen, because very apparently if a service for which you propose to charge can be obtained free with rather great ease, the practicality of such a business venture is limited at best.

Scrambled broadcasting will never work, first and foremost, because each of the so-called encoding methods is completely insecure. They can be broken with ease. This can be likened to the investment

[1] Jerrold Electronic Corp.'s Reply Comments in FCC, docket No. 11279, dated September 8, 1955, are of public record with the Commission and have therefore simply been retained in the committee's files, and are incorporated herein by this reference.

[2] The summary referred to is set forth beginning at p. 1417.

of millions of dollars in theater properties followed by a mass distribution to the public of free-admission passes.

In September's Reply to Comments before the Federal Communications Commission, Jerrold issued an unequivocal challenge to the three scrambled broadcast proponents to participate in a public security test of their codes.

Mr. Cox. Now is it your position that these codes can be broken on an individual basis by the ordinary viewer, or is this something that requires electronic expertness to accomplish?

Mr. Garfield. It doesn't require electronic expertness. It does require a slight degree of knowledge, and the probability would be that servicemen—who by the way would be confronted, if these attachments of these devices were made to receivers all over the country, with the probability of a television service monopoly by the scrambled broadcasting operators—that they would be the most likely persons to develop the very simple methodology for decoding and sell it, give it away, do anything in order to protect their own business and their own future as TV servicemen throughout the country. That appears the most likely.

It is a little hard to predict in advance exactly what the avenues will be. We do know, and think we can demonstrate to the committee, to FCC engineers, and even to the scrambled broadcasters themselves—given the same conditions as any member of the public would have, once these methods were instituted and the decoding units installed—that we could very quickly show with what ease these things could be decoded.

Mr. Cox. As I understand your challenge, though, you propose to have this done by your engineers in your laboratory. That presupposes people with more knowledge and more equipment than even the average television repairman would have available for the purpose of trying to break one of these codes.

Mr. Garfield. Our only purpose in so suggesting was for the sake of expedition. It could be done just as readily by putting someone with the little bit of knowledge that would be required in an apartment in an area covered by the scrambled broadcasting, having attached to his receiver the same decoding device as any member of the public would get which chose to pick up the service, and with that and the scrambled signals in the air, that is all he would require to proceed to do the job.

Mr. Cox. Well, as I recall his testimony, I believe Mr. Landis who represented Skiatron indicated that they regarded it as possible that a person with a certain amount of knowledge could take apart one of their printed circuit cards and could determine what would be necessary to receive the signal on other sets without the use of cards, but that they felt that ample protection was afforded in the fact that in order to make this a serious enough problem for a Skiatron franchise holder or program distributor, that there would have to be an organized system of distribution which itself would be detectable and subject to legal regulation; wouldn't that be true essentially?

Mr. Garfield. On the question of legal regulation, I am not sure what the law would be in this regard, and I would not pretend to attempt to elaborate on that point. I can visualize a situation, however, where if there were legal protection against the doing of this sort of thing by the simple device of installing a policeman in every home in the area covered, it could be enforced. Other than that I would foresee, I think, a somewhat complex problem of enforcement on this question. As to the complexity of doing the job, I am not an expert in this field either.

However, the methods that we have utilized for approaching this situation are spelled out in detail in the FCC submission and the important point is that once done, unless the scrambled broadcaster is willing to engage in tremendous expense for a constant revolution of the fundamentals of the code, he is going to find great difficulty, because it does not have to be repeated each time—the decoding operation.

The devices for decoding purposes can be made widespread and if you will notice, if you have a chance to review that FCC submission, the contrast between the very elaborate 19-tube device suggested by Telemeter in their original submissions for decoding is stripped down to virtually nothing for attachment to the set, because here you are no longer now concerned with recording moneys and recording programs seen and so forth, you are simply supplying a decoding device which is very simple in construction and operation.

I can perceive or foresee the possibility of a rather thriving business for the servicemen of America in this field.

Mr. Cox. But this would be one that would have to be conducted strictly under cover, then, wouldn't it, in order to avoid involvement in claims of unfair business practices?

Mr. Garfield. I do not know what the situation would be. It strikes me that it might be somewhat complex. I do not know what the situation would be with reference to the legal right to do whatever you are able to do with a broadcast signal free in the air.

Senator Potter. With your own set, with an airwave which is public property.

Mr. Garfield. Yes, sir. I do not know the legal answer to that question.

Mr. Cox. Well, as I understand the proposal for breaking Zenith's code, it involves determining the combination which would have to be dialed into a Zenith decoder in order to get programs on a particular set, there being some 16,000 variations possible in the setting of a particular receiver. Now in this instance anyone using the code, having obtained it through other than lawful channels, would be actually using an item of property which Zenith is leasing to him for the purpose of defrauding the company. Now it might be different in Telemeter's case. As I understand it you would feel that someone would devise a substitute for the Telemeter decoder?

Mr. Garfield. It is true in all cases.

Mr. Cox. Which could be put on the back of the case and which could accomplish this result, with adjustments from month to month, without the necessity of having the additional electronic equipment that is required to set the price for a program, record the program accepted, and the various other items that are taken care of by this in addition to switching on the decoding mechanism.

Mr. Garfield. That is correct, and that generally is true of all three, Mr. Cox, not of Telemeter alone. Don't misunderstand me. We are not talking about utilizing the decoder of the company for the purposes of decoding. That would not be necessary. You would only need one decoder.

It is the same principle as is spelled out here in the service. Cryptanalysts regard a code as breakable once they have access to the signal, and that is why channels are changed all of the time for transmission of secret code of any kind. They regard the breaking of code as ridiculously easy, given the decoder and the signal. They can be broken with ease. I think I have made this point.

Senator POTTER. You give a man a safe and combination and tell him not to open the safe.

Mr. GARFIELD. That is exactly right.

This challenge, which was first submitted by Jerrold in the summer of 1955, did have one noticeable effect: it seems to have shaken at least the psychological security of Zenith, Skiatron, and Telemeter in their codes.

For in its replies to comments in September, Zenith doubts the security of the Telemeter and Skiatron systems (p. 46, Zenith reply to comments).

Skiatron infers (pp. 4 and 5) that only their decoder (using a printed circuit card for a key) would deter bootleggers.

Telemeter states in their reply to comments (p. 2) that the Zenith and Skiatron systems "fall short of these objectives" (code security).

Each of the scramblers thus agrees with Jerrold at least in regard to the "other two" systems that they lack security. We might well conclude, "that among men who know decoders best, its Jerrold 2 to 1," which puts the odds on our side, anyway.

In one sense, perhaps, listening further weaknesses of scrambled systems is superfluous since kidney ailment is not serious in the case of a patient who has died of a heart attack. However, any one or a combination of the following points might be fatal of itself:

1. The cost of a scrambled broadcast system is considerably higher than the cost of the Jerrold cable theater. This disparity increases as the number of subscribers increase for each method.

Senator POTTER. What would the cost of yours be per customer?

Mr. GARFIELD. Senator, that would vary considerably as the saturation of the system increases. That is referred to in the submission to the Communications Commission on page 14. There is a chart, which indicates the swing of cost versus number of subscribers and percentage of subscriber saturation.

Senator POTTER. Your dollars—is that cost per year or what?

Mr. GARFIELD. No, this is capital cost, Senator, presuming the connection to the home—to the subscriber's receiver—to be a part of the capital investment. The cost per mile of our system to installation, like the cost of a telephone company plant, is a static capital investment figure. As the cost of that plant is amortized over an increasingly large number of subscribers, obviously the cost per subscriber goes down, the capital investment. This is not true in the primary cost element in the scrambled broadcast method. Their primary cost capitalwise is that decoding unit in the home and obviously that, too, is a static figure, and increases exactly the same amount with the addition of each subscriber.

Mr. COX. What is the cost per mile figure that you use?

Mr. GARFIELD. Roughly speaking, on a single channel system for subscription television purposes alone, not associated with any other service, about $2,500 a mile, perhaps less. As in all cases in our industry, we have found that as we get more and more experience in the field we are in a position to reduce cost.

Mr. Cox. Now, does this presuppose hanging the cable from above ground utility poles?

Mr. Garfield. Either above ground or conduit below ground. The cost in conduit would vary widely from area to area, depending on the problems.

It has been suggested, for example, that New York City couldn't possibly be wired. There are a couple of companies with fairly good repute who have managed to accomplish that impossibility, and serve the people of New York with public utilities, telephone and wire. We have talked to them and it is entirely possible to wire New York. There would be problems in the concentrated areas, but you must always, in any kind of a distribution system, relate your problems and costs to the concentration of population per mile of system, because that per mile remains the same no matter how many people you have access to. And in New York, or any major metropolitan center, quite obviously the concentration you would have is enormously greater than the smaller towns that our company has wired for community antenna systems.

Senator Potter. It would be difficult to have this system in your rural communities, then, wouldn't it?

Mr. Garfield. In completely rural communities, if you are referring to farm country, Senator, it would. We have been cognizant of that problem for some time in our other areas of operation, and are working on developments right now, and, as a matter of fact, have submitted to the FCC one aspect of resolving that problem. Low-cost systems for rural service, much the same as rural television service, has reduced cost because of the areas covered. We think we are coming pretty close to an answer that is going to make it possible for us to render service into rural areas.

Senator Potter. I would assume that would be one of the major objections to your type of subscription television. It would be difficult for the Commission or the Congress to wholeheartedly support a system that couldn't be made as universally used as possible.

Mr. Garfield. As a matter of fact, when we get into the rural areas, because our cost can relate itself in the small urban communities directly to the size of the population, I think it is actually more feasible for us to render service in the more sparsely populated areas of the country than it would be for scrambled broadcasters. I rather suspect that if such a system as they propose were allowed to extend itself, its tendency would be to concentrate in the major metropolitan markets. I do not know that for a fact. That is my own judgment.

Senator Potter. From a technical standpoint, you could just as well have a scrambled set on a farm 10 miles from the community as you could in the community, with the possible exception of service?

Mr. Garfield. The probabilities here are there is considerable fringe area remaining in the country, and the probabilities are that this would require increasing the power of existing television facilities or building of new television facilities, and then the cost is going to get pretty darned high for the scrambled broadcasters who want to reach those rural broadcasters.

We have found ourselves—just taking the contrast between television broadcast facilities as they exist today and community antenna facilities—that we can afford to go in and wire up a community, picking up remote signals on a mountain top—and I will comment on the legitimacy of that business operation later, if I may, at the end of this, for just a moment. But we have found that we can do this in communities where television broadcasters cannot afford to install a broadcast facility.

Mr. Cox. But that is because they are outside the range of existing facilities. Theoretically I would assume that a scrambled broadcast would be available to anyone within the normal range of reception of that station, assuming that he, being either in the community at the center or someplace else, can acquire a decoder and get someone who can install it on the set.

Mr. Garfield. That is correct, Mr. Cox. The contrast I was attempting to draw is the desirability of the capital investment for broadcast facility in a community as opposed to its practicality as a community antenna system installation, which is in effect the wired system versus the broadcast system in economic terms.

In many small communities which cannot afford broadcast facilities they can sustain a wired system.

Mr. Cox. But whereas in a developed community—a metropolitan area—you argue that your costs go down per set in use as the number of sets increases, whereas that of the scrambled broadcaster remains constant; as you get out into rural areas, your costs would go back up while his are still remaining rather constant?

Mr. Garfield. There is that possibility, and that relates to the comment I made before in that we are working right now, and I hope very soon will be able to submit addenda to the committee's record and certainly to the FCC—a low cost method for reaching rural areas by wire. We are satisfied that it can be done.

Senator Potter. It would seem to me that is one of your major problems.

Mr. Garfield. It certainly would be for reaching the rural community.

Point No. 2, operating costs for servicing and maintaining a wired system are but a mere fraction of those required to maintain a scrambled broadcast system, and this once again is developed in the FCC submission, and I have refrained from doing it here. In addition, the scramblers must pay for broadcast time. The cable theater operator does not.

3. The billing and collection procedures proposed by Telemeter, Zenith, and Skiatron are obsolete and unworkable. There is a section, gentlemen, in this document, that develops in detail each of these points, and I therefore refrain from doing it here, to spare the committee's time.

Mr. Cox. Now, you argue, in this filing with the FCC, that there would be considerable difficulty and cost, and in effect credit loss, in any administration of a scrambled broadcast system, which is a cost that is less in your case because recording the amount of the bill, if you don't use a season ticket arrangement, is easier and because you can control it simply by cutting off the connection in order to enforce collection. But, on the other hand, don't you have additional costs in delivering your signal which are absent in the case of a scrambled broadcast, in that you have a continuing problem of maintaining miles of cable, and the thousands of amplifiers necessary to keep the signal of required intensity?

Mr. GARFIELD. Mr. Cox, I think a comparison of the cost of maintaining a cable system, particularly one of the type that we have developed for the cable theater—which is demonstrable, by the way, because there are several hundred of these installations around the country, with concrete cost figures that can be developed, and shown to you—is immeasurably lower than the cost of access to every single home that you serve where you have a device that uses vacuum tubes—up to 19 vacuum tubes; an average television set doesn't have many in excess of 21—in the home. To get access to that unit is a problem. After you get access to it, to get access at a time when the family is not using its television receiver, either for ordinary reception or for subscription reception, is a problem; to service it is quite a difficult problem; and the number of tubes, I believe we have developed in this submission as well, is immeasurably greater, in most cases, so that the maintenance costs are actually lower.

We have reduced maintenance costs in cable systems—using in part techniques we have developed ourselves, and in part the experience of other wired services throughout the country—to a rather fine science. We can service, for example, a community of about 30,000 to 40,000 people—and these figures are subject to some error—with approximately 4 or 5 technicians.

Now, if you have something on the order of 60 percent saturation in an area of that sort or, let us say 4,000 to 5,000 home subscribers, you are not going to be able to service units inside those homes with that number of technicians. Furthermore, you are going to have to be paying them peculiar wages, because their service is going to be mainly from about 1 o'clock, when TV service goes off until 6, when service goes back on. The family is not going to tolerate service on this decoding unit during the television hours.

Senator POTTER. It won't be conducive to good homelife for the repairmen. [Laughter.]

Mr. GARFIELD. I would not think so.

In addition to these and many other weaknesses, Zenith, Skiatron, and Telemeter have flaunted the American tradition of free air waves.

Sections of the public already have been intimidated by the reasonable fear that such a proposal for seizure of broadcast time or space would deprive them of television as they know it. They have missed the fact—and this is a fact that we would greatly appreciate the committee calling to their attention if they considered it proper—that the cable-theater technique would provide a wholesome competitive medium, with broadcasters and cable-theater operators vying for the viewer's attention. The public could only benefit by improved programing in both mediums from such competition.

The only argument I have heard directed against this point, if I may say so, is that the cable theater operator would be in such a powerful competitive position that he would be able to take all of the programing away from free television. There is something of a contradiction in terms—in terms of this point 1—about the economic problems of the cable theater and its powerful ability to outbid the major networks in the country on entertainment. I hardly think that is likely, and I think it is further an underestimation of the ability of the entertainment world, in this country in particular, to measure up to the requirements and demands for entertainment that the public is willing and able to pay for.

Senator POTTER. No one should fear competition for programs; is that it?

Mr. GARFIELD. I would certainly think not, Senator.

Senator POTTER. The public gains by that?

Mr. GARFIELD. That is exactly right.

I recall when television first came into being, I heard on many occasions the comment that this vast thing would just gobble up all of the entertainment in the world, and there would just be nothing left, except perhaps westerns of the Bill Hart era. In fact, I think probably the greatest stimulus to the development of entertainment in the country that the country has seen, certainly in my time, has been television—the development of new writers, new actors, new techniques, new media. I think that the cable theater will accomplish exactly that same purpose, and simply add to it.

Mr. COX. To the extent, though, that you acquired viewing audiences in any given market, you would, of course, have the same effect on dilution of audience on standard sponsored broadcasts that the presence of any new station or, in fact, any new entertainment medium, would have on that market, thus raising their costs. That is, if you have an audience, you subtracted it from their potential audience?

Mr. GARFIELD. Potentially that is so, and if there were to be any objection to that, then theoretically the motion pictures should want television to shut down, and television should want motion pictures to shut down, and both should want all of the ball parks to close, and none of those things seems very likely.

Millions of viewers—referring back now to this question of broadcast time and space—millions of viewers simply will not accept the fact that a channel they have been watching for years suddenly turns to jabber and meaningless patterns under the ministrations of the scrambled broadcasters.

This in a sense is the crux of the security problem. We do not question, as may be suggested, the honesty of the American public. We do question the ability of Zenith, Skiatron, Telemeter, or anyone to force collections for a service which has been traditionally free by a method so subject to ready violation.

I have deliberately hastened this examination of scrambled broadcast deficiencies so as not to repeat information set down in detail in the attached analysis by Mr. Shapp and in our comments to the FCC. Permit me to refer you once again to these accompanying documents for substantiation of what I have said.

Despite these apparent deficiencies, Zenith, Skiatron, and Telemeter are intent on testing their systems.

In the meanwhile, motion-picture exhibitors—who would cooperate with the Jerrold cable theater as evidenced by the following quote—will not do so while the scrambled broadcaster haunts the background. This at least has been the apparent result that we have obtained from our explorations.

The joint committee does not urge that subscription television per se is inevitably against the public interest. For example, it is conceivable that a subscription television proposal to use existing common carrier facilities, in a

closed-circuit type of operation, would supplement rather than supplant existing television service and might, therefore, reasonably be found to be in the public interest. (The Joint Committee on Toll Television, representing motion-picture exhibitors, in its comments filed with the FCC on June 9, 1955.)

Mr. Cox. Don't you suppose, though, that they are talking about a closed circuit system that ends up in projection on a screen in a movie theater?

Mr. Garfield. I don't think so. I would not be prepared to debate that, Mr. Cox; I think they were referring to a service that reached into the home, but I don't know the answer to that question specifically.

I might say, however, in discussion with one exhibitor group that comes to mind immediately, they have suggested as a hub point, or terminal point, for the cable theater, the local motion-picture theater, with simultaneous exposure—with exposure of one first and then the other—in order to test public reaction.

We rather think in certain markets the two might tend to stimulate each other's business. I think that has been demonstrated by commercial television to a degree.

Only last week TV Guide urged editorially that "the fee-television enthusiasts establish a station and pipe their expensive programs, without putting them over the air, into homes that have been especially wired to receive the pay-television programs." This very specifically is the cable theater, without question. "Subscribers could accept or reject as many programs as they like. Such a test would be fair to all of us. It could be conducted without disrupting, even temporarily, our present TV reception."

Now, I should like to underscore, at the end of this quote, our judgment with reference to the performance tests that we recommend for the scrambled broadcast method—and by performance I mean both technically and businesswise, their ability to perform. We certainly are not recommending any widespread licensing of this thing all over the country. We are suggesting that, having presented every argument on paper that we could, having called for public testing of the security of their codes, having achieved neither, except the recording of our opinions to date, that apparently the only way the scrambled broadcast proposal can be eliminated is by a public performance test of its ability to perform and do the job on any kind of a sound basis. If the committee could find any way to get the scrambled broadcasters out of the way, we would welcome it.

These opinions have been echoed with variations by Broadcasting-Telecasting magazine, the National Association of Radio and Television Broadcasters, the Columbia Broadcasting System, and others. In private discussions, even more affirmative positions have been taken, again and again—and this I can testify to personally—by producers, exhibitor groups, sports promoters, and others.

It is for this reason, gentlemen, that we say to you as vehemently as possible: They have asked for it, let them have it. Let the scrambled broadcasters have their performance test. Let them, and let the public, observe the results for themselves. We are satisfied that the scrambled broadcaster will thereby eliminate himself. The way will then be open for the motion picture exhibitors, the men most experienced in the field of mass entertainment, to join forces in supplying both the shows and the showmanship necessary for the development of soundly executed, constructed, and operated cable theaters throughout the Nation.

This will not happen at once, but will be done in an orderly, step-by-step fashion. First, initial tests; then extension of these tests; then expansion to many markets throughout the country. The motion-picture exhibitor, who already has a tremendous stake in bringing mass entertainment to the American public, is the proper group, both by experience and by reason of existing investment, to take this project forward, in our judgment. That is not to say, and let me make this clear, that we eliminate the possibility of anyone joining forces in the development of a medium which has such a mass potential for expansion if it is soundly based.

We offer our full facilities to the motion-picture exhibitor in building modern cable theaters to back their experiments anywhere in the country. I might add that we offer these same test facilities to Zenith, Skiatron, and Telemeter, if they choose to avail themselves.

Our company has exhaustively explored this field, including, I might add, the scrambled-broadcast technique which is, in fact, no novelty. We are satisfied that the implementation of a program such as we have respectfully submitted today will drive forward the development of the cable theater, with long-range incalculable benefits to all concerned, most particularly to the public in the form of low-cost, quality entertainment in the home, which is not continuously available by any other means.

Mr. Cox. Now, of course, the representatives who have appeared before this committee for existing sponsored broadcasts argue that there is no form of programing that any subscription television agency could make available to the public that is not now, or will soon be, available to them on a free basis.

Mr. Garfield. I have heard that argument presented, and I would want to make very clear that I personally, and my company in particular, has only the highest regard for the progress that has been made by commercial television networks and broadcasters. I think a tremendous job has been accomplished in a short period of time. However, I do think at the level of programing that we are thinking of, that the economics of commercial television, as we know it today, simply will not sustain it. Let us talk about the sports field, which has been discussed widely in terms of subscription television depriving the public of a free opportunity to view ball games, and so forth.

Now, it is simply a fact that a number of ball clubs—baseball clubs in particular—have already withheld all or a portion of their games from commercial television, and that is simply because the economics are such that the amount that they can get for the telecasting of the games—and this is as it is told to me; I don't have figures to verify this—is simply not adequate to overcome their losses at the box office, at the ball field.

Senator Potter. Mr. Garfield, is it your opinion that in order for the public to receive programs that are not now available, such as the ball games that you mentioned, that it will be necessary to have some type of subscription television, whether it be scrambled systems or the cable theater?

Mr. Garfield. In quantity; yes, sir. Practically only by means of the cable theater in our opinion.

Mr. Cox. Do you have any idea at all of the possible range of charges that would be made on a per-program basis?

Mr. GARFIELD. We have examined this question in some detail, Mr. Cox, and the only answer that I can give you is something like this: The charge that would be possible—and, obviously, if you are shooting at any mass medium you want to reduce the charge to its minimum in order to hit that market as hard as you can, particularly with us, as each new subscriber becomes a way of amortizing our investment; it depends on the percentage of saturation that the system achieves from the public.

If it has a 33⅓-percent saturation, then the charges it will have to make to survive will be considerably different than if it has a 66⅔-percent saturation, and likewise on up. Generally speaking, we think a very high quality of programing—and please don't hold me to these figures, because this is exactly why we want to get programing and get into the field, to establish the answer—but very high-type programing could be achieved in a major mass market for around $100 to $125 a year. I cite that figure for only one reason; I am not sure of it. This is speculation based on paperwork and not experience in the field. I cite it only because, in reviewing earlier comments, I saw such preposterous figures as $1,100 a year for a family to be able to get subscription television service, and so forth. I think those figures are utterly ridiculous, and have no relationship to reality or any kind of mass service, and in our opinion this is not a service for the elite. It is a mass service. It is not for any special section of the country, although its economics might, from time to time, permit a servicing of needs of smaller groups in the national community that could not be otherwise serviced by a mass media.

Mr. Cox. How many hours would be encompassed in programing reaching that total annual charge—or what would be the per-program charge?

Mr. GARFIELD. Well, the per program charge, if it were a per program service, Mr. Cox, would vary widely. A motion-picture film produced at one budget could be made available to the public, because of the charge that would be made to the operator, at a considerably lower cost than another film made with, let us say, a 2 or 3-million-dollar budget. It would be impossible to establish an accurate figure for you on that.

Mr. Cox. It would run at about $125 a year; that is about $10 a month, $2.50 a week.

Mr. GARFIELD. That is a best estimate, Mr. Cox. I wouldn't cite that as any kind of firm figure, but to the best of our judgment, trying to do paperwork on this thing and estimate cost, service of that type at about that charge is practical.

Mr. Cox. Now, what extent of programing would you propose to make available on such a system? Is this going to provide an 18-hour-a-day program availability, or are you going to concentrate on the evening hours, or the afternoon hours in the case of sports events, or what would be your proposal in the way of quantity?

Mr. GARFIELD. I would make this point: A cable theater, unlike a scrambled-broadcast facility, once installed there is no additional cost for the use of the facility, such as purchasing broadcast time which requires money. This would be nominal in its cost to use, only requiring studio personnel in order to implement it.

We have therefore thought in a variety of terms on this question—thinking in terms of a backlog of specialized children's programs perhaps in the afternoon; a variation in type of programing during various hours of the day, aimed at the housewives in some cases with programing available of a type they would be interested in; and being able to more or less equalize costs, with obviously your highest cost programing most likely to occur in the evening hours.

We would like to make a rather full use of this cable theater once we have it, and if our season-ticket concept is sound, and we believe it is, we could supply programs for a great many hours a day, and probably much more than any broadcast facility could supply.

Senator POTTER. Would you envision more than one cable-theater system in a community?

Mr. GARFIELD. It is entirely conceivable. It could happen.

I think, Senator, that would depend a great deal on how the economics of the industry shaped up, as to whether a community of a given size could sustain more than one.

Mr. Cox. Now, I take it, then, that it would not be feasible through such a system to furnish the public with public-service programing—with discussion of public issues—unless you found a format which would support the charge, and that therefore this does not have the possibility, claimed for scrambled broadcast, that the additional economic support to be derived from subscription service would permit the establishment of essentially new stations in small areas not now capable of supporting a television station; and that outside of the limited percentage of time devoted to subscription broadcasts, this station would be providing well-rounded, balanced programing, including sustaining programing as well as commercial programing.

Mr. GARFIELD. On the contrary, Mr. Cox, I can see no reason at all why public-service programs should not be made available via cable theater. As a matter of fact, it appear to me entirely feasible from an economic point of view. The theater is there. It exists, and it costs not one whit more for that theater if it is used or if it is not used, the only increased cost is the nominal cost of operating personnel, and that I expect the theater would require anyway to have on tap. So there is no reason at all why time could not be allocated to public-service programing, and on a considerably more feasible basis.

Actually, my guess is that a telecasting station is going to want to be commercial a good percentage of its time regardless of the circumstances with reference to subscription television. A cable theater has the theater right there, and can make it available to the public, to governmental agencies, to service agencies of various kinds very readily, and at very low cost.

Mr. Cox. Well, would it be free to the public? Could there be certain programs offered through this facility which could be borne by the operators of the cable theater and charged against the receipts taken in?

Mr. GARFIELD. That is entirely feasible. There is no reason at all why not, Mr. Cox.

Mr. Cox. So that, then, if this cable theater were superadded, say, to a community antenna system operating in a small community, it would be possible for it to put on a program plugging the local community-chest drive, to put on a local program featuring local people, and in some sense provide the function of a local television station.

Mr. GARFIELD. Absolutely.

Briefly, then, if I may summarize the essential points I have made:

No. 1, Jerrold is prepared technically today to launch construction of cable theaters anywhere in the United States.

2. We strongly recommend that this committee do everything in its power to immediately assure the privilege of performing test operations for Zenith, Telemeter, and Skiatron, along the lines which we have discussed. We are convinced that their scrambled broadcast proposals are impractical, and when subject to actual operation, will be strangled by their own excess of economic and technical deficiencies. This, then, will clear the air, in our opinion, for the orderly and practical development of the only feasible means for the distribution of high quality box-office entertainment to the home, namely, the cable theater.

3. We are convinced that the progressive motion-picture-theater operators of America are natural allies in the development of the cable theaters. We are happy to offer our full facilities in cooperation with any group or groups of motion picture exhibitors for the construction of a soundly conceived cable theater anywhere in America.

Finally, let me repeat that Jerrold is convinced of the soundness of its proposals for the cable theater. We are convinced that this concept and its ultimate scope is much too large to be clutched to the bosom of any one company or group of companies.

Mr. Cox. Are there other companies in the country capable of performing the same functions Jerrold would perform in connection with the development of such a system?

Mr. Garfield. There are other companies in the business of making distribution. I think we can do it best, and have done a great deal more work in specific development in the area of cable-theater applications.

We are satisfied that the ultimate decision on a matter of such substantial import to the public should not, and ultimately will not, be the property of Zenith, Telemeter, Skiatron, or Jerrold. Neither will it be the property of the Commission or even of this important Committee. The final decision will be made by the public in the public interest. The public will see to that. We are happy to submit our proposals to you and to them.

Gentlemen, if I may make one additional comment, I would like to address myself to some of the comments made with respect to the community antenna system, in which we have a substantial stake as well. The community antenna system is only germane to these hearings, as we see it, in terms of its establishing facilities for the reception of television signals on a strong basis. However, it has been said we have been pirating, in earlier comments.

I would like to address myself to that. Our service in the community antenna system field is in effect the leasing of an antenna facility for areas which could not otherwise get the signals as well, or at all, that we make available to them through this antenna facility. That is strictly all a community antenna system does. Unlike what we have been discussing here today, with reference to subscription television, it is not a programing service. It does not touch programing in any way. It does not merchandise programing. It merchandises an antenna facility. It leases an antenna facility.

Now, it has been said in earlier testimony—and perhaps more than once, I don't know—that this constitutes pirating of property. I really think that that indicates a complete lack of comprehension of what a community antenna system is; and, as a matter of fact, in the areas of eastern Pennsylvania which were referred to in particular, I would be happy to have the committee, or any of the witnesses during the course of these hearings, address themselves to any number of UHF stations in that area—one, I might add, is close to Allentown; it is Bethlehem, which is contiguous—and get their view of community antenna systems. Far from viewing them as pirating anything, they view them as making a free will gift of what is most important to any telecasting facility, namely, extension of coverage, which couldn't otherwise be had. And UHF in particular, with its problem of shadowed areas and holes in primary area coverage, has found it particularly desirable and we have the most cordial relations with any number of stations whose signals are made available to additional coverage of the population that they desire to serve by means of this antenna facility which is made available to people in these areas who cannot of their own afford the costs necessary to receive these signals, so I would like to set the record straight on this question of pirating.

If we are pirating it is amazing that there are apparently no laws against piracy, because we have been doing it very publicly for the past five years. Now, someone might suggest that there ought to be. I don't think so. I think community antenna systems provide a service which is extremely important to the television industry. Actually today, although we only serve something on the order of a million people—which is considerable of itself, but a small fraction of the population of the country—it is our opinion that ultimately the highest quality television reception is going to be extended much more widely than that and render a service to a much larger percentage of the public, and thereby benefit the television industry as a whole, of which we are very much a part, and whose overall health we are very much concerned with.

Senator POTTER. I wish to thank you for your testimony, Mr. Garfield. We have the documents you referred to in your testimony. The summary used by Mr. Shapp in the television debate you referred to will be made a part of the record at this point. The reply comments of your company in FCC Docket No. 11279, dated September 8, 1955, having been filed with the Commission, will be incorporated by this reference and retained in the committee's files.

(The first item referred to is as follows:)

A COMPARISON OF SCRAMBLED BROADCAST AND WIRED SYSTEMS FOR ESTABLISHING A SUBSCRIPTION TELEVISION INDUSTRY

Prepared for a panel discussion on WCPO–TV, Cincinnati, Ohio, by Milton J. Shapp, president, Jerrold Electronics Corp., Philadelphia, Pa., September 15, 1955

The concept of subscription television is soundly based upon two factors:

(1) The producers and promoters of box-office attractions are seeking a profitable method by which they can sell more tickets.

(2) The public desires to see top-quality sports and theatrical box-office events at the lowest possible prices, and in the most comfortable and convenient manner.

Thus, if a method can be found to place a turnstile in front of each television set, the largest possible mass audience can witness the great sporting and theatrical events right in their own living rooms, and these two objectives can be attained.

To reach this mass audience is more than just a desire on the part of promoters and producers. It is an economic necessity in order for them to survive. The rise of television in the past 7 years has created a competitive situation in the entertainment field that is keenly felt at their box offices. This coupled with traffic, parking, babysitting, and other problems has reduced box-office receipts in some fields to such an extent that many theaters and sporting arenas have already closed their doors, and many more are operating on a loss or marginal basis. Some promoters have allowed their events to be telecast with the sad result that, in most cases, the additional revenue received from television has been offset by further reductions in gate receipts. Thus many sporting events have either been taken from the air waves, or their promoters are planning to drastically limit or eliminate such broadcasting in the near future.

That subscription television will be the answer to their economic problems is evidenced by the success of theater television which is but one step in the direction of reaching the large mass audience. The further extension of theater television to make each television set a projection screen for exhibitors, will enlarge the audiences, and lower the prices to the public.

The television networks and broadcasters who are opposed to the Zenith, Skiatron, and Telemeter proposals for subscription television, with great unanimity, take a stand only against the use of scrambled broadcasting that would preempt spectrum or use broadcast time of television stations for an encoded subscription service. The joint committee on toll television (subtitled the committee against pay-as-you-see TV) in its comments filed with the FCC on June 9, 1955, states:

"The joint committee does not urge that subscription television per se is inevitably against the public interest. For example, it is conceivable that a subscription television proposal to use existing common carrier facilities, in a closed circuit type of operation, would supplement rather than supplant existing television service and might, therefore, reasonably be found to be in the public interest."

This opinion is echoed with variations by the NARTB, CBS network, Broadcasting Telecasting magazine, and others.

On the following pages, it is shown that not only is a wired (closed circuit) subscription television service feasible, but it is in fact the only practical way in which subscription television can be brought to the American public. Scrambled broadcasting is superior only in the amount of publicity that has been generated. The use of wired systems will in one fell swoop achieve the desired goal of the producers and promoters of box office events, serve the best interests of the public, and eliminate the major opposition that now exists to subscription television. Further, since no legislation of FCC rule changes are needed, installation of wired systems can be started without delay.

The supporting data to back up the conclusions presented herein is contained in the reply to comments submitted by Jerrold on September 8, 1955, to the Federal Communications Commission. A copy of this 40-page booklet may be had upon request.

1. CAPITAL REQUIREMENTS

The capital investment needed to wire a city for subscription television is less than the investment needed to provide a subscription service by means of scrambled broadcasting. Complete data substantiating this statement is contained on pages 10 to 15 of the Jerrold reply to comments to the FCC of September 8. The following factors are revealed:

(*a*) The average cost of installing a Zenith or Skiatron decoder will be a minimum of $85 to $100 with Telemeter considerably higher. When 40 percent subscriber saturation is reached in a city, the average cost per subscriber to a wired system is $83.50. The decoder installation cost per subscriber for the scramblers remains essentially constant, whereas the cost per subscriber for a wired system drops steadily as saturation increases.

(NOTE.—These figures are quite low compared to the cost of building a theater. For example, a prominent theater architect estimates the cost to build a 1,000-seat movie house is between $250,000 and $300,000 or $250–$300 per seat. A drive-in theater to hold 400 cars would cost approximately $125,000, plus land.)

(*b*) The operating costs for servicing and maintaining a wired system are but a mere fraction of that required for running a scrambled broadcast system (complete details contained in pages 16–28 Jerrold reply to comments, June 1955). In addition, scramblers will either have to buy expensive broadcast time or they'll have to invest in their own TV stations. Neither expenses would be incurred by wired system operators. Initial investment for establishing service must be sufficient to cover operating losses until there are sufficient subscribers to place system operation in the black. Thus these higher costs for service, maintenance, and broadcast time (although operating costs) will be reflected in the initial investment requirements.

2. SECURITY OF PROGRAMING

Each of the "encoding" methods proposed by the scramblers can be broken easily without payment. This can be likened to the investment of millions of dollars in theater properties followed by mass distribution to the public of free admission passes.

Zenith, Skiatron, and Telemeter all recognize that the economic basis for the operation of their proposed system is dependent upon code security. For this reason, they have spent many years of engineering research and many thousands of dollars in an attempt to develop what they consider foolproof systems.

In their comments filed with the FCC in June 1955, all three claimed that their codes could not be broken. In fact, Zenith stated (p. 34) that it was not practical to break their code even by cryptographic analysis. When Jerrold issued its first statement in June that it could easily break any broadcast television code, all three proponents scoffed at these claims.

However, what does one find in their replies to comments a scant 3 months later. Zenith now doubts the security of the Telemeter and Skiatron systems (p. 46, Zenith reply to comments). Further, Zenith states that only public tests will determine whether or not the public will try to sneak "their heads underneath the tents" to view the programs without paying. One might well wonder if this is not but fancy language indicating that Zenith now recognizes that their proposed system, too, has a security problem.

Telemeter states in their reply to comments (p. 2) that the Zenith and Skiatron systems "fall far short of these objectives" (code security). However, Telemeter still holds to its contention that the basis for success of their system hinges on code security.

Skiatron infers (pp. 4 and 5) that only their decoder (using a printed circuit card for a "key") would deter bootleggers. Skiatron then goes on to build up a case that their system is simpler, more economical, and apparently does not possess the multiplicity of codes that Zenith and Telemeter claim for their systems.

Each of the scramblers agrees with Jerrold that the "other two" systems lack security. We might well conclude that "among men who know decoders best it's Jerrold two-to-one."

It is all very confusing. To clarify matters, Jerrold has challenged all three of these companies to cooperate in FCC supervised tests and public demonstrations to determine security of their respective codes. To date, no indication has been received whether any of these proponents will accept this challenge.

The wired system proposed by Jerrold is secure because programs are available only by direct cable connection to the system. No coding of signals is necessary. As with telephone service, simple on-off switches or filter circuits separate those who pay for the service from those who do not. Even "meter jumping" in the home will not produce pictures because there is no signal in the cable leading to the subscriber's program selection switch until this switch is operated by the subscriber. Then, when this switch (or even a bootleg switch) is operated, an automatic record is made at the company's central office, and the subscriber is billed accordingly.

3. SERVICE, MAINTENANCE, AND OPERATIONAL PROBLEMS

The scramblers must install a decoder on the back of each subscriber's television set. This decoder, in a fashion similar to an octopus grasping its prey, sends tentaclelike adaptors under tubes into at least six places in the circuitry of the receiver itself. Thus a scrambled broadcast operator would make his major capital investment in devices physically attached to, and electrically integrated with, other people's private and easily removable property. The subscriber's television set would become half-owned, half-loaned, with a third party—the finance company—sometimes showing an interest.

Not only would this situation jeopardize the great investment of the system operator, but it would create tremendous service problems. Independent servicemen would be unable to fix just half of the subscriber's receiver. The scrambler, or his authorized service agency, would have to assume complete responsibility for servicing the receiver as well as the decoder. This would necessitate the building of a huge service organization and could lead to the establishment of a monopoly in the television service business that would threaten the existence of all independent television servicemen in his area.

Since all of the company's equipment (with the exception of the encoder) is located in subscribers' homes, no practical plan of preventive maintenance can be put into effect. All servicing of the equipment must be done on an individual call-for-service basis in a subscriber's home during hours that are convenient to the subscriber. This would not only increase the number of service personnel needed for maintenance purposes, but would greatly increase the size of the truck fleet required to transport this personnel and necessary test equipment. The problem is further complicated because scrambled pictures would be broadcast for only a short period during the day (limited by Zenith to 15 percent of the broadcast time) so that unless the serviceman calls at the time when coded air signals are available, he has no method of checking actual operations of decoders and sets.

The entire service operation is one of confusion. A scrambled system will be expensive to maintain. The overlapping and divided service responsibilities and the resultant customer relation problems will greatly increase the financial burden borne by the company.

With a wired system, none of the above problems exist. Installation of cable service to the subscriber's home is accomplished in a manner similar to telephone connection. A thin coaxial cable is brought into the house and terminated in a small terminal box on the baseboard or wall at the rear of the television set. A lead from this box connects the antenna terminals of the television receiver. No internal connections are made to the receiver.

Responsibility of the cable company ends at its wall terminal box. Responsibility of the television serviceman starts at this point. There is no overlap of responsibility. In case of doubt, a test receiver can be brought to the subscriber's home, connected across the terminal box to determine whether the quality of signals supplied by the cable operator is up to par. This is a method which is already in use in over 400 communities throughout the country now serving 300,000 subscribers to community antenna systems. It is a method that eliminates confusion, and permits a lower cost operation.

4. QUALITY OF SIGNAL DELIVERED TO SUBSCRIBERS

The scramblers would have no control whatsoever over the quality of signal received by their subscribers, since reception of signals is entirely dependent upon propagational factors, subscriber antenna conditions, and can be affected by many types of local interference to be found in the various areas of reception.

In Zenith's June comments to the FCC (appendix, p. 64 and 65), their engineering data reveals serious problems with dropouts of codes due to ghosts, interference, and possible airplane flutter. There is no practical way of overcoming these problems, even if the operator of the scrambled broadcast system undertook the expense of installing new antennas at each subscriber's receiver and then constantly replaced these antennas as they deteriorated. Like the well-known arrow, the scrambler's signals are shot out into the air. Quality of reception is completely outside of his control. It may be argued that this is no different than the problems faced by regular broadcasters of television programs, but it must be remembered that there is a vital difference. In this case the customer is now paying for the programs that he views and expects quality pictures as well as quality programs.

The operator of a wired subscription service has complete control of quality of signals delivered to his subscriber. The problems of propagation or external interference in an area are eliminated because signals are delivered by shielded cable directly to the subscriber's set. No antenna is required to pick up the subscription programs.

The quality of picture clarity can be guaranteed by the wired-system operator, since he has absolute control of signal quality right up to the subscriber's wall terminal box. All equipment carrying the signals to this terminal box are accessible outside the subscriber's home so that preventive maintenance schedules (similar to telephone-company procedures) can be employed to make certain that signal-distribution equipment is constantly operating at peak performance.

5. BILLING AND COLLECTING

Plans proposed by Telemeter, Zenith, and Skiatron for collecting their accounts receivable flaunt established business methods.

Telemter proposes to dispatch house-to-house collectors to empty out their coin boxes. Coin-operated devices were last seen in the American home many years ago. They were removed by the gas and telephone companies when they were found to be too cumbersome and expensive to service. Telemeter would even compound collection problems by having their coin collectors change code cards and handle decoder-service problems.

Under the Skiatron and Zenith proposals, the subscriber would punch a board or a card to indicate the number of programs viewed. Zenith and Skiatron would then depend upon the subscriber returning this record to them so that they could bill the subscriber for the programs viewed. This would be like a telephone company asking its subscribers to keep a record of all calls placed so that at the end of the month the subscriber could advise the telephone company how much he owes. If a card is not returned to the company, there is no simple way to collect for the programs viewed. Further, the chance for future revenue from the subscriber is lost because additional cards will not be sent out.

Methods of billing and collecting from wired-system subscribers are much simpler. There are two types of plans that could be put into operation:

(*a*) A season ticket plan can be utilized, whereby a customer would subscribe for a well-balanced package of entertainment including sports, movies, theatrical events, operas, etc. The customer would be billed on a monthly basis. This would do away with individual metering devices and reduce the cost of billing procedures. It would result in lower program charges to the public. Many facets of the season ticket plan are now being studied by Jerrold. A detailed report and analysis of the pros and cons of this plan is being prepared and will be issued within the near future.

(*b*) Program per program billing is accomplished by incorporating a switch in the wall terminal box behind the subscriber's television set. This switch operates a filter-amplifier device located outside of a subscriber's house that permits the program signal to pass into the subscriber's television set and at the same time sends another signal back along the company's cable to a centrally located meter that automatically records the exact time that any subscriber views the programs. The company maintains an accurate and permanent record at its central office from which to bill its subscribers. The subscriber cannot receive programs unless the selector switch is operated. When he operates this switch (or any bootleg switch) he automatically records the information for billing. No cards; no punchboards; no money collectors. Billing and collecting on a Jerrold wired system can be accomplished at a minimum cost with the least amount of confusion.

The important thing to note about the metering methods available to a wired subscription service is the fact that nothing new, novel, or untried is required. The time-proven methods, based upon years of experience of power, water, and telephone companies, can be readily adapted to the wired subscription service.

6. PROGRAMING TIME

The broadcasters have expressed fears that unlimited scrambled programing could undermine the broadcast industry. The scramblers are quite content to accept limitation of programing time as a necessary evil in order to coexist with the broadcasting industry.

Even Skiatron, who proposes the use of new UHF stations in many areas, bows to this concept. They state (p. 19, Skiatron reply to comments, September 1955): "Skiatron seeks only a limited number of hours a week. It could not now, nor in the long foreseeable future, use more."

Telemeter states (p. 13, reply to comments, September 1955): "The number of programs for which a direct charge can be made are relatively scarce; not nearly enough to utilize anything but a small percentage of the time on television stations."

Zenith would have the FCC limit by law the maximum time of subscription programing to 15 percent of the broadcast hours.

One wonders if any sound investor should agree to such a limitation of plant utilization, which could only result in higher charges to the public per program in order to amortize the heavy capital investment and high cost of system overhead. One wonders if Zenith would condone a law that restricted its manufacturing plant operation to only 15 percent of the working day; and if so, how much more its products would cost.

A wired system is available for programing 24 hours a day throughout the year. Once installed, its facilities are available around the clock without the additional financial burden of paying for broadcast time. Perhaps of even greater importance, the wired system operator is not compelled to negotiate to obtain desirable broadcast time for the operation of his cable theater. Instead his program timing can be molded at his discretion to suit the tastes of his subscribers.

The greatest potential audience is available between the hours of 7 p. m. to 10 p. m. Nevertheless, the income potential of less popular hours must not be ignored. Theater exhibitors are very much aware of this. It is only necessary to examine many existing ticket policies to understand how the less popular hours can be used to produce revenue. Most theaters charge more for evening shows than matinees; more for Saturday, Sunday, and holidays, than for weekdays.

A wired subscription system can employ the same ticket policies—repeating film performances at any hour of the day or night, in order to increase its gross income—thus permitting the lowest possible program prices to its subscribers. Only current sports events would be limited to a one-shot exploitation.

Could a theater long afford to stay in business if it limited itself to only one film showing each day?

7. PUBLIC RELATIONS

The public-relations problems faced by the scramblers will be enormous. The American mind is not conditioned to the concept of paying to view its television programs. Ever since the inception of broadcasting, it has been merely necessary to flip a switch and take a choice of all programs on the air. It will be very difficult for many thousands of people to understand why suddenly during certain hours when they tune to their favorite channel, they will only hear "jabber" and only see drifting meaningless patterns, unless they pay the scrambler a fee.

The scramblers would find it necessary to spend a considerable sum of money on a well-planned and well-coordinated public-relations program, otherwise they may well find that many of these people will not consider it an act of "dishonesty" to try to beat the game and witness the programs without paying for the so-called privilege. For in effect, it will be the scramblers, not the public, that will be flouting American traditions.

The enormity of this problem lies bared when it is considered that all the money spent to date by Zenith, Skiatron, and Telemeter to promote scrambled broadcasting has only served to create confusion within the television industry itself. It has hardly dented the minds of the public except to cause questioning as to what this is all about.

The operator of a wired system will not face this public-relations problem. Only when a person subscribes to the service will he be asked to pay for the programs he views. If he does not subscribe to the service, he can still see all his favorite programs broadcast by his regular stations. He does not tune to a channel to find that the program he would like to see is not there, and what is there he cannot see.

For years the American people have paid regularly for wired services supplied by the telephone and power companies. They are conditioned to the concept that they must pay for services that are delivered by wire.

8. LENGTH OF TIME TO ESTABLISH SERVICE

On page 54 of the September 16, 1955, edition of Collier's magazine, Bill Davidson sums up a study on scrambled broadcasting by stating "Most experts don't expect any final decision on toll TV until about 1960." This same delay factor is echoed in many newspaper and trade magazine accounts describing the situation.

Even if scramblers should succeed in obtaining FCC and congressional approval and even if they should succeed in establishing the legality of their service in the courts, it will be at least 5 years before they would be in a position to start making tests of public acceptance for their proposed form of subscription television.

A wired subscription television service can be started immediately. There are no rule changes necesasry. Operation of "cable theaters" is not within the jurisdiction of the Federal Communications Commission or any other governmental body.

Jerrold is now preparing to test public acceptance of subscription television on four of its community antenna systems located in different sections of the country. In early 1956, construction of multichannel community antenna systems (with a channel reserved for subscription television) will commence in 2 cities of over 100,000 population each. Preliminary engineering is now being done in a metropolitan area of approximately 1 million people leading to the wiring of this area for subscription television programing.

Actual installation of wired television systems is contracted to electrical construction companies who have equipment and trained personnel available to do this job on an economical basis. Average rate of construction is 1 mile a week per crew. Ten crews of five men can wire a city of approximately 600,000 population in about 2 years. Additional crews could increase the rate of construction. Thus, wired systems can be built and placed into operation in medium-sized cities and in metropolitan areas long before the scramblers can hope to float their first coded signal into the air.

The only requirements for starting and operating a wired subscription service is the availability of top-quality box-office attractions—theatricals, movies, sports, etc.—plus the necessary capital to erect the cable theaters.

Based upon all the information contained above, we should like to relate a business fable.

"There are two ways that a water company can deliver water into the homes of its customers:

"A. Install pipes from the water source into each home. Install pumps along the route to maintain proper pressure. Build filtration plants to insure purity of water delivered. Install valves in the pipes to control water flow. Install a meter at each subscriber location in order to bill customers accurately for water used.

"B. Install rain collecting tanks in each subscriber's home. Lease or sell float mechanisms to subscribers to measure amount of rainfall collected in each tank after each rain. Hire a rainmaker to bring rain. Ask subscribers to report each month on readings taken from float mechanisms in order to bill customers for water received and used. Assume no responsibility for purity of water delivered to customers. Request police assistance to force noncustomers to remove pots and pans from roofs and windows of their homes.

"Question: Which method is most widely used by water companies in America today?"

The answer to subscription television is equally clear. Exhibitors will soon build the largest, most economical theaters in history. Relatively inexpensive coaxial cables and electronic equipment will replace concrete and steel. No seats or projection screens will be needed. The public will sit on their own sofas and chairs and witness attractions on their own television sets. The great mass sale of tickets at low prices will create a tremendous market for the finest possible box-office events.

This is Jerrold's blueprint for the future of the about-to-be-born subscription television industry.

Senator Potter. Mrs. Cornelison, we are delighted to have you present your views to the committee. If you would like to identify yourself for the record, we would be happy to hear from you.

STATEMENT OF MRS. R. W. CORNELISON, SOMERVILLE, N. J.

Mrs. Cornelison. I am very grateful to the committee for giving me this opportunity to state the case for the present system of free-television programs.

To identify myself, I will tell you that I was the first chairman of the department of communications for the General Federation of Women's Clubs, and am presently a member of the policy committee of the general federation, which is the channel by which resolutions get to the floor of the convention and become the policy of our organization.

I am also chairman of media for the National Council of Women, and in that particular am very much interested and very much concerned with the problems of educational television. I am very sorry that Mrs. Hartz, who is chairman of legislation for the General Federation of Women's Clubs, is ill and unable to appear today, but she planed to file a statement, and if she has not already done so, I am sure she will.

Senator POTTER. We shall be happy to receive her statement,[3] and that will be made a part of the record.

Mrs. CORNELISON. Thank you very much. I am very sorry she can't be here because she would be able to make a very clear case for our viewpoint.

I am very much opposed to the pay-as-you-see television proposals because I believe them to be un-American and undemocratic for one thing and I think they are unfair. I believe that before long we will be able to agree that they are unfair, and I believe that before long we will be able to agree that they are unnecessary.

It seems that it is very unfortunate to give a company an opportunity to control information in this country. I am very much concerned about maintaining freedom of information, freedom of communications, and I feel that the freer we make television service in this country, the safer our fundamental freedoms are.

I am also concerned with the difficulties that will ensue in homes where they cannot afford the pay-as-you-see television programs. I think it will make a discrimination. Television has done such a remarkable job in this country under the present setup. It has had a very great influence on life in the home. It has been a matter of family interest, and has in many instances, we feel, been a deterrent to juvenile delinquency. Now I know you can answer and say that some of the television programs are not very desirable. That correction lies in public opinion, and it will take care of it, I am very sure, as has been proved in many instances. So I feel very strongly that we must preserve this medium of communication which is rendering such an invaluable service, both in education, in entertainment, and in uplift. And anything that threatens it, I think, is a very serious matter. I am very much opposed to the idea of pay-as-you-see television, because I think it is unfair to present set owners.

You do not have to travel far in this country to see apartment houses with regular forests of antennas on the roofs, and we know that those sets have been purchased by families, painfully paying a little down at the beginning and so much a week for the privilege of what they believe to be free entertainment and free information. It is to me a very serious threat to these viewers, and I believe very strongly that nothing should be done to interfere with their access to the very highest type of entertainment and information—the panel discussions, which are a liberal education; the very high type music programs which we have; the theater.

Now much has been made today about the motion-picture industry.

[3] No such statement has been received.

It is a very interesting development, I think, that the motion-picture industry which was afraid of television and felt that it was being injured by it is cooperating very enthusiastically at the present time with the broadcast networks. So, too, is the legitimate theater which felt that it was going to be very seriously interfered with and perhaps put out of business. They went through a period of slump. Now they know that with the development of programs on television that their business has increased. Actors are more in demand than ever before.

Motion pictures cooperate with the television companies in putting on magnificent productions, and it does not appeal to me to think that we can—by paying a fee of $125 a year or something—that we can have good programs.

We already have them. I am a fan of Dave Garroway. I listen every morning for nearly 2 hours to his program. It is a wonderful contribution to family life. So, too, is the Home program on the same network. So, too, are the spectaculars—Max Liebman's spectaculars—and what could be better than the productions of Richard III and the Taming of the Shrew, and the magnificent program that Edward R. Murrow put on discussing the problems of the Arabs and the Jews. He was on the spot, interviewed distinguished Israelites, and the man in the street. He interviewed the leaders of Arab thought and the men in the refugee camps, and he presented a picture of that critical problem which we could not have gotten in any other way.

These are only samples of what is being done by the great broadcasting companies, and their sustaining programs are a tremendous contribution to American life.

Therefore, anything that threatens the permanence of this system of television seems to me to be a threat to fundamentals in American living, and for that reason it seems to me that we should go very slowly indeed in approving any system that is a threat to this institution. I would like to say that I represent the two organizations I mentioned. I cannot legitimately say that because, under our bylaws, we haven't taken action on this proposal. It has come up too recently. But we do plan to present the matter to the floor of the general federation convention in mid-May, and I can assure you that an organization with a paid membership of over 750,000 women will have a body of public opinion which I think is worth listening to.

Senator POTTER. If any resolution should be adopted along this line, I know the committee would appreciate receiving a copy of it.

Mrs. CORNELISON. Well, I will see that you get it, of course.

Senator POTTER. We wish to thank you, Mrs. Cornelison for giving us the benefit of your views. The committee will certainly give full consideration to the remarks which you have made.

Mrs. CORNELISON. Thank you.

Senator POTTER. Is there a representative from the National Council of Negro Women here?

(No response.)

Then our next witness is Miss Hurley. We are delighted to have you before the committee, Miss Hurley. We are waiting with interest to hear your views on this subject. Will you identify yourself for the record, please.

Miss HURLEY. Thank you.

STATEMENT OF MARIE A. HURLEY, NATIONAL BOARD MEMBER AND NATIONAL CHAIRMAN OF LEGISLATION, NATIONAL FEDERATION OF MUSIC CLUBS

Miss HURLEY. Mr. Chairman, my name is Marie A. Hurley. I'm a native Washingtonian, an employee of the United States Government, and am affiliated with the National Federation of Music Clubs as a member of the board of directors and as national legislation chairman.

The National Federation of Music Clubs, founded in 1898, is a nonprofit organization with representation in all 48 States, the District of Columbia, and Mexico. Its membership totals approximately 600,000 in over 5,000 clubs—senior, junior, and student. It has as its primary goal the promotion of American art and American music, with the accent on American youth.

Today I have the privilege to represent the president, Mrs. Ronald A. Dougan, and the entire membership of the National Federation of Music Clubs.

On behalf of this philanthropic organization, I wish to register protest against pay television, and to enter a plea for the continuance of free television.

The National Federation of Music Clubs is opposed to pay television because of the unnecessary financial burden it would place on the American public, and because pay television would require that televiewers be charged for the programs they have been, and are now under the system of free television, enjoying free of charge. Further, the organization considers that pay television would be most discriminatory, since it would be available only to those televiewers who could afford to pay the required fee, and that pay television would in time jeopardize the scope and the quality of news and public service programing.

Because free television has provided, and is providing, valuable information and entertainment that socially and economically is within the reach of the average American through the best possible coverage of subjects, such as, politics, art, music, news, science and drama, the National Federation of Music Clubs favors the continuance of free television. And the federation realizes that the best in free television is yet to come.

The system of free television, under which every American can watch television as much as he wants free of charge, serves the best interests of the American public and thereby justifies its continuance and expansion. Not to be ignored is the significant influence free television will, as it gains in age and wisdom, exert in the promotion of the educational and cultural life of America.

In brief, the National Federation of Music Clubs wants free television in a free nation for a free people. Therefore, on behalf of that organization, I would ask that all of you, representatives of the American people in the Congress of the United States, support free television so that it may continue in the future, as in the past and present, at the free disposal of all Americans all of the time.

Thank you, gentlemen, for the privilege of being here today and for the opportunity to express the views of the organization I represent.

Senator POTTER. We wish to thank you, Miss Hurley, and I assume that the views that you represent are the views of your organization and not just individual views.

Miss HURLEY. That is correct.

Senator POTTER. We wish to thank you for your fine statement, and I am sure that the committee will give it every consideration.

Miss HURLEY. Thank you very much, Senator.

Senator POTTER. Now is there a representative of the American Mothers Committee here? If not——

Mrs. CORNELISON. Mr. Chairman, I am a member of the National Board of the American Mothers Committee.

Senator POTTER. And I assume that the statement that you would make would apply to that organization as well.

Mrs. CORNELISON. I am very sure of it.

Mr. COX. We have received a telegram from Mrs. Poling, who is the president of the committee, suggesting that some representative, not named, would like to be here, but we would be happy to accept your indication of your membership.

Mrs. CORNELISON. Thank you.

Senator POTTER. Mrs. Boute. We are delighted to have you here. Will you identify yourself?

STATEMENT OF MRS. MATHIEU BOUTE ON BEHALF OF THE ADVISORY BOARD OF THE NEW YORK STATE TRAINING SCHOOL FOR BOYS AND THE SOCIAL SERVICE AUXILIARY OF THE FRANCES DELAFIELD HOSPITAL

Mrs. BOUTE. I am Edna Boute, a native of Louisiana but now a New Yorker by choice.

I am a member of the advisory board of the New York State Training School for Boys, where I have served for 11 years and was recently reappointed for 7 more years. I will be an old lady. I am also the founder and the first official chairman of the social service auxiliary of the Frances Delafield Hospital, which is allied with medical center but whose work is altogether with cancer patients.

Those are the two organizations for which I am speaking officially, but I am also a member of the National Council of Women in the United States, and what the former speaker said also expresses my sentiment, and also the Allied Council of Women in the United States, and a member of the board of directors of the New York City Cancer Committee.

I cannot speak for the cancer committee, but only through the organizations with which I am working very directly. I am very happy to say that in the past year I have been made a member of the board of directors of one of the most exciting organizations in New York City, the Manhattanville community centers, and as a member of that board we have pledged ourselves to do all of the community organization work that will be involved in those magnificent houses that are being built in the process of rehabilitating Morningside Heights. Of course, as you know, that was backed by and spearheaded by Mr. David Rockefeller and some of the fine people connected with the 14 sponsoring institutions—Barnard College, the School of Music, Rockefeller's Church, Morningside, and a number of other fine institutions. So my interest in being here is because all of my life has been spent doing direct services to other people.

Senator POTTER. And from the many organizations that you are affiliated with, I can see that you have a pretty busy life, too.

Mrs. BOUTE. A very busy life. Professionally I am a medical social consultant and for several years was connected with the American Cancer Society, of which I am now a volunteer worker.

What was my profession, I do now as a volunteer worker. And professionally, I am also a pharmacist and am now my husband's business partner, so I have had an opportunity—I say this simply to point out that I speak out of interest, because I have never functioned in an ivory tower. I have met and worked with all ethnic groups and people of all economic levels, and what I say I say from the bottom of my heart because I know it to be a fact.

I am an opposer of pay television. Of course, the proponents of pay television start out by offering the criticism that commercials are boring. Hence the first thing they say they are going to do is to eliminate commercials. I hope if they succeed it will be one of the things that they have worked for. Opposers, however, of pay television recognize that there are commercials that are bad, but they are a necessary evil. Since American freedom must be balanced by American responsibilities, public opinion has been, and is still being, exercised progressively in raising standards and ethics in the industry to the extent that a recent study or survey by the ABC Research Department revealed that 88 percent of 750 viewers of free television, when questioned on what programs they saw and if they listened to commercials, reported that they had found commercials both informative and interesting.

Senator POTTER. As a matter of fact, I think there has been a great improvement in the industry in raising the standards for commercials.

Mrs. BOUTE. I think so, too.

The proponents claim that: Subscription television would present top quality box office and entertainment features not shown by sponsored television such as new theater quality movies, opening nights on Broadway, heavyweight championship fights, grand opera, in its entirety, by the world's great opera companies, college courses for credit, etc.

Of course, most of these are already being presented on free television, and certainly advances already made along these lines are only indications or preludes of future advances. For several years now, because of free television, Mr. and Mrs. America know what is going on throughout the world. Into their homes come the finest talents in all fields, not only of their country, but of foreign countries also. They can get all of the general information and scientific knowledge that television offers; the worthwhile and significant events of their Government and that of other countries; they hear and see the personalities that keep the wheels of Government going. They travel through the museums of art. They see the evidences of the advances in the world of science.

Subscription television would enable the privileged only to benefit and enjoy all of these things at the expense of the run-of-the-mill citizen who, because of status, would be obliged to accept and become accustomed to uninspired programs. Too, the propaganda and thought control potentialities of paid programs to a favored audience could well breed division, excluding, as it would, the stabilizing base of broad public coverage such as now exists.

I suppose in a democracy it is just as proper to have pay television as free television, provided laws and public acceptance are respected. But to my thinking and belief, advertisers make television possible, and the mass purchasing power of the so-called little man is where the volume is. So it is reasonable to hope and believe that due to practicalness we shall have free television for a long, long time; that there will be no interruption of the present system of communication which makes it possible for any owner of a television set to watch television to his heart's content.

Visual education is in its heyday. While television does not replace the teacher, it is a valuable new tool when properly used. It has great influence generally, and especially so in training schools for juvenile delinquents, the type with which I come in contact at the New York State Training School for Boys, ages 10 to 16. To dilute the program now being televised, as would happen for a number of years, at least, until pay television spent its force, would lessen the scope and quality now being viewed, and work adversely on our treatment program. We figure 70 percent of our boys become normal citizens through our treatment program.

Senator POTTER. That is a good record.

Mrs. BOUTE. From the psychololological aspect, the shut-ins should constitute a basic consideration. I am talking now particularly of that paradoxical disease that kills that on which it feeds, which is cancer.

Senator POTTER. Mrs. Boute, could I ask you this: Do you use television in your training school for boys as a therapeutic medium?

Mrs. BOUTE. Yes, that is right, and of course we also use it for recreation and education, and the programs are very carefully selected by the director of education. A donor has just made possible a special room where we shall have television, and I don't know that you know that the State training for boys at Warwick is one of the most beautiful plants. The State established it 25 years ago as a research center, and whatever difficulties we have in not realizing the things that we want are due to budgetary problems.

Senator POTTER. That is a common problem.

Mrs. BOUTE. Yes. The State gives what they can. We have beautiful buildings. We have the cottage system. We have 16 cottages. The ideal would be to have not more than 25 boys in a cottage, but pressures have made us take more and we are still under pressure. Last year the pressure became so great that the State board of social welfare had to take over Otisville, which was formerly a tuberculosis retreat, and we now use that for older boys, over 16.

Senator POTTER. I am particularly interested. I am an old social worker by profession.

Mrs. BOUTE. Fine, then we have something in common. Now, I said in the psychological aspect the shut-ins should constitute a basic consideration. Pay television would be a sorrowful invasion of their peace of mind, their tranquillity, their acceptance of a slow death. The proponents of pay television minimize, or fail completely to recognize, the disastrous effects of the loss of the privilege to enjoy free television—what it will mean not only to the chronically ill, the incurables, the handicapped, and the aged, but also the majority of viewers not able to pay.

Consider, if you will, the effect on human personality when once barriers are like a prison. May I inject here about television, for instance, at the boys' school? Those television sets were not provided by the State, but people who are interested in the work that we are doing have contributed a television set for every single cottage. Of course, these people—as my board of advisers say, the State would not pay to put in scrambled television, and the same thing holds true with the hospital.

Now, the Delafield Social Service Auxiliary last year provided four movable televisions for the patients that are not ambulatory and that cannot go to the solarium, where we have a television on each floor in each solarium which was given to us by Arthur Murray. Now, the city of New York feels that it has so many demands that it will never pay for televisions and somebody else has to do it, and certainly if they don't give us the televisions themselves, they would not pay for pay television. We would have to fork over the money or do without it.

The establishment of a pay system is contrary to the concept of free enterprise, as has been repeated many times. It is undemocratic. It will give to much to too few. It will be a disservice to millions of families of low and middle income groups. By the irony of progress, the rich will become richer, from the supposedly super educational, cultural, spiritual, and recreational values that pay television offers.

From the sociological aspect the largest minority group in this, our great country of great abundance, the Negro, will suffer an irreparable loss. The majority of this minority group are still on the lowest rung of the economic ladder. Great strides have been made. A few hold top positions, but many, many barriers are still there—low pay, lower grade jobs, substandard living in racial ghettos. Despite our economy of abundance, he still lives on a substandard scale. Discrimination and segregation deprive him of the chance to earn a decent living, a fair chance for all that America has to give. Pay television would be an added social injustice. Therefore, this I believe: There is no sound reason, with a 70 million audience potential, why any program should be paid for. Advertisers should pick up the tab and give free any program such as the proponents of pay television have in mind.

I thank you very much for this privilege, for more reasons than one, but primarily because in the early eighties my father, a French Creole, was for several years a member of the House of Representatives of the State of Louisiana.

Senator POTTER. That is wonderful.

Mrs. BOUTE. And you may know that segregation on the trains was instituted by the Louisiana State, and my father was the man who opposed the passage of that bill. I have here with me today a photostatic copy of the address which he made to the house when he opposed that bill. I have inherited my love for social justice from my parents, so I thank you very much.

Senator POTTER. Thank you, Mrs. Boute. The committee will recess until 2 o'clock this afternoon. I am sorry that I have another commitment; as a matter of fact, I am going back to Michigan, so I won't be here this afternoon, but the committee will resume at 2 o'clock this afternoon.

(Whereupon, at 12:05 p. m., the committee recessed to reconvene at 2 p. m., the same day.)

AFTERNOON SESSION

Senator BIBLE. The committee will come to order, and we will observe the courtroom admonition of being quiet.

Our first witness is Father Vizzard. We are very happy to have you with us, Father.

Father VIZZARD. Thank you, Senator.

Senator BIBLE. You may proceed.

STATEMENT OF FATHER JAMES VIZZARD, NATIONAL CATHOLIC RURAL LIFE CONFERENCE

Father VIZZARD. My name is Rev. Father James L. Vizzard, Society of Jesus, I am assistant to the executive director and eastern regional representative of the National Catholic Rural Life Conference. The national headquarters of the conference are at 3801 Grand Avenue, Des Moines, Iowa. I am also chairman of the policy committee of the conference. Before undertaking this position I was professor of economics at Santa Clara University, Santa Clara, Calif.

Senator BIBLE. When were you professor there, Father?

Father VIZZARD. Three periods in my life: 1940–42, 1948–49, and 1952–54.

I appear here today, therefore, in a triple capacity: As an economist, as a spokesman for a Catholic organization, and as a representative of the interests of rural people.

In all three capacities I am opposed to pay television. I propose, however, to limit my remarks to those reflecting the interests of the church and of rural people. I believe that the economic as well as technical and other aspects of this issue have been adequately covered in testimony already submitted and I do not feel that on these points I have anything to add.

In my concern for the problems and possibilities of television, I am following the lead of the head of our church, Pope Pius XII. In a number of talks with, and statements directed to, leaders of the radio and television industry, Pope Pius has often pointed out that a medium which can so deeply and powerfully affect the spiritual and cultural roots of whole peoples as well as of individuals is of legitimate interest to the church.

Only a few months ago, in an address to the delegates of the European Radio Union, he reminded them that, "The good and evil which can result at the moment of broadcast or after it are incalculable and unforeseen." And he admonished them: "Make absolutely sure, therefore, that television does not serve to spread error and evil. On the contrary, make it an instrument of information, formation, and transformation."

But there is reason for interest not only in the direct moral influence of television. Pope Pius also emphasized that educational, cultural, and spiritual advantages, as well as dangers, of this versatile new medium. He pointed out its power to present with unforgettable clarity the lessons of science, the facts of history, the beauties of art, the truths of religion. He addressed himself particularly to one of the beneficial effects television can have on the family.

Certainly he is to be praised who succeeds in holding at home both adults and little ones without requiring that they give up necessary and useful relaxation after days at work and study. * * * Television can contribute to this effect by reuniting the whole family around the set.

It might be unnecessary to add that Pope Pius also gave special attention to the contributions television can make to the spiritual welfare of peoples.

Television also can become a providential instrument for larger participation in the manifestations of religious life for all those who would be prevented from being actually present at them. The televising of liturgical ceremonies, the illustration of truths of the faith, the presentation of masterpieces of sacred art, and many other things will carry the word of God to homes, hospitals, prisons, the most remote centers of population.

For these reasons the Pope took the occasion to remind his audience that—

Television * * * ought to be helped continually to reach an increasing number of viewers. So make yourselves surmount economic and legal obstacles which encroach upon the extension of such a beneficent means. Study attentively all the administrative, legal, and technical provisions which increase your insight into it and consider above all the moral ends of the true welfare of men and families.

It is because I share Pope Pius' recognition of the actual and potential value of television that I am concerned by the changes which I believe would be wrought by pay-as-you-see plans.

I have read through much of the argument presented both at these hearings and elsewhere by the proponents of pay television as well as by the opponents. Having no ax of my own to grind, I have tried to think through and to weigh as objectively as possible the effects one might most reasonably expect pay TV to have on the quality, quantity, and variety of programing.

Against the background of some intimate knowledge of Hollywood, with some understanding of the economics of markets and media of communication, a study of the pros and cons has convinced me that pay television would inevitably restrict the quantity and variety and lower the quality of TV content. Not that I believe that TV is now as good as it could and should be. But I believe that the facts and the arguments already adduced by those opposed to pay television are conclusive to the effect that deterioration rather than improvement must be expected from the introduction of pay-as-you-see TV. Under such a system, television would not tend, as Pope Pius recommended, "continually to reach an increasing number of viewers"; nor, I believe, would it be able increasingly to contribute to the "moral ends of the true welfare of men and families."

Beyond this concern on general moral and religious grounds the National Catholic Rural Life Conference is interested in this issue because, as its very title indicates, it is concerned with the welfare of rural people. And although the point has not yet, to my knowledge, been brought out in these hearings, the interests of rural people are vitally involved in the problem of pay TV, perhaps more critically involved than any other major group of Americans. This belief is based on the following reasoning:

Pay television, as I understand it, predicates its success on the assumption that, in addition to their outlay for the set itself, families would be willing and able to spend about $2 a week, or $100 a year, to see these programs. I believe that it is obvious, however, that even in these days of general prosperity a considerable number of our American families, and particularly of our rural families, do not have that kind of money to spend for this purpose, especially when they now receive it free. Whereas now all who can afford a set can without further expense enjoy the same program whether they live in a Park Avenue penthouse or a Main Street bungalow, under a system of pay television millions of families might well be blacked out from what pay-as-you-see advocates readily admit would be the cream of the programs. Pay TV would create an elite whose willingness and ability to pay for the best would deny it to the rest. To allow that kind of class distinction to come into being where none exists, nor need exist, does not seem to me to be in accord with the American spirit or for the common welfare.

As I understand it, the great opportunity and challenge of television, which perhaps has not yet been fully appreciated and certainly has not yet been fully achieved but toward which important strides have been taken, is to bring the best in entertainment, information, art, education, science, and culture to all and thus to contribute to the recreation and growth of the mind and spirit. Such an objective clearly cannot be accomplished by restricting the opportunity to those who can afford it or by cutting down the variety and quality of programs. This, I believe, is precisely what pay television would do.

In this respect rural people are particularly vulnerable. I believe that it requires no proof that families in rural communities have fewer opportunities for spiritual and cultural enlargement than those living in major centers of population. They have more limited access to libraries, art galleries, museums, the legitimate theater, concerts, opera, and ballets, and all the other recreational, educational, and cultural opportunities which abound in the metropolitan areas.

It would be proper here, I believe, to quote from the 1956 Policies of the American Farm Bureau Federation (p. 59) the following resolution on radio and television:

> Radio and television broadcasting provides an invaluable service to rural areas and farmers. We strongly support the efforts made by the industry to expand and improve its coverage of news and farm affairs.
>
> We urge that the Federal Communications Commission give close scrutiny to the issuance of licenses and guard against any lowering of high standards of public service which might vitally affect programing and reception for farm families.
>
> We are firmly opposed to any Government regulations which might reduce, or threaten to reduce, service to rural listeners.

Farm and rural families, therefore, are more than usually dependent on the broadcast channels, both radio and television, which represent for them a major contact with the best of our current national life and of our cultural heritage. The extent to which television has been providing for this need is most perceptively and amusingly described by William Zinsser in the April issue of Harper's in an article entitled "Out Where the Tall Antennas Grow." With your leave, I would like at this time to enter this copy of the article in the record.

Senator BIBLE. It may be entered at this place in your statement, Father.

(The article referred to is as follows:)

Out Where the Tall Antennas Grow

By William K. Zinsser

When I went out to Iowa a year ago to get married, I wasn't even sure that there was a State called Iowa. I had seen the Nile, the Congo, and the Ganges, but not the Mississippi. Beyond that river lay a mysterious land of waving wheat and stampeding cattle. According to Oscar Hammerstein, the corn grew as high as an elephant's eye, and this seemed very high to someone who had seen corn only on the cob—and had never been able to look an elephant in the eye.

Whatever would I talk about with my new relatives? I am one of those New Yorkers who spurn the call of the suburbs, with all their robins and roses. I stay in the city because I like to see the new plays and films, operas and exhibits, and try to keep up with the arts. But a huge area of ignorance remains—television. I don't own a TV set. At the time of our wedding, this didn't matter. The folks in Iowa didn't have television either. So we talked about the weather and the cost of living, dogs and taxes, neighbors and politics.

Well, 1 year can make quite a difference in this coaxial age. When we went back to Iowa last fall, the house had changed. In a corner of the living room, where the dog used to sleep, a television set now stands. I tried to pretend that I didn't notice, but it was no use.

"Have you seen A View From the Bridge yet?" my mother-in-law asked, eager for word straight from Broadway. "We saw Arthur Miller on television the other day, and he made it sound absorbing. He explained how he tried to relate the tragedy of a Brooklyn family to the tragedies of Greece and Rome—you know with a chorus to comment on the action. The moderator compared the technique to Sophocles and Euripides."

My father-in-law asked if I had seen the world series. I confessed that it's almost impossible for New Yorkers to get tickets to a world series held in New York, but that I had glimpsed a few innings poorly by craning my neck around some beer drinkers at a local bar. "Too bad you missed it," he said.

"I'll be interested to hear how you like the movie of Moby Dick," my mother-in-law said. "We saw a wonderful interview with John Huston on Dave Garroway's show, and he told us how he filmed the whaling sequences off the Canary Islands, where the whalers still use the same phrases as the old New Bedford harpooners, like 'thar she blows!' He said he filmed it in a new process to make it look like those old whaling lithographs. He spoke about the symbolism of the white whale, and said that he used Melville's exact words in many passages."

I had missed Huston's interview, of course, and Moby Dick won't be released for months. Conversation swung to other celebrities. I gathered that every person who even carries a spear onto a Broadway stage appears soon afterward on Steve Allen's night show. Van Heflin, Ruth Gordon, Michael Redgrade, Julie Harris—every star of the new theater season has confided his secrets to people in Iowa and 47 other States, but not to me.

My mother-in-law got up to make dinner, and I commented that she was wearing a very chic dress.

"That's the Y line," she said. "We heard all about it on the Home Show. Arlene Francis had this designer from Dior's studio in Paris to explain the new line. I got my winter dresses out and sat at the sewing machine for 3 days, and now I'm all set—at least for this season. I just hope that Dior and Arlene Francis don't give us another new style too soon. Some of the ladies in town haven't reconverted yet, and, of course, they're quite embarrassed."

My wife's teen-age sister put a record on the phonograph. Her heroes are Stan Kenton and other apostles of "progressive jazz," so when she lowered the needle and raised the volume I braced myself for the old blast. But out of the phonograph came a Bach fugue. Its rhythm was not as perky as Kenton's, but its construction was trickier than anything the great Stan had put together, and Janet sighed with admiration.

"Jeepers, catch that contrapuntal bass," she purred.

I asked here where she got the record.

"We saw Leonard Bernstein on Omnibus," she said. "He took this Bach fugue and showed us how it was assembled. Quite a few of the kids saw the program, and everybody thought it was real crazy. I had saved up to buy a new Ray Anthony record—he played here at the Golden Goon a few weeks ago—but I bought this instead. Isn't it the most!"

Suddenly the lights went out, and my mother-in-law brought in dinner on a flaming sword. "Shashlik Escoffier flambe," she announced. "This is the way it's done in the best Continental restaurants. They demonstrated it on a cooking program on TV, and I wrote it all down. Last week we had fettucine al Alfredo, which was described on some program by a chef just off the plane from Rome—he even brought his own cheese—and then we had cherries jubilee for dessert. Tomorrow I'm making Stroganoff Tsar Nicholas, and I hope it works. The man who demonstrated it on TV fled from St. Petersburg just ahead of the Bolsheviks with all his recipes, and he made it look very easy."

On Saturday afternoon we watched a football game on television. I had always watched football from a chilly perch high in the stadium, where I got only a general idea of the action. I could follow the more obvious maneuvers, executed by the tiny figures far below—punts and passes and end runs from the plain old single-wing formation. Later, when the T formation came along, I never did know which player had the ball, and my interest lapsed.

Now, the TV camera took me right into the backfield as the Hawkeyes played the Badgers, or whoever they were. (Midwestern teams are always called by their nicknames; I never did learn what universities they represented.) The backs went through motions as intricate as a Watutsi dance, and they handled the ball with a legerdemain too fast for my eye. But they did not fool my father-in-law. He pointed out the spinners, fake handoffs, and buck laterals as if he had devised them himself.

We New Yorkers never regained the initiative. The folks had seen an archeology program and knew more about the solar boat than we did, though we had been to Egypt and seen the boat itself. They were excited about the new ballet season, since somebody (was it George Balanchine?) had told them about it on a TV show. They talked about the exhibits we would soon be seeing at the Metropolitan Museum of Art and they described the new opera productions.

The weekend left us demoralized, and we wondered if we should buy a television set so that we could keep up with the Iowans. But they have too much of a head start. I'm working on another plan. I have subscribed to Agricultural Digest and the Pig Breeders' Weekly. I went to a revival of State Fair and took notes. I'm reading Secretary Benson's speeches and boning up on the soil bank. I'm hoping that my in-laws will watch television so much that they'll forget all they ever knew about Iowa. That's when I'll go out and tell them a thing or or two about corn.

Father VIZZARD. This is what television is now doing and, in my judgment, is doing increasingly well. No longer are rural peoples denied the opportunities to share fully in the riches of our American life and heritage. These benefits come directly from programs professedly cultural or educational. But perhaps even more effectively they come indirectly through broad appeal entertainment programs. As a single example of this we may quote Charles Laughton's comments on the program The Day Lincoln Was Shot:

It is more than 90 minutes of entertainment. It is teaching without exercises or homework. It turns the home into an education center, which, after all, is what youth leaders and educators have been striving for for decades; isn't it?

If such opportunity for cultural and spiritual enlargement is important to all people, it is of far greater value to rural people.

On the basis, therefore, of our conviction that pay-as-you-see TV would surely diminish the effectiveness of the medium in performing this vital function the National Catholic Rural Life Conference stands opposed to any such fundamental change.

Senator BIBLE. Father Vizzard, thank you very, very much for your very able statement. We are happy to have you with us.

Do you have any questions, Mr. Cox?

Mr. COX. No; I do not.

Senator BIBLE. I think that is all. Thank you very much.

Our next witness is Mr. Pierson.

REBUTTAL STATEMENT OF W. THEODORE PIERSON, ZENITH RADIO CORP.

Mr. PIERSON. Mr. Chairman, the notice for this part of the hearing was for a selected representative of the proponents. The proponents as near as I can define them—though I am in some doubt after Mr. Garfield's testimony—are Telemeter, Skiatron, and Zenith. I have been asked by the other parties—since I represent Zenith Radio Corp.—I have been asked by them to give the rebuttal in their behalf. However, I am not certain that I will cover all of the points they intended. I would like to reserve some of the time I have for them in case there are any points they have.

Senator BIBLE. We are happy to proceed in that way. You may proceed.

Mr. PIERSON. There have been some similes used to describe the proponents of subscription television in the record here, and particularly what we were trying to do here. Some of them have been rather complimentary and one of them has been quite uncomplimentary. One of them is that our technique is a camel's-nose-under-the-tent technique, and in another one we are trying to get a foot in the door, and I believe Mr. Cohn referred to us as trying to get a toehold, which was a slight change in the simile. Now, I want to make clear that we do not plead guilty to these characterizations, because we claim far more. We are not a beast on the outside of the tent trying to get in where he doesn't belong, nor are we an unwanted peddler knocking at the front door attempting to get into a place where he doesn't belong. Because we think that it is a common, ordinary, American right, when you have developed a service or a product, to go to the market place and let the public decide whether you should succeed or fail on that product.

Up to this point our opposition has been somewhat varied in terms of the identification of the people who have opposed us and also to some extent varied in terms of the arguments that they have made. There are those whose private interest, they feel, will be substantially injured if we are given this opportunity to enter the market place, who I would say have carried the principal burden of the opposition against us. There are other dedicated independent witnesses who appeared here in behalf of important organizations of the public, and some of them in their own individual capacities, who have opposed us.

Now, running through all of the arguments of the public witnesses, whose positions and opinions I respect very much, is one postulate that furnishes the sole basis for their opposition to subscription television. This postulate is the one that our two principal opponents here—CBS and the motion-picture theaters—have not only pronounced here but far and wide through the country, and that is that we will not add to television service, we can but subtract from it. Therefore, it seems to me that the testimony of the independent witnesses stands or falls on the truth of this postulate that they have accepted from our opponents. It is pretty obvious, at this point, that as to those people we have not been as effective in persuading them of the truth of what we predict as compared to the truth of what our opponents predict. For that reason I would like to devote the major portion of my time, if not all of it, to that problem.

I have another reason for doing it. In the record yesterday Senator Pastore invited rebuttal on that point and said that he felt that, from a committee standpoint, it was a crucial point still to be resolved.

Now, after the testimony this morning I might say that a party who was listed as an opponent, who was confused himself as to whether he was a proponent or opponent, might have given all of the rebuttal that was necessary. I am referring to the testimony of Mr. Garfield in behalf of Jerrold. First, the claim of our opponents. They claim a phenomenon, which they call blackout and siphon, will operate to take all of the top television programs from free television over to subscription television. And they say that this will not happen if neither the Commission nor this Congress, or whoever has jurisdiction—with respect to which I am not uncertain, but it is arguable, I suppose—denies the right of subscription television to go to the market place.

Now, the reason that I say perhaps all of the rebuttal necessary was made this morning by Mr. Garfield is this: Mr. Garfield first claimed that our system is uneconomic; it will certainly fail, and all that you need to do to make it fail is to give it a chance against his wired system—what he calls a cable theater; and that the cable theater itself will be capable of furnishing to the people of this country all of the top programs that what he calls scrambled subscription television could do.

Now, Mr. Garfield is in a fortunate position. He doesn't have to go to any Government body to get permission to start, but he anticipated the question as to why he would be here by saying that because of the furor created by the proponents and opponents of subscription television, the owners of program production have been reluctant to release to his system the programs that he needs to make it work, and he was quite sure that if the Commission would either deny subscription or would give us a chance so that we could prove our failure and our folly, that his system then would blossom into a full-blown national system of subscription television carried by wire. Now, then, if that is true—if his system is better, if it is more economic, if it can provide the public the service that we claim we can provide, only cheaper and better, then the siphon which our opponents so bitterly fear is going to happen regardless of what happens to subscription television. In other words, we can't possibly be the cause of these things that these people fear if the Jerrold Electronics Co. is right, if Mr. Garfield is right. Now, I can't agree with him as to his reasons why he will defeat us in competition, but I can thoroughly agree with him that he should have the opportunity to do so, and furthermore that we should have the opportunity to compete against him.

Now, I would like to turn for a moment—or maybe quite a few moments—to the argument of CBS. As I stated before, the whole crux of their position is based upon a contention that this phenomenon of siphon and blackout will occur. Now, Mr. Salant presented their testimony and he said that this results from a "little exercise in economics," or a "lesson in economics." Well, now really I don't know how much weight to give to CBS lessons in economics or their exercises in economics. History may cast a little doubt—even contemporary events may cast a little doubt—upon how much weight should be given. I think all of those acquainted with the industry can recall that when the Government attempted, starting back in 1938 and finally succeeding in 1943, to impose regulations upon the network industry, CBS indulged in, not little exercises in economics, but tremendous exercises in economics to try to teach the Commission, the Congress, and the courts that certain ruin would occur if the proposed regulations went into effect. Now, they failed to teach that lesson, or persuade in any of the areas in which they were operating, and this was to their immense good fortune, because after the regulations went into effect, the most prosperous period of the industry occurred, including a great prosperity by CBS.

Now, to get a little bit more up to date on the trustworthiness of their lessons of economics, the Commission, a short time ago, was much concerned about the fate of UHF, and out of that concern started a procedure for the purpose of determining what changes, if any, in their allocation plan should be made in order to preserve a nationwide system of 2,000 stations in 1,260 communities. And they asked the large interests, and those who had means of going into this problem with research and with engineering technical ability, to make suggestions with respect to what should be done.

Assuming that everyone wants to save the industry and everyone wants to accomplish the objectives of the act and the objectives of the Commission's sixth report, it seems—and it is only a clear indication of the presentation that CBS finally made—that CBS decided that perhaps before we waste a lot of time in allocating many more stations than we will ever use, we should first determine how many stations we can conceivably use, and that our allocation plans should be based upon that requirement, not some unsupported requirement for just a fanciful number of stations. So they used the services of a very eminent economist, Dr. Alexander.

Now, I assume, in view of their resources and their intelligence, that he was among the best that they could possibly obtain for this purpose. Now, Dr. Alexander made a very careful study—one of the most authoritative that has been made in the industry—and Dr. Alexander concluded that, in the foreseeable future, advertising television would on its most optimistic basis support no more than 588 stations, and the probable figure was substantially lower than that. Now, this was a rather dismal prospect in terms of what had been projected, as a matter of hope in the sixth report, of nearly 2,000 stations in 1,260 communities—as compared to the 500 or 600 stations in 270 communities found to be economically possible by Dr. Alexander. Now, CBS realistically faced up to these facts and, in response to the request of the Commission to assist it in determining what it should do about its allocation plan, it prepared what it calls plans I and II, which were the successors of plans A and B, substantially similar.

They in effect said, "Why bother with allocating 2,000 stations in all of these markets when no matter what we do—providing you keep out subscription television—no matter what we do, we will never have any more than Dr. Alexander found." So they proposed a plan. Their allocation plan had as its major objective the accommodation of the network requirements in the first 100 markets. Their plan had as its purpose the accommodation of that objective with VHF facilities, and their plan substantially accomplished that purpose. The result is that there can't be any question but what they dumped UHF, because in order to get comparable facilities in those 100 markets, wherever they could they put in a VHF facility and succeeded in most instances, and their plan substantially reduced the major markets that would have UHF from that of the existing allocation plan, or even existing allocations.

Now, it is true that they said "Well, UHF can be reserved for future growth." You can't save for growth what has been killed now. All of the progress to date would have been lost. This was preserving one of the most effective blackouts that I have seen, and doing it in one of the most effective manners that it could be done. There is currently, today, a blackout of local expression in nearly 1,400 communities—in nearly a thousand communities. There are many, many stations projected by the Commission that are blacked out—75 percent of them.

It also had the value as a matter of regulation to keep this beautiful siphon that CBS now has in operation working. Now, I think they are somewhat experts in siphoning. The networks themselves, in 1954, siphoned into their own organizations 52 percent of all of the revenue that was received by the television industry. They have, by virtue of operation contracts and arrangements with the present stations in the country, siphoned up control of that program time to the networks. They have also siphoned into CBS the control of broadcast time—into CBS and NBC and ABC, the control of broadcast time as far as advertisers are concerned.

There was one other thing about their contention, besides the cloud it places over public aspirations, and that was it would eternally preclude, for any practical matter, subscription programs or independent producers of programs. This was a very careful study made by an eminent economist, upon which they soberly and sincerely applied to a Government body for a plan. This was what they proposed; this was its clear effect. But this became somewhat embarrassing to them when they came down here this week, because since the proponents of subscription television were arguing that we would take their rejects—we would take the stations that Dr. Alexander insisted they couldn't use—and by getting economic support from subscription television by using, say, 15 percent of its time, we would light up a lot of communities in terms of local expression. When Mr. Salant was asked about Dr. Alexander's report, he said, "Well he is only an economist," in effect, "and what we on the business side must do is to refute Dr. Alexander."

Mr. Salant said that the total basis of his statement supporting blackout and siphon was economics, and I didn't know Mr. Salant was an economist. Basically, what he wants is a chance to prove that his own economist is wrong, and he wants that chance by denying subscription television itself an opportunity to prove that it is right. Now, I submit that by their own statements, and by these circumstances, their economic predictions are not reliable.

I would like to get now to the question of blackout and siphon specifically—and I should say, before I get into that, that it is impossible for Mr. Salant, even if he reconciles his economics with Dr. Alexander, or for me to prove as a matter of final fact, on this record, what will in fact happen. And since that is true, the only way that it can ultimately be determined is for it to get its opportunity, under the controlled and supervised conditions that have previously been discussed in the record.

They say that subscription will be so successful, and will have such economic power, that it will siphon all of the best programs from advertising TV, and thus blackout viewers' screens for all but the poorest programs free. This is Mr. Salant's economics that will bring this about, not Dr. Alexander's. Now, I have no capacity to refute this simple lesson in economics. Therefore, in desperation I am left to what commonsense and simple logic I can command, and it may fall far short, but I would like to submit it to the committee.

I claim that the blackouts and siphoning that they predict will not occur, because they are based upon a priori assumption that are simply ridiculous, and it doesn't involve economics. Their assumptions are that all of the top talents in shows will move en masse to subscription, that none will remain on advertising television, nor will new ones come to advertising television. Now, the top television shows, if I can establish a predicate, are of various types, but each network tries to put forth the best that it can in each type, with the hope that it will corner the public taste for that type of program. A few examples will suffice.

Ed Sullivan's variety program is on CBS opposite Comedy Hour on NBC. This occurs at the same time. Robert Montgomery has his Studio One. Phil Silvers had Milton Berle. Howdy-Doody has Mickey Mouse. The $64,000 Question is in competition with the Big Surprise. Meet the Press, on NBC, is in competition with Face the Nation. Rin-Tin-Tin is in competition with My Friend Flicka. There is other competition. I am merely giving examples of programs of the same type. Playhouse of Stars competes with Star Stage, Danny Thomas with Jane Wyman, and Gleason with Como.

Now, in support of their prediction, they must establish, or we must be required to assume, that if one of these pairs moved to subscription television, both would. Now, I claim as a matter of commonsense and logic that that is the necessary postulate for their prediction: That if these programs, competing in the same type, if one of them moves—if a CBS show moves, or a NBC show moves, or an ABC show moves—the same type of show from all networks will move.

Now, let us take an example. Let us assume that Ed Sullivan moved to subscription. Now, the Comedy Hour would no longer be competing with Ed Sullivan for the free audience. Except for the Famous Film Festival that ABC puts on at about the same time, they would have the free audience for that type of variety show entirely to themselves. Now, it would seem to me that NBC, at that point, would decide in ordinary commonsense that all they need to do to capture the free audience for this type of show, and make sure that Sullivan would not get a thin dime, is to continue to try to produce as good or better shows than Sullivan. That is what they are trying to do now.

Now, what would this do to the advertising value of the Comedy Hour? If they could just get rid of Ed Sullivan—if Ed Sullivan could go over and require people, before they listen to him, to pay him money—what could you imagine would do more to increase the listenership of the Comedy Hour? And if their costs per listener economics—I am sorry if I transgress into the field of economics—operates, the advertisers would be standing in line for that program and willing to put much more money into it by reason of its increased listenership.

Now so much for NBC and their Comedy Hour. What of Sullivan? If the Comedy Hour remains with advertising television, which it seems to me in commonsense it would, Sullivan would be trying to sell the same thing that NBC is giving away. Now, I just don't think the public would be that stupid. Furthermore, Sullivan's problem is greater than that. We have referred before in the record to the fact, the obvious fact, that a family's budget for entertainment is limited, and therefore, in any given week or month, there is going to be a maximum amount that any family can spend for entertainment. It also means that everyone who is competing for the subscription-television dollar competes with everyone else for its share of that money that the family is going to spend. The most careful study of this indicates that the average family would spend about $1.50 a week.

Now, Sullivan's position, having moved to subscription is this: He must compete for this $1.50 average with first-run feature movies, with outstanding sports events, 2- and 3-hour Broadway plays, and a host of other programs which the public could not get without going to some turnstile now and paying for it. So the public has the choice, in deciding whether they would give Sullivan any part of their budget, that they can watch the Comedy Hour for free, but they can see a first-run movie out of that $1.50 budget, which is much cheaper than they can see it in the theaters or any place else.

Again, I would think the public, in commonsense, would make their selection to the very tremendous detriment of Sullivan. And it would seem to me quite possible that Mr. Sullivan would find, in a few short weeks, that he was meeting economic ruin, and he would be back on advertising TV promptly.

But how wonderful it would be for ABC if both Sullivan and the Comedy Hour did move. They would leave the advertising medium nationwide from 8 to 9 o'clock on Sunday night, the primest of prime hours, to ABC alone. I believe—again not as an economist, but just as an observer—it would be impossible for me to think of a single medium of advertising in this country that would be more valuable than the complete control of the free audience from 8 to 9 o'clock on Sunday night.

It seems to me, also, that any advertiser would pay a huge sum of money both for time and program—far more than he will spend on ABC now for programs—to get access to that great medium, and for the very reason that that is true, I hardly think that NBC and CBS would place ABC in that beautiful position.

Now, therefore, I say that in commonsense there is no way that this thing can happen that they predict—unless we assume that they are going to sit down and agree that when one of them puts one type of program on subscription the other will put its type on there, and not put any more of that type on advertising. It is hard for me to think that they would make that agreement, because their law departments are very well skilled in the knowledge of antitrust law, and I don't think they would do it; but I see no way, except by a conspiracy in violation of the laws, that this thing could happen. But even then I don't see how they could possibly keep anyone from taking over what they left, if they were silly enough to leave it.

Now, it seems to me that this demonstrates a simple but true proposition. No advertising show dares move to subscription unless it is assumed that all competing shows of the same type do, and unless new shows of a comparable type and quality are effectively blocked from advertising TV. And I don't see how it is possible for them legally, or as a physical matter, to affect that prior condition.

It also seems to me to indicate very clearly that subscription must succeed on box office type programs alone. It must succeed on that alone. And it will have no help, but the toughest conceivable kind of competition, from the advertising media—a competition that is tough because they are giving away something free that you are trying to get people to pay for, and you must demonstrate to the public that your quality is so far superior to theirs that the public should take your wares instead of theirs.

Now, I think CBS, as well as having problems with its economics, has problems with its plumbing. They did a beautiful job in constructing the siphon that now is bringing them millions of dollars every year from the broadcast industry, and I think it is working very well; but I think their plumbing techniques fell down a little when they referred to the siphon operation of subscription television—and if the siphon does not work, the blackouts will not occur.

Now, I could go on and give demonstrations of the same thing in a city such as Washington. I do not wish to impose any more upon the patience of the committee in that respect except to say this: The gross revenue of all of the stations in Washington in 1954 was $6½ million. That is four stations. That comes to a figure of about $126,000 a week. Now, if we assume that 50 percent of the television homes in Washington were made subscription television homes, and the average family would spend $1.50, there would be $450,000 gross revenue from the subscriber. But in order now to reduce—to determine what part of that would go to the television station—because this is the comparison that we started out with—we have to take off an amortization charge for the cost of the system, which would be between $15 and $20 million, and we have to pay the owner of the products, such as the motion-picture owner, his share.

Now, I think that it is conservative to say that at least 80 percent of the subscribers' take would have to go to those 2 sources, which would leave, in my opinion, a maximum for the television station of 20 percent. So there would be 20 percent of $450,000, or $90,000 available, per week, from subscription revenue in Washington.

Now, assume that we have the four VHF operations, and that a UHF comes into existence, if the Commission limits subscription to UHF. It just doesn't make sense to me that all 4 stations will all of a sudden give up this $126,000 a week revenue to move over to try to split up, among 5 stations, $90,000 of revenue. I rather think, if they are people who look at things from a rather simple but prudent point of view, that they would find means for the industry as a whole to preserve both sources of revenue.

Now, I submit that if these simple propositions are correct, the CBS propositions must be false, and all of the witnesses whose testimony was based upon these false propositions would undoubtedly correct their testimony if this truth were accepted. I submit, therefore, that subscription television can only succeed by adding to present program service, and if it tries to subtract it will surely fail.

Now, I have sought some independent opinion on this judgment as to how the advertisers would react, and this industry would react.

I didn't need to seek judgment from the networks because their views are rather widely published. Also I think it is important for me to cover this point because there have been several questions from the committee during the course of this hearing as to how the advertisers felt about this. After all, the advertisers are the ones who would be the most affected by destroying the value of this medium as an advertising medium.

Tide magazine has a panel which it calls the top leadership panel, composed of the leading advertisers in the country. It submitted this question to those advertisers, and published an article in Tide as to the result. I have furnished for the record a copy of the reprint and——

Senator BIBLE. It will be incorporated as part of the record, Mr. Pierson. You may highlight what you would like to draw attention to.

(The magazine article referred to is as follows:)

[From Tide, July 30, 1955]

UNITED STATES MARKETERS VOTE ON TOLL TV

TOP ADVERTISERS WOULD GIVE FEE TV A TRY

Tide leadership panel, by a commanding 7 to 3 majority, insists subscription television has the right to compete with commercial television for the viewers' interest.

Most panelists feel FCC, not Congress, should decide whether the air waves can rightfully be sold. In any event, it will be the viewer who decides whether fee TV stays or goes.

The men who sponsor commercial TV also believe the public will pay for what it wants to see. They claim, too, that fee TV's effect on commercial TV can only be beneficial.

If the fiercely controversial dispute over subscription television were left to the Nation's top advertisers—the men who now foot the bill for commercial television—pay-as-you-see TV would get a chance to show what it can do.

Such is the emphatic conclusion from a survey of the Tide leadership panel. These leading advertisers, agencymen and public-relations executives, who represent most of the companies which will invest some $950 million in television advertising this year, vote by a resounding 7 to 3 for at least a trial test of toll TV.

Exactly 70 percent of these top marketers, if they were a Federal Communications Commissioner or a Member of Congress, would vote tomorrow for subscription television. This is how they reason:

(1) Fee TV, like any new idea in a free-enterprise system, deserves a chance to meet commercial television in open competition. There, at least, it can stand or fall on its own merits.

(2) The public is gradually getting fed up with current commercial TV fare. These viewers—and every advertiser is also an individual viewer—deserve something better, which fee TV may offer.

(3) Subscription television would have little, if any, effect on commercial television, might even help it by forcing it to raise its standards and improve what the panel calls mediocre to idiotic programing.

Interestingly, these top advertisers seem little concerned with any effect fee TV might have on the size of commercial-TV audiences. Even the prominent agencymen—whose income in many cases comes mostly from commercial TV billing—feel fee TV should be allowed a tryout.

Many panelists believe that a trial period is necessary first to determine how fee TV would go over with the public and how much viewers would pay for what kind of shows. Some suggest pilot runs in test markets. But they insist most emphatically that ruling fee TV out before it has a chance to prove itself is contrary to free enterprise and the democratic, competitive principles that should govern all business.

In investigating how the country's leading marketers feel about subscription television, Tide asked the leadership panel four basic questions:

Who should decide whether the public can rightfully be "sold" programs carried over the air waves—FCC or Congress?

How much would the public pay for certain types of fee TV shows?

What effect would subscription TV have on commercial TV?

Would you vote for or against fee TV—and why?

Who should decide the airwaves issue, FCC or Congress? FCC, according to a slight majority (54 percent) of the panel. While 34 percent claim Congress must make the decision (with the remaining 12 percent offering other answers), the overwhelming majority make one important conclusion: No matter who makes such a decision, the public will be the final judge. Only the viewer, insists the panel, will settle whether the parlor paybox stays or goes.

"Neither (FCC nor Congress) should interfere. If someone has a legitimate service to sell and someone else wants to try it, why should the Government get into the act?" This opinion, voiced by president Ross Llewellyn of Ross Llewellyn, Inc., is shared by a significant number of panelists. "To heck with both their houses—FCC and Congress," adds McMahan-Horowitz partner Rollo Horowitz. "Permit fee TV's installation. Soon enough the law of supply and demand will decide its future."

One proponent of fee TV, Opinion Research Corp. vice president Dilman M. K. Smith, raises an interesting point: "This selling * * * the airwaves argument is silly. The telephone company and Western Union make charges for their services transmitted over airwaves. The opponents of subscription TV should come up with a better argument than this one."

Despite several recent surveys showing that the public isn't willing to pay for fee TV entertainment, Tide's leadership panel stoutly believes viewers would pay for what they want to see. For a first-run movie, for instance, the panel thinks viewers would fork up between 50 cents and $1. To see a hit Broadway play, the figure goes up—from $1 to $2 and even higher. For a major sports event, the panel expects the public might shell out from $1 to $2. And to lease decoding equipment to unscramble fee TV's picture, many panelists claim the public wouldn't be adverse to a $5 to $10 monthly bill.

This optimism about the public's willingness to pay is not shared by the entire panel: A significant 30 percent steadfastly maintain that viewers will not pay for what they've always gotten free. Quips James L. Barrick, national ad manager of the Kansas City Star: "Like the lady of easy virtue, you can't sell it if you give it away."

How would subscription television affect its commercial counterpart? Most panelists seem to feel that the two could exist quite healthily side by side. One of these is E. Bradford Hening, president of Hening & Co., who points out that the two have done just that in Australia for many years. Prevalent panel opinion is that fee TV might well do free TV more good than harm; many look for better programing, new talent, fewer objectionable commercials in order to meet subscription television's challenge.

E. B. Thompson, sales vice president of Torrington Co., is one who feels "the public can and will support both commercial and subscription television." H. J. Graham, assistant secretary for advertising and sales promotion of Hartford Accident & Indemnity Co., claim fee TV will probably force an improvement in free TV's "overall quality in order to compete for audience." Adds Reach, Yates & Mattoon president Charles Dallas Reach: Fee TV will spur commercial TV to develop new show techniques, new talent, force better marketing data, better merchandising, tighten up present loose, extravagant and questionable expense.

Fee TV would severely damage commercial TV. W. H. Long, executive vice president of Hutzler Advertising Agency, maintains fee TV would have the same effect that network TV has had on radio—"Consign it to the limbo of the lost. If subscription TV succeeds (and I don't think it can)," predicts Long, "it will push commercial TV off the map." Maytag Co. vice president Roy A. Brandt sees fee TV diluting the value of commercial television to the advertiser.

Diamond T Motor Car Co. ad manager W. S. Baldwin expects that "Overall quality of commercial shows will deteriorate and networks will suffer because the best shows will no longer command maximum interest and attention. * * *

On fee TV or not fee TV, the country's top marketing executives offered these diverse opinions:

George J. Allen, manager, J. P. McKinney & Son: "The public interest is best served when it has a choice. Subscription TV will force commercial TV to improve both quality of its programing and advertising if it is to continue healthy."

Kenneth B. Crawford, president, Whipple & Black Advertising: "(Subscription TV) seems a further encroachment on personal freedom of choice. And if you pay your quarter 'and the picture stinks, you're stuck.'"

Alvin Long, owner, Long Advertising Service: "I think that subscription television will make it possible to put on specific programs of high interest to specific groups, something that commercial television does not do."

William H. Horsely, president, Pacific National Advertising Agency: "Many millions have bought TV sets with the understanding that programs were to be free. With fee TV the air will no longer be free."

Dwight Schoeffler, promotion manager, Marketing Devices: "People who want faster travel use toll roads. People who want premium entertainment should be able to pay for it."

L. H. Rogers II, vice president, WSAZ–TV: "Essentially fee TV is not in the public interest, but in the interest of very few operators. * * *"

Jack R. Maguire, public-relations director, Texas Insurance Advisory Association: "I believe the viewing public has a right to escape from commercial TV's 'plug uglies' if it so desires. Only through subscription TV will advertisers be forced to use commonsense and good taste in their sponsored 'free' shows."

Nelson A. Miller, United States Department of Commerce: "Fee TV would kill a thriving industry which has contributed much to the gross national product and would raise the question, why not charge for radio programs?"

Kurt J. Mann, broad chairman, Mann-Ellis, Inc.: "Water costs nothing, still many people pay for other beverages to quench their thirst. Let subscription television, through better programs, force regular TV to improve theirs."

Miss Honor Gregory, president, Gregory & House: "Our high TV program standards are possible because of known available budgets. Who will gamble on high-cost shows under subscription TV? * * * networks won't."

William Shay, ad manager, Coast Fisheries: "I think toll TV would be the means of bringing a new high-quality entertainment to television and that this would have a salutary effect on commercial programs. It would force commercial programs to improve the quality of their offerings. I think commercial television should have a chance to prove what it can do."

Frank J. Reynolds, president, Albert Frank-Guenther Law: "This public has been educated to receive television free. If television had originally started charging the same, fee TV might have had a different reception."

L. C. Worden, ad manager, the Knox Co.: "What difference whether a sponsor pays with our money or we pay with our money?"

Who should decide whether the air waves can be "sold"?

	Percent
Federal Communications Commission	54
Congress	34
Other	12

If you were a FCC Commissioner or Member of Congress, would you vote for or against fee TV?

	Percent
For	70
Against	30

THESE MARKETERS ARE FOR TOLL TV

Donald C. Berry, vice president, McKesson & Robbins: "Subscription should be given an opportunity to prove itself. If the public doesn't like it, it will die of malnutrition."

Donald Lynch, public-relations director, Mutual Benefit Life Insurance Co.: "It deserves a fair trial. It's free enterprise; isn't it? We shouldn't protect the broadcasters from competition, just for the sake of protection. Perhaps some limitations can be placed on pay TV in the early stages, just to make sure all hell doesn't break loose and the whole TV business isn't thrown into hysteria."

Edward Whitney, ad director, Charles Pfizer & Co.: "I believe it in line with democratic principles and business rights to give new ideas a chance to prove themselves before throttling them. It's a part of our free-enterprise system."

Marvin Davis, ad manager, I. Miller & Sons: "I believe it will raise the intelligence value of television and increase its cultural possibilities for viewers."

Robert Waddell, public-relations director, Hamilton Watch Co.: "I think the public should decide—and how can it if it doesn't have the opportunity to accept or reject?"

H. F. Kemp, vice president, National Oats Co.: "It's an inalienable right—the same under which Americans buy books, phonograph records, newspapers and other news, cultural and entertainment services."

Murray Barnes, ad manager, Pan American World Airways: "You don't—or shouldn't—kill a competitor by lobbying the daylights out of him, but by clobbering him with a superior product. After all, movies came into business when we already had a perfectly good legitimate stage. * * *"

A. H. "Red" Motley, president and publisher, Parade: "Give the public the best break possible, even at a price."

Albert Carroll, ad manager, Merck & Co.: "It is my belief that every new idea should have a chance to prove itself in the market place."

Earl Benjamin Mix, ad manager, Lily-Tulip Cup Corp.: "The telecast of the show Peter Pan was seen by millions of people. To my mind and in the opinion of many critics it was television at its very finest. Paid TV could bring more such spectacles into the average home."

Samuel C. Pace, public-relations director, F. W. Dodge Corp.: "The people are entitled to have anything they will pay for; TV investors are entitled to have the opportunity to invest."

H. A. Hebbard, Jr., ad manager, Stokely-Van Camp: "In our free economy and democratic life we shouldn't construct barriers * * *."

Sidney Holt, ad manager, Aetna Fire Insurance group: "Anything of this nature should have a chance. In the end, it will be the public, not Congress or any other agency, that will make the decision."

E. A. McCabe, ad manager, Consolidated Vultee Aircraft Corp.: "Just because a man pays $50 to $500 for a box full of tubes and wires he has no right to expect advertisers—or anyone—to forever furnish him excellent no-cost entertainment."

THESE MARKETERS ARE AGAINST TOLL TV

Tad Jeffrey, ad and sales promotion manager, Kraft Foods Co.: "Commercial TV has proven itself successful at bringing to the public, without cost, programs of a generally high level of education."

W. A. Morgan, ad manager, Continental Oil Co.: "TV's greatest audience is the young low-salaried family. They have TV and don't want much other entertainment. They cannot afford to pay for TV programs."

H. S. Thompson, advertising consultant, Miles Laboratories: "Television, it seems to me, cannot exist half pay and half free. The cost of television to the advertiser today is fantastic. When we have a fairly good TV show that attracts a fair-sized audience, it seems to me totally unfair to put anything opposite it that will steal 25 to 75 percent of that audience. More than this, millions of TV sets are owned (or partially owned) by people who have all they can do to keep up the payments on those sets. They have bought them for entertainment. Is it fair to interfere in any way with the entertainment these people are now getting?"

Don Belding, executive committee chairman, Foote, Cone & Belding: "What's the matter with the way it's going now?"

Otto Furman, ad manager, Hat Corporation of America: "I think it will do great harm to the TV industry. Many people watch and enjoy boxing on TV but they will not go to the theater and pay for the privilege."

Harry Hahn, ad manager, Electrical Merchandising: "Let's improve (commercial TV), not kill it"

Richard H. Koehler, ad and publicity director, Westinghouse Air Brake Co.: "The present system is workable and satisfactory. In addition, it is representative of our unrestricted and liberal approach of allowing business to serve and entertain the public as desired. People now pay for the programs in the cost of the product. This is painless and spread over the broadest possible base."

G. S. McMillan, products division vice president, Bristol-Myers: "The people just don't want it. They do not want to pay for anything which they got free before and the endorsement of the FCC or their Congressmen won't change their minds. You are monkeying with their pocketboods. Don't do that, boy, I don't like it."

J. A. McIlnay, sales vice president, Ray-O-Vac Co.: "There is nothing wrong with free television now any more than there has been anything wrong with free radio all these years. Leave sleeping dogs lie."

Craig Smith, vice president, Gillette Safety Razor Co.: "I fear preempting of good shows, talent, and events, also monopolizing of channels."

Robert M. Bowes, II, ad and sales promotion vice president, Bowes Seal-Fast Corp.: "With the cost of TV sets what they are, I don't think the public should be expected to pay for the sets and then also pay for the right to use them."

A. W. Scott, advertising manager, Standard Pressed Steel Co.: "None of the firms promoting pay TV plan to build new stations. Therefore it would necessarily tie up facilities now devoted to free TV and, in effect, deprive present audiences of some of their services."

Mr. PIERSON. I would like to summarize briefly.

In the first place, 70 percent of these advertising leaders who were consulted said that pay TV would help advertising, not hurt. They were all uniformly of the opinion that, in the American tradition, it should be given a chance. I will not attempt to read all of their exact determinations, as stated, but I think my summary was fair.

I would like to quote, however, from some of those leaders who gave their opinion. One question was how would subscription television affect its commercial counterpart. Most panelists seem to feel that the two could exist quite healthily side by side; one of these, E. Bradford Henning, president of Henning & Co., points out that the two have done just that in Australia for many years. Prevalent opinion is that fee TV might well do free TV more good than harm. Many look for better programing, new talent, fewer objectionable commercials in order to meet subscription television's challenge.

Similar opinions were expressed by others. Murray Barnes, ad manager of Pan American World Airways, said as follows: "You don't—or shouldn't—kill a competitor by lobbying the daylights out of him, but by clobbering him with a superior product." He adds that "After all, movies came into business when we already had a perfectly good legitimate stage."

Mr. E. A. McCabe, ad manager for Consolidated Vultee Aircraft Corp., said as follows: "Just because a man pays $50 to $500 for a box full of tubes and wires he has no right to expect advertisers—or anyone—to forever furnish him excellent no-cost entertainment."

I submit that the very people who have to reach down into their pocket to support this system that CBS says will go to pot if subscription television is authorized very strongly and predominantly as a group disagree with CBS, and that made me rather more confident of the rather simple conclusions to which I had come.

Now, I would like to assume for the moment that, in spite of my argument up to this point, CBS is right and we are wrong. I think that leaves a very horrible and awful decision to govern. The Congress passed an act which instructed the Commission, in establishing communication facilities in broadcasting, to establish a fair, efficient, and equitable distribution of facilities. The Commission, in response to that mandate, adopted their sixth report. The first priority, as has often been stated here, was to get at least one service to every resident in the country, and the second priority—which was really the section 307(b) priority—was to get local expression and community stations in as many communities in the country as could possibly support them.

Now, in determining the requirements of that priority, and the requirements of section 307 (b), the Commission allocated facilities for in excess of 1,200 markets. Today we have 275, and Dr. Alexander says we will most likely end up with 217. Dr. Alexander's studies, bear in mind, were based solely on advertising economics, and did not include subscription television.

It seems, therefore, that we must decide, on the one hand, whether even the possible loss of some top programs that CBS predicts would happen, with which I thoroughly disagree—whether we will take that loss and try to establish 1,200 stations in the country instead of 217, whether we will try to establish facilities for local expression, whether we will try to establish some competition for the concentrated power over this industry in the networks, or whether we will live with Dr. Alexander's predictions, and with the current situation, and give up the requirements of 307 (b), and forget completely about the requirements of priority 2. We had just as well repeal priority 2, and Columbia's hundred-market plan is the awful result.

Now, I submit that the public is affected either way it goes, and there is no side of the angels in this question, as far as the public is concerned. If CBS's predictions are correct, I say this great medium is bound to suffer as much, if not more, if those awful predictions come true—I am talking now about Dr. Alexander's predictions—as they will if their predictions as to subscription television come true. So much for CBS.

NARTB appeared, which is a trade association of the industry. By and large they echoed the CBS line, which is to be expected. However, their original resolution was rather amazing to me: They suggested that subscription television could be done by another means rather than by use of television channels, and then referred to television channels as scarce; and this, they said, is why they opposed it. Later they incorporate the network arguments, but this was their initial resolution.

Now, the reason I was somewhat astounded at this statement, when less than 25 percent of the towns and stations in the country are in use, is that I don't see anything scarce about television facilities—and with respect to UHF they are the most plentiful thing in the world. You can buy a station, fully equipped, almost for the asking today.

Furthermore, I couldn't understand, when almost 50 percent of the industry was in economic distress, how this trade organization would suggest that the great revenues from subscription television go to some other industry—that it go to Mr. Jerrold's cable theater people, who would not build a television station that would render a service in addition to the subscription service that it rendered.

The theaters were here. I was only struck by their audacity. Here is an industry that has never given anything away free, and they come in and complain, or urge that their competitors, television, should be required to give something away free. Now, I can see in principle why they would want that done, but it seems a little late for them to pose as great defenders of television, in view of all that they have done to prevent production from getting to television up to date. They even have developed their own plan to set up a closed-circuit system, and freely predicted that it would take over practically all of what we now know as television fare as soon as it was established nationwide. And Mr. Garfield, this morning, made an earnest plea to them to join in his new gadget for the purpose of doing precisely the same thing.

Mr. Cohn did mention that the legislative history of the act clearly supported his position that Congress did not intend that anyone should be required to pay for a program. Now, I know that I may offend in this respect—that you cannot make a full judgment of legislative history by taking a few arguments, or a few statements, by people on the floor of either House and saying that this proves it. But I don't want his statement to go unchallenged, and I don't want to burden this committee——

Senator BIBLE. You go right ahead and put your answer in the record—what you think the legislative history shows.

Mr. PIERSON. When the Radio Act was being considered, Senator Dill, who was one of the managers of that act, was questioned by Senators Pittman and Walsh in the 68th Congress, at 2880 in the Record, as to whether or not the act, as drawn, would prohibit charges to listeners. Senator Dill said that it would not, and here is his quote:

> In my judgment, Congress should not pass a law that would prevent a broadcasting station from so equipping itself that people could not listen to its programs unless they had a certain kind of receiving set. In other words, if a broadcasting station wants to select its clients by selling a certain kind of receiving set or attachments for sets, I do not know any reason why the Congress of the United States should prevent it from engaging in that business any more than we would prevent a telephone company or a movie house from presenting something and not allowing anybody to enjoy it or hear it except by paying a fee.
>
> The facts of the matter are that a broadcasting station that intended to put on such a device would immediately so limit its listeners that it would lose its chief means of support, namely its advertisers, and even if it were to be done, have we reached a point in this country where we are going to forbid men to use radio as a means of business as well as other things? I do not think that if the danger existed, it would justify the passage of the legislation which the Representative from New York—

who was Representative Bloom—

> has offered.

Now, this colloquy on the floor of the Senate was not merely tangential, because Congressman Bloom had introduced such a bill in the House. It had passed. It went to conference and it was eliminated in the conference; and the queries of Senator Dill were what really happened to Representative Bloom's proposal. I can say that in some measure the legislative history supports our view that it was not intended to preclude subscription television.

Now, I would like to deal with the testimony this morning given by Mr. Garfield. I was very pleased with the fact that he urged that we get the only thing we have been requesting, namely, an opportunity to try this in the market place. I suppose that really to sum up my understanding of Mr. Garfield's testimony, it was that mass communication could be done better by wire than it can by radio communication. We don't believe him. We think that experience in the country so far proves the contrary.

Furthermore the estimates that we have obtained with respect to the cost of doing what he proposes are to the order of about 10 to 1 to what he has estimted—or rather 100 to 1 to what he has estimated. In any event, I don't believe that it is a point that it is necessary for the committee or for the Commission to decide, because he can put his money upon his own predictions and his own ability, and we want to put it on ourselves. If he can beat the pants off us and make us fail, I think he is entitled to that right, but he can't ever do that, unfortunately, unless the Government gives us the right to try—and that, I submit, is all that we are seeking.

Senator BIBLE. Thank you very much, Mr. Pierson. Mr. Cox, did you have any questions of Mr. Pierson?

Mr. Cox. No, sir.

Senator BIBLE. Thank you very much for your rebuttal testimony. Are there other witnesses to be heard in closing this phase of the television hearing on subscription television?

Mr. Cox. Mr. Cohn, did you have something further to say?

REBUTTAL STATEMENT OF MARCUS COHN, COUNSEL, COMMITTEE AGAINST PAY-TO-SEE TV

Mr. COHN. Mr. Chairman, on behalf of CBS and the Joint Committee Against Pay Television, we ask leave to submit a statement in reply to Mr. Pierson's statement, if that meets with the approval of the chairman, at some date that will be convenient for you and us.

Senator BIBLE. I have no objection as long as we don't keep replying indefinitely, ad infinitum.

Mr. COHN. No, sir.

Senator BIBLE. Is this the last reply that we get to the replies?

Mr. Cox. We would suggest, Mr. Cohn, that certainly you are entitled to do this as long as you limit further reply to what you regard as new matter contained in Mr. Pierson's statement. I don't know what you would have in mind in that connection since it seemed largely directed at arguments raised by the opponents, but subject only to such restriction, you, singly or jointly, may submit such a statement.

Mr. COHN. It wouldn't be my intention to reargue the entire matter, but to confine it to what would be surrebuttal.

Senator BIBLE. Well, direct your testimony and your statement directly to the rebuttal—what we would call surrebuttal—and that will be permissible.

Mr. WASILEWSKI. I just wanted to know, sir, if that permission extended to NARTB individually?

Senator BIBLE. I would think it would. You will have exactly 10 days to do it. The record will be kept open for 10 days for that purpose. Is there anything further? [4]

Mr. COHN. Mr. Chairman, there was one further thing and that was in connection with the statement which I made. Senator Pastore asked me to submit for the record a certain document to which I have referred. I have that document in my briefcase, and I will hand it to the reporter for the record.

Senator BIBLE. That will be inserted at this place in the record.

(The document referred to is as follows:)

SECURITIES IN CLASS "D": THESE ARE SPECULATIVE SECURITIES

PROSPECTUS

TECO, INC.

99,000 Shares Common Stock, Par Value $10 a Share, Together With Subscription Receipts Evidencing Conditional Subscriptions for Said Shares

These securities have not been approved or disapproved by the Securities and Exchange Commission, Nor has the Commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

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[4] No further statements were received except as follows:

(a) A letter from Mr. Cohn furnishing the answer to a question asked by Senator Pastore, which is printed in the appendix to this volume at p. 1467.

(b) A supplemental statement of Zenith Radio Corp., and Teco, Inc., which is printed in the appendix to this volume at p. 1467.

As more fully set forth herein, the Company is offering to the shareholders of Zenith Radio Corporation of record on July 15, 1949, the privilege of subscribing at the Price to Public shown below for their pro rata part of 99,000 shares of the $10 Par Value Common Stock of Teco, Inc., at the rate of one-fifth (1/5) of a share of such stock for each one (1) share of the Common Stock of Zenith Radio Corporation then held. Subscription privileges will expire at 3 P. M. Central Daylight Time on May 9, 1950. Shares not subscribed for by the shareholders of Zenith Radio Corporation will be offered by the Company to such person or persons as may be interested in the purchase thereof. All Subscriptions are subject to the condition that on or before November 18, 1950, all unsubscribed shares will be sold. No certificates representing shares subscribed for will be issued unless and until this condition is fulfilled. In lieu thereof transferable Subscription Receipts will be issued by the Company evidencing conditional subscriptions that have been accepted. Holders of Subscription Receipts will not be considered shareholders of the Company and will have no rights or privileges as such.

In the event that all of the Company's authorized Common Stock consisting of 100,000 shares has not been subscribed for on or before November 18, 1950, the Company will refund to all holders of Subscription Receipts other than the Promoters the amount of the subscriptions evidenced thereby. The details of the offering in this as well as other respects are set forth under the heading "Offering to Shareholders of Zenith Radio Corporation" and under the heading "Obligations of Promoters."

Subscription price, $10 a share.

	Price To Public	Underwriting Discounts	Proceeds to Company*
Total	$990,000.00	None	$990,000.00
Per Unit	$10.00	None	$10.00

*The proceeds to the Company are stated before deduction of expenses payable by the Company. Unless all shares are sold prior to Nov. 18, 1950, these expenses will be paid exclusively out of funds received by the Company from subscriptions made by certain of the promoters as more fully explained under the heading "Obligations of Promoters" at p. 8 hereof.

This issue is not underwritten.

The date of this Prospectus is April 19, 1950.

No dealer, broker, salesman, or other person has been authorized to give any information or to make any representations not contained in this Prospectus in connection with the offer contained in this Prospectus and, if given or made, such information or representations must not be relied upon as having been authorized by the Company. Neither the delivery of this Prospectus nor any sale made hereunder shall, under any circumstance, create any implication that there has been no change in the affairs of the Company since the date hereof. This Prospectus does not constitute an offering in any state in which such offering may not lawfully be made.

THE REGISTRATION STATEMENT

Teco, Inc., has filed with the Securities and Exchange Commission, at Washington, D. C., a Registration Statement (Form S-2) under the Securities Act of 1933, as amended, with respect to 99,000 shares of Common Stock, par value $10 a share and such indeterminate number of Subscription Receipts evidencing conditional subscriptions received for said shares as may be issuable as a result of the exercise of subscription privileges being offered to the shareholders of Zenith Radio Corporation. For further information with respect to the securities offered, reference is made to the Registration Statement and amendments thereto, including the financial statements and exhibits filed as parts thereof.

TECO, INC.

99,000 Shares Common Stock (Par Value $10 a share) Together With Subscription Receipts Evidencing Conditional Subscriptions for Said Shares

Transfer Agent and Subscription Agent: The First National Bank of Chicago, Chicago, Illinois.

ORGANIZATION AND HISTORY OF BUSINESS

The shares of common stock covered by this Prospectus are offered by Teco, Inc. (meaning Television Entertainment Company, Incorporated), herein referred to as "the Company."

Teco, Inc., was organized under the laws of the State of Illinois on May 25, 1949. Its registered and only present office is located at Room 2067, 231 South LaSalle Street, Chicago 4, Illinois. Its organization was sponsored by the principal executive officers and by the directors of Zenith Radio Corporation of Chicago, Illinois, herein referred to as "Zenith." All of the Company's presently outstanding capital stock consisting of 1,000 Common Shares is owned by individuals who are either officers or directors of Zenith or both officers and directors of that corporation. Set forth below is a statement of the factors that prompted the sponsorship of the Company by this group.

For some time it has been the considered opinion of Zenith's management that unless some means were developed for providing revenue in sufficient amount to make possible the broadcasting of first-run movies and other expensive types of programs, television would never realize its full potentialities as a great, nationwide industry. It was and is the opinion of Zenith's management that advertisers who have supported radio broadcasting and are now partially paying for the present type of television programs cannot be expected to provide the very substantial revenue required to make possible the broadcasting of television programs that will be entirely acceptable to the public over the years.

Accordingly, Zenith has endeavored for a number of years to devise a means for providing such revenue for television broadcasting. It has now developed what is believed to be a practicable subscription television system known as "Phonevision" by which fees may be collected from users of television receivers for the privilege of satisfactorily receiving certain programs, such as first-run movies and other costly forms of entertainment. Certain technical features are still in the process of solution but Phonevision has been developed to a degree indicating that its commercial use is feasible. Zenith has pending several applications for patents covering Phonevision. In this connection reference is made to the heading "Patents" appearing on page 6 hereof. Zenith has publicly announced that it intends to license other manufacturers to manufacture and sell television receivers embodying Zenith's Phonevision invention. A description of the manner in which Phonevision operates follows:

Television receivers will be equipped with a special device whereby users, if they so desire, may satisfactorily receive programs for which a fee will be charged. These receivers also will be capable of receiving "free" programs satisfactorily. In the case of programs for which a fee is charged, only a portion of the frequencies on which the programs are being broadcast will be transmitted directly by the broadcasting stations to television receivers. The effect of this will be to make the picture or other signal on the receiver scrambled, indistinct, and otherwise unsatisfactory.

It is contemplated that a user of a television receiver equipped with the device embodying the feature referred to above who desires to see programs for which a fee is charged, by calling the telephone company serving him and requesting it, will receive over the telephone lines the missing frequencies. These additional frequencies will be transmitted to the television set through an appropriate connection with the telephone line and the picture which originally appeared on the television set in scrambled and indistinct form, immediately will be made clear and distinct. The user of the television receiver will be charged a fee for this service. Fees derived in this manner will be divided between the television broadcasters, the telephone companies, the producers of programs, and other interests entitled to participate therein on a basis to be agreed upon between them, thus furnishing funds for the production, broadcasting, distributing, and booking of programs.

The Company was organized for the purpose of promoting Phonevision and bringing about its general acceptance and use. When, as, and if Phonevision is put into commercial operation, it is proposed that the Company will act as the representative or agent of the various interests producing and transmitting the subscription programs, in the booking of such programs, the fixing of fees to be collected from users of television receivers adapted for Phonevision reception, arranging for the collection of all or a portion of such fees, the allocation of the same among the various interests entitled to participate therein, the negotiation of contracts between producers of programs, television broadcasters, telephone companies, and other interests involved and, in general, to supervise the functioning of the system after it has been established so far as the transmitting portion of the same is concerned. It is likely that the Company also will be obliged to render assistance to such interests in obtaining authority to put the system into effect from the Federal Communications Commission and possibly other regulatory bodies.

The Company as yet has not commenced the active operation of the proposed business in which it will engage as outlined above. It is still definitely in the formative and organizational stage. Its primary asset is a contract that it has entered into with Zenith Radio Corporation, the terms and provisions of which are described below.

CONTRACT BETWEEN TECO, INC. AND ZENITH RADIO CORPORATION

Under the date of July 26, 1949, the Company and Zenith entered into a contract providing, in substance, as follows:

1. Zenith grants to the Company the exclusive right to engage in promoting and endeavoring to bring about the acceptance and use of the transmitting portion of Phonevision by television broadcasting companies, organizations owning, operating, or controlling telephone lines or other conductor facilities or networks, motion-picture producers, distributors of motion-picture films, organizations engaged in the entertainment business, and other persons or organizations producing or making available for broadcasting, programs of various types. Such entities or organizations are hereafter collectively sometimes referred to as "Broadcasting Interests."

2. In order to enable the Company to accomplish the foregoing objectives, Zenith grants to the Company, without the payment of royalty, the nonassignable exclusive right, with the right to license others, to manufacture or to have manufactured and to use but not to sell transmitters and other equipment connected with the transmitting portion only of Phonevision under any and all inventions and applications for patents now owned or which may hereafter be acquired by Zenith while the contract with the Company is in effect and under any and all patents which may be issued on such applications covering the transmitting portion of Phonevision as well as similar rights under any patents not owned by Zenith but under which it has or may acquire the right to license others. If Zenith is required to pay royalty to any third parties under any agreements granting it rights under patents of such third parties, Zenith will license the Company under the claims pertaining exclusively to subscription television transmission under such patents only if the Company shall agree to pay, either to Zenith or to such parties, the proper proration of the royalties, if any, which Zenith is obligated to pay to such third parties. The rights granted to the Company are limited to the United States of America, its territories, and insular possessions, the Dominion of Canada, the United States of Mexico, the Island of Cuba, and the Island of Hispaniola, which is comprised of Haiti and the Dominican Republic.

3. Zenith does not grant any rights to the Company, nor will the Company be authorized to extend any rights, to television or radio manufacturers, television broadcasters, or any other persons or organizations to manufacture, use, or sell devices or apparatus embodying the receiving portion of Phonevision under any applications for patents or patents which may issue thereon now owned by Zenith or hereafter acquired, or under which it may have the right to license others, such rights being specifically reserved to Zenith.

4. In the event the Company is successful in its efforts to bring about the adoption and use of Phonevision by the various Broadcasting Interests above set forth, the Company will arrange for and book the programs to be broadcast by means of Phonevision and will act as the representative or agent of such interests in coordinating their operations. It will negotiate and make agreements with respect to the fixing of the fees to be charged users of television receivers who subscribe for programs broadcast by means of Phonevision and it will collect all or a portion of such fees and negotiate and make agreements with respect to the allocation of such fees between the various interests involved. The Company also will assist in obtaining the necessary authority from the Federal Communications Commission or any other governmental agency having jurisdiction of the matter to establish, put in use, and operate the transmitting portion of Phonevision.

5. The Company may grant to such interests participating in the transmission of programs by means of Phonevision the right to use the transmitting portion of such system on such terms as the Company sees fit.

6. Zenith will not grant to any person other than the Company any licenses or rights under the claims of Zenith's patents pertaining exclusively to subscription television transmission, or under similar claims of any patent under which it has the right to grant licenses to others, to manufacture or to have manufactured, or to use or permit the use of subscription television transmitting apparatus in

any portion of the area covered by the contract or to any person to sell such subscription television transmitting apparatus except with respect to any portion of the area covered by the contract which may be withdrawn by Zenith because of the failure of the Company to bring about the acceptance and use of Phonevision in any such withdrawn portion of said area, and except also that if any licensee of the Company shall, for any reason, cease to have use for subscription television transmitting apparatus, such licensee, with the consent of the Company, may sell it to another licensee of the Company subject to the terms of the proposed contract, or the Company itself may purchase the same and sell it to another of its licensees.

Zenith agrees not to itself manufacture or have manufactured subscription television transmitting apparatus during the term of the contract except for its own experimental purposes without the consent of the Company.

7. Zenith agrees that, on its own initiative or at the request of the Company, it will prosecute infringers of any of the claims of its patents pertaining to subscription television transmitting apparatus or, if the Comany shall so elect, it shall have the right to prosecute such infringers. In the event of any recovery of damages by the Company in any suit instituted by it, the Company will retain one-half the net amount of such damages and pay the remaining half to Zenith.

8. Zenith agrees that, if at any time during the term of the agreement it should sell or assign any of its patents relating to subscription television transmission, it will make such sale or conveyance subject to the terms of its agreement with the Company.

9. Zenith will not pay the Company any compensation for its services. Such income as the Company may receive will be derived from that portion of the fees paid to it by the users of television receivers who subscribe for the programs broadcast by means of Phonevision in accordance with the provisions of contracts negotiated by the Company and entered into with it by the various Broadcasting Interests or paid to it in such other manner as may be agreed upon by it and the Broadcasting Interests involved.

10. The Company agrees to pay to Zenith annually an amount equal to 33⅓% of the Company's net profits before payment of or provision for Federal or State income, excess profits or other taxes on income. This amount will not be deducted from profits in computing the payment due Zenith but will be deducted as an expense for the tax purposes indicated.

11. Zenith agrees to continue diligently the development and improvement of Phonevision and to cooperate with the Company in making all such developments and improvements available to the Broadcasting Interests. Zenith assumes and will pay the cost of all necessary demonstrations, experiments, and testing of Phonevision, including the cost of the necessary equipment therefor.

12. The Company agrees to devote its best efforts to the promotion of Phonevision in the territory above mentioned. If the Company shall not have been successful in effecting the adoption and use of Phonevision prior to July 26, 1959, in any metropolitan district of the United States as defined by the Bureau of Census or in any similar area outside the United States within the territory covered by the agreement, or within any other area within or without the United States not classified as a metropolitan district exceeding 100,000 square miles in extent, which is considered suitable for the practice of Phonevision, Zenith may terminate the contract with respect to any such area provided the Company, after receiving notice from Zenith, shall not have been able to bring about the adoption and use of Phonevision therein within one year from the date of such notice.

13. The Company has the right to terminate the agreement at any time after five years from its effective date on six months' notice to Zenith if the latter has not obtained patent rights covering Phonevision which are satisfactory to the Company.

14. The contract automatically terminates if the Company becomes bankrupt or is reorganized, or makes an arrangement with its creditors under the Bankruptcy laws, or if a receiver is appointed for the Company or its assets and is not removed within ninety days from the date of the appointment.

15. The Company is obligated to offer to shareholders of Zenith the right to subscribe for the Company's $10 par value common stock in proportion to the number of shares of Zenith stock held by such shareholders, as established by the stock records of Zenith at the close of business on July 15, 1949. Each owner of five (5) shares of Zenith stock will be entitled to subscribe to the purchase of one (1) share of the Company's stock at a purchase price of $10.00 a share. Any unit of Zenith stock less than five (5) shares owned by any share-

holder of that company will entitled such shareholder to subscribe proportionately for fractional shares of the Company's stock. The right of Zenith's shareholders to subscribe for the Company's stock will expire twenty (20) days after its offer for sale to them.

16. The contract will not become effective unless the Company shall obtain through the sale of its stock, either pursuant to the offer to be made to Zenith shareholders or otherwise, its entire authorized capital of $1,000,000.00 within seven (7) months after such stock shall have first been offered for sale. At the expiration of said period, the Company is obligated to advise Zenith whether or not it has obtained such fully paid-in capital. The contract further provides that in the event the Company is unable to procure its entire $1,000,000.00 capitalization within the period specified, it is obligated to return to all persons who have subscribed for and purchased its stock the amounts paid by them for the same, after deducting their proportionate share of the cost of organizing the Company and its other proper and necessary expenses, including, among others, the expenses incurred by it in procuring subscriptions for its stock. Under date of January 31, 1950, three of the promoters of the enterprise entered into a contract with the Company providing, among other things, that if the Company is unable to procure its entire capitalization within the stated period, all these expenses shall be paid out of funds received by the Company on subscriptions made by the promoters. Accordingly, in the event of the contingency referred to, all subscribers other than the Promoters will have returned to them the full amount of their subscriptions without any deductions. (See page 8 hereof under the heading "Obligations of Promoters".)

17. If the contract becomes effective, it will extend and remain in force during the life or terms of any United States patents which may be issued on the applications filed by or for Zenith on its Phonevision development and for five (5) years thereafter unless the same is terminated in whole or in part for any reason or in any manner provided for in the contract.

The foregoing consists in part of summaries of certain provisions of the contract between the Company and Zenith, a copy of which is filed as an exhibit to the Registration Statement and to which reference is made for a full statement of its terms and provisions. The description herein set forth is qualified by such reference.

PROSPECTIVE BUSINESS

No representations or predictions are or can be made as of the date of this Prospectus regarding the business prospects of the Company. It has not as yet engaged in any activities except those incident to its intitial organization and development. Further progress in this respect is dependent on the sale of all of the stock offered by this Prospectus at not less than the offering price within seven (7) months from the date of the initial offering to Zenith shareholders as provided in the contract between the Company and Zenith. As heretofore stated, the Company is required to refund the purchase price received on any shares that are sold to the purchasers thereof (other than the promotional interests) during this seven-month period, in the event it is unsuccessful in disposing of all of its authorized capital stock within such period. Accordingly, if the Company fails to fulfill this obligation, it will have insufficient funds with which to pursue its corporate objectives.

Another consequence of the Company's failure to sell all of the stock offered by this Prospectus within seven (7) months from the date thereof will be the cancellation of its contract with Zenith. Although no asset value is attached to this contract in the financial statements accompanying this Prospectus, it is apparent that the contract is the Company's present principal asset. Without the exclusive rights granted to the Company by Zenith, the Company would be in no position to engage in the contemplated enterprise. For the reasons stated, any business prospects that the Company may have are initially contingent upon its ability to dispose of all of its authorized stock.

It is estimated that the promotional and development stage of the Company's business will cover a period of several years. It also is estimated that the cost of this promotional and development work will aggregate close to $1,000,000.00. This accounts for the provision in the contract with Zenith that the Company must have a paid-in capitalization of $1,000,000.00 before the contract becomes effective.

Phonevision has from time to time been demonstrated to various motion-picture producers, broadcasting organizations, telephone companies, and others. While many of these organizations have indicated an interest in it, up to the present time none of them has agreed to participate in the adoption of the system for the purpose of putting it into operation. There are no commitments of this nature in existence.

The Company is informed that Illinois Bell Telephone Company has agreed to the use of certain of its facilities for the purpose of enabling Zenith to make the experimental Phonevision broadcasts in Chicago, referred to below. Illinois Bell Telephone Company has, however, made it clear that in permitting the use of its facilities for experimental Phonevision broadcasts, it does not enter into any commitment to provide such facilities for like broadcasts on a commercial basis. Furthermore, Illinois Bell Telephone Company has stated that it has no present intention of participating in other aspects of Phonevision, such as billing, collecting, or operating the switching of unlocking signals, or handling the orders therefor.

Efforts will be made to persuade Illinois Bell Telephone Company—and other companies in the Bell System—to recede from the position last stated. If such efforts are unsuccessful and that position is adhered to, the development of Teco's business will be seriously retarded—even though the tests referred to indicate a potential public demand for Phonevision. Other means would have to be developed to furnish the Phonevision subscriber with the missing frequencies heretofore mentioned.

It is apparent that the Company's business prospects will be directly dependent on the extent to which the public accepts and makes use of Phonevision. No means exists for measuring this demand and, accordingly, no representations are made with respect thereto. Competition from present sources of entertainment, possible technical problems and the necessity of procuring approval of regulatory bodies for the institution and use of Phonevision are other factors that may have an effect on the Company's business.

No technical problems exist that are considered vital. Equipment has been developed to handle what is believed will be a normal volume of traffic over telephone facilities in a thirty-minute interval of time immediately prior to a Phonevision broadcast. If present estimates in this respect prove to be inaccurate, other methods of controlling this traffic will have to be devised. This is possible mechanically but involves additional expense. Adaptation of the equipment to so-called four-party or more than four-party telephone lines may also be classified as a technical problem. The equipment can be so adapted but the expense involved probably will be more than the cost differential between a four-party telephone line and lines serving fewer than four parties. Other problems of a technical character not foreseen at this time may arise and reference to those indicated above must not be construed as a representation that there will be no others.

Permission to inaugurate a system by which fees may be collected from users of television receivers will have to be obtained from the Federal Communications Commission and possibly from other regulatory bodies. Applications for such permits may be the subject of public hearings lasting over an extended period of time, the duration of which cannot be estimated. Interests controlling present sources of entertainment may interpose objections to the issuance of any such permits for competitive reasons. It is impossible to forecast the effect of such opposition in obtaining required authorizations. These are other factors that may have an effect on the Company's business prospects. Refusal on the part of the aforesaid regulatory agencies to issue permits in all probability would force the Company to abandon the objectives for which it was created and would probably result in its liquidation.

The Company has been advised that the Federal Communications Commission has granted an application filed by Zenith for authority to make experimental Phonevision broadcasts in Chicago, Illinois. The purpose of these experimental broadcasts is to establish the feasibility and practical operation of Phonevision and its public acceptance. The order of the Federal Communications Commission granting this application by Zenith was issued subject to the following conditions, among others:

"This action shall not be construed as a determination or finding that the conduct of said experimental operations in the television broadcast band is or will be in the public interest beyond the express terms of this authorization. The Commission expressly reserves its determination as to what frequencies, if any, should be allocated to 'Phonevision' or to any system of subscription television."

* * * * * * *

"Zenith Radio Corporation shall avoid any action that might create the impression in the mind of any person or persons that 'Phonevision' has been or will be authorized on a regular basis or that the said authorization constitutes approval by the Commission of the principle of 'Phonevision' or subscription television. * * *"

While it is fully aware of the existence of the factors outlined above, the Company believes that there is a substantial need for some revenue-producing medium to defray the expense involved in providing acceptable television programs and, if such need remains unfulfilled, the management of the company shares the opinion expressed by the management of Zenith that the development of television into a great nationwide industry will be materially retarded. The Company believes that Phonevision affords the most satisfactory means of answering this need.

If this need exists, the Company also believes that there is a corresponding need for the services of a separate and independent organization to perform the various functions outlined above. Accordingly, if and when Phonevision is accepted and made operative, the Company believes that there will be a demand for the services it proposes to render.

The Company is not able at this time to predict with any degree of certainty the extent of its business prospects. At the present stage of its development it must be considered a speculative enterprise. Particularly is no representation made regarding prospective earnings. Any earnings of the Company are contingent upon the success of Phonevision and no substantial earnings are expected for a period of several years. Any earnings thereafter are at this time only a matter of conjecture.

It is contemplated that the Company's income will be derived largely from that portion of the fees paid to it by the users of television receivers who subscribe for the programs broadcast by means of Phonevision in accordance with the provisions of contracts negotiated by the Company if and when Phonevision becomes commercially operable. In this connection specific reference is made to the provision in the contract between the Company and Zenith that as long as the contract is in existence the Company must pay annually 33⅓% of its net profits to Zenith before the payment of or provision for federal or state income, excess profits, or other taxes on income.

DESCRIPTION OF PROPERTY

The Company owns no physical properties of any kind nor at this time does it contemplate the acquisition of any other than office furniture, fixtures, and equipment to be acquired as the need therefor arises after it has commenced the active transaction of business. The business of the Company as described above will be that of a so-called service industry so that office quarters and facilities only will be required in conducting its operations. The Company does not presently plan to engage in manufacturing operations of any kind. Its only present office is located in leased quarters in The Continental Illinois National Bank Building, 231 So. LaSalle Street, Chicago, Illinois.

PATENTS

The Company does not own any patents. Zenith Radio Corporation presently has pending in the United States Patent Office several applications for patents covering both the receiving and transmitting portions of Phonevision. The Company is advised that recently eighteen claims were allowed by the Patent Office under one of these applications, considered to be basic in nature, but no patent has been or will be issued thereon for a matter of several weeks. Under the contract between the Company and Zenith, the Company is granted, without the payment of royalty, exclusive rights with the right to license others, to manufacture or to have manufactured and to use, but not to sell, transmitters and other equipment connected with the transmitting portion only of Phonevision under any and all inventions and applications for patents now owned or which may hereafter be acquired by Zenith while the contract is in effect and under any and all patents which may be issued on such applications covering the transmitting portion of Phonevision as well as similar rights under any patents not owned by Zenith but under which it has or may acquire the right to license others. Attention is called to the fact that neither Zenith nor the Company will have any enforceable rights in the claims contained in the pending patent applications until patents issue. Thereafter such rights will be limited to the claims allowed in the patents as issued.

The Company believes that the foregoing rights will be of considerable value and of distinct advantage to it in the conduct of its business when and if the aforesaid patents are issued.

COMPETITION

The nature and extent of the competition from others that may engage in the same type of business as that contemplated by the Company cannot be foreseen with any degree of accuracy at this time. It is believed that at present there is no method similar to Phonevision for providing revenue to defray the cost of broadcasting expensive types of television programs. Consequently, there is no guide by means of which the Company can measure prospective competition and it makes no representations or predictions with respect thereto.

OFFERING TO SHAREHOLDERS OF ZENITH RADIO CORPORATION

As required by its contract with Zenith, the Company is offering on a pro rata basis to the shareholders of record of Zenith as of July 15, 1949, the shares covered by this Prospectus. The offering is made on the basis of one-fifth (1/5) of a share of Teco, Inc., $10 par value common stock for each share of Zenith stock held. The offering price, as stated on the cover page of the Prospectus, is at the rate of $10.00 a share. Fractional shares will be issued and Zenith shareholders may purchase all or any portion of the shares offered to which they may be entitled by virtue of their stock holdings in Zenith. The initial offering is made exclusively to the record shareholders of Zenith as of July 15, 1949, as shown by its stock transfer records and the subscription forms evidencing subscription privileges will not be assignable, tranferable, or negotiable in any manner.

The First National Bank of Chicago will act as Subscription Agent for the Company in connection with the offering to Zenith shareholders and all subscriptions will be subject to acceptance and confirmation at its offices in Chicago, Illinois. Subscription privileges may be exercised by surrender of subscript on forms to the Subscription Agent properly executed, together with full payment of the subscription price. The subscription price must be paid in the United States dollars and may be made in cash or by certified or cashier's check payable to the order of the Subscription Agent.

The privilege of Zenith shareholders to subscribe for the common stock offered hereunder will expire at 3 P. M. Central Daylight Time on May 9, 1950.

All subscriptions for stock are subject to the condition that on or before November 18, 1950, all stock of the Company offered hereunder will be subscribed for—either by exercise of the privileges herein offered or otherwise. No certificates representing shares subscribed for will be issued unless and until this condition is fulfilled. Pending fulfillment thereof all funds received by the Subscription Agent from subscribers other than certain of the promoters will be held in escrow by the Subscription Agent and will be returned to such subscribers in the manner stated below if said condition is not fulfilled.

As promptly as possible after the receipt of subscriptions (if received before the expiration date and time referred to above) the Company will issue to each Zenith shareholder who has submitted a properly executed subscription form, together with payment in full for all shares subscribed, a Subscription Receipt acknowledging receipt of such subscription and payment and stating the terms and conditions upon which it is issued as herein set forth. All Subscription Receipts will be issued in registered form and will be transferrable only on the books of the Subscription Agent subject to such reasonable regulations and charges as the Subscription Agent may prescribe. No transfer will be valid unless entered on the books of the Subscription Agent. The registered holder of any of said Subscription Receipts will be deemed the absolute owner thereof and neither the Company nor the Subscription Agent will be affected by any notice to the contrary.

If all of the Company's authorized Common Stock consisting of 100,000 shares has been subscribed for on or before November 18, 1950, and payment therefor has been received by the Company, notice to that effect will be mailed promptly to all holders of Subscription Receipts as shown by the records of the Subscription Agent. Such notice will direct holders of Subscription Receipts to surrender them to the Subscription Agent in exchange for stock certificates issued by the Company or its Transfer Agent in the name of the registered holder of the Subscription Receipt or his assignee evidencing ownership of fully paid and nonassessable shares of the Company in the number called for by the surrendered Subscription Receipt. Until the issuance of such stock certificates, holders of Subscription Receipts will not be considered shareholders of the Company and will not have voting rights or any other rights or privileges as such.

In the event 100,000 shares of the Company's stock have not been subscribed for on or before November 18, 1950, notice to that effect will be sent by the Subscription Agent to all holders of Subscription Receipts other than the Promoters. Said notice will direct holders of Subscription Receipts to surrender them to the Subscription Agent for cancellation. Upon surrender of each such Subscription Receipt, the Subscription Agent will pay to the registered holder thereof or his assignee the amount of the subscription evidenced by said receipt.

The Company is aware that it is, in effect, pioneering in an unexplored field. It believes that the potentialities are promising but the obstacles that must be overcome also cannot be ignored. The proposed enterprise may be successful or wholly unsuccessful. In the latter event the prospective investor may receive no return on his investment, capital or otherwise. There is presently no market for the Company's common stock or the Subscription Receipts described above.

The present shareholders of the Company are all directors and shareholders of Zenith. Because of their relationship to the Company on the one hand and to the shareholders of Zenith on the other, it was determined that the latter should have the first opportunity to acquire stock in the new enterprise if they so desire and before participation is offered to others. For this reason there was included in the contract between the Company and Zenith the provision requiring the Company to make this initial offer to Zenith shareholders.

PROMOTERS

The organization of the Company was initiated and sponsored by certain officers and directors of Zenith. They subscribed to all of the Company's presently outstanding capital stock issued at the time of its organization amounting to 1,000 shares and paid $10.00 a share therefor in cash. The names of the individuals participating in the manner indicated, together with a brief statement of their business experience and the number of shares of the Company for which they subscribed and subsequently purchased is set forth below:

Mr. E. F. McDonald, Jr., has been president and a director of Zenith since 1923 and is the principal executive officer of that corporation. He subscribed for and purchased 590 shares of the Company's common stock.

Mr. Hugh Robertson is executive vice president, treasurer, and a director of Zenith. He has occupied these positions for more than fifteen years. Mr. Robertson subscribed for and purchased 76 shares of the Company's common stock.

Mr. Irving Herriott is a practicing attorney, a partner of the law firm of Montgomery, Hart, Pritchard & Herriott, Chicago, Illinois, and has been general counsel for Zenith since its organization as a corporation in 1923. He has been a member of its board of directors since 1942. Mr. Herriott initially subscribed for and purchased 191 shares of the Company's common stock. Subsequently he acquired the 3 shares subscribed for by the incorporators of the Company.

Mr. Frank A. Miller is a partner in the firm of James E. Bennett & Co., Stock and Grain Brokers, Chicago, Illinois, and has been a director of Zenith since 1940. He subscribed for and purchased 100 shares of the Company's common stock.

Mr. Ralph Hubbart is president of Allied Products Corporation, manufacturers of automotive parts, and has been a director of Zenith since 1928. He subscribed for and purchased 20 shares of the Company's common stock.

Mr. Karl E. Hassel is assistant vice president, engineering executive, and a director of Zenith. He has been a director since 1934 and assistant vice president since 1943. He was a member of the partnership known as Chicago Radio Laboratory, predecessor of Zenith Radio Corporation. Mr. Hassel subscribed for and purchased 20 shares of the Company's common stock.

Reference is made to the following section under the heading "Obligations of Promoters" for the terms of certain commitments undertaken by Messrs. McDonald, Robertson, and Herriott, three of the above-named individuals, in connection with the offering.

OBLIGATIONS OF PROMOTERS

The shares offered hereunder have been qualified for sale in Illinois under the Illinois Securities Law. To effect this qualification and fulfill a requirement imposed on the promitional interests, Messrs. McDonald, Robertson, and Herriott, three of the promoters referred to above, have entered into a contract with the Company agreeing:

(a) to subscribe for and purchase at $10 a share all of the shares for which they will have the privilege of subscribing by virtue of their stock holdings in Zenith and, in addition, to purchase such further number of shares as may be necessary to make their aggregate subscriptions equal to not less than 15% of Teco's proposed paid-in capitaliaziton of $1,000,000.00; provided, however, that the obligation to purchase such further number of shares is subject to the condition that there are a sufficient number of shares not subscribed for by other shareholders of Zenith to enable the promoters to fulfill their commitments in this respect; and

(b) that in the event the proposed paid-in capitalization of $1,000,000.00 is not realized within seven (7) months of the initial offering to Zenith shareholders, all expenses relating to the incorporation of the Company, including its operating expenses since its incorporation and the expenses of this financing, shall be paid exclusively out of funds received by the Company on the promoters' subscriptions and shall not be paid out of funds received from other subscribers.

The agreement further provides that nothing therein contained shall be construed to prohibit the promoters, individually or as a group, from subscribing for shares aggregating more than 15% of the Company's proposed paid-in capitalization, although they are under no obligation to do so. A copy of the agreement is filed as an exhibit to the Registration Statement, to which reference is made for a full statement of its terms and provisions. The foregoing summary is qualified by such reference.

The promoters have advised the Company that no shares purchased by them, either in fulfillment of their obligations under the aforesaid contracts or other wise, are being purchased with a view to the further distribution thereof but are being purchased for personal investment purposes only. Accordingly, the Company does not believe the promoters are properly classified as "underwriters" as that term is defined in the Securities Act of 1933, as amended.

DISPOSITION OF UNSUBSCRIBED SHARES

Except as stated above, there are no commitments in existence for the purchase of shares not subscribed for by the shareholders of Zenith. The Company proposes to sell such shares by offering them to such person or persons as may be interested in the purchase thereof. Said shares will be offered under similar conditions and at the same price as the offering to Zenith shareholders. After the expiration of subscription privileges being offered to Zenith shareholders, the Company will file a supplemental Prospectus by post-effective amendment to the Registration Statement reflecting the result of such offering. It is contemplated that unsubscribed shares will be offered through the supplemental Prospectus.

CAPITALIZATION

The capitalization of the Company as of January 31, 1950, and as adjusted to give effect to the issuance of the shares offered by this Prospectus was as follows:

Title of Class: Common Stock, $10 Par Value
January 31, 1950:
  Authorized: 100,000 shares
  Outstanding: 1,000 shares
Adjusted As Above Stated:
  Authorized: 100,000 shares
  Outstanding: 100,000 shares

DESCRIPTION OF CAPITAL STOCK

All shares of the Company's $10 par value common stock are entitled to participate equally in dividends. All shares rank equally upon liquidation. Each shareholder has one vote for each share registered in his name, except that for the election of directors each holder is entitled to as many votes as shall be equal to the number of his shares of stock multiplied by the number of directors to be elected and each shareholder may cast all of his votes for a single director or may distribute his votes among the number to be voted for or among any two or more of them in accordance with his desires. The holders of the Company's common stock have preemptive rights as to additional issues of stock by the Company with such exceptions as exist under the statutes of the State of

Illinois. There is no limitation in the Company's Articles of Incorporation with respect to voting or dividend rights of holders of fractional shares. Accordingly they will possess such rights to the extent of their fractional share holdings.

DESCRIPTION OF SUBSCRIPTION RECEIPTS

The Subscription Receipts which the Company will issue to Zenith shareholders evidencing conditional subscriptions received for shares of its common stock are described under the heading "Offering To Shareholders of Zenith Radio Corporation." The only rights or interests that the holders thereof will have in the Company or its affairs will be (1) the right to receive the number of shares of the Company's $10 par value common stock called for by their Receipts when and if such stock is issued and (2) the right to receive a refund of the subscription evidenced by their Receipts in the event such stock is not issued. Holders of Subscription Receipts will have no right to participate in the management or operation of the Company and will have no voting rights of any kind. They will have no interest in the contract between the Company and Zenith Radio Corporation described above nor in any possible rights or privileges of the Company thereunder. They will not be entitled to participate in any liquidation of the Company prior to the issuance of certificates representing common stock subscribed for and will have no interest in any of the Company's assets. In addition, holders of Subscription Receipts will have no preemptive rights or rights of any other kind with respect to the disposition of shares not subscribed for by Zenith shareholders.

THE PURPOSE OF ISSUE AND APPLICATION OF PROCEEDS

In the event that all of the shares of the Company's $10 par value common stock offered hereunder are sold, the net proceeds received by the Company (after deducting expenses) will amount to approximately $950,000. Such proceeds will become the working capital of the Company and will be available for any proper corporate purpose. As heretofore indicated, the Company requires working capital for the purpose of promoting and endeavoring to bring about the acceptance and use of the transmitting portion of Phonevision by television broadcasting companies, organizations owning, operating or controlling telephone lines or other conductor facilities or networks, motion-picture producers, distributors of motion-picture films, organizations engaged in the entertainment business and other persons or organizations producing or making available for broadcasting, programs of various types. After accomplishing such objectives, working capital will be required for the establishment and operation of an entertainment booking agency. It is these activities in which the Company proposes to engage and it is impossible at this time to itemize with any degree of accuracy the actual purposes for which the proceeds will be used.

In the event the offering hereunder is completed and additional funds are needed to carry on its proposed business as herein described, the Company may obtain such additional funds from the proceeds of borrowings, the sale of additional stock, or other appropriate means. No such additional financing by the Company is now contemplated.

MANAGEMENT

The names and addresses of the officers and directors of the Company are as follows:

Name	Address	Office
S. I. Marks	343 South Dearborn St, Chicago 4, Ill.	President and director.
Thomas M. McNicholas	Room 2067, 231 South La Salle St., Chicago 4, Ill.	Vice president, treasurer, and director.
B. A. Massee	120 South La Salle St., Chicago 3, Ill.	Secretary and director.

The officers and directors of the Company are acting in a temporary capacity without compensation, with the exception of Mr. McNicholas. It is anticipated that when and if all of the common stock offered hereunder is sold and the contract between the Company and Zenith becomes effective so that the Company will be in a position to commence active operations, the then shareholders will elect a permanent board of directors, who in turn will elect the officers of the Company that are to be charged with its operation and management. As of the date of this prospectus, it is not known who these individuals will be. It is anticipated that Mr. McNicholas will remain associated with the Company in an executive capacty and possibly as a member of its board of directors.

Mr. S. I. Marks is a wholesale distributor of specialty products and has been engaged in this business for many years. He is the owner of Simarks Company, an individual proprietorship, with offices at 343 South Dearborn Street, Chicago, Illinois.

Mr. Thomas M. McNicholas is a graduate of the University of Notre Dame and for a number of years subsequent to his graduation in 1929 was associated with that institution in various administrative capacities. For more than five years immediately prior to his employment by the Company he was engaged in the newspaper business as secretary, treasurer, and a member of the board of directors of Tennessean Newspapers, Inc., newspaper publishers of Nashville, Tennessee.

Mr. B. A. Massee has been engaged in the insurance-brokerage business in Chicago, Illinois, since 1932 and is presently associated with R. N. Crawford & Company, 120 South La Salle Street, Chicago, Illinois.

REMUNERATION OF DIRECTORS AND OFFICERS

Mr. Thomas M. McNicholas, vice president, treasurer, and a director of the Company, is the only officer or director receiving any remuneration. In May 1949 he was employed by the Company at an annual salary of $10,000. It is assumed that when and if this financing is completed the Company will employ others in executive capacities and will compensate them commensurate with the nature of their duties and responsibilities. It also may pay reasonable fees to its directors for attendance at meetings. No commitments in this respect have been entered into by the Company as of the date of this prospectus.

The following tabulation sets forth on an accrual basis the remuneration for services to the directors and officers, directly or indirectly, by the Company from the date of its organization in May 1949 to January 31, 1950:

Directors' fees or salaries	None
Officers' salaries	$7,499.97
Other remuneration of directors and officers	None
Total	7,499.97

PRINCIPAL SECURITY HOLDERS

None of the officers or directors of the Company owns any of the Company's common stock. As heretofore stated, all of its outstanding stock is owned by individuals who are either officers or directors of Zenith Radio Corporation or both officers and directors of that company.

As of January 31, 1950, the following persons held, of record or beneficially, 10 percent or more of the Company's outstanding stock:

Name and address	Title of class	Type of ownership	Amount owned (shares)	Percent of class
E. F. McDonald, Jr., 5801 West Dickens Ave., Chicago, Ill.	Common stock	Of record and beneficially.	590	59
Irving Herriott, 120 South LaSalle St., Chicago, Ill.	do	do	194	19.4
Frank A. Miller, 141 West Jackson Blvd., Chicago, Ill.	do	do	100	10

NOTE.—The directors of Zenith, as a group, owned or controlled on July 15, 1949, 58,384 shares of Zenith. If they exercise the subscription privileges pertaining to said 58,384 shares (and if all the shares of the Company herein offered are issued), they will own or control 11,656⅘ shares, or slightly in excess of 11⅔ percent of the Company's outstanding stock. This computation does not include shares that the directors of Zenith may purchase in addition to those which they will have the privilege of purchasing as stated.

OPTIONS TO PURCHASE SECURITIES OF THE COMPANY

There are no outstanding options to purchase any of the Company's common stock except insofar as the obligation of the Company to first offer the shares covered by this Prospectus to the shareholders of Zenith may be considered an option. This obligation is imposed on the Company under the provisions of its contract with Zenith described above. The terms of the offering to Zenith shareholders are fully set forth at page 6 of the Prospectus.

EXPERTS

The financial statements, including the notes thereto, of the Company from May 25, 1949, the date of its incorporation, to January 31, 1950, included in the Registration Statement and this prospectus have been reviewed by Touche, Niven, Bailey & Smart, independent public accountants, as set forth in their report appearing in this Prospectus and have been so included in reliance upon the report and opinion of said firm as experts.

No member of the firm of Touche, Niven, Bailey & Smart is an officer or employee of the Company. The members of said firm have no substantial interest in the Company as a promoter, underwriter, voting trustee, director, officer or employee. It is contemplated that said firm will continue to act as independent auditors for the Company. It has not been employed on a contingent basis.

MISCELLANEOUS

The legality of the $10 par value common stock offered hereunder and all other legal matters relating thereto will be passed upon by Tenney, Sherman, Rogers & Guthrie, 120 South LaSalle Street, Chicago 3, Illinois, counsel for the Company

The Company is not a party to any pending legal proceedings nor are any such proceedings known to be contemplated.

TECO, INC., FINANCIAL STATEMENTS

The statement of other securities has been omitted since the Company has no securities other than those included in the statement of capital shares.

ACCOUNTANTS' REPORT

CHICAGO, ILLINOIS,
February 11, 1950.

BOARD OF DIRECTORS, TECO, INC.:

We have examined the statements of assets and capitalized expenses, liabilities, and capital shares of Teco, Inc., as of January 31, 1950, and the statement of cash receipts and disbursements for the period from May 25, 1949 (date of incorporation) to January 31, 1950. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the statements of assets and capitalized expenses, liabilities, and capital shares of Teco, Inc., present fairly the financial position of Teco, Inc., at January 31, 1950, and the accompanying statement of cash receipts and disbursements presents fairly the cash receipts and disbursements of the Company for the period from May 25, 1949, to January 31, 1950, in conformity with generally accepted accounting principles applied on a consistent basis.

TOUCHE, NIVEN, BAILEY & SMART,
Certified Public Accountants.

TECO, INC.

STATEMENT OF ASSETS AND CAPITALIZED EXPENSES

January 31, 1950

Current Assets—cash		$9,854.64
Other Assets:		
Office furniture and fixtures, less depreciation of $8.58	$1,020.97	
Carpeting, less amortization of $118.11	354.35	
		1,375.32
Capitalized Expenses:		
Development expenses, consisting principally of salary and travel expenses of a director and officer of the Company—Note B	$9,634.63	
Organization expenses	79.06	
		9,713.69
Total Assets and Capitalized Expenses		20,943.65

STATEMENT OF LIABILITIES

January 31, 1950

Current Liabilities:	
Non-Interest-Bearing Demand Note Payable	$10,000.00
Accounts Payable—Note C	16.82
Accrued Salary and Federal Income Taxes Withheld	901.83
Accrued Social Security Taxes	25.00
	10,943.65

STATEMENT OF CAPITAL SHARES

January 31, 1950

Common Stock, par value $10.00 per share—Notes D and E:	
Authorized—100,000 shares	
Issued and outstanding—1,000 shares	10,000.00
Total Liabilities and Capital Shares	20,943.65

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

May 25, 1949 (Date of Incorporation) to January 31, 1950

	May 25, 1949 to January 31, 1950	Month of January 1950	May 25, 1949 to December 31, 1949
Cash Balance—beginning of period		$1,074.96	
Receipts:			
Sale of 1,000 shares of common stock, at par value	$10,000.00		$10,000.00
Non-interest-bearing demand note	10,000.00	10,000.00	
	20,000.00	11,074.96	10,000.00
Disbursements:			
Organization expenses	79.06		79.06
Development expenses, consisting principally of salary and travel expenses of a director and officer of the Company	8,564.29	1,087.84	7,476.45
Office furniture, fixtures and carpeting	1,502.01	132.48	1,369.53
	10,145.36	1,220.32	8,925.04
Cash Balance—end of period	9,854.64	9,854.64	1,074.96

NOTE.—Reference is made to the accompanying notes which are an integral part of these Financial Statements.

TECO, INC., NOTES TO FINANCIAL STATEMENTS

January 31, 1950

A. The Company has entered into a contract dated July 26, 1949, with Zenith Radio Corporation relating to the promotion, development and operation of Phonevision. Under this contract the Company is granted certain rights with respect to the transmitting portion of Phonevision. The terms and provisions of the contract are described in the Prospectus beginning on page 2.

As indicated therein, the contract will not become effective unless the Company obtains, through the sale of its stock, its entire authorized capital of $1,000,000.00 within seven months after the stock is first offered for sale. In the event the Company is unable to procure its entire $1,000,000.00 capitalization within the period specified, it is obligated to return to all persons who have subscribed for and purchased its stock the amounts paid by them for the same, after deducting their proportionate share of the cost of organizing the Company and its other proper and necessary expenses, including, among others, the expenses incurred by it in procuring subscriptions for its stock.

Under date of January 31, 1950, three of the promoters of the enterprise entered into a contract with the Company providing, among other things, that if the Company is unable to procure its entire capitalization within the stated period, all these expenses shall be paid out of funds received by the Company on subscriptions made by the promoters. Accordingly, in the event of the contingency referred to, all subscribers other than the Promoters will have returned to them the full amount of their subscriptions without any deductions.

B. All expenses incurred by the Company during the development stage in promoting Phonevision and endeavoring to bring about its acceptance and use are and will be capitalized. At the present time, the Company has not formulated a definite program of amortization of such accumulated costs.

C. No provision has been made in the accompanying statements for expenses in connection with the proposed sale of the common stock. It is estimated that said expenses will amount to $50,000.00.

D. All of the outstanding stock at January 31, 1950, was issued upon payment in full in cash. There were no underwriting discounts or commissions incurred in the sale of such stock.

E. There are no outstanding options or rights to purchase any of the Company's stock except insofar as the obligation of the Company, under the provisions of its contract with Zenith Radio Corporation dated July 26, 1949, to first offer the common shares to the shareholders of Zenith, may be considered an option or right to acquire the shares.

The Company is obligated to offer to shareholders of Zenith the right to subscribe to the $10.00 par value common stock in proportion to the number of shares of Zenith stock held by such shareholders, as established by the stock records of Zenith at the close of business July 15, 1949. Each owner of five shares of Zenith stock will be entitled to subscribe to the purchase of one share of the Company's stock at a price of $10.00 per share. Any unit of Zenith stock less than five shares owned by any shareholder of that company will entitle such shareholder to subscribe proportionately for fractional shares of the Company's stock. The right of Zenith's shareholders to subscribe for the Company's stock will expire twenty days after its offer for sale to them.

ADDITIONAL INFORMATION ON FILE WITH THE SECURITIES AND EXCHANGE COMMISSION

Further information with respect to these securities and their issuer is to be found in the Registration Statement on file with the Securities and Exchange Commission, Washington, D. C.

The Registration Statement may be inspected by anyone at the office of the Commission without charge and copies of all or any part of it may be obtained upon payment of the Commission's charge for copying.

Other information relating to the Company and various exhibits, such as, the Articles of Incorporation of the Company, its bylaws, opinions of counsel, forms of stock certificates, the subscription form to be submitted to shareholders of Zenith, the form of Subscription Receipt, the escrow agreement relating to the escrow of funds received from subscribers, an estimate of the expenses of the Company in connection with this issue and certain other agreements are included in such information on file with the Commission.

TECO, INC.,
By S. I. MARKS, *President.*

Senator BIBLE. Is there anything further to come before us?

Mr. PIERSON. Mr. Chairman, the document to which Mr. Cohn refers was the interpretation of some prospectus issued by TECO which he said tended to refute testimony that we gave here. Since he hadn't put it into the record up to the time I appeared, I didn't respond to it.

Senator BIBLE. You will have the opportunity of taking a look at it, and can have 10 days to take a look at it. Is there anything further to come before the hearing? If not, this phase of the television hearing on subscription television stands in recess subject to the call of the Chair.

(Whereupon, at 3:50 p. m., the committee recessed to reconvene at the call of the chairman.)

APPENDIX

Additional Materials on Subscription Television Inserted Into Record in Later Phases of Hearings

A number of letters and written statements relating to the question of subscription television were received by the committee and ordered inserted in the record during the later phases of the inquiry concerning network practices. They are printed in this appendix in order to bring them together with the other testimony and materials on subscription television.

These materials are set forth below in the order in which they were inserted in the record. In each case the date on which they were thus inserted is shown, so that reference can be made, if desired, to the point at which they were actually received.

One small portion of the testimony of Chairman McConnaughey, of the Federal Communications Commission, on July 17, 1956, pertained to subscription television. It is set forth at page 1473 below.

[Inserted May 15, 1956]

Cohn & Marks,
Washington, D. C., May 11, 1956.

Hon. Warren G. Magnuson,
Chairman, Senate Interstate and Foreign Commerce Committee,
Senate Office Building,
Washington, D. C.

Dear Senator Magnuson: When I appeared and testified before your committee on April 25, 1956, Senator Pastore asked me a question to which I did not know the answer. I asked permission to supply the information later for the record and this permission was granted me. The purpose of this letter is to supply that information.

In the course of my testimony I referred to the fact that the movie Richard III appeared on television before it was shown in the movies. Senator Pastore asked me whether there were any other movies which made their first appearance on television. The answer is that, among the more popular movies, The Constant Husband and Davey Crockett were first shown to the American public via television. Undoubtedly there were other less popular movies also.

Sincerely,

Marcus Cohn,

[Inserted May 15, 1956]

Supplemental Statement on Zenith Radio Corp. and Teco, Inc.

This supplemental statement is limited to answering certain erroneous assumptions made by Marcus Cohn, counsel for the Committee Against Pay-to-See TV, in connection with an interpretation of an agreement entered into by Zenith Radio Corp. and Teco, Inc., in 1949. Since the public document upon which Mr. Cohn based his charges was not submitted into this record until the close of the hearing on April 27, 1956, the chairman of this committee granted permission to Zenith and Teco to file a written reply within 10 days (tr. 2793).

During the course of his testimony, Mr. Cohn stated that under his interpretation of an existing agreement between Zenith and Teco (1) Teco will provide all programing to be carried by subscription broadcasts if the Zenith system is approved, and (2) Teco, rather than the broadcaster, will unilaterally set the rate at which the public will pay for subscription programs (tr. 2352–2355).

Mr. Cohn's assumptions were based upon his interpretation of the description of the agreement entered into by Zenith and Teco on July 26, 1949, as described in the prospectus of Teco, Inc., issued April 19, 1950 (inserted in the record at p. 2792), which was filed with the Securities and Exchange Commission. The pertinent language of the prospectus upon which Mr. Cohn based the above assumptions is as follows:

"4. In the event the company is successful in its efforts to bring about the adoption and use of phonevision by the various broadcasting interests above set forth, the company will arrange for and book the programs to be broadcast by means of phonevision and will act as the representative or agent of such interests in coordinating their operations. It will negotiate and make agreements with respect to the fixing of the fees to be charged users of television receivers who subscribe for programs broadcast by means of phonevision and it will collect all or a portion of such fees and negotiate and make agreements with respect to the allocation of such fees between the various interests involved. The company also will assist in obtaining the necessary authority from the Federal Communications Commission or any other governmental agency having jurisdiction of the matter to establish, put in use, and operate the transmitting portion of phonevision" (prospectus, p. 2).

In construing the above language, consideration must first be given to the circumstances existing at the time the agreement was written in 1949. At that time subscription television was in a laboratory stage of technical developmment and far removed from commercial operation. As a result, the above-quoted language may understandably lack specific detail as to business operations. Mr. Cohn, in the spirit of advocacy, has seized upon this particular lack of detail. But his charges are based solely upon his own self-serving interpretation of this language.

The description of the 1949 agreement set forth in the prospectus states: "The company [Teco] will arrange for and book the programs to be broadcast by means of phonevision and will act as the representative or agent of such interest in coordinating their operations." From this Mr. Cohn jumped to the unwarranted conclusions (1) that Teco will "tie in" the furnishing of programs with the use of the phonevision system, and (2) that no one else can or will provide subscription programs to the broadcaster.

Both Zenith and Teco are well aware that any attempt to require any broadcaster using phonevision equipment to obtain program product exclusively from Teco would be an illegal tie-in under the antitrust laws (*Cf. International Salt Co., Inc. v. United States*, 332 U. S. 392 (1947)). In view of this knowledge on the part of Zenith and Teco, it cannot be presumed that they would do what they know would be illegal.

Furthermore, it is an elementary rule of contract interpretation that the interpretation given by the parties themselves to a contract, as reflected by their actions and public declarations, is the best manifestation of their intentions. Therefore, we will specifically point out how Mr. Cohn's conclusions conflict with those various acts and public declarations of Zenith and Teco which constitute the only meaningful interpretation of the language in question.

Further, the parties to the agreement by public declaration have made clear that under the 1949 agreement, the broadcaster will not be restricted to broadcasting subscription programs obtained from Teco over the phonevision system. Thus, in comments jointly filed by Zenith and Teco with the Federal Communications Commission in June 1955 it was stated that—

"While Teco will do everything in its power to procure and distribute high quality program product for subscription broadcasts, *no broadcast station desiring to utilize the service of any local phonevision franchise holder will be required or obligated by such franchise holder to obtain its subscription program product from Teco.* Teco's distribution activities will give the broadcasters assurance that high quality programs will be available. *If the broadcasters can obtain high quality box-office programs from sources other than Teco, they may do so.* Teco, however, will offer an additional competitive source to those other sources which may have high quality product available for distribution to subscription television." [Emphasis added.] Comments of Zenith Radio Corp. and Teco, Inc. Before the Federal Communications Commission, Docket No. 11279, p. 8; see also p. 55.)

The above interpretation placed upon the contract by the parties themselves clearly repudiates the charge of Mr. Cohn that any broadcaster desiring to use the Zenith phonevision system must obtain its programs from Teco.

Mr. Cohn also misinterprets the 1949 agreement as providing that Teco and not the broadcaster will fix the ultimate fee which the public will pay for its subscription programs. He arrives at this position from the general language that Teco "will negotiate and make agreements with respect to the fixing of fees to be charged users of television receivers who subscribe for programs broadcast by means of phonevision * * *" and that Teco will collect the subscription fees. This language was not intended to, and does not, mean that either Teco or its franchise holder will enter contracts reserving to themselves the right to fix and establish the prices to the public—it obviously refers to the fact that contractual arrangements will undoubtedly be necessary between Teco and its franchise holders and between the franchise holders and the broadcasters for whom the service will be provided and that the latter contracts will necessarily contain a provision relating to the fees to be charged the public. It is obviously necessary that the franchise holder be notified of the price which the public is to be charged for a particular program so that this information can be supplied to prospective purchasers and so the proper amounts can be collected for each program. This is the type of agreement contemplated by the general language in question. From the language itself, it is clear that there was no intention that Teco itself fix these fees because no negotiation or agreement of the type referred to would be necessary if the fees would be fixed and collected by the same person. We wish to make it plain, so that there can be no doubt whatever, that it is not the intention of Teco that the franchise holders will have the right by contract or otherwise to dictate the fees to be charged for any particular program. The matter of program fees will be the primary responsibility of the broadcaster.

In conclusion, we call attention to our statements to the Federal Communications Commission in previously filed comments that "An inherent part of the phonevision plan is that the function and duty of the broadcaster in subscription television will be fundamentally no different than under current conditions. There will be no diminution of the licensee's control over his station or responsibility to the public. Subject to Commission regulations and the policy recommended herein that subscription broadcasters be limited to broadcasting programs which are of box-office quality, the broadcaster will select the subscription programs he believes to be in the public interest. Further, the broadcaster will determine the source, quantity, and time of his subscription broadcasts."

We have further stated that the local franchise holder's primary function will be to provide the equipment and necessary administrative service essential for subscription television to all authorized broadcasters in the community without discrimination. Once established, the local phonevision franchise service will be available to any broadcaster (commercial or educational) authorized and desiring to use it. Under the circumstances, it is clear that the plan of operation proposed by Zenith and Teco does not contemplate any perpendicular monopoly which takes the ultimate control of subscription television out of the hands of the broadcasters. Aside from the obvious fact that such control cannot be taken from the broadcasters as a matter of law, it is clear that no monopoly in subscription programing can result from the business methods outlined by Zenith and Teco in this proceeding and before the Federal Communications Commission. Indeed, the contrary is true, for Zenith and Teco propose that any local franchise holder must make the subscription system available to all broadcasters authorized by the Commission to carry subscription programs without discrimination, and also that the broadcaster shall be completely independent in selecting the source of any subscription program it may desire to broadcast. These proposals will clearly promote rather than restrict competition.

Respectfully submitted.

ZENITH RADIO CORP.,
By VERNON C. KOHLHAAS,
PIERSON, BALL & DOWD,
Washington, D. C., Its Attorneys.

TECO, INC.,
By LOUCKS, ZIAS, YOUNG & JANSKY,
Washington, D. C., Its Attorneys.

MAY 7, 1956.

[Inserted May 15, 1956]

(with its enclosures)

HICKORY HILL BROADCASTING CO.,
Thomson, Ga., May 3, 1956.

Hon WARREN G. MAGNUSON,
United States Senate, Washington, D. C.

DEAR MR. SENATOR: Somehow, because of my extensive travels around the country, I did not realize that the hearings on toll TV had been scheduled for last week. Had I known, I would have asked for a few minutes to appear. However, I would like to submit the 3 letters I wrote to the Federal Communications Commission during 1955 so that you will have this information along with the other material you have received and the points that were made during the hearings.

I was particularly distressed with the comments by Senator Bricker and his charges of monopoly which, I think, were unfounded and unfair.

I feel sure that the deeper your committee and the FCC get into the subject of network regulation, the more they will realize that there is no need for such regulation and I am sure that the sound-thinking people who have to make these decisions will come up with the answer that is best for the people.

Sincerely,

EDGAR KOBAK.

P. S. I strongly urge that the subject of toll radio be a part of this study. Both radio and television are licensed and involve the airways and both should be subject to this study. If not, and a decision were to be made in favor of toll TV, there would be confusion.

E. K.

HICKORY HILL BROADCASTING CO.,
Thomson, Ga., May 17, 1955.

Re Toll TV.

FEDERAL COMMUNICATION COMMISSION,
New Post Office Building, Washington, D. C.

GENTLEMEN: The subject of toll TV as covered in the press and on radio and television, has interested me a great deal. It brings to my mind the early days of broadcasting at the time the Federal Radio Commission, predecessor of the FCC, had the responsibility of setting up the allocation plans and following out the will of the people concerning the public interest, convenience, and necessity.

At that time, I was with the McGraw-Hill Publishing Co. as publisher of their electrical and radio publications. One of our editors, Dr. Orestes H. Caldwell, was named a member of the Federal Radio Commission as one of its first Commissioners.

During those early days of broadcasting, I expressed the view that I thought that radio should be made available to the public on a pay basis, on a monthly charge, not per program. This thinking, undoubtedly, stemmed from my publishing experience where we charged subscribers a nominal sum per year to receive our magazines and the balance of our income came from the advertiser.

The idea, evidently, was not considered feasible and I was not running a crusade. I did realize and still do, that the listener makes an investment for sets, for maintenance, and pays an additional amount for the use of electricity. In other words, broadcasting is not free, although the network, station, and the program owner get no part of this money.

When television got into operation after World War II, the talk of toll TV came to the front. There is no question but that any new thought or idea deserves serious consideration. I am glad to know that this is being done. However, from what I have read and heard and seen to date, it doesn't seem to bring out enough points to help the general public understand the situation. There is much self-interest in the matter on the part of those who are pro toll TV as well as those who are against it. And, there is nothing wrong with self-interest in this country of free enterprise. And, the self-interest of the public is most important.

But, something is missing and perhaps the answers will come out at the hearings. I do not get particularly excited at the opportunity of paying for the opening of a new play on Broadway by seeing and hearing it in my living room. On the stage, as well as in radio and TV, many shows are flops; the same goes for first-run movies. I am having difficulty finding out just what it is that I will get which will be better and more in my interest than that which is available today.

What, for example, will happen to sports events such as the world series? If the world series goes toll TV, will it be taken away from me on radio? The same goes for the Metropolitan Opera and the great symphonies and other programs now available on radio. And, how about religious and educational programs? Also, should the long-line rates be on a higher scale?

I feel that the idea that was in my mind and the minds of others in the early days of radio was, possibly, sound—so I have no reason to be negative to toll TV. However, the approach as made today doesn't seem to answer the matter from the standpoint of public interest. And, one important element has been forgotten in this hard drive to get the listener and viewer to pay for certain programs—radio broadcasting is also licensed by the FCC and radio is as free as television. It is my feeling that any hearing held on toll TV should also include the subject of toll radio. Should one be free—the other paid?

It is hard for me to figure out whether we are going to have our radio and TV scrambled, poached, fried, hard, soft, or raw, and people can read what they want to into this list of the future of the egg. What kind of egg will be laid?

The biggest problem that is faced is that you will have difficulty taking away something that has been free for years and starting a charge account system. I don't envy you your jobs.

Very truly yours,

EDGAR KOBAK, *President.*

P. S. As chairman of the Freedom of Information Committee of the National Association of Radio and Television Broadcasters, I would like to suggest that these hearings be opened to radio and television broadcasting as well as to the press and photographers as these hearings are certainly in the public interest.

E. K.

HICKORY HILL BROADCASTING CO.,
Thomson, Ga., June 8, 1955.

Re toll TV.

Miss MARY JANE MORRIS,
Secretary, Federal Communications Commission,
New Post Office Building, Washington, D. C.

DEAR MISS MORRIS: On May 17 I wrote to the Federal Communications Commission on the subject of toll-TV. The following points are submitted for consideration by the Commission in its study of this matter which affects the public interest of the people today and far, far into the future:

1. Any deliberation of toll-TV must also include consideration of toll-radio—AM and FM broadcasting. One cannot be free and the other part pay, part free. Therefore, I ask that you enlarge the hearing to include all phases of broadcasting where licenses are involved.

2. All hearings should be open to microphones and television cameras as well as to the press and photographers to cover the hearings so that all listeners, readers, and viewers can get all sides of this vital subject which involves their freedom. This is truly public interest, convenience, and necessity.

3. If the people should be asked to pay for programs, examination should be made as to whether charges should be made per program or on the use of sets by day, month, or year. If broadcasting should be on a pay basis, should it be part free, part paid, or all free, or all paid. If it is to be paid in any form, examine the idea of metering any usage of sets as we now meter gas, electricity, and water.

4. If paid, who should get paid—the broadcasters—the people through their Government—or both?

5. If broadcasting goes paid, should the Government charge for licenses?

6. Review the rights of the set owner who invests in sets, set maintenance, electricity and batteries, and other costs which amount to very large sums annually.

7. Study the effect on a national emergency with a part-paid, part-free or all-paid system. Would a change in the present system handcuff our greatest means of mass communications?

As a pioneer in radio and broadcasting, my interest has been and still is the interest of the people. And that is your interest, too.

Very truly yours,

EDGAR KOBAK, *President.*

HICKORY HILL BROADCASTING CO.,
Thomson, Ga., September 8, 1955.

Re toll television.

Miss MARY JANE MORRIS,
Secretary, Federal Communications Commission,
New Post Office Building, Washington, D. C.

DEAR MISS MORRIS: This is my third letter addressed to you on the subject of toll TV. In the two previous letters I did not indicate my conclusion on this important subject. It was my intention to list points that deserved consideration, points which I have studied in some detail to help me arrive at a conclusion either for or against toll TV.

In the meantime, I have had an opportunity to study most of the presentations made to you by those for or against toll TV. With no direct personal financial interest in television but with a background of experience in broadcasting since its inception, I felt I could make an objective review and study of the subject.

My investigation of the subject has brought me to the conclusion that toll TV should not be approved either by the Federal Communications Commission or by Congress. Further, I wish to reiterate that toll radio must be included in any hearing on the subject of toll TV. Both radio and television are licensed by the FCC, and one cannot be considered without the other. I ask that the subject of toll radio be included in any hearing of toll TV.

The people must decide this matter and be given an opportunity to be heard. Congress is the representative of the people. Let us not have another situation where Congress is bypassed.

Little has been presented that indicates program responsibility in relationship to a station's license. The cost to the set owners is high now—the increased costs on most plans presented show a healthy income to a few—little consideration for the listeners' and viewers' pocketbook. The air belongs to the people; the people, through their Government, allow the licensee to use the air at no charge by the people. Public interest, convenience, and necessity cover a broad front; we must not forget their meanings, and I cannot see where the word "toll" fits in.

Briefness of this statement is caused by the fact that a current family illness emergency prevents a detailed statement. To meet your September 9 deadline, I submit this letter based on my objective study, and I hope for an opportunity to appear at any hearing held on this very fundamental subject.

Very truly yours,

EDGAR KOBAK, *President.*

[Inserted May 15, 1956]

STATEMENT OF AMERICAN CIVIL LIBERTIES UNION, NEW YORK, N. Y.

MEMORANDUM ON TOLL TELEVISION

The American Civil Liberties Union is a national nonpartisan organization organized to defend the civil liberties guaranteed to all Americans in our Bill of Rights. Since its founding in 1920, the ACLU has been especially alert to denial of or limitations on the right of free speech, which is protected by the first amendment. Our interest has not been confined to cases where Government officials have deprived an individual or group of this right. The union has actively encouraged the extension of free speech, the expression of opinion on all kinds of issues. This is predicated on its belief that our democratic society thrives—indeed exists—only so far as there is a free exchange in the market place of ideas. For this reason we have supported measures which would add to diversity of opinion in the mass communications field. From this diversity, this give and take of democratic debate, ideas are refined and the public can choose what solutions it wishes for a variety of social problems.

Because of this, the union naturally has a real interest in the whole problem of toll TV. We have followed carefully the debates on the subject by both the proponents and foes of this new television system. There are arguments that support diversity on both sides; for example, the pro-toll-TV advocates stress that their programs will offer events that free television cannot present; the opponents of toll TV counter with the argument that the new system would take up time on their channels and thus reduce the number of programs now offered to the public.

After full consideration of all arguments, the union believes that despite imperfections the toll-TV system should receive a trial, provided that important safeguards are included.

The following resolution adopted by our radio-TV panel on March 16, 1955, and approved by our board of directors on April 2, 1956, represents the union's opinion:

"The ACLU has carefully considered toll TV because of the possibility that it would increase diversity in TV programing. While the ACLU is concerned that the present toll-TV plans may not increase diversity, we favor its trial, but only upon the following conditions: (1) that there be no sponsors of toll-TV programs; (2) that toll TV should not be allowed in any city unless there are at least three other free channels broadcasting; (3) the experiment should be limited in time, whatever period is agreed upon; (4) toll-TV programers must give ample guarantees that the program content will add something not now available, if asked by the FCC. The ACLU should state it is opposed to the various toll-TV plans as they now stand, because of the absence of these safeguards—and perhaps other safeguards which have not occurred to us. However, we would approve of toll TV on an experimental basis if these safeguards are adopted together with any others that might seem appropriate in the public interest, as the public hearings may develop, or which may later occur to us."

Since the above statement, which emphasizes our concern about sponsored toll-TV programs, was adopted, we are pleased to note that one major toll-TV group, the Zenith Corp., has announced that its schedules would certainly allow for nonsponsored programs.

MAY 11, 1956.

(Hon. George C. McConnaughey, chairman of the Federal Communications Commission, appeared before the committee on July 17, 1956, accompanied by other members of the Commission and certain of its staff. Their testimony was principally concerned with allocations and is therefore printed in the second volume of the UHF-VHF Allocation Problem at p. 939. However, one passage concerned subscription television and is therefore printed here, as well as in connection with the full testimony above.)

Mr. COX. All right. With reference to the matter of subscription television, that is another proceeding which the Commission has had under consideration. Is there anything to report with respect to the status of that?

Mr. MCCONNAUGHEY. I think I can answer that very quickly by saying we have been devoting our time on this allocation matter practically all the staff, day and night, and I mean night, too, and we have not gotten any further on subscription television.

Mr. COX. I think, of course, the committee indicated they wanted the allocations matter treated with priority.

Mr. MCCONNAUGHEY. That is what your committee told us, and what we have tried to do.

Mr. COX. Am I correct in my understanding that while you have been, therefore, waiting to give further consideration to this issue, that petitions have been filed with the Commission for experimental use of a subscription service in connection with UHF stations now off the air, and that the Commission has denied those almost at the outset on the ground that they are premaure; is that correct?

Mr. MCCONNAUGHEY. That is correct, Mr. Cox.

Mr. COX. In other words, the Commission is of the opinion that not even experimental use of subscription television should be authorized until it has reached its final conclusion on the general soundness of the proposals that have been made?

Mr. MCCONNAUGHEY. I can only answer for myself in that regard, since this matter is before us I feel that possibly along the line that we should, personally speaking, consider permitting experimental subscription television operation some place. I say that is just my own thinking, offhand. I haven't studied it too much. I think we possibly should permit an experimental operation of subscription television. And I am not going to be tied to that, either.

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TELEVISION INQUIRY

HEARINGS

BEFORE THE

COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 13 and S. Res. 163

AUTHORIZING INVESTIGATIONS OF CERTAIN PROBLEMS RELATING TO INTERSTATE AND FOREIGN COMMERCE

(Including testimony on S. 825, by Mr. Bricker, to authorize the Federal Communications Commission to establish rules and regulations and make orders with respect to networks and their activities)

MARCH 26, 27, 28, MAY 14, 15, JUNE 11, 12, 13, 14, 15, 18, 19, 20, AND JULY 17, 1956

PART IV
NETWORK PRACTICES

Printed for the use of the Interstate and Foreign Commerce Committee

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NICHOLAS ZAPPLE, *Staff Communications Counsel*

[1] Appointed April 18, 1956, to succeed Strom Thurmond, South Carolina, who resigned on April 4, 1956.

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APPENDIX

TELEVISION INQUIRY

(Network Practices)

MONDAY, MARCH 26, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., in room 318, Senate Office Building, Washington, D. C., Senator Charles E. Potter, presiding.

Present: Senators Potter, Pastore, Schoeppel, and Bricker.

Senator POTTER. The committee will come to order. We are resuming our hearing this morning on the television allocation problem, although our first witness is going to discuss other matters. (Senator Potter then referred to the testimony taken earlier and read a number of items into the record. For these matters and the testimony heard on this day regarding allocations, see the volume on the "UHF–VHF Allocation Problem—Public and Industry Witnesses," beginning at p. 745.)

Senator POTTER. Our first witness this morning will be Mr. Richard A. Moore of station KTTV, Los Angeles, Calif., who will discuss, I understand, the matter of certain network practices as they affect the operation of independent stations and the public interest in general.

Mr. Moore, we are delighted to have you here and if you have a prepared statement—do you care to read your statement?

Mr. MOORE. I would like to very much, Mr. Chairman. We are eager to have this opportunity and if we can read it, we would like to do so.

Senator POTTER. Yes. Well, you may commence.

Mr. MOORE. Thank you.

STATEMENT OF RICHARD A. MOORE, PRESIDENT, KTTV, INC., LOS ANGELES, CALIF.

Mr. MOORE. Mr. Chairman and members of the committee: My name is Richard A. Moore. I reside in Flintridge, Calif., and I am president of KTTV Inc., licensee of television station KTTV, Los Angeles. I am a former president of the Television Broadcasters of Southern California and last week I retired as cochairman of the board of directors of the Television Bureau of Advertising, an all-industry business league whose membership includes the three major networks, most of the leading stations in the country, and station

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NOTE.—Staff members assigned to this hearing: Kenneth A. Cox and Wayne T. Geissinger, special counsel; Nicholas Zapple, communications counsel.

representatives. I am still a director of this bureau, but I wish to make it clear that I am speaking only on behalf of KTTV and my views have no relationship to any opinions of the Television Bureau of Advertising or its members. I entered the broadcasting field in 1946 as an attorney for the American Broadcasting Co. and subsequently became director of television for their western division and general manager of their Los Angeles television station. I left ABC to accept my present post in 1951.

As an active member of the television broadcasting industry, KTTV has had a first hand experience with many of the problems with which this committee is concerned. We deeply appreciate your invitation to testify today, and if KTTV's statement should prove helpful in reaching conclusions which will achieve a truly competitive national television medium, we will be very happy indeed.

I will welcome questions during the statement and I would like to introduce some of my associates who have come with me from California to present our story.

Senator POTTER. Yes, please identify your associates.

Mr. MOORE. Mr. John J. O'Mara, our director of research, on my left; Prof. Donald F. Turner of Cambridge, Mass., who has given us some legal advice in this field; Mr. John R. Vrba, our vice president in charge of sales; and Mr. Lloyd N. Cutler, of Washington, D. C., who is representing us in connection with this hearing and related proceedings.

Senator POTTER. We are delighted to have you here, gentlemen, and if during the course of your statement, Mr. Moore, you care to elaborate on any point, feel free to do so, and call upon your associates to do so at any time.

Mr. MOORE. Thank you very much.

KTTV, which is 1 of 7 VHF stations licensed to serve the Los Angeles community, has been operating since January 1, 1949. All of the stock of KTTV, Inc., is owned by the Times-Mirror Co., publisher of the Los Angeles Times and the Los Angeles Mirror-News.[1] Virtually all of the stock of the Times-Mirror Co. is owned by residents of the Los Angeles area.

Originally 49 percent of the stock of KTTV, Inc., was owned by the Columbia Broadcasting System and the station had an affiliation agreement with the CBS network. In April of 1951 the Times-Mirror Co. purchased the stock owned by CBS, and CBS acquired 100 percent ownership of another television station in Los Angeles. KTTV's affiliation with the CBS network terminated at that time. Between April 1, 1951, and March 1954, KTTV had an informal affiliation agreement with the DuMont television network and carried a small number of DuMont network programs. That arrangement was terminated in March 1954, and since that time KTTV has operated as a completely independent television station without network affiliation of any kind.

As 1 of 7 VHF stations in Los Angeles, KTTV competes for audience and advertising revenues with 3 other unaffiliated stations as well as 3 flagship stations owned and operated by CBS, NBC, and ABC, respectively. Since audience and advertising revenues must be divided among seven stations the road to economic stability in Los

[1] Since Mr. Moore's appearance before the committee, Loew's, Inc., the parent company of Metro-Goldwyn-Mayer, has purchased a 25 percent interest in KTTV, Inc.

Angeles has been difficult. Like most pioneers in the television industry, KTTV incurred heavy losses before it reached the point of profitable operation. However, most prefreeze television broadcasters, including the two larger network companies, turned the corner after the first year or two, while KTTV's losses continued at an extremely heavy rate during its first 5 years of operation. Our first profitable year was 1954 and we have maintained an operating profit since that time.

But KTTV's financial curve did not begin to taken an upward course until there began to be available a supply of good programs on film which KTTV could acquire to supplement its local live programs. These good films enabled us to offer a balanced combination of programs that were competitive to network programs in terms of budget and entertainment values.

During the last 2 or 3 years, when good quality film programs have been available to KTTV, the station has been able to achieve a strong position in its market in competition with the three network-owned stations, as well as the independents.

KTTV is first in audience among all seven stations during the daytime hours. Its average audience for all broadcast hours substantially exceeds that of the ABC station and is closely competitive to the CBS and NBC stations even during the prime evening hours. Although it is an independent station, KTTV operates more hours per week than any other station in Los Angeles and it does more live remote telecasts than all six competing stations put together. Its news programs are by far the most popular in Los Angeles, network or local, and have won all the important awards for which a Los Angeles station is eligible.

Mr. Cox. If I could interrupt at that point, Mr. Moore, could you explain to us why KTTV has such a prime dominance in live remote programs. It this because time is not available on the network stations for providing that sort of programing?

Mr. Moore. I think it is a matter of necessity being the mother of invention, Mr. Cox. We have to develop fine programs or we can't survive. With only ourselves to rely on, we have had to develop local live programing, particularly local live remote programing, of interest to the people of our community. We also have to maintain quite a big newsreel staff to develop news that means something to our folks in Los Angeles, and this goes for the other independents, too.

Mr. Cox. This is an incentive lacking for the network affiliated stations?

Mr. Moore. The networks offer a substitute for ingenuity which we don't have. We have to serve the local community.

Senator Potter. How does your advertising rate compare with the network-owned stations?

Mr. Moore. It is about the same as the ABC station, but perhaps 50 or 60 percent of the NBC or CBS stations. Ours happens to be a little higher than any of the other three independents.

Mr. Cox. This, I take it, is not because of any difference in the coverage area which can be reached by your station, since all of these stations are VHF?

Mr. Moore. That is right, Mr. Cox, and additionally, Los Angeles is a good market to study, because everybody had the same transmitter site with one exception, from the start, atop Mount Wilson.

Generally we all have the same coverage, so the public can choose on the basis of programs and not signal.

Senator POTTER. I suppose most of your revenue is from local advertisers?

Mr. MOORE. No, sir; about 50 percent of our revenue comes from national advertisers and 50 percent from local advertisers. The national advertisers find—and this goes for all markets—that through the so-called national spot placement in TV advertising markets, where they have particular sales problems or ambitions, national advertising can be used effectively on a local television station. I think we have more of each type than any station in Los Angeles. It is about half local and half national.

KTTV has also been a leader in the field of children's programing and, over the years, has perhaps won more awards and more audience for its children's programs than any of its competitors.

We cite facts like these not to pat ourselves on the back but to indicate that a television station, by itself, can render the best possible service to the community so long as it has equal access to good sources of film programing.

We now see the immediate prospect that this source of high-quality film programs will shrink and disappear, and that independent television stations like KTTV will be unable to obtain access to the few high-quality films that may still be produced. If independent stations cannot obtain access to such programs, the stations' potential for service to their communities will be destroyed.

The reason lies in one fact. On the basis of 7 years of operating experience, we believe this one fact is the most fundamental problem facing our industry. It overshadows all of television's other economic or regulatory problems. The one fact is this:

The television broadcasting industry is not being conducted on normal principles of free competition. It is therefore not responding to the same basic economic forces which promote the development of other industries. The serious limitations on free competition are caused not merely by the scarcity of available stations, but, even more important, by certain restrictive agreements imposed by the network companies on the stations affiliated with them.

I intend today to describe these restrictive agreements, the harmful effect they are having on all segments of the television industry and on the public, the reasons why they are illegal and against the public interest, and the remedies that are necessary to restore competitive conditions in the industry.

The physical scarcity of available frequencies is, of course, a factor which limits the scope of free competition in television—all the more reason why we should be aware of all factors that limit competition. We are aware that the solution to this problem is a matter of serious concern to this committee and to the FCC. But the other limiting factors to which I refer are artificially created and are readily and immediately curable. They are within the scope of the FCC's own regulations governing the relations between network companies and affiliated stations, and they can be cured forthwith by simple amendments to those regulations, or, if necessary, by legislation. In other words, despite the physical scarcity of channels, we believe that a truly competitive television service can rapidly be achieved by simple regulatory or legislative action.

KTTV does not, in any way, suggest or recommend the elimination of networks and network services. We believe that interconnected network service will always play a most important part in the full realization of the television potential.

Mr. Cox. Would that be, Mr. Moore, because in your opinion there are always going to be certain matters which the networks can handle on a better basis—matters requiring live broadcast from multiple points during a short period of time or broadcasting of events of national significance such as political conventions and things of that kind?

Mr. MOORE. That has certainly been the pattern, Mr. Cox, and I am confident it will continue. The networks are equipped to provide this live national service, and under the stimulus of competition I would expect they would provide even more such live programs than they have in the past.

Mr. Cox. I would assume that independent stations could perhaps provide live network programing within a relatively limited area. Would that be true? Have you had any experience with that sort of thing?

Mr. MOORE. Yes, we have. Actually all you need for a live telecast of an event that is happening are really two things: You need a sponsor to pay the bills and you need the A. T. & T. There was an example which caused quite a bit of attention in the industry when we found that the great announcement of the results of the Salk vaccine test was to be made at Ann Arbor—we regarded it as one of the most solemn and happy moments in medical history—and nobody had made arrangements to telecast it to the public. So KTTV went 2,100 miles to Ann Arbor, Mich., leased the lines of A. T. & T., and broadcast the full 4 hours of that wonderful occasion. The interesting part of it is that other stations in California—one was owned by a network and the others were affiliated with networks—took the full 4 hours very happily. We did arrange for sponsorship by a fine oil company which gave institutional messages on conservation. One station which wasn't ordered, through an oversight, took it free, because they felt it would mean so much to so many mothers and families generally. So there will always be ingenious broadcasters who will give the public what it wants.

Senator POTTER. You say this wasn't carried by the networks?

Mr. MOORE. No, sir. I think they had network programs on at that time. I should say, in fairness, I do not know that they evaluated a 4-hour medical meeting as interesting enough. There was perhaps a difference of opinion. I do not mean to suggest that they would not cancel out commercials for fine public service. They do, but in this instance, there was a difference of opinion, and I think the opportunity to take advantage of differences of opinion that exist among broadcasters in program evaluation is what we are really striving for. Out of such differences of opinion you get the best results for the public.

Mr. Cox. The networks did have some news coverage of that, I assume.

Mr. MOORE. Yes. Mr. Murrow went out there that night and interviewed Dr. Salk and Dr. Francis, and it was a fine program. But we were intrigued by the fact that every affiliate to whom our full simultaneous coverage was offered jumped at the chance to carry it, and one called us and tried to get it without being paid by the sponsor.

Senator BRICKER. You mean the other affiliates in Los Angeles?

Mr. MOORE. No, sir, we fed it to the ABC-owned station in San Francisco, to a station in Sacramento which I believe was affiliated with 1 or 2 networks, to the CBS–ABC affiliate in San Diego, and to the Fresno station that called us up and joined voluntarily.

Senator BRICKER. Is that right? I can see the vital importance and great public interest in that program. Was that particular program broadcast by any other agency in any other section of the country like you did?

Mr. MOORE. No, sir; there was an arrangement with a network to cut in for a 5-minute interview after one of the speeches, but it ran past their scheduled time and they were starting the next show, so they did not carry it.

We had offered to feed that to them, but California was the only population in the country that heard first-hand what the real facts were about the Salk vaccine, and the point is——

Senator BRICKER. I begin to see why you are up toward the top.

Mr. MOORE. Thank you, Senator.

Senator POTTER. Senator Bricker made a comment, this would be an appropriate time for the story about the bird dogs and the house dogs.

Senator BRICKER. The kennel dogs and the field dogs. [Laughter.]

Mr. MOORE. Since I am engaged in public relations at the moment, I am not going to say anything about dogs.

We believe, as I say, that interconnected network service will be basic in our industry and always with us. But we believe our suggestions will bring about improvements in network service, just as healthy competition in any industry invariably serves to improve the product and to benefit the public. We anticipate that if the FCC or the Congress restores free competition in television broadcasting, the network companies will continue to prosper and flourish in exact proportion to their ingenuity and initiative, as compared to the ingenuity and initiative of competing producers and distributors of television programs.

RESTRICTIVE AGREEMENTS

The restrictive agreements with which KTTV is concerned are of two types:

The first is the agreement between a network company and the licensees of certain individual stations whereby each station agrees to withhold certain desirable time periods from sale to any advertiser unless the advertiser agrees to purchase equivalent time on all stations throughout the country who are parties to this agreement. These are the so-called must-buy agreements, utilized by CBS and NBC.

Mr. Cox. Well, now, are those formal agreements in those terms, or is this an agreement which you deduce exists from a practice which is observable?

Mr. MOORE. Well, Mr. Cox, we do not have access to the affiliation agreements. It may well be, as we understand it, that some of the agreements contain a provision that a station will be on the must-buy list and it is signed by both parties. In any event, the network rate card which is published—and the network is acting as sales agent for the stations—specifies that the advertiser may not buy unless he buys all 50 or 55. And as a matter of fact, most basic affiliates publish in their own rate card the fact that they are a basic affiliate. I think it is actually a formal agreement in many cases, but certainly it is spelled out in one way or another.

To my knowledge, these agreements have never been tested in any court and there is no reference to them in the regulations of the FCC. We were naturally interested, however, in the following excerpt from the recent testimony of Assistant Attorney General Barnes before this committee:

> Mr. Cox. There has been testimony that NBC and CBS follow a must-buy policy, under which an advertiser, to get on the network at all, must buy time on a minimum of 50 or 55 stations, whether he wants to advertise in all these markets or not. Is there a possibility that this practice might violate the antitrust laws?
>
> Mr. Barnes. Yes.

Senator Bricker. I would think from the mere statement of the facts that it would be more than a possibility.

Mr. Moore. Senator, I am a former lawyer and I won't comment. I think you can guess that I agree.

Senator Bricker. It certainly is a restriction that comes within the provisions of the antitrust laws.

Mr. Moore. It does have the inevitable consequences that come from all of these collective agreements to withhold services. As you will see later, I will develop that, because it hurts us very specifically, and hurts every independent.

Now the second type of agreement is one whereby each affiliated station agrees with the network company that it will not accept programs from any source other than the network during certain important time periods if the network elects to use that time for a network program. This is the so-called time option. It is couched in different words than I have used, but its legal and practical effect is a collective arrangement between a network company and the licensees of all its affiliated stations, whereby all affiliated stations are compelled to broadcast during certain periods whatever programs the network company offers, and only those programs. Technically, there are certain exceptions to the station's legal obligations, but these are rarely invoked and have little practical effect. In reality, these agreements amount to a collective refusal to deal with any other program source or advertiser whenever the network company desires the time, which, during the best viewing hours, is practically always. There is good reason to believe that these agreements constitute the kind of block booking or blind selling which was held unlawful by the United States Supreme Court in the motion-picture-industry cases, but the question has never been tested.

It is our opinion that these agreements are unlawful and contrary to the public interest because they enable the network companies:

1. To restrict the affiliated station from exercising its own judgment in programing and from discharging its nondelegable responsibility to serve the needs of its own community.

2. To restrict the opportunity of advertisers, large or small, to utilize television on a freely competitive basis and to derive the full benefit

of television's capacity for creating a demand for their goods and services.

3. To restrict the opportunity of American creative talent to present the results of their creative efforts upon television.

4. To restrict the opportunity of the unaffiliated television station to serve the public interest of its community by presenting the finest possible programing service.

As a result of these important restraints upon free competition, the American public is being denied its rightful opportunity to receive the widest possible choice of television programing. Instead, during the best viewing hours for the American public, three network presidents in New York decide what the American public shall be allowed to see and when they may see it. Worse yet, they decide what the American public shall not be allowed to see. These restraints upon free competition are denying to the public the benefits which traditionally and inevitably flow from the American system of free competitive enterprise.

Senator BRICKER. Not only that, they are able to say to one advertiser who is in competition with another: "You can have the time, and another man cannot have it."

Mr. MOORE. I understand that there has been some unhappiness among advertisers over that, Senator.

The FCC Network Study Committee has correctly stressed that all segments of the television industry are closely related, each having an effect on the other. In order to show the injury that is being done to the independent station and, most important of all, to the American public by the restraints I have described above, I would like to first show the effect of these restraints on the affiliated station, the advertiser, and the independent program producer.

THE AFFILIATED STATION

When the FCC grants a license to a television station it tries to select the applicant who will best serve the local community. The FCC stresses the financial resources of the applicant, its organization, and its relationship and identification with the community. When there are competing applicants, exhaustive hearings are held to determine these things. But the effect of the network time option is to transfer the power to select the best programs for the local community from the local station owner to the network company headquarters in New York.

Mr. Cox. And that, of course, Mr. Moore, would place it in the hands of people who have never been evaluated by the FCC with respect to such qualifications or closely examined in any way?

Mr. MOORE. That is right, they are not parties to the hearings and they are not even present. They may never have been in that town.

As the FCC said after very careful study of this matter in 1941:

> We conclude that national network time options have restricted the freedom of station licensees and hampered their efforts to broadcast local commercial programs, the programs of other national networks, and national spot transcriptions.

Now that is radio and, of course, in television we have national spot films which are parallel.

> We believe—

said the FCC—

that these considerations far outweigh any supposed advantages from "stability" of network operations under time options. We find that the optioning of time by licensee stations has operated against the public interest (Report on Chain Broadcasting, May 1941, p. 65).

Nevertheless, under great pressure from the network compaines, the FCC permitted limited use of time options in radio broadcasting, as a business convenience.

Mr. Cox. Now isn't it true that when the report of the FCC was originally published the language of its regulations did not permit time options at all, but that those were subsequently amended in October of the same year to permit optioning to the extent of 3 hours in each time period?

Mr. Moore. That is correct, Mr. Cox. The option time was abolished altogether in the report after the 3-year hearing. It was amended later after rehearing.

Now 15 years later, this old radio "business convenience" has now become the key instrument which enables the television network companies to exercise virtually complete control over what is broadcast throughout the country during the prime evening hours. In fact, the constant objective of the network companies is to persuade the individual affiliated station to surrender its responsibility for program selection and simply "patch in the network." In case you think I am exaggerating, I would like to quote from the statement of Dr. Frank Stanton, president of CBS, before this very committee 2 years ago. Dr. Stanton said:

Certainly it takes more work for a station which does not rely on a network. It is far easier to patch in the network and have a full day and a full night's programing. I do not blame stations for preferring that course of life. I would myself. In fact, we try our best to make this an attractive way of life. But it is well to emphasize that perhaps there is a substitute of self-reliance, good management, and plain hard work. (Senate Committee on Interstate and Foreign Commerce, hearings before Subcommittee on Communications on the Status of UHF Television Stations and S. 3095, 83d Cong., 2d sess., p. 1001.)

Mr. Cox. Would it be fair to say that, in addition to trying to make this an attractive way of life, they have through these amendments to the Chain Broadcasting Regulations made it possible for them to insist on a legal right, in their agreements, to a substantial portion of the time of the affiliate, making this a compulsory way of life for the affiliate?

Mr. Moore. We will see later it is at least 96 percent of that.

The contracts, as I said, have these certain exceptions but they are very limited. With the economic balance being what it is between a network and a station we find that the exceptions are very seldom invoked. Thus, the time option is used in a way that makes it pointless for the FCC to go to the trouble of selecting the applicant who has the best identity with the community and the greatest capacity for "self-reliance, good management, and plain hard work." If the successful applicant is simply going to "patch in the network," the licenses might just as well be awarded to the network companies themselves.

Mr. Cox. Then to the extent that the limitations imposed by the FCC on multiple-station ownership are designed to prevent a unified control of programing and the expression of opinion, rather than to limit the derivation of economic benefits from the ownership of stations, would you feel that option time permits a substantial evasion of that, at least to the extent of determining the programs?

Mr. MOORE. Yes. A transmitter has one function, to broadcast programs, and if someone else controls the programs, the license is illusory. It is a way of programing more than the limited number of stations allowed.

Mr. Cox. So the network dominates, as far as program control, many more stations than it is permitted to own, but the stations are held in separate ownership and the economic benefits thereof go off to other people?

Mr. MOORE. That is correct; the patch-in approach is what accomplishes that.

As an illustration of how completely the affiliated stations have been required to surrender their responsibility for program selection to the networks, let us look at the 40 cities where NBC and CBS each have an affiliate which an advertiser is required to use under the "must-buy" policies of the two networks.

These cities are: New York, Chicago, Los Angeles, Philadelphia, Detroit, Boston, San Francisco, St. Louis, Washington, Baltimore, Minneapolis, Buffalo, Houston, Syracuse, Oklahoma City, Sacramento, Nashville, Norfolk, Providence, Salt Lake City, Milwaukee, Kansas City, Seattle, Atlanta, Portland, Oreg., Dallas, San Diego, Denver, Louisville, San Antonio, Tampa, Rochester, Omaha, Tulsa, Davenport, Columbus, Dayton, Cincinnati, Cleveland, Birmingham.

These 40 cities contain 71.5 percent of all the television sets in the United States. In these 40 cities, there are 80 NBC or CBS affiliates. The 3 hours of network evening option time—the most desirable viewing time for the entire family and therefore for advertisers—include 6 half hours per night or 42 half hours per week. Multiplied by the 80 NBC and CBS stations, this amounts to 3,360 half hours per week.

In the typical week of February 19–25, 1956, during the 3 hours of network evening option time, NBC and CBS programs were carried at the time ordered by the network in 3,150 of the 3,360 half-hour periods. This is a network saturation of 93.7 percent, at the time indicated by the network. If we add the 85 half hours which were carried by the stations, but at times different from the ordered time, the rate of saturation rises to 96.3 percent. This left 3.7 percent of the time, or 7½ minutes per night, for programs produced by other networks, by the affiliated station itself, or by independent program producers.

Actually, I think the figures are even stronger, because at the moment I think CBS has one half hour of prime time unsold which is not being ordered, and if that were cleared it would be a little higher than 96.3 percent.

Mr. Cox. I presume when you say this leaves only this limited time for programs of independent producers, this means for programs produced by them and cleared by them. I presume some part of that 3,000 half hours would include programs produced by independent producers, but where it was necessary to rely on the networks to clear the programs.

Mr. MOORE. Yes, the network programs include programs of independent producers, but as far as the stations go, we find there was only 3.7 percent of the time when the station might have bought some program other than dictated by the network.

Senator POTTER. Who would be included in the group as independent producers?

Mr. MOORE. There are several categories, Mr. Chairman. One of the most important, increasingly so, is the film industry which produces programs which can either be syndicated or can be played on a network. Actually, outside producers produce many network programs like Dragnet, the Groucho Marx Show, I Love Lucy—I would say a good portion of the most popular programs currently on the networks are outside packages. Lassie is outside, Rin Tin Tin——

Senator POTTER. But those are sold directly to a network?

Mr. MOORE. Yes, to a network or a network sponsor.

Senator POTTER. Now I was questioning the amount of non-network time that you have cited here as one of the categories making up that 3.7 percent which was supplied by independent program producers. I assume probably that would be films, independently purchased.

Mr. MOORE. Numerically the greatest number would be films, Mr. Chairman. Now and then there might be local live shows—such as a local panel show. Generally the available programs are films, like the anti-Communist series called I Led Three Lives, or a program called Waterfront which is very good. These are produced by independent film companies in Hollywood who have a great many wonderful shows on their story boards that they cannot produce for lack of exhibition time.

Now, I am talking about the period—which in the East is 7:30 to 10:30 p. m.—of network option time. But furthermore many hour-long programs are started within this network time and overlap into nonoption time or station time. You are familiar with many of those shows—the Lux Video Theater, the prize fights, Twentieth Century Fox Theater, Studio One. The station which is obliged to clear for the first half of the program either has to surrender station time or cut the prize fight or drama off in the middle. This is a device whereby the networks take an additional half hour away from the station quite consistently, and each such half hour is over and above the 96 percent that I have mentioned. Then, of course, there are many other programs started at the fringe time, the edge of option time, at 10:30 at night particularly. The stations in many cases will carry these programs. Whether they carry them because they want to keep the network happy or because they think it is the best possible show they could have, I don't know. But I do know that the networks are not only saturating their own network time, but are steadily moving more and more into station time.

Now, as a further and specific example of how the stations have been required to abandon their local responsibility and simply have patched in what the network offers, take the case of Disneyland. A year and a half ago, Mr. Walt Disney turned his skills to television, to the delight of children of all ages throughout the land. The Disneyland program is on film. It can be played in each city at whatever time best suits the convenience of the young audience in the particular community. But because it is a network program it was arbitrarily placed in network option time, 7:30–8:30 p. m., in the eastern time zone.

This necessarily means that children, and we refer to those particularly between the ages of 3 and 9, sometimes younger, can enjoy Disneyland only if they are kept from their beds until 8:30 p. m. on a school night. We doubt strongly that this time period is the most suitable one in the honest judgment of each individual station licensee, if he were free to exercise that judgment.

On the west coast the Disneyland situation is even more acute. In order to accommodate a live network broadcast of the weekly Pabst Blue Ribbon prizefights, which reach Pacific time zones from 7 to 8 p. m. each Wednesday, the network pushed Disneyland back a half hour on the west coast, so that it plays from 8 to 9 p. m. in the West. Occasionally the prizefights run long, so that Disneyland starts late, and Snow White, Davy Crockett, and Donald Duck may be on the air until 9: 15 p. m. or later.

Throughout the country families must choose between children who are cross on Wednesday night because they are sent to bed before Disneyland is over, or children who are cross on Thursday because they stayed up too late on Wednesday night. This is how the decline of station responsibility under option time prevents a fine program like Disneyland from performing its proper public service in each community.

Now, a most revealing and significant fact is this: In a study of program schedules last month we find that Disneyland is carried on 15 network-affiliated stations in the Pacific time zone; 9 of these stations carry it in the time period dictated by the network, 8–9 p. m.; but Disneyland plays at 7 p. m. in Salinas and Santa Barbara; 4 p. m. Sunday in San Diego; 7: 30 p. m. in Eugene, Oreg.; 3 p. m. Sunday in Yakima, Wash.; and 5 p. m. Saturday in Chico, Calif. There can be no doubt that these earlier times are far more suitable for a children's audience. Certainly it is no coincidence that each of the six stations which demanded and obtained an earlier time is located in a city where there are so few stations that a refusal to respond to network pressure could not result in loss of network service. In every case where Disneyland is played at a suitable time it is where the station is a free agent.

Senator POTTER. That is, a one-station community?

Mr. MOORE. One or two; in San Diego, where the station plays it Sunday afternoon, they do have CBS service and presumably they are going to lose their ABC affiliations to the Mexican station, anyway.

Now there is another aspect of the time option which deserves the most careful study. If a station wishes to carry certain network programs of high quality, it can do so only by entering into an affiliation agreement whereby the station agrees to carry any network program offered during the 12 hours per day of option time. This is reminiscent of the time when a movie theater owner could not obtain the particular high-quality pictures he wanted from a major studio unless he agreed, on a blind basis, to accept a block of pictures which that studio had not yet even produced. It is a matter of the old days of the liquor shortages and taking the rum with the whisky.

The time option constitutes block booking in its elemental form. The time option also constitutes blind selling since the station licensee rarely sees the program before he broadcasts it, and, of course, is in no position to judge whether the program is in the public interest or whether it is less in the public interest than some other program he could obtain from another source.

Mr. Cox. Does he have any advance information as to this program—a summary of its contents?

Mr. MOORE. That varies, Mr. Cox. I think, yes; because of course there are all kinds of programs. He does have a description of the nature of it, such as a panel show, a variety show. This I think could be better answered by network representatives. The case of pilot films being sent to the station before a decision, I would say, is a rare case. I would say not once in many, many times does a station have a look at what they will put on the air before they broadcast it.

Now it cannot be demonstrated that the stations invariably accept the network program under a time option because they think the public would prefer the network program over any other program available at the same time. We would readily admit when affiliated stations accept network shows like I Love Lucy, The Ed Sullivan Show, Richard III, Omnibus, The $64,000 Question, Disneyland, Peter Pan, and the World Series, they are doing so in the sincere belief that the public would prefer these programs over any others available at the same time. But can the same be said of all network programs accepted by the affiliates, among which might be:

Two for the Money	Name That Tune	Chance of a Lifetime
People Are Funny	Penny to a Million	It's a Great Life
Break the Bank	Dollar a Second	Life Begins at 80
Beat the Clock	I've Got a Secret	Place the Face
Stop the Music	Masquerade Party	
Name's the Same	Truth or Consequences	

(A correction in this list and others throughout Mr. Moore's testimony were made pursuant to the following letter from his attorney:)

COX, LANGFORD, STODDARD & CUTLER,
Washington, D. C., April 9, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
The United States Senate, Washington 25, D. C.

DEAR SENATOR MAGNUSON: I refer to the reporter's transcript of the testimony of our client, Richard A. Moore, and of Prof. Donald F. Turner, who accompanied him, on March 26, 1956, before the Committee on Interstate and Foreign Commerce.

In addition to the typographical and grammatical corrections that we have submitted to the staff, we should very much appreciate the following corrections to reflect what was actually stated by the witness.

Page 1598: The program This Is Your Life was not included in the list of programs as read by Mr. Moore and should be deleted.

Page 1627, line 3: Change "rate" to "rare".

Page 1632, 5th line from the bottom, the paragraph should read as follows: "In Seattle, the ABC station ran an independent film instead of Chance of a Lifetime. Now, with the network program getting ratings of 6 to 11, an independent film, and it is a fine one, Death Valley Days, got a rating of 32.9, almost 5 times the average rating which the network program receives under similar competitive conditions."

Page 1634, line 1, change sentence to read as follows: "That is why we want to stimulate more competition."

Page 1655, line 5, change sentence to read as follows: "I think so, Mr. Cox, because bear in mind that along with the 75 percent limitation, the repeal of block booking or time option would become effective."

Page 1671, line 1: Change "section 1" to "section 2."

Page 1671, line 9: Insert "after agreements" the words "of this type."

Page 1676, 10th line from the bottom: Insert at the end of the sentence after "stations" the words "receiving the same network service."

Sincerely yours,

LLOYD N. CUTLER.

Mr. MOORE. Now I have mentioned these few programs here without attempting to criticize any particular program, but are these necessarily the best programs available out of the country's talent?

They are network programs winning station acceptance virtually wherever they are offered. I doubt that necessarily all of those programs are finer, better, or more acceptable to the public than perhaps some other program that might be available.

To prove that network programs are not always first in popular preference we need only point to those markets with more than three stations where nonnetwork programs receive a fair exposure to the public. The public reaction to these programs has repeatedly demonstrated that the great talent of the motion-picture industry in Hollywood is thoroughly capable of producing television programs which have great popular appeal.

Mr. Cox. Isn't it true that there are, at most, only 11 markets in the United States in which there are 4 or more stations, so that the network-affiliated stations face substantial commercial competition from an independent station?

Mr. Moore. That is right, there is that limited number of markets and it therefore makes fairly rare the case where these other programs get an opportunity to compete in the best time. What we are looking at are situations where very fine film programs are played in class A time, which would usually be a four-station market, or more. I would like to recite a few examples taken from audience surveys of the American Research Bureau for February 1956, whose reports are an accepted form of audience measurement. In these examples I shall compare the audience popularity of certain syndicated filmed programs as compared to the popularity of the evening network programs in the same city in the same week.

In Chicago, with 4 VHF stations, the nonnetwork film series based on Lloyd C. Douglas' book, Dr. Hudson's Secret Journal, has a larger audience than 101 of the 129 network programs broadcast that week. Science Fiction Theater has a larger audience than 90 of the 129 network programs. The Cisco Kid is more popular than 80 network shows, Long John Silver is more popular than 69, and Superman is more popular than 63. Apparently, there is a writer who escaped the networks. His name is Robert Louis Stevenson, and Long John Silver apparently is pretty good television material.

In Seattle-Tacoma, with 4 VHF stations, there were 118 evening network programs. Death Valley Days and I Search for Adventure were more popular than 108 of these shows. Highway Patrol was more popular than 104. All told, 8 syndicated programs had larger audiences than any of 79 network programs.

In Los Angeles, with 7 VHF stations, there were 128 network programs. Confidential File had an audience larger than 95 of these network programs. Amos and Andy was ahead of 93 and 6 others had larger audiences than 87, 82, 75, 74, 73, and 69 evening network shows, respectively.

So it is apparent that the public does not like a program just because it is a network program. They like the program on its merits, and this great country has plenty of talent.

Generally speaking, these desirable nonnetwork programs are on film and are available to the network-affiliated stations in most of the major markets. In most of these markets there is no independent station, and the distributor of the nonnetwork program undoubtedly would like to place it in that market on an affiliated station during prime viewing time. Moreover, the sponsor of the nonnetwork program will usually pay the full station rate, instead of the low percentage of the station rate (in the range of 30 percent) customarily paid by the networks. Yet almost invariably the affiliated station accepts the network program instead of the superior nonnetwork program.

Mr. Cox. If that is true, then, Mr. Moore, certainly the decision to carry this network program is one not dictated by the station owner's self-interest, since he could make more from a national spot program; and if there are available programs, as you indicate, which are perhaps more popular than the network program, it is also not dictated by the public interest—would that be your view?

Mr. Moore. That, to us, is so clear here; with 96 percent of the schedule in prime evening time being billed by network programs, this implies that the rest of the country couldn't develop more than 3 percent of programs that are superior. Yet we have seen how superior they are in the eyes of the public when the public is given an opportunity to judge them. So we can only conclude that the clearance is given for some reason other than the pure merit of the program.

Why is this so? The FCC opinions on NBC's recent purchase of the Westinghouse TV station in Philadelphia contain the answer. In the words of the explanatory statement issued by two of the Commissioners who were part of the majority approving the transfer:

> The expiration of the affiliation agreement triggered the negotiations which led to the transfer. * * * No law, rule, or regulation of the FCC required NBC to renew that affiliation contract. NBC was free to exercise its own business judgment to renew, affiliate with another, delay an affiliation until it negotiated with another station, or refuse any affiliation. * * * Westinghouse was free to refuse [to sell the Philadelphia station] or to negotiate with another television network * * * it concluded to do business with NBC * * *. We must take them [Westinghouse] upon their word that the transfer was based upon the exercise of a prudent business judgment. (FCC Report No. 2793, December 28, 1955.)

If threatened loss of an affiliation could bring about this exercise of "prudent business judgment," on the part of a licensee as strong in financial resources and management as Westinghouse, to sell its Philadelphia station—which actually was purchased quite recently at a record price—rather than lose the affiliation with NBC, to what extent can we expect an affiliate with "prudent business judgment" to resist a network's request for clearance of its programs within network option time, or in station time itself? To what extent can we expect station licensees to depend on their own "self-reliance, good management, and plain hard work," when the result of applying these honorable American virtues can be financial ruin, and when the network companies can pay such a handsome reward for patching in the network and abdicating station responsibility to them?

Mr. Cox. Wouldn't it appear, then, that quite possibly the pressure to take programs—except as to those stations in areas where they can afford to be somewhat independent because of lack of facilities—would exist whether you had this legally enforcible provision for option time actually written in the contract or not?

Mr. Moore. I think that is true, Mr. Cox. I don't think that the motion-picture studios have always had block-booking contracts, but when they came in to sell Gone With the Wind, or whatever a great picture was, they communicated to the fellow that he had to take the rest. I think network service is considered so important to an affiliated station, under our present structure, that even without the legal requirement he probably would clear. He does clear now on station time, which he doesn't have to do.

INDEPENDENT PROGRAM PRODUCERS

We come now to the independent film producers. Mr. Chairman, these are a group of fine companies with talented people who are in television and eager to play a larger part.

In order to defray the cost of producing a good television film program, experience has proven that the independent film producer or syndicator must be able to sell the program at a fair price in virtually all the important markets of the country. In order to sell the program in any particular market, a syndicator must find a sponsor, and there are many fine sponsors—national, regional, and local—who would like to buy a good syndicated show. If a sponsor pays a fair price for a high-quality program, he also wants a good time period.

But in most markets all the good time periods are under option to a network, and are generally already occupied by the network. Thus, the syndicator is blocked from selling his program because the sponsor cannot obtain a satisfactory time period. Even if a time period is not currently occupied by the network, the advertiser is still reluctant to buy the program because he may be dispossessed at any time by a network program. Ironically, he may even be dispossessed by a program sponsored by a larger competitor in his own business. And the station itself cannot afford to buy the syndicator's program, because the station cannot ordinarily obtain a sponsor for the program, since it cannot offer him a good time period which is guaranteed against network preemption.

Today, the only means by which a film producer can be assured of time periods in a sufficient number of markets is to sell the program to a network, or to an advertiser who is able to place the program on the network. Without such a guaranteed release, the film producer or syndicator can now seldom afford to produce a series.

It is true that a number of fine syndicated films have been produced for nonnetwork use and have been sold in many markets, but the number is steadily dwindling because of the restraints imposed by time options. It is no answer to say that independent films can obtain class B or class C time since the competitive network programs have automatic control of the really valuable class A time.

Mr. Cox. Mr. Moore, I noted yesterday in the television section of the Washington Post an article which contains this language:

> More than 200 TV pilot films are in circulation around New York's advertising agencies. This represents a speculative investment of over $6 million, and most of it will go down the drain.

Now would that be by reason of the factors that you are discussing here, in your opinion?

Mr. Moore. Precisely that situation. Good pilot films which would make a fine series, great actors, great directors, but no exhibition time. We actually have stages in our studios where there is, as a tenant, a very fine motion-picture producer. He has eight programs in the plans, which he can not bring to television. I would urge that the committee talk to some of these responsible and capable film companies to find out just what the state of their business is, because it is rather deplorable, and good product is being denied an outlet for no fault of its own.

The importance of desirable time periods is fundamental, and we need no elaborate statistics to prove that the most convenient viewing hours for the American public are in the middle of the evening. That is when the worker has returned from his job, the housewife has completed her daytime chores, and the whole family is together in the interlude between the supper hour and bedtime. This is so-called class A or class AA time when the rates are highest and when the network time options are exercised with the most consistent and telling effect. It is these hours when the television audience is at its peak, and when there is the greatest likelihood that the advertiser will pay a program fee which is sufficient to defray the cost of the show. Yet these are the very time periods which are covered by the network option, and from which the independent producer is almost completely excluded unless he sells his program for distribution over the very network company that is producing competing programs of its own, which it naturally prefers to use instead of an independently produced program.

The dilemma of the independent film producer is well put in an article that appears in the October 31, 1955, issue of Sponsor, an authoritative industry publication. This article, entitled "The Great Debate on Network Show Control," quotes from a series of interviews with independent program producers. It quotes one such producer as stating:

We used to have a large number of potential buyers. Now we have three, the networks. And most of the time, even if we should come up with a show they want, they'll cut themselves in and try to take over control.

Mr. Cox. How do they do that?

Mr. Moore. Well, I can't testify from direct conversations, Mr. Cox, but when the network controls the time on other people's stations, and a film producer wants to sell them a program, they are in a very strong bargaining position with that film producer, and I think you will find that the networks have partial ownership or partial interests in the film properties which have come to them from independent producers and which they have either bought, or sold to sponsors.

Mr. Cox. Well, would the situation be that a film producer has invested his time and capital in developing this show, and he has that to contribute, and the network contributes its time-clearance function only—which deals with the time of stations which the network does not own?

Mr. Moore. Well, I have a strong feeling that this is an area which the committee could well look into from other witnesses, since I don't have, in my position, this firsthand experience.

Senator Potter. Do you know of any illustration that would bear that out?

Mr. Moore. I have had numerous lunch-table complaints from film producers that you can't get on the air unless you want to cut the network in. I have heard specific oral conversations referred to, but I cannot assert that that is the fact. I think it would be worthwhile, though, to inquire as to the ownership, or profit arrangements, on some of the films since one of the considerations for acquiring any right in the film would be time on the affiliated station. If the network were acquiring a film, and I were an affiliate, I would want 30 percent of its interest in the film because it may be using my air time to obtain its interest in the property. So I have a feeling that the power is there, and therefore it might be a topic well worth looking into.

Mr. Cox. And you see evidence that results are produced which would be consistent?

Mr. MOORE. I didn't quite get that.

Mr. Cox. You see some evidence that perhaps the power is exercised because, for some reason or other, there are film programs released over the networks in which the networks own an interest?

Mr. MOORE. Yes, indeed. There seems to be a scream in the trade papers every so often that some independent film producer who has sold a high quality program to a sponsor, was then told that the network was putting its own show in because they deemed it better, or whatever the reasons. I think there have been instances where such network programs have ended up with the same sponsor that the independent producer had acquired in the first place.

Senator POTTER. Of course, it seems to me that the future of television would be in the wider use of film, and the difficulty that these independent film producers are having now would be a deterrent to the growth of the television industry.

Mr. MOORE. Mr. Chairman, that is almost the nub of the problem. You have an allocations problem in television, and the answer in the long run is going to be programs, because stations can only survive if they have programs and get audience. If we solve our allocation problem after all the independent film companies have either gone out of business or become hand maidens of the network organizations, we will have reached a cure and will not have any programs to supply the stations we have cured.

Today in Hollywood—I will put it this way—in the last 3 years in Hollywood there has been a great boom in production of films for television, but more and more they are being limited to the films that go on the network. If we take competitive opportunity away, that new, young industry is going to slow up very badly and will be the victim of the usual problem, as it was in the motion-picture industry, of lack of competition and therefore lack of quality.

So they need some help. They have a lot to contribute and all they ask—you won't find a film distributor who will say "Give me an option where I can kick a network show off"—he just wants an even break. He just wants an opportunity. If his program is better and the public likes it better, he feels he ought to have an opportunity to get it on the air. He doesn't say "I want the contractual right to preempt a network show."

Senator POTTER. He just wants to be able to compete with them?

Mr. MOORE. Yes; he just wants to be able to compete with them. Actually, KTTV knows of many additional programs which the independent film producers would like to produce but cannot because network option time denies them access to the market. We know that companies which previously had produced several new series a year for syndication are now reducing or discontinuing the production of new programs for syndication. I think it would be very helpful if the committee were to invite representative film producers and distributors to testify as to the effect of the time options upon their own prospects and plans. We believe it will present a sad story of talented and skilled craftsmen who are being arbitrarily precluded from an opportunity to bring their services and their skills to television.

The must-buy agreements also injure the independent film producer. They limit his opportunity to sell his programs for sponsorship by the many important advertisers who do not have complete national distribution for their products. There are other advertisers whose sales and advertising campaigns are seasonal in various parts of the country. There are many products which should not reasonably be advertised in Florida and Minnesota at the same time; suntan lotion and snow tires being two good examples.

As I will show in a moment, there are many advertisers who would like to buy a good film series for use in the markets where they have distribution, but who cannot afford to do so if the only means by which they could have it broadcast is to buy network time in cities where the advertiser's goods are not even sold. Hence, the must-buy agreement between the network company and its basic affiliates makes it impossible, in many cases, for the independent film producer to sell, or for the advertiser to buy, a program series which the producer is capable of delivering and the customer is anxious to acquire.

THE ADVERTISER

That brings us now to the advertiser, who is certainly an important part of our industry, since advertising revenues make possible fine television. In the year 1955, American advertisers spent more than a billion dollars on television. This enormous expenditure, in what is only the seventh year of TV's life, is the most persuasive evidence of the advertising and selling power of the TV medium. The importance of TV to any American business enterprise which is engaged in selling goods to consumers can hardly be overestimated. We have already reached the stage where network television is largely a seller's market with customers virtually standing in line to buy good TV time from the three network companies which have complete nationwide control over the good time.

The committee may be aware of the undercurrent of dissatisfaction among many leading American advertisers, resulting from the tight control which network companies exercise over the advertiser's opportunity to use TV. As one indication of that unrest, the magazine Advertising Age printed a page-one story on March 5 where it lists cases of advertisers who are dissatisfied with their treatment by network companies. Nineteen prominent American companies are mentioned in this article, including P. Lorillard Co., Liggett & Myers, American Tobacco, General Electric, Bendix, Longines-Wittnauer, Stokely-Van Camp, Hazel Bishop, Schick Razor, Sheaffer Pen, and Nestle's.

As is true for all other segments of the television industry, it is the must-buy and time-option policies of the network companies that are the root of the advertisers' problem.

The must-buy agreements

The NBC rate card specifies that the purchase of time on the NBC network requires a minimum purchase of time on 50 specified stations—

only 5 of which are owned by NBC and 45 of which are owned by independent companies. In addition, NBC requires that during the prime evening hours of 8 p. m. to 11 p. m. Monday through Friday and 7 p. m. to 11 p. m. on Saturday and Sunday, sponsors may not buy network time unless they also order at least 50 additional NBC affiliates over and above the must-buy list.

The CBS rate card provides that an advertiser may not purchase time on the CBS network unless he buys the same amount of time on 53 CBS stations, named by call letters, 4 of which are owned by CBS and 49 of which are owned by other companies.

ABC does not publish any must-buy policy. We do not know the reasons; but it could be because of doubts as to its legality or because ABC lacks the economic power to force the must-buy policy upon advertisers.

The Annual Data Book of Television Magazine has been published today, March 26, and it contains a complete tabulation of network advertisers and their expenditures for network time during 1955. The total expenditures were $407 million. That is apart from programs—time only. More than 50 percent of this total, some $205 million, was expended by the top 18 TV network advertisers. It goes without saying that the companies which expended these sums are of a size and scope sufficient to meet the network must-buy requirements. But what about the medium sized and smaller advertiser who cannot afford the vast expenditure involved in the must-buy lineup? And what about the advertiser (big or small) whose sales and distribution pattern does not cover the specific markets which he must purchase in order to acquire network time? The only answer for such advertisers—and they certainly represent the majority of American concerns—is either to give up TV or to use it other than on a network basis.

On a nonnetwork basis an advertiser may buy spot announcements between programs or participations within local programs. There are also certain NBC and CBS programs in class B and C time where he can also participate on a spot basis; but if, like his larger competitor, he wishes to present a program in a time period when most of the public is available to watch it, he must either pay for cities which he doesn't need or he must absorb a cost which would mean economic suicide.

Theoretically, an advertiser who cannot properly meet the must-buy requirement has the alternative of buying the program from a nonnetwork source and placing it in markets of his own choice by direct arrangements with the individual station in each market. Having been relegated to that alternative by the effect of the must-buy agreements, the advertiser then faces the effect of the time-option agreements.

Time-option agreements

We have pointed out that the prime evening hours are the most valuable for the purposes of TV advertising, and it is apparent that both major networks and the 18 top network advertisers agree with this conclusion. But those are exactly the hours which the station cannot sell to a local or regional advertiser, or to a national advertiser who has his own program, because that advertiser can be dispossessed at any time by a network advertiser pursuant to the time-option agreements. The inevitable and actual result is that the non-network advertiser is made a second-class citizen who, at the very most, can only find exposure on TV in less desirable time than his larger competitors.

This kind of distinction between first-class and second-class citizens would be wrong in any medium. But there is ample evidence that TV is a medium which means the difference between life or death for the average business concern. In that respect, it is unlike radio, where, if an advertiser were dispossessed by operation of the network time options, he could expect to sell his wares on a competitive basis by advertising in other media like newspapers and magazines. The clearest statement of this distinction was made by Mr. Sylvester Weaver, then president of the National Broadcasting Co. and now chairman of its board, in a recorded interview published in Broadcasting-Telecasting magazine on February 28, 1955. Mr. Weaver said:

> Television is so much more important than radio was that, while it really didn't matter if the big advertisers took over radio, they (referring to smaller advertisers) did have a way of selling their goods effectively. That's not true in television. If television were limited, for instance in the soap field, only to the Big Three, the other companies would go out of business, literally go out of business. They could not compete without television, in terms of selling. This is something that the other media may not believe, but I'm sure it's true and I am sure that most agency people would agree to it, too.

We believe that the NBC policy, for instance, where class A use of TV is limited to those who can buy 50 specified markets plus a total of 50 more, creates a situation where the majority of American advertisers are effectively denied the opportunity to make use of the TV medium. When coupled with the time-option agreements by which the medium sized and small advertiser are denied good time even in their nonnetwork use of TV, this network policy becomes violative of the most basic concept of American free competition. In short, the must-buy and the time-option agreements are discriminatory against all American advertisers except those who, by merger or otherwise, have grown large enough to meet the minimum requirements of the network companies.

THE INDEPENDENT STATION

As we have seen, the direct impact of the network must-buy and time-option policies falls on the affiliated station, the independent program producer, and the advertiser. But one important secondary result is the serious competitive injury done to the independent station.

The simplest way to illustrate the effect of the must-buy clause is to assume a situation where 50 separately owned newspapers, each in a different major city, enter into an agreement whereby each agrees not to sell certain desirable advertising space to any advertiser unless that advertiser buys equivalent space in each of the other 49 newspapers throughout the country.

We cannot imagine that an agreement of that kind would be tolerated from a legal standpoint for 15 minutes.

Since a television program, unlike a newspaper advertisement, is ordinarily placed on only one station in a market, the competitive disadvantage to a station which is the victim of such a boycott is readily apparent. KTTV is constantly confronted with situations where an advertiser has acquired the national rights to a television program and desires to have it broadcast in Los Angeles as well as in other cities throughout the country. In such instances, if KTTV desires the program, we consult with the advertiser or the advertising agency and offer him a time period for the program on our station.

It has been our experience, however, that regardless of whether KTTV offers a more desirable time period at a lower cost per thousand than a particular network station in Los Angeles, we are told by the advertiser or his agency that despite the fact that the KTTV proposal is more attractive, the advertiser must place the program on the network station in Los Angeles or he will be deprived of the opportunity of placing the program on stations affiliated with that network in other cities.

In one instance, KTTV actually secured an order from the advertiser for the film program Captain Midnight, owned by the advertiser and broadcast over network facilities in 40 other cities. We were able to do this because of an apparent slip-up whereby the advertiser was able to avoid temporarily the network's must-buy requirement in Los Angeles. We were told by the advertising agency that continued pressure was placed upon them by the network to move the show to the network station. Finally, on the telephone, the agency informed KTTV that the network had now told the agency that unless they moved Captain Midnight to the network station in Los Angeles, the network would not make available a time period then under discussion for another program, Tales of the Texas Rangers, to be placed on behalf of a different advertiser by the same advertising agency.

Mr. Cox. Well, that would be a tie-in, in effect, releasing time for another program only on the condition that favorable treatment is given to them in connection with a disassociated item of programing?

Mr. MOORE. As I heard it over the telephone, Mr. Cox, it did sound like a tie-in.

Mr. Cox. Have you ever reported that practice to the FCC?

Mr. MOORE. No, I haven't, sir.

Mr. Cox. Could you tell us what the network was?

Mr. MOORE. Do you want me to tell you in this meeting?

Mr. Cox. Yes.

Mr. MOORE. That program was transferred to the CBS station.

Shortly after that conversation, the agency elected not to renew Captain Midnight on KTTV and transferred it to the network station in Los Angeles. At about the same time, the network cleared time for the agency's other program, Tales of the Texas Rangers.

In another case, KTTV offered to buy a new program, Captain Gallant of the Foreign Legion, but was informed by the distributor that it was necessary for him first to offer the program to a possible national advertiser. The old story: he didn't think he could get a sale market-by-market. Subsequently, Captain Gallant was sold to a national advertiser who elected to place it on a network. Because of the difference in time zones, the program would be preempted from its regular time on the west coast every fourth week by a live network program, described as a "Spectacular," thus breaking up the weekly audience habit for the advertiser's program. And the weekly audience habit is a very valuable extra which the advertiser buys.

KTTV therefore communicated with stations in the principal cities on the coast, each of which offered a much more desirable time period on a regular weekly basis. The time charges for these periods were considerably lower than the charges at the network rate. KTTV met with the advertiser and demonstrated that the advertiser could receive a much larger audience at a lower cost, without interruption every fourth week, by placing the program on a market-by-market basis on the west coast. The advertiser stated in effect, that he agreed with our conclusions, but that he would be unable to accept such a proposal because the network's must-buy policy compelled him to buy time on the the network's west coast affiliate stations as a condition of obtaining time on the network affiliates in the remainder of the country.

We contend that these agreements, whereby stations and networks collectively agree to withhold time on any one station unless the advertiser buys time on all the stations, are contrary to the public interest and contrary to the antitrust laws. We know for a fact that these agreements are seriously damaging KTTV, and presumably any independent station and probably some affiliates.

Senator POTTER. It is like economic blackmail.

Mr. MOORE. Whatever it is, Mr. Chairman, it presents a problem.

Now, on the time-option agreement, which you would think need not affect an independent, it most certainly does.

Like a network company, an independent television station has one thing to sell the advertiser, and that is circulation for the advertiser's message. To achieve circulation, a station must have programs of sufficient entertainment value to attract the audience. As the television art progresses, it has become evident that most local programs, produced on a budget which a local market can support, cannot compete in terms of entertainment value with the high budgeted programs presented by the network companies, particularly in the evening hours. Network programs generally are supported by high budgets, ranging upward from $20,000 per program. These budgets are justifiable because the programs are exposed in good time periods in a great many cities. The pro rata cost per city is therefore low, although the total cost of the program may be high.

Generally speaking, if an independent station is to compete with network programs in the prime viewing hours, the programs must be supported by an equivalent budget. The answer to this dilemma has been found in the so-called syndicated film programs made by independent film producers, the budget for which is generally as high as comparable network programs. Since a syndicated program can be broadcast in many cities, the pro rata cost per city can be low, although the total budget may be high.

In logic, therefore, there should be no reason why an independent station, by using syndicated film, cannot present programing which is competitive to network programing. However, this seemingly logical answer is becoming more and more impractical because of the restrictive effect of time options.

Mr. COX. Would it be your opinion that if it were not for these restrictive effects, then, that if a sufficient number of programs continued to be produced of a quality now produced, and these were available to others than the networks, that you and the other independents would be able to compete in markets where there are network affiliates operating?

Mr. MOORE. Yes, indeed, that would give us an equal opportunity, only to bid. We again don't ask any rights. We just ask the privilege to bid. If we could bid on top shows, and if the producers could then produce them, that is all we would ask. We would then have an equal competitive opportunity.

As we have shown, the only means by which a film producer can be assured of time periods in a sufficient number of markets is to sell the program to a network or to an advertiser who is able to place the program on the network. Without such a guaranteed release, the film producer or syndicator can now seldom afford to produce a series. Therefore, despite the fact that a station like KTTV is ready and eager to buy new syndicated programs, few are forthcoming.

In its anxiety to acquire good programs, KTTV has even gone as far as to guarantee a certain assured revenue to the producer, over and above the fee for the Los Angeles rights. It has done this by signing contracts, or making firm offers in writing, whereby KTTV would acquire and pay for the rights to a series for the entire west coast, or even for the 11 Western States.

The reason for that is that if the producer is going to make a $25,000 film, he doesn't dare accept an offer from just one market, so we have gone into business and helped them get those programs off the storyboards.

Mr. Cox. So you have taken the full risk?

Mr. Moore. Yes, we have actually done that in 3 or 4 cases. Early in 1954, an independent film company announced production plans for the distinguished series Halls of Ivy starring Mr. Ronald Colman. We were told by the distributor that he could not afford to sell the program for Los Angeles only, but would need a larger commitment. KTTV, therefore, entered into an agreement to acquire the rights for the four Western States. However, at the request of the distributor, the agreement contained an escape clause to protect the distributor in the event the program could be sold to a national advertiser for network use. On the last effective date of the escape clause, the distributor notified KTTV that the program had been sold to two national advertisers who were able to clear time on the CBS network through the exercise of the network time options. Thus, KTTV lost the series.

In that example, I am not criticizing anyone; I am pointing out that despite the fact that we signed a contract at the highest price we ever paid as buyers, we couldn't get it, and the only thing that defeated us was the existence of the time options.

Mr. Cox. This was not because the advertiser would not have been satisfied with the coverage you could have given him in the Los Angeles market, but because he found he could not get similar coverage in enough other markets without dealing with a network.

Mr. Moore. That is the heart of the problem. If the networks control the time in enough important places, we never get the program because it is either not produced or not put on the market.

Mr. Cox. And there are not enough four-station markets so that he can get his investment back by selling film on the fourth station. He must find prime time on the affiliates and there is where he runs into the option.

Mr. Moore. That is where he is blocked.

Without going into details, we had a similar arrangement or a written offer at their asking price on Rin Tin Tin. It was bought by a sponsor, under the escape clause, and put on the network. We went to the advertiser urging him to use KTTV and presented a very fine proposal, we thought, but were told that the advertising agency did not want to disturb the network arrangement. So we were caught coming and going there.

KTTV was the first broadcaster to see the new series Robin Hood. We made a written offer to buy it for the entire west coast. This was agreed to but with the escape clause, and again the escape clause took effect. In short, after making the deal with us, the syndicator quite properly felt he should explore other sales on a national basis, and at all times was met with a need for a network clearance—so we got the usual telegram.

Senator BRICKER. You turned out to be a guinea pig as to whether a program would work.

Mr. MOORE. There is a lot of pride and gratification in that, Senator Bricker, but we can't take that forever.

THE PUBLIC

Now we come to the most important effect of these restrictive clauses. Their most harmful effect is on the American public. The great majority of the cities of the United States with television stations have three television stations or less. In 36 of the top 50 markets and in 80 of the top 100 markets all commercial television stations are affiliated with 1 or more of the network companies. Through the exercise of the time options, therefore, three network presidents in New York possess and exercise the power to determine what television programs the American public may watch—and what programs they may not watch—during the prime viewing hours. This is a concentration of control for which there is no parallel in any other American industry.

In the field of art, entertainment, and ideas, any collective agreements which cut off opportunity for any individual are particularly repugnant. America is filled with creative people whose talents may emerge from any direction or any source and, when they do, the public benefits from their particular art. In one such area, the great motion picture industry, there came a point where half a dozen companies, through block booking agreements very similar to the time option and must-buy practices of the networks, exercised the kind of control over the distribution and exhibition of motion pictures which the three network companies exercise in television today. It is generally agreed that the quality of motion pictures suffered during this noncompetitive period and that the ultimate victim was the public. The control of these companies was found illegal by the Supreme Court in the Paramount and Griffith cases, and free competition was restored. Since that time, the number of independently produced motion pictures has greatly increased, and the spur of competition has raised the quality of motion pictures generally.

In the movie industry in 1948, when the Supreme Court decided the Paramount and Griffith cases, the Court found it illegal for the 6 producing companies to control the release of films in approximately 3,000 of the 18,000 movie theaters in the country, or 16⅔ percent of the total. In the country today, there are only about 450 television stations, and the 3 network companies control the release of programs during prime viewing time on all but 32 of these 450 stations. They control the prime viewing time on over 90 percent of the stations, not 16⅔ percent.

With rare exceptions a new high-cost, high quality television program cannot reach the public today unless it is given release by 1 of 3 national network companies. Each of these network companies is producing programs of its own. With increasing frequency, the network companies decide that their own programs are the ones entitled to release, and that programs produced by the many other fine talents in America are to be barred from the Nation's homes. It cannot be argued that these three companies have the only creative talent in America. It cannot be argued that the judgment of the three particular heads of the network companies is infallible, nor can they be expected to be impartial when they choose between utilizing the time they control for one of their own programs or utilizing it for an independently produced program in which they have no financial interest.

Mr. Cox. In this instance then, Mr. Moore, the network is performing more than its basic and essential function of clearing time and is in effect competing for that time with the independent film industry with a product of its own—is that correct?

Mr. Moore. That is correct.

Mr. Cox. And since it controls the time, it is perhaps again in a position to insist on a tie between that time control and the purchase of the program to be released during the time?

Mr. Moore. It most certainly is in that position.

Mr. Cox. Now, would it be your position that there are cases where advertisers, if they were permitted to make a free choice between a network-produced show and one produced by an independent film producer, would have chosen the latter but have ended up buying what they regard as an inferior product because that is the only way they can get time clearance?

Mr. Moore. Mr. Cox, again, on information and belief, so to speak, I think there are several, if not many cases precisely of the kind you describe. Again, I think there is an opportunity for the taking of testimony of those engaged in any such negotiations and conversations that might be very enlightening and constructive.

Mr. Cox. Then at this point, through its control of the time, not only of its owned and operated stations but of its far more numerous affiliates, the network, in addition to its percentage of the card rates of its affiliates, also makes a profit on the sale of the program, doesn't it?

Mr. Moore. That is my understanding.

Mr. Cox. There would be no incentive for them to do this if there were not a profit?

Mr. Moore. I think it is a safe statement that on many programs the network makes a profit on the program itself as well as on the sale of the affiliates' time.

Senator Potter. What percentage of the prime time is utilized by the network for their own programs?

Mr. Moore. I am afraid I don't have that figure, Mr. Chairman.

Senator Potter. Is it a majority of the time?

Mr. Moore. I may have a pretty good answer to that right here. Perhaps it would be simpler, Mr. Chairman, if I submitted to the committee this exhibit from Sponsor magazine which indicates their information as to which programs are controlled by advertisers and which are controlled by the network companies.

Senator POTTER. Well, we will have that made a part of the record at this point.

(The article from the October 31, 1955, issue of Sponsor magazine is as follows:)

THE GREAT DEBATE ON NETWORK SHOW CONTROL

BEHIND SCENES THESE ARE THE ISSUES BEING ARGUED BY ADMEN, PACKAGERS, AND THE TELEVISION NETWORKS

One of the great revolutions of the television era has been the assumption of responsibility for creating and controlling a high proportion of their own programing by the television networks. This step gives the networks the opportunity to move fast when changes in the program lineup are necessary to meet competition. And, say the networks, it is a way of assuring that a balance of programing is maintained.

Advertisers and their agencies in recent years have accepted the new pattern, some enthusiastically and others reluctantly. Among the reluctant, debate continues with some expressing new hope that the advertiser who wants to bring in his own show will have more opportunity to do so now because of the stellar success of one independently produced package, $64,000 Question.

To provide a balanced report on the usually behind-scenes discussion of network programing control, Sponsor took two steps: (1) Got from the networks a breakdown on shows they control and outside shows. This appears at right. And (2) conducted a series of interviews with executives whose views reflect every shade of opinion. Presented in a sequence which frequently gives one side the opportunity to answer the other, the quotes below are the reader's ringside seat at the great television programing debate of 1955.

Debate starts with the question: Can an outside show get on the air today?

Network

"Definitely. We want good shows. You bring us a program that's an audience getter, and you've got no problem. A successful program is worth a lot to us, not only in its own timeslot, but as an audience builder in the adjacencies. We don't care who brings us such a program, or who controls it. We want it."

Sponsor

"The networks have surrounded themselves with a brick wall called Nielsen and we can't get through. We don't sell to everybody. Our product is bought by a select few and we need a program that will reach this group. We're looking for audience composition. But they block us."

Packager

"We've got three programs tailored to the needs of certain sponsors, and we've got sponsors who want them. But the networks won't make time to try them out. Consequently we can't sell the programs. If things don't change, we'll be out of business."

Network

"Any packager who's got a good property can come to us. We won't only listen to him. We'll spend money to put his show on film or kine and we'll go out of our way to try and find him a sponsor. We've bought more independent shows than those developed by our own people."

Packager

"There is bound to be a general reevaluation. Look at the ratings and reviews some of those network produced or controlled 60 and 90 minute wonders are getting. The audiences won't go along and neither will the sponsors. As soon as they find that 1 or 2 announcements stuck into a giant program don't sell their merchandise, they'll come back to us. They'll have to."

Sponsor

"I want a program to be identified with my product. I want the people to know that I'm paying for what they see. But what do I get for my $70,000? A minute and a half announcement in the middle of a big thing that's got no connection with me or my product."

Network

"A minute and a half in a spectacular costs the same as a color-center spread in Life. Have you ever seen anyone look for a minute and a half at a center-spread in Life? Even 20 seconds seems like an eternity. And they can't tell me that the readers of Life buy the product, because they reason that the ads pay for the magazine. Life gets bought by 6 million. Last Sunday's color spread reached 15 million homes. Even conservatively that means 45 million viewers. Which $70,000 do you think sold more merchandise?"

Agency

"It's supposed to be our function to kick around ideas with our clients. To come up with something that we feel will help sell his product and then to develop it and try it out. It used to be like that, but no more. Today all we can do is look at the lists of what the networks have to offer, and if we're lucky we can find a participating position somewhere."

Packager

"We used to have a large number of potential buyers. Now we have three, the networks. And most of the time, even if we should come up with a show they want, they'll cut themselves in and try to take over control."

Network

"It's all got to do with the fantastically high cost of television. Where an agency used to be able to cut audition transcriptions at a cost easily within its budget, the companies able and willing to spend some $30,000 for a pilot film or audition kinescope are few and far between. That leaves it up to us. Television is a growing medium. Things change all the time and it's our job to present top entertainment to the public. So we scout around for new programs. We try to keep our program schedule flexible to be able to present important special shows when the occasion arises."

Sponsor

"The worst thing is that, with the irregular network schedules, it's nearly impossible to count on regular weekly exposure of a program to our audiences."

Network

"There are still a large number of regular weekly positions. But the flexibility of our programs helps a lot of sponsors. When in the past could a chocolate manufacturer buy participation in a big show just once or twice a year, maybe before Christmas and Easter? The big boys have no problem. They can always find top-notch programs and buy the time for them. It's the little fellow and the one in between who profits by shows like Today, Home, Tonight, and by the spectaculars and the specials. Show me an agency that is willing to spend $400,000 for an hour-and-a-half program on speculation, only to then try and sell it to its clients. If there is one, our doors are wide open."

Packager

"I call what we're doing Operation Vulture. We develop programs and then we wait for an existing show to drop dead. Then we'll jump in and, with luck, we can sell one of ours."

Packager

"They're going to be in trouble—the networks, I mean. With control over programing and time, it's a clear-cut case of monopoly. Like with the major companies in Hollywood, the Government is going to step in one of these days. I don't know when, but they're going to. And then there's going to be another 'divorcement decree.' You can't have production, distribution, and exhibition all in the hands of 2 or 3 companies."

Network

"There is nothing even resembling monopoly. There's strong competition. Competition between the networks themselves, competition between the independent packagers and us, and even competition between the sponsors. All we really control is the time."

Agency

"It's a fight for supremacy between the networks. All they want is to kill the ratings of the other fellow. It makes no difference if we and our client like a program. If the other network gets a better rating, we know we're on our way out."

Network

"Certainly we want ratings. We would serve our sponsors very poorly if, for the sake of one who happens to like a weak program, we'd be willing to lose the audience for an entire night. All following sponsors would be hurt."

Agency

"The practice of dumping a sponsor is a vicious thing. We may have spent millions on developing a program and an audience and suddenly, when a competing show gets a better rating, we're out."

Network

"The term 'dumping' is unjustified. When we find that we have a weak program, we try and suggest a change or improvement in order to strengthen it. We are willing to work with the sponsor, to help him along. Only sponsors who are unwilling to see the necessity of protecting our program lineup will ever face a refusal to renew a franchise. We try to bend over backward to avoid such a situation. But sometimes it does happen."

WHO CONTROLS NETWORK TV PROGRAMING?

(Italic type: Programs networks control (though they may not be the actual producers). Roman type: Programs outside packager, agency, or client controls)

ABC

Network controlled hours	80
Outside controlled hours	70

CBS

Network controlled hours	174
Outside controlled hours	160

NBC

Network controlled hours	180½
Outside controlled hours	179½

(Sources: List was obtained from the nets themselves. Of 844 total network hours, a little over one-half—424½ hours—are network controlled. Client, agency, or packager control the remaining 419½ hours.)

ABC PROGRAM BREAKDOWN

Sunday:
- Faith for Today
- *College Press*
- *Dean Pike*
- *Super Circus*
- You Asked for It
- *Famous Film Festival*
- Chance of a Lifetime
- Ted Mack

Monday:
- *Mickey Mouse Club*
- Kukla, Fran, and Ollie
- *John Daly, news*
- *Topper*
- Reader's Digest
- Firestone Hour
- *Dotty Mack*
- Medic, Horizons

Tuesday:
- *Warner Bros. Presents*
- *Wyatt Earp*
- *Room for Daddy*
- Du Pont Cavalcade
- *Outside USA*

Wednesday:
- *Disneyland*
- *MGM Parade*
- Masquerade Party
- Break the Bank
- Wednesday Night Fights

Thursday:
- Lone Ranger
- Bishop Sheen
- Stop the Music
- Star Tonight
- Down You Go

Friday:
- Rin Tin Tin
- *Ozzie and Harriet*
- Crossroads
- Dollar a Second
- The Vise
- Ethel and Albert

Saturday:
- *Ozark Jubilee*
- Grand Ole Opry
- Lawrence Welk
- *Tomorrow's Careers*

Supplement:
- *Feature horserace*

CBS PROGRAM BREAKDOWN

Sunday:
- Wild Bill Hickok
- *Winky Dink and You*
- *Contest Carnival*
- *Let's Take a Trip*
- Now and Then
- *Face the Nation*
- Omnibus
- Lassie
- *Jack Benny*
- Private Secretary
- *Ed Sullivan*
- GE Theater
- Alfred Hitchcock Theater
- Opening Night
- *What's My Line?*

Monday:
- *Garry Moore*
- *Arthur Godfrey Time*
- Strike It Rich
- Valiant Lady
- Love of life
- Search for Tomorrow
- Guiding Light
- *Jack Paar*
- Welcome Travelers
- *Robert Q. Lewis*
- *Art Linkletter*
- Big Payoff
- *Bob Crosby*
- Brighter Day
- Secret Storm
- On Your Account
- *Douglas Edwards, News*
- *Robin Hood*
- *Burns and Allen*
- *Talent Scouts*
- *I Love Lucy*
- *December Bride*
- *Studio One*

Tuesday:
- Name that Tune
- *Navy Log*
- *You'll Never Get Rich*
- *Joe and Mabel*
- *Red Skelton*
- $64,000 Question
- *Favorite Husband*

Wednesday:
- Barker Bills Cartoons
- *Brave Eagle*
- *Arthur Godfrey and Friends*
- Millionaire
- *I've Got a Secret*
- 20th Century Fox Hour
- United States Steel

Thursday:
- Sergeant Preston
- Bob Cummings Show
- *Climax*
- Four Star Playhouse
- *Johnny Carson*
- Halls of Ivy

Friday:
- New Review
- *My Friend Flicka*
- *Mama*
- *Our Miss Brooks*
- Crusader
- Schlitz Playhouse of Stars
- *The Lineup*
- *Person to Person*

Saturday:
- Captain Midnight
- Tales of the Texas Rangers
- *Big Top*
- Lone Ranger
- Uncle Johnny Coons
- College Football
- Gene Autry
- *Beat the Clock*
- *Stage Show*
- *Honeymooners*
- Two for the Money
- It's Always Jan
- *Ford Star Jubilee*
- *Gunsmoke*
- Damon Runyon Theater

NBC PROGRAM BREAKDOWN

Sunday:
- Captain Hartz and Pets
- American Forum
- *Frontiers of Faith*
- American Inventory
- Youth Wants To Know
- *Dr. Spock*
- *NBC–TV Opera*
- *Zoo Parade*
- *Hallmark Hall of Fame*
- *Wide Wide World*
- Captain Gallant
- *It's a Great Life*
- *Frontier*
- Colgate Comedy Hour
- *Spectaculars*
- *TV Playhouse*
- *Loretta Young Show*
- Justice

Monday:
- *Ding Dong School*
- Search for Beauty
- *Home*
- Tennessee Ernie
- Feather Your Nest
- *Matinee*
- Way of the World
- First Love
- World of Mr. Sweeney
- Modern Romances
- *Pinky Lee*

NBC PROGRAM BREAKDOWN—Continued

Howdy Doody
Tony Martin
News Caravan
Caesar's Hour
Producer's Showcase
Medic
Robert Montgomery
Tuesday:
Dinah Shore
Milton Berle
Martha Raye
Bob Hope
Fireside Theater
Armstrong Circle Theater
Big Town
Wednesday:
Coke Time
Screen Director's Playhouse
Father Knows Best
Kraft TV Theater
This Is Your Life
Midwestern Hayride
Thursday:
You Bet Your Life
People's Choice
Dragnet
Ford Theater
Lux Video Theater
Friday:
Truth or Consequences
Life of Riley
Big Story
Star Stage
Cavalcade of Sports
Red Barber's Corner
Saturday:
Paul Winchell
Fury
Mr. Wizard
Press Box
NCAA Football
Scoreboard
Perry Como
People Are Funny
Texaco Star Theater
Spectaculars
George Gobel
Hit Parade
Supplement:
Big Surprise
Today
Tonight

Mr. MOORE. Now, coming to this question of competition, in previous statements made to this committee and elsewhere by various executives of the network companies, there has been the repeated assertion that each network welcomes competition from other networks. There has been the repeated acknowledgment that this type of competition creates an incentive for each network company to improve the quality of its programs. Now, the regulations of the FCC have long provided that one network's time option shall not be binding upon the station if the station prefers to broadcast a program of another network. A statement that one welcomes the competition that one is required by law to accept is not necessarily a concession. In fact, NBC and CBS strenuously opposed this feature of the chain broadcasting regulations, which would give equal competitive rights to another network, when they were first issued. Under the present regulations, however, a network has the power to dispossess a program from any source except another network, simply by exercising its time option. So far as we know, in no statement made to this committee by an official of any network has he indicated that his company would welcome an equal competitive opportunity for program sources other than networks.

Among those who would welcome an equal opportunity to present their programs on television are the many talented people of our great film industry who are not associated with a network. Hollywood houses countless actors, writers and directors of distinction, and there are many more throughout the country whose talents are yet unknown.

If the networks have confidence in their own programing ability, why are they unwilling to allow their programs to compete on a basis of merit alone with programs produced by these nonnetwork sources? We contend that the principal function of the time option is to protect inferior network programs against the better programs produced by other program sources that the station could choose if the option did not exist. If a network program is of high quality, it will win public acceptance and station clearance on its own right. But if a program is of inferior quality, the network company should not have the right to force that program upon the public, through its affiliated stations, in place of a program of better quality.

Each of these inferior network programs for which this compulsory option is so necessary, by dictation of a network company, prevents some other program, yet unproduced, from reaching the airwaves and the public.

To ascertain what might happen if more stations rejected network programs during prime viewing time and substituted an independent film, we have examined some of the rare cases where this has actually happened.

In the four-station market of Seattle-Tacoma at 9 p. m., on Sunday, CBS and NBC affiliates release the normally scheduled NBC and CBS programs just as is done in the other 4-station markets of Washington, Minneapolis-St. Paul, Chicago, Detroit, and Phoenix. In the latter five cities, the ABC affiliates play the regularly scheduled ABC program, Chance of a Lifetime. Against this NBC and CBS competition, the regular ABC program receives ratings in these cities ranging from 6.6 to 11.7. These are the American Research Bureau figures——

Mr. Cox. Is that a percentage?

Mr. Moore. It means that 6.6 percent of the television homes were turned to that program.

Senator Potter. Is that a pretty good rating?

Mr. Moore. No, that is not, Mr. Chairman, for a prime entertainment show. The highest rating a program ever receives, normally a top program may be in the sixties or fifties; 20 to 30 is very fine, but I think when it gets down below 10 there is a sign the public doesn't appreciate the program very much.

In Seattle, the ABC station ran an independent film instead of Chance of a Lifetime. Now, with the network program getting ratings of 6 to 11, an independent film, and it is a fine one, Death Valley Days, got a rating of 32.9, almost 5 times the average rating which the network program receives under similar competitive conditions.

In Dayton, Ohio, the CBS affiliate plays the program Highway Patrol at 9 p. m. Tuesday in place of the regularly scheduled CBS network program Meet Millie. The independent program Highway Patrol receives a rating of 39.9, almost double the average rating which Meet Millie receives against identical competition in several other 2-station markets.

In the case of the NBC program, Kraft Theater, at 8:30 Wednesday night, the rating of the independent film Waterfront which the NBC affiliate in Houston plays instead of Kraft Theater against the same competition which Kraft Theater faces in 17 other 3-station markets, is 32.8. This is higher than the Kraft Theater rating in 16 of the 17 similar markets, and is approximately double the average rating of Kraft Theater in these markets.

In other words, when we have a choice of 2 or 3 network programs which get pretty good ratings, we never know whether this is because the public likes them or it is a default rating for lack of anything better. Put in another show, and it often happens that the network rating is doubled or tripled on the basis of quality.

Senator POTTER. If you have 2 mediocre shows on the 2 network stations in a 2-station market, there isn't much competition.

Mr. MOORE. That is when pinochle comes back into vogue. [Laughter.] There are half hours during the week when I am surprised as many people watch television as they do. That is why we want to stimulate more competition.

As another indication of the great wealth of creative talent which lies outside the networks, consider the many programs which are broadcast on a network as a purely mechanical service. I refer to programs developed or owned by outside packagers or advertisers which go on the network simply because the networks control the best viewing time, and because the quality of these shows is so high that the network companies saw greater advantage in accepting them than in reserving the time for programs produced by the networks themselves. These include such programs as:

The $64,000 Question	Your Hit Parade
Lassie	Omnibus

Now, each of those programs, just 2 weeks ago, won the Emmy award of the Academy of Television Arts and Sciences as the finest program in its category. Not one of them is a network creation. Neither are:

Rin Tin Tin	United States Steel Hour
The World Series	Ford Theater
The Groucho Marx Show	The Lawrence Welk Show
Robin Hood	Wednesday night fights
Four Star Playhouse	

Programs like these are obviously successful despite the fact that they are created, produced, and owned by companies or individuals other than networks. Despite the success of programs like these, the trend of the network companies continues to be in the direction of insisting upon presenting programs which they own or produce. This insistence may be due to an honest network conviction that, as Dr. Frank Stanton told this committee 2 years ago:

> We have found by and large that the greatest assurance of * * * quality programing is for us to do it ourselves.

But with all respect to Dr. Stanton, and to the high quality of many network-owned shows, the network company has a large financial bias in favor of using its own programs, and may not be an impartial judge. And no matter how disinterested the network may be, is it better to vest this power of choice in the network company than to vest it in the American public?

To us it seems inescapable that much of the best entertainment which could come on television and win public favor is precluded from doing so because primary control of broadcast time is centered in three network companies. We believe that there are many programs currently on the air, thanks to the effect of the time options, which would be rejected by the public if they had a free opportunity to choose something else. By the same token, we contend that there are many programs not on the air which would win public favor if the public had a free opportunity to view the program and reach its own conclusions.

In that connection, we believe the case history of the Lawrence Welk Show is typical of what could happen if competition for time periods on the air were based on merit alone. The Lawrence Welk Show is a musical program which for 5 years was presented on KTLA, a fine independent station in Los Angeles. The huge Los Angeles audience took the program to its heart, and it was consistently one of the most popular programs on the air, network or local. There are three network headquarters in Los Angeles, none of which apparently deemed the Lawrence Welk Show to be worthy of network use. Eventually, however, a sponsor, the Dodge division of the Chrysler Corp. became convinced that the program would win quick popularity throughout the country if only it could obtain national release. Accordingly, the sponsor made direct arrangements with Mr. Welk to acquire national rights to the program and eventually received network approval to broadcast the program for 13 weeks as a summer replacement. The public response was immediate, and less than a year later the Lawrence Welk Show is the second most popular program on the ABC network, its audience exceeded only by the audience for Disneyland.

Mr. Cox. In that connection, Mr. Moore, apparently not only was there no inclination on the part of the local network agencies in Los Angeles, but some opposition in New York. In the television column in the Washington Post, Jack Minor, the general sales manager of Dodge, is quoted as follows:

> ABC didn't want the Welk show. The network said that orchestras and TV didn't mix. I insisted that Welk was an exception. ABC wouldn't budge. Finally, I threatened to cancel sponsorships of our other two shows, Danny Thomas, and Break the Bank. Things looked bad at first. The show had a low rating but it just kept going up and up.

Now, is this a case where there is too much influence and control by the network heads?

Mr. Moore. I have great respect for the network heads, but it is obvious from this situation that any system that places the viewing habits of the public in the hands of three network heads is completely inconsistent with the principles of this country. We cannot delegate this great television medium to three companies. Apparently the national public loves Lawrence Welk's music, but the public was deprived of this opportunity to see and hear this program until this past season because no network chose to present it. How many more Lawrence Welks would emerge if broadcast time were open to all comers instead of being open only to those who meet the approval of a network company?

If a network company presents programs of a quality which the public appreciates, there is ample evidence that such programs will win both clearance and audiences on their own merits. If a network company presents an inferior program, it is not entitled to compulsory clearance to drive out a program which the public might like better.

LACK OF JUSTIFICATION FOR THE TIME OPTION AND MUST-BUY

Now we come to the question of the economic aspect of a change in regulations governing time options.

Time options

The network companies will undoubtedly argue that any elimination of time options, or even a reduction in the number of hours subject to option, will not only destroy network broadcasting, but will destroy television broadcasting as we know it today.

Before dealing with this argument on its merits, it is pertinent to note that the networks made the same argument once before, and were proven wrong by subsequent events. The networks made the same argument against the limitations on the time option which the FCC imposed when it issued the present chain broadcasting regulations in 1941. These regulations made time options nonexclusive against other network companies, and required 56 days' notice of exercise instead of the 28 days' notice which was the practice at that time. The network companies sought court injunctions against the 1941 regulations, and the presidents of NBC and CBS submitted sworn affidavits in support of the injunction pleas.

President Trammell of NBC swore that the nonexclusive feature would result in "making it financially and physically impossible to handle a sufficient volume of business to support the existing programs of the network organization." He swore that the requirement of 56 days' notice "will have the practical effect of an absolute prohibition against network optional time." He swore that "the inevitable consequence" of the option-time restrictions "will be the destruction of nationwide network broadcasting to the irreparable injury of NBC."

President William S. Paley of CBS swore that making the option nonexclusive against other network companies "will make the clearing of time for the arrangement of a national network program an almost impossible task." He swore that the requirement of 56 days' notice would mean that "network broadcasting will be working under an unnecessary handicap which will weaken it in competition with other media and cause it to lose important business."

The history of radio and television network broadcasting since the 1941 regulations were issued shows how fallacious were these sworn predictions of doom. In radio, combined network time sales rose from $79,621,534 in 1941 to $126,737,727 in 1946. In television, as we have seen, NBC and CBS are still in business. They are still able to clear time, saturating a full 96 percent of the prime evening hours on their major affiliates. CBS has just reported the greatest profit in its history. Television is gaining advertising business, not losing it to other media, as Mr. Paley predicted in 1941. According to today's issue of Broadcasting-Telecasting, Mr. Paley and Dr. Stanton have just announced that CBS–TV is now "the largest advertising medium in the world."

I do think we should concede that these latest statements from NBC and CBS were made from factual information, while I think the earlier sworn statements were made on information and belief.

Now any new network company predictions as to the effect of abolishing or limiting option time should be viewed with corresponding skepticism, fully mindful of the predictions made in 1941 on exactly the same issue.

The primary network company argument in support of the time option is that programs must be simultaneously broadcast throughout the country. This is often necessary for live programs. But approximately half the network programs during prime viewing time are on film. And we feel there are sure signs that that percentage is growing. There is no practical need whatever to broadcast a film program simultaneously throughout the country. Moreover, with the advent of electronic tape, we can assume the same will be true with regard to live programs.

Mr. Cox. By that you mean they have the option of releasing them simultaneously or filming them, at the same time they go out over the air, for later release in other markets?

Mr. Moore. Yes, Mr. Cox; film has proved, for all but special events and very rare types of programs, a completely acceptable form of presenting the program. In fact, a little better. The top programs over the last few years have been on film. In the case of a live broadcast, the Kinescope recording, which is required for a delayed broadcast elsewhere, has not been quite as satisfactory as film. But magnetic tape may give us virtual live quality in the reproduction of a show, so then it could be scheduled to suit the convenience of any town. That, of course, would not be true of the political conventions or the World Series or programs of that type.

Where simultaneous broadcasting is necessary for a live program, or even for a film program, time can be effectively cleared by network companies without relying on time options. For example, a network company could enter into bilateral contracts with affiliated stations for firm periods, such as 13, 26, 39, or 52 weeks, covering a specified time period such as 9 p. m. Monday for a specified program such as I Love Lucy. While the network company would bind itself to furnish a particular program at the stated time and the station would bind itself to carry the program at the stated time, changes in programs could be made by mutual agreement, and the station would reserve its customary right to substitute an occasional special program of outstanding public importance.

The network company would continue, as it does now, to communicate in advance with its affiliated stations with respect to clearance of programs. There is not the slightest doubt but that affiliated stations throughout the country would accept high-quality or popular network programs for simultaneous broadcasting even if they were not under the compulsion of a time-option clause. Sporting events such as the World Series and public-interest events such as political conventions would win clearance on their merits, as they do now in nonoption time.

The great difference would be that the networks would no longer be the sole effective means of nationwide clearance. Advertisers and independent program producers would have alternative means for distributing programs. They could deal directly with the stations or with some central clearinghouse that could communicate with stations as effectively as a network company. It would be a simple matter of setting up a teletype headquarters in New York. The advertisers could enter into firm 13-, 26-, 39-, or 52-week contracts of their own for particular programs with affiliated or individual stations throughout the country, without fear that during the contract period the time could be taken away by exercise of a network option.

It is often argued that time options are necessary in order to enable network companies to assure advertisers that a program can be placed at a particular time so as to take advantage of the audience attracted by the preceding and following programs. This is the so-called audience-flow concept. Even if this concept were valid, it is questionable whether for particular advertisers or for advertisers as a whole, it outweighs the limitations on access to television stations that the time option system imposes. In fact, however, the audience-flow concept is a fiction. Audience ratings and independent surveys show that the American people watch the television programs they like and refrain from watching programs they dislike, regardless of what program follows or precedes. The public is not too lazy to turn the dial; in fact, it takes delight in doing so. Our problem is to give him something to choose from when he does turn the dial.

In October 1955, for example, the $64,000 Question on CBS was phenomenally popular. In New York, Los Angeles, Chicago, Seattle, Atlanta, Houston, Providence, and Dayton its ratings ranged from 44.5 (in Houston) to 59.5 (in Chicago). However, the preceding program, featuring Red Skelton, had ratings ranging from 32.4 (in Dayton) down to 14 (in Houston). The highest rating in any of these cities for the show which followed the $64,000 Question was achieved in Atlanta, not by a CBS network program but by an independently produced film program. In other words, the audience didn't go for the network show, but the station put in a program the public wanted to watch, and they had the audience. I think if we feel that the American public will stay with a show because they liked the show which preceded it, we are underestimating their intelligence severely.

Any survey of audience habits, whether based on ratings or on interviews of a cross section of the public, would show that the primary factors determining the number of people who watch a television program are (1) the quality of the program; (2) the quality of programs on other television channels at the same time; and (3) the quality of available nontelevision entertainment at the same time. Not what went before or what went after.

Even if there were any validity to the audience-flow argument of the network companies, it is a principle that is economically and legally indefensible. It is essentially an argument that a network company can assure to an advertiser a larger audience than the program itself would ordinarily merit because it can capitalize on a captive audience obtained by the quality of a preceding program. On this theory, the time option becomes a device that enables the network companies to sell time for inferior programs, and to give these inferior programs an unfair competitive advantage over other programs exhibited at the same time, which the inferior program could not obtain on its own merits.

The must-buy

The usual justification offered for the must-buy policy is that the network can only retain its affiliations with television stations, and obtain sufficient revenue to produce high-quality programs, if each network program is distributed to all of the affiliated stations on the must-buy list, and the advertising sponsor pays for time on all such stations.

The short answer to this argument is that the American Broadcasting Co., which does not follow the must-buy policy, is a successful, and increasingly successful, network. It is therefore clear that the must-buy policy is not essential to the success of a network

It may be true that ABC is not yet as strong a network as NBC and CBS. It may also be true that the must-buy policy adds to the profits of NBC and CBS. But, if these are the facts, they prove merely that the must-buy policy is an exercise of monopoly power by the dominant network companies. It is not a policy that must be followed to achieve network success, but it is a policy that can be used by a strong network company to compel advertisers to purchase station time on stations that the advertisers do not want.

If further proof is needed, consider the situation in radio. If the must-buy policy is essential to achieve network success in television, the same must be true to achieve network success in radio. For some time, the NBC and CBS radio networks did follow the must-buy policy. In recent years, however, the number of radio stations in all markets has increased to a point where some advertisers prefer to deal with unaffiliated stations rather than to buy the entire NBC or CBS must-buy network. As a result, NBC and CBS have recently abandoned the must-buy policy for their radio networks.

Mr. Cox. Well, isn't it true, though, that perhaps having abandoned must-buy in radio networking, they are not doing so well in radio at the present time as they are in television, from the standpoint of revenue?

Mr. Moore. They are not doing as well, but I think primarily the reasons relate to the advent of television. When they were not doing as well, they had to give up the must-buy because they did not have the economic monopoly power to enforce it.

It is our view that the must-buy arrangement can only be used when it can be forced upon the advertiser. When advertisers were standing in line to buy radio time, the major networks had a must-buy policy, but when the advertisers began to look around to buy other media instead of network radio, the networks said "No more must-buy; we will be reasonable."

Mr. Cox. Also the cost of network programing is much greater in television than in radio, I would assume?

Mr. Moore. Well, I am not sure I get the connection there. The cost of television, of course, is a great deal higher and the cost of time is higher, and the must-buy arrangement can be imposed apparently by a network when it is a seller's market, when the customers are fighting to get time. That is when the conditions can be fairly stiff. That was true in radio when radio network time was in great demand. As radio network time became less valuable to the advertiser, the radio networks were no longer able economically to impose the must-buy clause upon the advertiser; so they gave it up.

Mr. Cox. Well, you would feel, would you, that even with very expensive network programing, if the network produces a program of a truly desirable type it will have no difficulty either in finding a single advertiser who wishes to advertise in these many markets or in putting together a combination of advertisers who would be willing to pay to get this out to a sufficiently broad coverage?

Mr. Moore. I would think that within the framework of those 18 advertisers I mentioned who were the top advertisers—General Motors, the great soap companies—there are more than enough big advertisers who will readily buy at the minimum of the must-buy list and buy fine programs like the NBC program, Wide Wide World, a wonderful show sponsored by General Motors. I think General Motors puts the program into a great many more markets than the must-buy list. We are concerned with the medium-sized advertiser, who might want to buy a less expensive program which would not require that big a clearance to support it. Or there are other ways that the problem can be solved. There is an exception to the must-buy list on the NBC network today, the Life of Reilly. An eastern oil company sponsors it and it does not have distribution in the West, and in that case NBC has made arrangements not to enforce the must-buy. But it is a good program and they sell the program on a syndicated market-by-market basis in the West.

Senator POTTER. Of course with your must-buy policy you are freezing out advertisers that would use the medium of television to advertise their products. You tie up 50 main markets in the country with 1 advertiser, and a smaller advertiser that might want to localize his product in certain regions of the country is frozen out. That is not true in radio. In radio he has ample facilities by which to advertise his product.

Mr. MOORE. There is great flexibility in radio, Mr. Chairman. I think that is the point inherent in what Mr. Weaver said. Television is so vital a necessity for selling goods that if we have a system that precludes competitive use of television—equal access to television by the medium-sized and smaller companies, as he put it—they will go out of business, literally go out of business. The must-buy is one of the barriers to effective competitive use by medium-sized advertisers. Yet, within the ranks of the big advertisers, in my opinion, if the networks are stimulated to produce more and more Wide Wide Worlds and Richard III's, and Disneylands, there will be plenty of good sponsors to take the full exposure voluntarily.

Now, as far as the stations themselves are concerned, the must-buy lists of NBC and CBS cover only about one-third of the stations with which each network has affiliation agreements. Most of these stations have a strategic position in a major market. More often than not, they would probably be taken by the network advertiser regardless of any must-buy policy. When they are not taken, their strategic position would enable them to sell the time to some other sponsor for possibly a better program and at a net rate higher than the network compensation. Thus, the must-buy policy is not a necessity for the 100-odd CBS and NBC stations covered. Furthermore, many of the 100-odd affiliates of each network that are not included in must-buy lists are operating profitably, even though advertisers are not compelled to buy their time in order to get on the network.

THE TIME OPTION AND MUST-BUY VIOLATE THE ANTITRUST LAWS

We now come to the legal side of this problem and the relevance of the antitrust laws. I was trained as an attorney and did practice, but I have not practiced law for many years. However, KTTV has consulted qualified counsel with antitrust experience, including Prof. Donald F. Turner, of the Harvard Law School, who is sitting here with me. We have been advised by our attorneys that in their opinion the time option and must-buy arrangements of the network companies are per se violations of the antitrust laws.

Our counsel have prepared a legal memorandum in support of their view that the time option and must-buy arrangements are illegal and that the chain broadcasting regulations should be amended to forbid their use. We are submitting this memorandum to the Network Study Committee of the FCC. I am also submitting copies of the memorandum to this committee as a supplement to my statement. Professor Turner will briefly summarize the memorandum, after I have concluded my statement, and he will, naturally, be glad to answer any questions.

There can, of course, be differences of opinion among attorneys on the legality of particular practices, particularly in the antitrust field. The network companies have competent counsel, and they may believe that their practices do not violate the antitrust laws. I think it would be helpful and enlightening if your committe would give copies of our memorandum to the network companies and invite them to submit the views of their own counsel on these issues.

THE REMEDY

To correct the restrictive and limiting effect of certain network agreements, we propose a system where the station is free to accept or reject a program purely on the basis of the station's judgment of the program's merit. The station, in turn, will be quickly receptive to the wishes of the public.

This result can be accomplished by three simple amendments to the existing regulations, which we are proposing to the Network Study Committee of the FCC.

First: The regulations should be amended to provide that the placement of a program or the purchase of time on one station may not be made contingent on the placement of a program or the purchase of time on another station. The effect of this amendment would be to outlaw the must-buy practice and to eliminate its many harmful effects.

Senator Bricker. Do you think that is within the power of the Commission at the present time without amendment of the law?

Mr. Moore. Senator Bricker, it appears that the Commission has regulatory power over the kind of affiliation agreements a station may make. Those are pretty well covered in the existing regulations. I would think that if there was any agreement undertaken between a station and a network for this package deal, this must-buy deal, it would come within the discretion of the Commission to forbid that.

Senator Bricker. And the Commission is bound, of course, with full knowledge of the antitrust laws, to follow their provisions?

Mr. Moore. Yes, indeed, sir. As you know, the antitrust laws are made specifically applicable to broadcasting by the language of the act.

Second: The regulations should be amended to provide that no licensee may enter into any agreement or understanding, express or implied, whereby the broadcast of any program or series of programs is made contingent upon the broadcast of any other program or series of programs. The effect of this amendment would be to eliminate the time options and to outlaw the practices of block booking, blind selling, and exclusive dealing.

Third: In cases where a station fills a high proportion of its program schedule with programs of a single network source, it might be difficult from a practical standpoint to determine whether this schedule was a result of any exclusive dealing arrangement or understanding. To solve this problem, we suggest that a third amendment be added. This amendment would provide that, if during any 52-week period an average of more than 75 percent of a station's schedule during any of 4 segments of the broadcast day consists of programs from a single outside source—and we are not limiting it to networks—or if during a 52-week period the station's schedule between 7:30 p. m. to 10:30 p. m. averages more than 75 percent of programs from any single outside source, this fact shall constitute prima facie evidence of exclusive dealing. In such event, the station would be given an opportunity to rebut the presumption of exclusive dealing, and no penalty, such as suspension or revocation of the license, could be imposed until after hearing. The amendment could also be worded in a way which would afford appropriate exclusions for special events such as national political conventions, so the station would not be penalized by carrying that type of program.

We doubt that a network would assert the right to program a yearly average of more than 75 percent of the affiliated station's schedule during these particular time segments. Such a contention would not be consistent with the public interest and with the station's nondelegable responsibility to serve its own community. We also believe that a great many affiliated stations would welcome the opportunity to have 25 percent of their prime evening viewing time free of network-controlled programs, so that they could use this desirable time to carry local or syndicated programs sponsored by local, regional, or national advertisers—programs which the station itself felt were the programs it wanted to present to the area which it served.

I am attaching to my statement a brief summary of these three proposed amendments to the Chain Broadcasting Regulations.

Mr. Cox. I take it this third one of creating this presumption of exclusive dealing is to cover the situation where, with or without a legal basis for insisting upon time clearance, there might be a danger that a network would overpersuade its affiliates to carry its programs in any event?

Mr. Moore. Exactly, Mr. Cox. Theoretically, a station could argue that it just so happened that there wasn't a single other program other than a program of his network which he thought was suitable for his community. That becomes a matter of discretion. There is a point, though, where it sounds silly. We think 75 percent is a pretty good cutoff point. If he programs more than 75 percent, it is a fair inference that there must be some understanding that he accept that much or lose his affiliation. He could rebut it, though.

Senator Potter. Certainly if independent stations control 100 percent of their time, the affiliated stations could find programs for 25 percent of their time?

Mr. Moore. I couldn't agree with you more, Senator Potter. I think 25 percent is a very modest reservation, but it certainly gives the station, and all of the people I am talking about, including the friendly public, a better crack at seeing better television.

Mr. Cox. And you would feel, would you, that that would give enough incentive to the continued production of independent programs, that you would have competition with network programs, that there would be the possibility for independent stations to find suitable programing, and so on?

Mr. MOORE. I think so, Mr. Cox, because bear in mind that along with the 75 percent limitation, the repeal of block booking or time option would become effective. If a very fine nonnetwork program comes up, the network has an incentive to clear up to 75 percent, so they should do their darnedest to keep improving their programs and win clearance, because if they don't, other sources of talent may come in and the network could end up with less than 75 percent. So within that area we have a constant healthy competition where the only test is who delivers the best program, and I think that is a pretty fine way to run our industry.

Incidentally, I should point out that this is no straightjacket. It doesn't mean 75 percent every night. It is a yearly average. A station could be heavy on network programing on a particular night, if their programs were the best, and have local programing more than 25 percent on another night. It gives tremendous flexibility to the network, the station, and the advertiser, and more choice to the public.

CONCLUSION

Now, in conclusion, we believe that an independent television station can get along without any artificial aid if, as Dr. Stanton said, it possesses the capacity for "self-reliance, good management, and plain hard work." We do not come here seeking an arrangement whereby KTTV be given access to network programs. We do object, however, to restrictive agreements imposed by the network companies on their affiliated stations and on advertisers, which have the effect of preventing us from acquiring good nonnetwork programs.

Senator BRICKER. I would like to have Professor Turner give attention, when he presents his paper this afternoon, or when he does, to the question of the public utility aspects of the broadcasting business and the network operations. Certainly if there is anything in our country that ought to be charged with the public interest it is the television industry. They are, assuming that the local broadcasting stations are of a public character and charged with a public interest, and therefore subject to regulation.

They are dependent, I think, as has been shown here, upon the programing by the networks, by the overall power which they have, economically, over industry and over their subsidiary stations, affiliated stations, as well as indirectly over the independent stations. Now, if you are going to charge them with a public interest, I do not see why the ordinary public utility rules should not apply to that, just the same as it does to any other public utility. Here is something in the nature of a natural monopoly. They are using something of great public interest, the airwaves. They are dealing with public opinion also. They are dealing with the economic aspects of all industry of our country. They can make or break any industry. They can make or break any station. The power is so great that I think if ever there were a duty for the Government to exercise public utility regulation—and it is an essential responsibility of the Federal Government in this case because of crossing State lines—it should be in this industry. I can't see any other answer to it. You ought to have the same opportunity as any other station to get a network program.

I would like to have you give some consideration to that when you make your presentation.

Mr. TURNER. I would be happy to do so, sir.

Mr. MOORE. I would like to make one comment now, Senator Bricker. We thoroughly agree that the television industry is affected with a public interest. Since we have a scarcity medium, even with more channels, there will still be a limit on competitive opportunity. The essence, to me, of what the Government, whether it is Congress or an administrative body, should provide to this public industry is the absolute assurance that it is competitively open to all, and that no special monopoly controls it.

Senator BRICKER. That is certainly what I was driving at.

Mr. MOORE. Right. We believe that every segment of the television industry, including the network companies, will get along best if the industry is freed from restrictive agreements which compel stations to accept programs, and compel advertisers to accept station time, that might not be accepted on their own merit.

I am sure we all have enough faith in the resourcefulness and ability of the network companies to believe that they can hold their own under a system of free competition.

Senator BRICKER. If they can't, there is no place in our American society, if we are to remain a free society, for that kind of thing. Isn't that the protest?

Mr. MOORE. Yes, indeed. As long as we would permit agreements which allow one program to reach the people which might not be the best program, where the better program is prevented by those agreements from reaching the people, we have a situation which will never permit the true use of this medium, in my opinion, the true development of it. I guess we have learned by now that the way this country develops in all its areas of activity is by the stimulus and inventiveness of people who compete with each other to be there first and best, and that is what we at KTTV are looking for to come to our television industry.

We should also have enough faith in the principles of free competition to believe that if network programs and individually produced programs can compete fairly with each other, the quality of both will improve. As overall program quality improves, television's audiences, and advertising revenues which make great television possible, will both increase. The full play of competitive forces is bound to benefit the entire television industry and its most important customer, the American public.

Gentlemen, you have been very indulgent in permitting me to make this long statement. It represents a point of view to which we have given great thought for 7 years, and we from California so sincerely appreciate the time you have given us.

Senator POTTER. Mr. Moore, I want to commend you for your statement. I think it is one of the best statements that has been presented to the committee. It reflects a great deal of thoughtfulness on your part, and many of the points that you have raised here I know the committee will give serious consideration to. I believe at this time we will have Dr. Turner's brief inserted in the record, following your statement, and also your appendix A.

(The documents above referred to are as follows:)

Appendix A to Statement of Richard A. Moore

RELIEF NEEDED TO PROVIDE FAIR COMPETITIVE OPPORTUNITIES TO INDEPENDENT TELEVISION STATIONS AND INDEPENDENT PRODUCERS OF TELEVISION PROGRAMS

It is essential, in order that the television industry may be operated free of restraints that violate the antitrust laws and the competitive principles of the Communications Act, that television stations and program producers be given free and direct access to each other without being forced to deal through the network companies.

The first step in this direction is to provide the following items of relief:

1. Prohibit television stations from granting time options to network companies;
2. Abolish the must-buy policy followed by NBC and CBS; and
3. Require television stations not to accept programs exclusively from one network company or any other single program source, particularly during the prime viewing hours.

These forms of relief can be granted by amendments of the Federal Communications Commission chain-broadcasting regulations as follows:

1. Prohibition of time options

To abolish the time option, section 3.658 (d) of the regulations should be amended to forbid any form of option under which a station agrees in advance to clear time for a network program or in any way to permit a network company to clear time on terms more favorable than those granted or offered to any other source of programs.

The Commission's authority to issue such a regulation is clear. Language similar to that of section 3.104 of the regulations proposed in the May 1941 report on chain broadcasting would be appropriate. This language reads as follows:

"No license shall be granted to a [television] broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders the station from scheduling programs before the network finally agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time."

2. Abolition of must-buy policy

To end the must-buy policy of CBS and NBC, a new subsection should be added to section 3.658 prohibiting a station from being a party to direct or indirect arrangements with other stations, or with an affiliated network company, under which the station, or the network company on its behalf, refuses to clear time for an advertiser unless the advertiser agrees to purchase time on one or more separately owned stations.

The Commission clearly has power to impose such a regulation. The Commission has authority to forbid the inclusion of particular terms in affiliation agreements between licensed stations and network companies, and has exercised this authority, in section 3.658 of the existing regulations, to prohibit six different types of provisions in affiliation agreements. The must-buy policies of NBC and CBS, as presently applied, are clearly based on an express or implied understanding between the network company and the affiliated stations of the must-buy list that forms a part of the affiliation arrangements between them. The making of such arrangements can therefore be prohibited by the Commission.

The proposed new subsection of section 3.658 might read as follows:

"No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with one or more other television broadcast stations or with a network organization, under which such station (or the network organization on such station's behalf) refuses to clear time for a sponsored television program unless the sponsor agrees to purchase time for the same program on one or more separately owned television broadcast stations."

3. Prevention of exclusive dealing with a single program source

To prohibit exclusive dealing relationships between a television station and any outside programing source, section 3.658 (a) of the regulations, which now forbids a station to enter into arrangements with one network company that directly or indirectly prevent the station from accepting programs of other network companies, should be expanded so as to forbid a station from entering into any direct or indirect exclusive dealing arrangement with any single outside program source. The section should also state that it is prima facie evidence of an exclusive dealing arrangement for a station, during any segment of the broadcast day, or during the prime viewing hours of 7: 30 to 10: 30 p. m., to devote more than 75 percent of its time to programs from a single program source.

In order to give the station flexibility in accepting unusually good or unusually important programs from a single outside source, the percentage could be computed on an average basis during each 52-week period, and special exceptions could be made for major public events such as political conventions.

The purpose of this regulation would be to assure reasonable access to the market for all program sources by preventing the existing economic power of the network companies, or the future economic power of any other outside program source, from being used to compel stations to accept programs on an exclusive dealing basis from a single outside source.

The 75-percent prima facie evidence test would be based on a presumption that when a station takes more than this percentage of programs from a single source over a 52-week period, it is responding to excessive economic pressure from this source and is abdicating its local responsibility for program selection. The presumption would be rebuttable, and the Commission would not have authority to suspend or revoke a station's license until after a full hearing, at which the station has the opportunity to prove that it is selecting each individual program on its competitive merits, as compared to the merits of other programs available for the same time period, and is not abdicating its local responsibility by entering into a direct or indirect exclusive dealing arrangement or course of conduct with a single outside program source.

There are a number of statutory and regulatory precedents for fixing a particular percentage point as the place where the burden of proof shifts from one party to the other. For example, section 9 of the Investment Company Act states that "control" shall be presumed when any person owns more than 25 percent of a company's voting securities, but that the presumption may be rebutted by evidence. And section 2 of the Public Utility Holding Company Act states in effect that ownership of 10 percent of the stock of a public-utility company shall make the owning company a "holding company," unless the owning company presents proof of other circumstances establishing that it is not a "holding company." And 75 percent appears to be a reasonable point at which to shift the burden of proof on exclusive dealing since there is good judicial authority that it constitutes exclusive dealing for a buyer to follow the practice of purchasing 80 percent of its requirements from a single supplier (*United States* v. *Richfield Oil Corp.*, 99 F. Supp. 280, 295 (S. D. Cal., 1951, affirmed 343 U. S. 922 (1952)).

The proposed amendment of section 3.658 (a) might read as follows:

"No license shall be granted to a television broadcast station having any exclusive contract, arrangement, or understanding, express or implied, with a network organization or other producer or distributor of programs under which the station is pevented or hindered from, or penalized for, broadcasting the programs of any network organization or other producer or distributor of programs. Proof that a station, during any segment of the broadcast day (8 a. m. to 1 p. m.; 1 p. m. to 6 p. m.; 6 p. m. to 11 p. m.; 11 p. m. to 8 a. m.) or during the period 7: 30 p. m. to 10: 30 p. m., has devoted an average of more than 75 percent of its time over a calendar year to broadcasting the programs of any network organization or other producer or distributor of programs shall be prima facie evidence of the existence of a contract, arrangement, or understanding, express or implied, prohibited by this subsection In computing this percentage no account shall be taken of time devoted to broadcasts of public events, news summaries, and major sports events, regardless of the identity of the program producer or distributor."

MEMORANDUM CONCERNING THE NEED FOR AMENDING THE FCC'S CHAIN BROADCASTING REGULATIONS TO PREVENT VIOLATIONS OF ANTITRUST LAW IN THE TELEVISION INDUSTRY

Supplement to statement of Richard A. Moore, president, KTTV, Inc., before Senate Committee on Interstate Commerce, March 26, 1956

INTRODUCTION

Summary of the problem

1. Television broadcasting is carried on under subpart E of the Federal Communications Commission's Rules Governing Radio Broadcast Services (47 C. F. R., ch. 1, pt. 3). These rules include sections known as the chain broadcasting regulations, which state that a station license or renewal will be denied if certain arrangements exist between the station and a network with which it is affiliated, but will not be denied because certain other arrangements exist between the station and the network.

2. The chain broadcasting regulations applicable to television (sec. 3.658) are the same as the chain broadcasting regulations applicable to AM radio broadcasting (secs. 3.101–3.108). These regulations for AM radio were issued by the FCC in 1941, long before television reached full development, and have been amended since then only in minor respects.

3. Radio stations in any area are plentiful, while TV stations in any area are scarce. Whereas a great many radio stations with substantial audiences throughout the country are not affiliated with networks, most of the TV stations with substantial audiences are affiliated with 1 or more of the 3 national television networks.

4. There is increasing evidence that under the mantle of the chain broadcasting regulations, the three national network companies have worked out contractual arrangements and understandings with separately owned affiliated stations under which the network companies select and distribute most of the TV programs broadcast by most of the separately owned TV stations during the prime viewing hours of the day and night.

5. This domination has had damaging and destructive effects on other segments of the industry, particularly on

(*a*) the independent producers of television programs, who can effectively achieve national or regional distribution of their programs only by dealing with the network companies, which produce programs of their own and usually give their own programs preference in the competition for advertising sponsorship;

(*b*) the advertisers, who can generally purchase prime station time on a national or regional basis only by dealing with a network company and therefore must buy the programs selected by the network company, at the times selected by the network company, over the stations selected by the network company, and consequently, even though they may prefer a different program at a different time over a different list of stations, have no way to make their economic choice effective;

(*c*) the independent stations not affiliated with any network, who, because the independent producers must distribute their programs through the networks to obtain national distribution, are restrained from buying the desirable programs and therefore restrained from selling program time to national and regional advertisers.

6. In short, the independent program producer must dispose of his output primarily through the very network companies that are competing with him in program production, the advertiser must buy TV advertising time primarily from the network companies, and the independent station, the independent program producer and the advertiser are deprived of any effective means of arranging national or regional distribution by dealing with each other.

7. As a further result, the public is steadily and increasingly being denied access during the prime viewing hours to any but network distributed programs, selected by the heads of the three network companies in New York.

Questions presented

1. Does the network dominance described above result from practices and agreements that are in restraint of trade and violate the Federal antitrust laws?

2. Does the network dominance achieved by these practices constitute an illegal attempt to monopolize in violation of the antitrust laws?

3. Do the 1941-model chain broadcasting regulations, originally designed for radio broadcasting, adequately protect against such violations?

4. Do the regulations otherwise adequately protect the public interest in free competition in television broadcasting in 1956?

5. If the answer to questions 3 or 4 is in the negative, what changes in the chain broadcasting regulations should be made?

Summary of conclusions

1. The Communications Act makes interstate radio and television communications specifically subject to all the antitrust laws; and in addition, free competition in radio and television is a basic objective of the act.

2. The structure and practices of the television broadcasting industry are similar in all essential respects to the former structure and practices of the motion-picture industry that the Supreme Court ruled in 1948 to violate the antitrust laws.

(*a*) Just as the major movie firms produced or controlled the bulk of feature motion pictures, the three major network companies produce or control the bulk of feature television programs.

(*b*) Just as the major movie firms owned or had affiliation agreements with the principal movie theaters throughout the country, the network companies own or have affiliation agreements with the principal TV stations throughout the country.

(*c*) Just as the movie firms pumped their pictures through the theaters on a block booking and blind selling basis (*United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131), the network companies block book and blind sell their programs through their affiliated stations under time option contracts requiring the stations to clear the prime viewing hours of the day for network programs only.

(*d*) Just as the strong motion picture theater chains illegally compelled independent distributors to book their weak theaters as a condition of booking their strong theaters, to the detriment of the independent competitors of the weak theaters in the chain (*United States* v. *Griffith*, 334 U. S. 100), the network companies illegally compel advertisers to purchase time on a must-buy list that includes both strong and weak stations, to the detriment of the independent stations competing with the weaker network stations, and of advertisers who cannot afford to pay for such a large package. Furthermore, the must-buy policy is a collective refusal to deal by the network company and its affiliates, and is illegal under the rule of *United States* v. *First National Pictures, Inc.* (282 U. S. 44).

(*e*) Just as the combined control of the major motion picture firms over movies and theaters deprived the independent movie producer and the independent theater owner of a fair opportunity to compete with the major producers and their affiliated theater chains (*United States* v. *Paramount Pictures, Inc, supra*), the combined network control over TV programs and stations deprives independent TV stations and independent TV program producers of a fair opportunity to compete with the major network companies and their affiliated stations.

3. No pertinent fact in the television industry saves the present TV network arrangements from violating the antitrust laws, in the same way that the former structure of the motion picture industry was held to violate the antitrust laws. The time-option and must-buy arrangements between network companies and affiliated stations are clearly illegal restraints of trade under section 1 of the Sherman Act. Through the use of these illegal practices, the network companies have achieved an illegal monopolization of trade or commerce under section 2 of the Sherman Act.

4. Whether or not these anticompetitive practices violate the antitrust laws, the Federal Communications Commission has the authority to prevent them in order to carry out its statutory duty to protect the public interest in competitive TV broadcasting.

5. Since the anticompetitive situation described above has grown up under the 1941 AM radio-type chain broadcasting regulations now applicable to TV stations, it is obvious that these regulations no longer protect the public interest, convenience, and necessity in free competitive television broadcasting. These regulations neither authorize nor forbid the illegal must-buy arrangements now in force. They specifically sanction an unreasonably extensive use of time-option agreements between network companies and their affiliates, and while they do not permit the option to be enforced against the programs of other

networks, they do permit it to be enforced against any producer, distributor, or sponsor of programs for national, regional, or local broadcasting.

6. The Federal Communications Commission should therefore terminate the anticompetitive practices described above, by issuing rules requiring network-owned and network-affiliated TV stations not to follow these practices, and by requiring such stations to follow other practices that will promote free competition in television broadcasting.

7. The remedies required to restore effective competition are essentially the same as those applied by the courts to the movie industry, namely:

(*a*) The elimination or restriction of all block booking and must-buy arrangements, such as option time provisions in network-station contracts and minimum lists of network stations that must be purchased by advertisers, and

(*b*) A prohibition of any type of exclusive dealing arrangement between a network company and independently owned affiliated stations that prevents the station from acquiring programs from other sources, particularly for showing during prime viewing time.

Proposed methods of applying these remedies appear in section VIII of this memorandum.

Discussion

I. STRUCTURE OF TELEVISION INDUSTRY

The television industry consists basically of four segments:

1. Stations which broadcast programs and sell to advertisers the right to intersperse commercials,
2. Producers of the programs,
3. Distributors of programs, and
4. Advertisers who pay for station time during or between television programs, so that their commercials can be seen and heard by the consuming public.

Some organizations engage in activities that cover more than one segment of the industry. The network companies, for example, are actively engaged in the operation of stations, the sale of time, and the production and distribution of programs.

In addition to the four basic segments, there are various types of middlemen who perform specialized liaison service among the basic segments, such as national spot representatives, syndicators, station representatives, advertising agencies, etc.

The commodity or service that a television station sells is its circulation—the people whom it persuades to tune their television sets to the channel on which the station is broadcasting. The size of the listening audience of a station depends ultimately on the station's ability to broadcast programs that interest the people who have access to television sets. The income of a television station depends on the station's ability to persuade advertisers that enough potential customers tune in to the station's signal, so that it is profitable for the advertisers to buy time on the station for sponsorship of a program or for a spot announcement.

The advertiser is interested in having his appeal to the consumer reach as many eyes and ears as possible at the lowest possible cost. One measurement of circulation is in terms of cost per thousand—the rate charged for time by the station divided by the number of television sets in the market area in which the station's signal is received. The effective circulation for a particular program is measured by the percentage of the total television sets in the reception area that are actually tuned in at the time the program is on the air. This percentage figure is known as a rating.

The greatest potential audience exists at certain hours—principally the prime viewing time beginning with the return of children from school, the return of the worker from his job, and the end of chores for the housekeeper, and ending with bedtime. But at all hours, the income of the station, derived from sale of time to advertisers, depends on the quality of its programs, compared with the quality of competing television programs and programs offered by competing media such as radio, motion pictures, and sports events.

Within the framework of these general marketing principles the television industry has developed a complex structure, much of it patterned on the pre-existing radio industry and some of it distorted by technical limitations, such as the shortage of broadcasting channels. The basic unit, both practically and legally, is the local station. Evaluation of television business practices and official regulations must begin with consideration of their effect on this basic unit and its ability to serve the public.

Television station

A television station consists fundamentally of physical facilities—studio, cameras, and transmission devices, and a staff consisting of technicians, program talent, program producers, sales representatives and executives.

Television stations may be owned by individuals, partnerships or corporations. They operate under licenses granted to their owners by the Federal Communications Commission for 3-year periods under section 307 of the Communications Act of 1934 (47 U. S. C, sec. 307). Each station operates on a 6 megacycle channel or wavelength. During the developmental period shortly before World War II and in the first few years after the end of the war, all stations were licensed to broadcast in the very-high-frequency (VHF) band of the radio spectrum. Beginning in 1952, licenses were granted for operation in the ultra-high-frequency (UHF) band. There are now 82 channels, of which 12 (Nos. 2–13) are in the VHF band and 70 (Nos. 14–83) are in the UHF band.

Licenses are granted for TV stations under an allocation of channels to particular areas made by the FCC in April 1952. At that time there were 108 television stations in operation, all of them VHF. As of November 5, 1955, there were 453 stations on the air, of which 346 were VHF stations and 107 were UHF stations: 437 were commercial and 16 were noncommercial.

It has been estimated that about 38 million homes in the United States have television sets, of which about 7,500,000 are equipped to receive UHF.

Under the Commission's allocation plan, New York and Los Angeles have 7 commercial VHF assignments and 1 or more UHF commercial assignments. Chicago, San Francisco-Oakland, Washington, Minneapolis-St. Paul, and Denver have 4 VHF and 1 or more UHF. Detroit (counting a channel in Windsor, Ontario), Dallas-Fort Worth, San Diego (counting 2 channels in Tia Juana, Mexico) and Phoenix (counting a channel in Mesa) also have 4 commercial VHF assignments. Of the top 100 markets, there are thus only 11 with 4 or more VHF assignments and 33 with 3 or more VHF assignments.

In areas where there are two or more VHF stations, UHF stations are finding it difficult to survive because the public is not buying UHF converters for existing VHF sets, or new television sets equipped for UHF reception. The result is that although VHF and UHF channels are technically available in sufficient quantity to permit a broad base of competitive stations, there are in practice severe limitations in many areas on the number of stations that the existing sets in the area are equipped to watch.

Most TV stations do not operate as tndependent units. Many are under common ownership, and most are affiliated by contract with one or more network organizations.

Television networks

The term "network" is not defined in the Communications Act of 1934 nor in the regulations of the Federal Communications Commission. The act uses the term "chain broadcasting" and defines it in section 3 (p) as the "simultaneous broadcasting of an identical program by two or more connected stations." The rules of the FCC use the term "network organization" (see, e. g., sec. 3.658), but do not define it except by reference to the Commission's 1941 report on chain broadcasting which, in turn, described but did not define "national" and "regional" "network organizations." The 1941 report was confined to radio network practices, because at that time television was still in the experimental stage. In proposed legislation intended to authorize the Commission to regulate networks directly (S. 825, 84th Cong., for example), the term "network" has been defined as "any person who operates a system which, for the purpose of simultaneous or delayed broadcasting of identical programs, in any way interconnects or affiliates any two or more broadcasting stations."

The term "network" or "network organization" is given meaning by description of the organizations generally recognized as being national network companies. In the television field there are three: National Broadcasting Co. (NBC), Columbia Broadcasting System (CBS), and American Broadcasting System-United Paramount (ABC). Each of these three also has a radio network. A fourth television network, Alan B. DuMont Laboratories, Inc., in effect ceased operations as a network in the summer of 1955.

NBC is a wholly owned subsidiary of Radio Corporation of America. It has operated a nationwide radio network since 1923, and owns and operates radio stations in New York, Chicago, San Francisco, Cleveland, and Washington. ABC, which has operated since 1943, when it took over NBC's "Blue" radio network, owns radio stations in New York, Chicago, San Francisco, Los Angeles, and Detroit. CBS also operates a nationwide radio network, and owns radio stations in New York, Chicago, Los Angeles, San Francisco, Boston, and St. Louis.

The FCC rules place a ceiling on the number of stations that may be owned, operated, or controlled by any one person. Section 3.636 of the FCC rules, as amended effective October 22, 1954, in effect permits common ownership of 7 TV stations of which not more than 5 may be in the VHF band. NBC owns and operates VHF television stations in New York, Chicago, Los Angeles, Philadelphia, and Washington, and a UHF station in Buffalo. CBS owns VHF stations in New York, Chicago, and Los Angeles, and a UHF station in Milwaukee. ABC owns VHF stations in New York, Chicago, Detroit, Los Angeles, and San Francisco. If pending applications are successful, the network companies will have the following additional owned and operated UHF stations: CBS in Hartford, Conn.; NBC in New Britain, Conn.

In addition to the stations it owns, each of the three TV network companies enters into affiliation agreements with separately owned stations throughout the country. The affiliation agreements differ in some respects depending on the network, the market in which the station is located, and other factors. In general, the affiliation agreements provide for the terms under which the network companies will furnish to the station and the station will broadcast programs originated by the network. In some cases, particularly in a community where there are less than 3 stations on the air, the station may have affiliation agreements with more than 1 network.

Each network has between 175 and 210 affiliates. About 70 stations are affiliated solely with NBC, 73 solely with CBS, and 57 solely with ABC.

Of the approximately 450 stations on the air, 32 are independent, that is, not affiliated with any of the 3 network companies. Of the 32 independent stations, 18 are in the VHF band and 14 are in the UHF band.

Program production and distribution

Television programs are broadcast either live or on film. If on film, the program is broadcast for a station's studio. If live, it may be broadcast from a studio or from a location away from the studio.

A program that is on film can be distributed by mail or express to a multiplicity of stations for simultaneous or nonsimultaneous broadcast. For simultaneous broadcast of a live program on a multiplicity of stations it is necessary to use interconnecting cable or microwave facilities leased from the American Telephone & Telegraph Co. A program on film can also be aired simultaneously over several stations by means of the cable. A print of a program originally broadcast live can be made by kinescope recording, for later broadcast over a network or part of a network or by individual stations.

At the local level, a station can, and does, produce programs. Such locally originated programs may be produced and broadcast either live or on film, but normally a program produced by the staff or a station is performed live. A station may also broadcast a program produced, either live or on film, at the local level by an independent producer, such as a local advertising agency or an independent program "packager."

At the national level, the chief sources of programs are the national network companies, the advertising agencies retained by national advertisers, the established motion-picture companies, and independent TV producers. Such programs are distributed either by the network companies or by the so-called syndicators or by the advertiser through its advertising agency.

Programs supplied by syndicators are usually on film and are distributed by mail or express to various stations for broadcast at a time or times mutually agreed upon, or at a time selected by the station. The syndicators usually deal in programs produced by themselves or by a film company with which they are affiliated. All three network companies also engage in syndication, although to a very minor degree as compared to their network activity.

Programs on film have become an increasingly important factor in television. In the developmental period, Hollywood films originally produced for motion-picture exhibition were used on television to keep the station on the air in the absence of specialized TV-program material. Such programs could be purchased for broadcast by networks or by the local stations themselves. As the industry developed, specialized television film-production companies prospered, each producing one or more series of programs, and marketing the product either to network companies or network advertisers, or through syndicators to regional and local advertisers or to local stations. In recent years, the established Hollywood motion-picture companies have begun to make available their quality films and have entered the field of producing specialized television film programs.

Television programs produced by the networks or by advertising agencies are usually performed live, originating in studios operated by the network, and are distributed to the network's other owned stations and affiliated stations by coaxial cable or microwave relay. But an increasing number of network programs are on film; in such cases the basic distribution over a multiplicity of stations by means of the interconnecting cable may be supplemented by delivery of prints to stations not connected to the cable. Programs originally performed live are distributed to some stations by a kinescope film, transmitted by cable or microwave or simply mailed to the station.

Aside from the use of kinescope recordings, the degree to which film programs are used on the networks and their affiliates is shown by a survey published in the November 21, 1955, issue of Broadcasting Telecasting. This survey shows that during the week of October 9–15, 1955, 22.3 percent of the network companies' total programing was on film. Of the total broadcast hours of interconnected network affiliates, 31 percent were devoted to nonnetwork film programs in addition to the substantial percentage of network film programs. An independent survey for the week ending March 24, 1956, shows that during the prime evening hours between 7:30 p. m. and 10:30 p. m., the programs originated by the three network companies, according to their schedules, divided themselves between film and live as follows:

[Percent]

Network	Film	Live
NBC	33	67
CBS	57	43
ABC	50	50

Statistics on the percentage of network-distributed programs which are produced or controlled by the networks, as against the percentage produced by independent program producers and not controlled by the network, are difficult to obtain. According to an article in the October 31, 1955 issue of Sponsor, somewhat over 50 percent of the programs distributed by each network are network produced or network controlled.

Whatever the source of a program and regardless of who controls it and whether it is broadcast over one station only or over many stations simultaneously or over many stations separately, it may be sustaining (unsponsored) or sponsored by one or more advertisers, or unsponsored but interrupted by spot advertising announcements.

Advertisers

Television advertisers fall into three general categories: Local, regional, and national. All of them are buying time on local television stations. Each kind of advertiser may purchase time for sponsorship of a program so that his advertising message is broadcast at the beginning, in the middle and at the end of the program, or may purchase time for spot announcements unassociated with any particular program. Each kind of advertiser may buy time to sponsor a program already being broadcast or already prepared for broadcast, or may buy the time only and supply his own program. He may buy the time or the program or both through a network or through a film syndicator or directly from the station. Where an advertiser buys time through a network, there has occurred a network sale. If a national advertiser buys time directly from the station or through a film syndicator and not through a network, either for a commercial or for a program, there has occurred a national spot sale.

Most stations have a sales staff for solicitation of advertisers at the local level. For solicitation of national sales, most stations employ national spot representatives. The networks act as national spot representatives for the stations they own and operate; CBS and NBC also act as national spot representatives for many of their affiliated stations.

In the case of a network sale, the network company is acting as sales agent for its affiliated stations, and is empowered by each station to sell the station's time at an agreed price.

An advertiser wishing to buy network time from NBC or CBS is required to buy time over the stations owned and operated by the network and a further group of so-called basic affiliates in the fifty-odd major markets in the country. The advertiser may, in addition, designate "optional affiliates" in other market areas. The basic network which an advertiser is required to take is often called the must-buy. ABC does not follow the must-buy policy.

Strategic position of networks

The three network companies own only 15 of the 450 TV stations in the country. They produce or control about 50 percent of the television programs they broadcast during the day. Yet they have achieved a strategic position of virtually complete control over the distribution and broadcasting of TV programs on a national basis during the prime viewing hours. Advertisers, program producers, and program distributors find it virtually impossible to achieve national distribution of a television program during the prime viewing hours except by dealing with 1 of the 3 network companies.

Evidence of the strength of the networks is shown by the extent to which prime evening viewing hours are devoted to network programs. The prime viewing hours, when the audience is greatest and advertisers can be charged the maximum rates, are 7:30 p. m. to 10:30 p. m. The two strongest networks, CBS and NBC, have virtually monopolized these hours on the stations which they own and operate or with which they are affiliated in the principal markets.

To demonstrate this network domination of prime viewing time, an independent survey was made of the programing, during the typical week of February 19, 1956, on the NBC and CBS stations in the following 40 principal markets:

New York	Kansas City	Sacramento
Chicago	Seattle	Nashville
Los Angeles	Atlanta	Norfolk
Philadelphia	Portland, Oreg.	Providence
Detroit	Dallas	Salt Lake City
Boston	San Diego	Tulsa
San Francisco	Denver	Davenport
St. Louis	Louisville	Columbus
Washington	San Antonio	Dayton
Baltimore	Tampa	Cincinnati
Minneapolis	Rochester	Cleveland
Buffalo	Omaha	Birmingham
Houston	Syracuse	
Milwaukee	Oklahoma City	

In each of these markets each CBS and NBC station is on the must-buy list of its network. The 40 cities are estimated to have 71.5 percent of all the television sets in the United States. There are 42 half hours per week in the time segment 7:30 p. m. to 10:30 p. m., eastern standard time. For the 80 CBS and NBC stations in the 40 principal markets, a total of 3,360 half hours per week are available in the 7:30 to 10:30 p. m. period. During the week of February 19, 1956, CBS and NBC programs were accepted in 3,150 of the 3,360 half hours at the time ordered by the network. This is a saturation of 93.7 percent. Adding 85 half hours of programs cleared on a delayed basis, the percentage of saturation rises to 96.3 percent. There were also 157 additional half hours representing the overlap of network programs into time before 7:30 p. m. or after 10:30 p. m. These figures do not include network programs which began and ended immediately prior to 7:30 p. m. or immediately after 10:30 p. m.

This saturation by the network companies of the prime evening hours on stations in the principal markets throughout the country is the best evidence of the strategic control by the network companies of the national television market. This strategic control is achieved by means of affiliation agreements between the network companies and the individual, separately owned stations throughout the country. Under these agreements, the individual affiliated stations obtain a first call on the right to broadcast a network-distributed program in the station's community. In exchange, the individual station surrenders its own freedom of action to sell broadcast time during the prime viewing hours, and gives the network company an irrevocable option to sell the individual station's broadcast time, subject to certain requirements of notice and the station's limited and rarely exercised right to reject a particular network-distributed program. And finally, by specific understanding between the major network companies and their affiliates, the two most powerful network companies sell the time of the principal affiliates on a must-buy basis, under which the networks and affiliates agree in effect that neither the network nor any station will deal with the advertiser unless the advertiser buys time on all fifty-odd stations in the basic affiliated group.

The legality of the restraints thus agreed on under network affiliation arrangements has never been considered by a court. However, the Federal Communications Commission has issued regulations stating that no license shall be granted to a television broadcast station which restricts its freedom of action by an agreement or understanding with a network that goes beyond certain specified limits. These limits are set forth in the so-called chain broadcasting regulations of the Commission.

II. THE CHAIN BROADCASTING REGULATIONS

The Federal Communications Commission has no direct control over a network as such, but only over the stations forming the network. It is authorized by the act (sec. 303 (i)) to make "special regulations applicable to radio stations engaged in chain broadcasting." Its control stems basically from its power to grant, withhold or revoke station licenses, and its chain broadcasting regulations take the form of rules it announces it will observe in station licensing.

Provisions of the regulations

The chain broadcasting regulations applicable to television, identical with those applicable to radio, appear in section 3.658 of the FCC Rules Governing Radio Broadcast Services. They provide that no license shall be granted to a television station which has any affiliation contract, arrangement, or understanding, express or implied, with a network organization under which—

1. The affiliate station is prevented or hindered from, or penalized for, broadcasting the programs of any other network organization;
2. Another station located in the same community is prevented or hindered from broadcasting the network's programs not taken by the affiliate, or another station located in a different community is prevented or hindered from broadcasting any program of the network, provided that an affiliate station may have the first call in its community on the network's program;
3. The term of affiliation is more than 2 years;
4. The station is hindered from scheduling programs before the network decides whether or not to utilize the time, or the station is required to clear time sought to be utilized by the network, provided that the station may grant an option to the network, subject to call on at least 56 days' notice, permitting a network program to displace any other program (except a program of another network), during a total of 3 hours within each of 4 segments (8 a. m. to 1 p. m.; 1 p. m. to 6 p. m.; 6 p. m. to 11 p. m.; 11 p. m. to 8 a. m.) of the broadcast day;
5. The station is prevented or hindered from refusing network programs that the station believes to be unsuitable or unsatisfactory or from rejecting a program that is considered contrary to the public interest or from substituting a program of outstanding local or national importance;
6. The station is prevented or hindered from, or penalized for, fixing or altering its rates for nonnetwork broadcast time.

The regulations also provide that no station license shall be granted to a network organization in a locality where conditions are such that competition would be substantially restrained by such licensing, and no license shall be granted to a station affiliated with a network organization maintaining more than one national network.

Effect of the regulations

The effect of the regulations becomes clearer if they are stated in terms of what may be made a matter of contract between a television station and a network.

Under the territorial exclusivity provision (sec. 3.658 (b)) the affiliate station is given the first call in its community upon network programs. There is no limit to the hours of network programs it may take. While the contract between the affiliate and the network may not provide for barring another station from taking the network's programs that are rejected by the affiliate, there is no requirement that the network offer such programs to another station.

In the option time provision (sec. 3.658 (d)) a station is free to bind itself to clear time on 56 days' notice, at the call of the network, during 12 hours of the broadcast day. Nothing precludes the station from clearing time for a network on less than 56 days' notice, from clearing time in hours other than the 12 designated in the contract as being subject to preemption by the network, or, in fact, from devoting its whole broadcasting time to the network's programs.

The regulations bar any contract precluding a station from broadcasting programs of another network or from selling to another network time previously optioned to, but not preempted by, its own network. But nothing prevents the station from voluntarily limiting itself to the programs of only one network and from refusing to sell optioned time to any other network.

The regulations provide that the network's right to preempt the time of the affiliated station on 56 days' notice may not be exercised so as to compel the station to displace a program of another network, although the station is free to do so if it wishes. But the regulations sanction the network's right to displace any other type of program, such as a local program or a program being distributed nationally or regionally by a film syndicator or advertiser or other nonnetwork organization. In this way, the chain broadcasting regulations appear to forbid the use of time options as an unfair method of competition between networks, but to permit the use of the time option as a permissible method of competition between a network and a nonnetwork organization.

The must-buy policy of NBC and CBS, under which advertisers are required to buy time on a minimum list of fifty-odd stations, is not specifically authorized or forbidden by the chain broadcasting regulations.

III. HISTORY OF CHAIN BROADCASTING REGULATIONS

As shown above, the FCC chain broadcasting regulations indirectly permit the TV networks to make affiliation agreements with stations severely limiting the freedom of both parties to deal with competing units in the market. These regulations were adopted in 1941, after a 3-year study. As originally promulgated, they applied only to radio. On November 28, 1945, they were made applicable to television in virtually the identical form without any new study of how well or badly they suited the television industry. They have not been reexamined in detail, as applicable either to radio or to television, for 15 years.

Furthermore, in the 3-year study on which the 1941 regulations were based, the Commission concluded that the key provision of affiliation agreements which limited the individual station's freedom of action—the option time provision—was against the public interest. The regulations as originally proposed by the FCC flatly prohibited option time provisions in network affiliation agreements. It was only after strong objection by the two major radio networks that the FCC amended its regulations to permit a limited amount of option time. This step was taken without changing the Commission's previous findings that option time provisions were against the public interest. The change was made solely on the ground that option time was a convenience which would help the third and weakest of the then existing networks—the Mutual Broadcasting system—to strengthen its competitive position vis-a-vis its two stronger rivals.

The history of the 1941 chain broadcasting regulations is summarized briefly below:

By 1938, the radio-broadcasting industry had become a major medium of advertising, and the radio networks had become an important factor in the industry. On March 18, 1938, the Commission authorized an investigation to determine what special regulations applicable to radio stations engaged in chain broadcasting were required in the public interest, convenience or necessity. A committee of three commissioners was appointed to supervise the investigation. hold hearings, and make a report. Hearings were held by the committee between November 14, 1938, and May 19, 1939. On June 12, 1940, the committee issued a report which included the following conclusions:

1. Network organizations held a dominant position in the field of radio broadcasting;
2. The networks had developed around their owned and controlled stations which had been operated largely for the benefit of the networks, and the interests of independent outlets had been subordinated;
3. There had been a trend toward concentration of ownership of radio stations;
4. The predominance of network organizations, evidenced by their disproportionate share of the income of the industry and their affiliation with the high-power clear channel and regional stations, presented inherent dangers to freedom of communication;

5. The affiliation contracts between network organizations and their outlet stations revealed many arbitrary and inequitable practices on the part of the networks; and such contracts were the "heart of the abuses of chain broadcasting."

Following the report of the committee, the full Commission received briefs and heard oral arguments on December 2–3, 1940. In May 1941, the Commission issued a comprehensive report on chain broadcasting accompanying the issuance of proposed new regulations covering chain broadcasting. In addition to prohibiting contracts tying stations to 1 network and contracts giving 1 station exclusive rights to the network's programs whether or not taken by the station, the Commission's proposed regulations prohibited any option-time agreement requiring the station to clear time for network programs.

In the May 1941 report the Commission, after reviewing the evidence as to time-option practices, came to the following conclusions (p. 65):

"A station licensee must retain sufficient freedom of action to supply the program and advertising needs of the local community. Local program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community by broadcasting such outstanding local events as community concerts, civic meetings, local sports events, and other programs of local consumer and social interest.

"We conclude that national network time options have restricted the freedom of station licensees and hampered their efforts to broadcast local commercial programs, the programs of other national networks, and national spot transcriptions. We believe that these considerations far outweigh any supposed advantages from stability of network operations under time options. We find that the optioning of time by licensee stations has operated against the public interest."

The major networks strongly protested this report and the proposed regulations. During June 1941 the Senate Committee on Interstate Commerce held hearings on the subject. During July and August 1941, the Commission itself conferred with representatives of the networks. On August 14, 1941, the Mutual Broadcasting System filed a petition requesting amendment of the regulations dealing with network option time and with the duration of affiliation contracts. After hearing oral argument, the Commission on October 11, 1941, issued a supplemental report on chain broadcasting, and amended the regulations in three respects:

1. It clarified the "territorial exclusivity" provision, making clear that an affiliate may be given the first call in its primary service area upon the programs of the network organization;
2. It extended from 1 year to 2 years the limit on the duration of affiliation contracts, in accordance with a decision to extend the terms of station licenses from 1 year to 2 years;
3. It abandoned the outright prohibition of option time in favor of a limitation formula (3 hours during each of 4 segments of the broadcast day, subject to a call period of at least 56 days), with the proviso that such options could not be exclusive against other networks and could not hinder the station from selling or optioning time to another network.

In the October 1941 supplemental report the Commission did not withdraw from the unequivocal findings of its May report. Its October justification for permitting the time options was that "some optioning of time" would "operate as a business convenience," would not interfere "too seriously" with the station's local program requirements and spot business, and would be "instrumental in fostering competition among networks." Thus, the basic finding that time options were against the public interest was left untouched, but yielded to a business convenience criterion.

In October 1941 CBS and NBC brought suits to enjoin enforcement of the regulations. In February 1943 the Supreme Court upheld the rules against the networks' objections. *National Broadcasting Co.* v. *United States* (319 U. S. 190 (1943)). The rules then went into effect. The rules were not challenged on the ground that they failed to promote competition, or that they in effect sanctioned violations of the antitrust laws.

On November 28, 1945, the Commission perfunctorily applied the same chain broadcasting regulations to television. Despite the application to a very different medium, there have been only minor changes in the regulations since 1941. No change whatsoever has been made in the option-time provision. The only change in the territorial-exclusivity provision was made in June 1955 when the Commission amended section 3.658 (b) so as to limit the geographic bonds in which a TV station may contract with a network for territorial exclusivity and first call, substituting the term "community" for the previously used "service area."

The provisions of the Federal Communications Act upon which the Commission relied to support its 1941 chain broadcasting regulations, and which the Supreme Court considered when it upheld their validity, remain in effect in substantially the same form today.

The Commission relied upon the following provisions of the act:

1. Section 1, which states the general objectives of the act, including that of making "available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communication service. * * *"
2. Section 303 (f) under which the Commission is directed to "make such regulations not inconsistent with law as it may deem necessary * * * to carry out the provisions of this act."
3. Section 303 (g) under which the Commission is required to "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest."
4. Section 303 (i) under which the Commission is given "authority to make special regulations applicable to radio stations engaged in chain broadcasting."
5. Section 303 (r) giving the Commission authority to "make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this act."
6. Sections 301 and 307–312, defining the Commission's function of licensing, in accordance with the general criterion of "public convenience, interest, and necessity." Section 307 is particularly relevant by virtue of its provision that in considering applications for licenses and renewals thereof, the Commission "shall make such distribution of licenses * * * as to provide a fair, efficient, and equitable distribution of radio services."
7. Sections interpreted by the Commission as requiring free competition in the radio field, including the following:
   (*a*) Section 3 (h) providing that a person engaged in radio broadcasting shall not be deemed a common carrier;
   (*b*) Section 313 making the antitrust laws applicable to persons engaged in radio communications and authorizing the courts to revoke the license of any person found guilty of violating the antitrust laws;
   (*c*) Section 311 directing the Commission to refuse a license to any person whose license has been revoked by a court and authorizing the Commission to refuse a license to any person found guilty by a Federal court of having violated the antitrust laws with respect to radio communication;
   (*d*) Section 314 forbidding persons engaged in radio communications from engaging in communication by wire, or vice versa, if the effect thereof is substantially to lessen competition or restrain commerce.

Of the foregoing sections of the Federal Communications Act, relevant amendments have been made since 1941 only in section 311. When the Commission issued its 1941 report on chain broadcasting, section 311 read as follows:

"The Commission is hereby directed to refuse a station licensee and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313, and is hereby authorized to refuse such station license and/or permit to any other person (or to any person directly or indirectly controlled by such person) which has been finally adjudged guilty by a Federal court of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through the control of the manufacture or sale of radio apparatus, through exclusive traffic arrangements, or by any other means, or to have been using unfair methods of competition. The granting of a license shall not estop the United States or any person aggrieved from proceeding against such person for violating the law against unfair methods of competition or for a violation of the law against unlawful restraints and monopoly and/or combinations, contracts, or agreements in restraint of trade, or from instituting proceedings for the dissolution of such corporation."

By an act of July 16, 1952, section 311 was abbreviated to read as follows:

"The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under section 313."

The conference report (H. Rept. 2426, 82d Cong.) on the bill (S. 658) made clear that no legal significance should be attached to the elimination of the provision that the granting of a license should not estop the United States or any private party from proceeding against a licensee or applicant for violation of the antitrust laws.

IV. CHANGES IN INDUSTRY SINCE ADOPTION OF REGULATIONS

The Federal Communications Commission formulated the chain broadcasting regulations in 1941, 15 years ago, on the basis of a record which relied to a large extent on statistics for 1938, 18 years ago. They were devised for the AM radio industry, at a time when television was still in the experimental stage. It is obvious that television broadcasting is different, in major relevant respects, from radio broadcasting. It would be an extraordinary coincidence if regulations devised for the 1941 radio industry were appropriate for the 1956 television industry. Aside from the obvious fact that rules designed for radio broadcasting are not necessarily appropriate for television broadcasting, it is clear that present conditions in television are sufficiently different from 1938–41 conditions in radio that an entirely fresh approach is needed.

Difference in relative strength of networks

In 1941 network radio broadcasting by competing chains had a history of only about 12 years. The existing networks varied widely in their competitive strength, and it was considered important to help the weaker networks compete with the stronger ones. The importance of fostering competition among networks apparently was a more significant consideration to the Commission than the need for sustaining the independence of radio stations. The leading networks had built up a commanding position through their affiliation agreements. But it was at least possible that drastic curbs on affiliation agreements might prevent the weaker networks from building up their own strength. The situation was thus ripe for compromise, and the regulations as finally issued reflected the spirit of compromise.

To a large extent the regulations were aimed at one network organization—NBC. Its ownership of two networks was a primary target of the Commission. Aside from the emphasis on making two separate networks out of the NBC twin organizations, the FCC's 1941 regulations were obviously framed to assist the weakest of the then existing networks—Mutual—to strengthen itself.

Today, both in radio and in television, no one network is itself dominant. But there has been no real increase in the number of networks. Despite the fact that the primary thrust of the regulations was to foster competition among networks, to support the weaker networks and to open the field to new networks, it is now evident that the practices sanctioned by the regulations do not expand the opportunities for new networks in proportion to the limitations on station responsibility and the restraints imposed on the competitive opportunities of independent stations and independent program producers.

Difference in outlets

The evidence on which the Commission relied when it formulated the chain broadcasting regulations showed dominance by the two major network companies of the powerful radio stations throughout the country. In its May 1941 Report on Chain Broadcasting, the Commission used this evidence to show the need for regulations to make it possible for other networks to compete and for network affiliates to have a measure of responsibility and independence. It neglected the need for regulations to permit independent unaffiliated stations to operate successfully. This narrow approach in 1941, culminating in regulations that actually helped the networks primarily and network affiliates only secondarily, may well be attributed to the fact that the Commission was dealing with a medium where the supply of frequencies was potentially great.

In television today, there are relatively few stations, particularly VHF stations with sizable audiences, that are not owned by or affiliated with the 3 existing networks, and among the 3 network companies, 2 of them, through ownership or affiliation agreements, have dominant control. In this respect, the situation is somewhat similar to the dominance of radio outlets by NBC and CBS that the Commission emphasized in 1941. The difference in conditions is that unlike radio in 1941, television in 1956 shows little or no promise of developing the multiplicity of outlets needed to provide competition for the networks that have acquired overwhelming economic power under the umbrella of the chain broadcasting regulations. Even if the magic solution can be found to make the more plentiful UHF channels competitive with the scarce VHF channels, the number of potential outlets in every community of the country cannot be expected to be equal to the outlets, actual and potential, in radio.

Difference in proportion of live programs

In 1938 and even in 1941, the use of electrical transcriptions for distribution of programs was a relatively minor factor in radio broadcasting. In fact, the major networks adhered to a policy against the use of electrical transcriptions. This policy of the networks, kept in effect until 1946 or 1947, may have been based in part on the inferior quality of recordings. It may also have been dictated by the consideration that the use of recordings, tapes, or transcriptions might have served to eliminate the need for interconnected transmission and, therefore, to reduce the need for the network function.

Whatever the reasons why recorded programs were not a part of network service in 1941, the significant point is that the chain broadcasting regulations were adopted against a background of simultaneous live transmission of radio programs. They were extended to television against a similar background.

In television broadcasting today, film is an important and an increasingly important means of distribution. Film can be distributed physically by mail or express to individual stations instead of being transmitted to the stations by cable or microwave relay.[1] The greater the use of film, the less need there is for networks, and the less justification there is for permitting networks to control station time. The more the networks rely on film, the more they become simply competitors of other program producers and distributors, but in a favored position because, under the regulations, they have the right to force their programs upon the affiliated stations.

Difference in cost of programing

The cost of producing a TV program today is far higher than the cost of producing a radio program in 1941. This cost can only be recouped by national distribution of the program paid for by advertisers. In radio, programs are not so expensive that national distribution is essential. In television, however, national distribution is essential, and during the prime evening viewing hours, under the present chain broadcasting regulations, it can only be achieved through the networks.

Difference in availability of talent and sources of programs

Because radio reaches its audience through the ear, it is a relatively limited medium in comparison with television. Similarly, the kind of talent and the kind of programs that are appropriate for radio are limited. In the 1938–41 period of radio, therefore, just as there did not exist the tremendous pressure on the part of advertisers for broadcast time, there did not exist the tremendous reservoir of talent and program sources that exist today.

Virtually every element of the entertainment industry looks upon television as an outlet for its talents. The availability of top quality programs and top quality talent, in a medium where they can be seen as well as heard, is as wide as the American creative power itself. There is no indication that when the chain broadcasting regulations were considered, the Commission felt that talent and program sources were being stifled for lack of outlets. The major consideration seemed to be that there was need for more networks and greater competition among networks, without regard to the effect of networking in general upon the performers and the independent producers. To perpetuate regulations which are designed to encourage networking and which in practice are fostering monopoly in networking disregards the fact that the potential supply of talent and programs is being denied release.

Difference in use of option time

In its supplemental report on chain broadcasting of October 1941, the Commission, while adhering to its position that time options restricted the freedom of licensee stations, interfered with their ability to serve local program needs,

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[1] See the address of Thomas F. O'Neil, president of General Teleradio, to the Texas Association of Broadcasters, reported in Broadcasting Telecasting for November 21, 1955, pp. 30–31. Mr. O'Neil stated that the cost of distributing television film through the RKO film exchanges recently purchased by General Teleradio would be "substantially less than the amount that either CBS or NBC would pay for interconnection alone."

hampered their efforts to broadcast nonnetwork programs, and were not indispensable to network operations (as demonstrated by the fact that networks had successfully operated without option time), retreated to a position that "some optioning of time" would be permitted "as a business convenience." Before arriving at this rationalization, it observed that the networks used "only a fraction of the valuable broadcast hours which they placed under option."

The situation in television is far different today. The saturation of the prime evening hours under the option time provisions of the chain broadcasting regulations is almost complete. Even if it could be argued that the Commission contemplated such complete network saturation in radio, which is unlikely, it could not have approved it in the vastly more powerful television medium if it had foreseen the limited number of TV stations.

Crucial importance of television as an advertising medium

In 1938–41, radio had become not only a vital means of communication but also an important advertising medium. It was not, however, so powerful and so essential a selling tool that advertisers could not find other effective means of selling their products. The Commission's May 1941 Report on Chain Broadcasting did not concern itself with the position of radio among the available advertising media, or the extent to which network practices, existing and proposed, affected small, medium, and large businesses.

In 1956, however, it is apparent, and undoubtly can be demonstrated, that television is the most important medium of advertising. It is thus clear that if prime viewing time on television stations can be controlled by big advertisers, small- and medium-sized business are placed in an almost impossible competitive position. That such a situation exists today in television is shown below.[2] For example, Commissioner Hyde has recently testified that 25 advertisers control more than 50 percent of television commercial time. If a comparable situation had existed in 1941 and the Commission had taken it into consideration, it is inconceivable that the chain broadcasting regulations would have been written in precisely the way that they were written for radio.

Effect of the regulations on television's pattern of development

The fact that television broadcasting in 1956 may have acquired many of the patterns and practices of radio broadcasting in 1941 does not demonstrate that the two industries are comparable and therefore should be subject to the same regulations. Any such similarity of practices may well be due to the fact that television network broadcasting has been permitted to develop under the protective umbrella of the chain broadcasting regulations, so that the regulations themselves have directed television into the footsteps of radio.

V. EFFECT OF PRESENT NETWORK PRACTICES UPON VARIOUS SEGMENTS OF TELEVISION INDUSTRY

To some degree the strong position in national and regional television markets achieved by the networks may result from the free play of competitive forces. But, this strength has certainly not been achieved as a result of free competition alone. The network companies have employed two highly restrictive forms of agreements in restraint of trade, which restrict the separately owned affiliated stations from dealing with independent sources of programs and independent purchasers of station time. These same restrictive arrangements compel independent program producers and independent purchasers of station time to deal primarily through the network, and hamper competitive dealings with independent unaffiliated stations.

The two key restrictive practices are:

1. The option time provisions of network affiliation agreements, which are specifically sanctioned by the existing chain broadcasting regulations, and

2. The must-buy policy of two of the major networks, which is in no way authorized by the existing chain broadcasting regulations.

These restrictive practices, employed in conjunction, have effects that restrain competition at every level of the industry, and have enabled the networks to achieve dominant control over the national and regional television markets.

[2] Pp. 49–53.

Affiliated stations

In the May 1941 report on chain broadcasting, the Commission concluded that time options were against the public interest because they impaired the station's freedom to select programs of its own choice suited to the needs of the local community. Nevertheless, it permitted a limited degree of time optioning as a matter of business convenience, and to help build the strength of Mutual Broadcasting System to compare with that of the other networks.

In television 14 years later, it is still inescapable that time options restrict the freedom of the station licensees and hamper their efforts to broadcast, or dissuade them even from trying to broadcast, local commercial programs, national spot programs and the programs of other networks. Most important, they prevent the affiliated station from accepting programs of independent producers and distributors, and from selling sponsorship of such programs direct to advertisers, during the prime viewing hours covered by the option.

It is well recognized that radio and television advertising is unlikely to be effective until it has been on the air a considerable length of time. If a network station has a good independent program in time that is subject under its affiliation contract to preemption by the network company, any sale of that program and time to a local advertiser or to a national spot advertiser must of necessity be subject to termination on 56 days' notice. In many cases, the affiliate will sell time subject to termination on less than 56 days' notice. In contrast, the station is obligated to carry a network commercial program in option time for the entire period that it is carried by the network itself, subject only to the limited cancellation privileges specified in the regulations. Thus, a network company can assure an advertiser that individual stations will carry a program as long as it is on the network. Because affiliation with a network is presently the easiest and quickest way to financial success, the station is prone to take network programs even in nonnetwork option time and, therefore, to reserve strict termination rights in contracts with nonnetwork advertisers in order to be able to carry network programs.

The regulations state that a station must retain the right to reject network programs which the station believes to be unsatisfactory or unsuitable, the right to cancel network programs which it believes to be contrary to the public interest, and the right to substitute for a network program a program of outstanding local or national importance. These are in effect the only cancellation rights as to network commercial programs carried in option time.

Significantly, none of these rights permits the station to select an independently produced and distributed program for normal competitive reasons, such as the fact that the station thinks that the independent program is better than the network program, or the fact that the sponsor of the independent program will pay more money than the network. The very purpose of the time option is to restrain this type of competition. It is hard to conceive of a more coercive and unjustified restraint on the freedom of the affiliated station than this form of time option, unless it is the must-buy policy employed in direct conjunction with the time option.

Under the must-buy policy, the individual affiliated station agrees to abdicate its responsibility for selecting programs to an even greater degree. By affiliating with a network company which has the must-buy policy, an affiliated station in Louisville in effect agrees that it will not carry any program, no matter how desirable, unless the sponsor or owner of the program purchases time through the network company not only on the Louisville station but on the fifty-odd other stations throughout the country included on the network's must-buy list. It is difficult to see how such a naked tie-in agreement, which would be clearly illegal in any other industry,[3] is justified by the facts of the television broadcasting industry. It is difficult to see how the Louisville station is serving the public interest of its own community, when it in effect refuses to broadcast a desirable program in Louisville unless the owner or sponsor agrees to buy time for the same program on another station in Seattle.

The overall effect of the practices adopted by the networks under the umbrella of the regulations is to persuade the affiliate to take all of the network's programs throughout the broadcast day. During 12 hours of the broadcast day, the option binds the station to take what the network company offers. Since the station must accept network programs during the prime viewing hours when most of its

[3] See the discussion in sec. VI, below.

revenue is obtained, the station has little incentive to develop an organization of its own to produce or buy nonnetwork programs for the relatively nonlucrative portion of the broadcast day not covered by the network option. Even in nonoption time, the pressure that can be exerted by the network company, the convenience of broadcasting a program produced by someone else, and the risks of losing affiliation are so great that the station generally takes any program offered by the network company.

Abdication of the responsibility for program selection to the network company is the easy course for the station licensee and the natural goal sought by the networks. In testimony before the Senate Interstate Commerce Committee in 1954, Mr. Frank Stanton, president of CBS, put the matter as follows:

"Certainly it takes more work for a station which does not rely on a network. It is far easier to patch in the network and have a full day and a full night's programing. I do not blame stations for preferring that course of life. I would myself. In fact, we try our best to make this an attractive way of life. But it is well to emphasize that perhaps there is a substitute of self-reliance, good management, and plain hard work." (Senate Committee on Interstate and Foreign Commerce hearings before Subcommittee on Communications on the status of UHF television stations and S. 3095, 83d Cong., 2d sess., p. 1001.)

Whether the station licensee voluntarily or involuntarily accepts the network "substitute" for "self-reliance, good management, and plain hard work," station acceptance of the substitute is completely inconsistent with the general FCC policy of emphasizing the responsibility of the individual station licensee to operate in the public interest of his own community. The longer the station licensee continues to shirk the responsibility, the less chance there is that he can retain or recover the initiative to exercise independent judgment and to use the franchise in accordance with independent evaluation of the needs and desires of the community he serves.

As a flagrant example of how far TV stations have already gone in abdicating their responsibility to their own communities, consider the case of Disneyland. This is a film program distributed by the ABC network. No one can possibly dispute its desirability as a program, particularly for young children. Being on film, it can be shown by television stations in different cities at the most suitable time for each community. But, in fact, it is shown at a most unsuitable time on ABC network-affiliated stations, particularly in the Far West. The option time clause of the ABC affiliation agreements, and the abdication of station responsibility by the affiliated stations, are clearly to blame.

In the East, ABC elected to distribute the program during option time from 7:30 to 8:30 p. m. on Wednesday evening. All eastern affiliated stations accepted the program at this time, despite the obvious unsuitability of forcing small children either to miss Disneyland or to sit before the television set until 8:30 on a school night.

In the Far West, the situation is even worse. ABC distributes the Pabst prizefights live throughout the United States from 10 to 11 p. m. eastern time on Wednesday. This program is broadcast live over ABC affiliated stations in the Far West between 7 and 8 p. m. Pacific time, a period which falls within ABC's option time. For this reason, ABC distributed Disneyland to its Far West affiliates for showing between 8 and 9 p. m. Wednesday night, also within ABC's option time. As a result, the children in the Far West must stay up half an hour later than children in the East to see Disneyland.

Another sign of the decline of station responsibility for program selection is evident in the way NBC and CBS have virtually saturated the 3 hours of option time during the prime viewing hours of the evening.

As shown at page 19 of this memorandum, during the representative week of February 19, 1956, NBC and CBS saturated 93 to 96 percent of the prime time (7:30 to 10:30 p. m., eastern standard time) of their basic must-buy affiliated stations in the 40 markets where NBC and CBS each had a must-buy affiliate. These 40 markets contain 71.5 percent of all the television sets in the United States.

There is no justification for this network saturation of prime viewing time. It cannot be demonstrated that affiliated stations accept each of the network programs because it is the best program available. In fact, the opposite is often indicated. In markets with more than three stations, where there are independent stations offering nonnetwork programs, the nonnetwork programs frequently draw greater audiences than network programs offered by the affiliated stations at the same time. Typical examples in the Los Angeles area appear in the following table (based on the Audience Research Bureau rating for October 1955):

	Audience rating
Tuesday, 7:30–8 p. m.:	
Waterfront	17.5 (KTTV) (nonnetwork).
Warner Bros. Presents	11.2 (ABC).
My Favorite Husband	10.5 (CBS).
Dinah Shore and News Caravan	3.3 (NBC).
Tuesday, 8–8:30 p. m.:	
Science Fiction Theater	13.7 (KTTV) (nonnetwork).
Martha Raye	10.5 (NBC).
Warner Bros. Presents	10.4 (ABC).
Navy Log	7.9 (CBS).
Tuesday, 8:30–9 p. m.:	
Wyatt Earp	14.4 (ABC).
You'll Never Get Rich	11.2 (CBS).
Liberace	11.0 (KTTV) (nonnetwork).
Martha Raye	9.7 (NBC).
Friday, 9:30–10 p. m.:	
Playhouse of Stars	13.8 (CBS).
Confidential File	11.5 (KTTV) (nonnetwork).
Western Varieties	11.5 (KTLA) (nonnetwork).
Movie	10.8 (KHJ) (nonnetwork).
Star Stage	2.9 (NBC)
The Vise	2.1 (ABC).
Saturday, 8–8:30 p. m.:	
Susie	19.6 (KTTV) (nonnetwork).
Perry Como Show	15.1 (NBC).
Jackie Gleason Stage Show	12.6 (CBS).
Spade Cooley	12.4 (KTLA) (nonnetwork).
Sunday, 9–9:30 p. m.:	
GE Theater	15.4 (CBS).
Bandstand Revue	14.2 (KTLA) (nonnetwork).
Dr. Hudson's Secret Journal	12.1 (KTTV) (nonnetwork).
TV Playhouse	7.6 (NBC).
Chance of a Lifetime	3.8 (ABC).
Sunday, 9:30–10 p. m.:	
Confidential File	17.6 (KTTV) (nonnetwork).
Alfred Hitchcock Presents	13.3 (CBS).
Bandstand Revue	8.7 (KTLA) (nonnetwork).
TV Playhouse	7.4 (NBC).
Life Begins at 80	0.8 (ABS).

Generally speaking, these desirable nonnetwork programs are on film and are available to the network-affiliated stations in most of the major markets. In most of these markets there are no independent stations, and the distributor of the nonnetwork program undoubtedly would like to place it in that market on an affiliated station. Moreover, the distributor of the nonnetwork program will usually pay the full station rate, instead of the low percentage of the station rate (in the range of 30 percent) customarily paid by the networks. Yet almost invariably the affiliated station accepts the network program instead of the superior nonnetwork program.

The ultimate effects of inroads on station responsibility arising from the FCC-sanctioned network practices can be seen vividly in the radio industry, where NBC's monitored program blankets the NBC stations during the entire weekend. Regardless of Monitor's merits as a program, its very existence proves that when networks are given the opportunity to force network programs upon the stations during certain hours and to induce the stations to take network programs during all the other hours, nothing can prevent complete saturation of the air with network programs.

According to trade reports, Monitor was literally forced on many unwilling NBC radio affiliates by exerting pressure on NBC–TV affiliates owned by the same interests. If Monitor has already come to radio, how far off can it be for TV?

Independent producers

The great source of competition with the networks in production of programs lies in the advertising agencies, established movie studios, and independent producers.

To a considerable degree, these competitive sources of programs are subject to the dictates of the networks upon which they will be dependent for acceptance of the program and clearance of time for its broadcast.

The established motion-picture companies and the so-called independent producers can operate successfully only if they can find a purchaser ready, willing, and able to pay the high price that is necessary to cover the high costs of production. The only buyers in a position to pay this high price for a program are the network organizations, the advertising agencies representing national network advertisers and the national network advertisers themselves. In competing for a sale to a national advertiser or an advertising agency representing such an advertiser, the independent producer is competing with the network company itself. The power of the network company over the most desirable broadcast time gives it a decisive edge in dealing with a sponsor.

Moreover, the network company is frankly interested in selling the sponsor a network produced show in preference to an outside show. This network preference for network programs may rest on the honest conviction of the network executives that their programs are better, as suggested by Dr. Frank Stanton's statement that—

"We have found by and large that the greatest assurance of * * * quality programing is for us to do it ourselves" (hearings, supra, p. 990).

It is obvious that the network company is not the only entity capable of producing good programs. Many of the best and most popular TV programs, such as Disneyland, the Groucho Marx Show, The $64,000 Question, Screen Directors' Playhouse, and Ford Theater, are produced by independent firms. But it is also obvious that the network company has a clear financial interest in selling a sponsor the network show, which represents a substantial network investment that cannot be recovered unless the show is sold. Furthermore, the network company usually makes a profit in selling its own program over and above the profit it makes in selling the time on which either a network show or an independent show is broadcast.

Thus, the independent program producer finds himself in the following dilemma:

(*a*) He must distribute his program on a national scale during prime viewing time in order to recover the costs of production and a reasonable profit.

(*b*) Because of the time option provisions of network affiliation agreements, the must-buy policy, and the economic power of the network companies over the affiliated stations, prime viewing time on a national scale can today be cleared effectively only through the networks.

(*c*) The independent program producer, or the national advertiser who wants to sponsor his program, must therefore deal with the network company in order to obtain national distribution during prime viewing time.

(*d*) The network company, however, is producing its own programs and trying to sell its own programs to the same sponsor.

(*e*) As a result, the independent program producer can only sell through his own major competitor—the network company—and sales can be made only when the network is unable to persuade the advertising sponsor to take a network-controlled show instead.

Advertisers

Out of 2,378 national advertisers, only 123 have budgets of $1,500,000 and over, and only 58 have budgets in the range of $1,000,000 to $1,500,000. Over 75 percent have budgets of $250,000 a year or less. Yet, the time and program charges for a half-hour show over a national network during prime viewing time run between $50,000 and $100,000 per week, or $2,500,000 to $5,000,000 per year. A Federal Communications Commissioner recently stated that only 25 advertisers control more than 50 percent of commercial television time.[4]

With increasing frequency the big-budget advertiser is not interested in a network-produced program, but either produces its own film program, or purchases a film program created by an independent producer. However, the big-budget advertiser usually needs nationwide or at least regional coverage during the prime evening broadcast hours. The advertiser might want to distribute a program on stations of his own choice, including some network-affiliated stations and some independent stations, delivering the film to each station without using

[4] Senate Interstate Commerce Committee Hearings on Television Industry, February 21, 1956, transcript, p. 538.

the network transmission facilities. But under the time option provision in network affiliation agreements, the networks can control the prime hours on affiliated stations, and the big-budget advertiser must deal with the network to obtain national or regional coverage. And under the networks' coercive must-buy policy, the major advertiser must buy the time of network affiliates both in markets in which the advertiser is not interested and in markets where the advertiser would prefer a nonnetwork station. So long as this compulsion exists, the advertiser is forced either to purchase a program selected or produced by the network, or, at the very least, to accept the time and stations dictated by the network for any independently produced program he desires to sponsor.

The only trace of competition, insofar as the major national advertiser is concerned, is the competition among the network companies. And whichever network company the advertiser deals with, he continues to be subject to dictation as to time, market coverage, and program content. Thus, from the advertiser's viewpoint, the network practices reduce the opportunities for free selection of the timing, description, and content of the message to be put before the purchasing public.

Many big-budget national advertisers do, of course, continue to place announcements or even programs on a spot basis through national spot representatives of both network-affiliated and independent television stations. Even in this aspect of placement of advertising, however, the networks are permitted to engage in practices that restrain competition. The prime broadcasting hours are blanketed by network programs so that spot business is shunted to less desirable time. The threat of loss of network time acts to inhibit the advertiser from using the competing medium of spot advertising. Where the networks themselves act as spot representatives for affiliated stations, they are in a position to shift the interest of the advertiser back to network activity which is more profitable to the network and less profitable to the affiliated stations.

The restrictions on the activities of major national advertisers have a less serious effect upon the economy as a whole than the limitations imposed upon relatively small advertisers. The high cost of network television time in the prime hours and the paucity of million-dollar advertising budgets suggest that network advertising is a privilege of the few, that big companies can use it while little companies cannot, that companies which sell on a regional rather than a national basis are virtually excluded from network television advertising, and that the preservation of competition in fields where consumer advertising is a key to success requires the creation and maintenance of effective forms of competition with the networks.

The crucial importance of TV advertising as a competitive sales factor is well illustrated by the following statements of Sylvester Weaver, president of NBC, in a recorded interview published in the February 28, 1955, issue of Broadcasting-Telecasting magazine:

"The only thing is—the radio formula was a very restricted national advertising formula. In a large part, *purposely restricted by those of us who were in it because it was very effective for a top group of advertisers.* There wasn't any particular pressure to cut everybody else in on the melon.

"Question. Is there a reason why you are thinking along these terms? Do you need money?

"Answer. We need more money, certainly. There are two reasons. One is that you do want the money because you can then have a better service and a more vital medium. The other one is a question of equity.

"Television is so much more important than radio was that, *while it really didn't matter if the big advertisers took over radio,* they (referring to smaller advertisers) did have a way of selling their goods effectively. That's not true in television. *If television were limited, for instance in the soap field, only to the Big Three, the other companies would go out of business,* literally go out of business. They could not compete without television, in terms of selling. This is something the other media may not believe, but I'm sure it's true and I am sure that most agency people would agree to it, too.

"Question. It was also true in radio; wasn't it?

"Answer. It's true that the other brands, the smaller companies, did use radio in one way or another, but it wasn't vital.

"Question. The Alka-Seltzer Co. started from scratch and practically consumed the entire headache market; didn't it?

"Answer. Yes; I see what you mean. In certain lines that moved into radio, they did absolutely take the entire market with broadcast advertising. I thought you meant that radio insured the position of the top people. I think that is true, but television is just so much more powerful." [Emphasis added.]

The present television network practices, sanctioned by the chain broadcasting rules, help the giant companies through nationwide network television advertising to achieve even greater size and even greater domination in their own industries. In every field where advertising is a significant factor in mass-consumer sales, the companies that have already achieved bigness are those that can pay the heavy cost of network television advertising in the prime listening and viewing hours. They are the ones that can bid highest for programs. Once they establish themselves on a network program protected by option time, they can displace the nonnetwork programs of their smaller competitors, and foreclose them from access to national or regional television advertising during the prime viewing hours.

Independent stations

The immediate impact of the coercive time option and must-buy agreements falls on the affiliated stations, the independent program producers and the advertisers, as shown in detail above. But this impact is felt most severely of all by the independent stations which never have direct contact with the network.

Like the affiliated station, the independent station can make money only by selling time to advertisers. It can sell time to advertisers only if it can build a sufficient audience. It can build a sufficient audience only if it offers quality programs. In short, the independent station must obtain good programs and good sponsors to survive.

The independent station can produce some inexpensive live programs of its own. But it cannot afford to produce expensive live programs by itself, since it has no way to recover the costs by national or regional distribution. The individual station must, therefore, rely on outside sources for most of its programs.

The networks are a major source of programs, but these programs are not available to the independent station, since they are subject to the first call of the affiliated station in the same area. Independent producers of filmed programs are another major source, but this source is also becoming less and less available to independent stations. The reason, of course, is that the independent program producers can only recover their costs by national distribution, and because of the time option problem, national distribution can only be achieved through a network. Whenever the producer distributes his program through a network, it cannot be made available to the independent station that competes with the network affiliate.

Some concrete examples are listed below. They are drawn from the experience of KTTV, a successful independent station in Los Angeles, whose audience rating is second only to the Los Angeles CBS station, and is higher than the Los Angeles NBC and ABC stations.

1. Early in 1954 an independent film company, Television Pictures of America, Inc. (TPA), announced plans to produce a film series entitled "Halls of Ivy" starring Ronald Colman. KTTV tried to obtain the program for its station but was told by TPA that a commitment would be needed for a larger group of markets. Accordingly, KTTV entered into an agreement with TPA committing KTTV to buy the rights for California, Oregon, Washington, and Arizona, taking the risk that it would be able to sell the program to other stations in these States outside of Los Angeles. However, the agreement contained an escape clause requested by TPA, permitting TPA to cancel if it could sell the program to a national advertiser who preferred to distribute it through a network. On the last effective day of the escape clause, TPA exercised its right to cancel, since it had sold the program to two national advertisers who distributed the program on a national network during option time periods.

2. In August 1954 KTTV entered into similar discussions concerning the film series Rin-Tin-Tin being produced by Screen Gems, Inc., a wholly owned subsidiary of Columbia Pictures. Although KTTV was one of the first to negotiate for the series, the series was subsequently sold to a national advertiser who sponsored it during option time on a national network.

3. In May 1955 KTTV agreed with Official Films to purchase a new series entitled "The Adventures of Robin Hood" starring Richard Greene. As in the case of Halls of Ivy, KTTV agreed to buy the rights for the entire west coast. However, once again the producer insisted on an escape clause permitting the cancellation of the program if a national advertiser bought the program for network distribution. Within 2 days after the agreement was made, the series

was sold to a national advertiser for network distribution, and the escape clause was invoked.

4. KTTV made offers to buy or invited offers to sell the Los Angeles rights to the following programs, before they were sold on a national basis:

Captain Gallant of the Foreign Legion
Thunder (later retitled "Fury")
I Love Lucy (second run)
It's Always Jan

In each case, the distributor said the program was being held for national sale and would not be sold to an individual market. In each case the national sale was made, and all of the above programs are being broadcast by networks in network option time.

5. Similar conversations were had with the distributors representing properties entitled "Dr. Hudson's Secret Journal," "The Count of Monte Cristo," and "Jungle Jim." In such cases KTTV was advised that the programs were being held for national sale. Following the selling season of the spring and summer of 1955, none of these three properties had achieved a national sale and each was subsequently offered for sale on a syndicated basis. KTTV did acquire the Los Angeles rights to each of these properties and each is currently running on the station in class A time. In each of these instances, therefore, KTTV's ability to acquire the properties came about only after rejection by networks or network advertisers.

The independent station is injured not only by the restrictive time-option agreement between the network and its affiliates, but also by the must-buy agreements between the networks and their affiliates. The must-buy arrangements hurt the independent station in two ways:

(*a*) First, national advertisers are forced to buy network time on more stations than they would buy with full freedom of choice. As a result, in some must-buy markets all the available stations are occupied with network programs during the prime viewing hours, and are not available to participate in national syndications of nonnetwork programs along with independent stations in other cities.

(*b*) Second, the national advertisers who own their own film programs and merely desire to buy network time are forced to buy the time of a network affiliate in a city where the advertiser might prefer to deal independently with an independent station, without using network facilities at all. Thus, an advertiser might want to buy time in 30 selected cities from network affiliates through the network, but in the case of Los Angeles might prefer to deal independently with KTTV, mailing the film directly to KTTV without using the network organization. The advertiser cannot do this under the network must-buy policy, which compels him to use the network's Los Angeles station as a condition of using the network affiliates in other cities. Thus, KTTV's local competitor gets the program and the revenue not on its competitive merits in Los Angeles, but because it is tied into a must-buy package with stations in other cities.

VI. PARALLEL BETWEEN PRESENT POSITION AND PRACTICES OF THE TELEVISION NETWORKS AND THE ACTIVITIES OF MOTION-PICTURE PRODUCERS AND THEATER CHAINS HELD ILLEGAL BY THE SUPREME COURT

There is a striking parallel between the television industry and the motion-picture industry. Both industries are primarily engaged in producing entertainment for the public. Both consist primarily of units which produce programs and units which show the programs to the public. In fact, an increasingly large percentage of the programs used by the television industry consists of motion-picture films, many of them produced by established units in the motion-picture industry.

It therefore seems relevant to compare the structure of the television industry today with the structure of the motion-picture industry. It would be logical to expect that similar distribution practices were employed in both industries and that there would be similar struggles for market control. The inquiry becomes especially relevant because the structure of the motion-picture industry has been rigorously tested under the antitrust laws, in a series of cases decided by the United States Supreme Court.

The comparison shows that the structure and distribution practices of the television industry today are remarkably similar to the structure and distribution practices of the motion-picture industry that the Supreme Court held in 1948 to violate the antitrust laws.

In the motion-picture industry five major film-producing companies produced and distributed the bulk of the motion pictures. These companies also owned interests in many of the first-run motion-picture theaters in the United States, and they had long-term agreements with independent chains of first-run theaters. The major film-producing companies and the first-run theater chains engaged in the following distribution practices, among others:

(*a*) Block-booking and blind-selling agreements, under which the theater chains committed themselves to take a block of the producing company's films before they were produced, instead of selecting individual films on their merits. These agreements were the same in purpose and function as the time-option provisions of the television network-station affiliation agreements.

(*b*) Agreements between the independent theater chains and the film distributors, under which the distributor was compelled to give first-run rights to all of the theaters in the chain, as a condition of placing the film in any one theater of the chain. These agreements were the same in purpose and function as the must-buy feature of the television networks' agreements with sponsoring advertisers.

In a series of cases, the Supreme Court ruled that both types of agreements in the movie industry were unreasonable restraints of trade under section 1 of the Sherman Act, and were illegal per se. The Court fund that these agreements illegally deprived competing independent theaters of the opportunity to obtain the defendant producers' pictures individually on a first-run basis, and illegally deprived competing film distributors of the opportunity to have their films distributed in theaters controlled by the defendant theater chains. The Court also ruled that through the use of these unreasonable restraints the defendant companies were guilty of attempts to monopolize the business of motion-picture exhibition under section 2 of the Sherman Act. The Court approved decrees nullifying the illegal agreements and enjoining the making of similar agreements in the future. (See *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131 (1948); *United States* v. *Griffith*, 334 U. S. 100 (1948).)

There are only three major respects in which the structure of the movie industry found illegal so recently differs from the structure of the television industry today. One of these differences is irrelevant from an antitrust standpoint. The other two differences are hardly in favor of the network position. These differences are as follows:

1. In the motion-picture industry the income is ultimately derived from the sale of theater admissions to the public. In the television industry income is ultimately derived from the sale of program sponsorship to advertisers. In both cases, however, income depends directly upon the quality of the program and the number of people who can be persuaded to see it. From an antitrust standpoint, the difference is not significant.

2. There are many more motion-picture theaters in the United States, including many more first-run theaters, than there are television stations. At the time of the movie antitrust cases there were over 18,000 theaters, of which over 3,000 were first-run theaters. In contrast, there are only 450 commercial television stations in the United States. Thus, access to the market, the viewing public, is obtained through a much smaller number of individual units than in the motion-picture industry. This fact, of course, makes denial of access to the market a far more serious antitrust problem in the television industry than in the movie industry.

3. Although there are many more motion-picture theaters than television stations, the total television audience is far larger than the total movie audience, both in number of individual viewers and in number of daily or weekly viewing hours per individual. The combination of a larger audience accessible through a smaller number of outlets increases the competitive advantages to be obtained by controlling access to the market and increases the importance of preventing the use of illegal means to acquire that control.

The Supreme Court opinions in the movie cases are almost exact legal and factual precedents for determining whether the conduct of the networks and their affiliated stations amounts to illegal restraints of trade and attempts to monopolize the television industry. As shown below, these opinions clearly establish that the existing time-option provisions of the network affiliation agreements and the "must buy" policy of NBC and CBS are illegal restraints of trade under section 1 of the Sherman Act, and that the use of these restrictive arrangements constitutes an illegal attempt to monopolize under section 2.

The time option as a form of block booking

In the Paramount case, the Supreme Court defined block booking in the movie industry as follows:

"Block booking is the practice of licensing, or offering for license, one feature or group of features on condition that the exhibitor will also license another feature or group of features released by the distributors during a given period. The films are licensed in blocks before they are actually produced" (334 U. S. at 156).

This definition also fits the time-option practice in the TV industry. For the time option, the definition might be paraphrased as follows:

"The network time option is the network practice of agreeing or offering to transmit to a station one program or group of programs on condition that the station will also accept for broadcast another program or group of programs to be transmitted by the network at its option during specified periods of the broadcast day. The station grants the option and agrees to accept the programs during specified periods before the programs are actually produced."

The Supreme Court found that—

"Block booking prevents competitors from bidding for single features on their individual merits" (334 U. S. at 156).

Time options have the same result in the television industry.

The Court also found that block booking permits the film owner to use his monopoly of a desirable film to compel exhibitors to take less desirable films, thus giving these less desirable films an undeserved market advantage over films of competing producers. The Court said:

"Where a high-quality film greatly desired is licensed only if an inferior one is taken, the latter borrows quality from the former and strengthens its monopoly by drawing on the other. The practice tends to equalize rather than differentiate the reward for the individual copyrights. Even where all the films included in the package are of equal quality, the requirement that all be taken if one is desired increases the market for some. Each stands not on its own footing but in whole or in part on the appeal which another film may have. As the district court said, the result is to add to the monopoly of the copyright in violation of the principle of the patent cases involving tying clauses" (334 U. S. at 158).

The same reasoning, of course, applies with full force to television programs. The fact that affiliation agreements are not based on copyright licensing is irrelevant. Television programs on film are individually copyrighted, and scripts of live programs can be and often are covered by copyright. Furthermore, whether or not a program enjoys the monopoly of a copyright, every individual program itself enjoys an inherent economic monopoly. It can be imitated but not duplicated. There is only 1 Disneyland, 1 Arthur Godfrey, 1 George Gobel, 1 I Love Lucy, etc. These programs enjoy economic monopolies that are not materially affected by the existence or nonexistence of a legal copyright.

It also seems clear that the Supreme Court affirmed the finding of the district court that block booking was illegal per se and that the rule of reason was not applicable. *United States* v. *Paramount Pictures, Inc.* (66 F. Supp. 323, 348 (1946); 70 F. Supp. 53, 72 (1947) (conclusion of law No. 11)). This seems an inescapable inference from the fact that justification of block booking on grounds of convenience or necessity was specifically rejected as irrelevant by the Court, as follows:

"Columbia Pictures makes an earnest argument that enforcement of the restriction as to block-booking will be very disadvantageous to it and will greatly impair its ability to operate profitably. But the policy of the antitrust laws is not qualified or conditionad by the convenience of those whose conduct is regulated. Nor can a vested interest in a practice which contravenes the policy of the antitrust laws receive judicial sanction" (334 U. S. at 150).

And in *International Salt Co.* v. *United States* (332 U. S. 392 (1947)), the Court upheld summary judgment in a section 1 proceeding based on International's practice of requiring lessees of its patented machines to purchase its unpatented salt. The Court held that it was "unreasonable, per se, to foreclose competitors from any substantial market" and that proof of the alleged reasonableness of the practice need not be considered.

This is in striking contrast to the Federal Communications Commission's treatment of time options in 1941. It will be recalled that the Commission, after issuing chain broadcasting findings and proposed regulations in May 1941 that specifically condemned the time option as against the public interest and prohibited its further use, later modified these findings and regulations so as to permit limited use of the time option. The Commission explained its action on the ground that the use of time options was undoubtedly a "convenience,' and would help the weakest of the existing radio chains to strengthen its competitive position.

This action was taken 7 years before the Supreme Court issued its motion picture opinions in 1948. It seems most unlikely that the Commission would have taken such action if the Supreme Court opinions had been before it at the time.

Film master agreements and the networks' must-buy policy

In *United States* v. *Griffith* (334 U. S. 100 (1948)), the Supreme Court considered the legality of master agreements between independent theater chains and motion picture film distributors, under which the theater chain was licensed to exhibit the distributors' films on a first-run basis in all of the theaters in the chain. Some of the theaters were in single-theater towns, with no competition, while others were in multiple-theater towns where they competed with theaters owned by others.

The Supreme Court found that it was illegal per se for the theater chains to exact agreements from the distributors granting first run rights for all the theaters in the chain. The Court reasoned as follows:

"A man with a monopoly of theaters in any one town commands the entrance for all films into that area. If he uses that strategic position to acquire exclusive privileges in a city where he has competitors, he is employing his monopoly power as a trade weapon against his competitors. It may be a feeble, ineffective weapon where he has only one closed or monopoly town. But as those towns increase in number throughout a region, his monopoly power in them may be used with crushing effect on competitors in other places. He need not be as crass as the exhibtors in *United States* v. *Crescent Amusement Co., supra,* in order to make his monopoly power effective in his competitive situations. Though he makes no threat to withhold the business of his closed or monopoly towns unless the distributors give him the exclusive film rights in the towns where he has competitors, the effect is likely to be the same where the two are joined. When the buying power of the entire circuit is used to negotiate films for his competitive as well as his closed towns, he is using monopoly power to expand his empire. And even if we assume that a specific intent to accomplish that result is absent, he is chargeable in legal contemplation with that purpose since the end result is the necessary and direct consequence of what he did (*United States* v. *Patten, supra*, p. 543).

"The consequence of such a use of monopoly power is that films are licensed on a noncompetitive basis in what would otherwise be competitive situations. That is the effect whether 1 exhibitor makes the bargain with the distributor or whether 2 or more exhibitors lump together their buying power, as appellees did here. It is in either case a misuse of monopoly power under the Sherman Act. If monopoly power can be used to beget monopoly, the act becomes a feeble instrument indeed. Large-scale buying is not, of course, unlawful per se. It may yield price or other lawful advantages to the buyer. It may not, however, be used to monopolize or to attempt to monopolize interstate trade or commerce. Nor, as we hold in *United States* v. *Paramount Pictures, Inc.* (post, p. 131), may it be used to stifle competition by denying competitors less favorably situated access to the market" (334 U. S. at 107).

In the Paramount case, the Supreme Court considered master agreements covering all of the theaters in a particular chain from another aspect. As in Griffith, the Court found such agreements illegal insofar as they combined theaters in single theater towns with theaters in multiple theater towns. Before reaching this issue, however, the Court first found such master agreements illegal on a separate and independent ground, as follows:

"In the first place, they eliminate the possibility of bidding for films theater by theater. In that way they eliminate the opportunity for the small competitor to obtain the choice first runs, and put a premium on the size of the circuit. They are, therefore, devices for stifling competition and diverting the cream of the business to the large operators" (334 U. S. at 154).

The above language reads exactly on the must-buy policy of the two major television network companies. Each television station is a pro tanto monopoly granted by license of the Federal Government. In any market, the number of stations is limited by law. In some markets on the must-buy lists of both NBC and CBS, the stations affiliated with these network companies are the only stations in the market. Even when there are competing stations in the same market, the must-buy policies of the two network companies, in the words of the Paramount opinion, "eliminate the opportunity for the small competitor (independent television station) to obtain the choice first-runs (sponsored programs) and put a premium on the size of the circuit (network)."

Moreover, whereas the master agreements in Griffith were condemned even in the absence of threats to withhold access to the monopoly theaters unless the distributors granted exclusive rights to the chain's theaters in competitive towns, the network must-buy policy is clearly based on a most explicit threat not to sell time on the network's monopoly stations unless the advertiser also purchases time on the network's stations in competitive markets.

Finally, Griffith and Paramount both condemn a must-buy policy as illegal, even when interpreted as an individual refusal to deal. It is even more clear that a must-buy policy is illegal when, as in the case of the TV networks, it results from a collective refusal to deal under an explicit or implied agreement among a group of individual sellers. In *United States* v. *First National Pictures, Inc.* (282 U. S. 44 (1930)), the Supreme Court held it illegal for the dominant motion-picture distributors to agree on a standard form of licensing contract for dealing with exhibitors, and to refuse to deal with exhibitors who declined to sign this contract. In *Fashion Originators Guild of America* v. *Federal Trade Commission* (312 U. S. 457 (1941)), the Court applied the same doctrine to condemn an agreement among dress manufacturers to refuse to deal with purchasers who also bought dresses from so-called style pirates. The Court ruled that even if style piracy was a legal wrong, the defendant manufacturers had no right to prevent the wrong by a collective refusal to deal. Collective refusals to deal are illegal per se, and the alleged reasonableness of the refusal is irrelevant. *Columbia Steel Co.* v. *United States* (334 U. S. 495, 522 (1948)).

The network must-buy policy is plainly a collective refusal to deal. The network in effect agrees with its affiliates that it will not sell time to the sponsor for any one station on the must-buy list, unless the sponsor buys time on all the other stations on the list. Each affiliated station agrees with the network and the other affiliates that it will not sell time for the program of an advertising sponsor (even a program owned or produced by the sponsor) during option time unless the sponsor places the program on all the other affiliated stations in the network's must-buy list. While the affiliated station is technically free to accept the sponsor's program during option time if the network has not yet cleared another program, the station must displace the sponsor's program and refuse to deal with him as soon as the network exercises its option right.

Under the above cited cases, such collective refusals to deal are illegal per se under the Sherman Act, even when they have some higher motive than the elimination of competition, so long as the elimination of competition is the necessary result.

Monopoly in the motion-picture and television industries

In the motion-picture industry cases cited above, the Supreme Court ruled not only that the practices employed by the defendants were illegal restraints of trade under section 1 of the Sherman Act, but also that, through use of these restraints, the defendants had achieved, and in some cases had exercised, an illegal power to monopolize in violation of section 2 of the Sherman Act.

The same conclusion seems warranted in the television industry. Through the use of affiliation agreements containing time options and through the must-buy policy, the major network companies achieved and have exercised the power to monopolize the business of television broadcasting. In the words of the Paramount case, they have combined the individual monopoly power conferred by each of a large number of FCC station licenses to beget monopoly. They have clearly acted in collaboration with their affiliates to deny fair competitive opportunities to independent TV stations, to independent producers of television programs, and to the advertisers who employ the television medium. By the control of television station time in all the major markets—achieved through the time option and the must-buy policy—they have prevented the independent television station, the independent program producer, and the advertiser from dealing with each other so as to compete with the network companies in national or regional broadcasting of television programs.

Present validity of the motion-picture opinions

The principles laid down in the Paramount and Griffith cases have not been changed or questioned in subsequent opinions of the Supreme Court. The case of *Times-Picayune Publishing Co.* v. *United States* (345 U. S. 594 (1953)), sometimes cited as weakening these principles, does not in any way dilute the force of the Paramount and Griffith motion-picture cases as precedents establishing that the television network practices are violations of the antitrust laws.

In the Times-Picayune case, the charge was that a New Orleans newspaper company, owning the only morning newspaper and 1 of 2 evening newspapers in the city, required advertisers to purchase space in both of its newspapers as a condition of buying space in either newspaper. This was alleged to be an unreasonable restraint of trade under section 1 of the Sherman Act and an attempt to monopolize under section 2.

The Court, after reviewing the relevant precedents including the motion-picture cases, stated as a principle that a tying arrangement (where the sale of a product or service is conditional on the buyer's purchasing some other product or service) is a per se violation of section 1 of the Sherman Act where (1) the seller enjoys a monopolistic position in the market for the "tying" product and (2) a substantial volume of commerce in the "tied" product is restrained (345 U. S. 594 at 609). The Court then found that because the defendant's morning newspaper's advertising lineage hovered around 40 percent of lineage in all New Orleans dailies, it did not "in the absence of patent or copyright control" have "that market 'dominance' which, in conjunction with a 'not insubstantial' volume of trade in the 'tied' product, would result in a Sherman Act offense" (345 U. S. 594, 612–613). Furthermore, the Court held that there was no tying, because the two newspapers owned by one company were selling indistinguishable products to advertisers—the products were identical and the market the same (345 U. S. 594,614). It then found that there was insufficient evidence of deleterious effects on the defendant's competitors to show unreasonable restraint of trade (345 U. S. 594, 621–622). There was no illegal collective refusal to deal, because there was just one corporation and no group or concerted refusal (345 U. S. 594, 627). Nor was there an attempt to monopolize in violation of section 2 of the Sherman Act, because the acquisition of the two newspapers and the requirements that advertisers use both were motivated by legitimate business aims rather than specific intent to monopolize (345 U. S. 594, 627).

The Times-Picayune case involved facts so widely different from the facts in the motion-picture cases and the facts in the television industry as to be irrelevant. The acquittal in Times-Picayune was based on the absence of a showing of a monopoly of the tying product, which in the motion-picture cases, was inherent in the copyrights of the producers (*United States* v. *Paramount Pictures, supra*) and the one-theater towns of the theater circuits (*United States* v. *Griffith, supra*). The requisite monopoly in the television industry, on which the network company practices are based, is established not only by the copyright and inherent uniqueness of each program but also by the protected position of each station under a system where necessarily there can be only a limited number of stations. Furthermore, tying clearly exists in the television industry because the television programs block-booked under the time option differ from one another, and because the market varies from that covered by a single station to the combined markets of the 50 stations on the must-buy list or of the two hundred-odd affiliates comprising the entire network. And even if these obvious monopoly features are not sufficient to make illegal per se both the block-booking form of tying arrangement represented by the network option-time options and the concerted refusal to deal represented by the must-buy policy, it is clear that, unlike the New Orleans newspaper situation, the network companies have achieved dominance of the television advertising market, have restrained a substantial volume of commerce and have seriously and adversely injured the independent stations and independent program producers with whom they compete. Finally, the existence or nonexistence of an intent to monopolize is irrelevant under section 1, and since dominance has in fact been achieved, intent is equally irrelevant under section 2.

An essential difference in the Times-Picayune case is that it involved a single seller, not a group of sellers acting collectively. Collective agreements among separate business entities are repugnant to the antitrust laws, whether they occur in the movie industry, as in the Paramount and Griffith cases, in the television industry, as in the present situation, or in the newspaper industry involved in the Times-Picaynue case. In *Associated Press* v. *United States* (326 U. S. 1 (1945)), the Supreme Court struck down the provisions of the Associated Press bylaws which made it more difficult for a nonmember newspaper to join if it competed with an existing member, and which blocked "all newspaper nonmembers from any opportunity to buy news from AP or any of its publisher members."

The Court summarized the illegal effect of these bylaws as follows:

"The net effect is seriously to limit the opportunity of any new paper to enter these cities. Trade restraints of this character, aimed at the destruction of competition, tend to block the initiative which brings newcomers into a field of business and to frustrate the free-enterprise sysem which it was the purpose of the Sherman Act to protect" (326 U. S. 13–14).

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"The Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete" (326 U. S. 15).

The time option and must-buy arrangements between the network companies and the affiliated stations clearly have the same restrictive effects on independent television stations and independent program producers.

VII. THERE IS NO ADEQUATE ECONOMIC JUSTIFICATION FOR THE TIME OPTION AND MUST-BUY ARRANGEMENTS BETWEEN NETWORKS AND AFFILIATES

In antitrust litigation, the familiar defense has been that the monopoly or restraint is necessary and desirable in the economic and practical context of the particular industry. To some extent this plea has been recognized in the rule of reason—not every contract in restraint of trade is illegal. On the other hand, many restrictive trade practices are illegal per se, and no rationalization in the form of alleged beneficial results can legitimize them.

As shown in the preceding section, there are strong reasons for believing that under the rule of the Paramount and Griffith motion picture cases, the time option and must-buy arrangements between the network companies and the separately owned affiliates are per se unlawful restraints of trade under section 1 of the Sherman Act. Accordingly, neither the economic convenience or even alleged economic necessity of these arrangements nor their long period of use can justify their continuance. In the Paramount case, the Supreme Court specifically rejected a justification of block booking along these lines (334 U. S. at p. 159, quoted above).

In 1941, 7 years before the Supreme Court decided the Paramount and Griffith cases, the Federal Communications Commission, after finding time options to be against the public interest, nevertheless sanctioned their limited use on a business convenience basis. Today, the rule of the Paramount and Griffith cases prevents the Commission from permitting the continued use of time options and the must-buy policy, no matter how necessary or convenient these practices may be claimed to be for successful television operations in the public interest.

Nevertheless, the network companies will probably maintain that the time option and the must-buy policy are not illegal per se, but that they are reasonable and lawful restraints justified by some special economic circumstances of the television industry. Accordingly, it seems appropriate to consider whether there is any economic justification for continuing these restrictive practices.

Initially, it must be emphasized that the burden of proof is on the network companies and whatever affiliates may support them. The basic principle of our laws is that free competition ultimately best serves the public welfare. There is a presumption that whatever progress and success have been achieved under monopolistic conditions, greater progress and success could have been achieved if those conditions had not been permitted to exist and thrive, and greater progress and success can be achieved in the future if these conditions are arrested and their promoters deprived of the fruits of monopoly.

Against that background, it cannot be established, even if economic justification were a relevant factor, that the present time option and must-buy arrangements are necessary to the operation of the television industry.

Justification of time options

(*a*) *From the standpoint of the affiliated station.*—It is obvious that the continued use of time options is harmful to the affiliated station. It restricts the station's freedom of choice in selecting programs and sponsors. It insidiously saps the initiative of the station to broadcast what the station considers the best available program for the local community. If the time option did not exist, the affiliate would be free to carry the network program which it now carries during the time option period, or it could decide instead to accept some other program which it considered to be a better and more profitable program to carry. For each individual time period, the station would make its own free choice in the market. It could continue to negotiate for the right of first call in its area on the network program, but it would not be compelled to accept the network program. This would clearly be a much healthier state of affairs for the station and for its listening audience. The only conceivable way in which the affiliated station could benefit from the time option would be if the option enabled the network to offer the affiliate a better choice of programs than the station could obtain otherwise. As shown below, this is not the case.

(b) *From the standpoint of the network.*—The networks have argued that the time option is essential to permit the production of high quality network programs. The argument runs essentially as follows:

1. High quality programs are expensive to produce;
2. The costs of production can only be recouped by nationwide distribution and advertising sponsorship; and
3. Nationwide distribution can only be achieved through the use of the time option.

Points 1 and 2 of this argument can readily be conceded, but point 3 can clearly be refuted.

Before dealing with this argument on its merits, it is pertinent to note that the networks made the same argument against the limitations on the time option which the FCC imposed when it issued the present chain broadcasting regulations in 1941. These regulations made time options nonexclusive against other network companies, and required 56 days' notice of exercise instead of the 28 days' notice which was the practice at that time. The network companies sought court injunctions against the 1941 regulations, and the presidents of NBC and CBS submitted sworn affidavits in support of the injunction pleas.

President Trammell of NBC swore that the nonexclusive feature would result in "making it financially and physically impossible to handle a sufficient volume of business to support the existing programs of the network organization." He swore that the requirement of 56 days' notice "will have the practical effect of an absolute prohibition against network optional time." He swore that "the inevitable consequence" of the option time restrictions "will be the destruction of nationwide network broadcasting to the irreparable injury of NBC."

President William S. Paley of CBS swore that making the option nonexclusive against other network companies "will make the clearing of time for the arrangement of a national network program an almost impossible task." He swore that the requirement of 56 days' notice would mean that "network broadcasting will be working under an unnecessary handicap which will weaken it in competition with other media and cause it to lose important business."[5]

The history of radio and television network broadcasting since the 1941 regulations were issued shows how fallacious were these sworn predictions of doom. Any new network company predictions as to the effect of abolishing option time should be viewed with corresponding skepticism.

The primary network company argument in support of the time option is that it is essential to clear time for simultaneous broadcasting throughout the country. Simultaneous broadcasting is often necessary for live programs. But as shown earlier in this memorandum (p. 16), approximately half of the programs offered by the network companies during prime viewing time are on film. There is no practical need to broadcast a film program simultaneously at the same hour of the same night in every market throughout the country or throughout a region. Furthermore, reels of film can be delivered to individual stations throughout the country or a region less expensively than a show can be electronically transmitted to affiliated stations by a network.

Where simultaneous broadcasting is necessary for a live program or even for a film program, time can be effectively cleared by network companies without relying on time options. For example, a network company could enter into bilateral contracts with affiliated stations for firm periods, such as 13, 26, 39, or 52 weeks, covering a specified time period for a specified program or programs. While the network company would bind itself to furnish a particular program at the stated time and the station would bind itself to carry the program at the stated time, changes in programs could be made by mutual agreement, and the station would reserve its customary right to substitute an occasional special program of outstanding public importance.

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[5] The complete texts of the pertinent portions of the Trammell and Paley affidavits appear in appendix A.

The network company would continue, as it does now, to communicate with its affiliated stations with respect to clearance of programs. There is not the slightest doubt but that affiliated stations throughout the country would accept high-quality or popular network programs for simultaneous broadcasting even if they were not under the compulsion of a time option clause. Sporting events such as the world series and public interest events such as political conventions would win clearance on their merits as they do now in nonoption time.

The great difference would be that the networks would no longer be the sole effective means of nationwide clearance. Advertisers and independent program producers would have alternative means for distributing programs, dealing directly with the stations or with some central clearinghouse that could communicate with stations as effectively as a network company.

At the present time, it is the inferior network shows—those which the affiliated station might reject in favor of a better independent program, if legally and economically free to do so—that the time option protects. For example, in the 7-station Los Angeles market, where the network companies must compete with independently produced programs offered by the 4 nonnetwork stations, audience ratings in October 1955 (American Research Bureau) showed that during prime evening option time there were 9 network programs [6] having ratings of 6.5 or less, placing them in 125th or lower place out of 247 evening programs, with 50 or more nonnetwork programs having higher ratings. It seems obvious that the affiliated stations in any community would not accept such inferior network shows if they were not compelled to do so by the time option and by the economic pressure of the network companies. Abolition of time options would help to end this protection of the inferior network programs against the competition of superior nonnetwork shows.

The network companies may conceivably argue that it is economically necessary for them to protect inferior shows and to be able to market the inferior product by compelling the affiliate stations to accept it. But the network companies have never made such an argument. The network companies are proud of the quality of their programs, and often with excellent reason. Elimination or reduction of time options would permit them to prove that their programs are good enough to be accepted on their own merits, in competition with independent programs, instead of being forced on the affiliates by compulsion.

(*c*) *From the standpoint of the advertiser.*—It has been argued that simultaneous broadcasting of a television program throughout the country is essential to the success of the advertising message, and that this can be achieved only through the time option.

It is very doubtful whether simultaneous broadcasting is essential to the advertiser. The country is separated into four different time belts, and many network shows that are broadcast in the eastern time zone at 8 are viewed in the Middle West at 7, in the mountain zone at 6, and in the Far West at 5, with apparently satisfactory results.

So long as a particular program and advertising message are regularly delivered at the same hour of the same day in each particular market, it should make no difference that the hour and day in one market are different from the hour and day in a completely separate market. Particular hours of particular days are better for a particular advertising message in some markets than in others. Thus, the winter evening viewing habits of people in New England are very different from those of the people in Florida and California.

[6] Note the following table:

Program	Rating	Rank among 247 evening programs	Nonnetwork programs with higher ratings
Life Begins at 80	0.8	238	137
Penny to a Million	1.6	226	126
Masquerade Party	3.3	191	89
Ozark Jubilee	3.4	179	88
Chance of a Lifetime	3.8	171	82
Name's the Same	4.5	160	74
Break the Bank	5.8	140	60
Dollar a Second	5.8	140	60
It's a Great Life	6.5	125	50

For particular local reasons, such as a locally televised sporting event or a competing nontelevised event, Monday evening in some markets may be better than Friday or Saturday evening, while the opposite may be true in other markets.

Accordingly, the only case in which an advertiser really needs simultaneous broadcasting of the program and advertising message throughout the country is the case of the live program. In the case of high-quality live programs, simultaneous clearance can be worked out without difficulty, without need of the time option. Clearance of poor-quality live programs may depend on time options, but poor-quality programs are of little interest to the advertiser; the only reason the advertiser sponsors them today is that the network company controls the prime viewing hours throughout the country, and will only sell these hours to the advertiser if the advertiser accepts the inferior program. In fact, there is good reason to believe that advertisers would be better able to obtain high-quality live and film programs and to clear them throughout the country on a simultaneous basis if time options did not stand in the way.

It is the mass circulation of inferior network programs, protected by the time option, that makes it difficult—and sometimes impossible—for an advertiser to clear time for a high-quality program produced by a nonnetwork source. The abolition or restriction of time options would give advertisers a much wider choice of programs from independent sources. These programs could be cleared for simultaneous broadcasting throughout the country on stations affiliated with networks, whenever the affiliated station can be convinced that a particular program is the best program available for the particular time period.

The clearance procedure could be the same as that projected above for the networks. Contracts could be made with the stations for firm periods such as 13, 26, 39, or 52 weeks covering a specified time period for a specified program. These contracts would be immune from encroachment by network companies. With prime viewing time opened up for nonnetwork programs, the economic incentive would exist for establishing improved methods of rapid communication with stations throughout the country, as, for example, through a clearinghouse.

It is often argued that time options are necessary in order to enable network companies to assure advertisers that a program can be placed at a particular time so as to take advantage of the audience attracted by the preceding and following programs. This is the so-called "audience-flow" concept. Even if this concept were valid, it is questionable whether for particular advertisers or for advertisers as a whole, it outweighs the limitations on access to television stations that the time option system imposes. In fact, however, the "audience-flow" concept is a fiction. Audience ratings and independent surveys show that the American people watch the television programs they like and refrain from watching programs they dislike, regardless of what program follows or precedes. The public is not too lazy to turn the dial; in fact, it takes delight in doing so. In October 1955, for example, the $64,000 Question on CBS was phenomenally popular. In New York, Los Angeles, Chicago, Seattle, Atlanta, Houston, Providence, and Dayton, its ratings ranged from 44.5 (in Houston) to 59.5 (in Chicago). The preceding program, featuring Red Skelton, had ratings ranging from 32.4 (in Dayton) to 14.0 (in Houston). The following program had ratings ranging from 7.1 (in Houston) to 27.7 (in Atlanta). The highest rating for the following show was achieved in Atlanta, not by a CBS network program but by an independently produced film program.

Any survey of audience habits, whether based on ratings or on interviews of a cross-section of the public, would show that the primary factors determining the number of people who watch a television program are the quality of the program, the quality of programs on other television channels at the same time, and the quality of available nontelevision entertainment at the same time.

Even if there were any validity to the audience-flow argument of the network companies, it is a principle that is economically and legally indefensible. It is essentially an argument that a network company can assure to an advertiser a larger audience than the program itself would ordinarily merit because it can capitalize on a captive audience obtained by the quality of a preceding program. On this theory, the time option becomes a device that enables the network companies to sell time for inferior programs, and to give these inferior programs an unfair competitive advantage over other programs exhibited at the same time, which the inferior program could not obtain on its own merits.

Justification of the must-buy policy

The usual justification offered for the must-buy policy is that the network can only retain its affiliations with television stations, and obtain sufficient revenue to produce high quality programs, if each network program is distributed to all of the affiliated stations on the must-buy list, and the advertising sponsor pays for time on all such stations.

The short answer to this argument is that the American Broadcasting Co., which does not follow the must-buy policy, is a successful and increasingly successful network. It is therefore clear that the must-buy policy is not essential to the success of a network. It may be true that ABC is not yet as strong a network as NBC or CBS. It may also be true that the must-buy policy adds to the profits of NBC and CBS. But if these are the facts, they prove merely that the must-buy policy is an exercise of monopoly power by the dominant network companies. It is not a policy that must be followed to achieve network success, but it is a policy that can be used by a strong network company to compel advertisers to purchase station time on stations that the advertisers do not want.

If further proof is needed, consider the situation in radio. If the must-buy policy is essential to achieve network success in television, the same must be true to achieve network success in radio. For some time, the NBC and CBS radio networks did follow the must-buy policy. In recent years, however, the number of radio stations in all markets has increased to a point where some advertisers prefer to deal with unaffiliated stations rather than to buy the entire NBC or CBS must-buy network. As a result, NBC and CBS have recently abandoned the must-buy policy for their radio networks.

Nothing could prove more clearly that the must-buy policy is an instrument of monopoly power, that its exercise proves the existence of monopoly power, and that it cannot be imposed on the networks' customers once the networks' monopoly has been ended.

So far as the stations themselves are concerned, the must-buy lists of NBC and CBS cover only about one-third of the stations with which each network has affiliation agreements. Most of these stations have a strategic position in a major market. More often than not, they would probably be taken by the network advertiser regardless of any must-buy policy. When they are not taken, their strategic position would enable them to sell the time to some other sponsor for possibly a better program and at a net rate higher than the network compensation. Thus, the must-buy policy is not a necessity for the one-hundred-odd CBS and NBC stations covered. Furthermore, many of the one-hundred-odd affiliates of each network that are not included in must-buy lists are operating profitably.

VIII. THE REMEDY

To remove the restraints on competition in the television industry, prompt and substantial amendments of the chain broadcasting regulations are necessary. This action is appropriate, whether the restraints are considered as violating the antitrust laws or as violating the Communications Act policy of free competitive broadcasting, with responsibility lodged in the station licensee.

The parallel between the television industry today and the movie industry that was forcibly reorganized under the Supreme Court's 1948 decision suggests that parallel remedies should be applied. In the motion-picture case block booking for the distribution of pictures and must-buy arrangements for the circuits of theaters were outlawed. In addition, in order to restore competitive conditions in the industry and to deprive the violators of the fruits of their illegal activities, the motion-picture producers were required to divest themselves of their ownership interest in motion-picture theaters. (*Paramount Pictures, Inc.* v. *United States*, 85 F. Supp. 881 (S. D. N. Y. 1949).) In effect, the Court prohibited one entity from producing motion pictures and at the same time owning, or having a long-term affiliation agreement with, the theaters in which the pictures were exhibited.

The essentially similar facts of the television industry might well justify the similar relief of divorcing the production function of the network companies from their distribution function and their ownership of stations. At the very least, it is essential to eliminate discriminatory time options, must-buys, and exclusive dealing relationships between television stations and network companies, so that independent television program producers and independent television stations can compete freely with network companies, network-owned stations and network-affiliated stations in the production and sale of television programs, and the sale of station time to nationwide, regional, and local advertisers, and so that the viewing public can enjoy the best programs available from any creative source.

At the minimum, the chain broadcasting regulations should, therefore, be amended as follows:

(*a*) To abolish the time option, section 3.658 (d) of the regulations should be amended to forbid any form of option under which a station agrees in advance to clear time for a network program or in any way to permit a network company to clear time on terms more favorable than those granted or offered to any other source of programs.

The Commission's authority to issue such a regulation is clear. Language similar to that of section 3.104 of the regulations proposed in the May 1941 Report on Chain Broadcasting would be appropriate. This language reads as follows:

"No license shall be granted to a [television] broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders the station from scheduling programs before the network finally agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time."

(*b*) To end the must-buy policy of CBS and NBC, a new subsection should be added to section 3.658 prohibiting a station from being a party to direct or indirect arrangements with other stations, or with an affiliated network company, under which the station, or the network company on its behalf, refuses to clear time for an advertiser unless the advertiser agrees to purchase time on one or more separately owned stations.

The Commission clearly has power to impose such a regulation. The Commission has authority to forbid the inclusion of particular terms in affiliation agreements between licensed stations and network companies, and has exercised this authority, in section 3.658 of the existing regulations, to prohibit six different types of provisions in affiliation agreements. The must-buy policies of NBC and CBS, as presently applied, are clearly based on an express or implied understanding between the network company and the affiliated stations on the must-buy list, that forms a part of the affiliation arrangements between them. The making of such arrangements can therefore be prohibited by the Commission.

The proposed new subsection of section 3.658 might read as follows:

"No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with one or more other television broadcast stations or with a network organization, under which such station (or the network organization on such station's behalf) refuses to clear time for a sponsored television program unless the sponsor agrees to purchase time for the same program on one or more separately owned television broadcast stations."

(*c*) To prohibit exclusive dealing relationships between a television station and any outside programing source, section 3.658 (a) of the regulations, which now forbids a station to enter into arrangements with one network company that directly or indirectly prevent the station from accepting programs of other network companies, should be expanded so as to forbid a station from entering into any direct or indirect exclusive dealing arrangement with any single outside program source. The section should also state that it is prima facie evidence of an exclusive dealing arrangement for a station, during any segment of the broadcast day, or during the prime viewing hours of 7:30 to 10:30 p. m., to devote more than 75 percent of its time to programs from a single program source.

In order to give the station flexibility in accepting unusually good or unusually important programs from a single outside source, the percentage could be computed on an average basis during each 52-week period, and special exceptions could be made for major public events such as political conventions.

The purpose of this regulation would be to assure reasonable access to the market for all program sources by preventing the existing economic power of the network companies, or the future economic power of any other outside program source, from being used to compel stations to accept programs on an exclusive dealing basis from a single outside source.

Exclusive dealing has long been recognized as contrary to the public interest, in the chain-broadcasting field as in other fields, and there are several provisions of the existing chain broadcasting regulations specifically designed to prevent the growth of exclusivity. For example, section 3.658 (a) prevents any arrangements between a network company and a station under which the station is prevented or hindered from, or penalized for, broadcasting the programs of any other network organization. Similarly, section 3.658 (d) states that time options granted to one network company may not be exclusive as against other network companies, and may not prevent a station from optioning or selling any or all of its time to other network companies. The above proposal would simply extend the same principles of protection against exclusivity to programs of nonnetwork organizations.

The 75-percent prima facie evidence test would be based on a presumption that when a station takes more than this percentage of programs from a single source over a 52-week period, it is responding to excessive economic pressure from this source and is abdicating its local responsibility for program selection. The presumption would be rebuttable, and the Commission would not have authority to suspend or revoke a station's license until after a full hearing, at which the station has the opportunity to prove that it is selecting each individual program on its competitive merits, as compared to the merits of other programs available for the same time period, and is not abdicating its local responsibility by entering into a direct or indirect exclusive dealing arrangement or course of conduct with a single outside-program source.

There are a number of statutory and regulatory precedents for fixing a particular percentage point as the place where the burden of proof shifts from one party to the other. For example, section 9 of the Investment Company Act states that "control" shall be presumed when any person owns more than 25 percent of a company's voting securities, but that the presumption may be rebutted by evidence. And section 2 of the Public Utility Holding Company Act states in effect that ownership of 10 percent of the stock of a public-utility company shall make the owning company a "holding company," unless the owning company presents proof of other circumstances establishing that it is not a "holding company." [7] And 75 percent appears to be a reasonable point at which to shift the burden of proof on exclusive dealing since there is good judicial authority that it constitutes exclusive dealing for a buyer to follow the practice of purchasing 80 percent of its requirements from a single supplier. *United States* v. *Richfield Oil Corp.* (99 F. Supp. 280, 295 (S. D. Cal., 1951), aff'd 343 U. S. 922, 1952)).

The proposed amendment of section 3.658 (a) might read as follows:

"No license shall be granted to a television broadcast station having any exclusive contract, arrangement, or understanding, express or implied, with a network organization or other producer or distributor of programs under which the station is prevented or hindered from, or penalized for, broadcasting the programs of any network organization or other producer or distributor of programs. Proof that a station, during any segment of the broadcast day (8:00 a. m. to 1:00 p. m.; 1:00 p. m. to 6:00 p. m.; 6:00 p. m. to 11:00 p. m.; 11:00 p. m. to 8:00 a. m.) or during the period 7:30 p. m. to 10:30 p. m., has devoted an average of more than 75 percent of its time over a calendar year to broadcasting the programs of any network organization or other producer or distributor of programs shall be prima facie evidence of the existence of a contract, arrangement, or understanding, express or implied, prohibited by this subsection. In computing this percentage no account shall be taken of time devoted to broadcasts of public events, news summaries, and major sports events, regardless of the identity of the program producer or distributor."

LLOYD N. CUTLER.
MARSHALL HORNBLOWER.

MARCH 26, 1956.

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[7] 15 U. S. C., sec. 79b (a) (7) (A) and (a) (8) (A). See *Electric Bond & Share Company* v. *SEC*, 92 F. (2d) 580, 592 (2 Cir. 1937), aff'd 303 U. S. 419 (1937).

Appendix A

National Broadcasting Company et al. v. United States of America, United States Supreme Court, October Term, 1942

CASE NO. 554

(Extract from affidavit of Niles Trammell, president, National Broadcasting Co., sworn to October 30, 1941, Record, pp. 239–242)

"Option time: At present NBC is able to sell network time for commercial programs to national advertisers on the basis of an assured national circulation for specified hours of the day by giving its affiliated stations 28 days' advance notice. NBC's ability to do this is basically dependent upon the time-option provision in its contracts with affiliated stations, as hereinabove described, which enables NBC to sell network programs within the optional [fol. 240] time period and enables the affiliated station to use the balance of the day for such local programs as it sees fit.

"As originally promulgated on May 2, 1941, paragraph 3.104 of the Commission's order, as stated in the verified complaint herein, prohibited the inclusion of any optional time provision in any contract of affiliation between a network organization and a standard broadcast station. As amended on October 11, 1941, said paragraph, as stated in said complaint, prohibits the inclusion of an optional time provision in any contract of affiliation valid as against any other network organization, national, or regional. Said paragraph, as amended, moreover, prohibits a station from agreeing to clear its time of nonnetwork programs for NBC upon less than 56 days' notice. The same paragraph prohibits any option provision in any such contract which may 'prevent or hinder the station from optioning or selling any or all of the time covered by the option, or other time, to other network organizations.'

"Said paragraph 3.104 divides the broadcast day into four segments (8 a. m. to 1 p. m.; 1 p. m. to 6 p. m.; 6 p. m. to 11 p. m.; 11 p. m. to 8 a. m.) and permits a station to agree to clear time of nonnetwork commitments upon 56 days' notice, so long as the time subject to call on this so-called option does not exceed a total of 3 hours within each of said four segments.

"The effect of the amended paragraph 3.104, like that of the original, will be destructive of nationwide network broadcasting, to the detriment of the other radio services supported thereby. The vice of this amended paragraph is its failure to recognize that national network organizations must be able to clear time on affiliated stations in order to render a nationwide service and that the identity or character of the organization which interferes with such clearance is immaterial. In addition to NBC there are at present two nationwide networks, one operated by Columbia Broadcasting System, Inc., and the other by Mutual Broadcasting System, Inc., as well as a number of regional networks, and each of these networks, whether national or regional, will be able to block an NBC network program under the amended order.

"In operating under the order, NBC would be forced to negotiate a sale of network time to a national advertiser, for example, on the blue network, upon an 'if, as, and [fol. 241] when' basis with respect to each of the 99 affiliated stations until all of the stations indicated that the particular time desired by the advertiser would be available.

"National network advertising contracts are customarily entered into for a period of 1 year, subject to the right of the advertiser to cancel at the end of any 13-week period. Under the Commission's order, before NBC could agree to enter into an advertising contract with an advertiser for a commercial program, it would first have to communicate with each station to determine whether such station had available the particular period of time desired.

"At the present time an advertiser using the red network during the valuable evening hours is required to contract for the use of a minimum of 50 stations, of which only 6 are operated by NBC itself. Consequently, if optional time is prohibited, each and every advertising contract negotiated for such hours on the red network would require negotiation by NBC with a minimum of 44 stations. In the normal course of its business, each of these stations would, under the Commission's amended order, be scheduling the programs of other networks. Despite these conflicting demands, therefore, NBC would have to obtain the unanimous consent of not less than 44 persons, firms, and corporation for each program scheduled.

"This problem is intensified in cases where the advertiser desires a lineup of 100 stations or more. The further fact must be considered that clearance must be accomplished for each of the many network programs broadcast. In order to save itself and its affiliated stations from damage, NBC would have to accomplish this feat a sufficient number of times annually to assure itself of a gross income of more than $17,900,000, which amount is spent in maintaining NBC's network and key-station broadcasting services inclusive of wire lines.

"Optional time is as necessary for the practical operation of network broadcasting as traffic lights are for the practical flow of vehicular traffic. The order is no more workable than an ordinance permitting each vehicle to operate the traffic lights to suit its own convenience, and the same chaos will result from its enforcement.

"Elimination of network optional time on a firm basis under the order of the Commission will cause irreparable [fol. 242] injury to NBC and its affiliated stations by making it financially and physically impossible to handle a sufficient volume of business to support the existing programs of the network organization. Abolition of such optional time will inevitably lead to increased expenses to NBC and its affiliated stations as well as a reduction in network revenue and a consequent diminution in the quality of programs, thus setting in motion a vicious descending spiral. Such injury will result from the Commission's order even though NBC and its affiliated stations take no action other than to amend their respective affiliation contracts so as to bring them into conformity with the Commission's order.

"The requirement that the station may agree to clear its time of nonnetwork programs only upon 56 days' notice will have the practical effect of an absolute prohibition against network optional time. It is a matter of common knowledge in the advertising business that national advertisers insist that a specific advertising program be placed before the public shortly after the contract is signed. This insistence is not peculiar to radio advertisers. For example, magazines having a national circulation have found it necessary to shorten the period between the deadline for advertising copy and publication.

"The 28-day notice required in existing option-time provisions was not determined theoretically, but is the result of an experienced balancing of the needs of the stations and needs of the advertisers, since the networks must satisfy the legitimate needs of both in order to exist. The 56-day period flagrantly disregards the practical necessities of the advertising business. National network organizations will have to satisfy the advertisers by clearing time on less than 56 days' notice under penalty of losing to competitive advertising media the revenues which support the existing broadcasting services. As a result, NBC will have to negotiate for time on its affiliated stations on the basis of the 28-day notice period which has resulted from experience and in so doing will be unable to clear such time as against local commercial programs, local sustaining programs and other nonnetwork programs, any one of which may defeat the scheduling of a network program.

"The inevitable consequence will be the destruction of nationwide network broadcasting to the irreparable injury of NBC."

COLUMBIA BROADCASTING SYSTEM, INC. *v.* UNITED STATES OF AMERICA, UNITED STATES SUPREME COURT, OCTOBER TERM, 1942

CASE NO. 555

(Extract from affidavit of William S. Paley, president, Columbia Broadcasting System, Inc., sworn to October 30, 1941, record pp. 238–241)

"THE PROHIBITION AGAINST EXCLUSIVE OPTIONS

"Rule 3.104 contained in the order of May 2, 1941, prohibited the station from granting the network an exclusive option upon a certain portion of the station's time. It read:

" '3.104. No license shall be granted to a standard broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which prevents or hinders the station from scheduling programs before the network finally agrees to utilize the the time during which such programs are scheduled, or which require the station to clear time already scheduled when the network organization seeks to utilize the time.'

"By the order of October 11, 1941, this rule was amended to read:

" '3.104. No license shall be granted to a standard broadcast station which options for network programs any time subject to call on less than 56 days' notice, or more time than a total of 3 hours within each of 4 segments of the broadcast day, as herein described. The broadcast day is divided into 4 segments, as follows: 8 a. m. to 1 p. m.; 1 p. m. to 6 p. m.; 6 p. m. to 11 p. m.; 11 p. m. to 8 a. m. Such options may not be exclusive as against other network organizations and may not prevent or hinder the station from optioning or selling any or all of the time covered, by the option, or other time, to other network organizations.'

"Rule 3.104 as amended continues the absolute prohibition against the giving by stations of exclusive options to networks, but provides that an option, not exclusive against other network organizations, may be given by a station to national or regional networks (all the rules are made applicable to regional networks as well) for the broadcasting of network programs during not more than 3 hours in each of the 4 segments into which the broadcast day is divided. The order defines an 'option' as—

" '[fol. 243] any contract, arrangement, or understanding, express or implied, between a station and a network organization which prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time.'

"When a network's option upon the time of a station ceases to be 'exclusive as against other network organizations,' it ceases to be an option. It becomes a mere opportunity for the network to offer a program or program series to the stations and try to conclude a contract with enough stations in important markets to satisfy the advertiser. The Commission's October opinion on rehearing relates:

" 'The Commission is not convinced by the contention of NBC and CBS that the optioning of time by networks is indispensable to network operations, particularly since the chain broadcasting regulations, neither in their original form nor as herein amended, place any restrictions on the bona fide purchase of station time by networks. Networks have heretofore successfully operated without option time. However, it is clear that some optioning of time by networks in order to clear the same period of time over a number of stations for network programs will operate as a business convenience.'

"This 'nonexclusive option' will not enable networks 'to clear the same period of time over a number of stations for network programs.' If Columbia's option during the period from 8 to 10 p. m. on a Tuesday evening means that the time of the outlets is available for Columbia's sponsor provided that five other network organizations (national and regional) do not make the station contracts first, then Columbia must contract with its sponsor subject to a sheer gamble that the time can be cleared and the advertising contract performed.

"The prohibition of exclusive option time will make the clearing of time for the arrangement of a national network program an almost impossible task. Advertisers do not determine to use network broadcasting to sell their products only 24 hours prior to the time of the program. It sometimes takes months of planning, market study, and research [for. 244], program planning and negotiations before an advertiser decides whether or not to use network broadcasting and thereafter what stations and programs to utilize. The national advertiser must have nationwide coverage, both because he sells nationally and because he must give substantially the same support to the distributor and the retailer in all parts of his territory. Advertising efforts must be carefully and scientifically planned. Frequently they are related to an advertiser's whole manufacturing and merchandising operations as much as a year in advance. Under such circumstances it is practically impossible to sell an advertiser the use of networks, a program idea, program talent, and the like, when the network is not able to know and inform the advertiser in advance, what stations and what time the network has to offer; in short, what circulation he could get for the money he would spend. Under the rule in question, the network might spend months of effort in convincing the sponsor, in helping him select the territory in which to broadcast his program, the stations to utilize, the character of the program, and the talent, and then find itself unable to provide either the stations or the time desired by the advertiser in the markets which he desires to cover.

"It would be impossible in practice to operate a network such as that of CBS if CBS did not know in advance what circulation it could deliver, what stations it had to offer and what time on those stations was available for use by prospective advertisers. This is precisely the kind of assurance the visual media are able to provide and the kind of assurance which the advertiser requires before he is able to make any intelligent selection of his medium, before he does, in fact, select his medium.

"NOTICE TO AFFILIATES OF NETWORK COMMERCIAL COMMITMENTS

"Existing contracts provide that the affiliate may require not less than 28 days' notice from the network before the affiliate will be called upon to broadcast a network commercial program. Amended rule 3.104 provides that the period of notice shall be increased to 56 days, and the Commission explains (exhibit C to verified complaint, p. 8).

" 'This lengthening of the call period will give stations greater freedom in scheduling local and non-network national [fol. 245] programs during the hours of the broadcasting day which are subject to network option; for such programs, even though subject to be moved, may be assured of at least 8 weeks of continuous broadcasting. Nor does it seem that the increase in the call period will seriously affect national network business: for the national networks have pointed out that theirs is a long-range business and that large-scale national advertising network programs are usually planned and arranged for many months and even a year or two ahead of the actual commencement of the brodcasts. Under such circumstances, it does not appear that a 56-day call period will impose any serious hardship upon national network operations.'

"In the foregoing the Commission strikes a needless blow at the flexibility of the highly competitive network advertising business. I have already pointed out the frequent need for the ability to negotiate with advertisers well in advance with the assurance of being able to deliver if we make a sale. On the other hand, a variety of reasons in the industrial world will cause advertisers to desire to start an advertising campaign swiftly. Newspapers and magazines will continue to be able to accomomdate such advertisers, whereas network broadcasting will be working under an unnecessary handicap which will weaken it in competition with other media and cause it to lose important business."

Senator POTTER. We will recess until 2:30 this afternoon, and I believe it would be desirable if you and your colleagues could return at that time for any questions the committee might have.

Mr. MOORE. Thank you very much, Mr. Chairman, for your courtesy.

(Whereupon at 12:30 p. m., a recess was taken to 2:30 p. m.)

AFTERNOON SESSION

Senator POTTER. The committee will come to order.

Mr. Moore, as the committee recessed this morning, you had concluded your statement. Dr. Turner, I believe, was going to advise the committee as to certain legal matters—or at least give a summation of his brief. So Dr. Turner, if you care to do that now, and Mr. Moore, if you or your other colleagues care to add anything to Mr. Turner's summation, feel free to do so.

Mr. MOORE. Thank you very much, Mr. Chairman.

Senator POTTER. Dr. Turner.

STATEMENT OF DR. DONALD F. TURNER, COUNSEL, KTTV

Dr. TURNER. Mr. Chairman, I will first identify myself. My name is Donald F. Turner. I am on the faculty of the Harvard Law School where, among other things, I teach a course in antitrust law. I also, a year or two ago, served as a conferee of the Attorney General's Committee To Study the Antitrust Laws, the committee which subsequently issued a report.

I would like, before going further, to merely restate the obvious; first, the views that I express are my own and are no way attributable to the institution with which I work; and second, as Mr. Moore pointed out, that I was retained by him to consult on the antitrust aspects of the TV industry.

Senator POTTER. Have you done any legal work for the television industry or television personalities in the past?

Dr. TURNER. I have not, sir, up until this time.

I had intended to start off with a discussion of the point raised by Senator Bricker concerning the public utility aspects of the TV industry. Since he isn't here, I think I will wait.

Senator POTTER. I think it might be better to wait until Senator Bricker arrives.

Dr. TURNER. I won't further summarize the information and facts concerning the industry which Mr. Moore put before you this morning, as to the nature of the restraints in the TV industry and as to the adverse effects which these restraints have on such groups as independent stations, small advertisers and independent program producers.

In my opinion, the facts which Mr. Moore presented, if true, would lead me to say there are violations of the antitrust laws in these TV industry practices, and I would say so without having any particular need to cite specific cases.

However, in the supplement that we have submitted we have given a brief resume of the particular cases on the basis of which we conclude that the time option and the "must-buy" practices of the TV networks do violate the antitrust laws. In particular we have discussed what to us is a striking analogy, namely, the movie industry, where the legality of comparable practices has been thoroughly adjudicated and they have been held to be illegal.

Very briefly, the time option is virtually identical with block booking. And the "must-buy" policy adopted by the networks through an agreement, express or implied, with their stations, is very similar to the master or chain agreements negotiated between movie distributors and chains of movie theaters.

In the Paramount case and in the Griffith case, which we have cited in our discussion, the Supreme Court made it clear that the vice of both of these restrictive agreements—block-booking of pictures and master or chain agreements with independent theater chains—the vice of both of these is that they enable, in the one case a particular picture and in another case a particular theater, to prevail, not on its own merits, but on the back, so to speak, of other pictures or other theaters to which it is tied in.

Now we think it is fairly clear from a close reading of the Supreme Court opinion in the Paramount case that block-booking is simply illegal per se, under the Sherman Act. There is no need to inquire as to justification or business reasons or anything else. The kind of agreement where a person can get one picture of particular merit only on the condition that other pictures be taken with it is just simply illegal. Attempted justifications were made in these cases. Columbia Pictures, in the Paramount case, vigorously argued that block-booking should be left available to them because this was the only way that they could effectively compete. The Supreme Court's answer to that was that such a business justification could not prevail in the face of the Sherman Act's prohibitions on restraint of trade of this type.

Senator POTTER. Dr. Turner, do you have any ideas as to why time option and "must-buy" agreements have not been tested or challenged in the courts?

Dr. TURNER. I don't know for sure, Senator. I would guess that the Department of Justice has not moved against these practices because of the overhang of the chain broadcasting regulations, which purportedly justify the time option. The regulations do not mention as such, or have any reference to the "must buy," but I would gather—and I did make a quick reading of Judge Barnes' testimony of a few weeks ago—the Justice Department is not exactly sure as to its power to proceed initially against the TV industry without having these practices tested first before the Commission.

Mr. COX. That is, there is a problem as to who has primary jurisdiction?

Dr. TURNER. That is right. As to the applicability of the antitrust laws to the TV industry, some doubt has been raised as to that. In my opinion, without looking at it too closely, it seems to me clear from the statute, particularly in comparison with other regulatory statutes, that the application of the antitrust laws to broadcasting, radio and TV, is specifically reaffirmed in the act, so that in any event, it seems to me that it can be argued, to say the least, that the Federal Communications Commission itself has no power to ratify practices which the antitrust laws would prohibit. In other words, I think, in view of the legislation, they would exceed their powers in attempting to do so.

As to the next question, as to whether the Department of Justice could move independently, I am just not in a position to say. My offhand guess would be that this would be a case of what is called concurrent jurisdiction; that the Justice Department could, if it wanted to, proceed independently.

That may not be wise. It might be much better, in view of the fact that practices get woven into a web, which deeply involves a chain regulation, to work cooperatively with the Federal Communications Commission.

Senator POTTER. Dr. Turner, did you have any other points that you wanted to raise in your summation, or are you ready——

Dr. TURNER. I would like to make a few more points. One is in connection with the approval of the time option in the chain broadcasting regulations. I want to point out, as we do in our memorandum, that this was done 7 years before the decisions of the Supreme Court in the big movie cases, and we think there is considerable doubt that the Commission would have taken this step if it had had those decisions before it.

Now, in the memorandum we have submitted we have discussed the case largely in terms of the movie cases, which we think cover this situation like a blanket.

I might just suggest that the effects of these practices—the legality of the practices themselves, is extremely doubtful, to say the least, regardless of how you look at them. The effects, as Mr. Moore pointed out, of the time option are very similar to those of exclusive dealing arrangements, which are often practiced in industries in general, and the effect is to foreclose independent program producers and small advertisers from many markets in which they would otherwise be able to enter.

Now, exclusive dealing is specifically dealt with in section 3 of the Clayton Act. There is some doubt that the Clayton Act applies to the sale of advertising. It may be limited to goods. But in any event, a restraint which goes far enough would violate section 1 of the Sherman Act, even if you couldn't bring it within the terms of section 3, and where you have, as you do have here, virtually 95 percent foreclosure of prime TV time, it seems to me unquestionably that this would be held to be an undue restraint under section 1 of the Sherman Act.

Secondly, the "must-buy" arrangements, as Mr. Moore has very clearly pointed out, foreclose independent TV stations from access to programs, and again foreclose small advertisers from an opportunity to purchase prime television time. Again we would conclude that, even apart from the movie cases—I mean just on general antitrust principles—this would be clearly an unreasonable restraint of trade.

We believe that under the movie cases these practices would be unreasonable per se; as I said, no question of business justification would come in. I do not think, however, it is particularly important as to whether they are or are not per se violations of the antitrust laws. In any event, whenever you have a restrictive practice indulged in by groups wielding the economic power that the networks wield, even if you say, "Well, they are not illegal per se," under these circumstances where a group with great power is indulging in restrictive practices, they would be held to be unreasonable restrictions of trade even if not per se, even regardless of who was doing it.

In that connection I might just briefly discuss the so-called rule of reason. I want to express my own opinion, which I think the Attorney General Committee's report fully supports, that the rule of reason does not permit any arguments as to the benefits to be derived from the monopoly power or from restrictive practices—any arguments to the effect that the units involved have performed well. The courts have repeatedly said that the Congress and the antitrust laws did not permit good trusts and only strike down bad trusts. Congress struck down all trusts, and the only avenue of evidence, in my opinion, that the rule of reason opens up is not evidence as to whether the performance has been good, but evidence as to whether, in fact, the restraints that are being attacked are undue restraints.

Now the leading rule of reason cases, the old Chicago Board of Trade case and the Appalachian Coals case, in the depression, both really went on the ground, not that these were serious restraints which business justification would permit, but on the ground that they were not serious restraints.

In the Appalachian Coals case, for example, the Court said that they would permit the joint selling arrangement which the coal producers there entered into because the record showed that this joint selling effort would have no effect on price whatsoever because of the strength of remaining competition. Moreover, the Court directed the district court in that case to retain jurisdiction and see if in fact the arrangement that was there being attacked by the Government would have a substantial effect on price—the implication being that if it did, then it would be illegal, regardless of all of the cries that were raised that restrictions were necessary because of an acute depression condition.

Mr. Cox. Then you would feel no restraint that is 95 percent effective could be defended?

Dr. Turner. Absolutely not. As in any antitrust situation, you can always go back and extract bits and pieces from cases and attempt to build a defense. In my opinion, a defense of the practices that are involved here would be a fairly flimsy weapon.

In this discussion, of course, I mean our conclusions are all predicated on the assumption that the Federal Communication Commission lacks the authority under the act to protect practices which would otherwise violate the antitrust laws.

Senator POTTER. That they do not have the authority?

Dr. TURNER. That is right.

Senator POTTER. It was predicated on that basis?

Dr. TURNER. That is right.

Mr. COX. Except, of course, in common carrier instances.

Dr. TURNER. That is right, but it would not apply here.

That is as far as I care to go on the subject.

Mr. COX. Do you want to put into the record your answer as far as Senator Bricker is concerned?

Senator POTTER. I think it would be desirable, I know I would like to hear Dr. Turner discuss that question, too, and if you would care to discuss it now, and when Senator Bricker arrives, if he would care to have you discuss it later, I am sure you would like to do that.

Dr. TURNER. I would like to say one more thing that I forgot before I go further in connection with TV practices, and that is that it is extremely important to notice they are collective. That is, the power that the networks wield is not the power of a single individual, but the power based on the fact that a whole collection of TV outlets, namely, their stations, have aggregated together. In other words, it is a combination, and as cases like Associated Press make clear, it seems to me, it would not be necessary, to show violation of section 2 of the Sherman Act, to show that this group had monopoly power in the sense that they were the only unit in the industry. It is sufficient to show that they have substantial power, and it seems to me that that cannot be denied in the TV situation.

Collective restraints—collective practices which tend to foreclose competitors from a market—have in effect been ruled illegal per se by the Supreme Court. In the Columbia Steel case, the Court said as much; collective agreements of this type are simply illegal per se.

With regard to the question raised by Senator Bricker, he asked me to comment on the public utility aspects of networks and television and industry in general.

I would say this: First, there is clearly no doubt that the TV industry is clothed with a public interest or affected with a public interest, sufficient to warrant public utility type regulation, if that were deemed appropriate. Moreover, if the network claims, as I understand them, were taken at face value—namely, that restrictions and a high degree of market power is essential to the functioning of the TV industry—if these claims were taken at their face value, then it seems to me that the networks have simply made a case for public utility regulation.

Historically it seems to me the approach of the Congress has been this: That primary reliance shall be placed on competition. The Sherman Act and other antitrust laws are the fundamental part of our Federal economic regulation and express the hope that, in the vast majority of situations, if you preserve competition in industry, competition in the market place will take care of itself. It will prevent the arising of undue market power.

On the other hand, in situations where competition for one reason or another cannot work, as in the utility field—the gas, electric light, railroads—the Congress has taken the position that you cannot have competition if you cannot rely on it; then you must regulate it because high degrees of market power cannot be safely left in private hands.

To use a phrase that somebody has used a great many time, a monopoly cannot be allowed to be a judge in its own case.

One of the fundamental reasons for this is that where you do not have the economics of competition—the economics of the market place—there is no effective way of telling just how good the performance of the monopolist is. There is no measuring rod, in short, because you do not know how progressive the industry would have been, what the prices would have been, what the product improvements would have been, if there had been competition. There is no way of telling.

Senator POTTER. Doctor, could you regulate the networks without regulating the advertisers?

Dr. TURNER. Well, you are now raising or dipping into some of the reasons why, in my opinion, it would not be wise to rush pell mell into public utility regulation.

The point I was about to make was this: That utility regulation, as we all well know from the history of attempting to regulate railroad rates, electric utility rates, and so forth, is a rather unhappy alternative. It immerses the Government into the day-to-day operations of an industry. It requires more and more detailed regulations which may hamstring efficiency, remove incentives to efficiency. So long as you operate on the general principle that rates should be set to permit a profitable return, you diminish incentive to improve. In short, public utility regulation, or detailed regulation of that kind, is an alternative to be avoided whenever possible.

Our answer with respect to the TV industry is that it is extremely unlikely—at least it has not been proved—that restraints of trade, high degrees of market power, are essential to behavior of this industry in the public interest. There are a good many ways in which competition could be reintroduced in this industry, strengthened and improved. The prospect of satisfactory operation in the TV industry under these circumstances is sufficiently good that we believe this ought to be the course that Congress should take, because what we have now is a situation where there have been very serious restraints imposed and they are the kind of restraints that probably have the effect of a vicious circle. The greater the damage to independent producers, the less likely it is that new independent producers will come in and the more likely it is that independent sources of programs will dry up. This puts additional pressure on independent stations. It makes it even more important that stations having an affiliation retain that affiliation. In other words, the whole effect of these restraints is cumulative, and if allowed to go on, it would mean that 3, 4, 5 years from now you would probably have a much tighter, more controlled industry than you now have. We believe that if these restraints were removed they would have the effect of multiplying, over the course of time, the numbers of independent film and other program producers, that the increased sources of programs would enable independent stations to survive and improve, would make the importance of network affiliation considerably less, and to the extent that it make it possible for more and more advertisers to come in and sponsor programs, would probably make economic the creation of additional TV stations. That is, it would become then more profitable in areas which now have 1 or 2 stations, to put in an additional 1 or 2.

Senator POTTER. Is there a corollary between the Associated Press case where the courts forced the AP to make a service available to whoever could use the service? Is there a corollary between the Associated Press case and the distribution of network programs?

Dr. TURNER. There is a corollary to the Associated Press case, Senator, in terms of the situation, in several respects. First, you had in the Associated Press case, or in the newspaper industry, 2 or 3 news services. Access to one of those news services was almost essential. Access to AP, according to the findings of the court, if not indispensable at least was fairly important, and inability to purchase AP news would put a paper at a competitive disadvantage.

The effect of the bylaws in the Associated Press case which prevented nonmembers from dealing in AP news, and which restricted their membership, where they were competitors of existing members, was to put pressure on competing papers. Moreover, and the court stressed this very much, it made it much more difficult for newspapers to spring up.

As to what the court provided, the only part of the decree that is significant here is that AP was not required to take in everybody. They were, however, required to admit members without taking into consideration in any way the fact that they were or were not competitive with existing members. In other words, the court did not go to the extent of putting AP in a public-utility category.

Mr. COX. You have this distinction, don't you? In that case, of course, it was quite feasible for three newspapers in a market to publish stories based on AP service, whereas in the TV field the advertising would only be paid for once, and therefore, there is not equal policy reason for providing access on equal terms to this program by all stations.

Dr. TURNER. Yes. Not only that, you could always give AP service in a town with 3 papers and it would be hard for 1 town to have 3 TV stations receiving the same network service. As a matter of fact, there are many reasons why this would not be done.

Mr. COX. Is it your reasoning on this public-utility concept that, in the absence of some showing that restraints are necessary in order to permit a national system of television, it would be preferable to leave TV to unrestrained competition, rather than to seek to improve regulation of rates and other matters.

Dr. TURNER. Positive regulation, that is right. It seems to me, particularly in this field where you have an informational medium, you are walking on pretty dangerous ground when you start to set up fairly complete regulations. My feeling is that this should be avoided if at all possible—that competition should be tried. If it ultimately proves unfeasible, that is something else again, but regulations should not be tried until that time.

Senator POTTER. Do you have have any questions, Senator Pastore?

Senator PASTORE. No, sir.

Senator POTTER. Do you plan on staying for the balance of the afternoon, Mr. Moore, Dr. Turner?

Dr. TURNER. Yes; we can do that.

Senator POTTER. I know Senator Bricker has another committee meeting, but he does plan on returning this afternoon. I know he has some questions that he wants to discuss with you. So if you could stay I think Mr. Cox has a few more questions he would like to take up with Mr. Moore. If you have no further testimony to give, you could stand by. If Senator Bricker does come, I know he is very desirous of discussing some of these legal questions with you.

Mr. MOORE. We would be very happy, Mr. Chairman.

If it should be inconvenient this afternoon I would be glad to return tomorrow or the next day if the committee so wishes.

Mr. COX. I have one question for you, Mr. Moore, and that is, what you think would be the result of the proposed amendments that you suggest to the chain broadcasting regulations, in terms of the continued function of the network. That is, would the network continue to play an important time-clearance function, within the 75-percent limitation that you suggest—Would it continue to play a role in the producing of television programs?

Mr. MOORE. I think the networks most certainly would, Mr. Cox, within the limit of their 75 percent. I think they will continue to play a program role and a clearance role which would be successful—could be successful to the maximum of the 75 percent, and where it was less than that, it would be because there was a rival competing unit seeking the same clearance. Therefore, the networks, within that framework, have plenty of room to maintain their economic position, but we would expect that with the spur of program competition from other sources, that perhaps we could look toward improvement not only of network program service, but of the independent program service as well.

I think that in regard to clearance some mechanism would spring into being very quickly, which would make it convenient for advertisers to make inquiry for this competitive clearance through some kind of a central teletype headquarters in New York which could communicate with all stations in every market. You might find an advertiser who had a program who might prefer, in each market, to communicate with all stations, asking them to submit the best possible time schedule. At the same time, the network might be inquiring in that market of its affiliate for clearance of its show in perhaps the same time. Therefore, we would have a very simple and very effective form of competition, and to the extent the network programs are of high quality they would succeed, and I think we would have a very fine three-network service, or more.

Mr. COX. But this would be a situation in which the decision in each case was left to the station licensee as to what program, and what time for that program, he thought was best in his community?

Mr. MOORE. Exactly.

Mr. COX. One other question, either for you or Professor Turner. Do you think that indirect control of these matters, these practices, through FCC regulation simply of either network-owned and -operated stations or of the contractual arrangements entered into between independent licensees and the networks, is a sufficient protection of the public interest and a sufficient insurance of competition; or is there any chance that a more direct approach—authority to permit the FCC to regulate practices of the network in and of itself—would be appropriate?

Mr. MOORE. There is always the question of the administrative effectiveness of the regulation, but it would appear to me that the current framework within which the Commission operates would enable it to establish the regulations which would govern agreements between stations and network originating organizations, or even between stations and other originating organizations, in a way where the Commission could see to it that the licensee complied with the spirit and letter of the Commission's regulations and could see to it that the rules were complied with through its present control of the licensee. It may be, again, that in experience we would find that that was not sufficient.

I daresay that the extent of the network use of the option is greater today than the Commission thought it woud be when they approved present regulations, so we never know exactly what a set of regulations will bring about. But until experience proves the regulatory approach inadequate, I would think it should be tried.

Senator PASTORE. In a locality where you have two stations and each of them is owned by a network, how would you go to work?

Mr. MOORE. The network is a licensee of the station and as such it has the same responsibilities as any other licensee, which are, namely, to program that station in the public interest and convenience of the community.

I would think if we had a pattern, which actually we almost do now, where every station owned by a single licensee—in this case, a network—carried exactly the same programs at exactly the same time there would be a very strong inference that the schedule was determined on considerations other than the separate local interest of each community. The coincidence of each community, perhaps 3,000 miles apart, requiring exactly the same program schedule is almost too great a coincidence. Therefore, the network licensee, within the 25-percent limitation we have suggested, would operate like any other station in that it would accept the best programs it could obtain from nonnetwork sources. Within the 75 percent, where the network would be allowed to program its own programs, it would be subject only to the limitation that it truly present those programs for local reasons. If, as I said, 5 stations operated by a single network are all programed identically to a full 75 percent, I would think the Commission might consider that questions should be asked as to the identity of community interest in these 5 separate markets.

Senator PASTORE. Have you any opinion on how public policy is affected with relation to a network owning its own stations?

Mr. MOORE. Of course, we compete in Los Angeles with three network-owned stations, and I think the networks run fine stations.

Senator PASTORE. I realize that.

Mr. MOORE. But I do think this, that you will always have the question, in a case like that, as to which interest the station is serving. Is it serving the local community interest or is it serving the more general interest of the network? I think that is a line that should be watched, and it is one that has to be carefully drawn. As the owner of 1 station in 1 community, our company is in a position to make program and sales decisions purely with respect to that community. If we were mingling those decisions with business considerations that affected stations in other communities, we would be departing slightly from the pure responsibility to our own town. I think the network ownership of the station, therefore, should be subject, to boil it down, to the same kind of examination, periodically at renewal time, as any other licensee. The same standards for local programing and service to the local community should be applied to a network station like any other.

Senator PASTORE. You see nothing inimical to the public interest in allowing networks to operate their own stations?

Mr. MOORE. I see the potential, Senator Pastore. The actuality is one that would be the Commission's responsibility to determine.

Dr. TURNER. May I add something there?

It seems to me that it is inimical to the public interest if it goes too far. If, to take an extreme case, the networks were permitted, although they are not now, to own as many stations as they wanted to, and they took over all of their present affiliates, you would have precisely the same restraint that you now have via the medium of ownership rather than contract. This is one consideration. Second——

Senator PASTORE. But that is on a national level. Let's take it on a community level.

Dr. TURNER. Senator, with regard to the ownership of any single station it seems to me fairly important to examine what the nature of competition in that market is. If you have only one station in a particular area, then it seems to me it is very bad to have that owned by any one network because it is not subjected, in that market, to competition from anybody. In an area where you have a great many TV stations, the effect of network ownership of a single station is not so great.

Senator PASTORE. I am surprised to hear you say in communities where you have very many. There are only half a dozen communities that do.

Dr. TURNER. Precisely.

Mr. MOORE. Senator, I think the issue was well summed up years ago in a famous Variety headline which read, "Stix Nix Hix Pix," meaning the rural people didn't like pictures about rural communities, although they were popular in the cities. We find different tastes in different parts of the country. The same thing is true of a play that is a hit in one town and on the road it dies. Every station has a community to serve, and to the extent that one company would treat widely separated stations on a uniform pattern that would be, in my opinion, a departure from the responsibility imposed. To the extent that, on review, we find they are adapting their program schedule to the particular tastes and needs of the community, the multiple ownership by the network is not inimical. I think it is a matter of administration.

Senator POTTER. Mr. Moore, and Dr. Turner, I want to thank you for coming back this afternoon, and I hope you can stand by, in case Senator Bricker has further questions to discuss with you. Again, I want to thank you for a very comprehensive statement.

Mr. MOORE. Thank you.

(During the afternoon session testimony was heard from Mr. Ernest Lee Jahncke, Jr., vice president and assistant to the president of the American Broadcasting Co. His testimony, which related principally to allocations matters, is set forth in full in the volume on the

UHF-VHF Allocation Problem—Public and Industry Witnesses, commencing at page 752. However, he referred to Mr. Moore's testimony at two points. His comments in this connection were as follows:)

Mr. JAHNCKE. My name is Ernest Lee Jahncke, Jr.

I am vice president and assistant to the president of the American Broadcasting Co. ABC welcomes again the opportunity of testifying before this distinguished committee on the grave problem of television allocations.

In connection with the testimony of Mr. Moore, I would like to say that ABC would like to have the opportunity to speak to that testimony, and I understand we will have that opportunity at a later date when network practices are discussed.

Senator POTTER. That is correct.

Mr. JAHNCKE. However, I would like to make 1 or 2 observations at this time, if I may, as they relate to allocations, first of all, and they will all be made under the general point that I disagree completely with Mr. Moore's statement.

I think Mr. Moore has in great part presented the opinions of ABC, but he arrived at the wrong conclusions. I think everything he said is an effect, not a cause. I think it all stems from the economy of scarcity, of not enough outlets from the position of monopoly and duopoly that exists because we have not been able to have free access to the market place or enough TV stations to serve the public interest.

He cited that in radio you don't have these pressures only because the scarcity has been eliminated. I submit that the main concern of this committee is to eliminate that same scarcity. I submit that the various plans that have been proposed to solve this problem are not as different as has been suggested and that immediate action is absolutely essential.

Senator PASTORE. In other words, what you are saying, Mr. Jahncke, is that a lack of competition exists because of lack of facility rather than lack of regulation?

Mr. JAHNCKE. I think, Senator Pastore, that regulation stems from scarcity. You eliminate the scarcity, you eliminate the necessity for regulation—and free competition will act in the traditional American Government situation.

For example, ABC owns its own TV stations, but we operate only in markets that have at least three competitors, in addition to ourselves, and have since 1948. As a network operating individual TV stations we are just as concerned with our obligation to serve the public interest locally and nationally as any other licensee. We have competed in New York against 6 competitors; in Los Angeles against 6 competitors; in Chicago against 3; in San Francisco against 2, and now 3; and in Detroit originally against 2 and now 3.

Senator PASTORE. As contrasted with the situation in New York, what is your predicament in relation to localities where they only have 1 station or 2 stations?

Mr. JAHNCKE. We don't own any stations in such markets, sir; and we rarely if ever have the opportunity to have an affiliate in such a market.

Senator PASTORE. I am not speaking of affiliates. I mean insofar as your network activities are concerned.

Mr. JAHNCKE. Out network activity in respect to 1 or 2 station markets is a ceaseless activity, usually futile, to get access or persuade these duopoly markets to even schedule an ABC program.

I would like to refer to a couple of specifics in Mr. Moore's testimony. On page 11 of his testimony he listed 40 markets in discussing must-buy policies. I only mentiton it because I would like to read the 16 markets that are neither must-buys, nor any other buys on ABC. They are the 16 markets to which we don't even have access. They are Boston, St. Louis, San Diego, Louisville, San Antonio, Tampa, Rochester, Omaha, Syracuse, Oklahoma City, Sacramento, Norfolk, Providence, Davenport, Dayton, and Birmingham.

When we talk about competition—we don't compete in these places. We don't have equal access to these market places. I would like to refer to another part of Mr. Moore's testimony, on page 5, where he refers to his operation in connection with the Salk broadcast. I think KTTV's operation on that date was most commendable, but I make two observations: One, had it not been for the regular network use of A. T. & T. facilities, those facilities would not have been there, available and waiting, for Mr. Moore to buy them from Michigan to Los Angeles on that 1 particular occasion for 4 hours. A. T. & T. cannot maintain their lines for 4 hours a year. Secondly, I suggest that perhaps Mr. Moore's operation at that point was more in the nature of a temporary network, rather than as a poor lone independent station. We of ABC were happy to join in that network in both our Los Angeles and San Francisco stations, and, as my memory recalls, we did pay our proper share of the cost involved.

Senator PASTORE. With relation to these markets that you have just recited, including the city of Providence, how would that 75 percent rule that was suggested by Mr. Moore affect your network? Would it be bad, or wouldn't it have any effect at all?

Mr. JAHNCKE. Senator, I refer to that in my statement. I think any percentage figure is arbitrary. Mr. Moore chose 75 percent of 3 evening hours. Perhaps there are 4 or 5 or 6 evening hours, if we get 75 percent for 5 hours, perhaps it is more than any network is using today. I think, therefore, that any percentage figure subjects you to the arbitrary trap of substituting numerology for commonsense. As to whether—I don't think it is a question of whether the network uses too much. I think the network programs—I disagree with Mr. Moore, I don't think they are inferior. I think they are in the public interest.

I don't think that stations are fighting not to take network programs. Quite the reverse, as I understand it. Of course it is not my network, but stations find the privilege of being listed as a must-buy an important asset, which is another way of saying that they are very desirous and happy to take network programs. The very popularity of network programs seems to me suggests they are in the public interest.

Mr. COX. If they are listed as a must-buy, it relieves them of the obligation of selling their prime time, doesn't it, substantially—95 percent at least?

Mr. JAHNCKE. I didn't quite get that, Mr. Cox.

Mr. COX. If the individual affiliate is listed as a must buy, by either NBC or CBS, to the extent that Mr. Moore's statistics are reliable as to the percentage of time cleared, they have been relieved of the necessity of selling their prime time?

Mr. JAHNCKE. In my opinion it is not a question of being relieved of necessity. When a station affiliates with a network, part of that arrangement is that the network acts as the national sales agent. And to be listed as a must-buy is a device between the sales agent and the advertiser, saying that the advertiser has to order. The station reserves its regular right as a licensee to accept or reject a program, depending upon whether, in its opinion as licensee, it is in the public interest. The must-buy is a pressure on the advertiser, not on the affiliate, who merely is in a position to enjoy the advantages and benefits, if it so wishes, as a licensee.

Mr. COX. The right reserved to the affiliate to reject, however, is not just that he doesn't think this is the most in the public interest, but that he thinks it is affirmatively contrary to the public interest, or that there is some peculiar local occasion which he feels requires the displacement of the program. Wouldn't that be a better description of the extent to which he can reject programs in option time?

Mr. JAHNCKE. I don't think that any stations have ever been reluctant to eliminate any program, network or local, for a program that, in its opinion, is more in the public interest.

Senator PASTORE. Let's get these things in their proper perspective. What you are actually saying, Mr. Jahncke, is this: That this must-buy aspect of this situation affects relationship between the network and the advertiser insofar as it regulates the amount of money that the advertiser has to pay and the quality of the program that you can put on the air, as to the distribution you can make of that program?

Mr. JAHNCKE. Well, Senator Pastore, I think that you do have economics coming in here.

Senator PASTORE. That is what I mean.

Mr. JAHNCKE. In that the number of outlets needed to justify the cost of a program—the number of outlets which, may I hasten to point out, practically every advertiser wants, because he needs a distribution—all are factors in this situation, but I would like also to point out that we are discussing "must-buy," which is a practice that doesn't obtain on ABC. I feel perhaps I should retreat from this discussion.

One last comment on Mr. Moore's testimony. On page 39, he speaks about the Lawrence Welk Show, which we are very happy to have the privilege of broadcasting in the public interest, and he says he regrets the public was deprived of the opportunity to hear and see this program because of network reluctance to schedule it. We are happy to schedule it, and I only regret that the public is still deprived in a great many places of the privilege of seeing the Lawrence Welk Show because we do not have access to quite a few markets for that program, which even Mr. Moore admits is completely in the public interest.

If I may return to my prepared statement——

Senator POTTER. What percentage of your class A option time do you program? I mean, what percentage of a class A time on your affiliate stations do you provide?

Mr. JAHNCKE. We——

Senator POTTER. I notice the percentage in Mr. Moore's statement of the four networks. I was wondering if your network was using up all of its option time.

Mr. JAHNCKE. No, sir; we are not using all of the option time. I think class A time is limited to those 3 hours that are optioned by law to the network. There is nothing illegal about network option time. Both the FCC and Justice Department, as I understand it, have ruled this is a perfectly legal arrangement. May I say I think we are innocent until proved guilty in this respect. Of the 3 hours that are optioned to us, we are not using all of them. Perhaps we could use more, if we were able to compete more totally with the other two networks—and by "compete," I mean have access to the market place. For example, Senator Pastore, we do not have access to Providence, R. I., and Mr. Chairman, we do not have access, or at least equal access, to places like Lansing, Grand Rapids, or Kalamazoo, Mich. We do compete, for example, in the Detroit area.

Mr. Cox. Of the programing which you do provide in option time between 7:30 and 10:30 or 7 and 10 in the evening, what percentage of that programing is normally cleared for you by the ordinary affiliate?

Mr. Jahncke. I do not like to identify any affiliate as ordinary. We love them all. We only regret we do not have enough of them. [Laughter.]

Mr. Cox. By a typical affiliate—or aren't they typical, either?

Mr. Jahncke. Our clearance on affiliates where we have full access to the market place is good, and comparable to the other two networks. I think it is good only because we program in the public interest.

Mr. Cox. Do you think that you would clear as high a percentage of that program time if your affiliate had the option to replace the program you offer with one from another source which he happened to think was better?

Mr. Jahncke. I do not quite follow that, sir.

Mr. Cox. That is, suppose that instead of having a clause in your agreement which says that you can, subject to very minor restrictions, require the affiliate to accept the programing you offer during option time, you didn't have that; do you think that there is a real possibility that some of your affiliates might find programs from other sources which they thought would attract more viewers and would be more in the public interest—not as a general rule, but as against certain programs which you offer?

Mr. Jahncke. Any program schedule is an average of its best and its worst. Perhaps it is reasonable to assume that any one person might be able to develop a program better than the worse of a given list of programs, but I think we get back, basically, to allocations here. We are talking about the fact that we only use 6 hours a day, or only have 6 hours a day option in the practical area, afternoon and evening. This is far from 90 percent of the station's time. I mean, after all, most stations are on the air from 8 in the morning until midnight. It is against this projection of 16 hours that maybe we should talk about 6 hours, or even 9 hours. It is not that great a percentage of the station's time.

Mr. Cox. We will reserve other questions. You may go on to your statement now.

(At a later point, after enumerating 13 cities among the first 100 markets in which VHF channels are still ungranted, Mr. Jahncke said:)

Mr. Jahncke. There is a partial answer to Mr. Moore.

All of these stations, if they ever commence operation, will be looking for programing that film syndicators can provide in addition to networks. There is only one solution and that is to overcome the scarcity of stations. As long as you have 1- or 2-station markets around the country, how can any film packager expect them to need the same amount of program service as is necessary to supply the needs of a market like Los Angeles, which has seven stations that have to be programed. The mathematics of it are simple.

(At the conclusion of Mr. Jahncke's testimony, Senator Potter inserted into the record certain questions propounded by Senator Bricker, as follows:)

Senator POTTER. Senator Bricker has some questions that he wants to submit for the record, so that Mr. Moore and Dr. Turner may have the chance to look over the record and submit responses to these questions, as related to the testimony that was given this morning.

They will be placed in the record at this point.

(The questions referred to are as follows:)

QUESTIONS FOR KTTV'S WITNESSES

1. From January 1, 1949, until April 1951, when you were affiliated with CBS and CBS owned 49 percent of the stock of your company, did you clear time for CBS network programs on a live basis?
2. Were you in charge of clearing time of KTTV for CBS programs during this period January 1, 1949, to January 1, 1951?
3. Can you indicate the number of CBS network programs, half or one-quarter hours, per week during each time segment which you cleared for CBS, and the number of half or one-quarter hours which were either rejected or cleared in another class of time?
4. Were difficulties between KTTV management and CBS management concerning time clearances the cause of the sale of CBS's 49 percent interest in KTTV and the cancellation of the CBS affiliation agreement?
5. During the period 1949 to March 1951 were intercity relay facilities available for simultaneous or live broadcast of CBS network programs?
6. Insofar as intercity relay facilities were not available, were your relationships with CBS on a per program film clearance basis?
7. Can you give a table of the number of one-quarter or one-half hours of CBS programs which were available per week during the period?
8. Can you give a table showing the numbers of class A CBS originations which you actually cleared in (*a*) KTTV class A time, (*b*) in another time period, (*c*) in class A time period of another Los Angeles station, and (*d*) not cleared in any Los Angeles station?
9. Can you give copies of KTTV memoranda and copies of correspondence with CBS which will show your clearance relationship?
10. Can you give the total weekly number of hours of CBS network programs available and the number of programs carried by KTTV during the period?
11. (*a*) Were the principles regarding clearance of network programs during any given time slot (versus the selection of nonnetwork programs or local programs) the touchstone of your relationship with CBS from 1949 to 1951?
(*b*) Describe the development of the relationship and the termination.
12. Can you give a table showing the number of class A Du Mont originations which you actually cleared in (*a*) KTTV class A time, (*b*) in another time period, (*c*) in class A time period of another Los Angeles station, and (*d*) not cleared in any Los Angeles station?
13. Do all Los Angeles TV stations have comparable coverage?
14. If the coverage of the Los Angeles stations varies, can you give us a table of the populations residing within the brade B contour and any other contour which CBS, other networks and national spot agencies use for each station in Los Angeles?
15. Would you give a résumé of the relative bargaining position of CBS and KTTV and Du Mont and KTTV, respectively (even though they involved different time periods—1949–51; 1951–54)?
16. Did the 5 hours of Du Mont programing represent as much weekly income for Du Mont during the period as the weekly revenue of CBS on account of the time cleared by KTTV for their respective network programs?
17. Will you give a table showing for each Los Angeles TV station class A national spot and class A network rate from 1949 to date?

18. Was Du Mont's percentage of participation in KTTV's rates the same as that of CBS?
19. Would you say that because of the lower percentage of commissions to national spot representatives and commissions to local agencies that KTTV's revenues were higher than the three affiliated stations?
20. Would you say that since your station operates longer hours than any other independent stations its revenues were higher than any other independent station?
21. Would you say that your expenses were higher for every nonnetwork hour of operation than for comparable hour of network operation?
22. (*a*) Is it fair to assume that affiliated stations which clear 80 to 100 hours of network programs per week have more income before taxes than your independent station which operates more hours?
(b) Is there any doubt in your mind that the CBS and NBC affiliates each make more income than KTTV?
23. Is it fair to assume that the great majority of three or more station market TV stations would choose the status quo if their mind was on the balance-sheet motive rather than the public-service motive?
24. Does this account in part or major part for solid support of major (3 and 4 station) market affiliates' solid support of the status quo—which is no regulation of network operations?
25. Do you think this accounts in major part for a general impression that any attack upon option-hours clauses will destroy the television industry and/or the networks?
26. Have you given any consideration to the amount of billings of the television networks as to the dominance of CBS and NBC over ABC, and formerly over Du Mont?
27. Do I understand that the option-time provisions of network contracts are prevalent in all TV networks?
28. If your assumption is correct that the option-clause provisions are absolute is it not true that a network control of its primary affiliate's time is as complete as if it owned the station?
29. When a network bids for a producer's show then is it true that it bids on the basis of the profit it can make on the aggregate timecard of all its affiliates, since it can control the clearance of time on all stations?
30. From a practical standpoint, NBC and CBS can control time on affiliates in 7, 4, 3, and 2 station markets for the purpose of outbidding independent stations; can they not?
31. Insofar as TV networks control time on affiliated stations, they are the same as time brokers for the sale of station time on each of their affiliates, are they not?
32. Your objection is not only to the licensee abondoning his responsibility to select programs at any given hour, which would best meet his licensee responsibility under the law, but also that its licensee responsibility is delegated to a nonresident network executive hundreds or thousands of miles away?
33. In your opinion, is it not also true that the coupon-clipping motive of the network executive hundreds or thousands of miles away is the deciding factor in the quality of programs which a large number of stations carry in their class A hours?
34. Since networks (in their network operations) are not regulated and their programs are not tested by the touchstone of the public interest, is it your opinion that the programing of a vast majority of TV stations are operating on no standard of programing except the network's balance sheet?
35. Do the networks not only have the option clause provisions but also have control of the talent for the time slots selected by them for balance-sheet purposes?
36. In your opinion, what is the proper denomination of program sales to stations by networks or independent producers?
(*a*) A per time slot or individual program basis?
(*b*) A series basis.
(*c*) A monthly basis.
(*d*) A quarterly basis.
37. If the option clauses are made illegal is it your contention that advertising agencies will not tie up stations instead of the networks? Explain how private enterprise would work in this instance.

(Following this, the hearing was adjourned until 10 a. m., Tuesday, March 27, 1956.)

TELEVISION INQUIRY

(Network Practices)

TUESDAY, MARCH 27, 1956

United States Senate,
Committee on Interstate and Foreign Commerce,
Washington, D. C.

(The committee first heard extensive testimony on allocations by William B. Lodge, vice president in charge of engineering, CBS television, which is printed in the volume on UHF–VHF Allocation Problem—Public and Industry Witnesses, at p. 786. Senator Potter, who was presiding, then made the following reference to matters concerning network practices:)

Senator Potter. I understand Senator Bricker has some further questions he would like to have submitted for the record to be answered by Mr. Moore. They will be placed in the record at this time.

(The questions referred to, which are a continuation of those propounded by Senator Bricker on March 26, 1956, are as follows:)

38. Does not the profit motive of producers always result in their making sales to stations, groups of stations or stations and networks which can provide the greatest revenue?

39. You have described the programs that KTTV lost to networks, as I understand because they can outbid independent stations. In your case they outbid you even on the basis of your buying the rights for several Western States. In your opinion with the option provisions made illegal, can you envision groups of CBS and NBC and their respective basic affiliates having enough common interest in capturing particular programs and providing for uniform time clearances?

40. Is a prohibition also needed so that program sales shall be made on an individual station basis?

41. If stations within the same market are not competitive in the number of people, viewers, or families served, will the larger coverage station not always be able to outbid the smaller coverage station for any program—be it network programs or programs of independent producers?

42. Will cancellation of network option clauses still leave the smaller (coverage) station at a competitive disadvantage in procuring programs for any given market?

43. If UHF stations located in the same markets with VHF stations have smaller circulation of people, or smaller than 100 percent conversions, such UHF stations cannot bid on a competitive basis with VHF stations for either network or independently produced programs?

44. Is it true that the committee cannot rely upon the elimination of the option clauses in network contracts alone for solution of the UHF–VHF problem in intermixed UHF and VHF markets?

45. Even with the option clauses eliminated, if a station in a large market (with a lower unit cost per thousand circulation) overlaps a smaller market station (higher cost per thousand circulation) will not the smaller market station always be at a competitive disadvantage with the large market station in bidding for network programs or independently produced programs?

46. Insofar as operation of a VHF station in the second or third ranking market (like Los Angeles) is concerned you have proven that you can outsell the competitive network-owned or affiliated stations. Now, can you visualize smaller market situations where network programing is essential for successful operation?

47. Insofar as networks are able to choose the largest market affiliates and reject small market affiliates, and thus deny the benefits of this mass program buying power and mass selling power to the latter, there is no comparable full time source of programing available as a substitute. Is it not true that the small market unaffiliated station is in a much less advantageous position for independent operation than 1 of 7 VHF stations in Los Angeles?

48. Would you agree that there is also a need to enforce the spreading of affiliation benefits of network buying of programs and selling of broadcast time to small market stations so long as the present network trade practices are permitted, or so long as the equivalent of multiple market buying of programs and multiple market sale of advertising exists?

49. It has been intimated that any interference with the networks' freedom to affiliate or not affiliate, to furnish programs or not to furnish programs, will precipitate Government regulation of station rates. From a legal standpoint, you state that the option provisions (legalized by the Commission's chain broadcasting rules) are parallel to block booking in the movie industry, which has been stricken by the courts. Do you know of any movie situation resulting from the court's striking down block booking where rates were prescribed by the Government for distributnon or showing of films to theaters?

50. Do you see anything peculiar to the broadcasting industry practices which would justify an assumption that if network option clauses are stricken it is necessary for the Government to prescribe rates for individual stations?

(Whereupon, at 4. 32 p. m., the committee adjourned to reconvene Wednesday, March 28, 1956, at 10 a. m.)

(Mr. Moore's answers to Senator Bricker's questions were received under a covering letter dated May 11, 1956, and were inserted in the record on June 11, 1956, with directions that they be printed at this point in the record. See below.)

Cox, Langford, Stoddard & Cutler,
Washington, D. C., May 11, 1956.

Hon. Senator Warren G. Magnuson,
Chairman, Senate Interstate and Foreign Commerce Committee,
Washington, D. C.

Dear Senator Magnuson: You will recall that, in the course of the television hearings before the Senate Interstate and Foreign Commerce Committee, following the testimony of Richard A. Moore, president of KTTV, Inc., on March 26, 1956, certain written questions were presented by Senator Bricker for reply by KTTV. These questions appear in the reporter's transcript for March 26 and 27.

Enclosed are the answers to Senator Bricker's questions prepared by Mr. Moore.

Sincerely yours,

Lloyd N. Cutler.

Replies by Richard A. Moore, President, KTTV, Inc., to Written Questions Submitted by Senator Bricker With Reference to the KTTV Testimony Presented to the Committee on Interstate and Foreign Commerce, March 26, 1956

1. From January 1, 1949, until April 1951, when you were affiliated with CBS and CBS owned 49 percent of the stock of your company, did you clear time for CBS network programs on a live basis?

Answer. During this period there were no A. T. & T. facilities connecting Los Angeles with the East on a live basis. Therefore, KTTV clearance of CBS programs was entirely on a delayed basis by kinescope recording, with certain rare exceptions where a live program was originated by CBS in Los Angeles and fed to the rest of the country by kinescope recording.

2. Were you in charge of clearing time of KTTV for CBS programs during this period, January 1, 1949, to January 1, 1951?

Answer. I had no connection with KTTV until July 2, 1951, and, therefore, no responsibility for any of its activities.

3. Can you indicate the number of CBS network programs, half or one-quarter hours, per week during each time segment which you cleared for CBS, and the number of half or one-quarter hours which were either rejected or cleared in another class of time?

Answer. At the outset of the CBS affiliation agreement, KTTV was telecasting 5 days per week, being off the air on Wednesdays and Thursdays. Under the affiliation agreement the CBS network had option time in the morning, afternoon, and evening, but as a rule nearly all the time requested for clearance was during the option-time period of 7 to 10 p. m. daily. Our records show no case where a CBS program was rejected.

A representative week has been analyzed for each of the years 1949, 1950, and 1951. During the representative week in 1949 (March 6 through 12), of the 60 quarter hours of option time available to CBS under its affiliation agreement, 19 quarter hours were devoted to CBS network programs, all during network option time.

During a representative week in 1950 (February 12 through 18) at which time KTTV was on the air 7 days per week, of the 84 quarter hours of option time available, 36 quarter hours were devoted to CBS network programs, during network option time, and 7 quarter hours were cleared for CBS network programing in other than network option time.

During a representative week of 1951 (March 18 through 24), of the 84 quarter hours of option time available, 57 quarter hours were cleared for CBS network programing during network option time and 35 quarter hours were cleared in other than network option time.

4. Were difficulties between KTTV management and CBS management concerning time clearances the cause of the sale of CBS's 49 percent interest in KTTV and the cancellation of the CBS affiliation agreement?

Answer. The sale of CBS's 49 percent interest to KTTV and the cancellation of the CBS affiliation agreement were not caused by any difficulties concerning time clearance. To our knowledge, the direct reason was the desire of CBS to acquire outright ownership of a station of its own in Los Angeles.

5. During the period 1949 to March 1951 were intercity relay facilities available for simultaneous or live broadcast of CBS network programs?

Answer. During the period 1949 to March 1951, there were no intercity relay facilities available for simultaneous or live broadcast of CBS programs in Los Angeles, since the transcontinental link was not completed until September 1951.

6. Insofar as intercity relay facilities were not available, were your relationships with CBS on a per program film clearance basis?

Answer. Intercity relay facilities were not available at any time during the CBS–KTTV affiliation. Since almost all CBS network programs originated in New York, the arrangement with KTTV called for our carrying of these programs on a delayed basis by kinescope recordings. In 2 or 3 instances, CBS network programs originated in Los Angeles, in which cases KTTV carried the program live, and the balance of the network carried the program by kinescope recording. The affiliation agreement between KTTV and CBS was a normal affiliation agreement, containing the usual provisions for network option time, rather than so-called per program affiliation.

7. Can you give a table of the number of one-quarter or one-half hours of CBS programs which were available per week during the period?

Answer. During a representative week in 1949 (March 6 through 12) 19 quarter hours of CBS network programs were available.

During a representative week in 1950 (February 12 through 18) 43 quarter hours of CBS network programs wers available.

During a representative week in 1951 (March 18 through 24) 84 quarter hours of CBS network programs were available.

8. Can you give a table showing the numbers of class A CBS originations which you actually cleared in (*a*) KTTV class A time, (*b*) in another time period, (*c*) in class A time period of another Los Angeles station, and (*d*) not cleared in any Los Angeles station?

Answer. (*a*) In the 1949 representative week, all of the 19 quarter hours cleared by KTTV for CBS programs were in class A time.

In the 1950 representative week, all of the 43 quarter hours cleared were in class A time.

In the 1951 representative week, 67 of the quarter hours cleared were in class A time.

(*b*) In the 1949 and 1950 representative weeks, all of the CBS programing cleared were in class A time only. In the 1951 representative week, 17 quarter hours were cleared in other than class A time, in addition to the 67 quarter hours which were cleared in class A time.

(*c*) So far as we know, no CBS programs were cleared on any other Los Angeles station during the KTTV–CBS affiliation.

(*d*) We know of no case where a CBS program was offered to other Los Angeles stations during the CBS–KTTV affiliation.

9. Can you give copies of KTTV memorandums and copies of correspondence with CBS which will show your clearance relationship?

Answer. We are not able to locate any memorandums or other material from these early days of KTTV operation relating to KTTV–CBS clearance relationship. However, the recollection of those persons involved in the clearance of programs was that the relationship was one of regular clearance of CBS program offerings by the station. In this early phase of television, there was a shortage of program sources, and KTTV was glad to clear network programs offered by CBS.

10. Can you give the total weekly number of hours of CBS network programs available and the number of programs carried by KTTV during the period?

Answer. During the representative week in 1949 (March 6 through 12), 4¾ hours of CBS network programing were available and cleared by KTTV.

During the representative week in 1950 (February 12 through 18), 10¾ hours were available and cleared by KTTV.

During the representative week in 1951 (March 18 through 24), 21 hours of CBS network programing were available and cleared by KTTV.

11. (*a*) Were the principles regarding clearance of network programs during any given time slot (versus the selection of nonnetwork programs or local programs) the touchstone of your relationship with CBS from 1949 to 1951?

11. (*b*) Describe the development of the relationship and the termination.

Answer. (*a*) The relationship with CBS from 1949 to April 1951 involved no problem regarding clearance of network programs. As indicated above, there was a scarcity of good programing material during this period, and KTTV was glad to accept programs provided by the CBS network. There were occasional questions concerning the selection of a time period, particularly during the period when KTTV was off the air 2 days a week, but generally speaking clearance satisfactory to both parties was readily achieved.

(*b*) In 1947, after KTTV, Inc., had received a construction permit from the FCC, the Times-Mirror Co. was approached by CBS to discuss the possibility of joint ownership. In due course an agreement was worked out whereby CBS acquired 49 percent of the stock of KTTV, Inc. Certain key management positions, such as the general manager, sales manager, and program director, were originally filled by former employees of CBS who resigned from CBS to take their positions at KTTV. Prior to going on the air, KTTV entered into an affiliation agreement with CBS.

Three or four months after KTTV began operations, which was January 1, 1949, Mr. Don Thornburgh, vice president of CBS, advised the Times-Mirror Co. that CBS was anxious to acquire outright ownership of a station of its own in Los Angeles and was actively seeking such a station. On December 31, 1950, CBS did conclude arrangements to acquire channel 2. Prior to that time, arrangements had been worked out whereby the Times-Mirror Co. had an option to buy back the CBS stock in the event CBS elected to acquire a station of its own. This option was exercised on December 31, 1950, and 100 percent of the stock of KTTV, Inc., has been owned by the Times-Mirror Co. since that date.[1] The affiliation agreement continued for 3 months thereafter until CBS took title and began operation of its own station, KTSL, channel 2.

While KTTV was a CBS affiliate, KTTV, Inc., also had an agreement with CBS whereby the CBS spot sales division represented KTTV. This agreement was terminated effective December 31, 1950.

The relationship between KTTV and CBS was cordial and satisfactory. Its termination was due primarily to the decision made by CBS shortly after the jointly owned station, KTTV, had gone on the air, that they would prefer to

[1] See footnote on p. 1476.

operate a CBS affiliate in Los Angeles which was fully owned by them. At one point, CBS indicated a desire to discuss outright purchase of KTTV. The Times-Mirror Co., however, did not desire to sell the station and does not desire to sell today.

12. Can you give a table showing the number of class A Du Mont originations which you actually cleared in (*a*) KTTV class A time, (*b*) in another time period, (*c*) in class A time period of another Los Angeles station, and (*d*) not cleared in any Los Angeles station?

Answer. (*a*) During the representative week of October 21 through 27, 1951, 17 separate Du Mont network originations were cleared in class A time, totaling 8¾ hours.

During the representative week of March 2 through 8, 1952, eight separate Du Mont network originations were cleared in class A time, totaling 4½ hours.

During the representative week of February 8 through 14, 1953, six separate Du Mont network originations were cleared in class A time, totaling 3 hours.

During the representative week of February 7 through 13, 1954, six separate Du Mont network originations were cleared in class A time, totaling 3 hours.

(*b*) During the representative week of 1951, the last half-hour of a Du Mont program that commenced in class A time was cleared in class B time.

During the representative week of 1952, seven Du Mont programs were cleared in other than class A time, totaling 3¼ hours.

During the representative week of 1953, no Du Mont programs were cleared in other than class A time.

During the representative week of 1954, three Du Mont programs were cleared in other than class A time, totaling 1½ hours.

(*c*) During 1952 and 1953 Du Mont made network broadcasts of certain football games which, because of the difference in time zone, reached Los Angeles at a time when KTTV regularly presented a Sunday church service. KTTV, therefore, rejected clearance of the football games but did make arrangements on Du Mont's behalf for the football games to be carried on KHJ–TV. To our knowledge these were the only Du Mont network programs which were cleared on a station other than KTTV during the Du Mont-KTTV affiliation.

(*d*) We know of no case where a Du Mont program was offered to a station or stations other than KTTV and where Du Mont was unable to obtain clearance on any Los Angeles station.

13. Do all Los Angeles TV stations have comparable coverage?

Answer. The seven Los Angeles stations, all of whose transmitters are located on Mount Wilson, do have generally comparable coverage within the Los Angeles metropolitan area.

14. If the coverage of the Los Angeles stations varies, can you give a table of the population residing within the grade B contour and any other contour which CBS, other networks and national spot agencies use for each station in Los Angeles?

Answer. Not answered in view of answer to question 13.

15. Would you give a résumé of the relative bargaining position of CBS and KTTV and Du Mont and KTTV, respectively (even though they involved different time periods—1949–51; 1951–54)?

Answer. Because good programs were scarce in 1949–51, KTTV was glad to include in its schedule such programs as CBS was able to make available. Hence, the question of bargaining balance between station and network was academic.

The KTTV–Du Mont affiliation did continue into the period when good programs from nonnetwork sources were becoming available. During this time, many programs of other networks were presented on a live basis in Los Angeles, but Du Mont refrained from utilizing the A. T. & T. transcontinental facilities and its programs were delivered wholly by kinescope. Generally speaking, these kinescope programs were not competitive with the rival network programs. KTTV found it increasingly important to rely on good filmed programs or local live programs as its principal means of competing with the other network stations. With increasing frequency, therefore, KTTV exercised its prerogative of scheduling live local programs or filmed programs in the best time periods, since the kinescope recordings of the Du Mont programs became unable to win local acceptance.

Inasmuch as Du Mont needed a Los Angeles release for the purpose of making a national network sale, we would say KTTV was more valuable to Du Mont than the converse. In suggesting that the affiliation not be renewed in 1954, Du Mont indicated that the increasing success of KTTV in its use of film and live programs was rendering the Du Mont programs of secondary importance to the station. They stated frankly that they would prefer another affiliate which would place greater reliance upon the Du Mont programs and would more readily clear such programs in the time periods requested by Du Mont. Thus Du Mont and KTTV agreed not to renew their affiliation, and Du Mont affiliated with KHJ-TV.

16. Did the 5 hours of Du Mont programing represent as much weekly income for Du Mont during the period as the weekly revenue of CBS on account of the time cleared by KTTV for their respective network programs?

Answer. KTTV was compensated for its time by the network but has no knowledge as to what compensation either CBS or Du Mont received from the sponsor for the network programs telecast on KTTV. Therefore, we have no exact way of knowing whether the Du Mont programing on KTTV represented as much weekly income for Du Mont as the CBS programing represented for CBS. However, as shown from the representative weeks of 1949–51, the number of hours of CBS programing carried by KTTV ranged from 4¾ hours to 21 hours per week, while the number of hours of Du Mont programing carried by KTTV as shown from the representative weeks of 1951–54, ranged from 3 hours to 8¾ hours per week. It would seem probable, therefore, that CBS, at least in the later phase of its affiliation with KTTV, realized more revenue for the sale of time on KTTV in 1949–51 than did Du Mont in the later period.

17. Will you give a table showing for each Los Angeles TV station class A national spot and class A network rate from 1949 to date?

Answer. The requested information is contained in the table set forth below.

Los Angeles television network and national spot rates (class A, or highest, 1-hour, 1-time rate)

	KABC (was KECA-TV) ABC network	KNXT (was KTSL)	KRCA (was KNBH) NBC network	KTTV CBS network	KTLA	KHJ-TV (was KFI-TV)	KCOP (was KLAC-TV)
January 1949:							
Network	(1)	----	$900	$500	----	----	----
National spot	$500	(1)	750	500	$250	$400	$450
January 1950:							
Network	900	(1)	900	750	----	----	----
National spot	500	(1)	500	650	350	210	450
		Du Mont					
January 1951:							
Network	1,650	600	1,650	1,600	----	----	----
National spot	900	600	1,000	1,000	750	750	750
		CBS network		Du Mont			
January 1952:							
Network	2,000	2,000	2,000	1,600	----	----	----
National spot	1,200	1,500	1,250	1,000	1,250	750	1,000
January 1953:							
Network	2,000	2,000	2,200	1,600	----	----	----
National spot	1,200	1,500	1,500	1,200	1,250	1,000	1,250
January 1954:							
Network	2,000	2,250	2,500	1,600	----	----	----
National spot	1,200	1,750	2,000	1,400	1,250	1,000	1,250
				Independent			
January 1955:							
Network	2,000	2,700	2,750	----	----	----	----
National spot	1,500	2,700	2,500	1,400	1,250	1,000	900
January 1956:							
Network	2,000	3,200	3,500	----	----	----	----
National spot	1,750	3,200	3,600	1,750	1,500	1,200	1,250

[1] No information available.

Source: Standard Rate and Data Service.

18. Was Du Mont's percentage of participation in KTTV's rates the same as that of CBS?

Answer. The compensation arrangement with both Du Mont and CBS provided for payment to KTTV of 30 percent of the rate applicable to the particular time period. KTTV has no information as to the percentage of the KTTV card rate actually retained by the respective network, since KTTV has no knowledge as to what compensation the network received from the advertiser.

19. Would you say that because of the lower percentage of commissions to national spot representatives and commissions to local agencies KTTV's revenues were higher than the three affiliated stations?

Answer. Each of the three network affiliated stations in Los Angeles is actually owned by the respective network company, and KTTV has no knowledge as to what sums are credited by the network to its own station which carries a network program. Therefore, an answer to this question could only be obtained by access to the actual figures of the three individual network stations which, we understand, are on file with the FCC.

The relative position of KTTV revenues is certainly affected by the fact that the 15-percent commissions to a local advertising agency are less than the probable 70 percent paid by an affiliate to its network (although we do not know for a fact whether the 70-percent figure applies to the network-owned stations in Los Angeles). Another factor affecting the size of KTTV revenues is the fact that KTTV generally sells both program and time in the prime hours, whereas a network affiliate in these hours sells only time, the program being supplied by the network. Incidentally, the commission paid to national spot representatives is not a factor in computing gross revenues since this is calculated as a sales expense chargeable against gross revenues in determining net revenues.

20. Would you say that since your station operates longer hours than any other independent station its revenues were higher than any other independent station?

Answer. KTTV does not have access to the revenue figures of other stations, but we believe that KTTV revenues are substantially higher than those of any other independent station in Los Angeles. We also believe that KTTV revenues are higher than those of any other independent station anywhere else in the country. The fact that KTTV operates more hours per day than other Los Angeles independent stations is a factor in this estimate, but we believe our gross revenue is also higher on an hourly basis.

21. Would you say that your expenses were higher for every nonnetwork hour of operation than for every comparable hour of network operation?

Answer. We believe our expenses are substantially higher for any hour of nonnetwork operation than for any comparable hour of network operation by other stations. Generally speaking, an hour of network operation for an affiliate requires only the throwing of a switch or the operation of a projector, but nonnetwork hours of operation usually require live production crews and talent or the rental of expensive films, or both. The need for selling, promoting, and servicing every hour of operation also results in a greater administrative overhead per hour for a nonnetwork station than for a network station.

22. (*a*) Is it fair to assume that affiliated stations which clear 80 to 100 hours of network programs per week have more income before taxes than your independent station which operates more hours?

(*b*) Is there any doubt in your mind that the CBS and NBC affiliates each make more income than KTTV?

Answer. (*a*) All statistics available to us indicate that stations affiliated with the major networks, even in cities half the size of Los Angeles, have net income before taxes substantially higher than that of our independent station, even though KTTV may operate more hours per day. While the KTTV gross revenues are probably higher than those of such stations (see answer to question 19), we understand that the net revenue before taxes of affiliated stations in middle-sized and large cities is usually much greater than KTTV's.

(*b*) There is little doubt in our mind (particularly after noting the information contained in Senator Bricker's report entitled "The Network Monopoly") that the net income of the CBS and NBC affiliates in Los Angeles is very substantially higher than that of KTTV. Yet KTTV employs more people than either of these stations, performs more live and remote programs, and presents more hours of programing per day.

23. Is it fair to assume that the great majority of three or more station market TV stations would choose the status quo if their minds were on the balance-sheet motive rather than the public-service motive?

Answer. We believe that the great majority of television stations are very conscious of their public service obligation. To perform this obligation, the station must first be able to stay in business and earn a profit. For this reason, we believe that in any market of three stations or more, each station would eagerly seek an affiliation with either CBS or NBC. However, we are convinced from conversations with various affiliated stations that while they would like to continue receiving network programs, they are now being urged to take more network programs than they want and they respond to such urgings for fear of losing their affiliation. We believe many affiliated stations would welcome a change in the status quo which would prevent the network from occupying as much time on the station's schedule as it does now and which would prevent the increasing likelihood that the network will try to occupy even more station time.

24. Does this account in part or major part for major (3 and 4 station) market affiliates' solid support of the status quo—which is no regulation of network operations?

Answer. We believe there is no evidence of solid support among major market affiliates for that feature of the status quo which enables a network to occupy not only network option time but substantial segments of station time. A general regulation which would place an affirmative limit on the amount of time any station, regardless of the number of stations in its market, could accept from a network, or which a network could furnish to a station, has never before been publicly proposed or discussed. We believe it is possible, if not probable, that such a change in the status quo would win the solid support of major market affiliates, at least if they could express their views in a way that would protect them from the displeasure of the network companies.

25. Do you think this accounts in major part for a general impression that any attack upon option hours clauses will destroy the television industry and/or the networks?

Answer. We believe that any general impression that an attack on option hour clauses will destroy the television industry and/or the networks primarily echoes a point of view expressed by the network companies themselves. The same predictions were made in 1941 (and later proved false by experience) when the radio networks were faced with loss of exclusivity in their network option clauses.

It is certainly true that under the status quo, affiliated stations, program producers and many advertisers must depend primarily upon the favor of network companies for their economic prosperity or survival. It would be understandable, therefore, if persons in that position refrained from taking a public position contrary to the position expressed by the network companies, or if such persons publicly supported the position of the network companies. Until the recent emergence of the independent television station as a factor in the industry, there was virtually no one who had an interest in disputing this network contention. The premise upon which KTTV bases its case is very simple: A network can succeed without the option time privilege if it produces programs which are good enough to gain acceptance on the basis of program quality; the elimination of option time will hurt a network only if its programs are so inferior as to be unable to gain acceptance without benefit of the compulsory clearance required by the option time privilege.

As to the network notion that elimination of its option-time privilege would destroy the television industry, such a contention can only be based upon a lack of faith in the American competitive system itself, or a lack of faith by the network in its own ability to compete. We contend that free competition will stimulate the networks to produce constantly better programs, just as it will stimulate all creative elements in the Nation to contribute to the quality of television programs. But if the networks lack in faith in themselves, feel that they cannot measure up to a competitive challenge and will therefore fail, it is utterly presumptuous for them to assert that the industry itself will fail. The true answer is that the American competitive system knows no indispensable man or indispensable company, and others would step forward to give the American public the fine television service they deserve and demand. Actually, we believe the networks will thrive and prosper under the spur of wholesome competition.

26. Have you given any consideration to the amount of billings of the television networks as to the dominance of CBS and NBC over ABC and formerly over Du Mont?

Answer. We believe that, particularly in the last year or two, the dominance of CBS and NBC over ABC, and formerly over Du Mont, has been given important impetus by the block booking arrangements whereby CBS and NBC, through their control of the time on affiliated stations, have been able to preclude ABC and Du Mont programs from exposure in important markets, or from exposure in acceptable time periods in these markets, regardless of the relative quality of the ABC or Du Mont program.

In the last year or two ABC, primarily by drawing upon the nonnetwork sources of programs which exist in the motion-picture industry, has developed programs which are capable of winning greater public favor than many programs presented by CBS and NBC. Yet these programs are blocked from exhibition in good time periods in many important markets. This impairs the financial ability of ABC to compete with the two senior networks and effectively denies to the public the opportunity to indicate its favor of these high-quality programs.

It is true that CBS and NBC have been ready to make substantial investment in programing and facilities, more so in the past than ABC or Du Mont. But NBC and CBS have been aided by a vicious circle, because it was patently unwise for ABC or Du Mont to make comparable programing expenditures when, by reason of restrictive block-booking agreements, these expensive programs were barred from release in many important cities in the land. In any event, ABC appears ready today to make expenditures comparable to those of CBS and NBC, but ABC still occupies a subordinate position by reason of testimony of Mr. E. L. Jahncke before this committee on March 26, 1956, where Mr. Jahncke pointed out the persistent failure of ABC to accomplish clearance for its programs in markets with only two VHF stations, utterly regardless of program quality.)

27. Do I understand that the option-time provisions of network contracts are prevalent in all TV networks?

Answer. KTTV does not have access to copies of network affiliation agreements, which are on file with the FCC, but not available for public inspection, but it is our understanding that all or virtually all such contracts grant the customary time options to the network companies.

28. If your assumption is correct that the option-clause provisions are absolute, is it not true that a network control of its primary affiliate's time is as complete as if it owned the station?

Answer. One means of obtaining an answer to this question is to compare the program schedule of a station owned by a network with the program schedule of certain basic affiliated stations which are not owned by the network. To the extent that the scheduling of network programs on both classes of stations may be identical, or nearly identical, it would appear that the network's program control over a nonowned station is the same, or substantially the same, as its program control over an owned station.

By way of example, we have examined the schedule of WCBS–TV, the flagship station owned by CBS in New York, during evening network option hours. We have also examined the published schedules of CBS affiliated stations in Detroit, Philadelphia, and Houston-Galveston, each of which is owned by a different licensee, for the week of January 19 through 25, 1956.

WCBS–TV, New York, grants 100-percent clearance to the CBS network programs from 7:30 to 10:30 p. m., Sunday through Saturday, 7 nights a week. WJBK–TV, Detroit, grants 100-percent clearance of the CBS network programs on the same schedule as WCBS–TV, New York, Sunday, Monday, Tuesday, Thursday, and Saturday. The Wednesday evening schedule follows the WCBS–TV pattern, except from 7:30 to 8 p. m. In this half hour, WJBK–TV presents a nonnetwork program, but it should be noted that the CBS network does not have a sponsor for this half hour and therefore did not offer WJBK–TV a sponsored program for clearance. On Friday, WJBK–TV follows the WCBS–TV pattern except from 7:30 to 8 p. m., when it carries another CBS network program in lieu of the CBS network program regularly scheduled at that time. To the best of our information, however, the regularly scheduled network program which might have been offered to WJBK–TV was not sponsored at that time. Thus, like the network owned station in New York, this nonowned affiliate carries the complete CBS schedule except for the only two half hours where the network did not offer commercial programs.

WCAU–TV, Philadelphia, follows the WCBS–TV schedule 100 percent on Sunday, Monday, Thursday, and Saturday. On Tuesday it fails to clear one half hour of CBS network programing, but does clear for that program in a half hour within station time. On Wednesday and Friday WCAU–TV follows the WCBS–TV schedule 100 percent except for the same two half hours referred to in the case of WJBK–TV.

In Houston-Galveston KGUL–TV follows the WCBS–TV pattern 100 percent Sunday, Monday, Tuesday, Thursday, Friday, and Saturday. On Wednesdays it departs from WCBS–TV's schedule only for the unsponsored half hour referred to above.

Not all basic affiliates of CBS follow the WCBS–TV pattern quite as religiously as these three examples, but an enormously high degree of control appears to exist. These examples in Detroit, Philadelphia, and Houston-Galveston do indicate that despite the fact that the stations in these great communities are licensed to different individual licensees, the program control by CBS during the hours when it is most convenient for the public to watch television is virtually identical with the program control which CBS exerts over its own stations where CBS is the licensee.

Incidentally, the CBS-owned stations in Chicago, Los Angeles, and Milwaukee follow the WCBS–TV pattern with the exception, in Chicago and Milwaukee, of the half hour on Wednesday which is unsponsored. Thus we have here an immediate example of stations in seven major markets in the country whose prime program time is controlled by a single licensee, Columbia Broadcasting System, Inc. It is difficult to assume that public tastes and living habits in these widely separated markets are so identical as to justify identical programing service in each.

In the case of NBC we have examined the same week's published schedules of WNBT, the flagship station owned by NBC in New York and of KYW–TV, Cleveland, Ohio, WSB–TV, Atlanta, and WVEC–TV, Norfolk, all owned by separate licensees.

During the network option hours of 7:30 to 10:30 p. m., WNBT grants 100-percent clearance to the NBC network programs 7 nights a week. WSB–TV, Atlanta, follows the same schedule as WNBT, New York, on a 100-percent basis all 7 nights without exception of a single half hour. WVEC–TV, Norfolk, also follows the WNBT schedule 100 percent 7 nights per week without the exception of a single half hour. KYW–TV, Cleveland, also follows the WNBT schedule 100 percent 7 nights per week without the exception of a single half hour.

The identity of the program schedules on these nonowned stations during the most convenient viewing hours with that of the programs scheduled on the network-owned station is either a matter of control or of fantastic coincidence. To us it appears plain that a single licensee, National Broadcasting Co., controls the prime viewing schedule on far more stations than NBC itself is allowed to operate as a licensee, again with no regard for the usual differences in public tastes in various parts of the country.

In summary, during those viewing hours when the station truly has an opportunity to serve the population of its particular community, the network's control of the station's programing appears to be the same as if the network owned the station.

29. When a network bids for a producer's show, then is it true that it bids on the basis of the profit it can make on the aggregate timecard of all its affiliates, since it can control the clearance of time on all stations?

Answer. When a network bids for a producer's show, it normally does so on the assumption that the program can be sold to a network sponsor. In that event, the network receives the major percentage of the time charge of each affiliated station which carries the program. In view of the must-buy and time-option requirements, the network can buy the program confident that it can require purchase of time and compel clearance of time on a sufficiently high number of its affiliates to realize a substantial profit on the time sale. However, when a network buys a producer's program, it buys it at a price. It is the network which then sells the program rights to the sponsor (over and above the time sale). There is no reason why the network may not charge the sponsor a substantially higher price for the program than the network pays to the producer, and it is our understanding that this is a common practice.

Thus, the network by reason of its control of time on its affiliated station can realize a profit on the producer's program in addition to the profit on the time sale. Inasmuch as the very factor which puts the network in this position is its control of the time on the affiliated stations, it would appear in such cases that the profit margin on the program itself constitutes income to the network which was obtained as a result of the network's control of time on the stations owned by other people. Yet, as we understand it, the affiliate does not share in the profit on the program, even though the granting of the time clearance by the station was the very factor which enabled the network company to make a profit on the program. Under these circumstances it would be understandable why a network might prefer to purchase a program itself, and then sell it to a sponsor as a compulsory package of time-and-program, rather than sell its time alone for a program owned by the advertiser. In the latter case, the advertiser would deal directly with the program producer and there would be no opportunity for the network to make a profit on the program itself.

This is KTTV's opinion as to the proper answer to the question. We suggest that the most accurate and complete answer would come from the network companies themselves if they were asked to supply information as to the price which they pay for each program which they purchase from a producer and the price at which they sell that program to the advertiser.

30. From a practical standpoint, NBC and CBS can control time on affiliates in 7, 4, 3, and 2 station markets for the purpose of outbidding independent stations, can they not?

Answer. In markets of three equivalent stations or more, it is evident that the value of the NBC or CBS affiliation puts the network in a position of complete control over the station's time. Refusal by a station to accept such complete control could be expected to result in a shift or threatened shift of valuable affiliation to a competing station in the same market. Therefore, in these multistation markets, NBC and CBS can operate in the virtual knowledge that they can clear whatever programs they choose to offer.

The position of the independent station in these multistation markets is rendered difficult by the necessity of competing with the NBC or CBS schedule of high-budgeted programs. However, this already disadvantageous position of the independent station is even more drastically affected by the tight NBC–CBS control of important markets which have only 2 equivalent stations or even 3.

One theoretical source of good programs for the indepeudent station is the advertiser who acquires national rights to a fine independently produced program (Ford Theater, Rin Tin Tin, Lassie, Robin Hood, $64,000 Question, world series, the Millionaire, Fireside Theater, United States Steel Theater, General Electric Theater, Lux Video Theater, Damon Runyon Theater, etc.).

Advertisers like these, wishing to gain access for their program to good time periods in the CBS–NBC duopoly markets, have no alternative but to come to the network and deal with the network on its terms. That is the only passkey to rich areas which are economically vital to them. In granting the access to these tight markets, CBS and NBC impose the firm condition that the program be placed on the CBS or NBC station in the multistation market. Therefore, no matter how fine a job the independent station may be doing in its community, no matter whether it can give the advertiser a larger audience at less cost, it is foreclosed from doing business with that advertiser by reason of the network compulsion that the program arbitrarily be placed on the network affiliate.

The other source of programs for a station is the independent film producer from whom a station may buy the rights to a program for its own community. But such producer, in order to recover the cost of his film, must be able to sell the film in important markets like Boston, Pittsburgh, Louisville, Providence, Dayton, and many 2- and 3-station markets in the country. Yet in those markets the good exhibition time is controlled by CBS and NBC. Without a good time period, a sale cannot be made. Therefore, despite the fact that an independent station in a multistation market stands ready to outbid the network station in the same market for the rights to the program, the producer is unable to accept this higher bid because, by doing so, he forecloses himself from selling his program at a fair price in the NBC–CBS duopoly cities. Generally, the only means by which an independent filim producer can gain a release for his program is by dealing with his own competitor, the network, or by selling the program to a national sponsor who is able to obtain time clearance on the network. Therefore, the independent station either loses the program to a network (and, with it, the advertising revenue) despite his willingness to outbid the network station in his market, or the program is never made because the producer cannot obtain a release in the NBC–CBS duopoly cities.

31. Insofar as TV networks control time on affiliated stations, they are the same as time brokers for the sale of station time on each of their affiliates, are they not?

Answer. The network actually is a time broker for the sale of time on stations which they do not own. Incidentally, this authority to sell time on other stations carries with it, as a practical matter, the authority to determine what program will be placed in that time period on the individual licensee's station. In all cases, therefore, where the network sells time for an advertiser's program, its whole function is as a sales broker or agent for the affiliated stations. Its agent's commission, we understand, can be as high as 70 percent. Incidentally, the network companies also act as time brokers for the sale of nonnetwork time on many of their affiliated stations in that CBS and NBC each operates a spot sales division. In those instances, therefore, the time on someone else's station which is not sold by the network on a network basis is available for sale by the network on a nonnetwork basis.

32. Your objection is not only to the licensee abandoning his responsibility to select programs at any given hour, which would best meet his licensee responsibility under the law, but also that its licensee responsibility is delegated to a nonresident network executive hundreds or thousands of miles away?

Answer. We believe that the congressional mandate to the FCC which fixes program responsibility in the local licensee was based on the wholesome and proper premise that the local licensee is the best judge of the interest and needs of the community he is obligated to serve. This principle of local responsibility is fundamentally the same as the constitutional plan for a Senate and House of Representatives in which each Member represents the particular needs and wishes of his own State or district.

Although a Senator or a Congressman makes legislative decisions in Washington, which may be 3,000 miles away from his constituency, his decisions which affect the area he represents are based on intimate knowledge of the needs and habits of his area. He visits that area constantly and he is in touch with his home community by mail, telephone, and by constant visits from his constituents in his Washington office. And while Members of Congress are usually affiliated with a national political party, there are very few Senators or Congressmen who vote as recommended by the party leaders as consistently as affiliated stations accept the programs offered by the networks.

In determining the extent to which the responsibility of a licensee is delegated to a nonresident network executive hundreds or thousands of miles away, it might be helpful to obtain answers from the networks to questions like these:

(*a*) How many times has a network president or responsible network official in charge of programing visited the community of each of the network's affiliated stations and how long did he stay? During such visits, what did he do to obtain a firsthand familiarity with the tastes and needs of the community? As a result of any such visits, has he requested or approved a departure from the blanket network schedule for that particular area? Has such network official, as a result of such a visit, ever recommended a change in the blanket network schedule to meet the tastes or needs of a particular community?

(*b*) The acceptability of a program, or programs scheduled, in a particular community is often reflected by public reaction which can be ascertained from mail, phone calls, interviews, and other evidences of viewer approval or disapproval. With regard to the network schedule in each of its affiliated markets, does a network executive review such communications from the public of that area concerning the acceptability of the network schedule to the public of that particular area? Examples of such communications and replies by the network or memorandums of action taken might be helpful.

33. In your opinion, is it not also true that the coupon clipping motive of the network executive hundreds or thousands of miles away is the deciding factor in the quality of programs which a large number of stations carry in their class A hours?

Answer. Available information does indicate that the decisions of network executives hundreds or thousands of miles away are the controlling factors in the quality of programs which a large number of distant stations carry in their advertiser and station, and to that extent some of the effect is bound to be felt in a beneficial way in curable UHF situations.

42. Will cancellation of network-option clauses still leave the smaller (coverage) station at a competitive disadvantage in procuring programs for any given market?

Answer. We believe the answer to this question is covered in our answer to question 41 above. In general, we believe that the greatest program availability can only be helpful to the smaller coverage station.

43. If UHF stations located in the same markets with VHF stations have smaller circulation of people, or smaller than 100 percent conversions, such UHF stations cannot bid on a competitive basis with VHF stations for either network or independently produced programs?

Answer. Our answer to this question is also covered in our answer to question

41. Again, we believe that our proposals, while not a cure to the UHF problem, can only have a helpful effect.

44. Is it true that the committee cannot rely upon the elimination of the option clauses in network contracts alone for solution of the UHF-VHF problem in intermixed UHF and VHF markets?

Answer. We recognize that the committee cannot rely upon the elimination of the option clauses in network contracts alone for the solution of the UHF and VHF problems in intermixed markets. Yet we believe that an increased supply of high-quality programs is one of the important requirements for the solution of this problem. It is our view that the reasons previously stated, which are unrelated to the UHF or VHF problem, are sufficient to justify adoption of our proposals, but we are glad that our proposals will also have a helpful effect in assisting the UHF station.

45. Even with the option clauses eliminated, if a station in a large market (with a lower unit cost-per-thousand circulation) overlaps a smaller market station (higher cost-per-thousand circulation) will not the smaller market station always be at a competitive disadvantage with the large market station in bidding for network programs or independently produced programs?

Answer. It is true that a station in a small market which is overlapped by a station in a larger market is basically at a competitive disadvantage, but we do not believe his problem insoluble.

One direct and specific manner in which our proposal will benefit such a station is that many advertisers will be relieved of the necessity of dealing with a network on the network's terms. In most such situations currently the network does not affiliate with the overlapped station and, we understand, either does not encourage or does not permit the network advertiser to place his network program on this presumably competitive station. Those national advertisers who own their own programs and who place them, under our proposals, on a nonnetwork basis, will be completely free to place the program on the overlapped station, perhaps on a night different from the night it is shown on the larger station. Since the smaller station is no longer barred by network practice from an order for the program, the smaller station's salesmanship will come into play and he will have a legitimate opportunity to sell his time for a high-quality program on the basis of the size of his circulation and its cost per thousand. This could be a most important area of emancipation for the overlapped station.

Another example is this: In a market where the major city has 2 stations and there is a station in a nearby smaller city which is overlapped, it would be expected that the 2 major stations would be 75 percent saturated with network programing, and possibly would also carry programs from a different network in the remaining 25 percent of their time. Thus, the 2 major stations would not be in a position to bid for all of the good quality nonnetwork programs which might be available, and these would then be available to the smaller station, presumably at a better price than he could buy them at today, and with a wider selection of programs to choose from. With good programs at reasonable cost, he would be in a much better position to attract both national and local advertisers at rates commensurate with the circulation delivered in his market.

Even where a national advertiser places his program on a network, he would be free, as he is not today, to deal on a spot basis in any market where he desired to have his program, both on a major station and on the station which covers a neighboring community. In the must-buy cities, he is barred from doing this today because he must buy the network affiliate, and the network protects that affiliate from a competing exposure of the program in the neighboring community. With the repeal of the must-buy provision, the advertiser could deal on a spot basis in such markets. He could then buy both the major station and the smaller station if his distribution pattern warranted an advertising campaign in the community covered by the smaller station, which it probably would.

Finally, it is worth noting that many national advertisers rely heavily on the cooperation of local dealer groups in connection with their advertising campaigns. Where a city like San Jose, Calif., has an active Westinghouse or Ford dealership, it is probable that this dealer would be influential in persuading the factory to include his market on the list for the Westinghouse or Ford program either on a network or spot basis. Under our proposals, the advertiser would be free to do this, and the overlapped station could obtain both a fine program and important revenue. This one factor could accomplish a most significant improvement in the status of the overlapped station.

46. Insofar as operation of a VHF station is the second or third ranking market (like Los Angeles) is concerned you have proven that you can outsell the competitive network owned or affiliated stations. Now, can you visualize smaller market situations where network programing is essential for successful operation?

Answer. Under current conditions it seems probable that a station in a smaller market needs network programing in order to be successful. But that is because quality programs today must obtain a network release in order to survive, and therefore a station in a smaller market cannot obtain enough quality programs without an affiliation. If the regulations are amended in a way which will make it possible for a sufficient number of quality programs to gain a satisfactory release on a nonnetwork basis, then it may be possible for a station in a smaller market to survive without network programing.

47. Insofar as networks are able to choose the largest market affiliates and reject small market affiliates, and thus deny the benefits of this mass program buying power and mass selling power to the latter, there is no comparable full time source of programing available as a substitute. Is it not true that the small market unaffiliated station is in a much less advantageous position for independent operation than one of seven VHF stations in Los Angeles?

Answer. It is true that a market as large as Los Angeles is one for which the national advertiser is ready to appropriate money for television advertising, and that the smaller market does not win such ready acceptance in the appropriation of advertising budgets. In that sense an unaffiliated station in a market like Los Angeles has a more advantageous position than an unaffiliated station or, in some cases, than an affiliated station in a smaller market. Yet local newspapers survive in smaller markets because, while their share of national advertising is small, their operating costs are also small. The important fact is that a local newspaper can have access to much of the same news material as a great metropolitan paper and much of the same feature material, including columnists and comic strips. These are available at a cost to the local newspaper which is small compared to the cost to a newspaper in a larger city. If equal access to quality programing is available to a station in a smaller market at a cost which bears a proper ratio to the cost of programing in larger markets, it seems possible that the small market television station can develop local and national advertising revenue and rates which also bear a reasonable ratio to the rates in the larger markets. Thus, if the small market station can attain access to quality programing at a proportionately proper cost, it is reasonable to suppose that it can survive economically just as a newspaper can survive in a small community.

Carrying the newspaper analogy further, it is noteworthy that King Features Syndicate and the Associated Press do not dictate to the local newspaper as to the emphasis or location in the newspaper of the individual news items or features. The freedom to operate the newspaper in a manner which appeals to the interests and tastes of the local community gives the local newspaper an advantage which is not entirely available to a local television station whose schedule is dictated by the network headquarters. Thus, there is an additional reason why a local unaffiliated station, which enjoys the same programing freedom as the local newspaper, could actually be a more effective local station than its competitor who operates under a network affiliation agreement.

48. Would you agree that there is also a need to enforce the spreading of affiliation benefits of network buying of programs and selling of broadcast time to small market stations so long as the present network trade practices are permitted, or so long as the equivalent of multiple market buying of programs and multiple market sale of advertising exists?

Answer. So long as most quality programs are available only through the networks, it is apparent that any station which is ineligible to receive these programs from the networks suffers a most serious disadvantage through no fault of its own. We have been unable to envision any regulatory action which would require an advertiser to buy markets which he does not wish to buy or which would require a vendor of programs to sell a program in markets where he does not wish to sell it. That is why we have recommended regulations which would have the effect of making quality programs available through sources other than networks. If all program sources are eligible to compete in the distribution of their programs on an equal basis, free of must-buy and option-time restrictions, we believe that the existing denial of programs to certain stations will be effectively overcome. In that sense we believe our recommendations will serve to provide small market stations with a high degree of benefits equivalent to those which are now available only through network affiliation and delivery of network programs.

49. It has been intimated that any interference with the networks' freedom to affiliate or not affiliate, to furnish programs or not to furnish programs, will precipitate Government regulation of station rates. From a legal standpoint, you state that the option provisions (legalized by the Commission's chain broadcasting rules) are parallel to block booking in the movie industry which has been stricken by the courts. Do you know of any movie situation resulting from the court's striking down block booking where rates were prescribed by the Government for distribution or showing of films to theaters?

Answer. Before answering this question, we should like to point out that KTTV does not acknowledge that the chain broadcasting regulations necessarily legalize the option time agreements or, more particularly, the practices conducted by the network companies under cover of the option time agreements. To us it is doubtful whether a regulatory body like the Federal Communications Commission can legalize by regulation practices which are prohibited by congressional statute. If these practices do violate the antitrust laws, it seems doubtful they could be rendered legal by an administrative commission.

With regard to the question, we do not know of any movie situation resulting from the court's striking down block booking where rates were subsequently prescribed by the Government for distribution or showing of films. On the contrary, the result of the decrees abolishing block booking in the movie cases was that theaters now compete actively with each other for the films of all distributors, and distributors now compete actively with each other for the business of all theaters.

50. Do you see anything peculiar to the broadcasting industry practices which would justify an assumption that if network option clauses are stricken it is necessary for the Government to prescribe rates for individual stations?

Answer. As we understand it, rate regulation by the Government customarily occurs where protection from competition is granted. We see nothing peculiar to the broadcasting industry which would reverse this normal situation and which would make rate regulation probable if free competition were introduced. Under current conditions the network companies are protected from competition during the important option hours. Yet one of the most important determining factors in establishing rates or prices is the natural interplay of vigorous competition. It therefore seems obvious to us that any likelihood of Government rate regulations would exist in those areas where the network companies are protected from competitive pressures which customarily insure fair rates and fair prices. It seems equally obvious that to the extent free competition is introduced into those important time periods, where protection from competition now exists, the necessity or the justification of Government rate regulation would be eliminated rather than enhanced.

Details of the arrangement were disclosed yesterday by Alfred Levy and David Susskind, owners of Talent Associates. They said their company also would share with NBC any income from television plays produced by Talent Associates that later were adapted for motion pictures or the legitimate theater.

Talent Associates, established in 1948 produces Armstrong Circle Theater on the NBC network. Its other productions in the past included Goodyear Playhouse, Philco Playhouse, Justice, and Adventure. The company now is producing a motion picture financed by Metro-Goldwyn-Mayer and will produce in the fall a Broadway play starring Ezio Pinza. (New York Times, May 9, 1956, p. 67, col. 1.)

Mr. Cox. Now have these productions had independent set producers, such as yourself, provide the scenery in years past?

Mr. Rotondo. Yes. On the show Justice, I was recommended by Batten, Barton, Durstine & Osborne, which produced the show, because they feel the service is far better than network service. We entered into an agreement whereby I was to package the show at a certain fee.

Now that recommendation went to Talent Associates; and, of course, they blew hot and cold on it. Finally, the thing went to NBC. The same thing applied to the show Armstrong Circle Theatre. The agency also wanted me to do the show, and naturally that also went to NBC. Now I happen to know that on the show Justice, my bid on the show was $2,800. That is a flat fee base, on a weekly base. We supply all of the scenery, the properties, the designing, and everything for that fee. Now I happen to know that the network charges on this particular show have run over $3,800 per week on a weekly basis.

Mr. Cox. I take it that the agency that you have referred to here is the representative, in this transaction, of the advertiser who ultimately pays the bill?

Mr. Rotondo. That is right. You see, the agencies don't always have their own production departments, so they turn these shows over to a producing group to produce for them at a flat fee. But unfortunately, even if the agency recommends you and wants you to do the work, you see, with this kind of setup here this is only making this thing official. This actually was going on for several years prior to this announcement, but those are the conditions that we have to operate under.

Thus, another independent factor, the independent producing agency, is coming under the ownership and control of the networks.

Once again I would like to comment on that. I think there is only one independent producing agency left in the city of New York, and that is Goodson & Todman.

Last fall, as you gentlemen may be aware, Mr. Louis Cowan, head of Louis Cowan Productions, Inc., was hired by CBS-TV. Mr. Cowan is now a CBS-TV vice president. What influence this will have on the producing agency he founded I'll leave to your imagination.

A similar situation exists with the advertising agencies. They are no longer producing their own shows as in the early days of TV. They are, instead, offered network produced or controlled shows, and if they want the choice time spots, they take them.

However, even where a show is still produced by a producing group or an advertising agency, the networks still manage to exert enough pressure to get all the below-the-line services, such as scenery, props, and so forth.

Let me cite you a few examples. Late last year I was asked by the Louis G. Cowan producing group to bid on a new show called the $100,000 Question. Maurice Gordon, the designer, asked me to bid on that show, and I did. Later, the designer called me and said that NBC was insisting that if the show was to go out over their network, they would have to use all of the network's production facilities, including the supplying and painting of scenery. Now, on this particular unit I bid $2,800. I was told that the network bid was $4,800, and NBC did the show.

A similar situation existed with respect to the show called Justice. Bob Wade, as I have already explained, bid on behalf of Talent Associates, Ltd. I submitted a bid, was told that it was lower than NBC's estimate, but that the network insisted on doing the scenery work as the show was to go out over NBC facilities.

One thing I would like to point out here is the manifestly unfair bidding practices involved. For one thing, the networks actually submit an estimate usually with a 10-percent differential clause; that is, either above or below.

Nowhere in the bid is any evidence of the trucking charges for bringing the scenery from their shops to the broadcast studio. Where that item is hidden no one knows, and if all the costs go up after the first or second show, the sponsor is simply billed the additional costs and must pay.

Mr. Cox. You mean to say the network does not produce the sets on the studio location; that they must, in New York, pay trucking charges to get these sets in place?

Mr. Rotondo. That is right. We pay trucking charges—naturally we meet the union conditions—and they hide their charges somewhere in there. They actually don't show a trucking charge.

Much has been said by network officials, in conferences and in replies to our protests, about the limitations of the existing scenery-supply organizations. Actually, our group furnished the personnel to the networks for scenery supply work during the formative period of TV.

Senator Wofford. Let me interrupt you there. You left out one paragraph. Did you mean to omit that?

Mr. Rotondo. On the other hand, the independent scenery supplier submits a firm bid and gambles on it. In turn, the networks make his costs skyrocket by insisting on removal of the scenery immediately after the show, which in the case of an evening show means double-time trucking charges. That they do to us.

Mr. Cox. Do they do that in instances where it is not actually necessary to clear the set for immediate re-use the following day?

Mr. Rotondo. Well, let's take a case in point, the Hit Parade. We must haul the Hit Parade out on a Saturday night directly after the show—that is, at their convenience, because they have what they call a setup crew—at which time they will go in there and tear the show down and get it ready to ship it out. Well, of course, they do that at their own convenience, but our trucks are waiting out there and the night haul costs us $110 per load. Now, I don't believe it creates too much of a problem with the networks to have that stuff remain there until the following morning, or until a Monday morning; but I guess it is their property and they insist upon it.

All the knowledge of stage craft and all the basic techniques now in use on TV were taught to the network employees by our craftsmen, whose knowledge and skill is readily available and being used by us in our everyday operations.

Mr. Cox. Have the networks developed any completely new concepts in scenery design, and so on, which are more suitable for their operations than the theater concepts out of which your work has developed?

Mr. Rotondo. No. I will say we ourselves developed—where years ago we would require 5 to 6 weeks to do a musical show, of course, with the modern age of machines and things of that kind; but today I have done musical shows for the networks and for myself over a period of 24 hours. We have developed these techniques. We have made it possible.

Moreover, the combined square footage and trained personnel of the independent contractors compares most favorably, and in some instances exceeds those of the networks. It is pretty well established that, in an atmosphere of competitive bidding, the independent scenery contractors methods and materials will far exceed the run-of-the-mill network shop.

We are not alone in our judgment that there is a monopoly trend within the industry. In fact, that issue is one of the basic questions in the current campaign in New York Local 1, IATSE, where Arthur Harvey, one of the candidates for office, stated flatly that the network shops were a monopoly and in direct competition to our independent shops. It was, he adds, the intent of the network shops when they received a stencil from the union that this was for themselves and their own shows.

May I qualify that statement—when the stencil was originally issued to the networks, it was with the understanding that it was only to be used on stage shows, because the unions themselves didn't want direct monopoly from the networks to their own independent shop owners. But since then the networks have also become contractors and used the stencil for anything that they want.

Gentlemen, I don't want to burden you any further. I am attaching a compiled list of the shows I have done for TV over the past 7 or 8 years. That list will amply demonstrate that I am being squeezed out of TV as an independent scenery supply contractor.

I am not a lawyer nor a political scientist nor an economist. But I do recognize a monopoly when I see one, especially when it is literally breaking my back.

A television industry in which the most important market area stations are either owned by or affiliated with giant networks, which in turn control what is broadcast over such facilities by either the packaging of shows, the control or ownership of the producing agencies talent, and all other phases of production constitute a formidable economic bloc which will make impossible free competition.

If the designer or producer or producing agency expects to live in such a TV world, they'll take the staging facilities of the networks, come what may. And where the designer, producer or production agency is either employed by or partially owned by the network, the situation is even worse.

Networks should be divorced from the production of television, save when such production is for the purpose of a sustaining show for a time slot lacking a sponsor. Every encouragement should be given and other obstacles removed from the path of the independent designer, producer, scenery contractor, and customer. There was a time when the monopoly evils threatened the legitimate theater when theater owners tried to dominate the legitimate stage, insisting on their own facilities being used; and still later motion-picture production companies tried to dominate the exhibition of movies by block booking and other devices.

The evils which were eliminated from these two media are now threatening television. I am hopeful that you honorable gentlemen will recommend appropriate action to either Congress or pertinent Government agencies. Certainly small businesses have a claim to equal protection under the law. I am confident you gentlemen agree with that and will be guided by that.

Thank you.

(The compilation referred to above is as follows:)

COMPILATION OF WORK DONE FOR TELEVISION NETWORKS, ADVERTISING AGENCIES, AND TELEVISION PROGRAM PRODUCERS—PETER J. ROTONDO CO., 429 WEST 53D STREET, NEW YORK

1949–50

Hit Parade [1]—Batten, Barton, Durstine & Osborn, Inc.[2]
Man Hunt [1]—Talent Associates, Ltd.[3]
Show Business [1]—Batten, Barton, Durstine & Osborn, Inc.[2]
Frank Sinatra Show—CBS.
Ken Murray Show—CBS.
Shayne Kinescope
First Hundred Years [1]—Benton & Bowles, Inc.[2]
Captain Video [1]—Benton & Bowles, Inc.[2]
Those Two [1]—Benton & Bowles, Inc.[2]
Flying Tigers [1]—Fred Bruck Agency [2]
Faye Emerson Show—Biow Bancservice, Inc.[2]
Morton Downey [1]—Music Corporation of America [3]
Live Like A Millionaire [1]—Masterson, Reddy & Nelson, Inc.[3]
Bride and Groom [1]—Masterson, Reddy & Nelson, Inc.[3]
Robert Montgomery Show [1]—Neptune Productions, Inc.[3]
Jack Carter Show [1]—NBC
Babes in Toyland—NBC
Ed Wynn—NBC
Richard Rodgers—NBC
Anything Goes—NBC
Other musicals for NBC

1951–52

Hit Parade [1]—Batten, Barton, Durstine & Osborn, Inc.[2]
Search for Tomorrow [1]—Biow Bancservice, Inc.[2]
Captain Video [1]—Benton & Bowles, Inc.[2]
First Hundred Years [1]—Benton & Bowles, Inc.[2]
Flying Tigers [1]—Fred Bruck Agency [2]
Fred Allen Show [1]—NBC
Live Like a Millionaire [1]—Masterson, Reddy & Nelson, Inc.[3]
Bride and Groom [1]—Masterson, Reddy & Nelson, Inc.[3]
Robert Montgomery Show [1]—Neptune Productions, Inc.[3]
Greatest Story Ever Told [1]—Radio Program Productions Co.[3]
Scott Music Hall [1]—J. Walter Thompson Co.[2]
Manhunt [1]—Talent Associates, Ltd.[3]

Footnotes on p. 1599.

1953

Hit Parade [1]—Batten, Barton, Durstine & Osborn, Inc.[2]
Two For the Money [1]—Goodson & Todman Productions [3]
Gillette Christmas Show—Music Corporation of America [3]
Search for Tomorrow—Biow Bancservice, Inc.[2]
Milton Berle Show [1]—Sagebrush Enterprises [3]
Philip Morris Playhouse [1]—Biow Bancservice, Inc.[2]
Valiant Lady [1]—Dancer, Fitzgerald & Sample [2]
Nothing But the Best [1]—Biow Bancservice, Inc.[2]
Coke Time–Eddie Fisher Show [1]—Music Corp. of America [3]

1954

Dimensional Rock Set—CBS
Cab Callaway Set—CBS
Milton Berle Show [1]—Sagebrush Enterprises [3]
Love of Life [1]—Biow Bancservice, Inc.[2]
Hit Parade [1]—Batten, Barton, Durstine & Osborn, Inc.[2]
Search for Tomorrow—Biow Bancservice, Inc.[2]
Two for the Money—Goodson & Todman Productions [3]
Fred Waring Show—Batten, Barton, Durstine & Osborn, Inc.[2]
Coke Time-Eddie Fisher Show [1]—Music Corporation of America [3]
On Your Account—Benton & Bowles, Inc.[2]—serviced
I've Got a Secret—Goodson & Todman Productions [3]—serviced
Name's the Same—Goodson & Todman Productions [3]—serviced

1955

Hit Parade [1]—Batten, Barton, Durstine & Osborn, Inc.[2]
Milton Berle Show [1]—Sagebrush Enterprises [3]
Love Story—Benton & Bowles, Inc.[2]
I've Got a Secret—Goodson & Todman Productions [3]—serviced
Name's the Same—Goodson & Todman Productions [3]—serviced

1956

Hit Parade [1]—Batten, Barton, Durstine & Osborn, Inc.[2]

Mr. Cox. I take it, you don't object, then, Mr. Rotondo, to a network producing its sets for sustaining purposes, but you feel it should not be permitted to manufacture sets beyond that—even for shows they own themselves—if they are to be commercially sponsored; is that right?

Mr. Rotondo. That is right.

Mr. Cox. In other words, where the advertiser is ultimately going to bear the expense, you feel that outside scenery producers, such as yourself, should be free to compete among yourselves for that business?

Mr. Rotondo. That is right.

Mr. Cox. Now, isn't it true that if a network is going to maintain a shop for any purpose, it is impelled to find work to keep the shop busy on a steady basis to make it economical? So they might claim that they need some of the commercially sponsored business in order to sustain the expense of their sustaining shows?

Mr. Rotondo. Well, I think to answer your question, Du Mont proved conclusively, when they were operating, that they were getting far better service and operating far more economically through the independent shops. This I do know to be a fact—as far as the net-

[1] Indicates package deal.
[2] Indicates hired by advertising agency.
[3] Indicates hired by independent television producers.

work shops—they are a real Frankenstein to them. They are able to pass on costs to the sponsor or to the agency which they wouldn't acquire if we handled those same shows.

Now I think this is only part of their plan to eventually monopolize the entire business. I know back in 1935, or 1936 and 1937, when I was in radio, they made the same claim those days. They said the advertising agencies can't produce radio shows. But the FCC sat down on them in 1937 and made them disband a lot of their activities at that time, and the producing outfits that sprang up from that delivered far better shows than the networks ever were able to do.

Mr. Cox. Now, do you know whether the networks purport to make a profit on the production of sets for others, or whether they claim that they operate this simply on a break-even basis?

Mr. Rotondo. Well, in some instances they claim they are losing money. In other instances they tell you, "Well, we have got to make money, too."

Mr. Cox. They concede, in some instances at least, they seek to make a profit?

Mr. Rotondo. Oh, yes; definitely.

Mr. Cox. I take it that it is your feeling that if this matter were left open to competitive bidding, that your shop and others like it would be able to compete in this business and to continue to provide the service as you did in the early days of television?

Mr. Rotondo. Yes, sir.

Mr. Cox. To your knowledge, are your costs today competitive with any costs which could be developed by the networks for the production of sets?

Mr. Rotondo. Well, my own costs, I think, are anywhere from 20 to 33 percent under network costs, and I have a pretty good reputation in the industry. We have never failed to make a delivery, and we have time elements which sometimes break your back; but we turn out the job because we know it is necessary. They have got to have it, and we do it.

Mr. Cox. Have the networks ever criticized the quality of the sets you have produced for any show that went out over the networks?

Mr. Rotondo. No; there are individuals in the networks who may do that occasionally, but you take that with a grain of salt.

Senator Wofford. Thank you very much, Mr. Rotondo.

The next witness we have is Mr. David Steinberg, of New York City.

STATEMENT OF DAVID STEINBERG, PRESIDENT, IMPERIAL SCENIC STUDIOS, FORT LEE, N. J.

Mr. Steinberg. Gentlemen, I am David Steinberg, president of Imperial Scenic Studios of Fort Lee, N. J.

For over a quarter of a century I have been associated with the theater. My first job was with Producer Earl Carroll back in 1927. I stayed with him for 7 years absorbing everything I could about stagecraft from that noted showman.

During 1934 and 1935, I worked for Joseph Tishner and Frank Stevens, independent contractors supplying the legitimate theater. In late 1935, together with a partner, we formed the Kaj Velden Studios in New York City.

In 1948, we formed a similar company in New Jersey but after a disastrous fire in 1952, I bought out my principal partner's interest and renamed the company Imperial Scenic Studios.

During all these years, we have been supplying television, the stage, trade shows, and exhibitions with scenery. In 1949, at the infancy stage of television, we did a volume of $12,895.25.

By 1950, the demands by the networks, advertising agencies and TV production groups zoomed that figure up to $221,214.68. The next year that figure went even higher and our gross income from these sources reached $294,496.48.

During 1952 and 1953 we grossed $263,224.93 and $345,575.94, respectively. The year 1954 we started to notice a change, as the networks began to do all their own work and vie strongly for the nonnetwork produced shows. Our volume that year declined to $215,906.22; but the next year—1955—really told the tale.

Our gross business in TV last year declined to $71,437.99. For the first 4 months of this year the picture is no brighter as our figures indicate a total volume of $31,185.21 for the first four months, a good part of which came from closed-circuit shows and not from network sources.

Basically, Mr. Chairman and Senators, we independent scenery supply contractors have no chance to exist in TV at all as long as the networks are allowed to produce or buy control of shows, and then sell the show, the time slot, and the staging or production services to a sponsor as one package.

Under such a monopolistic setup, no one is even allowed in the door. That is what happened with the Jackie Gleason show. CBS controlled it, with the understanding that they—the network—would provide all the services and sell it to a sponsor or sponsors as a packaged deal.

Mr. Cox. Now was that an arrangement entered into between the networks and Mr. Gleason?

Mr. Steinberg. From what I understand, yes.

Somewhere along the line this monopolistic development has to be stopped or there will remain in television just a few giant networks which will control and sell broadcasting time as well as every bit of talent and designing, production, and staging services in one package.

Every unfair tactic possible is utilized by the networks to extend their control. Last year, for instance, I was asked to bid on the $64,000 Question by the Louis G. Cowan organization. That office told me I was the low bidder on the show but that the network had informed them that if an outside contractor did the show, he would have to remove the scenery after every performance, for an extra charge of $400 per week.

Mr. Cox. Was that such as to make it competitively impossible for you to provide the services?

Mr. Steinberg. That is right.

The network sets are stored or left in place until the stage or studio is needed again. But the independents are denied the privilege of paying for such storage, or of removal at a period when double-time trucking charges would not apply.

Mr. Cox. Have you offered to pay the networks for such storage of your sets?

Mr. STEINBERG. No, I didn't, because I personally never got a chance to negotiate with the networks. On the Cowan show I was just told it was on that basis.

More and more the networks are adopting a policy of not selling time slots to sponsors or their agencies but of selling them packaged shows with an allotted time slot all wrapped in one deal. Slowly but surely, this practice is diminishing the role of the advertising agency and the independent producer in the television field.

Seemingly the networks are satisfying these situations by making no move to eliminate the advertising agencies' commissions and by hiring executives of the independent production groups or buying into them.

This elimination of the truly independent factors in the production of TV shows will eventually make for a completely monolithic industry with sponsors allowed to pay for, and the set owners allowed to watch, what the TV network bigwigs decree.

In this sense the whole question becomes even greater than our interest as independent contractors. It seems to me of real public interest to prevent such domination in a field which plays such a large part in shaping public opinion about many questions of vital interest to our country.

However, from the viewpoint of a small-business man solely, I know that this is not simply a theoretical problem. I solemnly assure you gentlemen that unless the networks are pushed back into the business of TV broadcasting and the sale of broadcast time, every independent operator will be crushed under the weight of this growing gigantic monopoly.

No one today regulates the networks. Yet they are the possessors, either directly as TV station owners or indirectly through TV station affiliates, of a priceless privilege to use the airwaves of the Nation for whatever ends they desire.

Evidently the end they most immediately desire is the complete domination of television from the creation of an idea for TV broadcasting through its production, staging, and presentation phases, right up to the point where it appears on the TV screen.

Such a monopoly is in existence now and is destroying us independent scenery contractor. We sincerely hope you gentlemen will either use your legislative power or call on some law-enforcement body to change this shameful situation.

Mr. COX. Have you had any complaints from the networks or from advertisers as to the quality of the sets that your organization has produced for television?

Mr. STEINBERG. No; they always say that the quality of our sets are better.

Mr. COX. Than those produced by the network?

Mr. STEINBERG. That is right.

Mr. COX. Has there ever been an instance where you were unable to produce sets on time to take care of broadcast requirements?

Mr. STEINBERG. No. Only one time, I had a fire and it was burned down completely.

Mr. COX. You produced the sets and they were destroyed?

Mr. STEINBERG. That is right.

Mr. COX. Has any problem been created by the advent of color?

Mr. STEINBERG. No; we have always been producing in color for theaters.

Mr. COX. And you have no problems in connection with the photographing or televising of those color sets?

Mr. STEINBERG. No.

Mr. COX. Thank you.

(A tabulation attached to Mr. Steinberg's testimony is as follows:)

Imperial Scenic Studios, Inc., Fort Lee, N. J.

1949	
Du Mont television network, scenery	$3,150.00
Young and Rubicam, scenery	9,745.25
Year end total	12,895.25
1950	
National Broadcasting Co.:	
September through December 1950: 34 shows for Comedy Hour and Motorola starring Eddie Cantor, Bob Hope, Martin and Lewis, Fred Allen, Bobby Clark, Jack Carson, Danny Thomas, Jimmy Durante, Hartmans, Abbott and Costello	104,037.48
Rental of scenery during above period for other shows	2,798.50
Columbia Broadcasting Co.: Supplying scenery and rentals, February to December 1950	3,575.91
Howard Bay (Teller of Tales): Nov. 8 to December 1950	12,000.00
Dumont Television: Rentals, January through December 1950	1,205.00
Norman Pincus (Ellery Queen): Nov. 16 through December 1950	10,160.00
Fred M. Waring Productions: 22 shows, Jan. 9 through December 1950	34,026.82
WOR television: January through December 1950	11,486.97
Young & Rubicam: January through December 1950	41,924.00
Year end total	221,214.68
1951	
National Broadcasting Co.:	
January through September 1951, 29 shows for same stars as in 1950	61,741.97
Rental of scenery during above period for other shows	2,013.42
Rental of scenery, September through December 1951	1,205.00
MCA Corp. (Burlington Mills): Jan. 2 and 19	3,960.00
Calvalcade of Stars (Jackie Gleason star on Dumont television): Oct. 4 through Dec. 31, 1951	14,285.00
Louis G. Cowan (Cosmo Theatre): Oct. 4 through Dec. 27	27,121.00
Columbia Broadcasting Co.: Rentals, 1951	300.00
Howard Bay (Teller of Tales): Jan. 2 through Dec. 10	41,863.37
Batten, Barton, Durstine & Osborn: Nov. 26 to Dec. 31	2,380.00
Dumont Television: Rentals, March through September	275.00
Norman Pincus (Ellery Queen): 43 shows, January to December	50,692.20
J. Walter Thompson Agency: 20 shows, October to December	21,794.00
Fred Waring Productions: 41 shows, Jan. 2 to Dec. 31	64,780.52
WOR-TV: Scenery, March and November	1,985.00
Young & Rubicam: Scenery rentals	100.00
Year end total	294,496.48

1952

Corsair Productions, Ted Ashley Agency (Curtain Call): 6 shows	5,624.25
Calvalcade of Stars (Jackie Gleason): 36 shows, January to September	49,012.07
Louis G. Cowan Agency: Rentals	600.00
Columbia Broadcasting System: Rentals	200.00
Batten, Barton, Durstine & Osborn: Rentals and scenery	11,177.25
Dumont Television: Rentals	179.20
Albert Frank-Guenther Law Agency (Joe DiMaggio Show): October	1,790.00
Sam Leve: Scenery rental, July through December	1,711.58
McCann Ericksen Agency: Scenery, January 18	1,920.00
National Broadcasting Co.: Rentals	977.00
Neptune Production (Robert Montgomery Show): 15 shows	52,500.00
Norman Pincus (Ellery Queen)	26,256.22
J. Walter Thompson Agency (Fair Meadows U. S. A.): 21 shows	46,585.55
Fred Waring Productions: 38 shows	54,893.81
WOR-TV: Scenery and rentals	9,299.00
Young & Rubicam: Scenery	700.00
Year end total	263,224.93

1953

Batten, Barton, Durstine & Osborn: Rentals and scenery	6,371.00
Sam Leve: Scenery rental	2,202.00
MCA Corp. (Revlon Theatre): 11 shows	21,450.00
MCA Chrysler Theatre: 26 shows	59,326.00
Charles Martin (Philip Morris Show): 3 shows	8,260.00
National Broadcasting Co.: Scenery	4,073.19
Neptune Productions: Robert Montgomery Show, 52 shows; Eye Witness Show, 13 shows	190,519.60
Fred Waring Productions: 25 shows	34,007.69
William Weintraub Co.: 9 shows	1,786.00
Westinghouse Electric Co.: Closed circuit	11,645.46
Young & Rubicam: Scenery	5,935.00
Year end total	345,575.94

1954

Batten, Barton, Durstine & Osborn: Rentals	$8,612.15
Dumont Television Network: Rental	40.00
Paul Winchell Show: Scenery, June 3	535.00
Jerry Stagg Show: Scenery for Pilot Film	4,574.68
MCA Corp. (Chrysler Medallion Show): 13 shows	35,395.00
Charles Martin (Phillip Morris Show): 3 shows	8,100.00
MCA Corp. (General Electric Theater): 3 shows	8,700.00
Neptune Productions (Robert Montgomery Show): 39 shows	121,633.50
J. Walter Thompson Agency: Rental	125.00
Fred Waring Productions: Scenery, 17 shows	20,995.60
Fuller, Smith & Ross (Westinghouse closed circuit)	7,195.29
Year-end total	215,906.22

1955

Batten, Barton, Durstine & Osborn: Rental scenery	$11,790.74
Production Aids, Ltd. (Elwell): Scenery and touchup	8,021.81
MCA Corp. (General Electric Theatre): 13 shows	37,855.88
MCA Corp. (Windows): 8 shows	11,290.00
Fred Waring Productions	2,479.56
Year-end total	71,437.99

1956

Production Aids, Ltd. (Elwell): Scenery and touchup	$1,175.30
Theater Network Television (closed circuit)	6,965.00
Fuller, Smith & Ross (closed circuit)	1,100.00
MCA Corp. (General Electric Theatre): 5 shows	15,597.83
MCA Corp. (Lombardo Show): Basic set and numbers, 6 shows	6,347.08
Total to date, May 1, 1956	31,185.21

Senator WOFFORD. Thank you very much.

Mrs. Lucille Ashworth is our next witness. Will you come around, please? You may proceed.

STATEMENT OF LUCILLE ASHWORTH, STUDIO MANAGER, CHESTER RAKEMAN SCENIC STUDIOS, NEW YORK CITY

Mrs. ASHWORTH. I am the studio manager of the Chester Rakeman Scenic Studios, 530 West 47th Street, New York City.

Our studio has been under its present name since 1950 when a merger of the Vail Construction Co. and the Bergman Studios took place.

Both of these organizations had been serving the legitimate theater, television, and all other media such as exhibitions, trade shows, ice shows, and so forth, since 1920. I, in turn, have been connected with the Bergman Studios since 1933.

With the advent of television broadcasting as a new form of visual entertainment, our people were called upon to give the benefits of their three decades of experience in the field of scenery construction and painting. We readily assented to this demand by this new industry, convinced as we were that by its very nature as an industry granted a public privilege to use the air waves for television broadcasting purposes, it would need the services and experience of people such as ourselves to carry out its functions.

We never, of course, dreamed that the day would arrive when this industry, operating through direct station ownership and affiliated networks, would not only control the sale of time for television broadcasting but literally maintain a stranglehold on all the attendant aspects such as the building, painting, and supply of scenery, the production and direction of the shows, the supplying of props, and so forth.

Yet this is exactly what has happened. Let me recite our own experience as an example. In 1949, we supplied scenery on a time-and-material basis to the Columbia Broadcasting System television network for a number of shows and a gross volume of $73,608.69. In 1950, this volume grew both in number of shows and actual income to $229,932.91. By 1951, this total reached $276,159.55. The next year, 1952, it fell off a bit to $225,713.73.

But by 1953 the trend began to evidence itself as CBS–TV went into the scenery business on a large scale, and our volume dropped to $134,402.41. In 1954, we hit rockbottom with a total business with this network of $3,263.07. Last year that total rose slightly to $9,061.69, only because the networks found themselves unable to fulfill time commitments on several shows. To date this year we have not been called on to supply any scenery to CBS–TV at all.

We have had unfortunate experiences with the National Broadcasting Co. television network as well. Last year, the Perry Como

Show was sold to NBC–TV. For almost 8 years we had supplied the scenery for Perry Como and his organization.

John Root, the designer, wanted us to continue. However, NBC not only demanded the scenery work for the show but insisted that the show's director, Lee Cooley, and the designer, John Root, join their organization. Cooley became an NBC employee but Root continued as an independent designer and our studio is presently building and painting the scenery he designs for Armstrong Circle Theater commercial.

Mr. Cox. Did that, however, terminate his relationship with Perry Como?

Mrs. Ashworth. It did.

We had a like experience with this monopoly trend on the Longine-Wittnauer holiday shows. In 1954, as had been our custom since 1951, we built and painted the scenery for the Longine-Wittnauer Thanksgiving show.

Again, as per our custom, the scenery was returned to our studio for alterations and additions for the Christmas show. However, shortly afterward, and before the Christmas show, Mr. Alan Cartoun, of the Longine organization, informed me that CBS–TV insisted that their scenery facilities be employed for the Christmas show.

Since then, Longine-Wittnauer has returned these two shows to our studio for the painting and supplying of scenery because they were disgruntled with the service and quality CBS–TV scenery services provided.

Last year we met with the leading executives of the networks after our organization, the Scenery Suppliers Association, Inc., complained through its consultant, Mr. George R. Donahue, of this growing monopolistic trend and of discriminatory practices.

ABC–TV officials very bluntly told us they always intended to do their scenery work, had been almost uniformly successful in so doing, and intended to continue the practice of excluding the independent scenery producer. In fact, they blithely suggested that since they had never given us a chance to exist on their network, our complaint of discriminatory practices should be lodged not against their network but rather against those networks which first tolerated and then rebuffed us.

Mr. Cox. You have never done any work for ABC?

Mrs. Ashworth. No, never.

This, of course, was much in keeping with the movie-industry practice, long since broken up by Government action, of controlling both the production and exhibition of motion pictures. In television broadcasting, however, the networks began by controlling the exhibition facilities in TV through ownership and affiliation, and then augmented this monopoly by gradually extending their control over production facilities. Paramount Pictures, a controlling factor in ABC–TV, really pioneered this now universal development in the industry.

NBC–TV and CBS–TV officials, however, were more tactful. They piously denied any monopoly intent or any discriminatory practices.

Instead, they suggested they had become involved in scenery production and supply because of three main factors: (1) The outside scenery supply organizations were not equal to the task of supplying the necessary scenery; (2) the time schedule of TV was beyond the capacity of independent scenery supply contractors to produce on short notice; (3) the color problems of TV color television were beyond the abilities of the outside studios.

None of these claims have any basis in fact. Actually, in 1952 our studio singlehandedly built and painted all CBS–TV scenery during a 3-month period while that network was changing the location of its scenery operations.

Mr. Cox. Were they then carrying on a level of programing roughly equal to what they are handling now?

Mrs. Ashworth. At that time I would say it was greater, because at that time all scenery had to be built new, and now they have a stock of scenery which can be used over again.

Mr. Cox. Has there been an increase in film programing which has reduced the overall need?

Mrs. Ashworth. Definitely, Mr. Cox; yes.

As to the time element, I can state flatly that in over 20 years of experience—I have to exclude Mr. Steinberg's fire—in this industry, I have never known of any independent scenery organization failing to meet its time schedule for a stage production, a television show, or any other type of production.

The last excuse of the networks for not using our facilities, that is the problem of color in television, is actually laughable. Color has always been part of our basic work in stage scenery. In fact, the overwhelming majority of the designers and scenic artists now working for the television networks came out of the legitimate theater and in many instances out of our studios.

I am attaching to this statement a record of our gross receipts as a supplier of scenery for the television industry. As you will readily see, it reflects a growth from a total of $88,079.43 in 1949 to a high of $367,150.59 in 1951 and $351,064.86 in 1952, and then a disastrous decline to $106,628.12 in 1955 and a total of $20,798.80 for the first 4 months of 1956.

What makes the situation even more frightening is the steady gobbling up, as well, of New York theater properties by the TV networks, thus delimiting our possibilities of work in the legitimate theater by eliminating more and more outlets for the presentation of the traditional dramatic audience-supported shows.

Mr. Cox. This is an occupation of these theaters as used for studios for broadcasts?

Mrs. Ashworth. Yes; every year they add 2 or 3 of the remaining Broadway theaters.

Nothing can, in my mind, justify these developments. Neither as an individual, a manager of an independent studio, or as secretary of the Scenery Suppliers Association, Inc., have I the power to expose or put a stop to this evident monopolistic growth of the TV networks. But somewhere in this country dedicated to freedom there should be a force strong enough to halt the TV networks, operating through TV stations with Government franchises, from using that public privilege to destroy any and all individuals and groups normally qualified to participate and contribute to staging and supplying of TV productions.

We hopefully look to your committee for aid and relief. If it is not forthcoming, slowly but surely a vital, independent and traditional

American type of small business with a high quality of artistic creativeness will be lost to the American scene and the American theatrical arts.

Mr. Cox. Could you tell us, Mrs. Ashworth, approximately how many independent scenery producers there are in the business in the New York area?

Mrs. Ashworth. There are really about 5, of whom 3 are represented here.

Mr. Cox. And there are two others of like stature?

Mrs. Ashworth. Yes; that is right.

Mr. Cox. Do you and your competitors continue to provide the sets for the theater, for nightclubs, and things of that sort?

Mrs. Ashworth. Yes; definitely. That is what we live on now.

Mr. Cox. Does the loss of revenues which you have in past years derived from television have any effect upon your continued ability to provide this service for the other agencies that use your sets?

Mrs. Ashworth. Well, I would say that the networks have gobbled up some of our best craftsmen; in fact, a great many of them.

Mr. Cox. So to that extent you are hampered?

Mrs. Ashworth. Yes; that is true.

Mr. Cox. Your feelings, then, I take it, is much like Mr. Rotondo's and Mr. Steinberg's, that the networks should be confined to the sale of time, and that the details of production, the supplying of sets, properties, drapes, and things of that sort, should be handled on an individual contract basis, with competition and bidding for lowest price and best quality determining who was to get the job.

Mrs. Ashworth. That would seem the fairest way to do it.

Senator Wofford. Thank you very much.

(The document referred to above is as follows:)

Chester Rakeman Scenic Studios, Inc., 530 West 47th St., New York, N. Y.

	1949	1950	1951	1952	1953	1954	1955	Jan. 1 to May 1, 1956	Total
CBS-TV	$73,608.69	$229,932.91	$276,159.55	$255,713.73	$134,402.41	[1] $3,263.07	[1] $9,061.69	None	$982,142.05
Root: Chesterfield Supper Club	14,470.74	17,927.60							32,398.34
Root: Chesterfield, Perry Como Show, and TV Top Tunes		21,104.68	87,710.62	80,819.83	82,868.75	68,940.41	[2] 43,894.33		385,338.62
Root: Armstrong Circle Theatre							[3] 4,747.40	$3,749.16	8,496.56
Jackie Gleason						[4] 13,181.41	37,471.82	17,020.80	67,674.03
Longines-Wittnauer Watch Co			3,280.42	14,531.30	18,669.59	9,134.06	11,452.88	[5] 28.84	57,097.09
Total of above	88,079.43	268,965.19	367,150.59	351,064.86	235,940.75	94,518.95	106,628.12	20,798.80	1,533,146.69
Miscellaneous TV jobs for agencies and others (approximate total)	1,700.00	200.00	4,500.00	430.00	5,800.00	[6] 10,400.00	[7] 10,250.00	1,100.00	34,380.00
Grand total	89,779.43	269,165.19	371,650.59	351,494.86	241,740.75	104,918.95	116,878.12	21,898.80	1,567,526.69

[1] 4 shows for CBS done between Jan. 11 and Jan. 20, 1954. 2 shows for CBS: Jan. 6, 1955, Best of Broadway, $7,246.89; July 16, 1955, Toast of the Town, $1,840.80.
[2] Ended Sept. 3, 1955.
[3] Sept. 23 to Dec. 31, 1955.
[4] Includes vaudeville show at Paramount Theater, $12,000.
[5] Mar. 2, 1956.
[6] Includes $10,132.80 closed-circuit TV show for Theatre Network Television, Inc.
[7] Includes $9,669.30 closed-circuit TV Dodge show, done for Haford Kerbawy, Grosse Point, Mich.

Senator WOFFORD. The committee will stand adjourned until 10 o'clock tomorrow morning in this same room.

(Whereupon, at 12:25 p. m., the committee adjourned to reconvene at 10 a. m., Tuesday, May 15, 1956.)

TELEVISION INQUIRY

(Network Practices)

TUESDAY, MAY 15, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to notice, at 10 a. m., in room G-16, the Capitol, Senator Frederick G. Payne presiding.

Present: Senators Payne, Pastore, and Duff.

Senator PAYNE. The committee will be in order.

In the last several weeks, the committee has received a number of statements and communications which should be inserted in the record. These are as follows:

A. Regarding subscription television:

1. Letter dated May 11, 1956, from Marcus Cohn supplying the answer to a question directed to him during his testimony before the committee on April 25, 1956.
2. Supplemental statement of Zenith Radio Corp. and Teco, Inc., regarding interpretation of the 1949 agreement between these two companies, which was referred to by Mr. Cohn in his testimony.
3. Letter from Edgar Kobak, of WTWA, Thomson, Ga., enclosing copies of three earlier communications to the Federal Communications Commission on this issue.
4. Statement of the American Civil Liberties Union urging that toll television be given a trial subject to certain enumerated safeguards.

(All four of the above items are set forth in the appendix to the volume on Subscription Television, at pp. 1467 to 1472.)

B. Regarding allocations and the UHF problem:

1. Statement of Helm Coal Co., and four others, permittees of UHF stations in Pennsylvania, urging deintermixture in their area by deletion of channel 8 from Lancaster, Pa.
2. Statement of Plains Television Corp., licensee of UHF station WICS, Springfield, Ill., urging deintermixture of that market by deleting channel 2 from Springfield and adding it in St. Louis and Terre Haute.
3. Statement of Telecasting, Inc., permittee of UHF station WENS, Pittsburgh, Pa., urging deintermixture in general and suggesting specifically that a fourth commercial VHF channel be added in Pittsburgh.
4. Statement of Charles W. Lamar, Jr., permittee of UHF station WPFA-TV, Pensacola, Fla., and KTAG Associates, per-

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mittee of UHF station KTAG-TV, Lake Charles, La., urging a comprehensive plan for deintermixture in the gulf coast area.

5. Statement of Carmen Macri, permittee of UHF station WQIK-TV, Jacksonville, Fla., urging a comprehensive plan of deintermixture for Florida and southern Georgia.

6. Letter from Senator Homer E. Capehart, of Indiana, together with 18 letters and telegrams received by him from constituents urging prompt action for the preservation of UHF broadcasting.

All of these will be inserted in the record at the conclusion of the testimony in the allocation phase of these hearings.

(All 6 of the above items are set forth in the appendix to the second volume on the UHF-VHF Allocation Problem, at pp. 1012, 1015, 1017, 1019, 1022, and 1024.)

C. Network practices:

1. Telegram dated April 14, 1956, from Richard A. Borel, secretary of CBS Television Affiliates Advisory Board, setting forth a resolution unanimously adopted that day by all 169 CBS television affiliates supporting option time and other network practices and requesting an opportunity for representatives of their group to testify before the committee regarding these matters. Pursuant to this telegram the original of the resolution, bearing the signatures of the 169 CBS affiliates, was later forwarded to the committee and will be preserved in the committee's files. The request to appear has been granted, as has a similar request from representatives of the affiliates of ABC.

2. Letter dated April 19, 1956, from John W. English, setting forth a copy of a resolution adopted by the UHF affiliates of CBS opposing regulation of the network and urging instead the provision of adequate competitive facilities, with action by the FCC on or before June 1, 1956.

3. Letter to Congressman Oren Harris, of Arkansas, from W. M. Bigley, South Arkansas Television Co., Inc., expressing complete satisfaction with KRBB's affiliation with NBC and opposing control of the networks.

4. Letter dated April 30, 1956, from Senator Homer E. Capehart, enclosing a letter from J. M. Higgins, WTHI, Terre Haute, Ind., expressing satisfaction with his station's relations to the networks and enclosing a copy of the CBS affiliates' resolution.

5. Telegram from Ely Landau, National Telefilm Associates, Inc., and letter of May 4, 1956, with enclosures, supporting the networks and stressing necessity for additional stations and networks.

All of this material will be placed in the record.

(The documents concerning network practices above referred to are as follows:)

CHICAGO, ILL., *April 14, 1956.*

Hon. WARREN MAGNUSON,
Senator from Washington,
Senate Office Building, Washington, D. C.:

In unanimous action today, all 169 affiliates of the Columbia Broadcasting System television network in attendance at the annual meeting of the affiliates' organization resolved that a representative cross section of the affiliates would respectfully seek an appearance before the Senate Interstate and Foreign Commerce Committee to bespeak their opinion with respect to network option time and related contractual arrangements between the network and its affiliates. The resolution was supported by a petition personally signed by each of the affiliates. Full copy of the resolution follows.

"Whereas the Senate Interstate and Foreign Commerce Committee of the United States Senate has recently heard testimony with respect to network option time and other network practices; and,

"Whereas it is the consensus of the affiliates of the CBS television network that option time or some similar business arrangement and other network practices are of fundamental importance to continued sound networking; and

"Whereas it is recognized that the economic health of the networks insures the preservation of vital public service on a national and international level; and

"Whereas it is the belief of the affiliates that there have been no seriously detrimental practices, and the relationship between the CBS television network and its affiliates is one of partnership in which each operates to the benefit of the public and each other: Now, be it and it is here

"*Resolved*, That the undersigned affiliates of the CBS television network request the opportunity to present a representative group of affiliates to said Senate committee to testify as to essentiality of option time or some similar business arrangement and other network practices."

The above information is sent to you at the direction of the affiliates in order that you may have immediate knowledge of the action. Original copy of resolution with appended signatures will be forwarded to you.

CBS TELEVISION AFILIATES ADVISORY BOARD,
By RICHARD A. BOREL, *Secretary*.

APRIL 19, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee, Washington, D. C.

MY DEAR SENATOR MAGNUSON: This is to advise you that a meeting of the UHF affiliates of the Columbia Broadcasting System was called by Mr. Humboldt J. Grieg, of WHUM-TV, Reading, Pa., on April 14, at the Conrad Hilton Hotel in Chicago.

The following resolution was moved, seconded, and unanimously approved:

"Whereas network regulation has been suggested as necessary for television in the United States: Now, therefore, be it

"*Resolved by the ultra-high-frequency affiliates of the Columbia Broadcasting System*, That television should be competitive and not regulated and that the real answer to television problems is not regulation of networks or network option time or the industry generally, but swift and intelligent availability of adequate competitive television facilities; and an answer should be made available to the industry by the Federal Communications Commission on the future of all-channel television on or before June 1, 1956."

Respectfully submitted.

JOHN W. ENGLISH,
WNAO-TV, Raleigh, N. C.; WSEE-TV, Erie, Pa.

Hon. OREN HARRIS,
House of Representatives, Washington, D. C.

DEAR SIR: This is an unsolicited letter, and you have our permission to quote from it.

After serving as general manager of KRBB-Television, El Dorado, Ark., for 4 months, I wish to express our complete satisfaction with our affiliation with the National Broadcasting Co.'s television network. We feel that this affiliation has been most fair and equitable to all parties concerned. We also feel it has been of great value in bringing to the audience in our area a greater variety and higher standard of programing and public service than we could possibly provide without it.

It is our sincere belief that undue or excessive restriction and control of network operations may very well result in lowered programing standards and a lessening of the individual affiliated station's ability to provide equally good service to their respective areas. We believe such restriction and control would benefit only minority groups in a limited number of situations.

As far as KRBB–Television is concerned we believe that the present criticism of network operations is unjustified in the light of the benefits we and our audience have enjoyed.

We hope that this information and our experience will aid you and your fellow members of the House Interstate Commerce Commission Committee in any consideration you might have regarding regulation or control of network operations.

Sincerely yours,

South Arkansas Television Co., Inc.,
W. M. Bigley, *General Manager.*

United States Senate,
Washington, D. C., April 30, 1956.

Hon. Warren G. Magnuson,
Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.

Dear Senator: Attached is a letter and enclosure received from Mr. J. M. Higgins, general manager of WTHI–TV in Terre Haute, Ind., which I believe you will find self-explanatory.

Since you will soon be considering testimony on network practices, I thought you might like to incorporate Mr. Higgins' letter in your study.

Regards.

Sincerely,

Homer E. Capehart.

Terre Haute, Ind., *April 27, 1956.*

Hon. Homer Capehart,
United States Senate, Washington, D. C.

Dear Senator: The television industry is being investigated from all angles. It seems fashionable to talk about the television industry. At the same time I feel confident that the practices by most station operators are healthy and in the interest of the public.

Attached is a resolution which was unanimously passed and signed by all the CBS–television affiliates in attendance at their annual meeting in Chicago, Ill., April 14, 1956.

I wanted to personally tell you that I feel the networks do not abuse their affiliates. We are affiliated with all three networks and our operation with them is most compatible.

For well over 17 months we had economic strife. There were moments when we felt the advertisers were not responding to the value of our property. It took a lot of hard work and constant reiteration of our story to the advertiser. It also meant imposing a lot of self-improvement in our daily operation. Together these factors developed an economic health. Now we are giving the public the best television that can possibly be given in our area. Many suggestions and much guidance were given to us by the networks.

Your support and endorsement that the networks are doing a good job will be appreciated by me.

Sincerely,

J. M. Higgins,
General Manager, Wabash Valley Broadcasting Corp.

The following resolution was passed unanimously and signed by all CBS television affiliates in attendance at the annual meeting in Chicago, Ill., on April 14, 1956:

"Whereas the Senate Interstate and Foreign Commerce Committee of the United States Senate has recently heard testimony with respect to network option time and other network practices; and

"Whereas it is the consensus of the affiliates of the CBS television network that option time or some similar business arrangement and other network practices are of fundamental importance to continued sound networking; and

"Whereas it is recognized that the economic health of the networks insures the preservation of vital public service on a national and international level; and

"Whereas it is the belief of the affiliates that there have been no seriously detrimental practices and the relationship between the CBS television network and its affiliates is one of partnership in which each operates to the benefit of the public and each other: Now, be it and it is here

"*Resolved*, That the undersigned affiliates of the CBS television network request the opportunity to present a representative group of affiliates to said Senate committee to testify as to the essentiality of option time or some similar business arrangement and other network practices."

CBS TELEVISION NETWORK AFFILIATES.

NEW YORK, N. Y., *May 14, 1956.*

Senator WARREN G. MAGNUSON,
United States Senate,
Committee on Interstate and Foreign Commerce, Washington, D. C.
(Attention Mr. Zapple)

As your office was advised, our annual stockholders meeting prevents my attending tomorrow. However, you are authorized to insert my letter and enclosure in the record of your proceedings. Will be pleased to cooperate with you in all respects. Regards,

ELY A. LANDAU,
President, National Telefilm Associates, Inc.

NATIONAL TELEFILM ASSOCIATES, INC.,
New York, N. Y., May 4, 1956.

Senator WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee,
Washington, D. C.

DEAR SENATOR MAGNUSON: Pursuant to a telephone conversation with your Mr. Nicholas Zapple and Mr. Harry Algus of our office, I am addressing this letter to you, relative to your committee's current television network hearings.

I am the president of National Telefilm Associates, Inc. (NTA), one of the major film-distribution organizations in the television industry. There has been much talk in our trade about the TV film distributors' attitude with regard to the network concept, and most of it seems to indicate that film distributors in general are definitely antinetwork both in philosophy and in practice. We, here at NTA, quite to the contrary, feel that there are many pluses to the network concept in the broadcast industry and that we owe ourselves and our industry an obligation to offer to you the thinking and the evaluations that emanate from the experience and position that we hold in this industry.

I believe that as a major television-service organization our thoughts in these matters could prove of value to you in reaching your ultimate conclusions. I am enclosing herewith a copy of a letter which I recently sent to heads of other major TV film-distribution companies which I feel might give you an insight to some of my views. Should you feel that I can be of some service to you and your committee, I would be most happy to extend my cooperation.

Respectfully,

ELY A. LANDAU, *President.*

NATIONAL TELEFILM ASSOCIATES, INC.,
New York, N. Y., May 3, 1956.

Mr. JOHN DOE,
Film Syndicator,
Main Street, U. S. A.

DEAR MR. DOE: Charges and countercharges about the control by networks of the broadcast industry are being made by many people and organizations both informed and uninformed.

As heads of leading television film distribution organizations I believe that both you and I have a decided interest in the current hearings being conducted by both the Senate Commerce Committee and the Barrow committee appointed by the FCC. It seems to me that we, and others who have a stake in this business of broadcasting have an obligation to ourselves and to the industry to make our stand crystal clear and public.

Our company, as you know, has basically not been a supplier of programs to the networks for network telecasting. Our prime function has been to supply television programs on film and theatrical feature films for use by the local station operator.

I have no banner to wave for the network as our customer. It is not.

However, I have been greatly disturbed in not seeing a clarified position taken by the distributors in relation to the networks, and it is toward that end that I'm taking this opportunity to offer our thinking here at NTA.

I feel that I must call upon you and the others to weigh the scales carefully. The expediencies of the moment can lead us to be extremely shortsighted. Let us not fail to see the forest because of the trees.

It is my conviction that you and I, and everyone concerned with the TV broadcast industry, should shout "Hurrah for the TV network, without which TV as we know it today would not exist."

We should say, Thanks to the networks which gave the TV industry an impetus that few other fields have ever gotten—especially so much in so little a span of time.

We should say, "Let's look at TV's growth picture." From a humble beginning in 1948 when the TV set count stood at 190,000 the figures show a tremendous rise. In 1949 there were 1 million sets. In 1950, 3,950,000. That figure rose to 10,549,500 in 1951, 21,234,000 in 1953 while today's figure stands at 36,900,000.

And then we should ask, "Where are the organizations that can claim and deserve as much credit for TV's amazing growth as the networks themselves?" It seems to me that those within the industry as well as those without, who are publicly or privately picking apart the networks today, have short memories indeed.

Without a network concept in the broadcast industry, what single station—or group of stations could or would have had the buying and organizational power to give to an infant TV industry such epic and industry-building projects as:

Championship sporting events—boxing, football, and the world series since 1947;

Political highlights including the presidential nominating conventions since 1948, and the presidential inaugurals since 1949;

International events such as the signing of the North Atlantic Treaty Pact, the Japanese Peace Treaty Conferences, and the Coronation of Queen Elizabeth in 1953;

Congressional hearings such as the Kefauver Crime Commission investigation of 1951 and the Army-McCarthy sessions in 1954;

Big-time variety entertainment since Milton Berle's first telecast in 1948—the Ed Sullivan Show, the dramatic big-timers Studio One, U. S. Steel Hour, and Kraft Theater;

The spectaculars since 1954 and, of course, colorcasting since 1954.

All of this, plus 25 years of laborious experimental work done at tremendous cost to the networks for a nonexistent and then embryonic TV industry. I am sure that many of those complaining bitterly about network profits today have completely forgotten the staggering network expenditures and losses of yesterday when it was the networks' faith in the medium that enabled them to progress so fast and so far.

To all this I then say: "There is nothing wrong with the network concept today—that has not been brought about by the TV economy itself—an economy not measured in terms of bigger and better programing nor measured in terms of bigger and better viewing audiences; nor in terms of bigger and better advertising dollars—but an economy of a stunted growth, brought about by a limited and entirely uncompetitive market situation.

I say that there is absolutely nothing wrong with the networks' role in the television broadcast industry that couldn't be cured by precise and concise governmental action that will allow for steady and stabilized expansion of the television market. I sincerely believe that our hue and our cry can only be addressed to those in Government who control the growth of our industry, calling on them to aim their sights in the right direction, that of increasing and stabilizing the TV station-allocation picture.

The network role in the television industry will then and only then become less a matter of monopoly—less a matter of arrogance—less a matter of high-handedness—than any other approach could ever bring about. The law of supply and demand operates in broadcasting just as it does in the grocery business. There's nothing wrong with network broadcasting than an increased supply of networks and stations couldn't cure.

The fundamentals behind all the fuss and fury are obvious. Network time is scarce; advertisers are standing by, ready to snatch up time availabilities. With the limited supply against a plentiful demand in the hands of so few—the basic "facts of life" are bound to prevail.

I know that you are well aware of the basic vicious cycle in our business—that of better programing, creating more viewers, attracting more advertisers with more advertising dollars, allowing for the creation, production, and/or acquisition of better programing—and so on around the cycle again and again. But we also know that the independent station operator must find the answer to the question of where that cycle begins for him.

You and I know that for the unaffiliated nonnetwork station it has been an almost impossible task. There is no start without outstanding programing, and the network concept of enabling independently owned stations all over the country to procure programing for their stations which they alone could not produce or acquire is one of the fundamental cornerstones of the TV industry.

Ask any station owner about the value of his network franchise. He'll say that he needs it desperately. If he's truthful, he'll say that. He needs his network, but he'd be much happier if he had the competitive leverage of other networks to vie for the use of his time.

Of the 67 stations which have gone off the air since 1952; all, at the time of their retirement, were nonnetwork basic affiliated stations. Ask the average station operator who is network affiliated what he would do without his network affiliation and have him analyze how different his battle for survival, let alone profits, will become.

The fact that there are only three networks is the only thing wrong with the network role in the TV broadcast industry, and particularly since one of them is still very, very much in the embryonic stage because of our limited station picture.

There should be more networks. There must be more stations before there can be more networks. There must be positive and sound Government action before there can be more stations.

I say let's concentrate on, call for, and create the means to give the industry more of them.

There has been much criticism and much comment about must buys and station option time. These facets undoubtedly have their flaws and drawbacks. But the basic underlying facts of life are that you can't put the world series on the air; you can't buy Richard III for onetime national showing; you can't produce Dragnet, Lucy, Omnibus, and the Perry Como Show unless, and this is the biggest unless of all, unless you have enough time cleared to induce the right sponsor to spend tremendous amounts of money to bring, in the ultimate, the best in home entertainment to the people of the United States. Unless the network can have such option time it cannot acquire or produce great programing. Unless they have their must buy they cannot defray enough of those costs and make a profit.

One is the chicken—the other is the egg. There could not be one without the other. There would not be this great televesion broadcast industry for the overwhelming majority of the United States to see and enjoy without both—and the network.

We must remember too that the stations' allegiance to the network is not contractual. It is entirely dictated by economics. Under a station's license from the Government it cannot be bound legally to program network shows nor give network time. We both know that stations do so because they want and need such a structure for the procurement and development of programing and the sale of their time nationally to sponsors.

It seems to me that Dean Roscoe L. Barrow, of the University of Cincinnati Law School, who heads up the special staff of the FCC's network investigating committee, summarized the issue succinctly when he said, "The network as an instrument in itself has no particular significance to us, it is the effect it has on broadcasting to the people, the effect on advertising, and all components of the industry." In an elaboration of his remarks, Dean Barrow further stated that among the questions he will seek answers to are, "Why it is that we have such a small number of networks and why in recent years no new ones have entered the field."

It is upon this point that we must and should raise our voices.

I believe that you and I and others within the framework of TV film programing can do much to clear the air and to present some of the basic facts that exist. I don't have to tell you the implications and the inferences that go with lack of information. I believe strongly that there is room and a prime need for the network in the TV economy. I believe that there should be more networks.

If we can induce those that have the power to do so to give us more stations, we'll have more networks tomorrow, in a freer, more competitive industry within which to work.

Sincerely,

ELY A. LANDAU, *President.*[1]

Senator PAYNE. The first witness we have this morning is Mr. Wilbur M. Havens, president of Havens & Martin, Inc., who are the licensees of WTVR, Richmond, Va.

Mr. Havens, I understand that you have a prepared statement. You may proceed in your own way. If you wish to read the statement, or the statement in its entirety will, of course, be made a part of the record in any event.

Mr. HAVENS. I would like to read it, Mr. Chairman. And I have with me several of my associates whom I would like to introduce. On my right is Mr. Walter Bowry, treasurer of Havens & Martin; Mr. Martin Hutchinson; and Mr. John Midlen, Washington counsel.

During the course of my statement, Mr. Chairman, I would be glad to answer any questions. However, I am hard of hearing, and you will have to ask your questions loud.

STATEMENT OF WILBUR M. HAVENS, RICHMOND, VA., PRESIDENT, HAVENS & MARTIN, INC., STATION WTVR

My name is Wilbur M. Havens. I am president of Havens & Martin, Inc., owners and operators of AM station WMBG, FM station WCOD, and television station WTVR, channel 6, all in Richmond, Va. Since 1925 I have been continuously engaged in the broadcasting industry in Richmond, Va.

WTVR was the first television station to begin operating in the South. We received our construction permit in 1946. We were one of the original seven interconnected stations on the first NBC television hookup, comprising the cities of Boston, Schenectady, New York, Philadelphia, Baltimore, Washington, and Richmond. At that time our AM radio station was also an NBC affiliate.

Our most recent NBC television affiliation agreement was terminated on June 1, 1955. NBC declined to renew this affiliation agreement with us, and instead affiliated with another station which had received its construction permit and was not yet on the air. My purpose here today is to tell this committee how and why NBC decided to cut off WTVR from the privileges of affiliation and what the consequences have been for our station.

I believe that NBC cut off our station for two principal reasons. First, because we insisted on exercising our own independent judgment as to what NBC programs we should carry on both our TV and radio stations, and occasionally rejected some NBC programs in favor of other programs. Second, because after we increased the power and coverage of our transmitting facilities, we insisted on increasing our station rate for network programs, to which NBC objected even though we were asking for less of an increase than we were entitled to under NBC's own rate formula as applied to the number of television sets in our service area.

So long as our station was the only station in the Richmond area, NBC was most anxious to retain us as an affiliate, despite our insistence on retaining some independence in selecting programs. But

[1] Mr. Landau appeared before the committee at a later date, his testimony appearing at p. 2690.

shortly after a second television station authorization was issued for the Richmond area, and, as I will show in a moment, perhaps in connection with the other station's deciding to switch its equipment purchases from Du Mont to RCA, NBC dropped us like a hot potato, and transferred the affiliation to the new station. A short time later, the NBC radio network affiliated with the Richmond radio station owned by the same interests. NBC took these actions suddenly and without prior notice to us, and has never since explained to us the reason for its decision.

Mr. Cox. Excuse me. Isn't that, however, what is required of you by the law—that you, in the exercise of your own judgment as a licensee, shall determine what programing is best in the interest of the viewers in your community?

Mr. Havens. That is my understanding of the rules and regulations—that the affiliate should determine what are the best programs it should carry.

But the reason was clear enough. Apparently, NBC does not care for affiliates who believe in putting the interests of their own communities ahead of the interests of NBC. I believe that NBC terminated our affiliation as an object lesson to show all of its other affiliates what would happen to a station that stands up to the network.

Unless you gentlemen of this committee, or the Federal Communications Commission, or the Department of Justice decide to do something about it, the object lesson will sink home in the minds of every affiliate, and the many hundreds of independently owned affiliates of the major networks will be independent in name only. They will serve the useful functions of supplying the necessary local capital and taking the necessary local business risks, but for all practical purposes, they will be controlled body and soul by the network companies.

I would now like to tell you our story.

EARLY NBC NETWORK OPERATION

As I have said, we built the first television station in the South, and were 1 of the 7 interconnected stations on the original NBC television hookup which began broadcasting regularly scheduled network programs on January 1, 1949. This was before either of the other network companies had entered the field of interconnected network programing.

In those days, NBC supplied 4 hours of programing per day, and we carried all of it. We also paid our proportionate share of the cost of the interconnected hookup, determined in accordance with a regular formula. We did not receive a penny in compensation from NBC during the entire year of 1949, which was the first year of regular network service. In other words, our station, along with NBC and the independently owned affiliates in Boston, Schenectady, Philadelphia, and Baltimore, helped to build and pay for the establishment of network services.

Shortly thereafter CBS and, a little later, ABC started their own interconnected television networks. This is when our troubles began with NBC. We were still the only TV station in Richmond, and both CBS and ABC were continuously urging us to carry some of their programs. While we had placed the prime evening viewing hours 7:30 to 10:30 under option to NBC under our affiliation agreement, the agreement provided, as the FCC's chain broadcasting regulations require, that the option could not be invoked to exclude a program offered by another network. The regulations also provided that a station could not enter into an arrangement or course of conduct with one network company under which the station agreed to carry the programs of that network exclusively. Furthermore, in November 1950, the FCC initiated its rulemaking proceeding, docket No. 9807, looking toward a proposed rule limiting the number of hours which any television station could take from a single network.

Mr. Cox. In that connection, Mr. Havens, is it your understanding that this proposed rulemaking of the FCC was designed to take care of the problem of markets in which there was only 1 or 2 television stations available, so that there were not facilities adequate to permit the release of the programs of all the networks?

Mr. Havens. I think very definitely so. I think that they were interested in determining why stations in 1 single station market—in cities where there is only 1 station—weren't carrying programs of other networks; or wanted to see that they were carrying programs of all the networks.

Mr. Cox. So that your decision to carry the programs of CBS and ABC, in some instances, was in line with that suggested policy, as well as with your determination that some of these programs were superior to those of NBC and, therefore, more in the interest of the people of Richmond?

Mr. Havens. Yes, I am sure that is true, sir.

NBC OBJECTIONS TO BROADCAST OF CBS AND ABC PROGRAMS

We took these FCC regulations and proposed rulemaking proceedings seriously. Moreover, we believed that, as the only television station in Richmond, we owed a duty to our audience to carry the best programs being offered by any source. While many of the NBC programs were of very high quality, we did not feel that every single one of the NBC programs offered during the prime evening hours was better than any competing programs being offered by CBS and ABC. Accordingly, notwithstanding our affiliation agreement with NBC, we accepted some CBS and ABC programs during prime evening hours.

We did not think we were being unfair to NBC. During the 28 prime evening hours per week between 7 and 11 o'clock, we carried 21 hours of NBC programs and only 7 hours for the other networks combined. Furthermore, we offered to carry on a delayed basis, by kinescope, those NBC programs which we were not accepting at their originating time.

But this did not satisfy NBC. The NBC station relations people complained about our action. In some cases they refused to accept delayed broadcast time for their programs, and would not send us the kinescopes. Rather than permit these programs to be broadcast on a delayed basis, they preferred to deny these programs to the people of the Richmond area. In other words, they decided that if Richmond was foolish enough to insist on seeing any single CBS or ABC program on its only station instead of an NBC program being offered at the same time, the people of Richmond were not going to be given a chance to see the NBC program at some other time. This was typical of NBC's dog-in-the-manger attitude, which continued even after NBC terminated its affiliation agreement with us.

VOICE OF FIRESTONE

Perhaps the most glaring example of NBC's attitude toward carrying the programs of other networks is the case of the Voice of Firestone. As the committee doubtless recalls, NBC decided that, beginning in September 1954, it would no longer carry the Voice of Firestone at 8:30 o'clock Monday evening, the time which Firestone had been purchasing from NBC radio for this program for over 20 years, and which Firestone had also been purchasing on NBC television in order to simulcast the program on radio and television at the same time. NBC offered Firestone a less desirable time which Firestone refused to accept. NBC thereupon insisted on evicting Firestone from its traditional time, and put on the Sid Caesar show instead. Firestone then moved its TV and radio programs to the ABC networks, at its traditional time of 8:30 o'clock on Monday night.

The Voice of Firestone is one of the fine musical programs on the air, and it was extremely popular in the Richmond area. Nevertheless, under great pressure from NBC, our station at first accepted the NBC replacement for this time period, Caesar's Hour. However, the Firestone people decided to take their case to the public. They published advertisements in the Richmond newspapers, stating that the Voice of Firestone could no longer be seen in the Richmond area because our station had decided to carry the new NBC program, and said that this state of affairs would continue unless the public took steps to advise our station that it preferred the Voice of Firestone. I have a copy of the advertisement here, and I am handing it to the reporter. It is dated September 20, 1954.[1]

Mr. Cox. I take it that in that advertisement, the criticism or blame for this change was directed against your station, rather than against any action of the network?

Mr. Havens. Yes, sir, it certainly was. The public didn't seem to understand that the action was not on the part of the station, but on the part of the network. It states as being the cause or reason for the loss of the Firestone program that we had taken it off.

Mr. Cox. You referred to pressure here to accept Caesar's Hour. Was that the normal pressure which was exerted by the network in connection with trying to get you to clear time for new programs, or was there anything exceptional about this incident?

Mr. Havens. Well, we felt all along that the Firestone program was entitled to stay on the station, because we had carried it on our AM station for 18 years. In fact, we didn't subscribe to the principle of taking Firestone's program off the network just simply because they didn't want to use some other program that the network wanted them to use, and then switching them to Sunday afternoon after they had been on the network for 25 years. And we were in favor of carrying it. However, Caesar's program was an hour program, not a half-

[1] This advertisement is set forth at the conclusion of Mr. Haven's testimony, on p. 1639.

hour program. Firestone was a half-hour program. And NBC called us a number of times about taking the Caesar program, instead of the Firestone program. So, we finally decided we would do it. But we never got on the air. Before it got on the air these advertisements were in. When these advertisements were in, then we were swamped with letters here—over 3,000 of them—which I would like to present for inspection.

Does that answer your question, Mr. Cox?

Mr. Cox. Yes. Proceed.

Mr. Havens. Within a few days after this advertisement was published, our station received over 3,000 letters from listeners who said they wanted to continue seeing the Voice of Firestone. I have these letters here, and I will be glad to submit them for the record.[2] Anyone who reads these letters will see that while they may have been prompted by the advertisement, they are sincere individual expressions of strong, personal preferences. We did not receive 3,000 letters, or even 3 letters, urging us to continue Caesar's Hour instead of the Voice of Firestone.

Now, as any advertiser or station operator or public opinion analyst will tell you, 3,000 letters is an enormous number of letters to receive in a city the size of Richmond about whether a single television program should be continued. I interpreted these letters as expressing a strong preference by our audience in favor of returning to the Voice of Firestone. I felt it was my duty as the licensee of the only television station in Richmond to respond to this preference. I therefore notified NBC that we would drop Caesar's Hour and that we would carry the Voice of Firestone on ABC in its place.

NBC did not like this decision at all. The NBC station relations people told me that the 3,000 letters were a pressure move inspired by a disgruntled advertiser, and that I should ignore them. To explain my action, I sent them the entire set of 3,000 letters. I sent them in this very box just as they were returned to us. They apparently made little impression on NBC, since they were returned with a letter from Mr. Paul Hancock of NBC's station relations, dated October 4, 1954, continuing to urge that we drop the Voice of Firestone in favor of Caesar's Hour. This letter said, and I quote:

> We ran into considerable difficulty last week, and we still may not hear the end of it. Several of the clients are complaining loudly. I sincerely hope that the time will come soon when you can clear Caesar live.

So long as WTVR was the only television station in Richmond, NBC could do nothing immediately about my decision. But 6 months later they transferred their affiliation to a second television station in Richmond, which had not yet even begun operating.

(On May 31, 1956, the chairman of the committee wrote to Mr. Harvey S. Firestone, Jr., with respect to the matter, receiving a reply from Mr. Firestone's secretary under date of June 16, 1956. These letters were inserted into the record on July 17, 1956, and are printed at this point to tie in with Mr. Haven's testimony:)

[2] These letters and cards were examined by the committee's staff and then returned to Mr. Havens. They are of the character indicated by him.

MAY 31, 1956.

Mr. HARVEY S. FIRESTONE, Jr.,
The Firestone Tire & Rubber Co., Akron, Ohio.

DEAR MR. FIRESTONE: As you may know, the Senate Interstate and Foreign Commerce Committee has been conducting hearings this session into certain phases of the television industry, including network practices. In that connection, the committee recently heard testimony from Mr. Wilbur Havens, the general manager of WTVR in Richmond, Va.

Included in Mr. Havens' testimony was a reference to the occasion when the National Broadcasting Co. canceled your company's broadcast time on Monday evening in order to make room for the Sid Caesar Show. Mr. Havens inserted in the record a copy of an advertisement which your company ran in the Richmond newspapers advising the public that your program was to be no longer heard in the Richmond area. He also brought before the committee more than 3,000 letters and post cards which he had received as a result of your advertisement, and he advised the committee that because of this expression of public interest his station had decided to carry the Firestone Hour over ABC and to reject NBC programing during this period.

I am writing to you at this time for two reasons: First, I would like to know whether your company placed advertisements in other areas and whether you know what the public response was. The committee is particularly interested in learning whether there may possibly have been a similar response in other communities where, however, the local station nonetheless disregarded the public's views and carried the new NBC program. Second, the committee would appreciate any details you can give us regarding your negotiations with NBC for continued use of your time period on Monday evening. We would be particularly interested in the reasons given by NBC for terminating your company's longstanding relationship with that network. If any of your negotiations were in the form of correspondence we would be happy to have copies if you feel you can supply them to us.

Thank you for your cooperation in this matter.

Sincerely yours,

WARREN MAGNUSON, *Chairman.*

THE FIRESTONE TIRE & RUBBER CO.

Harvey S. Firestone, Founder

AKRON, OHIO, *June 16, 1956.*

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR: During Mr. Harvey S. Firestone, Jr.'s absence from the country his office has referred to me your letter of May 31, 1956.

After the National Broadcasting Co. informed us in April 1954, that it would no longer carry the Voice of Firestone in the 8:30 to 9 p. m. time spot on Mondays, which our program had occupied on the radio since 1928 and on television since 1949, we switched to the American Broadcasting Co. network. As you know, in many of the major markets of the United States there are, unfortunately, only 1 or 2 television stations, which means that 1 or both of them usually share affiliations with 2 or more networks.

The station in Richmond, Va., which had been carrying the Voice of Firestone on NBC also had an affiliation with ABC. When we switched from NBC to ABC we asked all the stations which had double affiliations to continue to carry the Voice of Firestone. The station in Richmond informed us that it would do so only if it felt that the public wanted the Voice of Firestone continued. We knew of no way to prove to the station that the public wanted to continue the Voice of Firestone except to insert an advertisement in the Richmond papers advising the public that the Voice of Firestone would not be heard in the Richmond area unless the station received enough letters requesting its continuance.

To answer your first question, a similar situation occurred in Roanoke, Va. In both cases the volume of mail which the stations received influenced them to continue the broadcasts of the Voice of Firestone. We did not publish our advertisement in any markets except these two because in the other markets the stations either accepted the Voice of Firestone or rejected it without any qualifications regarding the opinion of the public.

To answer your second question, as noted above, we were informed by the National Broadcasting Co. in April 1954, that it would not renew our contract for the 8:30 to 9 p. m. time spot on Mondays on the NBC television network, although NBC was willing to renew it for radio only. Since our program is a simulcast and since it would have cost considerably more money to broadcast it separately on radio and television, we felt that we had to have the same time spot on radio and television.

NBC offered us a choice of three time periods, none of which were in network-controlled time, which meant that we would have had to get the individual stations to give up their station-controlled time to carry the Voice of Firestone. NBC did, however, offer us for sponsorship all of or part of the Sid Caesar show, an NBC network package show, which it planned to put in our previously held time period on Monday night. Since we did not feel that we wanted to lend our name to this type of show, we refused this offer as well as the offer to try to line up a network of stations in one of the station-controlled time periods.

The reason given by the network for discontinuing our program was that it did not have a high enough rating. The network pointed out that although our program was of outstanding quality, the program preceding us had a higher rating than our show and that the program which followed us could not get high ratings because when our show came on, part of the audience tuned to other networks and did not return to NBC after our show was off the air.

This was somewhat surprising to us because in February 1951, our company asked the National Broadcasting Co. for its recommendations to provide Firestone with a more popular television and radio show. We emphasized that we were willing to consider any type of television and/or radio program which would maintain a quality format and be a sound investment of advertising dollars.

In that same month, Mr. Niles Trammell, who was then president of NBC, and a group of NBC representatives came to Akron and made a presentation in which they urged the continuance of the Voice of Firestone on both radio and television. The net of their presentation was that the Voice of Firestone was not only an excellent program for our company, but also a highly valued program for the National Broadcasting Co., and they showed us statistics which indicated that on a cost-per-listener basis it compared very favorably with other television and radio programs.

During this presentation they made certain recommendations for improving the Voice of Firestone, all of which were adopted by us.

Furthermore, on November 30, 1953, when we celebrated the 25th anniversary of the Voice of Firestone, just 4 months before NBC notified us that it would not renew our contract, Mr. David Sarnoff, chairman of the board of RCA, stated publicly on our simulcast:

"We at the National Broadcasting Co. have a deep sense of pride in being able to share in this anniversary observance with the Firestone Tire & Rubber Co. But our tribute must be to the leaders of that great company whose faith in the public's love for fine music has been fulfilled and renewed over the past 25 successful years. The acceptance and stability of the Voice of Firestone goes far beyond mere program duration. Many of its orchestra members have performed every Monday night for as many as 15 and 20 years. This is not an anniversary of endurance. It is an anniversary of gratitude to a company which for a quarter of a century has been bringing a fine and wholesome broadcast series to American homes."

We trust that we have answered your questions.

Very truly yours,

JOSEPH THOMAS, *Secretary.*

NBC RESISTANCE TO RATE INCREASE

Our second major problem with NBC concerned the station rate we charged for network programs. Our original facilities had power of 12.16 kilowatts and an antenna height of 430 feet above average terrain. With these facilities, our service area in September 1953, included approximately 175,000 television sets, and our station rate was $625 per hour. During 1952, we obtained FCC approval to increase our power to the maximum for a channel 6 station, 100 kilowatts, and we received local zoning approval to raise our antenna height to 1,049 feet above sea level. We believed that this would substantially increase our service area and the number of sets within our area, and would justify our charging a higher rate.

Earlier than that, we had become so disturbed over NBC's management policies and their complaints as to our carrying programs of other networks that we had notified NBC in June 1952, that we did not intend to renew our television-affiliation agreement on the same terms. Despite NBC urging, we adhered to this decision for approximately a year, although we continued to accept the same proportion of NBC programs as we had when formerly affiliated. During this period, NBC continued to list us as one of its affiliates.

During this period, NBC was very anxious to have us sign a new affiliation agreement, and courted us assiduously. On November 19, 1952, Mr. Paul Hancock of the NBC station relations department wrote me a letter which included the following complimentary remarks about our operation:

It is rarely that you find a station manager who is so well-informed about all the mechanics of station operation. Occasionally, one finds a station manager who has a good engineering background but no sales experience, or other times a salesman who has no engineering or programing background. I can truthfully say you are a rarity in the broadcasting business when it comes to combining engineering, programing, and sales ability.

It was a distinct pleasure being with you, and I am sure that your future plans for expanding the station will bring you great satisfaction.

Later in the same letter, Mr. Hancock said:

* * * I have complete confidence that we are working on a fairly firm foundation and that some of our differences can be resolved to the satisfaction of both parties. Your prestige and loyalty in this network is unquestioned, and the least I can hope is that we are reciprocating.

In June 1953, Mr. Paul Hancock came to Richmond and urged us to sign a new affiliation agreement. After some discussion we agreed, after receiving verbal assurance that our new facilities, then under construction, would be recognized for station coverage, out to the 100 microvolt per meter contour, provided we would have an engineering survey made by qualified consulting engineers to establish this line.

The new facilities were completed at the end of 1953, and the engineering survey was made in January, February, and March of 1954, at a cost of $8,000.

Mr. Cox. Can you tell us what was the firm of engineers that made that survey?

Mr. Havens. We employed the firm of Jim McNary. A copy of this survey I have here, which is entitled "Coverage Survey for WTVR, Richmond, Va., Channel 6, 100 Kilowatts, Effective Radiated Power, 890 Feet, AAT."

It states:

During February and March of 1954, a station wagon equipped with a recording field intensity measuring apparatus was driven approximately 8,000 miles in the area surrounding WTVR to collect data on distances from the station to the standard field intensity contours. Their volumes of data have been analyzed and are summarized in this report.

Now, these particular surveys and measurements were conducted in a truck with a collapsible antenna which could be elevated to various heights. And the field intensitv of the station was recorded on graph paper which was driven off the speedometer of the truck. In other words, every single inch of the way, the field measurements were recorded on this graph paper. Unfortunately, I don't seem to be able to put my finger immediately on that sample of the graph paper. But it is in here. So that the human element as to the field-intensity measurements of the station was completely removed and the measurements were shown on the graph paper from which these curves for the various radii were prepared.

Mr. Cox. And this indicated that, as you had expected, the service area of your installation had been tremendously increased by this increase in power and antenna height?

Mr. Havens. Very definitely so, Mr. Cox. And moreover, the survey proved that the station coverage exceeded the theoretical calculation, because the theoretical calculations cannot stand up in the face of direct measurements.

Our total investment in the new facilities was $659,000. On the basis of the survey and the need to obtain an adequate return on our investment, we raised our station rate for spot programs to $875 per hour, and asked NBC for a similar increase in our rate for network programs. Despite numerous requests by us, NBC did nothing until August 1954, 8 months after the new and more powerful facilities had been placed in operation.

Based on the independent engineering survey, we could show a set count of over 450,000 sets within our 100 microvolt contour, or approximately triple our previous set coverage. We received numerous letters telling us how well our signal was being received. Within the State of Virginia, we received many letters from cities as far as 70 to 110 miles away. Newspapers wrote from Raleigh and Durham, N. C.; Salisbury, Md.; and Charlottesville, Harrisburg, Lynchburg, Newport News, and Waynesboro, Va., asking us to send our program schedule so they could publish it for their readers.

Mr. Cox. Do you know, Mr. Havens, whether or not the service area which you established by this increase in power overlapped in any substantial measure the claimed service area of the owned-and-operated station of NBC in Washington, D. C.?

Mr. Havens. Well, NBC affiliated itself with a station in Norfolk. Now, at the time that this affiliation was made, Mr. Heffernan appeared before this committee and testified that they had affiliated with a ultra-high-frequency station in Norfolk; and at that time the station had no set coverage, because there were no ultra-high-frequecy receivers in Norfolk at this time. But there were some 150,000 very high frequency sets in the city of Norfolk. And Norfolk fell within the hundred microvolt per meter contour according to these measurements.

Mr. Cox. So, that you had overlapped, certainly, with WTAR in Norfolk, which had been their affiliate?

Mr. Havens. Well, WTAR was not then an NBC network at this time. Prior to that it was.

Mr. Cox. At that time you then did overlap the Norfolk market in which they had a UHF affiliate?

Mr. Havens. That is right. Of course, it might be remembered that the very high frequency sets in the Norfolk area would still have to depend upon WTVR for reception from NBC.

Mr. Cox. Do you know offhand what the airline distance is between Washington and Richmond?

Mr. HAVENS. Not accurately. I could approximate it. I would say less than 80 miles.

Mr. COX. In other words, if you were getting anything like the distances of 70 to 110 miles, your signal could be received in areas in northern Virginia?

Mr. HAVENS. Very definitely.

Mr. COX. They could also receive the signal of the Washington, D. C., owned and operated station, WRC; in other words, NBC then owned, and still does, a station of its own in Washington?

Mr. HAVENS. Yes, sir.

Mr. COX. And you had then, after this increase in power, some substantial overlap in service area with that station?

Mr. HAVENS. Between Washington and WTVR?

Mr. COX. Yes.

Mr. HAVENS. I would suspect it would be; yes, sir.

Under NBC's own 1953–55 TV rate table giving a formula for station rates based on set circulation, the proper rate for 450,000 sets is $1,250 per hour. This formula is attached to my statement.[3] And that is the first attachment to this statement, at the very end, which says:

> TV rate table, all stations, 1953–55, based on $100 for 15,000 circulation; $5,000 for 3 million circulation.

And it shows that the rate for 450,000 sets is $1,250. That is about midway in the sixth column.

Mr. COX. Now, Mr. Havens, wouldn't it be the policy of the network generally to agree to a rate which was determined only on the basis of unduplicated sets?

Mr. HAVENS. Yes; I think so.

Mr. COX. Did you ever have any discussion with NBC as to methods of determining how many of these 450,000 sets within your service area were not duplicated by other network coverage?

Mr. HAVENS. No, sir; I never did find out. I could never find out. We discussed the coverage of the station many times. But we were never given any definite information as to how many of their sets, that I can recall—do you have any information on that [turning to Mr. Bowry]?

Mr. BOWRY. No; I don't have any information. But I think that, as Mr. Havens will point out later in his testimony here, the method for setting the rate would be determined upon the hundred microvolt per meter line. That is set forth in the testimony here.

Mr. COX. Yes.

Mr. BOWRY. Informally in the agreement.

Mr. COX. Did NBC ever ask you to have surveys made by any of the commercial agencies to determine what the viewing habits were of the owners of these 450,000 sets; that is, whether they were actually watching WTVR, or watching the station in Norfolk, or watching the station in Washington?

Mr. HAVENS. I can't recall. But I would assume that viewers and listeners within the areas where the editors of the newspapers requested copies of the program schedule were certainly listening and looking, or they wouldn't have asked for them. In fact, they stated

[3] This statement is set forth at the end of Mr. Havens' testimony, on p. 1640.

in their letters that they needed them in order to give this program schedule to their readers.

Mr. Cox. But you never had any detailed discussions with NBC in an effort to pinpoint what part of these claimed sets couldn't be duplicated?

Mr. HAVENS. Not that I can recall; no, sir.

At that time, we were receiving exactly half this amount, $625 per hour. We were requesting an increase only up to $875 per hour, approximately two-thirds of the rate to which we were entitled on NBC's own formula.

Nevertheless, NBC did nothing about our request for an increase until 8 months after the new facilities had been placed in service. Finally, on August 11, 1954, Mr. Tom Knode, manager of NBC's station relations department, called me over the telephone and said that Mr. Sarnoff was sympathetic with our request for an increase, but that a $250 increase at one time was too much. He suggested a $175 increase beginning immediately (that is, September 1, 1954), which would mean a station rate of $800, plus a $75 increase 6 months later. I reluctantly agreed.

I would like to comment that we have been selling our station in the national spot field for $875 from April 1, 1954. And this is August. And they are still selling the station for $625.

Then, on August 19, to my great surprise, I received a teletype from Mr. Paul Hancock of NBC, an assistant of Mr. Knode, stating that our network rate would be increased from $625 to $800, but that the increase would be effective October 1 (rather than September 1 as I had previously understood), and that for a period of 6 months rate protection would be given to all current NBC advertisers. We could not compel NBC to pay any higher rate, since our affiliation agreement did not permit us to increase the NBC rate without NBC's consent.

Mr. Cox. Do you know whether that provision requiring their consent is standard in affiliation contracts with the network? Do you know whether it is standard practice of NBC to insist that no station on the network may raise its station rate without consent of the network?

Mr. HAVENS. Without what?

Mr. Cox. The consent of the network.

Mr. HAVENS. I still can't get your question.

Mr. Cox. This provision that was in your agreement—do you know of your own knowledge whether that is more or less standard for NBC affiliation contracts?

Mr. HAVENS. I haven't seen any other NBC contract, but I would assume that it was standard in all of their contracts. I was led to believe their contracts were all the same.

Mr. Cox. Is it customary practice—if you know—for the network to give this 6 months' protection to their advertisers when a rate increase is made?

Mr. HAVENS. Yes. Now that is true. It is customary to give an advertiser 6 months' rate protection. But in this case, Mr. Cox, each network advertiser using the facilities of NBC's network had already had 8 months' protection. NBC was notified on January 4 that this new station had been placed in operation and was then operating on 100 kilowatts, 1,040 feet above sea level. The actual usage of the station had already been given to the advertiser more than 6 months—8 months.

Mr. Cox. Was any notice of this proposed increase given to the advertisers? Did you publish any rate cards such—which showed a new proposed station rate?

Mr. HAVENS. They did nothing about the rate. So, I assume this advertiser was not advised. But it certainly wasn't due to my negligence that they weren't advised.

Mr. Cox. What is your current station rate at this time?

Mr. HAVENS. $875.

Mr. Cox. You have a basic affiliation with ABC?

Mr. HAVENS. Yes, sir; we are at this time affiliated with ABC.

As I have stated, NBC delayed 8 months before accepting any increase in our station rate for network programs. It then agreed to a partial increase effective October 1, 1954, to become effective for most advertisers 6 months later, or April 1, 1955. On April 18, 1955, 18 days after this modest increase had finally become effective for NBC programs, NBC switched its affiliation from WTVR to the second television station in the Richmond area, effective June 1. Thus, after stalling any rate increase for a period of 15 months, NBC left us 2 months to enjoy the benefits of the increase before the punishment for requesting it became effective.

NBC DISTORTION OF WTVR'S COVERAGE TO STALL RATE INCREASE

If further proof is needed to show how unfairly NBC treated our request to increase our station rate on network programs, I am attaching to my statement a document prepared by NBC's research department, which was placed in evidence as part of the deposition of an NBC witness during litigation in the United States Federal court in Richmond, Va., on January 5, 1956.

Mr. Cox. Do you happen to know the name of the case in which this deposition was taken?

Mr. HAVENS. Yes. It was in the suit between the Lehigh Structural Steel Co. and Havens & Martin, Inc. Now, that suit was brought by virtue of the fact that we purchased this tower from the Lehigh Structural Steel Co. at a cost of $101,000 for steel. The first contract provided for about $80,000 for the tower. However, the building commissioner for the city of Richmond declined to issue a building permit to erect a tower unless the tower was constructed with rib bolts rather than plain bolts. The Lehigh Structural Steel Co. then modified the first contract to show a cost of $101,000 including rib bolts, and justified that extra cost by virtue of saying that the tower would have to be matchmarked, subpunched and reamed, and it would require that much additional money.

Now, when the tower was finally supplied to us, much of the tower had not been subpunched, matchmarked or reamed. In fact, many pieces were without any holes at all. They themselves sent down more than 100 extra pieces to be installed in the tower. Yet, our agreement with our erector had set forth that we would supply him with a tower that was matchmarked, subpunched and reamed. Consequently, we could not perform our contract in accordance with what we had promised the erector to do. And it took him about twice as long to erect the tower, because much of the work had to be done in the air.

Now, then, we were advised by our counsel not to pay the final $17,000 that was due on the Lehigh tower. Lehigh brought suit. We in turn cross-suited. The case was finally settled, after about a year and a half of litigation, by Lehigh marking the notes paid, paying the $8,000 in cash as damages, and installing 100 extra pieces which they had sent down and which had not been covered.

This chart is entitled "NBC Estimates of TV sets (Data Chart) Unduplicated Areas of NBC Affiliates."[4] The rates which NBC approves for its affiliated stations are based primarily on the number of television sets in each station's service area. The chart shows a set count for WTVR Richmond, in January 1953, of 157,000 sets. The chart also shows the monthly set count for each month thereafter through June 1955, when NBC terminated our affiliation. This is a period of 30 months. For every single one of those 30 months, the NBC estimate remains constant at 157,000 sets.

Now, this is obviously preposterous. During this period WTVR was the only television station in the Richmond area. The NBC estimate, therefore, means that during the 30-month period from January 1953 through June 1955, the number of television sets in the Richmond area remained absolutely constant. Even if no consideration whatever is given to the tremendous increase in the area of our coverage when our new facilities began operating in January 1954, it is obvious that, during this 30-month period of tremendous television growth, many thousands of television sets must have been sold in the city of Richmond alone, and that the number of sets in the city must have been increasing constantly.

For example, the very same chart gives a set count for WTAR-TV and WVEC-TV in Norfolk. WTAR-TV, a VHF station, was the NBC affiliate from January through September 1953. In October 1953, it was replaced by WVEC-TV, a UHF station. For the 9 months of WTAR's affiliation (January to September 1953), the table shows an increase in set count from 152,000 to 178,000, or an increase of approximately 2 percent per month. This is an extremely conservative rate of increase. Even if this extremely conservative rate had been applied to WTVR during the 30 months of its affiliation shown on the table, from January 1953 through June 1955, the result would be an increase from 157,000 sets in January 1953 to approximately 250,000 sets in June of 1955. The fact is, Broadcasting-Telecasting magazine's issue of July 4, 1955, shows WTVR with a set count not of 250,000 sets, but with a set count of 491,627 sets.

I have already referred to NBC's own TV rate table for 1953–55, attached to my statement. This table shows NBC's calculation of the proper station rate for any set coverage, ranging from $100 per hour for a circulation of 15,000 sets to $5,000 per hour for a circulation of 3 million sets. This table shows that for a circulation of 490,000 sets, the applicable rate is $1,330. Yet NBC terminated our affiliation after we had insisted on obtaining an increase of our rate to only $800, effective 15 months after we had achieved the coverage which entitled us to an increase.

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[4] This chart is set forth at the conclusion of Mr. Havens' testimony, at p. 1639.

WTVR'S POSITION ON RATES AND COVERAGE

The controversy with NBC as to WTVR's rates was a culmination of a long period of discussion as to the coverage of the station and the sets in use in the station's area. Even more important to us than the revenue involved was our interest in obtaining recognition by NBC of the proper coverage of WTVR's signal and the drawing power of our facilities. NBC's unreasonable discounting of our coverage and the sets in use in our area, which appeared in their published material, was a severe reflection upon the importance and prestige of our station in the Virginia area. It was completely inconsistent with the public response that we who were at the scene knew we were getting. Our requests for rate increases were primarily motivated by our desire for recognition of the viewing public whose loyalty we had obtained through technical improvements and the highest standard of programing.

NBC RELATION IN RADIO

I have described our problems with NBC in the television field. Our other problem with NBC concerned the NBC radio network affiliation with our AM station WMBG.

WMBG had been an NBC radio network affiliate for many years. After the advent of television, we began to find NBC's radio network service increasingly unsatisfactory. Finally, we decided to permit our radio affiliation agreement to lapse on the expiration of the then current affiliation agreement in the fall of 1954. Nevertheless, we continued to carry a substantial number of NBC radio programs as before, and without a written contract. Mr. Hancock, of NBC, told me that NBC had at least 20 "affiliated" stations without a contract at that time.

In the spring of 1955, however, NBC was preparing to launch its Monitor program for radio. Monitor is a program which runs for the entire weekend from early Saturday morning to late Sunday night. We did not think it was in the public interest, or our own interest, to devote the entire weekend to a single marathon program, which would reduce our station function to plugging in of the network early Saturday morning, reading an occasional local commercial, and pulling out the plug late Sunday night. We objected, and we still object, to the so-called magazine network programs, in which NBC, in effect, is selling spot announcements for which the affiliate's compensation is far less than the compensation for spot announcements sold directly.

On April 18, 1955, NBC switched its TV affiliation from WTVR to the second television station in the Richmond area, and shortly thereafter NBC signed a radio affiliation agreement with a Richmond station owned by the same interests. It is pertinent to note that this Richmond radio station carried the complete Monitor program from the time it began on Saturday morning until the time it ended on Sunday night.

Mr. Cox. Mr. Havens, I take it that your objection to this Monitor program was based both on a feeling that this was not sound programing, and also on the belief that this would cost your station revenue because of the different manner of selling the announcements in connection with it. Is that correct?

Mr. HAVENS. Yes; I am sure of it later. And the reason why I am sure is that I have seen the very same thing happen with Garroway and the program Today, in which NBC was selling anything from a hundred-word commercial up to an hour of programing, and compensating the station on its network compensation basis.

I have seen spot after spot account canceled with us and they would give as their reason that they were going over to network programing on Today. And if it had happened in Garroway, the television program and was being instituted in radio, there were reasons to think it would happen in radio, too.

Mr. COX. The shift was in revenue that your station had been receiving for announcements—from your pockets to the network?

Mr. HAVENS. Dropping our station and taking a spot in the program Today.

Mr. BOWRY. At a much reduced rate.

Mr. COX. At that time your national spot rate was $875. And their rate was—that, of course, means for an hour—and their rate was a much lower rate than that?

Mr. BOWRY. That is correct.

Mr. HAVENS. Of course, I know you understand the compensation which you receive from a network, as compared with what you receive from spot-announcement programs.

Mr. COX. You get a percentage of what they have received—normally in the neighborhood of 30 percent.

Mr. HAVENS. It calls for a percent of the total. And then they ask for 24 free hours in addition to time before it pays for it.

TERMINATION OF TELEVISION AFFILIATION BY NBC

I would now like to describe the backhand manner in which NBC terminated its television affiliation agreement with us. The current agreement had been signed in June 1953, and in accordance with applicable FCC regulations, was to terminate on June 1, 1955. The agreement provided that it would be automatically renewed unless either party gave notice to the contrary, at least 3 months before the expiration date.

On February 10, 1955, 3 months and 3 weeks before the agreement was due to expire, WTVR received a notice of intention not to renew from NBC. The notice was accompanied by a letter which I would like to read in full. The letter is as follows:

FEBRUARY 10, 1955.

Mr. WILBUR HAVENS,
President, TV Station WTVR,
Richmond, Va.

DEAR WILBUR: Our television affiliation contract with your station, WTVR, will expire on June 1, 1955. As provided in the contract, it will automatically renew on the same terms and conditions unless notice is given by either of the parties 3 months before the expiration date.

We would like an opportunity to consider revision of some of the terms and conditions of the present contract, and in order to provide time for such revision, we believe that the present contract should not be automatically renewed. In order to comply with the legal technicalities, I am attaching to this letter a formal notice of nonrenewal.

If our study should indicate the desirability of proposals for changes in any of the terms of the contract, we will, of course, discuss these proposals with you at the earliest opportunity so that we may formulate with you a mutually satisfactory basis for continuing the affiliation of your station with the NBC television network.

With warmest personal regards,

Sincerely,

HARRY BANNISTER.

Please note that the letter states the purpose of delivering the notice was not to switch NBC's affiliation to another station but to allow sufficient time to consider revision of some provisions of the present affiliation agreement and to formulate a mutually satisfactory basis for continuing the affiliation.

From February 10, 1955, until April 19, 1955, no representative of NBC made any suggestion to me, or any other official of WTVR, concerning a revision of the provisions of the affiliation agreement. April 19, 1955, was 3 days before a scheduled meeting of NBC affiliates at the Waldorf-Astoria in New York. Two days before WTVR had made hotel reservations and had paid our registration fee.

On April 19, Mr. Paul Hancock of NBC came to Richmond without advance notice. He telephoned from the airport to my assistant, Mr. Walter Bowry, and asked Mr. Bowry to meet him at a restaurant across the street from our studio. Mr. Bowry suggested that Mr. Hancock come to the office, that anything he said to him would be the same as saying it to me, and that I was in the office and that Mr. Hancock could see me.

Mr. Hancock then came to the office. He said that while he was in Greensboro, N. C., the day before, his superiors in New York had signed an affiliation agreement with the second station in the Richmond area, effective June 1, 1955. Mr. Hancock offered no reason for the switch, and said he was sorry.

Mr. COX. Did you ever receive any reports, through the press or otherwise, as to any reason that had ever been given by NBC to others to explain this action?

Mr. HAVENS. Yes, sir. An article appeared in Variety, several in the Richmond newspaper. But I believe more important than any other is one that appeared in Martin Codel's Television Digest: Now this is apparently the April issue, I assume. It is not dated here. But it states:

Richmond prefreeze WTVR channel 6 becomes ABC and CBS outlet June 1, when affiliation with NBC ended, and Owner Wilbur Havens took page ads in local newspapers to tell public that in 1954 at NBC compensation of $166.36 per hour, WTVR lost $118.16 every hour of NBC programs it carried. Network has stated it has had trouble clearing time on Havens' stations, hence terminated contract in favor of new affiliation, with Tom Tinsley's upcoming WXEX-TV, channel 8, due on the air next month.

Mr. COX. That tied in, then, with this matter of your clearance of programs for ABC and CBS?

Mr. HAVENS. That is what it means; yes.

I do not know whether the NBC letter of February 10, stating that the termination notice was being delivered as a legal technicality to provide time for working out a mutually satisfactory basis for continuing the affiliation was a blind, or whether something happened between February 10 and April 19 that decided NBC in favor of breaking off with our station and switching to the new TV licensee. NBC has never seen fit to tell me. Although we were 1 of the 7 original stations in the first NBC network, although we paid, ourselves, part of the cost of the first interconnected facilities, and although we carried NBC programs for 18 months before we received any payment from NBC, we were cut off without any advance notice and without any explanation of any kind.

REASONS FOR NBC TERMINATION OF AFFILIATION

As I have said, I believe the reason for NBC's action was to take reprisal for our independence in refusing to clear every NBC television and radio program and for our insisting on the rate increase which we deserved, not only because of our increased coverage but also in view of our increased investment. And there may also have been an additional reason, which I would now like to describe.

The second television station in the Richmond area is station WXEX-TV, which serves both Petersburg and Richmond, 20 miles apart, from a transmitter between the two cities. On September 21, 1953, the ultimately successful applicant for this station filed an application indicating that its principal transmitting equipment, including the tower, would be purchased from Du Mont at a cost of approximately $500,000. On September 29, 1954, the Commission approved this applicant. Presumably, the applicant began negotiations for a network affiliation agreement immediately thereafter. Then, on March 11, 1955, a month after NBC had delivered its letter of February 10 to us, the applicant applied for modification of its construction permit, showing that instead of using Du Mont equipment, it now intended to purchase approximately $700,000 worth of equipment from another manufacturer. You have undoubtedly guessed the name of the other manufacturer. It was the Radio Corporation of America, parent corporation of the National Broadcasting Co. The Commission approved this change on April 6, 1955. Approximately 2 weeks later, on April 18, 1955, NBC signed an affiliation agreement with the new station.

I think we have photostatic copies of these two applications, which show the change in equipment and material taken, from the files of the Federal Communications Commission.[5]

Was it simply a coincidence that WXEX-TV canceled its order for Du Mont equipment and placed an order for RCA equipment instead, just before obtaining its affiliation agreement with NBC? I do not know. But I think that this committee, or the Department of Justice, or the Federal Communications Commission could find out.

You might think that NBC would have wiped the slate clean with WTVR when it canceled our affiliation agreement effective June 1, 1955. However, this was unfortunately not the case.

NBC REFUSAL TO ALLOW USE OF LOOP

When we learned on April 19 that we would lose all of our NBC programs as soon as WXEX-TV began operations, we made arrangements with CBS to substitute whatever CBS programs that network's advertisers might desire to place on our station. Most of the CBS advertisers decided to put their programs on our station, beginning

[5] These two applications are set forth at the conclusion of Mr. Havens' testimony, at pp. 1641-1647.

June 1. In order to carry these programs, however, our agreement with CBS required us to arrange and pay for the use of the existing loop between the telephone company's office in Richmond, where the intercity relay was connected, to our studio. The loop was owned by the telephone company, but NBC, as the telephone company's customer, had control over its use.

We asked NBC to release the local circuit into our building, so that we could carry CBS programs over this loop after June 1, when NBC would no longer require it. NBC refused, and said WXEX-TV would not be able to go on the air until August. Accordingly, NBC wanted us to carry its network programs during June and July and wanted to use the loop in our building for this purpose.

We said we would be willing to carry NBC programs acceptable to us during June and July, but that we wanted freedom to carry CBS programs of our own choice as well, and desired, at our own expense, to use the loop from the telephone company office to our studio for this purpose.

But this was not good enough for NBC. NBC categorically refused to permit any CBS programs to go over the loop. The only possible reason could have been that NBC desired to exert its monopoly control over the use of the loop to compel us to accept NBC programs in place of CBS programs under all circumstances, even in cases where we would have preferred the CBS programs if we had a free choice. And NBC took this arbitrary position after it had terminated its affiliation agreement with us, and no longer had any legal basis whatever for urging us to take NBC programs in preference to CBS programs.

As a result, the telephone company was compelled to take the wasteful step of having a second duplicating loop built from the telephone company office to our studio, and to bring the equipment in from another city under tremendous time pressure. We managed to get this second loop finished 13 hours before our NBC affiliation expired, on June 1, 1955.

NBC'S ATTEMPT TO PREVENT NETWORK ADVERTISERS FROM USING WTVR

But NBC was not through with us yet. The day after our affiliation agreement expired, Mr. Frank Grady, of Young & Rubicam, called me and said NBC had told him we were refusing to carry the NBC program The Life of Riley sponsored by Gulf Oil Co., a Young & Rubicam client. We told Mr. Grady we would still be glad to carry his program, and that we had so advised NBC. Mr. Grady subsequently told us he then called NBC, who told him that this was true, but that we wanted too much money, namely our then current station rate of $875, which NBC had never been willing to accept. Mr. Grady said he told NBC that the question of whether this rate was too high was for the advertiser to decide and not for NBC. NBC then had to order the time for Mr. Grady's program and we carried it until WXEX-TV went on the air, August 15, 1955.

At this point, we lost The Life of Riley for good. Even though the advertiser might have preferred to continue it on our station, which we believe has superior coverage to WXEX-TV, WXEX-TV had become the must-buy station on the NBC rate card and all network advertisers were compelled to purchase it in preference to our station.

Mr. Cox. Do you know what the station rate for WXEX is?

Mr. HAVENS. Seven hundred dollars. It is the last published rate I saw.

Mr. COX. Seven hundred dollars?

Mr. HAVENS. Yes.

EFFECT OF MUST-BUY POLICY

When NBC switched its affiliation to WXEX, the NBC must-buy policy caused us to lose a large number of programs which the advertisers might well have preferred to keep on our station, instead of shifting to WXEX-TV.

Mr. COX. Do you know of any instances in which advertisers have indicated that directly to you, or is this just an assumption on your part—about the fact that they might have preferred to continue on your station?

Mr. HAVENS. I think we have some supporting documents here that will support that statement.

J. Walter Thompson: Lux, Ford, and Kraft would like to remain on, at least until Petersburg can get on the air.

Lennen & Newell called about Old Gold. Could not put on spot basis because of must-buy. Also the same thing as a matter of—the same condition existed with the Schlitz program. But that is a CBS show; that happened later on CBS, when CBS shifted.

Now, there is more supporting data here—I think the Ford Star Theater. We did actually carry that on a spot basis right up until WXEX went on the air, and then it switched to network.

Mr. COX. But you don't have any direct indications that after WXEX was on the air advertisers would have personally preferred to have continued to broadcast their programs over your station, but were required by their commitments to NBC to use the Petersburg station?

Mr. HAVENS. I believe I do. I think this is it: April 9, 1956, from Blair TV. It said it is true that Four Star Play House is not a CBS program. However, WTVR, is supposed to be a basic affiliate of CBS and, therefore, because both accounts have purchased a time period on the CBS network, they must buy all of the basic CBS stations when this live time period is made available to them. WTVR has made this live time period available—WRVA, rather.

Mr. COX. That refers to the appearance of the third station on the Richmond market, at which time your interim program basis for CBS was terminated and CBS advertisers were shifting from your station to WRVA?

Mr. HAVENS. This happened to be with the CBS network. But it is descriptive of what you just asked, of a case where an advertiser would like to stay but had to switch because of the must-buy policy. I would be perfectly willing to file that.

Mr. COX. All right.

Mr. HAVENS. Of the 37 NBC-network-originated programs which we were carrying between the hours of 7:30 and 11 p. m. each week when our affiliation agreement expired, several were on film and were controlled not by NBC, but by the advertiser. Prominent examples are Fireside Theatre, Ford Theatre, Dear Phoebe, and Texaco Star Theatre. The advertiser could readily have delivered this film to us by mail in a can, for broadcast by our station, instead of having it transmitted over the network wire from New York. But the NBC must-buy policy compelled the advertiser, as a condition of purchasing time on NBC affiliated stations in 50 other major markets throughout the country, to purchase time on the NBC affiliate in the Richmond area, WXEX–TV, instead of from us.

When we were told in April 1955, that our NBC affiliation would end on June 1, I talked with CBS about obtaining some of their programs. CBS agreed to place programs on WTVR on a per program basis, when requested by the advertiser, subject to 28 days' notice, with compensation at 30 percent of our regular rate, but with no free hours and with local loop charges at our expense.

As mentioned above, we arranged for the installation of a loop, to replace the facilities that NBC refused to allow us to use, shortly before June 1. We rebuilt our schedule with ABC and CBS programs. However, we are again faced with the problem of rebuilding our schedule because CBS has switched its programs to WRVA–TV which has just gone on the air on May 1.

Mr. Cox. However, in this interval you didn't have a formal affiliation arrangement with CBS which bound them to provide you——

Mr. Havens. We accepted their programs with that condition, that we would be given programs only when an advertiser wanted to purchase our station—and in CBS's opinion they were not getting coverage from without.

I know very well that some sponsors of CBS and NBC programs would prefer to continue to use WTVR as the outlet in Richmond. For example, certain CBS programs that we were carrying in April 1956 were on film, and controlled by the advertisers, and not controlled by CBS, so far as we know. Examples are: The Bob Cummings Show, It's Always Jan, The Millionaire, Four Star Playhouse, Damon Runyon Theater, and Schlitz Playhouse of Stars. If these advertisers had a free choice they might well prefer that these programs be released through WTVR, rather than through the new CBS affiliate. But the must-buy policies of the two networks prevent us from obtaining even these programs.

Mr. Cox, I feel that somewhere here I have a letter relating to one of these latter three programs—I am referring to Four Star Playhouse, Damon Runyon Theater, and Schlitz Playhouse of Stars—all of which we were carrying on a spot basis, even when we were carrying CBS programs. We had them before CBS started to put their programs on this station. The advertisers already had started to use the station and were paying for it on a spot basis.

Now, one of these programs—I have a memorandum from our local sales director which stated that he had talked with the local distributor of the Schlitz Brewing Co. in Richmond, Va., who stated that he was very disappointed that the program had to switch to WRVA–TV.

I don't know where to put my hands on that letter immediately. But if you want it, we will take time to find it.

Mr. Cox. If you find it, you can forward it to us by mail and we will insert it in the record. Is that perhaps the letter you have already put in the record?

Mr. Havens. It could have been.

Mr. Cox. If you find another letter, you can forward it to us, and it will be inserted.[6]

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[6] No other letter was received.

CONCLUSIONS AND RECOMMENDATIONS

I sincerely appreciate the opportunity to come here today and present to this committee the experiences of WTVR. It is part of our American tradition that the doors of Congress are open to any citizen who has suffered injury at the hands of another. The injuries done to WTVR may seem relatively unimportant, but they are part of a growing concentration of power over the operation of the Nation's television stations, the production of television programs, and the right to decide what the American public shall see and what it shall not be permitted to see.

There are many attorneys who believe that existing network practices violate the antitrust laws. I am advised that memorandums to this effect have already been submitted to this committee and to the Federal Communications Commission. I understand from press reports that the Department of Justice is now conducting investigations into the subject.

But whether or not effective antitrust relief is available, I believe that this committee and the Federal Communications Commission have a duty to see that the existing economic power of a network company such as NBC is held within proper bounds, so that it cannot be used to compel complete subservience by theoretically independently owned affiliated stations in matters such as program selection and rate determination. It is obvious to me that the existence and exercises of this power is contrary to the public interest, and that it defeats the very purposes for which the Federal Communications Commission endeavors to select station licenses with the best capacity for serving the interests of their own local communities.

Specifically, I believe the Commission should consider adopting regulations which would—

(*a*) Prevent a network company from compelling an affiliated station licensee to accept all programs offered by the network company, on pain of losing its affiliation. This might best be done—

(i) By setting some maximum limit on the percentage of its programs which a station can accept from a single outside source; and

(ii) By preventing a network company from terminating an affiliation agreement, or allowing it to lapse, because of an affiliate's refusal to accept programs offered by the network company during option time (provided the programs refused do not exceed one-half hour of the commercial network programs offered during any one option-time segment) or because of the affiliate's refusal to accept any network program during nonoption time.

(*b*) Prevent a network company from requiring an affiliated station to accept a gross network station rate lower than the station's national gross rate on spot programs for the same class of time segment, provided such station rate does not exceed the rate table for cost per thousand customarily used by such network.

(*c*) Prevent a network company and its affiliated stations from applying their present must-buy policy, under which an advertiser, in order to obtain time on affiliated stations throughout the country, must place a program on the affiliated station in each of the must-buy markets, instead of some competing station in the same market which the advertiser might himself prefer.

I have told you the story of how television station WTVR was injured by NBC. In our own interest, the interest of the entire television industry, and the interest of the American public, I hope that this committee will see to it that NBC's action is not permitted to stand as an object lesson to affiliates which fail to obey network orders. I hope instead that this committee will see to it that NBC's action is turned into an object lesson to a network company which abuses its tremendous economic power.

(Advertisement appearing in the Richmond Times-Dispatch: NBC Estimates of TV Sets (Data Chart) Unduplicated Areas of NCB Affiliates; TV Rate Table for All Stations, 1953–55; and two television broadcast station construction permits, all of which were referred to by Mr. Havens, are set forth as follows:)

[Advertisement appearing in the Richmond Times-Dispatch, Richmond, Va., September 20, 1954. The same advertisement appeared in the Richmond News Leader on the same day]

UNLESS YOU PROTEST—WTVR WILL DISCONTINUE THE VOICE OF FIRESTONE AFTER TONIGHT'S PROGRAM

If you want the Voice of Firestone continued on WTVR, write, wire, or telephone WTVR at once. Otherwise you will not be able to get this fine musical program on television.

Thank you! The Firestone Tire & Rubber Co., Akron, Ohio.

NBC estimates of TV sets (data chart)—Unduplicated areas of NBC affiliates

	WTVR Richmond	WVEC-TV Norfolk	WTAR-TV Norfolk
1953—			
January	157,000		152,000
February	157,000		157,000
March	157,000		162,000
April	157,000		167,000
May	157,000		171,000
June	157,000		174,000
July	157,000		175,000
August	157,000		177,000
September	157,000		178,000
October	157,000	36,000	
November	157,000	41,000	
December	157,000	45,000	
1954—			
January	157,000	50,000	
February	157,000	53,000	
March	157,000	56,000	
April	157,000	62,000	
May	157,000	64,000	
June	157,000	65,000	
July	157,000	66,000	
August	157,000	68,500	
September	157,000	72,000	
October	157,000	77,000	
November	157,000	80,000	
December	157,000	85,500	
1955—			
January	157,000	87,000	
February	157,000	91,000	
March	157,000	97,000	
April	157,000	97,000	
May	157,000	97,000	
June	(1)	98,000	
July		102,000	

1 Terminated June 1, 1955.

NOTE.—WXEX-TV Richmond-Petersburg replaced WTVR on Aug. 1, 1955.
Source: NBC research and planning department, Jan. 4, 1956.

TV rate table—All stations, 1953–55

[Based on $100 for 15,000 circulation; $5,000 for 3 million circulation]

Circulation:	Rate
10,000	
11,000	
12,000	
13,000	
14,000	
15,000	$100
16,000	105
17,000	110
18,000	115
19,000	120
20,000	125
21,000	130
22,000	135
23,000	140
24,000	145
25,000	150
26,000	150
27,000	155
28,000	160
29,000	165
30,000	170
31,000	170
32,000	175
33,000	180
34,000	185
35,000	190
36,000	195
37,000	200
38,000	205
39,000	205
40,000	210
41,000	210
42,000	215
43,000	220
44,000	225
45,000	230
46,000	230
47,000	235
48,000	240
49,000	245
50,000	250
52,000	255
54,000	260
56,000	270
58,000	280
60,000	285
62,000	290
64,000	300
66,000	310
68,000	315
70,000	320
72,000	325
74,000	330
76,000	335
78,000	340
80,000	350
82,000	355
84,000	360
86,000	365
88,000	370

Circulation—Continued	Rate
90,000	$375
92,000	380
94,000	385
96,000	390
98,000	400
100,000	410
110,000	450
120,000	470
130,000	500
140,000	530
150,000	560
160,000	580
170,000	620
180,000	640
190,000	660
200,000	690
210,000	710
220,000	740
230,000	760
240,000	780
250,000	800
260,000	840
270,000	860
280,000	880
290,000	900
300,000	940
310,000	950
320,000	980
330,000	1,000
340,000	1,020
350,000	1,050
360,000	1,080
370,000	1,100
380,000	1,120
390,000	1,135
400,000	1,150
410,000	1,170
420,000	1,190
430,000	1,210
440,000	1,230
450,000	1,250
460,000	1,270
470,000	1,290
480,000	1,310
490,000	1,330
500,000	1,350
520,000	1,400
540,000	1,440
560,000	1,480
580,000	1,520
600,000	1,550
620,000	1,600
640,000	1,630
660,000	1,680
680,000	1,700
700,000	1,730
720,000	1,760
740,000	1,800
760,000	1,830
780,000	1,900

TV rate table—All stations, 1953–55—Continued

Circulation—Continued	*Rate*	Circulation—Continued	*Rate*
800,000	$1,920	1,600,000	$3,200
820,000	1,950	1,700,000	3,300
840,000	1,980	1,800,000	3,500
860,000	2,000	1,900,000	3,600
880,000	2,050	2,000,000	3,700
900,000	2,100	2,100,000	3,900
920,000	2,120	2,200,000	4,000
940,000	2,150	2,300,000	4,200
960,000	2,180	2,400,000	4,300
980,000	2,200	2,500,000	4,450
1,000,000	2,250	2,600,000	4,600
1,100,000	2,400	2,700,000	4,700
1,200,000	2,600	2,800,000	4,800
1,300,000	2,700	2,900,000	4,900
1,400,000	2,900	3,000,000	5,000
1,500,000	3,000	3,500,000	5,600

Source: NBC plans and research department, December 1950.

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

F. C. C. Form No. 351–B
Rev. July 1952.
File No. BPCT–1772
Call Letters W P R G

TELEVISION BROADCAST STATION CONSTRUCTION PERMIT

Subject to the provisions of the Communications Act of 1934, subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this permit,[1] authority is hereby granted to Petersburg Television Corporation to construct a television broadcast station located and described as follows:

1. Station location: State, Virginia; City, Petersburg.
2. Transmitter location: State, Virginia; County, Chesterfield; City or Town, Near Chester.: Street and number, Hundred Road, 7.5 miles east of Chester. North Latitude: Degrees, 37; Minutes, 20; Seconds, 33. West Longitude: Degrees, 77; Minutes, 18; Seconds 17.
3. Main studio location: State, Virginia; County, ----------; City or Town, Petersburg; Street and number, 214 East Washington.
4. Transmitter: Visual, Make and Type, Dumont, 12000; Dumont, Aural, 12000; Rated power, 16.99 dbk (50 kw.) peak. Rated power 14.55 dbk (28.5 kw.).
5. Antenna: Make and Type RCA, TF–12AH, 12-section, superturnstile with 70/30 power division between upper and lower halves. Horizontal field pattern, Omnidirectional. Antenna supporting structure, 501-foot tower. Overall height about ground, 574 feet. Obstruction marking specifications: In accordance with paragraphs 1, 3, 4, 13, 21, and 22 of the attached FCC Form 715.
6. Operating assignment: Frequency, 180–186 Megacycles. (Channel No. 8). Carrier frequency: Visual, 181.25 Mc.; Aural, 185.75 Mc.; Effective radiated power, Visual 25 dbk (316 kw.) peak. Aural, 22 dbk (158 kw.). Transmitter output power: Visual 15.5 dbk (35.1 kw) peak. Aural, 12.4 dbk. (17.5 kw). Antenna height above average terrain 550 feet. Hours of operation—Unlimited.
7. Date of required commencement of construction, November 29, 1954.
8. Date of required completion of construction, May 29, 1955.
9. Equipment and program tests shall be conducted only pursuant to Sections 3.628 and 3.629 of the Commission Rules.

[1] This construction permit consists of this page and page 2.

10. This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow unless completion of the station is prevented by causes not under the control of the permittee. See Section 1.314 of the Commission Rules.

Dated this 29th day of September, 1954.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary.*

[Page 2]

Dated 9-29-54.
File No. BPCT-1772
Call Letters WPRG

OBSTRUCTION MARKING ANTENNA TOWER(S) OR SUPPORTING STRUCTURE(S)

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303 (q) of the Communications Act of 1934, as amended.

1. Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 40 feet nor less than 1½ feet in width. All towers shall be cleaned or repainted as often as necessary to maintain good visibility.

2. There shall be installed at the top of the tower at least two 100- or 111-watt lamps (# 100 A21/TS or # 111 A21/TS, respectively) enclosed in aviation red obstruction light globes. The two lights shall burn simultaneously from sunset to sunrise and shall be positioned so as to insure unobstructed visibility of at least one of the lights from aircraft at any angle of approach. A light sensitive control device or an astronomic dial clock and time switch may be used to control the obstruction lighting in lieu of manual control. When a light sensitive device is used it should be adjusted so that the lights will be turned on at a north sky light intensity level of about thirty-five foot candles and turned off at a north sky light intensity level of about fifty-eight foot candles.

3. There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 500- or 620-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to one-half of the luminous period.

4. At approximately one-half of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

5. At approximately two-fifths of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

6. On levels at approximately two-thirds and one-third of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed

in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

7. On levels at approximately four-sevenths and two-sevenths of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

8. On levels at approximately three-fourths, one-half, and one-fourth of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

9. On levels at approximately two-thirds, four-ninths, and two-ninths of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircaft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

10. On levels at approximately four-fifths, three-fifths, two-fifths, and one-fifth of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed heights.

11. At the approximate mid point of the overall height of the tower there shall be installed at least two 100- or 111-watt lamps (# 100 A21/TS or # 111 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

12. On levels at approximately two-thirds and one-third of the overall height of the tower, there shall be installed at least two 100- or 111-watt lamps (# 100 A21/TS or # 111 A21/ TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

13. On levels at approximately three-fourths and one-fourth of the overall height of the tower, at least one 100- or 111-watt lamp (# 100 A21/TS or # 111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

14. On levels at approximately four-fifths, three-fifths, and one-fifth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

15. On levels at approximately five-sixths, one-half, and one-sixth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

16. On levels at approximately six-sevenths, five-sevenths, three-sevenths, and one-seventh of the overall height of the tower at lease one 100- or 111-watt lamp

(#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

17. On levels at approximately seven-eighths, five-eighths, three-eights, and one-eighth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation and obstruction light globe shall be installed on each outside corner of the structure.

18. On levels at approximately eight-ninths, seven-ninths, five-ninths, one-third, and one-ninth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

19. On levels at approximately nine-tenths, seven-tenths, one-half, three-tenths, and one-tenth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

20. All lighting shall be exhibited from sunset to sunrise unless otherwise specified.

21. All lights shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35-foot candles and turned off at a north sky light intensity level of about 58-foot candles.

22. During construction of an antenna structure, for which obstruction lighting is required, at least two 100- or 111-watt lamps (#100 A21/TS or #111 A21/TS, respectively) enclosed in aviation red obstruction light globes, shall be installed at the uppermost point of the structure. In addition, as the height of the structure exceeds each level at which permanent obstruction lights will be required, two similar lights shall be installed at each such level. These temporary warning lights shall be displayed nightly from sunset to sunrise until the permanent obstruction lights have been installed and placed in operation, and shall be positioned so as to insure unobstructed visibility of at least one of the lights at any angle of approach. In lieu of the above temporary warning lights, the permanent obstruction lighting fixtures may be installed and operated at each required level as each such level is exceeded in height during construction.

This form is a part of and shall be attached to the current instrument of authorization.

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

F. C. C. Form No. 351–B
February 1954
File No. BMPCT–2957
Call Letters WVAA

TELEVISION BROADCAST STATION CONSTRUCTION PERMIT

MODIFIED AS OF APRIL 6, 1955

Subject to the provisions of the Communications Act of 1934, subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this permit,[1] authority is hereby granted to Petersburg Television Corporation to construct a television broadcast station located and described as follows:

1. Station location: State, Virginia. City, Petersburg.
2. Transmitter location: State, Virginia. County, Chesterfield. City or town, near Chester. Street and number, Hundred Road, 7.5 miles east of Chester. North latitude: Degrees, 37. Minutes, 20. Seconds, 33. West longitude: Degrees, 77. Minutes, 18. Seconds, 17.
3. Main studio location: State, Virginia. County, ———. City or town, Petersburg. Street and number, 124 West Tabb St.
4. Transmitter: Make and type: Visual, RCA, TT–50AH; Aural, RCA, TT–50AH. Rated power: 16.99 dbk (50 kw.) peak; 14.77 dbk (30 kw.).

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[1] This construction permit consists of this page and pages 2 and 3.

5. Antenna: Make and type: RCA, TF–12BH, 12-section, Superturnstile, horizontal field pattern, omnidirectional.

Antenna supporting structure: 906-foot tower. Overall height above ground: 979 feet (including obstruction marking beacon). Obstruction marking specifications in accordance with paragraphs 1, 3, 7, 16, 21, and 22 of FCC Form 715, attached.

6. Operating assignment: Frequency, 180–186 megacycles. (Channel No. 8.)

Carrier frequency: Visual, 181.25 Mc. Aural, 185.75 Mc.

Effective radiated power: 25 dbk (316 kw.) peak, 22 dbk (158 kw.). Transmitter output power, 16.4 dbk (43.6 kw.) peak, 13.4 dbk (21.9 kw.). Antenna height above average terrain: 940 feet. Hours of operation: Unlimited.

7. Date of required commencement of construction: November 29, 1954.

8. Date of required completion of construction: October 6, 1955.

9. Equipment and program tests shall be conducted only pursuant to Sections 3.628 and 3.629 of the Commission Rules.

10. This permit shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow unless completion of the station is prevented by causes not under the control of the permittee. See Section 1.314 of the Commission Rules.

Subject to the attached conditions on page 3.

Dated this 6th day of April 1955.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary.*

[Page 2]

Dated 4–6–55
File No. BMPCT–2957
Call Letters WVAA

OBSTRUCTION MARKETING ANTENNA TOWER(S) OR SUPPORTING STRUCTURE(S)

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303 (q) of the Communications Act of 1934, as amended.

1. Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 40 feet nor less than 1½ feet in width. All towers shall be cleaned or repainted as often as necessary to maintain good visibility.

2. There shall be installed at the top of the tower at least two 100- or 111-watt lamps (#100 A21/TS or #111 A21/TS, respectively) enclosed in aviation red obstruction light globes. The two lights shall burn simultaneously from sunset to sunrise and shall be positioned so as to insure unobstructed visibility of at least one of the lights from aircraft at any angle of approach. A light sensitive control device or an astronomic dial clock and time switch may be used to control the obstruction lighting in lieu of manual control. When a light sensitive device is used it should be adjusted so that the lights will be turned on at a north sky light intensity level of about thirty-five foot candles and turned off at a north sky light intensity level of about fifty-eight foot candles.

3. There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 500-or 620-watt lamps (PS–40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filter. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to one-half of the luminous period.

4. Approximately one-half of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

5. At approximately two-fifth of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacou cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

6. On levels at approximately two-thirds and one-third of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

7. On levels at approximately four-sevenths and two-sevenths of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

8. On levels at approximately three-fourths, one-half and one-fourth of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

9. On levels at approximately two-thirds, four-ninths and two-ninths of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

10. On levels at approximately four-fifths, three-fifths, two-fifths, and one-fifth of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed heights.

11. At the approximately midpoint of the overall height of the tower there shall be installed at least two 100- or 111-watt lamps (#100 A21/TS or #111 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

12. On levels at approximately two-thirds and one-third of the overall height of the tower, there shall be installed at least two 100- or 111-watt lamps (#100

A21/TS or #111 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

13. On levels at approximately three-fourths and one-fourth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

14. On levels at approximately four-fifths, three-fifths, and one-fifth of the overall height of the tower, at least one 100- or 111-watt lamps (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

15. On levels at approximately five-sixths, one-half, and one-sixth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

16. On levels at approximately six-sevenths, five-sevenths, three-sevenths, and one-seventh of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

17. On levels at approximately seven-eighths, five-eighths, three-eighths, and one-eighth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

18. On levels at approximately eight-ninths, seven-ninths, five-ninths, one-third, and one-ninth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

19. On levels at approximately nine-tenths, seven-tenths, one-half, three-tenths, and one-tenth of the overall height of the tower, at least one 100- or 111-watt lamp (#100 A21/TS or #111 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

20. All lighting shall be exhibited from sunset to sunrise unless otherwise specified.

21. All lights shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

22. During construction of an antenna structure, for which obstruction lighting is required, at least two 100- or 111-watt lamps (#100 A21/TS or #111 A21/TS, respectively) enclosed in aviation red obstruction light globes, shall be installed at the uppermost point of the structure. In addition, as the height of the structure exceeds each level at which permanent obstruction lights will be required, two similar lights shall be installed at each such level. These temporary warning lights shall be displayed nightly from sunset to sunrise until the permanent obstruction lights have been installed and placed in operation, and shall be positioned so as to insure unobstructed visibility of at least one of the lights at any angle of approach. In lieu of the above temporary warning lights, the permanent obstruction lighting fixtures may be installed and operated at each required level as each such level is exceeded in height during construction.

(This form is a part of and shall be attached to the current instrument of authorization.)

[Page 3]

Dated 4–6–55
File No. BMPCT–2957
Call Letter WVAA

CONDITIONS

1. That the grant is without prejudice to any action which the Commission may take pursuant to the court's decision in *Southside Virginia Telecasting Corp.* v. *F. C. C.*, United States Court of Appeals for the District of Columbia Circuit, Case No. 12546.

2. That the permittee shall comply with the following requirements:

(a) The height of the uppermost point of the antenna structure, including the required obstruction lighting and any other attachments, shall not exceed 1,049 feet above mean sea level.

(b) A benchmark shall be established on the tower base. The elevation above mean sea level of the benchmark shall be determined within one foot from a line of spirit levels from a Municipal, State, or Federal benchmark that is a part of the national level net.

(c) The horizontal position of the tower site shall be determined within ½ second of latitude and longitude by a ground survey tied to a Municipal, State, or Federal control point that has previously been connected to the national geodetic network.

(d) An affidavit signed by a registered or qualified engineer or surveyor shall be submitted with the license application setting forth the geographic coordinates of the structure and the overall height (which shall include the obstruction marking) above sea level of the completed structure, and describing the survey and the reference points upon which it is based, together with a plat of the antenna site and vertical plan sketch of the antenna structure portraying pertinent details.

Senator PAYNE. Thank you, Mr. Havens. I have just 2 or 3 questions here that I am interested in having the answers to in the record.

The first is: Did The Voice of Firestone contact you after WTVR decided to carry their program?

Mr. HAVENS. I never talked to anyone with the Firestone Corp. about it in my life.

Senator PAYNE. You did not contact them and they did not contact you?

Mr. HAVENS. That is right.

Senator PAYNE. Has WXEX ever indicated to you any reason for shifting over to RCA equipment?

Mr. HAVENS. They have not; no, sir.

Senator PAYNE. In other words, the only thing you have is the change that took place?

Mr. HAVENS. The coincidence that happened all around the same period of time.

Mr. COX. These documents do show, Mr. Havens, that the tower purchased from RCA was some three hundred and fifty or so feet higher than the one they would have purchased from Du Mont; is that correct?

Mr. HAVENS. I believe it does.

Senator PAYNE. Do you have any questions, Senator Duff?

Senator DUFF. No questions.

Senator PAYNE. Does any member of the staff have any other questions?

Mr. COX. No.

Senator PAYNE. We want to thank you. You have given a clear statement setting forth the problems you are faced with, and it is very helpful to the committee to have the information.

We will keep these letters and see that they are returned to you, Mr. Havens.

The next witness scheduled is from my own State. I am very happy to have with us this morning Mr. Murray Carpenter. He is a person that has been long and favorably known to me as a very outstanding citizen and one who has been not only a pioneer but also a long, well-recognized expert in his field. And I will ask Murray Carpenter, who heads WTWO in Bangor, Maine, if he would be willing to step forward at this time.

Murray, you may proceed in your own way. I know that you have a prepared statement which I imagine probably you would like to follow very closely. The entire statement, in any event, would be made a part of the record with the several exhibits that you have attached. But you proceed in your own way.

Mr. CARPENTER. I will read it verbatim if that is the committee's wish.

Senator PAYNE. You proceed in any way you desire.

Mr. CARPENTER. Thank you, Mr. Chairman.

STATEMENT OF MURRAY CARPENTER, PRESIDENT, TREASURER, AND CONTROLLING STOCKHOLDER OF MURRAY CARENTER & ASSOCIATES, PERMITTEE OF WTWO, BANGOR, MAINE

Mr. CARPENTER. May I say that I appreciate the chairman's comments about me very much.

My name is Murray Carpenter. I live in Bangor, Maine, where my wife and I own television station WTWO.

I am definitely not one of the "fat cats" of the television industry. On the contrary, I frequently feel pretty scrawny, particularly when I look at the bank balance. However, every month that goes by I feel a little less scrawny, and I occasionally enjoy fleeting visions of becoming pleasingly plump, if not actually fat.

I am here today at the committee's invitation, but at my request, because I think this committee will welcome observations from a grass-roots operator. With great respect, I offer these two suggestions to the committee:

1. Please do not tamper with the vitals of networking.
2. Please take a careful look at A. T. & T. charges for intercity television service.

QUALIFICATIONS OF MURRAY CARPENTER

This committee is entitled to know something of my background and experience in the broadcast field. I am reasonably typical of very many small independent telecasters, and I think you will agree that my background and experience are sufficiently diversified to permit me to speak authoritatively in making the suggestions which I place before your committee today.

I first went to work in 1934 during the great depression when I was 18. During the 21 years since then, I have been continuously engaged in advertising and broadcasting.

During the first half of my business life, I worked on the advertiser's side of the table; the second half has been devoted entirely to radio and television station management.

In 1934 I started in as a personal messenger boy for Richard Compton who was the head of Compton Advertising, Inc., until a short while before his death a few years ago. I was very lucky to have a chance to start at the Compton agency. It is a superb training school for agency men. Besides that, Compton has always been one of the key agencies for the Procter & Gamble Co. whose skill and know-how in the use of broadcast advertising are matchless.

While with the Compton agency I held various posts in the media department. That is the branch which is responsible for planning the expenditure of advertising money and for actually spending it. There were also interludes during which I worked directly and exclusively for individual products in the agency's account group. Over the years I held jobs of various levels, ranging all the way from messenger boy to media supervisor. During my years at the Compton agency I would guess that I had a hand in the spending of about a hundred million dollars for broadcast advertising.

In 1945 I quit my job in New York to move into the field of station management. This was a careful and deliberate decision. My years of agency experience as a planner and buyer of advertising convinced me that the broadcast media had an unlimited future. In this belief I had organized financial backing for a new radio station to be established in Portland, Maine. I had successfully guided an application through an FCC hearing, and I was prepared to make the switch from working as a buyer to working as a broadcaster and seller.

Accordingly, I went to Portland, Maine, in the fall of 1945, where I organized and constructed radio station WPOR, and I remained with that station as its manager for 4 years.

In the fall of 1949 I went to Bangor, Maine, where I joined hands with former Gov. Horace Hildreth to acquire radio station WABI, of which I became manager. During my 4 years as manager and half-owner of WABI, the station achieved clear leadership of both audience and advertising business in the Bangor market area. It was also during my tenure as manager that WABI branched off into the television business. In January 1953 we established WABI–TV. It was the first postfreeze television station in New England and it provided the very first television service anywhere north of Boston.

In the summer of 1953 I sold my interest in WABI and left Bangor in order to become an applicant for channel 13 in Portland, Maine. I withdrew from that Portland television venture several months later when it became clear that I would not be able to secure adequate local financial backing on terms that I would accept.

In the fall of 1953 I returned to Bangor and bought radio station WGUY from the Guy Gannett publishing group. Shortly thereafter, we applied for channel 2 in Bangor, this being the channel on which our station WTWO now operates. I have been the manager and controlling owner of WTWO from the beginning. Incidentally, I no longer own radio station WGUY in Bangor; I sold it just before our television station went on the air in the fall of 1954 because I do not believe in trying to compete with myself.

As the committee can see from this chronology, I have been both a buyer and a seller of broadcast advertising. I have worked on the highest professional level and at the lowest. I am experienced in radio as well as television. I have created, sold, and produced broadcast advertising for the largest national advertisers and for the smallest local advertisers. At one time or another I have dealt with all of the radio networks as a buyer, and with three radio networks and all of the television networks as a seller. I have had personal experience with both losses and profits. And in the course of this experience, I have managed to acquire assets that most people would consider quite substantial, although, as I recall it, my initial investment in the broadcast business amounted to about $1,200.

In short, I think I know a good deal about how the broadcast field works, and I hope this committee will give appropriate weight to the observations that I am about to make.

DISCUSSION OF NETWORKING

This committee has been told that important changes in network practices should be forced upon the network companies. I say exactly the opposite.

I say that the networks have evolved a method of operation that is nothing short of marvelous in its effectiveness and efficiency. I say that the network companies have done more to develop American television to its present high level than all the station operators put together and doubled. I say that the network companies have worked out methods which have brought more television programs to more homes more rapidly than the wildest enthusiast would have predicted a few years ago. I say that the network companies have demonstrated ability to provide quality and variety of program fare that will stagger the mind of anyone who will take the trouble to dig through a week of program schedules. I say that the network companies have done more to help establish a nationwide and competitive television industry than all the carpers, criticizers, and second-guessers from Los Angeles to Washington, inclusive. I say that the practices and policies of the network companies are demonstrably successful and demonstrably in the public interest.

Mr. Cox. In that connection, Mr. Carpenter, would it be your position that the practices themselves are necessarily in the public interest, or that the programs which have been developed in connection with the employment of those practices are the things which, in your mind, are the important contributions to the public?

Mr. Carpenter. I am speaking of the effect, sir, rather than the causes. Does that answer your question?

Mr. Cox. That is, the programs are the things by which you measure the contribution to the public?

Mr. Carpenter. Yes, sir.

And I think it follows from this that anyone who proposes substantial changes to so successful a system ought to be required to make an overwhelming showing that his proposals are backed by urgent public necessity and unassailable logic.

I have spoken strongly on behalf of present network methods, and I mean my words to apply particularly to network option time. As I see the networks operate from my vantage point in Bangor, Maine, it seems very clear to me that the option time provisions of affiliation agreements are substantially responsible for the rapid growth in the volume of network programing in those markets not important enough to be characterized by "must buys"—and my own market of Bangor, Maine, is certainly such a one. I feel sure that many, many other smaller stations feel the same way about it.

The best way for me to explain this to the committee is to give a brief outline of the development of television in my own market area of Bangor, Maine. What I say about my station and my market will be found to be true of other smaller stations in smaller markets, although not always to the same degree.

Television started in Bangor in January 1953. The number of television-equipped homes was close to zero at the outset. There were no A. T. & T. television circuits available and the supply of available program material was small, as was the supply of available advertising revenue. During a typical week in April 1953, the Bangor market had a total of 63 hours of television available, of which 14 hours represented network programing.

One year later, in April 1954, the total hours of available television had risen to 74, of which 36 hours comprised network programs.

Bangor's first live network television circuit was established in the fall of 1954 and that naturally made additional network programing available to WABI in Bangor. My station W–TWO was also established in September of 1954, and although it had no network affiliation of any kind, W–TWO did contribute substantially to the variety and volume of television programing available. Consequently, by April of 1955, 172 hours of television programing were available in the Bangor area, and 76 of these hours were network programs.

In April of 1956, after a further year of development, the Bangor market enjoyed 193 hours of television per week, of which 103 hours were network programs.

The above figures (which are summarized in appendix A)[7] indicate clearly that television has developed with great speed in the Bangor market area.

Mr. Cox. I think that appendix A indicates, Mr. Carpenter, that your station was on the air, in the week in April that you used as a sample, 115 hours, of which 59 hours were network programing—is that correct?

Mr. Carpenter. In which April are we talking about?

Mr. Cox. April of 1956.

Mr. Carpenter. The table says in that month my station was on the air 115 hours and carried 59 hours of the network programing.

Mr. Cox. That is about 51 percent. Could you estimate for us, generally, what percentage of the remaining 49 percent was filmed programing and what percentage was local live programing?

Mr. Carpenter. I would have to guess—and I take your question to mean day as well as night.

Mr. Cox. Yes.

Mr. Carpenter. I would say that, probably, of the remaining 50 percent, probably two-thirds was live and one-third filmed. I would say that I could be wrong about that, though. I would be glad to dig up the figures and submit them separately if you wish.

Mr. Cox. I think those estimates are sufficient. Of course, in connection with that programing, whether filmed or local-live, your station is put to actual out-of-pocket expense in providing this programing, as distinguished from your arrangements with the network where, if your station is purchased for a particular show, you then receive a share of the time charge which is made for the time on your station?

Mr. Carpenter. Yes, sir; that is correct.

I might add that when I speak of the distinction between local-live and local-filmed, some of the program periods that we call local-live nonetheless contain film elements.

Mr. Cox. Yes.

Mr. Carpenter. It is hard to draw a line.

Mr. Cox. Your news shows use film clips and things of that kind, and regular shows may have filmed elements in them, and so forth?

Mr. Carpenter. Correct.

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[7] Appendix A is set forth at p. 1664.

The rapidity of this development is further emphasized by the fact that the number of television-equipped homes served by the Bangor television stations gained from practically zero in 1953 to approximately 90,000 as of the spring of 1956. The percentage of television-equipped homes in Bangor was determined to be 83 percent in January 1956, according to a study made by American Research Bureau, Inc.

People in the Bangor television area spend an unusually high proportion of their time watching television. In April 1956, an audience study was made by Trendex, Inc., throughout an area of approximately 45 miles from Bangor in all directions, and it showed that the number of homes engaged in watching television at an average instant between 7 and 11 p. m. was 57.8 percent. Selected times of exceptionally high viewing show percentages in the seventies.

Television advertising revenues in the Bangor market area have been growing very rapidly too. We are in a competitive business, so naturally we keep half of one eye on how our various competitors are faring. In April of 1956 we estimated that the total number of dollars spent by advertisers of all kinds—national, regional, and local—for advertising time on the two Bangor television stations was almost exactly equal to the total number of dollars spent by advertisers of all kinds for advertising space in the two Bangor daily newspapers. Naturally our competitors do not confide in us to the extent that we know their revenues with precision, but even allowing for estimating errors, it seems plain that television in Bangor has achieved advertising stature comparable to that enjoyed by the newspapers. It is my impression that Bangor television has progressed further and faster relative to other media than is true in most other market areas.

My reason for reciting this chronology is that I want the committee to be aware of the very rapid and thorough development which has taken place in my area, because it is my belief that competitive television in Bangor would probably not have developed as thoroughly, and certainly not as rapidly, had it not been for the existence of highly developed network organizations and their efficient program distribution systems, including the network option time provisions.

I attach as appendix B [8] three typical evening WTWO program schedules. The first schedule shows the WTWO evening program lineup after 7 months of operation. The second shows the evening program lineup after a year of operation—and, incidentally, in the fall of 1955 immediately after network affiliation. And the third shows the WTWO evening program schedule for this present week. This appendix is attached because I think the committee will want to see the components of typical programing schedules for a developing station like WTWO.

This week's evening program schedule shows 19 hours of CBS programs and 6½ hours of sponsored film programs. Thirty-four individual programs comprise the CBS schedule and 13 programs comprise the sponsored film schedule. We think this schedule shows that our sales department has done a very effective job in developing both network programs and sponsored film programs.

Mr. Cox. Are all of these 19 hours of network programs—are they purchased from your station by the advertisers?

Mr. Carpenter. Yes, sir.

[8] Appendix B is set forth beginning at p. 1665.

Mr. Cox. And you receive your agreed percentage from the network for carrying those programs?

Mr. Carpenter. Yes, sir.

Mr. Cox. I think in the last week shown you carried two programs that start in option time and extend into station time.

Mr. Carpenter. Yes, sir.

Mr. Cox. Is that a fairly common experience in your dealings with the network?

Mr. Carpenter. Very common, yes, sir. In fact, so common that we do not stop to make any distinction between the network option time and the station option time.

Mr. Cox. In other words, if a network program is offered to you at any time, you accept it?

Mr. Carpenter. Well, I wouldn't want to go quite that far. But thus far, our situation has been simply this: That we have a great many hours to take care of in the course of the week. We have a staff and facilities and money which would seem small, I am sure, to many station operators, and certainly to the networks. And it helps us very greatly to program that portion of the schedule which is ours to get a large proportion of it programed by the network. Consequently, take a case—well, I suppose you were referring on the schedule to the Twentieth Century-Fox program and to Edward R. Murrow's See It Now?

Mr. Cox. Yes.

Mr. Carpenter. In accepting See It Now from 10 to 11—half in station time and half in network time—I do not think we even gave any thought to whether it lapped over or not. We decided the program was one we wanted, and we accepted it with alacrity.

Mr. Cox. Is it your feeling that, generally speaking, your net revenues are greater from network programing than they would be from the sale of national spot or local sponsored programing, because even though you would get 100 percent of those revenues, your costs in providing that programing and obtaining that business would be so great that the net would be reduced?

Mr. Carpenter. I would not want to say "greater," Counsellor. But I would say about the same as for the comparison between the national spot and the network.

Mr. Cox. I see.

Mr. Carpenter. It is true, as you indicate, that the network revenue is net, practically; whereas, the national spot revenue is not. It is true also that our sales cost is considerably higher on the national spot than it is on the network.

I would say they would come out about even.

Mr. Cox. So, there is no great advantage to your station, revenue-wise, from trying to sell national spot rather than accepting programing through the network?

Mr. Carpenter. There is this advantage: That in general what we can sell in the national spot field is in addition to what we can sell in the network field. They are not necessarily mutually exclusive.

Mr. Cox. But to the extent that the network is capable of fulfilling your requirements, you are glad to accept that programing and then start from there adding on the national spot sales?

Mr. Carpenter. Yes, sir; that is true.

The amount of manpower and money and travel and entertainment and correspondence and wires and phone calls and presentations required to sell the 13 sponsored film programs is probably greater than what was required to sell the 34 CBS network programs.

Perhaps that answers your question.

Mr. Cox. Yes.

Mr. CARPENTER. And that fact points directly at the heart of the conviction I am trying to convey. WTWO's sales department was able to develop a very strong lineup of CBS network programs because CBS had already done three-fourths of the selling job for us. Each one of the CBS programs on WTWO is there primarily because CBS sold the agency, sold the advertiser, and either produced the program or sold the advertiser on hiring someone else to do so. WTWO's sales job was limited to selling the agency and advertiser that WTWO should be purchased in addition to the major market stations already planned. Of course, some of the network business on WTWO is over-the-transom business, but a very substantial proportion has been sold by WTWO.

Mr. Cox. Basically your sales problem is the same, either in the case of persuading the advertiser to order your station or persuading an advertiser to place a program on your station on national spot, except that the programing which you obtain from the network is perhaps a more attractive type, and which, therefore, has already won advertiser acceptance. Would that be true?

Mr. CARPENTER. Not quite, sir. When you try to sell a program in the national spot field, you must sell the program, the market, the station, the time, and the price. When you make a comparable sale to an advertiser who is merely going to order the addition of your station through the network, there isn't any question about the station, the time, the price. There is only a question about the market. This simplifies your sales effort considerably.

Mr. Cox. Well, the market involves the price, doesn't it? Your basic approach to him is whether your time rate is going to be a cost per thousand which is within his range?

Mr. CARPENTER. Well, in a particular case. Of course, you must realize we are in competitive circumstances, and there may, in individual cases, be price competition as well as other kinds in the national spot field.

In the case of an advertiser who is being solicited to order his network program on our station, in real life there is not price competition, because the price has already been determined by bargaining between the station and the network. It is just removed from the discussion.

Mr. Cox. So the only question is whether he takes it at that price or doesn't take it at all?

Mr. CARPENTER. Yes, sir; that is true.

That is why the existence of network option time is so very important to a station like W-TWO. Certainly W-TWO would have cleared time for these CBS network programs even if there were no such thing as network option time, but the probability is that many stations in the top 50 markets would be either unable or unwilling to clear for some of the programs.

Mr. Cox. That would be almost solely in communities with less than three stations?

Mr. CARPENTER. I would assume so; yes, sir.

Mr. COX. As long as there are more than 3 stations, even in the top 50 markets, the normal inclination of the station operator would be to accept with alacrity the network programing offered him, because it is easier than programing the station independently and it can be done at less expense to him?

Mr. CARPENTER. I assume that is probably true.

Mr. COX. So that the only case in which you would find a problem presented to the network in getting clearance for its programs in the top 50 markets would be where another network was seeking to get programing on the station with which it had affiliation?

Mr. CARPENTER. I can only speak on information and belief, but I imagine that would be true in a large number of cases. I can at least imagine circumstances in which, in the larger markets, there is a seller's market condition which puts the station in a position to be quite choosy. And there might well be cases where he would propose to do something by himself in a given period of time rather than take something from a network even though it is automatic. It might also be more profitable to him.

Mr. COX. Now, to the extent that he is carrying the programs of another network, option time does not permit the displacement of those programs, does it?

Mr. CARPENTER. So I understand.

Mr. COX. So that option time would operate in these conditions you are describing only where the local station had chosen to carry a national spot program, and the network then wished to assert its option rights to acquire control of the time?

Mr. CARPENTER. That seems correct to me, sir.

And from the advertiser's standpoint, if he cannot have clear sailing in the top 50 markets he is going to lose a great deal of his interest in the program. Whether we small operators like it or not, we have to face the fact that the bulk of the advertiser's business volume is generated in the top 50 markets of the country, and we are just the tail of the dog.

What I am saying in plain blunt terms is that WTWO would not be where it is today if it were not for the existence of network option time. I do not believe that WABI, our competitor in Bangor, would be where it is today were it not for the existence of network option time. And the people in the 90,000 television homes of the Bangor area would not be spending 57.8 percent of their evening time watching television were it not for the strong program schedules made possible by the existence of network option time.

Now, please join me in looking at the same fact from a slightly different point of view. Network option time extends from 7:30 to 10:30 p. m. During these hours 86 percent of WTWO's time is occupied by CBS network programs during this current week. But except for Sunday evening, WTWO does not carry a single evening network program prior to 7:30 (except early CBS news). This does not indicate any lack of desire on our part. It is simply because CBS does not offer any programs before 7:30 with the single exception of the Doug Edwards news program. Why is this so? Why is WTWO denied the opportunity to secure evening network programing prior to 7:30 p. m.? It is because that time is not network option time. It is because a national advertiser who tries to buy such an early evening period would not be able to get station clearance in very many of the top 50 markets.

Mr. Cox. Don't some of them do it on a spot basis now?

Mr. CARPENTER. We are not fortunate enough to carry any.

Mr. Cox. But in the top 50 markets where they are anxious to get in, aren't some advertisers who are unable to get into the prime period that you referred to finding it possible to place their programs in the 5 to 7:30 period, with satisfactory results?

Mr. CARPENTER. I imagine that is true, councelor. It would be hard to say what the reasons are. One of them would almost certainly be that advertisers in that circumstance do not want to buy across-the-board, across the country, but they want to pick and choose their markets. And in doing so, they naturally have to look for time periods that are available in each individual market.

Mr. Cox. Are you suggesting here, in connection with the fact that you do not carry this programing prior to 7:30, that in your view it would be desirable if the networks had more option time so that this programing would be provided on a national basis, and that therefore WTWO would get additional programing from the network?

Mr. CARPENTER. Well, sir, it would be of advantage to my particular station at this particular time. But I am sure that in a national sense it would not be practical, because there are probably not enough stations who have that same desire.

And, therefore, he is just not interested. It is probably also true that it would not be economically feasible for the network to offer program service during this early evening time period because too few stations accept the offering.

I believe this shows clearly that network programs flow in network option time, and that network programs do not flow without network option time.

Mr. Cox. Isn't there also the element that the period of time covered by option is the time when the viewing public is at its peak and, therefore, when the time is most attractive to advertisers?

Mr. CARPENTER. That is true. But it is a question of which is the cause and which is the effect. It seems to me that one of the reasons which causes set use to be higher in the period from 7:30 to 10:30 is that more popular programing is available in that time period. At least, in our area I sincerely believe there are as many people at home and willing to watch at, say, 6:30 to 7:30 as would be present in the period 7:30 to 8:30, but the program structure is not the same by any means. And I see no way to make it equivalent.

Mr. Cox. But there would be a limit to the extent to which this period could be extended. That is, in other words, quite clearly in the middle of the afternoon or the middle of the morning would never be as attractive a period to advertisers, and, therefore, would never justify the expenditure of funds to provide that kind of programing.

Mr. CARPENTER. Oddly enough, counselor, I think that in some daytime periods it costs less, price considered, to buy a program in the afternoon than is true in the evening.

Mr. Cox. Yes; but that price is fixed partly because you have to adjust downward in order to keep cost per thousand in line.

Mr. CARPENTER. That is true. The price in the daytime is half the price at night. And there are quite a number of periods where the audience is considerably greater than half of the nighttime. This, of course, is constantly changing anyway.

Of course, it might be argued that if WTWO had not been able to develop the strong evening network schedule it now has, it might have been possible to build an equally strong program schedule using syndicated film—which would presumably be sponsored by various advertisers, local and national. This is "iffy." Obviously I do not know what we would have done had we faced those circumstances. My belief is that we could not have developed a schedule that would be within hailing distance of the present schedule if we had to do so with syndicated films, and there are two reasons for this belief:

1. We do not have, and I doubt we could have, enough sales manpower to sell that many film programs in a year and a half, and I doubt we would have been able to finance the sales cost of a venture of such magnitude.

2. The film billing for any such ambitious evening program schedule would make our accountant shudder and would make the entire evening program schedule so costly that we could not afford to carry it, considering the amount of advertising revenue that probably could be made available as a practical matter.

Mr. Cox. What is the cost of a 30-minute film to your market?

Mr. Carpenter. They vary quite widely, as you probably suspect. I have seen them as low as $35 or $40 per half hour; and as high as $125 or $130. I would have to guess at what the average level is in the market. I would say it would be somewhere in the neighborhood of $60 net.

To sum up this one point that I have tried to make, Bangor television could not have developed as well and as rapidly as it has were it not for the existence of network option time. I think it doubtful whether we could maintain as strong a program schedule as we now have were network option time to be abolished or severely limited. This is a matter of opinion, but a very strong opinion.

I am aware that everything I have said is in conflict with the proposals made to this committee on March 26, 1956, by Richard Moore, president of KTTV of Los Angeles, Calif. The circumstances of KTTV are obviously quite different from those of WTWO. And if the general flavor of Mr. Moore's statement be compared with the general flavor of mine, it will be clear, I think, that Mr. Moore is largely preoccupied with program problems that are entirely unknown to stations like WTWO. Mr. Moore's statement is filled with fears that the supply of syndicated film programs "will shrink and disappear." He is worried about the plight of stations which "are compelled to broadcast during certain periods whatever programs the network offers and only those programs." He speaks of stations "being required to abandon their local responsibilities." He says that "if a program is of inferior quality the network company should not have the right to force that program upon the public."

In short, Mr. Moore seems to be preoccupied with visions of networks compelling their affiliated stations to carry programs against the wishes and judgment of the affiliates. This concept may be very real in Los Angeles, but I can assure this committee that it is pure fantasy to the majority of television station operators. Far from being compelled by networks to broadcast programs they do not want, many stations have been preoccupied with the problem of getting their networks to feed more programs to them.

Mr. Cox. Wouldn't you feel that there may well be a substantial number of markets in which the station operator is able to get film programing—that is, if he were able to get filmed programing on a volume basis, he might get programing which he considered better than some part of the network fare that was offered?

Mr. CARPENTER. Yes, sir, I think that must necessarily be true—some part.

Mr. Cox. If he feels that he can, in a week's time in prime time, place 5 programs which are better than the 5 offered in those time slots by the network, would he not be in performance of his statutory obligations as a licensee if he sought to substitute those programs?

Mr. CARPENTER. Yes, sir, I would think he would. However, in our circumstances, you see, it would not be an either/or question. We would certainly strive very hard to do both. And considering our overall schedule, undoubtedly we could do so. In fact, I cannot think of any time when we have been unable to do so. So, we can have our cake and eat it too.

There are 9 independent stations located in the very largest markets, 7 of which are in New York and Los Angeles. Because these huge independent stations are located in two of the biggest and most desirable markets in the country, obviously they would gain greatly if someone were to throw a monkey wrench into the network option-time machinery. But the same monkey wrench might foul up the program machinery of hundreds of stations like mine located in smaller and less-favored markets.

Mr. Cox. As I recall Mr. Moore's testimony, his suggestion was that an affiliate would still be permitted to accept up to 75 percent of its programing during the prime time from the network, and that it would be required to open up 25 percent of its time to film programs or other fare acquired from sources other than the network. Now, actually, I think your figure was that you were carrying 86 percent——

Mr. CARPENTER. This week; yes.

Mr. Cox. Of your time this week from the network; yes. So, the difference would be a matter of 10 or 11 percent in your case.

Mr. CARPENTER. Yes, sir. But that is not the point that is concerning me. As I recall the testimony of Mr. Lee Jahncke before this committee, also on March 26 of this year, he drew attention to the sales problems which the ABC Television Network had due to inability to clear time in the larger and key markets. And he seemed to indicate that that was the biggest sales handicap they had to overcome.

What is concerning me is Mr. Moore's proposal to tinker with the network option time provisions that now obtain. I would be afraid that if the CBS Television Network, for example, did not have network option time available to them, their sales problems might turn out to be the same as ABC's sales problems. Now, in other words, they might have difficulty clearing time in prime evening periods and prime daytime periods in the larger markets. And this would secondarily make it more difficult for a station like my own to get access to the programs that are now there. Do I make my point?

Mr. Cox. Yes.

Mr. CARPENTER. If network option time were to be abolished or severely restricted, maybe the networks would be able to devise some other mechanism which would make a large volume of network programs available to stations outside of the top fifty or hundred markets. Maybe. I hope this committee will decide that it is unwise to exchange a good, efficient, productive, successful system for such a "maybe."

Mr. Cox. You are not commenting, I take it, on the portion of Mr. Moore's testimony which involved his legal conclusions that these practices were actually in violation of the existing antitrust laws, so that, therefore, he urged that the proposals he was making were simply designed to see to the enforcement of the law as it is presently written—that is, you express no opinion on that?

Mr. CARPENTER. I am not an attorney, and I do not think I should express a legal opinion. Our company takes counsel, and it has been advised that what we do, particularly with respect to network agreements, is legal and proper. That is a legal opinion. I won't venture any personal opinion.

INTERCITY VIDEO CONNECTION CHARGES

This committee is interested in seeing that this country has a nationwide and competitive television service. To achieve that goal, it is important to give special thought to the special problems of the numerous smaller markets—and I mean to include both the markets that are smaller by present-day standards and those that are now thought to be too small to support a television station.

I should like to call the committee's attention to one such special problem. It is the problem of very high A. T. & T. charges for live video connections. Although these charges are usually paid by networks, rather than stations, it is apparent that the cost of connections is an important factor which a network must consider in judging the economic feasibility of affiliating with a station. Because these connection costs must be important to a network, they are of interest to stations and to this committee.

Most station expenses are less in the smaller markets than they are in the major markets. Payrolls, overhead, and depreciation are usually less for the smaller markets. But A. T. & T. charges are the same for big and small, rich and poor alike. And ironically, it sometimes seems that it is the smaller stations having the lowest advertising rates whose line hauls are greatest.

Taking the CBS stations in New England as an example, the average station base rate per mile of the line haul is about $9. However, the Boston and Providence advertising rates per mile of line haul are $24 and $22, respectively, while the Bangor and Burlington advertising rates per mile of line haul are $2.50 and $2.60, respectively. Since A. T. & T. charges are based on mileage, obviously the economics of networking are going to give a tremendous advantage to the high-rate stations.

Mr. Cox. Your charges are based upon mileage beyond the last other affiliate below you; is that correct?

Mr. CARPENTER. Yes, sir. Of course, they are not strictly our charges; they are the network's charges. But in the long run the network has to consider these matters when they think of affiliating.

Mr. Cox. And is this $9—do you indicate that that would be the charge for the distance between Bangor and, say, Portland?

Mr. CARPENTER. No, sir. Perhaps I haven't made myself clear. The figures quoted in this paragraph are determined by dividing the published base rate for the station in question—that is, published on the network's rate cards—by the approximate number of miles from the last connection point to the station.

In other words, in the case of Boston, as I recall, the base rate of the CBS station is $2,400 an hour. Boston has a line haul of roughly a hundred miles from the nearest connection point. Dividing $2,400 by a hundred miles, you would find $24 per hour per mile of line haul.

Mr. Cox. You have a hundred miles at a charge of $250?

Mr. CARPENTER. Yes, sir.

Mr. Cox. From that you derive this $2.50 figure?

Mr. CARPENTER. Yes, sir. The A. T. & T. connection charges are not exactly proportionate to the mileages, because they have additional charges at each end. But as a broad assumption you can pretty well take it that the greater the distance the greater the charges, and somewhat in direct proportion.

Mr. Cox. This connection charge you speak of is a charge that is made every time you are receiving a network program; is that correct?

Mr. CARPENTER. Well, since my station does not pay the charges—the network does—I cannot speak with personal knowledge. But my belief is that they are charged on a monthly basis and not on a per occasion basis.

A connection cost which would not worry anyone in connection with a high-rate station might well be an intolerable burden on the network commercial traffic destined for a low-rate station.

This is particularly worrisome to me and some other small operators. Not only do our networks have to absorb connection costs which are high relative to the value of the traffic over the connections, but the charges seem much higher than they need be. This can be illustrated in a simple way.

In the main, television programs are transmitted from city to city over a series of microwave relays. The equipment used to transmit a program between two points of an intercity circuit is basically the same equipment as is used by a station to send a remote program back to the studio or to transmit a studio program to the station's own transmitter. These microwave relay links are readily available to the trade and most stations own and operate at least one.

Or to put it the other way around, a television circuit between cities is merely several microwave links laid end to end. The whole is equal to the sum of its parts.

Therefore, if it can be demonstrated that the A. T. & T. charge is too high for a television circuit between a single microwave transmitter and its associated receiver, it must follow that the charge is too high for a string of such transmitters and receivers employing the same type of equipment in the same type of service.

The simplest demonstration I can think of concerns the cost of a connection between studio and transmitter. This is a so-called STL, meaning studio-transmitter link. If telephone company charges for an STL can be shown to be far too high, it will become apparent that charges are also too high for more complicated A. T. & T. services using fundamentally the same type of equipment and having the same type of pricing structure.

My station maintains such an STL. The cost to operate it is $3,054.36 per year, assuming the equipment is depreciated to zero at the end of 4 years. If the depreciation were figured on a 20-year basis, as I believe is A. T. & T. practice, our cost to operate it would be $801.36 per year (as detailed in appendix C).[9] The cost to have exactly the same service performed by the telephone company would be over $7,000 per year. When so great a disparity exists between a station's cost and the telephone company rates for the same service, something is not right.

High telephone company charges are usually defended by arguing that the telephone company are expert and their service is superior. There is very little foundation to this in my station's experience. During the 18 months that W–TWO has operated its own STL, the amount of time lost due to breakdown is less than 2 hours—a reliability record of better than 99.964 percent. The reliability record of the A. T. & T. connection which brings network programs into the W–TWO studio is no better, and the quality of the picture service is frequently deficient, whereas we have never had that complaint about the service of our own STL.

My engineering department estimates it could establish and operate an intercity television circuit from Portland, Maine, to Bangor, Maine, for less than $25,000 per year, including very fast depreciation (4 years) and the services of two full-time maintenance men. By way of contrast, we estimate that the CBS network pays A. T. & T. more than $70,000 a year for a circuit between Portland and Bangor.

I want to make it clear that I am not talking about transcontinental television trunklines. Delivering high-quality television pictures from coast to coast is another subject altogether, and I suspect that the A. T. & T. charge for service of this type may well be reasonable. In fact, I suspect that the whole pricing difficulty is that A. T. & T. charges substantially the same rate for branchline service as for trunkline service, although the two services are quite different.

If these television connection charges are too high for branchline service, as I believe they are, it is very important that this committee consider the effect of these rates on the economic health of the smaller affiliated stations. This is probably not important to the larger stations whose advertising rates are high in proportion to the connection charges necessary to furnish network service. However, this committee should be concerned with whether it is equitable and in the public interest for the lower-rate stations to be burdened with the same high connection costs.

To correct the inequities which we believe exist, it is not necessary that Congress legislate connection costs. It is merely necessary to make it legally possible for individual stations to provide their own intercity connection if they wish to do so in preference to buying the same connection from A. T. & T. Stations and networks do not have this choice now, but are required by the rules of the FCC to use A. T. & T. facilities if A. T. & T. desires to make facilities available. A station can only provide intercity service for itself if A. T. & T. is unable or unwilling to provide it. The fact that a station may feel

[9] Appendix C is set forth at p. 1667.

it can provide a more satisfactory service or do so at lower cost cannot be considered under the present rules.

Mr. Cox. Isn't it true that the FCC is considering relaxing its rules to permit construction of more private intercity relays, and has actually granted permission in a number of instances?

Mr. CARPENTER. Yes, sir. I believe the rulemaking proceeding is still pending and would give the Commission authority to do just that, provided the station which makes the application makes a positive showing.

Mr. Cox. Would that be acceptable, in your view, if they could complete that proceeding along the lines they have indicated?

Mr. CARPENTER. I would imagine it would, yes, sir.

One thing which the present rules do permit is a station-owned microwave service between studio and transmitter. And it is noticeable that almost all stations do provide their own STL service in preference to purchasing it from the telephone company. This in itself suggests strongly that stations are able to perform service of this type more efficiently than the telephone company and would seek to provide analagous service on an intercity basis if it were legally practical for it to do so.

I therefore suggest to this committee that the FCC be urged to make suitable changes in its rules so as to make it possible for stations to perform an intercity connection service for themselves if they wish to do so. And this refers to the rulemaking proceeding you just mentioned.[10]

CONCLUSION

I believe that the networks have contributed greatly to the rapid development of television programing. I believe that high quality programing in volume has been distributed to hundreds of stations from coast to coast in an unbelievably efficient way. I therefore believe it would be extremely dangerous to tamper with a system that has demonstrated efficiency of so high an order.

I believe it is also backward thinking to propose to help solve the problems of nonaffiliated stations in a handful of larger markets at the risk of creating graver problems for affiliated stations in the majority of smaller markets.

For these reasons I earnestly request this committee to avoid any action which might result in abolishing or restricting network option time. I feel convinced network option time has played a major part in the growth of my station and hundreds of others.

On the other hand, if this committee would like to make network programs available in greater quantity to more stations in the smaller markets, this can be done by urging the FCC to make it possible for stations to perform their own intercity connection service if they wish to do so.

For myself and my company I want to thank this committee for considering the views of a small telecaster like myself. I have every confidence that my views will be given the same consideration as those of the largest and most powerful stations.

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[10] For other comment on the matter of private intercity relays and A. T. & T. rates, see the testimony of John W. Boler, North Dakota Broadcasting Co., which is printed in the second volume of the UHF–VHF Allocation Problem at p. 983. See also testimony of Rex Howell at p. 2556 below.

(Appendix A, appendix B, and appendix C attached to Mr. Carpenter's statement are as follows:)

Appendix A

Hours of television programing available to viewers of the Bangor area

	Hours of programs during a typical week		
	WABI	W-TWO	Total
April 1953	63		63
April 1954	74		74
April 1955	112	60	172
April 1956	[1] 78	115	193

[1] In May 1956 WABI added approximately 35 additional hours.

Hours of network programing carried by Bangor television stations

	Clock hours of network for a typical week		
	WABI	W-TWO	Total
April 1953	14		14
April 1954	36		36
April 1955	76		76
April 1956	[1] 44	59	103

[1] In May 1956 WABI added a substantial additional volume of network.

NOTE.—All figures are based on published listings and are therefore approximate.

Appendix B

W-TWO Bangor, Maine

EVENING PROGRAMS FOR THE WEEK

OF APRIL 11-17, 1955

	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
7:00	W-TWO Theater (movie film)	Amos & Andy (film)	Tales of Tomorrow (film)	Dangerous Assignment (film)	Annie Oakley (film)	Terry & The Pirates (film)	Wrestling (film)
		Duffy's Tavern (film)	Stories of Century (film)	Mark Saber (film)	Fulton Lewis, Jr. Kar Kwiz	Boy Scouts	
8:00	Chas. Laughton Playhouse TWO (movie film)	Catholic Thought	Burns & Allen (CBS Film)	Serial (film)	Big Picture (film)		Mark of the Avenger (movie film)
		Young & Beautiful	Wrestling (film)	Burma Victory	Facts Forum (film)	Charlie Chan	
9:00					Harmony Lane (movie film)		
			Furious Phony (film)				
10:00							
11:00							

CBS Network (1/2 hour)

Sponsored Film (4 1/2 hours)

W-TWO, Bangor, Maine

EVENING PROGRAMS FOR THE WEEK

OF SEPT. 18-25, 1955

	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
7.00	The Hunter	Duffy's Tavern	Tales of Tomorrow	Mark Saber	Annie Oakley	Film	Wrestling
	Private Secretary	D. Edwards	D. Edwards	D. Edwards	D. Edwards	D. Edwards	
		Bill Clark	Film	Bill Clark	Film	Film	
8.00	Ed Sullivan	Burns & Allen	Navy Log	Arthur Godfrey	Film	Boy Scouts	Greatest Bands
		I Led 3 Lives	Phil Silvers	Wrestling	Climax	Topper	
9.00	GE Theater	Whiting Girls	Meet Millie	Millionaire		Playhouse of Stars	Big Picture
	Personality Playhouse	Ethel & Albert	This Is Your Music	I've Got A Secret	Science Fiction Theater	Mark Saber	Ford Star Jubilee
10.00		This Is Your Music	$64,000 Question	Front Row Center	Charrada	Under-current	
		Let's Face It	Science Fiction Theater		Big Picture	Person to Person	
11.00							

CBS Programs (14 3/4 hours)

Sponsored Film (3 1/2 hours)

W-TWO Bangor, Maine

EVENING PROGRAMS FOR THE WEEK OF MAY 13-19, 1956

	Sun	Mon	Tues	Wed	Thurs	Fri	Sat
7.00	Lassie	San Francisco Beat	Mr. Dist. Atty	Science in Action	Mark Saber	Crunch & Des	Barn Dance
	Private Secretary	Robin Hood	Name That Tune	Great Gildersleeve	Man Called X	Flicka	Beat the Clock
8.00	Ed Sullivan Show	Burns & Allen	Phil Silvers	Arthur Godfrey	Bob Cummings	Mama	Jackie Gleason
		I Led 3 Lives	Navy Log	Paul Winchell	Climax	Miss Brooks	Stage Show
9.00	G.E. Theater	I Love Lucy	Guy Lombardo	Millionaire		Crusader	Victory at Sea
	Mark Saber	December Bride	Mr & Mrs. North	I've Got A Secret	Science Fiction	Playhouse of Stars	It's Always Jan
10.00	Pendulum	Oral Roberts	$64,000 Question	20th Century Fox	See It Now	Line-Up	Gunsmoke
	Home Theater	University Maine	Do You Trust Your Wife?			Person to Person	Late Show
11.00							

CBS Network Programs (19 hours)

Sponsored Film Programs (6 1/2 hours)

APPENDIX C

Cost of operation of W–TWO's studio-transmitter link (STL)

	If equipment depreciated over a period of— 4 years	20 years
Initial cost of equipment	$11,196.70	$11,196.70
Plus freight	28.80	28.80
Plus estimated installation	40.00	40.00
Total initial cost	11,265.50	11,265.50
Number of months in depreciation period	48	240
Monthly depreciation	$234.69	$46.94
Plus actual monthly maintenance	10.84	10.84
Plus estimated power consumption	9.00	9.00
Total cost per month	254.53	66.78
Total cost per year	3,054.36	801.36

NOTE.—The above-described equipment as used at W-TWO has caused less than 2 hours of lost air time in 18 months, a reliability percentage of better than 99.964 percent.

Senator PAYNE. Thank you very much, Murray.

Of course, I think you realize—I know you realize, because I have talked with you before—that some of the problems that have been brought before the committee here, for instance, the case that was discussed just before you appeared is quite a bit different than your own situation in the Bangor area, in view of the fact that you do not have an overlapping situation up there where you have got the two stations really that have that area up there pretty nearly within your own boundaries.

Mr. CARPENTER. Yes, sir.

Senator PAYNE. So that naturally if there are programs that are desirable to come into the area, or be made available on the part of the networks, they naturally are anxious to get the outlet there and come to the only two available stations in order to provide it. Whereas, if you were in an overlapping area, then, of course, you might run into a little different situation than you are confronted with.

Mr. CARPENTER. Yes, sir; that is true. But I think the major difference is that many stations have grown used to operating in a seller's market. I have never been in a seller's market yet. I would like to get in one some time. But I am not in one.

We operate in a quite free and competitive market. The differences between operating in a free and competitive market, which is to say a buyer's market, and operating in a seller's market, are quite different. And many of the people who have complaints to make are people who are in a seller's market of one degree or another.

I should also like to draw the committee's attention to the fact that although those operators like myself, who operate in the smaller and buyer's markets, are not as vocal as some of the larger ones; there are a good many of them. Many of the smaller operators are so preoccupied with the day-to-day problems of running a station that they do not pace back and forth to Washington as often as probably they should.

Senator PAYNE. Are there any questions?

Mr. COX. I have no questions.

Senator PAYNE. I believe that is all, Murray; and thank you very much for being here and giving this information to the committee.

We will now recess these hearings until 2 o'clock when they will be resumed, and Mr. Benedict Gimbel, Jr., of WIP, Philadelphia, will be the first witness.

(Whereupon, at 12:30 p. m., the hearing recessed to reconvene at 2 p. m.)

(Since the testimony of Mr. Gimbel and that of Henry B. Walker, Jr., the other witness heard in the afternoon related to allocations and other related matters; such testimony is printed in the second volume on the "UHF–VHF Allocation Problem" at pp. 897 and 912, respectively.)

TELEVISION INQUIRY

(Network Practices)

MONDAY, JUNE 11, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to notice, at 3 p. m., in room G-16, the Capitol, Senator Sam J. Ervin, Jr., presiding.

Present: Senators Ervin, Purtell, and Wofford.

Senator ERVIN. Senator Schoeppel is compelled to attend a meeting of the Committee on Agriculture and Forestry. He would like very much to be present here but he is unable to be here on that account.

Would you make a statement in the record, Mr. Cox, as to the matters that concern us at this time.

Mr. COX. We have some matters to be inserted in the record:

First, an exchange of correspondence on advertising in radio and television consisting of two communications from Senator Magnuson to the Federal Communications Commission, together with the Commission's replies on April 30 and May 29, 1956; and an adidtional exchange of correspondence on this same subject between Senator Magnuson and the Federal Trade Commission, under dates of February 15 and 27, 1956, respectively.

All of this correspondence relative to radio and television advertising is directed to be published in the printed reports of these hearings at part of an appendix to the volume (soon to be printed) containing the testimony of the members of the Federal Communciations Commission (these materials are set forth at pp. 221 to 258, inclusive).

There will also be printed, as an appendix to that volume, the several comments of the Commission upon the Jones and Plotkin reports, which have heretofore been made public (these materials are set forth at pp. 260 to 304, inclusive).

Second, an exchange of correspondence, already made public, between Senator Magnuson and Chairman McConnaughey, of the Federal Communications Commission (letters dated May 1, and 14, 1956), regarding Mr. McConnaughey's speech of April 17, 1956, and the necessity for prompt action on allocations. These letters will be inserted in the printed record in an appropriate appendix to the testimony on allocations matters (They are set forth in the appendix to the second volume on the "UHF-VHF Allocation Problem" at pp. 1031 and 1032.)

Third, a letter dated May 22, 1956, from Albert N. Jorgensen, chairman of the Joint Council on Educational Television, urging the increased manufacture of all-channel television receivers, the creation of substantial areas in which UHF is the sole or predominant television service, and the vigorous pursuit of answers to the technical problems of UHF transmission and reception. This letter will be inserted in the printed report in connection with the material on allocations. [It is set forth in the appendix to the second volume on the UHF-VHF Allocations Problem at p. 1033.]

Fourth, a letter dated June 1, 1956, from Joe Drilling, vice president, O'Neill Broadcasting Co., licensee of Station KJEO in Fresno, Calif., forwarding a map entitled "Coverage Map of Seven California Television Stations Depicting Full Service to all Central California Homes with No White Areas," together with a copy of the 1956 ARB Metropolitan Area Television Coverage survey for Merced and Tulare, Calif. This letter and the ARB survey will be inserted in the printed record in connection with the testimony allocations [they are set forth in the appendix to the second volume on the UHF-VHF Allocation Problem, at p. 1036], and the map referred to will be made a part of the committee's files.

Fifth, a letter dated May 22, 1956, from P. A. Sugg, executive vice president of station WKY-TV, Oklahoma city, Okla., relative to the testimony before this committee of Bill Hoover, of Ada, Okla., enclosing letters from National Broadcasting Co. to WKY and from the latter to KVSO-TV of Ardmore, Okla., regarding rebroadcast by the latter of programs of WKY-TV. This correspondence will be printed in connection with the testimony of Mr. Hoover. [It is set forth in the second volume on the UHF-VHF Allocation Problem, at p. 894.]

Sixth, a letter dated May 22, 1956, from Morton H. Wilner, counsel for Triangle Publications, Inc., commenting on the testimony before this committee of Benedict Gimbel, Jr., of WIP, Philadelphia, and enclosing a copy of Triangle's comments in FCC Docket No. 11532. This letter will be printed in conjunction with Mr. Gimbel's testimony [it is set forth in the second volume on the UHF-VHF Allocation Problem, at p. 912] and the comments will be retained in the committee's files.

Seventh, a letter dated May 16, 1956, from Vincent T. Wasilewski of the National Association of Radio and Television Broadcasters forwarding certain materials regarding newspaper polls referred to by Harold E. Fellows in his testimony in opposition to subscription television, together with a copy of a letter dated September 9, 1956, from F. S. Houwink of WMAL-TV to Chairman McConnaughey of the Federal Communications Commission, commenting on his station's experimental broadcasting of coded television signals in May and June of 1955. These materials will be printed in connection with Mr. Fellows' testimony. [They are set forth in the volume on Subscription Television, at p. 1273.]

Eighth, a letter dated May 11, 1956, from Lloyd H. Cutler, forwarding the answers of Richard A. Moore to certain questions presented to him by Senator Bricker during his testimony before this committee. This material will be printed in connection with Mr. Moore's testimony, following the questions of Senator Bricker.

(It appears at pp. 1574-1591, herein.)

Ninth, a letter dated May 7, 1956, from Len Higgins, manager of KTNT-TV of Tacoma, Wash., to Senator Bricker, commenting on references in the Senator's report The Network Monopoly to overlap as between that station and KVOS-TV, Bellingham, Wash., together with copies of Senator Bricker's reply and of his letter to station KVOS-TV.

(The letters referred to are as follows:)

TACOMA, WASH., *May 7, 1956.*

Hon. JOHN W. BRICKER,
Senator From Ohio,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR BRICKER: Broadcasting magazine of April 30, 1956, carried a report about your attack on CBS and NBC-TV networks as having a yoke of economic dominance over network telecasting and in which you cited three cases of overlap as between TV stations in large and small markets, purported as illustration.

The intimation that our television station KTNT-TV, Tacoma, included in your table as in 1 of 3 such larger markets, made a small profit at the expense of KVOS-TV, Bellingham, and that CBS has placed its programs on our station thereby injuring KVOS-TV, Bellingham, is in no sense fair, accurate, or reasonable in view of the facts.

KTNT-TV, Tacoma's A contour contains a population of 1,225,000 persons and is the basic outlet for CBS television in and for the central Puget Sound area. KVOS-TV, Bellingham's A contour contains a population of only 166,000 persons in the northern Puget Sound area of the United States. Its A contour overlaps that of KTNT-TV's A contour to the extent of only 5,500 persons. These figures are from carefully prepared analysis of the 1950 census tracts published by the Department of Commerce Bureau of Census in relation to the A contours of the respective stations filed with the FCC.

The fact that KTNT-TV covers the cities of Seattle, Tacoma, Bremerton, Olympia and Everett with its A contour and the fact that the A contour of KVOS-TV, Bellingham does not reach as far south as the north boundary of the city of Everett (which is north of Seattle), should be ample factual proof to you as to why we feel whoever supplied you with the purported facts in this case should be reprimanded for supplying you with but part of a story. It places you, Senator, in an untenable position for one who has the reputation of confining himself to statements which include full factual presentations.

We feel also that inclusion of the KVOS-TV, Bellingham, figures for 1954 is unfair use of context as we recall the facts; inasmuch as the CBS-TV extended market affiliation of KVOS-TV, Bellingham, was not effective during enough of 1954 to justify their citation for that year.

We here wish to express our firm conviction that association of KTNT-TV, Tacoma, as the basic CBS affiliate for the central Puget Sound area has in no wise injured the financial interests of KVOS-TV, Bellingham, prior to, during or after the year 1954.

Cordially,

LEN HIGGINS,
Manager, KTNT-TV.

MAY 10, 1956.

Mr. LEN HIGGINS,
Manager, KTNT-TV, Tacoma, Wash.

DEAR MR. HIGGINS: This will acknowledge your letter of May 7, regarding KVOS-TV, Bellingham, and KTNT-TV, in my recent report on the network monopoly.

In order that there may be no misunderstanding in this matter I am requesting that your letter be made a part of the record in the current television hearings being conducted by the Senate Committee on Interstate and Foreign Commerce.

Also, I am enclosing a copy of the report since it appears your knowledge of the matter stems from the article appearing in the April 30 edition of Broadcasting-Telecasting magazine.

Sincerely yours,

JOHN W. BRICKER,
United States Senator.

MAY 10, 1956.

STATION KVOS-TV,
Bellingham, Wash.

GENTLEMEN: I am forwarding, for your information, a copy of a letter I received recently from Mr. Len Higgins, manager of station KTNT-TV in Tacoma.

I have written Mr. Higgins that his letter will be made a part of the hearings in the current television inquiry being conducted by the Senate Committee on Interstate and Foreign Commerce.

I am sending you a copy of Mr. Higgins' letter with the thought that station KVOS-TV may also like to have its views on this matter made a part of the same record.

Also for your information, I am enclosing a copy of the network monopoly report.

Sincerely yours,

JOHN W. BRICKER,
United States Senator.

Tenth, a letter to Senator Bricker from Howard Buffett, of Omaha, Nebr., commenting on the degree of control over opinion possessed by the networks, together with a copy of Senator Bricker's reply.

(The correspondence above referred to is as follows:)

BUFFETT-FALK & CO.,
Omaha, May 1, 1956.

Senator JOHN BRICKER,
Senate Office Building,
Washington, D. C.

DEAR SENATOR BRICKER: In the Chicago Tribune of April 30, I see reference to a report from you to the Senate Commerce Committee titled "The Network Monopoly."

If the copies of this report are available I would like very much to obtain one. If there is any charge in this connection I will be glad to pay it.

Incidentally, I know of no more important service one can render this country than to reveal the degree of mind control that is currently possessed and used by the radio networks. When I say radio networks I, of course, include the TV as well. I noticed that in the last annual report of NBC they told their stockholders that they had access to 93 percent of the TV listeners in America. That is a fearful amount of power, and there is no doubt in my mind but such power will be abused if not controlled in some feasible fashion.

Sincerely yours,

HOWARD BUFFETT.

MAY 10, 1956.

Hon. HOWARD BUFFETT,
Buffett-Falk & Co.,
Omaha, Nebr.

DEAR HOWARD: Thank you for your letter of May 1, regarding my report on the network monopoly.

In accordance with your request, I am forwarding several copies of the report.

If there is no objection, I will have your letter made a part of the record of the television inquiry being conducted by our committee.

With best wishes, I am,

Sincerely yours,

JOHN W. BRICKER,
United States Senator.

Eleventh, a letter dated May 21, 1956, from Senator Magnuson to Judge Stanley N. Barnes, Antitrust Division, Department of Justice, regarding the testimony of three independent producers of scenery and sets who testified before this committee on May 14, 1956, together with Judge Barnes' reply of May 24, 1956.

(The correspondence referred to above is as follows:)

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
MAY 21, 1956.

Judge STANLEY N. BARNES,
Antitrust Division, Department of Justice,
Washington, D. C.

DEAR JUDGE BARNES: I am enclosing herewith copies of statements presented to the Senate Interstate and Foreign Commerce Committee on May 14, 1956, by Mrs. Lucille Ashworth, Mr. Peter J. Rotondo, and Mr. David Steinberg. These people are independent producers of sceneries and sets in and around New York City. They have represented to the committee that they have been systematically excluded by national television networks from participation in the provision of scenery and sets for programs broadcast over the networks. It would appear that, if the matters set forth in their testimony are true, there may be an effort on the part of the networks to monopolize this collateral phase of the television industry.

It is apparently charged by these witnesses that all of the networks either directly or indirectly make the use of their set building facilities a condition to obtaining desirable broadcast time, over which it is alleged they exercise complete control. I would appreciate your examining the enclosed statements and advising me whether you feel they present any danger of practices violative of the antitrust laws, and further whether the Department of Justice has any plans at present for looking into this phase of the broadcast industry.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

DEPARTMENT OF JUSTICE,
Washington, May 24, 1956.

Hon. WARREN G. MAGNUSON,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: This is in reply to your letter of May 21, 1956, transmitting copies of statements presented to the Senate Interstate and Foreign Commerce Committee by three independent producers of sceneries and sets in the New York City area. In general, their testimony contained complaints that they have been excluded by national television networks from participating in providing scenery and sets for broadcast programs.

We are conducting an inquiry into this matter to determine whether or not the situation involves any violations of the Federal antitrust laws. If violations are found they will, of course, be prosecuted.

This answers the specific request in the last sentence of your letter that I advise you as to the present plans of this Department "for looking into this phase of the broadcast industry."

Thank you for calling this matter to our attention.

Sincerely yours,

STANLEY N. BARNES,
Assistant Attorney General, Antitrust Division.

Twelfth, a letter dated May 29, 1956, from Judge Stanley N. Barnes and a letter dated May 31, 1956, from Chairman McConnaughey, of the Federal Communications Commission, both in response to earlier requests by Senator Magnuson for comment upon the statement of Richard A. Moore, of Los Angeles, Calif., to this committee on March 26, 1956, as well as upon the legal memorandum submitted by Mr. Moore at that time.

(The correspondence above referred to is as follows:)

DEPARTMENT OF JUSTICE,
Washington, May 29, 1956.

Hon. WARREN C. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: On March 29, 1956, you sent to us a copy of a statement made on March 26, 1956, before the Senate Interstate and Foreign Commerce Committee by Richard A. Moore, of Los Angeles, together with a copy of a legal memorandum discussing matters relating to that statement. On May 21, 1956, you requested that the Antitrust Division forward comments on those documents by May 31, 1956. This is in reply to those letters.

We have reviewed the facts presented by Mr. Moore bearing upon network practices in the television field, particularly with respect to network option time and must-buy clauses and their effects on independent and affiliated television stations, independent producers and advertisers. We have also studied the legal memorandum submitted with Mr. Moore's testimony, discussing those facts in the context of the antitrust laws. Material already in our files appears to be consistent with many of the statements of fact contained in Mr. Moore's statement to your committee.

The Anitrust Division has previously communicated to your committee those policies which will guide it in dealing with the problems raised by Mr. Moore. Deputy Attorney General William P. Rogers, in his letter to your committee on March 4, 1955, stated that the Antitrust Division would be "on the alert for information indicating that any network is engaged in a violation of those [antitrust] laws." He gave assurances that we would "continue to investigate any complaints submitted to the Department to determine whether or not any violation of the antitrust laws is involved." In my appearance before your committee on February 28, 1956, I stated:

"Since the Supreme Court in the National Broadcasting case has sanctioned this Commission power [to promulgate chain broadcasting regulations], the Federal Communications Commission now reexamines its regulations with a view to determining whether or not they should be modified and enlarged in order more effectively to promote the public interest in telecasting. Obviously, until we have the report of the Fedeal Communications Commission on this subject, further comment by a representative of the Department of Justice would be inappropriate."

This need to await the recommendations of the Federal Communications Commission is particularly appropriate with respect to Mr. Moore's testimony on network practices, inasmuch as the Commission's network study group is presently reappraising its regulations with respect to these practices.

I also stated during my testimony before your committee that there is a substantial area in the broadcasting field which is not regulated by the Federal Communications Commission and in which the Antitrust Division has primary responsibility for enforcing the Sherman and Clayton Acts. In recognition of that responsibility, we are looking into certain of the situations concerning which Mr. Moore testified. I refer particularly to those investigations which I described to your committee in February. Wherever possible, in those areas where inquiry by the Department would not conflict with reexamination by the Commission of its regulations, we are expanding our investigations to include charges of alleged restraints and monopolization in broadcasting referred to us by your committee. For example, in my letter of May 24, 1956, I advised you that we were investigating complaints, which you sent the Antitrust Division, by three independent scenery producers who were allegedly excluded by television networks from providing scenery and sets for broadcast programs.

If there is any further information you desire, please get in touch with me.

Sincerely yours,

STANLEY N. BARNES,
Assistant Attorney General, Antitrust Division.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., May 31, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I have your letter of May 21, 1956, in which you mention forwarding to me, on March 29, 1956, a letter asking for the Commission's comments on the statements made before your committee by Mr. Richard A. Moore, of Los Angeles, Calif. I have been unable to find any record of having received your March 29, 1956, request and therefore have not replied heretofore.

Mr. Moore's statement is largely concerned with his analysis of the option time provisions of the chain broadcasting rules and the must-buy list of network affiliates. These are matters under very serious consideration in the network study and in fact had been discussed by our network staff with Mr. Moore prior to his statement before your committee. However, the Commission has reached no conclusions as yet on these matters. Mr. Moore also discussed the question of possible violation of the antitrust laws. This, as you know, is under the primary jurisdiction of the Department of Justice. Thus, the Commission has no comments to make on the statement at this time.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*

Senator ERVIN. The first witness is Mr. Leonard Marks, general counsel for the FM Broadcasters.

Mr. Marks, we will be glad to hear you at this time.

(At the request of the witness, his testimony appears following that of Benedict Gimbel Jr. It is set forth in the second volume on the "UHF-VHF Allocation Problem" at p. 906.)

Senator ERVIN. The next witness is Dr. Everett C. Parker. We would be glad to hear Dr. Parker at this time.

We are glad to have you with us, Dr. Parker. You have a prepared statement which you can either read, or if you prefer to talk extemporaneously and insert your statement—we will leave it up to you.

Reverend PARKER. I think I would prefer to read it, sir, because it has some facts and statistics in it.

STATEMENT OF REV. EVERETT C. PARKER, DIRECTOR, OFFICE OF COMMUNICATION OF THE CONGREGATIONAL CHRISTIAN CHURCHES

Reverend PARKER. My name is Everett C. Parker. I am an ordained minister and my present position is director of communication for the Congregational Christian Churches, 287 Fourth Avenue, New York City. This gentleman on my left is Frank Ketcham who is counsel for the organization.

I am also a member of the board of managers of the Broadcasting and Film Commission of the National Council of the Churches of Christ in the U. S. A. This latter is an elective, not a staff position.

I have been associated with religious broadcasting on a national scale since 1937. I have previously been director of the Protestant Radio Commission which was the central representative body for Protestant broadcasting until the formation of the National Council of Churches. The Protestant Radio Commission entered the national council along with such other cooperative interdenominational organizations as the Federal Council of Churches, the International Council of Religious Education, the Home Missions Council, etc. The national council has a membership of 30 Protestant and Eastern Orthodox Communions representing 35,874,601 persons.

After formation of the national council I was asked to make a definitive study of the effects of television on religion. I, therefore, organized and served as director of the communications research project from 1951 through 1955. The project was sponsored by the national council and conducted under the supervision of the Yale University Divinity School.

I am appearing today upon behalf of the office of communication. I am not here as a spokesman for the National Council of Churches or the Congregational Christian Churches as a whole.

I understand that to date hearings of this committee have been concerned primarily with television and, specifically, with the technical aspects of allocation of frequencies in the VHF and UHF bands. I also understand that representatives of the national television networks are to testify before you later on this month—tomorrow, I believe—concerning their operations and their views on the current status of television and its future.

While I recognize the critical importance of the technical situation of television today, I would like, respectfully, to remind the committee that the aspect of television that is of ultimate importance is the kind of programs that are transmitted into American homes. And since television is so greatly dependent upon network operation for programing, the most vital issue may well be the determination of the degree to which the networks and their affiliated stations are fulfilling their responsibility to give the public a well-rounded program service of superior quality.

The treatment of religion is illustrative of the present attitude of networks toward their public service obligations. The National Broadcasting Co. originates 4,860 minutes of network television each week. Thirty minutes of this time, sixty-two one-hundredths of 1 percent, is devoted to religion. Furthermore, this 30 minutes is divided between the Protestants, Roman Catholics, and Jews in varying proportions. The net effect for Protestants is that during 24 weeks in the year not a single minute on the NBC network is devoted to Protestant Christianity.

The Columbia Broadcasting System maintains two 30-minute religious programs, both aired in the early hours of Sunday morning. One of these periods they program independently. On the other there is cooperation in programing and production by the National Council of Churches and by Roman Catholic and Jewish agencies. Protestantism, at present, is faring somewhat better on this latter program over CBS than on NBC. It is absent from the CBS network only 23 weeks.

Of course in both cases the Roman Catholics and Jews receive even less time.

The American Broadcasting Co. currently offers no noncommercial religious programs on its network, although I understand the program featuring Dean James Pike, of the Cathedral of St. John the Divine, may be restored in the fall.

The situation in television should be contrasted with radio. The networks have never been overly generous with radio time for religion. Most programs have been scheduled on Sunday mornings or early Sunday afternoon. Most of them, in format, have been modeled after church services—which is about as ineffective a form of broadcasting as you can get. Church services are planned for corporate worship, i. e., they are effective when a group of people come together to share in the worship of God. They are not meant for a single person or 2 or 3 sitting in the livingroom. The essential participation in congregational prayer and confession is lost on a radio audience. Radio needs programs that are beamed to the individual listener.

Mr. Cox. Are such programs available and offered to the networks and to local stations?

Reverend Parker. Yes, they are.

Mr. Cox. That is, techniques have been developed by yourself and other organizations and these have been carried forward to the point where they are either in recorded form—filmed form—or in a form where there are the necessary materials for live presentation, and all of this can be turned over to a licensee or network if time is made available?

Reverend PARKER. Yes; for the past 10 years, year after year, the advisory committee of CBS's Church of the Air on radio—which is kind of a body that they have for a front; it consists of ministers like myself, who come together for lunch once a year—somebody has always made the suggestion, backed by one of the others, that they change the format of Church of the Air and do something else but a church service. I think maybe they will get around to doing that sometime when radio is far gone.

The representation of religion on radio has been greater than it is on television. The National Broadcasting Co. and the American Broadcasting Co. have always provided at least 30 minutes a week each to Protestants, Roman Catholics, and Jews. The National Council of Churches has for many years presented two programs on NBC: National Radio Pulpit, which is 30 minutes long, and Art of Living, which is a speech by Dr. Norman Vincent Peale, 15 minutes long. Both are broadcast early Sunday morning when available audience is minimal.

The Columbia Broadcasting System, on radio, has offered the Columbia Church of the Air, which they consider to be representative, in which 30 minutes have been set aside twice each Sunday on a rotation basis for Protestant, Roman Catholic, and Jewish clergymen to speak within the format of a miniature church service. Clergymen of the various faiths appear on a representative basis arbitrarily determined by CBS.

Thus, as you can see, the networks have reduced religion on television to a position of less than one-third the importance it has held on radio—where it has not been held in too great esteem.

Mr. COX. Now in this connection, have they taken the position that this is basically a responsibility of the local stations, who are more conversant with the requirements of their particular localities, and that therefore the function of a network is not as important in this field as it might otherwise be?

Reverend PARKER. I have never heard that view expressed to any of us in conferences with networks. I haven't had an official conference with a network on this in the last year or so, but I have never heard it expressed.

Mr. COX. Well, then, would it be their position that they acknowledge a responsibility for balanced programing on the network, including religious programing, and that they regard this as satisfying that requirement?

Reverend PARKER. That is my understanding. They have always acknowledged the necessity of broadcasting for the representative central agencies of the Protestant, Eastern Orthodox, and the Roman Catholic, and Jewish groups.

Mr. COX. Now it is true, is it not, that a number, perhaps all, local television and radio stations do provide additional programing of a local nature, largely on Sunday morning.

Reverend PARKER. Yes, I would say that the vast majority of them do.

Mr. Cox. That would at least be of particular service to shutins and people who were not able to attend regular church services, and who found some substitute in this?

Reverend Parker. Well, the use of church services—especially on the local level—it hasn't gone down to a point where church services are minority religious broadcasting, because the usual practice of a station is to offer some time for a devotional program. But councils of churches throughout the country—ministerial associations and the National Council of Churches—have been encouraging the use of more radio-wise and television-wise programs. For instance, the National Council puts out a program called Let There Be Light on recordings—15-minute dramas—and there are a great many news broadcasts now in the religious field, there are counseling programs, there are a few children's programs put on locally, both on radio and television. There is some experimentation going around on television with many program types. We have been able to do better locally, on television, in cutting down this incidence of church services. You see, it was always so easy for the local station in radio to throw a microphone into a church and pay $7 or $8 a week for a line, which usually they charged to the church, and called that their religious broadcasting; and maybe give 15 minutes 2, 3, or 4 times a week to the Ministerial Association for a talk. But we have been fighting that for years.

Mr. Cox. That would be relatively expensive for television, I take it, even if it were effective.

Reverend Parker. I think that is one of the reasons why television does not do it. For example, WPIX in New York started out with a rather grandiose plan that was opposed at the time by the National Council of Churches. There was no television committee of the Protestant Council of New York, but they were going around to pick up from the local churches. They did for sometime and they stopped, I think, because of the cost and the fact that it was not a good program, they found out. NBC found that out with Frontiers of Faith. They persisted for 2½ years in presenting a miniature worship service, in an empty church usually, and it just didn't go, so they changed the format.

This downgrading of religion by network television has come at a time when, apparently, we are experiencing a marked growth in interest in religion and a substantial increase in active participation in religious organizations by the people of America. A recent opinion poll by Ben Gaffin & Associates of Chicago, found that 99 percent of those questioned believe in God. The Yearbook of American Churches indicates that currently 60.3 percent of American citizens are on the rolls of all religious bodies. It is also noteworthy that in the past decade when television has been developing with minimal attention to religion, newspapers, wire services, feature syndicates, news magazines, and magazines of general circulation have been increasing the space devoted to news and features about religion. While the spiritual strength and depth of a nation cannot be measured by statistics or news coverage, most competent observers agree that religion is a vital force in America today and that a majority of our citizens are concerned with spiritual affairs.

Furthermore, there is widespread interest by the public in the presentation of religious programs on television and radio. This concern has been documented by scientific study of television audiences. The communications research project studied the value, the use, and the effects of television and radio in a metropolitan population, using New Haven, Conn., as the laboratory. New Haven is a representative American industrial city, not satellite to any other, and has the added advantage that residents can view the New York City television stations, as well as their own channel.

The project employed a 5-percent sample of the New Haven population as the basis of its study. This sample, which was drawn by Prof. August B. Hollingshead of Yale University Department of Sociology, was representative of the New Haven population on the basis of education, occupation, age, number in the household, income, and religious affiliation. There were 3,552 families in the sample. This sample is the only one of its type and adequacy that has been used in communication research.

The project staff interviewed each of the families in the sample at length on their regular television and radio habits. A smaller sample of 100 families was reached through depth interviews in which a tape recorder was taken into the home and a 3- to 5-hour interview was recorded.

The research found that 2,128 households—59.8 percent of the families—regularly listen to or look at one or more religious television or radio programs. Furthermore, it was found that this majority audience does not differ markedly in any respect from the total population of the city. In other words, the audience for religion is a cross section of the population. It is not specialized. It is not limited by religious affiliation or by cultural status. It is, of course, true that the audience for a particular religious program is apt to be particularized when studied on the basis of age, sex, education, religious affiliation, and other sociological factors. Religion on television is subject to the same limiting factors as are other types of programs. All audiences are minority audiences. In religion, as in other fields of programing, only a few programs have a cross-section audience.

The research I am citing divided all television programs into 14 types: News, sports, variety, religion, comedy drama, domestic drama, general drama, crime drama, Western drama, quiz, musical, domestic science and variety, personality, public issues, and education and information.

Senator Ervin. Pardon me. This is Senator Purtell. Dr. Parker was talking about the research project in New Haven—about the attitude of the people in listening and looking at television on the subject of religion. He was in the midst of that.

Senator Purtell. I am sorry I wasn't here. I assure you that I will read the statement very religiously.

Senator Ervin. Pardon the interruption.

Reverend Parker. Among adults we found measurable audiences for sports, adult variety programs, quiz programs, general drama, news, religion, comedy drama, crime drama, music, and domestic drama. Religion ranked sixth among these program types in regular usage by the households in New Haven. However, in availability on both the New Haven television outlet and the New York stations religion ranked last. In New York, at the time of our study, only 1 percent of television time was devoted to religion.

Mr. Cox. What was your method there, Dr. Parker? Did you ask them simply to list, on their own initiative, the areas of their interest, or did you provide them with a listing of these 14 different categories and ask them to rank them within that listing?

Reverend PARKER. We did neither. We went into the home and asked them to tell us what programs they viewed regularly, and we talked to them long enough to bring out their memory. It wasn't just a case of handing them a listing and asking them to check.

Mr. Cox. Then you minimized, as far as possible, any tendency, perhaps, to rank things which they felt might be expected of them?

Reverend PARKER. Yes; because they did not know the auspices of the study. In fact, they thought it was a commercial study, I guess. We just said it was the New Haven radio-television survey. We then broke them down into these 14 categories ourselves, by programs which they gave us by name.

Senator PURTELL. Were these all programs out of New York stations?

Reverend PARKER. And WNHC. We did a monitoring survey of WNHC and the New York stations and compared the two for the whole week. The NAEB monitored the New York stations and we did WNHC.

Senator PURTELL. In the course of that study did you determine what percentage of those you interviewed were listening to New York stations in New Haven? Did you find, in other words, a great number of people who said, "We don't listen to New York stations here"?

Reverend PARKER. No; of course channel 8 is determinative in New Haven, as we both know, but anybody who could get the New York stations would get them. There were several reasons for that. The network outlets in New York had dropped a great many sports programs—and so had WNHC at that time, because they were taking both NBC and CBS—so in order to get the Dodgers they had to get channel 9. People were putting up extra antennas so they could get channel 9 in New York. They could get all of the other New York stations, but they needed the antenna for channel 9.

Senator PURTELL. I thought all of those people were Red Sox fans. [Laughter.]

Reverend PARKER. No, I think they are all Dodger fans.

Parenthetically, I might add that the networks and stations seemed to guess as poorly on what the public wanted in other types of programs as they did in religion. For instance, among adult programs crime drama ranked first in availability, the New York stations giving 15 percent of their broadcast time to it. The people of New Haven ranked crime drama 8th out of the 10 program types in their regular viewing of programs. Similarly, while the audience ranked sports first in their interest, the New York stations ranked sports third in availability. Only in the case of news did the New York stations and the audience come close to being in agreement. The stations offered news as their fourth ranking program type. The audience ranked news fifth in their regular viewing. It is apparent that commercial considerations are paramount in the choice of programs to be offered the public.

Still another discouraging factor about network religious broadcasting that virtually assures the ineffectualness of the programs is the segmented scheduling of broadcasts by the various faith groups. On NBC's Frontiers of Faith from September 1955, through August of this year, no group—Protestant, Catholic, or Jewish—will have in sequence more than eight broadcasts. On the CBS Look Up and Live, a program for teen-agers on Sunday mornings, during 1956 the National Council of Churches is scheduled for a sequential group of 13 broadcasts. This is the longest sequence of the year. In 2 other cases—the National Council of Churches once and the Roman Catholics once—there will have been 9 broadcasts in sequence. This segmentation of assignment to the various faith groups makes it virtually impossible for any one of them to create and sustain an audience for its programs.

The type of scheduling that is being done for religious broadcasts, of course, contravenes the principles on which the networks operate in other fields. Continuity and repetition, we are told, are the sine qua non of successful broadcasting.

Local station acceptance of network-originated religious programs offers a further block to effectiveness. The Protestant segment of Look Up and Live on CBS is currently carried by 49 stations. Protestant programs on NBC's Frontiers of Faith are aired by 63 stations, 25 of whom delay the broadcasts. On the other hand What's Your Trouble? a filmed series distributed by the National Council to local stations, involving discussion between Dr. and Mrs. Norman Vincent Peale, has played on more than 150 stations. This is a fair average comparison between live network and film coverage. The National Council obtains this widespread station coverage through vigorous promotion of its programs. It does not enjoy this promotional advantage on network programs. And, of course, I should say parenthetically that it is limited to the network affiliates when it goes on the network, and if the network affiliate will not carry the program in its community, then it cannot be carried on another station that might be willing to carry it.

Mr. Cox. Do you make direct efforts to interest the affiliates in these live programs, or is that handled just as a matter of routine through the network organization itself?

Reverend Parker. Well, the National Council does. I always do myself when I have any programs. The networks are not always happy about that. They do not like to have the affiliate pressured from the local community, and so there has to be a meeting of minds, you see, and cooperation on the thing. Now there were times, in days gone by, when a network would set up a talker circuit and make a closed circuit broadcast on the initiation of a new religious series, but those times are pretty well past. I haven't seen that done recently.

Mr. Cox. Are all of these programs, then, that are on the network live broadcasts, so that the only use of the delayed broadcast is through a kinescope?

Reverend Parker. Yes.

Mr. Cox. Generally, then, the programs you prepare for use on television would be filmed, and you would therefore have this greater flexibility, as far as time and placement was concerned?

Reverend Parker. That is correct. That, of course, was true in radio and is today. You have much greater flexibility in a recorded program, in an organization like the National Council, than you would with a network program, but you have many more stations on radio.

Mr. Cox. Have you offered to furnish the networks with film programs for use by them in this network time that they make available?

Reverend PARKER. I am sorry, I couldn't answer that as to whether any specific offer has been made.

Mr. Cox. That would, of course, reduce their expense to the cost of the time, whereas if they furnish a live program, I assume it requires some additional studio personnel, as well as, in some cases, professional participants to put the program on?

Reverend PARKER. That is correct, but you will see later on that we usually pay for the participants.

Program costs of network religious programs typically are borne by the religious group to which the network allocates time. CBS pays a substantial share of the talent costs for Look Up and Live, and all expenses of its house-sponsored Lamp Unto My Feet. But, of course, that program, they decide who shall be on.

NBC contributed director, announcer, and crew, but does not pay talent and script fees on Protestant programs. The religious agencies require substantial staffs and budgets to service the network time segments. Incidentally, I don't want to make it seem that they pay on Roman Catholic and Jewish—I do not know whether they do or not.

In no network do the leading creative minds work on religious programs. On the other hand religious agencies, like the National Council of Churches, have developed production staffs with a good deal of competence in both the television and religion fields. The views of the religious bodies on what constitutes a proper presentation of religion are always subject to the veto of the network employee currently in charge of religious programs. These people do not have theological training, yet they do not hesitate to judge the adequacy of Protestant, Roman Catholic, and Jewish program plans.

Mr. Cox. Does each network have one individual in charge of religious programing?

Reverend PARKER. Yes; usually it falls in the public service department. There will be a man who is head of the department, has quite a few programs. Sometimes the one in charge of religion will have more things to do than just religion. In some cases there is a person who has religion, but he is always at the bottom of the totem pole. It is usually a young member of the staff.

The tenuous hold of the major religious bodies on network television representation is further threatened by the commercialization of religion on television. The American Broadcasting Co. has always sold time for religious broadcasting, and of this date gives no time for religion on television. NBC recently began to sell time on radio, reversing a policy established when the newtork was formed. Only CBS has maintained its original policy that the presentation of religion is a public service obligation of the network, and has refused to demand payment for time.

Of course, we are all familiar with the arguments that networks and stations are profitmaking bodies; that religious groups have something to sell, just like soap manufacturers, and should pay their own way, and so forth. But this ignores the public service responsibility of stations and networks. The fact is that the religious agencies that are representative of Protestantism, Roman Catholicism, and Judaism have high ethical standards about the use of television. They do not use television for proselytizing; rather their programs are specifically and primarily oriented to the solution of spiritual problems. It is not too much to say that the church bodies are the only groups that broadcast primarily in the interest of "character building" as distinct from education, information, entertainment, and other uses of the mass media.

When religion becomes commercialized it is no longer possible to keep it a service function. The religious body concerned must bow, at least to some extent, to the wishes of the commercial sponsor or, if it is buying time itself, must use the bulk of its energy for fund raising to support the programs. The Christian religion is a poor commercial risk. The Gospel can best be described in the words of the Apostle Paul: It is a "scandal" and an "offense" to people of worldly view. The presentation of the Gospel on television is calculated to make men examine their consciences and come to terms with the will of God. It is not a good medium to sell products, since it cannot qualify for that least common denominator of television that it offend nobody and entertain in the process.

The broadcasting and film commission of the National Council of Churches has been concerned over the twofold trend of the networks and local stations (*a*) to commercialize religion and (*b*) to consign religion to the hours of the day when there is least audience available. The commission appointed a committee from its board of managers which conducted a yearlong study, searching for a policy that would be fair both to the television-radio industry and the religious interests of the people of America. This committee held hearings and sought the advice of leaders in religion and in broadcasting. After careful consideration, it proposed a policy on sale and allocation of time for religion, which was adopted by the board of managers of the broadcasting and film commission on March 2, 1956, and was endorsed last Wednesday, June 6, by the general board, the governing body of the council. I should like to read this policy statement into the record.

Policy Statement for Religious Broadcasting for the Board of Managers of the Broadcasting and Film Commission

The broadcasting and film commission of the National Council of Churches of Christ in the U. S. A., records its concern that religious programs of the highest quality, designed to serve the spiritual needs of the American people and to strengthen their religious foundations, be presented on television and radio; and holds that the churches and synagogues of America have an obligation to provide such a responsible broadcast ministry to all people.

The broadcasting and film commission recognizes that it is vital to religious freedom that diverse religious positions have a right to be heard. No one religious body can speak for all; nor can the right and obligation to speak be limited to the clergy.

Religion is essential to the strong and healthy continuance of our life as a nation. Therefore, public interest requires that it be given a proper place in radio and television broadcasting schedules. While the broadcasting facilities are individually and corporately owned, they are licensed to be used "in the public interest, convenience, or necessity." Therefore, licensees have an obligation to provide adequate time and facilities for the broadcasting of religious programs as a public service.

Therefore, the broadcasting and film commission declares the following statements to be its position and policy concerning religious broadcasting in the United States of America, and instructs its staff to circulate these views on religious broadcasting to appropriate officers of networks and individual radio and television stations, to the members of the Federal Communications Commission, to members of the appropriate committees of the Senate and the House of Representatives of the United States, to religious communions, and to the general public:

1. The broadcasting and film commission recognizes it to be the responsibility of the churches to provide high-quality programs (live, recorded, or on film), free as a public service. It expects the networks and stations to recognize it as their responsibility to make a substantial provision of facilities and desirable broadcast time free as a public service for such programs.

2. The broadcasting and film commission calls attention to the fact that the broadcasting industry itself has indicated its endorsement of this position in two statements contained in the television code of the National Association of Radio and Television Broadcasters:

"It is the responsibility of a television broadcaster to make available, as part of a well-balanced program schedule, adequate opportunity for religious presentations."

"A charge for television time to churches and religious bodies is not recommended."

3. The broadcasting and film commission commends the television and radio stations and networks that adhere to these policy statements in the television code of the National Association of Radio and Television Broadcasters.

4. The broadcasting and film commission advises against the sale or purchase of time for religious broadcasts. It holds this practice to be inconsistent with its own basis of operation and, by implication, with the position of the broadcasting industry as expressed in the television code. The commission, therefore, calls upon its constituent communions, councils of churches, and councils of churchwomen to exercise their influence in support of this position by discouraging the practice.

5. The broadcasting and film commission also calls upon the stations, the networks, and the Federal Communications Commission to recognize that the scheduling of sustaining religious broadcasts only in marginal or unsalable time is not in the best public interest. It records the conviction that the high objectives of religious broadcasting can best be achieved when broadcasts are scheduled at times when substantial audiences are available, and in particular the audiences for whom the programs are intended.

6. The broadcasting and film commission calls upon stations and networks, in their allotment of time to Protestant and Orthodox broadcasting, to give due consideration to the strength and representative character of the councils of churches, local and national.

7. The broadcasting and film commission holds that the scheduling of sponsored or paid-for religious programing in all or a major part of the time allotted for religious broadcasts cannot be considered an adequate discharge of the public service obligation to religion by a network or a station.

Mr. Cox. In that connection, Dr. Parker, do you have an opinion as to what would be a reasonable expectation on the part of religious groups with respect to the quantity and the scheduling of time for religious purposes?

Reverend Parker. On a network?

Mr. Cox. Yes.

Reverend Parker. I think it is reasonable to expect a national network to provide a time period a week for the central representative Protestant-Orthodox bodies, like the National Council of Churches, and a time period a week for the central Roman Catholic body that is in charge of broadcasting—I believe that is assigned to the National Catholic Welfare Conference—and to a central Jewish agency, as they have done in radio. I think that is minimal. I think that once in a while it might come at some other time but early Sunday morning, or at 1:30 in the afternoon on Sunday, before people are really up and around and looking at television. I have been in religious broadcasting since 1937. I never have had class A time on a network for a sustained series of religious programs.

Mr. Cox. How are you going to take care, without purchase of time, of the interests of groups that are not included—religious groups that are not included in those three categories: that is, largely Protestant organizations that are not a part of the national council?

Reverend PARKER. That is a problem that I have great sympathy for the stations and networks on, and I believe that those people have a right to be heard. I don't believe you can give time to them every week—to a group, for instance, that may represent 250,000 people—but on a minority basis they have a right to be heard, and I would like to see that right exercised.

Senator PURTELL (presiding). Well, do you think that the time should be allocated on the basis of the number of communicants of a particular religion, since you spoke in this case of the number of adherents to that particular religious belief?

Reverend PARKER. I am not in favor myself—and there are a lot of people who will argue with me on this—on the present type of allocation being practiced by the networks, of giving a proportional representation to Protestants, Roman Catholics, and Jews. The Protestant representation on both NBC and CBS is broken down to give some minority group representation. I believe that in our culture here in America—as far as broadcasting is concerned, anyway—Protestants, Catholics, and Jews should have an equal representation. I know that the Jews are a small part. The argument is mostly made on that basis, and I believe on CBS they get—I don't know how many weeks—but it is a very few weeks, but culturally Judaism is the basis of our Christian tradition.

Senator PURTELL. I wasn't thinking of Judaism. I was thinking more of the group that Mr. Cox spoke about, which might be classed as nonaffiliated Protestant groups that would be seeking time. I understood your answer to be that, on the basis of their membership, they should be granted some time. That is what I had in mind.

Reverend PARKER. Yes; I think it would have to be on the basis of membership. But there is this situation: The national council has been willing to represent, and has represented fairly, groups that are not affiliated with the council. For example, the Missouri synod of the Lutheran Church has a program called—I am sorry, I can't remember—but it is a film series distributed by the national council, and to the complete satisfaction of the Missouri synod and the national council. The Evangelical Lutheran Church is including a program in a series distributed by the national council. The national council stands ready to be a service agency to those groups that will permit it; and that is true also in the local situation, where the Council of Churches is a fair representative agency, and tries to be that in behalf of the churches and the station, because a group with one church in a community can cause a lot of trouble. Rightfully, they have a right to be heard, but it is hard to say that they have the same right to be heard that all of the other churches have, just as if you took it on an educational basis—well, that isn't a good simile.

Senator PURTELL. That is exactly the problem that is presented. This whole major problem—assuming time was allocated on what would be a fair basis, then you would have a reallocation of time, it would seem to me, to these numerically smaller groups who would also want time.

Reverend PARKER. They do want time, and they have gotten it through the years—and they have gotten it on a pretty fair basis, for their influence. You see, in Protestantism the very vast percentage of Protestants are members of the national council through their denominations. There are a small number of Lutheran bodies that are not members. The rest are pieces and bits in size. They are represented by other organizations—the National Association of Evangelicals represents a group of denominations. We feel they should have representation, but we can't find any way but numbers to be fair in this case.

You can say "My way of preaching the Gospel is the only way," and who can say you nay?

The churches are also deeply concerned with the effect of television on the spiritual life of American children. Criticism of children's television programs, as you know, has been widespread and bitter. The Communications Research project conducted a study in New Haven of children's viewing and the attitudes of parents toward children's television.

The report of the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary of the United States Senate lists 34 hours a week when children can be expected to be using television. This is the time between 5 to 7 p. m. and from sign-on to 7 p. m. on Saturdays and Sundays. This is a conservative interpretation on children's hours. Our study showed that children typically view programs after 7 p. m. and, in many homes, are permitted to watch television up to, and even beyond, 10 o'clock at night. We estimated conservatively that children typically spend 13 hours a week watching their regular television programs. They do additional random viewing.

The project discovered that while children constitute a major audience for television, only about 11 percent of the time of New York stations was devoted to children's programs. Drama is the program type that is broadcast most frequently in the children's hours. It may be adult drama, it may be children's drama, but it is some form of drama.

Senator PURTELL. When you speak of the children in the survey, what were the ages that you designated?

Reverend PARKER. We broke them down: Four to 9, 9 to 13, 13 to 16, 16 and above.

Senator PURTELL. What group, then, do you conservatively estimate spends 13 hours a week watching regular television programs?

Reverend PARKER. Anyone from about 5 years on up.

Senator PURTELL. But would that 13 hours apply to anyone from 5 on up?

Reverend PARKER. Yes, sir.

Senator PURTELL. Is that so?

Reverend PARKER. Yes, it is an average figure, and we are conservative about it. We could show you children who watch television 40 and 45 hours a week—and many of them.

Senator PURTELL. But from 5 on up to 16, the average would be 13 hours a week watching television?

Reverend PARKER. Yes.

Mr. Cox. That is about double the national average of 6 hours.[1]

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[1] This statement i sin error. According to some estimates, the average family watches television some 6 hours per day.

Reverend PARKER. Yes, but when you get into the home and talk to them with a tape recorder, and have the whole family there, you get to realize what children watch, whether their parents realize it or not. We found parents were reluctant to admit that the children watched certain adult programs, but the children would pipe up and describe the program in detail. The women were reluctant to admit in front of their husbands that they watched television during the day. You start out and they say they always watch Today. And you say, "You know what follows that," and they say yes, they do—and they know what follows that, and that, and that. It may not be a fair way of doing it, but it shows what they are watching.

Senator PURTELL. You say this survey is predicated upon the report of the Subcommittee To Investigate Juvenile Delinquency, and also this survey you conducted?

Reverend PARKER. Yes; I suppose the hours used in the report were gotten from the NARTB.

Senator PURTELL. I am more interested in the 13 hours—that came from your survey, and it was limited to New Haven?

Reverend PARKER. That is correct, but I don't think children are much different in New Haven from any place.

Senator PURTELL. I didn't wish to imply that. I hope they are not different, anyway. [Laughter.]

Reverend PARKER. Nor parents.

Senator PURTELL. I doubly hope that. That is astounding, 13 hours.

Reverend PARKER. It really isn't so much when you figure they will get up at 7 o'clock in the morning, before their parents are up, and start looking, almost invariably; and on Saturday and Sunday many children look all day. It is fantastic, but true; and if they don't look at home they go next door, if you don't have a television set.

Senator PURTELL. I am sorry for the interruption, but it is important to me, and it has made quite an impression on me.

Reverend PARKER. Between three and four-fifths of what is called drama for children consists of westerns. In addition the study found that children watch adult drama a considerable amount of time, and I said earlier that crime drama was the ranking program type in New York at the time the studies were made.

Studies made by the National Association of Educational Broadcasters have shown that there is a great deal of violence depicted in dramatic programs. These studies show that children's drama has twice as much violence as does adult crime drama; that most of the violence on children's dramatic shows occurs in a nonhumorous context; and that most of it is carried out by human beings.

This overemphasis on violence greatly troubled the parents who were interviewed in our New Haven study. A majority of adults generally approved of children's television programs, but many of them had reservations about particular program types; and the minority of almost 30 percent who disapproved of children's programs is so large it cannot be ignored. The basic criticisms were that there are too many westerns, too much violence. Among parents of children 4 through 9 years of age there was concern about the kinds of programs the children were watching and the effects the children were exhibiting which the parents attributed to television.

There was general concern both among parents who approved of television for children, and those who did not, over the lack of educational and religious programs for children. There was no network religious program being broadcast for children at the time the study was made, nor is there such a program on the air today. On the other hand, children are regularly exposed through television to values which conceivably could corrupt the basic moral principles of American citizenship. For instance, what is it doing to a child's understanding of law enforcement in a democracy when he is exposed, hour after hour and day after day, to television programs which tell him in effect, that the people are unable to solve law-enforcement problems, that sheriffs and other law-enforcement officers are either venal or lack intelligence, and that the only hope for fair play is from "the good guy" on the horse or in the space suit who comes in and takes over by force?

Another matter of serious concern is the effect on children of the adult programs that they must watch most of the time when they are looking at television. I am sure that there are few adults who would condone the watching of adult crime dramas by children. I am also fully aware of the argument that these programs are broadcast in the late evening so children will be in bed and will not be exposed to them.

But the fact of the matter is that children are exposed to them. It is not enough to say that such exposure is the sole responsibility of the individual parents and thus shrug off all the responsibility from the rest of us. Every citizen has a duty to aid in the proper rearing of the children of America, and the broadcaster and the sponsor or his agent are not exempt from this duty.

Mr. Cox. Isn't it true, though, that if you are to broadcast varied programs in the hours running up to 10 o'clock, where you indicate some children are still viewing television, that to have adult type programs you are going to have to leave some measure of control to the parents, in the home, to see that their children do not view what may be perfectly all right for their parents, and for other adults throughout the country?

Reverend Parker. Certainly that is true. It is also true that stations delay a lot of these things on kinescopes and don't always broadcast them in the late evening hours. WNHC didn't always broadcast the crime programs after children went to bed.

Mr. Cox. In your view is there some dividing line in time beyond which you would absolve the station or the network of responsibility for the adult content of the program?

Reverend Parker. There is and there isn't, Mr. Cox. It is a very difficult problem, and I know it; but you find a child—I have a daughter who is 13 years old, and typically in our community 13-year-olds go to bed between 9:30 and 10 o'clock, whatever time you can force them into bed in that period. Now, while my own child doesn't watch television too much, I don't think, nevertheless, she is up to see the programs that are on at 9 o'clock, at least, and sometimes later, and she is not untypical of children. And I think you have to have a great deal of care on any kind of program you put into the home.

On the other side, I do not for one minute think that the artistic value of programs should be cut down for moralistic bases. I think that there has to be some thought of how much violence you put on a program, for instance, of any type that is going into the home—how much is necessary to the action, and how much just lets it move along; how much other material is put in that is necessary to the action, and how much is slipped in because it is a quickly written script. There has to be a concern, at any time of the day, for that.

Mr. Cox. You would think, then, that the most that could be said is that you would expect greater care in certain hours of the viewing day than in others, because of the greater likelihood of a high percentage of children in the audience?

Reverend PARKER. Yes, but I would like to see some care all of the way up, because don't forget that 15-, 16-, and 17-year-old children are looking at television just the way their parents do. They are adult listeners after they get to be 15.

Senator PURTELL. Isn't it also true that we are reaching an audience that weren't exposed, for instance, to the westerns that our people objected to when we were youngsters? Children are watching television today who are unable to read, and they see these westerns and see other things. I know westerns go on long before the children's bedtime. I have some grandchildren that like to watch television, and I at times fear as to what is happening to them by watching these programs they are subject to—and they can't read yet.

Reverend PARKER. There is that, which is very important, and there is the additional fact that you and I, when we were children, depending on how liberal our parents were, would get to a movie show and see William S. Hart once a week. That is all that they ever had then; and if you were like me it was every 2 or 3 weeks, maybe. Now, that isn't so bad; but when you are exposed, day after day and hour after hour, to exactly the same thing, and when you have no critical judgment, you begin to believe what you see. The Nazis found that out—they used it to good advantage. The Communists use it to advantage today on adults.

Now, what does it do to children? We don't know yet. We haven't had time to find out. I think it is more dangerous than the movie situation ever was. Of course, we got overexcited about what movies would do to us, I think. But this is something different. It has never been known in history before.

Senator PURTELL. We either got overexcited about it, or lived with the situation after it was created.

Reverend PARKER. It could be one or the other. That answers, a little bit more, the question I think you asked, too.

Parents know all too well that the tremendous publicity buildup given to certain of the evening television programs, including crime dramas, creates an almost irresistible demand on the part of children to experience the joys of these apparently delectable entertainment features.

The television industry has only partially recognized its obligation in this matter.

I should like to quote from paragraph one of the section entitled "Responsibility Toward Children" of the Television Code of the National Association of Radio and Television Broadcasters. This paragraph states:

> The education of children involves giving them a sense of the world at large. Crime, violence, and sex are a part of the world they will be called upon to meet, and a certain amount of proper presentation of such is helpful in orienting the

child to his social surroundings. However, violence and illicit sex shall not be presented in an attractive manner, nor to an extent such as will lead a child to believe that they play a greater part in life than they do.

I know this is not a careless flouting of convention. A case can be made for teaching children proper attitudes toward illicit sex, crime, and violence. But when the broadcasters undertake this educational responsibility toward our children—and they do it voluntarily—they must also be certain that such programs are carefully supervised by trained educators, religious leaders, and others with similar professional backgrounds. To adopt a code which permits the description, to children, of illicit sex, crime, and violence without guidance of a high professional order shows a shocking disregard of public responsibility.

We have scarcely had an opportunity to find out what the effect of the mass media in general may be through the acceleration that they give to the impact of the environment on the growing child. They present the child with the problems of the environment regardless of his stage of maturity. While the television broadcaster may think that he is doing the right thing, parents may have personal policies of not introducing the child of, let us say, 9 years to problems presented by marital infidelity. Yet by means of the television screen, such problems are thrust at him as soon as he is able to perceive the medium.

Children are not sophisticated enough to understand the implications of organized crime or of illicit sex relations. This criticism is pertinent both for the adult programs to which children are exposed inadvertently and, to an even greater extent, to the children's programs which deal in crime and violence in their content. No matter how few children are exposed to such programs the exposure is still unjustifiable. Children do not distinguish between the guns that a criminal shoots and the guns that a policeman shoots.

One of the parents interviewed in the New Haven studies gave a succinct opinion which might well be accepted as a universal principle in television programing. He said, "An older person knows crime does not pay, but children do not properly understand."

Purely from a business standpoint we would expect the television industry to look seriously at the criticisms made of children's programs by parents, educators, and impartial observers. Even if these critics are in the minority the leaders of the industry cannot evade—and will not wish to evade—their responsibility to find out through objective, scientific research as much as can be discovered about the effects on children of various types of programs now taking up a large proportion of television time. Nor can they forever evade the responsibility to present a number and variety of programs that, while they may well be entertaining, clearly enunciate the basic values of our Hebrew-Christian tradition and our American democracy. The director of children's work of the National Council of Churches, in writing of the need for research in religious television, has summed up well the attitude of responsible Christian educators to children's television programing. I should like to quote her:

It would be easy for the industry to toss its responsibility off lightly with the statement that parents are the guardians of their children and should control their viewing. But it would also be less than completely candid. For the truth is that not only parents, but even educators, lack a sound basis for judgment in assessing the merit of different programs. Further, all parents are not equally responsible guardians.

It is also true that when a set is turned off at home, the child may be welcome at the neighbor's. And, finally, an industry as anxious as television to come in the home certainly has a grave responsibility to that home, especially when its purposes are commercial.

Senator PURTELL. I would like to say here, too, that your touching on all of this is very important to me, particularly the effect on children. The persuasiveness of television on the minds of youngsters is pretty well demonstrated for you who have children—or in my case, grandchildren—because I find that my daughter almost has to have a grocery store to satisfy what the youngsters want for breakfast, because they saw a television show last night that said it should be pop and crackle, and tomorrow it has to be something else. They think that anything they see on television has to be right, and is right, contrary to what their parents tell them.

I find I am eating new breakfast foods all of the time because somebody on television thought it was a good thing to have. They do think everything they see there is just about right. It has a tremendous effect upon them during this time of life when they are very easily impressed, and I think we sometimes don't give proper value to that, and proper weight to that, and the effect on the minds of youngsters.

I think, too, that some of the things they see—I know in one particular case I am quite sure what one youngster saw on television was a reason for dreams at night, waking up and screaming, and being frightened about things which were horrible things she had seen on television. I think we must do something about it.

Reverend PARKER. Well, things are horrible to children that are routine to adults, also, because they haven't experienced them before, and we don't realize how much influence they have when they come through this medium because the child—no matter what you may say about its being a film, or anything else—the child things he is seeing something that is happening. In the back of his mind he always deals in terms of realities.

All television and radio stations, and, of course, the networks, have this obligation of broadcasting in the public interest. One phase of the obligation is broadcasting for religion, which is the greatest single force in the lives of our people. The networks have failed to fulfill this obligation on television by drastically limiting time for religion, by confining religious programs to the least desirable time, and by failing to meet the costs for programing. The American Broadcasting Co. has compounded all three failures by its policy of selling time for religion without regard to the representative character of the groups which come with money in their hands. There is danger National Broadcasting Co. will now adopt a similar policy.

Religious bodies such as the National Council of Churches, in my opinion, are willing to do their share as partners of the networks in serving the needs of the American people through religious broadcasting. The church organizations are wasting their substance on the present kind of network television programing. Until the networks and local stations provide (*a*) sufficient time; (*b*) good time; and (*c*) good production, they are not fulfilling their obligation to broadcast in the public interest, convenience or necessity in terms of the needs of the American people for religion.

Senator PURTELL. Well, while I wasn't here, as I said before—I had to appear on the floor; I had a short speech I wanted to deliver in the Senate and couldn't be here to hear all of your testimony—I want to thank you for appearing here, Reverend Parker, and I again assure you that I shall read all of your testimony, not only because it contains a survey made in New Haven, but because I think it contains information that would be most helpful to me as a member of this committee.

I have no questions to ask you, but Mr. Cox may—I beg your pardon, Senator, I apologize. You came in so quietly I didn't see you. Have you any questions?

Senator WOFFORD. No; I have no questions. I listened with a great deal of interest. I came in just a few minutes ago.

Senator PURTELL. You have treated the subject—again I don't know, of course, what the first portion of your testimony was—but you have treated the matter in a broad general way.

Now, have you specific recommendations to give to the committee as to the time, the hours—you speak of class A time, and we know what that is—but the degree of that time, the amount of that time, how it should be provided. You have touched upon it generally, but rather in a broad way. Those are all problems that ultimately will have to be met and answered if this is going to be solved as you feel it should be, and as completely as you would like to see it solved.

Reverend PARKER. Well, of course, Senator, I am not an attorney, I don't know how to draw legislation.

Senator PURTELL. That makes us even. I am not, either. [Laughter.]

Reverend PARKER. That is right; you are a manufacturer. That is a problem that we have faced for a long time. I believe in the original Communications Act there was inserted a clause that directed the FCC to come back—I would have to have the act, I haven't read it in years—but directed the FCC to come back and make a recommendation to the Congress as to how public interest could best be served.

Mr. COX. They never did.

Reverend PARKER. That is correct. They never made such a recommendation. There must be some way in which the general public can—once a day, at least—get public-service programs in times when the audience is available, say between 7:30 and 10 at night, when there is a majority audience. For example, I said that we had 14 program types, and we found an audience for 10 of them. One of the types we didn't find an audience for was public affairs. The reason we didn't find an audience was because there wasn't any program—and if there was, the audience was eating, or in bed, just as with religion. These people that listen to religion really have to be interested. They have to hunt around for it; and if you want to find out something about the Government of the United States, or something of that sort—unless it is the Secretary of State, or the President that is speaking, or it is a campaign—you don't get much of it.

For example, in children's programs, there is no educational program on in the hours when the children are watching. That is prime time.

You can put the Mickey Mouse Club on and get kids, but sometimes it might be wise to put on a series that tells how the Government of the United States works. There ought to be some time reserved for doing that, because the children are interested in that. We tried a little experiment outside television to see about putting on a program. We brought kids in and offered them a dollar and asked them what power did the House of Representatives have that the Senate did not have and that was directly representative of the people. None of the children knew, but they ran around the next week and came up with an answer. We almost got the program on the air, but we didn't. That kind of program, I think, ought to be required somehow—that kind of program be put on once in a while for children and adults, too.

There is a large audience for good programing. Look at the audience for Richard III. That is entertainment. There can be a substantial audience brought together for real discussion of public issues. They do it in Britain. It isn't what the stations and networks may want to call a mass audience, but their "mass audience" on a lot of the big entertainment programs is a very minority audience, as their own research shows. So I believe that, somehow, there is going to have to be a requirement that in the good times there be some public-service programing done.

Mr. Cox. Would you suggest, then, that this might be done in the form of the specification of certain percentages within prime time, as well as overall, which should be devoted to different types of programs?

Reverend PARKER. I do not see how you can do it any other way. You cannot say at 8 o'clock on Wednesday night you have to do something—you have to leave the stations some flexibility. But if the Federal Communications Commission was really concerned with programing—if it really followed its own Blue Book, for example—we might not have this problem. There might be some voluntary conformity with the public interest, but somehow some agency is going to have to look at the programing and say, "See here, you have all of your programs that deal with information, education, public affairs, on Sunday morning. Get them off Sunday morning and put them on sometime on Monday, Tuesday, Wednesday, Thursday, or Friday night."

Mr. Cox. To your knowledge, has any church group ever participated in a proceeding involving the renewal of the license of, let us say, one of the stations licensed to one of the national networks, and made a showing to the FCC as to the state of what you regard as lack of balance in programing?

Reverend PARKER. Recently church groups participated in a hearing on a station in New Orleans. The FCC renewed the license. I do not know the whole story, but certainly there was no religion on the station. I believe there was no education.

Mr. Cox. I assume, however, that the station promised that there would be, and that the promise was accepted, and that they will look 3 years from now, when the station's license comes up for renewal again.

Reverend PARKER. Yes; that is what happens. There have been other cases where church groups have appeared. There have been a couple of cases, maybe, where the FCC listened to them, I don't know. I cannot cite them to you, but there have been such cases. And we advised local groups—I mean people in positions like myself, now, not the National Council of Churches officially; but people like myself who had radio and television for denominations—we advised churches to "Work the matter out, if you can, with the station; but if you can't—appear before the FCC."

But there is nobody that helps a public-interest group appear before the FCC—and least of all the Federal Communications Commission. I have an example of a letter that was written just a few weeks ago to the FCC about, not just something a person did not like on a particular station, but the program schedule—and a completely perfunctory letter back from the FCC saying that the letter would go in the file. He had also written to the station, and there was a letter from the station pointing out that they were for public-service programs, as if they were the whole program schedule.

I think the FCC has to be a little tougher if they are going to get anything out of it.

Mr. Cox. That is all.

Senator PURTELL. We want to thank you, Reverend Parker, for appearing. If there are no other witnesses here, these hearings will adjourn until tomorrow, June 12, at 10 a. m., at which time Dr. Frank Stanton, president of CBS, will appear as a witness.

(Whereupon, at 4:50 p. m., the committee adjourned, to reconvene at 10 a. m., Tuesday, June 12, 1956.)

TELEVISION INQUIRY

(Network Practices)

TUESDAY, JUNE 12, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to notice, at 10:25 a. m., in room G–16, the Capitol, Senator John O. Pastore, presiding.

Present: Senators Magnuson, Pastore, Ervin, Bricker, Butler, Potter, Duff, and Purtell.

Also present: Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel; Bertram O. Wissman, assistant chief clerk.

Senator PASTORE. This hearing will come to order.

Our first witness is Dr. Stanton of CBS. I am a little concerned about the facilities in this room. I realize it is a small room and there are many interested people. Is there some way we could open up those doors and spread about a dozen chairs in there?

Mr. Purtell has suggested that maybe we ought to wait until we get the new Senate Office Building. [Laughter.]

Mr. STANTON. That is agreeable to me.

Senator BUTLER. That suggestion may be very welcome.

Senator PASTORE. This is off the record.

(Discussion off the record.)

Senator PASTORE. All right, Doctor, you may begin.

STATEMENT OF FRANK STANTON, PRESIDENT, COLUMBIA BROADCASTING SYSTEM, INC.

Mr. STANTON. Mr. Chairman, and members of the committee, my name is Frank Stanton. I am president of Columbia Broadcasting System, Inc., which is composed of seven operating divisions. One of these, the CBS television division, is engaged in four broad areas of television broadcasting: the CBS television network, CBS-owned television stations, CBS television spot sales, and CBS Television Film Sales, Inc. With me today are Mr. J. L. Van Volkenburg, president of CBS television, Mr. Richard S. Salant, vice president of CBS television, Mr. William B. Lodge, vice president in charge of engineering, CBS television, and Mr. Sidney S. Alexander, CBS economist.

Also with us is Judge Bruce Bromley, member of the firm of Cravath, Swaine & Moore.

My associates and I welcome this opportunity to appear before you today, to discuss the general topic of "network practices." Television broadcasting in all its aspects is constantly growing and evolving, and it is most important that all of us who are interested in it are properly aware of the facts and circumstances that govern its growth.

We are here today to try to do three things: First, I want to describe broadly what a television network is, what it does for people, stations, and sponsors, and how it operates. Second, I want to answer specific charges which have been leveled at networks. In this connection, I asked to testify after the critics had appeared in order to be able to deal directly with their comments and thereby avoid a generalized presentation. Third, and finally, of course, I am here to try to answer your questions.

The television network industry is an industry of very great complexity. It undertakes to provide, on an efficient and economic basis, a nationwide service of information and entertainment to millions of individual owners of television receiving sets. It must perform its difficult and highly diverse functions on a split-second timetable, more rigidly adhered to than that of any railroad or airplane.

One of its most essential functions is to provide instantaneous national interconnection day in, day out, between great cities and small towns throughout the length and breadth of America. It does so in more permutations and combinations than can be calculated. It does so for purposes ranging all the way from entertainment, through the presentation of unique on-the-spot coverage of such essentials to our government as the national political conventions and elections to be held this year—through this, I say, to the instantaneous alertment of the public in time of national crisis. No such facilities ever existed before the creation of the networks, nothing except networks can serve these functions, and nothing now imagined can take their essential place. These statements are central to my discussion, so I make them with some considerable emphasis.

The subject matter of networking is huge, and I know of no one man who has completely mastered it all. Yet all of its parts are closely interrelated, and no part can be examined in isolation from the others. This may seem like an elementary point, but I must emphasize it. A network is an organic thing—that is, it is very much alive. We all know that our own bodies are made up of only a few pennies' worth of chemicals. We also know that our own bodies are made up of a variety of separate organs. But neither the chemicals nor the organs can be alive by themselves; it takes the whole to be alive. And it is the same with so complicated a thing as a network. It has to be considered as an entity. The dangers of considering it only as a set of disrelated parts to be juggled around any which way are most considerable, and not everyone has successfully avoided them, by any means.

Because of the importance and complexity of the issues we are considering here, they cannot be dealt with quickly. Lunchtime gossip, tablecloth arithmetic and inexpert speculations cannot successfully deal with these issues, rooted as they are in the natural laws that govern the electron, or the economic laws that govern how an enterprise can be successfully conducted. Neglect or ignorance of basic facts can lead to wholly wrong conclusions, and wrong conclusions can lead to disaster. Judgment, to be successful here, must be highly informed judgment, based upon adequate and accurate knowledge.

For this reason, CBS has attempted to set forth the facts of its enterprise as comprehensively and in as much detail as possible. I would place an intolerably heavy burden upon this committee, and indeed upon myself, if I attempted, in an oral statement, to place all the facts and considerations before you. Therefore, we have prepared, and submit to this committee for the record, a number of documents, as follows:

1. A Supplemental Memorandum entitled "Network Practices.": Printers page proofs of this document have been in your hands since a week ago today. It describes the dimensions of television; the role of networks in the development of television, the tripartite network functions—for the public, for the stations, for the national advertisers; the operations of the CBS television network; the internal economics of networking—where the money cames from, where it goes and what the profits are; the external economics of network television as an advertising medium—the problems of creating an efficient lineup of stations and a sound program schedule so that the network is a good buy for the advertiser. It also examines in detail the charges which have been made against the network and discusses the various proposals which have been advanced. This I would describe as the basic document which deals with these matters definitively.

Senator PASTORE. On the question of incorporating these in the record, do you desire to have them incorporated by reference and to be filed with the committee so that anyone may be referred to them, or do you want them to be made a part of the body of the record? The reason I say that is they are rather voluminous, and I think we ought to charge the counsel of the committee to take the matter up with the chairman to see just how he would like to have it done. Because every time—committee hearings will be printed, and of course this will be part of it. I am thinking of the expense involved.

Mr. STANTON. It would be satisfactory, Mr. Chairman, as far as I am concerned, if they were made simply as reference documents.

Senator PASTORE. All right, sir.

(It was later agreed, however, that this and the succeeding documents would be incorporated into the record. The document referred to is as follows:)

NETWORK PRACTICES

Memorandum Supplementing

Statement of Frank Stanton, President,

Columbia Broadcasting System, Inc.

Prepared for the Senate Committee

on Interstate and Foreign Commerce by

Columbia Broadcasting System, Inc.

June 1956

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PART I: General Introduction

Purpose of this Memorandum

This memorandum has been prepared in the conviction that there has been little understanding, and considerable misunderstanding, of precisely what a television network is, what its functions and relationships with stations, advertisers and the public are, and how it operates. To the casual outsider—the viewer of programs—network broadcasting is exceedingly simple. A knob on the television set is turned to the on position and after a few seconds a picture appears on the face of the tube; the viewer turns another dial to see what other pictures there are; and if he finds what he likes, he settles back to watch—perhaps a play from Hollywood, or a political convention from Chicago or San Francisco, or a news program from many parts of the country, or a visit to Harvard University, or a variety program from New York City, or an interview with a Senator in Washington. One program follows another, with split-second timing. People—drama—news—debates—discussion, appear on the television screen. The viewer looks at what he wants and when he no longer wants to look, he turns the knob to the off position and goes on to some other activity.

It is the purpose of this memorandum to describe comprehensively what is behind the pictures on the face of the cathode ray tube. It has been prepared in order to give to the Committee some idea of the people, the equipment, the organization, the skills and the economics which make possible the remarkable flow of network programs.

The business structure out of which those pictures grow is complex. In many of its elements and combination of elements, it is unique, with no counterpart in other more familiar industries. The business of networking involves a unique integration of otherwise unrelated groups, skills and elements. It is a wedding of creative skills with the hardest-headed kind of slide-rule economics. Its success and its existence hinge on three wholly interdependent and interlocking elements—the public, television stations and advertisers.

The complexity of the structure has grown out of the demands and very nature of the business. There are profound reasons for the details of the structure, rooted in the necessities of the business itself.

Criticisms which have been leveled against networks and their practices, and proposals which have been advanced for change, can be properly weighed only in the context of the entire structure of the business. So interlocking are the relationships that often what appears to be one small change can injure and perhaps even destroy the entire structure.

Therefore, this memorandum has been prepared to provide the basic facts which are necessary before discriminating judgments can be made.

Part II of this memorandum will examine the dimensions of television today, its growth and the role of networks in television. Also in Part II, in order to provide a better understanding of what a network is, this memorandum will describe the CBS Television Network in terms of its organization, manpower facilities, stations and program structure.

To give greater clarity of understanding, Part III of this memorandum will deal with some of the *internal* economics of networking by focusing on one CBS Television Network program, in order to illustrate what the programming functions of a network are, why they are necessary and how the revenues derived from the program are expended.

Part IV will deal with the *external* economics of networking —the economics of providing sound values to advertisers through providing an efficient aggregate of stations and an efficient program structure. Finally, Part V will examine, in the light of Parts II, III and IV, some of the charges against networks and proposals for change.

PART II: Networks—Their Role in Television, Their Functions and Their Nature

A. THE DIMENSIONS OF TELEVISION. Today, over 34 million families in the United States have one or more television sets. They have invested $16.6 billion for the purchase and maintenance of these sets, and the latest figures show each family averages slightly over six hours a day watching television.[1]

Television's growth has been remarkably rapid. It took television ten years to reach 34 million homes. It took telephone service 80 years to reach that number of homes; electrical wiring, 62 years; automobiles in use, 49 years; the electric washing machine, 47 years; the electric refrigerator, 37 years; and radio, 25 years. See Chart I.

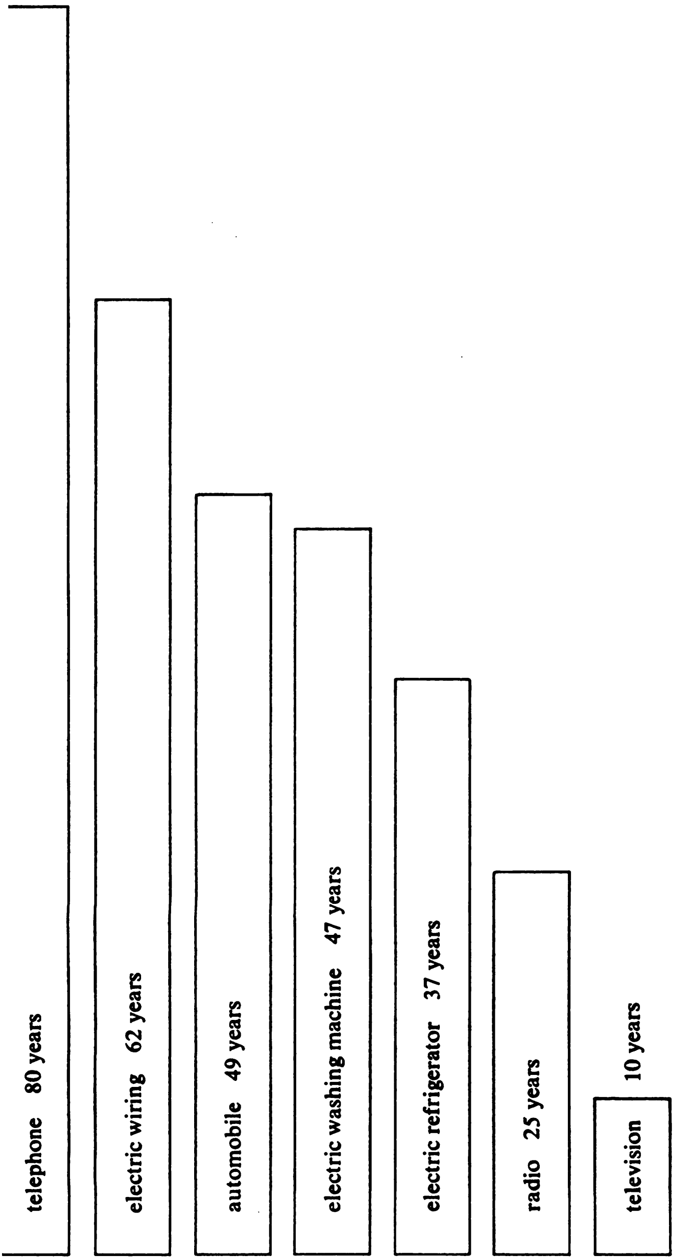
The public investment in money and time and the rate of growth of television have a vital implication to those concerned with the industry. Its dimensions today provide a striking measure of the public's interest in, and its acceptance of, television. It would be difficult to find any industry or business activity with so clear and explicit a stamp of public approval.

The universality of television in the United States is further evidenced by the fact, as Chart II shows, that 99.2 per cent of United States families live in areas which are within range of

[1]Nielsen Television Index, National Television Nielsen-Ratings, First Report for March 1956. The A. C. Nielsen Company is a leading research organization which studies and reports on broadcasting audience data.

CHART I

YEARS TO REACH 34 MILLION HOMES



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POPULATION DISTORT MAP OF THE UNITED

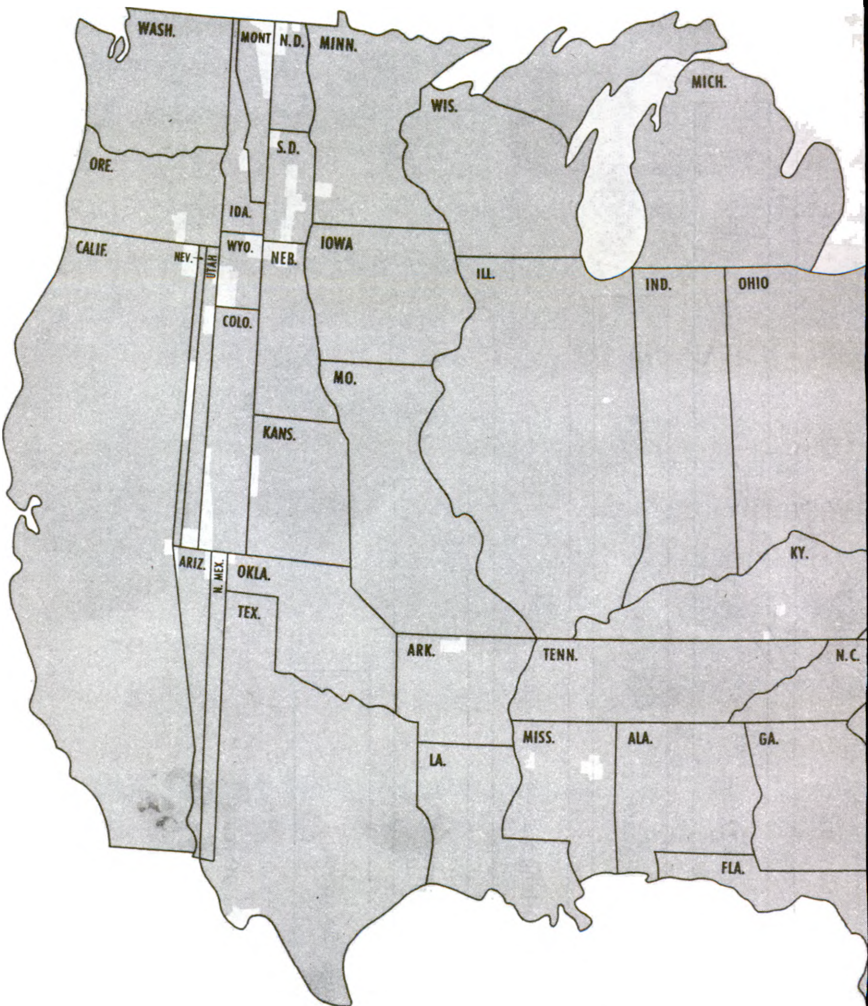
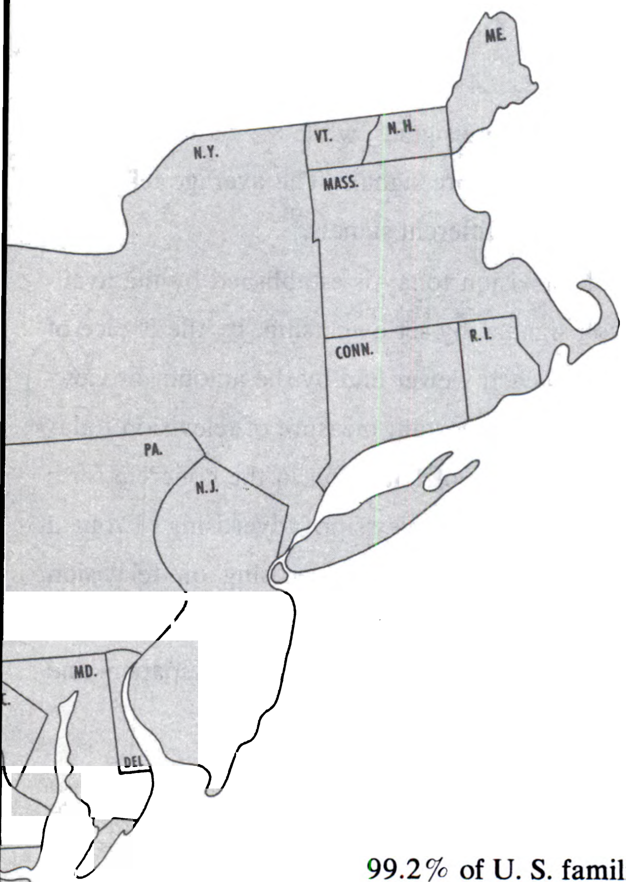


CHART II

G TELEVISION COVERAGE FROM ALL U.S. STATIONS



99.2% of U. S. families
live in areas served by television
as of March 1, 1956

7 out of 10 families have sets

at least one television signal.[1] More than seven out of ten United States families actually have television sets. Exclusive of educational stations, by March 1, 1956, there were 429 stations on the air, of which 393[2] were affiliated with a nationwide network.

Despite misconceptions to the contrary, in the vast majority of cases the American public has a considerable choice of service. As Chart III shows, 9.4 out of every ten television homes have a choice of two or more signals, while 8.7 out of every ten have a choice of three or more signals. The average television home has a choice of 5.1 different signals.[3]

Thus the size of television today is established by the availability of television signals, by set ownership, by the choice of programs available to each viewer and by the amount of viewing. But there is another important measure of television today —the advertisers' evaluation of television in the concrete form of their dollar investment in television advertising. From a volume of $57.8 million in 1949, advertising on television grew to more than $1 billion in 1955, far outstripping the rate of growth of national advertising revenues for newspapers and magazines during that period.

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[1]Areas "within the range of at least one television signal" are all counties: (1) in which ten per cent or more of the homes had television sets on June 1, 1955, according to Advertising Research Foundation estimates, plus (2) all counties in the service areas of CBS Television affiliates which have gone on the air since June 1, 1955, and (3) all counties in the service areas of other stations which have gone on the air since June 1, 1955.

The service area of a CBS Television affiliate is defined in accordance with the criteria of the CBS Television Engineering Department as indicated on pp. XVII to XXII of Appendix C of this memorandum. The service areas of other stations which have gone on the air since June 1, 1955, are assumed to include all counties more than half of which fall within 50 miles of the station transmitter for a VHF station and within 30 miles of the station transmitter for a UHF station.

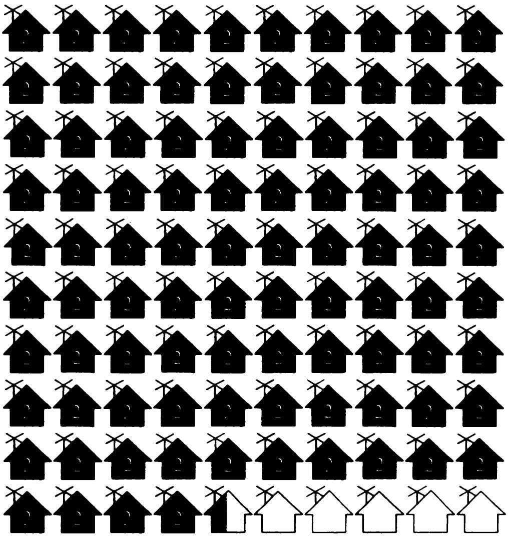
[2]Not including non-affiliated stations receiving network programs on a per-program basis, but including four satellites. Of the remaining 36 non-affiliated stations, 13 are in cities where all three networks have primary affiliates or own their own stations. Of the 23 in other cities, the CBS Television Network supplies programs to six stations on a per-program basis. Undoubtedly the other two networks similarly supply programs to some, if not all, of the other stations.

[3]Based on a special Nielsen Television Index study as of January 1, 1956.

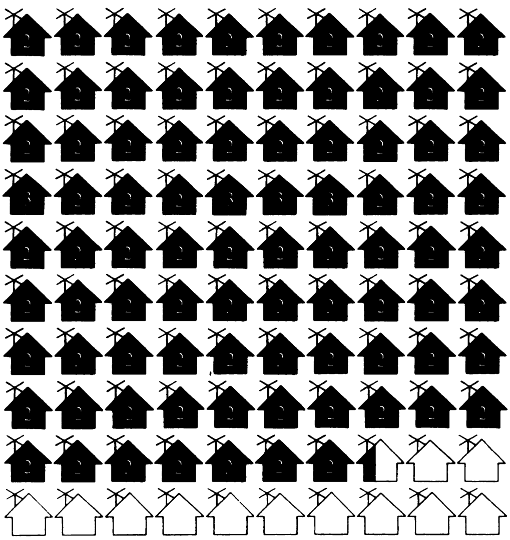
CHART III

CHOICE OF SERVICE IN U. S. TELEVISION HOMES

service from 2 or more stations — 94.4%



service from 3 or more stations — 87.3%



B. THE ROLE OF NETWORKS IN THE DEVELOPMENT OF TELEVISION. The foregoing provides some measure of the size of television and the rate of its growth. There can be no serious question that the stimulus for that growth and a basic, if not *the* basic, reason for its current size is *network* television.

The networks were active in the development of television long before most others now on the scene. By the end of 1930, both CBS and NBC had established television laboratories and had been licensed to operate experimental television stations. By the end of 1931, CBS was broadcasting on a regular schedule over its local station in New York. It was not until after the war, in 1946, however, that full scale broadcasting operations were possible.

But in the early postwar period there were few sets, numbering only in the tens of thousands. Because there were so few sets, there were few programs, since advertisers were unwilling to pay for programs which had such small potential audiences. Conversely, because there were so few programs, there was little incentive to purchase receivers. The industry was thus bound within a tight circle of economic frustration.

There was only one way to break out: to program far in excess of what was then justified by the number of sets, the potential viewers and advertiser interest. It was the television networks which, at enormous cost to themselves, broke the circle. They embarked on what was then an extremely uncertain and risky course. They provided the major entertainment programs and the broadcasts of popular sports events and important political events of national interest.

As was stated in a recent article in the *New York Herald*

Tribune (December 22, 1955), it was these programs that "signaled the start of television as a major industry back in June of 1949. There were few stations then and practically no network to speak of. Within a matter of weeks, people were flocking to their television dealers to buy sets because they wanted 'to see Milton Berle' [on NBC]."

Thus it was the networks, with their investment of creative energy and of dollars, that provided the driving force that brought together the families in the home, the receiver manufacturers, the performers and writers, the advertisers and the station licensees, which led to the explosion of television on the American scene.

In priming the television network pump so as to lead to the flow that we know today, CBS, alone, invested $53.1 million from 1934 through 1952, without a single year of network profit.

It may be noted that during that period of initial growth and financial loss, CBS Television alone among the networks lacked both of two vital elements: (1) ownership of its permissible quota of stations, which historically are profitable before networks are[1]; and (2) a supporting television receiver manufacturing activity. NBC and ABC each had five stations in major markets and DuMont had three, while CBS, until 1951, owned only one station. NBC and DuMont also were engaged in the manufacture of receivers, so that their investments in programming could be justified by the returns which resulted through the sale of receivers stimulated by programming.[2]

[1]See Part V, p. 131 of this memorandum.

[2]CBS did not enter receiver manufacturing until 1951.

In sum, the road which in retrospect may sometimes appear to have been so easy for the CBS Television Network to chart and develop—and on which so many who contributed so little in the early days to its construction would now like to travel—was a hard and dangerous one and its direction, while clear today, was by no means clear a few short years ago.

C. NETWORK FUNCTIONS. Networks today perform the same functions for the public, stations and advertisers, that they performed in starting television on its miraculous road to success.

(1) *Network functions for the public.* Networks function first for the public. The networks bring to the public news, information, education, and more and better entertainment than the general public has ever known on a nationwide basis. Today, through the networks and without paying any fee, the entire nation can see the Sadler's Wells Ballet, the World Series, "Peter Pan," "The Caine Mutiny Court-Martial," a debate between Leonard Hall and Paul Butler, a discussion of the Federal Constitution by Joseph Welch and an infinite variety of the best that the entertainment world has to offer. Never before have such opportunities for education and amusement been made so universally available, and on such a scale, to the people of any nation.[1]

By making available throughout the country information, education and the best of our culture, network television has

[1]For an interesting and vivid article concerning the cultural effect of television in Iowa, see an article in *Harper's Magazine*, April 1956, by William Zinsser, motion picture editor of the *New York Herald Tribune*, entitled "Out Where the Tall Antennas Grow." In his article, Mr. Zinsser describes a visit to Iowa where, to his consternation, his friends and relatives discussed cultural and entertainment matters to which they had been exposed through television with which Mr. Zinsser, who had no television set in New York, was unfamiliar. Mr. Zinsser resolved, on his return to New York, to become thoroughly familiar with the more obscure aspects of farms and farming, so that on his return to Iowa he might match the expertness of Iowans in their own fields.

brought about a cohesion among the people of the United States which has never before existed, and has given them a firsthand knowledge of the entire country which has never before been available to them. And it has provided the potential of an incalculable benefit in terms of the national interest, for it makes available a means by which in times of national crisis the nation is afforded a mobility which is needed to meet totalitarianism.[1]

It should be emphasized that the only source of nationwide *live* programming is the networks. Only by live network programming can events of national interest be seen throughout the country as they happen. The entertainment and informative qualities of some film programs cannot be denied; indeed, some programs require film and are better because of it. But good as film programs are, it is the live quality, the sense of seeing the actual event or performance taking place before the eyes of the viewer as he sits in his living room, that is the real magic of television. To remit television largely to film is to confine its excitement, scope and impact,[2] and even more important, it is to destroy the only effective means of nationwide visual communication to the entire country for national emergency purposes.

(2) *Network functions for the stations.* None of this service to the public can, of course, be performed by a network except through the individual stations. The second major element in television networking and the second vital link is, therefore, the stations themselves.

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[1]See Frank Stanton, "The Role of Television in Our Society," before the National Association of Radio and Television Broadcasters, May 26, 1955.

[2]Another advantage of a *live* series of programs over film is the flexibility of the former in its being susceptible of change and reshaping in the light of actual experience and public response. See p. 39 of this memorandum.

A major difference between radio and television has thus far proven to be the great cost of television programming, even on a local basis. A vital function, accordingly, which networks perform for stations, is furnishing them with programming. Network programs furnish a double benefit to stations: First, revenues accrue to the station for carrying the network programs (see p. 47 of this memorandum). And second (and in many ways equally important), because the network has provided the programs to the station, the station is relieved of the necessity to expend monies for its own local programs or for the acquisition of other outside programs.[1]

Thus network service to the stations provides them with not only a program schedule at no additional cost to them but also revenue from network advertisers. Further, there is a third and basic by-product of benefits to the stations: As a result of a network's providing major programs of substantial popularity, a large circulation accrues to the affiliate. This large circulation attracts additional revenues directly to the station—revenues both from national spot advertisers and from local advertisers. These revenues are vital in station economics. It is a basic fact of television advertising that advertisers look to "adjacencies" —the times, whether 10 seconds, 30 seconds, a minute, 15 minutes or half-an-hour, which may be available adjacent to the programs which have attracted the greatest audiences.

The rating services show that, with rare exceptions, network

[1]The network schedule supplied to the affiliates is composed not only of the sponsored programs but also the sustaining entertainment and public affairs programs. These sustaining programs cost CBS Television in excess of $10.5 million in 1955 without any allocation of general administrative overhead (see p. 43 of this memorandum). It is reasonable to assume that no station, or limited group of stations, could afford to present such programs at their own expense or through their own facilities.

programs are far and away the most popular.[1] Hence it is network programs which build the station's circulation, on which the station bases its rates,[2] and make it possible for the station to attract additional revenues. In this important sense, it is relevant to note, network programming and national spot and local programming are not antithetical at all. Indeed, national spot and local advertising is complementary to network programming and takes its strength from a strong network schedule. National spot and local revenues in television have increased with network revenues (see pp. 123 to 126 of this memorandum). An explicit illustration of the strength which national spot programs are given by network programs is provided by the following comment of Frederick W. Ziv, the president of a leading producer of syndicated films, which appeared in *Variety* on November 16, 1955: "Ziv said that since the PEP, EMP and other network plans to bring web programming to smaller markets got underway, Ziv's sales to stations included in the plans have undergone an increase of between 10% and 15%. He declared that 'it's been the industry patterns so far that the more network programming an unaffiliated [sic] station carries, the more syndicated films it also schedules, boosting the total number of program hours the station airs each week.' Smaller stations, once they get more network revenue, he explained, usually use it to

[1]In the 60 television markets for which American Research Bureau local rating reports are available for January, February, or March, 1956:

10 of the 10 most popular programs are network programs in 46 markets.
9 of the 10 most popular programs are network programs in 12 markets.
8 of the 10 most popular programs are network programs in 2 markets.

In other words, on the average, in these 60 markets, 9.7 of the top 10 programs are network programs.

[2]An analysis of rate cards of stations in markets in which four or more stations are located shows that a network affiliation contributes to the circulation of the station so that it in fact charges a higher rate for all hours of the broadcast day than do non-affiliates, no matter how remote those hours are from a network program.

expand their airtime, buying in most cases syndicated film to do so."

While discussion of the division of revenues between stations and network is reserved for a later point in this memorandum (see p. 47), it may be noted here that it is this factor of dependence of national spot and local revenues on network programming which underscores the inaccuracy of comparing the direct revenues which a station receives from a national network advertiser for carrying a network program with the revenues received from national spot and local advertisers. In the first place, a station necessarily bears greater costs when it must provide its own sponsored program locally and must itself pay various costs such as advertising agency commissions in addition to operating costs and sales costs. Furthermore, there must be added to the revenues which accrue to the stations directly from the network program the circulation and revenues which come to it through national spot and local advertisers *because* of the network program. In many ways, the contribution of network programs as a factor in increasing the affiliates' circulation and rates generally and in attracting the national spot and local dollars is even more valuable to the affiliate than the actual revenues received by the affiliates directly from the networks as their share of the payment of national network advertisers.

(3) *Network functions for national advertisers.* As has been seen, the public and the stations are two of the vital elements which permit networks to exist and to which networks provide services and for which they perform their basic functions. The third vital element and the third point in television's immutable

triangle are the advertisers. For advertisers, network television provides large circulation at specific time periods in the schedule at a low unit "cost per thousand" (see pp. 59 to 85 of this memorandum) and in one efficient purchase. Detailed discussion of the economics of advertising in network television is reserved for Part IV of this memorandum. It is well to emphasize, however, that advertisers are hard-headed businessmen, who invest their advertising dollars carefully and as scientifically as possible. The annual investment of individual advertisers in network television ranges from the tens of thousands of dollars to the tens of millions. They will not make this investment unless they are persuaded they receive sound value for the money they expend. It is a network's function to organize itself and fashion its network line-up of stations and programming so that it can persuade the advertiser that network television is a good buy. For advertising dollars are the life blood of all of television.

D. THE OPERATIONS OF THE CBS TELEVISION NETWORK.

In the preceding subsections, this memorandum has examined the broad dimensions of television today and described in general the services and functions which networks perform for the public, for stations and for advertisers. In order to provide greater specificity, this memorandum here turns to focus on the operations of a single network—the CBS Television Network.

(1) *The CBS Television Division.* The CBS Television Network is a part of the CBS Television Division, one of the seven operating divisions of the Columbia Broadcasting System, Inc. The other six operating divisions are: The CBS Radio Division, historically the first of the divisions, which operates the CBS Radio Network and six owned radio stations; the CBS Laboratories

Division, which is engaged in the development of broadcast and receiving equipment for both black and white and color television and in research in electronics and other fields, not only for the CBS divisions but for the Government and for outside industrial use; the Columbia Records Division, which produces primarily phonographs and records; the CBS-Columbia Division, which makes television and radio receivers; the CBS-Hytron Division, which makes electronic tubes, including black and white and color television picture and receiving tubes; and the CBS International Division (the only one of the seven divisions which plays no part in bringing radio and television programs to people), which is engaged in the export business.

The CBS Television Division, whose activities began in 1931 but which was not established as a division until 1951, is engaged in networking and in operating VHF television stations in New York, Chicago and Los Angeles, and a UHF television station in Milwaukee. CBS has pending an application, which has been the subject of a comparative hearing and which is now before the FCC, for a VHF station in St. Louis. CBS also has contracted to purchase a UHF station in Hartford subject to FCC consent. The matter is pending before the Commission.

The CBS Television Division also includes CBS Television Spot Sales, an organization which acts as national spot advertising representative for the four CBS Owned stations and for eight CBS Television affiliates.[1]

CBS Television Film Sales, Inc., a wholly owned subsidiary of CBS, produces and sells entertainment and newsfilm pro-

[1]The eight affiliated stations represented are WTOP-TV, Washington, D. C.; WCAU-TV, Philadelphia; WBTV, Charlotte; WBTW, Florence; WMBR-TV, Jacksonville; KGUL-TV, Galveston-Houston; KSL-TV, Salt Lake City; and KOIN-TV, Portland, Oregon.

grams to all television stations which wish to purchase them.[1]

(2) *The CBS Television Network organization and staff.* Organizationally, the CBS Television Network comprises 47 major operating units, divided into five main groups: (1) Programming; (2) Sales; (3) Operations; (4) Operating Services, including Station Relations, Engineering and Research; and (5) Administrative Services.

The weekly cost to CBS Television of maintaining this organization and staff is about $700,000. In 1949 the full-time personnel devoted to the television network numbered only 427; in contrast, as of March 1, 1956, CBS Television employed on a full-time basis 2,412 people for its network and a total of 5,493 people, including per diem personnel, talent and supporting corporate personnel.[2]

Among the 47 operating units are the following:

The Program Department is the keystone of the network operation. Programs are a network's most important product. The Program Department has the primary responsibility for the basic creative and planning work which results in the conception, evaluation, development and production of the program schedule. It consists of 38 supervisory personnel and 91 addi-

[1]CBS Television Film Sales, Inc. offers its programs to all stations, regardless of network affiliation; network-owned stations and network affiliates get no preference. In fact, there have been instances when a CBS Owned station bid for a film series distributed by CBS Television Film Sales, and Film Sales sold the series to a competing station which made a better offer. During a recent week, 601 station half-hours were sold. CBS Owned stations purchased 9.2 per cent of the 601 station half-hours; primary CBS affiliates, 11.4 per cent; secondary affiliates, which are primary affiliates of other networks, 7.4 per cent; unaffiliated stations, 34.9 per cent; direct to advertising agencies and sponsors, 21.0 per cent; regional and national sales, 16.1 per cent.

[2]Included in the supporting corporate personnel are staff members in the News and Public Affairs Department (see pp. 22 and 23 of this memorandum) and in the Legal, Tax and Building Operations Departments, as well as in corporate management. It is estimated that this latter group spend about two-thirds of their time on television network matters.

tional employees, exclusive of the creative personnel assigned directly, and charged, to individual programs.

The Research Department, comprising 22 people, evaluates tastes; measures audiences, station circulation and set ownership; checks comparative media values; and evaluates and analyzes program content in order to determine public tastes and reactions. It functions in three separate operating areas—in programming, sales and station relations (affiliations). In the programming area, its objective is, to the greatest extent possible, to make television a two-way communication system by evaluating the viewers' over-all tastes and needs.[1] In assisting the Sales Department, it prepares circulation and audience data for presentation to advertisers and agencies. Through its circulation, set ownership and similar research, it also participates in the process of affiliation determinations (see Appendix C, pp. XIII and XVII to XXII of this memorandum) and negotiations of stations' network rates.

The Sales Department comprises 48 sales personnel and 23 sales service personnel. Its tasks are to sell network time periods (and, in appropriate cases, programs) to advertising agencies and advertisers; to assist in the determination of the advertisers' needs and relating those needs to the time periods and programs available; to provide continuous service of this nature to the agencies and their clients; and to clear time on stations and provide a station line-up in accordance with the advertiser's desires.

The Engineering Department, comprising 42 people, develops broadcasting equipment, maintains studio and transmission

[1]Over $300,000 is spent annually for research of this nature, involving rating services and special audience analysis studies.

standards, provides technical consulting services to affiliates, and conducts engineering studies of station coverage to assist in the affiliation process (see Appendix C, pp. XII, XIII, and XVII to XXII of this memorandum) and to assist in negotiations with stations leading to the setting of network rates for the stations.

The Station Relations Department, comprising 12 people, is engaged in the vital and complex function of securing and maintaining the most efficient line-up of stations for the network. See pp. 59 to 82, and Appendix C of this memorandum.

The Promotion Department, comprising 37 people, promotes the CBS Television Division and its network programs to advertisers and the public, and provides program promotional materials for stations.

The Operations Department is the largest of the network departments; it comprises more than 2,400 people employed on a continuing basis, including both staff and per diem personnel. The function of this department is to make it physically possible to broadcast a network program. Among its functions are the provision of studios, cameras, and other technical equipment and the personnel required therefor, building and designing the scenery and sets, arranging, securing or building the props, providing facilities for rehearsals, making up the performers, obtaining or making the costumes and performing all the other tasks in the physical job of getting the show on the air.[1] This department is also responsible for supervising film production activities, for making and distributing television recordings of television programs (TVR's), for securing and scheduling use

[1]For an indication of the variety of skills and functions of the Operations Department in connection with a single program, see pp. 41 and 42 of this memorandum.

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of telephone company circuits and for carrying on an active developmental program to improve production techniques.

Other Supporting Units. Other units whose functions are essential to network operation include Accounting, Legal, Building Operations, Office Services, Personnel, Information Services, Editing, Music Clearance, Business Affairs, and Labor Relations.

CBS News and Public Affairs. In order to fulfill its responsibility as a medium of mass communication devoted not only to entertaining but also to informing the people, CBS must maintain a News and Public Affairs Department. The current gross annual operating budget for the CBS News and Public Affairs Department is $7,000,000.

CBS News maintains four American news bureaus, five European bureaus and one Far Eastern bureau. It employs 600 contract and free lance correspondents at 263 locations throughout the world. In Washington, CBS News has a staff of 11 correspondents, in addition to three news executives, six persons functioning in connection with Public Affairs programming and a film unit comprising 13 persons. The CBS Television Network is now broadcasting 22 news broadcasts a week.[1]

For the week ending April 7, 1956, the Public Affairs Department produced eight programs totaling eight and one-half hours. The department comprises 103 full-time employees. In addition to the direct cost of programs totaling over $2,000,000 a year, the department cost more than $500,000 to maintain and operate last year. Public Affairs programs are produced by the network in order to maintain an over-all programming balance; few of them are sponsored. The programs of the Public Affairs

[1]For the personnel and man-hours involved in a single 15-minute network news program, see footnote, p. 42.

Department include "See It Now," "Let's Take a Trip," "Face the Nation," "Lamp unto My Feet," "Look Up and Live" and "The Search," as well as special programs such as the recent "Out of Darkness," an hour-and-a-half program devoted to mental illness[1]; and "Report Card," a special series of five programs devoted to schools and education.

The CBS Television Network believes that as a matter of policy it has an obligation and responsibility to devote the same degree of planning, care and skill to these Public Affairs programs as it does to the major sponsored entertainment programs. For a case history of "The Search," a typical CBS Public Affairs series, which took three and one-half years to prepare and cost more than $750,000, see Appendix B.

(3) *CBS Television Network physical facilities.* The CBS Television Network comprises not only people but facilities. For in order to supply high quality programs to its affiliates day in and day out, a television network must provide and maintain elaborate physical facilities. The CBS Television Network now has 29 broadcast studios—22 in New York, five in Hollywood, and two in Chicago. All but five in New York are equipped for the production of live programs. Those studios include elaborate, intricate and expensive equipment, including 148

[1]"Out of Darkness," broadcast by the CBS Television Network on March 18, 1956, was the first full-scale attempt to penetrate in depth into the private world of mental patients and mental hospitals and to bring the public up to date on the nature, causes and treatment of what has been termed the nation's number one health problem. It was produced with the help of The American Psychiatric Association and The American Association for Mental Health. This single one-and-one-half hour program pre-empted "Omnibus" (three of the four segments of which were sponsored) on March 18. "Out of Darkness" was unsponsored and involved out-of-pocket production costs in excess of $135,000 in addition to the revenues of $40,000 which were lost because of the pre-emption of "Omnibus." It should be noted that in all cases where special sustaining programs produced by the CBS News and Public Affairs Department pre-empt commercial programs, there are double costs to the network: (1) the cost of the program itself, and (2) the amounts lost by the network as a result of pre-emption of the commercially sponsored programs which the special program replaces.

live cameras and 35 film cameras, together with their assorted electronic control equipment, synchronizing generators, audio systems, lighting switchboards, 6,200 lighting fixtures, in connection with which are used substantially in excess of 20 miles of portable connecting cable, audio and video communication systems, including 792 microphones and 1,403 video amplifiers, 896 picture monitors, sound monitors, film recording and playback systems, 68 film projectors and 41 studio, telecine and master control rooms.

CBS has invested nearly $28 million in its television network program production facilities in New York and Hollywood alone. CBS spent more than $3 million in improving, equipping and finishing the New York color television studio and another $1 million on its Hollywood color studio. An additional $1 million has just been authorized for color in Hollywood. The cost merely of maintaining the New York and Hollywood facilities in 1955 was approximately $6,500,000, without including the cost of the departments which used the facilities.

It has become apparent recently that even this quantity of facilities is insufficient. CBS is now considering an investment of up to $25 million in additional plant facilities over the next few years.

This large reservoir of physical facilities is required in order to maintain a regular schedule of diversified programming.[1] Thus, for example, a one-hour dramatic program or musical variety show usually requires the use of a studio for rehearsal for three days. During the first day ten to 12 hours are re-

[1]See pp. 30 to 32 of this memorandum for a quantitative summary of the CBS Television Network weekly program schedule.

quired to erect the sets, the number of which varies from five to 15.[1] This is followed by four to six hours of lighting preparation, which includes hanging electrical equipment, focusing the lights in appropriate areas and planning the intensities of the various units to produce the necessary mood and effect. There follow eight to nine hours of intensive rehearsal with a cast and cameramen. The third day is usually devoted to five or six hours of rehearsal, including one or two dress rehearsals and finally the air show.[2]

Following the actual broadcast, as much as seven hours are required to remove the sets and prepare the studio for its next use by another program. Under normal operating procedure the new program is set up immediately following the removal of the sets and props which were used for the preceding program. Often the studios are in active operation 24 hours a day, seven days a week.

The continuous network schedule, however, actually permits economies which normally are not available in non-network production. The almost continuous use of the studios and other physical facilities makes for efficient operations and enables the enormous cost of maintenance and operation to be amortized over many programs, reducing to the lowest possible minimum the studio cost of each individual program.

[1] The CBS Television library of stock scenery in New York City alone consists of 5,000 units, while the storage warehouse of properties in New York includes about 100,000 items.

[2] In addition to the actual studio work, the average variety show requires three to five weeks of active preparation, including the designing and making of costumes and the designing, fabrication and painting of scenery and sets before the rehearsal moves to the studio. The actors for the average one-hour dramatic show rehearse in a rehearsal hall for ten days to two weeks before going into the studio. The less complex half-hour programs usually rehearse five to seven days before going into the studio, while the daytime serials, interview shows and other daytime programs usually complete rehearsals in two to eight hours.

(4) *The CBS Television Network affiliates.* The CBS Television Network consists not only of people and physical facilities but, most important, it is an aggregate of stations affiliated with CBS Television. As noted, only four of these stations are owned by CBS. The remainder are wholly owned by others. In total, as of March 1, 1956, the CBS Television Network furnished programs to 233 stations[1] in the United States, 27 in Canada, and seven in Alaska, Hawaii, Mexico, Cuba and Puerto Rico. As of March 1, 1956, CBS had 151 primary affiliates, 38 secondary affiliates,[2] and 26 Extended Market Plan affiliates (see pp. 78 to 80). The CBS Television Network also supplies programs to 52 additional stations on a per-program or letter agreement basis (see footnote 2, p. 68; p. 138; and Appendix C, pp. XXXII and XXXIII). As of March 1, 1956, CBS Television affiliates reached 33,914,900 families in the United States or 98 per cent of all the families who own television sets. (The location of the 181 primary, secondary and EMP CBS Television affiliates in the United States is illustrated in Chart IV.)

(5) *AT&T interconnection facilities.* In addition to its own organization and facilities which a network must maintain, and in order to serve its affiliates with its program product, a television network must arrange for a means by which its affiliates throughout the country can be interconnected.[3] Only in this

[1]Not including satellites.

[2]The terms "primary affiliate" and "secondary affiliate" are convenient means of loose classification of affiliates and are not subject to precise definition. Generally speaking, the principal difference between a primary affiliate and a secondary affiliate is that the affiliation agreement with a primary affiliate provides for network option time while the affiliation agreement with a secondary affiliate does not. A typical primary affiliation agreement is set out as Appendix A.

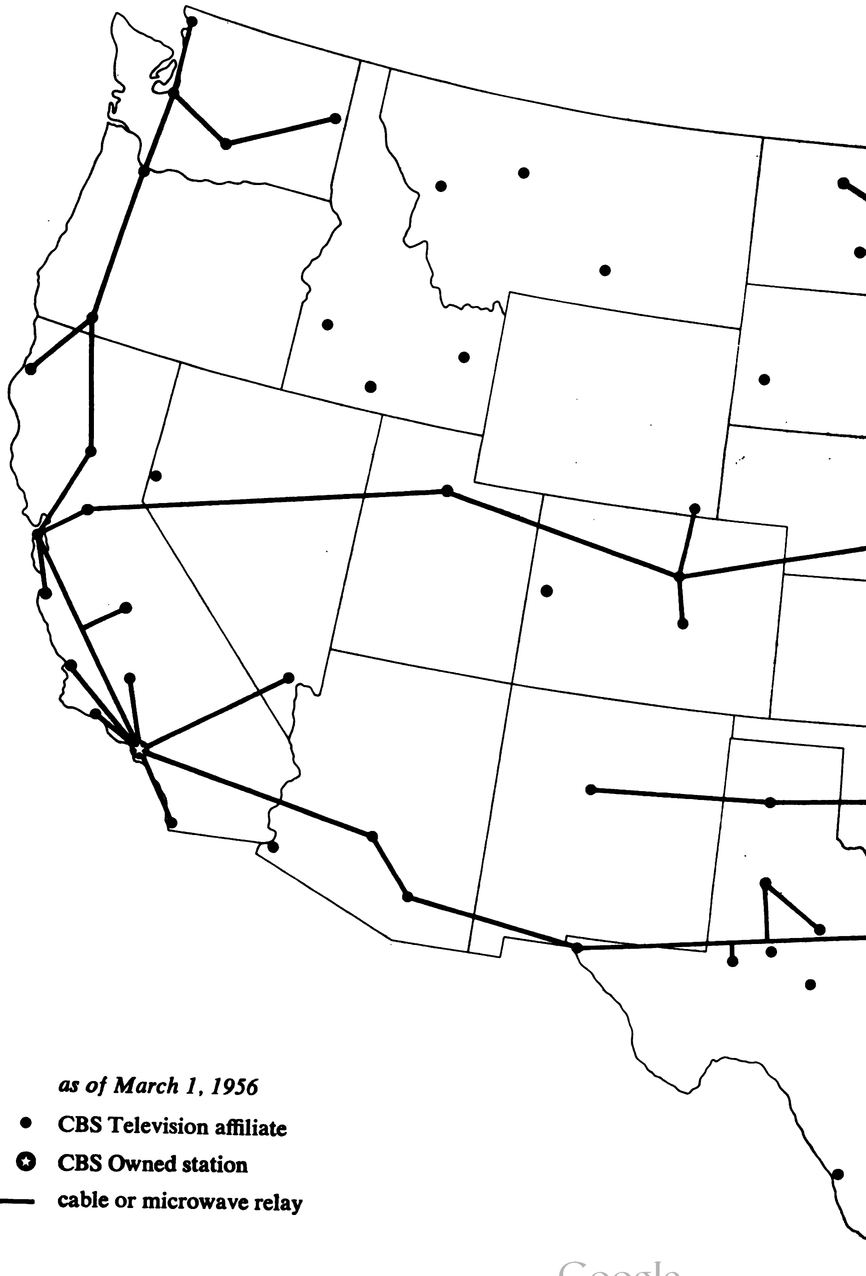
[3]Of 181 United States CBS Television affiliates, 163 are interconnected. See Chart IV. The 18 non-interconnected affiliates are dependent on television recordings which are supplied by the network.

way can a program be seen simultaneously by viewers on a nationwide basis. Interconnection is, of course, necessary for all live programs, whether they be entertainment programs or broadcasts of public events as they occur. Even with respect to film programs, interconnection is necessary in order to provide simultaneity and to make it possible for an advertiser to have his program and his advertising continuity broadcast through a single purchase from a single source and at a fixed point in the network program schedule.

At present most network stations are interconnected by American Telephone and Telegraph facilities, either in the form of coaxial cables or microwave relays. These facilities are used by the networks on a continuous basis and represent a major expense to the networks. CBS Television, alone, is currently paying at the rate of $13.5 million a year to the AT&T for the use of interconnecting facilities.

Only by the continuous use which networks make of AT&T interconnection facilities are even these large costs kept down or indeed are the facilities preserved on a regular basis to television. If interconnection facilities were not supported by the networks' regular and substantial use, and if instead they were used only on special occasions such as the World Series or a political convention, their costs on such an occasional use basis would vastly increase—possibly by as much as 30 or 40 times per program. In any event, it is likely that if these interconnection facilities were used only occasionally, at least those which go to the smaller markets outside the top 40 or 50 cities would not be used with sufficient frequency to warrant their being preserved by AT&T for television use at all. It is not unlikely,

CBS TELEVISION NETWORK – 181 U.S. AFF



as of March 1, 1956

● CBS Television affiliate

✪ CBS Owned station

—— cable or microwave relay

CHART IV

ING TOTAL OF 33.9 MILLION TELEVISION FAMILIES

therefore, that were it not for the continuous use by the networks of these facilities, some of them, at least, would revert to other uses and be unavailable to television even for special occasions, so that many smaller markets would forever be deprived of live programs emanating from any area other than that in which the local station is located.

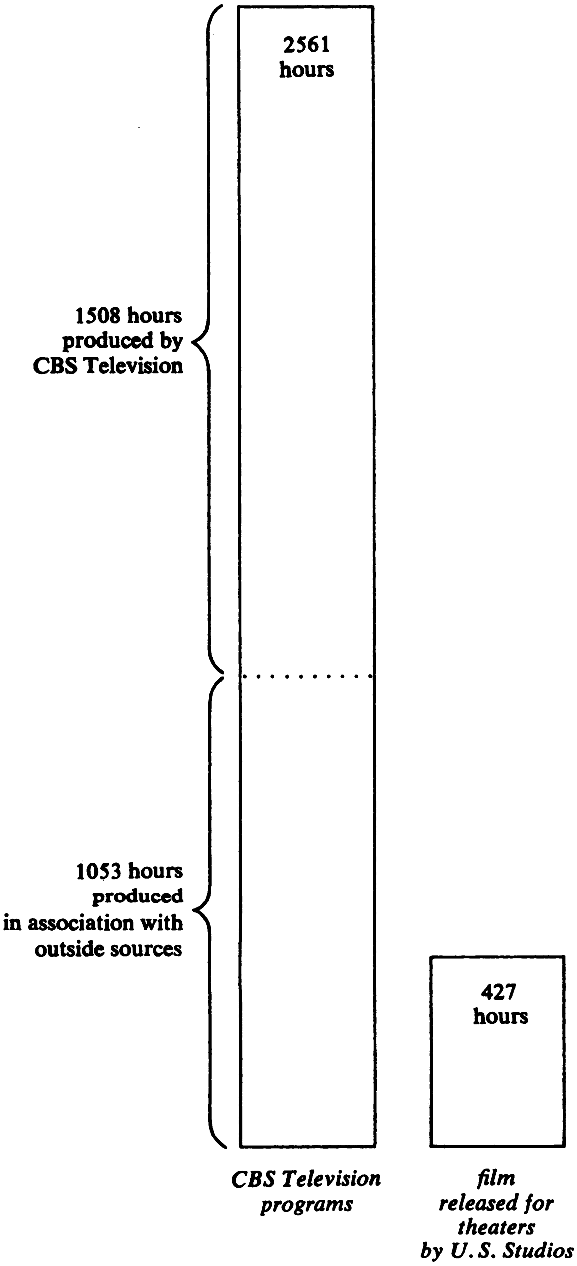
(6) *The CBS Television Network program schedule.* The end result of the CBS Television Network staff, physical facilities and aggregate of affiliates is the CBS Television Network program schedule. It is a truism that television is a voracious consumer of programs. In the legitimate theatre, a single production may be repeated for weeks, months and, if successful, years. In respect of motion pictures, the production of a single feature may extend for months or years, and an individual scene may be perfected by constant trial and error and reshooting; then the final product is shown repeatedly for days and weeks at a time in a single theatre.

Television does not enjoy these luxuries of lengthy production, flexible time schedule and multiple repetition of performance. A network must produce a full day's schedule day in and day out, and it cannot leave the screen blank even for a minute once a program is scheduled. Some idea of the dimensions of the task of a network can be gained from the fact that, for example during the week ending April 7, 1956, the CBS Television Network furnished to its affiliates 129 live programs,[1] varying in length from 15 minutes to three hours and covering an aggregate of 68¾ broadcast hours. It is estimated that during 1956, the CBS Television Network alone will produce and broadcast

[1]In computing the number of programs, each separate program of a program series such as five-times-a-week news programs and daytime serials was counted as an individual program.

CHART V

TOTAL ANNUAL PRODUCT



1,508 hours of programs, and CBS Television in association with outside sources[1] will produce and broadcast 1,053 hours of programs or a total of 2,561 hours of programs (without taking into account the programs broadcast by the network but produced by others). This compares with a total of 427 hours of running time for all United States feature film production released in 1955. Thus the product of the CBS Television Network alone, in terms of hours, will be more than three times that of the total product of feature films from Hollywood, and that of CBS Television and CBS Television in association with outside sources will be six times that of feature films from Hollywood. See Chart V and pp. 88 to 95 of this memorandum.

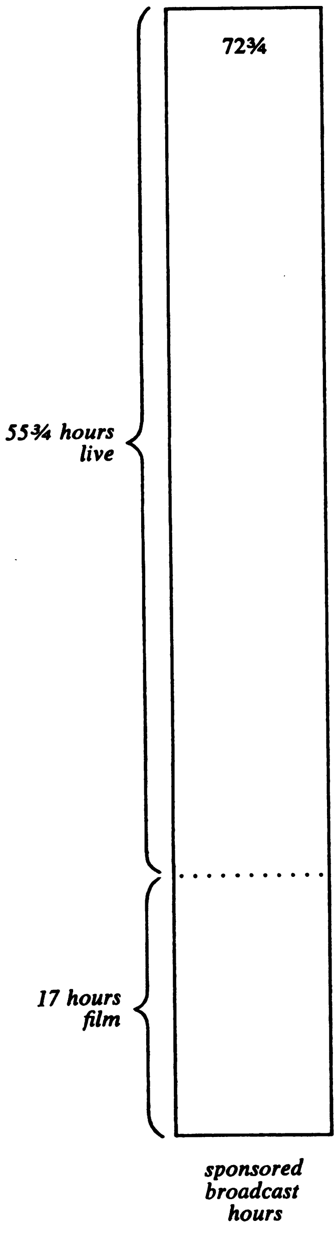
During the single week ending April 7, 1956, the CBS Television Network broadcast a total of 86¼ hours of sponsored and sustaining live and film programs. As Chart VI shows, of the 72¾ sponsored broadcast hours involved in that schedule, 55¾ were live, and 17 were filmed. A similar schedule during the two weeks ending March 10, 1956, resulted in an average of more than 800 million viewer hours per week spent watching CBS Television Network sponsored programs.

How this network program schedule is integrated into the program schedule of an average interconnected affiliate, and an analysis of the sources of such an affiliate's programs, are discussed on pp. 121 to 123 of this memorandum.

[1]Outside sources are defined for this purpose as organizations not owned or controlled by CBS Television which produce and sell programs or portions of programs to various elements in the industry including advertising agencies, networks and stations. CBS has no financial interest in any such organization except Desilu Productions, Inc., in which CBS, Inc., owns a minority interest.

CHART VI

**CBS TELEVISION NETWORK
COMMERCIAL SCHEDULE**



PART III: The Internal Economics of Networking—Revenues, Expenditures and Profits

INTRODUCTION. Part II of this memorandum has dealt with the dimensions of television today and has sought to describe, in general terms, the elements, functions, organization, staff, facilities and product of a network. Part III will deal with the internal economics of networking—the revenues, expenditures and profits. In order to provide greater specificity for the sake of clarity, this part will deal mainly with one program series in order to illustrate why and how the programming resources of a network are brought into play, how the program is developed and what are the revenues and expenditures involved in the program—where the money comes from and where it goes, not only in supporting the particular program but the whole of the process of networking.

It should be emphasized, however, that the one program series selected herein is only for illustrative purposes. Unlike tangible manufactured products for mass consumption, the product which a network offers to the public—the network programs—is not fungible. Each program differs to a greater or lesser degree from the other; each has its own history, presents its own problems and has different requirements in terms of conception, production and costs. For purposes of this memorandum the full-hour drama entitled "CLIMAX!," broadcast on Thursdays from 8:30 to 9:30 PM (E.S.T.) and sponsored by the Chrysler Corporation, has been chosen as illustrative of some of the functions of a network and some of its basic internal economics.

A. THE HISTORY OF CLIMAX! "CLIMAX!" currently is broadcast over 164 CBS Television affiliates, of which 139 are in the United States and the remainder in Canada. The broadcast of March 1, 1956, was watched by more than 26,000,000 people in the United States. That was approximately 45.9 per cent of all the people watching television at the time the program was broadcast. These figures are typical of the audience sizes which have been attained by "CLIMAX!" this season.

The program was designed to meet a specific problem of over-all network scheduling; by a gradual and persistent process it has solved the problem which it was designed to meet.

In the Fall of 1953 and Spring of 1954, the hour between 8:30 and 9:30 PM (E.S.T.) on Thursdays was occupied on the CBS Television Network by two half-hour sponsored programs. Those two programs were broadcast weekly on a line-up which averaged 80 stations, and had an average weekly audience of less than 11,000,000 viewers, or 29.3 per cent of the total audience watching television at that hour. Thus neither the public nor CBS Television affiliates were fully served, since during 8:30 to 9:30 PM, less than half the number of affiliates were supplied with the programs and less than half as many viewers were tuning to CBS Television in 1954 as are currently tuning to it. As a result the sponsors were dissatisfied and one of the sponsors had issued a notice of cancellation.

Although the situation had crystallized in this fashion by the Spring of 1954, actual detailed planning of the new program had begun late in 1953. The Program Department had felt that a half-hour time period, then commonly utilized for mystery dramas and melodramas, was insufficient for development of this type of program and hence after discussion, it was decided to adopt the concept of an hour program. In March 1954, although there was not yet a definite determination of what time period the program might ultimately fill, the actual preparation of "CLIMAX!" began. Involved in the preparation were the Research Department, the Program Development Department and the Production Department, each of which would necessarily play a part if the program were eventually to be broadcast in the Fall of 1954.

By April 1954, thirteen stories, representing an investment in excess of $40,000, had been acquired. By July 1954, seven or eight of these stories had been reduced to the form of a first draft of script—a process which cost an additional $15,000.

The program was sold to the Chrysler Corporation late in May 1954. The sale was possible only because the months of preparation had sufficiently crystallized its ultimate form to permit concrete presentation to the sponsor.

From May until the Fall of 1954, the creative work was accelerated and the Station Relations and Sales Service Departments were active in informing CBS Television affiliates of the program and arranging for time clearance.

On October 7, 1954, the first program of the "CLIMAX!" series was broadcast by the CBS Television Network. But despite all the planning, preparation and financial investment, the program, as it was actually broadcast, did not meet the network's expectations. Accordingly, almost immediately after the program first was broadcast, the creative team which had been assigned to the program by CBS Television was reorganized and supplemented. The Program Department continued to work on the program, sharpening its concept, changing its production team and developing it to the successful stage which it has since attained.[1] As noted above, "CLIMAX!" now has accomplished the objectives for which it was designed: serving more of the public—well over twice as many viewers as had tuned in during the same time period before "CLIMAX!" was broadcast; providing program service and revenues to over twice as many affiliates; and giving the advertiser a vehicle which accomplishes his purposes. See Chart VII.

The foregoing brief history of the inception and ultimate evolution of "CLIMAX!" is representative of the effort and expense involved in program development. Some programs, even after investments in time and energy like those devoted to "CLIMAX!," never do evolve satisfactorily and are abandoned even before the first broadcast. Some are carried to the stage of pilot films, or to the point where several actual filmed programs of a series are produced, yet because they do not satisfy the network's standards, or a sponsor's, are abandoned. In some cases the planning and preparation have taken a far longer period—sometimes as much as two years between initial conception and ultimate first broadcast.

In almost all cases of nighttime programming, the time cycle of "CLIMAX!" between initiation and broadcast—some six to

[1]In addition, during the first four months the program was on the air, CBS Television spent over $115,000 on special newspaper advertising to promote the program.

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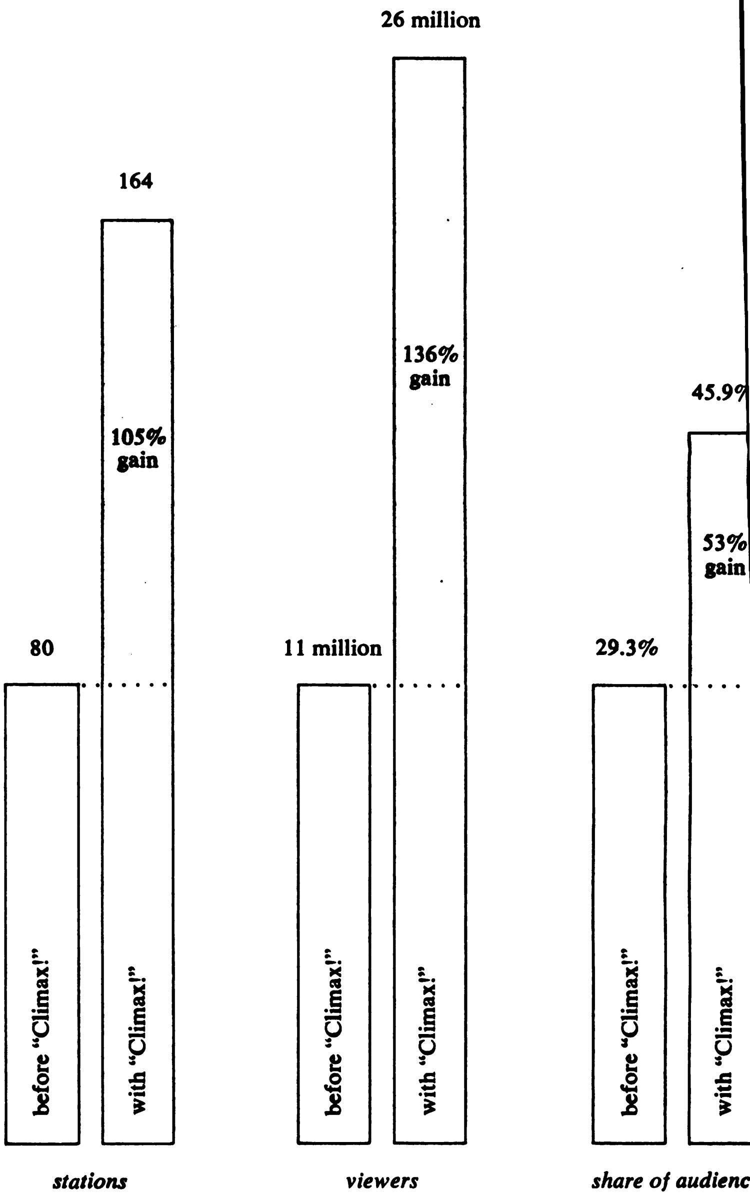
CHART VII

EFFECT OF "CLIMAX!," 8:30 TO 9:30 PM THURSDAY
ON CBS TELEVISION NETWORK



Before "Climax!": Oct. 1953-Apr. 1954 average With "Climax!": as of March 1, 1956 eight months—is a minimum. This, at least, is the period necessary between the drawing board and first broadcast in order that creative teams can be assigned to selecting, negotiating for, and preparing the material and devoting themselves continuously to the program's evolution.

This planning and preparation—even to the purchase of stories—goes forward without any certainty as to the time period the program might fill, or whether, indeed, any time at all can be found for it. For, in order to achieve the most effective schedule possible, a network's program department must engage in a constant process of forward planning for the next year, and the year after that. It must have a reservoir of programs so that, whenever the occasion demands (and failures of programs or changes in public taste often cannot be anticipated), a suitable program is ready.

Another aspect of the history of "CLIMAX!" also underscores the special character of network programming activities: the process of reorganization and evolution even after the first broadcast and in response to the actual experience gained from it. Since "CLIMAX!" was a live program,[1] and since it had been conceived, planned and produced by the network's own Program Department, it was possible to take prompt action to remedy the initial defects which became apparent after its early broadcasts. Because it was a network produced program, all the skills and program and production resources of the network could be brought to bear promptly and directly to continue the process of shaping and evolving it. And, as noted, it was by

[1]In the case of filmed programs, by the time the first film of a series is actually broadcast, normally a substantial number of the series has been completed and is "in the can." In such circumstances, reshaping in the light of actual experience and public reaction is exceedingly difficult and expensive.

this process that "CLIMAX!" was ultimately brought to its successful state.

B. THE ECONOMICS OF CLIMAX! Necessarily involved in any television programming are the advertiser dollars which must support it. The average gross weekly charges to the advertiser for "CLIMAX!" during January, February and March, 1956 total $137,007. This gross charge is composed of two elements: program charges of $43,287 and time charges of $93,720.

Time charges are applicable in the case of all programs—regardless of their source—broadcast by the network. They are the aggregate of the hourly rates, as published in the CBS Television Network Rate Card, of each of the 164 CBS Television Network stations[1] which are used by the Chrysler Corporation.

Program charges, however, are applicable only where the program is one created and produced or sold by the CBS Television Network. Where the program is produced and sold by outside producers, the program charge is made by the outside producer.

(1) *Program revenues and expenditures for "CLIMAX!"* As noted, the Chrysler Corporation is charged $43,287 weekly for the production of "CLIMAX!" Fifteen per cent of this amount, or $6,493, is paid by the network, in behalf of Chrysler, to Chrysler's advertising agency as the customary agency commission. After this deduction of $6,493, there remains to the CBS Television Network $36,794 to apply against the costs which

[1]The station's rate for a network program is set by agreement between the station and the network. While formerly, CBS Television affiliation contracts gave the right to the network unilaterally to reduce a station's network rate during the term of the affiliation agreements (a right which was in fact never exercised), current affiliation agreements now preclude the network's reducing the rate except in the event of a *general* re-evaluation and reduction, and even then, if there is a reduction, the station may terminate the agreement. See Appendix A, Schedule A, VI.

the network incurs for the program. Those costs fall into two general categories: (1) the costs of creating the program each week, known as "above-the-line costs," and (2) program production and (studio and technical) facilities costs, known as "below-the-line costs."

The direct above-the-line creative costs for "CLIMAX!" average $26,065 weekly which is paid out in the form of salaries to 59 people who may be categorized as creative talent. Those 59 people, who prepare, rehearse and present each program, devote an average of 2,454 hours to each week's program, which may be broken down as follows:

	personnel	*man-hours*
Producer	1	60
Director	1	100
Program Staff	5	216
Story Editor and Staff	10	98
Script	1	?[1]
Writers (script adaptation)	3	240
Music Scoring	5	36
Music Record Library	3	4
Cast	30	1,700
	59	2,454 *plus "?"*

The direct below-the-line costs for production and facilities average a total of $19,451 a week, including salaries to 263 additional people who spend an average of 2,105 man-hours providing the physical elements necessary for each program. The number of personnel and the man-hours which they devote to each program break down as follows:

[1]The original script or story may be in the form of a book, or a play, or a magazine story, or a script specially prepared for television. The number of hours, days, or even years which went into the preparation of the original story cannot, of course, be normally estimated.

	personnel	man-hours
Production Conference	15	24
Cost Control	8	26
Network Operations & Scheduling	4	6
Scenery Design	6	111
Scenery Construction and Painting	39	631
Costume Design	1	40
Wardrobe Handling	7	78
Props	14	110
Trucking	6	18
Stagehands	74	480
Special Effects	2	16
Technicians		
Supervisors	3	2
Cameramen, Boom Operators, Dolly Operators, Audio & Video Control	24	192
Maintenance	4	8
Audio Engineer	1	8
Scheduling and Administration	5	5
Music Recording Equipment	3	48
Sound Effects	2	10
Lighting Supervision	1	20
Makeup	7	42
Graphic Arts	3	15
Stage Managers	2	64
Ushers	3	24
Building Maintenance	12	86
Telecine	5	12
Film Production	7	25
Master Control	5	4
	263	2,105

Thus it will be seen that, each week, a total of 322 people, devoting more than 4,559 man-hours, work directly in the creation of each "CLIMAX!" program.[1]

[1]A typical CBS Television half-hour dramatic program is the product of 1,374 man-hours, involving 154 people exclusive of the services of such Departments as Sales, Advertising, Press Information and Traffic. Even for such an apparently simple program series as "Douglas Edwards with the News," in which normally only one person appears on camera, a total of 829 people is involved (14 program staff, 37 administrative staff, 147 newsfilm staff, 16 studio staff, and 615 foreign and domestic camera correspondents)—exclusive of the facilities and services of the Operations, Engineering, Reference and other Departments of CBS Television. Similarly, the coverage of the 1952 political conventions involved over a year of planning and preparation, and, for the 118 hours and 11 minutes of actual convention broadcasting, 41,750 man-hours were required.

It will be noted from the foregoing that although the Chrysler Corporation pays $43,287 per week for program charges for "CLIMAX!," the actual amounts expended by CBS Television directly for the program total $52,009—$8,722 in excess of the amount paid by the sponsor. See Chart VIII.

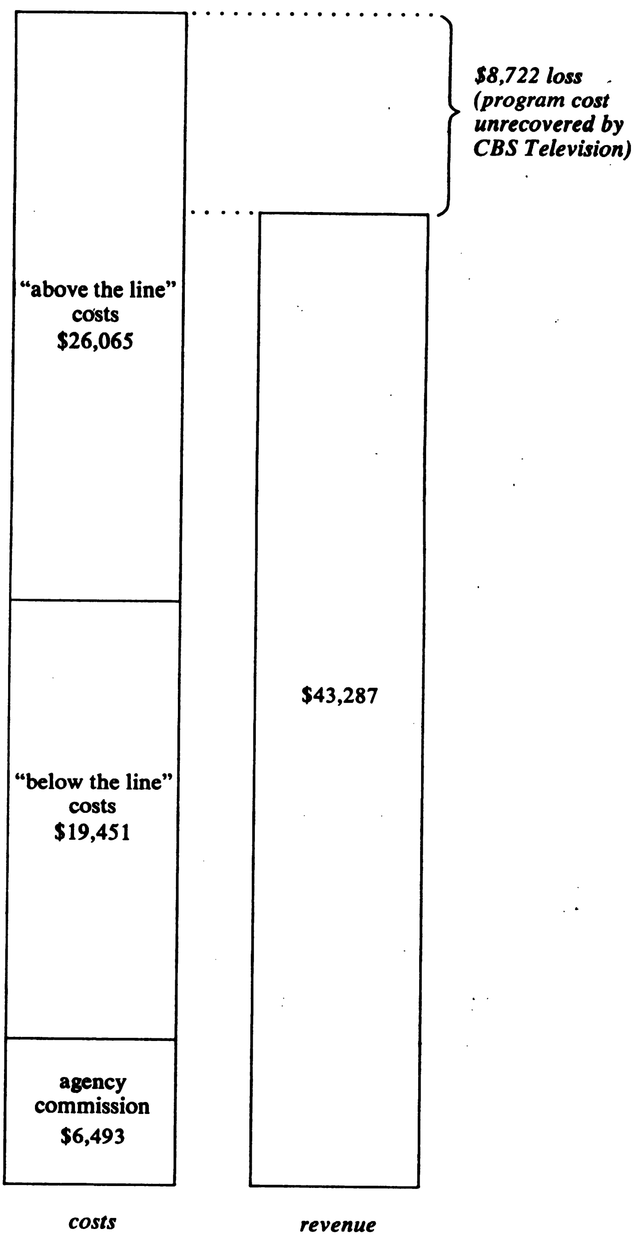
It is in this sense that "CLIMAX!" is not typical; the amount by which the program costs exceed program payments by the sponsor are abnormally large. CBS Television does attempt to attain full reimbursement for its program expenses. But some loss to CBS Television in programming is not unusual; the loss is the price which the network pays in order to develop and maintain a strong over-all program schedule for the public, for the affiliates and for the advertisers.

In 1955, the loss *for commercially sponsored programs alone* was in excess of $7.1 million without any allocation of general overhead such as selling and administrative expense. In addition, CBS Television spent over $10.5 million for sustaining entertainment and public affairs programs for which it received no revenues. It is estimated by CBS accountants that an additional $4.5 million in overhead expenses is attributable to program production. In total, sustaining programs and the loss on the sale of commercial programs cost more than $22 million in 1955.

(2) *Time revenues and expenditures for "CLIMAX!"* The gross time charges, comprising the total of the hourly rates of the CBS Television affiliates carrying "CLIMAX!," has been shown to be $93,720 each week. In order, however, to encourage (1) the advertiser's use of the maximum number of stations and (2) week-to-week continuity in advertiser sponsorship by making it more economic for advertisers to support major program-

CHART VIII

DISTRIBUTION OF GROSS PROGRAM REVENUE FROM "CLIMAX!"



ming throughout the year, the CBS Television Network provides for discounts designed for those purposes. In the case of "CLIMAX!" these discounts total $23,175. Thus, *net* time charges to Chrysler are reduced to $70,545.

From this latter amount, in turn, the advertising agency commission of 15 per cent is deducted—totaling, in the case of "CLIMAX!," $10,582—the customary commission which is paid by the network to Chrysler's advertising agency.[1]

After deducting the discounts and the 15 per cent agency commission, therefore, there remains to the CBS Television Network $59,963 as revenue accruing from the time charges for the 164 stations over which "CLIMAX!" is broadcast. But the network incurs another major category of expenses directly attributable to the program—the costs of physically bringing the program to each of the affiliates which carries it. These costs of distribution include a share of the network's payments to AT&T, estimated to be $6,056, which represents the approximate cost for use of AT&T transmission lines allocated to the program. The network also pays approximately $1,259 each week for television recordings (TVR's) for stations which wish to carry the program on a delayed basis or which are not interconnected by regular AT&T facilities.[2]

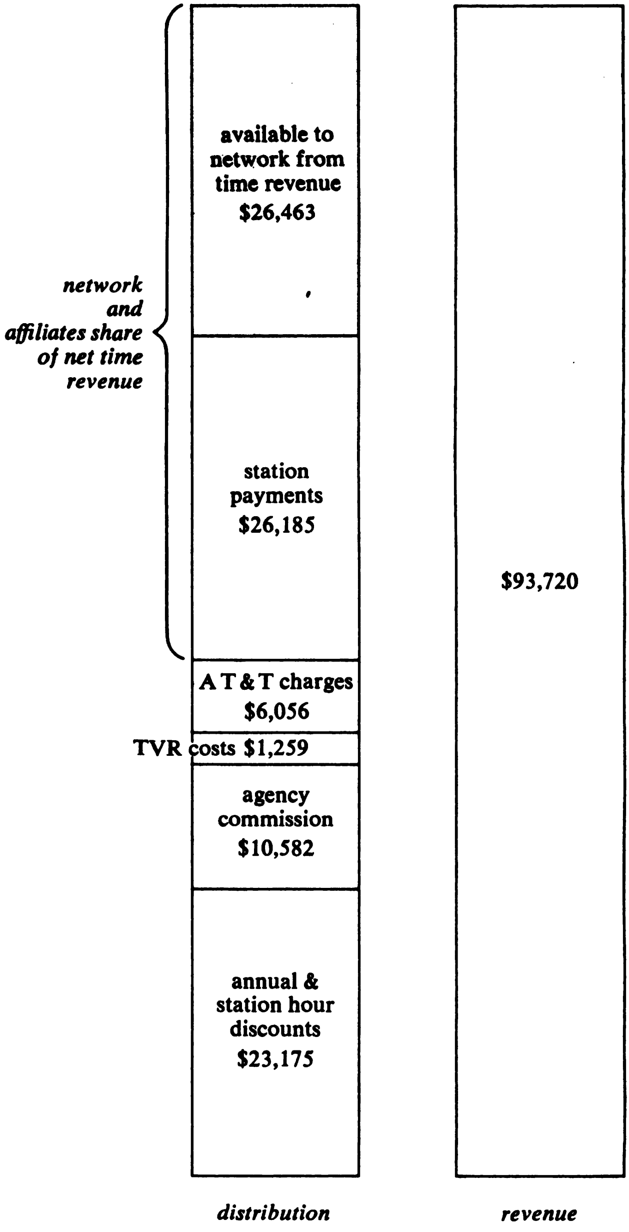
Thus of the total gross time charges of $93,720 for "CLIMAX!," there remain after these several deductions and expenditures $52,648. See Chart IX.

[1]The advertising agency performs a great many services to its client, the sponsor, in connection with the program. These services include actual preparation and payment for the commercials, research, merchandising, public relations and many other important functions. It is the understanding of CBS that although advertising agencies receive 15 per cent, as noted in the text, their net after expenditures for all the services approximates only one and one-half per cent or two per cent.

[2]In the case of "CLIMAX!," 15 interconnected stations carry the program on a delayed basis and an additional 20 stations are not interconnected.

CHART IX

DISTRIBUTION OF GROSS TIME REVENUE FROM "CLIMAX!"



(3) *Division of time charge revenues with affiliates.* This $52,648 amount is further substantially reduced by the network payment to the affiliates for the station broadcast hours which they devote to "CLIMAX!" The payments to those stations each week total $26,185.[1]

It is of first importance to note that the affiliation contracts normally provide for payment to the stations of a percentage of the *gross* time charges to the advertiser.[2] As has been shown, this gross amount is not in fact received by the network; rather it is reduced by several direct major deductions and expenditures totaling $41,072 or about 43.8 per cent of the total. Hence, as is illustrated by Chart IX, the total of $26,185 paid by the network to the stations for their broadcast time for "CLIMAX!," is almost equal to the $26,463[3] which is retained by the CBS Television Network after all the deductions, payments and charges which have been described. Before taking into account the $8,722 deficit incurred by the network in the production of the program, there is an almost exact equality in the amounts shared between network and stations.

In evaluating the division of revenues between stations and the network the functions of each must be examined.

(4) *Station functions in connection with network programs.* For the $26,185 which is paid by the network to the CBS Television affiliates for their broadcast of "CLIMAX!," the station provides the use of its transmitter and the most valued commodity which the station has to offer—its time. In providing

[1]Exclusive of $940 deducted for BMI and ASCAP payments.

[2]CBS Owned stations are paid in exactly the same manner and on the same basis as the typical primary affiliate.

[3]Exclusive of $620 deducted for BMI and ASCAP payments.

its transmitter and time, the station must, of course, attribute to that hour a proportionate share of its investment and of the costs of its over-all operations. Since "CLIMAX!" is produced for the station, sold to the advertiser by the network,[1] carried to the station by AT&T or by television recordings prepared and paid for by the network, the actual out-of-pocket expenses of the station attributable to its programming are normally minimal.[2] And, in turn, the personnel of the station are thus freed to create local programming, to sell the station's own (or outside produced) non-network programs to national spot and local advertisers and to do all the things necessary for successful local operation. As a result of the network program, as has been shown on pp. 13 to 17 of this memorandum, the stations benefit triply: (i) the share of the revenues, (ii) the saving of costs which would be incurred if the station were required to program that period itself, and (iii) the increased circulation which enables the station to charge substantial rates and to attract national spot and local advertising revenues directly to it.

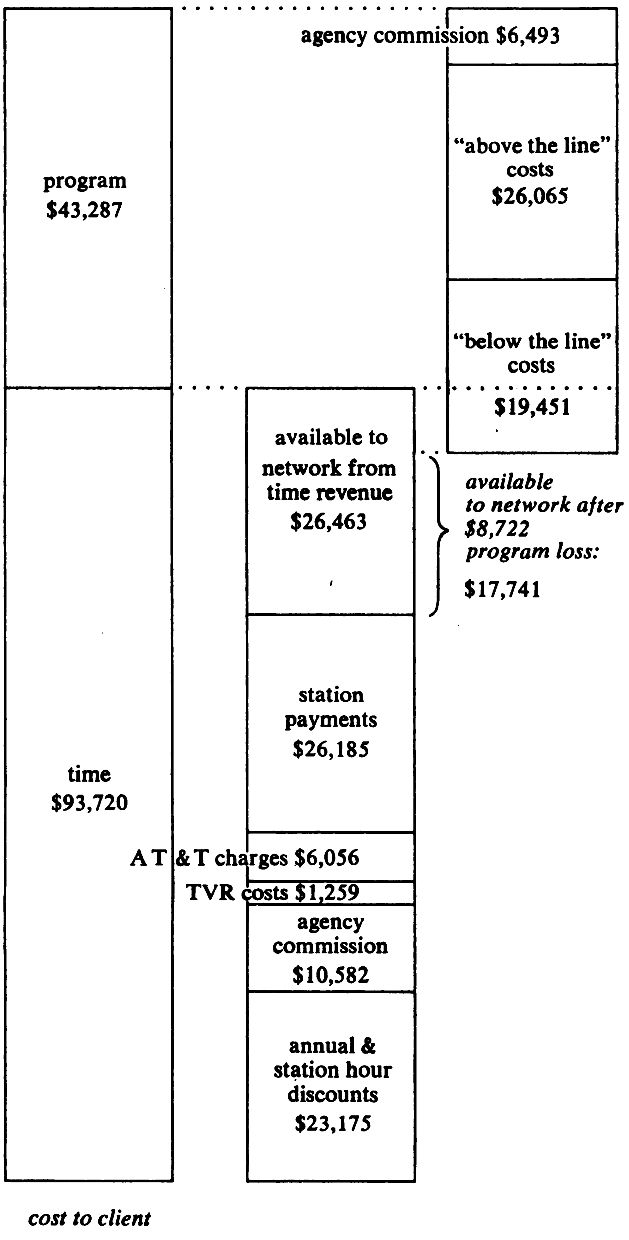
(5) *Network services maintained out of advertiser revenues.* As has been shown, the net residue to the CBS Television Network accruing from the gross charges of $137,007 to Chrysler for the 8:30 to 9:30 PM (E.S.T.) period on Thursdays, is only $17,741. See Chart X. This residue varies from program to program and in a number of cases is not subject to so large a reduc-

[1] In some instances, a network advertiser may order an additional station at least partially through the sales efforts of the station itself, whose representative may go directly to the advertiser's agency to persuade it to add the station to the line-up. These activities, supplementary to the network's own efforts to sell the station, do involve special expenses to the station attributable to the network program.

[2] Although AT&T costs are normally assumed by the network, there are cases in which stations assume incremental expense.

CHART X

STRIBUTION OF GROSS TIME AND PROGRAM REVENUE FROM "CLIMAX!"



tion for loss in respect of direct program charges. Nevertheless, except for the program deficit, this amount of residue and its relationship to the gross charges approximates the magnitude of net revenues to the network for nighttime hours.

It is out of this (and similar) net residue that the CBS Television Network must pay for the network staff and facilities,[1] and for all the functions and services described on pp. 12 to 17, and 19 to 32 which it must render. Out of this residue, the network must maintain its organization and its over-all programming schedule, including all its sustaining and public service programs (see pp. 22 and 23 of this memorandum).

C. REVENUES AND PROFITS. The preceding pages of this memorandum have summarized the organization and physical facilities which a network must maintain, as well as some of the services and functions which the network performs. All of these, as has been noted, must be supported out of the net revenues from sale of time to advertisers.[2]

The network organization is large and complex. It must be maintained in order to provide the highest quality programs possible, integrated into a balanced over-all weekly schedule of entertainment and information. Such a schedule requires an organization of the best creative personnel obtainable—executive and talent, writers and performers. Also there are enormous risks which must be taken through entering into the long

[1]As was noted on pp. 41 to 43 of this memorandum, only some staff and facilities expenses are paid for out of the program charges. The unreimbursed portion of these expenses must be paid for out of the residue of the time charges. Still another unreimbursed expense arises when non-sponsored (sustaining) programs are broadcast. The residue of time charges is the only source for covering staff, facilities and other expenses attributable to sustaining programs.

[2]Revenues from program production charges are excluded, but as noted on p. 43, total program charges, even if limited to sponsored programs, result in a net over-all loss which must also be met from time revenues.

term contracts and expensive commitments necessary to attract creative skills.

Not all risks crystallize in success, as they did in the case of "CLIMAX!" Some of the projects in which tens of thousands or hundreds of thousands of dollars are invested have to be abandoned; programs in which the network has made large investments in energy and dollars sometimes have failed even to get on the air.[1]

Inherent in the complexity of the network business, in the enormous costs of maintaining an organization and an over-all program schedule, and in a network's multiple obligations to the public, to its affiliates and to its advertiser-customers, is the phenomenon which marks the economic nature of the business of networking: The phenomenon of the delicate balance and the violent swing.

Unlike most businesses, a decline in network business involves a double liability to a network. If a shoe factory's sales are reduced, the factory can reduce production and thus reduce costs. Its chief loss, when sales are reduced, is loss of revenue, which is normally offset in some substantial degree by reduced operating costs. But in networking there is usually no such offsetting factor.

For when a network loses time sales, it not only loses the revenues; in addition, its costs are vastly *increased* as it continues its network service. Its program service to its affiliates cannot, in general, expand and contract in direct proportion to advertisers' time purchases but must continue at the same pace

[1]In 1955, CBS Television spent a total of one million dollars on the development of programs and program ideas which never saw the light of day.

regardless of whether time and program revenues are forthcoming. Thus, even though a time sale is lost, a network must, as a rule, maintain its program service to its affiliates—maintain it at a high qualitative level—if an over-all effective network program schedule on behalf of its affiliates and other advertisers is to be continued.[1]

Hence the network, when it loses a time sale, not only loses the revenue but incurs the costs involved in broadcasting the unsponsored program which must take its place.

Thus it is that failure to sell one hour between 7:30 and 10:30 PM each night for a year (whether because of refusal of stations to clear time or for any other reason) would result in an enormous swing in a network's profit and loss figures. The net revenues (net time charges less station payments) that would be lost from the failure to sell one nighttime hour each broadcasting day throughout 1955 would have been $13 million. In addition, the expenses to provide sustaining programs of comparable quality for the period would have been increased by some $13 million to $15 million. The possible swing, therefore, for one Class A hour each day for one year is in excess of $26 million.

Despite the risks and the complexity of the business and despite the inherent hazards, television networking has, in general, been profitable. According to public FCC figures[2] for the year 1954 (the latest figures available), the profit before taxes of the four then existing networks as a percentage of broadcast

[1]For the importance to an advertiser of an over-all effective program schedule, see pp. 83 to 85 of this memorandum.

[2]"Broadcast Revenues, Expenses and Income (Before Income Tax) of Radio and Television Broadcast Services 1954."

revenue[1] was 2.3 per cent.[2] These profit percentages for the networks are in sharp contrast to those for stations. As shown in Chart XI, 377 independently owned stations included in the FCC figures show a profit, before taxes, of 18.8 per cent of sales. It is to be noted that these 377 stations include *all* independently owned stations[3]—including non-affiliated stations, new stations and UHF stations. If only independently owned pre-freeze stations are taken into account, FCC figures show that the percentage of profits before taxes to revenues for such stations would approach 34 per cent.

This relationship between the respective profits of stations on the one hand, and networks on the other, is confirmed by other figures which were released by the FCC for the year 1954. These figures show that the average net return, before Federal income taxes, on total revenues (after commissions) of three stations operating in Philadelphia was 33 per cent; of three stations operating in Detroit, 46 per cent; of three stations operating in Milwaukee, 43 per cent; of two stations operating in Boston, 52 per cent; and of four stations operating in St. Louis, 46 per cent.

Still further confirmation of the relative profits of stations and networks is drawn from data concerning the 1954 revenues and income of two station operators not engaged in network-

[1]Broadcast revenue is defined as net revenue after deductions for (1) discounts, (2) agency commissions, and (3) station payments, plus the incidental broadcast revenues from sale of programs and charges for production costs.

[2]This percentage for network profits is depressed since it would appear that DuMont and American Broadcasting Company both lost money in 1954. It is estimated that if these two networks were excluded for the year, the percentage of profits *before* taxes would be about nine per cent. In the same year, the profits *after* taxes of the CBS Television Network, were 4.6 per cent of net sales.

[3]Excluding only 17 stations with less than $25,000 in time sales.

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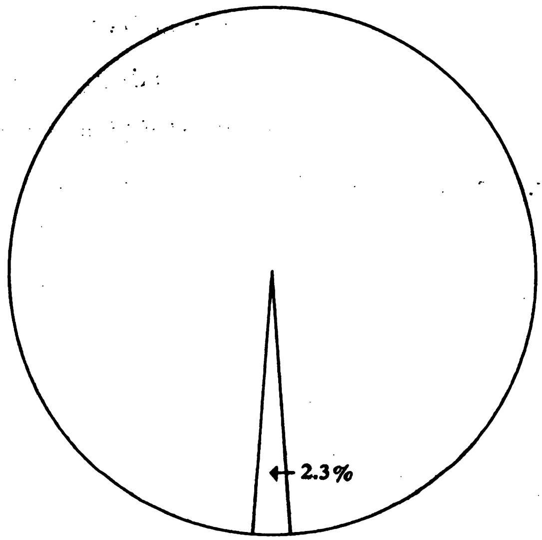
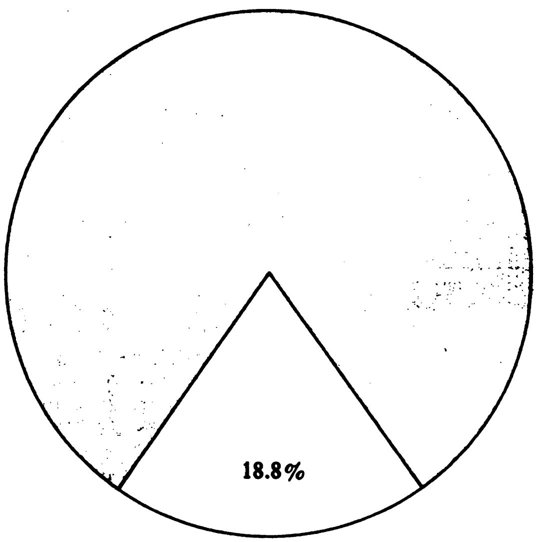
CHART XI

1954 NETWORK AND STATION PROFIT
AS PER CENT OF BROADCAST REVENUE, FROM FCC
PUBLISHED RELEASE OF DECEMBER 2, 1955



four networks



377 stations

ing.[1] The operators are Storer Broadcasting Company, a licensee of seven television and seven radio stations, and Gross Telecasting, Inc., a licensee of one television and one radio station, at Lansing, Michigan. These data are:

	total TV revenues	*total AM revenues*	*income before taxes*	*return*
Storer	$13,391,027	$4,345,504	$7,105,103	40%
Gross	1,973,031	268,558	1,320,464	60%

It is estimated by CBS that in 1954 the total net profits of the seven largest CBS Television affiliates (exclusive of the stations owned by CBS) *exceeded the net profit of the CBS Television Network.* In 1955, when the CBS Television Network profits were greater, it is estimated that nevertheless the total net profits of between 12 to 14 of its largest affiliates exceeded the total net profits of the network.

[1]These data were made public in 1955 in connection with offerings by the two companies of their securities.

PART IV: The External Economics of Network Television as an Advertising Medium

INTRODUCTION. In the foregoing sections, this memorandum has dealt with the dimensions of television and has described the CBS Television Network and the functions and services which it performs for the public, for its affiliated stations and for advertisers (Part II). In Part III, the network's operations and internal economics—in terms of revenues, expenditures and profits—in the focus of a particular program have been analysed.

In this Part IV, the memorandum will examine a different facet of network economics: the economics arising out of the relationships between network broadcasting and the advertisers. This part will deal with the two major factors that must be taken into account competitively in creating a nationwide television network which satisfies the requirements of national advertisers: first, in order to perform a complete and satisfactory service to its affiliates, to the public and to the advertiser, a network must carefully devise the most efficient possible nationwide combination of stations at the lowest possible cost to the advertiser. Second, it is equally imperative as a matter of network economics that the network provide to that efficient aggregate of stations an *effective over-all schedule* of programs in order that the advertiser can be furnished the circulation which he seeks at the times in the broadcast schedule when he seeks it.

A. NETWORK TELEVISION'S COMPETITIVE POSITION AS A NATIONAL ADVERTISING MEDIUM: THE FACTOR OF COST PER THOUSAND AND ITS RELATION TO CIRCULATION.

Since advertising support is the life blood of the American system of broadcasting, it is a condition precedent to providing programs for the public as well as providing programs and revenue for affiliated stations that a television network produce sound economic values for advertisers.

(1) *Identity and scope of competing media.* The economic values must be sound not only on an absolute basis in order to attract the most possible advertisers, but they must be sound on a relative basis because network television is in direct competition with other national media. The CBS Television Network must compete for national advertisers' dollars not only with the other television networks, but with national spot television advertising and with newspapers, magazines, radio, direct mail, trade publications, outdoor advertising and such miscellaneous forms of advertising as car cards and match boxes. And, as is shown in Chart XII, the *entire* broadcasting share of national advertisers' budget—the share accruing to (1) network television, (2) network radio, (3) national spot television,[1] and (4) national spot radio—amounts to less than 20 per cent of the total national advertising expenditures. Thus less than one out of every five dollars spent by national advertisers is spent on the broadcasting media.

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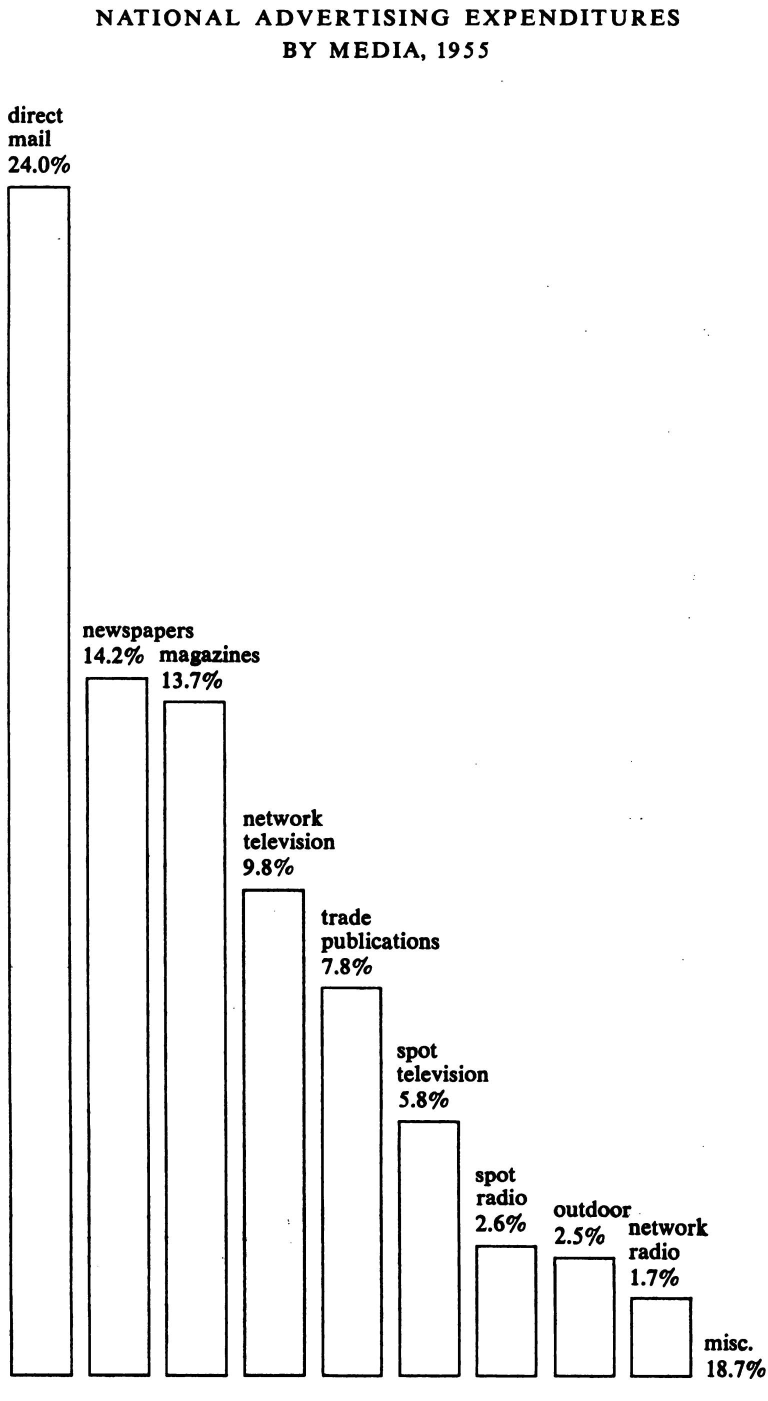
[1]It may be noted, however, than in an important sense, national spot television advertising is complementary to, and built on, network television: A strong network schedule increases circulation and attracts spot revenues. See pp. 14 to 16 of this memorandum.

CHART XII


NATIONAL ADVERTISING EXPENDITURES
BY MEDIA, 1955
direct mail 24.0%
newspapers 14.2%
magazines 13.7%
network television 9.8%
trade publications 7.8%
spot television 5.8%
spot radio 2.6%
outdoor 2.5%
network radio 1.7%
misc. 18.7%

It is the factor of competition with other national advertising media which is a major touchstone of network economics. The competition between media is intense and direct. For example, an organization of newspapers recently announced its intention to launch a "frontal assault" on television to attempt to disprove that it is an effective and economical advertising medium.[1] Such competition is an added reason why there must be a constant and persistent effort by television networks to keep absolute, as well as relative, costs at a minimum. It is no secret that some advertisers have left network television for other media in the past few years because of cost considerations.

Of course, neither stations nor the public can be served without the revenues from national advertisers. Hence any factor which adversely affects the economic value of television for the advertiser almost inevitably results in less money for the medium. And this, in turn, normally means more restricted programming in terms of both quantity and quality.

Necessarily, therefore, in organizing its network of stations and in creating its programming structure, a network must strive to provide a medium which has the maximum possible economic value for advertisers.

(2) *Basic factors influencing advertisers' choice of media; the factor of cost per thousand.* When an advertiser decides between spending his money for a program to be broadcast on the CBS Television Network, or for a television program on another network, or for another medium altogether, probably the most important factor which influences his decision is which

[1]*The New York Times*, January 25, 1956.

medium (or program) will produce the greatest sales per dollar spent. Or putting it another way, the advertiser's question is which medium costs least per unit of sales produced. This depends on three factors: the cost[1] of the medium, the number of homes reached by the medium, and the "impact" of the medium (i.e. the effectiveness of the medium in producing sales in the homes reached). In order to determine whether the cost is justified, the advertiser must relate the cost to the number of homes reached by the program and to the "impact" of the program.

Before a program goes on the air, there is no way an advertiser can be certain of how many homes the program will reach. However, the number of homes the program will reach obviously depends to a large extent on the *potential* audience of the program—the number of television families living in the areas served by the CBS Television affiliates which the advertiser orders. The number of such families served by each of those affiliates is commonly referred to as the station's "circulation." A station's time rate, divided by its circulation (in terms of thousands of families), gives its cost per thousand circulation—a figure which is television's counterpart of a newspaper's or magazine's cost per thousand circulation and is used generally in the advertising field to compare the circulation costs of different advertising media.

After an advertiser's program has been produced and broadcast, he is able to estimate cost per thousand in terms of homes which actually tune to his program.

[1]The cost of a network television program to an advertiser consists, as has been shown in Part III, of (1) the aggregate of the time rates charged by each affiliate ordered by the advertiser and cleared by the network, less discounts, and (2) the program charges.

The usual method of estimating homes actually reached by a program (as contrasted to circulation of the stations carrying the program) is by conducting national sample surveys. Since these surveys are much too expensive for an individual or company to perform solely for its own information, the surveys are made by organizations known as "rating services" and the results are made available to multiple subscribers.

Measuring "impact" or sales produced per home reached is much less precise than measuring the number of homes reached by a program. Sometimes it is intuitively evaluated by the advertiser. However, just as the format of a magazine and the position and attractiveness of the advertisement carrying the sponsor's message determine impact in a magazine or newspaper, so also do the nature of the television network of stations, the particular program he sponsors, the attractiveness of the commercial he presents and the quality of the programs adjacent to his determine the impact of the sponsor's television program. Homes reached by the program plus the impact of the program when related to the cost of the program will generally determine whether an advertiser will use television or another medium.

Since cost per thousand circulation for a television program (or any medium) is so important in determining cost per sale produced by the program, it is for most advertisers a major factor[1] in determining whether to use the program as an advertising medium.

One of the precepts of advertising economics is that (1) *high*

[1]In some cases an advertiser may be interested in advertising for prestige purposes or to deliver a message to a special audience. In such cases, cost per thousand (or even cost per sale) becomes less important.

circulation with (2) *high* dollar rates yields (3) *low* cost per thousand, while (1) *low* circulation with (2) *low* dollar rates yields (3) *higher* cost per thousand. This phenomenon stems from the fact that the rate of a broadcasting station, a newspaper or a magazine does not increase directly with the circulation increase, but instead tapers off in a less sharply ascending curve. This is a matter of economic necessity: There are basic costs (plant, equipment, operations and the like) which a station, newspaper or magazine must incur, no matter how small its circulation; hence, the rate of media in small markets must be relatively high in order to cover these basic costs. Costs do not rise proportionately, however, to increased circulation; hence, added circulation comes in at a lower proportionate cost. Accordingly, a broadcasting station or a newspaper with 1/50th of the circulation of a New York City station or newspaper will have a rate greater than two per cent of the New York rate. Therefore, the cost per thousand of the medium with the smaller circulation is higher.

The factor of high circulation/low cost per thousand is illustrated by the actual rates and costs per thousand shown in Charts XIII, XIV and XV. As Chart XIII shows, the *New York Daily News* has a circulation of 2,136,928 and its rate per line is $3.47; in contrast, the circulation of the *Watertown Times* (Watertown, New York) is 42,042 and its rate per line is only 22¢. Yet the cost per thousand of the *News* for a thousand line ad is only $1.62, while the cost per thousand of the *Watertown Times* is $5.23—almost three-and-one-half times as high.

Chart XIV illustrates how the same factor of low cost per thousand with high circulation operates where multiple small

CHART XIII

RELATIONSHIP OF NEWSPAPER CIRCULATION AND RATES TO COST PER THOUSAND (I)

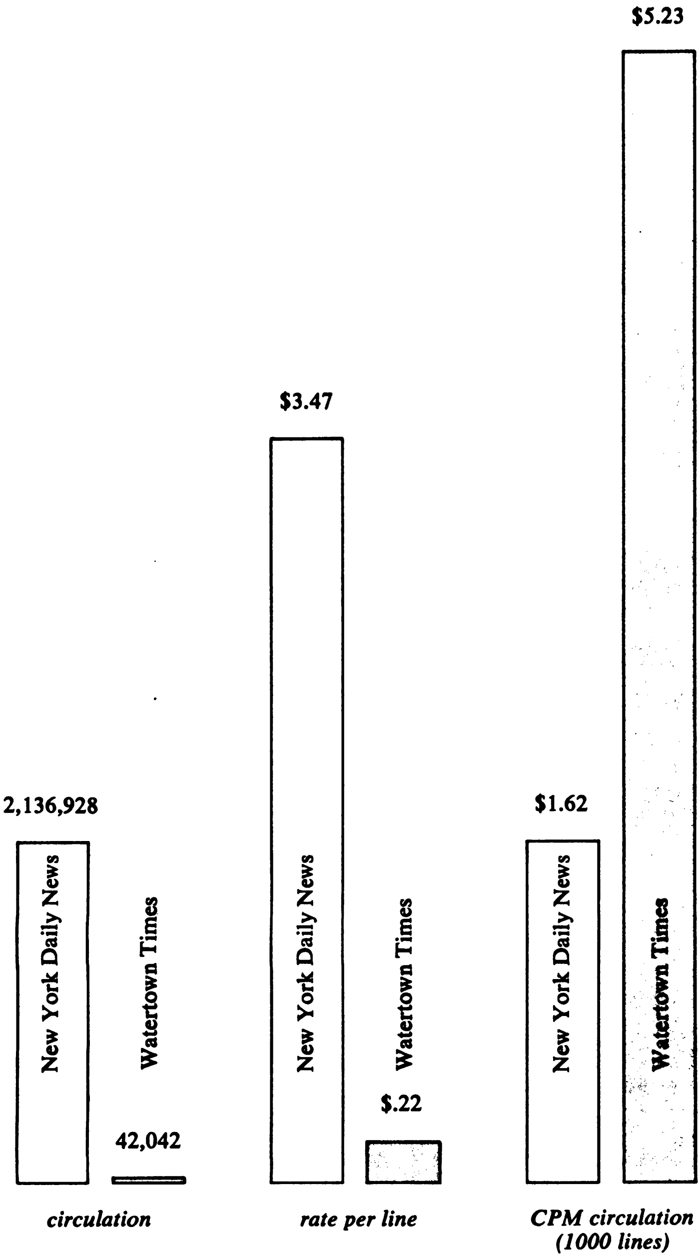
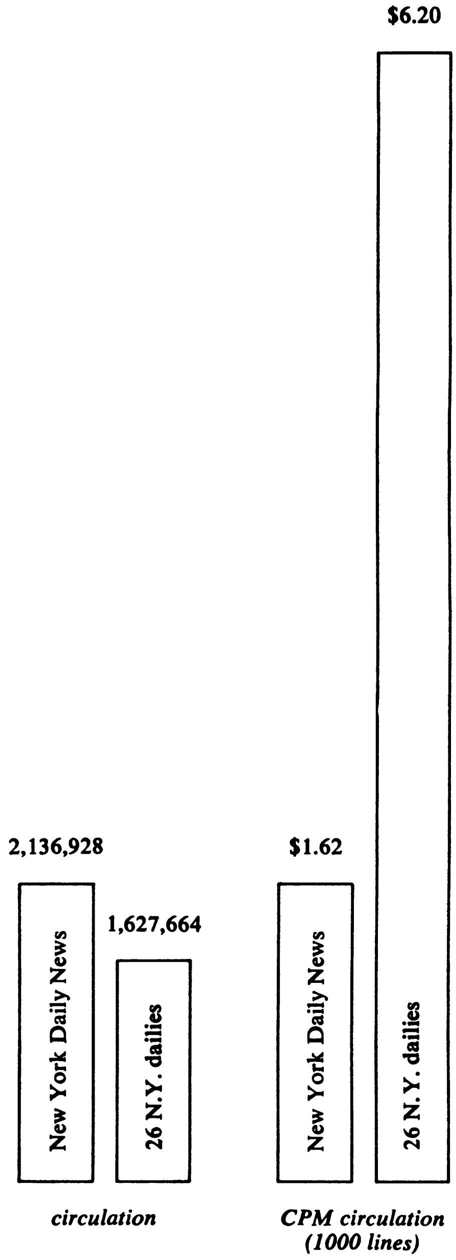


CHART XIV

RELATIONSHIP OF NEWSPAPER CIRCULATION AND RATES TO COST PER THOUSAND (II)



units of circulation are aggregated to achieve a large circulation. It is possible in New York City for an advertiser to reach a circulation of about 1.6 million people in two ways. First, the advertiser can place his advertising solely in the *New York Daily News* yielding, as has been shown, a circulation of over two million at a cost per thousand for a thousand line ad of $1.62. Alternatively, the advertiser can select 26 different New York dailies with a circulation of about 1.6 million.[1] The cost per thousand of these 26 New York dailies, even though the circulation still falls almost one-half million below the circulation of the *New York Daily News,* would be $6.20—almost four times the cost per thousand of the *News.*

Nor is this phenomenon peculiar to print media. Chart XV shows how it similarly operates in respect of television. A Philadelphia television station with a circulation of 1,630,000 families and a Class A rate of $3,100 per hour yields a cost per thousand of $1.90. In contrast, the 36 smallest CBS Television affiliates[2] with an aggregate circulation almost the same as the circulation of the Philadelphia station have a *total* rate of $7,175 and, thus, yield a cost per thousand of $4.39—almost two-and-one-half times the cost per thousand of the Philadelphia station, although the circulation is virtually the same.

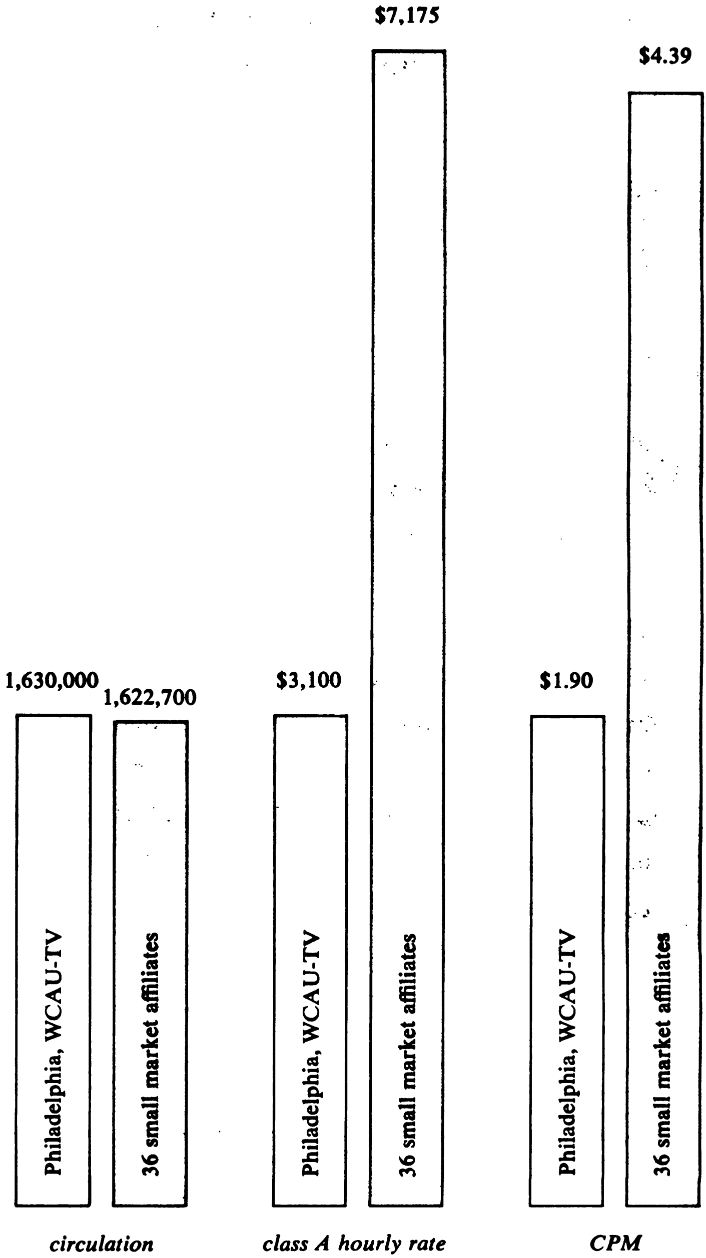
B. THE ADVERTISER ECONOMICS OF AFFILIATIONS. The immediately preceding discussion concerning the factor of cost per thousand and its effects bears directly upon the question of a network's affiliation determinations. For, in order to attract advertisers to network television, and to maintain network tele-

[1]To minimize duplication, standard daily newspapers have been excluded from the group of 26 and, instead, such dailies as *Il Progresso, The Wall Street Journal, The Staats-Zeitung* and nine Westchester dailies have been included among the 26.

[2]Exclusive of Extended Market Plan affiliates. See pp. 78 to 80 of this memorandum.

CHART XV

RELATIONSHIP OF TELEVISION CIRCULATION AND RATES TO COST PER THOUSAND



vision's competitive position with other national media, the objective of maximum circulation at the lowest possible cost per thousand must be a primary consideration in devising the structure of a network of affiliates.

A second factor, closely related to the cost per thousand factor, is "duplication," which, in broadcasting, means the overlapping of signals in the same area by different affiliates. Affiliates normally must be selected by a network so that there is the minimum possible duplication.[1] (For a full description of the criteria and procedures followed by CBS Television in its affiliation determinations, see Appendix C, of this memorandum.)

The problem of duplication is accentuated in the field of network broadcasting. In printed media, an advertisement in two morning papers in the same city or in *LIFE* and *The Saturday Evening Post* might well involve substantial readership duplication, as many of the same readers read both papers or both magazines. But this duplication would not necessarily be wasteful because the reader can read the papers or magazines successively and, hence added values may be gained from the multiple impressions on the duplicated reader. In contrast, there is an element of exclusivity in respect of the television viewer: While watching one program from one station, the viewer obviously cannot watch the same program from another station. And having watched a program on one station, he cannot later turn to the other station to see the program which it had been

[1]The major exception to this rule of minimum duplication involves neighboring major markets such as Washington, D.C. and Baltimore, and Providence and Boston. Even though these two pairs of cities involve very substantial duplication, experience has shown that as a matter of advertiser preference, each must normally be covered from within. See Appendix C, pp. XV, XX and XXI, XXIV and XXXII. The importance of the market and advertisers' beliefs with reference to the need for local support of his product in such larger cities sometimes outweigh cost consideration relating to duplication. The exceptions are rare.

broadcasting at the time he was watching the first station. In this sense, there is no factor of successive multiple impressions in broadcasting which would offset duplication.[1]

For these reasons, an advertiser will not ordinarily pay twice for the same unit of circulation because the audience will not be proportionately enlarged and each viewer can only look once at any given time. As a matter of advertiser economics, therefore, a network's task in forming its network of affiliates is something like putting together a jigsaw puzzle: It must choose its affiliates insofar as possible in a pattern so that each contributes the maximum additional *unduplicated* service. It was because of duplication that, for example, CBS Television found it necessary to refuse to affiliate with KOVR, a VHF station operating in Stockton, California. As is shown in Chart XVI, KOVR's location is such that the CBS Television affiliates in San Francisco, Sacramento, Fresno and Chico virtually duplicate the circulation of KOVR. Because KOVR could add no new circulation to the CBS Television Network, and because of the nature of the market of Stockton itself, a regular affiliation was determined to be clearly uneconomic.[2]

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[1]Moreover, the audience for a single program broadcast in the same area simultaneously over two stations would not normally assure twice as large an audience as if it were broadcast over only one station; rather the tendency would be merely to divide the normal audience for the program between the two stations.

[2]It should be noted, however, that lack of affiliation does not necessarily exclude a station from network programs. It has long been the practice of the CBS Television Network to make a sponsored program available, at the sponsor's request, to a non-affiliate in a community where the regular CBS Television affiliate has not cleared time for the program. For example, in Washington, D. C., WTOP-TV, a CBS Television primary affiliate, has not cleared for the sponsored network programs during the period 4 to 5 PM. These programs, accordingly, are carried on WTTG in Washington, which is not affiliated with CBS Television. In addition, CBS Television has recently adopted a plan of making its commercial programs available to non-affiliates in cities different from those in which a CBS Television affiliate is located, if (1) the sponsor requests that the program be carried on the non-affiliate and (2) the non-affiliate (a) accepts a rate based upon the incremental circulation that it contributes to the CBS Television Network and (b) pays the actual out-of-pocket costs, if any, of getting the program to it. Under that policy, during the week ending April 7, 1956, 12 non-affiliated stations carried a total of 240 hours of sponsored CBS Television Network programs.

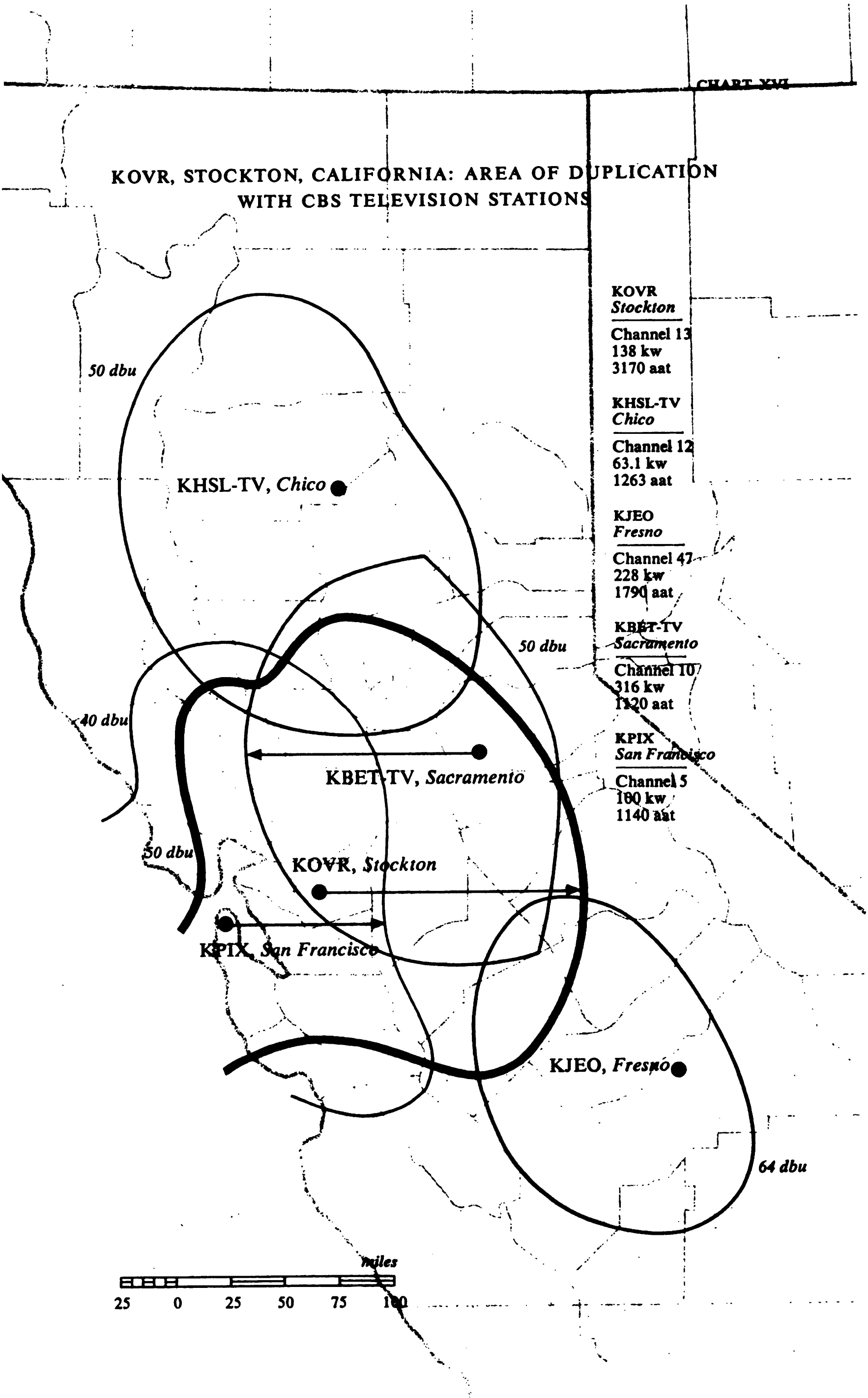


CHART XVI
KOVR, STOCKTON, CALIFORNIA: AREA OF DUPLICATION WITH CBS TELEVISION STATIONS
KOVR
Stockton
Channel 13
138 kw
3170 aat
KHSL-TV
Chico
Channel 12
63.1 kw
1263 aat
KJEO
Fresno
Channel 47
228 kw
1790 aat
KBET-TV
Sacramento
Channel 10
316 kw
1120 aat
KPIX
San Francisco
Channel 5
100 kw
1140 aat
50 dbu
KHSL-TV, Chico
50 dbu
40 dbu
KBET-TV, Sacramento
50 dbu
KOVR, Stockton
KPIX, San Francisco
KJEO, Fresno
64 dbu
miles
25 0 25 50 75 100

Chart XVII illustrates the economics of affiliating in order to fill in gaps in coverage. For purposes of illustration, the question of affiliating with WEHT, a UHF station in Henderson, Kentucky, or WTVW, a VHF station in Evansville, Indiana, is used. As shown in the chart, the CBS Television Network has existing affiliates in Louisville and Nashville, as well as in Terre Haute, Indiana, and Cape Girardeau, Missouri. The coverage of these affiliates, however, includes only part of the areas covered by the Henderson-Evansville stations. In the remainder of the areas covered by the Henderson-Evansville stations, no CBS Television signal would be available in the absence of a Henderson-Evansville affiliate. As shown on Chart XVII, if CBS Television were to affiliate with WTVW, the VHF station, 14.1 per cent (or 35,200 homes) of that station's coverage would be duplicated by the CBS Television Louisville affiliate; 9.2 per cent (22,800 homes) would be duplicated by the Nashville affiliate; 11.7 per cent (29,200 homes) would be duplicated by the Terre Haute affiliate; 4.5 per cent (11,100 homes) would be duplicated by the Cape Girardeau affiliate and an additional 2.0 per cent (5,100 homes) would be duplicated by the combined coverage of the Louisville and Nashville affiliates. Thus, only 58.5 per cent (145,600 homes) of WTVW's coverage would be unduplicated.

In contrast, as shown on Chart XVII, WEHT, the UHF station, minimizes this duplication. Falling within the WEHT coverage area are 22,900 homes (14.5 per cent of the WEHT coverage area) already covered by the Louisville affiliate and 11,100 (7.1 per cent of the WEHT coverage area) covered by the Nashville affiliate. But, in the case of WEHT, there are

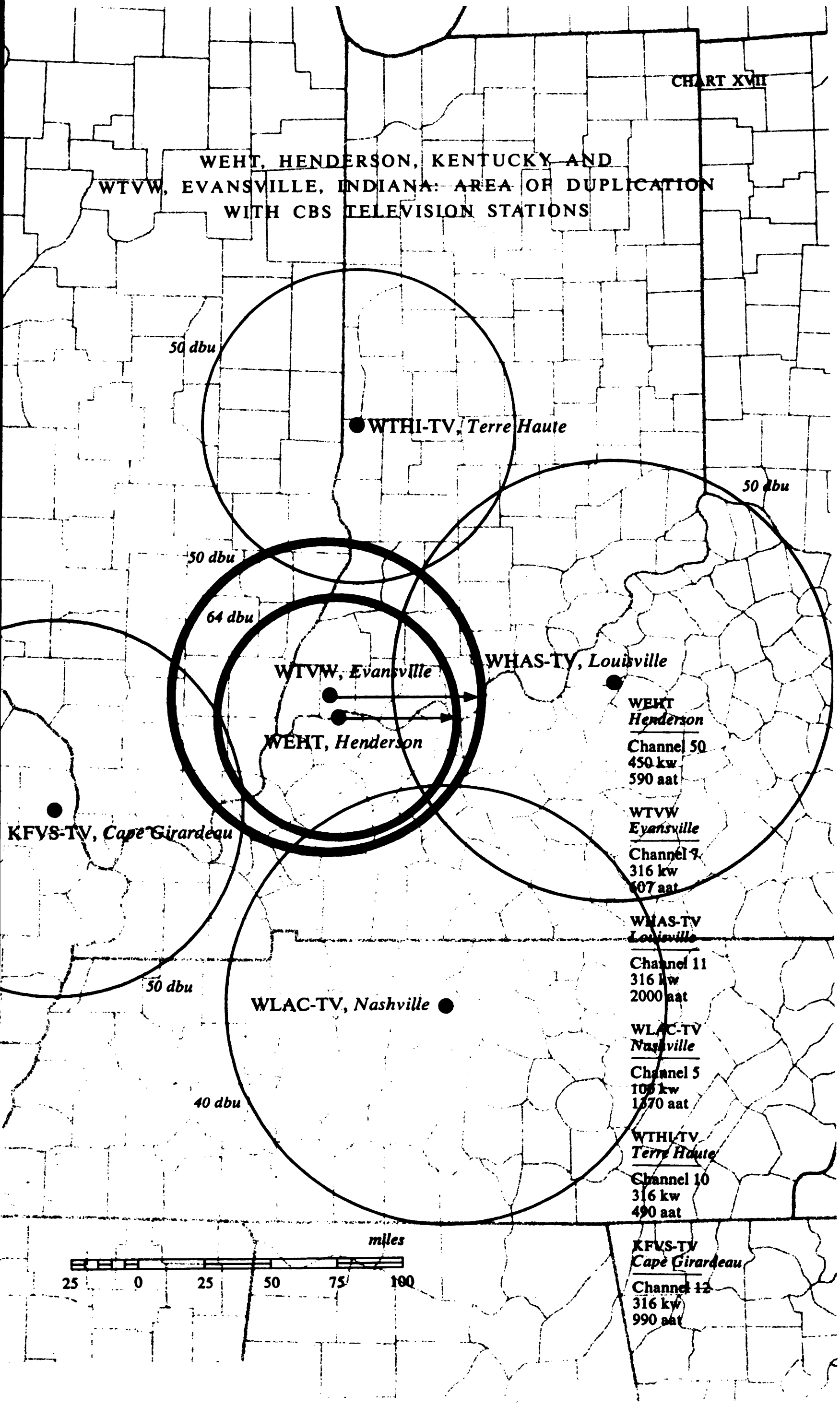


CHART XVII
WEHT, HENDERSON, KENTUCKY AND
WTVW, EVANSVILLE, INDIANA: AREA OF DUPLICATION
WITH CBS TELEVISION STATIONS
50 dbu
WTHI-TV, Terre Haute
50 dbu
50 dbu
64 dbu
WTVW, Evansville
WHAS-TV, Louisville
WEHT, Henderson
KFVS-TV, Cape Girardeau
50 dbu
WLAC-TV, Nashville
40 dbu
miles
25 0 25 50 75 100
WEHT
Henderson
Channel 50
450 kw
590 aat
WTVW
Evansville
Channel 7
316 kw
607 aat
WHAS-TV
Louisville
Channel 11
316 kw
2000 aat
WLAC-TV
Nashville
Channel 5
100 kw
1370 aat
WTHI-TV
Terre Haute
Channel 10
316 kw
490 aat
KFVS-TV
Cape Girardeau
Channel 12
316 kw
990 aat

CBS TELEVISION NETWORK SERVICE TO 36 S

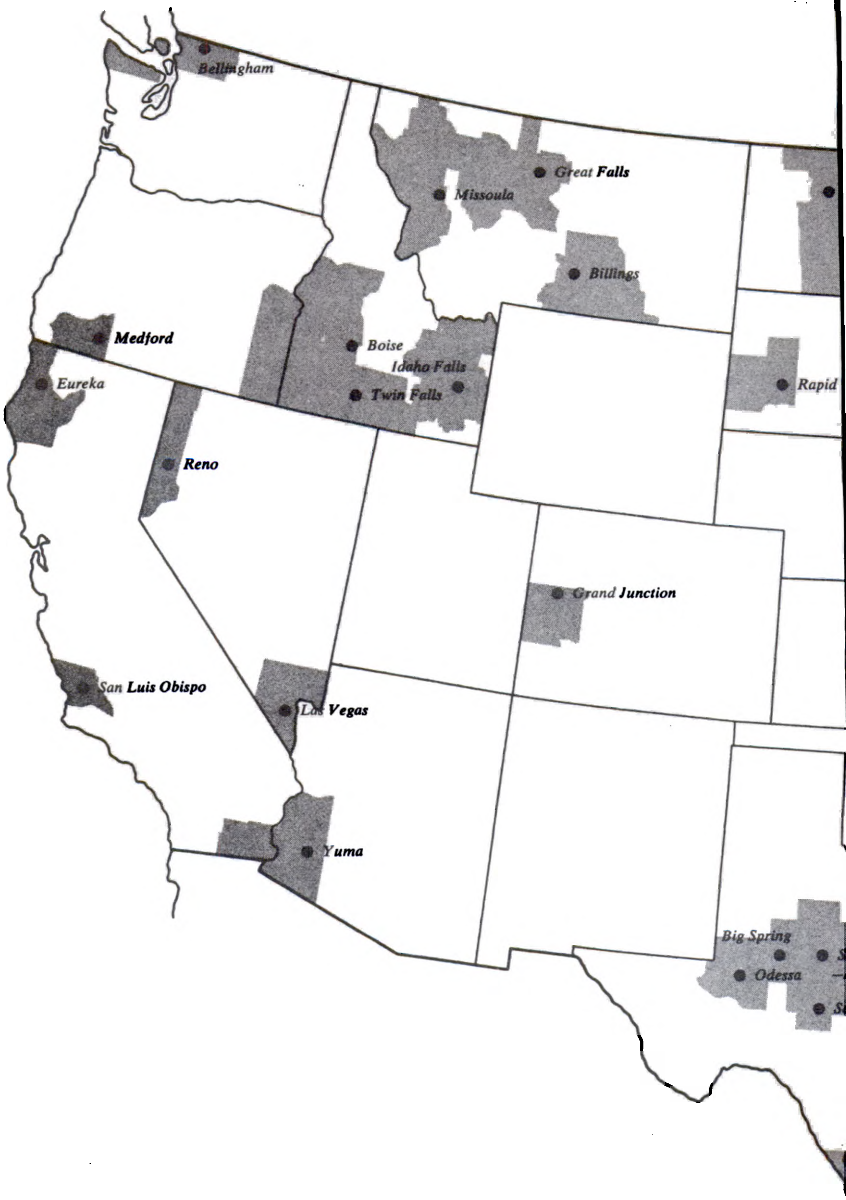
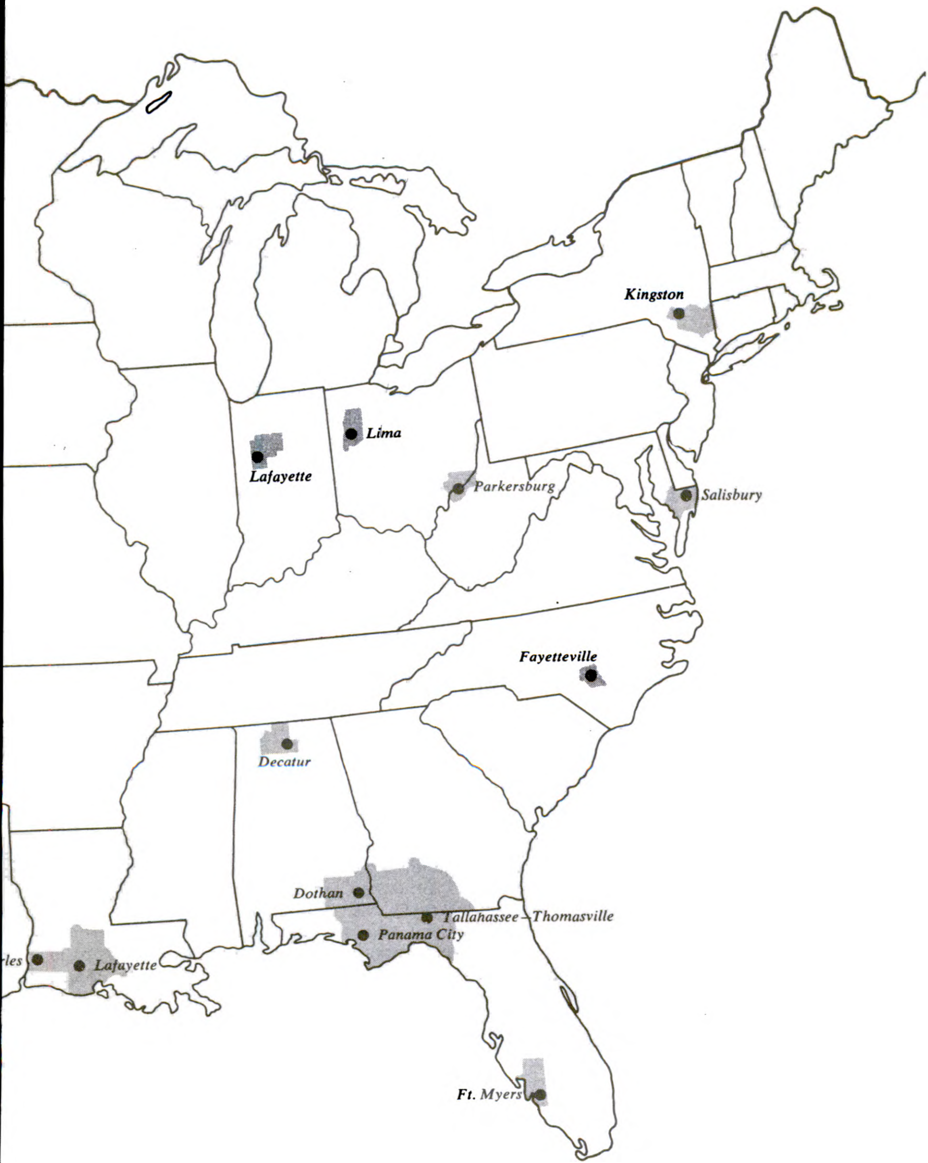


CHART XVIII

OVERING LESS THAN 40,000 TELEVISION FAMILIES



123,500 unduplicated homes, or 78.4 per cent of the WEHT coverage area in contrast with only 58.5 per cent unduplicated by WTVW. Since the cost per thousand of the unduplicated circulation of WEHT was, therefore, lower than the cost per thousand of the unduplicated circulation for WTVW, CBS Television affiliated with WEHT, the UHF station, in order more efficiently to fill in the gap in coverage.

As noted, the second major reason for affiliating with stations in smaller markets is to extend service into areas which would not otherwise be served by CBS Television Network programs. Pursuant to that policy, the CBS Television Network has affiliated with 36 television stations, each of which covers less than 40,000 television families. See Chart XVIII. The smallest of these is KHAD-TV, Laredo, Texas with a March 1, 1956 circulation of only 3,700 television homes.

By adhering to the basic principles underlying advertiser economics, the CBS Television Network has, in fact, succeeded in providing nationwide service, reaching all but two per cent of the television homes and at the same time keeping cost per thousand at a reasonable level. See Chart XIX. The general tendency over the years has been in the direction of lower cost per thousand despite the fact that the total rates of time for all stations has increased and total circulation has also increased.[1]

It is important to note that an affiliation is not, in any event,

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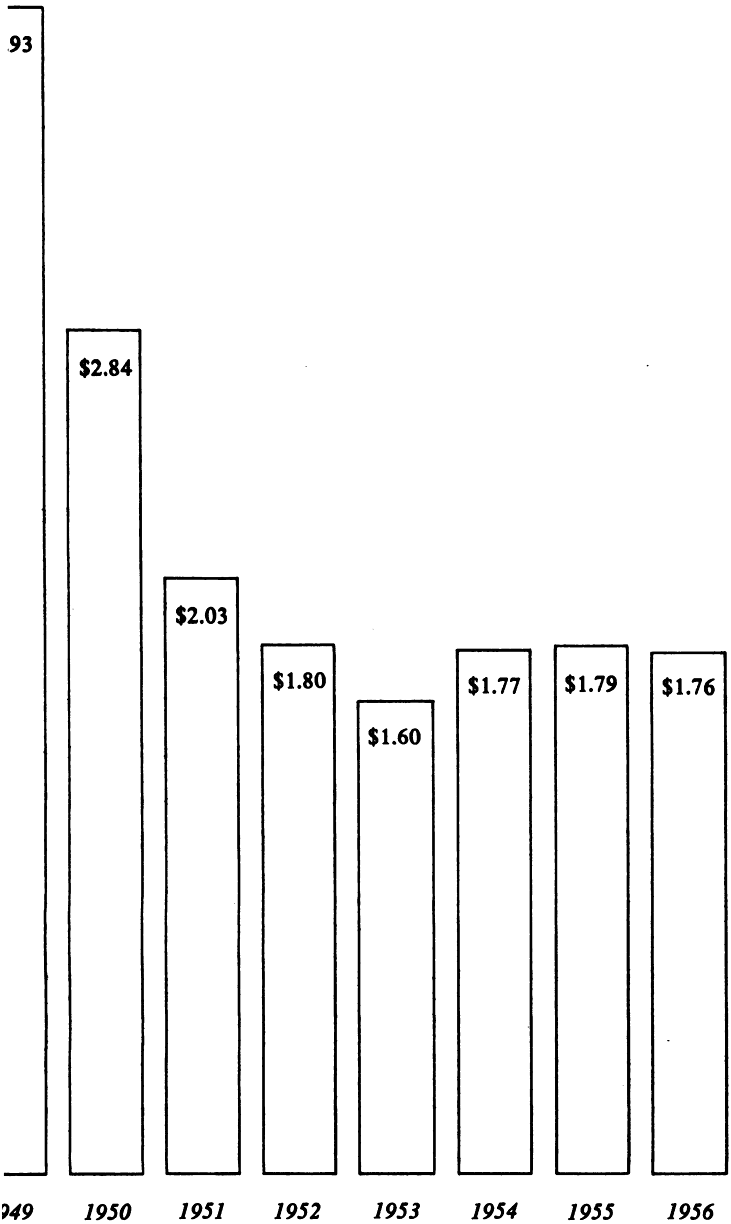
[1]Subsequent to the lifting of the freeze there have been two conflicting factors in operation affecting cost per thousand. Tending toward a lower cost per thousand on the one hand has been the growth of set ownership in individual markets. As noted above, as circulation increases, since rates do not increase proportionately, the result is a lower cost per thousand. Operating counter to this factor, however, has been the factor that many new stations are located in the smallest markets and, hence, entail a higher cost per thousand. Prior to the end of the freeze only the first factor was at work, which accounts for the sharp decline of cost per thousand through 1953. After 1953, both factors were at work simultaneously and tended to equalize each other and, hence, there was a leveling off of cost per thousand.

CHART XIX

COST PER THOUSAND CIRCULATION,
CBS TELEVISION NETWORK



a guaranty of success.[1] Except for affiliates in the Basic Required Group (see pp. 127 to 130), the advertiser may pick any (or none) of the CBS Television affiliates. Before an affiliation can ripen into sponsored programming, there remains the problem of persuading the advertiser to order the station. As Chart XX shows, during December 1955, for example, 41 CBS Television affiliates carried 12 or less hours of CBS Television Network commercial programs each week; 21 carried from 13 to 24 hours; 38 carried from 25 to 36 hours; 22 carried from 37 to 48 hours; and 52 carried from 49 to 60 hours.[2]

Not only the affiliate, but also the network suffers when an advertiser fails to order the affiliate. The network's revenues derive from the sale of time of the affiliates and its revenues increase as more stations are ordered. Conversely, the network receives no revenues for an affiliate which is not ordered. Nevertheless, the network provides the affiliate with non-sponsored programs; it normally pays for the AT&T lines to the affiliate as well as the other expenses of serving the affiliate.[3] There are cases where the advertisers order an affiliate so seldom that an actual loss to the network, attributable to the station, is involved. During 1955, for example, the actual costs attributable to 48 of the stations with which the network did business exceeded the revenues attributable to those stations by more than $640,000. Nevertheless, many of these stations are

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[1]See testimony of Frank Stanton, President, Columbia Broadcasting System, Inc., before Senate Subcommittee No. 2 on Communications, Committee on Interstate and Foreign Commerce, June 18, 1954.

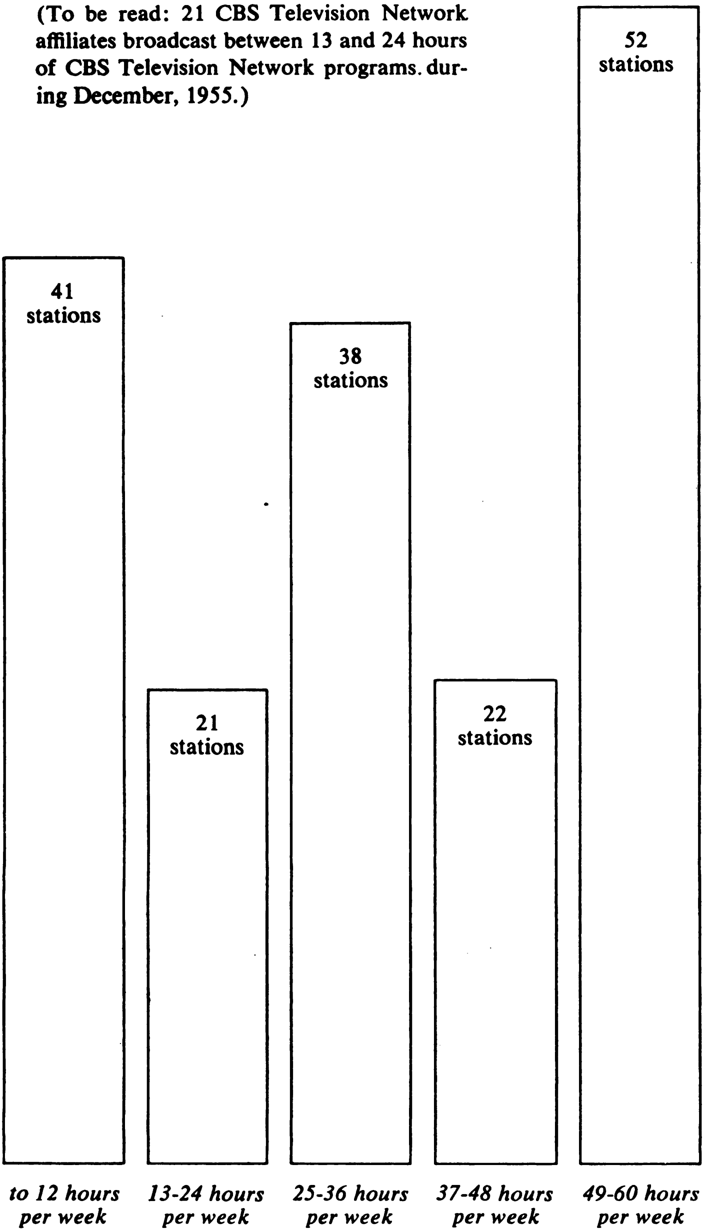
[2]Conversely, stations not affiliated with any network may well prosper. For example, KTVW-TV, a VHF station operating without a network affiliation in the four-station Tacoma-Seattle market, had billings in excess of $50,000 a month in June 1955, and was operating profitably. Similarly, the net television sales of KTTV in Los Angeles totaled $7,473,759 in 1955, an increase of almost 33 per cent over the prior year, while its net income rose 76 per cent to $396,886.

[3]For a description of these expenses, see footnote 2, p. 82 of this memorandum.

CHART XX

DISTRIBUTION OF CBS TELEVISION AFFILIATES BY HOURS OF SPONSORED NETWORK PROGRAMS

(To be read: 21 CBS Television Network affiliates broadcast between 13 and 24 hours of CBS Television Network programs. during December, 1955.)



retained by the network in the hope that advertisers can be persuaded to order them and that, as they carry more network programs, their circulation will increase and the stations will ultimately be able to pay their way.

It is, accordingly, of primary importance both to the network and to the affiliates that advertisers be persuaded as vigorously as possible to order the maximum number of stations. The CBS Television Network has met with some success on this score. The average number of stations carrying network daytime programs has increased over the last year from 72 to 83, while the average number of stations carrying nighttime network programs has increased from 87 to 121.

In addition, the CBS Television Network has attempted, within the framework of basic advertising economics, to extend network program service to that segment of the public which is served by smaller affiliates. The two plans which have been developed—the Extended Market Plan and the Extended Program Service Plan—illustrate some of the potentialities, as well as the limitations, of increasing service to stations and the public without violating the basic economics of television networking.

(1) *The Extended Market Plan (EMP).* After a year of planning, the CBS Television Network instituted its EMP in December 1954. It was devised to meet the problems which were involved in encouraging advertisers to use the stations in the smaller markets. Because, as noted, there are actual out-of-pocket operating expenses for AT&T lines and for the other functions which a network must perform in servicing stations,[1] a minimum volume of orders for a station is neces-

[1]See footnote 2, p. 82.

sary to avoid network losses attributable to the station. Based on experience, CBS Television had found that stations with a gross hourly nighttime rate of less than $150 usually result in a net operating loss for the network, since the network's share of any lesser rate normally does not permit service to such an affiliate at a profit to the network. Hence the minimum network rate for any station had been fixed at that figure. As a result of this rule, markets served by stations which had lower rates were not provided with CBS Television Network service or, alternatively, if the station did maintain a rate of $150 where its circulation did not warrant it, advertiser orders for such stations were sparse. In either event, the public served by such stations in smaller markets was deprived of network programs, and the stations received neither programming nor revenues—both of particular importance to the smaller stations.

The EMP cut through this dilemma by abandoning the rule of the $150 minimum rate. By agreement with the stations, lower rates—in some cases as low as $50—related to their actual circulations were established. To induce the advertiser to use the stations in sufficient volume to cover the network's out-of-pocket expenses, and to provide the stations with revenues and programs, a special network sales unit was assigned to work exclusively on obtaining orders for EMP stations. In addition, the network provided special discounts, in addition to the regular discounts, to an advertiser ordering EMP stations.[1] It is to be noted that those discounts do not reduce the revenues to

[1]Advertisers using EMP stations are allowed an extra discount of five per cent for ordering five to nine such stations, seven and one-half per cent for ordering ten to 14 stations, ten per cent for ordering 15 to 19 stations and 15 per cent for orders of 20 or more stations. Thus, the total discounts for EMP can be as high as 36.25 per cent.

the station. Since the station's percentage is based on gross rate before reduction for discounts (see p. 47), the entire cost of the discounts is borne by the network.

As a result, from the date when the EMP was instituted to March 1, 1956, the number of regular CBS Television advertisers using the plan had increased from 30 to 47, and the number of EMP stations on the air in the United States had increased from 13 to 25[1] (seven of which are UHF stations). In approximately one year, television receiver ownership in the markets covered by these stations had increased from 143,000 to 464,800. Because of the increase in circulation, 12 EMP stations were able to increase their network rates by an average of 49 per cent. Yet in spite of those rate increases, the cost per thousand dropped from \$5.52 to \$4.00 and the average network payment to each EMP station is about \$860 a month.[2] And, of course, the additional network programs thus made available to these stations also attracted additional revenues from national spot and local spot advertisers (see pp. 14 to 16).

(2) *The Extended Program Service Plan (EPS).* This plan devised by the CBS Television Network and instituted in April 1955, was designed to extend program service to the smaller markets. It represents an attempt to encourage the distribution of sponsored programs to affiliates which are not ordered by advertisers. In accordance with that plan CBS Television offers commercial programs to many of its regular affiliates which are not ordered by advertisers. Although the stations receiving EPS programs cannot carry the commercial messages and are not

[1]An additional EMP station is in Alaska.

[2]For the week ending April 7, 1956, the gross time billing for all programs carried on Extended Market Plan stations was \$19,029.15.

permitted to insert substitute commercials into the programs, they are able to sell spot announcements both before and after the programs. CBS Television thus provides those stations with the drawing power of network programs and the corresponding assurance of selling adjacencies locally or to national spot advertisers. Additionally, the stations do not have to program locally to fill the time. The public, of course, benefits from the plan by the increased availability of high-quality programs. The plan has been partially successful: In March 1956, 40 CBS Television Network affiliates received one or more of 21 network commercial programs totaling 383 station quarter-hours per week.

Its limited success is illustrative of the necessity of adapting affiliation practices and program service to advertiser economics. In order for a program to qualify for inclusion under EPS, permission must be obtained from a number of different sources, each of which has a legitimate interest in the program. Thus, for example, it is necessary to obtain permission from the advertiser who is paying for the program. It is hardly to his interest to permit the program, with commercials deleted, to be carried on a station whose circulation significantly duplicates the circulation for which the advertiser pays. To require the advertiser to permit the program to be carried without commercials on a duplicating station would be to require him to compete with himself, thus giving some portion of the viewers a choice of seeing the program—for which he pays—without his commercials or with his commercials. Understandably, some advertisers have been reluctant to permit inclusion of their programs on a station which duplicates the coverage of a station for which he pays.

Similarly, the rights of the program producer and talent, as well as the syndication rights, if any, must be taken into account. Where a filmed program is involved, for example, the owner of the program may be reluctant to permit it to be carried in unordered markets free and thus diminish the possibility of future sale to stations in those markets.[1]

However, even if clearances are obtained from the advertiser, producer and talent, sometimes a station does not avail itself of a program furnished under EPS, because the station has already sold the time to a local or national spot advertiser. In March 1956, 27 stations did not accept 526 quarter-hours of programs a week made available to them under EPS.

Despite these limitations, EMP and EPS indicate what can be accomplished within the framework of the whole complex of economic relationships and interests involved in broadcasting; these plans also delimit the areas in which progress can be made within that framework.[2]

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[1]Where all the program rights, however, reside in CBS Television or the syndication rights belong to CBS Television Film Sales, Inc., consent for inclusion of the program in EPS is granted.

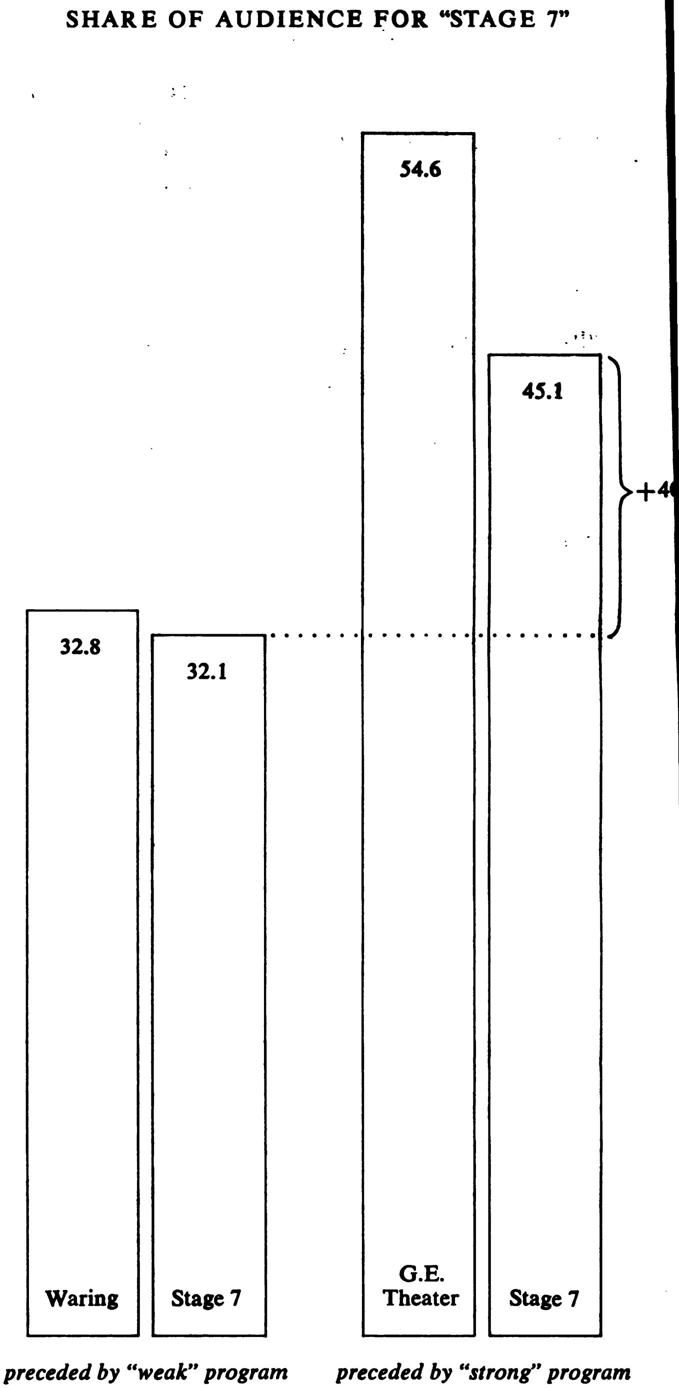
[2]Considerations such as those described in the text establish the basic difficulties of accepting the suggestion, which has from time to time been advanced, that in order to provide stations with network programming on the broadest possible basis, networks should affiliate with them and make them available to advertisers free, as a bonus. While providing affiliates to advertisers on a free basis would indeed solve the problem of cost per thousand to the advertiser, it must be noted that network revenues come from the network's share of the advertiser's payment for the station. If the rate for a station is zero, the network's revenue when the station carries a network commercial program is also zero. Yet, servicing the station is in the aggregate costly to the network. CBS Television Network studies have shown that the network direct out-of-pocket expenses of servicing stations in smaller markets approximate $90 a week without assigning to the station any portion of the indirect selling, programming and administrative costs involved. To that must also be added the network's payment of AT&T charges. Those charges can be illustrated by taking the case of a small station 100 miles from the nearest service point. It may be assumed, as is customary, that the station does not qualify for full time use of the cable and that it is used only two hours a week. Even on so limited a basis, the cost which must be borne by the network is $230 a week for the intercity relays, plus an additional $170 a week for the minimum connection charge and local loop. Of course, for a "free" affiliate, the AT&T costs would be vastly increased since the lines would be in almost constant use. It is readily apparent, therefore, that the concept of free stations is not, in general, economically feasible. The EPS, which is an attempt to avoid those difficulties, is sounder—both in theory and in practice.

C. ADVERTISER ECONOMICS OF A SOUND PROGRAM SCHEDULE. In the preceding portions of this Part IV, the memorandum has dealt with the exacting problem of devising an efficient network of stations so that network television can be a sound economic value to advertisers and competitive with other media. In addition to providing an efficient aggregate of network stations, it is necessary, in order to furnish the advertiser with maximum network values, to provide an effective composition of the over-all weekly network schedule. It is the network's special obligation, both to the public and to advertisers, to provide: (1) a suitable number of popular programs well balanced as to type between information and entertainment both for purposes of variety and in order to serve the public interest, and (2) assuming that strong and balanced programs are provided, a schedule in which these programs are placed in such reference to each other as to maximize their over-all appeal.

Those objectives are important not only to the stations and to the public; they are also important to advertisers. Both the over-all schedule and the program which precedes and which follows the time period which an advertiser has under consideration are important to him, for he knows that audiences are built up and retained through an appropriate flow in sequence of programming.

The phenomenon of audience flow has been presented negatively before this Committee. Audience flow does not mean, however, that a poor program has a larger audience than it deserves because it follows a popular program. Rather, it means that a program is not *deprived* of the audience it deserves

CHART XXI


SHARE OF AUDIENCE FOR "STAGE 7"
54.6
45.1
+4
32.8
32.1
Waring
Stage 7
G.E. Theater
Stage 7
preceded by "weak" program
preceded by "strong" program

by following a poor program. People will not watch a poor program no matter how much they like the program that preceded it. However, when two or more good programs are presented at the same hour over different stations in the same area, a large part of the audience of one station may never know that a good program is on the other station if their attention has already been attracted to the first station by a preceding program on that station, which they enjoyed watching. The importance of program sequence is illustrated by Chart XXI which shows the effects upon the program "Stage 7" when the program which preceded it was changed from one which received only fair audience acceptance to one which received wide audience acceptance. "Stage 7" had only 32.1 per cent of the audience when it was preceded by "The Fred Waring Show" with a 32.8 per cent share of audience. When "The Fred Waring Show" was replaced with "General Electric Theater" which attracted 54.6 per cent of the audience, the audience for "Stage 7" increased to 45.1 per cent, a 40 per cent increase.

The phenomenon of audience flow may also be illustrated by the effect of reversing the order of two adjacent programs, as in the case of "Navy Log" and "The Phil Silvers Show." When "Navy Log" was presented first, between 8:00 and 8:30 PM on Tuesdays, it attracted 28.1 per cent of the audience, and "The Phil Silvers Show" which was broadcast between 8:30 and 9:00 PM on Tuesdays, attracted 26.2 per cent of the audience. When the order of the two programs was reversed, "The Phil Silvers Show" attracted 40.4 per cent of the audience, an increase of 44 per cent, and "Navy Log" attracted 31.3 per cent of the audience, an 11 per cent increase.

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PART V: The Charges Against the Networks and Proposals for Change

The preceding parts of this memorandum have sought to describe the dimensions of television, and the nature, functions and economics of television networking. It is in that entire context that the several charges which have been leveled at the networks and the several proposals which have been advanced will be examined seriatim.

A. THE CHARGE THAT THE NETWORKS RECEIVE A DISPROPORTIONATE AMOUNT OF TELEVISION NETWORK REVENUES. The facts described (Part III) concerning the economics of networking and the distribution of revenues between stations and the network readily establish that networks do not receive a disproportionate amount of television revenues. In fact, as has been shown, the station profits in terms of percentage of return on total broadcasting revenues (i.e., sales) far exceed network profits in percentage of return, despite the sharply contrasting functions of networks and stations[1] and the relative risks which each takes. In order for a network to perform its functions at all, it must maintain a large organization and ex-

[1]See pp. 47 to 50 for a description of the contrast between the functions of a network and the functions of a station in respect of network programs. See also p. 47 for an analysis of the division of network revenues between affiliated stations and the network.

tensive facilities. Necessarily, therefore, the very nature of a network's functions is such that its revenues are large; but for the same reason, its expenses are also proportionately large.

In the circumstances, a comparison of the total revenues of the stations and the total revenues of the network would appear to be wholly irrelevant. If the inquiry is a proper one at all, it must take into account the contrasting functions; and the basis of comparison must be the relative percentage of profits in their relation to revenues. On that basis, there is clearly no disproportion in favor of the network.

Not only are the functions and services of a network, and hence its expenses, vastly different from those of stations, but so are the risks inherently different.

In network operations, there are double risks and double liabilities (pp. 50 to 52). The loss of a sponsor for a program period entails not only the loss of revenues but an additional heavy burden of uncompensated expense in providing a program service to the stations on a sustaining basis. The stations' operations do not normally entail a like risk. While it is true that a station loses its share of the revenues when a network program loses its sponsorship, the station still has the opportunity of selling the time period to a national spot or local advertiser. And failing that, it receives the network sustaining program at no cost to it for programming that period. In contrast, the network must bear the full expense of the sustaining program.

Thus, the facts seem clearly to establish that the charge that networks receive a disproportionate amount of television broadcasting revenues stems from a pervasive misunderstanding of the basic facts of network functions and economics.

B. THE CHARGE THAT NETWORKS INSIST ON THE USE OF NETWORK PRODUCED PROGRAMS. The charge that the CBS Television Network discourages, or discriminates against, non-network produced programs by making valuable time periods available only to network produced programs is mistaken. CBS Television follows no such policy; there is no such discouragement or discrimination.[1]

No evidence of a program tie-in has been adduced before this Committee and none can be for there is none. Indeed, the facts refute the charge: as is shown on Chart XXII, during the week ending April 7, 1956, 72¾ hours of sponsored programs were broadcast by the CBS Television Network. A total of 36½ of those hours, or 50.2 per cent, were occupied by programs created and produced entirely by 38 outside producers with whom CBS Television has no direct connection, and an addi-

[1]There is one category of programs which CBS Television insists be produced under its own supervision and control: As a matter of policy, and in order to maintain direct responsibility in the public interest, the CBS Television and Radio Networks have always maintained the production, supervision and control over all its news and public affairs programs. This policy is based on the belief that only in this way can the network fulfill its responsibilities of maintaining its standards of objectivity and over-all balance among significant viewpoints on public issues.

In addition, there are two types of programs which may be said to be tied, to a greater or lesser degree, by CBS Television to particular time periods: (1) multiple sponsorship programs; and (2) "anchor" programs. Multiple sponsorship programs are represented by "Good Morning with Will Rogers, Jr.," "Captain Kangaroo" and "Arthur Godfrey Time." The nature of these programs and the sales patterns involved are such that after one or more sponsors have agreed to purchase a participation or sponsor one of the several segments, the time obviously cannot be sold to another sponsor for a different program. In this sense, so long as the programs remain in their time period, one of the sponsors or a potential sponsor cannot, as a practical matter, substitute a different program during the time period.

"Anchor" programs include the following: On Sundays, "The Jack Benny Show," and "The Ed Sullivan Show"; on Mondays, "Arthur Godfrey's Talent Scouts," "I Love Lucy" and "Studio One"; on Tuesdays, "The Phil Silvers Show," "The Red Skelton Show" and "The $64,000 Question"; on Thursdays, "Climax!"; on Fridays, "The Line-Up," and on Saturdays, "The Jackie Gleason Show." These programs are the anchors for the night's schedule; they become anchor programs through proven popularity. Normally, since the schedule is built around them, the CBS Television Network would be reluctant to sell the time periods which they occupy for programs of a different nature. If, however, their strength and popularity should decrease, or if some other programs of clear merit were proposed, the list of anchor programs might well change. It may be noted in any event that a program qualifies as an anchor program on its merits and irrespective of its source: four of the 11 programs listed in this footnote as anchor programs are not CBS Television-produced.

tional 19¾ hours, or 27.1 per cent, were occupied by programs produced by eight companies or individuals in association with CBS Television. That total of 72¾ hours was comprised of 74 different programs or program series, only 17 of which were wholly produced by the network. Of the remaining 57 programs or program series, 47 were wholly produced by outside producers and ten were produced by outside producers in association with CBS Television.[1]

An analysis of programs on the CBS Television Network produced by outside sources in whole or in part over the last three years reveals a significant increase in the number of hours of programs produced solely by outside sources and by outside sources in association with CBS Television, while, despite an increase in the total hours of network programming, the hours of programs produced by CBS Television alone has decreased:

	sponsored broadcast hours per week			
	April 1954		*April 1956*	
	hours	*per cent*	*hours*	*per cent*
Produced by outside sources	27¼	46.6	36½	50.2
Produced by outside sources and CBS Television	8½	14.5	19¾	27.1
Produced by CBS Television	22¾	38.9	16½	22.7
Total	58½	100.0	72¾	100.0

However, a comparison of the numbers and hours of programs produced by CBS Television and outside sources does not alone reveal the full story of the opportunity of outside producers to have their programs broadcast over the network. An analysis of the amounts paid by advertisers for commercial programs

[1]In addition, there were 13 sustaining programs and program series occupying 13½ hours. Of those sustaining programs, CBS Television produced 11 which occupied 12½ hours. Of the 28 programs produced by CBS Television alone, 11 were news and public affairs programs which, under CBS Television policy, must be produced under its supervision and control. See p. 88, footnote 1.

broadcast on the CBS Television Network during 1955 reveals, as is shown in Chart XXII, advertisers paid out almost twice as much for programs produced wholly by outside producers as they did for programs produced by CBS Television and programs produced by CBS Television in association with independent producers. It is estimated that during an average week advertisers paid $1,170,000 for programs produced wholly by outside sources, $520,000 for programs produced by CBS Television alone and $130,000 for programs produced by CBS Television in association with independent producers. For the year 1955, it is estimated that $61,000,000 was paid for programs produced wholly by outside sources, $27,000,000 for programs produced by CBS Television alone and $7,000,000 for programs produced by outside producers in association with CBS Television.[1]

An examination of the sources of programs broadcast on the CBS Television Network during Class A commercial time[2] over the past three years reveals that, proportionately, independent producers of programs have an even greater and increasing outlet on the CBS Television Network at night:

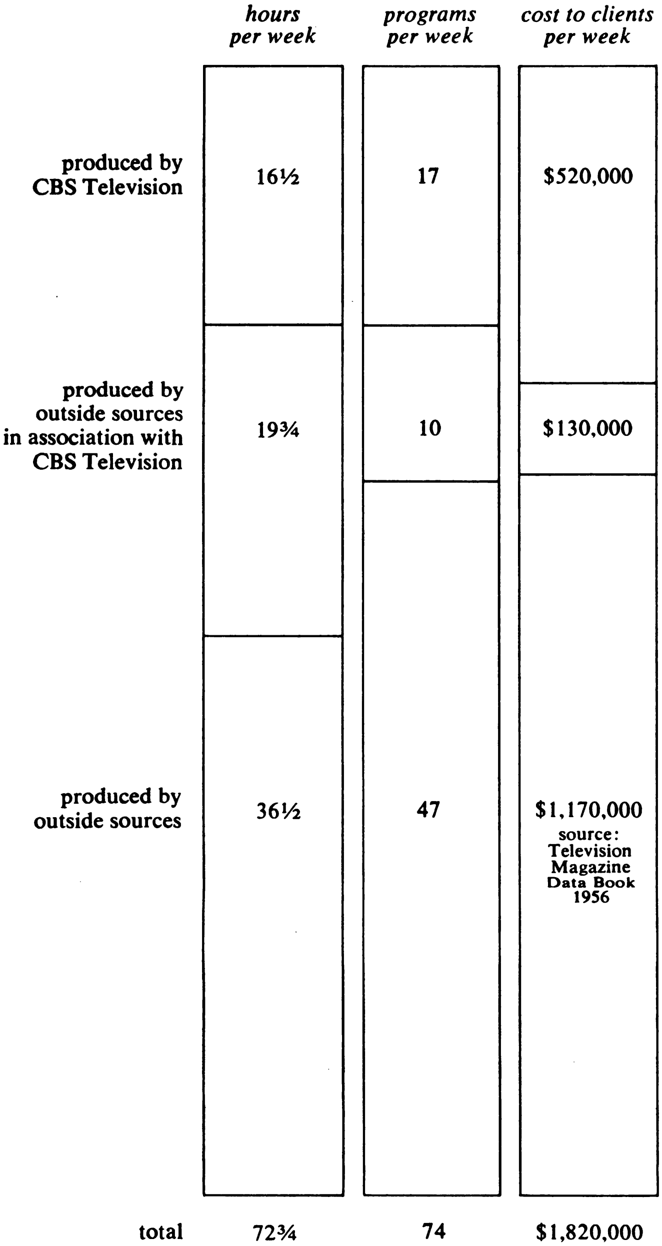
	Class A sponsored broadcast hours per week			
	April 1954		*April 1956*	
	hours	*per cent*	*hours*	*per cent*
Produced by outside sources . .	9½	38.0	16	57.7
Produced by outside sources and CBS Television	2½	10.0	2½	9.0
Produced by CBS Television . . .	13	52.0	9¼	33.3
Total	25	100.0	27¾	100.0

[1]The amounts for CBS Television productions and CBS Television productions in association with outsiders were arrived at by taking four sample weeks (in the months of February, May, August and November 1955) and converting them to an annual basis. Cost of outside produced programs was based on estimates appearing in *Television Magazine Data Book—1956*. All amounts include agency commissions.

[2]6 PM to 11 PM, Monday through Saturday, and 5 PM to 11 PM on Sunday.

CHART XXII

PRODUCTION SOURCES, CBS TELEVISION COMMERCIAL PROGRAMS



Further evidence of the fact that there is no policy or practice on the part of CBS Television to discriminate in favor of programs it produces over those produced by outside sources is the history of changes in network programs since 1951. There have been 171 program replacements since 1951—106 nighttime programs and 65 daytime programs. Of the 65 daytime programs which were replaced, 23 were outside produced. In replacing these programs exactly the same number of outside produced programs was used. Of the 106 nighttime programs replaced since 1951, 52 of those programs *replaced* were produced by outside sources, but 62 of the *replacing* programs were produced by outside sources. In other words, there has been a net *gain* of ten outside produced programs and a net loss of ten CBS Television produced programs in the network's nighttime schedule as a result of program replacements. Surely this does not lend support to the charge that CBS Television is systematically replacing outside produced programs with CBS Television produced programs.

Demonstrably, therefore, the CBS Television Network does not exclude independent program packages from its program schedule. Indeed, any such policy of exclusion and discrimination would be suicidal because it would weaken, if not destroy, the asset on which a network stands or falls—the quality of its programming. Precisely for that reason, the policy of the CBS Television Network has always been, and will continue to be, to schedule the right program in the right place regardless of its source. Pursuant to that policy, the CBS Television Network has replaced programs produced by it with programs produced outside, and has given precedence to outside programs over network-produced programs, in which it has invested heavily in money and manpower.[1]

Not only do the facts show that CBS Television does not insist on advertisers using CBS Television produced programs in order to buy time on the network, but the charge becomes frivolous when one considers that CBS Television lost $7.1 million on commercially sponsored programs alone in 1955, without any allocation of general overhead expenses. It can be easily understood that incurring such a loss is not the voluntary choice of a domineering businessman engaged in restrictive practices. Rather it is the natural result of trying to serve the public, the affiliates and the advertisers in the best manner possible even though such a result eats heavily into over-all profits.

In the final analysis, it would seem that the charge that the CBS Television Network insists on using its own programs by making prime time available only if the advertiser uses a CBS Television produced program is in reality an attack designed to prevent networks from engaging at all in creating and producing programs.

If a network is to fulfill its responsibility to its affiliates and to the public, it must, however, engage in program production. Only in this way can there be assurance of day-in, day-out, and week-in, week-out high quality programs. The network cannot perform its functions in this area if it must stand and wait for programs from outsiders who do not have the same continuous relationship which the network has to the broadcasting indus-

[1]Recent examples of CBS Television produced programs which were replaced by programs produced by outside sources include: "Honestly Celeste," "Jane Froman Show," "Life with Father," "Meet Millie," "My Favorite Husband," "My Friend Irma" and "The Johnny Carson Show." In addition, a number of CBS Television produced programs were rejected by the sponsor in favor of "Name that Tune," an outside package. All of these programs involved time periods between 7:30 and 10:30 PM (E.S.T.).

try, to stations and to the viewing public. It must play some greater role in programming than merely reviewing whatever outsiders should happen to offer—and even then having only a veto power limited by the fact that not enough quality product may be available. Indeed, those basic facts have long since been emphasized by the Federal Communications Commission itself which, in "Public Service Responsibility of Broadcast Licensees" March 1946, p. 13, criticized networks for *not* engaging in program creation and production and hence failing to exercise their programming responsibilities. The FCC stated: "Experience has shown that in general advertisers prefer to sponsor programs of news and entertainment. There are exceptions; but they do not alter the fact that if decisions today were left solely or predominantly to advertisers, news and entertainment would occupy substantially all of the time. The concept of a well-rounded structure can obviously not be maintained if the decision is left wholly or preponderantly in the hands of advertisers in search of a market, each concerned with his particular half hour, rather than in the hands of stations and networks responsible under the statute for over-all program balance in the public interest.

"A device by which some networks and stations are seeking to prevent program imbalance is the 'package' program, selected, written, casted and produced by the network or station itself, and sold to the advertiser as a ready-built package, with the time specified by the station or network. In order to get a particular period of time, the advertiser must take the package program which occupies that period. This practice, still far from general, appears to be a step in the direction of returning control of programs to those licensed to operate in the public interest..."[1]

Thus, it will be seen that this charge is directed at the networks' performing precisely the function which the FCC has criticized the networks for failing to exercise and which it contended they ought to exercise in the public interest.

C. THE CHARGE THAT THE NETWORKS HAVE A MONOPOLY.

The charge that the networks, or CBS and NBC, constitute monopolies is reckless and insubstantial. Its legal aspects are discussed in full in the legal memorandum submitted to this Committee simultaneously herewith. This memorandum deals with the factual aspects of the charge.

The facts establish that no monopoly exists in any ordinary meaning of the word. As has been shown (pp. 57 to 59), many other national advertising media are in competition with network television. Network television has only a 9.8 per cent share of the national advertising dollar. The CBS Television Division —the Network and the four CBS Owned stations—receive only 3.2 per cent of the national advertising dollar and about 20 per cent of the television advertising dollar.

Even if the total business of only television networks is taken into account, no monopoly exists. It is obviously true that *all* the television networks do *all* the network business. But it is a travesty of common sense so to define monopolies. Few facts in the television industry are clearer than the intense competition

[1]See to the same effect *The New York Times*, Sunday, April 8, 1956, Section 2, p. 13: "If network control is materially crippled the advertising world for all practical purposes will be taking over TV; frankly, this could easily constitute a far greater danger than the shortcomings of the status quo. A sponsor normally is interested only in his own show, not with the general balance of a programming structure. He intuitively leans to the more popular type of show and does not generally think in terms of television's over-all well-being.... The plain fact is that many of the principal cultural advances in television—the ninety-minute plays, the documentaries and the coverage of such happenings as the Army-McCarthy hearings—have stemmed from the incentive of the networks, often against the opposition of advertisers and individual stations."

which exists between and among the networks. Each is engaged in trying to take audience, programs, talent, advertisers and affiliates from the other. Indeed, the networks are frequently criticized for being overcompetitive by placing attractive programs opposite each other so as to make the viewer's choice difficult. But this intense competition has benefited the public in terms of the programs and services they have received.[1]

The facts establish that no network has a monopoly of the television network business. The gross billings of the CBS Television Network during 1955 totaled 46.5 per cent of the total network billings; of NBC 40.2 per cent; and of ABC 12.6 per cent. The CBS Television Network share of television network billings falls far short of monopoly.

Indeed, the entire history of the growth of networks and of national advertising expenditures in network television is wholly inconsistent with the normal indicia of monopoly—i.e., a smaller and smaller share to those behind the leader. In the television network field, perhaps the outstanding phenomenon of recent years has been the growth of ABC. Like CBS and NBC, ABC started from scratch in 1948, but it soon fell behind because of lack of capital to invest in the necessary amount of facilities, organization, talent and programs. In 1953, ABC merged with the United Paramount Theatres and as a result new capital was available. It has made substantial investments in facilities, programs and talent commitments since 1953 and its billings rose from $21 million in 1953 to $34 million in 1954 and to $51 million in 1955, while according to trade reports its current billings for 1956 are at the rate of $76 million a year.

[1]The factor of "exclusive" viewing, noted on pp. 67 and 68, intensifies the competition among networks. Since a viewer can look at only one program at a time and normally several are broadcast simultaneously, the competition necessarily must be intense.

Growth such as this requires the flat rejection of the charge of a network monopoly and squeezing out the smaller network competitors.

The growth of the television networks reflects nothing more than the results of intense and vigorous competition. During the first quarter of 1949—the infancy of television networks—the gross billings of NBC were about $1 million, of CBS Television $431,000, of ABC $51,000 and of DuMont $200,000. The billings of NBC, alone, exceeded the combined total billings of the other three networks. For the third quarter of 1950, the gross billings of NBC were $4.3 million, of CBS Television $1.6 million and ABC $0.9 million.[1] Thereafter, the gross billings of NBC and CBS Television rose rapidly, although CBS Television did not pass NBC and attain the lead which it still has today until the first quarter of 1954.[2]

Those increases were the result of planning, of courageous investment in creative programming and physical facilities and of intensive selling efforts. As has been noted, CBS, alone, invested $53.1 million in television networking before 1953 when it first made profits in its network operations.

It is true that the very nature of the network business, with its requirements of enormous effort and investment, makes the establishment of new networks difficult. But it is not impossible.[3]

[1]DuMont's gross billings were not reported.

[2]CBS Television led NBC in the third quarter of 1953 but dropped behind during the fourth quarter of 1953.

[3]It is probable that as a matter of economics there is a finite limit on the potential number of networks. That is in part because of the relatively limited number of stations, but the limit also arises from the factor of exclusive viewing as previously noted. Inevitably there must come a point where, if a substantially increased number of networks of equal strength and equal programming attractiveness are assumed, the audience will be so fragmentized that the actual circulation for each network will fall below the point at which the advertisers will find it economical to support it. It is not, of course, contended that that point has been reached.

Under FCC regulations, no station is, or may be, closed to other networks even where the station may be a primary affiliate which grants option time to the network with which it is affiliated. The FCC regulations provide that option time is not effective against programs of competing networks and all three networks have programs which are carried by primary affiliates of the others.

The touchstone is strong programming. For example, ABC's "Disneyland" has crossed network affiliation lines; even when the program was first broadcast, 60 CBS Television affiliates, including ten primary affiliates, carried the program. On February 11, 1956, 79 CBS Television affiliates carried "Disneyland," including 65 CBS Television primary affiliates.

An additional network, therefore, is not restricted to new stations which are unable to obtain a primary affiliation with one of the existing networks. If a new network's programming is strong, it will have a market even among stations primarily affiliated with another network, and if its over-all programming schedule should prove to be consistently better and more attractive than the programming of the existing networks, there is no question but that stations would readily change their affiliation in order to obtain the best schedule.

In sum, the charge of monopoly falls before the actual facts. If construed only as an attack on size, it may be factually correct but it is otherwise insignificant. As this memorandum has established, the very nature of the functions of a nationwide network necessitates substantial investments and commitments, extensive facilities and a large staff. This necessarily entails a unit of considerable size. So long as networks continue to perform network functions, there can be no such thing as a small nationwide network. Mere size, however, certainly where so shaped by the inherent requirements of the business, is no justification for penalty or elimination. For, as stated by the radio-television editor of *The New York Times* (Sunday, April 8, 1956, Section 2, p. 13): "It should not be entirely forgotten ... that their 'bigness' also has been responsible for much of the best in TV."[1]

D. THE CHARGE THAT NETWORKS CHANNEL A DISPROPORTIONATE SHARE OF TELEVISION REVENUES INTO STATIONS IN LARGE MARKETS AND IGNORE STATIONS IN SMALL MARKETS. Related to the charge of monopoly is the charge[2] that networks tend to channel a disproportionate share of television revenues to stations in larger markets and to ignore small markets. That charge is inaccurate; the facts, indeed, are to the contrary, for networks are of particular importance and assistance to the stations in the smaller markets.

In support of this charge, it is contended[3] that all the television stations located in 12 cities whose population rank ranges from first to thirty-second, received 50.9 per cent of the net income (before Federal taxes) of the entire industry during

[1]*The New York Times* article also stated: "If the price of economic independence for all TV stations is the sort of half-hour films that now dominate the programming efforts of non-network outlets, it would seem a fair guess that a good many viewers would scream for a return of 'bigness' in the TV business."

Similarly, in an article in the *New York Post,* April 11, 1956 (p. 76), the radio-television editor of that newspaper stated: "No one will dispute that the networks are big ... but without them we would never see most of the best programs broadcast. If the drive had not come through the networks, you would never have seen a 'Peter Pan' or a 'Richard III,' almost none of the big 90-minute shows, no 'See It Now,' no 'Adventure' or NBC Opera Theater. Whatever their faults, the network men have a sense of public responsibility. Many sponsors feel responsible only to their stockholders.... No, the fact is that at least until now the network influence with all its failings has been decidedly a good one for the viewer. We could not possibly have gotten most of the good things now on TV without it."

[2]See Progress Report Prepared for the Committee on Interstate and Foreign Commerce by Robert F. Jones, Special Counsel.

[3]Jones Progress Report, p. 17.

1953. This fact hardly establishes the accuracy of the charge, because those stations served, as of November 1, 1953, 51.7 per cent of all the television families in the United States. Hence, the proportion of income which was cited bears an almost exact relationship to the proportion of the circulation which those stations represent.

The more significant fact that is cited is that only 31.8 per cent of the *revenues* received by the entire television broadcasting industry went to the television stations in those 12 markets. That means that stations which served more than one-half of all the television families in the United States received less than one-third of all the television revenues.

Normally it would be expected that a disproportionately large share of national advertising expenditures would be devoted to major markets. For there are strong natural economic forces working to the advantage of stations in the larger markets, since as has been shown (pp. 61 to 65), their rates are higher, but their cost per thousand are lower than those of stations in smaller markets. It is networks, in fact, which tend to counteract the normal disproportionate flow of revenues to large markets and to divert a share, which would otherwise not be available, to stations in the smaller markets. Standing alone, because of their relatively small circulation and higher cost per thousand, the stations in the smaller markets tend to be ignored by the advertiser. For the administrative cost which an advertiser must incur to place a program or an advertisement directly on a small station on a station-by-station spot basis is generally just as large as the administrative cost involved for a larger station. Similarly, for every additional station bought on an individual basis by the spot advertiser, additional program costs are usually incurred since independent program suppliers often sell programs on a per-station basis. Networking offsets these disadvantages of the smaller stations. A network advertiser can add the smaller stations as a by-product through a single network order, with no additional program or administrative costs.

Thus, not only does the operation of television networks provide, in normal course, benefits to smaller stations which they would not otherwise enjoy,[1] but in addition the CBS Television Network has taken affirmative steps to adapt its sales and distribution policies to accentuate those normal trends on behalf of small stations. The Extended Market Plan and the Extended Program Service Plan (pp. 78 to 82) were explicitly designed for those purposes.

In addition to these plans, the CBS Television Network discount structure also provides positive stimulus encouraging advertisers to order small market stations. Its discounts depend on the number of stations ordered, and the per cent of discount increases as the number of stations ordered increases. This means that when an advertiser orders a large number of stations (including small market stations) he receives a larger discount on the more expensive, large market stations than he would if he did not order the small market stations.[2]

Hence, psychologically and economically there are factors in

[1]See pp. 27 and 30, of this memorandum, for a discussion of the adverse effects on stations in smaller markets which would occur if it were not for networks' continuous use of AT&T facilities. As noted there, without networks to sustain the use of intercity facilities, the costs on an occasional basis would probably be so prohibitive that small market stations would be cut off from live programs—including the broadcast coverage of great national events which are now available to them.

[2]It is even possible for an advertiser to add a few small stations to a line-up and to pay less for the larger line-up than he did for the smaller.

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networking which work towards advertisers' inclusion of small stations, while on an individual station-by-station basis, the smaller stations might be excluded.

This has in fact been confirmed in practice by the pattern of purchases by national advertisers: As a general rule, a national advertiser, even though he may have nationwide distribution, purchases fewer stations on a national spot basis than he does on a network basis. A vivid example is provided by Philip Morris, which sponsored "I Love Lucy" on the CBS Television Network with a line-up of 152 stations. When it cancelled its sponsorship of the program and embarked upon a national spot advertising campaign, it ordered only the 50 top markets.

The facts establish, therefore, that networks tend to *prevent,* rather than accentuate, a disproportionate flow of revenues to the larger markets.

E. THE PROPOSAL TO PROHIBIT OPTION TIME.[1] Proposals have been advanced before this Committee to eliminate network option time. This memorandum addresses itself to the nature, functions and importance of option time and analyses the premises on which the attack on option time is based. The question of whether option time violates the antitrust laws is discussed in a separate legal memorandum submitted herewith.

(1) *The nature, functions and importance of option time.* Since there has been misunderstanding of the reach and operation of option time, its precise nature should be set out at the threshhold. The standard option time clause in CBS Television Net-

[1]The remaining portions of this memorandum are addressed to certain proposals on which thus far the chief attention of this Committee has been focused. Other suggestions have been, or subsequent to preparation of this memorandum, may be, brought forward. CBS necessarily has not addressed itself to all possible proposals and hence suggests to the Committee that, if additional issues arise more sharply, CBS be permitted to submit supplemental memoranda dealing with those issues if the situation warrants.

work affiliation agreements[1] provides (see Appendix A, p. II):

"(a) Station, as an independent contractor, will accept and broadcast all network sponsored programs offered and furnished to it by CBS Television during 'network option time' (as hereinafter defined); provided, however, that Station shall be under no obligation to accept or broadcast any such network sponsored program (i) on less than 56 days' notice, or (ii) for broadcasting during a period in which Station is obligated by contract to broadcast a program of another network. Station may, of course, at its election, accept and broadcast network sponsored programs which CBS Television may offer within hours other than network option time.

"(b) As used herein, the term 'network option time' shall mean the following hours:

"(i) if Station is in the Eastern or Central Time Zone, Daily, including Sunday, 10:00 A.M. to 1:00 P.M., 2:00 P.M. to 5:00 P.M. and 7:30 P.M. to 10:30 P.M. (expressed in New York time current on the date of broadcast);

"(ii) if Station is in the Mountain or Pacific Time Zone, Daily, including Sunday, 10:00 A.M. to 1:00 P.M., 2:00 P.M. to 5:00 P.M. and 7:30 P.M. to 10:30 P.M. (expressed in local time of Station current on the date of broadcast).

"Nothing herein shall be construed (i) with respect to network programs offered pursuant hereto, to prevent or hinder Station from rejecting or refusing network programs which Station reasonably believes to be unsatisfactory or unsuitable, or (ii) with respect to network programs so offered or already con-

[1]As of February 10, 1956, the clause was included in contracts with 143 CBS Television affiliates. Seven other contracts had slight variations in the hours specified because of local problems.

tracted for, (A) to prevent Station from rejecting or refusing any program which, in its opinion, is contrary to the public interest, or (B) from substituting a program of outstanding local or national importance. CBS Television may, also, substitute for one or more of the programs offered hereunder other programs, sponsored or sustaining, of outstanding local or national importance, without any obligation to make any payment on account thereof (other than for the substitute program, if the substitute program is sponsored). In the event of any such rejection, refusal or substitution by either party, it will notify the other by private wire or telegram thereof as soon as practicable."

Thus it will be seen that option time is limited. It applies only to *sponsored* network programs during the hours specified. It is inapplicable as against programs of any other network. It may not be exercised on less than 56 days' notice. Further, CBS Television has construed the option time provisions to be inapplicable to any program which occupies a period straddling option time and non-option time. Thus, for example, the periods between 10 and 11 PM (E.S.T.) on Mondays and Wednesdays, which are now occupied by hour-long programs, and the period once every four Saturdays occupied between 9:30 and 11 PM (E.S.T.) by an hour-and-a-half program, are not in any part subject to network option time. In fact, therefore, contrary to contentions that have been advanced to this Committee, option time, under the construction followed by CBS Television, is *contracted* rather than expanded when a single program in part covers option time and in part covers non-option time.

Option time, in addition, is sharply limited so as to permit broad discretion by the station. As the option clause provides, a station has the right to reject any network programs in option time in order to substitute other programs "of outstanding local or national importance." But a station's rights are much broader. It may also reject or refuse any network programs offered which the station "reasonably believes to be unsatisfactory or unsuitable" or, even though the program has already been contracted for by the station, which the station believes "is contrary to the public interest." Those provisions have been construed by CBS Television to permit wide discretion to the station to reject network programs which the station believes will not serve the local audience as fully as a non-network program which the station proposes to broadcast.[1]

The precise limits of the respective rights of the CBS Television Network and its affiliates under these provisions of the option time clauses have never been fully delineated, because in practice there has been no necessity for it. Rather, acceptance by stations of network programs has been based on the cooperation which is inherent in the basic partnership relation which exists between the network and its affiliates. There has been no rigid invocation of its option rights by the network, and affiliates' schedules are studded with non-network programs in option time (pp. 120 and 121 of this memorandum).

[1]As provided in the FCC rules, and as embodied in CBS Television Network affiliation agreements, the affiliate's right to reject a network program during option time would seem to be greater when the network program is first offered to the affiliate; the right appears to be more restricted after the station has actually agreed to accept the network program. Even after acceptance by the station, however, the station has considerable latitude since its own "opinion" that the program "is contrary to the public interest" suffices to support rejection. In any event, it should be noted that if a station feels that it has not received enough information in advance concerning the nature of the program to be offered, a station can preserve its broader right to reject, even after the program has begun; for if the station believes that it cannot evaluate, on the basis of advance information supplied, whether a network program offered is "unsatisfactory or unsuitable," it can condition its acceptance upon being satisfied after broadcasting the first programs of a series that it is satisfactory and suitable for continued broadcast.

An illustration of the operation of the network-station relationship in respect of option time is afforded by a recent example on station WTOP-TV, a CBS Television primary affiliate in Washington, D. C. and one of the four VHF stations in that city. The events were recently described by the radio-television editor of the *Washington Daily News*[1] as follows:

"The congressmen, currently up to their eyebrows in puzzlement as they try to unravel the mysteries of the TV industry at the current hearings on the Hill, should study how come WTOP—9 is taking 'Name that Tune' away from WTTG—5. It would be as instructive as taking the back off a watch to see what makes it go.

"The lawmakers would see:

"That the networks and their member stations are NOT ruthless monopolists trying to squeeze out independent stations.

"On the other hand, when a station suffers a business setback, it will take advantage of its network membership to mend its affairs even tho at the expense of an independent in the same city.

"IT'S CBS SHOW

" 'Name that Tune,' the quiz program offering a top prize of $25,000, is produced by CBS to which WTOP is affiliated. The show has been carried on WTTG this season because WTOP didn't want it.

"WTOP had 'Amos 'N' Andy' with a local sponsor and wanted to keep it on. However, it arranged for WTTG to take 'Name that Tune,' which was on at the same 7:30 p.m. Tuesday time.

[1] March 29, 1956.

"Thus the network station not only didn't try to keep a network show from a rival; rather it helped it get it.

"But the sponsor of 'Amos 'N' Andy' gave notice that it was dropping the syndicated film program. With spot thus due to be vacated, WTOP notified CBS that it needed network service, thus exercising its prior right to 'Name that Tune.'

"SHIFTS APRIL 10

"CBS gave the usual month's notice to WTTG, and 'Name that Tune' starts April 10 on WTOP.

"That the networks' hold on members can be weak is shown by the fact that 'Name that Tune' is on what is called 'network time,' meaning those hours when members are supposed to carry the network's show.

"The soap opera serials, 'Brighter Day,' 'Secret Storm' and 'On Your Account' from 4 p.m. to 5 p.m. are CBS shows and on network time. But they are shown by WTTG. WTOP prefers its own Pick Temple show.

"NATURAL PROCESS

"Its ability to take 'Name that Tune' when it needs it shows that WTOP is in a better competitive position than WTTG. That's because CBS has prospered in a competitive business, while only fragments are left of the Dumont network which owns WTTG.

"But there have been no deep-dyed plots, no bribery of government officials as has been hinted in the Hill hearings."

Thus in operation, CBS Television Network option time is not a one-way street; rather, in practice, it is utilized and adjusted for the benefit of both network and its affiliates.

While option time is thus in fact administered flexibly, either it or some equivalent tool is the keystone of network operations. Without such a tool, networks cannot operate. Without some reasonable assurance of general clearance by stations, the effectiveness of the over-all, day-in, day-out, week-in and week-out network schedule would be eroded.

It would take the defection of only a few key stations in major markets to deprive a network television advertiser of so substantial a part of his circulation that the program would not continue and thus would be lost not only to the network but, far more important, to the vast majority of stations which need and want the program. It is the public, then, and the stations in the smaller markets which would suffer most acutely, if any major pattern of non-clearance developed.[1]

It cannot be stated with certainty that any such fatal erosion would occur overnight; indeed, that is improbable. But equally, there can be no certainty that over a period of time, such erosion would not occur. If it did, the blow to networking, with all that networking means in the way of major programs and the programs which must be carried live, would be fatal.

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[1]The station clearance history of "The $64,000 Question" serves to illustrate the importance to the public, to affiliates and to the advertiser of station clearance.

In order to make sponsorship of this program economically possible it had to be carried by a number of stations sufficiently large to insure a wide audience. The program might never have gone on the air if enough stations in important key markets had not agreed to accept it.

On June 7, 1955, the CBS Television Sales Service Department had been able to secure time on 104 stations—enough to justify introduction of the program by the sponsor. After it became available to the public, and because there were enough clearances to justify its introduction, the program proved so popular that the number of stations carrying the program increased each month. On July 5, 139 stations carried it; on August 2, 145; on September 6, 147; on October 4, 158; on November 1, 161; and on December 6, 163.

Thus, the public, the stations and the advertiser benefited. In November 1954, before the Tuesday 10 to 10:30 PM (E.S.T.) period on the CBS Television Network was occupied by "The $64,000 Question," 43.3 per cent of U.S. television receivers were not in use. In November 1955, after "The $64,000 Question" had occupied 10 to 10:30 PM (E.S.T.) for a few months, the sets not in use had been reduced by 18.4 per cent to 35.3 per cent.

Were it not for the clearance results which were forthcoming, it is possible that a handful of stations in key markets could have deprived the public of a program which it enjoys and could also have deprived more than 150 stations of the program itself, and the revenues accruing to them from the program.

Particularly in a period, if it ever should occur, of a declining market, without option time or some equivalent there would be a real threat of destruction which would be difficult to contain. It is wholly possible that an entire schedule could be eroded by a pattern of non-clearance that would checkerboard across the schedule. It is hardly likely that key stations would pick the same programs and the same time periods for non-clearance. What would be more likely to occur is that some key stations would refuse to clear during one half-hour, another group of key stations might pick another half-hour and another still a different half-hour. If the stations were in enough large markets, each network time period would then become unsalable to national advertisers. Obviously, no network could afford to program, with a quality schedule, so many time periods on a sustaining basis; as has been shown previously, the costs of high quality programming on a sustaining basis for one nighttime hour, seven days a week, would be between $13 million and $15 million. The alternative would be to curtail network service and thus throw the burden of programming and large costs on the scores of smaller stations which had *not* refused to clear.

These dangers are accentuated during a period of a softening of network business. Moreover, once a time period became sustaining because of the loss of an advertiser, it would be difficult for the network to recapture the period, because in many instances key stations might well have sold it to national spot and or local advertisers.[1] The station's contracts for those pro-

[1]It is one of the phenomena of the broadcasting business, illustrated by the recent history of radio, that in periods of decline, network business is hit first and hardest. A national advertiser's diminished budget is normally first withdrawn from the network and devoted instead to a more limited number of stations in key markets.

grams would have varying termination dates; hence, without option time, re-entry of the network would have to await the last termination of the last group of stations. But that date may be so late other stations meanwhile will not have waited, and cannot be expected to wait, and in turn will have entered into new contracts. By then the network advertiser is likely to be lost.

Essentially, therefore, option time is not a rigid right, explicitly exercised in particular cases by the network. Rather it is a limited protection against erosion, which can be used if it ever becomes necessary. It is a safeguard and a shield against destruction of networking,[1] rather than a sword.

It is of first importance in considering option time and its justification to recognize that it is the result of negotiations between stations and the network. It is not an abdication by stations of their responsibility; rather it is a voluntary recognition by them that the network is a reliable source of a substantial portion of an over-all effective weekly schedule with appropriate balance of the various elements which are necessary to successful broadcasting in the public interest. Since, by affiliating with a station, a network in effect agrees to use its best efforts to sell the station's time and make programs available to it, it naturally follows that the station will agree to make time available when the network does sell its time.

Option time is not, as has been suggested in the memorandum prepared for this Committee by its Special Counsel[2], "given" by

[1]Compare the comments in *The New York Times* (see Sunday, April 8, 1956, Section 2, p. 13): "There is, however, another most important side to the 'option time' controversy. Unless a network can count on access to a fixed number of hours it is hard to see how a chain could long survive. And without the combined economic strength of many advertising markets joined together it simply would not be feasible to finance many of the network's major fine productions and other public service features."

[2]Memorandum prepared for the Senate Committee on Interstate and Foreign Commerce by Harry M. Plotkin, Special Counsel, p. 34.

the Government. It is, rather, not forbidden by the Government and hence arrived at voluntarily by stations and network.

It has been claimed that networks should not be able to have option time since independent program producers do not have it. But it is fallacious to equate networks with independent film syndicators, for as has been shown, they do not perform the same functions. Film syndicators offer particular types of programs on a limited basis. The functions of a network are in sharp contrast with those of film syndicators.

A network offers a full and balanced schedule of both live and film programs and of both entertainment and non-entertainment nature.[1]

A network, to survive, must offer this kind of rounded overall schedule and, as has been described, it must, in order to perform its functions for the public, the stations and the advertiser, provide an effective composition of the weekly programming schedule.

It must be able to give a network advertiser some assurance of reasonably complete nationwide coverage on the basis of a single order.

It must, because of the importance to advertisers of program sequence (see pp. 83 to 85 of this memorandum), be able to provide him with assurance, in general, of where the program he sponsors will be broadcast in relation to programs which precede it, and follow it, and to programs with which it will compete.

[1]For the contrast between the programming of film syndicates, on the one hand, and networks, on the other, see the recent articles in *The New York Times* and the *New York Post*, cited at footnote 1, p. 99 of this memorandum.

A network must maintain an organization to experiment, create and produce; it must amortize the cost of major programs over many markets; it must schedule them for maximum circulation.

It must, in order to attract the ablest writers, producers and performers, make long-term commitments, and it must plan a reservoir of programs for the future in order to assure the maintenance of a high quality, continuous schedule.

A network must deliver simultaneity for national news and public affairs programs, for sports events, for entertainment programs in which the live and spontaneous element is essential, and for flexibility in scheduling simultaneous advertising messages.

A network creates, promotes and sells a national advertising medium.

Film syndicators and national spot advertisers may, in a limited way, perform some of these functions. But none must perform all, and none does so.

It is these basic differences between network television advertising and other television advertising, and between individual program suppliers and networks, which require the rejection of the attempt to equate the needs of the two groups for option time. If and when non-network programming sources provide an over-all qualitative programming service containing all the necessary variety of elements, then there still will be no need for Government intervention. For the stations are free now to deny option time to networks and to grant it to any other program source or sources which provide assurance of fulfilling their over-all needs. Stations will surely exercise that right at such time as other sources provide a more attractive over-all product.

In sum, without the ultimate safeguard of some device such as option time, at the worst networking with all its benefits could ultimately be fatally injured, and at the best the medium of television would be made less attractive and less economic so that the flow of advertiser dollars would be diverted to competing media, with the consequent weakening of television broadcasting, all of which—including broadcasting of syndicated film—is dependent upon these dollars.

(2) *The unsound premises on which option time is attacked.* The very nature of networking, and national advertising which uses networks, therefore, requires option time or some similar device which can provide reasonable assurance of the simultaneous availability not of a few scattered and isolated stations, but of a *network* of stations. It has been urged, however, that regardless of its importance to networking, it has restrictive consequences on other segments of the industry which require its elimination. Specifically, the premises upon which the proposal for elimination of option time is based are: (a) that option time has restricted the growth of non-network program sources; (b) that option time has unduly restricted the time available for non-network programs; and (c) that option time has restricted the ability of non-network advertisers to use television. None of these premises is sound.

(a) *The quantity and growth of non-network program sources.* A basic premise which underlies the proposal to forbid option time is that its effect has been to diminish the supply of television programs from non-network sources; it is alleged thereby to affect television stations adversely by limiting the supply of programs. The premise is inaccurate. The supply of non-network programs is large and increasing and its use by television stations, both network affiliates and non-affiliates, has been extensive.

Programs produced by non-network sources fall into two general categories: (1) syndicated film destined for national spot or local use on individual stations,[1] and (2) live or film programs for broadcast over the networks.[2]

There are a very large number of independent program producers, both large and small. Some are subsidiaries or affiliates of major Hollywood motion picture producers. Some are producers who have expanded into television from the radio syndication business. Some are talent agencies which in their productions utilize the talent they represent. Some are organizations which have come into being in recent years and devote themselves solely to production for television.

The vast majority of programs produced independently for use on individual stations are on film. These syndicated films are usually light situation comedies, mysteries, Westerns and other adventure programs.

While there has been no over-all survey of its total components and product, it is clear from published sources that the film syndication business is large, with a great many program suppliers. The business and its product have grown rapidly over the last few years.

[1]Such syndicated film may be either feature film initially prepared for theatre release or film produced especially for television.

[2]Another type of non-network program is the locally produced live program, produced by local stations or by independent producers.

Thus the *Television Factbook* for 1948 listed 192 independent programs, sources and services known to be acting as suppliers to television at that time. In the 1956 *Factbook*, 810 sources were listed, of which apparently almost 500 were newcomers since 1953. According to the *Television Magazine Data Book*, the number of syndicated films and film series produced especially for television and available for distribution increased from 85 in 1952, to 259 in 1955, and to more than 400 in 1956. The films listed in 1956 would provide 6,900 hours of programming, exclusive of the new installments of continuing syndicated programs which are being added to daily or weekly.

According to the January 23, 1956 issue of *Sponsor* magazine, film distribution in 1955 grossed $80 million and is expected to gross $100 million in 1956. Many syndicated film distributors reported increases of 50 per cent or more in revenues for 1955 over 1954.

According to the December 1955 issue of *Television Age*, the production budget of Screen Gems, Inc., one of the leading producers of syndicated film for television, rose from $100,000 in 1951 to $10 million in 1955. Its gross sales rose from $6 million in its 1954 fiscal year to $11 million in its 1955 fiscal year[1]; and it expects to gross $15 million in 1956.[2]

Guild Films Company, Inc., another producer of television films, almost doubled its sales and tripled its earnings in 1954, and, without network distribution, was able to place its programs on as many as 178 television stations in the United States, including many primary and basic required network affiliates.

[1] *Broadcasting-Telecasting Magazine*, December 12, 1955.

[2] *Sponsor*, January 23, 1956.

Its programs were sponsored by almost 400 companies.[1]

National Telefilm Associates, Inc., a distributor of syndicated feature film for television, increased its sales from $350,000 for the *year* ending July 31, 1954, to $870,000 for the *eight months* ending March 31, 1955, and to $1.5 million for the *six months* ending January 31, 1956. Its programs were broadcast by 313 stations during the 16-months period ending April 30, 1955.[2] Forty of its films were recently being broadcast in 96 different markets.[3]

The production plans for only three independent syndicated film producers call for expenditures of at least $31 million in 1956, according to *Television Age* for February 1956. The producers and their reported budgets are: TPA, $10 million; Screen Gems, $12 million; and Hal Roach, $9 to $13 million.

A cursory examination of trade publications received during the seven days April 11 to April 17 included announcements of 11 new film series which were being put on the market by independent producers and distributors. There were from 13 to 39 programs in each of those series. The most striking information came from the April 7, 1956, issue of *The Billboard,* which listed 173 *new* film series planned or in production for national sponsorship next Fall. At the head of the list appeared the following sentence: "The list does not pretend to be complete but does contain a large majority of shows being created for next season."

Another index of the upsurge of independent film producers

[1] Prospectus, September 28, 1954; Annual Report for 1954.

[2] Prospectus, June 7, 1955; Annual and Semi-Annual Reports for 1955 and 1956.

[3] *The Billboard,* January 21, 1956.

is the reported rise in the employment and earnings of writers in Hollywood who work exclusively for non-network film producers. According to the Western Branch of the Writers Guild of America,[1] the highest number of writers employed in Hollywood television production (exclusive of networks) in 1955 was 79; and in February 1956, the number had increased to 276. The gross earnings of the Hollywood television writers (again excluding those employed by the networks) for the ten months ending January 31, 1955, were $1.4 million; and during the succeeding ten months the writers received $4.5 million.

If, despite this evidence to the contrary, there is any present uncertainty on the part of syndicated film producers and distributors concerning the future salability of their products, it must be attributed to the overhang in the market of the vast film inventories of the major motion picture studios in Hollywood, which only now are being made available for television use.[2]

M-G-M is reported to be negotiating for the sale of its entire film library valued at $110 million. RKO last year sold its library for $15.2 million and the films are now being offered for television broadcast. Warner Brothers has just sold its feature film library for $21 million. Columbia Pictures has released to television 104 feature films, 22 Westerns and 151 cartoons. Paramount has sold 1,600 short subjects and 34 feature films. Republic Pictures has released 350 feature films. Universal

[1] *The New York Times* for April 5, 1956.

[2] Dwight Martin, Vice President of General Teleradio, the company that purchased the RKO feature film library, stated in a speech before the National Television Film Council on November 17, 1955, that there were then available for television approximately 3,362 feature films and 1,287 Westerns. He declared that there were twice as many features then available as past practice indicated stations would use. As noted in the text hereof, many additional feature films have been made available since that time.

Pictures has released 97 feature films and short subjects. Warner Brothers has released 191 short subjects. There are still large backlogs at Allied Artists, Columbia Pictures, Walt Disney, Paramount, Twentieth Century-Fox, United Artists and Universal Pictures.[1]

Indeed, when the Department of Justice recently decided not to appeal the judgment of the Federal Court in *United States vs. Twentieth Century-Fox Film Corp., et al.*, it was stated that "the Attorney General pointed out that in recent weeks, five of the companies named as defendants in the action—RKO, Columbia, Warner Bros., Universal and Republic have licensed or sold over 1,800 features and Westerns to television. In addition there have been reports that the remaining defendants are currently engaged in negotiating for release to television of an approximately equal number of features."[2]

It is clear, therefore, that there is a large and increasing number of non-network sources of supply and a large quantity of non-network programming available.

(b) *The time available for non-network programs.* A second premise on which the demand for the elimination of option time is based is that, apart from the matter of the number of non-network program sources, option time is somehow contracting the market available to these sources of non-network produced programs by permitting the pre-emption of all (or all desirable) station time during which their programs might be given exposure.

It is certainly true that whenever a station is broadcasting a

[1] *Variety*, March 28, 1956.

[2] Department of Justice release, March 6, 1956.

network-distributed program, it is prevented from carrying at the same time a program distributed by a non-network program source. It is clear, however, that despite any allegation to the contrary, non-network produced programs are given ample and desirable time for exposure.

This is perhaps most clearly demonstrated by the tremendous growth in the number of independent producers, and in the great increase in the number of television programs they are producing. (See pp. 113 to 118 of this memorandum.) To suggest that the current prosperity of non-network television producers exists in the face of an inability of their programs to appear (or to appear at desirable times) flies in the face of reason.

First, there is available virtually the full broadcast day of stations without option time agreements with any network. Among these stations are 36 stations without any network affiliation of any kind. The markets these 36 stations serve account for 43.2 per cent of the television homes in the United States. Although it is true that some, or perhaps all, of these stations carry some network programs, it cannot reasonably be maintained that option time agreements are preventing the exposure of non-network programs on these stations during any important segment of the broadcast day.

But, it may be argued, the great majority of television stations in the United States have affiliation agreements with networks, and it is probable that most of these agreements contain option time provisions. This is certainly true. However, even in the case of an affiliate whose network affiliation contract contains an option time provision, such option time applies to, at most, only nine hours of the broadcast day.

In addition, the network option applies only when the network broadcasts a sponsored program. None of the networks broadcasts sponsored programs during all nine hours of network option time (in fact, ABC does not now broadcast network programs before three o'clock in the afternoon, E.S.T.). Therefore, the network option applies to substantially less than the full nine hours provided in the standard CBS Television option clause. Furthermore, on many stations additional time is available even during the sponsored portions of the nine hours of network option time because the station is not always ordered by the network advertiser.[1] Also open to non-network programs, obviously, are all periods outside of option time.

Specific evidence of the fact that time is available, that it is desirable time, and that it is being utilized by the non-network advertiser is contained in the following excerpt from an address by Oliver Treyz, President, Television Bureau of Advertising:[2] "'Man Behind the Badge,' sponsored by Ohio Oil and ordered in 11 stations was cleared on ten of these in the supposedly difficult Class 'A' time. 'Great Gildersleeve,' for Lucky Lager Beer, was ordered in 26 stations and achieved 100 per cent Class 'A' clearance—26 Class 'A' clearances in 26 markets. 'Steve Donovan,' for Langendorf Bakeries, ordered into 13 stations, cleared in Class 'A' time in 11 of them. 'Racket Squad,' for Heilman Brewing Company, ordered in nine markets, 100 per cent Class 'A' clearance—nine markets cleared in Class 'A'

[1]The average number of stations carrying CBS Television Network programs during the daytime is 83, and the average number at night is 121. 150 CBS Television affiliation agreements provided for network option time on February 10, 1956.

[2]Speech delivered April 18, 1956, in Chicago at the annual convention of the National Association of Radio and Television Broadcasters.

time. 'The Turning Point,' a new program for General Electric, ordered into 68 markets and 66 markets with Class 'A' clearance. 'Dr. Hudson's Secret Journal' for Bowman Biscuit Company—12 markets ordered, Class 'A' clearances in all 12. 'Socony Mobil Theatre,' for Socony Mobil-Oil, primarily a central division order, 56 markets ordered, 56 markets cleared in Class 'A' time....This is a clear-cut demonstration that there are excellent availabilities in time and that these times can be claimed and can be staked out as franchises for syndicated film programs."

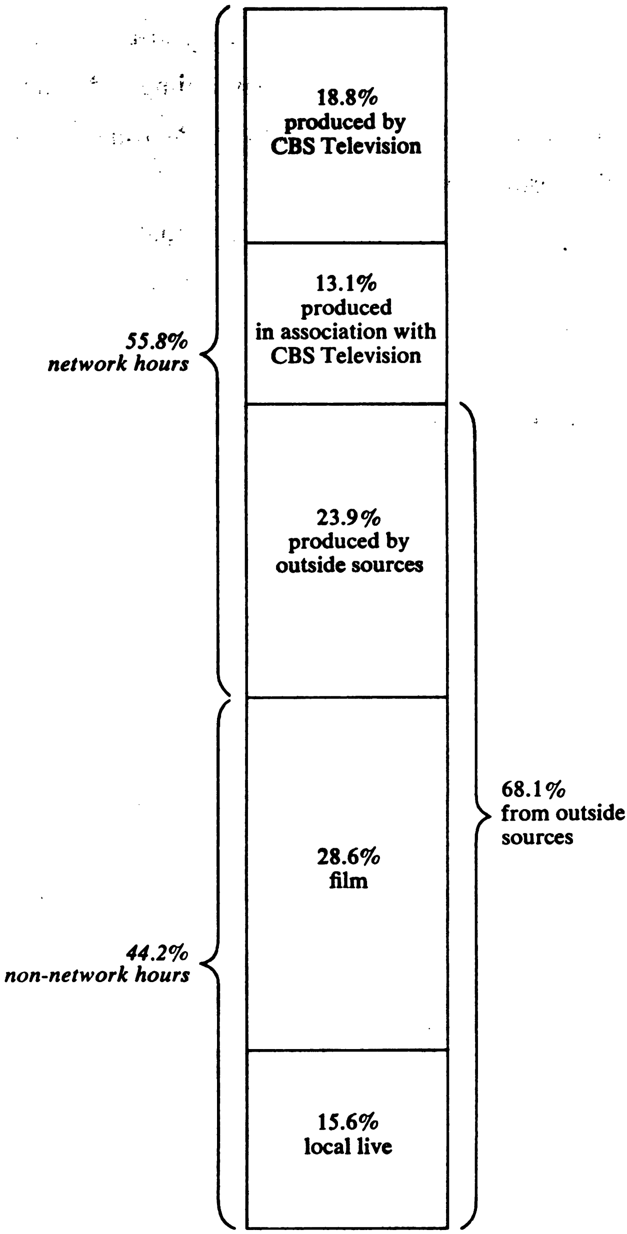
In summary, then, it appears that there is a substantial amount of time available for the broadcast of shows not distributed by the network. And indeed, the evidence bears out this appearance. Statistics which bear on this point are provided by a recent survey[1] based on the reports of 132 television stations, which showed that, during the week ending March 16, 1956, the average interconnected network affiliate was on the air a total of 102 hours and 45 minutes. Of this total, 29 hours and 22 minutes (28.6 per cent) were devoted to film programs not originated by the network, 16 hours (15.6 per cent) were devoted to local live programs and 57 hours and 23 minutes (55.8 per cent) were devoted to network originated programs. See Chart XXIII. Since only 57.1 per cent of the CBS Television Network commercial and sustaining[2] schedule is devoted to programs wholly produced by CBS Television or by CBS Tele-

[1]*Broadcasting-Telecasting Magazine*, April 2, 1956, pp. 78 to 80.

[2]For purposes of this computation it has been assumed that the average interconnected affiliate carried the same proportion of the CBS Television Network sustaining program schedule as it did of the CBS Television Network commercial schedule. As noted on pp. 88 and 89, only 49.8 per cent of the CBS Television Network commercial schedule is comprised of programs wholly produced by the network or by the network in association with outside producers.

CHART XXIII

PROGRAM SOURCES OF AVERAGE INTERCONNECTED AFFILIATE, SUSTAINING AND COMMERCIAL SCHEDULE



vision in association with independent producers, it will thus be seen that in fact by far the largest percentage (68.1 per cent) of the average interconnected network affiliate's time is actually devoted to programs produced directly or indirectly by outside sources, and the smallest percentage of the station's time (31.9 per cent) is devoted to CBS Television Network produced programs, 18.8 per cent produced by CBS Television alone and 13.1 per cent produced by CBS Television in association with outsiders.

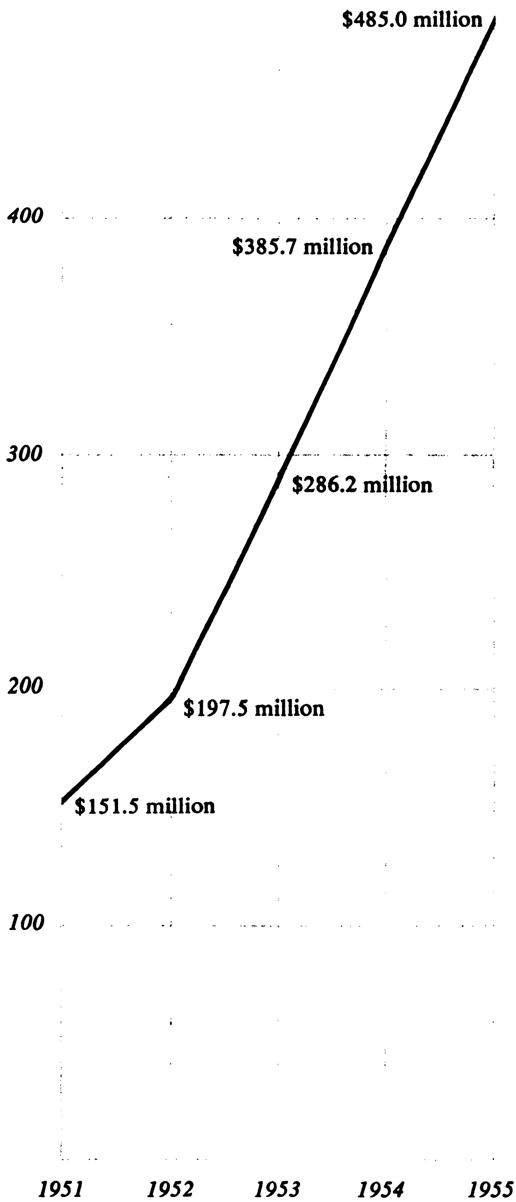
In considering the magnitude of use of non-network produced programs, the *Broadcasting-Telecasting* figures for non-network stations should also be taken into account. Non-network stations averaged about 85 hours of programming a week, of which 63 hours and 32 minutes, or 74.6 per cent, were devoted to non-network film (32 hours and 39 minutes, or 38.3 per cent, to film specially made for television and 30 hours and 54 minutes, or 36.3 per cent, to feature films).

A large part of the broadcast day, therefore, is available to non-network produced programs both on network affiliated and unaffiliated stations during and outside option time.

(c) *The growth and size of non-network television advertising.* The third premise on which the demand for elimination of option time is based is that, apart from the matter of quantity of network program sources, and the time available for non-network programs, option time is somehow restricting the growth of non-network television advertising. The evidence to the contrary is overwhelming. As indicated on Chart XXIV, there has been a steady and substantial increase, over the past five years,

CHART XXIV

TOTAL U.S. NATIONAL SPOT AND LOCAL TELEVISION ADVERTISING EXPENDITURES



in the volume of television expenditures by national spot and local advertisers: from $151.5 million in 1951[1] to $485 million in 1955.[2]

In 1955, the aggregate of money spent on national spot and local television advertising was only $55 million less than the corresponding network figure.[3] As in the case of radio, the margin between television network advertising volume and national spot advertising volume is steadily decreasing. Although nearly twice as much money was expended on network television advertising as was spent on national spot television advertising in 1955, the ratio between the two modes of national television advertising has materially decreased since 1949. In 1949, total expenditures for spot television advertising totaled 31 per cent of total expenditures for network television advertising; in 1955, this ratio had risen to 51 per cent. *Printers' Ink,* a publication accepted in the industry as a reliable source for advertising volume and other statistics, shows network—$520 million, national spot—$265 million, local spot—$220 million. Those figures were based upon estimated time costs adjusted upward to include program production costs. The amount of the adjustment for network was much greater than that for spot, because the costs of production of network programs are generally much greater than for spot programs. When based upon time charges alone, the ratio is substantially reduced—national spot volume for 1954 was 73 per cent of network volume based on official FCC figures.

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[1] *Printers' Ink,* October 21, 1955, p. 69.

[2] *Printers' Ink,* February 10, 1956, p. 24.

[3] For the dependence of national spot and local advertising on strong network programming, see pp. 14 to 16.

A recent survey by the Television Bureau of Advertising shows that the gap between gross time charges for time purchased through the networks and gross time charges for time purchased on a national spot basis is rapidly closing. During the period October through December 1955, gross national spot television time sales to 3,017 advertisers equaled $103,872,000, while gross network television time sales during the same period totaled $116,336,797. National spot time sales, therefore, have increased to 89 per cent of network time sales.

It appears, therefore, that contrary to assertions which have been made concerning restrictions which have impeded the rate of growth of non-network television advertising, this growth has exceeded that of network advertising and there is every indication that the amount spent by non-network advertisers will soon exceed that spent by network advertisers.

(3) *Summary*. Option time, in sum, is a necessary device based on, and arising out of, the very nature of networking and network advertising. Its benefits to networking are not offset by detriment to other segments of the industry. Non-network sources of programming are numerous and plentiful—and have been expanding rapidly. There is more than ample opportunity on stations and on networks for exposure of the product of these non-network sources, and indeed, they enjoy such wide exposure. And option time has had no contracting effect on non-network television advertising. On the contrary, the record is clear that such advertising has grown rapidly, and in recent years, at a higher rate than network advertising.

In the circumstances, the attack against option time must fail on the basis of the actual facts.

F. THE PROPOSAL TO ELIMINATE "MUST-BUYS."[1] CBS Television, in accordance with a long standing practice in the broadcasting industry[2] which has never before been seriously questioned, had, as of March 1956, a list of 52 affiliates which it designates as "basic required" stations. Those stations cover substantially all the major markets in the United States and 81.8 per cent of American television homes. With a few exceptions arising out of special circumstances and the special needs of network advertisers,[3] the effect of the basic required list is to require advertisers who wish to use the network to order these stations as a minimum.[4]

The basic required stations, taken as a group, constitute the indivisible product that CBS Television creates, assembles and sells. *They are the basic network.* Combined, they provide a medium which in fundamental respects is different from the limited medium provided by each individual station. It is a national advertising medium, as distinguished from a local medium. Its function is to provide nationwide circulation in the tele-

[1]To the extent that the "basic required" practice is attacked as a violation of the antitrust laws, see the discussion in the legal memorandum submitted simultaneously herewith.

[2]Contrary to suggestions which have been made to this Committee, each of the networks has some form of must-buy or minimum purchase. As stated in Rate Card Number 6, effective March 1, 1956, ABC imposes the following requirement: "Advertisers are required to purchase a minimum cleared gross for station time equivalent to $50,000 per Class A hour. Advertisers are required to order as part of the applicable minimum the five ABC owned stations in New York, Chicago, Detroit, Los Angeles and San Francisco and any other ABC owned stations added during the effectiveness of this rate card."

[3]For the week ending April 7, 1956, one advertiser ordered less than 52 affiliates for its program. In the case of four other programs, more than 52 affiliates were ordered, but the orders did not include some of the basic required stations.

[4]Except in the case of one station, there is no agreement between the CBS Television Network and the stations involved by which they are designated as "basic required." In the case of the one exception, the designation was specified in the affiliation agreement at the insistence of the station. With this exception, CBS Television is free to, and does, alter the list at will. A station will be a basic required station if its unduplicated coverage area includes a minimum of 175,000 families. Stations having a service area containing somewhat less than the minimum number of families and stations having a service area containing more than the minimum number of families may be included in, or excluded from, the basic required group by reason of considerations other than population. Some of these considerations are conversion rate in case the station is a UHF station, income, retail sales, and buying power of the area served and importance of the principal city served.

vision field, just as *LIFE* and *The Saturday Evening Post* serve the entire nation in the publication field.

The size and characteristics of the network medium are determined by CBS Television, based upon the interrelated requirements of its customers (advertisers), its affiliates and its own internal economics. In practice, national advertisers who want network coverage almost universally order far in excess of the basic required stations. In April of this year, the average number of stations which broadcast CBS Television Network commercial programs during daytime hours was 83, and during nighttime hours was 121.

The minimum dimensions of the network having been outlined by advertiser demand, CBS Television has fashioned its product and geared its operations to meet that demand. The basic required list was not adopted to suppress competition in any way, nor does it do so. Its basic purpose and function are merely to define and delineate the product that the network has for sale.

It is interesting to note that the advertisers—the only group to whom the basic required practice directly applies—have never raised a question about the practice. The answer is simple. Those who need nationwide coverage use network advertising, and their normal wants include coverage in all the major markets represented by the basic required stations. Those who need something less than nationwide coverage turn naturally to spot advertising, or share the network facilities on a regional basis with other advertisers.

Advertisers thus have a great freedom of choice in the market. They have three different nationwide networks from which to choose. If they prefer not to use a network, they can choose any line-up of stations that they want on a spot basis, including network affiliates in the basic group. Or they can, as many do, mix network advertising with spot advertising. Or they can choose non-television media, as some do. An advertiser should not be permitted, however, to choose a particular network and at the same time reject a substantial part of it, thereby making the rejected part unusable as a network for that period.

In the publishing field, it would not occur to anyone that an advertiser who buys space in *LIFE* or *The Saturday Evening Post* should be able to say that he does not want the advertisement to appear in those copies of the magazines which are distributed in Los Angeles, or Louisville, or Seattle, or some other specific city. Theoretically it is possible to regard each copy as a separate publication which an advertiser could be free to order or not; but for business reasons the publisher determines that its product is a single nationwide publication, and no one questions its right to sell its advertising space on that basis. There is no reason for viewing a network in a different light.

Once a network has determined the character and dimensions of its basic product (the basic required group) and geared its operations to satisfying the demand for that product, there are compelling economic reasons for prohibiting fragmentation of the product. The network, as stated, makes heavy commitments for AT&T interconnection service among its affiliates, on a minimum basis of eight hours per day. The cost of maintaining the interconnection service simply could not be supported by orders for only a few major stations. If an advertiser were to place an order, for example, limited to New York, Chicago and Los Angeles, the costs for interconnection facilities, alone, would be unbearably excessive. There must be stations along the line to provide sufficient revenues to defray the cost.

The other extensive network services that are described in Parts II, III and IV of this memorandum also require the broad financial support of sales of the combined time of the major network affiliates. Those services cannot be supported by sales of only a small fraction of a network.

In summary, the policy of the basic required group is no more than a conformance to the normal demand of national network advertisers, and it is no different from any other minimum order policy which a supplier adopts where the nature of his product, the requirements of his customers and the economics of distribution justify it.

G. THE PROPOSAL TO PROHIBIT NETWORK OWNERSHIP OF STATIONS. It has from time to time been suggested that networks should be prohibited from owning stations. Insofar as this suggestion is predicated on the belief that such a divorcement is compelled by, or even consistent with, judicial decisions under the antitrust laws in motion picture cases, it is demonstrated to be erroneous in the legal memorandum submitted simultaneously herewith.

In any event, the proposal to prohibit networks from owning stations is arbitrary. Also, because of their importance to networking as well as the record of performance of network-owned stations in their communities, the prohibition would clearly be contrary to the public interest.

Network ownership of stations is essential as a matter of economics. In previous portions of this memorandum (pp. 52 to 55) it has been shown that the station profits as the percentage of revenues are far larger than network profits. This fact is indeed confirmed by CBS' own experience as is demonstrated by the following table:

		per cent of gross sales attributable to:		per cent of broadcast profits before taxes attributable to:	
	year	*network*	*owned stations*	*network*	*owned stations*
Television	1955	85	15	58	42
	1954	85	15	51	49
	1953	84	16	34	66
	1952	88	12	0	100
Radio	1955	69	31	22	78
	1954	75	25	45	55
	1953	76	24	44	56
	1952	75	25	31	69
	1951	77	23	43	57
	1950	77	23	46	54

It should be noted in connection with the foregoing table that in 1952, and for the first month of 1953, CBS owned only two television stations, and from February 1953 until February 1955, it owned only three television stations. Since February 1955, it has owned only four television stations, of which one, WXIX, Milwaukee, is a UHF station.

Not only is station ownership, in general, more profitable than network ownership, but equally important, station revenues are far more stable. As has been shown (pp. 50 to 55), the margins of network profit in relation to sales are narrow and the swings are violent. Because networks are particularly vulnerable in periods of decline (see table on this page showing the relationship of CBS Radio Network profits to the profits of CBS

Owned radio stations), and because of this phenomenon of the violent swing, station ownership provides an essential bulwark supporting network operations. Because of the economic peculiarities inherent in the network business, it is the stable source of revenues provided by its owned stations which permits the network to maintain the organization and take the necessary risks involved in major investments in facilities and long-term talent commitments. Indeed, it would seem clear that without these assurances of stable revenues from its ownership of stations, networks would be forced substantially to curtail their investments and commitments and to shrink their sustaining, informational and similar programming to which the revenues of owned stations contribute so heavily.

It has been suggested that the force of the economic justification for network ownership of stations is fatally weakened by the success of CBS Television in the face of the fact that, unlike NBC and ABC, it has not owned its full quota of stations. But this is hardly assurance for the future; on the contrary, past history indicates that it is a weak reed upon which to rely. For the past few years hardly represent a typical period in the life cycle of television. It has been a period of explosive growth and of shortage of stations. There has not yet been a period of normal conditions, nor a period of any degree of recession. Hence none of the stresses against which station ownership is such powerful insurance have in fact obtained. And, in any event, as the table on p. 131 shows, the CBS Owned television stations have contributed a significant portion of CBS Television profits.

The FCC itself has confirmed the desirability of network ownership of stations because of the economic factors involved. Thus, in the ABC-Paramount merger case, the Commission recognized the speculative character of network operations and attributed the difficulties of ABC to its lack of financial resources "to take the risks involved in making long-term contracts with outstanding talent" (8 R. R. p. 599). It noted (p. 614): "Officials of all three networks involved in this proceeding, ABC, CBS and DuMont, are in agreement concerning the economic and operational importance of network ownership of television stations. The revenues of owned stations support networking operations, which are not per se significantly profitable."[1]

While the economics of networking provide the primary reason for the essentiality of networks' ownership of stations, there are other important reasons. Thus, network owned stations are far more likely to accept sustaining programs produced by the News and Public Affairs Department, and it is because of that reasonable assurance of substantial exposure for such programs that it is possible to plan and produce these at all.

So, too, ownership of stations provides an important lifeline for the infusion of new personnel into the network. The stations which CBS owns have furnished the CBS Television Network with a reservoir of personnel who are thoroughly familiar

[1]See also the Commission's Report and Order in Docket No. 10822, 11 R. R. 1519, 1523, in which the Commission noted: "The ownership of broadcast stations in major markets by the networks ... is an important element of network broadcasting."

See also address of Commissioner Bartley, January 1955, at the University of Georgia, in which he stated: "Network service, which is essential if we are to reap the benefits of instantaneous programming on a nationwide basis, would be complicated to the point of impracticability if their key stations, that is, the principal origination points for the bulk of their programs, were not run by the networks.

"Then, too, there is some basis for the claim that network operation, if divorced from the revenues of key stations, could not long survive. The cost of line charges, particularly in television, may well tend to drive more and more programs onto film or tape. So, based primarily on these two things: first, necessity for key station control, and, two, the need for key station revenues to help defray network costs, we have found it beneficial and in the public interest to allow a degree of multiple ownership."

with the operations of the network and who are experienced in broadcasting at the station level—where there is more immediate contact with public tastes and public reaction. Such personnel, trained at the station level, make it possible for the CBS Television Network to have executives who are sensitive to the problems of station operations and the broadcasting needs of different parts of the country. Their knowledge of station operations enables them to provide intelligent assistance and advice to the managers of the owned stations, and to appreciate the problems of affiliated stations in endeavoring to adapt to the needs of their viewers for network and local programs.

Similarly, owned stations are laboratories for program ideas and talent. In a number of cases, programs developed by its owned stations have later been added to the network schedule. For example, KNXT, the CBS Owned television station in Los Angeles, created and broadcast a series of programs by Dr. Frank C. Baxter on Shakespeare. Its success led the network to expand the program and carry it on a nationwide basis. Similarly, "Camera Three" and "Eye on New York," originally developed and broadcast by WCBS-TV, New York, were later broadcast by the network. Among the CBS talent developed by the stations, and later utilized on the network, are Arthur Godfrey and Jack Sterling.

But television stations owned by CBS contribute not only to the network but, even more important, to the communities which they serve. It has long been the policy of CBS that both the personnel of the owned stations and the stations themselves play an active role in the civic life of their cities. The stations owned by CBS have concentrated heavily on local programming and community service. Appendix D summarizes some of the details of the local programming, and of the community activities of these stations, and the awards which they have won for their local service.

It is submitted that no facts and no considerations of public policy would justify discriminating against networks, among all potential owners, as ineligible to own stations. On the contrary, as has been shown, the public would be seriously disserved by such a prohibition, not only because of its grave effect on networking operations, but also because it would deprive important local communities of station ownership which has proved by its record that it serves the communities well.[1]

H. THE PROPOSAL TO REGULATE NETWORK AFFILIATIONS.

The proposal that the Federal Government intervene in the question of network affiliation with stations and in effect determine with which stations a network must affiliate is apparently based on the premise that networks have been arbitrary and whimsical in their affiliation determinations. The facts are to the contrary.

It should be noted at the outset that the number of stations with no network affiliation at all is exceedingly small. For of the 429 commercial stations on the air as of March 1, 1956, 393 were affiliated with a nationwide network.[2] Thus, only 36 stations are not affiliated with one of the three networks and

[1]It has been suggested that network ownership of stations curtails competition. But the Commission's rules carefully guard against ownership of stations where competition would be adversely affected. It is to be noted that WCBS-TV is one of seven VHF stations in New York; KNXT is one of seven VHF stations in Los Angeles; WBBM-TV is one of four VHF stations in Chicago; and WXIX is a UHF station competing against three VHF stations in Milwaukee.

[2]The 393 affiliates do not include stations with which the networks have only "per-program" arrangements.

even of these 36 a substantial number have "per-program" arrangements with the networks.[1] In the case of these 36 stations, affiliation is not feasible either because they are in cities (such as Los Angeles, New York and Chicago—in which there are a total of nine unaffiliated stations) where each of the three networks already has a primary affiliate or they are in areas where there is severe overlap with existing affiliates.

Nor is it consistent with the facts to predicate Government control of network affiliations on the charge of discrimination against UHF. The fact is that the CBS Television Network is not concerned with whether a station is UHF or VHF, except insofar as it determines size of the audience which will be added to that already served by the network, and the effect upon the network's over-all cost per thousand.[2] During 1955 a total of 53 UHF stations broadcast CBS Television commercial programs for which they received $2,334,481 as their share of the revenues for those programs.

In any event, it is submitted that any careful examination of the procedures, practices and criteria which the CBS Television Network has adopted in making its affiliation determinations readily establishes that the network is not arbitrary or whimsical. These practices, policies and criteria have been described in full in response to a "Questionnaire for TV Networks," submitted to this Committee in December 1954. Brought up to date, that response is set out in full in Appendix C of this memorandum. The Appendix establishes that CBS Television

[1]Thus the CBS Television Network currently has "per-program" arrangements with six of these non-affiliated stations.

[2]For a description of the part played by the fact that a station is UHF, see Appendix C, pp. XXVI to XXVIII.

practices, policies and criteria are the result of careful consideration, and have been formulated in the light of the responsibilities of the network to each of the several groups which must be involved—the public, present affiliates and advertisers.

It is true that it is not possible for a network to formulate precise criteria for affiliation which are self-executing and which can be applied in any situation with mathematical certainty. The question of whether or not to affiliate is often difficult and delicate, involving close questions of business judgment and rooted in advertiser economics (see Part IV, B of this memorandum). Affiliation determinations, because of the very nature of the business, require substantial room for the exercise of sensible business judgment.

For the same reasons, affiliation determinations seem plainly not susceptible to regulation by Government fiat. It would be impossible, by legislation or regulation, to establish a sensible set of standards which would automatically dictate the choice in each case. And indeed, as far as competition for affiliation between stations in the same community is concerned, precisely this conclusion has been conceded by the Special Counsel of this Committee in his Memorandum transmitted on February 1, 1955. He there stated (p. 24) that absent a conspiracy or unduly restrictive practices (over which both the FCC and the Department of Justice have ample authority under present law), "it is of no governmental concern whether a given network awards an affiliation to station A or station B where they are both located in the same community, and where they serve approximately the same service area."

It would seem that exactly the same conclusion applies in any case of affiliation. It is difficult to conceive how the Government can sensibly make the necessary business judgments involved. And even if it could, it is unlikely that any benefit to the handful of unaffiliated stations would result. As has been noted (pp. 74 to 78 of this memorandum), mere affiliation is not enough. Affiliations are denied where there is already an affiliate in the community, or where the applicant would contribute so little additional circulation that an advertiser could not be expected to order the station. Obviously, in such cases, affiliation is unlikely to be of significant help to the station. The advertiser must still order the station, and it has not yet been suggested that the Government can compel the advertiser to do so; nor can the Government compel the advertiser to remain in network television.

It is to be noted that by its adoption of a policy of accepting an advertiser order for any station, even though not affiliated, so long as it is not located in the principal community where an existing affiliate is located, CBS Television has provided substantially all which Government regulation could provide, for the effect of this policy is to give every station (except those located in the same communities), whether affiliated or not, opportunity to carry CBS Television Network programs if they are ordered by the advertiser.

In sum, it is submitted that the proposal to regulate the affiliation practices of networks, and thus to determine where and with whom the network must affiliate, will inject the Government into an area in which even the large bureaucracy necessary for administration of such a law could make no sensible or beneficial contributions.

I. THE PROPOSAL TO REQUIRE VHF STATIONS TO SHARE NETWORKS. The American Broadcasting Company has suggested to this Committee that VHF stations in one- or two-station markets be required, for an unspecified "interim" period, to "share their service equally and equitably among the three networks."[1] The representative stated (p. 1705) "I think it should operate to provide positive entry rather than operate as an additional barrier to an additional program service common to the market." It would appear, therefore, that the ABC proposal is, in fact, a proposal not only to forbid a VHF station in one- and two-station markets from carrying more than a specified percentage of programs of a particular network; it is designed also to *require* the station to carry the programs of ABC (or any new networks not now in being) for a specified percentage of time.

Proposals such as this have previously been advanced in recent years. A similar proposal was the subject of FCC rule making proceedings in 1950-51 (Docket No. 9807). It was also advanced by DuMont in 1954. Both times it has been rejected; both times, indeed, it was opposed by ABC itself. In its

[1]Transcript of Hearings before this Committee, March 26, 1956, p. 1705. The precise content of this proposal is unclear. While, as first stated, ABC proposed that the stations share "equally and equitably," at p. 1707 the ABC representative stated that in such two-station markets as Providence each station would be required to provide one out of three of the evening option hours for service for the network with which it is not primarily affiliated. The ABC representative stated that thus "the primary network would still have a two to one advantage and therefore, I am not talking about parity." Of course, if the CBS Television affiliate in Providence were required to give up one hour to a network other than CBS Television, it could do so in order to carry an NBC program; similarly, the NBC primary affiliate, forbidden to carry NBC during the third hour, could theoretically carry the CBS Television programs. Thus, ABC would not be benefited. It is probable that ABC actually suggests that each station be forbidden to carry programs during the hour, not only of the network with which it is primarily affiliated, but also, of the network with which the other station is primarily affiliated. Only in this way could ABC be assured of the exposure which it demands. But this would involve a regulation the impact of which would apply to one station depending on the action of its competitor station in the same market: Station A, a primary affiliate of NBC, could carry two NBC hours, but none of CBS Television if Station B carries two hours of CBS Television.

comments in Docket No. 9807, ABC explicitly stated that it "would oppose any requirement affirmatively obligating licensees to clear a minimum number of hours for each network."

Apart from the extraordinary mechanical difficulties which such a proposal would entail (see footnote, p. 139), such a proposed rule is objectionable. It abandons the basic concept of licensee responsibility which is a fundamental tenet of the Federal Communications Act and a central policy of the Commission. The rule would destroy the licensee's freedom to select its own programs and to determine those persons with whom it would deal.

Contrary to fact, the rule assumes that each network is offering programs of equal quality and popular appeal. The rule would require stations to broadcast certain programs even when its management is convinced that they are unwanted by the station's audience. It would establish a dangerous and unsound precedent based on Government compulsion upon a licensee forcing the licensee to deal with a network not of its own choosing, and to accept programs which it would otherwise reject.

The proposal also turns its back on the principle that the public interest requires that there should, and must, be free competition among the networks for station affiliation and clearance. This was precisely the philosophy which underlay the Commission's rule forbidding the operation of option time against any other network. Stations are now free to choose, during any period of the broadcasting day, the programs of any network. As has been shown (p. 98), network programs cross affiliation lines so that, for example, ABC's "Disneyland" is carried on many CBS Television primary affiliates.

In essence, therefore, the proposal, under the guise of encouraging and equalizing competition, in fact is antithetical to competition. It would dilute the incentive of networks constantly to provide the best possible programs, for no matter how good their programs, the networks would *by law* be forbidden access, during certain periods of the day, to stations in favor of a competitor.

Nor can these undesirable consequences be considered, as ABC seems to suggest, in the light only of a *third* network. The possibility of fourth, fifth, sixth, etc. networks must also be considered, particularly if, as the proposal contemplates, each has a right automatically to a free ride in sharing stations' time. Thus, the moment a fourth organization declares itself a network and enters the business, it would have an automatic right, regardless of its performance, schedule, or record, to share one quarter of the aggregate time of stations in markets which have less than four stations; a fifth network would get one fifth of stations' time in markets of less than five stations—and so on, cutting down on the time available to existing networks with each new "network."

It is submitted that these considerations, which have led to rejection of this proposal over the past six years, are still of controlling persuasiveness. They require the proposal's rejection once again.

J. THE PROPOSAL TO LICENSE NETWORKS. The proposal to license and regulate networks is, on its face, simple. But since the Commission already exercises considerable regulatory powers over a network through its licensing of the stations owned by the network, as well as through its licensing of stations affiliated with the network, the implications of a proposal directly to license and regulate networks are both wide and unknown. In effect, it would seem that the proposal is designed to regulate, and hence license, anyone entering into the business of networking, irrespective of the fact that the network may own no stations and thus make no use of any portion of the broadcast spectrum. Yet it is the use of the spectrum which has always provided the basis in law for licensing and regulating broadcasters.

By abandoning this concept, the proposal enters into a novel and dubious realm. Its implications are perhaps most clearly assessed by regarding it as a proposal to regulate and license a network, not only in its affiliation practices,[1] but also as a supplier of program material—just as are film producers, independent program packagers or advertising agencies which produce programs. That is an extreme concept which may well lead to the complete destruction of the principle of free competition embodied in the Federal Communication Act and basic to the American system of broadcasting.

To the extent that the proposal is an attempt to regulate networks *per se* and wholly apart from *station* licensing, it is no different from saying that newspaper wire services or newspaper syndicates should be subject to regulation in order to control the subject matter of their writings, and perhaps, even how much they charge customers. It would inject the Federal Government into areas which have long been forbidden to it: areas of business judgment, of program content, of determining with whom suppliers may and may not deal; all involving the most

[1]To the extent that the proposal is designed to reach affiliation practices, it has been discussed on pp. 135 to 138.

intimate details of the business relationships between networks and stations and networks and advertisers—even to the fixing of rates, although there is no payment by the ultimate consumer—that is, the television viewer—involved at all.

It is submitted that nothing in the nature of television broadcasting or of current practices warrants, or even permits, so radical a departure from existing concepts and so dangerous a philosophy of Governmental intervention.

APPENDIX A

Form of Typical CBS Television Primary Affiliation Agreement

CBS TELEVISION

A division of Columbia Broadcasting System, Inc.

TELEVISION AFFILIATION AGREEMENT

AGREEMENT made this day of , 19 by and between CBS TELEVISION, a division of Columbia Broadcasting System, Inc., 485 Madison Avenue, New York 22, New York (herein called "CBS Television") and

(herein called "Station") licensed to operate television station at full time on a frequency of on Channel number

CBS Television is engaged in operating a television broadcasting network and in furnishing programs to affiliated television stations. Some of such programs, herein called "sponsored programs," are sold by CBS Television for sponsorship by its client-advertisers. All non-sponsored programs are herein called "sustaining programs." "Network sustaining programs," "network sponsored programs" and "network programs" as used herein mean network television programs. Station and CBS Television recognize that the regular audience of Station will be increased, to their mutual benefit, if CBS Television provides Station with television programs not otherwise locally available.

Accordingly, it is mutually agreed as follows:

1. CBS Television will offer to Station for broadcasting by Station network sustaining programs as hereinafter provided, without charge, and CBS Television network sponsored programs for which clients may request broadcasting by Station and which are consistent with CBS Television's sales and program policies. Network sustaining programs made available by CBS Television are for sustaining use only and may not be sold for local sponsorship or used for any other purpose without the written consent of CBS Television in each instance.

Station shall have a "first refusal" of each network sponsored program and each network sustaining program which is to be offered to any television station licensed to operate in the community in which Station is licensed to operate. Station may exercise its "first refusal" with respect to any network program by notifying CBS Television within 72 hours (exclusive of Saturdays, Sundays and holidays) after CBS Television shall have offered the program to Station that Station will accept and broadcast such program in the time period and commencing on the date specified by CBS Television in its offer of such program to Station. In the event that Station shall not so notify CBS Television with respect to any such program, Station shall not thereafter have any right to broadcast such program.

2. (a) Station, as an independent contractor, will accept and broadcast all network sponsored programs offered and furnished to it by CBS Television during "network option time" (as hereinafter defined); provided, however, that Station shall be under no obligation to accept or broadcast any such network sponsored program (i) on less than 56 days' notice, or (ii) for broadcasting during a period in which Station is obligated by contract to broadcast a program of another network. Station may, of course, at its election, accept and broadcast network sponsored programs which CBS Television may offer within hours other than network option time.

(b) As used herein, the term "network option time" shall mean the following hours:

(i) if Station is in the Eastern or Central Time Zone, Daily, including Sunday, 10:00 A.M. to 1:00 P.M., 2:00 P.M. to 5:00 P.M. and 7:30 P.M. to 10:30 P.M. (expressed in New York time current on the date of broadcast);

(ii) if Station is in the Mountain or Pacific Time Zone, Daily, including Sunday, 10:00 A.M. to 1:00 P.M., 2:00 P.M. to 5:00 P.M. and 7:30 P.M. to 10:30 P.M. (expressed in local time of Station current on the date of broadcast).

3. Nothing herein shall be construed (i) with respect to network programs offered pursuant hereto, to prevent or hinder Station from rejecting or refusing network programs which Station reasonably believes to be unsatisfactory or unsuitable, or (ii) with respect to network programs so offered or already contracted for, (A) to prevent Station from rejecting or refusing any program which, in its opinion, is contrary to the public interest, or (B) from substituting a program of outstanding local or national importance. CBS Television may, also, substitute for one or more of the programs offered hereunder other programs, sponsored or sustaining, of outstanding local or national importance, without any obligation to make any payment on account thereof (other than for the substitute program, if the substitute program is sponsored). In the event of any such rejection, refusal or substitution by either party, it will notify the other by private wire or telegram thereof as soon as practicable.

4. Station will not make either aural or visual commercial spot announcements in the "break" occurring in the course of a single network program or between contiguous network sponsored programs for the same sponsor where the usual station break does not occur.

5. CBS Television will pay Station for broadcasting network sponsored programs furnished by CBS Television as specified in Schedule A, attached hereto and hereby in all respects made a part hereof. Payment to Station will be made by CBS

Television for network sponsored programs broadcast over Station within twenty (20) days following the termination of CBS Television's four or five week fiscal period, as the case may be, during which such sponsored programs were broadcast.

6. CBS Television will offer to Station for broadcasting such network sustaining programs as CBS Television is able to cause to be delivered to Station over coaxial cable or radio relay program transmission lines under arrangement satisfactory to CBS Television. CBS Television shall not be obligated to offer, or make available to Station hereunder, such network sustaining programs as it may have available in the form of TV recordings, unless CBS Television has the right so to do and Station shall agree to pay CBS Television's charges therefor.

7. When, in the opinion of CBS Television, the transmission of network sponsored programs over coaxial cable or radio relay program transmission lines is, for any reason, impractical or undesirable, CBS Television reserves the right to deliver any such program to Station in the form of TV recordings, or otherwise.

8. Station agrees to observe any limitations CBS Television may place on the use of TV recordings and to return to CBS Television, transportation prepaid by Station, immediately following a single broadcast thereof, at such place as CBS Television may direct, and in the same condition as received by Station, ordinary wear and tear excepted, each print or copy of the TV recording of any network program, together with the reels and containers furnished therewith. Each such TV recording shall be used by Station only for the purpose herein contemplated.

9. Neither party hereto shall be liable to the other for claims by third parties, or for failure to operate facilities or supply programs for broadcasting if such failure is due to failure of equipment or action or claims by network clients, labor dispute or any similar or different cause or reason beyond the party's control.

10. The obligations of the parties hereunder are subject to all applicable laws, rules and regulations, present and future, especially including rules and regulations of the Federal Communications Commission.

11. Station shall notify CBS Television forthwith if any application is made to the Federal Communications Commission relating to the transfer of any interest in Station (or in the television station to which this Agreement relates), and CBS Television may terminate this Agreement, effective as of the effective date of such transfer, by giving not less than ten days' prior notice to Station. If CBS Television does not so terminate this Agreement, Station will procure the agreement of the proposed transferee that, upon the consummation of the transfer, the transferee will assume and perform this Agreement.

12. All notices required, or permitted, to be given hereunder shall be given in writing, either by personal delivery or by mail or by telegram or by private wire (except as otherwise expressly herein provided) at the respective addresses of the parties hereto set forth above, or at such other addresses as may be designated in writing by registered mail by either party. Notice given by mail shall be deemed given on the date of mailing thereof. Notice given by telegram shall be deemed given on delivery of such telegram to a telegraph office, charges prepaid or to be billed. Notice given by private wire shall be deemed given on the sending thereof.

[III]

13. This Agreement shall be construed in accordance with the laws of the State of New York applicable to contracts fully to be performed therein, and cannot be changed or terminated orally.

14. Neither party shall be or be deemed to be or hold itself out as the agent of the other hereunder.

15. As of the beginning of the term hereof, this Agreement takes the place of, and is substituted for, any and all television affiliation agreements heretofore existing between the parties hereto concerning the market area to which this Agreement relates, subject only to the fulfillment of any accrued obligations thereunder.

16. The term of this Agreement shall begin on and shall continue for a period of two (2) years from such date; provided, however, that unless either party shall send notice to the other at least six months prior to the expiration of the then current two-year period that the party sending such notice does not wish to have the term extended beyond such two-year period, the term of this Agreement shall be automatically extended upon the expiration of the original term and each subsequent extension thereof for an additional period of two years; and provided, further, that this Agreement may be terminated effective at any time by either party by sending notice to the other at least twelve months prior to the effective date of termination specified therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CBS TELEVISION, a Division of Columbia Broadcasting System, Inc.

By..

By..

SCHEDULE A

(Attached to and forming part of the agreement between CBS Television and

This Schedule A contains provisions supplementary to said agreement and in case of any conflict therewith, the provisions of this Schedule A shall govern.)

I. CBS Television will pay Station for broadcasting network sponsored programs furnished by CBS Television during each week of the term hereof, thirty per cent (30%) of the gross time charges for such week, less the "converted hour" deduction and the ASCAP and BMI deduction.

II. The "converted hour" deduction for any week shall be one hundred fifty per cent (150%) of the amount obtained by dividing the gross time charges for such week by the number of "converted hours" (as hereinafter defined) in such week.

III. The ASCAP and BMI deduction for any week shall be the amount obtained by (i) deducting the "converted hour" deduction for such week from thirty per cent (30%) of the gross time charges for such week, and (ii) multiplying the remainder by the ASCAP and BMI percentage.

IV. As used herein, the term "gross time charges" for any week shall mean the aggregate of the gross card rates charged and received by CBS Television for broadcasting time over Station for all network sponsored programs broadcast by Station during such week at the request of CBS Television.

V. As used herein, the term "converted hour" means an aggregate period of one hour during which there shall be broadcast over Station one or more network sponsored programs for which CBS Television shall charge and receive its Class A time card rate for broadcasting time over Station. An aggregate period of one hour during which there shall be broadcast over Station one or more network sponsored programs for which CBS Television shall charge and receive a percentage of its Class A time card rate, such as its Class B time card rate, shall be the equivalent of the same percentage of a converted hour. Fractions of an hour shall be treated for all purposes as their fractional proportions of a full hour within the same time classification.

VI. CBS Television shall not have the right to reduce Station's gross hourly card rates for network sponsored programs except in connection with a re-evaluation of the gross hourly card rates for network sponsored programs of a substantial number of its affiliated stations. CBS Television shall give Station at least thirty days' prior notice of any reduction in Station's then current gross hourly card rates for network sponsored programs and Station may terminate this Agreement, effective as of the effective date of any such reduction, on not less than fifteen days' prior notice to CBS Television.

VII. As used herein, the term "ASCAP and BMI percentage" shall mean the aggregate of the percentages of CBS Television's "net receipts from sponsors after deductions"

[V]

and of CBS Television's "net receipts from advertisers after deductions" paid or payable, respectively, to American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) under CBS Television's network blanket license agreements with ASCAP and BMI. (Currently such percentages are 3.025 and 1.2, respectively.)

VIII. In the event that CBS Television shall have license agreements with ASCAP or BMI which shall provide for the payment of license fees computed on a basis other than a percentage of CBS Television's "net receipts from sponsors after deductions" or "net receipts from advertisers after deductions," as the case may be, CBS Television shall deduct from each payment to Station, in lieu of the ASCAP and BMI deduction, the proportionate share of music license fees paid or payable by CBS Television which is properly allocable to such payment.

IX. The obligations of CBS Television hereunder are contingent upon its ability to make arrangements satisfactory to it for facilities for transmitting CBS Television network programs to the control board of Station.

APPENDIX B

A Case History of a CBS Public Affairs Series

Except that no revenues were involved, the case history of the planning, conception and evolution of the Public Affairs program entitled "The Search" parallels that of "Climax!" (see pp. 36 and 37 of this memorandum). "The Search," a series of programs produced by the Public Affairs Department, was designed to broaden man's horizons by bringing to the viewer knowledge of current scientific research projects. Its history illustrates the basic philosophy of the CBS Public Affairs Department that the objective must be to produce educational and informational programs which are designed and presented attractively so they will reach the largest possible audience.

Preparation of "The Search" began in January 1951, when a series of staff conferences led to the concept of a program series which would describe to the viewing public, in terms which would be informative and useful, the research done in major universities. In the Spring of 1951, negotiations were begun with a major university and sample scripts were prepared. Later, negotiations were begun with a second major university. By the Winter of 1951-52, two different types of programs were simultaneously prepared—one on a live basis with the first university, the other on a filmed basis with the second university. In September 1952, the pilot film was completed and revised. In October 1952, both the live and the filmed pilots were rejected since they did not measure up to the standards of the department. Research was begun again to determine where the scope of the series could be broadened so as to include many projects of many universities. In November 1952, the department assigned a staff to engage in a research tour of a number of universities throughout the country.

In December 1952, a decision was reached to proceed to film 26 programs, each dealing with a different research project at a different university. In January 1953, a skeleton staff was assembled, and in March 1953, the first actual production steps were taken. In July 1953, the first rough cut version of a single program was screened. Again after careful analysis, in September 1953, it was decided that the program was not wholly satisfactory and that its approach should be shifted. For the next few months, the organization for research, reporting and production was rebuilt and by February 1954, the rebuilt unit began active production.

In September 1954, the first of the series of 26 "The Search" programs was broadcast—*three years and nine months after actual preparation had begun.*

The series was continued throughout the Fall and Winter; it was repeated at a different time period in the Summer of 1955. The subjects with which the 26 programs dealt include such varied research projects as automation at the Massachusetts Institute of Technology; Arkansas folklore at the Fine Arts Center of the University of Arkansas; diagnosis and care of deafness at Johns Hopkins University; child development at

Yale University; and uranium prospecting and mining at the Colorado School of Mines.[1]

The total direct cost of "The Search," which was unsponsored, was approximately $750,000. Of this amount, $500,000 was spent during the years of preparation preceding the first broadcast.

The program has won ten awards, including the George Foster Peabody Award and the Blakeslee Award of the American Heart Association.

[1]One of the programs in the September series dealt with the work of Cornell University in the area of automobile safety. As a direct result of suggestions made in the course of the program, at least one major automobile manufacturer made available in its 1956 cars safety steering wheels, safety door locks, crash padding and seat safety belts.

APPENDIX C

CBS Television's Criteria in Affiliation Actions

NOTE: *This Appendix is a reprint of substantially all of the reply of CBS Television to Section III of a questionnaire submitted to CBS Television and other networks on October 19, 1954, by the Honorable John W. Bricker, then Chairman of the Senate Committee on Interstate and Foreign Commerce. Some explanatory text has been added as shown in italics within parentheses. New footnotes are numbered. Omissions from the original reply are indicated by a line of asterisks. Essentially, the omitted material consists of material duplicated in the body of the memorandum to which this document is an appendix.*

General Introduction

In selecting its affiliates, CBS Television is mindful of its obligation to discharge its responsibilities to each of several groups—viewers, potential viewers, the public at large, advertisers and the stockholders of CBS.

Ideally, it strives to select affiliates so that (1) CBS Television programs will be available to the largest possible number of viewers, and (2) the "cost per thousand"* of circulation provided by a network of all of such affiliates, or of whatever selection from such affiliates may meet the needs of a particular

*As used in this response, cost per thousand is the ratio of cost of station time to potential audience. The cost per thousand for a particular program is obtained by dividing (i) the aggregate of the card rates of all of the television stations which broadcast such program by (ii) the net unduplicated number of television homes within the combined service area of all such stations.

advertiser, will be as low as possible and, in any event will be competitive with other media.*

Superficially, these two objectives may appear to be mutually exclusive. In actual practice, achievement of the second will, in large part, result in achievement of the first.

The reason is simple. CBS Television cannot afford to affiliate with any station unless advertisers will purchase that station for network broadcasts. And, even if a station is affiliated with CBS Television, the viewers of that station cannot enjoy a particular program unless that station is purchased for that program. If a television network increases its economic efficiency in terms of cost per thousand, advertisers will be able to purchase, and will purchase, an increasingly larger number of stations for the broadcasting of their network programs, particularly if the cost per thousand of the additional stations is reasonable. Thus, as efficiency of the network in terms of cost per thousand increases, the number of stations used will be increased and the network's programs will be available to a larger number of viewers.

Increased time sales make it possible for television networks to attain a greater measure of success in discharging their responsibility to the public at large. Income from time sales provides monies to enable the network to create and produce high quality programs of all kinds.

In furtherance of its efforts to achieve both of the objectives set forth above and at the same time to make CBS Television network programs available to stations located in smaller com-

*Network television competes for the advertisers' dollar with all other advertising media—radio, magazines, newspapers, billboards and many other media. Television networks also compete with each other.

munities, CBS Television has recently adopted an Extended Market Plan.[1]

* * * * * * * * * * * *

The basic criterion utilized in most cases by CBS Television in determining whether or not to affiliate with a particular station is: Will affiliation with that station aid CBS Television in its efforts to obtain affiliates which in the aggregate, or in selected groups, will enable CBS Television to furnish advertisers a television network with a cost per thousand of circulation which will be competitive with other networks and all other media?

In applying this test all of the criteria discussed below are taken into account to a greater or lesser extent, although any one or more of them may be of insignificant, or only minor, importance in any given case. Because of the many variables involved, application of these criteria cannot be reduced to a mathematical formula.

Our current procedure for determining whether or not to affiliate with a particular station is generally as follows:

1. A representative of the potential affiliate calls on a member of the Station Relations Department of CBS Television and is invited to furnish the Station Relations Department with engineering, marketing and other pertinent data concerning the station.

2. The information so submitted is transmitted to the Engineering and Research Departments of CBS Television for their comments and recommendations.

3. The Engineering Department reviews the data submitted,

[1]That plan is described in the memorandum (pp. 78 to 80) to which this document is an appendix. It was described in an exhibit to the reply to Senator Bricker's questionnaire.

together with such other pertinent data as are available to it, and submits its recommendation concerning affiliation to the Station Relations Department, together with its estimate of the area to be served, the number of homes within such area, other services presently (or which later may be) available to the area and the extent to which the service area of the potential affiliate overlaps the service area of present or anticipated affiliates.

4. The Research Department reviews the comments and data furnished by the potential affiliate and the Engineering Department, as well as such other pertinent data as may be available to it. The Research Department, in turn, makes its recommendation to the Station Relations Department, particularly in the light of such information as it may have with respect to viewing data concerning the service area of the potential affiliate, the number of families within the area, and the number of television homes within the area, as well as such comments as it may wish to make upon the comments of the Engineering Department.

5. The Station Relations Department then reviews the recommendations of the Engineering and Research Departments and evaluates such recommendations and determines whether (a) to offer an affiliation agreement to the potential affiliate or (b) to advise the potential affiliate that it would not be feasible for CBS Television to affiliate with it or (c) if acceptance or rejection of the potential affiliate is not clearly indicated from the recommendations of the Engineering Department and Research Department, consults further with representatives of such departments and with such other officials and employees of CBS Television as may seem appropriate.

The procedure outlined above is the "normal" one, although no two cases are treated in exactly the same manner and the procedures followed with respect to any individual case are varied or modified depending upon the circumstances.

Because network television is a relatively new and complicated business, and because after the lifting of the freeze we were besieged by applicants for affiliation, our first decisions on affiliation were made solely on a case to case basis without regard to any definite criteria. The present "normal" procedures and application of various criteria have been evolved over a period of time and are subject to constant review and revision.

With the foregoing qualifications, the answers to Section III of the Committee's Questionnaire are:

1. SIZE OF COMMUNITY

a. *Please indicate whether size of the community in which a prospective television affiliate is located is a factor in awarding television affiliations.*

ANSWER: The size of the community in which a station is located is not ordinarily a factor in determining affiliates. (For the purpose of this question, we are assuming that a television station is "located" in community A if it is licensed as a community A station.)

However, generally speaking, CBS Television wishes to have an affiliate in each of the larger (in terms of population) communities and, other things being substantially equal, if faced with the problem of choosing between two stations serving substantially the same area, but located in different communities, would prefer the station located in the larger community.

The reason is that we believe that advertisers would prefer the station located in the larger community because it would be more likely to attract viewers than a comparable station in a smaller community. However, so far as we have been able to determine, we do not have any examples of cases where size of community in which a station is located has played a part in our decision to affiliate with one station in preference to another.

Also, the application of all of the factors which are considered in selecting an affiliate may result in the selection of a station located in a smaller community instead of one located in a larger community. *Example:* station KXJB-TV in Valley City, North Dakota, was preferred to station WDAY-TV in Fargo, which is larger than Valley City, because it was our belief that KXJB-TV would provide service to a larger number of homes than would WDAY-TV.

Further, the mere size, importance or other characteristics of two communities may result in the granting of a CBS Television affiliation to a station located in each of such communities although, technically, a station located in either could serve both. *Example:* CBS Television has an affiliate in both Washington, D. C., and Baltimore, Maryland.

b. *If the answer to* (a) *is "yes," please indicate the smallest community in which a television station affiliate of your network is located.*

ANSWER: Poland Springs, Maine, population unknown, estimated to be less than 1,000.

[XV]

2. SIZE OF SERVICE AREA

a. *Please indicate whether size of service area, in terms of population, of a prospective television affiliate is a factor in awarding television affiliations.*

Note: Except as specifically noted, the reply to this question does not apply to Extended Market Plan affiliations.

ANSWER: The total number of families residing within that portion of any television station's service area which is not otherwise served by a CBS Television affiliate is a primary factor in decisions affecting affiliation, since there is a direct relationship between this factor and CBS Television's objective of reaching the largest possible number of homes at a competitive "cost per thousand." In most situations, the television station serving the largest service area is preferred because more television homes will be reached and rates for stations with larger service areas generally reflect a lower cost per thousand than do those for stations with smaller service areas.*

However, if network coverage is desired in a market which is located not far from the service area of one or more CBS Television affiliates, it may be advisable to select a station with a smaller service area in order to minimize the effect of duplication of service.

* * * * * * * * * * * *

Size of service area has been, and will be, a determinative as well as a comparative factor in selecting affiliates. Generally, we will not affiliate with a station unless it can provide an unduplicated circulation of at least 40,000 homes. In specific

*Television rates are not directly proportional to station circulation. If they were, stations in small markets would find it difficult or impossible to obtain sufficient revenue. For that reason, stations with smaller circulation do not have a card rate proportionately less than that of a station with a large circulation. This pattern of increasing cost per thousand as circulation decreases is consistent with other media.

cases the number may be increased or decreased somewhat by the interplay of other factors affecting affiliation.

The reason for refusing to affiliate with stations which cannot produce a minimum of circulation is purely economic. A circulation of approximately 40,000 homes is required to justify a card rate of $150 to $175. We have found that affiliation with a station which cannot justify a card rate of at least $150 will result in a financial loss to CBS Television.

(The two preceding paragraphs do not apply to EMP affiliates with respect to which there is no minimum as to circulation or justifiable card rate. The reason we could not afford to affiliate, except on an EMP basis, with a station which would not produce a minimum circulation and justify a minimum card rate is that such a station could not produce sufficient revenue to defray even our out-of-pocket costs [such as wire line and TVR costs]. While many EMP affiliates did not pay their way from the beginning, and some do not do so now, the EMP affiliation held out the prospect of such stations being able to pay their own way in the future as, indeed, many of them are now doing.)

b. *Please indicate what criteria are utilized in ascertaining the boundaries of service areas. Are the Grade A or Grade B contours of the FCC utilized? If not, please indicate in some detail the methods utilized.*

ANSWER: At the present time, the geographical boundary of the service area of a station is based primarily on engineering measurements or computations. CBS Television includes within the service area of each station all of that area to which that station delivers a signal having the minimum required field intensity. The respective minimum field intensity requirements used by CBS Television are based upon the following values:

Channels 2-6	40 dbu (100 uv/m)
Channels 7-13	50 dbu (316 uv/m)
Channels 14-83	64 dbu (1600 uv/m)

The contours of service areas as used by CBS Television do not coincide, for Channels 2-13, with either the A or B contours as defined by the FCC. The reason for this is that, in general, audience data indicate a substantial public acceptance and use of VHF signal values lower than that corresponding to Grade B.

Whenever available, actual measurements of field strength are used. When measured data are not available, CBS Television engineers compute the outer limits of a station's service area. Such computations are made in accordance with methods prescribed by the FCC for computing field intensities.

In the past considerable reliance was placed on the Nielsen-CBS Television Reception Study, particularly in areas where all of the stations serving — or which will serve — that area were in operation prior to the time of such study. Because of the large number of stations which have commenced operation since the date of such study (reviewed Fall of 1953) and the many changes which have occurred in stations' transmitting facilities, it is now used only as a supplement to the engineering data.[1]

In addition, a certain amount of reliance has been placed upon reports from local television set dealers and servicemen, advertisers, advertising agencies and others as to the public

[1]Since the date of the reply to Senator Bricker's questionnaire, CBS Television has subscribed to a coverage study which is now in progress. When completed, this study will show on a county-by-county basis the viewing and the frequency of viewing of all television stations.

acceptance and effective service area of a television station. These reports and the Nielsen-CBS Television Reception Study have been valuable in enabling CBS Television Engineering and Research Departments to establish the relationship between field intensity contours and actual viewing.

Further, CBS Television may adjust a station's service area for the purpose of network affiliation by consideration of overlap of present or potential affiliates and the terrain of the area in which the station is located.

As is often the case with respect to application of other criteria, determination of a station's service area is the result of the exercise of judgment based upon practical experience. While the criteria outlined above are useful as guide posts, they cannot be applied rigidly or in a vacuum.

For example, theoretically, and in the absence of other data based on practical experience and observation, the A and B contours determined in accordance with the Commission's standards are useful measures of the service area of a station. So are the Commission's definitions of adjacent and co-channel interference, although the experience of CBS Television indicates that, in many instances, such interference has more theoretical than actual significance. Studies, such as the Nielsen-CBS Television Reception Study, underwritten by CBS, and reports from dealers, servicemen and others have indicated that tests other than delineation of the A and B contours and computation of theoretical interference must be applied. In many instances, mathematics must be tempered with judgment and practical experience.

In determining the usefulness of the service area of a prospective affiliate, one of the most perplexing and difficult problems is the estimation of absolute and relative overlap and the seriousness of such overlap when viewed in the light of other criteria.

The actual amount of present or potential overlap of any station with present or future affiliates of CBS Television is determined in the first instance by the Engineering Department of CBS Television. For this purpose, contours are drawn using the signal intensity value referred to in the first part of this section. The overlap is deemed to exist in those areas which are common to the areas which are delineated by two or more of such contours.

The Research Department of CBS Television determines overlap contours on the basis of the contours furnished to it by the Engineering Department and adjusts such contours in the light of such audience data as may be available to it and, where in its opinion such projection is appropriate, on a projection arrived at by combination of such data with subsequent changes in the number and method of operation of stations in the area under consideration. The principal source of such data is the Nielsen-CBS Television Reception Study.

The number of homes within the various overlap areas is computed by either the Engineering or Research Departments, using the usual methods for that purpose.

In evaluating the seriousness of overlap in any particular case, various factors are considered. If we are concerned only with the problem of overlap with respect to station A and station B, the principal factors are the extent to which the total service areas, in terms of number of homes, of station A and station B, taken separately, are included within the overlap area; the relative importance of the communities in which station A and station B are located; the relative importance of other communities in the non-overlap service areas of each of the stations; the relative importance of the entire service area of each of such stations; and the importance of communities within the overlap area which may be receiving a relatively poor quality signal from either station A or station B. If the overlap involves more than two stations, the same factors must be considered with respect to the respective service areas of each of such stations.

The following are the primary reasons which make it necessary for CBS Television to make its affiliation determination in such a way as to keep to a minimum the amount of serious overlap:

(i) Overlap will decrease the value to advertisers (whether network, national spot or local) of the affiliates which are subjected to overlap and, particularly, in the case of affiliates in important markets, will make it more difficult for CBS Television to obtain affiliation agreements with the better stations in those markets.

(ii) Despite the fact that a prospective affiliate is willing to accept a network card rate based solely on its unduplicated circulation, it seems inevitable and quite natural that such an affiliate, after it has secured for itself any substantial portion of the viewers in the overlap area, will believe itself entitled to be paid, and will request that it be paid, on the basis of actual circulation delivered by it. In such a case, because of the fact that station rates are not directly proportional to circulation,

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the network's cost per thousand will increase. In addition to this factor, costs to the advertiser would also tend to increase, without compensating value to him in terms of increased circulation, since it would be quite unlikely that the first affiliate would consent to a rate decrease proportionate to the new affiliate's increased circulation.[1]

CBS Television does not contend that it now has perfected the best methods for determining the service areas of television stations. It intends to continue to re-examine and re-evaluate its methods in the light of continued experience of itself and others.

c. *What is the smallest service area of any television affiliate of your network?*

ANSWER: The smallest service area, in terms of population, of any CBS Television affiliate is that of KZTV, Reno, Nevada (19,800 homes).[2]

The foregoing comments with respect to minimum size of service area apply in general to Extended Market Plan affiliates, although the number of homes required will be greatly reduced. Whether or not it will be necessary to establish a minimum is not now known. The smallest service area of any Extended Market Plan affiliate now under contract is that of Big Spring, Texas, 9,800 homes.

3. NUMBER OF TELEVISION SETS

a. *Please indicate whether the number of television sets in the service area of the prospective television affiliate is a factor in awarding television affiliations.*

ANSWER: No, except in the case of UHF stations, since ordinarily it is assumed that eventually there will be a television set in most homes in the service area of a prospective affiliate and,

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[1]Since the date of the reply to Senator Bricker's questionnaire, CBS Television has formulated a policy with respect to making individual stations available for specific programs upon the request of the advertisers concerned. That policy is outlined in the last section of this appendix.

[2]Since the filing of the reply, CBS Television has affiliated with KHAD-TV, Laredo, Texas, which, according to the most recent available information, has a service area of only 14,000 homes and of only 3,700 television homes.

where such assumption is made, this factor is of little importance. For the bearing of this question on UHF stations, see the answer to Question 9.

b. *If the answer to* (a) *is "yes," please indicate the television affiliate of your network with the fewest television sets, giving the number of such sets.*

ANSWER: We do not have this information. However, on the basis of estimates by the Research Department of CBS Television, it would appear that at December 1, 1954, WAIM-TV, Anderson, South Carolina, had only 7,550 television homes in its service area.[1]

4. PROXIMITY TO OTHER TELEVISION AFFILIATES

a. *Please indicate whether proximity to another television affiliate of your network is a factor in awarding television affiliations.*

ANSWER: Proximity to other affiliates is not in itself a criterion in the selection of affiliates, but because of its relationship to overlap, please see the answers to Questions 2 and 4(b).

b. *If the answer to* (a) *is "yes," please indicate (i) the minimum distance permitted (ii) the maximum overlap permitted.*

ANSWER: CBS Television has no fixed rules as to minimum separation distance or maximum overlap. As a result of proximity a station may provide very little unduplicated service and, hence, be unattractive as an affiliate. Factors such as terrain, power with which the station and nearby stations are

[1]See second footnote to answer to question 2(c).

operating and the propagation characteristics of the different channels all have a bearing on desirable mileage separation between affiliates. So does the importance of the communities served—e.g., Washington and Baltimore. Also taken into account is the ratio of overlap to otherwise unduplicated circulation.

For the reasons outlined above, no minimum or maximum is prescribed for mileage separation or overlap.

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5. *If the criteria referred to in III-1, III-4, are in any way interdependent, please explain in detail the nature of the interdependence.*

ANSWER: The criteria referred to in Questions 1 through 4 are interdependent, as are all other criteria used in determining questions of affiliation, to a greater or lesser degree depending upon the facts of each individual case. Ordinarily, size of service area, in terms of unduplicated circulation, will be the most important criterion.

6. CARD RATE

a. *Please indicate whether the card rate of the prospective television affiliate is a factor in awarding television affiliations.*

b. *If the answer to* (a) *is "yes," please indicate the lowest card rate of any television affiliate of your network.*

ANSWER: With two exceptions, the card rate of a prospective affiliate is not a factor in determining whether or not to affiliate with that station.

The first exception is that if the station will not accept an

Extended Market Plan affiliation and unduplicated circulation (present and near future) of the station will not justify a card rate of at least $150, CBS Television will not affiliate with that station because to do so would result in excessive out-of-pocket loss.

Also, if a station should demand a card rate in excess of that which CBS Television believes is justified by the unduplicated circulation (present and near future) of that station (and, perhaps, other factors) CBS Television would refuse to affiliate with that station, or might terminate its affiliation with that station and shift to another. In practice, this exception is more theoretical than real, although it has been determinative in a few instances.

7. *Please indicate what effect, if any, is given to the fact that the prospective television affiliate also owns one or more television stations in other communities which are television affiliates of your network.*

ANSWER: The fact that the owner of a prospective television affiliate in area A is also the owner of a present television affiliate in area B (or a radio affiliate in any area) may be of significance in three respects in determining whether to affiliate with such owner in area A:

(i) Where such owner has only just commenced operations in area A, or just purchased the prospective affiliate in area A, the quality of such owner's local station operations in area B will usually be a good indication of the probable quality of such owner's local station operations in area A;

(ii) If the business relationship between CBS Television and such owner in respect of the area B affiliation has been mutually pleasant, there will be a natural desire on the part of CBS Television to continue that relationship in area A; and

(iii) In order to obtain network coverage in, for example, three specific areas in the aggregate, it may be necessary to apply affiliation criteria to prospective and present affiliates in groups, rather than separately, weighing the merits of affiliating with the same owner in all three areas as against the merits of not covering one or more of such areas. In such a case, the decision may be to affiliate with the same owner in all three areas on the ground that aggregate network coverage will be improved.

8. *Please indicate what effect, if any, is given to the fact that the prospective television affiliate operates on channels 7-13 rather than on channels 2-6.*

ANSWER: No effect is given to the fact, as such, that a prospective affiliate operates on one of channels 7 through 13 instead of on one of 2 through 6. Such fact does, however, affect size of service area. (See the response to Question 2.)

9. *Please indicate what effect, if any, is given to the fact that the prospective television affiliate operates on a UHF rather than a VHF channel:*

a. *If no VHF television station is allocated to the community in which the UHF station is located.*

b. *If one or more VHF television stations are allocated to that community, but no VHF station is yet in operation in that community.*

c. *If one VHF station is in operation in that community.*

d. *If two VHF stations are in operation in that community.*

e. *If three VHF stations are in operation in that community.*

f. *If four or more VHF stations are in operation in that community.*

g. *In answering* (a) *through* (f), *please indicate what effect, if any, is given to the fact that a VHF station may not be allocated to or located in the same community as that in which the UHF station in question is located, but is allocated to or located in a nearby community. If any effect is given to that factor, please show with as much specificity as possible the criteria followed —e.g., distance, power, antenna height, etc.—in determining whether a television affiliation should be granted to the UHF station.*

ANSWER: No effect is given to the fact, as such, that a prospective affiliate operates on a UHF instead of a VHF channel. However, such fact does affect the size of the service area of the station, which is one of the criteria used in determining affiliation.

In determining whether or not to affiliate with a UHF station, if a VHF station is available, CBS Television must, because of competitive considerations, take into account the percentage of sets in the area which are capable of receiving UHF.

Assuming that no VHF station is allocated to the community to which a UHF station is allocated, CBS Television would affiliate with the UHF station if it provided a satisfactory amount of unduplicated circulation (after taking into account

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the circulation of other present and prospective CBS Television affiliates) and met the other criteria referred to in this response.

CBS Television has affiliated with UHF stations in communities in which a VHF station is in operation—e.g., Erie, Pennsylvania, and Milwaukee, Wisconsin.[1]

CBS Television has not affiliated with a UHF station in a community in which more than one VHF station is in operation. Whether or not it will do so will depend on all of the pertinent factors in each case. It should be noted, however, that CBS has contracted to purchase, subject to FCC consent, station WOKY-TV, Milwaukee. Three VHF channels have been allocated to the Milwaukee area.

10. *Please describe any other criteria which are utilized in the awarding of television affiliations by your network.*

ANSWER: In addition to the several criteria and factors described in the answers to the first nine questions, and which play a part in CBS Television's determination whether or not to affiliate with a particular station, there are a number of other considerations which, in appropriate circumstances, have a bearing on the CBS Television decision.

Where the question which is presented to the CBS Television Division involves a choice among two or more competitors for an affiliation in the same market, the nature of each station plays an important part. In such a case, the stature and operat-

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[1]Since the date of the reply to Senator Bricker's questionnaire, CBS Television has affiliated with WEHT, Henderson-Evansville, although a VHF station will be in operation in that market within the near future. Also since that date CBS has purchased WOKY-TV, Milwaukee, pursuant to FCC consent and is operating that station as WXIX. As of March 1, 1956, CBS Television was affiliated with 29 UHF stations, 22 on a regular basis and seven on an EMP basis and has "per-program" arrangements with 20 others. CBS has contracted to buy WGTH-TV, Hartford, subject to FCC consent.

ing record of each station will have an important bearing and such factors as its physical facilities, its community activities and community relationships, the aggressiveness of its operation and its over-all popularity are considered. Similarly, the aggressiveness of its national representation may play a part. So, too, all other things being equal between or among the competing stations, CBS Television generally prefers a television affiliate which is newspaper-owned because of the effect of such ownership on the role of the station in the community.

A second additional factor has from time to time, although certainly not invariably, played an important part in the affiliation decision: this is the factor of existing relationships between CBS and the owners of the television station in the radio broadcasting field. Thus, all other things being reasonably equal, where the question is otherwise a close one, CBS Television has affiliated with a television station with whose owners CBS Radio has had an historical and pleasant relationship. This factor, it may be noted, depends on the particular circumstances involved and has not always been decisive. Particularly where the market is one which does not otherwise justify affiliation or where the radio affiliate has been long delayed in obtaining a television station, or where the radio affiliate has not obtained facilities reasonably equivalent to other television stations in the market, CBS Television has found it economically necessary to affiliate with non-radio-affiliated television stations in preference to one which has had a radio affiliation.

A third and related factor which may play a part in the choice of a television affiliate is its previous history in radio broadcasting, even though it has not been a CBS Radio affiliate. Again, all other things being equal, CBS Television will choose a television affiliate with experience, and successful history, in the broadcasting field over one without such experience and history. Further, in the event that the licensee of a television station is also the licensee of a radio station with which CBS Radio wishes to affiliate, that fact will be considered.

A fourth factor which plays a part in choosing among competitors for a television affiliation is the structure and organization of the television station. CBS has found that as a general rule a station whose ownership and management are integrated will be a more successful station than one whose ownership and management are not integrated, and hence will prefer the former type of station to the latter.

A fifth factor which tended to play a larger rôle in affiliation determinations in the earlier days than it does now was simply what was available as the result of the historical progression of assignments. In the period during or immediately following the freeze, the pattern of operating stations obviously did not always follow the scale of the desirability of the market. As the result, affiliations in major markets were not available to CBS Television and it was faced with a necessity of affiliating in less important markets which provided some service in an important area. This criterion, if such it can be called, was only the necessity of providing the best service which was available.

A sixth factor which is applicable in appropriate circumstances in influencing a choice among applicants for an affiliation is that arising from antenna installations. Thus, there are situations in a community or an area where for example over a period of years there have only been one or two stations and the home antennas have been installed solely to receive those existing stations. If this occurs, there may be difficulty in receiving a new station in the same community, since it will be necessary for the antennas to be converted. In such circumstances, CBS Television would, if all other things were equal, prefer the station for the reception of which no such problems or expenditures by the home owner are necessary.

A seventh factor which in fact has been decisive in only one affiliation decision thus far is the station's pattern of cooperation in broadcasting network programs. Where, over a substantial period of time, CBS Television's experience with a station establishes clearly that the station is not providing clearances for network programs during network option time and is refusing such clearances in favor of local or national spot commercial programs which are clearly of no special public service nature, CBS Television has on one occasion switched its affiliation from such a station at the expiration of the affiliation contract. A related situation is that where station A considers itself primarily interested in carrying the programs of another network and is unable to do justice to the programs of the other network and those of CBS Television. In such a case if station B were available, could serve the area adequately, and indicated its intention of looking to CBS Television as its primary network, CBS Television would affiliate with station B.

An eighth factor, applicable not to a choice among television stations, but to the question whether to affiliate at all in a given area, is the economic status of the area which the television station serves. This factor, which is supplementary to the factors described in Questions 1 to 4, is likely to be determinative where there is a close question as to whether the population in the service area and the cost per thousand warrant affiliation. For example, if the area presents a borderline case in terms of homes, such factors as retail sales, rate of growth and family purchasing power are taken into account in the affiliation decision.

Finally, in addition to all the foregoing more or less objective and tangible factors, it must be realized that intangible and psychological factors may and do play a role in affiliation decisions. These psychological factors include the general personal impression which the owners and managers of a proposed affiliate make on CBS officers and personnel who make the decision; expressions of Congressional interest; and public community reactions. Even if it were desirable to do so, it is impossible to exclude such intangible factors which play an indeterminate, but nevertheless apparent role in affiliation problems just as they do in the decisions of all businesses. It is difficult to isolate and identify the precise role which psychological factors of this nature play, but they unquestionably do play a role in the difficult and delicate task of determining whether to affiliate in a particular community and with whom.

(PER-PROGRAM STATIONS)

(NOTE: *Where CBS Television has not affiliated with a station in a particular community because CBS Television did not deem it desirable to do so in the light of the foregoing criteria, CBS Television, upon request of the sponsor of a particular program will furnish that program to the* *non-affiliated station on a per-program basis provided that CBS Television is able to enter into mutually satisfactory arrangements with the non-affiliated station.*

These per-program arrangements are made with non-affiliates in completely isolated markets—that is, where the service area of such non-affiliates do not overlap the service areas of existing affiliates, with non-affiliates located in the same city or within the service area of an existing affiliate if that affiliate has not accepted the particular program, and with non-affiliated stations located in a community other than the community to which an affiliated station is licensed but still within the service area of the affiliate.

If the non-affiliated station is located in a community other than that to which an affiliated station is licensed but still within the service area of the affiliated station, releasing the program to the non-affiliated station is contingent upon that station accepting a rate which is based on the incremental set circulation contributed by that station to the CBS Television Network.)

APPENDIX D

The Record of CBS Owned Television Stations

The following is a summary of the local programming activities of the four CBS Owned television stations:

WCBS-TV, New York City

The total dollar value of facilities and air time[1] contributed free by WCBS-TV in 1955 to charitable, governmental, religious, educational and other civic organizations amounted to $3,204,089. Some of this contribution consisted of announcements on behalf of the various agencies which, because of their frequency and flexibility, are often more effective than a fixed weekly program. WCBS-TV broadcast a total of 5,438 such announcements in 1955. Many of these were carried on a "live" basis and delivered within established programs by well-known talent.

Program Series. In addition to announcements, WCBS-TV broadcasts a variety of local program series in the field of information, education and public affairs. Among the local programs which were broadcast by WCBS-TV in 1955 were the following:

[1]Time costs, as set forth in this Appendix, represent the card rates of the respective stations for the amount and class of time involved.

CAMERA THREE, a weekly half-hour program produced with the cooperation of the State Education Department of the University of the State of New York. Dr. Ward C. Bowen, Chief of the Bureau of Audio and Visual Aids of the New York State Education Department, is advisory consultant for the program and the regular host is James F. Macandrew, Director of Broadcasting for the New York City Board of Education. "Camera Three" is designed to serve as a study of man and his relationship to himself and to those about him. It utilizes experimental television techniques in production and in treatment of subject matter. During 1955, "Camera Three" focused primarily on the literary contributions of Dostoevsky, Shakespeare, Conrad, Sandberg, Steinbeck and others. The facilities and time costs for "Camera Three," for each program, average $6,306.

EYE ON NEW YORK, a weekly half-hour program, employing both live and film techniques, and dealing with community activities in and around New York City. The subjects presented on "Eye on New York" range from occurrences in New York City's history to the events encountered by a Police Department squad car on duty in Times Square. Leading local public figures have appeared on the program to discuss matters of community interest. The facilities and time costs for "Eye on New York," for each program, average $5,349.

ON THE CAROUSEL, produced in cooperation with the New York City Board of Education. "On the Carousel" is a weekly hour-long program intended primarily for children of elementary school age. The principal effort of the program is to blend education and entertainment for such children. Among the topics presented have been young people's hobbies, children of other nations, pets and their care, and simple "how-to-do" features. The facilities and time costs for "On the Carousel," for each program, average $5,074.

HICKORY DICKORY DOCK, produced in cooperation with the New York City Board of Education. "Hickory Dickory Dock" is a half-hour weekly program intended for children of elementary school age and conducted by a kindergarten schoolteacher. The facilities and time costs for "Hickory Dickory Dock," for each program, average $1,461.

OUR GOODLY HERITAGE, featuring Dr. William Bush Baer, Dean of the College of Arts and Sciences of New York University. Presented on Sunday mornings, "Our Goodly Heritage" is a fifteen-minute program devoted to readings and interpretations of the Bible by Dr. Baer, a leading authority on the Bible. The facilities and time costs for "Our Goodly Heritage," for each program, average $1,782.

AMERICA IN THE MAKING, a series of twenty-six weekly half-hour programs that was broadcast commencing in November 1954, and was produced by WCBS-TV with New York University and the Metropolitan Museum of Art. The program, with the aid of artifacts available from the Museum, explored America's colonial origins and the early days of the Republic. Dr. Robert Iglehart, Chairman of the Department of Art Education at New York University, moderated this series, assisted by other members of the University faculty. The facilities and time costs for "America in the Making," for each program, averaged $2,606.

GIVE US THIS DAY, a five-minute religious program at the opening and closing of each broadcast day. "Give Us This Day" is produced in cooperation with the Protestant Council of the City of New York, The New York Board of Rabbis and the television office of the Archdiocese of New York. Clergymen from these groups deliver inspirational messages which are filmed by the station for broadcast. The weekly facilities and time costs for "Give Us This Day" average $7,571.

THE BIG PICTURE, a half-hour weekly filmed documentary series produced by the United States Army. The time costs for this program are $900 weekly.

THE PASTOR, a fifteen-minute filmed program presented each week under the auspices of the Protestant Council of the City of New York. "The Pastor" features the Reverend Dr. Robert E. Goodrich, Jr. of the First Methodist Church in Dallas, Texas. The time costs for this program are $1,250 weekly.

SHAKESPEARE ON TV, a series of lectures on Shakespeare by Dr. Frank C. Baxter of the University of Southern California. This series of filmed programs was produced by KNXT, the CBS Owned station in Los Angeles, and was first presented in New York in 1954. A special "summer school" series of forty-five minute weekly programs was again presented in New York in 1955. The time costs for this series of "Shakespeare on TV" were $2,500 per program.

Special Programs. Among the individual special local programs broadcast by WCBS-TV in 1955 were:

A LINK IN THE CHAIN, under the auspices of the Christophers;

BORN IN THE WHITE HOUSE, for the National Foundation for Infantile Paralysis;

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CARDINAL SPELLMAN AND CATHOLIC CHARITIES;

DAY OF ATONEMENT and FESTIVAL OF LIGHTS, for the New York Board of Rabbis;

JACK BENNY VARIETY SHOW FOR RETARDED CHILDREN;

JUNIOR LEAGUE MARDI GRAS BALL, for Junior League Charities;

MIKE MAKES HIS MARK, for the National Education Association;

NEW YORK DOCUMENT, for the Federation of Jewish Philanthropies;

NEW YORK HERALD TRIBUNE FORUM FOR HIGH SCHOOLS;

SENATOR HERBERT LEHMAN ON "NIKE";

THAT I MAY SEE, a film produced by the Catholic Church;

THE CHRISTMAS STORY, in cooperation with the Protestant Council of the City of New York;

THE DAY BEFORE EASTER, a special religious program;

THE MAYOR'S CONFERENCE, a panel program in which Mayor Robert F. Wagner was interviewed by four New York City newspaper reporters; and

RELIGION IN AMERICAN LIFE, a special religious program.

News Programs. In addition to its public affairs programs, WCBS-TV broadcasts regular local news and weather programs. Insofar as possible film shot locally is used to supplement films of national and international events which appear on both network and local news programs. The local news schedule of WCBS-TV is as follows:

NEWS OF NEW YORK: 7:25-7:30 AM, and 7:55-8:00 AM, Monday through Friday;

SIX O'CLOCK REPORT: 6:00-6:15 PM, Monday through Saturday;

RAIN OR SHINE: 7:10-7:15 PM, Monday through Friday;

LATE NEWS: 11:00-11:10 PM, Monday through Saturday;

LATE WEATHER AND SPORTS: 11:10-11:15 PM, Monday through Saturday;

LATE LATE NEWS: three to five minutes at sign-off, each day of the week.

The program costs, value of time and facilities for all local news programs in 1955 were $2,600,687.

A Typical Week's Programs and Announcements. During the week of March 25 through March 31, 1956, WCBS-TV broadcast a total of 111 announcements, having a value of $29,100, for the following organizations: American Council to Improve Our Neighborhoods, American Optometric Association, American Red Cross, Citizens' Committee to Keep New York City Clean, Committee for a Quiet City, Federal Bureau of Investigation, Ground Observer Corps, *Herald Tribune* Fresh Air Fund, Hospitalized Veterans' Writing Project, National Safety Council, Nephrosis Foundation, N.Y. Association for the Blind, N. Y. City Board of Education, N. Y. City Cancer Committee, N.Y. City Fire Department, N.Y. City Society for Crippled Children and Adults, N. Y. Philanthropic League, N. Y. State Department of Education, United States Air Force, United States Department of Agriculture, United States Department of Defense, United States Department of Health, Education and Welfare, United States Marine Corps, United States Navy and United States Treasury Department.

In addition to its regular local news schedule, during the week of March 25 through March 31, WCBS-TV broadcast the following local religious, informational or educational programs: "Camera Three," "Eye on New York," "Give Us This Day," "Hickory Dickory Dock," "On the Carousel," "Our Goodly Heritage," "The Big Picture" and "The Pastor," all described previously. WCBS-TV also broadcast the following other local programs during this week:

YESTERDAY'S WORLDS, a half-hour program on archeology presented in cooperation with New York University, the Metropolitan Museum of Art and the Educational Television and Radio Center of the Ford Foundation. "Yesterday's Worlds" is a series of programs currently being broadcast weekly by WCBS-TV. The program broadcast during this week was devoted to the Persian Empire and presented Dr. Casper Kraemer, Professor of Archeology at New York University and the regular moderator of the program, discussing Persian artistry and crafts with Charles Wilkinson, Curator of Middle Eastern Archeology at the Metropolitan Museum of Art.

RIGHT NOW, a half-hour panel discussion program concerning civic problems in New York City. "Right Now" is also a series currently being broadcast by WCBS-TV. During the week of March 25 through March 31, the program presented the President of the High School Teachers Association, a representative of the Teachers' Guild of the AFL-CIO, the Director of the Budget for New York City and the President of the United Parents Association discussing "Teachers vs. New York City."

THE PASSOVER FESTIVAL, a special half-hour program in observance of Passover.

EASTER SEAL TELEPARADE OF STARS, a half-hour film for the New York City Society for Crippled Children and Adults.

The total facilities and time costs for these programs during this single week were $39,108.

Awards and Commendations. WCBS-TV received the following awards in 1955:

Variety Showmanagement Award to WCBS-TV, New York, for "Education With Showmanship."

For "Camera Three," the Institute for Education by Radio-Television of Ohio State University presented its First Award in the local and regional classification for a cultural program to WCBS-TV.

For "On the Carousel," WCBS-TV received the Institute for Education by Radio-Television of Ohio State University's Special Award in the local and regional classification for a children's program.

For its over-all public service programming, WCBS-TV was cited by the Alfred I. duPont Awards Foundation for "America in the Making," "Camera Three," "On the Carousel" and "Our Goodly Heritage." The citation stated that in each of these programs "talent and showmanship are called to the service of programs of unusual educational and spiritual value."

The Board of Managers of the New York Chapter, Sons of the American Revolution, presented the Gold Good Citizenship Medal of the Society to the Chancellor of New York University, Dr. Henry T. Heald, "in recognition of the outstanding dramatization of American history portrayed in the University's notable television series entitled, 'America in the Making'."

Other awards and citations to WCBS-TV during 1955 were received from the Protestant Council of the City of New York, the New Jersey State Fair, the National Exchange Club, the New Jersey Science Teachers Association, National Foundation for Infantile Paralysis and the Boy Scouts of America.

In April 1956, "On the Carousel" received honorable mention in the awards made by the Institute for Education by Radio-Television of Ohio State University. The citation commended the program "for a challenging series designed to occupy children's attention during their free Saturday mornings. The program provides opportunity for self-expression and wholesome entertainment for studio participants and home viewers. As an important by-product, the program also serves as an excellent public relationship vehicle for interpreting the work of the schools to the community."

Many letters of appreciation and commendation were received from individuals and organizations. Among the organizations were American Heart Association, American Red Cross, Big Brothers of America, the Bishop's Welfare and Emergency Fund, Catholic Charities of the Archdiocese of New York, Federation of Jewish Philanthropies, Hadassah, New York Board of Rabbis, Office of the Attorney General of New Jersey, United Hospital Fund, Vacation Camp and Dormitory for the Blind, Young Men's Christian Association and the Young Women's Christian Association.

KNXT, Los Angeles

The total dollar value of facilities and air time contributed free by KNXT in 1955 to charitable, governmental, religious, educational and other civic organizations amounted to $1,214,484. KNXT broadcast a total of 5,996 announcements in 1955 on behalf of these organizations.

Program Series. In addition to those announcements, KNXT broadcast the following local program series in the field of information, education and public affairs:

SHAKESPEARE ON TV, a series of eighteen 45-minute programs presenting Dr. Frank C. Baxter of the University of Southern California. These programs constituted the "third semester" of this well-known educational series. College credit at the University of Southern California was offered for those viewers who enrolled and took an examination. "Shakespeare on TV" has been broadcast on twelve educational television stations as well as on other CBS Owned television stations. The earlier series of "Shakespeare on TV" received seventeen national and local awards including citations from The Shakespeare Club of New York City, the American Shakespeare Festival Theatre and Academy of Connecticut, the Sylvania Award as the nation's best local educational program and two "Emmys" from the Academy of TV Arts and Sciences. The facilities and time costs for "Shakespeare on TV" during 1955, for each program, averaged $1,216.

OPERATION SAFETY, a series of 15-minute weekly programs produced in cooperation with the California Highway Patrol and the National Safety Council. The programs concerned traffic problems and the prevention of highway accidents. The facilities and time costs for "Operation Safety," for each program, averaged $375.

PREPARE, a series of thirteen 15-minute programs produced in cooperation with the Los Angeles Office of Civil Defense. These programs, part live and part film, were designed principally to demonstrate to the people of Los Angeles what should be done in the event of a local disaster. The programs also served as a means of disseminating information to the Los Angeles Civil Defense volunteers. The facilities and time costs for "Prepare," for each program, averaged $375.

YOUR INCOME TAX, a series of six half-hour programs produced in cooperation with the Department of Internal Revenue and the California State Franchise Tax Board providing information for the preparation of state and federal income tax returns. The facilities and time costs for "Your Income Tax," for each program, average $530.

LIGHT OF FAITH, a half-hour religious program broadcast each week and presenting clergymen, choirs and soloists from churches and synagogues in the Los Angeles area. The facilities and time costs for "Light of Faith," for each program, average $540.

GIVE US THIS DAY, five-minute inspirational messages by local religious leaders at the opening and closing of each broadcast day. The weekly facilities and time costs for "Give Us This Day" average $3,360.

SPOTLIGHT ON OPERA, a sixteen-part series of half-hour programs produced in cooperation with the University of California at Los Angeles and offered by the University as a college credit course. Dr. Jan Popper, Professor of Music at the University, discussed opera and opera techniques, illustrating his lectures with student performances of scenes from opera. The facilities and time costs for "Spotlight on Opera," for each program, averaged $529.

LEARNING '55, an educational series produced in cooperation with the City and County schools of Los Angeles. Through the reproduction on television of actual classroom techniques, this series is designed to inform the people of Los Angeles of the educational methods used in the Los Angeles City and County public schools. The facilities and time costs for "Learning '55," for each program, average $1,075.

FOCUS ON DELINQUENCY, a six-part series of half-hour documentary films produced by KNXT concerning the problems of juvenile delinquency. By bringing motion picture cameras to the breeding places of juvenile delinquency, into court rooms, juvenile retention centers and prisons, this series portrayed the causes and results of juvenile crime. The series also emphasized the positive forces at work to prevent delinquency. The facilities and time costs for each of these programs averaged $4,420.

DRESS BLUES, a series of fifteen-minute weekly programs produced in cooperation with the United States Marine Corps. Using amateur talent available from the El Torro Marine Air Base near Los Angeles, and films prepared by the Marine Corps, the program is entertaining as well as informative of the activities of the Marines. The facilities and time costs for "Dress Blues," for each program, average $367.

CHILD PSYCHOLOGY ON TV, a sixteen-part series of 45-minute programs produced in cooperation with the University of Southern California. In a classroom setting, Dr. Herman Harvey, Assistant Professor of Psychology at U.S.C., discussed the methods and techniques of child psychology, using films and studio demonstrations. This program was offered for college credit by the University. The facilities and time costs for "Child Psychology on TV," for each program, averaged $1,216.

AMERICA IN THE MAKING, the series of programs produced by WCBS-TV, the CBS Owned television station in New York, with New York University and the Metropolitan Museum of Art. The time costs for "America in the Making," on KNXT, for each program, averaged $480.

Special Programs. Among the individual special local programs broadcast by KNXT in 1955 were:

CRISIS OVER LOS ANGELES, a program concerning "smog";

DAY AFTER EASTER, for the Los Angeles Church Federation;

FANFARE, for the Community Chest;

FIGHTER PHOTO, SEA POWER IN THE PACIFIC, SEA POWER FOR FREEDOM and THE SIXTH FLEET, for the United States Navy;

GIVE THANKS, for the National Association for Retarded Children;

HEART BEAT and HEART TO HEART, for the American Heart Association;

HERITAGE, for B'nai B'rith;

JOIN THE STARS, for the American Red Cross;

MY RIGHT AND MY CAUSE, for the American Bible Society;

NIGHT OF VIGIL, for the American Hebrew Congregation;

OPERATION TRUTH, for the United States Information Agency;

SMOG MEN AT WORK, for the Los Angeles Air Pollution Control Board;

SUMMER MAGIC and TELEPARADE OF STARS, for the Easter Seal Society;

THAT MORE MAY WALK, for the Sister Kenny Foundation;

THAT 146,000 MAY LIVE, for the American Cancer Society;

THE LATTER DAY SAINT, a two-hour conference at the Salt Lake City Tabernacle;

THE MEANING OF EASTER, for the National Council of the Churches of Christ;

THE WHITES OF THEIR EYES, for the United States Army;

THE 'Y' ON WORLD FRONTS, for the YMCA;

WE HOLD THESE TRUTHS, for the Church Federation of Los Angeles;

WORKSHOP FOR PEACE, for the United Nations;

YOUR NEIGHBOR CELEBRATES, for the American Hebrew Congregation; and

An hour-long remote broadcast on the dedication of Mt. Sinai Hospital in Los Angeles.

News Programs. In addition to its public affairs programs, KNXT broadcasts regular local news and weather programs using local films and films of national and international events. The local news schedule of KNXT is as follows:

GRANT HOLCOMB AND THE NEWS: 7:00-7:10 AM, 7:30-7:40 AM, 8:00-8:10 AM, 8:45-8:55 AM, Monday through Friday;

CLETE ROBERTS AND THE NEWS: 6:10-6:15 PM, Monday through Friday;

THE BIG NEWS: 10:30-11:00 PM, Monday through Friday;

SUNDAY NEWS SPECIAL WITH BILL STOUT: 11:00-11:15 PM, Sunday;

SATURDAY NEWS: 9:30-9:45 AM, 1:45-2:00 PM, 2:45-3:00 PM, 12:00-12:15 AM;

SUNDAY NEWS: 11:00-11:15 AM, 3:30-3:45 PM.

The program costs, value of time and facilities for all local news programs are approximately $1,200,000 a year.

A Typical Week's Programs and Announcements. During the week of April 1 through April 7, 1956, KNXT broadcast a total of 105 announcements, having a value of $13,508, on behalf of the following organizations: Boys Clubs of America, City of Los Angeles, Civic Light, Crusade for Freedom, Easter Seal Society, League of Women Voters, Los Angeles Philharmonic Orchestra, Padua Hills Theatre, Ramona Pageant, Shrine Circus, United States Air Force.

In addition to its regular news schedule, KNXT broadcast the following local religious, informational or educational programs: "Give Us This Day," "Learning '56," "Light of Faith," "Dress Blues" and "Your Income Tax," all described previously. KNXT also broadcast the following other local programs during this week:

RENAISSANCE ON TV, a half-hour series with Dr. Frank C. Baxter of the University of Southern California and guests, discussing Renaissance literature and art.

KNXT FARM REPORT, a ten-minute daily series presenting market reports and agricultural news. This program is designed to serve as a "bridge" between the agricultural community of Los Angeles and urban viewers.

The total facilities and time costs for these programs during this single week were $8,987.

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Awards and Commendations. Among the awards received by KNXT for programs broadcast in 1955 were the following:

National Citizens' Committee for Educational Television 1955 award to Dr. Frank C. Baxter, for "Shakespeare on TV," "for pioneering vision and outstanding public service in helping to bring to the American community the advantages of educational television."

Hollywood Chapter of the B'nai B'rith 1955 Award to Dr. Baxter "for outstanding contribution to television programming."

New Jersey State Fair Blue Ribbon Award to "Shakespeare on TV" as "the most outstanding program of its type on television."

Little Peabody Award to "Shakespeare on TV" for "outstanding programming in the public's interest."

Little Peabody Award to "Learning '54" for outstanding interpretation of teaching methods and course content.

Little Peabody Award to KNXT for "outstanding programming in the public's interest." The multiple honors accorded KNXT at this time were stated to be "unprecedented in the [Peabody] Committee's history."

TV-Radio Life Magazine, Twelfth Annual Achievement Special Award to station KNXT for outstanding service.

Thirty-First District California Congress of Parent-Teachers Association to "Learning '54" for excellence in public service programs.

National Women's Committee of Brandeis University to Dr. Herman Harvey and "Psychology on TV" for "special contribution to American culture and education through the medium of college credit courses presented on KNXT."

Los Angeles Tenth District California Congress of Parents and Teachers to "Psychology on TV" and "Child Psychology on TV," for general excellence in programming and availability of public service programs to the public.

California State Fair Award presented for KNXT's "outstanding programming as judged from the 'exceptional comments' received from viewers answering a public survey conducted by the California State Fair and Exposition."

Los Angeles Presbytery Award, a "resolution of appreciation" for "Light of Faith." Presented "for your outstanding contributions to the Southern California community and the Protestant cause in providing free time and technicians for the program."

TV-Radio Life Magazine Distinguished Achievement Award for distinguished programming in 1955 to "Spotlight on Opera."

Sylvania Award to "Focus on Delinquency" for outstanding local public service. This was one of four presented to local television stations in the country, and the only one to a station west of the Mississippi.

Juvenile Delinquency Digest Citation. This national publication cited "Focus on Delinquency" as the "Best TV Film" in a list of "This Year's 'Best on Juvenile Delinquency'."

Gold Mike for "Consistent Enterprise in Radio or Television News Reporting" by the Radio and Television News Club of Southern California.

Hollywood Kiwanis Club "Special Award" for outstanding contribution to the fight against juvenile delinquency. This was the first such award presented by the organization in its thirty-year history.

Los Angeles County Conference on Community Relations "Citation for Outstanding Service" for "continuing and substantial contributions to the betterment of human relations in this area."

Institute for Education by Radio-Television of Ohio State University, a First Award to "Shakespeare on TV." This second Ohio State award for this program in three years cited Dr. Baxter as setting a "praiseworthy example of university instruction, employing television techniques to reach the students and vitalize the subject of dramatic literature."

Honorable Mention by the Institute for Education by Radio-Television of Ohio State University to "Focus on Delinquency," "for its human quality, its honest approach, its varied setting, and a certain great sincerity in its presentation of one of Southern California's most serious problems."

Among the letters of appreciation and commendation received from organizations were letters from: American Association for the UN, American Cancer Society, American National Red Cross, California State Franchise Tax Board, California Tuberculosis and Health Association, Campfire Girls, CARE, Community Chest, Crippled Children Society, Hollywood Bowl Association, Invest in America Committee, Los Angeles County Heart Association, Los Angeles Junior Chamber of Commerce, Los Angeles Presbytery, the Mayor of Los Angeles, Muscular Dystrophy Association, National Foundation for Infantile Paralysis, San Francisco Opera Association, Sister Kenny Foundation, Southern California Symphony Association, The Air Pollution Control Board, United Jewish Welfare Fund, United States Treasury Department and YMCA.

WBBM-TV, Chicago

The total dollar value of facilities and air time contributed free by WBBM-TV in 1955 to charitable, governmental, religious, educational and other civic organizations amounted to $1,117,230. WBBM-TV broadcast a total of 4,247 announcements in 1955 on behalf of such organizations.

Program Series. In addition to announcements, WBBM-TV broadcast the following local program series in the field of information, education and public affairs:

OPERATION NEW HORIZONS, a half-hour weekly program produced by the Education Department of WBBM-TV in association with seven local colleges and universities: Lake Forest College, University of Illinois, Northwestern University, DePaul University, Illinois Institute of Technology, Loyola University and Roosevelt University. The program covers the wide range of activities in progress at the participating institutions. Faculty members and others associated with the colleges and universities are presented in demonstrations and discussions involving their respective fields. In the course of a single month's programs, topics ranged from crystallography to the commemoration of the tenth anniversary of the United Nations. The facilities and time costs for "Operation New Horizons," for each program, average $1,265.

THIS WAY UP, a half-hour weekly religious quiz program for young people from Chicago churches and synagogues. Each program presents youngsters of one or more churches of the same faith answering questions prepared by church-school leaders. Choirs from participating churches also appear on the program. The facilities and time costs for "This Way Up," for each program, average $877.

VISION, a half-hour program broadcast on alternate weeks devoted to the study of the traditions and cultural influences in American life, with particular emphasis on religious institutions. Programs have included an examination of present day religious culture in Italy, produced in cooperation with the Italian consulate and Italian State Tourist Bureau in Chicago, and a study of the Mormon religion, depicting the early hardships experienced by the Mormon settlers in establishing a community in Utah. The facilities and time costs for "Vision," for each program, average $1,130.

THOUGHT FOR THE DAY and MEDITATION. At the opening and closing of each broadcast day, WBBM-TV presents a brief message of an inspirational nature by clergymen of various faiths. The weekly facilities and time costs for "Thought for the Day" and "Meditation" are approximately $1,700.

THIS IS THE MIDWEST, a weekly half-hour profile of Chicago and midwestern industries and the men who have contributed to making these industries important. For each program a particular industry in the Chicago area is chosen and the assistance of a representative company in that industry is obtained. Produced in cooperation with the Chicago Association of Commerce and Industry, "This is the Midwest" makes extensive use of demonstrations, displays and film. The remote broadcast facilities of the station are occasionally used to provide direct coverage of industrial events. The wide range of industries featured has included the newspaper industry, the dredging industry, the story of the Merchandise Mart, the banking business, the meat packing industry and many others. Civic problems such as the development of inland waterways and improving Chicago's transit system have been explored.

UN IN ACTION, a half-hour program devoted to the activities of the United Nations, broadcast weekly while the UN Assembly is in session. Films of United Nations' activities, together with appropriate locally produced film, are used to present the subject matter with special emphasis on its significance to the local television audience. The facilities and time costs for "UN in Action," for each program, average $1,340.

THE TRUE PICTURE, a weekly program of films of educational and cultural interest. The facilities and time costs for "The True Picture," for each half-hour program average $1,090; for each quarter-hour program $785.

EYE ON CHICAGO, using films produced by WBBM-TV to present scenes of Chicago and its activities. Stories and places have included the North Pier Terminal "shape up," a public auction on South Michigan Avenue, weather research at the University of Chicago, the International Dairy Show, the Shedd Aquarium and the story of Chicago as the rail hub of the United States.

FARM DAILY, a daily fifteen-minute agricultural program. The regular features of the program include weather and market information and a special feature, such as an interview with a farm authority or filmed reports of farm activities. The facilities and time costs for "Farm Daily" are approximately $2,240 per week.

FARMTOWN, USA, a series of weekly half-hour programs produced in cooperation with the Illinois Agricultural Association and the Pure Milk Association. This program presented the station's Farm Director and guests from rural areas near Chicago. Activities at state and county fairs, livestock shows, dairy shows and other farm events were described. The program also provided information on methods of farm improvement and the alleviation of farm problems. The facilities and time costs for "Farmtown, USA," for each program, averaged $1,265.

CHOOSE YOUR CAREER, a series of half-hour programs broadcast weekly designed to afford an opportunity for high school students to learn pertinent facts concerning career possibilities in various industrial, business and professional fields. Each week a panel of high school students and prominent leaders in various fields discussed career possibilities. The facilities and time costs for "Choose your Career," for each program, averaged $1,265.

Special Programs. Among the individual special local programs broadcast by WBBM-TV in 1955 were:

FIRE AT WHITING, INDIANA, direct coverage of the fire at the refineries of the Standard Oil Company, using the station's remote facilities;

MAYORALTY ELECTIONS, special films and a direct audio line to election headquarters for coverage of the returns;

MEMBER OF THE TEAM, a panel discussion of juvenile problems;

OPERATION UNITY, for the American Museum of Immigration; and

THE MAYOR'S REPORT TO THE PEOPLE.

News Programs. The news gathering facilities of WBBM-TV include eleven wire services and regular reports from the State Highway Departments of Illinois, Indiana, Wisconsin and Michigan, and the Chicago Police Radio. Still photographs are available from the Soundphoto Network of International News Pictures and from Radiophoto. It is believed that the WBBM-TV news staff of 29 persons and five newscasters (which includes nine men and three camera crews, each crew equipped with both sound and silent equipment) constitutes one of the largest —if not the largest—television news operations outside of New York, Los Angeles and Washington.

Extensive use is made of films of news events, shot locally by the station's camera crews. WBBM-TV's news cameramen were the first to film the proceedings of the Illinois State Legislature, the first to record the hearings of a Chicago City Council committee on the floor of the Council Chamber and the first to film the deliberations of a Federal Grand Jury in Chicago. The WBBM-TV news film operation is so established that on an important story, a film of the event can be broadcast within thirty minutes after its arrival in the developing laboratory. An average of approximately 7,000 feet of film is produced locally each week of which approximately 1,400 feet are used on the air.

The local news schedule of WBBM-TV is as follows:

LOCAL NEWS AND WEATHER: 7:25-7:30 AM, and 7:55-8:00 AM, Monday through Friday;

LOCAL, NATIONAL AND INTERNATIONAL NEWS AND WEATHER: 8:25-8:30 AM, 8:55-9:00 AM, Monday through Friday;

FRANK REYNOLDS NEWS: 12 Noon-12:15 PM, Monday through Friday; 10:30-10:35 and 11:40-11:45 PM, Sunday;

JULIAN BENTLEY NEWS: 6:15-6:30 PM, Monday through Friday;

NEWS, WEATHER AND SPORTS: 10:00-10:15 PM, Monday through Friday;

NEWS AND WEATHER: 10:30-10:45 PM, Monday through Friday;

PAUL HARVEY NEWS: 6:45-7:00 PM, Wednesday;

LOCAL, NATIONAL, INTERNATIONAL NEWS AND LOCAL WEATHER: 7:50-8:00 AM, Saturday;

THIS WORLD THIS WEEK: 3:00-3:45 PM, Saturday.

The program costs, value of time and facilities for all local news programs in 1955 were approximately $1,500,000.

A Typical Week's Programs and Announcements. During the week of April 1 through April 7, 1956, WBBM-TV broadcast a total of 115 announcements for the following organizations: American Cancer Society, Anti-Defamation League, Boys Club Anniversary, CARE Food Crusade, Employ The Handicapped, Girl Scouts, Ground Observer Corps, Income Tax, National Blood Program, National Guard, National Safety Council, Nursing Careers, Religion in American Life, Social Security, Travelers Aid Volunteers, United States Air Force, United States Savings Stamps, Veterans Administration.

In addition to its regular local news schedule during the week, WBBM-TV broadcast the following local religious, informational or educational programs: "Operation New Horizons," "The True Picture," "Farm Daily," "This is the Midwest," "Thought for the Day" and "Meditation," all described previously. WBBM-TV also broadcast during this week a special Easter program, the traditional Lutheran Easter service, originating from the Garrick Theater in Chicago.

The total facilities and time costs for these programs and announcements during this single week are estimated at $24,000.

Awards and Commendations. WBBM-TV received the following awards for programs broadcast in 1955:

Institute for Education by Radio-Television of Ohio State University, first place award to "Eye on Chicago" in the category of public service by a regional station. The citation stated: "This series is good television. It bridges the gap between spot news and education by television through the use of excellent camera work, revealing subject matter, and new techniques of finding the unusual through the eye of the camera, and in interest-compelling voice. It is lively in tempo and has attractive story-telling quality."

The Annual *TV Guide* poll for the top female personality, the best disc jockey, the best newscaster, the best male vocalist, and the best female vocalist.

The Chicago Federated Advertising Club four first place awards to WBBM-TV for the best variety program, the best musical production, the best news and commentary program, the best documentary program, and honorable mention in the educational program division.

Other awards were received from the Arthritis and Rheumatism Foundation, the Continental Air Defense Command Ground Observer Corps, the March of Dimes, the National Exchange Club, the Santa Claus Campaign for Needy Children, and the Sixth Annual Scout-O-Rama.

Among the letters of appreciation and commendation received from organizations were letters from: American Foundation for the Blind, Inc., American Legion, American Medical Association, American Red Cross, CARE, Chicago Board of Education, Chicago Park District Police Benevolent Association, Citizens Schools Committee, Citizens Traffic Safety Board, Community Fund of Chicago, Inc., DePaul University, Greater Chicago Churchmen, Illinois Agricultural Association, Illinois Association for the Crippled, Illinois National Guard, Loyola University, National Citizens Commission for the Public Schools, National Foundation for Infantile Paralysis, Salvation Army, The Tuberculosis Institute, United Cerebral Palsy of Chicago and United States Treasury Department.

On August 2, 1955, Mayor Daley of Chicago wrote the General Manager of the station and the Manager of the News Department expressing his appreciation for the station's cooperation in participating in the "Chicago Plan" for broadcasting in connection with mob disorders in Chicago. In his letter, the Mayor stated: "Civic responsibility such as you have shown in this instance will help make Chicago a greater, finer city, and deserves the thanks of everyone interested in the rights and safety of all Chicagoans."

WXIX, Milwaukee

The total dollar value of facilities and air time contributed free by WXIX in 1955[1] to charitable, governmental, religious, educational and other civic organizations amounted to $208,368. WXIX broadcast a total of 2,309 announcements in 1955 on behalf of such organizations.

Program Series. In addition to announcements, WXIX broadcast the following local program series in the field of information, education and public affairs in 1955:

THIS IS YOUR BUSINESS, a series of nine quarter-hour programs in cooperation with the Milwaukee Association of Commerce and presenting the stories of some of the major industries in Milwaukee. The facilities and time costs for "This Is Your Business" totaled $2,554.

BACKYARD FUN, a series of five half-hour programs presented in cooperation with the Milwaukee Department of Recreation. This program was presented on five consecutive days during a period when the Milwaukee schools were closed due to a threatened polio epidemic. The program demonstrated constructive activities for children who were confined to their homes. The facilities and time costs for "Backyard Fun" were $1,708.

YOUR PUBLIC LIBRARY PRESENTS, a series of thirteen half-hour programs in cooperation with the Milwaukee Public Library. The program was devoted to discussions and displays

[1]CBS acquired WXIX (formerly WOKY-TV) in February 1955. Accordingly, all information included for the year 1955 covers the period from February 27, 1955, the date on which WXIX commenced the broadcast of CBS Television Network programs, to December 31, 1955.

by groups of young people and adults of the customs and histories of children in other countries, native costumes, instruments, toys, games and books. The central theme of the program was the development among children of a greater interest in books. The facilities and time costs for "Your Public Library Presents" totaled $4,541.

THE TIME BETWEEN, a half-hour weekly series produced in cooperation with Marquette University. This program presented Father John W. Walsh of Marquette University in a series of discussions on drama and dramatists. The facilities and time costs for "The Time Between," for each program, averaged $490.

LIGHT OF FAITH, a half-hour program presented weekly in cooperation with the Milwaukee County Council of Churches. The facilities and time costs for "Light of Faith," for each program, average $278.

YOUR DOCTOR ADVISES, a series of half-hour programs broadcast on alternate weeks produced in cooperation with the Milwaukee County Medical Association and presenting a panel of practicing physicians discussing the causes and treatments of common illnesses. Telephoned requests for information from the viewing audience are answered on the program. The facilities and time costs for "Your Doctor Advises," for each program, average $378.

MILWAUKEE REPORTS, a series of half-hour weekly programs presented in cooperation with the Milwaukee Junior Chamber of Commerce and Wisconsin State College. The series is devoted to panel discussions by qualified persons on current topics of civic interest in Milwaukee. The facilities and time costs for "Milwaukee Reports," for each program, average $364.

LIVING WITH CHILDREN, a series of half-hour programs, broadcast on alternate weeks, concerning child psychology. A child psychologist answers questions posed by a panel of parents. The facilities and time costs for "Living with Children," for each program, averaged $467.

SHAKESPEARE ON TV, a series of lectures on Shakespeare by Dr. Frank C. Baxter of the University of Southern California, produced by KNXT, the CBS Owned television station in Los Angeles. During the summer of 1955, WXIX carried the first series of these programs. The total time costs for "Shakespeare on TV" on WXIX were $3,120.

AMERICA IN THE MAKING, the series of programs produced by WCBS-TV, the CBS Owned television station in New York, with the cooperation of New York University and the Metropolitan Museum of Art. The total time costs for "America in the Making" on WXIX were $3,120.

GIVE US THIS DAY, a five-minute religious program at the opening and closing of each broadcast day. In 1955, WXIX broadcast films produced by WCBS-TV. Recently WXIX has commenced the production of its own series. The weekly facilities and time costs for "Give Us This Day" are approximately $990.

In addition to these programs, WXIX regularly broadcasts films in the field of information, education and public affairs. Among the films shown on WXIX are:

A LIFE TO SAVE, for the County Medical Association;

4-H HEADLINES, for the 4-H Clubs;

HEART OF AMERICA, for the American Heart Association;

THE BIG PICTURE, a series for the United States Army;

THE MAGIC BOND, for the Veterans of Foreign Wars;

THEN THERE WERE FOUR, on safety;

THEY MET IN GALILEE and HILL NUMBER ONE, for religious groups;

TWO THOUSAND CITIES, for the United States Army Signal Corps;

YOUR MARINE BAND, for the United States Marine Corps; and films concerning the preparation of tax returns for the United States Treasury Department.

Special programs. Among the individual special programs broadcast by WXIX in 1955 were:

BROTHERHOOD, in commemoration of Brotherhood Week;

PREVENT THAT FIRE, for the Milwaukee Fire Department;

THIS IS CHRISTMAS, a special 90-minute program utilizing the native groups of Milwaukee and a cast of over 200 persons;

YOUR EASTER SEALS, showing the work done by contributions for Easter seals.

News Programs. In addition to its public affairs programs, WXIX broadcasts regular local news and weather programs, making extensive use of films of local, national and international events.

The local news schedule of WXIX is as follows:

MILWAUKEE MORNING HEADLINES: 6:55-7:00 AM, Monday through Friday, 7:25-7:30 AM, Saturday;

MILWAUKEE MORNING NEWSREEL: 7:25-7:30 AM, Monday through Friday;

NOON NEWS AND WEATHER: 11:25-11:30 AM, Monday through Friday;

THE SIX O'CLOCK REPORT: 6:00-6:15 PM, Monday through Friday;

THE BIG NEWS: 11:00-11:20 PM, Monday through Friday;

LATE NEWS: 12:45-12:50 AM, Monday through Friday; 12:30-12:35 AM, Saturday;

SATURDAY NOON NEWS: 1:55-2:00 PM, Saturday;

SATURDAY NIGHT NEWS ROUNDUP: 11:00-11:15, Saturday;

LET'S VIEW THE NEWS: 5:00-5:15 PM, Sunday.

The total weekly program costs, value of time and facilities for local news programs are $6,282.

A Typical Week's Programs and Announcements. During the week of April 1 through April 7, 1956, WXIX broadcast 69 announcements with an air time value of approximately $3,500 on behalf of the following organizations: American Cancer Society, Arthritis-Rheumatism Foundation, Boys Clubs of America, Disabled American Veterans, Fred Miller Community Theatre, Get Out the Vote Committee, Internal Revenue Department, Milwaukee Council of Churches, Milwaukee Easter Seal Society, National Safety Council, United States Army, United States Coast Guard, United States Treasury Department.

In addition to its local news and weather schedule, during the week WXIX broadcast the following local religious, informational and educational programs: "Light of Faith," "Your Doctor Advises," "Give Us This Day," "Milwaukee Reports" and "The Big Picture," all described previously.

WXIX also broadcast the following other local programs during this week:

BILLY'S QUIZ, a regularly scheduled half-hour weekly program in cooperation with the Milwaukee Public Library. The format of the program consists of a quiz for children designed to stimulate their interest in reading.

OPERATION BALLOT, a special program originated by the station and utilizing the combined forces of the station's staff and the representatives of three Milwaukee radio stations with approximately 300 special employees to cover the election results.

The total facilities and time costs for these programs during this single week are estimated at $4,500.

Awards and Commendations. WXIX has received the following awards:

The Medical Society of Milwaukee County for "outstanding public service in the presentation of 'Your Doctor Advises'."

The Department of the Army for the presentation of "The Big Picture," "a most important contribution to the public understanding of the role and mission of the United States Army."

The Milwaukee Fire Department for services contributed "to the cause of public safety by active participation in National Fire Prevention Week."

The National Police Officers Association of America "for distinguished service to the Association and law enforcement which it represents."

A United States Naval Recruiting Certificate for "WXIX's public-spirited cooperation in furthering the excellent relations between the United States Navy and the people of the community."

In May 1956, WXIX received from the Milwaukee County Radio and Television Council a first award in the category of cultural programs for "The Time Between," a first award in the field of public issues for "Milwaukee Reports" and a special citation for "This Is Christmas," described as "an outstanding one-time program artistically utilizing local cultural and ethnic groups."

Among the letters and commendations received from organizations were letters from: Arab Information Center, Consulate General of Israel, Lutheran Radio Church Service, Milwaukee Community Concert Association, Milwaukee County Council of Churches, Milwaukee County Good Friday Observance, Milwaukee County Radio and Television Council, Milwaukee County Society for Mental Health, Milwaukee Junior Chamber of Commerce, Milwaukee Public Library, National Conference of Christians and Jews, 75th Anniversary of Marquette University, and United States Treasury Department, Bureau of Customs.

Mr. Stanton. (2) An Opinion of Counsel and Memorandum Concerning the Applicability of the Antitrust Laws to the Television Broadcast Activities of Columbia Broadcasting System, Inc., prepared by our attorneys, Cravath, Swaine & Moore: This document addresses itself to the major legal issues which have been raised before this committee—the issues of monopoly, of network option time, of the basic required practice, of alleged program and time tie-ins and of network ownership of stations. The opinion and memorandum consider all the facts as well as the legal brief previously submitted to this committee by Donald F. Turner, and conclude that the activities of CBS in the television field "do not in any respect violate the antitrust laws."

(The document is as follows. See also material at p. 2929 and item 30 in the appendix.)

BEFORE THE

Committee on Interstate and Foreign Commerce

of the

United States Senate

Opinion of Counsel and Memorandum Concerning the Applicability of the Antitrust Laws to the Television Broadcast Activities of Columbia Broadcasting System, Inc.

CRAVATH, SWAINE & MOORE
15 Broad Street
New York City

1913

CRAVATH, SWAINE & MOORE

15 BROAD STREET

NEW YORK 5

HOYT A. MOORE
CARL W. PAINTER
LEONARD D. ADKINS
MAURICE T. MOORE
DONALD C. SWATLAND
BRUCE BROMLEY
ROSWELL MAGILL
A. I. HENDERSON
ALFRED McCORMACK
CARLYLE E. MAW
EDWARD S. PINNEY
ROSWELL L. GILPATRIC
THOMAS A. HALLERAN
ALBERT R. CONNELLY
L. R. BRESLIN, JR.
BENJAMIN R. SHUTE
GEORGE B. TURNER
FRANK H. DETWEILER
GEORGE G. TYLER
JOHN H. MORSE
HAROLD R. MEDINA, JR.
FREDERICK S. BEEBE
CHARLES R. LINTON
WILLIAM B. MARSHALL
RALPH L. McAFEE
ROYALL VICTOR, JR.
JOHN N. CALDERWOOD

TELEPHONE
HANOVER 2-3000

CABLE ADRESS: CRAVATH, N

NEW YORK

June 4, 1956

Dear Sirs:

You have requested our opinion as to whether your television broadcast activities are in any way contrary to the antitrust laws, particularly in reference to your practices of (a) obtaining agreements from individual television broadcast stations affiliated with your television network whereby each such station agrees, subject to prescribed conditions and limitations, to broadcast all network sponsored programs offered to it by you during certain specified hours of the day (generally referred to as "network option time"); (b) requiring advertisers who seek to use your television network facilities to order a minimum network of not less than certain specified stations (currently 52 in number); (c) selecting, producing or owning some of the programs to be broadcast over your network; and (d) owning and operating some of the television broadcast stations which are a part of your television network.

We have had before us (a) the facts, assertions of fact and arguments of law set forth in "Memorandum Concerning the Need for Amending the FCC's Chain Broadcasting Regulations to Prevent Violations of Antitrust Law in the Television Industry", dated March 26, 1956, filed with the Senate Committee on Interstate and Foreign Commerce; (b) the facts set forth in "Network Practices Memorandum Supplementing Statement of Frank Stanton, President, Columbia Broadcasting System, Inc.", which you are filing with the above-mentioned Committee; and (c) such other facts concerning the television broadcast industry as seemed to us or to you to be relevant and which you furnished to us or we obtained by independent research. A summary of those facts and a discussion of the principles of antitrust law applicable thereto are set forth in our "Memorandum Concerning the Applicability of the Antitrust Laws to the Television Broadcast Activities of Columbia Broadcasting System, Inc." annexed hereto.

Upon the basis of those facts, we are of the opinion that your television broadcast activities, and in particular the practices referred to above, do not in any respect violate the antitrust laws.

Very truly yours,

CRAVATH, SWAINE & MOORE

Columbia Broadcasting System, Inc.,
485 Madison Avenue,
New York 22, N. Y.

75589 O—57—pt. 4——29

Memorandum Concerning the Applicability of the Antitrust Laws to the Television Broadcast Activities of Columbia Broadcasting System, Inc.

Memorandum Concerning the Applicability of the Antitrast Laws to the Television Broadcast Activities of Columbia Broadcasting System, Inc.

Columbia Broadcasting System, Inc. (CBS), a New York corporation, is engaged in various phases of the television broadcast industry. Questions have been raised as to whether such activities are in any way contrary to the antitrust laws, including particularly its business practices of (a) obtaining agreements from individual television broadcast stations affiliated with the CBS Television network whereby each such station agrees, subject to prescribed conditions and limitations, to broadcast all network sponsored programs offered to it during certain specified hours of the day (generally referred to as "network option time"); (b) requiring advertisers who seek to use the CBS Television network facilities to order a minimum network of not less than certain specified stations (currently 52 in number); (c) selecting, producing or owning some of the programs to be broadcast over the CBS Television network; and (d) owning and operating some of the television broadcast stations which are a part of the CBS Television network. Messrs. Cravath, Swaine & Moore of New York City have furnished a written opinion under date of June 4, 1956, to CBS that its television broadcast activities, and in particular the practices referred to above, do not in any respect violate the antitrust laws.

This memorandum sets forth a summary of the relevant facts, a discussion of the applicability of the antitrust laws to such facts and conclusions as to the questions referred to above. Since it is designed to be a self-contained document, it repeats rather than refers to many facts set forth in "Network Practices Memorandum Supplementing Statement of Frank Stanton, President, Columbia Broadcasting System, Inc." (Supplemental Memorandum) to be filed with the Committee in conjunction with the testimony of Frank Stanton.

I. *The Facts*

General Nature of the Television Broadcast Industry

A television network is composed of a number of television stations in different localities, for the most part separately owned and operated, which are interconnected by telephone cables or microwave relays so as to be capable of the simultaneous broadcast of the same television programs. The three existing networks were separately organized by the Columbia Broadcasting System, Inc., the National Broadcasting Company and the predecessor of American Broadcasting-Paramount Theatres, Inc. Each of those companies operates its network and owns one or more of the television stations included in its network. The organization of a network, aside from physical interconnection, consists merely of the execution of separate written contracts between the company operating the network and those independently owned stations which desire to become a part of the network. Such stations are called affiliates and the contracts are called affiliation agreements. Each network provides a schedule of programs, including programs produced by the network and by others, and arranges for interconnection facilities to carry those programs to its affiliates. Each network also seeks to persuade advertisers to pay for broadcast time and program costs in return for the nation-wide broadcast of commercial messages accompanying the programs.

From the business viewpoint, a network is a national advertising medium: it is a means of carrying to the national audience the program which an advertiser sponsors, together with his commercial message. Advertisers are the network's customers. Each individual broadcast station is a supplier to the network of one element of network service, namely, local broadcast time, and is paid by the network for its use of that time.* The organization, functions and affiliation contracts of the CBS Television network are hereinafter described in greater detail.

As of March 1, 1956, there were 429 commercial television stations on the air in the United States, of which 334 were VHF and 95 were UHF stations. Of those stations, 393 were affiliated** with one or more of the regularly operating networks. The distribution of such stations among the various localities and networks is set forth below:

*No "sale" of station time is actually involved in network broadcasting, as is more fully explained in various places in this Memorandum. The CBS Television network merely contracts with each advertiser to broadcast designated programs for the advertiser over its network, for which the advertiser agrees to pay to the network compensation based upon (i) the time charges of the affiliates for carrying the programs and (ii) all or part of the cost of producing the programs if they are furnished by CBS. The making available by individual stations of their facilities for the broadcast of sponsored programs is, for purposes of convenience, frequently referred to in the industry as the "sale of station time." That terminology is sometimes used in this Memorandum, but it does not denote a "sale" in its usual sense.

**Six of the remaining 36 stations broadcast CBS Television network programs on a per-program basis. Undoubtedly some, if not all, of the other unaffiliated stations similarly broadcast some programs of NBC and ABC on a per-program basis.

Operating and Allocated Stations

			Total
Allocations —	518 VHF Commercial; 77 VHF Noncommercial;	1324 UHF Commercial 172 UHF Noncommercial	= 2091
Operating* —	334 VHF Commercial;	95 UHF Commercial	= 429

Stations in a Locality*	Localities	Total Stations in Localities	Affiliations: ABC	CBS	NBC	NBC ABC	ABC CBS	NBC CBS	ABC CBS NBC	Total
7	2	14	2	2	2	0	0	0	0	6
4	9	36	9	9	9	0	0	0	0	27
3	30	90	24	24	24	5	6	0	0	83
2	72	144	11	32	35	28	26	2	3	137
1	145	145	21	15	18	15	22	17	32	140
	258	429	67	82	88	48	54	19	35	393

*As of March 1, 1956.

The remaining available 1413 commercial stations are not in use for one of the following reasons: (i) licenses have not been applied for; (ii) licenses have been applied for but have not been granted by the FCC; (iii) stations which have been licensed are not on the air because construction is in progress but has not been completed, or construction has not begun or the station has gone off the air for business reasons.

Today, television service is practically universal in the United States. It is estimated that 99.2% of United States families live in areas which are within the range of at least one television signal, and more than 35 million families own one or more sets. It is estimated also that 94 out of every 100 television homes have a choice of two or more signals; 87 out of every 100 have a choice of three or more signals; and the average television home has a choice of 5 different signals. According to a recent study by a reliable market research organization, each family spends slightly more than six hours a day watching television.

CBS Television Broadcast Activities

CBS is a corporation formed in 1927 primarily for the purpose of establishing and operating a radio network. The television broadcast activities of CBS are carried out by the CBS Television Division and include the ownership and operation of four television broadcast stations and the operation of the CBS Television network. Through other units of the Division, CBS acts as national spot representative for its own stations and eight of its network affiliates and produces, sells and distributes entertainment and news film programs for use on television stations. Through other divisions, CBS is engaged in radio broadcast activities; manufactures television receivers and many types of electronic tubes; and engages in research and in the development of broadcast and receiving equipment.

(a) *CBS-Owned Stations.* CBS owns television broadcast stations in New York, Chicago, Los Angeles and Milwaukee, respectively, and has pending applications for an existing station in Hartford and for a new station in St. Louis. The stations in Milwaukee and Hartford are UHF stations, and the other stations are VHF stations. The number of VHF and UHF stations operating in each of the cities is as follows:

City	VHF	UHF
New York	7	0
Chicago	4	0
Los Angeles	7	0
St. Louis	2*	1
Milwaukee	3	1
Hartford	0*	2

The CBS-owned stations receive a share of the revenues of the CBS Television network attributable to its use of the broadcast time on those stations and the revenues from the sale of time and programs by those stations to national spot and local advertisers. In 1955, the national television time revenues of

*The CBS application for a station in St. Louis is for an additional VHF station not included in the above chart. A VHF channel is assigned to Hartford and hearings involving competing applicants have been held. In addition, a VHF station is operating in New Haven, which covers much of the same area reached by Hartford stations.

the CBS-owned stations represented only .46% of all national advertising expenditures and only 5.5% of all national television time expenditures. The national spot television time revenues of the CBS-owned stations in 1955 represented only 8.8% of national spot television time expenditures. In 1955, the share of network revenues for CBS-owned stations represented only 2.9% of all television network time revenues and only 7.2% of CBS Television network time revenues. The local television time revenues of the CBS-owned stations in 1955 represented only 1.5% of all local television time expenditures.

CBS-owned stations operate independently of the CBS Television network. They receive approximately the same percentage of their network rate and have the same rights and responsibilities to the network as do all other affiliates. Accordingly, CBS-owned stations are treated in the same way as other affiliates in this memorandum.

(b) *Affiliates.* The CBS Television network as of March 1, 1956, had 151 primary affiliates (which take all or most of their network programs from CBS), 38 secondary affiliates (primarily served by another network) and 26 Extended Market Plan affiliates (which serve small markets and are sold by a special network staff in accordance with a special pricing and discount structure designed to attract network advertisers). In addition, the CBS Television network supplies programs to 52 other stations on a per-program basis. Of the stations served by the network, 233 are located in the United States, 27 in Canada, and 7 in Alaska, Hawaii, Mexico, Cuba and Puerto

Rico. Signals from the stations affiliated with the network reach 98% of all families who own television sets in the United States.

Affiliates are selected with the aim of giving the widest possible coverage for the CBS Television network programs throughout the country and in all the major markets, without substantial duplication.

The relations between the network and each of its affiliates are governed by an affiliation agreement. In the case of a primary affiliate the agreement contains a commitment by the CBS Television network to offer to the station, which shall have a "first refusal" of all network programs, network sustaining programs without charge, and also network sponsored programs which network clients request be broadcast in the market served by that station, for which the network agrees to pay the station compensation as prescribed in the agreement; and also, usually, a commitment by the station to accept and broadcast all network sponsored programs, offered and furnished to it by CBS during certain specified hours, called "network option time", subject to various conditions and limitations. A typical option time clause in a CBS Television network affiliation agreement,* which complies in every respect with the requirements of the Chain Broadcasting Regulations of the FCC, is as follows:

*As of February 10, 1956, the clause is included in contracts with 136 U. S. CBS Television network affiliates. Seven other U. S. contracts had slight variations in the hours specified because of local problems. The clause is also included in contracts with 7 Canadian CBS Television network affiliates.

"2. (a) Station, as an independent contractor, will accept and broadcast all network sponsored programs offered and furnished to it by CBS Television during 'network option time' (as hereinafter defined); provided, however, that Station shall be under no obligation to accept or broadcast any such network sponsored program (i) on less than 56 days' notice, or (ii) for broadcasting during a period in which Station is obligated by contract to broadcast a program of another network. Station may, of course, at its election, accept and broadcast network sponsored programs which CBS Television may offer within hours other than network option time.

"(b) As used herein, the term 'network option time' shall mean the following hours:

(i) if Station is in the Eastern or Central Time Zone, Daily, including Sunday, 10:00 A. M. to 1:00 P. M., 2:00 P. M. to 5:00 P. M. and 7:30 P. M. to 10:30 P. M. (expressed in New York time current on the date of broadcast);

(ii) if Station is in the Mountain or Pacific Time Zone, Daily, including Sunday, 10:00 A. M. to 1:00 P. M., 2:00 P. M. to 5:00 P. M. and 7:30 P. M. to 10:30 P. M. (expressed in local time of Station current on the date of broadcast).

"3. Nothing herein shall be construed (i) with respect to network programs offered pursuant hereto, to prevent or hinder Station from rejecting or refusing network programs which Station reasonably believes to be unsatisfactory or unsuitable, or (ii) with respect to network programs so offered or already contracted for, (A) to prevent Station from rejecting or refusing any program which, in its opinion, is contrary to the public interest, or (B) from substituting a program of outstanding local or national importance. CBS Television may, also, substitute for one or more of the programs offered hereunder other programs, sponsored or sustaining, of outstanding local or national importance, without any obligation to make any payment on account thereof (other than for the substitute program, if the substitute program is sponsored). In the event of any such rejection, refusal or substitution by either party, it will notify the other by private wire or telegram thereof as soon as practicable."

The CBS Television network designates certain of its affiliates (currently 52) as "basic-required" stations. Those stations cover substantially all the major markets in the United States and 81.8% of American television homes. With a few exceptions arising out of special circumstances and the special needs of network advertisers* the effect of the basic-required list is to require advertisers who wish to use the network to order those stations as a minimum. With one exception, there is no agreement between the CBS Television network and the stations involved by which they are designated as basic-required. CBS is free to, and does, alter the list at will.

In practice, national advertisers who want network coverage almost universally order far in excess of the basic-required stations. In April of this year, the average number of stations which broadcast CBS Television network commercial programs during daytime hours was 83, and during nighttime hours was 121.

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*For the week ending April 7, 1956, one advertiser ordered less than 52 affiliates for its program. In the case of four other programs, more than 52 affiliates were ordered, but the orders did not include some of the basic-required stations.

(c) *Organization and Staff.* The operating requirements of the CBS Television network are such that it is necessary for it to maintain a sizable staff to carry out its functions. As of March 1, 1956, CBS Television employed on a full-time basis 2,412 people for its network and a total of 5,493 people, including per diem personnel, talent and supporting corporate personnel. Among the most important departments are the following: the Program Department, which has the primary responsibility for the basic creative and planning work which results in the conception, evaluation, development and production of the network program schedule; the Research Department, which evaluates tastes, measures audiences, station circulation, and set ownership, checks comparative media, and evaluates and analyzes program content in order to determine and predict public taste reactions; the Sales Department, which sells the network medium to advertisers and other users, assists in the determination of advertisers' needs and in the relating of those needs to the time periods and programs available and clears time on stations in accordance with the advertisers' desires; the Engineering Department, which develops broadcasting equipment, maintains studio and transmission standards, provides technical consulting services to affiliates and CBS-owned stations, and conducts engineering studies of station coverage; the Station Relations Department, which is engaged in the function of securing and maintaining the most efficient line-up of stations for the network; the Promotion Department, which promotes the CBS Television Division and its network programs to advertisers and the public, and provides program promotional materials for stations; the Operations Department, comprising more than 2,400 people, which makes physically possible the broadcast of network programs; and the CBS News and Public Affairs Department, which maintains, at an annual gross operating cost of approximately $7,000,000, a world-wide news gathering service and produces non-commercial public affairs programs of national interest.

(d) *Physical Facilities.* In order to supply high-quality programs to its affiliates day in and day out, the CBS Television network provides and maintains elaborate physical facilities. CBS has invested nearly $28,000,000 in its television network program production facilities in New York and Hollywood alone. Because it believes that even its existing facilities are insufficient, it is now considering additional plant facilities for the next few years, for which an expansion investment of up to $25,000,000 would be necessary.

A large reservoir of physical facilities is required in order to maintain a regular schedule of diversified programming. The continuous network program schedule permits economies which normally are not available in non-network production. The almost continuous use of the studios and other physical facilities makes for efficient operations and enables the cost of maintenance and operation to be amortized over many programs, reducing to the lowest possible minimum the studio cost of each individual program.

(e) *Interconnection Facilities.* In addition to its own organization and facilities which a network must maintain, and in order to serve its affiliates with its program product, a television network must arrange for a means by which its affiliates throughout the country can be interconnected. Only in that way can a program be seen simultaneously by viewers on a nation-wide basis. Interconnection is, of course, necessary for all live programs, whether they be entertainment programs or broadcasts of public events as they occur. Even with respect to film programs, interconnection is desirable in order to provide simultaneity and to make it possible for an advertiser to arrange through a single source to have his program broadcast from a single source and at a fixed point in the network program schedule.

At present most network stations are interconnected by American Telephone and Telegraph facilities—either coaxial cables or microwave relay systems—which transmit all network programs at a cost to the CBS Television network of approximately $13,500,000 a year.

The continuous use made of interconnection facilities keeps the network's per-program costs down and preserves the facilities on a regular basis to television. If interconnection facilities were not regularly called upon by the networks, and if instead they were used only on special occasions such as the World Series or a political convention, their cost on such an occasional basis would vastly increase—by possibly as much as 30 or 40 times per program. In any event, it is likely that if the interconnection facilities were required only occasionally, at least those which go to the smaller markets outside the top 40 or 50 cities would not be used with sufficient frequency to warrant their being preserved by AT&T for television use at all. It is not unlikely, therefore, that were it not for the continuous demand made by the networks upon those facilities, some of them, at least, would revert to other uses and be unavailable to television even for special occasions, so that many smaller markets would be deprived of live programs emanating from any area other than that in which the local station is located.

(f) *The Program Schedule.* The end result of the CBS Television network organization, physical facilities, interconnection arrangements, affiliation contracts, activities and energy is the creation of a nation-wide medium of communication by television, distinct from all other forms of nation-wide media, and also distinct from the local medium provided by each individual broadcast station.

The network medium is not just the bare avenue of communication afforded by the interconnection facilities arranged for by the network, any more than the medium created by Life Magazine can be said to be the bare pages of the magazine and the mechanics of its distribution. The network medium consists in principal part of the network program schedule which is broadcast over its facilities, which gives the medium form, substance and content and determines its character and impact. Accordingly, one of the prime objectives of the CBS Television network is to provide the best program schedule that it can devise, giving due consideration to the interrelated needs of the television audience, stations and advertisers. It is in order to perform that basic function that the network maintains a large organization and comprehensive facilities for the conception, development and production of programs, and that it retains final decision as to the selection and scheduling of its network programs.

An important fact about network programming, and indeed about television programming in general, is that not only must the programs be good but they must be continuous. A network must produce a full schedule, day in and day out. Some idea of the dimensions of the program task of a network can be gained from the fact that, for example, during the week ending April 7, 1956, the CBS Television network furnished to its affiliates 129 live programs,* varying in length from 15 minutes to 1¾ hours and covering an aggregate of 68¾ broadcast hours. Assuming that the CBS schedule for the week ending April 7, 1956, is typical, CBS alone will produce and broadcast 1,508 hours of programs, and CBS in association with independent producers will produce and broadcast 1,053 hours of programs, or a total of 2,561 hours of programs (without taking into account the programs broadcast by the network but produced by others) in 1956, compared to a total of 427 hours of running time for all United States feature film production released in 1955. Thus, the product of the CBS Television network, alone, in terms of hours, will be more than three times that of the total product of feature films from Hollywood, and that of CBS and CBS in association with

*In computing the number of programs, each separate program of a program series, such as five-times-a-week news programs and daytime serials was counted as an individual program.

independent producers will be six times that of feature films from Hollywood. During the single week ending April 7, 1956, the CBS Television network broadcast a total of 86¼ hours of sponsored and sustaining programs. Of the 72¾ sponsored broadcast hours involved in that schedule, 55¾ were live, and 17 were filmed.

The extent to which others contribute to the CBS Television network program schedule is shown by the following data: during the week ending April 7, 1956, 72¾ hours of sponsored programs were broadcast by the network. Of those hours, 36½ (50.2%) were occupied by programs created and produced entirely by 38 different outside producers with whom CBS has no direct connection, and an additional 19¾ hours (27.1%) were occupied by programs produced by 8 companies or individuals in association with the network. That total of 72¾ hours was comprised of 74 different programs or program series, only 17 of which were wholly produced by the network. Of the remaining 57 programs or program series, 47 were wholly produced by 38 outside producers and 10 were produced by 8 outside producers in association with CBS.*

An examination of the sources of programs broadcast on the CBS Television network during Class A commercial time** for the week ending April 7, 1956, reveals that, proportionately,

*In addition, there were sustaining programs and program series occupying 13½ hours. Of those sustaining programs, CBS produced 11 which occupied 12½ hours. Of the 28 programs (17 sponsored and 11 sustaining) produced by CBS alone, 11 were news and public affairs programs which, under CBS policy, must be produced under its supervision and control.

**6 P. M. to 11 P. M., Monday through Saturday, and 5 P. M. to 11 P. M. on Sunday.

independent producers of programs have an even greater outlet at night. Of the 27¾ hours of programs broadcast during that time, 16 hours, or 57.7 per cent., were wholly produced by outsiders, 2½ hours (9%) were produced by outsiders in association with CBS and 9¼ hours (33.3%) were produced by CBS alone. An analysis of programs on the CBS Television network produced in whole or in part by outside sources over the last three years reveals a significant increase both in the number of hours and in the percentage of programs produced solely by outside sources and by outside sources in association with CBS. Despite an increase in the total hours of network programming, the hours of programs produced by CBS alone and the percentage of programs produced by CBS alone and in association with outsiders, have decreased.

	Sponsored Broadcast Hours			
	April 1954		April 1956	
	Hours	Per Cent	Hours	Per Cent
Produced by Outside Sources	27¼	46.6	36½	50.2
Produced by Outside Sources and CBS Television Network	8½	14.5	19¾	27.1
Produced by CBS Television Network	22¾	38.9	16½	22.7
Total	58½	100.0	72¾	100.0

CBS estimates, that during an average week in 1955, advertisers who sponsored programs carried on the CBS Television network paid $1,170,000 for programs produced wholly by outside sources, $520,000 for programs produced by CBS Television network alone, and $130,000 for programs produced by CBS Television network in association with independent producers; and that for the entire year 1955, $61,000,000 was paid for programs produced wholly by outside sources, $27,-000,000 for programs produced by the CBS Television network alone, and $7,000,000 for programs produced by outside producers in association with the network. There have been 171 program replacements on the network since 1951—106 nighttime programs and 65 daytime programs. Of the 65 daytime programs which were replaced, 23 were outside-produced. In replacing those programs exactly the same number of outside-produced programs was used. Of the 106 nighttime programs replaced since 1951, 52 were originally outside-produced and the replacement process has resulted in 62 outside-produced programs. In other words, since 1951, there has been a net gain of 10 outside-produced programs and a net loss of 10 CBS-produced programs in CBS's nighttime schedule as a result of program replacements and without regard to programming new periods not theretofore filled by network broadcasts.

While the program-producing function is of vital importance to the network, it is not in itself a profitable side of the business. CBS lost $7,100,000 in 1955 solely on the commercially sponsored programs that it produced, without any allocation of general overhead expenses.

According to the findings of independent market research organizations that provide rating services, network programs are generally the most popular by a large margin. In the 60 television markets for which American Research Bureau local rating reports are available for either January, February or March, 1956, 10 of the 10 most popular programs were network programs in 46 markets,

9 of the 10 most popular programs were network programs in 12 other markets,

8 of the 10 most popular programs were network programs in 2 other markets.

In other words, in those 60 markets, 97.3% of the top 10 positions were occupied by network programs and only 2.7% by non-network programs.

The Market

Advertisers and advertising are categorized as "local" or "national". Local advertisers are those whose business and therefore whose advertising are limited to one or a few localities. National advertisers are those whose business and advertising are planned to reach the national public. National advertisers use networks as national advertising media. When a national advertiser uses the CBS Television network the time charges are paid directly to CBS. National advertisers, however, also advertise nationally by placing what is called national spot advertising on individual television stations. In that case the national advertiser pays the time charges directly to the individual stations which he selects. Therefore national television advertising consists of both network television advertising and national spot television advertising. The distinction between spot advertising and network advertising is that in spot advertising stations are selected individually rather than on a group (network) basis. Spot television advertising employs both brief announcements and commercially sponsored programs. It may consist of ten second (or longer) announcements or sponsored film programs or locally originated live programs.

Television networks compete for advertisers' patronage not only with each other but also with all other national media, including national spot television,* newspapers, magazines, radio, direct mail, trade publications, outdoor advertising and other miscellaneous forms of advertising. In 1955 total U.S. expenditures for national advertising were approximately $5,287,000,000, of which $785,000,000 was spent for national spot and network television advertising. Thus national advertisers spend only 15% of their advertising budgets on national television advertising. Of the total United States expenditures for national advertising of $5,287,000,000, the share of the CBS Television network for 1955 was but 3%. Of the total United States expenditures for national spot and network television advertising (including time and program costs) the share of the CBS Television network for the last quarter of 1955 was 27.2%.

As television has grown, advertising expenditures for both network and national spot and local television advertising have expanded as well, as is indicated by the following table:

	Television Advertising Expenditures		
	Network	National Spot and Local	
Year			(% of Network)
1952	$256,400,000	$197,500,000	77.0
1953	319,900,000	286,200,000	89.5
1954	417,900,000	385,700,000	92.3
1955	520,000,000	485,000,000	93.3

*It may be noted, however, that in an important sense, national spot television advertising is complementary to, and built on, network television: a strong network schedule increases circulation and attracts spot revenues.

The above figures are based upon estimated time costs adjusted upward to include program production costs. When based upon time charges alone, national spot and local television advertising revenues exceeded network time revenues by $76,100,000 in 1955.

The report of a recent survey by the Television Bureau of Advertising shows that the gap between network time charges and national spot time charges is rapidly closing. During the period October through December, 1955, net national spot television time charges to 3,017 advertisers amounted to $75,800,000, while the net network television time charges during the same period totaled $84,900,000. The ratio of network time charges to national spot time charges has, therefore, decreased to 1.12 to 1. If the net time charges for all national television advertising (network time charges plus national spot time charges) are used, the net time charges of the CBS Television network in the last quarter of 1955 were 23.0% of the total; NBC 21.4%; ABC 8.5%; and 47.1% was accounted for by time charges paid directly to the individual television stations selected by national advertisers for national spot television advertising. If only the net time charges of the networks are used, the net time charges of the CBS Television network in the last quarter of 1955 were 43.5% of the total; NBC 40.5% and ABC 16.0%. In 1953 ABC's share was 9%, but by 1955 it had increased to 13% and as of the end of February, 1956, its share had increased to 17%.

Competition among the networks and between the networks and spot advertising is constant, and major advertisers usually use both network and spot advertising simultaneously, depending on their appraisal of the relative costs and effectiveness of the two for the particular needs of the advertiser. In 1955, of the 50 largest CBS Television network customers, 78% also used national spot television and 50% were included in the 100 largest customers of national spot television advertising. 76% of those 50 customers also used at least one other television network and 58% were among the 50 largest customers of at least one other television network.

The following chart presents estimated figures for the segment of the national advertising market occupied by television advertising and gives figures for (1) all television stations; (2) all stations in cities with more than 100,000 population, (3) all stations in one-station areas, (4) all CBS affiliates in one-station areas, and (5) all stations in cities with CBS basic required stations. For each of those station groupings separate figures are given for the entire broadcast day* and for the five evening hours from 6:00 to 11:00 p. m. local station time. For each of the foregoing station groupings for both the entire broadcast day and for the separate five-hour evening period, estimated figures are given for (1) the total number of television hours actually broadcast; (2) the total number of CBS Television network hours carried; (3) the total number of hours of CBS-produced network programs carried; (4) the total number of television broadcast hours subject to CBS

*"The entire broadcast day" starts when the station "signs on" for its first broadcast following the early morning period during which it was off the air, and ends with the station's last broadcast when it "signs off" and again goes off the air.

options; (5) the total number of television broadcast hours ordered by CBS customers during option time; (6) the total number of television broadcast hours cleared as ordered for CBS network programs during option time; and (7) the total number of television broadcast hours cleared as ordered during option time for CBS-produced programs. The second chart merely expresses the figures in the first chart in terms of percentages of total hours broadcast in the various station groupings. The charts cover a week in May, 1956, which is believed to be typical.

ALL TELEVISION STATIONS

	In the U. S.		In Cities of 100,000		In One Station Localities		Affiliated with CBS in One Station Localities		In Cities with CBS Basic-Required Stations	
	All Day	5 Eve. Hours	All Day	5 Eve. Hours	All Day	5 Eve. Hours	All Day	5 Eve. Hours	All Day	5 Eve. Hours
Total Television Hours:										
1. Actually broadcast	44,562	15,680	21,883	7,700	15,617	5,495	8,157	2,870	14,821	5,215
2. Which originated from CBS network	6,725	3,134	3,982	1,725	1,851	954	1,722	877	3,004	1,247
3. Of CBS-produced network programs A	1,762	1,161	1,073	643	456	353	430	329	845	466
B	923	263	598	160	219	68	200	64	482	115
4. Subject to CBS options*	9,261	2,912	4,725	1,480	3,276	1,026	3,276	1,026	3,276	1,040
5. Ordered by CBS customers during option time	4,405	1,820	2,717	1,080	1,092	490	1,092	490	2,183	815
6. Cleared as ordered for CBS network programs during option time	3,881	1,531	2,438	926	900	385	900	385	2,017	724
7. Cleared as ordered during option time for CBS-produced programs A	928	462	643	292	179	112	179	112	555	230
B	657	132	453	84	128	32	128	32	389	65

A Produced by CBS.
B Produced by CBS in association with outsiders.

*Includes 1½ hours on each station, normally subject to the network option, on which the option is lost because a program begins during network option time and extends into non-option time or because the program begins before network option time and extends into it.

ALL TELEVISION STATIONS

Percentage of Television Hours:		In the U. S.		In Cities of 100,000		In One Station Localities		Affiliated with CBS in One Station Localities		In Cities with CBS Basic-Required Stations	
		All Day	5 Eve. Hours	All Day	5 Eve. Hours	All Day	5 Eve. Hours	All Day	5 Eve. Hours	All Day	5 Eve. Hours
1. Actually broadcast		100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
2. Which originated from CBS network		15.0%	19.9%	18.1%	22.4%	11.8%	17.3%	21.1%	30.5%	20.2%	23.9%
3. Of CBS-produced network programs	A	3.9%	7.4%	4.9%	8.3%	2.9%	6.4%	5.2%	11.4%	5.7%	8.9%
	B	2.0%	1.6%	2.7%	2.0%	1.4%	1.2%	2.4%	2.2%	3.2%	2.2%
4. Subject to CBS options*		20.7%	18.7%	21.5%	19.2%	20.9%	18.7%	40.1%	35.7%	22.1%	19.9%
5. Ordered by CBS customers during option time	C	9.8%	11.6%	12.4%	14.0%	6.9%	8.9%	13.3%	17.0%	14.7%	15.6%
	D	47.5%	62.5%	57.5%	73.0%	33.3%	47.7%	33.3%	47.7%	66.6%	78.3%
6. Cleared as ordered for CBS network programs during option time ...	C	8.7%	9.7%	11.1%	12.0%	5.8%	7.0%	11.0%	13.4%	13.6%	13.9%
	D	41.9%	52.6%	51.6%	62.6%	27.5%	37.5%	27.5%	37.5%	61.6%	69.6%
7. Cleared as ordered during option time for CBS-produced programs ...	A	2.0%	2.9%	2.9%	3.7%	1.1%	2.0%	2.1%	3.9%	3.7%	4.4%
	B	1.4%	0.8%	2.0%	1.0%	0.8%	0.5%	1.5%	1.1%	2.6%	1.2%

A Produced by CBS.
B Produced by CBS in association with outsiders.
C Percent of all Television hours.
D Percent of hours subject to CBS options.

*Includes 1½ hours on each station, normally subject to the network option, on which the option is lost because a program begins during network option time and extends into non-option time or because the program begins before network option time and extends into it.

II. *Legal Discussion*

1. *Introduction*

Consideration of whether the television broadcast activities of CBS in any way violate the antitrust laws involves principally three statutory provisions: Sections 1 and 2 of the Sherman Act (15 U. S. C. §§ 1 and 2) and Section 3 of the Clayton Act (15 U. S. C. § 14). Those sections will be discussed in this memorandum in inverse order.

The impact of the antitrust laws on the CBS Television network and its business practices cannot be determined merely by applying to the conduct of the network, labels used in other cases to identify practices which on the basis of the particular facts in those cases were determined to be unlawful. The antitrust laws have never been applied by the courts in so formalistic a manner. "Price fixing", for example, is a term that is customarily used to identify practices that are anathemas under the antitrust laws, yet the same term from a layman's standpoint also includes normal pricing practices which are entirely lawful. "Agreements in restraint of trade" are unlawful by definition, yet every lawful business agreement places some restraint on trade. Only if the restraint is undue does the agreement offend the Sherman Act and, in determining what restraints of competition are undue, the rule of construction to be applied is the standard of reasonableness. Of course, certain forms of conduct, such as agreements among competitors to fix prices, are presumed to be illegal and in such cases inquiry under the rule of reason is over, once it has been decided that the agreement under review in fact constitutes price fixing.

The test of lawfulness does not depend upon terminology, but upon an interpretation of the particular facts in each case in the light of the basic provisions and purposes of the antitrust laws as construed by the courts. Terms such as "block booking", "blind selling", "forced buying" and "collective arrangements" have no meaning or pertinence, except as they may identify practices which in both form and context are the same as those held in other cases to be contrary to the antitrust laws.

During the following discussion, references are made to certain Federal Court decisions dealing with the statutes involved. Digests of certain antitrust cases, including the so-called motion picture cases which have been asserted by others to have particular pertinence to the television industry, are attached to this memorandum as Appendix A.

2. *Section 3 of the Clayton Act*

Section 3 of the Clayton Act provides that it shall be unlawful for any person, in interstate or foreign commerce, to lease or sell commodities for use, consumption or resale within the United States or its territories, or to fix a price charged therefor

> "on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods . . . or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale or such condition,

> agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Section 3 clearly does not apply to the television broadcast activities of CBS. Section 3 applies only to *commodities;* the television broadcast activities of CBS involve only services.

a. No "Commodity" Involved

It is clear that Section 3 of the Clayton Act applies only to "commodities" and that the term "commodities" includes only tangible materials moving in commerce and does not include intangibles, such as services or facilities. Commercial television broadcasting is simply the furnishing of broadcast services; by law the station licensee cannot sell or lease his station, as such, without FCC approval, and the furnishing of broadcast facilities to a sponsor directly or through a network does not involve the sale of any "commodity" by the station. Similarly, as discussed in detail below, the activities of the CBS Television network do not involve the sale of any "commodity" but are the furnishing of programming services, *e.g.,* the assembled broadcast services of the stations and the program and other services of the network.

The legislative history and the Committee reports and debates on the floors of Congress with respect to both the Clayton Act and the Robinson-Patman Act, which make similar use of the term "commodities", indicate that Congress, in passing the Acts, did not have in mind the furnishing of services or the sale of intangibles. A study of the cases* interpreting the word "commodities" also indicates that the courts have consistently held that the word refers only to tangible movable goods, wares and merchandise, and the governmental agencies primarily concerned with administering those Acts, including the Federal Trade Commission and the Department of Justice, agree with this interpretation of the term.

b. No Substantial Lessening of Competition

Even if Section 3 applied to television broadcasting, CBS television broadcast activities would not be illegal, because Section 3 prohibits only those agreements which, in the light of reason and an analysis of all the attendant facts, may be expected to substantially lessen competition. As discussed in detail below in connection with the applicability of Sections 1 and 2 of the Sherman Act, especially in view of the nature of the industry, CBS television broadcast activities do not substantially lessen competition in any of the markets concerned, but, on the contrary, are a reasonable means of providing a national advertising medium which is competitive with other advertising media.

3. *Section 2 of the Sherman Act*

Section 2 of the Sherman Act provides:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other

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* *Fleetway, Inc.* v. *Pub. Service Interstate Transp. Co.*, 72 F.2d 761 (1934), *cert. denied*, 293 U. S. 626; *General Shale Products Corp.* v. *Struck Construction Co.*, 132 F.2d 425 (6th Cir. 1942); *Schow Bros.* v. *Adva-Talks Co.*, 232 S. W. 883 (Tex. Civ. Apps. 1921); *People* v. *Epstean*, 170 N. Y. Supp. 68 (Ct. Gen. Sess. 1918); *Binkley* v. *State*, 198 Pac. 884 (Okla. 1921); and *In re Jackson*, 107 N. Y. Supp. 799 (Sup. Ct. 1908).

person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations shall be deemed guilty of a misdemeanor . . .".

CBS clearly does not monopolize, and there is no evidence that it has attempted to monopolize, the national advertising market, the segment of the national advertising market occupied by television advertising, the market for television station time or the market for television programs, nor does it monopolize or attempt to monopolize "any part of the trade or commerce" in any of those areas.

a. Actual Monopoly

Each network must be considered separately. In considering the position of the CBS Television network in any of the markets concerned, the percentage of such market occupied by it must be considered separately from the percentage occupied by other networks. It has not been suggested that there is any combination, horizontal conspiracy or joint action of any kind among the presently existing networks in any of the markets. There is vigorous competition among the networks in every phase of the business. That is the first major distinction between the *Paramount Pictures* case* and the situation presented by the television industry. In the *Paramount* case the major motion picture companies were found to have combined and conspired to restrain trade and competition, which in the court's view justified lumping them together for the purpose of applying the usual tests of monopoly. Since no such conspiracy or

*A digest of this case is included in Appendix A.

combination exists among the television networks, each must be treated separately for antitrust purposes.

In defining monopoly, the issue is whether there exists power to affect price and not the reasonableness of the price actually charged. Therefore, whether profits are high or low is not strictly speaking relevant under Section 2. However, evidence as to profits and whether the level of prices is high or low is usually admitted in monopoly cases and may sometimes throw light on other problems such as the possibility of monopoly or even the extent of power over prices. Properly measured, CBS's profits have not been high. The operating ratio or percentage of margin on sales of the CBS Television Division in 1954 was 7.8% after taxes, while the CBS Television network's margin on sales after taxes was 4.6%.

The national advertising market. The basic business function of network television broadcasting is to furnish a medium for carrying an advertising message to the national public; and in that business it competes with a variety of other media, including newspapers, magazines, radio and national spot television. Of the estimated $5,287,000,000 spent last year in the total national advertising market, only $173,575,800 or 3% was received by the CBS Television network. Clearly the network does not monopolize the national advertising market.*

The television segment of the national advertising market. The CBS Television network does not monopolize the portion of the national advertising market consisting of television ad-

*CBS radio and television broadcast revenues from national advertisers totaled $230,400,000, or 4.3% of total national advertising expenditures in 1955.

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vertising. According to the figures for total national television advertising expenditures in the last quarter of 1955, only 27.2% of the total was received by the network. Control of only 27% of a market is clearly not a monopoly. This percentage position of the network is accounted for by the fact that the television segment of the national advertising market is highly competitive within itself.

Within the television segment, the competition between national spot advertising and network advertising is strong. In the last quarter of 1955, 47% of total time expenditures for national television advertising consisted of time charges paid directly to the individual television stations selected by national advertisers for national spot television advertising without any use of networks. 50% of the 50 largest CBS Television network customers are included in the 100 largest buyers of spot time and some of them spend more of their budget for spot than for network broadcasting. Advertisers continue to use both spot and network advertising, and they shift their efforts between the two from time to time depending on their conclusions as to the competitive advantages and utility of each for their needs. The percentage of national television advertising consisting of spot broadcasting has steadily grown and its continuing rapid growth shows that the CBS Television network does not monopolize the television segment of the national advertising market.

Within the television segment of the market there is also vigorous competition among the networks. No one of the three networks is dominant. Of the total network share of television advertising in 1955, CBS had approximately 43%, NBC 41% and ABC 16%. These percentages change frequently. Since 1953 ABC's share has nearly doubled. Moreover, 76% of the 50 largest customers of the CBS Television network also use another network and 58% of the 50 largest time customers of the network in 1955 were among the 50 largest customers of at least one other network.

The fact that there are at present only three regularly operating national networks is not evidence of monopolistic restraint, but is the result of the lack of available comparable broadcast channels and the economics of network broadcasting. In only 4.2% of the nation's localities which now have television stations are there more than three such stations. Thus, assuming that each station will be the primary affiliate of only one network, there are not enough stations in enough localities to support more than three regularly operating national networks at this time, although it can be expected, as the FCC makes more comparable channels available for station broadcast, that one or more additional networks may be possible even without using time on stations now affiliated with one of the present networks.

Nothing in present network practice or FCC regulations prevents the formation of regional or part-time national networks which would rely in large part on use of stations now primarily affiliated with the existing national networks. However, in order to furnish the necessary programs, facilities and interconnection services, large fixed costs and long-term major responsibilities must be assumed by any organization which seeks to operate as a network on a regular basis. That is the economic fact that limits the number and variety of networks operating today.

The "markets" for television broadcast time and for programs. The television segment of the national advertising market from the advertiser's viewpoint concerns the sale of "customer potential"; and from the network and public's viewpoint it concerns the sale of programming service. However, some persons primarily interested in one facet of the business urge that it is reasonable to recognize a separate special market for television broadcast time and a separate special market for programs. Recognition of such special purpose markets seems to distort the real economic fact, since from the viewpoint of the network, the public and the advertiser, only the combination of time and program (programming) is the subject of commerce. In any event, as discussed below and as shown in the chart on page 25 if such "markets" are recognized, the CBS Television network does not monopolize either of them or any part thereof.

Television broadcast time market. As the chart on page 25 above shows, the CBS Television network occupies only 15.0% of the total television broadcast time and, as set forth above, in the last quarter of 1955 received only 23% of the net time billings for national television advertising. In the localities including the cities of over 100,000 population, the CBS Television network occupies only 18.1% of the television station time and only 22.4% of the evening time in such localities.

Television program market. Similarly, as shown on the chart on page 25, of all programs broadcast on television, the

CBS Television network produces only 3.9% alone and produces an additional 2.0% in association with others. Of the programs broadcast in the evening hours in cities with populations of over 100,000, the network produces only 8.3% alone and 2.0% in association with others.

Even if the CBS Television network controlled all programs which it broadcast, it would still control only a small part of the total program market, for, as shown on the aforementioned chart, the network broadcasts only 15.0% of the total hours of programs broadcast on television and 22.4% of the total hours of programs broadcast in the evening hours in cities of over 100,000 population.

The CBS Television network is a major outlet for the programs of independent producers. Of the programs broadcast over the network in the week ending April 7, 1956, the network produced 22.7% alone, and produced 27.1% in association with others, and 50.2% were produced by outside producers. The creation of programs for television broadcasting by independent producers is a highly competitive and rapidly growing business. It is estimated that there are at least 800 independent agencies engaged in that business, ranging in size from small producers with very little investment in staff or facilities to the major theatrical film producers. Some of the concerns producing programs for television have greater assets than any of the existing networks; and the financial resources of the nation's large banking institutions are increasingly being made available to finance program production by independent producers. Employment figures for the month of February, 1956, indicate that in Hollywood alone, employment in the production of independent programs for television has increased more than threefold over the level of 1955. The experience of CBS shows that both the total number and dollar sales of independently produced programs shown on its television net work have increased every year and the percentage of total broadcast programs produced by the network has steadily declined.

Single station localities. The CBS Television network has affiliation agreements with 86 television stations in single station localities. In only 15 of those localities is the single station affiliated solely with CBS. Those facts do not establish that the network has a monopoly in those localities. Even if the network controlled all the broadcast time of its affiliates in such one station localities, it would not, standing alone, constitute an illegal monopoly under Section 2. Mere ownership or control of the sole outlet in a locality does not in itself constitute a violation of the Act. That principle was reaffirmed in the motion picture cases, wherein the Supreme Court emphasized that mere ownership of the only theatre in one theatre localities did not constitute a violation of Section 2. For example, in *United States* v. *Griffith,** the Court said:

> "Anyone who owns and operates the single theatre in a town, or who acquires the exclusive right to exhibit a film, has a monopoly in the popular sense. But he usually does not violate § 2 of the Sherman Act unless he has acquired or maintained his strategic position, or

*A digest of this case is included in Appendix A.

> sought to expand his monopoly, or expanded it by means of those restraints of trade which are cognizable under § 1." (334 U. S. 100, 106)

The court went on to point out that an otherwise lawful monopoly, consisting of the ownership of the sole outlet in a locality, could constitute a violation of the Act, *if* it were coupled with the specific intent to use, or actual use of, the monopolistic position to restrain trade in other markets. As pointed out later, the CBS Television network has not engaged in any of those restraints of trade which are cognizable under Section 1, nor does the network derive any power from its position in one-station areas which could be used to restrain competition in other areas. Moreover, the network does not in fact possess a monopoly, or anything approaching a monopoly, in the one station localities where the single station is affiliated with CBS. As indicated by the chart on page 25 above, even there, the network alone produces only about 5.2% of the hours of programs broadcast and occupies only about 21.1% of the total broadcast time.

b. Attempt to Monopolize

There is no basis for a charge that the CBS Television network has attempted to monopolize under Section 2 of the Act. In the absence of a conspiracy or other conduct prohibited by Section 1, specific intent must be proved in order to support a finding of an attempt to monopolize under Section 2. There is, of course, no evidence of any such intent. In the absence of evidence of specific intent, such intent would have to be inferred from the action of the CBS Television network in one of the markets concerned. But 50% of its 50 largest customers are also included in the hundred largest national spot television advertisers, and, of course, the programs used for such spot broadcasts as well as for 50.2% of the CBS Television network hours are purchased from outside sources. Moreover, of the 50 largest CBS Television network customers, 76% of them are also customers of at least one other television network. Accordingly, it seems clear that the CBS Television network does not in fact endeavor to prevent its purchasers of either broadcast time or programs from purchasing either broadcast time or programs from other sources. The small percentage of the market and various market segments occupied by the network, and the steady increase in the percentage of such market occupied by national spot advertising, other networks and independent program producers, together with the absence of unusually restrictive or unreasonable business practices, make it clear that there is no evidence from which any "attempt" by the network to monopolize could be inferred.

The figures in the foregoing discussion represent the portions of each of the market segments occupied by the CBS Television network, measured by programs and station time. That is the proper measure of market control in considering the applicability of Section 2, since only a part of the option time of affiliates is actually available to the network. The options are exercisable only for commercial programs upon 56 days' notice, are not effective against programs of other networks, are not effective against programs broadcast by local stations because of special public interest, and are not effective with respect to network programs considered by the local station to be "unsuitable or unsatisfactory". That those factors are real limitations on the effectiveness of CBS option control is indicated by comparing the total number of hours theoretically subject to its option control to the total number of hours which it actually occupies.

The chart on page 25 above shows that all time affected by CBS options is not actually under its control. In cities with a population of 100,000 or more, advertisers ordered 73.0% of the evening hours subject to CBS options, and CBS was able to clear as ordered only 62.6% of those hours.

Even if CBS did have control of all time subject to its option, those options would not be evidence of an "attempt to monopolize" any part of the market since, as shown on the chart on page 25, they only apply to 20.7% of the total television broadcast hours of all stations in the United States and to 19.2% of the evening broadcast hours of all stations in the localities containing the nation's cities of over 100,000 population.

c. CBS-Owned Stations

If the non-network revenues and programs of the CBS-owned stations are considered separately or in conjunction with the position of the CBS Television network, the conclusions heretofore reached with respect to Section 2 do not change. As is shown at page 6, each of the CBS-owned stations, including the stations for which CBS has applications pending, is situated in a market with substantial competition. The national spot television time revenues of the CBS-owned stations in 1955 represented only .3% of all national advertising expenditures, only 3.9% of national television time expenditures, and only 8.8% of national spot television time expenditures. The local television time revenues of the CBS-owned stations in 1955 represented only 1.5% of all local television time expenditures.

It will be seen, therefore, that if the CBS-owned stations are considered together with the CBS Television network, they do not substantially change the position of CBS in any of the markets discussed above.

d. Conclusion re Section 2

From the foregoing it is clear that CBS does not approach actual monopoly in the segment of the national advertising market consisting of television advertising or any part thereof, and there is no evidence of any attempt to monopolize. That is a second major difference between the facts of the motion picture cases and the television broadcasting industry. In the *Paramount* case the defendants owned 70% of the theatres in the country's 92 cities of over 100,000 population and received 73% of the domestic film rentals, and together had a position of market dominance in film distribution and exhibition approaching that of actual monopoly. It is important to note that the court did not find even that position to constitute a monopoly or even an attempt to monopolize in itself, but found a violation of Section 2 *only because* that market position had been used as "a definite means of carrying out the restraints and conspiracies we have described".

4. *Section 1 of the Sherman Act (Combination in Restraint of Trade)*

a. General

Section 1 of the Sherman Act provides:

> "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations, is declared to be illegal."

The functions performed and the practices engaged in by the CBS Television network are reasonably required to meet the needs of the industry, including the requirements of stations, advertisers and the public, serve the "public interest, convenience and necessity", do not prevent or hinder competition in the industry and are not in any respect illegal restraints of trade under Section 1.

There is no evidence of any contract, combination, conspiracy or other joint action among the networks. There is no evidence of combination or conspiracy, contract or agreement among the CBS affiliates.

The term "restraint" in the Act was not meant to include restrictions reasonably related to a legitimate business function. The functions of networks are reasonable and desirable and, as discussed in subsection b below, have been recognized by Congress and the FCC as such. Similarly, the practices of the CBS Television network, including option time, basic-required and programming, as discussed in subsections c, d, and e below, are clearly necessary to the legitimate doing of business, and any restrictions involved therein appear to be reasonably related to serving the network's legitimate business function.

b. Reasonableness of Network Functions

A network's principal business function is to furnish a national medium to advertisers. To do that it must assemble and have available a chain of local stations which together will afford a substantially nation-wide coverage. To that end it obtains affiliates, which, subject to a number of conditions that have already been mentioned, provide the network with reasonable assurance that they will broadcast sponsored programs of the network during certain hours of the broadcast day. The affiliate is the supplier of one element of the national medium, namely local broadcast services. In network broadcasting the affiliate does not buy anything from the network. It simply agrees to put its facilities at the network's disposal for an agreed price.

Network practices are functional. It is the function of a television network to present desirable program material to a large enough national audience to make it worthwhile for advertisers to bear the large expense of program production and transmission necessary for disseminating their commercial messages. Economic factors in the television industry dictate the functions and practices of CBS network broadcasting. Good programs are often expensive; so is the time needed to broadcast them. In order to persuade advertisers to bear these costs, the advertisers must be assured that an audience of sufficient size can be reached. One of the best ways to reach such an audience is to link together many different stations for the simultaneous broadcast of the program. In order to link stations together expensive interconnection facilities must be arranged. And in order to have stations to link, the network must have a call or option on some of the broadcast services of each station and the station must share in national advertising revenues. Finally, the programs must be good individually, and together must present a balanced and attractive whole, to attract and retain the necessary large audience and to preserve the reputation of the stations and the network.

In order to bring programs of the highest quality and proper variety to the nation's public, free of charge, all of these ingredients must be present: a balanced schedule of good programs and broadcast services must be available to the advertiser; interconnection facilities and revenue must be available to the affiliates. The function of a television network is to assemble those ingredients as a national advertising medium. Each television network must and does seek to guarantee the availability of all of these ingredients and, as discussed in subsections c, d and e of this section, the practices of television networks including option time, basic-required and network programming are merely reasonable means to those ends.

Recognition of Network Functions. Both the original Radio Act of 1927 and the Communications Act of 1934 defined chain broadcasting as the simultaneous broadcasting of an identical program by two or more connected stations and gave the FCC express authority to make regulations applicable to radio stations engaged in chain broadcasting. At the time of passage of the 1927 Act, networks had already been established and by 1934 were furnishing nation-wide program coverage; and since that time both television and radio networks have furnished the necessary ingredients for making chain broadcasting feasible and have been accepted by the Communications Commission, Congress, the courts, the stations, business and the public.

The need for networks as a means of realizing the full potential of broadcasting and the contributions made by networks to public enjoyment and the development of broadcasting were described by the FCC in its *Report on Chain Broadcasting,* May 2, 1941. While that report dealt specifically with radio networks, its explanation of the vital role of networks in broadcasting is equally applicable to television networks. The report stated in part:

> "The growth and development of chain broadcasting found its impetus in the desire to give widespread coverage to programs which otherwise would not be heard beyond the reception area of a single station. Chain broadcasting makes possible a wider reception for expensive entertainment and cultural programs and also for programs of national or regional significance which would otherwise have coverage only in the locality of origin. Furthermore, the access to greatly enlarged audiences made possible by chain broadcasting has been a strong incentive to advertisers to finance the production of expensive programs. . . ." (page 4)

The FCC has also recognized not only that networks are necessary for the occasional production of important live programs, but that television networks are necessary to realize the full programming potential of the television medium. Since, as discussed in detail below, it is necessary that most of the best educational and entertainment programs be originated from sources outside the individual stations and be distributed to the stations through an outside organization, it is clear that the responsibility for preserving a well balanced program schedule must in considerable part be placed in that distributing organization. In the report by the FCC on *Public Service Responsibility of Broadcast Licensees* dated March 7, 1946 (page 13) the Commission emphasized the importance of preserving a well balanced program schedule and concluded that in the public interest the networks should undertake responsibility for that function for the program hours which they broadcast. The Commission stated in part:

> ". . . The concept of a well rounded structure can obviously not be maintained if the decision is left wholly or preponderantly in the hands of advertisers in search of a market, each concerned with his particular half hour, rather than in the hands of stations and networks responsible under the statute for over-all program balance in the public interest.
>
> "A device by which some networks and stations are seeking to prevent program imbalance is the 'package' program, selected, written, casted and produced by the network or station itself, and sold to the advertiser as a ready built package, with the time specified by the

station or network. In order to get a particular period of time, the advertiser must take the package program which occupies that period. This practice, still far from general, appears to be a step in the direction of returning control of programs to those licensed to operate in the public interest. . . ."

Similarly in the *Report on Chain Broadcasting* the Commission recognized the importance of the production of programs by networks and emphasized that it had taken care to formulate its regulations so that this vital function would not be impaired. In the *ABC-Paramount Merger* case, 8 R. R. 541, the Commission based its approval of the merger in part on the fact that the large resources of Paramount would strengthen the ABC network and help it to fulfill its responsibility for programming.

c. Reasonableness of Network Option Time

Reasonableness of Option Time. The network must have some assurance that the national medium can be assembled and that each of its parts is available. Thus, if the network is to exist, it must make sure that each station will make available to the network certain hours (network option hours) of its broadcast time.

Each individual station existing alone offers only a limited local market for the would-be national advertiser. If the national advertiser attempts to arrange separately for the station time on each such station, he must make innumerable separate contracts for the stations' broadcast services; and he almost certainly will not be able to arrange for broadcasts at the same time on the various stations. He must deliver fragile and expensive films for his program to each station and must make separate arrangements for the necessary follow-up to ascertain the efficacy of his broadcasting on each station and whether the programs preceding and following his program on each station are of good quality and whether either their commercial message or content conflicts with that of his own. Even if the foregoing obstacles are accepted, the national advertiser dealing with the stations individually can arrange for the broadcast only of programs of the limited variety and quality which are available on film or are produced locally.

Affiliates enter into option agreements with networks because of their free determination that, by participating in the networks and assuring networks of outlets, the affiliates can earn important revenues while furnishing desirable services to national advertisers and top quality programs to their audiences. Without network affiliation, stations would not be able to offer the prestige and public following which come only from the regular broadcast of events of public interest and the other important programs which can be broadcast only through simultaneous live transmission over a large network. Moreover, normally, the station has virtually no sales or promotional expense for the portion of its broadcast day used by a network.

From the foregoing, it is apparent that network options on affiliate's broadcast services are not forced upon the affiliates by any illegal control or coercion. On the contrary, the options are willingly offered by the stations because, as shown above, they are so obviously in the business interest of the stations.

Each affiliate is free to adopt such other arrangements as it may wish. Affiliation agreements usually run for a period of only two years. Network affiliates do not complain about option time, nor do advertisers; thus, the parties who are directly interested in the health of the national television medium apparently recognize the reasonableness and need for option time.

Degree of Restraint on Affiliates' Freedom. Network option time is not an unreasonable restraint upon affiliated stations. Under FCC regulations the options may cover only a maximum of three hours each in the following four time segments: 8:00 a.m. to 1:00 p.m., 1:00 p.m. to 6:00 p.m., 6:00 p.m. to 11:00 p.m. and 11:00 p.m. to 8:00 a.m. CBS affiliation agreements provide for options only in the first 3 segments. Thus, even if all CBS options were exercised, at least 40% of the affiliate's time in each of the segments of the broadcast day would remain free for whatever other use the affiliate wished to make of it. Those segments and the percentage which could be made subject to network options were specifically determined by the FCC after a careful study of the industry and audience listening habits.

But option time is not in any sense under the complete control of the network. The affiliate is always free to reject any program on grounds of suitability; it can pre-empt any network option time for the showing of programs of special local interest; and the option rights of one network are not effective against programs of any other network broadcast by the affiliate. In view of the fact that a network consists of any two stations using interconnection facilities for the simultaneous broadcast of the same program, the fact that network options are ineffective against programs of another "network" is an important limitation. It means that the affiliate may use any hour subject to a network option for a program from any other existing network or any regional network which it may care to create or join, without being subject to any restrictions by virtue of its primary network affiliation; and such a network may easily be created for extended or occasional use merely by arranging for the simultaneous broadcast of the program over two or more interconnected stations.

But in addition to the foregoing limitations on the degree of control resulting from CBS options, there is the important limitation of business practice. As in many other business situations, the realities of the market place can greatly limit the apparent distribution of power resulting from contractual arrangements. It is easy to assume that a legal agreement, such as the options, creates effective power. But the options do not do so, nor are they intended to do so. They are designed to assure *within reason* that the network can be assembled when needed as a national medium. The network does not and could not insist on the strict exercise of its option rights. It requests stations to broadcast sponsored programs during option time, but stations do not automatically accede to such requests nor could they be made to do so. On the contrary, it is the clear understanding of the network and the stations that the option arrangements will be administered reasonably to accommodate the interests of all parties. Thus, stations often broadcast network programs on a delayed basis or refuse to broadcast a program altogether in order to preserve a local schedule which they prefer.

In summary, all these factors prevent network options from actually controlling affiliates during all the hours in which they are theoretically effective. As shown in the chart on page 25, CBS affiliates broadcast CBS Television network programs as ordered during only 41.9% of their hours subject to option.

Option time and local programs. Network option time does not materially restrict program production by local stations. In this respect there is no difference between option time and any other time devoted to programs not produced by the station. In order to bring in sufficient revenues and to attract the audiences on which such revenues depend, most of the station's broadcast hours normally must be used for programs beyond the productive capacity of the local station. The three evening hours covered by network options alone require 1,095 hours of good programs each year. No authority on television contends that any material portion of those 1,095 hours could be filled by programs produced by the local station.

Just as each local newspaper cannot have its own world wide news and picture service and its own national columnist and comic strips, each local television station cannot be expected to produce a major portion of its own programs, and certainly not those with the necessary drawing power required for national advertising. In fact, few individual stations can produce locally even the programs needed for hours outside of option time, and depend on outside sources for many of the programs broadcast during those hours. Of course, the one minor exception to the foregoing is the occasional program of special local interest, such as local political addresses, and network options are not effective against them.

Option time and independent program producers. Option time does not unreasonably restrict the sale of programs produced by independent producers. Independently produced programs are extensively used as a part of the network's programming service both during and outside option hours. Indeed, network broadcasts, including those during option hours, are an important outlet for independently produced programs and there is nothing in option time practice which unreasonably restricts the use of such programs. It is believed that network option time stimulates the sale of independently produced programs even during non-option hours. The revenues and prestige of a station increase as the number of hours for which it is used as a part of a network increases. The station's enhanced prestige attracts advertisers who, in turn, sponsor independently produced programs and part of the station's increased revenues are used to expand its total number of broadcast hours and for the purchase of independently produced programs for use during those increased hours.

Option time and national spot and local advertisers. Nor does option time unreasonably restrict access to station time by national spot and local advertisers. During 1955 expenditures for national spot and local time accounted for 55.7% of total television time expenditures. As shown at page 20, the growth of national spot and local advertising expenditures has not been inhibited by network practices, including network time options, nor do network time options preclude national spot and local advertisers from the so-called prime evening hours. The report of the Television Bureau of Advertising for the first quarter of 1956 shows that 55.5% of national spot television advertising expenditures were for programs and announcements broadcast during evening hours. Network option hours are used by national advertisers to bring the best programs to the stations' public and the largest revenues to the stations. During network option hours the local station is filling its proper role as a part of a national medium and the public properly demands that those hours be used to provide the highest quality entertainment or educational programs. Local advertisers cannot expect to gain access to all of the station's time unless they are able and willing to pay the local station for the valuable commodity they seek, and to give the station high quality programs for broadcast on the hours so purchased.

There is nothing in option time or other network practices which prevents local advertisers from meeting those requirements, and some energetic local advertisers have met them by working with other local advertisers to spread among them the necessary cost of the kind of program required, and by obtaining network time to carry that program, with each affiliate broadcasting a special commercial for the respective local advertiser.

But in any event at least 40% of the local station's time is not subject to network options and remains free for use by national spot and local advertisers.

Option time and per se violations of Section 1. In the course of the large body of cases arising under Section 1 of the Sherman Act, the courts have evolved a further definition of restrictive practices which specifically have been found not to be reasonably related to the doing of business. These restraints are so far removed from reasonable business practice as to be said to be illegal *per se,* without exhaustive analysis of the facts, and the element of intent to restrain trade can largely be inferred from the mere fact that such practices are engaged in. While it is sometimes loosely said that those practices are illegal without any consideration of the facts, analysis of the cases shows that in each case the court did review the facts sufficiently to be certain that an unreasonable restraint resulted, and the rule merely avoids an exhaustive analysis of the degree of the market affected and a detailed showing of intent to achieve such restraint.

For present purposes the field may be narrowed by disposing immediately of the best-known categories of restraints held to be illegal *per se*—those that involve agreements or understanding among competitors for the fixing of prices, the allocation of markets or other methods for eliminating competition which otherwise would have existed among them. There is no competition among the CBS affiliates because each of them is in a separate advertising locality and cannot be said to be competing with any other affiliate in any material sense of the term. There are no agreements or practices between CBS and its affiliates, or among its affiliates, controlling prices or in any other way affecting such competition as might be said to exist among them. At the time of entering into an affiliation agreement with the network, each station agrees on the amount the network is to pay for the station's time used by the network.

The second category of acts said to be illegal *per se* concerns agreements among persons not normally competing but dealing with one another, such as supplier and customer, which agreements restrain the freedom of choice of the customer or the market in which he seeks to deal. It is in this category of cases that the so-called "tie-in" rule discussed below and the rule concerning group "refusals to sell", discussed in subsection (d) below, have been evolved.

Option time and the "tie-in" rule—general. The basic principle of the "tie-in" rule is a simple one. This rule and the cases in which it was developed were reviewed extensively by the Supreme Court in the *Times-Picayune** case. The Court there stated as follows:

> ". . . The common core of the adjudicated unlawful tying arrangements is the forced purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product, resulting in economic harm to competition in the 'tied' market." (page 614)
>
> ". . . By conditioning his sale of one commodity on the purchase of another, a seller coerces the abdication of buyers' independent judgment as to the 'tied' product's merits and insulates it from the competitive stresses of the open market. But any intrinsic superiority of the 'tied' product would convince freely choosing

*A digest of this case is included in Appendix A.

buyers to select it over others, anyway. Thus '[i]n the usual case only the prospect of reducing competition would persuade a seller to adopt such a contract and only his control of the supply of the tying device, whether conferred by patent monopoly or otherwise obtained, could induce a buyer to enter one.' (page 605)

"... But the essence of illegality in tying agreements is the wielding of monopolistic leverage; a seller exploits his dominant position in one market to expand his empire into the next. Solely for testing the strength of that lever, the whole and not part of a relevant market must be assigned controlling weight." (page 611)

The tie-in rule thus depends on both (1) the possession of monopolistic leverage over one item and (2) the use of that leverage to obtain a position in another market.

In brief, the tie-in rule does not apply to CBS Television network practices because they do not in fact involve the "tie" of the sale of one distinct item to the sale of any other. And even if there were a tie-in in the sense of the cases above-mentioned, the rule still would not apply because the CBS Television network does not have the necessary dominance or leverage in any item to make a tie-in sale of it invalid under the rule.

Option time and the tie-in of separate programs. ("block booking") The furnishing of programs by the CBS Television network for broadcast during option time does not constitute an illegal tie-in sale of programs under any of the prior cases, including the motion picture cases. In the *Paramount* case the Supreme Court considered the tying of the sale of exhibition rights in one copyrighted motion picture to the sale of such rights in other copyrighted motion pictures. This tie-in practice, referred to as "block booking", was defined by the Supreme Court as "the practice of licensing or offering for license one feature or group of features on condition that the exhibitor will also license another feature or group of features released by the distributors during a given period." (page 156) The court found the practice to be illegal because "the result is to add to the monopoly of the copyright in violation of the principle of the patent cases involving tie-in clauses" (page 158) and added, "all we hold to be illegal is a refusal to license one or more copyrights unless another copyright is accepted" (page 159).

No tie-in exists. The tie-in rule has no application to option time, because time options do not involve the tying in of the sale or licensing of one program with the sale or licensing of another. Under its option time practices, the network does not sell any program to any station, let alone a block or group of programs. The station simply supplies its broadcast facilities to the network during option time. Under option time practices, the network is granted the right to broadcast, over the station's facilities, commercial programs furnished by the network, for which the network compensates the affiliate on the basis of the hours so used.

Nor does the fact that the station may broadcast several different programs furnished through the network on option time and sponsored by different advertisers constitute "block booking" to the stations of those programs. The basic element of illegality in "block booking", as in all other illegal tie-in sales, is the use of one item to coerce the taking of another and this coercion is not present in option-time practice.

At the time the option is granted, the stations and the network properly consider the entire option right as one item. The fact that option time may eventually be split by the network into separate periods of time for carrying different programs and made available to different advertisers plays no part in the granting of the option, and clearly, no part of the total option time is used to coerce the station regarding any other.

As the CBS Television network persuades each advertiser to sponsor a program during a part of option time, the program might be said to be "booked" on the station, but no one program is accepted by the station because of, or in relation to, other programs. In any event there is no tie-in of separate programs because the station has the right to reject any one or more of them. Experience has shown that the stations use this right of rejection both when they are dissatisfied with a particular program, when they have a local program which they would prefer to broadcast, and when they broadcast the program of another network.

Network programs are certainly not "block booked" to advertisers, as arrangements for each program that is sponsored by an advertiser are made individually by the network. Finally, even if CBS did tie-in the sale of some of the programs which it controls to the sale of other programs which it controls, the tie-in would not be illegal under the rule because CBS has no monopolistic leverage or dominance in the program field. CBS controls only a small percentage of the total programs available for or broadcast on television.

Option time and blind selling. CBS Television network option time practices do not raise any problem under the holding of the court in the *Paramount* case regarding blind selling. As defined in that case, blind selling was the practice of selling licenses on groups of motion pictures before they had been produced or shown to exhibitors. The court found that this practice was not as inherently restrictive of competition as block booking, although capable of some abuse, and, accordingly, required that exhibitors be given the right to reject 20% of the pictures which they bought "blind".

The court's holding in the *Paramount* case on blind selling does not apply to CBS Television network practices, since the network does not sell programs to its affiliates for network broadcast.

Moreover, stations do not broadcast network programs "blind", since the network gives affiliated stations advance information on and description of all programs, and the stations have the right to reject any proffered programs which are unsuitable or unsatisfactory and not merely the 20% required by the court's holding in the *Paramount* case.

d. Reasonableness of the Basic-Required Practice

General purpose. As pointed out above, in order to assure the availability of the ingredients necessary to the operation of a television network as a national advertising medium, the network must incur large fixed charges, including those for facilities, staff and interconnection. In order to operate economically, the network naturally must spread those costs as widely as possible. Also, the network as a national medium must have some continuity and acceptance both by advertisers and the public. Accordingly, the network has adopted the practice of setting a minimum of basic-required stations which any advertiser must use if he wishes to sponsor a program on the network.

The basic-required stations, presently 52 in number, are those whose rates as shared by the network cover the fixed charges of maintaining the network and whose use by an advertiser assures a minimum number of strong popular stations so that the network can be kept available for public use as a national medium. Included in the group are stations necessary to assure national coverage. The determination of which stations shall form the basic-required group is not made arbitrarily by the network. The group is made up of those stations which most advertisers order most often. As a result, CBS has had to expand its facilities, including interconnection, so as to make certain that it can meet the requirements of those advertisers. The network tries to persuade an advertiser to order as many stations as possible. It insists only that the advertiser order at least the basic-required group.

No collective agreement. The basic-required practice does not involve any collective agreement among affiliates or between the affiliate and the network. There is no agreement among the affiliates that there will be any basic-required list whatsoever. Except in the case of one affiliate which has insisted that its affiliation agreement contain a provision that it be included in the basic-required group if any exists, there is no agreement that any particular affiliate or any particular market shall be included on such a list. The network is free to change the affiliates and markets on the list as business factors and interconnection facilities change, without any approval or consultation with the affiliates. Any affiliate or market may be absent from the basic-required line-up at any time because it has elected to broadcast a local program or a program of another network or for any other reason, and none of the other affiliates would be able to interfere or normally would even know of it.

Basic-required defines the network as a medium. From a business point of view the basic-required station list merely defines the basic product which the network has to sell. The network is a national advertising medium and the basic-required list defines the minimum elements which must be assembled to form the national medium; it is an entity different from each of its affiliates as a national magazine is different from its circulation in any one locality. As national advertisers rarely can buy space in the pages of a national magazine for circulation only in limited areas, they cannot expect to use the network for reaching the audiences only in a few areas.

The basic-required station list is reasonably related to the needs of the national advertisers. The national advertisers seek a national audience; they do not generally distinguish between listeners in different cities or localities, but generally desire to cover as much of the national public as is possible at a reasonable cost per thousand. Indeed, almost all advertisers on the CBS Television network order more than the minimum basic-required station list.

Basic-required as a tie-in of stations' time. The reservation or disposition of the broadcast facilities of a group of stations assembled to form a network does not constitute an illegal tie-in sale under any of the prior cases. Such "sale" as might be found is not a tie-in sale of a group of separate items but the sale of a single facility or service. So the rule regarding tie-in sales does not apply. But even if the network were said to be a tie-in of separate items the tie-in would be lawful under the rule because the CBS Television network does not have the monopolistic leverage necessary to make such a tie-in illegal.

A network is a single service or facility. In the CBS basic-required practice there is no tie-in sale of different elements. There is only the sale of a single assembled service.

The Supreme Court recognized that concept in discussing tie-in sales in the *Times-Picayune* case. There it was concerned with the refusal by a publisher of both a morning and evening newspaper to sell advertising space in either separate from the other. After reviewing all the tie-in cases the court stated:

> ". . . The District Court determined that the Times-Picayune and the States were separate and distinct newspapers, though published under single ownership and control. But that readers consciously distinguished between these two publications does not necessarily imply that advertisers bought separate and distinct products when insertions were placed in the Times-

Picayune and the States. So to conclude here would involve speculation that advertisers bought space motivated by considerations other than customer coverage; that their media selections, in effect, rested on generic qualities differentiating morning from evening readers in New Orleans. Although advertising space in the Times-Picayune, as the sole morning daily, was doubtless essential to blanket coverage of the local newspaper readership, nothing in the record suggests that advertisers viewed the city's newspaper readers, morning or evening, as other than fungible customer potential. We must assume, therefore, that the readership 'bought' by advertisers in the Times-Picayune was the selfsame 'product' sold by the States and, for that matter, the Item." (page 613)

In the *Times-Picayune* case, the court held the sale of "readership" in the two papers was essentially the sale of one item and that no part could reasonably be said to be tied-in with itself. That clearly is true in the case of the CBS Television network. The sale to advertisers of "listenership" in the national television audience is the sale of one item; in the words of the court in the *Times-Picayune* case it is the sale of a quantity of "fungible customer potential".

A tie-in sale of stations' time would be legal. Even if the network were held to be a tie-in sale of station time, the tie-in would not be a restraint of trade under the tie-in rule, because CBS does not have the monopolistic position or leverage in any separate segment of station time necessary to bring the rule into play.

First, as pointed out in the discussion of option time above, CBS does not really control the time of its affiliates. 40% of the affiilates' time in each segment of the broadcast day is totally free of any option by CBS, and even the 60% of time under options is not under effective control by the CBS Television network.

But even if CBS options did constitute control over all the affiliates' time, it could not constitute the degree of monopolistic control necessary for application of the tie-in rule, for no one affiliate or group of affiliates can furnish the monopolistic leverage necessary to serve as the tying product to other stations in the network. For example, it cannot be said that CBS's control over its owned stations is the basis of tying in the purchase of other affiliates. CBS network-owned stations obviously do not dominate their markets, for they are all in highly competitive multi-station localities. It would be ineffective for the CBS Television network to try to force purchase of its network by relying on its owned stations as a lever.

Almost all the network affiliates on the basic-required list are similarly in multi-station localities. As shown by the chart on page 25 above, in all the localities on the basic-required list the CBS Television network has options on only 22.1% of the total broadcast time. Such control can not be said to approach the dominant position of the *Times-Picayune* in its market which the court found insufficient for the applicability of the tie-in rule, and clearly it would be ineffective for the CBS Television network to try to force purchase of its network by relying on those affiliates as a lever.

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In those two localities on the basic-required list in which the CBS affiliate is the only station, it is clear that the market is relatively so small that its leverage or coercive power is insignificant. In terms of the national market, those one station localities have such a small percentage of the total audience that there is no leverage in threatening to withhold them from any buyer who did not take the network. In any event, in such one station localities the real power of the network is very small. The control of the CBS Television network over its affiliates in single station localities does not in practice prevent them from freely joining other networks or often substituting spot for network programming. The network does not have any effective leverage by reason of its affiliations in one station localities.

Basic-required and refusals to sell. General principle. The so-called rule against "refusals to sell" also is a simple one. As stated by the Supreme Court in the *Times-Picayune* case, "refusals to sell, without more, do not violate the law". As has been demonstrated above, CBS may lawfully require a national advertiser to utilize a minimum number of network stations if he wishes to utilize the network at all. The exercise of this right necessarily means that the network may refuse to sell any one or more of the basic-required stations without the others. Such an individual refusal is not unlawful.

In order to escape that inevitable conclusion, it has been urged that the refusal to sell in the network situation is not an individual refusal on the part of CBS but is a group refusal to sell, the group being made up of CBS and its basic-required affiliates. Although it is sometimes loosely said that all group refusals to sell are illegal *per se*, it is clear that the courts have never so held and have not applied the rule to all group action or to all group refusals to sell. As shown by the cases, the rule applies only to those concerted refusals which are intentionally designed to affect competitors unreasonably or which actually result in unreasonable restraints on competition.

The rule was discussed in detail in *Fashion Originators Guild of America, Inc.* v. *Federal Trade Commission,* 312 U. S. 457 (1941). That case concerned a combination of clothing manufacturers and other textile interests, members of a guild who, among other things, by agreement refused to sell to persons who dealt with other manufacturers who violated guild rules against copying dress designs. The combination had done many other things restraining trade, and the Federal Trade Commission and the Court of Appeals had found that the combination had substantially lessened, hindered and suppressed competition and tended to create a monopoly. The Supreme Court reviewed the restrictive practices and found them in violation of Sections 1 and 2 of the Sherman Act. The rule concerning the group refusal to sell was stated as follows:

> ". . . the aim of petitioners' combination was the intentional destruction of one type of manufacture and sale which competed with Guild members. The purpose and object of this combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all brought it within the policy of the prohibition declared by the Sherman and Clayton Acts." (page 467)

The *Associated Press* case* also concerned a concerted refusal to sell, and none of the several opinions in the case suggested that such a refusal was illegal *per se.* Instead, each of those opinions was based on both the intent of the group and the actual effect of the group action on competition. Similarly, the *First National Pictures* case,* concerned a clear concerted refusal to sell with both the intent to restrain competition and that effect. It is thus another instance where the rule was applied to a concerted group refusal which resulted in a restraint on competition which was found to be both intentional and unreasonable.

Applicability of the rule. The CBS Television network basic-required practice does not violate the rule against individual or collective refusals to sell because there is no unlawful refusal to sell, there is no collective action, and there is no intent to affect competition or adverse effect thereon.

No unlawful refusal to sell. The basic-required practice is merely the definition of the basic network which is available and is offered for sale. The network does not offer an unlimited variety of broadcasting media for basic economic and business reasons explained above. There is nothing in the antitrust laws that requires it to sell other broadcasting media or to sell the time on individual stations or any particular combination of them. The decision is merely the decision to engage in one business, that of network broadcasting, instead of other businesses such as local broadcasting.

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*A digest of this case is included in Appendix A.

The individual stations do not refuse to sell under the basic-required practice. A large part of their broadcast time remains available for purchase as a local advertising medium and is available for national spot and local advertisers and all of their time remains available for use by any network since options are not effective against other networks. Even as to the part of the affiliate's time which is subject to network option, there is no refusal to sell in the sense of the rule. The affiliate is free to and does sell option time to others than CBS, subject only to the prior option thereon which may be exercised by CBS on 56 days' notice; and of course even that option is subject to all the limits discussed above.

No concerted action. Even if CBS's election to make the network available only as a minimum group of stations is somehow taken as a refusal to sell during those hours, such refusal can hardly be said to be collective, for as pointed out above, the basic-required list was established by and is maintained by the network without any agreement with its affiliates. In all the cases in which the rule has been applied, there has clearly been concerted action by the group; in the case of the network practices there is no such group action, but only an election by CBS to operate in a reasonable manner.

No intent to affect or actual effect on competition. There is no evidence of any material effect on competition from the basic-required practice even if it is a refusal to sell, and such effect on purchasers as may have resulted is not a restraint of trade within the purview of the act. The *Prairie Farmer* case*

*A digest of this case is included in Appendix A.

makes this clear. The facts involved in the *Prairie Farmer* case, including the markets and the effect of the practices in question, are parallel to many of those present in network television operations, and the material differences all emphasize that the restraint there approved was far more severe than that resulting from network practices. For example, CBS has not engaged in discriminatory pricing or other extreme methods of attracting advertisers from competitors as found in that case, and stiff competition is provided by two other networks and national spot television.

In both the case of the farm magazines and the CBS Television network, the principal market concerned is the advertising market. In both instances a grouping of individual units results in better service at cheaper cost, in competition to a certain degree with other individual units. Neither case involves any unlawful refusal to sell or boycott. However, in the *Prairie Farmer* case the better service and lower cost were not available on terms which permitted simultaneous purchases from independents as a practical matter, while CBS practices do not discourage its customers from buying from other networks or from buying non-network programs from affiliated or independent stations individually. In short, the holding of the Court of Appeals in the *Prairie Farmer* case appears to be directly applicable to CBS Television network practices. As the court stated, the inability of some persons in the industry to meet the competition from such acts "is one of the fortunes of development of industrial practices, and its existence should not stamp with the stigma of illegality the act of appellants" (page 984).

e. Reasonableness of Network Programming and Program Production

Network programming and the public interest. The CBS Television network must be responsible for its programming; that is, it must endeavor to make sure that each of the programs broadcast over the network is of high quality and that when considered together the programs furnish an appropriately balanced bill of fare including entertainment programs, educational programs, news and public interest events, all arranged in an appropriate sequence at appropriate times. The network activities in programming serve not only the business interests of all concerned but also the public interest.

Good programming attracts the large audience which affiliated stations must offer if advertisers are to pay the large cost of network advertising. The success of the network enterprise depends on good programming. Like a national magazine, it is the content of the medium on which its existence finally depends, and it would be as unreasonable to remove content control from networks as from magazines. If one program fails to satisfy the public, not only is one advertiser injured and disgruntled, but also other advertisers are disturbed by the injury to the stations' audience prestige from the fault in programming, and the affiliate, the network, the advertisers and the public are all injured. From the viewpoint of the public interest, as the FCC has recognized, the advertisers' individual choices cannot be depended upon to produce an appropriately balanced program schedule, and since most of the better educational and entertainment programs must be furnished by sources outside the individual stations, the networks must be responsible for serving the public interest in programming that portion of the broadcast day which they use.

Programming is the network's business. The CBS Television network is furnishing advertisers a programming service. That programming service is not two separate services consisting of programs and broadcasting, for from the point of view of the advertiser, the affiliate, the network and the public, the two cannot be separated. Indeed, a television program without broadcast services does not exist in the practical terms of any of the markets concerned. Nor do the broadcast services of a station exist in a market without a program worth carrying.

Independent producers and network programming. Network programming, including the production by a network of programs, cannot properly be said to constitute direct or primary competition with independent program producers, any more than an individual station can be said to be in direct or primary competition with such producers when its own staff creates a program which the station broadcasts over its own facilities, or any more than Life Magazine can be said to be in direct or primary competition with independent writers when its own staff prepares the editorial content of its magazines. A magazine is much more than a collection of articles and a television broadcast service is much more than a miscellaneous collection of programs. In both instances there must be policy direction, continuity, variety, and numerous other ingredients which cannot be obtained merely by buying up the chance creations of outsiders.

Historically, the stations and the networks provided both elements of the programming service; in the early years of television the networks arranged for time on affiliated stations and produced almost all the programs which were used in that time. Because the job of producing programs has become too great even for the networks and the stations to handle themselves and because the production of programs by outsiders has become a profitable business, others have begun to help in providing that part of the programming service.

To the extent that the networks and the individual stations do not completely fulfill their own program-producing functions, they provide markets for the products of outside program producers, and the independent producers are in competition among themselves for a share in those markets. The outside producers do not have any "right" to any part of those markets, any more than free-lance writers have a right to share the pages of Life Magazine or The Saturday Evening Post or any more than outside parts manufacturers have a right to share in the production of such assembled products as automobiles, refrigerators, radios, typewriters and cameras.

Extensive markets for programs produced by non-broadcasters do exist in the television field, however, because the magnitude of the task of creating a sufficient number of good programs of new and varied interest to fill a continuous broadcasting schedule is so great that the individual stations and the networks are incapable of performing it alone.

When an advertiser wishes to obtain CBS Television network programming services and offers to furnish the program portion thereof, CBS accepts the program if it is of appropriate quality and fits into the overall program schedule. But when the advertiser does not offer a suitable program, the network must aid him in obtaining one or must be able to furnish him a program itself. The CBS Television network does not make money on the production of programs or in the furnishing of assistance and facilities to program producers or to advertisers in the procurement of programs; the network loses money in those activities. But neither that fact nor the availability of "independent" program material can relieve the broadcasters, the networks or the stations, from their responsibility for programming or exclude them from program production.

The product of the networks being a nation-wide communication medium, their primary competition is with one another and with other media of communication, both national and local, including the local media provided by the individual stations. It is the force of that competition that compels each network to exert maximum effort to make its programming attractive, including, whenever necessary, resort to the products of outside program producers.

Tie-in of time and programs. It has sometimes been alleged that the networks violate the tie-in rule by tying-in the sale of network-produced programs with the sale of network time. But it appears that the CBS Television network does not engage in such a tie-in; and that even if such a tying-in were practiced by it, it would not constitute the kind of restraint proscribed by the tie-in rule, described above.

There are a few exceptional situations* in which the CBS Television network insists that certain programs be broadcast

*These are listed at p. 88, fn. 1, of the Supplemental Memorandum.

at certain hours in order to fulfill its responsibilities to the public, to its advertisers and to its affiliates, but even those are clearly not tie-in sales. They are the key segments of the network schedule which CBS thinks it must offer in order to preserve the proper balance of the over-all programming and to set the flavor and maintain the reputation of the network. For example, the network believes that a top quality news program should be broadcast every evening in the early evening hours. The network will not sell that fifteen-minute period for any other program. There are also entertainment programs, some produced by outsiders, for which the public demand has proved to be so great that the network feels it is in the public interest to insist that such programs be broadcast at appropriate times. Similarly, when it is possible to broadcast an event of great public interest, such as a political convention or a major sports event, the network will not allow the sponsor to substitute his own program.

Those programs are key or anchor programs. The network must be free to offer them in order to preserve its network and to fulfill its public responsibility in programming. The sale of sponsorship in this segment of the programming service is not a tie-in of separate sales of program and time; it is a sale of sponsorship for one commodity—the key part of the network's programming service.

In other instances, where a desirable program is so expensive as to exceed the advertising budget of any one sponsor, the network will enter into agreements with a group of sponsors. No one advertiser could be expected to bear the large program and time costs of "Omnibus". If the public is not to be denied the privilege of seeing such a program, a group of sponsors must be assembled. Obviously no one of them could be given the power to substitute his own program for the portion of "Omnibus" which he has sponsored.

If the foregoing instances can properly be called tie-ins, application of the rule of reason amply justifies them as lawful restraints.

The CBS television network does not tie the sale of programs and time. From a review of the CBS Television network practices and the conditions of the market, it is apparent that the network does not and could not use its control of CBS-produced programs to force the purchase of its network time. Similarly, the network does not and could not use its control of network time to force the purchase of CBS-produced programs.

The hours of CBS-produced programs broadcast over the network indicate that no tie-in of programs and broadcast time is engaged in. As pointed out above, the CBS Television network produces alone only 22.7% of the sponsored programs broadcast over the network, and network advertisers remain very large purchasers of independently produced programs.

In any event, since the network has no monopoly of the tying product, whether it be considered to be network time or network programs, a tie-in of the two would not be unlawful.

f. Conclusion Re Section 1

The CBS Television network practices are not unlawful restraints of trade in violation of Section 1 of the Sherman Act.

On the contrary, they are reasonable and essential to the legitimate conduct of its business. No one of them is employed with any unlawful intent to injure competitors, and no such injury has resulted.

5. *Network Ownership of Stations*

a. General

Ownership by CBS of the four stations which it now owns and of the two stations for which it has applied is lawful under the antitrust laws. CBS built its first station in order to promote the development of television; it acquired its other stations and has retained them in order to continue that development and to aid and preserve the efficient operation of its network.

Background. That the initial ownership of a television station by CBS was necessary and reasonable is hardly open to question. In the beginning, there were no television stations and the only way to develop the medium or to learn how to utilize its apparent potential was to build and operate a station. Later, in order that it might take its proper part in the development and exploitation of the television medium, CBS acquired its stations in Los Angeles and Chicago. In 1955, it acquired the station in Milwaukee. The acquisition of that station, which is a UHF station, followed the FCC order encouraging networks and other multi-station owners to enter the UHF field in order to stimulate its development.

Station operation became profitable before network operation which continued to lose money through 1952. The entire experience of CBS in radio and in television showed that station operation would be a more dependable source of profit than the more speculative network operation. Thus network ownership of stations serves a second important function, namely, as a stable source of funds to support the costly and risky business of network programming. CBS acquired and retains its stations partly as an investment.

Ownership of stations by CBS continues to serve both these purposes: It strengthens the network by giving it a reliable source of revenues, which helps it to continue to incur its large fixed charges and to assume its major long-term responsibilities. It enables CBS to continue to pioneer in the development of television as a national medium—for example, in the field of color television, and as an outlet for its programming developments, especially its major public-service programs and its experimental programs.

b. Status Under the Antitrust Laws

Vertical integration in an industry does not in itself constitute a problem under the antitrust laws. Specifically, in the motion picture cases the courts repeatedly affirmed that there was nothing illegal *per se* in the fact that a producer of entertainment programs also owned some of the outlets through which they were exhibited. None of the opinions in the *Paramount* case held that theatre ownership by the defendant distributors and producers was *per se* illegal, even though they owned 16% of the theatres in the country and 70% of the first-run theatres in the 92 cities of over 100,000 population. In the *Paramount* case, the District Court in its first opinion, 75 F. Supp. 1002, specifically found that, even in the context of the admitted conspiracy to restrain trade and to monopolize, the ownership of a material percentage of the nation's theatres by producers did not violate Section 2 of the Act. The Supreme Court in its opinion did not set aside that finding. On the contrary, having decided to amend the District Court decree in such a way as to require the divestiture of distributor-owned theatres, the Supreme Court instructed the District Court to reconsider whether the ownership of theatres by the distributors should be outlawed either as an integral part of a conspiracy to monopolize or as representing the fruits of such a conspiracy. On its reconsideration of the matter, the District Court again held that vertical integration was not in itself a violation of the Act. The court stated, in part:

> ". . . But here we are presented with a conspiracy among the defendants to fix prices, runs and clearances which we have already pointed out was powerfully aided by the system of vertical integration of each of the five major defendants. Such a situation has made the vertical integrations active aids to the conspiracy and has rendered them in this particular case illegal, however innocent they might be in other situations. We do not suggest that every vertically integrated company which engages in restraints of trade or conspiracies will thereby render its vertical integration illegal. The test is whether there is a close relationship between the vertical integration and the illegal practices. Here, the vertical integrations were a definite means of carrying out the restraints and conspiracies we have described. . . ." (85 F. Supp. 881, 893)

There is no evidence of conspiracy or of illegal restraint of trade in CBS's network operations. And if its present applications are granted, CBS will own only 1.4% of the country's stations. The *Paramount* holding is a direct authority for the proposition that CBS's ownership of six stations would not violate the antitrust laws.

The FCC has extensively considered the desirability of network ownership of stations and has concluded that such ownership is in the public interest. In the *ABC-Paramount Merger* case, the Commission did not disagree with the position taken by the three networks there involved—that network ownership of stations was reasonable as a source of income to support the large risks of network operations, as an outlet for major network programs and as a medium for continued network experimentation. In its efforts to promote the development of UHF television, the Commission has encouraged networks to go into the UHF field and CBS has attempted to cooperate by establishing a UHF station in Milwaukee and seeking a license for one in Hartford.

APPENDIX A

The Cases

a. The First National Pictures Case

In *U. S.* v. *First National Pictures Incorporated, et al.,* 282 U. S. 44 (1930), the United States attacked the establishment by a combination dominating the distribution of films of a uniform set of credit and business arrangements for the exhibition of motion picture film throughout the nation. That case followed the court's holding in the closely related case of *Paramount Famous Lasky Corporation et al.* v. *The United States,* 282 U. S. 30 (1930), which had just been decided and concerned the establishment by the same parties of a Standard Exhibition Contract and Rules of Arbitration throughout the motion picture industry.

The court found in both cases that (a) the combination dominated the motion picture exhibition business and (b) was motivated by the desire to restrain the freedom of action of all parties engaged in that business. The court pointed out that the combination had begun with producers and distributors controlling 60% of the film business who had then combined to deal with local Film Boards of Trade and other distributors who together controlled 98% of the entire business. In the *First National* case the court found that "The obvious purpose of the arrangement is to restrict the liberty of those who have representatives on the film boards and secure their concerted action for the purpose of coercing certain purchasers of theatres by excluding them from the opportunity to deal in a free and untrammeled market." [page 54] In the *Paramount Famous Lasky Corporation* case the court held that the arrangements could not be classed among "those normal and usual agreements in aid of trade and commerce", and added "Certainly it is unusual and we think it necessarily and directly tends to destroy 'the kind of competition to which the public has long looked for protection.'" [page 44] The court further stated: ". . . when under the guise of arbitration parties enter into unusual arrangements which unreasonably suppress normal competition their action becomes illegal." [page 44]

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Thus, in both these cases the court was concerned with (a) the clear instance of a concerted refusal to sell which involved almost the entire industry; (b) the clear intent to coerce the entire industry to follow unnatural business practices and (c) the actual effect of an unreasonable restraint on competition. These three elements combined to produce a restraint held illegal under the Sherman Act.

b. Prairie Farmer Publishing Co. Case

Indiana Farmer's Guide Publishing Co. v. *Prairie Farmer Publishing Co.*, 88 F. 2d 979 (7th Cir. 1937), involved charges of monopoly and restraints of trade under both Sections 1 and 2 of the Sherman Act and concerned business practices and markets similar in some respects to those involved in network television broadcasting. The case was considered by both the Federal District Court and the Court of Appeals for the Seventh Circuit on three separate occasions and by the Supreme Court of the United States twice. This extensive consideration of the case, plus the final denial by the Supreme Court of both a petition for certiorari and a petition for its rehearing after the final opinion of the Court of Appeals give to that court's opinion an unusual significance.

The facts described below are largely those set forth in the final opinion of the Court of Appeals.

The plaintiff was the publisher of the "Indiana Farmer's Guide", a weekly state newspaper for farmers, published and having the greatest part of its circulation in Indiana. The five defendants were the publishers of seven other weekly state farm newspapers in the so-called "corn belt" and an advertising agency owned by them, called "Midwest Farm Paper Unit", which solicited display advertising in those papers on a group basis. One of the seven papers was "The Prairie Farmer (Indiana Edition)", published by one of the defendants, a competitor of the plaintiff for circulation in Indiana and for advertising. The newspapers of the other defendants were published outside Indiana and each of them had its primary circulation in another state.

The action was a suit for treble damages under the Sherman Act and centered primarily on the group rates which the defendants offered. The defendants' group rates, which were available only to advertisers who placed their advertising in every paper in the group, were sufficiently lower than the aggregate individual rates of the member newspapers so that an advertiser could advertise in the whole group of seven papers more cheaply than he could advertise in the six non-Indiana papers of the group; hence an advertiser who had been using the plaintiff's newspaper in Indiana and the defendants' papers outside Indiana could, by dropping the plaintiff's newspaper and substituting the defendants' Indiana paper, not only save the total cost of his Indiana advertising but also get his advertising outside Indiana at a lower cost.

After the defendants commenced their group selling, in or about 1928, the plaintiff's newspaper began to lose advertising accounts. During the years 1928 to 1932 it lost some $146,000 of gross revenues from advertisers who had shifted their Indiana advertising to the defendants' Prairie Farmer (Indiana Edition), and plaintiff's net profit decreased from $72,000 in 1928 to $54,000 in 1929. Display advertising was, of course, its principal source of revenue. When the Midwest group operation was started, the five defendant publishers were publishing five out of twelve state farm papers in the corn belt, and were carrying 54% of the aggregate display advertising of those twelve papers. In 1932, of the remaining seven papers (the direct competitors of the defendants' newspapers in 1928), four had been acquired by various defendants and one had gone out of busines; and at the time of trial the defendants were publishing seven out of the nine state farm papers in the group's territory, and those seven papers were carrying 84% of the total advertising of the nine.

The complaint charged that the defendants:

> "entered into a contract, combination and conspiracy for the purpose of obtaining a monopoly of the farm paper business, including the publication, circulation, and distribution of printed matters and of advertisements of peculiar interest to farmers within the territory covered by the aforesaid publications; that in furtherance of this combination and conspiracy, they conceived a plan and design calculated to break down and destroy competition with other farm publications within said territory; that in order to effectuate that purpose

> they agreed upon a combination schedule of advertising rates for their combined publications, including the Indiana Edition of The Prairie Farmer and the Dakota Edition of The Farmer and Farm, Stock and Home, materially below the combined rates for the separate publications; that it was a part of said contract, combination and conspiracy that no other publisher of any farm journal circulating within said territory should be allowed to join with them in carrying any of the advertising business on equally favorable terms as fixed in the combination schedules, ..."

The principal theory of plaintiff's case was a charge of monopolistic purpose and restraint of trade as evidenced by the group selling plan and the resulting damage to competitors whose business was injured. The group selling plan was alleged to be a restraint of trade and the monopolistic purpose was alleged to be established by the use of such means to obtain business advantage. The court was considering defendants' motion for dismissal on the grounds that the evidence was insufficient to support a verdict by the jury. The case presented to the Court of Appeals two basic issues:

1. Whether the adoption and use of the group selling plan, involving the group discount rate, available only on a "whole group basis", and the refusal to admit competitors into the group, was sufficient evidence from which the jury could infer a purpose to monopolize or restrain trade; and

2. Whether there was sufficient evidence to go to the jury on the question whether the actual effect of the plan had been a restraint of trade or a tendency to monopoly in the business of publishing farm newspapers or farm newspaper advertising in the corn belt.

The court fully understood the effect of the group operation on the competitive position of the plaintiff and added that its ultimate effect might likely be that plaintiff would have insufficient advertising to maintain its existence. Notwithstanding, the court found that the activities of the defendants did not violate the antitrust laws, stating:

"Here, appellants, it seems to us, brought about a situation by agreement amongst themselves whereby in association they could reduce the cost of securing sustenance in the way of advertising in competition to a certain degree with national farm papers. What they sought in that respect was conducive to reduction of cost and to efficiency of operation of their businesses. Unfortunately, appellee was not in position to meet that competition; but that fact, it seems to us, is one of the fortunes of development of industrial practices, and its existence should not stamp with the stigma of illegality the act of appellants." [pages 983-4]

c. The Associated Press Case

In *U. S.* v. *Associated Press et al.*, 326 U. S. 1 (1944), the United States attacked the refusal by the members of the Associated Press to sell to competing nonmembers the local news collected by the individual AP members and the national and international news collected by the Associated Press itself. The court found that the Associated Press was the dominant source of news and that denial of access to its news was a serious competitive disadvantage to nonmember papers. The refusal to sell was accomplished through special by-law provisions of the Associated Press which prohibited the sale of news to nonmembers and which had been specifically designed to give each present member the power to deny membership (and hence access to AP news) to any newspaper competing with it. The court found these by-law provisions illegal and enjoined the AP from continuing to deny membership, and hence access) to competing nonmembers as a means of suppressing competition.

The court specifically did not outlaw all "refusals to sell" and carefully stated that it was not adopting a public utility concept which would require all collectively produced items to be sold to all would-be buyers. For example, the court stated:

> ". . . It is further stated that we reach our conclusion by application of the 'public utility' concept to the newspaper business. This is not correct. We merely hold that arrangements or combinations designed to stifle competition cannot be immunized by adopting a membership device accomplishing that purpose. [page 19]

> ". . . But however innocent such agreements might be, standing alone, they would assume quite a different aspect if utilized as essential features of a program to hamper or destroy competition. It is in this light that we must view this case. [page 14]
>
> ". . . They have also pooled their economic and news control power and, in exerting that power, have entered into agreements which the District Court found to be 'plainly designed in the interest of preventing competition.'" [page 16]

The basic element of illegality found in the refusal to sell in the *Associated Press* case was the clear intent of the members to restrain competition between members and nonmembers. That intent was made clear by the absence of any business justification for the collective refusal. The news which the members refused to sell to nonmembers was clearly a product which could have been sold to them; in fact in many cities AP news was sold to several competing papers published in the same city. The second necessary element in the refusal to sell in the *Associated Press* case was the crucial importance of the items which the members refused to sell. The court specifically found that the Associated Press was the dominant news-gathering agency and that denial of access to its news was a serious competitive disadvantage. At no point in the court's opinion, or in any of the concurring or dissenting opinions, did any of the justices attempt to dispose of the issue on the grounds that all concerted refusals to sell were automatically illegal or illegal *per se.* Indeed, all the opinions justified whatever disposition was being urged in terms of the effect on competition and the intent of the defendant, although the case presented a clear instance of a concerted refusal to sell.

d. The Griffith Case

In *United States* v. *Griffith,* 334 U. S. 100 (1947), the United States alleged a violation of Sections 1 and 2 of the Sherman Act on the part of four affiliated corporations and two individuals associated with them as stockholders and officers, who had operated motion picture theatres in eighty-five towns in several states. In thirty-two of those towns there were competing theatres. Fifty-three of the towns (62%) were closed towns, *i.e.,* towns in which there were no competing theatres. A master agreement was usually executed with each distributor covering films to be released by the distributor during an entire season. These master agreements lumped togther towns in which the defendants had no competition and towns in which there were competing theatres; they generally licensed the first run exhibition in practically all of the theatres in which defendants had a substantial interest of substantially all of the films to be released by the distributor during the period of a year; they included second runs and specified a total minimum rental to be paid by the circuit as a whole; they specified that films could be played out of the order of their release, so that a specified film need not be played in a particular theatre at any specified time; and they granted clearances over competing theatres, specifying substantial periods of time after the exhibition of each particular picture by defendants in one of their theatres before competitors could exhibit those pictures. These practices prevented defendant's competitors from obtaining enough first or second run films from the distributors to operate successfully.

The Supreme Court held that defendants' practices should be enjoined. The central point of the case in the court's opinion is that "the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor, is unlawful." The court found actual monopoly power in the fact that defendants owned the only theatre in many towns; and it found that such monopoly power had been used to obtain discriminatory privileges in film licensing. The court, therefore, found that defendants' action constituted a violation of Sections 1 and 2 of the Sherman Act. In the course of its discussion the court emphasized that the ownership of the single theatre in a town or of the exclusive right to exhibit a film, might constitute a monopoly in the popular sense, but that it would not violate Section 2 of the Sherman Act *unless* such a monopoly either (a) was obtained through restraints of trade recognizable under Section 1, or (b) was coupled with the specific purpose or intent to exercise the power to exclude competition. Since the court had found that the defendants had used their monopoly to injure competition, there was present the necessary purpose or intent to use the monopolistic power.

e. The Paramount Pictures Case

In *United States* v. *Paramount Pictures, Inc., et al,* 334 U. S. 131 (1947), the United States was suing to restrain violations of Sections 1 and 2 of the Sherman Act. The defendants were (1) the five major motion picture companies which produced and distributed most of the first run motion pictures and through subsidiaries or affiliates owned or controlled large numbers of motion picture theatres, (2) two other motion picture companies which produced and distributed motion picture films and (3) another company which was engaged only in the distribution of motion pictures. The District Court found that two price fixing conspiracies existed among the defendants—a horizontal one between all of the defendants and a vertical one between each distributor defendant and its theatre licensees. These two conspiracies resulted in the fixing of minimum admission prices which the exhibitors agreed to charge in their motion picture theatres. The District Court also found a conspiracy to maintain a uniform system of clearances of a fixed and uniform character, whereby it was provided that a period of time must elapse between successive exhibitions of the same motion picture within a particular area or in specified theatres. The District Court also found a combination among the exhibitor defendants, whereby they agreed with each other and their affiliates that some theatres of two or more of them normally competitive would be operated as a unit under a profit sharing arrangement, with the result that many theatres were operated collectively rather than competitively. The District Court also found a combination among certain distributors and certain independent and affiliated theatre circuits in the form of master agreements and franchises, whereby favored exhibitors were given exhibition rights to all motion pictures distributed by certain defendants over long periods of time. The District Court also found that the defendants had discriminated against small independent exhibitors in favor of large affiliated and unaffiliated circuits through various kinds of preferential contract provisions, all in favor of the larger circuits. Finally the District Court held that the practice of licensing or offering for licensing, before production, one feature or group of feature pictures, on condition that the exhibitor will also license another feature or group of features released by the distributors during a given period, was illegal for the reason that it adds to the monopoly of a single copyrighted picture that of another copyrighted picture which must be taken and exhibited in order to secure the first. This enlargement of the monopoly of the copyright was condemned in reliance on the principle which forbids the owner of a patent to condition its use on the purchase or use of patented or unpatented material. The basic fact found in the *Paramount* case was that the defendants were engaged in a series of unlawful conspiracies for the purpose of restraining trade.

The District Court had found no need for ordering the divestiture of theatres owned by the defendants on the ground that there had been no monopoly or attempt to monopolize the exhibition of films, and that the evils of the conspiracy could be satisfactorily dealt with by a decree providing for the competitive bidding for exhibition rights in films plus outlawing the various individual illegal practices. The Supreme Court, however, struck down the competitive bidding section of the District Court's decree on the ground that it would unreasonably involve the courts in continuing supervision of the film industry. The Supreme Court then set aside the District Court's findings on monopoly in exhibition, because, in view of the elimination of the competitive bidding system, (a) it was necessary to make sure that the defendants were not allowed to retain the fruits of their conspiracy, (b) it was necessary to make sure that the defendants were not allowed to retain the instrument of their conspiracy and (c) because it was not clear that the District Court's consideration of monopoly in exhibition had given proper emphasis to the importance of certain separate segments of the market, especially that constituted by the first-run theatres in the nation's 92 largest cities. The Supreme Court emphasized that vertical integration of producing, distributing and exhibiting motion pictures was not illegal *per se,* but that it might be illegal if (a) it had been conceived with a specific purpose and intent to restrain trade or to monopolize, or (b) there were present a specific purpose or intent to misuse monopolistic power resulting from vertical integration, if it in fact existed even though it had innocently arisen.

On remand, the District Court found that the first-run theatres in the country's 92 largest cities constituted an important separate segment of the market, and that defendants' combined ownership of 70% of such theatres, together with their receipt of 73% of domestic film rental and the strategic advantages derived from vertical integration resulted in a monopolistic power to exclude competition when desired. The court then found that the conspiracy to fix prices and restrain trade had been powerfully aided by defendants' theatre ownership and that such ownership was thus illegal because it had actually been used as an active aid to the conspiracy. The District Court also emphasized that it was not holding vertical integration to be illegal and added: "The test is whether there is a close relationship between the vertical integration and the illegal practices. Here, the vertical integrations were a definite means of carrying out the restraints and conspiracies we have described." (85 F. Supp. 881, 893).

In defining the percentage of the market controlled, the District Court gave a comprehensive justification for lumping together the theatre ownership of each of the defendants. The justification included not only a review of extensive illegal agreements among them, but also a careful analysis to show that the defendants' owned theatres did not, in actual fact, compete with each other in any significant number of instances.

f. The Times-Picayune Case

In *Times-Picayune Publishing Co. et al.,* v. *United States,* 345 U. S. 594 (1953), the United States Supreme Court reversed the judgment of the District Court which had found that certain of the practices of defendant publishing company constituted an unreasonable restraint in violation of Section 1 of the Sherman Act and an attempt to monopolize trade in violation of Section 2 of the Sherman Act. The Company published the only morning newspaper in New Orleans (The Times-Picayune) and one (The States) of the two evening newspapers in that City. The Company had adopted a policy of permitting classified and general display advertising to be bought only for combined insertion in both papers and the Department of Justice charged that that practice (referred to as "unit selling") violated Sections 1 and 2 of the Sherman Act.

[X]

The court reviewed extensively its previous decisions with respect to the practice of tying the sale of one item to the sale of another, and the case is especially important on account of this careful study of tie-in sales. The court stated that illegality in such tie-in arrangements depends upon the presence of two factors: (a) dominance or monopolistic control over one item and (b) the wielding of the monopolistic leverage in that item to force the purchase of the other. It pointed out that the market involved was the entire newspaper advertising market in New Orleans and that the Company's morning newspaper accounted for only 40% of such market. The court then added that, if each of the three New Orleans newspapers shared equally in the advertising market, the Company's morning paper would have sold 33%; and it concluded that in the absence of patent or copyright control, the 40% market occupation of the morning newspaper was insufficient to confer the market dominance necessary to make the morning paper a product to which sales of other products could not be legally tied under the Sherman Act.

The court gave a second separate basis for holding the tie-in rule to be inapplicable. It stated that the advertising market was really a market for "readership" and that the morning and evening papers published by the Company were the same in terms of the purchase of "readership" and hence were not properly two separate items which could be said to be tied together. No leverage in one market could be used to exclude competitors in the second because the products were held to be identical and the market the same.

Having held the tie-in rule inapplicable, the court proceeded to test the legality of the action under the general prohibition of unreasonable restraint of trade under Section 1 of the Sherman Act. The court stated that the "unit selling" contracts would be illegal, if unreasonable restraint was either their object or effect, and that the court must decide in terms of the percentage of business controlled and whether the action came from business requirements or evidenced a purpose to monopolize. The court reviewed the history of newspaper advertising in New Orleans and in the country and noted the widespread use of "unit selling". It pointed out that the single independent evening paper (the Item) was prospering and was increasing its sale of advertising. The court then held that the government had proved neither actual unlawful effect nor facts which radiate a potential for future harm. The court also added that the "unit selling" practice had been widely adopted in the United States and was apparently a useful business practice and showed no specific intent to monopolize.

The court also reviewed the Company's refusal to sell advertising in either paper alone, in terms of the cases dealing with refusals to sell. The court discussed group boycotting or concerted refusals to deal in violation of Section 1, and found that individual refusals to sell were illegal only if accompanied by specific illegal intent or other unlawful conduct. The court found, at most, nothing but a simple refusal to sell in the "unit selling" practice.

The court next reviewed the status of the Company's actions under Section 2. It pointed out that since there was no holding of actual monopoly, Section 2 could be violated only if the Company had "attempted" to monopolize, and added that the attempt to monopolize required a finding of specific intent. Since the court had found the unit contracts to be motivated by reasonable business needs and had found no other evidence of specific intent to monopolize, the court held that no attempt to monopolize could be found.

Columbia Broadcasting System

485 Madison Avenue, New York 22, N. Y.

Mr. Stanton. (3) An Analysis of Senator John W. Bricker's Report Entitled "The Network Monopoly": This analysis deals point by point with the several contentions, facts, conclusions, and proposals embodied in that report.

(The document is as follows:)

[XII]

An Analysis of
Senator John W. Bricker's Report Entitled
"The Network Monopoly"

PREPARED FOR THE SENATE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE BY
COLUMBIA BROADCASTING SYSTEM, INC.

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INTRODUCTION

On April 30, 1956, Senator John W. Bricker transmitted to the Senate Committee on Interstate and Foreign Commerce a "special report" entitled "The Network Monopoly." The general implications and conclusions of that Report, as well as many of its facts, are inaccurate. It is the purpose of this memorandum to analyze these implications, conclusions and facts. For purposes of clarity, this memorandum will follow the major general sections of the Report:

A. The impact of the networks on the objectives of the Federal Communications Act of 1934.

B. The alleged disproportionate "revenues, profits and income" of the CBS and NBC Television Networks.

C. The alleged problem of "access to network programing."

D. The alleged problem of "overlap."

E. The alleged problem of "superstations" and the proposal to reduce power.

F. The CBS allocation plan.

This memorandum will not deal with the propriety of the Report's publication of figures, submitted to, and hitherto retained by, the Federal Communications Commission in confidence, in the face of the explicit suggestion of the Commission that disclosure of financial figures transmitted by it be in aggregate form so as not to permit identification of particular networks and stations. CBS believes it desirable not to confuse substance with procedure; hence this memorandum will focus solely on the substance of the Report.

Further, this memorandum will not deal with the proposal to abandon any numerical limitation upon ownership of television stations and to substitute a limitation based on aggregate station coverage of a maximum permissible percentage of population. That proposal does not appear to be immediately relevant to the issues concerning network practices. CBS reserves the right to comment on this proposal at such time as it becomes more appropriate.

Nor will this memorandum deal explicitly with the Report's proposal to regulate networks beyond the regulation presently exercised by the FCC in its rules governing the relationship of station licensees to networks. This proposal is dealt with at pages 141-143 of the CBS Supplemental Memorandum. It is there pointed out that the FCC already exercises considerable regulatory powers over a network through its licensing of the stations which are the only outlets the networks have to the air.

Those powers are extensive, and are already being extensively exercised. The Report states (p. 22) that the passage of S.825 would confirm those powers and serve as a directive. But it does not specify the content of the directive. Since the networks are already subject to the regulatory powers of the FCC, so far as the use of the public airwaves is concerned, it must be concluded that the directive to which the Report refers would be to regulate aspects of networking other than those concerned with the use of airwaves. Such an extension of regulation beyond the field in which it is appropriate is contrary to the general philosophy of American public policy that regulation should be confined to those fields in which it *is* necessary and appropriate, and should not be unnecessarily extended to activities not requiring regulation.

So long as the government can, through its licensing of stations, require those stations to operate in the public interest as that interest is determined by the regulatory agency, the public interest is adequately protected. Regulation going beyond what is necessary to protect the public interest, such as regulation of a network as a supplier of program material, or in its business relations with stations or advertisers, would have to be justified by special circumstances in networking not common to the general run of unregulated activities. This memorandum will show that the Report's contention that such special circumstances exist in television networking are unfounded, so that there is no reason to extend the regulation of networks beyond that which is exercised through regulation of their outlets to the airwaves.

A. THE INDUSTRY'S FINANCIAL PATTERN AND THE CONGRESSIONAL OBJECTIVES

It appears to be the basic contention of the Report that the facts and conclusions therein establish that the major objectives embodied by the Congress in the Federal Communications Act of 1934 "have been minimized—even subverted" (p. 1) by the CBS and NBC Television Networks. This contention, in turn, appears to be based largely on the Report's analysis of certain financial data. Thus the Report compares revenues and income of the two television networks and their owned television stations with those of various groups of stations in support of its charge that "*there is an unmistakable and clear-cut pattern in industry finances which operates to defeat each of the three congressional intentions outlined earlier*" (p. 2, italics as in original).

In the succeeding sections of this memorandum, CBS will analyze the financial data presented, in order to illustrate the many errors which pervade the Report. But, at the outset it should be emphasized that the Report fails to relate the data on revenues and income to the basic charge that the networks have defeated the major objectives of the Congress. For the facts are precisely to the contrary: The networks have operated to speed the development of television and to advance, not "subvert," the congressional intentions listed in the Report.

The *first* of these intentions is to preserve and encourage competition. The intensity of competition among the networks is so strong, and so well known, that it need not long be dwelt on. It is also obvious that this competition exists not only on the network level but among the affiliates, each of whose ability to compete is vastly strengthened by its network affiliation. This, too, is universally recognized in the broadcasting industry. It cannot therefore be questioned that the networks have made a major contribution toward the preservation and encouragement of competition in television broadcasting, competition of the keenest kind with immeasurable benefit to the public which is offered programs of a richness and variety unknown in the rest of the world.

The *second* congressional intention is to provide meaningful service to the entire country. Here again the contribution of the networks cannot seriously be challenged. In the course of ten years a fully nationwide television system has been built so that now less than one per cent of the population of the country is outside the service area of television. Certainly the single most effective force behind this remarkable growth of television has been the program leadership of the networks. If television had to depend only on the programming efforts of local stations, the development of a nationwide television system would have been immeasurably delayed. Thus this congressional intention, as well, has been served by the development of network television broadcasting as it has actually taken shape.

The *third* congressional intention, to have as many local stations as possible, has also been well served by the networks as they have developed in this country. Testimony is at hand from the operators of small market television stations concerning the value of a network affiliation to them in helping them get started and in aiding them to continue in operation.[1] This fact too is so well known to all who are familiar with the in-

[1]See, for example, testimony of Murray Carpenter before the Senate Committee. See also the statement filed with the Committee by Frank C. McIntyre, Vice President and General Manager of KLIX-TV, Twin Falls, Idaho, describing the benefits to that station of CBS Television's Extended Market Plan and declaring that "CBS-EMP has given small market operators heart. It's given them the confidence they lacked. *It's proven more than any other single factor that small market television will work*" (italics supplied). Cf. Appendix B of this memorandum.

dustry that it need be supported by no lengthy argument. The simple fact of the matter is that the availability of popular network programs with genuine nationwide appeal means, to any potential station, that it can get a tremendous boost in getting started through a network affiliation. Unfortunately the number of networks is limited, ultimately by spectrum considerations and more immediately by certain shortcomings in the allocation pattern, so that the contribution of a network affiliation to the prosperity of a station in a small market is underlined by the complaints of those few stations (see p. 25, footnote 1, below) which are not in a position to get an affiliation with a leading network. Furthermore, as noted below, the affiliation does not, of course, guarantee all network programs to the affiliates. It does, however, contrary to the Report's statement (see below), give that station access to network programs, access that can be realized in actual occupancy if advertisers can be persuaded to add the station to their line-up.

Therefore, not only do the financial figures presented by the Report fail to substantiate the charge that industry finances operate to defeat each of the three congressional intentions, but the clear and obvious operation of networking in television broadcasting is such as to advance the three objectives. In fact, as CBS has called to the attention of this Committee, of the FCC, and of the general public, such shortcomings as the present television system has with respect to these three objectives proceed almost entirely from imperfections in the allocation system. CBS has done its best to suggest such remedies for those imperfections as seem to be practical in present circumstances.[1]

B. Revenues and Profits[2]

The Report contends that networks and selected affiliates have such disproportionately large revenues and profits that a monopoly exists and regulation of networks is justified. Both the facts and concepts which underlie the conclusions of the Report are erroneous; its conclusions, therefore, must fall. CBS does not deny that since 1952 its television operations have been profitable on an annual basis. Nor does CBS apologize for that success. CBS has assumed that a major—and wholly permissible—business objective of any American enterprise, whether in broadcasting or in any other commercial field, is to operate profitably. So far as CBS is aware, success as measured by profits has never, under any system of free competitive enterprise, been regarded as evil or undesirable.

By no accepted measures does CBS have anything approaching monopoly in the television broadcasting business. See *Memorandum Concerning the Applicability of the Antitrust Laws to the Television Broadcast Activities of Columbia Broadcasting System, Inc.*, prepared by Cravath, Swaine & Moore, and submitted simultaneously herewith. Neither the revenue nor the profit figures which are emphasized in the Report justify the charge of monopoly. Nor are they abnormal

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[1]*Proposals and Comments of Columbia Broadcasting System, Inc.*, submitted to the FCC, December 14, 1955, Docket No. 11532.

[2]The Report refers to "revenues," "net income" and "profits" (e.g., p. 3). Since the distinction between net income and profits is not apparent, this memorandum will treat both as "profits."

when measured by the experience in other fields of American commerce.

1. *Revenues.* The Report states (pp. 2-3) that in 1954 the combined gross revenues of the four television networks (CBS, NBC, ABC and DuMont), together with their 16 owned television stations,[1] totaled $306.7 million. This total, according to the Report, was slightly more than one-half of the 1954 revenues of the entire industry. The Report further states that the CBS and NBC Television Networks and their eight owned stations each received more than one-fifth of the revenues of the entire television broadcasting industry.

The irrelevance of the percentage of industry revenues represented by *network* revenues is established by the CBS Supplemental Memorandum (pp. 86-87), submitted to the Senate Committee simultaneously herewith. As there shown, a network's functions are such that necessarily its expenses, and hence its revenues, must be large.[2] Indeed, the Report would appear to concede this, since it states (p. 3) that "gross revenue is important only as it relates to net income."[3]

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[1]NBC and ABC each owned five television stations in 1954; CBS and DuMont each owned three. The Report mistakenly asserts at page 24 that CBS (as well as NBC and ABC) has "been able to build or purchase . . . 5 stations in the country's top markets." While NBC and ABC each has five VHF stations, CBS has only three. Like NBC, CBS also has a UHF station.

[2]In any event, if the CBS Television Division and the CBS Television Network were treated as separate corporations, their 1954 sales would rank 198th and 227th, respectively, among United States industrial corporations. See *Fortune,* Supplement, July 1955, *The Fortune Directory of the Five Hundred Largest U. S. Industrial Corporations.*

[3]The 1954 network shares of total network revenues are not representative of current shares of network revenues. ABC's share of national television network gross time billing was nine per cent in 1953; rose to 13 per cent in 1955; and was at the rate of 17 per cent as of February 1956.

2. *Profits.* The Report attempts to establish "exorbitant" profits, and hence a monopoly, of the CBS and NBC Television Networks. Even if amount, either absolute or relative, of profits were determinative of the issue of monopoly or to the need for regulation, the Report has resorted to improper and meaningless measurements of profits, and has ignored available facts concerning American business which, by putting the profits of the two networks into proper context, deprive the figures cited by the Report of the significance which the Report seeks to attach to them.

But it should be noted at the threshold that whatever significance profits might otherwise have from the viewpoint of public interest or the justification for special Federal intervention, the touchstone of profits is peculiarly inapposite in the field of broadcasting. For the broadcasting business is unique in that its product for the public—programs—are furnished to the public *free.* The viewer does not pay for the programs. While an infinitesimal fraction of the price of a sponsor's product may be represented by the cost of television advertising, the viewer can, and often does, enjoy the program without ever buying that product. It is exceedingly doubtful that prices of products would be even one penny lower if all television advertising should cease. On the contrary, to the extent that television advertising serves as an efficient tool of distribution and marketing, and thus increases mass manufacture, or supplants less efficient and more expensive marketing tools, it serves to *lower* the prices of the products advertised.

It clearly cannot be established, therefore, that the general public, or that portion of it which views television programs, is in any way adversely affected by the prices which the networks and stations charge advertisers, or the profits which the networks and stations earn. In these circumstances, the Report's emphasis on profits as a justification for regulation is particularly inappropriate.

Irrespective of its inappropriateness, however, the contention of the Report to establish that the two networks' profits are exorbitant or unusually high is without substance.

(a) *The impropriety of measuring profits in relation to net investment.* The Report (see pp. 3, 5-6, 15-17) seeks to establish excessive profits by utilizing the measure of the ratio of such profits to "net investment." "Net investment," as used in the Report, refers only to net tangible property owned and devoted exclusively to broadcast service, as reported to the FCC. Net tangible property consists only of (i) the value of land and (ii) the depreciated value of buildings, equipment, furniture and fixtures. It excludes not only all other tangible assets but also all intangible assets on which the broadcasting business is so heavily dependent. By thus defining "net investment," and measuring profits on so narrow a basis, the Report ignores the other major investments which a network must make in order to be successful. It ignores the $53.1 million which CBS invested through 1952 in television networking before the network earned any profits whatever. It ignores, too, the fact that on a cumulative basis, the CBS Television Network did not earn any profits at all *until 1955.* Clearly, therefore, the measure of the ratio of profits to net investment, as the Report defines it, is misleading, meaningless and inappropriate. The major area of

American commerce in which the ratio of profits to net investment has been accepted as a meaningful measure is that of certain public utilities such as telephone companies and railroads. The central characteristic marking such public utilities is their requirement of a massive investment in land and in plant in order to carry out their basic functions of transmission or transportation—of messages in the case of telephone companies and of freight and passengers in the case of railroads.

The sharply differing nature of broadcasting—as well as most other industries—from public utilities such as these is immediately apparent. The principal asset of a broadcaster, and particularly a network, is its creative and organizational activities. Like a newspaper's circulation, a network's good will, popularity and standing with the viewing public are part of its central asset, built up over the years. The $53.1 million, noted above, is one of the costs of that asset. For a broadcaster's investment is not so much in bricks and mortar as it is in a creative, sales, and service organization.[1] If the networking function were to be broken down into two parts, that of studio operation and physical transmission on the one hand, and program origination and organization and sales on the other, almost all of the tangible

[1]The Report's contention in this respect is not saved by the fact (see Senator Bricker's letter, dated May 23, to John Crosby) that profits have already taken into account operating expenses since, of course, profits represent the difference between revenue and expenses. The profits of 1954 have obviously not taken into account the expenses of previous years which were not met by the revenues of those years. As noted at page 10, on a cumulative basis through 1954, there were no profits. In any event, the letter begs the question. The crux of it is whether (assuming, contrary to the fact, that profits are relevant at all) it is proper to measure the reasonableness of profits in the broadcasting business as a percentage of "net investment," not whether absolute profits are correctly defined.

property can immediately be recognized as attributable to studio operation, and almost all of the profit creativity to the second category of functions. The major activity of the CBS Television Network is not mere studio operation and physical transmission[1] but rather is the business of creating or obtaining programs, organizing the program structure, and selling to advertisers.

The fact is that profitability in broadcasting follows program leadership rather than bricks, mortar and electronic equipment. In broadcasting, profits are the reward for the investment in creative activities and for the exercise of professional skill and not for the use of buildings and equipment. To compare the profits which arise from program and sales leadership with investment in bricks and mortar is to derive a numerical figure that has no relationship to the economics of the business. The Report's use of the public utility concept of profit measurement in the field of broadcasting is like concluding that since a flea can jump over 100 times its own height, and an elephant only a fraction of its height, the flea is more powerful than the elephant.[2]

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[1]In fact, physical transmission of network programs is largely performed by others than the network—transmission over AT&T lines and broadcasting over the affiliates' transmitters. These are obviously not the tangible property of the network and hence are not included in the investment base on which the ratio of profits is measured.

[2]How inappropriate a measure is return on net tangible investment in a non-public utility field can readily be illustrated. For example, a successful author's total investment in physical property may be only $100 in a typewriter. After years of training, education and effort, he may complete a book for which he receives $100,000. His rate of return, by the measure adopted by the Report, would be 99,900 per cent (assuming that the typewriter qualifies as "net investment"). Yet he is hardly to be condemned for "exorbitant" profits or to be characterized as a monopoly—economic or otherwise.

The arbitrary nature of this method of measuring profits is also indicated by the variations which depend on the irrelevant circumstance of whether

Broadcasting is not unique as a business for which the measure of return on capital investment is inappropriate. There are many other businesses in which physical properties play an even greater share than in broadcasting, but in which the principal profit source is nevertheless creative activity rather than bricks and mortar.

Attached hereto as Appendix A is a table setting out operating profit as a percentage of net tangible property for selected companies in 1954. In the context of such facts, the figures of 108 per cent attributed to the CBS Television Network and owned station activities and of 65 per cent for its network operations alone are neither abnormal nor immodest. As Appendix A illustrates, in a creative industry such as publishing, McGraw-Hill Publishing Co. profits before taxes in 1954 were 526 per cent of net tangible property; Time, Inc. earned 116 per cent; Moody's earned 500 per cent; and New Yorker Magazine, Inc. earned 2000 per cent. But as Appendix A also shows, it is unnecessary to rely only on publishing to show that the networks' percentage of return on tangible property is not uniquely high. Even in the field of manufacturing where bricks and mortar

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property is rented or owned. For example, it is roughly estimated that the physical property rented by CBS Television has a net value of about $15 million. If CBS Television owned, rather than rented, that property, the 108 per cent which the Report attributes to it would immediately be cut by about a third. The figures relating to the ABC Television Network also underscore the absurdity of this measure. As the Report notes, all of ABC's net tangible property in television broadcasting is assigned to its owned stations. Hence, the day that the ABC Television Network becomes profitable—and that point may already have been reached, since the last publicly available figures are for 1954—the ABC Television Network will have the highest rate of return on net tangible property of any of the three networks. As soon as it earns one dollar in profits, since the denominator is zero, the return under the Report's method of computation will be an infinite percentage.

play a larger part, there are many corporations which earn rates of return on net tangible property very much larger than those conventionally used as a standard in public utility rate-making: Thus, in 1954, Boeing Airplane Co. earned, before taxes, 377 per cent of its net tangible property; Douglas Aircraft Co., Inc., 249 per cent; Lockheed Aircraft Corp., 156 per cent; General Motors Co., 107 per cent; General Electric Co., 80 per cent; Coca-Cola Co., 92 per cent; and Pepsi-Cola Co., 119 per cent.

But it is increasingly being found by regulatory agencies that return on net tangible investment is an inappropriate measure *even in the field of public utilities itself*—and precisely for the same reasons that it is inappropriate in the non-public utilities field. In some public utilities, such as the operation of bus lines, net tangible property plays a much smaller role than in other public utilities such as telephone companies, railroads, or electric power companies. For those lines of public utilities in which the role of net plant investment is smaller, the *operating* ratio—that is, the ratio of expenses to revenues—is coming into use in rate cases instead of the return on net plant investment. One expert points out that there is in process "a revolution in rate regulation of mass transit companies."[1]

The same considerations which led to this revolution in the public utilities field operate even more powerfully to disqualify return on net tangible property as an appropriate measure in television broadcasting. It thus becomes immediately apparent that the reasonableness of profits, the need for regulation, and

[1]Charles Alan Wright, Associate Professor of Law, University of Minnesota Law School, "Operating Ratio—A Regulatory Tool," *Public Utilities Fortnightly,* January 1, 1953.

the question of the existence of a monopoly cannot turn on the inappropriate and meaningless measure advanced by the Report. The measure of ratio of profits to net investment is entirely irrelevant to an evaluation of competition in broadcasting. If this were a proper measure, the Federal Government would be compelled to condemn, intervene in, and regulate an enormous variety of other important industries. Obviously, no such suggestion can be seriously proposed.

(b) *The impropriety of using profits as a measure of monopoly.* The Report also seeks to rest its case for "economic monopoly" and the alleged need for regulation upon the contention that the CBS and NBC Television Networks and their eight owned stations had a disproportionately large share of the industry's net income before taxes. The Report, in so far as CBS is concerned, finds such disproportion in the fact that in 1954 the CBS Television Network and its three owned stations had a net income of slightly more than 28 per cent (of which 14.5 per cent was accounted for by the network and 13.6 per cent by the three stations) of the total net income for the entire television broadcasting industry. When viewed in context, the figure does not support the conclusions which the Report seeks to establish.

At the threshold, it should be emphasized that where, as here, there is no substantial evidence whatever of legally defined monopoly or intent to monopolize, a company's share of industry profits finds far simpler and less sinister—and more accurate—explanations than "economic monopoly" and "economic strangulation." Industry leadership in the field is a less dramatic but a more innocent and accurate underlying explanation. So too in the broadcasting industry, the highest share of profits may quite naturally follow program, sales and organizational leadership. And in this connection, it is, perhaps, something more than coincidence that the programs of the CBS Television Network (whose profits comprise 14.5 per cent of the industry share) *account for at least 26.2 per cent of all U. S. viewing.*[1]

Even if 1954 is viewed in isolation, without taking into account the investments of prior years which necessarily contributed so heavily to the profits of 1954 (see p. 10, above), the CBS Television share of industry profits was not abnormally large. The Report, again, has ignored the general experience of American business so as to create the impression of abnormality.

Similarly, the Report ignores the more normal and meaningful measure of profits—as operating ratio or percentage of margin on sales—a measure which has in fact come to be adopted by regulatory bodies even for some types of public utilities (p. 14, above). In 1954, the CBS Television Division margin after taxes on sales was 7.8 per cent, while the CBS Television Network's margin on sales after taxes was 4.6 per cent. On a *cumulative basis,* the CBS Television Network's return after taxes *through 1955* was 1.03 per cent of sales

[1]Based on the average of the two weeks ending March 10, 1956, and derived from the A. C. Nielsen Television Index report. The percentage of 26.2 is understated: It includes only the viewing of CBS Television Network *commercial* (sponsored) programs, and does not take into account network sustaining programs.

without taking interest payments into account; the return was *only 0.46* per cent if, as they properly should be, interest payments are taken into account. These percentages are to be compared with about 2,400 leading non-financial corporations tabulated by the First National City Bank, showing an average margin on sales in 1954 of 6.1 per cent[1] and a range of 3.9 per cent to 12.6 per cent approved by regulatory bodies for certain types of public utilities.[2]

Nor even when compared to the profits as a percentage of sales within the television broadcasting industry itself are such profits of the CBS Television Division or Network unusually large. As appears at pages 53-55 of the CBS Supplemental Memorandum, the FCC's own *published* figures for 1954 show that the profits after taxes of 377 independently owned television stations correspond to nine[3] per cent of sales—almost twice the percentage of profits of the CBS Television Network, while the average net return, after taxes, on total sales of three television stations operating in Detroit was 22 per cent; of three stations operating in Milwaukee, 21 per cent; of two

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[1]The Bank tabulated the income statements of 2,691 non-financial corporations. Average profit margins were computed for all the companies included which published sales or gross income figures. These represent about nine-tenths of the total number of reporting companies excluding the finance group.

[2]Professor Wright, in his article referred to in the footnote on p. 14, analyzed 22 cases in which operating ratios rather than net tangible property were used as the basis of rate regulation by public utility regulatory bodies. He found a range of approved ratios, after taxes, of 87.40 per cent to 96.08 per cent—corresponding to a net margin on sales of 3.9 per cent to 12.6 per cent. Approved ratios, before taxes, ranged from 88.12 per cent to 94.20 per cent—corresponding to a pre-tax margin on sales of 5.8 per cent to 11.8 per cent.

[3]Assuming a 52 per cent corporate tax rate in the aggregate.

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stations operating in Boston, 25 per cent; and of four stations operating in St. Louis, 22 per cent.[1] Since these percentages are the average percentages for each city, obviously the percentages for particular stations in each market were higher. During the same year, the profits after taxes of the three CBS owned stations in New York, Chicago and Los Angeles, averaged 23 per cent of sales. And CBS has estimated that in 1954, the total net profits of seven CBS Television Network affiliates not owned by CBS exceeded the net profit of *the entire CBS Television Network.*

Not only is the rate of the profits of the CBS Television Division and Network activities thus well within normal range; so also is its share of entire industry profits. The Report (pp. 3-4, 21) is mistaken in its emphasis on the fact that the CBS Television Division in 1954 earned 28 per cent of the net income of the entire industry. That percentage is, in fact, relatively low when compared with the percentage of industry income enjoyed by the leading company in each of a variety of other industries. This is established by the following table showing, for a selected list of industries for 1952, the per-

[1]Assuming a 52 per cent corporate tax rate in the aggregate.

centage of net profits before taxes of each industry which is accounted for by the most profitable company in the industry:[1]

Industry	Percent of Industry's Corporate Profits Reported by Leading Co., 1952	Number of Corporations In the Industry
Manufacturing		
Soap & Glycerine, Cleaning & Polishing Preparations, etc.	83%	1087
Distilled Liquors, etc.	76%	212
Non-alcoholic Beverages	73%	2513
Motor Vehicles (incl. Bodies and Truck Trailers)	73%	560
Tin Cans and Other Tinware	70%	68
Petroleum and Coal Products	51%	697
Dairy Products	50%	1599
Glass and Glass Products	48%	635
Yarn and Thread	45%	579
Meat Products	43%	1392
Office and Store Machines	41%	325
Tires and Inner Tubes	36%	35
Tobacco Products, excl. Cigars	33%	151
Agricultural Machinery & Tractors	32%	712
"Other Food Products"	30%	1898
Chemicals and Allied Products	27%	7628
Electrical Machinery & Equipment	26%	3639
Periodicals	22%	1389
Trade		
Variety Stores	33%	832
Food—Retail	19%	10275

[1]The year 1952 is the latest year for which authoritative Treasury figures on corporation income for entire industries are available. The data appear in *Statistics of Income for 1952*, U. S. Treasury Department, Part 2. The universe covered comprises all corporations filing income tax returns, including both profitable and unprofitable corporations. The data on profits of leading corporations for 1952 are from *Moody's Industrials* 1953.

The *Statistics of Income* defines profits before taxes as before Federal income and excess profits taxes but after state and some portion of foreign income taxes. The individual firms' profits from *Moody's* were taken before state, foreign and Federal income taxes. Thus, the percentages in the table are slightly overstated.

It is clear, therefore, that the profits of the CBS television operations are well within limits of normality. It is equally clear that it is wholly inappropriate to measure either monopoly or the need for regulation by examining solely the percentage of industry profits represented by the leading corporation in the industry. To do so would, as illustrated, compel regulation and condemnation as monopolistic of a far greater variety of enterprises than the single target of the Report—and with equal absence of justification.[1]

(c) *The unjustified attack on the 1954 testimony of Frank Stanton.* In the course of its discussion concerning the profits of the CBS and NBC Television Networks, the Report, as noted, seeks to establish that the profits were unreasonable by using the inappropriate and meaningless measure of the ratio of profit to investment in tangible property (see pp. 10-12 above). The Report compounds the error by stating (p. 5) that these profit ratios are "difficult to reconcile" with testimony on June 18, 1954, of Dr. Frank Stanton in which he stated before the Senate Communications Subcommittee:

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[1]It should be noted also that the percentage of industry profits earned by the CBS Television Network in 1954 may well not be typical for the long range future. The continued growth of the ABC Television Network (See page 8, footnote 3) can be expected somewhat to reduce the CBS Television Network's share of network's profits.

Further, the profitability of "other" (non-network owned) and smaller stations can reasonably be expected to increase. The history of radio tends to substantiate a long run tendency for networks and their owned stations to experience a profit trend rising less sharply than that of "other stations." Thus, in 1938—a period in radio's life cycle roughly comparable, chronologically, to 1954 in television's life cycle—the AM networks and their owned stations earned profits before taxes approximately equal to the total profits of the "other stations." By 1945, the AM networks and their owned stations earned profits less than 40 per cent as large as those of "other stations."

> "The television networking business is a complicated and delicate business. Profit margins are relatively small—particularly when one takes into account the enormous investments and operating expenditures involved.
>
> "It is easy to upset the balance of television networking and sink it altogether."

This testimony of Dr. Stanton was accurate both as of June 18, 1954, and as of today.

Dr. Stanton was not, of course, discussing profit margins in terms of profits as a ratio of physical investment. It was, and remains, a fact that profit margins of networks are relatively small in terms of operating investments, expenditures and total sales or revenues[1] particularly in the light of the unusual risks and advance commitments which television networking involves.[2] As noted above, even in 1954 the profits, after taxes, of the CBS Television Network—the most profitable network—were only 4.6 per cent of sales, and on a cumulative basis through the end of 1955, its profits, after interest and taxes, were only *less than one-half of one per cent of sales,* as compared to the *average* percentage margin on sales in 1954 of 6.1 percent of about 2,400 leading non-financial corporations. Clearly, these figures alone fully justify Dr. Stanton's testimony that the profit margins in the "television networking business" are "relatively small."

Further, Dr. Stanton's testimony explicitly dealt not only with the CBS Television Network but with the *entire* "television

[1]CBS Supplemental Memorandum, pp. 11, 17 to 30; see pp. 16-18 above.

[2]CBS Supplemental Memorandum, pp. 50-52, 87.

networking business." The profit margins of the NBC Television Network were lower than those of the CBS Television Network, while both the other television networks, ABC and DuMont earned no profits in 1954 as the Report itself establishes. The most recent data on the entire industry available as of June 18, 1954, when Dr. Stanton testified, were the figures for 1953 given to the same Subcommittee by the then Chairman of the FCC, Rosel H. Hyde. His testimony indicated that the four television networks, in the aggregate, suffered losses of $3 million in 1953. Since, in the same year, all 323 television stations reported on by Mr. Hyde had aggregate profits before tax of over $71 million, Dr. Stanton's conclusion that the profit margins in networking were small and delicate was well justified.

The only actual 1954 figures available to Dr. Stanton as of June 18 were those for the CBS Television Network for the first four months. On that date, the CBS Television Network forecasts had been extended only through September 30 and it was not until August that a forecast was carried through for the whole year. As of June, the forecast for the first nine months of 1954 stood at $91.3 million in net sales and $2¾ million profits, after taxes, or three per cent of net sales. It is to be recalled that 1954 was the year of the first substantial break-through of television networking into significant profits. The situation, while clear now by hindsight, was, in 1954, fluid, and the future hardly certain. As was customary, the major selling for the fall season occurred during the summer and was not completed until the end of August. Hence, when

Dr. Stanton testified, the 1954 profits before taxes of the CBS Television Network of $13.1 million were not predictable with any certainty whatever. Indeed, as of June 1954, the entire profit which had been forecast for the first nine months of 1954 would have been wiped out had only six one-half hour programs per week for the last half of the year been cancelled.

In the circumstances, whether with or without benefit of hindsight, the Report is patently mistaken in finding the facts "difficult to reconcile" with Dr. Stanton's testimony.[1] Both in the light of the facts as they existed on June 18, 1954, and as they later proved to be for the entire year 1954, his testimony that profit margins of "the television networking business . . . are relatively small—particularly when one takes into account the enormous investments and operating expenditures involved" was exactly accurate.

C. "Access to Network Programming"

The Report includes (pp. 6-8, chart on p. 9) a section entitled "Access to Network Programing" which, according to the Report, establishes the existence of an "economic monopoly" (p. 8). Its apparent contentions are that (1) "access to substantial amounts of network programs, is nearly 100 per cent essential to profitable operation of the individual station"[2]

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[1]Another error in the section of the Report dealing with revenues and income should also be noted: At page 6, lines 6-10, the Report refers to net 1954 income of "ABC and its 5 wholly owned stations" and "DuMont and its 3 wholly owned stations." The income stated in the Report is for the owned stations only.

[2]The remainder of this section of the Report treats such "access" as available only if the station carries 41 to 100 per cent of the commercial programs of the CBS or NBC Television Networks (see, e.g., pp. 6, 8). If the station carries less than 41 per cent, it is treated either as unaffiliated or as lacking "access."

(p. 6); (2) those CBS and NBC television affiliates in the top 20 markets and in Zone I which have such "access" garner a disproportionate share of industry profits; (3) exclusive of selected affiliates with such "access" in Zone I, "television is a losing proposition on the average" (p. 8); and hence (4) an "economic monopoly exists." The underlying premise of this section appears to be that a station can be profitable only if it (a) is in one of the largest markets in the most populous section of the United States and (b) has a CBS or NBC television affiliation.

Both the facts and the premises in which this contention is built are fallacious.

1. *The fallacy of the "access" contention.* The basic fallacy of this section of the Report is its use of the concept of "access" in a manner which ignores basic television (and other) economics and, by so doing, finding sinister indicia of monopoly attributable apparently to wrongdoing by the CBS and NBC Television Networks. The fact is, however, that the economic phenomena which are characteristic of our American economy account for the differences which the Report finds.

This basic error appears at the threshold of the section of the Report dealing with "access."[1] The CBS Television Network does not in fact determine an affiliate's "access" to the commercial schedule. The Report confuses "access" with "occupancy" and ignores the fundamental distinction between the

[1]The same misconception pervades other sections of the Report, particularly that dealing with "overlap," where alleged disparities between stations are attributed to the networks' "furnishing" and "placing" (p. 8) commercial programs on some stations and not others. See pp. 38-41 below.

two. Every CBS Television affiliate—and for that matter, every non-affiliate located in a city (or hyphenated city-group—e.g., Seattle-Tacoma, Houston-Galveston) other than that in which a regular affiliate is located (CBS Supplemental Memorandum, Appendix C, pp. XXXII-XXXIII)—has "access" to every sponsored program.[1] It is the advertiser, by his orders for particular stations, and not the network, who determines on which affiliates the programs will be placed. The fact, therefore, is that those stations which carried less than 41 per cent of the network commercial programs did have "access" to such programs in the sense that had the advertiser been willing to order such stations, the programs would obviously have been offered to them.

Indeed, far from acting to restrict the number of affiliates ordered, the CBS Television Network by its sales efforts, its discount structure and its Extended Market Plan has affirmatively sought to expand the number of stations ordered by advertisers (see CBS Supplemental Memorandum, pp. 78-82, 100-102)—and has succeeded in doing so by increasing, between 1955 and 1956, the average daytime lineup of stations for sponsored programs from 72 to 83, and the average nighttime lineup from 87 to 121. For, it is to be noted, it is to the advantage of the network to sell as large a number of its affiliates as possible for each commercial program.

The Report has thus distorted normal and basic economic phenomena into an allegedly sinister aspect of networking.

[1]As of March 1, 1956, only 36 of the 429 commercial stations were unaffiliated with one of the three networks (CBS Supplemental Memorandum, p. 8). Many of the 36 remaining stations also had "access" as per-program stations.

The explanation of differences among markets lies not in network monopoly or manipulation, but in the structure of the markets and the nature of the stations concerned. The population distribution of the American people is not geographically equal: More people live in some areas than in others. Nor is the economic distribution equal: For example, ten per cent of the counties in the United States account for 70 per cent of all consumer spending in the country. Further, there is the basic factor of cost-per-thousand in television as in all other advertising media (see CBS Supplemental Memorandum, pp. 59-65): The cost-per-thousand of a station reaching a large population is lower than that for a station reaching a small number of people. The former, accordingly, is normally more attractive to the advertiser.

All these natural population and economic phenomena unquestionably account for disparities between stations. Networks must accept them as inevitable and within reasonable limits, take steps, in so far as feasible, to counteract any undesirable effects, as they do (p. 25 above). But they are no more responsible for these factors than the Congress is responsible for the ebb and flow of the tides and the rising and setting of the sun.[1]

[1]To say that an affiliate's profits depend upon the percentage of a leading network's programs carried is to confuse cause and effect. Those stations which are attractive to advertisers will be ordered by more network advertisers, and they will also be ordered by more national spot and local advertisers. They will therefore be the profitable stations. The cause is the advertising value offered by the stations. One effect is the amount of network programs ordered on the station, as well as the amount of national spot and local advertising. Another effect is the station's profitability. The Report has accordingly identified one effect of the advertising value offered by a station, namely the percentage of network programs carried, and has used this effect as an index of another effect, profitability. There is no question that, on the

This section of the Report is, in addition, premised on still another threshold error—that "actual access to substantial amounts of network programs,[1] is nearly 100 per cent essential to profitable operation of the individual station"—the only exceptions being stated to be the stations "in the largest cities" (p. 6). A subsequent section of the Report itself demonstrates this statement to be erroneous. Thus the Report (p. 15) states that stations "in such relatively small markets as Minot, N. Dak.; Great Bend and Pittsburg, Kans.; Kearney, Nebr., and Joplin, Mo." have "prospered" with "reasonable access to network shows." Yet the striking fact for present purposes is that during the week of October 10, 1954, which apparently is the week used by the Report for measuring the percentage of network commercial programs carried, none of these stations

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average, this is an efficient index. The higher the percentage of network programs carried by a station, the higher will be, on the average, that station's profitability. The mistake is to regard this index relationship as a causal one.

The Report might have directed a similar complaint against Cadillacs, since the owners of Cadillacs receive a disproportionate share of individual incomes. It might then have concluded that access to a Cadillac is essential to a high level of income. This, too, is confusion of cause and effect.

[1]An additional implication of this section of the Report is that the affiliation must be with the CBS or NBC Television Networks if profitability is to be achieved. The implication is mistaken. Many ABC Television affiliates are also profitable. The Report itself discloses (p. 6) that the ABC-owned stations themselves were profitable. Although the profit figures are not available to CBS, CBS believes that a substantial number of other ABC Television affiliates were also profitable. Conversely, the profit figures relating to Zone I CBS and NBC Television Network affiliates are misleading because of the arbitrary cut-off point of 41 per cent of network sponsored programs. Thus, many CBS and NBC Television Network affiliates are excluded, and unquestionably a number of such affiliates carrying less than the 41 per cent suffered losses. Thus the inference is clearly justified that something other than CBS or NBC Television Network affiliation is often the determinative difference between profitable and unprofitable stations. Again, in most cases, the difference arises out of the difference in the structure of the markets concerned—their size and their relative location—as well as in the nature of the stations. These are not factors which are, or can be, governed by CBS or NBC.

carried more than 20 per cent of the commercial network programs originated by its primary affiliated network. Pittsburg, Kansas, carried just 20 per cent. The Kearney station carried only about 11 per cent of the CBS commercial schedule, Joplin and Minot each eight per cent.[1]

The Report itself at page 15, accordingly, squarely refutes what appears to be a central contention of the material at pages 6-8. The short of it is that "access" to network programs, or more accurately network advertisers' orders for stations, is simply one reflection of the economic and geographic complex which govern a station's profitability. The stations listed at page 15 profit because of favorable geographic and economic factors, and they do so without 41 per cent or more of the network schedule.[2]

2. *The fallacy of the statistics relating to the share of industry profits earned by selected groups of affiliates.* The Report seeks to bolster its central contention that "access" to CBS or NBC Television Network programs is essential to profitable operation of a station, and that because these networks con-

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[1]Kearney also carried 0.8 per cent of NBC's commercial programs and Minot, five per cent. Great Bend, Kansas, did not go on the air until November 15, 1954.

[2]Another error in the "access" section may also be noted: The Report states (p. 6) that "Access to network programs and the accompanying national spot advertising represents access to 77 per cent of all television revenue, as stated by the FCC in its 1954 report." If this means that 77 per cent of all television time sales are attributable to network and national spot advertising (wherever placed), and only 23 per cent to local advertising, it is literally correct. But its implication that stations without "actual access to a substantial amount of network programs" must get along with the 23 per cent of all television revenue accounted for by local advertising is incorrect. Affiliates with less than 41 per cent access, as well, obviously have "access to," and receive, national spot and network revenues and non-affiliates, of course, receive national spot and, occasionally, network revenues as well.

trol "access" they hold an economic monopoly. This attempt is made by setting out a series of statistics relating to the alleged profits of (a) affiliates in the first 20 markets (p. 7) and (b) 73 selected affiliates in Zone I (p. 8). When viewed in context, the statistics are significant only of economic and geographical factors and nothing more.

That the CBS and NBC Television Network affiliates in the first 20 markets[1] earn a substantial share of the industry profits is hardly remarkable. For the 20 largest markets accounted for about 58 per cent of the personal income in the United States, about 52 per cent of the homes, and 61 per cent of the television families. The combined share of evening audience enjoyed by CBS and NBC Television Network affiliates in these markets averaged 75 per cent.[2] Thus it readily appears that the share of profits earned by these stations in the first 20 markets has no sinister significance whatsoever, but stems only from the nature of the markets themselves. Indeed, other material elsewhere in the Report places these figures in proper perspective, for, in dealing with a different point, it states (p. 24) that "relative financial position of station operators is determined

[1]Since the Report did not list the markets considered as the first 20 markets, CBS has been unable to determine to which markets and stations the Report refers. In this memorandum, CBS has assumed that the first 20 markets are those listed in *Investigation of Television Networks and the UHF-VHF Problem* (Progress Report prepared for this Committee by Robert F. Jones). CBS has used Seattle-Tacoma and Houston-Galveston as combination markets. Making these assumptions, there were 74 stations in the 20 markets as compared with the 73 mentioned in the Report, and the CBS and NBC Television Networks each had 19 affiliates, if a point be stretched to count WDTV, Pittsburgh, as a CBS Television Network affiliate. The figures in the text below will accordingly relate to the 36 "remaining stations" rather than the 35 mentioned by the Report.

[2]Telepulse, January 1955, except for Pittsburgh, Pa. and Houston-Galveston, which are February 1955.

by reference to total net populations covered, rather than total number of stations, . . ."

Consideration of the presumptive identity (see p. 29, footnote 1) of the 38 CBS or NBC Television Network affiliates in the first 20 markets on the one hand, and the 36 remaining stations in these markets on the other, reveals the degree to which the comparison made by the Report (p. 7) depends on factors other than those implied. The 38 CBS and NBC Television Network affiliates are, except for seven stations, all well established pre-freeze VHF stations. Of the 36 remaining stations in the 20 leading markets which the Report implies are considerably less profitable because of the absence of NBC and CBS Television Network affiliation, ten are UHF stations in unequal competition with the leading VHF stations in the country, a circumstance which certainly can not be laid at the door of CBS, which has consistently opposed the intermixture of UHF and VHF stations.

Another two (plus five of the UHF stations mentioned above) of these 36 remaining stations were in operation less than one full year in 1954. They should certainly not have been expected to receive a full year's share of revenues in less than a year. Nor should these stations or the three stations among the 36 which started operation only in 1953 be expected to be as profitable in their first or second year on the air as their well established competitors in their seventh to fourteenth years.

Also included in the remaining 36 stations are the six stations in New York and Los Angeles that had no network affiliation, and the four stations with only DuMont affiliation. As shown by the published figures of one of them, KTTV, these stations have been slow in breaking into the black, but they are beginning to do so. They do have prospects of future profitable operation.

That leaves the 11 established ABC VHF affiliates in the 20 leading markets. These are presumably profitable stations and probably account for more than 100 per cent of the profits credited to all 36 "remaining" stations since the losses of the UHF's, new stations, and unaffiliated stations are combined with their profits.

Thus, not only is it reasonable that a major share of the station revenue and profits of the country should be found in the 20 leading markets, but it should also be expected that in those leading markets the old established VHF stations with CBS and NBC Television Network affiliation should be significantly more profitable and do a significantly larger share of the business than the UHF stations, the newly established post-freeze stations, or the unaffiliated stations.

Even more meaningless and misleading is the Report's attempt to show that 73 selected CBS and NBC Television Network affiliates in Zone I earn a disproportionately high share of industry profits and that exclusive of these 73 stations, "television is a losing proposition on the average" (p. 8). The facts are to the contrary.

In order to establish the erroneous conclusion which the Report seeks to advance, it indulges in arbitrary manipulation and exclusions and inclusions. First, it places on one side the profits of the entire industry. Second, the Report selects Zone

I—obviously that area of the United States where the population is most heavily concentrated: Zone I accounted for about 49 per cent of the entire population in 1954 and as of June 1, 1955, accounted for about *58 per cent of all U. S. television homes.* Third, instead of computing all Zone I CBS and NBC Television Network affiliates, it lifts itself by its own bootstraps by arbitrarily including only those CBS and NBC Television Network affiliates which are ordered for at least 41 per cent of the commercial schedule—thus including 34,[1] *but excluding 23*, CBS Television Network affiliates in Zone I, as well as many NBC Television Network affiliates. It may be noted that the CBS Television affiliates in Zone I, which carried 41 to 100 per cent of the CBS Television Network commercial schedule in 1954 had, as a group, an average hourly cost-per-thousand of $1.72, while such cost-per-thousand was $2.42 (41 per cent higher) for the remainder of the CBS Television Network.

It will be seen, accordingly, that important *natural* factors readily account for the relatively large share of profits which these selected affiliates earn. Yet it is only through this highly selective—and hence meaningless—process that the Report can conclude that in 1954 the net income of these 73 stations *plus* the net income of the CBS and NBC Television Networks exceeded the net income of all four networks and 410 stations.

The manipulation is such that there is no significance to the conclusion which the Report derives from the profit data. But

[1]The Report states (p. 6) that 34 affiliates in Zone I carried 41 to 100 per cent of the CBS Television Network schedule. The records of CBS indicates *only 29* such affiliates which carried this percentage of programs over the entire year 1954. During the week of October 10, 1954, there were 35 such affiliates.

it should be noted that even if the Report's manipulations were accepted, its conclusion is still incorrect. The fact is that the 73 selected affiliates plus the CBS and NBC Television Networks in 1954 had a net income, before Federal taxes, slightly *less,* rather than more, than the total net income for the entire industry.[1]

In any event, even if the mathematical error is ignored, the comparison is without meaning. For the Report engages in arithmetical legerdemain; first, it subtracts only enough of the profitable stations so that the remaining profitable stations can be lumped with those which are not profitable in order to arrive at a total net loss. Second, the comparison involves apples and pears since it lumps stations and networks together on both sides of the ledger.

Thus the Report's conclusion that exclusive of the NBC and CBS Television Networks and the 73 selected affiliates in Zone I, "television is a losing proposition on the average" (p. 8), is misleading. Even if the 73 "favored" stations are excluded, there remain many profitable stations. In fact the 1954 profits of profitable stations in the group for which the Report states that television was a losing proposition *amounted to over $38*

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[1]The Report states that the selected affiliates had a combined net income of $72,377,318 in 1954. To this total, the Report adds the profits of the CBS and NBC Television Networks and arrives at a total of $90,594,406 (p. 8). The difference between the two totals is $18,217,088 which should be the income of the CBS and NBC Television Networks. But Chart I at page 26 of the Report shows the combined income of the two networks at $17,119,065. Therefore, the total income of the 73 stations and the two networks is $89,496,383—just short of the $90.3 which the Report attributes to the entire industry. The Report makes the same error at page 7 in its discussion of the share of industry income earned by the two networks plus the CBS and NBC Television Network affiliates in the first 20 markets.

million, and actually exceeded by $12.8 million the losses of all the unprofitable television stations in the entire country. Only by adding the combined networking losses of ABC and DuMont in the amount of $12 million can the total for all 410 stations minus 73 of the most profitable be brought within reasonable balance of the aggregate loss which the Report seeks to establish.

While CBS does not have access, as the authors of the Report did, to the precise number of profitable stations included in the remaining 337 stations concerning which the Report states that "television is a losing proposition on the average," CBS estimates that about half of these 337 stations were operating on a profitable basis by the end of 1954. Published FCC figures indicate that 229 out of 374 television stations concerning which reports were made were probably in the black by the end of 1954. These include 94 profitable pre-freeze stations, 70 post-freeze stations reporting a profit for the ten-month period covered by the FCC *Third Survey,* and 65 stations reporting profitable operation toward the end of that ten-month period.[1]

If the 73 selected CBS and NBC Television Network affiliates which the Report classifies as being clearly profitable are subtracted, therefore, there remain approximately 156 *other* television stations (or a total of at least 229) operating on a profitable basis by the end of 1954; and doubtless some of the

[1]FCC *Radio and TV Broadcast Financial Data*—1954 (Public Notice 26134) and *Third Survey on Post-Freeze Television Stations* (Public Notice 23055).

36 stations not included in the FCC tabulation but included in the Report's 337 were profitable.

In short, the Report's contention that, exclusive of the 73 selected stations, "television is a losing proposition on the average" proves on analysis to mean nothing more than *even if 73 profitable stations are arbitrarily subtracted, about half of the remaining group were profitable by the end of 1954.*

If the 73 Zone I stations are included—as by any logical standard they should be—this would mean that about 60 per cent of all television stations were profitable by the end of 1954. And the obvious fact that profitability is not confined to the larger of the Zone I affiliates is further confirmed by the CBS estimate that in 1954, the aggregate profits on only 16 stations *outside Zone I* exceeded the total profits of the CBS and NBC Television Networks.

Further, over 70 per cent of the 410 television stations whose profits or losses were considered by the Report were less than two years old by the end of 1954. Some of them were only in operation for a few months. While there have been a few examples of post-freeze television stations in leading markets which earned profits almost from the first day of operation, it would be too much to expect such results in all cases. Many stations which can eventually be expected to earn satisfactory profits undoubtedly suffered losses in the first year or two of their operation. In view of the many years of unprofitable operation of the pre-freeze stations before they broke into the black, it should not be either alarming or surprising that some post-freeze stations should not have earned profits in the first or second calendar years of their life.

In any event, the fallacy of this section of the Report is illustrated by the fact that a picture similar to that attempted to be delineated in the Report for the television industry can, with like manipulation, be drawn for any other industry in the United States. For example, in the prosperous year 1952, 119,000 manufacturing corporations filed income tax returns. One group of only 19,000 corporations earned net income greater than the aggregate of all 119,000.[1] It could be said, accordingly, that 100,000 corporations in the group suffered losses which more than offset profits. To paraphrase the Report, "exclusive of the favored 19,000 manufacturing corporations, manufacturing is a losing proposition on the average." But this conclusion is simply an effective way of obscuring the fact that about 81,000—not just 19,000—manufacturing corporations made profits in 1952.[2] Similarly, the Report's emphasis

[1] *U. S. Treasury Statistics of Income for 1952,* Part 2, page 102. The year 1952 is the latest for which these compilations are available.

[2] Other errors in the section of the Report entitled "Access to Network Programing" may also be noted:

(1) In the next to last paragraph of page 7, the Report states that the share of the 38 CBS and NBC Television Network affiliates in the first 20 markets was equal to 69 per cent of the total net income of the 410 U. S. stations. The percentage cited is the share not of the total net income of the 410 stations alone, but of those stations *plus the four networks.*

(2) At page 8, third paragraph, the Report compares the combined income of 73 selected CBS and NBC Television Network affiliates plus the CBS and NBC Television Networks, and concludes that "If allowance is made for losses of unprofitable stations in the 410 TV stations (sic) of the Nation," the income of those 73 affiliates and the two networks exceeded the total net income for the entire industry. Apart from the fact that the income of the former group did *not* exceed that of the entire industry (pp. 32-34 above), "allowance is made" not only "for loss of unprofitable stations" but also for the unprofitable networks—as it had to be made in order for the Report to reach the conclusion it did.

(3) At page 8, eighth paragraph, the Report asserts that "the vast majority of smaller stations, lacking network programing, suffered heavy losses." First, the great majority of smaller stations in fact have network affiliations:

on the 73 profitable stations masks the fact that at least 229 stations were profitable by the end of 1954.

D. The Problem of "Overlap"

In a section entitled "Overlap" (pp. 8, 10-14), the Report charges that a network "economic stranglehold" is established by the fact that stations in small markets overlapped by stations in larger markets receive fewer network programs and less revenues than the larger market stations. As in the case of the preceding sections, both the principles and the facts embodied in this section are erroneous.

The CBS Television Network, for example, has affiliated with 36 stations each of which covers less than 40,000 television families (CBS Supplemental Memorandum, p. 74 and Chart XVIII). Second, while it is true that losses are more frequent among smaller-market stations than among larger-market stations, the size of the market is not the governing factor in determining whether a station earns profits or suffers losses. To the extent that stations in smaller markets are overshadowed or are UHF, they are less likely to be profitable, but for those two reasons and not simply because they are "small." Where the factors of UHF or overshadowing do not operate, it is not true that smaller-market stations generally suffer heavy loss. For example, among the pre-freeze stations, only one out of the 13 in metropolitan areas with population less than 250,000 suffered losses while six out of the 30 in metropolitan areas with population over 2,000,000 suffered losses. These are VHF stations in markets that, in general, are not overshadowed so that among these station markets the smallest are just about as profitable relative to their revenues as are the largest.

Of course, the six stations reporting losses in metropolitan areas of population greater than 2 million represent, in large part, the unaffiliated stations in Los Angeles and New York. But even if these be excluded from consideration, in the intermediate size group of metropolitan areas, between 500,000 and 2 million total population, the relative frequency of stations reporting loss is higher than among metropolitan areas of population less than 500,000. (Five out of 40 reported losses in 1954 in the larger metropolitan areas, three out of 38 in the smaller. FCC *Radio and TV Broadcast Financial Data, 1954,* Public Notice 26134.)

Similarly, among post-freeze VHF television stations, profits outnumbered losses even among the stations in the smallest metropolitan areas. Of 33 post-freeze VHF television stations in metropolitan areas of population between 75,000 and 175,000, 23 reported profits by the end of the period covered by the *Third Survey* (Table 15), and in metropolitan areas of population under 75,000, 43 of the 64 post-freeze VHF television stations reporting were in the profit group.

The same basic fallacy noted in connection with the "Access to Network Programing" section pervades the "Overlap" section as well—that the revenue and profit differences are the result of a policy of networks in "placing" their programs in the larger stations in preference to the smaller stations. As noted, the differences are caused by advertiser decisions, which in turn are guided by economics, geography and the behavior of electronic signals.

Wholly apart from the fact that the Report misunderstands this vital principle, however, the examples cited by the Report not only fail to support the Report's conclusions but, on the contrary, the facts refute the conclusions.

The Report seeks to establish its point by comparing three pairs of stations in larger and smaller markets: 1) KMTV, Omaha, Nebraska, and KOLN-TV, Lincoln, Nebraska; 2) KMBC-TV, Kansas City, Missouri, and KFEQ-TV, St. Joseph, Missouri, and 3) KTNT-TV, Tacoma-Seattle,[1] Washington, and KVOS-TV, Bellingham, Washington.

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[1]The report is inaccurate and misleading in treating KTNT-TV as a Tacoma station and comparing the Tacoma market with the Bellingham market. KTNT-TV is, in fact, a station covering Tacoma-Seattle, so that instead of being the 67th market, as the Report states (p. 10), it ranks as the 17th market according to CBS calculations and the 20th market according to the 1950 Census of Metropolitan Areas and the 1955 Sales Management Ranking of Metropolitan Areas.

A second error also appears in the Report's discussion of Tacoma-Seattle, since the Report (pp. 11, 13) compares the coverage of KIRO-TV, Seattle (stated to occupy channel 7), with Bellingham. There is no such station as KIRO-TV and channel 7 in Seattle is still unoccupied. The owners of KIRO, a radio station in Seattle, have applied for channel 7 in Seattle and have proposed the effective visual power and antenna height specified by the Report. The application, however, is still in hearing. In the circumstances, it cannot be contended that KVOS-TV in Bellingham is overlapped by a non-existent station in Seattle.

It is significant, as indeed the Report itself notes, that whatever disparity exists between the larger and smaller stations in each of these three pairs is in no way related to CBS Television Network affiliation practices, for each of the stations in each of the three pairs is in fact *affiliated with the CBS Television Network.*[1]

Thus, like all CBS Television Network affiliates, each of the smaller stations has, as noted above, full "access" to the entire CBS Television Network schedule. The disparity in the amount of CBS Television Network programming carried by the smaller of each of the pairs of stations, and in their resultant revenues and profits, is not due to network practices but rather to advertiser orders which in turn hinge largely on the nature and structure of the markets concerned. Bellingham is smaller than Seattle; Lincoln is smaller than Omaha; and St. Joseph is smaller than Kansas City. It is utterly illogical to condemn networks as monopolies because in television, as in other fields of commerce, revenues flow to larger population units in greater volume than to smaller population units.

The significant fact, however, is precisely the contrary of that which the report seeks to establish: It is that the CBS Television Network, far from neglecting or subordinating the smaller market in each of the three pairs has been of significant value to the smaller stations and has played an important role in their survival. Attached to this memorandum as Appendix B are communications from each of the three smaller stations—

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[1]Since 1954, KMBC-TV has been replaced by KCMO-TV as the CBS Television Kansas City affiliate.

KOLN-TV, Lincoln, KFEQ-TV, St. Joseph, and KVOS-TV, Bellingham—against which the report contends the CBS Television Network has discriminated. Each of these three letters squarely contradicts the Report's contention. Each station explicitly states the contribution which the CBS Television Network has made to the station. And each establishes the error of the Report's statement (p. 11) that they are "barred from access to network programs" and hold "an affiliation which is of little value." The stations are not, as the Report states (p. 11), in danger of being "forced off the air"; rather, their situation has been constantly improving owing, according to the stations themselves, at least in part to the network's efforts.

The figures which the Report cites in connection with these stations are, further, misleading and untypical. One of the three stations cited by the Report—KVOS-TV—as having had a CBS Television Network affiliation in 1954 and receiving only $1,470 for sale of time to networks (p. 14) was, contrary to the statement in the Report, not even affiliated with the CBS Television Network as of October 1954. It did not become affiliated with the CBS Television Network until December 16, 1954. The second of the three smaller stations specified by the Report—KOLN-TV, Lincoln—did not become affiliated with the CBS Television Network until June 1, 1954—so that its 1954 CBS Television Network revenues represented only a portion of the year.

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[1]See, however, the figures cited in the letters from these stations, attached as Appendix B. The stations have granted permission to CBS to submit these letters.

While CBS does not feel at liberty to disclose the precise network compensation to particular stations,[1] it is significant that KOLN-TV's revenues from the CBS Television Network were over 225 times higher in 1955 than in 1954; and KFEQ-TV's revenues from the network had increased by almost 50 per cent.[1] The network revenues of the three smaller stations have similarly increased between 1955 and 1956: In March 1956, KOLN-TV's revenues from the CBS Television Network were more than 16 times higher than its revenues in March 1955; KFEQ-TV's CBS Television Network revenues in March 1956 were 1⅓ times higher than those in March 1955; and KVOS-TV's March 1956 revenues were 5½ times greater than those in March 1955.[2]

In summary, the actual facts relating to the three stations which the Report uses to establish network "strangulation" establish precisely the opposite. Despite the disparity of these markets and despite their economic and geographic disadvantages, the CBS Television Network has affiliated with them, has worked actively and successfully in cooperation with the stations to obtain advertiser orders for network programs on the stations, and has been of substantial and increasing benefit to them. As the stations' own statements establish, the picture is not one of "strangulation"—but of sustenance.

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[1]Since, as noted, KVOS-TV did not become affiliated with the CBS Television Network until the close of 1954, and hence received only $21 from it, there is no basis of comparison between 1954 and 1955.

[2]As of May 1, 1956, KVOS-TV was carrying 32 different network commercial programs representing over 15 hours per week and had been offered two other programs, one a 15-minute commercial program and another a one-and-a-half hour per week commercial program, which it declined to carry.

E. "SUPERSTATIONS"

The section of the Report entitled "Superstations"[1] contends that (1) "large market stations have preempted service areas extending far beyond any limits imposed by economic necessity" (p. 15); (2) such "preemption" is accomplished by large stations' locating their transmitter sites "25 and 30 miles from the city to which their channel is actually assigned" and by using maximum power and antenna heights, "send signals into markets other than their own" (*id.*); (3) "abnormal profits accrue to large stations which preempt adjacent territory"—such "abnormality" being measured by the ratio of profits to "net investment" (p. 15-18); and (4) there is thus reflected a "trend of the 2 major networks to superstations covering as many cities as possible with 1 signal, ignoring all rural and sparsely settled areas"—which has the effect of "a general lowering of quality of signals over much of the entire country" since "only the area adjacent to the station's home city receives a good signal" (pp. 18-19).

On the basis of these premises, the Report proposes a reduction of "permissible service areas of VHF stations in the zone I area . . . , and in other areas . . . of high population density and large-city incidence, in order to restore the integrity of all smaller television cities through reductions in maximum powers and/or antenna heights" (p. 22).

Before examining the grave injury to the public and to television as an advertising medium which would result from the

[1]Since the section entitled "Superstations" and the succeeding section entitled "Answer to Advertiser Argument" are interrelated, this section of the memorandum will treat them together.

adoption of such a proposal (which, it may be noted, relates not to the current phase of the Committee's hearings dealing with network practices, but rather relates directly to the concluded phase of the hearings dealing with allocations), this memorandum will first turn to the four premises listed above. For not only is the conclusion erroneous; so are all of the premises on which it is predicated.

1. *The error of the "preemption" contention.* There is no substance to the charge that "abnormal inequities" between the large-market and small-market stations stem from the fact that the large-market stations have "preempted service areas extending far beyond any limits imposed by economic necessity" (p. 15). To define permissible service areas of "large" stations by the test of "economic necessity" is to inject a measure which lacks meaning. To require the operator of any station, or any other business enterprise, to serve only that number of people which is "economically necessary" is a concept at once impossible of enforcement and inconsistent with the American principle of free competitive enterprise. It would, in effect, socialize television stations, among all American businesses, by limiting their service only to an area which would permit their economic survival—and no more.

But stations do not acquire their service areas by "preemption" but by competition. The permissible service areas are, in general, the same for all VHF stations[1]; stations in small markets

[1]In practice, UHF stations do not generally have as wide a coverage area as VHF stations; there are relatively minor differences between "high-band" and "low-band" VHF stations; and VHF stations in Zones II and III can employ higher antennas with full authorized power than can stations in Zone I. In any one area the maximum allowable coverage is the same for all stations in the same channel group.

may have precisely the same or larger[1] service areas than stations in large markets. Once again, the vice the Report finds is not the geographical *size* of the service area but rather the population served—the fact that more people live in some areas than in others—a condition which no non-totalitarian government can remedy.

2. *The error of the transmitter location contention.* The second premise on which "superstations" are condemned and on which the proposal to reduce power and antenna heights is based is that "large stations often succeed in locating transmitters closer to competing cities than to their own"—a process alleged to be accomplished "by locating transmitter sites 25 and 30 miles from the city to which their channel is actually assigned" (p. 15). The contention appears to be that by these means "superstations" are created through "large" stations locating their transmitters at these specified distances from the city to which they are assigned in order to engulf smaller communities.

Analysis of the facts requires rejection of this contention. There are only 15 instances of station transmitters located 25 or more miles from the city of assignment.[2] They are:

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[1]For example, the CBS Television Network affiliate in Cedar Rapids (1955 population: 77,200) has an appreciably larger service area than the neighboring affiliate in Rock Island-Davenport-Moline (1955 population: 171,800).

[2]It is interesting that none of the three examples of small stations alleged to be victimized by "overlap" (Report, p. 10) is represented in the group involved in the process of transmitter "preemption." In both Omaha and Kansas City—two of the three "overlapping" markets noted in the preceding section—the television transmitters of the CBS Television affiliate are located almost precisely in the center of their respective cities. The Tacoma transmitter is located outside Tacoma, and somewhat in the direction of Bellingham—in order better to serve the Tacoma-Seattle market. Bridgeport, Waterbury and

Call	Channel	City	Distance[1]	Reason
WMTW	8	Lewiston	56 mi.	Mountain-top
KSWS-TV	8	Roswell	44	Aeronautical problem
KVVG	27	Tulare	38	Mountain-top
KOVR	13	Stockton	35	To serve San Francisco
KBET-TV	10	Sacramento	35	Mountain-top
KID-TV	3	Idaho Falls	31	Mountain-top
KJEO	47	Fresno	31	Mountain-top
KMJ-TV	24	Fresno	28	Mountain-top
KFRE-TV	12	Fresno	28	Mountain-top
KGUL-TV	11	Galveston	28	To serve Houston
KBES-TV	5	Medford	28	To serve Klamath Falls
WSFA-TV	12	Montgomery	25	Away from large adjoining market
KOLN-TV	10	Lincoln	25	Away from large adjoining market
WIRI	5	Lake Placid	25	Mountain-top
WTTV	4	Bloomington	25	To serve Indianapolis

The largest of the cities to which these stations are assigned is Sacramento which ranks 65th in population among metropolitan areas. The next largest cities of this group are Fresno, which ranks 66th and Stockton, which ranks 90th. Eight of the 15 stations have selected transmitter locations for the wholly legitimate purpose of taking advantage of terrain. In three cases[2]—

Stamford-Norwalk are also cited (p. 18) as "overlapped" by New York City stations—but it is to be noted that the latters' transmitters are located in mid-Manhattan. (The Report (p. 18) similarly lists Norwich, Conn., 113 miles from New York City, but this can hardly be considered an "overlap victim.") These facts serve again to illustrate that natural phenomena—economic, geographical and electronic—and not greed or monopoly underlie the patterns to which the Report objects.

[1]Transmitter site to center of city of assignment. In the case of WMTW, the city of assignment (Lewiston) is shown. The station is licensed to Poland Springs, 50 miles away.

[2]The transmitter of KGUL-TV, Channel 11, Galveston, Texas, is 28 miles from its city of assignment in order to serve Houston. The transmitter of KOVR, Channel 13, Stockton, California, is 35 miles from its city of assignment in order to serve San Francisco. The transmitter of WTTV, Channel 4, Bloomington, Indiana, is located 25 miles from Bloomington in order to serve

KGUL-TV, KOVR and WTTV—the choice of transmitter site involved not a large-city station moving toward small cities but precisely the contrary—a small-city station moving *toward* a larger city in order better to compete with the stations in the larger city. One case—KSWS-TV, Roswell, New Mexico—involved the location of its transmitter to accommodate aeronautical requirements. In two other cases—WSFA-TV and KOLN-TV[1]—the transmitters were located 25 miles away from the city of assignment in order to get *away* from, and thus reduce the overlap with, neighboring large-market stations.

There remains only one case of the location of a transmitter 25 or more miles from the city to which the station is assigned: KBES-TV, Channel 5, Medford, Oregon, whose transmitter is located 28 miles from Medford in order to serve not only Medford but Klamath Falls. The population of Medford—the "large" city—is 19,100, with 6,700 families, and that of Klamath Falls—the "small" city—is 16,200, with 5,400 families.

This, then, is the full extent of what the Report seeks to establish as the sinister and grasping practice of "large stations" moving their transmitter more than 25 miles in order "ab-

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Indianapolis. In addition, KVVG, a UHF station assigned to Tulare, California, should perhaps be included in this category since its transmitter, located 37.5 miles from Tulare on a mountain top, thus better serves Fresno.

[1]KOLN-TV is located in Lincoln, Nebraska. It is ironic to note that in the section of the Report entitled "Overlap," KOLN-TV is identified (p. 8) as one of the three small markets overlapped by neighboring large-city stations. Thus in the section entitled "Superstations," KOLN-TV appears to be implicitly criticized as a "large" station guilty of preempting an unnecessarily large service area; in the section entitled "Overlap," it is identified as a "small" station overlapped by a neighboring large station. Yet the obvious purpose of its transmitter move was to avoid the very overlap which the Report had earlier charged was victimizing it.

normally [to] depress the economic potential of the smaller market" (p. 15).

3. *The error of the contention that large stations profit abnormally.* The Report's contention (pp. 15-18) that large stations profit abnormally is based on the alleged ratio of the profits of such stations to their "net investment." The fallacy of this measure has been discussed above.[1] It is also relevant to note at this point, however, that in fact profits in the field of broadcasting are also the result of creative and service activity—of program leadership and popularity. Thus the profits of WCBS-TV (the CBS owned television station in New York City and one of the two New York stations to which the Report refers) must be judged in the light of the population which it serves and its program ratings which measure such leadership and popularity. It is estimated that WCBS-TV currently serves about 4.5 million television families. Although competing with six other VHF television stations all of whose transmitters are at the same location in New York City, its all-day, all-week share of audience is estimated at 35 per cent. In the light of such circumstances as these, it is reasonable to expect that the station would be profitable.

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[1]The inappropriateness of the measure is accentuated in the case of the CBS owned station in New York City. The only "tangible property owned and devoted exclusively to broadcast service" reported by CBS to the FCC for WCBS-TV is its transmitter and it is on this basis that the Report computes the ratio of profits. Transmitter space and antenna support tower are leased from the Empire State Building. All studio and technical equipment requirements of WCBS-TV are rented by the station from the network and all its space and furniture needs are filled by CBS Inc., or the network and charges are allocated to the station. While this is a reasonable bookkeeping arrangement, it makes particularly meaningless the measure of profit ratios which the Report utilizes.

4. *The error of the contention that "superstations" ignore rural areas and result in lowered signal quality.* The contention that networks through the utilization of full power VHF stations "ignore" "rural and sparsely settled areas . . ." is squarely refuted by fundamental factors of allocations engineering. Rural and sparsely settled areas cannot normally support their own television stations. As a rule, therefore, these "sparsely settled areas" can *only* be served by full-power VHF stations in neighboring larger cities. Further improvement of service to sparsely settled areas is to be sought through the use of boosters, translators and satellites. The CBS Television Network encourages action by its present or potential affiliates to improve the service to sparsely settled areas either through increase of power, erection of satellites or boosters, or by welcoming as affiliates smaller stations which bring in new coverage in these sparsely settled areas. Under the Extended Market Plan, in addition, special steps are taken to induce advertisers to place network programs on these stations serving sparsely settled areas. Plainly, this negates the charge that CBS is "ignoring all rural and sparsely settled areas . . ." It is precisely these rural and sparsely settled areas which, demonstrably, will lose the service which they now enjoy if the power of these stations is reduced (pp. 51-61 below).

Equally fallacious is the Report's further contention that "only the area adjacent" to a station's home city "receives a good signal." It is a well-known fact that a "good signal" is received at least 50 miles away from a full-power VHF station and, indeed, the signal received at that distance is often better than that received in the home city itself, where there are propagation difficulties because of tall buildings.

5. *The proposal to reduce service areas.* It will thus be seen that the contentions on which the Report predicates its proposal to reduce service areas "in order to restore the integrity of all smaller television cities" are fallacious. Equally pervasive fallacies underlie the basic proposal itself. Adoption of the proposal to erect an electronic tariff wall protecting one city from the signals of another would result in significant loss of television service for many people now receiving such service and it would seriously injure the medium itself so that there would be a deterioration of service even to those who are still within range of the reduced signals.

The full implications of the Report's proposal to reduce service areas are illustrated by Maps 1-4 at pages 50-51, 54-55 of this memorandum. Maps 1 and 2 illustrate the effect of the proposal in the New York area which is discussed by the Report at pages 15 and 18. Maps 3 and 4 illustrate the effect of the proposal in the Cleveland area, discussed by the Report at page 18.

Based on the Grade B contours shown in Map 1, 14,375,000 people receive in the New York area seven services and an additional 560,000 receive three services.[1] The Grade B contour of WCBS-TV (among others) in New York City includes the cities of Bridgeport and Stamford, Connecticut, and Paterson, New Jersey, to each of which cities a television channel is

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[1]Actually, since the signal reaches substantially beyond the Grade B contour, the reception figures cited in the text are understated.

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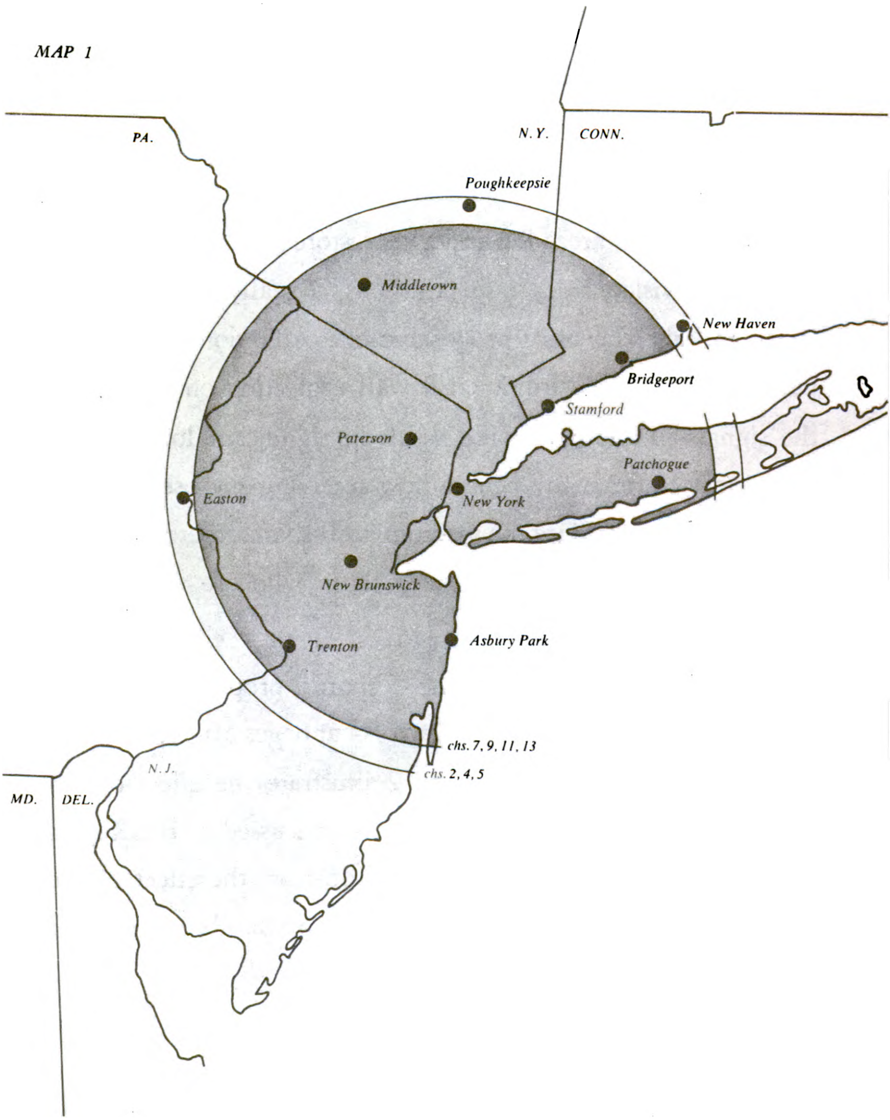
MAP 1

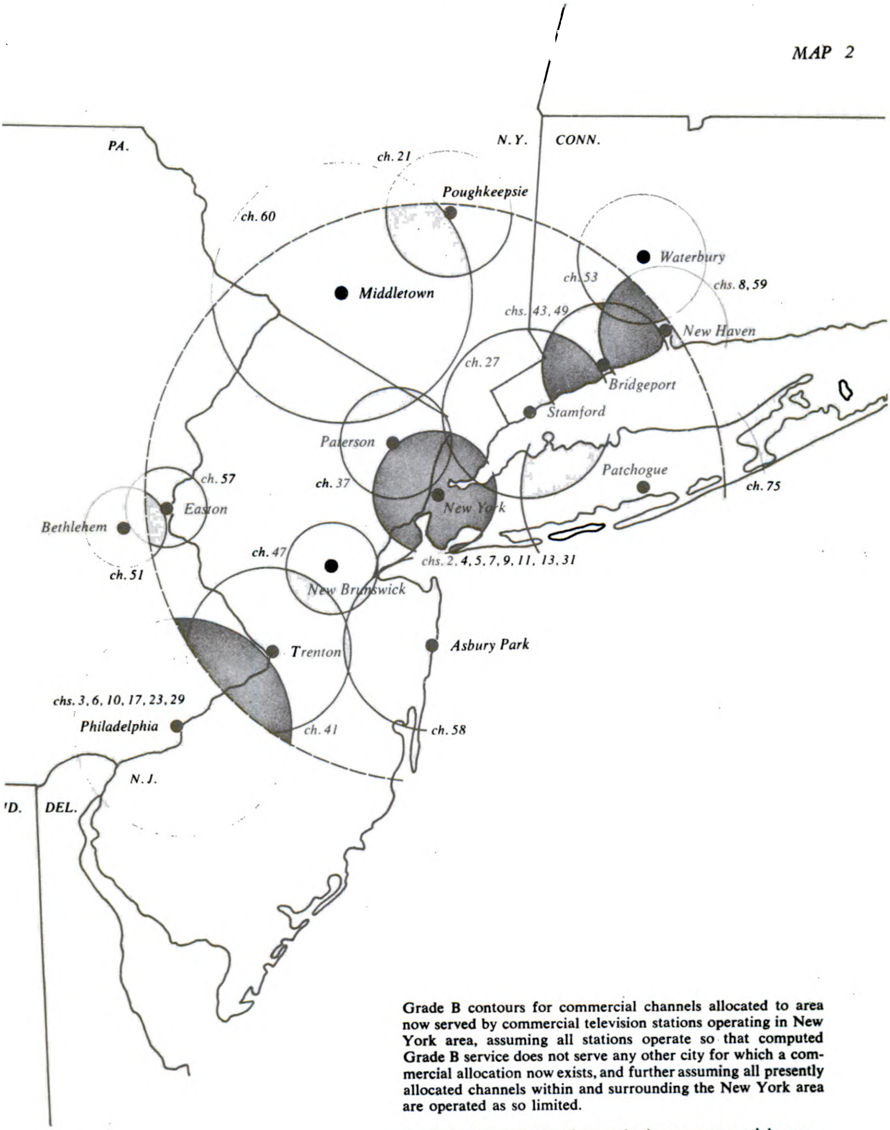


Grade B contours of operating commercial television stations in New York.

7 services from New York

3 services from New York

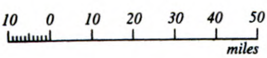
MAP 2



Grade B contours for commercial channels allocated to area now served by commercial television stations operating in New York area, assuming all stations operate so that computed Grade B service does not serve any other city for which a commercial allocation now exists, and further assuming all presently allocated channels within and surrounding the New York area are operated as so limited.

Analysis of loss of television service in area now receiving service from New York television stations as a result of reduction in service areas as shown.

OPERATING CONDITIONS	*POPULATION (1950 Census)*	*PER CENT (of existing service)*
— — Existing rules:		
3, or more services available from N.Y. City stations	*14,935,000*	*100%*
—— Proposed operation:		
3, or more services	*10,710,000*	*71.7*
2 services	*643,000*	*4.3*
1 service	*2,566,000*	*17.2*
no service	*1,016,000*	*6.8*



allocated. In order to protect Paterson, the nearest of these three cities, the power of WCBS-TV would be required to be reduced to 1/6700 of its present value, or a reduction from an effective radiated power for its visual transmitter of 42 kw (16.2 dbk) to 0.0063 kw (minus 22 dbk).[1] Map 2 shows the effect of this reduction. The City Grade radius of WCBS-TV would be reduced to two miles; its Grade A radius would be reduced to 3.4 miles; and its Grade B radius would be reduced to 14 miles, just touching the nearest boundary of Paterson. Yet, since the minimum radius required to cover all of New York City is 22 miles, under the proposal substantial portions of New York City itself[2] would fail to receive a signal of Grade B level.

Map 2 also shows the loss of service in the New York area, using Grade B contours. In that area, 929,000 people would lose all the seven services they are now receiving; 2,449,000 would be reduced from seven services to a single service; 387,000 would be reduced from seven to two services; and 116,000 would lose between one and four of their services. Further, of the 560,000 people in the area who now have a

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[1]A curious and doubtless inadvertent inconsistency results: Since the Report proposes reduction of service areas only for VHF stations, a UHF station in the same city would have a vastly greater coverage area and would, indeed, be permitted to do just what VHF stations would be forbidden to do—encroach on the "integrity" of neighboring small television cities. Because no such absurd consequence could have been intended, the calculations in this section of the memorandum have been based on the assumption that UHF stations must, where appropriate to achieve "integrity", be similarly cut back.

[2]As noted below, the signal impairment even in the limited area still served would be great since a 38 db reduction of power would be ruinous of reception of many of the homes within the reduced area.

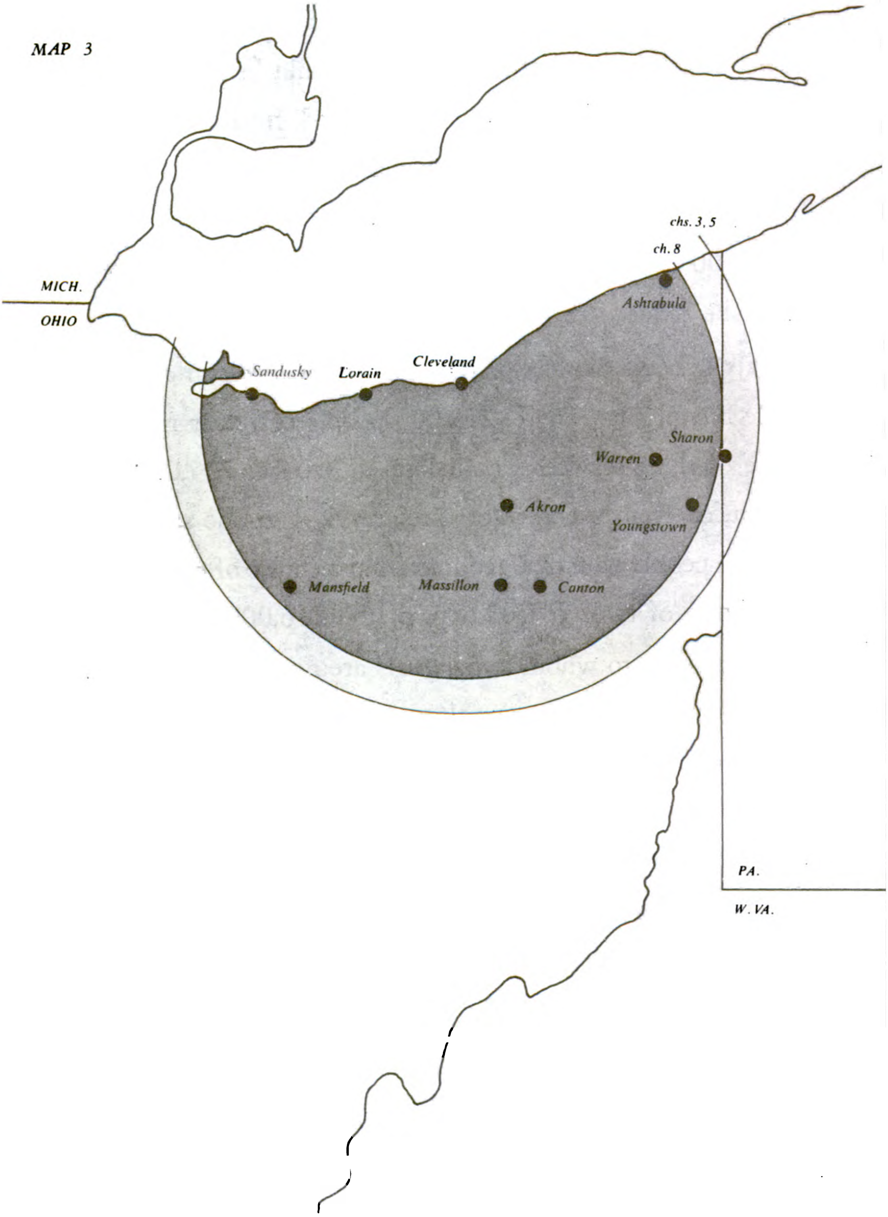
choice of three services from New York, 87,000 would be deprived of service altogether; 117,000 would be reduced to one service; and 256,000 would be reduced from three to two services. Thus it will be seen that a total of 1,016,000 people in the New York City area would lose all their service; 2,566,000 would be reduced to one service; and 643,000 would be reduced to two services.

Map 4 shows the loss of service in the Cleveland area, using Grade B contours. There, 259,000 people currently receiving a choice of three services would lose all service; 725,000 would be reduced from a choice of three services to one service; and 479,000 people would be reduced from a choice of three services to a choice of two. In addition, of the 216,000 people in the Cleveland area to whom two signals are now available, 38,000 would be deprived of service altogether, and 81,000 would have their choice cut in half—from two to one. Thus, a total of 297,000 people in the Cleveland area would lose all their service and 806,000 would be reduced to one service.

Thus in the New York and Cleveland areas *alone*,[1] 1.31 million people—equal to the population of the cities of Baltimore

[1]Theoretically in the cases of New York and Cleveland, some of the losses can be compensated for by *additional* allocations in the new "white areas." But it is to be noted that such areas are scattered, not concentrated. Further, the process is endless for as each additional community is added, further power reductions would be necessary in order to protect the new allocations. Still further white areas would then be created permitting more allocations until, finally, each home would have its own television transmitter protected, if possible, from each neighboring home. Further, as noted below, even if this process would result in new stations on channels now allocated to smaller cities or new stations on new channel assignments, there would still be a substantial loss of service because the stations in smaller towns would not be ordered by the advertiser as frequently as the current stations in the New York and Cleveland areas.

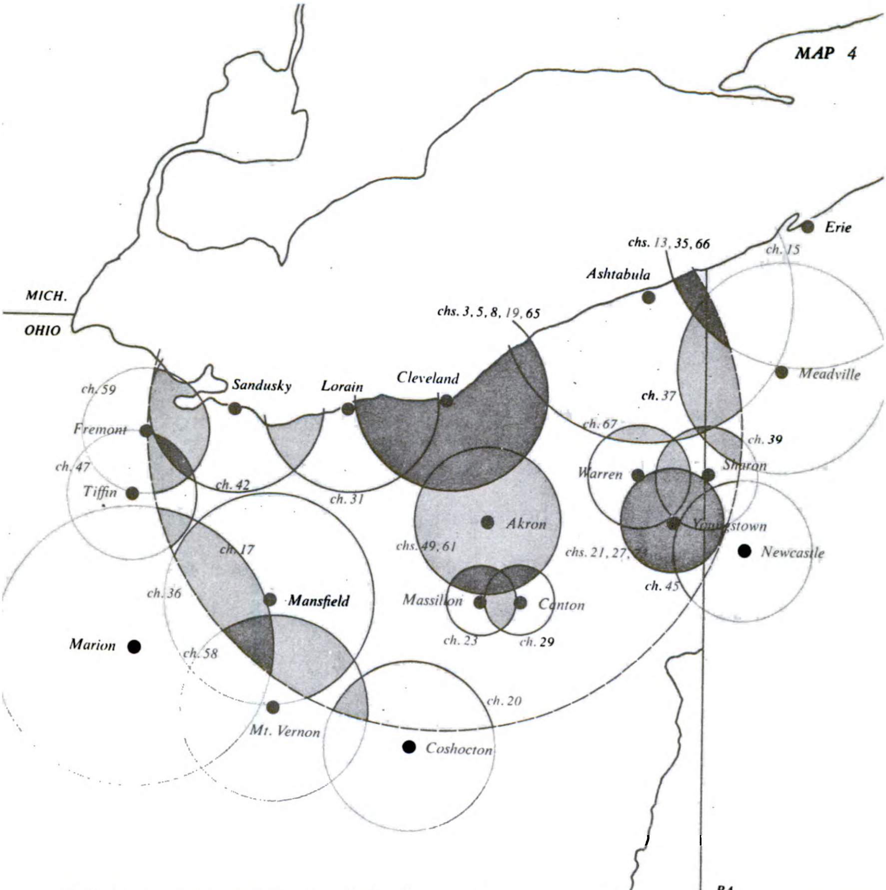
MAP 3



Grade B contours of operating commercial television stations in Cleveland.

3 services from Cleveland

2 services from Cleveland



Grade B contours for commercial channels allocated to area now served by commercial television stations operating in Cleveland area, assuming all stations operate so that computed Grade B service does not serve any other city for which a commercial allocation now exists, and further assuming all presently allocated channels within and surrounding the Cleveland area are operated as so limited.

Analysis of loss of television service in area now receiving service from Cleveland television stations as a result of reduction in service areas as shown.

OPERATING CONDITIONS	*POPULATION (1950 Census)*	*PER CENT (of existing service)*
— — Existing rules:		
Services available from Cleveland stations		
3 services	*3,289,000*	
2 services	*216,000*	
2, or more services	*3,505,000*	*100%*
—— Proposed operation:		
3, or more services	*1,857,000**	*52.9*
2 services	*545,000*	*15.5*
1 service	*806,000*	*23.1*
no service	*297,000*	*8.5*

**of this figure 31,000 presently receive only 2 Cleveland services*

10 0 10 20 30 40 50
miles

and Louisville—now enjoying multiple services from those cities would lose those services altogether, while 3.37 million additional people—equal to the combined population of the cities of Philadelphia, St. Louis and Columbus, Ohio—would be reduced to a single program source. Figures such as these should, it would seem, give serious concern to those who purport to be concerned with more service to more people and with avoiding "economic monopoly."

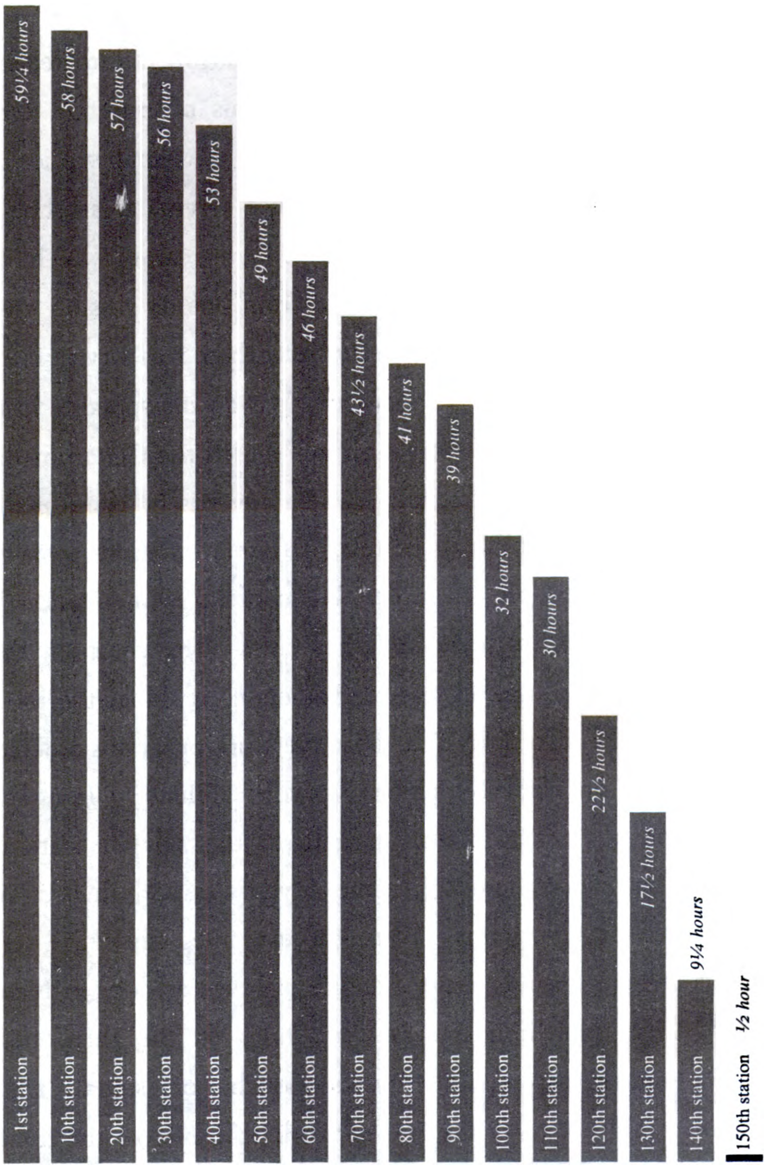
Even these figures, startling as they are, do not provide the full measure of the loss of service; the figures are understated in important respects. The loss is, in fact, far greater than indicated. First, in reducing the New York and Cleveland transmitter powers to the extent necessary, an inevitable corollary effect, along with the shrinkage in the service area, is the reduction in signal strength throughout the area still within the reduced contour. For this reason, a large number of the television receivers located within the atrophied New York contour would fail to get a satisfactory signal. CBS data indicate that more than 60 per cent of the sets in Manhattan have indoor antennas —many of which would be incapable of receiving so weak a signal. Further, it is known that shadowing by New York skyscrapers and apartment seriously weakens television signals. Hence, the reduction of power in New York to 0.0063 kw so as to protect Paterson would deprive millions of people of satisfactory signals even within the theoretically-served area.

Second, the maps and figures do not take into account another serious loss of service which would be incurred by reductions in the service radii of existing stations surrounding Cleveland and

New York. Thus for example, the principle of protection of integrity would, in the New York area, also require a reduction in the service radii of existing stations in New Haven, Philadelphia and Wilmington, Delaware, with still greater consequent loss of service in the areas surrounding New York.

A third and very significant factor would operate to reduce the richness of television service in terms of program fare even for that reduced number of people to whom service is still rendered. If the proposal to reduce service areas should be adopted, there might be substituted in areas in which, in aggregate, many people live, service from one or possibly two stations in small markets where formerly there was service from more stations in the larger markets. It is an indisputable fact, noted throughout the Report itself and which the Government, unless it has power to command where advertisers would place their orders, is helpless to correct, that small stations serving relatively few people are ordered less often by network advertisers than are stations in larger cities. The chart on the following page illustrates this phenomenon. It shows the total commercial hours of CBS Television Network programs ordered and carried on CBS Television Network affiliates. It establishes the obvious fact that in general the smaller station-markets are not ordered by some advertisers and thus carry fewer network programs. Thus, for example, while the residents of Paterson now have a choice of seven stations in New York City—including the full schedules of the three networks—under the proposal they will have but one signal. That station could not carry the full network schedules of the three

TOTAL NETWORK COMMERCIAL HOURS CARRIED BY CBS TELEVISION PRIMARY AFFILIATES FOR WEEK ENDING APRIL 28, 1956 (WITH EVERY 10TH STATION PLOTTED)



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networks even if it wanted to and had been ordered by advertisers. The proposal might, therefore, benefit the owner of a Paterson television station. It would hardly benefit the residents of Paterson.

It is to be noted that this phenomenon of fewer network advertiser orders for the smaller stations operates wholly apart from what the Report terms "overlap": The Report itself (p. 15) identifies a number of smaller stations, not subject to overlap, which have "prospered" with their network affiliations. And as this memorandum has noted (pp. 27-28), only one of the stations was ordered for as much as 20 per cent of the commercial network schedule.

The experience of these stations demonstrates the additional loss to the public involved in reducing service areas of large stations in order to create a group of smaller stations whose "integrity" is preserved by isolating them from outside signals. For, if a large number of markets like Kearney and Minot are to be artificially created throughout the country, while the "access" of these new small stations to network programs might be somewhat increased, the *public's* access to popular network programs in the service area of these small stations will be greatly reduced. Instead of receiving the 40 per cent to 100 per cent of the network programs which is characteristic of stations in the largest markets, they will get the eight to 20 per cent characteristic of small markets. This simple fact of advertising economics—that fewer advertisers will order stations serving a lesser number of people than will order stations serving a larger number of people—establishes, wholly irrespective of the other losses of service involved, that the fragmentation of television markets proposed by the Report ignores the demonstrated needs and desires of the public.

The rural and smaller city listener's loss of service thus may be of three types: (a) Loss of all service; (b) reduction in number of available signals; and (c) poorer program fare from the available signals. The Report, however, seeks to minimize the likelihood of such injurious consequences to the public by contending ("Answer to Advertiser Argument", pp. 19-20) that "exorbitant" rates which large stations charge, together with "restriction of station affiliation," prevent "the advertiser from buying time on as many stations as he desires" (p. 19).[1] The Report argues that if "large-city" affiliates (a) "cut back service areas," (b) "maintained reasonable rates", and (c) "were satisfied with reasonable profits"[2] then the "advertiser could

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[1]In so far as this contention is predicated on alleged restrictive affiliation practices, it is without substance. As of March 1, 1956, only 36 of the 429 commercial stations on the air lacked an affiliation with a nationwide network. In any event, it is the practice of the CBS Television Network to permit an advertiser to order a station not affiliated with it as long as it is not located in the same community (or in the case of a hyphenated market such as Houston-Galveston, in the same related communities) as a CBS Television Network affiliate (CBS Supplemental Memorandum, pp. 135-136; Appendix C, pp. XXXII-XXXIII). Thus, far from its affiliation practices "preventing the advertiser from buying time on as many stations as he desires," *a CBS Television Network advertiser is permitted to order stations in every community in the country to which a commercial station has been assigned.*

[2]The Report is ambiguous concerning the method by which "reasonable rates" and "reasonable profits" are to be maintained. It is not clear whether such reductions are intended to be accomplished automatically by reduction of service areas or whether some even greater regulatory intervention is contemplated to require a rate reduction beyond that resulting from service area reduction. If such additional artificial rate depression is contemplated, the proposal would probably be self-defeating. Since, as noted, the larger the circulation, the lower the cost-per-thousand, if the rates of large market stations would be still further reduced beyond a point commensurate with their circulation, the gap between their low cost-per-thousand and the higher cost-per-thousand

buy many more stations and cover more persons with the dollars he is now spending."

The contentions fly in the face of fundamental advertising economics. It is basic in television, as in all other advertising media, that the larger the circulation supplied by a single unit —whether it be a newspaper or a broadcasting station—the lower the cost-per-thousand to the advertiser. See CBS Supplemental Memorandum pp. 59-65, and Charts XIII-XV, showing that (1) the cost-per-thousand to cover 1.6 million readers in New York through 26 different small daily newspapers is *four times* as high as the cost-per-thousand to reach 2 million readers through the *New York Daily News;* and (2) the absolute cost as well as the cost-per-thousand of reaching 1.6 million television viewers through 36 small television stations is *two-and-a-half* times as great as the cost to reach the same number of viewers through a single television station.

Plainly, therefore, the Report is in fundamental error in its contention, since the more stations an advertiser must order to reach the same total of viewers, the higher his total costs as well as his cost-per-thousand.[1] By the drastic reductions in service areas which the Report proposes, therefore, the medium would be fractionated. The dollars which an advertiser would save because of the lowered rate resulting from the reduced coverage area would not be nearly sufficient to buy enough stations to compensate for the loss of circulation even if it were assumed,

of smaller stations would be even greater. The larger stations would then be an even more attractive buy so that *more* advertiser orders would tend to flow *to* them and *away* from the smaller stations.

[1]For the reasons for this phenomenon, see the CBS Supplemental Memorandum, p. 62.

contrary to the fact (see p. 53 above), that the smaller-market stations would reach the population which lost service by virtue of the cut-back. Thus while perhaps more stations could (but not necessarily would) be ordered, the total coverage for the same number of dollars would be significantly less. The statement, accordingly, that "the advertiser . . . could cover more persons with the dollars he is now spending" is patently in error.

And, perhaps even more important, such a process would inevitably make television a less attractive advertising medium since it would artificially distort it into a more expensive and less efficient medium. In all likelihood, the consequence would be to divert many national advertising dollars away from the medium altogether, and into other media. This, obviously, would harm *all* of television—small stations as well as large ones—and, since it is the advertising dollar which provides the life blood for television service, it would also be injurious to the public—wholly apart from the loss of service directly stemming from the reduction of service areas (see p. 53 above) which would thus be deprived of substantial programming.[1]

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[1]Other factual errors in this section of the Report may be noted.

(1) At page 18, paragraphs 6-10, statements concerning Flint, Michigan are inaccurate. WTAC-TV, the Flint UHF station which went off the air, had been in operation for only five months. While it is true that, as stated, the CBS Television Network cancelled its affiliation "with the station in the third overlapped market," exactly one month *prior* to the date of the Report the cancellation was withdrawn and a new affiliation contract with the station was signed for two years beginning April 1, 1956, with mutual five months' cancellation privileges.

(2) At page 19 of the Report, it is stated that "CBS and NBC station affiliates in the large markets now charge up to $8,400 per hour for station time, with the average running somewhat lower, approximately $2,000 to $4,000 per hour." First, no CBS Television Network affiliate has a rate as high

F. The CBS Allocation Plan

The Report (pp. 20-21) purports to describe the CBS allocation plans previously submitted to the FCC and to the Senate Committee. The Report's description of the plan bears little relationship to the actual proposal.

As the CBS allocation plan itself and the CBS testimony concerning it explicitly establish, the CBS allocation plan is not a "100-market plan" and is *not* limited to 100 markets. The original CBS *Proposals and Comments* in the current FCC Allocation Proceeding (Docket No. 11532), submitted on March 27, 1956, to the Senate Committee stated (p. II-3):

> "Those markets outside the coverage areas of television stations in the 100 leading television markets and large enough to support one or more program-originating stations do not, in general, offer a serious assignment problem. *Because they are situated at some distance from the leading markets they can usually be assigned channels which do not conflict with the assignments to the leading markets. These smaller markets cannot, in general, support more than two television stations."* (Italics supplied)

Nowhere in the CBS *Proposals and Comments* was it suggested that these smaller markets should be deprived of their assignments or their stations. Clearly there is a significant distinction between the CBS statement that the markets below the top 100 "cannot, in general, support more than two tele-

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as $8,400; only one NBC affiliate does—and that rate is not for network programs. Hence the plural is unjustified. Second, the *average* Class A hourly rate of the ten CBS and NBC Television Network affiliates with the highest rates is just under $3,000; of the highest 20, about $2,140; of the highest 30, about $1,775; and of the highest 50, about $1,375.

vision stations" and the Report's charge (p. 20) that CBS suggested "amputation at the neck" for stations outside the 100 leading television markets.

In testifying before the Senate Committee on March 27, 1956, the CBS witness explicitly addressed himself to the false allegation that the plan proposed stations only for the 100 leading markets. William Lodge, Vice President in charge of Engineering, CBS Television Division, testified (Transcript of Hearings, pp. 1835-1837):

> "Probably the best answer to the charge that CBS is interested only in the 100 leading television markets and is ready to have the rest of the country go unserved is the fact that the CBS Television Network has affiliated with stations not in the 100 leading television markets only, but in 178 markets, covering as much of the country as we can. We have affiliates not only in Detroit and Philadelphia but in Grand Junction, Colorado and Twin Falls, Idaho, with 5300 and 6300 families respectively.
>
> "*In fact, the CBS plans did not propose any alteration in the assignments outside the centers of the 100 leading television markets* except for the four channels so far unapplied for and the seven channels permitted to move toward larger cities. In all except these eleven instances, the community assignments were left unaffected. It certainly does not extend the white areas.
>
> "Our emphasis on the 100 leading television markets was a result of the fact that it was in those markets that we were proposing changes. As noted in Columbia's December 14, 1955 *Comments* to the FCC:

'. . . the imperative present and identifiable need is to increase the number of competitive assignments in larger markets.

'For this reason Plan I and Plan II have been worked out in complete detail only to take care of urgent present needs in the 100 largest television markets. *There are currently a large number of assignments to smaller television markets and additional assignments could be made to them.* (p. 14. Emphasis added.)

'Those markets outside the coverage areas of television stations in the 100 leading television markets and large enough to support one or more program-originating stations do not, in general, offer a serious assignment problem. Because they are situated at some distance from the leading markets they can usually be assigned channels which do not conflict with the assignments to the leading markets. These smaller markets cannot, in general, support more than two television stations'." (p. II-3) (italics in original)[1]

It is plain, therefore, as established by the CBS allocation plan itself and by the CBS testimony concerning it before this Committee, that the purpose and effect of the CBS allocation plan were to *add* stations in the 100 largest markets where there is now current demand for additional stations, while at the same time *leaving unaffected virtually all allocations in the small markets.* Far from "amputation at the neck" the CBS plan, as was explained by Mr. Lodge, added to the total alloca-

[1]In commenting on this phase of Mr. Lodge's testimony, Mr. Cox, special counsel to the Senate Committee stated (Transcript, p. 1889):

"I am interested in what our TV system would look like outside the 100 top markets. You made this morning the very valid point that *you certainly have not denied television service to the areas not covered on your map, . . .*" (Italics added)

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tions and made progress toward the objectives not only of nationwide service but of a greater choice of competitive services.[1]

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[1]Other errors in the section of the Report entitled "CBS Allocation Plan" are as follows:

(1) At page 20, paragraph 4, it is stated that "CBS candidly confirms its intention to create a chain of a few wide-circulation and highly profitable station affiliates." No such statement either explicit or implicit appears in the CBS allocation plans or in any statement by CBS concerning the plans.

(2) At page 20, paragraph 5, the Report states that CBS "states that there are only 100 'market areas' in the country that can support a CBS affiliate station, and it has furnished a map delineating these CBS 'market areas.'" CBS has made no such statement and has furnished no such map. CBS, in describing and testifying concerning its plan, has explicitly stated that there are more than 100 market areas which can support a station; the map referred to illustrated the CBS proposals only for the 100 leading markets because it was in these markets that CBS proposed allocation changes. CBS expressly stated that maps for the remaining markets were not included since for these remaining markets there were already sufficient allocations.

(3) At page 20, paragraph 8, the Report states that "It is CBS' obvious intention to cover only the most densely populated portions of the country via 100 superstation affiliates . . ." CBS has no such intention. It has many affiliates outside the 100 major markets and it proposes to continue those affiliations.

(4) At page 20, paragraph 12, the Report states that the "basic premise" of the CBS allocation plan is "that the size of its suggested 'market areas' is the minimum required to support a station." CBS has made no such statement and has proceeded under no such premise. Rather, CBS has clearly indicated to the contrary. The smallest market area included in the 100 leading television markets specified in the CBS allocation plans was El Paso with 77,500 families (*CBS Proposals and Comments,* Docket No. 11532, pp. 11-25). Yet in the study submitted with the Proposals (*How Many Television Stations Can the United States Support Economically?,* Exhibit V of the Proposals), 22,000 families are given as the minimum total homes per market required to support a television station on the average. The CBS allocation plans focused on the problem of providing at least three competitive stations to each of the 100 leading markets. But this is a far cry from suggesting that no other markets could support any stations.

(5) At page 21, line 2, it is stated that 89 of the proposed market areas lie in Zone I. On the assumption of the Report that the CBS plans included only 100 market areas, this would leave only 11 market areas for the entire United States falling outside Zone I. The fact is that 41 (not 89) of the CBS 100 leading markets are in Zone I and 59 are outside Zone I.

(6) At page 21, lines 3 and 4, it is stated that 35 of the CBS leading market areas in Zone I "contain over 1 million persons, as determined by the Bureau of the Census." According to the Census figures there are 22 (not 35) market areas in Zone I which cover 1 million or more persons.

It is difficult to conceive how these readily ascertainable facts could have been more clearly or explicitly stated. In its plan and in its testimony concerning the plan, CBS stated its belief which, lest there be any doubt, it once again confirms, that there *is* economic room outside the leading 100 television markets for many television stations, that it favors channel allocations for stations outside these 100 markets, and that it has indicated concretely its faith and its interest in these small markets by affiliating with about 80 stations outside those markets and by its special plans to aid those markets.[1]

[1]See CBS Supplemental Memorandum, pp. 81-83, describing the CBS Television Extended Market Plan and the Extended Program Service Plan.

APPENDIX A

Operating Profit as a Percentage of Net Tangible Property for Selected Companies in 1954

Industry	Company	Operating Income (a) (1954) ($ millions)	Net Tangible Property (b) (Jan. 1, 1954) ($ millions)	Profits As A Percentage of Net Tangible Property
Advertising:	Albert Frank-Guenther Law, Inc.	0.2	0.3	67%
	General Outdoor Adv. Co., Inc.	3.8	2.4	158%
	Walker & Co.	1.2	2.1	57%
Amusements & Amusement Supplies:	Eastman Kodak Co.	134.6	222.7	60%
	Madison Square Garden Corp.	0.9	1.6	56%
	U. S. Playing Card Co.	3.2	1.9	168%
Clocks & Watches:	Longines-Wittnauer Watch Co. Inc.	2.1	0.4	525%
	Bulova Watch Co., Inc.	8.5	10.4	82%
Drugs & Cosmetics:	Abbott Laboratories	16.8	27.6	61%
	Avon Products, Inc.	9.9	3.8	261%
	Miles Laboratories, Inc.	3.7	6.7	55%
	Pfizer (Chas.) & Co., Inc.	24.2	36.1	67%
Beverages:	Coca-Cola Co.	55.4	60.4	92%
	Pepsi-Cola Co.	13.0	10.9	119%
Durable Goods:	General Motors Corp.	1,647.3	1,536.3	107%
	General Electric Co.	358.4	449.8	80%
	Westinghouse Electric Corp.	169.4	285.5	59%
Publishing:	Book-of-the-Month Club, Inc.	0.9	0.5	180%
	McGraw-Hill Publishing Co.	12.1	2.3	526%
	Prentice-Hall, Inc.	3.2	2.3	139%
	New Yorker Magazine, Inc.	2.0	0.1	2,000%
	Time, Inc.	11.3	9.7	116%
	Moody's Investors Service	0.5	0.1	500%
Airplane Mfg.:	Boeing Airplane Co.	80.0	21.2	377%
	Douglas Aircraft Co., Inc.	80.4	32.3	249%
	Lockheed Aircraft Corp.	43.8	28.1	156%
Stock Brokers:	Merrill Lynch, Pierce, Fenner and Beane	27.1	1.9	1,426%

(a) Operating profit, before other income, other expenses and income taxes. Calendar year 1954 or nearest fiscal year.

(b) As of January 1, 1954 or beginning of fiscal year.

Source: Moody's Industrial Manuals, 1954-1956 and *Annual Reports,* Merrill Lynch, Pierce, Fenner and Beane.

APPENDIX B

LETTERS FROM

(1) KFEQ-TV, St. Joseph, Mo.

(2) KVOS-TV, Bellingham, Wash.

(3) KOLN-TV, Lincoln, Nebraska.

K F E Q
RADIO TELEVISION
ST. JOSEPH, MISSOURI

May 3rd, 1956

Dr. Frank Stanton, President
Columbia Broadcasting System, Inc.
485 Madison Avenue
New York 22, N. Y.

Dear Dr. Stanton:

Upon reading statements made by Senator John W. Bricker, we note that in his attacks on network practices that he has referred specifically to KFEQ-TV, our station in St. Joseph, Misouri, in relationship to KMBC, who at one time was the CBS Television outlet for the Kansas City metropolitan area. In referring to these stations, he has quoted actual sales figures for both stations, network sales, local time sales and total sales.

Our interpretation of this reference to our station in relationship to the Kansas City outlet, as well as our interpretation of his reference to similar situations, such as the Lincoln-Omaha situation, leads us to feel that he is endeavoring to prove that there may be a reluctance on the part of the network to deliver network programs on our station or that there might possibly be either a direct or indirect attempt to minimize the number of network programs that would be fed to our station in St. Joseph.

Because our experience with the CBS Television Network has been so completely different from the situation described above, we felt that it would be very important to go on record with you by saying that we are very conscious of the complete cooperation which we have had on the part of your Sales Department and your Sales-Service Department in their efforts to put every CBS program possible on KFEQ-TV. We have very concrete knowledge of the continued

[II]

efforts on the part of your Sales Service Department to have KFEQ-TV included in practically every network order. Our personal contacts with your Sales Service Department, as well as our day-to-day contact via teletype and long-distance phone, have been continual proof of the complete cooperation which we have received.

Since our first association with the CBS Television Network, our network position has constantly improved. The number of programs carried week-to-week has been increasing, as well as the dollars and cents revenue from network sales. For instance, our total network income in 1954 was $32,953.00; in 1955 our total sales from CBS Network were $51,292, an increase of $18,339.00. To bring this picture down to date, may we compare the first 3 months of 1955 as opposed to the first 3 months of 1956? The total for January, February, March, 1955, network sales for KFEQ-TV—$11,662.00; for the same three months of 1956, network sales totalled $16,130.00; thus, in the first three months of 1956, as compared to the first three months of 1955, we show an increase in network billings of $4,468.

You have our personal assurance that we are extremely well-pleased with the manner in which your Sales and Sales Service Departments work with and in behalf of KFEQ-TV, and we are also gratified with the continual increase, not only in the number of programs which we carry from CBS, but also with the increase in the dollars and cents revenues. We want you to know that we appreciate the support and cooperation which your various departments are giving us, and we are looking forward to a continuation of this very pleasant and increasingly profitable relationship.

With best wishes.

Very truly yours,

G. G. GRISWOLD
Glenn G. Griswold
General Manager

GGG/jm

—AM—	KVOS	—TV—
790 KC	*The Peace Arch Station*	CHANNEL 12
1000 WATTS	BELLINGHAM, WASHINGTON	33,400 WATTS
ESTABLISHED 1927		ESTABLISHED 1952
ABC NETWORK		CBS and DU MONT

May 7, 1956

Mr. Richard S. Salant
Vice President
Columbia Broadcasting System
485 Madison Avenue
New York 22, N. Y.

Dear Dick:

The Bricker Network Report deserves some comment from KVOS-TV. The Senator's interest in small stations is sound and appreciated. However, some points have been overlooked.

The question of overlapping stations is largely taking care of itself. KVOS-TV and KTNT-TV overlap to a minor degree in their A signal areas. When, and if, KVOS-TV gets permission to use maximum power, this overlap will be increased. CBS-TV has indicated it would welcome this improvement in our facilities and ability to serve the public.

There are other indications that major networks are moving away from the concept of no overlapping coverage. As a matter of fact this monopoly thinking seems to be in the station's mind, and not the network's.

As to the figures quoted by Senator Bricker we would like to bring him up to date. 1954 figures are not fully illustrative of our situation. Probably the same is true for the entire industry. 1954 is too close to the end of the freeze in 1953. In 1954 we were on the Dumont Network. The $1,470 came almost entirely from them. Our CBS-TV contract is dated December 16, 1954. We received only $21 from

CBS-TV in 1954. The Senator is correct in showing a loss for 1954 of $45,115.

By the end of March, 1955, we were starting to get some business from CBS-TV—a pretty fair example of good selling. At that time we had lost $5,782.53 with inadequate charges for depreciation, no interest paid or computed on long-term debt and no salary to the writer.

Our ratio of current assets to current liabilities was 3 to 4, and only the 23rd Psalm stood between us and the sheriff.

Under our CBS-TV contract we can accept or decline business, there is no option time and we can take programs live or delayed as suits our ideas of serving the public.

Gradually our network sales and all income increased in 1955 because of our CBS-TV service. Though network income had only amounted to $391.20 we did twice as much business in March of 1955 as we did in 1954. By the end of March 1956 our gross business was more than double 1955 and nearly four times the first quarter of 1954. Our network income for the first quarter of 1955 was $3,467.74, compared to $870.45 in the same period of 1954.

Our ratio of current assets to current liabilities was 2.19 to 1. We had added over $75,000 in new and useful equipment. By the end of April, as this is written, preliminary figures show our accounts payable are on a 45 day basis, compared to a 155 day basis of a year before. Depreciation allowances are adequate and after 25 months the writer's salary is being paid.

As the 338th market we expect to sell less and make less than our nearest CBS-TV neighbor, KTNT-TV. Practically any business or profession in Bellingham makes less than the same operation would yield in Tacoma or any other of the top 100 markets.

We are now able to serve our A-grade signal area in competition with major market stations, but only because we are an affiliate of a major network. We think major market stations have many advantages, but as free enterprizers we say: Give us CBS-TV programs and we can compete.

[V]

We are grateful for the work that is being done by the Senate Committee in behalf of small stations, but we feel the networks are not to be misjudged. There are other factors that could harm us much more—monopoly minded film distributors, for example.

This letter, we hope, will be of some use to you. It is a sincere expression of appreciation.

Yours,

ROGAN JONES
Rogan Jones

RJ/ag

[VI]

CHANNEL 10
310,000 WATTS
1000 FOOT TOWER

KOLN-TV

CBS - DUMONT - ABC

40th & W Streets - Lincoln, Nebraska

May 18, 1956

Dr. Frank Stanton, President
Columbia Broadcasting System, Inc.
485 Madison Avenue
New York 22, New York

Dear Dr. Stanton:

The purpose of this communication is to make reference to the market duplication connotation contained in Senator John W. Bricker's report to the Senate Interstate and Foreign Commerce Committee, wherein specific mention was made to KOLN-TV, Lincoln, Nebraska.

That report indicates during 1954 the diversity of revenue between the Lincoln and Omaha stations due to the dominant position of the one over the other. Out of all fairness it must be made abundantly clear that at that time KOLN-TV had been a network member but a few months and had little opportunity to develop its market story. Most certainly the low station income in 1954 was not due to lack of diligence on the part of the network.

On the contrary, through individual effort KOLN-TV faced its economic plight by developing strong local programs and by building a new transmitting plant designed to serve the total Lincoln-Land area. As a result of this private enterprise, in the short space of a year and a half, we are able to project our 1956 revenue over 1954 as follows: network sales up 600%, local sales up 250% and national spot sales up 300%. By making our market story valid and competitive, it has attracted both national and local advertisers to our facilities. A steady flow of fine network programs has followed. Network officials have been able to place their programs on our facilities because we first created advertiser demand.

In our view, the progress at KOLN-TV is a clear example of private enterprise effectuating an end-result which the strait jacket of bureaucratic control could never accomplish.

With every good wish, I am

Sincerely,

A. JAMES EBEL
A. James Ebel
Manager

AJE:wb

Columbia Broadcasting System

485 Madison Avenue, New York 22, N. Y.

Mr. STANTON. The fourth document is A Memorandum Concerning the Statement of Richard A. Moore.

(The document is as follows. See also material at p. 2897 and item 29 in the appendix.)

Memorandum

Concerning the Statement of

Richard A. Moore

PREPARED FOR THE SENATE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE BY COLUMBIA BROADCASTING SYSTEM, INC.

JUNE 1956

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Memorandum Concerning the Statement of Richard A. Moore

Introduction

On March 26, 1956, Richard A. Moore, President of KTTV, Inc., Los Angeles, California, made a statement (hereinafter referred to as the Statement) before this Committee (Tr. 1569-1660). The Chairman later requested that the networks respond to the Statement.

Mr. Moore's statement consisted primarily of an attack on the validity and propriety of the option time provisions in network affiliation agreements and of the "basic-required" practice of the networks. The relevant facts and the basic legal and other considerations concerning these two issues are fully set forth in "Network Practices, Memorandum Supplementing Statement of Frank Stanton" (Supplemental Memorandum), the Opinion and Memorandum of Messrs. Cravath, Swaine & Moore, and the statement of Frank Stanton, President, Columbia Broadcasting System, Inc. It is not the purpose of this memorandum to restate those facts or contentions, amply documented in the aforesaid submissions. Rather it is the purpose of this memorandum to address itself to certain additional allegations of fact and implications not fully treated in the other documents.

It should be noted at the outset, however, that although the Statement is lengthy, it deals primarily in argumentative conclusions and assumptions, rather than in primary facts. There is in general a noticeable absence of supporting data. On the relatively few occasions when the Statement did deal with facts, they were often wrong. And, when the Statement's facts were technically correct, the inferences which were drawn from them and the multiple assumptions which were built upon them were equally inaccurate or misleading.

Accordingly, it is the purpose of this memorandum to analyze these facts, inferences and assumptions since the Statement bases its fundamental conclusions upon them.

As noted, some of the conclusions in the Statement are treated in other documents submitted herewith. To the extent possible, repetition will be avoided by reference to the pertinent pages of the Supplemental Memorandum.

The Statement contends that the option time provision in affiliation agreements and the basic-required practice (described by the Statement as "must-buy") of the television networks so adversely affect (A) affiliated television stations, (B) syndicated film producers, (C) independent television stations and (D) advertisers, as to result in a denial to the viewing public of its opportunity to receive the widest possible choice of programs. To permit a clear appraisal of the impact on the conclusions of the misstatements and misleading implications in the Statement, the allegations concerning the supposed effects of the network practices on each of these groups will be discussed separately.

A. *Alleged Effects on Affiliated Television Stations.*

This memorandum will consider in turn the contentions that as a result of network option time, television network affiliates become mere mechanical conduits and (1) broadcast an unreasonably large amount of network programs and (2) do not exercise a free choice in the selection of programs during option time, thus abrogating their responsibility as licensees.

1. *The Fallacy of the Contention that Network Option Time Causes Television Affiliates to Carry an Unreasonably Large Amount of Network Programming.*

In attempting to support this contention, the Statement makes two threshold errors of fact. First, it is said that in order for stations to carry high quality network programs, they must agree to carry network programs offered during the "twelve hours" of option time each day (Tr. 1596). Second, it is said that since many hour-long network programs are broadcast partly within and partly outside of—and thus straddle—network option time, the networks effectively add an additional half-hour of option time (Tr. 1593-1594). Both statements are in error.

First, no CBS Television Network affiliation agreement provides for more than *nine* network option hours a day.

Second, it is and has been the position of the CBS Television Network that if a station is ordered for a program which straddles network option time, the option provisions in the affiliation agreement are inapplicable. Thus, this practice, rather than increasing the number of hours subject to the network option, has actually *reduced* that time.

But the statement seeks to find its main support for the contention that option time results in network affiliates carrying an unreasonably large amount of network programming in a study of forty cities in all of which the NBC and CBS Television

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Networks each has a basic-required affiliate. The study purported to show that during evening network option time network programs occupied 96.3 per cent of the time on the 80 CBS and NBC affiliates in those markets (Tr. 1590-1592)—and was later used to imply that this percentage applied to *all* network affiliates (Tr. 1601, 1627).

CBS has been unable to understand the significance of the data derived from this study—done as it was in a carefully selected group of cities for carefully selected hours of the day. In any event, the facts negate the implications of the study. That option time has no such results as the statement apparently seeks to establish appears from the following facts derived from an analysis of the CBS Television Network's program clearances during the week of May 19, 1956:

On all CBS Television Network affiliates—

58.1 per cent of all hours subject to network option are available to *non-network* programming.

47.4 per cent of all evening hours subject to network option are available to *non-network* programming.

On all CBS Television Network basic-required affiliates—

38.4 per cent of all hours subject to network option are available to *non-network* programming.

30.4 per cent of all evening hours subject to network option are available to *non-network* programming.

The availability of these hours to non-network programming arises either (i) because affiliates have rejected the network programming offered (during the week analyzed more than 500 hours of option time were ordered by the network but were not cleared as ordered by affiliates), or (ii) because the normal option hours, for one reason or another,[1] were not subject to option by the network. In all other hours of the day, of course, 100 per cent of any affiliate's time is available to non-network programming.

2. *The Fallacy of the Contention That Affiliated Stations Do Not Exercise a Free Choice in Program Selection.*

The assertion of the Statement (Tr. 1584) that the right of an affiliated station to refuse to broadcast a network program is a mere "technicality" is squarely in error. It is a broad and practical right.[2] It is effectively and not infrequently invoked. As noted above, during one week more than 500 option-time hours were ordered by the CBS Television Network and not cleared by the stations as ordered.

CBS, perhaps immodestly, believes that the fact that this figure is not larger is evidence of the high quality of the television network's over-all programming schedule. The Statement, however, appears to urge that in general, the selection by affiliates of network programs in option time must be the result of compulsion since syndicated film programs, it asserts (Tr. 1601), are more popular. Thus, it contends, time options "protect in-

---

[1]The periods which would otherwise be subject to option time were occupied by a "straddling" network program (see p. 3, above) or option time was inapplicable because the network program was unsponsored, or because of difference in time zones, no network program was offered during the period.

[2]The right is *not* limited to the rejection of network programs which the station believes are "contrary to the public interest"; it extends to network programs which the station finds are "unsatisfactory or unsuitable" for its purposes. For the breadth of these rights, see Supplemental Memorandum, pp. 104-105.

ferior network programs against the better programs produced by other program sources" (Tr. 1631).

Its reasoning seems to be that:

(a) Program popularity is the test of a station's programming responsibility. A station should therefore broadcast the most popular programs available.

(b) Syndicated film programs are more popular than network programs.

(c) A station which broadcasts network programs instead of syndicated films has thereby abrogated its programming responsibility.

It should be noted, preliminarily, that popularity is not the only yardstick for measuring the quality or public interest aspects of a program. In order to achieve a well-balanced program structure, stations should and do broadcast programs which are not expected to attain high audience ratings.

However, even assuming that program popularity is the test of a station's programming responsibility, network programs are more popular than syndicated films. The Statement's figures attempting to create a contrary impression are so carefully selected as to be entirely misleading. One of the examples presented in the discussion of syndicate films is that, "In Los Angeles, with seven VHF stations, there were 128 network programs. *Confidential File* had an audience larger than 95 of these network programs" (Tr. 1599). If this statement be accepted, there were *33* network programs more popular than the *most popular* syndicated film. However, there are two *Confidential File* programs broadcast each week in Los Angeles, both on KTTV. One is a live program on Sunday

9:30 p.m. to 10:00 p.m. and the other is a film program on Friday 9:30 p.m. to 10:00 p.m. The Statement has used the live program among its syndicated film examples because the syndicated film *Confidential File* is, in fact, exceeded in popularity by *84* network programs.

No purpose would be served by similarly commenting on the other examples cited in the Statement. Each points inevitably to the same conclusion—that, as the following table shows, network programming as a whole is more popular than syndicated films:[1]

	New York	Los Angeles
Average of ten highest rated shows[2]		
Network	40.6	37.7
Syndicated Film	12.9	16.5
Network Advantage	+215%	+128%
Highest rated show		
Network	57.0	55.6
Syndicated Film	22.4	19.7
Network Advantage	+154%	+182%

The above table uses data from New York and Los Angeles where there are four independent stations which can provide "prime time" for syndicated films. The popularity of network programs as compared to non-network programs throughout the country is shown at page 15, footnote 1, Supplemental Memorandum.

Clearly then, if program popularity is the test, a station licensee can hardly be considered remiss in choosing network

[1]CBS wishes to make clear, however, that it is not seeking in this section of the memorandum, to minimize the important and valuable role of the film syndicators for *all* segments of the industry—for the CBS Television Network, and for stations both affiliated and unaffiliated. CBS herein is only addressing itself to the specific tests which the Statement itself has established.

[2]Data are from American Research Bureau, February, 1956.

programs instead of syndicated film. And equally clearly, option time provisions do not protect inferior network programs against better programs produced by other program sources.

Further to support its contention that option time results in an abdication by affiliates of their responsibilities to the community, the Statement stressed the history of the clearance of *Disneyland*. It states that although *Disneyland* is on film and can be played in each city at the most suitable time for a young audience, the network option time selected for the program (7:30-8:30 p.m. Eastern Standard Time and 8:00-9:00 p.m. Pacific Standard Time) means that children can enjoy *Disneyland* only if they stay up to a late hour. It states further that while *Disneyland* is carried on fifteen network affiliated stations in the Pacific Time Zone, nine of them carry it in the time period dictated by the network (Tr. 1594-1596).

The Statement's reliance on this history is misplaced. *ABC does not have time options on many of the stations which broadcast the program at the time ordered.* In the Pacific Time Zone, of the ten stations[1] which broadcast the program at the "ordered" time, two are owned by ABC. Four of the eight other stations are primarily affiliated with either the NBC or CBS Television Networks, so that ABC does not have option time agreements with those four stations. Throughout the country, more than 36 per cent of the stations which broadcast *Disneyland* at the time it is ordered by ABC do not have option time agreements with ABC.

[1]Program of February 8, 1956. The Statement's reference to nine stations may have been based upon examination of a different day.

Thus, it plainly could not have been network time options which "forced" stations to accept *Disneyland* at the hour ordered by the network. As the Statement itself acknowledges, *Disneyland* is regarded as a program for "children of all ages" (Tr. 1594). The sponsors of *Disneyland* include an automobile manufacturer and a meat packer. Obviously neither is interested primarily in reaching children with commercial messages. CBS cannot be certain, of course, of the reasoning behind the stations' decisions to carry the program as ordered, but it seems likely that popularity of the program among adults who may not be able to watch during the daytime, as well as the wishes of the program's sponsors, had more to do with those decisions than did option time.

Still another contention embodied in the Statement as part of its argument that option time is inconsistent with station responsibility is that network time options constitute blind selling[1] since the station licensee rarely sees the program before it is broadcast and cannot judge whether the program is in the public interest (Tr. 1597).

CBS Television Network affiliates receive advance descriptions of all network program series before the series begin, and, in some instances, the CBS Television Network has provided closed circuit previews of new programs. After a network series begins, each ordered station receives a detailed description of the following week's program several days before it is to be broadcast. That description and a station's

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[1]Network programs are not sold to affiliated stations at all. See *Opinion of Counsel and Memorandum Concerning the Applicability of Antitrust Laws*, p. 58.

confidence in the judgment of the network are usually adequate for the station to make an informed decision as to the suitability of the individual program. When an affiliate is not satisfied with the regular description, either before or after a series begins, it can and does ask for a more detailed description of the forthcoming program or series, and the network, of course, does its best to satisfy those requests. *And at any time, whether before or after the network series begins, an affiliate can reject a network program which is "unsatisfactory or unsuitable" for the station's purposes.* Supplemental Memorandum, p. 105.

The information which stations receive about non-network distributed programs is not substantially different. Even when a station views a pilot of a syndicated film series, it does not preview every film in the series before it contracts to purchase and broadcast the entire series.

And in fact, an affiliate, as a practical matter, has more leeway to reject a network series after it has begun than it has to reject a non-network series once the station has contracted for the latter. If the affiliate exercises its broad right to reject—noted above—it will, of course, lose the advertising revenue for the programs which it has decided not to broadcast. But it is not penalized financially for the exercise of its right to reject.

In contrast, when a station orders a syndicated film series, it usually must pay for all programs in the series whether or not they are broadcast. Thus, if a station decides to cancel a syndicated film series because it believes the programs to be contrary to the public interest, or otherwise unsuitable or unsatisfactory, it must bear a heavy financial burden. It may be assumed that these consequences will not make any easier a decision to cancel.

On balance, it is clear that an affiliated station is in at least as good a position and is as apt to exercise its judgment on network programs as is any station with respect to syndicated film programs.

Finally, the Statement relies heavily on allegations of fact purporting to establish KTTV's programming superiority (Tr. 1572-1575). The purpose of the recital, apparently, is to lend weight to the contention that a network affiliate, allegedly burdened by option time, cannot operate to serve the public or the interests of the local viewers while an unaffiliated station, with no such "burden", can and does do so.

Even if the argumentative premises be accepted, the facts compel rejection of these contentions. CBS has compared the programs broadcast by KTTV and KNXT, the CBS-owned television station in Los Angeles. That comparison establishes that by any of the normal and available criteria, even as to an affiliate such as KNXT, where the maximum amount of clearance of network programs is to be expected, the programming of an affiliated station compares favorably to that of a non-affiliated station. There follows a summary of the source of programs broadcast by KTTV and KNXT during the week ending April 7, 1956:

	KNXT	KTTV
Network	74 hrs. 15 min.	none
Film, including features and re-run syndicated film with off-camera announcer	9 hrs. 45 min.	63 hrs. 15 min.
Film, as above, with on-camera announcer	16 hrs. 40 min.	39 hrs. 30 min.
First run syndicated film	1 hour	5 hours
Local live	26 hrs. 15 min.	21 hrs. 20 min.

A qualitative breakdown of the local live programming of each station shows that KNXT broadcast 7 hours and 20 minutes of news while KTTV broadcast 2 hours and 30 minutes. KNXT also broadcast 3 hours and 30 minutes of local live agricultural, religious and educational programs, while KTTV broadcast 65 minutes of religious and no educational or agricultural programs.

The Statement claims that (1) KTTV is first in daytime audience among all seven stations in Los Angeles; (2) its average audience for all broadcast hours "substantially" exceeds that of the ABC television station; and (3) it is "closely competitive" with the CBS and NBC television stations during prime evening hours (Tr. 1572-1573).

First, KNXT and KTTV had identical average ratings in the daytime,—3.3.* Second, KTTV's average audience for all broadcast hours did not "substantially" exceed that of the ABC television station: The average rating for KTTV was 4.4 and that of the ABC television station was 4.2. Third, KTTV was not "closely competitive" with the CBS and NBC television stations during "prime" evening hours: From 7:30

*All ratings in this paragraph are from the American Research Bureau Report for February 1956.

p.m. to 10:30 p.m. (the hours specified as "prime" in the Statement) the average rating for KNXT (CBS) was 17.0 and KRCA (NBC) was 16.1—both more than twice as large as KTTV, which was 7.9.

Relative audience acceptance of the program schedules of the two stations is reflected in the American Research Bureau Los Angeles Report for February 1956 which shows that KNXT attracted 26.3 per cent of the average audience throughout the week, while KTTV attracted 18.8 per cent.

Public recognition of the excellent overall programming of KNXT is evidenced by the fact that the station has received 75 awards in the past three years from educational, civic and industry organizations. Many of them are detailed in Appendix D of the Supplemental Memorandum. They include the Academy of Television Arts and Sciences special station achievement award in 1954 and 1955, a record without precedent, and the Peabody Award of "outstanding programming in the public's interest," with a notation that the multiple honors accorded KNXT at this time were "unprecedented in the [Peabody] Committee's history".

In addition, KNXT recently won the two top television awards voted by the California Associated Press Television-Radio Association. KNXT won the "Sweepstakes Award for General Excellence of Locally Originated News Broadcasts." KNXT's *The Big News* received the "First Award" for being the best local, regularly scheduled news program.[1]

[1] In connection with the Statement's claim of the superiority of KTTV's news programming (Tr. 1573), the following editorial comments concerning one of KTTV's news analysts is relevant:

> "[The KTTV news analyst] has indulged in the spread of ugly rumor, innuendo and gossip.

KNXT has demonstrated that, while broadcasting practically a complete network schedule, it can serve the public well, and that there is no basis of fact for the allegation in the Statement that network affiliates "have been required to surrender their responsibility" (Tr. 1590) because of option time.

The present owners of KTTV, in any event, have not always believed that a network affiliation agreement containing option time provisions precludes a station from assuming its responsibilities as a licensee. Before the station went on the air, they sold a 49% interest in the station to CBS. At the time of that sale, they made the following representation to the FCC in support of their application for transfer:

> "In the interest of more effective handling of the television station operation, it has long been the intention of assignor ultimately to establish a separate company for the operation of the station rather than to operate it as a department of the newspaper. The current assignment request is being made for the dual purpose of accomplishing that desirable result and of making possible the cooperation of the Columbia Broadcasting System on a minority-interest basis, thus

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"His comments have exceeded the dictates both of journalistic responsibility and of good taste.

"Such conduct, whether occurring in a newspaper, on the radio or the television should be repudiated by all who regard the profession of news reporting as a trust, . . . Those who resort to rumormongering and the circulation of irresponsible gossip cast a reflection on the entire process of gathering, reporting and interpreting the news. They arouse unjustified public suspicions, create false alarms and attract the cooperation and ready collaboration of crackpots, fanatics and character assassins. . . ."

The foregoing evaluation appeared on May 5, 1956, as an editorial in the Los Angeles Times, published by the *Times-Mirror Co., which in turn owns KTTV, Inc.*

> securing the benefit of their background and experience in television station programming and operation as well as *the advantages to be gained from network television operation.* It is felt that this action will result in a *distinct improvement* in the service to be rendered the community by Station KTTV." (Italics added).

Option time was in existence when that representation was made. The CBS Television affiliation agreement with KTTV included the usual option time provisions. When seeking to gain the advantages of an affiliation with option time, they were not of the view that they would thereby abrogate or fail to fulfill their responsibilities to the community. In fact, they sought the affiliation to improve their service to the community.

B. *Alleged Effects on Syndicated Film Distributors*

The Statement argues that network practices are harmful to syndicated film distributors in their relations with networks and in their relations with stations. This memorandum will consider in turn the several subsidiary contentions on which the Statement's conclusion is based.

1. *The Fallacy of the Contention that Network Practices Are Harmful to Syndicated Film Distributors in Their Relations with the Networks.*

The Statement contends (Tr. 1627-1628, 1635) that networks "tie-in" the sale of network-produced programs with the sale of desirable network time periods. This activity is allegedly motivated by the profits networks make on the production of programs (Tr. 1629, 1635). In addition, the charge is made (Tr. 1606, 1608) that the networks attempt to take over control of the independently-produced film properties which are offered for broadcast over the networks.

As is stated in the Supplemental Memorandum (pp. 88-95), the CBS Television Network does not discriminate in favor of programs which it produces as against programs produced by independent sources in clearing time for advertisers. On the contrary, the CBS Television Network believes that independent program producers are a vital source of supply to it of excellent programs. Its policy, accordingly, is simply to place in its network schedule the best program—regardless of source—at the best time.

The fact is that a majority of the programs broadcast over the CBS Television Network are not produced by it, and the trend in this direction has increased over the last few years—both for all network broadcasting time and, particularly, in Class A time, the very period during which the tie-in is alleged to obtain.

As is also stated in the Supplemental Memorandum (p. 93), the CBS Television Network not only does not profit on its program production operation; it suffers substantial losses. It produces (or arranges for the production of) programs to fulfill its responsibility to the public by making certain that good programs are always available for the network schedule.

The charge that the networks try "to take over control [of] the film properties which come to them from independent producers" is irresponsible, unsubstantiated and false. When questioned concerning the basis for this charge, the author of the Statement conceded that of his own knowledge he knew of no specific instance where the networks had engaged in such a practice, but that the charge was predicated on the "usual lunch-date complaints."

The fact is that the CBS Television Network acquires a financial interest in an independently produced (or more often, a not yet produced but conceived) program *only* when the outsider submits an idea or a pilot and, to bring the program to completion, the CBS Television Network incurs financial obligations in respect to the program's development and production.

In no case has CBS or the CBS Television Network ever imposed as a condition of acceptance of a program, or of making time available for it, a requirement that it be granted a financial interest.

2. *The Fallacy of the Contention that Network Practices Are Harmful to Syndicated Film Distributors in Their Relations with Stations.*

The assertions underlying this contention are that (a) network option time results in so-called "prime time" being virtually completely occupied by network programs (Tr. 1590-1592), (b) Class B and Class C time is not sufficient for independent films (Tr. 1604, 1606), and (c) as a result, the Statement alleges, stations are prevented from buying the product of syndicated film distributors (Tr. 1604).

(a) The "evidence" offered by the Statement in support of the allegation that network programs completely pre-empt "prime time" is primarily the "96 per cent" argument (Tr. 1590-1592). Whatever relevance that argument may have to other contentions offered by the Statement, it has none in respect of the assertion that stations cannot buy non-network programs. For, as noted above, even the 96 per cent relates only to 80 selected stations in 40 selected markets: It thus ignores more than 80 per cent of the nation's television markets, and even in the 40 markets, it ignores more than one-third of the stations.[1]

A more accurate representation of the ability of syndicated programs to clear Class A time in substantial numbers of markets was given by Mr. Oliver Treyz, President of the Television Bureau of Advertising, in a recent speech which is quoted in part in the Supplemental Memorandum (pp. 120-121).

In his speech, Mr. Treyz listed a large number (but by no means all) of the syndicated film programs which have cleared Class A time in a substantial number of markets. To the examples given by Mr. Treyz can be added the case of *The Rosemary Clooney Show,* a syndicated film program which recently started on 54 stations, including KTTV. On 80 per cent of these stations, the program is being carried between 7:30 and 10:30 p.m. In the other 20 per cent of the cases, the program is being broadcast either between 6:00 and 7:00 p.m. or between 10:30 and 11 p.m.

(b) The contention that Class B and Class C time is inadequate for exposure of syndicated films is equally unwarranted. While it is true that programs broadcast during Class B

[1]According to information available, at the time of the Statement all stations in the 40 markets broadcast more than 2000 half-hours of syndicated film programs a week.

and Class C time do not draw audiences so large as those broadcast during Class A time, time other than 7:30 to 10:30 p.m. may not be written off as useless or unprofitable. There follows a breakdown indicating the average number of homes using television during the other hours of the day, expressed in local station time.[1]

	Number of Homes Tuned to Television (in 1,000's)
8-10 a.m.	4,706
10 a.m.-1 p.m.	6,836
1-2 p.m.	5,393
2-5 p.m.	8,210
5-7:30 p.m.	16,041
7:30-10:30 p.m.	23,015
10:30-11 p.m.	14,049
11 p.m.-1 a.m.	4,019
Average:	10,820
Average excluding 7:30-10:30 p.m.:	8,222

There are, then, very large audiences available throughout the day. The average number of homes using television (8,222,000) in hours other than the "prime evening hours" is greater than the number of homes using television in the hour of *greatest television use* as recently as June, 1951, when the CBS Television Network had been operating for more than two years. And it is to be noted that 63 per cent of total set use occurs during hours other than 7:30 to 10:30 p.m.

[1]These figures were obtained from the American Research Bureau report for February, 1956, applied to CBS estimates of television homes (34,350,000).

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That time periods other than Class A evening hours will support high quality programs is evident from an analysis of the programs which the CBS Television Network produces. Of the 36½ hours of programs which were produced by the network alone, or by the network in association with independent producers, during the week ending May 19, 1956, *more than 75 per cent* were originated during hours other than the three evening hours specified by KTTV. Clearly, therefore, as the experience of the CBS Television Network itself establishes hours outside 7:30 to 10:30 p.m. provide sufficient incentive for program production. It is also to be noted that more than 50 per cent of the time revenues the CBS Television Network derives from the sale of time on basic-required stations is from time sold outside 7:30 to 10:30 p.m.

(c) The contention that stations are prevented from buying the product of syndicated film distributors cannot be reconciled with the following table, which shows a partial list of current syndicated films and the approximate number of cities in which each program is broadcast:

Program	Approximate Number of Cities in which Program is Broadcast
Eddie Cantor	67
Badge 714	117
Dr. Hudson's Secret Journal	105
I Led Three Lives	120
Buffalo Bill, Jr.	112
The Man Called X	More than 50
Waterfront	More than 175
Liberace	163

Program	Approximate Number of Cities in which Program is broadcast
Soldiers of Fortune	98
Amos 'N' Andy	73
Mr. District Attorney	56
The Great Gildersleeve	37
Long John Silver	61
Man Behind the Badge	35
Highway Patrol	165
Range Riders	56
Sheena, Queen of the Jungle	More than 50
Death Valley Days	80
Annie Oakley	165
Passport to Danger	More than 50
The Whistler	54
Science Fiction Theatre	126
Douglas Fairbanks	More than 50
San Francisco Beat	40
Racket Squad	More than 50
Sky King	75
Count of Monte Cristo	59
Susie	More than 90
Studio 57	50
Turning Point	75
The Mobile Theatre	68
Patti Page	111

Still other facts—as distinguished from speculation and assumption—further compel the rejection of the contention that option time or other network practices are responsible for any alleged shortage of outlets for syndicated film programs. For the fact is that it is network affiliated stations with option time which make greater use of first-run syndicated film series than do unaffiliated stations (where, of course, no option time obtains). Thus, in the following table, CBS has selected representative CBS Television Affiliates covering a geographical cross section of large, medium and small markets with varying numbers of stations, and compared the number of first-run syndicated film programs broadcast on those stations with the number broadcast on unaffiliated stations in New York and Los Angeles.

CBS Television Network Affiliated Station	Number of first-run syndicated film series broadcast each week	Non-Affiliated Station	Number of first-run syndicated film series broadcast each week
KSBW-TV, Salinas, Calif.	19	*Los Angeles*	
WCAU-TV, Philadelphia	16	KHJ	2
KFXT-TV, Grand Junction, Colo.	15	KCOP	1
KLZ-TV, Denver	15	KTLA	1
WMBR-TV, Jacksonville, Fla.	15	KTTV	13
WBTV, Charlotte, N. C.	15	*New York*	
WCIA, Champaign, Ill.	13[1]	WABD	13[3]
KSL-TV, Salt Lake City	13	WOR-TV	1
KDUB, Lubbock, Texas	12	WPIX	19[4]
WCCO-TV, Minneapolis	12	WATV	0
WBTW, Florence, S. C.	12		
W-TWO, Bangor, Maine	11		
KOIN-TV, Portland, Ore.	9		
KGUL-TV, Houston-Galveston	9		
WMAR-TV, Baltimore	8[2]		
WTOP-TV, Washington, D. C.	7		
Average:	12.3	Average:	6.3

Whatever hypotheses the Statement may have as to why network practices should adversely affect syndicated film distributors, it is apparent, as has been documented in the Supplemental Memorandum (pp. 113-118) that there is

[1]One series broadcast twice a week, and one series broadcast three times a week.

[2]One series broadcast five times a week.

[3]Two series broadcast twice a week.

[4]One series broadcast five times a week, and one series broadcast twice a week.

ample supply of syndicated film available and that syndicated film distributors are, and will continue to, prosper greatly from their sales to networks and to stations alike.

In summary, the evidence is that syndicated film distributors have a large market for their product on the networks, that they have access to a substantial amount of Class A time on stations, and that Class B and Class C time is valuable and accessible to them.

C. *Alleged Effects on Non-Affiliated Stations.*

The Statement asserts that network practices (1) will result in a serious curtailment of the sources of programs available to non-affiliated stations and (2) has resulted in a loss of income to those stations. Neither assertion can be reconciled with the facts.

1. *The Fallacy of the Contention that the Program Sources Available to Non-Affiliated Stations Will Dry Up as a Result of Network Practices.*

The Statement contends that one of the sources of programming (syndicated film) of the non-affiliated station will be cut off or sharply restricted as a result of the network practices complained of (Tr. 1575). The Statement is here attempting to project into the future. As has been indicated earlier in this memorandum (pp. 20-23) and more fully detailed in the Supplemental Memorandum (pp. 113-118) there is no likelihood of a drying up of the production of syndicated films. All the available evidence of the past points to an increase in this product in the future. The pessimistic speculations of the Statement have no sound basis.

2. *The Fallacy of the Contention that the Non-Affiliated Stations Suffer Economic Loss as a Result of Network Practices.*

Such loss, it is claimed, occurs in two ways: first, the basic-required practice of the networks prevents the network advertiser from placing his program on non-affiliated stations in the basic-required markets (Tr. 1616-1617), and second, the networks are charged with exerting improper pressure on advertisers to transfer to network affiliates network programs previously placed on non-affiliated stations (Tr. 1617-1619).

The allegation that the basic-required practice is an illegal agreement among stations is completely unwarranted by the facts.[1] The basic-required practice is based on sound economic reasons arising out of the nature of the television network business itself and the product which it offers—i.e., *nationwide* circulation. The practice does nothing more than define the national medium the network offers for sale. Similar practices are followed by other national advertising media.

The question is whether the basic-required policy prevents—as the Statement suggests it does by the use of the word "boycott" (Tr. 1617)—the network advertiser from advertising on non-affiliated television stations in basic-required markets. KTTV's own list of advertisers readily establishes that the basic-required practice has no such effect. The following products which were advertised on *network* stations in Los Angeles, were

[1]See Supplemental Memorandum (pp. 127-130).

also advertised on KTTV during the period March 3 to March 9, 1956:

Toni Home Permanent	Nestle Products
Kent Cigarettes	Miles Laboratories Products
Carter Products	Pabst Beer
Viceroy Cigarettes	Bristol Myers Products
White Rain Shampoo	Crest Toothpaste
Ivory Soap	Wildroot Shampoo
Spic & Span	L & M Cigarettes
Dash	Armour Products
Coca-Cola	Revlon Products
Winston Cigarettes	Arrid Deodorant

It is true that KTTV has not been able to broadcast certain network programs. But that is wholly irrelevant to the basic-required practice. When an advertiser chooses to use the network as his advertising medium, he elects to have his program broadcast over the network's affiliates—the network is an aggregate of its affiliates, not an *ad hoc* collection of stations unrelated to it except at the whim of advertisers. Here, KTTV is not complaining about the basic-required practice, but rather, either that it is not a network affiliate, or that there is such a thing as a network at all.

The network practice is not different from that of other national advertising media. LIFE magazine does not give an advertiser a rebate because the advertiser would prefer to have his advertisement in another publication in Chicago or in any other market. Similarly, each of the so-called Sunday supplements defines the medium being sold by listing the newspapers in which the advertiser must place his advertising. The advertiser may not arbitrarily place his advertising in another newspaper in one or more markets *in lieu of* a newspaper associated with the Sunday supplement.

The further assertion that networks use improper pressure to induce the transfer of programs from non-affiliates to affiliates is based on a single alleged occurrence, described as follows:

> "KTTV was able to secure an order from an advertiser for *Captain Midnight* which was broadcast over CBS network facilities in 40 other cities. The advertisers's agency said that continued pressure was placed upon it by CBS to move the show to the network station in Los Angeles. Finally, on the telephone, the agency informed KTTV that unless the agency move *Captain Midnight* to the network station, the network would not make time available for *Tales of the Texas Rangers,* to be placed on behalf of a different advertiser by the same agency. Shortly thereafter, the agency did not renew *Captain Midnight* on KTTV, and transferred the program to the CBS station in Los Angeles. At the same time the network cleared time for *Tales of the Texas Rangers.*" (Tr. 1617-1619).

Here again, the Statement's allegations are irresponsible and entirely erroneous. The facts are that when the advertiser first purchased *Captain Midnight* on the network, KNXT, the CBS-owned television station in Los Angeles (and, it may be noted, on the basic-required list) refused to clear the time ordered by the advertiser since that time period was occupied by the educational programs *Shakespeare on TV* and *Child*

Psychology on TV. Thus, in accordance with CBS Television Network policy, the program was made available for placement on another station in the market. KTTV was selected by the advertiser. Thereafter, KNXT and the network continued to negotiate with the advertiser, and when a mutually satisfactory substitute time period was found, *Captain Midnight* moved from KTTV to KNXT.

The *Captain Midnight* negotiations were wholly unrelated to the *Tales of the Texas Rangers* negotiations. One program or one set of circumstances had no bearing on the other. George A. Bolas, Director, Media Activities, Tatham-Laird, Inc., the advertising agency which handled the *Captain Midnight* and *Tales of the Texas Rangers* programs, stated in a letter to CBS: "We were never threatened or informed in any way by CBS that we were jeopardizing the possible time period clearance of *Tales of the Texas Rangers* unless we moved *Captain Midnight* to the CBS network station in Los Angeles. We can also state that we did not inform Mr. Moore that such was the case." That letter is Appendix A, attached hereto.

It is clear that the charge that the program was lost by KTTV because of improper pressure on the advertiser by the CBS Television Network thus collapses. And with it falls the Statement's "proof" that networks utilize improper pressure to induce the transfer of programs.

D. *Alleged Effects on Advertisers.*

After referring to the March 5, 1956 issue of *Advertising Age* listing advertisers allegedly dissatisfied with their treatment by the networks, the Statement charges that it is the basic-required practice and option time which are at the root of the advertisers' problem (Tr. 1611-1612). The article makes no reference to the basic-required practice or to network option time and there is no justification for the Statement's implication that it is those practices which are the source of the alleged dissatisfaction.

CBS has no way of knowing what was in the minds of the advertisers referred to in the article. It does know that it has never had complaints from any of them with respect to network option time or the basic-required practice. And it knows that at least one of the advertisers, identified in *Advertising Age*—Longines-Wittnauer—could not have complained about either of these practices. Its program was not broadcast during network option time, and it was broadcast on far fewer stations than were then included in the basic-required list.

But the Statement has supplied the complaints for the advertisers. It alleges that network practices make the non-network advertiser a second-class citizen, prevent medium-sized and small advertisers from using television, and result in the networks' having undue control over the advertiser's choice of programs and station outlets.

1. *The Fallacy of the Contention That the Non-Network Advertiser Is a Second-Class Citizen.*

Many companies are non-network advertisers by choice. The failure of even large advertisers to use network television often stems from their own business judgment that other media serve their purposes better. It is doubtful whether the label "second-class citizen" can be applied to Hunt Foods, Inc., the Great Atlantic and Pacific Tea Company, Stanley Warner Corporation, Doubleday & Co., Inc., Borg-Warner Corp., or New York Life Insurance Co., none of which used network television in 1955 although each was included in the 100 largest national advertisers for 1955. Of the 100 largest national advertisers, approximately 50 per cent devoted less than half of their national advertising budgets to network television.

There are many other companies, large enough to be able to afford network television, which have decided that spot television can be more valuable than network television in advertising their products. The Philip Morris Company decided to forego sponsorship of what was the highest rated program in television, *I Love Lucy,* to devote its advertising budget to other media, including national spot television. Other companies which chose to use spot television rather than network television in the last quarter of 1955 were: Bulova Watch Company; Motorola, Inc.; Esso Standard Oil Company; Shell Oil Company; Benrus Watch Company; Socony-Mobil Oil Company; Sunshine Biscuit Company; and Salada Tea Company.

Despite these facts, however, the Statement seems to be particularly concerned with the advertisers who prefer non-network television to network television. It attributes second-class citizenship to these advertisers because, it alleges, their commercial messages cannot be broadcast during the more desirable times of the day.

This allegation rests, as so many of the Statement's contentions do, on the premise that network option practices pre-empt all desirable television time for network advertisers. That this contention is unjustified has been shown before (pp. 17-20) and in the Supplemental Memorandum (pp. 118-123).

Another clear indication of the ability of national spot television advertisers to clear time during prime evening hours is the report of the Television Bureau of Advertising for the first quarter of 1956. That report, broken down to show the percentage of national spot expenditures during various periods of the day, is as follows:

TIME OF DAY

	Percentage of Total Expenditures
Day	34.6%
Night	55.5%
Late Night	9.9%

TYPE OF EXPENDITURE

Announcements (including Station-Break announcements):	
Day	28.8%
Night	66.1%
Late Night	5.1%
Programs:	
Day	26 %
Night	61.2%
Late Night	12.8%
Participations in Programs:	
Day	59.1%
Night	21.2%
Late Night	19.7%

In summary, the facts show that non-network television advertisers have access to television and make wide use of it during all hours of the day. Their choice of spot television rather than network television is unrelated to network time options or the basic-required practice.

2. *The Fallacy of the Contention That the Basic-Required Practice Has the Effect of Preventing Medium-Sized and Small Advertisers from Using Television.*

According to the Statement, medium-sized and small advertisers cannot use television because they cannot afford the vast expenditures involved in the basic-required line-ups of networks. It asserts also that advertisers whose sales and distribution patterns do not cover the specific markets which must be purchased suffer the same fate (Tr. 1613-1614).

The basic-required practice has not precluded advertisers from using network television. More than 200 different advertisers sponsored programs on one or more of the three networks during 1955. During the three evening network option hours, 53 different advertisers sponsored programs on the CBS Television Network in 1955. CBS does not know the assets and gross sales of its customers; however, more than 12 per cent of all CBS Television Network advertisers spent less than $100,000 for time *and* programs on the network during 1955. Two advertisers spent less than $5,000 for time *and* programs during 1955.[1]

While local and regional advertisers do not generally seek national nework coverage (see pp. 32-33, below), networks

[1]*Television Magazine Data Book,* 1956.

do make some provision for them. For instance, KTTV broadcasts *The Life of Riley,* an NBC Television Network program, because the network sponsor of that program does not have distribution in the Los Angeles area, among others, and, therefore, is not required to buy the Los Angeles affiliate.

The CBS Television Network also accommodates local and regional advertisers. A group of local advertisers supplying the same or similar products or services can band together and broadcast a network program. This was done until recently by a group of electric companies which sponsored *You Are There* on the CBS Television Network. Each electric company inserted a local announcement in its service area. *Person to Person* is sponsored in the eastern part of the country by the American Oil Company and in the western part of the country by the Hamm Brewing Company. For advertisers who wish to advertise different products in different parts of the country it is possible to use sectional or local cut-in announcements on the network. During the network program *United States Steel Hour,* local commercial announcements are occasionally cut in in 16 different states. Procter & Gamble regularly uses local announcements in numerous states during its CBS Television Network programs. Regional announcements are employed by General Foods in its programs *Our Miss Brooks, I Love Lucy, December Bride,* and *Mama.*

In the main, small and medium sized advertisers are not interested in network television just as they are not interested in advertising in LIFE or *The Saturday Evening Post.* They either have no national distribution or the investment involved is too large. But, as is shown on pp. 118-123 of the Supplemental Memorandum, these advertisers are not being precluded from using television. On the contrary, national spot and local television advertising expenditures (for time and programs) have increased over the years at a rate much greater than network television expenditures. In fact, national spot time expenditures alone were almost equal to network time expenditures during the last quarter of 1955 and the first quarter of 1956, according to reports to the Television Bureau of Advertising. During the last quarter of 1955 over 3,000 different advertisers used spot television. As KTTV itself states (Tr. 1574), one-half of its revenue comes from national advertising. And, as demonstrated above (pp. 17-23), there are ample desirable time periods available for the non-network advertiser.

APPENDIX A

TATHAM-LAIRD INC.
64 EAST JACKSON BOULEVARD
CHICAGO 4, ILL. - HARRISON 7-3700

June 1, 1956

Mr. Craig Lawrence
Columbia Broadcasting System, Inc.
485 Madison Avenue
New York, New York

Dear Mr. Lawrence:

This letter will answer your telephoned request of last week asking for a letter from me covering the accuracy of the following sentence which is an excerpt from page 40 of the "Statement of Richard A. Moore" before the Committee on Interstate and Foreign Commerce of the United States Senate March 26, 1956:

> "Finally, on the telephone, the agency informed KTTV that the network had now told the agency that unless they moved Captain Midnight to the network station in Los Angeles, the network would not make available a time period then under discussion for another program, Tales of the Texas Rangers, to be placed on behalf of a different advertiser by the same advertising agency."

After checking and re-checking other members of the agency who might possibly have had contact with CBS or KTTV on the subject of Captain Midnight or Tales of the Texas Rangers, we believe the following statement is proper and accurate:

"We were never threatened or informed in any way by CBS that we were jeopardizing the possible time period clearance of Tales of the Texas Rangers unless we moved Captain Midnight to the CBS network station in Los Angeles. We can also state that we did not inform Mr. Moore that such was the case."

[1]

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We do recall a telephone conversation of approximately one year ago wherein I as a courtesy called Dick Moore to inform him that the possibility of continuing our Captain Midnight schedule on KTTV was nearing an end.

During that conversation, I pointed out that because there would be a lapse of months between the termination of the year contract (August 1955) and the start of the second year contract (October 1955), there would be no opportunity to renew Captain Midnight but would instead require a new contract subject to the terms and conditions in force at the time of our signing such a new agreement. It was obvious to me that any new contract would automatically include a requirement for our client to order all basic CBS stations including Los Angeles. We would have to await the time period offer of KNXT, the CBS Los Angeles station before we could possibly have another opportunity, or need, to insist on our right to place Captain Midnight on another station. When KNXT offered our agency Captain Midnight "clock hour" time, we were automatically obliged to accept that period since it was the period stated as being acceptable in our network order. It seemed only natural for Dick Moore to register keen disappointment at this news and he questioned as to whether a continuation of our agency's firm attitude on the Captain Midnight clearance might not be in order. I advised that we could only honor the terms and conditions of any new contract which we might enter into with CBS, and that only if KNXT again failed to clear our "clock hour", or an acceptable delayed broadcast time period would we be able to re-instate Captain Midnight on KTTV. It was our opinion at that time that KNXT would not once again offer an unacceptable time period. Our opinion proved to be right some weeks later when we started to receive clearances from each of the stations ordered.

During the course of that same telephone conversation with Dick Moore, I also pointed out that we had no desire to create an unfavorable climate for our negotiations on Tales of the Texas Rangers by insisting on a continued departure from the published, and agreed upon, network clearance policies of CBS. It was pointed out that where CBS delivered a less than acceptable time period, we would take such action as the situation required, as in the case of using KTTV for the previous year. On the other hand, when CBS delivered a satisfactory period, we felt no need nor any inclination to insist on any station change.

It is possible that Dick Moore misinterpreted my meaning and felt that I was using this indirect means of advising him of some connection between Captain Midnight and Tales of the Texas Rangers. If this was the case then I can only wish that I had been more lucid and specific.

Again, Mr. Lawrence, I can only re-iterate that we never received any implication that there was the slightest connection between these two programs from anyone at CBS and we were unaware that any such impression had been created anywhere until my attention was called to Dick Moore's testimony.

We know many of your CBS associates and feel only high regard for them. We also know, respect and admire Dick Moore. It is difficult to understand how the misimpression occurred. We have carefully reviewed the events and conversations and hasten to assure you and all concerned that there is little doubt in our minds that we have herein reported the conversation with maximum care and accuracy.

Very truly yours,

GEORGE A. BOLAS
George A. Bolas,
Director, Media Activities

GAB:kv

Mr. STANTON. The latter three documents, as has this statement, have been in your hands since yesterday.[1]

In essence, my statement here will attempt to distill these hundreds of pages of documents. But my statement must confine itself mostly to highlights, whereas these documents represent the concepts, basic facts, and considerations upon which our case rests. Therefore, I respectfully request that my oral statement be considered in conjunction with the documents I have just described. The total situation before us can be fully comprehended in no other way.

THE NETWORKS AND THE PUBLIC

The first, and absolutely primary, aspect of a network is its relationship to the public. A network renders its service to nothing else, and to nothing smaller, than the national American public. This service is its touchstone.

Mr. Cox. In that connection wouldn't it be accurate to say that television also has a local function which can be performed only by your local affiliates, and that the affairs of the network must be conducted in such a way as not to unreasonably interfere with that function?

Mr. STANTON. I would agree with that statement, Mr. Cox. Obviously, I am addressing myself here to the network aspect, but I do believe that all of the licensees have their individual market responsibilities, and as licensees for stations in television, we feel that way about the four stations we own, obviously.

Much of the testimony that has been offered before this committee against networks has come from people who have some special interest. These special interests cannot and must not be isolated from the broadest interests. The broadest interests, I must repeat, are those of the national American public, and nothing in this area can serve the American public more broadly than the instantaneous national interconnection which the networks alone supply—on a continuing basis.

The proposals for change must first, last, and always be subjected to this fundamental test: Not how will the change affect particular stations or groups of program suppliers or scenic designers, but how will it affect the public? Are you sure that the change will add to the public's fare or may the change involve the grave risk, instead, of taking away from the public that which it has demonstrated it wants?

Mr. Cox. Isn't it true, though, that the public is interested in the effects upon the various groups you have mentioned, insofar as they may involve a change in the shape of our television service or may involve a freezing of existing television service at the present level?

Mr. STANTON. To the extent that the public is informed on these subjects, Mr. Cox, I would say yes to that question.

Mr. Cox. In other words, the public, aside from its interest in the quality of your programs and those of the other networks, has a broad interest in the development of a competitive nationwide system of television, which requires the free play of competitive forces and the possibility of growth beyond our present three-network system; and

[1] In addition, CBS, under date of August 15, 1956, submitted partial replies to the questionnaire sent to all networks on May 28, 1956. These and the balance of the materials submitted later have been kept in the committee's files. The standard forms of affiliation agreements included in these replies are set forth in the appendix hereto, at p. 3043.

therefore any policies which serve in any way to impede such development would be contrary to the public interest?

Mr. STANTON. Yes, but I think the essential point, Mr. Cox, is that the public is interested in programs. I think the public is less interested in the mechanism behind the programs. As long as the public is getting an adequate bill of fare, so to speak, I think the public is not looking behind the machinery. I wish that the public would look behind the machinery. I think it is a healthy condition when the community does concern itself with how these things operate. Unfortunately, I think that this is one of the complex mechanisms in this country that the public has given too little attention to.

Mr. Cox. Do you think that the public is getting adequate program fare, regardless of its quality, if it has 3 or 2 real program choices before it?

Mr. STANTON. Well, in most parts of the country it is getting 2- and 3-program choices now, and in many parts of the country more than that.

Your question, sir, is almost like "How high is up?" I wish that we had more channels available. I think that competition is a desirable thing. We have done everything we could do, historically and recently, to see what could be done to help on that matter of additional competitive choices. I think that as I go through my statement—at least I hope I will be able to demonstrate to you that there is ample competition at the present time.

Mr. Cox. Does the public have an interest not only in receiving a program, but possibly in receiving it from a station which has some identification with the locality in which this particular group of people live?

Mr. STANTON. I think you would be disappointed if you were to do an adequate study of the public on that particular point. You and I might wish that the public did have that kind of feeling, but I think you would find that an adequate first-class sampling job of the public might reveal that there isn't as much concern about the local programing and the community participation, if this is the point that you are making, as you and I might suspect, or as you might suspect.

Mr. Cox. That interest exists whether they recognize it or not, and there are people in each community, are there not, who recognize that interest, who would have a use for a local television service if one were available, and who therefore would prefer that this service come from a large number of stations distributed over the country, rather than from a lesser number of more powerful stations in certain selected markets?

Mr. STANTON. Mr. Cox, I think, first of all, today there is a lot of community activity in television operations; the licensees are doing a lot of their local public service community broadcasting. And as to whether or not the public would prefer to have many stations as against fewer stations serving larger areas, I think this will depend on two things: (1) The quality of the signal, or the quality of the service that the public gets; and (2) on the economics of whether or not the advertiser can foot the bill. Because in this country, as you know, the only source of income the broadcaster has is the income he gets from the sale of time, and anything that is done that puts an inordinate burden on the advertisers could kill the goose that lays the golden egg. And I think this is something we have to study very carefully. It certainly would be, I think—to take an extreme situation, if you were to go to the concept of cutting back each station's service area similar to the suggestion that was made in Senator Bricker's memorandum, so that no service area invaded the home town of a market that had an allocation—I think that that, followed to its extreme, if every allocation was granted that was necessary to try to cover the country under those conditions, you would probably increase the number of communities with stations from something like 250 to 260 to around a thousand, provided somebody built them, and you would increase, perhaps, the number of stations from the present count to something like maybe 1,800, the full complement.

And even so, if you did all of that, and if somebody paid the bill to build the transmitters, and the advertisers paid for the present programs that they are now putting on the existing stations, it is estimated that you would cut back service from, oh, say, three and a quarter to three and a half million families who now have television sets, and this is wholly without any discussion as to how many signals you would cut back. But there would be in excess of three million families who wouldn't have any service at all under those conditions. There you would be increasing the number of stations and be denying the public—a substantial cross-section of the public—you would be denying that public any service whatsoever. So I think these things have to be studied very carefully. I realize your question—you didn't say you were going to go to that extreme or that you were proposing that, but we sometimes get carried away with these concepts of dividing and multiplying the units. We get carried away and we lose sight of two things, that is, the service to the public and the cost of doing that.

Senator PASTORE. Isn't it your fundamental concept, Dr. Stanton, that television must be considered from a national point of view rather than from a local one?

Mr. STANTON. No, Mr. Chairman. I think you have to consider it from the individual listener's point of view, wherever he may be. I am only addressing myself here, in the major part of my statement this morning, to the problems of networking. If you were to invite me to participate on the basis of station operation, I would be glad to address myself to it. But I want the record to be perfectly clear that I am not saying that there is—that the national public is any different from the local public. It is "public" wherever it is, sir.

Senator PASTORE. The reason I asked you the question is that you have used that phrase three times already—twice at least—"national American public," and underscored "national." I was wondering what you were driving at in doing that.

Mr. STANTON. Well, I am driving at the point that we are talking here about—networks—and our public is a national public rather than a local public.

Senator PASTORE. I see. From the standpoint of the network.

Mr. STANTON. That is right, sir.

And as you see, I come back to that same point in my next sentence where I say: Once you take your eye off the national American public, you enter endless realms of conflict and confusion. You have lost your base line. You open yourselves immediately to a host of self-serving and self-canceling proposals.

To curtail or destroy the networks' unique quality of instantaneous national interconnection would be a colossal backward step. It would be to make the United States much more like Europe than America. In fact, it would be a step in the direction of the Balkanization, the fragmentation, of the United States.

THE ROLE OF THE ADVERTISER

The second aspect of a network is its relationship to advertising, and this rests upon its primary relationship to the national public.

A great deal of the criticism of networks springs from a lack of understanding of how network services are paid for. The support of all who contribute to the technical and creative aspects of network television comes, very simply, from the advertiser. Directly he supports programs of entertainment. Directly and indirectly he supports programs of information, news, and public affairs.

Network television is in direct and strenuous competition with all other media for the advertising dollar. Advertisers use network television only when they are convinced that it is an economical and effective means of delivering messages to the people and thus stimulating product sales. The total effect of these dollar expenditures far transcends their specific effect in supporting the television networks' economy. Since our overall economy is based upon efficient distribution of information about products, network television advertising represents an important factor in supporting the high level of our economy which relies on mass production and mass consumption.

But the advertiser is not required by law to spend his money with television—either nationally through a network or market by market directly through stations. If advertisers felt that network advertising had less value than spot advertising, they would use spot. If they felt other media were preferable, they would never have come to television in the first place, or stayed with it very long.

Mr. Cox. In that connection, I take it from what you say here, and what is said at a later point in your statement, that this function of promoting the efficient distribution of our products and stimulating the national economy is restricted, in your operations, to the products of those advertisers who can afford to buy a list of stations and who are qualified, in terms of the nature of their market and in terms of their resources, to use an instrument that in terms of programing and sponsorship is, in your view, solely a national instrument for advertising?

Mr. Stanton. Yes, just as an advertiser who uses a mass circulation magazine has to have mass distribution, so we look upon the advertisers who use network radio as those who have substantially coast-to-coast, border-to-border distribution of their products.

There are other forms of television, of course, to accommodate the advertiser who has less than national distribution, or who may be as restricted as a local advertiser is to a single market.

Mr. Cox. Isn't it true that in some fields, at least, local or regional advertisers find themselves in direct competition, within their restricted market places, with national producers of like products who are using network television?

Mr. STANTON. I think that there probably are occasions where that is the case. I think that for the most part there is ample opportunity for the regional or local advertiser with like merchandise to find his way into television locally or regionally.

Mr. COX. Can he do that within the hours of 7:30 to 10:30 at night in the form of a sponsored program? If the——

Mr. STANTON. He is doing it now, sir.

Mr. COX. Is he doing this in major markets with three or less stations?

Mr. STANTON. I can't tell you about the 3 or less, or less than 3. I think he is certainly doing it in the major market with 3 stations at the present time, and I rather suspect analysis would reveal that he is doing it in 2 station markets.

Mr. COX. Is there not, in connection with the use of television for advertising, not only a question of its cost, in terms of circulation cost, but a question of its impact, which makes this a much more vital matter of getting an even break with your competitor or in advertising than might be true in certain other media? Perhaps I don't make myself clear.

Mr. STANTON. I think you make yourself clear. I was going to be sure I gave you a responsive answer. You might argue that a local bottler in Little Rock might not be able to compete with a national bottler of a nonalcoholic beverage that would have the back cover of Life magazine. There is no way for him to compete in Little Rock with the back cover of Life magazine except by using other advertising media. He can't come in and get the back cover of Life for Little Rock. But that doesn't mean the bottler in Little Rock has his hands tied behind him and can't compete. The record shows that many times the local bottler will outstrip the national distributor because he is more ingenious in his use of advertising and promotion. I think that if you are saying that a used-car dealer in some community can't buy Toast of the Town for his community and compete with Lincoln-Mercury with Toast of the Town—or with the Ed Sullivan Show—coast to coast, that is the same story, or the same condition, that exists about the local bottler and back cover of Life. But the used-car dealer, or the small dealer in cars, can certainly get announcements and participations—very effective ones—and it is happening all over the country in television on local stations.

Senator POTTER. Along that line, Mr. Chairman: Dr. Stanton, isn't it true that we have with our network system today, of two major networks and which cover a—where you can receive national coverage, you can have national products that are actually frozen out of the television advertising market? For example, particularly on prime time, option time, you have—I am asking the question, I am not certain how it operates, and I would like to have your comment on it. For example, you can have national products such as automobiles: Maybe Ford advertises on the option time, the prime time, on CBS; possibly General Motors is on NBC. What would happen if Packard-Studebaker wanted to advertise on prime time on CBS?

Mr. STANTON. I don't recall that Packard-Studebaker, Senator Potter, has ever asked for a program service.

Senator POTTER. I am just using that as an example. I don't know.

Mr. STANTON. Yes. But I didn't want to leave the question stand about Packard-Studebaker. We have tried to interest Packard-Studebaker in specific program service.

Senator POTTER. Use any other——

Mr. STANTON. No; to answer your question directly, I don't think that any major national advertiser is frozen out, to borrow your expression, from national network time, even in the prime evening hours.

Senator POTTER. In your contracts with your advertisers for prime option time, do you ever have a provision that a competitor will not be able to use that—beyond the same evening, the same—during that prime time?

Mr. STANTON. No; not in the sense that you are asking the question, Senator Potter. We do have a policy, I don't believe this is a matter of contract, but we have had a policy—and this is not unique to CBS television, this is general practice in the industry, both local spot and network—that competing advertisers of the same product are not put back to back, as we say. In other words, if one advertiser of automobiles had 8:00 to 8:30, you wouldn't then turn around and sell to the competitor the time 8:30 to 9:00. But you would be perfectly within your operating practices to sell the competing advertiser 9:00 to 9:30, let us say.

Senator POTTER. But it is not done?

Mr. STANTON. Oh, yes; it is done, sure. I think if you take the schedule you will find competing products. Later on I can grab my schedule and I can show you on the same night there are competing products that are on the same schedule, separated by as little, I think in one case, as a quarter of an hour. Isn't that right, Jack? And I am sure that this practice is followed by individual station operators as well. This isn't something that is just network in origin.

Mr. COX. Under present conditions, however, you are sold out in prime time, with the exception of one-half hour which is opposed to a rather strong show—isn't that true?

Mr. STANTON. Yes. Look at the show it is opposed to—it is one of the automobile manufacturers that isn't in the group that Senator Potter mentionned as being one of the big national advertisers in the automobile field. I think that we have—yes, that is the only half hour that is currently open, that 7:30 to 8:00 on Wednesday night.

Mr. COX. Would it be fair to say that there are——

Mr. STANTON. Sorry, there is one other hour that is open on alternate weeks, on Thursday night.

Mr. COX. Would it be fair to say that there are, in general, national advertisers who would like to sponsor programs on network television—as long as they can stay out of this particular time slot—who are not able to find time at the present time because there is only so much time in the period, there are just so many networks, and the time is presently occupied by advertisers who apparently wish to continue to use the medium?

Mr. STANTON. Yes; but I think that that story is exaggerated. I haven't been out making solicitations for some time for the sale of time, but I think that you hear the stories about the number of advertisers who are waiting to get into prime evening time on the three networks, and I would suspect that there aren't very many of them around. You occasionally hear about the man who comes and says, "I have got a program if I just could find some time for it." Well, there are advertisers who will sponsor any program in an effort to get into a time period. But there aren't a lot of them, and don't forget that many of the advertisers who are occupying these important franchises today in the prime evening time came into television, network television, when it wasn't a paying proposition in terms of cost per thousand. They were men who had courage and vision and who wanted to try the medium and see how it could be used. I don't think they can be criticized for having established themselves in the medium while their competitor was asleep at the switch.

There is one field, for example, where one advertiser equipped himself with a very imaginative program and stole the lion's share of the distribution for quite some time with a very effective series. And his competitors cried that he had an unfair advantage because he had gone out and got the right kind of show to sell his particular merchandise. Well, that happens every day in every business, where a man will pick the right corner to put his store on, where traffic is going to flow, where he will get some benefit from that. His competitor can't get space in that same building. This happens with people who move into new advertising ventures. The same thing happened in radio in the very early days.

Senator Magnuson. He gets a longer lease than 13 weeks, too; doesn't he?

Mr. Stanton. Well, we are giving longer leases, Senator Magnuson, than 13 weeks. Be glad to talk to you about any. [Laughter.]

These leases aren't 13 weeks, for the most part, in television; they are 52-week leases and the turnover has been such that these leases are renewed pretty—the renewal rate is pretty high on these leases.

Senator Pastore. Dr. Stanton, I think we have touched on a very important point, and I think that all of us recognize the inadequacies and deficiencies involved. But let's be somewhat realistic about this, and practical, too. We only have three major networks: NBC, CBS, and ABC. We used to have four. We have a limited number of stations in various localities; we would all be glad to see many more local television stations, I think we all recognize, but how to do it is the big question. Let's assume, let's take as a predicate the hypothesis that was just advanced by Mr. Cox: That there may be other advertisers who would like to use prime time that is already sold to someone else. But fundamentally under our system of free enterprise, what is the answer to it? How can you change it? Do you know of any way that it can be changed?

Mr. Stanton. Well, it isn't as simple, sir, as creating another network, or creating more networks, necessarily.

Senator Pastore. I say that would be very desirable if it happened.

Mr. Stanton. You and I, or none of the men in this room, can figure out the way to do that, unfortunately. Or at least I don't think we can.

Senator Pastore. No; but you made the argument here that you have got to have a national advertiser in order to support a free national television system. Without that national advertiser you can't have this national network; am I correct?

Mr. Stanton. That is correct.

Senator Pastore. Otherwise, the whole thing becomes localized; something happens as a matter of national crisis and you can't disseminate this word throughout the entire country because it is a local proposition—you don't have a national network. Let's assume, for instance, that there are advertisers who would like to come in on this prime time, but the time is already engaged, do you know of any Federal regulation that can unscramble that mess?

Mr. STANTON. No; I don't know of any Federal regulation that can unscramble that situation; but the national advertiser, sir, is not barred from network television just because he can't get a half hour or an hour in prime evening time. Let me give an example.

Senator PASTORE. He can only go to 2 or 3 stations. All the advertisers in this country, and I assume that there are a lot more national advertisers than we see on television programs——

Mr. STANTON. Yes, sir; but——

Senator PASTORE. But they only have three places to go.

Mr. STANTON. But, they have many hours to go on.

Senator PASTORE. There is only so much time to sell—I am talking about prime hours. What is the use of buying half past ten in the morning?

Mr. STANTON. A good use, sir. Mr. Godfrey is selling an awful lot of merchandise at 10:30 in the morning, coast to coast. That is the point I was coming to. That for many national advertisers——

Senator PASTORE. But how many Godfreys can you have at the same time? You can only have three.

Mr. STANTON. Isn't that enough, sir?

Senator PASTORE. No. [Laughter.]

All right, I will bow to that [laughter] but if we are considering this tremendously vast free enterprise system of the United States, there are only 24 hours around the clock, there are only so many desirable hours. Now, you don't mean to tell me that every hour is a desirable one; you can't compare 8 o'clock in the evening with 10 o'clock in the morning, unless you are trying to reach a specific group of people.

Mr. STANTON. Well, many times——

Senator PASTORE. I hope that we all remain on a very sensible balance here, because I think that we understand, one to the other, exactly what we are trying to bring out. The point I make is that if Godfrey broadcasts at 11 o'clock in the morning—or from 10 to 11, I don't know what his hour is—now that would mean that if he has as sponsors, let's say, 3 advertising agencies with 3 networks, there can only be 9 agencies that can advertise; am I correct? That is not sufficient for our American system of advertising and free enterprise. Now, I ask you the question: Recognizing that fact, what is there that we can do about it?

Mr. STANTON. Well, I am not so sure that I recognize that fact, Senator Pastore.

Senator PASTORE. You don't recognize that fact? You think that three networks are sufficient for the American public?

Mr. STANTON. No. I would like to say what I just said. I would like as many networks as you can possibly have. I would like that absolutely clear.

Sentaor PASTORE. But, they can't get on the air because you don't have enough television stations to sell their programs to. We recognize that fact. We started with four, and rather than this tremendous, large, expanding industry expanding networkwise, it has become constricted.

Mr. STANTON. You only started with 4—if I may say, sir, not on a national basis, you didn't start with 4; but let's not quibble about that, whether it is 3 or 4. The point I want to make is that you look at the prime evening time as though that is the end-all of national advertising opportunities, and I would like to submit that there are opportunities that are being used every day by national advertisers, who are getting excellent results, who aren't necessarily in the prime evening time. Now, there will be certain products that demand or require evening time; there are other products that can be handled just as well in the daytime.

But when you belittle the amount of circulation at 10:30 in the morning—irrespective, now, of the personality involved—when you say that that can't compare with 8 o'clock at night: No. 1, I would say to you that the advertiser gets more commercial time at that time than he would get at night per unit of time sponsored; No. 2, the rate is lower for the daytime, it is scaled down so it isn't as high as the nightime; and No. 3, if that advertiser is skillful in his purchase of time he can buy some daytime in the morning, he can buy some daytime in the afternoon, and the two don't duplicate—many times they would add up to almost as much as he would get in a nighttime period. So when we say that the national advertiser can only be considered for prime evening time, this is nonsense, because the national advertiser uses the entire day, and the schedules are full of advertisers who are doing just what I am describing. And if a man can start in the daytime and build and wait until there is an opportunity at night, he can sometimes get into the nighttime schedule, and I can demonstrate to you in the schedule where that has happened.

Senator PASTORE. Are you trying to tell me that everybody who wants to advertise on television is happy?

Mr. STANTON. I don't think that there are very many happy advertisers any place, whether they are in magazines, newspapers or television.

Senator PASTORE. That is the point I am trying to make. Now, I recognize the fact that there are some people who would like to get on and can't get on, but I really don't see what you can do about it as long as you have three networks—and I don't see what you are going to do about expanding networks as long as you are limited in television stations. And I don't see what you are going to do about television stations as long as you are in intermixture and deintermixture, and the fact that you go beyond the confines of a city. Now, I am perfectly willing to admit that we are in a mess; and the thing that gets me is that we come in here with a lot of fancy words and we try to dress and undress this whole picture, and the fact of the matter is we have certain definite limitations here that I don't see how we can surmount. And I am hoping for the day that someone will be truthful enough to come here and admit it.

Mr. STANTON. I think the record is clear that we have admitted it. And furthermore, we tried to do something about it when we were asked to help. If you go far enough back in the record you will find that we predicted the very mess that you are talking about and describing here. I didn't realize that this discussion this morning was to address itself to the allocation problem.

Senator PASTORE. No, no, no. I am not addressing it to that.

Mr. STANTON. That is the root of all the evil you are talking about.

Senator PASTORE. Absolutely. Unless we get more television stations in the various communities—I don't know how and when you are going to do it—unless you do that, there is going to be no incentive, of course, to spread out on your network base.

Mr. STANTON. May I take that one point. If you could wave a wand and create six networks tonight, there would be unhappy advertisers who couldn't get behind I Love Lucy, or behind Ed Sullivan, or behind some of the other top 10 shows. They are always going to be unhappy because they want to be in Disneyland or they want to be into a top NBC show or a top CBS show. There will always be that.

Senator PASTORE. I realize that, but the picture would be a whole lot better than it is now.

Mr. STANTON. Yes, but I submit, if you created these six networks by magic, that you would have a very tough time filling the fourth one.

Senator PASTORE. I am not saying that you can create these new networks. I am perfectly willing to admit what the limitations are. I can see the efficacy of the arguments that you are making here, Dr. Stanton. I can see the points here raised with these hypotheses that are being presented—that there are many people who would like to get on prime time and just can't get on. I can realize that. But, after all, you people have to allocate this as best you can to the people who are willing to pay the price, if they can afford the price, in order to give this free entertainment to the American public. I can see all that, I can understand that. But I am not perfectly—I am not ready to admit that everything is sweetness in this whole television system, because it isn't.

Mr. STANTON. Well, I wouldn't quarrel with the fact that everything isn't sweetness—particularly as you address yourself to the question of allocation. But, I think you are exaggerating when you talk about us allocating advertisers, because it hasn't been my experience that we have been in that posture for some time. We are selling advertisers, not allocating them. And we have open time, and it is prime evening time, and it is not sold—and if there are advertisers who are so anxious to get into that time I haven't seen them and neither have our salesmen, even though they have been out trying to find them.

Senator ERVIN. Isn't that because it takes such a tremendous amount of economic power to get into that time? Isn't this just an illustration of the fact that the big are growing bigger and the littler folks are in danger, in the television field, of suffering the same economic turn that they have been suffering in the automobile field, particularly with reference to dealers?

Mr. STANTON. Not at all, sir; I think they are two entirely separate subjects. I think that the price on the time that is open in our schedule between 7:30 and 10:30 at night is not priced out of proportion to what advertisers are paying for circulation in other media and in a television medium. And I don't see this as the big getting bigger and the small getting smaller, because we are not talking that way about networks. The smallest of the three has had rather phenomenal growth this year. I think its sales are up 76 percent over a year ago—that can't certainly be getting smaller. So I don't follow the analogy that you are citing about the automobile business.

Senator PASTORE. Well, you used to have about 25 or 30 manufacturers of automobiles and now you have about 6.

Mr. STANTON. That isn't unique to the automobile business, sir.

Senator PASTORE. I know it; that is what bothers me. Everything. It is the general condition in the United States.

Mr. STANTON. I think this is a way of doing business in this country, and we are a large country and you have to be to big manufacturer and have rather considerable distribution channels in order to compete nationally today.

Senator PASTORE. I am not quarreling generally with television except the fact we have a tendency—I agree with you the bigger the country grows the fewer people who have control of particular businesses, which to my mind is rather alarming if there is any way to prevent it.

Mr. STANTON. Well, sir, I don't know how to serve people—35 million television families, you know—without being big. It is a big job and it takes a big budget to do it and a large organization to do it. This is not a local operation that we are talking about here. But we do have many parts of our network which are individualized, in the sense that they are locally owned and locally managed. They are not being squeezed or crowded in any way, shape, or form that I can see in this particular industry. Unlike many other industries, I think television is keeping the local regional ownership. That isn't happening—is contrary to the trend of distribution in many of the appliance fields, for example, where manufacturers of white goods are owning their own distributors and branches now, not having locally owned distributors and branches. We don't operate that way as a network. To be sure, we own four stations, and that is all at the present time. We hope to get our full complement in time. But, even if we did get all that we are allowed to under the regulation, we would only have seven out of the one-hundred-and-eighty-odd that are primary affiliates, and all the rest of those are owned by individuals for the most part. There are some that are multiple owned, but for the most part they are individually owned. Those men aren't being squeezed at all by the networks or any trends in our business, as distinct from the white goods, automobiles, or other businesses where major manufacturers are taking over the ownership of distribution.

Senator PASTORE. But, they are restricted to not over 3—a selection of not over 3 national programs.

Mr. STANTON. No; those stations, sir, are not restricted in any way. They can take from us, they can take from other networks, or they can take from independent package suppliers. They are not restricted to three by any means. As I will develop here in my statement, I hope, I will show you that many of them are taking right now from other sources, other than us.

Senator MAGNUSON. Dr. Stanton, I think maybe we are getting a little bit off here. I apologize for not being here earlier, but I had a little airplane trouble this morning. They are getting bigger, too—the airlines. [Laughter.]

But I think what we would like to do, this committee, is approach this thing on the basis that, after all, this is a public license we are using. It isn't like starting a grocery store or a newspaper or something else, it is a public license. And, therefore, the whole public interest is involved. It is true American advertisers have done a good job, in the American way, to advertise the best products in the world, and they use this medium. But television wasn't created only for the advertisers; it was created for some other things too. It was created in the public interest because, as the Senator from Rhode Island pointed out, there are only so many minutes a day, and it is only possible to have so much space available for advertisers. And I think that we have the problem up here in trying to get the best advice we know how as to how to create this—this new, great medium of expression in the public interest—in the best way, including permitting advertisers to use it, too. So I think we do depart a little bit because there are so many public considerations involved. And I think you agree with me on that.

Mr. STANTON. Yes, Senator Magnuson, I agree with you. I couldn't agree with you more, because in my statement I said that the first touchstone here is the public.

Senator MAGNUSON. I missed the first part of it; I am sorry.

Mr. STANTON. The public is the No. 1 objective.

Senator MAGNUSON. Because somebody, a corporation, can own an automobile plant and they can make any kind of cars they want, that is their business. Anyone can start a newspaper and do what they want, within certain exceptions—but this is another story. This is created in the public interest, and the public have the big stake in it.

Senator POTTER. Along that line, if the Senator will yield, it has been suggested—and I am sure you are familiar with the suggestion, Dr. Stanton—that because of the great impact that television has upon public thinking that the networks should be regulated. Now, can networks be regulated without at the same time regulating advertisers, rates, and so forth? I am speaking now of Government regulation.

Mr. STANTON. I understand your thought. This raises a lot of questions, Senator Potter. I treat with the regulation, in the bill to regulate networks, in my statement.

Senator POTTER. If you do——

Mr. STANTON. If you would allow me to get into that, I will try to treat with it there.

Senator MAGNUSON. I want to say for the record that we do have before the committee some legislation, which is technically the reason for testimony and discussion of these matters. The Senator from Ohio, I understand, will be here this afternoon. The bill he has introduced is S. 825. That is the one before us for discussion.

Mr. STANTON. And I treat with S. 825 in my statement here.

Senator MAGNUSON. Yes; I understand.

Senator PASTORE (presiding). All right, Doctor.

Mr. STANTON. We now come to the second fundamental test.

Senator MAGNUSON. I just wanted to add for the record, if I may, Mr. Chairman, that we also have seven bills now referred to the committee dealing with political broadcasting, and we might get your ideas about that later on.

Mr. STANTON. All right, sir.

Senator Magnuson, I had earlier talked about the first fundamental test being the test of the public. The second fundamental test is: How will the proposal for change affect television as an effective and efficient advertising medium? For if the change should reduce that effectiveness, the sinews which support the medium will be gone. And a network can fulfill its obligation to the national public and its responsibility to its affiliated stations only to the extent that it can maintain its status as a marketing medium competitively attractive to its advertisers.

THE DIMENSIONS OF TELEVISION

With these broad principles and objectives in mind, I would like now to give you a brief picture of the dimensions of the television industry as it exists today. Television today is characterized by a size, a vigor, and a pace which, in itself, refutes clearly any speculation that networks have retarded the growth of this industry. Here are some of these dimensions:

In 10 years, 35 million United States families have invested about $17 billion for television receivers and their maintenance.

Over 99 percent of all United States families live in areas served by television signals.

Senator POTTER. I live in the 1 percent that doesn't. [Laughter.]

Mr. COX. Do those 99 percent of United States families live in what you regard as the service areas of existing television stations, in terms of the 100, 316, and 1,600 microvolt standards that you employ for your affiliation standards?

Mr. STANTON. Mr. Cox, I would like you to address that question, or ask Mr. Lodge to answer that, if you don't mind, because he is familiar with that.

Mr. LODGE. No; that figure is based upon audience research, based upon counties where people report hearing or viewing television signals, but are not the same as the figures that are derived from contour criteria that you mentioned for defining the service areas.

Mr. COX. This would include, then, everyone who sees television via a community antenna system, or through the use of a particularly sensitive receiver, or through the employment of a high and rather expensive private antenna?

Mr. STANTON. Yes; this would include people beyond the normally defined fringe.

Mr. COX. Does it include people who are receiving a signal that you would not regard as an acceptable signal for purposes of selling coverage on one of your stations?

Mr. LODGE. Well, this matter of defining how good a picture somebody else thinks is good enough is a difficult one. So I don't know if I could answer that categorically.

The figure, however, to go back to your original question, would be approximately 95 percent. I think this may clear the point in your mind—if the normal definition that we have used for engineering definition of service were employed.

Mr. STANTON. Mr. Cox, the question that you raise about the 99 percent is covered in footnote 1 on page 8 of the supplemental memorandum.

Out of 100 television families, 94 have the free choice of 2 or more television signals; more than 87 out of 100 receive service from 3 or more stations.

The average television family has a choice of 5.1 signals.

Mr. Cox. Would those be individual program choices, or does this simply mean that he may be able to receive the same program, at least in the nighttime hours covered by network service, from more than one station at a time?

Mr. Stanton. Well, Mr. Cox, this would depend upon the hour of the day and the day of the week, and the week of the year as to whether I would answer that question as being different programs or similar programs. Some of that 5.1 could be the same program, coming from more than one source.

Mr. Cox. Perhaps I can make the point in this way: Isn't it true that there are only some 8 or 10 markets in this country today which have more than 3 television services?

Mr. Stanton. Oh, yes; but there are interstitial areas between markets where you can get from 2 to 3 stations to each market. I can think of places in southeastern Ohio, or southwestern Ohio and southeastern Indiana where you can get signals from Indianapolis, Louisville, Cincinnati, Dayton, Columbus, and I think each of those markets has 3 stations—except Louisville, and that has 2.

Mr. Cox. But you would get, from all of those points, in the prime evening hours probably the lineups of the three national networks?

Mr. Stanton. With some exceptions, yes.

Mr. Cox. Unless there were an affiliate of one of the networks in that region that was not ordered, and therefore had replaced the network program with a national spot program which it had sold itself?

Mr. Stanton. Or one that might have been ordered and didn't clear because they had something of more importance locally to carry, yes. There would be duplication, there is no question about it. But you don't have to confine yourself to 8 or 10 markets in order to get more than 3 signals.

Mr. Cox. But New York, Los Angeles, and the four-station markets are the principal areas in which you have, on a continuing basis, a good local signal which provides you with more than three-program choices?

Mr. Stanton. That is correct.

The average television family watches television some 6 hours a day.

The Chairman. Are we getting that bad with it?

Mr. Stanton. Are we what with it?

The Chairman. Go ahead. I suppose this is based on an average family of, say, four.

Mr. Stanton. I would imagine it is around four. This is family listening, now; this isn't individual listening.

The Chairman. Yes, family. I see.

Mr. Stanton. As we get more and more individual service, I suppose the family listening composite time will remain about the same, but listening will become much more personalized, just as it has in radio.

The Chairman. And some families are getting two television sets.

Mr. Stanton. Yes; we are finding many families now in our surveys that have as many as three. The television public includes more than

7 out of 10 of all United States families and is served by 429 commercial stations, all but 36 of which are affiliated with 1 or more networks.

Mr. Cox. Your network includes about 188 primary and secondary affiliates, doesn't it?

Mr. Stanton. On page 28 and page 29, chart IV in the supplemental memorandum, we have a map showing the CBS television network, the 181 affiliates reaching a total of 33.9 million television families. And that is made up of primary and secondary affiliates and what we call extended market-plan affiliates.

Mr. Cox. Now, within even your primary class of affiliates, these affiliates are not equal in the sense of their coverage areas, their circulation, or of the economic returns that they get from this affiliation, or the programing that they get from the network.

Mr. Stanton. Yes, stations are like human beings; there are no two alike. Some are endowed with more of this world's riches than others, and by that I mean they are in markets that are more successful, growing faster than other parts of the country. The terrain may be different in one place than it is in another, and that affects the coverage area.

The program schedules vary from station to station, not only as far as what the network makes available to the station, but in terms of what the local management of the station does about its own local programing, and its selection of films and things of that kind.

Mr. Cox. You have a chart on page 77 in your supplemental memorandum which indicates, I believe, that only 52 of your affiliates receive as much as 49 hours of network programing?

Mr. Stanton. Yes, that chart, among other things, gives you a distribution of the hours of sponsored network programs by the amount of time each station carries, in broad classifications. One thing it shows, of course, is that network affiliation isn't automatically an answer to getting a lot of programing.

Mr. Cox. And I take it, since the various blocks add up to less than the total number of your affiliates, that you had affiliates who got no programing at all from the network in the month of December 1955.

Mr. Stanton. Well, I am not sure that I want to answer that in the affirmative, Mr. Cox; I would like to check that.

Mr. Cox. Very well.

Mr. Stanton. There may be some reason why that doesn't total. But if I can get the answer, I will give it to you.[2]

These 8 or 9 points that I have just mentioned, I believe, represent a record of growth and achievement unparalleled in American industrial history.

The Chairman. Doctor, I think it is important to get in the record, too—and I assume these facts are correct—there is about a billion dollars a year in television advertising, would that be a good general figure?

Mr. Stanton. That is right.

The Chairman. And I think it is important to know—sometimes we do overlook this—that about half of that, approximately, is in nonnetwork advertising.

Mr. Stanton. It is a little more than that, Senator.

[2] See additional comment on this point at p. 2152 below.

The CHAIRMAN. It used to run about 58 percent. I don't know whether it has gone up or down.

Mr. STANTON. Well, I think on page 21, or possibly 51——

The CHAIRMAN. We will find out.

Mr. STANTON. On page 51 of the opinion of counsel there is this sentence:

> During 1955 expeditures for national spot and local time accounted for 55.7 percent of total television time expenditures.

The CHAIRMAN. It used to run 58, and then it ran higher than that, but it is gradually coming down; but at least it runs now about 50-50, or a little over, for local advertising.

Mr. STANTON. That is right. Well, local and national spot—nonnetwork.

The CHAIRMAN. Nonnetwork spot.

Mr. STANTON. Right.

The CHAIRMAN. That probably could be broken down to local advertising.

Now, that is one of the problems that we are concerned with here—the inability of the local advertiser to find the spot in the time, except for sometimes just pure 1-minute spot announcements.

Mr. STANTON. Senator Magnuson——

The CHAIRMAN. There still is a wide field of local advertising. That is the point I want to bring up.

Mr. STANTON. There is. And about a fourth of that billion dollars, roughly a fourth, is spent by local advertisers. But I think that as you have testimony coming up from individual station operators, they are in a much better position to tell you the story of the local advertiser and his success in using television, or lack of it, than I can.

The CHAIRMAN. Of course, that is the thing we are concerned with. That is the thing that bothers my friend from North Carolina here, that in this great medium of expression there ought to be—we hope we will be able to have a climate whereby the local man will have a chance to use it. But I think it is important that we do realize that it isn't all network advertising going on on television.

Mr. STANTON. By no means, sir.

The CHAIRMAN. Yes.

Mr. STANTON. I was just about to compare the 10 years it took television to reach 35,000,000 homes with the length of time it took now commonplace items to reach that number of homes. I mention these comparisons only as an index of the growth and explosive nature of television and the acceptance of it. It took——

The CHAIRMAN. Did you include the freeze in this calculation?

Mr. STANTON. Yes, the freeze is included in this. And I wish I had some freeze here. [Laughter.]

It took telephone service 80 years, the electric washer 47 years, electric wiring 62 years, the automobile 49 years, and radio 25 years, to reach what television has taken only 10 years to reach. Television's rate of growth, expressed by the public's dollar investment in sets and the extensive use it makes of them, is striking testimony to the regard in which the American public holds television. In fact, were it not for this intense interest on the part of the public neither I, nor any of us, would be here today.

THE ROLE OF NETWORKS

Next, I would like to take up the role of networks. If we allow our minds to go back only 10 short years, we can each of us recall the essentiality of networks—the part networking played in turning idea into reality. The idea of being able to see and hear a moving image in the home captured the imagination of the American public. But no one would manufacture a device to enable the public to see television, and no one would build a transmitter to broadcast a signal, until there was assurance that pictures and sounds would be available to homes as programs broadcast on a regular basis.

Today, as 10 years ago, the networks supplied that assurance. As the New York Herald Tribune noted last December, it was this assurance in the form of program contribution that—

signaled the start of television as a major industry back in June of 1949. And there were few stations then and practically no network to speak of. Within a matter of weeks, people were flocking to their television dealers to buy sets because they wanted to see Milton Berle.

Without the networks' courage in taking enormous financial risks and investing vigorous enemy—energy, there would not——

Senator PASTORE. Either one would be right, sir. [Laughter.]

Mr. STANTON. We are even, sir.

There would not have been the programs to stimulate the public to acquire sets at the rate it did. Without receivers in the home, there would not have been the advertisers to invest in the medium and insure the continuation of the programing. And, without advertising dollars to support them, there would have been no stations to broadcast the programs. Clearly, it was the networks that provided the driving force which brought together the families in the home, the station licensees, the receiver manufacturers, the performers, producers, and writers, which led to the explosion of television on the American scene.

Mr. COX. I think in your supplemental memorandum you use a figure of $53 million which was expended by CBS in television before its networking operations returned a profit to it; is that correct?

Mr. STANTON. 53.1, I believe was the figure.

Mr. COX. Now, is it correct that your owned-and-operated stations, however, started returning a profit to CBS at a somewhat earlier date?

Mr. STANTON. Yes, that is set out in one of the documents here, showing the owned and operateds, and the network, as I recall.

The CHAIRMAN. You are talking only about your television operation, are you?

Mr. STANTON. Yes.

Mr. COX. I take it CBS, Inc., never operated at a loss during this period?

Mr. STANTON. The consolidated corporation?

Mr. COX. Yes.

Mr. STANTON. No; we did not operate at a loss during this period.

The CHAIRMAN. Because of radio.

Mr. STANTON. Yes. As I said at the outset, the Columbia Broadcasting System is made up of 7 operating divisions, and the CBS Television Division is just 1 of the 7.

Mr. COX. So that these expenditures to establish television were defrayed out of the revenues of your overall business, including your then-thriving radio network business.

Mr. Stanton. Yes; and the radio network is still making a profit. I don't want it to be characterized as not thriving.

Senator Butler. Wouldn't it be stretching it a little to say you didn't make a loss simply because you were making a profit out of something unrelated? Certainly you had that capital hazard. It seems you lost money on it.

Mr. Cox. I could perhaps put it this way: That the point I was trying to make was that you were not sinking additional funds of the stockholders of CBS, Inc., in television; you were effecting this transition from one form of radio networking into the more modern form of radio networking out of current revenues.

Mr. Stanton. I could show you some letters I received from stockholders. [Laughter.]

Senator Butler. They thought you were taking it out of their pockets. Those are the people I was thinking about. You were having a tough time convincing stockholders that you weren't losing money.

Mr. Stanton. You are absolutely right, Senator, because there are many stockholders who said, "We are not concerned about television, we are only concerned about getting our dividend." But we thought it was the part of prudent management to restrict our dividend policy and to be in a position to invest in this new medium. And it took $53 million before we turned the corner on networking.

The Chairman. That was the similar experience of NBC, only they had a different, bigger backlog to draw on because of their manufacturing.

Mr. Stanton. That is right.

The Chairman. They had a larger manufacturing division than CBS had.

Mr. Stanton. In fact, at the time we started television, Senator Magnuson, we were not in the receiver manufacturing business.

The Chairman. That is right.

Senator Pastore (presiding). You may proceed, Doctor. I don't think we have to belabor that any more.

Mr. Stanton. Thank you.

The networks, then as now, functioned to serve three separate but closely interrelated groups: The public, the stations, and the advertiser. Let us examine how each of these groups benefits from the services rendered by the networks. And in this examination, let us recognize that no one of these groups can exist without the other two.

First, the networks serve the public: Through network programing the American public—from coast to coast and border to border—receives a richness and diversity of entertainment and culture and information unavailable to even the wealthiest families living in major metropolitan centers a few short years ago. Today, through the networks and with the single requirement of a television set in working order, the entire nation can see programs as diverse as the Sadler's Wells Ballet, the World Series, Peter Pan, the $64,000 Question, The Caine Mutiny Court-Martial, a debate between Paul Butler and Leonard Hall, Disneyland, and a discussion by Joseph Welch on the Constitution—all of them free.

Through the miracle of live television, possible only by the networks' continuing use of telephone lines, the whole Nation will be watching the deliberations of the national conventions, and the elections themselves. The importance of maintaining live television is particularly apparent in times such as these. Through live television the entire Nation can simultaneously be informed and assured of conditions which affect their very being. Today, through live television, the faces and character of our country's leaders can become as familiar to the television viewer as those of his neighbors down the block.

Senator PASTORE. How long after President Eisenhower was stricken with his last illness was the word flashed throughout the Nation by way of television?

Mr. STANTON. I can't give you the precise time, but it was very early in the day on Friday when the news came in about the fact that he had canceled his appointments; and then as the day went on, that news was kept fresh and up to date throughout Friday and, for example, in New York where we operate a station—where we operate not only a television station but a radio station—we kept those stations on the air all night so that we could be of service to the people in the metropolitan area of New York, to give them any word that developed during the night. And of course it was during the night that the operation was performed, and our public was told about it just as quick as we had the word out of Walter Reed Hospital.

Senator PASTORE. Now, only because of the fact that it is a national network was that possible?

Mr. STANTON. That is correct. But I don't want to have the record misleading on the point that on Friday night we did not keep the network on the air all night. This raises considerable problems of traffic arrangements, and so forth, and we didn't think that—we were afraid that if word got out that we had ordered lines for the entire night, that the public generally would feel that something was much more serious than it was. So we were torn between the decision of keeping our New York station on the air without saying anything about it, or making a lot of noise about it, in the sense that just as soon as you order lines coast to coast, everybody would start talking about something that New York knows that they don't know in Fort Wayne or Keokuk or someplace else, and we made that choice.

Mr. COX. Could you tell us in general terms, Dr. Stanton, what percentage of your programing currently is live and what percentage is broadcast on film?

Mr. STANTON. Yes; that is given in the supplemental Memorandum, Mr. Cox, on page 33, chart VI.

The CHAIRMAN. Do you have a breakdown—I haven't read this—but do you have a breakdown of the number of news broadcasts in relation to the amount of time per month in your supplemental memorandum?

Mr. STANTON. I think we have the number, Senator Magnuson.

The CHAIRMAN. Those figures are easy to get?

Mr. STANTON. Yes. Yes; they are in here.

Mr. COX. I take it this represents your total broadcast week. Do you have the approximate breakdown between live and film for the prime evening hours, 7:30 to 10:30?

Mr. STANTON. I can give that to you; but I want to make it clear, Mr. Cox, when you say this represents our total broadcast week, it does to the extent that this represents our total commercial schedule.

Mr. Cox. Commercial; yes.

Mr. Stanton. We broadcast a number of sustaining programs which aren't included in this analysis. If you want those figures, we can get them for you.

Mr. Cox. You have some 14 hours of sustaining programs in addition?

Mr. Stanton. Yes; I would guess that it is of that order. It is about 90 hours a week total scheduled.

Mr. Cox. Would it be fair to say that in the prime evening hours your division between live and film programing is about 50–50?

Mr. Stanton. Yes; that is right.

Second, networks serve stations: Networks supply stations with an overall and varied schedule of commercially sponsored and sustaining programs. Both groups of programs provide a dual benefit to stations. First, the stations are benefited by the revenue which accrues to them from their share of the sponsored program schedule. Even though the functions performed by the network in originating these broadcasts contrast sharply with the functions of the affiliated stations in broadcasting the program, the network and stations share on roughly a 50–50 basis in the money available from the sale of time.

Second (and in many ways equally important), the stations are spared the expense of programing these time periods with either their own local programs or with other programs obtained from outside sources.

Mr. Cox. You also share in the distribution of the stations' share, to the extent of your owned-and-operated stations; is that correct?

Mr. Stanton. Would you mind repeating that question again, please?

Mr. Cox. In other words, this represents a division of these funds between the networking function and the stations' share of time, including your 4 owned-and-operated stations; so that, for instance, in terms of the breakdown you give for the program Climax, where you indicate a time-charge return to CBS network of some $17,000, there would be, in addition to that, the residue received by the 4 owned-and-operated stations of CBS?

Mr. Stanton. Yes, Mr. Cox, for purposes of that analysis, we treated all stations as though they were affiliates.

Mr. Cox. In connection with your reference to the sustaining programs which you furnish, and the figures that we were just talking about, can you give some idea of what they are per week—the difference between 72 and some 90 hours? Is any of that sustaining programing carried in the prime evening hours, 7:30 to 10:30?

Mr. Stanton. Yes; there is the period from 7:30 to 8 on Wednesday night.

Mr. Cox. What program is that, please?

Mr. Stanton. Let me get my schedule. It is Brave Eagle.

Mr. Cox. That is the sustaining program carried opposite Disneyland?

Mr. Stanton. It is.

Mr. Cox. Do you carry any sustaining programs of a public service nature in the 7:30 to 10:30 time period?

Mr. Stanton. Not on a regular basis, but at 7:15, which is adjacent to the 7:30 time, we carry a network news service from 7:15 to

7:30, and on a sporadic basis we carry such programs as See It Now in prime evening time. I think virtually the entire series of 1955–56 has been carried in the periods that you referred to as prime evening time. And of course there are other public service broadcasts on an occasional basis which find their way into the 7:30 to 10:30——

The CHAIRMAN. Are all your newscasts sponsored, or do you have a public service newscast? Does the network carry a newscast at a given hour as a public service, or are they all sponsored?

Mr. STANTON. They are all sponsored, but I don't make a distinction between public service that is sponsored and public service that isn't sponsored. It doesn't affect the news one way or the other.

The CHAIRMAN. Unless you make the newscaster sell the product.

Mr. STANTON. Well, the newscasters—we have long had a policy that our newsmen may not engage in commercials on the network. There is one other network show that comes up at 1 o'clock with Charlie Collingswood every day; at the present time that isn't sponsored, but we maintain that service. And then there is, in the morning, a program called Good Morning, with Will Rogers, Jr., we have news in there; and that is a 1-hour program, but not all news.

And advertisers—this is one of those programs that I was talking about when Senator Pastore——

The CHAIRMAN. The point I am trying to get at is that the networks surely would have the responsibility, over the networks, to give the news to the American public a given number of times a day, wouldn't that be correct?

Mr. STANTON. We look upon that as one of our primary responsibilities.

The CHAIRMAN. I wouldn't know how you would divide up the time, or the amount of time involved. And whether or not that newscast is sponsored, the networks—wouldn't you agree with me—should have the policy of continuing giving that news so many times a day?

Mr. STANTON. Yes.

The CHAIRMAN. And in some cases, I suppose, they have been sponsored and you have continued on with the show when the sponsor maybe quit—in the interim to get a new sponsor?

Mr. STANTON. That is correct. We have, as I indicated we have Charlie Collingwood in the daytime; there is no sponsor today, and we are putting that on every day at 1 o'clock.

The CHAIRMAN. In other words, you keep Charlie on—regardless of whether—you try to get a sponsor, but supposing there might be a time when there was no sponsor available, you would continue to give that news to the American people over the network?

Mr. STANTON. Absolutely, just as long as we had some sponsors in the schedule elsewhere, otherwise, we wouldn't have any income at all.

The CHAIRMAN. I understand that. But there is a certain amount of time that you would have to allocate for that purpose regardless of sponsorship, in my opinion.

Mr. STANTON. That is right. Senator Magnuson, on page 22 of the supplemental memorandum we describe news bureaus and organizations that we keep, and I am not going to go into all the detail, but the CBS television network is now broadcasting 22 news broadcasts a week.

The CHAIRMAN. Is that at a certain time or——

Mr. STANTON. Hit or miss?

The CHAIRMAN. Hit or miss.

Mr. STANTON. No; they are at fixed times.

The CHAIRMAN. Would the other networks compare favorably with that?

Mr. STANTON. I would say, yes.

Mr. COX. I think you indicated that the average daytime lineup for the network is 183 stations and average nighttime, 121. Can you tell us in general terms what would be the average clearance for sustaining public service programing put out over the network?

Mr. STANTON. Well, it is considerably less, Mr. Cox, than the clearance for a commercial broadcast, and these are figures that we look at from time to time because we are trying to get some indirect evaluation of how the stations feel about the sustaining schedule that we are feeding, although even if we were to have an outstanding news broadcast and we didn't get wide acceptance for it, we would maintain that as part of our service.

And as a matter of fact, I suspect that the acceptance lives for some of our public service programs is rather short. This isn't necessarily a reflection on the quality of the program, nor is it a reflection on the part of affiliates. But these are just the facts of life, as far as operating a network is concerned. If you are interested in specific counts, and I don't believe that any is given in the supplemental memorandum, we could supply it on specific programs if you were to request it. But we don't maintain a day-to-day record on that; we only look at it on an occasional basis to keep a file on how the programs are going nationally.

The CHAIRMAN. This sustaining program, then, is a real service and is accepted as such by the stations which might have difficulty selling this time, but a good many of your affiliates in the larger markets, who can sell on national spot, do not clear for your public-service programs because they have sold that time to a national or regional advertiser?

Mr. STANTON. That may be the reason, or there may be another reason. In the field of news, for example, a lot of our affiliates feel that they can do a local or regional news job, which will embrace much of what we do, and yet give them their local participation. Let me give you an example: This Collingwood 10 minutes that we are talking about, that allows the affiliate to come in behind Collingwood, who will give the national and international news for 10 minutes from New York—it allows the local sponsor, or the local operator, to program with 5 minutes of local news in there and fill out a quarter hour that way.

There are two benefits: One to the public, because the public gets not only network news—national and international in character—but it gets local news; and the station benefits because the station may be able to sell that 5 minutes locally—and we have been of help to that station in giving it a lead-in with a strong 10-minute national news service.

The CHAIRMAN. And all of that is taken off the wire services anyway; isn't it?

Mr. STANTON. You are talking now——

The CHAIRMAN. Of the particular—of Charlie's program.

Mr. STANTON. Charlie's? Not at all; we maintain bureaus all over the world that feed——

The CHAIRMAN. Doesn't he use the wire services, too?

Mr. STANTON. That is right—that are supplemented by the wire services. But we have a number of people—again, on page 22 of the Supplemental Memorandum, CBS News maintains "4 American news bureaus, 5 European bureaus and 1 Far Eastern bureau. It employs 600 contract and free-lance correspondents at 263 locations throughout the world."

The CHAIRMAN. So that a news analyst—getting Charlie back in the picture again—such as Charlie, whom we happen to know very well——

Mr. STANTON. Surely.

The CHAIRMAN. He uses the facilities that you have just read to us there: but he also could pick up AP, UP, as I tried to say, and analyze the news; is that correct?

Mr. STANTON. Absolutely right.

The CHAIRMAN. And there would be no editing of that, would there?

Mr. STANTON. By editing——

The CHAIRMAN. Except what he would do.

Mr. STANTON. No. All the copy of all of our news people has to cross the desk of an editor at one of the bureaus, to make sure that we are living within the code that we have set for ourselves of trying to be as objective as possible. And the best of us on occasion will fall over the line, one way or the other.

The CHAIRMAN. What I am trying to get at: It is not only the editing of what CBS—its own news-gathering organization brings it—it is the editing of wire services, CBS, or anything that may be happening. They can use all that material?

Mr. STANTON. Right. Charlie's broadcast is a composite of all those sources.

The CHAIRMAN. Yes, I see. He could put me in or cut me out, any way he wanted to; is that right, the editor? [Laughter.]

No, I don't say this is wrong. In 10 minutes, you can't put it all in.

Mr. STANTON. That is what I was going to say.

The CHAIRMAN. What I say is the editor has leeway to do what he wishes.

Mr. STANTON. These are professional, trained, experienced newsmen who give their best news judgment on what stories are the key stories; and when you are editing for 10 or 5 minutes, it is a much tougher job.

The CHAIRMAN. Than filling 30 minutes. You probably have the raw material taken out, if at all.

Mr. STANTON. That is right; I remember Elmer Davis, in the days when he used to do the 8:55 to 9 news, used to complain of the difficult job it was to write for a 5-minute news period.

Senator PASTORE. But, the point I think we are getting at here, Dr. Stanton, is this: Is there any censorship on the part of the directorship of CBS as to what the commentator decides to put in or to take out, or express his opinion?

Mr. STANTON. There is absolutely no censorship, Senator Pastore, whatsoever. The thing we try to do is to cover all the news as objectively as it is humanly possible to do—and I don't think the public would let us get away with anything else.

The CHAIRMAN. The FCC, I think—I may be wrong in the date, but about 2 years ago—sent word to all the stations that they could "editorialize" if they felt like it. And some of the local stations do, which I think is a good policy. But the networks really don't have the best way—it is just an editing and condensation of the news that is gathered from all of these sources, including your own.

Mr. STANTON. Senator Magnuson, we don't have an editorial page. We did exercise the right to editorialize on one occasion. I did an editorial to the television network, I believe, 2 years ago. But we approach the problem of varying viewpoints a different way. We encourage and invite viewpoints to come on and be cross-examined, or to participate on the air, so that you get these various viewpoints from the person who holds them, rather than an oracle of one particular person.

The CHAIRMAN. Such as your Face the Nation program?

Mr. STANTON. Exactly.

The CHAIRMAN. Yes; and the other networks have the same format.

Mr. STANTON. Absolutely.

Senator POTTER. I have heard criticism of the networks on the question of editorializing by the networks—meeting that problem by granting equal time. And you have a professional newscaster or news analyst who gives one side of a question, and then you invite somebody, who may not be a professional in the field, to have equal time on the other side of the question. Now, do you think that is meeting your test of objectivity?

Mr. STANTON. Senator Potter, that is a—as you stated it, I don't think that that is balancing the books, so to speak. It is very difficult to reduce this to a mathematical equation. Some people are more persuasive than others. By and large, the thing you described does not. I am not talking about him when he gives a prepared speech, have given time to opposing viewpoints when a program that we put on was characterized by the opposition as being in the direction of a special viewpoint. I don't think that the people who came on to answer those programs were in any way in second position because they had not had exposure, or weren't professional in the sense that they were newscasters on a regular basis.

That is one of the reasons why we have steadfastly avoided the commentator approach to our news. We have talked about having newsmen and analysts, and the analyst's job is to try to give the background or the elucidation or illumination, if you will, of the news without leaning one way or the other. Now, this is a pretty difficult thing for a human being to do, but by and large I think that we live with our objectives, or our ideals, pretty well on that score.

But we do not do as some do—allow a man, a newsman, to comment and to take what corresponds to an editorial point of view. I won't deny that there haven't been occasions when people have broken over the lines, but this is just the statistical happening that occurs in any kind of human endeavor, where occasionally you do not—you miss it.

But I think the record over the years reveals that we have been fairly objective. This is a tough thing to do. But I think the public respects us for it, and I think by and large the high regard that the public holds for radio and television news covering in this country, as distinct from the news covering of the other media of mass communication, is largely due to the fact that we have tried to do a balanced and objective presentation. And a minute ago I said, I think in answer to someone, that if we ever broke with that tradition I don't think the public would ever let us get away with it.

Senator POTTER. I think that is right. The effect that television has on the public, as you know, is very great. And if you would let any person, or any group of people, control the editorial policy, if you have an editorial—if you were allowed, if you did editorialize through television, you would run the country.

The CHAIRMAN. Well, the prime example of that is where you have a newspaper that also owns a television station. It is pretty hard to recognize the two mediums on a given day. The newspaper has the perfect right to editorialize, or take the news and change it around, which they do in some cases. But when they get to their television station, they do have a public license and they try and keep it, as you have pointed out.

Mr. STANTON. Yes. I think that just as the generations that have grown up with the traditions of radio and television objectivity in news, so you have generations—and many more of them—who have grown up with the tradition of the newspaper, which does have the right that Senator Magnuson is talking about.

The CHAIRMAN. I don't mean they change the stories, but the format of the paper sometimes. The story is the story, but what they put in is a great deal different than what they would put in the same television story.

Mr. STANTON. That is right.

The CHAIRMAN. And they have a right to do that.

Mr. STANTON. I think that in the news and public affairs field, television has another great string to its bow, if you will, and that is that in programs such as Face the Nation or Meet the Press, or programs of that type, the man can sit, and the family can sit in its living room and watch the elected representative or the public official react to questions much the same way that he would react if he was sitting face to face with that individual. And I don't think there are very many people in this country who don't feel that if you give them 15 or 20 minutes or a half hour with a personality, that they can't form a pretty good impression of whether that man is a squareshooter or not. I am not talking about him when he gives a prepared speech, but I am talking about him in the give and take of conversation.

Senator POTTER. They say in television that you never come away from a television program without leaving some impressions, either good or bad.

Mr. STANTON. That is right. I think one of the great things about it is that it exposes the phony faster than anything else has done in the history of man.

Senator POTTER. It is rough on politicians. [Laughter.]

Mr. STANTON. On the other hand, it is a great thing for politicians and statesmen, because it allows the viewer to form his impression of the man as a whole man, not just as he has issued a press release or as if he had made a transcription. I think the impression that the newspapers are giving to the people are a little—but just as you can form the impression of the kind of guy that is running CBS, the——

Senator POTTER. Of course, I think, by the same token, it is changing the character of politics, too.

Mr. STANTON. One of the things, that rather than everything else, it has taken you away from the town meeting to the State capitol to the National Capitol. This is taking it back now to the precincts.

Senator PASTORE. Dr. Stanton, Edward Murrow is an official of CBS; is he not?

Mr. STANTON. Edward R. Murrow, Senator Pastore, is a news broadcaster and a broadcaster, in television, of special programs such as See It Now. He is not an official of the company as an officer; he is a director of the company, but not an operating officer.

Senator PASTORE. He is a director?

Mr. STANTON. He is a director.

Senator PASTORE. Well, now, as a matter of policy, does the directorship have any censorship over any of his programs?

Mr. STANTON. We have——

Senator PASTORE. I mean is the material, or the expressions that he makes, passed upon by the directors, as such; or is he left much alone when he gets on to his own program, to do it as he pleases?

Mr. STANTON. No; he is not left alone to do it. Neither do the directors pass on what he says, nor is he left alone to do what he pleases. He is treated exactly the same as Senator Magnuson's friend Charlie Collingwood. All of our newsmen receive exactly the same treatment, and Mr. Murrow receives no different treatment because he is a director. We have——

Senator PASTORE. I am not being critical.

Mr. STANTON. No; I am glad you asked.

Senator PASTORE. I think it ought to be on the record.

Mr. STANTON. A number of people have thought, because he was a director, that there was some special privilege that he had. This is not true. So that the record will reflect the way our creative programing activities are handled, there are two programing boards: One for radio and one for television. Mr. Van Volkenburg, sitting to my right, who is president of CBS Television, is chairman of the program planning board for the television division. His counterpart, who is president of Radio, has a similar plans board for radio. The chairman of the corporation, William S. Paley, and myself sit on both of those boards.

In addition to that, in the field of news and public affairs—which is operated centrally in the corporation and isn't in the individual divisions, because news isn't something that originated with television or originates with radio, it originates by event—we have a centralized news-handling operation. There is an editorial board—not editorial in the sense that it decides on what editorial policy shall be, but it is an editorial board that reviews and plans the kinds of programs that are done in the public affairs area and keeps tabs, in a supervisory sense, on our news and public-affairs operation.

That editorial board is made up of the chairman of the corporation, the head of news and public affairs, the head of the radio division, the head of the television division, the vice president, creative program services of the corporation, and Mr. Salant, sitting on my left.

From time to time, we review the program output of the news and public affairs division to make sure that they are living up to policies and are doing the best possible job.

I guess I was at——

The CHAIRMAN. Do you think this would be a good time to break?

Senator PASTORE (presiding). I think so.

The CHAIRMAN. How about 2 o'clock?

Senator PASTORE. We will recess the hearing now until 2 o'clock this afternoon.

(Whereupon, at 12:08 p. m., the committee was recessed, to reconvene at 2 p. m., of the same day.)

AFTERNOON SESSION

Senator PASTORE. The hearing will please come to order. All right, Doctor, you may proceed.

Mr. STANTON. Mr. Chairman, and members of the committee, this morning Mr. Cox asked about a chart, chart XX, on page 77, and was concerned because the totals did not add up to the same number that appeared elsewhere, about the number of affiliates that we have. I would like the record to show that this chart was prepared on data as of December 1955, and at that time we had a number of affiliates equal to the total of 174, which is the figure you had, Mr. Cox.

Subsequent to that time, 7 stations, new stations, have come on the air and account for the difference between 174 and 181 as shown on the map, which gives the figure of 181 at the top. These are stations in the markets of Laredo, Big Spring, Columbia, Marquette, Sweet Water, Odessa, and Memphis.

Mr. Cox. Thank you, Dr. Stanton.

Mr. STANTON. One other question that I believe Senator Potter asked, and that was about the possibility of having competing advertisers, or advertisers dealing in the same products, on the same night in the same peak evening hours. A quick look at the schedule shows two examples. There are others. But on Friday night, for example, from 9 to 9:30, Reynolds Tobacco is in that period. From 10 to 10:30, Brown & Williamson is in that period. So that you have a separation of half an hour. And on Sunday night, Bristol-Myers has the time period 9:30 to 10, and Helene Curtis has the period 10:30 to 11:00. They have many products that compete. Now, they are not back to back, as I indicated this morning, Senator Potter, but they are separated by a half hour on the same night.

Senator POTTER. Do you ever have a contract with your advertiser in which the advertiser insists, if he is going to take an account with you for a certain period of time, that you don't take advertising from a competitor during the prime hours?

Mr. STANTON. I know of no such contract, and we wouldn't write such a contract.

Mr. Cox. In connection with your advertisers, we have had some testimony before the committee by a member of the Federal Communications Commission to the effect that some 25 national advertisers occupy between 50 and 60 percent of the network broadcast time. Would that sound like an accurate approximation of the situation?

Mr. STANTON. Yes. I want, before I sign my name to it, Mr. Cox, to check it, of course, but I don't offhand quarrel with that kind of a general statement. I think that is true in many other fields besides broadcasting, however.

Senator BRICKER. Mr. Chairman——

Senator PASTORE. Yes.

Senator BRICKER. Just one question, Dr. Stanton. Have you any fixed policy in regard to advertising for competitive industries or businesses, and if you have—I wouldn't ask you to do it now, but could you make us a definitive statement as to what your policy might be if there is one, giving equal opportunity to competing industries or competing businesses in the field? If you have such a policy——

Mr. STANTON. Senator——

Senator BRICKER. Or do you take each one on its own merits?

Mr. STANTON. Senator Bricker, we have no policy in that regard, the way we have, for example, in the political field, of giving equal time.

Senator BRICKER. Of course, that is made by statute.

Mr. STANTON. That is right. But as it works out, I am sure, between the major networks or among the major networks you would find that they all get a crack at the audience, so to speak, or can get access to time.

Usually what happens is that if one large national advertiser becomes quite active in a medium—be it newspapers or magazines or radio or television—competitive advertisers in the same field come in pretty quickly because the distributors and the dealers insist on having the same kind of national support for the local sale of the products. And by that token, if one automobile manufacturer comes in, you usually find his competitor coming in fast to offset or to compete with what the first one does. Now, we have never had—in the twenty-odd years I have been in the business I don't recall any time when we ever had an advertiser come to us and complain about not being able to get access. We would like to do business with him. And I think an analysis of what has happened would indicate that those who want the time, who are eager to get the time, have been taken care of. But I could make an analysis for you of what the track record has been, but it is not as a result of a policy.

Senator BRICKER. Not a policy.

Mr. STANTON. It is the way it has worked out.

Senator BRICKER. I suppose the record is in here; that we could dig out. It might be helpful to us, though, if you would do that. Because that is basic to all this, as you understand.

Mr. STANTON. Sure. What I would like to suggest is that we take a number of commodity groups—automotive and soap and cigarettes—broad groups of classifications of products that are advertised and show you how those balance.[3]

Now, you occasionally have some national advertiser who, for reasons of advertising strategy, will go exactly contrary to what the others do.

Senator BRICKER. Yes.

Mr. STANTON. For example, there was a time—and I think I mentioned it in my statement, and if not it is in the supplemental memorandum—where Philip Morris was a very large user of network television. Then, Philip Morris—and at that time Philip Morris,

[3] This analysis is set forth in a letter dated August 10, 1956, and in exhibit B thereto. which will be found beginning at p. 2835.

among other programs, had I Love Lucy, a very popular program. Philip Morris left I Love Lucy and went out of network television completely and went into spot television. They took an entirely different tack. So you occasionally get these breaks in continuity. But those aren't the result of anything that a network does or the medium does. That is a matter of advertising strategy. Sometimes it is very useful. I would like to think, you know, they should stay with the network. But, on the other hand, you do have advertisers who want to change the pace, and they will do that kind of planning and strategy.

Senator PASTORE. If you had that competition even among the networks themselves—if you put on a good program at a certain hour, usually the other network comes up with a rather glamorous program to more or less attract the viewers away from the other program.

Mr. STANTON. Yes, and the public benefits, I would say, Senator Pastore, because they have a choice, then, of 2 good programs, or 3 good programs. That is what happens when you have the free competition that we have in this country. Until the ITV came along in England, the BBC just planned the way it was going to be and it didn't have any competition.

Senator BRICKER. If you could furnish that data, it would be very helpful to the committee.

Mr. STANTON. I will do so, Senator Bricker.

Was I at the paragraph starting with "Stations"?

Senator PASTORE. The second paragraph.

Mr. STANTON. Second, I am sorry. This is on page 12 of my statement.

Second, and in many ways equally important, the stations are spared the expense of programing these time periods with either their own local programs or with other programs obtained from outside sources.

Still talking about the subject of how stations benefit from the networks, stations benefit in a third way from network affiliation. Their affiliation enables them to broadcast a balanced program schedule of wide public appeal, with major, high-cost programs attracting large circulation to their channels. This large circulation attracts nonnetwork revenues directly to the station—revenues from both national spot and local advertisers. It is the network schedule which creates the value of the stations' "adjacencies"—the time periods adjacent to the programs which have attracted the largest audiences.

3. Networks Serve the Advertisers: If you will recall, I was discussing the fact that networks serve first the public, second the stations, and now I am talking about how networks serve the advertisers.

Networks assure value to sponsors by delivering large circulation at specified periods in the schedule at a low-unit cost.

Only networks can efficiently supply advertisers with nationwide television coverage. Through a single order advertisers are assured of the simultaneous exposure of their messages in all markets and as part of a rounded program schedule—in which each program reinforces and adds value to every other program in the schedule. Advertisers' increasing use of network television testifies to their endorsement of the network's function in providing these efficiencies in the marketing and distribution of their products.

THE FUNCTIONS OF A NETWORK

Networks supply a balanced program schedule on an effective nationwide basis which dovetails with the local schedule of the independently owned and operated stations comprising the network. In this way networks provide a television service for the Nation as a whole and create economical circulation for the advertisers.

This sytem has worked. It has worked by any standard of measurement: The approval of the public, the functioning of independently owned stations, and the confidence of advertisers. Simple as it sounds, the mechanism which created it and which has kept it functioning is vastly complex. It would be redundant for those who have read the CBS supplemental memorandum for me to try to summarize what is already a very tight digest of how a network functions.

Mr. Cox. In that connection, Dr. Stanton, despite the very real contributions of the networks to the operations of many of the independently owned affiliates, is it not true that a substantial number of individual licensees are still operating at a loss and that a number of them, representatives of whom have appeared before this Committee, indicate that unless there is some material change in the situation—much of it, of course, depending on the allocations problem—they may be forced out of business?

Mr. Stanton. Mr. Cox, are you referring now to the UHF-VHF situation?

Mr. Cox. To that and to the problem, also, of stations in smaller markets—the entire gamut of economic problems which face individual licensees as distinguished from the network. In other words, the point I am making is this: The system has worked, but as I think you yourself suggested this morning, it has certainly not worked equally well for all affiliates or for, as far as that is concerned, all networks.

Mr. Stanton. Well, Mr. Cox, I won't deny that there are some isolated instances of loss operations. But I also should remind you that earlier in the life cycle of television there were loss operations on the part of a lot of stations which are now making handsome profits. And if you were to go back into a similar life-cycle position in radio and you were to take a look at radio when it was 10 years old as an advertising medium, and look at the picture then as against the picture now in radio, I think you would have found fewer stations and perhaps some loss operations at that particular time in radio's life cycle.

Mr. Cox. Weren't most of the earlier losses in television because of the low percentage of set saturation, and isn't there some ground for concern that for some stations these losses continue, even when we are approaching the high levels of saturation that you have testified to?

Mr. Stanton. Well, now, we have to look at the high level of saturation, Mr. Cox, in terms of individual markets, because some of the markets that you are talking about are small markets, loss markets, being very low in saturation. They don't bulk large when you look at the whole country, but they bulk very large for that operator. That is why, largely as a result of the hearings we held in this very room 2 years ago, when Senator Potter was holding hearings in his committee, I got a number of questions, and I know a number of members of the committee and others here said, "What can we do to help the small station, the small-market stations?"

This is a genuine problem. The large national advertiser is most concerned about the biggest markets first, and he keeps going down—and don't ask me where he cuts off, but there is a cutoff point beyond which, many times, he doesn't go in terms of building up the list of markets that he wants to put on a network. Obviously, we started with the "must buys," but we try to expand that. But there are a lot of small stations in places like Big Springs and Odessa and so forth that were not getting either service or getting income. This posed a real problem for us, because it wasn't economical to give the service to these stations. The advertiser wasn't interested in them on the basis of the rate that we had to charge, because the rate, in relation to the amount of circulation they delivered, just wasn't worth it.

Now, we tried to come back and cope with that problem by setting up what we called the Extended Market Plan, and I will talk to it a little bit later. But that in itself—as I think some of the testimony will show from people who own and operate these EMP stations—that move on our part, of establishing that class of station, where we put a special rate and a special discount and we gave those stations the right to buy TVR's or recordings of our programs at a very low price, so that the people in those very small communities—the public, again—could get the same kind of programs that the people were getting in the big communities——

Mr. Cox. Well——

Mr. Stanton. This is something that the network did in an effort to try to broaden its service and to protect the smaller market from the natural flow of the revenue to the big market. And I think as I get into my statement here—I hope I will—I will show that there is a disproportionate amount of money going to the smaller markets in television today, and a large part of that, I submit, has been accomplished by the things the networks have done. And I am not talking just about CBS television now. Others have done similar things, in an effort to take care of these smaller markets.

THE CBS TELEVISION NETWORK

I was getting ready to say, I guess: However, I think it useful at this point to describe very briefly some of the components of the CBS television network.

The CBS television network aggregates 181 affiliates in the United States and 34 outside the United States, in Canada, Alaska, Hawaii, Mexico, Cuba, and Puerto Rico. Four of these are CBS-owned stations: 3 VHF stations, New York City, Chicago, and Los Angeles; and 1 UHF station, Milwaukee.

The vast majority of these stations are interconnected by American Telephone & Telegraph facilities, and the cost to the CBS television network of using these connections on a regular basis amounts to $13.5 million a year. Without this investment there would be no network. And if these facilities were not used by the network on a regular basis, but were used only sporadically, their costs would increase, perhaps as much as 30 or 40 times per program. Moreover it is likely that some of them, at least, would revert to other uses.

They would then be unavailable to television—even for occasional use—in markets outside the top 40 or 50 cities. As a result, many smaller markets would forever be deprived of live programs except those locally originated.

Mr. Cox. As far as that is concerned, Dr. Stanton, though, isn't it true there could be changes, either of the sort which had been proposed in hearings before this committee or of another nature, in the regulations under which the networks conduct their business, but this would not necessarily mean that the networks would cease to be regular users of the telephone company's facilities, or that because these changes were made the national network system would cease to exist? I realize this anticipates a major part of what you say later. But the point I am trying to make is: Is it a question of all or none, as this seems to imply? Is there not a possibility that there could be alteration in the character of the network service without eliminating it, at least on the stumbling block of the A. T. & T. charges?

Mr. Stanton. Well, Mr. Cox, without knowing what the middle ground might be, of alteration, it is difficult for me to say what would happen.

This much I believe, and that is if some of the proposals that have been talked about before this committee were to become the pattern of operation for the future, I think you would pretty well emasculate what we now have as live national television networks. I think that you would be taking something out of the democratic process, and out of this culture, and out of our economics by that process.

But I can't tell you precisely what is going to happen, or how rapidly it will happen, without addressing myself to specific proposals, which I try to do later.

Mr Cox. All right.

Senator Pastore. Doctor, do you mean by this that the broadness of a network's program depends upon the amount of charges the telephone company will make, as to how far you can go and whether or not an advertiser will be given a certain amount of spread?

Mr. Stanton. Senator Pastore, if I understand your question, I am afraid I didn't make myself clear. All I was trying to say here——

Senator Pastore. Well, let me put it this way. You began by saying that sometimes we would like to go to the smaller community. Well, we can't go that far because the cost would be too great. Now, you start out at a central point when you broadcast a live show. It is that one broadcast that is spread out throughout the country. Now, why does it become expensive if you go to a small community? It is still on the air. Where does the expense come in?

Mr. Stanton. Well, we are charged for our circuits, sir, in terms of the mileage between points that are connected.

Senator Pastore. Is that where the expense lies?

Mr. Stanton. That is where the expense lies. Well, there are other features, but that is essentially it. But we don't change our network from minute to minute or hour to hour. The stations may change it in terms of what they take and what they don't take. But, as far as the service we buy from the telephone company, the interconnections, that is constant, as I understand it, pretty much throughout the 9 hours. They might route us a different direction from one hour to the next, but the net effect is that the service is at each one of these places. The local station may not take it, but the service is there. Once we make an affiliation, or once we decide to go into a community with service, if there is a station there, we don't keep changing that around from hour to hour or day to day. So this doesn't vary, if I am on the same frequency you are here as far as this question is concerned.

Senator PASTORE. Well, I don't know whether we are on the same frequency at all. You start out with a program originating in New York. You have a national network. Now, why does it make any difference to the advertiser, in the amount he must pay, as to how many stations you cover, if those stations are all on your network?

Mr. STANTON. Oh.

Senator PASTORE. Is that an unfair question?

Mr. STANTON. No; not at all. We don't charge advertiser A any differently than we charge advertiser B, as far as the wire lines are concerned, or the interconnections. The difference in charge to the advertiser, sir, is based on the rate the station charges for serving that particular community. For instance, if Providence isn't on the network, then the advertiser isn't charged for Providence; but we are charged for putting the service into Providence nevertheless. In other words, we are charged for it by the fact that we have to amortize a part of the fee for the telephone feed into Providence whether Providence takes the program or not. Perhaps if I turned it around and put it another way: If an advertiser buys 100 stations, the bill that he pays for those 100 stations is based on a printed rate card, with each station charging so much for each time unit. There is nothing on that rate card that charges the advertiser for the telephone lines. Obviously he pays for it as part of the over-all rate. But, it doesn't vary from advertiser to advertiser. Only as it is reflected in the rates charged for the number of stations.

The CHAIRMAN. Excuse me. Are those fixed charges, the telephone company charges?

Mr. STANTON. Yes; they are, if I understand your question, Senator Magnuson.

The CHAIRMAN. Well, what I mean is, you make a contract with them for a period.

Mr. STANTON. Yes; they are blocks of time. I think our contracts are now for—what? Eight-hour days, are they not, in 8-hour units?

Mr. VAN VOLKENBURG. Eight-hour units.

The CHAIRMAN. You make a contract with the telephone company for a certain period of time, or they just charge you a service charge for every given——

Mr. STANTON. Use of it?

The CHAIRMAN. Month?

Mr. STANTON. No; they charge us by the month, but it is a bulk buy of the service. It isn't—we don't buy a minute for this hour and then drop it for the next hour. It is not charged like a long-distance call.

The CHAIRMAN. I understand that. I am just trying to get at your relations with the telephone company; that is CBS. Do they give you a fixed charge like anyone else using their lines for a certain period of time, or do they change those rates on you?

Mr. STANTON. Well, that is a tariff that is established by——

The CHAIRMAN. They must file it; I understand that.

Mr. STANTON. Yes; absolutely, and that is fixed.

The CHAIRMAN. Then that is fixed. So we will understand that. In order to change that tariff—which naturally reflects to the local television station because they pay for it, I mean in the long run—that must be filed with the FCC, the change in charges?

Mr. STANTON. Yes; it must.

The CHAIRMAN. Or can they change you from month to month?

Mr. STANTON. No; they don't change us from month to month.

The CHAIRMAN. Could they?

Mr. STANTON. No. They would have to file that and put us on notice.

The CHAIRMAN. They would have to file it and put you on notice.

Senator BRICKER. File a new tariff which would have to be approved?

The CHAIRMAN. Yes; that is what I am getting at.

Mr. COX. Do I understand, then, that as long as you have 181 affiliates you would be charged the same rate per day, or week, or month for this 8 hours' use of the network, regardless of what your clearances at any time—at any particular time—may be?

Mr. STANTON. There may be some slight deviation because of loops and connections, Mr. Cox, but for the most time, I think the substantial answer to that question is "Yes."

Mr. COX. What is the problem that is posed? You state in some of your documents you have found your experience to be you can't afford to add an affiliate unless it has 40,000 homes and will justify a rate of $150——

The CHAIRMAN. $125 to $150, you say.

Mr. COX. Because of the expenses to the network. Is this an expense of amortizing, over some period of time, the amount of additional charge that will be made because of the addition of this station, whether ordered or not—or in what way does this impose an expense upon CBS?

Mr. STANTON. Well, we have to pay in most of the cases, Mr. Cox, the cost of getting the program to market A, or whatever the market might be. There are some exceptions to that, but for the most part of the 13½—well, all of the 13½ million I talked about here, we pay for. There are some stations, however, whose contracts are not the same as the rest, and who make their own connections to the nearest point to get the service from the network.

Mr. COX. They make payments direct to the telephone company?

Mr. STANTON. They may make——

Mr. COX. When they are connected?

Mr. STANTON. Well, they may make them direct to the telephone company or they may maintain their own connections.

Senator POTTER. You have to pay the line charges whether you use the lines or not?

Mr. STANTON. Oh, yes; we pay for them on a bulk basis.

Mr. COX. You receive a discount for that service, however, that reduces that charge on a per hour basis below what it would be for a single time use, or a less frequency use?

Mr. STANTON. Oh, absolutely. I am not complaining about the rate here, don't misunderstand me. I would obviously like it if it were lower. But the purpose here isn't to get into a question of rate consideration.

Senator PASTORE. Well, in other words, Doctor, every time you go on the air on a national program you reach 181 affiliates in the United States and 34 outside the United States?

Mr. STANTON. In one form or another, Senator Pastore. Because when you say outside the United States, and even some inside the United States, they are not necessarily interconnected. They may get their program service in what we call television recording or on film. There are some of the extended market plan stations—EMP, very small market stations—who get their service by recording rather than by wire or microwave relay. But substantially, the answer is "yes." But I wanted to make sure there were those exceptions.

Senator PASTORE. And this added cost you are talking about is when you bring in new affiliates?

Mr. STANTON. That is right.

Mr. COX. You don't reach that market, though, unless it is ordered? I mean, actually your program will not go out over the transmitter of that station unless the market has been ordered?

Mr. STANTON. Oh, no, not at all.

Mr. COX. Or unless you are providing the program on your extended program service?

Mr. STANTON. Under the extended program service plan, Mr. Cox, some of our programs are made available to stations whether or not the advertiser orders that particular station. Obviously, if the program goes to the station and the advertiser doesn't order the station, the station derives no income from that directly. The station benefits in another way, however, and that is: First, he doesn't have to buy any programing, or provide any programing, which he pays for out of his own pocket; second, if the program is a popular network program, it enhances his program schedule locally, so he can attract local advertisers and perhaps national spot advertisers to buy adjacent thereto.

We don't have the extended program service plan running straight through all of our programs because it is not possible to do them with all programs at this particular time.

The CHAIRMAN. Didn't you give them a package at one time? If they bought one, they could get another?

Mr. STANTON. No, not as far as the network operation is concerned, Senator Magnuson.

The CHAIRMAN. But you are down now to a $50 rate card in some individual cases, aren't you?

Mr. STANTON. In some of the EMP stations, yes.

The CHAIRMAN. As low as $50?

Mr. STANTON. I think that is the lowest.

To perform its functions, the CBS television network required a total of 5,493 people as of March 1956. As of that date, 2,412 of these were employed on a full-time basis. This compares with 427 full-time employees devoted to the activities of CBS television as recently as 1949. Currently, the cost of maintaining this organization and staff amounts to about $700,000 a week.

Senator POTTER. What are the part-time employees?

Mr. STANTON. Part-time employees, sir?

Senator POTTER. Yes.

Mr. STANTON. Musicians, actors, per diem personnel.

Senator POTTER. Program personnel?

Mr. STANTON. For the most part, program personnel—stagehands, ushers, people that come and go as programs come and go.

CBS NEWS AND PUBLIC AFFAIRS

One of the most vital of the network's functions is performed by the CBS news and public affairs department. Through it the network fulfills its responsibility as a medium of mass communication by providing the public with news, science, religious, education and public affairs programs.

The CHAIRMAN. Doctor, do you have broken down—I suppose we can get it—the amount of time in these different categories, in ratio to your pure entertainment programs?

Mr. STANTON. I could provide it. The thing that frightens me a little bit about any analysis of that kind, Senator Magnuson, is that many times in the field of education, for example, we get education in programs that ordinarily wouldn't be classified as education. Let me give you an example. I think that some of the things that have appeared on Ed Sullivan's program, from the ballet and from serious music and so forth, would qualify as very special educational kinds of programs.

On the other hand, I think that the $64,000 Question taught the average man in this country more about income taxes than all the educational programs that we have ever had. [Laughter.]

So I am always nervous when we try to put rigid classification on programs.

The CHAIRMAN. How do you report to the FCC?

Mr. STANTON. We have a questionnaire form from the FCC—I am not very happy about it because education doesn't qualify there unless it is done in conjunction with, as I recall, a bona fide educational institution.

Well, that is all right. I am not saying that educational institutions can't help us. But I think that we occasionally can do educational programs without having to be tied to an educational institution for it. And I don't like not to get credit for it under those circumstances.

The CHAIRMAN. Well, I was going to say it works in reverse, too. Any station, or any network, should get credit for doing these things you mention. And you have to have some yardstick to break them down. You can break down the news in ratio to the number of hours you are on the air. And I would think you could break down the religious part.

Mr. COX. Isn't it true, though, that ——

The CHAIRMAN. And you have certain public affairs programs that are definitely public affairs?

Mr. STANTON. That is right.

Mr. COX. Isn't it true that this report form that you are talking about is employed only in connection with your owned-and-operated stations—that since the network is not itself licensed by the FCC, you do not file any statement showing balanced programing over the network?

Mr. STANTON. Yes, Mr. Cox, you are right. I wasn't referring to the network filing. I was only thinking in terms of what company-owned stations do.

We have been very conscious of this breakdown, however, because when we go into comparative hearings for licenses we have to follow the form that is used for the——

The CHAIRMAN. Well, it becomes a very important part of what service the station is doing for the public.

Mr. STANTON. Yes, except I think, Senator Magnuson—and I don't want to quarrel with you on this—I think that tables can sometimes be very misleading. I could put on a lot of programs that would qualify as education and you wouldn't give them 5 minutes of your time, and neither would anyone else.

The CHAIRMAN. Yes.

Mr. STANTON. And I can put on some other programs that don't technically qualify as education that I think you would say were very good programs.

The CHAIRMAN. Yes.

Mr. STANTON. For example, we had for 4 years an hour and a half program on Sunday afternoon, called Omnibus.

The CHAIRMAN. Yes.

Mr. STANTON. I think Omnibus was an excellent program. Omnibus wouldn't qualify as an educational program, and yet there was much in that program that was far better——

The CHAIRMAN. By that you mean a station to qualify under the FCC in marking their time now—what they do for education—Omnibus couldnn't be put in that category?

Mr. STANTON. That is my understanding of it, sir.

The CHAIRMAN. Yes.

Senator PASTORE. Another one I think needs worthy mention is You Are There. I think it is a good education program. It is a good lesson in history, if you listen to it.

Mr. STANTON. Yes. Only a network that is financially healthy could fully perform these functions. For the CBS news and public-affairs operation represents a substantial loss. Few public-affairs programs are sponsored. One program series, for example, The Search, which reported the research projects of different colleges and universities, took 3½ years to produce. More than $750,000 was spent on it, without recovering any of this cost through sponsorship. The department, with an annual operating budget of $7 million, comprises 103 full-time employees and employs 600 contract and free-lance correspondents at 263 locations throughout the world.

Only a network could maintain a department to produce, and supply, at no charge to stations, programs in the field of education, such as The Search; Adventure, which was produced in conjunction with the American Museum of Natural History; Report Card, a special five-program series devoted to schools and education; such weekly religious programs as Look Up and Live, Lamp Unto My Feet, which, through longstanding CBS policy, are withheld from sale or sponsorship by any groups.

Mr. Cox. As you may have been advised, Dr. Stanton, a witness testified before the committee yesterday—Dr. Everett Parker, of the Congressional Christian Churches—and while commending this last policy of yours with respect to your refusal to sell religious time, was critical, in general, of the policies of the networks and of individual licensees on the ground that there was not enough religious time made available, that it was not good time for the purposes to be served, that the program formats which were customarily employed were not effective, and that organizations outside the networks had developed techniques in the field of religious programing and had tried to persuade representatives of the networks to make use of this kind of programing but without success. Now, I realize that this testimony—you have not had a chance to digest this testimony—and perhaps you prefer to comment on it at a later date, but I think some comment at some time would be appreciated.

Mr. Stanton. Well, I would like to hold that until later. I have some pretty firm convictions in this particular area.

Mr. Cox. Those can be made a matter of the record then, later.

Mr. Stanton. I think we would like to treat with that later, if we may.[4]

Similarly, only a network could produce and supply programs in the field of public affairs, by providing such series as Face the Nation; Years of Crisis, a live broadcast in which CBS news correspondents flown to New York from their overseas posts discussed the year's most significant events; The U. N. in Action; such science programs as the hour-and-a-half Out of Darkness, which examined, through case histories, the problems of mental health.

And it is only a network which is equipped to cope with the complexities of covering the conventions this summer. Convention coverage this summer will present a very special challenge to television, requiring the most exacting kind of thought and planning, and huge resources in both manpower and dollars. The cost of CBS Television's convention coverage this year will run to over $5 million. Over 300 members of our network will be working directly on this giant task. Planning for this year's convention coverage began in earnest in September 1954—23 months before the first "call to order."

And because the two conventions are scheduled so closely together in time, and so far apart in space, we will have the unprecedented task of transporting between 10 and 12 tons of delicate electronic gear 2,000 miles by air—having it in working order in San Francisco's Cow Palace 24 hours after the final gavel falls in Chicago.

Programing such as this amply refutes the charge that networks are merely time brokers who arrange for the distribution of programs.

Senator Purtell. Doctor, when you speak of the $5 million, is that a net cost to you, or is it your intention to intersperse advertising at times throughout the program? Would that be additional advertising that you would not get if you were not covering the conventions?

Mr. Stanton. Let me break your question down into two parts: First, this is part of the cost of the program. We will offset part of this, but not all, by selling time. But most of the time we will sell, Senator Purtell, is time we already sold, so we are not getting advertising that we normally wouldn't get.

Senator Purtell. I see.

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[4] The comments of CBS on this subject are contained in exhibit A to a letter dated August 10, 1956, which will be found at pp. 2835, 2836.

THE PROGRAM OUTPUT OF THE NETWORK

The complexity and magnitude of networking are also indicated by the staggering size of the CBS television network's annual program output. In 1956, the network—by itself or in association with independent program packagers—will produce and broadcast approximately 2,500 hours of programs. This does not take into account the programs broadcast by the network but produced entirely by others. Compare, if you will, these 2,500 hours of programs with the 427 hours which represent the amount of playing time for all United States feature films produced for release in 1955. In other words, the program product of the CBS television network this year is about six times that of Hollywood's total feature-film output.

THE INTERNAL ECONOMICS OF NETWORKING

The income from the sale of network time and facilities maintains this vast and delicately balanced organization which I have so briefly described.

In the case of broadcast operations, there is an exceedingly slender margin between satisfactory profit and devastating loss. For networking is a double liability business. The loss of a sponsored program entails a double loss. Not only is the revenue for that time sale gone for all time—a half hour unsold is unsold forever—but the network faces the cost of producing a replacement program series in the unsold time. Otherwise, the burden of these programing costs would be thrown on the scores of affiliates in smaller markets which are least able to shoulder that financial burden.

The balance between profit and loss in the case of networks is so delicate that the failure to sell 1 hour between 7:30 and 10:30 p. m. each night for a year (whether because of a refusal of stations to clear time or for any other reason) would, in 1955, have turned the CBS television network's profit into loss.

It is facts such as these which underlie the necessity of the network practices which have been criticized. Proposals affecting such practices would threaten the entire structure of television networking by removing its essential financial stability.

In my description of a network, I have not gone into questions of affiliation or advertisers' standards in evaluating competitive media. Nor have I described the plans by which we have successfully channeled more programs and revenues to small-market stations; our extensive plant facilities; our engineering and audience research; and many other items which are part and parcel of the business of networking. All these, however, are detailed in the supplemental memorandum submitted to the committee.

CHARGES AND PROPOSALS

Let us now examine specifically and factually the charges and proposals which have been presented to this committee.

1. Revenues and profits: The proposal to regulate networks is based largely on the charge that the CBS and NBC television networks receive a disproportionate share of the industry's revenues and profits. The facts relating to revenues and profits destroy this basis.

That revenues of networks are large has no relevance here. A network's functions are such that necessarily its expenses, and hence its revenues, must be large.

And the focus on profits is equally misplaced. We do not deny that since 1952 our television operations have been profitable. Nor do we apologize for that success. I have always assumed that it was a wholly permissible business objective in any field of commerce to operate on a profitable basis. By no accepted principles in our system of free competitive enterprise is business success a justification for Federal intervention.

But even if the issue of the size of our profits were relevant, the facts are that there is nothing abnormal about them. I would like to put our profit figures in context.

(*a*) In 1954, the CBS television network's profit after taxes was 4.6 percent of sales. On a cumulative basis, taking into account all operating costs, the network's return after taxes through 1955 was 1.03 percent or, if interest payments are taken into account, as they should be, only 0.46, less than one-half of 1 percent of sales. Compare these figures with profit figures of other enterprises. The FCC's own published figures for 1954 show that the profits after taxes of 377 independent stations corresponded to 9 percent of sales. The margin on sales in 1954 of about 2,400 leading nonfinancial corporations was 6.1 percent. And the range of profit margins to sales approved by State regulatory bodies even for certain types of public utilities was 3.9 to 12.6 percent.

(*b*) The 28 percent of the industry's net profits——

The CHAIRMAN. Dr. Stanton, I don't want to belabor this point, but there is some difference in comparative figures where the capital investment is much greater than, say, a network system that gives essentially a service, isn't that true—where they have fixed charges and they have to amortize a capital investment. I think there is a little difference there, on that basis, in comparative figures.

Mr. STANTON. Well, Senator Magnuson, forgive me but I don't accept that, because I think that even in certain fields, that is, even in transportation, there is indication that the shift is now going—as we pointed out on one page here in one of the documents—even some of those regulatory bodies are going away from the invested capital concept to the sales concept.

(The chairman nods.)

Mr. STANTON. I think that in any business that is as creative as ours, we have abnormal expenses. Sure——

The CHAIRMAN. You don't have as many fixed charges as some other concerns would have.

Mr. STANTON. Did I misunderstand you? Because maybe I am going down the wrong direction here.

The CHAIRMAN. I don't want to belabor the point. I am just saying in many cases, when you figure profit, you have got to figure the actual capital investment at some of these places where they have big heavy fixed charges, whereas the network is essentially a service organization.

Mr. STANTON. Well, and as a service organization, if you accept that concept, I think the usual measure for a service organization is not its invested capital.

The CHAIRMAN. No; it is what they give.

Mr. STANTON. That is right.

The CHAIRMAN. The services they render.

Senator BRICKER. The real difficulty in assumption of that kind is that you must compare the production for sales in relation to the investment in capital assets necessary for the making of the product, and it is very hard to get a comparable figure, as you have set out here, that has any real bearing on the economics either of production or of service.

Mr. STANTON. Well, Senator Bricker, where some businesses invest in heavy equipment, we can't invest in creative manpower and take it as a capital investment. I sometimes wish we could. I don't know how to——

Senator BRICKER. This serves to go toward expenses, of course.

Mr. STANTON. That is right; and they are reflected in the low level of profits here to sales.

Senator BRICKER. But a great manufacturing corporation can't expense its facilities for the purpose of production or their improvements to their facilities, like one of our big industrial concerns, for instance. They have to capitalize all of their investment, and that is a very heavy capitalization in relation to the amount of annual production.

Mr. STANTON. Well——

Senator BRICKER. Your capital investment is comparatively small in comparison with the total amount of the services you are rendering and the cost of those services or the return.

Mr. STANTON. The only difference, isn't it, sir, is that in the case of the items that can be expensed you take it in 1 year as against writing it off over several years, wherever the particular——

Senator BRICKER. No; it is the relation of the capital investment to the amount of production and the return upon that production, either in goods or in services.

Senator PURTELL. And the continuing capital investment. The huge investment on a part of a manufacturer must be amortized, whereas you write off most of your expenses in the form of personnel that you need, which is your main, I would imagine, item of expenses. You write it off each year. A manufacturer puts a great deal of money into capital equipment and he must amortize that over a period of years.

In other words, after the first year, assuming his amortization period is 10 years, 90 percent of the investment is still there. His money is still in there, 90 percent of it, although 10 percent only could be charged as an item of expense and operations?

Mr. STANTON. That is right.

Senator PURTELL. So there is a great deal of difference.

Now, I do think there is much to be learned from the percentage that we might develop, or you might develop for us, in relation—your profits in relation to your investment, rather than just on sales, because of that vast difference in the amount of money required to operate certain types of businesses and the amount of money required to produce the same dollar sales in your business.

Mr. STANTON. Well, I do develop those figures as I go along.

(b.) The 28 percent of the industry's net profits before taxes which CBS television earned in 1954 (14.5 percent of the industry share for the network and 13.6 percent for the 3 CBS-owned stations) is not disproportionate. The CBS television network was the leading network in 1954.

Mr. Cox. On that point, Dr. Stanton, you stressed the risks, and the heavy commitments that must be made by the networks. Isn't it true that your owned-and-operated stations have not, in recent years, incurred either those risks, or been required to make commitments for long-term personnel contracts or program contracts—and yet they are earning here roughly the same percentage of the broadcast revenues, or net profits, that the network itself earns?

Mr. Stanton. Well now, are you saying that they are earning the same with relationship to sales or share of the total industry?

Mr. Cox. Their share of the total industry approaches that of the network.

Mr. Stanton. Sure.

Mr. Cox. And you have stressed through your documents that the share received by the network is justified because the network, in the very nature of its operations, takes these risks, involves the use of working capital, and so on. Now, the point I am suggesting is that it is not true that the same thing is true in anything like the same degree of your owned-and-operated stations.

Mr. Stanton. No, Mr. Cox. That is one reason we have always wanted to have our full share of stations, is to give stability to the network side of the picture financially.

Mr. Cox. That is——

Mr. Stanton. You are quite right.

Mr. Cox. Their earnings, you feel, are justified because of their contribution to the overall economic health of the network structure?

Mr. Stanton. Their earnings are justified for that reason?

Mr. Cox. Yes. In other words——

Mr. Stanton. No, I don't think they are justified for that reason. I think they are justified for the job they do in each community. It so happens that they contribute a large amount to our earnings: and in radio, as this report shows—I don't know what page it was, but I think we referred to it this morning—there is a table showing the trend—it is on page 131.

Mr. Cox. Yes.

Mr. Stanton. Where the ratio of earnings from the network and the company-owned stations, both for radio and for television—you can see that in 1952, in television, 100 percent of our profits in television came from the stations and zero from the network. And in 1953, 66 percent came from the stations and 34 percent from the network.

Well now, if you go back into the radio picture, in 1950 you will find—and that was the year when radio was still enjoying a high level of income—54 percent of our radio profit came from company-owned stations and only 46 percent from the network.

Mr. Cox. Well, let me put it this way. I think it is clear that the profits, just in terms of dollar amounts, of many of the individual licensed television stations are large. Now, those are largely a function of their rate and the degree to which they are ordered by advertisers—which in turn are largely the product of population, the ownership of a frequency—or the temporary occupancy of a frequency—and a network affiliation.

Now, the investment in the plant and equipment of the station in, let's say, Washington, D. C., is substantial, but not tremendous. Having gotten a frequency, a channel grant here—which is in itself one of a limited number because of the artificial limitations imposed by the frequencies—this man is in a position, because of the program product of the network, and of the necessity of advertisers to get into this market, and your requirement, in fact, through your "must buy" that they order the market—he is in receipt of large revenues, when a station operator with exactly the same degree of skill, the same investment in the same kind of transmitting equipment, in a market half the size, will have much smaller revenue. Now, isn't that roughly true, that the revenues which accrue to the operator of an individual station are not necessarily directly related either to his ability, to the nature of the service he performs to his community, or to his investment?

They are simply a product of the fact that he has a channel in a large market, and he has an affiliation which provides him with desirable programs.

Mr. STANTON. Yes, but I don't think that that is anything that is unique to television.

Mr. COX. Well, there are not very many businesses, are there, where——

Mr. STANTON. And I don't quite go along with you that his plant cost is the same in the smaller market as it is in the large market.

Mr. COX. What would be the difference? He may have more elaborate studios.

Mr. STANTON. He may have more elaborate studios. There are many extras that I think you tend to install in a big market station that you wouldn't in a smaller station.

Mr. COX. He has remote equipment. He has, maybe, more cameras in his studio and does a little more live programing.

Mr. STANTON. These are all items of some basic different percentage which is in his investment.

Mr. COX. But the point I am making is that there is a very great disproportion between the net profits at the end of the year for a man running a good operation in a small city, which has trouble persuading advertisers to buy it, and a man who operates the same kind of a station, in terms of public service and in terms of alert and aggressive salesmanship, in a larger city.

Mr. STANTON. I don't quarrel with the facts, as you put them, about the difference between the large market and the small market, Mr. Cox. I am sorry, I don't follow what you are trying to get across.

Mr. COX. Well, maybe the point I am trying to make is this: The thing that permits him to make this is not, again, his investment, or his ability, or the nature of the service he performs—because those may be at least proportional in the two markets—but by the accident that there are not unlimited channels in the big city and the fact that he has received a grant to operate on what is essentially a part of the public domain, and the fact that he enjoys his friendly relations with your network, or another network, which provides him with a substantial portion of his daily programing, he is enabled to receive a high rate of return which is largely a function of the population of the market in which he is located—to which he has contributed nothing.

And you get a situation in which part of the industry is not just doing well, it is thriving; and the other part of the industry—VHF as well as UHF—is hanging on by the skin of its teeth.

Now, is there a flaw in that analysis; that is, does the man in the big city do something which earns the higher rate of return he gets over and above the man in the smaller city?

Mr. STANTON. Well, I don't think I can account for the entire difference, but I am not prepared to say that there isn't some difference. Many times individuals pick the market where they operate. They had some freedom of choice in where they selected the market to apply for the license. They are not ordered to go into a smaller market. True enough, they may have been there because they were in radio, or because they liked the place, or something else. But there is nothing in the law that says they have to go to that particular market to operate. And even so, I think that some of the moderate-sized markets are making a very good income, either in relation to sales or in relation to invested capital.

Mr. COX. I think you point out at 1 point that 7 affiliates of CBS make more than the network in the course of 1 year?

Mr. STANTON. That is right.

Mr. COX. Now, those stations are largely patching in the network for a substantial part of the time. They may, in fact, enjoy affiliations with 2 networks, so they have the choice of the programs, on a live and delayed basis, of more than 1 network. They are making tremendous returns, and I find it difficult to see that they are performing any higher kind of service for their community than a struggling operator who is putting on live programing, and selling a network show when he can, in a city half or a tenth the size of the bigger one.

Mr. STANTON. Well, I expect there are many newspaper editors in a small town who feel they do just as much news reporting as the man does who is editing a large metropolitan daily, but one gets paid a high salary and the other one gets a very modest salary. I don't quite see where this leads us into the present—as far as the present situation is concerned. Because it is not our fault——

The CHAIRMAN. The value of a franchise is worth more in some places than it is in other places.

Mr. STANTON. Certainly it is, and this is true, I think, in every industry. A bottling franchise in a big market is worth more than a bottling franchise in a small market.

The CHAIRMAN. A Cadillac dealer, say, in Washington, is better off financially than in Fargo, N. D.

Mr. COX. This business, however, operates under a license, granted by the Federal Communications Commission, to occupy a scarce commodity—which is the radio frequency.

The CHAIRMAN. That is the difference.

Mr. STANTON. Yes, except I must say, Mr. Cox, even though we get this distinction, I don't know what it does, or where it advances us in a present dilemma.

Mr. COX. No. I think essentially we are trying to analyze the problem to see if you fundamentally disagree with that analysis of it. It is not relevant, I admit, to the immediate question of the network and the network's earnings. I think perhaps there is as serious a problem in connection with the distribution of earnings among the individual licensees, as distinguished from the network.

Mr. STANTON. Well, I didn't quite finish that sentence and I would like it to be on the record. [Laughter.]

Senator PASTORE. I suppose what Mr. Cox means is if you go to the right place and are lucky enough to get the license, you've got a gold mine.

Mr. STANTON. That is right. [Laughter.]

Senator PASTORE. Let me ask you this question, Dr. Stanton: Does the network have any supervision or control over the amount that an affiliate charges for radio time?

Mr. STANTON. Well, as we say on page 31, I believe—there is a footnote here in the supplemental memorandum. I hope I am right in my footnote reference. No, it isn't.

Senator PASTORE. What page is that, please?

Mr. STANTON. On page 40, sir, footnote 1:

> The station's rate for a network program is set by agreement between the station and the network.

Now, that is for the network program.

> While formerly CBS television affiliation contracts gave the right to the network unilaterally to reduce the station's network rate during the term of the affiliation agreement (a right which was in fact never exercised), current affiliation agreements now preclude the network's reducing the rate except in the event of a general reevaluation and reduction, and even then, if there is a reduction, the station may terminate the agreement.

That is covered in appendix A, schedule A, VI, which has to do with the network contracts.

In practice, however—and I suppose there are some men sitting behind me in this room who would agree to this, although I don't want to put words in their mouths. The network is largely the determining factor in working out these rates. One reason is that it is up to us—I am talking only about the charges for network rates. It is up to us, in operating the network, to keep that network in competition pricewise—that is, in price—in competition with our NBC friends and ABC.

Also, we see the thing in the round and we have to price the various markets in relation to what they contribute to the total circulation. And occasionally there will be stations that overlap one another, and we get involved in trying to untangle the contributions of each affiliate to the total circulation. These are very complex and aggravating problems, as some of these men back here will testify to. So that if you say to me do we do more about setting rates than they do, I would say yes, we probably do.

Senator PASTORE. In other words, if I want to make a political speech during the campaign for 50 minutes back home, I have to pay the rate that CBS said I had to pay?

Mr. STANTON. No, sir. I am only addressing myself now to the charges that are for the network time in Providence. The local rate——

Senator PASTORE. I am trying to get that cleared up.

Mr. STANTON. I am glad you are, because there is a lot of misunderstanding about this. The rate that the station there—there are three kinds of rates that the station might have. First of all, there is the network rate, and that is the one we are just discussing, and that is the one we have a large hand in determining. Then there is the national spot and local rate. That is the rate you would pay on a station-by-station basis.

Senator PASTORE. And you have nothing to do with it?

Mr. STANTON. We have nothing to do with it, except I suspect that the rate that we helped set for the network rate does influence, to a certain extent, the rate that is charged locally, and national spotwise. I wouldn't want to leave you with the impression they may be 100 percent apart, because obviously they are not. They are pretty close.

Senator PASTORE. Well, I have paid the charges, and I think you are right. [Laughter.]

Senator PURTELL. But actually, to complete the answer to the question of Senator Pastore, when and if he runs for President and wants national coverage, you would set the rate, is that correct?

Mr. STANTON. Well, I wouldn't charge him any more than I would charge somebody else. [Laughter.]

The rate that Senator Pastore would pay at that time would be the published rate card. We have the same rate for political broadcasts that we do for commercial, and they don't change except as rates are increased by individual markets—and those are increased only when there is additional circulation to justify the change.

Senator PASTORE. But you do concede this, that insofar as national time is concerned—that is, the national program is concerned—the network has much to do with the amount of rate that is charged on the local level?

Mr. STANTON. By indirection, yes.

Senator PASTORE. By indirection.

Mr. STANTON. That is right.

Mr. COX. Could you tell us how you do deal with this difficult problem of overlap in fixing rates? How do you allocate the receipts in the overlap area as between the stations in the two contiguous markets?

Mr. STANTON. You realize, Mr. Cox, that you are opening a large Pandora's box here. [Laughter.]

Well, let's take an example where we have two basic-required stations and they have substantial overlap. I don't want to say that—perhaps I would like to strike the word "substantial" and say there is some overlap. We think of this in an area of the country where the coverage areas are perfect circles—where there aren't mountains and terrain that would make them into strange shapes—but they are perfect circles. You will have a piece that is overlapped, and generally if they are both basic stations and the markets are roughly equivalent, that is whacked right down the middle. The advertiser is not charged twice for that circulation. Now, there are some spillovers from time to time, and we have to separate, or try to act like a judge, and try to say "This much will go to one, and this much will go to the other." By and large, it is worked out on the basis of a split of that.

Now, then, you have a case—or you could have a case, for example—where a station is added to the network on a per-program basis. It is not a basic station. It is not a primary or a secondary station. It is a per program station. I am giving you the other extreme. Those are usually stations that are in very small markets, or they are stations that have come into existence late in the cycle or the life of television, so there are established stations in the area. The part that the per program station gets—the amount that that station gets is the incremental part that it contributes to the total network circulation.

In other words, if there is a station on the network that has been established, and so forth, and it has a big circle of coverage; and there is a crescent shape [indicating] that you get by adding another one, a per program station—the rate that is charged is applied only to that crescent-shaped area. It doesn't get into the overlap at all. The overlap is credited to the initial station.

Now, those are the two extremes. There will be variations depending upon the situation; and you name it and, brother, we have had it.

Mr. Cox. What if you have a basic affiliate in a large city and a primary affiliate in a smaller city and they have substantial overlap? I think you indicated in your affiliation standards that this might have raised a question in your mind, in the first instance, whether you would affiliate the station in the smaller city. And you point out, for instance, that even though it says initially it is willing to accept only the incremental value——

Mr. Stanton. That is right.

Mr. Cox. That it adds, that later on as it wins viewers in the area of overlap, it will, and naturally, expect to be paid for them. And you seem to feel that you ought to try to avoid this difficulty, the net effect of which, of course, is to always credit the sets there to the metropolitan stations since it is the only one providing CBS service, and to deprive the people in the incremental area of CBS service at all. Isn't that the net effect of being concerned about a future problem of allocating this rate?

Mr. Stanton. Well, yes; that is a net effect. In practice, it doesn't work out that way, because we will not deny service to any station, unless it is a station that is in any market where we have an affiliate—providing, of course, the affiliate that we have is carrying the program, because even here in Washington we feed programs to other than our affiliate here when our affiliate in Washington doesn't clear the program.

So that in practice, if an advertiser wants to buy that station, we will add it on a per program basis; and if enough advertisers want to buy the station, the chances are before long that becomes a secondary or a primary affiliate. It may become a primary affiliate right from the outset.

You see, part of our problem, Mr. Cox, is due to the fact that the industry is extremely young in terms of having a body of facts on coverage in terms of audience reaction. We are growing very rapidly, partly as a result of the freeze—we had this artificial plateau in terms of new stations, and now we have had a whole series of them coming on the air. But as the industry stabilizes itself in the number of stations that are operating and we begin to accumulate audience research information on a county-by-county basis, the problem of separating overlap will solve itself very quickly, because the problem of orienting your antennas pretty well fixes most of the people in these overlap areas. They are either fixed to one market or they are fixed to the market 180° away.

But we don't have enough adequate fieldwork yet in terms of listener research to give us the basis for computing those rates. But when we do get that kind of information, many of these problems that we are talking about now as aggravating problems will resolve themselves, because we will be able to turn to a body of facts which will show us what happens in this overlap county. Does it go to one market or does it go to the other market?

I don't care what engineering maps show. I am most concerned on what the public does. Obviously, the public generally follows what the engineering maps show. But we have learned over a 20- or 30-year experience in this business—not all of it in television, but most of it in radio—that what the listener does is the thing you have to watch. That is why we base so much of what we do on what the audience does, whether it is programing or whether it is how we affiliate stations. Because that is the real test. It is the public reaction, and not what the engineer's contours or what the station manager says.

Mr. Cox. Now—Did you want to change the subject?

Senator Pastore. I am—I simply think we ought to take a minute's recess in order to allow a change here of stenographers.

(A recess was taken.)

Senator Pastore. May we now have quiet, please, so that we may resume the hearings?

Off the record.

(Discussion off the record.)

Senator Pastore. Proceed.

Mr. Stanton. If I may——

The Chairman. Go right ahead. See if you can't go on with your statement and then we can ask these questions afterward.

Senator Bricker. Mr. Chairman, I am rather opposed to taking pictures. I know they have a handsome subject here, and a lot of his colleagues are with him. But this is tremendously inconvenient to have these lights on. I notice one or two of the associates here that are perspiring rather profusely, and it makes it hard to see, and it makes it hard for the witness and hard for the people in the back of the room. So if they could cut it down to the very minimum, I would deeply appreciate it. You are not taking pictures all the time, and it just discommodes the whole committee.

The Chairman. I think they can cut it down.

Senator Pastore. Incidentally, that is NBC. [Laughter.]

Senator Potter. They don't have any film in it, though. [Laughter.]

Senator Bricker. I don't object to taking pictures, but I don't want to inconvenience the hearing, and I know it is very hard on the witness. It is flashing right in his eyes all the time.

Mr. Stanton. Thank you, Senator Bricker. It is a little warmer up here, for more reasons than one. [Laughter.]

I would like to go back and say the 28 percent of the industry's net profits before taxes which CBS television earned in 1954 is not disproportionate. The CBS television network was the leading network in 1954.

CBS television's share of industry revenues is to be compared with the 73 percent of the industry profits earned by the leading company in the nonalcoholic beverage industry in 1952; the 51 percent earned by the leading company in the petroleum and coal products industry; the 50 percent earned by the leading company in the dairy products industry; and the 33 percent earned by the leading company in the tobacco products industry.

The measure of profits as a percent of return on tangible property is wholly inapplicable in the field of broadcasting operations where physical investment plays such a relatively minor part.

But even if we accept this mistaken standard, the figures of 108 percent attributed to the CBS television network and the 3 CBS-owned stations, or of 65 percent attributed to the CBS television network, are neither abnormal nor immodest.

In creative industries, McGraw-Hill Publishing Co. profits before taxes in 1954 were 526 percent of net tangible property; Time, Inc., 116 percent; and New Yorker Magazine, Inc., 2,000 percent.

In the field of manufacturing, where bricks and mortar play a larger part, Boeing Airplane Co. earned, before taxes, 377 percent of its net tangible property; Douglas Aircraft Co., Inc., 249 percent; General Motors Corp., 107 percent; General Electric Co., 80 percent; Coca-Cola Co., 92 percent; and Pepsi-Cola Co., 119 percent.

2. Monopoly: The CBS television network does not constitute a monopoly by any meaningful definition. Our attorneys' opinion and memorandum which we have submitted deal fully with the legal aspects of this issue. To the extent that the charge is based on profits, I trust I have just disposed of it.

The fact is that all network television in 1955 received only 9.8 percent of the national advertising dollar. The CBS television network and the 4 CBS-owned stations received only 3.2 percent of the national advertising dollar and about 20 percent of the television advertising dollar.

The growth of the television networks reflects intensive and vigorous competition as witness the extent to which the position of each of the networks has changed during the past 6 years. During the first quarter of 1949, the networks, according to gross billings, ranked as follows: NBC, CBS, Du Mont, and ABC. Today, on the same basis, it is CBS, NBC, and ABC; Du Mont no longer operates a network. No single network has as much as 50 percent of all the network business. And, contrary to one of the usual indexes of monopoly—a smaller and smaller share for others than the leader—the outstanding recent phenomenon has been the growth of ABC from 9 percent of the total network gross billings in 1953 to 13 percent last year. For the first 3 months of 1956, ABC's gross billings are running 76.2 percent ahead of 1955.

3. Insistence on the use of network-produced programs: The CBS television network has no policy favoring programs it produces. Its policy is to place the right program—regardless of its source—at the right time. The CBS television network schedule itself negates the charge. Of the total hours (72¾) of sponsored programs broadcast by the CBS television network during the week of April 7, 1956, just over half (50.2 percent) were created and produced by 38 independent program producers. And slightly more than half of the remaining hours (27.1 percent) were filled with programs produced by 8 independent producers in association with the CBS television network.

The CHAIRMAN. Just to clear the record there, these independent producers put a show together, is that the way—I am asking this for information—they put a show together; some advertiser wants to put it on the air, and then you give them the time; is that right? Do you participate in the show in any way as to the profits, or do you just sell the time?

Mr. STANTON. If it is an independently produced program, an outside package, we have no participation in any way, shape or form in the profits on that program, and the only thing we provide——

The CHAIRMAN. Is the time and the facilities?

Mr. STANTON. Yes; that is right; the time and the facilities.

The CHAIRMAN. Now, where do most of those programs come from—advertising agencies?

Mr. STANTON. No; most of them come from independent packagers, some come from advertising agencies; if you are interested, we can supply a list. We have a breakdown for a period of time in April, I believe, of 1956, showing the source of all of our programs by three broad types: Those that are produced exclusively by outsiders; those that are produced by outsiders in conjunction with us; and those that are produced exclusively by us.

The CHAIRMAN. I don't say whether this is right or wrong, but it has been suggested that when we talk about monopoly that some of the programs were monopolized by 3 or 4 of the large advertising agencies. That wouldn't be, from your figures, the case here, would it?

Mr. STANTON. Well, do you mean the production of the program, Senator Magnuson?

The CHAIRMAN. Yes.

Mr. STANTON. Or the handling of the time and the production?

The CHAIRMAN. Well, both, or the tying up of talent for an—almost a monopolistic period of time.

Mr. STANTON. Well, I think, first of all, no one has a monopoly on talent or anything approaching it. But it is true that there are large agencies, large advertising agencies——

The CHAIRMAN. What I mean—supposing a big name shows up and gets tied up by one advertising agency, and they in turn would monopolize that production of that program involving, say, a few of the big names in the talent field.

Mr. STANTON. Well, many times if you make a contract——

The CHAIRMAN. I don't know that this is true. I just know that this complaint has been made.

Mr. STANTON. Well, Senator Magnuson, you do have exclusive contracts for talent. And in that sense you do tie them up. But this isn't something that any one advertising agency does, or any one package producer, or for that matter any one network.

The CHAIRMAN. What I am trying to say, if you had—if you have 38 independent program producers, it would probably do a lot to dispel the feeling that this might be too closely held; is that correct?

Mr. STANTON. I think it does dispel that.

The CHAIRMAN. They would maybe bring in new talent?

Mr. STANTON. I think it dispels two things: The fact that there is any person on the outside on an independent basis that has the lion's share of this; and it also dispels the fact that the networks have the lion's share of the picture. Because as I go on to say: The CBS television network produced less than one-fourth (22.7 percent) of its total commercial schedule. The trend is worth noting: In the week of April 1956, 50.2 percent, or 36½ hours, of the network's commercial schedule was occupied by independently produced packages, as compared with 46.6 percent (27¼ hours) in April 1954. The shift in favor of the independent package producer was even more marked during class A time: In April 1956, 57.7 percent (16 hours) of the network's weekly commercial schedule was occupied by independently produced programs, as compared with 38 percent (9½ hours) in April 1954.

Senator PASTORE. Is this intended as an answer to the criticism made by Mr. Moore?

Mr. STANTON. No.

It is clear, therefore, that the charges are refuted by the facts. There is a real paradox in the current criticism directed at us in this area today. Just 10 short years ago, in March 1946, the Federal Communications Commission criticized us for not engaging in program creation and production. This, the Commission said, was a failure on our part to exercise our programing responsibilities. In its report entitled, "Public Service Responsibility of Broadcast Licensees," the Commission said:

> A device by which some networks and stations are seeking to prevent program imbalance is the "package" program selected, written, cast, and produced by the network or station itself, and sold to the advertiser as a ready-built package, with the time specified by the station or network. In order to get a particular period of time, the advertiser must take the package program which occupied that period,. This practice, still far from general, appears to be a step in the direction of returning control of programs to those licensed to operate in the public interest * * *.

We have not gone as far as the Commission urged us to in 1946, we do not tie in time to program. But we do exercise our responsibility for maintaining a sound, overall programing schedule. And it is for this that we are being criticized today.

The CHAIRMAN. But there, too, I think the record ought to be clear. Sometimes I think we miss this point: The licensee—the individual licensee, not the network—is responsible to the FCC for the program, directly.

Mr. STANTON. Yes, but because in the case——

The CHAIRMAN. You are not responsible for programing to the FCC?

Mr. STANTON. Well, Senator Magnuson——

The CHAIRMAN. You may feel responsible.

Mr. STANTON. Well, there are two—it cuts two ways.

The CHAIRMAN. Legally, you are not.

Mr. STANTON. Legally, we are responsible for the program schedule of our four stations that we own and operate.

The CHAIRMAN. Yes. I am talking about the networks, excuse me.

Mr. STANTON. Right. But we have an obligation to the affiliates to provide the kind of balance and programing that we think is the best possible programing.

The CHAIRMAN. But that is a voluntary assumption of responsibility and not—it is not a legal responsibility.

Mr. STANTON. Well, I would like the lawyers to talk to how legal it is, because when we enter into an affiliation contract with the stations, I think they in turn expect a certain kind of performance from us.

Now, that is outside the FCC in one sense, but it comes back in another door awfully fast through their program schedules and through our own.

The CHAIRMAN. It comes back awfully fast if they get checked up, or you give them the wrong program?

Mr. STANTON. That is right.

The fourth charge that I would like to discuss has to do with networks and small market stations.

There is no basis to the charge that networks channel a disproportionate share of television revenues into large market stations and ignore small market stations. The facts are precisely to the contrary.

We have discussed in the CBS supplemental memorandum and in the analysis of Senator Bricker's report the special benefits of a network to the stations in the smaller markets. I touched on them earlier today. But recently I received a document which tells the whole story at firsthand. Frank C. McIntyre, the vice president and general manager of KLIX-TV, Twin Falls, Idaho—with 6,300 families—sent me a copy of part of the reply which he filed to this committee's station questionnaire. In answer to the question, "Has your station benefited from CBS' extended market plan or NBC's program extension plan," this is what he said:

Mr. Cox. Before you read that, could you tell us whether you received part or all of copies of other questionnaires that were filed by your affiliates?

Mr. STANTON. We received all in the case of some affiliates, parts in the case of other affiliates, but a very small proportion of our total affiliates have given us any of the material.

And since that question has come up, Mr. Cox, I would like the record to show that this came to us voluntarily. We didn't ask about it. I didn't know anything about this man's filing; in fact, it came in just as we were trying to prepare some language for this, and it seemed that this man told the story better than we could tell it ourselves, and that is the reason I inserted it into my testimony.

The CHAIRMAN. What is the percentage of replies that we got, the amount of questionnaires?

Mr. Cox. They are probably within 20 or 25 of complete response to the questionnaires.

Mr. STANTON. If you don't get a 100 percent, I will be surprised.

Our station has benefited from CBS' extended market plan to such a degree that I am convinced we would never have succeeded without it. Because CBS aggressively promoted and sold small-market television stations—at a realistic cost per thousand—we were able, from our very first day of operation, to offer our viewers worthwhile TV shows and local, regional and national advertisers attractive adjacencies. While, at the start of operation, we were ordered for only a limited number of network programs, nonetheless, we had enough to use them as "anchor programs" around which to build a schedule.

Thanks to the CBS extended market plan, we could go to our local Studebaker dealer and sell him I Led Three Lives. "You'll be right next to Jack Benny," we told him. Benny brought Three Lives. Three Lives brought AG All Star Theater. Then came Ed Sullivan from CBS. "You can buy Highway Patrol just before Ed Sullivan," was our sales pitch to the Mobilgas dealers. And, they bought. Now—Sunday night is sold out.

And it all started because CBS sold American Tobacco a "pig in a poke"—KLIX-TV. Jack Benny is responsible to a great degree for our SRO status on Sunday night. And, not only do we have hundreds of dollars in local billing, we're filled with blue-chip national advertisers on Sunday night.

Not only did we use the CBS commercials as anchor programs—we could point to these CBS advertisers in our local sales presentations. Ours was a new market—a small, conservative, farming area. We had no "track record." But because of these CBS advertisers, we could show the local skeptic that the smart buyers, the blue-chip clients with their tremendous research and advertising departments, had enough faith in our facilities to come on from the very first week.

It may be a little difficult to comprehend how important this was "sy-cologically." Due to grave financial problems, the opening of our station was delayed for over a year. By the time we did make it our people were more than skeptical. Many of the businessmen were convinced (*a*) we'd never make it, and (*b*) if we did, we'd never last.

Thank God we were able to come into their homes in our infancy with Jack Benny, Private Secretary, Garry Moore, I've Got a Secret, Arthur Godfrey, You Are There, Red Skelton, and a lineup of CBS sustaining shows that cost us $5 each. Yes—$5, instead of $25 to $75 we would have paid for syndicated films. This was positive evidence to our viewers and potential clients that their town did have a television station—and the time buyers in New York knew it.

Have we benefited from the CBS extended market plan? I'm sure there are many secondary market operators who feel as I. It was a blessing for small stations:

1. EMP was the biggest single factor in the success of our station.

2. Without EMP, it is questionable whether our station could have remained on the air due to our inability to underwrite huge losses.

3. EMP made it possible for our operation to attract local and regional sponsors—as we could offer programs and spot adjacencies next to important programs and advertisers.

4. And, perhaps most important of all, EMP gave our station the prestige that's necessary before the mass audience and advertisers will accept a new product.

5. EMP made it possible for our station to quickly move into the black.

6. EMP has been largely responsible for our being ordered for many features from the two competing networks and for considerable additional local, national, and regional business. How? Products advertised on our station through the CBS extended market plan naturally started cutting into the sales of nonadvertised products. Area managers and distributors of the nonadvertised products felt the pinch and convinced their home offices action was necessary. The downward sales curves brought orders from other networks and from our national and regional representatives. And, many local sales have been made to combat the pressure of the CBS advertisers.

7. Without EMP, few network advertisers would have ordered our facilities. The great majority of these buyers are "slide rule" artists. And the slide rule would come up with one answer—don't buy Yuma, Twin Falls, Missoula, and their like. The EMP sales formula—and aggressive EMP sales efforts—convinced a few bellwether accounts that perhaps TV was practical in the hinterlands. So, a few got their feet wet, and the results were such that secondary market television is now accepted on Madison Avenue.

In our case—we have many advertisers who buy our station at a low EMP rate and yet use our station extensively on our established national rate. We proved to them we could solve their sales problems and we were an economical buy and absolutely necessary even at normal rates.

Without EMP—how would we have proved it?

8. Less than a year after we started with little or nothing except an overdraft, long-term indebtedness and a hopeless list of past due accounts payable, our operation is financially sound—the banks which gave up the cold shoulder consider us a good financial risk—we're meeting our notes—the past-due accounts are being whittled down—we're paying our current bills—and our staff has grown from 20 for both radio and television to over 40.

EMP didn't do it all by a long shot. We cleared the land, removed the rocks and plowed the field—but CBS planted the seeds and helped us irrigate and cultivate. And, the best farmer in the world with the best land can't grow a crop without seeds.

I doubt even if CBS comprehends the farflung benefits of their extended market plan. CBS–EMP has given small market operators heart. It's given them the confidence they lacked. It's proven more than any other single factor that small market television will work.

Senator POTTER. You should make that man a CBS vice president. [Laughter.]

Mr. STANTON. Well, that is the end of the quote, and just as a footnote I would like to add to Mr. McIntyre's comments that today the CBS television network has 26 of these EMP stations; and as I said earlier I doubt that we would have ever gone into them as early as we did, in our normal development, if we hadn't had a hearing down here 2 years ago in which Senator Potter asked me some questions about why we weren't doing more for the smaller market stations. And while we had started doing some of that, I went back and scratched my head with my associates and decided we weren't doing enough; and we tried to make something a little better, and we came up with EMP, and this is the result.

Senator POTTER. I would like to take this time to compliment both CBS and NBC for moving into this field to provide programing in the smaller markets. You moved into the area quickly and I think with good results.

Mr. STANTON. Thank you.

Fifth is option time: There is much misunderstanding about what option time is and how it works.

The CBS television network's affiliation agreement provides that during 3 hours of each of 3 segments of the day, a station will accept the sponsored program offered by the network. But there are exceptions and they are not technical—they are substantial.

Option time operates only on at least 56 days' notice. It does not operate against programs of other networks and it does not operate for nonsponsored network programs. As we interpret it, it does not operate for a network program which straddles option time. For example, the CBS television network program Studio One, which is broadcast from 10 to 11 p. m., New York time, is not subject to our option for any part of that period because option time only extends to 10:30. In other words, we lose a half hour of option time.

Most important of all, a station has broad rights to reject a network program during option time. It can do so if it decides that the network program is contrary to the public interest, or if it wants to substitute a program of outstanding local or national importance. Even more than this, it can turn us down during option time if it reasonably believes that our program is "unsatisfactory or unsuitable."

The CHAIRMAN. How does that work out in my country, where there is 4 hours' difference in time? Do they turn it down because of the time?

Mr. STANTON. No, Senator; we adjust the option-time portion of our contracts by time zones, so that as we go through from east to west, or west to east, depending on where the program originates—by and large these are in zoning across the country by time zones. We get a little confused in the summertime because of daylight saving time problems, but for the most part that is in Michigan at the present time.

The CHAIRMAN. So that doesn't work as a handicap to, say, an operator in the Pacific Northwest.

Mr. STANTON. Not at all, not at all. I cannot tell you just how broad this right is because we do not approach it that way. The fact is that a station has very substantial leeway to turn us down if it thinks certain nonnetwork programs will better serve the viewers in its area.

Senator PASTORE. Are you saying by that there has never been a controversy over the exercise of that option?

Mr. STANTON. Well, now, Senator Pastore, I can't recall any controversy over that.

Senator PASTORE. I mean it has been more or less an ex parte procedure up to this time. The station just says: "We think we have a local program of greater interest, and for that reason we cannot take it"; or what?

Mr. STANTON. I went through the files on a couple of programs just to see what accumulation there has been of answers, and many times they don't give us that much of an answer; they simply say, "We don't want to take it." Often, to the extent we can, we try to persuade them to take it; but they don't rule book us in the sense that they refer to the Communications Act that gives them the right, for local programs of public service nature, to turn us down. They say "No," and they may have a flat spot program that they think is better than our program, or they may just plain not like the program we are providing them.

I can think of one case in our current schedule where, at the outset of the season, many of our affiliates didn't take the program. As a matter of fact, some of our basic required stations refused the program, and we offered it to other stations in the community. And I suspect that many of the stations that turned it down didn't think the program was a very good program. As it turned out it became a very popular program. And some of the stations changed their mind, and the acceptance on the program is now much higher than it was when we started out. I can name any number of other examples where the list of ordered stations is larger than the list of cleared stations, and if the program is exceptionally good, we build up. Sometimes we are not as successful as others. But this is not something that we get a long explanation for why a station turns it down. They sometimes just say "No."

Senator PURTELL. Is that option exercised? Percentagewise can you give us any idea as to what the percentage might be of exercise of the option, timewise, now?

Mr. STANTON. Yes, Senator Purtell, I come to that in just a minute in my statement here.

On page 108 in the supplemental memorandum—and I won't clog the record with reading this into the record—but there is a footnote which tells the story of the clearance history on the $64,000 Question, because it illustrates the point that you were making, Senator Pastore, and I would like that reference to be reflected in the record.

Senator PASTORE. In other words, it isn't to the advantage of a local station to exercise this right unless they can get something better?

Mr. STANTON. Looking at it—if I were a station manager I certainly would say "Yes" to that question.

I was saying this is certainly more than a technical and limited right. Resuming the transcript, or my statement, here: Our affiliates' schedules are studded with nonnetwork programs in option time—even in class A option time. We estimate that for a week in May this year, during the class A option time, a total of 815 station hours of sponsored programs were offered to our CBS television network's "basic required" stations and 91 of those hours were not cleared as ordered. In total, on all CBS television network affiliates, during that single week, there were 524 station hours of option time ordered by network advertisers but not cleared as ordered by the stations.

In short, CBS television network option time is not a rigidly invoked legal right and it does not operate as a one-way street. In practice, it is utilized and adjusted for the benefit of both the network and its affiliates. While it is not a rigid right, it is vital to the network and to the affiliates because it is the mechanism by which the network has some reasonable assurance of general clearance by stations. Without its assurance we cannot go ahead to plan our overall day-to-day, week-in-and-week-out, schedule and without which there is nothing at all on the shelf to offer to the advertisers.

In the absence of option time, or its equivalent, and particularly in a period of a declining economy, there would be a real threat of destruction to networks which would be difficult to contain. The inevitability of this conclusion lies in the fact that, without option time, the usefulness of networks to advertisers—the assurance required by network advertisers to secure reasonably complete nationwide coverage on the basis of a single order—would be frustrated. For, if some key market stations would refuse to clear during one half hour, and another group the next, and still another a different half hour, each of these network time periods would then become unsalable to national advertisers. Since no network could afford to program so many time periods on a sustaining basis, the inevitable effect would be to curtail network service. Thus, the onerous burden of program cost would be thrown on the scores of small-market stations which had not refused to clear.

The foregoing are the practical results of prohibiting option time. Without option time or something equivalent, the network function sooner or later would be emasculated. With it would go so much of the magic of live television. The vast majority of stations, and all of the public, would be the losers.

Three unsound premises constitute the basis of criticism of the practice of option time:

First, option time, contrary to the charges, does not restrict non-network program sources. The supply of nonnetwork programs is large and increasing and its use by affiliated and unaffiliated television stations has been extensive. More than four times as many independent suppliers of programs in television exist today as existed 8 years ago. Since 1952, a parallel increase has been recorded in the availability of syndicated film and film series produced especially for television. And last year, many syndicated film distributors reported increases of 50 percent or more in revenues over 1954.

Second, contrary to the charges, option time has not foreclosed availability of time for nonnetwork programs.

First, a vast number of hours are not subject to network options at all, either because the stations are not affiliated with any network (and these cover almost half the population) or because even on affiliated stations only a maximum of 9 hours a days is subject to options at all.

Second, in the schedules of our affiliates, of course, a very considerable percentage of the total option hours are not occupied by CBS television network programs. Even on the 52 CBS television network basic required stations, as I have noted, 91 station hours during 1 week were not cleared as ordered, and there were a substantial number of other periods on these stations in which option time did not operate because of "straddling" or nonoccupancy by sponsored network programs.

Third, and finally, it is not true that option time has restricted the ability of nonnetwork advertisers to use the medium. The use of television for spot advertising has increased from $28.5 million in 1949 to $485 million in 1955—a 1,600-percent increase in gross billings.

Since a major concern of this committee is directed to the financial stability of the smaller market stations, the statement of Murray Carpenter, president of W-TWO, Bangor, Maine, before this committee on May 15 is worth recalling. Mr. Carpenter pointed out the inability of stations such as his to marshal the manpower and money for travel, entertainment and correspondence to sell film programs to replace the loss of network programs which he recognizes as inevitable if option time were banned and network programing were made unavailable to stations such as his. He said:

> What I am saying in plain, blunt terms is that W-TWO would not be where it is today if it were not for the existence of network option time. I don't believe that WABI, our competitor in Bangor, would be where it is today, were it not for the existence of network option time. And the people in the 90,000 television homes of the Bangor area would not be spending 57.8 percent of their evening time watching television were it not for the strong program schedules made possible by the existence of network option time.

And he concluded his statement by saying:

> If network option time were to be abolished or severely restricted, maybe the networks woud be able to devise some other mechanism which would make a large volume of network programs available to stations outside of the top fifty or one hundred markets. Maybe. I hope this committee will decide that it is unwise to exchange a good, efficient, productive, successful system for such a "maybe."

End of Mr. Carpenter's statement.

Sixth, Restriction on stations' choice of program sources: The proposals to deprive stations of their discretion in choosing among program sources have taken two forms: First is the proposal by the American Broadcasting Co. to forbid a VHF station in markets which have a lesser number of VHF stations than there are networks from carrying more than a specified percentage of programs from a particular network. It is also designed to require the station to carry the programs of ABC (or any new networks) for a specified percentage of time. Second, the operator of an unaffiliated station has proposed that stations, in effect, be prohibited from devoting more than three-quarters of their time between 7:30 and 10:30 p. m. to network programs. The practical effect of this proposal, like the ABC proposal, is to place an affirmative requirement on the station—in this case to require it to carry programs for a specified period of time from nonnetwork sources.

Adoption of these proposals would established a dangerous and unsound policy of Government compulsion forcing a licensee to deal with a program source not of its own choosing and to accept programs which it might otherwise reject. It involves a concept squarely contrary to the underlying principle of licensee responsibility embodied in the Communications Act, which puts on the station licensee itself the responsibility of making the determination of which among all programs offered are the most suitable for its audiences. While it is advanced by those who say they want to compete on equal terms, it is the antithesis of competition because it would exclude all networks in the one case, or particular networks in the other case, from competing for the time of a station licensee.

These proposals particularly illustrate the overriding principle which I mentioned at the outset. They are vivid examples of those who have particular interests advancing proposals which may help them but which ignore the public. For the precise result of these proposals is to bar network programs from the public by requiring the station to go to some other source, no matter what the merits of the program and no matter what the demonstrated desires of the public.

Seventh, must-buy stations: The CBS television network has a list of 52 primary affiliates, covering about 82 percent of American television homes, which it designates as "basic required." Except in special cases, the CBS television network requires that an advertiser order these stations as a minimum.

These basic required stations as a group are the indivisible product that we assemble and sell. For a network's function is to provide a nationwide circulation just as Life and Saturday Evening Post serve the entire Nation in the weekly magazine field. The real purpose and function of the basic required policy are simply to define and delineate the product that we have for sale. It is no more sensible to permit an advertiser who wants to use network television to chose a few scattered markets and reject a substantial part of the network than it is to say that an advertiser who buys space in Life or Saturday Evening Post must be permitted to reject the advertisement in those copies of the magazine distributed in Los Angeles, Louisville, or Kalamazoo.

To let an advertiser pick and choose a few scattered stations would make network operations, geared for activity on a far larger scale, uneconomic. Worse than this, it would harm all the vast majority of the stations who are not ordered and for that period would not be a part of the network.

In any event, this issue relating to basic required stations is a false one. The requirement applies only to advertisers and it is obvious that, nationally, advertisers will normally want the basic required list in order to amortize their great program costs. I have never heard any complaint from any network advertiser about this practice. The advertiser in fact usually buys far in excess of the 52 basic required stations; the average station lineup for sponsored programs in April of this year was 83 during the daytime and 121 at night.

In summary, the basic required practice is nothing more than a conformance to the normal demand of national network advertisers and is no different from any other minimum order policy which a supplier adopts where the nature of his product, the requirements of his customers, and the economics of distribution justify it.

Finally, eight is S. 825: This bill provides that the Federal Communications Commission shall be empowered to regulate networks. It does not state what regulation is contemplated and it does not set forth the standards for such regulation.

I had thought that the special report recently transmitted to this committee by Senator Bricker, the author of S. 825, gave rather strong indication of what sort of regulation the bill intends. Senator Bricker has assured me that I am mistaken. In the circumstances, since there is no new light on the purposes of the bill, I think it best for me to turn to my testimony of 2 years ago before the Subcommittee on Communications of this committee, when S. 3456, an identical bill, was then pending. What I said then is, I believe, applicable today:

On its face this bill is a simple one, providing for the regulation of networks. But since the Commission already exercises rather considerable regulatory powers over the networks through its licensing of the stations owned by networks, as well as through its licensing of stations affiliated with networks, the implications of S. 3456 are rather large. In effect, it would regulate, and hence license, anyone entering into the business of networking irrespective of the fact that that network owns no stations and thus makes no use of any portion of the spectrum. And it is the use of the spectrum which has always provided the basis in law for regulating and licensing broadcasters. This concept is abandoned by S. 3456 which thus enters into a novel and dubious realm. Perhaps the bill can most clearly be viewed as though it proposed to regulate and license a network as a supplier of programing material, just as do film producers, independent program packagers, or advertising agencies which produce programs.

This I believe is an extreme concept and we have a number of comments about it. But I think that for the present I should limit my comments here to the particular context of these hearings, that is, in the context of regulation of network affiliations.

If the bill is designed to empower the Commission to require networks to supply particular stations with programs or is designed to require stations to give up particular portions of their time to each network, this is an extremely radical proposal. Constitutional problems of free speech are involved. Keeping in mind that this is an attempt to regulate networks per se and wholly apart from station licensing, it is no different from saying that newspaper wire services or newspaper syndicates should be subject to regulation in order to permit a rule which would provide that if a newspaper chose to carry AP dispatches, it must carry UP and INS dispatches, or if it chose to carry Walter Winchell, it must also carry Drew Pearson, Walter Lippmann, and Leonard Lyons.

I cannot believe that such a proposal can be seriously considered. Television and radio are media of communication and information. Any regulation of networks is necessarily a regulation of freedom of speech. There has been no showing that so extreme a proposal is required in the public interest.

CONCLUSION

Mr. Chairman, it hardly seems possible, but the end of my statement is almost at hand. Most of it has had to do with the economics of television networking because most of the charges and proposals concerning networks have been directed at their economic practices. Yet I would leave an important word unspoken if I did not address myself to one charge that lies outside economics.

This is the charge that the heads of networks exercise an arbitrary and capricious power over what the public sees and does not see on television. I have a five-word answer to that: They do no such thing.

Senator BRICKER. Could they?

Mr. STANTON. Senator Bricker, I would like to address myself as I go into this, on that, and if I don't satisfy you, sir, I would be only too happy——

Senator BRICKER. I am just questioning the power, the authority, if it were arbitrarily exercised, to do such a thing that would end in such control.

Mr. STANTON. They might do it once, sir, but they would never do it again.

Senator BRICKER. That is what I am getting at. Then you would come to exactly what I have proposed?

Mr. STANTON. No, not by the route that you propose, but if you had been here this morning, Senator Potter and I were talking in this general area.

Senator BRICKER. That is the area of editorializing?

Mr. STANTON. That is right. And if I could develop what I want to say here and then come back——

Senator BRICKER. Go ahead. I don't want to break in.

Mr. STANTON. Not at all. I would be only too glad to address myself to the point that you made.

So, I suppose that it could also be said that the heads of the major motion picture companies dictate the kind of movies that people will see; that the heads of the largest television receiver manufacturers dictate the kind of television sets that people will use; and that the heads of the several big soup companies dictate the kind of soup that people will eat.

All these statements have a surface truth. But they are wrong. In each case, the manufacturer, naturally, has the final responsibility of deciding what his company will produce, just as we have the final responsibility for deciding what our program schedule will include. But in the case of all of these industries, the decision is based on the company's best information of the needs and wants of the consuming public—in our case, to satisfy the tastes of the public and to expose it to the widest variety of information, entertainment, and art so that, if it chooses, the public may develop new and different tastes.

In fact, in the business of broadcasting perhaps more than in any other business, the ultimate decision is not ours but the public's. In our business the process is one of pure democracy. Each viewer is completely free to turn his dial on or off or to shop around. He has made no investment in the program. He is as free an agent as there can be.

I would say that in these circumstances it is absolutely impossible for networks or their officers to affront public taste, to deny public taste, to control public taste, to run persistently counter to public taste, or to manipulate public taste to their own ends. For television, the public is the ultimate monitor—the monitor in chief. What it persistently turns off cannot be turned on again by any group of network executives, let me assure you.

For a network draws its validity in precisely the same fashion as an elected official of government—from election by and of the people. But with these important differences: The vote is informal, it is anything but secret, and it is wholly continuous, taking place every minute of every hour of every day of every year. The network that ceased to have the consent of its public, and to be a satisfactory servant to that public, would lose its audience and disappear completely. The prime thing of value it has to offer to the source from which it receives its revenues—the advertiser—derives entirely from the health and strength of the relationship it has to the American public. We regard the public as the touchstone of our success, not just out of theory, not just as a matter of lip service, but because we must please and serve this whole public or else we are out of business.

I think I have said enough to make it evident that the problems of networking are at once delicate and complex, and contain elements of tremendous scope and importance. There is nothing sinister in the management and operation of networks. There is nothing capricious in our practices and procedures. Believe me, we have learned about them the hard way—through much experience and much experiment. Speaking for the Columbia Broadcasting System I can certainly say that we want to stay continually on the frontiers of improvement, wherever they lie. But in the light of the public approval and the success that we have met with up to now, it would be rash and dangerous, and frivolous as well, to act on mistaken or uninformed beliefs, or on the selective submissions of a few special interest groups. The burden of proof that something better, instead of only something different, will in fact be achieved in networking rests on him who makes the proposal.

In thanking the committee for the opportunity to appear at these hearings, I shall ask it once again to consider this oral statement in closely coupled conjunction with the various written statements I have placed before you. Thank you.

Mr. Chairman, I have one document that we have prepared because some questions had been raised about our practices in the scenery design and preparation field. And if it pleases the committee, I would like to submit copies of that for the record, because I think it meets squarely with the issue that has been raised by some of the witnesses and will save the time of the committee if I don't read it into the record, but it is merely made a part of the record.

Senator PASTORE. All right. Without objection, it will be made part of the record as though it were read.

(The document referred to follows:)

THE CBS TELEVISION NETWORK'S POLICY AND PRACTICES CONCERNING PROCUREMENT OF SCENERY

Network scenery policies and practices have been the subject of recent criticism before this committee by three theatrical scenery suppliers of New York City. Their testimony has largely consisted of:

(a) Complaints about their decreasing television volume of business, and

(b) Allegations that this drop has been caused by the networks' implied or express pressure on advertisers and independent television producers to use network constructed scenery.

This statement is submitted in clarification of the policy and practices followed by the CBS television network with respect to the scenery use on programs broadcast from New York by the CBS television network.

THE CBS TELEVISION NETWORK'S POLICY AND PRACTICE

The CBS television network's policy is simple: It wants the best television scenery technically possible at prices its sponsors can afford. The CBS television network welcomes any firm which competes with it in cost and quality, for that must inevitably lead to better scenery and superior programing over the network.

The current steady improvement in the quality of television scenery has not always been the case. In television's early days, the CBS television network turned to theatrical scenery suppliers for a major portion of its scenery needs, hoping to take full advantage of their existing facilities. But stage scenery, built to be seen at a distance through a proscenium arch, cannot generally withstand the close-up scrutiny of the television camera. Equally important was the fact that, faced with a huge new television demand, the handful of established scenery firms in New York were in a position to skyrocket prices. As prices went up, either the CBS television network had to assume all costs above what sponsors could reasonably be expected to pay, or reduce the amounts and types of scenery ordered to bare minimums. Perhaps even more disturbing in the early period of commercial television was the pressing but unsatisfied need to develop television techniques altogether divorced from established theatrical conceptions. Television's scenery needs are almost infinite and tremendously varied and oftentimes extremely urgent. Speed, flexibility and improvisation are essential to keep pace with the ever-increasing complexity of television program production.

As a result, the CBS television network began providing substantially more scenery for the programs it produced and designed. In doing so, the CBS television network has been able to develop many new mechanical, electrical, and lighting devices and scenic projection methods, all of which specifically meet the technical requirements of television production.

It has also made material improvements in such areas as the use of plastics for set-surface coverings and detailed reproductions, optical illusions, color classification, and set assembly. Furthermore, it has created a large reservoir of stock pieces which can be used over again at low cost, in place of the almost all-new, high-priced construction of the theatrical suppliers.

As a consequence of such efforts, as well as the responsibility taken for performance, it may well be that many outside producers now prefer the CBS television network designed and built sets. CBS television network, however, has never required any outside producers of programs or commercials broadcast on its network to use CBS television network-constructed scenery. They are free to procure scenery from any source they may select. Indeed, according to the CBS television network's information, Mr. Peter J. Rotondo, despite the implications of his testimony, is now supplying approximately the same amount of scenery for programs broadcast by the network as he did in the past.

Moreover, some advertisers go to the independent suppliers for scenery for commercials carried on wholly CBS television network-produced programs, even though it would clearly be advantageous to the network to furnish all the scenery for the entire program. For example, the Studio One and Ed Sullivan programs are completely produced by and closely identified with the CBS television network; nevertheless, the commercials broadcast during both of those programs use scenery supplied by theatrical suppliers.

Interestingly enough, Mr. Rotondo has implied in his testimony before this committee that Mr. Louis G. Cowan's becoming a vice president of CBS, Inc., would undoubtedly affect the outside supplying of scenery for CBS television network programs previously created by Mr. Cowan. As a matter of fact, this seems to have worked the other way. Although the CBS television network until comparatively recently had furnished the scenery for the commercials on the $64,000 Question program, that scenery is now being supplied by Mr. Rotondo himself.

SPECIFIC INSTANCES CITED IN TESTIMONY

Mrs. Ashworth of Chester Rakeman Scienic Studios, Mr. Steinberg of Imperial Scenic Studios and Mr. Rotondo of the Peter J. Rotondo Studio have cited alleged instances of pressure by CBS television network on producers or advertisers to use its scenery facilities. The facts with respect to these instances are as follows:

1. Mrs. Ashworth testified that from 1951 through 1954, her studio had constructed the scenery for the Longines-Wittnauer Thanksgiving show and that following the 1954 show the scenery was returned to the studio for the Christmas show. "However, shortly afterward Mr. Alan Cartoun of the Longines organization informed me that CBS–TV insisted that their scenery facilities be employed for the Christmas show. Since then, Longines-Wittnauer has returned these two shows to our studio for the painting and supplying of scenery because they were disgruntled with the service and quality CBS–TV scenery services provided."

In 1954 the CBS television network was asked to bid on the Thanksgiving show but was unsuccessful and the Chester Rakeman Scenic Studio was awarded the job. Later, the CBS television network was asked to bid on the 1954 Christmas show. The award for this show was made to it. In 1955 it was again asked to bid on the Thanksgiving show but was unsuccessful and the Rakeman Studio was awarded the job. In response to a request to comment on Mrs, Ashworth's testimony, Mr. Alan R. Cartoun, director of advertising of Longines-Wittnauer Watch Co., Inc., has written to CBS television as follows:

"CBS constructed the scenery for our Signor Pizzicato TV fairy tale which was presented on our traditional Christmas Day program in 1954. We were extremely pleased with the results and found the quality of the work, as well as the cost, proper in every way.

"The construction for our holiday programs was returned to the Chester Rakeman Studio for Thanksgiving 1955 because of a misunderstanding created at the time of the Christmas 1954 program. The misunderstanding was an unfortunate one in which Mr. Rakeman assumed he had an 'order' to construct the Christmas scenery. This was not the case and the Christmas scenery was done by CBS. I carefully explained to Mr. Rakeman and to Julius Feist, at that time, that I was indeed sorry for the misunderstanding, as having worked with the Rakeman organization for many years. I was grieved to realize that they found themselves in a difficult financial position.

"Because of the above, I then told the Rakeman organization that we would return the Thanksgiving 1955 program to their shop (assuming, of course, their price was competitive). It was this 'moral obligation' that prompted us to give Rakeman the 1955 program. This decision had nothing to do with the quality of the CBS work." (Copy of letter attached.)

2. Mr. Steinberg charges that the CBS television network controlled the Jackie Gleason show "with the understanding that they—the network—would provide all the services and sell it to a sponsor or sponsors as a packaged deal." No such understanding exists; in fact, the scenery for the current Gleason Honeymooners show was handled by the Chester Rakeman Scenic Studios.

3. Mr. Steinberg states that last year he was asked to bid on The $64,000 Question program by the Louis G. Cowan organization but that he was told that although he was the low bidder, the network had informed the Cowan office that if an outside contractor did the show, he would have to remove the scenery after every performance for an extra charge of $400 per week. The CBS television network at no time advised anyone in the Cowan organization that the scenery would have to be removed immediately after every performance so as to incur any overtime or extra charges.

As previously noted in connection with The $64,000 Question, although the network had furnished scenery for the commercials on this program that scenery is now being supplied by Mr. Rotondo's studio. In addition it should be noted, according to a letter received from Mr. Harry Fleischman of the Cowan organization, that after his organization had obtained bids from the CBS television network and from Mr. Steinberg's studio:

"We then totaled these costs together with the costs of storage and hauling in order to determine which of the two bids would represent the more favorable price to us. This very simply established the fact that the same service obtained from CBS would cost less that it would from Imperial. We, therefore, made a completely free decision to do business with CBS at a lower price.

"I might point out that if anyone else came along at that time and offered us scenery, storage, and hauling at a lower cost than now prevails in our arrangements with CBS, we would accept such an offer at once." (Copy of letter attached.)

4. Mr. Steinberg and Mr. Rotondo also charge that the network sets are stored or left in place until the stage or studio is needed again, but that the independents are denied the privilege of paying for such storage or of removal at a period when double-time trucking charges would not apply. The CBS television network does not discriminate in storage or trucking practices against outsiders. All continuing show sets, both the network's and outsiders', are stored at the studio when possible, although at times ousiders may be asked to remove their scenery when the use of studio space for other shows becomes necessary, just as the CBS television network must do when the studio space is required for such purposes. In some instances when outsiders must remove their scenery, the network has shared or assumed the cost of removal. Storage charges are the same for the network and outsiders—30 cents per square foot per week. A letter from Mr. John Egan, executive producer of Compton Advertising, Inc., comments on this question as follows:

"As you know, for almost 3 years we were very happy with the staging services you rendered us for the Guiding Light. About a year ago we decided that in the interests of economy and possibly greater scope of production that we would try an independent scenery house for our sets and props. Our decision to do this was purely voluntary; and since we made the change, I have noticed no lessening in any of the CBS production services rendered to us outside of this area. I was particularly impressed a few months ago when we had a problem of scenery storage. With the great spirit of cooperation on the part of the network, sufficient storage space was made available for our materials at Liederkranz Hall.

"I have always thought that you and your people do a great job of helping us with the many varied details of getting our show on the air day after day. We have always appreciated your extra efforts on our behalf."

(Copy of letter attached.)

CBS TELEVISION NETWORK FINANCIAL STATUS ON SCENERY OPERATIONS

The CBS television network has never made any profit on its scenery operations. It has been fully occupied up to the present time in trying to minimize its historic losses on scenery construction, and only now sees the possibility of coming out of the red.

These scenery losses at one time were considerable. The following chart indicates how the network in New York has managed to cut its losses, until it finally is close to a break-even point.

Year	Billings	Cost	Loss	Percentage loss on billings
1952	$1,714,898	$1,920,047	$205,149	12 0
1953	1,770,500	1,910,886	140,386	7.9
1954	1,935,308	1,962,005	26,697	1.4
1955	1,945,050	1,952,693	7,643	.4

The CBS television network's financial difficulties in scenery operations have principally stemmed from the sudden and tremendous increase in television programing in the late 1940's and early 1950's. At that time, the CBS television network found itself with scattered and inadequately organized scenery-construction facilities. Nor had it had sufficient experience with television-scenery operations to handle the financial and other problems that were involved in this sharp increase in volume and the demand for higher quality scenery for this new medium. For example, when the scenery department attempted to estimate scenery costs in advance in order to establish program budgets, it too often found itself in the position of having underestimated and of being compelled to take the consequent loss itself. In addition, it was found that subcontracting the CBS television network jobs, in whole or in part, to outside firms was an expensive and uneconomical practice.

Initial losses on scenery operations were further aggravated by the pressing need to invest extensive time and money in scenery construction research and development, if scenery was to be available for television in sufficient quality, quantity, and speed. This research and development, of course, have in no sense been income producing, but have been reflected in the steady improvement of the scenery of the CBS television network programs. It was also deemed advisable to begin on a large-scale construction of stock scenery units which would be readily available for repeated use. The cost of this has not yet been fully amortized out of the rental charges for the units.

The CBS television network has now been able to remedy many of its initial scenery problems. All scenery facilities have been collected within one building each in New York City and in Television City in Los Angeles, Calif. The scenery department has gained considerable experience, and can now accurately estimate scenery needs and costs, even from very rough blueprints. Past uneconomic subcontracting practices have been discontinued. Scenery rates have been increased in an attempt to bring the scenery department's income up to a more realistic level. But several factors have slowed down financial progress. Scenery charges on programs produced by the CBS television network or outsiders cannot be raised to such an extent that sponsor's budgets cannot include the best possible sets. Second, sufficient facilities must be at all times maintained to service speedily unanticipated requests; this necessarily results in substantial idle time, equipment, and paint. Third, outside producers cannot be charged prices higher than those charged to CBS television network-produced programs. To do so would obviously be grossly unfair to sponsors and producers of outside packages.

The CBS televisin network has attempted to meet this situation by developing more efficient scenery-construction methods while at the same time maintaining, and striving to improve quality. In this way, the CBS television network is succeeding in operating its scenery department at diminishing losses without increasing its prices to prohibitive levels. Indeed, we believe that our prices are generally, and have always been, in line with those of the trade—neither undercutting the outside scenery suppliers, nor overcharging producers and sponsors. Without changing this pricing practice, the CBS television network scenery operations should reach a profitable level in the near future as efficiency increases even further and a greater supply of stock rental items becomes available.

(The letters referred to follow:)

LONGINES-WITTNAUER WATCH CO., INC.,
New York, N. Y., May 22, 1956.

Mr. PAUL WILSON,
CBS TV Production Center,
New York, N. Y.

DEAR MR. WILSON: In response to your telephone-call request, I should like to say that our asosciation with the CBS–TV scenery and construction department has always been a satisfactory one from our standpoint.

CBS constructed the scenery for our Signor Pizzicato TV fairy tale which was presented on our traditional Christmas Day program in 1954. We were extremely pleased with the results and found the quality of the work, as well as the cost, proper in every way.

The construction for our holiday programs was returned to the Chester Rakeman Studio for Thanksgiving 1955 because of a misunderstanding created at the time of the Christmas 1954 program. The misunderstanding was an unfortunate one in which Mr. Rakeman assumed he had an "order" to construct the Christmas scenery. This was not the case and the Christmas scenery was done by CBS. I carefully explained to Mr. Rakeman and to Julius Feist, at that time, that I was indeed sorry for the misunderstanding, as having worked with the Rakeman organization for many years, I was grieved to realize that they found themselves in a difficult financial position.

Because of the above, I then told the Rakeman organization that we would return the Thanksgiving 1955 program to their shop (assuming, of course, their price was competitive). It was this "moral obligation" that prompted us to give Rakeman the 1955 program. This decision had nothing to do with the quality of the CBS work.

Sincerely yours,

ALAN R. CARTOUN,
Director of Advertising.

LOUIS G. COWAN, INC.,
New York, N. Y., May 29, 1956.

Mr. RICHARD S. SALANT,
Columbia Broadcasting System,
New York, N. Y.

DEAR MR. SALANT: Last spring, when we were in preparation with The $64,000 Question, we obtained bids from CBS and from Imperial Scenic Studios for the building and painting of the physical production.

We then totaled these costs together with the costs of storage and hauling in order to determine which of the two bids would represent the more favorable price to us. This very simply established the fact that the same service obtained from CBS would cost less than it would from Imperial. We, therefore, made a completely free decision to do business with CBS at a lower price.

I might point out that if anyone else came along at this time and offered us scenery, storage, and hauling at a lower cost than now prevails in our arrangements with CBS, we would accept such an offer at once.

Sincerely yours,

HARRY FLEISCHMAN.

COMPTON ADVERTISING, INC.,
New York, N. Y., May 23, 1956.

Mr. PAUL WILSON,
CBS, New York, N. Y.

DEAR PAUL: As you know, for almost 3 years we were very happy with the staging services you rendered us for the Guiding Light. About a year ago we decided that in the interests of economy and possibly greater scope of production that we would try an independent scenery house for our sets and props. Our decision to do this was purely voluntary; and, since we made the change, I have noticed no lessening in any of the CBS production services rendered to us outside of this area. I was particularly impressed a few months ago when we had

a problem of scenery storage. With the great spirit of cooperation on the part of the network, sufficient storage space was made available for our materials at Liederkranz Hall.

I have always thought that you and your people do a great job of helping us with the many varied details of getting our show on the air day after day.

We have always appreciated your extra efforts on our behalf.

Yours truly,

(Signed) John,
JOHN EGAN,
Executive Producer.

Mr. STANTON. It is now 4:30.

The CHAIRMAN. I wonder, Mr. Chairman, Dr. Stanton, I probably won't—I can't be here tomorrow; I am going out to Seattle tonight. But I did want to take advantage of your presence here to ask you one or two things.

No. 1, I know we are not in the allocation field here today, we are not trying to discuss that. But from your experience in CBS, and naturally in communication with other members of the industry, do you think that we would go a long way in providing more free and competitive television—particularly I am thinking of independent stations, where I think there is room for independent stations other than those that have networks—if we could achieve some way here to have all-channel sets?

Mr. STANTON. Of course, Chairman Magnuson, yes; the all-channel set would be a great help to those markets that have both UHF and VHF.

The CHAIRMAN. Yes.

Mr. STANTON. But I would guess that less than 20 percent of the population is served by markets or stations that are mixed, both V and U, now.

The CHAIRMAN. Now?

Mr. STANTON. Now. And if you were to do anything to make it mandatory to manufacture all-wave sets, you would be placing a burden on eight-tenths of the public because that part of the set wouldn't be used.

The CHAIRMAN. Well, I am thinking of that, yes; we run into that problem. But with the advent of color, which would probably, I suppose in 3 or 3½ years, to phase into color television would be so great that everybody would have the same type of set if we were making one type. Wouldn't that be correct?

Mr. STANTON. Yes; except that I——

The CHAIRMAN. We are starting something practically new in color now.

Mr. STANTON. You certainly are; you are starting from the 1-yard line and you have got the whole length of the field to go on color. But color sets at the present time are priced——

The CHAIRMAN. Too high.

Mr. STANTON. Very high; and some of us in the industry feel that perhaps the reluctance on the part of the consumer to purchase color has been due to the price of the receiver.

The CHAIRMAN. Isn't that coming down?

Mr. STANTON. Well, sir, it is not coming down the way I think the average customer thinks it is coming down. I think it is a near miracle that the Radio Corporation of America has been able to put a set on the market under $500. We are not a manufacturer of the size and scope of RCA, but I have gotten my fingers burned and my feet wet in manufacturing to the extent that at least I have great respect for the price that they have put on that receiver. Now, I don' think there is much margin in that.

The CHAIRMAN. No.

Mr. STANTON. There are some who will tell you, probably, that there is no margin in it. So that I don't think those prices are coming down very rapidly. The biggest element of cost in that receiver is the color kinescope, or the picture tube. And we are in the receiving tube and picture tube manufacturing business and I know something, a little, about the cost of producing those units; and I don't see a lot of price reduction in those very rapidly.

So that if you add another unit, such as an all-band tuner, to a color set you are putting the price higher and you are slowing the day—or you are holding off the day—when you are going to have any vast color circulation. And, as you retard that day, you are retarding the day when the networks and the program producers will be putting their programs in color. It begins one of these circular arguments here.

The CHAIRMAN. But the problem we run into here, or we are conscious of, I should say, is the fact that the spectrum is limited to—as you know, the VHF is limited to certain channels, and the only possibility that we have for independent stations or a spread away, other than the networks, would be in the UHF band.

Mr. STANTON. Well, I am acutely aware of that and have been——

The CHAIRMAN. What I am trying to say: Do you think that—you hear the networks operating, ABC, NBC, and Columbia, but in many of these communities there are only the three channels. And I think what concerns us—it does me—is that we seem to be shutting out—and this may get into this monopoly question, we are talking about—it shuts out the possibility of an independent competitive station in even the big market areas, where you are limited by the VHF spectrum.

And I think that the networks themselves should be interested in that because they are going to—a good little strong independent station in an area or two would help, I think, bolster up the networks. Then you would have no one to criticize, then, what you call, or what has been termed, a captive program.

Mr. STANTON. Well, I can make the argument that we would be criticized on another point when that day comes.

The CHAIRMAN. Yes; you would be criticized for a lot of things, regardless.

Mr. STANTON. That is right; but as I said this morning, and perhaps it was before you came here: We have always felt, in the field of radio and in the field of television, Senator Magnuson, that we wanted as many facilities as possible, so there was free and open competition. And it put the emphasis, not on whether or not you had the franchise that Mr. Cox was talking about earlier, but whether you were doing a service for the public.

Because you can't take your eye off the public in this business; this is what we are here to serve. And I think that if there were unlimited facilities, and by unlimited I don't mean 30 or 40 stations for a market, but if there were more than the 3 we have got now in many markets, this would put the competition squarely on programing service or doing a programing job.

The CHAIRMAN. And it would assume the aspects of what I like to call a local station. What bothers me about this whole thing is that unless we break the ice here someplace on this spectrum—whether it be all-channel sets or some other method—the local advertiser, as the networks get better and bigger and have better programs and are more in demand by the national advertiser, which you primarily serve, the local fellow has no chance.

Mr. STANTON. Yes; but let me say something to that point. The philosophy of distribution and selling in this country has undergone a marked change since, let's say, the depression.

The CHAIRMAN. Yes.

Mr. STANTON. More and more national advertisers and national manufacturers are owning and controlling their own distribution as I mentioned this morning; and more and more they are embarking upon broad national selling programs, where, in effect, they are preselling the customer for the local merchant in whatever community he might be in.

And so you can't look at the network or national program as being something apart from the local community.

The CHAIRMAN. No, no.

Mr. STANTON. Because one of the criticisms you get in many fields of distribution today, and I may be stepping on the toes of some of my retailing friends, is that we have forgotten how to sell in this country; that the merchant at the point of delivering the product is really just an order taker, that he isn't really selling.

Now, this could change very quickly depending on what happens to the economy. But it is difficult to get the dealer, in many cases, to really push and sell a product, because he has been learning to depend on the large national advertising campaigns to presell. Now, television has had a part in that.

The CHAIRMAN. Supposing he is a small manufacturer.

Mr. STANTON. May I develop this and come back to that?

Television has had a part in that, Senator Magnuson, because in printed advertising, and even in radio advertising, you didn't do the kind of demonstration that is possible to do with television. In other words, you can really sell as well as advertise when you use television. So that a lot of preselling has been done. You can show the customer how to apply the product in his own home by what television does. So that when we say the local advertiser is getting frozen out, or he might get frozen out, you have got to look at it not only in terms of how much local business he places on the station, but how much local advertising is done on a national basis for his benefit because of the nationally advertised brands.

Now, of course, on the local product, on the local manufacturer, that is a different problem. But there is ample time; there is much time that the local manufacturer or the small dealer or retailer can have on these stations. And I think the record when you examine it, as the affiliates pass before you, will demonstrate what I am saying.

The CHAIRMAN. You still think that there is enough available time at the right cost for the local fellow to use this great new medium of expression?

Mr. STANTON. Part of my job and part of my life, sir, has been a salesman. I think there is never enough time. But there is more time than I think you realize, looking at it from a national point of view. I think if you made a careful analysis of the actual minutes of commercial time that local advertisers are getting; don't just look at the money, and don't just look at the amount of program time they sponsor, but look at the amount of access they have got in terms of commercial impact.

The CHAIRMAN. What I am trying to say is, though, that I think the networks are going to constantly consume, and rightly so, more time on stations as we move along in this field of national advertising; and that as you consume more time, stations will want to take it—shows get better and all of these things—there isn't much left for the local fellow, particularly when we are faced with this VHF restriction.

Mr. STANTON. Senator Magnuson, as Senator Pastore, I think this morning, said, you know, there are only so many hours in the day. We can't expand the hours like a magazine.

The CHAIRMAN. There are only so many channels.

Mr. STANTON. That is right; so we are bound. But there are other things that networks can do.

I don't expect that we will sell a lot more time. You say we will make our programs better: I hope we do. They are a lot better now than they were a year ago. They will be better next year. But this doesn't mean that we are selling more time. This means that the programs we are now selling will be better. You couldn't get much more time, in the night time schedule of the two leading networks, if you used a crowbar, because there is no time to get in there. ABC has some time open.

The CHAIRMAN. We hope the day will come when ABC might probably be in that same position.

Mr. STANTON. I hope the day comes around.

The CHAIRMAN. Then you are limited to the job that you do for the national manufacturer and the national—I don't know where the little fellow gets in.

Mr. STANTON. But the little fellow can't buy coast to coast at night time.

The CHAIRMAN. No; I am talking about the little fellow in his own community. Take the city of Seattle, where there are only three stations: Suppose I make Magnuson soap and I want to tell the people of Seattle about it, or a different kind of oil; I can't get on those stations, I can't afford it. But if there was an independent station I might have a chance to sell my product.

Senator POTTER. Is that a soft soap? [Laughter.]

Mr. STANTON. I would urge you, Senator—even though you could buy the time cheaper, perhaps, on the indepedent nonaffiliated station—to buy your time on the network-affiliated station because I think you would get more circulation.

The CHAIRMAN. But you just said it wouldn't be available at night time, for instance.

Mr. STANTON. Oh, well now, I don't know how much time the Magnuson Coap Co. wants to take. [Laughter.]

The CHAIRMAN. The available channels at night are pretty well taken up by network programs, isn't that correct?

Mr. STANTON. I tried to show that even on the basic required stations, out of the 52 markets there are 91 station hours that weren't cleared as of the week of May 1956. So that there is some time available.

The CHAIRMAN. You don't anticipate that as we move along here, and the big manufacturers get bigger and bigger, that they will start to get into that time?

Mr. STANTON. Well, many times—no, I don't think that this is going to change markedly, as the manufacturers get bigger. I think that ABC will get more business as a result of that, but I don't think we are going to get more business at night as a result of that; or that last——

The CHAIRMAN. I am thinking of a local television station. I think as of now, unless we can solve this problem, the local events can't get on.

Mr. STANTON. Yes, they can. If they are important——

The CHAIRMAN. I don't know how the Seattle baseball team could get on NBC on any night, if they play a night game.

Mr. STANTON. Well, when you said event, I thought——

The CHAIRMAN. Or the local high-school championship football team. I think that has been bothering a lot of us here—that we think there is room for some of these local things.

Let us concede the networks serve a purpose.

Mr. STANTON. May I take the two examples you use—baseball and high school football championships.

We have records, I am sure, in New York, as a result of our relations with our affiliates, which reflect that there are stations presently affiliated with us who are not clearing network programs, as ordered, so that they can take baseball, or—and the fall schedule reflects this in past seasons—will cancel one-time network entertainment programs to take a local championship football game or something of that kind.

The CHAIRMAN. Or a local event?

Mr. STANTON. Or local event, certainly.

The CHAIRMAN. Of course, sometimes the station woudn't take the network program because those putting on the local program can't afford the network rates.

Mr. STANTON. Yes. But many times the affiliate will put on the local football game—and get no income for putting on that event—as a part of his public service.

The CHAIRMAN. I am glad to find you are a little more optimistic about it than I am—about the local fellow.

Senator PASTORE. Then don't you think—inasmuch as you have networks, 3 networks—that you ought to have at least 3 stations in every community? Wouldn't that be in the public interest?

Senator POTTER. I would like to have one in Cheboygan.

Mr. STANTON. Senator——

The CHAIRMAN. Back to Cheboygan and Providence. [Laughter.]

Mr. STANTON. Last September, I believe it was, the Chairman of the FCC talked with me about the problem in pretty much the same way you talked about it, and said "What can we do about this allocations thing? Do you have any ideas?" And I told him that we had been studying this problem since the very beginning. And that we had been reeaxamining what might be done to try to correct and help the present situation—not the perfect plan, but perhaps something that would make a better situation out of what you described this morning as a mess.

And he indicated, he said, "You know, if we could only take care of the top hundred markets—if we could just get three services in the top hundred markets—this would go a long way toward solving some of the problems that the industry has." And I couldn't have agreed with him more.

It so happened that the work we were doing at that time was almost to the point of completion, and I told him about the work that Mr. Lodge and his associates were doing and suggested that if he wanted to have access to it I would be glad to give him that kind of a study. On the 5th or 6th of October, we brought down what has been erroneously characterized as our hundred-station plan. We brought down a proposal—two proposals, in fact—which we called an interim report, which suggested what might be done to try to make the present situation a lot better than it is.

That was accepted informally by the Commission, and later accepted formally by the Commission when it opened its files for the reception of such suggestions from the industry. I think we were the only network in the business who came down and tried to do that kind of a job. We are still picking arrows and darts out of our backs because you can't please everybody. I said in the covering letter, I believe, that one of the great troubles with all the plans—they all have to have something in it for everybody and you can't have a plan like that.

Now, this was not a 100-station plan. We only focused our attention on the top hundred markets because those are the bottlenecks in many cases. Beyond the hundred markets there wasn't any problem. And we have submitted such a plan. It is a matter of record in this hearing, and it is a matter of record before the Commission. And it goes a long way toward getting 3 equal affiliates, or 3 equal stations, in the top hundred markets, at least 3. In many markets it will permit more.

Mr. Cox. For the record, I think that—isn't it true that American Broadcasting Co. also filed such a recommendation with the Commission and that it was directed to a like end, for obvious reasons, since they, of course, would be the primary beneficiaries of the introduction of a third service in the top markets?

Mr. Stanton. I didn't realize, Mr. Cox, that theirs was quite as broad an allocation plan as ours. I certainly don't want to quibble. They did make a contribution. I thought they should have come over and helped pay for all of the work we did on ours, because they certainly would have benefited the most from the proposal we made.

Mr. Cox. I think theirs was perhaps directed specifically to what they would regard as their trouble spots, rather than covering the entire range which was encompassed in your plan.

Mr. Stanton. Yes. The only difficulty is that when you begin to look at this thing piece by piece—when you squeeze this down, something pops up over here. That is the reason Mr. Lodge took the broad view of the entire country rather than just trying to patch in certain places.

Senator Potter. Along the line of questions that Senator Magnuson was pursuing, isn't it true today that with just VHF service, the public is buying half a television set, when the Commission has allocated a portion of the spectrum which includes both VHF and UHF for television service to people. Rather than to deny, as you state, 80 percent of the people—force them to pay for something that they won't need, isn't it true that they are at the present time buying half a set?

Now, if we are going to—if we are going to have what the Commission has stated, a nationwide competitive television system, and to provide for the local type of programing which many people feel is very important, the testimony that we have had certainly gives evidence of the fact that we are going to have to utilize the UHF band.

Now, there have been several proposals before this committee. One proposal: That if the excise tax could be removed for all-channel sets, would that serve as enough of an encouragement to the set manufacturers to encourage them to build all-channel sets? And, particularly as we go into the field of color, to provide a—to repeal the tax on color sets that provide all-channel bands.

Mr. Stanton. Senator Potter, I meant to mention that in connection with Senator Magnuson's question about color, and I am glad that you have brought it into the discussion because I think that the removal of the excise tax—and this has been proposed—would go a long way in encouraging the manufacturers to make all-channel sets in color. But this is going to be a drop in the bucket as far as the current problem is concerned, because I don't see color coming quite that rapidly to solve some of the problems that I think are worrying you and worrying us.

A curious thing is happening in the set manufacturing business at this time, and it is working against, unfortunately, I think the UHF. You are getting a pincers movement. On the high end you have got the expensive color set which is killing sales in the expensive end of black and white. A man is less apt to buy a black and white console today over $250 because, for paying just a little bit more, he can get himself a color set. So that kills off that part of the market. Now, if there isn't a UHF tuner in that color set for the reasons I gave Senator Magnuson—because it adds more cost to it—the manufacturer isn't going to put it in there. So there is no UHF in there.

Now, on the other end—the other side of the pincer—you have the introduction of the small portable receiver, which is so compact that it is pretty difficult to put a UHF tuner in, in the first place. And because they are being sold at a price sometimes under a hundred dollars, there isn't enough room in the price of the unit to include the all-channel set. So it is getting squeezed from that side.

Senator Magnuson. If the tax was off, though, they could put it in, couldn't they?

Mr. Stanton. The removal of the tax at the low end wouldn't have anything like the impact that it would have if you took it off of the color set, Senator Magnuson.

The Chairman. You don't see much future for UHF?

Mr. Stanton. No. We are the owner and licensee of a UHF station in Milwaukee, and we are the purchaser—yet to be approved by the Commission—of a UHF channel in Hartford, and we have gone into those things not for the love of it but because we expect to make money and do a job with it. The unfortunate part about the UHF thing isn't—if you want to go way back, you go back of course to the original allocation, but there is no point in getting into that. But another point along the way where we missed the boat, it seems, is that the multiple-set owner, or multiple-station owner, was denied the privilege of buying UHF stations unless he bought 1 within the 5.

I think if the networks, for example, had been allowed to buy UHF stations in excess of 5—the 5 V's—in the early stages, a number of things might have happened: We would have taken the first olive out of the bottle, so to speak, and the set manufacturer would have sat up and taken notice, because if he had known the networks owned these things, they would have worked; the advertiser on Madison Avenue would probably have had more respect for the UHF stations—and I think the public would have gotten a better deal because we were in a position to give those stations the kind of programing that would have sold the sets.

We missed that second opportunity. UHF may have a third chance; I don't know. But I haven't written UHF off. But there are certain inescapable facts that you have got to face, and I think it is pretty late in the day to be facing those facts. I don't mean in this day, but I am talking in terms of the life cycle of UHF.

Senator PASTORE. Before the mess gets messier.

The CHAIRMAN. If we don't face them, don't you agree, if we don't try we are going to be limited to just a very few channels in a country with growing population and all these things that we hope for expansion.

I wanted—Mr. Chairman, if I may suggest this: You don't have to testify on it now, but I would like to have your views, and those of the other networks, on this very timely and ticklish problem of political time. You can submit it to us in writing. We have 4 or 5 bills here, all different types. But I do think this Committee would like to explore that before we adjourn, because I am afraid if we don't the networks and everybody else are going to have some real problems this fall. There might be some rules of the game that you can suggest.

Mr. STANTON. Well, we have——

The CHAIRMAN. Other than what the law now says.

Mr. STANTON. We have spoken a lot to that subject and we will be glad to give you our thoughts.[5]

The CHAIRMAN. You are always good with plans, Frank, you can suggest one. [Laughter.]

Mr. STANTON. I am still picking the darts out on that hundred-station plan. [Laughter.]

The CHAIRMAN. Well, I would like to have that, if we can, because the networks are going to be faced, I think, with some real practical problems.

Senator BRICKER. Mr. Chairman, may I have just a moment? I do want to compliment you on the presentation. I think you have done a magnificent job. I don't know any other way it could have been done. I am particularly interested in the suggestion, on the last 2 or 3 pages, which you made in regard to whether or not there should be licensing and the effect of it. I think your whole presentation emphasizes more dramatically than anyone could who has not been as familiar with the development as you have, the great public interest that

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[5] The comments of CBS were furnished in a letter dated June 22, 1956, which was inserted into the record on July 17, 1956, and is printed in the appendix to this volume at p. 2857.

there is in this field. And I am quite confident you have no more question about it than I have, that if there were a licensing system and a regulatory authority over the networks, that there would be no constitutional question involved because it is definitely charged with the public interest, if so declared.

Mr. STANTON. Well, I would like more able minds than mine, Senator Bricker, to address——

Senator BRICKER. That is what I want to discuss with you some day. Not today, necessarily. You mentioned in here that there would be a violation of the right of freedom of speech. I would like to have your lawyers explore a little more fully how this would be true, any more than the regulation of the telephone business is a limitation on the right of free speech. I see no relationship to it at all, under the first amendment to the Constitution, which has been expanded, as you know, to cover Federal law as well as—Federal administration as well as legislation.

That I think we ought to discuss at possibly a later date. But those are the questions that are fundamental in my mind. I am not interested in the details that you have presented here. I think you have done it magnificently.

Now, just one other suggestion in regard to what Senator Magnuson said. I am not interested, directly or indirectly, in any radio or television station except one—and I am vitally interested in that one, as I think you are. We were not permitted to have a VHF station at Ohio State University. We got a UHF. There is no advertising. It is all educational. And most of it is produced by the university facilities and by their own people. I was told yesterday, and this was very encouraging to me, that there have been purchased in our area 20,000 UHF sets, or converters, since that station went on the air, showing that there is a very vital local interest in something more than advertising. And I would like to see this medium, to the extent it is possible, consistent with its proper business management, made to the ultimate degree available for those interests. Now, I hoped in the beginning that it might be by reserved channels for educational purposes. There hasn't been the money available or the ability, I think, in many instances, to do that. We happen to be in a very fortunate position in our community. But that is something I think that maybe should be subject to some administrative authority. That is what I am driving at, that is what I am thinking about, and at a later date I would like to discuss with you, on the record here, those aspects of the bill to which you referred.

Mr. STANTON. I would welcome the opportunity, sir.

Senator PASTORE. One o'clock tomorrow in the same room.

(Whereupon, at 4:57 p. m., the committee adjourned to reconvene at 1 p. m., Wednesday, June 13, 1956.)

TELEVISION INQUIRY

(Network Practices)

WEDNESDAY, JUNE 13, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 1 p. m., in room G–16, the Capitol, Senator John O. Pastore presiding.

Present: Senators Pastore, Monroney, Bricker, Potter, and Payne.

Also present: Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel.

Senator PASTORE. We said 1 o'clock, and 1 o'clock it is. Mr. Cox, it is your turn.

Mr. COX. Thank you, Senator. Dr. Stanton——

Senator PASTORE. Now, may we please have quiet so that those who are interested in hearing the witness may hear him?

Mr. COX. Dr. Stanton, in your testimony yesterday and in some of the documents you filed you have indicated disagreement with the comparison of the rate of your earnings to your investment in tangible assets. You indicate certain other requirements of your business, risks, and so on, and I assume that this also involves the necessity for working capital. Could you give the committee some estimate as to the average working capital which it is necessary for CBS to devote to television networking?

Mr. STANTON. Mr. Cox, I don't have that figure on the tip of my tongue. I will be glad to supply it for the record.

Mr. COX. If you would, please.[1]

Now, I assume that all of the expenses which you list—the important expenditures CBS must make in order to provide the service it does to the public: Your programing expenses, the maintenance of your news organization, the maintenance of your facilities, the payment of your staff—all of these are, of course, charged off in each calendar year before a determination of profits, so that the profit figures which are cited in Senator Bricker's report are profits after you have performed all of these functions and taken care of all of these charges in the ordinary course of business?

Mr. STANTON. Yes; I don't believe there is any exception to that. There might be on some properties that are purchased, where the writeoff is more than 1 year. Those might not be expensed. But for the most part the way you have stated it is essentially correct.

Mr. COX. Now, you referred a number of times to the risks of net-

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[1] This information was furnished in a letter dated January 23, 1957, which is set forth, so far as is relevant here, as item 27 in the appendix to this volume.

working as being a basis which would justify, if justification were necessary, a higher rate of return. These risks, I take it, are first of all that you may invest funds in the development of a program which either never meets your standards and never gets on the air, or gets on the air and develops into something that does not meet public taste and therefore must be dropped; and that, therefore, you have an investment in that sort of situation which you require in order to be able to continue this service. Would that be one of the risks?

Mr. STANTON. That is certainly one of them.

Mr. COX. Now, can you give us any idea of the extent to which that has really been a problem—of the degree to which CBS has invested money in the development of program ideas and these ideas have not become commercially usable?

Mr. STANTON. Well, you mean you want me to qualify that?

Mr. COX. Yes; just in a rough way.

Mr. STANTON. Well, it runs into millions of dollars, but I can't give you a precise figure at this point.

Mr. COX. You indicated, in connection with your programing costs I believe, that you had a loss—perhaps in a particular year, or maybe this was an estimated annual figure—of about $7 million on commercial programing. Now, would a substantial part of that $7 million be represented by investment in properties which you never were able to use?

Mr. STANTON. In one form or another I think that a part of that falls into that classification, Mr. Cox. A large part of it is the difference between the price that a program might be sold for and what it cost us to produce. For example, we don't recover everything, all the costs, on every program that we put on, whether it is in the entertainment field or whether it is in the public-affairs field.

Just because a program is sponsored, you understand, it doesn't mean that we recover a hundred percent of what the program costs.

Mr. COX. Yes; you indicate in the case of Climax that you had an average loss per week of something on the order of $8,000. You also indicated that that was not typical, that that was largely extraordinary.

The point I am trying to get at is whether this $7 million for a year represents an accumulation of situations like that, where you sold a program to a sponsor for less than it cost you to produce, or whether a substantial part of it might be represented by efforts to develop programs which never caught on at all.

Mr. STANTON. Well, it is both of those points. But when you say "accumulation," you mean accumulation within a calendar year?

Mr. COX. Yes.

Mr. STANTON. Yes.

Mr. COX. In other words, could you tell us—strike that. Are there any programs which you produce which you sell to sponsors at above cost?

Mr. STANTON. Certainly.

Mr. COX. Do you buy, occasionally, outside independently produced programs and sell them to sponsors at more than you paid for the properties?

Mr. STANTON. There may be some infrequent cases of that kind. Sporting events, perhaps. But for the most part, it is about—if we buy the package as a complete package it is just about the price that we had to pay for it.

Mr. Cox. That you then resell it to a sponsor?

Mr. Stanton. The ones where we make the profit are the ones where the idea and the whole program is generated within the framework of our own organization.

Mr. Cox. Well now——

Mr. Stanton. Take a program such as Studio One, for example. I can't tell you offhand—it is not because I don't want to; I don't have the figure in my head. We are making a profit on that particular program.

Mr. Cox. Now, would the profits that you make on those programs where you can sell it for more than your cost—would the aggregate of those profits exceed the aggregate of your losses on programs like Climax?

Mr. Stanton. I suspect not.

Mr. Cox. You would then have a net loss. Now, I assume that the independent producers of programing who must compete with CBS in the sale of their product have to operate on a profit margin in order to stay in business?

Mr. Stanton. Well, it depends on what their business might be. If they were associated with some other business, I suppose that wouldn't necessarily follow.

Mr. Cox. That is, in other words: Isn't it true that a network occupies the position of being able to afford to sell programing for less than cost, because it has a participation in time charges—either directly through the ownership of stations or through its percentage interest in the station rates of its affiliates—so that it can sell the program itself at less than cost and still make a profit on the overall transaction?

Mr. Stanton. Well, that isn't any different, Mr. Cox, than the independent packager who decides to sell a series for $35,000 or $25,000 a unit that might cost $40,000 to make. And he recovers $25,000 from the onetime rights to a network advertiser or to a spot advertiser, and then hopes to get the balance between the 25 and 40, let us say, plus the profit out of either syndication, second runs on a network, or European distribution.

Mr. Cox. Well do you think that it is a common practice among syndicators to sell first-run rights at as substantial a loss as that?

Mr. Stanton. I can't—I obviously can't tell you that it is a common practice. I know that it does exist in many instances.

Mr. Cox. Isn't the real reason that some of them, at least, say they have come to the point where they feel they must sell, initially, a first-run of their film either to a network or to a national advertiser who has network time, the very fact that this is the only way in which they can, within 1 year, recover their cost? And they are perfectly willing, as you suggest, to wait for reruns or the sale of foreign rights to make the profit. But isn't it almost essential, in the nature of their operation, that they recover 100 percent of their investment in the film within a fairly prompt period of time after the film is released?

Mr. Stanton. Well, I think that depends upon the attitude of the various companies, Mr. Cox. I don't think that there is any universal policy on that point.

I think some companies are prepared, just as we are, to take their recoupment in the second and third exposure, rather than in the first exposure. If we feel we can make a program a lot better, and give the advertiser and the public a greater value in entertainment and in circulation—entertainment on the one hand to the public, and circulation to the advertiser on the other—we may elect to delay our recoupment until some later time, whether it is through syndication or whether it is through second run. In some negotiations that we have had recently regarding the preparation of some film the company that—one of the companies that was negotiating with us for the production of those films was willing, I think, to take about 50 percent from us for the first run, and was perfectly willing to put 100 percent more into the package in order to get that back out of second or third runs on television, let's say, or up to any number you want to take. And then to recoup the rest of that, plus, I think, a considerable profit, from theatrical exhibition. I mean, there are no two deals alike in this business.

Mr. Cox. However, you are in the more or less unique position that you can take a loss on the current exhibition of a program you have produced and at the same time, incidental to that exhibition, you can realize a profit by virtue of the time charges which you receive?

Mr. Stanton. Well, we are in that position. But so is the independent producer in that position.

Mr. Cox. How does he—he never participates in the time charges of the network he is with, does he?

Mr. Stanton. Not in the time charges of the network, but he may participate in other use of his product.

Mr. Cox. But those will all be later uses?

Mr. Stanton. Not necessarily; not necessarily at all.

If you are talking about a motion picture company—a Hollywood company that may have written off the cost of the script or the book in connection with theatrical exhibition of many years ago—he has very little cost to the writing on the show, let us say, so that may be carried on his books at a very low price. He is getting reuse out of his material.

Mr. Cox. But he won't have a loss. He would have a profit on the sale of this television use?

Mr. Stanton. That is right; but he may also use some of the material he is developing for television for theatrical exhibition.

Mr. Cox. In connection with Climax, which you set out in your supplemental memorandum, you show a loss of about $8,000 on the programing element. You indicate that this leaves you a net of something like $17,000 of the network's share of the time charges; to which there would have to be added some figure—I don't know precisely what it would be—for the network's owned-and-operated stations' share of the other half of the time charge distribution. So that it would appear that even though you lose $8,000 on the programing, that CBS television is receiving something like $20,000 a week return on its funds which are invested in its venture and on this particular production-exhibition combination? That is you do—you have a cushion here in the form of your time charges, which doesn't make it as important for you to break even, or to make a profit, on the production of entertainment—that is not enjoyed by other producers of entertainment?

Mr. STANTON. Well, it may not be enjoyed by other producers, and certainly is not enjoyed by the producer if you are specifying that he gets part of that offset from the sale of network time. But that is no different, sir, than what an affiliated station does in selling a product.

Senator PASTORE. May I interject at this point. In what way does this defeat or help the public interest? Do we have that developed? I mean, does the viewer get hurt in all this?

Mr. STANTON. Well, I would submit, Mr. Chairman, that the viewer benefits.

Senator PASTORE. In what way does he benefit?

Mr. STANTON. He benefits because I think he gets a superior program by this route. Now, it doesn't always follow that just because you spend more money you get a better program, but by and large programs cost money, and as you invest more money in writing and in production, you may get a better end product than you usually do.

So I submit that when you spend more than you recoup, that the public by and large is getting a better service, and I think the affiliate is getting a better service by that route.

Senator PASTORE. And the advertiser gets a cheaper rate?

Mr. STANTON. The advertiser, I think, gets a cheaper rate when it is translated into cost per unit reached; yes.

Mr. COX. This particular advertiser—in this case, Chrysler—got what you regarded as a better show, it got it at less than cost, and it paid the same time charge that other advertisers would pay who receive no such subsidy or contribution to program costs?

Mr. STANTON. It may or may not have received it. I won't answer that that way, Mr. Cox.

Mr. COX. That is you mean there are a number of instances in which other advertisers also received help in connection with the financing of expensive programs?

Mr. STANTON. Take a program like See It Now—well, Alcoa sponsored that program. Alcoa didn't underwrite the total cost of the program; we underwrote part of the cost of that program. I think that was part a public service we gave the advertiser, and I think in that case Aluminum Corp. got a better show. I certainly think the public got a better program by the extra cost that we put in to make the program a better program.

Mr. COX. And you would regard this as an investment of the network's funds in providing public service entertainment of a higher quality?

Mr. STANTON. Total programing, whether it is sustaining or whether it is commercial. And as I was about to say before, I think you will find many instances where individual stations will produce programs and sell them for less than cost, the same as we are doing. It is part of their job to put the best program in the time period.

Mr. COX. Now, in your press release of April 29, 1956, commenting on Senator Bricker's report, you point out that CBS owns less than 1 percent of the television stations in the country. Would it be approximately correct to say, however, that the four stations which CBS now owns cover something like 24½ percent of all the television sets in the country?

Mr. STANTON. I don't think that is correct, sir. I don't think that figure is correct. Of sets?

Mr. Cox. Yes.

Mr. Stanton. That may be correct, I am not prepared to say whether it is or not.

Mr. Cox. Could you provide us what you would determine to be the percentage of total sets which can receive the signals of your four owned-and-operated stations?

Mr. Stanton. Glad to.

Mr. Cox. And you are——

Mr. Stanton. What do you want to use as the definition of coverage?

Mr. Cox. Well, I would use the definition that you used in determining that 99 percent of the people can receive television signals.[1]

Senator Potter. I believe along that line, if I may interject, I believe there are bills now pending which would limit the television coverage of any one company—I believe it is 25 percent. It is my understanding that NBC, through their own stations, can cover about 25, about 24 percent of the present television audience.

Mr. Stanton. Well, there is a distinction, Senator Potter, between the way you have stated that and the way Mr. Cox asked his question. Yours is referring to population residing within the coverage areas of the stations and he was directing himself to sets.

Senator Potter. I see. Have you made any report at all on the legislation that is pending?

Mr. Stanton. No, we have not.

Senator Potter. Would you be in a position to say whether you favor such legislation or not?

Mr. Stanton. Well, I would like to put it this way: I certainly don't disfavor it; I am not at the moment prepared to say that I would favor it. I have one reservation in my mind, and that is that I think some concern should be shown for where those stations are located. I think it is possible, if some safeguard wasn't put into the legislation on that point that would make sure that those stations were reasonably well distributed around the country, that it is conceivable, for example, that that 25 percent would all be concentrated, let's say, in the States of Michigan, Ohio, and Indiana or in Illinois, if you want to do a 4-State concentration job.

Now, this is something that has always concerned the FCC, and I think this committee in past years, about the undue concentration geographically. It has concerned us, because we think that there is some reason for concern about that undue concentration.

Some years ago when the Commission was studying this problem in connection with trying to fix a limit, we put our minds to it to try to figure out what we might suggest in the way of something that might be a safeguard. At that time I think we suggested that whatever the upper limit might be—whether it is 25 percent of the population served or whether it is 10 stations or whatever it might be—that no more than 2 of those stations might be located in any 1 judicial district. Now the reason we happened onto judicial districts instead of Federal Reserve districts or FCC districts—there are a lot of different districts

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[1] This information is set forth in a letter dated August 10, 1956, and exhibit C thereto, which will be found beginning at pp. 2835, 2846. It is indicated there that the television stations owned and operated by CBS have an aggregate coverage which would include 22.1 percent of the families in the United States. In a supplemental letter dated August 27, 1956, printed at p. 2856, it is estimated that 25.2 percent of the households having television sets are within range of the signals of CBS-owned television stations.

you could use for setting up these safeguards—but the judicial districts, as I understand it, are set by Congress and aren't subject to the change of an administrative agency, let's say, the way the FCC districts might be changed. So that those—I think there are 11 of those districts and one of them is the District of Columbia, so you wouldn't obviously put two stations in the District of Columbia. So we are really talking about distributing those so they would be in 10 geographical areas that, I think, are largely based on population—so that this thing would break down, not on square miles, but the distribution would be by population.

Now, if you couple something like that with this 25 percent, I think it is something that the multiple station owner could live with very well. I expect there will be some criticism of that kind of limitation because it is going to be difficult for everybody to achieve 25 percent under those limitations. That is the reason I hesitate when I say I don't come forward positively, but I certainly wouldn't oppose it. But, I have some doubt in my mind as to how you can set up the safeguard that wouldn't allow all of those to be in the State of Texas for one person, and all of them to be in, as I say, as I have used before, Michigan, Ohio, Illinois, and Indiana.

Senator POTTER. I think there has been some concern of some independent television operators that with the large markets being taken by the networks, such as CBS, NBC, and ABC, that there might be a constant encroachment upon the total—there would be an effort, maybe, to increase the population coverage by acquisition of additional stations or other means. And I am—I think there is a great deal of interest on the part of individual television operators, independent operators, to have a limit which will not cause the networks who own their own stations to curtail the present effort, but as a limit to keep them from expanding further.

Mr. STANTON. Well, the rule that the Commission operates under now is the rule of 5 on VHF, and you have in the case of ABC and NBC, 2 networks, and you have in the case of George Storer, 1 multiple owner, who is up to his limit now. We have only 3 V's; we are an applicant for a fourth V in St. Louis, and we still have one to go under the rule of 5.

Senator POTTER. But I believe, at the present time—you have 3 V's at the present time and 1 U.

Mr. STANTON. One U.

Senator POTTER. At the present time I believe you have about 20 percent of the population coverage; am I correct?

Mr. STANTON. Is that based on—I expect that that is approximately right.

Senator POTTER. In other words, with a 25-percent limit, if you came up to your full complement which the FCC would allow at the present time, you could conceivably go over the 25-percent limit.

Mr. STANTON. No, not the ones that we think we can get into, and I believe—and I may be wrong on this—but I think that if you take just the coverage areas of the 5 stations that are owned by ABC and NBC, that neither exceeds the 25.

Senator POTTER. That is right.

Mr. STANTON. And I will be glad to settle for those five markets for CBS any day.

Senator POTTER. I was interested in getting your views as to whether CBS had taken any definite position on the legislation that has been introduced.

Mr. STANTON. No; we have not.

As a matter of fact, in our comments on Senator Bricker's memorandum, in which that was mentioned, we said that we purposely were not commenting on it in there because we were addressing ourselves only to the monopoly aspects and not to that particular point. We certainly will be heard from the day this is appropriate for us to comment on.

Senator POTTER. Thank you.

Mr. COX. In connection with furnishing that last figure, could you also tell us then whether or not it is true that if an advertiser wanted to buy equal time on all the television stations in the country it would cost him about 11.7 percent of the total expenditure in order to buy the 4 owned-and-operated stations which you now maintain? In other words, what percentage of the time charge for the purchase of equal time on all stations would go to your 4 stations?

Mr. STANTON. You are saying now of all commercial stations in the country?

Mr. COX. Yes.

Mr. STANTON. Sure.[2]

Mr. COX. I think perhaps it is central to what we are talking about in this phase that we establish this point: Isn't it true—I think perhaps you indicated yesterday— that there is a sort of built in monopoly, or quasi-monopoly, in the television field today because of the shortage of frequencies? That is, there are only 17 markets which have any independent stations. Even when the pending grants now before the FCC are processed, Chairman McConnaughey says that two-thirds of the top 100 markets will have 2 stations or less; and the American Broadcasting Co., of course, frankly states it has great difficulty clearing time in key markets on a competitive basis at the present time. Now, quite obviously none of this is the fault of CBS or NBC, but is not that generally true that such a situation exists?

Mr. STANTON. Well, there is still a lot of open time, but there certainly is a shortage and I wouldn't deny that.

Mr. COX. Now, isn't the central core, therefore, of this phase of the committee hearings relating to network practices an inquiry as to whether, operating in this sort of a naturally constructed medium—constricted medium—on publicly owned channels licensed to station owners to operate in the public interest, whether the networks are pursuing policies which further restrict competition or concentrate control or restrain trade? Isn't that basically the issue that is posed by the contentions made by Mr. Moore and which you have answered in your testimony and in the documents you have filed?

Mr. STANTON. Well, Mr. Cox, I think it is a question as to whether you want to just patch the patient up with adhesive tape, or whether you want to find out what is really wrong with the patient so that he can live over a long period of time. It had seemed to me, when some of the deliberations of this committee began, that you were addressing

[2] This information is set forth in a letter dated August 10, 1956, which will be found at p. 2835. It is there indicated that the card rates for the 4 CBS owned-and-operated stations comprise 5.7 percent of the aggregate card rates of the 443 commercial television stations in the continental United States as of June 10, 1956.

yourselves at that point to getting at the root of the problem here, which is essentially the allocation problem. And I am still not persuaded that there isn't something that could be done to alleviate the condition that you are describing, vis-a-vis ABC.

Mr. Cox. In terms of allocations?

Mr. STANTON. Certainly.

Mr. Cox. I think that would be entirely correct. Now, with the conditions prevailing as they are today, so that there is a constriction placed upon the availability of stations, time, the development of additional networks—isn't there then posed this question: Whether some of the practices which the networks now pursue are further artificial restraints upon freedom in supplying programs, upon choice of program sources by the public and stations, and upon access for all classes of advertising to the medium?

Mr. STANTON. Yes; but you are asking me to describe what I consider to be a temporary condition, sir.

Mr. Cox. Well, it has been temporary for the entire life of television. That is, this is not something that has suddenly come about. These limitations have existed at least ever since the freeze was lifted and the Commission embarked upon the intermixture of UHF and VHF stations.

Mr. STANTON. Well, I quarrel with that definition as to how long it has existed, but I don't think that because it exists today that it has to exist tomorrow.

Mr. Cox. Well, clearly——

Mr. STANTON. It has only existed as long as the business—when the business began to be profitable. It didn't exist when everyone was losing money, and the allocation table was the same then as it is today. It is only the introduction of the fact that some of the industry who were interested enough and had the courage and the resources enough to invest in the bricks and mortar and the electronic gear—and more importantly in the programing—and take those losses for a considerable period of time; it was only when we turned the corner that this thing really began to bind and pinch. It didn't exist through that period. And I say to you that that can be changed.

Mr. Cox. Can it be changed through developments within the industry or only through FCC action on allocations, or how can it be changed?

Mr. STANTON. Well, it can be changed with the FCC.

Mr. Cox. And you would suggest that that is the only way in which it should be changed?

Mr. STANTON. I would suggest that that is the only way it should be changed.

Mr. Cox. You quoted certain instances where single companies in other industries receive a higher percentage of the total net earnings of that industry than is true of CBS in the broadcast field. Isn't the danger, however, of concentration greater in the field of communications, in the transmission of ideas, than it might be in the field of nonalcoholic beverages or coal, which were two of the instances you used?

Mr. STANTON. It would be, sir, if we owned all of the stations that carried our programs. I think then you might have some reason to say what you have just said. But I think you are being unnecessarily critical and apprehensive about the conduct of the 181 affiliates, minus the 4 that we own, that make up the stations of the Columbia Broadcasting System television network.

Senator PASTORE. Well, is that a true measure, or should the measure be the number of people that you cover? You can own 4 stations and cover one-quarter of the population of this Nation, and own 15 and only cover one-tenth. So I think the measure should be the vastness of the coverage.

Mr. STANTON. I certainly don't quarrel with that. I think that should be the measuring stick if we have any at all. Absolutely.

Senator PASTORE. Then I think you would find the control or lack of control in the public interest. I am not quarreling—I am just stating a measure.

Mr. STANTON. I just wanted to say that if we were to take that approach—and if we weren't a network, and if we just were the licensee of four stations—we would still cover the same percent of the country, and I suspect that Mr. Cox would still have the same fears, then, that he has just expressed about the concentration, coast to coast.

Mr. COX. I do not think so, Dr. Stanton. That is, I am suggesting that, of course, you have developed here a network, 1 of 3, which provides a substantial portion of the programing to the country—far beyond the reaches of your 4 stations, it goes to the 181 stations that you mentioned.

Mr. STANTON. Yes, but if you take the average affiliate—and I think this is covered on one of the charts in the supplemental document. If you take the average network affiliate, Mr. Cox, and I think it is on the page facing 123, chart XXIII; there we show the program sources of the average interconnected affiliate's sustaining and commercial schedule; and you will see that over two-thirds of all the programing on the average station affiliated with the CBS television network comes from outside sources.

Now, that does not seem to me to be undue concentration in terms of programing.

Mr. COX. What would the percentage be during the hours 7:30 to 10:30 at night?

Mr. STANTON. From the network it would be considerably higher, of course, than it is here.

Mr. COX. And, of course——

Mr. STANTON. But not necessarily from CBS program sources. As I pointed out yesterday, I think it is something like 22.7 percent from 7:30 to 10:30, from CBS Television.

Mr. COX. You are talking now just in terms of production. I was discussing the mat——

Mr. STANTON. I thought that is what you were addressing yourself to. We don't control the programs produced by outsiders.

Mr. COX. I am talking about the selection—the determination of what programing is going to be, the decision as to what entertainment, what discussion of public issues, who is going to broadcast the news, these matters decided by you in the period 7:30 to 10:30 at night to a substantial measure for 181 stations.

Mr. STANTON. Well, the only way I would change that is I would say that CBS Television, in cooperation with the public, decides what goes into that schedule; we don't decide what goes into that schedule.

Senator PASTORE. May I interrupt for a question?

Dr. Stanton, these stations that are owned by CBS, are they in localities that have less than two?

Mr. STANTON. No, sir. In New York there are 7 and we own 1; in Chicago there are 4 and we own 1; in Los Angeles there are 7 and we own 1; in Milwaukee, I believe, there are 3 V's and 1 U, and we own the U. And believe me that is less than a fourth of that market. [Laughter.]

Senator PASTORE. On any one of your stations, do you employ programs by either NBC or ABC?

Mr. STANTON. Programs originated by them?

Senator PASTORE. Yes.

Mr. STANTON. No, sir.

Senator PASTORE. Exclusively your own?

Mr. STANTON. No, not exclusively our own.

Senator PASTORE. I mean insofar as national programs.

Mr. STANTON. No, if I understand your question. Let us take New York as an example: The schedule in New York is roughly the proportion that we give for the network in terms of produced by us, produced by us in cooperation with outside producers, and produced by independents.

Senator PASTORE. But they all come in over your network?

Mr. STANTON. That is correct.

Senator PASTORE. That is what I mean. In every case the vehicle of channeling is through your own network?

Mr. STANTON. That is correct.

Senator PASTORE. Regardless of what the production background might be.

Mr. STANTON. That is right.

Senator PASTORE. I will be real frank with you, the question I am trying to resolve in my own mind is whether or not there was a situation where you were located in a locality that only had two stations.

Mr. STANTON. No, but ABC, I believe, is located in a market that only has three in the case of Detroit.

Senator PASTORE. All right.

Mr. COX. Yesterday, Dr. Stanton, you were outlining the method of allocating sets for ratemaking purposes in the case of overlap: First between two primary basic stations, that is where you just split down the middle; and second, between a primary basic and an EMP station which was later built near the edge of the service area, in which case you allowed a rate which would only pay the EMP station for the incremental sets added.

Let us take what is perhaps the harder case, 2 primary affiliates, 1 basic and 1 not; and to make it concrete, let's use one of the instances set forth in Senator Bricker's report, the situation as between Kansas City and St. Joe, Mo.—although as I understand it from your statement you have since changed affiliations; your affiliation there is now with KCMO instead of KMBC; is that correct?

Mr. STANTON. I just wanted to say that I don't make any distinction of any substance between those two—the change in call letters—as far as the St. Joe thing is concerned.

Mr. COX. No. This, however—was this just a change in call letters or was this a shift in affiliate?

Mr. STANTON. This was a change in affiliation for good and sufficient reason. But I think, for the purpose of the discussion that you want to have, the fact that we have changed affiliation shouldn't impede your question.

Mr. Cox. All right. Now Kansas City, here, is a basic station on your must-buy list, and St. Joseph is not; is that correct?

Mr. STANTON. That is right.

Mr. Cox. Do you have any idea approximately what percentage of CBS's commercial programing is ordered for St. Joseph?

Mr. STANTON. No, but if one of my associates has the figure in his black book, I would be glad to take it and give it to you.

Senator PASTORE. May we please have quiet? Now, after all, ladies and gentlemen, we have a very distinguished witness here who represents a very large free enterprise in the country. He is a man of great distinction and I suppose in many quarters one of tremendous envy. Now, I do not think there ought to be all this giggling and all this chatting to and fro. Let's have calmness here, please. Let's hear the witness.

Mr. STANTON. The answer to that question, Mr. Cox, is 77 quarter-hours a week.

Mr. Cox. Seventy-seven quarter-hours a week?

Mr. STANTON. That is right.

Mr. Cox. And that is out of a total offering of something like 72 hours—wasn't that what you had in your typical week?

Mr. STANTON. I think it is of that order; 68 as I recall, but you may be right.

Mr. Cox. Now, can you tell us what efforts would be made by the CBS sales organization to sell programs on the St. Joseph station? In other words, as I understand it, there is no problem as regards Kansas City; it is a basic primary station and it must be purchased. Now, what effort is made by CBS to interest advertisers in buying additional stations over and above the basic required list?

Mr. STANTON. Well, I think the best testimony to that is the difference between the basic must-buy list, which is 52, and the average lineup in the daytime, which is 83, and the average lineup at night, which is 121. That is a quantitative answer. I would say that there is considerable effort made saleswise to sell supplementary stations because, essentially, we want to get our programs into the—all the markets that we can possibly get them into.

Mr. Cox. Are you free to make that same effort with respect to a station which is overlapped, in the way KFEQ is, that you are with respect to a smaller market which is, however, a complete entity unto itself and presents no problem of overlap with another CBS affiliate?

Mr. STANTON. I think that question, as far as the station that you are talking about in St. Joe, is discussed by Mr. Griswold's letter of May 3, which is included as an exhibit in the analysis to the Bricker report. It was a letter that describes that in part, at least, that situation of selling effort.

Mr. Cox. He indicated a substantial improvement over 1954 in the amount of programing that CBS had been able to get ordered for this station.

Mr. STANTON. Yes. Reading from his letter, Mr. Cox, he says:

For instance, our total network income in 1954 was $32,2953; in 1955 our total sales from CBS network were $51,292, an increase of $18,339.

Mr. Cox. Now, there is only one station in St. Joseph; isn't there?

Mr. STANTON. If you say so, I will take your word. I am not familiar with every allocation in every city. As I understand it, that is right. Yes.

Mr. Cox. Therefore, the Kansas City affiliate of NBC has no overlap problems in either area?

Mr. STANTON. Well, has no overlap problem with St. Joe.

Mr. Cox. Well in other words, when an advertiser buys Kansas City on NBC, he knows he is not going to be asked to buy any possible duplication of that coverage?

Mr. STANTON. Well, you are looking at this particular market, and without knowing more about the surrounding markets in the NBC television affiliations, I am not sure that I can meet the line that you are taking here. But as it pertains to St. Joe, I would assume that—I mean I would assume no effort is being made to sell St. Joe to the WDAF advertiser.

Mr. Cox. In other words, NBC can sell its Kansas City affiliate as providing an unduplicated service clear out to its 100 microvolt contour, or whatever standard they use?

Mr. STANTON. Depending upon what overlap problems NBC might have in other directions.

Mr. Cox. From other stations?

Mr. STANTON. That is correct.

Mr. Cox. If any. Now, does it tend to make your Kansas City affiliate any less attractive, or to produce any contention about the rate at which it is sold, if KFEQ is being sold on an increasing basis and the advertiser raises the problem that he is now being asked to pay KFEQ and KCMO for the same coverage?

Mr. STANTON. Wherever there is overlap, sir, there is always a problem on the part of the affiliate. Not as it necessarily pertains to the network rate or to the network program situation, but the more programs a station has in the way of service—the more programs two stations have in an overlap area—the greater the difficulty when it comes to establishing circulation for either of those stations on local and national spot business.

Now, in a sense, this isn't quite as critical in television as it was in radio, because in time, I suspect that the orientation of antennas will be frozen either one direction or the other in much of that overlap area.

Mr. Cox. When that time arrives would it be the policy of CBS, then, to credit to each of these stations in accordance with the more or less established viewing habits of the people in the overlap area?

Mr. STANTON. I think that is essentially correct. As I said yesterday, we would place our case in terms of—and to the extent that we can make the measurements—we would place the case on what the viewer does, not what the signal is alleged to do.

Senator PASTORE. Doctor, in the operation of CBS, wherein does lie the area of the keenest competition? What gives you the most competition in the running of your station?

Mr. STANTON. I suppose the keenest competition, sir, is, first, in the area of programing, in the field of ideas. Second, I would say in the field of selling. And, third, in vying for the loyalty and the support and cooperation of our affiliates. But the first one is by all odds the greatest.

Senator PASTORE. You mean programing as against other networks?

Mr. STANTON. Not only against other networks but against our own voracious appetite. There has never been a medium since the beginning of time, I think, that has used up the manpower and money and material that television has.

Senator PASTORE. What is the procedure that is followed in the selling of a program to an advertiser? He buys a program for a specific number of weeks?

Mr. STANTON. Ordinarily he goes into it for a longer period than a given number of weeks, but contractually he generally buys on a 13 weeks' cycle basis. He may say, "I am going to buy this particular program in this time period for 52 weks." But more times than not, he has the right to get out at 13-week intervals, so that if he feels he hasn't made a good buy he can step out at the end of 13 weeks.

Senator PASTORE. But he is tied down ordinarily to 13-week periods?

Mr. STANTON. That is if he buys, yes; that is, I think, a pretty safe answer for the lion's share of the schedule. There are some exceptions.

Senator PASTORE. Has there ever been a case in your experience where a man or an advertiser was tied up for this period of 13 weeks at least, and then you both discovered the fact that the program did not take too well with the viewing public and he was released from his commitment?

Mr. STANTON. I am not sure there has been a case where he has been released from his commitment, as far as the advertising contract was concerned. But there have been cases, sir, where the advertiser and we were not happy with the program that we were supplying, and we have remedied that situation by changing the program and the advertiser has been perfectly happy to live up, then, to the balance of his contract.

Senator PASTORE. And does that usually come about because a competing network, at the same time, has a program that more or less has become more attractive?

Mr. STANTON. No; that doesn't necessarily—if it is within the cycle, to go back to the case that you indicated, that comes about by the fact that we want to be doing business with that man beyond the contractual limits of the contract; and we try to keep him as happy as possible, on the one hand, while on the other hand, we have got to keep up our level of programing not only for the public but for our affiliates. Because if the affiliates aren't satisfied with the program once they get it, once they have tasted of it, they can come back to us and say: "We don't want it."

Senator PASTORE. Well, now, there again I should like to ask you a question, too: For what period of time are they tied up?

Mr. STANTON. Generally, they are ordered for 13 weeks.

Senator PASTORE. No; I mean an affiliate, now.

Mr. STANTON. You mean an affiliate's contract?

Senator PASTORE. You turn on channel 12 in Providence; they say, "This is an NBC station." You turn on—that is pretty conclusive. You can't shuttle back and forth.

Mr. STANTON. It is a 2-year contract.

Senator PASTORE. Whether it is good or bad, I suppose has to stem from the point of origination.

Mr. STANTON. Except that the station does have veto power. For instance, we couldn't feed them something that isn't good, in the sense that the station has to carry it, from the standpoint of serving its local audience, even though the affiliation remains constant. That station can say, "I don't want this program; I don't like it, it is not good for the market." Obviously if we had enough of them saying that we would have to change the program.

Mr. COX. Does he do this part way through the 13 weeks' series?

Mr. STANTON. He has done it part way through the series. Generally, that isn't the case. But that has happened and can happen.

Mr. COX. When that happens, does that indicate that he did not fully understand the nature of the program at the time he first cleared time for it?

Mr. STANTON. It could be that, or it could be that he understood what the program was then, but the program wasn't able to continue the level or the format that started in the first broadcast or 'the second broadcast. It is many times difficult, Mr. Cox, to maintain for the entire cycle the level that you always see in the first dry run, whether it is a live show on a recording to look at, or whether it is a film show.

Everyone in the creative field, like the selling field or anything else, wants to put his best foot forward first. I am more concerned about what the fifth or the ninth program is going to look like than I am about the first program. Everybody has one book in him and one good first show, but it is the next show that I am concerned about.

Senator PASTORE. And that is a continuing responsibility.

Mr. STANTON. Yes, sir; it certainly is. And when you said where is the competition, it is not only competition from other networks and other media of communication, it is competition right within your own family, because you are digging all the time, trying to get better product, and one is vying against the other to put his ideas forth.

Senatore PASTORE. Now, take in a community such as Providence where you have 2 stations, and realizing the fact that you have 3 networks, how much of a leeway has either station got to go to the third network? Or is he shut out by the terms of your contract?

Mr. STANTON. He is not shut out by the terms of our contract.

Senator PASTORE. How much leeway does he have?

Mr. STANTON. As much leeway as he thinks he should have in terms of the products offered by the two networks.

Mr. COX. What is the average record of clearance, however, for ABC stations in two station markets like Providence?

Mr. STANTON. I can't give you that answer, sir; but I would say that it still stands, and the action of the station still stands in terms of what he elects to do. It is nothing that we can force him to do, or contractually that we can force him to do.

Mr. COX. In connection with this matter of Kansas City and St. Joe, if and when you can get to the point that you can measure the viewing preferences of the population in this area of overlap, and you therefore adjust the rates Kansas City and St. Joe have, will not that tend to make St. Joseph a more attractive market in terms of cost per thousand?

Mr. STANTON. It may or may not. It depends on what the figures show at the time, Mr. Cox.

Mr. COX. He can only gain, can't he, to the extent that he gets credit for coverage in the area of overlap?

Mr. STANTON. No; he can gain 2 or 3 ways. First, he can gain in the area that isn't duplicated by increase——

Mr. COX. But I mean with respect to the area of overlap. He can only get a positive benefit from a policy which would credit him with some part of the sets in that area.

Mr. STANTON. Well, he is getting credit for some of that now.

Mr. COX. On what basis?

Mr. STANTON. Well, on the basis of the best information we have got at hand. That will vary market by market, but this is in consultation with the affiliate, with our engineering personnel, and with our audience research personnel.

Mr. COX. Did you ever make a commitment to an affiliate in the larger market—in order either to get the affiliation or to maintain it—that you would not recognize the claims of the overlap station with respect to that area?

Mr. STANTON. I know of no such commitment and I am sure none has been made.

Mr. COX. In chart XVI in your supplemental memorandum you explain why CBS did not affiliate with KOVR in Stockton, because of the overlap situation that would have been created. Now, haven't you created an overlap problem for yourselves by shifting affiliation in Fresno from KJEO to KFRE-TV?

Mr. STANTON. We have a map in here, Mr. Cox, on that situation.

Senator PASTORE. Page 68.

Mr. STANTON. Would you read me the question back, please?

Senator PASTORE. Clerk, can you read the question back?

(Question read.)

Senator PASTORE. You know, it is always very pleasant to hear a stenographer's voice. We seldom ever do. [Laughter.]

Mr. STANTON. I am just trying to locate the map, Mr. Chairman.

Senator PASTORE. Take your time, Doctor.

Mr. STANTON. Mr. Cox, we have increased the overlap in one direction, I would say. At the same time, however, we have filled in much more area than was served before by the UHF station, KJEO-TV.

Mr. COX. Where is that area?

Mr. STANTON. Well, the area is to the south, to the——

Mr. COX. Is this area that is not now covered by KERO, from Bakersfield?

Mr. STANTON. Well, KERO is not the affiliate in Bakersfield according to this map.

Mr. COX. Doesn't it have a dual affiliation?

Mr. STANTON. Well, it is a primary NBC affiliate. KBAK-TV is the affiliate that we are talking about.[3]

[3] In a letter dated June 27, 1956, which was inserted in the record on July 17, 1956, Dr. Stanton commented further on the change of affiliation in Fresno and explained that his reference to KBAK-TV as a CBS affiliate was somewhat premature, since the network was then only considering such an arrangement. This letter is printed at p. 2856.

Mr. Cox. That is the UHF station?

Mr. STANTON. That is correct.

Mr. Cox. And you feel that KFRE will provide you with coverage toward the south which KBAK does not give you, and KJEO?

Mr. STANTON. Did not give; that is correct.

Mr. Cox. Isn't it true that Mr. Lodge advised you that, based on his studies there:

We would credit KFRE under normalized county standard with only one more county (Tuolumne—with 4,500 families) than is presently credited to KJEO?

Mr. STANTON. This, I have to plead ignorance to, because I don't get into the computation of every rate and I know nothing about this evaluation on the part of Mr. Lodge, Mr. Cox.

Mr. Cox. Well, could Mr. Lodge answer whether that was in fact the result of his investigation?

Mr. LODGE. That information was contained in a memorandum I believe I sent to Mr. Shurick at the time of analyzing the difference. I also believe that that memorandum, or other information I gave Mr. Shurick, indicated that our mere measurement of whole counties wherein we went by discreet steps of an entire county minimized the effect of the gain we would obtain by shifting to KFRE.

Mr. Cox. Do you feel, then, that the additional coverage you have obtained here in one direction more than compensates for the increased overlap that you get to the north?

Mr. STANTON. Yes; I think it improves the service of the network, and furthermore we had a commitment to KFRE to affiliate if it got channel 12 and satisfactory terms could be worked out.

Mr. Cox. Why was it that this commitment was strictly conditional upon its obtaining a VHF, as distinguished from a UHF, channel? Simply in order to get the coverage that you are speaking of here?

Mr. STANTON. That is one of the considerations, but another consideration is that that was what our radio affiliate was applying for at the time. The UHF was not a matter of discussion at the time.

Mr. Cox. That is, you were not at the time you made this commitment an affiliate—you had no television affiliate in Fresno?

Mr. STANTON. I would want to look at the letter on that date, Mr. Cox. But my recollection is that there wasn't any affiliation at that time with KJEO-TV. But what I really mean is that at the time we sat down and talked with the applicant for channel 12, he did not talk with us about making the letter conditional or having it read to UHF. He was setting his cap for VHF and was an applicant for the VHF.

Mr. Cox. And he was then your radio affiliate in Fresno?

Mr. STANTON. He was then our radio affiliate and is now our radio affiliate.

Mr. Cox. Now, with respect to the division between the network and the affiliate of the station's time charge, how is that determined?

Mr. STANTON. Could you give me, please, a little footnote to that, because I do not understand your question.

Mr. Cox. How is the percentage split between CBS and its affiliate arrived at? This is specified, is it not, in your affiliation agreement?

Mr. STANTON. Oh, yes; it is very clearly specified. I suppose that is arrived at or was arrived at the same as any other contract percentage stipulation is arrived at. It is arrived at in negotiation.

Mr. Cox. Is there any standard pattern in such matters among your affiliates?

Mr. Stanton. It is very standard. There are very few exceptions to the percentage that is specified in the contract.

Mr. Cox. And that standard is 30 percent to the affiliate and 70 percent to CBS?

Mr. Stanton. No, not 30 percent to the affiliate and 70 percent to us, but in terms of net dollars about 50–50 between the affiliate and us. That 70 percent that you referred to loosely there includes all the gross fees and the agency discount and money that we never get our hands on.

Mr. Cox. I recognize that, sir. It also takes care of the line charges, it takes care of the cost of television recordings and all the other things that you itemized in your statement. But the basic rate of the station is still 30 percent of gross time charge?

Mr. Stanton. Right.

Mr. Cox. Now, there is another factor which enters into the calculation of the affiliate's share and that is the matter of free hours. How is the number of free hours for any particular affiliate determined?

Mr. Stanton. Well, it doesn't vary by affiliates, though there may be 1 or 2 instances where it might. But for the large part it is standardized at 5 free hours. That, I think, is legitimately a case of where you could say there are historical reasons for that; and without trying to be facetious, let me just say that that, I think, is a carryover from the contract form that existed in the days—not in the days of the radio network, but existed when we started our radio network affiliation contracts and continues in both contracts. If we didn't have the 5 free hours—it would be very simple to remove the 5 free hours if that troubles anyone and just adjust the percentage to accommodate that fact. There is no magic to the 5 free hours. It is a carryover. It had its roots in a very logical point in the days of the radio—when it was originated in the radio days.

Mr. Cox. Now, do I understand you to say that there is almost the same degree of uniformity as to free hours as there is to this percentage distribution of time charges?

Mr. Stanton. I would say almost, and I would say further than that, where the 5 free hours don't exist it is all flat 30 percent, and the reason for that variation is because there are some instances, and I can detail the cases; I think as a matter of fact I am luckier than I thought because I have got the sheet right here. There are a number of stations where they pick up the signal—either off the air or they maintain their own links—either with their own investment in equipment or they buy the service, so that in those cases there are no free hours and the station gets a flat 30 percent.

Mr. Cox. Are there any other cases in which there are no free hours?

Mr. Stanton. Well, I am a little nervous about saying absolutely no, but substantially no. Oh, yes, I am glad that that has been brought to my attention. The secondary affiliates don't have the free hours, but I am addressing myself here to what we consider our network, which is basically the primary stations.

Senator PASTORE. You and Mr. Cox, Mr. Stanton, know pretty much what you are talking about, because we are on the professional level; but after all, we develop a record here for a lot of people who don't attend these meetings.

Now, tell us a little bit about how this money is paid out. You make a contract, let's say, with Chrysler Corp. to put on a program. How do you allocate the money that is paid to the individual station, and how is that all figured out? I mean, give us the fundamentals of the procedures involved, and the same thing about this free hours that we are talking about, so that people who read this record will know what you mean.

Mr. STANTON. A large part of that, sir, is set out in this supplemental memorandum, and if the record will reflect that and if I leave out everything——

Senator PASTORE. I mean in a very simple way. You know what I mean, and I think you are capable of doing it.

Mr. STANTON. Well, I suppose it starts out with an idea, and that idea may be on the part of the client or it may be on the part of his advertising agent or it may be on the part of our sales department, as far as interesting a customer in a sale. But before there is an interest in the sale there has to be something to sell, which is a program and facilities. And I would like to start with the sale of the time.

We are assuming, if you will, that we have got a network of X number of stations, and the rate that we charge, or the price that we charge, the advertiser for that time is a standard charge—nighttime has one rate, daytime has a lesser rate. Then if that advertiser indicates that he wants to go to, let's say, 85 percent of the population, and he specifies the markets where he is most interested in getting that coverage and concentration of circulation, we try to give him a network of stations which will match that circulation.

The price that that man is charged—let's say, in this case, Chrysler—the price he is charged for the time is an aggregate of the individual prices that are on each of those stations, so that Providence has one price, Boston has another price, New York has a different price, Philadelphia has still a different price, and so forth. That is the way the time is sold. Now, if he buys that time for 52 consecutive weeks, he gets certain discounts. If he buys it for only 13 weeks, the price per week is higher than if he buys it for 52. In other words, there is a bulk rate for beyond a certain point.

When we make our affiliation contract with the station, and the term of that contract is 2 years, generally, never longer than that. And the length of that contract is fixed by FCC regulation on the affiliate, not on us. When we make that contract there is a discussion, or a negotiation, if you will, about what the price will be for that facility. Whether it is $500, whether it is $600, that will depend upon a lot of factors.

But once that price is agreed upon—and, as I indicated yesterday, we, I think, have more to do with that than the station does. But there are instances where our hands are prettly well tied on what the price is because it may be a station that is switching from one network to another, where in a sense the rate has already been established as the going rate on the property when it was affiliated with another network. But at that time we agree to provide that station a balanced program schedule and we get option time, commitments that are specified in the standard form of contract, which is part of the exhibits here, and that contract is so written that the first 5 hours we get free from the station.

In other words, we put the program on the station and we don't pay the station anything for the first 5 hours. And then, from that point on, he gets 30 percent, as Mr. Cox said, of our gross rate for that station. In net dollars, that translates itself really into 50–50. And that is the way the station part of the deal is set.

Senator PASTORE. You say 5 hours within 24 hours that you get free, or 5 hours out of what?

Mr. STANTON. Five hours out of a week. And thank you for bringing that out, because this is again too much of the professional talk here. That 5 hours out of the week he gets—we get free.

Senator BRICKER. What is the reason for that?

Mr. STANTON. Senator Bricker, it came about in the early days of the radio network where, in exchange for the 5 hours of free programing that they gave us, we committed ourselves to give them a program service. Prior to that time they were paying for our sustaining programs—the ones that we didn't sell to advertisers—and they were buying those from us, and we agreed not to charge them for that if they would give us 5 free hours in exchange.

But as I said to Mr. Cox, it may have been before you came in, that 5 free-hour thing is one that could be adjusted out of the contracts very easily, simply by adjusting the percentage that you pay on the balance of the hours. It is not an insurmountable problem.

Mr. COX. Do you, in general, tell the affiliate now that he gets anything in return for the free hours, or is it purely and simply one step in the computation of this division?

Mr. STANTON. It is both things; he gets a lot for the 5 free hours, in the sense that he gets a lot of sustaining service, he gets a lot of public service broadcasting, he gets the benefit that flows from the whole affiliation.

Mr. COX. But you can't say he gets that in return for free hours any more than you can say he gets it in return for the time charge that is paid over?

Mr. STANTON. That is right; it is not a clear quid pro quo. And I would be perfectly willing, without any hesitation, to adjust the contracts to reflect the 5 free hours and to adjust the percentage. Don't let this 5 free-hour thing get in our way here, because it has just been carried over from an earlier form of doing business.

Mr. COX. Well, in connection with your indication that your standard practice was the 5 free hours per week and there were few, if any, exceptions, we have formed a substantially different opinion based on at least the initial analysis of the replies of your affiliates—a good many of whom indicated, perhaps under misinterpretation of the question, that they were not supplying you with any free time.

Mr. STANTON. Well, that comes as news to me. [Laughter.]

I am sure our accounting department will take note of this in the record. [Laughter.]

No, I think, Mr. Cox, in fairness to the affiliates and to clear the record here: There has been a lot of misunderstanding about the

5 free-hour thing, and particularly on the part of people in television who weren't in radio and didn't have the experience of the genesis of this device.

Mr. Cox. Now, is that 5 free-hour figure specified in your affiliation contract with them?

Mr. STANTON. It is.

Senator PASTORE. Don't misunderstand the tone of my question, but assuming you are in a location where you have 3 stations—1 is tied up with the NBC, 1 is tied up with CBS and 1 with ABC. Now, the life and the existence of that station depends upon your feeding them national programs. Now why do you keep emphasizing the fact that you must do so much catering to the station? It looks to me like the station has to do all its catering to you.

Mr. STANTON. Well, Senator Pastore——

Senator PASTORE. I mean if you shut them off they are out of business.

Mr. STANTON. Yes, but——

Senator PASTORE. You can't go to ABC, it is already tied up; nor to NBC, it is already tied up.

Mr. STANTON. But where are we going to go?

Senator PASTORE. You can go to another affiliate. You can expand your network, but they have no place else, too.

Mr. STANTON. No, I am very sorry, I think we are not on the same frequency today.

Senator PASTORE. Let's get on the same frequency.

Mr. STANTON. I didn't misunderstand your question or the tone of it.

Senator PASTORE. I am not being critical; I am asking you wherein does your competition lie, you say to keep satisfying the broadcasting station, your affiliate.

Mr. STANTON. Sure.

Sentor PASTORE. In other words, you created the impression pretty strongly that you have to do quite a bit of catering to them. To me, it looks like the reverse is true; they have to cater to you, because if they don't meet your conditions and meet your approval, if the contract is not renewed, where else would they go to get a national network?

Mr. STANTON. Well, there are 2 broad classes of affiliates—and I don't think you can divide them all into 2 broad classes, but for the sake of this discussion—there are the ones that are in the markets that are highly sought after. They are the larger markets for the most part, and those affiliates have many opportunities to take business from other sources, other than the network, so that we have to cater to them.

Senator PASTORE. That is in New York, Los Angeles, Washington—Mr. Stanton, you wouldn't say that is so in Providence.

Mr. STANTON. Yes, I would say that is so in Providence.

Senator PASTORE. Why?

Mr. STANTON. Because that is an important market. I am not trying to use any of Senator Magnuson's soap, either.

Senator PASTORE. Neither am I.

Mr. STANTON. No, that is an important market. I would say that once you get past, let's say, let's call it someplace between 70 and 80 markets, then we begin to veer over to the other kind of station that

I am talking about, and that is the one that is wooing us for as much business as it can get. That is a station, a market, let's say, that might be overlooked in trying to find the best places to take the cream off the sale of merchandise by an advertiser. If he has got a limited budget he might say, "I can't afford to buy every station that is on the network, so I will make up the list as far as my money holds out, and it may end at the 82d market." Now, the man who is in the 84th, 85th, and so forth, he comes in and wants to get on that network very badly, not only to get the program but to get the income.

So we have those two broad classes. There aren't pure cases in either extreme.

Senator Pastore. Where would that individual, that station, get its service—from a producer you mean?

Mr. Stanton. He is in bad trouble in my opinion. That is one reason I think it is so important to keep networks alive and to keep them strong and healthy.

Because we channel, as I tried to point out yesterday, I think a disproportionate amount of the advertisers' income into those smaller markets. And the only other way I know how to take care of that smaller market—and I don't know whether this is legal—but the only other way I know to do it, and I don't know of any way to do it in a democracy, is for somebody to say "You can't charge Cleveland this much because you have to take some of this money and put it in Yuma."

We try to do that in a systematic way and to make it as painless for the advertiser, and as beneficial for the small market, as possible. So there are those two groups, the ones that don't need us so much and the ones that need us a lot. But in your 3-station example that you gave, if it is a market with 3 stations and you say: What happens if we cut off that affiliate, what does he do? Well, if it is an important market, he can do pretty well without us. But I am not ——

Senator Pastore. Where would he go? That is the question I am trying to resolve here: Where would he go to get these high-class national programs?

Mr. Stanton. Well, I think he would have a difficult time going anyplace but a network. But there is a lot of good programing made available on film and from the syndicators and so forth, and we have said so in one of these documents here. I think there is a lot of fine programing coming from the independent packager and available to the independent station. But what I wanted to say to you before, sir, is if there are only 3 stations in the market, and there are 3 networks, it is not where does he go, it is where do we go—as ABC knows—if we break with that man? We have no place to go; we must have that market. We cannot afford to be without it.

Mr. Cox. Don't you try to acquire the ABC affiliate?

Senator Pastore. In other words, you would have difficulty, I suppose, in dealing with your advertiser later on if you couldn't furnish that many affiliates?

Mr. Stanton. We couldn't have a map of the United States that had moth holes, or swiss cheese holes, all through it where we didn't have affiliates. We try to get as broad a coverage as we can get.

And to answer your question, Mr. Cox: If we did go to the ABC or the NBC affiliate, then in turn that network would go to one of the others—there would be a game of musical chairs, and that has happened on occasion.

Mr. Cox. Isn't it true you have testified that CBS has, for the last year or two, been the dominant network in terms of gross billings, it has had a preeminent position in terms of popular shows—therefore, isn't it quite likely that the man who is affiliated with you in a three-station market is quite anxious to retain this particular affiliation with your particular network, and that he would not be willing to take risks of offending you if this might involve the necessity of this game of musical chairs you are talking about?

Mr. Stanton. I wish it were that way, sir, but the record, I don't think, will support your point. I think that the stations have a pretty good give and take with the network. I see a number of them in the room here, and I can remember some of the give and take that we have had with them. [Laughter]

Mr. Stanton. And we have an affiliates' advisory board for our radio network and an affiliates' advisory board for our television network—and these have been pretty earthy meetings, at times.

And I think we have resolved a lot of our problems; and we have corrected things that they were doing that we didn't understand, and we have corrected things that we were doing that they didn't understand. So that I don't think that this is a one-sided street by any means.

Senator Pastore. Would you say, Dr. Stanton, that the three networks are getting stiff competition from the independent producers?

Mr. Stanton. As far as program production is concerned?

Senator Pastore. Yes.

Mr. Stanton. Absolutely.

Mr. Cox. Is this in terms of the attractiveness of your produced programs against their programs on the network, or isn't this in terms of the availability of time for them on a syndicated basis?

Mr. Stanton. Well, it is both, Mr. Cox, and I think the trend from 1954 to 1956, in the figures I gave yesterday, demonstrates 1 of the 2. And I think that if you look at the growth of the independent producer, or the independent producer-packager, in terms of his ability to sell these packages on stations, I think that that is pretty good evidence on the second point.

Mr. Cox. That has largely been just incident to the overall growth of television, hasn't it? That is, it is only apparently within recent months that they have begun to encounter real difficulty in finding outlets for their programs?

Mr. Stanton. Well, I still think that if on the average interconnected affiliate that we have got on our network—as I tried to show here in this 1 chart—that if 68 percent of the time is filled by outside-produced packages, that that is a pretty good indication that we haven't got any stranglehold on the programs.

Senator Potter. What would happen, Dr. Stanton, if one of your prime affiliates decided they had an independent show which might be more popular in that area than, for example, I love Lucy, and they asked you to relinquish that time for their independent show?

Mr. Stanton. Well, we would do it. We have affiliates, for example, I suppose—and I hope the representatives of the competing networks will pardon what I am going to say here, but I suppose the most exciting thing that has happened in television as a series program in recent years has been The $64,000 Question. Now, you would normally think that a station would jump at the opportunity to have that program. It was front page news all over the world as that program got under way. And yet, there are stations that have been ordered for that program, and are affiliates, that are not clearing for that program. And as I indicated yesterday, in I think the footnote on page 88, if I am not mistaken—no, that isn't the right footnote. But at any rate, the history of the clearance problem on that particular program is recited in a footnote here which I indicated yesterday.

So that is something that I don't like to see happen, because I am trying to persuade the station to take the program. But believe me, sir, it happens; and the figures that I gave yesterday indicate that out of the—even out of the 52 basic required stations, 91 hours ordered were not cleared as ordered, out of the 52—on the 52 basic stations in 1 week. Now, those basic required stations are all, for the most part, in the larger markets.

Senator POTTER. If they fail to clear a period of time, particularly option time, for a network program, would there be a likelihood of retaliation in the case of a program that they did want in another period of the day?

Mr. STANTON. Absolutely not, and I don't think you will find any of our affiliates that will ever give you any indication that there has been any retaliation in any way. I will say this: That we try to persuade them to think that our program is superior to the program that they might be taking, but the judgment is very simple, it is in the man's hands that has the license.

And as one of my associates just wrote on a piece of paper here, because I had forgotten the figure, of all the network-time periods that we have sold now on the network, only three of them have all the stations cleared that were ordered. Which I think is another way of answering the question that you asked before.

Senator POTTER. Do you think the networks will be confronted with increasingly stiffer competition from the independent producers?

Mr. STANTON. I hope we will be, because that way lies better programing for the public.

Senator POTTER. Now, this development of pictures on tape, won't that have quite a revolutionary effect upon independent programing?

Mr. STANTON. It is difficult to see the shape that that will take at the moment. There are a lot of problems that come up with labor contracts in connection with the employment of that; there are a lot of facilities changes. But this is bound to have a very marked effect on the future pattern of things.

The tape equipment will allow for a great deal of flexibility for the network; will allow for a great deal of flexibility for the station; and I think will allow certain types of stations in small markets to get on the air with, perhaps, lower operating costs. And I think this is the introduction of automatic equipment, in the sense of recording on tape as against recording on film, and then playing it back through electronic equipment. I think this is very healthy for the industry.

To give you one example of how it will—or how it might eventually help the public: It is very simple, too, I think, to tell you this one, because more and more of the country is going to varying time zones. It is not uniform. And this plagues the broadcaster, as I suppose it plagues anyone who goes coast to coast with his service, such as airlines and railroads—and I am sure some of you have been through the mill on this question. But for large parts of the country what happens in the originating center affects the viewing habits where the clock doesn't change at all. And there is no reason the person in Kansas should be upset with his viewing habits because the clocks are changed in New York City.

Now, if we can adjust those time—our schedule for that part of the country through the use of tape, where we give good quality and instantaneous recording, this is a great benefit to the viewer because it doesn't upset his viewing habits twice a year. We have done this in radio, because we have had tape for radio ever since the end of World War II. We haven't got it yet, as far as this application is concerned, for television, but this I think will evolve from this latest development. And that will again benefit the viewer, because it means that the person in New York, when the clock changes, doesn't get any changes—his favorite programs are on at the same time. But the man in Kansas, or the man in some other part of the country that doesn't have daylight time, doesn't get his schedule knocked back an hour simply because the originating point changes.

Senator POTTER. Dr. Stanton and Mr. Chairman, I would like to pursue a couple of more questions on another facet of this problem, and I may have to be called on the floor. So I know that counsel has his questions pretty well integrated, but with the permission of the Chair I would like to ask Dr. Stanton this question. And I assume you probably have answered it in one of your memoranda submitted to the committee, but I will be very frank with you, Doctor, I haven't had an opportunity to go through the memoranda as I would like.

I assume you have refreshed your memory on Mr. Moore's testimony before our committee, where he made many recommendations. One of the—I would like to quote you from Mr. Moore's testimony and I would like to receive your comment on his testimony, and he states:

> The first is the agreement between a network company and the licensees of certain individual stations whereby each station agrees to withhold certain desirable time periods from sale to any advertiser unless the advertiser agrees to purchase equivalent time on all stations throughout the country who are parties to this agreement. These are the so-called must-buy agreements, utilized by CBS and NBC. * * * We were naturally interested, however, in the following excerpt from the recent testimony of the Assistant Attorney General Barnes before this committee.

And he quotes from testimony of Mr. Barnes, who is head of the Antitrust Division of the Department of Justice; and this is in response to a question by Mr. Cox. Mr. Cox' question is as follows, and I quote:

> There has been testimony that NBC and CBS follow a must-buy policy, under which an advertiser, to get on a network at all, must buy time on a minimum of 50 or 55 stations, whether it wants to advertise in all these markets or not. Is there any possibility that this practice might violate the antitrust laws?

Judge Barnes' reply was, "Yes."

And as I say, I assume you probably covered that in one of your memoranda. But the memoranda, as I understand, will not be made a part of the record, but will be used as references to the record. And

I think as long as Mr. Moore's statement has been made a part of the record, it would be desirable to have your comment as to whether you feel that your must-buy agreements are in violation of the Antitrust Act.

Mr. STANTON. Senator Potter, I have before me here the Opinion of Counsel and Memorandum Concerning the Applicability of the Antitrust Laws to the Television Broadcasting Activities of Columbia Broadcasting System, Inc. This was prepared by our counsel, Cravath, Swaine & Moore, and Judge Bromley, a member of that firm, is at the table with me here. He may wish to address himself to your question because I think it might save time and be less costly for the record if he comments, rather than if I do.

Senator POTTER. Yes.

Senator PASTORE. Can you do that, Judge Bromley?

Mr. BROMLEY. I would be very glad to, Mr. Chairman. I think I should say at the outset that my good friend, Judge Barnes, by his own statement had not had an opportunity to study this problem in detail. All he indicated was that he thought there might be a question about its lawfulness. Now, he had not at that time had the opportunity of reading my opinion, either. [Laughter.]

Senator BRICKER. In his new position he might have something to say about that, too. [Laughter.]

Mr. BROMLEY. We treat this, starting on page 58, and point out that the network is in the business not of offering all sorts and kinds of mediums, but it is in the business of offering a network. And there is nothing unlawful in its saying, "Here is what I am offering: I am offering a minimum of 52 stations. I don't want to sell 1 network station to an advertiser, I don't want to sell 2, I am offering a network." And that is, while it is in a sense a restraint, it is a reasonable restraint under the rule of reason which the Supreme Court has applied to all section 1 Sherman Act questions. And an examination of the cases like the Prairie Farmer case, where the publishers offered the advertiser a package of farm papers at a discount price, has been sustained—that kind of a reasonable restraint has been sustained by the Supreme Court time and again. And I am confident it will be sustained here.

Senator PASTORE. In other words, if you don't contract for 55 stations you can't buy wholesale?

Mr. BROMLEY. That is right.

Mr. COX. If you don't buy 55, you can't buy at all?

Senator PASTORE. I suppose the quality of the program is predicated upon the spread.

Mr. STANTON. Absolutely.

Senator PASTORE. And there is a certain cost element involved that depends upon the kind of a spread that you give it.

Mr. BROMLEY. That is right, sir.

Senator PASTORE. And the basic cost of that spread is 55 stations that you have to cover.

Senator POTTER. I assume your 55 stations would give them the nationwide coverage that they seek—that the advertiser seeks? If he wants to advertise regionally——

Mr. STANTON. He wouldn't buy coast-to-coast network.

Senator PASTORE. He wouldn't get I Love Lucy.

Mr. STANTON. Not at the present time.

Mr. Cox. Judge Bromley, is there any possible analogy between this situation and that of the theater chains; where in some markets the chain owned the only theater available and insisted that if you wanted to exhibit your films in their theater, that to get into that market you had to also take their particular theater in 20 or 30 other markets where there was some choice? Now, isn't it true that the two dominant networks have affiliation arrangements in certain of the essential markets in this country, and that through that degree of control of the time available for broadcast in those markets, through a must-buy policy, they are in a position to insist that you take specified stations in other markets—not that you advertise on a national scale, not that you buy another market, but that you take a particular outlet in that market?

Mr. BROMLEY. No. I think you are talking about the Griffith case. I think there is no analogy here because there is no conspiracy. Even you wouldn't suggest there is any combination between the three competing networks. And the the Supreme Court has said there is nothing wrong in an exhibitor owning the only theater in one town. True, he can't tie to that one-theater town a whole lot of other competitors for the purpose, with the intent and with the effect of injuring his competitors in other towns. But I don't look upon the basic required as a tie-in situation at all, because what are we tied to? We don't tie anything to anything in the sense that Griffith did in his situation there. It requires a little keen analysis, Mr. Cox, but I am sure if you read this opinion you will at least see what I am contending for. And that is that there is involved in this national medium, and the minimum stations, no element of tying something of which we have complete control to something that we haven't complete control for the purpose of injuring competition.

Senator BRICKER. If you will yield for just a moment I want to clear up two questions. In case that ordered time is not taken by an affiliate station, is there an adjustment of your basic contract then with the advertiser?

Mr. STANTON. Well, the advertiser, Senator Bricker, is only charged for the stations that he ordered and that accepts; and if they don't clear, then the advertiser is not charged for them.

Senator BRICKER. In the case where the ordered time is not taken by one of the broadcasting stations, how is that explained? Is there anything in the record to show? Is that by the independent producers' programs, or by local programs, or what is the substituted program that is used in most instances, the nature or character of it?

Mr. STANTON. Well, it varies from case to case. Generally, it is either a local program, in the sense it is a local live program, or it is a program that is on film and is bought from an independent package-producer organization.

Senator BRICKER. It might be of particular importance in that community?

Mr. STANTON. It might be or might not be.

Senator BRICKER. Cheaper program; matter of price?

Mr. STANTON. Not necessarily a matter of price. It may be a matter of content. There are occasions when there will be a break in a particular market to broadcast a local event of some importance. That is a one-time break. There may be other instances where the advertiser doesn't clear—I mean the station doesn't clear for a matter of weeks. That may be the illustration of an important series of sporting events locally; it may be the hometown baseball team or something of that kind. Or it may be some other popular program that is on film that some advertiser wants to put into that particular time period.

Senator BRICKER. The only way, then, that you could enforce your ordered time is through payment, first, and withdrawal of the contract—the affiliation contract—in the second place?

Mr. STANTON. Well, yes; except that that is not the way we operate.

Senator BRICKER. I know.

Mr. STANTON. We consider this a very binding contract.

Senator BRICKER. That is what I am getting at.

Mr. STANTON. Absolutely. But, we have never invoked it from a legal sense.

Senator BRICKER. How would you enforce that—cancellation of the contract?

Mr. STANTON. Well, I expect the first remedy we would try would be to get the lawyers to remind them of what is in the contract that they have got. And, in due course, if we didn't have any success there, I suppose we might take some other remedy in the sense of trying to get another affiliate.

Senator BRICKER. There is no enforcement provision that you have in the contract; there is no penalty provision in it in any way, shape, or form. The only enforcement comes that they don't get the money for the time, in the first place; and in the second place you can cancel the contract and go to another affiliate.

Mr. STANTON. That is right. There is another element that I think we are missing here in just reducing it in terms of dollars and legality. And that is that these programs have a great deal of importance to the affiliate for their overall circulation and prestige that they give to the station. So that if the station accepts the program from us, it isn't just a matter of money, but it is a matter of indirect benefits that the station gets by the adjacent time periods that are enhanced by the presence of the network program.

Senator BRICKER. In other words, you get a captive audience at a particular time, or you have an audience—of course, they can shut it off if they want.

Mr. STANTON. That is right, there is a good lead-in, let's put it that way.

Senator BRICKER. Yes.

Senator PASTORE. Just so that we can dispose, on the record, of the other subject that we were just discussing, this must-buy: Isn't it usually the case where a certain type program of a high cost production is sought by the advertiser, that in order to put that program on you have to go out and get two or three advertisers in order to sustain it?

Mr. STANTON. Yes, not all of the programs that we have are sponsored by a single advertiser.

Senator PASTORE. Well, now, what I want to get on the record is why is that so? I want you to explain that on the record. Why, in many cases, do you have to get more than one advertiser in order to put a program on?

Mr. STANTON. Economics is the answer, sir. We might have a program that cost $100,000, just the program; not the time, but the program may be $100,000. We may find it easier to find 3 advertisers to share that $100,000 on an every-week basis than we would to find 1 advertiser to take the $100,000 bill every week. Or you might split it in another direction. Instead of splitting it three ways every week, you might split it half and half on alternate weeks.

Senator PASTORE. But, if one of those 3 advertisers came along and said, "I will take this program, and instead of giving me 55 stations just give me 10"—you couldn't give it to him?

Mr. STANTON. We would not sell it to him. Because what we are selling, sir, is coast-to-coast coverage of a minimum of 52 stations.

Senator POTTER. What would happen if you had an advertiser who would take a show, and your affiliates rejected the show in substantial numbers so they gave you concern—you really had a stinker on your hands. [Laughter.]

What do you do about it?

Mr. STANTON. We try to remedy that very quickly, because it is not only the loss of the affiliates that matters, but that is a distinct interruption to our program schedule, where the stations do carry what you have characterized as a stinker. And the thing that we can't afford to have happen to our schedule is to have the sequence broken, because each program leads into the next program and we put a lot of study and effort into how we phase those programs in terms of sequence or time. And if we had a low point we would do everything we could do to shore that up very fast ourselves, even digging down into our own pocket to fix it up, particularly if it is an outside program. The advertiser would be just as quick to want to change that program as we would be, because he is after the same thing we are after. He is after circulation. His benefit flows from the benefit that flows to us from serving the public. And if we don't have large numbers—this is a mass medium—if we don't have mass circulation, the advertiser isn't interested in us. And I say that I don't want to characterize that as 100 percent, because there are some advertisers who are interested in programs that aren't necessarily the utmost in circulation. But by and large, what the advertiser is buying is circulation.

Senator POTTER. The reason I asked the question, I have heard of cases where an advertiser thought that such and such a show was a fine show and that the stations that had to carry this show thought differently. Now, whether they made—whether they were vocal to the network or to the advertiser, I don't know. But I am just wondering if the case where the advertiser—it is his show, they produce the show or the program, and maybe they have contracted for time for 13 weeks, or whatever it might be. At the end of 5 weeks you found out that it was—you had heard from enough of your affiliates to know that it was hurting your whole network programing. Just what can you—can you force the advertiser to get another show, or can you cancel his contract if the show doesn't come up to standards?

Mr. STANTON. Well, it depends upon the seriousness of the quality of the program as to what limits we would go to. But, it never gets itself into that particular position, Senator Potter, because the advertiser is right there beside us in wanting to fix that situation up. He wants the good will of the public, he wants the good will of the station.

He may be buying network time today, he may be buying spot time tomorrow, and he is in business for the long haul. We are in business for the long haul. And so it isn't looked at on the basis of invoking a clause in the contract. We try to fix the thing up. Because the most precious thing we have got is that audience that is out there, and if we do anything that drives that audience away from our channels to some one else's channels we may never get them back for quite some time. And so we do everything we can do to encourage the viewer to stay with us—not to drive him away. And the affiliates, if they felt that we were feeding them a program that wasn't worthy of the schedule or of their facilities and for the audience in their communities, they—I believe they would not go to the advertiser and complain, they would look to us, and rightly so, for having gotten them into that predicament. We don't obviously do it deliberately, and we have had shows that have gone to pieces for one reason or another—not anything wrong as far as content was concerned, but the quality wasn't as good as the first one. As I indicated a minute ago, we jump in as rapidly as we can to remedy that situation.

Senator PASTORE. We will take a 5-minute recess at this point to give the stenographer a recess.

(A short recess was taken.)

Senator PASTORE. Mr. Cox?

May we have quiet now, gentlemen?

Mr. COX. Dr. Stanton, Senator Potter was asking you about possible instances in which you had received complaints from affiliates and had therefore had to doctor your program schedule. Are there instances in which CBS, itself, has made changes in its program scheduling because it was not satisfied with a program, even though the advertiser concerned may not have agreed?

Mr. STANTON. Mr. Cox, I don't believe I answered Senator Potter the way you phrased the question.

Mr. COX. No; I am shifting now to another point.

Mr. STANTON. I know you are, but I think I did not say what you indicated in setting up your question. I think—I don't recall of any instances where we have changed programs because the affiliates complained to us. I think that—I thought this was a hypothetical question——

Mr. COX. Yes.

Mr. STANTON. That I answered in the case of Senator Potter. That is the way it would work if we didn't step in first. But we, I think, are more sensitive to this problem, perhaps, than even the affiliate, and we would move in very quickly on a situation like that.

Mr. COX. Are there any instances where you have made changes in programing even though the advertiser concerned did not concur in your judgment?

Mr. STANTON. Yes. I think that there have been some instances where that has happened.

Mr. COX. Is CBS now carrying a program called Four Star Playhouse?

Mr. STANTON. At the present time I believe it is in the schedule; it was in the schedule this season. It may be off now, but it was in this season's schedule.

Mr. COX. Do you know how long this has been on the network?

Mr. STANTON. I can't give you precisely that, but all of that information about the Four Star Playhouse, Mr. Cox, is covered in a memorandum which I will be glad to give you for the record.

Mr. COX. I would like to have that. I would also like to discuss some phases of it here.

Senator PASTORE. Do you want that in the record at this point, sir?

Mr. STANTON. I would like it in the record at this point.

Senator PASTORE. Without objection, it is so ordered.

(The document referred to follows:)

Thursday—9:30 to 11 p. m.

FOUR STAR PLAYHOUSE—PLAYHOUSE 90

Four Star Playhouse is 1 of 3 half-hour programs which will be replaced in the fall of 1956 by Playhouse 90, a 90-minute weekly dramatic program.

Four Star Playhouse is currently being broadcast on Thursday evening from 9:30 to 10 p. m., sponsored on an alternate week basis by Bristol-Myers Co. and the Singer Sewing Machine Co. The other programs which were being broadcast in the time period to be occupied by Playhouse 90 at the time plans for it were finalized were the Johnny Carson Show, produced by CBS television and sponsored by General Foods Corp. and Quiz Kids, sponsored by Whitehall Pharmacal Ltd.[4]

CBS television decided in the summer of 1955 to provide and broadcast an hour and a half dramatic show on a weekly basis in the hope that such a program would open up new sources of dramatic material and enrich the viewers' enjoyment of television drama. The decision to assume the financial commitments for this series was made with the hope, but without any assurance that it could be sold. (As a matter of fact, alternate sponsorship has not yet been obtained for the 10 to 11 p. m. portion.)

In recommending Playhouse 90, Mr. Hubbell Robinson, executive vice president of CBS television in charge of network programs, stated in a memorandum, dated June 17, 1955, addressed to Mr. J. L. Van Volkenburg, president of CBS television:

"Bill Dozier and I have been discussing for some weeks now the possibility of doing an hour and a half dramatic show on a weekly basis.

"We believe this may be the next big forward step in evening television. Here are some of the reasons which prompt up toward that conviction.

"1. It opens up a large area of material not available to the weekly 1-hour formula. There are many distinguished authors who will not release their material for a 1-hour adaptation, feeling that is not sufficient time in which to do it justice.

"2. This would be the first show to come to the public each week as an hour and a half. No one else would be doing anything of this size with this frequency.

"3. * * *

"In every phase of the operation this should be a distinguished, an important, and an impressive production.

* * * * * * *

"5. Another attractive aspect of this type of production is that a 90-minute script is practically the perfect length for a motion picture. This would make this project more attractive to authors * * *.

"6. If we were to go ahead with such a project we should decide on it at once. I should think we would think of it in terms of starting in the fall of 1956, but we should use the current season buying and preparing the material. This means we would have the precious time to prepare it carefully. Also, selecting and purchasing it, we would not be under the pressures and urgencies which we always seem to have to contend with and which

[4] General Foods canceled its contract for the Thursday 10 to 10:30 p. m. time period and its contract for the Johnny Carson Show, effective after the broadcast of March 29, 1956. The Arthur Murray Party, sponsored on an alternate week basis by Toni and Hazel Bishop, is currently being broadcast in that time period. Whitehall canceled its sponsorship of Quiz Kids effective after the broadcast of April 12, 1956. That program is now being broadcast on a sustaining basis.

frequently result in our having to pay more than we want to and ending up with a product which could have been better if we had more time.

"7. As to the hour and a half into which this show would go, it obviously does not exist at the moment but it would seem to me that if we start planning and maneuvering now we would have a reasonable chance of making an hour and a half available by the fall of 1956. In fact that would seem to me the only way we could make an hour and a half available.

"8. Such a series would require two teams of producers working alternate weeks. One of these teams could be Markle and McConnor; the other team we will probably have to acquire.

"In conclusion I only want to say that it seems to me as if this could be a tremendously impressive series that could not only be the most important and distinguished dramatic undertaking in television, but one that, by virtue of its stars, stories and frequency, could be television's biggest dramatic audience-getter."

Present plans are that, for the first year, the Playhouse 90 series will consist of 36 live programs to be produced by CBS television and 8 filmed programs, each of which will be repeated during the summer, to be produced by Screen Gems, Inc., a subsidiary of Columbia Pictures Corp. Our arrangements with Screen Gems provide for that organization to produce at least 8, and if requested, up to 13 filmed programs for CBS television during the 1956–57 season. After determining that Playhouse 90 should be broadcast, consideration was given to selecting the most appropriate time period. The Thursday 9:30 to 11 p. m. time period was finally selected because, among other reasons, it was believed that the interest of program sequence would best be served by having the program follow Climax and because of the general weakness of the then programing in the 9:30 to 11 p. m. Thursday period.[5]

Despite the fact that in the opinion of CBS television program executives Four Star Playhouse was not an outstanding program, at no time were sponsors of that program told that the program was not acceptable. On the contrary, the advertising agency for Bristol-Myers and Singer was advised in February of 1956 that if those clients did not desire to participate in the sponsorship of Playhouse 90 but wished to continue to sponsor Four Star Playhouse, CBS television would endeavor to find another suitable time period. At the same time the advertising agency was informed frankly that CBS television could give no assurance that a suitable substitute time period would be available.[6]

In any event, CBS television was not faced with the necessity of attempting to find a substitute time period for Four Star Playhouse because its sponsors decided to participate in the sponsorship of Playhouse 90.

In short, CBS television has never refused to accept Four Star Playhouse. CBS television has never been requested to accept the program in another time period. If such request is made, CBS television will consider the suitability of the program for broadcasting in the specific time period suggested.

In connection with the uncertainty of CBS television in February of 1956 as to its ability to provide a substitute time period for Four Star Playhouse, the following is pertinent: Mr. J. L. VanVolkenburg consulted with representatives of Young & Rubicam as early as August of 1955 concerning the plans of CBS television for a 90-minute dramatic program in the 9:30 to 11 p. m. Thursday

[5] Four Star Playhouse was not a strong program, in the opinion of the program executives of CBS television. During the period from October 1955 through April 1956, its ratings averaged 6.7 points lower than the programs which preceded it (Climax, in 3 weeks of each 4-week period and Shower of Stars every fourth week) and 9.5 points lower than its principal competition, Ford Theater. While the ratings of Four Star Playhouse were less than that of the programs which preceded it, the ratings of its principal competition, Ford Theater, were approximately equal to those of Dragnet, the program which preceded Ford Theater through December, and considerably higher than those of The People's Choice, the program which preceded Ford Theater during January through April of 1956. Furthermore, while the average of the ratings during the period October 1955 through April 1956, both inclusive, of all CBS television network programs broadcast between 6 and 11 p. m. was 25.4, the average rating of Four Star Playhouse for the same period was only 22.9. It is interesting to note that the average rating of Meet Millie, a program produced by CBS television and with which CBS television was dissatisfied, achieved an average rating during the period October 1955 through the first Nielsen rating period in March 1956 of 22.6—for all practical purposes the equivalent of that of Four Star Playhouse. (Ratings used are Nielsen average audience ratings.)

[6] It is our information that the Zane Grey Theatre which will replace Our Miss Brooks, a CBS television produced program, in the fall of 1956 will be produced by an organization, not connected with CBS, in which the equity ownership will be held by many of the same persons as originally held an equity ownership in the organization which produced Four Star Playhouse.

period. Mr. VonVolkenburg was encouraged by the agency's reaction to the plan and its expression of interest on behalf of its clients, Bristol-Myers, Singer, and General Foods. CBS television network program executives kept the agency constantly advised of the progress of the programing and understood that the clients of the agency were interested in participating in the sponsorship of Playhouse 90 as a substitute for the programs which they were then sponsoring. It was not until February of 1956 that CBS television learned that sponsors concerned had some question as to whether or not they wanted to participate in sponsorship of Playhouse 90. In going forward with its plans to broadcast Playhouse 90 CBS television was merely exercising what in its opinion are its programing responsibilities. When, however, questions were raised in the general area of network's programing activities, CBS television held its plans in abeyance and submitted questions involving Playhouse 90 to its general counsel. Only after CBS television received an oral opinion from its counsel that no violation of the antitrust laws was involved did CBS television go forward with its plans. Subsequently at CBS television's request, CBS television received a written opinion confirming the oral opinion.

Mr. Cox. Do you have a copy for the reporter?

Would it be roughly correct to say that it has been on the network since September 1952, now going into its fourth season?

Mr. Stanton. Yes, I would say that is so.

Mr. Cox. Currently that program is sponsored by Singer Sewing Machine Co. and Bristol-Myers; is that correct?

Mr. Stanton. That is correct.

Mr. Cox. Has it had generally good rating by the critics and a good rating as far as your surveys are concerned?

Mr. Stanton. That is covered, sir, in the footnote in the memorandum; or if not in the footnote it is covered in the text. I am referring to footnote on page 3.

Mr. Cox. You indicate that it was not a strong program. What is the current time period that is occupied by this show?

Senator Pastore. At this point, unless you show it to the stenographer, will you please read out loud so that he can take it down.

Mr. Stanton. As a matter of fact, I will be glad to give him this copy and we can both work off of it.

At the present time I think that program is 9:30 to 10 on Thursday nights.

Mr. Cox. And the program has been in that time slot for some time?

Mr. Stanton. It has been.

Mr. Cox. You indicate that it received ratings somewhat lower than Climax, the show that preceded it, and on which you had spent considerable money; and that it also had a rating, at least at some time, considerably below its competition on NBC, which is Ford Theatre. Was this a matter of concern to the advertisers involved?

Mr. Stanton. I suspect it was. It was primarily a concern of ours.

Mr. Cox. That is, they did not come to you with complaints about the problem, and with the request to improve the situation.

Mr. Stanton. Mr. Cox, I can't say whether they did or whether they didn't, as far as all members of the staff are concerned. I have had no conversations with them on that particular point.

Mr. Cox. Did CBS go to them and suggest the possibility of introducing a new program in this time period?

Mr. Stanton. Yes. CBS television representatives went to the agency involved as early as August of 1955 to discuss the possibility of improving the time period and the program.

Mr. Cox. What was the program suggested?

Mr. Stanton. The program suggested, sir, is covered in the memorandum; it is called Playhouse 90.

Mr. Cox. And that would be a program to be produced and controlled by CBS with, as I understand it, some participation by Screen Gems in the production of films for a part of the series?

Mr. Stanton. That is to be an hour and a half program, part of which will be produced live by CBS television and part of which will be produced on film by Screen Gems, a subsidiary of Columbia Pictures, Inc.

Mr. Cox. Four Star Playhouse is a film program which is produced by another independent film agency, which was organized, as I understand it, by the stars who appear on the program, is that correct?

Mr. Stanton. Essentially, yes.

Mr. Cox. What was the reaction of the agency and advertisers' people to this approach of CBS?

Mr. Stanton. Well, the agency representing the client encouraged us to go forward with the plan. That is set forth in the memorandum.

Mr. Cox. You then went forward with your planning and made further recommendations as to the nature of the program?

Mr. Stanton. That is correct.

Mr. Cox. Did you at any stage have a story selected, a producer-director selected, talent lined up, or were you talking largely about a concept of longer drama than was currently being presented in the series?

Mr. Stanton. That is pretty well spelled out in the memorandum. Obviously you start a thing like this with a concept and not with talent. So that you first get the idea and then you begin to assemble the stories and the directors and the producers and the personnel required.

Mr. Cox. Now what was the sponsor of the show in the next time period, which would also be covered by Playhouse 90?

Mr. Stanton. Well, that was General Foods from 10 to 10:30. But that advertiser had indicated that it was not going to stay in the time period.

Mr. Cox. It was voluntarily leaving the time period?

Mr. Stanton. That is correct.

Mr. Cox. The show in that time period was Johnny Carson, which is a CBS property.

Mr. Stanton. It is; it was a CBS-produced program.

Mr. Cox. How was its rating?

Mr. Stanton. Not satisfactory enough to hold the client.

Mr. Cox. Was it doing as well as Four Star Playhouse?

Mr. Stanton. It was not.

Senator Pastore. Let me ask you a question at this point. Let's assume that The $64,000 Question was being produced by an independent producer—can CBS afford to throw that out?

Mr. Stanton. Could we afford to throw it out in the sense that we had the right to, or you mean if it weren't any good?

Senator Pastore. I mean, could you take a program like The $64,000 Question, regardless of who produced it, and eliminate it from the air at this point?

Mr. STANTON. Well, we, I think, would have a revolution on our hands if we were to do that with The $64,000 Question. But if that were a turkey, or, as Senator——

Senator PASTORE. Didn't you have a revolution on your hands when the Four Star Playhouse went off the air?

Mr. STANTON. No; we did not.

Mr. COX. It is not off the air yet?

Mr. STANTON. It is not.

Mr. COX. Therefore, there would be no complaints.

Mr. STANTON. Well, there has been a lot of publicity given to it in the columns.

Mr. COX. Now, the final conclusion as far as the advertisers were concerned was that they were not interested in Playhouse 90 and that they would prefer to continue with the Four Star Playhouse?

Mr. STANTON. I don't understand that to be the final conclusion, sir. I don't see how it could be the final conclusion when the advertisers voluntarily went into the Playhouse 90 series.

Mr. COX. Well, they voluntarily went into Playhouse 90, because if they did not go into Playhouse 90 they would not be on the CBS network at that time, and you indicated grave doubt as to whether you could get other time for them?

Mr. STANTON. Well, we didn't exhaust the second alternative that you suggested there, because we haven't come up to that particular point yet. Long before that and quite before that the agency encouraged us to go forward with the plan because they thought it was something to recommend to the client.

Mr. COX. But was the agency's ultimate recommendation to the client that they should accept this show, or was it that they should continue with Four Star Playhouse?

Mr. STANTON. I assume the ultimate recommendation was to go with Playhouse 90.

Mr. COX. But this was only after there had been an indication that if they did not go with Playhouse 90 they would not be on the network at that time?

Mr. STANTON. I am not absolutely sure on that point, sir.

Senator PASTORE. Are you collecting more money from your advertisers for Playhouse 90 than you were for Four Star Theater—Four Star Playhouse?

Mr. STANTON. Well, we didn't collect any money from the advertisers for Four Star Playhouse, because that was an independently produced package. The amount of money we collect from the advertiser for time is identical in the case of the 9:30 to 10 period, whether it is Four Star Playhouse or whether it is Playhouse 90. We will not make a profit on Playhouse 90. We have gone into the Playhouse 90 program sequence from 9:30 to 11 o'clock because we felt that there was need in television's nighttime schedule for a regular hour and a half drama every week. Now, there are many hour and a half dramas on a sporadic basis, but there is none on a regular basis of this particular kind, especially produced for television. That is why we arrived at the 9:30 to 11 time on—that is why we went into the program. And we selected 9:30 to 11 on Thursday night for it because we thought that was the best place in the schedule to have that kind of programing.

Senator PASTORE. But, had you received any complaints on the Four Star Playhouse?

Mr. STANTON. Complaints from the advertisers?

Senator PASTORE. From any source?

Mr. STANTON. I don't know of any complaints. But, in our opinion, it wasn't a strong show for the long pull. And we felt that some new life was needed in the schedule. We were in very bad condition at that time period.

Senator PASTORE. Is it a policy of CBS to try to get in one of their own produced shows wherever they can?

Mr. STANTON. Absolutely not, sir, and the record refutes it.

Senator PASTORE. In what way?

Mr. STANTON. The record refutes it in the fact that the amount of time that is occupied by our own programs now as against a prior period in time, say 2 years ago; it is down considerably from there.

Senator PASTORE. Well, it might be the chances are the independent producer is producing better shows than you are able to produce, and that is the reason why your solicitude is in that direction. But assuming, where you can—is it a policy of CBS to have its own show where it can have its own show in place of an independently produced one? I think that is a legitimate question. I don't think I should be very much bothered either way you answer it. You have a right to have a policy of producing your own shows if you like.

Mr. STANTON. I have no hesitation in answering your question. Our policy is to get the best possible program in the schedule, and we are not concerned whether it is ours, or whether it is an independent, or whether it is one that is produced jointly.

Senator PASTORE. Well, now, are you telling me——

Mr. STANTON. We have no policy.

Senator PASTORE. That it is a casual situation that you decided to change Four Star Playhouse or Theater, or whatever you call it, or was it a pretty well-designed plan?

Mr. STANTON. It was a very well designed plan. These things are not done casually.

Senator PASTORE. Could you give us the background of what led you to it? In view of the fact that this situation has now been raised by Mr. Cox, I think we ought to have a better background on it because the implication here that Mr. Cox is raising is that, apparently, these people had a satisfactory program, and that because it was an independently produced one, CBS deliberately knocked it off the air because they would like to put on their own show. Now, that is the implication.

Am I right, Mr. Cox? I mean I would like to come to the point. [Laughter.]

Let's come to the point. If that is the implication, I would like to know what your answer to it is.

Mr. STANTON. Well, the implication is without foundation. I will be glad to read the memorandum, which sets forth in as few pages as possible the story, the background, and exactly everything that I think we can supply for the record.

Senator PASTORE. Can you summarize without reading it all, Dr. Stanton? I mean if you feel that you have to read it all. You are pretty well familiar with these documents. I notice you pick up a big book and you go right to the page. Why don't you give us a résumé of what it is, without reading 4 or 5 pages?

Mr. STANTON. The document is in the record anyway, so there is no point in repeating it.

Senator PASTORE. Yes.

Mr. STANTON. The situation is very simple. We didn't think that we had the strongest programing that we might have on Thursday night from 9:30 to 11. We felt there was need for the hour and a half dramatic program that I have just indicated. There is no program of that kind produced for television week in and week out.

Senator PASTORE. How long a program was the Four Star Playhouse?

Mr. STANTON. Thirty minutes.

Senator PASTORE. You took an hour and a half? What are the other programs that were knocked off?

Mr. STANTON. Two programs of our own.

Senator PASTORE. What are their names?

Mr. STANTON. Johnny Carson and Quiz Kids.

Senator PASTORE. Those went off, too?

Mr. STANTON. They will go off; they haven't gone off yet.

Senator PASTORE. I mean the plan is to take those off, too?

Mr. STANTON. I think Carson is already off. But taking it in the heart of last season, as against the heart of next season, the programs were Four Star Playhouse, Johnny Carson, and for part of the season Quiz Kids.

Senator POTTER. Were you influenced in your decision because of your competition on the other networks?

Mr. STANTON. We certainly were, sir. That is one of the reasons why the schedule was going down in terms of— deteriorating in terms of ratings, is because we had very stiff competition, and we analyzed the competition. We analyzed the kind of programs that were available on Thursday night and other nights of the week. We felt that the next big kind of program to put in the nighttime schedule was an hour and a half dramatic program. There is none, now.

There are plenty of hour programs and plenty of half-hour programs. There are many plays and books which cannot be condensed satisfactorily to a half hour or to an hour, and we felt we would be making a contribution to the programing service to the public by putting an hour and a half program in there. We had no thought at any time that this had to be a CBS television package.

As a matter of fact, we went outside to get production help on this, and we have made independent contracts for the production of the program so that this isn't the problem at all. The problem stems completely from the fact that we did not think we had adequate programing in the time period.

Senator POTTER. You know, one of the things that bothers me: You have on one half-hour period maybe three excellent programs. I assume that the competition from the other networks generates better programs than on the other two networks. But then you can have a half an hour or an hour on where you have a pretty lousy show on all three networks. [Laughter.]

Senator POTTER. It would seem to me that if you hit one of those soft spots in there, you can really make some hay.

Mr. STANTON. Senator Potter, your soft spots are other men's strong spots. Believe me we try to keep the whole level of the schedule as high as we can possibly make it. We had a soft schedule on Thursday night. There might be some difference of opinion as to how soft it was. But we had another spot in our schedule where a program was rating just about the same as Four-Star Playhouse, and this one happened—the one I am referring to now happens to be one of ours, and we didn't treat it any differently than we treated Four-Star Playhouse. We got rid of that one, too. So that we are not being any different to our own child than we are to someone else's. As I said at the outset of my statement yesterday, our primary obligation is to put out the best possible service to the public and we watch the public reaction to these programs just as carefully as it is humanly possible to do so.

As new techniques are developed, I think we will be in the foreground of those who are applying them to find out more information about our programs and the public's acceptance of them. The whole thing stems from that.

We had 10:30 to 11 unsold. We had 10 to 10:30 where we were getting a cancellation. We had 9:30 to 10 with a program that we didn't consider a strong program. We also had this concept that we felt that the public deserved to get certain kind of plays that could not be reduced to the hour or the half-hour format without losing a lot that was in the play. So we felt that someplace along the line there had to be an hour and a half series. And with the kind of weakness in the schedule that I just indicated, and with the kind of lead-in that that kind of program would get from Climax we thought that was the logical spot to put Playhouse 90 on.

Let me go back. The idea of having programs—90 minutes isn't anything new. We have no reason to claim any credit there. We had the idea when we started Studio One many, many years ago on Monday night at 10 to 11. After a season or so of Studio One from 10 to 11, we soon discovered that there were many important properties that could not be rewritten and condensed to fit into that hour format, and the producer on that program came and talked with me personally about the concept of an hour-and-a-half show. And we searched our schedule from stem to stern trying to find a place where we could put an hour-and-a-half program in the schedule. And it wasn't that we didn't have the open time periods at that time. The problem was that you couldn't find enough stations to stay with the program from one half-hour to the next, and if you don't have the same programs for the whole 90 minutes, it can be the best show in the world and who wants to see the middle act of it?

So we had to find a place, and we had to put that idea on the shelf until such time as there were enough affiliates available so that we could have a constant network from the beginning of the show to the end of the show. And each year we have examined our schedule to see where that hour-and-a-half show might go. And this season seemed to us to be the logical time to launch the program.

We had the weakness in the schedule, the open time, and we had the idea. And it is as simple as that. There isn't anything sinister to this thing. I have read the press just the same as Mr. Cox has, and I know what people are saying. But, believe me, we are not foolish, on the one hand, to walk into that kind of situation or behave that way. The whole thing that motivated this was to serve the public with better programing.

Senator POTTER. On better programing, I believe it is Tuesday night, the night that everybody has—all networks, apparently, have these terror shows or whodunits. Now, it would seem to me that that might be dispersed throughout the week. I don't know whether it is too——

Senator PAYNE. CBS doesn't on Tuesday night. I can almost recite the programs. [Laughter.]

Senator POTTER. Am I talking to another network?

Senator PAYNE. You may be.

Mr. STANTON. I think you are. What you are describing about having more than one show that you want to look at, that is competition.

Senator POTTER. No; I don't want to look at all the channels. [Laughter.]

Mr. STANTON. Well, all right.

Senator PASTORE. You see the four stations in Washington have spoiled him. [Laughter.]

Senator PASTORE. I was never——

Senator POTTER. I don't get any at home.

Senator PASTORE. I was never spoiled that way. [Laughter.]

Senator PAYNE. Mr. Chairman, I think what Dr. Stanton is talking about is very interesting to me because I used to be, in my earlier days, in the theater business. And it is almost—it almost follows a pattern of theater programing, and of course it is true that there is practically no producer of a moving picture that can take a good seller, a good book, a good novel, and condense it much beyond an hour and 25 to an hour and 30 minutes for moving-picture production, and the same would follow true on television production.

Now, I happen to follow channel 9 here in Washington a lot. So let me just say that as one who, when he has an opportunity, is able to sit at home and watch a program—that I am going to welcome, frankly, the change that he is talking about here.

Now, to get at the matter that Senator Potter mentioned, with respect to these periods when you get some pretty lousy shows fitted into the thing—that is what we used to call in the theater game as feeders, in other words, fillers. We would start off, perhaps, with a news shot, and they would get some fillers in between, and then finally we would wind up with a good feature picture. But, in the meantime, the customer had to sit there and wade through.

On the television, you can shut it off or change over to another channel if you want to. The theater business was a little different in that regard. But it is programing very much in line with theater programing, moving-picture programing.

Mr. Cox. Dr. Stanton, was there, in addition to your concern with the status of your schedule and this interest in this new type of format, any element of financial commitment on the part of CBS which had reached such proportion that you felt you should go ahead with this?

Mr. STANTON. No. We have had financial commitments before and changed our mind on programs. I wouldn't say that the financial commitment had ever gotten to the point where we couldn't have changed our mind.

Mr. Cox. Is there a man named William Hylan on your staff?

Mr. STANTON. William Hylan?

Mr. Cox. Yes.

Mr. STANTON. He is vice president of CBS television in charge of network sales.

Mr. Cox. I have here what purports to be a photostatic copy of a letter he wrote to Mr. Robert P. Mountain of Young & Rubicam, on February 9 of this year, in which he recites the negotiations that have gone before, and says that: "We have reached and gone beyond the 'point of no return' in both of the above areas"—these being commitments for creative personnel and for desirable properties. "There is only one time period that can logically accommodate this program and that is Thursday, 9: 30 to 11 p. m. As we have discussed with you and your associates—we are hopeful that Singer Sewing Machine and Bristol-Myers will sponsor the first half hour and that General Foods will sponsor the last 60 minutes—"

Then he says in the last paragraph:

Although we are most anxious to accommodate all three of the above advertisers, the size of the financial commitment we have already made makes it imperative that we get a decision and a commitment from Bristol-Myers, Singer, and General Foods concerning sponsorship of Playhouse 90 within very near future.

Now, does this mean that if the show is to go on they must have this commitment, or does it mean that the commitment is such that CBS has decided that this must be the show in the time period?

Mr. STANTON. CBS television had decided that this must be the show for the time period, and I think that this is a wholly normal letter for a salesman to write in an effort to get the clients' commitment, so that, if the client says "No," he is free then to go someplace else and offer the time and the program.

Mr. Cox. I would like to read into the record Mr. Robert Mountain's reply of February 9, 1956.

In answer to your letter of February 1, we find that our clients have been placed in a very strange and untenable position—a position which we feel called upon to protest most vigorously. For you to understand our feelings, we need a little history:

Several months ago, you called us in to let us know of your investigations and explorations concerning a new concept—an hour and a half drama to be called Playhouse 90 to be scheduled on the network every week. You told us that for your purposes it would be ideal if this program were scheduled Thursday nights 9: 30 to 11. You asked us if we could explore with our clients—Singer-Bristol-Myers 9: 30 to 10, and General Foods 10 to 10: 30 the possibility that they might be interested in such a change of vehicle. You told us too that at that point you were not in a position to offer this show firm.

Some time later, in another meeting, you told us that Playhouse 90 had become a reality and that now it was only a question of what night it might be scheduled and that you still leaned heavily toward Thursday. We told you that we were interested, as we would naturally be in any new development of the business. We told you that we had explored it with our clients, and that it looked as though General Foods would be in no way interested for two reasons: (1) They have never gone for the dramatic vehicle and (2) That this would be sold to them as an hour instead of a half hour which they are currently using.

We asked you in that meeting, as we did in the first meeting, whether or not this meant this proposal could mean that you were considering taking the time away from these clients, and you told us that you felt constrained to find them another piece of time if this scheduling became a fact. In our last meeting which took place this week, you made it very clear to us that the scheduling was definite for Thursday night and that while you still felt constrained to "use your best efforts" to find another piece of time, you wanted it clearly understood that it was practically an impossibility.

This all boils down to the fact that Bristol-Myers, Singer, and General Foods have now been told by CBS that CBS is not taking their time away from them provided they buy the program that Columbia has arbitrarily put into their time. Also, the fact that no other time is available to them.

Four Star Playhouse has been on the air for 4 years with a consistent record of success and a fine advertising value. This show was developed and created as a collaboration between Don Sharpe and Y. & R. The Johnny Carson show from 10 to 10:30 is a Columbia package developed exclusively by CBS. We gambled on a new personality and on a Columbia package. We lost the gamble.

It is our position that Columbia is asking us to take another gamble on a wholly-owned and exclusive CBS package, and worse than that, we are not being asked—we're being told.

We do not believe that it is proper for CBS to force a client as important as General Foods into the type of entertainment which is in no way consistent with their advertising taste. Nor do we believe that it is any more proper to force a successful program for Singer and Bristol-Myers off the air for an untried format built for the benefit of the network itself.

We cannot accept the statement in your letter of February 1 that there is only one time period (Thursday 9:30 to 11 p. m.) that can "logically" accommodate this program. It is equally logical that it could be scheduled on Sunday, Monday, Tuesday, Wednesday, Friday, or Saturday.

We would appreciate any further thought that you might have on this matter.

Sincerely,

ROBERT P. MOUNTAIN.

Senator POTTER. Who is that letter from?

Mr. COX. That is from a vice president of Young & Rubicam, who I assume was the account representative for the sponsors involved.

Now, in the light of that, would it not appear that there was considerable reluctance on the part both of the agency and of the advertisers involved in making any change, or in making this particular change?

Mr. STANTON. Well, in the light of the letter. But I think you have got to know something of the background of the letter, and I think that what this gets down to is whether you want to turn over this medium, to allow the advertiser to dictate the kind of programs that we are going to give to our affiliates on our stations, or whether we have a responsibility as licensees of our company-owned stations and a responsibility that does not flow through the FCC but certainly flows in our relations with our affiliates to provide what we consider to be the best possible programing.

Mr. COX. No one would contest that the legal responsibility with respect to your stations is in you, and with respect to your affiliates is in them. But this raises the point that you undertook to answer yesterday in the concluding part of your statement, and to which Senator Bricker raised some question, as to the degree of control exercised by yourself and your associates, and by your counterparts in the other networks.

Mr. STANTON. It certainly does go to that, and it flows directly to the statement. Because in that statement, as I recall, I said that the public was the ultimate monitor in chief.

Mr. COX. But the public will be only permitted to make a choice between the showings which are presented by the three networks, after a choice has previously been made as to what is to be offered to them?

Mr. STANTON. Well, Mr. Cox, you are not suggesting that we make these choices in a vacuum, are you?

Mr. Cox. No. Have you ever had a suggestion made to you that the relative merits of two suggested programs be submitted to some kind of public testing?

Mr. STANTON. We do it every day.

Mr. Cox. In what way?

Mr. STANTON. When it is appropriate.

Mr. Cox. In advance of decision on a program?

Mr. STANTON. Many times.

Mr. Cox. In what way?

Mr. STANTON. With what we call—a system called program analysis, where we invite a cross section of the audience in and let them see a dry-run of a show, or if it is a film show let them see some of the episodes.

We have to be careful; it isn't always apropriate. There are certain types of shows that don't lend themselves to this kind of testing. But the idea of testing the program before it goes on the air is nothing new with us, and it is certainly nothing new with other networks, I am sure.

Mr. Cox. Admitting the legal responsibility for the selection of programing to be in you and your affiliates, is it not appropriate, nonetheless, that the other parties concerned be consulted, that their views be given their just weight—and wouldn't, in fact, that process of consultation perhaps produce a more reliable final result than if it is strictly a matter within your organization?

Mr. STANTON. Well, I think it is always better to have the parties to any particular program of change sit down and discuss it in advance, and that is why as far back as, I believe, August of 1955, representatives from our organization visited the agency in question and were encouraged to go forward with this plan.

That the agency didn't keep the client involved informed is something we didn't learn until quite late in the game, and by that time we had already firmed up our decision. And I don't know that the decision would have been any different even if that had been made clear to us right at the outset. Now, Mr. Mountain, I think, was not a member of the organization, and was not involved in these discussions at the time the initial discussions took place. That is one of the unfortunate misunderstandings that exists as background of that particular letter.

Mr. Cox. Now, even to this time, have you furnished to the sponsors any very detailed information as to who the personnel involved will be, the directors, the producers; what the stories will be—and have you been able to furnish any such information to the affiliated stations which you will ask to clear the program?

Mr. STANTON. As to the latter item, I am not certain. As to the former, we have.

Mr. Cox. In what detail—that is, to what extent?

Mr. STANTON. Story lines, producers, directors, names, dates.

Mr. Cox. For the whole series?

Mr. STANTON. Well, you don't go the whole 39 weeks in one sitdown. You go into blocks of programs.

Mr. Cox. Have they expressed themselves as being satisfied with that particular ——

Mr. STANTON. I can only assume that in the case of Bristol-Myers—and this gets into delicate client relationships in business—but I can only assume in the case of Bristol-Myers that Bristol-Myers cannot be too unhappy with the situation. Bristol-Myers is buying the time; this was not the only time that Bristol-Myers could have bought.

Mr. COX. Well, it seems to be suggested that you had not come up with any other time.

Mr. STANTON. May I develop my point, sir?

(Mr. Cox nods.)

Mr. STANTON. This was not the only time that Bristol-Myers could have bought, and second, or third, just recently Bristol-Myers has come back and bought more time in addition to this particular time from CBS television. Now, you don't come back and do more business with someone you think has not done well by you. There is ample time on other networks, and we have got other time even in our schedule.

So that they are not left without any place to go. As a matter of fact, they didn't even choose to go anyplace else. But Bristol-Myers just last week bought a new series—started within 24 hours after they placed the order. You don't do things like that in business if you are unhappy with people you are doing business with.

Mr. COX. That is a show that is now on the air?

Mr. STANTON. It is a show that is now on the air.

Mr. COX. I take it in the nature of your operations there was no consultation with even your affiliates advisory board regarding this proposed change in program scheduling?

Mr. STANTON. I can't testify as to whether the hour and a half program had ever been discussed with the affiliates advisory board, or not. I rather suspect it has been, in reviewing forward-looking plans, because this has been a gleam in our eye for some time. As to whether it had been decided, or discussed as 9:30 to 11 on Thursday night, there is a question that I can't answer.

Mr. COX. I mean in the sense of asking their recommendation with respect to the program? That is, do you ever canvass your affiliates, or those who are on this board, as to their suggestions for ways of improving the schedule, their comments on present programing, and so on?

Mr. STANTON. Yes, we do, and they volunteer long before we canvass them. I don't know whether we had discussed this particular 90 minutes, as I said a while ago. But this is a program of such excellence and such breadth and scope, and it would never occur to me to discuss this kind of a program with an affiliate.

Mr. COX. That is, you expect it to be. In other words, you cannot, as a positive matter, now have any assurance whether either the public or the sponsors would be better served by this series of programs than by any other combination, or a different format entirely.

Mr. STANTON. No. If you give me three $64,000 Questions, or something of that kind, and put them back to back, I will back away from what I said. But talking statistically, or in the realm of experience, and making an estimate as to what is going to happen, there isn't a shadow of a doubt in my mind but what this will be superior programing in terms of quality and in terms of a value from the standpoint of the advertiser, because he will get more circulation

And this all benefits the public, and comes back precisely to where I started yesterday—when I was talking at the biginning of my remarks and at the close of my prepared statement—that the public does determine what happens. I didn't sit in an office and say we've got to kick everybody out from 9:30 to 11 to make room for some pet idea of mine. This would be suicide.

Mr. Cox. Has the public ever indicated, as Senator Payne has, that they would welcome this?

Mr. Stanton. The public has indicated it many times in terms of the attention that they have given to the big special hour and a half shows. The public has indicated it almost from the beginning of the movies, because as Senator Payne pointed out, you have the traditional length there in excess of an hour. And the only difference—he put his finger on it beautifully—the only difference between what happens in the theater, as he described it, and what happens with us, is that they pay their money and they have no other choice in the moviehouse, but with us, they would leave us and go to NBC, ABC, or an independent station.

Mr. Cox. Are you going to be able to devote the same kind of budget to this as you do to your present hour and a half spectaculars?

Mr. Stanton. Well, we don't——

Mr. Cox. Well, if this is a trade secret?

Mr. Stanton. No; not at all. [Laughter.]

There are some of the hour and a half programs that we have had on a special program that have cost less than what this series will cost. There are others that have cost more than what this series will cost. I will say that as a budget, as far as a show goes, this is a very substantial budget for an hour and a half program.

Mr. Cox. You would expect it, therefore, to have the same success as your other shows of similar duration?

Mr. Stanton. I will stick my neck out a little bit farther. I would say that I would expect it to have greater success for one simple reason, and that is it is there every week at the same time on the same station. Therein lies one of the great underpinnings for the mass-circulation media. One of the things that I think would help all programs is to have them on regular time periods, so that the audience knows where they can go to find them. This is not said in any sense of criticism of the quality of the programs that have come on from time to time in isolated positions. But the audience gets very confused as to where these programs are and where they can find them. And the best thing you can do is to lock them into the time schedule so that the public knows, at 9:30 on Thursday night, there is going to be an hour and a half drama worth watching.

Now, it could be one Thursday might—if you had three different programs in there, and you put an hour and a half in once a month—I don't consider that to be as good a program service to the public as putting in the same high quality program every week. So that I think that per dollar spent we will get greater circulation, and the public will get more benefit by having it in there every week, than if we just put it in there once a month and even spent more money for the program.

Mr. Cox. Now, shifting to another subject, but still within the area of programing and of the alleged control of networks—according to this chart XX at page 77, I believe, in your supplemental statement, you show that you furnished some 49 to 60 hours per week of programing to 52 affiliates, which I suppose are your must-buy stations. That would represent, roughly, possibly an average of half, or somewhat less than half, of their total programing, would it?

Mr. STANTON. Well, that will vary.

Mr. COX. Assuming a median of 55 hours for the group.

Mr. STANTON. I don't have—I haven't looked at the operating schedules of all the stations for quite some time, and I know that they are gradually expanding their day. So I don't know whether it is 50 percent or not. But if you are talking from information that is recent, why I will certainly go along with you on that.

Mr. COX. No, this is just my estimate of what I assume to be their usual daily hours on the air. The point I am getting at here is: Don't you have, by virtue of your option time arrangements and your affiliation arrangement, a substantial degree of control, as evidenced by this table, over the program content of these stations, and of course a corresponding financial return from the exhibition of these programs over their stations?

Mr. STANTON. Well, I would quarrel with your use of the word "control." What do you mean by that, Mr. Cox?

Mr. COX. Well, as I understand it, you think your option is a legally enforceable right, and if it is legally enforceable, you control that time subject to the agreement——

Mr. STANTON. Well, the stations have ample opportunity to step aside from that option on legal grounds. If the program is unsuitable, it is spelled out in the contract—let me read you that provision. It is in the appendix where we filed the contract. Where is my copy of this?

Mr. COX. It conforms, generally, doesn't it, to the language of the FCC's regulations?

Mr. STANTON. I am sure it does. [Laughter.]

There are three bases, roughly, for the station to turn down the program. If the station reasonably believes the program to be unsatisfactory or unsuitable, that is one; the second is if the station, or the licensee, feels the program is contrary to the public interest; and the third point would be substituting a program of outstanding local or national importance.

Mr. COX. That, normally, would refer to a one-time, or a series, rejection of programs because of something that was happening at that particular time in a locality?

Mr. STANTON. That is correct, the last one.

Mr. COX. The last one. So that any rejection of an entire program series would be on the ground either that it was contrary to the public interest, or that it was unsuitable or unsatisfactory. Now, has any affiliate ever claimed that a program you were furnishing was contrary to the public interest?

Mr. STANTON. Not that I know of.

Mr. COX. And it would be highly unlikely, I suppose?

Mr. STANTON. You see, the difficulty with your question, Mr. Cox, or the difficulty with me, perhaps, as the witness is that I don't look inside the head of every affiliate when he makes up his mind as to whether he is going to take a program or not take a program, and we don't require him to file with us a written answer, or a written reason for not taking the program.

We think that it is satisfactory, if the station says "We don't want the program," we don't then say "Give us, and specify why, under terms and conditions as outlined in our contract." I doubt that we would be doing business with some of them very long if we became that technical. This business moves swiftly, and we assume that we are in this thing on a partnership basis, and that if there is a reason that they don't clear it, the reason must be good and sufficient.

We don't take the first "No" without hoping to persuade them that they will change their mind. But if it is finally "No," and as I indicated in answer to one of Senator Potter's questions, there are only three programs on the entire schedule where we got all the stations cleared that were ordered. So that we don't look behind the turndown.

Mr. Cox. But in terms actually of the amount of clearance that you get on these 52 stations, you are the ones who have selected the programs—and their control over that programing, if any, has been purely negative, in the form that they have not ruled it unsuitable?

Mr. Stanton. In many cases the stations know about the program before they get the program. Many times they are shown the program before it——

Mr. Cox. They are shown a film, a pilot?

Mr. Stanton. Sure. Many times it can be a program that has had exposure elsewhere, either on our network or on another network, and it is not a program that they are unfamiliar with. And if it is a personality that has established a certain reputation in terms of craftsmanship and ability to build a program and stands for certain quality, you don't question what the show is going to be because you know if it is built around that central character, you are going to have a quality program of a certain level.

Mr. Cox. For new shows—that is involving different ideas or different settings, or possibly new personalities—do the affiliates tend to require of you a considerable amount of detail as to the nature of the show, or do you furnish it in the ordinary course, before they clear it?

Mr. Stanton. I think we furnish it—well, the order and the information generally goes out pretty much at the same time. This varies from program to program. And the amount of information they get varies from program to program, and the sources of the information will vary. Sometimes they have seen a pilot of the program in advance, let's say, at one of our affiliates' conferences. I am not now talking just about the advisory, but I am talking about all the affiliates.

On other occasions, there will be teletype descriptions. And as I have already indicated, on many occasions they are programs that they are familiar with, either in terms of the program format from other exposure or from the personalities involved. But there is no question in my mind—if you are aiming back to this 90-minute situation—there is no question in my mind that you have got to sit down and give each affiliate every detail about a 90-minute dramatic series that we are producing. We stand for a certain quality of production. I think for many, many years our dramatic production in Studio One was preeminent in the field. There have been others that have been equally good elsewhere. But we haven't got a bad track record.

We have tried some things, and the losses that we have indicated earlier come from some of these experiments that haven't proved out. But in the dramatic field, if you have got writing and if you have got good production and direction, and you have got good talent, it is a pretty safe thing. This isn't an untried format, you understand. The dramatic hour and a half isn't anything new. It is just quality, and everything we can——

Senator POTTER. I would assume that you promote most of your new shows ahead of time, not only for the benefit of affiliates but also for the benefit of the public.

Mr. STANTON. Basically for the benefit of the public, because we want the public to know where to find the program scheduled. And we spend a lot of money on that.

Mr. COX. Basically, in terms of your track record, your performance, your affiliates—you would say they are reposing confidence in you and have left the selection of the timing and programing that is to go on to you and to your associates?

Mr. STANTON. No; I wouldn't say that at all. All I am saying is that when we tell them we are going to put an hour and a half dramatic program in there, they don't come back and say "Give us the name of the stagehands."

Mr. COX. Do they clear the time for you without asking detailed questions about the program?

Mr. STANTON. Well, we don't ask them to clear time without giving them information about the program.

Mr. COX. Have you ordered time for this show as yet?

Mr. STANTON. I can't answer that question because I am just not familiar with that detail.

Mr. COX. Now, in answer to certain questions which were posed to him by Senator Bricker when Mr. Moore testified before the committee, Mr. Moore has furnished some extensive answers. Included in this was some information as to the degree of clearance by CBS affiliates in three principal markets. This was for the period 7:30 to 10:30 for the week of January 19 to 25, 1956. On WJKB–TV in Detroit, the record showed it cleared all 21 hours of shows sponsored by CBS, except for 2 programs; and in the case of WCAU–TV in Philadelphia, it had carried all but these same 2 unsponsored half hours and another half hour which it had carried on a delay basis in station time. In the case of KGUL–TV, it had carried all but one of the unsponsored half hours.

Now substantially, of course, that is the same record of clearance that your owned-and-operated stations have. In other words, even your stations in Chicago and Milwaukee did not clear for one of these unsponsored half hours. So that, in a very real sense, these three stations in which CBS owns no interest carried programing determined by CBS to the same extent as if you did own the stations.

Mr. STANTON. Well, I quarrel with your "determined by CBS" again, because that is the whole schedule. I think that is a very unfortunate or deliberate use of the word "determined."

Mr. COX. Well, I mean the selection of the programs which you are going to offer to the public for its final decision was made, with respect to these three stations, by CBS. The public, not being polled except insofar as you rely upon their reaction to prior programing, will have a final say as to the character of the programing you offer only once it is on the air. So that at the time the station is cleared, the station is cleared for programing based on your decisions, your judgment, and their confidence in your ability to interpret the public's taste.

Mr. STANTON. The only difficulty I have with you, Mr. Cox, is that you are talking about this one particular week, and these 21 hours, as though this is a new experience for the public and a new experience for the stations—as though there is a pattern of 21 hours that some political genius in New York has predetermined will be fed out to these stations. This package is not made up of a whole series of new programs each week. These are program series, many of them on for a long, long time. So there is a well-established track record of how the public feels about these programs. This isn't just a brand new experience that is coming to the public in these programs.

Some of our critics may say this is something that is wrong about television. There isn't enough change, perhaps, from program to program in television. That may have been a justifiable criticism from the critic's point of view. But the public, by and large, is pretty well satisfied with it. So that there may be, in that 21 hours, only a few new ones in terms of new series; but for the most part these are things that have been tried for quite some time. This isn't anything new.

Mr. COX. No. But I assume this week was selected because it was relatively current at the time.

Mr. STANTON. I don't quarrel with the selection of the week. All I want to say is take, for example, Studio One that occupied 1 hour of the 21 and that has been on for a long time.

Mr. COX. It was not even new in the preceding fall when you put your programs together; that is, it is something that carried on even from a preceding season.

Mr. STANTON. Yes; there is a dramatic program in there in the summertime; it is not called Studio One.

Mr. COX. Mr. Moore gave us another figure at the time of his testimony. He pointed out in 40 cities having 71½ percent of the television sets in the country—these being the cities in which CBS and NBC each had must-buy stations—that the affiliates had cleared for CBS and NBC, together, 93.7 percent of the network programs offered, or if you included delayed broadcasts, a total of 96.3 percent.

Now, you have made certain comments in your reply to Mr. Moore's testimony with respect to the nature of the sample and so on, but insofar as you know, are these figures accurate? That is, do they represent the actual record of clearance for the 40 cities involved?

Mr. STANTON. I haven't tried to verify those figures, Mr. Cox.

Mr. Cox, turning to page 4 in the Memorandum Concerning the Statement of Richard A. Moore, I would like to read:

> CBS has been unable to understand the significance of the data derived from this study—

referring now to the study that you talked about—

> done as it was in a carefully selected group of cities for carefully selected hours of the day. In any event, the facts negate the implications of the study. That

option time has no such results as the statement apparently seeks to establish appears from the following facts derived from an analysis of the CBS television network's program clearances during the week of May 19, 1956:

On all CBS television network affiliates:

58.1 percent of all hours subject to network option are available to nonnetwork programing.

47.4 percent of all evening hours subject to network option are available to nonnetwork programing.

On all CBS television network basic-required affiliates:

38.4 percent of all hours subject to network option are available to nonnetwork programing.

30.4 percent of all evening hours subject to network option are available to nonnetwork programing.

Mr. Cox. With respect to that, I take it that you would agree that the selection of cities was not a free choice; that actually this is the result of the selections made by CBS and NBC in choosing their must-buy stations. Because as I understand it, the list of cities here involved consists of those 40 cities in which CBS and NBC both have must-buy stations. So that the sample would be a fair one in that sense.

Mr. Stanton. Well, it isn't a sample, it is the universe.

Mr. Cox. It is four-fifths of your——

Mr. Stanton. It is the universe as stipulated by Mr. Moore's definition of NBC and CBS; both have to have basic required stations in there, and these are all there is. That is it. There isn't any sample involved.

I am not quarreling with that. I am simply saying to you if you take all of our stations, if you don't like to take the 52 required, and these are the figures for the week of May 19, 1956.

Mr. Cox. With respect to that, I assume that in each case the first percentage you give, whether for all affiliates or for the basic-required affiliates, takes account of the entire broadcast day, and therefore includes a lot of programing hours which are not regarded as being as desirable as the evening hours.

Mr. Stanton. No, Mr. Cox. Please bear with me while I read that definition once again: It is 58.1 percent of "all hours subject to network option."

Mr. Cox. Your 9 hours of option time?

Mr. Stanton. Absolutely. This is not the entire broadcast time. The figure would be much larger if it were.

Mr. Cox. But in connection with each case, your calculation is made upon the 9 option hours, which include in addition to the 7:30 to 10:30 hours at night, 3 hours in the morning and 3 hours in the afternoon?

Mr. Stanton. That is correct.

Mr. Cox. And those are generally regarded as less desirable broadcast time, subject to your contention yesterday that you quite often could get a better buy for your money. But I mean as reflected by the rates—the rates for the network and for stations are lower in those periods than in the evening hours?

Mr. Stanton. Lower in the daytime than in the evening. Yes, we divide the day, roughly, from 6 to 11 and prior to 6.

Mr. Cox. I assume that the second set in each case, where you say all evening hours, that that is not confined to evening option time; that is confined to the period 6 to 11?

Mr. Stanton. I am very sorry, but I direct you again to the document: "47.4 percent of all evening hours subject to network option are available to nonnetwork programing." We are now talking about the 3 hours that you are talking about, 7:30 to 10:30.

Mr. Cox. All right. Therefore among your must-buy markets in the evening option time, you say that somewhat less than a third of the hours on those stations are available to nonnetwork programing. Does that mean that that 30 percent of those hours was filled by the affiliates with local programing or with national spot?

Mr. STANTON. No, it does not. But it is available to nonnetwork programing. Some of it is filled with network programing and some of it is filled with national spot, and I suppose some of it is filled with local.

Mr. Cox. In other words, some of that time in some markets is filled with the programing of ABC?

Mr. STANTON. No, it is ours.

Mr. Cox. It is your programing?

Mr. STANTON. Some of it is; yes. Brought about in this way: You recall yesterday I said that our interpretation of option time on a program that is straddled from 10 to 11—to go back to the Studio One example, again—if our option time closes at 10:30 but the program straddles from 10 to 11, in other words, it is part in the 3 hours of option time and part of it is out, we do not consider that we have an option on the period from 10 to 10:30 once we do that kind of straddle programing.

Now, some of this is occupied by that.

Mr. Cox. But you regard that, even though it was filled by your programs, as having been available to nonnetwork programing if the station had elected to make it so?

Mr. STANTON. I got lost. I am very sorry. I didn't hear you.

Mr. Cox. In other words, you don't say it is available to nonnetwork programing because it was in fact used by the station for that purpose. You say that because this was a program that straddled, it could have been opened up to nonnetwork programing by the station if it chose?

Mr. STANTON. It is some of that; it is some sustaining programs; some of it because of time zone changes, the option time doesn't apply.

Mr. Cox. In other words, this includes——

Mr. STANTON. It is accessible, put it that way.

Mr. Cox. This includes all the stations that didn't clear Brave Eagle for you, then?

Mr. STANTON. Yes; because option time doesn't hold on sustaining programs.

Mr. Cox. Now, with respect to this matter of programs that straddle, you indicated, I believe, that it was your interpretation that this was not subject to option. Have you ever so advised your affiliates in writing, or amended your affiliation agreements to that effect?

Mr. STANTON. I don't know that we have amended our affiliation agreements to that effect, but our affiliates are aware of it.

Mr. Cox. Is the rate of clearance for the three programs which I think you carry on that basis less than the clearance for half-hour programs completely within option time?

Mr. STANTON. Well, let's look. Yes; as my associates point out, I don't know how many stations have been ordered. I can tell you what is cleared, but I can't tell you what is ordered from the documents I have before me. But this is something that could be determined, Mr. Cox, and could be supplied for the record.

Mr. Cox. Would you do that?

Mr. STANTON. Sure. Let me be sure I understand it. You want to take the hour from 10 to 11 on Monday night, the hour from 10 to 11 on Wednesday night, and the hour from——

Mr. Cox. 9:30 to 11 on Saturday.

Mr. STANTON. 9:30 to 11, once every fourth week on Saturday? That isn't going to give you anything.

Mr. Cox. All right, then, just take the other two.

Mr. STANTON. I would just take the other two and we will compare those with the distribution of half-hour programs cleared in option time.

Mr. Cox. Will you also compare it with the rate of clearance for the half-hour shows carried at 10:30 which are clearly not in option time?

Mr. STANTON. Gladly. And for the record, I will do that for the same week of May 19, 1956, so that there are comparable data here.[7]

Mr. Cox. That will be fine, sir.

Now, you advance these figures, I take it, and certain others that you have presented, to show that there is ample time on evening network stations, under existing option arrangements, for the showing of the product of independent producers; is that correct?

Mr. STANTON. No one is ever going to sign his name to "ample" in that question, Mr. Cox.

Mr. Cox. In your opinion, that there would be substantial.

Mr. STANTON. I would say there would be substantial opportunity for the independent packager; yes.

Mr. Cox. Let's put it this way: Suppose that a film producer is projecting a 39-week series of a completely new film show, which will cost him in the neighborhood of something a little over a million dollars to produce. And he has prepared a pilot and is interested in exhibiting it to advertisers who might possibly be willing to buy it.

If he finds an advertiser who does want it, and this advertiser is not someone who already has a time period on 1 of the 3 networks, can he have any assurance that they can get an outlet on a regular basis for this program in, say, two-thirds of the top hundred markets over the country, unless they do approach the network and make arrangements with the network for provision of time on the network, rather than approaching the spot market?

Mr. STANTON. Well, I am not familiar with the details on this particular transaction, but I read in the trade press the other day where one producer had cleared 65 stations in prime evening time.

Mr. Cox. Were they in the top hundred markets?

Mr. STANTON. I would assume that many of them, and I suppose most of them, were in the top hundred market. I haven't seen the list of markets. But I would rather guess that they were.

Mr. Cox. Then you would be inclined to discount statements by people who are in that business, that if they cannot sell the pilot of a new series either to a network itself, or to a national advertiser who has a time slot on the program schedule of a network, that they will

[7] This information is set forth in a letter dated August 10, 1956, and in exhibit D thereto, beginning at pp. 2835, 2846.

not be able to produce the show with any assurance of being able to get their money back, recover their initial investment, within the first year?

Mr. STANTON. Well, I think I would have to say yes, I don't see how he can. But that is—we experience that all the time, right in our own program production activities.

Senator PASTORE. Do they want us to pass a law to guarantee that to them? [Laughter.]

Mr. COX. No. I think that the proposal which was contained in Mr. Moore's testimony involving a reduction, or a modification, of the present option requirements would clearly produce in the period, 7:30 to 10:30, available time in which such shows could be sold; it being the contention of Mr. Moore and of the film producers that under existing conditions, with option time and "must-buy" as it now is, that the show cannot be exhibited in prime time in the necessary leading markets of the country unless arrangements are made with or through the network.

Mr. STANTON. Let me read, if I may, just a brief paragraph from the supplemental memorandum, page 120.

> Specific evidence of the fact that time is available, that it is desirable time, and that it is being utilized by the nonnetwork advertiser is contained in the following excerpt from an address by Oliver Treyz, president, Television Bureau of Advertising: "Man Behind the Badge, sponsored by Ohio Oil and ordered in 11 stations was cleared on 10 of these in the supposedly difficult class A time. Great Gildersleeve, for Lucky Lager Beer, was ordered in 26 stations and achieved 100 percent class A clearance, 26 class A clearances in 26 markets. Steve Donovan, for Langendorf Bakeries, ordered into 13 stations, cleared in class A time in 11 of them. Racket Squad, for Heilman Brewing Co., ordered in 9 markets, 100 percent class A clearance, 9 markets cleared in class A time. The Turning Point, a new program for General Electric, ordered into 68 markets and 66 markets with class A clearance. Dr. Hudson's Secret Journal for Bowman Biscuit Co.—12 markets ordered, class A clearances in all 12. Socony Mobil Theatre, for Socony Mobil-Oil, primarily a central division order, 56 markets ordered, 56 markets cleared in class A time * * * This is a clear-cut demonstration that there are excellent availabilities in time and that these times can be claimed and can be staked out as franchises for syndicated film programs.

Senator PASTORE. Let me ask you a question at this point, Dr. Stanton. Has any film producer ever approached you with a million-dollar production, a first-run production, to put it over your network, in prime time?

Mr. STANTON. I am hesitating to answer because I think the answer is that no one has ever come with that kind of a production, or anything in that area. We have had conversations with producers who wanted to make such a product if we were interested in taking it for one-time showing, so that they then could take it and show it in the theaters and show it in Europe, and that they would get some of their money from us and some of their money from the theatrical exhibition.

Mr. COX. Perhaps I didn't make myself clear. This is the total cost of the 39-week series.

Mr. STANTON. I am sorry, I thought he was talking about a single program, a single film.

Senator PASTORE. Are these all going to be first-run pictures?

Mr. COX. This is a series of 30-minute programs made especially for television which cost in the neightborhood of $25,000 to $30,000 per week.

Senator PASTORE. Like the Four Star Playhouse?

Mr. COX. Yes. So that the gross expense, gross charge for 1 year, consisting of 39 sequences, would be slightly in excess of a million dollars?

Mr. STANTON. That may or may not be the total cost of the production. Now, to answer your question, if that is what you meant, and I am sorry, I thought you were talking about a single program——

Senator PASTORE. No; I was talking about a single program first.

Mr. STANTON. All right. The answer is "No." But we have had some talks in that dimension, that are on film, just in the idea stage.

Senator PASTORE. The reason I asked is because the group interested in subscription television claims that is the only way the viewer will ever get it—that kind of performance—through subscription television. That is why I asked you the question. Whether or not the proposition of free entertainment was made along that line——

Mr. STANTON. You would forgive me if I disagree with you on that particular subject. But that would keep us both here too long.

Senator PASTORE. I don't want you to go into that. I am just giving you a predicate for my question.

Mr. STANTON. Right.

No; I don't recollect that anyone has ever come in to see me, nor my associates that I have heard of, with a million-dollar film and said, "We want to put it on the network for the first run."

Mr. COX. With reference to the quotation from Mr. Treyz' speech, he is speaking of class A time and that includes more than the 7:30 to 10:30 period, of course; doesn't it?

Mr. STANTON. In his speech it was 7:30 to 10:30, Mr. Cox.[8]

Senator PASTORE. Just so that we clear up the record on this. Apparently this group that Mr. Cox is talking about is interested in prime time, and it raises the question that possibly they are having some difficulty in negotiating with the networks in getting this prime time cleared. The only way that they can do it is through the networks. Now, can you give us any elaboration on that point. Why is it difficult for them to come in on prime time, if that is the question? And why isn't it profitable for CBS or NBC or ABC to give these people prime time? I mean what is the problem really involved. Let's get that on the record in simple language.

Mr. STANTON. I think the problem, sir, is there isn't the time in the schedule to permit them to come in willy-nilly and get the clearances. But that doesn't mean that they don't get their programs into our schedule. Because, as I indicated, over half of our nighttime prime time is filled with programs produced by outside, independent producers that we have nothing to do with at all. Let me give you an experience. We had two of our shows in two half-hour time periods, prime time. And there was some talk about dissatisfaction with the programs, talk in our own shop, because the programs were—had been on for a number of years and all good things must come to an end. You can't stretch these things out forever.

These were not shows that were built around personalities; these were idea programs that were in the time periods. And there had been some talk in the trade about the advertiser and about us both looking for new properties to fill that time. And an officer of an

[8] In a letter dated June 14, 1956, which was inserted in the record on July 17, 1956, Dr. Stanton indicated that, upon checking further, he found that class A time as used by Mr. Treyz was 7 to 10:30 p. m. This letter is printed at p. 2874.

For certain correspondence between Senator Magnuson and the Television Bureau of Advertising, and others, regarding the quoted clearances of class A time for syndicated films, see item 28 in the appendix to this volume.

independent film-producing organization called me to see whether he could come over and see me; and I was puzzled as to why he wanted to see me, because normally programing is something that is handled, for television, by the man in charge of programing for television. But I said I would see him. That is one of the jobs the president of an organization has; there isn't anybody you could push him off onto; you have got to see him. He indicated this was something he had to see me about. He came in and he said, "I have got a whale of a good program series coming up. I haven't got the pilot finished yet, but believe me, this is one of the greatest." Well, every one of them that you hear about is the greatest; there is no point in going into that. But he was very enthusiastic about this half-hour program, and as he told me about it I shared some of his enthusiasm. And I said, "What do you plan to do with it?" He said, "That is what I want to come and talk with you about. We think this is such an expensive program and such a worthwhile program we don't want to sell it on a spot basis—we want to sell it networkwise. What do I have to do?"

I said, "The same thing we have to do, go out and sell it. If we have advertisers in our schedule who would rather have this program than the program they have now got, provided it doesn't break a sequence that we think is terribly important, we will be glad to talk with you about it. The first thing we want to do, however, is to see the pilot. I don't want to talk about anything just on the basis of paper in this particular area. So as soon as you get your pilot, you let me know and we will arrange for a screening." He said, "What do I do after you have seen it?" I said, "If we like it, we will say, 'More power to you,' and we may offer to buy the show from you and pay you the same price and take a chance on selling it, if it is as good as you say it is."

He was puzzled. He felt that something had to take place in order to get time on a network. He hadn't been on networks; he has been very successful on a spot business. He sold that show within a matter of weeks, even before I saw it. I went in to see it even though he didn't come to me. I thought I owed him that courtesy. But he sold that show to replace one of our own shows. Before we could turn on a dime to convince him we had something good on our shelf to sell him this other man sold him. I am glad he did. It is a good program, in my opinion. There is no mystery about this thing. I told him—he told me afterward, he said, "This is a simple thing; I didn't know it was done this way." I suspect that he had been contaminated, if you will, or had been influenced to believe that there had to be some monkey business go on here in order to get that program on the air.

Senator PASTORE. Now, in the situation—in the factual situation that was just raised by Mr. Cox, could those individuals who expect to get this $1 million production over a period of weeks go to one of those advertisers and say, "Look, you are showing such-and-such a show on CBS, why don't you buy this one?" Can they do that?

Mr. STANTON. Certainly.

Senator PASTORE. If they can do that, how has the advertiser got you tied up? Has he bought the show or has he bought the time? Can that advertiser come in and say this is what you will show on the network?

Mr. STANTON. No; he can't.

Senator PASTORE. Then, what good is it to him to sell it?

Mr. COX. He would only buy it conditionally.

Mr. STANTON. He would buy it subject to our approval of the program.

Senator PASTORE. In other words, he could sell it if you like it?

Mr. STANTON. If it is good for the public; certainly.'

Mr. COX. Take a specific instance, however: In the case of the projected program You Can't Take It With You, which was a film program in which one of your advertisers was interested, isn't it true that Carter placed such a conditional order for this program because it seemed to them highly desirable? They were interested in the new property, but when it was shown to you—and by that I mean to CBS—it was rejected on the ground that it was not suitable for the network's program schedule.

Mr. STANTON. It certainly was.

Mr. COX. Now, the program that Carter was then carrying was a CBS package program called, Meet Millie; wasn't it?

Mr. STANTON. That is correct. That is covered, Mr. Cox, in a memorandum I will be glad to submit to the chairman for the record. It is a memorandum entitled "Tuesday, 9 to 9:30 p. m., Meet Millie—Joe and Mabel—You Can't Take It With You."

Mr. COX. All right; fine.

Senator PASTORE. Without objection it is so ordered.

(The document referred to follows:)

TUESDAY, 9 TO 9:30 P. M.

MEET MILLIE—JOE AND MABEL—YOU CAN'T TAKE IT WITH YOU

Prior to January 1955, Talent Associates, Inc., an independent program producer not affiliated with CBS, approached CBS television with the suggestion that Talent Associates produce a series of programs for broadcast on the CBS television network based on characters (Joe and Mabel) created for radio by Irving Nieman. Talent Associates had acquired the rights to such a series from Nieman.

An agreement between CBS television and Talent Associates was entered into as of March 3, 1955, which provided, in substance, that Talent Associates would furnish a series of 30-minute programs for broadcast by CBS television. CBS television agreed to pay Talent Associates specified amounts for each program, together with a percentage of the net profits if the programs became commercially sponsored. CBS television also agreed to provide production facilities and furnish a producer and a director.

An audition television recording of the program entitled "Joe and Mabel" was prepared on March 15, 1955. On the basis of this audition recording, in April 1955, the program was offered to agencies for sponsorship. Also on the basis of the audition the decision was made that the program would be more effective if produced on film than if broadcast "live."

At that time Meet Millie, a program produced by CBS television, occupied the 9 to 9:30 p. m. time period on Tuesdays on the network schedule, sponsored by Carter Products, Inc., and Pharmaceuticals, Inc., on alternate weeks. Except for brief periods. Meet Millie had been on the network since October 25, 1952. During much of this time, the program was broadcast on a sustaining basis. In the judgment of CBS television executives Meet Millie was not a strong program, particularly in view of the competitive programing of NBC and the fact that it was believed to have outlived substantial audience interest.

Accordingly, in February 1955, CBS television agreed to renew the facilities agreements for the 9 to 9:30 p. m. time period on Tuesdays with the agencies for Pharmaceuticals and Carter for an additional 52 weeks, to commence in March 1955, with the understanding that a substitute program for Meet Millie would be obtained. It was also understood that such substitute program would be one acceptable to CBS television and the two sponsors.

Among the substitute programs that were suggested were Our Miss Brooks, a network program produced by CBS television and suggested as a substitute by the agency for Carter Products; You Can't Take It With You, a series to be produced by Screen Gems, Inc. (a subsidiary of Columbia Pictures Corp.) also suggested by the agency for Carter Products; and, when it became available, Joe and Mabel, which was suggested by CBS television.

At no time were the sponsors told or given any reason to believe that Joe and Mabel was the only program which was acceptable to CBS television. On the contrary, they were specifically told that they might use any program, regardless of the identity of the producer, if the program was aceptablce to both of them and, in the opinion of CBS television, met the requirements for the particular time period.

Our Miss Brooks did not become available as a replacement because of the continued interest of its then current sponsor. You Can't Take It With You was rejected, for reasons stated below, as a substitute after serious consideration, including a screening of the pilot film by five CBS television executives.

The acceptability of You Can't Take It With You as a substitute for Meet Millie was further complicated by the fact that the choice involved not only approval by CBS television but also by both of the sponsors. Pharmaceuticals preferred to continue sponsorship of Meet Millie, was agreeable to sponsoring Joe and Mabel, but was reluctant to sponsor You Can't Take It With You. Both Pharmeceuticals and Carter Products agreed to sponsor Joe and Mabel, in the particular time period commencing September 20, 1955, although as previously stated it was made clear that this program was by no means the only possibility for the time period.

The production of Joe and Mabel, which had been assumed by Jamie Television, Inc., a subsidiary of Talent Associates, commenced in July 1955. An unanticipated delay occurred in the production schedule of the series due to a strike called by the Screen Actors Guild. By the middle of September, six programs had been filmed. However, very shortly before the first broadcast was scheduled to commence CBS television decided that these six programs did not fully measure up to CBS television's program standards and, accordingly, after obtaining the agreement of the sponsors, it was decided to continue Meet Millie on an interim basis until such time as satisfactory programs of the Joe and Mabel series could be filmed or another satisfactory substitute program could be agreed upon. This decision was arrived at despite the fact that CBS television had expended approximately $185,000 plus developmental expenses on the Joe and Mabel series and was committed to spend an additional $183,000 under its arrangement with Jamie Television.

Thereafter, in October of 1955, CBS television renegotiated its arrangements with Jamie Television to provide that CBS television would produce the series under a license arrangement with Jamie Television and Nieman. CBS television assumed full control of production and the six programs produced by Jamie Television were discarded. Filming was resumed in November 1955, and 13 episodes of Joe and Mabel were produced under the new arrangements. Production was suspended in February 1956 because of the substantial amounts already expended for the series without assurance of sponsorship.

Carter Products did not renew its facilities agreement for the 9 to 9:30 P. M. time period on Tuesdays, which expired in March 1956, and Pharmaceuticals contracted for the time period on an every-week basis. The agency for Pharmaceuticals then suggested, and CBS television agreed, that Meet Millie be dropped and that Guy Lombardo's Diamond Jubilee, a program produced by Music Corporation of America, be substituted in the time period. Diamond Jubilee was originally scheduled to be broadcast until September 4, 1956, with the possibility of five additional broadcasts. However, because of lack of audience interest, Pharmaceuticals became dissatisfied with Diamond Jubilee after the first few broadcasts.

Joe and Mabel was suggested by CBS television as a substitute for Diamond Jubilee. At no time did CBS television indicate in any way to Pharmaceuticals that Joe and Mabel was the only program which would be appropriate as a substitute. Pharmaceuticals determined that Joe and Mabel was acceptable to it for a 14-week summer period and the series is scheduled to commence on June 19, 1956. The agreement, as yet unsigned, between Edward Kletter Associates, Inc., and CBS television, provides for the furnishing of only 13 films (1 of which is to be repeated) for 14 broadcasts to be sponsored by Pharmaceuticals.

That the decision to substitute Joe and Mabel for Diamond Jubilee was that of Pharmaceuticals' agency, without any pressure from CBS television, is evidenced by a letter dated May 3, 1956, from Edward Kletter, president of Edward Kletter Associates, Inc., to Mr. Frank Burke, editor of Radio Daily.

A copy of Mr. Kletter's letter is attached.

The CBS television executives who viewed the pilot film of You Can't Take It With You were J. L. Van Volkenburg, president of CBS television; Hubbell Robinson, CBS television executive vice president in charge of network programs; Harry Ommerle, CBS television vice president in charge of network programs; William H. Hylan, CBS television vice president in charge of network sales; and Oscar Katz, director of research of CBS television. In addition, Mr. Ommerle reviewed seven story lines proposed for future episodes of the program to determine whether or not they offered promise not inherent in the pilot film. The unanimous decision of these individuals was that You Can't Take It With You was not suitable for the 9 to 9:30 P. M. period on Tuesdays.

Among the bases for their opinion that the program was not suitable for the period for which it was suggested were the nature of the program which was such that it must necessarily tend to go too far in exaggerating reality and the overexaggeration, which while suitable for a one-time play or motion picture, did not suit the requirements of a week-to-week medium which comes into the living room.

Messrs. Hylan and Katz wrote memorandums dated June 16, 1955, and June 10, 1955, respectively, to Mr. Van Volkenburg setting forth their reasons for recommending against the program in the Tuesday 9 to 9:30 p. m. period. A copy of each of these memorandums is attached. In addition, under date of June 13, 1955, Mr. Ommerle wrote two memorandums and on June 14, 1955, a further memorandum to Mr. Van Volkenburg setting forth his conversations with Mr. Stauffer of Sullivan, Stauffer, Colwell & Bayles, Inc., the advertising agency for Carter Products. In these memorandums Mr. Ommerle set forth the views of CBS television with respect to You Can't Take It With You and advice to the agency that CBS television was not insisting on Joe and Mabel as a replacement for Meet Millie. A copy of each of these memorandums is also attached.

CBS television rejected the offer of Screen Gems to submit to a public test the differences of opinion with respect to You Can't Take It With You, despite the fact that the suggestion presented a superficially attractive solution to the problem. The suggestion was rejected because of the belief of the executives of CBS television that it is their responsibility to determine the composition of CBS television network programs and that CBS television cannot abdicate that responsibility to a popularity contest. It was also the belief of the CBS television executives that no matter how carefully the sample audience were selected, it would be impossible for that audience to have any opinion as to the suitability of the program for the time period or as to the possibilities for the future programs of the series.

In addition to offering Joe and Mabel as a substitute for Meet Millie CBS television submitted it to several advertising agencies for their possible consideration. Among the submissions were those to General Foods, Pet Milk, Procter & Gamble and Amoco as replacement for programs taking a summer hiatus. At the same time, CBS television offered Play for Keeps and You're on Your Own, both of which are produced by outside producers in association with CBS television, and reruns of My Favorite Husband.

Joe and Mabel was offered to General Foods for the 9:30 to 10 p. m. Monday period, to Pet Milk for the 9:30 to 10 p. m. Tuesday period, to Procter & Gamble for the 10 to 10:30 p. m. Friday period, and to Amoco for the 10:30 to 11 p. m. Friday period.

General Foods decided to use The Johnny Desmond Show as a summer replacement, Pet Milk, Playhouse of Stars (reruns), Procter & Gamble, Undercurrent (reruns) and Amoco, Pantomime Quiz. CBS television does not own any interest in any of these programs.

(The attachments to the memorandum are as follows:)

EDWARD KLETTER ASSOCIATES, INC.,
New York, N. Y., May 3, 1956.

Mr. FRANK BURKE,
Editor, Radio Daily, New York, N. Y.

DEAR MR. BURKE: In your issue of Thursday, May 3, in your column Tele-Topics, you mention: "After June 12, Guy Lombardo's Diamond Jubilee via CBS–TV will leave the network, because CBS–TV wants its own package, Joe and Mabel, in the Tuesday night 9–9:30 time slot."

Just for the record, please be advised that the decision to replace the Lombardo show with Joe and Mabel was not that of CBS, but of our agency's, on behalf of our client Pharmaceuticals, Inc. Guy Lombardo's Diamond Jubilee program regretfully did not come up to our rating expectations; therefore, after considering several other programs it was our decision in favor of Joe and Mabel.

Very truly yours,

EDWARD KLETTER, *President.*

[Office communication]

CBS TELEVISION, *June 16, 1955.*

To: Mr. Van Volkenburg.
From: Mr. Hylan.

Herewith, my reactions to the pilot of You Can't Take It With You which we screened at the request of S. S. C. & B. as a possibility for the 9:30 p. m. Tuesday period.

Basically, my reactions were quite negative for the following reasons:

1. You Can't Take It With You is farce which we have never had much sucess with. You will recall that it was one of the reasons why My Friend Irma was dropped. It is also partially behind our recommendation that Meet Millie be replaced.

2. The producers, in my opinion, made an unfortunate decision in doing the play (or parts of it) as their pilot. Almost everyone in our business is familiar with the Broadway play, and its success was not at issue. However, there is a big question in my mind as to the ability of the writers of the series to match the quality of a highly polished one-time version by Kaufman and Hart.

3. One of the strongest elements of the Broadway show involved the creation of a feeling of frenzy which mounted throughout the course of the play. Use of the entire stage area and the ability of the audience to see a broad perspective at all times made this possible. The television screen, unfortunately, is not as broad a canvas and is not suited to the type of three-ring circus which contributed so greatly to the success of You Can't Take It With You as a play.

4. Finally, it boils down to the fact that 9 o'clock Tuesday is a key point in our effort to create the tune-in habit to CBS television on that night. All of the elements which I have discussed above indicate that the television version of You Can't Take It With You is, at best, a very risky proposition. With the kind of deals that most packagers insist upon, the program would probably be locked in with a minimum of 39 weeks, and if it were unsuccessful, we would be stuck with it in this important time period.

If Carter wishes to use this particular program, I am sure you would agree that we could schedule it in the 10:30–11 p. m. Thursday period and I will so inform Heagan Bayles and Don Stauffer when we see them tomorrow.

(Signed initials) W. H.
(Typed) WILLIAM H. HYLAN.

[Office communication]

CBS TELEVISION, *June 10, 1955.*

To: Mr. Van Volkenburg.
From: Mr. Katz.

After viewing You Can't Take It With You, I would say that this program does not seem to me to be strong enough to fit into the Tuesday night lineup we are planning for next season. The main reason for this, in my opinion, is that a program dealing with so many "wacky" characters must necessarily tend to go too far in exaggerating reality. And I feel that this overexaggeration is fine for a one-time play or motion picture, but does not suit the requirements of a week-to-week medium which comes into the living room. In short, an audience will accept it once almost as a lark, but the overexaggeration will work against acceptance of this kind of property on a regular basis.

Another aspect is that the physical characteristics of the stage and the motion picture screen makes them more suited than the more confining television screen for depicting all of the "screwy" goings-on that take place simultaneously in You Can't Take It With You. Consequently, I find that even as a one-time show, it has lost a lot of punch in its conversion from the stage and the movies to television.

Finally, I did not think that this audition was a fair one in the sense that the story line and the jokes seemed to be taken right from the stage play. As a result, I felt that what I had viewed was illustrative of a stage-to-television adaption, rather than an example of one episode in a projected week-to-week series.

(Signed initials) O. K.

[Office communication]

CBS TELEVISION, *June 13, 1955.*

To: Mr. Jack Van Volkenburg.
From: Mr. Harry G. Ommerle.

Just for the record, I wanted you to know that I called Don Stauffer Friday afternoon after you, Bill Hylan, Oscar Katz and I saw You Can't Take It With You.

I told Don that we were very disappointed in the show and had our doubts about its being able to produce in the 9 o'clock Tuesday spot.

I pointed out to Don that in essence this was nothing but a condensation of the stage play and the motion picture, and that the same kind of frenzied excitement could not be sustained on a weekly basis. I also told him that it was our feeling that except for the grandfather, the rest of the characters emerged as rather superficial. I promised him, however, that over the weekend I would read the seven-story lines that had been sent to me to determine whether they offered promises that were not inherent in the pilot film.

(Signed initials) H. G. O.

[Office communication]

CBS TELEVISION, *June 13, 1955.*

To: Mr. Jack Van Volkenburg.
From: Mr. Harry G. Ommerle.

I tried to reach Don Stauffer this morning about You Can't Take It With You, but he was not in the office.

I, therefore, talked to Heagen Bayles and told him substantially what I said to Don on Friday, adding only that the seven-story lines had failed to impress me. I told him quite definitely that it was our feeling that this show lacked the strength for 9 o'clock Tuesday.

In this conversation I was very careful to state that we were not taking the position that Joe and Mabel had to go in there, nor that we were reserving the spot exclusively for CBS shows. It was just that none of us felt that this particular one could consistently deliver a large enough audience to prove to our mutual interests.

Heagen has asked for a meeting and I have agreed to it.

(Signed initials) H. G. O.

[Office communication]

CBS TELEVISION, *June 14, 1955.*

To: Mr. Jack Van Volkenburg.
From: Mr. Harry G. Ommerle.

Bill Hylan and I met with Don Stauffer and Heagen Bayles this morning about You Can't Take It With You.

Much of the same ground was covered as in our previous discussions, but Don did ask if we were taking the position that You Can't Take It With You was completely unacceptable to the network. We told him that this was not the case. We would accept it, for example, at 10:30 Thursday, but that we did not believe it good enough for 9 o'clock Tuesday.

We took this opportunity to reiterate that we were not forcing Joe and Mabel on them, nor were we limiting this time spot to CBS owned or controlled shows. We were most emphatic about this.

Stauffer and Bayles are to meet with Hoyt of Carter Products tomorrow, and I will advise you as soon as I know the outcome of this meeting.

(Signed initials) H. G. O.

Mr. Cox. Just for the record at this point, CBS not only determined that this program was not satisfactory, it then offered in lieu of the CBS package that was then being sponsored by Carter another CBS package referred to as Joe and Mabel; is that correct?

Mr. STANTON. Yes, but the advertiser considered a number of programs, not just Joe and Mabel.

Mr. Cox. He did not take Joe and Mabel, did he?

Mr. STANTON. Well, at that time, no. Because we weren't satisfied with the program after it got into production. And as a result, the program Meet Millie continued in the time period.

But let me make perfectly clear, for the gentlemen who won't read this memorandum, as to why we turned down You Can't Take It With You, because this was a show that had a good track record on Broadway. The reason we turned that program down wasn't because the first showing wasn't a good program, but what had happened in that particular program was that the program packager, in our opinion, had milked the Broadway show for everything and put it all in the first show. And as I said a little while ago, I am not nearly as concerned about the first show as I am concerned about the fifth or the ninth show in a series, because I want to see what is going to come on down the line a ways.

And the feeling of our program executives who viewed that particular pilot was that all of the material that was in the Broadway show had been pretty well put into this half-hour pilot, and we didn't know where the program was going to go to after the first show was on the air.

Mr. Cox. When you are buying a pilot, you are buying that on the basis of characters, a productive team, talent. You don't know, when you ordinarily buy a show, how it is going to go for 39 weeks, do you?

Mr. STANTON. Not for 39 weeks, perhaps, but this was a program staged completely on the basis of the Broadway show, and they had used up the whole book in a half-hour.

Mr. Cox. One of the shows you were referring to which was displaced by Mr. Ziv's program was the show Mama?

Mr. STANTON. That is correct.

Mr. Cox. That was based on a Broadway show and on a book, but I don't suppose that a very large percentage of the 30-minute programs based on that were in any way related to the actual incidents in the original play.

Mr. STANTON. Mr. Cox, I will be glad to show you the first run of Mama and I will take you back over the script of the Broadway show and the book, and if there is anything like the percentage of the Broadway show used in the first half hour of Mama I'll eat it. Now, in the case of You Can't Take It With You, they had condensed the whole show in the first half hour. We had no fault to find with the first show; it was excellent and we so told them. But we said: "Where is the show going to go from here?" We had our competent professional executives look at the material, the scripts, and we didn't feel the show would hold up in the time period. This is not a case of feeling that the first pilot wasn't any good.

Mr. Cox. That is why you thought there was no point in submitting this show to public test, because you yourselves were satisfied with the quality of this one?

Mr. STANTON. Sure, we didn't think that would prove anything and we told them that.

Mr. COX. In connection with option time you have indicated that you regard it as legally enforceable, but you have never had to resort to legal action in that connection. Isn't that because you have been able—isn't this because you have been able to get sufficient clearance with your affiliates without any such resort to legal process?

Mr. STANTON. Well, that is part of the answer. We have been able in the administration of that contract, because I think you live longer that way and you do business better that way. I don't think it is much fun to be in business where you live with a legal contract at your elbow all the time with 181 affiliates.

Mr. COX. You, however, regard option time as being vital to the continued existence of the network.

Mr. STANTON. I tried to make that as clear as I could in as few words as possible in my direct statement yesterday.

Mr. COX. Do you have any primary affiliates as to whom you do not have option time?

Mr. STANTON. I don't know of any, but there might be one deviation someplace in the group. I am going to do——

Mr. COX. Is that so, Mr. Salant?

Mr. SALANT. Yes.

Mr. COX. Do you have any different—I will address this question to you, then—do you have any substantially different clearance experience with the station as to which you do not have option time than in connection with those stations where you do have it?

Mr. SALANT. I don't know.

Mr. STANTON. I think if there is only one case out of the entire network, I don't think that proves anything one way or the other.

Mr. COX. Well, it proves that you clear for that station without any legal basis for the clearance, doesn't it?

Mr. STANTON. Well, I suppose it proves that; but I think that 1 out of 181 is only a sample of one, and I don't think that you can prove anything with that. That is the only point I want to make.

Mr. COX. The point is that he must clear your programs, then, either because he regards them as the best that are offered to him, in the time, or because he values his affiliation with CBS and therefore is willing to clear such a substantial percentage of your programs that you never raise any question with him about them.

Mr. STANTON. I would feel much better qualified to discuss this with you if I knew the particular case and something of the history of it. I don't know this particular one, so you are drawing a blank from me on this one.

Mr. COX. Don't you feel that actually your affiliates generally—all 181 of them—clear time just about like this one unidentified station does—because it needs the program service that you can provide, because CBS is generally highly rated and, therefore, the right to be an affiliate is, at least in the major markets, a valuable one. And that therefore, subject to these deviations that you have pointed out, in general, the affiliate would clear these programs for you regardless of whether you had a legal option.

Mr. STANTON. If I thought that, Mr. Cox, I wouldn't have said what I said to you yesterday in my direct statement. I believe option time is of vital importance to a network. And I think that if anything is done to take it away, I think there is real danger that you are going to emasculate something that I think is mighty important to the public in this country, to the industry and I think, too, in many ways, to Government. Because if you do something that is going to destroy live networks, I don't know what is going to happen when you need the networks for important defense discussions or things having to do with Government, and so forth.

Mr. Cox. No one has any desire to destroy the networks or the valuable service that they perform.

Mr. STANTON. We must have a fully healthy financial operation in order to do it. Because the cost of doing these things is absolutely astronomical.

Mr. Cox. I think you have established that very clearly. But as I understand it your concern about the elimination of option time is that this would result in the rejection of programs by affiliates in major markets scattered over the country in varying time periods.

Mr. STANTON. Yes.

Mr. Cox. That this would make it uneconomical?

Mr. STANTON. I don't want to leave you or any members of the committee with the impression that I am saying we are going to fall apart the day after some decision is made that would change option time. That would be very foolish. I don't think it will happen that way. If you were to cut back on option time, or eliminate option time, I think you would have an erosion process that would start and eat away, period by period—1 market, 1 period; 1 market another period—until the thing would become uneconomical for the advertiser and would grind to a halt. Because we couldn't afford to maintain the $13½ million worth of interconnection, we couldn't maintain the tremendous program costs for sustaining programs, public affairs programs, and entertainment programs, that we now carry. All of that would diminish. And the end result as far as the public is concerned, is that he would get a degraded, in my opinion, program service.

When that is going to come, in time, I don't know. It will depend a lot on how or what is done. But I think that you have got something here that is going, I think it is performing beautifully. There are bits and pieces that could be improved, but anything that is done, where you do something that is very major to this industry, I think it is a pretty dangerous thing. That is the reason I have devoted as much time and energy as I have to the preparation of the documents that we have given to you. This isn't something that we whipped up overnight, you understand.

Even though that questionnaire did come in just a week or so ago. You know you were decent enough——

Mr. Cox. I am glad you understand that.

Mr. STANTON. That is right. It was almost impossible in 8 working days to answer that.

But the reason we approached this thing as seriously as we did, and turned out the documents—basically the supplemental memorandum is something that took a long time to develop. The reason we did that is because, first of all, we felt television is so important that the Members of Congress deserve to have all the facts that could possibly be put before them. I don't object to hearings until the cows come home. I will sit with you as long as you want. The only thing I want to come out with is something of the order that we came in with, because I think the record of the industry is pretty good.

The reason we took this so seriously is that you have a right to know, No. 1; and we wanted to be able to have the record as full as we can make it. So there isn't any question. I have no objection to your asking any questions about anything we have done or anything we plan to do. We haven't withheld one bit of information.

The only thing I plead with you is that you look at all the facts and you weigh them very carefully in the round, not piece by piece, and see where this thing has gone, and what might happen if you change the course of it substantially—and I think doing something to option time would change the course of it substantially.

Mr. Cox. Doing anything to option time?

Mr. Stanton. I think doing anything to option time.

Mr. Cox. In other words, 3 hours works very well, less than 3 hours would not be workable at all, or at least not workable, in your opinion, in maintaining the present level of service?

Mr. Stanton. You can't trim this thing in terms of minutes. You have to trim it really in terms of half hours.

Senator Pastore. May I interject again here? Let's assume we take this 3-hour option time; let's say we cut it down to 2 hours. Where is the public service being served either one way or the other.

I wish that would be expounded on somewhat; even if the counsel has some ideas on it, I would like to hear them. I mean what do we do, what do we accomplish, what do we have to do? I am not interested in CBS as such; I am not interested in the independent producers as such. My job here is to protect the people of the United States and to see they get the best kind of service in every particular where the United States Government is interested as such. I am interested in the public interest here.

Now, how do we better serve the public interest with or without option time, or by cutting it down or expanding it? Can I get some elaboration on that? Let's think of Mr. Average American here.

Mr. Stanton. I am glad you said that because I share that 100 percent.

Senator Pastore. I don't care who gets what program and sells to whom for how much money. [Laughter.]

I am pretty well convinced here that this is a battle of the giants. When we talk here of producing $1 million shows, we are not talking about panhandlers, we are talking about big business. [Laughter.]

And let's get the facts here for the American public. Now, let's assume that we do cut down this option time by a half hour or an hour, Dr. Stanton. How will it help in any way? Do you know of any way it will help. Or how will it hurt in any way?

Mr. Stanton. Well, it is difficult to say precisely what will happen, but let me see if I can talk a little bit to it.

I think there are many stations that won't get as much service as they are now getting in terms of programs. Forget whether they are paid for or whether they are not paid for. They just won't get the programs. I can't tell you, Senator Pastore precisely when and at what list these stations will suffer. But I think that Murray Carpenter put it very well in his testimony that I quoted from the other day. In a market the size of Bangor, if that hour is taken out that you are talking about here, of option time, I think he will lose an hour of network programing at that particular time, or equal programing.

I don't think that Philadelphia or New York is going to suffer much as far as the audience is concerned. I think they will get programing in there. But Mr. Carpenter, in Bangor, is going to have to reach down in his pocket and buy some film to fill that time, because he isn't going to get it from the network—we are not going to be operating in that time. If we can't sell it in the big markets, then we can't afford to furnish the service to him in Bangor. Now, there is something between Bangor and Philadelphia—I don't mean geographically, I mean in size. I don't know where that cutoff point is. But there is going to be a certain group of markets that will be able to fill the time, even perhaps make more money out of the time than they are now making.

I am not sure whether the programs will be as good or——

Senator PAYNE. There are a lot more Bangors than there are Philadelphias.

Mr. STANTON. You are right, Senator Payne.

Mr. COX. Isn't it true that Mr. Carpenter does not now receive a program from CBS unless it is ordered for his station by an advertiser?

Mr. STANTON. Not necessarily, sir.

Mr. COX. Aside from sustaining?

Mr. STANTON. No, not aside from sustaining, Mr. Cox. If it is a sustaining program, he gets it, and if it is an EPS program he gets it.

Mr. COX. He is not on your Extended Program Service; is he?

Mr. STANTON. Certainly he is on the extended program service. That is available to any station that isn't ordered for the program, provided the program is one that can be ordered by EPS. That is spelled out very clearly in the supplemental memorandum. I will give you the reference if you like. You are not confusing that with EMP, are you?

Mr. COX. No. In other words, you make this available to—and I assume there is in his case no overlap. Your primary problem there is you are not making programs available, on the Extended Program Service, where there is any substantial overlap between that and another market which is purchased.

Mr. STANTON. That is one of the problems. There are many problems. Well, we will lose ourselves if we go down that road. All I want to establish here is that he does get more than just the commercial schedule. He gets the sustaining schedules and those EPS programs that are available. So that he will lose by this. But I think that more than that, I think that you are shrinking back the margin of profit that the network is going to have to work with to invest in new program ideas.

Some of them are turkeys, but somebody has got to bear the load of that experimentation. Somebody has got to bear the load of the sustaining schedule. Somebody has got to bear the load of covering conventions and big national events and having these wire lines available.

Now, if you begin to shrink back, I can't tell you precisely, Senator Pastore, where this cutoff point is. All I know is the thing is working pretty well the way it is. I am sure there are some people who would like to change it. But they have got special interests, and I don't think they represent the viewpoint that you have got, and the viewpoint that I have got to have if I am going to be successful in operating a national network.

Anything that is done to take something away from the public, you ought to holler about.

Senator PASTORE. How was this prime time arrived at? Was there a scientific approach? Apparently the three networks have designated this as prime time. Is it in fact prime time, or is it more than prime time? Is there some scientific rule by which this was determined?

Mr. STANTON. I think that is determined pretty much by what the public does. There are more people to a television set after dinner than there would be in the afternoon.

Senator PASTORE. I realize that. But why start at 7:30? Why couldn't you start at 7:45?

Mr. STANTON. Fifteen minutes here or there isn't going to make too much difference. I think most programs come and go on the half hour and not on the quarter hour. I wouldn't start a program on the quarter hour.

Senator PASTORE. You wouldn't want to start at 8 o'clock, either? You wouldn't want to lose that half hour?

Mr. STANTON. We could lose that half hour——

Senator PASTORE. In other words, the point we are trying to determine here—and I am not saying it ought to be regulated by the FCC or any legislative fiat that we might enact in the Congress—but I was wondering if maybe you haven't gone too far in the establishment of this time; whether or not you don't need the whole 3 hours. I think the point Mr. Cox is trying to determine, in order to get all these factions a little more satisfied—or whether you are holding on doggedly to the 3 hours, because that is the 3 hours you want, or is it because that is in fact the prime time. Is there any scientific way this has been arrived at?

Mr. STANTON. Well, I hesitate sometimes to call it science.

Senator PASTORE. Well, you have—what do you call it? The Hooper system. Then we have the Gallup Poll; we have a lot of fancy ways——

Mr. STANTON. It is because you have introduced the word "Gallup" that I am a little sensitive. [Laughter.] Senator Pastore, we know pretty well, and I am sure that the operators of the stations know it better than we for their own communities, what the traffic is at various half hours during the evening. Now, we might have taken 8 to 11; we might have taken 7 to 10. We took 7:30 to 10:30, obviously, because we thought that was the best time span.

I think that is the prime time in the evening. But there are plenty of programs that do very well from 10:30 to 11 and there are many that do well from 7 to 7:30 but we have taken 7:30 to 10:30. I can't answer and say that 15 minutes snipped off of that would upset the applecart. But 15 minutes wouldn't do us any good. Because who wants to look at a 15-minute program in the prime evening hours? You want to look at half-hour programs, hour programs, and I hope an hour-and-a-half program.

So it isn't a 15-minute adjustment we are talking about. These go down in at least steps of a half hour. So I think that we need the 3 hours that we have got. And I think the system is working pretty well.

Mr. Cox. As I understand it this process of erosion that you fear would arise because individual affiliates would reject CBS-offered programing and would substitute some other programing in its place; is that correct?

Mr. Stanton. That is correct.

Mr. Cox. I assume that each station operator, operating under his license and the responsibilities imposed thereby, would do this because, in his construction of the public interest in his market, the program he accepted was better than the one that CBS offered him.

Mr. Stanton. It could be that that would be the reason.

Senator Pastore. For that one spot.

Mr. Stanton. Yes, certainly for that one.

But you see if each station took a different spot in the schedule—let me make one point clear. That when an advertiser looks at a long budget for 39 weeks or 52 weeks—and when you were talking about a show from $20,000 to $25,000, Mr. Cox, in today's market that is not an expensive program, as I am sure you recognize; a program costing $50,000 to $60,000 is much more likely to be a big show at the present time, for a half hour. Now, when a man looks at that kind of a commitment for 52 weeks of, let's say, $50,000, that is $2½ million for the program—and he is looking at approximately that much more in time to put that in. So he is looking at a $5 million budget.

Now, he isn't going to sign his name to a $5 million expenditure today if he doesn't think he can get coast-to-coast coverage and write that expense off over the maximum amount of circulation. If Pittsburgh isn't accepting, or if Philadelphia isn't accepting—if Philadelphia and Boston don't accept—then he says, "Well, maybe the thing I had better do is to buy a cheaper program, because I can amortize that off over less circulation." And when he does that—when he buys a cheaper program—then maybe the man in Detroit says "Well, that isn't as good a program as I had in there last year, so in the next 13 weeks that goes out."

Little by little that erosion continues, and the next time around maybe we can't get an advertiser to put a program in there that cost anywhere near it, so you have lowered your program quality.

I said earlier that by and large quality goes with money. As you lower your budget you are not going to be able to attract the quality of good writing or talent, et cetera. Gradually, this thing is going to be lowered on that basis. I don't know where it is going to end. I say why take a chance? I go along with Murray Carpenter. Maybe? Well, "maybe" isn't good enough.

Mr. Cox. Wouldn't it be fair to say, though, that you view that in terms of the public interest and in view of CBS's interest; and Mr. Carpenter views it in the interest of WTWO?

Mr. Stanton. And his public?

Mr. Cox. And the public in Bangor. And that there might be difference of opinion as to whether the risk there is so great that it could not be taken. Now, isn't it true that you clear substantial time outside of option hours, on at least more stations than were listed with respect to a number of those programs in Mr. Treyz's speech?

Mr. STANTON. Yes, certainly.

Mr. Cox. Now, in a two-station market where ABC does not have an affiliate, your option is not good against an ABC program, is it?

Mr. STANTON. Not good against an ABC commercial program; that is right.

Mr. Cox. Now, would you think that this is approximately correct: That in the 10 markets where there are only 2 stations which, again, are on both the NBC and CBS must-buy lists—excluding only a couple of markets for which data is not available—that on the CBS affiliates, CBS programs were cleared 91.2 percent of the half hours during prime evening option time while ABC programs were being cleared 2.9 percent of the time?

So that in a situation where you do not have an option right enforcible against the program of another network, you are getting clearance at the rate of 30 to 1 as against ABC. Now, in that situation what is the basis for the high preponderance of clearance of CBS programs?

Mr. STANTON. Well, I can only say that the judgment that the affiliate makes in that case, I suppose, is based upon quality of the programing.

Mr. Cox. That is you would say that there is only 2.9 percent of ABC's programing——

Mr. STANTON. No. Let me go on to say that I want the record very clear on that, and I don't want to be misunderstood by anyone in the room that I am saying there is a 30 to 1 differential in programing, because there are other occasions where ABC's programs are being cleared on our primary affiliates, and we are not getting clearances, not in two-station markets. But you have taken a very limited test for your 30 to 1 ratio, sir, and if you were to look at what happens at 8 to 8:30 on Wednesday night I think you would find a pretty good clearance on the part of our affiliates for Disneyland.

Mr. Cox. I have taken all the two-station markets for which data is available.

Mr. STANTON. That is right. But if you added them up they are not going to make or break the network.

Mr. Cox. But they may make a substantial difference as to whether an advertiser will support a program, if he cannot get clearance in these and other markets where the problem is posed.

Mr. STANTON. This is a serious problem, and that is why yesterday when Senator Pastore characterized this thing as a mess, that we are not getting at the thing. The thing here is the allocation problem. We are talking about independent packages, and things of that kind aren't going to solve the problem as far as ABC is concerned.

Mr. Cox. The point I am making, in this connection, is in connection with your claim that option rights are absolutely essential. You are able, on some basis—either quality or simply by virtue of the affiliation arrangement, itself—without option, you are able to clear in these substantial markets at the ratio of 30 to 1 against a competitor as to whose programs you don't have an option right.

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Mr. STANTON. Yes, but Mr. Cox, you have got to give some weight in this discussion to the fact that ABC has not been in the competitive position that it is in today for a very long period, and that this is the way it exists today. Next year, I might be sitting down here and the story might be reversed in those markets.

Mr. Cox. In your statement, Dr. Stanton, you object to the proposals made by ABC as to allocation of time in two-station markets, and to the proposals made by Mr. Moore with respect to reduction in option time, on the ground that this would deprive stations of their discretion in choosing among program sources. Now, isn't it true that, by agreement, you and your affiliates have already limited their freedom to take programs from a source other than your network to a far greater degree than would be involved in either of these proposals?

Mr. STANTON. That is by agreement between the stations and us. This isn't by any Government order.

Mr. Cox. But the effect in terms therefore—if this has an effect upon competition for programing, the effect, regardless of the source, would be greater in the case of option time than in the case of these proposals?

Mr. STANTON. Well, there is nothing in the option time situation that says they may not take a program; and as I understand the ABC proposal and the practical effect of the proposal to limit option time is that there is a "shall not" attached to it.

Now, there is no "shall not" in our agreement. And as I have demonstrated with the figures, there are stations that are taking other programs. We are not blocking the free choice of the station there. Those terms we have been over before. But what I understand this to be is that this is a flat restriction—that the station cannot show the program in those particular times.

Mr. Cox. I believe you are correct. But you would feel that a regulation to that effect, if adopted by the FCC—and I assume it would be so adopted only if felt to be in the public interest—would be a more serious restriction on competition, and a more serious threat to television, than is the existing more extensive and purely private limitation which is imposed by the agreements entered into between you and your affiliates?

Mr. STANTON. I think it would not be in the public interest, but I don't like the way you used the word "private" as though there is something dirty about a private agreement.

Mr. Cox. I am a lawyer, and I deal in private contracts all the time. There is certainly nothing dirty about a private contract at all. "Private contract" means it is an arrangement entered into between two private individuals, to distinguish it from the public situation you were suggesting.

Mr. STANTON. I don't think I would have objected to it as much in the transcript when I read it as the way you said it.

Mr. Cox. I am sorry; I didn't mean anything by the tone.

Senator PASTORE. That was a fast recovery, Doctor. [Laughter.] Twenty minutes to 5, since 1 o'clock—it is still good. [Laughter.]

Mr. STANTON. Thank you, Senator Pastore.

Mr. Cox. Are your "must-buy" stations selected in accordance with some formula that CBS has developed?

Mr. Stanton. Well, this is set out in the supplemental memorandum. I will give you the page reference here; it is in the index in the front of the book.

Mr. Cox. I read the memorandum. I don't remember anything other than your indication of this jig-saw process by which you think you have put together the most economical and efficient possible minimum lineup for the use of a national advertising medium.

Mr. Stanton. Mr. Salant has come to my assistance and says it is footnote 4 on page 127.

Mr. Cox. This is with respect to the matter of whether it is a matter of an agreement?

Mr. Stanton. No; read further on.

Mr. Cox. Oh, 175,000 families.

Mr. Stanton. That is right; that is the minimum.

Mr. Cox. All right. Why is it, then, that you have stations on your must-buy list which are smaller than the other primary facilities which are not included?

Mr. Stanton. Well, let me read you the rest of the sentence here:

Stations having a service area containing somewhat less than the minimum of families and stations having a service area containing more than a minimum of families may be included in, or excluded from, the basic required group by reason of considerations other than population. Some of these considerations are conversion rate in case the station is a UHF station, income, retail sales, and buying power of the area served and importance of the principal cities served.

Mr. Cox. All right. Now, why is Phoenix not on your "must-buy" list when it ranks 47th, and Des Moines is on the list, and it ranks 93d?

Mr. Stanton. Are you, Mr. Cox, taking city population?

Mr. Cox. No; I assume this is the rank of the market, but maybe it is the city population.

Mr. Stanton. The market of Phoenix, as we treat with it for our purposes—and this is now not the trading area, but this is the coverage provided by the station—ranks it 79th in cities.

Mr. Cox. Where does Des Moines rank?

Mr. Stanton. Des Moines is much higher than that; Des Moines is 53d.

Mr. Cox. It is 53d as against 79th?

Mr. Stanton. Yes, sir.

Mr. Cox. I see. Do you have a "must-buy" practice in your radio network?

Mr. Stanton. We have—we did have and today the "must-buy" situation in radio isn't the same as it was when radio had much more circulation every half hour than it has now.

Mr. Cox. I think you indicated in your statement that you make exceptions to the "must-buy." In general, under what circumstances do you make exceptions to the practice?

Mr. Stanton. I can treat with those. I think they are set forth again in the footnote. But let me find my—some of these individual cases, Mr. Cox, are best classified as historical and some are on the basis of contracts that flowed from radio over into television. Some are cases where we went with the advertisers in the early days of television, before there were coast-to-coast facilities, and these were advertisers who had distributed, or had limited distribution. And we haven't seen fit to throw them out, just because they came with us in the early days and had developed a good following in those areas where they did have distribution. We haven't said to them "Now you have got to get out just because we go to the coast."

Mr. Cox. What do you do, supplement that in national spot.

Mr. STANTON. Well, it varies. Take a situation where Amoco had distribution on the east coast. Amoco was a sponsor of Edward R. Murrow and the News. In radio Amoco had one part of the country and other advertisers had other parts of the country. So in that particular case we were giving a national program service, but we were giving 2 or 3 regional advertisers access to network programs. And when Amoco entered into the Murrow contract at one stage of the game for his radio news strip it insisted upon, and got from us, the right to sponsor, or to consider sponsorship, when he went into television. And when Murrow went into television with Person to Person, Amoco exercised that option, if you will, and bought Person to Person for a part of the country. We then set out to find an advertiser who either had national distribution and wanted to supplement it, or underscore it by taking the rest of the country, or one who had distribution that would fit in with the Amoco distribution.

Now, you seldom find them that fit perfectly, but we were able to work this out reasonably well. Now, that is the case in the case of Person to Person. Now, there are some stations even in that lineup that aren't ordered either by Amoco or the other advertiser. In those cases we worked out arrangements with the stations and with the program producer—since this is not produced by us, but in association with us—we have worked out arrangements whereby those programs are available to local advertisers for sponsorship.

I can take you down each case if you want it. But there are only 1, 2, 3, 4, 5, 6 cases in the schedule, and 1 of them—1 of the cases in the 6 is only limited, I think, in 1 market.

Senator PASTORE. Have you finished?

Mr. STANTON. I think so. I thought you were getting ready to say something. That is the reason I——

Senator PASTORE. I am. [Laughter.]

Dr. Stanton, I want to thank you on my own behalf and on behalf of the committee for your coming here the past 2 days, for being as patient as you have been for the last 4 hours. It has been a pleasure to have had you here. I hope that you have been helpful.

Now, we will recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:48 p. m., the committee adjourned until Thursday, June 14, 1956, at 10 a. m.)

TELEVISION INQUIRY

(Network Practices)

THURSDAY, JUNE 14, 1956

United States Senate,
Committee on Interstate and Foreign Commerce,
Washington, D. C.

The committees met pursuant to adjournment at 10 a. m. in room G-16, the Capitol, Senator John O. Pastore, presiding.

Present: Senators Pastore (presiding), Payne, Magnuson, and Bricker.

Also present: Wayne T. Geissinger, assistant chief counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel.

Senator Pastore. The hearing will please come to order.

Our witness this morning is Mr. Robert W. Sarnoff. Will you, Mr. Sarnoff, identify, for the purposes of our record, your assistants, so that if any questions are propounded to them or they make any answers, we will know who they are?

STATEMENT OF ROBERT SARNOFF, PRESIDENT, NATIONAL BROADCASTING CO., INC., ACCOMPANIED BY DAVID ADAMS, JOSEPH HEFFERNAN, MAL BEVEL, JOHN SONNETT, AND THOMAS ERVIN

Mr. Sarnoff. I will be glad to, Mr. Chairman.

On my left is Mr. David Adams, staff vice president and my assistant; next, Mr. Joseph Heffernan, financial vice president; Mr. Mal Bevel, vice president in charge of planning and development; Mr. John Sonnett, counsel; and Mr. Thomas Ervin, vice president and general attorney.

Senator Pastore. All right. Let me say, Mr. Sarnoff, it is a pleasure to have you here, and you may proceed in your own fashion.

Mr. Sarnoff. Thank you very much, Senator Pastore.

Before beginning I want to also express my appreciation for this opportunity to present NBC's views on some of the matters under consideration.

I have a prepared statement which I would like to read.

In my presentation today I propose to deal with the principal policy issues which have developed in your consideration of television network operations. I feel this would be appropriate, since we have already submitted detailed factual material bearing on specific issues.

On May 25 we filed with this committee a statement of facts describing the network functions and operations. That statement dealt specifically with option time and the so-called "must-buy" policy. Together with the statement, our counsel submitted a legal memorandum. I ask leave to have the statement and legal memorandum of May 25 made part of my testimony in any printed record of your proceedings.

Senator PASTORE. You want it made part of the record itself, or if we incorporate it by reference is that satisfactory?

Mr. SARNOFF. I would prefer to have it made a part of the record. Actually, they are not very large. I think the statement is about 40 pages.

Senator PASTORE. Without objection, it is so ordered.

(The statement of facts and legal memorandum are as follows:)

BEFORE THE

COMMITTEE ON INTERSTATE & FOREIGN COMMERCE

OF THE

UNITED STATES SENATE

STATEMENT OF FACTS

NATIONAL BROADCASTING COMPANY, INC.

May 25, 1956

STATEMENT OF NATIONAL BROADCASTING COMPANY, INC.

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STATEMENT OF NATIONAL BROADCASTING COMPANY, INC.

This Statement, with an appendix of exhibits, is submitted in accordance with a request from the Chairman of this Committee for NBC's views on testimony presented to the Committee on March 26, 1956, by Richard A. Moore, and on a legal memorandum filed with the Committee by Mr. Moore on that date. We are also submitting herewith a memorandum presenting a legal analysis of the claims made by Mr. Moore.

I. Summary.

The narrow issue presented is whether networks are to be permitted to continue their operations and their development of television. The broader issue is whether the public is to be deprived of the type of programming which is provided only by networks—the programming which has made television a vital service in the American home.

A. The Network Service

Networks are the only organizations which furnish stations with a regular, daily program service of diversified presentations. Networks are also the only organizations from which national advertisers can obtain—in one transaction—national television advertising exposure from a specified program, at a specified time period, over a specified lineup of stations from coast to coast.

A network is a creative program organization, not merely a mechanical instrumentality for channelling programs to outlets. The program service it furnishes is distinguished by unique and irreplaceable public values: live programming on a national basis; great entertainment offerings; important information and cultural services, both sponsored and unsponsored; coverage of public events of national interest; and the innovation of new program forms and techniques which have led the way in expanding television's horizons.

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This network program service has been, and continues to be, the foundation for the growth of television in this country. It created a national television audience, which enabled television to function as an effective advertising medium and provided the basis for the successful operation of hundreds of stations.

The network program service is based on simultaneous national broadcasting. The related network advertising service is based on the national advertising exposure generated by such simultaneous broadcasting.

Option time is the clearance arrangement underlying national simultaneous broadcasting. Without such an arrangement, networks could not conduct a national program or advertising service. Option time is therefore the *operational* essence of networking, just as nationwide interconnections are the *technical* essence of networking.

Option time is also the essence of the network-affiliate relationship. It is an agreed procedure arrived at between affiliated stations and networks, and provided for in the affiliation contracts. It represents the stations' undertaking to carry network programs, which implements the network's undertaking to furnish them with programs. Without option time, there would be no meaning or substance to the affiliation relationship. And without affiliations, there could be no networks.

Option time is specifically provided for in the Chain Broadcasting Regulations of the Federal Communications Commission, which were adopted in 1941 after protracted hearings, and were upheld by the Supreme Court in 1943. The existing contractual provisions as to amount and placement of option time are in exact accordance with the FCC's Regulations.

The "basic network" (or so-called "must-buy") policy is an essential sales procedure in national networking. It establishes a reasonable minimum purchase unit for those who would use the costly facilities of a national network; and precludes national network programs from being limited to a minority of the television population at the instance of an advertiser interested only in limited distribution.

B. The Attack on the Network System

The attack on option time and the policy of selling a basic network is an attack on the very foundation of the network system. Those who call for the elimination of these procedures make the pretense that they are proposing only a few minor adjustments in the network operation. Such "adjustments" would be as minor as cutting off the current from a TV set, on the claim that this would improve the picture.

Who is levelling this attack on the fundamentals of the network service? It is not the viewing public, or the affiliated stations, or the national advertisers—all of whom derive great benefits from this service.

The attack on option time and the basic network policy ostensibly comes from the President of KTTV, Inc., the licensee of an unaffiliated television station in Los Angeles, who testified at length before this Committee on the alleged "restraints" involved in these network procedures.

His testimony falls into clearer perspective in the light of the undisclosed interests for whom he was speaking when he testified before this Committee.

We understand that Mr. Moore's presentation was part of an organized campaign previously agreed upon and financed by a group of film syndicators and related interests, whom Mr. Moore served as Treasurer and to whom he has made periodic progress reports. We further understand that this film group had a series of meetings, agreed upon the retainer of counsel who represented Mr. Moore at his appearance before this Committee, and consulted together on the network attack to be made through Mr. Moore.

Among the members of this film group were Ziv Television Programs, Inc., Television Programs of America, Inc., Official Films, Inc., Screen Gems, Inc., and General Teleradio Corporation (now RKO Teleradio Pictures, Inc.). The first four companies just named are television film syndicators; one of them—Screen Gems—is owned by Columbia Pictures, a major Hollywood motion picture producer. The fifth company, RKO Teleradio Pictures, is part of the RKO motion picture organization with principal interests in Hollywood film production.

We do not know how many other film or related interests have become associated with this group; but if the Committee desires to obtain further information on the matter, Mr. Moore is undoubtedly in a position to supply such information at the Committee's request.

If this film group should succeed in undermining the network system, the great national service provided today by three intensely competitive television networks would ultimately be reduced to the lowest common Hollywood denominator. The wealth of fine entertainment, educational and cultural programs available in the diversified schedules of the networks would be replaced by a continuing flow of stale and stereotyped film product.

In this connection, it should be emphasized that TV film syndicators, such as those represented by Mr. Moore, are by no means the only interests seeking to profit by displacing the network system of national broadcasting.

A wide variety of promoters and financial traders are now entering the television field with masses of old Hollywood film backlog which the motion picture studios are selling to them in bulk packages. Now that television has been developed to a national system serving 37,000,000 homes, these promoters and financial traders are looking to this new public communications medium as a source of quick profit from reruns of the old Hollywood movies, most of which have outlived their theatrical usefulness. To obtain such profit, they must force huge amounts of television time for thousands of these movies; and the disruption of the network service offers an inviting route to achieve this objective.

The magnitude of the financial stakes involved in this current trading of large packages of Hollywood backlog from motion picture studios to promoters to TV distributors is reflected by *Exhibit 1,* which summarizes reported transactions already consummated in this field. As shown there, the Hollywood backlog recently released aggregates 1,888 old Hollywood features, and 4,072 movie shorts. These have been released to television for a total of well over $42,000,000.

Over and above this recent release of movie backlog are more than 7,500 old Hollywood features already in the hands of TV distributors.

In addition, among the transactions in current negotiation is the release for television use of the MGM backlog of 770 feature films and 900 shorts. According to press reports, a value of at least $50,000,000 has been placed on this package.

The foregoing totals over 10,000 full length feature movies, moving into the television market. These, together with the movie shorts now in syndication would absorb *all* the broadcast time of a station operating 16 hours daily for more than three years running. Moreover, the amount of film available for television is constantly increasing and is not reduced through use.

A third group of film and related interests seeking to exploit the national television system are the proponents of pay-as-you-see television. Their purpose is to chain television to a coin box; and although, like the film syndicators, they disavow any intention to supplant the network service, their efforts—if successful—could so disrupt the network system that it could not continue the type of free programming which has made television the vital force it is in American life.

There are various associations between the promoters acquiring the Hollywood backlog for television and the pay-as-you-see promoters. For example, C&C Television, which has acquired the RKO backlog from RKO Teleradio Pictures (a member of the Moore group), is headed by Mr. Matty Fox, associated with Skiatron, a leading advocate of pay-as-you-see television, which has also testified before this Committee.

These film interests and financial traders, if successful in their designs on television, could reap a mountain of profit from the molehill of their contribution to the broadcasting art. But if they achieve their objectives, the American public and the vital new industry of television will be the twin losers.

The networks, which are under direct or indirect attack from these various groups, are the same networks which in thirty years have provided the basis for the creation of three great industries—first radio, then black-and-white television, and now color television.

It was the networks which developed the facilities and skills and undertook the financial risks of building a national television program service—not the film-come-latelys or the promoters with Hollywood backlogs in their portfolios. While the networks were chalking up annual losses of millions of dollars to develop the new medium, the film interests withheld their product from it; and turned to television only after it had been built by others.

Since then, the film syndicators have been expanding rapidly in television. With Mr. Moore as their spokesman, they are now seeking to expedite this expansion by asking the Government to create artificial vacuums in the network service—so that they can move in and occupy the field.

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The basic claim on which the Moore position rests is that film production for non-network broadcasting is being suppressed by the existence of the network service. This claim is flatly untrue. Television film production and syndication—rather than shrinking—are booming, with more product, more distribution and more sales than ever before—as will shortly be demonstrated by evidence from the very film syndicators who are included in the Moore group. This in itself demolishes the edifice of their argument.

The touchstone for evaluating the Moore claims and proposals is public interest. We believe that adoption of his proposals would put the private interests of a film group ahead of the public interest in the continued development of television as a broadly-based national communications system. It would reverse the progress of an industry which has grown faster than any other in American history.

In the following sections, we shall describe the development of television and discuss the special characteristics of the network service which require and justify option time and the basic network policy. We hope this material will help the Committee determine whether the public interest would be advanced by emasculating the network system in order to give an indirect subsidy to television film syndication.

II. The Network Service and Television Development.

A. The Network Service Created the Television Base

Television was first brought into being as a public service on the basis of years of costly technical development and experimentation, which ultimately resulted in an operating system for the electronic transmission of pictures and sound. RCA and NBC played a leading part in this development. As early as 1928, RCA was operating the first experimental television station, and after a decade of continued development work, NBC started television as a public service in 1939, with a telecast of President Roosevelt opening the New York World's Fair. Over the next two years, experience and data were developed which enabled the Federal Communications Commission to authorize television as a regular commercial service.

On July 1, 1941, the first day commercial television was authorized, NBC's pioneer New York station, WRCA-TV (then WNBT), went on the air with a commercial service. Although there was then a negligible number of TV sets in the hands of the public, this station started with a schedule of about 65 programs a month. In that year, NBC took in less than $7,000 from television; but by that time it had spent over $2 million on the medium.

The war suspended television operations in this country, but a week after the Japanese surrender, NBC was telecasting films of the surrender ceremony over its New York station. During the next several years, NBC moved rapidly ahead in television development, constructing, equipping and operating television stations in Washington, Chicago and Cleveland; developing a regular program schedule; and expanding the interconnected network as fast as the Telephone Company could provide the intercity circuits, so that the network programs could be made available by simultaneous broadcasting to a larger and larger national public.

In 1947, with only 6 television stations in operation, and only 14,000 TV homes in the country, NBC was furnishing regular network programming. In that year, its schedule included the Kraft Television Theater, the World Series, the Theater Guild dramatic series, Howdy Doody and the Louis-Walcott fight. It was the availability of network service like this which gave additional stations a basis for going into operation, and gave members of the public a reason to buy sets. In 1947, NBC took in about $100,000 in time revenue, against television costs for the year in excess of $2 million.

By 1948, the pioneering network service had expanded further. That was the year Milton Berle started on the air in an NBC series and became known to a widening audience as "Mr. Television". It was the first year the political conventions and elections were carried live over the television networks, giving an added impetus to television development. In that year, the operating result for the NBC television network was a net loss of approximately $1,300,000.

In the next several years, while television was still in its infancy, it was the network programming which made television important to the public—through a regular, dependable service featuring nationally famous performers, leading sport classics and coverage of events of national interest, from the Presidential inauguration in 1949 to the hearings of the Kefauver Committee in 1951.

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After building an evening program schedule, the networks pioneered the creation of a daytime television schedule at heavy cost, maintaining the service while seeking to develop sponsorships to help defray the cost. An affiliated station going into operation could count on a volume of continuing, audience-building network programs, without cost to it and with a share of the revenue from sales the network could develop.

From 1947 through 1954, the NBC television network was substantially in the red on a cumulative basis. Indeed, it was only last year —in 1955—that the cumulative operating results of the NBC television network first showed a profit.* And even before this point was reached, NBC had undertaken—and is now actively pursuing—a major and costly new development: the development of color television.

With high-attraction network programs available on a continuing basis, television circulation grew by leaps and bounds—to 1,000,000 sets by January 1949; 4,000,000 sets by January 1950; over 10,000,000 by January 1951; and nearly 16,000,000 by January 1952 (See *Exhibit 2*).

With a continuing network service providing the foundation for this growth, hundreds of stations could be established—stations affiliated with networks, and in addition, unaffiliated stations which could draw on the existence of the television circulation in their markets to develop their own operations. By the end of September 1948, when the Federal Communications Commission established a freeze on the authorization of new station construction, there were 37 commercially operating television stations. By the end of the freeze, in July 1952, 109 stations were in operation. Since then, the number has increased to 431 (See *Exhibit 3*).

By 1949, the NBC interconnections linked two groups of stations—an eastern group of seven interconnected markets from Boston to

* Also illustrative of the risks and costs of the network business is its high break-even point, reflected by the ratio of net income to sales. The net income of the NBC television network for the nine years 1947-1955 was 0.4% of its net sales over that period. For the year 1954 the network's net income was 1.1% of net sales, and for 1955 it was 3.4%. The Federal Trade Commission and Securities and Exchange Commission have reported that, for all United States corporations in the size classification in which NBC and the other network companies fall ($100,000,000 or more of total assets), the ratio of net income to net sales for the same nine year period was 6.9%, and that for the years 1954 and 1955 the ratio was 6.5% and 7.4% respectively.

Richmond; and a midwest group of seven additional interconnected markets from Buffalo to St. Louis. On January 12, 1949, as soon as the AT&T completed construction of circuits connecting these two groups through Pittsburgh, NBC expanded to an interconnected network of 15 stations. In September 1951, the last link was completed between East and West Coasts. Since then, NBC has ordered circuits as they became available, so that its interconnected network now consists of 176 stations, with only 26 affiliates served on a non-interconnected basis.

The nationwide audience created by the network service has provided the base for all forms of television advertising: not only national network advertising, but also national spot advertising, used by regional advertisers and by some national advertisers for selected-market campaigns; and local advertising, used by manufacturers and retailers operating within a single market area. All three forms of television advertising have flourished. Indeed, as shown in *Exhibit 4,* national spot and local television advertising volume has had a rate of growth almost precisely parallel to the rate of growth of network advertising volume.

Network advertising volume represents only a small fraction of total national advertising volume, and accounts for approximately one-half of total television advertising, as shown by the following Printers' Ink estimates for 1955:

	% of Total Represented by Advertising Expenditure on National Television
Total advertising expenditure	5.8%
Total national advertising expenditure	9.8%
Total television advertising expenditure	51.7%

B. TV Film Production and Syndication Are Expanding on the Television Base Created by the Network Service.

With the television base established by pioneering networks, a new market was opened for Hollywood film. As stated before, the foundation of the Moore position is that film production and syndication for television are being suppressed by the network service furnished to stations under option time arrangements; on this foundation, his film group constructs a series of other alleged restraints—against affiliated stations, unaffiliated stations and advertisers.

The fact is that television film production and syndication are doing a record business. The film syndicators themselves predict an even greater expansion in their production and sales in the coming year. The catalogue of evidence on this point is so massive that only a few highlight items need be cited here to demonstrate the facts.

Television Programs of America, Inc. (TPA), is one of the film syndicators in the Moore group. On April 18, 1956, TPA's Executive Vice President issued the following statement:

> "TPA's own growth illustrates the TV film industry's progress. When TPA started, less than three years ago (September 1953), the company had one half-hour series. Today there are ten TPA shows on the air and six more, 'Tugboat Annie', 'Last of the Mohicans', 'Captain Kidd', 'New York Confidential', 'Mr. Digby', based on the Saturday Evening Post series of the same name, and 'Shark Malone' in various stages of production. . . .
>
> "In 1955, Hollywood produced 2,835,000 feet, or 500 hours, of theatrical (feature) films. TV production for the same year was 10,538,000 feet, or almost 2,000 hours of entertainment."

Official Films, Inc., is also a member of the Moore group. The trade press reports that:

> "The biggest batch of new offerings during the past year came out from Official Films, which brought 11 half-hour series into syndication" (*Sponsor,* April 16, 1956).

Ziv Television Programs, Inc. is a third member of the Moore group. It has recently issued the following report:

> "Over-all gain of 50% in total Ziv dollar volume of syndicated program sales to all classes of advertisers will be scored by Ziv Tv in '56 if present sales levels continue, M. J. Rifkin, sales v.p., predicted today.

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"Pace-setters in the syndication upbeat are sales to clients spotting shows on regional or multi-market basis. Latter category is 'a safe bet' to show a '56 gain at Ziv of 80%, Rifkin said.

"Ziv Tv's optimism about syndication market's strength as a prime outlet for new telefilm shows is reflected in firm's latest sales and production strategy.

"Several new telefilm properties, now in various advanced stages of preparation, will bear a 'For Syndication ONLY' sales tag this fall to meet station and sponsor demand for first-run product competitive with top network programs, Rifkin revealed."

Screen Gems, Inc. is the fourth television film syndicator in the Moore syndicate. In a recent press conference, it outlined

"production plans that will call for a $12,000,000 expenditure. Along with a dozen or so new strip shows, the company proposes to turn out several 60 or 90 minute dramatic spectaculars" (*Printers' Ink,* January 13, 1956, p. 23).

A round-up article on the growth of TV film syndication in 1955 states:

"Syndication of TV film series this year brought the industry gross sales of $35,000,000 to $40,000,000, according to informed estimates. This represents an increase of $3,000,000 to $8,000,000 over last year's business" (*The Billboard,* December 31, 1955, pg 3).

The huge expansion in the number and earnings of Hollywood television writers, as officially reported by the Writers Guild of America, also reflects the booming condition of television film production:

"According to WGAw records, the highest number of television writers employed during any week in February 1955 was 79. Records for February 1956 show 276.

"The 1955 figures were exclusive of the networks, with whom the Guild did not at that time have a contract, but included the major studios and independents then active.

"As comparison the number of writers writing for the major film television subsidiaries in February 1955 was 34; this February, 80. The number of writers writing for independent film television producers in February 1955 was 45; this year, 129.

"Television writer income shows a corresponding increase: for the ten months ending January 31, 1955, gross earnings, as reflected in dues paid, were $1,441,500. This past ten months these earnings were $4,583,500 or an increase of $3,142,000 in writer income for a partial year on the West coast" (*WGAw News,* March 1956).

Currently, as indicated by an industry-wide survey conducted by *Television Age,* "film syndicators now have some 224 different series on the market, divided into about 9,184 half-hour episodes. To run through this supply of syndications, *a station would have to broadcast 88 hours of film a week for an entire year*" (*Television Age,* April 1956, p. 56).

In the light of this record, it is difficult to understand the film group's claim that although "during the last two or three years . . . good quality film programs have been available to KTTV . . . we now see the immediate prospect that this source of high quality film will shrink and disappear." Nowhere is there any explanation of what sudden change in circumstances has produced the alleged "immediate prospect" of shrinkage and disappearance of high quality film. Certainly there has been no change in network operations which would bring that about.

Mr. Moore cites several instances in which KTTV was unsuccessful in obtaining a new film series for use only in Los Angeles because a network or national advertiser had bought the series for use on a nationwide basis. The simple economic facts of the syndication business, rather than any network practice, provide the reason for KTTV's inability to get such programs. The producer of a film series will always prefer to sell it initially to a national advertiser or a network, and subsequently to syndicate on a market-by-market basis, because an initial national sale generally covers production cost and eliminates the producer's risk. The principal differences in financial effects between market-by-market syndication and sale of a film series to a national advertiser or a network are summarized in *Exhibit 5.*

If there is any prospect of decrease in the production of *new* film for television syndication, it will not be the result of any aspect of network operations; but rather, the result of the release to television of huge masses of Hollywood backlog, referred to previously and tabulated in *Exhibit 1*. That was the conclusion reached by Mr. C. R. Manby of RKO Teleradio Pictures, one of the members of the Moore group, who has pointed out:

> "A greater share of business during the immediate future will be done with feature films now becoming available from the major studios. This will tend to discourage the manufacturer of new films solely for syndication, and put a concentration on features by default" (*Television Age,* April 1956, p. 121).

Over and above the many thousands of movie films recently released to promoters for television, and the further Hollywood backlog for which distributors are negotiating—plus the 9,000 half-hour film programs made for television syndication—the syndicators use film program series which have completed their network broadcast. For example, a substantial number of film series, which were broadcast on networks during the past season—and were not renewed because they did not make the grade—are now going into syndication. In addition, the inventory of film for syndication is not reduced through use, but is progressively increased through "reruns."

With this plethora of film for television, there is the most active jockeying for television placement of film product.

The film syndicators represented by Mr. Moore are acting as the spearhead in a direct attack on the network system. They want to create a vacuum in the existing service so that they can fill it with their product. If they succeed, they may see it filled—not by their own product—but by repeated re-runs of Hollywood feature films. The accumulated product in Hollywood's vaults—most of it musty and outdated—would hit television with the impact of a tidal wave. The American viewing public would literally drown in a celluloid sea. This likelihood is given added reality by the huge sums at stake in the trading of Hollywood backlog from motion picture studios to promoters to TV distributors.

In the play and byplay for additional film profits from television, the public interest in an expanded television service would be submerged, if the network system is dismantled at the instance of film syndicators and traders. The disruption of the structure of live networking would mean the death of a national communications service of great range and vitality, with rival film interests fighting over the remains of the television system, which would shrink in scope and public value to a tiny fraction of its potential.

In any event, as regards the specific issues raised before this Committee by the Moore presentation, the record is clear that the availability of film programs for use by television stations and advertisers on a non-network basis is *not* being suppressed by the network service. The facts show, on the contrary, that existing television usage of syndicated film is so active and widespread that it has stimulated continued expansion in this field.

With the demolition of the basic charge of suppression of television film production and distribution, the structure of the Moore argument falls apart. The essential nature of option time arrangements and the propriety of the basic network policy in providing a national network service will be discussed in the following sections.

III. Option Time is Essential in the Conduct of the Network Business.

A. Definition of Option Time

Under the contracts between NBC and its affiliated stations, the station agrees to broadcast sponsored programs offered by NBC within designated hours, except that:

a. The station may reject any program offered by the network "which it reasonably believes to be unsatisfactory or unsuitable."

b. The station may reject any program offered by the network "which in its opinion is contrary to the public interest."

c. The station may reject any program offered by the network in order to substitute "a program of outstanding local or national importance."

d. The station has no obligation to broadcast any program offered by the network at a time "during which the station is already obligated to broadcast the program of another network."

The propriety of option time agreements between networks and stations is specifically covered in the Chain Broadcasting Regulations adopted by the Federal Communications Commission in 1941 after protracted hearings, and upheld by the Supreme Court in 1943. These Regulations contain provisions which precisely parallel the terms of the affiliation contracts quoted above.

The range of discretion provided for stations to reject network programs offered in option time, as provided by the Regulations and the contracts, is a far cry from the Moore claim that by virtue of option time, "all affiliated stations are compelled to broadcast during certain periods whatever programs the network company offers, and only those programs."

The Regulations were also carefully designed to prevent stations from optioning too much of their time to networks. Thus, the Regulations divide the broadcast day into four segments, all determined in terms of local time at the station.* Stations are prohibited from granting options to networks on more than three hours of time in any one of these segments. Thus in Class A time, which generally is from 6-11 P. M., a network may not and does not option more than three out of the five hours. Again, the facts do not support the Moore claim that virtually all of the "prime viewing hours" are subject to network option.

The particular hours subject to network option are specified in the affiliation contract. The hours specified in NBC contracts vary from time zone to time zone, since the option arrangement is designed to provide for simultaneous national broadcast, cutting across the four time zones. Generally, NBC options three hours in each of the morning, afternoon, and evening segments—or 9 hours out of the total broadcast day of its affiliated stations. It has never optioned time in the 11:00 P. M.-8:00 A. M. segment. The Moore statement that networks option 12 hours of time a day is simply not true.

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* These segments are 8:00 A.M. to 1:00 P.M.; 1:00 P.M. to 6:00 P.M.; 6:00 P.M. to 11:00 P.M.; and 11:00 P.M. to 8:00 A.M.

B. The Nature of the Network Service Requires an Option Time Arrangement with Stations

A major premise of the film group's attack on the network system is that film syndicators furnish a service comparable to the network service. Accordingly, they argue, the network operation should be redesigned by government action to eliminate option time, and network practices should be revised to conform to the syndication operation. The fact is that a network's undertaking is fundamentally different from that of the film syndicators and requires option time for its accomplishment.

1. The Network-Affiliate Relationship.

Nobody requires any station to enter into an affiliation contract with a network. Stations seek network affiliation because of the great values they obtain from the network service. The affiliation relationship involves mutual undertakings on the part of the network and the station. For example, among the obligations which NBC undertakes in its affiliation contracts are the following:

a. NBC undertakes to furnish the station with a variety of sponsored and unsponsored programs. The NBC network schedule consists of about 80 hours of programming a week. NBC's talent and production cost of this programming currently averages $1,500,000 a week. NBC assumes these costs, furnishes the programs to stations, and takes the risk of recovering such costs from sales to advertisers. If these costs are not recovered, NBC alone bears the loss.

b. NBC undertakes to provide the interconnections which link the station to others on the network so that the programs can be simultaneously broadcast on a nationwide basis by its affiliates, at the time periods for which the programs are designed. NBC leases from the Telephone Company almost 14,000 miles of intercity circuits on a regular basis for its television network, with a total annual cost for all circuits of over $14,000,000. The existence of such a facility for simultaneous broadcasting, as implemented by the option time arrangements with stations, provides an incomparable means for instantaneous, simultaneous, country-wide communications in times of national emergency.

c. NBC undertakes to share with the station, under an agreed formula, the revenue from the sale of time for sponsored network programs carried by the station. NBC assumes the function of selling network time and programs to national advertisers in competition with magazines, newspapers and other national advertising media. The price charged the advertiser for this time consists of the network rates for each station, aggregated for the total number of stations which the advertiser uses for the particular network program.

On its part, as indicated before, the affiliated station undertakes to broadcast in designated periods of option time the sponsored programs offered to it by NBC, subject to its right to reject any such programs for any of the reasons which have been previously detailed.

These are the basic elements of the obligations assumed by a network and a station in their affiliation relationship. None of these network obligations is assumed by film syndicators. Their business is procuring or producing individual film series or blocks of movie features and selling them to individual stations, for resale by the station at their own risk; or on occasions, selling an individual series to an advertiser who buys individual time periods on selected stations or who buys network time; or selling a series directly to a network. They do *not:*

> Provide stations with a regular daily schedule of morning, afternoon and evening programming, furnished over nationwide interconnection for simultaneous broadcast;
>
> undertake, on behalf of a nationwide aggregate of stations, to sell such programs in specified time periods and to share the sales revenue with the stations;
>
> furnish stations with a varied and balanced program service, including news, special event coverage, sports, public affairs and cultural presentations at their own cost;
>
> maintain any continuing operating relationship with stations.

These are the functions which make option time indispensable in the network-affiliate relationship. The fact that option time does not fit the syndication operation does not mean that it should be removed from the network operation. Moreover, there is nothing to prevent film syndicators from entering into contracts with stations for options on the latters' time. Indeed, in the case of syndicators, there is no regulatory provision—as there is in the case of networks—limiting the amount or placement of time which can be optioned. Presumably if syndicators undertook the costs and risks of furnishing stations with the type of program and advertising service which networks furnish, they too could arrange for time options, and could build their own networks.

In any event, the option time arrangement is the basic undertaking of a station in its network relationship. The destruction of that arrangement would also destroy the network-affiliate relationship on which the network system rests.

2. The Unique Nature of the Network Program Service.

a. *The Content of Network Programming.* Network programming is distinguished from syndicated programs in that it is:

An overall *service*, covering the full range of audience interests, and not a series of unrelated shows;

furnished on a regular daily schedule;

developed under public interest standards, since the networks themselves are licensees of a limited number of the stations carrying the network service; and

based on the technique of *live* presentations.

The latter characteristic makes use of television's special quality—the feature which distinguishes it from all other media: its immediacy and ability to communicate events as they are happening. This attribute is indispensable for certain presentations, such as special event coverage, actuality programming, and sports; and its spontaneity gives added values to many other types of programs.

Live programming on a national basis is possible only through networking. Networking, in turn, requires interconnection facilities and a program clearance arrangement with stations which is accomplished by option time. Without the network service, television would shrink from a national communications system to a film transmission mechanism, supplemented by locally produced shows.

As indicated in *Exhibit 6,* live programs accounted for 88.1% of the total program hours in the NBC network schedule for the typical week of March 18-24, 1956. By contrast, as shown in *Exhibit 7,* KTTV's schedule for a similar week consisted of only 9.8% live programming, with an additional 15.9% combined live and film, and 74.3% completely film.

The network program service is not only unique in the four broad characteristics just listed, but in its individual elements, which also require the networking procedures which are under attack by the film group. These elements include:

(1) *A visual news service in which outstanding reporters and analysts collect, present and interpret the news on a nationwide and worldwide basis.* To provide this daily news service, which is a basic source of information to the public, NBC has its own news organization with a staff of over 250, including commentators, reporters and cameramen working out of NBC foreign offices in London, Paris, Rome, Bonn, Tokyo, Hongkong, Taipeh, Singapore and Cairo. This news organization shoots almost 2,500,000 feet of news film a year. The annual cost of this news operation exceeds $3,000,000. Film syndicators provide no such service to stations and the public.

(2) *Coverage of special events of national importance.* Networks are the only program organizations which, as part of their overall service, undertake to furnish stations with live coverage of important public events such as the political conventions and national election campaigns, addresses by the President and national leaders, the Presidential inauguration, and Congressional hearings; or with comprehensive live sports coverage of leading sports events including the World Series, the major football classics, championship fights, the principal golf matches and tennis tournaments.

(3) *Significant cultural and public affairs presentations on a national basis, for which networks assume the costs and furnish to stations whether or not they are sponsored.* As distinguished from film syndicators, networks furnish stations with programming produced at

the networks' cost as a public service, such as nationally broadcast religious series. Other examples in the field of information and culture are series like "The Search" or "Adventure" on CBS; NBC's "Elder Wise Men" series—which has brought a nationwide audience face-to-face with such outstanding personages as Herbert Hoover, Robert Frost, Wanda Landowska, Pablo Casals, Nehru, Sean O'Casey, Bertrand Russell; or the NBC Opera Theater series, including original works specially commissioned by NBC. The Opera Theater has cost the network over $2,500,000 to date in presenting opera performances on television without a sponsor.*

(4) *The innovation of new program forms and techniques which have tremendously enlarged the value of television to the public.* Film syndicators are program merchants, not program experimenters. Their product falls largely into the standardized pattern of the half-hour drama, adventure, situation comedy or western series. While this type of program has a place in the television service—and is included as one of many elements in the network schedule—it must be recognized that the principal program experimentation and development in television—the type of presentations which have opened new and broader horizons for the medium—have come from the networks, which have undertaken the risks and costs of program innovation. To cite a few examples from the NBC service:

The Spectaculars. This program form did not exist in television until it was created by NBC in 1954. It consists of 90-minute live special entertainment events, with each series scheduled once every four weeks, so that the individual productions can have the benefit of maximum creative attention, long and thorough preparation, and the par-

* The following comment from the New York *Times* is significant here:

"The most vivid laboratory example of a program that meets the ultimate qualitative test for TV is probably the *NBC Opera Theater.* This company's aim has not been merely to do 'opera on television.' Instead, with excitement, imagination and a magnificent refusal to compromise its artistic integrity, it has widened the horizons for all of opera and made a cultural contribution that transcends mere media.

"Is it too rash to hint that the NBC Opera, in terms of its national influence, now is the equal and conceivably even the peer of the Metropolitan? . . ." (New York *Times,* February 6, 1955) ticipation of outstanding talent who are only occasionally available. The results have been such presentations as Sadler's Wells Ballet in "The Sleeping Beauty"; Shakespeare's "Taming of the Shrew" and Shaw's "Devil's Disciple" both with Maurice Evans; "Heidi", "Babes in Toyland", and "Alice in Wonderland"; Robert Sherwood's "Petrified Forest"; "Cyrano de Bergerac"; Katharine Cornell in "The Barretts of Wimpole Street"; and Mary Martin in "Peter Pan". NBC has thus far presented about 70 major productions of this type. They have given the whole television medium a broadened scope and value.

The Telementaries. This is another form developed by the networks. "Victory At Sea", a 26-episode history of the Navy, with a specially-commissioned symphonic score by Richard Rodgers, is one example. Others are the treatments in depth of a given subject like "Three, Two, One, Zero", on the atomic bomb; "Nightmare In Red", a history and analysis of Russian communism; "Assignment India"; and the "Twisted Cross" which documented the rise and fall of Nazi dictatorship—major contributions to public information, furnished in many cases on an unsponsored basis, at NBC's cost.

The Network Service Shows. Network program series like "Home" and "Today", each costing several million dollars a year, would not have been developed by any other program source and scarcely could be produced by any organization other than a national network. "Home", an hour-long program each weekday, presents national authorities dealing with homemaking, health news, child care, fashions, family management and new products. "Today", scheduled two hours daily, five days a week, is a more general news and information show, keeping viewers current on national and international affairs and the forthcoming events of the day; reviewing books, plays and movies; and presenting the leading personalities of our time.

"Wide Wide World". This novel program series takes a nation-wide audience around the country—and to neighboring countries —with *live* cameras, so that viewers can look in on America's ways of life and activities while they are happening. A single program, like the one of May 13, 1956 covering the U. S. Armed Forces, takes several months of planning and preparation; involves the participation of a number of affiliated stations in different parts of the United States;

requires as many as 75 live television cameras; and costs as much as $150,000. It is possible only with live networking.

That television's greatest contributions to the public have come from the network program service is a fact recognized by objective observers and critics of the medium. This is what Jack Gould, radio and television critic of the New York *Times* had to say about "television's progress in some areas of programming and its stalemate in others", in a recent article*:

> "Television's special events—the occasional programs which are entities unto themselves—probably represent the medium's most significant single asset: its capacity to be extraordinarily good. In this season alone the viewer has been afforded the chance to witness George Bernard Shaw's "The Devil's Disciple", with Maurice Evans; Robert Morley in "Edward, My Son"; a superb live version of "The Caine Mutiny Court Martial"; a tour of India with Chester Bowles; an examination of the farm problem that disturbed the Secretary of Agriculture; Noel Coward; Mozart's "Magic Flute"; Sir Laurence Olivier's new film, "Richard III"; Mary Martin in "Peter Pan", and the Sadler's Wells Ballet. . . .
>
> "To represent TV at its best there also is another type of special attraction—the actuality broadcast that takes place outside the studio. The national political conventions, the coronation of Queen Elizabeth, the Kefauver crime hearings, the world series, the Presidential press conference and the heavyweight championship are samples of life itself conveyed into the home. With such broadcasts the world of reality unfolds upon the screen in all its spontaneity and unpredictability. This has been and always will be TV at its most exciting because it is something that only TV can do, which is to enable the viewer to be his own reporter, editor and critic. . . .
>
> "The films especially made for TV? A sorry lot, by and large. Certainly, they cannot stand comparison with the live hour-long dramas and the special events; more than ever, they seem inadequate in characterization and narrative, following the

* "Television Today—A Critic's Appraisal", New York *Times*, Sunday, April 8, 1956.

old fashioned radio way of telling a story. But also with few exceptions, they are trite and artificial, certainly not a good advertisement of the capabilities of Hollywood. . . ."

The full text of Mr. Gould's article and typical articles on network service by other critics are set forth in *Exhibit 8*.

b. *The Structure of Network Programming.* The foregoing has dealt with special characteristics of network programming from the point of view of *content*. It is similarly distinctive in its *structure*. This structure—a schedule of consecutive programs related to each other in a planned sequence—also makes option time arrangements necessary, so that the values of the program structure can be preserved—subject to any station's veto of any program in its market—as it is broadcast nationally over multiple outlets.

The planning of the network program structure has as its objective the scheduling in each period of the type of program—and the particular program within the general type—which will be most effective, in the light of the programs which precede and follow it, the competing programs of other networks, and the type of audience available at the time.

In program selection and the organization of these programs into an overall schedule, the network must be concerned not only with the foregoing elements, but also with the program variety and quality of the total resulting schedule; the creation of new program services which would not be initiated by advertisers, but which they may support after the network has developed such programs; and with the commercial success of the schedule.

c. *Sources and Responsibility for Network Programming.* The decision on what specific programs shall go into which time periods programmed by the network cannot be delegated to the many different program sources on which the network draws. To do so would turn over to others, who have an individual interest only in a particular program or time period, the responsibility for organizing the overall network schedule.

Although the network must itself decide on the development, selection and organization of its program structure, many of its programs come from organizations and individuals outside the network itself. This is desirable, in order that a network service, running over 80 hours

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a week of widely diversified programming, will have the benefit of as many different creative talents as possible.

The film producers for whom Mr. Moore speaks are themselves one of the many sources of network programming, and in fact NBC has recently obtained two program series from one of the members of the Moore group. Other sources of network programs are advertisers and advertising agencies; independent producers who furnish the talent and vehicle and undertake the production of live programs; stations; motion picture studios; and the network itself. In NBC's case, more than half of the programs in its schedule are produced by a variety of outside organizations.

In view of the many different organizations which provide programs for the network, there is a wide range of different business arrangements regarding ownership interests in such programs. There are even differing ownership and financial arrangements with respect to network programs obtained from the same type of source, as for example, programs obtained from outside producers.

In the foregoing respects also, the network program service is distinguished from syndicated film programming, in that it is based on a carefully organized, integrated program structure, drawn from many different sources, with a diversity of ownership interests.

It is obvious, as Mr. Moore states, that there may be programs not on the air, which, if given public exposure, might be more attractive than certain programs which are on the air. This truism applies to every entertainment medium, and it would apply to television even if networks did not exist. The appeal of a program cannot be finally tested until it is on the air, and there are always more potential programs than can be broadcast. The networks themselves screen thousands of program ideas, auditions and possibilities, from which the programs of the future are developed. Each network, in fierce competition with the others, strives for hits, and together, they are giving the public the finest program service available in the world.

d. *The Economics of Network Programming.* The provision of this network program service in a highly competitive industry is an undertaking requiring huge financial commitments for talent and program development. The network provides a regular volume of programs whether or not they are sponsored. It takes the risk of obtaining sponsorship on a basis which ultimately will recover the costs of the programming. And when the popularity of an established program or performer declines, the network has to absorb the costs of the long-range commitment it may have had to assume to obtain the program or performer in the first instance.

Accordingly, the significant financial dimension in the network business is money at risk—not just capital employed in the conventional sense, but in addition to that, the financial commitments for talent, program properties and the other elements for which networks must commit on a long-term basis.

In the case of the NBC television network, money at risk may often exceed $100,000,000—only a minor part of which is represented by investment in physical properties. Commitments of this magnitude are the concomitant of developing and maintaining—on a regular, continuing basis—a unique national program service of great scope and diversity, which offers such values to the public and the medium.

Another distinguishing aspect of the network program operation is reflected by the fact that the NBC television network's revenue from program sales falls far short of meeting the network's program costs. This is true because a network—unlike any other organization supplying programs to stations—furnishes costly unsponsored programming from which it obtains no revenue; engages in expensive program development and experimentation at its own cost; maintains programs on the air to build audience pending sale; and furnishes important program services which are designed for use by limited-budget advertisers on a "participation" basis, and which are seldom sold out.

The heavy financial burden inherent in providing programming of the scope and quality of the network program service is another consideration calling for option time, as will be pointed out in the next section.

3. The Unique Nature of the Network Advertising Service.

The ability to provide a program service of the type just described depends on the networks' ability effectively to conduct their related advertising operation—the sale of comprehensive national circulation; and this in turn depends on option time arrangements, which make it possible for a national advertiser to turn to a network, and *in one* *transaction,* buy the national circulation to be generated by a given program over a multiplicity of affiliated outlets in markets the advertiser desires to cover.

Network advertisers want simultaneous broadcasts of the program they are sponsoring—indeed that is one of the main reasons why they use networks. For example, one of the advertisers on the NBC network does not accept *any* delayed (non-simultaneous) broadcasts for its program. In all cases, advertisers are opposed to delayed broadcasts of their network programs, and if there are an excessive number of such delayed broadcasts or if an insufficient number of affiliates accept the program, the network sale is lost.

Accordingly, simultaneous national broadcast of network programs not only is indispensable for certain types of presentations and has important values for many other network shows, but it is generally an advertising necessity for networks.

Indeed, the sale of national advertising opportunities furnished by the simultaneous nationwide broadcast of a program *is the specialized advertising function* filled by a network. In conducting this advertising function, a network competes with every other network and all other national media for the patronage of national advertisers.

This competition is vigorous and intense. Within the network field, it has in the past year resulted in the development of a third television network as a major competitive force. Once the American Broadcasting Company undertook the costs and risks of developing an overall program service of value to stations and national advertisers, its volume of business in terms of sponsored hours, billings and profits has rapidly increased, and in a number of periods, it now has competitive superiority in audience.*

Competition for the national advertiser's dollar is no less intense as among networks and other national media. Network television is far behind magazines and newspapers in national advertising volume. As shown in *Exhibit 9,* national advertising volume for network television in 1955 was $520 million, as against national advertising of $724 million

* Mr. Robert E. Kintner, President of ABC, predicts that "in the next two years ABC will equal CBS and NBC in billings and that it will be the number one network . . . [its] ratings have soared and ABC led in increases on all but Thursday nights, with Saturday ratings up over 120 per cent over a year ago." (*Radio Television Daily,* May 17, 1956, p. 1).

for magazines and $750 million for newspapers. And the latter two long-established media have continued their growth during the years of television's expansion.

In order to compete effectively for the national advertiser's patronage, networks maintain extensive sales organizations supported by a myriad of specialized supporting services. In NBC's case, the television network sales organization has grown from a staff of 10 people in 1947 to 201 in 1955. This sales operation is also assisted by a Planning and Development Department which each year has undertaken a fundamental research project on the advertising effectiveness of television as a medium. These NBC television research studies, each costing over $250,000, have given new impetus to the development of all forms of television advertising. Their results have been made available to the whole broadcasting industry—to other networks, stations, advertisers and their agencies, independent program producers, and film syndicators.

No matter how aggressive and thorough a network's sales operation may be, it would be unproductive if the network could not give the national advertiser some assurance that it is capable of delivering what he wants to buy and *can* buy from other national media: national exposure of his sales message.

When a national advertiser buys space in *Life* magazine or the *Saturday Evening Post,* he has an assurance that his message will get national exposure. In the case of the national magazines, this is automatic. In the case of networks, there is no assurance of national circulation except to the extent it is provided by option time arrangements with affiliated stations. Without option time, networks could not compete effectively with other national media.

C. Option Time Arrangements Enable Affiliated Stations to Discharge Their Responsibilities to the Public.

The stations affiliated with networks recognize that they are able to bring to the public a well rounded high-quality program service because of the network-affiliate relationship and its essential ingredient of option time. They have explicitly asserted that option time is

> "a vital factor in the station-network relationship, strongly influencing the stations' ability to serve the public interest, con-

> venience and necessity" (Resolution of ABC Affiliates, April, 1956).

> "of fundamental importance to continued sound networking" (Resolution of CBS affiliates, April, 1956).

> "necessary to permit television networks to function effectively as national advertising media. If they are prevented from functioning effectively in the field, the networks' ability to provide the overall national television service which the public and the stations need will certainly be impaired and may be destroyed." (Letter of April 18, 1956 from Executive Committee of NBC TV Affiliates to the affiliated stations.)

The high percentage of clearance by stations for network service in option time, upon which Mr. Moore places so much emphasis, is neither sinister nor surprising. Such clearance simply reflects the stations' recognition of the unusual values of the program service furnished by the network, in terms of audience attraction, the strengthening of the stations' standing in their communities, and the economic benefits to it. The Moore group acknowledges these values but asserts that some network programs are "inferior" to available non-network shows. This is, of course, a matter of judgment, and it is the station's judgment that is operative.

The film group represented by Mr. Moore catalogues various non-network programs which obtained higher local audience ratings than a number of network programs in the same market; and from this, it is argued that the affiliate is being "restrained" from carrying "superior" non-network programs. The illustrations used in no way support such a conclusion, because:

a. The non-network programs cited for their superiority were in most cases carried by network affiliates—the very stations claimed to be "restrained"; and

b. The network and non-network programs compared were broadcast at different time periods, against different competing programs, and with different preceding and following programs—factors which strongly influence audience ratings.

It is nonetheless interesting to note that on the Moore reckoning which is based on ratings alone, "Superman", "Death Valley Days" and "Amos 'n Andy" are superior to the 90 minute color production of Ferenc Molnar's "The Good Fairy", with Julie Harris; and to such important public affairs presentations as "Meet the Press," "News Caravan" and "American Forum"!

It is not asserted that every network program is better than any non-network program. However, the validity of the judgments exercised by affiliates in accepting the network programming is clearly demonstrated by the fact that stations carrying the network service consistently obtain a much greater share of audience than non-affiliated stations in the same market (See *Exhibit 10*).

The decisions of affiliated stations on accepting network programs are based upon full information as to their content. The stations are advised, in advance, of the nature of each program series offered by the network and have ample opportunity to pass upon its suitability in the public interest. This information is given when the program series is first offered, and is supplemented with individual program details by means of press releases and promotion kits furnished to the stations in advance of broadcast.

The FCC does not regard an affiliated station's acceptance of network service under option time arrangements as an "abdication" of its licensee responsibility, a contention which the Moore group has put forward. The FCC Regulations specifically provide for option time. Moreover, the applications upon which it grants construction permits for stations set forth the schedule of network service the applicant expects to carry. It is on these applications, often after detailed hearings on the minutiae of the proposed operation, that the Commission makes its findings of public interest, convenience and necessity.

Although the percentage of clearance for network programs in option time is high, there are many cases where an affiliate exercises its judgment to carry a syndicated film show in such time. An analysis has been made of the 11 syndicated programs cited by the Moore group, to determine the extent to which they were carried in evening option time by network affiliates in the 48 markets listed in *Exhibit 11*. The results are set forth in the following tabulation:

Program (Cited by Moore)	Affiliates Carrying Program: In Evening Option Time	Affiliates Carrying Program: Other Time	Affiliates Carrying Program: Total	% Carrying In Evening Option Time
Death Valley Days	6	12	18	33%
Highway Patrol	19	25	44	43
Waterfront	8	17	25	32
Dr. Hudson Journal	9	19	28	32
Science Fiction Theatre	17	24	41	41
Cisco Kid	10	24	34	29
Long John Silver	3	13	16	19
Superman	7	37	44	11
Search for Adventure	2	1	3	67
Confidential File	7	17	24	29
Amos and Andy	5	18	23	22
Total	93	207	300	31%

As appears above, in 44 of the 48 markets, "Highway Patrol" was carried by network affiliates, and in 19 of these cases it was carried in network option time. Another syndicated film series, "Science Fiction Theatre", was carried by network affiliates in 41 of the 48 markets and 17 of these affiliates carried the program in evening option time. All told, 31% of the broadcast time devoted by affiliated stations to carrying these syndicated programs was evening time subject to network option.

It is clear from the foregoing that affiliated stations are not, as Mr. Moore claims, deprived of their freedom of action by option time arrangements.

D. Summary: The Three-Way Need for Option Time.

Option time is the clearance procedure agreed upon between a network and affiliated stations whereby the network program service, consisting of a planned and organized program structure, can be simultaneously broadcast over multiple facilities across the country. This is the essence of network service to (a) national advertisers; (b) stations; and (c) the public.

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a. For *national advertisers,* option time provides the means for obtaining from a network

> * * * the collective national circulation generated by a specified network program series * * *
>
> * * * which is broadcast at a designated time for which the advertiser has contracted * * *
>
> * * * over multiple outlets which he has ordered across the country for the specified time period and program series.

No network advertiser has objected to the option time policy. Without it, the network system would disappear as an effective medium for national advertisers.

b. For *affiliated stations,* option time enables making orderly provision for receiving from networks a daily volume of programming which provides the stations with their principal audience attractions; builds their audience; increases the value of their time; gives them network revenue directly; and also gives them highly saleable adjacencies from which they obtain national spot and local advertising revenue.

No affiliated station has objected to the option time principle. On the contrary, stations eagerly seek affiliations with networks, and the option time agreement is the heart of the affiliation relationship. It implements both the stations' undertaking to broadcast network programs and the network's undertaking to furnish them with programs. If stations should be barred from entering into such an undertaking, there would be no meaning or substance to the affiliate-network relationship.

In urging the elimination of option time, the film group represented by Mr. Moore proposes that in lieu of this arrangement, stations could enter into contracts with networks to carry a specified program in a specified time period "for firm periods, such as 13, 26, 39 or 52 weeks." Of course, if affiliates entered into such contracts for all network programs, the end result would be the very result which this film group seeks to destroy, but with enormous administrative complications, involving hundreds of separate contracts a year between a network and each of 200 stations on changing lineups ordered by advertisers; and with no advance potential for clearance on the basis of which the sponsor commits his advertising.

But the film interests for whom Mr. Moore speaks realize that even with such an artificial and destructive procedure, the likelihood is that stations *would* contract with networks to carry the network service through program-by-program arrangements, because they want and need the network programs. Indeed, he asserts:

> "I think network service is so important under our present structure to an affiliate that *even without the legal requirement* (sic) *he probably would clear.* He does clear now on station time which he doesn't have to do" (Tr., p. 1603; emphasis supplied).

The prospect that stations, in the exercise of their choice, might clear time for network service without option time arrangements is so disturbing to the film group that they call upon the Government for extraordinary action. They ask the Government to impose a rule which would have the effect of barring stations from carrying network programs for designated periods in each segment of the broadcast day, including approximately one hour between 7:30-10:30 P. M. Apparently they do not trust stations to exercise their choice. They are also heedless of the fact that if such a restriction were imposed on stations, a network like NBC would face an immediate financial crisis; and to avoid a loss operation, would have to eliminate or reduce its program development and its non-revenue producing public services.

c. For the *public,* option time makes possible a responsible, diversified and carefully organized network program service on a national basis, including a world-wide news service, great live programs and major public events. Live programs constitute the bulk of NBC's total programming and embody the essential attribute of television, which distinguishes it from all other communications media.

During the past year and a half, the network service here under attack provided a national public with such live programs as:

The Cradle Song
This Happy Breed
Peter Pan
The Sadler's Wells' Ballet

See It Now
Festival of Music
A Night to Remember
Babes in Toyland
The Caine Mutiny Court Martial
The Barretts of Wimpole Street
The Magic Flute
The Taming of the Shrew
Person to Person
Macbeth
Wide Wide World

Even if only a portion of this programming—which in itself represents only a fraction of the great network offerings—had been foreclosed, the public's pleasure and enlightenment would have been impoverished, and the growth of the television medium toward larger responsibilities would have been curtailed.

IV. The "Basic Network" Sales Policy Establishes a Reasonable Minimum Purchase Unit and Serves the Public Interest.

A. Definition of the Basic Network Sales Policy.

Under this sales policy, NBC establishes a minimum unit of purchase by advertisers, in order to provide against fragmentized use of its national network facilities. This minimum purchase unit consists of a group of "basic" stations, selected on the basis of objective economic criteria described below. Beyond this minimum station group, an NBC advertiser has complete choice in the selection and purchase of almost 150 optional affiliated stations, which provide valuable supplementary coverage and additional penetration of the national market.

Mr. Moore claims that the basic network policy represents an agreement between a network and stations "whereby each station agrees to withhold certain desirable time periods from sale to any advertiser unless the advertiser agrees to purchase equivalent time on all stations throughout the country who are parties to this agreement.''*

This is sheer fantasy. The designation of an affiliate as a basic station is not a matter of agreement between NBC and any station, or between NBC and anyone else. It is a sales policy, arrived at by NBC alone, on the basis of objective standards of market size and economic value.

These facts in themselves destroy the whole elaborate argument that the basic network policy represents a ''collective agreement not to deal'' on the part of the stations among themselves and with the network.

The following summarizes the background and evolution of NBC's basic network policy.

Since NBC provides a national program service desired by all its affiliates, it would be preferable if its minimum purchase unit for advertisers were the full network. This would assure that all sponsored programs would be available to all affiliated stations, and through them, to the total television population. Originally, *all* stations which had affiliation contracts with NBC became basic stations as soon as they were interconnected, and the full interconnected network was the minimum network sold to advertisers.

However, with a great many new stations coming on the air and joining the NBC network beginning in 1953, it was realized that a different procedure was necessary for administering NBC's basic network policy. Although establishing the full network as the unit of advertising purchase might have the public advantage of making all sponsored programs available to all affiliated stations and their communities, such an extreme requirement would not be feasible as an advertising matter because:

1. It would put the NBC network at a disadvantage in competing with such national media as Sunday supplements, newspapers, etc.

* Mr. Moore's further claim that ABC has no basic network policy (and that accordingly such policy cannot be essential in network operation) is not in accordance with the facts. The ABC basic network policy is in terms of a minimum dollar purchase, including the ABC-owned stations, as follows: ''Advertisers are required to purchase a minimum cleared gross for station time equivalent to $50,000 per Class A hour. Advertisers are required to order as part of the applicable minimum the five ABC-owned stations . . . and any other ABC-owned stations added during the effectiveness of this rate card.''

2. Marketing problems of many national advertisers do not require such complete and intensive coverage as would be provided by the full network.

3. The cost of the full network would be too large for various national advertisers to whom network television would be advantageous.

On the other hand, if there were *no* minimum network purchase requirement at all, the national character of NBC's service could be atomized, with the result that network programs could be withheld from a majority of the television-equipped public at the instance of a sponsor with limited distribution; and an advertising operation designed for national scope might be used on a restricted basis that would be uneconomic in meeting the network's costs of providing a national interconnected service.

On these considerations, NBC decided on what it believes to be a reasonable "middle road", through a sales policy which designates a realistic minimum station list to be ordered by the network advertiser. This minimum list is the basic network.

In keeping with sound marketing and media practice, NBC sought to include in the basic network the affiliates in the principal centers of population and distribution. In doing so, NBC had the problem of where to draw the line. After much study, it established a set of economic criteria which determine eligibility for basic status in terms of the following objective economic considerations: In order for an affiliate to qualify as a basic station, the *metropolitan area* of its market must include a designated minimum percentage of the total U. S. population and total U. S. retail sales; and its *coverage area* must also include a designated minimum percentage of total U. S. homes and retail sales.*

As a result of the application of these standards, the NBC basic network now includes 56 stations in major markets which measure up

* To qualify under these criteria, a station must meet at least one of the two "metropolitan area" standards and at least one of the two "coverage area" standards. In a few borderline cases, where these statistical standards are not strictly met, but where the market is regionally important, an exception may be made.

to or exceed the designated economic levels. The Moore group's claim that this policy requires advertisers to order "weak" markets in order to reach "strong" markets is not in accordance with the facts.

B. The Basic Network Sales Policy is Reasonable, and Affirmatively Serves the Public Interest.

The attack on the basic network policy in effect argues that networks, which are national advertising media, should be forced to provide regional or selected-market advertising. That is the precise function of national spot television, and it serves that function well.* To impose this alien function on national networks would artificially limit their service; endanger their economy; reduce their effectiveness as national advertising media; and be injurious to the public.

1. The Advertising and Economic Functions of the Basic Network Policy.

National networks—like national magazines—do not lend themselves to use by advertisers with regional distribution or by national advertisers for special, selected-market campaigns. In the television field, as in the print field, there is a full range of suitable advertising forms for these advertisers, and they use these forms successfully and extensively. This has been indicated by the data previously cited on the rapid growth of national spot billings.

It is also demonstrated by the first of a continuing series of national spot surveys released by the Television Bureau of Advertising on April 16, 1956, covering the last quarter of 1955. For that period, the survey shows that national spot television had gross time sales of $103,872,000, and was used by over 3,000 advertisers. This compares with gross time sales on all networks of $116,336,797, to 247 different advertisers. These facts demonstrate the absurdity of a claim that advertisers are foreclosed from using television for regional or selected market campaigns, or that spot television cannot effectively operate because of the national network service.

A recent brochure of the Television Bureau of Advertising on the same subject disposes of another of Moore's repeated assertions—that

* Indeed, the very term "spot" refers to the geographical "spots"—the individual markets selected for a national spot advertising operation.

a national spot advertiser cannot clear Class A time for a film program. The following tabulation taken from the report shows stations ordered and cleared in Class A time for nine separate national spot advertisers:

Syndicated Film	Advertiser	Stations Ordered	Stations Cleared in "A" Time
Mr. District Attorney	Carter Products	23	22
Man Behind the Badge	Ohio Oil	11	10
Great Gildersleeve	Colonial Stores	11	11
Great Gildersleeve	Lucky Lager Beer	26	26
Steve Donovan	Langendorf Bakeries	13	11
Racket Squad	Heilman Brewing	9	9
The Turning Point	General Electric	77	66 (excludes 9 on-order stations)
Socony Mobil Theater	Socony Mobil Oil	56	56
Dr. Hudson's Secret Journal	Bowman Biscuit	12	12

The purposes for which national advertisers use spot television were recently summarized by an official of a leading national advertiser, whose remarks on this subject are set forth in *Exhibit 12.*

Among the types of television advertising available for regional, selected-market or local purposes are:

(a) announcement participations in non-network programs;*

(b) sponsorship of non-network programs; and

(c) announcements between all programs—whether network or non-network—throughout the broadcast day (so-called "station-break" announcements).

On network affiliates, the latter form of national spot or local advertising is particularly valuable because of the size of the audience which is attracted by the network programs adjacent to the station break.

* In addition, affiliated stations may make local or national spot sales in certain network "participation" programs they carry; and in NBC's case, many stations not ordered for certain network programs by the network sponsor are furnished the program, with network commercials deleted, as a special NBC service and are permitted to use the commercial time in the program for local or national spot sale on their own behalf.

So far as the practical requirements of *national* advertising are concerned, they normally involve advertising exposure going well beyond the basic network. The advertisers who use NBC's network facilities generally desire and order many more affiliated stations than are included in the basic group. Currently, the facilities ordered by NBC advertisers for sponsored evening programs average 129 stations,* although the basic network, which represents the minimum purchase unit, consists of only 56 stations.

There is no merit to the claim that the basic network policy forecloses small-budgeted national advertisers from use of the network medium. Although NBC's minimum *facilities* unit is designed to provide basic national coverage, its *purchase* units are so varied that they make network television advertising available to all types of national advertisers, regardless of the size of their budgets.

For example, on the NBC network, national advertising can be bought in forms ranging from a single advertising message costing a few thousand dollars to annual sponsorship of a color Spectacular series at a cost of over $4,000,000 with every gradation between these extremes, to fit any budget or requirement of national advertisers.

The actual use made by advertisers of this national medium reflects this range and diversity of opportunity. In 1955, the advertiser with the smallest expenditure on NBC was Edison Chemical Company, which bought one announcement in "Home" for $6,700; the advertiser with the largest expenditure was Procter & Gamble, which spent $11,000,000 for a number of NBC daytime and evening programs.

A great variety of small companies with national distribution have used and are currently using network television for low cost campaigns. Through the use of this medium, they are increasing their markets and enlarging their operations. *Exhibit 13* lists in parallel columns a few examples of large and small national advertisers who used the NBC television network in 1955. As shown there, these included relatively small companies with modest budgets—an ironing board manufacturer;

* NBC recently established a special provision for the number of affiliated stations to be ordered for evening sponsored programs in connection with its Program Extension Plan, described in *Exhibit 15*. However, even before the establishment of this provision, evening advertisers were ordering substantially more stations than the basic network. For example, in October 1955, evening sponsors were ordering over 100 stations on the average, and none of these sponsors limited his order only to the basic stations.

a hearing aid company; a silver polish manufacturer; a bird seed concern; and a company making pizza pies—as well as major companies in the automotive, food, drug, soap, tobacco, and appliance fields.

In 1955, the composition of national advertisers on the NBC television network broke down into the following categories, in terms of their gross time expenditure on the network:

Expenditure	Number of Advertisers
Under $50,000	58
$50,000-$99,990	38
$100,000-$249,000	42
$250,000-$499,999	25
$500,000-$999,999	17
$1 million or more	51
Total:	231

The availability of network television to all types of national advertisers is also indicated by the rapid increase in the number of such advertisers using the NBC television network—a number which rose from 48 in 1949 to 231 in 1955, as shown in *Exhibit 14.*

The foregoing puts to rest the claim that the basic network policy has the effect of confining network television to the advertising giants. NBC's television network sales patterns are deliberately designed to democratize the advertising use of the medium for *all* national advertisers. It is absurd to contend that a medium which undertakes the cost and burden of providing a national service with nationwide interconnections cannot properly establish sales policies which guard against such a fragmentary use of its facilities that the result would be uneconomic.

Although NBC's interconnection costs represent only one of the many elements in its fixed cost structure, they illustrate what could result from the elimination of the basic network sales policy. NBC leases intercity circuits which make possible the interconnection of 176 stations. These circuits are generally leased under monthly contract in a minimum unit of 8 hours a day, seven days a week, which represents the most economical way for NBC to buy the service from the Telephone Company.

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If NBC could not establish a minimum facilities purchase requirement, presumably it would have to accept the business of an advertiser who wanted to buy only 10 or 15 stations, with revenue to the network which would not even meet its interconnection costs. This is like arguing that *Life* magazine should be forced to sell advertising at one-quarter of its established rates to an advertiser whose distribution is limited to one-quarter of the country, and who wants to buy the circulation *Life* furnishes in that quarter only.

Perhaps a closer parallel in the media field is the Sunday supplements, such as the Metro Sunday Magazine Network, which acts as sales representative for national advertising in Sunday supplements published locally by a group of newspapers. The relationship between Metro and its "affiliated" newspapers has some marks of similarity to that between a network and its affiliated stations, with the significant difference that Metro provides *only* the advertising, and is not responsible for the editorial material in the supplements; whereas a network undertakes the provision of a costly program service to its affiliates, as well as the development of advertising in that service.

Despite the fact that it does not have the fixed cost of producing the supplement, Metro operates under a "must buy" policy in the sale of national advertising in these supplements. In its case, the minimum purchase requirement is a supplement in each of 26 "Basic Group" cities, out of the total Metro group of 30 supplements in 27 cities. The Los Angeles *Times*, published by the owner of KTTV, is a "basic" ("must-buy") affiliate of Metro.

2. **The Basic Network Policy Serves the Public Interest.**

Apart from its advertising and economic justification, NBC's basic network policy serves an important public interest function in assuring that sponsored programs of great public value, which NBC has equipped itself to furnish to a nationwide audience, will be available at least to a majority of that audience*; and assures against the possibility that an advertiser could, by limiting the number of stations he orders, confine the program to a minority of the public.

It is curious that there should be an attack on this sales policy by those who purport to speak for the public interest. Indeed, it is because

* The NBC basic network now covers 80% of all U. S. television homes.

such a policy cannot, as a practical matter, go *far enough* in providing for the availability of sponsored network programs in additional smaller markets, that NBC developed two plans to help affiliates in such smaller markets obtain network sponsored programs which they needed and wanted, but for which they were not ordered by the network advertiser. Until these plans were adopted, the normal practice in network broadcasting was to furnish sponsored programs only to stations ordered by the program sponsor. Accordingly, where the advertiser ordered a relatively small number of stations in addition to the basic group, many communities were deprived of access to the program.

Under the first of these plans—the NBC Program Service Plan established in September 1954—various NBC sponsored programs, with the network commercial announcements deleted, are made available, as a service to optional affiliates which are not ordered by the sponsor. These smaller-market stations have eagerly welcomed this additional network service. As a result of it, they have been able to furnish their communities with popular network shows, which they otherwise would not have received. This in turn has increased television circulation in their markets and has made them more effective elements in the national television system.

A related procedure to make more network sponsored programs available to smaller-market affiliates is provided by NBC's Program Extension Plan, adopted in October 1955. Under this procedure, NBC established a group of some 50 "optional" affiliated stations which were most in need of additional programming. Under the plan, a network advertiser may order these stations at reduced costs by virtue of a "dividend" system, the cost of which is borne by NBC.

Details and the results of these plans are set forth in *Exhibit 15*. As shown there, these plans have brought about a notable increase in network programs for smaller-market affiliates which had great need for such programs. NBC's action in developing these plans was applauded by the stations and by Government leaders. Typical comments are set forth in *Exhibit 16*.

The proposal of the film group to outlaw the basic network policy would foster the opposite results—the withdrawal of network service from many communities at the dictate of any advertiser who sought to use a national medium for restricted coverage.

V. Conclusion.

Option time and the policy of selling a basic network involve no unreasonable restraints.

They are necessary and proper procedures in conducting a national network service.

The network service has been the basis for the development of television to its present scope, and is now the basis on which the new industry of color television is being created. It has been and is the source of television's outstanding contributions to the public. Without an effectively operating network system, there could be no live programming or special event coverage on a national basis; the country's television source would be limited to local programs and film.

Adoption of the film group's proposals would have the effect of supplanting a vital, diversified and responsible service by a flood of standardized film programs and old Hollywood movies. The result would be a contraction of the scope and usefulness of television and a grave disservice to the public.

Respectfully submitted,

NATIONAL BROADCASTING COMPANY, INC.

May 25, 1956.

APPENDIX OF EXHIBITS.

Exhibit 1

Hollywood Film Backlog Recently Released for TV Broadcast

Studio	Backlog Released — Features	Backlog Released — Shorts	Price	Sold to
20th Century-Fox	52		$ 2,300,000	NTA
Warner Bros.	754	1500	$21,000,000	PRM
RKO	740	1000	$15,200,000	C&C
Columbia Pictures	104			Screen Gems
	121	152	Not Known	Hygo-Unity
Universal	14	179	Not Known	NTA
	6		Not Known	Hygo-Unity
	97		Not Known	Quality
Paramount		1450	$ 3,000,000	NTA (Via UM&M)
Selznick	10		$ 1,000,000	NTA
	1898	4281	$42,500,000	

NOTES

The transaction involving the 52 20th Century-Fox features was in the form of a 10 year lease to National Telefilm Associates (NTA), with a guarantee of $2,300,000 to 20th Century-Fox against a percentage of the gross. It is reported that 20th Century-Fox has divided its total backlog into 10 groups of film, of which the first to be released to television was the package listed above. This leaves 9 similar film packages, which if released on the same terms, would involve payments of over $20,000,000. (See *TV Digest,* April 21, 1956, pg. 7)

* * * * *

The Warner Brothers sale to PRM, Inc. was concluded March 1, 1956. PRM is a Canadian-American investment company headed by Mr. Louis Chesler, Chairman of the Board. As reported in *Broadcasting-Telecasting* Magazine (March 5, 1956):

> "Associated with Mr. Chesler as an investor is Eliot Hyman, President of American Artist Productions, New York. . . . It was reported that PRM would absorb the sales division of Associated Artists and install Mr. Hyman as managing-director of the company. . . . The control of PRM, it was reported, recently was acquired by a group headed by Mr. Chesler and George Gardiner, PRM president."

Mr. Chesler has also been in negotiation for the purchase of the MGM backlog. In these negotiations, according to press reports:

> "The Chesler bid is through Ridgeway Corp., a shell corporation listed on the New York Stock Exchange, as was PRM prior to the Warner deal. Ridgeway, according to M. Mac Schwebel, general counsel for the firm, is the successor company to Campbell, Wyant & Cannon Foundry, which was sold to Textron, Inc., for $15,500,000 in cash." (New York *Herald Tribune,* May 17, 1956).

* * * * *

Ex. 1, pg. 2

The RKO sale to C&C was announced December 27, 1955. The distribution of the films is to be handled by C&C Television Corporation, of which Mr. Matthew Fox is president. C&C Television Corporation is a newly-created subsidiary of C&C Super Corporation. According to the New York *Times,* other

> "subsidiaries of C&C Super include Cantrell and Cochrane, manufacturer of the Super Coola soft drink; the Nedick's food chain, a rubber company and a power products company. . . ."
>
> "Mr. Fox speculated that his investment of $15,200,000 would bring a total return of $43,000,000 within five years. He estimated that $30,000,000 would come from television in this country and $15,000,000 from foreign distribution, mostly in theatres.
>
> "The purchase of the films represents another addition to the list of business ventures for Mr. Fox. He obtained his stock in the C&C Super Corporation this year by turning over to it his Western Television Corporation, which owns and distributes 650 Hollywood theatrical films to television.
>
> "Mr. Fox said that Western had owned $15,000,000 worth of air time on television stations. Western had acquired this time in rental payments for films it distributed. In turn the C&C Super Corporation used the time for advertising its soft drink.
>
> "In 1948 Mr. Fox established the American-Indonesian Corporation, a sales and purchasing agency for Indonesia that aroused controversy, including protests by the State Department. The agency was dissolved in 1950.
>
> "In 1947 Mr. Fox introduced Bub-O-Loon, a small wooden pipe that emitted plastic bubbles. The enthusiasm of small children in blowing bubbles set off a national craze." (New York *Times,* December 27, 1955.)

A further account of the financing of the acquisition of this RKO backlog is reported in *Advertising Age:*

> "Coincident with the signing of his contract with RKO, Mr. Fox, a former exec. v.p. of Universal International Pictures, sold his holdings in United Artists Corp. A principal in Skiatron

Electronics Corp., a would-be pay television operator, he has been active in many motion picture and tv film operations.

"He is the major stockholder in C&C Super Corp., having acquired that position through a merger with Western Television Corp., a tv film distributor, and C&C several months ago. At that time Western's films were sub-leased for distribution, and C&C got several million dollars worth of spot tv time Western had obtained in exchange for films.

"Mr. Fox financed the C&C deal with RKO by borrowing $9,200,000 from First National Bank of Boston and $3,000,000 from the Irving Trust Co., New York.

"Reportedly he was able to arrange the financing because of advance sponsor interest. International Latex Corp. was a big help here; this company is interested in using the films in several markets. The parent company of C&C Television Corp., C&C Super, will use some commercial time in the films to promote C&C Super Coola." (*Advertising Age,* January 2, 1956).

* * * * * *

The release by Columbia Pictures of 104 of its old feature films was made through its own subsidiary for TV production and syndication—Screen Gems—and the price has not been announced. As reported by the *Wall Street Journal* (January 3, 1956): "The 104 films Columbia is releasing represents less than 10% of the more than 1,000 films in the studio's vaults. Television stations around the nation were informed that Columbia would release the films through its wholly-owned subsidiary, Screen Gems, which has been producing short subjects and serials for TV use for the past four years."

* * * * * *

The acquisition by NTA of much of the film backlog it is holding came about through its purchase of UM&M TV Corp. for a reported $4,000,000. UM&M had previously acquired Paramount's library of shorts and cartoons. (See *Variety,* May 16, 1956).

Exhibit 2

TV SETS and TV HOMES 1946-1956

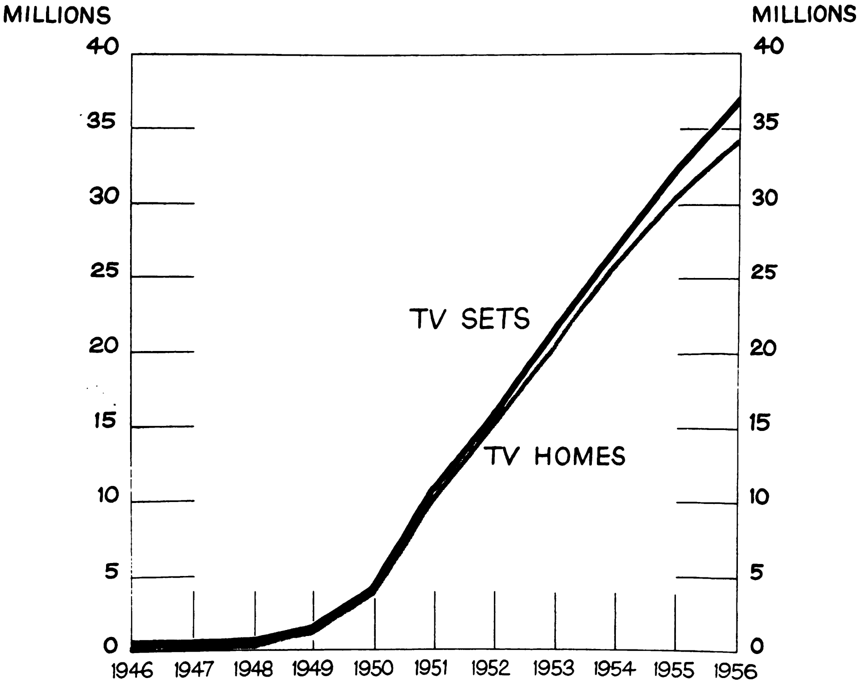

Exhibit 3

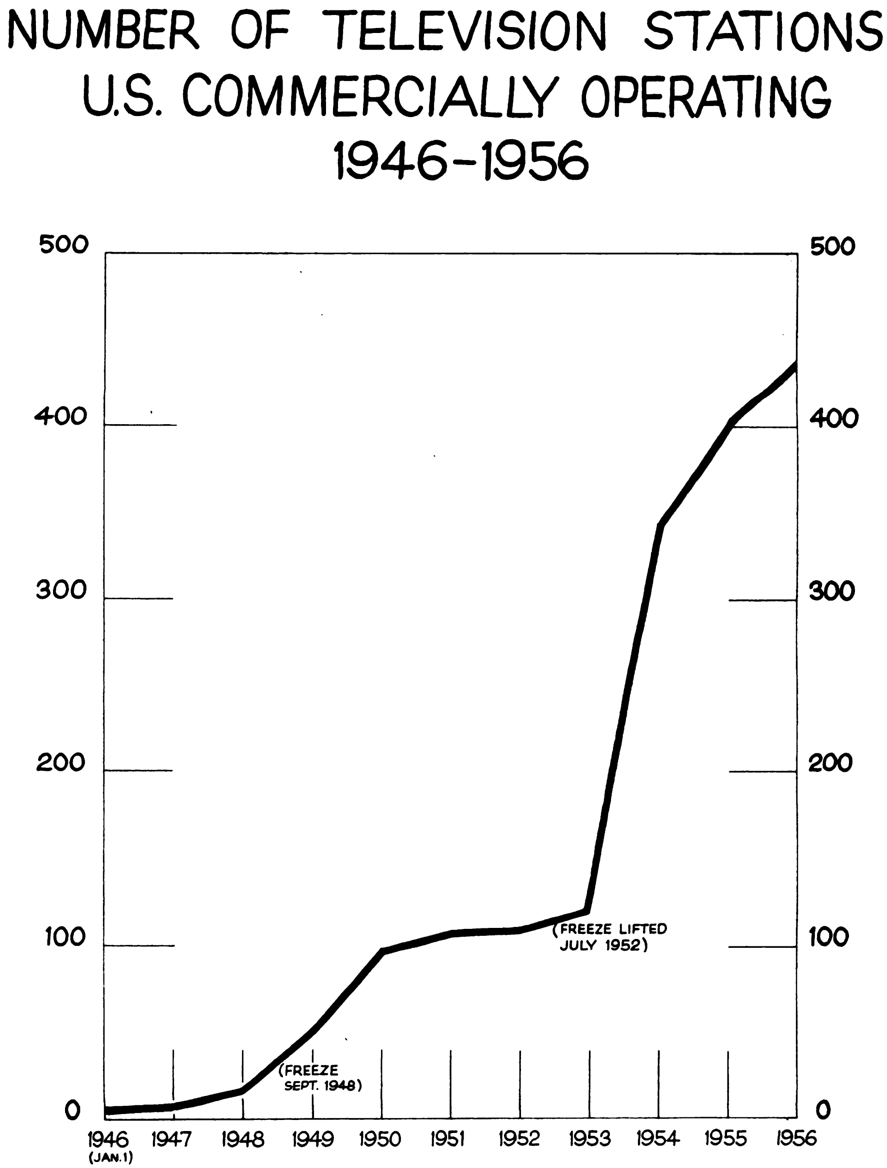
NUMBER OF TELEVISION STATIONS
U.S. COMMERCIALLY OPERATING
1946-1956
500
400
300
200
100
0
(FREEZE
SEPT. 1948)
(FREEZE LIFTED
JULY 1952)
1946
(JAN.1)
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956

Exhibit 4

TELEVISION NET TIME SALES 1949-1955 NETWORK-SPOT-LOCAL-

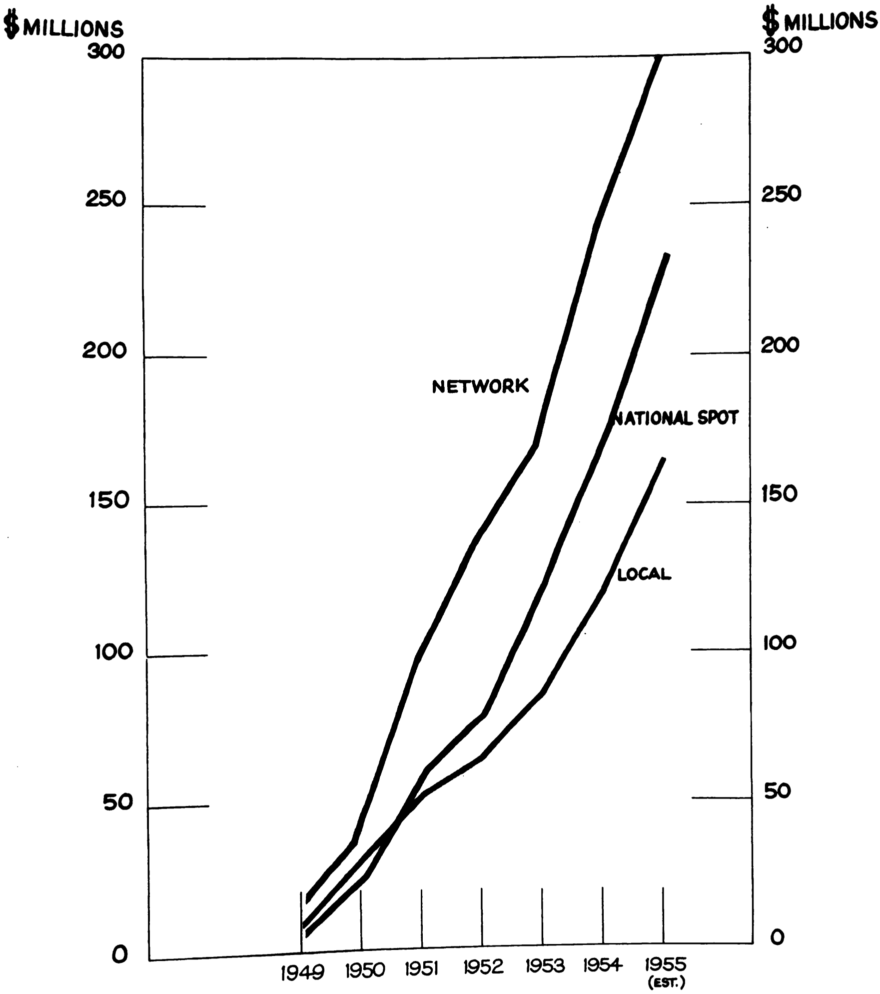

Exhibit 5

Examples of Financial Differences Between National Sale of a Film Series and Market-by-Market Syndication

1. When a film producer sells to a national advertiser or a network, he makes only the number of films ordered, and at most, needs a small revolving fund, because he gets his money back from the advertiser or network either on commencement of production, or upon delivery of the film. When the films are syndicated over individual stations, the producer's recovery is piecemeal, and may be spread over several years, as films are played and paid for in individual markets; on this basis, he generally requires long-term financing which means giving up a portion of profit to the person who furnishes the risk money.

2. When a producer sells to a national advertiser or network, there may be no distribution fee if a fixed price is paid per film; or if the producer sells to a network at cost and participates in profit, there may be a fee of 10% of the sale price. When the films are syndicated, a distribution fee of 35%—40% of gross revenue is deducted to pay for the services of the distributor; in this event, recovery of production cost is further postponed.

3. Print and shipping costs of film series broadcast by a network are generally borne by it. In syndication, because of the multiple prints and many individual shipments required, the distribution cost is higher, and is deducted from film revenues before the producer is paid his share.

4. The network and national advertisers bear most of the cost of promotion when they buy a film series. This cost has to be borne by the producer or syndicator when the film is syndicated, and is deducted as a distribution cost before the producer is paid his share.

Exhibit 6

NBC Network Live and Film Program Composition

Week of March 18-24, 1956

	Live Hours	Film Hours	Total Hours
COMMERCIAL HOURS			
Sign On—12 Noon	7.00	.50	7.50
12 Noon—6 PM	13.75	1.00	14.75
6 PM—Sign Off	20.00	8.00	28.00
Total Commercial Hours	40.75	9.50	50.25
SUSTAINING HOURS			
Sign On—12 Noon	14.50	—	14.50
12 Noon—6 PM	12.75	.50	13.25
6 PM—Sign Off	5.75	—	5.75
Total Sustaining Hours	33.00	.50	33.50
TOTAL WEEK			
Sign On—12 Noon	21.50	.50	22.00
12 Noon—6 PM	26.50	1.50	28.00
6 PM—Sign Off	25.75	8.00	33.75
Total Hours Comm'l. & Sust.	73.75	10.00	83.75
% of Total	88.1%	11.9%	100.0%

Exhibit 7

KTTV Live and Film Program Composition

Week of March 25-31, 1956

	Live Hours	Film Hours	Combined Live and Film Hours*	Total Hours
MONDAY-FRIDAY				
Sign On—12 Noon	2.50	8.75	13.75	25.00
12 Noon—6 PM	——	26.25	3.75	30.00
6 PM—Sign Off	2.00	35.25	2.75	40.00
Total Hours Mon.-Fri.	4.50	70.25	20.25	95.00
SATURDAY, SUNDAY				
Sign On—12 Noon	1.00	5.75	——	6.75
12 Noon—6 PM	3.58	8.42	——	12.00
6 PM—Sign Off	3.50	10.50	——	14.00
Total Hours Sat., Sun.	8.08	24.67	——	32.75
TOTAL WEEK				
Sign On—12 Noon	3.50	14.50	13.75	31.75
12 Noon—6 PM	3.58	34.67	3.75	42.00
6 PM—Sign Off	5.50	45.75	2.75	54.00
Total Hours Mon.-Sun.	12.58	94.92	20.25	127.75
% of Total	9.8%	74.3%	15.9%	100.0%

* Programs including both live and film material.

Exhibit 8

Articles on Network Service by Television Critics

"TELEVISION TODAY—A CRITIC'S APPRAISAL".

(From The New York *Times* Sunday, April 8, 1956)

"By JACK GOULD

"Age is creeping up on television; it's in its ninth year. In 1947 the infant medium was tenderly carried from the laboratory to the public stage. At home a handful of hardy pioneers squinted at strange, illuminated windows cut in cumbersome boxes. Before their eyes cavorted an assortment of little figures, the dancing omens of a nation's new way of life.

"Today the TV set ranks with the kitchen stove as a family essential. The youngsters who were introduced this year to the regimen of high school are members of the first TV generation, boys and girls who cannot be expected to remember what life was like without video. The thought is quite a numbing one.

"As perhaps need not be suggested, the advancing years have not always been kind to the viewer; to think back alone on the total number of hours wasted on ancient movies is a little terrifying. But in fairness it must be conceded that the passing of time has been just as cruel, if not crueler, to the TV broadcaster. The video operator, after all, is the only man in the television age who is denied the most exhilarating of intellectual privileges, turning the TV off. In his executive suite he cannot merely sit in contemplation of the ulcer that lies beneath the gray flannel; he must constantly devise new ways to nourish a monster that grows more hungry with every meal.

"How goes life, then, with this unenviable figure, the broadcaster? How well is he succeeding in his multiple role of impresario, educator, journalist, psychiatrist and nursemaid to the millions? Is TV getting better or worse?

"TV has gone through two stages of development and now is in its third. The first stage was the medium's pure technical novelty, when almost anything could be put on the screen and the public would look at it. The second was the era of personality novelty; the sight of a new face periodically refreshened interest in the TV medium. Now, in the third stage, with almost everybody and his brother having had

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a TV debut, the industry is confronted with the realization that it must rely on itself. This is the key both to its progress in some areas of programing and to its stalemate in others.

"Television's special events—the occasional programs which are entities unto themselves—probably represent the medium's most significant single asset: its capacity to be extraordinarily good. In this season alone the viewer has been afforded the chance to witness George Bernard Shaw's 'The Devil's Disciple,' with Maurice Evans; Robert Morley in 'Edward, My Son'; a superb live version of 'The Caine Mutiny Court Martial'; a tour of India with Chester Bowles; an examination of the farm problem that disturbed the Secretary of Agriculture; Noel Coward; Mozart's 'Magic Flute'; Sir Laurence Olivier's new film, 'Richard III'; Mary Martin in 'Peter Pan', and the Sadler's Wells Ballet.

"Granted that the cited attractions would not be immune to some critical reservations, none the less such efforts are not the output of untutored morons; they are thoroughly commendable and sometimes brilliant illustrations of the fact that, when they want to, the broadcasters are entitled to hold up their heads proudly. The boring snobs who have tried to concoct an intellectual superiority out of a noisy refusal to watch television will have to find a more persuasive dodge.

"To be sure, not all special events, some of which have labored under the collossally inept title of 'spectaculars,' have been an unmixed blessing. Quite a number were pretentious cathode atrocities. If the Sadler's Wells Ballet chalked up an impressive total audience of some 30,000,000 viewers, let the record show that Art Linkletter's incredible 'tour' of Beverly Hills allegedly garnered a bigger one. 'Spectacular' is not a reliable synonym for 'culture.'

"But in this respect television differs not a whit from the theatre, movies or book publishing. For every Pulitzer Prize or Oscar winner, there are scores of wretched products in these fields, dismal outrages that constitute huckstering at its worst. A fairer test is the ratio of good to bad. By this criterion, TV's special endeavors stack up rather well.

"To represent TV at its best there also is another type of special attraction—the actuality broadcast that takes place outside the studio.

The national political conventions, the coronation of Queen Elizabeth, the Kefauver crime hearings, the world series, the Presidential press conference and the heavyweight championship are samples of life itself conveyed into the home. With such broadcasts the world of reality unfolds upon the screen in all its spontaneity and unpredictability. This has been and always will be TV at its most exciting because it is something that only TV can do, which is to enable the viewer to be his own reporter, editor and critic. Why television does not venture more often out of the studio continues to be quite baffling; the medium hasn't really begun to explore the vast amount of fascinating programing that may lie between Madison Avenue and the Hollywood Freeway.

"Television's regular events—the programs that turn up according to a fixed schedule—are quite another story. The passing years are taking their toll of both the ingenuity of producers and the durability of viewers. It could not be otherwise after so many hundreds of nights of continuous programing. The creative artists of TV and the set owner are, each in his own way, bound to feel the consequences of 'over-entertainment.' The program producer has done too much and the viewer has seen too much to make their relationship easy.

"Comedy on television is in dire difficulty. The frayed tempers of Arthur Godfrey and Jackie Gleason and the physical exhaustion of other clowns are symptomatic of the law of diminishing returns that goes with trying to fit humor on an assembly line. The routines, mannerisms and gestures that once seemed so amusing inevitably wear thin; they are too fragile to survive repetition. This season Phil Silvers has been a great hit and justly so. But how long can even Sergeant Bilko last?

"No comedian in his right mind, before the coming of TV, would have dreamed of going to the same house once a week and being the life of the party; yet this is what he tries to do in video. It is madness and the toll of comedians is one of TV's great tragedies. The country needs its warm and funny men too much to burn them out. The comedians should restrict their appearances to a few performances a year. Failing that, the viewer can only institute his own rationing system.

"The dramas on television, with changing casts and authors, are perhaps doing best of the regular TV attractions. Some of the plays

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are extremely good and the sustained high quality of acting on TV is astonishing. But drama also is facing troubles. Whereas once there were four hour-long shows, now there are nine every week. There simply are not that many good plays around and many are just soap-opera rubbish in pretentious settings. There is a need for more drawing-room comedy and satire and certainly more theatre of the bravura school. TV drama is topheavy with social discussions conducted in cubbyholes.

"Television variety this season brings one name to the fore: Perry Como. Ironically, his show represents a full turn of the TV wheel; its appeal and charm are based on the qualities of relaxation and informality that made 'Garroway at Large' one of the first video successes. Mr. Como's philosophy might well be a guiding motto of all TV: easy does it. Ed Sullivan's 'Toast of the Town' continues to thrive, perhaps because it also combines the virtues of professionalism and low pressure. Most of the other variety shows seldom sustain themselves for many weeks; they try too hard, including 'Omnibus.'

"The films especially made for TV? A sorry lot, by and large. Certainly, they cannot stand comparison with the live hour-long dramas and the special events; more than ever, they seem inadequate in characterization and narrative, following the old-fashioned radio way of telling a story. But also, with few exceptions, they are trite and artificial, certainly not a good advertisement of the capabilities of Hollywood.

"Of the major studios, Twentieth Century-Fox has done much the best with its extended dramas. Warner Brothers has come up with a satisfactory Western series, but Metro-Goldwyn-Mayer hasn't put its heart into TV. Economics will always assure a place for filmed series on video, but artistically it is shocking how really unimportant they are.

"TV quizzes have come in a few years to the point it took radio quizzes nearly twenty-five years to reach—buying their audiences. 'The $64,000 Question' started it all, of course, and its appeal at once was undeniable: watching a person gamble his knowledge against the possible loss of a fortune. The human values were indubitably there. But the imitations have not been especially successful and now the question is: where does the quiz go next?

"The inexpensiveness of most quizzes is their prime asset and no doubt they will be with us forever. But it surely would be fun if some of those old familiar faces could be replaced. The current members of television's cafe society elite, the mainstays of panel attractions, are fading. Let's bring on the younger girls!

"The regular news programs on TV are not what they should be; journalistically, video is something of a disappointment. The fault does not lie with the backstage laborers in the news vineyards, they are able. But on the policy-making level the TV high brass is not really overly interested in news because it does not have the same commercial sales value as, for instance, vaudeville.

"The best that TV can do, after eight years, is a quick newsreel once-over of the day's events. There is no sustained coverage in depth, little helpful evaluation of the significance of the headline, and virtually no interpretive commentary to stimulate the viewer to do some thinking for himself. TV has all but wrecked night-time radio, where news opinion once flourished, and has failed to offer an adequate substitute in the realm of regular informational programming. This is one of TV's black marks.

"The weekly interview shows in which newspaper men examine front-page personages are consistently interesting, though at times the panels seem inordinately eager either to pack their guests off to jail or to let them off the hook with dismaying gentleness.

"Programs for small children—the older youngsters would not be caught dead looking at children's shows—are not what they should be. 'Captain Kangaroo' is a civilized delight, unhesitatingly recommended. Dr. Frances Horwich, principal of 'Ding Dong School,' is still imploring tots to guide their mothers to the right commercial products, a not too seemly performance for one trained in child education. 'Howdy Doody' is every bit as objectionable as ever.

"Daytime programming has not had much really new for quite a while. 'Home,' with Arlene Francis, has a number of worthwhile features, however, and Garry Moore, with his innocuous high-jinks, is diverting and also one of the most consistently pleasant gentlemen on the air. The 'Matinee' series of hour-long dramas seems to be teetering perilously close to soap opera, which is a pity. And, of course, there are movies and menus at all times.

"The final program classification with a legitimate claim to attention is that of the full-length theatre movies now being shown on TV. Some are uncommonly good, particularly the more recent English features. And it now appears that the motion picture industry's unspoken boycott of TV has been broken with the release of major backlogs of films to TV. The cutting of some of the films for TV purposes, however, has not always been especially judicious. The narrative can become entangled by the interruptions for those blankety-blank, if altogether necessary, commercials.

"What of the future of television programming? Very likely the broad outlines of today's pattern will continue, but no one would be too surprised if TV came to the 'special evening' as opposed to the present 'special event.' This would entail the planning of a night's several shows as part of an integrated whole. Instead of a mixed assortment of bits and pieces, there would be an over-all design and point of view intended to hold an audience, say, 8:30 to 11 o'clock.

"In European television there is the custom of an attractive hostess who appears periodically and provides a thread of continuity throughout an entire night's viewing. American television, in contrast, almost invites a viewer to tune out and look elsewhere every half-hour or hour. With the 'special evening,' presumably, also would come better balance in programming, not one quiz back to back with another quiz but perhaps first a quiz, from 8 to 8:30, then a two-hour play until 10:30, and finally a half-hour of song and dance before the news and bedtime.

"On the other hand, television cannot afford to abandon its present bread-and-butter staples. To suggest that this or that format will be predominant in the days to come is to misunderstand video's requirements: it must have a little of everything. There are some indications already that the 'spectacular' has perhaps become too commonplace. TV's everlasting problem is not to worry so much about what it is doing but what it is not.

"Essentially, both the viewer and the broadcaster are showing their TV years in the same way: they are becoming restless. As a fixture in the living room, television can be accepted as a matter of

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course; as a social force, TV's effects cannot. The people of the nation now see more plays in a year than a professional Broadway drama critic. They are more knowledgeable about vaudeville than the Monday matinee audience at the old Palace; certainly, they've seen the same acts more often. They can identify on sight more celebrities than the traveled cosmopolite of a generation ago.

"Quietly but steadily, television has wiped out 'the sticks' and 'the road' from show business. The erstwhile hayseed is looking at the same things as the supposedly more sophisticated resident of Park Avenue. The economic and geographical barriers that once separated the mass from the arts have simply been taken down. If, under the circumstances, the television impresarios are a little bewildered by the full long-range meaning of what they've started, who isn't?

"The world of TV has a cultural bear by the tail and finds it cannot let go. In inundating the American home with things to watch morning, noon and night, it has set off a gradual process of selectivity on both sides of the screen. It matters not that the majority of millions may prefer the shows with which they are familiar; millions of other persons are willing to track down the unusual. There is a growing body of undeclared set owners who, having absorbed so much TV, are becoming choosy. The impact of TV is proving a double-edged sword: the show that can quickly impress a viewer can also quickly exhaust him.

"The despair of television today—finding enough things to do—in the long run is the hope of television tomorrow. Video's appetite for material is so huge that not even the supply of mediocrity is large enough to go around. To borrow Gore Vidal's immortal line, there comes a time when in sheer desperation it is necessary to scrape the top of the barrel.

"Economically and artistically, television has no real alternative to expanding its interests and lifting its sights; it's done everything else. Undoubtedly it will receive far too much advice about how it should proceed, and unquestionably it will pay much too little attention to most of it. With baffling rapidity it can be expected to be charming and stimulating one moment and completely infuriating and tiring the next. But this should not surprise either viewer or broadcaster unduly. After all, isn't television the lusty child of the arts?"

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"ON THE AIR".

(From New York *Post*, Wednesday, April 11, 1956)

"By Jay Nelson Tuck

"Are CBS and NBC two gigantic monsters who ought to be restrained now before they strangle the rest of the country? This is an argument that is being pressed now before the Senate Commerce Committee in current Washington hearings, before the Dept. of Justice Anti-Trust Division and before the FCC.

"The argument is attractive to politicians because it is being presented by people who represent themselves to be small business men and creative artists standing against two economic Goliaths. If the news reports are accurate, numerous Washington worthies have been so impressed that the two big networks are now decidedly on the defensive.

"No one will dispute that the networks are big. There is a greater demand for their choice hours than they can supply. There being only so much time in a broadcasting day.

"They have used this situation to exert greater and greater control over programming. Less and less is it possible for an advertiser to bring in any show he chooses and buy good network time for it; more and more he must advertise on the program the network wants.

"Moreover, the networks exert some control over the programming of their affiliated stations. As a price of its affiliation, the station agrees to permit the network to take certain choice hours each day for network programs.

"It is on these facts that the attack is based. Advertisers claim they have insufficient opportunity to hawk their wares and too little choice of the program that shall be wrapped around the hawking.

"Stations claim they have insufficient control of their own programming. And salesmen of programs claim they have insufficient opportunity to place their stuff.

"If, in all this welter of noise, anybody has represented the viewer, it has not been reported in the dispatches.

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"And in essence what all these people are suggesting as an alternative to network programming would be poison to any viewer of the grade of boob or better.

"Each of them is really arguing that he could make a quicker buck if there were more cheap film programs on the air, most of them are either moldy junk long since previously run on the networks and thrown off or stuff too trashy ever to have gotten on the networks in the first place.

"This department has been no laggard when it seemed necessary to rip into the networks for what appear to me to be their deficiencies, but when it comes to choosing between their control of programs and control solely by advertisers, I'm with them every time.

"Yes, the networks have put on their share of stinkers, but without them we would never see most of the best programs broadcast. If the drive had not come through the networks, you would never have seen a 'Peter Pan' or a 'Richard III,' almost none of the big 90-minute shows, no 'See It Now,' no 'Adventure' or NBC Opera Theater.

"Whatever their faults, the network men do have a sense of public responsibility. Many sponsors feel responsible only to their stockholders.

"As far as the stations are concerned, they can make more money by broadcasting a cheap film show as a local program than they can by carrying the network offering.

"So take a look at the average program of some of our local stations—Channels 5, 9 and 11 (13 is a special case) and compare it with the network shows. How much creative talent is being smothered because Channels 2, 4 and 7 don't offer more of this?

"No, the fact is that at least until now the network influence with all its failings has been decidedly a good one for the viewer. We could not possibly have gotten most of the good things now on TV without it."

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"JANET KERN: Networks Have Many Faults, but Provide Vital Services".

(From Chicago *American,* Tuesday, April 3, 1956.)

"SOME TIME AGO, a politically astute friend alerted me: 'The one subject both political parties can safely be against in 1956 will be the networks.'

"This prophecy is now on the brink of fulfillment.

"On our legislative agenda we'll soon find investigations, debates, etc., in which 'the networks' are likely to be charged with everything from too noisy commercials through monopoly to stealing from church collection plates.

"Just a glance at any serious TV-radio column will provide fodder on the faults of any network. Few businesses operate under so constant or glaring a spotlight and high-powered a magnifying glass as we of the columning fraternity keep on the broadcasting networks.

"So, perhaps, in justice we should turn our spotlight, for a moment, on the question:

" 'What IS a network?'

* * *

"A NETWORK IS an alliance of stations carrying the same programs, joined by individual contracts under which a broadcasting company agrees to provide and transmit a certain number of national programs in return for the affiliation of each station.

"There are three major networks.

"NBC was formed first, on November 16, 1926, by what is now the Radio Corporation of America, to prove the controversial contention of RCA's Gen. David Sarnoff that radio could become a useful, integral part of every household.

"In 1927, CBS came into being and into bitter competition with NBC, followed by the formation of ABC in 1943.

"Thus, RCA, and then NBC and CBS, poured out the money and took the considerable risk of creating and developing radio. Later, the same three companies gambled again to develop TV.

* * *

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"NEEDLESS to say, these gambles were not unselfishly motivated. RCA wanted to sell radios, and then TV sets, and the transmitters and other equipment which go with the broadcasting business.

"CBS and NBC each wanted to sell programs. So these companies developed a new industry which proved profitable . . . but it might not have.

"Now that broadcasting is fully developed as an industry, where would we be today without the networks? Ninety per cent of our favorite TV shows are network shows—for no single station could afford to assemble the stars, writers, studios, etc., needed for big-league shows.

"Would such events as presidential conventions or inaugurations be covered individually by single stations? Not on your coaxial cable!

"Suppose all the radio networks were to decide today that their business is not profitable enough to continue.

"How would government officials, wishing to speak to the nation in time of emergency (or political campaign), do so?

"What would replace 'Conelrad' if war were to make instantaneous Civil Defense alerts necessary?

• • •

"SPONSORS PAY for network operation, but they complain the networks are arrogant to them.

"The sponsors could put an easy stop to this arrogance by refusing to patronize the networks, for the broadcasting companies are, admittedly, behaving as is frequent in a 'sellers' market'—as some of those same sponsors bullied THEIR customers during wartime shortages.

"Network affiliates moan about excessive demands on their time. But the affiliates ARE the networks and, were they to utilize the strength which lies in union, they could bring any broadcasting company to its corporate knees.

"Some independent stations complain the networks constitute unfair competition for them. Well, it has long been true that he who gives the most for the least price frequently monopolizes us customers.

• • •

Ex. 8, pg. 12

"No One resents the faults of the networks more than I; no one would like to wallop them across their spanking area more often than I yearn to. But even I cannot quite forget that, without the networks, radio and TV could not span continents and oceans, to bring the World Series to hospital wards, comedy and music to old people at home, etc.

"There is much I delight in condemning on all networks . . . but, just between us, I'd hate to have to learn to live without the services only networks can provide—and, in their heated competition, provide in super-abundance."

Exhibit 9

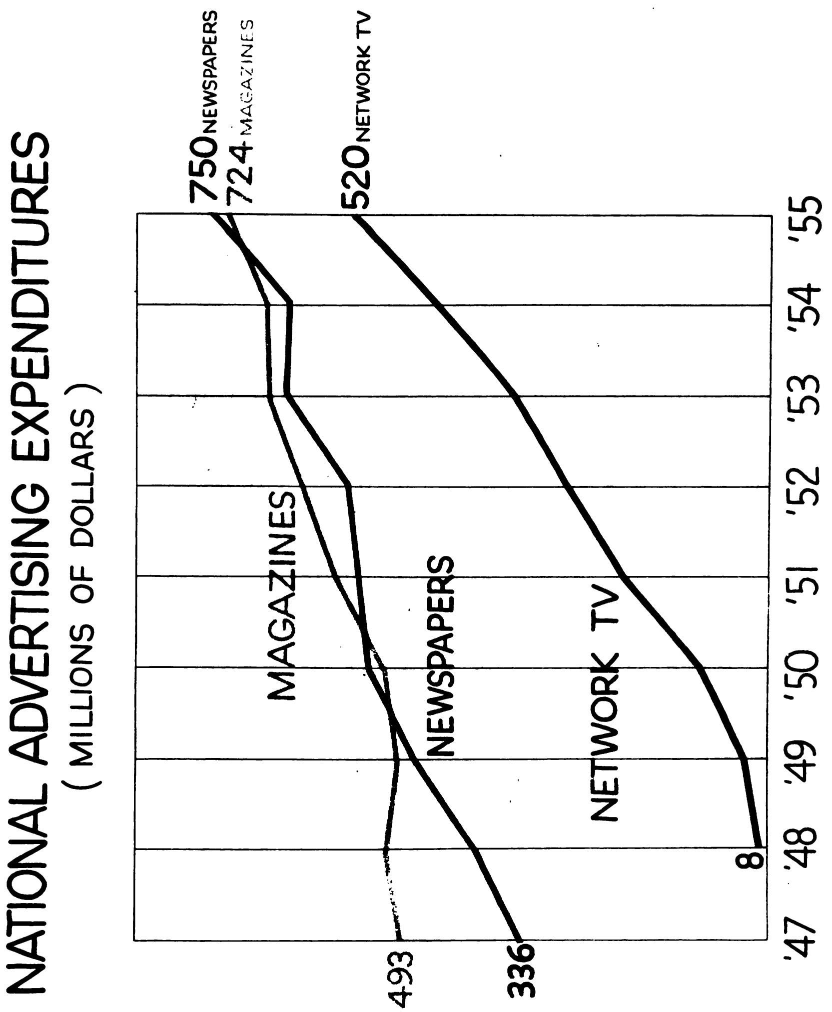

NATIONAL ADVERTISING EXPENDITURES
(MILLIONS OF DOLLARS)
750 NEWSPAPERS
724 MAGAZINES
520 NETWORK TV
MAGAZINES
NEWSPAPERS
NETWORK TV
493
336
8
'47
'48
'49
'50
'51
'52
'53
'54
'55

Exhibit 10

Share of Audience of Affiliated and Unaffiliated Stations
6 P. M. to Midnight

	Affiliated			Non-Affiliated	
	Network	Station	Share*	Station	Share*
Los Angeles	N	KRCA	20.4	KTTV	14.6
	C	KNXT	29.0	KTLA	8.9
	A	KABC	14.4	KHJ	6.2
			63.8	KCOP	6.4
					36.1
New York	N	WRCA-TV	32.0	WPIX	6.2
	C	WCBS-TV	41.2	WOR	5.5
	A	WABC-TV	10.4	WABD	4.1
			83.6	WATV	.8
					16.6
Chicago	C	WBBM	34.9	WGN	13.2
	N	WNBQ	30.6	Other	1.7
	A	WBKB-TV	20.5		14.9
			86.0		
Minn.-St. Paul	C	WCCO-TV	40.3	KEYD-TV	7.4
	N	KSTP-TV	34.1		
	A	WTCN-TV	18.3		
			92.7		
Washington	N	WRC-TV	36.1	WTTG	5.8
	A	WMAL-TV	20.2	Other	1.5
	C	WTOP-TV	37.9		7.3
			94.2		
Seattle-Tacoma	N	KOMO-TV	33.3	KTVW	4.3
	A	KING-TV	34.6	Other	0.8
	C	KTNT-TV	27.7		5.1
			95.6		

* Based on time periods when station was on the air. This accounts for total shares which do not always add to 100%.

"N" is "NBC"; "C" is "CBS"; "A" is "ABC".

Exhibit 11

48 Markets Included in Syndicated Program Placement Study

(Program Scheduling Taken from Available 1956 Pulse Reports)*

Eastern Time Zone Markets (23)

Atlanta, Ga.
Baltimore, Md.
Bangor, Me.
Boston, Mass.
Buffalo, N. Y.
Charlotte, N. C.
Cincinnati, O.
Cleveland, O.
Columbus, O.
Dayton, O.
Detroit, Mich.
Erie, Pa.
Miami, Fla.
New York, N. Y.
Norfolk, Va.
Philadelphia, Pa.
Pittsburgh, Pa.
Providence, R. I.
Richmond, Va.
Syracuse, N. Y.
Washington, D. C.
Wheeling-Steubenville, W. Va.
Youngstown, O.

Central Time Zone Markets (17)

Birmingham, Ala.
Chicago, Ill.
Dallas, Tex.
Houston, Tex.
Jackson, Miss.
Kansas City, Mo.
Louisville, Ky.
Memphis, Tenn.
Milwaukee, Wisc.
Minneapolis, Minn.
New Orleans, La.
St. Louis, Mo.
San Antonio, Tex.
Sioux City, Ia.
South Bend-Elkhart, Ind.
Tulsa, Okla.
Wichita Falls, Tex.

Mountain Time Zone Markets (3)

Albuquerque, N. M.
Denver, Colo.
Tucson, Ariz.

Pacific Time Zone Markets (5)

Los Angeles, Cal.
Portland, Ore.
San Francisco, Cal.
San Diego, Cal.
Seattle-Tacoma, Wash.

* The 48 markets listed were those covered by 1956 Pulse Reports available at the time the analysis referred to at page 30 of the text was made.

Exhibit 12

Excerpt from Address on "The How & Why of Selective Television" By Mr. D. S. Frost, Vice President in Charge of Advertising, Bristol-Myers Products Division, Made April, 1956

* * *

Where Do We Use Spot TV?

Let's take a look at the type of situations where we call on spots to augment our network operations.

First—*In testing of new products.* In this case a limited number of markets is selected for actual sales testing of new products prior to national or sectional introduction. We are sure TV will be an important ingredient in any plans for expanded introduction. We attempt to determine the amount of television weight to be put behind broad-scale launching and to simulate as closely as possible this condition in a test-market operation through the use of local TV coverage.

Secondly—*To support our national TV operation.* No matter how good a show is in national ratings, popularity and audience exposure will vary considerably market by market. For instance, Arthur Godfrey's national rating on the daytime show is around 11. On the Pacific Coast it is only 1 or 2. Maybe it's the bad time, hot kine reproduction or the fact that Californians can't take his Chamber of Commerce attitude toward Miami Beach. In any event, we buy special shows on The Coast on a spot basis to support sagging Godfrey exposure in those markets. We do the same thing in other markets where we have not been able to obtain satisfactory time on the network shows.

Thirdly—*Where product situations require a localized approach.* For instance, per capita usage of laxatives is much greater in the South and Southwest, probably because of that famous over-rated Southern cooking. We no longer use network coverage for our laxative product, but concentrate our advertising efforts in areas of highest per capita consumption. This requires a spot operation for TV penetration.

Fourth—We have found with some products, particularly some of our newer brands, that an accelerated advertising program in local

Ex. 12, pg. 2

markets can get the product off to a faster start than if we relied solely on national media. We have gone into selected markets with some products and, in addition to our national advertising, have poured on the coal for relatively short campaigns to create local bonfires under our brands. In this type of concentration or saturation effort, spot TV has proven to be one of our most important and effective tools.

FIFTH—*We have used spot for short-term buys.* For instance, when additional advertising funds have become available and we have not had time to plan a full-scale national effort. Of course, we try to make sure that this is not too frequent an occurrence, but it has been known to happen. In such cases, spot TV has proven to be a very effective sponge in mopping up such an overflow.

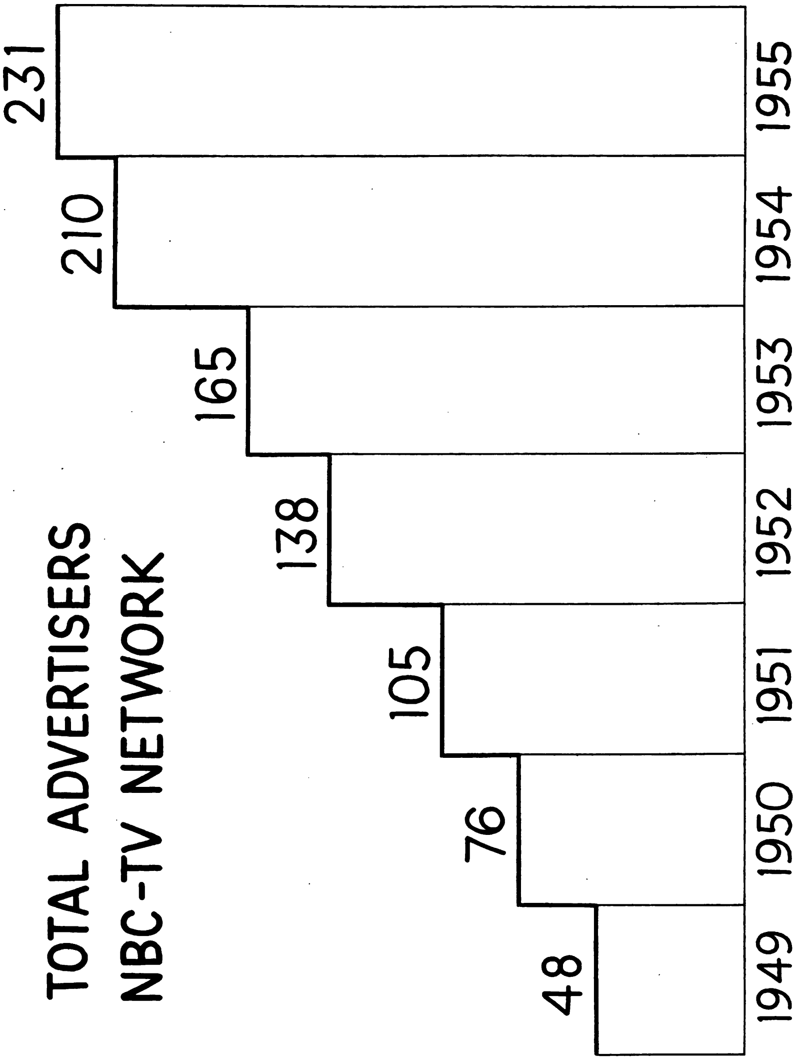
SIXTH—*In support of products with a seasonal sales pattern.* This could be cold remedies in the winter time—deodorants in the hot weather months. Here, again, spot TV is a most useful tool for adding additional weight when it is most needed and most effective. * * *

Exhibit 13

Representative Large and Small Advertisers on NBC Television Network—1955

Major National Advertisers	Smaller National Advertisers
General Motors	Mobile Homes—Trailers
Procter & Gamble	Magla—Ironing Board Covers
Colgate	Maico—Hearing Aids
Ford	G. M. Scott—Lawn Seeds
General Foods	Food Specialties—Pizza Pie
Chrysler	Lettuce Inc.
General Electric	Lau Co.—Fans
Remington Rand	Bostwick Laboratories—Insecticides
American Tobacco Company	Washington State Apple Commission
Radio Corporation of America	Pfaff Sewing Machine
Lever Brothers	Grocery Store Products—canned foods
Texas Company	Wrights Silver Polish
Aluminum Company of America	Atlantis Sales Corp.—bird seed
Armour & Company	Sandura—floor covering
Eastman Kodak	Gold Filled Manufacturers Assn.

Exhibit 14



75539 5291 60%

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Exhibit 15

NBC Program Service Plan and Program Extension Plan

Program Service Plan (PSP)

The NBC Program Service Plan was established in September, 1954, in order to provide affiliated stations in smaller markets with additional network sponsored programs desired by them. Until this plan was established, there was no procedure for furnishing sponsored network programs to an affiliated station unless the station was ordered by the network advertiser.

Under the NBC Program Service Plan, certain sponsored programs, with commercial announcements deleted, are made available to affiliated stations in many "optional" markets not ordered by the advertiser sponsoring the program. This procedure applies to programs where NBC, under its contractual rights, is able to use the program for such a purpose, and where the mechanics of production permit the deletion of the network advertiser's commercial announcements when the program is broadcast in a market he does not order.

NBC inaugurated this novel plan by making three leading network programs available to those unordered stations which could be fed the program without additional interconnection cost. From time to time since then, additional programs have been added to it, so that 15 programs are now included in the plan.

The purposes of the plan were outlined to advertising agencies in the following letter sent by NBC on March 25, 1955:

> "Dear ....
>
> "We have had inquiries from some of our television clients and their agencies with regard to the purpose of our Program Service Plan which was established last September, and I am writing this letter to explain the basis for the plan and how it operates.
>
> "The premise of the plan is that NBC is a national network with the objective of providing a national service to all of the people of the United States, so far as that is possible. Operating on this premise, it has been NBC's policy to negotiate affiliation

Ex. 15, pg. 2

arrangements with stations serving a population of significant size which would otherwise be without our service. Our success in following this policy is indicated by the fact that the coverage area of the NBC Television Network now includes 90% of all homes in the country and 99.1% of all United States television sets.

"However, the fact that we affiliate a station is in itself no guarantee that the station—and the population it serves—will receive our programs. The clients sponsoring these programs may feel that particular stations affiliated with the network do not offer them sufficient circulation and advertising values to justify their ordering such stations; or their budget limitations may preclude ordering large numbers of stations in smaller markets. Although we seek to persuade our network clients to increase their lineups in order to obtain more comprehensive coverage, we recognize that they are primarily concerned with advertising values—and properly so—and that they have the final decision on which optional stations are needed to serve their particular advertising needs.

"This may meet the situation with regard to NBC's position as an advertising medium, in competition with other media. But it leaves unsolved the problem of how NBC, as a medium operating in the public interest, can make its programs available to the audience in areas served by affiliates which the advertiser does not order. This problem has concerned NBC, just as it has concerned Congressional committees and other agencies of the government. Our Program Service Plan, which has been in effect for some time, is one of the ways in which we are seeking to meet the problem.

"Under this plan, we have selected certain programs which we may, under existing contracts, make available to stations not ordered by the client and we offer such programs to affiliates in a position to receive them over existing interconnection facilities, as well as to non-interconnected affiliates willing to pay the kinescope costs. By following this procedure, we are able to provide popular programs to many viewers who otherwise could not

Ex. 15, pg. 3

enjoy them; we give the program wider national exposure and identity; and we give stations in smaller markets the opportunity to broadcast well known network shows which will help increase their television circulation and thus make them more attractive buys for network advertisers, as well as more effective elements in the broadcasting system of this country.

"We feel that this procedure is in the interest of the public, the stations concerned, and that it is also in the interest of the advertisers using our facilities. We believe that it is important to our public service responsibilities to continue this plan, and we are considering its application to additional programs. I know that you will recognize the importance of the problem which we are seeking to attack and hope that we can count on your cooperation in connection with any program with which you may be concerned."

As of January, 1956, the 15 programs included in the plan averaged 36.75 program hours per week.

These programs were carried by 104 different stations which were not ordered by the sponsors and which otherwise would not have received the programs. This totalled over 1850 station-hours per week of additional programming furnished unordered affiliates.

In cases where contractual rights and mechanics of production permit, the unordered stations furnished the programs are allowed to sell them on a national spot or local basis, and thus are able to obtain station revenue from these network programs, in addition to the other values of the programming.

The following tabulation indicates the number of programs and stations involved in the Program Service Plan as of January, 1956:

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Program	No. of Program Hours Per Week	No. of Unordered Stations Carrying	Station Hours Per Week
Today*	10.	38	380
Home*	5.	46	230
Howdy Doody*	2.5	70	175
Matinee Theatre*	5.	70	350
Meet The Press*	.5	39	19.5
Caesar's Hour**	1.	34	25.83
George Gobel**	.5	7	2.75
News Caravan	1.25	27	33.75
Ding Dong School	2.5	47	117.5
Perry Como	1.	35	35
Color Spread***	1.5	26	29.25
Pinky Lee* (Mon.-Fri.)	2.5	68	170
Pinky Lee (Sat.)	.5	14	7
Queen For A Day	2.5	44	110
NBA Basketball*	2.	85	170

Average Program Hours Per Week 36.75

Number of Different Unordered Stations Carrying PSP Programs 104

Total Station Hours of Additional Program Service Per Week 1855.75

* National spot and local commercials can be sold in these programs by unordered stations in the time represented by the deleted network commercials.

** Program broadcast three out of every four weeks.

*** Program broadcast one out of every four weeks.

Program Extension Plan (PEP)

The NBC Program Service Plan, described in the preceding section, is designed to provide affiliated stations in smaller markets with network programs for which they are not ordered by the network sponsor. The NBC Program Extension Plan, described in this section, is a *sales* plan designed to encourage network advertisers to order more of these smaller market stations on a commercial basis, and thus provide these stations with additional network revenue, as well as more programming through this means.

Ex. 15, pg. 5

The NBC Program Extension Plan now applies to 51 affiliated stations in the smaller markets which were selected for inclusion in the Program Extension Plan Group because of their need for additional network programming and network commercial business. Under the plan, an NBC advertiser ordering a designated amount of these "PEP" stations gets additional stations in the "PEP" group as "dividends" without added charge. The more stations in the group he orders, the more he gets as "dividends". By ordering stations whose gross rates aggregate one-half of the total in the group, he gets the other half without charge—a "dividend" of 100%.

As a result of this arrangement, the network advertiser's cost for affiliates in these smaller markets is substantially reduced, so that they become very attractive advertising values, giving the advertiser supplementary coverage and more intense penetration of the national market at a "cost-per-thousand" equivalent to that of stations in the larger, more densely-populated markets.

NBC itself bears the full cost of making the additional "dividend" stations available to the advertiser, compensating such stations at their regular rates.

During the few months in which the Program Extension Plan has been in operation, it has developed a substantially increased volume of sponsored network programs on the small-market affiliates included in the plan, and this has helped them to obtain additional revenue, increase their audience and make television a more effective medium in their communities. The following shows what it has accomplished to date:

> Sponsored NBC programming has been increased 113% on the small-market affiliates included in the PEP group comparing October, 1955—the month before the plan went into effect—with March, 1956.
>
> This represents an increase from approximately 1,040 to 2,212 hours per month of sponsored network programming on these stations.
>
> As a result of the Program Extension Plan, 46 different sponsored evening programs have been ordered on the smaller-market stations in the PEP group, by 56 different NBC television network advertisers.

Ex. 15, pg. 6

The 100-Station Minimum

In connection with the Program Extension Plan and effective simultaneously with it, NBC established a sales policy under which an advertiser ordering less than 100 stations in certain evening hours would have his normal discounts reduced unless he permitted his program to be made available to unordered stations under the Program Service Plan.

This policy was designed to make more sponsored programs available to stations not previously ordered for them, and to maintain commercially-ordered lineups. At the time this policy was announced, all but 12 of the evening advertisers affected by it were ordering 100 or more stations. Under the plan, an advertiser ordering less than 100 stations in these time periods had the choice of (a) ordering additional stations; or (b) permitting his program to be made available to stations he did not order, but at no additional cost to him; or (c) taking a reduction in discounts. None of the advertisers concerned has elected to take a reduction in discounts, and as a result, more stations and more of the public have had an opportunity to receive NBC programs.

Exhibit 16

Excerpts from Typical Letters Commenting on NBC's Program Extension Plan

"You are to be commended for this very important work and I know that it will be deeply appreciated in a state like Nebraska where we have many small TV stations coming into being which must be supported by a 'thin' audience."

(Letter of November 14, 1955
from Senator Carl T. Curtis)

"The National Broadcasting Company is to be commended for having undertaken this extensive program to encourage wide dissemination of the better network television programs."

(Letter of November 2, 1955
from Senator George Smathers)

"Such efforts to promote television development in the smaller communities deserve commendation."

(Letter of October 26, 1955
from Senator Arthur V. Watkins)

"In my opinion this plan will undoubtedly fulfill a long felt need for better television service to the smaller communities.

"NBC is to be congratulated for implementing this plan, and I know that the people of these smaller communities who will benefit thereby will be deeply grateful."

(Letter of October 24, 1955
from Congressman Tom G.
Abernethy)

Ex. 16, pg. 2

"I have given this plan a careful reading, and have come to the conclusion that it represents a giant step in the direction of complete television coverage of the United States, a truly worthwhile objective when consideration is given to the almost unlimited educational and entertainment potential of the television medium.

"I am certain that the P. E. P. will be of great benefit to the Nation's smaller communities. Please accept my congratulations for its conception and best wishes for its success."

(Letter of November 9, 1955
from Congressman Charles A.
Boyle)

"As a resident of one of the smaller communities, and as a Representative of a Congressional District which has a number of small stations, I am especially grateful for the action you are taking to furnish better TV programs to our smaller towns and cities.

"I realize and appreciate the program you have instigated will be an expensive one as far as your Company is concerned, yet it does indicate the real and unselfish interest NBC takes in the welfare of all American people."

(Letter of October 24, 1955
from Congressman Clarence J.
Brown)

"Your Company is to be highly commended in efforts by your new plans to extend television service to the smaller communities throughout the Country."

(Letter of November 3, 1955
from Congressman Oren Harris)

Ex. 16, pg. 3

"I read with interest the new plan of N. B. C. for getting TV programs to the smaller communities. N. B. C. is to be congratulated. It is the sort of progressive thinking that has made your Company the leader in the broadcasting business."

(Letter of November 15, 1955
from Congressman DeWitt S.
Hyde)

"I want to congratulate you for a forward step, particularly as it affects, as I understand it, a number of smaller television stations. I believe your efforts in this direction will be greatly appreciated."

(Letter of November 21, 1955
from Congressman J. Percy
Priest)

"Certainly, this plan will give great impetus to program popularity and appeal of these small stations, and it appears to me also that the program should be most attractive to the advertisers.

"Again, I commend you highly on this farsighted program."

(Letter of October 25, 1955
from Congressman Bob Sikes)

"I think the idea is excellent and that it will not only benefit the viewer in the smaller communities but it should prove a boon to the television industry and advertiser as well."

(Letter of October 31, 1955
from Congressman James E.
Van Zandt)

Ex. 16, pg. 4

"PLAN FOR PEP ANNOUNCED IN YOUR LETTER OF OCT 4TH IS WONDERFUL GREATEST LEG UP SMALLER MARKET TELEVISION HAS EVER GOTTEN FROM ANYONE ANYWHERE DEEPLY APPRECIATE THIS MAGNIFICENT ACTION CONGRATULATIONS"

(Telegram of October 6, 1955
from Edward Breen, KQTV,
Fort Dodge, Iowa)

"I've just been reading your brochure on the Program Extension Plan, which you inaugurated. I would indeed be remiss if I did not let you know how enthusiastic I am. You have really given the stations a 'shot in the arm' that is most valuable. We feel that it is going to be a real help in our programming problems."

(Letter of October 25, 1955
from F. E. Fitzsimonds,
KFYR-TV, Bismarck, N. D.)

"I believe that I speak for the majority of Optional Stations in complimenting you on the PEP plan. All of the operators that I have contacted have expressed approval and their belief that NBC was making a substantial effort toward strengthening those stations who badly need it."

(Letter of November 2, 1955
from James H. Moore,
WSLS, Roanoke, Va., and
member of Optional Stations
Subcommittee of NBC TV
Affiliates Executive Committee)

"After you had issued the initial information on the PEP plan I set about to investigate reaction to it by double-checking the other members of the NBC TV Affiliates Committee who represent the optional stations. This has taken some time but I now have heard from the different parts of the United States and I am able to report a general consensus of the optional stations.

Ex. 16, pg. 5

"There is no doubt but what this is the best and most intelligently thought out plan for both the stations and for the advertisers that has come into being since television began. You have taken into consideration every element of the business and have developed the plan that helps everybody and hurts no one. Only good can come from it. The stations know this and appreciate what has been done."

(Letter of October 28, 1955
from Fred C. Mueller, WEEK-TV,
Peoria, Ill., and Chairman,
Optional Stations Subcommittee,
NBC-TV Affiliates Executive Committee)

"NBC has constantly led the way in pushing sales for the smaller stations. * * * They are building the entire industry so that it can better serve the country by strengthening the base of its operations."

(Letter of November 7, 1955
from William L. Putnam,
WWLP-TV, Springfield, Mass. to
Congressman J. W. McCormack)

BEFORE THE

COMMITTEE ON INTERSTATE & FOREIGN COMMERCE

OF THE

UNITED STATES SENATE

MEMORANDUM OF LAW ON THE APPLICABILITY OF THE ANTITRUST LAWS TO OPTION TIME AND THE "BASIC NETWORK" SALES POLICY OF TELEVISION NETWORKS.

Cahill, Gordon, Reindel & Ohl,
63 Wall Street,
New York 5, New York.
Attorneys for National Broadcasting Company, Inc.

May 25, 1956

TABLE OF CONTENTS.

Table of Cases.

I.

The Sherman Act forbids only unreasonable restraints of trade, not the normal incidents of engaging in a lawful business.

A. Introductory discussion.

There is being submitted simultaneously with this memorandum of law a separate Statement of Facts which describes in detail the business practices of the NBC Television Network. It is clear from this statement that option time and the "basic network" sales policy are necessary to the continued existence of a national network.

Mr. Richard A. Moore, who as a witness before this Committee proposed that these practices be eliminated, undoubtedly realizes that they are essential to the continued operation of networks. His strategy for achieving their elimination is to try to persuade this Committee that the Federal Communications Commission is required by Sections 1 and 2 of the Sherman Act to rewrite its Chain Broadcasting Regulations.

The alleged violations of the Sherman Act contained in the network option time and basic network arrangements are derived entirely from supposed analogies to two decisions of the Supreme Court relating to the motion picture industry, *United States* v. *Griffith,* 334 U. S. 100 (1948), and *United States* v. *Paramount Pictures, Inc.,* 334 U. S. 131 (1948).

The Chain Broadcasting Regulations which the Moore brief attacks were promulgated by the Federal Communications Commission "after protracted hearings and consideration not only of the general public interest but of the Sherman Anti-Trust Act . . .", *Federal Broadcasting System, Inc.* v. *American Broadcasting Co.,* 167 F. 2d 349 (2d Cir. 1948), *cert. denied,* 335 U. S. 821 (1948). Those regulations, which fix the contractual arrangements now in effect between networks and affiliated stations, were "validated" by the Supreme Court in *National Broadcasting Co.* v. *United States,* 319 U. S. 190 (1943); see *United States* v. *Storer Broadcasting Co.,* 24 U. S. L. Week 4256, 4260 (U. S. May 21, 1956).

The short answer to Mr. Moore's contention is, therefore, that the regulations now under attack were issued after exhaustive considera-

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tion of the public interest, including the Sherman Act, and that the motion picture cases have nothing to do with this matter.

However, we do not propose to rely only on this ground. We shall show that even if there were no Chain Broadcasting Regulations the practices complained of in the Moore presentation are entirely lawful under all decisions of the courts.

B. The rule of reason.

Section 1 of the Sherman Act, 15 U. S. C. §1, reads as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal . . ."

As the courts which construed this language soon recognized, every contract is in a sense a restraint of trade. If A contracts to buy a load of coal from B, that is one load of coal less in the market for other sellers.

Such early cases as *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (6th Cir. 1898), *aff'd,* 175 U. S. 211 (1899); *Standard Oil Co.* v. *United States,* 221 U. S. 1 (1911); and *United States* v. *American Tobacco Co.,* 221 U. S. 106 (1911), promulgated the so-called "rule of reason". This was expressed as follows in the *American Tobacco* opinion:

> "Applying the rule of reason to the construction of the statute, it was held in the *Standard Oil Case* that as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the Anti-trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power

3

> to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose'' (221 U. S. 179).

These and other cases are analyzed in *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469 (1940), in an opinion by Mr. Justice Stone, later Chief Justice.

Perhaps the classic statement of the rule of reason is that of Mr. Justice Brandeis in the unanimous opinion in *Chicago Board of Trade* v. *United States,* 246 U. S. 231, 238 (1918):

> ''But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences.''

The Supreme Court has recently cited the *Chicago Board of Trade* case in pointing out that ''competition'' in the abstract is not the goal of the Sherman Act. In *Federal Communications Commission* v. *RCA Communications, Inc.,* 346 U. S. 86, 91-93 (1953), the Court said:

> ''That there is a national policy favoring competition cannot be maintained today without careful qualification. It is only in a blunt, undiscriminating sense that we speak of competition as an ultimate good. Certainly, even in those areas of economic activity where the play of private forces has been subjected

only to the negative prohibitions of the Sherman Law, this Court has not held that competition is an absolute. See Chicago Board of Trade *v.* United States, 246 U. S. 231; cf. Mason, *Monopoly In Law and Economics,* 47 Yale L. J. 34.

"Prohibitory legislation like the Sherman Law, defining the area within which 'competition' may have full play, of course loses its effectiveness as the practical limitations increase; as such considerations severely limit the number of separate enterprises that can efficiently, or conveniently, exist, the need for careful qualification of the scope of competition becomes manifest. Surely it cannot be said in these situations that competition is of itself a national policy. * * *

"The very fact that Congress has seen fit to enter into the comprehensive regulation of communications embodied in the Federal Communications Act of 1934 contradicts the notion that national policy unqualifiedly favors competition in communications. * * * Whatever the reasons, they are not for us to weigh; it is for us to recognize that encouragement of competition as such has not been considered the single or controlling reliance for safeguarding the public interest."

The different application of the rule of reason to regulated industries in general and those subject to the Federal Communications Commission in particular is thus specifically pointed out. On this point the Court said further:

"RCAC's arguments based on comparable language in the Clayton Act, and on decision under that Act and under the Sherman Law cannot, we think, be sustained. What may substantially lessen competition in those areas where competition is the main reliance for regulation of the market cannot be automatically transplanted to areas in which active regulation is entrusted to an administrative agency; for reasons we have indicated above, what competition is and should be in such areas must be read in the light of the special considerations that have influenced Congress to make specific provision for the particular industry" (346 U. S. 98).

As shown by these cases, it is necessary in determining whether a restraint is unreasonable, and hence unlawful, to examine the industry in which the restraint occurs to ascertain whether the restraint is in furtherance of or, as it is often expressed, ancillary to a reasonable business purpose.

The burden is upon those who claim it is not. As the Supreme Court said in *Times-Picayune Publishing Co.* v. *United States,* 345 U. S. 594, 622 (1953):

> "Under the broad general policy directed by §1 against unrea sonable trade restraints, guilt cannot rest on speculation. * * *"

Equally it is not the role of the courts under the Sherman Act to engage in broad revisions of business methods, absent violation of law. Thus the Supreme Court said with respect to the Sherman Act in *United States* v. *Columbia Steel Co.,* 334 U. S. 495, 526 (1948):

> "It is not for courts to determine the course of the Nation's economic development."

Judge Medina in a long and meticulous opinion in *United States* v. *Morgan,* 118 F. Supp. 621 (S. D. N. Y. 1953), dismissed an effort by the Department of Justice to revise the investment banking business through the instrumentality of the Sherman Act. He said:

> "The Sherman Act is not an open door through which any court or judge may pass at will in order to shape or mould the affairs of business men according to his own individual notions of sound economic policy. Nor was it ever intended by the Congress that judges should determine such policy questions as: the desirability of compulsory sealed bidding for new security issues; the propriety of officers or partners of investment banking firms accepting directorships on the boards of issuers; the good or bad effects of the solicitation of proxies by investment bankers; and whether investment bankers should be permitted to advise issuers concerning their financial affairs, the formulation of long range plans for expansion and refunding, the setting up of specific security issues and kindred subjects and also perform services and assume risks in connection with the registration and distribution of such security issues" (118 F. Supp. 633-4).

At another point the Court stated:

> "At the very heart of the case lies the fundamental principle which is implicit in every antitrust case, and which government counsel have never disputed, that the Sherman Act was not designed to compel businessmen in any industry to compete in any particular way, but rather to break up and dissolve monopolistic or restraining combinations, conspiracies or agreements not to compete" (118 F. Supp. 738).

We quote at some length from this opinion because there as here it was sought through general conclusory allegations to establish that the manner in which the industry functioned constituted unreasonable restraint of trade. The complaint was dismissed at the close of the Government's case, and the Government did not appeal.

II.

The manner in which NBC operates its business contains no unreasonable restraints of trade.

From what is said in the accompanying Statement of Facts about the nature of the service to the public which the networks have rendered and are continuing to render, and the manner in which they must operate in order to do this, the reasonableness of option time and basic network policy is apparent. It may be useful, however, to repeat here in capsule form what NBC does.

Its business is to conduct a *national* advertising service through television. In order to do this, it does the following. (1) For the benefit of advertisers, NBC provides for the simultaneous exposure of programs over affiliated stations throughout the country by taking options on the time of these stations in minimum packages of three three-hour intervals a day, under contracts voluntarily made by individual stations. (2) In order that NBC may be a *national* network, advertisers are required to buy national circulation during this option time in the form of a minimum basic network of 56 stations. (3) In order to maintain a national network of stations with broad circulation, NBC prepares and presents a full program service to its affiliated stations, whether sponsored or not.

The reason for this last expensive practice is plain. There must be a national body of viewers in order to sell national circulation. In order to have viewers, there must be stations broadcasting programs. In order for there to be such stations there must be programs. Thus to create a network, or indeed a television industry of any kind, three elements are essential—viewers, stations and programs.

Television is a new industry. It had to start somewhere; the three necessary elements could not be expected to come into existence simultaneously. It could not start with viewers, for the public would not buy television receivers if there were nothing to receive. It could perhaps in time have grown from independent stations. However, the investment in building a station is heavy, and as the Moore brief points out (page 35) the cost of programming is very high. If television had had to wait for the capital to be raised in each community for a local station to begin telecasting and local programming on the venture that sufficient viewers and advertisers would appear, we should in all likelihood still be without television.

The only way was for *programs* to come first, programs sufficiently attractive to build a national audience. Then, as more and more sets came into the hands of the public, television would become an effective national advertising medium for American business.

There were two major industries at the end of World War II with sufficient capital and experience in the entertainment field to make a beginning. One was the radio broadcasting industry, which had great experience with the technical side of radio and with the financing of broadcasting through advertising, but which had no experience or equipment for visual productions.

The other industry was the motion picture industry, which had great experience and equipment for visual productions, had the best known entertainers in the world under contract, and had, moreover, in its vaults a tremendous number of completed films. It could have started television on a network basis through the use of its entertainers in live productions; it could perhaps even have stimulated the creation of unaffiliated local stations by making available to them its existing films.

What happened is well known. NBC and other radio networks stepped into the breach. With no viewers and no sponsors, they built television studios and facilities, created television programs, made commitments for interconnections between stations, and over an increasing number of stations presented a complete and balanced program service. This service brought into being the national television circulation which is the very foundation upon which today's industry rests.

The moving picture producers, on the other hand, fearing in television a competitor to their virtual monopoly of visual entertainment, withheld their product. This story is recounted by Chief Judge Yankwich in his decision in *United States* v. *Twentieth Century-Fox Film Corp.,* 137 F. Supp. 78 (S. D. Cal. 1956). He there dismissed a complaint that the major motion picture producers had *conspired* to boycott television, but the opinion sets out in detail the manner in which each producer individually refused to make its films available to television.

To achieve its national network NBC has had to deal in two kinds of minimums, and it must continue to deal in them. One is a minimum audience. NBC must be able to assure a sponsor of a minimum audience or he will not pay the amount necessary to cover costs. This it can do only by proving to him that through time which NBC has optioned from its affiliated television stations it can, week after week, attract such an audience to his program. It must, therefore, be able to clear time in advance over outlets that provide national coverage. The only practicable way in which this can be done is through its present option time system. This option time is the minimum on the basis of which NBC is allowed by the FCC to deal and does deal with its affiliated stations.

The other minimum is a minimum purchase of national circulation. What NBC has to offer advertisers is nationwide coverage. The minimum which it deems it can sell and remain in the business of being a national network is the audience coverage given by its basic stations.

Before discussing in more detail the reasonableness of these minimums which are the very definition of a national network, it is appropriate to note a fundamental right in the conduct of business which the Sherman Act has not taken away. That is the right to select one's customers. The famous case in this field is *United States* v. *Colgate & Co.*, 250 U. S. 300 (1919). There the Supreme Court decided that although a manufacturer could not make dealers agree to resale prices, it could refrain from dealing with those who did not observe suggested retail prices. The Court held unanimously:

> "The purpose of the Sherman Act is to prohibit monopolies, contracts and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—in a word to preserve the right of freedom to trade. In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell" (250 U. S. 307).

This principle was most recently reaffirmed by the Supreme Court in *Times-Picayune Publishing Co.* v. *United States,* 345 U. S. 594, 625 (1953), where the Court said:

> "Beginning with *United States* v. *Colgate & Co.,* 250 U. S. 300 (1919), this Court's decisions have recognized individual refusals to sell as a general right, though 'neither absolute nor exempt from regulation.' "

There has never been a decision, so far as we are aware, which has even suggested that it was improper for a business organization in selecting those with whom it chose to deal to fix a minimum on the quantities that it would offer to buy or to sell. Every business must deal in minimums of some kind, or the cost would become prohibitive. NBC has fixed its minimums at the level at which it estimates that it can best serve the public through the efficient operation of a national network.

The Court of Appeals for the Second Circuit has upheld this manner of doing business against precisely the type of attack made here. *Federal Broadcasting System, Inc.* v. *American Broadcasting Co.,* 167 F. 2d 349 (2d Cir. 1948), *cert. denied,* 335 U. S. 821 (1948), was a treble damage action under §§1 and 2 of the Sherman Act by a radio station against four radio networks alleging conspiracy and monopoly. Among the charges of the complaint were the following:

> "18. * * * Under the elaborate contract structure erected by the chain networks, the local broadcasting stations are tied to the chains by a series of mutually exclusive understandings and arrangements under which the chains are accorded exclusive preemptions on the time of the local affiliates, and the local affiliates are accorded exclusive access to the programs of the chain networks.
>
> "19. Superimposed on top of this myriad of exclusive arrangements between the chains and their exclusive local affiliates is a further series of exclusive arrangements between the chain networks and the national advertisers. Pursuant to these exclusive arrangements between the chains and the national advertisers or their advertising agencies, the national advertiser, who in every case pays the entire cost of producing, distributing and broadcasting the program, is absolutely precluded from offering his own program to a local station not tied to the chain network by an exclusive standard affiliation contract. * * *
>
> "20. Under the chain networks' uniform and exclusive mode of dealing with their affiliates, the affiliate conveys to the chain the option to preempt the most valuable time available over the affiliate's broadcasting facilities. The time over affiliated broadcasting facilities thus made available to the chains is sold by the chains to national advertisers, the chain network price to whom is the aggregate of all the card rates of all the affiliated stations comprising the chain. The affiliates' card rates, that is the price for which the affiliates make available broadcast time over their facilities to advertisers, are fixed by the chains and arbitrarily imposed on the affiliates as one of the terms in the so-called standard exclusive affiliation arrangement."

There is a good deal more in the same vein, raising the questions of option time and basic network policy.

The opinion of the Court was written by Judge Augustus N. Hand, who two years before had written the opinion in *United States* v.

Paramount Pictures, Inc., 66 F. Supp. 323 (S. D. N. Y. 1946), which condemned "block-booking" in the motion picture industry. The other judges sitting were Judge Learned Hand and Judge Thomas W. Swan. This distinguished Court rejected all allegations of conspiracy or monopoly, and said:

> "Plaintiff misconceives the function of a network, which buys time from the stations and sells to the advertisers its facilities and the services of those stations as an aggregate. Not only are the networks not common carriers, but it would be cumbersome if not impractical for them to furnish programs if they did not have authority to deal independently with the advertising concerns instead of leaving the rates to be determined individually by the different stations which they serve. Such control by a network, operating as a single coordinating agency, would seem to be at least desirable in order that it might compete with other networks and advertising media and to assure a more reasonable distribution to every station of the income which the network as a whole may receive. We do not say that it would be impossible for a network to allow each station to set its own rate, but it would seem a less practical course of business and certainly one to which plaintiff can make no claim as of right.
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> * * *
>
> "We think it improper to grant a preliminary injunction upon the charge that the networks have unlawful 'exclusive' contracts with their stations where the Federal Communications Commission, after protracted hearings and consideration not only of the general public interest but of the Sherman Anti-Trust Act, has specifically sanctioned many of the important terms of the affiliation contracts at present in use and the defendants have given reasonable grounds for denying their exclusiveness or illegality. See F. C. C. Report on Chain Broadcasting, Comm. Order No. 37, Docket No. 5061, May, 1941, p. 46; National Broadcasting Co. *v.* United States, 319 U. S. 190, 223, 63 S. Ct. 997, 87 L. Ed. 1344" (167 F. 2d 351-2).

III.

The reservation of option time is not an unreasonable restraint of trade.

A. Inapplicability of the doctrine of illegality per se.

On what basis can it be said that option time violates the anti-trust laws? Mr. Moore advances but one. He argues that it is forbidden by the discussion in *United States* v. *Paramount Pictures, Inc.,* 334 U. S. 131 (1948), which affirmed Judge Augustus Hand's opinion relating to "block-booking". He argues that because "block-booking" was held illegal *per se,* "option time" is also illegal *per se,* and accordingly no exposition of its necessity or desirability can justify it.

Illegality *per se* is a doctrine that has arisen as an adjunct to the rule of reason. The courts have said that certain types of restraints are inherently of so unreasonable a nature that they violate the Sherman Act regardless of the amount of commerce involved. This doctrine was summarized in *United States* v. *Columbia Steel Co.,* 334 U. S. 495, 522-3 (1948), as follows:

> "A restraint may be unreasonable either because a restraint otherwise reasonable is accompanied with a specific intent to accomplish a forbidden restraint or because it falls within the class of restraints that are illegal *per se.* For example, where a complaint charges that the defendants have engaged in price fixing, or have concertedly refused to deal with non-members of an association, or have licensed a patented device on condition that unpatented materials be employed in conjunction with the patented device, then the amount of commerce involved is immaterial because such restraints are illegal *per se.*"

Inasmuch as "reasonableness" depends upon all the "facts peculiar to the business", as the Supreme Court indicated in the *Chicago Board of Trade* case, the courts have been understandably slow to transfer the tag of "illegal *per se*" or "unreasonable *per se*" from one type of factual situation to another. Thus price-fixing among competitors on sales to the individual customers of each has been held illegal *per se* in *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150 (1940), and other cases; and in fact price-fixing is the prototype of illegality *per se*. Nevertheless, "price-fixing" by a group of investment bankers of the price of a security to be offered to the public by a syndicate of which they are members is not only not unreasonable *per se*—it is reasonable. *United States* v. *Morgan*, 118 F. Supp. 621, 690-1 (S. D. N. Y. 1953).

Against this background we shall now try to ascertain just what, if anything, was held illegal *per se* about "block-booking" in the *Paramount* case.

"Block-booking" was the practice pursued by seven of the eight defendant motion picture producers of "licensing, or offering for license, one feature or group of features on condition that the exhibitor will also license another feature or group of features released by the distributors during a given period" (334 U. S. 156).

Contrary to the impression given in the Moore brief, block-booking was only a small fraction of the *Paramount* case. In the Supreme Court's 38-page opinion the discussion of it covers less than 3 pages. The bulk of the opinion is a finding of conspiracy among the eight defendants to fix prices for admission to theatres and engage in a host of other restrictive practices, and a consideration of various aspects of a charge of joint monopolization against the defendants. What effect the existence of all these conspiratorial and predatory activities had on the Court's approach to block-booking is, of course, impossible to say.

The District Court did not in its discussion of block-booking use the words "illegal *per se*" or "unreasonable *per se*", *United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323, 348-50 (S. D. N. Y. 1946), nor did the Supreme Court use those words. What the Supreme Court said was this:

> "The District Court held it illegal for that reason and for the reason that it 'adds to the monopoly of a single copyrighted picture that of another copyrighted picture which must be taken and exhibited in order to secure the first.' That enlargement of the monopoly of the copyright was condemned below in reliance on the principle which forbids the owner of a patent to condition its use on the purchase or use of patented or unpatented materials. See *Ethyl Gasoline Corporation* v. *United States*, 309 U. S. 436, 459; *Morton Salt Co.* v. *Suppiger Co.*, 314 U. S. 488, 491; *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S.

> 661, 665. The court enjoined defendants from performing or entering into any license in which the right to exhibit one feature is conditioned upon the licensee's taking one or more other features.
>
> "We approve that restriction. The copyright law, like the patent statutes, makes reward to the owner a secondary consideration. In *Fox Film Corp.* v. *Doyal,* 286 U. S. 123, 127, Chief Justice Hughes spoke as follows respecting the copyright monopoly granted by Congress, 'The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors.' * * * As the District Court said, the result is to add to the monopoly of the copyright in violation of the principle of the patent cases involving tying clauses.
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> * * *
>
> "We do not suggest that films may not be sold in blocks or groups, when there is no requirement, express or implied, for the purchase of more than one film. All we hold to be illegal is a refusal to license one or more copyrights unless another copyright is accepted" (334 U. S. 157-9).

Thus if block-booking was held unreasonable *per se,* it was solely on the basis of an extension of the law of patents to copyrights. A patent (or a copyright) is a legal monopoly granted by the Government to an inventor (or author) for the benefit of the public. He will not be permitted to extend that legal monopoly to encompass more than was granted to him by licensing the patent or copyright on condition that something additional will also be taken. That there are limits to the sweep even of this patent-tying ban is shown by such cases as *Transparent-Wrap Machine Corp.* v. *Stokes & Smith Co.,* 329 U. S. 637 (1947), which allowed a patent license to include a condition requiring the licensee to assign improvement patents, and *Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.,* 339 U. S. 827 (1950), which allowed a patent license under a group of patents to fix royalties on the basis of a flat percentage of dollar sales of the licensee, whether the patents were used or not.

It is apparent on the face of the matter that this patent-copyright doctrine bears no relation to NBC's option time, for three principal reasons:

(1) NBC does not license or sell anything to its affiliated stations during option time. It obtains time from them on a minimum optioned basis; and during that time, subject to their veto, it presents the programs which generate the circulation it sells to its advertisers.

(2) There is no question of tying anything to anything. NBC merely obtains certain segments of time from its affiliated stations during which it offers a program service under contractual provisions which permit the stations to reject individual programs. The offer of one program is never "tied" to the acceptance of another.

(3) The sponsored programs delivered by the network to the affiliated stations may contain copyrighted program material but such material is not being licensed to the stations for a fee. Instead, the network in effect pays the affiliated station for broadcasting sponsored programs containing the copyrighted material. Therefore, insofar as the affiliated station is concerned, there is no exploitation of copyright and consequently no possibility of an unlawful extension of a copyright monopoly. The basis of the Court's condemnation of block-booking is wholly absent. The legal monopoly granted by the Government to a copyright holder in the public interest is not itself exploited, much less used to try to establish an enlarged monopoly over something else.

There can, therefore, be no question of illegality *per se* of option time. Option time is not of the same category as the restraint involved in block-booking. The only question, then, is whether it is so unreasonable a restraint in the light of all the facts of the industry as to violate the Sherman Act. Such a question has two aspects: (1) What are the affirmative business reasons for option time, and (2) what are the restraints that it imposes?

B. **Affirmative reasons for option time.**

What has been said in the accompanying Statement of Facts shows the role of option time in the operation of a network. The essential point is that the general system of option time is a necessary element in a television network. If a television network is a desirable business enterprise, some form of option time must be reasonable.

As an example, assume that an advertiser wished to present over the NBC Television Network an hour's live show every Tuesday night at 8 P. M. Eastern Standard Time for a year. This desire of the advertiser is, in itself, reasonable. As Mr. Moore points out, page 40, "It is well recognized that radio and television advertising is unlikely to be effective until it has been on the air a considerable length of time." How will NBC go about setting up this program?

At present, assuming the time period has become available on the network, it is relatively simple for all concerned. The network accepts the order from the advertiser for the basic network plus as many optional stations as the advertiser desires and then sends the order to the stations selected. Because of the option time reservation, the advertiser can expect a reasonably good acceptance of the program by the stations.

In the absence of option time, how could this same transaction be accomplished?

At this point Mr. Moore's argument becomes curiously inconsistent. It should be noted in the first place that he recognizes the need for national distribution at page 35 of his brief:

> "The cost of producing a TV program today is far higher than the cost of producing a radio program in 1941. This cost can only be recouped by national distribution of the program paid for by advertisers."

The practical problem of how to get simultaneous national distribution in the absence of option time is disposed of in a paragraph at page 74:

> "Where simultaneous broadcasting is necessary for a live program or even for a film program, time can be effectively cleared by network companies without relying on time options. For example, a network company could enter into bilateral contracts with affiliated stations for firm periods, such as 13, 26, 39 or 52 weeks, covering a specified time period for a specified program or programs. * * * There is not the slightest doubt but that affiliated stations throughout the country would accept high-quality or popular network programs for simultaneous

broadcasting even if they were not under the compulsion of a time option clause."

The point is, of course, that affiliated stations could not accept such programs, even if they wanted to, if Mr. Moore's proposals were adopted. His whole object in eliminating option time is to enable affiliated stations to make firm contracts for non-network programs during what is now option time. That is the entire thrust of his proposed regulation at page 83 of his brief.

If this proposed regulation is to have any effect, as Mr. Moore obviously desires that it will, each station will then begin making firm contracts for non-network programs in what is now option time. Assume that for a few months prior to the approach of the hypothetical advertiser NBC had been carrying at 8 P. M. on Tuesday night an experimental sustaining program. According to Mr. Moore's argument, most of NBC's basic stations would not have accepted this program but would have accepted instead a variety of non-network programs from different program sources for varying lengths of time. Now comes the advertiser seeking to place a program which perhaps would be a milestone in television public service at 8 P. M. on Tuesday. NBC would, of course, have to decline. The network would have ceased to exist on Tuesday at 8 P. M.

The worst of it is that, once broken, Humpty Dumpty could not be put together again. Without a time option, it would be extremely difficult to bring the schedules of the stations back into synchronization. No high quality show could be held suspended until all or most of the stations were free of their other commitments.

Thus the elimination of option time would have necessarily one of two results, both of which Mr. Moore would disavow: (1) the elimination would be ineffective and the stations, realizing that the availability of network service was at stake, would continue to accept network programs in periods formerly under option regardless of the blandishments of the film industry and others, or (2) the stations would make firm contracts with non-network producers and the network would be *pro tanto* destroyed.

It is simply a fact that a network without continuing arrangements for clearance of time on its affiliated stations is not a network. It must have a daily schedule of time on which it may depend. Otherwise it

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has no assurance of circulation and nothing to sell to national advertisers. The national media which compete with network television—such as magazines and newspaper supplements—would run away with the national advertising dollar because they could deliver circulation and the networks could not.

Apart from this question of actual survival there is the problem of the mechanics of doing business. Even assuming that some sort of 50% network could be patched together for network advertisers through the week, the complication of negotiations of constantly shifting programs with nearly 200 affiliated stations is apparent. Pertinent here are the words of the Supreme Court in approving a unit policy for advertising in only two newspapers published morning and evening in the same city, *Times-Picayune Publishing Co.* v. *United States,* 345 U. S. 594, 623 (1953):

> "In any event, uncontradicted testimony suggests that unit insertions of classified ads substantially reduce the publisher's overhead costs. Approximately thirty separate operations are necessary to translate an advertiser's order into a published line of print. A reasonable price for a classified ad is necessarily low. And the Publishing Company processed about 2,300 classified ads for publication each day. Certainly a publisher's steps to rationalize that operation do not bespeak a purposive quest for monopoly or restraint of trade."

If a national network is reasonable, the principle of option time is reasonable. If a national network is in the public interest, option time is in the public interest. In adopting the Chain Broadcasting Regulations, the Federal Communications Commission expatiated upon the value of networks in its report on May 2, 1941, saying among other things:

> "We have exercised our jurisdiction upon the premise, generally accepted by the public and the industry, that the network method of program distribution is in the public interest. We subscribe to the view that network broadcasting is an integral and necessary part of radio. The regulations which we are promulgating are designed to preserve without loss the contributions of network broadcasting to the public and to the affiliated

stations, while ensuring that licensees will exercise their responsibilities under the law. We believe that these regulations will foster and strengthen network broadcasting by opening up the field to competition. An open door to new networks will stimulate the old and encourage the new'' (p. 88).

The affirmative reasons for the current time option system are so pressing that it cannot be held violative of the Sherman Act, in view of the limited nature of the option allowed under present regulations.

C. **Reasonableness of the option time arrangements.**

The discussion of the nature of the time option in the Moore brief is highly misleading. The so-called ''prime'' time under option is much less than the discussion implies, and the option is of a much less restrictive nature than the discussion suggests.

The Class A evening network rate is charged on each affiliated station during the period from 6-11 P. M. These are the ''prime viewing hours'' when advertisers are charged the maximum rate. Of this 35 hours, NBC under FCC regulations can option only 21 for any given station. Thus, at a maximum, only 60% of the Class A time is subject to option at all on a given station.

This option can be exercised only in a limited manner. It cannot be exercised at all if the station has made a commitment to another network for the time in question. It cannot exclude competition. Without the consent of the station, an option cannot be exercised except on 56 days' advance notice to the station. Thus, networks have been allowed only a minimum tool to use in putting together their national circulation.

In addition, when the network offers a program, the station is still free to reject it. The clause of NBC's affiliation contracts which governs rejection of programs during option time is as follows:

> ''6. Nothing herein contained shall: (a) prevent or hinder the Station from rejecting or refusing any programs offered hereunder which *it reasonably believes to be unsatisfactory or unsuitable,* or (b) prevent the Station from rejecting or refusing any program offered to or previously accepted by it which *in its opinion is contrary to the public interest,* or (c) prevent the

> Station from substituting therefor a program of outstanding local importance'' (emphasis added).

NBC cannot force unsatisfactory or undesirable programs upon any station under such a contract.

As is apparent from these facts, all the discussion in the Moore brief (*e.g.,* pages 42-6) about saturation of prime viewing time and station responsibility, as illustrated by the examples drawn from the Los Angeles area, amounts only to this—that NBC affiliates prefer in most cases NBC programs. The solicitude of KTTV's president to prevent his competitors from carrying network programs is understandable.

With regard to film producers, it will be recalled that network time options are the result of contracts which stations have made with networks. The amount and placement of the time they can option to networks, and the nature of the option, is limited by the Chain Broadcasting Regulations. There is nothing to prevent non-network program suppliers from negotiating contracts for option time with stations, and as to these no limiting federal regulations would apply. If individual stations do not choose to give film companies time options, presumably it is because they cannot obtain from them a program service of sufficient value or continuity to warrant the granting of the option.

In any event, the reservation of option time does not bar the film producer from the market place. He has full opportunity to sell his product to network affiliated stations in the time periods not under option. As a matter of fact, in the accompanying Statement of Facts, it has been shown that on many occasions film producers have been able to clear network option time for their programs. The unaffiliated station has a constant need for his product since the only other programming source available to the independent is the local live program. Finally, the networks themselves are proving to be excellent customers for the film producer. As a matter of fact, they have been such good customers that this, too, has caused Mr. Moore to complain.

It is clear from the foregoing discussion that the reservation of option time is a reasonable incident of the network business and that it does not unduly restrict either the affiliated station or the producer of non-network programs.

IV.

The "basic network" sales policy is not an unreasonable restraint of trade.

A. **Inapplicability of the doctrine of illegality per se.**

In addition to attacking option time, the Moore brief also charges that it is illegal *per se* for NBC to sell to national advertisers a minimum unit consisting of time on its 56 basic stations. Again the authority is a case relating to the motion picture industry, *United States* v. *Griffith,* 334 U. S. 100 (1948). There, owners of affiliated circuits of motion picture theatres, some of which were the only theatres in their towns, bargained with distributors for first runs in all their theatres and for certain other special competitive advantages. The Supreme Court held it unlawful for the defendants to use the bargaining power of lawful monopolies in the towns in which the defendants had the only theatres as a trade weapon to gain an advantage over the competitive theatres in the other towns.

It is by no means clear from the opinion that the Court found illegality *per se* in this situation. But in any event, this decision is entirely inapplicable to the basic network sales policy of NBC, for two reasons.

(1) Virtually all of the NBC basic stations are located in markets where there are other competing stations. There is no element, as in the *Griffith* case, of using a monopoly of the audience in one area to gain an advantage as an exhibitor in another. NBC's minimum unit covers the major population and distribution centers, and it is in precisely those areas where competition is keenest.

(2) In the *Griffith* situation there was no reason other than to gain a competitive advantage for aggregating theatres and bargaining for them as a group. Each theatre was in a different place, exhibiting different films at different times and charging separate admission prices. NBC, however, charges its advertisers for one homogeneous thing—a nationwide audience. Its basic stations are sold as a group

not for the purpose of obtaining a competitive advantage but to insure that effective use is made of what is essentially a national distribution system. If the NBC programs are not made available to the minimum group of stations necessary to achieve national coverage, then important sections of the public are deprived of program service. And if this happens often enough, the national circulation base begins to disappear. Therefore, the network in order to maintain itself, is certainly entitled to insist on the purchase by an advertiser of a minimum national audience.

Virtually an exact precedent for doing business in this way occurs in *Times-Picayune Publishing Co.* v. *United States,* 345 U. S. 594 (1953). Under attack there was the practice of the publisher of the only morning newspaper in New Orleans, who also published one of the two evening newspapers, in requiring advertisers to purchase a minimum unit of space in both the morning and evening papers. There was, unlike the situation with NBC, the factor that the publisher had a "monopoly" in the morning newspaper field, and the Department of Justice argued that the *Griffith* case was controlling. The Supreme Court rejected this argument. Among other things, the Court said:

> "The District Court determined that the Times-Picayune and the States were separate and distinct newspapers, though published under single ownership and control. But that readers consciously distinguished between these two publications does not necessarily imply that advertisers bought separate and distinct products when insertions were placed in the Times-Picayune and the States. * * * Although advertising space in the Times-Picayune, as the sole morning daily, was doubtless essential to blanket coverage of the local newspaper readership, nothing in the record suggests that advertisers viewed the city's newspaper readers, morning or evening, as other than fungible customer potential. We must assume, therefore, that the readership 'bought' by advertisers in the Times-Picayune was the selfsame 'product' sold by the States and, for that matter, the Item" (345 U. S. 613).

Just as the Supreme Court held that it was not unlawful *per se* for the Times-Picayune to require advertisers to advertise simultaneously in two New Orleans newspapers, on the premise that the defendant was thereby merely selling coverage of New Orleans readers, so the Court would unquestionably hold that it was not unlawful *per se* for NBC to require advertisers to advertise over a reasonable nationwide minimum of stations on the comparable premise that the network was thereby merely selling coverage of nationwide viewers. Any contention that it is illegal *per se* for NBC to fix as a minimum network purchase the audience coverage of its basic stations is plainly without merit.

B. **Affirmative reasons for the basic network policy.**

Apart from its role in public affairs, the great service of a network is that it brings to all its viewers, across the nation, instantaneously, programs upon which time and care can be spent commensurate with the size of the audience. The top quality live shows presented by the networks today could not exist without payments made by advertisers on the basis of national circulation. A network should not be criticized for trying to bring its service to the maximum number of people; only a failure to do so should subject it to criticism.

NBC's basic network policy is the means by which it fulfills its function as a national network. NBC has nearly 200 affiliated stations. But NBC requires currently that its advertisers take only 56 of these. Thus the network insures a minimum national coverage, without ceasing to be competitive with other advertising media.

Apart from the question of service to the public, for business reasons NBC must require that sufficient circulation will be paid for to maintain its national network facilities and finance programs which will attract national audiences. To sponsor a high quality program a national advertiser must pay a minimum amount. In return for that minimum amount he is given circulation over the basic stations. That is the economic reality of the situation.

C. **Reasonableness of the basic network provisions.**

It is a matter of definition that a network must operate as a network and that it must require that those who wish to use its network facilities and programs use them to a certain basic minimum. It is disingenuous for Mr. Moore to say in one breath that he is not trying to destroy the networks but that their advertisers must be allowed to pick and choose among all the stations.

The basic network sales policy is only such as permits existence of a national network. It is true that a company which does not desire national advertising will not want NBC programs, because national advertising is all that the network sells. No one would expect a national magazine or a national newspaper Sunday supplement to be required to sell regional advertisements, for example, and a national television network is in the same position. That, however, does not mean that small advertisers are not able to benefit from national advertising over NBC. The extensive participation by small budget advertisers is shown in the accompanying Statement of Facts. Those who desire local or regional advertising are free to deal and do deal with individual stations, either directly or through various agencies.

As pointed out in the accompanying Statement of Facts, national advertisers are in no way preempted by networks through the basic network policy, nor prevented from engaging in other forms of television advertising. According to a survey by the Television Bureau of Advertising, national spot television had gross time sales of \$103,872,000 in the last quarter of 1955, a figure which does not include local television advertising. This compares to gross time sales of \$116,336,797 on all networks. Networks are simply a medium for those desiring national coverage. Those desiring less have many paths open to them.

To eliminate the requirement that the basic network be utilized by adopting the regulation proposed by Mr. Moore would on the face of the matter eliminate the network. Under the proposed regulation NBC could not require an advertiser to take more than *one* station. Local advertisers in every area would presumably have to be accommodated on each network affiliate. But a single-station network is no network at all. A more effective method of destroying the networks could scarcely be devised.

Conclusion.

At stake is the existence of network television broadcasting. As a matter of plain logic, without an option on a certain minimum of its affiliated stations' time, and without sale of time on a certain minimum number of affiliated stations, a network cannot exist.

That the existence of strong and effective networks is in the public interest cannot be denied, and the Moore group does not deny it. The very existence of the television industry is a product of network enterprise. The networks are the proven innovators and creators in the field of broadcasting, as is once more being shown by their activities in color television.

The film interests represented by Mr. Moore have played no role in creating the industry. Their efforts have rather been to smother it. Now that it is healthy and profitable, however, they seek to take it over and to replace a vital live program service with standardized film shows. They ask for governmental action to achieve this end, action which would strike at the heart of the network system.

They make their attack in the guise of enforcing the antitrust laws, citing inapplicable cases from the film industry. They claim that the networks are restraining other elements in the industry. Yet without the networks the industry itself and these elements of it would not exist. Far from restraining the industry, the networks have created it.

Affiliated stations have been made possible by network programming, which they are free to accept but are not bound to accept. They recognize the value to them of the network relationship and the necessity of option time in maintaining it. They have explicitly asserted that option time is

> "a vital factor in the station-network relationship, strongly influencing the stations' ability to serve the public interest, convenience and necessity" (Resolution of ABC Affiliates, April 1956).
>
> "of fundamental importance to continued sound networking" (Resolution of CBS Affiliates, April 1956).
>
> "necessary to permit television networks to function effectively as national advertising media. If they are prevented from functioning effectively in the field, the networks' ability to provide

the overall national television service which the public and the stations need will certainly be impaired and may be destroyed" (Letter of April 18, 1956 from Executive Committee of NBC TV Affiliates to the affiliated stations).

Unaffiliated stations have prospered on the basis of the audience potential built through promotion of television set sales by availability of network programs. Mr. Moore's own description of the prosperity and circulation of KTTV is ample testimonial to this fact.

Film producers have prospered through the creation of an industry by the networks which furnishes a new outlet. That they are on the threshold of still greater prosperity is shown by the discussion in the accompanying Statement of Facts.

Advertisers have been given a new medium which for many has brought greatly increased sales. National advertisers on NBC in general use far more stations than are included in the minimum unit of the basic network.

The public has a national network available for instantaneous transmission of matters of public importance or interest. In the field of entertainment it has a wide selection of programs from network and non-network sources. High quality, live network programs are made possible by the wide circulation which the networks present to advertisers.

The activities of the networks impose no unreasonable restraints upon anyone.

The antitrust laws do not require, and the public interest forbids, the action urged by Mr. Moore and the group he represents. This Committee should not assist in reducing the television industry to a disorganized group of stations mechanically displaying the wares of the producers of film.

Respectfully submitted,

CAHILL, GORDON, REINDEL & OHL
Attorneys for National
Broadcasting Company, Inc.

May 25, 1956.

Mr. Cox. In that connection, there are two communications received by Senator Magnuson which should be made a part of the record in connection with the statement.

First, is a letter dated May 31, 1956, from Mr. Richard A Moore, of KTTV, regarding some of the matter in the statement; and second, a letter under date of June 11, 1956, from Mr. Sarnoff in further regard to that same material.

Senator PASTORE. Is there any objection to this, Mr. Sarnoff?

Mr. SARNOFF. No objection.

Senator PASTORE. All right. Without objection it is so ordered.

(The letters refered to are as follows:)

KTTV, LOS ANGELES TIMES TELEVISION,
Los Angeles, Calif., May 31, 1956.

Hon. WARREN G. MAGNUSON,
Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I am writing with reference to the statement filed with your committee by the National Broadcasting Co. in reply to the testimony delivered before the committee March 26, 1956, by Dr. Donald F. Turner and myself on behalf of KTTV, Inc. The NBC statement contains the following on page 3.

"His testimony falls into clearer perspective in the light of the undisclosed interests for whom he was speaking when he testified before this committee.

"We understand that Mr. Moore's presentation was part of an organized campaign previously agreed upon and financed by a group of film syndicators and related interests, whom Mr. Moore served as treasurer and to whom he has made periodic progress reports. We further understand that this film group had a series of meetings, agreed upon the retainer of counsel who represented Mr. Moore at his appearance before this committee, and consulted together on the network attack to be made through Mr. Moore."

These statements are, of course, utterly irrelevant to the question upon which NBC was invited to express its views, namely, the question whether the "option time" and "must buy" policies of the networks are contrary to the antitrust laws and the public interest. However, the frequent references to these allegations throughout the statement and brief would suggest that NBC considers them to be both relevant and true.

For that reason it seems appropriate for me to supply a factual statement concerning the genesis of the KTTV testimony and concerning KTTV's relationship with other companies with reference to the issues with which your committee is concerned.

The true facts are that KTTV prepared its own testimony, engaged and paid its own counsel, paid its own expenses and spoke only for KTTV. KTTV has also taken the leadership in bringing together other companies which are being injured by the unlawful practices of the networks, and has engaged in joint research with them. We will continue to consult with such companies and individuals. But KTTV was not authorized to speak for any such companies, or for anyone else, and it did not do so. Any NBC allegations to the contrary are false.

A complete factual statement is as follows:

In May 1955, following publication of the Plotkin and Jones reports, I consulted in Washington with Mr. Lloyd N. Cutler, of the firm of Cox, Langford, Stoddard & Cutler, to obtain legal advice as to whether certain network practices were violative of the rights of KTTV. KTTV then formally retained Mr. Cutler's firm to provide us with a legal opinion on these questions. His associate, Dr. Donald F. Turner, of Cambridge, Mass., visited Los Angeles in June of 1955, at KTTV's expense, to study the facts of our operation as a basis for further consideration of the legal issues involved. Subsequently, Mr. Cutler advised KTTV that, in the opinion of his firm, the network companies were engaging in violations of the antitrust laws to the detriment of KTTV—particularly those practices known as "option time" and "must buy."

On July 22, 1955, the Federal Communications Commission announced the appointment of a committee of four Commissioners to conduct a study of network broadcasting.

Following further consultations with Mr. Cutler, KTTV, completely on its own initiative and without consulting any other company or individual, prepared a memorandum dated November 5, 1955, describing the effect of certain network practices upon KTTV. The memorandum contained certain recommendations for changes in the regulations together with a statement of the arguments in favor of such changes. Much of this material was later incorporated in my testimony before your committee.

On November 8, 1955, in Washington, I called on Dean Roscoe L. Barrow, of the Network Study Committee of the FCC, and delivered a copy of the memorandum to him. Shortly thereafter, I sent copies to various licensees of independent television stations and to several independent film producers and distributors. My purpose was to stimulate interest in these issues on the part of other companies which were also being adversely affected by certain network practices. I urged each to join in a meeting to discuss our common problems.

On December 8, 1955, such a meeting was held at the offices of WGN–TV, in Chicago. It was attended by representatives of KTTV, WGN–TV, WPIX, General Teleradio, Inc. (licensee of WOR–TV, KHJ–TV, WNAC–TV, WEAT–TV), Official Films, Screen Gems, Television Programs of America, and Ziv Television Productions. I acted as chairman and outlined the effects of the network restraints on free competition. The specific effects of the "option time" and "must buy" practices upon each of our companies were thoroughly discussed.

At my suggestion, a second meeting was held in New York on December 15, 1955, attended by representatives of the same companies. At that meeting, it was unanimously decided that the eight companies would initiate joint factual and legal research concerning the common effect of the network practices upon our respective companies. It was agreed that the results of such research would be available to each company, but with respect to any action, each company would continue to act entirely upon its own. The expenses of this research activity were to be defrayed from a common fund to which each company contributed equally, and I was authorized to make disbursements from this fund.

I was also authorized to engage counsel and I advised the group that, if he were available, I would like to engage Mr. Cutler, particularly in view of his familiarity with the general problem as a result of his work on behalf of KTTV.

Shortly thereafter, I did retain Mr. Cutler on behalf of the group, which status was and is separate and distinct from representation of KTTV.

Meanwhile, we understand, the staff of the network study committee had advised the staff of the Senate Interstate Commerce Committee of the existence of the KTTV memorandum dated November 5. The staff of the Senate committee requested us to supply them with copies, which we did, and Mr. Cutler and I subsequently met with members of the Senate committee staff during the week of January 11, 1956. We also had meetings during that week with the staff of the network study committee. In these meetings, Mr. Cutler and I were representing KTTV. In the course of these meetings, however, we advised both the staff of the network study committee and the staff of the Interstate Commerce Committee that KTTV was one of a group of companies, made up of independent stations and film companies, which were jointly studying the general questions of network practices. We stated that Mr. Cutler had been retained to advise this group apart from and in addition to his representation of KTTV.

At about this time, in the course of a meeting with Mr. Kenneth A. Cox, during which we discussed the KTTV position, Mr. Cox inquired whether I would be willing to testify before the committee, and I told him I would be happy to do so.

At my suggestion, a third meeting of the station-film group was held in New York on March 23, 1956. At that meeting, the question whether to continue any joint activity was discussed, and all the companies except General Teleradio Inc. (we understand that by this date the corporate name may have been changed to RKO-Teleradio Pictures, Inc.) and WGN–TV decided to continue the group activity. With respect to Official, Screen Gems, TPA, and Ziv, they advised the group that they were then taking steps to form an association (which has since been done) and that their participation in the group activity would be conducted through such an association, together with KTTV, WPIX and such other television stations as might wish to participate. The group thereupon retained Mr. Cutler's firm for a period of a year, to continue to advise us on the facts and issues relating to our common problems. Each of the six companies agreed to make an equal contribution to support this activity and it was agreed that I would continue to administer this common fund. The only other meeting of the group was a brief session at the NARTB convention in Chicago on April 18.

1956. No other companies have joined the group or contributed to the fund, although I understand that Hollywood Television Service, a film distributor, is expected to join the film association shortly and to make a proportionate contribution. It may be that others will join with us in the future, but we have no definite information to that effect.

It has been understood at all times that the interests of the respective companies are not identical, and each company will continue to take whatever individual action it desires on any or all issues. It is also understood that each of us shall be free to utilize the results of any legal or factual research done on behalf of the group.

The KTTV testimony which I delivered to the Senate committee on March 26 was prepared by me with the assistance of other employees of KTTV and members of the Cutler firm. No one from KTTV or the Cutler firm consulted with any other company concerning the preparation or content of the KTTV testimony at any time. Dr. Turner was retained by the Cutler firm at KTTV's expense, and his testimony was prepared without consultation with any company other than KTTV. All legal work done by the Cutler firm on behalf of KTTV, including their assistance in the preparation of my testimony, has been accounted for separately, including disbursements, and has been paid for by KTTV alone. KTTV has also paid its own expenses in connection with the preparation of the testimony, such as travel and subsistence for KTTV employees and Dr. Turner in connection with their visit to Washington.

To repeat, I stated in my testimony that I was speaking only on behalf of KTTV and that is the exact truth. Any intimation by NBC or anyone that KTTV was "fronting" for any other companies or for any of the group is utterly false. It is certainly true that KTTV has taken the leadership in stimulating other companies to express themselves with respect to the restrictive and unlawful practices of the networks which adversely affect us all. We shall continue to consult with other companies or individuals who, like KTTV, are the victims of these practices. But in testifying before your committee, KTTV acted wholly on its own and spoke only for itself.

I am glad to set the record straight on this matter, and once again may I express KTTV's appreciation to the committee and its staff for the courteous hearing which they afforded to us. We stand ready at all times to supply any additional information which the committee may desire.

Respectfully yours,

RICHARD A. MOORE, *President.*

NATIONAL BROADCASTING CO., INC.,
New York, N. Y., June 11, 1956.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: Mr. Lloyd Cutler has sent us a copy of Mr. Moore's letter to you of May 31, in which he discusses his relationship with film organizations in connection with proposals for additional regulation of network operations.

It seems to us that the facts now admitted by Mr. Moore completely confirm NBC's understanding of the situation, as set forth in our statement of facts submitted to you on May 25. In that statement, we said that—

"We undestand that Mr. Moore's presentation was part of an organized campaign previously agreed upon and financed by a group of film syndicators and related interests, whom Mr. Moore served as treasurer and to whom he has made periodic progress reports. We further understand that this film group had a series of meetings, agreed upon the retainer of counsel who represented Mr. Moore at his appearance before this committee, and consulted together on the network attack to be made through Mr. Moore."

In his May 31 letter to you, Mr. Moore admitted that the film group he represented as treasurer established a fund to finance their research on network practices, retained the counsel who represented Mr. Moore in his appearance before the Senate committee, and had meetings to discuss their joint activities. However, he asserts that:

"No one from KTTV or the Cutler firm consulted with any other company concerning the * * * content of the KTTV testimony at any time."

This assertion is belied by the record of Mr. Moore's own reports to his group. In one of these reports, Mr. Moore informed the group that he and the attorney retained by the group—

"* * * feel we should suggest an additional clause whereby, during each segment of the broadcast day, the station would be required to reserve at least 1 hour for the presentation of programs other than programs furnished to it by a single network."

He added that—

"* * * we will probably find it advisable to make a suggestion of this kind to the Barrow committee or the Magnuson committee in the very near future. While this amendment would implement the objectives outlined in the December 19 memorandum, the members of our group have never specifically considered and agreed upon this particular suggested regulation. If a majority of you are opposed to this suggestion, Mr. Cutler and I do not feel that we would be authorized to submit it. Therefore, if you have any objection to our doing so, I hope you will let me know at once."

The report containing the foregoing was dated January 19. Thereafter, Mr. Moore included the additional proposal, for which he had asked group approval, in his March 26 presentation to the Senate Committee on Interstate and Foreign Commerce.

In the light of these facts of record, no comment is required on Mr. Moore's claim that his group was not consulted on the content of the presentation he made to the committee.

Yours sincerely,

ROBERT W. SARNOFF.

Carbon copy Kenneth A. Cox, Esq., special counsel to the committee.[1]

Mr. SARNOFF. Earlier this week, we filed with the committee's counsel material in response to a comprehensive questionnaire received from Senator Magnuson on May 28. This supplies additional data on various matters you are studying.

Mr. COX. I think the record should show that that material will be kept in the files of the committee, and incorporated in the record by reference.[2]

Mr. SARNOFF. Fine. Now, in discussing the principal issues I plan to cover the following points:

First, I will sketch briefly what a network is and what it is not, so that you may have a background picture of the special nature of the network service.

Second, I will deal with our program operation, and particularly with the question of network program control.

Third, I will cover the network's advertising function and discuss how it is interwoven with questions of station affiliation.

Fourth, I will take up the economics of networking and give you a brief financial history of our television network.

Fifth, I will try to show you how competition is the very fabric of network television.

Sixth, and finally, I will deal with the facilities problem of television, which is the real root of the issues raised before you.

1. THE SPECIAL RESPONSIBILITIES ASSUMED BY NETWORKS

Now, as to the special responsibilities assumed by networks, my first point:

Since the advent of television as a major medium, a great many different organizations have entered the business of acquiring, developing, selling, and furnishing programs. Of all these organizations,

[1] A further letter with reference to this matter was received from Mr. Moore under date of July 25, 1956. This letter is printed at p. 2875.

[2] The standard forms of affiliation agreements included in the reply to the questionnaire are set forth in the appendix hereto, at p. 3054.

only 3—the 3 television networks—have undertaken the responsibility of providing a comprehensive, balanced, national program service.

That last word—"service"—is the key to a network's program function. This function is the planning and furnishing of a service—not just 1 program, or 1 type of program, or even a few different types of programs—but an overall service, consisting of the full range of presentations of which television is capable. It is this network service which has been the basis for television's growth, and is essential for the continued growth of the medium.

Now, in connection with this service, there are certain characteristics that I would like to describe.

First, (*a*) the network service is comprehensive. Networks present a great variety of entertainment programs. However, this is only one aspect of the network service. The network schedule also includes a regular nationwide and worldwide news service. It provides national coverage of great public events like the political conventions, which millions of Americans will soon be watching, only because the networks undertake this service. The network service gives the leaders of our country and candidates for high office their only opportunity to speak face to face to the whole Nation. It provides important public affairs programs like Meet the Press on NBC and See It Now on CBS.

Networking also provides live coverage of the great sports classics. It offers many programs of information and culture, developed at the initiative of the networks—creative, costly programs like The Search for Adventure on CBS, or its recent fine series on mental health. Other examples are the NBC documentaries on the atomic bomb, on India, on the Nazi movement and on Russian communism; or The NBC Opera Theater, which a leading critic has called the most vital laboratory example of a program which meets the ultimate qualitative test for TV.

I am citing these network programs not boastfully, but to emphasize the basic fact that networks are the only organizations furnishing the public with a comprehensive, responsible national program service which includes entertainment, but goes far beyond it.

(*b*) The network service is based on a planned schedule: It is not just a random assortment of different programs, but an organized structure of programing—similar to the makeup of a national magazine, but of greater scope and variety than any single magazine. In addition, each program must be suited to the time it is broadcast. A particular program can be very effective in one time period, but wasted in another. This depends on the composition of audience available for the specific time periods, the type of surrounding programs, the type of competing programs, and many other factors. The careful planning and organizing of the network schedule is one of the most challenging creative responsibilities in our business.

(*c*) The network service is national in character: Its operation is distinctive in that it furnishes a program service for simultaneous national broadcast. This is made possible through clearance arrangements with independently owned affiliated stations, so that programs which may originate in Washington, New York, Los Angeles, or anywhere else, can immediately travel across the country on electronic tracks. These tracks consist of interconnections which the network leases from the Telephone Co.—at a cost, in NBC's case, of about $14 million a year—to join the stations into a national communications system.

Only through a network system can live programs be broadcast on a national basis. Of course, we have a number of film programs, too, and we think they are good ones. However, live telecasting is indispensable for certain types of programs, and it makes many other programs more effective. Between 80 and 90 percent of the total hours on our network consist of live programs.

Mr. Cox. I believe in the answers to the questionnaire you indicated, in the period 7:30 to 10:30 in the evening, the percentage of your programs which were on film was approximately 29 percent?

Mr. Sarnoff. That is correct.

Mr. Cox. Thank you.

Mr. Sarnoff. I would like to make it clear that in stressing the special values of network service, we are not belittling film as a method of television programing, nor are we attacking film producers and distributors. It is our position, however, that the network service should not be artificially curtailed, as certain film interests have urged, for their own benefit. Such interference with the essential procedures of network operations could result in the destruction of networking.

If that should happen, television's value to the public would shrink to a fraction of its potential, because film distribution could not possibly be an adequate substitute for the comprehensive national communications service rendered by networks. This was one of the basic points made in the statement we filed with this committee on May 25, and I want to reaffirm that statement now.

(*d*) The network service draws on a great variety of program sources: The network seeks the best programs from all available sources, both inside and outside the network organization, just as a magazine draws on many outside writers, as well as its own staff writers. In the case of a network, the outside sources of programing include independent packagers of live programs, independent film producers, motion-picture studios, stations, and advertisers. NBC itself produces less than one-third of the programs in its network schedule.

Mr. Cox. In that connection, the exact figures, as I think they were shown in your questionnaire, were 28 percent for the entire day and about 21 percent for the portion 7:30 to 10:30 p. m.?

Mr. Sarnoff. That is right.

Mr. Cox. I assume, of course, that NBC itself has some interest in, or control over, a good part of the independently produced programs which are released over the network?

Mr. Sarnoff. Well, it varies with individual programs. In some cases the program is under contract to NBC, although it is the property of an outside producer.

(*e*) The network service provides and is dependent upon a specialized advertising function: Network programing is supported by an advertising service which consists of furnishing simultaneous national exposure of sales messages in the network program structure. In the print field advertisers turn to magazines and Sunday supplements to buy national advertising in one transaction. In the broadcast field, a network performs a similar specialized function.

(*f*) The network service is unique: Both in programing and in advertising, a network's function is fundamentally different from any other organization supplying programs to stations. These other organizations acquire or produce individual entertainment programs for sale. They may sell some to a network, or to an advertiser who places them on a network, or on selected stations; or they may sell programs directly to stations.

But the companies producing and selling these programs do not themselves undertake the responsibility for developing a balanced daily program service which includes news, public affairs, information presentations, and special events coverage. They do not assume the costs of furnishing stations and the public with unsponsored public-service programs. These responsibilities they leave to the networks and the stations.

Senator BRICKER. What is the percentage of the stations affiliated that use your news broadcasting service in relation to those that produce their own news broadcasts?

Mr. SARNOFF. I am not sure that I have such a percentage, Senator Bricker. But what we provide is a network national news service which I believe is used by most of our stations in addition to the local news service which they provide themselves.

Mr. COX. Your service, then, is simply a supplemental service covering a broader scope than would normally be covered by their own local press.

Mr. SARNOFF. Well, in general, we cover worldwide and nationwide news, news of the national interest; and the local station, while it, too, through its connections with the wire services, can get some of that information, in effect adds what is of interest locally; is that correct?

Senator PASTORE. Are you talking of a program such as the John Cameron Swayze one now?

Mr. SARNOFF. That is correct, sir.

Senator BRICKER. Is there any of the information on the wire services that you get that is not available to your local stations?

Mr. SARNOFF. Well, it is available to the local stations if they are taking the wire service.

Senator BRICKER. That is what I mean; yes.

Mr. SARNOFF. But most of that information is available through our own—through our own news programs.

Senator PASTORE. It is available to you, I know, of course. You get all of the wire services.

Mr. SARNOFF. That is correct.

Senator PASTORE. And how many of the affiliated stations get the independent wire services, or are dependent entirely on your news service?

Mr. SARNOFF. I don't have the answer to that, Senator. It would depend entirely on what the individual arrangements of a station are with the news services.

Senator PASTORE. That, you don't know?

Mr. SARNOFF. That, I do not know.

Senator PASTORE. You have no control over that at all?

Mr. SARNOFF. No, sir.

And now, if I may, I would like to summarize my first point, which is that a network's function is to furnish the public, through affiliated stations, with a comprehensive, balanced program structure, simultaneously broadcast on a nationwide basis. It is able to do this by means of the revenue it obtains from selling national advertising exposure. Thus, it is built like a triangle. The base of this triangle is service to the public. The other two sides are service to affiliated stations and service to advertisers. These 3 aspects of network service are as inseparable as the 3 sides of a triangle. Only as the network serves the public well will it be able to develop the circulation to give good service to the advertisers and stations. If it does not give good value to the advertiser, it will not obtain the revenue to give good service to the public and the stations.

Network service provided the base for the growth of the entire television industry. As soon as network programs became available in a community, television circulation in that community soared, and with network service available, hundreds of stations went into operation. The national audience developed by the network service also created the advertising base for the medium—not only for network advertising, but for national spot and local advertising, too.

This audience development is still going on. Public interest in television has not slackened, but intensified. The average TV home now uses its set more than 5½ hours a day, an increase of over 21 percent from 6 years ago. TV sets are in simultaneous use in as many as 25 million homes during the evening hours.

Mr. Cox. Would you agree with Dr. Stanton that the period 7:30 to 10:30 p. m. does represent the peak viewing hours and, therefore, the prime time for national television service?

Mr. Sarnoff. I would agree that it represents the peak viewing hours. I think the term "prime time" is too restricted when applied just to those 3 hours.

Mr. Cox. However, that would be the period when the largest audience is available?

Mr. Sarnoff. I believe so.

Mr. Cox. And therefore, in terms of appeal to an advertiser, it would be the most attractive time that the network has to offer, except for specialized audiences perhaps.

Mr. Sarnoff. It would depend on the advertiser's needs. Some advertisers, it would be more attractive than it would be to other advertisers, depending on what they are trying to accomplish.

Individual network programs regularly draw audiences of 20 to 30 million viewers. The record for a single entertainment program is still held by NBC's first broadcast of Peter Pan, with its 67 million viewers.

THE NETWORKS' ROLE IN DETERMINING ITS PROGRAM SCHEDULE

Now, my second point: Although network programs are obtained from many sources, the network is, and must be, responsible for planning and developing its own program structure. This program structure is the network's product, and the network succeeds or fails on the basis of the overall appeal of its product. There has been a good deal of confusion regarding network program "control," and in an effort to clarify the subject, I will break it down into three separate questions:

First, is it proper for a network to decide what programs it will present and in what period each program should be placed—in short, to plan its own schedule?

Second, is it proper for a network to produce programs?

Finally, is it wrong for a network to have a financial interest in programs it presents?

As to the first question—the planning and decision by a network on what should constitute its schedule: We believe that such decisions are an essential responsibility of any network. Only a network can discharge this responsibility, because the network alone is concerned with the balance, variety and effectiveness of its overall schedule.

Mr. Cox. In legal terms, though, isn't it true that the responsibility for programing is imposed directly upon the licensee of the individual station?

Mr. Sarnoff. That is correct.

Mr. Cox. And that the legal basis for NBC's responsibility is, therefore, its holding of licenses for its owned-and-operated facilities?

Mr. Sarnoff. That is correct.

Mr. Cox. And insofar as the programing of the local station is concerned, would you feel that it is permissible for the licensee of that station to delegate the responsibility for determining the program content to the network, or any other agency?

Mr. Sarnoff. I don't believe, in practice, that is what happens. I think that a station in accepting network programs—I believe that is what you are referring to—is exercising responsibility in determining that he does want the network program.

Mr. Cox. In other words, you would feel that it is not a blanket acceptance of the network's offering, but that each program which he carries, when ordered by an advertiser over the network, is accepted because he believes that is the best program available to him in that time period in view of the special needs of his particular community?

Mr. Sarnoff. I believe that is true, yes.

Mr. Cox. Now, you indicate that the network, itself, has a responsibility for balance as far as the programing that it offers to the affiliate is concerned. Now, do you feel that that is a responsibility that is something separate and apart from its responsibility for its owned-and-operated stations—where, of course, it provides its programing for a greater number of hours and on a more localized basis?

Mr. Sarnoff. Well, there is a little confusion as between its own stations and the network and the stations. I might point out that the National Broadcasting Co. has amongst its several divisions, a number of divisions, two independently operating divisions: The network and the stations. The network doesn't own the stations, the National Broadcasting Co. owns the stations as well as owns the network.

Mr. Cox. Then, essentially, the men who are charged with the responsibility of operating your owned-and-operated stations are also accepting initially, the programs determined by other officials in the National Broadcasting Co.?

Mr. Sarnoff. That is correct.

Mr. Cox. Subject to their right of rejection on certain grounds?

Mr. Sarnoff. That is correct.

Mr. Cox. The point I am making, though, is that the managers, say, of WRCA—or whatever your station in New York is—would have a responsibility under the Communications Act for the overall balancing of programing from the time the station goes on the air in the morning until the time it goes off at night, and that would include, of course, a good deal of material that is in no way connected with the network's programing. I think you suggest here that the network is providing a service that it provides to its owned-and-operated stations and to its affiliates, and that within that segment of the over-all programing the network itself has a responsibility for maintaining balance.

Mr. Sarnoff. That is right.

Mr. Cox. Would that be correct?

Mr. Sarnoff. That is right.

Mr. Cox. Now, is that a responsibility which—since you say the network organization is separate from the owned-and-operated stations—should be directly enforcible by the FCC upon the network organization, itself, as a distinct entity and apart from your individually licensed stations?

Mr. Sarnoff. Well, I see nothing to be gained by the FCC imposing regulations on the network, as such, in connection with its responsibility—with the responsibility element of its programing; no.

Mr. Cox. As I understand it, you have two separate organizations: Your owned-and-operated stations, which are licensed and have the statutory responsibility for balance?

Mr. Sarnoff. That is right.

Mr. Cox. And the network organization, which is furnishing a substantial portion of the programing for those stations and for the rest of your many affiliates. And that your feeling is that the balance of the network's programing should be subject to review only insofar as it actually finds its way into the program schedules of individual licensees?

Mr. Sarnoff. That is correct.

Senator Pastore. Have you any information, Mr. Sarnoff, with respect to the number of sets that are covered by the stations owned by you, as against your affiliates that are independently owned?

Mr. Sarnoff. I believe we do have such information.

Senator Pastore. If, without too much trouble, we could have that in the record, please.

Mr. Sarnoff. Twenty-seven percent of all sets are served by the stations which we own and operate.

Mr. Cox. That is the six stations you presently own. As I understand it, you are applying for transfer of a seventh.

Mr. Sarnoff. That is correct.

Senator Pastore. If you do get the seventh, then what would the figure be? Do you have any figures on that?

Mr. Sarnoff. I don't have it offhand, but it would be somewheres between another percentage point and——

Mr. Cox. That is a UHF station in Hartford or New Britain?

Mr. Sarnoff. It is New Britain.

Senator Pastore. But definitely under 30 percent?

Mr. Sarnoff. Definitely.

Senator BRICKER. That is the ratio of the sets which you will reach by your own stations, as compared to the sets which are served by your affiliate stations?

Mr. SARNOFF. Yes, sir.

Senator PASTORE. Your own affiliate stations?

Mr. COX. Or is that a percentage of the total sets in the United States?

Senator BRICKER. That is what I was getting at.

Mr. SARNOFF. It is the percentage of all sets in the United States.

Mr. COX. In the United States?

Senator PASTORE. Well, now, I would like to get the other figure if we can. What percentage of sets are covered by your own stations, as against your affiliates that are independently owned?

Senator BRICKER. That is the affiliates of NBC.

Senator PASTORE. Of NBC?

Senator BRICKER. Yes.

Senator PASTORE. I mean we are talking here about responsibility on the part of the local licensee, the broadcasting station, as against the network's responsibility. All I am trying to do is to get into the record the comparative influence, if we are speaking about influence.

Mr. SARNOFF. We can work that figure out for you.

Senator PASTORE. I would like to get it in the record, if it is not too much trouble. You can put it in later on.

Mr. SARNOFF. Thank you. May we do that?

Senator PASTORE. Give it to me any time during the hearing so that we won't delay this proceeding.

Mr. SARNOFF. Fine.

Senator PASTORE. We will put it in at this point in the record, Mr. Stenographer.

(The information referred to is set forth in a letter dated August 9, 1956, and in exhibit 1 thereto, which will be found beginning at p. 2878. The percentage shown is 26.8 percent.)

Mr. SARNOFF. Thank you.

As I was saying, only a network can discharge this responsibility because the network alone is concerned with the balance, variety, and effectiveness of its overall schedule.

That is exactly what the FCC said in its report on the Public Service Responsibility of Broadcast Licensees, issued in 1946, when it stated:

> The concept of a well-rounded structure can obviously not be maintained if the decision is left wholly or preponderantly in the hands of advertisers in search of a market, each concerned with his particular half hour, rather than in the hands of stations and networks responsible under the statute for overall program balance in the public interest.

The same point was made by Mr. Fairfax Cone, chairman of the board of a leading advertising agency, who said:

> The advertiser is really not in a position to decide what the American people should see. His interest cannot lie in "editorial" judgment of what types of programs should be on the air, if you will.
>
> That should be the job of someone in the position of the periodical editor, who, to be sure, must have his magazine make a profit, but at the same time recognizes his responsibility to provide a balance of all that makes a good, constructive, and always-improving publication.

When network and station executives realize this necessity and assume this responsibility to the public, television will grow up.

That statement was made in 1953—not by a network representative but by a representative of advertisers. The responsibility to which he referred has been progressively assumed by networks so far as their own schedules are concerned, and the principal beneficiary has been the public.

Mr. Cox. Is it to be inferred from that that the network has assumed an increasing degree of control over programing as the years have gone by?

Mr. Sarnoff. I would say it has assumed an increasing degree of control over decisions as to what programing—in other words, control—it has assumed more decision over the structure of its program schedule, as distinguished from control over programs.

Mr. Cox. That is, what programs are to go into the overall schedule and at what point they are to be inserted in that schedule?

Mr. Sarnoff. That is right.

Mr. Cox. That is something that has been growing and has now reached the point of perhaps near saturation in the sense that you are now providing just about the maximum amount of programing, and have produced an integrated schedule, for the entire period for which you serve the network?

Mr. Sarnoff. I do not know about saturation, but I would say that it is generally accepted now that networks do exercise the final responsibility over the structure of the program schedule.

Mr. Cox. I assume in the exercise of that responsibility, however, that you consult with the advertisers concerned, with their advertising agencies, and take due account of their views as to what their programing needs are, what kind of programing is going to be of service to them in return for the financial support that they provide for networking?

Mr. Sarnoff. Yes; we do take into account their views.

Senator Bricker. And do you consult with the local stations that are actually doing the broadcasting?

Mr. Sarnoff. Yes; quite often we do. We have an executive committee of our affiliates and we have regular meetings, and at those meetings we discuss in some detail what our programing plans are.

Mr. Cox. This is in advance of your actual decision on the lineup for a new season, you mean?

Mr. Sarnoff. That is correct.

Mr. Cox. And you consult with them as to whether, in their opinion, the changes you are proposing are going to be desirable in terms of the needs of their own local areas?

Mr. Sarnoff. Well, this committee is selected by the affiliates and cannot speak for each individual affiliate but can give us a general reaction as to how they feel the rest of the affiliates will respond.

I would like to give you a specific example of what I have just been talking about. In 1954 NBC developed and introduced a new program concept for television—the spectaculars—90-minute special-entertainment attractions. They were scheduled every fourth week for a number of advertising and production reasons. To bring these shows to the public, we had to revise the whole pattern of weekly scheduling. The spectaculars series have presented some of television's finest accomplishments—from the Sadlers Wells' Ballet, to Shakespeare, to Broadway musicals. If NBC did not plan and decide its own schedule, the spectaculars concept, which has broadened the whole scope of the television medium, would have remained a dream instead of becoming a reality.

Networks have led the way in such program innovations. They have kept public interest in television refreshed and renewed. The argument that networks should not determine their own schedules is an argument that they should abdicate program judgment and responsibility.

Senator PASTORE. Mr. Sarnoff, at this point, there has been a strong implication here from time to time on the part of other representatives that much of this spectacularism has taken place only because of the recent pressures on the part of independent producers and on the part of those who are interested in subscription television. Now, what is your reaction to that?

Mr. SARNOFF. I would say, Senator Pastore, that there is no truth in that whatsoever. The spectaculars were developed, first, as an important form for television. They were—I might say quite frankly, they were started by NBC in an effort to bolster up its schedule, and its competitive schedule which, at the time they started, wasn't all that it might have been.

And I think that they have not only made possible important properties—important programs and shows and have brought much to the American public that they would not have gotten otherwise; and I think they have been an important factor in color television, for one thing.

So, I think there were many reasons of an operating nature that have nothing whatsoever to do, quite frankly, with——

Senator PASTORE. We have the assurance that, regardless of what else happens, they are here to stay?

Mr. SARNOFF. I do not know that anybody in this business can give such assurance about anything. But I would believe that they are here to stay in one form or another.

Mr. COX. In connection with the time when you first inaugurated these programs—with this different time period and with the every fourth week feature—did you encounter any opposition from advertisers who felt that they were being displaced from their normal time periods, 1 week out of 4, and were therefore in some sense losing the impact of their advertising message?

Mr. SARNOFF. Well, Mr. Cox, as usually happens with anything new—and I cannot give you the specific ones—but there were some advertisers and agencies who felt that it was a change, and it was a change from past procedures where advertisers bought on a, you know, 4-out-of-4-week basis; and they were faced with 3 out of 4, and even though it has a lot of merit on an advertiser's basis it was something difficult for them to reconcile, for some of them.

I might say that since the introduction of the 3 out of 4 principle, with the spectacular every fourth week, many advertisers are now asking us to give them that form. This is a standard evolution in the business.

Mr. COX. To participate in spectaculars?

Mr. SARNOFF. Either to participate in spectaculars or to buy on a 3 out of 4 basis.

Mr. COX. Have they found that the spectacular every fourth week has built up audiences even when the spectacular is not on?

Mr. SARNOFF. Yes, it has created an interest in the days and time periods that they have been in; that is correct.

Senator BRICKER. What was the reaction of your affiliate stations to that kind of programing?

Mr. SARNOFF. Most enthusiastic.

Senator BRICKER. How many of them are utilizing it?

Mr. SARNOFF. Well, I would have to get the actual lineups on the individual spectaculars which would depend somewhat on the orders for them. Do we have that? I think in most cases they are being carried by most of the affiliates. As I cited before, the one example of Peter Pan was 67 million viewers. You have to have pretty complete coverage to have that kind of an audience.

May I suggest——

Mr. COX. Yes, you can furnish that.

Mr. SARNOFF. To furnish that to you? [3]

Mr. COX. Yes. Now, do these spectaculars normally run over into the half-hour period beginning at 10:30 p. m.?

Mr. SARNOFF. No, the Monday spectacular is 8 to 9:30, the Saturday is 9 to 10:30, and this year we have had Sunday night, which has been 7:30 to 9, and this coming season, I believe, instead of Sunday it will be Friday from 9 to 10:30.

Mr. COX. They are all within your evening option time?

Mr. SARNOFF. That is correct.

Mr. COX. Do you have any programs which start in option time and extend into the period after option time?

Mr. SARNOFF. Yes. We have the Lux Video Theater on Thursday night, which is from 10 to 11. I believe that is the only such program—perhaps the fights on occasion, if they run over.

Mr. COX. Now, do you concur with Dr. Stanton in his interpretation that when you have a program which straddles the end of option time, that you are not entitled to an option with respect to that?

Mr. SARNOFF. Well, I am not sure that we operate that way. If we have a good program and—like the Lux Video Theater—and we put it in at 10 o'clock—well, let me put it this way: I think it is academic, actually, because if the station does not want to clear for the second half hour it is free not to take the program at all. So I do not think it is really a matter whether 10 o'clock is option time or 10:30 is not option time, or whether you stop calling 10 o'clock option time.

Mr. COX. In other words, you would never take the position that you were entitled to require them to clear for the first half hour, leaving them, then, with the Hobson's choice of either stopping the program in the middle or providing you with an extra half hour?

Mr. SARNOFF. I would say this: He is free to take the first half hour if the advertiser will accept the station on that basis. That is a practical matter. Of course, that doesn't happen. No, there is no requirement, as you state.

[3] The information is set forth in a letter dated August 9, 1956, which will be found at p. 2878.

Mr. Cox. Would it be generally true that you get the same clearance for the Lux Video Theater, on an average, that you get for programs that are wholly within option time?

Mr. SARNOFF. I do not have the exact clearance figure in my head, but I know that it is very good; and I think the quality of the program has something to do with that clearance.

Senator PASTORE. Mr. Sarnoff, much has been said here—and I think really an important part of this whole hearing is as to the influence, or the hold, that a network has over the independent station, because of a contract between them, on programing.

Now, could you get into that a little bit—your relationship with the independent station? Are they at liberty, ex parte, on their own, to withdraw any time they want from any particular program? I mean, how are they bound by contract and what are their rights, and how much independence do they have or don't they have? I think that is an important thing we are trying to get at; and we go all around it but no one ever asks the question pointblank. Let us get that on the record.

Mr. SARNOFF. The affiliated station is under contract to the network, or has a contract with the network, limited to 2 years by regulation of the Commission; and under that contract the network has certain time periods which you call option time.

There are a number of reasons for which the station may refuse to accept a network offering in those periods. They are spelled out in the contract, and I would just like to read briefly what they are:

> Under the contracts between the NBC and its affiliated station the station agrees to broadcast sponsored programs offered by NBC within designated hours except that, (*a*) the station may reject any program offered by the network which it reasonably believes to be unsatisfactory or unsuitable; (*b*) the station may reject any program offered by the network which in its opinion is contrary to the public interest; and (*c*) the station may reject any program offered by the network in order to substitute a program of outstanding or national importance; and (*d*) the station has no obligation to broadcast any program offered by the network at a time during which the station is already obligated to broadcast a program of another network.

In other words if it is carrying the program of CBS or ABC——

Senator PASTORE. Well, read that first provision again, the first exception there.

Mr. SARNOFF. "The station may reject any program offered by the network which it reasonably believes"—that is, the station—"reasonably believes to be unsatisfactory or unsuitable."

Senator PASTORE. Now, who is the judge of what is reasonable? The station, itself?

Mr. SARNOFF. I would assume that it would be the station manager and his program manager.

Senator PASTORE. I mean you have never had any controversy over the exercise of that exception, or that privilege?

Mr. SARNOFF. Not to my knowledge, no.

Mr. Cox. Do you view your option right as an enforceable legal right which you could, if you wished, insist upon through legal process?

Mr. SARNOFF. Well, Mr. Cox, I am not a lawyer. I believe it is a legally enforceable right, but in practice it is not used that way.

Mr. Cox. Now, would it be fair to say, in line with what Senator Pastore was asking, that when a station manager declines to clear for a program which the network offers—and this means, of course, that he is substituting another program for it—in some instances this may be a single instance, a local event?

Mr. SARNOFF. Yes.

Mr. COX. In which cases as I understand it, he picks this up for you on a delayed basis; he makes up the time. Normally, however, it would simply be as one, either specific or implied, ground that he thinks the program he is putting in there is better than the one offered by the network. That, I take it, is a matter on which the network may have some further discussion with him in an effort to persuade him to clear, but where, in the final analysis, his decision will stand?

Mr. SARNOFF. As a practical matter, that is exactly how it operates.

Mr. COX. As a practical matter, then, if he does not wish to honor your option you do not seek to enforce the option?

Mr. SARNOFF. We do not seek to enforce the option, no. We seek, perhaps, to convince him that either then, or at some later date, he should carry our program because we think it is a good program.

Now, you are quite right—in most cases if he does not accept the order for his station, it is because he has another program in that period.

Mr. COX. Well, then, you would feel, actually, that the clearance which you do get—the high percentage of clearance that you get—is due not to the fact that you have a right here which you would, in practice, enforce against the local operator, but because of the general advantages of being an NBC affiliate and the general high level of your programing, which leads him to accept the program and clear time for it regardless of the option?

Mr. SARNOFF. Well, I believe that there are two factors at play. I think the existence of option time in the contract with the station is an influence in the clearances which we get. And I also think that the quality, if I may use the word, of our programing and its value to the station is also a factor in securing the clearances that we get.

Senator PASTORE. Mr. Sarnoff, have you ever refused to renew a contract of an independent station because they had exercised this perogative of excepting to the option too often?

Mr. SARNOFF. No, sir.

Mr. COX. How about the case of WTVR in Richmond?

Mr. SARNOFF. What about it? [Laughter.]

Mr. COX. Well, the committee has heard testimony from Mr. Wilbur Havens, the president and general manager of the licensee of that station, regarding the circumstances under which his affiliation with NBC was terminated, I think in April of last year. And it was his statement to the committee that NBC never gave him any specific ground for its termination of his contract, but that in his opinion it was caused by two factors: One, the fact that he did not give you what you regarded as satisfactory clearance, because his was the only station in Richmond at the time and he felt, therefore, obligated under policies of the FCC to provide some clearance for the other networks, and felt that in so doing he was serving the public interest of the people of Richmond by providing them with the best selection from the offerings of all three networks; and, in the second place, that you were unwilling to give him the network rate which he felt was provided for under your formula for determining such rates and, that having given him this rate on a delayed basis, you then proceeded to cancel the affiliation in such a way that he had the benefit of the increased rate, I think, for a period of 1 or 2 months.

Senator PASTORE. Before you answer that question, Mr. Sarnoff, let me say this: Are you familiar with that testimony?

Mr. SARNOFF. In general, yes, sir.

Senator PASTORE. Are you prepared to answer it?

Mr. SARNOFF. Yes, sir.

Senator PASTORE. All right.

Mr. SARNOFF. Mr. Cox, I hesitate to run down a witness or a man who has been a veteran in business. I am not going to do that. Of course, it would be hard for Mr. Havens to put emphasis on the reasons why he was disaffiliated, if I can use that word.

One of the basic reasons was he was a difficult man to do business with. And in this business we have to deal with individuals as well as with facilities. And when I say "difficult," I do not mean difficult only in the sense of program clearances, but he was difficult. [Laughter.]

Now, one of the basic issues between us and him was this question of his claim as to coverage, against the evaluation of our own people—our own research department and engineering department—as to what coverage he rightfully could claim in having set for him his network rate. In fact, his coverage, if granted, would have eliminated Norfolk as a market and as a UHF station which is now affiliated with us. In fact, I have been told that his claimed coverage was greater than the whole population in the State of Virginia.

Now, you can have things two ways. It is our effort to maintain stations and keep a service going, and make it possible for all stations to survive. You can, on the other hand, give rates to stations on the basis of their claim of popularity, which we do not feel is justified, and which we do not feel the advertiser would recognize.

Mr. COX. Is it not true that in connection with his claims for a rate increase he furnished you with, not just a calculated coverage map for his station, but with a coverage map based on actual measured field intensities—which showed that, in fact, his signal did cover Norfolk, reach as far north as Alexandria, and as far south as the northern tier counties in North Carolina?

Mr. SARNOFF. Well, I am not actually familiar with the map coverage [turning to Mr. Bevel].

Mr. BEVEL. Yes; he did furnish such a map.

Mr. COX. And it showed coverage of that order?

Now, was one of the problems, perhaps, between NBC and Mr. Havens the fact that NBC has an owned-and-operated station in Washington, and that there was substantial overlap, therefore, between the claim of coverage of the Richmond station and of your own station in Washington, D. C.?

Mr. SARNOFF. No, sir; that was not a factor.

Senator PASTORE. Let me get into this a little bit. This Mr. Havens that we are talking about, he had the only one station in this locality?

Mr. COX. At that time, in Richmond.

Mr. SARNOFF. He was the only station at that time.

Senator PASTORE. Well, that is the peril of monopoly.

Mr. SARNOFF. When a second facility came into the market we decided that we preferred to do business with the second facility.

Senator BRICKER. Getting right down to the essence of this problem, Mr. Sarnoff: You had the sole responsibility of canceling his affiliate contract; you could or could not continue the contract. You could cancel it whenever you desired, regardless of the cause. That is your privilege.

Mr. SARNOFF. Well, we could not renew at the termination of the contract.

Senator BRICKER. That is right. Well, now, do you think——

Mr. SARNOFF. It is not unilateral, it is bilateral. He has the right, too.

Senator BRICKER. I know. Do you think that ought to be solely your responsibility, in light of the great interest in broadcasting, or that there ought to be some review by some authority over your rights in regard to your affiliates?

Mr. SARNOFF. I am sorry; I do not believe there should be some such review.

Senator BRICKER. You object to any authority on the part of the FCC to review your relationships with any of your affiliates?

Mr. SARNOFF. Well, the FCC at present reviews certain facets.

Senator BRICKER. They approve the contract on the basis of the affiliate only; they have no jurisdiction over you at all, except in your direct broadcasting?

Mr. SARNOFF. That is correct.

Senator BRICKER. And you would object to their having any responsibility in regard to the relationship of yourself and your affiliates—regardless of the cause of the cancellation of the contract, or refusal to renew it?

Mr. SARNOFF. Yes, I would, sir.

Mr. COX. Weren't you advised by some of your associates that, based on this engineering study, they should reappraise WTVR's coverage, and that they should attribute certain additional counties to his station; and that your problem was complicated by the fact that the station in Norfolk, affiliated with CBS, which had a slightly—a comparable coverage, had a rate substantially greater than that which WTVR then had?

Mr. SARNOFF. I believe that is correct.

Mr. COX. In fact, did not some of your associates suggest that the rate increase sought by Mr. Havens should be granted?

Mr. SARNOFF. I do not recall offhand, Mr. Cox, whether the specific figure that Mr. Havens recommended—suggested—was recommended by my associates or not.

Mr. COX. Well, at the time of this discussion he had a network rate of $625 and his national spot rate was $875; and it was pointed out to you, was it not, that this was probably the only station in the country which had such a spread between its two rates?

Mr. SARNOFF. Excuse me, Mr. Cox, are you referring to a memo you have there, so I can refresh my memory?

Mr. COX. Yes, I am referring to a memorandum of June 30, 1954, from Mr. Hancock to Mr. Rumpel; or, maybe it is the other way around.

Mr. SARNOFF. I do not have any knowledge of that particular memorandum, obviously.

Well, Mr. Cox, maybe I can put it to you this way—and if you want to get into those details, perhaps I can have Mr. Bevel answer some of them. There was a difference of opinion as between the station as to the rate it should have for the coverage it was claiming and the rate that our people felt it should have on the basis of the scientific information—or as scientific as you can get in this business—that they had as to what it ought to be. Also in the light of the realities of business, we felt that he was claiming more than he had a rightful claim to. He felt that we were not crediting him with as much as he felt he was entitled to. It seems to me it is a matter that is not unique in business; it requires business judgment and business decision and I do not see how it can be——

Senator PASTORE. But, Mr. Sarnoff, if he became disaffiliated, to use your word, with NBC, could he still go to ABC and CBS?

Mr. SARNOFF. He could have gone to either. Remember, Senator Pastore, there was only one station in that market.

Senator PASTORE. Now, fundamentally, of course, you have nothing to do with it, and I do not know how much we are going to have to do with it. But fundamentally, that is the whole problem: It is one man in one community that runs the whole show in broadcasting. That is the one thing that is bothering me in every respect of this television business, from top to bottom.

Mr. SARNOFF. That is correct.

Senator PASTORE. And the big question here is how much real competition is there in it; and sometimes those who come here to complain against the monopolies are in a little monopoly of their own. Only sometimes because it involves one individual they do not think that is quite the case.

Now, here is one community that is confined to one broadcasting station, that has the right to deal with three networks. Now, I agree with Mr. Bricker that we get into the point that sometimes the viewing public is victimized, because it is denied, because of a controversy between an individual and a network, a certain program that it would like to see. But the fact of the matter is that the whole problem could be resolved here if you had four television stations in that community.

Mr. SARNOFF. That is correct.

Senator PASTORE. Then you would have something to compete with.

Mr. SARNOFF. That is absolutely right.

Senator BRICKER. One more question, Mr. Sarnoff. Have you a record of how many of your affiliates have refused to take the various programs that you have furnished under your advertising contracts?

Mr. SARNOFF. Of all the—if I understand your question, it is how many of our stations refused to take——

Senator BRICKER. That is right.

Mr. SARNOFF. Well, I understand that the answer to that specific question is in the questionnaire that we filed.

Mr. COX. I think that is exhibit 9 to your questionnaire, is it not? They have here a series of pages indicating specific programs and stations which have not cleared those programs—either stations that are primarily affiliated with NBC or those which were receiving major services from other networks.

Senator BRICKER. Now, in your advertising contracts with the advertising sponsor, do you take into account, in the rate that is charged, the number of stations that do not carry the programs?

Mr. SARNOFF. Well, the charge to the advertiser is the aggregate of the network rates for those stations on which his program is carried. Therefore if his program is not carried in a particular market which he ordered, but for one reason or another is not able to obtain, he is not charged for that market.

Senator BRICKER. He is not charged for that?

Mr. SARNOFF. No.

Senator BRICKER. That is carried in your contract?

Mr. SARNOFF. That is right.

Senator BRICKER. Your contracts with your affiliates and your advertising contracts generally are in the record?

Mr. COX. Yes.

Mr. SARNOFF. Affiliation contracts are in the record.

Mr. COX. Not the advertising contracts; but the affiliation contracts.

Senator BRICKER. Your advertising contract is made upon the basis, then, of allowance for those stations who do not take the advertising program?

Mr. SARNOFF. Well, it is not exactly allowance, it works the other way. The charge, or payment by the advertiser, is made up by the aggregate of those stations which he does get for his program.

Senator BRICKER. Now, what if a station consistently refused to take a certain program, and you had assured your advertiser that your affiliates would all, or practically all, carry the program? What would be your attitude toward that station?

Mr. SARNOFF. If most of our affiliates had agreed to carry the program and one had decided not to?

(Senator Bricker nods.)

Mr. SARNOFF. We would try to persuade him that he should carry the program, and if the decision on his part was not to carry, that would be the end of the matter.

Senator BRICKER. And have you ever canceled any other affiliates' programs on the basis that they did not carry a proper percentage or share of your advertising programs?

Mr. SARNOFF. You mean cancel affiliation contracts?

Senator BRICKER. Yes.

Mr. SARNOFF. Not on that basis.

Senator BRICKER. Never?

Mr. SARNOFF. Not to my knowledge.

Mr. COX. Have you failed to renew them on that ground?

Mr. SARNOFF. I would say this: That in renewing contracts, as situations change in markets with new stations coming in, with changes in management, with changes in operating quality of the station, with changes in the station's position in the market, that amongst many factors taken into account, if there is a change in affiliation to be taken, conceivably could be the amount of clearance.

Mr. COX. In connection with the Richmond station, is it not true that you timed your cancellation of the contract with WTVR so as to coincide as nearly as possible with the on-the-air date for the second station in the Richmond area, WXEX in Petersburg?

Mr. SARNOFF. Well, actually, the only timing that was possible was the timing that coincided with the termination date of the contract.

Mr. Cox. And you had gotten some assurances from Mr. Tinsley, the owner of WXEX, that he hoped to be on the air about that time?

Mr. SARNOFF. That is correct.

Mr. Cox. Mr. Havens put into the record a copy of the letter notifying him—not initially of cancellation, but simply of notice that you did not wish the contract automatically to be renewed—which was mailed to him on February 10, 1955, and in which you indicated that you simply desired to review the provisions in the contract and that if your study indicated the desirability of proposing any changes in the contract, you would then discuss those proposals with Mr. Havens so that you could formulate with him "a mutually satisfactory basis for continuing the affiliation of your station with the NBC television network." You sent him such a letter, did you not?

Mr. SARNOFF. Well, I did not send it to him.

Mr. Cox. It was sent by Mr. Bannister of NBC?

Mr. SARNOFF. That is correct.

Mr. Cox. Is it not true that at that time NBC had decided they were going to cancel Mr. Havens' affiliation?

Mr. SARNOFF. I believe it was approximately about that time. I might state this is a standard form of letter.

Senator PASTORE. Mr. Sarnoff, it has been called to my attention that there are 3 television stations in that area now, where there was 1.

Mr. Cox. That is true.

Mr. SARNOFF. I believe that is right. Yes.

Senator PASTORE. Now, does your program reach that area?

Mr. SARNOFF. Richmond?

Senator PASTORE. Yes.

Mr. SARNOFF. Yes.

Mr. Cox. You advertise WXEX as your Richmond affiliate?

Mr. SARNOFF. Yes.

Senator PASTORE. Now, as a matter of practice, there have been many complaints here on this question of UHF and VHF—that when you have a UHF station in a locality that is tied up, you have a contract with one of the networks or several of them, and a VHF station comes in, the contracts are usually transferred from UHF to VHF. Now, is that quite common, Mr. Sarnoff?

Mr. SARNOFF. As a matter of it—it is common with us or common in the industry——

Senator PASTORE. Common in the industry? I mean, let us face the facts. I mean, I am not being critical now, I am just trying to find out if it is so. You have your reasons for it, and I would like to know what they are.

Mr. SARNOFF. I am going to touch a little later on UHF in relation to NBC. I think there are cases, Senator, where there have been shifts from UHF stations to V's as they came into the market. They worked the other way, too. In the case of Norfolk, as I mentioned before, we undertook an affiliation with a UHF station where formerly we had had a V.

Mr. Cox. In that case, however, the VHF station had terminated its affiliation contract with you; hadn't it?

Mr. SARNOFF. Well, it would have been possible to maintain a secondary affiliation with them.

Senator PASTORE. I know that is so. But we have had testimony here that VHF is the more powerful medium of broadcasting, and it has a wider coverage. And every time a VHF comes in—and I am not saying it shouldn't come in, we are not getting into that discussion now—but it has been the practice, there have been a number of complaints here during the progress of this hearing, on the part of UHF station owners, that the minute a VHF station is permitted to operate, that the big networks transfer their contracts to the VHF. And because they lose the better quality of program, they are destined to lose viewers and finally shut down. Now, why is that so, if it is so?

Mr. SARNOFF. Well, if it is so, I think one of the problems is one of the things inherent in the problem of facilities, and that is the circulation problem. It is difficult, sometimes—and we must face the fact, there is no point denying it—it is difficult, sometimes, to sell UHF stations to advertisers, on the basis of the lack of circulation presently existing in some markets.

Senator BRICKER. One question that I can't resolve in my own mind, Mr. Sarnoff, and it involves the very nature of the broadcasting business: The individual station is subject to license. It is controlled and regulated by the rules of the Commission; it is responsible to them in the public interest; it is, in fact, a public utility. Now, the networks have complete control over the life or death of a station in many instances. You could make a profitable station, or you can make a station unprofitable by giving or refusing or withholding an affiliation agreement. There is a public interest in the whole aspect of broadcasting. You are in a controlling position in the networks, not only as to the station itself but as to what advertisers shall have available time. Your contract controls that.

For the life of me I cannot see why that isn't charged with the public interest as much as the local broadcasting, because you have the power over the stations—you might as well admit it, we all know it. You likewise have the power over the advertiser. You can put on, or you can refuse to put on. Now, isn't there a public interest in the networks the same as in a local broadcasting station?

Mr. SARNOFF. Well, Senator Bricker, I believe that everything that broadcasting does, it should do to serve the public interest.

Senator BRICKER. I agree with you on that.

Mr. SARNOFF. I know of no alternative to the present competitive system that I think would prove a better or more satisfactory result, or would be more in the public interest, than the present free enterprise, highly competitive system that we now know. And this includes all the problems involved with stations either making a profit or not making a profit; advertisers getting a time period or not getting a time period.

I will touch on this point a little later.

Senator BRICKER. It would still be free enterprise, regardless of whether or not there is a regulatory authority to see that there is a proper handling of the power that you have got.

Mr. SARNOFF. Well, I think that raises certain problems on matters that I think, quite properly, the Government should not be involved in.

Senator BRICKER. Why not?

Mr. SARNOFF. I would like to make reference——

Senator BRICKER. Just explain why the Government should not be involved in it, when the Government controls the nature of the program by the local station—it can withhold or grant licenses to a local station.

Mr. SARNOFF. I will take issue with that, Senator Bricker; the Government does not control the nature of the program. That is one of the very points we are concerned with, that the Government would control the nature of the programing.

Senator BRICKER. But they do have rules and regulations as to the character of the program. If there is a program that is adverse to the public interest, the Government can withhold a license. It has got complete power over the broadcasting station itself, and that must involve the nature of the program—not the program itself, not censorship or anything of that kind, and nobody wants to see a Government censorship of programs.

Mr. SARNOFF. I agree.

Senator BRICKER. I am the last one that ever wants to see that. But it does control the broadcasting business by license, and can refuse a license to a station if it doesn't fulfill its public obligation.

Mr. SARNOFF. That is correct.

Senator BRICKER. Now, here you, the networks, control the life and death of that local station. They, to a degree, control the kind of programs that they put out. They control the advertiser that can get on and cannot get on, or determine the one that can get on and cannot get on.

Why there isn't a public interest in that, and why there isn't a Government interest involved, I cannot understand.

Mr. SARNOFF. Well, I think there is a public interest, and again I say I don't—in the first place, I think the word "control," if I may say so, is perhaps a little bit overused. There isn't the kind of "control" existing that you referred to. There are plenty of times when—well, not plenty of times, all the time. We cannot run a business based on advertising serving industry if we don't take into account the needs of industry.

Now, the fact that one advertiser gets a particular time period because the other one doesn't get it—because the other one has it, this is just the way the world is made. No two bodies can be in the same place at the same time. If the networks don't decide which advertiser is to get the time period, the only alternative is to have a Government body. I certainly don't think——

Senator BRICKER. But there should be a fair dealing with all.

Mr. SARNOFF. There is.

Senator BRICKER. It is charged with the public interest. It has a public utility aspect to it, and if there isn't somebody that can control that, it is left absolutely and arbitrarily to the judgment of the networks—be there 1, be there 2, be there 3.

Mr. SARNOFF. I don't recognize the Government can exercise better judgment over which advertiser has a better program——

Senator BRICKER. Not that they should judge which shall have and which shall not have, but that there should be fair dealing with all. Because they have the power to make or break a business—the networks, themselves.

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Mr. SARNOFF. I think their record to date on building it has been pretty good.

Senator BRICKER. It may be; I have no complaint with the program making that you have got, not at all. There may have been instances, though, of unfair dealing, and there ought to be some authority to which there could be an appeal.

Mr. SARNOFF. I am not quite——

Senator BRICKER. I don't want to leave it in the hands of an individual—what if there should be a consolidation of the two networks? What if there should be one in control of the programing of the country and of the advertisers that should get the advertising rights, and one is excluded and the other admitted?

Mr. SARNOFF. Well, what if there should be one Government controlling the facilities——

Senator BRICKER. There is and should be and will be, I hope.

Mr. SARNOFF. Determining which advertisers, what programs, what kind——

Senator BRICKER. No, not which one, but that there should be fair dealings with all. There is a competitive system of industry in our country, and there should be no individual that has the right to say to this business "you can advertise," and that business "you cannot advertise," under similar circumstances. Each one should be treated fairly and equally, in my judgment.

Mr. SARNOFF. I am not quite clear to what you are referring when you say there should be—or there hasn't been fair dealings, Senator Bricker.

Senator BRICKER. Without conclusion, there might be, there might be. And there must be some jurisdiction——

Mr. COX. Mr. Sarnoff——

Senator BRICKER. Just a minute, please.

There must be some jurisdiction to determine whether or not this great advertising facility of our country that controls so much of business in which the public is interested, and that reaches into practically every home—someday it may reach into every home of the country—there should be some power over that arbitrary discretion which now the networks exercise, or could exercise.

Mr. SARNOFF. They do not exercise arbitrary discretion.

Senator BRICKER. They could exercise, and you know it just as well as I do.

Mr. SARNOFF. I don't believe they could.

Senator BRICKER. What would prevent it?

Mr. SARNOFF. The competitive system and the competitive climate in which they are now operating.

Senator BRICKER. What if we get down to one network—it is a part of Government to see that that should not happen—but what if it should happen? It is a question of power and control and authority in which there is an overweaning Government responsibility representing a great public interest.

Mr. SARNOFF. Well, Senator, if I may, I would like to make this comment: I don't think any of the fears that you have, you need have, in the present situation with the present competitive system we have. I would suggest if the day comes, and I certainly don't believe it will, where there is only one network, then I would suggest you take a look at the situation under those circumstances.

Senator BRICKER. Well, isn't it the responsibility of Government to look at the situation as it is today and the possibilities that might accrue?

Mr. SARNOFF. Yes, but I don't think the——

Senator BRICKER. There are many companies that would like to have an advertising advantage, that are competitive with those that have it?

Mr. SARNOFF. Are you suggesting——

Senator BRICKER. They can't get in.

Mr. SARNOFF. Are you suggesting that the Government decide which advertiser has the time?

Senator BRICKER. It ought to lay down the rules by which fair treatment should be given to all. If that means splitting up the time—whatever it means, I don't know. I am not planning this program at all. But I do know that there is a great public interest in this, far greater——

Mr. SARNOFF. I agree.

Senator BRICKER. Than in those public utilities that are regulated.

Now, someday, someday, if ever the time comes when there isn't a fair approach to this problem on the part of the networks, whenever there isn't competition that will treat all fairly and alike, then you are going to face absolute Government regulation and you are going to face it on a public utility basis—which I don't think is necessary, I wouldn't want to see it at the present time. But I want to see a fair dealing with the public, and with business, and with the various stations that reach the public. I cannot for the life of me understand how you can justify the Government regulation of the stations, themselves, and the networks go absolutely free of any Government regulation, either as to character of the programs or the way you treat business in general.

Mr. SARNOFF. Well, Senator, I touch on that very point in my statement. If I may, I would like to——

Mr. COX. I had just one point in that connection, and that is: What, in your view, would be improper or undesirable about having networks file with the Federal Communications Commission a statement of their affiliation criteria, a statement of their policies with regard to the allocation of advertising broadcast time, and then permitting anyone who feels himself aggrieved to appeal to the Commission—not on routine day-to-day matters, but where he feels that actually, by some affirmative action of a network, he has been injured—give him a right to appeal to the Commission for a determination in the matter?

Mr. SARNOFF. Well, Mr. Cox, as you know the broadcasting business lives in enough of a goldfish bowl as it is. I think that it imposes a situation where, rather than the free play of competition operating and rather than arrangements as between individuals being carried on as they properly should be, quietly—I mean I see nothing to be gained by it, I will put it that way. I see no benefit to be achieved.

Mr. COX. You say that the network industry lives in a goldfish bowl, that is in a sense that particular instances, as they arise, are discussed in trade publications, or may receive even broader attention. But wouldn't it be more orderly to provide a forum for one who felt he has been aggrieved by a network, to have a forum to which he could go for a decision?

Mr. SARNOFF. Well, now, specifically you addressed yourself to affiliation arrangements. I still think that is a private matter between the network and the station. I mean it is a contract negotiation.

Mr. COX. You think, then——

Mr. SARNOFF. I don't think you can set—as I will mention as I get to it—hard and fast rules so that anybody who feels that he can qualify under these set of criteria, from which there is no possible deviation, automatically is entitled to an affiliation. I don't think you can run a business that way.

Mr. COX. Let us take the situation where a man has an affiliation, and you propose to withdraw it from him. He feels that he could convince an impartial body that the only ground for this action on the part of the network is the fact he has not cleared the programs offered to him by the network, and he wishes to attempt to justify his decisions, as a local licensee with the statutory responsibility for programing his station, by showing why he put certain programs on in lieu of those which were offered by the network.

Now, in your view is this an improper interference in contract matters; do you feel that it is absolutely essential that the network, in order to enforce its option rights, must have the unrestricted power of terminating that affiliation at any time?

Mr. SARNOFF. I think the network should be free, absolutely free, in its dealing with its affiliates.

Senator PASTORE. Which leads me——

Mr. SARNOFF. I might say it it not a one-way street.

Mr. COX. They terminate contracts, too?

Mr. SARNOFF. Certainly, they have equal rights.

Senator PASTORE. Looking at this from the point of view of a local advertiser, or the local user of a broadcasting facility, like a candidate for public office running, let us say, on a municipal level or on a State level. We had testimony here yesterday from Dr. Stanton to the effect that the network does negotiate with the station as to the setting of the fee for the time to be used on a national broadcast. Am I correct in that?

Mr. SARNOFF. That is correct.

Senator PASTORE. You follow the same policy?

Mr. SARNOFF. Well, actually, the network determines the rate for the station for that broadcast.

Senator PASTORE. National broadcasts. Now, Dr. Stanton went so far as to admit—and whether or not he did admit it I think it would be a truism—that that in effect does influence the rate that is instituted by the local broadcasting station insofar as a local program is concerned. You heard him say that?

Mr. SARNOFF. I heard him say that.

Senator PASTORE. You heard him. Do you agree with that?

Mr. SARNOFF. I don't know that you can pin it down specifically. I think that you will find in many cases, and I don't have a rate card in front of me——

Senator PASTORE. Wide or narrow, it does have an influence. When you step in and tell a man that a quarter of an hour is worth $200 or $300, he begins to believe it is worth $200 or $300 no matter who wants to buy.

Mr. SARNOFF. I want to make this distinction—I think it probably will have more influence on the national spot rate than it would have on the local rate.

Senator PASTORE. Now, that being the case, that is actually requiring a local advertiser—a small advertiser who wants to use, let us say, 10 or 15 minutes on a local broadcasting station—to pay a fee that actually is promulgated on a national level?

Mr. SARNOFF. No; that is not true.

Senator PASTORE. Explain to me why it isn't? We want to get this in the record.

Mr. SARNOFF. For this reason, I believe: The fact that the national rate may have an effect on the final determination of the national spot and the local rate, it has an effect only in that it has created a certain value for that station. The station under no circumstances—if it is being run by good business management, good business judgment—under no circumstance can set a local rate that is uneconomic, or will not make it possible for local advertisers, and in this case the individual is in the same posture as a local advertiser——

Senator PASTORE. Well, if you had a free market to move in, you would be right. But it just so happens—and there, again, it isn't your fault, it isn't anybody's fault—but in most communities we don't have quite enough broadcasting stations. If we had half a dozen or a dozen of them, I think the prices would come down.

Mr. SARNOFF. Not necessarily, there is another factor. The local station, even though he may not have much competition from other facilities in his market, still has competition from other media.

Senator PASTORE. You mean like a newspaper or a radio?

Mr. SARNOFF. Certainly.

Senator PASTORE. Well, I think, myself, the importance of this hearing spotlights the importance of television.

Mr. SARNOFF. I agree.

Senator PASTORE. I hope we don't have to kick that dead horse.

Mr. SARNOFF. No, no.

Senator PASTORE. Television is a pretty important attractive medium—that is the reason why you are here, and that is the reason why, I hope, I am here at this hearing.

Mr. SARNOFF. Excuse me, sir. The point I was trying to make—the local television rate must take into account the other mediums available. Let us say, for example, the local dealer, the local department store, who has other mediums available to him—maybe not as effective, maybe he would rather have television, but maybe he won't buy it if the local rate is too high.

Senator PASTORE. Are you still saying, Mr. Sarnoff, that the system is such that even though a rate is set for a national program between a network and a local broadcasting station, that there is sufficient leeway on the part of the local broadcasting station to make a lower rate insofar as a local user is concerned?

Mr. SARNOFF. He is absolutely free to set his own rate at any rate that he wants.

Senator PASTORE. Now, let us get into how this works out. You set a specific rate on a national broadcast. Do you mean to tell me that if a local broadcasting service—I am not questioning now, I am merely getting this on the record—if a local broadcasting service exercises the exception to the option, and let us say allows me to go on for 15 minutes to make a political speech for which I have to pay—would it be profitable for that station to exercise its exception to the option and yet charge me—and make money, you see—a price that is lower than the rate that you have set? Now, do I make myself clear on the question?

Mr. SARNOFF. I believe so.

Senator PASTORE. In other words, I am trying to get into the practicalities of this.

Mr. COX. He would retain all of his local rate would he not, whereas, he must share with the network ——

Senator PASTORE. That is what I want him to answer. I want to get this down categorically. I want him to answer it.

Mr. SARNOFF. It would depend on a number of factors. I would say in the case of selling the time to you for broadcast, using his local rate for that purpose and retaining a hundred percent ——

Senator PASTORE. I am talking now about prime time; I want to go on between 8 and 8:15. [Laughter.] I don't want to go on when everybody else is in bed.

Mr. SARNOFF. If he had no program costs and he had ——

Senator PASTORE. Well, he has a program; it is Sunday night, and he has The Colgate Hour. I will put that in the question, too.

Mr. SARNOFF. No; what I meant was if he sells you time for whatever purpose you want, and he doesn't have to provide any additional cost, or it costs him nothing to do that, he merely sells you the time, depending on what his local rate is, and in this case, he would retain a hundred percent of it, minus an agency commission if you were to buy it through an agency; it is possible, and quite likely, that he may in that case retain more money, or as much money, probably not less, than he would have received from his compensation from the network for that same period sold to a national advertiser.

Senator PASTORE. In other words, would it be profitable or unprofitable for him to sell the time to me for less?

Mr. SARNOFF. It would depend on what he was receiving from the network for that period. I can't answer you absolutely because I would have to know more facts. I would have to know exactly what his rate was for the national advertiser ——

Senator PASTORE. Does the cut that he gets from you allow him leeway to give me a reduced rate less than the rate that you have set with your advertiser; that is the point that I am getting at?

Mr. SARNOFF. Yes; it should.

Mr. COX. That is he would get, normally, not more than a third of the gross time charge for his station for a national broadcast; so that he could set a local rate 25 percent under his national network rate, and if he did not have excessive programing costs, retaining 100 percent of that, he would make more money for that time period than if he were on the network?

Mr. SARNOFF. He might; he could. There are a number of instances where the network rate is anywheres from 40 to 50 to more percent higher than the local rate. It is quite a substantial spread.

The point I was trying to make earlier, was that there is a relationship, but in the sense that it is related back to the value of everything that he is receiving from a network, which gives him an opportunity to set a local rate which may be higher than the local rate of his competitor; that is possible.

Mr. Cox. Because of the network service and the reputation that permits him to have in the market?

Mr. Sarnoff. His own local management and what he does in the community.

Mr. Cox. Getting back to the matter touched upon by Senator Pastore: Has not NBC within the past several months terminated its affiliation with station KEDD, in Wichita, a UHF station to affiliate with KARD, a VHF station, and has it not notified WGBS, in Miami, a UHF station, that it is terminating its affiliation to affiliate with a new VHF station to go on the air there?

Mr. Sarnoff. That is right.

Mr. Cox. And this, in terms of your earlier testimony, is because of the additional circulation that you obtain and the greater ease that you will have in selling those markets to national advertisers?

Mr. Sarnoff. No; it is not. In the case of Wichita it was because of difficulties in the management of that station, to the network, failures of equipment, a number of other matters which if you wish, I could go into.

Mr. Cox. Then it primarily did not turn on the UHF–VHF situation?

Mr. Sarnoff. No; it did not; it turned on the management of that station.

Mr. Cox. How about Miami, was that perhaps in terms of the relations of Mr. Trammell to the network?

Mr. Sarnoff. Well, it was in terms of our knowing there would be a V there originally, and the arrangement with the U, I believe, always had been on a 90-day—what we call an interim basis.

Mr. Cox. Mr. Storer had always known that there was a V allocated and would be granted?

Mr. Sarnoff. Yes.

Mr. Cox. And that his affiliation with you was subject to the likelihood of your making a shift when that was available?

Mr. Sarnoff. That is correct.

Senator Pastore. Where V's have been allocated to certain areas that are covered by U's, you usually do it? Your contract with the U is usually on a temporary basis?

Mr. Sarnoff. Yes, and I believe there are a number of cases where the V is on a temporary basis also, pending more facilities in the area.

Mr. Cox. Is this more universal in the case of UHF stations, however?

Mr. Sarnoff. I would believe it is probably more in the case of U's; yes.

Senator Pastore. All right. You are on page 11.

Mr. Sarnoff. Thank you. [Laughter.]

Senator Bricker. You were temporarily delayed. [Laughter.]

Senator Pastore. Let me say this, for the benefit of all that are here, including Mr. Sarnoff, the members of the committee, and the staff of the committee, especially the counsel. We will go until 12:30; we are going to take a short recess for the benefit of the stenographer. This is off the record.

(Discussion off the record.)

Senator PASTORE. Let us have quiet quickly, so that we can get going, please. Thank you very much.

All right, Mr. Sarnoff.

Mr. SARNOFF. Thank you.

On the second question—that is the right of networks to produce their own programs, this is another aspect of the responsibility I have been discussing.

In order to discharge this responsibility, a network must have a creative, experienced program organization. Through its program staff, it produces certain of the entertainment shows it needs for its schedule, develops new stars and writers and builds programs to suit their talents. It also produces other programs which are needed for a well-balanced schedule, but which no advertiser, agency or independent producer takes the initiative to produce. This is true of such NBC programs as Today, Home, and Tonight. It is the case with our Project 20 series of documentaries, our NBC TV operas, Wide, Wide World, many of our other public affairs presentations, and all of our news programs.

These are programs which would not exist if the network had not taken the responsibility for developing and producing them. Nevertheless, we obtain many programs from a variety of outside sources, and as I previously stated, NBC-produced shows account for less than one-third of the programs in our schedule. Not only is it proper for a network to produce programs, but it is essential that it do so if it is to maintain and furnish a comprehensive program service to the public.

As to the third question—should a network have a financial interest in programs: We strongly believe the answer is "yes", because these financial interests grow out of contributions the network makes to program development. We generally own the programs we produce ourselves, but we have no financial interest in programs brought in by an advertiser.

We negotiate for a participation in those programs which are developed or produced at our cost and risk; and in those cases we generally obtain some participation—but not always. When we acquire a program by contract with an outside producer, we may or may not have a financial interest, depending on what we have put into the show. We have described these situations in some detail in answering your questionnaire, but let me briefly outline them here.

The typical situation is one where an outside writer or producer brings us a program idea he would like us to develop. Just developing the idea into a sample program costs a good deal of money. The outside writer or producer may not want to take on this risk himself, and he asks us to do so. If the idea seems to have promise, we may put up the money to make a sample program, and in that case, we negotiate for a participation in the program. Many of these sample programs, or "pilots", as they are called, never go any further. However, if the sample indicates that a satisfactory program can be developed, we may either try to sell the series to an advertiser on the basis of the pilot program, or commit to have the series produced before securing a sponsor. Nobody bats a thousand in show business. When such a program series doesn't live up to expectations, we usually have to absorb the balance of our commitment.

Another situation is one where a producer brings us one or two completed episodes of a new film series and asks us to underwrite the cost of producing the series—which may run as much as a million dollars or more. When we feel that the program has good potential, we assume such a commitment, with the risk of trying to get and keep a sponsor. In these cases, also, we may negotiate for an interest in the program. Sometimes, the interest we get is limited to merchandising rights, with the producer retaining rights to syndicate after the network broadcasts. Sometimes we get a larger interest, and sometimes we get no interest.

Through this sort of risk and undertaking, we have helped others develop many fine programs. Rather than stifling independent production, networks have provided an important encouragement and stimulus for program development by outside producers.

The claim has been made that we give special preference to programs in which we have a financial interest in order to get a profit from the sale of the programs as well as from the sale of the time. I want to deny that charge categorically. Our primary concern is whether or not a program best meets the needs of our planned program structure. This is the decisive element—not who owns the program, or whether or not we have a financial interest in it.

I think this is evident from the fact that our schedule includes a great many outside shows in which we have no interest, even though at the same time, there are a number of NBC developed programs available for broadcast. After all, we are in a highly competitive business. We would soon go under if we didn't give first consideration to programing our schedule with the strongest shows available to us, regardless of their source.

The idea also seems to be around that program production is profitable for a network. Actually, in 1955, our commercial programs cost us $8,600,000 more than we received from the advertisers for these programs. When you add to this our other costs for furnishing a program service—such as the cost of sustaining programs, program staff, and program development—our total unrecovered program cost in 1955 was $24 million.

These facts, I believe, should dispose of the claim that profit—rather than service and competition—is the reason why networks undertake production of their own programs. And they should clear the air of a lot of vague charges about the motivation for network program control.

Programing responsibility is one of the central facts about the network operation. It is interwoven with the network's advertising function and its service to affiliates, which I would like to discuss next.

3. NETWORKS MUST PROVIDE EFFECTIVE NATIONAL ADVERTISING

A network has just one paying customer—the advertiser. Advertiser money supplies the funds for the network programs, not only the sponsored programs, but all the unsponsored public service programs, too. An advertiser has many mediums available to him, and he will buy television advertising from a network only if he gets a good value from it. The network must provide a good advertising value if it is to give the public and the stations a good program service.

Senator BRICKER. In relation to the other services, I think that television advertising is increasing very rapidly, is it not?

Mr. SARNOFF. I believe so.

Senator BRICKER. It is, I would assume, to be the best advertising mediums—best of all the advertising mediums that are available.

Mr. SARNOFF. Well, we believe so.

Senator BRICKER. Well, isn't it generally conceded to be so?

Mr. SARNOFF. Well, I think you would find certain other media who don't agree with us on that score.

Senator BRICKER. Have you any way of ascertaining from the sales impact?

Mr. SARNOFF. Yes, definitely. We do—Mr. Bevel's department does a number of research, undertakes a number of research projects, and does it annually, to prove the effectiveness of advertising both in itself and as it relates to competition from the other mediums.

Senator BRICKER. And what has been the conclusion?

Mr. SARNOFF. The conclusion is that it is one of the most effective media for the sale of products.

Senator BRICKER. And it is increasing in its effectiveness?

Mr. SARNOFF. I believe it is increasing in its effectiveness, and certainly I think the amount of advertising on all levels, national, local, and national spot, is increasing.

Senator BRICKER. How does the relation of the amount of money spent for advertising on television at the present time compare with the amount spent in magazine advertising?

Mr. SARNOFF. Well, the national advertising expenditure for magazines, in 1955, was $724 million, newspapers was $750 million, and network television $520 million.

Mr. COX. That does not include national spot advertising?

Mr. SARNOFF. This is national advertising.

Senator BRICKER. National advertising?

Mr. SARNOFF. Network.

Senator BRICKER. It does not include spot advertising.

Mr. SARNOFF. No, when you include spot and local you have about a billion dollars.

Senator BRICKER. It is higher than any one of the other mediums. I say the total, then, is higher than either one of the other two mediums that you mentioned?

Senator PASTORE. Well, I think there is some doubt there between the witnesses. Let's clear it up. You can take your time on this.

Mr. SARNOFF. In 1955, out of about $9 billion of total advertising throughout the country, television, as a whole, received about a billion, or about 11.1 percent; newspapers, 34 percent.

Senator BRICKER. What was the percentage of television?

Mr. SARNOFF. 11.1.

Senator BRICKER. 11. Newspapers?

Mr. SARNOFF. 34.

Senator BRICKER. Well, that doesn't coincide with the other figures a moment ago.

Mr. SARNOFF. Well, on my other figures—these figures I have just given you are for all advertising, of all kinds in television, all kinds of advertising in newspaper. This—not only national advertising.

Senator BRICKER. I see. The greater proportion, then, of newspaper advertising is on a local level.

Mr. SARNOFF. That is correct.

Senator BRICKER. And what was the amount, the percentage amount?

Mr. SARNOFF. For magazines, it is 8 percent.

Senator BRICKER. Eight percent.

Senator PAYNE. Isn't a lot of that, Mr. Sarnoff, due to the fact—that is the tremendous increase you are getting—that television embodies both essential elements of sight and sound in its ability to carry and take into effect. The two separate elements are available through the other media of advertising, namely, publications is sight, radio is sound alone; whereas you have both. Isn't it generally considered that that is the most effective?

Mr. SARNOFF. That is quite right. And I certainly believe, in the area of advertising, the fact that you are able to demonstrate and show your product in motion has a tremendous impact.

Senator PASTORE. What is the figure on radio?

Mr. SARNOFF. Radio is 6 percent.

Senator PASTORE. Six percent; still pretty high.

Mr. SARNOFF. You might be interested to know that direct mail is 14.1 percent.

Senator PASTORE. Direct mail?

Mr. SARNOFF. Higher than television as of 1955. Maybe we will catch them.

Senator PASTORE. In the middle of the page on page 16.

Mr. SARNOFF. Now, providing a good advertising value—for a network this means delivering national circulation large enough to meet the needs of national advertisers. It also means delivering this circulation at a cost to the advertiser which is competitive with the rival media seeking his business. This directly affects the network system of station affiliations, through which a network delivers advertising circulation.

NBC's objective in affiliating stations is to provide complete national coverage for the public and the advertiser. Our success in doing so is indicated by the fact that over 95 percent of all homes in the United States are in range of stations on the NBC network. We are constantly analyzing the possibilities of improving the effectiveness of our network coverage, and we continue to add affiliates from time to time so that we can provide a better service to the public. This process is still going on, particularly with regard to the smaller markets.

It doesn't follow, however, that every station which wants a network affiliation can be affiliated. Where we have an affiliate in a given community, affiliating a second station in that community would provide a duplicate service, and the public would lose the benefit of a competitive program service. In addition, the network advertiser would not buy the second station, because it would mean added cost for duplicating the coverage he is already receiving.

Similar considerations apply where a community in which we have no affiliate is adequately covered by an affiliate in another city. This situation, however, may present a problem which can only be decided on a case-by-case basis. The problem may arise from the fact that although a station overlaps with an existing affiliate, it also covers an area which the existing affiliate does not cover. In considering the affiliation of such a station, duplication in the overlap area must be balanced against the value of covering some additional population.

Decisions like these are difficult, and they can't be covered by any fixed or simple rules. It is necessary to take into account the size of the population which would be duplicated and the size of the population which would be added, the degree of service already furnished in the area, the type of markets involved, the advertising economics and competition. The weight to be given each of these factors in individual situations is a matter of judgment, not of rule. Moreover, in a highly competitive business like ours, we cannot afford to make such decisions on the basis of whim or generalities. We try to make them carefully and objectively, with the combined knowledge and judgment of our specialists in engineering, research and marketing.

Thus, affiliation decisions are influenced by advertising economics, as well as by the goal of providing a complete national service without wasteful duplication. Even after we weigh all the circumstances and arrive at a conclusion on a desirable affiliation, the decision is not made by us alone. It is the result of a meeting of minds between the network and the station. The framework of this mutual agreement is competition. Networks compete with each other for affiliations and for clearances, just as stations compete with each other for network affiliations.

To take this point one step further, the affiliation of a station is no guarantee that the station will receive all the network programs, and I stress this because there have been inferences in the course of this committee's study that if an affiliate isn't getting enough network programs, it is somehow the network's fault. So far as most affiliates are concerned—and this applies to the 150 optional stations on the NBC network—the network advertiser decides which stations he needs, and not every affiliate is ordered for every program.

If an advertiser does not order a station for his program, the station and its community normally do not get the program. I'd like to tell you how we have applied practical business ingenuity in making it possible for such a community to receive the program.

In September 1954, we developed a new procedure which we call the NBC Program Service Plan. Under this plan, we supply various sponsored programs to a number of affiliates which are not ordered by the sponsors, with provisions for deleting the commercial announcements. By January of this year, 15 important programs included in the plan were being carried by 104 different stations which were not ordered by the sponsors. The volume came to almost 2,000 station hours each week of popular network programs furnished these stations in smaller communities. Without such a plan, none of these stations would have received these particular programs.

Last year, we took another step in the same direction with our Program Extension Plan, popularly known as PEP. It is designed to help the smaller-market stations get network revenue as well as network programs. This additional plan offers a special inducement to the network sponsor to buy the 51 smaller-market stations included in the plan, by giving him some of the stations without charge, depending on the number he orders. The more he orders, the more he gets without charge. As a result, his cost for these stations is substantially reduced, so that they become attractive advertising buys, even though they are in the smaller markets. The cost of the plan is borne by

NBC, with the stations getting compensation at their regular rates.

The PEP plan went into effect last fall. Since then, it has resulted in a 113 percent increase of sponsored NBC programing on the small-market stations included in the plan.

Beyond these specific plans, the network service is of great benefit to all affiliated stations. It is particularly beneficial to stations in smaller markets. For example, it is the continuous network service which makes possible interconnected service to small markets as well as big ones. These are markets which could not be economically interconnected for live network programs if the network service were fragmentized. Also, if the smaller-market affiliates were not part of a national coverage system, the national advertiser would be much more likely to bypass them. As part of the network, they become more attractive to him, since he can include them in his overall buy without additional administrative, clearance or program costs. Networking is of vital importance to small-market affiliates and they would be the first to be hurt if the network system should be disrupted.

Affiliated stations are overwhelmingly in favor of the present system of network broadcasting, and the reason for this is simple. Networks furnish the stations with a balanced program service of a scope and quality far beyond anything which a station could otherwise get. This network service helps the station attract a bigger audience, which increases the value of its time and therefore increases the revenue it can obtain from the sale of national spot and local advertising.

These facts illustrate the basic point that a network service consists of three inseparable aspects—service to the public, stations and advertisers. They are not only inseparable—they are also self-regulating in the free enterprise tradition. If the network service to any one of the three elements is inefficient or inadequate, the network will lose the support of the other two.

In their relationship with networks, stations have been closely regulated by the FCC for many years. And as you know, the FCC has organized a special staff, headed by Dean Barrow of the University of Cincinnati Law School, which is engaged in a comprehensive study of the subject to determine whether any changes should be made in the present regulations. We have already supplied voluminous data in reply to two questionnaires sent us by this group and are now working on a third one.

In connection with the suggestions for regulation of networks, which have been made to this committee in the course of its comprehensive study of television, I would like to stress the dangers inherent in such a course.

These proposals are the first step down the road to Government decision on whether advertiser A or advertiser B should occupy a particular network time period, or whether a network should sell program X or program Y to an advertiser. They would involve a review by Government authority of business judgments on what station should be affiliated; or how the programs of various networks should be divided among the stations in a given community; or what kind of programing should be included in the network schedule.

This could not be done without putting the Government into the broadcasting business. I assume that nobody really wants such a result. Yet the type of regulation I have just referred to has been suggested in one form or another during the course of this committee's consideration of television.

Government directives on which stations should be affiliated and which programs they should receive would force advertisers to obtain their television advertising exposure in accordance with a new set of Government rules or standards. In any event, such regulation of networks would certainly make them an unappetizing medium for the advertiser. There are plenty of other media seeking his advertising which are not subject to Government regulation—newspapers, magazines, billboards and the like. Network revenue would be siphoned off to these media, weakening the economic foundation on which the network program service rests.

For all of these reasons, it is clear that the present competitive system—rather than a system of additional Government regulation—provides the best safeguard for maintaining and improving the television service which networks furnish to the public. Moreover, it is apparent that many of the proposals for regulation result from a lack of understanding of the economics of networking to which I now turn.

4. THE ECONOMIC ASPECTS OF NETWORKING

Television networking is a business of great risks, heavy financial commitments and low profit margins.

Networking combines a show-business enterprise with a communications service to the public, and it rests on an advertising base. Its product is programing, and it is an extremely perishable product. Every week that a time period goes unsold is a week that is gone forever; it cannot be stockpiled for later sale. And when it is not sold, the network not only loses the revenue, but also has to bear the cost of the program, since it undertakes to provide a continuing service.

A network is also subject to all the hazards of having to make program commitments—often long-range ones—on the basis of a judgment as to what will appeal to the public over a long enough period to permit the network to recover its costs. It must risk large amounts of money for program experimentation and development. It also takes the risk of financing network-produced and outside-produced programs, often without any advance assurance that it can sell the programs or keep them sold. In addition, a network undertakes the cost of public service programing which is not sponsored but which is an important part of the responsibility it assumes.

By its very nature, a national network operates on a large scale. For example, the NBC television network presents about 6,500 different programs a year, serves about 200 stations from coast to coast, and does business with over 200 advertisers of all types and sizes. To provide this service, a network has to have a large organization, thousands of employees, a great amount of technical facilities and dozens of studios. Its overhead is very high, and its plant is subject to rapid obsolescence because of continual technical developments, such as the development of color.

Despite the fact that a network's sales volume is large, its profit margins are modest.

As pointed out by the American Institute of Accountants and other authorities, the economic position of any business can best be evaluated by reviewing its financial results over a period of years. In fact, the SEC requires that a prospectus for the sale of securities contain a summary of earnings for a minimum period of five years.

So I would like to review with you the financial results of the NBC television network since 1947, by showing you the network's annual sales and income figures for the past 9 years. I think these figures will be interesting to the committee, and they should help dispel some erroneous impressions about the profitability of network operations.

Mr. SARNOFF. Now, these are the net sales and income of the NBC television network for the period 1947 to 1955. These figures are after Federal taxes for income, and I just call to your attention that the figures in parentheses indicate loss.

These sales and income figures——

Senator PASTORE. These figures will go in the record as though you had read them.

Mr. SARNOFF. Yes, sir.

Senator PASTORE. All right.

(The chart referred to follows:)

Net sales and income, NBC television network, 1947–55

Year	Net sales	Net income after Federal income taxes	Net income as percent net sales	Cumulative net income
1947	$282,000	($643,000)		($643,000)
1948	2,525,000	(1,332,000)		(1,975,000)
1949	10,254,000	(1,799,000)		(3,774,000)
1950	26,052,000	(2,997,000)		(6,771,000)
1951	69,859,000	1,129,000	1.6	(5,642,000)
1952	98,295,000	432,000	.4	(5,210,000)
1953	110,405,000	(249,000)		(5,459,000)
1954	137,689,000	1,457,000	1.1	(4,002,000)
1955	185,320,000	6,317,000	3.4	2,315,000

NOTE.—Figures in parentheses indicate loss.

Net income as percent net sales

9-year average net income as a percentage of net sales	0.4
5-year average net income as a percentage of net sales	1.5

Mr. SARNOFF. These sales and income figures are on a net basis, and by "net income," I mean income after taxes. A before-tax figure can be misleading—in NBC's case considerably more than half of the before-tax figure is paid out in Federal income taxes. I would like to invite your attention to several significant facts shown by these figures.

You will see that the first 8 years of NBC's television network operation—from 1947 through 1954—resulted in a cumulative loss of more than $4 million. This is shown in the last column of the chart. It may be a surprising fact to you—8 years of major effort with major risks, resulting in an overall loss of $4 million—but it is the hard fact.

Only last year, in 1955, did the network finally reach a cumulative profit, and a modest one. For its 9 years of operation, from 1947 through 1955, the total net profit of the NBC television network was only $2,315,000.

These facts show that any claim of exorbitant profits from this high-risk business is not in accordance with the economic realities.

And just as we reach the point of a $2,315,000 profit from 9 years of television network operation, we are taking on the heavy cost and burden of a major new development—color television. To carry on this development, about $13 million in capital costs has already been authorized in the past several months for color television networking alone. The total amount projected over the next 5 years for NBC capital costs is $80 million.

Another important economic fact about television networking is its high break-even point and its tendency to sharp financial swings, which reflect the risks of the business. This is shown by the figures we have just reviewed.

In 1952, for instance, almost $100 million in sales produced less than $500,000 in profit. And in the following year, over $110 million in sales produced no profit at all.

Now that you have the profit story for the television network, I would like to invite your attention to the ratio of profit to sales.

For the 9 years, from 1947 through 1955, the total net income of the NBC television network was less than one half of 1 percent of its total net sales over the same period. For the past 5 years, the total net income was 1.5 percent of net sales. And in 1955, our record year, the ratio was less than 3½ percent.

As you know, NBC engages in operations other than its television network. These include its radio network and its stations. As you may also know, the radio network business is not having an easy time of it these days.

Our VHF television stations were in the red during the first 3 years of the 9-year period I have used, and our UHF station is now in the red. In the last 6 years our VHF television stations have contributed to NBC profits—in the latter years substantially. But all of these station profits have been plowed back into the business—to develop our network service during the many years it was in the red, and to pioneer in color broadcasting—both network color and with the first all-color television station—our Chicago station.

In evaluating the net income of the NBC television network and of NBC consolidated figures, it may be helpful to compare them with what other companies have done.

In making such a comparison, the use of net income as a percentage of net sales is the formula usually employed. The Federal Trade Commission and Securities and Exchange Commission, which publish comparative industry figures, have said that the percentage relationship of income to sales—

is of universal interest as it expresses operating results in terms of volume of business done.

For comparative purposes, I'd like to refer now to the profit-to-sales ratios for other companies, which are shown on the next page.

Senator Pastore. That will be inserted in the record as though you had read it.

(The table referred to follows:)

Company	9-year period, 1947-55	5-year period, 1951-55	Year 1954	Year 1955
Bethlehem Steel	7.0	6.9	8.0	8.6
Chicago Daily News	7.2	5.1	4.5	5.9
Coca-Cola	13.2	11.1	10.7	10.9
Corning Glass	9.8	9.9	11.8	11.8
Eastman Kodak	10.8	9.7	11.0	12.0
Ford	5.8	5.6	5.6	7.8
General Electric	6.7	6.2	7.2	6.5
General Motors	8.5	7.7	8.2	9.6
Goodrich	5.9	5.8	6.2	6.2
IBM	11.4	9.6	10.1	9.9
Libbey-Owens-Ford	11.8	10.9	11.3	12.8
McGraw Hill Publishing	[1] 6.5	6.6	8.5	8.2
Meredith Publishing	9.5	8.9	8.9	8.5
Owens-Corning Fibreglas	5.9	5.7	6.2	6.8
Procter & Gamble	5.9	5.6	5.7	6.0
Standard Oil (New Jersey)	11.8	12.1	10.3	13.5
Texas Co	13.2	13.3	14.4	14.9
Time, Inc	5.3	4.7	4.5	4.6
Union Carbide	12.7	10.8	10.6	11.9
United States Steel	6.3	6.3	6.0	9.0
All manufacturing companies of $100 million or more of assets	6.9	6.4	6.5	7.4
RCA (consolidated)	5.2	4.5	4.3	4.5
NBC (consolidated)	4.1	4.0	3.5	5.5
NBC television network	.4	1.5	1.1	3.4

[1] 7 years; 1947-48 not available.

Mr. SARNOFF. Thank you.

As these figures show, the average 9-year ratio of profit to sales for all manufacturing companies in the size classification of NBC was 6.9 percent.

Senator BRICKER. That is measured by sales?

Mr. SARNOFF. That is the ratio of profit to sales.

Senator BRICKER. No; I mean your 6.9 is on sales, and your comparison with other companies in the same size classification—your size classification is determined upon sales?

Mr. SARNOFF. That is correct.

I am sorry, Senator. In order to determine the size classification we have used the category of all manufacturing companies of 100 million or more of assets.

Mr. COX. For NBC to be in that category, you have included assets that are not devoted solely to networking, however?

Mr. SARNOFF. Yes.

Mr. COX. In other words, you include other assets of the corporation?

Mr. SARNOFF. Well, we are comparing total company. You notice we have two figures—NBC television network, NBC consolidated—and we are using the ratio of profit to sales as a comparison to other companies.

This compares with less than one-half of 1 percent for the NBC television network. The 5-year figures for the manufacturing companies average 6.4 percent—4 times as much as the television network's ratio. And their 1955 figure was 7.4 percent—twice as much as for the television network. The figures for the consolidated NBC operation are also lower in each case than the average for the other companies.

In considering the network business, you should also recognize that it requires not just the amounts tied up in physical properties, like buildings and equipment, but much larger amounts of money at risk—the financial commitments for programs, performers and all the other elements for which a network must commit on a long-range basis without having covering commitments from advertisers. In the case of the NBC television network, money at risk may often exceed $100 million.

In this high-risk, heavy-commitment business, failure to make a few major sales can mean the difference between profit and loss for a whole year. A network must nevertheless commit funds to programing as a necessary part of providing a competitive network service. I would like to turn next to the nature of this competition.

5. TELEVISION NETWORKING IS INTENSELY COMPETITIVE IN ALL ITS ASPECTS

Competition is woven into the fabric of the television network business. Networks are in fierce and constant competition for the public attention. They vie with one another for audience. They also compete with all other forms of entertainment and with other advertising media. Only as they maintain a competitive service can they survive in the contest for the advertiser's dollar.

The service they provide to their customers is itself an outgrowth of competition. The network advertiser uses television as an important instrument in his own competition for sales against other network advertisers. This sales competition has provided the incentives for our expanding economy. Networks serve this competition and are part of it.

As far as competition within the television network field is concerned, there has been a lot of talk about the two "principal" television networks. But I want to emphasize that any organization has the opportunity to operate effectively in the network field, provided it is willing to undertake the costs and risks of furnishing a strong, well-balanced network program service that can stand up in competition. This opportunity existed for Du Mont, which entered the field early. When Du Mont presented a popular program, like the Bishop Sheen series, it got the clearances it needed, in competition with the other networks. And if it had undertaken development of an overall effective program schedule, it would be a major competitive factor in the network business today.

This point is well illustrated by ABC's history in television. Until ABC took on the job of developing a competitive network program service, it was not a significant factor in the television network field. Recently, it decided to assume that responsibility. As a result—and in the past year—it has increased its sales and sponsored hours at a far faster rate than either CBS or NBC. Now it is operating at a profit, and beats the other networks in audience in a number of time periods.

A television system consisting of 3 actively competing networks, over 400 stations, and scores of program suppliers makes meaningless any claim of monopoly. No network comes near controlling a share of the market large enough to approach a monopoly position. Here are some figures showing NBC's share of the advertising market in the various categories.

Senator Pastore. Those figures will be inserted in the record as though they had been read.

Mr. SARNOFF. Thank you.

	5-year period, 1951–55	Year 1955
	Percent	*Percent*
NBC's advertising revenue as percent of all advertising revenue	2.4	2.7
NBC's national advertising revenue as percent of all national advertising revenue	3.9	4.4
NBC's TV advertising revenue as percent of all TV advertising revenue	22.4	21.7
NBC's national TV advertising revenue as percent of all national TV advertising revenue	27.3	26.3

Mr. SARNOFF. These figures demonstrate that our share of the market is fractional, and the same is true of the other networks.

As for programing, the NBC television network's share of the total is also fractional. We estimate that the broadcast hours occupied by NBC network programs represent 17.2 percent of the total television broadcast hours of television broadcasting in this country. With all of the television stations in the country, and all of the different networks and nonnetwork programs on these stations, it is almost impossible to estimate what percentage of the total number of different programs broadcast each week are NBC programs. It is clear, however, that the percentage is very small. And in every market where the NBC service is available, other television services are also available.

So we see that the NBC television network is part of an intensely competitive television industry, which itself is part of an intensely competitive advertising industry.

THE PRINCIPAL PROBLEM IN TELEVISION IS AN ALLOCATIONS PROBLEM

And now for my sixth and final point: We welcome competition as a stimulus to enterprise in our business and in others. Although there is no restraint on competition in television, additional competition and additional service could be developed if there were more stations. This is the root of the problem in television, and its solution will also solve the problems which are under study by this committee. We therefore urge that the Congress and the FCC focus on this central problem and take affirmative steps to bring about its solution.

This is not a new position on the part of NBC. We have been urging it repeatedly and consistently. We feel that the best prospect for expanding television service is effective use of the 70 UHF channels as well as the 12 VHF channels. Only through such a course can proper provision be made for a multiplicity of stations. We are in favor of a multiplicity of stations, because that would permit maximum competition at both the station level and the network level. It would also provide additional outlets for other program sources, without disrupting the values of the present service. And it would assure the public the widest possible range of program choices.

For all of these reasons, NBC has itself supported UHF wherever practical and possible in operating an effective network service. Our television network includes six basic affiliates operating on UHF channels—stations which must be ordered by the advertiser for every sponsored network program. In total, we have 37 UHF stations as affiliates. These UHF affiliates account for over 40 percent of all UHF stations in commercial operation. We have also undertaken UHF development directly, through acquisition and operation of a UHF station in Buffalo, an intermixed market with well-established VHF stations, and we are following a determined campaign to make UHF successful in that market. We have applied for a UHF station in New Britain and are awaiting final FCC action on our application there.

In connection with the FCC's pending reallocation proceeding, we have urged that it take immediate steps to provide for the maintenance and encouragement of UHF. We did this in comments filed last December and in reply comments filed this February. We outlined a series of principles to be followed so that the maximum number of additional stations could be provided without degrading existing services, particularly to rural and smalltown areas.

These NBC proposals were outlined before this committee at earlier sessions of your hearings, so I will not repeat them again. Our representative on your Ad Hoc Allocations Committee, headed by Dr. Bowles, has carried this position forward in his work with that group.

We believe deeply that the most constructive action which could be taken to broaden television's service to the public would be provision for the maximum number of stations. It is apparent that most other elements in the industry have reached the same conclusion. We hope that this vital objective will not be obscured or diverted by attacks on network operations, which could have such destructive effects on service to the public—at a time when a basic facilities problem is calling for constructive solution.

Senator Bricker. I want to say in passing, Mr. Sarnoff, that there has been no attack made by me when I filed this bill before the Senate, neither now or the former one, on the network system, as such. I recognize the great constructive service that they have rendered, and represent only a public interest to see that it is conducted in the public interest. So the use of the word "attack" is a very unfortunate thing.

Mr. Sarnoff. Well, we are using the word broadly. It is not referring to anything in particular.

Senator Bricker. That makes it all the worse. There had been no broad attacks on the networks at all.

Mr. Sarnoff. Well, there have been attacks on certain practices.

Senator Pastore. Why don't you say, Mr. Sarnoff, that you are using it poetically?

Mr. Sarnoff. Thank you.

Senator Bricker. If you said there had been criticism of certain practices, you would be well within the realm.

Mr. Cox. This refers to criticisms made within the industry—a group of independent film producers, and so on?

Mr. Sarnoff. That is correct.

7. CONCLUSION

And now in conclusion, television networks provide the public with an incomparable service. They alone undertake the responsibility for furnishing a complete, balanced national program structure on a regular daily basis. They are the only means through which live programs are broadcast to the whole Nation. Their programing includes the most ambitious, and the most popular, entertainment attractions, but it is not limited to entertainment. It meets and stimlates the whole range of audience interests, through a wide variety of information, public affairs, and cultural programs developed at heavy cost and often presented on an unsponsored basis.

If the network operation should be restricted by additional Government regulation, the whole delicate balance of network advertising, affiliation relationships, and service to the public could be upset. Moreover, various types of regulation which have been proposed could not be effected without regulating advertisers. Such a step would raise the most serious problems, not only for television, but for the American enterprise system.

While consideration is being given to the practices and operations of networks, which render a service of great public value, the central problem of television—the provision of additional stations through effective use of the UHF band—is begging for solution. A solution of this problem would enlarge the public's stake in television, whereas curtailing the network service would reduce the public's stake in the medium.

It is against these basic facts that this committee must weigh any proposals to change the present system of network operations. The ultimate test is not whether something will help or hurt any individual business interest. The test must be whether it will affect the program service the public now gets; and, if so, will it result in better television for the public?

I am confident that when this committee has weighed all the evidence it will conclude that a restriction of the network operation would not be in the public interest.

Senator BRICKER. Would you advocate taking away the licensing authority of the Commission over the local stations?

Mr. SARNOFF. No; I don't think it is necessary to do that.

Senator BRICKER. Do you think it has been a constructive service to the public.

Mr. SARNOFF. I believe so. And the licensing operation really stems from the problem of allocating the spectrum, so I think there is a justification for it.

Senator BRICKER. That is necessary, you think?

Mr. SARNOFF. I don't know whether it is necessary, but I think it has worked well enough.

Senator BRICKER. You would have utter confusion otherwise; wouldn't you?

Mr. SARNOFF. I think that is quite right.

Senator PASTORE. I say this only in the spirit of competition, because we have been talking about competition—the statement of the NBC was 1 page longer than the statement of the CBS.

Senator BRICKER. But it didn't take as long to present.

Senator PASTORE. Well, we are coming to that. And I only hope that that doesn't serve as a hint to ABC to better the record. [Laughter.]

Can you return at 1:15; would it be better for you?

Mr. SARNOFF. Fine; as it suits you.

Senator PASTORE. Recess until 1:15.

(Whereupon, at 12:25 p. m., a recess was taken until 1:15 p. m. of the same day.)

AFTERNOON SESSION

Senator PASTORE. It is 1:15. All right, Mr. Cox.

Mr. SARNOFF. We are here.

Mr. COX. Thank you, Senator.

In your statement, Mr. Sarnoff, you indicated that when a producer brings in to you a pilot, or a proposal for a development of an outside package—either live or on film—that you sometimes acquire an interest in those shows. Do you ever seek an interest in a program which is owned by an advertiser who wants time to place it on the network—perhaps in terms of exclusive broadcast rights or something of that sort?

Mr. SARNOFF. I don't know whether the word "interest"—we are using the word "interest," in my case it is a financial interest.

Mr. COX. Yes, I am talking now about a lesser interest, a nonparticipating interest, but an arrangement which would give you some rights in, or over, the property.

Mr. SARNOFF. We might seek, on occasion, to have an arrangement where the program—well, let me say this: I think probably not unless we contributed something toward helping develop the program.

Mr. COX. Does the network have any desire to be in a position so that the particular program is tied in with NBC's network operations and could not easily be shifted to another network in case the advertiser becomes dissatisfied with his time, or something like that?

Mr. SARNOFF. We like to feel if a program is successful on the NBC network—and is contributing to the structure and drawing from the structure—we like to feel that it is available to us rather than to the competition.

Mr. COX. You indicated that you do not give special preference to programs in which you have a financial interest. Is it true, sometimes, that having made an expenditure of funds in developing a program that you do try to sway advertisers to make use of this program in preference to one that has been offered to them from other sources, in an effort to at least recoup your investment?

Senator PASTORE. If you say "no" to this I am going to bring this hearing to an end. [Laughter.]

Mr. SARNOFF. Well, Mr. Chairman, I am not going to say "no," but I am going to say "yes" for a different reason. [Laughter.]

We do invest money in developing programs, and we often do have money tied up in programs that we have developed. And if we feel that the development of the program justifies the program going into the schedule, we would seek to have advertisers sponsor it. And at the time that we were seeking it, there is no doubt that others are also trying to get him to buy their programs. This is part of the way the business operates.

Senator PASTORE. And isn't it part of your competition that whatever you produce has to be of better quality than anything that is produced independently that will be in competition with your production?

Mr. SARNOFF. We believe it does; yes, sir.

Mr. Cox. Now, in those situations, at least, there is, then, under consideration for broadcasting in a particular time period under the sponsorship of a particular advertiser, 2 programs: One in which NBC has a financial interest, and 1 in which it perhaps has no financial interest?

Mr. SARNOFF. There could be such a situation, yes.

Mr. Cox. That is the situation you were referring to, isn't it—where you think that a program you have developed fits this time spot and would be suitable to the advertiser; and he, of course, has had other offers and may have tentatively decided that one of these is the program that he wants to broadcast?

Mr. SARNOFF. He might.

Mr. Cox. In that case isn't is true that the final decision as to which of those programs will go into that time spot, with or without the sponsorship of that particular advertiser, will be made by the network?

Mr. SARNOFF. That is right.

Mr. Cox. Now, you indicated that your program production is not a profitable operation; that on your commercial programs alone you lose in the neighborhood of $8,600,000 a year.

Mr. SARNOFF. We did in 1955.

Mr. Cox. In 1955?

Mr. SARNOFF. That is right.

Mr. Cox. Now, does that figure consist in large part of shows which you sought to develop which were unsuccessful, and where you have lost your entire investment because you have never been able to make any use of them?

Mr. SARNOFF. No, that consists——

The CHAIRMAN. May I ask a question, do you mean unsuccessful financially or unsuccessful as a show? There is a little difference.

Mr. SARNOFF. I didn't state that they were for reasons of unsuccessful programs. The statement said that it cost us $8,600,000 more than we received from advertisers for those programs.

The CHAIRMAN. Yes. So you are talking about the financial aspects of the show?

Mr. SARNOFF. That is correct.

The CHAIRMAN. Yes. There may be a show that might be successful with the public that wouldn't bring in a nickel?

Mr. SARNOFF. That is quite possible.

The CHAIRMAN. Yes.

Mr. SARNOFF. The reason for the difference between what we receive from the advertiser and what the program costs; there are a number of reasons. One could be our own fault. It could be that we underestimated the budget of the show, and as a result, in order to maintain the quality of the show, or just pay the prices being charged by talent, we had to put more money in than we were actually receiving from the advertiser.

We have a number of programs on the network that we have developed in order to broaden the base of advertising, programs like Today, Tonight, Home, and Matinee Theater in the afternoon. These are what we call participating programs, where an advertiser can buy a small participation, up to a large participation. They are rarely completely sold out. Therefore, in order to maintain those programs we have to absorb a certain amount of the cost. If they were 100 percent sold there would be no loss, provided we stayed within the budget. As long as they are not a hundred percent sold, part of the cost falls back on us.

That is what makes up the $8,600,000 in——

Mr. Cox. Plus some unsuccessful ventures where you sink money into develping an idea, and it does not develop?

Mr. Sarnoff. That is right.

The Chairman. Mr. Cox, could I ask a question there just for information?

I read part of your statement, but as usual I just got in again off an airplane. On a show like Tonight or Today, is it the common practice that the person in the show buys the time and then the advertising agency reimburses him for the amount of advertising, or that you pay the salary of the person on the show, or the people on the show, the production, and then you try and get advertisers to fill in?

Mr. Sarnoff. Well, in the case of Today, Home, and Tonight, which we developed, we pay all the costs and we make the commitments for the talent.

The Chairman. So you pay Steve Allen or Garroway, or what is that other——

Mr. Sarnoff. Arlene Francis.

The Chairman. Arlene Francis, a salary. You pay the production?

Mr. Sarnoff. That is correct.

The Chairman. And then NBC advertisers come to NBC to take a portion of that show?

Mr. Sarnoff. That is right. In the case of Today, for example, which in effect pioneered a new time period, built an audience in a period that normally was not—in a period where formerly there were no viewers in the early morning hours—we put the program on the air, paid the cost of doing it, fed it to the facilities, and kept it going for quite a period of time until we were able to develop enough audience in order to make it worth while for advertisers to buy it. This cost us a few million dollars. Now, it is——

The Chairman. Now, supposing Mr. A or Miss B would want to buy an hour of time and reverse the procedure, would you sell that? In other words, they pay for the time, and then they would get the advertiser. That is often done; isn't it?

Mr. Sarnoff. Are you speaking in reference to these particular programs?

The Chairman. Well, any amount of time, any place on the schedule?

Mr. Sarnoff. Senator Magnuson, if I understand your question, there are times where the advertiser buys a period of time in which he places a program which we agree is suitable for that time period.

Mr. Cox. But you do not ever sell him the time with complete freedom as to what he will put into the time?

Mr. Sarnoff. No; we do not.

The Chairman. That is the point I was trying to make, because sometimes a personality on TV might want to buy, say, an hour of time, and then go out and try and get the advertisers, but they will pay you a flat price for time. But you wouldn't do that, because it would encroach upon the shows you have developed; is that correct?

Mr. Sarnoff. I am not sure I quite get the import of your question, Senator. In the case of programs like Today and Home——

The CHAIRMAN. Supposing I were Steve Allen, which I am not, and I wanted to buy that time and pay you a flat price.

Mr. SARNOFF. I see what you mean; no, no, no.

The CHAIRMAN. Which is done a lot of——

Mr. SARNOFF. No; we only sell time to advertisers. Steve Allen may produce the package, the program that goes into the time period.

The CHAIRMAN. That is the point. Why couldn't an individual buy the time if he paid you for it?

Mr. SARNOFF. Because we are in the business of selling time for advertising to advertisers.

The CHAIRMAN. And you would only sell to advertisers?

Mr. SARNOFF. We only sell to advertisers.

Mr. COX. Now, you do make——

Mr. SARNOFF. This is not true, of course, in the case of politicals.

The CHAIRMAN. I am not talking about politicals. We have got to pay for it, I know that; yes.

Mr. SARNOFF. We do not—what you are talking about goes into an area of what we call time brokerage. We do not make our time available to an individual, a programer, who in turn then sells the time.

The CHAIRMAN. I see. That is what I am trying to get at. Now, that is sometimes done, as I understand it.

Mr. SARNOFF. Well, it may be done by others.

The CHAIRMAN. But not by networks?

Mr. SARNOFF. Not by NBC.

The CHAIRMAN. By NBC, that is the point I am trying to make.

Mr. COX. Do you make a profit on some of the shows which you produce?

Mr. SARNOFF. Some individual shows do make a profit.

Mr. COX. Do you sometimes make a profit where you buy an outside package and then sell it to an advertiser?

Mr. SARNOFF. It depends on the arrangement, and it also depends on the market, and it depends on the program. It depends on a number of things. There are not very many that I can recall where that happens. It is possible that we might make a profit on a program that we have bought from an outside source.

Mr. COX. Now, you discussed the decisions that have to be made in connection with affiliation; the difficulty of those and so on. But isn't it true that this decision, although it is of obviously vital importance to the local station concerned, this decision is made by the network itself, more or less, and that there is presently no appeal from that decision?

Mr. SARNOFF. This is on the question of affiliating a station?

Mr. COX. Yes.

Mr. SARNOFF. No; it certainly cannot be unilateral; it depends on whether or not the station wants to affiliate with the network.

Mr. COX. But the decision, basically, is in the network in the sense that a station coming on the air these days comes to the network and seeks an affiliation; and the decision as to whether that affiliation will be granted will be made by the officials of your network?

Mr. SARNOFF. In that circumstance, it would be; yes.

Mr. COX. Now, with respect to the matter of the station rates on the network, you expressly reserve in your contract, do you not, the power to change those rates unilaterally?

Mr. SARNOFF. Well, it isn't exactly unilateral. There is a protection period, and I believe that the stations, if they don't wish to accept the change in the rate, have a right to withdraw from the affiliation.

Mr. COX. But subject to that, you have the power either to raise or lower the rate?

Mr. SARNOFF. These are the national rates, yes; that is correct.

Mr. COX. Yes. As I understand it, you base these rates primarily on your own determination of unduplicated coverage furnished to the network by the station?

Mr. SARNOFF. That is right.

Mr. COX. Now, do you have a minimum rate for stations—one that wouldn't be economic if it were lower than that?

Mr. SARNOFF. I believe it is $100.

Mr. COX. I assume the highest rate is the rate of your New York owned-and-operated station?

Mr. SARNOFF. At the present time, I think that is correct.

Mr. COX. And what is that?

Mr. SARNOFF. I think at the moment—it is either $8,600, or $9,000, $7,700. I am not sure offhand.

Mr. COX. Could you tell us, or could you furnish us for the record——

Mr. SARNOFF. Seventy-seven hundred.

Mr. COX. Could you tell us, or furnish us for the record, what percentage of the cost of buying the entire network would be represented by the time charges of your six owned-and-operated stations? As I say, if you don't know that, why, would you furnish it for the record?

Mr. SARNOFF. Yes, we will be glad to furnish that.[4]

Senator PASTORE. Any time you raise the rate, it is to the advantage of the local station, isn't it?

Mr. SARNOFF. It is to the advantage of the local station when we raise their national rate; that is correct.

Senator PASTORE. The fellow who has to pay more is the advertiser?

Mr. SARNOFF. That is right.

Mr. COX. It is also of advantage to the network, isn't it—if the rate is competitive—because you receive your share of the increased rate?

Mr. SARNOFF. It works both ways, right.

Mr. COX. How is the division of the time charge as between the station and the network fixed; that, again, is a matter in your affiliation contract?

Mr. SARNOFF. That is a matter of agreement by contract.

Mr. COX. What is the range of that percentage? Just in general terms.

Mr. SARNOFF. As you know, that is answered in the questionnaire.

Mr. COX. Yes.

Mr. SARNOFF. But in broad terms, the range of percentage—well, it could go as low as 10 and go as high as about 33; 33⅓, I think is about the top.

Mr. COX. Now, in addition to this percentage, you, like CBS, I understand, have arrangements whereby you get free hours, on which the station waives all of its compensation?

[4] This information is set forth in a letter dated August 9, 1956, and in exhibit 2 thereto, which will be found beginning at p. 2878. The percentage indicated is 18 percent.

Mr. SARNOFF. That is right.

Mr. COX. And what is the standard, if there is any, in that area? Twenty-four hours?

Mr. SARNOFF. I think in our case it runs about 24 hours a month. But again it varies with stations.

Mr. COX. And would there be a high and low to that?

Mr. SARNOFF. Yes; some go as high as, I believe, 50 hours, and as low perhaps as none.

Mr. COX. Why would a station give you 50 free hours? I mean, under what circumstances would it be necessary for the network to bargain for that kind of a contribution of time?

Mr. SARNOFF. Well, there are several reasons. It may be an interconnection problem, it may be a problem of economics, it may be a desire on his part to get the program service, and even though from an advertising standpoint it may not be an economic buy.

Mr. COX. Now, do you—in connection with this interconnection charge—do you sometimes require the station to pay those charges directly to the telephone company rather than handling them as part of your national lineup—the $14 million figure you mentioned?

Mr. SARNOFF. The station pay directly to the——

Mr. COX. Telephone company.

Mr. SARNOFF. I don't believe so.

Mr. ADAMS. We have that spelled out in some detail in the questionnaire.

Mr. SARNOFF. Yes, there are a number of stations who do pay the phone company direct. It is listed in the questionnaire.

Mr. COX. If they pay the phone company direct do they get, then, a reduction in the free hours which you require?

Mr. SARNOFF. Well, in those cases the likelihood is that they don't have free hours—we don't have free hours again. But again, it is a matter of negotiation. In most of these cases the decision to pay the phone company charges is made at the time the contract is made, so that all the elements come into play at the same time—free hours, rate of compensation, cost of interconnection.

Mr. COX. Now, unlike CBS, isn't it true that in your contract you spell out that these free hours are to be given to NBC in return for its sustaining program service and for the payment of interconnection charges?

Mr. SARNOFF. Well, it may, Mr. Cox——

Mr. COX. Maybe I misread it.

Mr. SARNOFF. I will read what it says:

> As a means of sharing the cost to NBC of providing network service, including amongst other things the cost of interconnected facilities and of unsponsored programs furnished to the station by interconnection without charge therefor, you will waive to NBC each month compensation—

in this case 24.

Senator PASTORE. Must there be a sense of equality and economic justification with reference to your affiliates; otherwise wouldn't these questions come up at your executive conference that you have every year?

Mr. SARNOFF. They certainly would.

Senator PASTORE. Doesn't A know what B is paying, and right down the line?

Mr. Sarnoff. I think, if we are going to be realistic, we know that they talk to each other; so they know pretty much.

Senator Pastore. So, whatever the pattern is, it is one that keeps everyone happy; otherwise you have a hot potato on your hands.

Mr. Cox. Would you have any objection to having the copies of your affiliation contracts, which are filed with the Federal Communications Commission, made a matter of public record?

Mr. Sarnoff. I would have an objection on the basis that I don't think these matters are matters of public information. I think they are arrangements by private parties. I see no purpose in making them public.

Mr. Cox. Wouldn't it be an assurance to your affiliates as to the question of whether or not they are receiving equal treatment with others whom they feel to be in like circumstances?

Mr. Sarnoff. Well, I don't think it is a matter of like circumstances. Each one is an individual case depending on an individual market—depending upon the circumstances in that market. And no two cases are alike, or can possibly be alike.

Mr. Cox. Don't you, on most of these matters, compare certain markets in terms of their set count, competitive situation in the market, and you are able to arrive at certain conclusions as to their comparability; certain markets have the same rates, certain markets, I assume, also have the same split arrangements on their rates?

Mr. Sarnoff. Are you talking about the rate of compensation?

Mr. Cox. First of all——

Mr. Sarnoff. The rate, itself, and so on.

Mr. Cox. Yes.

Mr. Sarnoff. Well, I think since you are selling a national product you have to evaluate each of the elements of it in relation to one another. But you obviously couldn't have a market that was way out of line or justify another market—it wouldn't be good business judgment to have another market that was way below what its potential was in terms of the rate that you could get from an advertiser. So in that sense there is something of a balance. But there is no arbitrary rule. We, of course, have yardsticks that we use.

Senator Pastore. Since this point is being developed, I am a little confused. I hope you can explain it. Where would the public interest be served in doing this?

Mr. Cox. This matter of filing contracts?

Senator Pastore. Yes. I mean how does this help the average American that looks at his television.

Mr. Cox. That was suggested by either Mr. Plotkin or Mr. Jones, former special counsel to the committee.

Senator Pastore. I don't care about them. [Laughter.] I am asking about the public interest. I don't want to leave the impression here, by this question, that that is how the committee feels about it. I don't mind it being explored, but I was wondering where the public interest is. For the moment I don't see it, but I am always willing to be enlightened. Where is the public interest involved in spreading these things on the record?

Mr. Cox. The suggestion made was that it would produce an equality of dealing between the network and its affiliates, without governmental regulation.

Senator PASTORE. Are the affiliates willing to spread on the records the profits they make, too?

Mr. COX. This is not a matter of profits.

Senator PASTORE. If the public is going to know everything, let us know everything from the bottom up.

The CHAIRMAN. Well, I think that he has answered the question, but we have given the FCC sufficient amounts of money, and they have suggested they want to go ahead with an investigation of network contracts with their affiliates. And they have assured me that they are doing so, and that this committee would have access to whatever they find out, as it progresses; and I think it is up to the committee, as you point out, as to whether or not we feel that it should be made public knowledge.

Senator PASTORE. I mean I don't want to leave the impression now, I think, on behalf of the committee——

The CHAIRMAN. Now, what the FCC is doing about it, I don't know. But the committee will find out before we are through.

Mr. SARNOFF. I made the statement this morning, Senator—I made reference to the fact that this study was underway, and that we had answered a number of questionnaires, with more on the way.

The CHAIRMAN. In other words, they, on the record, said for their appropriation they wanted to go ahead, and we thought they might take that portion of this inquiry or study or investigation—whatever you want to call it—off the hands of the committee, and they could go ahead and do that. And they agreed that they would give us all the information, if we wanted it; and after we get it we should decide what to do with it.

Senator PASTORE. You are perfectly willing to give it to the committee and to the Commission?

Mr. SARNOFF. They are filed with the Commission.

Mr. COX. They are filed with the Commission.

Mr. SARNOFF. Referring to my statement again——

The CHAIRMAN. But I think if the networks are required to do this—which the FCC could require of them—that the affiliates ought to do the same thing.

Mr. SARNOFF. Well, contracts between an affiliate and the network are filed with the Commission.

The CHAIRMAN. Yes, and affiliates ought to be, because they are operating under a public license, too.

Mr. SARNOFF. Quite right.

The CHAIRMAN. Their stations are.

Mr. SARNOFF. That is correct.

This is the type of regulation that I referred to this morning as one of a number of regulations that had been suggested that we are opposed to, because it would inevitably put the Government into business; and this is a business matter as between a network and a station, and the implication would be—if these arrangements were filed—that such arrangements were subject to rules and Government regulation, and I do not think this would serve any purpose.

Senator PASTORE. That isn't my problem. My problem—I asked the simple question, Wherein does the public interest lie in this? That is all I want to know. How will this serve the public interest?

Mr. SARNOFF. We do not feel it will serve it any better than the present arrangement.

The CHAIRMAN. It may or may not.

Mr. COX. Does NBC furnish service to stations on a per-program basis, where you have no formal affiliation with them?

Mr. SARNOFF. There are some cases where we do.

The CHAIRMAN. Before you get off that, I wanted to ask one question again, not prejudging it: In your contracts with the telephone company for a given amount of line, are the contracts with the networks the same, or are there different arrangements with the networks?

Mr. SARNOFF. Well, the tariffs are the same.

The CHAIRMAN. The tariffs are the same, which are filed?

Mr. SARNOFF. Which are filed. But the use that each network makes of the facilities of the phone company depends on its requirements, in accordance with the tariffs set by the——

The CHAIRMAN. What I am trying to get at is that the tariffs are the same, but sometimes the use by a network, the different use, the actual payment may be different in given cases?

Mr. SARNOFF. Some networks' payments may be higher or lower than the other networks.

The CHAIRMAN. Yes.

Mr. SARNOFF. In the aggregate.

The CHAIRMAN. Yes.

Mr. COX. In discussion, this morning, of your attitude toward possible governmental regulation of networks, you said that you thought that proposals of this sort would constitute the first step down the road to a Government decision as to whether one advertiser or another got time, and so on. Now, is it not true that the Federal Communications Commission now regulates option time, and that it could change its regulations with respect to option time and stop right there, without undertaking the overall regulation that you seem concerned about?

This is on page 22, the last paragraph.

Mr. SARNOFF. May I ask you——

Mr. COX. My question simply is whether it would not be possible for the Commission to change its existing regulations regarding option time, for one thing, and stop at that point, and not undertake regulation as to what advertiser would get what time, and whether you would sell a particular program to this one or buy it from that one?

That is, couldn't there be some change in the existing control of broadcasting without getting involved in all the problems that you are envisioning here?

Mr. SARNOFF. Well, it depends on how it is done. I think if the Commission were to change the rules on option time, it isn't necessary that these consequences I have outlined here would follow, no.

Mr. COX. Now, isn't it true that in 1941—or whenever the chain-broadcast regulations were adopted—that the initial form of the regulations promulgated by the Commission barred all option time?

Mr. SARNOFF. The proposal barred all option time, yes.

Mr. COX. Well, I mean actually the initial decision reached by the Commission was that there would not be any more option time?

Mr. SARNOFF. I believe that is true.

Mr. COX. And then shortly thereafter they filed a modification of that which permitted the present 3 hours in each period?

Mr. SARNOFF. That is right.

Mr. COX. Now, prior to that time the networks had had an unlimited option in radio, hadn't they?

Mr. SARNOFF. That is right.

Mr. COX. And isn't it true that at that time representatives of NBC, as well as of CBS, argued that they could not continue in business, and could not provide the network service they were then furnishing the country, unless they continued to have not only unrestricted option, but exclusivity?

Mr. SARNOFF. Well, of course, it is a little before my time, but I believe they made that type of a point, yes.

Mr. COX. And quite obviously their fears were not too well grounded, in view of the growth and prosperity of, first, radio broadcasting and, now, television broadcasting under those rules?

Senator PASTORE. Off the record.

(Discussion off the record.)

Mr. SARNOFF. I think the real concern was with the elimination of option time, actually. Of course, circumstances in the broadcasting industry have changed so greatly since then that I think to refer back to that period, while it is perfectly legitimate for historical reasons, I really don't feel has merit for today's situation.

Mr. COX. For what reason would you feel that option time was more urgently needed now than it was at that time?

Mr. SARNOFF. Well, I think the nature of the business is such today, its size, as I have tried to indicate this morning, the importance of the medium. While radio is certainly as important as ever in terms of the value to the public, television is a different kind of a medium.

Mr. COX. But this is a difference in degree and not in basic kind. That is, in other words, the problem of assuring advertisers of reasonable chance of clearance was the same then as it is now, except that you are talking about a different means of getting the signal out.

Mr. SARNOFF. I believe that is right.

Mr. COX. Now, you discussed this morning the economic aspects of networking, and your profits in relation to sales and so on. Could you tell us, or, if not, furnish for the record, an estimate of the average amount of working capital which is actively employed in your networking operations?

Mr. SARNOFF. About $25 million.

Mr. COX. About $25 million. The figure of over a hundred million dollars which you mentioned as being money at risk includes your physical assets, it includes commitments for properties or for talent to be employed in future years, and a number of other items on which you may never suffer any loss, doesn't it? It is simply a hazard that you have undertaken?

Mr. SARNOFF. That is right.

Mr. COX. Now, on page 26 in your statement——

Mr. SARNOFF. But they are still all at risk.

Mr. COX. Yes. But I mean, for instance, you may have entered into a contract with a particular personality that you would employ him for 5 years at a certain annual fee?

Mr. SARNOFF. Yes.

Mr. COX. And you might find at the end of two and a half years that his popularity had waned, and that you had to absorb the balance of that contract?

Mr. SARNOFF. That is right.

Mr. Cox. On the other hand, if his popularity holds up as long as you thought it would, then you would come out all right on that. The money would have been a risk—not in the sense that you had lent it to anyone, but you had committed yourself to pay it—and you finally get your money's worth?

Mr. SARNOFF. That is right.

Senator PASTORE. Now, on that point, Mr. Sarnoff, what is the longest contract, in term, that you have with personnel at NBC?

The CHAIRMAN. In some cases it is about as long as——

Mr. SARNOFF. I am just trying to think of the longest one.

The CHAIRMAN. Twenty years; is it not?

Mr. SARNOFF. It varies. I would say anywhere from 5, in some cases maybe 20 years. Not necessarily actively performing for that full period.

Senator PASTORE. I do not want to be accused of the Government's getting into your private affairs, but why does it have to be that long?

Mr. SARNOFF. Well, the real reason it has to be that long is that is the way the talent likes it.

Senator PASTORE. Yes. But you have been talking here about tremendous losses that you have suffered. Why do you engage these people for 20 years?

Mr. SAROFF. Really, again it is the competitive market. If you want a particular performer——

Senator PASTORE. You have to take him as long as he lives?

Mr. SARNOFF. Not necessarily, but almost.

Mr. Cox. Otherwise, he will go to CBS; is that it?

Mr. SARNOFF. That is right. You know, they have agents and people working for them that are always trying to get the best deal.

The CHAIRMAN. This is off the record.

(Discussion off the record.)

Senator PASTORE. But you feel that in competition with your competitors that that is necessary?

Mr. SARNOFF. I think it is necessary. I won't say it is desirable, but it is necessary. That is really the exception, though.

The CHAIRMAN. Mr. Sarnoff, do you not use, also, the fact that you tie up a good entertainer for a period of time, but you do not always anticipate he is going to be an entertainer. You may use his experience for other phases of programs—producing or things of that kind, is that not correct?

Mr. SARNOFF. We have some cases where, after a period of active exposure performing on the network, the performer then becomes a producer or a consultant, or an executive, possibly. [Laughter.]

But in any case, he can—there is nothing to prevent his developing into a producer or director and right on up.

The CHAIRMAN. And the way you draw your contracts, you can use him for any purpose; can you not?

Mr. SARNOFF. That is right.

Senator PASTORE. But Senator Magnuson, wouldn't it be nice if you and I could get a contract——

The CHAIRMAN. We are not that popular. [Laughter.]

Senator PASTORE. The best we can do is 6 years. [Laughter.]

Mr. Cox. On page 26——

The CHAIRMAN. Their life is very short-lived in many cases.

Senator PASTORE. So is ours. [Laughter.]

The CHAIRMAN. They become producers and we become lawyers again. [Laughter.]

Mr. COX. On page 26 you set out the figures for net sales and income for NBC television network. Now, as I understand it these are simply for the division of the corporation which operates your network business; is that correct?

Mr. SARNOFF. I missed that one again.

Mr. COX. That is, these are the figures for income—profit or loss—of the NBC television network alone?

Mr. SARNOFF. Of the network alone, that is correct.

Mr. COX. Now, in the years where you show losses here, in 1947 through 1950, and again in 1953, did the corporation as an entirety make a profit?

Mr. SARNOFF. Yes, it did.

Mr. COX. I take it that these figures do not even take account of the revenues of your owned-and-operated stations?

Mr. SARNOFF. Not these figures, no.

Mr. COX. Now, you discussed the capital investments that NBC is proposing to make in color television, and you have, of course, discussed the investments that you made in getting television started.

Mr. SARNOFF. Yes, sir.

Mr. COX. Isn't it true that NBC has a little more favorable position in this regard than the other two networks, in that it has—in fact, it is wholly owned by a major manufacturer of transmitting and receiving equipment, which has had its business built on the developed interest in television that you have been able to build up through your programing?

Mr. SARNOFF. But I don't quite see how that develops a favorable position for the NBC television network.

Mr. COX. Well, what I am suggesting is that your parent corporation, RCA, was in a position to make profits from the sales of receivers and transmitters, even in the years when the network was operating at a loss because you were still building circulation to a point where you could bring in sufficient advertising revenues to support your programing.

Mr. SARNOFF. That is true. But it is also true that a number of other manufacturers made profits from the sale of receivers as a result of the audience built by the network, without having to make any investment in the programing service that the network provided.

Mr. COX. That is very true.

The CHAIRMAN. Well, there have been suggestions made that the law be amended to the effect that—which it has been in cases of other business—where there has been a divorcement of the manufacturer from the operation of the thing manufactured. It even got down to the famous Pullman case. But I think what you are saying to us here is that, without the revenues from the manufacturing division of the RCA, it would not have been possible to take all of these calculated risks for the network; is that correct?

Mr. SARNOFF. I think in the initial stages without the manufacturing——

The CHAIRMAN. Maybe not now, but in the beginning.

Mr. SARNOFF. Yes, I think in the beginning it was the manufacturing organization that made possible the establishment of the network.

If you go back to 1926 when the NBC radio network was first organized for that specific purpose, of building an industry. And after it had built, then the moneys that the NBC radio network and its stations had made were poured into developing black and white television. And now, as I pointed out this morning, now that the NBC television network has turned a corner and is making a profit, those funds are poured into developing color.

If you go back to the origins, you find the origin is a manufacturing company.

The CHAIRMAN. This may be the wrong place to ask this, but RCA has several patents; do they not?

Mr. SARNOFF. I believe they do. [Laughter.]

The CHAIRMAN. Does the network pay the same amount for the usage of those patents as anyone else would have to pay for them?

Mr. SARNOFF. The network is not in the manufacturing business.

The CHAIRMAN. I mean, supposing you use a patent of RCA—the network—do you pay a royalty, the same royalty, a third party would have to pay?

Mr. SARNOFF. We do, but I don't believe we are using any. Do we? (Turning to associates).

I am corrected by my counsel. We have a license agreement and we pay the same as anyone else.

The CHAIRMAN. At least you do it bookkeepingwise?

Mr. SARNOFF. That is right.

Mr. COX. At page 31 in your statement you were discussing the competitive aspects of television.

Mr. SARNOFF. Page 31?

Mr. COX. Yes. Your competition for audience, your competition with other media, your competition with other networks. Isn't it accurate to say, however, that in respect to the matter of competition in the providing of programing through the clearance of time that you and the other networks enjoy certain advantages over your nonnetwork competitors through the existence of the option-time arrangement?

Mr. SARNOFF. Well, I think the advantage, if there is one, accrues from the kind of service that we provide that no one else provides. That was the point I tried to make. That only three organizations in the programing field provide this kind of a comprehensive service.

Mr. COX. That is why an affiliation is so highly desired by a television station?

Mr. SARNOFF. I think so.

Mr. COX. And isn't that really the basic reason why the station then clears for a substantial percentage of the programs that you offer to it?

Mr. SARNOFF. I like to think he feels that the service is superior, yes.

Mr. COX. I think you stated, in commenting on the testimony of Mr. Moore regarding the high percentage of clearance in the 40 markets that he had analyzed, that this was true, but that this was because your affiliates apparently believed that the programing you were furnishing them was better than what they could obtain elsewhere.

Mr. SARNOFF. I think that is right.

Mr. Cox. Now, if your affiliates have made that decision in the past, on the basis of the quality of your programs, and if you expect to be able to maintain that quality for the future, why would not NBC be able to compete for clearance on its affiliates with any outside supplier of programing without the assistance of the option?

Mr. SARNOFF. Well, I think you have to understand the function of the option. I have no qualms about competing with anybody when it comes to programing. We get beaten quite often by different programs from different sources. But, on the whole, I think we have no qualms about competing.

The function of the option time thing is that we are selling national circulation, and we must be in a position to have some assurance that we can deliver that to a national advertiser whose revenue we are seeking in order to support ourselves. And he has to have some assurance that we can deliver what we are selling him; otherwise, he isn't going to make his commitment. That is the basic function of the option time.

Mr. Cox. Suppose you have an affiliate and a particular program broadcast of the network has not been ordered for his station; he must then program that hour or half hour himself?

Mr. SARNOFF. The affiliate?

Mr. Cox. Yes.

Mr. SARNOFF. Not necessarily. He might take from another network.

Mr. Cox. Or buy it from a syndicator?

Mr. SARNOFF. That is correct. Or program it himself with some local programs.

Mr. Cox. Now, if he buys a syndicated film program and places it into this time period for an advertiser and the program has local success in the market, but if for any reason, at a later point in time, the network desires clearance for that time, it can, on the required notice period, require him to evict that advertiser and that program from this station to make way fo clearance of the network program?

Mr. SARNOFF. Well, I wouldn't say "evict." I think our contracts call for what they call a 56-day recapture. But again, as I pointed out this morning, it still is at the election of the station.

Mr. Cox. That is the point I am trying to get at, Mr. Sarnoff. That is: Either this is something that you do because you have a legal right, or it something that you are able to do only because you can persuade the affiliate to do it.

Mr. SARNOFF. Not necessarily. I don't think you can make that clear a distinction. I think the existence of option time in the contract has a persuasive power. The fact we may not invoke our legal rights is a matter of business judgment.

Mr. Cox. As a matter of actual practice, isn't your ultimate recourse in the event a station operator—for whatever reason; whether he believes it in the interest of his local public or whether he is simply interested in the additional revenues he may get—if he refusees to clear systematically for the network, your final recourse is not legal action but to seek another affiliation arrangement?

Mr. SARNOFF. That is right.

Mr. Cox. So that in the final outcome, you don't rely on the option—you rely upon the availability of another facility as a means for clearance in the area?

Mr. SARNOFF. Well, I think that is carrying it pretty far, but I think that——

Mr. COX. That is the way you carry it, isn't it?

Mr. SARNOFF. No, I think that could be a consequence. I don't know that it is a reliance upon it.

The CHAIRMAN. Let's put it this way: That could happen, could it not?

Mr. SARNOFF. Yes, that could happen.

The CHAIRMAN. All right.

Mr. SARNOFF. Remember, that a station—we provide a service——

The CHAIRMAN. Could I ask, does it happen?

Mr. SARNOFF. Well, I stated this morning that I know of no case where it happened for that specific reason.

The CHAIRMAN. Yes.

Senator PASTORE. But insofar as dealing with your advertiser is concerned, on a national level, unless you had a reservation of the option in the beginning when you tie yourself up with your affiliate—before you could actually effectively deal with your advertiser, you would have to go up and buy up options before you could actually agree with him that his program could go on the air? You either do it in the beginning—you have to do it sometime?

Mr. SARNOFF. That is absolutely right. There would be utter chaos if everybody would——

Sentor PASTORE. I mean, unless you had this reservation of options—as much as we do not like the word and the connotations involved—but looking at it from a practical business point of view, unless you had this reservation in the beginning you would have to go up and pick up these options before you could deal with the advertiser?

Mr. SARNOFF. That is correct.

Senator PASTORE. Otherwise, you could not tell him what a spread you could give him.

Mr. SARNOFF. It is an essential element of being able to provide national coverage to an advertiser. If you can't give him that assurance you can't sell your programs to him.

Mr. COX. What you actually do with the option is exactly that in every case; isn't it? That is, you always order, under the option, the number of stations on the network that the particular advertiser is interested in, and it is not until you have had responses from your stations that you can really tell the advertiser what clearance you can give him?

Mr. SARNOFF. I would say technically that is true.

Mr. COX. Well, this is the only time that this station operator has had a chance to exercise this ultimate power of decision, in the light of the interest in his market which you say he must exercise, and which occasionally leads him to reject a program. And therefore you never know until you have had responses to your telegram orders of the markets, whether you can clear for 50 or 100 or 150 stations, except on the basis of average performance?

Mr. SARNOFF. Well, I would say that in practice you take a program like Groucho Marx, you can be fairly certain, based on its performance and based on its acceptance by stations, that you can accept the advertiser's order for renewal in that time period.

Mr. COX. But this is not——

Mr. SARNOFF. You may not get all the stations that he wants, but you will get enough to cover—get your national coverage and get your basics, and some of those that he is ordering. In no case, practically no case, do we ever get as many stations as the advertiser orders, but we know we will get enough.

Mr. COX. But that is not based on the option—that is based on your conviction that, in the exercise of your sound business judgment, X number of your affiliates will clear a program of the proven popularity of Groucho Marx' program?

Mr. SARNOFF. It is based on that experience. It is also based on the fact that we have option time which works to clear national lineups for us.

Senator PASTORE. Well, it is also predicated upon the fact that there is a feeling on the part of the broadcasting station that unless they play ball with you, you are not going to play ball with them when renewal time comes around. I mean, let's face it. Isn't that an important element involved?

Mr. SARNOFF. Well——

Senator PASTORE. I mean at the time the station ties itself up as an affiliate with you, it knows it has certain responsibility; that it has to meet certain of your requirements and requests in order to keep affiliated with you?

Mr. SARNOFF. Well, let me put it this way, Senator. The station affiliates with us because it wants our service. We affiliate a station because it plays an important role in filling out the market coverage for our advertisers. If we do not provide the service that satisfies the station, then he won't want our service and he won't want the affiliation. If he is unable or unwilling to carry our programs, so that we are unable to deliver to the advertiser that market, he is of no value to us. It is as simple as that.

Senator PASTORE. And if he is all alone in one community he is in a very strategic position?

Mr. SARNOFF. He can swing any way he likes.

Senator PASTORE. If he is 1 of 2, well, he still has ABC to go to?

Mr. SARNOFF. That is correct.

Senator PASTORE. But if he is 1 of 4, he has to pretty much tie up with 1 network and stay there; otherwise, he might be out of luck. The fourth man might come in.

Mr. SARNOFF. That is correct.

Mr. COX. Take the 2-station situation: That is, studying 10 markets in which NBC and CBS have affiliations and "must buy" arrangements with the only 2 stations in the market, it would appear that in a typical week NBC has been able to clear, over its affiliates in those markets, over 95 percent of the half hours as against 1.4 percent of the time for ABC.

Now, in this situation you have no claim of option because the stations could clear for ABC and you could not preempt the time; isn't that right? And, therefore, your success in clearing against ABC in those markets, at the ratio of something like 60 to 1, is based on something other than a legal right to preempt the time.

Wouldn't it be fair to say that that is based on the fact, as Senator Pastore mentions, of their desire to maintain their affiliation with NBC, or upon their belief that the programing is the programing they want to present in their markets, and not upon the legal-option right?

Mr. SARNOFF. Well, we do have option arrangements with such stations in those markets, and it is true that the option time is not—does not work against a program carried from another network. Whether or not the reason that the station carries so much of our programing is because of the existence of option time in the contract, or whether it is because he prefers to take our programing over ABC's, is a matter I don't have the answer to. That is something in his head. Or whether it is both—it may be both factors.

Mr. COX. If he refused to clear ABC on the ground that you have an option, that would be in violation of the regulations of the Commission.

Mr. SARNOFF. Well, I don't think that is the way he would operate. He would just inform us that he was not clearing for a program we were offering to him and he was taking something else.

Mr. COX. What has happened is that he has consistently told ABC he will not clear for them, and he does clear for you. In this one situation, at least, it must be perfectly clear that the fact that leads to the clearance is not option time, it is something else—either a desire for the affiliation or a preference for your programing.

Mr. SARNOFF. Well, Mr. Cox, you can't say that option time, per se, delivers clearances. It has a lot to do with the program content and the quality of your overall service. I can only reiterate what I said before, that option time—as a function of advertising, and as a function of the relationship between the network and the stations—does have an effect on clearances.

I think you will find in the questionnaire that we submitted that the clearances in option time, for whatever the reason, are far better than they are in nonoption time periods. So there must be something.

Mr. COX. But you do clear substantial lineups of stations even in nonoption time?

Mr. SARNOFF. Sometimes. Again depending on the program. But even with good programing, the best programing, programing of the best quality, you can find it is still difficult in many cases——

Mr. COX. Isn't that partly because the prime evening hours are the hours in which you have concentrated most of the programs on which you have spent the largest budgets and which are of a character to draw the maximum popular support; and that, therefore, you get a higher rate of clearance then because they are the programs that the local broadcaster must have——

Mr. SARNOFF. I was thinking specifically of a period like 10:30. There is not much distinction, from a viewing standpoint, between 10:30 and 10 o'clock. Yet 10:30 is not option time. It is station time, and up to 10:30 is option time.

Mr. COX. What percentage reduction in your clearances do you get at 10:30?

Mr. SARNOFF. Well, you take This Is Your Life, which is in option time. The client ordered 152 and we, so far, have cleared 120.

Mr. COX. That is in nonoption time?

Mr. SARNOFF. That is in option time.

Mr. COX. That is in option time?

Mr. SARNOFF. We had a 10:30 to 11 period, a program fed by an affiliate; the client ordered 124, cleared 37.

Mr. COX. What was that program?

Mr. SARNOFF. Midwest Hayride.

Mr. COX. Well, that just obviously wasn't a popular program, or one of as broad appeal——

Mr. SARNOFF. I cite that as one example. Anyhow, I think there are some facts in the questionnaire——

Mr. COX. Fine. I just haven't been able to examine that.

Mr. SARNOFF. Which address themselves to that point.

Mr. COX. Now, you have stressed, throughout, the importance of simultaneity in the broadcast operations of the network and the essential part played by the maintenance of the A. T. & T. lines, and so on. What precisely do you mean by simultaneous broadcasts? Does this mean a broadcast that is released in all time zones in the country at the same moment? Or one which is released at the same moment in certain zones and at a different time in other zones?

Mr. SARNOFF. I mean primarily the capacity to transmit a program so that it can be received simultaneously, at the moment it is being transmitted, in all parts of the country.

Mr. COX. That is, in other words, when the President addresses the country, you get a truly simultaneous broadcast so that he is heard by everyone at that moment?

Mr. SARNOFF. That potential is always in existence as long as you have the networks and the lines.

Mr. COX. But in terms of your commercial broadcast operations, isn't it true that you never—except on your spectaculars where they are broadcast in color and you cannot record them for later release too well—don't you ordinarily release programs in the western part of the country at a different time than they are broadcast from New York?

Mr. SARNOFF. Yes, on the west coast we have what we call a "hot kine" operation, so that they are—the programs originating in the East are done on kine at the same time, 7:30. There is a 3-hour delay.[5]

Mr. COX. So that you give them clock-time simultaneity, rather than absolute time?

Mr. SARNOFF. That is right.

The CHAIRMAN. That can't be done on live; can it?

Mr. SARNOFF. Well, if you go through live at 7:30 in the East, it is 4:30 in the West, which isn't——

The CHAIRMAN. My clock is now 11 o'clock. I just came from there.

Sometimes do stations ask for different times, the western stations? I mean, ask you to make a kinescope of it?

Mr. SARNOFF. Well, the time differential is so great on the west coast, as compared to the east coast, that for viewing purposes and for advertising purposes, it is almost essential that we do it at the later hour.

Mr. COX. The network does that itself; that is you feed it on to the network lines at a different hour, don't you?

Mr. SARNOFF. That is right.

Mr. COX. From this kinescope?

Mr. SARNOFF. That is right.

The CHAIRMAN. So you have to pay to do that, then, two cable charges. You are paying for the cable charges——

[5] Further information on this point is set forth in a letter dated August 9, 1956, and in exhibit 3 thereto, which will be found beginning at p. 2878.

Mr. SARNOFF. In effect, you do; yes. You are feeding it to Hollywood; Hollywood is recording it, and then it rebroadcasts it as a kinescope film 3 hours later.

The CHAIRMAN. You can do that because you have the line for so many hours; have you not?

Mr. SARNOFF. That is right.

The CHAIRMAN. And you can send the show out, say, at 8 o'clock here; you could still send that show out at 4 o'clock to my hometown in Seattle, because you are paying for the line anyway, aren't you, for a given number of hours?

Mr. SARNOFF. Well, we have to use the lines to carry our schedules, so whatever is normally fed across country at 4 o'clock, would have to be that particular program.

Mr. COX. Now, isn't there a substantial practice among advertisers who have more than one program—possibly on different networks—to have one or more of these programs broadcast live and simultaneously, and the other broadcast on a delayed broadcast basis throughout the various parts of the country?

Mr. SARNOFF. I don't quite follow that question, Mr. Cox.

Mr. COX. Well, for instance, doesn't Stopette, in sponsoring Caesar's Hour, carry that on a delayed basis, whereas What's My Line? is actually broadcast live across the country?

Mr. SARNOFF. Well, there may be some markets of Caesar's Hour—or in some markets, Caesar's Hour may be on a delayed basis. That may be a decision of the station. It may be that in the case of What's My Line?, which is on another network, that they have secured live clearances right through.

Mr. COX. Isn't this sometimes, though, a choice of the broadcaster? In other words, depending on the time and how it is going to fit into programing in another time zone, he may actually desire to have it broadcast on a delayed basis, rather than on a live basis clear across the country.

Mr. SARNOFF. Well, I would say with the exception of the west coast and certain problems raised by the irregularity of daylight saving time, the desire is always, with those exceptions, to go through live in as many stations as possible.

Mr. COX. You indicate on page 33 of your statement that you estimate that your programs, network programs, occupy something less than 18 percent of the total television broadcast hours of all stations, I assume, broadcasting in the country. Could you tell us, or provide for the record later, what percentage this would be in the hours from 7:30 to 10:30 at night?

Mr. SARNOFF. We'll provide that for the record, if we may.

Mr. COX. All right.[6]

Now, you indicated, in closing your statement, the fundamental problem that is posed by the allocation situation as distinguished from the network practices we have been discussing, and you urge prompt action to solve those. That obviously has taken much time, and perhaps will take more time. Are we to understand that these other program sources, who could be accommodated when additional station

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[6] This information is set forth in a letter dated August 9, 1956, which will be found at p. 2878. The percentage shown there is 25.58 percent.

facilities are available, should be the ones to wait until this solution is found, and that there could not be any concession on the part of the networks at this time, to open up time for more equal competition in the furnishing of programs on the existing facilities?

Mr. SARNOFF. Well, Mr. Cox, I think there is more competiton than ever in the programing field, more opportunity than ever in the programing field for these so-called independent producers. Their own figures and the figures we have and their own statements indicate a growing volume of business.

I personally see no need, or no reason that would serve the public interest, to impose restrictions upon networks in order to help these individual groups, particularly since the solution to the problem rests in the solution to the allocation problem, and the damage that might be done to the networks' structure, and the imbalance that might be created, I don't think, would be worth whatever might be saved by advancing the solution to the problem, if there is one, by a couple of years, for these independent producers.

Mr. COX. Now, in commenting on the testimony of Mr. Moore regarding the problem of those producers, and the problem of an independent television station seeking programing of a quality to permit it to compete with the network, as I recall it you concede that a syndicator prefers to sell a new series to a network or to a national advertiser having time on the network—because he can, in this way, more easily and more quickly recapture his investment than if he were to go into the syndication business and try to get this back piecemeal, clearing this series in this market when he can and in that market when he can.

Mr. SARNOFF. That is right.

Mr. COX. Now, that being the situation——

Mr. SARNOFF. I assume that is what he would prefer. I mean experience would indicate that that is——

Mr. COX. And your analysis of the problems facing him leads to that conclusion.

Mr. SARNOFF. Yes.

Mr. COX. Now, isn't there great likelihood, then, that a shrewd syndicator of film programs, having weighed these same factors that you outline and come to the conclusion that this is the only way in which he can get a prompt return on his investment, will produce only the quantity of film programing that he can dispose of on a network basis, either directly to the network or to one of its national advertisers?

Mr. SARNOFF. Well, I don't know how, when he begins, he determines what that number is.

Mr. COX. Well, he produces a pilot and he goes to the network—all three networks—he goes to all the advertisers he thinks might be interested. If he finds either a network that is interested, or an advertiser with time, and the network agrees that the program would be suitable, he is in business; he can complete the other 38 films and he has a sale. Wouldn't that be true?

Mr. SARNOFF. Yes.

Mr. COX. Now, if he finds he cannot interest the network, or a national advertiser who in turn can get clearance from the network, isn't it quite likely that this project dies at that point, and he never completes the series?

Mr. SARNOFF. Not necessarily. He can go the route of syndicators. It may be a little harder and take a little longer, but there is nothing in the book saying he has to make his sale immediately and make his cost and get his investment back in one fell swoop.

What has happened is it has become difficult in syndication for reasons which have nothing to——

Mr. COX. Isn't the difficulty somewhat contributed to by the fact that as I——

Mr. SARNOFF. His difficulties are stemming from the increasing volume of films being produced for television, that is his basic problem.

The CHAIRMAN. Can I ask this question, because I am confused here. Suppose the syndicator has got a series of half-hour films and he wants to put them on a network. Maybe time isn't of the essence just when he does it. Wouldn't you sell him that half hour, the 38 half hours, if the time was available?

Mr. SARNOFF. We wouldn't sell it to him.

The CHAIRMAN. Why not?

Mr. SARNOFF. Because we only sell to advertisers.

The CHAIRMAN. You mean no individual can every buy time on a network?

Mr. SARNOFF. We don't sell time to individuals.

The CHAIRMAN. I am not saying whether there is a practical way; I am merely posing the simple qustion: If you have available time, you have a rate card, and Mr. A walks in. You say you wouldn't sell to him unless he is represented by an advertiser that would come in and buy the time from you?

Mr. SARNOFF. Unless he is a user of the time for advertising purposes. In other words, we do not sell time to individuals who in turn sell the time to somebody else. We are in the business of selling time and facilities.

The CHAIRMAN. In other words, what you are saying is that if he bought the time—you wouldn't sell him the time if he was going out, then, and peddling the time to an advertiser; is that correct?

Mr. SARNOFF. That is right.

The CHAIRMAN. Supposing he came in as an individual; he didn't want to peddle anything, he just wanted to buy the time?

Mr. SARNOFF. It would depend on what purpose there was.

The CHAIRMAN. There could be programs, say; a foundation, like the Rockefeller Foundation, wanting to come to you without an advertiser, and to buy a series of half hours of time. Would you do that?

Mr. SARNOFF. We might, in a case like that. Omnibus was a case where the foundation provided——

The CHAIRMAN. Or supposing somebody wanted to legally propagandize a cause of some kind, and the time was open; he is an individual, would you sell him the time?

Mr. SARNOFF. We might in that case offer him the time, actually. It depends——

The CHAIRMAN. You wouldn't offer it to him; he would have to buy it.

Mr. SARNOFF. We might. We do quite often.

The CHAIRMAN. Yes, I know. You do, to general public causes. I understand that. But I am saying suppose he is an individual, he can afford it, he wants to buy it.

Mr. SARNOFF. We normally do not sell time for controversial purposes. We sell our time for advertising purposes. The balance of the time and some of the time that we could sell for advertising we would hold for other purposes, but it would be within the framework of programing that we would provide, mostly in public service programing where you can get discussion and argumentation. But we would not sell a time period to an individual producer of a program for his own purposes.

If he came in—if he came to us with the program and we said the program is fine, and he wanted to produce it himself, and didn't need our help—he just says "I think this is a great program; I would like to see it on the NBC network, and I know such and such an advertiser who is tired of the show he has now and would like to buy this program."

The CHAIRMAN. Supposing he had enough of his own money to buy 2 half-hour periods on NBC that were open; he wanted just—no advertiser or nothing—he just believed that once he put that on it is going to catch on. Would you sell him the time?

Mr. SARNOFF. We would not.

The CHAIRMAN. You would not.

Senator PASTORE. But if he went to an advertising agency, the advertising agency could buy up the time, couldn't they?

Mr. SARNOFF. They could buy it on behalf of their client. They order it for their client.

Senator PASTORE. He would be the client.

Mr. COX. They cannot buy it themselves and control the time for resale to an advertiser?

Mr. SARNOFF. That is right.

The CHAIRMAN. I understand that. But I am making another distinction. Supposing someone wanted to come in and buy the time for a program that is not controversial in any way, entertainment, wanted to take that chance——

Senator PASTORE. Just show the signal for a half hour.

The CHAIRMAN. And the time was open——

Mr. SARNOFF. Well, you know one of the discussions that has been carried on here is the problem of advertisers and not having enough time. So here is——

The CHAIRMAN. No, I am predicating a case where the time was open, and he wanted to put it on. Supposing it is a new play he wanted to put on. Maybe he got some individual to put up the money to buy that time, and they do it themselves without anyone, any advertiser or anything else. Would you sell him the time?

Mr. SARNOFF. I don't think we would, Senator.

Senator PASTORE. Isn't it a fact that every time a program is shown under the auspices of NBC, CBS, or ABC, the prestige of the network it as stake, and you are very much fundamentally interested in the quality of the program?

The CHAIRMAN. I am not——

Senator PASTORE. I am not arguing with you.

The CHAIRMAN. Supposing he has taken a look at NBC programs, and he says: "I have just as good a one"—he believes that. And the quality—I think Mr. Sarnoff will agree with me that some of the programs are bad and some are good. But naturally, it would have to be—NBC would have to approve the type of program. I understand that. But I am assuming that supposing a fellow: Let's use the example again, a new play, and he gets—what do you call it on Broadway—an angel. Is that what they call them?

Mr. SARNOFF. An angel.

The CHAIRMAN. Angel, yes. The angel says: "We ought to put this on television. Let's go and see where we can get half an hour, or an hour's time. I will pay for it, it is good. When we open the show, it might bring more people to the show." He just does it all by himself, but you wouldn't sell him the time?

Mr. SARNOFF. In that case, he would become an advertiser. [Laughter.]

The CHAIRMAN. No, he doesn't come as an advertiser at all. He doesn't know.

Mr. SARNOFF. You just suggested that he would be advertising a program.

The CHAIRMAN. An advertiser is someone that advertises a definite product with commercials.

Mr. SARNOFF. But he is advertising his product here, which is a legitimate Broadway play.

The CHAIRMAN. But he doesn't know whether his product is any good or not. [Laughter.]

I mean, there is a distinction there. Of course, there is always a reason for buying time. If a man buys time for a cause, why there is a reason, he is an advertiser, if you want to make that fine a distinction.

Mr. SARNOFF. I can't recall a situation like that ever arising. If it did, we certainly would have to give it some real hard thought.

The CHAIRMAN. But I think the record ought to be clear, you said "no."

Mr. SARNOFF. I would say offhand we would not, that we will sell time to advertisers and not to individuals who really are the owners of programs.

The CHAIRMAN. Is this a fair question: In any situation such as that that might occur, unless the person, or the applicant for the time, had an advertising agency, you would look a little askance on it, wouldn't you?

Mr. SARNOFF. I wouldn't put it this way. I would look hard at it if it were an individual who was not an advertiser, not a national advertiser certainly.

The CHAIRMAN. Now, this time is supposed to be open for people who put on programs, is it not, or ask for time—programs that naturally will be of the type you would have to clear—but it is supposed to be open; it is a free field, isn't it?

Mr. SARNOFF. Well, I think in such cases as the ones you are suggesting you would really have to take a look at the function that it serves. I mentioned this morning that one of the functions our network serves—or that our network service was actually based on a triangle, serving the public, serving the stations, and serving the advertisers.

Now, I think in any case like the one you are suggesting, if it were to arise, we would have to take a look at it to see whether it was serving all three sides of that triangle. And if it were not, and something else would serve the three sides of that triangle, then I think we would have to give it very serious thought.

The CHAIRMAN. I understand that, that is for most of your available hours. But I am suggesting a case where the half hour, or the time, would be open—it hasn't been sold to an advertiser. The network is not using it, it is available; he is going to pay the card rate.

Mr. SARNOFF. Well, Senator, it gets into a lot of complicated problems. Because what it would mean, in effect, is if there were a half hour—in the first place, there is no such thing as a half hour that isn't being programed, in one form or another. Those that are not sold are being programed sustaining.

The CHAIRMAN. I am coming in to buy it—give you the card rate.

Mr. SARNOFF. All right. Now, you come in to buy it, not for advertising purposes but merely to put your program on.

The CHAIRMAN. That is right. And it is a program that you have to approve of.

Mr. SARNOFF. You would be subsidizing our programing, in effect. Well, I think that raises some serious questions.

Senator PASTORE. Let's put it this way: Let's assume someone, realizing that they have a lot of loose dollars, which is a hot question to ask, but he realizes that South Pacific is a wonderful musical comedy that a lot of people haven't seen, because they can't afford the $6.60. So he has a couple of million dollars and he would like the whole country to see it for half an hour. He is willing to buy up the show and put it on the air once, on television; and he comes to you and says he wants to buy the time. The time is available. He says: "I've got nothing to sell."

The CHAIRMAN. Except his own idea.

Senator PASTORE. "I want 65 million Americans to see South Pacific for nothing." Would you give him the time?

Mr. SARNOFF. Well, if somebody came to us——

Senator PASTORE. I don't know his name, outside of Santa Claus. [Laughter.]

Mr. SARNOFF. If somebody came to us with South Pacific, and wanted to put it on the network and wanted to pay the cost for the network and compensation for the stations, I think we would take a good hard look at it, and probably take it. [Laughter.]

The CHAIRMAN. The point, Mr. Sarnoff, I am trying to get at: I think it doesn't maybe work this way. It has been suggested to me here by a note that no angel would be so stupid as to kill the play. [Laughter.]

Sure, everybody has something to sell—even the Santa Claus he talks about has something to sell. But the point I am trying to get at is that, supposing someone has something new—new talent, new show. Everything else is tied up; he can't get an advertising agency, but he finally digs up enough money to buy a piece of network time. He comes to you as an individual.

You say "What kind of a thing have you got?" So he outlines it to you and it fits within the pattern of the things you put on, entertainmentwise or propagandawise, or any other way. You say that that time would not be available to him?

Mr. SARNOFF. I don't mean to be negative or categorical; it is a situation that has not arisen. I can conceive where under certain circumstances it is quite possible we might do it. You will have to let me backtrack a little on that—on being as positive as I was before.

The CHAIRMAN. Let me pose this; maybe you can answer the question better. Supposing it is a really—an actual real public service program, but you find that you can't fit it in to give it free for public service. So he says, "I will pay you for it, I am not selling anything, I haven't got an advertising agency, I don't want to deal with one, I am not selling a product that is manufactured. I want to buy a half hour of your time. Maybe I want to put on a play that might talk about——"

Mr. SARNOFF. I think actually this could happen. But it would depend on what the program was, who was buying the time, what he represented, all these factors. It is not impossible. Nothing is impossible in this business.

Mr. COX. While we are mentioning public-service programing, you indicated, of course, that one of the principal roles that a network can play is to provide a balanced program service, which you indicated included public-service programing, including news and other services. Could you tell us approximately what percentage of your network broadcast time is devoted to public-service programing?

Mr. SARNOFF. Well, Mr. Cox, I think you get into a bit of a discussion of what public-service programing is. I think this has come up before. It is difficult to specify any particular program as public service. There are a few that you might say are public service. But if you look at the entire schedule, there are many programs, and many elements within programs, which certainly fall into the public-service category. And I think that the idea that only a sustaining program represents public service has pretty much gone by the boards. You can have commercial programing that is equally as important as public service. As a matter of fact, we have at NBC a monthly report—we call it a responsibility report—and this lists all the things that our producers have been able to do, within the programs they are producing, during that month which are of a public service, information, educational, cultural nature. So it would be hard for me to say that the presentation of the Sadler Wells Ballet—ballet for the first time in that form—wasn't public service, or that Nightmare in Red, The Twisted Cross, these fine documentaries of Project 20, aren't public service, even though they were sponsored.

The CHAIRMAN. Let's restrict it, then, to sustaining programs. What percentage, first, of your network broadcasting time, is devoted to sustaining programs?

Mr. SARNOFF. That I believe we can give you.

The CHAIRMAN. I think you have put that—you ought to have all the networks put that in the record.

Mr. COX. I don't think this is in the questionnaire.

The CHAIRMAN. Pardon me.

Mr. SARNOFF. Again, it presents a bit of a problem of terminology, because where you take a program that is only partially sponsored, the part that isn't sponsored is sustaining, yet it is a commercial problem.

The CHAIRMAN. Put this in the record: What portion of so-called—and we can define "public service"—let's not get into ballet; let's get out of that field. [Laughter.]

We can define fairly well "public service"; what portion of your programing time has been in public service, not sponsored?

Mr. SARNOFF. What do you mean by "public service"?

The CHAIRMAN. Well, I can think of all kinds of programs. You mentioned one on the mental-health program.

Mr. SARNOFF. Senator, that is the point I am making. It is difficult——

The CHAIRMAN. Yes. You mentioned—things in the public interest. There are some political discussions. You own Meet the Press, don't you?

Mr. SARNOFF. That is right.

The CHAIRMAN. You have Youth Wants To Know. What happened to that?

Mr. SARNOFF. It is on.

The CHAIRMAN. It is still on?

Mr. SARNOFF. As I understand; yes.

The CHAIRMAN. And things of that nature. I think you can draw a definition of this.

Mr. SARNOFF. Well, I think if you would like, I would be happy to file with the committee a copy of our March 1956 responsibility report which gives some indication of the type of thing I am talking about.

The CHAIRMAN. Don't you file that with the FCC?

Mr. SARNOFF. This is for our own purposes.

The CHAIRMAN. Well, it will be incorporated by reference and kept in the committee files.

(The document referred to will be retained in the committee files.)

The CHAIRMAN. Would you say that the three networks do about the same amount, percentagewise?

Mr. SARNOFF. Public service?

The CHAIRMAN. Yes.

Mr. SARNOFF. I don't know. I haven't actually analyzed the ABC.

The CHAIRMAN. I have always understood—and I may be wrong, correct me—public service broadcasts I have always considered have been put on by the station without a sponsor, whatever definition you want to make, as a public service. That is the percentage I want.

Mr. SARNOFF. We can work up that kind of percentage.[6a] The point I was trying to make——

The CHAIRMAN. Sometimes they are political, sometimes they are of local interest.

Mr. SARNOFF. But the point I was trying to make——

The CHAIRMAN. You always announce this is a public service broadcast of network so-and-so?

Mr. SARNOFF. That is right.

The CHAIRMAN. That is what I want.

Mr. SARNOFF. But the figure doesn't have any particular significance in terms of only that programing which is not sponsored.

The CHAIRMAN. It may have some to us.

Mr. SARNOFF. Would you suggest that I leave out Meet the Press?

The CHAIRMAN. No, no.

Mr. SARNOFF. That is sponsored.

[6a] This information was furnished in a letter dated December 12, 1956, which is set forth (insofar as here pertinent) at p. 3124, appendix. The percentage given in this letter is 43 percent.

The CHAIRMAN. Yes, yes. I mean you can say "We have these public service that we sponsored—the networks sponsor themselves, or they put on themselves—and then we have other programs in the nature of public service that are advertiser sponsored."

Mr. SARNOFF. All right. I think we can work that up.

Mr. Cox. Do you carry any sustaining programs now in evening option hours?

The CHAIRMAN. Noncommercial programs, that is what I am talking about.

Mr. SARNOFF. I understand, sir.

Mr. Cox. Do you carry any sustaining programs in evening option hours?

Mr. SARNOFF. Not on a regular basis. Sometimes we do specials which may be sustaining.

Mr. Cox. That is, all of these discussion type programs that you have mentioned—Meet the Press, and so on—are carried in daytime hours, then?

Mr. SARNOFF. Well, some of them are carried—yes, some of them are carried on Sunday. As a matter of fact, we have one starting this summer which is going to be 8 o'clock Wednesday, Nation's Press Conference.

Mr. Cox. That will be on your program schedule next fall—this summer you say?

Mr. SARNOFF. And Meet the Press is 6 o'clock on Sunday.

Mr. Cox. As I pointed out when Dr. Stanton was testifying, we heard testimony on Monday of this week from Rev. Everett Parker, indicating I think, in the case of NBC, that according to his calculations, NBC was providing sustaining religious programing at the rate of only one half-hour a week, I think, which he indicated was 0.62 percent of your broadcast time. Now would you care to comment now, or could you provide us with a comment later on, as to the network's concept of its responsibility for programing in that field, and whether the network feels that this is an adequate recognition of that phase of our national life?

Mr. SARNOFF. If I may, I prefer to do it later, because I haven't had an opportunity——

Mr. Cox. To examine his testimony?

Mr. SARNOFF. That is right.

Mr. Cox. Very well.[7]

Now, you have indicated in your testimony and in the statement of facts that NBC maintains a basic required or must-buy policy which includes the 56 basic affiliates of NBC, including your owned-and-operated stations. As I understand it, your practice in prime evening hours is to require the advertiser to buy an additional 44, is it, to bring this total up to 100 stations of the network?

Mr. SARNOFF. A minimum of a hundred.

Mr. Cox. And if he does not buy this, he either has to make his program available for your Program Service Plan or he must pay a penalty or lose ——

Mr. SARNOFF. There is an adjustment in discount.

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[7] The comments of NBC are set forth in a letter dated August 9, 1956, and in exhibit 4 thereto, which will be found beginning at p. 2878.

Mr. Cox. Adjustment in discounts.

Now I think you also indicated that you had certain standards in the selection of your must-buy markets involving two factors: Population or homes, and retail sales for two different areas, one the metropolitan area in which the station is located, and the other the service area of the station; is that correct?

Mr. Sarnoff. That is right.

Mr. Cox. Now isn't it true that you have a number of stations on your must-buy list that are below those standards?

Mr. Sarnoff. I believe so, and I believe the questionnaire addresses itself to that point.

Mr. Cox. The point that I was going to raise is: Do you not have a number of other stations who feel they are in this same general category—not quite meeting your requirements, but they feel they are doing as good a job as others on the list—who are seeking this basic status and have not yet been accorded it?

Mr. Sarnoff. Yes, I believe there are probably—I don't know offhand which ones, but I am sure there must be some who feel that they ——

Mr. Cox. Now isn't this a matter that they bring up periodically with you; that is, they come in with new figures as to population or sales or coverage, and they try to persuade you that you should add them to the basic list and advertise them on your rate card as a part of the basic network?

Mr. Sarnoff. That is right.

Mr. Cox. And you either agree to this or you don't?

Mr. Sarnoff. That is right.

Mr. Cox. But the decision is made by the network?

Mr. Sarnoff. Correct.

Mr. Cox. And I think in your answer to the questionnaire you have also indicated some exceptions to your "must-buy" policy; that is, there are instances in which you do sell——

Mr. Sarnoff. You mean the advertiser?

Mr. Cox. You sell to advertisers who do not take it?

Mr. Sarnoff. There are a couple of instances, one of which is historical, but normally we do not. Normally it is—with these exceptions, they are all on the "must buy."

Mr. Cox. Now the committee heard testimony several weeks ago from a number of independent scenery and set producers in New York who contended that they had been systematically excluded by NBC and CBS in recent years, and by ABC at all times, from furnishing sets for live programs broadcast on the net. And they quoted statistics indicating the sharp decline in the volume of their business with the networks. Now isn't it true that, initially, NBC purchased the greater bulk of the sets that it used from people of this kind who operated independent businesses of furnishing such sets?

Mr. Sarnoff. Well, maybe in the very early days of networking that is possible, but I certainly don't think it is true as we grew and as we found it necessary to maintain our own production facilities.

Mr. Cox. I am sorry, I didn't understand you.

Mr. Sarnoff. I said in the early days of the networking service it is quite possible that, until we had built our own facilities, that we were buying on the outside, where we had a small—you know, our schedule of hours wasn't very great. But as we increased our scheduling and our programing, and our own facilities——

Mr. Cox. Well, isn't it true that as recently as 1952 you were buying a substantial quantity of scenery and sets from these people?

Mr. SARNOFF. Well, I don't know the actual statistics on this, Mr. Cox. I do know a couple of things that have happened, though.

Mr. Cox. All right.

Mr. SARNOFF. There are a number of programs that are no longer being broadcast by NBC, which were being serviced by the outside scenery designers. There are also a number of programs that have moved to the west coast. There has been quite a shift of production from the East to the west coast. Now, as I understand it, the witnesses from the scenery makers are New York operators?

Mr. Cox. Exclusively.

Mr. SARNOFF. Yes. Well, the shift to the west coast could easily affect the volume of their New York business.

Mr. Cox. Has the size and the scope of your own set operation in New York been increasing steadily over the years?

Mr. SARNOFF. Well, there was a period when it increased. At what point it leveled off, I am not quite sure. I don't think it has increased substantially in the last——

Mr. Cox. Do you furnish sets not only for programs which NBC produces but for programs which are produced by live packagers?

Mr. SARNOFF. In some cases we provide sets for NBC-produced shows, and in some cases we provide them for out-produced shows, yes.

Mr. Cox. I think you indicated in your answer to the questionnaire that you operate your staging division, of which this set operation is a part, at a slight profit.

Mr. SARNOFF. Certain elements of it, yes.

Mr. Cox. Now, do you submit a bid to an outside packager for the sets on the show in competition with the independent producer?

Mr. SARNOFF. I am not sure, Mr. Cox, to be perfectly honest, that I am too familiar with the operation of the scenery department.

Mr. Cox. Well, could you perhaps, then, do as Dr. Stanton did, file a statement with us which would be directed to the testimony of the earlier witnesses on that point?

Mr. SARNOFF. Yes, be glad to.[8]

Mr. Cox. Now, as I understand it, NBC operates a spot sales organization which represents its owned and operated stations and also a number of your major affiliates?

Mr. SARNOFF. Yes, it does.

Mr. Cox. Are you seeking to add to the number of affiliates whom you represent?

Mr. SARNOFF. No; I do not think we are. I think we have about what we feel is what our organization can handle at the moment.

Mr. Cox. Was this arrangement one that was originally suggested by the network to the stations, or was service requested by the affiliates?

Mr. SARNOFF. I believe this was a service developed by the O. and O. division.

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[8] This statement is set forth in a letter dated August 9, 1956, and in exhibit 5 thereto, which will be found beginning at p. 2878. A reply statement from Peter J. Rotondo, one of the independent scenery designers, is printed at p. 2890. A further letter from a representative of the independent designers is set forth as item 31 in the appendix to this volume.

Mr. Cox. Then it was offered by the network to certain affiliates, or to all affiliates?

Mr. SARNOFF. No; it was offered by the station division.

Mr. Cox. By the station division of the network?

Mr. SARNOFF. That is right. Of the company, not of the network.

Mr. Cox. Oh, this is yours——

Mr. SARNOFF. So the sales is a function of the O. and O. division.

Mr. Cox. I see. And operates, therefore, as a part of NBC and separately from the network?

Mr. SARNOFF. That is correct.

Mr. Cox. Does your company make a profit from this representation business?

Mr. SARNOFF. Yes, it does.

Mr. Cox. Does your spot sales organization operate any differently than the private spot representatives who are in business?

Mr. SARNOFF. In accordance with the competitive situation in the spot field.

Mr. Cox. It performs the same functions and receives the same rates?

Mr. SARNOFF. The same functions and same arrangements.

The CHAIRMAN. Right back there, can a fellow come in and get some spot advertising without going through an advertising agency?

Mr. SARNOFF. I guess so, yes.

Mr. Cox. Doesn't your spot sales organization compete for spot revenues with its own clients, in the sense that it is selling spots on your six owned and operated stations at the same time as it is trying to place spots in other markets?

Mr. SARNOFF. No, I don't think that is happening, and I have heard of no complaints from any of the stations that are represented by our spot sales that they are being slighted in any way. As a matter of fact, they seem to be very happy with the performance.

Mr. Cox. Would there ever be a chance that it might be in the interest of NBC, if you had a program period for sale on the network schedule, to try to interest an advertiser with whom you were dealing in placing his advertising budget in this program rather than in a spot campaign to make use of your affiliated stations?

Mr. SARNOFF. You mean are they likely to be influenced toward—I am not quite sure I get the import of your question.

Mr. Cox. Isn't there always a choice on an advertiser's part between whether he is going to devote his budget to the sponsorship of a network program or whether he is going to devote it to national spot, either in terms of sponsoring programs on local stations throughout the country or on a spot announcement campaign?

Mr. SARNOFF. Yes.

Mr. Cox. Now, don't you, therefore, perhaps at times find a situation where the network has an available program it would like to sell and it is trying to interest advertisers in this program; at the same time it is also engaged by its affiliates to represent them in selling and competing for these advertising dollars in the spot market?

Mr. SARNOFF. Well, I would say that the national salesmen are competing with the national spot salesmen all the time.

Mr. Cox. But in this case the network sales staff is competing with the spot sales staff of the same organization, although it may be a different division of NBC?

Mr. SARNOFF. It is no different than different brands of similar kinds of products competing with each other.

Mr. COX. That is, you mean where the manufacturer makes two cars, and he competes with himself? Except that the money, here, would go to different people, wouldn't it. That is in one case it would go to the local station, and in the other case it would go partly to the station and partly to the network on the split of time charges?

Senator PASTORE. The answer to that was "yes"? You see a nod doesn't get in the record, Mr. Sarnoff.

Mr. SARNOFF. I am sorry. Yes.

Mr. COX. Just one question, then, in conclusion, and I am sure this will please Senator Pastore.

Senator PASTORE. Most refreshing.

Mr. COX. Ten minutes ahead of schedule.

If the networks feel that, on top of the natural constriction, and therefore reduction in competition, that is necessarily incidental to the limitation on facilities, that they must have, by contract or other arrangement, additional restrictions upon the free marketing of programs or upon the free access of advertisers to the network in terms of option time and "must-buy," doesn't it seem that this additional artificial restraint upon the free movement of forces in the field—which really cements the position of the network—might require regulation of some kind in the public interest which perhaps would not be necessary if there were no such artificial restraint?

That is awfully long and involved. I am sorry.

Senator PASTORE. Let us ask the witness, do you understand the question?

Mr. SARNOFF. I am not sure I do. Maybe I will try to answer it, anyhow.

Senator PASTORE. Well, if you want it restated I think Mr. Cox would be glad to restate the question.

Mr. SARNOFF. Would you like to?

Mr. COX. All right.

Let us put it this way: We start with the fact, to which you address yourself, of the problem of the shortage of facilities?

Mr. SARNOFF. Right.

Mr. COX. So that at the very outset some problems arise competitively that would not exist if we had ample competitive television channels. Now, it appears to be the position of the networks, including NBC, that on top of this natural limitation on competition, they feel it is essential to the maintenance of their network service that they have option time and "must-buy," which are contractual or other arrangements within the industry which, it is charged, limit competition. Now, doesn't the addition of these artificial restraints perhaps raise a necessity for some form of Government regulation which would not exist if you were going to compete on a first-come, first-served basis with the existing stations in the market?

The CHAIRMAN. That is where my man comes in to buy the time. [Laughter]

Mr. SARNOFF. First of all, I think the so-called artificial restrictions, the "must-buy" and the option time, actually they have been in existence. It is the situation of a limitation of facilities imposed on that that perhaps has created part of the problem.

But I cannot see—and I stand by what I said this morning—I cannot see any regulation that could advance the public interest or any regulation that would not in some way hurt the existing service which is of great benefit to the public. In other words, I see nothing to be gained in a small improvement here, by a major surgery over here. I think that the contribution that networks have made to the public in building up this tremendous industry—which now has four hundred some-odd stations, 35 million television sets, a billion dollar advertising business, hundreds and hundreds of advertisers on the national and local level—that having developed it to this point in 10 years on the basis of the networks' service, now finds itself in the position of a great new enterprise coming ahead, which is color, which will only develop and flourish if the networks are permitted to operate, I cannot see anything in any regulation proposed that could benefit the public by improving the present situation. Just the opposite would happen; I think it would hurt it considerably. And a number of the proposals made, I think, could result ultimately in the destruction of the present national program service as we know it.

The CHAIRMAN. On the reverse side of the coin, we are charged here with the primary responsibility of legislation. Have you any suggestions you would like to make now, or put in the record, as to any changes in the authority given the FCC, or changes in the original FCC Act that are detrimental to what you suggest?

Mr. SARNOFF. Well, there are 2, at least 2 suggestions, Senator Magnuson. First, I think we have to solve the problem of allocation—solve the UHF problem.

The CHAIRMAN. Yes. I want to ask just a couple of questions about that.

Mr. SARNOFF. Secondly—and I think that can be done, as we have suggested on a number of occasions, by selective deintermixture. I think what we have to do is start something. We have to get going. Nobody is going to be able to wave a magic wand and solve the problem tomorrow, but it is at least a step we can take toward solving it.

The CHAIRMAN. And your suggestion to the Commission, under its authority given to it by us, is that they proceed with that?

Mr. SARNOFF. That is correct. And we suggested principles on which they should proceed, namely, selective deintermixture to result in the greatest possible number of new facilities without degrading the existing service.

Secondly, we have urged, and still urge, action be taken on the removal of the excise tax, because that would be another step in the right direction by encouraging the manufacture of all-channel receivers. And here with a new industry coming along—color—which has every indication, regardless of what anybody says, of really breaking through, I think it is giving that indication now, we can find—and I think in a quicker time, in a shorter period than it took to get 35 million black-and-white sets out—we can get out that number, and more, in as short a period of time. And that, too, would help the problem, because part of the problem is UHF circulation.

The CHAIRMAN. I want to say that I may not agree with you on everything you do, but your manufacturing division, I think, has done a good job in trying to hold the line on all-channel sets, and they were courteous enough to come and discuss the matter with us informally, that they were hopeful that something could be done before it became an absolute necessity to break the line, and I think they have done a good job on that.

Mr. SARNOFF. That is right.

The CHAIRMAN. This committee is concerned, of course, with this real problem, tremendous problem, of allocation. And I hope that you don't feel that there is still—I mean I hope you do feel that there is still some hope for UHF.

Mr. SARNOFF. We feel very strongly. This morning in my statement I indicated our belief in UHF based on what we had done. We have better than 40 percent of the UHF stations in the country on the NBC network, and we, ourselves, as you know, have undertaken to develop UHF in Buffalo. We bought a station; we are waiting approval——

The CHAIRMAN. You have three; don't you?

Mr. SARNOFF. We only have one.

The CHAIRMAN. You applied for two?

Mr. SARNOFF. We are awaiting approval of our purchase of a UHF in New Britain. We have right along urged the support of UHF because, to us, it seems to be the only possible solution to the problem of getting more facilities. We think the solution lies in expanding the service in the economy, not restricting what now exists.

The CHAIRMAN. You don't feel that the expansion of new facilities, which would get us further along toward the goal of free and competitive television, would in any way hurt the networks—or do the networks serve a different function?

Mr. SARNOFF. We would welcome it.

The CHAIRMAN. Yes.

Senator PASTORE. Any further questions?

The CHAIRMAN. But my fellow still cannot get time; can he? [Laughter.]

Mr. COX. Maybe he can.

Senator PASTORE. Any further questions?

We said we would terminate it by 3 o'clock. We beat it by 1 minute. Ten o'clock tomorow, and the chairman is presiding—Mr. Magnuson.

(Whereupon, at 3 p. m., the committee adjourned until Friday, June 15, 1956, at 10 a. m.)

(In response to the chairman's general request that the networks comment with respect to the pending bills concerning political time, NBC submitted its views in a letter dated August 2, 1956. This letter is printed at p. 2894.)

TELEVISION INQUIRY

(Network Practices)

FRIDAY, JUNE 15, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m. in room G-16, the Capitol, Senator Warren G. Magnuson, the chairman, presiding.

Present: Senators Magnuson (presiding) and Potter.

Also present: Wayne T. Geissinger, assistant counsel; Kenneth A. Cox, special counsel; Nicholas Zapple, staff communications counsel.

The CHAIRMAN. The committee will come to order. Because we are having long sessions here, we will start before some of the rest of the Senators get here. Mr. Kintner, we will be glad to hear from you. You have a prepared statement which you can read in whole or in part, but it will go in the record in whole.[1]

Mr. KINTNER. Thank you very much, Mr. Chairman.

STATEMENT OF ROBERT E. KINTNER, PRESIDENT, AMERICAN BROADCASTING CO., ACCOMPANIED BY ROBERT H. HINCKLEY, ERNEST LEE JAHNCKE, JR., JAMES STABILE, HAROLD MORGAN, AND FRANK MARX

Mr. KINTNER. It is a privilege for ABC to appear before the committee.

Before reading my statement, I would like to identify the people from ABC in the room who would be available to the committee for any questioning in the various fields:

Mr. Robert H. Hinckley, who is vice president of American Broadcasting-Paramount Theaters and a member of our board of directors; Mr. Ernest Lee Jahncke, Jr., vice president of ABC and assistant to the president; Jim Stabile, general counsel and vice president of ABC; Harold Morgan, vice president and comptroller; and Frank Marx, vice president in charge of engineering.

My name is Robert E. Kintner. I am president of the American Broadcasting Co.

I am sorry, Mr. Chairman, that Senator Pastore is not here, because you will note our statement is 25 pages long, compared to 38 and 39 for NBC and Columbia. [Laughter.]

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[1] The response of American Broadcasting Co. to the network questionnaire mailed by the committee on May 25, 1956, was delivered to the committee staff on this date and will be retained in the committee files. The standard forms of affiliation agreements included therein are set forth in the appendix hereto at p. 3035.

In addition I would like to give a summary of our position. We believe that the trouble with the television business is a scarcity of stations created by Government inaction, and permitted to continue by the Government, and we believe the networks are operating in the public interest, that their practices are in the public interest. We believe the competitive problems would disappear if there were 3 or more competitive stations in the top 200 markets of the country. That, basically, is our position.

ABC, the youngest of the networks, owns and operates the ABC television network, the ABC radio network, and owns and operates television stations in New York, Chicago, Detroit, Los Angeles, and San Francisco, and radio stations in New York, Detroit, Los Angeles, and San Francisco.

It seems to us that what your committee is basically examining is free competition within the television industry. I feel that I qualify as an expert in this field, since as the youngest and smallest of the television networks we have faced the problems of building a program structure competitive to that of the older networks.

You have heard varied charges against the methods under which television operates on a national and local level. Some of these charges are based on lack of understanding of the business, others on selfish interests, and others were made by those who have a sincere desire to improve an industry which has exploded in a few short years and has revolutionized the home life of most of America.

ABC'S POSITION

ABC's position is a simple one.

One, there is a kind of monopoly in the television business, but it is a Government-created monopoly based on the lack of at least three comparable television stations in the top population markets of the country.

Two, the program offerings of the three networks constitute an important factor in the daily life of America, which is not only in the public interest, but consitutes a major contribution to the economic well-being of the country.

Three, while no one should say that a system cannot be improved, the relationships now established between stations and the networks represent the most efficient method by which all parts of the country can simultaneously receive outstanding entertainment, news, religious, and public interest television programs.

SCARCITY OF COMPETITIVE STATIONS

We believe that the major attention of the Senate committee, and of the Federal Communications Commission, should be directed to the scarcity of stations, because with its solution, alleged monopolistic practices in the industry will disappear, just as they disappeared in radio when the factor of a too limited number of radio stations was removed.

Mr. Cox. What were those practices, Mr. Kintner, that you were referring to there that were of monopolistic nature, but which disappeared when additional stations were made available?

Mr. KINTNER. You remember Mr. Cox, there was a freeze on the granting of radio stations during the period of the war. Similar charges developed due to the scarcity of sufficient stations to accommodate the four networks in top markets. After the freeze was lifted and sufficient stations were put in the markets, the practices of which the networks, the stations, the packagers, et cetera, were accused disappeared, because for the first time there was a freedom of the market place, which you today have in radio. And it is not only because radio perhaps is not as profitable as it used to be, that criticisms aren't directed at the radio networks; it is that by Government action a free play of the forces in the broadcasting, in radio, business have been achieved.

Mr. COX. Were some of the criticisms in that period leveled at the networks criticisms involving option time, must-buy and matters of that sort?

Mr. KINTNER. That is right. They originally started in the 1938 FCC study and continued with the creation of the network rules, on the basis primarily, I believe, that NBC and CBS dominated the business through their relationships with clear-channel stations throughout the country.

The CHAIRMAN. In other words, there is a distinct parallel between the matter before us now, on television, and what the experience—and what happened in a given period during the growth of radio?

Mr. KINTNER. I believe so, Senator; yes, sir.

The CHAIRMAN. And there may be some parallel, wouldn't you say—not on all fours—but between the AM–FM thing and our UHF–VHF.

Mr. KINTNER. Well, I hope there is not a good comparison.

The CHAIRMAN. Some parallel in the problem.

Mr. KINTNER. There is parallel in the problem.

The CHAIRMAN. I say not on all fours, but there is some experience there, I think, we could draw on.

Mr. KINTNER. It is a parallel. I would hope we could solve the UHF problem better than we solved the other problem.

Mr. COX. Largely in the nature of a warning?

Mr. KINTNER. Yes; I think so.

It seems to us a serious indictment of governmental processes when this subject has been under intensive investigation for at least 2 years without adequate solution. I know the committee is interested in contributing to free competition within the television industry, and I can think of no better way to achieve it than by a strong congressional mandate to the Federal Communications Commission, not only to speed up the granting of television stations already allocated, but also to devise new allocations plans whereby 3, 4, or 5 competitive television stations can be established in the larger markets of the country.

ABC, as you know, has filed with the committee, and also with the FCC, a plan whereby we believe a minimum of three stations can be established in the top markets of the country. Since that time we have continued our study, and we will file at a later time with the committee, with your approval, and also with the FCC, a proposed plan which would do the following:

Of the 200 top markets in the country on the basis of population——

The CHAIRMAN. Are you reading from your statement?

Mr. KINTNER. No; I am not.

On the basis of the top 200 markets of the country, through the use of deintermixture, drop-in of stations and similar methods, we feel sure that without a degradation under the present FCC engineering standards, that in the first hundred markets 75 of them could have 3 or more VHF stations, 1 could have 2 VHF stations, 2 could have 1 VHF station, and 22 would have completely UHF service. That totals the top hundred markets. This is the plan that we filed.

The second hundred markets: We believe that 69 markets can be given 3 or more VHF stations, 2 can be given 2 VHF stations, 3 can be given 1 VHF station, and 26 would be all UHF.

This would mean of the total top 200 markets, instead of the terrible scarcity that we now have, there would be 144 markets with 3 or more V's, there would be 3 markets with 2 V's, there would be 5 markets with 1 V, and the ultrahigh frequency would be continued and play an important part in the broadcasting economy by being the exclusive method of broadcasting in 48 cities.

The CHAIRMAN. Now, would that plan, without designating specific markets—that plan would give complete coverage would it not, to practically all sections of the United States with maybe some rare——

Mr. KINTNER. Farm population——

The CHAIRMAN. Topographical situations.

Mr. KINTNER. We think that would do it. We will file, Mr. Chairman, with your permission, the additional plan.[2] The first plan is already in the record of the March hearings.

Let me restate the basic problem of the television business. It is that there are not enough comparable and competitive television stations in many major markets. By comparable and competitive stations, we mean simply stations that are capable of being received by approximately the same number of sets in the hands of the public. The demand for additional network regulation, and the charges of monopoly directed against network practices, are directly traceable to this scarcity of outlets. If the scarcity problem is solved—and it can be solved—the problems that confront us now will be fully and effectively met without the need of additional governmental intervention or regulation.

There are two phases to the problem:

One, the necessity for speedy action by the Federal Communications Commission to grant pending applications in such cities as St. Louis, Boston, and Pittsburgh, so that there will be at least three comparable facilities in such cities. These proceedings have drawn out interminably, some of them dating back as long as 8 years.

Two, reallocations to authorize additional outlets in such cities as Providence, Birmingham, and Louisville, so that there can be at least three comparable television facilities in such cities.

The CHAIRMAN. I am glad you got Providence in there. [Laughter.]

Mr. KINTNER. I thought the Senator was going to be here.

[2] This new allocation plan was forwarded with a letter dated July 25, 1956, and is set forth following Mr. Kintner's testimony, beginning at p. 2507.

Mr. *Cox*. What you mean in that connection, Mr. Kintner, is that in the first category, although there are allocations which would permit three comparable facilities, due to procedural delay the third facility has not yet been made available; and in the other category the allocations are limited to only two competitive facilities?

Mr. KINTNER. That is correct; and I selected typical cities. I understand that the FCC is taking action next week, and I would hope that they would follow this basic principle—and I might say that if they do not, in our judgment, they will compound the evil rather than remove it.

The point becomes brutally clear when remembering that of the major markets only 2 have more than 4 VHF outlets, and only 7 have 4 or more. Only 26 have at least 3 VHF assignments. Thirty-two of these major markets have only 2 VHF assignments, and 18 have only 1 such assignment.

This is hardly a system conducive to free competition among three or more networks. Perhaps I can illustrate that paragraph by telling you that ABC, in the year 1955, had orders that we could not clear time for, so that ABC was deprived of the revenue of $13 million which could have been used in improved programs, in helping the smaller markets, in promoting UHF, and so forth, all due to only one thing: The scarcity factor.

The CHAIRMAN. Well, it would be a great deal like if there could be only two automobile dealers in a given area. They would either be selling Ford or General Motors.

Mr. KINTNER. I think that is correct. Perhaps I can make it more pertinent. It is as though in your race for reelection——

The CHAIRMAN. Let us not talk about that. [Laughter.]

Mr. KINTNER. Your opponent could count votes in all cities and you have five cities excluded from which you could not get votes.

The CHAIRMAN. That scares me. [Laughter.]

Mr. KINTNER. Senator, that is what I was trying to do. [Laughter.]

The CHAIRMAN. The point I am trying to make is that if there is any justification for the monopoly suggestion, it could be removed if there were opportunity for everybody to get into the field.

Mr. KINTNER. There is no question about it.

The CHAIRMAN. Yes.

Mr. KINTNER. These figures, in our judgment—particularly the fact that 32 of the top markets are 2-V markets—make abundantly clear what is the matter with the television business. It is the inability to have equal access to a substantial portion of the population of the country.

Perhaps I can make the point appropriately before this committee by pointing out that from ABC's viewpoint, this is the equivalent of running for office in the State of Pennsylvania with the entire Pittsburgh population being able to vote for your opponent, but no one being able to vote for you.

That was for Senator Duff.

[Laughter.]

Mr. KINTNER. Too many station monopolies in individual markets have been permitted to continue. As a result, too many people have been denied a freedom of choice of programing due to station scarcity. ABC would welcome not only 3 competitive stations in the top markets of the country, but 4 or more stations. We would welcome additional interests entering the network business, which, in our judgment, they could only do with an end of station scarcity. We know that the emergence of ABC as a strong force in the television programing business has served the public interest by giving viewers a greater freedom of choice.

Mr. Cox. Would you think that any suggestion that other interests seeking outlets in the television field should form a new network and try to get stations to give them option time would be very realistic under present conditions?

Mr. KINTNER. I don't think it would, Mr. Cox, be very realistic to go cold into the network business at the present time, as long as there is the scarcity factor in the top markets. If that scarcity factor were removed, there is no reason that someone with capital, with entertainment know-how, with a willingness to take a risk, could not and should not go into television-network business just as we went into the radio-network business.

The CHAIRMAN. At least they would have the opportunity.

Mr. KINTNER. That is correct.

The CHAIRMAN. With any of us it is basic, trying to create an equality of opportunity.

Mr. KINTNER. That is all ABC asks for.

We also know that it has aided the advertising business—a basic part of our economy—by giving advertisers a greater freedom of choice, and it has aided, at least in our judgment, the National Broadcasting Co. and the Columbia Broadcasting System by providing them with additional program competition.

Mr. Cox. Do you think that that desirable fact of competition in programing can be stimulated also by competition from nonnetwork sources as well?

Mr. KINTNER. I think they are at the present time and do provide competition.

Mr. Cox. And their continuation on a healthy basis of competition would be desirable in terms of programing of the other networks as well?

Mr. KINTNER. I think that the more healthy program producers you can have in the business making available product—I don't agree, Mr. Cox, if you are implying in the process the network business should be brought down on the public's heads in order to accommodate——

Mr. Cox. No, I am suggesting that if you feel that ABC has made a contribution to overall programing by the stimulus that its competition has given to the other two networks to improve their programing, that the same would be true with respect to the competitive effect of the offerings of independent program sources in those areas where the networks must compete to hold clearances on stations throughout the country.

Mr. KINTNER. Yes, I would agree with that.

THE HISTORY OF ABC

It may be useful to the committee if we give a brief summary of the history of ABC.

ABC, as a company, is the direct result of the FCC's concern with promoting competition in the network field. What are now the ABC radio and television networks originated when NBC created the Blue Radio Network to provide listeners with another choice of radio fare from that offered by the Red Network. In the course of its investigation of network broadcasting, begun in 1938, the FCC concluded that the dual network systems of NBC had an adverse effect upon competition, and competition would be stimulated if NBC divested itself of 1 of its 2 networks.

In 1943, following this decision, ABC was formed as a separate and independent company under new ownership. So, in effect, ABC was created by the Government for the purpose of supplying additional competition in the broadcasting field.

In this connection, Mr. Chairman, I think it is ironical that the Government created an additional network to give competition by one set of actions, then approximately 10 years later, by another set of actions, handicapped the competition that it had created.

ABC is proud of the progress that it has made in becoming an important third force in the television industry. Our television network gross time billings have increased from $1,392,000 in 1949 to $51,369,000 in 1955, and our billings for this year will be substantially above 1955. Our owned stations occupy important positions in their local communities.

The ABC Television Network has made available outstanding programing to the public over the past few years. In the field of entertainment we are now presenting such outstanding programs as Walt Disney's Disneyland, Walt Disney's Mickey Mouse Club, The Lawrence Welk Show, Warner Brothers Presents, The Voice of Firestone, The DuPont Theatre, The Danny Thomas Show, Ozzie and Harriet, Rin Tin Tin, Crossroads, Wyatt Earp, and The Amateur Hour, to mention a cross-section of our top programs.

In the field of news and public affairs, we have developed an excellent organization headed by John Daly, which produces daily news programs as well as numerous public information programs such as Outside U. S. A., Tomorrow's Careers, Junior Press Conference, and which has continuously made available to our stations coverage of important spot news, such as the recent illness of President Eisenhower.

Mr. Chairman, I can't think of any recent example that is more graphic and more illustrative of the national public service that the networks give—both in radio and television—than in the accuracy and immediacy of the news given concerning the President's illness. From the very hour that it was announced, at 9 o'clock in the morning, over the entire weekend, only through radio and television were up-to-date reports brought to the public. And I think we have an example in this, unfortunate as the illness might be.

Mr. Cox. And it is your position that networking in much its present form would have to be preserved in order that the line facilities which make that possible be preserved for such occasions?

Mr. Kintner. I think there are two points: The one you made, the necessity of the lines; and the second, the type of news organizations that all three networks have lose a tremendous amount of money, and it would seem to me unreasonable business judgment and almost silly for anyone to go into this type of news business as a profitmaking operation. I doubt if any network has ever made any money in news.

In the field of religion we are presenting Bishop Sheen, Dean Pike, and other similar-type programs.

Mr. Cox. In that connection, I asked Dr. Stanton and Mr. Sarnoff regarding the testimony heard on Monday from Reverend Parker. He commented on what he regarded as the lack of adequate time on all of the networks and commented specifically, with respect to ABC, upon the practice of selling time in connection with religious broadcasts. And I think the committee would like to have your comments, either now or filed in the form of a statement at a later date.

Mr. Kintner. I would like to make a comment because of the press reports. I have not read the doctor's testimony, not because of his criticism of ABC.

Religious presentations on our two networks fall into two classifications: One, time that is given free by ABC to Protestant, Catholic, and Jewish faiths; and the second is the sale of religious time to certain churches.

Turning to the ABC Television Network, for the last year we have had Dean Pike on Sunday afternoon for a half-hour, with Dean Pike inviting Protestant, Catholic, and Jewish leaders on his program.

For the fall, we are negotiating with the Jewish Theological Seminary for a half-hour program concerning the Jewish faith. As you know, we have the contract and support of the Society for the Propagation of the Faith, which is the Catholic organization which Bishop Sheen is on, and of course we broadcast Bishop Sheen.

It is ABC's policy to deal basically with 3 organizations: (1) The National Council of Churches; (2) the Catholic group; and (3) a group of Jewish organizations in New York, in consultation on our religious programing. It is our policy on both networks to give time to all three of the major faiths.

Mr. Cox. Now, Dr. Parker was also concerned with the scheduling of this in the daily schedule—with the desire that apparently religious groups have in common with advertisers to get on in the best viewing time that they can get. And he was of the opinion both that the times made available were not such as to be really effective, and that in some degree—although I think this was perhaps directed to other programs—that the format, being more or less in the nature of a miniature church service, was not as effective as certain religious organizations had developed.

Now, I realize, of course, the problem of finding time in prime hours. But I take it that the policy of ABC, as in the case of the other networks, is to give as much time as is possible to these; but that in very few cases is that done in the evening viewing hours, with the exception of Bishop Sheen's program.

Mr. Kintner. Yes. I think you have to start with the exception. There is a certain type of presentation, such as Bishop Sheen, which does attract tremendous audiences and does have a place in the balanced program structure in prime evening hours, and as you know, Bishop Sheen has been broadcast by ABC during the last season at 8 p. m. on Thursdays. There is a much smaller group, as far as audience is concerned, who are generally interested in religious programs, and we believe that Sunday is an appropriate time.

Dean Pike has been broadcast at 1:30 for half the year, and at 4:30 for the remainder of the year, and it would be our plan in giving free time, basically, to use the Sunday afternoon periods.

Mr. Cox. Now, I assume that the bulk of the religious time, and perhaps of the public service time in general that is provided by television stations, is provided by the individual affiliates on a local basis, and that the network, rather than trying to provide a full measure of this, is simply trying to supplement what the local stations can do in these fields?

Mr. KINTNER. That is correct, Mr. Cox.

The CHAIRMAN. How do you handle the so-called smaller groups like Christian Science, or groups of that type that may not fall into those general categories?

Mr. KINTNER. In the case of the Protestant organizations that are not members or associated with the National Council of Churches, we have a policy of making available, irregularly, time to them, not on a regular basis but in proportion to the membership.

The CHAIRMAN. In other words, if you have a program such as Dean Pike—he could put on any of these groups?

Mr. KINTNER. That is right.

The CHAIRMAN. In proportion to their requests?

Mr. KINTNER. And one of our purposes, Mr. Chairman, in establishing the format—which is an interview format—of Dean Pike was so that we could have Protestant, Catholic, and Jewish leaders on that program.

In the field of sports we are presenting major boxing on a weekly basis, and other sporting activities on a seasonal basis.

For the 1956–57 season, ABC has developed 11 new programs which we are hopeful will be in our weekly 1956–57 schedule.

The CHAIRMAN. Of course in the sports field—I do not think in those cases you would consider those public service? They are all sponsored.

Mr. KINTNER. The boxing is sponsored.

The CHAIRMAN. I have never seen a sports program that was not sponsored that I know of.

Mr. KINTNER. Yes. There is various racing that is not sponsored and there have been basketball games, and so forth. And I must confess an error in judgment. We had an unfortunate bid on the football games 2 years ago—while we had it sponsored, we just lost our shirt in the process of it. But I don't think the question whether it is sponsored or not has anything to do with whether it is serving the public.

The CHAIRMAN. No; I think the question is, you try and sprinkle within the overall programing a great amount of sports, which a lot of listeners like to look at.

Mr. KINTNER. We try for a balanced programing that will attract a cross-section of the population.

The CHAIRMAN. Yes, and your contention here is that ABC sprinkles the sports programs in the overall programing sufficient to satisfy the needs of the sports fan.

Mr. KINTNER. That is correct.

The CHAIRMAN. You would not satisfy me on it, because I would want more of it. [Laughter.]

Mr. KINTNER. We are going to have the all-star game in August, so——

The CHAIRMAN. But I sometimes think maybe we might end up, if we can get free competitive television and get the spread you are talking about, maybe with a sports network before we are done.

Mr. KINTNER. I believe that if you have more than 3 stations in the market, and we will say, for example, there are only 3 networks still operating, the fourth station, the so-called independent station, as in radio, almost inevitably turns to local sports and gives a very important contribution to the community.

The CHAIRMAN. I wonder if you would agree with me that in the sports field that is very important, because we are seeing a decline of local sports. For instance, the minor leagues are just about gone because of the fact that they do not have the outlets. The development of sports at the local level.

Mr. KINTNER. I think it is very important.

The CHAIRMAN. I think it is very important.

Mr. KINTNER. Very important. In Detroit, as you probably know, hockey is the most important game, and it is to my mind very important that the local Detroit stations have worked out, together, means by which the hockey games have been carried over the years.

The CHAIRMAN. Because if you had these additional numbers of stations, I think, in most of the local communities throughout the United States—I do not think there would be much trouble to find a local sponsor for a local sporting event.

Mr. KINTNER. I agree with you.

The CHAIRMAN. And that gives the local sponsor, the man I have been talking about so long—it gives him a chance for an outlet for his product, as against a national product.

Mr. KINTNER. I agree. We would be interested in that man who is going to give us, free, South Pacific, if you would like to——

The CHAIRMAN. Well, I do not know about him. I think I ought to make it clearer—practically, this probably would not work at all, but I do think that if this is a public license, that anyone should have the same opportunity.

Now, I do not know that it is practical for anybody to take advantage of it. But it should be there, and apparently under the way this thing is worked it is not there.

Mr. KINTNER. Well, I think basically it is there——

The CHAIRMAN. Basically?

Mr. KINTNER. To the ones who want to use the medium.

The CHAIRMAN. It is like all of our rights, sometimes they are practically not used, but we want to be sure that they are there.

Mr. KINTNER. I think they are there.

We are also developing a group of special programs, including 2 Metropolitan Opera productions, 6 Theatre Guild programs, 2 special ballet performances, and 3 timely and significant documentaries directed by Mr. Daly, dealing with the difficult problems of alcoholism, divorce, and juvenile delinquency.

The Theatre Guild, as you know, Mr. Chairman, is probably the outstanding producer of plays in America. While we are firm believers in film as a method of bringing improved production and top talent to television, we plan to increase our live programing, including the broadcasting of Omnibus, in prime nighttime hours. Over the last year we have increased our programing so that we are supplying service to affiliates from 7 p. m. until 10:30 p. m. 7 nights a week, and afternoon service from 3 p. m. to 6 p. m. It is our planning to expand further our daytime programing during the 1956–57 season.

The CHAIRMAN. In addition to that, I think the record should show that all of the stations and the networks do a lot of public service programing for the military.

Mr. KINTNER. No question about it.

The CHAIRMAN. And for the—really for the Government. The sale of bonds. I notice that now that we have started our new Reserve program for the 6 months' period, very few people in the country understand—or the youngster that is going in—just what it is all about. And I notice that, freely, the networks have thrown in a little 5-minute documentary telling the families of the country, and the boys who may be taken in for that Reserve period, what to do about it. So you do a lot of that.

This testimony—I think the record ought to show that in testimony before me the other day on the Veterans' Administration appropriation bill, we had an argument about whether they should have 15, or 20, so-called public relations men, and we discovered that the work that—that they are able to get with those extra 5, almost $22 million worth of free time and space to advertise and tell the veterans what the veterans' program is and what their rights are under the varying bills. So there is that factor.

Mr. KINTNER. Yes.

The CHAIRMAN. All networks——

Mr. KINTNER. All networks do that. It is not confined to one. For example, for the last year, for the full season we gave a half-hour a week to the Army and the War Department in order to increase recruiting, and I am sure the other networks are just as active in this field.

ABC has the capital; we hope we have the know-how; we know we have the support of the public, of our primary affiliates, of large and small advertisers and of advertising agencies, so that over the next 2 years we feel that we can achieve competitive equality with NBC and CBS, provided that Government action is taken to end the scarcity of television stations.

We are the first to admit that we are still not able to compete with NBC and CBS on equal terms. The reason is the underlying cause for these hearings and of all the complaints you have heard. It is that there are too many important markets in which there are only 1 or 2 competitive stations. NBC and CBS, the older networks, have obtained the basic affiliations in these scarcity markets, with the result that our programs are either shut out entirely or carried at times when many people are not available. The public is the loser. The situation was summed up by the Commission in its 1953 decision approving the ABC-United Paramount Theatres merger, as follows, and I am quoting from the Commission opinion:

> NBC and CBS were in the network-television business before ABC. Because of the extent of their financial resources, they have been able, particularly in the early days of television when large losses were incurred, to give their affiliated stations a better program structure than that supplied by ABC. Furthermore, many of the television licensees are also the owners of NBC and CBS

radio-affiliated stations, and naturally have been inclined to favor NBC and CBS in television station affiliations and clearances. As in radio, NBC and CBS have affiliates with the most important station outlets. Furthermore, in most of the 1-or-2 station markets, the stations have a basic television affiliation with either NBC and CBS, and clear considerably more time for programs of these networks than they do for ABC and Dumont programs. The inability to obtain station clearances poses a very serious competitive problem for ABC, because NBC and CBS try to, and do, attract sponsors of ABC programs to their networks on the basis that they can provide a much larger number of station clearances (8RR 598).

Mr. Cox. The figures that I suggested while Dr. Stanton and Mr. Sarnoff were telling of advantages enjoyed by CBS and NBC in these 2-station markets—on the order of 30 to 1 and 60 to 1 over ABC—would be a very striking illustration of the point that the Commission was making in this connection?

Mr. Kintner. I think that is correct.

Although this statement was made by the Commission in February 1953, it is still true today. In fact, with the greatly increased amount of programing now being offered by all three networks, our clearance problem is an even greater handicap to further growth than it was in 1953. Our competitive disadvantage is shown by a comparison of our clearances with those of CBS and NBC.

Before I give you these clearances, Mr. Chairman, just imagine yourself as a salesman contacting the top companies of the country selling advertising on a national basis and see, if you were the buyer, which of the networks you take. It gives a small idea of the kind of selling burden that is on ABC.

For example, in the peak-viewing period, 7:30 to 10:30 p. m., during the week of December 11 to 17, 1955, ABC's average program station lineup consisted of 84 stations, 49 (58.4 percent) of which carried the program at its "live" time. The remaining 35 carried the program on a delayed basis, at less desirable times.

The Chairman. Can I ask this question for information on this competitive feature? The rate cards—are they the same with all three networks, based upon the number of outlets?

Mr. Kintner. No, they are not.

The Chairman. Is yours lower?

Mr. Kintner. Ours is approximately 10 percent lower than NBC and Columbia's.

The Chairman. And CBS?

Mr. Kintner. They are approximately the same as NBC—perhaps slightly more expensive than NBC.

The Chairman. Depending, of course—naturally it would vary on the number of outlets and variety type of outlet, I suppose.

Mr. Kintner. That is correct.

I am taking the same cities.

For example, in the peak-viewing period, 7:30 to 10:30 p. m., during the week of December 11–17, 1955, ABC's average program station lineup consisted of 84 stations, 49 (58.4 percent) of which carried the program at its "live" time. The remaining 35 carried the program on a delayed basis, at less desirable times. That means, Mr. Chairman, for example, that in those 35—just to take a theoretical case—instead of carrying a program at 8 o'clock on Thursday, the Boston station would carry at 10:30 or 11:00 or 11:30 at night.

As compared with these figures, CBS's average program was carried by 121 stations, 106 (87.1 percent) of which carried the program "live." NBC, with 104 stations for each average program, had 94 (90.1 percent) stations on a "live" basis.

This points up the basic problem of ABC in attracting large advertisers, who don't buy from friendship; they buy for economic reasons and must have results. And it seems to me that these clearances illustrate, as well as any figures you could obtain, the difficult competitive job ABC has.

The CHAIRMAN. Well, may I ask this question: The cost to ABC to bring a given program to X number of stations would be the same as the cost to NBC or CBS, would it not?

Mr. KINTNER. No, it would not.

The CHAIRMAN. Why would it not?

Mr. KINTNER. Because of the large number of delays, which means that we have to send prints and kinescopes, so that it is much more expensive for ABC to deliver the same number of stations.

The CHAIRMAN. That is the point I was making. But say a "live" broadcast.

Mr. KINTNER. In the live time we all pay the same telephone charges.

The CHAIRMAN. You pay the same charge, but your rate card is 10 percent less?

Mr. KINTNER. That is right.

The CHAIRMAN. But your cost to bring that program to X number of stations would be the same as NBC or CBS costs?

Mr. KINTNER. As long as it was——

The CHAIRMAN. Live.

Mr. KINTNER. Live. When it was delayed, it would cost us considerably more.

Even more revealing is the comparison of clearances for the program United States Steel Hour which we lost to CBS. The United States Steel Hour appeared on ABC for the last time on June 21, 1955. It had been with us for 2 years. On that date, 104 stations were ordered, of which 77 cleared the program live, producing 68.2 percent coverage of United States television homes. On July 6, 1955, the program appeared on CBS for the first time. For that date, 110 stations carried the program live, resulting in 91.2 percent coverage of television homes.

This is a classic example, because the clearance we show for ABC on our last broadcast is a result of 2 years of intensive effort of getting the program into 1- and 2-station markets—the program is one of the outstanding programs. It took us years to develop a 68.2 percent coverage, and in 1 week CBS, by the nature of its entrance into the scarcity markets, came up with a 91.2 percent live coverage.

Mr. COX. And that ability to get clearance was the selling point, presumably, on which the sponsor was persuaded to make a change.

Mr. KINTNER. I don't have any doubt of that in my own mind. It is always difficult to analyze the motives.

Another telling example is the difficulty that we are now experiencing in clearing time in 1- and 2-station markets for ABC coverage of the forthcoming national political conventions and elections. Basically, we believe that our coverage——

The CHAIRMAN. Just for information, are the networks going to cover those conventions jointly, or each one separately?

Mr. KINTNER. Basically, they cover them separately, with a pool of broadcasts on the actual proceedings from the convention floor.

Mr. COX. Your problem there, of course, is compounded because that is something that cannot be handled on a delayed basis.

Mr. KINTNER. That is correct. Basically what has happened is what we expected to happen: The 1- and 2-station markets, even though we obtained our order 3 months before NBC, are basically the NBC stations and are carrying the NBC coverage—so that John Daly and his associates will be seen in approximately 77.7 percent of all television homes, rather than the 95 percent or 97 percent which would result if the scarcity factor wasn't there.

Mr. COX. This is a situation, then, where you ordered the time on the NBC station because you obtained a sponsor earlier?

Mr. KINTNER. That is correct.

Mr. COX. Before NBC had placed an order?

Mr. KINTNER. That is correct.

Mr. COX. And in a situation where, under the regulations of the Commission, if your order had been accepted it could not have been preempted under the option of NBC?

Mr. KINTNER. That is correct. That is why we did not, and could not, order the Columbia stations who had the order first.

The CHAIRMAN. Let us take about 5 minutes here.

(A brief recess was taken.)

After the conventions are over and the nominees are selected, do you have any plans as to equal time for both major parties?

Mr. KINTNER. We have met with the chairman of the Republican National Committee and the chairman of the Democratic National Committee.

The CHAIRMAN. Were you in the same room with them? [Laughter.]

Mr. KINTNER. Separately.

The CHAIRMAN. I was going to say you would not get much done.

Mr. KINTNER. And we have told them that the ABC television and radio networks ——

The CHAIRMAN. Charley, we are discussing Republicans and Democrats.

Senator POTTER. It is a good thing I got here to protect myself. [Laughter.]

Mr. KINTNER. We told Mr. Hall and Mr. Butler that we wanted to give equal opportunity on both of our networks to each party. We will begin to sell time for political broadcasting the day after the conventions close and the nominees are selected.

The CHAIRMAN. Well, then, I am to understand by this that the common complaint is that the party that would have the most money to spend could therefore buy the most time?

Senator POTTER. That is not our party. [Laughter.]

Mr. KINTNER. That is correct, Senator. The party that has the largest amount of money for television can obviously buy the most time.

The CHAIRMAN. Well, wouldn't you limit that—the opportunity to buy time?

Mr. KINTNER. No, what we will do is be sure, for the amount of money that each party may have, that they will have equal opportunities to get on our network. If X party has $5 million and Y party has $2½ million ——

The CHAIRMAN. You are a little bit off in your figures, but the five is correct. [Laughter.]

Mr. KINTNER. We don't believe that that is a problem basic to our operation of the broadcasting business, and it is an economic problem in the political area that we can't solve.

The CHAIRMAN. This is off the record.

(Discussion off the record.)

The CHAIRMAN. The portion of the so-called clean elections bill which was introduced by Knowland and Johnson—the portion dealing with radio and television—has been sent to this committee, and we will have to make some decision on it, I think, before we get out of here.

Then we also have about 5 or 6 bills in here. I think you are the author of one of them, Senator Potter, for this. And I think the networks can contribute a great deal with suggestions, because they can tell you the practical obstacles involved that we probably don't see.

But surely, the cost of television in the campaigning today has become so great that you could slip into a situation whereby the candidate—nationally or locally, statewide—that had the most money would have the greatest opportunity to use the best medium of campaigning that I know. That wasn't true as much in the past as it is now. And if we don't do it, and have some solution to this thing or some ground rules, after this campaign is over you are going to have a lot of people that are going to be mad. And they are going to descend upon the next Congress and you are going to have some drastic legislation.

Mr. KINTNER. We would be happy to testify on any legislation.

The CHAIRMAN. Now, this is off the record.

(Discussion off the record.)

Senator POTTER. What is ABC's policy considering a presidential candidate for the Vegetarian Party or the Prohibition Party or the Social Workers Party?

The CHAIRMAN. We have, for instance, a United States Senator who is the candidate of the Prohibition Party. Senator Langer has been nominated. He hasn't made his acceptance speech yet, but they nominated him. [Laughter.]

Mr. KINTNER. The FCC requires us to give time, if we give to the two major parties, to minor parties if they meet certain qualifications connected with the amount of votes they obtained.

The CHAIRMAN. Yes. Wouldn't you say you would have to take, there, the pattern of most States to get on the ballot? There is usually a requirement that the party, to get on the ballot, must have polled X percentage of votes at the last general election. Otherwise, they would be classified as what they call a splinter party.

Mr. KINTNER. This is covered by the FCC regulations, actually.

Mr. COX. It is a matter of statute; isn't it section 315?

Mr. KINTNER. Yes; you are correct.

Mr. Cox. It requires that, regardless of the identification of the party, if the 2 candidates are running for the same office, and time is given to 1 candidate, it must be given on the same basis to the other?

Mr. Kintner. There are other regulations regarding who is a legally qualified candidate. It is necessary to then determine the eligibility of such person as a prospective candidate on the basis of local or State laws as to whether the particular party is a recognized party which may be entitled to a place on the ballot.

The Chairman. Because, if we do not have ground rules in this thing, you are going to have—everybody is going to be mad at the networks or the stations, or something. They are going to attribute—if the fellow is defeated, he is going to attribute his defeat to the fact that they wouldn't let him on television or the other fellow had more money: "He could get on and I couldn't, in the heat of the campaign."

I will bet you that the chairman of this committee will get a phone call, 3 or 4 every day: "Something is wrong. We can't get on. They are favoring this fellow, favoring that fellow."

Mr. Kintner. It is a serious problem; there is no question about it.

The Chairman. And I do hope the networks and yourselves, because you know the practical aspects that we don't, are setting themselves to it, because, otherwise, I think we are going to get in a lot of trouble—which usually results in a more drastic piece of legislation than should be on the books.

Senator Potter. Television has a terrific impact on the voting public. As a matter of fact, it is changing the whole character of politics today. And it is very important that we do have some ground rules.

The Chairman. We even have a bill in the Senate that has gotten down to the fact that you shouldn't use any makeup on television, or get a haircut. [Laughter.]

Mr. Kintner. We have a school where we make available through the country free instruction to the candidates.

The Chairman. On how to look good? There will be two members of the Senate who will want to see you. [Laughter.]

Senator Potter. Better double your staff when Magnuson and I appear. [Laughter.]

The Chairman. And another thing: I think you have to discuss this a little with your affiliates because there may be a policy adopted, and you find they have got another policy for their local problems, and sometimes they may collide. And then the tendency—the fellow who can't make good on his commitment, he is going to blame the other fellow. He is going to place the blame—a local affiliate may say the reason you couldn't get on, maybe the networks put Joe Doakes on nationally, and vice versa. I think you are going to have nothing but trouble and complaints unless we get some ground rules.

And the law is completely inadequate on it, the FCC. The law only says that if I get some free time and call you some names, you have a right to get equal time and call me a name. That is about all it amounts to.

Mr. Kintner. That is the basic principle; yes.

The Chairman. Yes. But this poses an economic problem for every candidate running.

Mr. Kintner. An economic problem, Senator, if I may add, for the networks and the stations.

The CHAIRMAN. Sure, I understand that. That is the practical side. Excuse me. Go ahead.

Mr. KINTNER. Advertisers place their business on the basis of a careful judgment as to how they can economically and effectively reach the potential customers for their products. It is critical for the advertiser to get his message into the markets of importance to him. And when ABC cannot clear time in important markets such as Boston, Pittsburgh, St. Louis, Grand Rapids, New Orleans, Birmingham, Providence, Dayton, Syracuse, Louisville, and many others, we are in the position of fighting with at least one hand tied behind us. We cannot completely satisfy customers, and we cannot in the long run hold programs unless we can get into these markets effectively. And we cannot do this if there are not enough competitive outlets.

SUPPORT FOR ABC

During the past few years, ABC has received increasing support from advertisers and advertising agencies. In the last year, I have talked to the presidents and high officials of more than 50 of the major companies using television for advertising purposes. They have made it clear to me that they want and need a third fully competitive network—and that they do not want to be limited to a choice of only two networks.

I think this is a very important point, that the basic television money on the national basis—to my mind without exception—is strongly in support of having the Government permit ABC to be equal competitively. And the presidents of the companies that advertise extensively feel very strongly that they should have a freedom of choice, with at least 3—and of course they would desire 4, 5, or 6 networks if it were practical.

The CHAIRMAN. That would be only natural; they would want even a fourth, if possible.

Mr. KINTNER. That is correct.

The CHAIRMAN. Because the more competition, the more they figure the price might get a little bit better for them.

Senator POTTER. They are in a better bargaining position.

Mr. KINTNER. That is right.

If we were able to obtain access to more of the important markets, it would be of benefit, basically, to the communities directly involved. But the resulting revenues would also permit us to extend our services into smaller markets, in this way bringing to the smaller communities program fare identical to that enjoyed in the larger cities. It would also enable us to expand and improve programing in larger markets.

I briefly gave you the example of $13 million in revenue which, if we could have obtained it in 1955, would have made a great difference in the extent of the program structure and the character of programs that we could have put on ABC.

Perhaps it will be argued that as representative of the youngest network I am taking a selfish position and one which will benefit ABC most. The basic question is not of benefit to any 1 network, or benefit to any 1 station applicant. It is the simple question of how the television channels can be used best to bring the greatest variety of programing to the largest number of people.

I do not think it necessary at this point for me to describe in detail the intermixture of UHF and VHF television outlets provided for under the rules now in force. You know this. You have heard the story of UHF stations and their inability to compete with VHF stations in the same markets. ABC's contention that UHF cannot prosper against multiple VHF competition has been proven, unfortunately, time and time again. Our recent testimony in these proceedings—the statement on March 26, 1955, by Mr. Ernest Lee Jahncke, Jr., vice president of ABC—spelled the facts out in detail.

Neither do I think it would be fruitful at this point to argue whether the judgment of the Commission, when it adopted the present table of allocations in 1952, was sound in the light of things as they then appeared. Whatever the picture may have seemed to be at that time, we all know that the frequency allocations provided for in the rules now in force have not served their basic purpose. They have in fact prevented the development of the nationwide truly competitive television system they were designed to accomplish. I think by now that this has been recognized by this committee, by the Commission, and by everyone else having even a casual familiarity with the broadcasting field.

I recognize the difficulties that confront this committee and the Commission in their efforts to meet the problem. But, in view of the tremendously important matters at stake, I cannot underscore too strongly the urgency of the situation and the long time that has elapsed since all of us first became aware of the problem. Hard or easy, the decisions must be made. Unfortunately, solving the aggravated condition that exists is the price that must be paid for the delay thus far.

Mr. Cox. Further delay is not going to improve the situation or make it any easier.

Mr. Kintner. It would make it worse.

The Chairman. I think this is a good point to give the stenographer a rest.

(Recess taken.)

The Chairman. The committee will come to order.

Mr. Kintner. I don't know, Senator Potter, whether I should read the next sentence. [Laughter.]

Senator Potter. Read it loud and strong.

Mr. Kintner. All right. What has been done since the Potter hearings?

Ever since last November, when the Commission instituted its television reallocation proceeding, the problem has been worsened, confused, and unfortunately, as well as unnecessarily, further complicated. VHF grants have been made, and the stations authorized have commenced or will soon commence operation, in areas that were well suited for UHF television. Of the VHF grants made in comparative hearing cases in the last 12 months, at least one-third of them—in markets such as Madison, Evansville, and Fresno—introduced VHF stations in areas in which the UHF possibilities could have been effectively protected.

While VHF stations have been authorized and are commencing operation in areas that are logical anchor points for effective UHF service, there has been no final action on pending VHF applications for many communities in which VHF stations should be authorized and in which they are sorely needed. For example, there still has not even been oral argument before the Federal Communications Commission on pending applications for VHF facilities in markets such as Boston, St. Louis, and Pittsburgh.

Senator POTTER. And Cheboygan. [Laughter.]

Mr. KINTNER. And there are a number of equally important cases awaiting final decision after oral argument. As I said, some of these applications have been pending for 8 years.

With its back-breaking workload and limited personnel, the Commission can properly respond that there are only so many hours in the day and that comparative television hearings are complicated proceedings that take a great deal of time to decide. But certainly the emphasis should be on those cases where the need for service is greatest and where the grants will not further complicate the reallocations that must ultimately be made.

ABC has submitted specific allocation revision proposals to the FCC and to this Senate committee. Our proposals included deintermixture and drop-ins in a number of important markets. This would provide a sensible starting point in meeting the immediately pressing allocation problems.

Our proposal would result in three or more competitive outlets in the top markets. It therefore would open the door to far more effective network and local competition. And by setting up a number of strong important UHF markets it would be a highly important step toward retaining and strengthening the use and effectiveness of UHF channels in our television structure.

Under a sensible and realistic television allocations structure, most of the complaints that you have heard would disappear, just as the advent of a sufficient number of radio stations resulted in the virtual disappearance of similar complaints in the radio field.

The CHAIRMAN. Do you have anything to add right there on the problem of all-channel sets that we have discussed so much?

Mr. KINTNER. We believe that the manufacturers should be manufacturing all-channel sets and, in order to aid them in this, that the excise tax should be removed. However, we do not think it should be limited merely to color sets. We believe it should also apply to black and white, which is just as important in our judgment.

The CHAIRMAN. But if that could not be achieved, would you think that because color is—color is a new field, it is coming in—to relieve the tax on color would go at least part of the way, on color sets.

Mr. KINTNER. It would go some of the way. It is a question of your basic judgement as to when you think there will be national color television in America with sufficient sets.

The CHAIRMAN. The practical problem we run into is the Treasury, which, of course, always violently opposses any suggestions that taxes now coming in be eliminated. But in color we are dealing with a tax that is not there—it doesn't produce much revenue, to amount to anything.

We have the practical problem of that opposition. I don't know whether we could do anything about it. We have the suggestion in and we are hopeful we can. Maybe we won't succeed in taking the tax off, because in that case we have the second practical legislative matter, that once we start to touch any one given excise tax that is now there, we open up Pandora's box. And at this time of the year, and this year in particular, I don't think Congress is in the mood to do that.

Senator POTTER. When do you think color will come in on a nationwide basis?

Mr. KINTNER. It is very difficult to judge. We are not in the manufacturing business. However, we don't think there is a possibility of a genuine national color operation, involving 4 or 5 million sets, at least until the fall of 1957.

The CHAIRMAN. But you do agree it might be helpful, as we phase into color over a period of time, that this might be a part of the solution.

Mr. KINTNER. I agree with that. The only question is how much.

Senator POTTER. Of course the investment the individual has to make in a color set is quite substantial at the present time; it probably will come down, I hope it will. But if they start making color sets with just VHF channels we are going to have a real problem on our hands to get the development that is needed in UHF sets.

Mr. KINTNER. I agree with that.

The CHAIRMAN. And then do you agree with this: That even if we could squeeze out of the spectrum some more VHF channels, which has been suggested as a possibility, we still have to change the sets?

Mr. KINTNER. Oh, yes.

The CHAIRMAN. Yes.

Mr. KINTNER. You need the UHF to have a national television structure in our judgment.

The testimony of those who have most vigorously argued against option time and other network affiliate arrangements makes this clear. The difficulties they allege—like the difficulties of ABC—stem directly from a scarcity of outlets. For example, the burden of the argument made to you by Mr. Richard A. Moore and certain other witnesses is that independent program sources have difficulty developing because of a limitation on the possible outlets for their product. This difficulty is ascribed to network option-time arrangements. If it exists at all, it might better be ascribed to the scarcity of available outlets in the major markets—many of which could support not only 3 but 4 or more stations—network and nonnetwork—if the stations were comparable in terms of channel assignment and coverage.

Mr. COX. If ABC has trouble getting clearance in key markets, doesn't it seem likely that nonnetwork sources would have even greater difficulty—and that their difficulty would extend beyond the 2-station market even into the 3-station market?

Mr. KINTNER. Well, as long as there is a scarcity factor the independent packager, and I presume you are referring to the syndicator, will have some trouble. I don't think he will have more trouble than ABC because the station gets 100 percent of the dollar, when he comes with his sale, for the time.

Mr. COX. So he has certain economic advantages in what he can offer the licensee?

Mr. KINTNER. That is correct.

NETWORK OPERATIONS AND PRACTICES

We doubt if even our most severe critics would argue against network operations per se. We believe these critics and this committee will agree that it has been the many millions of dollars of plant, program, and connecting line investment of the networks that have played the major part in developing television as a national medium, simultaneously available to almost all parts of the country. To our minds, there is equally no doubt of the important role that the networks play in the national economy in enabling our national companies to advertise their products throughout the country in the most efficient and productive way. The networks have served the public by providing a great variety in types of programing. They have enhanced the national economy by enabling advertisers to sell in the efficient manner that is an important part of the American competitive system.

The basic obligation of a network, and of individual television stations, is, of course, to the public. In judging the network operation, this fact must be kept uppermost in mind. Secondary to the consideration of the obligation to the viewer is the careful weighing of the effect on the economy. If this nationwide communication service is hampered to such a degree that advertisers find it no longer economic to spend the $1 billion a year that is now supporting our free television system, the result would be to turn the clock backward at a time when increased production, automation, and atomic energy require every aid to the distribution system.

It seems to us that the advantage of network operations can be summarized very briefly:

1. Through network operation, most of the country is able to receive a variety of programing practically at the same time.

2. Through this simultaneous broadcast of expensive network programing to large segments of the population, the advertiser is able to reach the maximum number of people at a minimum cost.

Mr. Cox. What is the particular advantage, in terms of this simultaneity, where the program is on film?

Mr. Kintner. The advantage is to the advertiser, basically, in the ability to advertise his product in the same way in each time zone.

Mr. Cox. Now, does that mean that it is advertised at the same clock hour in each time zone?

Mr. Kintner. No; because the pattern has developed of 1 hour later in the central, and another pattern, because of the great difference in time, to have the east and the west coast the same.

Mr. Cox. So that actually if a man—if an advertiser has a program beamed at an adult audience which is broadcast in New York at 8 o'clock, it would not even be desirable from his standpoint to have that broadcast in the Pacific time zone at 5 o'clock—so that your arrangements are that it is broadcast at 8 p. m., Pacific time, or at least at a later evening hour when the audiences interested in it will be available?

Mr. Kintner. That is correct.

The hot kine process has them at the Pacific coast time, which is equivalent of the New York time. If it is carried 8 o'clock New York time, it is carried in California 8 o'clock Pacific coast time.

Mr. Cox. Basically, if a program is on film, and if the advertiser can get a release in a desirable evening time with desirable adjacencies, it is not a commanding feature that it has to be at the same time in each market, is it?

Mr. KINTNER. Yes; it is of definite advertising advantage. Let's take the central time zone, take a 9 o'clock show in the East, that is 8 o'clock, central time. It is a very great advantage to General Motors, Ford, Chrysler, to mention all three, to advertise in a certain group of newspapers and publications throughout the central time zone that their program is on at 7 o'clock; it is also a big advantage to the dealers in simultaneous use of the displays and the merchandising.

Mr. Cox. Then this is an advantage that is lost to the advertiser who uses national spot for the placement of his program, because in the very nature of that operation he is going to have the program placed in different hours in different markets?

Mr. KINTNER. That is correct. It is also lost whenever a station delays a program and doesn't carry it in the ordered time period.

3. Through the mere line interconnection of stations by the network, regular news, important special events, and matters of public interest, can be brought to all parts of the country at once.

4. By the very nature of the responsibilities being met by the networks, and by the very nature of network competition, the public can only thus be assured of regular and extensive program experimentation designed to improve the type, the variety, and the amount of programing.

Basically, networks are national program services requiring millions of dollars of investment and overhead in order to supply programing on a national basis. In the last analysis, the judgment of a network's success does not lie with the FCC, with congressional committees, nor with the networks themselves. The judgment is completely determined by the public.

Mr. Cox. You stress here again that the networks are providing a national service. How can television serve the local or regional businessman, who is in competition with a national advertiser having a sponsored show, if he finds that in his local market, where he wishes to advertise, that all of the best time in a 1-, 2- or 3-station market is occupied with national programs?

Mr. KINTNER. He can use the local outlet. Let's take a soap company that we will say is just developing——

Senator POTTER. The Magnuson Soap Co. [Laughter.]

The CHAIRMAN. Yes.

Mr. KINTNER. As against Procter & Gamble, which is the largest. First of all, he has available to him all the station time, which is 6 to 7:30 and after 10:30 p. m. and are very popular times, in addition to the daytime.

No. 2, speaking for ABC, we have developed a type of participation program in our Famous Film Festival, on Sunday night, and our Afternoon Film Festival, from 3 to 5, 5 days a week, whereby we make available to the stations locally certain of those spots to sell locally, and the Magnuson Soap Co. could buy in the local community in the Afternoon Film Festival, just as P. & G. could buy in the same show nationally.

Mr. Cox. This gives them the advantage at least of a partial sponsorship, then, so that it permits perhaps a program identification that would be lacking if they were forced to rely simply on spot announcements and station breaks?

Mr. KINTNER. Correct.

In the third area, taking ABC as an example, we make Kukla, Fran, and Ollie available in a very substantial part of the country to local advertisers, to sponsor locally. We also do the same with the John Daly news program, which permits the local advertisers, through what we call a cooperative, to get the advantage of probably the most famous man in news business, Mr. Daly, at a local——

The CHAIRMAN. That is advertising?

Mr. KINTNER. Cost. I had to get that in, Senator.

The CHAIRMAN. But if there could be accomplished what you have suggested in the early part of your statement, those problems of the local advertiser would largely disappear, would they not?

Mr. KINTNER. They certainly would, and they have disappeared in two of the markets. Just take New York City, with seven television stations; there isn't any doubt that any local soap company can get prime time on VHF stations in New York any time they want to pick up the telephone.

The CHAIRMAN. And would you suggest specifically that if the suggestion of at least 3 or more in the first hundred markets and at least 3 in the second hundred markets could be carried out, that you could have local opportunity for advertisers?

Mr. KINTNER. I have no doubt, Senator.

Senator POTTER. Do you know whether your competitors, CBS and NBC, have an arrangement similar to that you have for local participation in advertising?

Mr. KINTNER. I can't speak with authority, but my guess would be that they do in certain of their programs.

The CHAIRMAN. But that is very little that they can get in there. You might have 1 or 2 local companies that might get in, but it doesn't give the spread of——

Mr. KINTNER. It doesn't give the final answer.

The CHAIRMAN. No; it doesn't give the spread of opportunity to all kind of local people that need it, that want to use television as a means of advertising. You might get 1 or 2 and that is all. They would have to be almost in the nature of a big company locally.

Mr. KINTNER. Yes; a substantial company.

The CHAIRMAN. A very big one, yes.

Mr. KINTNER. True.

The network business is never a static one. It is one subject to rise and fall depending upon the public reaction to programing. Let me give but a few examples. On ABC, through the introduction of Disneyland, we were able to obtain a program which has always been among the top 10 in public popularity.

In connection with Disneyland, this illustrates our point as to availability markets. This is to my mind one of the outstanding, if not the outstanding, show in all television. We have 180 stations carrying Disneyland—77 of them carry it in the ordered time, which is 7:30 to 8:30 New York time, and 103 carry it in delays varying from Saturday morning, Saturday afternoon, and 11 o'clock at night. Yet, notwithstanding these poor-time positions, it has always been the second, third, or fourth show on the air in terms of popularity.

Mr. Cox. So when Dr. Stanton used this as an example of ABC's ability to compete when it developed an outstanding show like Disneyland, the effectiveness of that competition is still limited by the fact that you can only get the clearances that he was talking about, on CBS stations, at times that you regard as less desirable?

Mr. KINTNER. That is correct; a very substantial obstacle to our show.

Mr. Cox. Do you have a problem not only of clearing a program like Disneyland into a market, but sometimes a problem of keeping it there once it is established and has won popular acceptance?

Mr. KINTNER. That is correct.

Mr. Cox. That is, there have been stations that have dropped it because of the desire of a network with which they have a basic affiliation that they clear that time for some other program?

Mr. KINTNER. That is correct.

Last year we introduced the Lawrence Welk hour-long program on Saturday night, and it achieved leadership in its time period. On CBS you are all familiar with the spectacular overnight success of the $64,000 question. I Love Lucy still ranks among the top 10 programs in the country, notwithstanding the severest competition. NBC has had great success with the new Perry Como program, taking on heavy competition in the form of Jackie Gleason, and through public approval it has readjusted the viewing habits of the public on Saturday night.

The ability to judge accurately the public taste, whether it be in entertainment, news, documentaries, or special programing, is the key to all network operation, and no one has a monopoly or inside track on what the public actually wants. All day, and through most of the night, millions and millions of homes, by the simple movement of a dial, shop among network and local programing to determine which shows they will watch.

Here again, Mr. Chairman, is the question of scarcity. These people can't shop in New Orleans or in Boston. Our programs aren't there for them to have the opportunity to see.

CRITICISM OF THE NETWORKS

If we analyze the criticisms of network operations, they fall into three categories. Charges that the networks—

1. Unduly and arbitrarily control programing.
2. Through option time dominate affiliated stations.
3. Through buying requirements restrict the operation of the medium.

CONTROL OF PROGRAMING

ABC's firm position is that no network nor company has sufficient creative ability to produce and supply directly more than a small percentage of the needed programing. We welcome today, and we will welcome in the future, programs on the ABC television network that are owned and controlled by advertisers, by independent program producers, and by talent agencies.

The secret of topflight programing, however, is the placing of one or two successful shows in an evening in order that an audience for other programs may be built around them. Therefore, we believe that each network should control certain key programs, in fixed time periods, in the interest of service to the public and to protect its program structure.

The CHAIRMAN. May I just ask there: You have—and I suppose this would apply to all the networks—when you review the program before you accept, do you have a board that does that, or is that one man, or how do you do that?

Mr. KINTNER. It is done collectively through the program department of the network, which is staffed by skilled creative people whose judgment is better than most on whether a program is good or bad. That is the No. 1 review.

The No. 2——

The CHAIRMAN. I don't mean good or bad——

Mr. KINTNER. Creatively, I am talking about.

The CHAIRMAN. Creatively, yes. I am talking about the pure censorship.

Mr. KINTNER. Well, then, No. 2, we also have a review by what is called our continuity acceptance department, which is a review for good taste as far as the general public and the home audience is concerned.

The CHAIRMAN. Is that with all networks together?

Mr. KINTNER. No.

The CHAIRMAN. Do you have a certain code?

Mr. KINTNER. We all belong to the NARTB code, all the stations of the three networks, at least their owned stations. But in addition each network has a code of its own which is in fact stricter than the general code applied throughout the country.

The CHAIRMAN. In other words, the basic code is general, then each network supplements that by their own interpretation of so-called good taste.

Mr. KINTNER. That is right. And we have a department, I would guess of 50 to 60 people, whose job is to do nothing but review.

The CHAIRMAN. Of course, it is hard to control an individual when he gets on the air. Something might happen that you would have no control over.

Mr. KINTNER. That is correct; if he ad libs, it is very difficult.

The CHAIRMAN. I don't like to be too critical, but have you reviewed wrestling?

Mr. KINTNER. We don't carry wrestling. [Laughter.]

We don't carry wrestling on the network.

The CHAIRMAN. I wondered what board that went through. [Laughter.]

Senator POTTER. You don't have an office in television like they do in the motion pictures, like Johnston's office.

Mr. KINTNER. We have the NARTB code, to which you subscribe. In a sense, it is like the Johnston office, in that it is a collective organization and has the power to take the seal away from the station. But we have no czar in the sense of Eric Johnston.

Mr. Cox. You haven't developed much use of the seal, have you; that is, it is not projected——

Mr. KINTNER. We project it every morning and every night. [Laughter.]

This is particularly true in the case of ABC where, due to station scarcity, it is an easier job for NBC and CBS to lure our programs away, than for us to attract their programs. Moreover, it is the public obligation of a network to be certain that programs brought to it by outside sources meet creative and good taste requirements.

There again, Mr. Chairman, on the program brought to us, we go through the same procedure as one which we own and control.

The inability of certain independent packagers to obtain sponsorship because of the lack of quality of their product is often wrongly attributed to network program policy.

If I may just digress for a second, I think the committee should look on arguments that product can't be sold, by taking into account whether the product is good or bad. There are, in Hollywood, literally sufficient pilots, probably, to fill the time of all the networks for a year, but that doesn't mean that they are good pilots and good shows. And many times packagers become outraged when you don't desire to buy their product, when basically the decision is made on your best creative judgment that the show is not of network standard.

Mr. Cox. Aren't there instances, however, of programs that have not been accepted for network broadcast, have been syndicated, have been broadcast by the affiliates of the networks, and have won popular acceptance that ranks with some of the network shows.

Mr. KINTNER. I don't know of any that—there probably are instances, but I specifically don't know of any that the networks have turned down.

Mr. Cox. In connection with the point that you make about your being certain that the programs brought in meet your standards, do you insist—as apparently NBC and CBS do—that in the final analysis, if there is a difference of opinion as to the program under discussion between the network and the advertiser—as to its desirability, whether it will do the job—the network's decision must be final on the matter?

Mr. KINTNER. Basically, the network's decision must be final because we have the public obligation of responsibility for what is on the air.

Mr. Cox. Wouldn't it be desirable to spread participation in decisions on broad policy, at least, in that field to more people than can possibly be brought into the picture in your network organization?

Mr. KINTNER. Not in my judgment. I believe it would be impractical and impossible. What you are saying in effect, if I understand you, Mr. Cox, is that we should bring a representative of Screen Gems, which is an independent packager, into ABC to make our final management decisions concerning product.

Mr. Cox. No, I am suggesting the possibility of some part being played in the process by your affiliates who, as the licensees for the stations which will ultimately carry the program, are the ones having the nondelegable duty to program their stations.

Mr. KINTNER. Well, the affiliates do play a part, and I think basically, in the comments that I have read and heard here, there may be an erroneous understanding of what an affiliate relationship is, or at least should be.

Basically, when you are talking about a network you are talking about a partnership between affiliated stations and the network itself.

In the proper running of a network and its most efficient operation—it can only be with a mutual trust of a partnership, because that basically is the relation between an affiliate and a network. We at ABC do go over all our program plans with representatives of our affiliates, in addition to regular meetings of all our affiliates. In clearing time we have a policy not only of sending them a description of the program, the producers, the story line—but in addition we have made it a practice, many times, of sending out actual first prints to show the station what type of show it is.

In addition, we have used our affiliates in a very major way to develop programing from their local community—such as, for example, Springfield's Ozark Jubliee, where really, basically, the affiliate is giving us the creative judgment, which we approve.

The CHAIRMAN. And I don't know whether you have it, but I know that at CBS they have an affiliates' informal policy committee that meets regularly and discusses matters.

Mr. KINTNER. That is right. We have the television advisory committee, and in addition we hold regular meetings of all our affiliates—which we held last March or April in Chicago, where, for one whole day, to all the primary affiliates of the ABC television network, we went over in detail the programing that we were proposing, telling them the producers, the people who we were planning, the proposed program structure on each night of the week, and obtained their comments, some of which were very good, some of which resulted in changing our 1956–57 plans.

The CHAIRMAN. And if you suggested or gave them a program that they put on that was in bad taste, they would have some influence—you would hear from them pretty fast; wouldn't you?

Mr. KINTNER. One of the difficulties I have in listening to the hearings is that everybody talks about the power of the networks and very few people talk about the power of the stations.

The CHAIRMAN. We are going to hear from them next week. We will see what they think about it.

Mr. KINTNER. I will guarantee you there is no one who has a greater responsibility, and greater authority, than an individual licensee.

Mr. COX. Basically, though, in terms of planning, or of policy decisions in programing, the role that is played by the individual station manager is essentially a negative one? That is, the initial decision as to what program will be offered on the network is made by the network after this consultation that you have described?

Mr. KINTNER. I wouldn't call it negative, if I may interrupt you, Mr. Cox. What I would call it is advisory, because it is positive as well as negative.

Mr. COX. The point I am making is that his final action on this part of your program is to decide whether or not to accept the order when you order time on his station, if the advertiser has requested it.

Mr. KINTNER. That is correct.

Mr. COX. Now, at that point all he can do—if he thinks that a better program can be offered in terms of the needs of the people of his community—is to reject your program and try to find something better from another source?

Mr. KINTNER. That is correct.

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Mr. Cox. He cannot, at that point, do anything to influence what will be on the network in that time period. He must either take it, or reject it and make other plans.

Mr. KINTNER. After the final decision is made, and the program is in the process of broadcast and the local station decides, as it has a right to, that it is not in the public interest to carry the program, or that other programs are more in the public interest, he has many avenues to go to: Local programing; second, he has film syndicators; third, he has live shows that are now sold on the syndicated basis.

So I don't think it is a problem from his point of view if he is unhappy with this particular show.

Mr. Cox. Woudn't it be a fair statement to say that the tastes and the needs of the public vary throughout the country; that is, in different regions, different programing may be required?

Mr. KINTNER. I am not—I am not so sure that that is true. I think across the country there are generally similar tastes. Now, there are certain exceptions; for example, country music is much more popular in the Southwest than it is in New York City. We have a show called the Polka Dance out of Chicago, which is very popular in Chicago and Detroit, and perhaps wouldn't be as popular without the foreign language and foreign descendant groups.

But basically, I think the taste of America is almost identical from Maine across to California.

Mr. Cox. Don't you find rather sharp differences in ratings of the same show in different parts of the country?

Mr. KINTNER. Yes, but that may be due to various factors. It may be due to the facility involved, not being equal to another facility; it may be due to the management of the station, not being an able one. It may be due to the refusal to promote and advertise the show commensurate to the need.

I would question very much—it would be difficult to prove whether there is a great difference in taste throughout the country. And I think in the case of Walt Disney, for example, you see a case of national approval, as you do in I Love Lucy, as you do on The $64,000 Question, and as you do in perhaps most of the top 30 programs on the air.

Mr. Cox. I take it, though, it would be fair to say that in your programing for the network you have sought the forms of program that would meet with this broad national approval, and that you have not been able, of course, in the nature of your operation to program for a special interest in any section of the country?

Mr. KINTNER. What we have done in that connection is, basically, to try to provide programs that will have the greatest popularity. We have also gone into fields where we knew we could not get the ratings of the Disney, and so forth—where there were smaller audiences and very intense; and an example of this is the Ozark Jubilee Show, where perhaps 90 percent of the country is interested in country music and 10 percent is not. It was our decision that, at least in this time period, as contrasted with Disney and Warners, that we would take a show of a more limited potential. The same is true, for example, in Medical Horizons, which is a medical show on ABC. We know that it could never achieve the popularity of a Disney, yet, we think it has a place in the balanced program structure of ABC. The same applies to religious, public service, and similar shows.

The CHAIRMAN. The networks are now comparatively free of the problem, are they not, of what we discussed in this committee some months ago—the so-called pitchman?

Mr. KINTNER. Yes.

The CHAIRMAN. That is mainly a local problem?

Mr. KINTNER. That is correct. I think actually almost completely on television stations through the country——

The CHAIRMAN. Yes; because your national advertiser would be a standard, well-thought-of product of some kind.

Mr. KINTNER. That is right. And I have no doubt that the networks, on their own stations, impose good taste obligations that are perhaps more rigid than the general standard of the industry.

The CHAIRMAN. Well, in that case in your own affiliated stations it would be hard for a station manager, if I come in and say "I am going to sell you—we have washing machines on sale for $59.50," on its face you wouldn't have the chance to run down whether that was a lead or a come-on?

Mr. KINTNER. Yes; we do, we do.

The CHAIRMAN. You try and do that?

Mr. KINTNER. That is what our continuity acceptance department does. Even before they go on the air we check the product.

The CHAIRMAN. With the better business bureaus, places like that?

Mr. KINTNER. That is right.

The CHAIRMAN. Because we did give the Federal Trade Commission a considerable amount of money—in view of the fact that this thing started and got a little bit out of hand, I think—to monitor quite a few of the stations. But I would think the networks as such would be comparatively free of that.

Mr. KINTNER. The networks as such would be free, and I would guess most of the major affiliates of the three networks would be.

The CHAIRMAN. It is more prevalent with local radio stations?

Mr. KINTNER. That is correct.

As I have said, it is a firm ABC policy that our network, in order to program the number of hours required for present and future needs, must draw on every creative source, whether it is from within our own company, or whether the program is produced by the advertisers, advertising agencies, or independent packagers.

There is one field where we do believe that the network should have exclusive control of talent and exclusive supervision. This is in the broad field of news, where we are certain that basic obligation for the presentation of balanced news programs with a variety of viewpoints should be the obligation of the network.

The CHAIRMAN. There, I wanted to ask one question which we have asked all the networks. It is your policy to keep the newscaster free from advertising any product; is it not?

Mr. KINTNER. From being influenced by the advertiser, is that it?

The CHAIRMAN. No; I meant to give the news and also to advertise the product.

Mr. KINTNER. Yes. It is our network policy not to do that.

The CHAIRMAN. That is the policy, I understand, of other networks as of now.

Mr. KINTNER. That is correct.

Senator POTTER. The ABC has excellent news service.

Mr. KINTNER. Thank you very much, sir.

The CHAIRMAN. He is just making a plea for Cheboygan, again. [Laughter.]

Senator POTTER. Do you have a policy concerning editorializing on news?

Mr. KINTNER. We believe the network should have the right to editorialize. However, we have not utilized it because we are not sure (*a*) of our capability at the present time to do it well; (*b*) we haven't solved, in editorializing, how we would present other viewpoints. I think we should have the right, and I think some day a mechanism will be developed whereby it can be done fairly.

We are considering in Chicago at the present time, on our local station, assuming an editorial position in connection with a local problem within the city of Chicago.

Senator POTTER. With the impact that television has on public thinking, do you not feel that that is a great concentration of power, particularly with the limited number of networks we have today, to enter into a field of editorializing; that you may be asking for the very thing that you do not want, Federal regulation of networks?

Mr. KINTNER. You put your finger on the very reason we are reluctant to do it: (*a*) We know the impact, and (*b*) we haven't evolved the mechanism whereby other viewpoints could be protected, and not merely our viewpoint expressed.

The CHAIRMAN. And (*c*), your advertisers?

Mr. KINTNER. We are not so concerned about that, Senator.

The CHAIRMAN. Well, you start to editorialize and they will make it their concern. You want to try and keep it as objective as possible because Republicans and Democrats buy their product.

Mr. KINTNER. Yes; but both Democrats and Republicans advertise in the newspapers.

The CHAIRMAN. I agree with you that you should have the right, the opportunity to do it; and you might be able to work something out, but it is a difficult problem.

Mr. KINTNER. Very, extremely.

The CHAIRMAN. As the Senator from Michigan points out.

Senator POTTER. Of course, you have a little different medium than the newspapers. With the newspapers, it has been an accepted practice, newspaper editorializing. In the first place, they are using their own newsprint that they buy; you are using a public medium, the airways. And I have—I will be frank with you, I do not think that you should editorialize. I think it is a tremendous power that is put in the hands of, at the present time, three networks.

You give me the opportunity to control the editorial policy of the three networks and I will control the thinking of the people of this country.

Mr. KINTNER. There is no question it is a difficult problem.

Here is an analysis of the production source of all programs broadcast by the ABC television network in 1955; and I think this shows without question, at least as far as ABC is concerned, there is no monopoly of control:

Source	*Percentage*
ABC	13.2
Television stations of the ABC network	10.2
Advertising agencies	9.4
Independent film producers	35.8
Independent packagers of live shows	31.4

Mr. KINTNER. If that isn't competition, I don't know what it is.

The CHAIRMAN. Is that timewise?

Mr. KINTNER. Percentage of our broadcasts.

The CHAIRMAN. Timewise?

Mr. KINTNER. That is correct.

These figures, and the figures submitted in these hearings by CBS and NBC, certainly belie the charge, rather recklessly made in our judgment, that networks exercise a monopolistic control over television presentations. Then too, much of the station programing is of local or nonnetwork origin. Our studies indicate that the average station devotes about 47 percent of its time to nonnetwork programing.

Mr. COX. How much would it do in the period 7:30 to 10:30 at night?

Mr. KINTNER. A smaller percentage than that.

This variation in program type and service is as it should be. It means that our medium is being properly used on a national basis to present important and general programing, and is being used on a local basis to fit the requirements of the local community.

NETWORK OPTION TIME

To our mind it is absolutely essential that any network have reasonable assurance that its programs can be broadcast in various parts of the country in prime time. Unless this assurance can be given to the advertisers, we cannot obtain the revenue necessary to finance our investment and overhead—in the case of ABC, for example, over $6 million a year in connecting lines—to finance the millions of dollars to which we are committed in developing entertainment, news, and public information programs.

Mr. COX. Isn't it true, though, that this assurance to advertisers is actually given, in final form, only after you have ordered the time on your stations and have obtained clearance from them?

Mr. KINTNER. Legally, it can only be given after the acceptance of the station. But as I say, this is a partnership and a working arrangement, and patterns develop which result in assurances to advertisers that are satisfactory to them.

Mr. COX. That is, they are assured, essentially, that your relations are such with your affiliates, that they prize their affiliation to such a degree, that they respect the quality of your programs to such an extent that, on an average, you will be able to get clearance in at least the minimum number of desired markets?

Mr. KINTNER. Basically, I think your statement is correct. I wouldn't quite put it the way you put it.

I would put first the character of the programing. The affiliates know it will be of a certain quality, and therefore it is generally reasonable to expect them to accept it.

No. 2, that it will be part of a program structure which they understand, as far as other programs in the evening, and will fit into the program, which will increase their chance of acceptance. Also the assurance that if it is an advertiser show it has been reviewed and is of a network quality.

And basically, over the years, the networks have done rather well in meeting the public taste. That results in a working arrangement assurance which, as you say, obviously can only become firm when the station accepts the show.

Mr. Cox. Wouldn't that working arrangement, and wouldn't all those factors, still operate even if you didn't have the option?

Mr. Kintner. Absolutely not.

Mr. Cox. In what way, what would be missing?

Mr. Kintner. As I say, this is a partnership and a working arrangement of 7:30 to 10:30—taking the nighttime, 7 days a week—where a network can expect that generally most of the time will be filled by programing.

It is a partnership in which the affiliate understands and recognizes the program structure of the network, its management, its personnel. So that if you ended the network option time, in my judgment these assurances would rapidly disappear and the business would become chaotic.

Mr. Cox. Wouldn't the value of this program structure continue to the local station?

Mr. Kintner. Not to the—without this partnership, in my judgment, it would not.

Mr. Cox. Well, that is, I mean without option you could have an affiliation arrangement. You could, by contract, enter into agreements with your affiliates under which you were to provide them with certain programing and agree as to the basis on which this would be offered and accepted. And my question is whether, if you maintain your level of programing so that it can compete on its merits—and if you provide a service, as you have pointed out, in terms of public service, sustaining, news programs, which supplements and does things which the local stations cannot do—would it not continue to be so important to a local station to be an affiliate of one of the major networks that he would continue to accept, with minor deviations, the program structure offered him by the network?

Mr. Kintner. I don't believe it would work the way you say, and I believe that the result would be the destruction of our basic method of network operation. What we are saying to the affiliates in network option time: "We collectively will program this period. You will have the final decision as the affiliate, but as the fair partner to ABC as a network, you will go along with us to a reasonable degree." When that disappears, I believe the relationship disappears.

Mr. Cox. Can't you say all that without couching it in the legal terms of the option?

Mr. Kintner. I don't think so.

Mr. Cox. I take it that ABC, just as the other networks, has never sought to enforce the option?

Mr. Kintner. We never have.

Mr. Cox. Actually, the only sanction you have if a station consistently refuses to accept your programing is to change your affiliation?

Mr. Kintner. No, we have other steps. No. 1, I consider it as a partnership. We have a discussion period as to the reasons which the affiliate has for refusing the program. I believe basically this discussion is much more important than the final decision of losing the affiliation agreement with the network.

Mr. Cox. That is, in other words, if he does not clear upon your first order, you then attempt to persuade him?

Mr. KINTNER. That is correct.

Mr. COX. By giving further details about the programing, by pointing out how it fits into the structure, how it builds towards the commonly desired goal of circulation—you could do all of these without the option, though.

Mr. KINTNER. But I don't believe the working arrangement would be there which would make the relationship effective.

Mr. COX. That is, in other words, in your view the language contained in that part of the affiliation agreement which sets forth the option is more important than the general working arrangement which is contemplated by the entire agreement taken in its four corners?

Mr. KINTNER. Yes. In effect, Mr. Cox, when a station is willing to give you an affiliation contract—network option time—in effect, they are taking the affirmative position in behalf of your program structure, subject to their right to refuse in individual cases in the public interest.

Now, that is a tremendously affirmative asset in selling advertisers on a national basis. And I think without that, national advertising as we understand it today on television could not exist.

Mr. COX. Well, wouldn't the affiliation itself provide that assurance? Wouldn't you be able to go to a national advertiser and point to the fact that you have primary affiliation with fully competitive stations in so many of the top 100 markets, and that as a matter of practice this station has cleared, and you think will continue to clear, nearly all of the programs you place in evening option time? Would that assurance, coupled as it must be even now with the check, then, with the station through a definite order, give you all the basis for providing a national advertising service that you now have?

Mr. KINTNER. In my judgment, no. I think what you underestimate is the affirmative acceptance by the station in giving 7:30 to 10:30, 7 nights a week for network option time, and the specific confidence to a network, which in turn is translated in very complicated selling by a network to national advertisers.

I believe if you withdraw that and remove option time, as I said before, the national advertising on television, as we know it today, will be very detrimentally and very disastrously affected.

Mr. COX. Now, as you said awhile ago, in a two-station market neither NBC nor CBS, even though they have primary affiliations with the stations there, can preempt your programs; yet the record shows that they get clearance and you do not. Since this is done without the option, upon what basis do you think they accomplish that result?

Mr. KINTNER. Well, actually the affiliates in 1- or 2-station markets that clear for ABC programs, clear it in station time. And you will find basically, if you review our programing in 2-station markets, that in general it is put at 10:30, at 7 o'clock, Saturday afternoon, Sunday afternoon.

So, in effect, what the two-station market is doing is saying that the ABC programing, if he does not have a primary affiliation with us, is so important that he is willing to take his own time and broadcast the ABC programs.

Mr. Cox. But now in the prime viewing hours, in which the sponsors of Disneyland would like to have their program presented to the people in the 2-station market, as well as in your 3-station, and where there is no option to contend with on the part of the competition, you end up getting less than half "live" clearance for an outstanding program, and this demonstrated preference in clearance pattern on the part of the basic affiliates of the other networks, since it cannot be rested on the option, can only be explained in terms of their general relationship with their basic net, their desire to maintain that affiliation, and their concern about the integrity of the program structure of that network, all things which are not tied in with the option?

Mr. Kintner. Those factors have an importance in the ability of NBC and Columbia to clear in prime time with the stations. But I think more fundamental is the fact that they have a network option arrangement which permits the station only not to carry the network programs if they conclude that it is in the greater public interest to have local programing of a certain type or other national programing.

Mr. Cox. Now, I think as you suggest a little later on, this judgment is basically and finally that of the station?

Mr. Kintner. There is no question about it.

Mr. Cox. In other words, you do not contest with the station manager and in fact have no way in which you can review his decision. Now, if basically the station manager can reject your program simply on the ground that he prefers another, then the option, if it cannot overcome that situation, is worthless as a legal proposition?

Mr. Kintner. I don't agree. It is correct that the station has the final say and they must conclude, as you know, that another program is in the greater public interest in that particular locality. They have that obligation, it seems to me, which would not exist as far as the network show is concerned if there were not network option time.

Mr. Cox. Now, do you favor the proposal to require sharing of time in the two-station markets? This was initially made by Dr. Du Mont and then I think Mr. Jahncke made some passing reference to it in his earlier testimony.

Mr. Kintner. This is a very difficult question for me to answer. No. 1, we think the problem can be solved by quick Government action to remove the scarcity factor. That is our solution and that we recommend to the committee.

In the event that the Government would not move, and in the event that the scarcity factor would continue, we would be unwilling to say that we are firmly of the belief that the stations in the 1- and 2-station markets must carry all 3 networks in a certain proportion. We do say that this committee and the FCC should carefully weigh the possibility of decreasing the option time for the other two networks, leaving free time for ABC in the option periods.

We are not affirmatively for this; we think it would be a mistake in the business; we think it is the wrong type of regulation. But there is no doubt that if the situation cannot be corrected by other means, it is the obligation of the Government to give the public in these scarcity markets an opportunity to see other programing.

The Chairman. And it might establish a precedent, to come home to roost.

Mr. Cox. As long as the scarcity does exist then, if it were decided by the Commission or by the Congress that some such step should be taken, its effect would be to open up time on NBC and CBS affiliations to ABC. Now, wouldn't it be fair, as long as the scarcity exists, to open up some time in the peak hours to nonnetwork program producers so that they can find an outlet, in terms of competition in quality, with again the final decision being made by the station manager?

Mr. Kintner. No, I don't think so, because I think what you neglected to mention, Mr. Cox, is the national contribution made by all 3 networks in continuous programing availability during the day in the field of news, special events, and I believe that these responsibilities that we 3 networks have taken on entitle us, or anyone else who wants to go in the network business and provide 12 to 16 hours a day of programing—we should be entitled to an increased opportunity to have our programing structure that exists.

Network operation is intricate, delicate, and subject to feast and famine. It involves tremendous capital investments and long-term commitments of millions of dollars in technical and intercity connection facilities, talent arrangements, staff, elaborate studios, and so on. The existence of such an organization—its capacity to make these commitments and provide network services— is completely dependent upon its capacity to attract the advertising dollar to television in competition with other mediums. Only option time gives the network the ability to assure advertisers that programs will be placed in desired markets at the desired times, making possible an efficient and productive advertising buy.

Some of those that argue against network option time, it seems to us, would pull down the entire structure of television broadcasting, for the selfish purpose of permitting them to sell their program product somewhat more easily. They, wittingly or unwittingly, completely fail to grasp the unique day-to-day servicing of stations by a network. They fail to give weight to the right of any affiliate to reject programs, not in the local public interest, offered during option hours. The judgment is the judgment of the station. For example, we have as many as 26 shows—including some that we consider our best—which from 1 to 15 of the stations principally affiliated with ABC are not clearing in ordered time. They also fail to take into account the extent to which broadcasting is completely regulated from the minute a station is started to the time it ceases to operate.

The committee needs only to refer to the Communications Act and the rules and regulations of the Commission to appreciate the full extent of this regulation. The very matter with which we are here concerned—the Commission's rules on option time—are illustrative. They were arrived at after an extensive rulemaking proceeding and have the effect of imposing severe governmental limitations upon the network operation. They were found to be legal and in the public interest. They expressly permit the kind of option-time arrangements that have been so amply described.

Mr. Cox. I take it when you refer to these as having been found to be legal, you refer to the opinion of the Supreme Court in the case where NBC and CBS challenged the chain-broadcasting regulations?

Mr. Kintner. That is correct.

Mr. Cox. Wouldn't it be fair to say that all that the Court decided in that case was that the Commission had authority to limit restrictive practices on the part of the networks, and not, conversely, that it had authority to approve them?

Mr. KINTNER. I can't answer that. We would be happy to file a brief. I am not a lawyer, as you know, so I can't answer it.

Mr. COX. All right. Very well.

Mr. KINTNER. There is one point that, to our mind, has been lost sight of. We do not know of any television station that has been forced by a network to accept affiliation. The stations voluntarily accept affiliation because they know that through the program structure supplied by the network, they can best serve the local community, and because they know that through the revenue and service provided by the network, they can maintain a sound economic operation.

MUST BUYS

ABC believes that must buys, which have been the subject of testimony before the committee, is in the public interest because it results in necessary economic support, both for the stations and for the network. But ABC does not require a network advertiser to purchase a large number of specific markets. It is our belief that the most efficient use of the medium by an advertiser can be realized through the establishment of a minimum gross for network time, and he must generally purchase this amount. ABC's minimum gross for television network sales is $30,000 for a class A half-hour. Within this requirement, advertisers are normally required to include the five television stations owned and operated by ABC.

Mr. COX. What would be their aggregate network rate? If you could furnish that for us.

Mr. KINTNER. $14,100.

Mr. COX. And then the balance of $26,000 is——

Mr. KINTNER. No, that should be——

Mr. COX. $16,000 is placed——

Mr. KINTNER. No, that should be compared not to the $30,000. This is the hourly rate. And it should be compared to the complete stations on a rate card, which is $102,000. So it amounts to about 13 percent of our complete network, if we can clear every one.

Mr. COX. But assuming the man takes only the minimum of $30,000.

Mr. KINTNER. Well, you should take 60 percent of $14,000 or $8,400.

The reason and justification for a minimum gross time requirement is apparent. It assures programs to a large number of ABC affiliates and recognizes the cost of providing the program and related network services. It is axiomatic that a minimum economic base must be maintained if the operation of a network is to be supported. It is a matter of fact that most advertisers using ABC facilities would like to buy higher grosses than we can now deliver.

Actually, on the ABC nighttime television network at the present time, I would say that our average buys are $35,000 gross, not $30,000, and almost without exception advertisers would go up to $40,000 and perhaps beyond, if we could clear the stations.

ABC would not be operating reasonably, as a network, if for example, an advertiser were permitted to purchase a half hour of prime time without meeting some minimum requirements. We require the advertiser to include in his purchase the five network-owned stations because it is, in part, the revenue from these stations that enables us to develop network programing and network services. While the minimum gross buy is a requirement of ABC, we do make exceptions, depending upon the marketing requirements of advertisers, and we use every means at hand within prudent business judgment to give opportunities to the smaller advertisers to use network television.

An example that comes to mind: We had a program sponsored by the Florida Citrus Commission, which does not sell oranges in California. So we did not sell San Francisco and Los Angeles. [Laughter.]

Mr. Cox. Do you have a must-buy or minimum gross requirement in connection with your radio network?

Mr. Kintner. Yes, we do.

Mr. Cox. How long have you had your minimum gross in television network operation?

Mr. Kintner. It started 2 years ago.

Mr. Cox. How were you able to maintain the integrity of your national advertising service prior to that?

Mr. Kintner. Prior to that, there was such a scarcity in stations that a minimum gross would have meant nothing, and there was no purpose to be served by it.

Mr. Cox. Do you suggest to the advertiser the selection of particular stations to fill out the balance of the minimum gross, and beyond that in order to accomplish particular advertising results within varying budgets?

Mr. Kintner. No. Basically the advertiser selects them in accordance with his marketing and advertising program.

Mr. Cox. However, you do perform a sales function for your stations, which I assume would be designed to try to extend that? In other words, to persuade——

Mr. Kintner. As soon as the advertiser has bought and there are stations that are not on the list, we have personnel within our sales department whose job it is to go to the advertiser and try to get him to add the stations that were omitted from the list.

Before leaving the subject of network regulation, I would like to invite your attention to one area where we believe Government appraisal would be helpful. I refer to the extremely high cost of the A. T. & T. line charges that has limited our ability, and that of our affiliates, in providing program service. Your network questionnaire indicates that you recognize that this cost is an important factor in network operation. We agree that these charges should be reviewed carefully to determine whether or not they are justified. Such an investigation should include the question of why the services are provided only on a special overtime basis beyond 8 hours, whereas the normal television broadcasting day will be 12 hours soon in the case of ABC, and is at least 16 hours in the case of the other networks.

The Chairman. Let me ask this question there: A. T. & T. must file their rates with the FCC?

Mr. Kintner. That is correct.

Mr. Cox. In order to get an increase in rate the Commission must approve of it; is that correct?

Mr. Kintner. That is correct.

The Chairman. There have been several filings down at the FCC in which rates have been upped, maybe justifiably so, I do not know; but they have been put into effect without hearings. Now, have the networks ever come in and protested any of these filings?

Mr. KINTNER. In my judgment, I think not.

The CHAIRMAN. I do not think they have. And we have provided that there should be—the FCC in this particular case went ahead and agreed to the upping of the rates and there were no hearings. If someone had asked for a hearing, I suppose there would have been a hearing.

Mr. COX. Isn't it the case that the telephone company has simply filed a proposed tariff, that this tariff has never been finally passed upon, and that the reasonableness or unreasonableness of the rates has never been determined, and that an industry committee—I think under the chairmanship of Mr. Salant—is now looking into the matter, so that the whole thing is still in a condition of flux, but has continued in this condition for some 7 years?

Mr. KINTNER. That is correct. They have not been finalized——

The CHAIRMAN. My point is that there is, under the present administrative procedures, an opportunity for the networks or anyone else to come in and protest.

Mr. KINTNER. As Mr. Cox says, the industry is prepared to come in.

The CHAIRMAN. Apparently there have been no specific protests made.

Mr. KINTNER. Yes; there will be.

The CHAIRMAN. There will be, but there has not to date. There may be.

Mr. KINTNER. That is correct. The hearings haven't been held as yet.

The CHAIRMAN. I think that, frankly, the matter in these cases as well as some other files down there should be aired. Now, they may be entirely justified, but there has been no one come in and really go into them and find out whether they are or not.

Mr. KINTNER. All we are asking for is an inquiry to justify the rates, or not justify them.

In actual operation, ABC suffers more than might appear. The A. T. & T. facilities for which we pay go through cities in which we frequently cannot secure an outlet for our programs. In many cases we have the experience not only of being unable to use the facilities for which we pay, but of having to incur the additional and very substantial expense of sending prints of a program to the cities involved for delayed broadcasting.

SUMMARY

To summarize our position:

1. There is a tremendous obligation on the Government to make possible, speedily and realistically, three or more competitive television stations in each of the major markets of the country.

2. Network television daily proves it is operating in the public interest. To modify the network option arrangements and other business practices would be an extremely dangerous step in a very intricate and complicated business.

3. There is room within the television industry for all types of program producers, and to our mind they are being given opportunities, limited only by their ability to produce good product.

The CHAIRMAN. Now, Mr. Kintner, the committee would be glad to hear—whether you want to put it in the record later or make a statement now; after all, we are concerned with laws up here and regulations—whether or not ABC, in their experience with the Communications Act, has any suggestions for changes in the act. It has been in existence now, as you know, a great number of years, and only sort of—it has been amended sort of haphazardly from time to time. And it was the intention of the committee to probably take another good look at the whole act; some technical amendments are even necessary.

Mr. KINTNER. We would be happy to file a brief and suggestions.

The CHAIRMAN. Yes. We would like your suggestions on that, because you are up against the operation of the act all the time, and you probably could be helpful to us in that.

Mr. KINTNER. It would be a privilege for us to do that.

The CHAIRMAN. I have no further questions. We want to finish this afternoon, or do we want—this is off the record.

(Discussion off the record.)

The CHAIRMAN. I want to say in all these cases—I am sure Senator Pastore, as chairman, has said that we will leave the record open in case you want to make some changes as to figures or other things you would like to add.

Senator POTTER. I am not going to be able to stay for the counsel's questioning, and I am sorry that I missed the first part of your statement. But from what I have gleaned from the statement you have given, I think it has been an excellent statement and you have put your finger on the question we have been wrestling with for some time on this scarcity of outlets.

And I do not know—we seem to have a lot of hearings on this problem and little happens, and I hope that the fire will flame up enough so that we will get some action to bring them to alleviate the scarcity of television as it is today.

Mr. KINTNER. Thank you very much, Senator, we appreciate it.

Mr. COX. We have asked questions of the representatives of the other——

The CHAIRMAN. I merely wanted to say there—this is off the record.

(Discussion off the record.)

The CHAIRMAN. Go ahead.

Mr. COX. I would like to ask you several questions on the matter of your station rates. Does ABC, as the other networks have indicated, get a waiver from its affiliates of compensation on a number of so-called free hours?

Mr. KINTNER. Yes. We basically have, I guess, two types of contracts in the general category: One with our primary affiliates, in which we have 22 free hours and pay 30 percent of the gross; another type, with the one and two stations where we get no free hours and pay varying percentages depending upon what deal we can make.

Mr. COX. Now, is there little or no variation, then, as far as the free hour provision for your primary affiliates is concerned?

Mr. KINTNER. There is little variation on the primary affiliates. Actually, from a monetary viewpoint there is none. In some cases, where there are long line hauls, instead of having the station pay the line haul, we translate it into free hours.

Mr. Cox. Now, are these free hours provided in return for the affiliation arrangement generally, or do you in your dealings with your affiliates indicate that this is to offset line charges or is for sustaining programing or anything of that sort?

Mr. KINTNER. We consider the free hours an initial economic base to provide for the operation of the company, including the programing of sustaining, the overhead, the telephone lines, and so forth. It obviously does not cover it, but basically it covers a portion of our overall expense, whether it be in programing or administration or payments to the A. T. & T.

Mr. Cox. Would you agree with Dr. Stanton that this is basically a historical remnant; that actually it is simply one means of calculating the division of the rate; and that it has little or no significance in and of itself?

Mr. KINTNER. It just has a historical significance as the method that was developed in radio. It obviously could be changed, removing the free hours and changing the percentage of compensation you come to the same result.

Mr. Cox. Suppose you agree on 22 free hours when the station rate is $100, so that you would take the first $2,200 in a given month, and then later the station rate has gone up to $200—now do you take $4,400 of the first revenue, or do you adjust the number of free hours to account for the fact that this provision is bringing you in more revenue than it formerly did?

Mr. KINTNER. No, we keep to the 22 hours. It is part of the building of the business and our sharing in it.

Mr. Cox. Now, in connection with the matter of scenery and sets, does ABC provide all of the sets for "live" shows which are broadcast on the network from its New York studios?

Mr. KINTNER. It does not. I would like to correct the impression that one of the witnesses before you has given concerning our policy on set construction. ABC started in the business by establishing its own set construction department for making the scenery, and so forth. We have never barred outside companies from ABC, providing they meet our union requirements. At the present time, for example, the set of the Amateur Hour was made outside of ABC and there are several other sets.

We actively are in the business of making scenery. We do not make a profit from it. And we actively solicit the business, but in no sense do we stop advertisers or independent producers from bringing in their own scenery.

Mr. Cox. Now, is it the practice of sponsors of programs requiring such sets to ask you to submit a bid on the sets for the program, and then for the advertiser to go out and get a bid from independent suppliers as well?

Mr. KINTNER. I think most careful people in the business do that. If you are in the business continuously, you have an idea of the pricing anyway. But, for example, United States Steel Hour, when it came on ABC, they asked us for estimates on set construction. They also asked independent contractors for estimates and made the decision, which in this case happened to be ABC.

Mr. Cox. Now, do you give a binding price in connection with the scenery and sets, or do you simply provide an estimate which you are then permitted to exceed if you find, in terms of time and materials, that you run over?

Mr. KINTNER. Basically, we follow what is called the rate manual and we give an estimate—generally the advertiser, if the set is more expensive due to change in design, and so forth, has to pay it.

In the early days there were some limitations, or maximums, put on; but I think generally it has disappeared and our rate manual is followed consistently, depending upon the number of hours of carpenters, and so forth.

Mr. COX. Of course, the outside producer would, I assume, have to give a binding quotation, to which he would be forced to adhere even if he found his expenses ran over that?

Mr. KINTNER. I would think not. If they looked at a set which looked as though it took a hundred carpenter-hours a week to make, and then the designer for the advertiser brought in a set that took 140, I would think the advertiser would be willing to pay the independent producer production unit the additional cost.

Mr. COX. Now, if you do not make a profit on the production of your sets, are you not in effect quoting prices which undercut the competition which the independent producer can give you—since, not having a broadcast business to fall back upon, he must make his profits on the sets and the sets alone?

Mr. KINTNER. Not in my judgment. We would make a small profit if our facilities were completely used. So it is sort of like the automobile business, if you aren't manufacturing the maximum number of cars to make for an efficient operation you don't make money. If our carpenter shops, paint shops, and so forth, were used to full capacity, in my judgment we would make a profit.

Mr. COX. Do you feel, generally, that the network should integrate the operations of television as far as possible, so that all of its manifold phases are under the control of the network and carried on by the network, wherever that can be done?

Mr. KINTNER. In what field, Mr. Cox?

Mr. COX. Well, that is, do you feel that it is important for the network to have this scenery and set function within its own organization; to have an expanding program service within its own organization; to have talent arrangements, perhaps, whereby it maintains a pool of talent under contract; and to bring within its control as many of the varied phases of the business as are possible?

Mr. KINTNER. Well, you covered, I think, four topics. No. 1, as far as the back of the house, as we call it, I believe it is our obligation, if we want to sell time for live shows, to have facilities present that the advertiser can use.

As far as the network controlled programs, as I said in my statement, I think a certain percentage of the network program structure should be controlled by the network. I think in the case of news, it should be all controlled.

As far as other programing, I believe the network has the fundamental decision as to whether the program is creatively acceptable, but that it should draw on all sources of programs, whether they be independent packagers, talent agents or advertisers.

The CHAIRMAN. Which is the practice you have now?

Mr. KINTNER. That is correct.

Mr. Cox. Does ABC have a station representation organization within its organization which provides a service to its affiliates?

Mr. Kintner. We do not.

Mr. Cox. Do you have a policy reason for not having adopted this practice which is followed, as I understand it, by the other networks?

Mr. Kintner. We have no policy reason. Originally, we represented our own stations and WMAL, in the field of radio. It was our business judgment that we could do a better business job and make more profit if we went outside and hired individual representatives to represent our stations, and we are now represented by Blair and Petry, at the present time, and begining in the fall there will be an additional representative.

Mr. Cox. So you do not even handle national spot sales for your owned-and-operated stations?

Mr. Kintner. That is correct.

Mr. Cox. Now, do you feel that the network has a function distinct from that which is performed by its owned-and-operated stations as licensees in the five communities where you own television stations?

Mr. Kintner. If I understand the question, yes; in providing a program structure for national distribution.

Mr. Cox. All right. And this is a function of the network; it is a function which is then merged into the operation of the owned-and-operated stations, but those stations have additional responsibilities?

Mr. Kintner. Yes; this is basically a function of the network, and in addition our five stations, as licensees, have certain obligations in local programing, meeting local community demands.

Mr. Cox. Do you feel, then, that the network as such, in connection with this national programing service it provides—do you feel it has any obligation of maintaining balanced programing and objectivity of reporting within its network schedule, as distinguished from its overall responsibility for the programing of its owned stations?

Mr. Kintner. Yes; I think the public is entitled to balanced programs including international news, religion, public information and public service, special events, and so forth.

Mr. Cox. Do you think that the network has an obligation to follow affiliation policies, policies regarding rates, policies regarding access to time for advertisers, that again are separate and distinct from its obligations as a station owner?

Mr. Kintner. I am not sure I follow that. You mean in our affiliation agreements?

Mr. Cox. In other words, part of the functioning of the network is, of course, the way in which the network is built.

Mr. Kintner. That is right. To answer your question, there are certain responsibilities to maintain the station relations department, to handle your relations with your affiliates, to maintain a national sales department, to sell to your national advertisers, to maintain a program department, to give creative continuity acceptance, to check good taste; they are all basic parts of the network.

Mr. Cox. The question I am leading up to, of course, is whether or not there is a possibility that it would be appropriate to make explicit provision for review by the Federal Communications Commission of the performance of the networks of these separate network responsibilities?

Mr. KINTNER. I think not. I think the business is sufficiently and properly regulated on the basis of the individual local licensees.

Mr. COX. In other words, you think the Commission requires no power with regard to the three networks other than the authority it presently exercises over the licenses that are held for the owned-and-operated stations?

Mr. KINTNER. That is correct. And if I may add, Mr. Cox, that is the power of life and death. The five stations of the ABC television network are the profitable part of our operation, and removal of one of our licenses would have a very devastating effect on our position.

Mr. COX. In the history of the Federal Communications Commission, has it ever deprived a station of a license?

Mr. KINTNER. I believe it has; yes. I can't name it off-hand, but I believe it has.

Mr. COX. Is this in radio or television?

Mr. KINTNER. Radio.

Mr. COX. You described the monopoly markets which are created by the allocations situation and the advantage that this gives, of course, to CBS and NBC as regards ABC, and of course the same carries over to other sources of programing. You argue that in addition to this restriction, the networks must have the benefit of option time and "must-buy" in order to exist. Now, isn't this the sort of a situation in which a Government regulation is usually imposed, where you have at least a seminatural monopoly and possible additional restraints?

Mr. KINTNER. You already have Government regulation in the form of the licenses of the stations, and I believe it would be a mistake to fool with the complicated, intricate industry that is serving the public good by network regulations, which I imagine is what you are referring to?

Mr. COX. All right.

The CHAIRMAN. Thank you, Mr. Kintner.

Mr. KINTNER. Thank you, Senator.

The CHAIRMAN. I might say that I am informed by the staff that Monday at 10 o'clock we start with the CBS affiliates in this room, G–16.

(Whereupon, at 12:43 p. m., the committee was recessed, to reconvene at 10 a. m., Monday, June 18, 1956.)

(The new allocation plan proposed by ABC, referred to by Mr. Kintner at p. 2468, is as follows:)

AMERICAN BROADCASTING CO.,
New York, N. Y., July 25, 1956.

HON. WARREN G. MAGNUSON,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: You may recall that during my testimony before your committee on Friday, June 15, 1956, I said that American Broadcasting Co. was preparing a plan for television reallocations in the top 200 markets and that, with your permission, we would file this plan with your committee. Copies of the plan to which I had reference are attached and it is requested that it be made a part of the record of your proceedings.

As study of the plan will show, its adoption would provide: in the first 100 markets of the country, 50 markets with 4 or more VHF services, 25 markets with 3 VHF services, 23 markets with all-UHF service, 1 market with 2 VHF services and 1 market with 1 VHF service; and in the second 100 markets of the country, 17 markets with 4 or more VHF services, 49 markets with 3 VHF services, 29 markets with all-UHF service, 2 markets with 2 VHF services, and 3 markets with 1 VHF service.

Copies of the ABC plan are also being submitted to the Federal Communications Commission.

On behalf of American Broadcasting Co., and of myself personally, I should like to thank you and the other members of the committee for the opportunities which have been afforded me and other executives of the company to make our views known before your committee. I hope that the opinions expressed and data presented by American Broadcasting Co. will be of some assistance to you in your consideration of the problems raised by the current status of the television industry.

Sincerely,

ROBERT E. KINTNER, *President.*

American Broadcasting Co., reallocations for top 200 markets

Rank	City	Present commercial VHF	Proposed commercial VHF	Remarks	Total commercial VHF resulting
1	New York (Newark)	2, 4, 5, 7, 9, 11, 13	Same as present		7.
2	Chicago	2, 5, 7, 9	do		4.
3	Los Angeles	2, 4, 5, 7, 9, 11, 13	do		7.
4	Philadelphia-Wilmington	3, 6, 10, 12	do	Wilmington channel 12 provides 4th service	4.
5	Detroit-Windsor	2, 4, 7, 9	do	Windsor channel 9 provides 4th service	4.
6	Boston-Manchester	4, 5, 7, 9	do	Manchester channel 9 can provide 4th service	4.
7	San Francisco-San Jose	2, 4, 5, 7, 11	do	San Jose channel 11 can provide 5th service	5.
8	Pittsburgh (Irwin)	2, 4, 11	do		3.
9	Washington	4, 5, 7, 9	do		4.
10	Cleveland	3, 5, 8	3, 5, 8, 12	Move channel 12 from Erie. See Market 85	4.
11	St. Louis	4, 5, 11	2, 4, 5, 11	Move channel 2 from Springfield. See Market 119	4.
12	Minneapolis-St. Paul	4, 5, 9, 11	Same as present		4.
13	Baltimore	2, 11, 13	do		3.
14	Buffalo	2, 4, 7	do	NBC owns UHF channel 17	3.
15	Kansas City	4, 5, 9	2, 4, 5, 9	Move channel 2, St. Joseph, Mo., to Kansas City. See Market 195.	4.
16	Houston-Galveston	2, 11, 13	2, 5, 11, 13	Galveston channel 11 provides 3d service. Add channel 5.	4.
17	Milwaukee (White Fish Bay)	4, 6, 12	Same as present	CBS owns UHF channel 19	3.
18	Cincinnati	5, 9, 12	do		3.
19	Dallas-Fort Worth	4, 5, 8, 11	do	Forth Worth channels 5 and 11 provide 3d and 4th services. See Market 38.	4.
20	Portland-Salem, Oreg	3, 6, 8, 12	do	Salem channel 3 can provide 4th service	4.
21	Seattle-Tacoma	4, 5, 7 11, 13	do	Tacoma channels 11 and 13 provide 4th and 5th services	5.
22	Miami	4, 7, 10	4, 6, 7, 10 or all UHF	Add channel 6 or possible deintermixture	4 or all UHF.
23	Atlanta	2, 5, 11	Same as present		3.
24	Denver	2, 4, 7, 9	do		4.
25	Indianapolis-Bloomington	4, 6, 8, 13	do	Bloomington channel 4 provides 4th service	4.
26	San Diego-Tijuana	6, 8 10, 12	do	Tijuana channel 6 and 12 provide 3d and 4th services	4.
27	Hartford-New Britain	3	None	Move channel 3 to Providence area. See market 29	All UHF.
28	New Orleans	4, 6	4, 6, 11 or 2, 4, 6, 11 or all UHF.	Add channel 11 or add channel 11 and move channel 2 from Baton Rouge. See Market 122. Or possible deintermixture by removing all VHF channels.	3 or 4 or all UHF.
29	Providence-Fall River	10, 12	3, 6, 10, 12	Move channel 3 from Hartford to Providence area. Add channel 6. See Market 27.	4.
30	Albany-Schenectady-Troy (Vail Mills)	6, 10	All UHF or 6, 8, 10	Move channel 6 to Syracuse. Delete channel 10 and make all UHF or add channel 8. See Market 33.	All UHF or 3.
31	Bridgeport-Stamford-Norwalk	None	None		All UHF.
32	Louisville	3, 11	3, 7, 11	Move channel 7 from Evansville. See Market 111	3.
33	New Haven-Waterbury	8	None	Add channel 8 to Albany. See Market 30	All UHF.
34	Columbus	4, 6, 10	Same as present		3.
35	San Bernardino-Riverside	None	None		All UHF.
36	Rochester, N. Y	5, 10	5, 10, 13	Add channel 13	3.
37	Memphis	3, 5, 13	Same as present		3.

American Broadcasting Co., reallocations for top 200 markets—Continued

Rank	City	Present commercial VHF	Proposed commercial VHF	Remarks	Total commercial VHF resulting
38	Fort Worth-Dallas	4, 5, 8, 11	Same	Dallas channels 4 and 8 provide 3d and 4th services. See Market 19.	4.
39	Worcester	None	None		All UHF.
40	Youngstown	do	do		Do.
41	Dayton	2, 7	2, 7, 11	Add channel 11	3.
42	Birmingham	6, 13	3, 6, 13	Add channel 3	3.
43	San Antonio	4, 5, 12	Same as present		3.
44	Tampa-St. Petersburg	8, 13	5, 8, 10, 13	Add channels 5, 10	4.
45	Toledo	11, 13	13	Move channel 11 to Grand Rapids-Kalamazoo area. See Market 58.	1.
46	Springfield-Holyoke	None	None		All UHF.
47	Akron, Ohio	do	do		Do.
48	Phoenix (Mesa)	3, 5, 10, 12	Same as present		4.
49	Allentown-Bethlehem-Easton	None	None		All UHF.
50	Norfolk-Portsmouth	3, 10	3, 5, 10, 13	Exchange channel 13 for channel 12 in New Bern and move channel 13 from New Bern. Add channel 5.	4.
51	Omaha	3, 6, 7	Same		3.
52	Syracuse	3, 8	3, 7, 9 or 3, 6, 8	Exchange channel 8 for channel 7 in Carthage and move channel 9 from Elmira, or move channel 6 from Schenectady to Syracuse. See Market 170.	3.
53	San Jose-San Francisco	2, 4, 5, 7, 11	Same	San Francisco channels 2, 4, 5, 7 provide 4 services	5.
54	Richmond-Petersburg	6, 8, 12	2, 6, 8, 12	Petersburg channel 8 provides 3d service. Add channel 2.	4.
55	Oklahoma City	4, 9	4, 5, 7, 9	Move channel 5 from Enid and channel 7 from Lawton	4.
56	Sacramento-Stockton	3, 10, 13	3, 6, 10, 13	Change channel 6 to commercial. See Market 91. Stockton channel 13 can provide 4th service.	4.
57	Flint-Saginaw-Bay City	5, 12	5, 10, 12	Receives service from Bay City channel 5. Move channel 10 from Parma-Onondaga to Flint area.	3.
58	Grand Rapids-Kalamazoo	3, 8	3, 8, 11	Move channel 11 from Toledo. Channel 3 Kalamazoo provides 3d service.	3.
59	Fall River-Providence	10, 12	3, 6, 10, 12	Providence provides 4 services channel 3, 6, 10, 12. See Market 29.	4.
60	Jacksonville	4, 12	4, 7, 10, 12	Change channel 7 to commercial. Add channel 10. Or possible deintermixture by removing all VHF channels.	4 or all UHF.
61	Nashville (Old Hickory)	4, 5, 8	2, 4, 5, 8	Change channel 2 to commercial	4.
62	Wichita-Hutchinson	3, 10, 12	3, 6, 10, 12	Hutchinson channel 12 provides 3d service. Add channel 6.	4.
63	Wilmington-Philadelphia	3, 6, 10, 12	Same as present	Philadelphia channel 3, 6, 10 provide 3 services	4.
64	Poughkeepsie-Newburgh-Beacon	None	None		All UHF.
65	Fresno	12	do	Move channel 12 to Bakersfield. See Market 24	Do.
66	Wilkes-Barre-Hazleton	None	do		Do.
67	Tulsa-Muskogee	2, 6, 8	2, 6, 8, 11	Muskogee channel 8 provides 3d service. Change channel 11 to commercial.	4.

68	Salt Lake City-Ogden	2, 4, 5, 9	Same as present	Ogden channel 9 provides 4th service	4.
69	Harrisburg	None	None		All UHF.
70	Des Moines (Ames)	5, 8, 13	5, 8, 11, 13	Change channel 11 to commercial	4.
71	Canton, Ohio	None	None		All UHF.
72	Trenton-Philadelphia	3, 6, 10	Same as present	Receives 3 services from Philadelphia channels 3, 6, 10	3.
73	Knoxville	6, 10	2, 6, 8, 10	Move channel 2 to Knoxville from Sneedville and change to commercial. Add channel 8.	4.
74	Utica-Rome	13	None		All UHF.
75	Wheeling-Steubenville	7, 9	Same as present		2.
76	Davenport-Rock Island-Moline	4, 6	4, 6, 8	Move channel 8 from Peoria	3.
77	Charleston-Huntington, W. Va	3, 8, 13	3, 5, 8, 13	Can receive 2d and 3d services from Huntington channels 3 and 13. See Market 105. Move channel 5 from Weston and make commercial.	4.
78	Reading, Pa	None	None		All UHF.
79	Peoria	8	do	Move channel 8 to Davenport-Rock Island-Moline. See Market 76.	Do.
80	Spokane	2, 4, 6	2, 4, 6, 7	Change channel 7 to commercial	4.
81	South Bend	None	None		All UHF.
82	Duluth-Superior	3, 6	3, 6, 8, 11	Add channel 11. Change channel 8 to commercial	4.
83	Chattanooga	3, 12	3, 9, 12	Move channel 9 from Rome, Ga	3.
84	Bakersfield	10	8, 10, 12	Move channel 12 from Fresno and add channel 8. See Market 65.	3.
85	Erie	12	None	Move channel 12 to Cleveland. See Market 10	All UHF.
86	Tacoma-Seattle	4, 5, 7, 11, 13	Same as present	Seattle channel 4, 5, 7 provide 3 services	5.
87	Fort Wayne	None	None		All UHF.
88	Lancaster	8	do		Do.
89	Lansing	6	6, 10, 12	Can receive service from Flint channels 10 and 12. See Market 57.	3.
90	Beaumont-Port Arthur	4, 6	4, 6, 9	Move channel 9 from Lufkin	3.
91	Stockton-Sacramento	3, 10, 13	3, 6, 10, 13	Can receive 2d, 3d, and 4th services from channels 3, 6, and 10 Sacramento. See Market 56.	4.
92	Greensboro-Winston Salem-High Point	2, 12	2, 6, 8, 12	Add channels 6 and 8	4.
93	Brownsville-Harlingen-McAllen	4, 5	2, 4, 5, 13	Add channels 2 and 13	4.
94	Johnstown-Altoona, Pa	6, 10	3, 6, 8, 10	Add channels 3 and 8	4.
95	Shreveport	3, 12	2, 4, 12	Add channels 2 and 4. Delete channel 3	3.
96	El Paso-Cuidad Juarez	2, 4, 5, 9, 11, 13	Same as present	Cuidad Juarez channels 2, 5, 11 provide service	6.
97	Charlotte	3, 9	3, 9, 11	Add channel 11	3.
98	Corpus Christi	6, 10	2, 6, 7, 10	Add channels 2 and 7	4.
99	Scranton	None	None		All UHF.
100	Little Rock-Pine Bluff	4, 7, 11	2, 4, 7, 11	Receives 3d service from Pine Bluff channel 7. Change channel 2 to commercial.	4.
101	York, Pa	None	None		All UHF.
102	Rockford, Ill	13	3, 13	Move channel 3 from Madison, Wis. See Market 109	2.
103	Binghamton, N. Y	12	2, 4, 12	Add channels 2 and 4	3.
104	Mobile-Pensacola	3, 5, 10	3, 5, 10	Channel 3 Pensacola can provide 3d service	3.
105	Huntington-Charleston	3, 8, 13	3, 5, 8, 13	Can receive 3d and 4th service from Charleston channels 5 and 8.	4.
106	Brockton			See Boston and Providence	5.
107	Atlantic City, N. J	None	None		All UHF.
108	Tucson, Ariz	4, 9, 13	Same as present		3.

American Broadcasting Co., reallocations for top 200 markets—Continued

Rank	City	Present commercial VHF	Proposed commercial VHF	Remarks	Total commercial VHF resulting
109	Madison, Wis	3	None	Move channel 3 to Rockford, Ill. See Market 102	All UHF.
110	Portland, Maine	6, 13	6, 11, 13	Change channel 11 Durham educational to commercial and move to Portland.	3.
111	Evansville, Ind	7	None	Move channel 7 to Louisville, Ky. Delete channel 9 from Hatfield, Ind.	All UHF.
112	Hamilton-Middletown			See Cincinnati and Dayton	6.
113	Austin, Tex	7	7, 11, 13	Add channels 11 and 13	3.
114	Albuquerque, N. Mex	4, 7, 13	Same as present		3.
115	West Palm Beach, Fla	5, 12	do		2.
116	Fort Lauderdale-Miami, Fla	4, 7, 10	4, 6, 7, 10, or all UHF	Miami provides 4 services (channels 4, 6, 7, 10). See Market 22.	4 or all UHF.
117	Saginaw-Bay City-Flint, Mich	5, 12	5, 10, 12	Receives service from Bay City (channel 5) and from Flint channels 10 and 12. See Market 57.	3.
118	Lorain-Elyria, Ohio			See Cleveland	4.
119	Springfield, Ill	2	None	Move channel 2 to St. Louis and Terre Haute. See Market 11.	All UHF.
120	Manchester-Boston, Mass	4, 5, 7, 9	Same as present	Boston (channels 4, 5, 7) provides 3 services	4.
121	Lubbock, Tex	5, 11, 13	do		3.
122	Baton Rouge, La	2	2, 7, 13 or none	Add channels 7 and 13, or permissible move channel 2 to New Orleans. See Market 28.	3 or all UHF.
123	Greenville-Asheville-Spartanburg, S. C	4, 7, 13	Same as present	Spartanburg channel 7 and Asheville channel 13 provide service.	3.
124	Augusta, Ga	6, 12	2, 6, 12	Add channel 2	3.
125	Columbia, S. C	10	8, 10, 13	Change channel 13 to commercial and move from 3. Charleston, S. C. Move channel 8 from Florence. See Market 146.	
126	Orlando, Fla	6, 9	4, 6, 9	Add channel 4	3.
127	Jamestown, N. Y	None	None		All UHF.
128	New London-Norwich, Conn	do	do		Do.
129	Roanoke-Lynchburg, Va	7, 10, 13	Same as present	Receives service from Lynchburg, channel 13	3.
130	Waco-Temple, Tex	6, 10	6, 10, 12	Temple channel 6 provides service. Add channel 12	3.
131	Savannah, Ga	3, 11	3, 9, 11	Change channel 9 to commercial	3.
132	Cedar Rapids-Waterloo, Iowa	2, 7, 9	Same as present	Receives service from Waterloo channel 7. See Market 157.	3.
133	Kalamazoo-Grand Rapids, Mich	3, 8	3, 8, 11	Move channel 11 from Toledo	3.
134	Amarillo, Tex	4, 7, 10	Same as present		3.
135	Eugene, Oreg	13	2, 9, 13	Add channel 2. Change channel 9 to commercial	3.
136	Boise-Caldwell-Nampa, Idaho	2, 6, 7, 9, 12	Same as present	Caldwell channel 9 provides 3d service. Nampa channels 6 and 12 provide 4th and 5th services.	5.
137	Hampton-Warwick, Va			See Norfolk	4.
138	Ann Arbor, Mich			See Detroit	4.
139	Battle Creek, Mich	None	None		All UHF.
140	Lincoln, Nebr	10, 12	2, 10, 12	Add channel 2	3.

141	Yakima, Wash	None	None		All UHF.
142	Galveston-Houston, Tex	2, 11, 13	2, 5, 11, 13	Houston provides service (channels 2, 5, 13). See Market 16.	4.
143	Muskegon, Mich	None	None		All UHF.
144	Pittsfield, Mass	do	do		Do.
145	Santa Barbara, Calif	3	Same as present		1.
146	Charleston, S. C	2, 5	2, 4, 5	Add channel 4, change channel 13 to commercial and move to Columbia, S. C. See Market 125.	3.
147	Sioux City, Iowa	4, 9	2, 4, 9	Move channel 2 from Vermillion and change to commercial.	3.
148	Montgomery-Salem, Ala	8, 12	5, 8, 12	Receives service from Selma, channel 8. Add channel 5	3.
149	Jackson, Miss	3, 12	3, 5, 12	Add channel 5	3.
150	Racine, Wis			See Milwaukee	3.
151	Raleigh-Durham, N. C	5, 11	5, 7, 11	Durham channel 11 provides 3d service. Move Washington channel 7 to Raleigh area.	3.
152	Topeka, Kans	13	6, 11, 13	Add channel 6. Change channel 11, Lawrence, Kans., to commercial, move to Topeka.	3.
153	Decatur, Ill	None	None		All UHF.
154	Jackson, Mich	do	do		Do.
155	Lexington, Ky	do	do		Do.
156	Columbus, Ga	4	do	Move channel 4 to Macon, Ga. See Market 167	Do.
157	Waterloo-Cedar Rapids, Iowa	2, 7, 9	2, 7, 9	Receives service from Cedar Rapids channels 2, 9	3.
158	Altoona-Johnstown, Pa	6, 10	3, 6, 8, 10	Can receive service from channels 3, 6, and 8. See Market 94.	4.
159	Winston-Salem-Greensboro, N. C	2, 12	2, 6, 8, 12	Greensboro channels 2, 6, 8 provide 3 services. See Market 92.	4.
160	Wichita Falls, Tex	3, 6	3, 6, 10	Add channel 10	3.
161	Spartansburg-Asheville-Greenville, S. C	4, 7, 13	Same as present	Greenville channel 4 and Asheville channel 13 provide service. See Market 123.	3.
162	Everett, Wash			See Seattle	3.
163	Terre Haute, Ind	10	2, 5, 10	Move channel 2 from Springfield. Add channel 5	3.
164	Salem-Portland, Oreg	3, 6, 8, 12	Same as present	Portland can provide 3 services (channels 6, 8, 12)	4.
165	Springfield-Dayton, Ohio	2, 7	2, 7, 11	Dayton provides 3 services (channels 2, 7, 11). See Market 41.	3.
166	Champaign-Urbana, Ill	3	None		All UHF.
167	Macon, Ga. (Warner Robbins)	13	4, 7, 13	Move channel 4 from Columbus. Add channel 7. See Market 156.	3.
168	Springfield, Mo	3, 10	3, 5, 10	Add channel 5	3.
169	Bangor, Maine	2, 5	2, 5, 12	Move channel 12 from Orono and make commercial	3.
170	Elmira, N. Y	9	None	Move channel 9 to Syracuse. See Market 52	All UHF.
171	Green Bay-Marinette, Wis	2, 5, 11	Same as present	Receives service from Marinette channel 11	3.
172	Anderson-Indianapolis, Ind	6, 8, 13	do	Indianapolis provides 3 services channels 6, 8, 13	3.
173	Mansfield, Ohio	None	None		All UHF.
174	Pensacola-Mobile	3, 5, 10	3, 5, 10	Mobile channel 5 and 10 can provide service	3.
175	Elkhart, Ind	None	None		All UHF.
176	Asheville, N. C	13	Same as present		1.
177	Lima, Ohio	None	None		All UHF.
178	Joplin, Mo.-Pittsburg, Kans	7, 12	4, 7, 12	Pittsburg, Kans., channel 7 provides 3d service. Add channel 4.	4.
179	Durham-Raleigh, N. C	5, 11	5, 7, 11	Raleigh channel 5, 7 provides 2 services. See Market 151	3.

American Broadcasting Co., reallocations for top 200 markets—Continued

Rank	City	Present commercial VHF	Proposed commercial VHF	Remarks	Total commercial VHF resulting
180	Port Huron, Mich	None	None		All UHF.
181	Oshkosh, Wis	do	do		Do.
182	New Castle, Pa	do	do		Do.
183	Williamsport, Pa	do	do		Do.
184	Lake Charles, La	7	3, 7, 12	Add channels 3 and 12	3.
185	Sioux Falls, S. Dak	11, 13	5, 11, 13	Move channel 5 from Mitchell	3.
186	Reno, Nev	4, 8	2, 4, 8	Add channel 2	3.
187	Watertown-Carthage, N. Y	7	7 or 8	Carthage, N. Y., provides 1 service channel 7 or 8. See Syracuse Market 52.	1.
188	Colorado Springs-Pueblo, Colo	5, 11, 13	Same as present	Can receive service from Pueblo channel 5. See Market 192.	3.
189	Ogden-Salt Lake City, Utah	2, 4, 5, 9	do	Receives service from Salt Lake City channels 2, 4, 5. See Market 68.	4.
190	Bay City-Flint-Saginaw, Mich	5, 12	5, 10, 12	Receives service from Flint channels 10 and 12	3.
191	Bloomington, Ill	None	None		All UHF.
192	Pueblo-Colorado Springs, Colo	5, 11, 13	Same as present	Can receive service from Colorado Springs channels 11, 13. See Market 188.	3.
193	Muncie, Ind	None	None		All UHF.
194	Danville, Ill	do	do		Do.
195	St. Joseph, Mo	2	do	Move channel 2 to Kansas City. See Market 15	Do.
196	Appleton, Wis			See Green Bay	3.
197	Kenosha			See Milwaukee	3.
198	Bellingham-Vancouver-New Westminster-Chilliwack, Wash.	2, 3, 8, 10, 12	Same as present	Vancouver-New Westminster channels 2, 8, 10, and Chilliwack channel 3 provide 4 services.	5.
199	Las Vegas-Henderson-Boulder City, Nev	2, 4, 8, 13	do	Henderson channel 2 and Boulder City channel 4 provide service.	4.
200	Modesto, Calif	None	None		All UHF.

TELEVISION INQUIRY

(Network Practices)

MONDAY, JUNE 18, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., Senator John O. Pastore presiding.

Present: Senators Pastore, Wofford, and Bricker.

Senator PASTORE. This hearing will please come to order. May we have quiet in the room, please, so that those who are interested in hearing the witness may hear him?

Our first witness this morning is Mr. John S. Hayes, president of the Washington Post broadcast division, Washington, D. C. All right, Mr. Hayes, you may proceed.

Mr. HAYES. Thank you, Mr. Chairman.

STATEMENT OF JOHN S. HAYES, PRESIDENT, WASHINGTON POST BROADCAST DIVISION; ACCOMPANIED BY ERNEST JENNES, COUNSEL

Mr. HAYES. For the record, my name is John S. Hayes. I am president of the Washington Post broadcast division. We operate WTOP radio and television in Washington, D. C., and WMBR radio and television in Jacksonville, Fla. Both of our television stations are primary affiliates of CBS television.

I am present here today as chairman of the special committee of CBS television affiliates which was established for the purpose of arranging for a representative group of affiliates to testify here before this committee.

Seated with me is the counsel for our committee, retained by our committee, Ernest Jennes, of Washington, of Covington & Burling.

Let me first tell you why we are here and who we are.

The independently owned and operated affiliates of the CBS television network are deeply disturbed by the attack made before this committee last March on affiliate-network relationships and on certain network practices. At our annual meeting in Chicago last April, completely at the initiative of the affiliates, the CBS television affiliates unanimously adopted a resolution supporting current affiliate-network relationships and other network practices, and authorizing presentation of testimony to this committee by a representative group of affiliates.

The resolution is attached.[1] And, sir, may I tell the committee that at the conclusion of each statement there are several appendixes which we would like to be made part of the record but which we will not read.

Senator PASTORE. As they are presented in your manuscript, or do you want them inserted at various points? For instance the resolution; do you want it inserted at this point?

Mr. JENNES. I would suggest they be inserted at the end of the main testimony.

Senator PASTORE. At the end of the manuscript. I think that is better, because that makes for orderly procedure.

All right.

Mr. HAYES. There are seven witnesses here today altogether. Two of us, one from Philadelphia and one from Washington, represent large multistation metropolitan markets. Two of us, one from Champaign, Ill., and the other from Lubbock, Tex., are from medium-sized VHF markets. Two more witnesses are from relatively small markets, Salinas, Calif., and Grand Junction, Colo. Our seventh witness is from Columbia, S. C., where he operates a UHF CBS affiliate which competes with a VHF NBC affiliate.

We would like to stress at the outset that we affiliates appear here to support not only our own interests but also what we believe to be the public interest. We appear here freely and at our own initiative and at our own expense, and we are stating what we believe to be true.

This committee has heard testimony for many weeks. You now have the difficult task of separating the wheat from the chaff, of separating the various conflicting private interests from the very basic public interest which, after all, is presumably the only concern of this committee.

As these hearings have progressed it has seemed increasingly to us that matters have strayed out of perspective. These hearings started with a study of FCC television allocation matters—the technical problems involved in providing a comprehensive system of television broadcasting for the United States. Somehow the hearings have been converted into a trial of networking and of network affiliates. This change in emphasis has come as a considerable shock to many individual television station operators throughout the country.

It is an extremely significant fact that, despite the many months these hearings have been in progress, not a single television viewer, nor, indeed, any representative of the public, has appeared before this committee to complain about affiliate-network relationships.

Senator PASTORE. That would not happen anyway too easily; would it? I mean that is our function as Members of the Congress. My experience has been, here, that—while it may be unfortunate, and I would like to see it otherwise, of course—our system is not such that you expect the public to come here and present its point of view.

First of all, they do not have the means; second, of course, they take comfort in the feeling that that is the responsibility of the Members of Congress. But I do not think that that proves any substantial point. The mere fact that we have not had a half dozen or

[1] See appendix A to Mr. Hayes' statement, printed at p. 2543.

a million viewers come in here to testify how they feel about this would not prove the case one way or the other, although I think it is a good argument for you to make.

Mr. HAYES. If you think it is a good argument, we are satisfied.

Senator PASTORE. Even that sometimes is overexercised, too, that argument. That is our job here, to protect little John Q. Public who has not the means nor the opportunity to come here. That is what we are sent to Congress for. So you can rest assured that they will be protected whatever the case may be.

Mr. HAYES. I am sure they will be.

Furthermore, not a single CBS network affiliate has appeared to complain about its own relationship with its network. So far as any basic attack on the present system of television networking is concerned, the principal charges have been made here by one person—Mr. Richard Moore, president of KTTV, the Los Angeles Times station in Los Angeles, Calif.

Mr. Moore has said that he has no desire to destroy the networks, and, gentlemen, we have no desire to attack Mr. Moore. But, since we are profoundly convinced that Mr. Moore's proposals would seriously jeopardize the system of nationwide television broadcasting that we have today, we want to meet his contentions head-on.

THE PRINCIPAL QUESTIONS PRESENTED

We suggest to the committee that three principal questions are presented:

First, is the present system of television networking operating to the advantage or disadvantage of the viewing public?

Second, what is the true affiliate-network relationship; and what would be the likely effect of the changes proposed?

Third, does the present system of television networking decrease the proper independence of a network affiliate so that it fails to operate in the public interest?

Let's consider these three questions and their implications for a moment. If the present system of television networking is operating to the advantage of the viewing public, the burden of proof is most certainly on those who attack it to justify the changes they propose.

THE PRESENT SYSTEM OF TELEVISION NETWORKING OPERATES TO THE ADVANTAGE OF THE VIEWING PUBLIC

We believe that the present system of television networking operates to the advantage of the viewing public.

Ten years ago there were half a dozen television stations operating in the United States and only a few hundred television sets. Television was a luxury.

Today—only 10 years later—there are more than 35 million television sets and some 450 television stations throughout the country. More than 9 out of every 10 of these stations are network affiliates so that at least some network programing is available to all but a handful of stations. Virtually every home in the United States is within the coverage area of at least 1 television station, and more than 70 percent of the families in the United States actually own television sets. Television has thus, in an extraordinarily short period of time, become a medium of mass entertainment, education, and communication. It serves the entire public.

Senator PASTORE. At this point may I say this: Of course it is the basic principle of our television law, that is the regulations made with reference to it, to have an equitable distribution of stations. While I agree with you there has been a tremendous coverage nationwide to the extent that at least there is 1 station available to most people, the fact of the matter is that we do have a situation today where some communities have 7 stations and other communities are confined only to 1.

Of course, I think you will have to agree with me that here, basically, of course, is the whole trouble—that is the basic source of the entire trouble that we have to meet here. How we are ever going to resolve it is a question I am not prepared to answer, and I do not think anyone has appeared here to give us a definitive answer that will be a cure-all for the present ills.

But the fact of the matter is, while it is true there is at least one station for most people throughout the Nation, there is not, in my humble opinion, an equitable distribution of the allocations to the extent that each community is getting its fair share of reception media.

Would you agree with that, Mr. Hayes? That is, basically, I think, the fundamental trouble with this whole problem. Now, I would like to get your point of view on that.

Mr. HAYES. I would like to say, first, Senator Pastore——

Senator PASTORE. When you say here it serves the entire public—well, not in equal fashion. You came here to Washington, and I tell you it is a pleasure to have four stations.

As a matter of fact, a little story that is told by one of my assistants. He moved down here—he never came down to Washington before—when I came down as a Senator. Finally, the mother came down to visit with the children—he has two boys—and she was very, very much interested in knowing how well they were doing in Washington. She said, "Do you like it better in Providence or do you like it better in Washington?" And, why, they were a little surprised that she would ask such a silly question. "Of course, we like it better here in Washington." She was set aback by that. She asked them why. They said, "Are you kidding? We have 4 television stations down here, 4 channels, as against maybe 1 or 2 back home."

It was 1 then; now it is 2. But, you see, that points up the point that I am trying to make. Some communities have four, like you have here in Washington. New York has seven. Los Angeles has seven. But where I come from, you only have two.

Now, ABC does not come in, as such, in my community as we would like to have it come in, because out stations are tied up with CBS and NBC. They have to put on an extraordinarily good program that people want to see especially for ABC to come through. Now, if we had a third station, I think most of our people would be much happier than they are.

Now, for us to argue that everything is in the public interest as it is now—while it may be true that at least one channel is available to most people, the fact of the matter is that you do not have what I consider to be an equitable distribution. If you want to make any comment on that, all right. If you want to skip it, that is all right with me, too. Because it is nothing new. I have said this a hundred times already.

Mr. HAYES. The only comment I would like to make is I am delighted that they like Washington and I hope they watch channel 9.

Senator PASTORE. I hope, too, the day will come when they will have 4 back in Rhode Island, so they do not have to make that comparison. That is neither here nor there, but that is basically, I think, most of the trouble.

All right, sir.

Mr. HAYES. Just why has there been this tremendous growth? The reason is that the three networks, and the network affiliated stations, have performed so well that the public has completely accepted the television medium. The public recognizes television as the best buy it can make. For the price of attending a moving picture theater once a week, a family can buy a television set and obtain free—day in and day out—the best of drama, variety and comedy, speeches of public figures, forums on and discussions of important issues, comprehensive news coverage, educational programs, sporting events, events of national importance, and local public service.

Network affiliates throughout the country provide the public a balanced fare of network and local programs. The public wants these programs. It accepts these programs. It likes these programs. We must serve the public in order to survive. We seek to determine public reaction by every method of audience testing that human ingenuity can devise. And when the public shows its dissatisfaction with a program either by complaints or by simply switching off the dial, you can be sure that the program does not long stay on a schedule.

On performance, we think it clear that the great American public which both this Congress and this industry have the responsibility of serving has in fact determined that television networking and affiliate-network relationships are operating to the advantage of the public. We do not believe our critics have proven otherwise.

Let me turn now to the second principal question which has been presented to this committee by the critics of networking. What is the true affiliate-network relationship?

THE AFFILIATE-NETWORK RELATIONSHIP

The affiliate-network relationship is in the true sense of the term a working partnership and the basic practices which have been attacked are sound, proper, and necessary for effective nationwide network television service.

The CBS television network and the CBS television affiliates are in the business of providing a regular, daily, comprehensive, nationwide television service. CBS television alone originates approximately 86 hours of network programs a week, of which over 72 are sponsored and 13½ unsponsored, and of the sponsored programs, almost 56 are live and 17 filmed. This does not take into account the local programs of the individual affiliates.

On a 52-week basis this is a colossal undertaking—some 4,400 hours of annual network television broadcasting. To perform this service effectively, the following interrelated elements must function in harmony with each other:

First, the existence of a network of affiliated stations located throughout the country so that nationwide coverage is possible;

Second, the development of a balanced program structure of high quality for many hours each day so that this network of stations is kept intact and attracts both audience and advertisers;

Third, the sale of a sufficient number of programs over a sufficient number of stations to a sufficient number of advertisers to obtain the revenues necessary to pay for the day-in and day-out schedule of network programing; and

Fourth, the maintenance of a nationwide system of A. T. & T. interconnection services, so that the public throughout the country can have available a comprehensive pattern of live network programing and not have to rely entirely on Hollywood film or locally originated live programs.

We would like to impress on the committee that these interrelated elements operate together in a very delicate balance. If one starts tampering with any of these elements the entire machinery of networking can easily fall apart.

Let me illustrate.

If a sufficient number of stations did not clear time for network programs, obviously advertisers could not buy them.

If advertisers could not be reasonably certain that such clearance would be possible, they could not plan the large advertising budgets necessary to support the programs.

If programs were not ordered over at least a minimum number of stations, it would not be possible for other affiliates, not originally ordered, to approach the advertiser, and to urge their subsequent order.

Senator PASTORE. What would be your answer to this question, because it has been raised from time to time, Mr. Hayes: What if prime time was cut down from 3 hours to 2 hours; what difference would it make to the argument you have just developed?

Mr. HAYES. Well, sir, we get involved in a question of degree. I don't know whether 2 hours 55 minutes or 3 hours 10 minutes is the proper amount of time. I do know this: That we have built this industry over the last 6 years on the fundamental concept of some machinery for clearing time.

Senator PASTORE. Let me put it more specifically, because somewhere along the line these are the important questions that have to be resolved. I realize that a man comes in here and makes a general statement, much of it repetition, but I would like to get it down to cases because, after all, fundamentally that is the one thing we will have to study and decide.

The argument being made—everything you have said thus far—is absolutely true. I do not think anyone can in good logic dispute it. But the argument made, I presume, by Mr. Moore, together with his group, was the fact that the best time, and too much of the time, has been specified as prime time, and they feel that that ought to be cut down so that the stations themselves would have a better opportunity to choose other media of entertainment which, of course, cannot be done now because most of it is tied up with your agreement with the network.

Now, their argument is that if you took this 3 hours—and it has not always been 3 hours, it used to be more than that, then it was cut down to 3 hours. If you use your argument, why do you not make the 24 hours prime time? You have come down to 3 hours. Why it is 3 hours and why is it necessary to keep it 3; and can't it be changed to 2 and still maintain all these things you have argued?

Can you direct your statement to that? That is where we will have to make our decisions.

Mr. HAYES. There is a whole series of questions, Senator Pastore.

Senator PASTORE. I will take it one by one. I do not want to confuse, but I would like the record straight, too. I do not want the record confused either.

The question that I asked specifically: We realize that there must be a must-buy system in order that the network can deal with advertisers.

Mr. HAYES. Correct.

Senator PASTORE. Because unless you pick up your option in the beginning—have it in the beginning at the time of the negotiations—you have to pick up that option before you can get the advertiser's signature on a contract. We all recognize that. I do not think anyone can argue against that.

No. 2, the argument is made that, after all, there are certain times on radio, you see, that are a little better than other times, and it has been decided now as an accepted principle that it is between 7:30 and 10:30. That is your prime time. Now, those who are interested on the other side of this argument say that you have picked up too much time as prime time, to the point that you are shutting them out completely and therefore you are not making this as competitive as it should be.

Now, that is the argument. I say, why should it be three and a half. We do not say you should throw out all prime time. Why should it be three and a half and why can't it be two, and all these things you have talked about still be preserved—network, telephone, everything you have developed.

Can you direct your observation to that question: Why can't it be 2 instead of 3?

Mr. HAYES. I would say, sir, in the first place it has become 3 from the beginning of the industry, and it has been 3. And I think the three works satisfactorily and not to the detriment of these groups that you mention. For instance, in Washington, Senator Pastore, there are today 24 hours available for nonnetwork programing on the 4 television stations at night.

The 3 hours has enabled us to plan our program schedule so we can take care of nonnetwork advertisers. The point I am trying to make is, since we have built the industry on three, I have seen no arguments which would persuade me, at least, that it ought to be less. And I don't see what purpose would be served by making it less.

I can certainly say in Washington, D. C., it would not make available any more time.

Senator PASTORE. Well, in Washington, of course, as I said before, you have 3 operating networks—you have NBC, CBS, and ABC—you have 4 stations. So you see you always have an added outlet. The problem, of course, can't be pinpointed to Washington, D. C.

Mr. HAYES. That is right.

Senator PASTORE. Other communities where you have only 2 with 3 networks, the other independent producers want to come in, the problem is all the more exaggerated. And in the one-station market it is all out of proportion.

Mr. HAYES. I have tried very hard to look into this argument, and tried to find a specific case of a nonnetwork advertiser who wanted to get clearance—not particularly in Washington, but in many communities throughout the country—and I can't find any.

Senator PASTORE. I see.

Mr. HAYES. Now, there may be one, and I may not know about it.

Senator PASTORE. That is your personal experience with this particular station in Washington, or are you expressing now the viewpoint of most of the affiliates?

Mr. HAYES. Well, I have talked to dozens of affiliates and we have discussed this as much as we could, so we could accurately reflect all of the affiliates views. I assure you, Senator, this is about the one charge that confounds everybody. Because there is time and Mr. Rogers is going to testify later—and in addition to operating the station in Texas, he is president of the TVB, Television Advertising Bureau. I know he can amplify this point. I just haven't found this situation to exist.

Senator PASTORE. In order to get you down to a categorical answer, then, your argument is that it would do no good, and it wouldn't serve the public interest any better, and it wouldn't put these people in any better position in getting their programs over, if they really wanted to get them over, if you changed the prime time from 3 to 2 hours?

Mr. HAYES. I don't think so.

Senator PASTORE. Mr. Cox would like to get into this point.

Mr. COX. Isn't it true, Mr. Hayes, that in order for a nonnetwork advertiser, who wishes to advertise on a regional basis, to get an effective presentation of his commercial message through the sponsorship of a program he would have to clear the major markets in the particular region in which he is interested in prime time?

Mr. HAYES. If he wanted prime time; yes, sir.

Senator PASTORE. Well, isn't it agreed that prime time is the best time?

Mr. HAYES. Certainly more people——

Senator PASTORE. Don't kick that around too much. I think we can almost take judicial notice of that.

Mr. HAYES. That is right. I would certainly agree that more people watch television at night.

Mr. COX. If this were not the case, why would your charge be $1,500 for the period 8 to 10:30 p. m., and only $916 for the period 7:30 to 8 p. m., and for the period 10:30 to 11. Don't you, in the quotation of your national spot rates, indicate a fundamental valuation of this time in different terms?

Mr. HAYES. Yes, sir.

Mr. COX. All right. Now then, this man wants to get on in prime time and he wants to get on in the major markets in this region. Isn't it quite likely that a substantial number of those major markets, in any region in the country, are either 2- or 3-station markets?

Mr. HAYES. Yes, sir.

Mr. COX. All right. Now in these 2- or 3-station markets, if all of this prime evening time is subject to the option of one or more networks—if you have a 2-station market—and if that option is legally enforcible and is enforced, how is he going to be in a position to buy this prime time when every station in the market has already obligated itself to hold this time available for network programing?

Mr. HAYES. Well, Mr. Cox, an affiliate doesn't obligate itself per se just to clear for every network order, as I think I will point out on the next page. It doesn't follow that because a network and an affiliate have an option-time arrangement, that automatically every program is on the schedule. In the case of Washington, D. C., in a four-station market all during last season we did not clear 7:30 to 8 on Tuesday and Friday nights, for nonnetwork advertisers.

Mr. COX. You did clear it?

Mr. HAYES. Did not clear—I am sorry, that is right, we did not clear for the network and accepted orders from nonnetwork advertisers.

Mr. COX. Isn't his access, however, to that time dependent upon your determination that the network program offered at that time is unsuitable, unsatisfactory, or contrary to the public interest?

Mr. HAYES. Yes, sir. I think the determination is always the licensee's—it must be. The licensee must judge which program is acceptable.

Mr. COX. All right. And in your judgment, using the illustration you just gave, 1 hour out of the 21 hours of nighttime option time was determined by WTOP not to be satisfactory or suitable.

Mr. HAYES. Well, we determined that the programs offered by the network were less satisfactory or less acceptable.

Mr. COX. Is that all that is necessary—that they be less satisfactory, in your view?

Mr. HAYES. I think so, sir.

Mr. COX. That is they don't have to be, in your judgment, positively unsatisfactory?

Mr. HAYES. Well, Mr. Cox, I think when a network advertiser places an order for the use of your facilities you either determine that the program is more acceptable, less acceptable, or about the same. If you decide it is more acceptable, you accept it; less acceptable, you don't.

Mr. COX. In other words, nonnetwork advertisers come to you, do they, and ask you to clear time for a specific program and you then compare that with the offerings of the network, and if at any point in the network's nighttime schedule you find a program that you regard as weaker or less satisfactory, you feel perfectly free to replace it with this other program of the nonnetwork advertiser?

Mr. HAYES. Yes, sir.

Mr. COX. Even though the program that the network is offering you cannot be said to be contrary to the public interest, nor would you, except by comparison with other programs, have determined it to be unsatisfactory?

Mr. HAYES. That is correct.

I just wish this happened to us oftener than it does, Mr. Cox. I mean, we just don't have this number of clients knocking at our door.

Mr. COX. Do you think that that might be influenced by the fact that you advertise that you are a primary basic CBS affiliate?

Mr. HAYES. No.

Mr. COX. And therefore, on the must-buy list of the network?

Mr. HAYES. No; I don't think so.

Mr. COX. If you had five times as many requests from nonnetwork advertisers for the clearance of time in prime evening hours, are you stating to the committee that you would be happy to clear that time for them, if they brought you good programs, in the face of the network's option?

Mr. HAYES. No, sir; I am not stating that. I am just trying to imagine what situation would arise. If there were that many network advertisers, all attempting to use our facilities—nonnetwork advertisers—I think we would have to sit down and just reexamine our whole situation as to whether we ought to become an independent station, for instance.

Mr. COX. You indicated a moment ago that there were 24 hours available for nonnetwork programing in Washington at the present time.

Mr. HAYES. In Washington, D. C.

Mr. COX. Isn't, however, the major part of that made up by the prime evening hours available on WTTG?

Mr. HAYES. A great percentage of it is, sir, yes.

Mr. COX. As a matter of fact, how much would it be—in the neighborhood of 18, 19, 20 hours?

Mr. HAYES. I would think close to that; yes, sir.

Mr. COX. They are only carrying the network programs that you have rejected; aren't they?

Mr. HAYES. I don't know their schedule that well.

Mr. COX. Well, no network would be in a position, under its contract, to offer them a program unless they had first offered it to you?

Mr. HAYES. That is right—or the other two network stations.

Mr. COX. Yes. So that if the independent station in the market is carrying a program originated by any one of the three networks, it must be because that network, having offered it to its own affiliate, has had it rejected for some reason and then made it available to the Du Mont station?

Mr. HAYES. That is correct.

Senator PASTORE. I am not trying to connote anything evil in this, because after all, let's realize the fact that we have to look at this whole picture realistically. But in the community of Washington, if you exercised your exemption to this option on prime time too often, would there be any question in your mind that CBS would be looking for another channel in this community, rather than yours?

Mr. HAYES. Well, I would think, Senator Pastore, if we did that, we would question in our own mind whether we would remain an affiliate.

Senator PASTORE. They would ask themselves the same question—whether they ought to keep you as an affiliate?

Mr. HAYES. Yes, sir. I think if you start from the premise we are working partners with each other, we would each be questioning what is going on.

Senator PASTORE. I am trying to simplify this question as much as it can be simplified. The argument made here by Mr. Moore is the fact that they can't come in on this prime time. You indicate they could if they wanted to.

Mr. HAYES. They——

Senator PASTORE. How could they if they wanted to. Would they have to use the network with all the network's facilities, or would they deal with each station; and could they do as much by doing it that way?

Mr. HAYES. They would have to deal with each station, fundamentally.

Senator PASTORE. Otherwise, the network.

Mr. HAYES. That is right.

Senator PASTORE. Your argument is that you have cleared certain hours, exempted it from this prime time, option time. What were the programs that you mentioned?

Mr. HAYES. We have—two specific programs.

Senator PASTORE. Yes.

Mr. HAYES. One was the program of Amos and Andy.

Senator PASTORE. From where was that originated?

Mr. HAYES. That is a film program.

Senator PASTORE. From whom did you buy that?

Mr. HAYES. I am not sure, sir, whether that was purchased by the client and brought to us as a film package.

Senator PASTORE. When you say "the client," you mean a local advertiser?

Mr. HAYES. No; this happens to be the case of a national advertiser.

Senator PASTORE. I see. This was a national program that you are talking about.

Mr. HAYES. This was a national client buying a local program, in effect. A program for local use in Washington.

Senator PASTORE. I see. And they dealt with you and you cleared the time.

Mr. HAYES. Yes, sir.

Senator PASTORE. All right. Now, how long did that program take?

Mr. HAYES. A half hour.

Mr. COX. What was the program it displaced?

Mr. HAYES. Name That Tune, which is a CBS program.

It didn't displace it; we did not clear for Name That Tune.

Mr. COX. That is one of the programs that was carried for a time on WTTG?

Mr. HAYES. That is right.

Mr. COX. You later exercised your right to recapture the program?

Mr. HAYES. What happened was the contract for Amos and Andy came to an end; during that time we had been examining how Name That Tune had been doing through the country. The network advertiser who was purchasing Name That Tune approached us: Could we clear time for it?

Senator PASTORE. What are the procedures that you went through with CBS in making this clearance? What are the reactions that you received? Was there resistance?

Mr. HAYES. Let me spell this one out for you.

Senator PASTORE. All right.

Mr. HAYES. As to what happened: We received an order from the network client for Name That Tune through the network. At about the same time we received an order through our national representative for the sale of the nonnetwork program.

Mr. COX. Your national representative is CBS Spot Sales?

Mr. HAYES. CBS Television Spot Sales.

We were then faced with the program judgment: Should we take Amos and Andy or should we take Name That Tune? We have had Amos and Andy on before, and whenever it has been on it has done very well.

At that point, which was the beginning of last season, we were thinking about the possibility of having developed, at 7:30 across the week, certain moods of programing. It seemed to us quite clear, at that point at least, that Amos and Andy fitted better than did Name That Tune.

So what you do then is you simply teletype the network and ask them to inform the network client that you are not clearing. Nothing happens.

Mr. COX. Did they try to talk you out of your decision?

Mr. HAYES. No, sir; they don't—they don't happen——

Senator PASTORE. I am just asking specific questions.

Mr. HAYES. No, sir.

Senator PASTORE. Because these points have been raised through other witnesses.

Mr. HAYES. No, sir.

Senator PASTORE. Did you get any resistance from them?

Mr. HAYES. No, sir. What you normally get is a question asking why.

Mr. COX. What did you tell them?

Mr. HAYES. You say you are clearing for another program. At that point, it usually stops. Now, perhaps 13 weeks later or 26 weeks later, you might get a request again.

Senator PASTORE. Have you any correspondence on this relationship?

Mr. HAYES. Well, we certainly, sir, would have in our file the teletype order.

Senator PASTORE. Would you have any objection to having it inserted in the record so we may have it first hand exactly? What was said by you and what was said by them?

Mr. HAYES. No.

Senator PASTORE. If there is no objection, I would like to have it inserted in the record at this point, because a question was raised as to the reprisal aspect of making this kind of a decision.

Mr. HAYES. Very well.

(The information is as follows, including also WTOP's cancellation of the program Quiz Kids:)

CBS TELEVISION NETWORK

MAY 25.

To: Station Manager.
Re Whitehall Pharmacal Co. "Name That Tune."

Tues. 7:30–8 p. m. CNYT Eff 9/27/55.

Herewith ur firm order on the above thru duration of new contract eff 9/27/55 for 52 telecasts thru & including 9/18/56. Agency is Biow-Beirn-Toigo, N. Y. reservation cancellable by CBS upon 28 days' notice to U. The Whitehall Pharmacal Division of American Home Products Corp. will advertise any & all of the products deemed acceptable by CBS–TV. Pls confirm the above with live clearance or offer suitable TVR period citing adjacencies. Pacific time zone stations pls note: confirm the above for Tues. 6:30 p. m. lcl time on Hot Kine basis via L. A. or offer suitable TVR period citing adjacencies.

Thanks and regards.

JOE FRIEDMAN, CBS TV NY.

CBS TELEVISION NETWORK

To: Station Manager.
Re Whitehall "Name That Tune."

Tues. 7: 30 p. m. CNYT eff 9/27/55.

My records indicate that I am still lacking confirmation from you on firm order for the above. Therefore, here are the details again. Herewith your firm order for duration of 52-week contract eff 9/27/55 thru and including 9/16/56. Agency is Biow-Beirn-Toigo, New York. Reservation cancellable by CBS upon 28 days' notice to you. Please confirm the above on live basis only if you are not available live client desires to know what pgm will be blocking. Thanks & regards.

JOE FRIEDMAN, CBS TV NY.

NEW YORK, N. Y., *September 27, 1955.*

Re Whitehall Name That Tune, Tuesday 7: 30 to 8 p. m., CNYT Effective September 27

STATION MANAGER:

My records indicate you will be unavailable on order for the above. The following describes an unusual aspect of this program, which we hope will merit reconsideration on your part for live clearance now or soonest. (Whitehall is not accepting any TVR's for this quiz show.) The program will include a brand new challenging extra. Any televiewer now has a chance to participate in the new musical marathon of golden medleys, which pays up to $25,000. This will be a race against the clock in which the studio contestant earns a higher reward every time he names a tune correctly. In addition, the home viewer can get into this game by submitting a list of his seven favorite tunes. If the list is chosen and used on the program, the home viewer splits the winnings with the studio contestant. A contestant who cracks the golden medley for a top figure of $10,000 returns the next week along with the home viewer who submitted the medley, the latter being flown in to New York. At this point both partners try to win the $25,000 prize by guessing 5 tunes a week correctly for 5 weeks. Please advise me immediately whether, on the basis of this new idea, it will be possible for you to clear live.

Thanks and regards.

JOE FRIEDMAN, *CBS–TV, New York.*

WASHINGTON, *September 27.*

Re Whitehall, Name that Tune, Tuesday, 7: 30 to 8 p. m.

JOE FRIEDMAN,
CBS–TV New York:

Your records are correct. Live clearance for above impossible.

Regards.

BOB BORDLEY, *WTOP–TV.*

NEW YORK, *September 26, 1955.*

Re Whitehall, Wanted, Thursday 10: 30 to 11 p. m., CNYT.

GEORGE HARTFORD,
WTOP–TV:

Happy to advise client accepts your offer to carry program live. Effective with net show of November 3 and thereafter through remainder of current contract to October 11, 1956.

Thanks.

AL MASINI, *CBS–TV.*

NEW YORK, *January 3, 1956.*

Re Whitehall, Wanted, Thursday, 10: 30 to 11 p. m. CNYT.

To Station Manager:

For your information the above program will change to Quiz Kids effective January 12 and thereafter. Client will remain the same, but only live network will be accepted. Please confirm that you will continue to carry program on live basis when new show goes into effect on January 12.

Thanks and regards.

AL MASINI,
CBS–TV New York.

NEW YORK, *January 9, 1956.*

Re Whitehall, Wanted, Thursday, 10 : 30 to 11 p. m. CNYT.

Station Manager:

I have not yet received an answer from my wire announcing the change of above program to Quiz Kids, effective January 12 and thereafter. I urgently need answer. Please confirm.

If you are going to clear live for this show or if you are presently on TVR basis whether you are going to run out the 28-day cancellation notice with TVRs of Quiz Kids.

AL MASINI, *CBS–TV.*

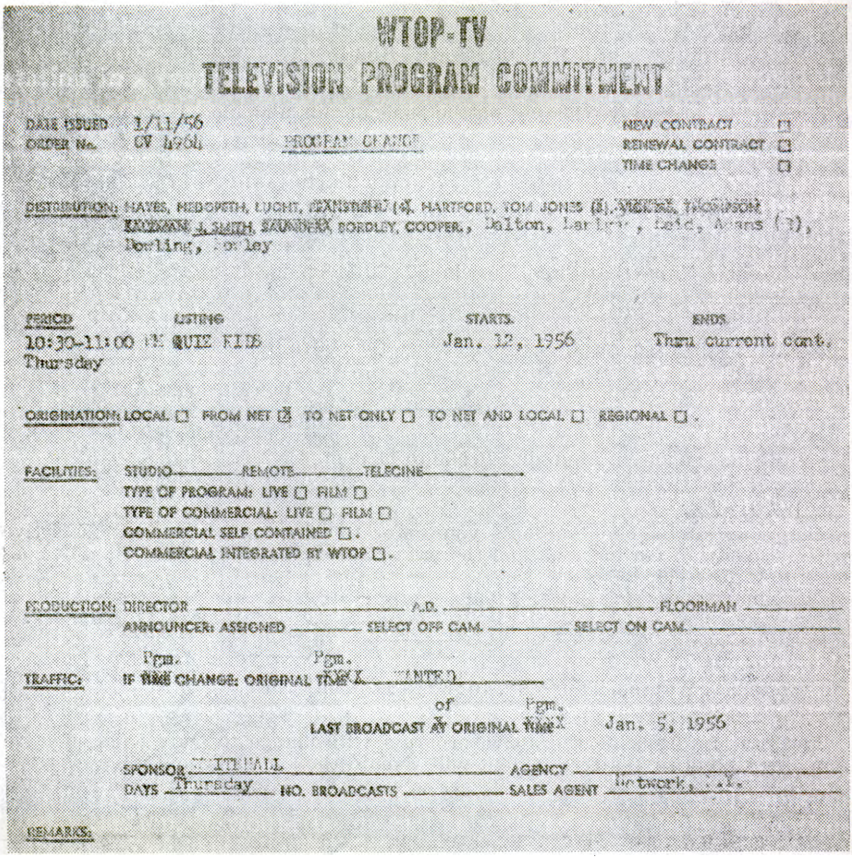
WASHINGTON, *January 10, 1956.*

Re Whitehall, Wanted, Thursday, 10 : 30 to 11 p. m.

AL MASINI,
CBS–TV, New York:

This confirms change of above program to Quiz Kids, effective January 12, 1956, and thereafter on live basis. Thanks and regards.

JANE SMITH, *WTOP–TV.*



WTOP-TV
TELEVISION PROGRAM COMMITMENT

DATE ISSUED 1/11/56
ORDER No. CV 4964 PROGRAM CHANGE

NEW CONTRACT ☐
RENEWAL CONTRACT ☐
TIME CHANGE ☐

DISTRIBUTION: HAYES, HEDGPETH, LUCHT, [illegible] (4), HARTFORD, TOM JONES (3), [illegible], THOMPSON [illegible] J. SMITH, [illegible] BORDLEY, COOPER, Dalton, [illegible], [illegible], [illegible] (3), Dowling, [illegible]ley

PERIOD	LISTING	STARTS	ENDS
10:30-11:00 [illegible] Thursday	QUIZ KIDS	Jan. 12, 1956	Thru current cont.

ORIGINATION: LOCAL ☐ FROM NET ☒ TO NET ONLY ☐ TO NET AND LOCAL ☐ REGIONAL ☐.

FACILITIES: STUDIO ______ REMOTE ______ TELECINE ______
TYPE OF PROGRAM: LIVE ☐ FILM ☐
TYPE OF COMMERCIAL: LIVE ☐ FILM ☐
COMMERCIAL SELF CONTAINED ☐.
COMMERCIAL INTEGRATED BY WTOP ☐.

PRODUCTION: DIRECTOR ______ A.D. ______ FLOORMAN ______
ANNOUNCER: ASSIGNED ______ SELECT OFF CAM. ______ SELECT ON CAM. ______

TRAFFIC: IF ~~TIME~~ Pgm. CHANGE: ORIGINAL ~~TIME~~ Pgm. [illegible] WANTED

LAST BROADCAST ~~AT~~ of ORIGINAL ~~TIME~~ Pgm. Jan. 5, 1956

SPONSOR [illegible]ITEHALL AGENCY ______
DAYS Thursday NO. BROADCASTS ______ SALES AGENT Network, [illegible]

REMARKS:

The communication from WTOP–TV to CBS Television canceling Quiz Kids is not reproduced here. This communication either has been misplaced or the cancellation notice was given by telephone. However, the next following document, a communication from CBS Television to WTOP–TV, is a confirmation of the cancellation notice.

NEW YORK, *February 3, 1956*.

Re Whitehall Quiz Kids, Thursday, 10: 30 to 11 p. m. CNYT.

JANE SMITH, WTOP.
DOC SCHOEN, WPRO.

This will confirm that the network show of February 23 will be your last for the above program. You will remain unavailable on order. Thanks and regards.

AL MASINI, *CBS*.

Mr. COX. What if you made this kind of a decision for 7 out of the 21 prime evening hours, instead of for 1? Do you think at that point that you might be getting objections or arguments from the network regarding your policies and their effect upon the network's operation?

Mr. HAYES. Mr. Cox, I don't think that you yourself would ever make the decision to reject the acceptance of network advertiser orders to such a degree that you would not then question whether or not you ought to remain an affiliate. Now, I don't know what that number is. I don't know whether if you didn't clear for half of the network programs you would start to think to yourself, Should I become an independent station or not?

Mr. COX. Do you suppose it might occur to the network that you should become an independent station at that point?

Mr. HAYES. I suspect if you didn't clear for anything they would certainly think about it.

Mr. COX. Certainly, if there is another station available.

Mr. HAYES. If you are not clearing it doesn't make any difference what they do.

Mr. COX. That is, they would be placing, of necessity, their programs on the fourth station anyway, wouldn't they—if they wanted to get into the market.

Mr. HAYES. That is right.

Senator PASTORE. This Amos and Andy was from what time to what time?

Mr. HAYES. 7: 30 to 8.

Senator PASTORE. Well, all right. What was the other clearance that you made? Let's get that one on the record.

Mr. HAYES. The other clearance is a program which is called Highway Patrol. There we have a slightly different situation, in that 7: 30 to 8 on Friday night was, at the beginning of the season, not occupied by a network commercial program. We had received an order for Highway Patrol, which our program board thought was acceptable. We placed the program in our schedule.

Senator PASTORE. You received the order from whom?

Mr. HAYES. From our national representatives. There is a national client, nonnetwork national client. Subsequent to our putting the program in our schedule, we then received an order from a network advertiser. We informed the network that we could not clear Friday night 7: 30 to 8 because we had another program in there which we preferred.

In that case the network advertiser approached us, through the network, and asked was there another half hour available for the presentation of the network program. There was—7:30 to 8 on Wednesday night. We offered that time to the network client; they accepted it, and that is where the program is today.

Mr. Cox. That displaced Brave Eagle opposite Disneyland?

Mr. Hayes. Yes.

Mr. Cox. The program that you placed in the 7:30 hour on Friday was a syndicated film; was it not?

Mr. Hayes. Yes, sir; produced by Ziv.

Mr. Cox. Now, do you insert in contracts with nonnetwork advertisers a provision which entitles you to recover that time on certain specified notice?

Mr. Hayes. Yes, sir. Our policy is this: We are prepared, providing the program is acceptable, to guarantee time to an advertiser as long as he is prepared to guarantee his purchase with us. In other words, if in the case of this particular program the sponsor is willing to sign a 52-week firm noncancelable contract with us, we are willing to sign that with him.

Mr. Cox. You do not reserve the right, during that 52-week period, to recover the time?

Mr. Hayes. In some cases we do, sir; in some cases we do not; and I don't know the answer to this particular program, but I can find out.

Mr. Cox. Now, if you do not reserve the time, reserve the right, suppose the network changes its programing in that period and asks you to clear for the time—you have not previously had a chance to compare this new program with the one you are carrying from the nonnetwork advertiser——

Senator Pastore. Will you answer the question, Mr. Hayes, because a nod doesn't get in the record?

Mr. Hayes. I was nodding that I understand. I didn't realize you had finished your question.

Senator Pastore. I see.

Mr. Cox. Have you still the right to recognize the network's option? Supposing you felt now that its new program was better than Highway Patrol, have you still the right to clear that time if you have not expressly reserved it in your contract with your nonnetwork advertiser?

Mr. Hayes. Well, if we have expressly reserved the right and the program is obviously that much more acceptable, we would. If we had not so reserved the right, we obviously couldn't.

Mr. Cox. Even though, in your opinion, the new program offered by the network was a better program, and even though you have optioned this time to the network and are obligated under the terms of that option to clear this time?

Mr. Hayes. Yes. I think if you got into a situation where you had somehow obligated yourself to a nonnetwork client, and then the situation arose where you were most anxious to clear for a network program because of its acceptability, I think you can work this out, actually, with both clients. Because with all this time available in Washington, there is plenty of space to move and to maneuver.

Mr. Cox. This would not be true, however, in a 2- or 3-station market.

Mr. HAYES. Well, sir, I am not prepared to admit that there is this awful shortage of time. At least, I haven't run across it.

Mr. COX. You don't think there is a shortage of time in prime hours in Boston, with two VHF stations?

Mr. HAYES. I don't know. There are obviously certain markets in this country where time is very tight.

Senator PASTORE. In other words, are you telling us, Mr. Hayes, that if you had no prime time at all and if there were no option time, and if there were no must-buy conditions, that insofar as independent producers are concerned, at your station you wouldn't be showing any more programs of independent producers than you are now? In other words, you are telling us that you are completely satisfied with the present setup?

Mr. HAYES. I am completely satisfied with the present setup; yes, sir. I think if you didn't have must-buy and you didn't have the option time you wouldn't have the network to start with.

Mr. COX. That is, you think that all of the programing of the network in these 21 nighttime hours, with the exception of the two that you have failed to clear, is better than any programing that is available from a nonnetwork source?

Mr. HAYES. Well, "any" is pretty broad, Mr. Cox. I haven't seen them all. But it is certainly as good as.

Mr. COX. That is, in other words, you feel that the programing of the network is not just very good in general—that it is more or less of unequal quality throughout the week? Aren't there some programs on the network schedule that are better than others?

Mr. HAYES. Yes, sir.

Mr. COX. Now, your reason for desiring the affiliation is to get the network programing service featuring, principally, these highly popular programs, isn't it?

Mr. HAYES. Yes, sir.

Mr. COX. And in order to get that, plus its facilities for bringing you live on-the-spot events as they occur and certain sustaining programs, you option your time and agree to take the other programs in the schedule which are not, perhaps, so popular as I Love Lucy and Studio One and some of the other outstanding features—you express yourself as being willing, in general, to clear the time on your station for these other programs which you consider good, although they are not as good as the top programs of the network?

Mr. HAYES. Yes, Mr. Cox.

Mr. COX. Now, taking just this category that you regard as not outstanding—they are still good programs, but they are not outstanding—don't you know, simply from trade publications, circulars that you receive from independent sources of program, that there are other programs which could be made available to you which, in other markets where they have been exhibited, have outdrawn some of the network programs that you are carrying?

Mr. HAYES. I wish I could answer that question simply, Mr. Cox. It just doesn't lend itself to an easy reply.

When you get into this whole area of buying syndicated half hours, you simply cannot say "How did this program do in St. Louis," and assume it is going to do this way in Washington.

Mr. COX. The network does. It assumes if this program does good——

Mr. HAYES. That is right; because it is only a network that can make that assumption. When an affiliate clears for a network program it then takes its proper place in the overall schedule. You know what is before it, and what is after it. You can build a comprehensive schedule. When you now talk about trying to buy an isolated half hour from a syndicated film supplier—the program may have done very well in St. Louis, where, perhaps, it had a certain time against this particular competition on a certain day. But those facts don't obtain in your market. So I have not felt it very helpful when a film salesman comes in and showed me sales promotion, and says, "Look at our ratings in Buffalo." It doesn't make any difference at all, because you have no idea at all what the situation was in which that program was in Buffalo.

Mr. COX. All right then, you look at the program. Is that the system you follow?

Mr. HAYES. The nonnetwork program?

Mr. COX. Yes.

Mr. HAYES. Yes. Sometimes, it is difficult to get a pilot that is representative of the group, but if you can, you certainly try to look at it, yes.

Mr. COX. In your opinion, there were only two that have been shown to you for broadcasting in this year which were better than any of the programs on the network?

Mr. HAYES. Two that were offered to us.

Mr. COX. That is you mean two instances where an advertiser bought it, and wanted to buy time on your station?

Mr. HAYES. That is right.

Mr. COX. That is, you do not generally engage in the practice of buying the Washington rights to a film series and then attempting to find a Washington advertiser to sponsor it?

Mr. HAYES. Or a national advertiser.

Mr. COX. Or a national advertiser?

Mr. HAYES. Not if we can avoid it, Mr. Cox. This is a very expensive business. We have done that at times to fill up a hole in the schedule. But if we can avoid committing ourselves to the film supplier without having a client, we try to duck.

Senator PASTORE. Well, the only observation I have to make is: We hadn't ought to try to tell you that you have a toothache if you feel perfectly all right.

Mr. HAYES. That is right. I was parading some if's that could happen to us——

Senator PASTORE. I just want to make this qualification. We have got a special situation here in Washington, where you have 4 channels and 3 networks. And maybe what Mr. Cox is trying to bring out here is, that may not prevail in another part of the country. And I think we ought to wait for that type of a witness to come before we take that up.

In other words, Mr. Moore has indicated pretty much in his testimony—he didn't say this, but I mean the strong implication is—that most of the broadcasting stations are more or less shackled to the network. You don't feel that way about it?

Mr. HAYES. No, sir.

Senator PASTORE. I guess you have answered the question.

Mr. HAYES. I don't feel that way—not only because of Washington, but as chairman of the CBS Television Affiliates Committee.

Senator PASTORE. And how many affiliates do you have in your organization that have less than three channels in their community?

Mr. HAYES. I don't know, sir.

Senator PASTORE. Well, I would be interested to know that. Because I am afraid that when you get into a locality where you only have 1 or 2 stations, of course the situation might be a little different. Because there I think you have to more or less deal on the terms of the network, much more so than you have to. I mean, it is an economic question; it is being done every day in the week, in every industry of our country.

It all depends on what side of the fence you happen to be dealing.

Mr. HAYES. May I proceed, sir?

Senator PASTORE. Yes.

Mr. HAYES. If the network did not have a reasonable prospect of meeting the huge expense of developing and originating programs and transmitting them over the interconnection lines, it could not provide the comprehensive schedule of contiguous programs—both sponsored and nonsponsored—which interests an individual station in becoming and remaining an affiliate.

If the comprehensive schedule of programs were not being transmitted continuously by the network to a sufficiently large number of affiliates throughout the country, the A. T. & T. interconnection facilities could not long remain available on a regular basis for nationwide television coverage.

Mr. Chairman, this is no parade of mere possibilities. This is the horrible nightmare of networks and affiliates alike.

It is because of this that the working partnership between the network and the affiliates has developed. It is this partnership that holds our various interrelated elements in harmony. It is this partnership which provides the only effective way we know of maintaining a comprehensive network pattern of nationwide television service.

Here are the principal aspects of the affiliate-network relationship. There are three.

1. The affiliate and the network agree that the affiliate will have the right of first refusal to all network sponsored programs ordered by the advertiser in the affiliate's market and to all nonsponsored programs originated by the network. Inasmuch as the network must look principally to a particular station in a particular market to carry its programs in order to maintain a continuity of programing, the affiliate quite properly has the first call on network programs. For the affiliate this is the essential element of the relationship. Indeed, without it every station would be the "affiliate" of every network and no station would be the affiliate of any network.

Second, a schedule of rates for use of the station's facilities is agreed upon between each individual affiliate and CBS television. The advertiser is charged the applicable rate and the station receives a percentage of the rate which is generally 30 percent before any network discounts.

Senator PASTORE. This rate that is fixed by the network: Is that the rate that you usually use with relation to your local advertisers?

Mr. HAYES. It can or cannot be depending on how the operator wishes to set his own rate card. Several stations have three rates: A network rate, a national rate, and a local rate.

Senator PASTORE. And do you have it?

Mr HAYES. No, sir; we have one rate for all advertisers.

Mr. COX. Now, in terms of compensation to the network, in addition to the 70 percent which is retained by the network—and out of which, of course, they pay the telephone charges, the discounts, commissions to the advertising agency, and certain other expenses—according to the testimony of Dr. Stanton it is general practice for the station to waive compensation on certain hours, called free hours. Does WTOP give free hours to the network?

Mr. HAYES. We use—let me answer: There are several methods by which you can arrive at a network rate in negotiation with the network. One would be a flat rate, a flat percentage; or second, you could use the converted hours; or third, you could use the free-hour routine. We like the free-hour routine, and we use it. This is an unfortunate term actually, "free hours," because it isn't actually that. What it is, is a method of arriving at a rate under which you are paid a return for the use of your facilities by network advertisers. This is really an outgrowth of radio.

Mr. COX. Yes. That is what Dr. Stanton said.

Now, however, if in your negotiations you came up with a set of terms which gave you the same percentage, 30 percent, as another station in a comparable market, and that station was not providing the number of free hours that you are, then to that extent that station would have entered into a more favorable relationship with the network?

Mr. HAYES. I don't think so, Mr. Cox. You get involved in an awful lot of statistical mumbo-jumbo in talking about this. But the fact of the matter is that the end result, or the end return to the affiliates—regardless of what formula they use, you end with about a 30-percent return.

Mr. COX. Well now, let's assume that you are giving CBS the more or less standard number of hours which Dr. Stanton testified to—which was 5 a week or 20 a month—and your network rates is $1,500 an hour. That means that on the first 20 hours a month you waive all that compensation, so that instead of taking 70 pecent, the network takes the entire amount?

Mr. HAYES. Yes; if you just had 5 hours a week.

Mr. COX. Well, in effect, on a monthly basis, the first 20 hours' worth of time charges that comes in is kept by the network?

Mr. HAYES. Correct.

Mr. COX. And then on the balance after that, you receive 30 percent of the gross, assuming again this standard figure?

Mr. HAYES. Yes; that is right.

Mr. COX. Now, suppose a station in another market comparable to Washington was not giving any free hours— so that the first $30,000 did not go to CBS—and he was still getting 30 percent of the gross overall time charges. He would be receiving more out of the time charges for his station than CBS is paying you?

Mr. HAYES. If those were the facts, yes, sir. But I would think, in that situation, it would be more likely that he would be accepting perhaps 25 percent.

Mr. Cox. He might be receiving 35 percent as far as you know?

Mr. HAYES. Sure. It would depend on so many situations. But it is pretty hard in this industry for that to get out of hand.

Senator PASTORE. Why?

Mr. HAYES. Well, broadcasters have a certain kinship with each other, and I think I could tell you fairly accurately what happens.

Mr. Cox. Then you would have no objection, personally, to having the terms of these contracts, as they are filed with the FCC, made public—so that you would actually know what the terms are of affiliates in comparable markets?

Mr. HAYES. I don't see what purpose would be served, Mr. Cox, in making them public. I mean we have competitors who would like to know. I suspect that our competition in Washington would like to know more about our revenue.

Mr. Cox. I am not talking about your revenues; I am talking about the terms that you have arrived at with the network as to the division of the revenues derived through the use of your station. It would not be a dollar amount.

Mr. HAYES. It would not be hard to compute backwards. You know what the network rate is—it is not hard to work back to the end figure. I would be just as happy if our competitors didn't know.

Mr. Cox. They, of course, can tell from your published schedules how much network programing you're carrying, they know your network rate, and they can therefore determine, certainly, the first figure, which is the gross revenues that are being derived from the time charges of your station. Now if you have in your conversations with various people in the broadcast industry indicated what your arrangements are with CBS, they could then complete the calculation.

Mr. HAYES. In this answer to Senator Pastore I have been talking about other CBS affiliates.

Mr. Cox. The people you are concerned about, then, as far as this situation is concerned are the other stations in the Washington market?

Mr. HAYES. I am an old-fashioned fellow. I would like to have our competitors work to get information about us.

Mr. Cox. Go ahead.

Senator PASTORE. Not as old fashioned as you think. [Laughter.] All right, sir.

Mr. HAYES. I was talking about the three principal aspects of the affiliate network relationship.

Now, the third: Under the FCC regulations the station is specifically authorized to agree with CBS Television that it will give the network an option to use its facilities for sponsored programs a maximum of 3 hours in each of the 3 time segments each day. This is the so-called option time provision of which so much has been made. But even this provision is often misunderstood. Under the FCC regulations and the network affiliation agreement, the individual station has these further rights:

(*a*) The option may not be exercised by the network on less than 56 days' notice.

(*b*) It may not be exercised to preempt a program during a period when the station has agreed to broadcast a program of another network; and, (*c*) In any event, the station is free to reject or refuse to accept any network program which the station reasonably believes to be unfit or unsuitable, or which, in the opinion of the station, is contrary to the public interest. Furthermore, a station may at any time substitute a program of outstanding local or national importance.

Under the affiliate-network agreement, the affiliate obtains a considerable number of valuable benefits from the network. They include the right of first refusal to all sponsored programs offered over the network which the advertiser wants to place in a particular market; the availability of sustaining programs produced and distributed at the network's expense; the strength that the network programs give to an affiliate's overall program schedule; the revenues directly accruing from network clients; the increase in audience acceptance from network programs which enables the station more readily to sell its locally originated programs to local and nonnetwork national advertisers; the promotional value inherent in network programs; and the ability of the affiliate to concentrate its creative efforts on local programing of a higher quality than would otherwise be possible.

Now, the basic consideration which CBS Television receives in return from the affiliate is the option right; without option time, the network affiliation would be a one-way street, assuming that the networks could survive without option time. And whether the networks could survive without option time is doubtful at best.

A network is principally an instrument for the simultaneous transmission of programs over a number of stations. Nationwide television networks with their present practices have come into being because no advertiser, no advertising agency—no one except the networks—has been able effectively to arrange for a number of programs to be transmitted daily to a large number of stations throughout the United States. (CBS television evening programs, for example, are broadcast, on the average, by some 121 affiliates in virtually every part of the United States.) Option time is essential to enable the networks to clear a substantial number of the markets the advertiser wants. Network and advertiser planning and budgeting, and the production of programs would be most seriously hampered without option time. The strong network schedules would erode, A. T. & T. interconnection facilities would go to other users, and the network machinery could no longer operate effectively. The loser would be the American public.

Mr. Cox. If there were a network providing a schedule of weak programs with option time it would, in your view, have a hard time getting clearance for that schedule if its affiliates were living up to their responsibility for programing in the public interest?

Mr. Hayes. Yes, sir.

Mr. Cox. On the other hand, if the network has a strong schedule of programs, isn't there every incentive on its affiliates to clear time for those programs, option or no option?

Mr. Hayes. Yes, sir; if they are very acceptable programs, of course.

Mr. Cox. That is, in other words, you have determined that of the 21 hours that CBS offers to you in prime evening time, that all but 1 hour is highly desirable and suitable for this market, and you are happy to carry them. Wouldn't you carry those 20 hours of programs even if the network did not have an option?

Mr. HAYES. Well, sir, it is the chicken and the egg. I think if the option time provisions didn't exist we wouldn't have the programs available to start with.

Mr. COX. Why not? Wouldn't these advertisers still desire to advertise on a national basis?

Mr. HAYES. But I don't know how an advertiser could be certain of clearance.

Mr. COX. He is not certain now of clearance until he orders a market and the order is accepted, is he?

Mr. HAYES. That is right.

Mr. COX. He could follow that same procedure without an option. He could order 60, 100, 150 markets, and would get, as he gets now, teletype responses indicating what markets can clear time for him?

Mr. HAYES. Mr. Cox, it doesn't quite work like that. When a national advertiser decides on buying a network program, he must, at that point, have some reasonable assurance of what markets he is going to get, otherwise he can't even begin to plan what kind of a program he is going to do.

If he only gets into 50 markets, and if he has a certain formula for arriving at a cost of program based on markets, that is one kind of a program. If he can only get in 25, then perhaps he has to do a program less expensive. This is purely a machinery for being able to make reasonably certain to an advertiser which markets there will be available. Now, he knows he is not going to get the whole station list. And he knows that some markets will not be able to clear. But he at least has a reasonable assurance of what he is going to get.

Mr. COX. But the only reasonable assurance he has is that if he can come up with a program of such quality that to a high percentage of the affiliates of the network it will seem suitable and desirable only then does he have any reasonable assurance that he can get the clearance?

Mr. HAYES. Well, he has to be reasonably certain that he can produce a program at least as acceptable as anybody else.

Mr. COX. In other words, it is not the option that gets any particular advertiser who deals with the network a clearance in the desired number of markets—it is the quality of the program that he offers and the chances that the individual affiliates, in their own determination of the public interest, will agree that that program should be broadcast in their market in that time?

Mr. HAYES. Well, there is something else too, which is the advertiser has no other way of doing it. There is no other machinery for doing this.

Senator PASTORE. But it is the option that creates the opportunity to sit down and talk about it?

Mr. HAYES. That is right.

Mr. COX. You couldn't talk without the option?

Mr. HAYES. I don't know quite what you would talk about. You would say "Here is a program." He would say "Where is it going to be on." And you would say, "I don't know."

Mr. COX. If—simply assuming this as an extreme possibility—if the option were eliminated, CBS would still exist as a highly organized facility for providing sustaining programs, for providing news service to its affiliates, for providing initial contacts in the top markets of the country with people with whom it has had a history of friendly dealings. It could still represent to national advertisers, couldn't it, that if they came to it with a program of sufficient quality, they would be able to get that cleared in, not all, but a substantial percentage of the top markets of the country which he might desire to order—on the basis of their relations with their affiliates, their affiliates' need for the network service and the quality of the programing?

Mr. HAYES. No, sir, I just don't agree with that, Mr. Cox. It seems to me, once you destroy this machinery and you take away the possibility of any cohesive planning, or the possibility of building a comprehensive schedule, and I can't think of any other word, but erosion is bound to set in.

Here is how erosion sets in. Let's suppose you have five programs cleared on X number of stations, and then this station decides he doesn't want to take it, then that station decides he doesn't want to take another program. You eventually end up with the entire program schedule gone.

Mr. Cox. Why would they do it more without the option than with it?

Mr. HAYES. Because they can't do it under the present system if the program is acceptable.

Mr. Cox. As I understand your testimony, the test of acceptability is not whether you find this positively acceptable, but rather that you just think you have found something that is more acceptable.

Mr. HAYES. Well, I am simply saying, Mr. Cox, that we think that the network program schedule is acceptable, and more than acceptable.

Mr. Cox. You would think that even if they didn't have the option?

Mr. HAYES. I don't think they would have the programs, Mr. Cox, that would make you think the network was acceptable.

Mr. Cox. That is, you think, if the Commission were to decide that the giving of an option was not in the public interest, that the advertisers who have invested advertising budgets in network programing with such satisfactory results to themselves would, at this one stroke of a pen, decide that the network no longer provided them a facility for presenting their national sales message and would decide to abandon television?

Mr. HAYES. No, sir; I think if that unhappy occurrence happened tomorrow, nothing would happen the next day. But I think something would begin to happen the following week, and it would be worse the week after and you would eventually end up without networking.

Mr. Cox. Are you saying that without the option in some way there would be an increased tendency on the part of affiliates to fail to clear network programs?

Mr. HAYES. Yes, sir.

Mr. Cox. Then you mean that the option now operates to clear for programs which the station, in its completely undisturbed discretion, would not have cleared?

Mr. HAYES. I am not sure I understand that question, Mr. Cox.

Mr. Cox. Well, that is, in other words, you think that the option, as it presently works, serves to effect clearance for a program that would not have made it on its own merits?

Mr. HAYES. No, sir, I don't think that at all. I think that—we are talking about, not about a specific program, we are talking about an overall comprehensive program schedule. When you start talking about overall program planning, it is very difficult to pull this one program out of that particular place on the schedule and say this is acceptable, this is not quite as acceptable, this is less acceptable. It belongs in a particular place, and at that particular place it is probably more acceptable than it would be elsewhere.

Senator PASTORE. Aren't you saying this, Mr. Hayes: That if you were contemplating building a shopping center, before you would talk to a tenant of a store—or prospective tenant of a store—you would like to have an option on the purchase of the land.

Mr. HAYES. I wish I had said that.

Mr. COX. However, if you get an option on the purchase of land, that is a contract presently entered into with respect to a particularized transaction for which you have given actual consideration, and it is not a general overall option which the man possessing could not enforce. The option you would get on real estate is a legally enforcible right.

Senator PASTORE. The evil in that—now, I hope that we don't keep kicking a dead horse here, because we have about eight witnesses and we have got to finish them today.

The evil with that, if I may make this observation, is this: That if you have to clear with 60 stations and you have got to start your option operation at the time that you are beginning to talk with your advertiser, when you get to the last 5 those stations will demand their own terms, if you need 60. I mean you have got to have these things in advance if you are going to do it in a reasonable and realistic way.

Now, if you are going to go from station to station to build up your 50 or your 60 must-stations, when you get to the last few, then the terms will be of those last stations. Personally, I wouldn't want to be placed in that position if I were dealing for the network. On the other hand, there is this evil: That you are up against the proposition that the option is so much in advance from the time that you deal with the advertiser, that sometimes it makes it pretty hard for a new man to creep in once the option time is more or less allocated to a certain station or certain network.

But your argument here is that you haven't had any difficulty with the network.

Mr. HAYES. That is right.

Senator PASTORE. I think we ought to wait for a witness that has had. We are trying hard to convince this man he has had a bad deal when he says he has a good one. [Laughter.]

Mr. HAYES. You will find that with CBS affiliates, generally.

Senator PASTORE. I am not prepared to go that far, and I think we ought to wait.

Mr. HAYES. All right.

For these reasons, the affiliates overwhelmingly support the option time provision because we recognize that it operates to our interest, and to the public interest. A few independent stations might benefit if networking were weakened, if not destroyed, but the vast majority of stations in the United States would suffer, and the public would suffer.

THE BASIC NETWORK REQUIREMENT

I would now like to say a few words about the basic network requirement. This is a practice involving the network's relations between it and the advertiser; it is not a practice between the network or the advertiser and the individual station. Yet, I am not able to find a single CBS affiliate which is not sympathetic with this practice, whether or not the affiliate is included on the basic required list.

It is difficult to realize how anyone can seriously challenge the requirement that, if an advertiser wants to use a nationwide network, he must order a sufficient number of stations to justify the use of that network in the first place. An advertiser who wants to place his advertising in a few markets doesn't need a nationwide network for this purpose. Either the national spot sales or the local sales route is open to him. Last year, such nonnetwork television purchases in this country totaled almost one-half billion dollars.

If you piece together the proposals to eliminate option time and the minimum basic network requirement, you will understand why we believe that these proposals would seriously impair, if not destroy, networking. If a nationwide television network had to accept orders when advertisers wanted to exclude the markets which by size and geographic location go to establish the basic network, it would no longer be in the nationwide network business. Thus, if the elimination of option time did not accomplish the end of television networking, the elimination of the basic network requirement would certainly do so.

May I next address myself to the third principal question? Does the present system of networking decrease the proper independence required of an affiliate so that it fails to operate in the public interest? In answer, I would like to explore three charges which have been made against us.

First, the charge that the network, through option time, controls and dominates the affiliate.

Second, the charge that the affiliate, because of this alleged control and domination, does not perform a satisfactory local service.

Third, the charge that network practices preclude affiliates from carrying nonnetwork programing and that nonnetwork program sources are drying up.

OPTION TIME DOES NOT OPERATE TO CONTROL THE AFFILIATE

We do not believe that option time operates to control the affiliate.

It is asserted that either option time permits the network to substitute its judgment for that of the affiliate, in which event it is an evil; or that option time has no effect, in which event it is unnecessary.

Neither of these assertions is correct.

When a station is broadcasting a nonnetwork program in option time and receives an order for a network program, there are three possible situations.

First, the affiliate determines that the network program is clearly more acceptable. Here the station exercises its judgment and presumably accepts the network program.

Second, the affiliate determines that the network program is clearly less acceptable. Here the affiliate is wholly free to reject the network program and continue the nonnetwork program.

Third, the affiliate determines that both the network program and the nonnetwork program are satisfactory and are essentially of the same quality. Here, under the affiliate-network partnership arrangement and the regulations of the FCC, the option will indeed operate to the advantage of the network program. But certainly this is no abdication of the licensee's responsibility to run its own television station. For it is the licensee, in good faith, who decides that the network program is acceptable.

In each of these cases, the station exercises its judgment, taking into account the quality of the network and the nonnetwork programs, its own overall program structure, the programs carried by other stations operating in the same area, the needs of the local area, and all the other factors which any responsible licensee will consider.

We simply fail to see where abdication of responsibility enters into the picture at all.

NETWORK AFFILIATES PERFORM A HIGH QUALITY OF LOCAL SERVICE

We believe that network affiliates perform a high quality of local service.

To suggest to a broadcaster that he is not properly serving his local area is tantamount to suggesting to a Senator that he has failed properly to serve his local constituents. You gentlemen recognize that a matter of national interest is of interest to your local constituents and devote yourself to these matters as well as to matters which are of purely local interest. In the same way, I am sure that you gentlemen will recognize that a network program of national interest is also of interest to the local public which an individual affiliate serves. So it is that I would wish to reject at the outset any notion that to broadcast high quality network programs is a disservice to the local community. If we did not broadcast the great bulk of these network programs, the local public would be the first to object.

But we go further and we state our profound conviction that network affiliates generally perform an outstanding service in originating local programs. Indeed, a network affiliate is able to concentrate its creative efforts upon its local programing to a more intensive degree than can a nonnetwork station whose efforts must, of necessity, be spread over an entire day without network support. CBS television programs are the central core of an affiliate's program schedule but to suggest that we affiliates merely "patch into the network" is simply inconsistent with the facts.

In the case of WTOP-TV in Washington, we originate 51 hours of programs locally out of a total of 124 hours a week. This is an average of more than 7 hours a day of local programing. Our local live programing alone amounts to 17 hours a week or more than 2 hours a day.

Our live, local schedule includes each week 4½ hours of news locally originated, 2 hours of religious programs, a children's educational series and a forum on local affairs. On one of our daily live local programs, the Mark Evans Show, we interview Government officials, authors, playwrights, distinguished citizens, actors, community leaders, and other well-known figures.

We also produce our own special features, which are very substantial undertakings, such as our series on alcoholism, on the rehabilitation of the mentally ill and on social diseases. Only last week we broadcast a program which took 6 months' preparation, including 2 weeks overseas, by our own personnel. This was a film documentary portraying the life of a Government girl in Istanbul and was done in cooperation with the State Department to aid in their recruitment of personnel. Only recently, we broadcast a live play dealing with some of the great individual constitutional rights of this Nation, which was written and produced by our own staff. Appendix B to this statement provides some details on our programing that may be of interest to you. (See p. 2543.)

To serve the public well is uppermost in our thinking. Much of our programing is network programing because it is first-class programing and well balanced, and the public likes it. But we have done, and we will continue to do, everything we are able, including rejecting network programs, to persuade more people to watch WTOP-TV in Washington.

INDEPENDENT PROGRAM SOURCES

Finally, I would like to refer to the charge that network practices preclude affiliates from broadcasting film programs which are independently produced, and that independent sources of programing are drying up.

I have already pointed out that 7 hours of our programing each day on the average is devoted to nonnetwork programing. In the field of first-run syndicated film, WTOP-TV broadcasts more first-run syndicated film programs each week than the average of all the nonaffiliated stations in Los Angeles and New York. Our syndicated film broadcasts in total run over 17 hours per week and we present an additional 17 hours of feature film. Our experience, I believe, is typical. Network affiliates make liberal use of independent program sources.

The charge that nonnetwork sources of programing are drying up was received by every television operator I know with nothing short of amazement. The industry's trade press is available for everyone to read. All available data demonstrates that the number of syndicated film programs produced specifically for television has increased tremendously, the gross revenues from the sale of syndicated film has steadily increased, and the moving picture studios in Hollywood have only recently begun to make available for television large portions of their tremendous libraries of relatively new feature films, westerns, cartoons, and short subjects.

CONCLUSION

It seems to us, gentlemen of the committee, that the existing system of networking and the existing affiliate-network relationship are operating to the great advantage of the viewing public; the basic practices are sound, proper and necessary for effective nationwide network television service; affiliates exercise their own good judgment in operating their stations; network affiliates perform a good job of serving their local communities; and nonnetwork program sources have flourished and have benefited, and have not been injured, by networking.

We do not suggest that this is a perfect industry. Man's creations are never perfect. We do suggest that this industry has grown amazingly and has served the public well. We can understand why this committee is concerned about some of the individual problems of particular communities. But these problems are largely technological, and result from the fact that this industry has expanded so rapidly that it has outstripped its own engineers. We do not pretend to know the answers to these engineering questions. We do assert that problems such as these are wholly distinct from the question of networking and the affiliate-network relationship.

The charges against the affiliate-network relationship brought us here today. We most respectfully submit to this committee that to tamper with this relationship would, in our view, be most dangerous.

Appendix A to the Statement of John S. Hayes, President, Washington Post Broadcast Division

The following resolution was passed unanimously by the CBS television affiliates at their anual meeting in Chicago, Illinois on April 14, 1956:

"Whereas the Senate Interstate and Foreign Commerce Commitee of the United States Senate has recently heard testimony with respect to network option time and other network practices; and

"Whereas it is the consensus of the affiliates of the CBS television network that option time or some similar business arrangement and other network practices are of fundamental importance to continued sound networking; and

"Whereas it is recognized that the economic health of the networks insures the preservation of vital public service on a national and international level; and

"Whereas it is the belief of the affiliates that there have been no seriously detrimental practices and the relationship between the CBS Television Network and its affiliates is one of partnership in which each operates to the benefit of the public and each other: Now, be it and it is here

"*Resolved*, That the undersigned affiliates of the CBS television network request the opportunity to present a representative group of affiliates to said Senate committee to testify as to the essentiality of option time or some similar business arrangement and other network practices."

CBS Television Network Affiliates.

Appendix B to the Statement of John S. Hayes, President, Washington Post Broadcast Division

I. DESCRIPTION OF TYPICAL LOCAL LIVE PUBLIC SERVICE AND PUBLIC AFFAIRS PROGRAMING ON WTOP–TV, WASHINGTON, D. C.

City Side.—(Current.) A weekly half-hour panel show wherein Washington reporters question a figure prominent in the news of Washington and the surrounding area. Problems discussed have ranged from integration in the public schools to an examination of advertising practices. Every fourth week the panel questions the Board of District Commissioners.

Ask-It-Basket.—(Current.) A weekly half-hour program featuring a panel of grade-school children questioning an expert from a cultural, governmental or scientific field. Such topics as Beethoven, plastics, juvenile courts, and cosmic rays have been discussed in the past. Each program is done in cooperation with a different area educational organization. This program was cited by the American Association of University Women during the past week as an outstanding program for school-age viewers.

Mass for Shut-Ins.—(Current.) A weekly half-hour performance of the ritual of the Catholic Mass from a studio chapel at Broadcast House. The Mass is done as a service to Catholics either temporarily or permanently disabled who otherwise would be unable to attend Mass. The archdiocese of Washington produces this program in cooperation with WTOP Television. This program is not broadcast when the Jewish Community Hour is broadcast 1 week each month.

Chapel of the Air.—(Current.) A weekly half-hour religious program done in cooperation with the Protestant chaplains of the United States Air Force under the direction of Gen. Charles I. Carpenter, Chief of Air Force Chaplains. This program reproduces from Broadcast House an actual Air Force Chapel service as it might take place on any Air Force base in the Nation or overseas. This program has been recently commended by the Secretary of the Air Force and plans are underway to film the service for distribution to Air Force bases overseas.

Jewish Community Hour.—(Current.) A monthly half-hour program devoted to a report and discussion of the activities of the Washington Jewish Community. In addition to a news report of Jewish Community activities the program features native Jewish music and explores various facets of Jewish folk culture in a way that is designed to appeal to the nonJewish audience, as well as answer questions that may be in their minds.

Meditations.—(Current.) A 5-minute, twice-daily religious devotional done at the beginning and end of each broadcast day. These programs are rotated among the Catholic, Protestant and Jewish faiths. These daily messages of inspiration have received a wide, favorable response from many viewers who have on numerous occasions asked for transcripts of the messages.

6:30 Spotlight.—(Current.) Presented Monday through Friday, this 15-minute program reports local and national news as well as the weather and news of the entertainment field. WTOP television news programs are produced by the WTOP news division. The news division has the use of the following facilities: AP trunk and radio wires, UP trunk and radio wires, Washington City news service wires, UP sports wire, Western Union sports and weather wires, UP facsimile service, and UP and CBS news film as well as UP still photo service. In addition to the above services the news division has a cameraman for film coverage of local news events as well as complete editing facilities.

11:00 P. M. Report.—(Current.) Presented 6 nights a week, Monday through Saturday, this 15-minute program is a comprehensive report of local, national, weather and sports news. This program has been consistently among the leaders in multiweekly news programs.

Saturday News Special.—(Current.) A weekly 15-minute program devoted to national, local, weather and sports news.

Sunday News Round-Up.—(Current.) A 15-minute report of local and national news with the emphasis placed on reviewing the week's news. A special film report is usually featured either from a CBS overseas correspondent or a local correspondent who has covered a local story of considerable interest.

In addition to the above regularly scheduled, locally originated news programs, a 5-minute portion of the Mark Evans Show daily (discussed further below) is devoted to a report of up-to-the-minute news, and another 5-minute portion of the same program is devoted daily to a newsreel presentation.

To Live Anew.—A series of 13 once-a-week programs presented in cooperation with the District of Columbia Health Department dealing with the problems of rehabilitating the physically handicapped. These programs were largely dramatic in treatment and many scenes were filmed on location by the WTOP Television camera crew. The series received outstanding reviews from the local and national press. The Office of Vocational Rehabilitation in the Health, Education and Welfare Department ordered film recordings for nationwide distribution to television stations.

The Road Back.—Another pioneer series done in cooperation with the District of Columbia Health Department. This was a weekly series of 13 programs dealing with the problems of alcoholism. During the preceding year WTOP Television also did two 13-week series on the problems of mental illness and venereal disease. For its programs in the field of health education, WTOP Television received the John Benjamin Nichols award of the Medical Society of the District of Columbia "for contributions in the health field and distinguished service to the people of the District of Columbia."

You and Traffic.—A weekly series of 13 15-minute programs during which the Director of Traffic for the District of Columbia, Mr. George Kneipp, discussed Washington traffic problems and answered questions from viewers relating to the highway law enforcement situation. Film reports of various trouble spots were integrated into the presentation as were diagrams illustrating the most common road hazards.

Do You Wonder?—A series of 26 religious programs done on a weekly basis. This program was done in participation with the Washington Federation of

Churches and was a Sunday School of the Air for children of the Protestant faith. Puppet plays and dramas were incorporated into the production of this program to illustrate the timeless stories of the Bible.

Meet the Candidates.—These half-hour programs produced by the News Division are scheduled whenever there is an election of importance in the area surrounding the District of Columbia. Free time is given by WTOP Television to the leading candidates in the elections to present their views. This type of program gives an equal forum to the candidates and an opportunity to the voter to hear the major opposing candidates express their views on the same program.

Assignment Istanbul.—A half-hour program on the life of a Government girl overseas. A WTOP reporter and camera crew went to Istanbul, Turkey, to prepare this report. Because of the high incidence of Government employees in the Washington area it was felt that a program of this type would be of special interest. Several months, including 2 weeks overseas, were spent in comprehensively covering all phases of the life of an American girl in one of the world's crossroads as a State Department employee.

The Blessings of Liberty.— A half-hour dramatic program commemorating the convening of the Constitutional Convention. The program dealt with the guaranties of the Bill of Rights and specifically with the freedom of speech and the right of political expression. A little-known historicial event was dramatized concerning the trial in Vermont of a Congressman under the Alien and Sedition Act. This trial, which took place only a few years after the ratification of the Bill of Rights, ended in the Congressman being sentenced to serve a prison term. However, public indignation was so great that the Congressman was reelected from his cell and the Alien and Sedition Act was allowed to expire under the Presidency of Thomas Jefferson.

V–E Plus 10.—This program produced by WTOP television and the Washington Post and Times Herald was presented on the 10th anniversary of V–E Day. Military leaders and statesmen prominent in that victory were interviewed on their reflections of that day's importance and meaning. Among those interviewed were former President Truman, Vannevar Bush, Gen. Walter Bedell Smith, Gen. Carl Spaatz, Gen. Omar Bradley, Admiral Kirk, and a child born on V–E Day. This program was broadcast nationally over the CBS television network.

Heart Sunday.—A special program presented on the occasion of the opening of the Heart Fund Campaign. Heart specialists from the Washington area talked about the necessity of the Heart Campaign and the good accomplished by it. Various heart patients were interviewed about assistance they had received from the fund.

Care Benefit.—A studio party for people attending a local movie premier sponsored by the CARE organization. The entire promotion of this special benefit performance was handled by WTOP television. People purchasing tickets to the benefit were invited to the studio program which was telecast for an hour. Present were Government dignitaries and embassy representatives as well as stars from the entertainment world.

Dedication of Civilian Defense Spotters Tower.—A civil-defense spotters tower was constructed on the roof of Broadcast House and a special program was done on WTOP Television when the tower was dedicated. Present were the Secretary of the Air Force and the Air Force Band.

Community Chest.—A dramatized half-hour program presented on behalf of the community chest in an appeal for volunteer workers. The drama illustrated the work of a volunteer and demonstrated ways in which this work is a service to the community. This program was produced from WTOP in cooperation with the other Washington television stations and was presented jointly over all stations.

Election Returns.—Special programs were devoted to broadcasting the returns from both the Maryland and District of Columbia primary elections. A special election headquarters was set up in our largest television studio with huge boards recording up-to-the-minute reports. In addition, the news division had reporters stationed at party headquarters who were broadcasting the latest news from those points.

Clark Griffith Memorial.—This special program was done in tribute to one of Washington's foremost citizens on the occasion of his death. Filmed highlights of his life and service to baseball and Washington were narrated. Prominent sports figures were on hand to pay their respects to Mr. Griffith.

II. DESCRIPTION OF OTHER TYPICAL LOCAL LIVE PROGRAMING ON WTOP–TV, WASHINGTON, D. C.

Mark Evans Show.—(Current.) An hour-long program of an informative and entertaining nature presented 5 days a week. Presented during the morning hours, the program is designed primarily for a women's audience. Included are cooking and homemaking features of an instructional nature, as well as news and newsreel features referred to above. Among the prominent guests interviewed as a daily feature have been Vice President Nixon, Senators Duff, Neuberger, and Martin, Attorney General Brownell, Secretary of Agriculture Benson, Speaker of the House Rayburn, and the ambassadors from many foreign nations.

Donna Douglas Show.—(Current.) A 15-minute Monday through Friday program concerned with the problems and interests of the housewife. Often instructive in nature, the program has featured explorations into fields of child care, juvenile delinquency, dieting, good reading and fashion, and others. Cooking and food-buying hints are also included in the overall direction of a comprehensive program for the average homemaker.

Pick Temple Show.—(Current.) An hour-long program telecast 6 days a week, Monday through Saturday, with an extra half-hour on Saturday. Pick Temple is a unique western performer—the cowboy without a gun. Pick never wears a gun or does the fancy gun-twirling tricks that are the stock in trade of the cowboy performers. A genuine folksong artist in his own right, Pick has recorded for the Library of Congress Folklore Division as well as on Label X records. Over a hundred thousand Washington-area children are members of the Pick Temple Ranger organization. As a requisite for being a member they fill in a daily cleanliness and obedience chart. Each day 15 members of the organization appear on the program with Pick. Pick has used the program as a vehicle for numerous safety contests in cooperation with the Police Department of Washington and the nearby area. In addition to talking with the guests on the show and playing games with them and singing folksongs, Pick shows a daily film episode based on the exploits of the famous American pioneer, Kit Carson.

Sunday Sports Round-Up.—(Current.) A 15-minute weekly program devoted to a review of the week's news in sports. Featured is an interview with a prominent sports personality. This is a year-round program reporting regularly on such nonseasonal sports as golf, tennis, and bowling as well as the more prominent seasonal sports.

Redskins Football.—A telecasting of the away-from-home schedule of the Washington Redskins football team. The WTOP television mobile unit traveled with the team on all away dates. In addition to telecasting the away-from-home games in the Washington area, WTOP television was the originating station for a network of over 35 stations throughout the South broadcasting all games—home as well as away.

III. DESCRIPTION OF TYPICAL NETWORK AND LOCAL FILM PUBLIC SERVICE PROGRAMING ON WTOP–TV, WASHINGTON, D. C.

Rural America.—(Current.) A weekly 15-minute local film public service program using films from the files of the Department of Agriculture. These films cover current farm problems as well as discuss new farming techniques. Liaison is maintained with the Department of Agriculture in the event they desire a particular film to be presented on the program.

What's Your Trouble.—(Current.) A weekly 15-minute local film public-service program in the religious field. Dr. Norman Vincent Peale, prominent Protestant clergyman, talks about broad Christian principles and how they apply to living in the 20th century.

Letter Home.—A local film public-service program telecast on Christmas Eve. The Armed Forces film messages from troops overseas to their families back home. Several of these filmed interviews were with Washington, Maryland, and Virginia boys. WTOP television assembled as many of these personalized Christmas cards as were available and put them all together in a special program immediately preceding the telecast of Christmas Eve services from the National Cathedral.

Adventure.—(Current.) A half-hour weekly network program produced in cooperation with the Museum of Natural History. These programs explore science and related fields featuring the foremost experts in the country, such as Margaret Meade, Carleton Coon, Willy Ley, and many others. Various topics have been discussed and dramatically illustrated, including Polynesian culture and ethics, Oriental sculpture, space travel, and genetics.

Camera Three.—(Current.) A weekly half-hour network program which has won numerous awards for experimental productions in the field of fine arts. Programs have ranged from readings of the poetry of Dylan Thomas to modern dress Shakespeare and Moby Dick.

Face the Nation.—(Current.) A weekly half-hour panel of newsmen who question a figure prominent on the national or international scene.

CBS Sunday News.—(Current.) A review of the past week's news conducted by Peabody award winner, Eric Sevareid. Film reports from trouble spots around the world are featured, and the purpose of this weekly half-hour network program is to put the events of the past week into perspective and objectively to probe their meaning.

Let's Take A Trip.—(Current.) A weekly half-hour educational program for children, consisting of trips through remote facilities to a different locale of historical or topical significance. Through this program children have been shown through a post office during Christmas rush, the Staten Island Ferry, a powerplant, and an international scouting exhibition.

You Are There.—(Current.) A weekly half-hour network program wherein a significant historical event is recreated from the past. The Trial of Socrates, The Composition of the Star Spangled Banner, Lee's Surrender at Appomattox, The Rise of Adolf Hitler have been recreated with painstaking detail and thorough research into the architecture, dress, mannerisms and general tenor of the times.

See It Now.—(Current.) These special programs of 1 hour and 1½ hours in length were telecast at irregular intervals during the past year. They have explored areas of international tension such as Africa and Israel. In addition to international coverage, the program also discussed the problems of school aid, the farm, and the importance of the Vice Presidency. Each of these programs involved weeks of intensive research as well as thousands of feet of film reporting.

Omnibus.—The weekly hour-and-a-half network series presenting programs of a wide cultural interest from Bach and Beethoven to Tennessee Williams and Louis Armstrong. Artists of stature from all over the world were commissioned to write and perform special programs for this unique and rewarding series.

The Search.—A special series of half-hour network programs that discussed and illustrated research projects being carried out at various American universities. The research in the field of speech therapy at the University of Iowa, and the field of old-age research at the University of Chicago were two areas explored. On-the-spot film coverage of these various projects was a feature of the program.

Now and Then.—A network half-hour series featuring illustrated lectures by Dr. Frank Baxter of UCLA discussing famous literature from Plato to Shaw.

Look Up and Live.—(Current.) A network weekly half-hour religious program rotated among three religious faiths.

Lamp Unto My Feet.—(Current.) A nondenominational Protestant religious program exploring through drama, dance, and music various basic religious truths.

In addition to the above programs which CBS has or is carrying on a regular or series basis, several spot or one-time programs have been presented as a public service. In this category would be the special tribute done to Winston Churchill on the occasion of his retirement from active political life, the memorial program on the night of the death of Albert Einstein, the special on-the-spot reports of President Eisenhower's heart ailment and the more recent special programs telecasting to the Nation on-the-scene reports concerning the President's operation. There have been various Presidential messages as well as messages from members of the Cabinet and speeches by leaders of the major political parties. There was the two-program report on mental illness, Out of Darkness, featuring Dr. Menninger and narrated by Orson Welles, so popular that it was repeated a few weeks after its initial showing. The network has also televised many sporting events including Big Ten Basketball, the Triple Crown Races, the Masters Golf Tournament, and the National Invitational Basketball Tournament. During the month of August the network program structure will be altered for a 2-week period to present on-the-spot coverage of the political conventions, and special coverage will continue up to and including the election.

Senator PASTORE. Senator Wofford.

Senator WOFFORD. Yes, sir. Mr. Hayes, the present FCC broadcast license period is 3 years, as I understand it?

Mr. HAYES. Yes, sir.

Senator WOFFORD. Do you have any views as to whether this is an appropriate period or not?

Mr. HAYES. Senator Wofford, the length of anything temporary is a matter of degree; and obviously in any business the longer the license the better. I think 3 years is better than 2. There has been much discussion in the industry about this very subject and, Senator, I have heard the figure 5 years used most often as perhaps a better figure than 3. I think that 5 years would certainly bring more stability to an industry, to this industry. I think it would not impinge on the authority of the FCC, which already has been authorized to review the performance of a licensee.

Certain so-called nonbroadcast radio services such as industrial radio and petroleum service radio are at 5 years. I would like to see our license period extended to 5 years.

Senator WOFFORD. Mr. Hayes, how do you feel about the length of a network affiliation agreement?

Mr. HAYES. Senator Wofford, that is now for 2 years, as you know. It has never made much sense to me, frankly, to have a license for 3 years and an additional contract which limits the affiliate to only 2 years. I have always felt they both ought to be the same. As long as the Federal term is for 3 years, I would like to see the affiliation for 3 years. If we make them 5 years——

Senator WOFFORD. In other words, you would like to see them identical as to the term, the length?

Mr. HAYES. Yes, sir.

Senator WOFFORD. That is all.

Senator PASTORE. Senator Bricker?

Senator BRICKER. No questions.

Senator PASTORE. Mr. Cox?

Mr. COX. You indicated, Mr. Hayes, that you are the chairman of this affiliates group which was organized to arrange for presentation of the views of CBS affiliates to the committee?

Mr. HAYES. Yes, Mr. Cox.

Mr. COX. Did you, in connection with your work, ask the affiliates of CBS to send you copies of the questionnaires that they had furnished to this committee?

Mr. HAYES. Yes, sir.

Mr. COX. And did you receive substantial compliance from them?

Mr. HAYES. Yes, sir. What we did is this: After the affiliates unanimously adopted the resolution, a copy of which is attached to the statement, the chairman of the CBS affiliates board asked me to serve as a committee of CBS affiliates to organize—chairman, rather, of the committee, to serve and organize this presentation to this committee. He appointed to that committee Mr. Rogers from Lubbock, Tex., and Mr. Meyer from Champaign, Ill., and myself. It seemed to me we wanted to be able very accurately to reflect the views of as many affiliates as we could, to this committee.

So I then addressed a letter to all CBS television affiliates stating we wanted to reflect their views and asking them to send me copies of the questionnaire which the staff of this committee had sent to them. I suggested that perhaps they didn't want to give this committee all the information they had submitted to you, so I told them that the questionnaires would be seen only by our counsel and by myself—which has been the fact—and that we did not want their revenue figures or any other information that they didn't want to give us.

We have received about two-thirds of all the CBS affiliates' questionnaires returned, about 113.

Mr. Cox. Other than yourself and Mr. Jennes, then, their material has not been made available to anyone else?

Mr. Hayes. That is right, sir, and we are sending them back this week.

Mr. Cox. Do you carry any network programs which begin before 10:30 in the evening but extend beyond that time?

Mr. Hayes. Yes.

Mr. Cox. Such as Studio One?

Hr. Hayes. Studio One.

Mr. Cox. Has CBS ever advised you that its option does not apply to programs of this sort?

Mr. Hayes. Yes, that becomes—you mean do we know that that becomes station time?

Mr. Cox. Have they ever indicated to you that their option does not apply to the first half hour of the program?

Mr. Hayes. Yes, sir.

Mr. Cox. Have they indicated this to you in writing?

Mr. Hayes. I just don't recall.

Mr. Cox. Do you remember when they advised you of this interpretation?

Mr. Hayes. No, I know that I know, but I don't know when we were told.

Mr. Cox. Has CBS ordered——

Mr. Hayes. This is our interpretation, too, Mr. Cox.

Mr. Cox. It is?

Mr. Hayes. Yes.

Mr. Cox. Has CBS ordered WTOP for its new program, Playhouse 90, which is to go on the air next fall?

Mr. Hayes. Yes. Has CBS?

Mr. Cox. Yes.

Mr. Hayes. Yes, sir.

Mr. Cox. Or the advertiser in question?

Mr. Hayes. Yes.

Mr. Cox. As I understand it, the program is not completely sponsored, so that CBS has asked you to clear time although it is still looking for sponsors for part of it?

Mr. Hayes. I think that is correct, Mr. Cox.

Mr. Cox. Have you agreed to clear the time regardless of the option?

Mr. Hayes. Oh, yes, I think Playhouse 90 meets a situation that we have been wanting to meet ever since we have been on the air. It is very difficult to get long plays and long books cut down.

Mr. Cox. However, since the option does not apply, your action with regard to this program is entirely in terms of your feeling about its desirability?

Mr. Hayes. Yes.

Mr. Cox. Now, you indicated that your company is also the licensee of a station in Jacksonville, Fla.?

Mr. Hayes. WMBR Television in Jacksonville.

Mr. Cox. That is a two-station market, is it not?

Mr. HAYES. Yes.

Mr. Cox. And your station has a secondary affiliation with the American Broadcasting Co.?

Mr. HAYES. ABC.

Mr. Cox. Could you tell us, just in terms of a general estimate, what percentage of the evening option time that station clears for CBS, and what percentage it clears for ABC?

Mr. HAYES. I can tell you generally, Mr. Cox, without being too precise about it.

Mr. Cox. Yes.

Mr. HAYES. I think we clear in Jacksonville, Fla., for about 9 hours a week of ABC programing, of which I would judge about 1½ or 2 would be in so-called prime time.

Mr. Cox. And the other 18 or 19 hours that are carried on the station are CBS or local origination or national spot?

Mr. HAYES. That is correct.

Mr. Cox. Now, is it your understanding that CBS' option is not effective as against any program of ABC that you might wish to carry?

Mr. HAYES. That is correct, under the FCC regulations.

Mr. Cox. And, therefore, CBS has been able to effect almost total clearance in evening option time without the benefit of the option in that market?

Mr. HAYES. The answer to that, Mr. Cox, is this: We are a primary affiliate of CBS in Jacksonville, Fla. You get right back to this question of building an overall program schedule. There is another station in Jacksonville, Fla., which also has an agreement with ABC.

Mr. Cox. However, it is a primary NBC affiliate?

Mr. HAYES. But it is a primary NBC affiliate. It is difficult to build your program schedule, assuming you can build it, around ABC, when your primary affiliation is with another network.

Mr. Cox. However——

Mr. HAYES. In any event there will be another station there very shortly.

Mr. Cox. Since you stated that the option of CBS would not be effective, your determination to clear this time for CBS was because of the overall desirability of an affiliation arrangement and of this unified program structure, rather than because CBS possessed an effective option in that market?

Mr. HAYES. Well, we go round in a circle, Mr. Cox. We know we are a primary CBS television affiliate in Jacksonville. We try to build our program, our programing, around the CBS schedule. Now and then a program will arrive from ABC which we prefer to take and we do it. But we rather think of ABC in this regard as a—the way we would think of an independent producer of programs.

Mr. Cox. However, ABC has certain protections under the regulations of the FCC against the option of another network that are not now enjoyed by independent programs?

Mr. HAYES. That is right.

Mr. Cox. Despite that protection, however—despite the fact that CBS' option is not legally binding—you clear this substantial percentage of your time for CBS for quite other reasons?

Mr. HAYES. Mr. Cox, I wouldn't say that our affiliation agreement is not legally binding.

Mr. Cox. That is, the network's option is not legally effective against the program of another network?

Mr. Hayes. Oh, that is correct.

Mr. Cox. And, therefore, your grounds for clearing this substantial amount of your time for CBS are based in terms of your fundamental relation with CBS as distinguished from ABC?

Mr. Hayes. That is correct.

Mr. Cox. Your desire to build your programing around the strong program structure of CBS, and you do not clear those 18 or 19 hours because CBS holds an option which they can assert against ABC?

Mr. Hayes. Yes, sir, that is putting it—not the way we like to state it, but the answer would be yes.

Mr. Cox. That is the way it works.

Mr. Hayes. It works that way because we want it to work that way.

Senator Pastore. You said in the opening part of your statement that this was a voluntary appearance on your part?

Mr. Hayes. Yes, sir.

Senator Pastore. Was there any discussion with CBS as to your appearance and what you would say?

Mr. Hayes. No, sir. Some members of this committee met with some people at CBS once to get some statistical information. We wanted to find out who precisely were the affiliates and whether somebody changed from basic optional to any other category. We have never discussed anything that I have said here today.

Senator Pastore. I am not intimating that you did. I just wanted to get this sense of impartiality on the record, as such. Any further questions?

Thank you very much, Mr. Hayes.[2]

Senator Pastore. We are going to have a short recess so that the stenographer may get his sixth wind.

(Short recess taken.)

Senator Pastore. All right, may we have quiet now? We are ready to resume the hearing.

Our witness now is Mr. Rex Howell, president, KREX-TV, Grand Junction, Colo.

All right, sir.

STATEMENT OF REX HOWELL, PRESIDENT, KREX-TV, GRAND JUNCTION, COLO.

Mr. Howell. Mr. Chairman and members of the committee, for the record my name is Rex Howell. I am president and general manager of the Western Slope Broadcasting Co., Inc., licensee of KREX-TV, channel 5, Grand Junction, Colo. KREX-TV is affiliated with all three television networks; however, our primary affiliation is with CBS, in the sense that that is the source of the greater number of our programs.

As a station owner—speaking in terms of the entire broadcasting experience, radio as well as television—for over 30 years, I have been active in almost every phase of the broadcast industry. During this time I have also held several positions in industry organizations.

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[2] The program schedule of WTOP-TV for the week of April 8 to 14, 1956, will be found starting at p. 2960.

Currently, I am a member of the CBS Television Affiliates advisory board, as the representative of all Extended Market Plan affiliates west of the Mississippi. Like other board members, I was elected by the affiliates whom I represent and my job is to present their views to CBS. I might note in passing that each board member serves without compensation or expense allowance and that CBS plays no part, directly or indirectly, in his selection.

I have come here, not to theorize, but simply to relate the cold, hard facts about a small-business man trying to succeed in operating a television station in what is probably the smallest TV market in America. I sincerely hope that this information will be of value to you gentlemen of the committee. It is largely the case history of KREX–TV, a station that might well not be in business today were it not for the existence of networks operating in their present pattern.

If there were no networks operating with option time and a basic group of stations, CBS would not be able to have an Extended Market Plan. Without this plan, and its counterparts, our station in Grand Junction, Colo., would have found it impossible to survive. And what is infinitely more important, if we had not survived, more than 100,000 people in western Colorado and eastern Utah would be without any television service whatever, for the nearest stations beyond our community are almost 300 miles away. Geographically we are situated about midway between Denver and Salt Lake City on the western slope of the Rocky Mountains.

Indeed, without EMP and similar plans there would be few, if any, small market operations in the Nation. These plans have been the greatest single factor in giving small television stations the means and the courage to enter and to stay in the business of serving the public in the less populous areas of this country—a public to whom TV is a vital and jealously guarded service.

If I may, I would like to tell you something about the CBS Extended Market Plan. Feasible television operation in small markets has been retarded in the past by the relatively high cost to advertisers of covering areas of low population as compared with metropolitan centers. Advertisers are accustomed to paying rates based on cost per thousand viewers. Metropolitan stations can naturally deliver audiences at a fraction of the per thousand cost of the small market station, because of their greater number of viewers, and consequently they are favored by advertisers purely on cost considerations.

I think CBS was the first to recognize that a truly nationwide system of television must, necessarily, include a large number of small-town stations. Unlike radio, television can serve only a relatively small area, even at maximum power. I think you gentlemen of the committee are familiar with the fact that in radio we are accustomed to thinking of a 50,000-watt station as a very powerful station, often encompassing an area of perhaps several States. On the low channels of television, twice that amount of power is used, but due to the inherent characteristic of television of transmitting, generally speaking, to the horizons, the coverage pattern is, of course, much more limited.

Something had to be done to provide service to small markets on an economically sound basis. CBS met this challenge with EMP and a wholly new concept of small-market operation was born.

CBS formed EMP by grouping together a number of small-market stations whose combined circulation, when realistically priced, became attractive to advertisers. CBS also set up special EMP discounts which are given out of CBS's share of the revenues, not the stations', and established a special EMP sales force to concentrate on EMP sales to advertisers. Our smalltown stations were thus provided access to some of the finest programs available, which in turn increased viewer interest, which in turn increased our circulation, and which in turn made our stations more attractive to both network and nonnetwork advertisers.

Senator PASTORE. Is this EMP a network program in the sense that it goes on several small stations at the same time, or do you buy it as a package and you put it on your own station?

Mr. HOWELL. Actually, Senator Pastore, the pricing of the stations was arrived through the basis of combining their circulation, because the combined EMP markets, many of which are small—perhaps not as small as my own, but many of them are small—when put together, looks pretty good because it is a market perhaps larger than the combined Seattle-Tacoma market, with all of us together, but they are not necessarily bought in a package. Is that the answer to your question?

Senator PASTORE. I was wondering how it works. For instance, what I am trying to get clear in the record: Why couldn't an independent producer have done precisely what CBS did? What is the advantage in having CBS do it? That is what I would like to have the record show.

Mr. HOWELL. Certainly. The Extended Market Plan was only possible because CBS did have a healthy nationwide television service.

Senator PASTORE. So they put their good programs on film?

Mr. HOWELL. Not in all cases. Some Extended Market Plan stations are interconnected. In my case I am not, but there are a number of us that do get it by film; yes, sir.

Senator PASTORE. Some get it live?

Mr. HOWELL. Some get it live; yes, sir.

Senator PASTORE. Oh, I see.

Mr. HOWELL. It is the same program structure that the other stations get.

Senator PASTORE. Only because you happen to be servicing a small community, that is taken into account; that comes under a different category and you get a special price for it?

Mr. HOWELL. Yes.

Mr. COX. Isn't the method in which it is made to operate the fact that CBS—in order to get programs into markets of this size—is willing to take a further reduction on its share of your gross time charges by giving special discounts, which tend to encourage advertisers to buy who would not buy at your flat station rate?

Mr. HOWELL. I am sure that has been contributory to their acceptance of our markets; yes, sir.

Although the rate of compensation necessarily was low at the beginning, CBS on its own initiative has periodically reevaluated each EMP market and, as audiences have grown, the rates have been increased. Since joining EMP, our circulation has doubled and so has our rate of payment.

Far more important than the revenue obtained from EMP is the tremendous boost it has given our program structure and our ability to serve our area. Without the assistance of network programing, I seriously doubt whether we could possibly survive. Our costs for programing material would make it economically impossible for us to operate effectively—if at all—in such a small community. Before EMP, we provided only about 3 hours of daily service. Despite our vigorous personal selling efforts, precious few network advertisers purchased our market because of its high cost per thousand. Consequently, a sizable percentage of our program was films—many more than 10 years old and of relatively low viewer interest.

Moreover, these films were quite expensive and we often paid more for a film then we received in revenue from the advertiser sponsoring it. Although 3 hours of daily service was slim fare for our viewers, it was economically impossible for us to offer additional hours with film costs so high and the opportunity for revenue so limited. Of course, we tried to create local live programs, but again we were handicapped by high costs and by the comparatively small volume of material suitable for local live programing; I should say the small volume of suitable program material for extensive local live programing in our small market.

The Extended Market Plan brought dramatic changes to the television diet of the people of Grand Junction. Almost immediately we began to receive orders for some of the fine network programs which augmented our schedule and replaced less attractive programs previously carried.

I think I should perhaps make reference also to the fact that we received, under the extended Program Service Plan of the CBS network, certain other programs that became anchor points in our schedule. In other words, programs for which we did not have a commercial order, but we were permitted to carry the program anyhow, deleting the commercials and substituting public service announcements of some nature.

Senator PASTORE. Could you be more specific? What were the names of some of these programs?

Mr. HOWELL. Well, See It Now was one of the programs, and another one was the one called Meet Millie that I recall immediately. These are programs, Senator Pastore, that the network owns. Therefore, they are in position to make them available to us. If they were owned by someone else, perhaps they couldn't do this. But they have made available a large number of these programs in markets even though the station is not ordered commercially.

Mr. COX. Is my understanding correct that you are permitted to sell spot announcements adjacent to these programs, but as you indicated that you can only insert public service notices in the time made vacant by the deletion of the national advertiser's commercial?

Mr. HOWELL. That is true, Mr. Cox. We are always permitted to sell our adjacencies to all network programs. These programs are furnished us as a public service and we run them as a public service. We get no revenues for them.

Mr. COX. But they do help build the revenues of your station by providing more desirable adjacencies?

Mr. HOWELL. Adjacencies; yes sir. Soon, an increasing number of national advertisers became aware of our market, through the aggressive selling efforts of the special EMP sales department, and we began to be included on their network orders. Our nonnetwork national advertising started growing, too, largely due to the adjacencies that we could offer to fine network programs. In fact, several EMP advertisers have ordered Grand Junction on a national spot basis, too. The result is that we have already been able to increase our daily service from 3 to a minimum of 7 hours daily.

Support from local and regional advertisers also increased rapidly as our overall program structure improved and our circulation increased. Prior to EMP we were unable to sell television advertising, for example, to Safeway Stores, one of the largest advertisers in our area. Today Safeway is one of our major accounts. Moreover, order of Grand Junction by one advertiser usualy induces his competitors to order our station, too. And EMP's attraction of nonnetwork advertisers has increased the volume of syndicated film programs on KREX-TV. We now broadcast 15 first-run syndicated film series each week.

Our network affiliation made possible improvements in our local programing, too. The availability of a framework of network programing enabled us to concentrate on quality rather than mere quantity of local live programs, and we have developed some outstanding public service features which I have summarized in an appendix (see p. 2560) to my statement. These programs have covered every facet of community interest, and range from special event broadcasts to panel discussions of important community issues. We take great pride in these local live programs, but it is doubtful whether their high standards could be maintained without network programs about which to build.

There is also, in that connection, an element of manpower. We operate a combined radio and television station with only 32 people. Obviously we have our limitations and we must use people with multiple skills; where we have a framework of network programing it releases some of these people from less productive use of their skills and we can concentrate on those live shows which we do build to serve the public interest.

I am utterly amazed at the charge that affiliates have been coerced by the networks and have abdicated their basic responsibilities as licensees.

Now, I would not want this to be construed as meaning that I think that all relationships between networks and their affiliates are "a many-splendored thing." I mean we have a business relationship in which we have differences of opinion occasionally, which we sit down and we analyze them and we arrive at satisfactory conclusions on the basis of business negotiations. Because as Mr. Hayes, I think, mentions, we are, in a sense, in a partnership type of business relationship with the networks.

KREX-TV is pretty small by any standard and especially in comparison with the networks. But no network has ever coerced or tried to control us. On the contrary, all three networks have actually helped us to discharge our responsibilities as a licensee. These so-called giants of Madison Avenue, whom their disparagers say are insensitive to local programing needs, have actually leaned over backward to make it possible for us to broadcast programs at times different from those first requested by the advertisers. This has enabled us to plug gaps in our program schedule and to avoid extra programing costs, all for the benefit of our viewers.

I would like to give you a specific example. We were ordered by the Carnation Milk Co. for the Burns and Allen show over CBS, but the alternate week sponsor did not order our market for their half of the program. NBC had another advertiser for our market 2 weeks out of each month, but at a time different from the alternate week availability caused by the partial order for Burns and Allen. We explained the situation to both networks and they immediately arranged for us to alternate the 2 sponsors from the 2 networks during the same time period each week.

Another example of this type of cooperation was the hour-long broadcast of ABC's Grand Ole Opry every fourth week in a period occupied the other 3 weeks by an NBC program. Furthermore, between 7:30 and 10:30 p. m., 50 percent of our hours are devoted to nonnetwork programs. Each network has been very cooperative in rescheduling their orders for our station during this time so as not to interfere with these locally and regionally sponsored programs.

Mr. Cox. I would assume, since your station is not interconnected, that in any event you have more flexibility in that regard since you can present these programs—which are either on film or kinescope—at any time that fits into your overall schedule which may be satisfactory to the advertisers in terms of time period and adjacencies.

Mr. Howell. It is true, Mr. Cox, we do have that added measure of flexibility under the present arrangement. I would like to add, however, we are looking forward to the day when we will have live innerconnection.

Mr. Cox. Do you expect that soon? Do you expect that some time soon?

Mr. Howell. Sir, that is something that depends a great deal on what can be worked out with respect to the availability of microwave facilities from the American Telephone & Telegraph Co.; the economic feasibility of our using their particular facilities. We have explored that matter both from the standpoint of taking an off-the-air pickup from the nearest point to Grand Junction that we can get a satisfactory signal from another station so as to cut these costs. We are a little perplexed, to be honest with you, because we find that we could do it very much cheaper with our own microwave facilities, but unfortunately we have no basis of permanency if we make the investment in our own microwave system. Because under the present regulations, in the event the telephone company, or the common carrier, provides or can provide a service, then we must automatically, within a certain length of time, discontinue the use of our equipment and use theirs.

So far the quotations we have received from A. T. & T. by the month are approximately the same cost that we would pay for each of the several microwave units that we would have to buy if we did the job ourselves. So we don't know exactly how we are going to do it. But we have been told that common carrier facilities will be available, perhaps in the course of another year. Whether they are going to be economically feasible for us remains to be determined. We hope they will.[3]

[3] For other testimony as to rates and policies of A. T. & T. with respect to intercity microwave service see testimony of Murray Carpenter at p. 1660, and of John Boler at p. 983 in pt. II of these hearings.

Mr. Cox. Presumably they would be available on the rates, though, that they have been quoting to you?

Mr. Howell. Yes, sir; that is correct.

I would like also to say that we have never found a program from a network to contain anything that is contrary to our firmly established policies of good taste. However, we have rejected a number of film programs from other sources which we felt did not comply with the standards of good practice of the NARTB code. And incidentally, this brings me to another benefit of our network affiliation. Independent film sources often require a station to buy a whole group of films, some of which are, in our opinion, quite unsatisfactory, in order to get the films the station really wants. With our program schedule bulwarked by network shows, we are far more able to resist these so-called library deals from film companies.

Senator Pastore. Can you document that at all, Mr. Howell?

Mr. Howell. Yes, Senator Pastore.

Senator Pastore. Now, that is an important assertion that you have made here. Independent film sources often require a station to buy a whole group of films, some of which are in our opinion quite unsatisfactory. Now, could you be specific on that?

Mr. Howell. I would like to, because I am afraid maybe my statement in that brief form—which was purposely made brief to conserve time with this committee—but I would certainly be happy to elaborate it.

For example, when we first went on the air, we knew that with a 3-hour schedule, actually, we could only use a fixed number of—I am speaking now of Hollywood films, films that were originally released for use in motion pictures which are now available for use in television. Several of the companies selling these films contacted us and said: "Now, we can give you a very good rate in this small market if you will play a minimum of so many thousand hours"—literally thousands of hours—"of this product." Some of which did not have that many hours in their library, which meant we would be repeating some of these films—running them a second time in a single-station market—which to us was not in the public interest.

Senator Pastore. In other words, it was one of those must-buy deals that they are complaining about on the networks.

Mr. Howell. Not there in the same sense, Senator Pastore, because here the basis of purchase was not for the purpose of obtaining a schedule of a number of stations, but requiring an individual station to carry a minimum number of programs.

Senator Pastore. In other words, if you bought wholesale it would be cheaper.

Mr. Howell. Perhaps it could be put in those words; yes, sir.

Senator Pastore. In other words, the more you would take on, the cheaper the rate.

Mr. Howell. The more you would take on, you might be able to buy the entire product cheaper; but your right of selection as a licensee is thereby reduced because you, perhaps, would be buying programs which you would not ever exhibit to your audiences.

Mr. Cox. Did you have any instances of that practice on the part of these people with respect to film series made especially for television? That is the 39- and 52-week series of half-hour programs?

Mr. HOWELL. Well, we have been able to employ the same basic principles with which we work with networks—that is a matter of business negotiation with these people—and I think we have worked out our problems in each case satisfactorily. I don't think we have any grievances against any of them. It did take a little persuasion on our part to get some of the syndicated producers to realize that in a single-station market most of the people watch television most of the time. And we were amazed to find, for example, after we had been on the air for a year and a half, that if we inadvertently ran a replay of even a single public service program that we had had in the first week of our schedule, people were calling us up, saying "don't you remember that you played this program sometime a year ago May?" Therefore, we had to convince these producers of syndicated programs that the policy, which many of them have used, and undoubtedly quite recently in multiple-station markets, that only so many programs would be available first run, and then in order to get the series you would necessarily have to take 13 repeats—a package of 39 films, you contract for 52, which means you run 13 of them over again.

It took a little negotiation, but I think in all instances we have been able to get those, at least those with whom we do business, to agree that that would not be good programing.

Senator PASTORE. On your station, do you have the authority to pick out what time you will show that program?

Mr. HOWELL. I am sorry, sir; I did not get the question.

Senator PASTORE. We have been talking here about prime time.

Mr. HOWELL. Yes, sir.

Senator PASTORE. And options. How does it work with reference to your station—I mean as between the network and the independent producer. Do you decide what program will go on at what time, or are you committed to the network to show their programs in specific times.

Mr. HOWELL. No, we make the decision, Senator Pastore, always; but as I develop, I think, in the course of my testimony, the EMP stations do not operate at present under an option time arrangement. But again, I would like to say that I am looking forward to the day when my market is of sufficient importance that we can obtain the full benefits of a standard network affiliation arrangement, which would mean getting live programs, and getting the sustaining service, and the other things which we do not get at the moment.

At the moment, we do not offer option time, that is true.

Mr. Cox. In connection with your observation about these film practices, the point I was interested in was whether the syndicators of the film series made especially for television used a tying device—that they wouldn't sell you one film series unless you would buy another film series for that market—or whether the only point on which you had difficulty with them was this practice of 13 repeats in order to fill out the year?

Mr. HOWELL. I think essentially it is the latter practice, although it became more aggravated in the case of the agents for Hollywood motion pictures——

Mr. Cox. Those are feature films?

Mr. HOWELL. Yes—in that the volume was so much greater. And cost control, Mr. Cox, has been the whole secret of our being able to operate in such a small market. And had we been forced to purchase more than we could use, you see, that might have been the difference between our surviving and not, also, in the initial period.

KREX–TV is now a reasonably profitable operation, although many people were pessimistic about our future when we undertook television in so small a market. We are looking forward to the day when our growth and revenue will permit us to increase our present minimum 7–hour daily schedule of programing. We are also looking forward to the day when we can become interconnected and thus be able to provide our viewers with live programing and the highly desirable features which interconnection can provide, such as programs of news, sports, and national events.

We undertook one major effort in live programing for the world series this year. We leased about nine microwave stations from the telephone company for 1 week, that were temporarily set up—mobile mounted between a point outside Salt Lake City and our community—and we carried the world series live, which was quite an accomplishment but a very expensive one for us. And it did give us some indication of the tremendous value that live programing is going to be to us when we can get it.

Our operation is based upon our understanding that we are responsible to the people. And I think this understanding is shared by the industry generally. A broadcaster's investment hangs upon a short term license of only 3 years, issued in the public interest, convenience, and necessity. It is only natural that under the American system of broadcasting, we are most sensitive to the wishes and reactions of the public. The networks, I believe, for identical reasons, are extremely sensitive to the attitude of the public. Jointly, the networks and the stations of this country are meeting their responsibilities to the public in an outstanding way.

If I may I might put this point in that connection. In my little station, of which I own 100 percent of the stock of the corporation, together with my immediate family—it represents my life savings. And yet that investment is only good so long as I can have a license to operate in the public interest—and I do operate in the public interest, convenience, and necessity to justify that license. My investment in real estate and a few pieces of electronic gear would lose its value to almost nothing if I failed in that one concept; because I am, after all, I am using something that belongs to the public when I use the airwaves. I only own the mechanical equipment involved. Therefore, it is the public that is really the deciding factor in all things that we do, because our entire investment hangs upon this very concept that we must continue to first think in terms of the public interest. I believe that if we do—if we make the public interest our primary consideration—all other factors, including the economic ones, sort of have a way of falling into their own proper place. So I think it is a very important part of the whole philosophy of the American system of broadcasting.

As long as the public is receiving outstanding service, surely this committee does not wish to become the arbiter of any intramural dispute between members of our growing industry. The personal interests of a large metropolitan independent station, or those of a small station, are of themselves of no public significance. I have a network affiliation, I have told you, and I am glad of it. If I were not part of a network, perhaps I would be less enthusiastic about its accomplishments, and perhaps I would be less concerned about proposing changes which could destroy the very core of our national pattern of television service. From the vantage point of 30 years' experience in this industry, I am convinced that our American system of television broadcasting, built as it is upon the traditional pattern of free enterprise, is dedicated to and operating in the public interest. And where segments of the industry are not healthy or economically sound, this is probably due to technological problems, or to individual cases of exceptional economic conditions. It certainly is not due, in my opinion, to affiliate-network practices.

In summary, then, may I say that the networks have played a major role in getting television service to the people of western Colorado who otherwise would have been denied service. I am fully satisfied with the present basis of negotiations with the networks. They understand my station's problems. If we are to keep broadcasting in the traditional pattern of the American system, I feel it must not be saddled with any greater degree of Federal interference than necessary under the Communications Act. I think the objectives of the networks and the stations engaged in the television broadcasting industry, whether large or small, are identical. We seek to provide the American public with a service which that public desires and deserves. This is the keystone of the whole concept of American broadcasting, and the contribution to our system which has been made by the networks is of such magnitude that we must not impair their opportunity to serve the public in the manner, and under the pattern of operation, which has proved such a boon to the progress of the art of electronic communication.

Thank you very much.

Appendix to the Statement of Rex Howell, President, KREX-TV, Grand Junction, Colo.

I. DESCRIPTION OF TYPICAL LOCAL LIVE PUBLIC-SERVICE AND PUBLIC-AFFAIRS PROGRAMING ON KREX-TV, GRAND JUNCTION, COLO.

In Town Today.—(Current.) A daily program of interviews and discussion concerning various issues, businesses, activities, and projects in the community. Among the groups to appear have been: American Legion and Women's Auxiliary, Band Mothers, Brotherhood of Railroad Trainmen, Business and Professional Women, Beta Sigma Phi,. Xi Beta and other sororities and fraternities, Brush and Palette, Civil Defense, Stamp Collectors Club, Daughters of American Revolution, dental profession, Disabled American Veterans, Eagles Lodge, Fruitvale Mothers, Girl Scouts, Graduate Newcomers, Grand Junction Chamber of Commerce, Grand Junction Garden Club, Grand Junction Rod and Gun Club, Grand Junction Junior Chamber of Commerce, Grand Junction Junior High Band-Parents Club, Grand Mesa Ski Club, Izaak Walton League, Kiwanis Club, Knights of Columbus, League of Women Voters, Loyal Order of Moose, Lions Club, Mesa Art Center, Mesa Community Concert, Mesa County Farmers Union, Mesa County Medical Association, Mesa County PTA, Mesa County Red Cross, Mesa County Retarded Children, Mesa County Society for Crippled Children, Mineralogical Society, Ministerial Alliance, Mr. and Mrs. Welcome Wagon Club, National Secretaries' Association, Optimist Club, Railbow Girls, Rotary Club, Soroptimist Club, VFW and Women's Auxiliary, Woolgrowers Auxiliary, and Western Slope Cancer Society.

A number of these groups have had projects of such importance that other special programs have been developed for them. Each major church denomination in Grand Junction has had time on this program. Through this program KREX-TV actively has promoted various special civil projects such as Clean Up Week, Health Week, Safety Week, and Fire Prevention Week, and promoted local school activities such as plays, concerts and athletic contests.

Light of the World.—(Current.) A weekly religious program from the Church of Christ in Grand Junction.

Editorial Broadcast.—(Current.) A weekly program dealing primarily with local and regional issues and occasionally with national issues. KREX–TV takes the initiative to express its own views concerning these issues and to invite comments from others. The purpose of the program is to stimulate thought, not to crystallize it. Accordingly, KREX–TV urges other groups to appear to express their viewpoints and actively assists their appearance from a production and promotional standpoint.

Life in Western Colorado.—(Current.) A public information series concerning community matters. Some programs are forum discussions of important issues such as water conservation and school problems. Other programs have dealt with the training and techniques of the police and fire departments, a State teachers convention, square dancing, dog shows, and a variety of other subjects.

Wildlife in Review.—(Current.) A general educational program presented by personnel from the Colorado Game and Fish Department.

Sporting Show.—(Current.) A program for local sportsmen providing information on the conditions of roads and streams. The program offers tips to hunters and fishermen, and sponsors contests for the largest fish caught and the largest game bagged.

News, Weather, and Sports.—(Current.) A daily program of international, national, regional and local news, weather and sports.

In adition to these regular programs KREX–TV carries numerous announcements of local charitable and public interest drives, meetings, causes and events.

II. DESCRIPTION OF TYPICAL OTHER LOCAL LIVE PROGRAMING ON KREX–TV, GRAND JUNCTION, COLO.

Lazy B Ranch.—(Current.) A general children's program with interviews, story telling and talent contests.

Today's Teens.—(Current.) A program primarily for local high school and college students. It features faculty interviews, style shows, discussion of issues of interest to sudents, and includes some entertainment.

III. DESCRIPTION OF TYPICAL NETWORK AND LOCAL FILM PUBLIC SERVICE PROGRAMING ON KREX–TV, GRAND JUNCTION, COLO.

KREX–TV has presented many public service films, from such organizations as the Department of Defense, the American Red Cross, the Department of Agriculture, the American Cancer Society, and numerous others.

We have also filmed our own public service programs. For example, we made our own documentary films on problems of marketing fruit and the control of disease in orchards. These films have been shown on KREX–TV and also have been loaned to organizations such as the Horticulture Society of Western Colorado for use in meetings.

Senator PASTORE. Mr. Cox.

Mr. COX. Mr. Howell, could you tell us approximately how many hours per week of network programing you are now carrying?

Mr. HOWELL. Yes, sir. I have a breakdown of the number of network hours that we are carrying at the present time. Perhaps you would like to have these by time segments, would you, Mr. Cox?

Mr. COX. Yes.

Mr. HOWELL. I have them that way if you like.

In commercial programs between 6 and 11 p. m., we carry 8 hours weekly for CBS, 5 hours for NBC, and 1½ hours for ABC. Of the segment between 7:30 and 10:30 p. m. local time, which has assumed some significance in this hearing, 5 of these hours for CBS, 3 of the hours for NBC, and all of the one-half hours for ABC are carried in the so-called prime evening time.

Of the entire schedule of the day, which totals 47½ hours for the week—and this is a week that we took as a sample, of April 8 to 14, it is the same week in which my appendix shows the summary of live programs and that is why we use it—CBS had 10 hours and 45 minutes, NBC had 6 hours, and ABC had 1½ hours.

I also, if you wish, have the breakdown of the use of syndicated films in the same periods.

Mr. Cox. You might insert that and make it complete.

Mr. Howell. Between 6 p. m. and 11 p. m. in syndicated film shows—by this I am not speaking of old Hollywood movies, I am talking about programs produced for television—we have 9½ hours, of which 9 hours were between 7: 30 and 10: 30.

In the motion picture type of film production we had, between 6 and 11 p. m., 5 hours, only 2 hours of which were between 7: 30 and 10: 30 p. m.

Mr. Cox. Now, looking forward to the day when you will become interconnected, can you tell us what the arrangements are as far as the time of local broadcast in Grand Junction in relation to the originating time in New York? In other words, when does a network program that originates at 7: 30 eastern standard time reach the public in the mountain time zone?

Mr. Howell. My understanding, Mr. Cox, from those stations in the Rocky Mountain area that are now interconnected, is that some programs are now being made into what we call hot kinescopes on the west coast and are actually fed back as far as our State. So that not necessarily do all programs have the 3-hour time separation, which would be the case if they originated only in New York live. That is the situation as of this moment with daylight saving time in effect.

During the part of the year in which we have standard time, of course, only 2 hours—this is one of the very sensitive problems in the Rocky Mountain region because our broadcasters of that area are constantly concerned about the biennial headache that we have because we can't, seemingly, get uniform daylight saving time or uniform standard time, one of the two, in the United States, so it is a problem. But I think the networks, all three of them, are taking such steps as they can to alleviate this by having programs originating in prime evening hours, here at 8 p. m., which would fall 5 p. m. in the mountain zone, when we would normally be programing for children, of course.

In those instances they made available to them kinescope recordings so they can have the flexibility. Then, of course, we are all looking forward to the technological developments in connection with the use of video tape which one day may help us solve this problem materially, with almost instantaneous rerelease of programs by recording.

Mr. Cox. I have here the American Research Bureau report on Denver, which is for a period prior to the inception of daylight time, so there was only the 2-hour differential. It would seem to indicate that, in general, a good many of the programs originating in the East at 7: 30 are carried in the mountain zone at 5: 30—that is, in other words, they come through live and are broadcast at the same identical moment.

Now, does that present some problems in providing a local service—or providing these programs on a local basis at hours that are most acceptable to your viewers?

Mr. Howell. I wouldn't think that it would be, Mr. Cox. Actually you see what it has, in effect—the effect it has in our particular case would be that our network service would probably terminate pretty early in the evening. We would have a lot of open time for local use in what is now the so-called prime hours.

Mr. Cox. Do you know what the option hours are in the mountain time zone for CBS?

Mr. HOWELL. They are standard in all zones.

Mr. Cox. That is, are they 7:30 to 10:30?

Mr. HOWELL. 7:30 to 10:30.

Mr. Cox. Is that in terms of local time?

Mr. HOWELL. My understanding is, sir, it is in terms of New York time in all contracts. I could be wrong, because I do not have that type of a contract.

Senatore PASTORE. I think Dr. Stanton so testified—it would be the same, prime time in the other region. He so testified.

Mr. Cox. My recollection was that it was New York time in the eastern time zone and in the central time zone, and it was local time in the mountain time and pacific time zones.

Senator PASTORE. That is right.

Mr. HOWELL. I am sure you will have witnesses here better qualified to testify than I.

Mr. JENNES. Mr. Cohan, I think, will be able to get you that. He is from California and he has interconnection.

Senator PASTORE. All right.

Mr. Cox. I was interested, however, in noting that in the case of one program which obviously has a very close tie to its time because of its appeal to a special audience—which is the Mickey Mouse Club broadcast by ABC—that apparently the stations in Denver carry that 5 to 6, even though this is not the live time as it would come out of New York. Do you know whether that is generally an adjustment that is made in the area?

Mr. HOWELL. I am sure the fact that it is on film to start with, it does enable the stations to give that a scheduling which best suits the public interest. We carry that program ourselves, and I know, therefore, it is on film.

Mr. Cox. You carry it at that time?

Mr. HOWELL. We purposely—no, I think—it is 5:30 that we carry. We carry it purposely there in order to reach a maximum of juvenile audience.

Mr. Cox. As you indicated, your network programing, when you are interconnected, if it comes through live, will cease fairly early in the evening and you will, therefore, have to look to other sources for your programing in the balance of your evening hours. What will be your primary source of programing for that period?

Mr. HOWELL. I don't know that we would have to be looking so much to an alternate source as it would be to adjust our schedule. We do have, you see, these various other programs which we might—we might conceivably have to move. But again we may not become interconnected until it is possible to do these things on tape, in which case the problem would be academic, because we could run them then at the local time best suited.

Mr. Cox. That is all I have, sir.

Senator PASTORE. All right, Mr. Howell, thank you very, very much.[4]

We will recess now until 2 o'clock this afternoon, in this same room. Senator Wofford will be presiding.

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[4] The program schedule of KREX–TV for the week of April 8 to 14, 1956, will be found starting at p. 2962.

(Whereupon, at 12:16 p. m., the committee recessed until 2 p. m., the same day.)

AFTERNOON SESSION

Senator WOFFORD (presiding). The next witness will be Mr. W. D. Rogers, Jr.

STATEMENT OF W. D. ROGERS, JR., PRESIDENT, KDUB–TV, LUBBOCK, TEX.

Mr. ROGERS. Mr. Chairman, and members of the committee, Mr. Czarra here is an associate of Mr. Jennes.

My name is W. D. Rogers, Jr., and I'm from Lubbock, Tex. I am president of Texas Telecasting, Inc., licensee of KDUB–TV, channel 13, and KDUB radio in Lubbock, Tex., and KPAR–TV, channel 12, our satellite in Sweetwater, Tex. Both television stations are primary affiliates of the CBS television network.

I have been in the operating end of the television business since 1949 when, as vice president and general manager, I helped to build and put on the air KEYL–TV, now called KENS–TV, in San Antonio, Tex. I operated this property until late 1951. In May 1952, I organized Texas Telecasting, Inc.

Over the years I have been active in several industrywide organizations. I helped to establish the National Association of Radio & Television Broadcasters in its present form and am a member of its board of directors. I am also chairman of the board of directors and cofounder of the Television Bureau of Advertising, an industrywide group which promotes television as an advertising medium. You gentlemen will recall that Mr. Moore, who testified here some weeks ago, is also a member of the board of TvB, and, as a matter of fact, he preceded me as chairman of that organization.

Of course, you understand that I am testifying only as a representative of the CBS affiliates and of KDUB–TV and KPAR–TV.

I appreciate the opportunity to come here today. During these hearings, there's been so much misinformation presented that I wouldn't be surprised if some folks have gotten the wrong idea about television affiliates and their relations with their networks. I'd like to set the record straight.

First, as an affiliate of the CBS television network we, like almost 200 other CBS affiliates, are working partners with CBS–TV. Second, our stations in Lubbock and Sweetwater are a lot smaller than CBS but we are completely independent and responsible and entirely free of coercion and domination by anyone. We operate our stations the way we think is best for our local communities. Third, because of our partnership with CBS, we are able to give to our communities a quantity and quality of television service they couldn't obtain in any other manner. Finally, I think that the affiliate-network partnership, the option-time provision and the practice of requiring advertisers to purchase a basic group of stations (the so-called must-buy practice) are in the public interest because they help us and other affiliates give good public service.

Let me tell you something about the television broadcasting business in Lubbock. There are two stations in Lubbock, both VHF—our station KDUB-TV, channel 13, and KCBD-TV, channel 11, the NBC and ABC affiliate. Lubbock has a population of about 130,000 and so we have there a typical 2-station medium-size market.

I had our experience in San Antonio behind me, where we built up the station from nothing, kept on pouring money in and finally had to sell out b...se some of my partners refused to put in another cent. So, before ...g into the television broadcasting business in Lubbock I took a l...lose look at conditions in that market. Our most obvious prob...ere that few people there had even seen a television set and too ...tional advertisers knew the Lubbock market potential. We k... ...ad to sell television in Lubbock and sell Lubbock to

...televis... stations into operation wasn't easy. It took a lot of ...genuity, and downright hard work. KDUB-TV was pio...freeze station in the country, and the very first television ...the ...kind in a medium-size market in the United States.

...ears of operation we have had to do plenty of hard work. ...ven had to push the manufacturers for sets to have an ...n we went on the air. We have had to scrimp and invent ...e and be a jack-of-all-trades in order to keep our losses ...uilt our own remote control unit out of an old city bus ...ifth of the cost of such a unit fresh from a manufac- ...ve have had to do a real selling job to get advertisers to ...rket.

...station's inception we've made very little profit, we've ...vidends, and what little we have made we've plowed right ...the business.

...e tell you how CBS fits into the picture. Most important, I ...it helps us maintain a top-quality, well-balanced program ...le for the people in the Lubbock area—a program schedule that ...sn't available from any other source. For one thing, we get the ...work entertainment shows. I can assure you that the people in ...bbock appreciate these shows and are just as anxious as the people ...New York, Chicago, or Los Angeles, to see these programs. Now ...on't let anyone tell you we take these network entertainment shows because we are afraid not to. We take them because we think they are of high quality and because our audience likes them and wants them. We and the local NBC affiliate both have nonnetwork syndicated film programs in our evening program schedules. The network programs are consistently the most popular; they are preferred by our audience. And if you could see our mail on network shows we have taken off or failed to carry, you wouldn't doubt this a second.

There are other shows of great importance to the people of Lubbock which they enjoy only because there are television networks. Among these are the many public service programs, the sports programs, and the live programs instantaneously covering events of national importance such as the President's speeches, roundtable discussions, and interviews of important national personalities. I've heard no suggestion how our people in Lubbock, Tex., are going to get these events brought to them without a network.

The network's news programs are especially important. Without the network we couldn't provide the people of the Lubbock area with the news service they now receive, no matter how much money we might spend. Of course, we also provide locally originated news programs. But some of the locally originated news segments are not sold simply because, in a market the size of Lubbock, there are not enough local advertisers who will buy these segments.

If we didn't have network national news coverage, [illegible] would have to reduce our total news coverage. And we would lose [illegible] only news program in which the people of Lubbock see, around di[illegible]time, the details of an important afternoon political developme[illegible] Washington or the details of a disaster that may have struc[illegible] Eng-land only a few hours before. Without the network the p[illegible] would be deprived of the on-the-spot "newsreel" type coverage of [illegible]ents of which television uniquely is capable.

We get other programing help from our partnership [illegible] CBS makes available to us, free of charge, a daily schedu[illegible] taining programs. These sustainers are first-class, gener[illegible] programs. If these sustainers were not available, medium [illegible] tions like KDUB–TV would be forced to reduce their time o[illegible] because they simply couldn't afford to program all of thes[illegible] themselves and stay in business. Such a reduction in hours o[illegible] tion would obviously not be in the public interest.

Also, the revenues that we receive from CBS for carrying ne[illegible] commercial programs are of great importance to us. These rev[illegible] make it possible for us to do a better job of running our station[illegible] whole. Just as important is the revenue that we receive from [illegible] increased value of our spot and program periods which are adja[illegible] to both network commercial and network sustaining programs [illegible] which result from the large circulation that these topflight progra[illegible] help to build for our station. And here's another point. The pop[illegible]larity of the network programs has helped build our total circulatio[illegible] This means that our local programs are able to reach more folks tha[illegible] if they were standing alone.

Our network affiliation is obviously important. But I hope you don't have the idea that a license plus a network affiliation is an automatic formula for success. I can assure you that it takes a good deal more to succeed in this business. A network affiliation doesn't even mean that you automatically are ordered by the advertiser for all of the network sponsored programs you want, or need, or you think you deserve from a market point of view. Persuading an advertiser to order a station for a network program is the station's job, too. I know that CBS tries hard to convince advertisers to order our market, and it is not their fault if the advertiser doesn't jump to order Lubbock, Tex. But when a station is not ordered by the network advertiser on the first go-round, it can't afford to sit back and wait and complain. It has to get out and fight to sell itself to the advertiser in a very competitive business.

In many cases where we have gone to bat in this fashion together with CBS, we have succeeded in getting the advertiser to place his program on KDUB–TV. Of course, now that we have a program schedule worked out, and have sold a number of advertisers on the Lubbock area, we don't have to do this as often as before.

There have been charges made that affiliates abdicate their responsibility to exercise their own judgment as to programing and in otherwise operating their stations. Well, anyone who says that just doesn't know me and the people like me in other stations.

I said before that we are a partner with CBS. CBS does its share by acting as a source of programing and of sales for us. The partnership is a two-way street. We try to do our part by clearing for network programs whenever this is consistent with our concept of public service. CBS does a fine job of helping us program and to convince advertisers to order our station. We would be a mighty poor partner if we didn't do the best we could to provide an effective network outlet in our community with good circulation. This means adequate clearance and aggressive promotion by us of the programs.

But don't let anyone tell you we are not independent. We use network programing as a framework for our station's programing structure. This doesn't mean that we plug into the network in the morning nd pull out the plug when we sign off. No indeed. We do carry a bstantial number of network programs which fit the needs of our rket and which provide a first-class scheduling framework. Around s framework of network programs we build our nonnetwork film ws and local live programs. We like to believe that every program carry fits into our entire schedule, is of good quality, and is of rest and importance to our viewers. I know that our programing result of the exercise of our own judgment whether the program twork or nonnetwork. And this is true whether the program is ption time or station time, or whether it is commercial or sustaining.

I feel that KDUB-TV has been able to do a good job of nonnetwork programing. During the week of April 8 through April 14, 1956, we were on the air a total of 115 hours. However, we broadcast a total of only 70 hours of network programs, the other 45 hours being locally originated programs.

I am particularly proud of our local live programing, especially the local special interest and public service programing. For instance, we present Community Crossroads from 5:30 to 6 p. m., Monday through Friday. Different charitable organizations or service-type organizations present their causes each day, some coming from as far as 120 miles away. Besides helping to raise money for various charities we have carried programs about the school expansion bond issue, the enlargement of city utilities, the long-range traffic dispersal system, a series on income tax conducted by internal revenue agents, the annual meeting of the Negro medical association and programs by local college students and faculty members.

Another local live program is Traffic Report of the Air which we carry from 6:30 to 7 p. m. once a week. This program is produced with the cooperation of the local police, the State highway department and the city traffic commission. We show pictures of accidents and have officials explain to the viewers our highway and traffic problems and what to do about them. For one of our shows the mother of a teen-age girl who had been killed in an automobile accident a week before volunteered to appear to promote safety.

We have a number of other local live programs, too. Plains Talk is our local agricultural program. Final Decision is a weekly panel conducted by area attorneys and judges on legal questions. What is the Answer? and Capital Report are local public forums dealing with area and statewide issues. We have a daily religious program, TV Sermonette. Annually we have an all-night telethon which has raised an average of $25,000 per year for the March of Dimes. This program also led to the installation of the only complete polio-treatment ward in Lubbock County, Tex. Also each year we have a Hallowe'en TV Party in cooperation with the schools and police officials which has been credited with reducing vandalism in our community to a minimum. Further details on our local live and public service programing are contained in appendix A to my statement. (See p. 2570.)

I've heard it said that the networks keep affiliates like us from doing a good job of hometown TV. This is just plain foolishness. The programs I've mentioned merely illustrate the job we do. We'r very proud of the article in the Saturday Evening Post last yea called Hometown TV Makes a Hit. That article is about KDUB-T and a reprint of that article is appendix B to my statement (see 2573). If we did not have a network affiliation we could not begin do the kind of local job which this article describes. This is true fo very simple reason. If we had to pay out money for all our progra ing and gamble entirely on our ability to buy and to sell our comp programing structure, we could not be on the air as much as we today. The plain fact is that a market like Lubbock cannot i pendently develop the volume of programs required for a full da programing.

The existence of option time has no adverse effect on our ability program our station. The fact that we have an option time agreement with CBS-TV does not mean that we cannot reject or preempt a network program. The affiliation agreement specifically gives us the right not to carry a network program during option time whenever, in our reasonable judgment, that program is unacceptable or unsuitable, or to carry a program of public importance.

Of course, when we reject a program in option time, we act in good faith. I personally believe that any flat, arbitrary refusal to carry a network program at all or to carry it at the time requested, regardless of the quality of the program offered and regardless of the quality of the program being carried, would not be in the spirit of our partnership. On the other hand, if the program the network requests us to clear is suitable and acceptable in comparison with the program we are carrying, I don't see a thing wrong in preferring the network program. We still exercise our judgment as station licensees and we are merely acting in good faith to keep up our end of the working partnership with the network.

Option time causes no problems for our operations. When we are carrying a nonnetwork program in option time and CBS-TV requests us to clear for one of their programs, we have usually been able to find a satisfactory alternative time segment either for the local or national advertiser or for the network program on a delayed basis. We have, during option time, refused to carry network programs at the requested time. For example, we refused to carry Wild Bill Hickok at the reqested option time due to conflict with a local church program. We refused to carry Jo Stafford in option time because this came over the network in the time slot we were using for our local early evening news. We have preempted particular network programs in order to carry an important public service program. And in no case where we have rejected or preempted a network program have we been subjected to pressure from CBS.

When you hear talk about abdication of station responsibility you should bear in mind that KDUB–TV has actually had to go out and fight to obtain approximately one-third of the network commercial programs that we carry. I understand station responsibility to mean that the station is responsible for providing an overall schedule of programing which, in its judgment, is good, acceptable to its viewers, and otherwise in the public interest. We do this at least as much with our network programing as we do with our film programing. In both cases we obtain our programs from outside sources, and I don't see that the source of the program has anything to do with station responsibility.

So I say that option time does not interfere with our ability to discharge our responsibility as a licensee. I say also that option time, as well as the basic required group of stations, are of positive benefit to us.

First a few words about the basic required group of stations. The so-called must-buy policy of CBS—and remember that it is a practice between CBS–TV and the advertisers and not between CBS–TV and the affiliates—has the effect of assuring that the advertiser will buy enough circulation to make the purchase a network purchase rather than a spot purchase. After the advertiser has committed himself to the basic network one of two things is likely to happen for the benefit of stations which, like ours, are not in the basic required group. The advertiser may decide to purchase some of the optional and supplementary stations in addition to the basic required group because of the relatively low additional cost per station. If the advertiser does not add the optional and supplementary stations of his own accord, these stations, like ours, have a chance to convince the advertiser to order their markets for his program.

I think that option time is absolutely essential, too. It takes a lot of affiliated stations to cover the economic markets of the United States. If the network is to be able to provide the advertiser with the markets which he wants on short notice, it must be reasonably sure that it can clear most of these markets in a pretty quick fashion. This is especially true of the key markets. Therefore, just as a matter of business machinery, it's essential to have option time even though there may be less of a clearance problem in markets such as Lubbock than in the larger markets. If the advertisers cannot clear prime time in the large key markets where the bulk of the population exists, markets like Lubbock would never get a crack at carrying the network programs in the first place. This is true because if the advertiser couldn't get prime time in the large markets, where he amortizes his huge program production investment, the program wouldn't be on the network at all.

Now, Mr. Moore told you that this would be a good thing because it would mean that his station, KTTV, would be able to get the programs rather than the network stations in Los Angeles. But what Mr. Moore overlooked is that the important question is the public interest. It doesn't make any difference to the public in Los Angeles which station gets the program so long as the public sees the program. The other thing that Mr. Moore overlooked is that if the network doesn't have the program, the chances of that program being carried at all in the Lubbock area and in a great many other areas in the United States our size and smaller, would be far less. Because the fact of the matter is that, if the program weren't on the network to begin with, it would be much more difficult for the Lubbock area to convince the advertiser that he should add another $300 to his budget to get his message to our people.

I have been in this business practically since the beginning of commercial television. And I know that neither the national advertisers nor their agencies are geared to clear large numbers of programs on a nationwide individual purchase basis. The costs would be prohibitive. That is one of the reasons why the present networks came into existence. And take it from me, if you destroy the present networks, film networks will come into existence—and no matter what they call the practices—there will still be option time and must buy.

But remember this, that with film networks replacing our present networks, the huge A. T. & T. interconnection facilities devoted to television today would be devoted to other uses. Without the present networks, the cost of occasional use of these facilities would be prohibitive. Without these interconnection facilities, we could no longer bring to the people the many essential on-the-spot public service, special events, sporting events, and similar programs they enjoy today.

Incidentally, there is one point in connection with syndicated film programs you ought to know. Option time doesn't keep a good syndicated film off the air. TvB recently released figures which show that individual good nonnetwork programs can be cleared in numerous markets in prime time. We carry a number of independently produced programs ourselves—programs such as Annie Oakley, Confidential File, Doug Fairbanks, I Spy, Range Rider, Crunch and Des, Sheena, Telesports, Grand Ole Opry, and Liberace. We could carry a lot more if advertisers would buy them.

When you gentlemen sit down to appraise all of the testimony that you have heard about the television industry, I am sure you will recognize that this industry has faced and solved a lot of problems. If any problems remain they are largely problems which come out of growing pains—technological growing pains, allocation growing pains, and growing pains of businessmen who took business risks and are unhappy about the results. Television's growing pains are no different from any other kind. Let's not lose sight of the tremendous growth and tremendous public acceptance of the industry as it is today. And let's not make the affiliate-network relationship the scapegoat for problems it hasn't caused.

Appendix A to the Statement of W. D. Rogers, Jr., President, KDUB-TV, Lubbock, Tex.

I. DESCRIPTION OF TYPICAL LOCAL LIVE PUBLIC SERVICE AND PUBLIC AFFAIRS PROGRAMING ON KDUB-TV, LUBBOCK, TEX.

Church Remote Telecast.—(Current.) Remote telecast each week from a local church. Time is equally divided among representative denominations of our city. The telecast is 1½ hours in length each Sunday morning.

Plains Talk.—(Current.) Half-hour weekly program conducted by the Lubbock County Agent to keep farmers of the area posted on the latest agricultural developments and offering visual do's and don'ts regarding planting, crop care, safety on farm, etc.

Recipe Roundup.—(Current.) Daily cooking school half-hour per day. Show designed to educate the viewer on diet control, value of proper diet, shortcuts to economy through proper food preparation, tips on avoiding and detecting food spoilage, and nutritional guidance.

News, Sports, and Weather.—(Current.) Seven to eight one-half hours weekly devoted to locally originated news, sports and weather with emphasis on coverage of local events.

TV Sermonette.—(Current.) Five quarter-hours weekly presenting religious talks by a different minister from the local ministerial association.

Community Crossroads.—(Current.) An average of four civic, charitable, or service organizations appear daily on this show, designed to present a cross section of what is going on in the community, covering such items as city improvements, school bond issues, water bond issues, entertainment activities. This program gives country schools and deserving individuals an opporunity to further their causes on TV that they would not otherwise have.

You and Your Garden.—(Current.) Quarter-hour weekly program informing the viewing public of vegetation suited to the area, growing habits and care of individual shrubs, flowers, and garden plants.

Beauty School of the Air.—(Current.) Informs the ladies of latest hair styles and tips on complexion care, beauty aids, and general self-improvement.

Traffic Report of the Air.—(Current.) Half-hour weekly program designed to educate the public on the various hazards encountered through reckless driving. The medium of actual accident photographs from the files of the Lubbock Police Department is employed to emphasize do's and don'ts on the highway as well as in city driving. Discussions are conducted by qualified persons instructing drivers on proper driving habits, automobile care and inspection, safety rules and regulations, and valuable pointers on how to avoid an accident when confronted with various hazards. Authorities referred to above are such people as members of the Citizens' Traffic Commission, police department, State highway patrol, and school driving instructors. Moderator of the program is executive director of traffic safety for the city.

Club Day.—(Current.) Time given to Federated Women's Clubs of Lubbock. Various clubs present book reviews, art reviews, and music recitals to further appreciation of the arts, as well as to promote individual charitable projects of the groups concerned.

March of Dimes Telethon.—Annual yearly program running from 9 p. m. Saturday to 9 a. m. Sunday with all proceeds going to the March of Dimes. Station gives all time and station facilities, and the staff contributes talent and labor free. Local merchants donate merchandise to auction off. Local and national talent provide entertainment. Average of $27,000 raised at each telethon.

South Plains Fair.—Remote telecast of outstanding events of particular agricultural interest to this area.

Physical Therapy Telecast.—Remote telecast of installation of therapy facilities installed for the first time in a hospital in this area.

What is the Answer?—Presented during Texas legislative sessions in cooperation with the Junior Welfare League. Qualified local and areawide civic leaders discuss problems of youth, health, unemploymnet, migratory living conditions, welfare services, child guidance, adult education, and juvenile delinquency.

Capitol Report.—Gives viewers a firsthand opportunity to query a panel of State legislators on problems facing the area or State. This program is broadcast during legislative sessions.

Songs from the Country Chapel.—Nondenominational daily quarter-hour devoted to singing of requested hymns and thoughts for the day.

Final Decision.—(Current.) Panel of area attorneys and judges discussing legal questions submitted by viewers giving general guidance on wills, contracts, mortgages and everyday legal problems confronting the average person.

So You Plan to Build.—A half-hour per week program designed to explain to the prospective home builder the many do's and don'ts of planning and building a new home. Each week an authority appears to discuss the following subjects: Architect, planning of the home; realtor, selection of lot; mortgage loan officer, discussion of different types of loans; plumbers, bricklayers, carpenters, general contractors, electricians, cement contractors, sash and door suppliers, interior decorators, paint contractors, lighting experts, floor and tile contractors. This program is presented for 13 weeks each year preceding the home show.

Halloween TV Party.—An annual program by school students of all ages, presented in cooperation with the school system and the Police Department, designed to entertain and provide youth with wholesome activity, thus reducing vandalism to a minimum.

Texas Public School Week.—Six half-hour programs given to area schools to promote a more active interest in our public schools.

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Your School Superintendent Reports.—(Current.) Quarter-hour monthly program designed to give the superintendent of the Lubbock Independent Schools District an opportunity to report to the people on the problems, the progress and the plans of the school system. This program presents the reasons behind rules and regulations which have been set up within the school system, thereby providing means by which the general public can become familiar with aspects of their children's education. Without such a program it would be humanly impossible for the superintendent to reach all the parents. Through this program he is able to pass along certain information which could not be handled by any other medium of public information.

South Plains Forum.—(Current.) Panel discussion presented in cooperation with Texas Tech adult education program, furthering the growth and development of our area and its individual citizens.

What's Behind the News.—(Current.) Discussion of current news events national, statewide, and local in scope, along with unbiased analysis of political developments.

II. DESCRIPTION OF NETWORK AND LOCAL FILM PUBLIC SERVICE PROGRAMING ON KDUB-TV, LUBBOCK, TEX.

Plainsman Parade.—(Current.) Alternate week half-hour program takes the viewer into the outlying agricultural areas by film, to show improved farming methods and machinery effectively employed in the area.

Man to Man.—(Current.) Prepared by Broadcasting Film Commission of the National Council of Churches. Down to earth religious discussions by Dr. Ralph Sockman and Dr. Louis Evans showing that in basic Christian principles lie the answers to most day-to-day problems.

The Christophers.—(Current.) Hollywood's leading stars dramatically focus attention on what the average person can do in a constructive way to strengthen government, education, entertainment, labor relations and literature.

This is the Life.—(Current.) Prepared by National Council of Churches of Christ in the United States featuring dramatic presentations aimed at the unchurched to emphasize problems that can be overcome through religion.

Confidential File.—(Current.) A behind-the-scenes report on America, with candid closeups of people and places dealing with such critical problems as kid gangs, child molesters, comic books, leukemia, medical quacks, mental breakdown, narcotics, phony charity rackets and pyromaniacs.

Industry on Parade.—(Current.) An informative series depicting progress through industry, depicting developments in science, manufacturing, and the way of life America enjoys.

Adventure.—(Current.) Peabody award winner takes a long, lively look at life through science, showmanship and entertainment. Subjects range from historical triumphs and failures in early expansion of the United States to studies of the complex human body.

Face the Nation.—(Current.) Originating in Washington, D. C., the world's top diplomats, political leaders, and the makers of news participate in lively discussions with the press.

CBS Sunday News.—Weekly review and analysis of top news events.

You Are There.—(Current.) Dramatizations of outstanding events in history.

Let's Take a Trip.—On-the-spot coverage of two youngsters who go everywhere (U. N. Building, fire station, waterfront, powerplant, etc.) and do everything. Hailed by educators, parent-teacher associations, and children of all ages.

Out of Darkness.—A documentary on mental health.

See It Now.—Frequent special hour-long reviews of national and international crisis situations.

Talk Around.—Designed to help youngsters, ages 12 to 14, explore their own feelings and to help parents and children understand each other's viewpoints.

U. N. in Action.—Action reports from U. N. General Assembly.

Report Card.—Five-week series giving comprehensive preview of White House Conference on Education.

The American Week.—A review of Nation's outstanding news events.

The Search.—Peabody award winning series on research at various universities visited each week.

Almanac of Liberty.—Story by Supreme Court Justice W. O. Douglas presented by Anti-Defamation League.

Years of Crisis.—Hour-long, year-end round up of year's events.

Appendix B.

Hometown TV Makes a Hit

By Joe Alex Morris

FOR ITS VIEWERS THIS WEST TEXAS STATION WILL FIND LOST PETS OR GET ERRANT HUSBANDS OFF THE HOOK. IT'S TV WITH A PERSONAL TOUCH

One morning not long ago, Wesley DeWilde Rogers, Jr., president of television station KDUB in the west Texas city of Lubbock, took 3 telephone calls in 11 minutes. The first call was from New York; a television-film distributor talked for 6 minutes while Rogers listened with no show of interest. The second call, from Los Angeles, concerned a national-network program. Rogers rang off after 3 minutes, and turned impatiently to his heavily loaded desk.

The third call was from a house down the street. Rogers picked up the receiver with a frown that quickly changed to a broad smile.

"Mrs. Swillingby? Yes, yes, of course. A lost kitten, eh? Oh, certainly, we'll be happy to help. In fact, we'll put it on the air at noon and again in the afternoon. Gray and white? Wandered away yesterday. Now, just let me write down a few notes."

After assuring Mrs. Swillingby that KDUB–TV had a record of 91.2 percent for finding stray pets, Rogers began pushing buttons. A secretary hurried in to take notes on the color, size and last-known whereabouts of the missing kitten. A voice over the office intercom assured Rogers that the description could be squeezed into a midday program of news and local chatter. An announcer dropped in to say that he would ask listeners on the children's program to keep an eye open for the stray. Rogers turned back to his deskwork with an air of accomplishment.

Now, nobody in his right mind is likely to contend that finding lost kittens is the secret of running a television station. But when you get outside of the big cities, operation of a television station becomes a kind of community enterprise in which missing cats, the high-school play and the local charity drive are as important as a theatrical extravaganza piped in from Hollywood. In smaller cities, the television operator is expected to react like a country-newspaper editor, with the ability to satisfy off-beat demands.

There was, for instance, the night that KDUB–TV was telecasting a local charity auction, and getting along nicely, when the telephone rang. "I'll contribute a hundred dollars," a viewer told the auctioneer, "if that gentleman wearing a dark suit and horn-rimmed glasses will stand on his head in the middle of the stage." The man singled out was Rogers; he promptly took off his glasses and, with some assistance, hoisted his considerable bulk into an upside-down position for the TV camera. His practical-joker friend paid off.

There was also the occasion when a kindergarten class visited the studio to demonstrate what they had learned in school. The master of ceremonies asked a simple question to test the children, and called on a small boy, who had been the first to raise his hand. The camera and microphone crew skillfully moved close to the youngster. "I don't know the answer," the boy said, in a voice that rang out in homes all over town. "But I've got to go to the bathroom."

The inauguration of television in Lubbock in 1952 posed some unusual problems. Few people in the area had ever seen a television set. One of the early demonstrations was at the county fair, where KDUB–TV had a camera and receiving set so arranged that visitors could see themselves on the television screen. A ranch hand in a fancy shirt and 10-gallon hat assumed several impressive poses, after which he spoke to the girl at the reception desk. "If them pictures develop good," he said, "I reckon I'll buy a half a dozen."

Television was not available in the Lubbock area until 1952 for two reasons. The population was too thin for it until after World War II. Then, in 1948, the Federal Communications Commission froze all station construction for 4 years, while it figured out how to allot available channels. Until the 1930's, Lubbock had been a typical west Texas cow town, with about 20,000 inhabitants. With the great production demands of World War II, it began a phenomenal growth. Now it is a booming community of around 115,000 inside the city limits, and almost 150,000 in the metropolitan area. New homes are going up at the rate of about 1,200 a year.

Lubbock is the site of Texas Technological College, with an enrollment of 6,000. The city has a bustling twice-a-day newspaper, the morning Avalanche and the evening Journal; it has approximately 100 churches, 24 theaters, and

15 service and businessmen's clubs, including what was believed to be the largest Lions Club in the world before it was divided into 3 units. The surrounding region is rich farmland. Lubbock is the world's third largest inland cotton market, and the area has 125 grain elevators and 12,000 producing oil wells.

On the city's outskirts, 2 television towers poke almost 1,000 feet into the sky. One of these marks the site of station KCBD–TV, property of the Bryant Radio & Television Co., headed by Joseph H. Bryant, a soft-spoken veteran of theater and radio business, president of the chamber of commerce, an ardent civic worker and one of the most popular businessmen in the South Plains area. The other belongs to KDUB–TV, owned by Texas Telecasting, Inc., of which Rogers is president.

"Maybe you've heard," an old resident said recently, "that in Texas, especially in West Texas, we do things in a big way. We don't get just 1 television station—we get 2. Competition is stiff in a medium-sized market like this, so they both try to give us the best of everything."

At a studio such as KDUB–TV, more than 50 regular employees and a dozen part-time workers are busy from 6 a. m., until midnight every day. Most of them have to double in brass. Local sales manager Jimmie Isaacs, for example, is an announcer as well as a salesman. When the occasion demands, secretary Brooks Fulbright and continuity writer Jane Tindall drop their pencils and take the stage with professional poise.

It takes ingenuity to stretch a small budget so it will cover large ideas. When Ted Simon, who is Wee-Gee the Clown on the children's program, once wanted a steam calliope to provide background music, nobody even thought of buying one. Production manager Vernon Poernor and floor manager Bill Baker found an old organ in a funeral parlor, took it apart, did mysterious things to its insides and put it together again. It's the best imitation of a steam calliope that can be heard this side of the Big Top. On another occasion they dressed up a new guessing game by transforming a battered pinball machine into a mechanical brain that spelled out works in electric lights, counted the score, flashed signals every 10 seconds and rang bells when time was up.

Perhaps the best demonstration of how to operate without busting the budget was the building of KDUB–TV's remote-control unit under supervison of chief engineer Rudy Starnes. A truck fitted to carry such a unit normally costs about $25,000; but Poernor and Baker bought an old city bus, rebuilt its interior, and made their own electrical installations. For $4,500 they had a mobile station ready to roll.

Like the country editor, whose success often depends on the number of hometown names that appear in the social notes, Rogers tries to get as many local faces and events as possible on the television screen. This keeps the remote-control crew and the newsreel unit busy covering such things as the opening of a new shopping center, the unveiling of Peter Hurd's murals at the Texas Tech museum, performances of the Lubbock Symphony Orchestra, and Sunday church services.

All such telecasts invite trouble. Recently, for instance, engineer Bob Jeu-Devine set up the portable microwave relay, known as the "dish," on the top floor of an automobile-parking building. He was going to telecast services at a nearby church. The beam from the dish must be aimed with a telescopic gun-sight at a receiver dish on the station's tower, and a clear view of the tower is necessary. Unhappily, just as the services were about to start, a man parked his automobile in front of the dish.

"Hey!" Jeu-Devine shouted. "Will you park to one side? You're blocking our relay!"

The man didn't want to move his car. Jeu-Devine explained the situation but the man wasn't interested and started to walk away. In desperation the engineer said, "Well, maybe you don't mind a shot of radiation on your car."

"Whadda yuh mean—atomic radiation?"

"This gadget," Jeu-Devine began, "is a high-frequency——"

But the man was in his car and driving away before the engineer could explain—if he meant to explain—that the high-frequency waves from the dish couldn't hurt anybody.

The toughest job in a television station is that of program manager. At KDUB–TV Ray Trent is the man who pulls all the pieces together and makes certain that they fit neatly in a minute-by-minute schedule. On a typical week-day, Trent has to mix a dozen Lubbock shows with a score of network productions, several motion pictures, 5 or 6 reports on the weather, 7 newscasts, including several from Washington or New York, and whatever special events happen to come along. The viewer gets a heavy run of network shows during the morning hours, including such items as the Morning Show and Garry Moore, three soap-opera serials and a half-hour movie. A few more serials—Brighter Day, Secret Storm, On Your Account—come along in midafternoon, and in the evening there are such network productions as Toast of the Town, Burns and Allen, Frankie Laine, Studio One, and Jackie Gleason. Movies of wrestling matches go on 3 nights a week.

Between the network shows and movies are the local programs, which in the morning include a 15-minute sermon by some local minister, a half hour devoted to civic affairs, and a quarter hour of Songs from the Country Chapel by the Rev. Darrell Taylor, a Lubbock pastor. The period from 1 p. m. to 3 p. m. is devoted to local women's clubs, hobbies, flower and garden club activities, cooking lessons and music. The time from 4 p. m. until 6 p. m. is for the younger generation—Children's Theater, Uncle Dirk's Puppets, Wee-Gee the Clown, and a cartoon or serial movie. Local programs in the evening are led off with Community Crossroads, presenting news, civic activities, personalities and talent of the South Plains. Then, on various nights of the week, there are South Plains Forum, a discussion of regional problems; Jack Huddle's Circle 13, the only hillbilly singing over KDUB–TV; a parlor game called Guess What? and special programs prepared by local organizations, such as a debate, a sports event or the Lubbock Symphony Orchestra.

"In the studio, a program gets on the air only because of the coordinated efforts of 22 different persons doing 22 different jobs," Trent said recently. "If just one of them fails in his task, the whole thing can fall apart."

Occasionally, of course, there are bloopers. Once a girl demonstrating nonsneeze pepper cut loose in the middle of a commercial with three healthy sneezes. It was discovered later that she had a cold, but by that time the sponsor had canceled his contract.

On another occasion, an announcer held up a pressurized can of whipped cream that could be sprayed on pastry in enticing curves. "You'll be amazed," he said, "at what this will do for your Thanksgiving pie." He then pointed the nozzle at a large pumpkin pie. For some reason, compressed gas—but no whipped cream—shot out with great force and splattered pumpkin pie for 10 feet across the studio floor.

Director Johnny Williams had a tough time one day with a sponsor who had bought a 15-minute spot and jauntily announced that he would do his own commercials. Williams suggested a rehearsal, but the man brushed the idea aside. The show rolled along smoothly until time for the first commercial. Then the floor director pointed his finger at the sponsor, the microphone boom swung around, and the big camera rolled forward for a close-up shot. Nothing else happened.

The sponsor was bug-eyed and white-faced. His Adam's apple bobbed up and down, but not a word could he utter. In desperation, the announcer tried to get him started with a routine question: "And now, sir, what is your name?"

"Glub," the sponsor replied. "I can't remember."

The announcer finally made a gallant pitch to pass the whole thing off as a joke, and made up his own commercial while the sponsor slunk off the stage.

Experts normally would consider a community the size of Lubbock as hardly large enough for two successful television stations. But Lubbock has a higher per-capita income ($1,818) than any other American city of the same size, and the surrounding market area boosts the total population served above the 400,000 mark. The area around Lubbock has 18,700 farms with an annual income of $316,718,000—around $17,000 apiece. These factors, and continued rapid population growth, have enabled both KCBD–TV and KDUB–TV to flourish. An informal poll of local critics suggests that opinion is evenly divided as to which station is the more popular.

Both stations have connections with big national networks, and both emphasize community service, but their techniques of operation differ. At KCBD–TV, formality prevails on most programs, announcers wear neckties and jackets, the weather and news programs are presented soberly, and the president of the company stays in the background. KDUB–TV is highly informal. Many local programs are played by ear rather than by script. Open-neck sport shirts are popular with announcers, and a comic weather bird enlivens the daily forecast. A firecracker is likely to explode during a hillbilly song program, and the president is frequently in the act.

Wesley Rogers is a husky, vigorous man who has enjoyed getting into the act since he was a small boy in Waco, Tex., where he was born in 1920. His father, a pharmacist, called him "Dub" when he was a baby, and the nickname has stuck. At the age of 6 he began taking clarinet lessons, and became so expert in later years that he worked his way through Baylor University as the leader of a dance orchestra. When he was a senior, he was offered a job with the C. G. Conn Co.; in 1941 he traveled through the Middle West selling band instruments and doing promotion.

He quit to join the Air Force in 1942, and spent the war at the Air Transport Command's big ferrying center near Dallas, where he met Miss Edith Tighe, of Dallas, whom he later married. They have two daughters. Rogers decided at the end of the war that the best opportunity for an ambitious young man was in radio and television. However, he was persuaded to take a job as sales manager for a soft-drink-bottling company with headquarters at Lubbock. "I was quickly sold on Lubbock," he said later. "I knew that west Texas was the place for me."

In 1949 he became vice president of a corporation formed to launch a television station at San Antonio, where he remained until the station was sold in 1952. Rogers headed back to Lubbock, where, in May, he organized Texas Telecasting, Inc., and hired a single employee, accountant John R. Reynolds, who is now 27 years old and the dean of the KDUB–TV staff. A short time later the FCC lifted its freeze on station construction and granted permits for two Lubbock stations.

Rogers wanted to be first on the air. He secretly arranged for studio space in the Lubbock National Bank Building, and for erection of a temporary tower on the roof. For some weeks, work on this temporary station was done at night in a kind of cloak-and-dagger atmosphere.

"Office space was scarce," Rogers recalls, "and our studio was only about 20 feet square, divided into 4 little rooms. We didn't have any place to store props or the products that advertisers wanted to show, so we piled them out in the corridor. For weeks, lawyers and doctors and clerks who worked on our floor had to stumble over vacuum cleaners, live chickens, racks of dresses, and crates of soap flakes."

Nobody in Lubbock had a television set. This meant that the secrecy had to be ended late in October, when Rogers threw a dinner for representatives of television-set distributors, and announced that KDUB–TV would be operating in about 3 weeks. He phoned manufacturers and urged them to speed their products into Lubbock. There wasn't much time, but none of it was wasted. Television sets began arriving by the boxcar load, and aerials popped up on rooftops all over town.

In November, KDUB–TV began running a test pattern of black and white circles for the benefit of workmen who were installing new sets. It also issued a booklet explaining the fundamentals of television. This was only partly effective. A lot of people called in to warn the station that its broadcasting tower must be leaning to one side "because the picture on my set is coming in crooked." During the test-pattern period one indignant woman snapped at Rogers, "I've been sitting here for 2 hours, and there's been nothing on the screen but a crazy bull's-eye. If that's the best television can do, you might just as well close up shop now."

Finally, on November 13, a crowd gathered in the street outside the studio. A big industrial-type switch had been installed on a platform, and a rope several hundred feet long was tied to it. Rogers asked everybody to grab hold of the rope and pull. Slowly the switch was closed and the new station went on the air. Naturally, it was christened KDUB, usually pronounced "Kay-dub," to jibe with Rogers' nickname.

KDUB–TV was the first station in the country to open in a medium-size market. The show-business magazine Variety expressed doubt that many sponsors had "any desire to penetrate East Slippery Rock, Mo., or Lubbock, Tex., or such remote areas that are opening up. It's a real toughie for the networks to hurdle."

When Rogers read Variety's remarks he did a slow burn. He confirmed his suspicion that there is no such town as East Slippery Rock. Then he inserted a page advertisement in the next issue of Variety. It included a photograph of Lubbock's tallest buildings and a cartoon in which a doddering, behind-the-times editor was "cordially invited to fly—at our expense—to Texas to be adequately informed about Lubbock and to return to New York with the astonishing news of 20th-century West Texas."

This proved to be an attention-getter among the big agencies that control advertising budgets, and it paid off double when a Variety reporter showed up.

He wrote an article saying that advertisers had now "learned some new names and found markets where none apparently existed before, such as Lubbock."

Both Lubbock television stations, KDUB and KCBD, are now installed in handsome new buildings and are neck-and-neck in the race for business. Rogers' new plant cost about $279,000 and, in all, some $625,000 has gone into KDUB-TV. In the first 2 years of operation, residents of the area spent approximately $30 million for sets and allied equipment. Today there are close to 80,000 sets in use, with probably 1,500 more being sold each month. In December 1952 KDUB-TV was on the air only 171½ hours and had 31 commercial program hours, half national and half local. Last December it was on the air 400 hours and had 192 commercial program hours, of which 144½ were national.

Rogers and his competitor, Bryant, feel that their success is due largely to the unchecked growth of population in the south Plains region. Naturally, both have emphasized that their stations serve not only Lubbock but the many smaller towns and farming areas nearby.

Apparently, this policy has struck home. Some months ago a disheveled man walked into KDUB-TV and found director Johnny Williams in the corridor, about to start Community Crossroads. "Mr. Williams," the stranger said, "you are always saying your station serves the smaller towns—so here's your chance. I live in Roaring Springs and I want to go on your show right away."

"But what do you want to do on the program?"

"Do?" the man replied. "I don't want to do anything. My car broke down and I can't get home until late. Now, if I telephone my wife and tell her that, she'll think I'm making up an excuse to go out with the boys. But she always watches your program and if she sees me on television and if you tell her——"

"O. K.," Williams said. "Let's get on the air."

It's things like that that make a station manager wonder sometimes whether you can carry this community-service idea just a little bit too far.

Senator PASTORE. Mr. Cox.

Mr. Cox. With regard to this point you were making, Mr. Rogers, regarding the TvB report on clearance for film programs, do you know whether in speaking of prime time they were limiting this to clearance in option hours in the evening, or whether they were talking about clearances in the period 6 to 11 p. m.?

Mr. ROGERS. They were in class A time.

Mr. Cox. That, in terms of the network, is the whole period 6 to 11 p. m.?

Mr. ROGERS. Yes, sir.

Mr. Cox. Do you know whether they were using the network's classification or whether they were using the top classification of the individual markets?

Mr. ROGERS. No, sir, I don't. Only this information which was prepared by TvB, and is documented right here in one of their bulletins, it leads off by saying, "How about class A clearance with spot programs?" and it lists the programs that were cleared in class A time.[5]

If I might read here:

> The fallacy sometimes persists that the clearance of desirable class A time for spot programs ranges from difficult to well-nigh impossible, depending on the markets wanted. Like the unicorn, this just isn't so and in evidence we submit the recent experience of nine typical spot advertisers—both national and regional—who requested class A time segments for their film programs listed below.

In other words, in the case of a syndicated program, Mr. District Attorney, the Carter Products wanted to order 23 markets and they cleared 22 of them in class A time.

[5] The witness later advised the committee that the class A time referred to in the TvB report was the period 7 to 11 p. m.

Mr. Cox. That is class A, though, as distinguished from prime time?

Mr. Rogers. Yes, sir. And Man Behind the Badge, 11 markets, cleared 10; Socony Mobil Theatre was ordered in 56 markets and cleared in 56 markets in class A time. I would be glad to give you one of these if you would like to have it.

Mr. Cox. Yes; we would like to have one for the committee's files, if you have an extra copy available.

Mr. Rogers. Yes, sir.

(The document referred to, entitled "Advertising's All-Purpose Working Tool—A Presentation From TvB," will be retained in the committee's files.)

Mr. Cox. As I understand your statement, it is your own decision, as the licensee in Lubbock, as to which of the television programs that CBS offers to you are acceptable for that market?

Mr. Rogers. Yes, sir.

Mr. Cox. And you said that when you had made a decision that you would not clear for a program, CBS never exerted any pressure on you?

Mr. Rogers. No, sir.

Mr. Cox. Does their station relations department take the matter up with you, find out what the reason is, see if other arrangements can be made, or, in fact, urge you at your earliest convenience to clear for the program?

Mr. Rogers. I have had no discussion—station relations has never contacted me in connection with clearing the program. Normally the station service department will send us a TWX ordering the program, and if for some reason we can't clear it, we so advise them and give them a reasonable reason and we have had no problems.

Mr. Cox. Could you tell us, in general terms at least, what percentage of the programs for which your station is ordered in evening option time you actually clear for?

Mr. Rogers. Well, at the present time we have 13 hours of network programing between—in our option time a week.

Mr. Cox. What is the option time?

Mr. Rogers. 6:30 to 9:30.

Mr. Cox. In your zone?

Mr. Rogers. Yes, sir.

Mr. Cox. You have 17 hours, you say?

Mr. Roger. 13 hours.

Mr. Cox. 13 hours?

Mr. Rogers. Yes, sir.

Mr. Cox. Do you know for how many hours additional you were ordered and you did not clear?

Mr. Rogers. Well, in our particular case, right now I have 3½ hours a week available in prime time, which I would just love to sell. [Laughter.] So if for some reason I can't clear the program at the requested time, I am in a position to offer a good alternative time in option time on another evening. So I am not involved in that type of problem.

Mr. Cox. You are not now currently rejecting any of the programs for which your station is ordered, then?

Mr. Rogers. No, sir. There are occasions when for some reason or other we have to reject it, maybe the advertiser does not agree on this alternative time. In that particular case, well, we don't carry the program.

Mr. Cox. Did you, for instance, not carry at all Wild Bill Hickok or Jo Stafford?

Mr. ROGERS. No, sir; we are carrying those.

Mr. Cox. You carry those on a delayed basis?

Mr. ROGERS. Yes, sir. Wild Bill Hickok conflicted with one of our church programs so we offered an alternative time and the advertiser accepted it. We gave him the reason.

Mr. Cox. So that to date you have usually been able to work out these rejections in terms of another time in your schedule which is satisfactory to the advertiser.

Mr. ROGERS. Yes, sir. We normally take it at the requested time.

Mr. Cox. Are there any CBS programs which you are now carrying which you would refuse to clear time for if the network did not have option time?

Mr. ROGERS. Well, maybe.

Mr. Cox. Do you have any in mind?

Mr. ROGERS. No, none specifically.

Mr. Cox. That is, in other words, with or without option, your station would still desire the quality programs which the network can offer it when you can get your station ordered, you would still desire the revenues that you derive from that sale of time, and you would, therefore, have all of the incentives which lead you to clear time even though the option were removed—as far as your individual operations are concerned?

Mr. ROGERS. Repeat that again, please.

Mr. Cox. In other words, even if there were no option on the part of CBS, you would still desire their programs, you would still desire the revenues from those programs, and, therefore, the incentives that now lead you to clear time for these programs after you have satisfied yourself that they are in the interest of your community, would still remain even though the option had been removed?

Mr. ROGERS. Probably so; we would have to consider it on a case-by-case basis. But where option time plays a big part in our operation is that, as far as I am concerned, without option time we would probably substitute patchwork for network. In other words, if the large advertisers, as I said in my statement, were unable to clear the markets where the huge population exists, then I would never have an opportunity to get that program to begin with.

Mr. Cox. That is, in other words——

Mr. ROGERS. That is where option time benefits me.

Mr. Cox. In other words, you are worried that in the absence of option time some other station licensee in some other market is going to reject the network's programing and that this is going to impair the network's ability to provide a high-quality integrated program service for your station?

Mr. ROGERS. That is true. In other words, it is a machinery of clearance, and if this program is not cleared in the markets that serve the large population of America, then I won't have a chance at it.

Mr. Cox. Now why will the operator in a large market who operates under the same statutory obligation to program in the public interest not clear for the network programs as long as they maintain their present quality?

Mr. ROGERS. Well, that I couldn't answer.

Mr. COX. Can you think of any reason why he would not clear if he were ordered for any one of the top shows that the network now has in the schedule?

Mr. ROGERS. Well, I imagine if I were ordered for one of the top shows and didn't elect to clear it in option time, it would be for possibly the same reasons that we would reject it in our size market—that probably he had a local show there, sold to a local sponsor, or a national spot show or for a public service type program.

Mr. COX. Would you have any way of knowing whether, in general in other markets, instances of that sort can usually be taken care of through adjustment of time?

Mr. ROGERS. Well, with or without option time?

Mr. COX. Under the present situation?

Mr. ROGERS. Well, I feel sure that based on TvB's study we just don't see where there is any problem in clearing nonnetwork programs in class A time, as I just recited here earlier.

Mr. COX. Do you feel, Mr. Rogers, that in all cases you have full enough information, in advance of clearance of programs, as to the nature of a new show that is offered to you—as to the stars of the program, format, story lines—to enable you to make up your mind, in the public interest, as to whether or not you should clear for this series?

Mr. ROGERS. You mean from whom? The network?

Mr. COX. From the network.

Mr. ROGERS. Well, yes, sir, in many cases—in other words, the network, we can determine what the format of the show is from various releases; they at certain times will have a closed circuit.

Mr. COX. How many of those do you have in a year, in which you are shown the contents of a program?

Mr. ROGERS. I would estimate that over the last 12 months we possibly had 5 or 6.

Mr. COX. Now, this is an arrangement by which all of CBS affiliates are placed on closed circuits?

Mr. ROGERS. Yes, sir. All affiliates were connected with the network and they explained the program; and then at the convention when we have affiliates meeting each year, why the network will outline to us their complete plans for programs over the next 12 months. And in some cases they will even show us a pilot print of a show or kinescope.

Mr. COX. On these closed-circuit arrangements, do they show you a pilot then?

Mr. ROGERS. In some cases they show us a pilot; in some cases they explain it.

Mr. COX. In the case of live programs, what information is given to you in advance?

Mr. ROGERS. In the case of a live show it is mostly explaining it, and collection of facts sheets, or facts bulletins that we receive from the network.

Mr. COX. Do you ever get a script of a program in advance?

Mr. ROGERS. No, sir.

Mr. COX. Now, you stated that when the NARTB meets—or when you hold your affiliates meetings, if they meet at different times—that the network will explain their overall program plans for the ensuing year. Have you, as an official of the network affiliates group, had any part prior to that time in determining what new programs will be added to the CBS schedule?

Mr. ROGERS. No, sir. Well, I am not an official of the affiliates group. I mean of the affiliates advisory board.

Mr. COX. I misunderstood you.

Mr. ROGERS. No, sir; I am not. Mr. Howell is the only one of our group that is a member of the affiliates advisory board.

Mr. COX. Do you know whether they are consulted as to advance programing?

Mr. ROGERS. Yes, sir. After they have a meeting with the network, our particular representative down in our area will send us a copy of the minutes of that meeting; and one recently that I can recall from memory is in the case of the changing of the time of the Doug Edwards Show, and the advisory board was involved with that, as I recall. And the network called in a representative cross section of the affiliates across the country—called them in and discussed this matter with them—and I think that I am correct in saying that most of the changes, which the network finally put in existence in connection with this show, came from the recommendations of the affiliates.

And I do know that the network is programing Doug Edwards twice in the evening, 6:45 and 7:15 at the request of this representative group of affiliates.

Mr. COX. Have you cleared any time for new network programs which are scheduled to be on the air next fall?

Mr. ROGERS. Not to my knowledge. We have been approached on the Playhouse 90 for our satellite, but at the present time the advertiser that has bought into it doesn't see fit to buy Lubbock in. So I am going after him.

Mr. COX. You have the cart before the horse.

Mr. ROGERS. Yes, sir.

Mr. COX. That is the only one that you have been ordered for?

Mr. ROGERS. That I know of at the present time; yes, sir.

Mr. COX. How much information have you been furnished regarding that program?

Mr. ROGERS. At the present time, we have had the—there was some information on the original TWX, and I believe in my absence that my sales manager told me last night that a facts sheet had come in on it while I have been away, which I haven't seen.

This Playhouse 90 was also discussed—not in detail, but it was mentioned—at the affiliates meeting in Chicago this year.

Mr. COX. What did they tell you about it?

Mr. ROGERS. Well, in essence, they explained to us the type show it was going to be, that they were going in for a new concept of programing. Naturally, they recognized, and we all recognized, that you can't pack an entire story in 30 minutes, and they were going to attempt to put on this complete drama.

Mr. COX. Then they familiarized you with this concept of a longer dramatic presentation, but they did not give you much information about specific shows that would be so handled, or stars, or the writers, directors, or other people who will have a part in preparing those programs?

Mr. Rogers. I think at that particular time it was a little bit early. We will get that on our facts sheet, I would imagine, within the next 30 days.

Mr. Cox. Is it your understanding that CBS' option does not apply to a program like Studio One, which starts in option time but extends into station time?

Mr. Jennes. Ten to 11 o'clock.

Mr. Rogers. I would say that option time would apply.

Mr. Cox. You would think it would?

Mr. Rogers. Of course, it carries over into station time.

Mr. Cox. CBS has never formally advised you that you could refuse this program because option time does not apply to any part of it?

Mr. Rogers. No, sir.

Mr. Cox. Now, you made the point, in connection with Mr. Moore's testimony regarding problems of his station in Los Angeles, that it did not make any difference to the public whether the program in question went on KTTV or on one of the owned-and-operated network stations in that market.

Mr. Rogers. Yes, sir.

Mr. Cox. Now, using this market simply as an illustration of a market in which there are independent stations, if we assume, in accordance with Mr. Moore's testimony, that as he views the operation of "must buy" and option time on the development of new film programs for television use, that the tendency of producers is to produce only for network release, or for sale to an advertiser with a national time clearance, and he therefore says that not only will the program end up on his network competitor but that if it does not get there it will never be made.

Now, if this were true, to what source can an independent station— or the 4 independent stations in Los Angeles, or the 4 in New York, or the fourth station in Washington, Seattle-Tacoma, Denver, and the other markets fortunate enough to have fourth facilities—to what sources can they look for programing?

Mr. Rogers. Well, from the independent producers. I think that assumption is wrong, because there are many, many syndicated programs available.

Mr. Cox. Do you, of your own knowledge, know of the plans of any of the independent film producers to produce new program series for fall release which will be syndicated only?

Mr. Rogers. Well, of course the only way we know about the new independent releases is as they come out through the advertisements in the trade journals, and then when the film people call on you, or they send out some direct mail information on it. There are a number of shows that are coming out, I can't recall any specifically right now. But we hardly miss a day getting some direct-mail piece from an independent producer.

Mr. Cox. Do you know of any other than the ones which have been sold for network release, Circus Boy, Sir Lancelot, Stanley——

Mr. Rogers. Well, one of the latest shows out, independently produced, and by the way, was sold on a nonnetwork basis, was Rosemary Clooney, purchased by the Foremost Dairy people.[6]

[6] The witness later furnished the following list of programs, compiled by the program director of WTOP-TV from recent contacts with distributors and from recent trade periodicals:

(Footnote continued on following page.)

Mr. Cox. For national spot advertising?

Mr. ROGERS. Yes, sir.

Mr. Cox. And that is a singing program, not a continuity series?

Mr. ROGERS. No; it is a half-hour syndicated show, independently produced, and Foremost placed it on a national-spot basis.

Mr. Cox. Is that campaign underway? I mean is the program on the air now, or is it scheduled for the air in the fall?

Mr. ROGERS. No, sir; it started about 30 days ago.

Mr. Cox. Do you know how much clearance has been obtained?

Mr. ROGERS. No, sir, I do not.

Mr. Cox. Now, you made some statement also about the impossibility of advertising agencies or other sources providing clearance. When a network orders your station under option time, what specifically does it do?

Mr. ROGERS. Well, they will order our station by TWX—if we are fortunate to be in the advertiser's list, they will order us by TWX—and specify the time. Then we will answer by TWX, which they pay for. And if we can clear it we will so state. If we can't, we will try to offer an alternative time and try to get a delayed broadcast, which, like I say, in most cases we are able to do.

Mr. Cox. What is there in that function that could not be performed by someone else?

Mr. ROGERS Well, like I say—in other words, what you are asking me is why an advertising agency couldn't do it by large numbers of programs like I stated in my statement?

Mr. Cox. Well, is it not true that either advertising agencies—strike that.

Is it not true that advertising agencies, working normally with the national spot representatives of the licensees, actually do the job of clearance in many markets, placing it in times as they are available?

Mr. ROGERS. Oh, yes, sir. A few programs, that is. But what I stated was large numbers of programs. I just don't think that they are geared to clear large numbers of programs, and the cost would be prohibitive for each agency to get into a network type of clearance operation.

Mr. Cox. In other words, you are contemplating, then, a situation, however, in which the network was no longer clearing for any pro-

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New syndicated series of television programs reported to be available for fall 1956

Title	*Source*
The Forest Ranger	Hollywood Television Service.
Behind the Scenes	Do.
Commando Cody	Do.
Frontier Doctor	Do.
Hawkeye	Television Programs of America.
New York Confidential	Do.
Tugboat Annie	Do.
Red Ryder	Flying A Enterprises.
You Can't Take It With You	Screen Gems.
Criminal Code	Do.
Mystery Writers Theater	Do.
The Web	Do.
Scattergood Baines	John W. Loveton.
Harbor Patrol	Reynolds Productions.
Skip Taylor	Do.
Tobor	Guild Films.
The Bob Mathias Show	NBC.
Emergency	Screen Gems.
Dr. Christian	Ziv.
Silver Eagle	Jewell Productions.
Mr. President	Reynolds Productions.

grams, where the advertising agency's clearance, or the national spot representative's clearance, would have to completely replace network clearance rather than supplement it?

Mr. ROGERS. That is true. But if option time were eliminated, then I think the networks would deteriorate.

Mr. COX. Thank you.

Senator WOFFORD. Thank you very much, Mr. Rogers.

Mr. ROGERS. Yes, sir. I appreciate the opportunity.[7]

Senator WOFFORD. The next witness will be John C. Cohan.

You may proceed, Mr. Cohan.

STATEMENT OF JOHN C. COHAN, PRESIDENT, KSBW-TV, SALINAS, CALIF.

Mr. COHAN. Senator Wofford, gentlemen, my name is John C. Cohan. I am president and general manager of the Salinas Valley Broadcasting Corp., licensee of KSBW-TV, channel 8, Salinas, Calif. KSBW-TV is a primary affiliate of CBS and a secondary affiliate of both ABC and NBC.

Since entering broadcasting in 1932, I have held positions in all phases of the business except those requiring technical engineering knowledge. I have also had approximately 25 years' experience in advertising and I operate my own advertising agency in Salinas. In addition to numerous local civic activities, I am national vice chairman of the American Red Cross.

I appreciate the opportunity to tell your committee about television broadcasting in Salinas. I am proud of our industry and our own part in it and I am ready to fight to preserve it. Television would never have reached its present development without networks operating with option time and with a requirement that a minimum basic network purchase be made. Television will stop developing—and will begin to wither on the vine—the minute networking is deprived of these essential business tools.

Television, like any other business, is governed by basic economic facts. A department store will not have customers unless it offers attractive merchandise and it cannot carry a full stock of merchandise until it builds its clientele. This is true of a television station, too.

When we received our permit for channel 8 our first thought was to locate a source of programs so that we could have something to sell. We sought a network affiliation because we believed that was the best way to obtain the kind of programs Salinas desired and deserved. We knew that we could not build an audience with homemade programs alone, or with free film or old movies. And we knew that if an audience were not built we would not attract enough advertisers to stay on the air.

We carried only 2 network programs during the first 18 days we were on the air. However, strong personal selling directly to advertisers, and the sales assistance of all three networks, have enabled us to obtain enough network programs to form a foundation for our overall structure. On that foundation we built the rest.

Our present program structure is the result of constant repetition

[7] The program schedule of KDUB-TV for the week of April 8-14, 1956, will be found starting at p. 2968.

of this process: We would secure a network order. This program would induce viewers to tune to channel 8. This increase in viewers would induce a nonnetwork advertiser to buy time. The nonnetwork program would further increase our circulation and lead to another network order. And so we grew.

Our network affiliations are of great value to us but they do not guarantee success. KSBW–TV's profits after 2½ years in operation are only a thimbleful. We recognize that factual market data and hard selling are necessary to convince an advertiser to order channel 8. We know that they will order our station if it reaches a large enough audience at a low enough cost. And we do not gripe at the networks because business is not handed to us on a platter.

This committee has heard that network practices deprive the public of the benefit of superior nonnetwork programs and force it to watch inferior network shows. Nothing of the kind occurs. KSBW–TV is affiliated with 3 networks, but more than 55 percent of our total air time is devoted to nonnetwork programs. We carry 19 first-run syndicated film series each week, which compares favorably with the number run by other stations, affiliated and nonaffiliated. Significantly, 40 percent of our time between 7:30 and 10:30 p. m. is filled with nonnetwork programs. Is this exclusion?

Superior nonnetwork programs have access to affiliated stations. These programs also have virtually complete access to the 36 nonaffiliated stations which serve more than 43 percent of the total population of the United States. There is a nonaffiliated station whose signal covers our market. If superior nonnetwork programs were excluded from KSBW–TV because of our network affiliation, then as a matter of practical business these same programs would soon be seen in our market on the competing station.

This committee has also been told that network practices deny nonnetwork advertisers access to affiliated stations. This is a fantastic charge. We are an affiliate of 3 networks but we have 28¼ unsold hours per week. One and three-fourths of these hours are between 7:30 and 10:30 p. m., and 6 hours are between 6 and 11 p. m. With any unsold time, do you think that we would turn away a prospective advertiser with an acceptable program? Far from excluding nonnetwork advertisers, we carry a large proportion of national, regional, and local advertising. Of our 52 hours of commercial programs per week, 22½ hours are sponsored by nonnetwork advertisers, and between 7:30 and 10:30 p. m. 6½ of our 19¼ commercial hours are sponsored by nonnetwork advertisers. Only 13 percent of our total billing for March 1956, came from network advertisers, whereas national billings and local and regional billings accounted for 60 and 27 percent, respectively. We wish our network billings were higher.

If programs and advertisers really exist that are being denied access to television, it is strange that a fourth network has not been organized. Not only would present nonaffiliated stations be potential affiliates for such a network, but many affiliates of the three existing networks would add the newcomer, too, provided it offered an equivalent quality product. It is only sound business for a station to show the best programs it can obtain. Television is highly selective. The public is very critical. They look at the station with the best programs. Let any business organization build a better program service and they will attract affiliated stations. The experience of the pioneers would make the road to successful networking much smoother for the newcomers and I am sure that no new network would try to operate without option time and a group of basic stations.

You have also been told that station licensees have abdicated their responsibility to exercise their own judgment in programing. You will see the fallacy of this charge when I tell you how we program channel 8.

In order to make our station the most viewed station—and hence provide the most effective public service—we aim for the greatest number of people at any given time with the very best program available to us. We arrange our programs to suit the audience. We program primarily for housewives in the early afternoon and for children after school. Our news programs concentrate around dinnertime to reach all audience groups, while our evening schedule is aimed at adults. We program for special audience groups, too, as shown by our Mexican language program each Sunday morning. We have found that networks arrange their schedules along the same lines. It is because of their consistently demonstrated quality that we use network programs as a foundation for our overall structure. This is our judgment. Moreover, our total schedule includes programs from all three networks, nonnetwork programs from a variety of sources, and local live programs.

You have also been told that we are afraid of losing our affiliation and so we discriminate against independent program producers and nonnetwork advertisers in placing their business. Let me tell you of a recent case and you decide whether there is discrimination. General Motors ordered our station through CBS for a half-hour live program, during option time, following the $64,000 Question. KSBW-TV did not clear this time for General Motors because we felt our community preferred Badge 714, a syndicated film program sponsored by a local furniture dealer. We offered General Motors alternate film time, in option time, following Disneyland. General Motors wanted only live clearance and refused. CBS backed us up 100 percent and told General Motors that KSBW-TV had done its best to fill the order.

We have cooperated with our partners, the networks, in clearing time for their programs, but a local advertiser has never been taken off channel 8 to make room for a network advertiser.

One other point should be mentioned. Witnesses have emphasized principally the extent of network programing between 7:30 and 10:30 p. m., the evening option period. Although 7:30 to 10:30 p. m. is good time, it is not the only good time nor is it necessarily the best time from the advertiser's point of view. While audiences may not be as large in class B time, neither are the rates as high, so that from the standpoint of cost per thousand—the advertiser's yardstick—class B hours are often better buys than 7:30 to 10:30 p. m. So let us not discount the availability of time on stations other than the evening option period.

Our ability to use network programs as a foundation has enabled us to increase our hours of daily service, which in turn has permitted us to expand our nonnetwork programing. We show an increasing number of independent film programs as our program structure is strengthened and we hope to show more in the future. Far more important, however, our use of network programing allows us to concentrate on quality local live programing.

When a network program is being broadcast our small program staff is free to develop, produce, and rehearse the live programs which are so important to our community. We can afford a staff of only 34 people. Even the most simple television program requires a great deal of money and a surprisingly large number of people. If our staff had to create programing to fill our total schedule, its quality would be so poor that we might be forced out of business entirely and, at the very least, our time on the air would be sharply reduced.

We might add here that independent film programs are expensive so that it is not a practical alternative to program a station in a small city with film alone. And this does not take into consideration the inadequacies of an all-film schedule. Many network programs are not available from other sources. There is no independent producer of live sporting events, or of news, or of presidential speeches, or of congressional hearings, or of national political conventions, or of live religious programs, or of fine operas or concerts. In addition, only networks offer programs which, by their very nature, must be spontaneous and instantaneous in order to be successful. The $64,000 Question falls into this category, and you all know that this show is among the most popular of all television programs.

Through our local live programing, KSBW–TV has been able to build a reputation for public service in our community which has raised the status of television equal with or above the status of newspapers. Channel 8 has been the focal point of every civic issue in Salinas from the day we went on the air. Our first program was a 6-hour broadcast for the Community Chest. We work continually on school problems. We carried the banner for a hospital bond issue that previously had failed. We took the local Red Cross drive over its quota for the first time since World War II and we did this in less than 1 day. We also have received an Academy Award for one of our public service programs. The complete list is enormous and the details of our public service record appear in the appendix to my statement. (See p. 2588.) The point is that without the foundation of publicly accepted network programing we could never have built our circulation to the point where KSBW–TV has become such an effective voice in our community.

Since networks are vital to bring adequate television service to all of the communities across the country, it is essential that networking operations not be impaired. Option time and a basic group of stations are absolutely essential for healthy networking. You must be practical when you spend advertising dollars.

For example, my advertising agency spends a large sum of money to purchase a program on ABC television for the lettuce growers in our area. In order to sell lettuce, it is necessary to reach the metropolitan centers of the United States at specific times. The practical way to accomplish this is to go to the networks, who are a national advertising medium, and who, because of option time and a basic group of stations, are able to sell us the coverage and the time we want, and to do it quickly.

It would be utter chaos if all advertising agencies and all advertisers were trying simultaneously to get nationwide coverage over individual stations. Many advertisers would fail to get their desired pattern of coverage and would switch to other media. There would develop such a seller's market for national spot business in the handful of major metropolitan areas that there would be no national advertising dollars left for a small station in Salinas. While big metropolitan stations might profit more from such a situation, many small-business men such as ourselves would be ruined, and when the small market station goes under it is the public who suffers.

It would be a catastrophe for the public if the network structure is weakened, for only networks provide service for all the people. Lack of knowledge of our industry and understanding of its business practices is prevalent among those who would criticize networking.

As an advertising agency operator, I can assure you that competition between networks is extremely keen and that there is nothing resembling monopoly in this field. Moreover, as a station operator I can assure you that networks recognize their solemn obligation to maintain high program quality. And the public benefits from both these conditions. We must get the special interests to quit grinding their special axes long enough to recognize that the public is being well served now, but that the public would be poorly served if networking is undermined.

Appendix to the Statement of John C. Cohan, President, KSBW-TV, Salinas, Calif.

I. Description of Typical Local Live Public Service and Public Affairs Programing on KSBW-TV, Salinas, Calif.

Names in the News and Feature Page.—(Current.) These two features are 5-minute public service programs included in our evening news broadcast These two segments feature community leaders interested in various projects. For example, during a recent week the programs were devoted to a drive to save minor league baseball for Salinas.

Following is a list of various organizations that have appeared on these programs: 4-H Clubs, Junior Rodeo, Girl Scouts and Boy Scouts, Job's Daughters, Crippled Children, Future Farmers of America, American Legion and American Legion Auxiliary, highway patrol, sheriff's office, policeman's and fireman's benefit balls, Pebble Beach golf tournament and road races (both for charity), women's clubs, junior chamber of commerce, Alisal Chamber of Commerce, American Association of University Women, American Ex-Prisoners of War, Babe Ruth League of Salinas, Inc., B'nai B'rith, Castroville Rod and Gun Club, Knights of Columbus, Palma Mothers' Club and Palma Dads' Club, Community Chest, Elks Exchange Club, Friends of Music, Little League Baseball, Lions Club, Mexican Civic Committee, Monterey County Sheriff's Posse, Monterey Peninsula Council for Retarded Children, National Secretaries Association, Optimists Club, Presbyterian Women's Association, Red Cross blood bank, Rescue Mission, Rotary Club, Salinas Business and Professional Women's Club, Salinas Valley Shrine Club, and World Affairs Council of Salinas.

The World At Your Doorstep.—(Current.) A civic pride program pointing out the many outstanding features of our own area with the theme of "support your own community." A recent program was devoted to the Monterey Bay area, the beaches at Santa Cruz and the big trees near Santa Cruz.

TV News Digest and Final Edition News.—National and local news, weather and sports.

Special agricultural programs are carried 15 minutes each week. A recent program was presented by the California Dried Fruit Research Institute.

Sports Paradise.—A program of hunting and fishing information including safety hints and interviews with game wardens.

Spot Light on Medicine.—Interviews with doctors from the area we serve on a variety of subjects, including infant care, heart trouble, and detection of cancer. The program presented simulated operations and diagnoses. This program won award for public service programs of the Northern California Academy of Television Arts and Sciences.

You and the Law.—Interviews with area lawyers discussing rights and obligations of citizens under the law.

Guide Dogs for the Blind.—A 1-week annual program devoted to the problems of blind persons. (Live and film.)

Code 1180.—A weekly traffic safety program featuring interviews with police and highway patrol officers who present information leading to traffic safety. (Live and film.) This was a small segment of the Black Flag traffic drive by KSBW–TV which ran in 1955.

Christmas Carols.—For 30 days prior to Christmas KSBW–TV presents all of the choirs of the area. This includes all schoolchildren from elementary through high school, the two junior college choirs, church choirs and vocal groups from Fort Ord and the Army Language School.

A Report on Your Schools.—A 30-minute program presented by the Salinas union school system giving a report to the people on current school curriculums.

All Eyes Are on You.—An annual 30-minute documentary on the 10 health and welfare agencies of the Community Chest.

Your Heart.—A complete information program presenting three of the best specialists in our area. This was preceded by a heavy spot announcement campaign on behalf of the Heart Fund during the national drive.

Fort Ord in Review.—A periodic program presented live in conjunction with the Fort Ord public information office explaining the Army training program and news from Fort Ord.

Shrine Band.—KSBW–TV presents a live band concert featuring the Watsonville Sciots Band about every 90 days.

The Red Cross in Action.—KSBW–TV has earned an enviable reputation for its special annual Red Cross programs. During the last 2 weeks of February and the entire month of March we present a series of programs, live and film, dealing with stories of the Red Cross in our area. This is a report to the people on the work of the Red Cross during the previous 12 months. Interviews with approximately 45 people were presented on the air this year during this 6-week period. The station has consistently been in the forefront of the Red Cross drive, putting it over 3 years in a row in 1 day.

Monterey County Industrial Development Report.—A weekly 15-minute live program giving a report to the people on the industrial development of the area.

Salinas Junior Woman's Club.—This was a series of live programs featuring scenes from the annual play presented by the woman's club for the benefit of a school for the mentally retarded children of the area.

Alcoholics Anonymous.—KSBW–TV presents an annual live program for Alcoholics Anonymous featuring members of the organization who wear masks and explain to the public the work of the organization.

KSBW–TV also provides many of the public service functions of a local newspaper:

1. On four occasions KSBW–TV has been instrumental in locating escaped prisoners from Soledad Prison, one of California's largest medium security prisons.
2. During the fall drought of 1955, KSBW–TV broadcast periodic bulletins on fire hazard conditions.
3. During the Christmas week floods of 1955, KSBW–TV assigned 12 employees to the disaster area to give complete news coverage, warnings, and instructions.
4. Black Flag, a special program for traffic safety.
5. KSBW–TV annually collects food, toys, and clothing for needy families at Christmas.
6. Special programs were devoted to Armed Forces Day and United States Army Reserve Week in cooperation with personnel from nearby Fort Ord.
7. The local, State, and National elected representatives of the public make periodic reports to their constituents.
8. KSBW–TV conducts a local employment-placement service program which has found jobs for many persons.
9. A public appeal over KSBW–TV for a very rare type blood vital for an emergency operation resulted in immediate donation of 7 pints of blood which saved the patient's life.
10. Another public appeal located the parents of a girl who had been seriously injured in Seattle, Wash., and who needed emergency surgery. The operation could not be performed without her parents' consent. Within 30 minutes of KSBW–TV's broadcast the parents, a soldier stationed at Fort Ord and his wife, were located and as a result an operation saved the girl's life.

11. KSBW–TV arranged for watermelons to be flown in from another State to satisfy a request of a child dying of leukemia.

12. Public Schools Week—special programs for the schools' open house.

13. Watsonville Boys Home—special boys home program.

14. There have been special live programs for the YMCA on the opening of their swimming pool.

15. Church groups of all denominations are assisted in their various special projects such as Easter, Christmas, revivals, and so forth.

16. KSBW–TV broadcasts all election returns.

17. Other organizations and features presented through this type of public service programing were: Bicycle Safety, Santa Cruz Community Players, Camber Ski Club, St. Vincent de Paul, Catholic Serra Club, County Welfare Commission, Entre Nous Society, Fine Arts Club, Horsemen's Association, League of Women Voters, Methodist Men's Club, Monterey Bay Mineral Society, Monterey County Tuberculosis Society, Newcomers Club, Nurses Association, PTA, Salinas Valley Memorial Hospital, and Salinas Valley Pets.

II. DESCRIPTION OF OTHER TYPICAL LOCAL LIVE PROGRAMING ON KSBW–TV, SALINAS, CALIF.

Program Previews.—A digest of upcoming TV programs of major interest.

Fun Club With Gary Ferlisi.—A daily children's program which includes some film.

La Hora Mexico.—Special Mexican program with film inserts prepared especially for our large Spanish-speaking population.

Your Garden.—A weekly program featuring hints on gardening and presenting various members of the garden clubs in the area.

Your Hobby.—A weekly hobby program presenting the various people in the area interested in a variety of hobbies.

Do It Yourself Program.—A weekly program featuring the manual arts teacher of the high school who explained how to "fix it" and "do it yourself."

III. DESCRIPTION OF TYPICAL LOCAL FILM AND NETWORK PUBLIC SERVICE PROGRAMING ON KSBW–TV, SALINAS, CALIF.

This Is The Life.—A weekly spiritual series of special religious programs prepared by the National Council of Churches of Christ in the United States.

The Christophers.—A weekly program featuring top Hollywood stars with spiritual advice as to how we can better the various phases of life in the United States.

Man to Man.—A special series of religious films featuring Dr. Ralph Sockman, prepared by the National Council of Churches.

The Big Picture.—A weekly half-hour series of films presented by the United States Army, giving the United States citizen a report on his army.

Industry on Parade.—A weekly series showing little-known stories about United States industry by the National Association of Manufacturers.

United Jewish Appeal.—Special film programs presented annually at the time of the United Jewish Appeal Drive.

Red Cross Report.—Special film programs presented in March showing the work of the Red Cross for the previous 12 months.

In addition to these film series, KSBW–TV also presents special film programs such as The Used TV Tube Racket and Helping The Taxpayer presented by the Bureau of Internal Revenue. KSBW–TV also broadcasts film programs from the United States Coast Guard, United States Navy, National Rifle Association, Immigration Service, Veterans' Administration, Boy Scouts of America, Cancer Society, Cerebral Palsy, Civil Air Patrol, Disabled American Veterans, National Foundation for Infantile Paralysis, Veterans of Foreign Wars, Care, Crusade for Freedom, and Community Chest.

Adventure.—A general educational program.

Face the Nation.—Panel questioning of prominent people in the news.

CBS Sunday News.—Review of the week's news highlights.

Out of the Darkness.—A special program on mental health.

The Search.—A discussion of research projects at various colleges.

Let's Take a Trip.—A children's educational program.

Lamp Unto My Feet.—A religious program.

Mr. Cox. Could you tell us, Mr. Cohan, what percentage of clearance you provide for ABC and NBC in evening option hours?

Mr. COHAN. All the time they order.

Mr. COX. All the time they order—that is, the three networks together do not offer Salinas enough to fill your evening time. I think you indicated an hour and a half left?

Mr. COHAN. We have an hour and three-quarters unsold now and 6¼ hours sold locally—local furniture store, people like that.

Mr. COX. Now assuming, not that option time were to be abolished, but that it would be limited in some way, why is it that this would make such a tremendous difference in the pattern of clearance on the part of stations affiliated with CBS, let's say?

Mr. COHAN. Mr. Cox, this thing of option time being impaired or changed or tampered with—let me give you my picture as I see it—and I have been on both sides of the fence, buying time and selling time.

The 3-hour option time arrangement by the network is an orderly distribution of national advertising. Now, the networks can't get into business as a network and provide the tremendous programing that they have provided without something to sell. Now you can't get into the grocery-store business without having merchandise on the shelf, you can't run a railroad without having the tracks.

Now, it is possible that we might say here that "Let's change this thing, let's make it 2 hours, let's make it 5 hours, what difference does it make?" This I think would be a disaster. I am sincere in my belief that the option-time provision of the networks should not be tampered with. It is working now, it is working well.

Nationwide television network programing is less than 4 years old, sir. Give us time; let's get off the ground.

Mr. COX. Do you have any idea how the 3-hour evening option period was arrived at at the time this was specified in the FCC regulation?

Mr. COHAN. No.

Mr. COX. It represented a compromise, didn't it, between the Commission's inital decision that there would be no option time and the insistence of the networks that they had to have unrestricted option time?

Mr. COHAN. I don't know, sir. But I think you have got to take the basic economic facts of advertising. This is where we all come from, we have to sell this time—the networks have to sell this time. You have got to operate at a profit. You can't continually operate at these tremendous losses or we will be asking the Government for a subsidy.

Mr. COX. Do you think it was just sheer good fortune that they happened to hit on 3 hours—that networks would not have developed if they fixed a period of 2 hours or 4 hours?

Mr. COHAN. If it is working now, Mr. Cox, why should we tamper with it? We have the most tremendous television service in the world, it is working. An automobile—you can build an automobile with 3 wheels—but you can't tell that it is going to run just as well as a car with 4 wheels.

Mr. COX. Let's go back to my original question. Just assuming that some change were made in option time, without trying to fix the extent of this. I still have the question, why, if CBS continued to provide the programs of the quality it now provides, and if your station in Salinas still has unsold time in option time even with affiliations with three networks, the network would not be able to sell you these programs in prime time without the option as well as it can with the option?

Mr. COHAN. Would you restate that?

Mr. Cox. Well, assuming some modifications of option time, but that CBS, desiring to continue in the networking business, continues to offer programing of the quality it now provides; and assume that your station still has time unsold despite relations with three networks; now why wouldn't you be as willing to accept this high quality programing from CBS and the other two networks without the option as you now are with the option?

Mr. COHAN. If you tamper with option time, you are going to start an erosion of the networks, piece by piece and bit by bit. Maybe not today, maybe not tomorrow, maybe not next week. But if a network operates, it has got to have something to sell. It is like the grocery store, it has to have something to sell. Now I can't go to an advertiser and say, "I have got something to sell" if I don't have it under option. How could CBS go and say "We want to sell you an hour," and the advertiser would say, "How do you know you can deliver?"

Mr. Cox. Does CBS sell an hour of time on any affiliated station without having previously ordered that hour specifically and gotten confirmation from the station that it will clear time for that program in that time slot?

Mr. COHAN. You mean before they go to see the advertiser, do they sell it?

Mr. Cox. Do they sell the time—that is, do they ever sell time to a national advertiser over any specific station without having specifically ordered that time for that program?

Mr. COHAN. First? You sell—it is my understanding that CBS goes and sells the program and then asks for the clearance, according to their option time contract.

Mr. Cox. Now when they are talking to the network before they send out the TWX, though—to the advertiser, I mean—have they committed themselves to the advertiser that they will clear in any specific market, or in any number of markets?

Mr. COHAN. I understand that our option-time agreement means that CBS has the right to commit us for delivery of our markets before they sign the contract.

Mr. Cox. Do you know whether that is their practice?

Mr. COHAN. Well, it would be if it was mine; if I was selling time, I wouldn't want to walk into a man's office and say, "I want to sell you a program," unless I knew I had stations to deliver.

Mr. Cox. What, however, if when they try to sell Salinas you find the program is less desirable than Badge 714, or that you have committed yourself to a local advertiser and you don't feel you can make way for this national programing? Now what happens at that point to the fact you say they had to be able, in advance, to assure the advertiser that they could clear Salinas?

Mr. COHAN. Well, it hasn't happened and I don't think it will happen. There is still a lot of time for sale on all the networks.

Mr. Cox. On the networks?

Mr. COHAN. Yes, sir.

Mr. Cox. That is unsold?

Mr. COHAN. Yes, sir.
Mr. COX. CBS has a half hour unsold in evening option time, isn't that true?
Mr. COHAN. Well, Mr. Cox, I am a broadcaster. If I am broadcasting 12 hours a day, I have 12 hours to sell; my clock has more than 3 hours. And I have got to, as far as I am concerned. Many daytime programs, many programs directed at women are better than nighttime shows, and there is still lots of time to be sold.
Mr. COX. Now you mentioned the freedom of access for independent film programs on your station—the number of such programs that you carry. Do you have any idea of the relative degree of access which syndicators of such programs have in, say, a 2-station market among the top 50 markets of the country?
Mr. COHAN. Well, of course, I am not familiar with the top 50 markets. I haven't heard of anyone not being able to buy time in the United States today that wants it.
Mr. COX. On a nonnetwork basis in option time?
Mr. COHAN. Any place, anywhere.
Mr. COX. Can he get it in the hours 7:30 to 10:30?
Mr. COHAN. Well I would assume he could, or he could at least in some cases, and if he can't get it into 7:30 to 10:30, why doesn't he take twice as much time in the daytime and get the results? All he wants is results.
Mr. COX. However, if his program is one directed at an adult audience of both sexes, he is never going to be able to duplicate, in daytime, the audience he can get at night?
Mr. COHAN. Eighty-five percent of the purchases in the country today are made by women. I will take the women. I don't care whether men ever look at it.
Mr. COX. Don't the figures also show, though, that even as among women, that you get a higher peak of viewing audience in terms of total numbers?
Mr. COHAN. Not relative to dollars you spend.
Mr. COX. Well, then——
Mr. COHAN. This is an economic business, Mr. Cox.
Mr. COX. Have you ever been able to persuade a national advertiser who asked for clearance in evening option time that, rather than accepting some other evening hour, he should put this on at 10 o'clock in the morning in Salinas?
Mr. COHAN. We have very often recommended that a man can get more for his dollar by taking another segment of programing, even though we have the A time programing available—that he can get more out of other types of advertising.
Mr. COX. This is a program that is shown on the network in evening time.
Mr. COHAN. No, no. I didn't understand your question, if that it what you——
Mr. COX. No. My question is: Suppose that you are ordered for a network show which the network releases in evening option time—you can't clear at that time. Now would you feel that you would be on sound ground if you advised this sponsor, who has designed a program to appeal to the evening audience, that he should accept a time on your station either before noon or in the early afternoon?
Mr. COHAN. We have never been faced with the particular problem.

But in our section, Sunday is sometimes a lot better than at night. Sunday morning, Sunday afternoon.

Mr. Cox. You suggested the possibility of development of a fourth network, and pointed to the fact that there are 36 independent stations which have coverage, I believe you said, of 43 percent of the television sets in the country?

Mr. COHAN. Right.

Mr. Cox. Now isn't it true that the American Broadcasting Co., with its present affiliation arrangements and present ability to clear, can accomplish clearance for far more than that percentage of the market, but still states frankly to this committee that it does not regard itself as yet being in an equally competitive position with the two major networks?

Mr. COHAN. Mr. Cox, give ABC time, they will be. You can't build Rome in a day. Television is only 4 years old. There will be other stations in other markets. You just can't do this thing overnight. This would be like the Government telling the Army, "Go build me a nuclear airplane by day after tomorrow."

There are tremendous technological problems, there are program problems, there are interconnection problems. There has become a gigantic industry overnight. This will be solved. There will be more stations in all markets. There are many stations in hearing now that will soon be allocated, soon be on the air.

Mr. Cox. Are you familiar with the statement of Chairman McConnaughey of the FCC that when all of the in-hearing applications are heard, there will still be fewer stations—66 of the top 100 markets in this country will have 2 or fewer stations that are of equal competitive ability?

Mr. COHAN. I am not familiar with the statement, but you just give the engineers time and they will work it out.

Mr. Cox. I wish I had your confidence.

Mr. COHAN. Well, Mr. Cox, just as a byplay on this, if anyone had ever told me that you could put a picture and voice on tape, I would say you are crazy. And when I sat there, I felt like the man that was in on the discovery of the telephone, running it right back. So give the engineers time; we will work this thing out.

Mr. Cox. That is all.

Senator PASTORE. Thank you very much, Mr. Cohan. We will take about a 2-minute recess.[8]

(A short recess was taken.)

Senator PASTORE. Let the committee come to order.

The next witness we have is Mr. H. Moody McElveen, Jr., from Columbia, S. C.

STATEMENT OF H. MOODY McELVEEN, JR., VICE PRESIDENT AND GENERAL MANAGER, WNOK–TV, COLUMBIA, S. C.

Mr. MCELVEEN. Mr. Chairman and members of the committee, my name is H. Moody McElveen, Jr. I am vice president and general manager of Palmetto Radio Corp., licensee of UHF station WNOK–TV, channel 67, in Columbia, S. C. WNOK–TV is a primary affiliate of CBS and a per program affiliate of ABC. In Columbia there is also a VHF station, WIS–TV, channel 10, an NBC affiliate.

[8] The program schedule of KSBW–TV for the week of April 8–14, 1956, will be found starting at p. 2967.

As a UHF station, WNOK–TV has had special problems. It is difficult to operate a UHF station, especially in competition with a VHF facility. At the outset we were delayed in getting on the air for some 8 months because our equipment supplier was late in producing our transmitter. Instead of having a lead of almost a year on our local VHF competition as we had expected, we went on the air at about the same time. Although we now get out a good signal for the area we cover, we cannot operate at full authorized power, because the equipment is not available to permit it. We have run into resistance from national advertisers, both network and nonnetwork, because of the unfortunate prejudice which exists against UHF operations.

Up until recently there were 2 UHF and 1 VHF stations in Columbia, but things were so rough all around that the other UHF station asked us to buy them out. We made arrangements with them that were agreeable and they ceased operations. This has helped somewhat. However, competing against a VHF facility is still not easy.

I am not here to plead a special case for the problems of the UHF operators. I do want to stress, however, that these problems are not the result of affiliate-network practices. On the contrary, the affiliate-network partnership with CBS, operating with option time and a requirement that a network advertiser purchase a basic group of stations, has been the most important factor in helping WNOK–TV cope with the problems of UHF operation. Without this network affiliation and the tremendous and understanding cooperation of CBS television, our UHF station probably would not be on the air today.

We sought network affiliation upon receipt of our construction permit because we knew that without strong programing we couldn't even hope to survive. Building an audience for a UHF station is difficult, even with good programing. It was obvious that we could never build and hold an audience with local live programs, free movies, and what few top-grade syndicated programs and feature films we could afford. We knew that the public in the central South Carolina area expected television to provide first-class entertainment and that they would prefer live shows. We knew they would want world-wide news, public affairs programs, sports, and other special events. Only a combination of network and local programing could satisfy such broad public tastes and we were determined to attract an audience by appealing to these tastes.

Although our CBS network affiliation today provides the backbone for our programing structure and our ABC programs are a very considerable help, we never have been naive enough to think that a network affiliation alone would directly provide enough programing for successful operation. Just because we are an affiliate does not mean that a network advertiser will order our market for a particular program. The affiliation affords us an opportunity to sell our market to network advertisers. Affiliation is only a backbone to which the station must add the flesh.

It has been an uphill fight to add this flesh to WNOK-TV because national advertisers, purchasing time either on a network or on a national spot basis, are prejudiced against UHF stations. We have been able to obtain national advertisers we could not otherwise have obtained through strong, direct personal selling, combined with an all-out sales effort by our partner, the network. CBS has often put us on the track of advertisers whom they believed could be convinced to order channel 67, and they have helped us to close a number of orders where there was initial advertiser resistance.

It is in this connection that option time and a basic group of stations are essential to sound networking and, in turn, to a truly nationwide system of television.

Option time is no pernicious device conceived by networks to coerce affiliates, as some earlier witnesses have stated. It is a simple practice necessary for sound business operations, and is absolutely essential to orderly operations on the network level. If advertisers could not be assured of live clearance of a large number of affiliated stations on short notice, network television would end. And if networks become ineffective, I doubt if many UHF stations in markets the size of ours would receive much attention from national advertisers whose budgets would be depleted trying to secure access to a handful of VHF stations in large markets. Many advertisers might forsake television altogether in favor of other media. Thus, without option time the high quality television service now available to Americans throughout the country would be found only in a relatively few big cities and the concept of a truly nationwide system would have been dealt a lethal blow.

A basic group of stations is also vital to successful networking and to the nationwide system of television for which Congress, the FCC, and networks and their affiliates all are striving. Without a basic group of required stations an advertiser could purchase the facilities of a network for service to only a few markets. This would soon destroy the function of a network as a nationwide advertising and programing medium, for when its facilities are tied up by orders for a few big markets they are unavailable for service to the rest of the country. Moreover, requiring purchase of a basic group of stations often induces advertisers to buy more than the basic group. In that way the people of Columbia are directly benefited even though WNOK–TV is not a basic required affiliate. Once an advertiser has committed himself to purchase the basic network we have found it much easier to convince him to add $200 to his budget in order to reach the central South Carolina market. The additional cost, in the light of audience delivered, does not increase appreciably his cost per thousand and may actually reduce it. Were an advertiser not required to purchase a basic group of stations, the people in our market might be deprived of our network service for most of the broadcast day because WNOK–TV would be far less successful in convincing a network advertiser to purchase time on channel 67.

The backbone of network programing received through affiliation enables us to provide more and better service to central South Carolina. The fine network programs please the public, add prestige to our station, and increase our circulation. They also free our small staff and limited facilities from the burden of creating an entire program structure and permit concentration on quality local programing. It is during network programs that our personnel prepare and rehearse our local programs. If we had to develop all of our own programs, we would have to reduce drastically our time on the air. Moreover, a UHF station the size of WNOK–TV in a market like ours could not possibly do a creditable job of programing by itself, day in and day out, nor be competitive with the VHF station in the community. Without a backbone of network programing, local live programs—no matter how worthy and important the content—could not receive the careful and thorough preparation that they require. While viewers might be tolerant of low-quality programing in the beginning, their interest would soon disappear and the very purpose of the programs would be defeated.

In return for the many benefits which affiliation brings, we are able to uphold our part of the affiliate-network partnership by providing an outlet for CBS network programing and advertising in central South Carolina. The charge that the practices governing this partnership lead to coercion, domination, or intimidation of affiliates is utterly ridiculous.

If there were a shred of truth in the charge, a small, struggling UHF station would never reject a network order for the top program in the country in favor of a local baseball game. Yet WNOK–TV did just that. We refused to clear, during option time, for the $64,000 Question because we believed that the public would prefer to see the only local baseball telecast in South Carolina. CBS' only comment was a request that we clear time for the program after the baseball season, which we did. There have been similar instances of rejection or preemption of network programs in option period and the cooperative attitude of true partnership has always prevailed.

We believe that it is a privilege to be a licensee of a television station and we resent the charge that, because of affiliation, we have abdicated our responsibility as a licensee. We are keenly aware of our responsibility to the public and our program standards are high. Our schedule includes entertainment, sports, news, religious, educational, agricultural, public event, and general information programs blended to reach and to appeal to all groups in our community. Moreover, these programs come from various sources—networks, film distributors, and our own studios. Within our means we try to present the best program available to us in each category, and this includes our local programs.

We were the first station in South Carolina to televise live Sunday morning church services and we are still the only station rendering this service in our part of the State. Through the auspices of the Columbia Ministerial Association, we also do a daily devotional series entitled, "In His Service." Kim Calling, our half-hour biweekly cultural and local affairs program, is carried in evening option time. We have a local newsreel program, filmed by our own staff within a radius of 50 miles of Columbia, which is also unique in our area. Our local biweekly traffic safety program, The Highway Show, carried in local-option time, received the National Safety Council award. We present a weekly live program in cooperation with the United States Public Health Service and the South Carolina State Board of Health dealing with community health problems. The local civic theater group periodically does live dramatic programs on WNOK–TV. A recent one was on behalf of the American Cancer Society. We recently completed a 26-week live series in cooperation with the Internal Revenue Service entitled "Tax Tips." A more complete description of our public service programing is contained in the appendix to my statement (sec. p. 2598).

The charge that affiliate-network practices deny nonnetwork advertisers and independent programs access to television likewise is false. More than 40 percent of our total program time is from nonnetwork sources. Between 6 and 11 p. m., more than 30 percent and between 7:30 and 10:30 p. m., 19 percent of our program time is from non-CBS network sources. This is far from exclusive, especially when you consider that many of the programs which our community desires are available only through the facilities of networks.

Strong networks are far more necessary in television than they ever were in radio. Strong networks are particularly important to UHF affiliates. The tremendous cost of television programing makes networks operating with option time and a group of basic stations essential if there is to be adequate television service in small and medium size communities like Columbia. The public expects and deserves a variety of constantly superior programs. The affiliate-network partnership is the best way to obtain a backbone of such programing around which a comprehensive schedule can be built. Any action that weakens the ability of this partnership to operate as it now does would destroy or degrade television service to the public.

APPENDIX TO THE STATEMENT OF H. MOODY McELVEEN, JR., VICE PRESIDENT AND GENERAL MANAGER, WNOK-TV, COLUMBIA, S. C.

I. DESCRIPTION OF TYPICAL LOCAL LIVE PUBLIC SERVICE AND PUBLIC AFFAIRS PROGRAMING ON WNOK-TV, COLUMBIA, S. C.

Sunday Morning Church Services.—(Current.) For the past 9 months, we have televised live the Sunday morning church services from the First Baptist Church of Columbia. It is our plan to continue this service indefinitely because of the overwhelming public response.

The Highway Show.—(Current). A live half-hour biweekly program devoted to traffic safety and produced under the auspices of the South Carolina Highway Department.

An Apple a Day.—(Current). A weekly live quarter-hour program in cooperation with the South Carolina State Board of Health and the United States Public Health Service dealing with community health problems.

In His Service.—(Current). A daily live 15-minute devotional program through the auspices of the Columbia Ministerial Association. Each guest minister is selected by the Ministerial Association.

Columbia Newsreel.—(Current.) The only program in this area made up of movie film shot within a radius of 50 miles of Columbia. This program, filmed by our staff, is a commercial weekly half hour that has been aired 2 years.

Local Baseball.—(Current.) We are the only station that does local live baseball in South Carolina. Last year we did 20 games of the local class A South Atlantic League team and this year we are doing 10 live baseball telecasts. Ownership of the ball club changed the first of this year, and the new owners felt that more than 10 televised games would be detrimental to attendance.

Tax Tips.—A recenty completed series of 26 15-minute live programs in cooperation with the United States collector of internal revenue.

Town Theatre.—The Columbia Town Theatre last month did a very fine live dramatic quarter-hour public-service program on our station in behalf of the American Cancer Society.

Columbia Church Choirs.—This half-hour program was done on an interdenominational basis live from our studios each Sunday evening. Each program presented a different choir.

Pixie Panel.—This half-hour weekly program was patterned after a kindergarten and had 8 different youngsters each week in the age group 5 to 7. The program was endorsed by several Sunday schools and PTA groups.

Kim Calling.—(Current.) A cultural and public-affairs program dealing with a variety of topics such as the Speech Correction School, the Crippled Children's Society, the United Fund Campaign, Columbia Art Museum, Columbia Music

Festival, Town Theatre, and so forth. A half-hour biweekly program with Mrs. Kim Difilippo as hostess.

Harmony Boys.—A group of University of South Carolina students who sing gospel music one-half hour weekly.

Teen Time.—A panel of six teen-agers representing the different high schools in the Greater Columbia area with music and current teen-age topics each week for a half hour.

Don Robertson News.—A daily early evening summary of news, weather, and sports; with emphasis on local coverage of news events in and around Columbia.

Final Edition.—A daily late evening news program followed by a sports program. Both the news and sports deal with local, regional, national, and international events.

Election returns.—Complete coverage of local and national contests and primaries. We are the only station in our area that covers these returns with a complete live camera and production crew located at party headquarters.

University Forum.—A biweekly half-hour forum on current events, presented in cooperation with the University of South Carolina, with the director of the university extension division serving as moderator.

Columbia on Camera.—A man-on-the-street program interviewing local people on current issues.

II. DESCRIPTION OF TYPICAL OTHER LOCAL LIVE PROGRAMING ON WNOK–TV, COLUMBIA, S. C.

Country Junction.—(Current.) A weekly half-hour program of country and western music featuring a six-piece band and a vocalist.

Robbie's Roundup.—(Current.) A local girl dressed as a cowgirl reads letters, interviews children, and shows a complete western movie daily.

Christmas Parade.—Annual live coverage of the largest and most colorful parade in South Carolina.

Christmas Choir.—Each Christmas for the past 3 years the all-Negro choir from one of Columbia's largest churches has presented a program of Christmas carols.

III.—DESCRIPTION OF NETWORK AND LOCAL FILM PUBLIC SERVICE PROGRAMING ON WNOK–TV, COLUMBIA, S. C.

The Big Picture.—Produced by the Army Signal Corps to keep the public informed about, and to stimulate interest in, the Army and its recruiting program.

The Pastor.—Produced and distributed by the National Council of Churches.

The Christophers.—Produced and distributed by the Christophers, this program advocates the return to the basic ideals of freedom.

Each week we run a number of public service films. During the week of April 8–14 the following public service films were broadcast: Rehearsal for Disaster, Senator Olin Johnston Reports, Short Cuts in Sewing, ABC's of Beef Cooking, Holiday Paradise, Mightier Than the Sword, Virgin Island Vacation, Pan American Games, and March of Dimes Fashions.

CBS Sunday News.—(Current.) A comprehensive weekend coverage of national and international news.

Face the Nation.—(Current.) Distinguished guests answer questions from a panel of reporters.

Adventure.—(Current.) A series in cooperation with the American Museum of Natural History embracing a wide variety of fields in science, nature, and human relationships among civilized and primitive societies.

Look Up and Live.—(Current.) A religious series presented in cooperation with the New York Board of Rabbis.

Let's Take a Trip.—(Current.) Weekly televisits to unusual and exciting places directed to the Nation's youth.

The Search.—Each week a different research project or unique educational activity in progress at one of the country's leading colleges or universities is described.

United Nations in Action.—Highlights of the activities of the U. N. sessions.

Lamp Unto My Feet.—A religious series in cooperation with the National Council of Churches of America.

Now and Then.—A series of lectures on literature by Dr. Frank Baxter.

Talkaround.—A panel discussion of current events.

VE Plus 10.—A program recalling events of May 8, 1945, the day of victory in Europe, featuring interviews with President Eisenhower, former President Truman, Generals Bradley and Spaatz, Secretary of State Dulles, and others.

Addresses by President Eisenhower.

Special News Broadcast.—The latest results of the British elections.

Special Address.—Adlai E. Stevenson to the 93d Annual Convention of the National Education Association.

Flood—the Story of Main Street.—This program featured Jackie Gleason and promoted nationwide support for the Red Cross and other relief funds designated to aid the flood-stricken communities of the Northeast.

Religion In America.—A special film, including discussion on children and Sunday school.

Special Address.—Secretary of State John Foster Dulles.

Thanksgiving Day Festival.—Symphony orchestra and ballet.

Christmas Eve Program.—A religious program from Boys Town.

Years of Crisis.—A special year-end roundup of news.

Special Address.—Sir Anthony Eden.

Special Address.—Secretary of Agriculture Ezra Taft Benson in answer to Edward R. Murrow's See It Now farm problem broadcast.

Out of Darkness.—A program depicting the nature, causes and treatment of mental illness and demonstrating dramatic evidence of progress in the battle against the Nation's No. 1 health problem.

Salute to Mamie Eisenhower.—A birthday tribute to the First Lady.

Philadelphia Forum.—A debate between Paul M. Butler, chairman of the Democratic National Committee, and Leonard W. Hall, chairman of the Republican National Committee.

Special Easter Morning Services.—A broadcast directly from the National Cathedral in Washington, D. C.

Ringling Brothers Barnum & Bailey Circus.

Special Address.—Senator Alben W. Barkley at the Democratic Committee Woodrow Wilson Dinner.

See It Now.—A series by Edward R. Murrow dealing with such subjects as The Vice Presidency—The Great American Lottery, The Farm Problem—A Crisis of Abundance, and Egypt and Israel.

Mr. Cox. Mr. McElveen, you indicated that, in the period 7:30 to 10:30 p. m., 19 percent of your program time was from non-CBS network sources. Could you tell us what percentage of that 19 percent was occupied by ABC programs?

Mr. McElveen. Yes. I think that 11 percent is from no network at all.

Mr. Cox. And the balance——

Mr. McElveen. And the remaining 8 percent is from ABC, yes.

Mr. Cox. This, of course, is the situation as you find it in your two-station market in Columbia. Do you have any information as to whether there are any like availabilities for nonnetwork programs in larger markets falling in the two- and three-station category?

Mr. McElveen. Mr. Cox, I don't know the exact availabilities there are in other markets. Judging from the testimony which I have heard this morning, it would indicate that the other gentlemen here from television stations say they have time in those periods, so I would assume so.

Mr. Cox. The committee has heard testimony from Mr. Moore that, based upon his study, I think it was, of 40 markets which were on the must-buy lists of both NBC and CBS, it was determined that either 93 or 96 percent, depending on whether you included delayed broadcasts, of the programs offered to the major network affiliate, were cleared in the period 7:30 to 10:30. Now, if that is true, that would leave nothing like the order of your availability in those markets.

Mr. McElveen. I know that we have an awful lot of time to sell. Now, what situation may be in other markets as to their existing availabilities, as I say, I could not give you answer on that.

Mr. Cox. Now, you indicated very clearly the reasons which made you want a network affiliation. Is one—I gather that one of the factors which led you to want an affiliation was a desire to get the outstanding programs that are offered by the network?

Mr. McElveen. That is right, yes.

Mr. Cox. Now, do you feel that all of the programs that are offered by the network are of the same quality?

Mr. McElveen. Oh, no.

Mr. Cox. Is there a possibility, if your market was ordered more extensively by national advertisers, that you would find yourselves being asked to clear for programs which, while not affirmatively unacceptable, did not in your mind hold up to the standards of overall CBS programing?

Mr. McElveen. Well, Mr. Cox, if we could—if I can assume that you mean that if we are ordered for programs that are below the existing standards, is that what you have in mind?

Mr. Cox. Well, let's suppose that you could set some kind of an average.

Mr. McElveen. That we as an affiliate set, all right.

Mr. Cox. That you said this class of program is definitely superior; this class of program, is, we think, of average quality, and then perhaps there are one or two included in the schedule which you would regard as not being of the same level of quality.

Mr. McElveen. Yes, I think that is true, that there are such programs.

Mr. Cox. Now, under the option system, then, is there a possibility that you may find yourself scheduled to clear for these programs which you don't regard, in and of themselves, as of such high quality, but you would be willing to take them because they are a part of the program structure which is offered to you and a large percentage of which you do desire?

Mr. McElveen. Well, in our particular case, Mr. Cox, as I stated, we have time available. Now, if a program meets—there are several standards. One is if we think a program is excellent. One is if we think it is at the other extreme, totally unsuitable. Obviously, if it is totally unsuitable for our community, in our judgment, we would refuse it, regardless of what the source. If on the other hand, the network or any other source would approach us with a program that we thought was a reasonably good program, not superior, and we had the time available, we would certainly try to clear for it, yes.

Mr. Cox. Supposing, though, that you reach the fortunate state where you didn't have all this time available, and they offered you a program which you would put in this second category of not being, you thought, as good as CBS ordinarily did.

Mr. McElveen. Yes.

Mr. Cox. Isn't it the purpose of the option to get you to clear time for that program, even though you might feel that there was a better program available from another source?

Mr. McElveen. As I understand our commitment with the option, this is the way we would try to administer it: If CBS offers us a program that obviously, we feel, is a superior program, we accept it. If, on the other hand, CBS offers us a program that we feel is as good as what we now have in the period, or what we could obtain to put in the period, we would still accept it. Now, we feel there is where the network has the advantage because of the option. We feel they are entitled to that advantage. That is what, actually, they get from us; that is, our giving part of this agreement. If the third case is true, which you mention—or which we are talking about—the network program is obviously far inferior, then I doubt seriously if we would accept the network program.

Mr. Cox. Then you feel that all that the option gives the network is the benefit of the doubt when the network and the nonnetwork program seem to be of about equal quality; is that what you are saying?

Mr. McElveen. I think that we, as independent operators and licensees, have to exercise judgment on all programs, network or otherwise, to the best of our ability.

But from my point of view, and the experience we have had with CBS programs, it is that there have been no truly bad programs, there have been some that we didn't think were as good, from a rating point of view, as others. But if it gets to the question of does the network have a slight advantage over other sources if the program is of equal quality, I would say "Yes." My interpretation is that they are entitled to that advantage. In effect, that is all they have gotten from us.

Mr. Cox. In that situation, however, you have no real incentive to take the nonnetwork program? You would gain nothing in terms of——

Mr. McElveen. In our particular case, we would have an incentive to take any commercial program, if it was at all acceptable, because we need the business.

Mr. Cox. You would actually find time for both of them, as I understand?

Mr. McElveen. We would make every effort to; yes.

Mr. Cox. Can you tell us whether, in general, CBS has been willing to—as willing to affiliate with UHF stations in other markets and to stand by them in the difficulties that they have encountered in competing with VHF competition?

Mr. McElveen. I would say "yes." Now I have a list here that we made of all the CBS–UHF affiliates. Now, there is one, of course, that is a CBS-owned station. So we will discount that. There are 14 that fall in the same basic category that we do, which are basic optional, and they are all interconnected. We are included in that 14. There are 6 additional, to the 14, that are called supplementary, and they are interconnected. One is in South Carolina—Anderson—which I am familiar with. There are 6 in the extended market group, UHF stations that are interconnected, and there is 1 in the extended market group that is not interconnected, UHF.

Mr. Cox. Would you provide us with a copy of the list for the record.

Mr. Jennes. Be glad to do that.

(The list is as follows:)

CBS–UHF Affiliates [9]

BASIC REQUIRED GROUP

City	Call letters	Channel
Milwaukee, Wis	WXIX	19

BASIC OPTIONAL GROUP, INTERCONNECTED

Albany, N. Y	WCDA-TV	41
Baton Rouge, La	WAFB-TV	28
Columbia, S. C	WNOK-TV	67
Erie, Pa	WSEE-TV	35
Fort Wayne, Ind	WIN-TV	15
Harrisburg, Pa	WHP-TV	55
Hartford, Conn	WGTH-TV	18
Henderson-Evansville, Ind	WEHT	50
Montgomery, Ala	WCOV-TV	20
Reading, Pa	WHUM-TV	61
Scranton, Pa	WGBI-TV	22
South Bend, Ind	WSBT-TV	34
Springfield-Holyoke, Mass	WHYN-TV	55
Youngstown, Ohio	WKBN-TV	27

SUPPLEMENTARY GROUP, INTERCONNECTED

Anderson, S. C	WAIM-TV	40
Lima, Ohio	WIMA-TV	78
Madison, Wis	WKOW-TV	27
Peoria, Ill	WTVH-TV	19
Raleigh, N. C	WNAO-TV	28
Saginaw, Mich	WKNX-TV	57
Yakima-Pasco, Wash	KIMA-TV	29

EXTENDED MARKET GROUP, INTERCONNECTED

Fayetteville, N. C	WFLB-TV	18
Kingston, N. Y	WKNY-TV	66
Lafayette, Ind	WFAM-TV	59
Lake Charles, La	KTAG-TV	25
Parkersburg, W. Va	WTAP	15
Salisbury, Md	WBOC-TV	16

EXTENDED MARKET GROUP, NONINTERCONNECTED

Decatur, Ala	WMSL-TV	23

Mr. Cox. Do you have any idea how many UHF stations formerly affiliated with CBS have had their affiliation terminated when a VHF affiliation became available in the market?

Mr. McElveen. I wouldn't be in a position to know that; no.

Senator Wofford. Just one question, Mr. McElveen.

Mr. McElveen. Yes, Senator.

Senator Wofford. In this area of networking and network relations as you know them, do you have any suggestion, or is there any way that you could suggest that this committee might possibly help?

Mr. McElveen. Well, Senator Wofford, I think that it is absolutely imperative that the existing formula or arrangement that now exists for option time and for the basic network be continued and I think that—I feel that any Government-inspired change of this existing system would probably be extremely detrimental to those of us in the smaller markets, certainly. And, I hope that this committee can agree with us that any change would work actually to the disadvantage of the people.

[9] Since Mr. McElveen's appearance the situation as to the UHF affiliates of CBS has changed as follows: CBS has acquired the Hartford station and it and the Albany station have been added to the basic required group; WISC-TV, a VHF station, has replaced WKOW-TV as the affiliate in Madison; and the stations in Reading and Kingston have left the air.

Senator WOFFORD. Thank you very much, Mr. McElveen.[10]

The next witness will be Mr. Donald W. Thornburgh, from Philadelphia, Pa.

STATEMENT OF DONALD W. THORNBURGH, PRESIDENT AND GENERAL MANAGER, WCAU-TV, PHILADELPHIA, PA.

Mr. THORNBURGH. Thank you, sir.

For the record, my name is Donald W. Thornburgh. I am president of WCAU, Inc., which is the licensee of WCAU-TV, the Philadelphia Bulletin television station on channel 10 in Philadelphia. WCAU-TV is a primary and basic required CBS affiliate. There are two other television stations in Philadelphia, one owned and operated by NBC and the other an ABC affiliate. Philadelphia is served by a fourth station, a nonnetwork VHF station in Wilmington, Del., which is approximately 15 miles from the city limits of Philadelphia.

I do not take lightly the responsibility and privilege of appearing before this committee any more than I take lightly the responsibility of managing the WCAU television and radio stations in Philadelphia.

It is perhaps fitting at the outset for me to point out that, like most other broadcasters, we at WCAU are mindful of our duties as citizens and as active members of our local community. I am proud of the contribution which our staff makes to the well-being of the city of Philadelphia, both in the daily operation of our station and in the energetic and enthusiastic devotion of time to a large number of local public service organizations.

I take this committee's time to say this at the outset because, it seems to me, our performance in the operation of our station and the great devotion of our staff to outside community organizations is an appropriate answer to the suggestion that broadcasters see nothing but the dollar sign and only take but never give.

Like most other broadcasters I, too, am greatly disturbed over the attack on network operations and the affiliate-network relationship. In view of the testimony which has already been heard, it would be redundant for me to describe again the great achievements which the television industry has accomplished in so short a period of time. Also, since I believe that the testimony given last week and today clearly demonstrates that the option-time provision and the network's basic network requirement, sometimes referred to as must buy, are absolutely essential to effective networking, I will not attempt to develop these points any further. In my testimony I would like to concentrate on a charge that has been made during these hearings against our station in its relations with the network and its broadcast operations.

Mr. Richard A. Moore, president of KTTV, Inc., of Los Angeles, has seen fit to use WCAU-TV and its programing as one of the major city stations that illustrate his contention that, because of alleged network control, affiliates do not operate their stations in a manner that is responsive to the needs of the local public.

Our principal interest—I repeat, our principal interest— is in operating to the satisfaction of the people of the Philadelphia area, and we are confident that this critical attitude about our operations is not shared by the public we serve. However, since the purpose of this attack is to show that something is wrong with the television networks

[10] The program schedule of WNOK-TV for the week of April 8-14, 1956, will be found starting at page 2969.

and the relations between affiliates and the networks, we are particularly anxious to demonstrate that the conclusions Mr. Moore is trying to persuade this committee to reach are utterly without foundation.

In my testimony, therefore, I will demonstrate the following points:

1. WCAU-TV is responsible for its television operations and is in no manner or means controlled or dominated by CBS Television.

2. WCAU-TV programs the way it does because it believes its programing is in the best interest of the viewing public in the Philadelphia area, and our viewing public has demonstrated that we are correct by their enthusiastic acceptance of our programing.

3. WCAU-TV not only brings to its public an excellent pattern of network programs but also does an outstanding job of local programing and public service programing.

4. Far from being controlled by CBS television, we are a working partner of CBS television and we believe that both of us benefit from what is essentially a cooperative relationship.

5. I shall show that, as in so many other markets, nonnetwork programs are not denied access in the Philadelphia area.

Our general programing policy is to provide the best possible balance of high quality entertainment, education, public information, news, religious, and other programs for the television public we serve. We have attempted to achieve this policy by integration of local live and film programs with the CBS network programs. The top flight programs available through the network are of inestimable value to our station. But it is a truism, going back far into my days of radio, that a good network affiliation alone is not enough, and would not be enough even if there were so such thing as a Federal Communications Commission which periodically reviews the station's programing.

I used to be amazed at the difference in the audience rating among affiliates of the same radio network which, largely, was a result of the local programing concept of the individual station and of the local acceptance of the individual station. What the station does along the line of developing local talent personalities, popular news programs, effective public service, selection of transcribed programs in the case of radio and now film programs in the case of television has a tremendous amount to do with the true success of any broadcast station. And people like me who have spent our lives in this industry become particularly incensed when we hear that all that an operator of a successful large station has to do is "patch into the network." I abhor that phrase and I resent that phrase. And I will show you why I do.

In the first place, I would like to point out to this committee that WCAU-TV has itself built several million dollars worth of programs for the CBS network. The Peabody award winner What in the World was one of our programs. Contest Carnival was another. Kid Gloves and Action in the Afternoon as well as our famous Big Top program, which is now in its sixth year of sponsorship over the CBS network, were all creative products of our staff.

Currently WCAU-TV is originating locally an average of more than 9 hours of programing each day, of which more than 3 hours is live. I emphasize that this includes no network programs whatsoever, and there are a number of television stations in the United States whose total daily program schedule is less than our locally originated programing.

To do an effective job of local programing we have built the finest facilities and established a large staff of qualified personnel. And I am proud to be able to tell this committee that in 1 year WCAU-TV won almost every major award for excellence in local general programing, in education and in public service, including the George Foster Peabody award, the Alfred I. Du Pont award, the Sylvania award, the Ohio State University award, the Variety show management award, the General Federation of Women's Clubs award and the Freedom Foundation award. And, although we have not been able to match this performance in every year, there has not been a single year when we have not won a major award for local station operations.

We are particularly proud of our local public service and public affairs programing. By this I have in mind religious, educational, instructive, and informative, news, forums, panel discussions, speeches and other programs devoted to public issues, special home programs and agricultural programs. It is perhaps appropriate to compare what we do along these lines with what Mr. Moore's nonnetwork station KTTV does in Los Angeles. We made this comparison for a recent week and we discovered that, while we are broadcasting 2 hours a day of local live programs of the above types, KTTV was broadcasting only a little more than an hour a day.

Comparison of certain categories is particularly interesting. We were broadcasting more than four times as much local live educational and instructive and informative programing as KTTV. We were broadcasting almost 50 percent more news programing than KTTV. We were broadcasting more than 2½ hours of agricultural programs in cooperation with Pennsylvania State University and Rutgers University for the farming community in eastern Pennsylvania, southern New Jersey and northern Delaware, while the farmer in southern California had to tune in on a station other than KTTV to find an agricultural program.

Again, I emphasize that I have been discussing only local live programs. If you also take into account our local film programs and network programs in these categories and KTTV's local film programs in the same categories, the disparity becomes even greater. Our total public-service and public-affairs programing from all sources totals 21 hours a week as compared with 11 hours a week for KTTV.

I have singled out KTTV for this comparison not out of malice but to compare the responsiveness of our network-affiliated station to the public interest as compared to the responsiveness of a nonnetwork station of which, certainly, KTTV is one of the best known examples in the country. The facts are as I have just described them.

Included as an appendix to my prepared statement is a brief description of our programing in each of the above categories. (See p. 2609.)

Now, against this background of our local programing, a more valid appraisal may be made of the charge that, because most of our programing in the 7:30 to 10:30 p. m. evening option period is network programing, we are not doing an effective job of service for the people of the Philadelphia area. It is quite true that, with only a few exceptions, our programs during these time segments are principally network programs, but the reason for this is not control by the network as has been suggested. The reason is that we believe that network programs, by and large, are the best programs available, and, in the few instances where they may not be the best, they are certainly as good as anything else available.

For a broadcaster the ultimate test of the adequacy of his programing must be the public acceptance of his programing. We have discovered that network shows with their large budgets and outstanding talent almost invariably have higher audience ratings than nonnetwork shows.

During the week in April 1956 when the American Research Bureau conducted its rating survey covering the three Philadelphia network stations and the Wilmington non-network station, 26 of the leading 50 programs in Philadelphia between 7:30 and 11 p. m. were CBS network programs carried over WCAU-TV. Eight of the first ten programs and fifteen of the first twenty programs were CBS network programs carried over our station. Every single one of the top 50 programs was either a CBS, NBC, or ABC program. Not a single nonnetwork program carried either by the 3 network stations or by the nonnetwork station in Wilmington was among the top 50. The highest ranking nonnetwork show was 69th on the list.

A similar study by the same rating service for the same period in Los Angeles showed the first 41 programs to be network programs and only 4 out of the first 50 programs were nonnetwork programs. The highest ranking of these four nonnetwork programs was a rerun on KTTV of a former NBC network program.

There are 6 half-hour program segments each night in network option time, for a total of 42 half-hour segments a week. This same Philadelphia rating survey shows that in 20 of these segments the program carried over WCAU-TV rated first and in 19 of these segments our program rated second. In 39 out of the 42 segments the Philadelphia audiences regarded our programs as either the best or the second best (and in a number of cases it was a very close second) available over the four stations surveyed. Every one of our programs rated first was a CBS network program. Every one rated second, except one, was a CBS network program.

One of the three WCAU-TV programs which were rated third was a nonnetwork syndicated film program, and this had the lowest rating of any program carried over WCAU-TV during evening option time. Another of our programs which was third in rank was the United States Steel Hour which is not subject to the option provision because it carries over into station time. We carry it because we think it is one of the fine live drama programs on television. Curiously, although it is third in the 10 to 10:30 segment it becomes first in the 10:30 to 11 o'clock segment.

I have reviewed this performance in some detail because I believe, as every responsible broadcaster believes, that the American public is the ultimate "monitor in chief" of television.

And I might point out that the performance of KTTV for the same program week in Los Angeles showed only 1 program out of 42 in first rank. Perhaps the American public is the monitor in chief of television in Los Angeles, also.

I should now like to turn to another aspect of this problem about which I feel most deeply. And this is that the relationship between the network and the affiliate is a true working partnership. It is not just that the individual affiliate has the power to reject or to preempt network programs for other programs if it is dissatisfied. We actually work together in an effort to help develop and improve the network programs. Each and every affiliate can, and many of us do, have a very real influence on network programing, both directly and indirectly.

For example, there was one network children's program where we felt too much emphasis was being placed on selling the youngsters equipment to use in connection with the program and not enough was being placed on the entertainment portion. We told the network of our feeling and indicated that unless a change was made we would no longer carry the program. The program's content was altered and we have continued to carry it.

In the case of a late evening program, we felt that there was a tendency toward too much physical violence. We invited this to the attention of CBS and changes were made in the format which we felt relieved the situation.

Senator Pastore. What was the name of that program?

Mr. Thornburgh. That program's name was Danger.

In addition to suggestions such as these which are made by individual affiliates, we have a CBS television affiliate advisory board, which is selected by the stations and which represents the stations in many aspects of affiliate-network relations. Meetings between this board and the network executives led to the programing of The Morning Show, an early morning show calculated to compete programwise with NBC's Today.

The affiliate board took up with the network the stations' feeling that there were not sufficient sports programs on the network. This led to an increase in the programing of sporting events. As a result of the activities of this board the charge for sustaining kinescopes was reduced. These are, now, just a few of the activities of our affiliate board and they demonstrate that in dealing with the network we are not operating on a one-way street.

The stations and the network are both conscious of the necessity for adequate information with respect to program acceptance so that the stations may properly exercise their judgment as to whether to take a program or not. The affiliates receive detailed written descriptions from the network, generally well in advance, as to the nature and content of the proposed program or series. In addition, there are closed circuit auditions from time to time fed by the network for the benefit of the station management and which enable the stations not only to see the proposed program but to meet the program's producers, personalities, etc. I would like to stress that the opportunity for advance information on network programs is at least equal to the opportunity for advance information on syndicated film programs and often is far better.

When you buy a new syndicated film program you usually see only 1 or 2 pilot films. Moreover, since normally an entire series of syndicated film programs is produced prior to scheduling, there is no opportunity for modification, as is true in the case of live network programs which can be modified from week to week in order to meet criticisms of the public or the stations.

Finally, I would like to refer briefly to the contention that non-network programs are excluded from affiliated stations. The fact of the matter is that WCAU-TV carries 16 first-run syndicated film programs. This compares with 13 carried by KTTV and an average of 6.3 carried by all 8 of the nonnetwork stations in Los Angeles and New York.

Moreover, it is absurd to suggest that there is no market for good film in Philadelphia. During this very week I am testifying, the 3 network stations in Philadelphia are on the air a total of 202½ hours during which they are not carrying network programs, and 38 of these hours are between 6 and 11 p. m. The simple answer is that, if the nonnetwork programs which we do carry in the evening hours did better in terms of public acceptance than they do, this committee can be sure that, as practical businessmen, we would carry more nonnetwork programs than we do.

Senator PASTORE. Even if that weren't the case if you made a complaint to the network they would either have to improve the quality of their programs to properly compete or you would buy from independent producers?

Mr. THORNBURGH. That is right.

The witnesses testifying here today are a cross section of affiliates of the CBS television network. We believe we also are a cross section of American broadcasters. We are here of our own accord because we feel deeply that the present system of television networking operates to the benefit of the public and that the existing pattern of affiliate-network relations is vital to the maintenance of effective networks.

During my testimony I have referred to the programing of WCAU-TV in considerable detail. This was not because I was anxious to single out our station, nor indeed has my intention been to criticize the operation of KTTV in Los Angeles. My only purpose has been to show that the mere fact that a network affiliate carries a substantial volume of network programs does not mean that it has abdicated its responsibility as a licensee or is controlled by the network. My testimony and the testimony of the witnesses who have preceded me today demonstrate that the combination of local and network programing by a network affiliate adds up to a total pattern of service which operates to the very real advantage of the public.

We firmly believe that, without option time and the basic network requirement, the operation of the networks would be seriously endangered. No one can be certain of the result. But the risk is too clear and too great to warrant change. If the wrong step is taken, the individual television broadcasters would, of course, suffer. What is far more important to your committee, the 34 million Americans who have bought television sets in an enthusiastic response to this great new medium would lose the type of television broadcasting they have come to want and to expect.

APPENDIX TO THE STATEMENT OF DONALD W. THORNBURGH, PRESIDENT AND GENERAL MANAGER, WCAU-TV, PHILADELPHIA, PA.

I. DESCRIPTION OF TYPICAL LOCAL LIVE PUBLIC SERVICE AND PUBLIC AFFAIRS PROGRAMING ON WCAU-TV, PHILADELPHIA, PA.

Channel 10 Farm Reporter.—(Current.) A daily half-hour series, presented in cooperation with the Agricultural Extension Services of Rutgers University and Pennsylvania State University, designed to give both urban and rural viewers complete market reports, important home economics information, technical information for farmers, information on lawn care, and other related subjects.

The Weatherman.—(Current.) A daily early morning program to present weather reports to the entire family to aid in planning one's day and attire in accordance with the weather outlook.

Bill Campbell's News and Sports.—(Current.) A daily early morning summary of news and sports, bringing viewers up to date on what happened overnight.

Bless This House.—(Current.) A daily religious program presented in cooperation with the Philadelphia Council of Churches, Philadelphia Catholic Diocese, and the Philadelphia Board of Rabbis. A different clergyman is presented each morning with a spiritual message for the entire family group at the beginning of the day. The time period for the program was selected by the church groups in order to reach the family unit at breakfast time before they separate for the day.

Jean Says.—(Current.) A daily weather program for the housewife and the woman who is about to go shopping.

News with Gene Crane.—(Current.) A daily midmorning news program.

Dividends for Homemakers.—(Current.) A daily information program for the benefit of the homemaker in which a qualified home economist and others in various fields present programs in homemaking, cooking, marketing, etc. There are also included features on women in the news.

News with John Facenda.—(Current.) Daily international, national, regional, and local news and weather, with emphasis on regional and local news and featuring filmed interviews and feature stories of topical interest.

Earl Selby and Mr. Fixit.—(Current.) A daily program featuring the Philadelphia Evening Bulletin's leading columnist, Earl Selby, who does feature pieces involving Philadelphia politics, religious activities and other newsworthy events. His guests represent a cross-section of the city from the mayor on down, who explain various facets of their jobs. Mr. Fixit, a fictional helper of Selby's attempts to solve various viewer problems such as the need for a traffic light, unpaved streets, etc.

News with John Facenda.—(Current.) A late night edition of news—international, national, regional, and local—featuring filmed interviews and feature stories of topical interest.

Weatherman with Phil Sheridan.—(Current.) A complete weather forecast for the entire area served by this station, based upon reports from the United States Weather Bureau. In order to serve our broad coverage area, the report is broken down regionally.

Sports Final with Jack Whitaker.—(Current.) Late roundups of daily sports including complete results of baseball and football games, and featuring commentary and interviews of local interest.

That Man McMahon.—(Current.)—A 5-minute feature show presenting interesting sidelights on the world of entertainment and of outstanding local figures.

Sports Corner with Bill Campbell.—(Current) Commentary and discussion on current points of interest in the sports world, with outstanding sports expert, Bill Campbell.

The Big Idea.—(Current). A weekly program series, now in its sixth year, on which inventors of all ages have a chance to show their skill to a panel of business and other experts from whom they receive suggestions for improvement and ideas for marketing their invention.

Man About Town with Frank Brookhouser.—(Current.) Glimpses into the world of politics, entertainment, and civic affairs of Philadelphia.

Here's How.—A 13-week series, now in its fourth year, produced at the opening of each school season in association with the Philadelphia public schools. Educational program of do-it-yourself ideas and demonstrations by faculty members of the Philadelphia school system.

The Robin Roberts Show.—During the nonbaseball season Robin Roberts, one of the leading pitchers of the National League, talks sports and sportsmanship with a studio group of young enthusiasts. The children take an active part in the show, asking Roberts and his guests questions about sports. The show includes boxing matches, with competent supervision and refereeing, under the aegis of the Police Athletic League.

Let's Go Fishing.—Information on tides, weather, and conditions for the angler, plus tips on new equipment and techniques.

The Bulletin Forum.—A regular series of public discussion and debate programs, on topics of local, national, and international importance, originating from Congress Hall at Independence Square in Philadelphia, and featuring nationally known public figures such as Secretary of State John Foster Dulles, Presidential Adviser on Disarmament, Harold Stassen, and Leonard Hall and Paul Butler, Chairman of the Republican National Committee and Democratic National Committee, respectively.

The Cancer Crusade.—A program specially produced by WCAU–TV in connection with the annual cancer drive to inform the public on research, danger signals, and methods of treatment of cancer. Program featured Dr. Catherine McFarland, outstanding cancer specialist, and Charles Shaw, WCAU news director.

American Bar Association.—A special telecast of the national meeting of the American Bar Association.

Mid-Atlantic Farm and Home Show.—A series of programs from Convention Hall in Atlantic City during the annual Tri-State Farm and Home Show. For this origination WCAU–TV sent an entire production unit and complete remote facilities 65 miles to Atlantic City in order to afford the viewers in our entire coverage area an opportunity to "attend" this show featuring progress in agriculture.

Election returns.—Election returns of local and national races during primary, local, and national contests. On election night, complete camera and production crews were located at the headquarters of the major parties.

University of Pennsylvania Ceremonies.—A special program in connection with the University of Pennsylvania radio–TV course, presented in cooperation with WCAU–TV. Program featured Dr. Harnwell, president of the university, and the entire group of students taking the course.

Report to the People.—A series of reports by the mayor of Philadelphia to the people presented at regular intervals throughout the year.

II. DESCRIPTION OF TYPICAL OTHER LOCAL LIVE PROGRAMING ON WCAU–TV, PHILADELPHIA, PA.

Mr. and Mrs.—(Current.) A daily program featuring a married couple designed to present information of interest to viewers related to community affairs, and includes a segment of entertainment for youngsters. Throughout the program, viewers are kept abreast of time, news, and weather.

Cinderella Weekend.—(Current.) A daily afternoon quiz show for women picked from the studio audience. The questions are primarily written to test the contestants' knowledge of current affairs and the world around them.

Carny the Clown.—(Current.) An imaginative children's show in a playground setting, produced with the aid of various playgrounds in the Philadelphia area.

The Children's Hour.—(Current.) A family show featuring talented youngsters from the Greater Metropolitan Philadelphia area. A 28-year old tradition in Philadelphia now in its eighth year on TV, such talent as Ezra Stone, Kitty Kallen, the Nicholas brothers, Eileen Barton, Eddie Fisher, and Elliot Lawrence sang their first song, or scuffed their first pair of tap shoes on this program. Long accepted as a community project by the people of Philadelphia, The Children's Hour has been cited often as television (and radio) at its best.

Junior Hi-Jinx.—An unusual children's series, running for 6 years on channel 10, wherein a puppet told children stories and impressed upon them good behavior patterns. This program was cited consistently by home and school associations for its contributions.

Please Find.—An audience-participation show which pitted teams from various local charities and welfare organizations against one another in contests for prizes that could be used in furthering the work of the organizations.

Valentine's Day.—A 15-minute variety show featuring up-and-coming Philadelphia personalities in the entertainment business.

Swap Shop.—A series running for 13 weeks which provided an opportunity for people to trade household items.

Jig-Saw Time.—A 13-week series which featured a telephone quiz show with a masked picture revealed little by little. The first person to identify the hidden personality won a prize.

Tops in Pops.—Weekly variety show, featuring a singing master of ceremonies, Jack Valentine, backed by a musical trio and headlining local entertainers. Produced particularly for teen-age audience.

1956 Mummers' Parade.—An annual on-the-spot presentation of the famous New Year's Day mummers' parade in Philadelphia, at which 2 complete remote crews cover the event from 2 vantage points. (The 1956 parade was presented in full color for the first time.)

Thanksgiving Day parade.—The annual on-the-spot presentation of the famous Philadelphia Gimbels' Thanksgiving Parade.

New Years' Eve dance party.—A special 3-hour musical program welcoming the New Year, with members of the Armed Forces as special guests.

July Fourth program.—Annual commemorative holiday program presented live directly from Independence Square in Philadelphia.

Evening Bulletin Christmas Choir.—An annual program of holiday music presented by the choir of the Evening Bulletin newspaper.

Chef Albert.—Early morning series in which Chef Albert, continental chef for over 50 years, prepared menus and gave the benefit of his knowledge to the housewife.

Evening Bulletin tour and dedication.—Special programs marking the dedication of the new Evening and Sunday Bulletin newspaper plant, and on-the-spot tours of its facilities.

III. DESCRIPTION OF TYPICAL NETWORK AND LOCAL FILM PUBLIC SERVICE PROGRAMING ON WCAU-TV, PHILADELPHIA, PA

The Adventurer.—(Current.) Live narration of filmed adventures in the world of the naturalist, drawn from a specially purchased film library of over 1 million feet. This program is produced under the guidance of the Academy of Natural Sciences. The adventures include safaris by Martin and Osa Johnson, and other major explorers, naturalists, and hunters. Featured are the habits and habitat of animals all over the world as well as glimpses of other customs and people.

Hall of Fame.—A weekly series of special documentary programs highlighting the achievements of outstanding persons who have made major contributions to the advancement of science, art, industry, and religion.

Word from Washington.—(Current.) A daily program featuring films supplied by various Government agencies of general interest and information to all viewers.

The Magic Bond.—A special program presented on behalf of the Veterans of Foreign Wars.

Heart of America.—A special program marking the opening of the Heart Association's campaign for funds.

Crusade for Freedom.—A special program relating the purpose and effect of Radio Free Europe, narrated by John Daly.

Having a Grand Time.—A special program marking the observance of Boy Scout Week.

This is Our Faith.—A special program in observance of the Jewish holiday, Hanukah.

Adventure Theater.—A special program presented on behalf of the United Community campaign, marking the kickoff of the annual Red Feather drive.

Memorial Day, 1955.—A special program commemorating the holiday and its significance.

A Time to Remember.—A special program, featuring Danny Kaye, and dealing with the work of UNICEF.

And Then There Were Four.—A safety program presented prior to Independence Day holiday.

That Certain Sound.—A weekly series presented by the Summer Evangelistic Committee and endorsed by the Philadelphia Council of Churches.

Your Neighbor Celebrates.—A special program highlighting various Jewish holidays, presented in conjunction with the Jewish new year holiday.

Man on a Bus.—A special religious program marking the observance of the Jewish holy day, Yom Kippur.

We Believe.—(Current.) A weekly religious series presented by the National Council of Catholic Men.

The Jack Benny Show.—A special program dealing with the problem of retarded children.

This Day We Celebrate.—A special Christmas program presented on behalf of the Christophers.

Christmas Carol.—A special sign-on program Christmas morning.

An Almanac of Liberty.—A special patriotic play presented in conjunction with the B'nai B'rith Anti-Defamation League.

Adventure.—A weekly series of educational programs presented in cooperation with the Metropolitan Museum of Natural History.

The Search.—A weekly series of educational programs dealing with research currently being carried out at leading colleges and universities.

Let's Take A Trip.—(Current.) A weekly educational series consisting of on-the-spot tours of places of interest, such as Independence Hall, a fire department, etc.

Now and Then.—A weekly series of discussions on literature, presented by Dr. Frank Baxter, nationally known Shakespearian authority.

Lamp Unto My Feet.—(Current.) A weekly series of religious dramas and discussions conducted by Dr. Lyman Bryson.

You Are There.—(Current.) A weekly series of dramas dealing with historical incidents and events of the past.

See It Now.—A series of programs dealing with subjects of current interest, ranging from a report on Africa to one on civil rights.

Sports events.—Some of the Nation's outstanding sports spectacles, such as the Kentucky Derby, Masters Golf Tournament, the Orange Bowl games, the Swaps-Nashua race, and the Landy mile.

Presidential Addresses.—President Eisenhower addressing the NARTB, his speech on the 10th anniversary of the United Nations, special foreign policy addresses preceding and following the Geneva Conference, the President's departure from Denver and arrival at Washington after his heart attack, as well as his telecast announcing his availability for renomination.

Government Policy/Political Programs.—Secretary of Agriculture Ezra Benson, in a reply to Edward Murrow's See It Now discussion on the American farmer. Senator Clinton Anderson and Thomas Martin, in a reply to Secretary Benson's rebuttal. Secretary of State John Foster Dulles, reporting on the Geneva Conference.

Out of Darkness.—A special public service program documenting the case history of a victim of mental illness.

Face The Nation.—(Current.) A weekly series featuring national and international figures in the political world, interviewed and questioned by prominent newspapermen.

Labor Day Address.—Former President Truman's speech from Cadillac Square in Detroit.

Talkaround.—A weekly series of teen-age topics discussed by a panel of youths from various parts of the country.

The American Week.—Weekly news review and analysis by correspondent Eric Severeid.

The CBS News.—(Current.) A nightly news review by Douglas Edwards.

Years of Crisis.—A special conclave of CBS correspondents from around the globe, gathered annually to review the events of the previous year.

Special Christmas Services.—Protestant services from the National Cathedral in Washington and Catholic Mass from Boys Town.

Report Card.—A weekly series of programs dealing with the Nation's school problems.

Flood, Story of Main Street.—A special program dealing with the devastating flood of summer of 1955, featuring Jackie Gleason.

Boy Scout Jamboree.—A special on-the-spot program from the annual International Jamboree of Boy Scout Movement.

Advertising Benefits You.—A special program featuring John Daly and Sid Caesar marking National Advertising Week.

Mr. Cox. Could you tell us, Mr. Thornburgh, what is the present approximate percentage of clearance for CBS programs in evening option time?

Mr. Thornburgh. Evening option time, I think we have all periods except three half hours that are network in that time.

Mr. Cox. What do you have in those three half hours?

Mr. Thornburgh. In those three half hours we have—I will have to—not refresh my mind, but understand the questioning; we have Gildersleeve, which is a film program.

Mr. Cox. What does that replace from the network?

Mr. THORNBURGH. That replaced Name that Tune. We had Crunch and Des, which replaced Flicka. As of this week Crunch and Des, by preference, moved up to the 7 to 7:30 time on Friday and we are now putting the Flicka program back into the regular time at 7:30 to 8 on Friday evening. So as of this week, we only have two.

Senator PASTORE. Is that Flicka program the one with the horse?

Mr. THORNBURGH. Yes.

Senator PASTORE. I like it. [Laughter.]

Mr. COX. At the time you did not clear it—at the time it was originally offered and you did not clear time for it—it was not a sponsored program; is that correct?

Mr. THORNBURGH. I think that is correct; yes.

Mr. COX. What is your third program, and the program which it replaces?

Mr. THORNBURGH. The third program is Passport to Danger.

Mr. COX. What does that replace?

Mr. THORNBURGH. I am prompted, the Quiz Kids program.[11]

Mr. COX. Now it is your feeling then that only in those three instances were there programs in the CBS schedule which were inferior to programs that were available to you from other sources?

Mr. THORNBURGH. Yes, reasonably so. I think it would be interesting for me to say that our policy is somewhat different than one that was mentioned this morning. We buy, as a station, many of the leading syndicated film programs that are offered—and we think we buy the best ones that are offered—and sometimes we don't have sale for them. But we put them in when we think that the network structure—I mean when the program structure needs that kind of a program. And I made a list of a few of them that we have bought on that basis. We bought Victory at Sea, Man Called X, we have bought Four Star Playhouse, My Hero with Robert Cummings, Foreign Intrigue, Stories of the Century, a western program, and Man Against Crime.

These are just a few of them that we have bought, regardless of whether we had advertisers to sell them to or not, because we wanted to have the best of the film programs that we could find on our station. And we have had them there.

Mr. COX. In what time periods of the day are those normally scheduled?

Mr. THORNBURGH. We have some scheduled 10:30 at night, some of them 7 to 7:30; we have had a strip 7 to 7:30. We have had some of them 7:30 to 8 when those time periods are open, and others of that sort. Early Sunday evening we have some.

Mr. COX. Now, you indicated at some length, and then referred to the further statement of your public-service programing in your appendix. When are these public-service programs normally broadcast?

Mr. THORNBURGH. Well, they are all through the schedule. I mean according to the type of programs that they may be.

Mr. COX. Are they mostly in the hours prior to 6 p. m.?

Mr. THORNBURGH. 6 p. m.? No.

Mr. COX. No?

[11] The witness later advised the committee that the third program was Highway Patrol, carried in place of the CBS network program, Brave Eagle. It should be noted that the latter was not sponsored and therefore the network's option rights did not apply.

Mr. THORNBURGH. Now, you could count them and maybe they would be mostly. But I mean we have a considerable number after 6 p. m. We have news broadcasts after 6 p. m.; we have sports shows after 6 p. m.; we have a number of public-service programs and informative programs after 6 p. m.

Mr. COX. Are there any of these public-service programs which you feel would attract a wider audience that ought to be interested in them—or which could perform their role more completely—if they could be broadcast in the period 7: 30 to 10: 30?

Mr. THORNBURGH. I don't believe so. As a matter of fact, I think it is interesting to say that we have a news program on at 11 o'clock at night that outrates any of the network programs—news programs—that are broadcast earlier. And that is at 11 o'clock at night. So I don't think that we need to discount, in a metropolitan area like ours, the times that are not right within the 7: 30 to 10: 30 time period.

Mr. COX. Now like WTOP, though, you have a class A rate which is limited to the period 8 to 10: 30, isn't that correct—for national spot, I mean as distinguished——

Mr. THORNBURGH. We have a double A rate.

Mr. COX. Double A rate, yes. And that is limited to the period 8 to 10: 30?

Mr. THORNBURGH. That is right.

Mr. COX. Now you say that by and large——

Mr. THORNBURGH. 7: 30 to 10: 30, as a matter of fact. I think that is right.

Mr. COX. Television Fact Book is in error, then?

Mr. THORNBURGH. Well, make it 8 to 10: 30. [Laughter.] I have a rate card over in my portfolio, but it is not here right now.

Mr. COX. You said by and large you felt that the network programs were the best, or at least as good as others, and you referred to their budgets and the high caliber of talent which is made available in network programs. Now isn't it true that some of these film programs that you referred to feature talent of the quality and the degree of popular acceptance that appear on some of the network shows and that they have budgets which, if anything, are in excess of the cost of some of the live programing on the network?

Mr. THORNBURGH. Could be. But I would like to make a point on that that I think has been overlooked in these discussions. We have talked about a two-way street, but maybe the meaning of that hasn't been made plain.

For instance, a few years ago, I think, we all recognize that the Milton Berle program was so outstanding it was very hard to compete with on any other station. And Columbia made several efforts to put on programs. I am sure they spent hundreds of thousands of dollars to get programs that would compete with the Milton Berle Show. And none of them, particularly, came up to the quality that they had to be in order to compete with that particular show, although they were very good shows in themselves.

We as a local station decided that maybe we could do something about it, and we spent a lot of our money building local programs to try to put in the two half hours opposite the Berle hour, and never did any good with it.

But finally Columbia—and I am sure at expenses probably up around the million dollar mark—worked and worked and worked until they came through with two shows that really successfully competed with Berle, and actually outdid Berle in some situations. And I think that that is the kind of two-way road that we are talking about, when we talk about option time. That the network does—no film syndicator came up and said: "Boys, we will put in this show for 26 weeks and try it out at this time and see if we can't compete with Berle." That is the job we get from the network that I think is tremendously important.

And I think that justifies the option time, because they do that—they spend hundreds of thousands of dollars on programs.

Senator PASTORE. Not only that, but if NBC had a good show like Milton Berle, and they couldn't put their finger on a competitive production to compete with that, and a good independent producer came along with a lollapalooza, they would buy it out and put it on in competition with Berle.

Mr. THORNBURGH. I am sure they would; they would be only too glad to. As a matter of fact, you talk about film programs with high-priced talent and I think you will remember, in the list that I read here, that the Four-Star Theater, which is one of those that you referred to, I am sure, is one that we have purchased on our station without having an advertiser to sell it to.

Mr. COX. Now you talk about the degree of information that you have in advance about programs, and indicated that it was at least equal, if not superior, to the information you have about syndicated programs. Now do you get complaints from the public regarding the contents of programs broadcast on WCAU?

Mr. THORNBURGH. Certainly we get comments, not always destructive criticism; we get constructive criticism that is very favorable many times. But we do get some that are critical.

Mr. COX. Now has the public ever called your attention to an incident—a sequence in a program—which if you had had full knowledge of the content of that particular program, might have led you to not broadcast it?

Mr. THORNBURGH. I suppose we have had such letters; I don't think there is any way, physically, that every program that goes on the air—I mean each episode of every program that goes on the air could possibly be known to the individual person running a television station. I am sure it couldn't be on film; you would never have time to look at them.

Mr. COX. You don't screen the films that you broadcast?

Mr. THORNBURGH. Our department screens every one that goes on.

Mr. COX. Before it is broadcast?

Mr. THORNBURGH. Before we buy films. Not network.

Mr. COX. Before it is broadcast?

Mr. THORNBURGH. Yes; that is right.

Mr. COX. Now you indicated——

Mr. THORNBURGH. But that is not necessarily just to find out whether there is anything bad. We do it for technical troubles and other reasons.

Mr. COX. You indicated the high percentage of the top rated shows in the Philadelphia area that were carried on WCAU, and also indicated that by and large they were all—that every single one of the top 50 programs was a program of one of the three networks?

Mr. THORNBURGH. One of the three networks; that is right.

Mr. Cox. Now was there any programing being carried during this period 7:30 to 11 p. m., with which you were dealing, that was nonnetwork in origin, aside from the three that you referred to that you have inserted into the schedule, and the programing of the independent station in Wilmington?

Mr. THORNBURGH. You mean on the other two affiliated stations and the independent station, was there any nonnetwork programs?

Mr. Cox. Let me rephrase the question. Do you have any idea how many nonnetwork programs were carried, in the period that you were studying here, by the ABC affiliate and the NBC?

Mr. THORNBURGH. Not individually; no.

Mr. Cox. You don't know?

Mr. THORNBURGH. But both of them had nonnetwork programs on them.

Mr. Cox. To a substantial degree?

Mr. THORNBURGH. I don't think to a substantial degree; no.

Mr. Cox. Then primarily you were considering the competition of the programing of the three network stations with the independent station in Wilmington?

Mr. THORNBURGH. No; because the ABC station, WFIL, has a number of syndicated programs in that particular time period, and NBC has some. How many, I am not able to tell you.

Mr. Cox. Your station is on the must-buy list of CBS?

Mr. THORNBURGH. That is right.

Mr. Cox. Is this in any way through agreement with the network?

Mr. THORNBURGH. No. As a matter of fact, as someone said before, that is an agreement between the network and the advertiser. In our case it obviously would make very little difference.

Mr. Cox. Now, the network carries you on its rate card as a must buy?

Mr. THORNBURGH. Certainly.

Mr. Cox. Do you advertise yourself as a primary basic affiliate?

Mr. THORNBURGH. I would doubt whether you could find that in any of our advertising, although there would be no reason for us not to advertise ourselves that way.

Mr. Cox. Do you feel that you could, if you desired, sell time to a local advertiser in evening option time?

Mr. THORNBURGH. Tell me that again.

Mr. Cox. Do you feel that you could, if you desired, sell time to a local advertiser in evening option time?

Mr. THORNBURGH. Oh, there is no question about it; we could.

Mr. Cox. Now, the only situation in which this will ever arise is if he comes in with respect to a time period where you regard the offering of the network as unsuitable?

Mr. THORNBURGH. You say that is the only time we would accept another program?

Mr. Cox. Or that you would regard the offering of the network as less desirable, or as poorer programing, than whatever he had to offer you?

Mr. THORNBURGH. Well, this has gotten me confused to the point——

Senator PASTORE. Let's put it in the positive. You would only let the independent producer come in if he had something better than you could get from the network?

Mr. THORNBURGH. As far as the independent producer, yes. But that would not apply to a public service program that we might want to put on that we felt had a great local interest.

Senator PASTORE. Are you here appearing under any compulsion from CBS?

Mr. THORNBURGH. I certainly am not.

Senator PASTORE You are satisfied with the option time allotment that you make to CBS?

Mr. THORNBURGH. Yes, I am.

Senator PASTORE. Are you satisfied with the prime time that you allocate to them?

Mr. THORNBURGH. Prime time.

Senator PASTORE. That is the prime time specified between 7:30 and 10:30.

Mr. THORNBURGH. Yes.

Senator PASTORE. Are you satisfied with the free time that they take?

Mr. THORNBURGH. Yes. I think that is just simply a matter of our payment.

I would like to say that we have had time open in prime time—no, not the 7:30 to 10:30 necessarily as much as the 10:30 strip. And we didn't clear the network programs that were offered between 10:30 and 11 for some time, because we held those for local sale. And we we unable to sell some of those time periods, and as a result we later took the network programs.

Senator PASTORE. Well, if you don't mind this interpolation, I would like to make a public announcement now: If there is any broadcasting station in the United States of America that is dissatisfied with the way they are being treated by CBS, NBC, or ABC, please let them come forward. I mean, I don't think we ought to be here telling people they ought to be unhappy when they are very happy. [Laughter.]

Mr. Cox. That is all I have.

Senator PASTORE. Thank you.

Mr. THORNBURGH. Thank you.[12]

Mr. JENNES. Mr. Chairman, the next witness is Mr. Meyer who advises me that he would like to offer the bulk of his testimony—have it incorporated into the record at this point and just read the last three pages of his testimony if he may.

Senator PASTORE. All right.

STATEMENT OF A. C. MEYER, PRESIDENT OF WCIA AND THE INDEPENDENT CBS AFFILIATES IN ILLINOIS

Mr. MEYER. My name is A. C. Meyer, president of WCIA in Champaign, Ill. Before referring specifically to our operations in Champaign, I would like to quote from a general statement about television operations and the relationship between networks and their affiliates. This statement was prepared by the television stations serving Illinois, that is, WCIA, KHQA–TV, WREX–TV, WTVH, WHBF–TV and KFVS–TV.

This committee has heard attacks and complaints by critics of network operation; particularly that of the network's relationship with its affiliates. We are affiliates of CBS.

[12] The program schedule of WCAU–TV for the week of April 22–28, 1956, will be found starting at p. 2972.

Do these attacks come from the viewer, the real interested party, and the only person with which this committee should be concerned? They do not.

Do these attacks come from the advertiser who pays the bill, and whose support enables the networks and the affiliates to operate? They do not.

To determine what their motive may be, careful scrutiny should be given these critics since they are not and do not claim to represent the viewing public or the advertiser, the two parties in interest.

Could these critics have a selfish interest? Do they want to tear down the television industry as it now so well operates, in the hope that out of the chaos which we believe would result they could sell film and programing?

Could it be that among these critics are station operators who rushed into television without sufficient analysis of his market and who now cry for help from "Uncle"?

Again we ask, what contribution have these critics made to television? What would our viewers, if any, be receiving today if there had been no networks. Airlines also use the airwaves. Some receive subsidies from the United States Government. As far as we know, television, which also uses the airwaves, receives no subsidy. It has made the advance of the century in a few short years with the help and support of the advertiser and the public.

Gentlemen, we are not here attempting to whitewash the networks. They have the ability, and the facts, to speak for themselves. But we do know by experience that network affiliation is essential for us to render the high quality service which the viewers of grassroots Illinois appreciate and demand. And we do feel that the network operation is a very intricate and complex business, regulation of which by Congress could very well seriously impair the ability of the network to give the public service to which we refer.

We submit also that regulation is not feasible because no regulation can force continued support by the advertiser, who pays the bill so that television is free to our people. It seems to us that the alternative is Government subsidy and Government operation, which we are sure no one wants.

Certainly after a period of only 3 or 4 years since the freeze was lifted by the FCC, it is too early to judge the full effect of the free play of the economic factors which ultimately will govern.

Television is probably the greatest invention since the printing press and has made a tremendous advance in a few short years. To make television the great public service it is today, the television networks pioneered and spent many millions of dollars for development. No one else was willing to gamble, or did gamble, the amount of money involved in a hazardous business venture or had the experience to do the job. And no one else has been proposed who can today do the job—no one has even offered to do the job—that the networks are doing.

This committee has heard attacks and complaints by a few critics of television network operations and of the networks' relations with their affiliates, including ourselves.

We each have an agreement with CBS Television for an option, subject to our control, to use our facilities up to 3 hours daily during each of 3 segments of the broadcast day. This option-time provision enables the network to sell commercial programs to advertisers in sufficient quantity to create an overall balanced program service, including entertainment and public service, and have money left over to furnish additional fine public service programs from a national viewpoint.

We deny that our stations have given up their duty to program under the network option-time provision, as alleged by the critics. If that were true, the FCC has the power and authority to require the offending stations to make their operations conform to the public interest, convenience, and necessity requirement under which all affiliates are licensed by that regulatory body.

On the other hand, if option time is banned from network-affiliate contracts as the critics demand, and the basic network requirement is prohibited, which the critics also want done by Government edict, this could seriously endanger the ability of the networks to furnish the service they now render to stations, which, in turn, we believe might very well downgrade the service which television stations at the grassroots, such as ours, now render to our public.

Option time and basic network groups are essential and a definite service to the advertiser, who is the key in our present system of television. An advertiser who invests in a television program must have reasonable assurance of a maximum amount of time clearances on stations in the market areas which he, the advertiser, feels he must cover for greatest public acceptance of his product or service. The present network-affiliate system is the most convenient and economical way yet devised for the advertiser to reach his prospects on a national television coverage basis.

Under our agreement, advertisers through CBS networks supply to us such programs for entertainment purposes as: The Ed Sullivan Show, What's My Line, Climax, the Arthur Godfrey shows, the Garry Moore shows, the Jackie Gleason shows, the United States Steel Hour, the $64,000 Question, professional football, Captain Kangaroo, and many others.

Under this same agreement, the CBS network supplies such live public service programs as the personal appearance of the President, the national political conventions, Senate investigation hearings, personal appearances of Cabinet members; programs such as Adventure, Face the Nation, Let's Take a Trip, the Douglas Edwards News, Look Up and Live, special religious events, educational programs, and many other special public service programs impossible for the affiliate to produce at the local level.

Our audience is interested in national affairs as well as local. Both are essential to good programing. Without the network, it would be impossible for us to furnish effective public service programing at the national level. At the grassroots level, that is from the viewer, there is no clamor to overhaul the television operation system in America today. The files of stations are full of complimentary letters and congratulations over the job that both the stations and the networks have done in building for the viewer a new world of entertainment, education, and public service.

The public—your constituents and our viewers—heartily approve of the programs which result from the option-time arrangement and the basic network requirement. It is our joint responsibility to protect and to improve an arrangement which can so well serve the public. We certainly can't improve anything by destroying it.

Mr. Moore, representing a station without a network affiliation, and one of seven stations in Los Angeles—the third largest market in the United States—has undertaken to speak for the industry.

Television is supported by markets, and Los Angeles is in no way comparable to Quincy, Rockford, Rock Island-Davenport, Champaign and Cape Girardeau-Cairo. We disclaim Mr. Moore's position as having any application to us.

Could it be that the critic from the area around Los Angeles is speaking for the film industry? We don't need to point out to you that the television networks sponsored and developed television while the film industry was keeping its best product from the television public and releasing only ancient moving pictures. The networks bring the activities of the people of Illinois to the rest of the nation, and likewise, bring the timely activities of the rest of the world to the people of Illinois. This obviously cannot be done by the film industry.

We know somewhat of the many tremendous problems with which this committee has to deal. But our present system of television is of the utmost importance to the public. The television networks are an essential element for us in good programing. We oppose, and we are sure that if the public understood the consequences it would oppose, any proposed regulation which would be detrimental to the television service to which they are now accustomed. Probably no industry has ever had greater public support than television. Public response alone proves the public has been pleased.

The present system of television, anchored as it is on the network system, has proven to be successful. It is our firm conviction that, until and unless a better system is devised and proven, the present system should not be impaired. The risks to the American public and the individual stations of change are too great to make of our present television system a political football.

In conclusion, we reiterate, regulation of the networks is not going to make a Santa Claus out of the advertiser. He is still going to invest his advertising dollars in the manner and in the mediums which he believes will bring him maximum results. Advertising dollars cannot be placed by regulation or wishful thinking. And we cannot emphasize too strongly that television income is received from sponsors and not the public. If regulation makes difficult the use of television by the advertiser who wants to use this powerful result-getting medium, he might take his advertising elsewhere and place it in other mediums.

We submit, if television is left alone to work out its salvation under the present regulatory powers of the FCC, that the law of economics will solve many of the problems that seem perplexing to us today. For it must be remembered that if a television market is not adequate to support a healthy, profitable television station, the station will fail unless subsidized by the Congress.

We are not attempting to tell this committee how television should be operated all over the United States, but we do feel we know what is needed to keep our stations healthy and strong at the grassroots in downstate Illinois, the breadbasket of the Nation. Any regulation of the networks and the industry which would drastically alter or which might destroy present television service would, we are sure, have a tremendously adverse effect upon the people in our Illinois area.

The CBS affiliates serving Illinois feel so strongly about this matter that we have sent to the Illinois Members of Congress the letter which is attached to this statement as exhibit A. (See p. 2623.)

The foregoing is a statement on behalf of the following CBS affiliates which serve Illinois:

WCIA, Champaign, Ill.; August C. Meyer, president.

KHQA-TV, Hannibal, Mo.; Walter Rothschild, general manager.

WREX-TV, Rockford, Ill.; L. E. Caster, president.

WTVH, Peoria, Ill.; Henry Slane, president.

WHBF-TV, Rock Island, Ill.; Leslie C. Johnson, vice president and general manager.

KFVS-TV, Cape Girardeau, Mo.; Oscar C. Hirsch, president.

I understand there is a desire to close the hearing today. I will start with page 9, reading a short summary of the statement.

My name is A. C. Meyer, and I am president of WCIA in Champaign, Ill.

WCIA is a full power and maximum tower television operation in Champaign, Ill. I mention our full power and maximum tower because we serve a great farming area which can best be served with maximum coverage. Champaign itself is not a large city and, from an enonomic standpoint, maximum coverage has been necessary to have a television market in our area that sponsors would support.

We are a primary affiliate of CBS and a secondary affiliate of NBC. There are two stations located at Champaign-Urbana, our station and the University of Illinois educational station. Four UHF stations are located in our general market area.

There are doubtless large metropolitan markets where a nonnetwork station can do a reasonably good job. Without a television network affiliation, we could not operate our station effectively, assuming we could operate it at all.

In the first place, many important types of programs can only be furnished by a network, such as public-service programs of national scope like political conventions and coverage of events like the world series, professional football, and so forth.

In the second place, we discovered in the early period of our operations, when we did not have many network orders, how difficult it was to try to do a good job of public service through local proganing alone. Continuous local live programing is utterly impractical in Champaign, Ill.

We have developed and scheduled nonnetwork programing and fit it into the network progaming so as to provide a broad public service to our area. With a strong network base, we also provide a substantial pattern of local programing, including programing of particular interest to central Illinois. In markets such as Champaign, it would be impossible to render a pattern of service such as this without the network affiliation. Destroy the network affiliation and you will have destroyed television service for the people of central Illinois.

As indicated above, we share the view of the affiliates generally that the basic network requirement—sometimes called "must buy"—and the option-time proviison are not only desirable but are essential from the affiliate's point of view.

WCIA has not accepted programs in option time where local programs were considered important from an overall programing standpoint. An example is the 6:30 p. m., Monday through Friday, time periods which WCIA has retained for its news, weather, and sports coverage. In the case of outstanding special events, which are in great demand by our viewing public, such as University of Illinois basketball and the Illinois State High School basketball tournament, we have preempted network programs in order to carry them in option time. The CBS network has not objected in the slightest to any of our preemptions.

Important as the network programing is to us, I don't want you to get the idea that all of our programing is network programing. Exhibit B shows the distribution of our time. (See p. 2625.) Less than 50 percent of our total programing is network commercial, and including sustaining programs, only approximately 60 percent of our programing is network. And this is true despite the fact that we are affiliated with both CBS and NBC. In the evening hours between 6 and 11 p. m., we have approximately 15 hours with no network commercial programs. Nonnetwork advertisers and nonnetwork programs have ample opportunity on the facilities of WCIA.

The advertiser is not a Santa Claus. The advertiser will place his dollars where they will do him the most good. Advertising dollars cannot be placed by wishful thinking, and certainly not by regulation. Network operations have made it possible for small and medium sized stations to survive. It has not been easy to persuade network advertisers to order medium and small markets, and if the network system is disrupted, then the small and medium markets will suffer. If it is made difficult for the advertiser to use the network as a whole, he will simply stop ordering smaller markets. The larger markets won't suffer nearly as much.

We have not attempted to tell this committee how to run television all over the United States, but we do feel we know what is needed in Illinois and we cannot see how Illinois would be any different from any other place. We are convinced that the existing affiliate-network relationship is basically sound and that the public is being well served Allocations and similar problems should not be confused with network operations.

Certainly, no changes in affiliate-network relations should be undertaken which could possibly weaken the existing system of network operations.

EXHIBIT A

JUNE 11, 1956.

To the Illinois Members of Congress, Washington, D. C.:

GENTLEMEN: Since we both serve the people of Illinois, you by mandate of the voters and we by designation of the FCC, it seems only proper that we should call to your attention criticisms against the television industry and suggestions made to the Senate Committee on Interstate and Foreign Commerce that if followed or adopted would, in our opinion, greatly impair television service to our people.

We believe the purpose of an investigation, if any, should be to improve public service to the viewers. Since the critics are not the public who we serve and since the complaint is not against quality, we naturally inquire into the critics' motives.

The attack is mainly against networks and their relations to their affiliates, including ourselves. We each have an agreement with CBS granting 3 segments of the time 3 hours each per day referred to as option time. Under this agreement, advertisers through CBS networks supply such programs for entertainment purposes to us as The Ed Sullivan Show, What's My Line, Climax, The Arthur Godfrey shows, The Garry Moore shows, The Jackie Gleason shows, U. S. Steel Hour, $64,000 Question, The Douglas Edwards News, Professional Football, Captain Kangaroo, National Political Conventions, and many others.

Under this same agreement, the CBS network supplies such live public service programs as the personal appearances of the President of the United States, cabinet meetings, Senate investigation hearings, personal appearances of Cabinet members, Adventure, Face the Nation, Let's Take a Trip, Horse Racing, Look Up and Live, special religious events, educational programs, and many other special public service programs of a national scope.

Option time enables the network to sell commercial programs to advertisers in sufficient quantity to create an overall balanced program service, including entertainment and public service, and have the added financial strength to furnish fine public service programs from a national viewpoint.

Our audience is interested in national affairs as well as local. Both are essential to good programing. Without the network it would be impossible for us to furnish effective public service programing at the national level. The public, your constituents and our viewers, heartily approve of the programs which result from the option-time arrangement. It is our joint responsibility to protect and to improve an arrangement which, so far, has best served the public. We certainly can't improve anything by destroying it.

Most of the criticism comes from the area around Los Angeles, the film center of the world. We don't need to point out to you that networks, not the film industry, sponsored and developed television. We ask you from experience if you know of any outstanding public service rendered to our people of Illinois by the film industry. We know of none. The networks bring the activities of the people of Illinois to the rest of the Nation and, likewise, bring the timely activities of the rest of the world to the people of Illinois. This obviously cannot be done by the film industry.

These critics would now take over the industry they could not destroy. We are aware of the many tremendous problems facing you. This problem is of the utmost importance. We oppose any proposed regulations which might destroy or impair the effectiveness of the networks, which are such an essential element for us in good programing. Probably no industry has ever had greater public support than television. The networks with the cooperation and support of the affiliates have done a major portion of the job under existing conditions. Public response alone proves the public has been pleased.

The networks as they now operate are essential to our ability to render the kind of public service the people of Illinois deserve. Nothing should be done to impair their ability to render the kind of public service the people of Illinois deserve. Nothing should be done to impair their ability to render this valuable service.

We urge you to acquaint yourselves firsthand with the problem so that the interests of our viewers and your constituents may be protected.

We submit that regulation, if such is necessary, should only be recommended after a careful study is made in the field, at the local level. Therefore, we invite you to visit us, ask questions, observe operations and by so doing acquire informed on-the-ground opinions.

You will find that the station has not given up its duty to program, under the network option provision, as alleged by the critics. On the other hand, if the critics succeed in having option time regulated out of network contracts, they will have destroyed to an important extent the abiliy of the network to furnish the advertiser with the service it now renders—and don't be misled—this is the secret aim.

While we would be the first to admit that the industry today is suffering from growing pains, no new industry has enjoyed greater public acceptance or has shown a greater sense of responsibility in its activity toward the public than the television industry, and the networks in particular, and therefore, we urge you, our Representatives in Congress, to join with us in supporting the present network system of operation. For after all, despite its imperfections, the answer in further improvement of the industry does not lie in the field of more restrictive Government regulation.

Respectfully submitted.

WCIA, Champaign, Ill., August C. Meyer, President; KHQA–TV, Hannibal, Mo., Walter Rothschild, general manager; WREX–TV, Rockford, Ill., L. E. Caster, president; WTVH, Peoria, Ill., Henry Slane, president; WHBF–TV, Rock Island, Ill., Leslie C. Johnson, vice president and general manager; KFVS–TV, Cape Girardeau, Mo., Oscar C. Hirsch, president.

(Exhibit B is as follows:)

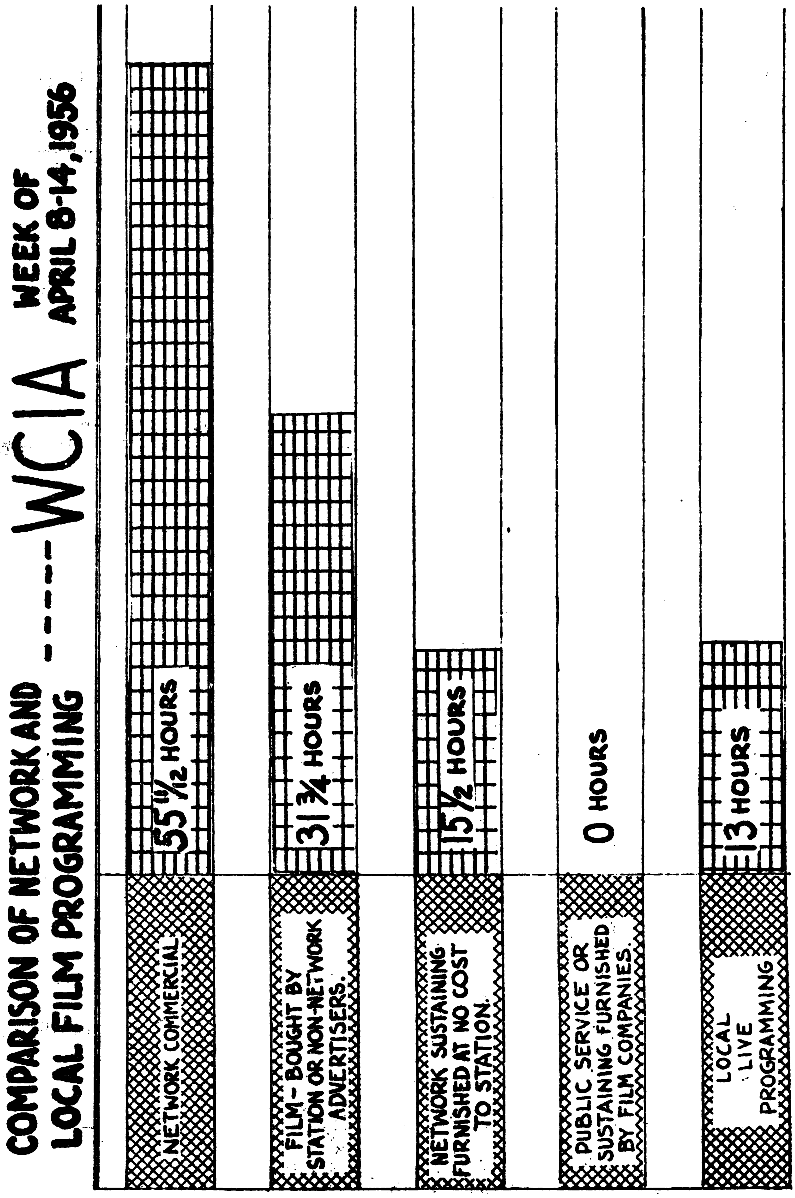
COMPARISON OF NETWORK AND LOCAL FILM PROGRAMMING ----WCIA
WEEK OF APRIL 8-14, 1956
NETWORK COMMERCIAL
$55\frac{11}{12}$ HOURS
FILM – BOUGHT BY STATION OR NON-NETWORK ADVERTISERS.
$31\frac{3}{4}$ HOURS
NETWORK SUSTAINING FURNISHED AT NO COST TO STATION.
$15\frac{1}{2}$ HOURS
PUBLIC SERVICE OR SUSTAINING FURNISHED BY FILM COMPANIES.
0 HOURS
LOCAL LIVE PROGRAMMING
13 HOURS

Exhibit B

Mr. Cox. Is this exhibit that you show here your overall programming, I take it?

Mr. MEYER. The exhibit?

Mr. Cox. Yes; that covers your entire broadcast day?

Mr. MEYER. Yes; that is over-all.

Mr. Cox. Could you tell us in the period 7:30 to 10:30 approximately how much time you clear for CBS and how much time you clear for NBC?

Mr. MEYER. No; I can't tell you verbatim, but I have our programming here which I could give you as an exhibit or I will submit it in writing.

Mr. Cox. I was wondering whether it would be possible for all of the stations to submit a copy of their program schedules, Mr. Jennes, for a sample week.

I think Dr. Stanton, in some of his figures in his testimony, used the week of April 1 to 7. I wonder if these seven members of your committee could furnish for the record copies of their schedules——

Mr. MEYER. Would April 8 be satisfactory?

Mr. Cox. If he has one worked out.

Mr. JENNES. I think they have been worked out already, although they may not be here. If you would tell us what you would like.

Mr. Cox. If you have worked them out for another week, one week is as good as another. I picked that one because Dr. Stanton used that.

Mr. JENNES. What is the data that you would like to have?

Mr. Cox. Just their schedule for that week and an explanation, by way of addendum, of the source of programs that are not of network origin. In other words, if they could indicate which of these were their local programs, and which of them were film programs, and which were programs received from another network, if they have a secondary relationship.

Mr. JENNES. In other words, an idea of program source by network, local, live, and film.

Mr. Cox. Yes.

Mr. JENNES. Certainly.[13]

Mr. Cox. I think that is all I have.

Senator PASTORE. Our last witness is Mr. Francis E. Busby.

All right, Mr. Busby, you may proceed.

STATEMENT OF FRANCIS E. BUSBY, DIRECTOR, VICE PRESIDENT, WTVY, DOTHAN, ALA.

Mr. BUSBY. Mr. Chairman and members of the committee, my name is Francis E. Busby and I live in Dothan, Ala. I am a stockholder, director, and executive vice president of the licensee corporation of television station WTVY, Dothan, Ala., which operates on VHF channel 9.

Station WTVY began operation on February 12, 1955, and was organized by a group of local civic-minded citizens who pooled their

[13] The program schedules of WTOP–TV, KREX–TV, KDUB–TV, KSBW–TV, WNOK–TV, WCAU–TV, and WCIA–TV for a sample week April 8–14, 1956—(except for WCAU–TV, which used April 22–28, 1956) were furnished later and are printed in the appendix at pp. 2959–2984.

resources in the interests of building a television station for the community of Dothan and the surrounding area, which includes three States, southwest Georgia, extreme north central Florida, and southeast Alabama. The policy of the station owners—and it was made clear to me as executive vice president and general manager—is that profit was most certainly to be secondary to programing and help that we could give the city of Dothan and our good neighbors in Georgia and Florida.

Dothan is in the extreme southeast corner of Alabama, and has a population, according to the 1950 census, of 21,584. It has a wide trading area in southern Alabama, Georgia, and north central Florida. The nearest large centers of population are Columbus, Ga., and Montgomery, Ala., both a little over 100-miles away. Each of these communities has two or more television stations which are affiliated with national networks, and up until the time WTVY went on the air, what service was available to Dothan came from these stations.

WTVY, as a small market station, faced the problem of obtaining quality programs which would attract viewers, and more important, at a cost which was not prohibitive. The budget and staff of WTVY initially was quite low, and although substantially increased since the station went on the air, they are still relatively low when compared with major market stations.

Initially WTVY went on the air as a nonnetwork station, and its staff of necessity was very small—in fact, we had only six full-time employees. Approximately 4 months after the station went on the air, arrangements were completed with the Columbia Broadcasting System whereby WTVY became an affiliate under the CBS Extended Market Plan. Initially CBS programs were provided by kinescope, and subsequently, in the fall of 1955, arrangements were made whereby live programs were available by microwave through the Columbus, Ga. CBS outlet.

This made available to WTVY practically all the top CBS programs. The primary advantage of this arrangement was to provide WTVY with outstanding programs which were not otherwise available, and to permit it to obtain these programs at a comparatively small cost. In addition to sustaining and commercial programs made available to WTVY under this plan, WTVY is able to carry some commercial programs not ordered by the advertiser and delete the commercial announcements of the sponsor, at no additional cost to the station, thus permitting WTVY to carry outstanding features at no additional cost. Such programs include, Person to Person, See It Now, Charles Collingwood and the News, and others.

Top sustaining programs also available at no cost to WTVY include Face the Nation, Front Row Center, Look up and Live, and others, and of course, most important are the on-the-spot broadcasts, such as sports, major political addresses and conventions. Although the revenue from CBS is relatively small, it is sufficient to cover the costs of delivery of programs, and permits WTVY to sell program and announcement adjacencies, which revenues otherwise would not be available. As a result of WTVY bearing the costs of delivery of the programs, CBS receives no free hours under its contract. Incidentally, I think it is of special interest to know that CBS voluntarily increased the network rate of station WTVY from $50 to $100 effective October 9, 1955. This, after only 5 months' affiliation.

The experience of WTVY with the Extended Market Plan has been a very happy one. As stated, the station commenced operation in February, and until the following October, when microwave facilities were available for live programs, the station operated at a loss; but immediately thereafter its operations were in the black, and the profit margins have continued to increase, despite extended hours of operation, increased staff, and other services provided by the station.

Although under its contract WTVY permits CBS to have the usual option hours, this has not prevented the station from carrying programs of local interest, either commercial or sustaining, as CBS has cooperated so that the station might carry CBS commercial programs on a delayed basis where local conflicts arise. Examples are such popular network programs as Arthur Godfrey's Talent Scouts and the Red Skelton program.

The advantages gained from the CBS Extended Market Plan, particularly the increased revenues that have resulted, have made it possible for WTVY to purchase more expensive and more desirable films, and has also made it possible for the station to extend its hours of operation to a schedule from 10 a. m. to 11:30 p. m., which, in my opinion, for a market of some 21,000, is rendering a rather complete service to the public.

Without the consideration which has been given by CBS for small markets such as ours, I doubt that WTVY could remain competitive with the markets in larger cities. Most certainly the viewing public, despite the advantages of local interest and local community spirit, would rather see a top network program than most locally produced or filmed programs. The public in small markets, in my view, is no different in their tastes for quality programs than our good neighbors in the larger markets. Therefore, we must give the viewing public the best in order to attract audiences of all ages and groups, and CBS has provided us with that vehicle.

Without CBS, or other major network service, any small market station, fighting a budget, cannot expect to provide anything approximating network programs and still be able to operate at a profit, or even break even. And just in case I may be misunderstood, in the case of WTVY, we are not putting profit above operating in the public interest, as I previously indicated; however, I think I have demonstrated that with the advantage of profits we have been able to extend our service and increase the quality of our programs. This would not have been practical for a small operation such as WTVY without the help of CBS programing, as we would not have been able to spend such large sums of money to provide network quality programs in order to compete with our large city neighbors.

In closing, I would like to emphasize that it is my belief, and the belief of my fellow stockholders of WTVY, that without the Extended Market Plan of CBS, which was the first such plan to help the small stations of our Nation, it is doubtful that WTVY could continue operating—certainly not in the black—and it is urged that nothing be done by your committee which would jeopardize the continued success of this plan, which, in my opinion, is the greatest single contribution ever made to further the small market station.

Senator Pastore. All right, thank you, sir.

We will recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:32 p. m., the committee was recessed, to reconvene at 10 a. m., Tuesday, June 19, 1956.)

(On July 17, 1956, a statement submitted by Paul R. Bartlett, president of KFRE-TV, Fresno, Calif., was inserted in the record. Since that station is affiliated with CBS, Mr. Bartlett's statement is printed at this point, as follows:)

STATEMENT OF PAUL R. BARTLETT

My name is Paul R. Bartlett. I am the controlling stockholder and president of the California Inland Broadcasting Co. which operates radio station KFRE, FM station KRFM, and television station KFRE-TV on channel 12 at Fresno, Calif.

KFRE-TV is one of the newest stations in the Nation, but our interest in television is of long standing. Although we were the first Fresno company to apply for a TV channel, we were the last to enter the business, having gone on the air on May 10 of this year, just 8 years and 26 days after we filed our original application.

On June 5, 1956, KFRE-TV became the Fresno affiliate of the CBS television network. We are a CBS basic or must-buy station, although current CBS advertisers will not be required to add our station until November 3 of this year. From the day we started on May 10, 1956, we have carried a number of CBS programs not previously available in Fresno because the former CBS affiliate in Fresno was also affiliated with ABC, and as a result of its dual affiliation, could not accommodate the full schedule of either network.

In view of our short 6-week history of television operations, it may appear somewhat presumptuous for us to appear before this committee to comment on problems of the television broadcast industry. It is my hope, however, that the very fact that we are an infant in this dynamic industry may offer a fresh viewpoint of the problems encountered by those attempting to enter the field of television broadcasting. I might further comment that after 8 years of attempting to get into television, including 3 years of agonizing, protracted, and exhaustive comparative hearings, we have received a somewhat painful education of the facts of life in the complicated television field, which takes us out of the category of the starry-eyed novice. My participation in this hearing is compelled by two deeply held beliefs:

1. That the present business practices of the networks and the established relationships between affiliates and networks are equitable and essential to both and entirely within the public interest.

2. That no television station should be permitted to skim all of the best network programs within a given market through affiliation with more than one national network, where such dual affiliation tends to reduce the number or potential number of stations which might otherwise economically operate in the market.

NETWORK PRACTICES

Most of the complaints against network practices have been aimed at option time or the must-buy concepts and the record is already replete with statements and evidence indicating that both of these practices are essential to network operation. Likewise, there is plenty of evidence to indicate that healthy national networks form the backbone of the excellent television service the American people enjoy. Consequently, I do not intend to belabor the point by restating here all the arguments which have already been made. But I do want to give you 2 or 3 simple examples of our experiences with CBS television during the brief period we have been affiliated with it.

When we became the primary CBS outlet in Fresno on June 5, 1956, we took over from the former affiliate a substantial schedule of CBS programs. A few of these programs were being carried by the other station on a delayed basis because that station had been sandwiching ABC and CBS shows in together in an effort to accommodate both. Consequently, it was necessary for us to work out new times for such programs. There were other CBS programs which the other Fresno stations had formerly carried at their scheduled times which we wanted to accept only on a delayed basis because of special local program plans we had developed.

In our negotiations with CBS, we found we were able to compromise and settle all these complicated scheduling problems quickly and easily, irrespective of whether or not they fell in option time or station time.

CBS at no time evidenced a desire to coerce or pressure us to do anything in contravention of our own beliefs and convictions as to how we might best serve Fresno; even where we preempted time for local programs which displaced network programs. In this regard, as in others, we found that dealing with CBS in television was similar to the methods followed by us for years in our CBS radio affiliation where, I can unequivocally state, we have never felt undue pressure and have never had any threats, either express or implied, used upon us by CBS in order to get program clearances.

Thus, from our experience, even when we had numerous and complex clearance problems to solve all at once, and at a time when we as a new affiliate might have been most susceptible to all the subtle pressures which could have been applied, we felt we were completely free to exercise our own program selection judgment without encroachments on our rights by CBS. I can think of no better recommendation for their fairness. I may add that I believe option time and the conditions on which it is granted actually afford a measure of protection to the station against any possible attempts of the networks to push it around.

Likewise, the importance of must-buy or basic status has been brought home to us by our own experiences. Despite the fact that Fresno is usually listed among the top 60 markets in the country in importance, there have been several advertisers who have declined to add our station to their lineups until the effective date of our must-buy status.

Among the well-known programs we shall not be carrying until fall for what the advertisers call budget reasons are The $64,000 Challenge, General Electric's 20th Century Fox Hour, General Motors' Do You Trust Your Wife, and Person to Person.

Were it not for the network's must-buy requirement, we might never be ordered for these programs. As a consequence, Dick Moore's station in the huge Los Angeles market might be able to gobble up the extra budget—or the money might be spent in New York, Chicago, or Washington or other markets in the top 10—but in such a case, the million people who can see our station would miss these excellent features and the network would be delivering uneconomic packages to its advertisers and be failing in its efforts to provide truly national coverage.

If this committee wants to make large-market operators richer at the expense of the smaller market stations throughout the country, they need only eliminate must-buys to get the job done. Conversely, if the Congress wants to encourage the growth of television as a competitive medium, it should leave well enough alone on this score.

In summary on this point, let me reiterate that our own experience, short in time as it is, has shown the CBS network to be fair and equitable in its dealings on program clearances and has confirmed the importance of having must-buys so far as the medium- or small-sized market affiliate is concerned.

THE NEED FOR REASONABLE RESTRICTIONS ON DUAL NETWORK AFFILIATION

Commissioner John C. Doerfer has on several occasions suggested that a restriction which would limit a station to a single network affiliation might improve the opportunity for additional stations, since it would make network programing available to more stations. While Commissioner Doerfer's suggestion has been directed primarily to the problem of the UHF stations in obtaining network affiliations in view of the fact that in many communities a VHF station has dual network affiliation while the UHF station has none, I believe his suggestion has merit beyond the UHF problem. In many cases, the dual network affiliation of a station is not based purely on the type of facilities, UHF or VHF, involved, but upon the number of stations or channels available in the community.

As an illustration, the city of Bakersfield, Calif., with a retail trade population of 200,000, now has 2 television stations, one of which is a VHF and the other of which is a UHF. The VHF station has had a dual affiliation with both NBC and CBS and as a consequence, only about one-half of the schedule of either of these networks can be carried by the VHF station. The UHF station is affiliated with ABC. At the present time there are no other channels, UHF or VHF, assigned to Bakersfield. It is completely possible to allocate additional UHF channels to Bakersfield, and since the UHF receiver conversion is virtually complete in the Bakersfield area, new UHF operators would be at no disadvantage as a result of receiver problems.

Under the present circumstances, the VHF station in Bakersfield has a virtual monopoly of the two major networks, which means that the people of Bakersfield do not get the full program schedule of either. This limitation on service in the Bakersfield area exists not because of the difference between the UHF and VHF status of the stations, but because only 2, rather than 3, stations are assigned there.

If, as we suggest, 1 or 2 additional channels are assigned to Bakersfield, the time would not be long coming when each of the 3 networks could have its own full-time affiliate in that city, provided the network rules of the Federal Communications Commission are modified in a manner calculated to bring about this highly desirable result of more television stations.

We believe that the Commission could accomplish this if it would adopt a policy providing, in substance, that no station would be permitted to affiliate with more than one national network where the Commission finds that multiple affiliation will tend to reduce the number or potential number of television stations which might otherwise be able to operate in a community.

Returning to my Bakersfield example, such a policy would prevent the VHF station from monopolizing both major networks so long as two stations operate there and would give ABC a chance at clearances on either or both existing stations. When and if the Commission allocated another UHF or VHF station to the Bakersfield area, each network would have its own affiliate and 3 stations would have the chance to survive where only 2 now exist.

I would like to cite another example of how a policy of restricting dual affiliation could work to the advantage of the public. In the Monterey Bay area of California, there are at least 3 unused UHF channels assigned and yet only 1 VHF station is in operation in this area. This single VHF station is affiliated with three networks and cannot, therefore, carry more than a portion of the schedule of any of them. As a further consequence, there is a very low UHF receiver conversion. If the restriction on dual network affiliation recommended herein were adopted, any UHF operator who wanted to go into the business in this area would be assured of a major network affiliation and could, as a result look forward with some rational optimism to public conversion of the receivers so as to receive UHF.

In this respect, I believe that Mr. Kintner of ABC may have overemphasized the importance of having stations with "comparable" facilities available to each of the national networks. In radio, comparable facilities have never existed and yet there has always been ample room for competition by 4 radio networks as contrasted to the 3 which now operate in television. The argument for comparable facilities loses some of its force when we consider that there is far more disparity between the coverage of a radio station at 550 kilocycles on the dial and 1 at 1500 kilocycles than there is between VHF channel 2 and UHF channel 70.

Yet, in many cities, the radio networks have been able to compete effectively while one is affiliated with a radio station in the 600 kilocycle range and the other is affiliated with a station in the 1500 kilocycle range. I sincerely believe, therefore, that one of the important things necessary to assure more service to the public and more competition in the industry is the adoption of a policy which will prevent large and well-entrenched stations from skimming all of the good network programs in a market by dual or even triple affiliation, rather than the almost impossible attempt to achieve the establishment of "comparable facilities."

In addition to a policy which can be adopted by the Commission prohibiting dual major network affiliation under the circumstances previously discussed, I believe that Congress can take several steps which would improve the status of UHF. One of these methods might be the adoption of legislation prohibiting the shipment of VHF-only sets in interstate commerce, and another might be the granting of special excise tax privileges on all-channel sets. If either or both of these recommendations were enacted, there would be an immediate increase in the number of all-channel receivers manufactured and sold, and a consequent improvement and lowering of the cost of such all-channel sets. While I believe that the adoption of legislation of this type would have a long-term effect upon improving the status of UHF, I believe if such legislation is coupled with a policy of restricting dual network affiliation, improvement could be seen in the status of UHF in a very few weeks or months, as many operators such as myself would be willing to go into communities and utilize UHF facilities if we had some assurance that we could obtain a network affiliation, rather than seeing 1 VHF station skim the programs of all 3 of the national networks.

CONCLUSION

We believe that present business practices of the networks, including those involving option time and "must buys," are fair to the stations, the networks and the public, and essential to the continued growth and excellence of our American television service. We urge that the present FCC rules governing this relationship should not be disturbed.

We further believe that additional television stations will come into being, particularly on UHF channels, if the Commission will adopt a policy of restricting multiple network affiliation by any station where such multiple affiliation may reduce the potential number of stations which might otherwise be able to operate in the community.

TELEVISION INQUIRY

(Network Practices)

TUESDAY, JUNE 19, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a.m., Senator John O. Pastore presiding.

Present: Senators Pastore and Bricker.

Senator PASTORE. Is Mr. Houwink in the room? All right, sir, you may proceed.

STATEMENT OF FREDERICK S. HOUWINK, CHAIRMAN, ABC TELEVISION AFFILIATES ASSOCIATION

Mr. HOUWINK. Thank you, Senator. My name is Frederick S. Houwink. I am general manager of the Evening Star Broadcasting Co., licensees and operators of radio stations WMAL and WMAL-FM and of television station WMAL-TV, in Washington, D. C.

My testimony today is being presented in my capacity of chairman of the board of governors of the ABC Television Affiliates Association. I shall be assisted in the presentation of this testimony by two members of that association: Mr. Harold V. Hough, director of the Fort Worth Star Telegram, stations WBAP, WBAP-FM, and WBAP-TV, in Fort Worth, Tex.; and by Mr. Sarkes Tarzian, president of Sarkes Tarzian, Inc., station WTTV, in Bloomington, Ind. These gentlemen will follow me on the stand and they will submit separate but related statements.

Our association came into being as a direct result of the hearings being held by your committee. The trend of certain testimony previously presented to you created, in our judgment, a distorted picture of the television broadcasting industry. This distortion was so great that our organization passed a resolution which included a plea for this opportunity to present our views before you. Copies of this resolution have been signed by an overwhelming majority of primary ABC television affiliates. These signed resolutions are a part of this testimony.

(A copy of the resolution and a list of signatories appears at the conclusion of this statement, at p. 2639. The original signed resolutions have been retained in the committee files.)

I would like to interpolate one extemporaneous point. In presenting this testimony we have been conscious of the pressures on this committee. As a result we are restricting ourselves, insofar as possible, to new information and are not endeavoring to cover anything that has been presented by anyone else.

Senator PASTORE. We appreciate that.

Mr. HOUWINK. As an aid to better understanding of our position, we wish to give certain background information on our situation.

We ABC television affiliates are the "poor relations" of the television broadcasting field. There is but one group of television stations that faces greater problems than we do; namely, the independent unaffiliated stations. We are sympathetic to their problems because many of us also have been living proof that a competitive television channel license in a major market is no guaranty of profits. Some of us have but recently turned the profit corner after years of red ink. Some are still sustaining operating losses.

While we are the "have nots" of television, we are not asking for outside help in solution of our problems. We do not want Government regulation, or any other outside restriction or influence, to intercede in our behalf in our competitive battle with our strongly entrenched competition which consists of CBS and NBC television affiliates.

We do not fear this strong competition because we know they can be overtaken. We know that our success will be determined by our ability to take audiences away from our competitors. We know that imaginative programing is needed to capture audiences. We are confident that ABC can help us do it.

We look forward hopefully to the day when ABC has equal access to the market through provision of an adequate number of television channels, particularly in the top 50 markets. Such access is essential for ABC to sell programs to sponsors and thus it becomes equally essential to us because it will provide the quality of programing needed to acquire audience.

During the past week, this committee has heard the testimony from the presidents of each of the network broadcasting companies. In the main, the testimony naturally applied to the various aspects of network operation, including programing, affiliations, operations, etc.

However, we feel that there is one basic point which has not been stressed, and which affects the television business in a manner which cannot be controlled by the networks, the Congress, the FCC, or the individual stations—namely, that the distribution of advertising expenditures generally, and with respect to television specifically, is determined primarily by an advertiser's distribution and by market factors completely beyond the control of the medium itself. The selection of markets and stations is determined by location of centers of population and of purchasing power of the population in those centers as related to each individual advertiser's distribution pattern.

Attempts on the part of television stations to influence the selection of markets that an advertiser uses are almost always based on the economic values of the market, such as total retail sales; effective buying income; drug, food, automotive retail sales, etc.; plus the ability of the television station's facilities to deliver as large a market as possible.

The effect of these influences is clearly evident in station sales to national and regional advertisers of spot advertising. In order to obtain a comprehensive picture of business placed by national and regional advertisers, our committee called upon the services of the TvB (Television Bureau of Advertising), and the N. C. Rorabaugh Co., Inc. Rorabaugh publishes quarterly reports on the use of spot television, and this report is recognized throughout the industry as a reliable reference source.

HIGHLIGHTS OF THE FINDINGS OF THE STUDY

An examination of the results of the study reveals that in an advertising medium such as spot television, where advertisers have complete freedom of selection of station and market, the great majority of advertisers and accounts use no more than 50 to 75 stations. These data are shown in tables I, II, and III, which follow page 2637.

1. Among the 3,800 national and regional accounts using spot television during the first quarter 1956, less than 2.5 percent use more than 50 stations. This is shown in table I.

2. A total of 813 advertising accounts used 5 or more television stations. Among these 813 advertisers only 4.1 percent used over 100 stations; 7.6 percent used between 51 and 100, and 88.3 percent used fewer than 50 television stations; 49 percent of these used between 5 and 10 stations. This is shown in table II.

3. According to a report prepared by the Television Advertising Bureau and based on the N. C. Rorabaugh data, the 100 largest national and regional spot television advertisers spent $62,538,600, or over 62 percent of the total spot TV expenditure of $100,209,000 made by 2,702 advertisers during the first quarter of 1956. Among these large investors in spot television only 31 percent use 75 or more stations; 24 percent use between 50 and 75, and 45 percent use less than 50 television stations. This will be seen in table III.

4. Use of spot television, even among the top four advertisers, varies greatly in number of stations. For example, the Procter & Gamble Co., which, according to the N. C. Rorabaugh report, spent $5,782,800 in spot television during the first quarter of 1956, used 184 TV stations for its new toothpaste, Crest, and 16 stations for its washing detergent, Tide. Similar variations are found among the other top spot television advertisers. For example, the Brown & Williamson Co., which used 224 televisions stations for its Kool cigarettes, used only 94 stations for Raleigh cigarettes. This, in spite of the fact that both the Procter & Gamble products and the Brown & Williamson products all have national distribution.

The findings of the study are clear, and the implications are equally clear. National and regional advertisers find it impractical, even with products which have full national distribution, to use television stations in many markets. Equally obvious is the fact that the larger centers of population with greater purchasing power will, in spite of increased competition, draw larger shares of the national advertising dollar than the smaller markets with little or no television station competition. It is inevitable that in television as in newspapers the ratio of national and regional accounts will vary directly with the size of the market.

These figures closely parallel the statements which have been made by the various network officials that their own individual station lineups vary from advertiser to advertiser. We recommend that your committee and the FCC reject any suggestion that networks be required to forgo part or all of the network option time because any such order or regulations would completely disrupt the system whereby instantaneous network programing is made feasible. Option-time provisions are essential for a network to function as such, and provide the means whereby major sponsorship, which is essential to the great programing of the day, can be acquired by the network organization to the benefit of the public, the affiliate, as well as the network. The limiting factor in availability of markets for any type of television programs is the table of channel allocations. No change in network option hours will alter it.

Film programs can run as either a local program or as a network program. Some of the top network programs are on film. Quality of program is the principal determinant of what program is shown. If the film producers can create superior programs, they can sell them and service an increasing amount of the available time. But no governmental regulation can possibly serve as a substitute arbiter of the public taste.

In fact, we find that there is a large amount of prime time available for good television programing during prime viewing hours. On June 12 we sent a wire to 23 ABC stations in the top 50 markets that have 3 or more VHF stations, asking for specific information regarding the number of periods available in prime time, and not programed by the network. The information from 20 of these stations, which is shown in tables IV, V, and VI of this report, reveals that not one station is without a substantial number of half-hour periods within its present network option time and which are available for use by a local, regional, or national advertiser who could purchase, if he so desired, any one of a number of syndicated films to program this time.

We ABC affiliates would be delighted to find sponsors for these availabilities. We sincerely hope that the ABC network will sell virtually all of their evening network option time this fall. When this occurs, we will be able to bring the viewing public in larger measure the superior type of programing that experience has shown can be obtained through the network system.

We think it fair to make the statement that television is the most dynamic means of communication that has been devised by the mind of man, and its impact is having an effect on many aspects of daily life. It has brought education and entertainment, with sight and sound, into the living room, and it has completely changed the methods and concepts of campaigning for political office.

We would like to offer the hope that the progress of this industry could be allowed to continue and develop and further enrich the lives of the American people without any unnecessary burdens other than those which it now has. No system as complex as the television business can possibly have grown so rapidly and be entirely free from imperfection at this stage of the art. The overwhelming majority of station owners and managers and network officials are keenly aware of their heavy responsibility in serving their own communities and their viewing public. Failure to so serve their communities and public inevitably causes a station to lose its viewing public and audience—and when a station loses this it has nothing.

Until such time as the technological advances being made in the industry to allow TV stations to operate without the expensive overheads which currently face all station managers, we believe that the economic factors of this industry should be taken into very careful consideration.

While we do not presume to tell your committee what should or should not be done, nonetheless, we hope the time is not distant when there will be established a sufficient number of stations in those markets which economically justify their existence to the end that as affiliates we, too, may enjoy the type of business that has been offered to our competitors.

We are in agreement that the public should be entitled to receive as much television service as it is possible for this industry to furnish, and we agree that the public be allowed as much choice of variety of program as it is possible for this industry to give. In our judgment, this can be best attained by providing a sufficient number of usable television channels so that old-fashioned American competition can have full play.

(The tables referred to are as follows:)

TABLE I.—*Number of television stations used by all national and regional spot accounts, 1st quarter, 1956*

Number of stations	Accounts using	
	Number	Percent
Over 100	33	0.9
51 to 100	62	1.6
41 to 50	28	.7
31 to 40	49	1.3
21 to 30	65	1.7
20 or less	3,563	93.8
Total	3,800	100.0

Source: N. C. Rorabaugh.

NOTE.—In the text and tables of the report submitted herewith, where the term "account" or "accounts" is used, it is singular and refers to the individual product or products of an advertiser. An advertiser may have a number of accounts. The term "advertiser" as used herein is a collective term, and refers to a single advertiser as a unit, whether or not that advertiser has one or more accounts.

TABLE II.—*National and regional advertising accounts using 5 or more television stations, 1st quarter, 1956*

Number of stations	Accounts using	
	Number	Percent
5 to 10	398	49.0
11 to 20	178	21.9
21 to 30	65	8.0
31 to 40	49	6.0
41 to 50	28	3.4
51 to 100	62	7.6
Over 100	33	4.1
Total	813	100.0

Source: N. C. Rorabaugh.

NOTE.—In the text and tables of the report submitted herewith, where the term "account" or "accounts" is used, it is singular, and refers to the individual product or products of an advertiser. An advertiser may have a number of accounts. The term "advertiser" as used herein is a collective term, and refers to a single advertiser as a unit, whether or not that advertiser has one or more accounts.

TABLE III.—*100 largest national and regional spot television accounts, first quarter 1956*

Number of stations:	Number of accounts
Over 100	23
75 to 100	8
50 to 74	24
40 to 49	15
30 to 39	10
20 to 29	8
Less than 20	12
Total	100

Source: N. C. Rorabaugh.

NOTE.—In the text and tables of the report submitted herewith, where the term "account" or "accounts" is used, it is singular, and refers to the individual product or products of an advertiser. An advertiser may have a number of accounts. The term "advertiser" as used herein is a collective term, and refers to a single advertiser as a unit, whether or not that advertiser has one or more accounts.

TABLE IV.—*Prime evening network option time, stations reporting 1 week in April 1956*

City rank	Percent of United States population	Station and city	½-hour weekly not programed by network	½-hour syndicated film sold to single advertiser	½-hour film used on participating basis	½-hour filled by other means
1	8.37	WABC-TV, New York	½	0	½	0
2	3.61	WBKB-TV, Chicago	13½	6½	2½	4½
3	3.23	KABC-TV, Los Angeles	10	3	3	4
4	2.44	WFIL-TV, Philadelphia	7	1	0	6
5	2.09	WXYZ-TV, Detroit	7	4	3	0
6	1.63	KGO-TV, San Francisco	8½	3	4	1½
10	1.05	WMAL-TV, Washington	8	2	2	4
12	.91	WAAM-TV, Baltimore	6½	0	1	5½
13	.75	WTCN-TV, Minneapolis	5	1	2	2
17	.58	WISN-TV, Milwaukee	8	1	1	6
18	.56	KMBC-TV, Kansas City	6	3	3	0
21	.48	WLW-A, Atlanta	6	2	0	4
22	.48	KING-TV, Seattle	18	8	3	7
23	.47	KLOR-TV, Portland, Oreg	12	0	9	3
27	.40	KBTV, Denver	15½	1	4½	10
29	.37	WTTV, Bloomington	18	4	4½	9½
32	.35	WTVN-TV, Columbus	8	1	0	7
38	.32	WHBQ-TV, Memphis	8	6	0	2
41	.29	KTVK-TV, Phoenix	42	4	4	34
44	.27	WBAP-TV, Fort Worth	4	1	3	0

TABLE V.—*Prime time from end of evening network to 11 p. m.—Stations reporting 1 week in April 1956*

City rank	Percent of United States population	Station and city	½-hour weekly not programed by network	½-hour syndicated film sold to single advertiser	½-hour film used on participating basis	½-hour filled by other means
1	8.37	WABC-TV, New York	1	½	½	0
2	3.61	WBKB-TV, Chicago	13½	9	½	4
3	3.23	KABC-TV, Los Angeles	7	5	1	1
4	2.44	WFIL-TV, Philadelphia	6	4	0	2
5	2.09	WXYZ-TV, Detroit	5	3	1	1
6	1.63	KGO-TV, San Francisco	6½	0	1	5½
10	1.05	WMAL-TV, Washington	6	2	2	2
12	.91	WAAM-TV, Baltimore	7	1	1	5
13	.75	WTCN-TV, Minneapolis	21	4	0	17
17	.58	WISN-TV, Milwaukee	21	5	14	2
18	.56	KMBC-TV, Kansas City	20	4	3	13
21	.48	WLW-A, Atlanta	5	0	0	5
22	.48	KING-TV, Seattle	7	0	0	7
23	.47	KLOR-TV, Portland, Oreg	15	2	9	4
27	.40	KBTV, Denver	6½	0	6½	0
29	.37	WTTV, Bloomington	9	2	2	5
32	.35	WTVN-TV, Columbus	6	3	2	1
38	.32	WHBQ-TV, Memphis	10	1	2	7
41	.29	KTVK-TV, Phoenix	7	0	6	1
44	.27	WBAP-TV, Fort Worth	15½	2	4	9½

NOTE.—There are inherent differences between various sections of the country due to time zones, which greatly influence these data.

TABLE VI.—*Prime time period following Mickey Mouse (Monday through Friday) to start of evening network shows—Stations reporting 1 week in April 1956*

City rank	Percent of United States population	Station and city	½-hour weekly not programed by network	½-hour syndicated film sold to single advertiser	½-hour film used on participating basis	½-hour filled by other means
1	8.37	WABC-TV, New York	3	0	3	0
2	3.61	WBKB-TV, Chicago	2½	2½	0	0
3	3.23	KABC-TV, Los Angeles	10	5	2	3
4	2.44	WFIL-TV, Philadelphia	17½	2	12	3½
5	2.09	WXYZ-TV, Detroit	12½	10	0	2½
6	1.63	KGO-TV, San Francisco	13	9½	1	2½
10	1.05	WMAL-TV, Washington	17	3	2	12
12	.91	WAAM-TV, Baltimore	14	2	0	12
13	.75	WTCN-TV, Minneapolis	5	0	0	5
17	.58	WISN-TV, Milwaukee	2	1	0	1
18	.56	KMBC-TV, Kansas City	5	3	0	2
21	.48	WLW-A, Atlanta	10	8	0	2
22	.48	KING-TV, Seattle	12	5	2	5
23	.47	KLOR-TV, Portland, Oreg	13	6	2	5
27	.40	KBTV, Denver	6	5	1	0
29	.37	WTTV, Bloomington	19	8	2	9
32	.35	WTVN-TV, Columbus	17	0	0	17
38	.32	WHBQ-TV, Memphis	1	1	0	0
41	.29	KTVK-TV, Phoenix	9	3	2	4
44	.27	WBAP-TV, Fort Worth	6	6	0	0

(The resolution referred to in the witness' statement and a list of signatories thereto are as follows:)

Whereas testimony regarding network option time and other network-affiliate practices recently was given before the Senate Interstate and Foreign Commerce Committee; and

Whereas the affiliates of the American Broadcasting Co. television network affirm their belief that option time provisions are a vital factor in the station-network relationship strongly influencing the stations' ability to serve the public interest, convenience, and necessity: Therefore, it is hereby

Resolved, That the undersigned American Broadcasting Co. television network affiliates request an opportunity to send a representative group to the Senate Interstate and Foreign Commerce Committee, to testify on how essential option time or some comparable arrangement and other network-affiliate practices are to the economic well-being of the networks and affiliates, with resultant continued vital service to the American people.

The above form was signed by the following individuals on behalf of the stations indicated:

S. Bernard Berk, WAKR-TV, Akron, Ohio.
T. R. Stillwagon, WALB-TV, Albany, Ga.
Charles B. Britt, WLOS-TV, Asheville, N. C.
Harry LeBrun, WLW-A, Atlanta, Ga.
A. H. Constant, KBAK-TV, Bakersfield, Calif.
Ken Carter, WAAM, Baltimore, Md.
Douglas Manship, WBRZ, Baton Rouge, La.
O. W. Myers, WNEM-TV, Bay City, Mich.
Walter E. Wagstaff, KIDO-TV, Boise, Idaho
Edward C. Lambert, KOMU-TV, Columbia, Mo.
W. L. Shellabarger, WTVP, Decatur, Ill.
Joseph Harold, KBTV, Denver, Colo.
Jesse O. Fine, WFIE-TV, Evansville, Ind.
Tom Barnes, WDAY-TV, Fargo, N. Dak.
Harold Hough, WBAP-TV, Ft. Worth, Tex.
J. C. Drilling, KJEO-TV, Fresno, Calif.
Donald D. Wear, WTPA, Harrisburg, Pa.
Fred Weber, WATN-TV, Huntington, W. Va.
Ross B. Baker, KSWO-TV, Lawton, Okla.
John H. Cleghorn, WHBQ-TV, Memphis, Tenn.
Robert R. Thomas, Jr., WOAY-TV, Oakhill, W. Va.
William P. Geary, WMGT-TV, Pittsfield, Mass.
George O. Griffith, WJAR-TV, Providence, R. I.
J. S. Bonansinge, WGEM-TV, Quincy, Ill.
Brent H. Kirk, KUTV, Salt Lake City, Utah.
Carl Fox, KYTV, Springfield, Mo.
Alex Campbell Jr. WEAT-TV, W. Palm Beach, Fla.
Robert W. Ferguson, WTRF-TV, Wheeling, W. Va.
Roy E. Morgan, WILK-TV, Wilkes Barre, Pa.
James W. Coan, WTOB-TV, Winston Salem, N. C.
Louis J. Appell, Jr., WSBA-TV, York Pa.
William M. Dawson, WARM-TV, Scranton, Pa.
R. A. Dunlea, WMFD-TV, Wilmington, N. C.
Howard H. Fry KFDX-TV, Winchita Falls, Tex.
Martin Umansky, KAKE-TV, Wichita, Kans.
F. S. Houwink, WMAL-TV, Washington, D. C.
William L. Putnam WWLP, Springfield, Pa.
Louis Wasmer, KREM-TV, Spokane, Wash.
Evans A. Nord, KELO-TV, Sioux Falls, S. Dak.
Otto P. Brandt, KING-TV, Seattle, Wash.
S. John Schile KLOR, Portland, Oreg.
Leon M. Nowell, KTVK Phoenix, Ariz.
Roger W. Clipp, WFIL-TV, Phila, Pa.
Owen Saddler, KMTV, Omaha, Nebr.
Aldo J. DeDominicis, WNHC-TV, New Haven, Conn.
R. D. Stanford, Jr., WSIX-TV, Nashville, Tenn.
Gerald A. Bartell, WMTV, Madison, Wis.
Willard E. Walbridge, Jr., KTRK-TV, Houston Tex.
O. L. Turner WSIL-TV, Harrisburg, Ill.
Clayton Ewing, WFVR-TV, Green Bay, Wis.
Willard Schroeder, WOOD-TV, Grand Rapids, Mich.
John F. Dille Jr., WSJV-TV, Elkhart, Ind.
Hamon L. Duncan, WTVD, Durham, N. C.
J. W. McGough WTVN-TV, Columbus, Ohio.
M. F. Woodling, KHSL-TV, Chico, Calif.
J. F. Hladky, Jr., KCRG-TV, Cedar Rapids, Iowa.
J. J. Bernard, WGR-TV, Buffalo N. Y.
Philip Merryman, WICC-TV, Bridgeport, Conn.
Robert Lemon, WTTV, Bloomington, Ind.
Leon O. Gorman, Jr., WABI-TV, Bangor Maine.
J. M. Moroney, Jr., WFAA-TV, Dallas, Tex.

George BarenBregge, WPTZ, Plattsburgh, N. Y.
John Soell, WISN-TV, Milwaukee, Wis.
P. E. Mills Jr., KPLC-TV, Lake Charles, La.

Senator PASTORE. Thank you very much.

Mr. HOUWINK. Thank you very much.

Mr. COX. Mr. Houwink, at the present time, what percentage of the commercial programs that ABC offers to WMAL are you clearing for the network?

Mr. HOUWINK. We are clearing a hundred percent at this present moment.

Mr. COX. Do they offer you a full schedule of programs in the hours 7:30 to 10:30 p.m.?

Mr. HOUWINK. No. sir, there are gaps in that schedule.

Mr. COX You have filled those with syndicated film programs or local programing?

Mr. HOUWINK. They were detailed on the exhibit attached. We filled them in part with some syndicated shows which are single-sponsored. We fill them in part with syndicated film programing that we purchase ourselves and use as an announcement carrier on a participating basis. This is a very risky venture on our part. We also carry some network sustaining which we feel is good programing and we fill some of it with feature film.

Mr. COX. Would you clear for these programs because of their quality, whether the network had an option with regard to this time or not?

Mr. HOUWINK. Could you restate that?

Mr. COX. Wouldn't you clear for these programs which the network is offering you whether it had an option on the time or not?

Mr. HOUWINK. On their quality basis we would clear because of the quality of the program; yes.

Mr. COX. I would like to be sure that I understand these tables that you have attached to your statement. The first three tables relate to your investigations as to national and regional spot sales of television; is that correct?

Mr. HOUWINK. Right, sir.

Mr. COX. Now, does this refer to spot announcements or to programs placed on spot or both?

Mr. HOUWINK. Both are included in this.

Mr. COX. That is, in other words, the statistics as to the number of markets covered would reflect the number of markets in which a particular advertiser was even carrying on a spot announcement campaign.

Mr. HOUWINK. Correct, sir.

Mr. COX. Now, is the inference that you draw from these figures that a reduction in the provision of network programing on a nationwide basis would leave only national spot as a source of advertiser support, and that this would result in channeling more of the revenue into larger markets with a resulting loss in program revenues to the smaller markets?

Mr. HOUWINK. That is correct; your inference there is absolutely correct, that the national spot advertiser who is the primary source for revenues for the television stations would naturally be the primary resource to fill the gaps that might be created in the network. On the basis of our study it would merely mean that the major markets would get the business and the smaller markets would not.

Mr. Cox. Isn't it true that under the present system, even with the network option and with the full program schedule that the network therefore offers, that in the smaller market, if it is not ordered on the network—as it may not be—and if it cannot get large-scale national spot sales, that it has to rely, and does now rely, to a much greater extent than in larger markets upon local advertising, local spot, to provide it with its revenues.

Mr. Houwink. That is right.

Mr. Cox. Now, in other words, these first three tables only look at the advertising revenues from the national picture; they do not reflect what revenues are now available, or would be available, on a local basis to provide programing to stations.

Mr. Houwink. That is correct.

Mr. Cox. Now, it is true, isn't it, that even the network's programs did not find their way into all of the local markets that were desired?

Mr. Houwink. I understand that is correct; they do not have complete data on the situation.

Mr. Cox. I do not recall whether Mr. Kinter gave a figure. Do you have any idea what the average lineup, nighttime lineup of ABC is?

Mr. Houwink. No, I do not, sir.

Mr. Cox. Now, with respect to your last three tables, turning to table IV, this is headed "Prime Evening Network Option Time." Now what hours are covered in this report? Just the hours 7:30 to 10:30?

Mr. Houwink. It would be what we in the eastern zone call 7:30 to 10:30, in the Midwest it would be 6:30 to 9:30 and so on adjusted across the country. It is the block of time which is considered prime time in terms of network programing. These are gaps in the network.

Mr. Cox. You have a column here headed "One-Half Hours Weekly Not Programed by Network."

Mr. Houwink. Correct, sir.

Mr. Cox. Are the figures, then, in that column the number of half hours, or are they the number of hours?

Mr. Houwink. Half hours, half-hour units.

Mr. Cox. That is for WABC, there is a quarter of an hour, is that what that would mean?

Mr. Houwink. That is what that would mean, sir.

Mr. Cox. Now I take it, then, that dropping down to KING, in Seattle, your 22d market there, that that indicates that in the 21 hours of nighttime option time there were 9 hours that were not programed by the network.

Mr. Houwink. That is precisely what it means, sir.

Mr. Cox. Now do you have any way of knowing whether any part of those 9 hours were offered to the station but rejected by it for any reason?

Mr. Houwink. I do not have specifics on it on a station-by-station basis. But I am quite sure on the Portland situation they are carrying some local programing instead of some network programing which was offered it. I am quite sure but I could not make it as an absolute positive statement.

Mr. Cox. This would be a matter of their local choice?

Mr. Houwink. Local choice, right.

Mr. Cox. Rather than a shortage of network programing?

Mr. Houwink. Right.

Mr. Cox. Now, with respect to table V this would reflect on the same basis as you cross the country?

Mr. Houwink. Right, and which has the effect of increase, as you will notice, in these data that as you go west the stations have far more hours available between the end of network service and 11 o'clock, the reason being that the network service stops earlier out there.

Mr. Cox. Therefore, again, this does not necessarily reflect any shortage of network programing; it may in part reflect the fact that they have whole blocks of hours for which no network programing would ever be furnished.

Mr. Houwink. Right. But it does point up the fact that there are tremendous blocks of prime evening viewing hours available.

Mr. Cox. In these markets?

Mr. Houwink. In these markets.

Mr. Cox. Then the same thing would be true with respect to your sixth table—that would cover the period between 6 p. m. and 7:30.

Mr. Houwink. It would be between 6 and 7:30 in the East; in the Midwest that would be 7 and 8:30. There is that time variation.

Mr. Cox. That is, the Mickey Mouse Club is carried at 5 o'clock in all the times.

Mr. Houwink. In all the times, yes.

Senator Pastore. You say in your introductory statement that because of the twist the testimony took before the committee, this association was created in order to present your views here. Was there any coercion or influence on the part of ABC toward you to make an appearance here today?

Mr. Houwink. Absolutely none, sir. In fact, I would say they are trying to catch up with us to find out who we are and what we are doing.

Senator Pastore. And in your dealings with ABC, with reference to the exercise of this exception to option time, have you ever been influenced in your decision in making a selection—in going beyond your dealings with ABC, in going to an independent producer—ever been influenced with the fear that there might be a reprisal against you by ABC if you exercised that exception to the option?

Mr. Houwink. Absolutely not, sir.

Senator Pastore. Are you satisfied that the option element of your contract has worked well?

Mr. Houwink. We think it works extremely well. We wish that they used a little more of it.

Senator Pastore. Are you satisfied with this element of prime time?

Mr. Houwink. Yes, we are.

Senator Pastore. Can you give us any examples of instances where you exercised your exception as to option time with ABC and what the background of that relationship was?

Mr. Houwink. We would not be a good example, Senator, because being in a four-station market we are continually short of programing; and in the frame of reference that I think you address your question in, I do not think it would be a relevant point to you. We are hungry for programing and as a result we wouldn't have the pressure situation that I intimate you feel may exist with some stations.

Senator PASTORE. There has been a strong implication here at these hearings that if the contract, and the terms of the contract, between the station and the network were made a source of public knowledge, that that would ameliorate the situation on behalf of the broadcasting stations. Are you for that?

Mr. HOUWINK. I just don't see how it could, in the area of public knowledge, alter the situation. The FCC I believe——

Senator PASTORE. Are you interested in knowing what the terms of the contracts are between the ABC and the other affiliates of the ABC?

Mr. HOUWINK. I think the ABC affiliates, when they meet occasionally around the country, disclose fully to each other what their situations are. I do not think there are any secrets about it.

Senator PASTORE. You are not dissatisfied with that situation?

Mr. HOUWINK. I think we could find that we have that as a matter of common knowledge, as exchange of information between managers. We know what everybody else's basic deal is; we know if anybody has a better deal.

Senator PASTORE. I am not asking these questions in criticism; I am trying to clarify the record.

Mr. HOUWINK. I know.

Senator PASTORE. The only further observation I want to make, Mr. Houwink, is that we appreciate very much your appearance here this morning. You have been very helpful. Thank you very, very much.

Mr. HOUWINK. Thank you, Senator.[1]

Senator PASTORE. Mr. Hough.

STATEMENT OF HAROLD V. HOUGH, WBAP-TV, FORT WORTH, TEX.

Mr. HOUGH. Gentlemen, I have a little brief statement and I will be just as brief as I can. It is a little statement that it occurs to me what might happen if option time were changed. I do not say that it will happen, but it is just something that might happen. It is a pretty serious matter and I will give it to you and then be glad to try to answer any questions.

My name is Harold V. Hough. I am the director of the Fort Worth Star Telegram, stations WBAP, AM, FM, and TV. WBAP radio went on the air in May 1922, and I was there at that time. WBAP-TV was the first television station in the Southwest, starting in September of 1948. I am here as one of the ABC group.

One thing that worries me about this Senate hearing is this option time idea, thus taking an hour off network night time. Here I must remind you that I do not know that it would, but it might. As a television station operator since 1948, I am puzzled as to how I am to fill this vacant hour and, at the same time, keep our people posted on current national events. I don't think there has been any suggestions made as to what hour it would be that would be missing. Would it be 7 to 8, 8 to 9, or 9 to 10? We know that these hours all have different values. The family life reaches the peak at some particular point, depending a great deal on the time zone or the season; and to eliminate a choice hour would be disastrous.

[1] Pursuant to later request, the program schedule of WMAL-TV for a sample week in April 1956 was furnished, and is printed in the appendix at p. 2949.

Senator PASTORE. Mr. Hough, you raise a very, very fine point here that I think has been somewhat overlooked. The argument that you are making now is that, should your option time be cut down from 3 to 2 hours, there may be a possibility that, unless the network has that option time at its disposal, it might not have a national advertiser for that 1 hour that is eliminated from this 3 hour period—and you would have a blank on your hands that you would have to fill in.

Mr. HOUGH. That is right.

Senator PASTORE. Is that what you are saying?

Mr. HOUGH. Yes, sir.

Senator PASTORE. Go ahead. That is novel.

Mr. HOUGH. So the question is how would the stations fill this hour? It will, of course, be filled essentially with the use of films. Live studio shows, which could hold interest 1 hour a night, 7 days a week, cannot be created locally by the average station. There is not enough talent; and it would mean an unbearable financial burden on the small station—such a station would have to establish a production department, a program department, and go into more stage businesses than ever before.

In our own shop, 18.67 percent of our programs, day and night——

Senator PASTORE. Will you raise your voice, Mr. Hough? I think there are a lot of people in this room that would like to hear what you have to say.

Mr. HOUGH. Thank you for the compliment. [Laughter.]

In our own shop, 18.67 percent of our programs, day and night, are live. We have not had much success trying to program live at night. We cannot build consistently strong evening shows which will please the people. So it is mostly a matter of buying half-hour films. I do not like to think what the cost of these might be in such a supply-and-demand market. The stations would be helpless. They would be thrown into a lion's den. Prices would soar.

It is true that the distributors of the half-hour syndicated films have been of considerable help in sales. They send their representatives out to call on the advertisers and they themselves make quite a few sales. They do a good job. I understand, but I am not sure, that their selling commission is 35 percent.

If we do not use these half hour films, it would mean old movies.

Suppose someone along the line decides by law or rule or regulation that there should be 1 hour night nonnetwork. If one tries to take care of this by a movie, we must remember that most of those movies are much over an hour in length. They were originally made for theaters, and probably run for about an hour and a half. It would mean taking an hour-and-a-half story, turning it over to a somewhat inexperienced person in your station and telling him to whittle it down to a 55-minute show but not to lose any of the story value. All of this is an absurd order and is impossible. The viewers get cheated.

I would like to take just another moment in reference to live television. When the viewers now hear the remark that this program is coming to them "live," it stimulates interest. I think that one of these days more programs will have to be produced live in order to hold interest. We would not only lose those, but people could lose instant contact in an emergency with the whole world during 1 hour when most of the family might be in front of the set. To be cut off from a network for this hour means that special events (let us say), a night world-series game or some tragic event, would be cut off. It wouldn't make much sense to schedule a game to the 9th inning and then, on account of the law, have to quit at the 7th inning.

What would happen during the coming political conventions if these rules should be in effect? The whole show would be carried on television, and yet at some night session, when they might be taking the final vote for the candidate for the Presidency, when they get right up to the time to call on how Texas has voted, they have to leave the air. [Laughter.]

Senator PASTORE. Wouldn't you know that pretty much in advance? [Laughter.]

Senator PASTORE. At least, I hope so.

Mr. HOUGH. I think I—well, I don't know.

Senator PASTORE. Well, go ahead.

Mr. HOUGH. But some have said there would be exceptions. In other words, the rules might be made where certain events could be carried. Thus enters censorship, in a form—which is one thing, as I understand it, Congress has certainly tried to avoid—the idea of turning over to some bureau or commission the censorship of programs.

As a television operator, I want more live network shows. I want more one-and-a-half-hour shows. Automatically they probably would be almost eliminated under this setup. So I wish to go on record that the elimination of 1 hour network television time in the prime of the evening would be a disastrous thing for all.

Now, Senator, as I said in the beginning, I do not know that it would happen. If you take the nighttime hour out, the networks might continue, just as they are. And I am sure that we would continue with them, in our case. But when you remove the option time you change the contracts. And suppose that a station here and a station there would decide—well, they get ambitious on this film problem—and they decide, well, we won't use the network program. Well, now, maybe these few stations out might affect the value of the other programs we were getting. In other words, an advertiser wanting particularly those markets, if he could get them, might not be so much interested. I do not know. Frankly, in my own idea, I think the television industry has got too much gumption to go for a thing like that. And I am not saying that the networks are going to close that hour down. It is not a probability, but it might be a possibility. And if the films are going to sell as much as they think they are under this new advent, they are going to get quite a few stations in that prime time, which is what they are talking about so much.

Senator PASTORE. Well, as a station operator, are you convinced that at the time that you tie up with a network as an affiliate of that network, that you must, and it is in your interest to grant them the right of option time at prime time in order that they may be in a position of dealing with national advertisers, which in turn means that you get a national program of good quality?

Mr. HOUGH. Yes; that is pretty much the way I feel about it.

Senator PASTORE. Is that the way you feel about it?

Mr. HOUGH. Yes, sir.

Senator PASTORE. And if you stood by your position that you would want to run your station exclusively of this option time on the part of the network, while it would leave you in a position of choosing whatever program you would want, apart from the network, that in the long run it would not be of an advantage to you?

Mr. HOUGH. We could choose whatever program we wanted, but I doubt if it would be to our advantage. If we give the network clearances—we run, say, the prime time on network shows—the network gets stronger, the shows are better, the people like them and we sell those adjacencies, Senator, and we will get along pretty well with them.

Senator PASTORE. Mr. Cox?

Mr. Cox. Mr. Hough, can you choose any program you want now for broadcasting at any time on your station?

Mr. HOUGH. Can I choose any——

Mr. Cox. Any program that you want now? That is, can you reject a network-offered program and take another program if you consider it to be better in the interest of the people in Fort Worth?

Mr. HOUGH. Yes; we can.

Mr. Cox. And you do that regardless of the option?

Mr. HOUGH. We do not do very much of it.

Mr. Cox. You have an affiliation arrangement also with NBC, do you not?

Mr. HOUGH. Yes, sir.

Mr. Cox. What percentage of the commercial programs offered to your station by ABC and NBC do you accept?

Mr. HOUGH. I should say 90 percent, 95.

Mr. Cox. Can you recall any instances in which you have rejected them, and tell us what program you rejected and what program you substituted in its place?

Mr. HOUGH. Well, I could recall an instance where we rejected ABC on Monday evening in order to take care of Wild Bill Hickok for the kids. But at the moment I do not remember what the offer was to put in there. We haven't had very many. We try to keep cleared up. But at the moment we have, I think you will notice in that statement, 6 half-hours open after 6 o'clock.

Mr. Cox. That is in the period 6 to 11.

Mr. HOUGH. Yes.

Mr. Cox. You have 6 half hours open in a week?

Mr. HOUGH. Yes.

Mr. Cox. Can you tell me for what percentage of the ABC network programs Fort Worth is ordered by the advertisers?

Mr. HOUGH. We are on the basic.

Mr. Cox. You are on the basic?

Mr. HOUGH. Yes, sir.

Mr. Cox. As I understand it, ABC's only basic was a minimum required dollar amount. But your understanding is that generally Forth Worth will be ordered within that $30,000 figure; is that correct?

Mr. HOUGH. Yes, sir.

Mr. Cox. So that you are ordered by ABC advertisers for substantially all of the programs which ABC broadcasts?

Mr. HOUGH. I don't recall any ABC program that we were not ordered for to fill on our time.

Mr. Cox. All right. Now, you indicated you wondered how you would fill an hour of programing in the evening if there was some reduction in the time that the network could option on your station. Now, if you are now providing an outlet for network advertisers—let's say in the period 9:30 to 10:30 at night—if that period were eliminated from option time don't you feel that these advertisers would continue to desire to present their messages in the Fort Worth market?

Mr. HOUGH. Yes, I believe they would.

Mr. COX. And aren't there, generally speaking, film programs of a kind that are now carried on the network, which would be available to these advertisers so that they could order Fort Worth in the period 9:30 to 10:30, and you could carry this program, you would get the same or greater revenues from the program, and your people would get programing of substantially the same type?

Mr. HOUGH. That is right.

Mr. COX. You indicated that in the event of national emergency you were afraid that the elimination of this hour might present a problem because you would be cut off from the network. Isn't it true that you are now cut off from the network many hours of the day?

Mr. HOUGH. Yes, sir, but we are not cut off at night.

Mr. COX. Well, you are connected with the network from the period of 3 p. m. to 6 p. m. and from the period 7:30 to 10:30; is that it?

Mr. HOUGH. I am not sure. I think that is it.

Mr. COX. So that it is only in those limited periods that any reduction in your period of interconnection would pose any such problem?

Mr. HOUGH. The cutoff, however, would be during peak assembly of audience time.

Mr. COX. Now, you indicated that you were afraid that political convention coverage might be influenced in this. Have you read the testimony which Mr. Moore presented before the committee?

Mr. HOUGH. Not all of it.

Mr. COX. Are you aware that, as I recall it, he suggested that the proposed changes in the regulations which he thought should be made would not be applicable to special events such as political conventions, world series, and other live events which, under even his proposal, would be permitted to be carried over the network, regardless of any restriction?

Mr. HOUGH. Well then, I presume that you would have to make up some rules as to what is to be excepted and what is not. So if you have wide variations, after all then it wouldn't amount to much, you could put in a newscast and go right on, can't you?

Mr. COX. I am not sure I understand your point. That is, you feel there would be some problem in having the FCC draft regulations which would provide for the exclusion of political conventions and certain other live events of national interest?

Mr. HOUGH. Well, it looks to me like that if the networks were going to set up lines and get going for this hour it is kind of going down away from them, that there would have to be something, somewhere, to say what shall we make exceptions about, and for. And there are many items. You could say news items—that being the case you could run a 5-minute news program in there and the whole thing wouldn't amount to anything.

Senator PASTORE. In other words, a program of major interest to some member might be a news program like John Cameron Swayze between a quarter to 8 and 8 o'clock; and yet some other people might think that chances are the world series might be important, but to some people it might not be important, or a national championship heavyweight fight? Wouldn't that actually put a Federal agency in the position of censorship as to what is important and what is not important?

Mr. HOUGH. That, I don't see how they can avoid, because there are going to have to be exceptions made under Mr. Moore's suggestion. He says "exception." Who is going to make the exceptions; how are they going to make them?

Senator PASTORE. Or when are they going to make them?

Mr. HOUGH. And when are they going to make them? So they are in the hole, and they are in a censorship business in a direct roundabout way, regardless. So I just cannot, Senator—I just can't get this thing through my nut that it is going to help television at all, to change this option hour time. I think that the station that lines up with the network to serve its folks—and if the network has that 3 hours, the station ought to carry the 3 hours, and give the folks the service.

You give the people what they wish, that is your obligation. You talk about all these terms, for public service and all that sort of thing, of course we are for public service. But we are for public ratings, too. Some of us are not as patriotic, maybe, like we have let on here. [Laughter.]

Mr. HOUGH. In our case down there, Senator, we carry two point sixty-eight, I believe, the last report, public service. That is things like films that are sent out and that sort of thing—of our total daytime and nighttime combined weekly program, out of 118 hours.

We carry 3 percent, 3½ percent of live newsreels that we make there. And we carry 29½ percent, or practically 30 percent, of film today.

Senator PASTORE. You are tied up with two networks at the present time?

Mr. HOUGH. Yes, sir.

Senator PASTORE. Any time an independent producer comes along with a program that you consider to be of better quality than the one that might come in from a national network on option time or prime time, you feel that you have enough flexibility in your contract now to negotiate with that independent producer if you think it is a better program?

Mr. HOUGH. Yes, sir; I do.

Senator PASTORE. All right, Mr. Hough; thank you very much.

Mr. HOUGH. Thank you very, very much.[2]

Senator PASTORE. All right, Mr. Tarzian.

STATEMENT OF SARKES TARZIAN, PRINCIPAL OWNER, WTTV, BLOOMINGTON, IND.

Mr. TARZIAN. My name is Sarkes Tarzian, principal owner of TV station WTTV, Bloomington, Ind., an ABC affiliate.

This is the third time within a 2-year period that I have had the opportunity to testify before this committee. My previous appear-

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[2] Pursuant to later request, the program schedule of WBAP-TV for a sample week in April 1956, was furnished and is printed in the appendix at p. 2955.

ances were primarily concerned with TV receiver and tuner matters as related to UHF. My recommendation, like many others, was to increase circulation of UHF by eliminating excise tax on full-band TV receivers. If this had been done 2 years ago, there would now be 15 million TV receivers in use that could get UHF broadcasts, and as a result we would have more TV stations on the air. With a great many stations on the air, this hearing relative to network monopoly might not be necessary. Since we have several thousand radio stations operating, no one now is investigating or trying to regulate radio networks. In fact, in many markets it would be a handicap for some stations to have a radio network affiliation. And I am sure that in a few years, with FCC cooperation, enough TV stations will be operating and competition will exist in all markets so that a hearing of this kind will be considered superfluous.

WTTV has been in operation for almost 7 years; we are one of the pioneer TV broadcasters. As a result, we know what TV was in its early days and can give a more complete picture of the role that networks have played in its growth and development.

In my opinion, TV as we know it would not be in existence if it were not for the initiative and the gamble that the networks took to develop programs. As a result, we now have a multibillion dollar industry with almost 40 million TV sets produced, making employment possible for hundreds of thousands of people. It took networks, stations, manufacturers, program sources, engineering advances, and so forth to make this possible.

The American people as a whole have benefited from this combined effort. I feel it is unwise at this time to listen to special interest groups who, for their own benefit, are trying to break up a system that has been productive of the common good. To me, the truth is that the public is served well by a strong network operation, by good film properties, as a matter of fact by any and all legitimate program sources. It is clear that the present system of cooperative station operation and network system contributes more good programing to more people because it is competitive and because it is rooted in a desire to reach and serve the maximum number of people. Conversely, opponents of the present system are not operating from a sense of maximum service but from their own special interests.

Senator BRICKER. Will you designate what you mean by "special interests" and the names of them?

Mr. TARZIAN. I would say that these people who criticize the network option setup and so on, with the idea that they are not able to get their syndicated films in that period, and therefore they are at a disadvantage. I feel that there is a particular, a special-interest condition. They are interested in just their own films.

Senator BRICKER. What other special interests do you designate?

Mr. TARZIAN. That is one of them that I can think of at the moment.

Senator BRICKER. What others?

Mr. TARZIAN. Well, then, there are, I am sure, some people who have ideas that they may have a better chance to do programing on their own, if there weren't these option-time arrangements with the networks and the stations; that they would be freelance operators, that they would have a better chance to do something.

Senator BRICKER. You think those have prompted the legislation that has been filed, do you?

Mr. TARZIAN. I don't know. I am just bringing those two out as some of the things that people are trying to use as a means to defeat the setup that we have now, which to me has accomplished a great deal—in my mind, it has accomplished a great deal for the American public as a whole.

Senator BRICKER. You think there should be no regulation at all, then; no power over the networks at all?

Mr. TARZIAN. I feel that over a period of years this arrangement has worked out well, and as more stations go on the air and we have competition and, for instance, like ABC, as they have more outlets and there are more independent stations, this whole matter will be automatically taken care of just like it has on radio networks.

Senator BRICKER. I think maybe I would agree with you on that. But what if you don't get the more stations and get complete saturation of the ——

Mr. TARZIAN. Well, Senator, I think that is where the Government and the Government agencies can work. It should be in that direction, to work to get more competition, rather than try to keep competition limited and then regulate the people who are in the business.

Senator BRICKER. I think you have got an idea there; but on the other hand, you are regulated, you are licensed, and what logic is there, then, to saying that the networks, which provide the programs and the service, should not be regulated?

Mr. TARZIAN. Well, since we are regulated we are the ones who put these network programs on the air.

Senator BRICKER. That is right.

Mr. TARZIAN. We have the responsibility; then it is up to us to do a good job. And I feel that that is sufficient regulation in itself, in my humble opinion.

Senator BRICKER. What I am getting to: Is there a power to say that you can have a program and your competitor can't; or he can have a program and you can't; or he can sell time to one businessman and refuse it to another?

Mr. TARZIAN. Well, we are in a position—I mean, in my opinion, in my own experience, Senator—we have been operating now for 7 years, as I have said here, and we have operated from a small community, relatively small community, Bloomington, Ind.

Senator BRICKER. I know that, I know where it is; I have been there many times.

Mr. TARZIAN. And we cover a big area, 2½ million people. We cover Indianapolis, Terre Haute, and the rest of them.

Now, it has been our experience—we had one tough job in the early days to program our station 2 hours a day. We were in Bloomington; we didn't have network facilities. And we just had a tough time. We put everybody in the town on the air in order to fill these 2 hours. Now, I am just giving you some of our own personal experience.

Senator BRICKER. I remember those days very well.

Mr. TARZIAN. And then in order to be able to stay on the air longer—at that time you couldn't get films; in fact, the film people were boycotting television. We all know that. They wanted to kill it just like the record people tried to kill radio. And in the end, radio bought out the record industry. And if the film people keep on boycotting television, TV people are going to own the film people, is my honest opinion.

So we put in our own microwave system from Bloomington, Ind., to Cincinnati, and we built it ourselves. A. T. & T. wouldn't do it for us. And in order to get network programs, that is, and we had affiliation with all four networks. Then later, we had to make a decision when other outlets became available in our area, as to which network we were going to affiliate with. And we affiliated with NBC for practically, exclusively, 1 or 2 years. Then we felt that the way ABC—NBC was operating wasn't to our overall interest, nor to theirs; and we were the ones that threw NBC overboard, and tied up with ABC, because we felt that we could do a better job in this area ourselves with ABC.

And there isn't any program that we don't feel free that we could eliminate if we had something of a local interest that we wanted to put in there that is more important. We believe in running this station for the benefit of the people of the area. And if the networks fit into that plan, we will say well and good. If they don't, we just don't use them.

Senator BRICKER. I see, then, what you mean by special interests. The fact is that I just want you assured that this committee approaches this problem with nothing but the public interest. Our public interest is nationwide, instead of localwise, as yours is.

Mr. TARZIAN. Well, because you do that, that is the reason I am here. I wanted to come here and give you the facts as I see them. As an independent station operator that deals with the networks, as long as they serve the public good in our area.

Senator BRICKER. But you have so grown up as a part of your community there, an integral part of the community, that you feel your first and primary interest is in the local community?

Mr. TARZIAN. That is right. To serve the area that we serve. That is our local primary interest, and if the networks have something to offer that the people want in that area, we are going to carry them. When they stop doing that, we are going to stop carrying them; we are going to program some other way.

Senator BRICKER. Do you ever broadcast any football games?

Mr. TARZIAN. Yes, sir. We broadcast all the Indiana University basketball games, all the Purdue basketball games. We have our own microwave system into Lafayette, Ind., and that occurs on network option time. We carried last year 21 basketball games of that type.

Senator BRICKER. You would carry football except for the conference regulation?

Mr. TARZIAN. That is right. We also carry professional football and baseball. These baseball games that we are carrying this year are not network items at all.

Senator BRICKER. Do you carry any of the educational programs or the cultural programs from the university?

Mr. TARZIAN. I certainly do; we have them full time, to give them as much as they feel they can program satisfactorily. We are the only educational outlet in the State of Indiana, I am sorry to say.

Senator BRICKER. I think that is most encouraging. I appreciate your testimony.

Mr. TARZIAN. We have our microwave into Purdue, they put on agricultural programs every day; we have our microwave into Indiana

University and they put on an average of 5 hours a week, some of them for credit, too. Some of the courses are for credit.

Senator BRICKER. You give credit on the TV classes; is that right?

Mr. TARZIAN. Yes, sir. And this year for the first time in the history of Indiana, we carried the commencement of both State universities, Purdue and Indiana University. Each one lasted an hour and half, and we gave that as a public service.

Senator BRICKER. I think you have proved your point, to my satisfaction, anyhow.

Senator PASTORE. And if I were representing you, Mr. Tarzian, I would rest my case at this point, and submit the rest of the statement in the record. [Laughter.]

Mr. TARZIAN. Well, since I came 800 miles to say a few things, I am going to do it. [Laughter.]

Senator PASTORE. Go ahead, go ahead, and spoil it if you want to.

Senator BRICKER. That is like too much cross-examination.

Mr. TARZIAN. It is a fact that TV was something that almost all people in America wanted at the same time. People wanted TV sets, good programs, TV stations and TV networks. The public's thirst for TV has never been matched by anything else, including Fords, phones, bathtubs or air conditioners. The only other item that might be placed in the same category was the demand to "get the boys home" after the war was over.

The unusual combination of engineers, manufacturers, stations, networks, program sources, and advertisers gave America TV in an equally remarkable short time. Everyone involved should be commended for a job well done.

Whatever the contribution which the Federal Government can make to the future of TV, it should be that which is best for the majority of the public. The networks have definitely contributed their part in building the finest record in American industry and communications. Any attempt to throttle their work at the peak of their contribution to the majority of the public, at the behest of a minoriy and special interest group, is unfair to the public interest.

The Government through the FCC should encourage the licensing of new stations. It should eliminate excise tax on full-band TV sets to increase circulation so that TV can grow and develop. The Government's energies should be expended in this direction where it will be for the good of all the people. Then the Government will be working in the public interest and fulfilling its mission.

More operating TV stations necessarily mean more competition and better programs and service to the public. This is the direction in which we should all work.

I wish to thank you for the opportunity of appearing before this honorable committee.

Senator PASTORE. Mr. Cox?

Mr. COX. Mr. Tarzian, you indicated that in some way you had felt that NBC's relation with your station was not working out to the best interest of the network and your station and possibly the public. Could you expand on that a little?

Mr. TARZIAN. Well, since we covered from our transmitter, located halfway between Indianapolis and Terre Haute, which is a distance of about 60 miles—the 2 towns are separated by about 60 miles. We are halfway between. So we are about 30 miles from Indianapolis. Some of the advertisers felt that they would like to buy one of the Indianapolis outlets as well as our own station, you see, thus duplicating programs in the Indianapolis area. Well, we felt that if NBC went along with that, you see, then our work of developing the NBC programs in that area wouldn't be good. We wouldn't be identified as purely an NBC station, which we wanted to be if we were going to be affiliated with a network.

If there would be duplication of programs of that type, then I felt that it wasn't a good thing as far as building up programs on WTTV. For that reason we made this other arrangement. It wasn't anything that the network did to us or anything of that kind.

Mr. Cox. You are the only ABC outlet, then, in the area?

Mr. Tarzian. Yes; I am the only ABC outlet in the area.

Mr. Cox. And you felt it was undesirable from your standpoint to have advertisers buying both your station in Bloomington and the station in Indianapolis, on NBC?

Mr. Tarzian. That is right. To buy competitive stations, with whom we competed all the time, wherein people could get used to seeing NBC programs on the other station—and I felt as a long-range thing it wasn't good policy for NBC, either, because they would be building up a program on a competitive network station.

Mr. Cox. What percentage of the ABC programs that are offered to your station do you carry?

Mr. Tarzian. We carry—I think we are offered—you have our confidential questionnaire on that. We don't carry all that they offer. We carry, I would say, about 70 percent of what they offer.

Mr. Cox. Is that 70 percent of the commercial programs or 70 percent of the combined commercial and sustaining?

Mr. Tarzian. Combined. And then they offer us sustaining programs, too, of which we do not take all because we have, like I said, we have a lot of our own sustaining programs in the way of Indiana and Purdue University programs.

Mr. Cox. Could you tell us what percentage of the commercial programs they offer you that you carry?

Mr. Tarzian. Of their commercial programs, that we carry? Well, I would say it averages around 70 percent of what they offer that we carry.

Mr. Cox. Now, you indicate that you think the public is served by the development of good film properties in addition to the strong network operation, and in fact that the public is served by any and all legitimate program sources. Do you think that the public has an interest in stimulating the development of as many program sources as are possible?

Mr. Tarzian. I think so. Because it would be to their advantage to develop as many program sources as possible, and if we have more stations on the air, that automatically takes care of more programs, you see.

Mr. Cox. Now, looking at the situation as it exists today, however, with the restricted availability of stations, isn't it true that if nonnetwork sources of programing are to develop and thrive, to the public's interest, that the producers of these programs must have access to——

Mr. TARZIAN. To outlets.

Mr. COX. To the major outlets, the major outlets in the major markets of the country; wouldn't that be true?

Mr. TARZIAN. Well, I think that you will find that this isn't true yet in all of the major markets, but I think you will find in a lot of the major markets like New York City, we will say, we have plenty of stations there, a lot of competition. If anyone has anything good, they can go to New York and get it put on the air. It may not be on WRCA, or WCBS, but there are other outlets there——

Mr. COX. How about a two-station market; Louisville, for instance?

Mr. TARZIAN. Well, in stations in places like Louisville, that is where I think the Government, through the FCC, should act and make stations available. Now, for instance, we have applied for channel 21 in Louisville. I don't know whether you know it or not, but there was a channel 21 on the air in Louisville, and they couldn't make a go of it so they went off the air. But we feel that we have a way that we can make this UHF channel 21 work in Louisville. Now, we want the opportunity to try this thing. We want to go on the air with channel 21, but do you know what happens?

The present holder of that CP on channel 21—who has already sold his transmitter and everything else, and who has already petitioned the FCC to move either channel 7 or channel 13 to Louisville—says that it is illegal for us to apply for channel 21 since they have a CP, and that they are going to ask for a renewal of their CP to keep us off the air. Now, it is this kind of thing, you see, that should be straightened out, that the Government could do, so that there will be stations in this market.

Senator PASTORE. Let me ask you a question along that line. What has been the practice in that regard, where a UHF station goes off and sells their equipment? Do they have a right to keep renewing that license just so that they will have a hold on that station, so eventually if a VHF channel comes along they can make first claim on it?

Mr. TARZIAN. Well, I think legally they can, unless the Commission is wise to the situation and turns them down, you see. So on technicalities they will do these things. I will give you another example. In Fort Wayne——

Senator PASTORE. Do you know of any station where a station has shut down for any substantial period of time and the FCC has renewed their license?

Mr. TARZIAN. Well, I am just giving you this as what may happen down there. They have already filed a protest and told the Commission that they should return our application in view of the fact that they are holding the CP for channel 21.

Senator PASTORE. I wish the staff would find out about that case. I think we are interested in that.[3]

Mr. TARZIAN. Here is another one——

Senator PASTORE. After all, I realize the fact that there is an economic interest involved there, and it is unfortunate that these people had to shut down. But when in the public interest, if there

[3] In response to an inquiry from the committee staff, Chairman McConnaughey wrote a letter dated July 5, 1956, relative to this matter, which is printed at the conclusion of Mr. Tarzian's testimony at p. 2657.

is someone who thinks he can make that channel a go in the public interest, they ought to be given that opportunity.

Mr. TARZIAN. All right.

Now, we have another situation in Fort Wayne, Ind., where 2 years ago we found a channel for Huntington, Ind., which is about 10 miles from Fort Wayne. We asked the Commission to assign 21 to Huntington, Ind., which they did. Then we applied for that channel up there. And CAA turned us down because of the fact that it would be an air hazard. So after 2 years of trying to find a spot where we could put this station, we finally—everybody agreed that if we put it 3 miles outside of Fort Wayne, Ind., it would meet CAA requirements, and it would meet FCC requirements, you see. So it is my understanding that as far as the Commission's staff was concerned it was O.K.

But then on a legal technicality they said, "Since you're 3 miles from Fort Wayne, Ind., we don't want to call you a Huntington station; and since you are 3 miles from Fort Wayne, why we will have to have a rulemaking so we can call you a Fort Wayne station—and therefore, we don't want to make you a grant." Now, rulemaking, in general, takes about 6 months. So here we are, we are held up. ABC wants an outlet up there, and we will be very glad to put the thing on the air, and get them an outlet up there. But what happens? As a result we are off the air; the two stations that are there now, it is to their benefit to keep us off the air.

So they work all these technicalities to keep people off the air. A lot of this is going on. These are two I know of personally. I don't know how many more there are.

Senator PASTORE. Any further questions?

Mr. COX. Yes, just a few.

However, with reference to the situation in Louisville, for illustrative purposes: Until something is done about a third channel, isn't it true that any producer of nonnetwork programs who wants to clear Louisville, as one of the major markets of the country, has a difficult time finding clearance in the peak viewing hours in the evening because the two major networks have affiliates with options on that time, and the third network, presumably, has some kind of a secondary relationship with the stations?

Mr. TARZIAN. I agree with you 100 percent. But this is like rationing during the war period, you know. We just have a limited supply so we ration everybody, we regulate it. But the real answer is, increase production and make it available to everybody. Why use the rationing as a crutch to achieve your objective?

Mr. COX. You indicated that you hope through this process that there would be more independent stations developed. Now, isn't it true that both the existing independent stations, and any which may develop in the future, are largely dependent for their quality programing on the nonnetwork film or independent packager sources of supply.

Mr. TARZIAN. That is true. And whatever they can do themselves in the way of local programing.

Mr. COX. Therefore, if these independent stations are going to be able to program in the public interest—to provide a fourth real program choice in the markets where independent stations exist—they have to have a thriving source of programs to which they can look?

Mr. TARZIAN. They have to have a thriving source of stations who can buy their programs, that is true. And the only way, again I say, you are going to have that is to have more stations on the air in the markets where people are interested in spending advertising money.

Mr. COX. Do you find that the broadcasting—that the furnishing of live programs from the network on an eastern time schedule presents any problems as far as programing in the best interests of the people in the central time zone?

Mr. TARZIAN. In the Middlewest: Well, I will tell you it presents problems, but we have been able to handle it. And now with this magnetic tape recorder, I think a lot of those things will be straightened out.

Mr. COX. Are you now broadcasting these live, so they are carried an hour earlier in your time?

Mr. TARZIAN. Yes, that is true. We accommodate ourselves so that we can do that. Then, of course, in some of the cities, they are an hour—in our particular case in Indianapolis, for instance, they did something which wasn't very good as far as the broadcasters were concerned: They went on eastern time the whole year round.

And then when the East went on fast time, then of course that meant a change for us. There was an hour difference there. Whereas, during the winter months we would be on the same time as the East. So that it complicated it. But we worked it out. We lived with it, it isn't a serious disadvantage. Where there is a will there is always a way.

Mr. COX. Thank you.

Senator PASTORE. Any further questions? Thank you very much, Mr. Tarzian.[4]

(The letter from the Federal Communications Commission relative to channel 21 in Louisville, Ky., referred to above, is as follows:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington 25, D. C., July 5, 1956.

HON. WARREN G. MANGNUSON,
Chairman, Committee on Interstate and Foreign Commerce, United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: This letter is in response to a telephoned inquiry from Mr. Nicholas Zapple, of the staff of your committee, concerning the status of channel 21 at Louisville, Ky.

Mid-America Broadcasting Corp., holder of a construction permit for a UHF station on this channel, operated the station from September 7, 1953 until April 20, 1954, when the station went off the air. On May 17, 1956, Mr. Sarkes Tarzian tendered an application for authorization to build and operate a television station on the same channel at Louisville. This application cannot be accepted by the Commission at this time since under its procedure the Commission does not accept applications for television stations on channels on which construction permits are outstanding.

The construction permit held by Mid-America Broadcasting Corp. expires on July 16, 1956, but an application for its extension has been filed by Mid-America, and will be considered by the Commission prior to that date.

Hitherto, in recognition of the difficulties confronting UHF broadcasters generally, the Commission has in most cases granted, on request, the extension of expiration dates of construction permits for UHF stations which have not yet gone on the air, or which having commenced operation, subsequently went off the air. Our policy in this regard is currently under review, taking into account

[4] Pursuant to later request, the program schedule of WTTV for a sample week in April 1956, was furnished and is printed in the appendix at p. 2951.

the length of time covered by successive extensions, the prospects for the commencement or resumption of station operation, and the fact that indefinite preemption of an unused channel by the holder of a construction permit could not be justified.

I am unable, of course, to anticipate what decision the Commission will reach concerning an extension of the construction permit on channel 21 at Louisville, but you may be assured that the matter will be carefully reviewed before a decision is made.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman*.

Senator PASTORE. Mr. Donald H. McGannon.

I understand, Mr. McGannon, that you are going to summarize your statement and have the whole statement put in the record.

Mr. MCGANNON. That is right.

STATEMENT OF DONALD H. McGANNON, PRESIDENT, WESTINGHOUSE BROADCASTING CO., INC.

Senator PASTORE. Therefore, without objection, we will have the whole statement inserted in the record in its entirety.

(The statement follows:)

STATEMENT OF WESTINGHOUSE BROADCASTING CO., INC., BY DONALD H. MCGANNON, PRESIDENT

Mr. Chairman, I am Donald H. McGannon, and appear before the committee today as president of Westinghouse Broadcasting Co., Inc.

Our organization has followed the proceedings of this committee for several months and, as these matters have progressed, have been of the opinion that perhaps some viewpoints which we have on the subjects covered would be of interest to the members of the Senate. However, in order to avoid the need to appear on multiple occasions, we have deferred until now our presentation.

I fully appreciate that you are now in the phase relating to network operation and practices. We will talk to this subject first and perhaps fullest but ask your leave to express our opinions regarding other subjects covered earlier. I want to assure the members of the committee that we are very appreciative of this opportunity to have your attention and sincerely hope that this material will aid in some small measure your deliberations of these most serious matters presently being studied.

Westinghouse Broadcasting Co., Inc., owns and operates television stations WBZ-TV, Boston, KYW-TV, Cleveland, and KDKA-TV, Pittsburgh, and a sister corporation entitled Westinghouse Broadcasting Co., Inc. (California) is the owner and operator of television station KPIX, San Francisco. Both of these companies are wholly owned subsidiaries of the Westinghouse Electric Corp., the founder of commercial radio broadcasting at station KDKA in Pittsburgh on November 2, 1920.

Working directly with the Electric Corp., we have been engaged in the development of television since 1926, following carefully and intimately all of the evolutions and successive ramifications in this field—technical and commercial, manufacturing and broadcasting. Prior to 1948, Westinghouse Broadcasting Co. owned and operated five radio stations which still continue in its ownership. In that year, however, it built its first television station, WBZ-TV in Boston, which remained its only television operation until 1953. In the course of the research and study that formed the basis of the establishment and construction of WBZ-TV, and later the experience gained in the operation of this station, Westinghouse Broadcasting Co. amassed a vast amount of additional research and statistics. In addition, its personnel worked closely with the staff of the Federal Communications Commission and other interested elements of the industry in the various developments of the allocation system which were finally set forth in the sixth report and order.

During the period from June 1953 to January 1955, Westinghouse invested almost $25 million in the acquisition of 3 additional television stations. This investment was, of course, in addition to the original cost of establishing WBZ-TV and the very substantial sum later invested, or about to be invested, in the acquisition, installation, and improvement of capital plant and facilities in all four of these locations. This latter sum totals over $6 million.

The philosophy pursued in the operation of our various stations can be best summarized this way: The constant and compelling goal of all our efforts is the highest degree of service we can render to the public of the communities in which we are licensed. In order to do this effectively, we believe we must become an integral, stable, and interested part of these communities, genuinely contributing to their forward progress, to their betterment, and to the solution of their many problems. Beyond this, in order to be thoroughly effective in these efforts, we must have a form or a character in the minds of our viewers and listeners, and when we have achieved that point of being afforded the respect and confidence of our public, then alone will our labors be considered successful.

We are commercial broadcasters and part of a publicly owned corporation, and we therefore properly seek profits that are commensurate with the character of our business and our substantial investments.

I want to take just a moment to tell the committee about our public service activities and to perhaps lend meaning to some of these high-sounding credos I mentioned above. The public-service effort consists of basically three elements.

The first element is the day-by-day cooperation with charitable, educational, religious and other allied organizations and the direct furtherance of their causes by the announcement of prepared messages on our air. In the period from January 1, 1955, to May 31, 1956, these announcements reached the amazing volume of 93,013. This was in addition to other supporting efforts such as interviews, telethons, and so forth, also aimed primarily at public solicitation of funds.

The second element has been a series of projects which have been approached on a group basis; that is, a program or series of programs created by a single production team and in turn utilized on all of our radio and television stations. It has been our conviction that a high quality of work can be accomplished by this method. This is coordinated by a staff of personnel operating at the corporate level, all of whom have had rich backgrounds and experiences in every phase of broadcasting.

One of the primary responsibilities of this staff is to maintain a close feel of the pulse of each of the six markets in which we operate and of the nine individual stations. This day-by-day experience, when coupled with their knowledge of broadcasting happenings and activities in other markets of the country, permits them to function as advisers and counsellors to the individual station managers who are otherwise autonomous. We have found substantial success in this regard both in the public service and commercial field.

During 1955 and 1956 the following constituted our group public service efforts:

Sing Along for Mental Health.—(Radio series.) A project in which we worked cooperatively with the Mental Health Institute and other authorities. The campaign consisted of the production and use of sprightly jingles promoting interest in mental health which were performed by top flight artists. The series won an award "for outstanding service against mental illness" given WBC, Inc., by the National Association for Mental Health.

Of Many Things.—(Radio series.) A program series produced by WBC, Inc., which gives Dr. Bergen Evans, familiar to most Americans as the erudite moderator of the network program Down You Go, a full sounding board for wit and ideas. The programs are in the form of spoken essays and make an important contribution to the cultural stature of radio.

Growing Pains.—(Radio series.) A series of programs conceived and produced by WBC, Inc., with Helen Parkhurst, the world famous educator and child psychologist, founder of the widely known Dalton plan. The program features Miss Parkhurst in intimate interviews with teenagers. The purpose of the program is not to prove anything shocking but, rather, simply to present the teenager's outlook on life and the problems that confront him through the skillful questioning of Miss Parkhurst. The series is currently being presented over three educational stations and WNYC in addition to its weekly presentation on WBC, Inc., stations.

The White House Conference.—(Radio–TV.) 1. Stations covered the local State conferences prior to the actual White House Conference.

2. WBC produced The Big R, four television documentaries pointing up and discussing the agenda problems of the White House Conference, with Raymond Massey as narrator. For radio, a 45-minute documentary on educational problems was produced with Dave Garroway as narrator.

3. WBC sent a five-man TV and radio crew to Washington to cover the conference as follows:

Interviews with delegates and conference officials.

Fifteen minute on-the-spot news reports each evening.

Ninety-second beep summaries for use in news shows.

Following the issuance of the conference report to President Eisenhower, WBC instituted a heavy spot announcement campaign on both radio and TV pointing up to the American public the findings of the conference.

4. Presentation of sets of The Big R television films were made to the National Education Association and the National Citizens Council for Better Schools for varied public service uses to which both organizations might put them. The program series won an honorable mention citation from Ohio State University and has been highly commended by the conference officials, the National Education Association, the Citizens Council for Public Schools and the United States Office of Education.

Coverage of New York Conference of National Citizens Committee for Better Public Schools.—During a 2-day conference at the Waldorf in New York City in February, WBC sent in a special crew and gave the conference coverage similar to that given the White House conference.

Coverage of Atlantic City Convention of the American Association of School Administrators.—Radio coverage of this event by a special team involved recorded interviews with delegates, evening news reports to our stations by phone and a 30-minute panel discussion on educational topics conducted by Hon. Samuel M. Brownell, United States Commissioner of Education, together with preeminent educators from each of WBC, Inc., station areas.

Currently, arrangements are in process for WBC, Inc., coverage of the forthcoming NEA conference at Portland, Oreg., in early July. A 30-minute panel discussion for WBC, Inc., is planned on the subject Manpower and Education which will be moderated by Dr. William G. Carr, executive secretary of NEA, and will include a number of prominent educators. News broadcasts and taped interviews with delegates will also be featured.

The third element of our public service effort consists of an aggressive approach to the problem strictly on the local level. In 1956 this is a four-pronged effort covering chiefly the following:

(*a*) The critical need in America for scientists and engineers.

(*b*) The enhancement of the prestige and position of the American teacher.

(*c*) A higher public enlightenment in the field of American history.

(*d*) A continuation of the drive for mental health.

(*e*) A purely local project varying from market to market which represents an item of great public need, a serious local condition, a community campaign or effort or similar situations.

As an indication of what has been done in the last subdivision of this category, the following are a few particulars:

KYW-TV, Cleveland, produced 11 episodes of 30 minutes each entitled "Juvenile Justice," a series concerned with the serious problem of juvenile delinquency and broadcast in conjunction with the Cleveland Police Department.

KYW, Cleveland, a series entitled "Tower 1-4600," constituting a weekly report to the city of Cleveland by Mayor Celebreze and his staff.

KDKA-TV, Pittsburgh, a project series designed to create public awareness of slum conditions and to stimulate interest in rehabilitating depressed areas.

KDKA, Pittsburgh, 2 weekly series, 1 entitled "Allegheny Round Table" which is a discussion of local community issues, 30 minutes in length, plus School Science Experts, conducted in conjunction with the University of Pittsburgh, Carnegie Institute, and Buhl Planetarium. In addition, the staff of the radio station is working jointly with the television station in the slum rehabilitation project.

KPIX, San Francisco, a series of programs intended to explore and inform the public on the entire problem of rapid transit in the bay area.

WOWO, Fort Wayne, an effort to bring about the establishment of a municipal art center, which to date the city has not had or enjoyed and for which it is felt there is a genuine need.

KEX, Portland, the focusing of attention on the facts, circumstances, and possible solution of the traffic problem that is plaguing Portland as it is other metropolitan areas.

WBZ-TV, Boston, a film documentary on a legislative plan submitted to the legislature by the chamber of commerce for the improvement of Greater Boston.

WBZ, Boston, this consists of two parts: The first is a series of documentaries on pressing Boston problems including parking and traffic, taxation and schools, and the second constitutes a get-out-the-vote campaign.

We have been privileged to win numerous awards in recognition of this effort and take substantial pride in these accomplishments but are convinced that the dynamic character of television lends good justification to our further belief that we have just begun to scratch the surface in this regard. Our efforts and investment in the future will be doubled and redoubled.

It has been our viewpoint that the American television team consists of several players:

First, the advertisers who invest and make available income through network, national spot, and local channels which, in turn, permits commercial broadcasters to operate in a sound and profitable manner and to create public service programs.

Secondly, the networks, about which I will talk in greater detail below, and other programing sources such as film producers and syndicators and package program producers.

Thirdly, groups of well-established, well-managed stations through whose facilities the public has available not only the best of network programs but also equally effective local programing which establishes the station as an integral part of the community. These three forces operating in close and effective cooperation have achieved the present high level of television service to the American people.

From the original establishment of WBZ–TV in Boston in 1948, the station was affiliated with the National Broadcasting Co., which was also true of WPTZ in Philadelphia and now KYW–TV in Cleveland. KPIX in San Francisco has been affiliated with the Columbia Broadcasting System. An unusual situation exists in the case of KDKA–TV, since it operates as the only VHF station in Pittsburgh and has, therefore, adopted the policy of carrying programs from all networks, selecting those which best serve the public need and appetite. This is done without option or free hours and at a uniform rate of compensation. When another VHF station inaugurates service, it is anticipated that KDKA–TV will become affiliated with the NBC television network.

During the period of these various affiliations, a sound relationship has developed between ourselves and the networks. We have been increasingly impressed with the ingenuity, aggressiveness, and creativity of all three television networks. We believe the results of their effort have brought to the American public a new era of enlightenment, and that the true future of television in all of its programing senses and the service to the public rests in a large measure upon at least three genuinely competitive and national television network services.

Obviously, our affiliation agreements (except KDKA–TV) have been of the standard type, providing for option time periods to the network on the station affected. I have read with much interest earlier statements to this committee on the alleged illegality of option hours and also the response by various witnesses including the representatives of network. Although I have had the privilege to be admitted to the bar, I do not believe it would be in the interest of time for me to add my opinion to that expressed by eminent counsel who have thoroughly researched the legalities of option time. However, predicated on the assumption that this is legal under all of our existing laws, including those dealing with antitrust, my company believes that option hours are necessary for an effective network operation. Only through this method can programing be evolved and conceived which will attract national advertisers and their budgets. It is, therefore, our recommendation that no steps be taken to alter or change the concepts surrounding the permissibility of affiliated stations optioning time to the television networks.

Despite our extreme regard and consideration for television networks and the advantages that our stations and the public we serve have received from these networks, this relationship—like so many other relationships—has known periods and occasions of difference between ourselves and the networks. Generally speaking, these have been worked out broadly and amicably with due recognition to the rights of both parties concerned. It is our firm conviction that the success of such a relationship, and in turn its benefit to the public (our common purpose), must in all cases be mutual in order that the station and network can prosper, and in order to insure the broadest expansion and diversification of service.

Whenever one or the other imposes upon the second, there will automatically be a reduction in such service even though that might not be perceptible at that moment. While discussing option hours, I believe that one phase of this deserves consideration before this committee; this is the fact that the networks have programed into local time periods generally in excess of the option periods available to them. It is recognized that the average station has the right to decline to carry such programing. But in the desire to preserve the relationship and the spirit of the affiliation, by far the predominant number of affiliates agrees to carry such addditional programing that is in excess of the option hours.

It is our conclusion that despite the high quality and caliber of the programing going into these additional hours, it brings about a corresponding reduction of the local hours of programing available to the public, a curtailment of the productivity of the station, and hence the earning power of the station.

I believe that in time the stations and networks will succeed in working out this relationship and this will be done on a basis that will be properly cognizant of the problems and responsibilities of both, and hopefully without the need for Commission or other governmental intervention. Such hours, of course, and such maximums considered and agreed to would be exclusive of special and unusual activities of long-running duration—such as conventions, athletic events, public service programing and the like.

There has also been substantial contention that the existence of network option time has thwarted the development of other programing sources. I cannot agree with this position. It is my observation that in the course of the past 5 years, numerous film producers and film syndicators have come into business and have displayed substantial financial success in producing and distributing film to television stations. Further reference has been made, however, to the fact that the existence of option hours has placed beyond the reach of such film and program sources, the availability of "prime" periods.

I wish to urge upon the committee that while these periods represent peak viewing times, network programing has been of such an attractive character in these hours that the viewing audience and reception has been of a premium type. There are at least three opportunities through the NBC, CBS, and ABC networks for such film producers to distribute their product for exposure between 7:30 and 10:30. Furthermore, there is substantial additional opportunity to distribute their films on a local basis directly to the stations concerned. It is my observation, further, that the time periods from 7 to 7:30 p. m. and from 10:30 to 11 p. m. represent and contain many of the characteristics normally attached to the so-called prime periods.

I urge upon this committee that this entire condition is one of pure economics and competitive business factors. I am confident that can be solved and a proper balance achieved, depending on the success attained by each of these producing entities to capture the attention of the public. I certainly strongly recommend against any change in the form of modern-day television networking in order to solve this purported problem.

In further commenting upon the relationship of our stations with our respective affiliated networks, I believe and recommend to this committee that these relationships can be improved if a longer period of affiliation contract were made available to the individual stations, at their option. I would suggest this be of a 5-year duration. The existing 2-year affiliation has not been of sufficiently long duration to permit the individual stations to achieve the desired degree of security in their relationship with the network. This insecurity, I believe, often creates the need for the station operator to concentrate on short-term gains, recoupment of investment, and deferral of the decision to plow back into the business earnings that will enhance service to the public. In eliminating the risk that the affiliation would be lost in a relatively short time, the individual station operator will be more willing to develop sound programs of all types, commercial, public service, educational, and to reinvest additional earnings in a higher degree for public service with more reliance on their own station, local talent, and the sound development of local facilities.

The question concerning the ownership of stations by television networks has been raised by this committee. Our company does not profess to have any operating history or experience to report to the committee concerning this question, but it is our observation, and my personal conviction, that there is not only a foundation for such ownership but even a need. This is especially true when considered in light of the fact that it can be argued that the network will perform a better programing service if it has the benefit of the day-by-day information dealing with the problems attendant upon local station operation. These local stations should be sounding boards for the networks and an internal measure of the effectiveness of their efforts.

However, we have one reservation in this regard. We appreciate that as long as the broad principles of ownership advocated above are in force, it is impossible to control the locations or types of stations which the network should own or seek to own. However, it may be possible, and we urge accordingly, that in the course of a network acquiring or upgrading station properties, it be done in a manner that fully insulates and segregates these station operations from their national network functions. If this segregation could be accomplished in a practical fashion, then their position as a buyer would not be automatically enhanced or made preferential because of their ability to grant or withdraw or fail to renew an affiliation contract.

It is appreciated that the mechanics of working this out are extremely difficult and perhaps in some measure the end could be accomplished if our earlier recommendation concerning a 5-year optional affiliation period were made available to the stations.

The consideration to license and regulate networks is one which we feel we must also strongly urge this committee not to consider favorably. The television network business is a vastly complex and sensitive one and one that is predicated upon the ability to secure, properly coordinate, and direct highly skilled and creative talent and managerial personnel. It is in essence a personal service business and one that involves vast risk capital. The restrictive and atrophying effect of direct Government regulation might well be to offset this balance and destroy qualities of service that cannot be simply legislated into being but are built, developed and created over long periods of experience. These are the qualities, some tangible but many more intangible, that translate program concepts into images on the television tube and into the service of the people. In our opinion, these put television networks out of the category of public utilities or common carriers. Beyond this, the Federal Communications Commission has effective control of the networks through the rules governing stations, including those owned by the networks as well as those affiliated with these networks.

In the course of considering television station purchases and the investments described above, Westinghouse conducted a careful review, study, and analysis of existing broadcasting concepts, their effect upon television and all of the other elements bearing upon the industry, including the engineering and technical problems, the programing challenges, the available sources of programing, the commercial aspects of the market, and the educational and public service opportunities that could be rendered to the communities in which we were or hoped to be licensed. The decision to proceed with such investments was only made after such careful study and founded upon the firm conviction that the industry had developed in a basically sound manner and even though there were many areas yet to be pioneered and developed.

Further, it was considered that the industry, the attitude of the Commission and the regulations affecting television were sufficiently stabilized to warrant such an investment. One thing was certain and clear, however, that television, on each of the successive dates of our station acquisitions, was enjoying a dramatic and unprecedented growth and the public was being well served by the system as it was then being evolved and as it now exists in consequence of the sixth report and order.

It was to be expected on those occasions of acquisition to believe that stations which properly fitted into the system and which, in turn, were properly operated in the public interest, possessed elements of permanence of a degree sufficient to justify an investment of this magnitude. It is mandatory, therefore, in our opinion that any change in such a system as it presently exists must first be measured against the effect on the service to the public in the various communities involved. If, after such measurement, a better service cannot be clearly seen as the result of such a change, then said changes should not be undertaken or should be deferred until it can readily be determined that the service to the American people, and not to any group of station operators or other persons within and without the broadcasting industry, is being enhanced.

Realistically speaking, of course, any major changes in the allocation system are bound to have some concomitant disadvantages since the interests of our population have become directly related to and crystallized in our present system. In other words, the history of the evolution of television cannot be disregarded. However, the test must be the aggregate public good. The problems facing our industry are neither so simple that they can be solved by one stroke of the legislative pen nor so complex that they should be considered insoluble. There is no panacea, but patience, ingenuity, and long-range viewpoints can point out the most desirable course of action.

It is recognized now, as for several years past, that an important segment of the television broadcasting industry has been operating under the most adverse circumstances. Despite the phenomenal growth of this product, the UHF portion of our industry has not been able to keep pace with the remaining elements. Any discussion of further expansion in our television service must automatically involve a discussion of the UHF television facility, and if the expansion is to be a sound one, the UHF facility must favorably compare in its service to that service being rendered to the public by VHF. In the absence of this condition, the whole matter of allocation must remain either as it is presently constituted, or be limited to stopgap or interim measures and improvements.

Our company and its management are keenly aware of the investment necessary to institute or acquire a television service and, in turn, to maintain it, and regards with great seriousness the economic plight of UHF operators who have been unable to succeed in producing a return on their investments. However, despite this, we urge upon this committee the fact that this represents but a segment of our industry and is perhaps in some measure comparable to VHF operators in the late 1940's, before set circulation had achieved sufficient volume to entice advertisers.

The basic norm and measures of at least momentary success as I have repeatedly said above, is "how is the American public faring under our present system?" It has been my observation that the public at large has been the least vociferous, if at all complaining. The present system has brought a television service startlingly close to 100 percent of the population of America, substantially over 90 percent of all television homes having the power of selection between 2 signals and almost 90 percent having the opportunity to select among 3 or more. In the face of this and in the absence of any clear-cut and definite plan to broaden this service to the public, we must strongly recommend that the current practices of licensing VHF stations with full power potential in metropolitan areas be continued. It is basic, we believe, that any attempt to reduce or curtail such service areas, or service powers, of metropolitan stations and provide that the signal coverage of such stations be conformed to the retail trading areas of that community, will result in a shocking reduction in the service to major segments of the population, and particularly to those in the rural areas. There are numerous examples in this regard that could be suggested, and I would just like to touch upon one or two.

For instance, if the coverage of WBZ-TV, Boston, Mass., were so reduced, its signal would not be permitted to penetrate the Lowell area, the Lawrence area, the Worcester area the Brockton area—in fact, it would be essentially confined to the Boston metropolitan area. More than 3 million people would be denied the service from WBZ-TV on which they have relied since 1948. The rural and suburban areas between Lowell, Lawrence, and Worcester, and between Boston and Brockton would, presumably, under these proposals, be served by additional stations, but nothing is said about the ability of those areas to support a station. It is our considered opinion that these communities could not presently support a station, whether it was VHF or UHF.

The citizens (and those in any similar community in the United States) who would lose service under this proposal have a right to, and will demand, a freedom of choice among multiple program sources. Since Lowell and Lawrence have been assigned only one channel each, it is clear that additional programs to permit a freedom of choice (and a competitive broadcasting system) must come from outside areas. This service can only be furnished by the existing VHF channels located in cities large enough to support multiple program sources.

An additional situation is the case involving Bridgeport, Conn., which presently receives signals from 7 stations in New York and 1 in New Haven, in addition to the local signal in Bridgeport. If the decision were reached to curtail the power and/or height of the New York and New Haven stations, and in turn roll back the areas serviced by these metropolitan outlets to the general retail trading areas, the result on Bridgeport would be to reduce it from its present level of 9 signals to 1 or possibly 2. Similarly speaking, but perhaps of equal or even greater importance, would be the consequence that would follow in the form of deterioration of signal strength within the entire area between Bridgeport and New Haven to the east and Bridgeport and New York to the west. Such a devastating impact upon the people of these areas can only begin to be explained by an apparent gain or advantage that would presumably be captured by television operators within the city of Bridgeport. However, it is our considered judgment that the limited broadening of commercial opportunity, principally on the local level, would be so grossly disproportionate to the accompanying disservice that it would fall far short of being a rational justification.

As indicated above, it is virtually impossible to discuss the problem and question of allocation without automatically at the same moment becoming involved with the problems concerning and confronting UHF. Although this portion of the television spectrum offers far more in the form of ability to accommodate a greater number of channels and facilities, it presently has intrinsic limitation in the caliber and the quality of the service that it can render in comparison with the standard established VHF. Historically speaking, UHF started in many areas without a fair opportunity to develop and prosper because of the existence of well-established VHF signals and circulations. The entire fulcrum of success of all television services, and this applies with equal force to UHF and VHF, is the ability to broadcast to an established circulation. The diligent efforts of many broadcasters operating and owning UHF facilities in the past 4 years have proved fruitless because of an inability to convince the public of the need and desire to invest a nominal sum of money in the conversion of VHF receivers so as to receive one or more UHF signals. Even though a good degree of density and circulation has been secured in given areas, maladjustment of receivers and transmitters and unfavorable terrain have resulted in a quality of signal that has impaired the subsequent forward movement of these stations.

In all realism, national advertisers cannot be criticized for their unwillingness to utilize UHF in the broadest and fullest sense. This is compellingly true when existing VHF service is available since, by presently known standards, the ability of the VHF channel to cover a wider area and on an average superior signal is well recognized. An advertiser, therefore, seeking the greatest mileage from his advertising dollars understandably—yes, in fact, of necessity—has invested his advertising budgets on the VHF facility. This same factor has motivated the television networks to seek VHF affiliates in order that they might more completely fulfill their obligations to their client and sponsors and in turn the broadest possible number of people with the best possible signal with their commercial as well as their public service programing.

These factors have created conditions that have brought the development and research in UHF to a virtual standstill. This is applied to receivers as well as to transmitters, and hence, today, there appears to be a virtual stalemate in this tremendous portion of the television spectrum which in many respects offers the broadest scope and vista for the progress which the potential of this dynamic industry demands.

Therefore, any suggested solutions of this problem that resort to changing our existing service would appear to be premature and cannot be logically considered until a full and complete reevaluation of UHF is had. It is of little significance whether this be obtained by the "crash program" suggested by Chairman McConnaughey in a recent address, or by a means similar to that apparently suggested by elements of the manufacturing industry last October.

This last mentioned proposal closely parallels the organizational approach followed in the evolution of the NTSC color standards. This statement is based on the condition that the objective result be founded on an unprejudiced and scientific desire to process the art and realize the ultimate potential of the ultrahigh-frequency bands. Further, this must be done with expediency and dispatch so that those interested in UHF fundamentally (which constitutes in reality the entire broadcasting business and a major segment of the American public, as well as the manufacturing industries) can have an answer to this crucial problem soon.

As previously indicated, all elements of our company stand ready to assist in this. We are convinced that if the ultimate future of television broadcasting in America must bear a proper relation to the broad use of the UHF spectrum, this must be determined before any existing standards, allocations or other services established by the sixth order be disrupted. We are convinced that the ingenuity, resources and ability of modern American industry can tackle and solve this problem within a reasonable period.

In the meantime, it is urged that the present service be left intact. I do not urge this solely to preserve a status quo favorable to our company. I recognize the fact and am keenly aware the Westinghouse Broadcasting Co., has an investment of almost $32 million. However, we have been in the broadcasting business for over three decades and, subject to our conintued ability to serve the public in the highest possible manner, look forward to being in this industry for an indeflenite time in the future. Therefore, our concern is the ultimate good of broadcasting and, in turn, the capability of this industry to serve the American public. This determination of UHF would certainly appear to be the first order of consideration and business before any interim consideration of further use of the existing VHF channels. I have read with interest many of the suggestions made to this committee in this latter connection. I feel some of them do not represent the highest consideration of the public and are perhaps motivated and influenced more by individual and economic circumstances.

While the UHF research is being conducted and, in turn, the entire question of allocations is being reconsidered and determined, it certainly appears to be apropriate to use all available effort to accomplish two goals—an expansion of facilities in maximum number of markets in the first 100 of the country so that at least 3 comparable television facilities be available to insure the economic feasibility and growth of 3 major television networks and provide the public with a greater degree of choice in network programing. This would also generate competition between and among these networks and the further accomplishment of a third genuine national network service.

Secondly, every incentive be given for the public to purchase all-band channel receivers and in order to supply the stimulus and to urge manufacturers to make all-band receivers available to the public, that the excise tax now applied to television receivers be eliminated from all-band receivers and in effect equalize the cost between the UHF and VHF types. I gather that this recommendation is one that has been made by virtually all witnesses who have appeared but, despite this unanimity, I gather that securing such elimination of the excise tax is a more difficult goal to be accomplished than the urging of it.

It is our considered opinion, however, that such action would substantially raise the attractiveness of UHF broadcasting to those interested, first, in investing in the receiver and thereby bolster and enhance the circulation which in turn raises the attractiveness of UHF as a medium for investment by operators and advertisers.

One remaining subject about which I would like to voice opposition is that of toll television. I want to urge this committee and the Commission to deny any application which would provide for the establishment of such a practice. My reason for this recommendation is that when measured against our ultimate standard (the public good), it is our opinion that the American people will subtly and unsuspectingly be anesthetized into the payment of huge sums which, though individually nominal, have a colossal cumulative total. It is this latter fact which forms the basis of the projected success of toll television by the promoters who seek such a system.

We believe it is just as intrinsically impossible for free television and toll television to effectively coexist as it is for the conflicting ideologies of our great Nation to peacefully coexist with those of the Soviet Union. Furthermore, once permitted to be "tested," which its advocates are strongly urging as an initial head-in-a-tent maneuver, the resulting change in position will be so radical and incisive that mere regulation or legislation thereafter will be unable to recapture the lost service to the public.

Again, let me express the appreciation of our company for this chance to make known our views and to voice our hope that they may be of some assistance to you. They have been offered after considerable thought and deliberation with utmost conviction and sincerity, contemplating only a higher and better form of broadcasting for the American people.

Mr. McGannon. Mr. Chairman, with me today is Joseph Baudino, our vice president, Mr. John Steen, legal counsel, and Ralph Harmon, vice president in charge of engineering.

The Westinghouse Broadcasting Co. owns and operates television stations WBZ-TV, Boston, KYW-TV, Cleveland, and KDKA-TV, Pittsburgh, and a sister corporation entitled Westinghouse Broadcasting Co., Inc., California, is the owner and operator of television station KPIX, San Francisco. Both of these companies are wholly owned subsidiaries of the Westinghouse Electric Corp., the founder of commercial radio broadcasting at station KDKA in Pittsburgh on November 2, 1920.

Working directly with the electric corporation, we have been engaged in the development of television since 1926, following carefully and intimately all of the evolutions and successive ramifications in this field—technical and commercial, manufacturing and broadcasting.

Prior to 1948, Westinghouse Broadcasting Co. owned and operated five radio stations which still continue in its ownership. In that year, however, it built its first television station, WBZ–TV in Boston, which remained its only television operation until 1953.

In the course of the research and study that formed the basis of the establishment and construction of WBZ–TV, and later the experience gained in the operation of this station, Westinghouse Broadcasting Co. amassed a vast amount of additional research and statistics. In addition, its personnel worked closely with the staff of the Federal Communications Commission and other interested elements of the industry in the various developments of the allocation system which were finally set forth in the sixth report and order.

During the period from June 1953 to January 1955, Westinghouse invested almost $25 million in the acquisition of three additional television stations. This investment was, of course, in addition to the original cost of establishing WBZ–TV and the very substantial sum later invested, or about to be invested, in the acquisition, installation and improvement of capital plant and facilities in all four of these locations. This latter sum totals over $6 million.

The philosophy pursued in the operation of our various stations can be best summarized this way: The constant and compelling goal of all our efforts is the highest degree of service we can render to the public of the communities in which we are licensed.

In order to do this effectively, we believe we must become an integral, stable, and interested part of these communities, genuinely contributing to their forward progress, to their betterment, and to the solution of their various problems. Beyond this, in order to be thoroughly effective in these efforts, we must have a form or a character in the minds of our viewers and listeners, and when we have achieved that point of being afforded the respect and confidence of our public, then alone will our efforts be considered successful. We are commercial broadcasters and part of a publicly owned corporation, and we therefore properly seek profits that are commensurate with the character of our business and our substantial investments.

I would like just a moment to tell the committee about our public-service activities and to perhaps lend meaning to some of these high-sounding credos I have mentioned above. The public-service effort consists of basically three elements.

The first element is the day-by-day cooperation with charitable, educational, religious and other allied organizations and the direct furtherance of their causes by the announcement of prepared messages on our air. To give an idea of the magnitude of this effort, our stations from January 1, 1955, until May 1, 1956, broadcast 93,013 announcements, plus numerous other programs, interviews, telethons and other efforts in support of these various organizations.

The second element has been a series of projects approached on a group basis, that is a program or series of programs created by a single production team and in turn utilized on all of our radio and television stations. During 1955 these have consisted of a series on radio called Sing Along for Mental Health, for which we received an award for outstanding service against mental illness, given to WBC by the National Association of Mental Health; a second radio series called Of Many Things, a program conducted by Dr. Bergen Evans, which are in the form of spoken essays and make an important contribution to the cultural stature of radio; a third series called Growing Pains, also a radio series, in which Miss Helen Parkhurst discusses with children their attitudes and viewpoints and ideas on what they believe to be their problems and comparisons made as to what we consider to be a major illness today, or major problem in our country, that of juvenile delinquency.

A very major effort has been the White House Conference on Education, on both radio and television. Insofar as the television aspect is concerned a series of half-hour documentary programs were had during double A time, prime periods, with the resulting effect of preempting network shows. These were called the four Big R series, discussing the agenda problems of the White House Conference. We sent a team to Washington, conducting interviews at the time of the conference, with 15 minutes on-spot news reports each evening during the time the conference was in progress, and ninety-second beep summaries for use in news shows. This was finally concluded, when the report was recently issued, by WBC commencing another effort in order to make known the results of the report of the White House Conference.

The third element of this public-service effort is the aggressive approach to the problem strictly on a local level. In 1956 this consists of these elements:

(*a*) The critical need in America for scientists and engineers.

(*b*) The enhancement of the prestige and position of the American teacher.

(*c*) A higher public enlightenment in the field of American history.

(*d*) A continuation of the drive for mental health.

(*e*) A purely local project varying from market to market which represents an item of great public need, a serious local condition, a community campaign or effort or similar situation, concerning whatever their individual circumstances or situations might dictate. For example, in Cleveland the television station has produced 11 episodes of 30 minutes each entitled "Juvenile Justice," a series concerned with the serious problem of juvenile delinquency and broadcast in conjunction with the Cleveland Police Department. KYW, Cleveland, has a radio series entitled "Tower 1–4600", constituting a weekly report to the city of Cleveland by Mayor Celebreze and his staff, and similarly so KDKA in Pittsburgh and our other radio properties as well.

We have been privileged to win numerous awards in recognition of this effort and take substantial pride in these accomplishments but are convinced that the dynamic character of television lends good justification to our further belief that we have just begun to scratch the surface in this regard. Our efforts and investment in the future will be doubled and redoubled in this area.

Generally speaking, it has been our viewpoint that the American television team consists of several players. First, the advertisers who invest and make available income through network, national spot, and local channels which, in turn, permits commercial broadcasters to operate in a sound and profitable manner and to create public-service programs in the fulfillment of their responsibility. Secondly, the networks, about which I will talk in greater detail below, and other programing sources such as film producers and syndicators and package-program producers. Thirdly, groups of well-established, well-managed stations through whose facilities the public has available not only the best of network programs but also equally effective local programing which establishes the station as an integral part of the community. These three forces, we believe, operating in close and effective cooperation over the past 6 or 7 years have achieved the phenomenally high level of television service to the American people.

From the original establishment of WBZ-TV in Boston in 1948, the station was affiliated with the National Broadcasting Co., which was also true of WPTZ in Philadelphia and now KYW-TV in Cleveland. KPIX in San Francisco has been affiliated with the Columbia Broadcasting System. An unusual situation exists in the case of KDKA-TV, which, since it operates as the only VHF station in Pittsburgh, and has, therefore, adopted the policy of carrying programs from all networks, selecting those which best serve the public need and appetite. This is done without option or free hours and at a uniform rate of compensation. When another VHF station inaugurates service, it is anticapated that KDKA-TV will become affiliated with the NBC television network.

Senator PASTORE. Elaborate on that a little bit. What do you mean: "This has been done without option or free hours." How has it?

Mr. McGANNON. It has been done in this manner: As offerings are made by the network they are selected by the station management and taken on 2-week cancellation basis, and continued on that basis. We have no formal or standard affiliation agreement. This is done in the same manner with all three networks, Columbia, National Broadcasting Co., and ABC.

Senator PASTORE. The relationship there has been good and pleasant?

Mr. McGANNON. Yes, it has. Obviously there are great areas of stress because of the limitation of time available, and you not only get involved with the stress from the viewpoint of the desire—legitimate desire—of the network to clear programs, but the advertisers as well who are anxious to have exposure in a market like Pittsburgh, which is about the sixth market in the country. But there have been good relationships.

Senator PASTORE. You say this is done on a 2-week arrangement?

Mr. McGANNON. Yes.

Senator PASTORE. What position does that place the network in dealing with the advertiser?

Mr. McGANNON. That situation is a confused one, in general. The circumstances are such that they cannot clear any more than one-third of the time, or 40 percent of the time, depending on the volume of offerings, and therefore it has represented a constant source of trouble to all networks. They have managed to cover some of this in the case of use of WENS, which is a UHF station operating in town, and also by exhibiting their programs on a Johnstown station and on the Steubenville station.

Senator PASTORE. Are you willing to admit, then, that if this were prevalent as a general rule, the networks would be in a sort of awkward position in dealing with advertisers?

Mr. McGANNON. Oh, very, very much so. I will cover that in a moment.

Senator BRICKER. It only comes about from the fact that you have the only VHF station in Pittsburgh?

Mr. McGANNON. That is right.

Mr. Cox. Is it reasonably accurate to say that in recent weeks you have been carrying programs on approximately this ratio: That of the 42 half hours of evening option time between 7:30 and 10:30 that you carry about 17 half hours of NBC programs, 7 half hours of CBS programs, no half hours of ABC programs, and 18 half hours of nonnetwork programs?

Mr. McGANNON. I cannot vouch for the exact accuracy, but if that is taken from our submission, that is correct.

Mr. Cox. No. This is based on a Telepulse report for the week——

Mr. McGANNON. It certainly is approximately correct, Mr. Cox.

Mr. Cox. In other words, then, in evening option hours NBC to CBS is a ratio of about 2 to 1, or a little better, and ABC has no clearances in that period, and you are clearing for local or syndicated film programs for a number of hours that actually exceeds your clearance for NBC?

Mr. McGANNON. Yes; that is correct.

Mr. Cox. And you clear for these independent and local programs because you consider them superior programing for the people of the community, even over the offerings of all three networks?

Mr. McGANNON. Yes. In light of the fact that we have such a basic limitation of local hours due to only one facility in town. So we think it is important to have in prime time, since there are no other facilities available, an opportunity to have some local programs aired for local advertisers as well as for local programing purposes.

Mr. Cox. Now do you think that the film programs that you present in that prime period are high quality programing, in terms of entertainment and other values, which are in the interest of the public in Pittsburgh?

Mr. McGANNON. In general I do, yes.

Mr. Cox. Now, do you think that the producers of these programs might have some difficulty in getting access for those programs in other areas of 3 or 4 stations where the stations in the market are subject to option time for the period 7:30 to 10:30?

Mr. McGANNON. Insofar as live clearance on a local basis in the individual option hours? Yes, obviously; the time is optioned to the network.

Mr. Cox. Boston is at the present time a two-station market?

Mr. McGANNON. That is correct.

Mr. Cox. NBC has an option with respect to that station?

Mr. McGANNON. Yes, they do.

Mr. Cox. What percentage of your nighttime hours in Boston are cleared for NBC?

Mr. McGANNON. Of the option hours I would say all.

Mr. Cox. All of the evening option hours?

Mr. McGANNON. With the exception of baseball, which we are carrying this summer.

Mr. Cox. Do you have a secondary relationship in Boston with ABC?

Mr. McGANNON. Yes; we do, but we are on a second-relation basis, because all ABC programs in Boston have a first refusal basis with WNAC, which is the CBS outlet in town.

Mr. Cox. So that both of the stations there carry some ABC programing?

Mr. McGANNON. Yes; we do. We just cleared the other day a program which I believe is called Screen Directors Playhouse sponsored by Eastman-Kodak, which was in lieu of an NBC offering because we felt we should give further opportunity for ABC to clear programs on our station, and they couldn't clear on WNAC. This was also true of Pittsburgh.

Mr. Cox. Generally speaking these clearances that you provide for ABC would be on a delayed basis, then?

Mr. McGANNON. In Boston, you mean?

Mr. Cox. Yes.

Mr. McGANNON. In some instances, yes; but we try to make as many live as we are able to do.

Mr. Cox. Now if you are clearing substantially all of the NBC offerings and if Boston is, I assume—are you a must-buy on NBC?

Mr. McGANNON. Yes; we are.

Mr. Cox. So that all advertisers then order Boston and therefore, to the extent that NBC provides a full evening schedule, your evening hours from 7:30 to 10:30 would be programed from the network source?

Mr. McGANNON. From a network source; yes.

Mr. Cox. Normally from NBC, unless you reject an NBC program in favor of ABC.

Mr. McGANNON. That is correct.

Mr. Cox. You mentioned one instance where you did that.

Mr. McGANNON. Just recently, that is one which comes to mind as I sit here and talk to you.

Mr. Cox. What is the situation in Boston of the producer of independent programs who wants to get into Boston as the fourth market, is it, in the country?

Mr. McGANNON. Fourth or fifth.

Mr. Cox. Or the fifth market—and who does not want to deal with the network? I assume quite obviously he doesn't get clearance on your station, or probably on the CBS outlet, in the hours 7:30 to 10:30

Mr. McGANNON. Yes; that is probably true. However, I want to urge upon this committee, and I intended to mention it in a later portion of my presentation, that there doesn't seem to have been sufficient emphasis lent to the value of the time period 7 to 7:30, 10:30 to 11.

Just yesterday I had a survey made by telephone which, in the case of Boston, indicates that the share of audience during the prime time periods runs about 60, whereas 7 to 7:30 it runs 30, and 10:30 to 11 runs 45. Even though this is a less share of audience in these two respective periods it is a very respectable share of audience and represents what we in the station operation consider very, very valuable time periods.

Mr. Cox. In terms of rates, do you have lower rates for these two periods adjacent to option time?

Mr. McGannon. In most cases; yes. In the case of Boston AA starts at 8 o'clock and runs to 10:30, Monday through Saturday, class A starts at 7:30 and runs until 8, and B starts before that time.

Mr. Cox. Now consider the programs that you are carrying in the period 7:30 to 10:30 in Pittsburgh, from independent sources which you feel deserve showing at that time, even though you have three networks to draw on. At what time in the day can these programs of that quality be offered in Boston?

Mr. McGannon. In the two time periods I have indicated; in other desirable time periods both during the daytime schedule and on the weekend schedule.

Mr. Cox. Even though they have what you regard as substantial and favorable audiences, they have below the peak audiences?

Mr. McGannon. Yes; they do.

Mr. Cox. All right.

Senator Pastore. Middle of the page. "During the period of these—"

Mr. McGannon. During the period of these various affiliations, a sound relationship has developed between ourselves and the networks. We have been increasingly impressed with the ingenuity, aggressiveness, and creativity of all three television networks. We believe the results of their effort have brought to the American public a new era of enlightenment, and that the true future of television in all of its programing senses and the service to the public rests in a large measure upon at least three genuinely competitive and national television network services.

Obviously, our affiliation agreements (except KDKA–TV) have been of the standard type, providing for option-time periods to the network on the station affected. I have read with much interest earlier statements to this committee on the alleged illegality of option hours and also the response by various witnesses, including the representatives of the networks. Although I have had the privilege to be admitted to the bar, I do not believe it would be in the interest of time for me to add my opinion to that expressed by eminent counsel who have thoroughly researched the legalities of option time.

However, predicated on the assumption that this is legal under all of our existing laws, Westinghouse believes that option hours are necessary for an effective network operation. Only through this method can programing be evolved and conceived which will attract national advertisers and their budgets. It is, therefore, our recommendation that no steps be taken to alter or change the concepts surrounding the permissibility of affiliated stations optioning time to the television networks.

While discussing option hours, I believe that one phase of this deserves consideration before this committee. This is the fact that the networks have programed into local time periods generally in excess of the option hours available to them. It is recognized that the average station has the right to decline to carry such programing. But, frankly, in the desire to preserve the relationship and the spirit of the affiliation, and this includes the WBC stations, by far the predominant number of affiliates agrees to carry such additional programing that is in excess of the option hours. It is our conclusion that despite the high quality and caliber of the programing going into these additional hours, it brings about a corresponding reduction of the local hours of programing available to the public, and a curtailment of the productivity of the station—and hence the earning power of the station. I believe that in time the stations and networks will succeed in working out this relationship and this will be done on a basis that will be properly recognized and cognizant of the problems and responsibilities of both, and hopefully without the need for Commission or other governmental intervention. Such hours, of course, and such maximums considered and agreed to would be exclusive of special and unusual activities of long-running duration—such as conventions, athletic events, public service programing and the like.

Mr. Cox. You indicate that these clearances are provided not because of the option but because of a desire to preserve the relationship with the network. That is, in other words, the networks indicate to their affiliates an urgent desire that they clear for these time periods just as fully as they clear for the time under option?

Mr. McGannon. Well, there is an order given for the station and obviously it is a selling-type process and they are endeavoring to get the clearance involved.

Mr. Cox. Now if you reject the order on the ground that it is not within the option, they nonetheless make much the same efforts to get you to accept this program as they would to get you to accept a program rejected in option time?

Mr. McGannon. Their station relations department have the function and responsibility of clearing as many as possible and hence urge upon us the clearance of this program even though it be in nonoption time; yes.

Mr. Cox. And they urge this upon you even though you explain to them that your feeling is that this time can be better used for local programing purposes in your market?

Mr. McGannon. Well, you get into an area here, Mr. Cox, which you might call a "never-never land, and that is the understandable potential difference of opinion as to what constitutes the best service. And I am not saying in every instance of an offering, in every instance of a refusal this comes up as an item of discussion, but it is assumed this is what motivates us and what motivates them to try to clear it—not only for the future of the network, but also their belief that this is good programing.

Mr. Cox. I assume if they can program in these hours this is additional revenue for the networks. On the other hand, if you program them locally, this results in a greater return to you because you do not have to share with the network the time charges for that period?

Mr. McGannon. That is true. It cannot be said just that quickly, though, because we must program this time period in addition.

Mr. Cox. You have expenses?

Mr. McGannon. You have this expense attendant upon it. So it is not the difference between the net amount received from the network—after the free hours being interpolated into the percent, which I think would come to 22-plus percent—but in reality would be something higher than that, probably well over 50 percent.

Senator Pastore. Well, does it ever get to the level of squeezing one another's arm? That is the thing we are concerned with here.

Is the relationship such as you encounter in any business transaction, where there is always the sword over your head that unless you do it our way it looks like a reprisal later on and no renewal of the contract.

Mr. McGANNON. I do not want to create the impression that there are improper tactics used by the networks. They use every legitimate means known, including calling our staff in New York and myself and endeavoring to do all of these things to advance their proposition. Obviously they depend upon this clearance and we recognize this. But we are motivated, in turn, by what we think is best for the operation that we are trying to conduct. And we do it in the best way we know how. So I do not wish to create this impression.

Senator PASTORE. All right, sir.

Mr. McGANNON. There has been a substantial contention that the existence of network option time has thwarted the development of other programing sources. I think we have touched upon this in answer to Mr. Cox' question. If I may pass on.

In further commenting upon the relationship of our stations with our respective affiliated networks, I believe and recommend to this committee that these relationships can be improved if a longer period of affiliation contract were made available to the individual stations, at their option. I would suggest this be of a 5-year duration—and in addition to that and not contained within the prepared brief would be consideration to a lengthening of a license period—both of which would add substantially to the ability of the stations to have an element of greater security than they presently have insofar as both of these factors are concerned.

Mr. COX. Excuse me, would you suggest, in that connection, any changes in the terms of the affiliation contracts as to rights of cancellation? That is, are your affiliation arrangements subject to cancellation at the option of the network?

Mr. McGANNON. No, they are not.

Mr. COX. They are not?

Mr. McGANNON. Well, I should qualify this. In the case of the CBS affiliation it is cancellable on a year's notice; in the case of NBC affiliation, which only applies in the case of Boston and Cleveland, they are firm contracts for 2 years.

Senator PASTORE. Mr. McGannon, you are not the first one that has stressed this 5-year term. Has this proposition ever been put to the networks?

Mr. McGANNON. This has been discussed in an oblique way with the networks. We did not consider this is the area we should take the problem to, since obviously, as I understand the situation, there is a limitation on the length of affiliation to 2 years by the Commission rules.

Senator PASTORE. Is that the reason why it is made 2 years, do you think, or is it because they want the flexibility of moving within a community from one station to the other?

Mr. McGANNON. I don't know—

Senator PASTORE. I am trying to get attitudes. After all, you are not the first one who made this suggestion. It is not the first time anybody has thought of it.

Mr. McGANNON. You probably know, Senator, it was investigated, as I understand, in the chain broadcasting investigation, with the resulting 2-year affiiliation being determined. The existing 2-year affiliation has not been of sufficiently long duration to permit the individual stations to achieve the desired degree of security in their relationship with the network.

Mr. Cox. In that connection, Mr. McGannon—excuse me—what element of insecurity exists in this connection, since most affiliations are renewed at the end of the 2-year period?

Mr. McGannon. I guess Mr. Cox, it is always the uncertainty of whether it is most certainly going to be renewed.

Mr. Cox. That is, you have had an NBC affiliation in Boston ever since the station has been on the air?

Mr. McGannon. That is right.

Mr. Cox. A period of 8 years, is it?

Mr. McGannon. Yes.

Mr. Cox. But you feel that the station would be in a stronger position if it had a legal claim on that duration rather than simply an expectation that relations will continue to be friendly?

Mr. McGannon. I do not think this necessarily relates itself only to your rapport with the network. I think it is an attitude which the individual broadcasters could, and should, have if they had a longer period of affiliation; that is, the ability to look long-range on everything they do on their station. I believe many of them do. But it is a tremendous area of exposure to have even the remote possibility that your network affiliation will not be renewed, and you have raised your level of operation into a high-expense area where obviously, with a substantial reduction in income, your situation profitwise could change very very radically. It involves the investment of substantial amounts of money in capital plants and equipment, improvement of tower and transmitting facilities, improvmeent of local programs, which in turn is a very important segment of the broadcasting day when related to audience flow—in that you can give to network programs, and capture the audience flow out by networks into the local periods. It is a mutuality that I think is important. I think the whole matter could be meshed, worked far better if you had this longer period of marriage assured to you rather than have a cancellation even as a remote thing.

Mr. Cox. You would agree, wouldn't you, that certainly a station's affiliation with one of the networks is one of its major assets and one of the strengths which it has in competition in the market?

Mr. McGannon. I agree completely.

Mr. Cox. And that the possibility of loss of this affiliation is not something that any broadcaster would continue with, or would regard with equanimity.

Mr. McGannon. I agree completely.

Senator Pastore. You certainly don't feel that way about your station in Pittsburgh, though?

Mr. McGannon. We do, Senator Pastore. We want to be an NBC affiliate in Pittsburgh ultimately. However, we have a very unique problem here. We are the only facility made available to the City of Pittsburgh at the present moment. Hence we have tried to twist and turn all these situations to bring about the best mix, or the best blending, of all sources available. We have a situation here where we have local advertisers who have no other place to go in television; they certainly cannot go to Johnstown or any of the other fringe stations. In consequence of this we have got to make time available to them. We try to carry a substantial amount of network program during the day, though, because all——

Senator PASTORE. You will admit that the Pittsburgh situation is a little unusual.

Mr. McGANNON. Oh, tremendously so.

Senator PASTORE. All right, sir.

Mr. McGANNON. The question concerning the ownership of stations by television networks has been raised by this committee. Our company does not profess to have any operating history or experience to report to the committee concerning this question, but it is our observation, and my personal conviction, that there is not only a foundation for such ownership but even a need. This is especially true when considered in light of the fact that it can be argued effectively that the network will perform a better programing service if it has the benefit of the day-by-day information dealing with the problems attendant upon local station operation. These local stations should be the sounding boards for the networks and an internal measure of the effectiveness of their efforts.

However, we have one reservation. We appreciate that as long as the broad principles of ownership advocated above are in force, it is impossible to control the locations or types of stations which the network should own or seek to own. However, it may be possible, and we urge accordingly, that in the course of a network acquiring or upgrading station properties, it be done in a manner that fully insulates and segregates these station operations from their national network functions. If this segregation can be accomplished in a practical fashion then their position as a buyer would not be automatically enhanced or made preferential because of their ability to grant or withdraw or fail to renew an affiliation contract. It is appreciated that the mechanics of working this out are extremely difficult, and perhaps in some measure the end could be accomplished if our earlier recommendation concerning a 5-year optional affiliation period were made available to the stations.

Mr. Cox. Can you suggest how this can ever be accomplished? That is, in other words, no matter what measures are taken, the fact would remain that if a network is a prospective purchaser of a station, it is still the network, it is still the agency that can grant or withhold affiliations. How are you ever going to be able to put the network on the same basis as any other potential purchaser?

Mr. McGANNON. Mr. Cox, I recognize this as a problem for which I don't have a full or even partial answer. It occurs to me, though, that these are two distinct businesses. We are in a portion of this business. We own and operate stations. We are not in the network business. They are different businesses, by their very conduct and by their very substance.

It seems to me that there should be proper differentiation made between them, and difference made between them, so that when they go out to buy and operate stations they are operating in one sphere of their activity, and they operate their network in the second sphere. I think it is something that might deserve some consideration in time, and perhaps for this committee and the Commission and the industry to turn on this subject and see what can be done.

Mr. Cox. Now, you sold or exchanged a station in Pittsburgh for the NBC station in Cleveland?

Mr. McGANNON. In Philadelphia.

Mr. Cox. In Philadelphia and Cleveland.

Now, do you feel that in that transaction there was any lack of this solation? Do you feel that Westinghouse was placed at any disadantage because the agency with which it was dealing was also its twork in two other important markets?

M McGANNON. Well, not in relationship to the other markets, no. house had bought this station for $8.5 million in the summer represented a record price for a station, and before pure evaluated our network position and even secured from act that they would renew the affiliation which then had tely 6 months to run.

$8.5 million is a great deal of money and the earning e station—which had been predicated upon a long period ore this could be recaptured or a fair return made on reduction in this revenue would obviously cause estment, and this is not said in derogation to the but it simply was not of either the dollar volume as NBC or CBS then, or even possibly now. greed to the transfer, because the alternative an or independent outlet in Philadelphia. We in fullment of our responsibilities as officers of a ompany, that we could afford to do this. It didn't bear t relationship to our stations.

hat is, in other words, NBC in the exercise of its power withhold affiliation in the Philadelphia market had inat it desired to own a station in Philadelphia. It wished to ase yours if you could come to terms with them. If not, they ated that they would acquire one of the other stations and would withdraw the NBC affiliation from your station; and would n, of course, furnish all of their network programs to the other ation they had purchased. And that this would be the way in which you would end up in Philadelphia as the ABC rather than the NBC affiliate?

Mr. McGANNON. That is correct.

Mr. Cox. Now, in other words, in dealing with you—in seeking to find whether you desired to sell and whether you were willing to sell on any proposed terms—NBC was the only agency which could thus affect your determination to sell, because it was the only agency, the only potential purchaser, who had the power of withdrawing this affiliation?

Mr. McGANNON. That is correct.

Mr. Cox. And because of this, and because of the result that you thought this would have upon the earnings, and therefore the value, of your Philadelphia property, you were willing to sell to NBC—involving the acquisition of its station in Cleveland—whereas, if there were another offer for the exchange of a station in Cleveland for your station in Philadelphia, with the amount of cash that was transferred, would you not have been interested?

Mr. McGANNON. No. We like the Cleveland market, think it is a great market. We are having, I think, some success there. If the matter had not come up, I think we would still be operating WPTZ in Philadelphia.

Mr. Cox. Philadelphia is a larger and more lucrative market?

Mr. McGannon. Yes; it is. It represented our top market insofar as ranking of stations in the country are concerned.

Mr. Cox. Isn't it true, with your acquisition of the station in Philadelphia, that for tax purposes you broke down the price and yo assigned a valuation to the NBC affiliation——

Mr. McGannon. And in turn to national, spot and local contrac which we used to call the adjacency value of the affiliation; yes.

Mr. Cox. What was that figure?

Mr. McGannon. $5 million.

Mr. Cox. This represented $5 million that you were

Mr. McGannon. $5 million is a round figure, I think it 000 something.

Mr. Cox. That is, of the 8 or 8.5 million you were estimated that you were willing to pay approximate that because of the value represented by this pr and above its physical assets, because of the NB

Mr. McGannon. Yes.

Mr. Cox. That was an affiliation which had then, contract, only 6 months to run?

Mr. McGannon. Approximately, yes.

Mr. Cox. And you had assurance from NBC that newed?

Mr. McGannon. That is correct.

Mr. Cox. Was it renewed?

Mr. McGannon. It was renewed.

Mr. Cox. How long after that renewal was the transfer

Mr. McGannon. Well, the actual transfer only occurred in J of this year, January 2, 1956. The contract entering in rangement was signed on, I believe, May 16, 1955. The tiations go back to September 1954.

Mr. Cox. When was the date of the renewal of your

Mr. McGannon. December 30—January 1, 1954. about 9 months after the beginning of the renewed p

Mr. Cox. Now, what was the status of your affilia your other two markets? What time did they then

Mr. McGannon. As I indicated KDKA televisio initial purchase—or at the time of the initial appro didn't own; and since that time we have not had a ment with any network. In the case of Boston I d has run in its normal courses.

Mr. Cox. Were you negotiating for the purchase of at this time?

Mr. McGannon. Shortly afterwards.

Mr. Cox. At the time of the negotiation with NBC?

Mr. McGannon. Shortly after September of 1954.

Mr. Cox. Were you discussing with NBC whether you would be able to continue—was the station in Pittsburgh—was KDKA then an NBC affiliate?

Mr. McGannon. Not primarily. The same arrangement was conducted by the former owners as we are conducting.

Mr. Cox. Did you have any discussions about the continuation of that, or about the station's ultimately becoming an NBC affiliate?

Mr. McGannon. I should say in this regard that this transaction was conducted by others than myself. I was not an officer or director of the company at the time. Much of this went on before I became a party. They were discussing with NBC, and subsequently a letter was secured from NBC, which indicated that we in turn would secure an NBC affiliate when, as and if another VHF service was instituted in Pittsburgh, and become a basic affiliate, with all of the other ramifications of a basic affiliation with NBC.

Mr. Cox. That was furnished you as a part of the negotiations for the sale of the Philadelphia station, or at least concurrently with it.

Mr. McGannon. I cannot say that, and I don't know that to be the

Mr. Cox. It was concurrent with those negotiations?

Mr. McGannon. The negotiations extend over a very broad period of time. As I indicated they started in September of 1954 and the contract was not concluded until the middle of May 1956. So, yes, it occurred during that same period.

Mr. Cox. 1955 you mean?

Mr. McGannon. 1955, yes, May of 1955. So you have a 9- or 10-month period, and lopped in the middle of that was this entire purchase of KDKA-TV by Westinghouse.

Mr. Cox. Thank you.

Senator Pastore. The question has also been raised, and I ask you now if you want to comment on it: Is it, in your opinion, in the public interest for a network to be owning broadcasting stations?

Mr. McGannon. I do consider it in the public interest that they own broadcasting stations.

Senator Pastore. Why?

Mr. McGannon. I can't argue as effectively as the networks can, having a minute experience from having been associated with Du Mont network, but I question whether the average businessman would undertake the financial risk involved in running a network unless he had some supporting means of income; namely, stations. Because the dollar volume they turn over for the relatively small percentage of return and the high-risk element involved I think would preclude this.

Secondly, I am a strong believer in the fact that these stations can be of tremendous value to the network insofar as having an interest and a stake and a participation in broadcasting as an entity, because they are operating stations in major markets and know all the problems of supplying programs to the public and serving the public, and do the public service efforts that their licenses require. I think there is substantial value to this. Beyond that, I approach it negatively and say and wonder why it isn't permissible for them to have it, and I can't think of any compelling reasons. And I merely have suggested one possible limitation in this particular regard, in the course of them acquiring or upgrading stations, as I have mentioned in my prior testimony.

Senator Pastore. All right, sir.

Mr. Cox. Could you tell us this one more thing, Mr. McGannon: What did you regard as the maximum radius of the coverage area of your Philadelphia station?

Mr. McGANNON. Mr. Harmon advises me it is between 60 and 70 miles.

Mr. Cox. My knowledge of eastern geography isn't too good. What is the distance between Philadelphia and New York?

Mr. McGANNON. I understand about 90 miles.

Mr. Cox. Then, assuming that the New York stations have a similar radius, there would be a substantial area of overlap between a station in New York and a station in Philadelphia; is that correct?

Mr. McGANNON. Yes, sir; it would.

Mr. Cox. The FCC has regulations which forbid the ownership of stations in adjacent markets where there is such overlap; is that true?

Mr. McGANNON. I understand there is such a rule, known as the duopoly rule. I understand, however, it has been interpreted to apply only to the overlap incident to the class A contour.

Mr. Cox. What would be the radius of your class A contour?

Mr. McGANNON. I am advised approximately 40 miles. And they either just touch, or slightly overlap, or just fail to touch.

Mr. Cox. So that the substantial area of actual overlap that you were referring to was in your gradeB coverage?

Mr. McGANNON. B contour area; yes.

Mr. Cox. Do you, generally speaking, in the operation of a television station, consider that your grade B coverage provides an adequate service and one which you sell to advertisers?

Mr. McGANNON. Very much so.

Senator PASTORE. All right, sir.

Mr. McGANNON. The consideration to license and regulate networks is one which we feel we must also strongly urge this committee not to consider favorably. The television network business is a vastly complex and sensitive one and one that is predicated upon the ability to secure, properly coordinate, and direct highly skilled and creative talent and managerial personnel. It is, in essence, a personal service business and one that involves vast risk capital. The restrictive and atrophying effect of direct Government regulation might well offset this balance and destroy qualities of service that cannot be simply legislated into being but are built, developed, and created over long periods of experience.

Senator BRICKER. Is there any difference in kind between the development of those programs and what you develop on your own in a local area?

Mr. McGANNON. In basic concept, no Senator Bricker; but in the degree and volume of investment and the availability of high-priced talent, in the ability of writers, comics, and the like, there is a tremendous difference.

Senator BRICKER. There is no interference with your programing on the part of the Government or the FCC because of their licensing power over your local station?

Mr. McGANNON. Only insofar as standards are set up.

Senator BRICKER. That is right. Why shouldn't the same standards be set up for the networks? Why shouldn't the same rule apply?

Mr. McGANNON. I think you deal in an entirely different sphere of things.

Senator BRICKER. Why, except in measure and degree?

Mr. McGANNON. Well, it is more than a question of degree. I think it is a higher level and type of programing. We can't as individual stations, embark upon programing efforts of other than, basically, the service, local program, news type. When we do, the expense far exceeds our ability to either sell it or sustain it. We have, for example, local live programing in every one of our markets. In Cleveland we instituted a local live program the day we took over, February 13, this year, which was the initial inauguration, and we have a program called The Morning Surprise. And it is a program not unlike the general format of Garroway and Today, with extreme local emphasis on what is going on in Cleveland. But this is not a program of great expense. We have one basic talent involved, we conduct interviews, we have a camera on the street, we do remotes from the airport and other places of local interest. And to go into any substantial amount of variety show type expense our entertainment value in this particular area, I think, would make this show prohibitive. When you go from this level of programing into even the, shall I say, lowest level of networking program, I think you involve vastly more in that regard and I really believe, even though perhaps there may be a limitation in my argument to pursuade you, that this would have a substantially curtailing effect upon the ability of the network to render the degree of programing service they are rendering today.

Senator BRICKER. Because of the cost?

Mr. McGANNON. Because of the cost, because of the spirit of the thing.

Senator BRICKER. That cost is overcome by them through their broadcasting stations; is it not?

Mr. McGANNON. No. The cost is overcome primarily through the revenue received from the sale to advertisers.

Senator BRICKER. Do you think that the networks, then, ought to be permitted to cover any loss if there should be a loss, or supplement their profits if there should be a profit, through the broadcasting business directly in competition with those who might be affiliates or those who might be broadcasting on a local level?

Mr. McGANNON. Through the ownership of stations?

Senator BRICKER. Yes.

Mr. McGANNON. Yes; I do.

Senator BRICKER. You do?

Mr. McGANNON. Yes.

Senator BRICKER. In other words, you just approve of the programing as it is, you are willing to go along with it?

Mr. McGANNON. I am willing to go along with it with certain reservations I have pointed out to you, and the belief that this is still comparatively a young industry, there is much yet to be developed and turned over and improved upon, both in terms of relationship and quality——

Senator BRICKER. If there comes an irreconcilable conflict between you in your programing of your local station and that which is required by the network, there is only one result—and that is withdrawal of the network service, isn't there?

Mr. McGANNON. As an affiliation contract, you mean?

Senator BRICKER. Yes.

Mr. McGANNON. Well, I have never known of a case like that that has developed to that point.

Senator BRICKER. It could happen.

Mr. McGANNON. With one single instance resulting in the loss of affiliation. I have heard—I have had no personal experience—of situations of a long history, over a long period of time, of nonclearance and noncooperation, and as a result, I am told, it resulted in loss of affiliation. It could happen.

Senator BRICKER. The public interest could not be served unless there was some way to resolve that irreconcilable conflict, the difference of opinion.

Mr. McGANNON. Perhaps not. I am convinced this is entirely a mutual relationship, the more mutual it is the more satisfactory it is going to be. I don't think networks can exist and prosper without strong aggressive stations on the local level. And by stations I mean of the typical type.

Senator BRICKER. Both owned and affiliated?

Mr. McGANNON. Both owned and affiliated, that is correct. We have an obligation to the networks as well as their having an obligation to us. And this thing must be worked out. I am convinced it can be worked out.

Senator BRICKER. In your Philadelphia transaction you attributed $5 million to the goodwill or whatever you you want to call it—going concern value of your affiliation. Was all of that recouped in your transaction?

Mr. McGANNON. No, Senator, it was not. In the transaction, you mean?

Senator BRICKER. Yes.

Mr. McGANNON. I don't think there was a direct relationship to that. The manner in which the $3 million was evolved was to determine the earning capacity of the 2 stations and then negotiate a price that represented a recoupment of that differential. It was determined at the time, I am told—I was not a participant in these negotiations—that the difference in earning value was approximately $600,000.

Mr. Cox. Per year?

Mr. McGANNON. Per year. And this was predicated on the basis of 5 times those earnings, or $3 million, which represented the cash consideration in the transaction.

Senator PASTORE. Go on, Mr. McGannon.

Mr. McGANNON. These are the qualities, some tangible but many more intangible, that translate program concepts into images on the television tube and into the service of our people. In our opinion, these put television networks out of the category of public utilities and common carriers. Beyond this, the Federal Communications Commission has effective control of the networks through the rules governing stations, including those owned by the networks as well as those affiliated with these networks.

Senator BRICKER. Just one question, you might properly address this to counsel: Should Congress decide that the networks should be licensed and subject to regulation and rules laid down by the Commission, there isn't any question in counsel's mind as to whether or not this is a business charged with a public interest; is there? When you mention it as not a public utility. A public utility becomes one when it is so declared by a governmental authority to be such. And the only test as to whether or not it is is whether there is a public interest in it. Is there any question in your mind about whether there is a public interest in programing of networks in this country?

Mr. McGANNON. No, sir. Obviously the whole effort is based upon the serving of the public interest.

Senator BRICKER. It is wholly a question, then, of whether Congress acts or not? When you say it is not a public utility, you are determining a question of law there.

Mr. McGANNON. I didn't mean to be, to be sure. What I meant was, in determining or considering public utilities or common carriers as we know them today, I don't know of any that has represented the intangible form that television networks represent today.

Senator BRICKER. It is just a bit different.

Mr. McGANNON. I think it is substantially different, if you will forgive me.

Senator PASTORE. You are talking more of character than you are of authority?

Mr. McGANNON. Of authority?

Senator PASTORE. Of jurisdiction?

Mr. McGANNON. Yes; I am.

Senator BRICKER. There has never been any doubt in my mind—and I ask this of counsel, if there has in his—that if Congress would so declare, that there is no court in the land that would set this aside because the programing by the networks is not charged with the public interest.

Mr. STEEN. I believe I would agree with you, Senator.

Senator BRICKER. It is just a question of policy. It is not a question of law. It is a question of policy as to whether Congress desires to act.

Senator PASTORE. I agree with Senator Bricker on that score, on the matter of jurisdiction.

Mr. McGANNON. I was not raising a legal issue when I made the point.

Senator BRICKER. That is what I wanted to clear up.

Mr. Cox. In connection with your comment about the fact that the Commission already has effective control, what substantial change would be made if the Communications Act were simply amended to provide that the Commission would have the authority to license network operations for a specified period, and that in connection with the granting and renewal of those licenses it would consider whether those networks were operating in the public interest, convenience, and necessity?

Mr. McGANNON. Well, there are two aspects of this, I believe, Mr. Cox. The first, as Mr. Steen points out, deals with the questions of types and caliber of programing that probably would be insisted upon as standards which they must follow.

But even more important and more fundamental to this question is this: If you are going to give to the networks the uncertainty—the question as to whether they will or will not be renewed, depending on the action of a regulatory body—I just don't know what would motivate the dollar volume investment required to be made in the network business.

Senator BRICKER. What motivates you in putting your $8 million into Philadelphia, when you have only got a 2-year license?

Mr. McGANNON. Well, the ability, Senator Bricker, to foresee that the manner in which we have operated stations in the past has gotten us renewals; that we do operate, in our opinion, in the public interest. This is our sole and only objective.

But you are going into a whole new field at this moment. When you ask me about licensing them, you must tell me more than just licensing them. Tell me the nature: How is it going to be conducted?

Mr. Cox. What is the nature of the regulation of the individual station? It is simply that they are licensed in the public interest, and that when their license comes up for renewal, a question can and may be raised as to whether they have, in fact, operated in the public interest. Isn't that correct?

Mr. McGANNON. Yes, it is fundamentally correct.

Mr. Cox. If only that issue were raised in connection with the licensing and relicensing of networks, how would there be any problem posed in terms of their programs which is not already posed in terms of whether you operate in the public interest by accepting those programs and carrying them on your station?

Mr. McGANNON. I believe there is substantial difference. I think the difference is one of an individual station declining one program as distinguished from a restrictive form imposed upon the networks in their programing efforts. This is a creative job, a creative effort, and I don't think you can indicate or legislate or determine what is going to be the full scope of this thing if you want this whole medium to develop in the broad and tremendous potential that I believe it possesses.

You have in networks, I believe, in its most fundamental form, another program service. And I don't think there has been any imposition or suggestion about licensing other sources of programing services presently available to the television industry. And hence I don't know why it should relate necessarily to networks.

Senator PASTORE. But why do you take the position that supervision in the public interest destroys creativeness? In what way?

Mr. McGANNON. In the mere existence of it, in my mental viewpoint.

Senator PASTORE. I can see your argument in censorship; I don't think that the Government ought to initiate any rules to tell what kind of a program, or with whom a company should deal in the institution of a program; whether or not a program is obscene, or whether or not a program goes too far. They regulate the station in that respect, don't they?

Mr. McGANNON. Yes, they do. I didn't even have in mind such considerations as these, because I think the area of intangibility goes far beyond obscenity, public acceptance, or propriety.

Senator PASTORE. You are, nevertheless, of the firm conviction that any regulation might be a restriction upon the network?

Mr. McGANNON. Any additional regulation or restriction would be a further limiting factor upon the development of the network.

Senator PASTORE. I think we can kick that around for an hour and a half and we won't change anything because you have stuck to it pretty tenaciously.

Mr. McGANNON. In the course of considering television station purchases and the investments described above, Westinghouse conducted a careful review, study, and analysis of existing broadcasting concepts, their effect upon television and all of the other elements bearing upon the industry, including the engineering and technical problems, the programing challenges, the available sources of programing, the commercial aspects of the market, and the educational and public-service opportunities that could be rendered to the communities in which we were, or hoped to be, licensed. The decision to proceed with such investments was only made after such careful study and founded upon the firm conviction that the industry had developed in a basically sound manner and even though there were many areas yet to be pioneered and developed. Further, it was considered that the industry, the attitude of the Commission and the regulations affecting television were sufficiently stabilized to warrant such an investment.

One thing was certain and clear, however, that television, on each of the successive dates of our station acquisitions, was enjoying a dramatic and unprecendented growth and the public was being well served by the system as it was then being evolved and as it now exists in consequence of the sixth report and order.

It was to be expected on those occasions of acquisition to believe that stations which properly fitted into the system and which, in turn, were properly operated in the public interest, possessed elements of permanence to a degree sufficient to justify an investment of this magnitude. It is mandatory, therefore, in our opinion that any changes in such a system as it presently exists must be first measured against the effect on the service to the public in the various communities involved. If, after such measurement, a better service cannot be clearly seen as the result of such a change, then said changes should not be undertaken or should be deferred until it can readily be determined that the service to the American people, and not to any group of station operators or other persons within and without the broadcasting industry, is being enhanced.

Realistically speaking, of course, any major changes in the allocation system are bound to have some concomitant disadvantages since the interests of our population have become directly related to, and crystallized in, our present system. In other words, the history of the evolution of television cannot be disregarded. However, the test must be the aggregate public good. The problems facing our industry are neither so simple that they can be solved by one stroke of the legislative pen nor so complex that they should be considered insoluble. There is no panacea, but patience, ingenuity and long-range viewpoints can point out the most desirable course of action.

Despite the phenomenal growth of television, the UHF portion of our industry has not been able to keep pace with the remaining elements. Any discussion of such expansion in our television service must automatically involve a discussion of the UHF television facility, and if the expansion be a sound one, the UHF facility must favorably compare in its service to that service being rendered by VHF.

The present system has brought a television service startlingly close to 100 percent of the population of America, substantially over 90 percent of all television homes having the power of selection between 2 signals, and almost 90 percent having the opportunity to select among three or more. In the face of this, and in the absence of any clear-cut and definitive plan to broaden this service to the public, we recommmend that the current practices of licensing VHF stations with full power potential in metropolitan areas be continued. It is basic, we believe, that any attempt to reduce or curtail such service area and/or service powers of metropolitan stations and provide that the signal coverage of such stations be conformed to the retail trading areas of that community, will result in a shocking reduction in the service to major segments of the population, and particularly to those in the rural areas.

For instance, if the coverage of WBZ-TV, Boston, Mass., was so reduced, its signal would not be permitted to penetrate the Lowell area, the Lawrence area, the Worcester area, the Brockton area—in fact, it would be essentially confined to the Boston metropolitan area.

Senator BRICKER. What service is there in Worcester?

Mr. MCGANNON. A UHF station in Worcester.

Mr. COX. It is now off the air.

Senator BRICKER. How far is Worcester from Boston?

Mr. MCGANNON. 40 miles.

Mr. COX. There is a station in Cambridge that recently left the air, also.

Mr. MCGANNON. Yes, sir.

Senator PASTORE. Well, you know, it is funny how we kick around this public interest sometimes. It is a fact that this power that you talk about—which would be a denial of service to more than 3 million people—operates to prevent another station from going into another community like Providence. Because the minute you raise this power tremendously in Boston, you get into this that we are talking about that denies Providence a third station, which is not good for Providence.

Mr. MCGANNON. I understand that.

Senator PASTORE. And we are for Providence. And the result of that is we don't get this competition we are talking about, because as long as we have three networks, I think it ought to be the purpose of the Federal Communications Commission to give three like channel stations to every community of this country if it can be accomplished. Then you have got fair, true competition.

Mr. MCGANNON. I concur.

Senator PASTORE. Then you have ABC coming on, NBC coming on, and CBS coming on. The only trouble is when you try to get 3 stations in the 1 community—a large community like metropolitan Providence—you can't do it because you have too much power in Boston.

Mr. MCGANNON. I am not sure the power is the problem in this case.

Senator PASTORE. You just brought it out very effectively on this page. You say if they don't give it enough power, you have to pull back.

Mr. MCGANNON. You would destroy all service to Boston if you reduced the power.

Senator PASTORE. Not if you put another station beyond a point, so that can cover those same 3 million people.

Mr. MCGANNON. I don't believe there is a metropolitan area, in connection with this specific point, that could support a television station and service those 3 million people.

Senator PASTORE. Well, I question that.

Mr. MCGANNON. This is a rural area, basically speaking, or a non-densely populated area.

Senator PASTORE. It all depends where you put it. I am not quarreling with Boston now, but I am quarreling with this thesis being developed here—that unless you keep adding this power and adding this power and adding this power—because what we are doing here, we are destroying the community service that we are all talking about.

Now, to give you a graphic example of it: Foster Furcolo, when he was a candidate for the United States Senate, I noticed he had to come to Providence and put on part of his broadcast in Providence in order to reach some sections of Massachusetts. And you have to do that in Boston in order to reach some sections in metropolitan Providence. I think if we get into too much power, what we are going to actually do is to deny the services of television to local advertisers who only want to advertise within their own community.

Mr. McGANNON. I think if you will let me pursue—

Senator PASTORE. If you want to put on a show in Bridgeport, you have to go to New York to do it, and pay the New York prices, and I don't think it is in the public interest. I don't know how you are going to rectify it. But somewhere along the line—

Mr. McGANNON. I agree. I don't think the solution lies in rolling back——

Senator PASTORE. I don't know what the solution is. But I don't think the solution lies in rolling forward.

Mr. McGANNON. I am not suggesting an increase in power.

Senator PASTORE. There have been increases in power granted in Boston from time to time which have caused exactly this situation, that now you can't roll back.

Mr. McGANNON. Well, as far as I know, the only power——

Senator PASTORE. I am not quarreling with you. But I mean that is one fundamental problem. We are told in Providence we can't have a third VHF channel because it runs into the power of the neighboring stations.

Mr. McGANNON. But not the Boston station, Senator, to be sure. Because at that closeness, at that proximity, it is my understanding that any station will have either one of two effects: So much cochannel interference that there will be no service between, or a reduction in the power so that you wouldn't even cover the metropolitan area of Boston.

Senator PASTORE. Be that as it may, it is a problem.

Mr. McGANNON. I agree, it is a very serious problem.

Senator PASTORE. We can't solve it here this morning, but fundamentally, it is my understanding there is too much power in some places that denies service to other sections of the country. That is chiefly the problem in the New York area. You have 7 channels in New York and it is that 7 channels in New York that has caused us a mess in New England.

Mr. McGANNON. Yes, there is some truth to this.

Senator PASTORE. Of course, there is a lot of truth in it.

Mr. McGANNON. Historically speaking, UHF started in many areas without a fair opportunity to develop and prosper because of the existence of well-established VHF signals and circulations. The entire fulcrum of success of all television services, and this applies with equal force to UHF and VHF, is the ability to broadcast to an established circulation. The diligent efforts of many broadcasters operating and owning UHF facilities in the past 4 years have proved fruitless because of an inability to convince the public of the need and/or desire to invest a nominal sum of money in the conversion of VHF receivers so as to receive one or more UHF signals.

Even though a good degree of density and circulation has been secured in given areas, it has been coupled with maladjustment of receivers and transmitters; and these and unfavorable terrain have resulted in a quality of signal that has impaired the subsequent forward movement of these stations.

In all realism, national advertisers cannot be criticized for their unwillingness to utilize UHF in the broadest and fullest sense. This is compellingly true when existing VHF service is available since, by presently known standards, the ability of the VHF channel to cover a wider area and on an average superior signal is well recognized. An advertiser, therefore, seeking the greatest mileage from his advertising dollars understandably—yes, in fact, of necessity—has invested his advertising budgets on the VHF facility. This same factor has motivated the television networks to seek VHF affiliates in order that they might more completely fulfill their obligations to their client and sponsors and in turn the broadest possible number of people with the best possible signal with their commercial as well as their public service programing.

These factors have created conditions that have brought the development and research in UHF to a virtual standstill. This is applied to receivers as well as to transmitters, and hence, today, there appears to be a virtual stalemate in this tremendous portion of the television spectrum which in many respects offers the broadest scope and vista for the progress which the potential of this dynamic industry demands. Therefore, any suggested solutions of this problem that resort to changing the existing service would appear to be premature and cannot be logically considered until a full and complete reevaluation of UHF is had. It is of little significance whether this be obtained by the crash program of Chairman McConnaughey, suggested in a recent address, or by a means similar to that apparently suggested by elements of the manufacturing industry last October.

This last-mentioned proposal closely parallels the organizational approach followed in the evolution of the NTSC color standards. This statement is based on the condition that the objective result be founded on an unprejudiced and scientific desire to progress the art and realize the ultimate potential of the ultra-high-frequency bands. Further, this must be done with expediency and dispatch so that those interested in UHF fundamentally (which constitutes in reality the entire broadcasting business and a major segment of the American public as well as the manufacturing industries) can have an answer to this crucial problem soon. As previously indicated, all elements of our company stand ready to assist in this regard.

In the meantime, it is urged that the present service be left intact. I do not urge this solely to preserve a status quo favorable to our company. I recognize the fact and am keenly aware the Westinghouse Broadcasting Co. has an investment of almost $32 million. However, we have been in the broadcasting business for over three decades, and, subject to our continued ability to serve the public in the highest possible manner, look forward to continuing in the industry for an indefinite time in the future. Therefore, our concern is the ultimate good of broadcasting. And while the UHF research is being conducted and, in turn, the entire question of allocations is being reconsidered and determined, it certainly appears to be appropriate to use all available effort to accomplish two goals—an expansion of facilities in maximum number of markets in the first 100 of the country so that at least 3 comparable television facilities are available to insure the economic feasibility and growth of 3 major television networks and provide the public with a greater degree of choice in network programing——

Senator PASTORE. Including Providence, R. I.?

Mr. McGANNON. Including Providence, R. I. [Laughter.]

This would also generate competition between and among these networks and the further accomplishment of a third genuine national network service. Secondly, every incentive be given for the public to purchase all-band or all-channel receivers and in order to supply the stimulus and to urge manufacturers to make receivers available to the public at the highest quality and caliber, that the excise tax, and I put this with emphasis and in quotes, now applied to television receivers be eliminated from all-band receivers and in effect equalize the cost between the UHF and VHF types.

One remaining subject about which I would like to voice opposition is toll television. I want to urge this committee and the Commission to deny any application which would provide for the establishment of such a practice. My reason for this recommendation is that when measured against our ultimate standard (the public good), it is our opinion that the American people will subtly and unsuspectingly be anesthetized into the payment of huge sums, which, though individually nominal, have a colossal cumulative total. It is this latter fact which forms the basis of the projected success of toll television by the promoters who seek the system. We believe it is just as intrinsically impossible for free television and toll television to effectively coexist as it is for the conflicting ideologies of our great Nation to peacefully coexist with those of the Soviet Union. Furthermore, once permitted to be "tested," which its advocates are strongly urging as an initial "head-in-a-tent" maneuver, the resulting change in position will be so radical and incisive that mere regulation or legislation thereafter will be unable to recapture the lost service to the public.

Senator PASTORE. I want to congratulate you on a very magnificent statement.

Mr. McGANNON. Thank you very much.

Senator PASTORE. I like the way you have prepared it, and the way you have condensed it, so we were able to finish here by 12:30.

We have one more witness.

Is Mr. Landau here?

(Mr. Landau rose.)

Senator PASTORE. How long a statement do you have, sir?

Mr. LANDAU. About 30 minutes.

Senator PASTORE. We will recess until 2 o'clock.

(Whereupon, at 12:27 p. m., a recess was taken, to reconvene at 2 p. m., of the same day.)

AFTERNOON SESSION

Senator PASTORE. The hearing will please come to order.
It is now 2 o'clock. The witness may proceed.

STATEMENT OF ELY LANDAU, PRESIDENT OF NATIONAL TELEFILM ASSOCIATES, ACCOMPANIED BY THOMAS WALL, RAYMOND E. NELSON, AND JUSTIN M. GOLENBECK

Mr. LANDAU. Mr. Chairman, and members of the committee, my name is Ely Landau; I am president of National Telefilm Associates, a listed, publicly owned corporation, better known in our industry as NTA.

The gentlemen on my right are Mr. Tom Wall, our Washington counsel, Justin Golenbeck, our house counsel, and Raymond E. Nelson, who is director of sales development for our company.

Our company supplies film programing to over 300 of today's 476 television stations. We are primarily distributors of film programing directly to stations, in contrast with the sale of programing to national advertising agencies or sponsors. We distribute film programing ranging from 5-minute to 30-minute shows, and are one of the primary sources of theatrical motion picture films to the television industry. I appreciate the opportunity of presenting my company's views on the subject of networks and television.

I am here today, basically, to offer to your committee our observations based upon our experiences as a film syndication organization in the television industry, and the steps that we have taken to meet certain of the current problems apparent to all of us. In that connection, I should like to discuss particularly the subject of network monopoly, the control of prime time, and the film syndicator's role in television.

I should like, at the very outset, to make our basic broadcasting philosophy clear. It is a philosophy that we have stated previously. It is one, I might add, that has been expressed before this committee by the operating heads of the three television networks. We are glad that they and NTA are in accord on the fundamental philosophies, because insofar as the health of the television industry is only as good as the health of its component parts, our interests are identical.

We believe in the principle of network broadcasting. We believe that the combined coverage of a united group of stations is essential to fulfill most completely the obligation imposed by "the public convenience, interest and necessity." We believe that there should be, and must be, a method of buying nationwide exposure in a one-transaction operation, an exposure big enough and complete enough to warrant the sizable expenditures national advertisers must make to bring better programing into America's households.

We believe that appreciation and acclaim are due the television networks, the broadcasting organizations which have given to the country's viewers the outstanding programing that has, more than any other factor, made television the social force that it is today. The networks, more than any other element, have enabled an infant television industry to make strides unparalleled in the history of entertainment and communications.

We are, however, at a loss to understand the cloak of unselfishness that some have ascribed to the networks for their contribution to the growth and development of the television industry. We do not think there is anything shameful about self-interest if it makes for progress, and we are rather surprised that there has not been more frank admission of the profit motive in connection with network investments in television.

The motives should not be confused with the accomplishments. There seems to be considerable reluctance about owning up to the motives. In our opinion, there is nothing wrong with putting money into the development of programs so that people will buy receiving sets to receive those programs. There is nothing wrong with putting money into programs to induce more people to turn on their sets to watch those programs. There is nothing wrong with putting money into programs to induce advertisers to buy time for those programs in order to increase the income of your operations.

The fact remains that the networks took grave financial risks in the early days of television and while it may be true that in the latter stages of development advertisers shared that burden, the lion's share of the credit for the development of this dynamic medium must go to the networks.

The question has been raised concerning the existence of monopoly in the television industry. We believe that there can be no question, even in the minds of those who operate the networks, that a monopoly does exist.

We suggest, however, that this monopoly is a monopoly by default.

It is a monopoly born of scarcity, a monopoly sired, fostered, and perpetuated by the Federal Communications Commission, the only agency authorized by law to rectify the situation of its own creation. It is a monopoly brought into being entirely by an inert hand at the throat of broadcasting, stifling competition, the only force that can truly supply the checks and balances that would offset the powers awarded by default to the monopolists of the industry.

However, while much has been made of network monopoly, I would like to bring to the attention of this committee another monopoly. It stems from the same fountainhead, and will require the same remedial action. It is again a monopoly be default and by scarcity; it is the station monopoly.

What I call a station monopoly is best illustrated by the following example. In a market where only one station exists people watch that station or they do not watch television; advertisers buy time on that station, or they do not cover that market; film syndicators sell their product to that station or they do not sell that market. Here, indeed, is monopoly.

Toledo, Ohio, is one of those markets. Toledo, according to Standard Rate and Data Service's 1956 Consumer Market Estimate, is the Nation's 47th ranking consumer market, with a television set count of 358,740.

The station is affiliated with all three networks, but, obviously, can carry only one network's program at any given time. Therefore, the people in this station's coverage area are deprived of much of America's greatest television entertainment, special events, and news coverage. The monopoly here is not a network monopoly; it is a station monopoly.

We do not suggest by inference or intent that the station management is in any way derelict in its service to its community. We do say that the 358,740 television families in that area are denied the privilege of seeing two-thirds of all network programs in the United States today. Try as it may, the Toledo station cannot possibly completely serve the "public convenience, the public interest, and the public necessity" of its community.

The advertiser in this market does not fare any better. The 1-time rate for a nighttime 20-second announcement in this only 1-in-the-market television station is $225—more money than the advertiser would have to pay for the highest priced similar spot in the Dallas–Fort Worth market, the Houston-Galveston market, or in Buffalo, Tacoma, Kansas City, Denver, Louisville, Columbus, and many other cities, all higher up on the consumer market list, but all with 2 or more stations competing for the advertising dollar.

As a matter of fact, in Youngstown, Ohio, the 35th ranking market, an advertiser can buy 3 spots for the price of 1 in Toledo, the 47th market. If instead of this $225 spot in the single station market of Toledo, the advertiser buys a similar spot on the lowest priced station in most markets where there is competition, he potentially has access to far greater circulation at a lower cost. For example, he can buy 20 seconds of class A time in the New York metropolitan area for $37 less than the Toledo buy—and have his message broadcast within range of 4,700,000 TV receivers, as compared to Toledo's 358,740.

In many other major markets like Pittsburgh, Boston, New Orleans, and other important concentrations of population, though they may not necessarily be single station markets, there are severe problems along these same lines. This kind of monopoly constitutes a disservice to the networks, the advertiser, the program source, and most important, to the public. The monopoly shoe can, and frequently does, wind up on the other foot.

This does not mean that the networks are innocent and the stations are guilty, or the other way around. It means that this inquiry should not be a unilateral affair. It means that there are concentrations of control in the broadcast industry, all stemming from the same scarcity. They are all open to accusation, and they are all defensible from a monopoly standpoint on technical grounds. Most of them are being so defended.

The National Broadcasting Co. would defend itself against charges of what is loosely called monopoly in the country's No. 1 market, New York City, by pointing out that its owned-and-separated station, WRCA–TV, is competing with six other VHF stations, all broadcasting from the same transmitter location atop the Empire State Building. That's perfectly true, if you stop at that point.

There is something missing, however. What's missing is the fact that WRCA–TV, given the powerhouse programing of the National Broadcasting Co., sells its 20-second nighttime chain breaks at $2,050 apiece, while one of its competitors, WPIX, gets only $1,750 for a full hour of its prime time. What is missing is the fact that WPIX, denied the powerhouse programing that comes with network affiliation, cannot procure, produce, and sell first-class programing truly competitive to what WRCA can and does offer—without an affiliation with enough stations in enough prime markets to deliver enough audience to an advertiser to defray the high costs of such programing.

If WRCA–TV enjoys an unfair competitive advantage, it is only taking advantage of a situation that it can hardly be accused of having created. WRCA-TV is winning a victory by scarcity. The FCC by keeping the allocation doors shut, has prevented the formation of the additional networks which could give more program strength to more stations, more market places to more advertisers, and mean less monopoly by default in the field of network telecasting.

Much has been said about the hours of time optioned to the networks, but the hours as such are a deceptive measurement. It has been argued that the networks control only so many hours out of the broadcasting day, but the hours they do control are the hours when the greatest number of people do most of their television viewing.

Those are the hours which command the highest ratings; those are the hours that advertisers vie for. Consequently, those are the most expensive and most lucrative hours. Those are the hours that are big-time television, the hours that are known as prime time. Those are the 7:30 to 10:30 evening hours, and they are basically what the shouting is all about.

Do the networks dominate and control and dictate the programing and the disposition of these golden hours? Of course they do. But they control not by contract, not by regulations. They control by circumstances; they control by economics; and, above all, they control by scarcity. Their control is no greater than the controls exercised by the local station operator in a single station market. Again, the responsibility for such undue control lies directly at the door of the FCC which created the situation, and which has consistently failed to do anything about it.

However, network control is not 100 percent control, otherwise there would be no need for film-programing sources such as NTA. On the other hand, we have been relegated to selling our product for use primarily in the second or third best time segments on network-affiliated stations. Film syndicators have built businesses running into many millions of dollars, selling product which seldom is broadcast in prime time.

The viewing public should not be denied access to the kind of programing it has repeatedly shown that it wants to see at the time of day it has the time to see such programing. The people of America who have spent hundreds of millions of dollars for television receivers are being deprived of a vast portion of this programing because of network control. The viewing habits of the public are, therefore, not governed by free selection, but by the decisions of the handful who are empowered by circumstances, and by scarcity, to predetermine what they shall see and what they shall not see.

Even under circumstances where they are programed in fringe time, film programs do command major viewing audiences. Last week's Billboard, a major publication in the entertainment world, carried a chart of feature film programing in 16 major markets. In such off times as early Sunday afternoon, 11 at night, and other class B and C time periods, these films rolled up ratings that would have been highly acceptable to network advertisers using the most expensive time. It might particularly be noted that in the case of one station, WTMJ in Milwaukee, where the station programed a feature picture on Saturday night at 9:30, in prime time, the rating was 45.4.

It is interesting to refer to a statement of facts filed with this committee by one of the leaders of this industry, in whose power it lies to dictate what the people shall see and what they shall not see. Mr. Robert Sarnoff, president of the National Broadcasting Co., in his statement of facts filed with this committee on May 25, 1956, stated in reference to the distribution of motion pictures on television by film syndicators:

If this film group should succeed in undermining the network system, the great national service provided today by three intensely competitive television networks would ultimately be reduced to the lowest common Hollywood denominator. The wealth of fine entertainment, educational, and cultural programs available in the diversified schedules of the networks would be replaced by a continuing flow of stale and stereotyped film product.

I have a copy of a letter that I sent to Mr. Sarnoff which I have submitted to the committee for its own information.

Senator PASTORE. Do you want it inserted into the record at this point?

Mr. LANDAU. Yes, sir.

Senator PASTORE. All right. Without objection, it is so ordered.

(The letter is as follows:)

NATIONAL TELEFILM ASSOCIATES, INC.,
New York, N. Y., June 1, 1956.

Mr. ROBERT SARNOFF,
National Broadcasting Co., Inc.,
New York, N. Y.

DEAR MR. SARNOFF: As president of National Telefilm Associates, Inc., one of the leading distributors of films for television, I feel that I must answer the statement of facts submitted by your company to the Committee on Interstate and Foreign Commerce of the United States Senate.

It seems to me to be fitting that I do so, as mine was one of the few voices raised in defense of network telecasting at the inception of the current hearings, and many of the remarks contained in your statement are strikingly similar to those embodied in my own brief on the subject, which is a matter of public record and on file with the committee. I might add that my organization is not a member of what NBC appears to believe to be a conspiratorial group of film syndicators, seeking to discredit the networks. We do not believe that such a conspiracy exists.

While my company's name did not appear in your statement, which would seem to grant us a certain objectivity of viewpoint, we, for the record, are not particularly overjoyed at this omission. Despite the fact that you do not single us out as members of this alleged cloak-and-dagger fraternity, we'd like to express the strongest possible indignation at your unwarranted attack. The film syndicators, aside from being virtually the only program sources that have enabled the independent stations to survive, have loomed importantly in the nationally sponsored program scheme of things.

We believe in the integrity of the leaders in our industry who have been in the film and/or programing business for many years, and expect to be for many more. Some of them were honored businessmen before the infant industry called television first appeared on the scene. And again, it should be stressed that some of the companies at which you point the accusatory finger are firms with which NBC has had dealings, now has dealings, and with whom, I'm sure, NBC expects to continue business relations, as a vital and necessary source of creative TV programing.

Your statement of facts appears to be following the general principle that the best defense is a good offense. It seems to me, however, that attempting to turn an attack on networks into an attack on the suppliers of television programs on film is pushing a principle a bit too far.

I object strongly to your inference that film programing is undesirable, unorginal, unexciting, and unimportant insofar as network broadcasting is concerned. And I quarrel just as violently with the assumption that the networks have a monopoly on creative thinking. Maybe it's high time that the networks stopped taking the bows for such shows as I Love Lucy and December Bride, produced by Desilu; Private Secretary, produced by Jack Chertok; Schlitz Playhouse of Stars, produced by the Meridian Productions; Ford Theatre, Father

Knows Best, The Adventures of Rin Tin Tin, and some of the other creative efforts of Screen Gems, and it's about time you acknowledged the fact that Halls of Ivy, Lassie, and Captain Gallant are really Television Programs of America productions, and that such audience favorites as My Little Margie, I Led Three Lives, Robin Hood, and Four Star Playhouse and many others owe their existence to such film sources like MCA, ZIV, TPA, and Official Films, not to the networks.

Let's look at the facts, not a "statement of facts," but plain, bedrock, on-the-record facts.

In your exhibit 6 you state that during the week of March 18–24 the NBC network broadcast only 11.9 percent film programing. A further examination of the same page discloses the fact that during the prime 6 p. m. to signoff period, where the viewership far exceeds all the other hours of the day combined, the film percentage was much higher. Eight hours of film programing is listed here as against a total of 25.75 hours of live shows. If you restricted the computation to the really peak viewing hours, 8 to 10:30 p. m., which would eliminate your network's low rating late-at-night live shows, you'd in all probability come up with a far higher film-to-live ratio. All this, mind you, from your own exhibit 6.

This is network telecasting that we're talking about. If you were to add the film programing during station-controlled time, the programing that is the lifeblood of their local operation, you'd get some idea of the true magnitude of the film distributor's role in broadcasting today.

The portions of your statement referring to theatrical motion pictures is, I believe, a direct and uncalled for slap at the TV viewing audiences of America. To condemn feature film programing is to deride a favored form of entertainment, favored by both the viewer, who has clearly expressed himself in survey after survey, and the advertiser, who has found that these shows attract top audiences and move merchandise. They're far and away superior to many of the jerry-built live productions available to today's television set owner who is, in the final analysis, the sole judge of what constitutes good entertainment in his home. National Telefilm Associates is one of the leading distributors of feature pictures for television; we've got some of the best available, and we're going to continue to acquire just as many as we can. We're businessmen, and of course we want to make profits for our stockholders. But I can tell you that the demand for our product hasn't slackened in the last year, but has accelerated at a tremendous rate. Stations demand it because the advertisers and the public want it, which would appear to be the perfect cycle. Were equal or even ample playing in comparable time slots available to the quantity and quality feature films available to TV today I don't think even you could question the fact that ratingwise they would more than hold their own.

Is this feature programing quality programing?

Let's face it; I admire such live producers as Max Liebman and Alex Segal. But, what should be my regard for such creative names as David O. Selznick, Samuel Goldwyn, Cecil B. DeMille, Darryl Zanuck, John Ford, and the many, many others who have made entertainment history?

Are we, then, as your statement alleges, "replacing the wealth of fine entertainment" offered by the networks with "a continuing flow of stale and sterotyped film product"?

Indeed it's true that we're "guilty" of offering the American public such outstanding classics as How Green Was My Valley, The Great Gilbert and Sullivan, Tales of Hoffman, Heidi, The Ox-Bow Incident, Since You Went Away, Notorious, I'll Be Seeing You, A Bill of Divorcement, The Well, Breaking Through the Sound Barrier, Captain's Paradise, and others of comparable quality. We're shortly going to be equally culpable on a similar score, because we're going to be offering the reappearances of such immortals as W. C. Fields, Robert Benchley, Willie and Eugene Howard, yes, even those dread characters in George Pal's Puppetoons—and the Little Lulu cartoon series.

If your network objects to film programing on the grounds of unoriginality, how about some of your own spectaculars by way of—well, shall we say contrast? You accepted some of the most glittering commendations ever awarded by the critics, and you widely promoted the outstanding success of your spectacular production of King Richard III—and, let's face it; King Richard III was somebody else's production, written by a writer you can hardly claim to have discovered, and produced by the same Sir Alexander Korda whose other fine works NTA is proud to carry in its library. In fact, King Richard III was, if you will forgive me for using the words, a feature film.

Then again, there was your own Peter Pan, a truly great show, but which the network aired by the simple process of pointing cameras at somebody else's stage production. The Taming of the Shrew? Shakespeare, period. Barretts of Wimpole Street? Just how long had Katherine Cornell been playing that role before NBC television went into business?

Are all of the feature pictures being offered to the American public four-star pictures? No, they're not, human creativeness being the fluctuating quality that it is. I'll avoid the obvious comparison with run-of-the-mill live programing, and ask another question. Anybody remember Satins and Spurs?

Your statement makes quite a point of the huge investments made by the networks before television reached the turning point. I'm fully aware of these losses—my brief expressed complete sympathy with the networks in this respect. But, let's not forget that "NBC is a service of RCA"—the quote is off your letterhead, by the way—and the investment could conceivably have been exactly that. A service *to* RCA. Let's not ignore the fact that while NBC was incurring these heavy losses, the head of the family, RCA, was busily earning huge sums by manufacturing television sets, TV electronic equipment, and collecting royalties on its many patents used in TV set production by itself and other manufacturers. NBC-RCA's investment in early television can hardly be put in the category of unrestrained altruism.

We of National Telefilm Associates have not been unmindful of our obligation to the industry. You may remember NATS—National Affiliated Television Stations—where another electronic manufacturer, General Electric, and NTA joined forces in a valiant effort to assist floundering television stations to keep their heads above water. An effort that was given a kiss of death by the Commission's action last November. If the networks were around throwing lifelines to these beleaguered broadcasters, the fact was never brought to our attention.

I can't go along with your statement that "networks are the only organizations which furnish stations with a regular daily program service of diversified presentations." "Only" is a strong word. Most of NTA's prime customers are network-affiliated stations; and better than 100 stations have availed themselves of NTA's well-rounded library of television programs on film that ranges from hundreds of 5-minute shows to hundreds of half-hour shows as well as our tremendous library of feature films. The networks are obviously several miles short of completely filling the station's programing needs.

It seems to me that your statement of facts can be construed as a smokescreen to divert the onslaught onto an unrelated target, and that it deliberately obscures the real points at issue.

I said in my committee brief, and I still say, that there's nothing wrong with the general principle of network broadcasting. In my opinion, there should be and there must be an organization which affords an advertiser the opportunity of buying national coverage on a single-transaction basis.

But—and you've brought this "but" into focus—there is something wrong when the workings of the system are complicated by a shortage of networks which, in turn, is caused by a shortage of stations, placing the presently constituted networks in an overwhelming dominant bargaining position.

NBC's own figures give the financial side of the story with extreme clarity. They show that network television got "only" $520 million national advertising dollars in 1955, whereas $724 million went into magazines, and $750 million into newspapers. What's missing is the fact that over half a billion was shared by only three networks; the other dollars were divided among hundreds of magazines, and probably thousands of newspapers. And, also missing is the fact that of this half billion total, a third, or less, went to the station owners, whose individual investments made the whole network structure possible; the lion's share went to the networks themselves.

The simple fact of the matter is that most of a station's best time is devoted to network programing, percentagewise, the least profitable part of its income. I say that if network broadcasting as it is presently constituted is to continue—and I am on record as saying that, in my opinion, it should—a way must be found to make more networks available to more stations, and on a competitive basis that would make it profitable for many, rather than for the few.

Let's face it; the controversy isn't network versus film, as your statement of facts would imply. The question, quite simply, is whether the network structure as it exists today should be changed, done away with—or expanded.

I say let's have more networks. I favor an orderly evolution—an evolution evolved in a competitive market, an American evolution if you will. Let's push for the only change that will eliminate today's bottleneck, today's stranglehold. Let's direct our united voices at the Government agencies that can do something about the situation, the only ones who can. Let's press for a solution of the UHF problem, for deintermixture where deintermixture is the only answer, for more stations, for healthier stations. The true answer to the network dilemma is more stations, broadening the base of broadcasting. More stations must inevitably lead to more networks, which in turn will mean more competition both for affiliates and for the national advertising dollar. Make no mistake about it; the only positive defense against entrenched monopoly is competition, and that's as simple and as basic in broadcasting as it is in the butter-and-egg business.

And I say, let's stop bickering with each other; let's join together in an all-out effort to shore up our industry's structure, rather than trying to tear it down segment by segment. Let's work together for the better health of television, all television, for only by serving the medium can we serve the public—and ourselves.

Sincerely,

ELY A. LANDAU, *President.*

Mr. LANDAU. Mr. Sarnoff's statement also referred to a conspiracy among film syndicators to discredit the networks. While Mr. Sarnoff did not single us out as one of the conspirators, we would like to express the strongest possible indignation at this unwarranted and undignified attack. We are not aware of any such conspiracy nor do we believe that such a thing exists.

More important, however, to condemn film programing is to deride a long accepted form of entertainment, favored by both the viewer and the advertiser who has found that these shows attract top audiences and move merchandise.

The viewing public should not be denied access to the kind of programing it has repeatedly shown that it wants to see at the time of day it has the time to see them.

I would like to quote from the letter I just mentioned, dated June 1, 1956, which I addressed to Mr. Sarnoff and which I am submitting in full to your committee at this time. [Reading:]

I object strongly to the inference that film programing is undesirable, unoriginal, unexciting, and unimportant insofar as network broadcasting is concerned. And I quarrel just as violently with the assumption that the networks have a monopoly on creative thinking. Maybe it is high time that the networks stopped taking the bows for such shows as I Love Lucy and December Bride, produced by Desilu; Private Secretary, produced by Jack Chertok; Schlitz Playhouse of Stars, produced by the Meridian Productions; Ford Theatre, Father Knows Best, The Adventures of Rin Tin Tin, and some of the other creative efforts of Screen Gems; and it is about time you acknowledged the fact that Halls of Ivy, Lassie, and Captain Gallant are really Television Programs of America productions, and that such audience favorites as My Little Margie, I Led 3 Lives, Robin Hood, Four Star Playhouse, and many others owe their existence to such film sources as MCA, ZIV, TPA, and Official Films, not to the networks.

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Is this feature film quality programing?

Let's face it; I admire such live producers as Max Liebman and Alex Segal. But, what should be my regard for such creative names as David O. Selznik, Samuel Goldwyn, Cecil B. DeMille, Darryl Zanuk, John Ford, and many, many others who have made entertainment history? Are we, then, as your statement alleges, "replacing the wealth of fine entertainment" offered by the networks with "a continuing flow of stale and stereotyped product"?

Indeed it's true that we're guilty of offering the American public such outstanding classics as How Green Was My Valley, The Great Gilbert and Sullivan, Tales of Hoffman, Heidi, The Ox-Bow Incident, Since you Went Away, Notorious, I'll Be Seeing You, A Bill of Divorcement, The Well, Breaking Through the Sound Barrier, Captain's Paradise, and others of comparable quality. We're shortly going to be equally culpable on a similar score, because we're going to be offering the reappearances of such immortals as W. C. Fields, Robert Benchley, Willie and Eugene Howard—yes, even those dread characters in George Pal's Puppetoons—and the Little Lulu cartoon series.

That was the end of the quote from my letter to Mr. Sarnoff.

The motion pictures listed in my letter to Mr. Sarnoff are indicative of the quality of film that NTA is making available to television today. In the best interests of the public, an expanded TV market is necessary to offset the imbalance of power which prevents the selection for telecasting of motion-picture entertainment of this type.

In this connection, it is our opinion that those who have proposed the reduction of network option time as the answer for the ills of network monopoly are not taking a long-range public interest viewpoint. What would be the benefits, and who would be benefited? We, the film syndicators, will benefit to a certain extent; there will be a few more hours weekly for the sale of our product. The advertisers will be afforded some relaxation of the rigid bondage within which they have been forced to operate. But there would not be any more useful broadcasting hours than there were before. As a matter of fact, to some advertisers it would only be a matter of inconvenience, because they would be forced into doing via the more complicated national spot route a clearance job that was difficult enough when they were involved in a network, single transaction operation.

Will the stations benefit by this reduction of option time? Some of them will; some of the major market independents, like WPIX in New York, WGN-TV in Chicago, KTTV in Los Angeles, and others will gain access to some of the advertising dollars currently frozen on their competitors' facilities by network contracts.

But the more important question of all: How does the viewer benefit, to whose service this entire industry is primarily dedicated? How does he make out under a reduced option-time system?

He gets the benefit of more people's thinking, of course, and access to some of the product of creative imagination hitherto denied him. But there would not be any increase of quantity of selection; his viewing would continue to be restricted by the fact that X number of stations in his community could still broadcast only X number of programs during the hours he had available to tune to them. What is needed is wider selection, both in depth and in breadth, and since the hours cannot be stretched, there again is only one solution. Additional stations must be created so that the viewer will have more selection during those broadcast hours. These new stations will make possible an increase in the number of networks, which will increase the amount of high-quality programing available to the country's viewers, and, parenthetically, lessen the station's dependence on its present network program sources.

We of NTA have not been unmindful of our obligations to the industry of which we are proud to be a part. The record will show that as late as last year we tried a noble experiment, wherein we and the General Electric Co. put our time, our money, and our programing behind a sincere attempt to help stations, primarily UHF stations, solve their programing and financial problems. We do not pretend that our motives were purely altruistic. We were trying to expand the market for our product, but the experiment, had it succeeded, would have vastly benefited the participating stations.

It did not succeed, and the reason for its failure stemmed from the still unresolved UHF problem, which the FCC to all intents and purposes has left in a state of suspension. We firmly believe in the principle of network broadcasting—free enterprise broadcasting, so to speak—conducted on fair and competitive lines. Perhaps I can add conviction to that statement by telling you that National Telefilm Associates, through a wholly owned subsidiary, the NTA film network, will shortly be engaged in the network business, the fourth operating television network in the country. It is a network that will operate entirely on film at the outset. It will aim to supply quality programing and sell the time of its affiliated stations.

Senator PASTORE. Are you sincere about that?

Mr. LANDAU. Yes, sir, this is currently in existence and has been for several months.

Senator PASTORE. I applaud you for it.

Mr. LANDAU. I do not want to unduly magnify the scope of the NTA film network; it is very much in its incipient stage. Nevertheless, as of this morning, the network has signed affiliation agreements with stations, ranging geographically from Savannah, Ga., to Anchorage, Alaska—from Richmond, Va., to Milwaukee, Wis.—from Bangor, Maine to San Diego, Calif.

As a matter of fact, while the operation is specified by contract to begin October 1, the NTA film network is already feeding sorely needed programing to 16 of its affiliated stations, and is stepping up its service as fast as possible. We say frankly that this is a small beginning, but, large or small, we have taken the film network out of theory into the realm of fact.

Do we believe in the principle of network broadcasting? Indeed we do. We are putting millions of dollars worth of TV programing and a good many dollars into implementing our belief. I do not think that we can be much more emphatic than that.

The NTA film network is not the cure-all for the ills of the TV industry. That remedy must come from governmental action, either legislative or administrative. If the public is to be truly served, give them more channels to which to tune. If the advertisers and the economy of our industry are to be served, provide more market places in which to shop. To eliminate the dominant controls of the present networks, create the stations that will make more networks, and hence more competition, possible.

If the hearings of your committee can serve to hasten specific, concrete action on the part of the FCC to clarify the allocation problem, to solidify and stabilize the current uncertainties that exist and to aid in the rapid expansion of the overall TV market, I am sure that it will greatly enhance the possibilities of a truly competitive TV broadcast industry to better serve the public interest.

I thank you for the privilege of appearing before you.

Senator PASTORE. Mr. Cox.

Mr. COX. Does NTA produce film programs specifically designed for television or does it largely syndicate the product of Hollywood film companies?

Mr. LANDAU. We have not been primarily in the production of television programing for television. We have, however, acquired from producers of such programing made specifically for television a large number of programs ranging from 5-minute to 30-minute programs. And we do supply, and at the early stages of our business it was the primary source of our sales effort.

Mr. Cox. You indicated that generally speaking you were forced—and other syndicators—to sell this film product, which you indicated won popular support, in second- and third-class time. Now, do you feel that this is because the film product could not compete, if given equal access to the market, with other program sources, or is it because there are arrangements within the broadcasting industry which place you at a disadvantage?

Mr. Landau. I don't know exactly what you mean by "arrangements."

Mr. Cox. I was referring to the option time and must-buy provisions.

Mr. Landau. I would say this comes back to the scarcity of time itself; to the scarcity of stations in any given number of markets.

We primarily program, or sell to stations who program, from 10:30 on in the evening, or Sunday afternoon. I would say that if you took the qualitative elements that go into a motion-picture film, such as How Green Was My Valley, or any of the others that I mentioned, where perhaps twenty or twenty-five or ten thousand dollars per minute has gone into the production value of that program, and compare it to the thousand dollars per minute or the $2,000 per minute that goes into the half-hour film program on the networks today, the elements of quality production and the overall entertainment values that can come forth are not comparable.

However, this great programing is restricted, again, by the scarcity of stations and the scarcity of time.

Senator Pastore. But I Love Lucy, December Bride, Ford Theatre, Lassie—those programs come through on option prime time?

Mr. Landau. I believe that Mr. Cox' question was aimed at the feature film.

Senator Pastore. No, no, no. I am not directing my question as an adjunct to his. I mean, on the thesis that has been developed here, you have developed a thesis here that you have had to go to class B and class C time.

Mr. Landau. We are primarily distributors of motion pictures for television rather than programing made for television. And that was the distinction that I believe Mr. Cox was trying to make.

Senator Pastore. I realize that, but I am getting off that point. I am developing this other point. Now, apparently these fine productions, which are independently produced productions, are getting in on option time and prime time, are they not?

Mr. Landau. Yes, they are.

Senator Pastore. I mean, if a show is good, it gets on. How do you develop this argument that you are being pushed around?

Mr. Landau. I don't think that I am trying to develop an argument that we are being pushed around. I am saying that, with 8 or 9 or 10 or 12 or 20 film sources, the number of I Love Lucys—that the 10 programs that I made mention of here are small indeed, to the comparative amount of time that the 10 or 20 film producers have available to place their programing in, in the event they make a sale.

Senator Pastore. Let's be practical about it. You are a very intelligent man and you stand high because you are the president of a very productive and very prosperous organization.

Now, you have heard the testimony here on the part of many affiliated broadcasting stations, who have all been very joyously saying here for the last 2 or 3 days—[laughter]—that they like to be connected with a network; that they are fundamentally very much satisfied with the relationship; they have even gone so far as to call one another partners; and they run their stations and they would have to buy your film even if you didn't have to have option time. They are ultimately the ones who would have to do the buying of your product.

And they come in here and they tell us here that they are completely satisfied with this option time that they have given the network, and they are completely satisfied with the prime time that they have allocated to the network.

Now, what can we as a Congress—let's be realistic about it—what can we as a Congress do about that when we live under a system of free enterprise?

Mr. LANDAU. Senator Pastore——

Senator PASTORE. I mean, I am not trying to be facetious, I am trying to develop this. I know a lot of people have gripes and they like to come in here and get it off their chests. But after all, we have a specific job here to perform in the public interest as Members of the Congress. Naturally, there are some things that we are being called upon to do.

Now, the question that I am curious about is this: Your shows that are being independently produced, whenever they are very good, they get on. Your argument is, of course, they have to be very, very, very good to get on. But the fact of the matter is that if they are very, very, very good, they do get on. Now, what can we as a Congress do about that—no more than we can tell you what kind of a picture to make? That is the question I would like to propound.

Mr. LANDAU. I don't profess to suggest what you as a Congressman can do.

Senator PASTORE. I mean, that is why you are here, you are here to tell us something to do.

Mr. LANDAU. I think what we can do, sir, is to push for more stations in more prime markets.

Senator PASTORE. I agree with you there.

Mr. LANDAU. In more prime markets, because we have today 9 stations that are not intermixed—9 markets that are not intermixed that have 4 stations or more. We have 20 markets that have 3 stations or more that are not intermixed. And if we can push for, instead of 29, 3-or-more-station markets—and I refer now to the testimony this morning where everyone would be very happy if we had 3 stations in every market—I would be much happier if you had 4 in every market.

Senator PASTORE. I will take three in Providence. [Laughter.] I know that. I know that. That is what I have been, let's say, crying about or begging for.

Mr. LANDAU. In Variety 2 weeks ago they listed a number of shows that were sold this year to sponsors—new shows to sponsors—not necessarily new sponsors. They came up with a list of 10 shows that will go on the air next year. Many of the film syndicators—and I am sure NBC, CBS Music Corporation of America, have as many as 10 shows themselves that they are offering. So that there isn't enough time for even this great programing to get on the air as our current TV economy is constituted.

Senator PASTORE. That is right. And your argument is that we need more stations and more networks. I will go along with that. I am not touching that aspect at all.

Let me put it this way: I will take judicial notice of that, that we ought to have more broadcasting stations; we ought to have more networks. We haven't got them. We are talking about option and prime time. What are we as a Congress expected to do about this, when the final decision is going to rest upon that individual who has come here and said, "I am very happy about what I have. I don't want to do anything to change it."

As a matter of fact, we have had here—we have had all these affiliates coming in here advancing the cause of the networks. I don't know what the connection is, but it is a good connection, whatever it is. [Laughter.] But it all sounded very lovely here. Now, in view of that testimony, what do we do?

Mr. LANDAU. I say that you call some of the fourth stations in a market to come and appear here, the ones that are unaffiliated, the ones that need the programing to buck the I Love Lucy's.

Senator PASTORE. What is stopping them now from coming to you and buying the best you have got to give?

Mr. LANDAU. Because they cannot defray, on a national basis, the cost of producing an I Love Lucy if you have only nine markets in which to place the advertiser's message. You cannot compete with RCA—or I believe Dr. Stanton says he has 181 affiliates. Nine stations cannot go out and buy, or help to produce, a program whose cost can only be defrayed over a small number of markets.

Senator PASTORE. Congress can't subsidize that, can it?

Mr. LANDAU. No, but the Congress can make available, or help, I believe, press for the reallocations, or concrete allocations——

Senator PASTORE. You always come back to the same point. I am willing to admit that.

Mr. LANDAU. If you have penicillin, sir, to cure a virus, you don't look for new sulfa. You try to cure the disease with the known remedy. I believe the known remedy here would be the expansion of the TV market, certainly in the prime markets, to offset the limited economy.

Senator PASTORE. You mean more stations?

Mr. LANDAU. More stations.

Senator PASTORE. Well, I grant you that. We—as a matter of fact, if you are familiar—and you must be, you must read the records of all these hearings—you know how the members of this committee feel about that. We have had the members of the Federal Communications Commission before us; as a matter of fact, I was the one who asked the question: When are you going to resolve this problem? As far back as 5, 6 months ago they told me in about 6 months. It hasn't been resolved yet. I tell you very frankly I am losing my courage—or losing my hope, let me put it that way. But I agree with you, we need more stations. But on this question of option time, and prime time, your honest, truthful opinion or recommendation is what, to the Congress?

Mr. LANDAU. Is that it will not help enough people, it will not do the public enough of a service, sir——

Senator PASTORE. Thank you for saying that. At least it is an honest answer.

Mr. LANDAU. That is my opinion.

Senator PASTORE. That is the problem that confronts us. I have been asking myself for the last 3 days, What am I expected to do, as a Member of the Senate, about this question of prime time or option time that we have been talking about?

Mr. LANDAU. Instead of 3 or 4 film syndicates or program sources selling 10 shows, including the networks for next year, perhaps 2 or 3 more film syndicators or 2 or 3 more program sources will get in and sell another show by reducing the option time. But the long-range benefit I do not believe is there.

Mr. COX. You suggest, don't you, in your testimony, Mr. Landau, that it would provide somewhat greater freedom of choice among programs, that it would provide programs which would permit the existing independent stations to compete more effectively?

Mr. LANDAU. To some degree.

Mr. COX. And that it would be, in your view, a step in the right direction, but perhaps too feeble a step; is that what it amounts to?

Mr. LANDAU. I say that it is an attempt to help a very, very tough situation. It is not the true remedy.

Senator PASTORE. Yes. But you have also said that the reason why you can't develop better shows than I Love Lucy, is because you have got to have a proper spread of these programs in order to invest the money in the cost of the production; is that correct?

Mr. LANDAU. Right.

Senator PASTORE. Now, if it is true that they need this option time in order to guarantee the proper circulation of these programs on a network, then, of course, it is true that if you constrict that you are setting in a process of erosion? Now, I want your honest answer on that, too.

Mr. LANDAU. I would say that you are correct in what you are saying.

Senator PASTORE. Of course I am.

Mr. LANDAU. But, I say that I don't want to—I say I would like to make a few programs as good as I Love Lucy. They don't necessarily have to be better. But I say, unless I can clear time on a network today I cannot sell that program. And I say that unless I can get enough stations in enough markets to be able to sell that program to WPIX in New York, or WGN in Chicago, KEYD in Minneapolis, or KTTV in Los Angeles, I cannot afford to produce that program.

Senator PASTORE. That is right. I can understand that, too. By the same token you can't put on I Love Lucy unless you can get the proper spread on the network and get your number of must stations in order to make it a profitable venture.

Mr. LANDAU. I agree. I say that network broadcasting is necessary.

Senator PASTORE. I mean that is what faces us. There you are. You are on both horns of a dilemma. You realize the fact that, after all, if you are going to get a certain quality of program it has to be channeled off to a specific number of areas in the country in order to make it worth while—otherwise your advertiser will not put up his dollars to do it that way. That creates a problem for you.

But the question I ask myself, fundamentally, is what are we as a Congress, in a system of free enterprise, expected to do about this?

I am afraid if we get into controlling the situation we may start out with a cure that may actually end up as a serious dilemma.

Mr. LANDAU. I am in accord with that, Senator. I believe that the question here is whether the technical problems or the economic pressures are withholding the clarification of the allocation system right now.

Senator PASTORE. Well, I go along with you on that. I think it is a very serious problem. I think it is tied in with this intermixture and deintermixture; I think it is tied in with the tremendous power given to some stations; I think it is tied in with the concentration of 6 and 7 stations in some areas of the country.

You have Toledo here with only one, where they can make their own price. A spot anouncement for 20 seconds you told me cost $225. That, to me—I know nothing about their private affairs, but that sounds to me ridiculously high. But it is either that or you don't go on. That is the thing that faces us.

I think you are right; we do have one-station monopolies in many communities, which in my humble opinion does not serve the public interest. I say this: As long as we have three networks in this country you ought to have at least three channels in every community.

Mr. LANDAU. I say we should have four. [Laughter.]

Senator PASTORE. I say four would be better. Then maybe you fellows can come in with the fourth network. I realize all that. But I keep asking myself the question: What are we being asked to do here? I am afraid we cannot put the FCC in the business of deciding what picture the station is going to buy, or with whom they are going to do business, because, after all, we get into socialism which nobody wants.

Mr. COX. You suggested——

Mr. LANDAU. I didn't mean to infer that that was our suggestion.

Senator PASTORE. No; you didn't say that. That is something I am drawing out of all this, if we are expected to go that far. You made a very intelligent statement.

I don't want to get into this matter between you and Mr. Sarnoff—we leave that for business license, competitive license. You fellows can call each other anything you want within bounds of your legal liability. That is your business. I don't want to get into that at all. If you have a gripe against Mr. Sarnoff, or he has one against you, it is all right if you want to air it out here a little bit, as long as you don't drag me into it.

Apart from that, you have made a very fine presentation. I want to congratulate you for it.

Mr. LANDAU. Thank you.

Mr. COX. You suggested that you thought the suggested change in time option regulations might make available a market for 2 or 3 more programs. Now, assume that a 3-station market—in a 3-station market, through some change in option time regulations, one-half hour in the period 7:30 to 10:30 was removed from the program capabilities of the networks. On 3 stations that would represent 21 half hours in the course of a week. Wouldn't that make a possible market for 21 syndicated film programs of 30 minutes' duration?

Mr. LANDAU. That is in 29 markets, Mr. Cox, out of how many?

Mr. COX. Out of a hundred.

Mr. LANDAU. Twenty-nine markets, I believe we have two hundred some-odd markets. So in 29 markets you might make it possible for——

Mr. COX. In the remaining 60 you would get 14 half-hour periods open, and in possible permutations and combinations of those, assuming one advertiser did not necessarily insist on clearance of all of them, you could perhaps open up something more than that number of program possibilities.

Mr. LANDAU. And I believe that I would be delighted to have the opportunity to vie for the placement of some of our programing in those time periods, as would, of course, all of the other film syndicators. Again, it doesn't give the viewer in a particular area any more of a privilege of tuning instead of to 3 stations or to 2 stations or to 1 station. If you bring it down to the ultimate of seven additional half hours in single station markets, it doesn't give them any greater choice of selection of their programing.

Mr. COX. Nobody denies that that is the only adequate and final solution. But in the period when Senator Pastore is losing hope, and we are giving consideration to other possibilities, you would agree, wouldn't you, that through some such changes these benefits that you have suggested could flow at least in some measure to the public, to independent stations, to the producers of nonnetwork programs?

Mr. LANDAU. I would agree that it is a respite of some sort from the pressures on all three of those groups.

Mr. COX. Thank you.

Senator PASTORE. Thank you again, sir, very, very much.

We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 3:49 p. m., the committee adjourned until Wednesday, June 20, 1956, at 10 a. m.)

TELEVISION INQUIRY
(Network Practices)

WEDNESDAY, JUNE 20, 1956

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10 a. m., Senator John O. Pastore, presiding.

Present: Senators Pastore, Magnuson, and Wofford.

Senator PASTORE. Is Mr. Whitmire here? (He came forward.) I understand that you desire simply to present your statement for the record, sir.

Mr. WHITMIRE. Yes, sir.

Senator PASTORE. All right, sir. Without objection, it is so ordered.

(The statement follows:)

STATEMENT OF B. T. WHITMIRE, GENERAL MANAGER OF TELEVISION STATION WFBC-TV, GREENVILLE, S. C.

My name is B. T. Whitmire. I am general manager of television station WFBC-TV, which operates on channel 4 with maximum power at Greenville, S. C. Station WFBC-TV is a primary affiliate of the NBC television network, but is not included in that network's basic must-buy list.

I personally, and on behalf of station WFBC-TV, appreciate the opportunity to appear before this committee and to record our experiences and thoughts on the matters with which you are now concerned.

The Greenville area is served by three television stations; namely, WFBC-TV, in Greenville on channel 4; station WSPA-TV, in Spartanburg on channel 7; and station WLOS-TV, on channel 13 at Asheville, N. C. Stations WFBC-TV and WSPA-TV both transmit from Paris Mountain, approximately 5 miles from Greenville, and station WLOS-TV is located on Pisgah Mountain, which is approximately 35 air-miles from Greenville. These 3 stations are affiliated with the 3 national networks and, consequently, the people in the area have a wide choice of network and local television programing.

Station WFBC commenced operations in 1933 and became an affiliate of the National Broadcasting Co. in 1936. Greenville is one of the important markets of the country, but it certainly does not rank in the minds of national advertisers with cities such as Cleveland, Philadelphia, and Chicago. Consequently, WFBC-Radio, just as in the present case of WFBC-Television, has always found it necessary to sell national advertisers on the importance of the Greenville market. The affiliation of WFBC-Radio with NBC meant only one thing—that NBC service was available to WFBC's transmitter. It certainly did not mean that any NBC client would or could be forced to buy our facilities. We were delivered the sustaining and public-service programs originated by the network, but it was the job of the station to show to the buyers of network time that the Greenville market was important to them and that the rate charged for it was justified. Of course the NBC sales department offered the station. A network salesman tries always to sell the entire network but seldom does he get an order for every station.

Secondary markets are the ones left out. Therefore, it was my job to go up and down Madison and Michigan Avenues, Peachtree and Canal Streets knocking on agency doors and telling them about the fine radio facility that had become available.

When WFBC–Television commenced operation January 1, 1954, we had obtained an affiliation with the NBC television network; however, history was repeated and I found myself going about the same streets, calling upon many of the same people and using essentially the same words to convince advertisers as to the desirability of using WFBC–Television.

Television networks, in my opinion, are a necessary and essential part of the business of broadcasting. The growth of the television industry, for the most part, has evolved in the past 10 years. The history of television broadcasting, excepting the early developmental period, is presently confined to the past 10 years. Nevertheless, television, in this one decade, and particularly since 1952, has witnessed an entirely unprecedented growth and development, with the result that television stands today as a powerful, highly respected and greatly envied—particularly by its competitors—medium for the dissemination of news, public service, special events, and entertainment, as well as for the advertising of goods and services.

Already, despite the vastness of this Nation, the great majority of the populace has available a multiplicity of television services. It is no longer uncommon to have a television audience of more than 50 million Americans simultaneously witnessing the same public event or outstanding entertainment feature. This growth has not been equaled anywhere else in the world. It hardly appears necessary to further detail any account of the marvelous development of the television medium and the tremendous service rendered for the public good. It should be recognized, however, that the rapidly developing stature of the television industry renders it and its various segments subject to considerable criticism and much exaggerated depreciation by those would-be detractors who would seek radical modifications in the present order for their private gain.

The television networks certainly deserve substantial credit for their pioneering efforts and their continuing contributions to the growth of this great industry. With the rapid changes in transportation and communications media in this country in the past half century, the interests of our citizenry has become far less provincial and our people are more and more concerned with national and international affairs. The television networks are essential if we are to be able to provide simultaneous coverage and presentation of major news and special events of nationwide interest. A network, of course, brings the talent of the world into outlying areas like South Carolina, as well as news coverage, educational programs and events of political and economic importance. Without the backbone of network service, local stations would mostly be magic lanterns broadcasting available movies. I cannot conceive of WFBC–TV without a network affiliation. At best, it would be a difficult and costly job and we could not possibly provide the variety of entertainment and public service that we now broadcast.

We could not possibly produce a show comparable to Dave Garroway's Today. We produce good news shows with our own photographers and reporters and service from Telenews, and so forth, and we have a lot of local and regional news. We also have daily sportscasts, but next week, from NBC, we will have the Olympic tryouts, live.

We have good children's shows, Kids Korral, Uncle Pat and Little Joe, and Dandyland, but we cannot possibly have the budget to produce on the level of Howdy Doody and we certainly would never attempt Peter Pan or Hansel and Gretel. And there's only one Miss Frances and her Ding Dong School.

A few times a year the Greenville Little Theatre Players put on dramatic bits, but can they compare with Robert Montgomery? And how would any single station do The Twisted Cross or A Night to Remember?

Consequently, I feel that a network affiliation is essential for the operation of a station such as WFBC–TV. I would certainly not welcome the idea of trying to operate an independent station in the Greenville market. Not only do the networks provide simultaneous coverage of major public events, they also make available to their affiliates entertainment features of the highest quality and at a cost which would be prohibitive for independent stations. Further, the availability of the network program service makes it possible for the individual station such as WFBC–TV to concentrate its efforts on doing a better production job in presenting local live programs. Our local productions, plus the outstanding program fare made available by our network, plus those film shows which we select as the best available from independent syndicators, permits us to provide a service for more than 18 hours daily and makes available, in our judgment, an ever-improving and already outstanding television service best designed to serve the needs and interests of the people in our area.

Also, in my opinion, option time is necessary for the successful operation of a network. When I enter a time buyer's office and he asks for a certain time, as a salesman, I've got to know that I can deliver the time I offer, otherwise no sale. The same is true in selling a network.

Furthermore, network option hours, in our experience, have not precluded station WFBC-TV from clearing time during prime viewing hours for outstanding programs of transcendent local interest. We have always attempted to accommodate our network's requests for time clearances insofar as possible, and, conversely, NBC has been understanding as to our problems and has recognized our primary and ultimate responsibility to program to best serve the needs of our own particular area. Next week, for example, WFBC-TV is utilizing, for local production, 5 hours and 45 minutes of NBC's class A option time between 7:30 and 10:30 p. m.

Station WFBC-TV has, on occasion, either rejected or delayed on film network programs to accommodate local advertisers. Likewise, in at least one instance, we have rejected a network offering because we were convinced that it was not an outstanding program and that we could substitute a better one.

In summary, we feel that television, in a very brief span of development, has experienced a remarkable growth and has achieved great success and stature. This alone attests to the general soundness of the industry and the current methods of doing business. Most of the current criticism of the television industry, in our opinion, certainly does not reflect any dissatisfaction on the part of the public. We believe that the television networks deserve substantial commendations for their part in the growth of the industry and that their services are a necessary part of the business of telecasting. We also sincerely feel that television, as an industry, has found substantially the right prescription and that major surgery is not indicated. Any significant modifications could well have the effect of depriving the American public of much of the outstanding program service now available and depreciate television both as an advertising and programing medium.[1]

Senator PASTORE. Is Mr. Harold Essex here?

Mr. ESSEX. Yes, sir.

Senator PASTORE. Will you come forward, please?

Mr. ESSEX. Mr. Chairman, in the interest of time, I had just as soon submit mine.

Senator PASTORE. Well, if you so desire. And I do want to say this to you, that Senator Ervin had hoped to be here, but as you know, there is a death in his family, and he has been detained.

Mr. ESSEX. Yes, sir.

Senator PASTORE. Thank you very much. Without objection, it is so ordered—that your statement be put into the record.

STATEMENT OF HAROLD ESSEX, VICE PRESIDENT, WSJS AND WSJS-TV, WINSTON-SALEM, N. C.

I am Harold Essex, vice president and general manager of WSJS and WSJS-TV, Winston-Salem, N. C. WSJS and WSJS-TV are part of the NBC radio and TV networks. I am appearing here because our stations are vitally interested in the investigations and deliberations of this committee concerning network operations and practices.

Let me give you briefly a station's eyeview of the nature of a network and the services it performs for a station such as WSJS-TV. A network should not, in my opinion, be regarded just as the National Broadcasting Co., located in New York City. Rather, in reality a network is a group of many independent stations located throughout the country which together are able to realize the benefits of cooperative action in two fields basic to American broadcasting—creation of programs and obtaining of revenues by selling programs to sponsors.

These many stations pool their resources to help create programs of a quality far beyond the physical and monetary means of any individual station for broadcast by every member of the group; and they pool their product—the

[1] Pursuant to later request, the program schedule of WFBC-TV for a sample week in April, 1956, was furnished and is printed at p. 2984.

time which they sell—so that national coverage can be provided to an advertiser wishing to broadcast his message over every one of the member stations at a time he selects. Both the programing and sales services are carried on for the benefit of the group by some central organization. Because of the obvious benefits of cooperative action by many stations, networks or chain operations as they are sometimes called, are almost as old as radio itself. Some networks have been created along the lines of cooperatives or voluntary associations. Others have been formed by independent entrepreneurs. Whatever the form of organization, the purpose and essential nature of the network is the same: to provide to the many separate stations programs and revenues which each could not possibly hope to provide itself acting alone.

It is, of course, possible for the jointly produced programs to be circulated to each individual station by transcription or film, and such operations are not unknown. But obviously such a method of program distribution does not meet the requirements of many of the most important program subjects—any special event, sports event, or other live production. Such a program has to be carried simultaneously to each station by telephone wire, cable, or microwave and broadcast by such station, if the full value—indeed, if any value—of the program is to be realized.

Thus, the essence of most network service is the simultaneous broadcasting over the many independent outlets throughout the country of an event or program—originated in a remote spot—whether it be a political convention in Chicago, a horse race in Kentucky, an opera in New York, or a peace conference in San Francisco.

This basic element of network service—simultaneous broadcasting by the many individual members of the network—obviously presented serious practical problems of administration. Unless the time that the event occurred or the program originated was free over all or most of the members of the network, the joint programing endeavors would prove abortive, and the sale of the program and the time over the member stations to a national advertiser would be frustrated.

Option time was the method which was developed to enable the 100 or 200 or more individual stations to operate as a team—to realize the objectives of a network service. Option time merely amounts to giving to the executive head of the group of stations, or its central organization or the independent company performing the programing and sales functions for the group, first call on about half of each station's daily time on the air. When an event occurs, or a program is ready to be aired, or a sale of time to a national advertiser can be closed, option time enables the programing and sales agency to assure distribution of the program and the advertiser's message over all or most of the member stations.

Without such distribution, and the advance assurance that such distribution is practicable, sales of time over the network to advertisers would be difficult if not impossible, and investment in and development of high-grade programing would be crippled. Thus, from the point of view of the member stations, option time is a concession by each in the interests of all, a guaranty that the full network will be available to act as a network when the occasion arises; and from the point of view of the sales and programing agency, option time, by enabling it to clear time over all or most of the network, provides the tool necessary for performing the sales and programing function delegated to it. In short, effective network service is vitally dependent upon option time.

I don't need to belabor the tremendous contributions to the growth of radio and television which network service has made. Most of the areas of this country would still be without television service if it were not for the pioneering of the networks—for the high-grade programing and the revenues which network service has provided to the many individual stations in different cities across the Nation. To network service and to network service alone must be accorded the principal credit for the present tremendous success of TV today.

It is important, however, to emphasize the breadth and variety of national network service. From some things that have been said, it might be thought that network programing consisted solely of entertainment. This is far from the case. A station is licensed to serve the public interest; and it is basic that this means serving the diversified needs of the public—providing programs not merely of an entertaining nature, but religious, news, special events, agricultural, educational, civic, cultural, public affairs and the many other kinds of program fare the public is interested in. And network service provides just such programing—in considerable abundance and at very substantial cost.

On a regular basis, the NBC-TV network provides several discussion programs devoted to public affairs, current issues and controversial matters, namely Meet the Press, American Forum, and Youth Wants to Know. I am sure that all members of this committee are familiar with the public service which these programs perform—many of them at first hand as the result of personal participation in the recent past in these programs on one or more occasions. The NBC-TV network also carries regular programs devoted to the religious needs—Frontiers of Faith—and to educational and cultural matters such as Zoo Parade, NBC Opera Theatre, Wide, Wide World, Medic, and Ding Dong School, and others to the interests of children.

In addition to these regular programs, the NBC-TV network makes available to its member stations a continuous flow of special programs covering or interpreting the important developments and events of the day and serving some timely civic, educational, religious or comparable need. For example, over the last year, the NBC-TV network has carried many addresses and talks by Members of Congress, and other public figures; it has carried many other special programs devoted to public affairs and issues, such as a panel discussion by juvenile court judges on juvenile delinquency; Operation Alert, dealing with civilian defense; a number of programs dealing with or reporting on the meeting at the summit; a discussion on equal job opportunities; the Meet the Press 10th Anniversary Dinner; The Man in Two Places at Once, emphasizing the importance of the Army Reserve Corps in defense.

It has carried many special educational and cultural programs, such as Ten Years After Hiroshima, devoted to medicine in the atomic age; Talk with Arnold Toynbee; The Saint of Bleecker Street, the Pulitzer prize winning opera; We, the Mentally Ill, in connection with the observance of Mental Health Week; the March of Medicine, devoted to advances in the field of medicine; Read to Me, Please, devoted to children's classics; The Ion Knife, a report on the use of radioactive isotopes to combat cancer; a special documentary on India; Alcoholism, its great menace; Antarctica, a special documentary on Operation Deepfreeze. It has carried many special religious programs, such as Home for Passover, a special dramatic program in cooperation with the Jewish Theolgical Seminary; Mass from the Cincinnati Cathedral at Easter; the Enchanted Top, celebrating the Jewish Festival of Hanukkah; the Christmas Eve Mass from St. Patrick's Cathedral in New York; the Holy Communion Services from the Washington Cathedral on Christmas Day; No Room at the Inn, the story of the Nativity on Christmas Day; For God and Country, inaugurating the 1956 American Legion's Back to God movement; Children of Israel, a special drama on the Passover; the Palm Sunday Mass from Boston; the Easter Service from the Episcopal Church in Cincinnati. And it has carried many diverse special events or campaigns and appeals in behalf of civic, charitable, and similar organizations, such as the square dance festival in Oklahoma City; the atomic bomb test a year ago at Yucca Flat involving a series of telecasts; a special drama in cooperation with the United Jewish appeal; Second Chance, dedicated to promoting highway safety; Salk Vaccine Report at the beginning of last summer; the Argentine revolt against Peron; the First Step Into Space dealing with the manmade earth-circling satellite; a number of special emergency programs on Hurricane Connie; many special programs on the illness of the President and his arrival home last November; the Macy Thanksgiving Day Parade; the Tournament of Roses in Pasadena on New Year's Day.

Most of the programs, both regular and special, mentioned above are sustaining; that is, they are paid for by the network itself out of the revenues obtained from sale of other programs to advertisers over the network. To be able to render such services as these, the networks must maintain extensive facilities, and employ a large staff. Network service means that member stations can obtain high quality programs—sustaining, if not sponsored—throughout most of the broadcast day. On the average, WSJS-TV broadcasts every week about 10 hours of the kind of network regular and special sustaining programs briefly summarized above. This represents a very important part of our programing, and a really significant service to our audience in the Winston-Salem area. Such programs as these are not available elsewhere.

How is such network service made possible? By the revenues derived from the sale of network time and programs to national advertisers. And how are such sales made possible? By the ability of the programing and sales agency to clear time for the programs on the many member stations.

Don't think for a moment that the present high quality of network service—that the many different kinds of programing, much of which is not self-sustaining—can be maintained, unless the networks have the tools to provide simultaneous distribution on a national scale of programs and advertising. It need not be emphasized that if such network service is impaired it is not primarily the programing and sales organizations—NBC, CBS, and ABC—which suffer; those who lose are the viewing public across this land which is served by many independent members stations that depend so vitally upon network service.

Now what is the complaint about option time? One complaint, as I understand it, is that option time prevents film producers from being able to compete on an equal basis with the networks for time on network member stations during some of the prime viewing hours. It is their complaint that since option time gives the networks the ability to preempt certain hours of the day for their programs, they are unable to sell their products to the stations for use during those hours. Of course, option time amounts only to 3 hours before 1 o'clock in the afternoon and 3 hours before and 3 hours after 6 o'clock—roughly half of the broadcasting day. To be sure, the best viewing hours for TV are between 6 and 11 p. m., and it is to the 3 hours of option time during this segment that the film producers, as I understand it, are primarily directing their attack.

But, based on our own experience, I don't believe the film producers have proved a case of real injury to themselves from option time. Over and above the numerous programs sold by the film producers to the networks, WSJS-TV, each week, during the prime viewing hours of 6 to 11 p. m., of which option time occupies 3 hours, carries about 5 hours of film bought from representative suppliers. This is a good portion of all worthwhile, top-quality film that is offered to us. I exclude, of course, the many old features and shorts not produced especially for TV, and the technical quality of which in many cases is far below par. So that based on our own experience, I would say that when the film producers have come up with good productions which are priced right, they have found customers.

Let us take a look at the alternatives—network service and the offerings of the film producers. The latter are limited almost solely, if not solely, to the lighter form of entertainment, such as situation comedies, thrillers, westerns, and variety shows. All of these, while undoubtedly quite fine productions, are mostly entertainment. On the other hand, network service provides a wide variety of offerings—not only entertainment, but special event and news coverage, sports coverage, educational, cultural, religious, and similar programs, and many discussion programs and other large blocks of time devoted to public affairs and issues. Certainly, it would be foolhardy to jeopardize such a fine diversified service even to a slight extent in order to make way for purely entertainment offerings of those who would abolish option time.

The objection will be immediately raised that there is no question of jeopardizing network service, but merely of eliminating one of the practices of networks which enables them to obtain a competitive advantage. I am firmly convinced that this approaches nonsense. Option time is the necessary tool with which effective network service is fashioned. If the network sales and programing agency does not have the use of option time privileges which the member stations confer upon it, effective network service to member stations is seriously impaired if not largely destroyed. Unless the networks as a whole—the affiliated stations and their sales and programing agency—can derive the revenues from the sale of program and time to sponsors during 3 of the 5 prime viewing hours, and have the assurance of being able to make such sales which option time affords, then the many other services in the nonentertainment fields cannot possibly be rendered by the networks.

But let it clearly be understood that my purpose in being here today is not to attack the film producers. Neither is it my purpose to defend the networks in all of their practices. Certainly we have had our differences with NBC during the years of our affiliation, but such differences have been resolved between us, always in a businesslike manner.

My reason for being here is solely in the interest of the stations that I represent—that they may continue to be able to render as good a radio and television service as possible, both in the public interest and so that they can obtain and hold audiences, which attract advertising revenues that mean profits for their owners. WSJS wants to insure that the means to make such service possible are not eliminated or impaired.

So, I come back to the point of beginning. In our view a network service, with all it brings, is essential to our greatest success. We want to be sure that we, along with the other independent outlets, are able to operate effectively as a network. Option time seems to us to be the adhesive which enables the aggregation of separate stations to cooperate effectively. The day may well come when network operation will no longer be the effective method that it is today. If and when that day comes, then the independent operators have the right to make their choice—network or not. We reserve that right of choice for ourselves, and we request now a continuation of the right to grant, if we so choose, option time to the network with which we are affiliated. When option time seems to us to be no longer in the best interest of our operation, the matter can be settled by the termination of our network agreement, a situation which I am certain exists with all affiliates alike.

I submit that the abolition or curtailment of option time now will represent a serious overall loss to listeners, viewers and station operators alike, resulting in a certain and substantial deterioration of the fine broadcast service our country enjoys today.

Thank you for listening to our views on this most important matter.[1a]

Senator PASTORE. Is Mr. Abeloff in the room?

(No response).

Senator PASTORE. Is Mr. Rogers in the room?

Mr. ROGERS. Yes, sir.

Senator PASTORE. How long would your statement be, sir?

Mr. ROGERS. 15 minutes.

Senator PASTORE. Mr. Floyd?

Mr. FLOYD. Fifteen minutes.

Senator PASTORE. Mr. Saddler, is he in the room?

Is Mr. Saddler in the room?

(No response.)

Senator PASTORE. Is Mr. Putnam in the room?

(No response.)

Senator PASTORE. Mr. Breen?

Mr. BREEN. Yes, sir.

Senator PASTORE. How long will your statement be?

Mr. BREEN. A little less than 15 minutes.

Senator PASTORE. Is Mr. Chisman in the room?

(No response.)

Senator PASTORE. Is Mr. Swezey in the room?

Mr. SWEZEY. Swezey is here, sir.

Senator PASTORE. How long will your statement be, sir?

Mr. SWEZEY. Between 5 and 10 minutes.

Senator PASTORE. Is Mr. Bryant in the room?

(No response.)

Senator PASTORE. Is Mr. Harris in the room?

Mr. HARRIS. Yes, sir; 10 minutes.

Senator PASTORE. Mr. Gross in the room, is he?

(No response.)

Senator PASTORE. Mr. Warren, is he here?

Mr. WARREN. Yes, sir.

Senator PASTORE. How long will your statement be, Mr. Warren?

Mr. WARREN. 15 minutes.

Senator PASTORE. Is Mr. Lambert in the room?

Mr. LAMBERT. Yes, sir. 15 minutes.

Senator PASTORE. Mr. Wagstaff, is he in the room?

Mr. WAGSTAFF. Here, sir.

Senator PASTORE. How long will your statement be?

Mr. WAGSTAFF. 12 minutes.

[Laughter.]

Senator PASTORE. Is Mr. Gilchrist in the room ?

Mr. GILCHRIST. Gilchrist, yes, sir. Less than 15 minutes.

[1a] Pursuant to later request, the program schedule of WSJS–TV for a sample week in April, 1956, was furnished and is printed at p. 2987.

Senator PASTORE. Well, that all sounds pretty good.

The only thing I want to say off the record—

(Discussion off the record.)

Senator PASTORE. Our first witness is Mr. Rogers.

Mr. ROGERS. Yes, sir.

Senator PASTORE. May we have quiet please, so that the witness may be heard.

All right, Mr. Rogers, you may proceed.

STATEMENT OF LAWRENCE H. ROGERS II, VICE PRESIDENT AND GENERAL MANAGER, WSAZ, INC. HUNTINGTON, W. VA.

Mr. ROGERS Mr. Chairman, Mr. Cox, distinguished Senators, my name is Lawrence H. Rogers II, and I am vice president and general manager of WSAZ–TV, with studios in Huntington and Charleston, W. Va.

I should like to offer this statement for the record in this hearing, and read some salient parts of it; and I invite any questions at any time during the course of this reading, which I will try to make as quick as possible.

Senator PASTORE. We appreciate that very much and without objection, it is so ordered.

(The statement of Mr. Rogers is as follows:)

STATEMENT OF LAWRENCE H. ROGERS II, VICE PRESIDENT AND GENERAL MANAGER, WSAZ, INC., HUNTINGTON, W. VA.

Mr. ROGERS. Mr. Chairman, distinguished Senators, my name is Lawrence H. Rogers II and I am vice president and general manager of WSAZ, Inc., Huntington, W. Va., licensee of television station WSAZ–TV, with studios in Huntington and Charleston, W. Va.

WSAZ–TV has been in commercial operation for 7 years, and is affiliated with the National Broadcasting Co. My appearance here is in behalf of the stockholders of the licensee corporation and it is prompted by only one pressure group; namely, the approximately half a million television-set owners in the West Virginia-Ohio-Kentucky-Virginia area who depend upon WSAZ–TV for service.

Over a period of months this committee has heard reports, documents, and testimony to the effect that network television, as it is constituted today, is a monopolistic force operating against or outside various laws and regulations to the general detriment of the public. Chief amongst these charges were the testimony of Mr. Richard A. Moore and the special report of the Honorable John W. Bricker, himself a member of this committee. I feel it my duty as a station operator to deny these major allegations, not in defense of the network companies, but because the facts simply do not justify these claims insofar as my experience in the operation of a small-city television station is concerned. Indeed, it is my contention that many of the network practices under attack are largely responsible for the growth and success of television in the hinterlands and that the restriction of basic network operations by Government action would be detrimental to the public interest, which as a licensee I am pledged to serve.

STATION OPTION TIME AND MUST-BUYS

I do not propose to treat in detail the questions raised by Mr. Moore as to the legality of option time contracts and minimum station purchases, since Messrs. Stanton, Sarnoff, and Kintner, who are far better qualified than I, have already adequately answered them. Suffice it to say that to expect a network to operate without basic network sales tools is ridiculous on its face, and I strongly suspect that Mr. Moore is well aware of it. To refute his claim that the elimination of these so-called evils will solve the problems of station operators and program packagers alike, one needs only to examine the very record Mr. Moore refers to in the motion-picture industry. He has claimed that the network option-time agreements and the basic network must-buy lists constitute the same type of restraint as block booking by motion-picture producers and chain ownership of theaters by producers. In the first place, the Moore statement actually reads:

> * * * each station agrees to withhold certain desirable time periods from sale to any advertiser unless the advertiser agrees to purchase equivalent time on all stations throughout the country who are parties to this agreement. (Statement of Richard A. Moore, March 26, 1956.)

This is a plain misstatement of fact and simply is not true. WSAZ–TV is not now nor ever has been a party to such an agreement with a network or another station.

In the second place, Dr. Frank Stanton, in his testimony last week, adequately disposed of the claim that a must-buy list is harmful by demonstrating how it actually serves to spread the use of television far beyond the normally anticipated bounds by the average national advertiser. Selective market, or spot buys, are almost invariably smaller than network purchases, and with the program extension plan and the extended market plans of NBC and CBS, the average network show is reaching the great majority of people of the Nation through the overwhelming majority of affiliated stations.

The system works, in fact, exactly the opposite to the claims of Mr. Moore. Now let us examine the movie industry under the divorcement procedure recommended by the Moore testimony. The May 16 issue of Variety, so-called bible of the entertainment industry, carried a story under the head "TV: Studio Meat, Exhib Poison." (See exhibit No. 1, Variety, May 16, 1956, p. 2721.)

> Divorce has not solved the exhibitors' pattern of frustration—

the story begins—

> Today the production side of the motion-picture industry is health and promising while the theater-operating side is notably depressed.

It goes on to say:

> The sages of yesteryear who solemnly assured the Department of Justice that the studios could not survive without exhibition had the argument rear end foremost since events established that it is the theaters that cannot survive without the wholesale supply of entertainment.

Stripped of option time and must-buy minimumus, the networks would probably do very well by redoubling their stake and efforts in programing and film production; but the rap will be taken by the stations who have thrived under the network system, and the biggest loss must inevitably be suffered by the public.

It is a matter of record that most stations, including WSAZ-TV, lost heavily before the advent of network programing. In our own case, we invested an additional $150,000 in private microwave facilities in 1950 after suffering losses in the neighborhood of $200,000, because we felt network programing was the only hope of success of a station in a city of our size. Subsequent events justified our gamble and that of NBC—because at that time it was a loss operation for the network to feed any programs at all over our 120-mile system from Cincinnati to Huntington.[1b] The fact that both of us have made money and the public has received a service great enough to cause them to spend over $200 million on television sets in our area alone is, I believe, a credit to native American ingenuity, rather than a reprehensible action worthy of legal reprisal.

You may help the film production business by Mr. Moore's proposals, and you may help this station in Los Angeles as well as similar operations in New York, but in so doing you will degrade the service of stations in wholesale numbers throughout the rest of the Nation, or so severely limit the scope of their operations as to make them mere jukeboxes for the film producers to display their wares to a disillusioned public. There is only one Los Angeles situation, and there is only one New York, but there are parallels to Huntington in two-hundred-odd American markets. A limitation or destruction of the present technique of network operation will do severe damage to the more than $2-million investment of my stockholders, but much more important, it will degrade and delimit the scope and quality of the service we are rendering to over half a million American families.

INVASION OF STATION TIME

It has been charged that the superior bargaining position of the so-called network monopoly has resulted in increased invasions of station time and that operators are abdicating their prerogatives because of the bullying of the networks. Let me quote an example of this alleged bullying that has resulted in my station's surrender of more than 15 hours per week of station option time to the NBC network:

Through 1954 we used to program feature-length Hollywood movies, of ancient vintage, in the hours from 11: 30 p. m. to 1 a. m. These film features were largely unsuccessful from a commercial point of view. The only regular advertisers who would buy them were the 5-minute and 10-minute "pitch-man" programs which WSAZ-TV now refuses to telecast because of their doubtful programing content and direct contravention of the NARTB code. There were times when this film programing would cost us, out of pocket, over $600 per week for the film alone, with anywhere from little to no revenue return. Thus, when NBC proposed to make its local New York Steve Allen show

[1b] The then station rate of $150 per class A hour converted to 24 average class A hours at $180 meant, under the terms of our contract, that NBC would receive a gross, before discounts, commissions, and program and administrative costs, of $4,320 for the first 24 hours per month waived by the station for interconnection. It further meant the station was waiving $1,440 per month, or 33⅓ percent of gross rate. In return, NBC agreed to pay WSAZ-TV the amount of A. T. & T. tariffs for this service * * * or a little over $6,000 per month. The network lost money on this affiliation arrangement until the station's share reached $6,000 * * * or an hourly class A rate of $625 * * * by which time the hours of operation increased the monthly cost to $7,200. Before NBC reached a break-even point on this deal, A. T. & T. took over the facilities on November 1, 1954.

Tonight available on a network basis, WSAZ–TV was only one of dozens of stations who seized eagerly the opportunity to insert fresh, new programing with real audience and commercial appeal in place of a stereotyped form of late-night timekiller which has become a sort of nationwide joke. Thus, at no additional program cost whatever, we were enabled to improve tremendously the quality of our late-night schedule and at the same time eliminate permanently a large quantity of sustaining film expenditures.

This is one of the great concomitants of networking that benefits station and public alike, but is not calculated by the critics or uninformed competitors. That the film people deplore network programing should appear obvious when you consider that at one fell swoop in the case of Tonight, they lost something like 7½ hours a week of material for 50 stations. This is nearly 20,000 station-film hours per year saving to the affiliates before a single network sale was made. Figuring a modest average of $250 per station per average hour of film cost, here is a minimum saving at the station level of some $5 million per year through scheduling of Tonight. Add to that the network, national spot, and local sales increases which followed and it is small wonder that the stations are pleased with network operation—or conversely that the film interests would like to defeat it.

The same story applies to Today for 10 hours a week from 7 to 9 a. m., with the exception that none of us in the station business ever dreamed of the potential service to be rendered at these hours until this NBC participating program made it possible. In this connection, it is interesting to note that a questionnaire circulated by this committee to all affiliated stations inquired as to the restrictive sales practices of the networks in such participation shows as Today. It would be equally interesting to know how many stations ever had any local or national spot revenue at all earlier than 9 a. m. until the development of Today?

From the foregoing examples it is easy to see that the popular sport of criticizing network compensation on the basis of free hours and a 33⅓ percent of gross rate payment is merely an exercise in arithmetic semantics which springs from a deep well of ignorance. In the final analysis, a station's network compensation is comparable to that which it would have received from a national spot sale or a local sale when program costs, program quality, and audience attractions are weighed in the balance.

SYNDICATION SALES PRACTICES

A curious fact is that the very detractors of networks who sell syndicated film shows derive their greatest sales benefits when their shows run adjacent to successful network schedules. The Moore testimony stated that syndicators and producers are inhibited or restrained from sales and eventual profits because they are blocked by networks; or else they are forced to sell to a network alone.

While this makes an attractive argument legalistically, in practice the opposite is true. Historically the biggest profits in syndicated films are in the residual rights—the resale of the shows after the first run in all markets for a whatever-the-market-will-bear price. Almost invariably, the use of a series by a network is used as basic sales ammunition when reselling the series later under the same or another name. Frequently the sale is made to the same network station that originally ran the show in a given market, and frequently the same package will be sold four or more times. This bespeaks neither a restrictive influence by the networks nor a concern for the viewing public by the film syndicators. (See attached exhibit No. 2, with analysis of WSAZ–TV syndicated film programing, June 10 through 16, 1956, at p. 2722.)

LIMITATION OF PERMISSIBLE NETWORK HOURS

The proposal has been made to reduce the number of evening hours which a network would be permitted to use on a given station. This, too, is an unrealistic proposal which would work against, rather than for, the public interest. Regardless of the pressures for or against clearance of a network schedule, the greater the number of program sources available, the better choice of programing the licensee should be able to provide.

To restrict the ability of a network to provide any service in a given time period would defeat the very purpose of increasing competition. It would mean the licensee would have 1 less rather than 1 more source of program material. It would force him to add 7 more hours per week of film or live local production, with no guaranty whatever that the public would receive as good a service as it had before.

OTHER CHARGES AND PROPOSALS

Other charges and proposals have been made here that range from astounding to downright ridiculous. For example, a scenery builder got big headlines with his charge that NBC was hurting him by building their own props and scenery. If this is a crime, I suspect every station operator is equally guilty. In the considerable amount of live local production done at my station, all artwork, scenery, and properties are either built or rebuilt on our own premises by our own staff. I have yet to hear a complaint from an outside supplier. The proposal that networks or operators should not have a free choice of providing their own scenery material strikes me as a restraint on ingenuity and placing a premium on efficiency. I am reminded of the story of young Henry Ford who was ingenious enough at one time to insist that his carburetors be shipped by the supplier in crates of his own specification, which he in turn knocked down for floorboards in a model T Ford. Surely Mr. Ford was not discredited for muscling in on the floorboard industry.

Just last week I read where a worthy member of the clergy weighed NBC's religious schedule in the balance and found it wanting. Here again a little bit of ignorance goes a long, long way. The one thing I have learned for sure about religion in 10 years of broadcasting is that it is largely both sectarian and local in nature. For a network to try to supply programing suited to all the local religious needs of all its affiliates would consume more hours per week than most of them are on the air. Speaking as a single affiliate, if my network supplied any more religious programing that it does, I would probably not carry it. The reason is simply that we program our religious schedule according to local needs and demands and feel that most other stations must do the same.

ALLOCATION

Now I should like to make a few observations of a positive nature. First of all, I must agree with every witness who has stated that the crux of the problems facing the industry and the networks today is one of available stations. Having been through every stage of construction and operation of a television station in the past 8 years, I am constantly amazed at the incredible productivity of our free competitive enterprise system, which has brought the American people in such a short time a system of over 400 television outlets, transmitting programs of individual producers and 3 networks to more than 95 percent of the population of the United States, and with advertising revenue support of more than a billion dollars a year. I am hardly surprised it's not perfect—I am positively amazed it could have happened at all.

LICENSEE RESPONSIBILITY

If, indeed, the networks have an uncommon or undesirable amount of control over licensees, this is perhaps as much the fault of the licensees as the networks. As many have stated before me, it is much easier to patch in and ride the network than it is to operate a station with comprehensive local programing. Perhaps the general excellence of network programs has led to this tendency, and perhaps it is the laxity of the average station operator. But this much is certain: It is possible and desirable to do strong and comprehensive programing at the local level, and this in turn enhances the schedule of any network. I am proud, and I believe justifiably so, of the record of local and regional interest program service developed and maintained by WSAZ-TV.

Consistently 20 percent of our schedule is originated live in our studios in Huntington and Charleston. We pioneered the development of a local-regional television news operation; and finally, we have been in regular color operation for over 2 years (we originate 2 hours or more of color daily in our studios). These things have not come about as a result of being a slave to a bullying network, but rather from network-affiliate teamwork in a workable business partnership. Indeed, it is my belief that strong local programing accounts for the fact that our ratings on our network shows are as high or higher than any station in the country. It is my recommendation that this committee give some attention to the kind of service the average licensee is giving the public he is pledged to serve before determining that any great wrongs are being perpetuated by the industry in the name of the networks.

Successful operators at every level have been constantly under attack in television. It is my feeling that this is not reflective of the spirit of competitive enterprise that has made our Nation great. It is more than coincidence that operators who have not been immediately successful tend to gather in Washington to petition for a restriction of competition against them. An examination of the chronic complainers will reveal that they have largely tried to get on a gravy train with a minimum stake in television. It is more than coincidence that those stations and those networks that have dedicated themselves to a total service to the public have been successful. Very few stations, indeed, who have fulfilled the maximum possible prerogatives of their licenses with respect to technical facilities, effective power, and on-the-air service to their audiences have fallen by the wayside. It is curious that in the much-maligned UHF band, those few stations which have utilized maximum power and full local facilities have crashed the black ink barrier. It is even more than curious; it is frightening that the anguished cries of the unsuccessful entrepreneurs have been to protect them and their facilities—not to guarantee the public a constantly upgraded television service. To blame the networks with monopoly and restrict their programing because some operators use too many network shows seems to me to be like declaring candy illegal because we can't get our children to stop eating it.

Perhaps the answer in each case is to teach the art of discrimination.

LICENSE PERIODS

Finally, I propose what I believe would materially reduce any imbalance of bargaining power between networks and affiliates during the time we must still wait for a solution to the major problems of allocations. This proposal can also relieve the FCC of so much of its administrative burden that faster progress in licensing new stations is almost certain to follow.

I propose that the present 2-year license period for television stations be materially increased—to as much as 6 years. The present burden of license renewals at the FCC is like painting the Golden Gate Bridge—it is time to start again before you have reached the middle. On the network side, it has been repeatedly charged here that an affiliate whose network contract is a matter of paramount importance is in no position to bargain when he has one eye on a biennial expiration date. If the stations were licensed for as much as 6 years, it would be relatively simple to reduce the problem by two-thirds—by the simple expedient of enabling network contracts to be 3 times as long. In the amortization of such a colossal investment as a maximum power television station, this makes much more sense than either a 2-year license or a 2-year network contract, and might well encourage all operators to use maximum facilities.

The question might be asked: "How can you give a station a 6-year license, cut out FCC work, and still scrutinize licensee qualifications?" I believe it is capable of easy solution. A license renewal in its present form is a time-consuming and frustrating operation for both the licensee and the FCC. Because of the press of time, this is a quantitative examination only, an almost meaningless statistical study which does not reveal the qualitative aspects of each operation. But each station can and does submit an annual financial report with no great strain. Why not submit an annual report of program accomplishment and evaluation? This would not be a collection of statistics on numbers of spot announcements, but an analysis of what each licensee has undertaken within his own sphere and his own local conditions to foster the public interest, convenience, and necessity.

Most stations are proud of their local programing achievements and at WSAZ–TV we frequently have notified the Commission of our activities in the local field as a matter of information without such requirement. It is my impression that any steps which will reduce administrative burden and give a clearer picture of actual TV operations at the local level would be welcomed by FCC and station operators alike.

CONCLUSION

Thus, it is my conviction that there is no network monopoly in any accepted sense of that word, and that most network practices as we know them are in the public interest, having been largely responsible for the development of the art thus far. But in conclusion, I respectfully submit to the committee these recommendations:

1. The qualifications and performance of individual television station licensees operating pursuant to the Communications Act of 1934 should be subject to the most rigorous inspection to assure the greatest possible use of available physical facilities for the benefit of the general public.

2. The license period of television broadcast stations should be increased materially beyond the present 2 years, preferably as much as 6 years, in order to achieve among other benefits: (*a*) longer and more stable network affiliation contracts; (*b*) greater administrative efficiency as well as qualitative analysis of stations by the FCC.

I wish to express the appreciation of the stockholders and management of WSAZ, Inc., for this opportunity to express these views. I am certain that the committee, in arriving at its conclusions in these matters, will be guided not by the exigencies of any group of operators, producers, or networks, but by the interest of our collective audiences, the public.

(Exhibits 1 and 2 referred to in Mr. Rogers' statement are as follows:)

EXHIBIT NO. 1

[Variety, May 16, 1956]

TV: STUDIO MEAT, EXHIB POISON—THAT'S MORAL OF WARNER SELLOUT

Divorce has not solved the exhibitors' pattern of frustration. Today the production side of the motion-picture industry is healthy and promising while the theater-operating side is notably depressed. Small exhibs in particular shoulda stood imbedded in the old system where the studios had to produce a lot of features in order to service their own owned and operated circuits.

The moral of today's predicament is seen starkly outlined in the current financial drama of the Warner Bros. sellout and the attendant insights. In short, film studios are on a found-money gravy train, thanks to the very television which so badly dents the filmgoing habits of the American public.

The sages of yesteryear who solemnly assured the Department of Justice that the studios could not survive without exhibition had the argument rear end foremost since events establish that it is the theaters (retail) which cannot survive without the wholesale supply of entertainment.

Thanks to careful adjustments in their output (which in turn affected the theater box office) and to a natural ability to latch on gradually to the television found-money train, production-distribution today is comparatively healthy; whereas the theaters are crying the blues.

Wall Street, with its ears to the ground, is testifying forcefully to this new shape of things. It is investing in production, but it considers exhibition an increasingly poor risk.

The circuits themselves, while maintaining an optimistic front, are doing some hardheadedly realistic thinking about the future. They're diversifying into nontheatrical fields for their own protection.

EXHIBIT NO. 2

Syndicated film programing, WSAZ–TV, week of June 10–16, 1956 (total hours on the air: 122 hours 33 minutes)

Sources	Total hours	Percent of total
NBC network	69:21	56.5
Local live studio	24:00	19.6
Local syndicated film	20:10	16.5
Remote baseball (Cincinnati Reds)	6:47	5.5
Miscellaneous public service films	2:15	1.9
Total	122:33	100.0
Hours local syndicated film (above)	20:10	16.5
Hours network syndicated film (included in NBC above)	11:00	9.0
Grand total syndicated film	31:10	25.5
Hours local syndicated film, 7 to 11 p. m	6:30	23.2
Hours network syndicated film, 7 to 11 p. m	6:00	21.4
Total syndicated film, 7 to 11 p. m	12:30	44.6

NOTE.—¼ of all WSAZ-TV programing during most recent week was provided by film syndicators. Nearly ½ of all WSAZ-TV programing between the hours of 7 and 11 p. m. during the most recent week was provided by film syndicators.

Mr. ROGERS. My appearance here is in behalf of the stockholders of the licensee corporation and it is prompted by only one pressure group, namely, the approximately half a million television set owners in the West Virginia-Ohio-Kentucky-Virginia area who depend upon WSAZ–TV for service.

Over a period of months, this committee has heard reports, documents and testimony to the effect that network television is a monopolistic force operating against or outside various laws and regulations to the general detriment of the public. Chief amongst these charges were the testimony of Mr. Richard A. Moore and the special report of the Honorable John W. Bricker, himself a member of this committee.

I feel it is my duty as a station operator to deny these major allegations, not in defense of the network companies but because the facts simply do not justify these claims insofar as my experience in the operation of a small-city television station is concerned.

STATION OPTION TIME AND "MUST-BUYS"

I do not propose to treat in detail the questions raised by Mr. Moore as to the legality of option time contracts and minimum station purchases, since Messrs. Stanton, Sarnoff, and Kintner, who are far better qualified than I, have already adequately answered them. Suffice it to say that to expect a network to operate without basic network sales tools is ridiculous on its face, and I strongly suspect that Mr. Moore is well aware of it. To refute his claim that the elimination of these so-called evils will solve the problems of station operators and program packagers alike, one needs only to examine the very record Mr. Moore refers to in the motion picture industry.

He has claimed that the network option time agreements and the basic network "must-buy" lists constitute the same type of restraint as block-booking by motion picture producers and chain-ownership of theaters by producers. In the first place, the Moore statement actually reads:

* * * each station agrees to withhold certain desirable time periods from sale to any advertiser unless the advertiser agrees to purchase equivalent time on all stations throughout the country who are parties to this agreement.

This is a plain misstatement of fact and simply is not true. WSAZ–TV is not now nor ever has been a party to such an agreement with a network or another station.

In the second place, Dr. Frank Stanton, in his testimony last week, adequately disposed of the claim that a "must-buy" list is harmful by demonstrating how it actually serves to spread the use of television. It is well known that selective market, or "spot" buys, are almost invariably smaller than network purchases, and with the program extension plan and the extended market plans of NBC and CBS, the average network show is reaching the great majority of people of the Nation through the overwhelming majority of affiliated stations. The system works, in fact, exactly the opposite to the claims of Mr. Moore. Now, as to the divorcement procedure recommended by the Moore testimony, I would like to offer as part of my testimony, the May 16th issue of Variety, so-called bible of the entertainment industry, carrying a story under the head "TV: Studio Meat, Exhib Poison." This article says in part:

Divorce has not solved the exhibitors pattern of frustration—

the story begins.

Today the production side of the motion picture industry is healthy and promising while the theater-operating side is notably depressed.

It goes on to say:

The sages of yesteryear who solemnly assured the Department of Justice that the studios could not survive without exhibition had the argument rear and foremost since events established that it is the theaters that cannot survive without the wholesale supply of entertainment.

My point is that stripped of option time and must-buy minimums, the networks would probably do very well by redoubling their stake and efforts in programing and film production; but the rap will be taken by the stations who have thrived under the network system, and the biggest loss must inevitably be suffered by the public.

In our own case, and I will spare you the details, we invested an additional $150,000 in private microwave facilities in 1950, after suffering losses in the neighborhood of $200,000. It is a matter of record that this system was used by NBC network at a loss to them, and footnote 2, which is part of this record, gives a financial detail as to the working of this system and how the network paid for it. It never did make a profit for NBC. The fact that both of us have made money in the long run and the public has received a service great enough to cause them to spend over $200 million on television sets in our area alone is, I believe, a credit to native American ingenuity, rather than a reprehensible action.

You may help the film production business by Mr. Moore's proposals, and you may help his station in Los Angles, as well as similar operations in New York, but in so doing you will degrade the service of stations in wholesale numbers throughout the rest of the Nation, or so severely limit the scope of their operations as to make them mere "jukeboxes" for the film producers to display their wares to a disillusioned public. There is only one Los Angeles situation, and there is only one New York, but there are parallels to Huntington in two-hundred-odd American markets.

A limitation or destruction of the present technique of network operation will do severe damage to the more than $2 million investment of my stockholders, but much more important, it will degrade and delimit the scope and quality of the service we are now rendering to a segment of the public.

INVASION OF STATION TIME

It has been charged that the superior bargaining position of the so-called network monopoly has caused the networks to invade "station time." I would like to give you an example of a surrender of station option time in our case, and the true facts surrounding it. Up to 1954 we used full-length Hollywood movies, of ancient vintage, in the hours from 11:30 p. m. to 1 a. m. These film features were largely unsuccessful from a commercial point of view. The only regular advertisers who would buy them were the 5-minute and 10-minute "pitchmen" programs which WSAZ–TV now refuses to telecast because of their doubtful programing content and direct contravention of the NARTB code. There were times when this film programing would cost us, out of pocket, over $600 per week for the film alone, with anywhere from little to no revenue return.

When NBC proposed to make its local New York Steve Allen show, Tonight, available on a network basis, we were only one of dozens of stations who seized eagerly the opportunity to insert fresh, new programing with real audience and commercial appeal in place of a sterotyped form of late-night timekiller which has become a sort of nationwide joke. Thus, at no additional program cost whatever, we were enabled to improve tremendously the quality of our late-night schedule and at the same time eliminate large film expenditures. This is one of the great concomitants of networking that benefits station and public.

That the film people deplore network programing should appear obvious when you consider that at one fell swoop in the case of Tonight, they lost something like 7½ hours a week of material for 50 stations—20,000 station-film-hours per year saving to the affiliates before a single network sale was made. Figuring a modest average of $250 per station per average hour of film cost, this adds up to a saving of some $5 million per year through scheduling Tonight. Add to that the network, national spot, and local sales increases which followed, and it is small wonder that the stations are pleased with network operation, or conversely, that the film interests would like to defeat it.

The same story applies to Today, with the exception that none of us in the station business ever dreamed of the potential service to be rendered before 9 o'clock until this NBC program made it possible. In this connection, it is interesting to note we all received a questionnaire circulated by this committee inquiring as to the "restrictive" sales practices of the networks in participation shows. It would be equally interesting to know how many stations ever had any local or national spot revenue at all earlier than 9 a. m. until the development of Today.

SYNDICATION SALES PRACTICES

The Moore testimony also stated that syndicators of films and producers are inhibited and restrained in their sales because of networks. They are blocked by networks from sales, or they are forced to sell to a network. I agree this argument sounds very attractive legalistically, but in practice, it works the very opposite. Historically, the biggest profits in syndicated films are in the residual rights—the resale of the shows after the first run in all markets for a whatever-the-market-will-bear price. Almost invariably, the use of a series by a network is used as basic sales ammunition when reselling the series later under the same or another name.

Frequently, the sale is made to the same network station that originally ran the show in the market. In this connection I have exhibit 2 which is part of this record, and I would like to call your attention to the fact that, counting locally originated film programing and network, that one-third in the most recent week, ended last Saturday, was originated by syndicated film. Nearly one-half of all our programing between the hours of 7 and 11 p. m., during this most recent week, was provided by film syndicators. This hardly seems like an inhibition or restraint of sale on film because of network operation.

LIMITATION OF PERMISSIBLE NETWORK HOURS

There has been a proposal made to reduce the number of evening hours which a network would be permitted to use on a given station. This, too, is an unrealistic proposal which would work against, rather than for, the public interest. Regardless of the pressures for or against clearance of a network schedule, the greater the number of program sources available, the better choice of programing the licensee should be able to provide.

To restrict the ability of a network to provide any service in a given time period would defeat the purpose. It would mean the licensee would have one less, rather than one more, source of program material. It would force him to add 7 more hours per week of film or live local production, with no guaranty whatever that the public would receive as good a service as it had before.

Mr. Cox. If, however, the option is binding on you in the evening hours, you are limited, in effect, to one supplier—unless you affirmatively find that to offer his program in your market would not be in the public interest.

Mr. Rogers. Presumably that is correct, unless we were to make such a finding. However, I refer back to this exhibit, Mr. Cox, which actually shows that during the hours from 7 to 11 p. m., we were offering 12 hours and 30 minutes, or 44.6 percent of those 28 hours, of syndicated film program. This does not include a number of half hours of local live originated programing in those hours.

Mr. Cox. Half of the film that you referred to there had been sold to the network?

Mr. Rogers. Yes, sir.

Mr. Cox. And therefore would fit in with the pattern, suggested by Mr. Moore, of an increasing tendency on the part of syndicators to make only those programs which they thought they could sell on a national basis?

Mr. ROGERS. I don't know that that necessarily follows, Mr. Cox. The fact that they sell to a network and then recoup the film after it has been sold and used by a network does not necessarily inhibit them from making films which they will not sell on a network basis.

Mr. COX. Have you been approached by any film syndicator with the proposal that you buy a new film series which he is offering for broadcast next fall?

Mr. ROGERS. I couldn't state positively any specific film syndicator or specific series. However, this is a common practice that occurs weekly—we are approached by a film syndicator to buy a new series.

Mr. COX. Now, is that a new series, in the sense that it is making its first appearance on television, or is this an offer to you of a program which has been run on the network or in other markets?

Mr. ROGERS. No, sir; I am referring to a new series. I would refer specifically to a series like Highway Patrol by the Frederick Ziv Co. which was offered to our station, and we didn't buy it and a competing station did. Series like Waterfront and I Led Three Lives, which in our case we did.

Mr. COX. Those are series which have been in the market for some months, at least, or years.

Mr. ROGERS. Yes, sir. As far as I know, no one of those series has ever run on a network, either.

Mr. COX. Could you check your records when you get back and supply us with information as to whether any new syndicated program has been offered to you on a syndicated basis for broadcasting this fall?

Mr. ROGERS. Yes, sir. I will make a check on that and report to you.[2]

Senator PASTORE. Go on, Mr. Rogers.

Mr. ROGERS. I would like to leave out the detail on some of these other things like scenery building and religious programs. I think they are terribly uninformed comments that have been made here and do not reflect the facts of the business as we experience them.

ALLOCATION

Now, I would like to make a few observations of a positive nature. First of all, I certainly agree with every witness that has faced this committee who has stated that the crux of the problems facing the industry and the networks today is one of available stations. Having been through every stage of construction and operation of a television station in the past 8 years, I am constantly amazed at the incredible productivity of our free competitive enterprise system, which has brought the American people in such a short time a system of over 400 television outlets, transmitting programs of individual producers and 3 networks to more than 95 percent of the population of the United States, and with advertising revenue support of more than a billion dollars a year. One can hardly be surprised it is not perfect—I am positively amazed it could have happened at all.

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[2] This material was forwarded in a letter dated July 6, 1956, which is printed at the conclusion of Mr. Rogers' testimony at p. 2732.

LICENSEE RESPONSIBILITY

If the networks have an uncommon or undesirable amount of control over licensees, this is perhaps as much the fault of the licensees as the networks. As many have stated before me, it is much easier to patch in and ride the network than it is to operate a station with comprehensive local programing. But this much is certain: I am sure every affiliate here is proud of the record of local and regional interest programing its station has developed. Consistently 20 percent of our schedule is originated live in our studios in Huntington and Charleston.

We originate such things as our News Picture program and transmit them from our two city origination points. We use a very large amount of remote programs to reflect the local activities in our State and our area. We pioneered the development of a local-regional television news operation; and finally, we have been in regular color operation for over 2 years—we originate 2 hours or more of color daily in our studios. These things have not come about as a result of being a slave to a bullying network, but rather from network-affiliate teamwork in a workable business partnership. Indeed, it is my belief that strong local programing accounts for the fact that our ratings on our network shows are as high or higher than any station in the country.

Successful operators at every level have been constantly under attack in television. It is my feeling that this is not reflective of the spirit of competitive enterprise that has made our Nation great. It is more than coincidence that operators who have not been immediately successful tend to gather in Washington to petition for a restriction of competition against them. An examination of the chronic complainers will reveal that they have largely tried to get on a gravy train with a minimum stake in television. It is more than coincidence that those stations and those networks that have dedicated themselves to a total service to the public have been successful. Very few stations, indeed, who have fulfilled the maximum possible prerogatives of their licenses with respect to technical facilities, effective power, and on-the-air service to their audiences have fallen by the wayside.

Senator Pastore. You don't mean that about UHF station operators, too?

Mr. Rogers. Yes, sir.

Senator Pastore. You mean to tell me it is the fault of the operator that he is going out of business, and losing money?

Mr. Rogers. I say even with the UHF band, where stations have utilized maximum power and full facilities, they have crashed into the black. There are not many but there are several examples.

Senator Pastore. Are you a VHF station operator?

Mr. Rogers. Yes, sir.

Senator Pastore. How many VHF's in your locality?

Mr. Rogers. Two.

Senator Pastore. How many U's?

Mr. Rogers. There are none.

Senator Pastore. Do you think a U can come in your locality and be in the black?

Mr. Rogers. No, sir.

Mr. Cox. With any power?

Mr. ROGERS. I don't think they can now. I don't think they necessarily will add an additional service that cannot be added by a V service that is already there.

Senator PASTORE. I realize that, but the point of the fact is that there are many localities where we have had very good business-minded people, and where you have two U's and one V and the U's don't survive, because you can't get conversion and power.

As a matter of fact, even where they are in a locality before you come in with a VHF, the networks, who only do business with them on a temporary basis, turn over and go to a VHF station the minute one is available. Now, that has happened time and time again. I am not being critical, because after all they get a better spread on a V. But after all I don't think we ought to be too prone to criticize the people operating these U's that if they did their business better they would still be in business. That isn't the case at all. They are bucking their heads up against circumstances over which they have no control. I am not saying it is your fault, but I don't think it is quite right to come in and say the reason they are not making money is because it is their own fault, businesswise.

It isn't their own fault. It comes fundamentally down to the point that you don't have the same spread on a U as you have on a V and you don't have that many sets insofar as conversions are concerned. These operators in communities that already have V's are finding it pretty hard to operate only because of circumstances unfavorable to them. And these circumstances are way, way, way beyond their own control. I think I ought to make that speech for the UHF operators.

Mr. ROGERS. Thank you, sir.

LICENSE PERIODS

I would like to propose what I think would materially reduce any imbalance of bargaining power between networks and affiliates during the time we must still wait for a solution to the major problems of allocations. This proposal can also relieve the FCC of so much of its administrative burden that faster progress in licensing new stations is almost certain to follow.

I propose that the present 2-year license period for television stations be materially increased—to as much as 6 years. The present burden of license renewals at the FCC is like painting the Golden Gate Bridge—it is time to start again before you have reached the middle. On the network side, it has been repeatedly charged here that an affiliate whose network contract is a matter of paramount importance is in no position to bargain when he has one eye on a biennial expiration date. If the stations were licensed for as much as 6 years, it would be relatively simple to reduce the problem by two-thirds—by the simple expedient of enabling network contracts to be three times as long.

The question might be asked: "How can you give a station a 6-year license, cut out FCC work, and still scrutinize licensee qualifications?" I believe it is easy. A license renewal in its present form is a time-consuming and frustrating operation for both the licensee and the FCC. Because of the press of time, this is a quantitative examination only, an almost meaningless statistical study which does not reveal the qualitative aspects of each operation. But each station can and does submit an annual financial report with no great strain. Why not submit an annual report of program accomplishment and evaluation. This would not be a collection of statistics on numbers of spot announcements, but an analysis of what each licensee has undertaken within his own sphere and his own local conditions to foster the public interest, convenience, and necessity.

CONCLUSION

Thus, it is my conviction that there is no network monopoly in any accepted sense of that word, and that most network practices as we know them are in the public interest, having been largely responsible for the development of the art thus far.

I might say parenthetically that networks are in fact regulated to the fullest extent simply because of the fact that with no stations there can be no networks and the stations themselves are beholden to the FCC for licensing based on their program record.

Mr. Cox. What would be the substantial difference if this was put in direct form by provision that networks be licensed, that they apply for renewal at specified intervals, and that that portion of the programing of their affiliates which they provide be subjected to criteria as to balance, fairness in treatment of the news and things of that sort?

Mr. Rogers. Mr. Cox, I respectfully submit that this is already the fact, since in each case the 2 networks own at least 5 stations of their own which are licensed and which are responsible for and originate the programing which is seen on the rest of the network.

Mr. Cox. Then——

Mr. Rogers. The fact of the matter is this licensing is already in effect.

Mr. Cox. You say this is not undesirable, it is unnecessary?

Mr. Rogers. I say it is unnecessary because it would be duplicated regulation.

Senator Pastore. Let me ask you this question: Of course, it gets to the point in all of these hearings, Mr. Rogers, where it is pretty hard, if a man attends them all, that you don't find out how he feels about some of these things. In that spirit let me say I am one of those who would be rather reluctant to put the networks under any Government regulation as of this time. I don't think we have had a development of circumstances nor of situations which would at this time warrant it in the public interest—although I feel that if the Congress did decide to do it, that they have the jurisdiction and that they have the right as they supervise a local broadcasting station—that they do have, under the law, the right to supervise a network. But be that feeling, as I have already expressed, as it may, the thing that I marvel at is this: You, the broadcasting station, are now under supervision, and every affiliate that has been in here testifying for the last 3 days is under supervision. Yet, they have all come in here to make a very strong appeal for not putting the networks under supervision. Why do you do it? What is this strong solicitation on part of the affiliate to come here and be the advocate for the network with reference to this bill? I mean, it is getting to amuse me a little bit.

Mr. ROGERS. Speaking for myself——

Senator PASTORE. Every affiliate has come in here with a dedication to protect the network against being under supervision. Now, I am perfectly willing to admit that it shouldn't be. But why have all you affiliates become the advocates of the networks on this proposition, when you yourselves are under supervision and all making a lot of money under it?

Mr. ROGERS. I believe it may be the question of exactly what I mentioned to Cox, a pyramiding of supervision upon supervision.

Senator PASTORE. But why is that so much your business? Why don't you leave it to the networks to come in here and plead their own cause? The thing that has intrigued me here is that we have had about 25 witnesses who have all come in here as advocates of the networks. Why? What is this close attachment—what is this interest on the part of the broadcasting station to protect the network?

Mr. ROGERS. I am not sure it is an impulse to protect the network so much as it is an interest to protect our station operation.

Senator PASTORE. Why does it protect your station operation? I mean, supervision thus far hasn't censored you in anyway; has it?

Mr. ROGERS. No, sir.

Senator PASTORE. It hasn't bothered you in anyway; has it?

Mr. ROGERS. No, sir.

Senator PASTORE. Why do you think it is such a tragic calamity?

Mr. ROGERS. Simply because our relationship with the network has enabled us to build a service with the network which is successful and is one which our license requirements allow us to deal with as an ordinary business relationship which we feel is entirely unnecessary to have supervision. We are not bound beyond the point of our own free programing choice to follow the dictates of a network.

Senator PASTORE. I realize that; that has been said time and time again. But after all you are not being interfered with by the FCC in the projection of your programs, in doing business as you like. Certain standards are set, but they really don't step in and run your business; do they?

Mr. ROGERS. No, sir.

Senator PASTORE. The FCC hasn't been telling you how to run your business?

Mr. ROGERS. No, sir.

Senator PASTORE. What makes you think that the FCC would step in and tell the networks?

Mr. ROGERS. I believe any regulation over a service that is a program service is inevitably a step in the direction of censorship.

Senator PASTORE. You are a program service, insofar as local program services are concerned?

Mr. ROGERS. We are also a technical distribution service.

Senator PASTORE. I know. But insofar as the principle is concerned, you are doing no more on a local level than the network is doing on a national network level. Let's face it, let's be realistic. I am afraid we sometimes strain these logics too far, to the point of creating an atmosphere of insincerity. I am one of those who doesn't feel that the circumstances are present whereby we ought to put the networks under supervision. I am against that unless it is absolutely necessary. I don't think anything has been developed in my mind. There may be people who might disagree with it.

If the Bricker bill came up tomorrow I would vote against it, because I think, in the public interest, the situation has not arisen for us to make a change at this time. But after all, let us face it; on the local level you do nothing more or nothing less than the network does on a national level. You have to program your own programs, your own local programs; you call in citizens off the street, you may even put on a little production of your own. You are doing that every day in the week and the FCC is not interfering with it, and I think we create a wrong impression here that Government supervision in the public interest is such an odious thing. It isn't, if the public interest is there. I say, of course, the public interest is such, at the present time, that under the present prevailing conditions it has been protected—it has been protected because we are somehow supervising the local stations on the local level, and I am perfectly willing to admit that. But I think, myself, that sometimes this strong advocacy on a matter that is not of intimate interest to you creates an atmosphere of insincerity here that I think does you more harm than good in pleading your case.

I had to get that whistlestop speech off my chest. I have been listening to this now for 3 days. [Laughter.]

Senator Wofford?

Senator Wofford. Mr. Rogers, doesn't it really narrow down to this proposition, more in answer to the Senator's question: You all, as affiliates, think you have a good contract and you don't want anything to upset it—isn't that the truth of the situation?

Mr. Rogers. Yes, sir. In fact it was going to be my recommendation that if any changes are made in the situation, we lengthen the licensing period for the station so that stations could make an even longer network contract. So that they need not be in any fear that renegotiation of a contract might inhibit them in the future.

Senator Pastore. Well, now that the question is brought up, wherein will supervision of the network interfere with your contractual relationship with the network? That is a very amusing point that I think we ought to explore.

Mr. Rogers. I don't know——

Senator Pastore. Do you mean to tell me, if the networks were put under supervision as you are now, that that would interfere with your contractual obligations or relationship with the network?

Mr. Rogers. No, sir; I don't believe it would, inasmuch as our contract with the network is already on file with the FCC in any event.

Senator Pastore. Of course not. I repeat again I am not being critical at all of the situation as it now exists. And I tell you very frankly after having sat here as I have for the past few weeks, I am pretty much convinced that it wouldn't serve the public interest if the networks were put under supervision. I am not for that at all, now. But I am a little amused, and I repeat again—as a matter of fact this presents the relationship and the connection much stronger than I thought was there. Now, it may be love; it may be love. [Laughter.]

It may be love that motivates all this. I don't know. But it could be something else. I have lived long enough to realize it could be.

Mr. Rogers. You have made my point much more eloquently than I could and I thank you very much for it.

Senator PASTORE. Thank you.

Mr. COX. Could you furnish the committee with a copy of your program schedule for the week of April 1 to 7 of this year? We made that request of the CBS affiliates.

Mr. ROGERS. April 1 to 7, this year. Yes, sir; it will be furnished to you.

(This program schedule was furnished later and is printed in the appendix at p. 2990. The covering letter contained certain requested information as to syndicated films, and is as follows:)

WSAZ TELEVISION,
Huntington, W. Va., July 6, 1956.

Mr. KENNETH A. COX,
Special Counsel, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR MR. COX: In reply to your request for additional information following my testimony in the matter of network practices, I am enclosing a copy of our weekly program schedule for the week April 1 through 7, 1956.

A percentage breakdown of the source of this programing will reveal a very slight difference from the breakdown in my testimony applying to the week of June 10 through 16. This is attributable to the change in the program structure due to daylight saving time, plus our carrying about 5½ percent of the schedule in remote baseball telecasts, which has the effect of reducing the percentage of network programing by that amount.

In regard to your question concerning film programing, a search of our records reveals that there have been only two new syndicated film shows offered to us for showing in 1956. One of these is the Dr. Hudson show from MCA; and the other is Long John Silver, produced by CBS. We are carrying through the rest of this year the new Dr. Hudson show for a local client. We have not purchased Long John Silver and, as far as I know, it is not in the market at all.

In the process of furnishing this information, my film director and program director both report that their biggest difficulty in negotiating with syndicated film sales organizations is the invariable requirement that a repeat package be purchased. Specifically, practically all syndicated film firms will only sell a 52-week run if it contains a minimum of 13 repeat shows and 39 new ones per year. If a new program is bought for 26 weeks, it is impossible to buy an additional 26-week schedule without taking either the same 26 on a repeat basis or 13 new ones with 13 repeats. This has inhibited us from the purchase of syndicated films more than any other single practice, the reason being that most national advertisers and all local advertisers in our experience have a distinct aversion to repeat runs of syndicated film shows.

It is the estimate of our film and program people that between 2 and 3 dozen syndicated film packages have been offered us for play during 1956, some of which are reruns of shows we have had before, and many are shows that have never run in the market at all. Our selection of syndicated film packages is invariably based upon what we feel is the program content and the salability of the show.

I trust this adequately supplies the additional information you requested.

Kind personal regards.

Cordially,

L. H. ROGERS,
Vice President and General Manager.

Senator PASTORE. Is Mr. Abeloff in the room?

(No response.)

All right. Counsel would like to read something into the record.

Mr. COX. Senator Schoeppel has requested that the record show that Mr. W. J. Moyer, of KARD–TV of Wichita, Kans., had asked to appear on this date and present testimony to the committee, but that upon checking on the situation the Senator discovered that so many had asked to come that it was not going to be possible to fit Mr. Moyer into the schedule. Therefore Senator Schoeppel suggested to Mr.

Moyer that he submit a written statement for the record. That is being done and will be made a part of the official record upon its receipt.[3]

Senator PASTORE. All right, Mr. Floyd.

STATEMENT OF JOE FLOYD, PRESIDENT, KELO-TV, SIOUX FALLS, S. DAK., KDLO-TV, FLORENCE, S. DAK.

Mr. FLOYD. I am Joe Floyd, of Sioux Falls, S. Dak., president of Midcontinent Broadcasting Co., operators of television stations KELO of Sioux Falls and KDLO of Florence, S. Dak.

After filling out the confidential television questionnaire for network affiliates for this committee, and reading several writings on the complaints against the networks because of their practices with their affiliates, I would like to submit my thoughts on the subject. Realizing that the major complaints were directed toward option time and network practices, I felt our television operation would be an extremely important example because it is a nonbasic station which has agreements, contracts primary and secondary, with all three networks, with the commitment of option time in the contracts.

Mr. COX. Do you give the option to everyone?

Mr. FLOYD. We have an agreement with CBS on a per program basis and option on NBC and ABC option times.

Mr. COX. ABC has an option on your time?

Mr. FLOYD. Secondary affiliation.

Mr. COX. It covers the same option time as NBC but is subject to it.

Mr. FLOYD. Subject to it.

When we started operations in May of 1953, because we are in a smaller market, we originally had a great deal of difficulty in securing programing for viewing from any television advertisers, that is, network advertisers, national spot advertisers, and local advertisers. This was because there was a limited number of sets in our new market and the cost to any advertiser on a circulation basis was almost prohibitive. We were actually faced with the old riddle of "which came first, the chicken or the egg." With programing, our station could gain set circulation, or, with set circulation, our station could gain programing. Of these three sources, that is, the networks, national spot advertisers, and local advertisers, I found that the only one of the three sources I could turn to for help in this program predicament were the networks, CBS, NBC, ABC, and Du Mont. They encouraged me by giving me all the across-the-board programs they had available. They aided me through their sales service and station relations departments, because these departments had had experience in similar markets and had a thorough understanding of this problem. They gave me assistance and the know-how to call on their clients to help in getting our station programing. Only the networks were interested in my problems of getting me scheduled programing because of their potential stake and interest in the future of our television station. This was not true with local or national spot advertisers because they deal with the current hard facts of circulation per dollar spent.

I readily agreed with the form contracts of the networks on regular option time, and I would have been happy to agree to more option time

[3] Mr. Moyer's statement was received later and is printed at p. 2830.

if I only could have solved our problem of programing in this smaller market for the viewing public.

Our next big hurdle, to increase our minimum circulation to a reasonable cost per thousand and enable our station to bring more informative and entertaining programing to the people, was to obtain a network live connection. In order to get this connection, cable or microwave meant a large financial obligation guaranty over several years. Again it was necessary for me to seek assistance, and the only people I could turn to for help were the networks. This was negotiated individually with all the networks, NBC, ABC, and CBS, and they all stood their proportionate share of the per-pr[illegible] obligation.

After obtaining our live connection, our circulation increased [illegible] leaps and bounds and we were able to bring to the public, in our [illegible] tant area, the splendors of live programing. So may I repeat, w[illegible] the help and assurance of the networks, our circulation grew, un[illegible] today we are an established market for not only the networks but f[illegible] national spot and local advertisers as well, furnishing our viewers wit[illegible] the top interconnected available television programs.

Although I am ever conscious of the favors, the assistance, and the effort which all the networks gave our station and am forever grateful that I was able to turn to institutions of this kind, I am at this time carrying local and national spot advertisers in, and closely adjacent to, my agreed option time. I have yet to be demanded by either NBC, ABC, or CBS to cancel any local programs, national spot programs, previously ordered, or public service programs for their use, regardless of option time. We have never been asked by our primary network, NBC, to give them any primary consideration in option time for their programs over our other network affiliates, ABC and CBS.

I'm sure this committee will be interested to know that we are carrying more commercial time from our secondary network affiliates than we are from the primary affiliate; and although now we have orders from NBC, our primary network, that we are unable to clear because of interconnection conflicts, NBC has never insisted that we give them first consideration.

Mr. Cox. In other words, they never insist on the enforcement of the option?

Mr. Floyd. They have never insisted that we clear the network for that time.

Mr. Cox. They have no legal right to do so?

Mr. Floyd. I have never been asked. I have always informed them we have other programs on the line.

Mr. Cox. The terms of your contract prevent you from honoring their option against another network program?

Mr. Floyd. Well, I have never been asked, I really haven't. If we had ever brought the terms of the contract into the discussion——

Senator Pastore. But you do say, Mr. Floyd, that the option time has worked to your advantage?

Mr. Floyd. The option time—really, this option time hasn't been a big thing with me, because it is kind of a rule of thumb actually. We schedule in and around and about all their option time and other times.

Senator PASTORE. Do you believe in this argument that has been advanced here that if option time were cut down or eliminated—before we get to the elimination, if it were cut down—that that would be planting a seed of erosion insofar as good programing is concerned in your station that would eventually lead to a disadvantage to the public interest?

Mr. FLOYD. I think anything in this particular, referring to my station; yes. I use it as a rule of thumb when they say we have an order for a thing; it automatically comes to my time, option time, and I give it all consideration possible. I think if we shortened this and the network was unable to put all the programing that they have now across all the stations, I think it would be harmful.

Senator PASTORE. And you are perfectly willing to accept the value of the 3 hours advanced by the station as binding upon you—that that is the prescribed option time that they should have?

Mr. FLOYD. I am willing to accept it. However, I never have been worked a hardship with it. I have never had any problem with it, so naturally I will accept it.

Senator PASTORE. You are willing to take their word for it that if you cut it down you may be planting a seed of erosion?

Mr. FLOYD. I do not exactly take their word for it; I think it is good healthy programing.

Senator PASTORE. You think they are in a better position to know? At least let me say this to you: I think they are in a better position to know, if you want that reassurance and comfort. I have had to listen to this for 3 days now.

Mr. FLOYD. I think the rest of this document here will point out exactly what I mean.

Also, the committee may be interested in knowing my answer to their television questionnaire in which I stated we are carrying 9 hours a week of commercial network programs outside of our option time. This time has not always been most satisfactory to the clients, but through the cooperation of the networks and their sales organizations, we have been able to program many of these outstanding shows outside of their regular broadcast period. This enabled the public to see more programs than they would see just in option time, because of the conflict on the live cable.

I would like to state to this committee at this time that our background has been that of operators in the motion-picture theater business, and because of this training, we are ever conscious of programing to the general public.

I might add in this case we were programing for money.

We have been trained to know our success depends on program quality and audience acceptance. We have seen what has happened in our motion picture theater experience. When major producers and distributors were curtailed by regulations such as the "divorcement" or "consent decree," it rendered it impossible for them to depend on, or be assured of, major outlets which would give them dependable runs and playing dates for their pictures or programs.

Mr. COX. The regulation to which you refer was simply the enforcement of the antitrust laws, wasn't it?

Mr. FLOYD. I know they were not programing their theaters; they did not have to. As far as we are concerned, for us it has been very, very harmful.

Mr. COX. However, the regulation to which you refer, both in terms of divorcement and in terms of the consent decree, were incidents to legal actions brought in the courts, in which it was held that the antitrust laws applied to certain practices in the motion picture industry, and you deplore the results of that?

Mr. FLOYD. That is correct.

It has been demonstrated they are no longer interested or financially capable of furnishing enough programing to satisfy the demands of the thousands of motion-picture theaters. They are no longer interested in these demands because they are not being forced to program or furnish pictures day in and day out to the major theaters they formerly owned or were affiliated with. Thus they have curtailed their motion-picture production by over 50 percent and are only producing top-budget pictures with no consideration of what the theater operator can do, or is doing, to fill out a well-rounded program entertainment year. Neither are they developing new stars nor are they forced to keep under contract major talent to protect and assure the theater operators product and programing at a price they can afford to pay for exhibition. Thus you have many of these thousands of theaters closing and going out of business at this time because of their inability to get the volume of programs that is demanded at a price that the theater operators can afford.

Senator PASTORE. Let's be fair about it: Plus the fact that you have television today.

Mr. FLOYD. Well, I am not so sure about this. We are still operating theaters and in some particular theaters, where we have a healthy product that we can secure enough for, we are doing a pretty good business; grosswise better than before. Maybe this is peculiar in our area, but we have been successful. We have found in a lot of our drive-in situations, where we are programing 3 or 4 pictures a week, we cannot get them now. We cannot do the business in these theaters.

Senator PASTORE. I have a very particular friend of mind who in the beginning of television—and when the theaters began to feel this pinch—who would always deny that television was good enough to hurt them. And I think it was part of their pattern of publicity never to admit that they were weakening, but he is willing to admit it today.

Mr. FLOYD. I think there is——

Senator PASTORE. Television has been one of the greatest boons for entertainment that this world has ever known. I think it is a wonderful thing; I think it ought to be encouraged, protected, and preserved. Let us not play down the effectiveness of it. It is a wonderful, wonderful medium of communications and of entertainment. It has been accepted by the public; it is a free thing; it is a wonderful thing, and it has had its effect upon the moving-picture house; there is no question at all about it. And it has created the situation where it is almost hard to get these tremendously good extravaganzas that can keep up the demand that would be necessary if you were to keep these movie houses going.

Now in my own State I know of four theaters that have had to close down. Now those men who run those theaters today have the same capacity, the same intelligence, the same creativeness, and the same initiative as they had 10, 20 years ago. They are still the same men. They have grown up in the moving-picture industry, in the theater industry. Today they have to close their doors. Why? Because people would prefer to sit in the comfort of their own parlors and look at a good television program without having to go out and pay money to do it. I mean that is the practical value of life, and I don't think we can change it. I am willing to accept that one, too, for the record. [Laughter.]

Mr. FLOYD. Senator, we have a problem——

Senator PASTORE. My hat is off to you, because you are in charge of a medium today that is such an effective medium. That shows you why these hearings are very important, because, say what we may, we are dealing here intimately with the public interest; we are dealing here with the desires, the aspirations, the hopes, the entertainments, and the emotions of people throughout the land. And you would be surprised how much we Senators and we Congressmen receive in the way of letters from back home on programs and on stations, why these matters become so important; it is because it is a very attractive thing. It is a great thing; it is one of the most modern things—and I say "Lucky we have it so much here in America, and we ought to promote it on a more competitive nationwide basis." This has been said time and time again and I think much of what we have been talking about for the last 3 days doesn't attack the very problem at its source. The problem is allocation. We should have more allocations, more stations, more networks, more entertainment, more program sources, more pleasure, more of everything. [Laughter.]

Mr. FLOYD. Shall I continue, Senator?

Senator PASTORE. Yes, go ahead.

Mr. FLOYD. So with this knowledge in mind, we feel and think all television stations should learn by this experience: Networks must be assured a number of basic affiliated stations in larger markets so they can continue to assure coverage for their clients. This gives them the necessary financial wherewithall to pioneer some new stars and lay off these threadbaring characters—we might get some new business in the theaters.[4]

Senator PASTORE. You have something there, but you have to admit television is developing a lot of new ones, too.

Mr. FLOYD. That is right.

Senator PASTORE. And what is wrong with Kim Novak? [Laughter and applause.]

Senator PASTORE. It looks like the boys in the back are having a picnic.

Mr. FLOYD. I think those points were well taken.

For an example of the last statement, when many of our small markets were pressed for programing, the networks (a year or so ago), recognizing their responsibility in the smaller markets, devised individual plans such as the Extended Market Plan and the Program

[4] The only particular in which Mr. Floyd's written statement differed significantly from his oral testimony was at this point, where it read: "This gives them the necessary financial wherewithal to program to the best of their ability at all periods of the day. It also enables them to afford long-term contracts to their talent and leaves them capable of having experimental money to pioneer in new programing, continually developing new talent as well as to furnish unsponsored or sustaining programs currently available to their affiliates and the general public.

Extension Plan, which were set up to assist the small markets by putting them in a group of buys that would attract national advertisers, thus making programing available for smaller markets or allowing smaller stations not ordered by the advertiser to play the program on a participating or a sustaining basis, which, I'm sure is agreed, was a great assistance. With the exception of the networks, I know of no other national program source or film interests that have been concerned or helpful with the overall small-market problems.

In conclusion, I'm sure it is recognized by all concerned that if the network's option-time and basic-network practices are disturbed, it will impair, if not destroy, the network chain programing that we have today. This will put all stations, small and large alike, in the position of individual all-day programing and at the mercy of film interests who do not have, and will be unable to take, the responsibility of network broadcasting as we know it. Theater owners have learned a severe lesson. So let's not let the broadcasting industry and the public suffer by such a mistake again.

Of course, I have no idea as to what, if any, legislation will result from these hearings, but I do urge you not to deprive television stations in small markets of our cheapest, our most plentiful and the best program source, the networks. If harsh measures and restrictions are applied against the networks, I fear that television operators in small markets will find themselves without adequate program material, thus not only working a severe hardship on the stations, but also on the viewing public.

Senator PASTORE. Senator Wofford?

Senator WOFFORD. No questions.

Mr. COX. Would you likewise, Mr. Floyd, provide us with a copy of your program schedule for the week of April 1 to 7, and would you indicate the source of the programing—which network, whether it is local, whether it is syndicated? Would you do that also, Mr. Rogers?

Mr. ROGERS. Yes, sir.

Mr. FLOYD. Yes, sir.[5]

Senator PASTORE. I want to say this off the record, gentlemen.

(Discussion off the record.)

Senator PASTORE. Mr. Saddler——

STATEMENT OF OWEN L. SADDLER, EXECUTIVE VICE PRESIDENT, THE MAY BROADCASTING CO., OMAHA, NEBR.

Mr. SADDLER. My name is Owen L. Saddler. I am executive vice president and general manager of the May Broadcasting Co., which owns and operates radio station KMA, Shenandoah, Iowa, and television station KMTV, in Omaha, Nebr.

I certainly appreciate the privilege of appearing before this committee and I will abide by the Senator's suggestions of briefing my 14-page statement down to about 2 or 3 minutes.

Senator PASTORE. That is fine, if you can do that, and then if you feel that you want to expand it any, you are welcome to do so. But do it with regard to the number of people that are to follow you.

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[5] The program schedule was furnished later and is printed in the appendix at p. 2993.

Because, after all, we have just put these names down as they come, and I wouldn't want someone to wait here all day and then find out they have to come back sometime later. So if we can fit them all in, let's synopsize this. Now, the whole statement will go in the record as though it were read.

(The prepared statement of Mr. Saddler follows:)

STATEMENT OF OWEN L. SADDLER, EXECUTIVE VICE PRESIDENT, THE MAY BROADCASTING CO., OMAHA, NEBR.

My name is Owen L. Saddler. I am executive vice president and general manager of the May Broadcasting Co., which owns and operates radio station KMA, Shenandoah, Iowa, and television station KMTV, in Omaha, Nebr.

I am here to speak in behalf of our own radio and television facilities and interests, and for this privilege I sincerely thank this committee. Our radio station is a "supplementary" on the ABC network; our television station is in the must-buy group of NBC. On the radio side, we have had affiliations with Mutual and ABC. On the television side, we have had affiliations with four networks, ABC, Du Mont, CBS, and NBC. Further, I have served on the advisory committee of ABC and later CBS. I currently am a member of the affiliates group of NBC. We do, therefore, feel that we can speak on network practices and policies with some knowledge and experience.

I want to point up the fact that our radio station is in a small Iowa town of 7,000 people. Our television station, however, is in Nebraska's biggest city with a population close to 300,000. We, therefore, can speak knowledgeably about a small town as well as a big-city operation.

A. UNFOUNDED ACCUSATIONS

I am afraid that a lot of loose talk has and will be presented to this committee. To some advocates, there is a sense of life so real that it becomes a sense of something more real than life itself. They employ some facts, ignore others, and often speak out of frenzy or emotion, rather than truth. Many are simply decrying the loss of something they have never had. Very few people, it seemed to us, wanted to get into television back in 1947, when we filed our application for a television station in Omaha, even though the American public of 1947 was just as deserving of a television service as are the people of today. History has proved, however, that few have the courage and hardihood of pioneers, because most people refuse to pay the penalties but will fight violently for an unjust share of the rewards after the way has been shown to them.

When our application was filed for Omaha, there were no television stations in Omaha, Kansas City, Des Moines, or Denver. In fact, no applications had even been filed for Denver and Des Moines, and one channel was still unapplied for in Omaha. Further, Commander McDonald of Zenith about that time was making some bold pronouncements to the effect that television could never be self-supporting and that some "toll method" would have to be devised and he, therefore, was proposing his system called Phonovision. A number of people believed him. I recall getting a questionnaire from the National Association of Broadcasters regarding our opinions on these and kindred issues.

Our basic answer then was this: That radio in its early days was certainly not self-supporting. In our own case, we lost money a number of years before we developed a service that was self-supporting. We felt that television would certainly go through the same cycle. We expected to lose money for an indefinite period, but were confident that our prior experiences in broadcasting would enable us to develop a service so adequate and wanted by the public that advertising could and would support it.

Now, a lot of the people who called us foolish back in 1947, also want to get into the proverbial "act." They want to do so, however, by damaging or destroying some of the things that have enabled us to build a fine, strong, dependable television service. Some would like to cut all stations to the same size. Some would like to destroy networks or to put so many restrictions on network operations that they would become ineffective as networks. These frightened operators are unabashedly asking the Government to protect them from some of the risks and hazards we willingly encountered several years ago. I do not suggest, of course, that the television field should be limited to those who were its pioneers. In an industry as dynamic as ours newcomers are needed, expanded program sources are desirable, and increased competition can serve only the public good. But in providing for these things we cannot afford to wreck the very structure that has made such a good television service available to the public. Networks as we know them and the network-station arrangement as we know it is an integral part of that structure.

B. MUST-BUY STATIONS ARE A MUST

There is nothing wrong, so far as the public is concerned, with networks having a must-buy group of stations. In fact, it is definitely to the public's advantage that networks do have, and effectively use, such groups of stations. A chain of any sort must have a certain number of links to be effective for given uses, and certainly if a network is to be national in scope, it must be national with a minimum group of links or stations it is representing.

If programs have to appear on a minimum group of stations, a network can then afford to produce expensive programs which will be in the high public interest. These shows then become economically feasible to the producers and to the advertisers, because then the program cost will be divided by the number of stations in the minimum group. In other words, the cost-per-station share for Omaha for a very lavish production might be only $300 to an advertiser, but the show, if produced for the Omaha area only, would probably cost so much it would be forever unavailable to Omaha people.

My own experience has definitely proved that a station is much more healthy when it is in the must-buy network group than when it is not. I can also say, too, that the networks which do have must-buy groups have proved stronger and far superior operations than those that have not had such groups. And the reasons are not vague or dialectical. A must-buy station usually carries most, if not all, the best shows on the network. This fact insures good, or substantial, audience acceptance to the obvious benefit of the local station and the people it serves. It is also good for the network because they are performing a truly national service.

Then, too, the network must have a strong, competent program department which can produce shows worthy of a national service. It must also have a strong sales department which can procure the revenue to make these fine shows possible and available to the public nationally.

I can speak from personal experience, too, that this must-buy feature is not something that has been rigidly imposed upon clients. They have not been forced to take our station against their will. For instance, in 1951 the sponsor of a dramatic program on CBS indicated that their distribution pattern was not too satisfactory in the Omaha area and that they would like to cancel. To this wish we acceded and filled that period locally with a program which after 5 years is still on our station in prime evening time. When we became affiliated with NBC, in January of this year, there was another sponsor who indicated that since we were on the must-buy list, he would buy our station if he had to, but that he would be quite willing to be left out if we wanted to use his period locally. This we did and in its stead we have a topflight syndicated film production. Such facts, I am sure, could be duplicated among the better television operations throughout the country.

In passing, it is only fair to note that the networks are more reasonable and gentlemanly in these matters than are many film syndicators. All network programs are on the 28-day cancellation basis. Some film producers, however, insist upon firm 52-week contracts. In short, if you have need for a program for 13 or 26 weeks, you cannot get it from them unless you contract and pay for 52, whether or not you, the sponsor, or the public want all 52 programs in a series. In one instance in our experience an appliance firm had to cancel its advertising because of changing marketing conditions but it had to pay for the eight unused programs remaining in the series anyhow.

I want to point out, too, that when a station is on the must-buy list it does not imply that it is also on the must-take list. Naturally, any station operator must be cooperative with his network. He cannot deny the network practical and proper use of his facilities, under the terms and conditions of the contract he voluntarily negotiated. On the other hand, whenever we've pointed out to any network with which we have done business that certain programs at certain times were unacceptable to us because of well-established local programs, they did not protest or threaten, but were thoroughly sympathetic to our situation and were happy to cooperate with us, either by not having the program in our area or on our station at all, or by accepting a delayed broadcast which was satisfactory to the client. In some instances, such programs have wound up on a competitive station when the advertiser felt that the time period and the simultaneity of network broadcasting were desirable or necessary.

C. MANY ADVERTISERS DO NOT USE NETWORKS

If any advertiser finds that a must-buy group of stations does not fit his distribution pattern, he has many other ways of doing business with television stations. He can do so with local shows or he can buy programs from the film or syndication people. We have a number of such instances on our station. One of our advertisers currently uses 5-minute weather reports on about 18 stations. All these programs are patterned after the one we developed in our studios. There are several network advertisers who also wish additional regional impact. One company sponsors our sportscast in the evening, three times a week, and another has a dramatic program on film. We have 1 national advertiser who sponsors only 1 television program in the country, and that program is on our station. In radio, however, they are using 30 stations and transcribe the programs in Omaha. In short, they have set up their own transcription network.

D. NETWORKS HELP OTHER STATIONS IN COMPETING WITH THEIR OWN AFFILIATES

It should also be pointed out that the networks themselves syndicate their own programs. In short, they have some good film programs of network caliber which they make available to all stations, and by all stations I most certainly am including stations not affiliated with them as a network.

Then, too, after a network program has been well received, it can be rerun on film and earn a very fine audience. For instance, Badge 714 was the repeat of NBC's Dragnet. We ran Badge 714 in prime evening time, getting higher ratings for it than the Dragnet programs that were currently being released by the network on our competitor. Despite the fact that we are now an NBC station, we are the station that carries Annie Oakley, a CBS syndicated program. In a sense, then, the networks are currently competing with themselves on their own affiliates and for this, I feel, they deserve tremendous applause.

E. ANYBODY CAN FORM A NETWORK—AND MANY DO

In instances where an advertiser does not wish to buy film programs for a special list of stations, or to buy local programs on individual stations, he can still do business by setting up his own network. In other words, he is not restricted to the national networks as such, because informal networks can be set up by anybody. In radio, for instance, when an advertiser has wanted to buy two or more stations, we have used as a cutting or closing cue, "This is a special Iowa radio network." In radio, we are a member of a special baseball network carrying the games of the Kansas City Athletics. There are some 28 to 32 stations on the list and they are fed over special telephone lines. It works out rather economically this way because a station does not have to buy individual lines all the way to Kansas City, but only to the nearest station carrying the games.

F. NETWORKS SOMETIMES HELP STATIONS TO THE NETWORKS' DISADVANTAGE

Such things are possible in television, too. For instance, back in February, I received a call from WCCO-TV, which is a CBS outlet in Minneapolis, to the effect that Secretary of Agriculture Benson would be in Minneapolis to make an address which he wanted carried by television in several other important cities in the Middle West. It was pointed out that if we were to buy special loops and connections for this broadcast, the cost would be exorbitant, but if NBC would allow us the use of their loops and connections at a prorated cost, the telecast would be economically feasible. We found NBC most cooperative in this regard, even though we were preempting one of their top evening shows to take a feed from a CBS station in Minneapolis.

I reiterate: There are many ways in which networks operate in the public interest, convenience, and necessity, which some inexperienced operators will probably never know.

G. OPTION TIME IS NOT OPTIONABLE—IT IS NECESSARY

And then, there is the very important question of option time. That this can be said to work to the detriment of the public or of the television station is ridiculous and can issue only from misconception or misguidance. A network, as such, cannot exist if it does not have certain definite areas in which it can do business. Option time clears the air of doubts and pettifoggery for both the networks and the television station management. Many of our topflight local features are built and established in periods other than option time. They fit there logically. Some, however, are in option time or during the prime viewing hours.

I might emphasize here—contrary to some impressions you may have received—that network option hours are not the only good hours available to a station. For example, our evening option hours are 6:30–9:30, Omaha time. A substantial time period immediately following these hours can be equally good if the programing is of sufficient public interest. The same point can be made with respect to afternoon time.

Option time is a factor helpful to the network in getting station clearances and without such clearances a network cannot exist. For instance, I quote from the April 16, 1955, Television Digest, volume 11, No. 16, page 4: "Du Mont spent nearly $3 million last year for rental of coaxial and microwave connections, he (Ted Bergmann) said, but because of shortages of stations in many markets, it was able to get back only $150,000 of this investment—or 5 percent." In short, option time or station clearances are necessary and exigent to the health and success of a network.

However, even if a network has a great number of affiliates, but still would not have option time, they would be under a grave handicap. Option time makes possible program or advertising position. To use an analogy, would it not be hard to sustain the editorial content of The Saturday Evening Post, Life, Collier's, and so forth, if your ad might appear on page 7 in one city, page 50 in another, and so forth? Such chaos would not only ruin the networks, but the television industry as we now know it.

Further, by having option time, a network knows that it can and will produce programs in certain time brackets. It therefore sees that there is diversity of program content, public interest, and a general well-rounded blend of information, entertainment, and all the other ingredients that make up good public service. They could certainly not do this if it were not for option time.

H. EXCLUSIVE AFFILIATIONS ARE LOGICAL AND JUST

On this same matter, I would like to point out, too, that there is nothing more wrong in having an exclusive national network in a city than there is in having an exclusive national representative. Both are salesmen, in a sense, and they can hardly do a conscientious and thorough job of representing more than one facility at a time in a city. While we sometimes lose business to our competitors, we certainly do not want our own sales people compelled by law to aid and abet such things. Competition has helped make our economy strong. It has helped us build a sound television service. I reiterate that what we want is competition, not chaos.

I. STATIONS CAN AND DO USE OWN DISCRETION IN ACCEPTING OR REJECTING NETWORK PROGRAMS

Some statements have been presented to this committee to the effect that option time gives the networks an undue programing prerogative and that stations in many cases program blindly without having any information in advance as to what the program content or overall value will be.

There might be some instances in which this situation occurs, but I have always found the networks very cooperative in offering us the fullest kind of information about the programs they would like on our station. Usually much in advance, we get lots of literature, even to pictures of the stars, and so forth, and in cases where such printed material is not satisfactory, we can usually get more than adequate information by telephoning the networks and asking them specifiic questions. In short, because of regular program releases, special traffic bulletins, and TWX messages, our programing department has sometimes complained to me that such a deluge of information from the network can be burdensome.

We usually don't go into a whole lote of preprogram inquiry about the world series, or a championship boxing bout, but I want to assure this committee that this is about as blind as we navigate regarding network programs.

J. GOOD NETWORK STATIONS ARE GOOD FILM CUSTOMERS, TOO

Some statements have been presented to this committee to the effect that the stations which option time to a network and are members of a must-buy group are, perforce, not good customers of film program producers. Certainly, if this fact were true at all, it would be true in our case where we are in a 2-station market and do business with 2 networks. But the facts indicate that we are a fine customer indeed of the film syndication people. For instance, I am listing below the syndicated film programs we are currently carrying in prime evening time.

Program	Night	Time
Celebrity Playhouse	Monday	8:30 to 9 p. m.
City Assignment	do	11 to 11:30 p. m.
Les Paul and Mary Ford	Tuesday	6:40 to 6:45 p. m.
Patti Page	do	6:45 to 7 p. m.
Cross Current	do	10:30 to 11 p. m.
Dr. Hudson's Secret Journal	Wednesday	8:30 to 9 p. m.
Wrestling from Texas	do	10:30 to 11 p. m.
Les Paul and Mary Ford	Thursday	6:40 to 6:45 p. m.
Patti Page	do	6:45 to 7 p. m.
Turning Point	do	7 to 7:30 p. m.
Annie Oakley	Friday	6 to 6:30 p. m.
Superman	do	6:30 to 7 p. m.
Death Valley Days	do	10:30 to 11 p. m.
Man Called X	Saturday	9 to 9:30 p. m.
Waterfront	do	9:30 to 10 p. m.

I have noted that even networks are good film customers, too.

K. YOU CANNOT LEGISLATE SUCCESS

I want to say to this committee that the network policies and practices here under challenge are vital to the most successful method of communication yet developed. Some newcomers to the field would love to legislate themselves into success. No one coerced them into television. You cannot be asked to vindicate their mistakes in judgment in entering television where and when they did. Further, you cannot assure their success or prosperity by destroying the great system of networks which we now have. You cannot guarantee that there will be enough apples for all by cutting down the tree.

Senator PASTORE. Now, you may continue.

Mr. SADDLER. I simply want to point out that in our careers we have had experience with all networks on the radio and television side. So we have had some considerable experience and do feel, out of that experience, that must-buy stations are a must if a network is to operate as such. I think many of the reasons given here—well, we concur with most of the reasons given. We certainly feel, too, that option time is a must; in fact the two are conjunctive; one without the other doesn't mean much. If you are going to have a group of must-buy station you must have option time; it is a two-way street. Not only that, but option time does this: It assures advertising or programing position which is very important. It would be very hard to sustain the editorial contents of Collier's, Saturday Evening Post, or Life magazine if your ad is going to appear on page 7 in one market, page 50 in another, and so on. That way you would have chaos. On option time I am sure an advertiser finds that position desirable.

Mr. Cox. Don't you state that you make adjustments—that you carry network programs on a delayed basis in order to permit the broadcast of local programs that you are originating—and don't you therefore get the same disruptive effect to the continuity of the network schedule that you are suggesting in the magazine field?

Mr. SADDLER. Those things are here, Mr. Cox. They are not everyday happenstances, and I would say that the several divorces that we might have had with the network, that does not gainsay the 300 or 400 happy marriages we have had. Basically, you must have a system and an organization, and there are exceptions. I would like to point out that on the network side you have people and on the station side you have people, and these two groups of people get together to serve people. So we have to be rational and there are exceptions that are made. But by and large we have to have a general pattern of framework within which we operate or we are lost.

Senator PASTORE. Do you feel that without the option time on the part of the network—that is, the agreement that it has with you in the affiliate agreement—that without that the network could not be in a position of dealing with advertisers so as to promote an overall, well-rounded, qualitative type of program on a national basis.

Mr. SADDLER. Precisely.

Senator PASTORE. That would meet the public interest in your community?

Mr. SADDLER. Precisely so. The thing is that option time does work directly to that because a network will program within its option time. It will not program, normally, within—to a great extent within station time. Therefore, they are block programing and are seeing that we do have an overall qualitative type program which you have said.

Senator PASTORE. Now, has this agreement, in granting option time to the network, deterred you or interfered in your negotiations with an independent producer if you so chose to do on a specific program?

Mr. SADDLER. No, sir, it has not.

Mr. COX. How many of those do you clear in the hours 7:30 to 10:30?

Mr. SADDLER. I give you a list, sir. In our prime evening time, what we clear, starting on pages 13 and 14.

Mr. COX. Part of those programs you list there are cleared in the period 9:30 to 10:30 which is, however, not option time in your time zone?

Mr. SADDLER. That is right.

Mr. COX. It is still prime time?

Mr. SADDLER. It is still prime time. We consider that prime up to 11. I would like to point out very definitely that the time the network goes on is certainly not the only good time of our broadcasting day.

Mr. COX. Do you have a different spot rate for different parts of the day?

Mr. SADDLER. We have a rate that runs until 10 o'clock. That, Mr. Cox, will vary from area to area. In the Middle West most stations, or many stations, will consider noon as class A time, which I am sure you won't find so in the East. That will vary according to area.

Senator PASTORE. Mr. Saddler, do you feel that if the rule restriction as to the term of your contract with the network were removed that that would improve your possibility of negotiating a longer contract with the network?

Mr. SADDLER. **Yes; it would.**

Senator PASTORE. Are you in favor of the removal of such a restriction?

Mr. SADDLER. Either the removal or the extension of it.

Senator PASTORE. When I say restriction, as to 2 years, I mean.

Mr. SADDLER. Yes; the 2 years is hardly satisfactory.

Senator PASTORE. We have had much testimony here that it ought to be made 5 years. How do you feel about that? Do you cover that in your statement?

Mr. SADDLER. I do not. But in the questionnaire that was sent, I did mention 5 years.

Senator PASTORE. I see. Is that the way you feel about it, sir?

Mr. SADDLER. That is the way we feel about it, sir.

Senator PASTORE. Are you at all disturbed that this option time is invoked during prime time, sir?

Mr. SADDLER. No, sir; we are not. In fact, we feel very good about option time being in the prime time because it assures us of topflight network programing in those prime evening hours, which is something we might not otherwise have.

Senator PASTORE. Any further questions of Mr. Saddler?

Thank you very much, Mr. Saddler.

Senator PASTORE. Mr. Putnam.

Mr. COX. Mr. Saddler, I forgot to ask, will you also supply a copy of your schedule—this will apply to all witnesses—for the week of April 1 to 7.

Mr. SADDLER. Yes, sir.

Mr. COX. Showing the sources of your programing.

Mr. SADDLER. Very happy to.[6]

Senator PASTORE. All right, Mr. Putnam. May we have quiet, please?

Mr. PUTNAM. Before I start, Senator, I would like to thank you for that plug for UHF. We can use it.

STATEMENT OF WILLIAM L. PUTNAM, TREASURER AND GENERAL MANAGER OF THE SPRINGFIELD TELEVISION BROADCASTING CORP., SPRINGFIELD, MASS.

Mr. PUTNAM. My statement is quite short.

My name is William L. Putnam. I am the treasurer and general manager of the Springfield Television Broadcasting Corp. which is the licensee for channel 22, WWLP, in the city of Springfield, Mass. We operate in the UHF portion of the television band.

I would like also to point out, sir, that we do not have any radio, newspaper, or other connections whatsoever. Our sole source of livelihood is UHF television.

Our station has been on the air since March 17, 1953. We operate with a peak visual power output of 206 kilowatts and for practical purposes cover the northern part of the Connecticut Valley in western Massachusetts and northern Connecticut.

Prior to our taking the air we secured network affiliations with the National Broadcasting Co. and with the American Broadcasting Co.

[6] The program schedule was furnished later and is printed in the appendix at p. 2998.

To this date our affiliation status is unchanged. We, naturally, receive more programing from NBC than from ABC, since from the date of our sign-on, NBC has had considerably more programing to offer.

Long before the time we went on the air, many NBC programs were carried on a VHF station located some 60 miles away and toward which a large part of our potential audience was already oriented. We, nevertheless, were offered on a commercial basis and accepted practically all the NBC programs that were carried on this VHF station.

In this regard I would like to point out that, although we do share our affiliation with ABC we, naturally, orient our thinking around the NBC programing which we take from 7 in the morning to 1 a. m., on most days. The amount of ABC programing that we carry is relatively limited, although it is of high quality.

Mr. Cox. Does that mean that you accept all the NBC programing that is offered to you?

Mr. Putnam. Not quite all. We have a couple of orders we have not been able to fill, but we accept 98 percent of it.

During all the time of our affiliation we have enjoyed extremely friendly relations with both of our networks. Naturally, as in any business arrangement, there have been things that I would have preferred done differently, but I am sure that our networks would have preferred that we would have done some things in a different manner. There has been the usual give and take of good business relations.

We have been offered all the network programs we could profitably use and have found NBC particularly willing to aid us in a great number of ways, not only by making their programs easy for us to carry but also with advice which we solicited and assistance in promotion and other matters.

Gentlemen, to put it simply, we are very happy with our networks. They have been good to us.

In noting our case, it is important to bear in mind that we are a small station in the UHF band with no large corporate connections—and no influential stockholders. NBC has helped us and we are grateful.

If there is anything malicious to be said about networks, I am not about to say it, for I have absolutely no reason.

Senator Pastore. As far as you are concerned, this option requirement provision in your contract, and this designation for prime time, and this must-buy feature that has been talked about—any change of that would not be in the public interest in your opinion?

Mr. Putnam. I don't know about the must-buy business, sir, because I am not on the list.

Senator Pastore. All right. Then eliminate that from the question.

Mr. Putnam. As far as option time is concerned, I don't have any great amount of outstanding orders for people who want to buy the time that is optioned out. Therefore, I am perfectly happy with the option arrangement. I have had no conflict on it.

Senator Pastore. Are you ever approached by independent producers?

Mr. Putnam. Not enough to put in your eye. [Laughter.]

Senator Pastore. How big is that eye?

Mr. PUTNAM. Well, I don't want to get into a conflict on the size of your eye, sir, but we haven't—whatever inquiries we have had from that source haven't stuck in my mind as worth remembering.

Senator PASTORE. Do you feel if you were approached, and you want to substitute any program on option time and prime time, that you are at liberty under your contract and you have enough flexibility to do so?

Mr. PUTNAM. I think if the contract were to be held strictly, I probably am not at liberty. But I have never had a conflict with the networks on that count when I have said, "Here is a program I would like to carry." In either case, whichever network I have had to go to have been quite willing.

Mr. COX. On the other hand, you cleared these NBC programs whether they had an option or not?

Mr. PUTNAM. In most cases I have. Although I have upon occasion not cleared in nonoption time because I have had other programing that I thought was of more value to the community.

Senator PASTORE. Senator Wofford?

Senator WOFFORD. No questions.

Senator PASTORE. Senator Magnuson?

Thank you very much.

Mr. COX. Will you furnish us the same data on your programing?

Mr. PUTNAM. Yes; I will send it to you when I get home.[7]

Senator PASTORE. Mr. Breen.

STATEMENT OF EDWARD BREEN, PRESIDENT AND GENERAL MANAGER, TELEVISION STATION KQTV, FORT DODGE, IOWA

Mr. BREEN. Mr. Chairman, I have a rather long statement. I am a UHF operator in a very small market.

Senator PASTORE. Without objection, the statement will be inserted into the record as though read into the record.

(The prepared statement of Mr. Breen follows:)

STATEMENT OF EDWARD BREEN, FORT DODGE, IOWA, PRESIDENT AND GENERAL MANAGER OF KQTV, CHANNEL 21, FORT DODGE, IOWA

My name is Ed Breen. I am the manager and one of the principal owners of KQTV, a UHF television station on channel 21 in Fort Dodge, Iowa. KQTV is the only UHF television station in Iowa. One other UHF station, which started in Des Moines a short time ahead of us, has been dark for over a year. Another UHF station licensed for Sioux City turned in its license without making any effort to start.

To give my background briefly, I am a lawyer by profession, having graduated at Wisconsin in liberal arts and in law at Drake University. I got into radio, when I was going to law school, at WHO, a clear-channel, 50-kilowatt NBC station in Des Moines, Iowa. I was employed there as an announcer and later as a program director and for a short time as local manager. In 1938, I was practicing law in Fort Dodge. I had served as Webster County attorney for 4 years, and then served in the Iowa Senate. I helped organize and became one of the principal owners of radio station KVFD. That station went on the air in 1939. I have been president of the corporation since its inception. A few years later I took over its management, and have been in active charge for the past 14 years. I was once my party's candidate for Congress and once ran for Governor of Iowa. I am a Democrat

In radio, KVFD has been affiliated with the Mutual network for 16 years, and is still a member of that network. It has been my privilege to serve as

[7] The program schedule was furnished later and is printed in the appendix at p. 3000.

president of the Iowa Tall Corn Network, an affiliation of 14 Iowa stations; as president of the Iowa Broadcasters Association; and as small-station representative on the board of the National Association of Radio & Television Broadcasters. At present, I am serving as a director of Radio Advertising Bureau.

The Northwest Television Co. was financed by the purchase of stock by some 243 people living in 26 towns and on farms in northwest Iowa. Those people wanted television. Our own service at that time was from WOI–TV at Ames, a station owned by the State of Iowa through its agricultural and engineering college. Representations had been made by people in authority at the college that as soon as other stations came into the area, WOI–TV would drop its network affiliations. Relying upon these representations, we went ahead with KQTV. The people at Ames defaulted upon their representations, however, and held on to the networks they had as long as they could. When WHO–TV came into being at Des Moines, WOI–TV, which is only 25 air miles from Des Moines, lost NBC, and later when KRNT–TV at Des Moines came into being, WOI–TV lost CBS.

About the time NBC left WOI–TV at Ames, it became possible for us to talk about an affiliation with NBC and within a few months we had a contract with NBC. That dates back to November of 1954, about a year after we started. We had no telephone facility for bringing network programs into Fort Dodge from Des Moines and we were told it would be a matter of some 7 or 8 months before we could expect such service. We petitioned the Federal Communications Commission for permission to build our own microwave relay. It was granted and we brought the first programs into Fort Dodge from NBC and Du Mont in December of 1954.

Fort Dodge is a town of 27,000. It serves a trade area embracing several counties and about 250,000 people. It has 1 daily newspaper, circulation 18,500, 2 radio stations, 1 only a month old, and our television station, KQTV, channel 21.

It is not a big market. National advertisers avoid it by the hundreds. Our affiliation with NBC served us with many sustaining programs from the start, but it was some months before we got our first commercial show.

Then someone at NBC came up with a brilliant idea that changed everything for us. The Program Expansion Plan came into being. I was notified of it confidentially in the early fall of 1955 by Bob Aaron, station relations representative for our area for NBC. The plan started working November 1, 1955. Since I may be the only small market station representative here affiliated with NBC, let me tell you how it worked for us. Some 44 or 45 stations our size, but most of them bigger, were asked if they would come into this plan. I would guess that most of those so invited came in because the advantage was on our side. NBC, through its officers, Pat Weaver and Bob Sarnoff, said to us, "We are going to put all of your stations in a package. We will pay you your regular rates, but we are going to ask the advertisers if they buy all of you to pay only half." The language was a little different than that but that is roughly how it worked. In addition, we were told that starting May 1, 1956, advertisers who wished to buy time between 7 and 11 in the evening, would have to buy more stations. The minimum was upped from 50 to 100.

The only out on that was that in certain cases they would be allowed to buy fewer stations if NBC was permitted to send the unpurchased NBC stations the programs on a sustaining basis or in some cases on a co-op basis. Co-op, as the industry knows, is that arrangement where you are allowed to cut out the network commercials or the network credits and sell those spots yourself. You pay the network a small fee for that right. Incidentally, these co-op fees are all we have ever paid NBC and we are not required to give the network any free time.

We agreed to that plan. We not only agreed—we embraced it as we would a long-lost brother. It was the greatest leg-up that small-town television had ever gotten. We wired our enthusiastic response. What did NBC ask in return? Nothing, except that we stay in the buggy for a year—just our agreement that once we had accepted the plan, we would go along with it for at least a year.

What has it meant to us? It has meant programs, prestige, conversions, lowered operating costs. For our corporation it has meant salvation. We have had a very rough 2½ years. We have lost a tremendous amount of money. We are not out of the woods, but we can see the light. So you can see that NBC has been our great benefactor. We owe NBC and its people for everything we are today.

So to turn to the charge of monopoly, if there is monopoly in television, it exists, it seems to me, because of fundamental mistakes made long since—and I fear in danger of being repeated—by the Government's own agency, the Federal Communications Commission, that has charge of such matters. It is my opinion that there should have been no intermixture of UHF and VHF unless the licensing agency, the Federal Communications Commission, upon whose order such intermixture was determined, had first made sure by law that VHF-only sets would be taxed out of existence. There is very little difference in the UHF and VHF signals, as I have been able to observe them. In some respects the UHF may be better than the VHF; in coverage the VHF may be better by a few miles than the UHF. The vital difference is that today all sets will receive VHF signals and only more expensive special or converted sets will receive the UHF signals. It is my opinion that no one today in his right mind will risk many dollars to go into UHF operation until this condition is corrected.

So we will continue to have a monopoly created by conditions which exist under the control of Congress and the Federal Communications Commission. As long as most of the sets manufactured in this country are going to be designed to receive only one kind of television signal, you are not going to have enough equal facilities assigned to defeat the scarcity that makes for monopoly.

To aggravate this scarcity of equal facilities, a great number of allocations have been reserved for education. We have one of these in Des Moines, channel 11. While every other VHF channel in Iowa has been spoken for and is in use, this channel remains idle. No one wants it for education. No one has been permitted to have it for commercial use. So Des Moines, the capital of Iowa, our largest city, home of a great newspaper, several great magazines, and of 6 radio stations, has only 2 television stations, while another VHF, the only one left in Iowa, remains idle. NBC has WHO for its outlet, CBS has KRNT. ABC has to be satisfied with the college station 25 miles away, while channel 11 remains idle.

A condition of scarcity has been created, although hardly one of monopoly. NBC has to be in Des Moines; so does CBS, and ABC would like to be. Nobody on a network level is in any position to push those stations around. In turn, however, the stations are so loaded with network and spot advertising, there is a real scarcity of time for local projects. I can remember when we used to say it was harder to get on WHO radio than on NBC.

How do I feel about option time? I feel this way. If NBC is going to sell our station, it must have some assurance that when it has sold KQTV, there will be time for the program that it has sold. I want those NBC people to work for me as they have been, getting me wonderful programs, making me money, treating me better than I have ever had any right to expect.

Now, I understand that there are other people in the film industry and in pay television who cry "monopoly," and point their fingers at the networks and say, "There is the villain in the piece." I think they have got something to complain about, but it is not the networks. No, my feeling is that they are the victims of this same scarcity of equal outlets that I complain about. Let's take Des Moines as an example. Allow four equal facilities in Des Moines. There is then plenty of room for three networks, pay television, and a film network, and also plenty of time for local affairs. But it can't be done as long as you have two brands of television operating in the same market, one that can be gotten by every receiver and the other by only a special and more expensive receiver.

The reason for the cry of monopoly lies in a system that wears the label "Made in Washington," and one that can only be corrected here in Washington. The American people deserve the best in television. They will only get that under a system of television big enough to insure competition for viewer interest everywhere. Aside from the sacred VHF's reserved for reluctant educationalists, there are no more VHF's to be had. More stations means more UHF stations. But that day will only come when the UHF's are raised to a position of equality with the VHF's. Until you change that condition of scarcity, by taxing out of existence the profitable manufacture and sale of one-lung television sets—the kind that get only one kind of television signal—the television system of this country will remain plagued by all the problems and ills that scarcity creates in any field of human endeavor.

Change that one condition under which we must operate and you open the way for film networks, for pay television, for the serving of every local, educational, political, social, and religious and economic need in this country. Don't let anyone fool you into believing that you can help this situation by

drop-ins and such. All you are doing then is debasing the very service you hope to improve. Go the whole way. Tax one-lung television out of existence.

Mr. BREEN. I have been in radio business with a small station in a small market for about 20 years. We started UHF in 1953. We had no commercial V near us—at least we thought we had none. We actually had one at about 40 miles owned by the State of Iowa through its college of engineering and agriculture. They had made repeated statements to the effect that as soon as commercial stations came into the area they would leave the commercial field. That they failed to do. So for a period of some months we were without any network. Eventually, Ames, WOI–TV, lost NBC to WHO in Des Moines, and also lost CBS to KRNT in Des Moines, and we were then able to talk to NBC, although Des Moines is only 72 air miles away from Fort Dodge.

Fort Dodge, Iowa, is a small market, 27,000. Just hundreds of national advertisers avoid it like poison. Nevertheless, we were able to negotiate a contract with NBC. We then found that we had no service, or no means of securing programs into our market through the ordinary facilities. We petitioned the FCC and were allowed to build a microwave relay. Later, we bobtailed that relay and we are now receiving service by air from WHO–TV, through their permission and by agreement with NBC, from Des Moines to a point located about 32 miles south of our station, at which place we pick up the signal and bring it into Fort Dodge.

As I say, national advertisers are not looking for markets of 27,000, in my experience. However, because I am almost a freak in this gathering, I think, being a small market and UHF both, I want to tell you something about what NBC has done for us. Maybe this spells the reason for love.

In the fall of last year Bob Aaron, station-relations man for NBC for our area, called me and said, "Confidentially, we are planning to bring you more program service than you have had, under a plan known as the Program Extension Plan. Since nobody else will tell you about this, let me take a minute to tell you." Bob said, "We are going to have a package of 44 or 45 small stations, or small market stations, some VHF, some UHF, most of them larger than your market. We are going to put these stations all together in one package. We are going to sell the whole kit and caboodle for half of the rate that is normally charged, but we are still going to pay you your full rate." He said, "Will you go along with that?"

There were no strings on it at all, except if we accepted this plan they wanted us to stay in the buggy for a year. We not only said we would; we embraced that plan enthusiastically. It brought us about 32 hours of NBC programing—the first real break that we had in our market. We have been on the air 2½ years; we have lost a tremendous amount of money; we are still not making money. Part of the reason for that, of course, was the fact that for a time we had all 4 networks concentrated at a point just 42 miles away, WOI–TV in Ames.

Now, I was on vacation when I heard from you, Senator. So I was a long way away from where I could find out what was going on here in Washington, or what charges were being made, or what the shooting was all about. So this was composed at a lake resort, and I want to say something here about this charge of monopoly. And I would like to read a short statement.

Senator PASTORE. All right, sir, go ahead.

Mr. BREEN. If there is monopoly in television it exists, it seems to me, because of fundamental mistakes made long since—and I fear in danger of being repeated—by the Government's own agency, the Federal Communications Commission, that has charge of such matters. It is my opinion that there should have been no intermixture of UHF and VHF unless the licensing agency, the Federal Communications Commission, upon whose order such intermixture was determined, had first made sure by law that VHF-only sets would be taxed out of existence. There is very little difference in the UHF and VHF signals as I have been able to observe them.

Out in our country, where it is flat, I can't see that there is very much difference. There has been a little difference in 7 or 8 miles, something like that, with comparable powers and comparable antennas. In fact, in some respects, maybe, UHF under certain conditions is a little better in that area where it has a strong enough signal. The vital difference is today that all sets will receive VHF signals and only more expensive, special or converted sets—and most of them converted badly—will receive the UHF signals. It is my opinion that no one today in his right mind will risk many dollars to go into UHF operation until this condition is corrected.

So we will continue to have a monopoly created by conditions which exist under the control of Congress and the Federal Communications Commission. As long as most of the sets manufactured in this country are going to be designed to receive only one kind of television signal, you are not going to have enough equal facilities assigned to defeat the scarcity that makes for monopoly.

To aggravate this scarcity of equal facilities, a great number of allocations have been reserved for education. We have one of these in Des Moines, channel 11. While every other VHF channel in Iowa has been spoken for and is in use, this channel remains idle. No one wants it for education. No one has been permitted to have it for commercial use. So Des Moines, the capital of Iowa, our largest city, home of a great newspaper, several great magazines, and of 6 radio stations, has only 2 television stations, while another VHF—the only one left in Iowa—remains idle, right there in Des Moines. NBC has WHO for its outlet; CBS had KRNT. ABC has to be satisfied with the college station 25 miles away, while channel 11 remains idle.

A condition of scarcity has been created, although hardly one of monopoly. NBC has to be in Des Moines; so does CBS, and ABC would like to be. Nobody on a network level is in any position to push those stations around. In turn, however, the stations are so loaded with network and spot advertising, there is a real scarcity of time for local projects.

I used to work for WHO years and years ago; that is how I got started in this racket.

Senator PASTORE. Change that to business. [Laughter.]

Mr. BREEN. Yes; that is the business.

I can remember when we used to say that it was harder to get on WHO radio than to get on to NBC. That was true.

Now, how do I feel about option time? I feel this way. If NBC is going to sell our station it must have some assurance that when it has sold KQTV, there will be time there for the program it has sold. I want these NBC people—and Lord knows they have been good to us; they have been getting me wonderful programs, making me the first network money I have seen in a long time, and treating me better than I have had any right to expect—I want them to continue to work as hard for me as they can, and get as many of those programs as possible.

I understand there are some people—this is almost hearsay—there are people in the film industry and pay television, who cry "monopoly" and point their fingers at the networks and say, "There is the villain in the piece." I think they have got something to complain about, but it is not the networks. No; my feeling is that they are the victims of this same scarcity of equal outlets that I complain about. Let's take Des Moines as an example. Allow four equal facilities in Des Moines. There is then plenty of room for three networks, pay television and a film network, and also plenty of time for local affairs. But it can't be done as long as you have two brands of television operating in the same market, one that can be gotten by every receiver and the other by only a special and more expensive receiver.

The reason for the cry of monopoly lies in a system that wears the label "Made in Washington," and one that can only be corrected here in Washington. The American people deserve the best in television, and the FCC has said this time and time again. They will only get that under a system of television big enough to insure competition for viewer interest everywhere. Aside from the sacred VHF's reserved for reluctant educationalists, there are no more VHF's to be had. More stations mean more UHF stations. But that day will only come when the UHF's are raised to a position of equality with the VHF's. Until you change that condition of scarcity, by taxing out of existence the profitable manufacture and sale of one-lung television sets, the kind that get only one kind of television signal, the television system of this country will remain plagued by all the problems and ills that scarcity creates in any field of human endeavor.

Change that one condition under which we must operate and you open the way for film networks, for pay television, for the serving of every local, educational, political, social and religious and economic need in this country. Don't let anyone fool you into believing that you can help this situation by drop-ins and such. All you are doing then is debasing the very service you hope to improve. Go the whole way. Tax one-lung television out of existence.

Senator PASTORE. Wouldn't you say, sir, that the longer we wait to solve that problem——

Mr. BREEN. The worse it gets.

Senator PASTORE. Of developing a nationwide UHF–VHF system of television, the more impossible it becomes?

Mr. BREEN. The more impossible it becomes.

Senator PASTORE. Because, fundamentally, more stations drop out, there is less incentive to make dual function sets; then it becomes an economic problem of tremendous proportions and gets so far beyond you that there is no coming back.

Mr. BREEN. Moreover, we have this growing state of mind on Madison Avenue that if you are UHF you shouldn't be purchased under any condition.

Senator PASTORE. You may be interested to know that the chairman, whom we are happy to have here today, has taken this matter up with the Treasury Department. Through his insistence, this committee has gone on record advocating to the Treasury that, at least insofar as color television is concerned, that they be made all-channel sets, and if they are that the excise tax be removed. That, of course, is somewhat encouraging. It may be comforting to you. It is only one step in the right direction. There are many other steps to be taken, but we want you to know that we are very conscious of this problem, that we feel that fundamentally that is the source of all the trouble that we are having, and that we are alive to the problem and that we are trying to do the best that we can. I can only speak for myself when I say this, but I think, myself, that the FCC in this particular area has actually dragged its feet.

Mr. BREEN. Thank you very much, Senator. There is one other person I would like to see you get before this committee. That is a man who purports to tell the world how many receivers you have in your area. He publishes a television magazine called Television. And I can tell you this, that his report on our station is biased, prejudiced, unreliable, and does not represent the truth. [Laughter.] I hope you will get him here and ask him where he gets his figures.

Mr. Cox. Will you provide us with that data on your programing?

Mr. BREEN. Yes, sir.[8]

Senator PASTORE. Mr. Chisman, please.

Mr. CHISMAN. Yes, sir.

STATEMENT OF THOMAS P. CHISMAN, PRESIDENT AND GENERAL MANAGER OF PENINSULA BROADCASTING CORP. (WVEC-TV)

Mr. CHISMAN. Senator, my name is Thomas P. Chisman. I am president and general manager of Peninsula Broadcasting Corp., which owns and operates WVEC-TV in Hampton, Va., which serves the Norfolk and Hampton markets. We operate on channel 15 and are a basic affiliate of the National Broadcasting Co. We have been in business since 1953.

For the sake of brevity, I will submit the statement.

Senator PASTORE. For the record.

(The complete statement follows:)

STATEMENT OF THOMAS P. CHISMAN, PRESIDENT AND GENERAL MANAGER OF PENINSULA BROADCASTING CORP. (WVEC-TV)

Mr. CHISMAN. My name is Thomas P. Chisman. I am president and general manager of Peninsula Broadcasting Corp. which owns and operates WVEC-TV in Hampton, Va., which serves the Norfolk and Hampton markets. We operate on channel 15 and are a basic affiliate of the National Broadcasting Co.

In 1952, when the FCC issued its sixth report and order, it hoped that it was, on the basis of the best available information, instituting a system of nationwide competitive television that would, in a short time, bring the social, economic, and cultural benefits of such a service to all of the people. It is obvious that it has at least partially succeeded, but the plan would have failed completely, and the people would have lost tremendously, had it not been for the networks and many of their policies. Neither VHF nor UHF could have prospered without network affiliations. A great number of people have forgotten too soon the fact that television had its phenomenal growth

[8] The program schedule was furnished later and is printed in the appendix at p. 3003.

from infancy to maturity at the very time and in direct relationship to the increase of network service. I am not of the opinion that all past and present networks and all past and present network officials are entitled to equal praise for what has been accomplished, for it is possible that some deserving stations may never have been given the support that WVEC-TV received. But I do believe that the best things in television have been made possible principally because of the very existence of networks and the farsighted action of some of their officials.

We received our construction permit from the FCC in February 1953; we signed an affiliation agreement with NBC in June of that same year. It was our first association with a network. Realizing this, two NBC station relations representatives, Thomas Knode and Paul Hancock, explained at great length the affiliation agreement to our attorney and to me. We signed the agreement feeling that it was a contract that had conditions in it which would be of mutual benefit. We fully realized the implications of option time and, quite frankly, were very happy that there was such a clause in the contract. To us, option time meant assurance of programing during certain prime hours of each telecast day. Since our only product was a program service, that assurance was vital and extremely important. We believe that the principle of option time is not only necessary but completely equitable.

Initially, we and the network had to sell each network advertiser on the facilities of WVEC-TV. We sold all but one advertiser. After we went on the air, that advertiser ordered our station but we declined the order and have never carried its show. We generally have that time period sold locally, and the network has never exerted any pressure to recapture the time. From time to time, we have exercised our right to preempt network shows for shows which we felt were more in the interest of our local viewers, and our decisions have never been questioned by the network or any of its representatives. We feel that our time is still ours and when we can put on a local live or filmed show which is superior to the network schedule we do not hesitate to preempt the network time for such shows. We exercise the final control on what does or does not go on the air. And we get our decisions from the people—our viewers.

You have heard much of the great shows, the spectaculars, the Wide, Wide Worlds, the See it Nows, but I would like to mention a service that is of equal, if not more, importance—the news service offered by the networks. No local station could possibly duplicate this service in terms of coverage or depth in news reporting. Like so many other programs, they provide stations with a service for our viewers not otherwise obtainable, and their importance to our democratic way of life should never be underestimated.

It is almost inconceivable that any station would ever have enough money and enough staff to duplicate, on its own, the quality and quantity of network programing. Certainly there is no station in our area with the facilities to touch network programing, and filmed shows can never replace the network.

We use approximately 4 hours of film per day. These films have been purchased from various film companies, and in all our negotiations with these film companies we never have found any of them which were interested in anything other than the amount of money they could get for their properties. There is a basic difference in the philosophy of film people and network people, and the difference, in my opinion, can never be reconciled. I consider the sense of public responsibility of the networks to be unmatched by any other business in this country. I am convinced that the networks fully realize the importance of their position—and their grave responsibilities—and I know of no case where they have disregarded or carelessly flaunted their power and influence.

Our contract with NBC has been one of the principal reasons for our ability to serve the people in the Norfolk area with good television programing. We have provided the network advertisers with a sound and successful outlet for their wares and services, and being more or less a pioneer in the UHF field, we have provided the network with statistical studies never before made and information as to marketing and viewing habits of UHF audiences which we feel have aided both the network and ourselves.

It is inconceivable to me that anyone would tamper with the present network-affiliate agreements as they exist today. The economy, the cultural well-being, and the political progress of this country have all been enlarged and strengthened by our present system of television, and a breakdown of today's network-affiliate structure would be a deterrent to continued progress. I might also add that our present healthy economy is indebted to this new marvel. The $17 billion that has been spent in the television industry in the past 8 years—which is the largest amount of money ever invested in one new industry in such a short period of time—has increased employment, lowered the cost of goods, and created a general increase in the mass purchasing power of the consuming public. I, therefore, urge this committee to weigh carefully the implications of this hearing. Any impediment to the growth of the industry would have far-reaching adverse economic and social effects.

Mr. CHISMAN. I would like to make a few comments on it.

In 1952, when the FCC issued its Sixth Report and Order, it hoped that it was, on the basis of the best available information, instituting a system of nationwide competitive television that would, in a short time, bring the social, economic, and cultural benefits of such a service to all of the people.

Senator PASTORE. May we have quiet, please? I realize there is a certain amount of noise in moving around. But we would all like to hear the witness.

Mr. CHISMAN. It has succeeded partially, in my opinion, but it would not have succeeded at all had it not been for the action of the networks and the network officials in getting the programs to the people—instituting better programs to get more sets.

We received such help from the networks in 1953 that it would have been impossible for us to operate a station without that help.

We believe that the system of option time is fair, it is equitable, in our case it was absolutely necessary.

Senator PASTORE. Have you ever been deterred or interfered with in any way in dealing with an independent producer only because of your option time obligation with the network?

Mr. CHISMAN. No, sir. The independent producers who have approached us have always had only one thesis, that is: How much can I get for my product? They don't give a damn where you put it.

Mr. COX. They are not concerned about the time?

Mr. CHISMAN. No, sir; so long as they can sell it and you will pay for it.

Mr. COX. You can broadcast it at any time of the day, and it makes no difference to them as to what time slot you put it in?

Mr. CHISMAN. No, sir. I am the customer, I am paying for it.

Mr. COX. You buy it?

Mr. CHISMAN. Yes, sir.

Mr. COX. What is the situation when a nonnetwork supplier of programs has tried to make a sale to a national advertiser, who then attempts to place the program on a national spot basis—is he interested in the time in which that program will be broadcast in the Norfolk area?

Mr. CHISMAN. Yes, sir; he absolutely is.

Mr. COX. Does the option that the network has prevent you in any way, or inhibit you in any way, from placing that in times desired by this advertiser?

Mr. CHISMAN. No, sir; it never has. While we are a basic NBC affiliate, we do have some prime time for national advertisers; and some of it, frankly, since we are a UHF, goes begging. We still consider that our time is ours, that we are the licensee, and that at any time when we feel that we can produce a show, live or on film, that is superior to the network, I think that we would certainly do so. We know of none right now.

Mr. Cox. So regardless of the option, you would displace a network program if you thought that another program offered was better; and, on the other hand, you would clear for the network programs when they are good, whether the network had an option or not?

Mr. Chisman. Yes, sir.

Senator Pastore. How do you feel about this term extension of your contract with the network?

Mr. Chisman. I think it is very vital. I think the investment that stations make in facilities—to put out a better signal and give them better coverage, both for themselves and for the network advertisers—is so extensive that 2 years is an insufficient length of time to recoup.

Senator Pastore. For how long does your license run?

Mr. Chisman. Two years, sir.

Mr. Cox. Three years.

Mr. Chisman. Three years? Three years. I am not particularly bothered about the term of the license.

Senator Pastore. Doesn't it occur to you that if you are to enter into an effective contract with the network for 5 years, you would have to have a license for 5 years, too?

Mr. Chisman. Yes, sir.

Senator Pastore. You are adding that to it, too.

Mr. Chisman. Yes, sir.

Senator Magnuson. Have you anything to say about the time—as long as it is brought up here—that the license, the 3-year period—whether the law should be changed, or the FCC regulations should be changed, for a longer period?

Mr. Chisman. I am of the opinion that it should be, sir.

Senator Magnuson. What would you say?

Mr. Chisman. A minimum of 5 years, possibly 10.

Senator Magnuson. Five years. Because that is the general time of your contracts with the network?

Mr. Chisman. No, sir; the network contract is only two. But I do believe that the investment——

Senator Magnuson. What options do you have in that?

Mr. Chisman. It is automatically renewable every 2 years unless either side gives notice.

Senator Magnuson. But how much notice do you have to give?

Mr. Chisman. Three months.

Senator Magnuson. Three months?

Mr. Chisman. Yes, sir. I think that the investment there, too, just as you invest in a network and the network invests in you, your license should be extended in order to give you a better chance to recoup the capital that you put forth when you initially get your license.

Senator Magnuson. Isn't is a fact that sometimes stations run without the extension of their license—just stay on the air, and the FCC has failed to extend the license?

Mr. Chisman. No, sir; I don't know about that. It doesn't happen in our particular case. I am not aware of any case where it does.[8a]

Senator Pastore. Any further questions? All right, sir. Thank you very much.

Senator Pastore. Now our next witness is Mr. Robert D. Swezey.

[8a] Pursuant to later request, the program schedule of WVEC-TV for a sample week in April, 1956, was furnished and is printed at p. 3005.

STATEMENT OF ROBERT D. SWEZEY, WDSU BROADCASTING CORP.

Mr. SWEZEY. Mr. Chairman, my name is Robert D. Swezey. I live in New Orleans, La. My other qualifications, such as they are, are included in this statement which I would like to deposit for the record.

Senator PASTORE. Without objection, it is so ordered.

(The complete statement of Mr. Swezey is as follows:)

STATEMENT OF ROBERT D. SWEZEY, EXECUTIVE VICE PRESIDENT, WDSU BROADCASTING CORP.

My name is Robert D. Swezey. I live in New Orleans, La. I am executive vice president and general manager of WDSU Broadcasting Corp., which is the licensee of radio stations WDSU–AM and FM, and of television station WDSU–TV, in New Orleans. I am also vice president and director of the Modern Broadcasting Co., licensee of radio stations, WAFB–AM and FM, and WAFB–TV, in Baton Rouge, La.

I have been actively engaged in the broadcasting business since 1939, when I joined the legal department of the National Broadcasting Co. in New York as an attorney. I was subsequently employed, in 1942, as general attorney and secretary to the board of the Blue Network Co. (now the American Broadcasting Co.), and then vice president and general manager of the Mutual Broadcasting System from 1944 until the latter part of 1948.

I have worked in many industry undertakings, particularly with respect to television, and served as a member of the boards of the National Association of Broadcasters and the National Association of Radio & Television Broadcasters continuously from November 1949 to April 1956. During that period I acted as chairman of a number of standing and special committees, and for 2 years as chairman of the television board.

It is furthest from my intent to add needlessly to the tremendous volume of testimony which has already been presented to your committee in these hearings, the trade-paper accounts of which I have been reading with interest. However, I have been impelled to request the opportunity to appear before the committee for the following reasons.

The matters in issue are of such tremendous importance I think none of us who has any real interest in television can afford to withold from your committee any information he may have which would be of the slightest assistance to you in your inquiry.

I am disturbed by the fact that much of the testimony which has been presented to your committee, though it may have been sincerely offered, appears to be sadly lacking in objectivity.

I am equally disturbed by what seems to me to be an increasing impatience to take some immediate action, however drastic, to appease the more virulent critics of the television industry, and to offer some manner of relief to those who find themselves in an unfavorable competitive position under the present allocation pattern and network affiliation arrangements.

I am fearful that in this climate there is a possibility of hasty and ill-considered actions being taken which might dislocate and irreparably damage the structure of our national television system, greatly impairing its efficacy and the quality of its service to the public, in order to provide correction for relatively minor maladjustments in that system.

It has occurred to me that it might be helpful to the committee to have me present the point of view of one television operation in a principal market which has contracted and dealt with all of the networks and most of the companies producing film for television; an operation which is financially interested in both a VHF and UHF station, which is seeking no relief, and which is speaking in its own behalf as a station licensee and not on behalf of any network or other organization or group.

I cannot help feeling that this committee is presented with an ironical situation. The television industry is not under inquiry before the committee because it has failed to do a good job. Although there is a great deal of comment in the testimony already presented to the committee concerning the failure of the present television structure fully to serve the public interest, there is still very little credible evidence to that effect. I think it is probably impossible for any other medium of entertainment or information to boast of any period of comparable performance in public service such as that which has been demonstrated by the relatively immature television industry. Certainly, by any fair test, it has more than fulfilled all reasonable expectations.

Television is being scrutinized by the committee because, in the opinion of some, it has been too successful; because some people, through imprudence or unfortunate business decisions, have found themselves in an uncompetitive position within the industry, and because others would like gratuitously to cut themselves in on television profits and take a free ride on the investment, the work, and the risk of those who built the business.

The testimony of the unsuccessful UHF operators, the disgruntled affiliate, the pay-television exponent, the independent station, the motion-picture producer, is quite apparently predicated upon considerations of personal rather than public interest.

It seems to me a little incredible that the networks, without whose efforts I am convinced television would still be a relatively mediocre and undeveloped medium, are put in the position of fighting for their very existence against the frontal attacks of a self-seeking and opportunistic nature.

There has been evidenced in these hearings, and in previous hearings conducted by Senator Potter's subcommittee, an alarming lack of appreciation of the real facts of the development of the television industry in this country. It is intimated that a handful of people with some extraordinary prophetic powers, seized control of all of the effective frequencies and shrewdly planned, through network organization and allegedly restrictive agreements, utterly to control the industry—and to their own selfish ends with little or no regard to freedom of competition and to consideration of public interest. This by and large is nonsense. It is quite true that some operators had more confidence in television than others. It is also true that some were willing or able to make more venturesome investments than others, but there is no evidence whatever that the network organizations, for example, had any greater insight into the future of television or any greater opportunity to take advantage of its earlier development than anyone else. It is quite clear from the Columbia Broadcasting Co.'s failure to acquire, at a much earlier time, the maximum number of owned-and-operated stations in selected large markets, that that company was completely unprepared for the course of development that the industry took.

It seems quite apparent that the networks followed, in their television operations, substantially the same method and procedures used for so many years in the operation of their radio networks. They did so hoping, rather than knowing, that television would ultimately become a profitable business.

A few years ago, there was a great deal of informed opinion to the effect that live television networks could not subsist for any appreciable period because of the enormous burden of cable and relay interconnection and other operating costs. The current situation is actually one which has evolved much more from happenstance than intent: if there are objectionable features in our allocation and network structure they are scarcely the result of deep-laid plot or malice aforethought.

It seems, too, a little extraordinary that attacks against the networks should be predicated, in some instances, upon business practices which have been openly and continuously followed in the radio business for many years with the complete knowledge and sanction of the Federal Communications Commission. For example, Mr. Moore, of KTTV, and his associates have contended that optional time provisions are illegal, and that they "restrict the affiliated station from exercising its own judgment in programing and from discharging its nondelegable responsibility to serve the needs of its own community." Like Mr. Moore, I am an ex-lawyer and like him, I believe I am presently incompetent to pose as an expert in the legal aspects of this matter. I can only say that, in my opinion, the validity of Mr. Moore's legal conclusions has been most persuasively refuted. I should like to say further that the owners and management of WDSU–TV are not conscious of having surrendered to the networks, or to anyone else, any portion of their responsibility for judging program acceptability.

I am also convinced, from a fairly long and varied experience on both sides of this network-station relationship, that some general commitment in advance on the part of affiliated stations with respect to the time which they are willing to permit the networks to sell, is absolutely necessary to the continuation of the network business. A network organization must have something definite to offer its advertisers. There may be some practical alternative to the option-time mechanism which will provide this assurance, but thus far, I am unaware of it. I am inclined to think that any other method calculated to achieve a similar result would in all probability be more complicated and inconvenient.

Similarly, I am not, I believe, qualified to pass upon the legality of the "must-buy" aspect of the network rate card. WDSU–TV is included in the NBC list of basic stations, although we are certainly not there by virtue of any negotiations or agreement with NBC. So far as we are concerned, we are delighted, for ourselves and our viewers, to be guaranteed access in this manner to a larger share of network programing than we might otherwise enjoy. We cannot feel that this must-buy condition is one that any advertiser interested in securing a national advertising vehicle could reasonably find embarrassing or undesirable. Nor can we see how a network could be expected to operate as a national medium if it permitted its clients to use small sections of the network of their own choosing.

Mr. Moore is, in my opinion, somewhat oversolicitous of the welfare of affiliated stations. I believe that the overwhelming majority of affiliates do not find themselves oppressed in any respect by their network arrangements. Certainly, it seems to me Mr. Moore should permit us to speak for ourselves.

It has been my observation, both as a network executive and as a station operator, that affiliation contracts are not casually entered into, arbitrarily enforced, or hastily terminated. The unique nature of the reciprocal services to be performed under them requires continuing compromise, cooperation, and understanding. I believe a network will always give important consideration in any affiliation arrangement to the reputation and acceptance of a station in its own community, and to the degree of alertness and conscientiousness it has demonstrated in serving the need of its local audience.

As one of the pioneer stations in television, WDSU–TV commenced operation in New Orleans on December 18, 1948. It was immediately affiliated with the National Broadcasting Co. under a standard option time contract and, subsequently, within the first year of its operation, entered affiliation agreements with all three of the other national networks, CBS, ABC, and Du Mont. None of these affiliation agreements, with the exception of the contract with NBC, contained optional time provisions. The station accepted network programs very much on the basis of first come, first served, with due regard to program balance; and NBC, aware of the station's position as the single TV outlet in the market, at no time insisted upon a strict observance of the optional time provision contained in its contract. The first 2 years of operation involved considerable loss of money and continuous efforts to increase the number of receiving sets in the market, to attract network programs, to improve the quality of local productions and increase local and national sales. Grants for the construction of two VHF television facilities, which had been made to other companies prior to the issuance of the construction permit to WDSU–TV, were surrendered by the grantees.

In commenting upon its reluctance to proceed with construction, one grantee testified:

"I will say to you there is every intention on the part of (grantee) to go through with a television station if and when we feel and can readily see we can do it without incurring a tremendous financial loss we would be enforced to incur at the present * * * while we are great believers in the future of television * * * we want to be reasonably sure we can get a reasonable return on our investment or not stand a loss before we embark on this investment. For that reason, I am here to ask for an extension * * *. They (the board of directors) happen to be very well acquainted with the owners of the station (WDSU–TV) already operated in New Orleans. They know the financial loss that has been entailed since that station was established * * * I can only answer you, although we have a station (WDSU–TV) there, and there has been many hundreds of thousands of dollars spent on publicity, the result on the sales of sets has been most unsatisfactory * * *."

The other grantee, in surrendering its construction permit in July 1949, explained that it was doing so due to "serious and fundamental uncertainties involved in television."

Yet, it was only 2 or 3 years later, when television began to pay its way, that people were looking askance at WDSU–TV's improved program schedule and growing list of clients and making snide remarks about its being a "fat cat." I am not quite sure what a "fat cat" is, but if WDSU–TV is one, it became so only because others refused to drink the milk.

New Orleans, at the present time, is a two-station market. The second station is WJMR–TV, a UHF, which first began operation in November 1953. For a period of nearly 5 years, WDSU–TV had a temporary and involuntary monopoly. This situation did not result from any action on the part of WDSU–TV, except for the fact it proceeded with the construction and operation of its station when others failed to do so.

Reverting to Mr. Moore's testimony, it seems to me that portions of it left serious misimpressions on the record. There are very definite implications in certain of his statements that a network affiliate need not work hard to develop live programs or otherwise "to serve the local community." This is far from the case. Even though station WDSU-TV in New Orleans has probably as many or more network programs available to it than any other single station in the country, of its 123 hours and 40 minutes of weekly programing, it does an average of 62 hours and 35 minutes per week in local programing, 19 hours and 5 minutes of which are devoted to live studio or remote productions. WDSU-TV maintains a news staff of 6 people, has a regular daily schedule of 10 local live newscasts, and shoots an average of 700 feet of local film each day—employing a regular newsreel staff of 3 men for that purpose, with part-time additional men when needed. At times, we send news and cameramen out to cover a story for a week or more at a time, as in the case of the recent Till murder trial in Mississippi. WDSU-TV is the only single station, to my knowledge, employing a full-time Washington correspondent and producing in Washington, for its local audience, a regular biweekly film program to bring home the facts of legislation and other governmental action of particular interest to the people of its area. WDSU-TV was one of the first stations to become fully equipped to do local programing in color.

Without attempting to give a full picture of WDSU-TV's community service, I should like to add that during the past 3 months we have produced 3 half-hour documentaries in cooperation with the New Orleans School Board, 1 half-hour program commemorating the 75th anniversary of the Red Cross, 3 comprehensive features spotlighting the shortage of trained scientists and teachers (cooperating with the American Chemical Society and local industry), a statewide Governor's inauguration telecast feeding 2 other television stations, a special remote from Tulane Stadium of the Air Force armament show. On June 24, we will telecast an Olympic preview program of outstanding local candidates for the United States Olympic team (featuring a remote from the Southern Yacht Club covering a sailing demonstration by Gene Walet), and on Tuesday night, June 26, we will telecast at 9 o'clock a special half-hour local spectacular of Summer Pops featuring the symphony orchestra.

Mr. Moore makes considerable capital of the fact that his staff made a 4-hour telecast of the medical meeting announcing the result of the Salk vaccine test. We share his enthusiasm for that accomplishment, but we cannot feel that it greatly overshadows in importance a number of things that WDSU-TV has accomplished in New Orleans—such as canceling its entire program schedule for the first telecast of the Kefauver hearings, concerning which Senator Kefauver later said in a letter of thanks adressed to the station:

"In view of the fact that this hearing was the first televised, it has been a revelation and undoubtedly our future hearings will be aired in this manner. Our committee policy deems it of value to educate and acquaint the public as well as the Senate with the situations brought to light by the hearings in order to prepare for remedial legislation, and television seems to have proved itself a splendid medium for this purpose.

"The quiet and efficient operations of your staff and cameramen did not detract from the hearings themselves and I want you to know that the members of my staff join me in expressing our appreciation for the skillful handling of this matter."

Similar cancellations of schedules for a full day or more at a time were made in order to permit the telecasting of the full preceedings of Senator Tobey's committee investigating waterfront activities and those of Senator Eastland's Committee on Internal Security.

Mr. Moore refers several times in his testimony to affiliates "patching in the network" and abandoning their local responsibility. He queries: "To what extent can we expect station licensees to depend on their own self-reliance, good management, and plain hard work when the result of applying these honorable American virtues can be financial ruin, and when the network companies can pay such a handsome reward for patching in the network and abdicating station responsibility to them?" This is clearly rhetorical nonsense, and its sinister conclusions completely unwarranted. There is no reason why a station cannot accept with a completely clear conscience the national programs which it contracts to receive from its network without surrendering any part of its American ideals or licensee responsibilities.

According to Mr. Moore, the affiliated stations are so intimidated by their networks that they must, for example, take a program like Disneyland at an hour too late for the wholesome enjoyment of its child audience. I do not know what other stations are doing, but we are presently telecasting Disneyland at 4:30 on Saturday afternoon, which seems to us a period well suited to the convenience and attention of the juvenile viewers.

Though at the present time we clear for a very large percentage of the network programs which are offered to us in option time, we do so because we honestly believe it is in our interest and in the public interest to do so. On the other hand, we have never refrained from rejecting a particular network show if we felt it incumbent upon us to take such action. We recapture a great deal of option time for events of local importance, such as our Mardi Gras and various Sugar Bowl events. During our last gubernatorial election we recaptured over 20 hours of time, 70 percent of which was in option time periods, in order to carry political broadcasts of local interest.

We carry relatively few network programs which are offered to us outside of our option time, because we feel that it is highly desirable for us to achieve a reasonable balance between network and local programs and to respond to the needs of our local advertisers.

I find Mr. Moore's concern for the motion picture producers and the creative talent they have at their command, a little unnecessary when I assay their situation in the light of our market. We have found it possible in New Orleans to place virtually all of the top syndicated film properties which have been produced and to broadcast them at times when they have excellent audiences. Following is a partial list of the syndicated properties currently carried by WDSU-TV indicating in terms of local time the program periods in which they are scheduled.

Program	*Schedule*
All Star Theatre	Monday through Friday, 3:30 to 4 p.m.
Amos 'n' Andy	Sunday 8:30 to 9 p. m.
Annie Oakley	Friday, 4:30 to 5 p. m.
Biff Baker, U. S. A.	Sunday, 9 to 9:30 p. m.
Celebrity Playhouse	Tuesday, 10 to 10:30 p. m.
Cisco Kid	Tuesday, 6 to 6:30 p. m.
Count of Monte Cristo	Tuesday, 8:30 to 9 p. m.
Crunch and Des	Saturday, 10 to 10:30 p. m.
Death Valley Days	Alternate Saturdays, 10:30 to 11 p. m.
Dr. Hudson's Secret Journal	Wednesday, 10:30 to 11 p. m
Four Star Playhouse	Wednesday, 10 to 10:30 p. m.
Grand Old Opry	Saturday, 4 to 4:30 p. m.
Great Gildersleeve	Sunday, 9:30 to 10 p. m.
Highway Patrol	Friday, 10 to 10:30 p. m.
I Led Three Lives	Saturday, 8:30 to 9 p. m.
I Spy	Thursday, 10:30 to 11 p. m.
Lassie	Sunday, 3:30 to 4 p. m.
Liberace	Saturday, 9:30 to 10 p. m.
Little Rascals	Friday, 5 to 5:30 p. m.
Lone Ranger	Tuesday, 5 to 5:30 p. m.
Man Behind the Badge	Saturday, 9 to 9:30 p. m.
Man Called X	Monday, 8:30 to 9 p. m.
Range Rider	Thursday, 5 to 5:30 p. m.
Ray Milland Show	Thursday, 6 to 6:30 p. m.
Rin Tin Tin	Saturday, 10:30 to 11 a. m.
San Francisco Beat	Wednesday, 8:30 to 9 p. m.
Science Fiction Theatre	Monday, 10 to 10:30 p. m.
Sky King	Saturday, 3:30 to 4 p. m.
Stage Seven	Thursday, 10 to 10:30 p. m.
Steve Donovan, Western Marshal	Alternate Saturdays, 10:30 to 11 p. m.
Stories of the Century	Monday, 6 to 6:30 p. m.
Studio 57	Tuesday, 10:30 to 11 p. m.
Summer Theatre	Wednesday, 9:30 to 10 p. m.
Superman	Wednesday, 5 to 5:30 p. m.
Susie	Monday through Friday, 4 to 4:30 p. m.
Tales of the Texas Rangers	Saturday, 11 to 11:30 p. m.
The Playhouse	Friday, 9:30 to 10 p. m.
Turning Point	Friday, 10:30 to 11 p. m.
Wild Bill Hickok	Sunday, 12:30 to 1 p. m.; Monday, 5 to 5:30 p. m.

At the present time, local advertisers are sponsoring 33 local programs and program series. Seventy local clients are using spot announcement schedules. Although we have not always been able to give a local sponsor the precise program period he would like to have, we have usually been able to provide a time period reasonably suited to his requirements. His and our position in this respect should be improved as additional television facilites become available in New Orleans.

It seems to me that Mr. Moore's suggestion of placing a purely arbitrary limitation upon the amount of programing which a station can be permitted to accept from any one source is at best unrealistic and meaningless. At worst, it might seriously impair a station's ability to program in the public interest.

I can see no reason to believe the imposition of such a restriction will necessarily have the effect, that Mr. Moore predicts, of increasing the opportunity of independent film producers to place their wares in more favorable time. I have no idea quite where we would turn for program material to fill the gap if any such rule were adopted. I do think our present ratio of film to the network and local live programs is just about right.

There seems always to be a great deal of talk about "scarcity of facilities," and I sometimes wonder whether the phrase is not misleading. In formulating any allocation pattern or other plans for the containment of the television industry, it seems to me great emphasis should be placed upon the reasonable future requirements of the medium.

As I look at the picture in New Orleans, there seems to me to be every indication that there are already more than enough television allocations made for use in that city. The effectiveness of the disposition of those allocations is quite another matter.

At the present time, stations are operating only on channel 6 and channel 20. Channel 4 is in a three-way hearing on which final arguments have already been heard by the Commission, and presumably a decision will issue without too much further delay. Channel 8 has been granted to the New Orleans Educational Foundation, which is proceeding with construction. Channels 26, 32, and 61 are still available for additional stations.

Let me say, finally, that if there are compelling reasons of national security or public interest which require drastic changes in the present allocation plan, I honestly think that most television operators would go along with them willingly, even though personal inconvenience and sacrifice were involved. I certainly would. But, on the other hand, we are entitled vigorously to protest any arbitrary changes in the structure which have no sound basis in public necessity, but are proposed only in pacification of some of the vocal elements in this hearing.

Mr. SWEZEY. I am very pleased that the Chairman made the suggestion he did. I don't know whether it has been because I have been working so hard, but I must admit I am a little bored with the repetitiveness of the testimony myself, and think I can add nothing to it with the possibility of applying——

Senator MAGNUSON. You can add something. You have had a lot of experience in this business.

Mr. SWEZEY. Yes, Senator.

Senator MAGNUSON. You have been in it a long time—you have worked for NBC, you have worked for ABC. Now tell us what you think about it.

Mr. SWEZEY. All right. [Laughter.]

May I just thumb through the statement with you?

Senator MAGNUSON. You have worked for them all.

Mr. SWEZEY. I worked for all but one, Senator—Columbia. I just was tempted to complete the circle, but I didn't. [Laughter.]

My qualifications the Senator has already elaborated on.

I next give the reasons for testifying—which I have already said—the only purpose I am here is that I think I might be able to add a little something.

I do think we are faced here with an ironical situation where the industry is under scrutiny not because it is unsuccessful, but possibly because, in the opinion of some of us, it is too successful. I think there is a little lack of understanding as to the real facts of the development of the television industry in this country.

Senator MAGNUSON. Let's get down to cases; we are running out of time. New Orleans is a two-station market?

Mr. SWEZEY. All right, let's do that.

Senator MAGNUSON. New Orleans is a two-station market?

Mr. SWEZEY. Yes, sir.

Senator MAGNUSON. Do you think that is good for the country?

Mr. SWEZEY. No, I don't, sir.

Senator MAGNUSON. That is one question.

Mr. SWEZEY. May I say this: When we first went into that market we had every reason to believe it would be a three-station market. There were already two grants for construction permits when we got ours. The only reason is wasn't a 3-station market, and it isn't now, is that the other 2 backed out. So it is now a 2-station market, with 1 V and 1 UHF, which came on about 2 years ago. For about 5 years we had sort of an involuntary monopoly, which we tried not to misuse.

Senator MAGNUSON. That is a new term, "involuntary monopoly."

Senator PASTORE. It is a nice way of saying, "I have got a monopoly, but I am not guilty." (Laughter.)

Mr. SWEZEY. I submit, Mr. Chairman, we were not guilty. And I would like—may I just quote one sentence——

Senator PASTORE. I am being funny now.

Mr. SWEZEY. And that is that if we are a "fat cat" it is only because everybody else refused to drink the milk, gentlemen. That is the true situation.

Now, I have got everything in here, I think. Very briefly, our own public service record—I was a little miffed myself when my friend Dick Moore intimated, it seems to me, that an affiliated station had only, and I quote him, "to patch in the network and didn't have to worry too much about public service." I am sorry he made that statement because I honestly don't think he believes it. Dick is a good man on public service. And I think I show in this statement, as many others will and have, that the affiliated stations are doing very creditable public service, Mr. Chairman.

I also take up the situation, in New Orleans at least, of the syndicated film producers, and so forth; and I think I show in 2 or 3 pages that they get excellent time on our station, in spite of the fact that our station, I assume, is offered at least as much, and probably more, network programing than any other station in the country.

Senator PASTORE. Do you feel that the option rights that the network have are necessary in the proper conduct of their business in order to promote, encourage and preserve a nationwide good quality type of network programing?

Mr. SWEZEY. Either these option rights or some other similar mechanism, Mr. Chairman. And I don't know what it would be. It seems to me that these option rights have worked very well over a long, long period of time. They have been examined and reexamined by various Government authorities now for years. And I was a little shocked that they were so vituperatively attacked as illegal and in violation of the antitrust laws, and so forth. If they are, it seems to me we have been an awful long time getting around to it. They have been part of the glass house condition of business operations of the networks for years and years. I think it is essential to have something like that.

Mr. COX. Isn't it true that both the Paramount case and the Griffith case were decided after the adoption by the FCC of its chain broadcast regulations?

Mr. SWEZEY. I think probably so, Mr. Cox, although I am an ex-lawyer and I would rather not answer any legal questions. I am really not qualified.

Mr. COX. I was referring to the matter of chronology.

Mr. SWEZEY. I think that is probably true; yes, sir.

Senator PASTORE. Any further questions?

Senator MAGNUSON. I think on page 14 you probably state your position—and this has bothered me considerably, and the members of the committee, too. You do have local advertisers sponsoring 33 local programs?

Mr. SWEZEY. In series, Senator. Some of those are programs that appear every day.

Senator MAGNUSON. Yes. Then there are the spot schedules, of course?

Mr. SWEZEY. Plenty of those; yes, sir.

Senator MAGNUSON. But you believe, and I think you state your position very well—you say "His"—speaking of the local man——

Mr. SWEZEY. Yes.

Senator MAGNUSON. "And our position in this respect should be improved as additional television facilities become available in New Orleans." Isn't that the crux of the whole thing?

Mr. SWEZEY. I believe that to be so, Senator.

Senator PASTORE. All right, Mr. Swezey. Thank you.

Mr. SWEZEY. Thank you.

Mr. COX. Will you provide us with the same information——

Senator PASTORE. Mr. Cox has a question or two, Mr. Swezey.

Mr. SWEZEY. Yes, sir.

Mr. COX. What percentage of the NBC programs that are offered you in your evening option time do you clear time for?

Mr. SWEZEY. I think at the present time, Mr. Cox, virtually all of them.

Mr. Cox. And your option time is the period 6: 30 to 9: 30 in your time zone?

Mr. Swezey. No, there is 2 hours difference right now because we are on standard time. That would ordinarily be the case—7: 30 to 10: 30 New York time. Right at the moment I think we are 5: 30 to 8: 30.

Mr. Cox. Then a good many of these film programs which you show here as being carried in desirable time are being carried, however, in those periods because the option of the network programing does not apply?

Mr. Swezey. Let me say that none of these—even when daylight time is not in effect would be in undesirable time. They would all be before—the last period would be 10: 30 to 11, I think, in all these cases.

Mr. Cox. You have an affiliation—some sort of arrangement with all three of the networks?

Mr. Swezey. Yes; we do, sir.

Mr. Cox. Do the other two networks attempt to clear time on your station in what they regard as the prime viewing hours which are covered by the option of NBC?

Mr. Swezey. Yes, sir.

Mr. Cox. Now, that option is not good against the programs of the other two networks?

Mr. Swezey. That is correct.

Mr. Cox. How do you explain that you clear nearly all of the NBC programs and do not clear programs for the other networks, if this is not a matter of honoring a binding option?

Mr. Swezey. Well, NBC is our basic network, it is the one that has been—we have had it ever since the beginning, of course, as the initial network with option time. However, we have taken many of the programs of the other networks. At the present time we are carrying much more of NBC, there is no question about it. The other station is carrying pretty largely the CBS schedule, and we share the ABC between us.

Mr. Cox. Mr. McGannon of Westinghouse Broadcasting Co. testified yesterday that with respect to KDKA—where they occupy a similar situation—that of the 42 one-half hours of evening option time, that station was carrying 17 NBC half-hours, 7 CBS half-hours, no ABC half-hours, and 18 one-half hours from nonnetwork sources.

Do you think that such a distribution would give fairer access to your important market for advertisers whose programs were carried on the various networks, and would also recognize in a more desirable fashion the availability of nonnetwork programs?

Mr. Swezey. It might possibly, Mr. Cox; I would have to examine the program content to answer that definitely.

Mr. Cox. You received a firm order from ABC, did you not, for its convention coverage and election night reporting before NBC had obtained a sponsor for its similar service?

Mr. Swezey. Yes, sir. We also received one from CBS.

Mr. Cox. You did not accept either of the orders from CBS or ABC?

Mr. Swezey. No, because it seemed to us the conventions were reasonably far removed so that we should wait until we had all of the offers in. We knew NBC would come in with an offer. It didn't seem to us that we had to act immediately. I didn't see how we could act in the public interest without determining first the relative merits of each organization.

Mr. Cox. Has NBC now placed an order for your station?

Mr. SWEZEY. We have such an order.

Mr. Cox. And you have accepted it?

Mr. SWEZEY. Yes, sir. I might add that one of the reasons for our doing so was that we felt that NBC—the other programing on NBC would also be tied into its convention coverage. For example, references would be made, we were advised by NBC, on the Today program and various of their other shows throughout the daily schedule that would supplement very adequately the actual convention coverage.

Mr. Cox. Did ABC, in particularly, make a second offer to you which would have involved sharing time on your station with NBC?

Mr. SWEZEY. Yes, sir, and we thought that would be an awkward and rather ineffectual way of covering the convention, because you would have to arbitrarily split the commentaries, and we honestly didn't think that that would be nearly as good as the single coverage from any one of the three networks.

Mr. Cox. Now, the present allocation to New Orleans is not any longer three commercial VHF stations, is it, because one of them has been reserved for educational use and there is now a station assigned to that channel and in operation?

Mr. SWEZEY. No, not in operation, Mr. Cox. The grant has been made and the educational foundation is about to construct, I believe. All plans are made for going ahead.

Senator MAGNUSON. Is it Government owned?

Mr. SWEZEY. No, it isn't; it is the New Orleans Educational Foundation, an educational group set up to take advantage of the educational grant.

Mr. Cox. Would you agree, then, that two V's, plus as many more UHF stations as could survive in New Orleans, might have some difficulty providing adequate outlets for all available programs sources and adequate services to the public?

Mr. SWEZEY. They might have some difficulty, Mr. Cox.

Mr. Cox. Yes.

Mr. SWEZEY. I don't see how. You say——

Mr. Cox. In other words, do you think if two VHF stations go on the air in New Orleans and if, as has proved to be the case in a number of other instances, the UHF station is forced off the air, that those two stations can provide a completely adequate television service to a market the size of New Orleans?

Mr. SWEZEY. I don't think there is any reason to assume that the UHF will be forced off the air, if there are only two V's. I would be perfectly willing to attempt to run the U. I would rather not exchange my V for it. [Laughter.]

Senator MAGNUSON. I was just going to say, I was going to put you wise.

Mr. SWEZEY. But I mean that I think it can be profitably operated. I think the market will probably stand three stations.

Mr. Cox. Would you supply us with this program information?

Mr. SWEZEY. I would be very glad to.[9]

[9] The program schedule was furnished later and is printed in the appendix at p. 3007.

Senator PASTORE. Thank you very much, Mr. Swezey.
Mr. SWEZEY. Not at all, sir.
Senator MAGNUSON. I want to say off the record——
(Statement off the record.)
Senator PASTORE. All right, Mr. Bryant.

STATEMENT OF JOE H. BRYANT, PRESIDENT, BRYANT RADIO & TELEVISION CO., INC., OPERATORS OF KCBD-TV, CHANNEL 11, LUBBOCK, TEX.

Mr. BRYANT. Gentlemen, I appreciate the opportunity you have given me to express here, from the standpoint of a medium-sized station operator, the value of the present network setup for our station.

To acquaint you with myself, my station and my community, stating our background as briefly as possible, I am president and general manager of Bryant Radio & Television Co., Inc., of Lubbock, Tex. We operate television station KCBD-TV, channel 11, in Lubbock, Tex., a medium-sized city of 128,000 people centrally located on the south plains of west Texas, the principal city in this area comprising a population of approximately a half million people. Lubbock is served by 2 television stations, our own and 1 other. We are affiliated with the National Broadcasting Co. and the American Broadcasting Co. as an optional affiliate.

Senator PASTORE. Even we Senators have to be told from time to time.

Mr. BRYANT. As the operator of a television station in a typical medium-sized market I would like to recite to you from the practical experience of the past 3 years the relationship and the benefits of the networking process to our station's operation.

I would like to state that we are unalterably opposed to the proposals which have been made to this committee that would prohibit stations from devoting more than 75 percent of their time between 7:30 and 10:30 p. m. to network broadcasts, that would do away with option time, and that would destroy the policy of selling a basic network—and in our opinion it would destroy the policy of selling a basic network.

We make this statement in spite of the fact that our station is not one of the basic stations of the National Broadcasting Co. We are an optional affiliate of the National Broadcasting Co.

We know from practical experience the importance of the basic network to create business which then flows to the optional stations. It is our opinion that the basic network stimulates business for us, as optional operators. After advertisers make their buy on the basic stations they further extend their purchases to the optional stations. Without their original purchase from the basic group, however, this business potential would be lost to us. The origin of business, then, is with the basic stations, but flows to us to give the national advertiser further exposure to television audiences throughout the Nation.

Senator PASTORE. Mr. Bryant, you are skipping around, but you want the whole statement in the record.

Mr. BRYANT. Well, I can read it. I thought in the interest of brevity we might leave some of this out.

Senator PASTORE. All right, proceed.

Mr. BRYANT. The basic network stations and the optional affiliate stations become a part of an overall system mutually beneficial to both types of stations, enabling the small- and medium-size stations to broadcast programs that our viewers would not otherwise receive.

We are for the continuance of present network structure, functions, and procedures, because they have made it possible for 108,000 homes in west Texas to receive television service comparable in quality to that offered in the major cities of the Nation. To the consumer, or the person who buys a television set, the costs are the same whether he lives in the largest city in the Nation or the smallest. The consumer's interest in the television media is the same no matter where he lives, but for the program service to be comparable in the medium-sized market, the present networking procedures must be preserved.

The two television stations located in Lubbock serve an area within a radius of our city of approximately 80 miles. Within this area are more than 100,000 homes and a population of approximately one-half million people. Each of the stations is presently rendering approximately 110 hours weekly of television service to the people of this area.

Senator MAGNUSON. How is that broken down with local programs and national programs, generally speaking?

Mr. BRYANT. Well, in a typical week we carry approximately 60 hours from the network, 30 hours from the film resources and—well, it would be more than that.

Senator MAGNUSON. Would you say that your local programing would run 50–50?

Mr. BRYANT. Oh, no, no. Our local programing would account for perhaps 17 or 18 percent.

Senator MAGNUSON. And the rest is all national advertisers?

Mr. BRYANT. No, not all national advertisers.

Senator MAGNUSON. Leave the spots out.

Mr. BRYANT. The rest is either network service, Senator, or film.

Senator MAGNUSON. The network service is a national advertiser, isn't it, unless you put spots in?

Mr. BRYANT. Well, we have programs like Today, Home, Matinee, that type of thing, that is made available to us—where we sell this in the local market so it is not national advertiser.

Senator MAGNUSON. Local—isn't that what you call, technically, spot advertising of local people?

Mr. BRYANT. That is right.

Senator MAGNUSON. Taking a program and putting their own advertising in?

Mr. BRYANT. Yes; using the national program.

Senator MAGNUSON. How much of that would you say dollarwise comes to your station as compared to the network programing?

Mr. BRYANT. Would you ask your question again, sir? You mean what percentage?

Senator MAGNUSON. Yes; what percentage of your gross take would come from local advertisers and what percentage from national advertisers?

Mr. BRYANT. That was covered in the questionnaire.

Senator MAGNUSON. Generally speaking.

Mr. BRYANT. Six or seven percent of our total income is from the network.

Senator MAGNUSON. Sixty or seventy?

Mr. BRYANT. No, 6 or 7 percent of our total income comes from the network, the 2 networks we serve. Then approximately—I have those percentages here.

Senator MAGNUSON. I mean just generally. We have them in the questionnaire.

Mr. BRYANT. Yes. Virtually 50 to 70 percent of our income is from the local level.

Senator MAGNUSON. The reason I always ask this question when I have the chance is, what is bothering me is the inability of local people, in some cases, to use the medium of television.

Mr. BRYANT. Well, I think we can cover that further here.

Senator MAGNUSON. Very well. When you can point out that the opportunity is there, I think you do a service to the committee—that there is the opportunity.

Mr. BRYANT. All right.

These two stations operate on a very competitive basis in the truest American tradition, vying for the viewing interest of the people of our area. This affords effective television service for the people of our area who have invested more than $30 million to equip themselves to receive television. Without the network process affording us the program resources that we have throughout the day and night periods, I would venture to say that neither of the two television stations could be sustained economically. Neither would the people of our area have the widely diversified program service now available to them, and television generally would not have the interest of the viewer which is stimulated by the quality of the present network program service.

Our responsibility as an operator of a television station is to render to the people of our area a well-rounded television program service, diversified in nature. Programs of the character of Today, Home, Ding Dong School, Matinee, in addition to the great current events such as the political conventions, world series, and other sporting events such as baseball games, football games, fights, golf tournaments, Broadway shows of the character of Peter Pan, opera, great musical events, and spectaculars, are all out of the reach of local programing presentations. Our association with the network, then, enables us to bring to the people we serve these outstanding attractions and is also the basis of viewing interests to the television media. The great programs created by the network give our programing service a character and depth beyond our ability to produce.

Our television station in Lubbock represents a total investment of approximately $700,000. There are within our area more than 100,000 homes with television sets. Our problem in bringing television service to Lubbock was largely an economic one, because we were faced with the responsibility of bringing to these 100,000 homes the same type and quality of television service rendered by stations in major cities. It is an obvious fact that an advertiser could not afford to pay any higher costs per 1,000 homes for the use of our station than a similar service would cost him in the major cities.

We were then faced with the problem of rendering a maximum service embracing all that television had to offer but within the economic boundaries imposed on us by the limits of our television homes. Where our 1-minute announcements sold for a $40 price, the same 1-minute announcement in a major market where several times

100,000 television homes are served, the cost might range upward to several hundred dollars per 1 minute. The people of our area, however, who own television sets expect our station to render to them the same high quality service available to the owners of sets in the major cities. Through the process of networking we have been able to bring to these people the same type of program service available to viewers in major cities. Our viewers, then, have not been penalized by the limitations of programing service that would be imposed on them if the network service were not available.

To reduce our program schedule to the economics involved—and I believe here, Senator, we cover this.

Senator MAGNUSON. Yes; I see it.

Mr. BRYANT. In a recent week our station carried approximately 61 hours of network programing, 30 hours of film programing, and 17 hours of live programing.

Senator PASTORE. Are you really saying, sir, that in a small community, if you were obliged by any means or method to subscribe more extensively to independently produced programs, that because of the very nature of your location and the number of people that you service, that you would not be in the same position of buying the same type of high quality independently produced programs as they can afford to buy in the larger city, where they charge more money for advertising?

Mr. BRYANT. That is right.

Senator PASTORE. For that reason, the only equality that you can hope to aspire for is through the uniformity of a national television network?

Mr. BRYANT. That is true.

Mr. COX. Isn't it true that the price for a film in your market is proportioned, to some degree at least, to the size of your market?

Mr. BRYANT. Well, there is no established price, actually, on film. It is a matter of bartering and trading.

Mr. COX. But you don't pay for the rights to exhibit in Lubbock what would be paid for the rights to exhibit in Chicago?

Mr. BRYANT. Oh, of course not. They are relative to what you sell them for. But I think in this next paragraph here we will cover the point that I would like to establish, and that is that the very cost of any alternative type programing would make it impossible for stations in our size markets to operate with anything like the length of service periods we now have. For example, I believe that Lubbock is perhaps the smallest city in the Nation that has two television services from 6:55 in the morning to 12 at night, which constitutes a good deal of television service to the people of our area, which wouldn't be possible without the network.

Mr. COX. For these 30 hours of film program that you indicate here, are you able to sell that to either national or local advertisers and make a profit on the time in which those films are shown, over and above your program costs?

Mr. BRYANT. Our price to the local or regional advertiser on the film type show is the film cost plus the time cost allotted to it.

Mr. COX. So you get your full-time charge on these programs, over and above the cost of the programing to you, and you keep 100 percent of the time charge, rather than making your division which applies to your network service?

Mr. BRYANT. That is true, that is true.

The top syndicated film shows available to our television station are priced to us at approximately $100 per half hour per showing, or a cost of $200 per hour. Your inquiry as to price there—this is the top bracket of shows that we buy. Of course, they range downward in other areas.

Mr. COX. This would be good film programing?

Mr. BRYANT. That is right.

Were this same pro rata cost applied to the hours devoted to network programs, the result would so increase our cost of doing business that it would be economically impossible to operate the station, assuming we were attempting to offer program service for the same period of hours we now broadcast, and also assuming sufficient program material were available—and this is actually a wide assumption, because I don't know where there would be sufficient resources to program the periods of time we now operate.

I would cite here, also, that the 61 hours devoted to the network in our program schedule were revenue-producing hours for us rather than an expense the station would not be able to bear to program these periods, locally or through film service.

Back to your question, Senator: One of the best arrangements that we have is the Program Service Plan, whereby the network makes available to us these programs of the character of Today, Home, and Matinee. Now, in our market, we are down the list a good ways. Many of the national advertisers who buy participations in these programs do not buy our station. The network allows us, in the place of this national advertiser, to put the advertising of the local merchant—

Senator MAGNUSON. That is what I was going to ask. I want this clear. When the network sells, say, a show like Today, they have certain national advertisers that get the basic stations. But a station such as yours, sometimes they buy and sometimes they do not?

Mr. BRYANT. That is right.

Senator MAGNUSON. But when they don't, you have the opportunity to put—to let the local advertiser come in?

Mr. BRYANT. That is right. In a typical month, for example, last March, we carried 192 advertising participations from local advertisers in these program service shows that I have mentioned, which gives the local advertiser quite an opportunity to have a resource such as these to create an audience for his advertising.

Senator MAGNUSON. How many similar stations would there be in the United States that have the same opportunity on these network programs, would you say, generally?

Mr. BRYANT. Well, I would—I don't know as a fact—I am sure NBC could acquaint you with those facts, but I think this same opportunity is available to all of the optional stations.

Senator MAGNUSON. Regardless of where they are located?

Mr. BRYANT. On this program service plan?

Senator MAGNUSON. Yes.

Mr. BRYANT. I believe earlier, the smaller group—what they call the Program Extension Plan, covers one group, and then the Program Service Plan, I believe, covers the other. I believe there are two categories there: One group of stations that as one gentleman before me here mentioned, is sold on what is called the Program Extension Plan; that is, the real small stations, and then——

Senator Magnuson. Of course, that has been only recently put into effect?

Mr. BRYANT. I think a matter of several months.

Senator MAGNUSON. Yes, a few months. Columbia started and then NBC, with this so-called package expansion progam.

Mr. BRYANT. Yes.

Senator MAGNUSON. Do you agree that that has been a very good program for the stations of your character?

Mr. BRYANT. It is the lifeblood of our station. Without this service I wouldn't be in the television business in Lubbock—I couldn't be.

Senator MAGNUSON. Well, this committee is very conscious of when that happened.

Mr. BRYANT. Shall I resume?

Senator PASTORE. All right.

Mr. BRYANT. I cite again that the physical time periods and their cost outlined here do not reflect all of the picture because the content of the network programing is of much higher quality and character than would be available to us through any other method, and thereby stimulates the viewing interest of the people, affording us an opportunity to sell this audience to the advertiser.

The present option-time arrangements between the networks and stations have been attacked before this committee. Option time is an absolute necessity for the network to be able to function and stations of our type to survive economically. The networks could not sell the national advertisers station time unless they had some contractual position with the station to assure the advertiser of getting what he purchased. The very cost of any other procedure in the networks' dealing with the stations would be prohibitive. Option time does not constitute a burden on optional stations for these reasons:

1. As previously cited here, it enables the small- and medium-sized stations to receive the flow of programing from the basic stations simultaneously across the Nation. The optional station is continually seeking out good programing resources to excite viewing interest for his station. Adjacent spots to these programs—again, I think this is the meat of the thing, as far as our local revenue is concerned—adjacent spots to these programs sold by the networks are the local station's principal source of revenue. Without the network programing creating an audience, the spot adjacency to the program would not be as salable, as if the station were dependent on local programing or programing from other sources.

2. Option time does not represent any waiver of responsibility on the part of the station in that the station management has not only the right but the responsibiliy to refuse any program offered him not suited or adapted to his particular location or circumstance. The problem in the optional station in reality is to get the program ordered for his station; in other words, we are not in the category that is crowded. Our problem is to actually get the programs ordered for our station so that our schedule may offer to our viewers television service comparable in the larger markets.

3. The advertisers, the network, the station, and the viewers are all better served by virtue of an arrangement that makes it possible for the network to function in cooperation with the station in selling

the station's time and delivering quality programing service to the viewers throughout the nation.

Our option-time arrangements with the network has not interfered with our responsibility to our viewers or our community.

Senator MAGNUSON. And isn't it true that these comparatively new arrangements have worked out so that you can make that statement you just made there?

Mr. BRYANT. By "comparatively new arrangements," Senator, I don't believe I understand what you mean.

Senator MAGNUSON. With the networks—I mean, to be able to take these programs, and the Program Extension Plan service.

Mr. BRYANT. This program service that I have mentioned in our station—we are not in this group. We have had this Program Service Plan in operation for 2 years.

Senator MAGNUSON. It has worked out so that you can actually make this statement?

Mr. BRYANT. That is right.

Senator MAGNUSON. I think it is good.

Mr. BRYANT. On several occasions we have seen fit to recapture option-time periods for specific purposes. An hour long kick-off for the community chest campaign in our community, time for a town-meeting type discussion of the Canadian River Dam proposal as a source of water supply for our city, and many other programs devoted to the public interest have been presented over our station in option time periods. Time has been made available to our city government and to our schools for discussion with the public of their problems. Option time not used by the network has been used for the showing of syndicated programing. In other words, the dearth of orders in our market enables us to have more flexibility than would be true in the larger markets.

Senator PASTORE. May I interrupt at this point—and this is off the record.

(Discussion off the record.)

Senator PASTORE. Proceed.

Mr. BRYANT. Mr. Chairman, if it is all right with you, I will just submit the rest of this for the record.

(The balance of the statement is as follows:)

Option time makes it possible for a network to invest risk capital to develop new programing material. A program may be carried at a tremendous cost to the network long before it's sold. Without option time they could not afford the risk capital required to develop the programs of the character of Home, Matinee, Today, the spectaculars and the many other fine types of programs that network pioneering has brought to television. Certainly no station, regardless of the market in which it was operated, could afford this type of creative activity for particular programs they were attempting to develop.

One of television's major assets is its ability to deliver simultaneously across the whole Nation a program service that affords a showcase for an advertiser's product. Option time is a prerequisite to this being possible. It enables the viewer to see at the same time events and programing no matter where he is located. Immediacy is one of television's greatest assets.

Television is rapidly becoming a new form of journalism, a method by which worldwide, national, State, and local news reports can be disseminated to people over a wide area instantaneously. In most markets our size in the Nation, television affords a competitive news dissemination resource. I cite this as only one of the great areas of public service television renders. The network enables us to present many of the news events as they occur. I cite the political conventions as a prime example.

For our station to render maximum service it must have the program resources with which to stimulate an interested viewing audience. Without the program resources of the network, our service would be limited in scope and the economic burden of programing upon the station would be too great to overcome. Instead of people of our area receiving a high-quality television service from two stations competing for their interest, I do not think that even one station could survive the cost burden of programing were the network resources not available.

The network function and process is a delicate procedure mutually beneficial to the advertiser, the network, and above all, the viewers that make up television circulation. Present arrangements between the networks and the stations affiliated with them have proven to be sufficient and practicable. The optional time arrangement being attacked here has evolved from the practical experience of the networking structure that dates back to the beginning of the network concept which made radio, as well as television, a national service.

The television industry, in its short lifetime, has experienced the most phenomental growth of any industry in the history of the Nation, and in this short period of time, through the pioneering efforts of the networks themselves, a national television service has been created. The network system is the channel through which the lifeblood of this great new industry flows. It provides entertainment and information resources to an entire Nation. Our affiliation with this system enables us as station operators to bring to the people of our area the same quality television service that is available anywhere in the Nation. Without the system this quality service would not be possible.

Throughout the past 5 years of association with the National Broadcasting Co. in both radio and television, we have found that they are sensitive to our needs, requirements, and problems in operation and that we have had the fullest freedom to make our own decisions as to programing our facilities in both radio and television. Present rules and regulations of the Federal Communication Commission under which we operate place upon the station operator the responsibility to determine his policies and exercise final judgment as to programs. We do not feel that there has been any instance in our association or dealings under the present network plan in which our own discretion as to policies deemed by us to be in the public interest have met with any interference, directly or indirectly, on the part of the network or any of its representatives.

I do not believe there is any need for any change in option-time arrangements between the network and stations in our present option-time arrangement. Rather than the option time arrangement being imposed on us by the network we look upon it as a reasonable and practicable method of selling our station, along with other stations throughout the Nation, to the national advertiser. We do not see how a network could function without option-time arrangements with the stations affiliated with it. Neither do we see how we could survive economically without the resources made available to us through this arrangement.

In the inquiry mailed to me from your committee I was asked my opinion of paid television. Throughout the history of the broadcasting industry in this Nation, this industry has established an unsurpassed national broadcasting service in both radio and television on a free basis. Millions of our citizens have invested billions of dollars in television sets with the expectancy of receiving a television service on a free basis. The networks, the advertisers, and stations have invested tremendous sums of money to make a free national television service available to these people. In its short lifetime television has already matured to an effective high-quality television service with unsurpassed public acceptance. I think it is a moral responsibility of the industry, and the people who have a voice in regulating it, to see that free television service remains available to these people who made their investments in good faith. To impose paid television upon our present system would, in my opinion, destroy it and would amount to the prostitution of a virgin industry.

Thank you for the time which you have given me. I appreciate the opportunity as a west Texan to present my views to your committee.

Mr. Bryant. One mention I would like to make is the news coverage of television in a market——

Senator Magnuson. Now, we are interested in your opinion on the last page. Read that for the committee. That is another matter that is before us. Just that last paragraph.

Mr. Bryant. This paragraph here?

Senator MAGNUSON. Yes.

Mr. BRYANT. In the inquiry mailed to me from your committee I was asked my opinion of paid television. Throughout the history of the broadcasting industry in this Nation, this industry has established an unsurpassed national broadcasting service in both radio and television on a free basis. Millions of our citizens have invested billions of dollars in television sets with the expectancy of receiving a television service on a free basis. The networks, the advertisers and stations have invested tremendous sums of money to make a free national television service available to these people. In its short lifetime, television has already matured to an effective high-quality television service with unsurpassed public acceptance. I think it is a moral responsibility of the industry, and the people who have a voice in regulating it, to see that free television service remains available to these people who made their investments in good faith. To impose paid television upon our present system would, in my opinion, destroy it and would amount to the prostitution of a virgin industry.

Senator PASTORE. Thank you very much, sir.

Mr. COX. Would you furnish us the same data for the week of April 1 to 7?

Mr. BRYANT. I believe I did that in the questionnaire.

Mr. COX. I mean actual schedules.

Mr. BRYANT. All right. I will mail it in.[10]

Senator MAGNUSON. I would like to exercise a little Senatorial prerogative. The next witness is from Houston, Tex., and the next one is from Lansing, Mich. In case I am called to the floor, I would like to call, out of order, Mr. Warren, from Seattle, so that I may be here when he testifies.

Senator PASTORE. We will give you that pleasure in about 10 minutes, Mr. Magnuson.

Senator MAGNUSON. All right, sir.

Senator PASTORE. Mr. Abeloff.

Mr. ABELOFF. It may not be necessary for me to sit down even. You all have copies of my statement. I am here to answer any questions if you wish. If not, the statement has been presented.

Senator PASTORE. The counsel is already familiar with your statement. Do you have any questions?

Mr. COX. I have just a few.

Senator PASTORE. The statement will be put in the record as though you had read it.

(The complete statement is as follows:)

STATEMENT OF IRVIN G. ABELOFF, VICE PRESIDENT, PETERSBURG TELEVISION CORP., LICENSEE OF WXEX-TV, CHANNEL 8, PETERSBURG, VA.

Mr. ABELOFF. My name is Irvin G. Abeloff. I am general manager and vice president of Petersburg Television Corp., owners and operators of television station WXEX-TV channel 8, Petersburg, Va. I am also vice president of the Lee Broadcasting Corp., owners and operators of radio station WLEE, Richmond, Va. WXEX-TV went on the air on August 15, 1955, as a basic affiliate of the National

[10] The program schedule was supplied later and is printed in the appendix at p. 3011.

Broadcasting Co.'s television network. WLEE has been on the air since October 1, 1945. It has been affiliated with the National Broadcasting Co.'s radio network since October 1955.

On May 15, 1956, certain statements were made before this committee by Mr. Wilbur M. Havens, presidents of Havens & Martin, Inc., owners and operators of television station WTVR, channel 6, Richmond, Va. At least two of Mr. Havens' statements have reference to WLEE and WXEX-TV. On May 29 I requested permission to appear before this committee to comment on some of Mr. Havens' remarks. I appreciate the courtesy of this committee in allowing me to do so.

The first item concerns radio station WLEE. Mr. Havens said in his statement:

> In the spring of 1955, however, NBC was preparing to launch its Monitor program for radio. Monitor is a program which runs for the entire weekend from early Saturday morning to late Sunday night. We did not think it was in the public interest or our own interest to devote the entire weekend to a single marathon program, which would reduce our station function to plugging in of the network early Saturday morning, reading an occasional local commercial, and pulling out the plug late Sunday night. We objected, and we still object, to the so-called magazine network programs, in which NBC in effect is selling spot announcements for which the affiliate's compensation is far less than the compensation for spot announcements sold directly. On April 18, 1955, NBC switched its TV affiliation from WTVR to the second television station in the Richmond area, and shortly thereafter NBC signed a radio affiliation agreement with a Richmond station owned by the same interests. It is pertinent to note that this Richmond station carried the complete Monitor program from the time it began on Saturday morning until the time it ended on Sunday night.

Affiliation of WLEE with NBC radio began officially on October 1, 1955, although WLEE had carried certain few programs from NBC radio during the preceding 2 months. A survey of the program logs of WLEE on a typical Saturday and Sunday in October of 1955 shows the following:

On Saturday:

Local programing was carried from signon at 6 a. m. to 11 p. m.

Monitor was scheduled from 11 a. m. to 12 noon.

Programing was local from 12 noon through the University of Richmond football broadcasts until approximately 5 p. m.

Monitor was carried from 5 to 5: 30 p. m.

Local programing was scheduled from 5: 30 to 7: 30 p. m.

Monitor then ran from 7: 30 to 10: 30 p. m.

Local programing was scheduled from 10: 30 p. m. to signoff at 12: 45 a. m.

Please note that WLEE signed off at 12: 45 o'clock on Sunday morning and, of course, did not carry either Monitor or any other programing from 12: 45 a. m. until signon at 6: 30 a. m. on Sunday morning. The schedule for Sunday then shows the following typical programing:

Local programs from 6: 30 a. m. to 3 p. m.

Monitor from 3 to 6 p. m.

Local from 6 to 6: 30 p. m.

Monitor from 6: 30 to 8 p. m.

Church services in conjunction with station WBBL from 8 to 9 p. m.

Monitor from 9 to 11 p. m.

Local from 11 to 11:30 p. m.
Monitor from 11:30 p. m. to midnight.
Local from midnight to signoff at 12:45 a. m.

NBC schedules Monitor for approximately 40 hours from 8 a. m. Saturday to midnight Sunday. On a typical weekend in October 1955, the first month of WLEE's affiliation with NBC radio, WLEE carried approximately 12 hours of the 40 Monitor hours. During this past weekend, June 16 and 17, with no football on Saturday afternoons, WLEE carried a few more hours of Monitor but the logs for this past weekend show that WLEE carried a total of approximately 15 out of the 40 Monitor hours.

As you can see, Mr. Havens was mistaken when he stated that we carried "the complete Monitor program from the time it began on Saturday morning until the time it ended on Sunday night."

The second item in Mr. Havens' testimony is of considerably more importance and, again, Mr. Havens is mistaken. Mr. Havens indulged in certain speculations as to why the National Broadcasting Co. canceled its television affiliation with WTVR and negotiated a television affiliation with the Petersburg Television Corp. Again, I quote from Mr. Havens' statement.

The second television station in the Richmond area is station WXEX-TV, which serves both Petersburg and Richmond, 20 miles apart, from a transmitter between the two cities. On September 21, 1953, the ultimately successful applicant for this station filed an application indicating that its principal transmitting equipment, including the tower, would be purchased from DuMont at a cost of approximately $500,000. On September 29, 1954, the Commission approved this applicant. Presumably, the applicant began negotiating for a network affiliation agreement immediately thereafter.

Then, on March 11, 1955, a month after NBC had delivered its letter of February 10 to us, the applicant applied for modification of its construction permit, showing that instead of using Du Mont equipment, it now intended to purchase approximately $700,000 worth of equipment from another manufacturer. You have undoubtedly guessed the name of the other manufacturer. It was the Radio Corporation of America, parent corporation of the National Broadcasting Co. The Commission approved this change on April 6, 1955. Approximately 2 weeks later, on April 18, 1955, NBC signed an affiliation agreement with the new station.

Mr. Havens then went on to ask a question and answer it.

Was it simply a coincidence that WXEX-TV canceled its order for Du Mont equipment and placed an order for RCA equipment instead, just before obtaining its affiliation agreement with NBC? I do not know. But I think that this committee, or the Department of Justice, or the Federal Communications Commission could find out.

I agree with one sentence of that last paragraph in Mr. Havens' testimony. Of course he does not know. He has made an insinuation rather than a formal charge and this insinuation is completely unsupported by the facts.

Mr. Havens is trying to read the minds of third persons; namely, the officials of the National Broadcasting Co. I shall not attempt a similar feat. Mr. Havens is attempting to tell this committee why the National Broadcasting Co. decided to offer television affiliation to WXEX-TV. Again, I shall not attempt to do that. The proper officials of NBC can certainly speak for themselves on this subject—and indeed have done so.

As for my company, all I can say is that my associates and I were delighted when the opportunity was presented to us to become affiliated with a network such as NBC, with a reputation for fine public service, good commercial success, and fair dealings with its affiliates.

However, I can speak positively about any relationship between our purchase of RCA equipment and our securing an affiliation with the NBC television network. There was absolutely no connection. At no time did any official of NBC attempt in anyway to influence us in our equipment purchases.

Gentlemen of the committee, any further elaboration of this statement would simply consume your valuable time. You have many more witnesses to be heard. Since I am, of course, subject to your jurisdiction, I am ready and willing to attempt to answer any questions you may wish to ask. I cannot allow Mr. Havens' insinuation to go unchallenged so I close this statement of mine by repeating as positively as I know how that there was absolutely no connection between our purchase of RCA equipment and our securing an affiliation with the NBC television network.

Mr. Cox. You are correcting here a misstatement by a prior witness as to the policy of a radio station which you manage regarding the carrying of the program Monitor?

Mr. Abeloff. That is one correction.

Mr. Cox. Has there been any time since your station was affiliated with NBC when you have carried more than 15 of the 40 hours of Monitor that are offered over the weekend interval?

Mr. Abeloff. The answer is "No," with this qualification: It may be 16.

Mr. Cox. But no major excess?

Mr. Abeloff. No major change.

Mr. Cox. The other matter with which you deal is in connection with the allegation of Mr. Havens regarding a change in the specifications in your application for your CP regarding your transmitter. Now in that connection, did you approach the National Broadcasting Co regarding affiliation in the Richmond market or did the network people come to you?

Mr. Abeloff. They approached us.

Mr. Cox. When was this?

Mr. Abeloff. In the late fall of 1954.

Mr. Cox. The late fall of 1954. Was there any discussion at that time about the amount of clearance for their programs they would expect you to provide, or about any difficulty in clearing they had had with their then affiliate?

Mr. Abeloff. To part 1, yes. Part 2, no. The difficulties with their former affiliate were not discussed with me.

Mr. Cox. What did they discuss with your regarding your clearance policy?

Mr. Abeloff. They asked what would my policy be, with regard to clearance.

Mr. Cox. What did you tell them?

Mr. Abeloff. I told them I would try to cooperate.

Mr. Cox. What percentage of the programs they offer you do you clear on the station?

Mr. Abeloff. In or out of option time?

Mr. Cox. Overall, first.

Mr. Abeloff. Most of the programs. I can't give you the exact percentage.

Mr. Cox. And the same would be true, then, for the option period as well?

Mr. Abeloff. No. There are certain programs in option time, which conflict with local programs, that we don't clear for them.

Mr. Cox. When did you decide to make the change in transmitters which you later effected—from DuMont to RCA?

Mr. Abeloff. That was done in the spring of 1955.

Mr. Cox. And what was the basis for this change—purely technical?

Mr. Abeloff. Partly.

Mr. Cox. What other factors?

Mr. Abeloff. We had advice both from sources which were using the two types of equipment we were considering; and also involved was the fact that we were about to issue an additional stock to be handled by a local underwriter, and the underwriter felt that—and the underwriter advised us that he felt his sale of stock would be more easily done with one type of equipment rather than another.

Mr. Cox. That is all.

Senator Pastore. Thank you very much, sir. We appreciate your cooperation.

Mr. Warren? Your complete statement will be inserted in the record.

(The complete statement is as follows:)

Statement of William W. Warren, Executive Vice President and General Manager, KOMO–TV, Seattle, Wash.

I am executive vice president and general manager of Fisher's Television Co. and of Fisher's Blend Station, Inc., owners and operators respectively of KOMO–TV and KOMO Radio in Seattle, Wash.

KOMO Radio and KOMO–TV are basic affiliates of NBC. KOMO Radio has been under the same ownership control since its inception 30 years ago on December 31, 1926, and became a charter member of the NBC Pacific coast network April 5, 1927. KOMO–TV began commercial operation on December 10, 1953, and has been an affiliate of NBC since December 11, 1953. I have been in the employ of KOMO since 1933. I was program manager for 18 years and have been general manager for 4 years.

The Seattle-Tacoma market has 4 commercial VHF stations and 1 educational VHF station.

Seattle is the 19th market in the Nation. In the area served by KOMO–TV there are approximately 514,000 sets, KOMO–TV operates a total of about 126 hours weekly. Network programs provide about 71 hours of which 13 hours are sustaining. Local live programs 20 hours, syndicated films 9 hours and all other films 26 hours. In the week of May 27, 1956, KOMO–TV scheduled eight ½-hour and one 1-hour syndicated film programs between 7:30 p. m. and 10:30 p. m. A tenth syndicated film program was scheduled at 7 p. m. on Thursday.

KOMO–TV went on the air the winter of 1953, releasing 5¼ hours per week of film syndicated programs. The next year this figure had increased to 6½ hours per week. We are currently airing 8½ hours per week and our estimate for the coming season is 10 hours.

SYNDICATED FILM STATUS ON THE THREE NETWORK STATIONS IN THE SEATTLE-TACOMA MARKET

In the Seattle-Tacoma market on the three network stations in the week of May 27, 1956, there were thirty-two ½-hour syndicated film programs scheduled in prime time between the hours of 7 p. m. and 11 p. m., Sunday through Saturday.[11]

[11] See appendix A at end of statement for list of film programs and scheduled times.

Only 15 of the 32 programs were fully sponsored during this week, 14 of the 32 programs were available for full sponsorship and 3 were available for cosponsorship. Twenty-eight of the total of thirty-two film programs were scheduled between 7:30 p. m. and 10:30 p. m.

Certainly there is no dearth of available time or programs for local, regional or national advertisers in the 7: 30 p. m. to 10: 30 p. m. period on network stations in the Seattle-Tacoma market.

As a matter of fact, in our market most local, regional and national spot advertisers are not interested in sponsorship or part-sponsorship of ½-hour film programs because of the resultant limitation to weekly or alternate-week exposure. A majority of such advertisers prefer multiple presentation of their commercials. These schedules consist of announcements in various times of day and evening, and particularly important, live participations in programs produced live locally which can be effectively merchandised and tailored to his product or service. A further advantage is the great flexibility attained in types of audiences reached and in the ease of expanding or modifying schedules to meet varying market conditions.

As a case in point, one of the most consistent regional television advertisers in the Pacific Northwest, a local concern which is the largest in its field, has recently discontinued one-half sponsorship of one of the highest rated syndicated film programs. This program has been consistently shown in the vicinity of 9 p. m. and has been considered a very successful vehicle. However, the advertiser and its agency felt that they could best achieve the desired advertising impact by spending the same budget for an announcement schedule spread throughout the telecasting day. They had previously proven this formula in one or more other markets within their distribution area.

NETWORK PROGRAMING IS THE FOUNDATION FOR THE TOTAL TELEVISION SERVICE

Network programs have given the tremendous impetus to set sales in the Seattle-Tacoma area. The public has bought their television sets primarily because of the great network programs appearing weekly, or as spectaculars, or the national conventions, or the world series. This is the primary reason why set ownership in the Seattle-Tacoma market has reached about 82 percent of saturation. Network shows and network stars are the talked about shows and stars—they are the ones about which our promotion people are able to create the greatest excitment. The diversification of programs, service to minority as well as majority interests, public affairs, sports, cultural, news, as well as entertainment programs—this is the basic network service—a service which the Seattle-Tacoma public has come to expect as a matter of course—a service providing the greatest system of mass communication ever devised. The other programing sources such as local and film have been able to profitably trade upon the basic circulation created by this network service over the years.

THE AFFILIATE-NETWORK RELATIONSHIP PROVIDES THE ULTIMATE OF NATIONAL PROGRAM SERVICE WITHIN THE SCOPE OF THE LICENSEE'S RESPONSIBILITY

For the station to have effective control in the influencing of nationally originated programs, there must be a national program entity of which it is part. This is the network form which is the aggregate of the network's affiliated stations throughout the country.

Because of the nature of the affiliate-network relationship, the first objective of the network is the same as the station's—to best serve the audience of my community at, say, 8 p. m. on Sunday. This is so because the network is obliged to program this period to the best of its ability in competition with other networks vying for the public's attention. The public benefits. This is not the first objective of the advertiser with a film program looking for an availability in the market. Regardless of how good his program may be, he will avoid 8 p. m. on Sunday if the competition is strong. He will seek an availability on one of the stations in the market which has the least competition. He therefore gets his audience largely by default and my station gets the business, providing the competition is weak opposite my availability.

If the advertiser does take the period and his program subsequently is failing in audience, chances are there is little can be done about it because all of the episodes in the series are probably already in the "can." If my station were to buy a film program to schedule at 8 p. m. on Sunday, chances are that our experience would be similar. In other words, film buying of syndicated programs is a gamble entered into at the time of commitment and little or no recourse is available to the station if the program doesn't live up to the original estimate.

The affiliate is a soundingboard to the network broadcaster and the sum of the reactions, opinions, suggestions and criticisms of the affiliates provides the network with fast and professional information, enabling it to measure the effectiveness of its programing upon all communities of the nation.

To properly serve the public interest, a station should provide different types of programs even though some types do not appeal to as many viewers as others. The entire program schedule must add up to something more than a lot of good ratings. There are periods on KOMO–TV where, because of scheduling a program of news, a competing station can schedule a film program with a good box-office appeal and get a very high rating. However, few would argue that the station should not schedule news, and I am sure that if the station or the network did not provide the news program, no one else would, or could. It exists because the station and the network believe it should to best serve my community.

No two stations or networks are alike. Each has a character of its own which is the result not just of the programs on the station and on the network, but of the control of those programs as to type, appeal, and placements. Each has a program philosophy somewhat different. The result is a great variety of programs, and the public benefits. Philosophy and psychology of programing are important and, to be constructive and progressive, the experience of the many broadcasters and their opinions should, for the public benefit, be interpreted and evaluated and where change is indicated, direction should be given. It is fortunate, indeed, that out of the affiliate-network relationship the means exists for changing the direction of programing before it reaches the stage of sameness and mediocrity.

A secondary but very important benefit resulting from the affiliate-network relationship is the outlet provided for the origination of programs from the affiliate's community to the Nation. Since June 22 of last year KOMO-TV has released 10 programs to the network, totaling 6 hours and 24 minutes.

In recognition of the great value that this outlet provides for expression by my community to the Nation, the Seattle Chamber of Commerce awarded the coveted Paul Bunyan trophy to KOMO–TV for the year 1955 for having made the greatest contribution toward focusing favorable national attention upon the city of Seattle during that year. This award was based upon the origination, during 3 days, of the program Home from the city of Seattle. This program depicted the mode of living and the attractions of my community before the Nation.

For the past year and one-half I have served as a member of the NBC television affiliates executive advisory committee. This is an elective position and I am 1 of 9 representatives of the NBC television affiliates. This committee meets frequently with the president of NBC together with his department heads and policy level staff members. Suggestions and problems having to do with programing policies, programing effectiveness, types of programs, standards of good taste, and questions of propriety in both program and commercial content are discussed and opinions exchanged.

At least once a year there is a national meeting of all the affiliates with the network. Broad fundamental subjects and problems are discussed and resolved. No such relationship exists between my station and any film producer. The relationship here is nothing more than that of a buyer and seller. We purchase film in two different ways. At least twice a year our program manager goes to Hollywood to audition pilots, and to purchase or recommend the purchase of new syndicated shows. KOMO–TV has tried to have top shows and I believe we have bought or bid on every outstanding show since we have been on the air. In addition to these periodic trips, we audition dozens of programs each year in Seattle with the salesmen for the distributing companies. Either way, we are constantly faced with the fact that we are expected to spend $20,000 to $25,000 for each series on the strength of one episode plus the experienced pitch of a salesman. Once we have signed a contract we have no more control over the quality of the product than our most distant viewer. In fact we have less, because we cannot switch to another station. We have to play them out, good, bad, or indifferent.

ONLY THE NETWORK MAINTAINS RESPONSIBILITY TO THE STATION FOR PROGRAM PERFORMANCE AND SALE

The important difference between the position occupied by the film syndicator and that of the networks is that only the latter maintain a continuing control and responsibility of programing and this responsibility, because of the affiliate-network relationship, is directly to the viewing public. Generally speaking, the syndicators have no financial investment in television stations. They are not worried about station responsibilities.

Their sole standard is ratings. I do not believe that the film companies, with all of their knowledge of the film business, could locate for me syndicated programs in the fields of education, agriculture, religion, discussion, or special interest, and yet they maintain that they are at least as well equipped to help program our station as the network.

Syndicated film, as such, is in no way a guaranty of quality nor popularity. It cannot supply those subjects which demand immediacy, such as news, sports, special events, etc. Apparently it cannot involve itself in any experiment in the field of new art forms. If the television industry ever reached the point of depending upon the syndicators for its programs, this exciting medium would be guilty of cultivating mediocrity.

The network assumes prime responsibility for the sale of all network option time. The burden for the sale rests continually upon it. On the other hand, the film syndicator, in my experience, assumes no resposibility for the continued sale of a period of time occupied by a film which he has sold the station.

THE FILM SYNDICATORS HAVE MADE VIRTUALLY NO CONTRIBUTION TO THE DEVELOPMENT OF COLOR TELEVISION

KOMO–TV is active in the development of color television. The station is equipped to release network, local live and film in color. Of all the color programs on the station, not one is a syndicated film program. With about $65,000 invested in color film projection equipment, virtually the only color film available is free film supplied by industrial concerns, nonprofit organizations, and governmental agencies. A one-half hour commercial film program produced locally for a regional sponsor is produced in color. Seventy-three stations in the Nation are equipped now to release color film.[12] The film producers are certainly not making any proportionate contribution to the development and pioneering of color television. Here again all the spadework and initial investment and risk is being undertaken by the networks and stations.

All of the color programs released on KOMO–TV are from the network or are produced locally except for so-called free films. To my knowledge only two first line syndicated film programs Judge Roy Bean and Long John Silver—the latter is produced in Australia—are available in color.

NETWORK OPTION TIME IS VITAL TO THE EXISTENCE OF THE NETWORK

To exist, the network must be able to clear time in all of the principal markets. If each station made up its schedule locally, no two stations on the network would have the same availabilities. The network would not be able to clear simultaneous time and the use of microwave interconnection facilities would not be practical. Programs would have to be delivered by film. The network would collapse as such. This would be the result if network option time were eliminated. The network as a programing entity—an organization existing primarily to provide direction, purpose, and control to programing—would cease to exist. The greatest programs—the spectaculars, national conventions, Wide Wide Worlds, matinee theatres, the world series—would no longer be available to the television viewing public. The public would have no choice but of local programs and standardized film programs. The blind would be drawn on the "window on the world."

Except for the testimony of Mr. Moore of KTTV and his attorney, I have not had the opportunity of either hearing or reading the testimony of other

[12] Compiled from RCA Color TV News and Television Digest.

witnesses before your committee. Mr. Moore speaks as the operator of a nonnetwork station in Los Angeles, but by inference at least he also pleads a case for film producers and purveyors.

A network affiliation is generally recognized to be a valuable franchise to a television station. Independent stations, however, fulfill a useful and important purpose in their ability to carry many programs which can only be presented during times in which network programs are being presented on network affiliates. For example, the independent station in our locality, KTVW, carries all of the Pacific coast baseball games played by Seattle in both Seattle and Portland. They also carry basketball games and certain football games which only an independent station with heavy unprogramed time could handle. To say, however, that a nonnetwork station fulfills a useful and important purpose, or to say that film is an important source of program material, does not mean that the networks should be sacrificed for the benefit of the independent stations or the film merchants. It is my personal belief that if Mr. Moore's demand that network option time be reduced by 25 percent is granted, the death knell of the networks would be sounded. It is my impression that profits in running a network are not large, comparatively speaking. Taking away as much as 25 percent of the ability of the networks to sell programs in prime evening hours could very well mean the difference between survival and nonsurvival.

It has always been my feeling that, in the absence of something evil, success in any line of endeavor—be it banking, manufacturing, or operating a television network—should not be penalized at the behest of competitors who would like to cut the successful ones down to their size. With all due respect to Mr. Moore's excellent television station, to the syndicated film producers, and to the old and new owners of the vast supply of old motion-picture film, I do not think that on merit they stand in a very good position to ask for regulations, the purpose of which is to cripple network telecasting. Furthermore, I cannot believe that, after hearing both sides, legislators will look with sympathy to the eloquent plea of these entrepreneurs who want an assist from the Government to improve their competitive position.

In conclusion, may I say that our station has a very genuine feeling of appreciation to the network for its contribution to our success as broadcasters over a period of almost 30 years. Telecasting, in a short space of time, has resulted in 4 out of 5 people in this country having access to a television screen in their homes. The networks are, to a large measure, responsible for this phenomenal growth. We as a network affiliate ask your favorable consideration for the position of the networks as against the position of certain elements in the industry whose manifest intention is to tear down network telecasting for the financial betterment of themselves.

(The appendix referred to is as follows:)

APPENDIX A.—*Syndicated film programs on the 3 network stations in the Seattle-Tacoma market in the week of May 27, 1956*

FULLY SPONSORED

	Day	Time	Channel
1. Turning Point	Monday	9:30 to 10 p. m.	4
2. Waterfront	Wednesday	do	4
3. Highway Patrol	Thursday	7 to 7:30 p. m.	4
4. Celebrity Playhouse	do	8 to 8:30 p. m.	4
5. Hall of Stars	Friday	7:30 to 8 p. m.	4
6. Crunch and Des	do	9 to 9:30 p. m.	4
7. Mayor of the Town	Saturday	10 to 10:30 p. m.	4
8. Western Marshal	Wednesday	7 to 7:30 p. m.	5
9. I Search For Adventure	do	7:30 to 8 p. m.	5
10. Life of Riley	Thursday	8:30 to 9 p. m.	5
11. Studio 57	Friday	7 to 7:30 p. m.	5
12. Mr. District Attorney	do	9 to 9:30 p. m.	5
13. Code 3	do	10 to 10:30 p. m.	5
14. The Hunter	Saturday	7:30 to 8 p. m.	5
15. Count of Monte Cristo	Thursday	9 to 9:30 p. m.	11

AVAILABLE FOR FULL OR PARTIAL SPONSORSHIP

16. Ray Milland Show	Monday	10 to 10:30 p. m.	4
17. Camera Four (Anthologies)	Tuesday	do	4
18. City Detective	Sunday	do	5
19. Judge Roy Bean	Monday	8:30 to 9 p. m.	5
20. Man Behind the Badge	do	10 to 10:30 p. m.	5
21. Man Called X	Tuesday	do	5
22. Confidential File	Thursday	9 to 9:30 p. m.	5
23. Science Fiction Theatre	do	9:30 to 10 p. m.	5
24. Badge 714	Friday	do	5
25. Dr. Hudson's Secret Journal	Saturday	7 to 7:30 p. m.	5
26. I Led Three Lives	Monday	9 to 9:30 p. m.	11
27. Famous Playhouse	do	10 to 10:30 p. m.	11
28. Ethel Barrymore	Tuesday	9 to 9:30 p. m.	11
29. Federal Men	do	10 to 10:30 p. m.	11
30. Counterpoint	Wednesday	do	11
31. City Assignment	Thursday	do	11
32. Guy Lombardo	Friday	do	11

NOTE.—This list of film programs does not include those film programs released on the 4th station which is nonnetwork.

Mr. WARREN. Mr. Chairman, Senator Magnuson, my name is William W. Warren. I am executive vice president and general manager of Fisher's Television Co. and of Fisher's Blend Station, Inc., owners and operators respectively of KOMO–TV and KOMO Radio in Seattle, Wash.

KOMO Radio and KOMO–TV are basic affiliates of NBC. KOMO Radio has been under the same ownership control since its inception 30 years ago on December 31, 1926, and became a charter member of the NBC Pacific coast network April 5, 1927. KOMO–TV began commercial operation on December 10, 1953, and has been an affiliate of NBC since December 11, 1953. I have been in the employ of KOMO since 1933. I was program manager for 18 years and have been general manager for 4 years.

The Seattle-Tacoma market has 4 commercial VHF stations and 1 educational VHF station.

Seattle is the 19th market in the Nation. In the area served by KOMO–TV there are approximately 514,000 sets. KOMO–TV operates a total of about 126 hours weekly. Network programs provide about 71 hours of which 13 hours are sustaining. Local live programs 20 hours, syndicated films 9 hours and all other films 26 hours. In the week of May 27, 1956, KOMO–TV scheduled eight one-half-hour and one 1-hour syndicated film programs between 7:30 p. m. and 10:30 p. m. A 10th syndicated film program was scheduled at 7 p. m. on Thursday.

KOMO–TV went on the air the winter of 1953, releasing 5¼ hours per week of film syndicated programs. The next year this figure had increased to 6½ hours. We are currently airing 8½ hours per week and our estimate for the coming season is 10 hours.

SYNDICATED FILM STATUS ON THE THREE NETWORK STATIONS IN THE SEATTLE-TACOMA MARKET

In the Seattle-Tacoma market on the 3 network stations in the week of May 27, 1956, there were 32 one-half-hour syndicated film programs scheduled in prime time between the hours of 7 and 11 p. m., Sunday through Saturday.[18]

[18] These film programs and their scheduled times are listed in appendix A to Mr. Warren's written statement, printed at p. 2783.

Only 15 of the 23 programs were fully sponsored during this week. Fourteen of the thirty-two programs were available for full sponsorship and three were available for cosponsorship. Twenty-eight of the total of thirty-two film programs were scheduled between 7:30 and 10:30 p. m.

Mr. Cox. What are your network option hours?

Mr. WARREN. In the wintertime our network option is 7:30 to 10:30. During the 5 months when the rest of the Nation is on daylight saving time, it is from 6:30 to 9:30.

Mr. Cox. So that the entire period after 9:30 p. m. on the three stations in the market is available for nonnetwork programing?

Mr. WARREN. The station time as contrasted with option time, yes, sir.

Mr. Cox. Would that be the substantial cause for the high number of these film programs carried in this period and for the fact that a good many of them are as yet unsold?

Mr. WARREN. No, sir. Let me say that on our station there has, I believe, never been a time when there hasn't been a half hour available for sale between 7 and 11 p. m.

Mr. Cox. In the period before daylight saving time—just before you went on it this time—how many nonnetwork programs were you carrying in the period 7:30 to 10:30?

Mr. WARREN. We were carrying, I believe I state it later on, 4 or 5.

Certainly there is no dearth of available time or programs for local, regional, on national advertisers in the 7:30 to 10:30 p. m. period on network stations in the Seattle-Tacoma market.

Senator MAGNUSON. Bill, isn't that largely due to the 4 hours difference in our time, wouldn't you say—particularly in the summer?

Mr. WARREN. No, sir. I would say the same programs between 7 and 11—in the schedule between 7 and 11, now, on the three stations as were between 7 and 11 during standard time.

Senator MAGNUSON. That is because they sometimes spot them at different hours because of the west coast difference in time?

Mr. WARREN. Well, on our station——

Senator MAGNUSON. Except live.

Mr. WARREN. Yes. On our station we would carry, for example, Highway Patrol at 7 o'clock during standard time on Thursday. That is station time. During the 5 months when the rest of the country is on daylight, Groucho Marx would move, normally, to 7 o'clock. However, in our case we scheduled Groucho at 10 o'clock and retain Highway Patrol at 7 o'clock.

Senator MAGNUSON. You change your programing around?

Mr. WARREN. Yes, sir.

Mr. Cox. Isn't it true that if you took these identical 32 time periods for the period prior to daylight saving time, that instead of all 32 being filled with syndicated programs it would get down in the neighborhood of 10 that would be occupied by nonnetwork programs?

Mr. WARREN. I believe I said that 28 of the 32 were between 7:30 and 10:30.

Mr. Cox. I am talking about the period, let's say, in February of this year.

Mr. WARREN. I see.

Mr. Cox. In February of this year, for instance, the period on Monday from 9:30 to 10 p. m., which you indicate is now occupied by a syndicated program, was then occupied by Robert Montgomery Presents which is an NBC program.

Mr. WARREN. Yes.

Mr. Cox. In fact, all of the periods which you indicate for KOMO were occupied by network programs except for the Highway Patrol example that you just used?

Mr. WARREN. I would say that all the programs listed of the 32—I expect that practically, or all, of them would be between the period of 7 to 11 throughout the entire year.

Mr. Cox. Throughout the entire year?

Mr. WARREN. Yes.

Mr. Cox. That is, they are adjusted as you shift the network block—either at beginning or the end of the period?

Mr. WARREN. That is right. In our case we must consider the total year, 12 months, in building our schedules and in doing business with the network and with other advertisers.

Mr. Cox. That is, you carry, then, all 7 or 8 of the nonnetwork shows here, the year round?

Mr. WARREN. Yes, sir.

NETWORK PROGRAMING IS THE FOUNDATION FOR THE TOTAL TELEVISION SERVICE

Network programs have given a tremendous impetus to set sales in the Seattle-Tacoma area. The public has bought their television sets primarily because of the great network programs appearing weekly, or as spectaculars, or the national conventions, or the world series. This is the primary reason why set ownership in the Seattle-Tacoma market has reached about 82 percent of saturation. Network shows and network stars are the talked about shows and stars—they are the ones about which our promotion people are able to create the greatest excitement.

The diversification of program, service to minority as well as majority interests, public affairs, sports, cultural, news, as well as entertainment programs—this is the basic network service—a service which the Seattle-Tacoma public has come to expect as a matter of course—a service providing the greatest system of mass communication ever devised. The other programing sources such as local and film have been able to profitably trade upon the basic circulation created by this network service over the years.

NETWORK OPTION TIME IS VITAL TO THE EXISTENCE OF THE NETWORK

To exist, the network must be able to clear time in all of the principal markets. If each station made up its schedule locally, no two stations on the network would have the same availabilities. The network would not be able to clear simultaneous time and the use of microwave interconnection facilities would not be practical.

Programs would have to be delivered by film. The network would collapse as such. This would be the result if network option time were eliminated. The network as a programing entity—an organization existing primarily to provide direction, purpose, and control to programing—would cease to exist. The greatest programs—the spectaculars, national conventions, Wide Wide Worlds, Matinee Theaters, the World Series—would no longer be available to the television viewing public. The public would have no choice but of local programs and standardized film programs. The blind would be drawn on the "window on the world."

Except for the testimony of Mr. Moore of KTTV and his attorney, I have not had the opportunity of either hearing or reading the testimony of other witnesses before your committee. Mr. Moore speaks as the operator of a nonnetwork station in Los Angeles, but by inference at least he also pleads a case for film producers and purveyors.

A network affiliation is generally recognized to be a valuable franchise to a television station. Independent stations, however, fulfill a useful and important purpose in their ability to carry many programs which can only be presented during times in which network programs are being presented on network affiliates. For example, the independent station in our locality, KTVW, carries all of the Pacific coast baseball games played by Seattle in both Seattle and Portland. They also carry basketball games and certain football games which only an independent station with heavy unprogramed time could handle. To say, however, that a nonnetwork station fulfills a useful and important purpose, or to say that film is an important source of program material, does not mean that the networks should be sacrificed for the benefit of the independent stations or the film merchants.

It is my personal belief that if Mr. Moore's demand that network option time be reduced by 25 percent is granted, the death knell of the networks would be sounded. It is my impression that profits in running a network are not large, comparatively speaking. Taking away as much as 25 percent of the ability of the networks to sell programs in prime evening hours could very well mean the difference between survival and nonsurvival.

It has always been my feeling that, in the absence of something evil, success in any line of endeavor—be it banking, manufacturing, or operating a television network—should not be penalized at the behest of competitors who would like to cut the successful ones down to their size. With all due respect to Mr. Moore's excellent television station, to the syndicated film producers, and to the old and new owners of the vast supply of old motion-picture film, I do not think that on merit they stand in a very good position to ask for regulations, the purpose of which is to cripple network telecasting. Furthermore, I cannot believe that, after hearing both sides, legislators will look with sympathy to the eloquent plea of these entrepreneurs who want an assist from the Government to improve their competitive position.

In conclusion may I say that our station has a very genuine feeling of appreciation to the network for its contribution to our success as broadcasters over a period of almost 30 years. Telecasting, in a short space of time, has resulted in 4 out of 5 people in this country having access to a television screen in their homes. The networks are, to a large measure, responsible for this phenomenal growth. We as a network affiliate ask your favorable consideration for the position of the networks as against the position of certain elements in the industry whose manifest intention is to tear down network telecasting for the financial betterment of themselves.[13a]

[13a] Pursuant to later request, the program schedule of KOMO–TV for a sample week in April, 1956, was furnished and is printed at p. 3014.

Senator PASTORE. Any questions, Senator Magnuson?
Senator MAGNUSON. No, sir.
Senator PASTORE. Mr. Harris?

STATEMENT OF JACK HARRIS, VICE PRESIDENT AND GENERAL MANAGER OF KPRC-TV, HOUSTON, TEX.

Mr. HARRIS. Mr. Chairman, my name is Jack Harris, KPRC-TV, Houston. I will dispense with the reading of this and ask that it be on the record.

Senator PASTORE. Make it part of the record.

(The full statement follows:)

STATEMENT OF JACK HARRIS, VICE PRESIDENT AND GENERAL MANAGER OF KPRC-TV, HOUSTON, TEX.

My name is Jack Harris. I am vice president of the Houston Post Co., general manager of KPRC-TV, Houston.

KPRC-TV is the second oldest television station in Texas. It was formerly affiliated with all the national networks and is still affiliated with one, the National Broadcasting Co.

There is nothing in our experience of the past 7 years to impel us to recommend any substantial changes in present operations of the networks.

In our own station and through my participation as a member of the NBC affiliates executive committee, our relation with the networks has been one of partnership, not dictatorship.

We have tangible evidence that our ability to serve our viewers with live network programing is a prime reason for our growth and progress.

Prior to the cable facilities which enabled us to bring live network programs to our area, channel 2 had been in operation 29 months. We served, at that time, 142,000 television homes. In the 29 months following the arrival of live network programs, our television homes increased 273 percent to a total of 389,000. Today, there are approximately 500,000 television homes in our area, and in our home county more families have television than telephones.

These figures are but one indication that an unprecedented public approval has made television the fastest growing postwar industry—that the public whom we are licensed to serve, and without whose approval we are lost, is not among the groups who petition this committee to make drastic changes.

During the past few weeks, testimony has been offered by or on behalf of film syndicators, designed to impose certain limitations on the national television networks. As we understand these proposed restrictions, the American viewing public, and the stations which serve it, would be the beneficiaries of expanded so-called local service made up in large part of film programs.

In this connection, a glance at our present schedule will be illuminating.

We are now carrying 6½ hours per week of nonnetwork syndicated programs between 6:30 p. m. and 9:30 p. m. An additional 3 hours and 55 minutes per week of nonnetwork syndicated programs is telecast each week prior to 10:30 p. m., or a total of 10 hours 25 minutes weekly between 6:30 p. m., and 10:30 p. m.

In other periods, we currently telecast an additional 7 hours of nonnetwork syndicated features each week.

This represents a total of 17 hours and 25 minutes each week of nonnetwork syndicated programs, aproximately 75 hours per month.

This does not include feature films, many of which are purchased from the syndicators who also supply nonnetwork syndicated programs. Feature films represent an additional 19 hours per week.

In other words, one-third of our current schedule in so-called premium hours is made up of nonnetwork syndicated programs.

It should be noted that our present schedule is tailored to daylight saving time, which is now in effect for 6 months of the year. Last April, when our schedule was tailored to standard time, we were carrying a total of 6½ hours per week of nonnetwork syndicated programs between 6:30 p. m. and 10:30 p. m., representing 23 percent of our schedule in premium hours. The average for the entire year would be approximately 8½ hours per week of nonnetwork syndicated programs or about 30 percent in premium time.

One additional point should be made, inasmuch as a strictly quantitative analysis cannot be complete and may be misleading: We are constantly seeking better and more varied programs from the film syndicators. And yet, fewer and fewer quality shows are being offered for local syndication. The syndicators are generally following a practice of making their programs available to the networks or national network clients, and then offering them for syndication as reruns after they have had network exposure.

I have personally discussed this problem with several syndicators, who have stated frankly that the one sale to the network advertiser had the advantage to them of eliminating a great deal of the risk from their venture, plus eliminating the cost of trying to make many individual sales. Consequently, it was to be preferred over multiple-station sales.

Thus, I am somewhat baffled as a station operator, to read of testimony before this committee wherein film syndicators are seeking to limit network option time in order, they say, to open more and better periods for them to sell their product to the stations. My own experience is that we have a difficult time in finding suitable, first-rate, first-run film material for us to use in the periods we already have available.

As a station we have made investments in color equipment. The cost of equipping our station to carry color films was roughly three times as great as the equipment for network color programs.

And yet, the film syndicators are not making their product available in color. The reason is pretty simple. It is not profitable with present limited color set circulation.

This is not meant as a criticism of the film syndicators. But it does point up, I believe, that while they are good businessmen, they have neither the obligation nor the urge for pioneering where a profit does not appear to be in the immediate offing.

As a network-affiliated station, if we were interested merely in the profits side of the ledger, on a short-range basis, we would certainly side with the film-syndicator's proposed cutting back the amount of network option time permitted, since the immediate revenue from spot business is greater than from network business.

However, that is only a small part of the story. While we pride ourselves on the contribution we have made in pioneering television in the Houston area, we are conscious that the really great advances of television development in the country as a whole, our area included, have sprung from the strong foundation laid down by the networks.

While our investments were substantial to us, they were small as compared to those of the major networks. While we had a vision of the future, it was constantly being raised by the farsighted planning and leadership of the networks.

And from the contributions of the networks the people of this country have been the principal beneficiaries. I find no one in our area asking that the networks be curbed and that more syndicated films be substituted. On the contrary, praise from our viewers comes principally for the exciting attractions made available to them from our network: Sadlers Wells Ballet, Wide Wide World, Maurice Evans, Barretts of Wimpole Street, George Gobel, Peter Pan, Robert Montgomery, Steve Allen, Matinee Theater, Perry Como, the political conventions, great sporting events, and so forth.

We are not averse to change, if it represents an improvement, for ours is a constantly changing industry; but we strongly oppose any attempt to turn back the clock to force a market, if you will, for somewhat shopworn products which have already passed the peak of usefulness.

And, in our opinion, in these still formative, pioneering years of television, it would be a sad day for the American people to handcuff the major television networks.

I am confident that when this committee has studied all the facts, it will give a green light to the continued growth and improvement of the American television service, which in a brief 10 years has already become a vital part of American life.

Mr. HARRIS. There is only one part of my statement that I think has not been fully covered here that I would like to touch upon. And that deals with the film producers.

Senator PASTORE. What page are you on, sir?

Mr. HARRIS. I will start on page 3.

Roughly, on our present schedule between 6:30 and 10:30 in the evening, about one-third of our time is composed of nonnetwork, syndicated programs. This is during the 6-month period of daylight saving time. In the other 6-month period it is roughly 30 percent during that period.

I make this point because the film producers and Mr. Moore have indicated that there is a great scarcity of time, which seems to be limiting their ability to expand their operation. We are 1 of 4 stations—3 commercial stations, 1 educational station—in the market, and the other 2 commercial stations have an equal, if not greater, amount of time available for the film producers.

However, I would like to make one additional point, inasmuch as a strictly quantitative analysis cannot be complete and may be misleading. We are constantly seeking better and more varied program fare from the film syndicators, and yet fewer and fewer quality shows are being offered for local syndication. The syndicators are generally following the practice of making their programs available to the networks or to the national network clients and then offering them as syndication reruns after they have had network exposure.

I have personally discussed this problem with several syndicators who have stated frankly that the one sale to the network advertiser had the advantage to them of eliminating a great deal of risk from their venture, plus eliminating the cost of trying to make individual sales. Consequently, it was to be preferred over multiple-station sales.

Thus, I am somewhat baffled——

Senator MAGNUSON. Could I ask a question there for information?

Mr. HARRIS. Yes, sir.

Senator MAGNUSON. If a syndicator sells a film to the network, and you are one of the affiliates of the network, the network offers the film to you; exercising your right to refuse, you do not take that film. Then do you buy it from him separately, independently of the network?

Mr. HARRIS. Normally not, because it is sold to one advertiser and it is not available. What would normally happen if we did not take the film—the network would then undertake to place it on one of the other two stations. If neither one of those cleared, it would probably not be on the market——

Senator MAGNUSON. You have the right to take it either from the network or buy it independently from the syndicator?

Mr. HARRIS. No; it is not available to the local station because if they sell it to a national advertiser, he has bought that for the country.

Senator MAGNUSON. And then it is not sold——

Mr. HARRIS. It is not sold.

Senator MAGNUSON. It is not peddled to independent stations?

Mr. HARRIS. Not until the national advertiser has released it and had his run on it.

Senator MAGNUSON. How is it we see these films running 2 and 3 times?

Mr. HARRIS. You are getting them on the reruns. You are getting the shopworn commodity that they offer to the local stations.

Thus I am somewhat baffled as a station operator to read of testimony before this committee wherein film syndicators are seeking to ime, in order, they say, to open more and better sell their product to the stations. My own experi- ve a difficult time in finding suitable first-rate, first- for us to use in the periods we already have available. that connection, Mr. Harris, do you think that the the film producers for the one sale has been contributed gree by the fact that, because of the option rights of the they have found difficulty making sales across the country dvertisers regard as the best time?

HARRIS. No. That is not our experience at all. We have good available for them. There is plenty of time available in the ston market, and we do not have first-rate good film material to that now.

Mr. Cox. In what time periods?

Mr. HARRIS. I am talking about between 6:30 and 10:30 which we consider our class A time.

Mr. Cox. Now if, however, they are going to produce only for this ne sale, then that poses a problem not only for you but a more acute for the independent station, which must look to these non- ources for all of his other than local programing?

RRIS. Yes. It does to some extent, except the independent usually goes into feature films and does not buy film series. not entirely true, but generally speaking, I would think that he n longer periods of feature films.

. Cox. Is feature film as competitive with network programing rograms made especially for television?

Mr. HARRIS. Good feature films directly outrate half-hour shows, if hat is what you mean.

Mr. Cox. Very well.

Mr. HARRIS. I might say parenthetically that at the moment we have four class A half hours that are sold to local sponsors that we are trying to find good first-rate, first-run products for next fall. So far there is only one film syndicator, to my knowledge, who has come up with a show that is not a rerun of a network—that is a new product—that is available next fall.

As a station, we have made investments in color equipment. The cost of equipping our station to carry color films was roughly three times as great as the equipment for network color programs. And yet the film syndicators are not making their product available in color. The reason is pretty simple. It is not profitable with the present limited color set circulation. This is not meant as a criticism of the film syndicators, but it does point up that while they are good businessmen, they have neither the obligation nor the urge for pioneering where profit does not appear to be in the immediate offing.

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I am confident that when this committee has studied al
it will give a green light to the continued growth and imp
of the American television service, which in a brief 10 years has
become a vital part of American life.

Senator PASTORE. Thank you very much.

Senator MAGNUSON. How many stations are there in Houston?

Mr. HARRIS. In the Houston area there are 4 stations, includi
educational station.

Senator MAGNUSON. Four? Three and one?

Mr. HARRIS. That is right.

Mr. COX. Would you supply us with the same programi
scheduling?

Mr. HARRIS. Yes, sir.[14]

Senator PASTORE. Mr. Gross. Do you intend to read your statement
sir?

Mr. GROSS. Just very small parts of it.

(The prepared statement of Mr. Gross follows:)

STATEMENT OF HAROLD F. GROSS, PRESIDENT AND GENERAL MANAGER, WJIM AND WJIM-TV, LANSING, MICH.

Mr. GROSS. My name is Harold F. Gross. I am president and general manager of Gross Telecasting, Inc., owners and operators of Stations WJIM and WJIM-TV, Lansing, Mich. I appear here solely at my own request because I believe it is important for your committee to have the thinking and experience of an individual station in a typical American community, and because of my great interest in the future of both the television industry and my own properties.

WJIM-TV is a prefreeze station—we were one of the first 100 stations on the air, having commenced operations early in 1950. Lansing was a small market in comparison to most of the cities that had television stations at that time, and there was great doubt in the minds of many experienced broadcasters, including myself at times, that a market the size of Lansing could support a television station. There were no A. T. & T. line facilities available to us. Detroit was the closest connecting point and if we were to have network programing, it would be necessary for us to build our own microwave link from Detroit to Lansing at a cost of approximately $100,000—this in addition to our original capital investment of $250,000.

[14] The program schedule was furnished later and is printed in the appendix at p. 3018.

We made the decision at that time, in 1949, to proceed if network service was available to the station. We felt that if we could bring our viewers the programs and talent from the entertainment centers of the country, through the facilities of the networks, we had a chance to succeed.

Without the assurance of network programing, we would not have built WJIM–TV and without network programing WJIM–TV would not have succeeded. Programs of network quality and telecasts of nationally important special events were essential to building a viewing audience and interesting people in purchasing a TV set. Remember, we started with practically no sets in the area we were to serve. Ours was the first television service for nearly a million people in the central Michigan area. It would have been a lost cause from the beginning if our programing had been dependent upon pupils of Miss Simmons' dancing class, an Arbor Day address by the mayor, the local hillbilly band, or a hopeful contralto—which is about the extent of the talent available in so many communities the size of Lansing. These local talent programs have their proper place in a balanced program schedule, but they could not build the audience which this new medium needed to survive and grow.

At this point, you might well say: "We have no intention of abolishing television networks. It is only certain practices and policies that we are investigating." It is my belief that option time is the essence of a network operation, for without it we have no network. We cannot be competitive with newspapers, magazines, outdoor displays, or various other media unless we can create a simultaneous impact upon a major segment of the buying public. This is as basic as day and night. Without the ability to provide that service, a network has little reason for existence so far as service to national advertisers is concerned. When we consider the programing service offered by the networks, the need for option time is even more obvious, for where else would stations like WJIM–TV get the news, sports, and special events coverage offered by the networks? Certainly not from the film industry.

I would like to cite an actual experience. Back in 1950, in order to schedule a news show of local origination, we contracted for a nationally syndicated news film service and sold a daily 15-minute news program to a local merchant. With considerable effort we succeeded in averaging 4 or 5 minutes of worthwhile local news and the balance of the 15-minute program was devoted to films of national news from this service.

Within a few days both the station and the sponsor started receiving complaints that the news we presented was 1 and 2 days old, and that the same film and same events had been shown previously on the network news program and also depicted in the local newspaper. In other words, we were 28 to 48 hours behind with the news because of shipping time in getting the films to us from New York. The same time delay exists today and we cannot compete for news coverage against the newspaper without network news service.

Without option hours the network would have no assurance that such events as the world series, the Big Ten football games, the political conventions, the world championship fights, or the $64,000 Question would be simultaneously telecast, and I certainly would not want to

face the WJIM–TV audience if anything happened
continuity of these programs.

It seems as though everybody is having their say. The film
panies have complained. Certain station owners have bitterly assai
present network practices, and various private interests and indivi
uals have expressed themselves before your committee; but the
one group I don't believe has been heard from—the people. I wo
if your committee has received any complaints from them. I
we haven't. They seem happy and well pleased with the ne
service we are furnishing. The only time they complain is wh
cancel or lose an established network program, and I wonder
more consideration should not be given to the people's wishes
those of private interests, most of whom have axes to grind.
believe, Mr. Chairman, that either you or I would want to b
for office in Michigan if we disrupted the network service t
now furnishing to 2 million people.

For a moment I would like to touch upon the so-cal
influence over affiliates. We have been affiliated and
ciated with the three major networks for the past 6 ye
and currently having contracts with NBC, CBS, an
obviously presents problems, as we are a basic NBC stat
of the demands upon our time, we do not clear for all of
Yet our relations today, after 6 years of doing bu
other, I believe are more firmly cemented than ever
Here is a typical example of our program schedu
Network option time amounts to 9 hours per d
week. Of this option time we clear only 47 hou
works, and of these 47 only 25 are cleared for NB
During 13 hours per week we carry CBS progr
schedule those fom ABC. In addition, we carr
national spot programs during network optio
are very revealing and I believe are typical
country. They are actual figures from the
week of April 22, 1956. It is difficult to un
suggest the elimination of option hours w
application of the present option time cla
ord certainly does not betoken network
dictation as to what programs the pub
for the campaign by the film people to
obtained from this case study.

Now, for the final word about the fil
As long as 3 years ago, we were the a
Broadcast Magazine in which we sug
plugs which the movie industry w
First, because they were obviou
medium, and, second, because they
and had tried to stifle it by per
film libraries to be used on this m
est motivated by a declining bo
would have you believe that th
with a television service featu
ing prime viewing hours. I
and I am quite familiar with

Now to the point of their complaints: They claim it is difficult to have their film productions scheduled during prime listening hours. Let's again take WJIM–TV as our example. During the class A hours (6 to 11 p. m.) we schedule 9 hours and 15 minutes of film programs per week. Three hours of these are during network option time, and the programs include features produced by Ziv, Screen Gems, TPA, Four Star Productions—the same organizations who agree with, or sponsor, the testimony of Mr. Moore of KTTV. When you get down to actual figures from a typical station in a typical community, I don't believe any of these individuals or commercial companies have a just complaint, and if you believe, gentlemen, that the additional film products of these various concerns could be substituted for live network shows, then I again refer you to a poll of the people which I am sure would prove my point.

In connection with these film companies I mentioned the word "commercial." Let me give you an example of the amount of money involved in these film contracts. When we went on the air in 1950 we leased 630 old film clips which averaged 3 minutes in length. For the privilege of using this old film—which we seldom did—we paid one of the film companies $8,000. Multiply this by the number of potential markets and you have a very imposing figure.

Now, let me give you a sample of the ancient talent included in this series: Frank Yankovic and his polka orchestra, The DeHavillands, Marion Morgan, Carolos Ramierez, Yogi Yorgesson, Red Nichols and orchestra, Nick Lucas, Rowena, the King Sisters, Happy Jesters, and Bonnie Baker.

Would you sit at home and be entertained during an entire evening with talent of this vintage? Yet this is the type of program that the film companies have offered in the past and are still offering today.

The film companies do not offer an improved or superior service, rather they seek laws which will substitute their entertainment ware for network programs during prime evening viewing hours covered by option time. They do not purport to provide a diversified program service which will meet the needs of the viewing public. They prefer to utilize the network stations which have achieved their standing and audience primarily through the very network service they would now cripple and destroy.

Voltaire is supposed to have said that "If there wasn't a God, we would have to create one." Let me say as emphatically as I can that if there were not a network service available to the TV stations like WJIM–TV, those stations would have to create one, to provide us with the very programing services which the film companies make no pretense of providing.

A network is a voluntary association of independent stations joined together as a salable unit, thus being able to offer the advertiser simultaneous national circulation. Without this we do not have a network.

In closing, gentlemen, I would like to suggest that the case of the networks be determined by the people to whom, above everyone else, we are responsible. I believe I can speak for 2 million people in Michigan who have enjoyed the finest of television service for the past 6 years, and 81 percent of whom have bought television sets during that time. This represents an investment of approximately $110 million. We have been in the fortunate position of offering them the programs from the three major networks, from the film syndicates and a variety of local live features. They have seen everything from Wide Wide World, Omnibus, and Peter Pan to the world series, two Rose Bowl games in which Michigan State participated, the Kentucky derby, the great political conventions of 1952, and today's No. 1 and No. 2 rated entertainment programs, $64,000 Question and Ed Sullivan show, all because of network service available to them during prime viewing hours. This network programing has made it possible for WJIM-TV to grow and expand, to the extent that we spent $1 million for improvements in 1954 and are spending another $250,000 this year in plant facilities.

Before closing, I would like to say that there has been a persistent rumor that your committee may not take seriously what station owners and managers have to say in this matter; that we are appearing at the request of and for the benefit of the networks. I am sure this cannot be true and feel certain that this committee would not prejudge such an important matter as this or impugn the good faith of the many independent station operators who, like myself, have appeared here. We all have a great interest in the results of this investigation and I am here to speak for, and protect, only the interests of my company and stockholders.

It is because I feel that the continuation of network service unimpaired is vital to the future of our company that I have appeared here today. I believe I express the views of over 2,000 stockholders of Gross Telecasting, Inc. when I say that network service has been basic and essential both to our company and to the industry. I sincerely appreciate the opportunity of appearing before you today and thank you for your attendance and your patience in listening to our thinking in Lansing, Mich., a typical American city.

Senator PASTORE. How long is it going to take you, sir? I think it is going to be most unfair. I don't want to shut anybody out.

Mr. GROSS. Three or four minutes.

Senator PASTORE. All right, sir.

Mr. GROSS. My name is Harold F. Gross. I am president and general manager of Gross Telecasting, Inc., owners and operators of stations WJIM and WJIM-TV, Lansing, Mich. I appear here solely at my own request because I believe it is important for your committee to have the thinking and experience of an individual station in a typical American community, and because of my great interest in the future of both the television industry and my own properties.

WJIM-TV is a pre-freeze station—we were one of the first 100 stations on the air, having commenced operations early in 1950. Lansing was a small market in comparison to most of the cities that had television stations at that time and there was great doubt in the minds of many experienced broadcasters, including myself at times, that a market the size of Lansing could support a television station. There were no A. T. & T. line facilities available to us. Detroit was the closest connecting point and if we were to have network programing, it would be necessary for us to build our own microwave link from Detroit to Lansing at a cost of approximately $100,000—this in addition to our original investment of $250,000. We made the decision at that time, in 1949, to proceed if network service was available to the station. We felt that if we could bring our viewers the programs and talent from the entertainment centers of the country, through the facilities of the networks, that we had a chance to succeed.

Without the assurance of network programing, we would not have built WJIM–TV and without network programing WJIM–TV would not have succeeded.

We have been affiliated and happily associated with the 3 major networks for the past 6 years, originally and currently having contracts with NBC, CBS, and ABC. This obviously presents problems as we are a basic NBC station and because of the demands upon our time, we do not clear for all of their programs. Yet our relations today, after 6 years of doing business with each other, I believe are more firmly cemented than ever before.

Here is a typical example of our program schedule: Network option time amounts to 9 hours per day, or 63 hours per week. Of this option time we clear only 47 hours for all 3 networks and of these 47 only 25 are cleared for NBC, our basic network. During 13 hours per week, we carry CBS programs and during 9 we schedule those from ABC. In addition we carry 13 hours of local and national spot programs during network option hours. These figures are very revealing and I believe are typical of many stations in the country. They are actual figures from the WJIM–TV logs for the week of April 22, 1956. It is difficult to understand how anyone can suggest the elimination of option-time hours when a factual study of the application of the present option-time clause is considered. Our record certainly does not betoken network domination of affiliates, or dictation as to what programs the public shall see. No sustenance for the campaign by the film people to eliminate option hours can be obtained from this case study.

They claim it is difficult to have their film productions scheduled during prime listening hours. Let's again take WJIM–TV as our example. During the class A hours (6 to 11 p. m.) we schedule 9 hours and 15 minutes of film programs per week, these 9 hours including 19 different film programs. Three hours of these are during network option time, and the programs include features produced by Ziv, Screen Gems, TPA, some of the other organizations—the same organizations who agree with, or sponsor, the testimony of Mr. Moore of KTTV.

The CHAIRMAN. You are skipping all your old films?

Mr. GROSS. They are going into the record; I am just skipping the details.

The CHAIRMAN. They make very interesting reading. As a matter of fact, the Senator from Rhode Island and myself remember all these programs.

Senator PASTORE. I will admit that Senator Magnuson remembers them; I don't. [Laughter.]

The CHAIRMAN. Red Nichols, I remember him. Nick Lucas. I don't remember the King Sisters. Well, go ahead.

Mr. GROSS. Voltaire is supposed to have said that "if there wasn't a God, we would have to create one." Let me say as emphatically as I can, that if there were not a network service available to the TV stations like WJIM–TV, those stations would have to create one, to provide us with the very programing services which the film companies make no pretense at providing.

The CHAIRMAN. In other words, what you say in there is probably as important a contribution—at least what you think about this matter—that if you had abolished all networks as of today, that networks would spring up again as a necessity in the industry?

Mr. GROSS. I would certainly think they would have to.

In closing, gentlemen, I would like to suggest that the case of the networks be determined by the people to whom, above everyone else, we are responsible. I believe I can speak for 2 million people in Michigan who have enjoyed the finest of television service for the past 6 years, 81 percent of whom have bought television sets during that time. This represents an investment of approximately $110 million, I believe. We have been in the fortunate position of offering them the programs of the three major networks, of the film syndicates and a variety of local live features. They have seen everything from Wide Wide World, Omnibus, and Peter Pan, to the World Series, two Rose Bowl games in which Michigan State participated, the Kentucky Derby, the great political conventions of 1952, and today's No. 1 and No. 2 rated entertainment programs, $64,000 Question and Ed Sullivan Show, all because of network service.

We all have a great interest in the results of this investigation and I am here to speak for and protect only the interests of my company and stockholders. It is because I feel that the continuation of network service unimpaired is vital to the future of our company that I have appeared here today. I believe I express the views of over 2,000 stockholders of Gross Telecasting, Inc., when I say that network service has been basic and essential both to our company and to the industry. I sincerely appreciate the opportunity of appearing before you today and thank you for your attendance and your patience in listening to our thinking in Lansing, Mich., a typical American city.

Senator PASTORE. Thank you very much.

Mr. Cox. Will you furnish us with the schedule?

Mr. GROSS. Yes.[15]

Mr. Cox. Very well.

Senator PASTORE. Dr. Edward C. Lambert.

(The full statement of Dr. Lambert follows:)

STATEMENT OF DR. EDWARD C. LAMBERT, GENERAL MANAGER OF KOMU–TV AND DIRECTOR OF TELEVISION, UNIVERSITY OF MISSOURI, COLUMBIA, MO.

Mr. LAMBERT. The use of the term "monopolistic" to describe the fine United States television networks is indeed disturbing. On the basis of our experience with these networks, at least, the adjective "altruistic" would be more apt.

I represent KOMU–TV, the commercial television station owned and operated by the University of Missouri in Columbia, Mo. The opinions I express today, however, are my own and are the result of the splendid relationships we at KOMU–TV have had with all of the major networks in general, and with NBC in particular.

KOMU–TV is a primary affiliate on NBC, and the facilities of our station are sold by this network on an optional basis to advertisers interested in using the central Missouri market. For more than a year, until another station came into the market, we worked with all of the networks, and all of us at KOMU–TV have the utmost respect for the goals and aspirations of each of these networks. Currently, in addition to our primary affiliation with NBC, we are a secondary affiliate of the American Broadcasting Co.'s television network. We have been treated with consideration and respect and have received excellent cooperation from this fine network.

[15] The program schedule was furnished later and is printed in the appendix at p. 3022.

Today, however, I would like to discuss our exemplary working relationships with that great network, the National Broadcasting Co.

Prior to the time KOMU–TV went on the air in December 1953, central Missouri had no consistent TV reception. True, occasionally there was a snowy signal from either St. Louis or Kansas City for those brave souls who bought high antennas, but most of the 403,000 persons in this area were without adequate television service. In fact, careful study by the NBC research staff in February 1953 revealed that there were fewer than 18,000 sets in the area. Most assuredly, NBC executives realized that they would lose considerable money in this area for a period of several years until the set count could be increased. These same executives, however, recognized that central Missouri should have television service. Consequently, early in 1953, KOMU–TV received a primary affiliation contract from NBC, and NBC officials began immediate negotiations with the American Telegraph & Telephone Co. to provide live, interconnected television service for mid-Missouri. Needless to say, this audio and video linking of central Missouri with the rest of the United States was achieved at great expense and with considerable effort on the part of NBC.

Certainly, the element of public service, not profit, was uppermost in the minds of the officials at NBC as the people of mid-Missouri found themselves for the first time, via television, enjoying fine comedy, excellent plays, and outstanding operas; witnessing political events; and becoming box seat spectators at outstanding athletic contests.

For many—I wish you could read the letters of appreciation in our files—a life of loneliness had ended. They had a sense of belonging, a sense of at last being a real part of the American scene. For all, there was at last the opportunity for magnificent entertainment, and, thanks to Sylvester Weaver's policy of upgrading programs, an equally fine opportunity for culture and enlightenment. Today, mainly because of superior network programing, there are nearly 100,000 television sets in our area. I seriously doubt that even now NBC is doing better than breaking even on KOMU–TV, but never once have we heard a word of dissatisfaction from the network. If this is monopoly, it is certainly a benevolent one.

As was the case with many stations in 1953, because of our inability to secure equipment delivery, and for a variety of other reasons, KOMU–TV experienced a number of delays in getting on the air. During this rather hectic period, NBC showed unbelievable patience. Meanwhile, at NBC expense, the NBC station relations department sent a representative to Columbia to counsel us and to assist us with our numerous problems. The representative, recognizing the fact that many of our staff were without adequate television experience, offered us an opportunity to come to New York to study video with the NBC staff. Several of us were able to take advantage of this opportunity, and, in my own case, arrangements were made for me to attend the NBC-Hunter College television workshop at no cost. I was given free access to the network facilities, and network personnel were assigned to work with me during this indoctrination period.

In early 1954, shortly after our station went on the air, the Columbia Chamber of Commerce decided to make television their theme for the chamber's annual progress report dinner meeting. The banquet committee contacted KOMU–TV with the request that we ask our network to provide the evening's main speaker. NBC, again at network expense, sent Stockton Helfrich, the network's continuity acceptance director, to Columbia to deliver the featured address. This program, thanks to NBC, was a tremendous success, and I am sure it did much to make mid-Missouri businessmen aware of the high standards set by the network.

Before our set count was large enough to attract some of the advertisers sponsoring shows that we felt the area would like, NBC, too, was cognizant of the fact that our area should have these programs. In many instances the network made special arrangements for us to get the productions on a sustaining basis. For example, in the fall of 1954 the Hallmark Hall of Fame was presenting Macbeth over NBC. KOMU–TV had not been ordered for the series, but the network representatives, feeling that most certainly an area serving 2 universities and 9 colleges should have the program, contacted the sponsor and gained his permission for us to carry this cultural production. This year the client ordered our market. Another time the network made the very excellent Mr. Wizard series available to us. We were not "live," however, at the time the program was being shown. The network then offered to waive the customary kinescope fee so that we would be able to carry this educational program at no cost and at our own convenience.

During the past year, NBC has made arrangements with all of its optional stations whereby these stations, either through the commendable Program Service Plan and through the famous PEP plan, may present most of the outstanding programs on the NBC schedule.

Many of the blasts at present network structure are aimed at the so-called network option periods. These critics, it seems to me, fail to recognize that the option periods are as important to the participating stations as they are to the networks. The stations have reasonable assurance that their network will supply quality programs during these option times. Thus the program directors have a framework of audience-attracting programs around which they may plan their complete schedules. If the program caliber for some reason fails to measure up to expected standards, the affiliates soon make themselves heard through their affiliates' committees, and the offering is quickly changed. In most cases, the network staff already has observed the programing flaw and remedial steps have been taken.

Most important of all, from the affiliate's standpoint, is the fact that adjacencies to network programs are the most salable time periods the average television station has to offer. In most instances, even the sponsors buying first-class film properties will insist that their shows are adjacent to network programs. These adjacencies are the lifeblood of many television stations, and without them a large share of these stations would cease to exist.

These stations realize, too, that without option time the network will be unable to offer national sponsors assurance that their programs will be shown on a substantial number of outlets. Without this assurance, and despite the fact that a large number of stations would want the programs, the network sales staff would be working under an insurmountable handicap. It is my belief that if the networks are not permitted to continue with their present option arrangements, the entire structure of network television as we know it today is in jeopardy.

NBC has been most liberal with KOMU–TV with regard to option periods. In a number of instances, NBC sales service has offered us a program in network option time. In checking our availabilities, we have found the time period blocked by a regional sale. In some cases we have felt that the network program was so attractive that we have discussed the matter with the sponsor and have offered him an equally good spot at another time. If he has accepted the new time, we have moved him. Several times, however, we have felt that we might lose the account if we changed the client's time and we have so advised NBC. In each case, NBC has accepted a less desirable time on a delayed basis. In the case of one of their finest shows, Goodyear Playhouse, we ran into just such a situation, and the network took a much less preferable time, 10:30 at night. From the standpoint of good programing, we are eager to place that outstanding program in its live time once the spot becomes available. In no instance, however, has NBC ever forced us to move our clients in order to make way for one of the network shows.

Although KOMU–TV is sold optionally, I feel most definitely that NBC should be allowed to maintain its basic station lineup. The basic stations in the more populous areas are necessary to attract advertisers to the entire network. Without these advertisers there could be no Program Service Plan and no PEP plan. Much of the cost of the latter is borne by NBC, and these expenditures are made possible by the revenue received from the sale of network time in the larger, basic markets.

NBC pioneered network broadcasting nearly 30 years ago. One of the early books on broadcast history, This Thing Called Broadcasting, by Goldsmith and Lescarboura, commented, concerning network programing: "* * * the Nation at last could have a quick and awakening knowledge of the activities of the Government and of great national events."

Their prophecy was accurate but incomplete concerning the significant role chain broadcasts were destined to play in our lives. All of us remember most vividly how the late President Roosevelt instituted his famous fireside chats to bring courage and hope to a desperate, depression-burdened Nation. Network broadcasting kept us informed during the harried, hectic days of Munich, Warsaw, and Dunkirk, and united 140 million of us as one great family that dismal Sunday that was Pearl Harbor back in 1941. Network broadcasting, we all recall, played a tremendous part in the unification of our war effort.

Shortly after World War II, NBC began to pour money into the development of nationwide television. Despite heavy losses, this network continued all efforts to develop the infant industry. NBC was joined by the other networks, who saw in TV a tremendous potential for news, special events, entertainment, education, enlightenment, and culture. They brought us great political conventions, let us meet our world leaders face to face, permitted us to witness nuclear bomb blasts, gave us ringside seats at history-making events through such programs as Meeting at the Summit. They introduced us to Peter Pan, and The Devil's Disciple, showed us how charming opera and ballet can be, permitted us to sit in on interviews with personalities in the headlines, acquainted more of us with Shakespeare in one telecast of Richard III than had previously seen the Bard's plays in 350 years. They developed television in the United States into the greatest communications medium ever known to man.

I believe this great industry that plays such an important part in our national life today faces a crisis. In my estimation, the contemplated changes in network structure would destroy the networks as we now know them. Without networks our present system of transcontinental television would disappear. If this system disappears, large numbers of the Nation's TV stations would be obliged to close, and many of the 37 million viewers would face the prospect of darkened video screens.

Mr. LAMBERT. I will boil this down for you. Much of what I have to say has been——

Senator PASTORE. May we have quiet, please?

Mr. LAMBERT. Has already been covered.

KOMU-TV is owned by the University of Missouri. What I say today, however, is my own opinion and doesn't represent the university. I am general manager of that station, director of television for the university.

The station is an NBC primary affiliate sold on an optional basis, and we have ABC secondary. We have had fine relationships with all the networks, but today I want to speak mainly of NBC.

I think one thing that hasn't been brought out is the tremendous helping hand that has been given by the networks to stations of our size. We cover an area of 403,000 people, mid-Missouri; that area was never served before by television, or was fringe reception from Kansas City and St. Louis. But for the most part it was not served. Today it has fine signals from two stations—ours, and another station in Jefferson City on CBS. But from the very beginning NBC was extremely helpful to us and made it possible for us to get on the air with their helping hand. For example, there were about 18,000 sets in the area when NBC made it possible for us to have interconnected television. I am sure they went in there at a tremendous loss. They are just about breaking even today. They brought television to that area because they felt it should be there. I just want to say in passing here that it has been a tremendous thing for the people in that area. Some of the people in rural homes, and so forth, have been able to see things that they never envisioned that they would ever see in their lifetimes, I am sure.

Before our set count was large enough to attract advertisers sponsoring shows that we felt the area would like, NBC also was cognizant of the fact that the area should have these programs. And many times they made certain that we would have these shows. For example, in the fall of 1954, the Hall of Fame was presenting Macbeth. Being an educational area, they felt we should have that show, and they went to great length to get it for us and made it possible for us to have it. The next year the sponsor ordered the show. We have had many, many compliments on it.

As has been pointed out, I think it is extremely significant that NBC has made arrangements with all of its optional stations whereby these stations, either through the commendable Program Service Plan or through the famous PEP plan, may present most of the outstanding programs on the NBC schedule. No one has mentioned the fact that the PEP plan is presented largely at NBC expense. This does not cost the stations. They get the regular rate; the difference is made up by NBC. That ties in with everything else, the basic stations that make this possible. Without the basic stations to foot that share of the bill, the PEP plan would not be possible.

Many of the blasts at present network structure are aimed at the so-called network-option periods. These critics, it seems to me, fail to recognize that the option periods are as important to the participating stations as they are to the networks. The stations have reasonable assurance that their network will supply quality programs during these option times.

This has been stressed, but I do want to emphasize one thing about this, and that is that this network-option time is the framework around which we can build our programs. It is a real boon to the program director, because he has substantial structure there around which to plan the rest of his programing. Actually, I don't know what in the world he would do without it. Most important of all, from the affiliate's standpoint, is the importance of adjacencies to these network programs, the most salable time periods that the average television station has to offer. And also significant here: In most instances even the sponsors buying the first-class film properties will insist on network adjacencies. I want to emphasize that these adjacencies are the lifeblood of television stations, and without them a large share of the stations would cease to exist. And it has been emphasized, and I want to reiterate, that without the option time the network would be unable to offer national sponsors assurance that their programs would be shown on a substantial number of outlets.

KOMU-TV has been fortunate in that NBC has been liberal with us in regard to option periods· We recognize it is a two-way street. We try to clear—every time we possibly can, that is—but NBC in no instance has ever forced us to clear and made us jeopardize our clients.

I want to say, also, for the record here—it is in my presentation—that I do think that it is important to keep the basic station lineup. The basic stations in the more populous areas are necessary to attract advertisers to the entire network. That has been emphasized, but I do think it is important.

The thing that I do think, and this is generalizing here, that we must keep in mind that this television network structure, as we have it today, is in jeopardy if option time or the basic station structure is changed. And personally I feel that much of our national welfare is dependent upon our being one large family through these networks. And, even as it was back in the depression with raido networks, it is even more important in this day of the atomic age that we have immediate contact, and I see or feel that it woud not be possible without networks as we know them today.

Senator PASTORE. Thank you very much, sir.

Mr. COX. Will you supply us with the scheduling for your program?

Mr. LAMBERT. Sure, be glad to.[16]

[16] The program schedule was furnished later and is printed in the appendix at p. 3025.

Senator PASTORE. Mr. Wagstaff?

Mr. WAGSTAFF. I would like to read excerpts, Mr. Chairman, and I will be——

Senator PASTORE. The statement will be made part of the record and you can read whatever excerpts you think may be of interest to these two Senators.

(The complete statement of Mr. Wagstaff follows:)

STATEMENT OF WALTER E. WAGSTAFF, VICE PRESIDENT KIDO-TV, BOISE, IDAHO

Mr. Chairman, and members of the committee, my name is Walter E. Wagstaff, and I reside in Boise, Idaho. I am vice president, general manager, and part owner of radio station KIDO and television station KIDO-TV, Boise, Idaho. Station KIDO-TV has been on the air for approximately 3 years and is affiliated with the National Broadcasting Co. and the American Broadcasting Co.

I welcome the opportunity to appear before this distinguished committee, as I know that there are problems in network-affiliate relationships which are peculiar to those stations which are as yet noninterconnected, and which serve secondary markets. I believe that an exposition of these problems will be useful to the purposes of this committee.

Some 2 years ago I was elected by the noninterconnected stations affiliated with the National Broadcasting Co. to serve as their representatives on the NBC-TV Affiliates' Committee, and in that capacity I have met once with the officials of the National Broadcasting Co. and have had the thinking of many noninterconnected stations. Through this, I believe I have more than average knowledge of the problems peculiar to the noninterconnected stations in secondary markets. However, I appear today solely as a representative of KIDO-TV, and the content of my testimony has been neither suggested nor influenced by any group of stations or any network organization.

There has been testimony put before this committee which would indicate that the option time agreements, as they exist between networks and affiliated stations, tend to stifle or at least hamper the development of smaller-market television. There have been public utterances by government officials which would tend to support this premise. There have been official and semi-official opinions expressed that option time agreements between networks and affiliated stations make it difficult or impossible for local, regional, and national spot advertisers to secure desirable time for the release of their programs and that, as a consequence, many smaller markets which are now without television will continue to be without television because the non-network advertiser is withheld from participating in the development of smaller-market television.

My opinion, based on experience, is that the exact opposite is true. KIDO-TV serves an area in which reside approximately 68,000 families. Another station in Boise, KBOI-TV, serves approximately the same area. By the rule-of-thumb judgments which existed in the early days of television, it was thought that a market of this size could not support one television station, much less two. I speak for myself and the other owner in our company when I say that we would have been very hesitant indeed to undertake a television operation in Boise if there had not been strong hope of getting a network affiliation. I am sure that this is also true of our competitive station, which is affiliated with CBS. Network affiliations have fostered, rather than hampered, the development of television in the smaller markets.

As to the hypothesis that the network option-time agreements shut out the local, regional, or national sponsor who is seeking desirable program time, again the opposite is true in my opinion. KIDO-TV has many good syndicated film programs and live local programs on its schedule, sponsored by nonnetwork advertisers. So does KIDO-TV's competition, KBOI-TV. I know of no single advertiser wanting desirable program time in the Boise market who has been unable to secure it on one or both of the stations. On the other hand, I am certain that there are many nonnetwork advertisers sponsoring good programs in our market which would not be doing so if the stations had no network affiliations. The network programs have bolstered and strengthened the schedules of both stations so that these stations become desirable buys from the point of view of the advertiser. Without network programs, I am certain that we would have far less TV sets in the area and fewer of the nonnetwork advertisers which have sponsored, or are sponsoring, such programs as Victory at Sea, Corliss

Archer, Highway Patrol, Halls of Ivy, Badge 714, I Led Three Lives, Celebrity Playhouse, local news, and others too numerous to mention.

The option time arrangement is a very necessary part of this development. If the networks are to develop good programs and make them available to as many United States families as possible, they must have assurance of time clearances and must have established relationships with stations serving all parts of the country. If the networks did not have these relationships, established by contract, and had to "dicker" for time periods and outlets, they would soon be nothing more than time brokers and the vast reservoir of creative resources which the networks possess would soon be nonexistent.

I have read with considerable interest the testimony introduced by Mr. Richard Moore; I respect Mr. Moore as a sound thinker and a highly competent broadcaster but am at odds with some of the theories which he propounds, particularly his attack on option time agreements and must-buy stations. To remove these arrangements would be to compound the very evils that Mr. Moore seeks to correct. It would put American television largely at the mercy of the pick-and-choose advertiser.

Fears have been expressed that stations over the country might evade their local responsibilities by just "riding the network" and becoming nothing more than a network outlet. There is little danger of this in the smaller markets. To use KIDO–TV as an example, the basic rate at which our station is sold to a network advertiser is $200 per hour. KIDO–TV is compensated by NBC and ABC at 25 percent of this basic rate. In short, we receive $50 per hour for our time when we are carrying network progams. By actual computation, it costs us $104.50 per hour to operate. Obviously, just "riding the network" is the short path to financial suicide for the station located in the smaller market. Network revenue accounts for but 12.6 percent of KIDO–TV's income.

From the foregoing it will be seen that network commercial programs are important to the smaller-market station as a programing source, not as a source of revenue. However, it should be interjected here that the adjacencies to the better network shows are much sought after by advertisers, and thus network commercial programs are indirectly a source of additional station income. But it is as a program source, not as a revenue source, that networks play a vital role in the development of small-market TV. The networks can initiate certain types of programing that just simply can't be done on a scale to make it generally available by anyone else—news and special event coverage—the spectacular, etc.

In some cases, a single network production—a one-time shot, if you please—costs more in dollars and cents than many stations have as their total investment. Take away assurance of time clearances, and the Peter Pans and Amahls are taken away along with coverage of the national political conventions. We couldn't turn to the film companies for this type of programing. The film companies perform a vital service to television. Indeed it would be just about impossible for the average station to get along without them. But they serve in one area and the networks serve in another. Certainly there is room for both—in fact, neither could replace the other. So it seems absurd to argue about whether we should have one or the other. Deteriorate either one, and American television would shrink tragically in stature and power to serve.

As I have clearly indicated, I believe firmly that the networks must have established contractual relationships with local stations and must have option time if they are to continue to play the vital role in the maintenance and further development of American television that they are playing today. However, if the networks are to have these prerogatives, it seems to me that they have concomitant responsibilities. Unfortunately, too many fine network programs are distributed over the country in accordance with the needs of the advertisers rather than in accordance with the needs of the public. Programs such as Nightmare in Red, Peter Pan, King Rich III, Sadler's Wells Ballet should be available to every family which has a television set. It is a crying shame that in relationship to programs of such stature there are still many have-not areas of the country. The American people hunger for this type of programing and that hunger is just as acute in Squeedunk as in New York City, probably more so.

The point is made by the networks that their basic station lists cover 80 percent of the television homes of the country. In America, we do not confine education or the right to vote to 80 percent of the people. No more should the television programing of the type beyond the capacities of local stations be confined to 80 percent of the people. I hope the day is not far hence when there will be no longer any such thing as eligibility lists of American TV listeners. As it is now, the people get to see certain programs only if they happen to live in a market of over 100,000 sets, other programs only if they happen to live in a market of over 250,000 sets, and so forth.

Obviously, it is often impractical and uneconomic for a particular advertiser to buy every market in the country, but it seems to me essential that the network-advertiser relationship and network-affiliate relationship be worked out in such a way that the networks make these outstanding programs available to those areas which do not fit the advertiser's distribution pattern as well as to the areas which do. There are no legal compulsions on the advertiser, the network, or the station to bring the programs of the type I have mentioned to all of the American people. But there is a high moral responsibility; and, until the ways and means are found to bring the finest programs to everyone, rather than just those who by virute of geographical location are on the elibibility lists, those who hold stewardship of the airways will not be fully measuring up to their responsibilities to the public.

Some attempts have been made to provide certain commercial programs to areas not desired by the advertisers, but the programs so made available thus far have been a fractional percent of the whole, and have not included the great cultural efforts typified by some of the programs I have named.

The networks have done a monumental job of program production. There is a crying need for a better job of program distribution. Certainly, the elimination of affiliation contracts and option time is not the solution to this phase of our problem. The only fault that I can find with the must-buy list of stations is that it is too small. I often wish that KIDO–TV were on it. Probably it will never be practical for the networks to expand their must-buy lists to cover the entire Nation. Lacking this, it is vital that the way be found to eliminate the have-not areas which now exist in relationship to the finest network programing.

In conclusion, let me reaffirm my conviction that small-market television will develop faster and go further with the help of the networks than it could possibly do without the networks.

KIDO–TV, after only 3 years on the air, is now building a new transmitting plant to be operated on maximum power which will make television available to farmers and ranchers in the mountains and valleys of Idaho where a few years ago such service was unthinkable. Up to now, our profits could be described as microscopic, but we feel sure that eventually we shall receive a fair return on our effort and investment and that in the meantime we shall be rendering a service of incalculable value to our area.

Mr. Chairman and gentlemen of the committee, I again thank you for this opportunity to place these views before you.

Mr. WAGSTAFF. I represent a noninterconnected station.

My name is Walter E. Wagstaff. I reside in Boise, Idaho. I am vice president, general manager, and part owner of radio station KIDO and television station KIDO–TV, Boise, Idaho.

KIDO–TV serves an area in which reside approximately 68,000 families. Another station in Boise, KBOI–TV, serves approximately the same area. By the rule-of-thumb judgments which existed in the early days of television, it was thought that a market of this size could not support one television station—much less two. I speak for myself and the other owner in our company when I say that we would have been very hesitant indeed to undertake a television operation in Boise if there had not been strong hope of getting a network affiliation. I am sure that this is also true of our competitive station, which is affiliated with CBS. Network affiliations have fostered rather than hampered the development of television in the small markets.

I know of no single advertiser wanting desirable program time in the Boise market who has been unable to secure it on one or both stations. On the other hand, I am certain that there are many non-network advertisers sponsoring good programs in our market which would not be doing so if the stations had no network affiliations. The network programs have bolstered and strengthened the schedules of both stations so that these stations become desirable buys from the point of view of the advertiser.

Fears have been expressed that stations over the country might evade their local responsibilities by just "riding the network" and becoming nothing more than a network outlet. There is little danger of this in the smaller markets. To use KIDO–TV as an example, the basic rate at which our station is sold to a network advertiser is $200 per hour. KIDO–TV is compensated by NBC and ABC at 25 percent of this basic rate. In short, we receive $50 per hour for our time when we are carrying network programs. By actual computation, it costs us $104.50 per hour to operate. Obviously, just "riding the network" is the short path to financial suicide for the station located in the small market. Network revenue accounts for but 12.6 percent of KIDO–TV's income.

Mr. Cox. How much is accounted for by the spots which you sell adjacent to that?

Mr. Wagstaff. I haven't made an analysis of that. Approximately 40 percent of our income is national spot and these network adjacencies are very much sought after.

As is stated on the next page, it should be interjected here that the adjacencies to the better network shows are much sought after by advertisers, and thus network commercial programs are indirectly a source of additional station income.

As I have clearly indicated, I believe firmly that the networks must have established contractual relationships with local stations and must have option time if they are to continue to play the vital role in the maintenance and further development of American television that they are playing today. However, if the networks are to have these prerogatives, it seems to me that they have concomitant responsibilities.

Unfortunately, too many fine network programs are distributed over the country in accordance with the needs of the advertisers rather than in accordance with the needs of the public. Programs such as Nightmare In Red, Peter Pan, King Richard III, and Sadler's Wells Ballet should be available to every family which has a television set. It is a crying shame that in relationship to programs of such stature there are still many have-not areas of the country. The American people hunger for this type of programing, and that hunger is just as acute in Squeedunk as in New York City—probably more so.

The point is made by the networks that their basic station lists cover 80 percent of the television homes of the country. In America, we do not confine education or the right to vote to 80 percent of the people. No more should the television programing of the type beyond the capacities of local stations be confined to 80 percent of the people.

The networks have done a monumental job of program production. There is a crying need for a better job of program distribution. Certainly, the elimination of affiliation contracts and option time is not the solution to this phase of our problem.

The only fault that I can find with the must-buy list of stations is that it is too small. I often wish that KIDO–TV were on it. Probably it will never be practical for the networks to expand their must-buy lists to cover the entire Nation. Lacking this, it is vital that the way be found to eliminate the have-not areas which now exist in relationship to the finest network programing.

In conclusion, let me reaffirm my conviction that small-market television will develop faster and go further with the help of the networks than it could possibly do without the networks.

Senator PASTORE. Senator Magnuson?

(Indicated no questions.)

Senator PASTORE. Senator Wofford?

(Indicated no questions.)

Senator PASTORE. Mr. Cox?

Mr. COX. Mr. Wagstaff, since you are not an interconnected station, all of the programs which you carry, even those from the networks, are made available to you either in film or kinescope form?

Mr. WAGSTAFF. Right.

Mr. COX. You therefore are able to place these programs in a completely different arrangement than they would have arrived to you if you were interconnected and to program in a way in which you think fits best the local viewing habits of the people in Boise?

Mr. WAGSTAFF. That is true.

Mr. COX. Now, when you are interconnected and receiving programing live from the networks, there will be a 2-hour differential between you and the source of origin of those shows, if they reach you from New York.

Mr. WAGSTAFF. Yes.

Mr. COX. Isn't it true that most of the stations in the mountain zone do broadcast on that 2-hour differential?

Mr. WAGSTAFF. Yes.

Mr. COX. Will not that possibly pose a problem by putting programs in undesirable times in your market unless, again, you make a kinescope and broadcast them on a delayed basis?

Mr. WAGSTAFF. Certain programs, yes, it will pose a very definite problem.

Mr. COX. Now, as I understand it, you have the choice, in your programing, among programs from NBC, ABC, and syndicated producers, plus your own local programing efforts?

Mr. WAGSTAFF. Yes.

Mr. COX. Now, would it be fair to say that among the top-rated shows which you carry on your station, about half is represented by the programs of the networks—the two with which you have affiliations—and the other half by syndicated programs?

Mr. WAGSTAFF. About half and half, yes.

Mr. COX. Thank you.

The CHAIRMAN. Just one question. Is anyone in the Boise area picking up your station with boosters?

Mr. WAGSTAFF. No.

The CHAIRMAN. You have answered my question.

Mr. WAGSTAFF. It has been suggested, but it hasn't been accomplished.

Mr. COX. Will you supply us with the program schedule data?

Mr. WAGSTAFF. Yes, sir.[17]

Senator PASTORE. Thank you. Mr. Thomas Gilchrist.

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[17] The program schedule was provided later and is printed in the appendix at p. 3026.

STATEMENT OF T. S. GILCHRIST, JR., GENERAL MANAGER, WJHP AM-FM-TV, JACKSONVILLE, FLA.

Mr. GILCHRIST. Since December 1953, I have been operating WJHP-TV, a UHF television station owned by the Jacksonville Journal Co. I also supervise the operation of WJHP radio, Jacksonville; WTMC radio, Ocala, Fla.; and WESH-TV, a nonaffiliated TV station which went on the air June 11, 1956, in Daytona Beach, Fla.

WJHP-TV operates with visual power of 276,000 watts, channel 36. Our principal network affiliation is with NBC, with secondary affiliation with ABC.

A VHF station, which operates on channel 4 at maximum power, had been in operation several years before the start of our station, and until WJHP-TV was established, was the only television service between Miami and Atlanta. Its primary network is CBS and with first call on programs from ABC.

Our station claims coverage of some 9 northeast Florida and southeast Georgia counties within a radius of approximately 45 miles from Jacksonville. Channel 4 claims coverage over a radius some 4 times ours, in a rough circle that swings from Savannah, Ga., almost to Tampa, Fla.

While WJHP-TV is an optional buy on the NBC and ABC networks, NBC has given us the Today, Home, and Tonight programs on a must-buy basis, adding much to our program lineup.

Through the combined efforts of the station relations, sales, and sales service people in the networks and our own New York personnel, we have developed a very substantial program schedule which permits us to operate from 7 in the morning until 1 a. m., Monday through Friday, with somewhat shorter hours Saturdays and Sundays.

Although the two networks have been most cooperative—particularly NBC—and our program schedule is resplendent with excellent programs, we remain definitely the second station in a two-station market. In most instances, despite our 90 percent conversion, only a few of our programs have been able to compete with the ratings enjoyed by the channel 4 competitor. This is because we are UHF.

Even though our power is substantial—and has been since the start of our station—and the height and location of the towers of the two stations are similar, it is definitely more difficult to enjoy good reception on UHF. If the converter and UHF antenna are properly installed in exactly the right spot, and the badly overloaded UHF receiving tubes hold out, and the natural forces of wind and rain and season are just right, and the viewer has the patience and time and ability to tune his set exactly, he will receive a substantially superior picture on UHF.

Senator PASTORE. In other words, it is possible.

Mr. GILCHRIST. Sometimes, Senator.

Senator PASTORE. All right, sir.

Mr. GILCHRIST. So despite the fact that the American public will pay almost anything for something they want, while grumbling mightily over the price of something they need, they also prefer those things which are easier to operate, and grow impatient with the difficult—especially when the simple is available. For this reason, WJHP-TV and the networks have suffered lower ratings and lower revenues through their UHF venture, despite serious and sincere intent and effort.

If any affiliate has been at the mercy of the network, it most assuredly has been the UHF station. Yet I can offer only praise for the co-operation we have received. Many of the difficulties which may have been expressed by stations have stemmed solely from the clash of personalities and the method of approach and external problems.

During the recent political campaigns in Florida, for instance, we prempted a number of commercial network programs in option time to carry political talks. In all my years in radio and TV, I have never had a strenuous objection, or a threat, either real or implied, when we canceled a network program to make way for a football game or political address, or any other local program we considered to be of prime local importance. And our Ocala radio station is an NBC "bonus" station enjoying far less status than regular affiliates.

Although I have found the networks liberal in the matter of option hours, I feel that option hours are a necessary feature of an affiliation contract. This tenet also offers protection to the network when needed, strengthens the moral obligation of the affiliate, and at times would serve as a protection to the station when a network might want time out of option hours.

Our new TV station in Daytona Beach is presently not affiliated with any network. We are negotiating with both NBC and ABC and both have expressed some interest, although our present operating power on channel 2 is only 5,000 watts e. r. p. and channel 6 is but 50 or 60 miles distant with 100,000 watts. But, in the midst of all of the local enthusiasm over the new station in Daytona Beach, the No. 1 question on the lips of the people there is, "How soon do you begin to get the network programs?"

Our contracts with both networks contain 90-day cancellation clauses. When channel 12 is finalized there promises to be tremendous client pressure for a mass exodus of network and film shows from channel 36 to channel 12. Since NBC is the larger, it will probably go to the new station. ABC programs will fill out the schedules on both stations. And since more network advertisers will desire the Jacksonville market when peak period VHF time is available, there will be only moderate increase in the need for film and local programs, and not much change in rates.

However, if 3 VHF stations are established—as we hope will be—there will be 1 station for each network and substantial time and need for film and local live programing on all 3 stations.

Mr. Cox. That would involve the proposal of deintermixture that you have made?

Mr. Gilchrist. Yes, sir—the many proposals, sir.

As competition for advertising and audience increases, there will be a level off in rates—we now ask a national spot rate of $300 per hour while channel 4 charges $700. There will also be substantial improvement in program material and methods of operation.

I should like to say that much of what has been proposed to this committee is that you create some special privilege for special interests but that you maintain a regulated monopoly. This is contrary to the American way of free enterprise, and tends to stifle imagination, ambition, and ingenuity—the very forces upon which TV is built. Mr. Kintner has told you that his network has difficulty clearing peak viewing time in many cities. There have been statements by Mr. Moore and others that local and regional advertisers and film producers cannot find adequate time in many of the top markets. That may be so and, if true, it's simply because there are not enough equally competitive television stations in many cities. While our VHF competitor may have difficulty in finding a good half-hour period or even a 10-second availability, I know where prime class A time can be cleared quickly in Jacksonville.

The entire trouble with television today lies in one, and only one, place. There aren't enough equally competitive stations to go around. There is a sellers' market resulting in a monopoly, which if continued, with or without Government regulation, will result in a stale and decadent service which the American public will reject, just as it will reject pay-see television. Most of America's greatness can be attributed wholly to the American competitive spirit, kept as free as possible of external regulation.

There is really nothing or little wrong with the basic network operation, and nothing wrong with television in general, that immediate action in creating more stations with more equal opportunity of acceptance by the public will not solve.

Senator PASTORE. Thank you very much, Mr. Gilchrist. We have one more witness, Mr. Harold Stuart.

Mr. COX. You will send us the schedule, will you, Mr. Gilchrist?

Mr. GILCHRIST. Yes, I will.[18]

(The prepared statement of Mr. Gilchrist is as follows:)

STATEMENT OF T. S. GILCHRIST, JR., GENERAL MANAGER, STATION WJHP, AM-FM-TV, JACKSONVILLE, FLA.

Since December 1953 I have been operating WJHP-TV, a UHF television station owned by the Jacksonville Journal Co. I also supervise the operation of WJHP radio, Jacksonville; WTMC radio, Ocala, Fla.; and WESH-TV, a nonaffiliated TV station which went on the air June 11, 1956, in Daytona Beach, Fla.

WJHP-TV operates on channel 36 with visual power of 276,000 watts ERP. Our principal network affiliation is with NBC, with secondary affiliation with ABC.

A VHF station, which operates on channel 4 at maximum power, had been in operation several years before the start of our station, and until WJHP-TV was established, was the only television service between Miami and Atlanta. Its primary network is CBS, and it has first call on programs from ABC.

Our station claims coverage of some 9 northeast Florida and southeast Georgia counties within a radius of approximately 45 miles from Jacksonville. Channel 4 claims coverage over a radius some four times ours, in a rough circle that swings from Savannah, Ga., almost to Tampa, Fla.

We claim to have approximately 90 percent of the television homes in Duval County equipped to receive the UHF signal and a lesser percentage in the adjacent and outlying counties. We have attained this high percentage of conversion because our station started operation at substantial power, enjoyed strong publicity support from our radio and newspaper affiliates, were adequately financed to withstand the losses which resulted from full-time operation—and because we were able to offer the public programs they wanted. The programs they wanted most were network programs and to this day, audience surveys indicate that network programs are still the public preference, although some syndicated film programs have done quite well, especially when placed between, or adjacent to, complementary network fare.

From the beginning of operation, we enjoyed some programs from both NBC and ABC, although channel 4 had first call on both. Within the first year, NBC offered us first call on all of their programs, despite vigorous protests from some

[18] The program schedule was furnished later and is printed in the appendix at p. 3029.

of their clients who preferred delayed playbacks in less than peak audience periods on the VHF station to live periods on a UHF station. In the 1954 World Series, NBC was forced to bend to an exceedingly strong client, and outside pressures, and make the games available to both stations in Jacksonville. In the 1955 series, the network stood firmly, giving the telecast only to WJHP-TV, with the result that UHF conversions took a substantial upward swing.

While WJHP-TV is an optional buy on the NBC and ABC networks, NBC has given us the Today, Home, and Tonight programs on a must-buy basis, adding much to our program lineup.

Through the combined efforts of the station relations, sales and sales service people in the networks and our own New York personnel, we have developed a very substantial program schedule which permits us to operate from 7 until 1 a. m., Monday through Friday; with somewhat shorter hours Saturdays and Sundays.

Although the two networks have been most cooperative—particularly NBC—and our program schedule is resplendent with excellent programs, we remain definitely the second station in a two-station market. In most instances, despite our 90-percent conversion, only a few of our programs have been able to compete with the ratings enjoyed by the channel 4 competitor. This is because WJHP-TV is UHF.

Even though our power is substantial, and the height and location of the towers of the two stations are similar, it is definitely more difficult to enjoy good reception on UHF. If the converter and UHF antenna are properly installed in the exactly correct spot, and the badly overloaded UHF receiving tubes hold out, and the natural forces of wind and rain and season are just right, and the viewer has the patience and time and ability to tune his set exactly, he will receive a substantially superior picture on UHF.

So despite the fact that the American public will pay almost anything for something they want, while grumbling mightily over the price of something they need, they also prefer those things which are easier to operate, and grow impatient with the difficult—especially when the simple is available. For this reason, WJHP-TV and the networks have suffered lower ratings and lower revenues through their UHF venture, despite serious and sincere intent and effort.

If any affiliate has been at the mercy of the network, it most assuredly has been the UHF station. Yet I can offer only praise for the cooperation we have received. Many of the difficulties which may have been expressed by stations have stemmed solely from the clash of personalities—and the method of approach; and external problems.

I have never found the networks resorting to pressure, even to the degree to which we are all accustomed in normal business. For many months we have declined to carry the Tennessee Ernie program for NBC because one client has so far refused to order our station for his daily half hour of the program, and the technical problems of blanking out that client's commercials, as delivered by the star, are such that we feel it would look bad on WJHP-TV. The network has asked us about the carrying of the program on a number of occasions. We have always declined for the same reason, and the network people have always merely said that they hoped it could be worked out soon.

Network option hours have never been a serious problem to us. We have preempted network commercial program for local programs we considered more desirable to our viewers on numerous instances. Both networks have accepted delayed playback periods for programs when we declined to clear, without questioning why, or if our refusal was within the bounds of the contract. However, we generally try to clear the live time for a network program because network programs are our very best audience builders.

During the recent political campaigns in Florida, for instance, we preempted a number of commercial network programs in option time to carry political talks. In all my years in radio and TV, I have never had a strenuous objection, or a threat, either real or implied, when we canceled a network program to make way for a football game or political address, or any other local program we considered to be of prime local importance. And our Ocala radio station is a bonus station enjoying far less status than regular affiliates.

Although I have found the networks liberal in the matter of option hours, I feel that option hours are a necessary feature of an affiliation contract. This tenet also offers protection to the network when needed, strengthens the moral obligation of the affiliate—and at times would serve as a protection to the station when a network might want out of option time.

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Our new TV station in Daytona Beach is presently not affiliated with any network. We are negotiating with both NBC and ABC and both have expressed some interest, although our present operating power on channel 2 is only 5,000 watts ERP and channel 6 is but 50 or 60 miles distant with 100,000 watts ERP. There are some technical, and possibly some legal, problems to be worked out. but they are being negotiated. But in the midst of all of the local enthusiasm over the new station in Daytona Beach, the No. 1 question on the lips of the people there is "How soon will we begin to get the network programs." To the public today, the network is the leader, the best, and the most desirable in television. There are some good syndicated film shows that they enjoy very much, but even the best do not compare with the overall desirability of the network programs.

Our contracts with both networks contain 90-day cancellation clauses. When channel 12 is finalized there promises to be tremendous client pressure for a mass exodus of network and film shows from channel 36 to channel 12. Since NBC is the larger it will probably go to the new station. ABC programs will fill out the schedules on both stations. And since more network advertisers will desire the Jacksonville market when peak period VHF time is available, there will be only moderate increase in the need for film and local programs, and not much change in rates.

However, if 3 VHF stations are established, there will be 1 station for each network and substantial time and need for film and local live programing on all 3 stations. As competition for advertising and audience increases, there will be a level-off in rates—we now ask a national spot rate of $300 per hour while channel 4 charges $700. There will also be substantial improvement in program material and methods of operation.

I should like to say that much of what has been proposed to this committee is that you create some privilege for special interests but that you maintain a regulated monopoly. This is contrary to the American way of free enterprise, and tends to stifle imagination, ambition, and ingenuity—the very forces upon which TV is built. Mr. Kintner has told you that his network has difficulty clearing peak viewing time in many cities. There have been public statements that local and regional advertisers and film producers cannot find adequate time in many of the top markets. That may be so and if true it's simply because there are not enough equally competitive television stations in many cities. While our VHF competitor may have difficulty in finding a good half-hour period, or even a 10-second announcement period, I know where prime class A time can be cleared quickly in Jacksonville.

The entire trouble with television today lies in one, and only one, place. There aren't enough equally competitive stations to go around. There is a sellers' market resulting in a monopoly, which if continued, with or without Government regulation, will result in a stale and decadent service which the American public will reject, just as they will reject "Pay See" television. Most of America's greatness can be attributed wholly to the American competitive spirit, kept as free as possible of external regulation.

There is really little wrong with the basic network operation, and nothing wrong with television in general, that immediate action in creating more stations with more equal opportunity of acceptance by the public will not solve.

Senator PASTORE. Identify yourself for the record, please.

Mr. STUART. Yes, sir. I am Harold C. Stuart, executive vice president of KVOO radio and KVOO television, Tulsa, Okla. I asked the opportunity to appear and testify and was advised, because of the great number of witnesses, you wouldn't reach me today. Consequently, I do not have presently a written statement. I will prepare one and submit it for the record.

Senator PASTORE. We will keep the record open at this point for the insertion that you can send in.

(The statement of Mr. Stuart was submitted later and again ordered inserted in the record on July 17, 1956. It is as follows:)

STATEMENT OF HAROLD C. STUART, VICE PRESIDENT, KVOO-TV, TULSA, OKLA.

My name is Harold C. Stuart. I am presently executive vice president and director of KVOO-AM and KVOO-TV, Tulsa, Okla. On June 20, 1956, your committee invited me to submit a statement concerning KVOO–TV supplementing my brief oral statement.

I am a partner in the law firm Doerner, Rinehart & Stuart, in Tulsa, Okla., and Doerner, Rinehart, Stuart & Clammer, in Washington, D. C. From 1949 to 1951 I served as Assistant Secretary of the Air Force. Thereafter, I commenced the active practice of law in Washington, D. C.

I became interested in television in the fall of 1951, assisting in the preparation and presentation of the application, before the Federal Communications Commission, for KVOO–TV (Central Plains Enterprises, Inc.). After receiving the construction permit I became actively associated with this station as executive vice president and have returned to Tulsa to assume these duties.

The president of KVOO–AM and KVOO–TV is W. G. Skelly, president of Skelly Oil Co., who for 24 years was Republican national committeeman from Oklahoma. He has long been extremely active in all civic and community affairs and for nearly 30 years has been the owner and operater of the first radio station in Oklahoma (KVOO–AM).

Serving as the chairman of the board of directors is D. A. McGee, president of the Kerr-McGee interests. Other officers and other directors include Senator Robert A. Kerr, vice president and a director; Dr. Oliver Wilheim, president of Oklahoma A. and M. College, Stillwater, Okla., director; and Dr. C. I. Pontius, president of Tulsa University, a director.

We received our construction permit from the Federal Communications Commission in July 1954 and went on the air in December 1954, utilizing temporary studios and tower. Early in the spring of 1955, when the delivery of our equipment was completed, we commenced operating with maximum power.

From the outset, the stockholders determined to give to the viewing public the finest programs possible and to serve not only the metropolitan area of Tulsa but the rural and small community areas in eastern Oklahoma. With this in mind, and in order to secure the fullest cooperation of the universities and educational institutions in the area which we would serve, we donated stock to both Oklahoma A. and M. College and Tulsa University and elected the two presidents of these institutions to our board of directors. In addition, we formed a program planning board consisting of the following committees: Labor programing, area development programing, agricultural programing, youth activities programing, community welfare programing, health programing, civic and governmental programing, university programing, high-school and elementary school programing, religious programing, fine arts and music programing, and national affairs programing.

For the members of these committees we selected outstanding representatives in their respective fields of endeavor to serve and to advise, recommend and assist our manager and program staff in telecasting programs of the greatest public interest and need. These committees have actively assisted us in affording the listening public in our service area the best programs in the public interest. Our program department meets with these committees periodically and they recommend additions, deletions and modifications of our programs.

Prior to going on the air, we discussed with officials of ABC, CBS, Du Mont, and NBC the feasibility of affiliating with them. After receiving our construction permit we negotiated a contract with NBC. Both CBS and ABC have affiliates in the Tulsa area, both of which are VHF television stations operating at maximum ERP. Thus, Tulsa and eastern Oklahoma have three VHF television stations operating at maximum power who are affiliates of the three major networks.

Although we are a basic NBC affiliate and utilize most of the network programs available to us, there have been quite a few occasions when, in the local public interest, we have rejected network programs in favor of local originations. We have never had any problem or complaint from NBC in taking these actions. All of our relations with NBC have been in the spirit of cooperation and in our joint effort to afford the best programs in the public interest for our listening audience.

We have found the network invaluable in its advice, assistance and suggestions in television programing, promotion, sales technique, engineering, and especially has NBC been helpful to us in the designing of our new radio and television studio in Tulsa. We have had numerous conferences, telephone calls and correspondence concerning lighting, soundproofing and designing both the radio and television studios.

Some question has arisen in other parts of the country suggesting the networks limit their option time in order to provide more local or film programing during the evening hours. In our opinion this would not be in the public interest and certanly would not be as pleasing nor as enjoyable to the listening audience. It would seem inconceivable that a local station in the Midwest could afford to, or with the talent available, present program on a regular and continuous basis as enjoyable or as interesting as those that are afforded by the networks. Certainly our costs would be tremendously increased. It has always been, and will continue to be, our desire to serve our area and to afford for them the best balanced, high type programing that we can. We believe that this purpose can be achieved by having network programs available to us.

Some suggestions have been made that we should be put in the position in which we would be required to purchase more independent syndicated film. Our experience in purchasing film has not been too satisfactory. We do negotiate and purchase most all of our film from the independent producers, but we find that we frequently must take less desirable film in order to get those which we desire. We are already searching for good film programs and have clients desiring such programs, but we have been unable to buy a sufficient amount of suitable film at prices we can afford to pay.

We think there is a definite requirement and need for good quarter-hour and half-hour film productions and our station could satisfy the requirement of some of our advertisers if such were available. We do have on our station desirable time for the presentation of such film.

We are opposed to toll television. We believe that the listening audience has been getting splendid educational, entertainment, sports, and other programs of national and local interest made available through advertising at no cost. To change this concept and require the public to pay for television programs, would not only be distasteful but would eventually deprive these people of the high-quality programs which they now have free and which is theirs for the turning of a dial. If toll television were permitted, we are convinced that it would adversely affect the programing quality of every television station and it would be impossible, in our opinion, to continue the type programs we now have.

Opponents of the networks have made suggestions which would limit network programing and destroy many of the fine programs which the networks are presently affording. It would seem to me that the answer to these opponents would be for them to organize one or more additional networks and demonstrate, if possible, that their programs would be superior to the present network systems.

In conclusion, we favor good clean competition. We believe that the networks have a very sincere desire to make their affiliate in each city the finest station possible and that our entire experience with NBC has always indicated that desire. We have no reason to believe that it will be otherwise in the future.

Senator PASTORE. You can make any observation you want.

Mr. STUART. In Tulsa, there are three operating VHF stations—all three major networks. There are two construction permits for UHF stations—they are not now on the air.

We are very happy and pleased with our relations with NBC. Prior to going on the air we discussed contracts with all three of the networks. The point I want to make and emphasize here is, in addition to the network programing, they have been extremely helpful to us in all forms of telecasting and also radio broadcasting. We are in the present position of building new studios out there. Their staffs—the people have been very helpful to us in discussing the construction, what we should put in it, our programing, our sales promotion, and everything else, all phases of television. We think that that is a service that we would not be able to get otherwise, and I certainly want to commend them and appreciate that help.

Senator PASTORE. Thank you very much, sir.

Mr. COX. Will you include in your statement, then, the schedule for the week of April 1 to 7, showing your sources?

Mr. STUART. Yes, sir.[19]

Senator PASTORE. This is off the record.

(Discussion off the record.)

[19] The program schedule was furnished later and is printed in the appendix at p. 3032.

Senator PASTORE. Thank you very much.
Recess subject to the call of the Chair.
(Whereupon, at 12:59 p. m., the subcommittee recessed to reconvene at the call of the Chair.)
(On July 17, 1956, statements or letters on network practices submitted by the following were inserted in the record:

Robert W. Ferguson, WTRF-TV, Wheeling, W. Va.
Les Biederman, WPBN-TV, Traverse City, Mich.
Walter J. Damm, WTMJ-TV, Milwaukee, Wis.
Harold P. See, KRON-TV, San Francisco, Calif.
Douglas L. Manship, WBRZ-TV, Baton Rouge, La.
David M. Baltimore, WBRE-TV, Wilkes-Barre, Pa.
Nathan Lord, WAVE-TV, Louisville, Ky.
Ralph J. McElroy, KWWL-TV, Waterloo, Iowa.

(Since these stations are affiliated with NBC, the statements and letters are printed at this point.
(There is also printed here the statement of William J. Moyer of KARD-TV, Wichita, Kans., which was received at a later date in accordance with arrangements referred to at p. 2733.
(These letters and statements are as follows:)

LETTER OF ROBERT W. FERGUSON

WHEELING, W. VA., *May 28, 1956.*

Hon. WARREN G. MAGNUSON,
Chairman, United States Senate Committee on Interstate and Foreign Commerce, Washington, D. C.

DEAR SENATOR MAGNUSON: This letter is prompted by my reading in the trade press testimony made before your committee by those who are interested in reducing the scope, service, and effectiveness of present network television operations.

Some of the statements made by various individuals against the network system, and in one instance against NBC specifically, are in wide variance with my own experience with NBC.

We have had a primary affiliation with NBC for almost 3 years. While we are not a must-buy we do carry almost 100 percent of their nighttime commercial schedule and about 72 percent of the daytime. We try to carry all of NBC's sustaining programs. Never in our relationship have they dictated about clearances, rates, etc. On the contrary they have been most helpful and every single department has shown genuine interest and concern about local operating problems; more recognition of the Wheeling market, and all of the other phases that are essential to good relationships and understanding between network and affiliate. It is this climate of teamwork that enables us to operate the best under the very definite obligations and responsibilities of our FCC license.

We are very proud that we have had opportunities to have as an important part of our program schedule the great productions and TV "firsts" that NBC conceived and introduced. I know firsthand that these have been most enthusiastically received by the people in our service area.

I have had the good fortune to have had experience in the Wheeling region in local newspapers, radio, and now television for the past 16 years, with exception of 3 years away as a naval communications officer. I like to think that I have a pretty good understanding of this market and its potential. It was based on this knowledge that we mutually agreed with NBC about all affiliation details.

In my opinion, we have been treated most fairly and have made ourselves competitive with other mediums. Here, like in most markets, there is substantial competition among television stations, radio stations, newspapers, and billboards.

Prior to the time we went on the air in 1953 our home county had only 19 percent television set saturation. Last June, according to the Advertising Research Foundation, our home county had 83 percent television set saturation. This rapid growth, most certainly would not have been remotely possible if we had been limited to syndicated films, features, and local live shows, all of which we do carry. Today the people of America want a front-row seat in the events of America—not only in entertainment but in education, information, sports, and news. Only a free network system can completely fulfill this assignment.

I am grateful that I can be put on record as to my own opinions and experiences and submit that I will volunteer to appear before your committee and amplify these convictions.

Respectfully,

ROBERT W. FERGUSON,
Executive Vice President and General Manager.

LETTER OF LES BIEDERMAN

PAUL BUNYAN NETWORK,
MIDWESTERN BROADCASTING CO.,
Traverse City, Mich., June 11, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce,
Senate Office Building, Washington 25, D. C.

DEAR SENATOR MAGNUSON: This is in reply to your letter of May 29, 1956, concerning the pending investigation into network practices by the Senate Interstate and Foreign Commerce Committee.

It is apparent from your letter that the session on June 20 will be a very busy one and I do not wish to consume the committee's time by making a formal appearance. In addition, my business activities make it extremely difficult for me to be in Washington at that time.

From information gathered in reading the various trade journals reporting your inquiry, I see a trend developing which indicates that the networks are not cooperating with television stations to the fullest extent in providing this country with good television program service. We are a small television station in the northern end of the Lower Peninsula of Michigan and I believe a brief recitation of our experience may be helpful in your evaluation of this situation. Our experience with the networks has been limited to NBC and I am pleased to say that this experience has been excellent. NBC has cooperated in every way and this cooperation dates back to our original planning for television during the so-called television freeze period.

During and since that time, NBC program personnel have spent many hours with our personnel in developing television programs for our area. Engineering personnel at NBC have supplied us with much valuable information and consultation which we have used in the establishment of our television facility. Their assistance dealt with all facets of television operation such as the economies of small market operation, construction of necessary buildings, the installation of technical equipment, studio lighting, and many other aspects of operation which were invaluable to us in evaluating and building our television facilities.

At no time did the people of NBC with whom I talked suggest that the purchase of RCA equipment may be helpful in securing an NBC affiliation. We later purchased RCA equipment but the decision to do so was based upon our judgment as to the quality and capability of the equipment and because of the technical service program carried on by RCA in order to keep the equipment in good operating condition.

Our dealings with the station relations department of NBC have always been very good. We have found them cooperative and sympathetic with our problems and this has been one of the very important factors contributing to our ability to supply high quality, live network programs to this small rural area in northern Michigan.

The above includes the thoughts which I would have expressed to the committee had I been able to appear personally. If you are so disposed I would appreciate it if you would incorporate this into the report of the proceedings of the committee.

Respectfully yours,

LES BIEDERMAN, *President.*

STATEMENT OF THE JOURNAL CO. (THE MILWAUKEE JOURNAL) WTMJ-TV, MILWAUKEE, WIS.

The Journal Co. (the Milwaukee Journal) became the licensee of station WTMJ on July 25, 1927. Prior to that date it had been associated for 2½ years with Marquette University in the joint operation of station WHAD. WTMJ became affiliated with NBC in 1927.

In 1934 the Journal Co. was issued a license for experimental broadcasting in high frequency amplitude modulation (Apex) and in 1934 and 1935 also experimented with facsimile broadcasting. In 1942 the company became the first licensee west of the Alleghanies of an FM station and operated such a station until 1950.

The company's first experience with television dates back to 1931 when it was licensed to operate experimental television station W9XD. On April 30, 1941, the Federal Communications Commission modified its television rules to permit full commercial television operation and on July 15, 1941, the Journal Co. filed the first application for a commercial television station. A construction permit was granted September 16, 1941, but the advent of World War II prevented any further development for the duration. Immediately after the war the company made new application for commercial television and on December 3, 1947, its station WTMJ-TV went on the air—the 10th independent commercial television station in the United States.

WTMJ-TV was one of the first stations in the United States to transmit color—transmitting the first network color show on December 20, 1953, and its first local live color show on July 18, 1954.

WTMJ-TV has been an affiliate of the National Broadcasting Co. since the station went on the air, and it was also affiliated with ABC, CBS and Du Mont. CBS canceled its agreement with WTMJ-TV in 1953 when it affiliated with WCAN-TV, and ABC and Du Mont canceled their affiliation agreements with WTMJ-TV in 1954 when they affiliated with WTVW.

The company's loss in operating WTMJ-TV through September 1949, was approximately $340,000. It was in October of 1949 that the station commenced profitable operation, and it was not until mid-January of 1951 that the accumulated losses had been recaptured.

The Journal Co. has carefully studied the statement of the National Broadcasting Co. filed with the Committee on May 25, 1956, and concurs fully with all of the facts as set forth therein.

There is attached hereto as exhibit A an analysis of commercial syndicated film shows carried by WTMJ-TV during the week of March 25 to 31, 1956, in class A time, which shows a total of 9¼ hours—of which 1½ hours were in network optional time.

The company's experience in the operation of WTMJ as a network affiliate before optional time became part of the contract between the National Broadcasting Co. and its affiliates proved conclusively that without optional time the network was seriously handicapped in selling network time. After interesting an advertiser and his agency in network radio advertising, and securing an order, it was then necessary for the network to contact each affiliate to find out whether the time was available. In many instances the stations which were able to accept the program were of such insufficient number that the advertiser lost interest. Optional time in our estimation is one of the fundamentals in the successful operation of a network. The same is true of the basic station principle of selling.

We believe that our more than a quarter of a century's experience in radio and television—and more particularly as a network affiliate for virtually the entire period in which networking has developed in this country—qualifies us to express judgments concerning the system and its worth to the American public. On the basis of that experience we unhesitatingly assert that the present system of network operation serves the greatest number of people with a program service of education, entertainment, religious, news, and public service—which could not be made possible under any other system.

Since we have succeeded in the operation of our stations under that system it may be said that by virtue of that fact we are partial and prejudiced. This we cannot deny. However, hastily we must add that such measure of success as we have enjoyed inevitably reflects the satisfaction and good will of the audiences we serve and their recognition of the benefits that they have received. It has long been our considered policy that enlightened rendition of public service results in economic success. It is our firm conviction that the proper and reasonable admixture of locally produced program subjects, feature and other film presentations together with network features of incomparable quality covering substantially all facets of national and local interest, have resulted in an overall service of great benefit and value to the public.

Obviously all those who would become a part of an industry do not all achieve the same or equivalent results. The reasons for this are so manifold and, in most respects, obvious that detailed discussion is not required. However, it is equally obvious that those who because of immature planning, lack of experience or economic or geographical obstacles, have failed to succeed to the maximum of expectations, frequently find it expedient to attack the prevailing system in order to bring about artificial readjustments in the hope of bettering their circumstance. It does not follow that such efforts are in harmony with genuine considerations of public interest.

We trust this committee will evaluate the views of these detractors with these considerations in mind. It is our company's view that the basic elements of the network arrangement that are in practice and have prevailed in this country for many years are necessary and essential to the type and character of network services which has thrust television into the great position it occupies today in the American home.

EXHIBIT A.—*WTMJ-TV Commercial Syndicated Film Shows, Mar. 25 to 31, 1956, 6:00–11:00 p. m.*

Sunday:
- 6 to 6:30 p. m.: Annie Oakley
- 10 to 10:30 p. m.: I Led Three Lives

Monday:
- 9:30 to 10: The Turning Point
- 10:05 to 10:20: Industry on Parade
- 10:30 to 11: Studio 57

Tuesday:
- 9:30 to 10: Blatz Triangle Theater
- 10:05 to 10:20: The World We Live In

Wednesday:
- 9:30 to 10: Mobil Theater
- 10:05 to 10:20: Patti Page
- 10:30 to 11: Great Gildersleeve

Thursday:
- 8 to 8:30: Secret Files of Dr. Hudson [1]
- 10:30 to 11: Highway Patrol

Friday:
- 7:30 to 8: Man Behind the Badge [1]
- 8 to 8:30: Blatz Triangle Theater [1]
- 9:50 to 10:05: Jungle Macabre
- 10:05 to 10:20: Patti Page Show
- 10:30 to 11: Science Fiction Theater

Saturday:
- 9:30 to 11: Schlitz Saturday Night Theater
- 11:07 to 11:36: Mr. District Attorney

Total, 9¼ hours

[1] Network option time: Total 1½ hours.

STATEMENT BY KRON–TV, THE CHRONICLE PUBLISHING CO., SAN FRANCISCO, CALIF.

This is a voluntary statement submitted by KRON–TV, the Chronicle Publishing Co., San Francisco, Calif. It is prompted by the contentions which have been made before your committee and before the Federal Communications Commission Network Study Committee that the option-time arrangement between networks and their affiliated stations constitutes a restraint of trade, causes hardship to certain syndicators of film in placing their product in the market place, unreasonably denies regional and local advertisers access to television-broadcasting facilities, and is not in the interest of the television-viewing public.

The protagonists of this viewpoint would seek remedy for the ills which they allege through rule change or legislation to place further restrictions on the amount of station time which may be devoted to the broadcasting of network programs, in addition to those limitations already contained in the chain broadcasting regulations adopted by the Federal Communications Commission in 1941.

It appears from these contentions and pleas for remedial action that some distributors of film used by television stations, and more particularly those who syndicate 30-minute programs produced primarily for television use, consider themselves victims of understandings, arrangements, or practices between and among the affiliated stations and their networks which have the effect of denying them their rightful place in the television broadcasting industry. It is not our purpose, nor are we qualified, to offer opinion on such general, or abstract questions as monopoly or what is or is not a restraint of trade.

Our purpose is to show the relationship between television networks and their affiliated stations from the viewpoint of our own extensive experience both as a primary affiliate and as one of the leading buyers of film. We hope that this presentation will thus provide the committee a view of the facts pertinent to its inquiry which might otherwise not be available to it.

The three San Francisco stations which are licensed on channels 4, 5, and 7 broadcast an approximate total of 1,520 hours of television programing during the month of March 1956. March is considered to be an average month during which a representative cross-section of programing may be considered to exist. More than one-quarter of this broadcast time, or actually 27 percent, was accounted for by feature and syndicated half-hour films not originated by a network. This does not take into account cartoons and 15-minute films.

Station KRON-TV, during the average week of 1956 between January and May, used 16 features and 27 syndicated half-hour subjects having a weekly dollar value of $19,631. This figure represents income to film distributors. In addition, the station used 4 15-minute film properties and 14 cartoons with a weekly dollar value of $630. This $20,261 expenditure per week provides an income of approximately $1,054,000 per year to film distributors. KRON-TV pays approximately $800,000 and sponsors pay approximately $254,000 to the film distributors. This station has an outstanding contractual commitment of $1 million to distributors of feature and syndicated films for the year 1956. Twenty-three distributors are supplying 541 feature pictures through the means of 42 contracts, and 12 syndicators are supplying 13½ hours of programing per week through the use of 27 separate runs of half-hour subjects per week, or 1,404 per year.

Most of this film is used outside network-option time, but 8:00 p. m. and 10:00 p. m., Friday—which are periods lying within prime network-option time—have been programed by this station since November 1949, with little interruption or occupancy by the network except for a rare special event. Prior to August 1953, the 8:00 p. m. time period was programed on a local live basis. The 10:00 p. m. time period has been programed with syndicated 30-minute programs since early 1951.

During the week June 3–9, 1956, film organizations had weekly access, between 7:30 and 10:30 p. m., to only 1 hour of the 21 hours contained weekly in these time segments. This is 4.7 percent of the time available in this time segment; but between 6:00 p. m. and 12:30 a. m. they had 24 of the 45½ hours, or 52 percent. The rental fee for film does not customarily distinguish between broadcast-time periods. The film distributor, with rare exception, receives the same price whether it is used at 8:00 a. m. or 8:00 p. m. or at whatever hour. The time segments 6:00 to 7:30 p. m. are not considered prime time in the true sense of the term. Neither are the time periods 10:30 p. m. to 12:30 a. m., but these are valuable broadcast franchises and do not fall into the category of fringe time to which category the film distributors claim they have been generally relegated.

When we consider that syndicators supplied 4½ hours to the network during the period 7:30 to 10:30 p. m. in the week June 3 to 9, and we originated 1 hour of syndicated film in that time period, the syndicators supplied 26.2 percent of our programming during the so-called prime time of 7:30 to 10:30 p. m. During the week June 3–9, 1956, KRON–TV originated 36 percent of its broadcast hours through the medium of locally projected film of all types. Fifty-nine percent of its programing was accounted for by the network. During a week when this station devoted 58 percent of its broadcast time to network originations of all types and 36 percent to locally projected film, anywhere from 6½ to 8½ hours of half-hour syndicated film subjects were transmitted by the network. When this maximum number is added to the 42 hours, or 36 percent of locally originated film, the total use of film rises to 50½ hours or 43 percent of all

KRON–TV programing during subject week. Thus film distributors supplied 43 percent of the station's programing.

Those distributors who provide half-hour syndicated films, as distinguished from feature films, in the subject week account for 13 one-half hours of locally originated film and anywhere from 6½ to 8½ hours of network originations in a given broadcast week of 117 hours. Thus we may have a total of as much as 22 hours or 18 percent of the weekly schedule supplied by half-hour syndicators.

During the week of June 24, this station will transmit 60 half-hours live (or 3-hour-delayed kinescope) from the network; 28½ hours of feature films, 22 hours of syndicated films from all sources, and 6¼ hours from local live studios. In terms of percentage the broadcast week will consist of—

Network live	51.4
Local live	5.4
Feature film	24.4
Syndicated half-hours	18.8
Total	100.00

Film from all sources will constitute 43.2 percent of the weekly broadcast hours.

It is apparent from data supplied herein that the film distributors enjoy an excellent product placement at KRON–TV and other San Francisco stations.

The statistics provided herein clearly indicate that neither film distributors nor nonnetwork advertisers are eliminated from the 6:00 p. m. to midnight evening hours. These figures do support the contention that the majority of the hours between 7:30 and 10:30 p. m. (95.3 percent) are used by network advertisers, but the answer to the contention posed by certain parties before this committee does not lie in tearing down the network option-time structure. It lies in the provision of additional facilities upon which these time segments are available.

When channel 2 is operating in San Francisco many more opportunities will be available to film distributors and nonnetwork advertisers. This channel has not been granted since the Federal Communications Commission hearings were held in September 1954. The allocation of channel 2 to the San Francisco area was provided for in the sixth report and order issued by the Commission. In addition to the film material now being broadcast in San Francisco 42 more half-hour film subjects, or 21 more 1 hour length feature film subjects, can be shown between 7:30 p. m. and 10:30 p. m. in the San Francisco market when channel 2 is operating. Through the use of this material 42 sponsors will have half-hours available to them, or 126 advertisers may buy participations in these prime time programs.

It should not be forgotten that 49 additional advertisers may buy station-break announcements and an additional 49 advertisers may buy station-identification announcements.

The contentions made to this committee reflect a fear that syndicated half-hour film product may be depleted in volume and quality, or both, because the existence of network option time precludes volume sale of half-hour film properties in good broadcast time to a majority of television stations. Relief is sought from an alleged impending crisis by legislation or rule designed to limit the number of hours which a station may take from a network. It would appear to be the opinion of the critics of network option time that, for example, the designation of the time periods 8 to 9 p. m. daily as time free from option agreements, would provide some magic open sesame for half-hour film product.

This station does not necessarily agree that these hours would even then be devoted to half-hour films made for television. On the contrary there is some evidence to indicate that it may be in the best interest of stations, advertisers, and viewers to program such a hypothetical open period with feature films of fairly recent vintage which have become available to the television broadcasting industry rather suddenly during the past 9 months. Some stations may consider that the total cost of the 60 or 90 minutes for the first, and subsequent, runs of feature films, would provide a broadcast vehicle more economical than the use of 2 or 3 syndicated half-hours in the same time segments. The management of this station knows of no recent network or station practices which should suddenly cause alarm to the syndicated half-hour people, in the San Francisco market.

This station commenced operation in 1949 using network kinescope material. It was not connected to the network by microwave until September 1951. The changes in program schedules to accommodate network programs for broadcast in their proper time segments, either by the quick kinescope or live method, came about slowly during the latter part of 1951 and the first 6 months of 1952. KRON–TV did not always clear network programs on kinescopes during these years.

Prior to early 1952 it was common to receive both telephone and mail inquiries and complaints from the viewing public with respect to the lack of network programing on this station. The most common complaint was that many programs of national interest, appearing regularly in other parts of the country, were not being seen in San Francisco because of the lack of network interconnection. Such programs included seasonal sports, national news and special events, and the live appearance of national leaders and name stars in the entertainment field.

Although some of these programs were later made available on kinescope, public interest had usually subsided. Public familiarity with such programs was apparently gained by reading national magazines and the actual viewing of such programs when these local residents visited other cities. This reaction testified to the efficacy of national network distribution of programs supplying the entertainment, cultural and educational needs of the American people.

The increase of the gross national product from $285 billion in 1950 to $387 billion in 1955 was due, in no small part, to the role played by the television broadcasting industry during those years. The national increase in the demand for goods and services as reflected by the gross product must have been stimulated, in part, by the activity of an industry which superimposed the dollar value of 37 million receivers, over 400 new and completely equipped television stations, the vast sums expended by the telephone company primarily for network television connections, and the secondary and accessory equipments and services attendant to this industry, upon the American economy in the short space of 6 years.

In our opinion this rapid evolution and its contribution to business growth could not have been achieved on an uncoordinated, piecemeal basis. It required the integration and comprehensive scope of network program resources. It also needed the economic strength which resulted from public interest in such programing.

In short, the network system was the mainspring of this growth. The aggregation of television facilities so developed will, in our opinion, achieve its own growth potential, and fully use its capacity to further stimulate business by nationally proclaiming the merits of other goods and services, in a national network system of advertising.

Summary: The information in this report shows that film distributors and regional and local advertisers have access to a substantial portion of television broadcast time in a market containing three television stations and could easily have free access to the television broadcast market place when a fourth channel is added.

This statement has provided the committee with data showing that the option time relationship between networks and their affiliates in a three-station market has not materially deprived film distributors from leasing a substantial portion of their product and receiving substantial revenue in return. We assume that an examination of the program schedules and use of film in larger markets and many smaller markets must also provide similar data.

Statement of Douglas L. Manship, President, Louisiana Television Broadcasting Corp., Baton Rouge, La.

My name is Douglas L. Manship of Baton Rouge, La. I am the president of television station WBRZ, which operates on channel 2 at Baton Rouge, and is an affiliate of the National Broadcasting Co. and the American Broadcasting Co.

I have followed with considerable interest the activities of this committee, with particular reference to its current study of the relationships between the networks and the affiliated stations. I view your inquiry as of the greatest importance to the broadcast industry since you are now examining a fundamental concept which goes to the very heart of our system.

Some testimony has been presented by those who do not favor the existing system of network relationships, and who believe that the best interests of the public will be served by making radical changes. I do not agree.

I am not here to tell you that our present system is perfect; in fact, I do not believe that any system that has ever been devised is perfect. Inevitably, there will be disagreements between networks and affiliated stations, just as there are disagreements between Senators and Congressmen. These disagreements do not mean that our political party system is bad and must be scrapped; rather, these differences of opinion illustrate the strength of the system, since honest disagreements of opinion are the basis of a democratic form of government. With strict analogy, the difference between networks and affiliates does not mean that the present system of network broadcasting should be abandoned; we should try to strengthen and improve the present pattern of broadcasting and not attempt at this time to experiment with a system which has developed the finest broadcasting service known throughout the world.

I want to explain to you in my own way what the network affiliation means to a station, such as ours, in a relatively small market. Although Baton Rouge is the capital of Louisiana and the center of a very important rapidly developing industrial area, the 1950 census discloses a population of only 125,000. This is a far cry from the metropolitan centers, such as Los Angeles, New York, Chicago, or Philadelphia, with their many millions. But please keep in mind that throughout this country there are more towns like Baton Rouge than there are metropolitan communities such as Los Angeles.

At the present time, we have in Baton Rouge two successfully operated television stations—ours, which operates on channel 2, affiliated with the National Broadcasting Co. and the American Broadcasting Co., and a UHF station, WAFB-TV, affiliated with the Columbia Broadcasting System. Unlike most communities about which you have heard, Baton Rouge has supported the UHF station. There has been a very substantial number of sets converted to the UHF and this station is on the air with a full schedule of programs. In addition, a new application has just been filed by a group interested in establishing another UHF station here. Therefore, we may soon have three operating stations.

In a market of our size, none of the stations could exist without the benefit of the network programs. This conclusion can readily be fortified by a few simple observations on the economics of broadcasting. In order to show you how important network programing is to an affiliate in a market such as Baton Rouge, I have prepared a memorandum illustrating the value of network programs and the amount of money which we would have to spend to purchase film to replace 1 hour per day of network programing. This memorandum is attached as exhibit No. 1.

Similarly, I have made a study of what it would cost us to substitute local live programs for 1 hour per day, instead of a network show. This study revealed that the additional local-level programs would necessitate the hiring of additional personnel, and incur production costs of such magnitude that we would incur a substantial operating loss.

In connection with both observations, I want to state categorically that we have no local, regional, or national advertisers standing in line to buy time on our station between the hours of 6 and 10:30 p. m. All local merchants who want time can be accommodated in our existing and available time periods. Further, at the present time we are running on a sustaining basis some of the top film programs available to the industry, simply because we cannot find sponsors for them. These are the simple economic facts for stations located in towns like Baton Rouge.

In large metropolitan areas like Los Angeles and New York, it is possible that advertisers are being deprived of the right to purchase prime evening time because of network affiliation agreements. However, that condition is not true in the vast majority of television markets in this country. If markets like Baton Rouge are unable to rely upon network programing as a source of revenue and programs during prime evening hours, we are certainly not going to be able to continue to provide the public with the extended program service which we have been able to do under present conditions.

I am not an apologist for the networks, but I do understand their problems. Although I would like to get more money for my time, I feel very strongly that I will not benefit by the adoption of the suggestions that have been made for the radical changes in the present pattern of network programing.

These changes will not yield me a greater profit, nor better programs; rather, they may destroy the fine program service which I have been able to build up around the core of network features. I want to point out to you that we do a substantial amount of local programing, and that we satisfy all of our community needs. Our network programs do not hinder us in carrying out this responsibility, and if the occasion should arise when a local program should be carried during an option hour, you can be assured that as an affiliate I will exercise my right to substitute that local program.

In conclusion, I want to point out to you that the attacks on the networks by the big-city operators from Los Angeles or New York do not reflect the views of the average affiliate. It is possible that several stations may benefit if the changes suggested are adopted; but it is more likely that if such changes are adopted, the house will tumbel down on stations like ours.

EXHIBIT NO. 1

WBRZ feels that the replacement of 1 hour of network programing with 1 hour of film programing each night would not be in the best interest of the public, the station, and the television industry.

First, 1 hour each night for 7 nights a week adds up to 14 half-hour programs. (We are discussing half-hour programs because the film industry at present is not producing any high-quality 1-hour programs to local stations.) In our negotiations with the various film companies and through examination of their productions, we are of the firm belief that the television film industry is not in a position to supply adequately the needs of our station if an additional 14 half-hour programs were to be purchased. And when consideration is given to the Baton Rouge market being a two-station market, the problem of buying quality film programs appears even more acute.

At present, we try to be discriminating in our selection of television film programs. However, if we are forced to buy 14 more half-hour programs each week, this discrimination of selection would be at an end. And for all practical purposes, we and the other stations in this market would be at the mercy of the film companies. Our station would thus be placed in an untenable position, much the same as many of the stations which are no longer in business. The shortage of supply and the inability of film companies to supply satisfactory products for so many additional hours per week do, therefore, command us to believe that the addition of 1-hour film programing each night would be disastrous.

Second, through experience, we have found that film programs which are available to local stations do not compare favorably with network programs which are available during comparable hours. It is not necessary to enumerate these programs as examples, but for the record, here are a few:

Pulse local ratings for March 1956

City	Program	Rating
Portland, Oreg	Disneyland (net)	44.6
Do	The Whistler (film)	21.5
St. Louis, Mo	Groucho Marx (net)	36.7
Do	Follow That Man (film)	27.0
Washington, D. C	Groucho Marx (net)	36.5
Do	Highway Patrol (film)	14.9
Cleveland, Ohio	Perry Como (net)	34.3
Do	Dr. Hudson (film)	17.9

Furthermore, a comparison of network and film ratings for the same month in all cities listed in Pulse local ratings shows that the 15th ranked program enjoys a higher audience rating than any No. 1 ranked film program.

Any competent television man in the country will testify to the fact, as a rule, network programs furnish greater audience ratings. Programs such as those listed above prove this point. Therefore, since our ratings would drop with the suggested increase of film programing during premium hours, it seems clear that our service to the public would be lessened. Of course, ratings mean more advertisers, and more advertisers mean better service to the public. Conversely, low ratings mean fewer advertisers and poor service, because of the burden of financial pressure.

Third, the cost of such a project would be a matter to be considered seriously. It goes without saying that all of the 14 additional film programs we are discussing here would not be sold every night of every year. As a matter of fact, in the opinion of our salespeople and others who have been closely associated with our market, there would not be enough advertisers to go around for 14 half hours, much less 28 half hours, when both stations in the market are included. The cost of those programs not sold would be borne by the station.

WBRZ has been faced with this problem. During the first year of WBRZ's operation, the station purchased and ran on a sustaining basis—absorbing all costs of film—approximately 400 half hours of film programs at an average cost of $60 per subject, totaling approximately $24,000. Even at present, we are running sustaining one half hour in our best time on Wednesday night with one of the better programs offered by the film industry. For film, these facts paint a dark picture. If a burden of 14 additional half hours per week were placed on the station—and subsequently on sales—the outlook for television stations in markets the size of Baton Rouge would be bleak. Therefore, we must conclude that the cost of adding 1 hour of film programing nightly would be prohibitive.

Fourth, in our opinion the responsibility for the development of the television industry lies largely with the networks. Without proper attractions every night of the week, few people would watch television. High-quality network programs afford WBRZ entertainment which can be obtained from no other source than the networks. (Since we are affiliated with NBC and ABC we will mention programs of those networks.) We anchor our programing plans on such shows as the Alcoa-Goodyear dramas, on Sunday; Robert Montgomery Presents, on Monday; Fireside Theatre, on Tuesday; Disneyland, on Wednesday; Lux Video Theatre, on Thursday; This Is Your Life, on Friday; and Playwright Hour, on Saturday.

Remove these option-time shows from our schedule and WBRZ's program structure would be weak. During the hours of WBRZ's operations each day we make time available to the various public service agencies and to advertisers of the Baton Rouge area. After meeting these obligations, WBRZ is interested in taking as much network time at all hours of the day as possible. We feel that the networks have built widely viewed shows; we have agreed to run these shows at specified hours; and we are happy with the situation as it stands.

Fifth, it is the opinion of the WBRZ program department that we do not have in our employ a sufficient number of people to accommodate the additional programs involved in this discussion. Although much of the personnel angle is covered in another report, this department foresees administrative confusion if an increase of personnel were to be required over a short period.

In summary, we feel that if WBRZ were to replace an hour of network programing each night with one hour of film programing, the competitive position of the station in the eyes of the public would be jeopardized. A move of this sort would restrict the audience growth of the station's program services and, therefore, would bring about a serious drop in billings, which in turn would cause a cutback in program expenditures. Such a cutback would mean fewer desirable programs, less money spent on them, fewer viewers and less billings, etc. This cycle is never-ending, because audience and billings cannot be separated from each other. Similarly, the program service to the public is improved only when audience and billings are in good shape.

It follows that when this condition exists, the cycle mentioned earlier is reversed, and the viewing audience receives better television programs, whereas the same audience suffers through inferior entertainment under the former conditions.

When those of us who are familiar with the local television structure and the television film industry examine closely this matter, we find that:

(*a*) The film industry could not supply the increased demand of such additional programing.

(*b*) Our ratings would be lower.

(*c*) The cost of such a project would be prohibitive.

(*d*) Networks are largely responsible for the development of the television industry.

(*e*) Additional personnel would be required.

We must conclude that the idea of replacing an hour of network programing with an hour of film programing each night would be a poor idea and such a plan would serve no interest except that of the film companies, who already are selling all of the good shows they can produce.

COMMENTS BY DAVID M. BALTIMORE, WBRE-TV, WILKES-BARRE

The experience in our market, the Wilkes-Barre-Scranton market, may serve as outstanding evidence that the claims of those who would change the basis of network-station affiliation are neither well founded, nor are the changes in any way desirable. Whereas most of the claims are based upon such premises as "option time precludes the use of prime time by local or spot advertisers," or "option time and network controls preclude the use of film product in grade A times," or "network control of station prime time, and dominance of the television networks by a few advertisers has prevented true competitive television operations," the facts of operation in the Scranton-Wilkes-Barre market show that such claims are indeed far from being practical accusations.

Wilkes-Barre-Scranton originally were allocated a total of five television channels—all UHF. In addition, coverage was provided to part of the over-all service areas of the local stations by a station from Binghamton, a VHF station. WBRE–TV was among the first UHF stations to go into commercial operation in the Nation. Despite the VHF competition from without, television was an overnight success in the northeastern Pennsylvania area.

With good quality picture, and with strong network program support, set circulation and conversion rose rapidly to astounding figures. In 6 months, the second station went on the air, and provided additional network service. In 14 months there were 5 stations in operation in the area; there was 1 NBC affiliate; there was 1 CBS affiliate; there were 2 ABC affiliates, and there was 1 independent. Needless to say, Wilkes-Barre-Scranton had more television stations per capita than any area in the country.

This was more than Philadelphia, which covered a population over three times as large. This was more than Chicago, and more than any other city in the country except New York and Los Angeles. Indeed, the true competitive spirit was in full play. With each network getting full representation, and with independent operations available, the network advertiser was able to take advantage of his network's option time periods to get clearance for his program on the market. Furthermore, he had a choice of taking the market or leaving it, since all the network affiliates were optionals. Despite this freedom of choice, the network advertisers, for the most part, took the choice of adding the market to the list. Today there is hardly a network advertiser who does not use the market. Since that time also, WBRE–TV has been made a basic NBC affiliate in recognition of the work it had done as a pioneer UHF television operation.

The vendor of old feature films has had his field day in the Wilkes-Barre-Scranton market. With five stations to play against each other, and with large periods of time needing programing, the price of his film has largely been what the market would bear. And third, fourth, and fifth reruns of films have not been, and still are not, uncommon. Furthermore, when film packages have been offered, the film sellers have often been wont to talk about the "great names" available in their packages, ignoring the deadwood, the real "oldies," the so-called bottles of rum which had to be sold in order to get the scotch. Contrariwise, we have had no such problems with network film vendors, and we have bought from all network film subsidiaries. They have been cooperative, straightforward, and realistic in their relations with the stations. As of this moment, there is scarcely a half-hour film that has not played the market, and but for the choice of using reruns again and again, there is really a scarcity of new material in the market because of this intense competition to buy the film vendors' product.

In the feature-film field, the price is definitely what the traffic will bear, and because of the obvious legal inability to agree with other stations on price limits for a product, the stations are played against each other to make the prices higher and higher. The Wilkes-Barre-Scranton market has therefore provided the film producer and the network advertiser, both, full freedom of opportunity and choice in his selection of station, time and product.

What has this fiercely competitive picture meant, then, to the stations? And to the public? What has this allegedly dominant network control done to the stations and to the public?

To go back to the beginning, briefly, WBRE–TV started on the air with over half the nighttime sponsored, high-rated programs as part of its initial offering. This great program fare attracted more television viewers, whose boxcar numbers helped to attract more network sponsored programs. During the first year there were pitifully few sales of a program on a spot basis to a client, locally, regionally, or even nationally, because they were unwilling to put their money in a new, untried UHF market. There was not the tremendous clamor from the local advertisers to go on TV because it "cost too much money." And we might add here, parenthetically, that the intense local radio competition has taught local advertisers to play the stations against each other, too, looking for the rate break, the deal, the cheap buy. It was therefore, the network, and its national network sponsors who first supported WBRE–TV, when it was alone in the market. It was the national spot advertisers who bought "only network adjacencies" who paid the initial way of the station. It was the network and the national net advertiser who put the second station on the air and kept it there.

As I stated earlier, our Wilkes-Barre-Scranton market had five television stations in operation within 14 months after WBRE–TV went on the air. There is no greater mystery about competition in television than in any other field, and it is therefore no great surprise that 1 of those 5, an independently operated station, went off the air. It is perfectly obvious to anyone with business experience and a working knowledge of supply and demand that the results experienced in the market are in all respects normal. There is no warrant to look for "villains" for none are involved. Free competition was at work—and the market with the highest TV station count per capita in the world was suffering from, if it be possible, too much competition.

What has the public gained, then? It has had the greatest choice of programs available to any population group in the country. It has had the benefit of all the network programing available to anyone in the country, plus the greatest array of nonnetwork live and film fare that could be put together. It has made the area so TV conscious that our citizenry rely upon television in ever-increasing measure for their programing of religious programs produced on a local level. WBRE–TV was the first station to present a Catholic Mass as performed in a parish in the United States. It had the benefit of programs from the colleges, the high schools, the fraternal and civic groups. It had regional coverage of its news events as never provided before by any one medium, or by one unit of a medium. It had children's programs, and operas, and conventions, and nationwide news coverage, available only through live network facilities, never before available to it. It has sports, live; and news, live; and Peter Pan, live—Broadway, live. TV is a living medium. It has brought the world into the living room—much of it live, as only a national network facility can do it—and it has had its own area brought into its living room as it had never before had a chance to see it.

All of the foregoing comment can lead to only these conclusions. It is not networks who are to blame for the problems of the have-nots—those who tried and failed, those who were underfinanced, too inexperienced, too late, those for whom there still is no room. The most fundamental cause is still one of channel allocations. This problem is of such magnitude that it is probably beyond the scope of any man of lesser wisdom than King Solomon. The problem of allocations is also complicated by the problems of economics. In 1944, radio had only eight hundred-odd stations, after 20 years of operation. A short 10 years later it had multiplied to 3,000 stations. Television is young, comparatively. Given time to grow, along with the economic and population growth of the country, it too may support 3,000 stations or television's equivalent. In the meantime, it is no ticket to freedom from social-security dependency, and while many have prospered, and more will prosper, many will also fail. Their failure cannot be blamed on the very system which, more than anything else, has accounted for the greatness of present-day television.

I recommend, therefore, that the system of network operation which now exists, and which, almost singlehandedly, is responsible for the art of television as the public knows and benefits from it today, and for the developments which will make it bigger and more influential in the future, be left intact and encouraged to grow; and that the standards of coverage, affiliation determination, advertiser choice or requirement with respect to station selection, option time, network-station affiliation policy be encouraged, unregulated, and, most important of all—understood.

Statement of Nathan Lord, WAVE–TV, Louisville, Ky.

I am Nathan Lord. I am vice president and manager of WAVE, Inc., Louisville, Ky., which owns and operates radio station WAVE and television station WAVE–TV. Our radio station has been on the air since December 30, 1933, and our television station since November 28, 1948. Both are affiliated with the National Broadcasting Co.

At the onset I would like to point out that the only reason we are affiliated with any network is because we believe that networks are the best source for superior programs at a price to affiliates which they can afford, and we further believe that the furnishing of superior programs to the listening audience in our community is an inherent obligation imposed on us by our license to operate in the best public interest.

At one time our television station was affiliated with four networks—NBC, CBS, ABC, and Du Mont. The affiliation with CBS ended on March 31, 1950, when WHAS-TV, Louisville, Ky., took to the air. The affiliation with ABC stopped when our affiliation agreement expired by its own terms on December 31, 1954, and ABC told me it did not wish to renew it. The affiliation ended with Du Mont when that network ceased operations.

This committee has heard testimony concerning the relationship of stations and networks. Because some of the statements regarding the relationship between affiliates and networks infer practices allegedly not in the public interest, I wish to have this statement included in the record:

(1) There is no agreement existing between WAVE, Inc., and the National Broadcasting Co. classifying either of our stations as a must-buy station.

(2) There is nothing in our agreement with the National Broadcasting Co. concerning either of our stations that prevents us from accepting programs from other networks and sources.

(3) There is nothing in our contract with the National Broadcasting Co. in which we give this network options on 12 hours of time daily.

We operate our television approximately 17 hours a day and we option 9 television hours daily to the National Broadcasting Co.

No other hours are optioned to any other network, but other networks are free to offer us their programs in these same option hours, and if we accept their program first in these option hours, NBC has no contractual right to ask us to displace that program.

(4) There is nothing in our agreement with the National Broadcasting Co. which gives it exclusive access to our so-called best hours. At night we are not required to carry network programs later than 9:30 p. m., thus leaving free the time of 9:30 to 11 p. m. for nonnetwork advertisers.

At this point I would like to state that it is not always correct to characterize night hours as "best hours." It is generally true that more people are available to look or listen at night, and, therefore, as a generalization these hours are best for adult and child audiences. They are not best, however, for children's audience programs or women's audience programs, nor other programs for specialized audiences; nor are they best in which to telecast events which already have occurred, such as athletic contests, and other newsworthy matters.

So much for our contractual relationship with our network. There are a few additional observations I have which I hope will be useful to this committee.

(1) Film programs have a useful place in our television operations, but the people living in the area we serve did not really begin to buy television receivers in substantial quantities until we received our programing via the cable at the time the Louisville stations were connected to networks by cable in the early fall of 1950. Prior to that time our programing consisted of local live programs and network and other forms of programs on film and kinescope.

(2) Popularity rating statistics should not be the sole standards on which programs are judged, because if this were true then some of our best programs, and most of which originate on the network, would not have been seen. A network program originating live has a quality of particular value to the affiliate because of its prestige and identification with worthwhile matters in the fields of entertainment, education, and information. Contrarily, a film program is almost always a rented source of program material, and while a film is exclusive to the station during the period of the lease, it has no long-term asset value to the station.

(3) We have successfully operated under the present number of option hours and for the life of us we can see no reason for a change. Certainly there has been no pressure from the two groups that the station operator must always keep in mind, namely, (*a*) his audience, and (*b*) his customers.

At this point it might be well to explore the thought that a film syndicator could become a network if he so chose. To qualify as a network he would have to show a program simultaneously on two or more stations. Then to be successful, I presume he would have to provide an overall program service to affiliates, would have to sell this service to advertisers, and would have to guarantee the payments to affiliates. I know of no rule or regulation that would foreclose this opportunity to any film maker.

It is not correct to allege that three network presidents in New York possess and exercise the power to determine what television programs the American public may watch and what programs they may not watch during the prime viewing hours. This determination is made by network presidents, network program personnel, and hundreds of people at the network; and, additionally, by the operators of the individual television stations, and finally, and exclusively, by the television audience. It is not correct to state that the time option "becomes a device that enables the network companies to sell time for inferior programs." First, we do not concede, and I am sure our audience and our sponsors do not concede, that network programs are "inferior." We believe them generally to be the finest source of programs in the world. Secondly, the time option is a device which enables a network which operates a national service to deliver national circulation to concerns that desire to advertise their products and services nationally.

(5) As I have stated, film programs, including feature films made originally for showing in theaters and films made particularly for showing on television stations, are now, and I am sure will continue to be, a useful form of television programing. But there are certain features of renting film which are not always entirely satisfactory to the station operator, but the problems are not so great as to work against the use of film. I refer to the fact that frequently if a station wants 52 programs, he rents 39 programs and a repeat use of 13 of these 39 programs to make the 52. In the rental arrangement of feature films made originally for theater showing, there are occasions where it is necessary to accept certain features of a lesser quality than others because the films come in packages. I think the committee will be interested in knowing that in our overall television operation we telecast 31 hours of syndicated and feature films a week, of which 14⅓ are telecast at night. This would not indicate that our network programing service excludes film. Incidentally, we carry network service from NBC, ABC, and CBS.

(6) In certain other testimony presented to this committee it seems to me that I have detected an implied recommendation that the committee should equalize station service either at (*a*) the program level, or (*b*) the service area level (that is, the area in which the station's signal is used by the television audience), by reducing both of these to a lower denominator.

The only way to equalize service and to be of benefit to the American public is to equalize it by raising it to the top denominator and not to a lower one. It may take time to do this, as it took time to develop radio. Unfortunately, in the process of developing radio, engineering standards were allowed to deteriorate and some of the economic problems that radio faces today are a direct result of the fact that an orderly plan of development was abandoned.

Television, of course, is a very young industry and has not had a reasonable and fair chance to develop, and it is my opinion that if an orderly plan of development is abandoned now at this very early stage, the real interests to suffer will be the public interest because overall service will decline. It is very difficult to retrieve a sound position once it is abandoned, and I hope that the public will not be the sufferer because pressures may be so applied that sound judgment may be adversely affected.

If there is any part of our industry that would possibly need help because of economic distress it would be found in radio and not television, but I do not detect that radio networks and stations who have had declines in their income are knocking at the doors of Government to ask for help. I do find that these networks and stations are developing new approaches and methods and services, and thus are bringing about a change for the betterment in the economic life of radio.

Thank you for allowing me to present this written statement.

LETTER OF RALPH J. MCELROY, BLACK HAWK BROADCASTING CO., WATERLOO, IOWA

HON. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce,
Washington, D. C.

DEAR SENATOR MAGNUSON: Realizing the difficulty your committee is experiencing in scheduling people who desire to give testimony, we are pleased to acknowledge your request and submit the following statement, which we understand you will incorporate into the record.

The Black Hawk Broadcasting Co. operates a television station in Waterloo, Iowa—KWWL-TV—which is affiliated with the NBC television network, and acts as management consultant for a television station in Austin, Minn.—KMMT–TV—which is affiliated with the ABC television network.

Inasmuch as your committee is investigating network practices, as they relate to telecasting, I will confine my remarks to the following:

1. Network revenue.
2. Network programing service.

The areas served by KWWL–TV and KMMT–TV are primarily farm areas. Our cities are small and some distance apart. We have no great center of population. According to the 1950 census, Waterloo's population was 65,198 and Austin's population was 26,900. Merchants in the small communities, if they have any advertising budget at all, find it is too limited to afford television advertising. We, therefore, must turn to the national advertiser, who can use the circulation of an area station, if we are to operate profitably and serve in the public interest.

There are two sources of national advertising available:

1. National network advertising revenue.
2. National spot announcement and program advertising revenue. (In most instances, these spot announcements or programs are bought adjacent to network programs, and consequently are an integral part of network advertising revenue.)

As a result of the income derived from these sources, as well as some local and regional revenue, KWWL–TV and KMMT–TV have been able to operate and develop a program service of its own, which, in addition to the program service of the network, has had great appeal to the people of this area, as evidenced by the fact that over 80 percent of the homes in this area own television sets.

Our people of eastern Iowa and southern Minnesota receive a vast number of specialized programs from the network in the fields of culture, entertainment, sports, religion, and public affairs. Some of these cultural features are the NBC Opera Theatre, the Sadler Wells Ballet, Shakespearean dramas, Peter Pan, etc.; great entertainment features include the Steve Allen Show, spectacular series, Ernie Kovacs Show, Bob Hope Show, This is Your Life, Hit Parade, Perry Como, George Gobel, Lux Video Theatre, Ford Theatre, Dragnet, Wide, Wide World, etc.; great sports features include NCAA football games, world series, all-star baseball game, all-star football game, national open golf tournament, Cavalcade of Sports, etc.; great religious features include Outlook, Frontiers of Faith, etc.; great public affair features include the Republican and Democratic National Convention coverage, addresses by the President to the people of the Nation, congressional hearings, Youth Wants to Know, American Forum, News Caravan, etc.

As you can readily see, a great variety of programs are offered through network programing service. These programs can be developed only by a national network and fed live, instantaneously, across this great country to the people of our area. The cost, not only of origination, but A. T. and T. facilities, which are used in the transmission of programs, is so great that it is doubtful that even a group of stations could develop a "pool" service that would be economically practical for a local station to afford. As we know telecasting today, it would appear to be impossible for an individual station to replace these major programing efforts that are developed by the network and made available to the people of this area.

The National Broadcasting Co. has established what is known as the Program Service Plan. Under this plan, we are allowed to carry various sponsored programs on our station by deleting the commercial announcements. This is of tremendous importance, because, if the advertiser does not order the station, we are still able to deliver these programs to the people of this area and their service is comparable to that of the people living in the metropolitan area cities.

In addition to the above, I would like to point out that both KWWL–TV and KMMT–TV are operating in what is known as a three-station VHF area. Individually, they are affiliated with only one network. They compete with the other stations that are affiliated with the other two networks, constantly and intensely, for the attention of the public. This competitive system has developed good television service in this area and will continue to develop an ever improved service in the years to come.

Any interference with the practices of the network which would result in destruction of, or minimize the effectiveneses of its programing service, would definitely affect the people of eastern Iowa and southern Minnesota and cause them to suffer a great loss of television service.

I deeply appreciate the opportunity of making this statement before your committee and sincerely hope that any actions arising from this report will be measured from the standpoint of public service to the people of the area we serve.

Respectfully submitted

BLACK HAWK BROADCASTING CO.,
R. J. MCELROY, *President*.

LETTER OF WILLIAM J. MOYER

JUNE 19, 1956.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
United States Senate, Capitol Building,
Washington, D. C.

GENTLEMEN: The Wichita Television Corp., Inc., which operates television broadcast station KARD–TV on channel 3 at Wichita, Kans., respectfully submits this statement to your committee to express its views in connection with your current study of the operation of television networks. We had hoped to be able to participate directly in your consideration of network television through my testimony as vice president and general manager of our corporation, but your committee advised me that you would be unable to hear my testimony and indicated that a written statement for the record would be acceptable. For that reason this statement is being submitted and we are anxious to have it considered.

As a brief background, station KARD–TV commenced commercial operation in temporary studios on September 1, 1955. The station had obtained its construction permit from the Federal Communications Commission in June 1955, after a prolonged competitive hearing commencing in October 1952. At that hearing the corporation had proposed programing based upon an NBC affiliation, and after 8 months of unaffiliated or independent operation, station KARD–TV commenced operation with NBC programing and is presently the regular NBC affiliate for the Wichita area.

Commercial television began in Wichita with the operation of KEDD–TV, on UHF channel 16, on August 15, 1953. This station was the regular NBC affiliate for the area until May 1, 1956. The first VHF station in Wichita, KAKE–TV, on channel 10, commenced operation on October 19, 1954, and has been the ABC affiliate since that time. CBS has undertaken to serve Wichita from station KTVH on channel 12 at Hutchinson, Kans., since June 22, 1953. KARD–TV on channel 3, carried no network programs from September 1, 1955, to May 1, 1956, except for NBC programs carried during short periods when KEDD–TV was off the air because of technical difficulties. Our network agreement with NBC was entered into some time before May 1, 1956, so that our personal experience with network television has been over a period of several months and our careful observation of network television has, of course, extended over a period of years.

With this information as background, we want very much to express our views on what we believe are the principal points in your committee's study about which we feel we have some knowledge—the questions of network must-buy practices and of option time.

The option-time arrangements in the normal network affiliation agreement are, based upon our experience and observation, necessary if a healthy television service of benefit to the public, the station, and the network is to be maintained and expanded. Under present option-hour arrangements, the network has the reasonable assurance of time clearance at the same hour by enough stations to permit it to present to the advertiser sufficient circulation to make his expenditure for top quality programs economically sound, rather than having the cost per viewer become prohibitive. We are well aware that our primary function is to serve the public interest, but the realities of our system of broadcasting compel a recognition that this system obtains its support from advertiser revenues. If a network is not in a position to have reasonable assurance of time clearances, we believe it could not afford the extensive costs of developing high quality programs for presentation to advertisers, where networks develop their own programs, and similarly high quality programs would not be developed by others for submission to advertisers and broadcasting over the network. In other words, there is often a direct correlation between circulation and the quality of commercial programs, and without clearances which the option time arrangement reasonably assures, the development of many quality programs would be prevented.

KARD-TV has clearly experienced a great increase in audiences with the advent of its network programing. This increase in audience has, of course, contributed materially to the station's financial well-being. In addition, it has rendered a major benefit to the public service groups of the Wichita area. From the outset our station has been keenly aware of its public service obligation and has programed to meet the area's needs. For example, in its first 3 months of operation from temporary studios and on a nonnetwork basis, KARD-TV developed sustaining educational programs for regular broadcast with the University of Wichita, Friends University, Southwestern University, and the public schools of the area. Similarly, it developed regular religious, fraternal, charitable, and other public service programs during that period, all on a sustaining basis. Sustaining special events programs of these public service groups have also been frequently broadcast. Upon becoming an NBC affiliate, Wichita Television Corp. was not only able to continue all of these programs particularly designed for its own service area, but was able to increase such programs and, when the station moves into its permanent, enlarged studios in the next few months, will further increase this local public service programing. The NBC network service, which we believe has obtained its quality and hence public appeal because of the reasonable assurance of circulation given by option hours, will be a major factor, if not the major factor, in our ability to expand and improve what we consider to be the already high quality of our local public service programing. The reason for this is that the network programing attracts a large audience. Much of that audience is now available for our local public service programing. And the network programing not only attracts network advertisers, but agencies to that programing bring national spot, regional, and local advertisers, all contributing to the revenue with which to improve the quality of our locally originated programing, as well as the syndicated and other film programs we acquire. Consequently, there is an interdependence among the quality of network programs, local public service programs, and nonnetwork film programs, and an essential ingredient in the upgrading of all of these programs is the audience attracted by the quality of the network programs. That quality, as we have attempted to point out, stems from the ability to develop such programs because of option-time arrangements.

Whether there should be a modification in present option hours, we cannot say with any real certainty. But we think not. The present option-hour arrangements, including 3 out of each 5 hours in the designated segments between 8 a. m. and 11 p. m. of the broadcast day with exceptions for locally important programs, have resulted in developing a sound balance between network and local programs. We feel that KARD-TV has been able, under the present option hour arrangement, completely to fulfill its local public service responsibility simultaneously with bringing the best in entertainment and other categories of network and commercial and sustaining programs to our audience. Since this balance is now working very successfully, there would seem to be no need to increase the option hours. We feel the networks are doing a sound job with the present number of hours. On the other hand, since there is presently adequate opportunity for full local self-expression within a balanced schedule meeting our area's needs, it would seem unsound to reduce the number of option hours and thereby jeopardize the teamwork between our station and the network from which the public benefits so materially in our opinion.

While we have a contract with the network giving it first refusal on our option hours, our experience has been that these option hours have in no way handicapped us in rendering a sound local public service. At no time has the network insisted on its contractual rights for any given time segment in option hours. The network has, instead, always demonstrated a complete spirit of cooperation when discussing the probabilities of our having to preempt a network show for local programing reasons.

The second point with which we wish briefly to deal is that of the must-buy status of certain stations. KARD-TV is not within that group, but hopes to be in the not too distant future, because of additional programing benefits that will accrue our viewing audience. We are convinced that a basic group of stations as a "must-buy" results in an overall advantage to the public in the United States generally and to our station and the public in our area particularly. Just as option hours give an advertiser assurance of adequate circulation, so does a basic group of stations give a stability to the network to assure that advertisers will not use what is essentially a national medium to pick and choose a few markets where the advertiser may feel he wants particularly to make an impact, with the result that the network renders a piecemeal service. Advertisers seeking this type of coverage have available to them national spot programs to serve their specialized requirements. The basic list of stations gives circulation assurance bringing about the same benefits to the public, KARD-TV and other affiliates, the network, and the advertiser as are achieved by circulation obtained from option hours.

The committee may wonder why KARD-TV feels that a basic list of stations is important although we are not on that list. The explanation of this is quite simple. KARD-TV benefits directly because many advertisers buying the basic list will also buy our station, making excellent programs and revenues available to us. KARD-TV benefits substantially even though not so directly in those cases where it is not ordered by an advertiser taking the basic list because the support obtained by the network from such a basic list keeps network broadcasting healthy, with the result that the network has available funds not only for the development of fine commercial programs but also can make available excellent sustaining programs which no individual station could ordinarily develop. Consequently, we feel that the so-called must-buy group of stations results in improving the national and local programs we are in a position to offer our audience.

Whether the basic list for NBC or any other network should be 50 to 60 markets, or more, or less, we are not in a position to evaluate. But since we feel convinced that the principle of having such a basic list is sound, it would seem to us that the question of how many stations should be on such a list should be left to the evolutionary development which has brought it about.

In summary, these views have been submitted for whatever help they may be to your committee. Because we share with you the desire to have television broadcasting in the United States render the finest public service and recognize the obligation incumbent on all broadcasters to make whatever contributions they can to achieve that end, I would be glad at any time to appear before your committee to support this statement and give whatever additional information or views I may have which you feel might be useful in your present study of network television operations.

Respectfully,

WICHITA TELEVISION CORP., INC. (KARD-TV),
By WILLIAM J. MOYER,
Vice President and General Manager.

(COMMITTEE NOTE.—Additional witnesses were heard on July 17 and 18, 1956. but their testimony related primarily to allocations matters and is therefore printed in the second volume on the UHF-VHF allocation problem.

(However, during the appearance of the members of the Federal Communications Commission on July 17, 1956, the following brief references to matters relating to network practices were made:)

Mr. COX. Now, it has, I suspect, been quite clear—both in your appearances before this committee and in your more recent appearances before certain of the House committees—that there is a good deal of concern over the question of the division of responsibility between the Commission and the Antitrust Division of the Department of Justice with respect to antitrust matters, in terms of primary jurisdiction and concurrent jurisdiction with respect to possible violations of the antitrust laws. You will recall that the committee wrote to the Commission and to the Department of Justice asking for comments upon testimony of Mr. Moore regarding his opinions as to the validity of certain network practices. The replies of both agencies were put into the record and indicate, still, a feeling on the part of each that perhaps this is something that the other one should be looking into. I think since that time the committee has again written to each of the agencies urging renewed efforts to try to mark out the divisions of responsibility. Is the Commission presently pursuing any course of discussion with the Department trying to achieve that end? Maybe Mr. Baker can answer that.

Mr. McCONNAUGHEY. General Counsel can answer that.

Mr. BAKER. I can answer that, in this sense: That as you know, Senator Magnuson wrote us a letter and we were in the process of replying to that. That reply is just about ready, but because of the fact that it only represents my viewpoint and has not yet been coordinated with the Chairman and the Commissioners, I can't tell you whether that is actually the view. I expect that it will be in your hands in the very near future.

Mr. COX. We will have it then for the record. Thank you.[20]

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[20] This letter appears in the appendix at p. 3114, together with a further exchange on this subject between Senator Magnuson and Chairman McConnaughey.

APPENDIX

1. LETTER DATED AUGUST 10, 1956, FROM DR. FRANK STANTON, PRESIDENT OF CBS, INC., SUPPLYING CERTAIN INFORMATION REQUESTED DURING HIS TESTIMONY

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N. Y. August 10, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington. D. C.

MY DEAR SENATOR MAGNUSON: In the course of my testimony before the Senate Interstate and Foreign Commerce Committee on June 12 and 13, 1956, you, Senator Bricker, and Mr. Cox requested that I supply certain additional information for the record.

In my letter of June 22, 1956, I submitted, in accordance with your request, our views on a number of bills on the subject of political time.

Mr. Cox requested our comments on the testimony of Dr. Alfred (sic) C. Parker, director of communication for the Congregational Christian Church (tr. 3226). A copy of our comments is enclosed as exhibit A.

In response to questions by Senator Bricker as to whether or not CBS has a policy of giving equal opportunity to competing companies, I volunteered to provide an analysis that would indicate that those who want to buy time have been taken care of—at least insofar os competing companies are concerned. I suggested that "we take a number of commodity groups—automotive and soap and cigarettes—broad groups of classification of groups that are advertising, and show how those balance" (tr. 3203). At my request, the CBS Television Research Department has prepared a compilation of the 1955 gross expenditures for network television time in each of the following product categories:

Automotive, automotive accessories and equipment
Beer, wine, and liquor
Confectionery and soft drinks
Drugs and remedies
Food and food products
Household equipment and supplies
Industrial materials
Office equipment, stationery, and writing supplies
Radio, television sets, phonographs, musical instruments and accessories
Tobacco, tobacco products, and smoking accessories
Toiletries and toilet goods
Soaps and cleansers

I am enclosing exhibit B which includes a table for each such product category. Each table lists the name of each advertiser who used network television during 1955 for advertising any product in the category to which that table applies, the gross 1955 billings to each such advertiser for CBS television network time charges for advertising products in such category, and the gross 1955 billings to each such advertiser for all television network time charges for advertising products in such category. The information contained in each such table was obtained from the 1955 reports of Publishers Information Bureau.

Mr. Cox also requested information concerning the coverage of CBS owned and operated television stations. He requested (tr. 3340) that this coverage data be computed on the same basis as was used in computing the 99.2 percent figure in our statement (pp. 4 and 8—Network Practices, memorandum supplementing the statement of Frank Stanton, president of Columbia Broadcasting Systme, Inc.) "that 99.2 percent of United States families live in areas which are within range of at least one television signal." It is not possible to furnish coverage data for the CBS owned television stations on a strictly comparable basis since the national figure is based upon the extent of set ownership in counties (to determine whether at least one service is received) while any individual station figure is, of necessity, based on an estimate of that station's coverage area. However, I am informed by the CBS Television Research Department that if the computation of coverage of CBS owned television stations is made on a basis as nearly comparable as possible to that used in the computation which resulted in the 99.2 percent figure, television stations owned by CBS would have an aggregate coverage which would include 22.1 percent of the families in the United States. Exhibit C, enclosed, is a statement of the basis on which such coverage was computed.

Mr. Cox requested information concerning the proportion of the aggregate of the gross card rates of all commercial television stations in the country, represented by the aggregate of the gross card rates of all television stations owned by CBS (tr. 3345).

The June 10, 1956, issue of Spot Television Rates and Data, published by Standard Rate & Data Service, Inc., lists rates for 443 continental United States television stations. The aggregate of the highest hourly rates as shown in such publication for each of such 443 stations is $275,157.65. The aggregate of the highest hourly card rates, as shown in such publication for the four television stations owned by CBS is $15,700, or 5.7 percent of the $275,157.65 figure.

Mr. Cox also asked for the "rate of clearance" for certain CBS television network programs. Clearance data with respect to those programs are set forth in the enclosed exhibit D.

Schedule I to exhibit D shows clearance data with respect to Studio One, broadcast from 10 to 11 p. m. (Central New York Time) on Mondays and of 20th Century-Fox Theater, broadcast from 10 to 11 p. m. (Central New York Time) on Wednesdays.

Schedule II to exhibit D shows clearance data with respect to programs broadcast over the CBS television network in the 10:30 to 11 p. m. (Central New York Time) period on Sundays, Tuesdays, Fridays, and Saturdays. (The program broadcast in this time period on Thursday of the week which was analyzed was not sponsored.)

Schedule III to exhibit D shows clearance data with respect to all half-hour programs broadcast over the CBS television network between 7:30 and 10:30 p. m. (Central New York Time).

Each of the schedules shows for each of the programs listed therein:

A. The total number of stations ordered for network option time, the number of such stations which cleared for the time ordered, the number which cleared for option time other than that ordered, and the number which cleared for nonoption time; and

B. The number of stations ordered for nonoption time, the number of such stations which cleared for the time ordered, the number which cleared for other nonoption time, and the number which cleared for network option time.

Each of the schedules shows the percentage of clearance within each of such categories. In each case, the percentage figure shown is the percentage of total stations ordered represented by clearance in the category to which the percentage applies.

The schedules reflect clearance data on those interconnected continental United States stations which carried the respective programs during the week ended May 19, 1956 (as agreed with Mr. Cox) and whose contracts provide for option time. Because of the effect of daylight saving time throughout parts of the country, which may cause a distortion of clearance information with respect to some stations for particular programs, the data for said programs are adjusted to reflect the clearance status for the week ended April 28, 1956, the last week before the institution of daylight saving time.

Sincerely yours,

FRANK STANTON, *President.*

EXHIBIT A TO LETTER DATED AUGUST 10, 1956 TO SENATOR MAGNUSON FROM FRANK STANTON

On June 11, 1956, in testimony before the Senate Committee on Interstate and Foreign Commerce, Dr. Everett C. Parker, director of the office of communication of the Congregational Christian Churches, made certain charges with respect to the quantity and character of religious programs offered by television networks. Dr. Parker also testified concerning children's programs. The committee has requested comment by CBS on Dr. Parker's testimony.

The substance of Dr. Parker's testimony concerning network religious programs is that they are inadequate in number, broadcast at inappropriate time periods, and based on an improper allocation of time among the various religious faiths. He further states that creative production and promotion of network religious programs are lacking. Many of the charges made by Dr. Parker are based, essentially, upon his particular viewpoint. Needless to say, the viewpoint of an individual whose chief concern is with religious matters will inevitably differ from those who have the responsibility of providing suitable balance in all areas of programing.

Each of the central arguments raised by Dr. Parker will be specifically discussed in this statement. At the outset, however, it is appropriate to describe the general policy of CBS in regard to religious programs and the manner in which they are treated. The policy of CBS, as applied to television programs, is not only to provide time for religious programs, but to assist religious groups in the production of programs. Because of the particular requirements of television production, in most cases an effective program requires the advice and close cooperation of personnel experienced in the techniques of television. For this reason, the development of each CBS television network program is a mutual undertaking on the part of religious agencies or leaders and network personnel.

Religious programs are not available for commercial sponsorship. The amount of time devoted to all religious programs is governed by a considered evaluation of what constitutes a balanced program structure. Because religion plays an important role at both the national and local level, it is expected that network and local religious programs will supplement each other. The amount of time devoted to particular faiths and denominations is determined in accordance with a policy of overall fairness. Allocation of network time is made in proportion to the memberships of the faiths and denominations, taking into consideration the composition of the audience of the medium and adjusted to allow somewhat less time to groups whose members are heavily concentrated in one area or region (with the result that, in practice, such groups receive greater consideration at the local level). This method of allocation was worked out for CBS Radio's Church of the Air series by its board of consultants, the group of religious leaders who serve as an advisory body for Church of the Air.[1]

This policy is administered for both CBS radio and CBS television by the CBS News and Public Affairs department. The director of educational and religious broadcasts of CBS News and Public Affairs, Dr. George Crothers, is charged with the immediate responsibility for religious programs. Dr. Crothers has had more than 8 years' experience in the field of religious programing for radio and television.

At the present time, the CBS television network offers two weekly half-hour religious programs: Look Up and Live, broadcast on Sunday from 10:30 to 11 a. m., New York time; and Lamp Unto my Feet, broadcast on Sunday from 10 to 10:30 a. m., New York time.

Look Up and Live is designed principally for young people between the ages of 13 and 20 years who do not regularly attend church services. The series presents popular entertainers and religious leaders who are specialists in youth problems. It is produced in cooperation with Protestant, Catholic, and Jewish agencies. Entertainers who have appeared on Look Up and Live include Dave Brubeck, Maria Tallchief, Marion McPartland, Lionel Hampton, Mahalia Jackson, Mitch Miller, and Ethel Waters. Among the many members of the clergy

[1] This group is referred to in Dr. Parker's testimony as the advisory committee. Dr. Parker is a member of this group. The other members of the board are: Fredrick Essex, director, press and publicity, American Baptists Convention; the Reverend Timothy Flynn, director of radio and television communications of the archdiocese of New York; Dewitt John, chief of the news and radio division, committee on publication, First Church of Christ, Scientist; David Wise, radio director of the Union of American Hebrew Congregations; Dr. Harold Hammond, director of public relations for the National Lutheran Council; Dr. Ralph Stoody, director of the office of Methodist information; Rev. Dr. Clayton Griswold, chairman of the department of radio and television of the Presbyterian Church, U. S. A.; Rev. Dr. James Hoffman, stated clerk of the Reformed Church in America; Rev. Paul M. Stevens, director of the radio and television commission of the Southern Baptist Convention; Elder Stephen Richards, member of the Council of Twelve of the Church of Jesus Christ of Latter Day Saints; Rev. Dana Forrest Kennedy, executive secretary of the National Council of Episcopal Churches; and Rev. Dr. Hampton Adams of the Park Avenue Christian Church, Disciples of Christ.

who have appeared are the Reverend Lawrence McMaster, of Oxford, Pa.; the Reverend Charles Templeton, formerly director of evangelism for the National Council of Churches of Christ, and secretary for evangelism of the Presbyterian Church, USA; the Very Reverend James Pike, dean of the Cathedral of St. John the Divine; Monsignor John Dougherty, of Darlington, N. J.; and Rabbi Arthur J. Lelyveld, national executive director of the B'nai B'rith Hillel foundations.

Lamp Unto My Feet, which has been broadcast on the CBS television network since November 1948, presents each week a short dramatization of moral and ethical problems of everyday life, followed by a discussion of various aspects of the problems by clergymen and other religious leaders. Particular programs have included Unto These My Brethren, presenting the television debut of Pauline Flanagan of the Ireland Gate Theatre and the Irish Players; No Pets Allowed, featuring Judith Evelyn; scenes from Good Friday by John Masefield; and The Other Cheek by Howard Rodman. Among the members of the clergy who have appeared are Dr. Philips Packer Elliott, minister of the First Presbyterian Church of Brooklyn, New York; Rabbi Samuel Penner, of Congregation Beth Israel, Philadelphia; Bishop John Wesley Lord, resident bishop of the Boston area of the Methodist Church; and Father Thurston Davis, associate editor of the Catholic weekly America. The program frequently departs from its usual format and has featured dramatic readings by Siobhan McKenna and Fritz Weaver and interviews with Premier U Nu, of Burma, on Buddhism and historian Arnold Toynbee.

THE CHARGES MADE BY DR. PARKER

1. Dr. Parker states that there is insufficient time devoted by television networks to religious programs (transcript, p. 3071–3072). In addition to its two regularly scheduled weekly programs, the CBS television network offers special religious programs for religious holidays such as Christmas and Easter services. Consistent with the belief that religious programs are, in part, the responsibility of local stations, all CBS owned stations, both radio and television, broadcast local religious programs.[2] Some of the local religious programs broadcast by the four CBS-owned television stations are described in appendix D of the document entitled "Network Practices, Memorandum Supplementing Statement of Frank Stanton, President, Columbia Broadcasting System, Inc." supplemental memorandum which was submitted to the committee on June 12, 1956, at the time Dr. Stanton testified.

In the judgment of CBS, its current practices with respect to the amount of time made available for religious programs more than adequately meets its responsibilities in this area. In the case of each of its owned television stations there is some religious programing—either network or local, or both—regularly scheduled on each day of the week.

2. Dr. Parker argues that religious programs are relegated to relatively poor listening periods and are usually broadcast on Sunday (transcript, p. 3092). The difficulty with this argument is that it ignores the fact that Sunday is generally the most suitable day of the week for most religious programs. While religious programs are not intended as a substitute for church attendance, in many cases, where for a variety of reasons persons are unable to attend church, they may in fact serve as a substitute. Furthermore, because of the inspirational and devotional nature of religious programs, it would seem clearly inappropriate to schedule them adjacent to programs of an entirely different character and purpose.

3. Dr. Parker criticizes the practice of allocating time to various faiths and denominations on a rotating basis. He states that the representation of faiths on CBS radio's Church of the Air is "arbitrarily determined by CBS" (transcript, p. 3074). He argues that "segmented scheduling" of religious broadcasts prevents the development of sustained audience interest (transcript, p. 3082).

As previously noted, the CBS policy of rotational representation of religious faiths was devised in consultation with members of the clergy. It is based on a formula concurred in by them and which has served satisfactorily for a num-

[2] Dr. Parker acknowledges that the "vast majority" of stations provide religious programs of a local nature (transcript, p. 3075).

ber of years for Church of the Air. In these circumstances, it is difficult to understand how it can be considered to be arbitrary.[3]

The arguments raised by Dr. Parker with respect to "segmented scheduling" ignores one fundamental factor which is basic in considering religion and broadcast media. A principal effort of a broadcaster in providing religious programs is the promotion of understanding of different faiths. One means of achieving this aim is to provide for the representation on a single religious program of various religious groups on a rotating basis. The wisdom of the conclusion that multidenominational programs are appropriate is borne out by the considerable volume of mail received from viewers and listeners which commends talks by clergymen representing faiths other than those of the letterwriters. It appears that, to a considerable degree, the audience for religious programs is composed of people who are looking for a general religious approach rather than their own denominational viewpoint.

In commenting on the representation of faiths on CBS television network religious programs, Dr. Parker leaves the impression that for a period of 23 weeks out of the year, Protestant groups were not represented (transcript p. 3071) Since Lamp Unto My Feet does not represent the effort of a particular religious group it is apparently discounted by Dr. Parker. As previously noted, Lamp Unto My Feet regularly presents ministers and other religious leaders. Accordingly, taking into consideration both of the CBS television network religious programs, during the 12-month period from June 1955 to June 1956, Protestantism was formally represented during 46 of the 52 weeks.

Dr. Parker refers to the "downgrading" of religion on network television (transcript p. 3076) and the reduction of religion on network television "to a position of less than one-third the importance it has held on radio * * *" (transcript p. 3074). In fact, the CBS radio network has for many years originated 2 weekly half-hour programs (Church of the Air), supplemented by the Salt Lake Tabernacle Choir, a weekly half-hour devoted principally to religious music. As previously noted, the CBS television network originates 2 weekly half-hour programs. This does not appear in any sense to constitute "downgrading" and certainly does not constitute a reduction "to a position of less than one-third the importance it has held on radio."

4. Dr. Parker makes a number of charges directed at the production and promotion of network religious programs.[4] Dr. Parker's statement that "In no network do the leading creative minds work on religious programs" (transcript p. 3085) is at variance with the facts. Dr. Crothers has had extensive experience in religious programing. He is a graduate of a church affiliated college and holds master of arts and doctor of philosophy degrees from Columbia University. Irving Gitlin, director of public affairs for CBS News and Public Affairs, who supervises the production of Lamp Unto My Feet and Look Up and Live is widely experienced not only in religious programing but in al phases of public affairs programing.[5] The producer of Lamp Unto My Feet is also an accomplished writer and actress. The director of Lamp Unto My Feet has recently returned to CBS News and Public Affairs after serving by invitation as director of the Little Theater in the Round in Dallas, Tex. for 6 months. The producer of Look Up and Live has been with CBS for 10 years and has served as a producer for CBS News and Public Affairs for the past 2 years. The director of Look Up and Live has been a CBS television director for 2 years and has been associated with several CBS television programs, including Toast of the Town. Among the writers whose work has been used on the CBS television religious programs are Horton Foote, Harold Rodman, Charles Norman, Clair Roskam, Jerome Coopersmith, Paul Tripp, and David Driscoll, all of whom are respected writers for television and other media. Clearly, under any reasonable interpretation of the term "leading creative minds" used by Dr. Parker, the individuals associated in the production of these programs would qualify.

Dr. Parker criticizes the use of a church service format for religious programs (transcript p. 3072). Without commenting upon the validity of this conclusion, it is sufficient to state that the CBS television network programs do not adhere

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[3] On one occasion, in 1948, the number of programs of the Church of the Air series assigned to the Congregational churches, which Dr. Parker represents on the board of consultants, was reduced by one without previous consultation with him. This instance was a deviation from the normal practice.

[4] The appendix hereto contains excerpts from reviews of Lamp Unto My Feet and Look Up and Live which refute Dr. Parker's charges concerning the production qualities of these programs.

[5] Among the many programs for which Mr. Gitlin has been responsible is The Search, a public affairs series the production of which is described in Appendix B to the Supplemental Memorandum.

to a church service format and CBS radio's Church of the Air series, while containing some of the elements of some Protestant services (liturgical music, prayers, scripture readings, and a religious talk), does not in any sense conform to Jewish or Catholic services when those faiths are represented. The subject is one that has been frequently considered. As recently as May 1956, the Church of the Air board of consultants discussed a change of format at the suggestion of CBS, but the consensus was that the program should retain its sectarian values.[6]

Dr. Parker states that "Program costs of network religious programs typically are borne [sic] by the religious group to which the network allocates time" (transcript p. 3084). He admits, however, that "CBS pays a substantial share of the talent costs for Look Up and Live, and all expenses of its house-sponsored Lamp Unto My Feet" (Ibid.). As a matter of fact, CBS pays *all* costs for both programs.

Dr. Parker attributes the greater acceptance of series produced by church councils to "vigorous promotion" by those groups, an "advantage" which he asserts church groups do not enjoy on network programs (transcript p. 3083). On the contrary, there are numerous "promotional advantages" inherent in religious programs on the CBS television network. Each week, a descriptive press release for each program is distributed to approximately 1,200 publications. Picture coverage and feature material are supplied. In addition, a certain amount of on-the-air promotion is provided.

5. Dr. Parker also makes certain charges concerning the effect of television programs on children.[7] His remarks were not directed at specific programs, but dealt in general terms with allegations of excessive violence and emphasis on crime in dramatic programs. CBS is fully aware of its responsibilities in this area. It is the general policy of CBS not to schedule programs that are considered inappropriate for children during hours when children are likely to be watching television. Through its editing departments, close supervision is maintained over all programs to assure that excessive violence and emphasis in crime is avoided. It is rare indeed that violence "is slipped in because it is a quickly written script" (transcript, p. 3102).

In the final analysis, the positive evidence that CBS television is dealing appropriately with this problem is its schedule of programs and the content of those programs. Currently being broadcast in the early evening hours are such programs as Robin Hood, My Friend Flicka, Gene Autry, and CBS Cartoon Theater. Six hours of CBS television network time each week are devoted to Captain Kangaroo, a children's program that consciously and consistently avoids all suggestions of violence and crime.

In many respects the problems of appropriate program content for children go far beyond the matters raised by Dr. Parker. Thus, for example, programs that are pitched at a high moral level may be so realistic and intense as to invoke undesirable emotional reaction from small children. On the other hand, a traditional puppet show may have numerous villains and considerable violence yet result in no emotional disturbances whatsoever. These are problems that can be considered only in the light of specific situations. This is precisely the manner in which they are treated by CBS television.

Appendix to Exhibit A—Extracts From Reviews of Lamp Unto My Feet and Look Up and Live

LAMP UNTO MY FEET

"Lamp Unto My Feet, a CBS–TV Sunday afternoon presentation, symbolizes one of the primary missions of television itself—public service with no ax to grind. It has no commercial sponsorship, could hardly accept underwriting without sacrificing its objectivity, and is as much in the public interest as any program in TV or radio."—Variety, December 5, 1951.

[6] Dr. Parker characterizes the Church of the Air board of consultants as a "front" and states that it meets only once a year (transcript, p. 3073). Aside from the unfair implication cast upon the members of the board by Dr. Parker's characterization, the fact is that while the board meets formally only once a year, the producers of religious programs are frequently in touch with individual members of the board (either in person or by telephone) concerning the planning and production of particular programs and for discussion of overall aims of religious broadcasting.

[7] In this portion of Dr. Parker's testimony appears the statement that there is no network religious program for children (transcript, p. 3100). As stated previously, Look Up and Live is designed for young people between the ages of 13 and 20.

"* * * [T]he playlet had loads of dramatic zing. * * * This session had impact and followed a highly rewarding pattern of public service programing at CBS–TV, which rarely falls short of its goal in that regard."—Variety, February 9, 1955.

"* * * Lamp Unto My Feet (10 a. m.) is one of the handful of topnotch dramatic shows in TV. Its themes range from the Christian ethic in labor disputes to the ways in which psychiatry can complement religion in comforting troubled hearts."—Harriet Van Horne, New York World-Telegram and Sun, September 13, 1955.

LOOK UP AND LIVE

"With all forms of religion having taken a greater interest in youth and youth activities over the past decade Look Up and Live shapes as a natural facet of religious programing that should win plaudits all the way round—from church groups, lay organizations, parents, and from teen-agers themselves. The latter is the most important group, for they comprise the viewers CBS Director of Religious Programing Dr. George Grothers [sic] has fashioned the show with an eye toward. * * * Everything about the show smacks of smart programing, from the tele and from the religious standpoint. There's a maximum of entertainment and a minimum of moralizing. Show stresses what religion has to offer young people without making any demands upon them. In line with that, program presents an award every week to a young person who's been most active in his or her community. Initial scroll went to a girl from Manhasset who wrote, composed, and directed an operetta given in her parish. Program will devote itself to all three major faiths.

"On the technical side, Producer-Director William Workman brought it all off without a hitch. Camera work was smooth, other production values simple but good, and Workman succeeded in creating an atmosphere of informality that gives the show an aura of pleasantness that's lacking in most other religious stanzas."—Variety, January 13, 1954.

"Jazz turns up in the strangest places on TV. Last Sunday on CBS–TV's morning show, Look Up and Live, jazz was used as the text for a religious sermon which is about as far removed as one can get from its earthy beginnings in the Storeyville section of New Orleans. But despite the rather highsounding title of the show, 'The Theology of Jazz,' it was an excellent session of music as furnished by the standout modern jazz combo, the Dave Brubeck Quartet. There was also an intelligent interview of Brubeck by Rev. Lawrence McMaster, of the Oxford, Pa., Presbyterian Church, who used the jazz form as a parallel to religious ideas. The theology was neatly woven into the show as Brubeck's crew illustrated various fugal and rhythmic patterns typical of its style. The basic idea was to show that jazz, like religion, permitted man to express fully his individuality."—Variety, August 31, 1955.

EXHIBIT B TO LETTER DATED AUGUST 10, 1956, TO SENATOR MAGNUSON FROM FRANK STANTON

Gross network television time billings, 1955, by product category

AUTOMOTIVE, AUTOMOTIVE ACCESSORIES, AND EQUIPMENT [1]

Advertiser	CBS television	Total network television
American Motors Corp		$2,605,303
Chrysler Corp	$4,150,232	17,272,769
Dow Chemical Co		249,661
Firestone Tire & Rubber Co		1,523,820
Ford Motor Co	5,209,519	8,648,800
General Motors Corp	897,915	11,627,288
General Tire & Rubber Co., The		67,451
Goodrich, B. F., Co., The	966,903	966,903
Goodyear Tire & Rubber Co		2,195,411
Mobile Homes Manufacturers Association		152,012
U. S. Rubber Co		53,618
Union Carbide & Carbon Corp	148,746	148,746
Studebaker-Packard Corp		1,547,854

See footnote at end of table.

EXHIBIT B TO LETTER DATED AUGUST 10, 1956, TO SENATOR MAGNUSON FROM FRANK STANTON—Continued

Gross network television time billings, 1955, by product category—Continued

BEER, WINE, AND LIQUOR [1]

Advertiser	CBS television	Total network television
Anheuser-Busch, Inc	$1,061,337	$1,061,337
Falstaff Brewing Corp	579,690	665,922
Theodore Hamm Brewing Co	336,108	336,108
Miller Brewing Co		135,849
Pabst Brewing Co	978,164	1,694,902
Joseph Schlitz Brewing Co	2,272,776	2,272,776
Wine Corporation of America		1,421,502

CONFECTIONERY AND SOFT DRINKS [1]

Advertiser	CBS television	Total network television
American Chicle Co		$107,220
Chunky Chocolate Corp		147,754
Coca-Cola Co		3,012,362
Curtiss Candy Co	$101,572	101,572
Johnson Candy Co., Walter H		147,820
Lowe, Joe, Corp		245,383
Luden's, Inc		152,251
Mars, Inc		435,920
National Dairy Products Corp		547,345
Pepsi-Cola Co		518,775
Seven-Up Co	56,500	141,892
Sweets Co. of America, Inc		1,599,116
TV Time Foods Co		200,638
Top Pop Products Co		14,384
Wrigley Co., William, Jr	741,360	741,360

DRUGS AND REMEDIES [1]

Advertiser	CBS television	Total network television
American Home Products Corp	$8,517,186	$8,956,222
Beltone Hearing Aid Co		56,501
Bristol-Myers Co	1,962,618	1,962,618
Carter Products, Inc	6,902	36,902
Ciba Co., Inc		438,180
Edison Chemicals Co	3,352	10,396
Emerson Drug Co		567,937
Grove Laboratories, Inc		148,086
Johnson & Johnson		439,448
Kendall Co., The	192,555	382,380
Lewis-Howe Co	48,546	648,121
Luden's, Inc		47,536
Miles Laboratories, Inc	1,014,231	3,039,440
Musterole Co		143,930
Norwich Pharmacal Co	510,505	510,505
Noxzema Chemical Co	392,775	602,279
Rexall Drug Co		32,892
Serutan Co	1,784,020	3,860,070
Smith, Kline & French Laboratories		212,808
Sterling Drug, Inc		1,414,613
Upjohn Co., The		71,194
Vick Chemical Co		200,485

FOOD AND FOOD PRODUCTS [1]

Advertiser	CBS television	Total network television
Adolph's Food Products		$53,068
American Dairy Association	$293,715	1,733,702
American Home Products Corp	126,176	222,432
Armour & Co	95,715	368,993
Atlantis Sales Corp		281,330
Beatrice Foods Co		42,133
Beech-Nut Packing Co		120,655
Best Foods, Inc	34,860	1,239,719
Borden Co., The	459,095	4,255,206
California Packing Corp		391,654
Campbell Cereal Co	23,056	66,411
Campbell Soup Co	1,972,811	3,885,385
Carnation Co	1,452,550	1,749,928
Chun King Sales, Inc	344,675	344,675

See footnote at end of table.

EXHIBIT B TO LETTER DATED AUGUST 10, 1956, TO SENATOR MAGNUSON FROM FRANK STANTON—Continued

Gross network television time billings, 1955, by product category—Continued

FOOD AND FOOD PRODUCTS [1]—Continued

Advertiser	CBS television	Total network television
Comstock Canning Corp	$144,470	$144,470
Continental Baking Co		1,102,047
Converted Rice, Inc	578,190	578,190
Corn Products Refining Co	793,977	793,977
Diamond Crystal Salt Co		18,787
Florida Citrus Commission	78,646	471,385
Food Specialties, Inc		23,937
General Foods Corp	9,437,050	13,839,211
General Mills, Inc	6,718,578	9,141,804
Gerber Products Co	248,345	910,750
Gordon Baking Co		5,040
Green Giant Co		264,690
Grocery Stores Products Co., Inc		129,779
Hawaiian Pineapple Co., Ltd	616,810	616,810
Heinz Co., H. J		2,098,569
International Salt Co., Inc		90,352
Kellogg Co	3,456,081	4,669,869
Kitchens of Sara Lee, Inc		11,425
Larsen Co	69,300	69,300
Lemon Products Advisory Board		70,029
Lettuce, Inc		124,612
Lever Bros. Co	2,066,436	2,066,436
Libby, McNeill & Libby		128,845
Minute Maid Corp		108,556
Morton Salt Co		277,694
National Biscuit Co	640,200	2,548,322
National Dairy Products Corp	1,579,869	5,917,999
Nestle Co., Inc., The	$1,701,414	$1,760,274
Old Welch Co., Inc		515,530
Pan American Coffee Bureau		119,653
Pet Milk Co	1,056,630	2,081,475
Pillsbury Mills, Inc	5,024,864	5,291,324
Procter & Gamble Co., Inc		33,992
Quaker Oats Co	944,674	1,209,076
Ralston Purina Co	116,070	1,577,351
Rath Packing Co., The		83,453
Standard Brands, Inc		1,551,016
Star-Kist Foods, Inc		343,230
Swift & Co	671,616	3,632,311
Wander Co., The	433,926	685,561
Washington State Apple Advertising Commission		88,226
Wesson Oil & Snowdrift Co., Inc	270,830	270,830

HOUSEHOLD EQUIPMENT AND SUPPLIES [1]

Advertiser	CBS television	Total network television
Admiral Corp		$122,689
Aluminum Company of America		294,823
Aluminum Goods Manufacturing Co		42,254
Amana Society	$1,177,212	1,177,212
American-Marietta Co		52,500
American Motors Corp	424,950	424,950
Apex Electrical Manufacturing Co		72,779
Avco Manufacturing Corp	841,770	1,582,420
Bissell Carpet Sweeper Co		486,049
Caloric Stove Corp		40,790
Camfield Manufacturing Co		42,367
Connecticut Chemical Research Corp		15,682
Dixie Cup Co		330,332
Dormeyer Corp		175,473
Dow Chemical Co		1,931,999
Dynamics Corporation of America		47,941
General Electric Co	3,700,503	5,579,190
General Motors Corp	2,450,285	2,450,285
General Time Corp		143,426
Hobart Manufacturing Co		2,441
Hoover Co., The	16,435	76,310
International Harvester Co	640,065	640,065
Lau Blower Co		48,796
Magla Products		39,204
Maytag Co	1,217,406	1,472,680
McGraw Electric Co		45,000
Mullins Manufacturing Corp	3,667	7,388

See footnote at end of table

EXHIBIT B TO LETTER DATED AUGUST 10, 1956, TO SENATOR MAGNUSON FROM FRANK STANTON—Continued

Gross network television time billings, 1955, by product category—Continued

HOUSEHOLD EQUIPMENT AND SUPPLIES [1]—Continued

Advertiser	CBS television	Total network television
National Presto Industries, Inc		$112,500
Necchi Sewing Machine Sales Corp		154,814
Olin Mathieson Chemical Corp		64,321
Oster Manufacturing Co., John		96,568
Peerless Electric, Inc		66,375
Pfaff American Sales Corp		198,033
Philco Corp		141,125
Roto-Broil Corporation of America		419,632
Scott Paper Co	$1,502,674	3,573,004
Singer Manufacturing Co	1,201,275	1,201,275
Sunbeam Corp		1,320,054
Sylvania Electric Products, Inc	2,142,450	2,142,450
Westinghouse Electric Corp	4,392,870	4,392,870
Whirlpool-Seeger Corp		320,763

INDUSTRIAL MATERIALS [1]

Advertiser	CBS television	Total network television
Aluminium, Ltd	$546,131	$546,131
Aluminum Company of America	826,398	1,452,107
American Viscose Corp		71,299
Black & Decker Manufacturing Co		111,001
Dow Chemical Co		229,624
Du Pont de Nemours & Co., Inc., E. I		790,609
Firestone Tire & Rubber Co		37,930
Glass Container Manufacturers Institute		117,148
Monsanto Chemical Co	185,913	489,894
Owens-Corning Fiberglas Corp		55,542
Reynolds Metals Co		1,805,609
United States Steel Corp	1,004,270	1,800,440

OFFICE EQUIPMENT, STATIONERY, AND WRITING SUPPLIES [1]

Advertiser	CBS television	Total network television
Gibson Art Co		$47,549
Gillette Co		1,217,481
Hallmark Cards, Inc		1,172,400
Minnesota Mining & Manufacturing Co	$544,945	565,157
Norcross, Inc	306,672	306,672
Parker Pen Co		328,026
Sheaffer, W. A., Pen Co	1,520,371	2,284,582

RADIOS, TELEVISION SETS, PHONOGRAPHS, MUSICAL INSTRUMENTS AND ACCESSORIES [1]

Advertiser	CBS television	Total network television
Admiral Corp		$1,281,300
Columbia Broadcasting System, Inc	$1,718,527	1,718,527
Du Mont, Allen B., Laboratories, Inc		145,035
General Electric Co	693,720	1,004,271
Motorola, Inc		45,342
Philco Corp		1,617,830
Radio Corporation of America		1,734,456
Webster-Chicago Corp	243,050	
Zenith Radio Corp	306,672	306,672

TOBACCO, TOBACCO PRODUCTS, AND SMOKING ACCESSORIES [1]

Advertiser	CBS television	Total network television
American Tobacco Co., The	$5,166,374	$10,703,825
Bayuk Cigars, Inc		185,595
Bloch Bros. Tobacco Co		87,788
British-American Tobacco Co., Ltd	1,827,202	2,171,911
General Cigar Co., Inc		374,105
Liggett & Myers Tobacco Co	3,038,954	7,430,797
Lorillard Co., P	4,148,301	6,446,082
Philip Morris, Inc	1,241,250	1,256,250
R. J. Reynolds Tobacco Co	5,561,326	12,230,666
Ronson Corp	914,360	914,360
United States Tobacco Co		320,383

See footnote at end of table

...AUGUST 10, 1956, TO SENATOR MAGNUSON FROM ...NK STANTON—Continued

...time billings, 1955, by product category—Continued

...ILETRIES AND TOILET GOODS [1]

Advertiser	CBS television	Total network television
[illegible]		$1,632,469
...cts Corp		50,400
...r Corp		154,585
[illegible]		1,399,208
[illegible]		1,039,806
...Inc		828,788
[illegible]		2,733,680
[illegible]	$69,240	84,240
[illegible]		53,891
...Myers Co	2,860,072	3,060,517
...arter Products, Inc	1,226,775	1,226,775
Chesebrough-Ponds, Inc		1,186,365
Colgate-Palmolive Co	7,669,907	13,718,302
Helene Curtis Industries, Inc	1,577,682	2,129,197
Doeskin Products, Inc	132,445	132,445
Gillette Co	4,748,875	14,522,765
Grove Laboratories, Inc		419,029
International Cellucotton Products Co		914,648
Jergens, Andrew, Co., The		1,261,895
Johnson & Johnson	305,703	694,459
Lanolin Plus, Inc	223,420	295,125
Lee, Ltd		244,497
Lehn & Fink Products Corp	1,460,775	2,111,419
Lever Bros. Co	917,508	4,842,768
Manhattan Soap Co., Inc		682,312
Maybelline Co	44,818	194,094
Mennen Co., The		949,909
Jules Montenier, Inc	894,141	894,141
Murine Co., Inc		21,064
Northam Warren Corp		299,772
Olin Mathieson Chemical Corp		540,290
Procter & Gamble Co., The	3,758,676	5,468,145
Revlon Products Corp	2,665,315	2,884,825
Schick, Inc	661,533	1,694,843
Shulton, Inc	73,025	73,025
Sperry Rand Corp	1,166,148	1,910,957
Sunbeam Corp		69,087
Vick Chemical Co		62,906
Warner Lambert Pharmaceutical Co		2,102,590
Weco Products Co		58,887
Wildroot Co., Inc	323,043	323,043
J. B. Williams Co		3,690
Yardley of London, Inc	666,915	666,915

SOAP AND CLEANSERS [1]

Advertiser	CBS television	Total network television
Babbitt, B. T., Inc		$30,697
Brillo Manufacturing Co., Inc		1,213,320
Bruce, E. L., Co		137,484
Colgate-Palmolive Co	$3,187,346	4,980,016
Dow Chemical Co		91,852
Economics Laboratories, Inc	102,500	102,500
Gold Seal Co	565,892	797,606
Hagan Corp		117,443
Jerclayton, Inc		19,758
Johnson & Son, Inc., S. C	1,330,535	3,474,450
Lever Bros. Co	1,734,308	2,535,548
Procter & Gamble Co., The	20,498,808	28,320,091
Purex Corp., Ltd		617,946
S. O. S. Co., The	499,675	865,830
Simoniz Co	919,043	2,180,458
Staley Manufacturing Co., A. E	319,480	319,480
Wright & Co., Inc., J. A		113,076

[1] Figures for each advertiser represent only expenditures for products in this category. The same advertiser may appear under other product categories.

Source: Publishers Information Bureau.

Exhibit C to Letter Dated August 10, 1956, to
Frank Stanton

The basis of the computation of coverage of CBS-own
referred to in the above letter is as follows:

(a) For stations in operation in November 1953 (New York,
Angeles), a county was considered in the service area of a statio
either of two conditions:

(i) It was the home county of the station. (A "home county"
in which the station is located, except in the case of New York
the home county includes the five counties within New York City.)

(ii) The percentage of total families in the county which could
the station was at least one-quarter of the percentage of total famil
the home county which could receive the station, according to the spe
study done for CBS Television by the A. C. Nielsen Co. in November 19

(b) For the station not in operation in November 1953 (Milwaukee), a count
was considered in the service area of that station if more than half of the county's population fell within the estimated 1,600-microvolt contour of the station.

(c) If a county was considered in the service area of a station, it was assumed that all families within that county could receive service from that station.

(d) Total United States families and total families within the respective service areas of the stations are as of January 1, 1956, and are taken from the Sales Management Survey of Buying Power.

Exhibit D to Letter Dated August 10, 1956, to Senator Magnuson From Frank Stanton

Schedule I

Studio One—Monday, 10 to 11 p. m. CNYT

	Ordered	Cleared	Percentage
A. Ordered in network option time	6		
1. Cleared in time ordered		6	6.5
2. Cleared in other option time		0	
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	86		
1. Cleared in time ordered		83	90.2
2. Cleared in other nonoption time		2	2.2
3. Cleared in network option time		0	
C. Total stations	92	91	98.9

20th Century Fox Theater—Wednesday, 10 to 11 CNYT

	Ordered	Cleared	Percentage
A. Ordered in network option time	8		
1. Cleared in time ordered		7	5.6
2. Cleared in other option time		0	
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	118		
1. Cleared in time ordered		102	81.0
2. Cleared in other nonoption time		3	2.4
3. Cleared in network option time		1	.7
C. Total stations	126	113	89.7

SCHEDULE II

What's My Line—Sunday, 10:30 to 11 p. m. CNYT

	Ordered	Cleared	Percentage
A. Ordered in network option time	13		
1. Cleared in time ordered		12	14.1
2. Cleared in other option time		1	1.2
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	72		
1. Cleared in time ordered		60	70.6
2. Cleared in other nonoption time		5	5.9
3. Cleared in network option time		0	
C. Total stations	85	78	91.8

Do You Trust Your Wife—Tuesday, 10:30 to 11 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	23		
1. Cleared in time ordered		16	10.8
2. Cleared in other option time		3	2.0
3. Cleared in nonoption time		2	1.4
B. Ordered in nonoption time	125		
1. Cleared in time ordered		72	48.7
2. Cleared in other nonoption time		16	10.8
3. Cleared in network option time		11	7.4
C. Total stations	148	120	81.1

[1] West-coast repeat, Tuesday, 7:30 to 8 p. m. Pacific time.

Person to Person—Friday, 10:30 to 11 p. m. CNYT

	Ordered	Cleared	Percentage
A. Ordered in network option time	12		
1. Cleared in time ordered		6	6.5
2. Cleared in other option time		0	
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	80		
1. Cleared in time ordered		71	77.2
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	92	77	83.7

Damon Runyon Theater—Saturday, 10:30 to 11 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	0		
1. Cleared in time ordered		0	
2. Cleared in other option time		0	
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	105		
1. Cleared in time ordered		77	73.3
2. Cleared in other nonoption time		3	2.9
3. Cleared in network option time		7	6.7
C. Total stations	105	87	82.9

[1] West-coast repeat, Saturday, 10:30 to 11 p. m. Pacific time.

Schedule III

Jack Benny—Private Secretary—Sunday, 7:30 to 8 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	122		
1. Cleared in time ordered		120	82.8
2. Cleared in other option time		1	.7
3. Cleared in nonoption time		1	.7
B. Ordered in nonoption time	23		
1. Cleared in time ordered		21	14.4
2. Cleared in other nonoption time		1	.7
3. Cleared in network option time		1	.7
C. Total stations	145	145	100.0

[1] West-coast repeat, Sunday, 7:30 to 8 p. m. Pacific time.

G. E. Theater—Sunday, 9 to 9:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	127		
1. Cleared in time ordered		123	91.8
2. Cleared in other option time		2	1.5
3. Cleared in nonoption time			
B. Ordered in nonoption time	7		
1. Cleared in time ordered		5	3.7
2. Cleared in other nonoption time		0	
3. Cleared in network option time		2	1.5
C. Total stations	134	132	98.5

[1] West-coast repeat, Sunday, 9 to 9:30 p. m. Pacific time.

Alfred Hitchcock Presents—Sunday, 9:30 to 10 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	107		
1. Cleared in time ordered		82	76.6
2. Cleared in other option time		6	5.6
3. Cleared in nonoption time		14	13.1
B. Ordered in nonoption time	0		
1. Cleared in time ordered			
2. Cleared in other nonoption time			
3. Cleared in network option time			
C. Total stations	107	102	95.3

[1] West-coast repeat, Sunday, 9:30 to 10 p. m. Pacific time.

$64,000 Challenge—Sunday, 10 to 10:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	108		
1. Cleared in time ordered		94	87.0
2. Cleared in other option time		4	3.7
3. Cleared in nonoption time		6	5.6
B. Ordered in nonoption time	0		
1. Cleared in time ordered		0	
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	108	104	96.3

[1] West-coast repeat, Sunday, 10 to 10:30 p. m. Pacific time.

Robin Hood—Monday, 7:30 to 8 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	106		
1. Cleared in time ordered		96	76.8
2. Cleared in other option time		1	.8
3. Cleared in nonoption time		5	4.0
B. Ordered in nonoption time	19		
1. Cleared in time ordered		12	9.6
2. Cleared in other nonoption time		4	3.2
3. Cleared in network option time		3	2.4
C. Total stations	125	121	96.8

[1] West-coast repeat, Monday, 6:30 to 7 p. m., Pacific time.

Burns and Allen—Monday, 8 to 8:30 CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	95		
1. Cleared in time ordered		88	92.6
2. Cleared in other option time		5	5.3
3. Cleared in nonoption time		2	2.1
B. Ordered in nonoption time	0		
1. Cleared in time ordered		0	
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	95	95	100.0

[1] West-coast repeat, Monday, 8 to 8:30 p. m. Pacific time.

Talent Scouts—Monday, 8:30 to 9 CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	123		
1. Cleared in time ordered		76	58.0
2. Cleared in other option time		21	16.0
3. Cleared in nonoption time		20	15.3
B. Ordered in nonoption time	8		
1. Cleared in time ordered		2	1.5
2. Cleared in other nonoption time		1	.8
3. Cleared in network option time		4	3.1
C. Total stations	131	124	94.7

[1] West-coast repeat, Monday, 8:30 to 9 p. m. Pacific time.

I Love Lucy—Monday, 9 to 9:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	125		
1. Cleared in time ordered		123	92.5
2. Cleared in other option time		2	1.5
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	8		
1. Cleared in time ordered		6	4.5
2. Cleared in other nonoption time		0	
3. Cleared in network option time		2	1.5
C. Total stations	133	133	100.0

[1] West-coast repeat, Monday, 9 to 9:30 p. m. Pacific time.

December Bride—Monday, 9:30 to 10 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	153		
1. Cleared in time ordered		144	94.1
2. Cleared in other option time		7	4.6
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	0		
1. Cleared in time ordered		0	
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	153	151	98.7

[1] West-coast repeat, Monday, 9:30 to 10 p. m. Pacific time.

Name That Tune— Tuesday, 7:30 to 8 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	122		
1. Cleared in time ordered		94	63.1
2. Cleared in other option time		1	.6
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	27		
1. Cleared in time ordered		17	11.4
2. Cleared in other nonoption time		1	.7
3. Cleared in network option time		0	
C. Total stations	149	113	75.8

[1] West-coast repeat, Tuesday, 6:30 to 7 p. m. Pacific time.

Phil Silvers Show—Tuesday, 8 to 8:30 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	139		
1. Cleared in time ordered		101	66.9
2. Cleared in other option time		31	20.5
3. Cleared in nonoption time		4	2.7
B. Ordered in nonoption time	12		
1. Cleared in time ordered		4	2.6
2. Cleared in other nonoption time		0	
3. Cleared in network option time		8	5.3
C. Total stations	151	148	98.0

[1] West-coast repeat, Tuesday, 8 to 8:30 p. m. Pacific time.

Navy Log—Tuesday, 8:30 to 9 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	104		
1. Cleared in time ordered		83	74.8
2. Cleared in other option time		7	6.3
3. Cleared in nonoption time		8	7.2
B. Ordered in nonoption time	7		
1. Cleared in time ordered		2	1.8
2. Cleared in other nonoption time		0	
3. Cleared in network option time		5	4.5
C. Total stations	111	105	94.6

[1] West-coast repeat, Tuesday, 8:30 to 9 p. m. Pacific time.

Guy Lombardo's Diamond Jubilee—Tuesday, 9 to 9:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	130		
1. Cleared in time ordered		91	66.9
2. Cleared in other option time		7	5.1
3. Cleared in nonoption time		8	5.9
B. Ordered in nonoption time	6		
1. Cleared in time ordered		2	1.5
2. Cleared in other nonoption time		1	.7
3. Cleared in network option time		3	2.2
C. Total stations	136	112	82.3

[1] West-coast repeat, Tuesday, 9 to 9:30 p. m. Pacific time.

Red Skelton—Tuesday, 9:30 to 10 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	89		
1. Cleared in time ordered		77	86.5
2. Cleared in other option time		7	7.9
3. Cleared in nonoption time		4	4.5
B. Ordered in nonoption time	0		
1. Cleared in time ordered		0	
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	89	88	98.9

[1] West-coast repeat, alternate, Tuesday, 9:30 to 10 p. m. Pacific time.

$64,000 Question—Tuesday, 10 to 10:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	137		
1. Cleared in time ordered		137	89.5
2. Cleared in other option time		0	
3. Clearea in nonoption time		0	
B. Ordered in nonoption time	16		
1. Cleared in time ordered		16	10.5
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	153	153	100.0

The Millionaire—Wednesday, 9 to 9:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	115		
1. Cleared in time ordered		102	83.6
2. Cleared in other option time		6	4.9
3. Cleared in nonoption time		7	5.7
B. Ordered in nonoption time	7		
1. Cleared in time ordered		2	1.6
2. Cleared in other nonoption time		1	.9
3. Cleared in network option time		4	3.3
C. Total stations	122	122	100.0

[1] West-coast repeat, Wednesday, 9 to 9:30 p. m. Pacific time.

I've Got a Secret—Wednesday, 9:30 to 10 p. m. CNYT

	Ordered	Cleared	Percentage
A. Ordered in network option time	151		
1. Cleared in time ordered		139	92.0
2. Cleared in other option time		8	5.3
3. Cleared in nonoption time		3	2.0
B. Ordered in nonoption time	0		
1. Cleared in time ordered		0	
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	151	150	99.3

Sergeant Preston of the Yukon—Thursday, 7:30 to 8 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	58		
1. Cleared in time ordered		51	73.9
2. Cleared in other option time		4	5.8
3. Cleared in nonoption time		2	2.9
B. Ordered in nonoption time	11		
1. Cleared in time ordered		11	16.0
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	69	68	98.6

[1] West-coast repeat, Thursday, 6:30 to 7 p. m. Pacific time.

The Bob Cummings Show—Thursday, 8 to 8:30 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	108		
1. Cleared in time ordered		86	74.8
2. Cleared in other option time		12	10.4
3. Cleared in nonoption time		5	4.4
B. Ordered in nonoption time	7		
1. Cleared in time ordered		2	1.7
2. Cleared in other nonoption time		0	
3. Cleared in network option time		4	3.5
C. Total stations	115	109	94.8

[1] West-coast repeat, Thursday, 8 to 8:30 p. m. Pacific time.

Four Star Playhouse—Thursday, 9:30 to 10 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	101		
1. Cleared in time ordered		83	82.2
2. Cleared in other option time		7	6.9
3. Cleared in nonoption time		6	5.9
B. Ordered in nonoption time	0		
1. Cleared in time ordered			
2. Cleared in other nonoption time			
3. Cleared in network option time			
C. Total stations	101	96	95.0

[1] West-coast repeat, Thursday, 9:30 to 10 p. m. Pacific time.

Arthur Murray Party—Thursday, 10 to 10:30 p. m. CNYT

	Ordered	Cleared	Percentage
A. Ordered in network option time	107		
1. Cleared in time ordered		66	56.9
2. Cleared in other option time		7	6.0
3. Cleared in nonoption time		17	14.7
B. Ordered in nonoption time	9		
1. Cleared in time ordered		4	3.4
2. Cleared in other nonoption time		1	.9
3. Cleared in network option time		3	2.6
C. Total stations	116	98	84.5

My Friend Flicka—Friday, 7:30 to 8 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	97		
1. Cleared in time ordered		40	37.4
2. Cleared in other option time		36	33.7
3. Cleared in nonoption time		14	13.1
B. Ordered in nonoption time	10		
1. Cleared in time ordered		4	3.7
2. Cleared in other nonoption time		5	4.7
3. Cleared in network option time		1	.9
C. Total stations	107	100	93.5

[1] West-coast repeat, Friday, 7:30 to 8 p. m. Pacific time.

Mama—Friday, 8 to 8:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	99		
1. Cleared in time ordered		87	85.3
2. Cleared in other option time		1	1.0
3. Cleared in nonoption time		1	.9
B. Ordered in nonoption time	3		
1. Cleared in time ordered		2	2.0
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	102	91	89.2

[1] West-coast repeat, Friday, 8 to 8:30 p. m. Pacific time.

Our Miss Brooks—Friday, 8:30 to 9 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	80		
1. Cleared in time ordered		72	86.8
2. Cleared in other option time		2	2.4
3. Cleared in nonoption time		2	2.4
B. Ordered in nonoption time	3		
1. Cleared in time ordered		2	2.4
2. Cleared in other nonoption time		0	
3. Cleared in network option time		1	1.2
C. Total stations	83	79	95.2

[1] West-coast repeat, Friday, 8:30 to 9 p. m. Pacific time.

The Crusader—Friday, 9 to 9:30 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	113		
1. Cleared in time ordered		99	83.2
2. Cleared in other option time		7	5.9
3. Cleared in nonoption time		5	4.2
B. Ordered in nonoption time	6		
1. Cleared in time ordered		1	.8
2. Cleared in other nonoption time		1	.8
3. Cleared in network option time		4	3.4
C. Total stations	119	117	98.3

[1] West-coast repeat, Friday, 9 to 9:30 p. m. Pacific time.

Playhouse of Stars—Friday, 9:30 to 10 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	112		
1. Cleared in time ordered		93	83.0
2. Cleared in other option time		12	10.7
3. Cleared in nonoption time		2	1.8
B. Ordered in nonoption time	0		
1. Cleared in time ordered		0	
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	112	107	95.5

[1] West-coast repeat, Friday, 9:30 to 10 p. m. Pacific time.

The Lineup—Friday, 10 to 10:30 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	140		
1. Cleared in time ordered		128	91.4
2. Cleared in other option time		1	5.0
3. Cleared in nonoption time		4	2.9
B. Ordered in nonoption time	0		
1. Cleared in time ordered		0	
2. Cleared in other nonoption time		0	
3. Cleared in network option time		0	
C. Total stations	140	139	99.3

[1] West-coast repeat, Friday, 10 to 10:30 p. m. Pacific time.

Beat the Clock—Saturday, 7:30 to 8 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	77		
1. Cleared in time ordered		70	75.3
2. Cleared in other option time		2	2.2
3. Cleared in nonoption time		2	2.2
B. Ordered in nonoption time	16		
1. Cleared in time ordered		6	6.4
2. Cleared in other nonoption time		3	3.2
3. Cleared in network option time		7	7.5
C. Total stations	93	90	96.8

[1] West-coast repeat, Saturday, 6:30 to 7 p. m. Pacific time.

Jackie Gleason Show—Saturday, 8 to 8:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	131		
1. Cleared in time ordered		121	87.1
2. Cleared in other option time		10	7.2
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	8		
1. Cleared in time ordered		6	4.3
2. Cleared in other nonoption time		2	1.4
3. Cleared in network option time		0	
C. Total stations	139	139	100.0

[1] West-coast repeat, Saturday, 8 to 8:30 p. m. Pacific time.

Stage Show—Saturday, 8:30 to 9 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	84		
1. Cleared in time ordered		83	95.4
2. Cleared in other option time		1	1.1
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	3		
1. Cleared in time ordered		0	
2. Cleared in other nonoption time		0	
3. Cleared in network option time		3	3.5
C. Total stations	87	87	100.0

[1] West-coast repeat, Saturday, 8:30 to 9 p. m. Pacific time.

Two for the Money—Saturday, 9 to 9:30 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	108		
1. Cleared in time ordered		106	94.6
2. Cleared in other option time		2	1.8
3. Cleared in nonoption time		0	
B. Ordered in nonoption time	4		
1. Cleared in time ordered		3	2.7
2. Cleared in other nonoption time		0	
3. Cleared in network option time		1	.9
C. Total stations	112	112	100.0

[1] West-coast repeat, Saturday, 9 to 9:30 p. m. Pacific time.

It's Always Jan—Saturday, 9:30 to 10 p. m. CNYT [1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	126		
1. Cleared in time ordered		113	89.7
2. Cleared in other option time		4	3.2
3. Cleared in nonoption time		6	4.7
B. Ordered in nonoption time	0		
1. Cleared in time ordered			
2. Cleared in other nonoption time			
3. Cleared in network option time			
C. Total stations	126	123	97.

West-coast repeat, Saturday, 9:30 to 10 p. m. Pacific time.

Gunsmoke—Saturday, 10 to 10:30 p. m. CNYT[1]

	Ordered	Cleared	Percentage
A. Ordered in network option time	134		
1. Cleared in time ordered		126	94.0
2. Cleared in other option time		4	3.0
3. Cleared in nonoption time		3	2.3
B. Ordered in nonoption time			
1. Cleared in time ordered			
2. Cleared in other nonoption time			
3. Cleared in network option time			
C. Total stations	134	133	99.3

[1] West-coast repeat, Saturday, 10 to 10:30 p. m. Pacific time.

2. Letter Dated August 27, 1956, From Dr. Stanton Further Clarifying One Point Covered in the Letter of August 10 (See Preceding Item)

Columbia Broadcasting System, Inc.,
New York, N. Y., August 27, 1956.

Hon. Warren G. Magnuson,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

My Dear Senator Magnuson: This is written in response to your letter of August 17, 1956.

On the basis of total households in the United States having 1 or more television sets, CBS television research estimates that 25.4 percent of these households are within the range of the signals of CBS-owned television stations. This figure is based on the assumption that all of the television households within the coverage area of a station can receive that station, a situation which does not prevail in the case of our UHF station in Milwaukee, WXIX. Applying a UHF conversion factor in this area, the percentage of total television households in the United States within the range of a signal from CBS-owned television stations is reduced from 25.4 percent to 25.2 percent.

I trust this information answers the question raised in your August 17 letter. If you have any question about these figures or any other questions about the material we have supplied, please do not hesitate to get in touch with me.

Sincerely yours,

Frank Stanton, *President.*

3. Letter Dated June 27, 1956, From Dr. Stanton (Inserted in the Record on July 17, 1956) Elaborating on Certain Points in His Testimony

Columbia Broadcasting System, Inc.,
New York, N. Y., June 27, 1956.

Mr. Kenneth A. Cox,
Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

Dear Mr. Cox: During my testimony before the Senate Committee on Interstate and Foreign Commerce you raised a question, transcript, page 3365, concerning the termination by the CBS television network of its affiliation with KJEO–TV in Fresno and its affiliating instead with KFRE–TV in the same city. You referred to chart XVI (p. 69) of our supplemental memorandum entitled "Network Practices," and you asked whether we had not "created an overlap problem for [ourselves] by shifting" this affiliation. I replied that "We have increased the overlap in one direction, I would say. At the same time, however, we have filled in much more area than was served before by the UHF station, KJEO–TV * * * to the south." You then asked whether this area to the south was "not now covered by KERO, from Bakersfield." I responded, "Well, KERO is not the affiliate in Bakersfield according to this map." In answer to your question whether KERO–TV did not have a dual affiliation, I replied, "Well, it is a primary NBC affiliate. KBAK–TV is the affiliate that we are talking about."

I based this reply on a CBS television map which I had before me, rather than chart XVI. The map which I had before me designated KBAK–TV, rather than

KERO–TV, as the CBS television network affiliate in Bakersfield. I now find that this map was somewhat premature. The fact is that we were at the time of my testimony contemplating affiliating with KBAK–TV, the UHF station, since it fitted in very well with KFRE–TV, minimizing overlap. Subsequently, the CBS television network has made the formal determination to seek a primary affiliation with KBAK–TV.

In any event, I should note that the substance of my answer to you—that our affiliation with KFRE–TV "improves the service of the network"—remains true.

Station KERO–TV in Bakersfield is a VHF station which is a primary affiliate of the NBC television network and only a secondary affiliate of the CBS television network. While KERO–TV carries 8 hours per week of nighttime CBS television network programing and 14¾ hours of daytime, there are an additional 8 hours nighttime commercial programs per week and 7 daytime ordered by CBS television network advertisers for KERO–TV, which that station is not clearing.

Because KERO–TV is a primary affiliate of the NBC television network, the question of overlap of its coverage area by KFRE–TV's coverage area did not play a critical part in the determination to affiliate with KFRE–TV. The CBS television network does not normally take into account the question of overlap with stations which carry some of the network's programs but which are primary affiliates of another network.

Further, as our files relating to KFRE–TV, which you have examined, indicate, it was the opinion of both the research department and the engineering department of the CBS television network that KFRE–TV would considerably strengthen our coverage in the area. You will recall that in his testimony while I was on the stand, Mr. Lodge pointed out that measurement by whole counties minimizes the effect of the gain achieved by shifting to KFRE–TV. The research department estimated that KFRE–TV gives us coverage of an additional 77,100 families not covered by KJEO–TV. It was also the opinion of the research and engineering departments that there would be improved service rendered by KFRE–TV within KJEO–TV's accredited area—even within Fresno itself.

In summary, our decision to affiliate with KFRE–TV was based on our judgment that there would be improved service to more people without significantly increasing the problem of overlap with any existing primary CBS television network affiliate.

I trust that this clarifies the record.

With all good wishes.

Sincerely yours,

FRANK STANTON, *President.*

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4. LETTER DATED JUNE 22, 1956, FROM DR. STANTON [INSERTED IN THE RECORD ON JULY 17, 1956], COMMENTING ON PENDING LEGISLATION RELATIVE TO POLITICAL BROADCASTING

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N. Y., June 22, 1956.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: In the course of my testimony before the Senate Committee on Interstate and Foreign Commerce on June 12, 1956, you referred (transcript p. 3324) to "this very timely and ticklish problem of political time" and you also referred to a number of bills on the subject. You requested that I submit our views in writing. I am glad to do so.

The bills are as follows: S. 771, S. 1208, S. 1909, S. 2306, .S 3308, and S. 3962. The latter three deal with the perplexing problem of equal time. Before turning to those three bills, I would like to discuss the first three bills which deal with more limited subjects.

1. S. 771: This bill proposes to withdraw the equal-time rights of section 315 (a) of the Communications Act of 1934 from any individual who has been convicted of subversive activities and from members of certain subversive organizations.

While CBS has no objections to the principle embodied in this bill, I call to your attention that the bill apparently places a difficult and heavy burden on the broadcaster since it seems to require him to determine in each case whether anyone claiming rights under section 315 has been convicted of subversion or, even more difficult of ascertainment, whether he is a member of certain subversive organizations. As you know, it is not often simple to determine the question of membership. Broadcasters have no investigative facilities which would permit them to assume this burden. I believe, therefore, that as drafted, the bill will be very difficult of administration by broadcasters.

2. S. 1208: This bill proposes to amend section 315 so as to relieve a licensee of liability on account of defamatory statements made in a broadcast by a political candidate unless the licensee participates in such broadcast with intent to defame. The purpose of this bill is to relieve broadcasters from the apparent dilemma of being required under section 315 to permit broadcasts by political candidates in certain circumstances, and also being forbidden to censor such broadcasts.

CBS supports the principle of S. 1208, although I would point out that (*a*) it is not clear that Federal legislation can exempt broadcasters from liability under State laws, and (*b*) the risk of suits for libel and defamation do not appear to be great. As a practical matter, CBS has had no serious difficulty and has not found the problem a grave one. Political candidates have almost invariably been cooperative and have voluntarily deleted statements which we thought might be defamatory or libelous, even though we have had no power to insist on such deletions.

3. S. 1909: This bill would amend section 315 by requiring that any political broadcast must "include an announcement of whether the speaker is speaking extemporaneously or from prepared material, and what facial makeup, if any, is being used by the speaker while making the broadcast."

We have no comment on this bill, since it does not seriously affect us as broadcasters. I would only point out that it would seem to be discriminatory against broadcast stations, since it would require a degree of candor for this medium which is not required for any other public appearance by a candidate.

I now turn to the bills which would deal with some of the aggravating and perplexing problems which have arisen under section 315 of the Communications Act. Section 315, as you know, now provides that if a broadcasting station permits "a legally qualified candidate for a public office" to use that station, it shall afford equal opportunities to all legally qualified candidates for the same office. While section 315 would appear to be rooted in the soundest principles of equity and fair play, I think it is indisputable that it has had unanticipated and extremely undesirable results. It has tended to stifle and suppress public information and knowledge, and its consequence has been to inhibit radio and television from fulfilling to the fullest potential their roles of informing the electorate.

CBS has for some time proposed amendment of section 315 in order to minimize some of these undesirable consequences. S. 2306, S. 3308, and S. 3962, each to a greater or lesser degree, improves the present situation. I will discuss them in order.

4. S. 2306: This bill proposes to amend section 315 by making the equal time requirements inapplicable to "any news, news interview, news documentary, panel discussion, debate, or similar type program where the format and production of the program and the participants therein are determined by the broadcasting station, or by the network in the case of a network program * * *."

In other words, as far as set campaign speeches or political rallies are concerned, section 315 remains just as it is. But in the instances specified in the bill, the broadcaster has leeway in the exercise of his journalistic function so that he can concentrate on the main issues and the main candidates without providing time in such programs for the candidates of splinter parties. And it is to be noted that in 1952 there were 18 different parties with presidential and vice-presidential candidates.

CBS supports S. 2306, which as a matter of fact was introduced at the request of CBS. A full discussion of the bill and the reasons which led CBS to support it are set forth in recent testimony of Richard S. Salant, CBS vice president, before the Subcommittee on Transportation and Communications of the House Committee on Interstate and Foreign Commerce. I am attaching a copy of Mr. Salant's testimony as exhibit A.

5. S. 3308: Title III of S. 3308 is a limited amendment to section 315. It leaves exactly as it is today the existing law governing the use of broadcast facilities by all legally qualified candidates for public offices except insofar as candidates for the offices of President or Vice President are concerned. For such candidates S. 3308 would apply the equal-time requirement only if (*a*) they are the nominees of a political party whose presidential candidate polled at

least 4 percent of the vote in the preceding presidential election, or (*b*) if their candidacy is supported by petitions numbering at least 1 percent of that vote.

Thus S. 3308 takes one very useful step forward: it relieves the broadcaster of the requirement that equal time be granted to presidential and vice presidential candidates of fringe parties.

CBS believes, however, that there are serious omissions in title III of S. 3308. It provides no relief in the case of candidates for the nomination for the Presidency, nor does it provide relief in cases of campaigns at any level other than the Presidency or Vice Presidency.

It is obscure candidates for the presidential nomination, even of major parties, who have given broadcasters some of their gravest difficulties. Some of the actual experiences on this score are set out on pages 5 to 8 of Mr. Salant's testimony attached as exhibit A. The short of it is that anybody who wants the presidential nomination of the Democratic or Republican parties today has equal right to President Eisenhower, if the Republican nomination is desired, or to Governors Stevenson and Harriman or Senator Kefauver, if the applicant claims he wants the Democratic nomination. There is no limit to the potential candidates. It seems to me in the circumstances that relief in respect of candidates for nomination is imperative.

I also point out that S. 3308 does not have the same limitations as S. 2306; the former applies even to set campaign speeches and political rallies. On the whole, we believe it more desirable to limit exemptions to the types of programs specified in S. 2306. If equal-time requirements are to be preserved at all, it is more desirable that when time is given free to candidates to use however they please, the equal-time requirements should apply to all competing candidates for the same office.

6. S. 3962: This bill proposes a comprehensive amendment to section 315. It embodies some important steps forward; but it also embodies one extremely disturbing proposal.

It would leave section 315 precisely as it is now but would add several new subsections, as follows:

Subsection (b) (1) of the bill deals only with nominees for President and Vice President and is substantially identical to title III of S. 3308. In effect, it applies the equal-time requirements only to presidential and vice presidential candidates nominated by major parties.

Subsection (b) (2), however, is in addition to what appears in title III of S. 3308 and represents an important improvement. It expressly applies to candidates for presidential and vice presidential nomination. First, it imposes equal-time requirements on candidates for such nomination only if the nomination is by a major political party. Second, subsection (b) (2) provides that the candidate for such nomination by a major political party is not entitled to the benefits of the equal-time requirements unless he (*a*) is the incumbent of any elective Federal or statewide elective office, or (*b*) has been nominated for President or Vice President at any prior convention of his party, or (*c*) is supported by petitions including at least 200,000 valid signatures.

Thus, subsection (b) (2) of S. 3962 would cure the defect I have noted above in connection with title III of S. 3308, since it would relieve broadcasters of the requirement of giving equal time to unknown or unsubstantial candidates for the Democratic or Republican presidential nomination.

I should note some reservations concerning subsection (b) (2). It appears to me that the definitions of eligibility are somewhat inflexible. Had these provisions been in effect in prior campaign years, we would have had to demand petitions with 200,000 signatures before General Eisenhower, Wendell Willkie, Herbert Hoover (in 1928), or John W. Davis could have qualified for a broadcast appearance as a candidate for presidential nomination of their respective parties, for none was an incumbent of any elective Federal or statewide elective office, and none had been nominated for President at any prior convention.

We think it more desirable to avoid embarrassing problems such as this by allowing the broadcaster some limited discretion in determining who is and who is not a substantial candidate for nomination of a major party. This could be done in terms of defining who could be presumed to be a substantial candidate, by using the three tests specified in subsection (b) (2) of S. 3962, but allowing broadcasters to go beyond that so as to take care of such situations as presented by Mr. Hoover in 1928, Mr. Willkie, General Eisenhower, and Mr. Davis.

The new subsection (c) of S. 3962 also embodies an important advance beyond title III of S. 3308. In contrast to S. 3308, subsection (c) of S. 3962 would provide some relief from the equal time requirements insofar as congressional candidates are concerned.

The new subsection (c) proposed by S. 3962 in effect applies the equal-time requirements only to major party nominees for a congressional office, as well as to candidates for election who may not be nominees of a major party but who file petitions with a number of signatures equal to 1 percent of the total votes cast for all candidates for that office in the preceding general congressional election. Subsection (c) therefore is an attempt to provide the broadcaster some relief from fringe party and unsubstantial candidates for a congressional office.

It is to be noted that Subsection (c) of S. 3962, however, unlike subsection (b), leaves the equal-time requirements where they are now insofar as candidates for congressional nomination are concerned. The relief provided by subsection (c) applies only to nominees and not to candidates for the nomination. The reason for this distinction between subsection (b) and subsection (c) is not immediately apparent to me, but I might say in all candor that insofar as network broadcasting is concerned, the matter is not of major significance. It may be of considerable importance, however, to individual stations, especially where there are vigorous campaigns for nomination for a congressional office. For example, I recall that a few years back there were a half a dozen or more candidates in Florida for the Democratic nomination for the Senate, and some of them were clearly unsubstantial.

Further, it should be noted that S. 3962 applies the equal-time requirements to set speeches and broadcasts wholly within the control of the candidate or his supporters. The exemptions are not limited to the types of programs specified in S. 2306, as we would prefer them to be.

The new subsection (f) of S. 3962 gives me the most concern. It places an affirmative obligation on each television network and each television station to make available to each candidate for the office of President of the United States, as defined in subsection (b), one half hour a week during October and 1 hour in November preceding election in any year in which a presidential election is being held. The subsection also apparently seeks to relieve networks and stations from "preemption" charges resulting from this requirement—that is, they apparently need not pay advertisers, advertising agencies, talent, or others for amounts which they would have been obligated to pay had it not been for the political broadcast.

CBS is opposed to this provision compelling broadcasters to grant free time. Such a requirement is wholly discriminatory and, I believe, raises serious problems of constitutionality. In 1954 CBS addressed itself to the same issue, which was then being considered by the Senate Subcommittee on Privileges and Elections. An excerpt from Mr. Salant's testimony before that subcommittee and dealing with this question is set out as exhibit B to this letter.

The reasons stated by Mr. Salant seem to be equally applicable today. Whatever the answers to the problems of financing political campaigning, I think it clear that the commandeering proposal of subsection (f) of S. 3962 is so unfair and of such doubtful constitutionality that it should be rejected.

In sum, CBS supports S. 2306. We believe that S. 3308, despite serious defects noted above, is a step forward. Except for subsection (f), S. 3962, while less desirable than S. 2306, is more desirable than S. 3308. In no circumstances, however, could we support S. 3962 so long as subsection (f) remains in the bill.

Further, in order to assist the committee and in order to take into the account some of the objections which we have noted to S. 3308 and S. 3962, we have prepared a redraft of an amendment to section 315 which embodies what we believe to be some of the best features of each of the bills. That draft is attached as exhibit C.

We urge that either S. 2306 or the attached exhibit C be enacted. Failing that, CBS supports S. 3962, provided subsection (f) is deleted. In the event that a more comprehensive solution along the lines suggested herein can be considered promptly at a later date, we would not oppose the enactment of S. 3308, although it is only a limited solution to the problem.

Finally, as I have previously announced, if any of these bills (except S. 3962 if it embodies subsection (f)) relieving us of requirements to satisfy the demands of fringe candidates are enacted in time for the present campaign, CBS proposes to offer free time, perhaps 2 hours, to the major party candidates for the Presidency to divide between them for some form of debate or discussion of the central issues of the campaign. We have already tentatively set aside class A nighttime periods during next fall for that purpose. I hope that legislation will be enacted which permits us to make that use of those time periods.

Sincerely yours,

FRANK STANTON,
President, Columbia Broadcasting System, Inc.

EXHIBIT A

STATEMENT OF RICHARD S. SALANT, VICE PRESIDENT, COLUMBIA BROADCASTING SYSTEM, INC., BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMUNICATIONS OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Mr. Chairman and members of the subcommittee; my name is Richard S. Salant. I am vice president of Columbia Broadcasting System, Inc. I am appearing today to record the Columbia Broadcasting System's support of H. R. 6810, which the chairman of this subcommittee has introduced at our request.

H. R. 6810 proposes to amend, in a manner which I shall specify in a moment, section 315 (a) of the Communications Act. Section 315 (a) provides that if a broadcasting station permits a "legally qualified candidate for any public office" to use that station, it shall afford equal opportunities to all other legally qualified candidates for the same office. Section 315 (a), it should be noted, does not require any station to make time available to any candidate; it provides only that if a station does make time available to a candidate, either on a free or on a paid basis, it must do the same, on the same basis, for all other candidates for the same office.

The only change in section 315 (a) which is proposed by H.R. 6810 is that its provisions be made inapplicable to "any news, news interview, news documentary, panel discussion, debate, or similar type program where the format and production of the program and the participants therein are determined by the broadcasting station, or by the network in the case of a network program * * * "

In other words, as far as set campaign speeches or political rallies are concerned, section 315 (a) remains just as it is, with no change. Then if a station or network makes its facilities available free for a speech by one party's candidate for office, it must do exactly the same for every other party's candidate for that office. But if, instead of a set appearance controlled by the candidate, the use of facilities is essentially in connection with the station's or network's exercise of its news-coverage function, produced under its own supervision and control and not the candidate's, then the broadcaster may exercise some discretion and, depending on the circumstances, need not necessarily do exactly the same for every other candidate for the same office.

Note that H.R. 6810 will not permit, and is not intended to permit, favoritism in granting free or paid time among candidates. Rather, its only purpose is to permit broadcasters, in the exercise of their news and journalistic functions, greater opportunity to inform the American public.

The fact is—and I believe that this is almost universally conceded—that while section 315 (a) is rooted in the soundest principles of fair play, it nevertheless has an inherent and fatal weakness. Put bluntly, section 315 (a) stifles and suppresses public information and knowledge; its consequence is to inhibit radio and television from fulfilling to the fullest potential their roles of informing the electorate. H.R. 6810 is designed only to reach these defects by providing an effective remedy while at the same time preserving the basic principles which we believe the Congress sought to achieve in enacting section 315 (a).

Over the years of operation under section 315 (a), we at CBS have become increasingly concerned with, and increasingly aware of, its suppressive effects. Broadcasting, and particularly in recent years television broadcasting, has come to play an increasingly important role in keeping the American people informed of the facts and issues which the people themselves ultimately determine in the voting booth. For in recent years there has unquestionably grown up a new and vital form of journalism—electronic journalism. More and more, the American people have turned to television for firsthand knowledge of the candidates—of what the candidates say and how the candidates look when they say what they have to say.

Thus, television has provided an unprecedented opportunity to the American people—an opportunity which has never before been available to them on so vast and immediate a scale. The people can see and hear the candidates directly; they can make up their own minds on the basis of firsthand direct information and impression.

There can, we believe, be no quarrel with the general proposition, therefore, that television and radio have given a new vitality to American democratic processes. They have permitted a more direct participation by American citizens in our democratic processes to a greater extent than has ever been possible before.

In 1858 the most famous series of American political debates took place between Abraham Lincoln and Stephen Douglas, Republican and Democratic candidates for the Senate from Illinois. Only some 75,000 people saw and heard Lincoln and Douglas engage in these historical debates. Today, television could make it possible for some 115 million people simultaneously to see and hear the presidential candidates debate; radio makes it possible for some 140 million people simultaneously to hear these debates.

But the fact which concerns us so deeply, and which led to our proposing H. R. 6810, is that if such debates could be arranged between the Republican and Democratic candidates next fall, section 315 (a) would, as a practical matter, bar us from broadcasting them. It is this sort of public disservice which H. R. 6810 would remedy. For fair as section 315 (a) may seem on its face, its practical result is to drop an iron curtain between voters and candidates.

This is so because whatever the voter may think and whatever may be the practical political fact, for broadcasters there is no such thing as a two-party system. For example, in 1952 there were 18 parties with presidential candidates who qualified in one or more States. As a consequence, if we could have arranged debates between General Eisenhower and Governor Stevenson in 1952, we would have been required to give the same amount of time to each of the other 16 parties with presidential candidates.

We cannot believe that any law which makes impossible so extremely dramatic and useful a method of informing the public and of contributing to the vitality of our democratic processes should remain on the books.

Preventing such debates is only one of the unfortunate consequences of section 315 (a). Section 315 (a) also tends to dilute broadcasters' efforts most effectively to present significant campaign issues. It tends to reduce broadcasters to third-class membership in the free press by precluding the electronic journalists from exercising the kind of news judgment which all other members of the press are constitutionally guaranteed. Let me illustrate how section 315 (a) has had these undesirable results of precluding broadcasters from achieving the full potentiality of their roles in electronic journalism, and thus depriving the public from all the information to which it is entitled.

For purposes of section 315 (a), a candidate for a public office is defined as any person who has publicly announced that he is a candidate for nomination or election and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate. It is enough that the candidate be eligible to be voted for by a writein—and a number of States permit writein candidates. Whether his campaign is merely for nomination or is for election, he need only be a bona fide candidate—which has been interpreted by the FCC to mean not that there need be the remotest chance that he be nominated or elected, but only that the candidate would, if nominated, accept the nomination or would, if elected, accept the office.

In 1952, we learned the hard way of the sweep of these provisions. There was a gentleman named William R. Schneider, a Missouri citizen. Prior to the period of presidential nominations in 1952, Mr. Schneider had made a number of requests to CBS to grant him time to expound his views on the air. He insisted that both Senator Taft and General Eisenhower were leftwing and only he represented true republicanism. We felt that there was not sufficient public interest in his views and that he was not sufficiently well known to warrant giving him time.

But Mr. Schneider learned what more and more persistent and perspicacious students of section 315 (a) are beginning to learn. He qualified himself under section 315 (a) simply by announcing that he was a candidate for the Republican nomination for President of the United States. He filed in the New Hampshire and Oregon primaries and thus in the opinion of the FCC qualified as a candidate for the Republican presidential nomination. After he announced his candidacy, and filed in these two primaries, he renewed his demand for time on CBS facilities, this time making his claim under section 315 (a). He pointed out that on a number of program series which we had carried preceding the conventions and dealing with the candidates for the Republican and Democratic presidential nominations we had broadcast interviews of Senator Taft, of spokesmen for General Eisenhower, and of other candidates for the Republican nomination. Mr. Schneider claimed as a result that section 315 (a) required us to give him equal opportunities on the CBS radio and television networks.

Mr. Schneider took us to court and to the Federal Communications Commission. The Commission ruled that Mr. Schneider was right and that he was entitled to the protection of section 315 (a). And so Mr. Schneider joined the ranks of General Eisenhower and Senator Taft and had himself two network half hours free.

As a footnote to this painful lesson which we learned, I may add that Mr. Schneider got only 230 votes in the New Hampshire primaries; we never did find out how many votes he got in Oregon. But we did discover that Mr. Schneider who, under section 315 (a), was thus held to be a qualified candidate for the Republican nomination was not, in the mind of the Republican Party, even qualified to be admitted to the Republican convention. He was unable to get a ticket to get into the convention hall.

The implications of our little adventure with Mr. Schneider are obvious and, as we look toward 1956, frightening. You can readily appreciate why in 1956 we are going to have to think twice before we provide as comprehensive coverage to candidates for the nominations as we did in 1952. For there is hardly any practical limit to the number of people who could do what Mr. Schneider did. All they have to be is 35 years old, American citizens, and willing to accept the nomination if it is tendered to them. A chance to appear before millions of people with no cost at all to themselves might well prove an enormous temptation to a great many soapbox orators and publicity seekers. As time goes on and Mr. Schneider's triumph becomes recognized, it is inevitable that we will have to cut down on our preconvention political coverage. One needs only a couple of dozen Mr. Schneiders for the air to be filled with little else. We will have to be very careful about presenting on our news panel, interview, and public-affairs programs well-known candidates for the nomination, because we know that by doing so we will place ourselves under the obligation under section 315 (a) to put a potentially unlimited number of people, in whom the public has no interest at all, on the air.

And the problem is the same even after the nominations are in. Although here the numbers of potential candidates get reduced from the hundreds of thousands or millions to the dozens, the number is still too large to be workable. For it is after the nominations are in that we find that the broadcaster cannot accept what all political commentators and historians accept—that ours is essentially a two-party system. Again, let us look at the 1952 record.

How many of you have ever heard of Homer A. Tomlinson, Fred C. Proehl, Don Du Mont, Edward Longstreet Bodin, or Ellen Linea W. Jensen? Each of these was a duly nominated candidate for President in 1952. They were the candidates of the 18 political parties which presented presidential nominees in the last campaign. There were presidential candidates presented not only by the Republican and Democratic Parties, but there were also presidential candidates of the American Party, the American Rally, the Christian Nationalist Party, Church of God Bible, Constitution Party, Greenback Party, Poor Man's Party, Progressive Party, Prohibition Party, Republimerican Party, Socialist Labor Party, Socialist Party, Socialist Workers Party, Spiritual Party, Vegetarian Party and Washington Peace Party.

No matter how obscure some of these parties may be, section 315 (a) allows us to make no distinction among them. We cannot, therefore, consider allowing the Republican and Democratic presidential candidates to appear on a press interview, forum, or panel program or a debate without taking into account the fact that under the law we would be required to do the same for the other 16 parties.

As a result, with a list of parties as formidable in numbers and as obscure in national interest as this list, we have in general been forced as a matter of simple common sense, in the interests of our own self-preservation, as well as the protection of our listeners, to adopt restrictive policies during campaign periods.

The problem is not limited to candidates for presidential nominations or elections. Let me give some further illustrations of our 1952 experiences where we found section 315 (a) limited us in serving the obvious public interest in clarifying and sharpening national issues.

During the 1952 campaign, the CBS radio and television networks carried a series of programs called Pick the Winner. The purpose of this series was to present each week a spokesman for the Democrats and a spokesman for the Republicans discussing face to face a different major issue of the campaign. We tried in each case to pick the most qualified leading spokesman. Often the most obvious choice of such a spokesman was a Congressman or a Senator or a Governor who had taken leading parts in the formulation, articulation or execution of the policies which were under discussion. But section 315 (a) precludes us from this obvious choice because every one of the Congressmen (except those who were retiring), one-third of the Senators, and 32 governors were running for reelection. Therefore, the FCC ruled they were "candidates" within the meaning of section 315 (a) and anyone who was running against them was entitled to equal time, at least in States or districts where the spokesman was running. Consequently, as a practical matter, almost all Congressmen and a substantial number of Senators and governors were barred from this important national program although they were often the best possible spokesmen for their parties on the issues under discussion. When almost all Congressmen and so many Senators and governors cannot as a practical matter be given time for debate on national issues in a national campaign, it seems clear that section 315 (a) is inconsistent with the objectives of public service and public enlightenment.

The 1952 campaign illustrated still another facet of the tendency of section 315 (a) to frustrate a broadcaster's achieving his full potentiality as an electronic journalist. A radio and television format which has proven particularly effective in bringing facts to the public firsthand is the press interview type of program—such as Face the Nation and Meet the Press. In these programs, leading political spokesmen are subjected to penetrating and searching questions by correspondents. These programs are useful in getting down to bedrock. James Reston of the New York Times has described them as important antidotes to one-way campaigns, tending to offset candidates' reliance on what he calls the "techniques of modern salesmanship" by which the candidates are encouraged to "put over their arguments without giving the people much chance to answer back."

Yet the FCC rules that even though these programs were in no way under the control of the candidates, a candidate's appearance on them falls within the reach of section 315 (a). Thus, if a candidate appears on Meet the Press or Face the Nation to answer news correspondents' questions, every other candidate for the same office must be afforded the same opportunity. I would venture to guess that even though the space in a newspaper may be rather less restricted by the forces of nature than the time in a broadcaster's day—a newspaper can go from 48 to 50 pages but a broadcaster can do nothing about inventing a 26-hour day—it is probable that a newspaper editor would lose his enthusiasm for press interviews if he were required to cover and give space to the press interviews of the Washington Peace Party's candidate or the Poor Man's Party's candidate equivalent to the coverage and space given to the interviews of President Eisenhower or Mr. Stevenson.

Here, again, section 315 (a) restricted a broadcaster's use of a most effective means of bringing information to the public during a campaign. And it was the public and its right to know which was the loser.

In short, by precluding debates between the candidates, by barring them from panel and press interview programs, and by limiting the spokesman who may appear in discussion programs, section 315 (a) has not worked out well in practice no matter how good it looks on paper. As has been stated by Jack Gould, radio-television editor of the New York Times (May 29, 1955):

"In practice the effect of section 315 is less a guaranty of fairness than a formidable barrier to adequate broadcasting of political opinion and controversy. The provision thwarts the conscientious broadcaster who wants to do a rounded job. It is a wonderful alibi for the broadcaster who doesn't * * *

"* * * It is time that section 315 were reexamined with a view to allowing the broadcaster to make his own journalistic decisions."

It is important to note that we are not alone in our deep concern about the hobbling effect of section 315 (a). Our proposal to modify that subsection in the manner embodied in H. R. 6810 has received general approval by those who have thoughtfully considered the problem. I am attaching to my statement editorials by the New York Daily News, the New York Post, the Milwaukee Journal, and the Des Moines Register, as well as articles by James Reston and Jack Gould, of the New York Times, and Roscoe Drummond, of the New York Herald Tribune. Each of these agrees that section 315 (a) has the undesirable consequences which I have discussed and each agrees that there should be modification. It is significant that editors and writers covering such a wide range of political views should be in agreement on this subject. I think it indicates that we at CBS are not regarding this from a purely parochial point of view—and that this is not so much a broadcaster's problem as it is the public's problem.

I recognize that some concern has been expressed that the proposal in H. R. 6810 raises the possibility of favoritism for one candidate over another. The unspoken premise of this criticism seems clearly to be that in handling news and public-affairs functions, a broadcaster, in his role as a part of the press, is so little to be trusted that he must be prevented from exercising any discretion.

This is a dangerous premise on which to base legislation—a premise that people licensed by the Federal Government to act in the public interest, convenience, and necessity are unworthy of trust. If a broadcaster is not deemed qualified to make its own journalistic decisions, even in this limited area, then it can only be asked by what standard did the FCC give him a license in the first place.

The fact is that there are other and far more powerful safeguards against the dangers of unfair play than a rule of enforced mathematical equality in these types of programs—equality which reduces service toward zero and thus deprives the public of facts and information to which it is entitled. The listener and viewer regard radio and television as a part of their personal lives. Our daily mail is vivid reminder of their quick reaction to anything which we do as broadcasters. If during the course of the campaign, or at any other time, a broadcaster were to be so flagrantly unfair as to favor one candidate over another, both the public and the political parties would be quick to react. For such favoritism cannot be exercised surreptitiously or invisibly. It would be there for all to see and hear and a broadcaster could not long survive the public ill will which such favoritism would justifiably create.

It seems to us, therefore, that public reaction is the surest safeguard against any dangers which might be thought to arise by this limited modification of section 315 (a). But there is still another safeguard. The basic ground rules of the Communications Act would remain—the requirement would continue that a broadcast licensee must operate in the public interest. We at CBS and, I believe, almost all other broadcasters, have always considered that one of the components of operating in the public interest is to air all significant viewpoints on any important public controversial issue. Whether that requirement is self-imposed or imposed by the Communications Act, it is one which broadcasters in general have embraced. It is applicable to all important public issues whether political or not, and it would remain during campaign periods and during the rest of the year, no matter how secton 315 (a) were modified. That there might be some difficult decisions to make is hardly a reason for not amending section 315 (a), if, as we believe, the public is being disserved by the subsection as it stands.

For these reasons, CBS has proposed that section 315 (a) be modified in the manner suggested by H. R. 6810. Enactment of the bill would, we believe, represent a long forward step in permitting this new form of journalism to fulfill its potentiality in bringing facts, faces, and issues to the public.

If section 315 (a) is modified in the manner proposed by H. R. 6810, CBS would invite the leading candidates on our panel discussion programs without charge, which we have been prevented from doing in the past. We would give greater coverage in news, news interview, news documentary, and similar types of programs to the leading candidates. And most important of all, CBS, with the approval of our affiliates to whom this question was submitted last spring, would provide free evening time during the campaign for the major presidential candidates to debate the main issues. We would propose to broadcast a modern-day electronic version of the Lincoln-Douglas debates in which both the Republican and Democratic presidential candidates would appear on the viewers' screen debating the great issues of the day. One way we might well do this would be to have a group of the country's leading newsmen, during the closing weeks of the campaign, designate the half-dozen or so chief issues as they have developed. In special live programs, CBS would invite the candidates to speak, wherever they are, one after the other, on these designated issues.

We strongly believe that if the law is amended to make programs such as these possible, the public will benefit, because television and radio with their enormous circulation and impact will be able to fulfill their roles in bringing the major candidates directly to the public. We believe that this would provide a significant contribution to our democracy.

We share the basic belief of our Founding Fathers that the citizen's opportunity to know and to judge for himself at firsthand will result in the best possible decisions in the polling booths.

By increasing the opportunity through radio and television for the major national candidates to face each other and at the same time to face the American citizen directly in the citizen's own home, we will have taken a long step forward in bringing radio and television to journalistic maturity and, even more important, in strengthening our democratic processes.

[From the New York Daily News, May 26, 1955]

EQUAL TIME FOR WHOM?

President Frank Stanton, of the Columbia Broadcasting System, has come out with a proposal which makes sense to us.

It concerns the Federal law requiring that, if a network gives free time to one candidate in a political campaign, it must give equal times to all other candidates for the same office.

The 1956 presidential campaign is coming up. Mr. Stanton recalls with visible shudders that in 1952 there were 18 candidates for President, most of them running mainly for laughs.

TV—LAW—CAMPAIGNS

Therefore, the CBS chief suggests, how about Congress amending the law so that the equal-time privileges will be extended only to major-party candidates? If Congress will do that, CBS for one will be glad to put on a series of TV debates next year between the two chief presidential nominees, along the lines of the famous Lincoln-Douglas debates of 1858.

We think Congress should consider amending the law in some such way. This is a two-party country, where third parties—to say nothing of eighth or eighteenth parties—never have amounted to much. Why not recognize that fact, and revise the law to fit it?

[From the New York Post, May 25, 1955]

TV DEBATE

The use of television as a political weapon may turn out to be one of the liveliest issues of the 1956 campaign. It has become increasingly apparent that the Republican strategists regard the TV blitz as the big political discovery of the century. Given a preponderance of financial assets, the GOP will undoubtedly try to blanket the country.

All of which sharply raises the question of free time for political oratory. On that subject Frank Stanton of the Columbia Broadcasting System has come up with some provocative thoughts. CBS, he says, is ready and eager to promote a series of "Lincoln-Douglas" debates and to invite the candidates of the major parties to participate in numerous panel discussions—again at no cost. But that can't be done, Stanton points out, unless the Federal Communications Commission amends section 315 of the FCC Act, which requires a TV or radio station to give equal time to all candidates if it extends free time to one.

In 1952, Stanton reminds us, there were 18 parties and 12 candidates in the presidential race. (Lest you have forgotten or never knew, General MacArthur was supported by three parties—America First, the Christian Nationalists and the Constitution Party; the Vegetarian Party ran Brig. Gen. Holdridge; the Church of God Bible Party backed Homer Tomlinson; the Greenback Party supported one Frederick Proehl; the Prohibition Party gave its all for Stuart Hamblen; the Socialist Labor Party was for Eric Hass; the Progressive Party for Vincent Hallinan—and there were others, too.) It would have made little sense to insist that television grant equal free time to all these nominees to match any time offered Eisenhower and Stevenson.

Surely, however, a series of debates between Eisenhower and Stevenson would have been lively TV fare even if the others were just allowed to sit on the platform.

What Stanton is proposing essentially is that TV be allowed to accept the reality that we live under a two-party system. If the year comes when a third party, through some historic convulsion, really assumes major dimensions, we have no doubt that some flexibility could be achieved. But by clinging to the fetish of free time for everyone, we are in fact denying free time to anyone; with the inequality of financial resources that now exists, we may well be getting "one party" TV before we are through.

Within the framework of Stanton's proposal there might well be some modified clause to assure some time for all minority parties. But no newspaper felt obliged to provide equal space for the views of the Greenback standard-bearer or the Vegetarian leader; Stanton has a case when he says TV ought to be allowed to inhabit the real world, too.

Anyway, his proposal warrants real study and debate.

[From the Milwaukee Journal, May 31, 1955]

Improved TV Use in Campaigns

The problem of television and its use and misuse in national election campaigns is a big one that requires long and serious study. One phase of it, however, could and should be corrected quickly—before the 1956 campaigns. Frank Stanton, president of the Columbia Broadcasting System, discussed this phase recently.

Under section 315 of the Federal Communications Act, a network of station which makes time available to one candidate must offer equal time to all others.

Stanton proposed this be amended so that leading candidates could participate in panel discussions, forums, or debates without networks or stations having to provide equal time for all minor candidates. He explained that CBS would like, for instance, to make 2 or 3 hours of evening time available free during the 1956 campaign for a "modern day electronic version of the Lincoln-Douglas debates between the Republican and Democratic presidential candidates."

Under section 315 as it now exists such free public-service programs would be impracticable, Stanton said. Every minor candidate could demand, and get, equal free time.

In the 1952 campaign, that would have meant 16 other candidates. Parties which offered candidates in one or another of the States included the Progressive, Prohibitionist, Vegetarian, Social Labor, Socialist Worker, Constitution and Christian Nationalist. There was a Poor Man's party with a presidential candidate who received 4,203 votes, all in New Jersey.

Basically, industry insistence that the opportunity of buying time be extended equally to all candidates is good and should be continued. Allowing networks and stations to limit to major candidates the free, public-service type of programs proposed by Stanton seems definitely in the general interest.

Safeguards should be written to provide inclusion of a major third party candidate when and if such appears. And it would probably be wise, for the time being, to limit the new freedom to presidential candidates. Injustice might be done in congressional, State, and municipal elections where serious third party and independent candidates can spring up quickly. They might be seriously handicapped by TV discrimination in favor of major parties.

[From the Des Moines (Iowa) Register, July 5, 1955]

Equal Time in Political Broadcasts

Some things that are wonderful in theory can turn out to be dismal failures in practice. The law on political broadcasting is an example.

The "theory" is contained in section 315 of the Communications Act of 1934. It declares:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station."

In practice, networks and stations have been discouraged from giving any free public-service time to political candidates. In the 1952 election, 18 parties had candidates for president. The parties included the Vegetarian, the Church of God Bible, and the Greenback Parties. If the networks had given free time to Candidates Eisenhower and Stevenson, they also might have been required to give free time to every minor candidate—crackpot or otherwise—on the presidential ballot. The law has been carried to such extremes that in 1952 broadcasters found themselves obliged to give free coast-to-coast time to a William Schneider to "answer" Robert A. Taft and General Eisenhower because Schneider had entered two Republican primaries in the race for the G. O. P. nomination.

Discussion programs are similarly affected. Some broadcasters decline to invite candidates to discuss or debate issues during campaigns for fear of getting stuck with interminable requests for equal time.

The result is that candidates who want to use broadcast facilities have to pay for most of their time. The costs of television can be prohibitive—$50,000 to $60,000 for a half hour on a major network. The result of the equal-time provision is that "ability to pay" becomes the major consideration in use of broadcast facilities. The candidate hardpressed financially and most in need of help is the one hardest hit by section 315.

Broadcasters would like to provide more public-service programs during political campaigns. Dr. Frank Stanton, president of the Columbia Broadcasting System, talks about inviting the leading presidential candidates to appear on the network's panel discussion programs. He also has in mind making available 2 or 3 hours of the best evening television time during the 1956 campaign for "a modern-day electronic version of the Lincoln-Douglas debates. Both the Republican and Democratic presidential candidates would appear on the viewer's screen debating the great issues of the day."

But this is impossible without revision of the Communications Act. So Dr. Stanton has proposed to add the following to section 315:

"Appearance by a legally qualified candidate on any news, news interview, panel discussion, debate, or similar type program where the format and production of the program and the participants thereon are determined by the broadcasting station, or by the network in the case of a network program, shall not be deemed to be use of a broadcasting station within the meaning of this subsection."

Some such change as this is needed. It should be possible for stations and networks to perform greater public service in the broadcasting and televising of political talks and interviews.

[From the New York Times, May 26, 1955]

Radio, TV, and 1956

An Account of the New Difficulties Facing Broadcasters in the Campaign

(By James Reston)

Washington, May 25.—In about a year from now there will be approximately 50 million television sets in this country haranguing the populace with political oratory in what will, of course, be "the most important, the most decisive, and the most historic presidential election in American history."

The "man who * * * " speeches will all be approximately the same, and the issues, of course, will be peace and prosperity, but the noise will be worse, and the ground rules for television campaigning will be even more out of date than they were in 1952.

They will, that is, if something is not done about them fairly soon.

Fortunately, some people here and elsewhere are beginning to think about the problem, and the TV and radio broadcasters, in town this week for a few days' institutional soul-searching, are asking the politicians some pertinent questions.

"What is the attitude of the Federal Communications Commission," the broadcasters asked yesterday, "on the suggestion currently being studied by Congress that radio and television stations be required to give political candidates 'free' air time?"

Dr. Frank Stanton, the president of the Columbia Broadcasting System, in a communication from New York, was even more specific. Why not amend the Federal Communications Act, he proposed, so that CBS could put the two major presidential candidates on panel shows on a series of Lincoln-Douglas type of debates without having to give the same privilege to the Vegetarian, Prohibition, and all other such minor candidates?

Even though debaters of the quality of Messrs. Lincoln and Douglas vanished with the 19th century, these are good questions. The sad part about it is that nobody here seems to be able to agree how to deal with the problem.

The main part of the present Communications Act that seems to be causing most of the trouble is the following:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station * * *."

The practical result of this regulation is that TV and radio stations seldom give any candidate for office free time because they would then be obliged to give all other candidates for the same office equal time. Thus, while many stations would no doubt have been willing to give time to General Eisenhower and Adlai E. Stevenson in the last election, they could not do so without having to give the same amount of time to the other "legally qualified candidates" representing minor parties or sects.

EDITORIAL JUDGMENT BARRED

In short, the TV and radio stations cannot exercise their editorial judgment to cover the speeches they think important and ignore the others, as the newspapers do. They are obliged under the fee rules to treat the candidates of the Socialist Party, the Communist Party, the American Vegetarian Party, the Greenback Party, and the Prohibition Party precisely as they treat the candidates of the Republican and Democratic Parties.

If one gets free time all must get free time, and while this is eminently fair in principle, the result in practice has been of course that the stations have allowed the problem to be settled on the basis of ability to pay.

Even in 1952, a half-hour single TV network broadcast could cost more than $30,000. That was when there were only 17 million TV sets in the country. Already the rates are higher and, by a year from next November, when there are expected to be more than 50 million sets, the bill will be much higher.

There is general agreement here that the ability-to-pay principle is not just in a democracy, and that the injustice is likely to increase in direct ratio to the rise in TV costs, but the problem cannot be solved merely by changing the rules to give the Democrats and Republicans free time and blocking out all others.

For while this might not produce injustice in national presidential elections, it could easily do so in State, congressional, and municipal elections. For example, Fiorella LaGuardia's successful Fusion Party campaign in New York City some years ago would have been handicapped by discrimination in favor of the major parties.

This is only one of the many new problems to rise with the popularity and power of nationwide TV.

Another is the increasing use of television by the executive branch of the Government. For example, President Eisenhower now puts on his weekly news conference before the TV cameras. Could he increase the number of news conferences during the campaign and thus be on a free TV national network 2 or 3 times a week while the Democrats had no such opportunity of equal time?

These are just a sample of the problems now facing and dividing the politicians and the Federal Communications Commission, and it is clear that the whole question will have to be carefully studied before long if an objective appraisal is to be conducted at all.

There are several ways in which this could be done by Congress, but perhaps the best way would be to have a presidential commission appointed, with representatives of the public, the broadcasting companies, the Federal Communications Commission, and the major parties.

Such a commission would still have time to explore the problem and come up with recommendations before the emotions of the campaign itself make all objective appraisal impossible.

[The New York Times, May 29, 1955]

Outmoded Broadcast Law

EQUAL TIME PROVISION SEEN AS BARRIER TO GOOD COVERAGE

By Jack Gould

In speaking before the convention of the Nation's broadcasters last week, President Eisenhower stressed television's role in helping keep the American public informed. In particular he urged the radio and TV men to insure that broadcasting be as free as other media.

If this goal is to be attained, however, the broadcasters cannot do it by themselves; the help of Congress is needed. In one of the most vital and crucial branches of news—politics—television is hobbled by a regulation that, if applied to newspapers, soon would make a hollow jest of a free press.

The regulation is known technically as section 315 of the Federal Communications Act and popularly as the equal time provision. It involves the attractive if naive notion that journalistic impartiality can be legislated on a mathematical basis.

In practice the effect of section 315 is less a guaranty of fairness than a formidable barrier to adequate broadcasting of political opinion and controversy. The provision thwarts the conscientious broadcaster who wants to do a rounded job. It is a wonderful alibi for the broadcaster who doesn't.

LANGUAGE OF LAW

Section 315 stipulates that if a broadcaster "permits any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station."

Under section 315 a candidate is defined as any person who announces his candidacy and "meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate."

The broadcaster's plight can be appreciated when it is realized that in 1952 there were not only General Eisenhower and Adlai E. Stevenson running for office. In addition, there were presidential candidates of the American Party, the American Rally, the Christian Nationalist Party, Church of God Bible Party, Constitution Party, Greenback Party, Poor Man's Party, Progressive Party, Prohibition Party, Republimerican Party, Socialist Labor Party, Socialist Party, Socialist Workers Party, Spiritual Party, Vegetarian Party and Washington Peace Party.

Under the law, is a broadcaster required to give all these candidates equal time? Strictly speaking, the answer would seem yes. In 1952 a man named William R. Schneider filed in two Republican primaries and then asked the Federal Communications Commission for equal time with General Eisenhower and the late Senator Robert A. Taft. The FCC directed that he receive such time and Mr. Schneider was heard from coast to coast.

In short, from a legal standpoint the broadcaster cannot focus his news attention merely on the candidates, whatever their number may be, in whom there is genuine public interest; he is legally subject to granting equal time to many unknowns.

To avoid this contingency most broadcasters simply do not give free time to any of the candidates once the formal campaign has started. The same policy seems certain to be extended to primary contests, which utilimately could mean virtually no meaningful political coverage that the politicians did not choose to finance. Manifestly, this is an unhealthy state of affairs both for TV as a journalistic medium and for the candidate who is not well off.

The ramifications of section 315 extend to many news and discussion programs. During a campaign it might seem fair for a Republican and a Democratic Senator, both running for reelection, to debate a national issue. But under section 315 their opponents back home theoretically could ask for equal time to give their views. Rather than run this risk, discussion shows often pass up politics during a political campaign.

NO NEWS

Even on spot news a strict mathematical interpretation of equal time can mean no news. During the last New York State conventions a television station wanted to cover the balloting contest, if one developed, between Averell Harriman and Franklin D. Roosevelt, Jr. Conceivably, this news event could run an hour or so on TV. The Republicans, with Senator Irving M. Ives unopposed for the gubernatorial nomination, had no ballot contest.

If the Democrats were to be on TV, however, the Republicans wanted to be on just as long, even if it meant filling in with speeches. But the Democrats said if the Republicans made speeches they wanted time to reply. The upshot of this seesawing nonsense was that the Democratic contest wasn't covered, even though it was real news. The TV public was not informed.

Section 315 imposes an impossible journalistic burden. News cannot be judged on a legalistic and statistical basis without leading to utter chaos. If a newspaper used the full text of the Republican and Democratic candidates, should it be compelled by law to run the full text of a dozen other candidates? Should a Democratic story be ignored because the Republicans weren't making news? Yet these absurd situations do prevail in TV.

The evil of trying to legislate fairness already is apparent. Senator Warren G. Magnuson, chairman of the powerful Senate Interstate and Foreign Commerce Committee, which has jurisdiction over broadcasting matters, suggested that perhaps broadcasters should be required to donate some fixed amount of time to qualified candidates. This is not unlike saying a newspaper should contribute its columns to the politicians with no voice in how those columns were used.

The remedy is not more legislation but less. Section 315 in substance contradicts another provision of the Communications Act, which prohibits Government meddling in program content. Political news is vital program content. It is time that section 315 were reexamined with a view to allowing the broadcaster to make his own journalistic decisions. If he is not deemed qualified to do so, then it can only be asked by what standard did the Federal Communications Commission give him a license in the first place.

[From the New York Herald Tribune, June 8, 1955]

Washington: TV, Campaign and Voters

(By Roscoe Drummond)

Washington.—Vice President Richard Nixon has reached some original and arresting conclusions concerning the use of television in political campaigns. He is convinced that a good deal of fresh thinking is needed if TV is to continue to be an effective instrument of campaigning, and as a beginning he offers the following judgments:

That the set speech of a Presidential nominee, showing him on the television screen haranguing a big rally or snugly reading his teleprompter in the studio, is on the way out.

That such performances won't any longer attract good audiences or hold them.

That only a major Presidential pronouncement or some very special circumstance such as the build up which preceded his explanation of the Nixon fund in the 1952 campaign, will produce and sustain the interest of an adequate TV audience in future campaigns.

That political telecasts will have to be far better produced than in the past and that there will have to be some form of audience participation—perhaps an adaptation of Secretary Dulles' recent foreign-policy report to the President plus running comment and questions in the presence of several members of the Cabinet.

Mr. Nixon is inclined to think that in future campaigns the nominees will have to take on the unrehearsed, off-the-cuff questioning if the candidates are to get the voters, in any large numbers, to stop, look and listen.

This makes a good deal of sense. Unless Mr. Nixon's advice is heeded, I suspect that set campaign speeches will attract smaller audiences than they did in 1952. Then television was still a relative novelty to many millions of viewers. Novelty will no longer be enough. Political performances on TV will need to have pace, movement and conflict.

This is why I am attracted to the suggestion recently made by Dr. Frank Stanton, president of the Columbia Broadcasting System. He says that CBS would provide free television time for a series of "Lincoln-Douglas" type debates between the two major 1956 Presidential candidates if Congress would amend the communications law to make it possible.

Dr. Stanton's suggestion has two advantages.

Its incidental advantage is that it would greatly reduce the costs of national campaigns by giving invaluable TV time to both sides—even as newspapers give thousands of columns of free space.

Its compelling advantage is that it would create political telecasts which would meet all of Vice President Nixon's tests—pace, movement and conflict.

The Lincoln-Douglas style of political debate would be pro-voter all the way. Some of its special values would be these:

It would galvanize public interest in the campaign issues as nothing else could.

It would clarify and sharpen the significant differences between the nominees.

It would put the Presidential candidates on the screen simultaneously and would greatly assist the voters in appraising their relative qualities and qualifications.

It would enable conflicting campaign arguments to catch up with each other much sooner and at once increase the hazard and reduce the temptation to rely on exaggerated campaign arguments.

I can't say that all Presidential nominees would like this type of campaigning. I am sure all the voters would like it, and I can't escape the conclusion that a campaign ought to be geared for what's good for the voters whether it is good for the candidates or not.

Exhibit B

Excerpt From Statement of Richard S. Salant Before Senate Subcommittee on Privileges and Elections

* * * Compelling broadcasters to give free time is not a fair or sensible remedy. The advantages of the candidate with generous contributors are advantages not limited to the candidate's use of radio and television. The fact that the current emphasis is on radio and television is a tribute to the impact and force of these media and is a recognition that they are perhaps the best and most direct way by which candidates can present themselves and their views to the people. But that is no reason to discriminate against radio and television, which after all are a vital part of the free press. It would be ironic to make radio and television victims of their own success by singling them out for condemnation proceedings.

After all, everything used in a political campaign costs money: train and plane travel, newspaper advertisements, sound trucks, auditoriums, campaign headquarters, buttons, car placards, mailing pieces, comic books, balloons, confetti, elephants, donkeys and pretty girls. At least some of these are just as necessary to a candidate, if not quite so effective, as radio and television. Yet nobody has suggested that the supplier of these items be required to give them away free to candidates. The imbalance of more elaborate headquarters, more plentiful confetti, a larger number of advertisements in newspapers, and more pretty girls, is dismissed as the natural and inevitable consequence of one candidate's having more financial contributions than the other.

The proposal to require broadcasters to provide free time can find no logical justification in the arguments that the broadcasters use the public's air and operate only by Government license, or that they have a "natural monopoly" arising out of limitations of air space available. Railroads and airlines also have natural monopolies and are licensed to operate by the Government. Yet there is no suggestion that they donate their services and facilities to candidates. Newspapers are afforded second-class mailing privileges under which their postal charges are considerably reduced. Yet no one entertains the fantastic notion that their second-class mailing privileges be revoked unless they carry a specified number of political speeches verbatim or a specified number of political advertisements free.

Nor can the suggestion that radio and television be treated differently from newspapers by requiring free donations from broadcasters be justified on the grounds of a special scarcity of broadcasting stations. The fact is that there are about 3,000 radio stations and 425 television stations in the United States and less than 2,000 daily newspapers. In New York City there are only 8 daily newspapers but there are 15 radio stations and 7 television stations. In Chicago there are 4 daily newspapers, 4 television stations and 16 radio stations. In Los Angeles there are 4 daily newspapers, 13 radio stations and 7 television stations.

While I am no expert in constitutional law, the proposal, wholly apart from its unfairness and unwisdom, also seems clearly to raise serious constitutional questions under the first amendment. Radio and television are a part of the press. Yet there is a tendency to make proposals to govern radio and television which no one would dream of making in respect of newspapers. A proposal to require newspapers to print verbatim a specified number of speeches of each political candidate during a political campaign would surely be universally condemned as an interference with the freedom of the press. For this is worse than censorship. This is telling a newspaper not what it may not print but what it must print. Yet the proposal for radio and television is precisely the same.

EXHIBIT C

SEC. 301. Section 315 of the Communications Act of 1934 (47 U. S. C. 315) is amended to read as follows:

"SEC. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.

"(b) Subsection 315 (a) shall not apply to any use of a broadcasting station by any legally qualified candidate for the offices of President or Vice President of the United States, or to any spokesman duly designated by such candidate for the office of President, if such use is an acceptance speech by such candidate at a nominating convention or is on a news, news interview, news documentary, panel discussion or debate program where the format and production of the program and the participants therein are determined by the broadcasting station or the network in the case of a network program: *Provided*, That the licensee shall afford equal opportunity in the same use of such broadcasting station to every other candidate for the office of President, or Vice President, as the case may be—

"(1) who, if a candidate for election as President or Vice President, is (i) the nominee of a political party whose candidate for such office in the preceding presidential election was supported by not fewer than four percent of the total votes cast, or (ii) whose candidacy is supported by petitions filed under the laws of the several States which in the aggregate bear a number of signatures equal to at least one percent of the total popular votes cast in the preceding election and which signatures are valid under the laws of the States in which they are filed; or

"(2) who is a substantial candidate for Presidential or Vice Presidential nomination by a political party whose candidate for such office in the preceding presidential election was supported by not fewer than four percent of the total popular votes cast.

"(3) For the purposes of Subsection (b) (2) of this Section 315, a candidate for Presidential or Vice Presidential nomination shall be presumed to be a 'substantial candidate' if—

"(i) he is an incumbent of any elective Federal or Statewide elective office; or

"(ii) he has been nominated for President or Vice President at any prior convention of his party; or

"(iii) his candidacy is supported by petitions filed under the laws of the several States which in the aggregate bear at least 200,000 signatures which are valid under the laws of the States in which they are filed.

"(c) Subsection 315 (a) shall not apply to the use of a broadcasting station by any legally qualified candidate for Congressional office if such use is on a news, news interview, news documentary, panel discussion or debate program where the format and production of the program and the participants therein are determined by the broadcasting station or the network in the case of a network program: *Provided*, That the licensee shall afford equal opportunity in the same use of such broadcasting station to every other candidate for the same Congressional office—

"(1) who if a candidate for election to Congressional office, is (i) the nominee of a political party whose candidate for the Congressional office sought by the legally qualified candidate received in the preceding general Congressional election not less than four percent of the total votes cast for all candidates for that office in such election, or (ii) whose candidacy is supported by petitions filed under applicable State law which in the aggregate bear a number of signatures, valid for the laws of the State, equal to at least one percent of the total votes cast for all candidates for that office in the preceding general Congressional election; or

"(2) who is a substantial candidate for nomination for the Congressional office by a political party whose candidate for such office in the preceding Presidential election was supported by not less than four percent of the total votes cast for all candidates for that office in such election.

"(3) For the purposes of subsection (b) (2) of this Section 315, a candidate for the nomination for Congressional office shall be presumed to be a 'substantial candidate' if

"(i) he is an incumbent of any elective Federal or State elective office; or

"(ii) he has been nominated by his party as a candidate for the same office; or

"(iii) his candidacy is supported by petitions filed under applicable State law which in the aggregate bear a number of signatures, valid under the laws of the State, equal to at least one percent of the total votes cast for all candidates for that office in the preceding general Congressional election.

for the purpose of this subsection, the term 'Congressional candidate' means a candidate for election as a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

"(d) No licensee shall have any power of censorship over the material broadcast under the provisions of subsection (a), subsection (b), or subsection (c). No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate.

"(e) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

"(f) The Commission shall—

"(1) prescribe appropriate rules and regulations to carry out the provisions of this section; and

"(2) determine, and upon request of any licensee notify such licensee concerning, the eligibility of any candidate to receive equal opportunity under subsection (b), or (c) in the use of any broadcasting station."

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5. Letter Dated June 14, 1956, From Dr. Stanton [Inserted in the Record on July 17, 1956] Clarifying One Point in His Testimony of the Preceding Day

Columbia Broadcasting System, Inc.,
New York, N. Y., June 14, 1956.

Hon. Warren G. Magnuson,
Chairman, Senate Interstate and Foreign Commerce Committee,
Washington, D. C.

Dear Mr. Chairman: In the course of my testimony yesterday I referred (transcript, pp. 3460–3461) to the record of clearances in class A time for national spot programs as reported by Oliver Treyz, president of the Television Bureau of Advertising. I was referring to material appearing at pages 120–121 of the CBS supplemental memorandum entitled "Network Practices."

In response to a question by Mr. Cox (transcript, p. 3463) concerning whether the class A time was 7:30 to 10:30 p. m., I replied in the affirmative. I have since checked further and find that class A time as used by Mr. Treyz referred not to 7:30 to 10:30 p. m., but rather from 7 to 10:30 p. m., and that I was therefore in error by half an hour. I find further, however, that the great preponderance of programs did fall within the 7:30 to 10:30 p. m. time. For example, in the case of the Socony Mobil Theatre to which I referred, only 7 of the 56 markets which were ordered and cleared provided time between 7 and 7:30; the rest provided time between 7:30 and 10:30 p. m.

Further, I call to your attention the material on page 18 of the CBS memorandum concerning the statement of Richard A. Moore pointing out that 80 percent of the 54 stations recently cleared time for a new program called the Rosemary Clooney Show and carried the program between 7:30 and 10:30 p. m.

Sincerely,

Frank Stanton.

6. Letter Dated July 25, 1956, From Richard A. Moore, KTTV, Los Angeles, Calif., in Response to a Letter Dated May 25, 1956, From the National Broadcasting Co. to the Committee

KTTV,
Los Angeles, Calif., July 25, 1956.

Hon. Warren G. Magnuson,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

Dear Senator Magnuson: Under date of May 25, 1956, the National Broadcasting Co. filed with your committee a printed statement of facts, which contained allegations that KTTV's testimony on March 26 before your committee was actually presented on behalf of a group of film companies. In a letter to you dated May 31, 1956, I pointed out that the NBC allegations were incorrect.

We have since received a copy of Mr. Robert W. Sarnoff's letter to you dated June 11 on the same subject. I regret the necessity of burdening the record further on this irrelevant issue, but in view of the importance NBC seems to attach to it, I feel it necessary to reply to Mr. Sarnoff's letter.

I

In his letter of June 11, Mr. Sarnoff states that I had asked group approval of a portion of my testimony before your committee on March 26. In support of this allegation, Mr. Sarnoff quotes from a letter which I mailed to certain broadcasters and film distributors on January 19, 1956, a full copy of which I am attaching hereto. Once again NBC's allegation is incorrect. The facts are as follows:

1. The proposal contained in my letter of January 19 was made to the group at a time when we were considering the possibility of a joint presentation on behalf of the entire group either to the Network Study Committee of the FCC or to this committee. The suggestion had nothing to do with any individual position of KTTV. It was decided subsequently by the group that no such joint presentation would be made for the reason, among others, that the members of the group were not in agreement as to what changes in the regulations should be proposed. The joint activity of the members of the group was limited to a common research project, the results of which would be available to all, with each company reserving complete individual freedom of action.

2. The proposal mentioned in my letter of January 19, as the record will show, was never made by me in my Senate testimony on behalf of KTTV. Instead, I made a completely different proposal which represented the view of KTTV only, and for which I had received no approval or authorization of any kind from any other company or group.

3. The suggestion contained in my letter of January 19, was a clause whereby, during each segment of the broadcast day, the station would be required to reserve at least 1 hour for the presentation of programs other than programs furnished to it by a single network. However, in my testimony before this committee on March 26, I recommended a regulation providing that: "if during any 52-week period an average of more than 75 percent of a station's schedule during any of the 4 segments of the broadcast day consists of programs from a single outside source—and we are not limiting it to networks—or if during a 52-week period the station's schedule between 7:30 to 10:30 p. m. averages more than 75 percent of programs from any single outside source, this fact shall constitute prima facie evidence of exclusive dealing" (transcript 1653).

The differences between the proposal which Mr. Sarnoff says I made and the proposal which I did make are real and substantial:

(*a*) The proposal made by KTTV to the committee on March 26 was based on an average which would permit a station to broadcast 100 percent of its schedule from a network on some days if it balanced such network schedule with nonnetwork programing on other days.

(*b*) Departures from the 75 percent rule would not face a flat prohibition but would create a presumption of exclusive dealing rebuttable by the station.

(*c*) Most important, the 75 percent rule would relate not only to programs of a single network, but to programs from any single source. It would apply equally against programs of a network and programs of a film distributor—including those very film distributors who were members of our research group.

As I stated in my letter of May 31, my testimony was prepared and approved only by KTTV, and I spoke only for our station.

II

When NBC incorrectly alleged in its May 25 statement that KTTV was testifying on behalf of a "film group," we had assumed that the incorrect allegations were made as a result of NBC's ignorance of the actual facts. However, it now appears that NBC may have been in possession of my January 19 letter at the time it made these allegations.

My letter of January 19 showed on its face that the membership of our research group, in addition to KTTV, included WPIX, New York, and WGN-TV, Chicago, as well as four film companies and General Teleradio, Inc. While General Teleradio had recently acquired certain film properties, its principal interest and activities are in broadcasting, and it is owner or licensee of WGTH-TV, Hartford, Conn.; KHJ-TV, Los Angeles, Calif.; WEAT-TV, West Palm Beach, Fla.; WNAC-TV, Boston, Mass.; WOR-TV, New York, N. Y.; and WHBQ-TV, Memphis, Tenn.

Yet in listing the members of the group known to NBC, NBC omitted WPIX and WGN-TV, and mentioned only the four film companies and General Teleradio, Inc., which it described merely as "part of the RKO motion picture organization with principal interests in Hollywood film production." After stating that my testimony "was part of an organized campaign previously agreed upon and financed by a group of film syndicators and related interests," NBC continued to create the impression that I was spokesman for a film group by constant references to the "film group represented by Mr. Moore," "the film group's attack on the networks," "the film producers for whom Mr. Moore speaks," etc.

Membership in the group by important and representative television stations, which were seriously concerned with the effects of certain network practices engaged in by NBC, was utterly inconsistent with the allegations made to the committee by NBC. Only by omitting any reference to WPIX and WGN-TV, not to mention the misleading description of General Teleradio, Inc., could NBC have supported the incorrect allegations which it furnished to the committee.

A copy of this letter is being sent to Mr. Sarnoff.

Respectfully yours,

RICHARD A. MOORE, *President.*

JANUARY 19, 1956.

To: Dwight Martin, General Teleradio Corp.
Harold L. Hackett, Official Films, Inc.
Ralph Cohn, Screen Gems, Inc.
Mickey Sillerman, Television Programs of America, Inc.
Frank Schreiber, WGN-TV.
Fred Thrower, WPIX.
John Sinn, Ziv Television Programs, Inc.

Subject: Progress Report No. I.

Have just returned from a trip to Washington in connection with the project outlined in my memorandum of December 19, 1955, and I thought that each of you would be interested in a progress report to date.

1. I completed arrangements to retain the Washington firm of Cox, Langford, Stoddard & Cutler to make the study and prepare the report described in the December 19 memorandum. I'm enclosing two copies of my letter outlining the arrangements and you will note that the cost will be based on the firm's normal hourly charges for work of this kind. It appears that the total cost of the project will be well within the limits of our original fund. The member of the firm in charge of the matter is Lloyd N. Cutler. His partner, Marshall Hornblower and other lawyers in the firm will also work on the matter. They have already done considerable legal research and have prepared drafts of the more important sections of the report. They are moving ahead to complete the report at a rapid rate.

2. In the course of my Washington visit I had many meetings with Mr. Cutler and his associates which were very productive. I had also known that your respective Washington attorneys had been anxious to meet with Mr. Cutler, and those meetings have now all been held. It seems to me that we have reached an enthusiastic meeting of the minds among all the lawyers involved concerning the objectives of our joint project. Mr. Cutler will continue to work closely with each of your respective law firms. At this writing we understand that there are three contributing companies who do not have special counsel in

Washington, but if you have lawyers in New York or elsewhere with whom you would like to have Mr. Cutler confer, he will be happy to do so.

3. Since my memorandum of December 19, there have been two new developments which seem important. First, the Network Study Committee of the FCC, together with Dean Barrow and the various staff members, have had several days of meetings with CBS and NBC in New York. Dean Barrow told us they will also visit ABC. You doubtless read of these meetings in the trade press, and we can only assume that the network people presented a very full picture of their side of the case. The second development involves the Senate Committee on Interstate Commerce (the Magnuson committee) which has announced that it will initiate new hearings beginning January 26. Senator Magnuson has communicated with the FCC and has told the Commissioners that the Senate committee desires to have all seven Commissioners attend the hearings prepared to answer questions concerning the nature and progress of the FCC Network Study, among other things. It appears to us that the Magnuson hearings may have considerable effect on the FCC study and that, in a very real sense, the hearings of the Magnuson committee become almost as important to us as the proceedings of the FCC group. After all, one of the principal reasons for initiating the FCC study was to enable the Commission to obtain information needed in order to answer the questions asked of it by the Senate committee. It, therefore, seems fair to assume that the questions asked by the Senate committee in the forthcoming hearings will serve to bring more into focus the points upon which the FCC study should concentrate. The Senate hearings should also have an effect on the speed with which the FCC study will be conducted. It therefore seems, in connection with our project, that we should be concerned with the Senate hearings almost to the same degree that we are concerned with the FCC study.

4. During the past week, Mr. Cutler and I had several conferences with Mr. Kenneth Cox who has just been appointed by Senator Magnuson as special counsel to the Senate committee to conduct the broadcast hearings. We have also conferred with Mr. Zapple, staff counsel to the Communications Subcommittee of the Senate committee. We have also had a good meeting with Senator Magnuson. In addition, we have had two meetings with Dean Barrow and meetings with Commissioner Hyde and Commissioner Bartley. To our knowledge, all of the above men with the possible exception of Senator Magnuson had read the blue-covered memorandum and seemed genuinely interested in discussing the point of view of independent companies like ours. We feel that these meetings have been extremely valuable.

5. I have been much encouraged by recent conversations with several station operators, whose stations have basic affiliations with the major networks. Understandably, none of these individuals would expect to make any affirmative public statement or to become associated with our committee actively, but each one expressed the hope that our project would succeed in order that the station could recapture some of its broadcast time from network control.

6. As a result of all our conferences with your respective lawyers, with the Government people mentioned above and with typical affiliated stations, Mr. Cutler and I have come to the conclusion that the suggested changes in the regulations contained in the blue-covered memorandum are inadequate in one respect. If our suggested regulations were adopted, there is no practical reason why a network could not continue to occupy all the station time it desired on a so-called voluntary basis. In other words, without the benefit of option time, the network could still use its economic strength to persuade the station to carry all the programs the network wished to deliver. Accordingly, we feel we should suggest an additional clause whereby, during each segment of the broadcast day, the station would be required to reserve at least 1 hour for the presentation of programs other than programs furnished to it by a single network. This proposal would accomplish the following things:

(a) It would guarantee a minimum number of hours per day during which the licensee would be free to exercise its unfettered judgment concerning the program content of the station, free of economic pressure from a network.

(b) It would open at least 1 hour in each time segment to the free play of competition among program sources such as independent film producers. It appears that the encouragement of additional program sources is one of the objectives of the FCC study.

(c) It would reserve at least 1 hour in each time segment for free competition among advertisers whereby the local or regional advertisers, or smaller national advertisers, would have equal opportunity to purchase television time and television programs, whereas the choice of time periods is currently available only to the major national advertisers because of the option time and must-buy arrangements.

(*d*) The availability of time periods for independent programs of non-network advertisers would give the independent station an opportunity to acquire good programs and good advertising revenue on a basis more nearly competitive with networks.

(*e*) It would give to the public the normal benefits which result from the presence of free competition in any industry.

7. We will probably find it advisable to make a suggestion of this kind to the Barrow committee or the Magnuson committee in the very near future. While this amendment would implement the objectives outlined in the December 19 memorandum, the members of our group have never specifically considered and agreed upon this particular suggested regulation. If a majority of you are opposed to this suggestion, Mr. Cutler and I do not feel that we would be authorized to submit it. Therefore, if you have any objection to our doing so, I hope you will let me know at once.

The more we look into the entire question, the more convinced I am that we have the law and the merits on our side, and it seems more and more likely to me that we are going to accomplish some good, affirmative results.

RICHARD A. MOORE.

P. S. Please note again that this memorandum calls for a reply if you have any objection to the suggestion made in paragraphs 6 and 7.

R. A. M.

7. LETTER DATED AUGUST 9, 1956, FROM THOMAS E. ERVIN, OF NBC, SUPPLYING CERTAIN ADDITIONAL MATERIAL REQUESTED DURING THE TESTIMONY OF ROBERT SARNOFF

NATIONAL BROADCASTING CO., INC.,
New York, N. Y., August 9, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: During the appearance of Mr. Robert Sarnoff, president of NBC, before your committee on June 14, 1956, it was agreed that NBC would supply additional information on some of the points raised in his questioning. This letter contains such information. The page numbers referred to below are the pages of the transcript on which the request for information appears.

Pages 3539-3541: Attached as exhibit 1 are the figures requested with respect to the number and percent of television sets served by the NBC television network credited to the six NBC-owned television stations.

Page 3549: Our records show that for the June spectaculars the number of stations ordered by the advertisers and the number of stations which accepted the order and broadcast the spectaculars were as follows:

Date	Time	Spectacular	Number of stations ordered	Number of stations cleared
Saturday, June 9, 1956	9 to 10:30 p. m., EDST.	Max Liebman Presents	130	127
Sunday, June 17, 1956	7:30 to 9 p. m., EDST.	Sunday Spectacular	144	136
Monday, June 25, 1956	8 to 9:30 p. m., EDST.	Producers' Showcase	99	95

This is approximately the number of stations ordered and cleared during the previous months.

Page 3637: Attached as exhibit 2 are the figures requested with respect to the percent of the cost of buying the entire NBC television network which is represented by the rate of the six NBC-owned television stations.

Page 3668–A: To qualify the testimony with respect to the "quick kinescope" operation, we have indicated in exhibit 3 the programs which, at the beginning of July, were being broadcast on the west coast, and the time of their broadcast.

Page 3671: We have endeavored to calculate the percent of programs supplied by the NBC television network during the hours of 7:30 to 10:30 p. m. throughout the United States. We have assumed that all 431 television stations were operating during this time period, resulting in total station broadcast hours during this time period for the month of May (31 days) of 40,085. According to our calculations 10,255 station broadcast hours consisted of NBC television network programs, or a percentage of 25.58 of the total station broadcast hours.

Page 3691: Attached hereto as exhibit 4 are NBC's comments concerning religious programs.

Page 3696: Attached hereto as exhibit 5 are NBC's comments concerning staging services.

If there is any further information or material which you may desire, we would be happy to furnish it to you.

Very truly yours,

THOMAS E. ERVIN.

EXHIBIT 1

Estimated TV sets served by NBC television network, as of January 1, 1956	36,288,000
Estimated TV sets credited by the NBC television network to the 6 NBC-owned television stations, as of Jan. 1, 1956	[1] 9,730,000
Percent of sets served by the NBC television network credited to the 6 NBC-owned television stations, as of Jan. 1, 1956	[2] 26.8

[1] If the sets served by the New Britain, Conn., UHF station with respect to which NBC's application for transfer of ownership is now pending before the FCC, were added, the estimated number of sets would be 9,878,000.

[2] If the sets served by the New Britain, Conn., UHF station with respect to which NBC's application for transfer of ownership is now pending before the FCC, were added, this percent would be 27.2.

NOTE.—All figures are on an unduplicated basis.

EXHIBIT 2

Gross class A hour network rate for all the 196 stations of the NBC television network, as of June 1, 1956	$114,175
Gross class A hour network rate for the 6 NBC-owned televisions stations, as of June 1, 1956	[1] 20,500
Percent of the gross class A hour network rate of NBC television network represented by the 6 NBC-owned television stations, as of June 1, 1956	[2] 18

[1] If the rate for the New Britain, Conn., UHF station with respect to which NBC's application for transfer of ownership is now pending before the FCC, were added, this total would be $21,000.

[2] If the rate for the New Britain, Conn., UHF station with respect to which NBC's application for transfer of ownership is now pending before the FCC, were added, this percent would be 18.4.

EXHIBIT 3

Because of the time differential between the west coast and the east coast, NBC transmits its evening programs to the west coast via interconnection, records them by kinescope on the west coast, and broadcasts the recording on the west coast 3 hours later. The result is that the broadcast on the west coast is at the same clock-hour as the east coast broadcast; the recording is known as a quick kinescope or "quick kine."

All NBC television network nighttime programs are scheduled on the west coast on a clock-hour with the exception of color spectaculars, special event and sports programs, and a few other programs where the nature of the program content makes simultaneous transcontinental release desirable. NBC daytime programs are scheduled by a combination of simultaneous live broadcasts and clock-hour quick kinescope broadcasts. The daytime schedule at the commencement of July was as follows:

Program	New York time	West-coast time
Today (quick kine)	7 to 8 a. m.	7 to 8 a. m.
Home (live)	11 to 12 a. m.	8 to 9 a. m.
Feather Your Nest (live)	12 to 12:30 p. m.	9 to 9:30 a. m.
It Could Be You (live)	12:30 to 1 p. m.	9:30 to 10 a. m.
Ding Dong School (quick kine)	10 to 10:30 a. m.	10 to 10:30 a. m.
Regional Today for west coast (local live and quick kine).	8 to 9 a. m.	10:30 to 11:30 a. m.
Tennessee Ernie (live)	2:30 to 3 p. m.	11:30 to 12 noon.
Matinee (live)	3 to 4 p. m.	12 to 1 p. m.
Queen for a Day (live)	4 to 4:45 p. m.	1 to 1:45 p. m.
Modern Romances (live)	4:45 to 5 p. m.	1:45 to 2 p. m.
Comedy Time (live)	5 to 5:30 p. m.	2 to 2:30 p. m.
Tic Tack Dough (quick kine)	10:30 to 11 a. m.	2:30 to 3 p. m.

EXHIBIT 4

NBC STATEMENT CONCERNING RELIGIOUS PROGRAMING

NBC RELIGIOUS PROGRAMING

Since the earliest days of radio, NBC has been broadcasting religious programs on its networks and owned stations. The oldest network program series is National Radio Pulpit, a religious series which has been broadcast on the NBC radio network since that network was formed 30 years ago.

In addition to the 7 weekly series of sustaining religious programs and 4 weekly series of religious programs supported by various responsible religious groups, the NBC radio and television networks carry many programs of religious importance throughout the year.

As this committee's investigation is with respect to television, we will confine this statement to that sphere, but the large number of religious broadcasts on radio must also be taken into account in assessing the religious broadcast programing to which the American public has access.

The first telecast of a religious service in the history of television was presented on NBC's experimental station W2XBS (now WRCA–TV) in New York City on March 24, 1940. This was a telecast of a Protestant Easter service, later followed by a telecast of a Catholic Easter service.

Ever since that time, the NBC television network and NBC-owned television stations have included religious programs in their schedule. In addition, the independent stations affiliated with the NBC television network present religious programs of their own.

For the information of this committee, we will outline briefly the religious programs on the NBC television network and owned stations:

TELEVISION NETWORK REGULAR SERIES

Since October 1951, the NBC television network has been broadcasting its well-known Frontiers of Faith[1] program series on Sunday afternoons. Broadcast every week in the year, this series is divided among organizations representing the three main religious groups in the United States: Protestant, Catholic, and Jewish. In general, each of the faiths is given a series of 4 or more consecutive weeks, in rotation.

The content of each program or series of programs varies, depending upon the desires of each group. For example, programs have originated from churches in different cities, or have consisted of sermons, dramas based on the Bible, debates, discussions, or morality plays.

When this series first commenced, NBC allocated a budget of $1,700 per week to the production of this program. This budget has been increased from time to time, so that during 1956 the budget is $5,500 per week ($286,000 for the year). In the event one of the religious organizations does not use all the money

[1] When the programs of the Catholic group are telecast, the programs are called the Catholic Hour, the same title as the radio series which has been broadcast on the NBC radio network for more than 25 years.

allocated to the production of one program, it may accumulate the difference and apply it to other programs in the series. The NBC production staff assigned to this program series includes outstanding creative and technical people who are also responsible for the production of some of NBC's major entertainment programs.

The foregoing amount contributed by NBC is for production services and facilities, and compares favorably with similar budgets for other sustaining half hour series presented on the network. For example, the production budgets for Youth Wants to Know and American Forum, which are also half-hour program series presented on Sunday afternoon, approximate $1,250 in each case. In addition to NBC's contribution for production services and facilities, the television time for the presentation of the program series is furnished without charge to the three religious groups for the presentation of the program series. The series is carried by a lineup of over 100 affiliated stations, and the annual value of the television network time involved is in excess of $1,750,000 at existing rates.

The religious groups are in complete control of the format and contents of the programs allocated to them, and make the arrangements for and pay the writing and performing personnel. These costs for performers are generally very small or nonexistent, as many of the performers are ecclesiastical or lay persons associated with the particular group or church and are not paid, while professional performers are generally paid minimum union scale rates.

The quality of these programs is illustrated by the awards which have been conferred upon the series. For example, in 1955 the series received a certificate of merit from the National Conference of Christians and Jews (for outstanding contributions promoting the cause of good will and understanding among the people of our Nation), one of the first annual public service awards from the Protestant Council of the City of New York (in gratitude for sensitivity to spiritual needs and for cooperation in meeting these needs through programs of religion), and the first award of the Institute for Education by Radio-Television of Ohio State University and honorable mention in the Robert E. Sherwood awards.

In addition to this regularly scheduled religious series, and the types of programs mentioned below, are religious presentations from time to time on behalf of various nonaffiliated religious groups, such as the Southern Baptist Convention, with a program planned for this fall from this organization's television headquarters in Fort Worth.

TELEVISION NETWORK HOLIDAY PROGRAMS

In addition to the Frontiers of Faith series presented each week, the NBC television network regularly presents programs celebrating various religious holidays. Currently, programs are scheduled for the following occasions: Passover, Palm Sunday, Easter, Hanukah, and Christmas (2). These holiday programs have included Christmas midnight Mass telecast each year since 1948 from St. Patrick's Cathedral in New York, a special film dramatizing the death and resurrection of Christ, a dramatic-musical explanation of the meaning of the Passover Seder, and the exodus of the Jews from Egypt.

These programs vary in length from one-half to 2 hours. NBC generally bears the entire cost of the programs, although in some instances the scripts and performers are supplied by the religious group cooperating in the production of the program. NBC makes no charge for the broadcast time.

TELEVISION NETWORK SPECIAL RELIGIOUS PROGRAMS

Throughout the year, the NBC television network broadcasts special programs of a religious nature to mark important occasions. For example, we have telecast special programs on the occasions of the fifth anniversary of the first meeting of the World Council of Churches, the canonization of Pope Pius X, the American Jewish Trecentenary, and a nationwide campaign by Religion in American Life (a group emphasizing the importance of religion in community and personal life), the Back to God program presented in cooperation with the American Legion and including representatives of all three faith groups, as well as others.

These programs are generally produced and paid for by NBC, although in some instances the scripts and performers are supplied by the cooperating group. The broadcast time is furnished without charge by NBC.

INTEGRATION OF RELIGION INTO OTHER TELEVISION NETWORK PROGRAMS

NBC has long been of the opinion that by including informational, cultural, and religious themes in programs or series not devoted primarily to those themes, its viewers will be better served and enlightened. In this way, a broad public can become acquainted with matters of religious significance without the necessity of viewing a program or series totally devoted to religious matters.

The NBC television network has, therefore, been including matter of a religious nature in a number of its nonreligious programs. For example, the Conversations series has included programs devoted to conversations with Dr. Louis Finkelstein (chancellor of the Jewish Theological Seminary of America) and Paul J. Tillich (eminent Protestant theologian and professor at Harvard University); NBC commissioned Gian-Carlo Menotti to compose an opera which has been broadcast each Christmas in the NBC Opera Co.'s series and has become a Christmas classic, Amahl and the Night Visitors; the Today, Home, and Tonight programs have often included material of religious significance. A number of examples of the inclusion of such material are contained in exhibit 4A, attached thereto.

In addition, many NBC programs foster those attitudes and beliefs which will enable religion to flourish. Our program policies emphasize morality, brotherhood, respect for clergy, and other virtues which are part of the religious tradition of our civilization. NBC's practices in this respect have won public recognition, and a number of awards have been conferred by religious organizations upon individuals associated with programs telecast by NBC. Exhibit 4B contains a list of such awards.

LOCAL PROGRAMS

The network is not the only supplier of religious television programs. There are also syndicated and local programs devoted to religious matters.

In fact, because of the heterogeneous nature of the population of the United States, religious programs telecast to the entire Nation can only deal with the major religions and in the broadest way. Any appropriate local emphasis on religious programs must be made by each local station for its particular area.

The NBC-owned television stations broadcast a number of local programs of a religious nature in addition to the religious programs supplied by the NBC television network. The NBC-owned television stations each broadcast an average of about 2 hours and 15 minutes per week of locally originated religious programs,[3] including prayers and sermons at the commencement and termination of broadcast, as well as a variety of other types of religious programs. In addition, of course, many of the local programs not primarily devoted to religious matters include material of religious significance from time to time.

EXHIBIT 4-A

INTEGRATION OF RELIGION IN NBC TELEVISION PROGRAMS—SEPTEMBER 1954–MAY 1956

HOME PROGRAM SERIES

(WRCA-TV and network, 11 to 12 noon (sponsored segments).)

Each Friday the Home show closes with a prayer rendered by a guest clergyman.

October 22, 1954: Guests were the Minister's Chorus, of the Swedish Mission Covenant Church. The 40-voiced choir was on tour in the United States, and sang several selections. The chorus is composed of pastors and members of the Swedish Mission Covenant Church.

October 29, 1954: Guest Bishop G. Bromley Oxnam, bishop of the Methodist Church, in Washington, D. C., area—interviewed about his life's work and home * * * and films shown of him at work.

November 19, 1954: Guests were a Sunday-school class and two teachers from Westport, Conn. They demonstrated their activities, songs, etc., to show how religion becomes an interesting role in their lives.

December 13–24, 1954: The Life of the Bible—series with a daily discussion on the Bible, its history, etc * * * conducted by Howard Whitman, noted author, lecturer, etc.

[3] Except for WBUF-TV, which NBC acquired recently and which is not yet operating on a full schedule.

December 24, 1954: Mobile unit visit to the Mission Dolores, a Spanish mission in California, for a tour, and attending services there.

January 26, 1955: Dr. Norman Vincent Peale, pastor, Marble Collegiate Church, New York City—interviewed.

February 22, 1955: Dr. Ralph W. Sockman, pastor, Christ Church, Methodist, New York City—interviewed.

March 28–April 8, 1955: Exploring Our Beliefs—several daily segments of this series were concerned with religion in everyday life: prayer, the meaning of God in the atomic age, etc.

May 17, 1955: Rev. James A. Pike, dean of the Cathedral of St. John the Divine, New York City—interviewed.

July 4, 1955: Discussion by Esther Tufty, Washington, D. C., newswoman and commentator, on increased interest in religion throughout the country, more church attendance, reading books on religion.

July 25, 28, 1955: Report in two parts on the work of modern missionaries all over the world; helping instill a democratic way of thought in underprivileged countries, etc.

September 16, 1955: Observance of Jewish high holy days—Rabbi Samuel M. Silver, director of public relations, Union of American Hebrew Congregations, intrepreted pantomime scenes of a Jewish family at home participating in ceremonies of the holy days, and then interpreted a portrayal of rituals as observed in synagogue.

October 14, 1955: Rabbi Abba Hillel Silver, of the Temple, Cleveland, and past president of the Central Council of American Rabbis, was interviewed during Home program's origination from that city.

December 19–23, 1955: Inside the Bible—daily series of discussions by Howard Whitman on various aspects of the Bible.

February 29, 1956: India Centenary choir and orchestra—guests on program were 18 young people from India; organized to commemorate the 100th year of Methodist missionary work in India and Pakistan. Dr. Donald F. Ebright, Methodist missionary at Lucknow, India, pointed out that the group will study for a year at an American university on completion of their tour. The different instruments were described by Victor C. Sherring, director of music and teacher of religion in the Methodist School of Mathura, in India, and the group performed several selections. Two classical dances were also performed.

March 26, 1956: A scene typical of the Passover scene that will take place in many homes tonight was portrayed. The family of Rabbi Morris N. Kertzer, secretary of the New York Board of Rabbis, was seated around the table. Rabbi Kertzer read from the Bible and explained the various symbols on the table. Mrs. Kertzer lit the festival candles and the service continued. As it concluded Cantor Avery assisted in the singing of some of the pertinent melodies which help tell the Passover story, and Rabbi Kertzer closed the services with a prayer.

TONIGHT PROGRAM SERIES

(Monday through Friday, 11:30 p. m. to 1 a. m. (sponsored segments).)

March 1, 1956: Lew Ayres, actor and student of religion, discussed the color films of 10 different religious ceremonies which he took while traveling around the world. Film clips were shown from the religious rites of a country in the Far East, with Ayres telling of its significance, and how the films were obtained.

TODAY PROGRAM SERIES

(WRCA–TV and network 7 to 9 a. m. (sponsored segments).)

December 22, 23, 1954: Mobile-unit visits to the homes of two clergymen for their views on the true meaning of Christmas: Archbishop Edwin V. O'Hara, bishop of Kansas City, Mo., and Rev. Dr. Theodore Ferris, pastor of Trinity Church, Boston, Mass.

March 8, 1955: Father Georges Bissonette, the only Catholic priest in Moscow who a few days earlier was ousted from Russia, was interviewed about religion in Russia and the reasons for his dismissal.

April 6, 1955: Mobile-unit visit to Jewish Museum of Jewish Theological Seminary, to see preparations for a Passover seder—significance of the rituals, etc.—with Rabbi Joel E. Geffin presiding.

August 15, 1955: Rev. Walter L. Flaherty, director of radio and television apostolate for Boston archdiocese, was guest—told of a TV workshop for nuns now operating in Boston, including films of the project in operation.

October 21, 1955: National Bible Week was commemorated—Garroway exhibited a velvet-bound Bible presented to Abraham Lincoln by, as the inscription reads, "the loyal colored people of Baltimore as a token of respect and gratitude." Spot closed with Garroway reading Lincoln's favorite Bible passage: Sermon on the Mount.

December 19–23, 1955: Each day this week Today visits a church of a different denomination, going to cities all over the country. At each church the pastor is interviewed, music is provided by the choir, and the type of architecture is noted.

February 21, 1956: Lew Ayres, famous actor, was interviewed about an extracurricular interest which has accounted for vast changes in his life—religion. He has made a vast study of the world's major religions and prepared a series of nine films on religion. Portion of one on Buddhism was shown today. Ayres commented on how these films will be used and spoke of his own career and future plans.

February 29, 1956: 100th anniversary of Methodist Church in India and Pakistan was highlighted by special guests, the India Centenary choir and orchestra. The group is on a world tour—its members are missionaries. Dr. Donald F. Ebright, who organized the tour, explained their activities, the relationship between music and teaching religion in India, and the group performed throughout program.

March 23, 1956: Special films of a model Passover Seder held at Mount Sinai Hospital in New York, under the direction of Rabbi I. Fred Hollander. Jack Lescoulie narrated, explaining the traditional rituals of this Jewish feast. He remarked on the significance of the Passover holiday for both Christians and Jews—for the Last Supper, which Christians commemorated this week, was a Passover Seder.

March 30, 1956: Special films taken by Today camera crew at St. Thomas More Church in New York showing the celebration of Mass on the evening of Holy Thursday for the first time in over a thousand years. This evening church Mass is a return to a practice of the early Christian Church, and was renewed by the Pope so that more people might benefit from Holy Week services.

MEET THE PRESS

WRCA–TV and network, 6 to 6:30 p. m., Sundays (alternate weeks sponsored by Pan American Airways and Johns-Manville).)

March 6, 1955, August 7, 1955: Billy Graham, evangelist, interviewed—discussing his European trips.

April 1, 1956: Dr. Eugene Carson Blake, stated clerk of Presbyterian General Assembly; and president, National Council of Churches of Christ in USA, interviewed about his trip to Russia with other Protestant clergymen.

THIS IS YOUR LIFE

(WRCA–TV and network, 10 to 10:30 p. m., Wednesday (alternate week sponsored by Hazel Bishop and Procter & Gamble).)

November 17, 1954: Honored guest Dr. Norman Vincent Peale, pastor, Marble Collegiate Church, New York, N. Y.

January 12, 1955: Honored guest Rev. Robert Richards, pastor of First Church of the Brethren in Long Beach, Calif. Reverend Richards is also an Olympic champion pole vaulter.

BETTY WHITE SHOW

WRCA–TV and network, 4:30 to 5 p. m. (sponsored segments), effective September 13, 1954, 12 to 12:30 p. m.)

March 26–December 31, 1954: The Reverend Dr. Ernest C. Wilson, minister of the Los Angeles Unity Church, Los Angeles, Calif., appeared each Friday to deliver a prayer and discuss a philosophy for good living.

THE WORLD OF MR. SWEENEY

(WRCA–TV and network, 4:30 to 4:45 p. m. (sponsored days).)

March 7, 1955: In this episode of the "situation comedy" series, Cicero, philosopher-storeowner around whom the story revolves, settled an argument between two boys of different religion. Each felt his own religion to be the best, and Cicero explained that though their churches were different, the belief in something eternal and beyond is the same.

THE WORLD AT HOME

(WRCA–TV and network, 10:45 to 11 a. m. (sustaining).)
August 31, 1955: Guest interviewed, Billy Graham, evangelist.

THE PERRY COMO SHOW

(WRCA–TV and network, 8 to 9 p. m., Saturdays (sponsored segments).)
September 24, 1955: The Jewish holiday of Yom Kippur was observed by Perry Como singing "Kol Nidre" the traditional chant of the evening preceding the Day of Atonement.

PEOPLE

(WRCA–TV and network, 4 to 4:30 p. m., Sundays (sustaining).)
October 9, 1955: Filmed profile sketch presented of Rev. Dr. Joseph Jackson, president of the National Baptist Convention, who was recently a visiting preacher in Russia. He reported during the interview on Russian rseponse to his sermons, etc.

NBC MATINEE THEATER

(Monday through Friday, 3 to 4 p. m.; live dramatic series in color; produced in Hollywood (sponsored segments).)
December 23, 1955: The Unwelcomed (in color) a Christmas story by Gladys Schmitt. Philip, a motherless little crippled boy, unwanted by his father, and cared for by his ailing grandmother, was grieved over the illness of his lamb, his only friend and companion. Hearing of a shepherd who had the power of healing, Philip pleaded to be taken to the shepherd. He was ridiculed by his father and a Roman centurion, but his grandmother gave him courage to seek out the shepherd. He started out alone with the lamb, and eventually found the shepherd, and his lamb was healed. The shepherd told the child how an angel of the host of God had come to him and told him of the coming of the Messiah and how upon touching the foot of the Babe, the shepherd had been given the power of healing. Though the lamb had been cured, no one gave credence to the story except the grandmother. The Three Wise Men, hearing of the child's story, sought out Philip for having been one of the first believers, and he was taken with them to Bethlehem.
March 30, 1956: The Book of Ruth, by Howard Rodman, a biblical story in observance of Good Friday. Naomi, an Israelite woman living in the Land of Moab, decides after the death of her two sons to return to her home in Bethlehem. Her loyal and loving daughter-in-law, Ruth, insists upon going with her. In Bethlehem they live in a small house which is the only property remaining to Naomi, and Ruth gleans in the fields, following the reapers as they harvest the corn. Boaz, owner of the fields and kinsman of Naomi, meets Ruth and thanks her for her kindness to Naomi—and he tells his workers to purposely drop sheaves of corn so that the two women will be well provided for. A young and arrogant kinsman, Michael, pays them a visit and makes it known that he is there only because of family duty. After he leaves, Naomi tells Ruth that they are to lose their home for lack of tax money and she sends Ruth to Boaz for help. As Ruth talks with Boaz she learns of an old custom—if a kinsman redeems property for a widow, he has the right to take her in marriage—and then Boaz declares his love for Ruth. There is only one thing standing in the way of their happiness—since Michael is a closer kinsman; and if he wishes to redeem the property he will have the right to marry Ruth. Boaz meets Michael at the market and confronts him with the situation but Michael refuses the offer, for he would lose his inheritance by marrying the foreign woman . . . Boaz and Ruth are wed and Naomi once more has a family to love and cherish.
A series of 6 programs, 1 a month, are being presented in cooperation with the Lutheran Television Associates which represent 4 Lutheran Church bodies, the American, the Augustina, the Evangelical, and the United Lutheran Churches. Lutheran Television Associates view this as a new approach to religious television, combining dramatic programing with the Lutheran Church's basic concern for man's spiritual growth.
April 2, 1956: Singer in the Valley adapted by Helen Hanff from a short story by Dorothy Rood Stewart. This drama is the first in a series of 6 programs, 1 a month, being presented in cooperation with the Lutheran Television Associates which represent 4 Lutheran Church bodies, the American, the Augustina, the Evangelical and the United Lutheran Churches. Lissa Hoffman has come

to a small Oregon community to teach and save money to continue her vocal studies. However, she soon finds herself deeply involved in the problems of the people, and especially of the two Metzer children whose mother is dead and whose father berates and terrorizes them. The younger child, Franz, has lost his speech through fright and ill-treatment at home, and his older brother, a warm hearted child, stole his father's shotgun to buy another poor little girl a dress so she could be a lady like her loved teacher. Over a period of time she helps the small youngster to regain his speech, and she donates her savings to the older boy so that he can start out in the world on his own. Lissa has given up the thought of a singing career, realizing that her happiness is in this little community where she is needed and can contribute so much to humanity.

May 7, 1956: The Twenty-Fifth Hour, by James Blumgarten, adapted by Dorothy Tyler. A young matron, happily married and blessed with two young sons, finds that as a result of her conscientiousness, her days are filled with tasks she feels she must do, leaving no time for music or books which she enjoys so much. On learning she is to have another child, she collapses completely—she tries to pray but finds she cannot. For the first time, the father and sons realize what she has been going through—they are aghast at the heavy workload she has organized for herself, including not only household chores but community work as well. Her husband talks over the situation with her and makes her realize that she has been so busy saving the community and her home that her own life has suffered. She must respect her own needs as an individual for solitude, reflection, outside interests and relief from household and community chores.

HIS WAY, HIS WORD

Sponsored by Goodyear Tire & Rubber Co.

January 29, 1956 (WRCA–TV and network, 2:30 to 3 p. m.): The Prodigal Son, the first of three special religious dramas to be presented once a month on Sundays via film. This is the story of the Prodigal Son as found in the Gospel according to St. Luke. As in the Gospel, the parable is told by the Master to a group of Pharisees who berate Him for breaking bread with sinners.

February 26, 1956 (WRCA–TV and network, 2:30 to 3 p. m.): Where Your Treasure Is, the second in a special series of three religious dramas. The story is about an abandoned little girl who is placed in the care of the town elder. The elder temporarily places the child in the home of a wealthy merchant and his wife who have no children of their own. Though the wife's impulse is to give the child care and affection, her husband looks upon the girl as an outlet for his pride and as a recipient of all the luxuries he can lavish on her. When the child fails to respond, the merchant requests the elder to take the child back. The elder suspects the difficulty and takes the merchant to hear the Master teach. After a series of dramatic incidents, the merchant learns that the child needs affection, care, and understanding, rather than the luxuries and material things he has given her.

March 25, 1956 (WRCA–TV and network, 2:30 to 3 p. m.): The Fruitless Fig Tree, the last of a special series of three filmed religious dramas. A story inspired by the parable which appears in St. Luke, Chapter 13, when a vineyard owner insists that a fig tree be cut down because it has not yielded fruit for several years, the vineyard dresser pleads to be allowed to give the tree special care and attention and promises to cut down the tree himself if no results are obtained. To illustrate the parable dramatically, the film tells the story of a bitter and unforgiving father, a vineyard grower, who goes to town with his wife to visit their young son who has gotten into trouble and is in prison. They hear the Master speak the parable of the fruitless fig tree—and the father, struck by the similarity between what the Master says and what has actually happened on his own farm, learns a lesson in forgiveness.

EXHIBIT 4–B

Christophers Awards (for outstanding achievement, given to "individuals whose work reflects positive values and shows how a person can use his God-given talent for the benefit of all"):

Robert Montgomery, Norman Felton, and Doris Folliott for Great Expectations (on Robert Montgomery Presents).

Frank Wisbar and Michael Foster for Crusade Without Conscience (on Fireside Theater).

Fred Clark Jones, and Sumner Locke Elliott for Peter Pan (on Producers' Showcase).

Tom Lewis, Harry Keller, and Marian Thompson for Something About Love (on Loretta Young Show).

Kraft Television Theater for drama entitled Judge Contain's Hotel, by William Mourne.

Armstrong Circle Theater for drama entitled The Narrow Man, by Anne Howard Bailey.

Love and Marriage song written especially for Producers' Showcase telecast of Our Town, by Sammy Cahn and James Van Heusen.

David A. Englander and Alan Neuman for A Conversation with Herbert Hoover.

Lee Cooley, Guy Lockwood, Mitchell Ayres, Goodman Ace, Jay Burton, George Foster, Mort Green for the Perry Como Show of March 17, 1956.

C. Maurice Holland, George Ray Hill, Duane McKinney for A Night to Remember (on Kraft Television Theater).

Jewish Chautauqua Society to Ben Grauer, NBC's veteran radio and television commentator ("for the contributions of your unequaled talent to our common cause of brotherhood * * *").

Jewish War Veterans of the United States to the sponsors of This Is Your Life for furthering the cause of brotherhood through sponsorship of the program.

National Conference of Christians and Jews Brotherhood Awards (for outstanding contributions to the cause of brotherhood):

A Man Is Ten Feet Tall (on Television Playhouse).

A Stone For His Son (on Robert Montgomery Presents).

American Baptist Convention award to the Home program (for being "sensitive to the need for an understanding of human relations which includes within its broad scope of features, telling examples of practical Christianity").

Exhibit 5

NBC Statement Concerning Staging Services

WHY NBC PROVIDES STAGING SERVICES

Contrary to the impression which was sought to be created by individuals who testified before this committee concerning staging services, NBC has supplied staging services in connection with programs since the early days of television. In fact, NBC opened its first scenery supply shop in the RCA Building in New York in April 1946.

Since the establishment of that first shop, NBC has given extensive consideration from time to time to proposals that it abandon its staging services operation so that it and independent program producers would be forced to rely completely upon outside suppliers of staging services. Each time it has considered the problem NBC has come to the conclusion that it must remain in the business of providing staging services for the reasons set forth below.

The outside suppliers in New York comprise a closely knit group of a few people or firms (only five, according to the testimony of Mrs. Ashworth) which use methods basically derived from serving the legitimate theater. The traditional methods involved in staging services for the legitimate theater proved to be unsuitable for television. NBC found that it had to develop new techniques geared to the tempo and electronic requirements of television. NBC made substantial investments of time, money, and effort in the development of simplified construction and painting methods, the use of new materials, of plastics, of modular stock scenery (both hard and canvas) for quick repainting and reuse and of special effects such as rear-screen projection, novel lenses, camera techniques, and graphics which have diminished the need for traditional scenery construction. Had NBC not entered this field, many of the advances in these areas would never have been devised, and their benefits would have been lost to the public, to the producers and advertisers, and to other staging services suppliers.

Similarly, the pioneering and development of new techniques in staging services for color-television programs had to go hand-in-hand with the pioneering and development of color-television programing itself. NBC has expended vast sums of money in discovering and meeting the problems caused by the optical effects of various kinds and colors of scenery on the color-television camera and receiving set. No outside scenery supplier would have—or could have—expended such sums to pioneer in this new field.

In the event NBC were removed as a competitive factor, less expensive programs and local programs would be especially hard hit by high prices and lower quality. The few outside staging services suppliers in New York would be able to charge what the traffic would bear, with the result that a disproportionate amount of program production budgets would have to be allocated to staging services. The continued development of new techniques would be stifled, since these outside operators would be reluctant to abandon traditional scenic methods which give them a profit, in order to develop new and better techniques which might require expenditures of time, money, and effort.

In addition, other values resulting from NBC's operation of staging services would be lost were NBC to abandon this service. NBC has always operated on the basic principle of getting the show produced despite the stringent time requirements of television, and has geared its staging services operation to meet emergency demands. Advertising agencies and program producers who obtain their scenic requirements from other organizations constantly turn to NBC for last-minute emergency services which NBC alone has been able to provide. Thus only by continuing its general services in this area can NBC be equipped to take on these important last-minute emergency functions.

NBC'S POLICY WITH RESPECT TO PROGRAMS SUPPLIED BY ADVERTISERS

NBC welcomes competition in staging services. NBC has never required NBC advertisers who produce their own programs to use NBC's staging operations. Neither NBC's contracts for the sale of time nor NBC's policies with respect to time sales has ever included the condition that advertisers use NBC's staging services in connection with programs produced by advertisers, their agencies, or their program producers.

Advertisers who produce their own programs may use NBC's staging services for their programs or may, at their own choice, obtain the services of outside suppliers. Furthermore, NBC's staging services may be used for the entertainment portion of the program and the services of outside operators may be employed by the advertiser for the commercial portion of the program, or vice versa.

NBC's charges for staging services are standard, both for NBC-produced shows and for the shows of independent program producers or advertisers, and there is no discrimination between them.

TESTIMONY OF SCENERY SUPPLIERS

The New York scenery suppliers who appeared before this committee on May 14, 1956, sought to create the impression that their loss of business in the last few years was attributable solely to the operation of staging services shops by the networks. Insofar as such testimony related to NBC, it should be noted that of the 18 shows broadcast on NBC which were listed by Mr. Peter J. Rotondo as having been served by him since 1949, 14 are no longer being broadcast on NBC, 1 now originates in Hollywood, 1 still obtains its services from Mr. Rotondo, and only 2 obtain their staging services from NBC. In the case of these last 2, both shows are now entirely produced by NBC, including talent and other production elements as well as the staging services.

Similarly, of the 8 shows broadcast on NBC which were listed by Mr. Steinberg as customers of his, 6 are no longer broadcast on NBC and the other 2 are now entirely produced by NBC.

And of the two NBC shows mentioned by Mrs. Ashworth, one continues to be serviced by her employer. NBC has supplied the staging services for the other ever since the program moved to NBC from CBS.

Attached hereto is a list of the shows referred to, showing the various categories described.

We would also like to comment on other specific allegations made by these witnesses with respect to NBC:

1. Mr. Rotondo testified that NBC discriminated against independent scenery suppliers by requiring them to remove scenery from NBC studios at times where in similar instances such removal was not required if NBC supplied the scenery. Mr. Rotondo used as his case in point the Hit Parade program. He stated:

"We must haul the Hit Parade out on a Saturday night directly after the show; that is, at their convenience, because they have what they call a setup crew, at which time they will go in there and tear the show down and get it ready to ship it out.

"Well, of course, they do that at their own convenience, but our trucks are waiting out there and the night haul costs us $110 per load. Now, I don't believe it creates too much of a problem with the networks to have that stuff remain there until the following morning or until a Monday morning, but I guess it is their property and they insist upon it."

Unfortunately, Mr. Rotondo's facts are incorrect. The studio in question, Studio 8-H is used so frequently that it is necessary to remove scenery quickly after each show. NBC clears the studio of the prior show's scenery on Friday night so that the Hit Parade scenery may be set up Saturday morning, and in turn requires that the Hit Parade clear the studio Saturday evening so that the Sunday night show, the Alcoa-Goodyear Hour, will be able to set up its scenery on Sunday morning. The Hit Parade scenery cannot be left standing until Monday.

This same requirement applies to all shows where lack of studio facilities and storage areas necessitate such removal. It is in no sense a discriminatory practice directed againt outside scenery suppliers, but a necessary expedient to permit the maximum use of studio space.

2. Mr. Rotondo testified that he submitted identical bids of $2,800 each for the basic set for The Big Surprise (called by him The $100,000 Question) and for the weekly scenery for Justice. He testified that he was not awarded the bid even though he was told that NBC's bid on the former show was $4,800 and that NBC's charges on the latter show were over $3,800 weekly. Mr. Rotondo says he "was told" that NBC insisted on doing the scenery for these shows.

NBC has never insisted on supplying the staging services for shows merely because the shows are televised on the NBC television network. NBC competes for the business of advertisers, agencies, and their producers along with any other staging services suppliers who wish to submit a bid. It is up to the customer to choose who should supply the staging services. Price is not the only criterion for the choice, with quality and promptness being equally important.

In 1 of the 2 cases cited by Mr. Rotondo, NBC's actual charges have averaged approximately $1,000 a week less than Mr. Rotondo's alleged bid, whereas on the onetime construction of the basic set, the charge was approximately $1,000 more.

3. Mr. Rotondo charged in his testimony that NBC's trucking charges were "hidden." This, also, is incorrect. The cost of operating all trucking in connection with NBC's staging services is charged directly against this operation. Advertisers are billed directly for all trucking in connection with staging services from and to all points with the exception of trucking from NBC's 18th Street scenic shop to and from the RCA Building, the Hudson Theater, and the 106th Street studio. These latter three areas are not billed because staging services competitors instituted a practice of not billing for trucking in similar situations. However, trucking from and to any other points is billed to the advertiser.

4. Mr. Rotondo testified that NBC engaged in unfair bidding practices in that the bids submitted by NBC were estimates "usually with a 10 percent differential clause." Mr. Rotondo is incorrect. NBC bids for staging services are in the form either of a "flat fee" or of an "estimated bid" clearly labeled as being subject to revision in the light of actual requirements. These types of bids are in accordance with the well-known practice of bidding in this field. When NBC submits a "flat fee" bid, it performs the services required and receives the agreed sum irrespective of the fact that experience shows that the bid may have been computed adversely to NBC. In the event NBC submits an "estimated bid" it is clearly labeled an estimate and is subject to revision as the actual charges are incurred in performing the required services.

NBC PROGRAMS MENTIONED BY ROTONDO IN TESTIMONY AND THEIR PRESENT STATUS

Currently broadcast (3):
- Hit Parade (Rotondo)
- Milton Berle Show (Hollywood)
- Coke Time (NBC)

No longer broadcast by NBC (14):
- Manhunt
- Show Business
- These Two
- Faye Emerson Show
- Morton Downey
- Bride and Groom
- Jack Carter Show
- Babes in Toyland
- Ed Wynn
- Richard Rodgers
- Anything Goes
- Fred Allen Show
- Scott Music Hall
- On Your Account

NBC PROGRAMS MENTIONED BY STEINBERG IN TESTIMONY AND THEIR PRESENT STATUS

Currently broadcast (1):
- Paul Winchell Show (NBC) [1]

No longer broadcast by NBC (6):
- Comedy Hour and Motorola
- Curtain Call
- Joe DiMaggio Show
- Fair Meadows U. S. A.
- Revlon Theater
- Eye Witness Show

NBC PROGRAMS MENTIONED BY ASHWORTH IN TESTIMONY AND THEIR PRESENT STATUS

Currently broadcast (2):
- Armstrong Circle Theater commercials (supplied by Rakeman)
- Perry Como Show (always NBC supplied)

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8. Statement of Peter J. Rotondo, New York City, in Reply to NBC's Memorandum on Staging Services Attached to Its Letter of August 9, 1956 (See Preceding Item)

Statement by Peter J. Rotondo of Peter Rotondo Co. Concerning National Broadcasting Co. Staging Services

The National Broadcasting Co., in its statement on staging services to the committee, endeavored to create the impression that since the advent of television it has been attempting to supply its own staging services and has always been determined to continue that practice under any and all circumstances.

The facts are that the National Broadcasting Co. (NBC) did create an experimental scenery supply shop in the RCA Building in 1946, staffed solely by three men who were paid less than the union scale because of the experimental nature of the shop. From that date until the middle of 1954, the NBC management conducted conversations with my organization relative to the subcontracting of all scenery work.

It has only been in the last few years that a final decision was arrived at to have NBC control all facets of TV production as well as broadcast time in order to advance their monopolistic control of the industry.

In a similar vein of half-truths, NBC has told the committee that it alone has developed the new techniques needed for the new medium of black and white television, and that similar pioneering of new staging techniques for color television had to go "hand in hand with the pioneering and development of color television programing itself."

The facts are that NBC was reluctant to go forward in the presentation of color television shows and that the most successful first in color shows was the

[1] Steinberg supplied some scenery for one show on June 3, 1954.

musical color show Your Hit Parade of January 16, 1954, staged in its entirety then (and now) by my company in a package deal which included designing, painting, and construction of scenery and the supplying of costumes and props.

The whole question of pioneering, of competence, and of overall ability in the field of staging services for both black and white and color TV can very well be summed up in this paragraph from the review of that show in the New York Times of Monday, January 18, 1954:

"As black-an-white program, Your Hit Parade always has reflected perhaps the most imaginative stagecraft of any TV show, and this know-how was magnificently translated to color."

The rest of the NBC statement is a similar collection of half-truths used to rationalize their present monopolistic position. No one knows better than they, for instance, that both NBC and CBS require 10 days advance notice on scenery requirements while independent contractors such as myself supply shows with almost no notice, working round the clock to do so. Yet they blandly claim that only by maintaining their "general services can (they be) equipped to take on these important last-minute functions."

As far as NBC welcoming competition in its staging services, the record proves this to be the best kept secret of our generation. The facts are that independent scenery suppliers have been steadily eliminated and whenever a replacement succeeded an independently supplied show, or such a show received a longer or more favorable time slot, NBC grabbed the scenery supplying and staging services almost without exception.

Nor does the question of cost justify their monolithic domination of all aspects of TV. The facts are that Your Hit Parade, one of the most elaborately staged shows on television has a most economical budget by comparison with any similar production.

Furthermore, there is little or no truth in their contention that advertiser produced shows may have NBC staging services or outside suppliers either for the main show or the commercial portion of the program or vice versa. The facts are that outside of a handful of shows, the networks dominate all staging services and the independent is fortunate if he can contract for the commercial portion of any of them.

Again, as to trucking charges, the same half-truths apply. NBC does bill to all other points for trucking save the three mentioned. However, it so happens that most of NBC's live shows emanate from these three points and my organization, as the leading independent, bills for trucking to these and all points.

Similar half-truths characterize NBC's answer to their control of the Justice show despite my lower bid. My bid was a package deal, which included designing, construction, hauling, and setting up of scenery as well as the supplying of props. Their bid or charge described as $1,000 a week less than my "alleged bid" was for supplying of scenery alone with set-up time, props, etc., billed separately or as different items.

Lastly, their statement that they submit "estimated" bids and "flat" bids as an answer to our charge is another half-truth. For while this is true theoretically, in practice all or almost all of their bids are of the "estimated" nature and only when they are pushed to the wall will they submit a flat bid.

In conclusion, let me state the following:

I and my organization are presently supplying scenery to Your Hit Parade and Omnibus. Both of them are "tight" budget shows, while demanding the highest in artistic requirements for their very individual types of shows. So much for the cost angle.

On the artistic side, objective evaluations such as the enclosed New York Times review, have hailed our work in this field. It is my opinion, therefore, that only an unfair monopoly on the part of the networks prevents myself and other independents from doing more of this work in TV. If ever small businesses needed protection from a giant monopoly, we in the scenery supply industry feel we do and we look forward confidently to your committee report and ensuing action by the United States Senate.

75589—57—pt. 4——90

[From the New York Times, January 18, 1954]

Television in Review: Hit Parade

SATURDAY NIGHT GLOWS AS TUNEFUL PROGRAM IS GIVEN IN COLOR—SONG, DANCE, PRETTY GIRLS AND COSTUMES COMBINE TO SHOW OFF MEDIUM

(By Jack Gould)

The National Broadcasting Co. played its ace in color television on Saturday night—a presentation of Your Hit Parade in natural tints. In its visual attractiveness the program was a joy, a panorama of shadings and hues that was altogether captivating. The Broadway musical comedy stage had better start worrying: color TV is going to be stiff competition.

The color broadcast of Your Hit Parade long had been awaited because the program is a readymade subject for the electronic palette. With song, dance, pretty girls, and superb production and costuming, the weekly dramatization of popular tunes contains all the requirements for an exciting display of the new medium.

The advance hopes were thoroughly justified. From the opening glimpse of Dorothy Collins in her familiar blouse, which turned out to be a beguilingly soft pink, Your Hit Parade was a tasteful, gay, and subdued reflection of the rainbow's wonders. It was probably the most impressive color TV show thus far.

With color, Your Hit Parade acquired a veritable Ziegfeld opulence. The introduction of lovely pastels complemented the mood of the romantic ballads and the more vivid hues imparted a new gaiety to the livelier selections. To television's existing artistic tools of melody and movement, there was added before a viewer's eyes the third emotional dimension of color. The addition spelled the difference between "live" television and living theater.

As a black-and-white program Your Hit Parade always has reflected perhaps the most imaginative stagecraft of any TV show, and this know-how was magnificently translated to color.

For the number entitled "Changing Partners" the setting was a large ballroom. As the couples swirled around the floor, the delicate blues, salmon pinks, and fragile lavenders of the ladies' gowns made their own symphony for the eye. The long white gloves and contrasting hair tints of the girls, set against the black and white of the men's formal attire, were straight out of a picture book.

In another selection a red devil dancer bounded on stage; it was the color alone that made him an exciting menace. The story of the clown in "Oh, Mein Papa" was told in a way that in black and white could not have had the same meaning. In the foreground the soloist was shown in closeup; in the background there was a small figure in full clown regalia entertaining an off-stage audience. Thanks to color, the clown was not lost in a gray haze but was seen in definition and detail.

Giselle McKenzie is eyeful enough in black and white but in a silver lamé gown, brilliant lipstick and recognizable flesh tones she made a torch ballad seem to say more than ever. For the No. 1 song on the parade, Stranger in Paradise, the setting was borrowed from Madame Butterfly. The contrast between the Navy officer's dress-whites worn by Snooky Lanson, and the lush kimona worn by oriental vis-a-vis gave a truly wonderland credibility to the rather trite lyrics.

Your Hit Parade is never going to seem quite the same again in black and white.

On another color television front, Dr. Allen B. Du Mont, head of the Du Mont network and manufacturing company, and Kenneth B. Wilson, president of the National Better Business Bureau, were heard Thursday night in a special panel discussion on the future of color TV. The program dealt one-sidedly with color TV's technical and economic problems and never came to grips with the importance of the end product from the public's standpoint—what seeing a show in color means.

The discussion, especially in the loaded questions of John K. M. McCaffrey, the moderator, was obviously designed to stimulate black-and-white set sales. It reflected what is now almost a state of mind among many manufacturers and retailers—that color TV should go away and stop bothering them. After Your Hit Parade that seems like a forlorn hope.

[For further comment on the quality of the independent designers' work see Item 31 below.]

9. Statement of Rev. Everett C. Parker, Congregational Christian Churches, in Reply to Testimony of the Network Presidents With Respect to Religious Programing

Statement of Rev. Everett C. Parker, Director, Offices of Communication of the Congregational Churches

Thank you for giving me another opportunity upon behalf of the Office of Communication of the Congregational Christian Churches to express my views about religious broadcasting. I have read with interest and concern the opinions of Dr. Frank Stanton and Mr. Robert Sarnoff, resulting from the testimony I made to your committee on this subject on June 11, 1956. I have the following comments on their arguments.

Neither Dr. Stanton nor Mr. Sarnoff apparently is willing to meet squarely the basic facts I brought to the attention of your committee; namely:

(1) That religion—not my viewpoint or some particular sectarian viewpoint as Mr. Stanton charges—but the totality of national religious broadcasting by the major faith groups, Protestant, Roman Catholic, and Jew, has been reduced on television to less than one-third of the program time devoted to religion on network radio.

(2) That the network policy—widely copied by local TV stations—of forcing the major faith groups—Protestant, Roman Catholic, and Jew—to share a single time period in sequence denies to each group the possibility of attracting a continuing audience. Since the purpose of religious broadcasting is to instruct, requiring repetitive contact with audience, the effectiveness of religious programs is nullified by this network practice.

(3) That the practice of networks—especially the Columbia Broadcasting System—of assigning religious programs to the least desirable time periods, when only minimal audience is available—i. e. Sunday morning and early Sunday afternoon—further restricts the scope and effectiveness of religion on television.

(4) That the commercialization of religion through the sale of time by networks and stations for such broadcasting, thus equating religious expression with the ability to pay for time or to sell a product, is a threat to the free expression of religious views on the air and a major abrogation of the public-service responsibilities of the networks and stations that engage in the practice. (The National Broadcasting Co. now sells time for religion on radio, as does the Mutual Broadcasting System. The American Broadcasting Co. sells time on both its television and radio networks. Only the Columbia Broadcasting System does not sell time for religion.)

I know you and the members of your committee are aware that the aspect of television that is of ultimate importance is the kind of programs that are broadcast into the homes. The way in which the networks handle religion is indicative of their attitude toward public service in general; and makes it doubtful that they are ever going to fulfill the fearful responsibility they have to serve the public interest.

My views on this matter of public-service broadcasting were presented fully and at length to your committee in my oral testimony. Nowhere in their statements in reply to my testimony do Messrs. Stanton or Sarnoff take issue with what I have said. Instead, they offer various discussions of their activities, explanations, and in some instances excuses for the present sorry state of religious programing.

It is noteworthy, for example, that Dr. Stanton in commenting on my testimony on scheduling flatly states, without supporting evidence, that "Sunday is generally the most suitable day of the week for most religious programs;" and "it would seem clearly inappropriate to schedule them adjacent to programs of an entirely different character and purpose." Dr. Stanton does not cite audience-availability figures—nor actual program audiences—for the early morning hours on Sunday when CBS schedules religion. As I pointed out in my testimony, some 60 percent of the households in a city such as New Haven, Conn., regularly use religious programs, but are limited in their viewing by a dearth of programs at times when they usually watch TV. The audience availability of Sunday morning time can best be judged by the value placed upon such time by Dr. Stanton's own organization. The CBS January 1, 1956, rate card lists the cost of a 30-minute period of class A time on the 107-station basic television network as $55,431. Class C time, which includes the Sunday morning period in which all regularly scheduled religious programs occur, sells for $27,715.50 per half hour.

Furthermore, in his concern for adjacency scheduling of religious programs, Dr. Stanton ignores the fact that the religious program with the largest audience, that of Bishop Fulton J. Sheen, is broadcast in class A time and surrounded and opposed by supposedly first-class entertainment programs.

Religious programs can reach the majority audience that desires them only if the networks schedule them when that audience is available. Network programs stand or fall on the basis of audience. Audience ratings are almost the sole criterion of success. Therefore, it is significant that neither Dr. Stanton nor Mr. Sarnoff in their claims about the adequacy of religious programs on their networks ever once mention the audience for these programs.

The issue between the public and the networks on the network handling of public-service broadcasting does not turn on how much money the network spends per program (although the published figures for religious programs listed in the briefs are pitifully small in relation to budgets for commercial programs) ; nor on program planning and participation; nor on awards and mentions in the trade press. It hinges on adequacy of presentation and on presentation of programs at a time when the chosen audience is available. It is the obligation of the network to produce—and pay for—a good program that draws a demonstrable audience. If it fails in that, then the network has failed in its public responsibility. I am applying here only the yardstick of measurement by audience that the networks have willingly and eagerly accepted as the basis for judging the success of their commercial programs.

In the case of religion, no network has demonstrated by means of audience figures that it is providing an adequate broadcast service.

It seems apparent from the statements of Messrs. Stanton and Sarnoff that religious broadcasters, and all others in the public-service field, cannot expect to receive treatment from the networks commensurate with the importance of their presentations in the public view. Complacency and indifference are the keynotes of these statements from the network policymakers. It is understandable from them why the public comes to your committee for aid.

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10. Letter Dated August 2, 1956, From Mr. Ervin, Commenting on Pending Legislation on Political Broadcasting

National Broadcasting Co., Inc.,
New York, N. Y., August 2, 1956.

Hon. Warren G. Magnuson,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

Dear Senator Magnuson: During the course of the hearings relating to television before the Committee on Interstate and Foreign Commerce last month, you requested that the networks submit written statements with respect to the bills under consideraion by the committee concerning political broadcasts. We appreciate this opportunity and I am pleased to present the views of the National Broadcasting Co.

My understanding is that at this time there are seven such bills: S. 771, S. 1208, S. 1909, S. 2306, S. 3308, S. 3962, and S. 4250 before the committee which are designed in some manner to amend section 315 of the Communications Act. This section deals with the subject of broadcast facilities for candidates for public office. Most of the bills have as their principal purpose a more workable, realistic and equitable law. We are fully in accord with this objective and we commend you and the committee for undertaking this worthwhile task.

For the purpose of convenience I shall discuss the bills in the order in which they were introduced in the Senate. This, of course, does not in any way constitute an evaluation of their relative importance.

S. 771

The present law requires a broadcaster to afford equal opportunity to all legally qualified candidates.

S. 771 would exclude from the equal opportunity privilege an individual who is a legally qualified candidate but who has been convicted under the United States Criminal Code of espionage, sabotage, treason, sedition, or other subversive activities. It would also exclude a person who is a member of any organization proscribed by section 3 of the Communist Control Act of 1954 or any organization registered under the Subversive Activities Control Act of 1950 as a Communist-action, -front or -infiltrated organization or finally determined to be a Communist-action, -front or -infiltrated organization.

It is our view that this bill reflects a sentiment consistent with national policy and legislation along this line would be beneficial if it could be drafted in proper form.

The bill in its present form, however, requires a broadcaster to be investigator, judge, and jury. It is apparent from the nature of his business that the broadcaster is not equipped to discharge this heavy responsibility without assistance.

We, therefore, suggest that an amendment be added which requires an applicant for time under section 315 to furnish (1) the secretary of the Federal Communications Commission, (2) the United States attorney in the district where he resides, and (3) the broadcaster to whom application is made for time with identical statements under oath in a form satisfactory to all that he is a legally qualified candidate for the public office involved and that he is not within the classes proscribed by S. 771. False affidavits would subject the affiant to the existing penal sanctions of the Criminal Code or a further provision could be added to this bill incorporating a specific penalty for false statements.

We also recommend that a provision be added exempting a broadcast licensee from liability in the event he refuses a candidate time on the ground that such candidate falls within the proscribed classes specified in S. 771 and the broadcaster has reasonable cause for his action.

S. 1208

The present law provides that a broadcaster shall have no power of censorship over broadcasts by legally qualified candidates for public office pursuant to section 315 of the Communications Act. This has been construed to prohibit the rejection or censorship of defamatory material in a political broadcast. *Port Huron Broadcasting Co.* (4 Pike and Fisher RR 1 (1948)). In its decision the Commission warned that a broadcaster who violated section 315 by deleting defamatory material might lose his license. The Commission made clear that in its opinion the licensee is relieved of liability under State law for the broadcast of defamation in political speeches.

This latter opinion, however, is cold comfort to the broadcaster confronted with decisions of State courts holding to the contrary and to the effect that it is no defense in a defamation action for a broadcaster to plead that the defamation occurred in a political speech. *Sorenson* v. *Wood* (123 Neb. 384, 243 N. W. 82 (1932), appeal dismissed, 290 U. S. 599 (1933)), *Daniell* v. *Voice of New Hampshire, Inc.* (10 Pike and Fisher RR 2045 (1954)).

Thus, the broadcaster is confronted with a dilemma. On the one hand, under the Communications Act he is powerless to delete defamatory material without placing his broadcasting authorization in jeopardy. On the other hand, if he fails to censor the defamatory material he may be held liable for the resulting defamation.

We, at NBC, have no quarrel with a congressional policy which denies a broadcaster censorship power over political broadcasts but we feel that the Congress should expressly exempt from liability the same broadcaster it has rendered powerless.[1] For this reason we believe that S. 1208 is basically sound and NBC favors the bill.

The bill in its present form, however, is somewhat ambiguous. It provides immunity unless the licensee or his agents or employees participates in such broadcasts. It might be argued that participation occurs by mere operation of the station over which the speech is made. Such an interpretation would clearly defeat the purpose of the amendment. It is suggested that in order to avoid this possibility the amendment be made more specific. One way to do this is to change the proviso to read "unless such licensee, or such agent or employee, directly engaged in the preparation of such defamatory statement willfully, knowingly, and with intent to defame."

Finally, it is recommended that the exemption be made applicable to both civil and criminal defamation.

[1] Although approximately two-thirds of the States have enacted legislation which in some degree lessens the liability of a broadcaster for material broadcast over his facilities which he is powerless to prevent, much of this legislation is inadequate. There are 12 States in which there is no statutory protection. In any event, it would appear that the Federal Government has occupied the field and the legislative exemption should come from the Congress which imposed the restriction.

S. 1090

This bill would require an announcement in any political television broadcast as to whether the candidate or his spokeman is speaking extemporaneously or from prepared material and what facial makeup, if any, is being used.

Although this bill is of minor significance, NBC opposes it because it is discriminatory. It imposes requirements upon one medium of expression—television—which are not imposed on any other medium.

S.2306

Section 315 (a) of the Communications Act now provides that if a broadcast licensee permits "a legally qualified candidate" for a public office to use the facilities of his station, the broadcaster must afford equal opportunity to use the station to all other legally qualified candidates for the same office. The present act does not compel any station to make time available to political candidates. However, if under any circumstances a single candidate is afforded time, a chain reaction commences whereby the broadcaster must furnish equal opportunity to all qualified candidates for the same office.

S. 2306 provides a limited exception to the all-encompassing scope of the present section 315 (a). It is made inapplicable to:

"* * * any news, news interview, news documentary, panel discussion, debate, or similar type program where the format and production of the program and the participants therein are determined by the broadcasting station, or by the network in the case of a network program."

A weighing of all considerations leads us to conclude that on balance the bill is sound in principle. It recognizes that we live in an era of electronic journalism and that the literal application of the equal time provision tends to defeat itself. It also would remove to a degree an existing discrimination. In no other field of programing is the broadcaster so mistrusted that there is a statutory imposition of equal time for all contenders. We believe that the handling of controversial issues by the broadcasting industry has shown that on the whole broadcasters are a responsible group capable of performing their function fairly.

In order to encourage this type of programing and in the interest of affording full play to freedom of expression by candidates, it is also recommended that S. 1208—which exempts broadcasters from liability for defamation—be made applicable to the type of programs covered by S. 2306 as well as those which are strictly within the purview of section 315.

S. 3308

This is an omnibus bill to amend the Federal elections laws. Only title III is concerned with the matter of political broadcasts.

Title III proposes a limited amendment to section 315. The proposal is to require a broadcaster to afford equal facilities to all legally qualified candidates for President and Vice President of the United States only (i) if they are the nominees of a political party whose presidential candidate polled at least 4 percent of the vote in the preceding election, or (ii) if their candidacy is supported by petitions filed under State laws which in the aggregate have a number of signatures equal to 1 percent or more of the total popular votes cast in the preceding election.

This is constructive legislation and NBC favors it. One of the most unworkable aspects of the present law is the application of absolute equality among all political candidates—even those fringe groups which have little popular support. For example, there were over 15 parties supporting presidential candidates in the 1952 election—and the total aggregate vote for all of these parties amounted to far less than 4 percent of the total popular vote. This large number of aspirants makes it extremely hazardous, if not impossible, for the broadcaster to offer major candidates television exposure.

This bill, however, would remedy this situation in large measure during the election period by limiting the equal facilities privilege to those candidates who have substantial support.

It is recommended that the bill be revised to afford some protection with respect to candidates for nomination as well as candidates for election. The period before nomination is a particularly troublesome one because nearly anyone may claim to be a contender for his party's nomination for high office. A dozen or more self-proclaimed candidates could do 1 of 2 things: (1) They could seriously interfere with a national program service; or (2) their very existence could result in no television coverage of the nomination contest. Either consequence is undesirable and remedial legislation seems to be required.

S. 3962

NBC is unalterably opposed to this bill. It would compel each television network and each television station to make available without charge as many as 8½ hours during September, October, and November upon requisition.

This proposal to appropriate the facilities of broadcasters for partisan political ends has no logical or reasonable justification. Political campaigns are expensive—campaign headquarters, handout literature, direct mail pieces, travel, hotel accommodations, newspaper advertisements, billboards, placards, buttons, and the multitude of other items that comprise the elements of campaigning—all cost money. To date there has never been legislation proposed to force the supplier to make his product available to the candidates free. Yet, that is precisely the proposal embodied in this bill.

Why is the broadcaster singled out? Occasionally, one hears the contention that the airlanes belong to the people and, therefore, the political parties are entitled to requisition them for their aspirants. But airlines are licensed and use Federal airlanes; railroads are regulated by the Government; newspapers enjoy mailing privileges which are less than compensatory to the Government—yet, it is never suggested that their licenses or privileges be revoked unless a minimum number of hours of travel for candidates is provided or verbatim accounts of a specified minimum lineage is printed.

While some of the other sections of this bill might be beneficial, the clear departure from our American tradition marked by the section which would appropriate for partisan ends the product of a broadcaster leads us to oppose this bill in its entirety.

S. 4250

This bill is similar to title III of S. 3308 in that it would limit the applicability of the equal facilities requirement to legally nominated candidates for President and Vice President of the United States only (i) if they are the nominees of a party whose presidential candidates polled at least 4 percent of the vote in the preceding election, or (ii) if their candidacy is supported by petitions filed under State laws having an aggregate number of valid signatures equal to 1 percent of the total votes cast in the preceding election. NBC favors this bill for the same reasons enumerated above in connection with S. 3308. NBC also recommends that it be amended to extend to the prenomination period for the reasons specified above.

Very truly yours,

THOMAS E. ERVIN.

11. MEMORANDUM SUBMITTED BY RICHARD A. MOORE, COMMENTS OF KTTV ON THE TESTIMONY OF DR. FRANK STANTON CONCERNING THE STATEMENT OF RICHARD A. MOORE

In his appearance before the Committee on Interstate and Foreign Commerce on June 12 and 13, 1956, Dr. Frank Stanton, president of Columbia Broadcasting System, Inc., incorporated by reference as part of his testimony, 4 printed documents, 1 of which was entitled "Memorandum Concerning the Statement of Richard A. Moore" (hereinafter called the CBS memorandum). Mr. Moore's statement, to which the CBS memorandum referred, had been delivered before the committee on March 26, 1956, on behalf of KTTV, Inc., and is hereinafter called the KTTV statement.

Since the CBS memorandum is entirely and specifically directed to the KTTV statement, it seems appropriate for KTTV to make a separate and specific reply.

The CBS memorandum describes the KTTV statement as inaccurate and misleading and uses other words like "irresponsible," "unsubstantiated," and "false." KTTV's testimony was presented in good faith; it was accurate in all material respects. We regret the necessity of burdening the committee with a comprehensive and detailed reply to the CBS memorandum. But in view of its nature, we feel that a full reply is needed so that the committee can properly assess the validity of the KTTV position.

ARGUMENTATIVE TECHNIQUE OF CBS MEMORANDUM

As part of its introduction, the CBS memorandum contains the following statement (p. 1):

"It should be noted at the outset, however, that although the [KTTV] statement is lengthy, it deals primarily in argumentative conclusions and assumptions, rather than in primary facts. There is in general a noticeable absence of supporting data. On the relatively few occasions when the statement did deal with facts, they were often wrong. And, when the statement's facts were technically correct, the inferences which were drawn from them and the multiple assumptions which were built upon them were equally inaccurate or misleading."

Despite this opening comment, CBS's specific allegations of inaccuracy are relatively few. Most of those which can be considered specific allegations involve a technique whereby CBS first paraphrases the KTTV statement, changes its meaning, and then attempts to refute the changed version.

KTTV will reply herein to each allegation of inaccuracy made by CBS. In certain instances, this will require correction of the CBS version of the KTTV testimony before dealing with the merits of the particular CBS contention.

1. CBS memorandum, pages 2 and 3:

"This [CBS] memorandum will consider in turn the contentions that as a result of network option time, television-network affiliates become mere mechanical conduits and (1) broadcast an unreasonably large amount of network programs and (2) do not exercise a free choice in the selection of programs during option time, thus abrogating their responsibility as licensees."

KTTV reply:

KTTV never stated that television-network affiliates become mere mechanical conduits. However, this would appear to be a reasonably accurate paraphrase of what Dr. Stanton said in his testimony before the committee in 1954, quoted by KTTV in the current hearings (tr. 1588):

"Certainly it takes more work for a station which does not rely on a network. It is far easier to patch in the network and have a full day and night's programing. I do not blame stations for preferring that course of life. I would myself. In fact, we try our best to make this an attractive way of life."

KTTV never stated that television network affiliates "broadcast an unreasonably large amount of network programs." Not only did KTTV make no such statement, but, to the contrary, KTTV made a specific proposal that the FCC Regulations be amended in a manner which would permit affiliated stations to carry considerably more programs from their respective networks than they do now. For instance, our proposal would permit an affiliated station to carry 75 percent of its total schedule from a single network (tr. 1652, 1653) whereas according to a survey cited to the committee by CBS, network programs currently make up only 55.8 percent of the program schedule of the average interconnected affiliate. (See Network Practices Memorandum Supplementing Statement of Frank Stanton, President, Columbia Broadcasting System, Inc., hereinafter called CBS supplemental memorandum, p. 121.)

Actually, it does not appear that the networks desire more time even though the KTTV proposal would permit them to occupy almost half again as much as they are occupying now. As Dr. Stanton testified (tr. 3313):

"I don't expect that we will sell a lot more time. You say we will make our programs better. I hope we do. They are a lot better now than they were a year ago. They will be better next year. But this doesn't mean we are selling more time. This means that the programs we are now selling will be better. You couldn't get much more time in the nighttime schedule of the two leading networks if you used a crowbar, because there is no time to get in there."

KTTV, however, did take exception to the network grip on the public's most convenient viewing hours, the time which CBS chose because, as Dr. Stanton testified (tr. 3497), it is "the best time span." These are the public's most convenient viewing hours—indeed the only hours—when many citizens can watch television at all. Yet these are the hours in which, in markets with 1, 2, or 3 stations, the networks have transformed television into a purely national medium, into which you could not get more network programs "with a crowbar," let alone nonnetwork programs. This is the factor which excludes from first-class television citizenship the local program, the local advertiser, and the advertiser who is not big enough to buy a national must-buy network program.

The KTTV proposal would permit more network programs, not less, but would make possible a more equitable distribution of "the best time" among all creative program sources and among all advertisers, large and small.

2. CBS memorandum, page 3:

KTTV is alleged to have been incorrect in stating that "in order for stations to carry high-quality network programs, they must agree to carry network programs offered during the 12 hours of option time each day (tr. 1596)."

KTTV reply:

The KTTV statement was incorrect, since the current practice involves agreement to carry network programs during 9 hours of the broadcast day, not 12 hours. The FCC Re[gula]tions permit a station to option 3 hours of its time to a network during ea[ch of] 4 segments of the broadcast day, a total of 12 hours. We now learn th[at as] a matter of practice, the networks require options only during the mo[rning,] afternoon, and the prime evening hours and not between 11 p. m. a[nd ...] when most of the public is asleep and unavailable. The network[s ... m]ay require options in these late night or early morning hours, [but cu]rrently limit their options to the public's more convenient [hours as] indicated above. While we regret this inaccuracy, it is hardly ... [Th]e entire discussion before the committee relates primarily to ... [eveni]ng hours, so that the failure to option 3 hours between 11 p. m. ... [has] no bearing on the issue.

... [me]morandum, page 3:

... [s]aid that since many hour-long network programs are broadcast ... [with]in and partly outside of—and thus straddle—network option time, ... [netwo]rks effectively add an additional half-hour of option time (tr. 1593–1594)."

"It is and has been the position of the CBS television network that if a station is ordered for a program which straddles network option time, the option provisions in the affiliation agreement are inapplicable. Thus, this practice, rather than increasing the number of hours subject to the network option, has actually reduced that time."

KTTV reply:

KTTV did not allege that a half-hour of option time was added by this "straddle" device, but did testify that it is a device whereby "the networks take an additional half-hour away from the station quite consistently" (tr. 1594). KTTV further testified that "the networks are not only saturating their own network time, but are steadily moving more and more into station time" (tr. 1594). These KTTV statements, as actually made, were not denied by CBS, nor have they been denied by any other witness.

However, since CBS could not deny that the straddle program have the true effect of enabling the network to occupy an additional half-hour of station time, over and above the regular network option time, CBS has made reference to an internal policy whereby time periods cleared by a station for a straddle program are deemed by CBS not to be subject to the network option. Apparently NBC does not follow this policy (tr. 3550–3551), and there is no testimony indicating whether ABC follows this policy or not.

In any event, this particular CBS policy vividly illustrates and fortifies the very core of the KTTV argument: That a high-quality network program will win clearance without the artificial help of options, that options are necessary only to win clearance for programs which are not capable of winning acceptance on the basis of quality alone.

As of the date of Dr. Stanton's testimony, under this CBS policy, four of the most important and expensive programs on the CBS network were apparently operating without benefit of network time options. These were: Studio One, 10 to 11 p. m. Monday night, sponsored by Westinghouse; U. S. Steel Theatre, 10 to 11 p. m. alternate Wednesdays; 20th Century-Fox Hour, 10 to 11 p. m. alternate Wednesdays, sponsored by General Motors; Ford Star Jubilee, 9:30 to 11 p. m., every fourth Saturday, sponsored by the Ford Motor Co.

These programs are among the most costly on the air, yet even without the help of time options, they have been sold to leading advertisers and satisfactory clearance has apparently been obtained. Indeed, in the case of Studio One, the clearance is so satisfactory that CBS is able each week to obtain full network time charges, plus the full program cost, plus a profit to CBS on the program itself in addition to the time charges (tr. 3332).

We take it, furthermore, that station acceptance of Studio One, which has been broadcast regularly for more than half of a decade, has steadily increased. Certainly it has not suffered the "erosion" which Dr. Stanton anticipates for CBS programs if they do not have the compulsive assistance of time options (see tr. 3489, 3499).

Again we say that if the quality of a program is such that it will "erode" when faced with competition from other programs, it should not be protected against such competition. If the program does not "erode" in the face of competition, it does not need the protection of time options—as proved so conclusively by Studio One and, presumably, by the other CBS programs mentioned above.

As a further proof of this proposition, CBS has recently initiated one of the most costly weekly programs yet to be presented on television, Playhouse 90.

The genesis of this program is fully described in Dr. S 3403 et seq.). Under the CBS interpretation of option ti straddle program (9:30 to 11 p. m. Thursdays) is not su tions, and apparently CBS believes that it can compete with clearance on the basis of program quality alone. We are gla options was not deemed a detriment in this instance, and we healthy competitive approach would stimulate improvement in pro it were applied to all time periods.

4. CBS memorandum, pages 3, 4:

"But the statement seeks to find its main support for the content option time results in network affiliates carrying an unreasonably large a of network programing in a study of 40 cities in all of which the NBC and television networks each has a basic required affiliate. The study purpor to show that during evening network option time network programs occupied 96.3 percent of the time on the 80 CBS anad NBC affiliates in those markets (tr. 1590–1592)—and was later used to imply that this percentage applied to all network affiliates (tr. 1601, 1627)."

KTTV reply:

The CBS memorandum repeats its incorrect statement that KTTV has stated that network affiliates carry "an unreasonably large amount of network programing." By repeating this incorrect statement, the CBS memorandum again attempts to shift the emphasis away from the public's prime viewing hours and gives the incorrect impression that KTTV objects to the amount of network programing cleared by the network during any hours.

Moreover, in referring to the statistics supplied by KTTV, the CBS memorandum says they "purported" to show 96.3 percent network saturation of evening option time in the 40 markets where both NBC and CBS had basic affiliates. Yet despite CBS' use of the work "purported," a careful reading will reveal that CBS did not dispute the validity of these statistics, and the record further shows that no other network witness challenged the correctness of these figures. In that connection the following testimony by Dr. Stanton is of interest (tr. 3450–3451):

"Mr. Cox. Now, you have made certain comments in your reply to Mr. Moore's testimony with respect to the nature of the sample, and so on, but insofar as you know, are these figures accurate? That is, do they represent the actual record of clearance for the 40 cities involved?

"Mr. Stanton. I haven't tried to verify those figures, Mr. Cox."

Actually the CBS memorandum, together with the CBS testimony and related papers, reflects a most studious and thorough checking of all other facts and figures in the KTTV statement, with the notable exception of this statistical core of the KTTV case. However, Dr. Stanton's testimony indicates only that he personally did not attempt to verify the figures. It seems hardly conceivable that no one at all at CBS made any attempt to verify these figures.

5. CBS memorandum, page 4:

"CBS has been unable to understand the significance of the data derived from this study—done as it was in a carefully selected group of cities for carefully selected hours of the day."

KTTV reply:

This is a most deceptive statement in that it seeks to imply that the selection was made by KTTV on an arbitrary basis. It is true that it was a "carefully selected group of cities," but the group was carefully selected not by KTTV, but by CBS and NBC, each of which decided that each of the 40 cities was important enough for the network to designate it as part of the must-buy list. Moreover, the "carefully selected hours of the day" were the hours which were carefully selected, not by KTTV, but by CBS and NBC for the network option time. As Dr. Stanton testified, these hours were selected by CBS because they are "the best time" (tr. 3497).

6. CBS memorandum, page 4:

Referring to the 40-market clearance figures the CBS memorandum says:

"In any event, the facts negate the implications of the study. That option time has no such results as the statement apparently seeks to establish appears from the following facts derived from an analysis of the CBS television network's program clearances during the week of May 19, 1956:

"On all CBS television network affiliates—

"58.1 percent of all hours subject to network option are available to non-network programing.

"47.4 percent of all evening hours subject to network option are available to nonnetwork programing.

"On all CBS television network basic-required affiliates——

"38.4 percent of all hours subject to network option are available to nonnetwork programing.

"30.4 percent of all evening hours subject to network option are available to nonnetwork programing."

KTTV reply:

The information supplied by KTTV illustrating the extent to which the 2 major networks effectively control the program schedules of the respective network affiliates in the 40 markets during evening option hours was clear and unequivocal. This information, based on the published program schedules, showed that 96.3 percent of evening option hours were actually occupied by programs of the primary network, and that only 3.7 percent of these prime hours were occupied by programs from all other sources including other networks.

CBS is in possession of its actual clearance figures for the week in February described by KTTV. It would have been a simple matter for CBS to reveal those figures to indicate whether it does achieve this degree of saturation of "the best time" or not. CBS has not done so. Instead, CBS has selected a week in May and has supplied percentage figures describing a concept which CBS calls a "percent of all evening hours subject to network option" which "are available to nonnetwork programing."

The significance of these percentage figures is questionable at best; upon analysis, they appear to be affirmatively misleading.

For instance, under questioning by committee counsel, Dr. Stanton revealed the surprising information that hours which CBS described to the committee as "available to nonnetwork programing" included hours currently occupied by CBS network programs and regularly broadcast by the station at the time ordered by CBS. This information is rendered all the more surprising by the fact that such hours are considered by CBS to be "available to nonnetwork programing" only because they have been ordered and are filled by CBS network programs. These are the so-called straddle programs, an example of which is Studio One broadcast by the CBS network from 10 to 11 p. m. eastern time on Monday nights.

If CBS had offered some other half-hour program between 10 and 10:30 p. m., this half hour would clearly not be available to nonnetwork programs. But when CBS actually offers a full hour program, Studio One, from 10 to 11 p. m., and the station carries Studio One at the time ordered, the time period 10 to 10:30 p. m. is then described by CBS as "available to nonnetwork programs." The same approach is taken with programs like 20th Century-Fox Hour, United States Steel Theatre and Ford Star Jubilee.

CBS' reliance upon this strange concept becomes even more questionable in the light of the testimony before this committee indicating that the CBS interpretation had apparently not been communicated to all of its affiliates. When asked whether CBS had given its affiliated stations written advice of this policy, Dr. Stanton stated only "our affiliates are aware of it" (tr. 3456). However, when the committee questioned W. D. Rogers, president and general manager of KDUB–TV, Lubbock, Tex., on this subject, his testimony was as follows (tr. 3960):

"Mr. Cox. Is it your understanding that CBS' option does not apply to a program like Studio One, which starts in option time but extends into station time?

"Mr. Jennes. Ten to 11 o'clock.

"Mr. Rogers. I would say that option time would apply.

"Mr. Cox. You would think it would?

"Mr. Rogers. Of course, it carries over into station time.

"Mr. Cox. CBS has never formally advised you that you could refuse this program because option time does not apply to any part of it?

"Mr. Rogers. No, sir."

CBS claims that 30.4 percent of evening option hours on the basic required affiliates are "available" to nonnetwork programing. The straddle programs, of course, involve clearance by the station as ordered by the network just as much as any program in evening option hours, and since a station cannot transmit two programs simultaneously, the time is not "available" for nonnetwork programs. Even assuming some validity to the straddle concept of availability, the 2 regular weekly straddle programs (Monday and Wednesday) would account for 4.8 of the 30.4 percent. Every fourth week when Ford Star Jubilee is broadcast, there would be an additional hour of straddle programing in option time.

In such a week, the straddle figure would be 9.6 of the 30.4 percent. On an average basis for any 4 consecutive weeks 24.4 percent of evening network option time would be "available" for some reason other than the straddle theory.

In view of Dr. Stanton's testimony that "you couldn't get much more time in the nighttime schedule of the two leading networks with a crowbar," what is the explanation of this "availability" for nonnetwork programs of 24.4 percent of network option time on the 52 basic-required stations? The answer should be contained in the first footnote on page 5 of the CBS memorandum, which purports to explain the reasons why normal option hours were not subject to option by the network during the sample week. This footnote explains the unilateral CBS policy on straddle programs, and further states that option time is inapplicable where the program offered by the network is unsponsored. We believe this subsequent statement is incorrect in that option time does apply to such a time period but, in the instance of one network program (Brave Eagle), the option had not been exercised by the network. Thus, the half hour in which Brave Eagle had been offered was available for nonnetwork programing only so long as CBS refrained from exercising its option. But even if this half hour could be considered not subject to option by the network, it would account for only 2.4 percent of network option time which was "available to nonnetwork programing."

The answer, then, must lie in the third clause in the footnote which states that certain hours were not subject to network option "because of difference in time zones, no network program was offered during the period." Failure to offer a sponsored network program does not exclude a time period from option time, but in any event difference in time zones has never prevented a network from offering its full complement of network programs. The answer then may lie in the fact that CBS, in attempting to counteract the significance of the KTTV statistics, has selected a week in May, which it described as typical, instead of a week in February as did KTTV.

In February, the entire Nation observes standard time, but May is a month when daylight saving time is observed in many CBS cities and standard time is observed in others. Specifically, daylight saving time is observed in New York, but 35 of the 52 cities of the CBS basic-required network continue to observe standard time.

During the season when daylight saving time is observed in New York, we understand that it is general CBS practice to continue to occupy the same local clock hours in the standard time cities of the central time zone, for instance, as it does during the balance of the year. A second network feed for these standard time cities is made by the network in the case of some programs, and the CBS programs in such cities may, therefore, be carried in different sequence during the daylight saving season. However, the station generally continues to carry the full CBS schedule at the time ordered by CBS during the same local hours.

Although the operating situation remains the same in this respect, we note that the CBS affiliation contracts specify that network evening option time in the eastern and central time zones shall be 7:30 to 10:30 p. m. "expressed in New York time current on the date of broadcast;" in the mountain and Pacific time zone, network evening option time is 7:30 to 10:30 p. m. "expressed in local time of station current on date of broadcast."

In other words, the printed form affiliation contract is apparently based on the normal conditions of standard time. While agreements are apparently reached between CBS and its affiliates to adjust their schedules to the CBS convenience during the daylight saving season, it may not have been found necessary to reduce these arrangements to a formal amendment of the actual affiliation contract.

Of the 19 basic CBS affiliates in the central time zone, 3 observe daylight saving time, and 16 observe standard time: of the 8 CBS basic affiliates in the mountain and Pacific zones, 4 observe daylight saving time, and 4 observe standard time.

The literal effect of this language in the affiliation contract would mean that during the daylight saving season, evening option time in a city in the central zone which observes standard time would be 5:30 to 8:30 p. m. local time (7:30 to 10:30 p. m. when expressed in New York daylight saving time).

Despite the fact that such a station customarily continues to carry CBS network programs at the time ordered by the network between 6:30 and 9:30 p. m. local time (the normal evening option hours in that city), the hour of 8:30 to 9:30 p. m. would technically not be network option time. Instead the hour of

5:30 to 6:30 p. m. would technically be subject to network option, but the network does not feed its programs to such station in that hour, retaining instead its regular period of 8:30 to 9:30 p. m.

KTTV wishes to emphasize that CBS continues to arrange clearance of its evening network programs in time periods selected by the network with the same degree of saturation and control in cities which observe standard time as in cities which observe daylight saving time. The implications of the KTTV figures, therefore, concerning network saturation are not affected either in kind or degree by daylight saving time. Nevertheless, by selecting and describing as typical a week during the daylight saving season, and by making no reference to the accidental effect of daylight saving time when construed under the literal language of the affiliation agreements, CBS was apparently able to contrive a percentage figure indicating considerable network option time in the 52 basic markets was "available to nonnetwork programing." Thus, CBS gave the impression that the clearance picture was different in substance from the picture presented by KTTV, and apparently did so with the knowledge that the substantive picture was not different at all.

Lest there be any question about the actual degree of saturation of network option time by CBS, we submit as exhibit A a tabulation of actual clearance in evening option hours during the truly normal week of February 19–25, 1956, in all 52 of the CBS basic-required cities. These figures were derived from published schedules of the individual stations. If there is any information which would show a greater degree of availability to nonnetwork programing that exhibit A indicates, CBS which is in possession of the official clearance records can undoubtedly supply it.

That exhibit A is entirely or substantially correct, is supported by certain information contained at page 24 of the opinion of counsel submitted to the committee by Dr. Stanton. That page contains a tabulation of certain information concerning program clearance during a week in May 1956, which CBS states, "is believed to be typical." That chart indicates that during this week in May, the 52 CBS basic-required cities carried 1,247 hours of CBS network programs during the evening hours of 6 to 11 p. m. local station time. The total of 1,247 hours may include those rare situations where a CBS program is carried on a nonaffiliate in a basic-required city. These cases would not materially alter the significance of the figure. Contractually, these stations placed under option to CBS a total of 1,092 hours per week between 6 and 11 p. m. local station time. Despite the fact that CBS has indicated that 30.4 percent of network evening option hours on these stations was "available to nonnetwork programing" the CBS total of 1,247 hours indicates that the number of hours of CBS network programs actually carried by these stations between 6 and 11 p. m., was equal to 114 percent of the number of hours which were subject to network option in this time segment.

It is also significant that the total of 1,247 hours for the 52 stations represents an average clearance of CBS network programs of 24 hours per station per week during evening time. This weekly total per station is exactly equivalent to the full contractual commitment of 21 hours of evening option time plus 3 additional hours (or 6 additional half hours) of station time. In this latter connection it should be noted that CBS originates 6 commercial half hours per week between 10:30 and 11 p. m., which is station time. This fact may serve to explain the average clearance by the basic stations of 6 half hours over and above the total number of 42 half hours under option.

We submit that these CBS figures are the most conclusive proof of all that access to the public's most convenient viewing hours is effectively barred by the networks to local and nonnetwork program sources, and local and nonnetwork advertisers; and that the choice of what the American public may see during these most convenient hours is effectively determined by unilateral decisions at the network headquarters in New York.

7. CBS memorandum, page 5:

"The assertion of the statement (tr. 1584) that the right of an affiliated station to refuse to broadcast a network program is a mere technicality is squarely in error. It is a broad and practical right. It is effectively and not infrequently invoked."

KTTV reply:

What Mr. Moore said was (tr. 1584):

"Technically, there are certain exceptions to the station's legal obligations, but these are rarely invoked and have little practical effect."

The infrequency with which the exceptions are invoked by the stations could not be more thoroughly demonstrated than by the figures submitted by CBS and discussed by us in the preceding section. Since the CBS tabulation indicates that stations regularly clear more than a total of 21 hours of CBS network programs during class A time, it would appear that the evening options are not only effective but are up to 114 percent effective. The essential fact is that the block booking aspect of the network option (involving as it does the station's desire for a renewal of the CBS affiliation) effectively achieves clearance of even more program hours in class A time than the network options contemplate.

8. CBS memorandum, pages 5, 6:

The KTTV statement "appears to urge that in general, the selection by affiliates of network programs in option time must be the result of compulsion since syndicated film programs, it asserts (tr. 1601), are more popular. Thus, it contends, time options 'protect inferior network programs against the better programs produced by other program sources (tr. 1631).'

"However, even assuming that program popularity is the test of a station's programing responsibility network programs are more popular than syndicated films."

KTTV reply:

CBS seems to assume that KTTV argues that all nonnetwork programs are capable of winning more audience than any network program. KTTV, of course, made no such contention. KTTV did argue that some nonnetwork programs have more appeal to the audience than some network programs. Yet, in most such cases, the network program will win clearance, thanks to option time, rather than a nonnetwork program which might be superior but which does not have the benefit of options. (See tr. 1631.)

A central theme of the KTTV position is that all programs should be allowed to compete for public acceptance on the basis of program merit alone. If the network program is better, it will win greater favor; if the nonnetwork program is better, it is the one which will win favor. Indeed, the fact that some nonnetwork programs are capable of winning more audience than some network programs is the root of the CBS advocacy of option time. Dr. Stanton (tr. 3489, 3499) testified that he fears erosion of the network program structure if CBS programs are not given the benefit of options. That erosion could only come where a competing program wins acceptance from stations and the public, as compared to a CBS program. There is no other source of such erosion except superior competitive programing. But the time options are designed to keep competitive programing from reaching the air during "the best time."

In support of its view that some nonnetwork programs are capable of winning more public acceptance than some network programs, KTTV supplied examples from three markets where one or more unaffiliated stations is located, Chicago, Seattle-Tacoma, and Los Angeles. In comparison to the audience rating for all evening network programs in these markets, KTTV offered the following examples of public preference for a nonnetwork program where that program had a fair opportunity to be judged by the audience during prime viewing hours (tr. 1599–1600):

Chicago.—There were 129 evening network programs during the sample week. The nonnetwork program, Dr. Hudson's Secret Journal, had a larger audience than 101 of the evening network programs; Science Fiction Theater had a larger audience than 90 of the 129 evening network programs; Cisco Kid had a larger audience than 80; Superman had a larger audience than 63.

Seattle-Tacoma.—Death Valley Days and I Search for Adventure each had a larger audience than 108 of the 118 evening network programs. Highway Patrol had a larger audience than 104 of the evening network programs. All told, 8 syndicated programs had a larger audience than any of 79 network programs.

Los Angeles.—There were 128 evening network programs. Confidential File had a larger audience than 95 of the evening network programs, and 7 other nonnetwork programs had larger audiences than 93, 87, 82, 75, 74, 73, and 69 evening network shows, respectively.

With reference to these examples, Mr. Moore stated (tr. 1600):

"Generally speaking, these desirable nonnetwork programs are on film and are available to the network-affiliated stations in most of the major markets * * * Yet, almost invariably the affiliated station accepts a network program instead of the superior nonnetwork program."

In reply to this portion of the KTTV statement, the CBS memorandum states that the figures are "so carefully selected as to be entirely misleading." But the only specific comment offered by CBS in support of this allegation is that, of the 10 nonnetwork programs named as examples by Mr. Moore, one, Confidential File, is not a syndicated film. This is entirely beside the point, since the purpose of the examples was to show that some nonnetwork programs (of which Confidential File is one) are capable of winning more audience acceptance than most network programs, if they are given a fair opportunity to be exposed in a convenient time period (see tr. 1598–A).

9. CBS memorandum, pages 8–9:

In these pages the CBS memorandum takes issue with KTTV's conclusions concerning the late hour at which the program Disneyland is scheduled by certain affiliated stations in compliance with the network request.

KTTV reply:

The ABC network, in the Pacific time zone, regularly schedules Disneyland from 8 to 9 p. m. or later, and KTTV expressed the view that reasonable broadcasters would agree that this hour is too late on a school night for a program which appeals to children from 3 years of age up.

A careful reading of the CBS comment reveals no error in fact on the part of KTTV. The lesson of the Disneyland case is simple: in every city where the station rejected the network request for this late broadcast, and where the station presented Disneyland at a more appropriate early hour, the station was a free agent which was not dependent upon renewal of the ABC affiliation as a source of program service. Thus, each of these stations was better able to serve the convenience of its community because it was not necessary to accommodate the station's schedule to the absentee decision of a network. Even according to the CBS figures, about two-thirds of all stations which carry Disneyland at the ordered time are stations which have optioned this time to ABC.

10. CBS memorandum, page 9:

With reference to the phrase "blind selling" contained in Mr. Moore's statement (tr. 1597), the CBS memorandum states "network programs are not sold to affiliated stations."

KTTV reply:

It is true that except for certain instances where a station pays for kinescope or line charges, and without examining the question whether the free-hour arrangement constitutes payment for programs, a network program is not "sold" to the station, since no payment is made by the station specifically for the program. While, as Dr. Stanton testified (tr. 3386) "* * * we try to persuade them to think that our program is superior to the program they might be taking," it is correct that this effort to persuade the station is not "selling" by dictionary definiion. Accordingly KTTV would be glad to change the phrase to read "blind offer and acceptance."

As to the degree to which the offer and acceptance may be "blind," the record contains considerable testimony concerning the extent to which the network regularly advises the affiliate of the content of a forthcoming program. KTTV has nothing to add to this testimony. However, in reviewing the record, we do recognize certain practical difficulties which would serve to prevent complete review of all network programs in advance by the affiliate.

11. CBS memorandum, page 11:

"Finally, the [KTTV] statement relies heavily on allegations of fact purporting to establish KTTV's programing superiority (tr. 1572–1575). The purpose of this recital, apparently, is to lend weight to the contention that a network affiliate, allegedly burdened by option time, cannot operate to serve the public or the interests of the local viewers while an unaffiliated station, with no such 'burden,' can and does do so."

KTTV reply:

The CBS interpretation of KTTV's "apparent" purpose in reciting certain facts concerning its operation is incorrect. The purpose, as the record will show, was stated as follows (tr. 1575):

"We cite facts like these, not to pat ourselves on the back, but to indicate that a television station, by itself, can render the best possible service to the community so long as it has equal access to good sources of film programing. We now see the immediate prospect that this source of high-quality film programs will shrink and disappear, and that independent television stations like KTTV will be unable to obtain access to the few high-quality films that may still be produced. If independent stations cannot obtain access to such programs, the stations' potential for service to their communities will be destroyed."

KTTV did not intend to comment unfavorably on any other Los Angeles stations, network or independent, and did not do so. In fact Mr. Moore said (tr.

1681–1682), "of course we compete in Los Angeles with the 3 network-owned stations, and I think the networks run fine stations."

12. CBS memorandum, pages 11–12:

On these pages the CBS memorandum presents a summary of the sources of programs broadcast by KTTV and by KNXT, the owned and operated outlet of CBS in Los Angeles, during the week ending April 7, 1956.

KTTV reply:

KTTV regards KNXT as a fine television station and has no wish to comment on the KNXT operation. With regard to the adverse comments of CBS on KTTV's operation, however, we desire to point out that all facts stated in this tabulation by CBS concerning KTTV programs (except the one notation that KTTV broadcast no network programs) are wrong.

This is shown by the following table:

	Facts of KTTV program sources as stated in CBS memorandum (p 12)	Actual facts of KTTV program sources for same week
Network	None	None.
Film, including features and rerun syndicated film with off-camera announcer.	63 hours 15 minutes	32 hours 30 minutes.
Film as above with on-camera announcer	39 hours 30 minutes	70 hours 30 minutes.
First-run syndicated film	5 hours	7 hours 30 minutes.
Local live	21 hours 20 minutes	23 hours 30 minutes

On page 12, in its qualitative analysis, the CBS memorandum states that KTTV broadcast 2 hours and 30 minutes of news whereas the facts are that KTTV broadcast 4 hours and 15 minutes of news, and does so each week.

13. CBS memorandum, pages 12–13:

In these pages the CBS memorandum takes issue with certain statements of KTTV concerning its relative audience position in the market with particular reference to KTTV's relative position as compared to the three network outlets.

KTTV reply:

KTTV does not feel that the comparative audience of KTTV and the three network stations is a matter which is relevant to the central issues before the committee. However, since CBS has seen fit to devote considerable analysis to this subject, we are glad to supply the following information to clarify the record:

As a basis for its comments, CBS has selected the American Research Bureau report for February 1956. While all research reports differ among themselves and from month to month, KTTV is happy to comment on the report selected by CBS.

As the best possible indication of general audience position of KTTV and each of the 3 network stations, we make reference to the audience report for each quarter hour for the 7 days in the week in the survey selected by CBS.

During the sample week, KTTV and KNXT (CBS) were both on the air at the same time for a total of 507 quarter hours. KTTV had more audience than KNXT during 274 of these quarter hours; KNXT had more audience than KTTV during 209 of these quarter hours. The 2 stations had the same audience rating during 24 of these quarter hours.

KTTV and KRCA (NBC) were both on the air at the same time for 482 quarter hours. KTTV had more audience than KRCA during 325 of these quarter hours; KRCA had more audience than KTTV during 147 of these quarter hours. The two stations had the same audience rating during 10 of these quarter hours.

KTTV and KABC (ABC) were both on the air at the same time for 435 quarter hours. KTTV had more audience than KABC during 329 of these quarter hours; KABC had more audience than KTTV during 98 of these quarter hours. The 2 stations had the same audience rating during 8 of these quarter hours.

14. CBS memorandum, pages 15–16:

"The statement contends (tr. 1627–1628, 1635) that networks 'tie-in' the sale of network-produced programs with the sale of desirable network time periods. This activity is allegedly motivated by the profits networks make on the production of programs (tr. 1629, 1635)."

KTTV reply:

A careful reading of the CBS memorandum will reveal that CBS does not deny that it engages in a "tie-in" practice. Indeed, CBS acknowledges (see p. 88, footnote 1, in supplementary memorandum) that tie-ins of time and programs by CBS television do occur, "to a greater or lesser degree," in the case of certain programs which include the Jack Benny Show, the Ed Sullivan Show, Arthur Godfrey's Talent Scouts, I Love Lucy, Studio One, the Phil Silvers Show, the Red Skelton Show, the $64,000 Question, Climax, The Lineup, and The Jackie Gleason Show.

The list furnished by CBS states that such examples "include" the above programs but does not state what other programs, if any, are also included in this practice. The footnote further states that 4 of the 11 programs "are not CBS-television produced." Apparently, therefore, 7 of the 11 tie-in programs are produced by CBS. CBS has not disclosed the extent of CBS ownership or financial interest in these tie-in programs, although it would appear that in addition to probable ownership of the seven CBS-produced programs CBS may also have financial interest in others. For instance, I Love Lucy is not "CBS-television produced," yet we understand that CBS has a 24 percent interest in Desilu, Inc., which produces I Love Lucy, and a 40 percent interest in profits of the program itself.

The tie-in sale of Playhouse 90 in the time period of 9:30–11 p. m. Thursday, of course, had been fully discussed before the committee. This was a clear case where current advertisers were told by CBS that if they wished to retain the time period, they could do so only by purchasing this new CBS program in place of their own show. In discussing the alternatives open to the sponsors who currently occupied the time period, Dr. Stanton said (tr. 3429): "CBS television had decided this must be the show for the time period."

Concerning the question whether CBS may make a profit on the sale of one of its own programs in a particular time period, over and above the time charges, CBS offers no specific information. The CBS memorandum merely states that the CBS television network does not profit on its total program production operation, but suffers substantial losses. CBS television, of course, is a profitable operation. Whether this total profit is rendered greater or less by undertaking program production is irrelevant to this discussion. Undoubtedly CBS undertakes program production because it believes the overall profit of the CBS network will be greater if it does so than if it does not. And, the record does show that in a case like Studio One, which is tied by CBS to a particular time period, CBS does make a profit on the program itself (tr. 3332), which it presumably would not make if the program were sold directly to an advertiser by an outside producer. Dr. Stanton did not indicate what other CBS programs involve a specific program profit to the network.

15. CBS memorandum, page 17:

"The fact is that the CBS television network acquires a financial interest in an independently produced (or, more often, a not yet produced but conceived) program only when the outsider submits an idea or a pilot and, to bring the program to completion, the CBS television network incurs financial obligations in respect to the program's development and production.

"In no case has CBS or the CBS television network ever imposed as a condition of acceptance of a program, or of making time available for it, a requirement that it be granted a financial interest."

KTTV reply:

As Mr. Moore indicated to the committee (tr. 1608) the arrangements between a network and program producers are not a matter of direct knowledge by KTTV, and Mr. Moore did not single out CBS or any particular network. Instead, Mr. Moore suggested that information on this subject could best be obtained from those concerned with such transactions. We understand from the reports of the hearings of the subcommittee of the House Judiciary Committee that certain independent film producers have given information on this subject to the Network Study Committee of the FCC and to the House subcommittee. (See House transcript September 13, 1956, p. 739, relating to ABC's negotiations for the time period following Disneyland.)

Quite apart from any information supplied by others, KTTV believes that it is relevant to point out that many independent program producers are solvent companies, with adequate resources, who do not need financial assistance to complete a pilot film or to bring a prospective program to completion. Regardless of financial resources, however, one thing an independent program producer does need is an acceptable network time period for his program. To the degree already indicated, the networks control the air time which the independent producer needs in order to release his program. Therefore, the availability of a good network time period, which only a network can give, is far more valuable to the producer than financial assistance in connection with a pilot film. Indeed, it is virtually the essential element which the producer needs if his program is to have any value.

Although the CBS memorandum (p. 16) states that a majority of the programs broadcast over the CBS television network are not "produced" by it, it appears from Dr. Stanton's testimony before the House subcommittee that CBS, nevertheless, either owns or has acquired a financial interest in, a majority of the programs which will be broadcast by CBS this fall—specifically, 57.6 percent, including 50.5 percent of the evening programs. (House transcript, September 25, 1956, p. 1984.)

KTTV has no information concerning the motivation which led the owners of these programs to grant an interest to CBS. We, therefore, cannot comment whether the only inducement was some financial contribution by CBS in connection with the production of a pilot, or whether the principal inducement was CBS' willingness to supply the crucial time period on its own stations and on stations owned by others. But since CBS has absolute control over the time, and the independent producer is acutely aware of this fact, it seems doubtful whether any CBS request for a profit participation, no matter how carefully phrased, can ever be "untied" in the mind of the producer from the availability of the time.

16. CBS memorandum, pages 17–23:

The CBS memorandum describes as a "fallacy" the "contention that network practices are harmful to syndicated film distributors in their relations with the networks."

This CBS contention is based on three arguments which can be summarized as follows:

(*a*) There is sufficient class A time to furnish an adequate market for syndicated films.

(*b*) Classes B and C time provides sufficient incentive for program production.

(*c*) Syndicated films do accomplish wide distribution.

Each of these arguments will be discussed separately.

KTTV reply:

(*a*) In this section, despite the virtual saturation of network option time, plus considerable time outside of network option hours, in markets serving upward of 80 percent of the Nation's television homes, CBS argues that there is sufficient desirable time available for nonnetwork programs.

The CBS supplementary memorandum (p. 120) and the CBS memorandum (p. 18) rely on specific examples, 8 syndicated programs which, among them, cleared a half hour between 7 and 10: 30 p. m. in a total of 237 station half hours. The total clearance of these 8 examples, accomplished over a period of months, is less than the average clearance of 2 network evening programs.

While these examples actually serve to illustrate the great contrast between the massive clearance of network programs and the occasional clearance of nonnetwork programs, the significance of the figures is made questionable by the following facts:

1. The term "ordered" has a different meaning when applied to the placement of a national spot program than when applied to the placement of a network program. In each of the examples the CBS memorandum compares the number of stations cleared between 7 and 10: 30 p. m. and the number of stations ordered. In the case of a network, the stations are normally ordered before the station has given indication of clearance. This order is given to the network which in turn communicates with each station, requesting clearance of the time ordered.

In the case of spot placement of programs, requests for time availabilities are normally made by the advertiser to one or all stations in the desired market. If a station submits a time period which is satisfactory to the sponsor, only then is the station ordered. Accordingly, in the case of the examples supplied by Dr. Stanton, we have no way of knowing how many markets were desired by the advertiser but not ordered because there was no satisfactory time period offered.

2. Even assuming in each case that the advertiser cleared every station that he desired, the figures supplied by CBS ignore the all-important problem of clearance in the large- and medium-sized markets where network saturation is so complete, and where clearance for the nonnetwork program or advertiser is so vital.

The examples used by Dr. Stanton were taken from an address by Oliver Treyz, president, Television Bureau of Advertising, delivered in Chicago April 18, 1956 (supplemental memorandum, p. 120, footnote 2). At that meeting the

Television Bureau distributed a pamphlet which repeated in great detail some of the material contained in the speech, but only one list of actual clearances was supplied, Socony Mobil Theatre. The pamphlet states that the first station order by Socony went out in October 1955, and it then lists the actual clearances in terms of stations and time periods which had been achieved as of April 1956. The entire list is attached hereto as exhibit B.

Socony Mobil distributes its products in 43 States (all but the 5 Southeastern States), and it seems fair to assume that the advertiser would want to cover a correspondingly extensive number of markets with Socony Mobil Theatre, if suitable time periods were available. Yet, analyzing this clearance list, we find that only 56 markets were cleared; only 14 clearances were obtained on a CBS or NBC primary affiliate in the top 100 markets of the United States; and only 3 of these were in network option time. Only 20 of the top 100 markets were cleared at all. Of the 36 remaining markets cleared, 16 were in cities ranking between 101 and 200 in size. Ten ranked between 201 and 260. As defined by the Bureau of the Census, there are only 260 metropolitan areas in the United States. Ten of the markets cleared were in communities ranking in size below these top 260.

In the case of the Rosemary Clooney Show which indicates clearance for the advertiser on 54 stations between 6 and 11 p. m. (CBS memorandum, p. 18), KTTV understands that the list of clearances was in accordance with the list contained in exhibit C, which specifies 51 markets cleared.

It will be noted that these markets in terms of size are as follows:

In the top 100 markets	22
In the markets 101 to 200	12
In the markets 201 to 260	5
In the markets 261 or lower	12
Total	51

Moreover, we have no way of knowing the extent to which the stations in the smaller markets were available because they were not otherwise ordered by network advertisers. Since the average nighttime network program is carried on 121 stations (Opinion of counsel, p. 10), it appears that there are many station half-hours within network option time which are not filled by the network because they were not ordered by the advertiser in markets below the top 100. Any such half-hours in network option time, however, would be subject to preemption under the network option if and when ordered by a network advertiser.

(*b*) CBS states (p. 20), "Clearly, therefore, as the experience of the CBS television network itself establishes, hours outside 7:30 to 10:30 p. m. provide sufficient incentive for program production."

This statement by CBS seems completely consistent with the KTTV recommendation that both network and independent program sources can prosper if some of the time now occupied by networks between 7:30 and 10:30 p. m. is made available to nonnetwork sources. Conversely a greater amount of the time outside of 7:30 to 10:30 p. m., which CBS itself deems satisfactory, would be made available for network programs. The networks, under this proposal, could originate more network programs than they do now.

Any other interpretation of this CBS argument would mean that hours outside of 7:30 to 10:30 p. m. are good enough for all other program broadcasters and are good enough for all nonnetwork advertisers, but not good enough for CBS and the CBS network advertisers.

(*c*) In support of its contention that there is a good market for syndicated films, CBS lists 32 syndicated programs (pp. 20, 21) and indicates the number of markets in which each program is currently broadcast. The short answer to this CBS evidence of successful syndication is that further production of at least 19 of these 32 series has been abandoned. Three of those where production is continuing are being produced first for network use, so that recovery of the investment is not primarily dependent upon syndication. The CBS tabulation, moreover, does not reveal the size of the markets or the time periods in which the programs are broadcast. Revenues received by the syndicator depend very largely on the size of the market and availability of a good time period.

With respect to the clearances listed by CBS, we find an average clearance per program of 89 markets. In this calculation we are assuming that, in those cases where CBS has estimated a number of markets as "more than" a certain number, the actual number is at least a third again as high. A large portion of these clearances are outside of the prime evening hours. And the number of stations cleared contracts sharply with the average clearance of network programs on CBS during network evening option time (the best time) which is 121 markets per program. Since the average CBS clearance includes the 52 rich must-buy markets, the sorry comparison between the clearance opportunity of the syndicator and the clearance which can be assured via the network is all too clear.

17. CBS memorandum, pages 21–22:

"Network affiliated stations with option time make greater use of first-run syndicated film series than do unaffiliated stations (where, of course, no option time obtains)."

KTTV reply:

In support of the above contention the CBS memorandum sets forth a list of network affiliated stations and indicatse the number of first-run syndicated film series broadcast during an unspecified week by each of the stations. It also gives the same information for independent stations in Los Angeles and New York. This information fails to support the CBS contention for two basic reasons:

(1) At a time when many syndicated film series have been blocked from clearance in network-affiliated markets by reason of option time, and may have ceased new production for that very reason, an independent station like KTTV may long since have consumed the first run of such series, and will be looking for more episodes or for new series which nowadays are rarely forthcoming. Thus a series which eventually obtains clearance for "first-run" in a network market may not only be out of production, but may be in its second, third, or subsequent runs on a station like KTTV.

(2) The information supplied by CBS gives no indication as to the desirability of the time periods in which the syndicated films have obtained clearance on the network stations.

The significance of the above two factors is illustrated by the February program schedules of KSBW–TV, Salinas, and WCAU–TV, Philadelphia, the two leading examples listed by CBS to illustrate the comparative opportunity for syndicated films on network affiliates:

> While KSBW–TV was carrying 25 half-hours of syndicated films, KTTV was carrying a total of over 90 half-hours including 40 different regular series. Eleven of the series carried by KSBW–TV had already completed their first run in Los Angeles and were being carried as subsequent runs.
>
> WCAU–TV was carrying a total of 23 half-hours of syndicated films, 10 of which were series which had already completed their first run in Los Angeles and were being carried as subsequent runs. Moreover, it is worth noting that at least 5 of these series, most or all of which appear to be first run in Philadelphia, were carried by WCAU–TV between 11:30 p. m. and midnight.

Actually, this material supplied by CBS merely underscores the barrier of option time, which has resulted in the decline of syndicated films as set forth in detail in the following section of this memorandum.

18. CBS memorandum, page 23:

"The KTTV statement contends that one of the sources of programing (syndicated film) of the nonaffiliated station will be cut off or sharply restricted as a result of the network practices complained of (tr. 1575). The statement is here attempting to project into the future. As has been indicated earlier in this memorandum (pp. 20–23) and more fully detailed in the supplemental memorandum (pp. 113–118) there is no likelihood of a drying up of the production of syndicated films. All the available evidence of the past poionts to an increase in this product in the future. The pessimistic speculations of the statement have no sound basis."

In support of the above statements, the CBS supplemental memorandum (pp. 113–118) quotes certain facts and figures derived from industry trade publications which led CBS to the conclusion that the supply of nonnetwork programs is "larger and increasing."

KTTV reply:

KTTV's attempt to "project into the future" has proved to be all too accurate, and the CBS prediction of an increase in production of nonnetwork programing has proved to be unfounded and incorrect. The facts and figures which CBS cited in support of this prediction were either incorrect or failed to support the conclusions which CBS attempted to draw from them.

Before discussing the CBS reply in detail, it may be helpful to clarify again the situation which confronts the producer of films for sale on a nonnetwork basis, that is, films for syndication.

Like a network, such producer must find salable time periods in which to expose his film if he is to recoup the negative cost and make a profit. With respect to a network program, Dr. Stanton has clearly stated that a network needs assured clearance in the large markets in order to be able to afford to produce the program and furnish it to the smaller markets. Discussing the case of a city like Bangor, Dr. Stanton said (tr. 3493): "if we can't sell it [network program] in the big markets, then we can't afford to furnish the service to him in Bangor."

Just like Dr. Stanton, the independent film producer cannot afford to produce the program for the Bangors of the country unless he can sell the program at a good price in big cities like Boston, San Francisco, Louisville, Philadelphia, Baltimore, and Cleveland, to name only a few. But as we have seen, "the best time" available in such markets is almost completely saturated with network programing, cleared by the network to the exclusion of opportunity for nonnetwork programs. As shown above, this is true even when the nonnetwork program is of a quality which would win more popular acceptance than most of the network programs which are being cleared.

As Mr. Moore stated (tr. 1604):

"Today, the only means by which a film producer can be assured of time periods in a sufficient number of markets is to sell the program to a network or to an advertiser who is able to place the program on the network. Without such a guaranteed release, the film producer or syndicator can now seldom afford to produce a series.

"It is true that a number of the fine syndicated films have been produced for nonnetwork use and have been sold in many markets, but the number is steadily dwindling because of the restraints imposed by time options. It is no answer to say that independent films can obtain class B or class C time, since the competitive network programs have automatic control of the really valuable class A time."

Attempting to refute this aspect of the KTTV statement, Dr. Stanton made reference (supplement memo pp. 115–117) to the reported prosperity of certain prominent companies engaged in production of films for television. Let us take these examples one by one.

CBS example (p. 115):

"The production budget of Screen Gems, Inc., one of the leading producers of syndicated film for television, rose from $100,000 in 1951 to $10 million in 1955. Its gross sales rose from $6 million in its 1954 fiscal year to $11 million in its 1955 fiscal year; and it expects to gross $15 million in 1956."

The facts:

Prior to 1956 Screen Gems had produced or offered only two new series for syndication, Jungle Jim and Celebrity Playhouse. It has terminated production of both these series. During 1956, Screen Gems has produced or offered no new series for syndication. Dramatically illustrating the contention that the independent producer must look to the network, is the fact that all of Screen Gems' new production in 1956 is for network broadcast. This includes two new half-hour series, Circus Boy and Bengal Lancers, which have recently begun network broadcast on NBC; a series of 90-minute films for Playhouse 90 (in which CBS will have a profit participation); The Mystery Writers Theater which will be available only for network broadcast. Screen Gems is also continuing new production for regular network broadcast of the following series: Fort Theater (ABC), Father Knows Best (NBC), and Rin Tin Tin (ABC). Three Screen Gems series, formerly produced for network broadcast—Captain Midnight, Tales of the Texas Rangers, and Damon Runyon Theater are not continuing this year on the network, and production of any new episodes in all of these series has been discontinued.

CBS example (p. 115):

"Guild Films Co., Inc., another producer of television films, almost doubled its sales and tripled its earnings in 1954, and, without network distribution, was able to place its programs on as many as 178 television stations in the United States, including many primary and basic required network affiliates. Its programs were sponsored by almost 400 companies."

The facts:

Prior to 1956, Guild Films had produced or distributed for syndication Liberace, Life with Elizabeth, Confidential File, I Spy, The Goldbergs, The Frankie

Laine Show, and Florian Zabach. As of 1956, production of all of these programs had been discontinued. During 1956, Guild has produced or offered no new programs for syndication. We understand that Guild has one projected program to be ready for 1957, but had none in 1956.

CBS example (p. 116):

"National Telefilm Associates, Inc., a distributor of syndicated feature film for television, increased its sales from $350,000 for the year ending July 31, 1954, to $870,000 for the 8 months ending March 31, 1955, and to $1.5 million for the 6 months ending January 31, 1956. Its programs were broadcast by 313 stations during the 16-months period ending April 30, 1955. Forty of its films were recently being broadcast in 96 different markets."

The facts:

All of the sales cited by CBS involve motion pictures and short subjects originally produced for theatrical exhibition. In 1956 NTA is offering only one new series produced specifically for television syndication, Sheriff of Cochise, plus a series of 39 dramatic half hours, most of which were produced prior to 1956 for British television.

CBS example (p. 116): "Television Programs of America, Inc., has a reported budget of $10 million."

The facts:

Prior to 1956 TPA had produced or distributed five new series for syndication, Ramar of the Jungle, Ellery Queen, Stage 7, Count of Monte Cristo, and Science in Action. (KTTV has testified how it sought to purchase rights to two other TPA productions, Halls of Ivy and Captain Gallant of the Foreign Legion, but the sale to KTTV was blocked by the need for network clearance, tr. 1619, 1623). In 1956, TPA is producing or offering no new programs for syndication and it has discontinued production of all five series which it had previously offered. TPA has announced one new program to be released for syndication in 1957, although there is no way of knowing whether, if that program has an opportunity to go on a network (as was the case in Halls of Ivy and Captain Gallant), it may be withdrawn from syndication. The only new production by TPA for 1956, is limited to its two programs which have network release, and are not available except for network broadcast, Lassie (CBS), Captain Gallant (NBC).

CBS example (p. 116): "Hal Roach has a production budget of 9 to 13 million."

The facts:

Prior to 1956, Hal Roach had produced, or participated in the production of, the following programs: My Little Margie, Trouble With Father, Racket Squad, Public Defender—production of all of which was predicated upon a network release. Network broadcasts of all these programs had been discontinued, and production of new episodes was forthwith discontinued in every case. In 1956, Hal Roach is producing, or participating in the production of, only one program for syndication, Code 3, which was purchased in advance for certain markets by Rheingold, in cities which include the major markets of New York and Los Angeles. It is being offered for syndication in markets not purchased by the original sponsor. However, Hal Roach is producing, or participating in the production of, two new series in 1956 for network broadcast: Oh, Susanna, on CBS, and Telephone Time, on CBS.

There were reports in the press that Hal Roach had planned production of a new series for 1956, Blondie, which was to be sold to national advertisers for nonnetwork clearance. We understand that this project has been abandoned.

In addition to the companies cited by Dr. Stanton there are certain other companies which have been active in the past in offering new films for syndication.

Prior to 1956, Ziv Television Programs, Inc., had apparently made it a practice to produce and release at least three new programs per year for syndication. These have included Mr. District Attorney, I Led 3 Lives, Corliss Archer, Eddie Cantor Comedy Theater, Favorite Story, The Unexpected, Boston Blackie, The Man Called X, Science Fiction Theater, Highway Patrol, and The Cisco Kid. In 1956, Ziv has offered only 1, instead of 3 new programs for syndication, Dr. Christian. A second program, Men of Annapolis, is offered for release in 1957. Significantly, for the first time in 1956 a new Ziv program, The West Point Story, was not offered for syndication but, instead, was sold for broadcast on a network—8 p. m. Friday on CBS. Meanwhile, Ziv has discontinued production of all its existing series except Highway Patrol, Science Fiction Theater and Studio 57.

Prior to 1956, the first-run properties offered for syndication by MCA TV, Ltd., included Waterfront; Abbott and Costello; Biff Baker, U. S. A.; Dr. Hudson's

Secret Journal; I Am the Law; Rocky Jones; The Lone Wolf; Kit Carson; Mayor of the Town; The Ken Murray Show; City Detective; The Guy Lombardo Show; Man Behind the Badge; Studio 57; and Soldiers of Fortune. In 1956, MCA is offering only two new programs, The Rosemary Clooney Show and State Trouper. Of all of the above series, MCA is continuing new production only for Dr. Hudson's Secret Journal and Studio 57.

MCA, however, is engaged in production for 1956 of one new series for network broadcast, On Trial, on NBC. It is also engaging in new production of the following series, but only for broadcast on the network: Alfred Hitchcock Presents (CBS), The Crusader (CBS), Jane Wyman Theater (NBC), General Electric Theater (CBS), Schlitz Playhouse (CBS).

Prior to 1956, Official Films, Inc., produced or offered for syndication the following new series: The Scarlet Pimpernel, Colonel March of Scotland Yard, Secret File U. S. A., and This Is Your Music. In 1955, Official acquired the rights to the series Robin Hood, acquisition of which by KTTV was blocked because Official needed a network release, and the program was placed on CBS. (See tr. 1624, 1625.) Official has had two new programs to offer in 1956: The Buccaneers and Sir Lancelot, both of which are receiving network release on CBS and NBC, respectively. Official is offering no new programs for syndication for 1956 and has discontinued further production of programs previously produced and offered for syndication.

Hollywood Television Service, a subsidiary of Republic Pictures, prior to 1956 had produced one full series for television, the Academy Award winning Stories of the Century. Having had 2 years in which to achieve distribution of these 39 episodes, Hollywood Television Service is now producing one new series for 1956, Frontier Doctor. Through the pattern of buying regional rights for this new series, over and above its own needs (see tr. 1622, 1623) KTTV was able to acquire rights to this series, and it was placed in syndication rather than being offered for network production as was the original intention.

Finally, it is relevant to mention Motion Pictures for Television, Inc., (MPTV), which, prior to 1956 had produced or distributed for syndication the new series, Paris Precinct, Sherlock Holmes, Duffy's Tavern, Flash Gordon, and Janet Dean, R. N. MPTV has long since abandoned further production of all these series and is offering no new programs for syndication.

KTTV understands that there will be 3 or 4 additional series offered for syndication in 1956 from various sources including 1 or 2 series produced in England, but we do not believe these series reflect the budget or quality appropriate for prime evening prcgraming.

While the above indicates the state of independent syndication, perhaps the most revealing evidence of the declining production of films for syndication is found in the syndication divisions of the three network companies themselves.

Prior to 1956 the syndication division of CBS had produced for syndication or distributed The Gene Autry Show (syndicated in cities outside a limited CBS network), The Whistler, Range Rider, Annie Oakley, Long John Silver, Cases of Eddie Drake, Buffalo Bill, Jr., Files of Jeffery Jones, Fabin of Scotland Yard, Gloria Swanson Theater and, after cancellation on the network, Amos and Andy.

To our knowledge the CBS film syndication division is producing or distributing no new programs for syndication in 1956, and production of all the series mentioned above has been discontinued with the possible exception of Buffalo Bill, Jr., and Annie Oakley of which a limited number of new half hours may be made this year.

The CBS film division has announced one new syndicated series for 1957, but none for 1956. With reference to this series, as an indication of the difficulty of clearing good time on individual stations, we understand that it will be offered with a must-buy requirement whereby the minimum order would involve the purchase of rights for an entire State.

Prior to 1956 the NBC film syndication division had produced for syndication or distributed Inner Sanctum, Dangerous Assignment, Crunch and Des, Hopalong Cassidy, Western Marshal, The Great Gildersleeve, His Honor, Homer Bell, Adventures of the Falcon. Like CBS, the NBC film division is offering no new series for syndication in 1956 and had discontinued production of all the above series.

Prior to 1956, the syndication division of ABC had produced for syndication or distributed the following programs: Passport to Danger, Three Musketeers, and Sheena of the Jungle. Further production of all three of these series has been discontinued, and the ABC film syndication division is producing or offering no new programs for syndication in 1956, except that early in the year we understand that it undertook film syndication of the Hal Roach property, Code 3, in all markets except those taken by Rheingold under the original arrangement with Hal Roach. In this, the only instance of even partial syndication of a new program by any of the 3 network divisions, it is important to note that production of the series was predicated on a major commitment by the sponsor in the 2 most lucrative markets, New York and Los Angeles, where clearance of a network affiliate in prime time is not necessary.

This then is the sad state of television film syndication brought about by the effects of option time. It is exactly in accord with predictions given to the committee by KTTV, which were described by Dr. Stanton as "pessimistic speculations" which had "no sound basis."

That KTTV is not the only station which is feeling the shortage of new syndicated film is confirmed by the testimony of a network affiliate. Jack Harris, vice president and general manager of the NBC basic-required affiliate, KPRC–TV, in Houston, Tex., and a member of the NBC affiliate's executive committee, testified in favor of existing network practices. The following excerpts from the testimony are relevant to the syndication question (tr. 4514–4518):

"We are constantly seeking better and more varied program fare from the film syndicators, and yet fewer and fewer quality shows are being offered for local syndication.

"The syndicators are generally following the practice of making their programs available to the networks or to the national networks client and then offering them as syndication reruns after they have had network exposure.

"I have personally discussed this problem with several syndicators who have stated frankly that the one sale to the network advertiser had the advantage to them of eliminating a great deal of risk from their venture, plus eliminating the cost of trying to make individual sales. Consequently, it was to be preferred over multiple-station sales.

* * * * * * *

"Senator MAGNUSON. How is it we see these films running 2 and 3 times?

"Mr. HARRIS. You are getting them on the reruns. You are getting the shopworn commodity that they offer to the local stations. Thus I am somewhat baffled as a station operator to read of testimony before this committee wherein film syndicators are seeking to limit network option time, in order, they say, to open more and better periods for them to sell their product to the stations. My own experience is that we have a difficult time in finding suitable first-rate, first-run film material for us to use in the periods we already have available.

* * * * * * *

"Mr. HARRIS. I might say parenthetically that at the moment we have four class A half-hours that are sold to local sponsors that we are trying to find good first-rate, first-run products for next fall. So far there is only one film syndicator, to my knowledge, who has come up with a show that is not a rerun of a network—that is, a new product—that is available next fall."

KPRC–TV, as a network affiliate, has consistently demonstrated an unusual flexibility in providing prime evening time for nonnetwork programs and nonnetwork advertisers. The shortage of new first-rate syndicated films in Houston is no fault of Mr. Harris'. It stems directly from the shortage of good time periods in other important markets where the best time is saturated by the networks. As a result, companies like the four local sponsors in Houston are typical of the second-class citizens of television to whom the local broadcaster offers only shopworn programs which have had one or more previous showings on behalf of the network sponsor.

19. CBS memorandum, pages 24, 25:

"The fallacy of the contention that the nonaffiliated stations suffer economic loss as a result of network practices.

"Such loss, it is claimed, occurs in two ways: first, the basic-required practice of the networks prevents the network advertiser from placing his program on nonaffiliated stations in the basic-required markets (tr. 1616–1617), and second, the networks are charged with exerting improper pressure on advertisers to transfer to network affiliates network programs previously placed on nonaffiliated stations (tr. 1617–1619)."

The CBS memorandum then attempts to demonstrate that neither of these contentions is correct.

KTTV reply:

In dealing with the first contention, CBS does not contradict the facts presented by KTTV, and merely presents legal and economic arguments attempting to justify the validity of the must-buy practice. These arguments have been fully dealt with in the KTTV statement and the memoranda submitted by KTTV's counsel, and need not be answered again here.

With respect to the second contention, CBS disagrees with KTTV's interpretation of the facts relating to the program, Captain Midnight. Captain Midnight is a film series controlled by an advertiser. The advertiser placed the program on the CBS network throughout the country but, in Los Angeles, decided to place it on KTTV instead of the CBS-owned affiliate, KNXT. Subsequently, CBS attempted to obtain the program for its own Los Angeles station, and was successful under the circumstances described below.

In commenting on this particular incident, the CBS memorandum sets forth the text of a letter from Mr. George A. Bolas, director, media activities, Tatham-Laird, Inc., the advertising agency which had placed Captain Midnight on KTTV. Mr. Bolas' letter does not deny Mr. Moore's statement concerning the pressure placed upon him by the network to move the show to KNXT prior to an ultimate telephone call from Mr. Bolas to Mr. Moore discussed at transcript pages 1618–1619. With reference to that telephone call, Mr. Moore testified:

"Finally, on the telephone, the agency informed KTTV that the network had now told the agency that unless they moved Captain Midnight to the network station in Los Angeles, the network would not make available a time period then under discussion for another program, Tales of the Texas Rangers, to be placed on behalf of a different advertiser by the same advertising agency."

In this connection the CBS memorandum quotes the following paragraph from Mr. Bolas' letter:

"We were never threatened or informed in any way by CBS that we were jeopardizing the possible time period clearance of Tales of the Texas Rangers unless we moved Captain Midnight to the CBS network station in Los Angeles. We can also state that we did not inform Mr. Moore that such was the case."

KTTV, of course, cannot testify concerning conversations between Mr. Bolas and CBS, and we accept Mr. Bolas' statement on that point. Regarding Mr. Bolas' phone call to Mr. Moore, however, Mr. Moore's recollection of that phone call is different from that of Mr. Bolas. We believe this is merely an honest difference in recollection of the contents of a phone call made many months earlier. Knowing Mr. Bolas, we are sure that his statement in the letter honestly reflects his recollection and we have complete faith in his truthfulness and integrity.

However, although Mr. Moore's recollection differs from that of Mr. Bolas, the significant fact is that other portions of Mr. Bolas' letter confirm the main point of the KTTV testimony, namely, that the advertiser's decision as between KTTV and the CBS outlet in Los Angeles was influenced by the advertiser's desire to retain CBS network distribution for Captain Midnight in other cities, as well as to place Tales of the Texas Rangers on the CBS network.

Mr. Bolas' letter and subsequent events confirm the following:

(1) Tatham-Laird placed its program Captain Midnight on KTTV. Despite the must-buy rules it was free to do so at the time because the particular CBS affiliate, KNXT, had not cleared for Tatham-Laird the clock time which Tatham-Laird had ordered on the network.

(2) As Mr. Moore testified, Mr. Bolas did telephone Mr. Moore, and in that conversation Mr. Bolas made reference to the unrelated program, Tales of the Texas Rangers. Mr. Bolas "pointed out that we [Tatham-Laird] had no desire to create an unfavorable climate for our negotiations on Tales of the Texas Rangers by insisting on a continued dparture from the published, and agreed upon, network clearance policies of CBS."

(3) Thereafter Tatham-Laird did move the program Captain Midnight to the CBS station in Los Angeles, KNXT.

(4) Tatham-Laird successfully concluded its negotiations with CBS for clearance of network time for Tales of the Texas Rangers, and that program duly went on the CBS Network and KNXT.

Thus, based on the statement of facts contained in Mr. Bolas' letter, the following points are clear:

(1) Under the operation of the must-buy policy, the program Captain Midnight was switched to the CBS station KNXT; thus KTTV lost a program because, as Mr. Bolas stated, "It was obvious to me that any new

contract would automatically include a requirement for our client to order all basic CBS stations including Los Angeles."

(2) Mr. Bolas, a skilled and seasoned buyer of television time, who represents major companies which make large expenditures for advertising on television, apparently felt that further insistence upon a departure from the "must-buy" policy in the case of Captain Midnight could "create an unfavorable climate for our negotiations on Tales of the Texas Rangers." Thus, an experienced advertising agency executive was concerned about a possible relationship between the apparently unrelated situations, despite the fact that Tatham-Laird was "never threatened or informed in any way by CBS" that "we were jeopardizing the possible time-period clearance of Tales of the Texas Rangers unless we moved Captain Midnight to the CBS network station in Los Angeles."

Good television time on the CBS network is scarce. The degree to which CBS and NBC control good advertising time, nationally, has already been demonstrated. The fact that a representative of major television advertisers, in the position of buyer not seller, saw the need for avoiding an "unfavorable climate" with the network in connection with placement of two unrelated programs on CBS, is the essence of KTTV's point. We do not know how many other advertising executives are similarly concerned about a possible "unfavorable climate" in situations like this.

In the days of certain memorable shortages, the best means by which a prospective purchaser could avoid an "unfavorable climate" for the purchase of a bottle of good Kentucky bourbon was to make a simultaneous purchase of inferior rum.

Incidentally, as of October 1956, the Captain Midnight program is no longer placed by Tatham-Laird on the CBS network, but rather is scheduled on a national spot basis in a number of markets. It is interesting to note that the program under theses circumstances has in Los Angeles been moved off KNXT, the CBS outlet, and has been returned to KTTV. As a significant footnote to this entire incident, this ultimate decision by the sponsor clearly spells out the following conclusion:

The sponsor of the Captain Midnight program, freed of the compulsive "must-buy" restrictions, is enabled to choose his Los Angeles station solely on his and his agency's appraisal of the particular circumstances in that market, without conditioning his Los Angeles station choice upon what stations he uses in other markets.

20. CBS memorandum, page 28:

The KTTV statement "alleges that network practices make the nonnetwork advertiser a second-class citizen, prevent medium seized and small advertisers from using television, and result in the networks' having undue control over the advertiser's choice of programs and station outlets."

KTTV reply:

1. The CBS memorandum points out that many large companies refrain from using television as a matter of choice and that many other large advertisers, as a matter of free choice, prefer to use national spot television rather than network television.

The KTTV statement, of course, was not concerned with those advertisers who elect to use no television or no network television as a matter of free choice. The KTTV statement was concerned with those many advertisers who would like to use television, and for whom the use of television might be vital to the success of their respective businesses, but who are restricted to the second-class use of television because of the network practices. Among these would be the type of company referred to by Mr. Sylvester Weaver when he said (tr. 1615):

"If television were limited, for instance, in the soap field only to the big three, other companies would go out of business, literally go out of business. They could not compete without television, in terms of selling."

The essence of the KTTV argument on this point, on which CBS has virtually refrained from commenting, is as follows: The network evening option hours represent "the best time" for television viewing. These are the hours when the advertiser can reach most consumers and the only time in which he can reach many consumers. (See discussion by Dr. Stanton, tr. 3497).

In connection with his description of these hours as "the best time," Dr. Stanton testified (tr. 3496):

"I think that is determined pretty much by what the public does. There are more people to a television set after dinner than there would be in the afternoon."

Those "more people" obviously include such prospective purchasers of goods as the workingman who has been at his job all day and the housewife who has been busy with her chores. The hours between dinner and bedtime are the hours when these potential customers can conveniently collect around the family television set. Yet, these are the hours when the programs selected at network headquarters in New York, and sold almost exclusively to national advertisers, thoroughly saturate the program schedules of the affiliated stations serving the local communities of the land.

With rare exceptions, therefore, only the advertiser who, through merger or otherwise, has grown large enough to buy a network program and a minimum basic-required network can sponsor a program in these first-class hours. And where a local advertiser does succeed in obtaining a single half hour in a single community, he proceeds under the continuing threat of being dispossessed by a network program. Ironically, the network advertiser might even be one of his large competitors.

2. For the reasons described above, even where a nonnetwork advertiser can obtain a half hour of prime time on a local station, he is confronted with the diminishing supply of quality programs with which to compete for audience against network programs. Examples of these are the four local advertisers described by Mr. Harris of KPRC–TV, Houston.

More than most network affiliates, KPRC has made it a practice to reserve some prime time for nonnetwork advertisers, but as Mr. Harris testified (tr. 4518):

"At the moment we have four class A half hours that are sold to local sponsors that we are trying to find good first-rate, first-run productions for next fall. So far there is only one film syndicator, to my knowledge, who has come up with a show that is not a rerun of a network."

In this instance, the advertisers had obtained the time, but apparently all that was available to them for programing was what Mr. Harris described as "the shopworn commodity" that is offered to local stations.

Thus, from a standpoint of equivalent times and equivalent programs, the nonnetwork advertiser is indeed effectively rendered a second-class citizen in terms of access to television advertising.

CONCLUSION

In simple terms, the principal recommendations submitted by KTTV would eliminate the "must-buy" requirement and would limit a concentration of programs from a single program source to not more than 75 percent of any of the four established segments of the broadcast day and of the nighttime period of 7:30 to 10:30 p. m.

The wholesome effects which would follow from a proposal like this need not be a matter of guesswork. Actual examples of what happens when some prime time is made available for nonnetwork use are found in the record in the instances of KLIX–TV, Twin Falls, Idaho, and KDKA–TV, Pittsburgh, Pa.

The story of KLIX–TV, as told by its vice president and general manager, Mr. Frank C. McIntyre, is set forth in Dr. Stanton's testimony (tr. 3261–3268). Mr. McIntyre's narrative dealt with the benefits that resulted for his station from extended program service from the networks, but his story is of paricular interest as a picture of what can happen for the benefit of the local advertiser, the local community, the local station, and the independent program producer when the network saturation of prime time is not complete.

KLIX–TV serves a market of only 6,300 families and is not ordered by all network advertisers. Thus, some prime time is open for nonnetwork use, and some of the results of that situation, according to Mr. McIntyre, are as follows:

1. Having started with nothing but debts, the station is operating in the black and is in sound financial condition.

2. Products advertised on KLIX–TV, by means of national network programs, started cutting into the sales of nonadvertised products. To counteract the pressure of network advertising in the area, the station has been able to obtain advertising revenues from other national, regional, and local advertisers.

3. Local business concerns are able to buy top syndicated programs like I Led Three Lives and Highway Patrol in good time periods just like the network sponsors of Jack Benny and Ed Sullivan.

The key to this happy situation is that KLIX–TV is able to make equal television opportunity available to small advertisers as well as large, nonnetwork as well as network, because its prime time is not saturated by network programs.

Even if a station were ordered for all programs of a particular network, it could continue to accommodate both network and nonnetwork programs in the KLIX–TV manner, simply by an equitable apportionment of hours within and outside the 7: 30 to 10: 30 period as between network and nonnetwork programs and advertisers.

In the large city of Pittsburgh, there is only one VHF station—KDKA–TV. As a result, good time on television in Pittsburgh is a particularly rare and precious commodity to both the program producer and the advertiser.

It appears from the transcript that approximately 18 half-hours between 7: 30 and 10: 30 p. m. are made available by KDKA–TV to nonnetwork programs and nonnetwork advertisers. In that connection, the testimony of Mr. Donald H. McGannon, president of Westinghouse Broadcasting Co., Inc., licensee of KDKA–TV, is relevenant (tr. 4182–4183):

"Mr. Cox. And you clear for these independent and local programs because you consider them superior programing for the people of the community, even over the offerings of all three networks?

"Mr. McGannon. Yes. In light of the fact that we have such a basic limitation of local hours due to only one facility in town. So we think it is important to have in prime time, since there are no other facilities available, an opportunity to have some local programs aired for local advertisers as well as for local programing purposes.

"Mr. Cox. Now do you think that the film programs that you present in that prime period are high-quality programing, in terms of entertainment and other values, which are in the interest of the public in Pittsburgh?

"Mr. McGannon. In general I do; yes.

"Mr. Cox. Now, do you think that the producers of these programs might have some difficulty in getting access for these programs in other areas of 3 or 4 stations where the stations in the market are subject to option time for the period 7: 30 to 10: 30?

"Mr. McGannon. Insofar as live clearance on a local basis in the individual option hours? Yes, obviously, the time is optioned to the network."

The enlightened approach of KDKA–TV could be followed by stations everywhere if the KTTV proposals were adopted, at least to the extent of assuring 10 half-hours per week in the 7: 30–10: 30 period for nonnetwork programs and nonnetwork advertisers. At the same time, on the basis of average existing clearance in major markets, a network like CBS could clear 4 more half hours on its affiliates between 6 p. m. and 11 p. m. (class A time) than it does now. All that is needed is a simple reallocation by the station of some of the time periods which are respectively assigned to network and nonnetwork programs. As a practical matter, the network programs thus affected (by being moved to the 6–7: 30 time or 10: 30–11 time) would be film programs for which simultaneous transmission in all markets is unnecessary. Such a plan need not interfere with any requirements of the network for simultaneous transmission of live programs.

The result of such an approach would restore to the television medium two principles which are basic to the American concept of free broadcasting.

1. The station licensee would indeed be the judge of its own program schedule, and the more desirable programs would inevitably find their way into the time periods which best suit the wishes of the local public.

2. A degree of equality of opportunity would be created for nonnetwork program producers and the nonnetwork advertisers, just as happened in Twin Falls. Moreover, in those cities where the spectrum does permit more than three stations, the independent station would have an opportunity to acquire new high-quality programs, because such programs would have a fair opportunity to clear good time in all other markets. If the independent station does not have a source of quality programs, then for economic reasons the public may find itself without a fourth station even in those markets where the spectrum would make such a station possible.

The voluminous testimony and related papers presented by CBS, like the testimony and supporting papers of all witnesses representing networks and network affiliates, contain not a single suggestion for any change whatever in the status quo, as represented by the chain broadcasting regulations which were transplanted from radio in 1945.

Conditions which serve to restrict freedom of competition and equality of opportunity in any medium of communications and information are particularly repugnant. Television, the most dynamic medium of all, already suffers from the severe restrictions imposed by the spectrum itself. It is therefore doubly important that it be freed of any curable factors which further compress competitive opportunity.

KTTV believes that the status quo in television can be improved. To that end we have made suggestions in good faith. We hope others will do so. And we respectfully urge that the committee give serious consideration to affirmative solutions which will improve and enhance the use and the potential of the American television medium on a free competitive basis.

Respectfully submitted,

KTTV, Inc.

Los Angeles, Calif., *October 29, 1956.*

EXHIBIT A

CBS network program clearance on the 52 basic-required affiliates: Evening network option time, Feb. 19–25, 1956

Market	Number of commercial stations (V=VHF U=UHF)	Number of evening half hours contractually subject to option	Number of half hours of CBS network-sponsored programs ordered within contractual evening option time	Number of half hours of CBS network-sponsored programs carried as ordered in contractual evening option time	Percent of CBS network-sponsored program half hours carried as ordered in contractual evening option time	Percent of CBS contractual network-option time occupied by CBS network-sponsored programs	Percent of contractual evening-option time available to nonnetwork programing [1]	Market rank [2]	Number of TV homes [2]
New York	7V	42	41	41	100.0	97.6	2.4	1	4,431,652
Chicago	4V	42	41	41	100.0	97.6	2.4	2	2,033,640
Los Angeles	7V	42	41	41	100.0	97.6	2.4	3	1,939,593
St. Louis	2V, 1U	42	41	41	100.0	97.6	2.4	9	766,367
Houston	3V	42	41	41	100.0	97.6	2.4	15	404,637
Milwaukee	2V, 1U	42	41	41	100.0	97.6	2.4	17	595,057
Seattle-Tacoma	4V	42	41	41	100.0	97.6	2.4	24	417,724
Memphis	2V	42	41	41	100.0	97.6	2.4	42	374,664
Detroit	3V [3]	42	41	40	97.6	95.2	4.8	5	1,356,120
Baltimore	3V	42	41	40	97.6	95.2	4.8	12	645,416
Minneapolis	4V	42	41	40	97.6	95.2	4.8	13	570,822
Kansas City	3V	42	41	40	97.6	95.2	4.8	18	465,219
Atlanta	3V	42	41	40	97.6	95.2	4.8	23	536,213
Dallas-Fort Worth	4V	42	41	40	97.6	95.2	4.8	21	540,930
Providence	2V	42	41	40	97.6	95.2	4.8	27	649,281
Tampa-St. Petersburg	2V, 1U	42	41	40	97.6	95.2	4.8	39	183,108
Syracuse	2V	42	41	40	97.6	95.2	4.8	58	362,340
Sacramento	2V, 1U	42	41	40	97.6	95.2	4.8	56	357,195
Nashville	3V	42	41	40	97.6	95.2	4.8	63	240,960
Cleveland	3V	42	41	40	97.6	95.2	4.8	11	1,146,150
Indianapolic-Bloomington	3V	42	41	40	97.6	95.2	4.8	30	629,280
Philadelphia	3V	42	41	39	95.1	92.9	7.1	4	1,795,680

Washington	4V	42	41	39	95.1	92.9	7.1	10	607,765
Cincinnati	3V	42	41	39	95.1	92.9	7.1	16	573,480
Birmingham	2V	42	41	39	95.1	92.9	7.1	31	300,400
Des Moines-Ames	3V	42	41	39	95.1	92.9	7.1	92	195,924
Wichita-Hutchinson	3V, 1U	42	41	38	92.7	90.5	9.5	69	196,969
Portland	2V, 1U	42	41	38	92.7	90.5	9.5	22	293,047
San Antonio	2V, 1U	42	41	38	92.7	90.5	9.5	36	182,635
Rochester	3V	42	41	38	92.7	90.5	9.5	43	293,220
Dayton	2V	42	41	38	92.7	90.5	9.5	44	476,010
Boston	2V, 1U	42	41	37	90.2	88.1	11.9	6	1,278,119
Buffalo	2V, 1U	42	41	37	90.2	88.1	11.9	14	470,529
Kalamazoo-Grand Rapids	2V	42	41	37	90.2	88.1	11.9	142	462,976
Omaha	2V	42	41	37	90.2	88.1	11.9	53	301,050
Rock Island-Davenport	2V	42	41	37	90.2	88.1	11.9	90	281,733
Charleston-Huntington-Oak Hill	4V	42	41	37	90.2	88.1	11.9	65	336,721
San Francisco	3V, 1U	42	41	36	87.8	85.7	14.3	7	905,902
Tulsa-Muskogee	3V	42	41	36	87.8	85.7	14.3	74	271,517
Columbus	3V	42	41	36	87.8	85.7	14.3	35	500,400
Oklahoma City	2V	42	41	35	85.3	83.3	16.7	55	270,564
Norfolk-Portsmouth-Newport News-Hampton	1V, 2U	42	41	35	85.3	83.3	16.7	41	253,224
Toledo	1V	42	41	34	82.9	81.0	19.0	51	352,620
Jacksonville	1V, 1U	42	41	34	82.9	81.0	19.0	54	279,889
Denver	4V	42	41	34	82.9	81.0	19.0	26	222,216
Miami-Fort Lauderdale	1V, 2U	42	41	33	80.5	78.6	21.4	25	301,439
San Diego	2V [4]	42	41	32	78.0	76.2	23.8	19	305,460
Louisville	2V	42	41	31	75.6	73.8	26.2	28	500,600
Salt Lake City	3V	42	41	31	75.6	73.8	26.2	72	182,921
Greensboro-High Point-Winston-Salem	2V, 1U	42	41	30	73.2	71.4	28.6	103	312,250
Charlotte	1V	42	41	28	68.3	66.7	33.3	99	528,210
Shreveport	2V	42	41	22	53.7	52.4	47.6	91	152,831

[1] These percentage figures relate to time periods actually unoccupied by network programs during the sample week. Pursuant to the affiliation agreements such time periods nevertheless remain subject to network option for a network-sponsored program on 56 days' notice, even though currently occupied by a nonnetwork program.

[2] Market rank and the number of TV homes are supplied in order to indicate the degree to which network saturation exists in areas where the greater numbers of TV homes are located.

[3] Detroit also covered by CKLW-TV, Windsor (V).

[4] San Diego also covered by XETV, Tijuana (V).

Cases on 1 or more stations in the mountain or Pacific time zones where the station clears for the network on a simultaneous basis and the local release falls outside contractual option time (e. g., $64,000 Question, broadcast 10 to 10:30 p. m., e. s. t. and released on the Pacific coast 7 to 7:30 p. m., p. s. t., Tuesdays) are treated as clearances within option time in the sense that the station surrenders a half hour of station time in exchange for a half hour of network option time.

Sources: Number of commercial stations, Standard Rate and Data Service, Feb. 10, 1956; clearance figures, published station logs; market rank, Sales Management, May 10, 1956; number of TV homes, Television magazine, January 1956.

EXHIBIT B

(Excerpt from pamphlet entitled "Advertising's All-Purpose Working Tool" distributed by Television Bureau of Advertising at a meeting of NARTB, Chicago, April 18, 1956, in conjunction with address delivered by TVB president, Oliver Treyz)

Socony Mobil Theatre clearance—Ordered, October 1955, started November 1955

Market	Station	Day
7:00 to 7:30 p. m.:		
Champaign, Ill	WCIA	Friday.
Cleveland, Ohio	WXEL	Monday.
Columbus, Ohio	WTVN-TV	Saturday.
Dayton, Ohio	WLW-D	Wednesday.
Denver, Colo	KOA-TV	Thursday.
Fort Wayne, Ind	WKJG-TV	Friday.
Indianapolis, Ind	WTTV	Monday.
7:30 to 8 p. m.:		
Cincinnati, Ohio	WKRC-TV	Tuesday.
Quincy, Ill	KHOA-TV	Friday.
South Bend, Ind	WSBT	Monday.
8 to 8:30 p. m.:		
Cape Girardeau, Mo	KFVS-TV	Saturday.
Fort Dodge, Iowa	KQTV	Tuesday.
Great Bend, Kans	KCKT-TV	Sunday.
Great Falls, Mont	KFBB-TV	Tuesday.
Lansing, Mich	WTOM-TV	Sunday.
Minot, N. Dak	KCJB-TV	Tuesday.
Springfield, Ill	WICS	Wednesday.
Waterloo, Iowa	KWWL	Tuesday.
Wausau, Wis	WSAU-TV	Wednesday.
8:30 to 9 p. m.:		
Evansville, Ind	WEHT	Friday.
Fargo, N. Dak	WDAY-TV	Do.
Green Bay, Wis	WBAY-TV	Wednesday.
Hastings, Nebr	KHAS-TV	Tuesday.
Kalamazoo, Mich	WKZO-TV	Do.
Madison, Wis	WMTV	Saturday.
Memphis, Tenn	WHBQ-TV	Friday.
Muncie, Ind	WLBC-TV	Thursday.
Rapid City, S. Dak	KOTA-TV	Do.
Rockford, Ill	WTVO	Do.
Sioux Falls, S. Dak	KELO-TV	Sunday.
Wichita, Kans	KAKE-TV	Friday.
9 to 9:30 p. m.:		
Bismarck, N. Dak	KBMB-TV	Do.
Colorado Springs, Colo	KKTV	Sunday.
LaCrosse, Wis	WKBT	Do.
Lima, Ohio	WIMA-TV	Do.
Missoula, Mont	KGVO-TV	Monday.
9:30 to 10 p. m.:		
Bay City, Mich	KNEM-TV	Tuesday.
Cheyenne, Wyo	KFBC-TV	Sunday.
Chicago, Ill	KBKB	Do.
Davenport, Iowa	WOC-TV	Do.
Des Moines, Iowa	WHO-TV	Do.
Duluth, Minn	WDSM-TV	Monday.
Grand Junction, Colo	KFXJ-TV	Tuesday.
Kansas City, Mo	KCMO-TV	Thursday.
Milwaukee, Wis	WTMJ-TV	Wednesday.
Minneapolis, Minn	WCCO-TV	Saturday.
Nashville, Tenn	WSIX-TV	Sunday.
Peoria, Ill	WEEK-TV	Monday.
Sioux City, Iowa	KTIV	Do.
Springfield, Mo	KTTS-TV	Friday.
Topeka, Kans	WIBW-TV	Monday.
Traverse City, Mich	WPBN-TV	Wednesday.
10 to 10:30 p. m.:		
Billings, Mont	KOOK-TV	Do.
Butte, Mont	KXLF-TV	Do.
Detroit, Mich	WJBK-TV	Do.
St. Louis, Mo	KSD-TV	Sunday.

Exhibit C

Clooney Station List

Market	Station	Time
Abilene, Tex	KRBC-TV	8:30 to 9 p. m., Sunday.
Albany, Ga	WALB-TV	8 to 8:30 p. m., Friday.
Albuquerque, N. Mex	KOB-TV	8 to 8:30 p. m., Thursday.
Atlanta, Ga	WAGA-TV	10 to 10:30 p. m., Monday.
Bakersfield, Calif	KERO-TV	7:30 to 8 p. m., Sunday.
Big Spring, Tex	KBST-TV	9:30 to 10 p. m., Saturday.
Birmingham, Ala	WBRC-TV	6:30 to 7 p. m., Saturday.
Bismarck, N. Dak	KFYR-TV	9 to 9:30 p. m., Wednesday.
Bluefield, W. Va	WHIS-TV	Do.
Charlotte, N. C	WBTV	10:45 to 11:15 p. m., Sunday.
Chico, Calif	KHSL-TV	8 to 8:30 p. m., Friday.
Columbia, S. C	WIS-TV	7:30 to 8 p. m., Tuseday.
Columbus, Ga	WDAK-TV	9:30 to 10 p. m., Monday.
Corpus Christi, Tex	KVDO-TV	9:30 to 10 p. m., Saturday.
Dallas, Tex	WFAA-TV	8:30 to 9 p. m., Monday.
Duluth, Minn	KDAL-TV	7:30 to 8 p. m., Tuesday.
El Paso, Tex	KTSM-TV	7 to 7:30 p. m., Sunday.
Eureka, Calif	KIEM-TV	9 to 9:30 p. m., Friday.
Fargo, N. Dak	KXJB-TV	9 to 9:30 p. m., Monday.
Florence, S. C	WBTW	10 to 10:30 p. m., Thursday.
Fort Myers, Fla	WINK-TV	7 to 7:30 p. m., Sunday.
Fresno, Calif	KFRE-TV	7:30 to 8 p. m., Tuesday.
Honolulu, Hawaii	KGMB-TV	9:30 to 10 p. m., Saturday.
Houston, Tex	KPRC-TV	8:30 to 9 p. m., Wednesday.
Huntington, W. Va	WSAZ-TV	9:30 to 10 p. m., Tuesday.
Jacksonville, Fla	WMBR-TV	10 to 10:30 p. m., Thursday.
Johnson City, Tenn	WJHL-TV	10:30 to 11 p. m., Tuesday.
Joplin, Mo	KSWM-TV	9:30 to 10 p. m., Tuesday.
Kansas City, Mo	WDAF-TV	9:30 to 10 p. m., Wednesday.
Los Angeles, Calif	KTTV	9 to 9:30 p. m., Tuesday.
Lubbock, Tex	KCBD-TV	9 to 9:30 p. m., Saturday.
Miami, Fla	WTVJ	10:30 to 11 p. m., Wednesday.
Minneapolis, Minn	WCCO-TV	9 to 9:30 p. m., Monday.
Monroe, La	KNOE-TV	6 to 6:30 p. m., Sunday.
Montgomery, Ala	WSFA-TV	9:30 to 10 p. m., Friday.
Odessa, Tex	KOSA-TV	9 to 9:30 p. m., Monday.
Orlando, Fla	WDBO-TV	10:30 to 11 p. m., Sunday.
Pensacola, Fla	WEAR-TV	9 to 9:30 p. m., Thursday.
Sacramento, Calif	KBET-TV	7 to 7:30 p. m., Saturday (3 out of 4 weeks). 9:30 to 10 p. m., Saturday (4th week).
Salinas, Calif	KSBW-TV	9 to 9:30 p. m., Tuesday.
San Antonio, Tex	WOAI-TV	9:30 to 10 p. m., Friday.
San Diego, Calif	XETV	9 to 9:30 p. m., Wednesday.
San Francisco, Calif	KPIX	9:30 to 10 p. m., Sunday.
Santa Barbara, Calif	KEY-TV	8:30 to 9 p. m., Wednesday.
Savannah, Ga	WTOC-TV	9 to 9:30 p. m., Monday.
Shreveport, La	KSLA-TV	9:30 to 10 p. m., Wednesday.
Sioux Falls, S. Dak	KELO-TV	6:30 to 7 p. m., Friday.
Spartanburg, S. C	WSPA-TV	8:30 to 9 p. m., Thursday.
Springfield, Mo	KYTV	7 to 7:30 p. m., Thursday.
Tallahassee, Fla	WCTV	9:30 to 10 p. m., Sunday.
Tampa, Fla	WFLA-TV	9:30 to 10 p. m., Monday.

12. "Memorandum Concerning Time Options, the Must-Buy Practice and the Public Interest" Submitted by Mr. Moore

Memorandum Concerning Time Options, the Must-Buy Practice and the Public Interest

On March 26, 1956, KTTV presented testimony before the committee and recommended certain changes in the chain broadcasting regulations of the Federal Communications Commission. Subsequently, the president of each of the three television networks and representatives of certain stations affiliated with those networks presented testimony uniformly opposing the recommendations made by KTTV. None of the witnesses made any affirmative suggestion for pertinent change in these regulations which, in their present form, were made applicable to television network broadcasting in 1945.

The testimony of the three network presidents and the network affiliated stations was voluminous and detailed. In the opinion of KTTV, the most detailed reply was contained in the testimony and related documents presented by Dr. Frank Stanton, president of Columbia Broadcasting System, Inc. KTTV has filed a separate memorandum commenting on the CBS testimony and documents insofar as they relate to the issues discussed by KTTV. With respect to the information supplied by other network witnesses, KTTV believes that its comments on the CBS presentation sufficiently indicate the KTTV position.

The purpose of this memorandum is to make certain brief observations in response to the following highly relevant comment made during the hearings by Senator Pastore (tr. 3491, 3492):

"Senator PASTORE. May I interject again here? Let's assume we take this 3-hour option time; let's say we cut it down to 2 hours. Where is the public service being served either one way or the other?

"I wish that would be expounded on somewhat; even if the counsel has some ideas on it, I would like to hear them. I mean what do we do, what do we accomplish, what do we have to do. I am not interested in CBS as such. I am not interested in the independent producers as such. My job here is to protect the people of the United States and to see they get the best kind of service in every particular where the United States Government is interested as such.

"I am interested in the public interest here.

"Now, how do we better serve the public interest with or without option time, or by cutting it down or expanding it? Can I get some elaboration on that? Let's think of Mr. Average American here."

In an effort to answer Senator Pastore's question, KTTV makes two major points:

1. Network practices have transformed television into a purely national medium during the public's most convenient viewing hours. The KTTV proposals will restore the potential of television as a local medium without impairing its national service.

2. Network practices have vested in three companies the absolute power to decide what the American public shall and shall not see during its most convenient viewing hours. The KTTV proposals will give greater freedom of choice to the American public by opening the television medium to all creative sources.

I. TELEVISION AS A NATIONAL MEDIUM

The purely national nature of network television was unequivocally stated to the committee by the network presidents themselves:

CBS

"Dr. STANTON. A network renders its service to nothing else, and nothing smaller, than the national American public" (tr. 3125).

* * * * * * *

"Well, I am driving at the point that we are talking here about—networks—and our public is a national public rather than a local public" (tr. 3131).

NBC

"Mr. SARNOFF. The network service is national in character. Its operation is distinctive in that it furnishes a program service for simultaneous national broadcast" (tr. 3527).

* * * * * * *

"It may be useful, however, to repeat here in capsule form what NBC does.

"Its business is to conduct a *national* advertising service through television. In order to do this, it does the following: (1) For the benefit of advertisers, NBC provides for the simultaneous exposure of programs over affiliated stations throughout the country by taking options on the time of these stations in minimum packages of three 3-hour intervals a day, under contracts voluntarily made by individual stations. (2) In order that NBC may be a *national* network, advertisers are required to buy national circulation during this option time in the form of a minimum basic network of 56 stations. (3) In order to maintain a national network of stations with broad circulation, NBC prepares and presents a full program service to its affiliated stations, whether sponsored or not." [Emphasis is NBC's] (NBC Memorandum of Law, p. 6.)

ABC

"Mr. KINTNER. Basically networks are national program services requiring millions of dollars of investment in overhead in order to supply programing on a national basis" (tr. 3758).

The essential national nature of the network to both the public and advertiser could not be pictured more bluntly or more frankly than by the constant references of the network witnesses to a supposed comparison between a television network and a national magazine like Life or the Saturday Evening Post.

While the analogy is appropriate in the sense that the networks have turned the prime time on the television airwaves into a sort of Life magazine or a Saturday Evening Post of the air, it was introduced by the networks for a different purpose: To justify two perogatives which they enjoy:

(*a*) Just as the publishers of Life and the Saturday Evening Post determine what the public may read in their magazines in all parts of the country, the network officials determine what the public may see on their networks in all parts of the country.

(*b*) Just as Life and the Saturday Evening Post require that an advertiser's message be uniformly reproduced and distributed in all parts of the country, the networks require that an advertiser uniformly place his message on the entire basic-required network throughout the country.

These comparisons are appropriate only in that the practices are similar in both cases. To make the analogy real, in terms of the effect upon the American people, we must assume certain additional facts, which would truly make a national network comparable to a Life or a Saturday Evening Post

A. With respect to editorial content, let us assume:

1. That the printing press involved a scarcity factor, so that there could be only 2 or 3 magazines in existence, as there are only 2 or 3 networks.

2. That during the most convenient leisure hours of the evening (7:30 to 10:30 p. m.) the average American citizen were required to read either Life or the Saturday Evening Post (in some cities he might also read Collier's) or not read at all.

3. That if a citizen wished to read a local newspaper, a book, a farm journal, or any other publication, he could generally do so only late at night, or during a brief period surrounding the supper hours, or during the daytime except for 6 hours which were optioned by the Saturday Evening Post, Life magazine, or Collier's.

If these seemingly fantastic conditions were real, then the analogy to Life or the Saturday Evening Post would be valid because these are precisely the conditions which apply in the public and scarce and vital medium of television.

Only by presenting this analogy in its true nature can we access the control which networks exert. For we can readily see that if these conditions applied in the magazine publishing field, the public would effectively be denied the fruits of all literary creativity except what pleased the editors of 2 or 3 publications. It is such stultifying effects on creativity in television which KTTV seeks to remove for the ultimate benefit of all of the public.

B With respect to the field of advertising, we must not only assume the above conditions, but we must assume:

1. That Life or the Saturday Evening Post were actually made up of 52 separately owned local newspapers in 52 different communities.

2. That in all but a few American communities a scarcity factor pre-empted the existence of all but 1 or 2 or 3 such local newspapers.

3. That each of these local newspapers needed the service provided by Life or the Saturday Evening Post as a matter of economic survival.

4. That each of these local newspapers agreed to publish only material provided by Life or the Saturday Evening Post on the first three pages of the newspaper.

5. That the local newspaper had limited discretion to reject items so provided, but that a high rate of rejection might jeopardize the continuance of its association with Life or the Saturday Evening Post, and that in such event the newspaper could anticipate, at best, the biweekly service of a Collier's.

6. That an advertiser could not buy competitive advertising space in any one of these local newspapers without buying similar space in all.

7. That an advertiser (large or small, national, or local) who, dealing directly with the local newspaper, might occasionally obtain desirable space on the pages reserved for Life or Saturday Evening Post clients, could be evicted from that space in favor of an advertiser provided by Life or the Saturday Evening Post, and relegated to the back pages.

If these seemingly fantastic conditions were real, in the magazine publishing field—and if a magazine were as scarce and as powerful an advertising factor as television—then we can readily see the restrictive effects upon American competition which would inevitably result. Yet these are the conditions which actually do exist in television and which the KTTV proposals seek to remove thereby resulting in inevitable benefit to the public.

II. NETWORK CONTROL OF PROGRAM CHOICE

KTTV's testimony and reply memoranda have shown that affiliated stations, serving up to 80 percent of the Nation's television homes, carry those programs selected by the network at the time ordered by the network during the prime evening hours.

No matter how benevolent the chief executives of the three networks may be, network practices vest in them an arbitrary control which would be fearful and wrong even if their program decisions, by some magic, were always right.

The KTTV proposals are designed to provide full opportunity for the public to select the best possible programs. They would accomplish this by opening the prime viewing hours for programs from all sources, rather than the programs preselected by three individuals. The inevitable result would be a wider choice of opportunity for public decision, and the gradual evolution of the best programs into the best time periods, whatever their source.

There is no one qualified to speak in advance for the public taste. This proposition is self-evident, but we cite one example to prove it is true.

Recently KTTV acquired television rights in Los Angeles to the great motion pictures of Metro-Goldwyn-Mayer. It presented the first such picture (Thirty Seconds Over Tokyo), to the Los Angeles audience the evening of Friday, October 12, 1956, from 8 p. m. to approximately 10:30 p. m. During this same time 12 regularly scheduled network programs were broadcast on the 3 network stations in Los Angeles. These were the programs which each of the networks thought would please the public most.

Almost twice as many Los Angeles homes preferred to watch, and did watch, Thirty Seconds Over Tokyo on KTTV as watched the competing programs on all three network stations put together.

The American Research Bureau conducted an extensive telephone coincidental survey (a thoroughly accepted form of audience research) during the time this motion picture was being broadcast. The following is a tabulation of the results indicating that the size of the audience watching KTTV and each of the competing network stations, respectively. The figures, based upon an accepted sampling technique, indicate the percentage of the approximately 2 million television homes in the Los Angeles community watching each station at the time indicated.

8 to 8:30 p. m.:	
KNXT (CBS): West Point Story	6.4
KRCA (NBC): Crunch and Des	6.4
KABC (ABC): Jim Bowie	8.1
KTTV: Thirty Seconds Over Tokyo	26.0
8:30 to 9 p. m.	
KNXT (CBS): Zane Grey Theater	5.2
KRCA (NBC): Walter Winchell	8.8
KABC (ABC): Crossroads	5.5
KTTV: Thirty Seconds over Tokyo	29.0
9 to 9:30 p. m.:	
KNXT (CBS): The Crusader	12.7
KRCA (NBC): Political	8.3
KABC (ABC): Treasure Hunt	1.7
KTTV: Thirty Seconds Over Tokyo	29.0
9:30 to 10 p. m.:	
KNXT (CBS): Playhouse of Stars	7.4
KRCA (NBC): The Big Story	4.3
KABC (ABC): The Vise	1.1
KTTV: Thirty Seconds Over Tokyo	37.6
10 to 10:30 p. m.:	
KNXT (CBS): The Lineup	5.4
KRCA (NBC): Juke Box Jury	4.0
KABC (ABC): Ray Anthony Show	2.3
KTTV: Thirty Seconds Over Tokyo	32.4

The MGM pictures represent some of the finest entertainment ever produced by American craftsmen. We understand that rights to these programs were offered to the networks. Whether the networks' decision not to acquire the programs for network broadcast was based upon price or upon judgment of the entertainment values, we do not know. But the result is that the public in cities relying on network service will be given a choice on Friday night only of those programs which the Los Angeles public so overwhelmingly rejected when given a free choice of something else. If the option time requirements were limited then other stations in other markets could present programs which the public also might deem preferable to network programs. The networks, under the spur of such competition, would be required to improve their programs or yield their audience because the public did not agree that what the networks offered them was necessarily the best.

Incidentally, the MGM pictures include classics like David Copperfield, Treasure Island, Huckleberry Finn, Mrs. Miniver, Mutiny on the Bounty, Northwest Passage and many more which will appeal to all the family. But it may be assumed that families in cities like Providence, Louisville, Omaha, and others will have little or no opportunity of gathering around the television set and sharing the enjoyment of such classic entertainment. Unknowingly, these families are missing such an experience as a result of option-time conditions.

The judgment of the networks will differ from judgment of others not only in connection with entertainment programs. In its direct testimony, KTTV related an occasion where KTTV judged the Salk polio conference to be worthy of televising, and the networks did not. As a result, the network audience in the East was deprived of that great event on television, which was watched by countless thousands on the coast. We cite this as an example of the inherent fallacy of entrusting the decisions of what the public will see to 3 companies or 3 men.

Today, October 31, the New York Times published a commentary[1] by its television editor, Mr. Jack Gould, discussing the failure of any of the networks to present television coverage of the crucial session of the United Nations Security Council dealing with the Egyptian crisis. In this case, apparently, none of the three networks deemed the event worthy of live television coverage. Only WPIX, a New York independent station, covered the proceedings on television.

While Mr. Gould's language is strongly condemnatory of the three networks, and laudatory of WPIX, KTTV finds it unnecessary to agree or disagree with Mr. Gould. The point is that, whether the decision of the three networks was good or bad, the power to make the decision lay solely with them.

With automatic control through option time there is no competitive pressure on the network to get there first with the most. By relieving the existing controls, judgments like that of WPIX could be made felt and the networks would have to respond ot public taste or suffer the results which accompany such failure in any competitive field. We are certain they would respond affirmatively to the competitive incentive if it were there.

The networks have many times justified the status quo on the ground that the present network practices make it economically possible for networks to maintain the organizations, the program facilities, and the costly interconnection arrangements which are necessary in order to bring to the Nation simultaneous coverage of just such events as the Salk vaccine announcement and United Nations telecasts. Yet these two significant incidents serve to illustrate that the judgment of the networks with regard to public service is not invariably in accord with the best judgment of others.

Dr. Stanton told the committee (tr. 3285):

"For television, the public is the ultimate monitor—the monitor in chief. What it persistently turns off, cannot be turned on again by any group of network executives, let me assure you."

Dr. Stanton overlooks the fact that what the networks do not turn on, the monitor in chief cannot turn off. The monitor in chief can only make a passive and limited selection among or between those program offerings preselected for him by the 3 or 2 networks.

The direct answer to Senator Pastore's excellent question is this:

If the KTTV proposal—or similar proposals—are adopted, then the public almost overnight will receive the benefits which American competition brings to everything it touches. In terms of programing service—which is the essence of television—the public will be able to choose from among the creative abilities, judgments, energies, and skills of all Americans, not just from the offerings preselected by the chief officers of three particular companies.

Respectfully submitted.

KTTV, Inc.

Los Angeles, Calif., *October 31, 1956*.

[1] See annex A.

ANNEX A

[The New York Times, October 31, 1956]

RADIO-TV: DISGRACE OF THE NETWORKS

CHAINS IGNORE SESSION AT UNITED NATIONS—ONLY WPIX AND WNYC AID PUBLIC INTEREST

By Jack Gould

The gigantic network broadcasting industry—radio and television—disgraced itself yesterday.

Neither the National Broadcasting Co., the Columbia Broadcasting System nor the American Broadcasting Co., with the facilities to enlighten a nation in its own home, carried the crucial late afternoon and evening session of the United Nations Security Council.

On the network television outlets it was the usual run of soap opera, giveaway, movies and commercials; on radio, it was disk jockeys, etc. In short, the national electronic communications system made an absolute mockery of its obligation to serve the public interest. It was stupid, selfish, and irresponsible. When the chips were down, the networks lived in their narrow, narrow world.

In television there was one notable local exception, WPIX, the outlet owned by The Daily News. It carried live the heart of the discussion at the U. N. It did a tremendous job, marred only by its failure to cover adequately the evening session, including the British and French veto of the American resolution.

On radio there was only one local exception—the ever-reliable WNYC, owned by the city of New York. It carried everything from start to finish. If ever there was justification for the tax-supported municipal outlet, it came yesterday. Commercial broadcasting cannot be relied upon.

The value of the WPIX telecast cannot be exaggerated. It was a dramatic, instructive and frightening primer in one of the most complex turning points in history. To the viewer fortunate enough to see the coverage on channel 11 the involved issues, the points of view of large and small powers and the contrasting personalities of the Council delegates were made vividly and comprehensively clear.

Before one's own eyes there occurred the hard-to-believe chain of events that found the Soviet Union and the United States on the same side, Britain and France defending their ultimatum to put troops along the Suez, the brilliant exposition of the Israeli position and the Egyptian appeal for action against Britain and France. The world suddenly seemed to have gone topsy-turvy; thanks to WPIX, a viewer could see it happen. Or, in the case of WNYC, hear it happen.

The WPIX telecast was one that should have been broadcast from coast-to-coast; here was a situation—man's own struggle to avoid a holocaust—which the electronic medium was designed to cover. Here was a chance to report history in closeup, to enable every citizen, old and young alike, to see destiny unfold.

David Sarnoff, chairman of the Radio Corporation of America, NBC's corporate parent; William S. Paley, chairman of the CBS, and Leonard Goldenson, ABC president, are the men who should search their consciences this morning.

Of what use are this country's superb communication facilities if they are not put to work in behalf of the people who own the airwaves? How is a nation to appreciate fully the gravity of world affairs if nothing is allowed to interfere with broadcasting's subservience to the middle commercial? How can the President of the United States impress the world with our concern if we ourselves sit benumbed at home in front of old movies?

Television broadcasters always excuse their inaction on the basis of the cost; it is time they stopped whimpering and acted as grownups. Every journalistic medium has high costs when an emergency occurs; it is part of the overhead that goes with the privilege of having access to the country's minds.

If television economics are in such deplorable state that the networks cannot properly play their part in a crisis, it is time the leaders of broadcasting had a long, hard look at their operations. If television is to be only a parlor carnival, let it say so and stop its pompous proclamations about being in the field of communications. If television does want to be a branch of the Fourth Estate, let it act that way.

P. S.: In erecting its headquarters, the United Nations thought of television and installed the necessary equipment for use by broadcasters. These facilities were available yesterday. The networks simply don't have an excuse for their behavior.

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13. Reply Memorandum of Law Submitted by KTTV, Inc., In Answer to the Memorandum of Laws Filed by NBC and CBS on Applicability of Antitrust Laws to Activities and Practices of Television Networks

(Lloyd N. Cutler, Marshall Hornblower, Samuel A. Stern, Donald F. Turner, Cambridge, Mass., Cox, Langford, Stoddard & Cutler, Washington, D. C., of counsel; October 29, 1956.)

INTRODUCTORY STATEMENT

Under date of March 26, 1956, KTTV, Inc., filed with the committee a brief prepared by its counsel entitled "Memorandum Concerning the Need for Amending the FCC's Chain Broadcasting Regulations to Prevent Violations of Antitrust Law in the Television Industry."

Under date of May 25, 1956, National Broadcasting Co., Inc. (NBC), filed with the committee a brief prepared by its counsel entitled "Memorandum of Law on the Applicability of the Antitrust Laws to Option Time and the 'Basic Network' Sales Policy of Television Networks."

Under date of June 4, 1956, Columbia Broadcasting System, Inc. (CBS), filed with the committee a brief prepared by its counsel entitled "Opinion of Counsel and Memorandum Concerning the Applicability of the Antitrust Laws to the Television Broadcast Activities of Columbia Broadcasting System, Inc."

The KTTV brief charged that certain practices of the network companies violate the antitrust laws, and should be prohibited by appropriate amendments of the FCC chain broadcasting regulations.

The particular practices so attacked are:

(1) The block booking of network programs under the option time provisions of the agreements between the network companies and their affiliated stations; and

(2) The must-buy policy of the network companies, adopted with the knowledge and approval of the affiliated stations concerned, under which advertisers are required to purchase time on approximately 50 or more named stations throughout the country as a condition of purchasing network option time on any one or more of these stations.

The NBC and CBS briefs contend that that no antitrust law violations result from either of the practices alleged. This memorandum replies to the contentions made in the NBC and CBS briefs.[1]

I. BLOCK BOOKING OF NETWORK PROGRAMS UNDER THE OPTION TIME PROVISIONS OF AFFILIATION AGREEMENTS IS A PER SE VIOLATION OF THE ANTITRUST LAWS

A. The question whether the block booking of network programs violates the antitrust laws is not affected by the provision of the FCC chain broadcasting regulations permitting limited use of option time clauses, or by the Supreme Court decision upholding the regulations against network attack.

In May 1941 the Federal Communications Commission issued a Report on Chain Broadcasting. In this report the Commission concluded that time options in radio broadcasting operated against the public interest, and proposed new regulations forbidding their use. In October 1941, however, after the Mutual Broadcasting System had urged that option time be authorized to a limited extent, the Commission issued a supplemental report amending its proposed regulations so as to contain the present provisions permitting a limited degree of option time, and promulgated the regulations as so amended. Thereupon, NBC and CBS brought suits to enjoin enforcement of the regulations as arbitrary and beyond the FCC's power. In February 1943, the Supreme Court rejected the network contentions. *National Broadcasting Co.* v. *United States* (319 U. S. 190 (1943)).

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[1] The CBS brief also defends the network companies against other allegations of antitrust law violations not advanced in the KTTV brief, and therefore not dealt with in this reply memorandum.

The NBC brief appears to argue that this action by the FCC in the field of radio broadcasting, subsequently validated by the Supreme Court, shields the block booking of television network programs under the time option clause from any finding of illegality under the antitrust laws. Any such contention fails on the following counts:

1. Section 313 of the Federal Communications Act makes the antitrust laws specifically applicable to persons engaged in radio communications. The act does not authorize the FCC, by regulation or otherwise, to sanction any act that is illegal under the antitrust laws. As FCC Chairman McConnaughey agreed in recent testimony, the Commission "not only has the obligation * * * to maintain a system of broadcast compatible with the antitrust laws, but it also must assure that none of its regulatory activities immunize practices which otherwise violate the antitrust laws" (transcript of hearings before special subcommittee of the House Judiciary Committee, June 27, 1956, p. 17). Nor does the Commission consider that action by it can make antitrust prosecution impossible (id. at p. 100).

2. When the Supreme Court upheld the validity of the chain broadcasting regulations in the National Broadcasting Co. case, it held only that the Commission had power to issue regulations prohibiting certain provisions in agreements between network companies and licensed radio stations, and that the Commission had not exercised this power arbitrarily. The legality of time options under the antitrust laws was not in issue; it was neither argued nor decided in that case.

3. Nothing to the contrary appears in *Federal Broadcasting System* v. *American Broadcasting Company* (167 F. 2d 349 (2d Cir. 1948), cert. den., 335 U. S. 821 (1948)), cited by NBC. The only issue decided in that case was that plaintiff was not entitled to a preliminary injunction to compel the continuation of special nonaffiliate agreements between plaintiff station and two defendant networks, which had simultaneously cancelled their agreements. Plaintiff alleged that the cancellations were pursuant to a conspiracy. The court of appeals held merely that an insufficient showing of conspiracy had been made out to warrant extraordinary relief. Plaintiff urged incidentally that agreements between the defendant networks and new affiliates contained features violating the antitrust laws.

In rejecting this argument as a basis for the preliminary injunction before trial of the merits, the court observed that the FCC had specifically sanctioned many provisions of the affiliation contracts. The court did not rule on the merits of plaintiff's contention that these conracts contained features violating the antitrust laws, nor did the court state that, if any such violations were found to exist, they would be shielded from attack because of the FCC's regulations. No allegation as to the block booking of television programs was made in the complaint, and the question was not considered by the court.

4. Finally, the chain broadcasting regulations cannot be interpreted as a judgment by the FCC that, although the block booking of feature-film programs is illegal under the antitrust laws, this principle of law is inapplicable to the facts of the television industry. At the time the chain broadcasting regulations for radio were issued in 1941, the latest lower court opinion on the subject of film licensing had found block booking legal under the Sherman Act. *Federal Trade Commission* v. *Paramount Famous-Lasky Corporation* (57 F. 2d 152 (2d Cir. 1932)).[2] The chain broadcasting regulations were made applicable to television in 1945. The Supreme Court's decision in the Paramount case, outlawing block booking as a per se violation of the Sherman Act, did not come down until 1948 (*United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131 (1948)).

B. There is no significant difference between the block booking of network programs under the time option clause and the block booking of feature films held illegal in the Paramount case.

1. It is immaterial that the option time clause in network affiliation agreements does not specifically state that the use of one program is conditional upon the acceptance of another program, since there was a similar absence of

[2] As shown in appendix A to this memorandum, Judge Manton's opinion for the court in this 1932 case justifies the block booking of feature films on almost the identical grounds now advanced by the network companies to justify the block booking of television programs. In the subsequent Paramount case, the three-judge district court said in 1946 it was "not inclined to follow" Judge Manton's earlier opinion (*United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323, 349 (S. D. N. Y. 1946)). The Supreme Court subsequently affirmed the Paramount decision, thus in effect overruling Judge Manton's earlier holding.

a specific contract condition in the block-booking agreements held illegal in the Paramount case.

Both the NBC and CBS briefs point out that the block booking held illegal by the Supreme Court in the Paramount case was defined as the "licensing, or offering for license, one feature or group of features on condition that the exhibitor will also license another feature or group of features released by the distributors during a given period" (334 U. S. at 156). They argue that since no such condition appears in the option time clause of a network affiliation agreement, the block-booking doctrine does not apply.

In fact, there was no such specific condition in the contracts between distributors and theater owners involved in the Paramount case. The court was not striking down the provisions of a contract. The court was condemning a practice of negotiating a contract—namely, the practice of refusing to make a contract covering one picture or group of pictures unless the theater owner agreed to accept another picture or group of pictures. Once this condition was accepted by the theaters, there was no need for including it as an explicit condition in the contracts. These contracts simply stated that the distributor agreed to furnish, and the theater agreed to accept, a certain number of features offered by the distributor during the contract period.[3]

The affiliation agreements between network companies and stations contain similar provisions. In the case of CBS, for example, the affiliation agreements obligate the station to accept "all network sponsored programs offered and furnished to it by CBS television during 'network option time.'" As in the case of film-block booking, this contract is signed as the result of negotiations in which the network company offers to make a particular program or group of programs available only if the station signs an affiliation agreement obligating it to carry all network programs offered during option time.

That this is the actual pattern of the negotiations is clearly indicated by the record before this committee. Thus, Mr. John Hayes, of WTOP-TV, Washington, D. C., a CBS affiliate, answered the questions of committee counsel as follows:

"Mr. Cox. Now, your reason for desiring the affiliation is to get the network programing service featuring principally these highly popular programs; isn't it?

"Mr. Hayes. Yes, sir.

"Mr. Cox. And in order to get that plus its facilities for bringing you live on the spot events as they occur and certain sustaining programs, you option your time and agree to take the other programs in the schedule which are not perhaps so popular as I Love Lucy and Studio One and some of the other outstanding features, your express yourself as being willing in general to clear the time on your station for these other programs which you consider good although they are not as good as the top programs of the network?

"Mr. Hayes. Yes, Mr. Cox" (tr. 3842).

Similarly, the testimony of the network companies before this committee shows that what the network companies offer to their affiliates is not a choice of disconnected individual programs, but a "balanced program service"; that in order to prevent the "erosion" of this service it is necessary for affiliated stations to accept substantially all of the programs offered during option time; and that if the station fails to do so, the affiliation agreement will not be continued. The following excerpts are illustrative:

Robert Kintner, president of ABC

"What we are saying to the affiliates in network option time: that we collectively will program this period. You will have the final decision [as] the affiliate, but as the fair partner to ABC as a network you will go along with us to a reasonable degree. When that disappears, I believe the relationship disappears" (tr. 3781).

Frank Stanton, president of CBS

"Networks supply a balanced program schedule on an effective nationwide basis which dovetails with the local schedule of the independently owned and operated stations comprising the network" (tr. 3206).

* * * * * * *

[3] The contracts are summarized in the appendix to the Supreme Court brief of the United States in the Paramount case.

"While [option time] is not a rigid right, it is vital to the network and to the affiliates because it is the mechanism by which the network has some reasonable assurance of general clearance by stations" (tr. 3273).

Robert Sarnoff, president of NBC

"The network service is based on a planned schedule. It is not just a random assortment of different programs, but an organized structure of programing—similar to the makeup of a national magazine, but of greater scope and variety than any single magazine" (tr. 3527).

* * * * * * *

"It is based on that experience. It is also based on the fact that we have option time which works to clear national lineups for us.

"Senator PASTORE. Well, it is also predicated upon the fact that there is a feeling on the part of the broadcasting station unless they play ball with you, you are not going to play ball with them when renewal time comes around. I mean, let's face it. Isn't that an important element involved?

"Mr. SARNOFF. Well——

"Senator PASTORE. I mean at the time the station ties itself up as an affiliate with you, it knows it has certain responsibility that it has to meet certain of your requirements and requests in order to keep affiliated with you?

"Mr. SARNOFF. Well, let me put it this way, Senator. The station affiliates with us because it wants our service. We affiliate a station because it plays an important role in filling out the market coverage for our advertisers. If we do not provide the service that satisfies the station, then he won't want our service and he won't want the affiliation.

"If he is unable or unwilling to carry our programs so that we are unable to deliver to the advertiser that market he is of no value to us. It is as simple as that" (tr. 3663–3664).

* * * * * * *

"Mr. COX. As a matter of actual practice, isn't your ultimate recourse in the event a station operator for whatever reason, whether he believes it in the interest of his local public or whether he is simply interested in the additional revenues he may get, if he refuses to clear systematically for the network, your final recourse is not legal action but to seek another affiliation arrangement?

"Mr. SARNOFF. That is right" (tr. 3660).

The testimony of the affiliated stations before this committee shows that they also understand the network is providing them not with individual programs from which they may select freely, but with a block of programs, and that the duty of a good affiliate is to accept substantially all of the programs offered. For example:

John Hayes, WTOP, Washington, D. C. (CBS)

"Senator PASTORE. I am not trying to connote anything evil in this, because after all, let's realize the fact that we have to look at this whole picture realistically. But in the community of Washington, if you exercised your exemption to this option on prime time too often would there be any question in your mind that CBS would be looking for another channel in this community, rather than yours?

"Mr. HAYES. Well, I would think, Senator Pastore, if we did that, we would question in our own mind whether we would remain an affiliate.

"Senator PASTORE. They would ask themselves the same question, whether they ought to keep you as an affiliate?

"Mr. HAYES. Yes, sir. I think if you start from the premise we are working partners with each other, we would each by questioning what is going on" (tr. 3831–3832).

* * * * * * *

"Mr. COX. Are you saying that without the option in some way there would be an increased tendency on the part of affiliates to fail to clear network programs?

"Mr. HAYES. Yes, sir" (tr. 3859).

* * * * * * *

"Mr. COX. Well, that is, in other words, you think that the option as it presently works [serves] to effect clearance for a program that would not have made it on its own merits.

"Mr. HAYES. No, sir; I don't think that at all. I think that—we are talking about, not about a specific program, we are talking about an overall comprehensive program schedule. When you start talking about overall program planning,

it is very difficult to pull this one program out of that particular place on the schedule and say this is acceptable, this is not quite as acceptable, this is less acceptable.

"It belongs in a particular place, and at that particular place it is probably more acceptable than it would be elsewhere" (tr. 3860).

Harold Essex, WSJS-TV, Winston-Salem, N. C. (NBC)

"Option time merely amounts to giving to the executive head of the group of stations or its central organization or the independent company performing the programing and sales functions for the group first call on about half of each station's daily time on the air" (tr. 4287).

Owen L. Saddler, KMTV, Omaha, Nebr. (NBC)

"The thing is that option time does work directly to that because a network will program within its option time. It will not program normally within—to a great extent within station time. Therefore, *they are block programing* and are seeing that we do have an overall qualitative type program which you have said" (tr., pp. 4381–4382). [Emphasis supplied.]

The foregoing testimony shows that in television networking today, there is at least an implied requirement that the affiliated station use more than one network program, and a refusal by the network to furnish one or more programs unless other programs are accepted. This negotiating pattern for the block booking of television programs clearly falls within the following language of the Paramount case:

"We do not suggest that films may not be sold in blocks or groups, *when there is no requirement, express or implied, for the purchase of more than one film*. All we hold to be illegal is a refusal to license one or more copyrights unless another copyright is accepted" (*United States* v. *Paramount Pictures, Inc.*, 334 U. S. at 159). [Emphasis supplied.]

Perhaps the clearest evidence of the close parallel between block booking in television and block booking in the film industry is found in the testimony presented to this committee by Mr. Joe Floyd of KELO–TV, Sioux Falls, S. Dak., and KDLO–TV, Florence, N. Dak., both NBC affiliates. Mr. Floyd is a motion-picture theater operator as well as the operator of two television stations. He told the committee that ever since the Supreme Court's decision in the Paramount case, the film producers no longer:

"* * * program or furnish pictures day in and day out to the major theaters they formerly owned or were affiliated with. * * * All television stations should learn by this experience * * *." (tr., pp. 4361–4362).

2. It is immaterial that the option time clause gives the station the right to reject programs which it reasonably believes to be unsatisfactory, unsuitable or contrary to the public interest, since a similar right of rejection was included in many of the very block-booking agreements held illegal in the Paramount case.

Both the NBC and CBS briefs argue that the block-booking doctrine does not apply to network affiliation agreements because these agreements expressly grant the stations the right to reject programs for stated reasons. The NBC and CBS briefs contend that these provisions have been liberally construed by the network companies, and that even during prime evening option time, a substantial percentage of network programs are rejected by the station. Thus, President Frank Stanton of CBS testified that even on the 52 CBS must-buy stations, a total of 91 ordered hours were not cleared as ordered in 1 week during prime evening option time (tr., p. 3385). Since CBS ordered 815 hours on the 52 stations in evening option time during this week, the percentage of rejections was only 11 percent (CBS brief, p. 24).[4]

This fact does not distinguish the block booking of television programs from the Paramount case; rather it makes the parallel closer. The district court opinion in the Paramount case specifically states that many of the block-booking agreements between distributors and theaters included a right on the part of the theater to reject a percentage of the feature films covered by the contract, and that the defendant distributors were liberal in permitting theaters to exercise this right. Judge Hand said:

"In many cases licenses for all the films had to be accepted in order to obtain any, though sometimes the exhibitor was given a right of subsequent cancella-

[4] The true percentage of rejection was even lower, since the CBS statistics (CBS brief, p. 24) do not include the number of hours cleared in evening option time although not at the exact time ordered.

tion for a certain number of pictures * * *. The * * * distributors have retained up to the present time their previous methods of licensing in blocks, but have allowed their customers considerable freedom to cancel the license as to a percentage of the pictures contracted for" (66 F. Supp. at 348).

Nevertheless, Judge Hand found for the three-judge district court that the block-booking agreements were illegal restraints of trade under section 1 of the Sherman Act.

In their briefs before the Supreme Court, two of the Paramount case defendants, Universal and Columbia, argued (just as NBC and CBS argue today) that block booking should be sanctioned because their practice had been to allow the theaters a specific contractual right of rejection. Columbia pointed out that of the 44 pictures it sold annually, the average number accepted by each theater customer under Columbia's block-booking contracts was only 32 (Columbia brief in the Supreme Court, *United States* v. *Paramount Pictures, Inc.*, p. 25). Columbia thus showed a nonclearance percentage of 25 percent, more than twice the percentage claimed by Dr. Stanton for CBS. Although the contractual right of rejection and its liberal interpretation by the distributors were specifically called to the Supreme Court's attention, the Supreme Court affirmed the district court's finding that the practice of block booking was illegal even when the block-booking contracts contained a specific right of rejection.

Furthermore, the station's right of rejection under the time-option clause of an affiliation agreement is far from complete. The clause specifically obligates the station to accept "all" network programs offered during network option time. The clause then states, several lines later, that "nothing herein" shall prevent the station from rejecting or refusing network programs which the station "reasonably believes to be unsatisfactory or unsuitable."[5] Reading this clause literally, the station must have reasonable grounds to believe that the network program is affirmatively "unsatisfactory or unsuitable." This language does not specifically authorize a station to reject a network program which is satisfactory or suitable in the abstract, but which the station believes is inferior to or less desirable than some other program which happens to be available for broadcast at the same time. At least one station operator testified that as he interpreted the option he had no such right.[6]

This right of rejection is much more limited than the station's right to accept or refuse programs in nonoption time—a fact which the time-option clause of the CBS affiliation agreement appears to recognize when it states that:

"Station may, of course, *at its election*, accept and broadcast network sponsored programs which CBS television may offer within hours other than network option time." [Emphasis supplied.]

Thus the station appears to enjoy a right of "election" to accept or reject network programs in nonoption time which is different from and broader than its right to accept or reject network programs during option time.

The limited nature of the station's right of rejection in option time is well illustrated by the testimony of network affiliates before this committee. Several affiliates testified that the right of rejection did not apply when the network program was as good as an available outside program. For example:

John Hayes, WTOP-TV, Washington, D. C. (CBS)

"Third, the affiliate determines that both the network program and the nonnetwork program are satisfactory and are essentially of the same quality. Here, under the affiliate-network partnership arrangement and the regulations of the FCC, the option will indeed operate to the advantage of the network program" (tr., p. 3865).

W. D. Rogers, Jr., KDUB-TV, Lubbock, Tex. (CBS)

"If the program the network requests us to clear is suitable and acceptable in comparison with the program we are carrying, I don't see a thing wrong in preferring the network program * * *. We are merely acting in good faith to keep up our end of the working partnership with the network" (tr., p. 3939).

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[5] This is the basic rejection right. The station may also reject a network program considered to be contrary to the public interest or a program for which the station has a substitute of "outstanding importance."

[6] Testimony of William L. Putnam, WWLP, Springfield, Mass. (NBC affiliate), tr. pp. 4388–4389.

H. Moody McElveen, Jr., WNOK-TV, Columbia, S. C. (CBS)

"If, on the other hand, CBS offers us a program that we feel is as good as what we now have in the period or what we could obtain to put in the period, we would still accept it.

"Now, we feel that is where the network has the advantage because of the option. We feel they are entitled to that advantage. That is what actually they get from us, that is, our giving part of this agreement" (tr., p. 4013).

Thus, it appears that an affiliate may not reject a network program that is inferior to an available nonnetwork program, so long as it cannot reasonably be said to be unsuitable or undesirable. But even if this is not so, the right of rejection under the time-option clause clearly cannot be invoked when the network program is of the same quality as an available nonnetwork program. And this limitation upon the right of rejection is enough to make the practice an unlawful restraint under the rule of *International Salt Co.* v. *United States* (332 U. S. 392 (1947)). In that case, the Supreme Court specifically ruled that an illegal tying agreement (obliging the user of the defendant's patented machine to purchase the defendant's unpatented salt) was not saved by giving the buyer a right to reject the defendant's salt if he could purchase salt from another seller at a lower price, but not if the competing product is available at the same price. The Court said that such a provision—

"* * * does not avoid the stifling effect of the agreement on competition. The appellant had at all times a priority on the business at equal prices. A competitor would have to undercut appellant's price to have any hope of capturing the market, while appellant could hold that market by merely meeting competition. We do not think this concession relieves the contract of being a restraint of trade, albeit a less harsh one than would result in the absence of such a provision" (332 U. S. at 397).

In a recent case, on motion for summary judgment, a similar tying agreement was held per se illegal. *United States* v. *Northern Pacific R. Co.* (W. D. Wash., June 23, 1956; CCH Trade Reg. Rep., sec. 68.401). Northern Pacific sold or leased land subject to a requirement that "the grantee or lessee * * * route via NP railway shipments of commodities produced by or on the land sold or leased, provided neither a lower rate nor better service be available from a competing line." This requirement was found to "prohibit grantees and lessees of NP lands from a free choice in the selection of transportation routing," and to result from market control of a particular commodity, the land. As such, it was held unreasonable per se under International Salt, supra, and allied cases. The Court found the practice clearly within the rationale of the tying cases expounded in *Times-Picayune Publishing Co.* v. *United States* (345 U. S. 594, 605–606 (1953)).

3. It is immaterial that the film block-booking agreements involved licenses of films by distributors to theaters, while the option-time agreements involve purchases of station time by network companies to broadcast-sponsored network programs which are not technically licensed to the station.

The NBC brief seeks to distinguish its option-time arrangements with affiliated stations from the film block-booking practice condemned in the Paramount case, on the ground that (NBC brief, p. 15):

"NBC does not license or sell anything to its affiliated stations during option time. It obtains time from them on a minimum option basis; and during that time, subject to their veto, it presents the programs which generate the circulation it sells to its advertisers."

This difference, however, is merely a difference of form. Both the movie theaters and the television stations are in the business of showing programs to the public for a profit. Both the theaters and the stations obtain their programs from a supplier, the theater from a film distributor, and the station from a network company. In both cases, the supplier agrees to furnish the programs only on a block basis.[7] The effect on competition between program sources and between theaters or stations in seeking programs, is exactly the same, regardless of the legal form under which the programs are supplied.

In *Federal Trade Commission* v. *Motion Picture Advertising Service Co.* (344 U. S. 392 (1953)), the Supreme Court held that section 1 of the Sherman Act was violated by exclusive agreements between motion-picture theaters and the defendant producer of commercial advertising film, requiring the theaters to use

[7] The CBS affiliation agreement provides that the network offers and furnishes programs to the station which accepts and broadcasts them.

only the commercial films produced by defendant. The Court said that its conclusion was not affected by whether these agreements should properly be interpreted as agency agreements or as some other form of distribution arrangement. The Court said:

"The vice of the exclusive contract in this particular field is in its tendency to restrain competition and to develop a monopoly in violation of the Sherman Act. And when the Sherman Act is involved the crucial fact is the impact of the particular practice on competition, not the label that it carries." (See *United States* v. *Masonite Corp.* 316 U. S. 265, 280; 344 U. S. at 397.)

4. The necessary monopoly control over the tying product is the same in the block booking of television programs under the time option clause as in the block booking of feature films; the monopoly arises both from the legal copyright of the program and from its inherent uniqueness.

In the Paramount case, the Supreme Court ruled that block booking of feature films was illegal because each film was the subject of a separate copyright, and because by insisting on furnishing the films in blocks, the copyright owner

"* * * 'adds to the monopoly of a single copyrighted picture that of another copyrighted picture which must be taken and exhibited in order to secure the first.' That enlargement of the monopoly of the copyright was condemned below in reliance on the principle which forbids the owner of a patent to condition its use on the purchase or use of patented or unpatented materials * * *. We approve that restriction" (334 U. S. at 157–58).

In the furnishing of television programs, the situation is identical. As shown at page 16 of the KTTV brief, during prime evening option time approximately 50 percent of the programs offered by the 3 major networks are on film. Most of these film programs are copyrighted. The copyrighted film programs include many of the most popular and desirable programs on the air, such as I Love Lucy, You'll Never Get Rich (Sergeant Bilko), Lassie, Disneyland, and many others. Even in the case of live shows, many of the scripts are copyrighted.[8] Thus, by refusing to offer these copyrighted programs to stations unless the station enter into affiliation agreements, obliging them to accept substantially all of the copyrighted or uncopyrighted programs offered by the network during option time, the networks are illegally "add[ing] to the monopoly of a single copyrighted [program] that of another copyrighted [program] which must be taken and exhibited in order to secure the first."

The CBS and NBC briefs deal with this issue in different ways. The NBC brief (p. 15) admits that its programs "may contain copyrighted program material," but contends that this is irrelevant since "such material is not being licensed to the stations." The NBC brief argues that for this reason "there is no exploitation of the copyright and consequently no possibility of an unlawful extension of a copyright monopoly."

This is pure legal formalism. When NBC sold the right to an advertiser to sponsor Dragnet, which is copyrighted and on film, over 143 affiliated stations in 1955, for more than $50,000 per half hour per week, NBC was exploiting the copyrighted program. If it was exploiting the copyrighted program, it was exploiting the copyright. The only reason for taking out the copyright in the first place is to protect the creator's legal monopoly over the program.

The CBS brief wisely ignores the point that many of its network programs are copyrighted. Instead, CBS contends that it "has no monopolistic leverage or dominance in the program field [since] CBS controls only a small percentage of the total programs available for or broadcast on television" (CBS Brief, pp. 57–58).

The short answer to this contention is that each television program is a unique work,[9] very similar to the unique dress designs considered in *Fashion Originators Guild* v. *Federal Trade Commission* (114 F. 2d 80 (2d Cir. 1940), affirmed, 312 U. S. 457 (1941)). In that case, the courts condemned an agreement among companies producing original "exclusive" dresses not to sell their products to other companies identified as "style pirates." The court rejected an argument that the agreement was lawful because the members of the guild controlled only a small percentage of the total number of dresses produced. The court said:

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[8] And where, as is frequent on the west coast, network program are kinescoped for rebroadcast, the kinescope film can be copyrighted.

[9] An Arthur Godfrey program or a Jack Benny program has an inherent uniqueness. It can be imitated, but it cannot be reproduced. The best recognition of its unique quality is the practice of the network companies in signing its greatest stars to long-term exclusive service contracts, extending as much as 20 years. (See testimony of Mr. Sarnoff, transcript, p. 3651.)

"Finally, it is of no consequence that the guild does not supply the whole market for women's dresses; it aims at a monopoly however small its share of total sales. The reason is as follows. Although all dresses made after one design are fungibles, the different designs themselves are not fungibles. Each has its own attraction for buyers; each is unique, however trifling the basis for preferring it may be. Hence to attempt to gather to oneself all possible reproductions of a given design is to attempt to create a monopoly, as at once appears from the fact that a copyright for it—and a fortiori a design patent upon it—would be ranked as a monopoly. It is true that the sanction of that monopoly may be very weak; it depends upon the design's attractions above other designs, often not a very important margin of advantage. But the same is true of nearly all monopolies, for there are substitutes for most goods" (114 F. 2d at 85).

The same approach was taken recently in *United States* v. *Northern Pacific R. Co.*, supra. Northern Pacific contended that the Government had failed to show that the land Northern Pacific sold or leased subject to the tying requirement (use of its line for shipment of the products of the land) bore a dominant proportion to the total amount of land in the area. The court answered:

"This contention ignores the plain language of the [Supreme Court tying] decisions, providing that market dominance of 'the tying commodity' is required. The tying commodity need only be the particular property or product to which forced purchase of the second commodity is tied; certainly it does not necessarily include all of the similar and competing commodities which may be in the market. Restraints of trade to be illegal under section 1 of the Sherman Act must necessarily tend to monopoly but need not fully or substantially achieve it * * *.

"The tying commodity in the present case is the land presently or formerly owned by NP. Unrestricted fee simple title to land vests in the owner absolute domination of the market in such land. By the ownership of the lands and resulting dominance in the market therefor defendants were able to impose the traffic clauses in question in the grantees and lessees of the land."

Curiously, the argument advanced here by CBS was made unsuccessfully, by Universal Pictures in the Paramount case. Universal contended before the Supreme Court, in defense of block booking, that a film distributor does not have monopoly power over his copyrighted film product because:

"The number of such products which may be created is unlimited. He is in the same position as is an owner of particular chattels, who necessarily has a monopoly over the particular chattels, but not over the production and sale of any other chattels of like kind" (Universal brief in the Supreme Court, *United States* v. *Paramount Pictures, Inc.*, p. 92).

C. Block booking, whether of feature films or of television programs, is clearly illegal per se under section 1 of the Sherman Act.

The NBC brief (pp. 12–13) attempts to cast doubt on the contention of the KTTV brief that, in the Paramount case, the Supreme Court ruled that block booking of feature films was illegal per se.

The CBS brief does not raise any such question. At page 54, the CBS brief refers to a "second category of acts said to be illegal per se" and says that "It is in this category of cases that the socalled tie in rule discussed below * * * [has] been evolved." At pages 55 and 56, the CBS brief states that in the Paramount case the Supreme Court considered the "tie-in practice referred to as 'block booking,'" and "found the practice to be illegal." Thus, the CBS brief appears to concede that in the Paramount case the Supreme Court found block booking to be an illegal tie-in and that illegal tie-ins fall within the class of restraints regarded as illegal per se.

This concession by CBS is nothing more than the truth. In the Paramount case the courts clearly banned block booking as illegal per se. This fact readily appears from the opinions of the Supreme Court and the lower court in the Paramount case, from the briefs in the Paramount case, and from a subsequent opinion of the Supreme Court referring to Paramount.

1. Supreme Court opinion in the Paramount case

The Supreme Court in the Paramount case stated that the condenmation of block booking copyrighted pictures was based "on the principle which forbids the owner of a patent to condition its use on the purchase or use of patented or unpatented materials" (334 U. S. at 157).

In *United States* v. *Columbia Steel Company* (334 U. S. 495 (1948)), decided at the same term as the Paramount case, the court listed as an example of the "class of restraints that are illegal per se," cases where the defendants "have licensed a patented device on condition that unpatented materials be employed in conjunction with the patented device" (334 U. S. at 522).

Moreover, the Supreme Court in the Paramount case was affirming a decision of the three-judge district court holding block booking illegal. As shown below, the district court clearly found that block booking was illegal per se.

2. Opinion of the district court in the Paramount case

That the district court found block booking to be illegal per se is clearly shown by the following extract from its opinion:

"The plaintiff argues that the Sherman Act forbids blockbooking in toto * * *. In our opinion this contention is sound, and any form of blockbooking is illegal by which an exhibitor, in order to obtain a license for one or more films, must accept a license for one or more other films" (66 F. Supp. at 348).

The district court's conclusions of law also contained the flat statement that "Block booking, as hereinabove defined, violates the Sherman Act" (Conclusion of Law No. 11, 70 F. Supp. at 72).

The preceding conclusion of law No. 10 stated that—

"* * * franchises [agreements giving a theater rights on the films of a particular distributor for more than one season] have tended to restrain trade and violate section 1 of the Sherman Act" (70 F. Supp. at 72).

This conclusion as to franchises was reversed by the same Supreme Court opinion which affirmed the finding on block booking. The Supreme Court said:

"But we cannot say on this record that franchises are illegal per se when extended to any theater or circuit no matter how small * * *. Hence we set aside the findings on franchises * * *" (334 U. S. at 156).

If conclusion of law No. 10 quoted above, reversed by the Supreme Court, was interpreted by the Court as a ruling the franchises were illegal per se, there can be no doubt that conclusion of law No. 11, affirmed by the Supreme Court, is a categorical ruling that block booking is illegal per se.

3. Briefs of the parties in the Paramount case

When the Paramount case was appealed to the Supreme Court, only two of the defendants, Universal and Columbia, urged reversal of the district court finding on block booking. The Columbia brief describes the district court ruling as follows:

"* * * The district court held that block booking per se was an illegal practice because in essence it amounted to a 'tie-in' or conditioning" (Columbia brief in the Supreme Court, *United States* v. *Paramount Pictures, Inc.*, p. 33.)

4. Subsequent Supreme Court opinion citing the Paramount case

In *Times-Picayune Publishing Co.* v. *United States* (345 U. S. 594 (1953)), the Supreme Court referred to the block-booking ruling in the Paramount case in language that can only be interpreted as a reaffirmation that block booking is illegal per se. The Court said:

"And since the Court [in the *International Salt Co.* case, 322 U. S. 392] deemed it 'unreasonable, per se, to foreclose competitors from any substantial market,' neither could the tying arrangements survive section 1 of the Sherman Act (332 U. S. at 396). That principle underpinned the decisions in the movie cases, holding unlawful the 'block booking' of copyrighted films by lessors, *United States* v. *Paramount Pictures* (334 U. S. 131, 156–159 (1948)), as well as a buyer's wielding of lawful monopoly power in one market to coerce concessions that handicapped competition facing him in another. *United States* v. *Griffith* (334 U. S. 100, 106–108 (1948))" (345 U. S. at 608).

Thus, the Court in the Times-Picayune case did nothing to undermine the force of the per se rule in situations like Paramount i. e., the use of monopolistic leverage in a unique product, like a copyrighted movie or television program, to restrain commerce in a tried product, like other movie or television programs.

D. The block booking of television programs between a single network company and a single affiliated station is illegal per se regardless of the existence of a conspiracy among television networks or among television stations.

Both the NBC and CBS briefs attempt to avoid the conclusion that the block booking of television programs is illegal per se by pointing out that in the Paramount case conspiracies were found to exist among the defendant companies in the distribution of feature films and the ownership of theaters, and that no such conspiracies exist among the television networks or among the owners of television stations. The CBS brief states that conspiracy was "the basic fact" found in the Paramount case (CBS brief, p. IX). The NBC brief says that "the bulk of the [Paramount] opinion is a finding of conspiracy" and that the effect of this finding on the Court's approach to block booking "is, of course, impossible to say" (NBC brief, p. 13).

It is, of course, true that in the Paramount case both the district court and the Supreme Court found that the defendants had engaged in an unlawful conspiracy. But wholly apart from whether or not a similar conspiracy exists in the television industry, it is plain that the Paramount ruling as to the illegality of block booking did not rest in any way on the finding that the defendants had illegally conspired with one another in other fields.

Thus, the district court in the Paramount case held, in conclusions of law Nos. 7, 8, and 9, that the defendants had unreasonably restrained trade and commerce in several enumerated ways, each described in a separate subparagraph. Several of these subparagraphs begin with the word "conspiring." For example, paragraph 7 (b) speaks of "conspiring with each other to maintain a nationwide system of runs and clearances." Paragraph 8 (a) speaks of "conspiring with each other to maintain a nationwide system of fixed minimum motion picture theater admission prices" (70 F. Supp. at 72).

Paragraph 8 (g), however, dealing with block booking, holds merely that the defendants have restrained trade by—

"(g) *Individually* conditioning the offer of a license for 1 or more copyrighted films upon the acceptance by the licensee of 1 or more other copyrighted films, except in the case of the United Artists Corp.;" [Italic added.] 70 F. Supp. at 72.

Furthermore, conclusion of law No. 11 states, without reference to conspiracy, that: "11. Block booking as hereinabove defined violates the Sherman Act."

It is equally plain that the Supreme Court's conclusion on the illegality of block booking did not rest in any way on the existence of a conspiracy among the defendants. Block booking is discussed in a separate numbered section of the Supreme Court's opinion, extending over 4 pages (334 U. S. 156–160). In these 4 pages, there is not a single reference to conspiracy.

E. Since the block booking of television programs under the time-option clause of the affiliation agreements is illegal per se because of its inherently restrictive character, the alleged absence of proof of actual adverse effects, even if true, is irrelevant.

The NBC and CBS briefs lay great stress upon the claim that, contrary to the evidence as presented in sections V and VII of the KTTV brief, block booking of television programs under the network time-option clause does not unduly hinder the operations of independent television stations, independent program producers, and small- and medium-sized advertisers.

The principal factual evidence advanced in support of these arguments is contained in the tables which appear on pages 24 and 25 of the CBS brief. These tables were referred to frequently in the other memoranda submitted by CBS and in the testimony of Dr. Frank Stanton. The tables analyze the programs carried by CBS affiliates during a week in May of 1956 "which is believed to be typical" (CBS brief, p. 23), and purport to show that during the 21 hours of evening option time in this week on each of the 52 basic CBS affiliates, 30.4 percent of the time was available to nonnetwork programs.

This computation rests on two basic fallacies. First, it considers as available for nonnetwork programs prime evening option time which is actually occupied by CBS network programs which straddle both option time and station time. Second, by selecting a week in May of 1956, during the daylight saving time period, CBS achieves a distortion of the actual clearance and availability picture which would not appear if CBS had selected a week when standard time prevailed throughout the country.

These two basic fallacies on which the figures relied upon by CBS rest are explained in detail in the KTTV memorandum, filed with the committee, accompanying this brief, dated October 29, 1956, entitled "Comments on the Testimony of Dr. Frank Stanton Concerning the Statement of Richard A. Moore."

But even if the contentions of the networks, to the effect that block booking has not had adverse effects, were correct, they would be irrelevant. As has been shown above, the block booking of television programs is illegal per se under section 1 of the Sherman Act. This means that it is one of the offenses which, in the words of the report of the Attorney General's National Committee To Study the Antitrust Laws, is "conclusively presumed unreasonably to restrain competition (the so-called unreasonable per se offenses)" and as the report states (p. 12):

"* * * where such restraints are established, in purpose or in effect, inquiry under the rule of reason ends."

Block-booking practices are illegal per se because, like the bylaws in the Associated Press case,

"* * * on their face, *and without regard to their past effect*, [they] constitute restraints of trade" (326 U. S. at 12). (Emphasis supplied.)

And, like the bylaws in the Associated Press case, block booking is "* * * a course of conduct which will necessarily restrain or monopolize a part of trade or commerce." (326 U. S. at 12.)

Even if it were true that 30.4 percent of evening option time was available for nonnetwork programs, the existence of the time option makes such availability depend on the whim of the network; and whenever the option is exercised, the network program prevails, regardless of quality or price.

The conclusion that block booking is illegal per se because of its inherently restrictive effect therefore puts an end to any inquiry as to what the actual past effect may have been. Such a practice is presumed to be unduly restrictive of competition, regardless of past effect.

F. Even if block booking of television programs under the time option clause were not illegal per se, the alleged business necessity or justification for the practice, if any, would be irrelevant in the face of proof that the practice unduly restrains competitors.

The bulk of the NBC and CBS briefs consists of an attempt to establish that under the rule of reason the supplying of a television block program service under the time-option clause of network-station affiliation agreements is either necessary to carry on the business of networking, or, at least reasonable under the special economic facts of the television industry.

This attempted justification rests on a misconception of the scope of the rule of reason. Even if the block booking of television programs were not a per se violation of the antitrust laws, the discretion of the courts under the rule of reason remains a limited one. Business justification may be utilized to illuminate ambiguous intent, *Times-Picayune* v. *United States* (345 U. S. at 623), or to help predict consequencies where the consequences are uncertain, *Chicago Board of Trade* v. *United States* (246 U. S. 231, 239 (1918)), but it becomes irrelevant where the restraint is clear.

"[The court's] discretion is confined to consideration of whether in each case the conduct being reviewed under the [Sherman] Act constitutes an undue restraint of competitive conditions, or a monopolization, or an attempt to monopolize. This standard permits the courts to decide whether conduct is significantly and unreasonably anticompetitive in character or effect; it makes obsolete once prevalent arguments, such as, whether monopoly arrangements would be socially preferable to competition in a particular industry, because, for example, of high fixed costs or the risks of 'cut-throat' competition or other similar unusual conditions." Report of the Attorney General's National Committee to Study the Antitrust Laws, page 12 (1955).

The only difference between a per se case and an unreasonable restraint case is that in the former, the unreasonableness of the restraint is presumed from its inherent character, while in the latter the unreasonable effects must be shown Thus, the court's disposition of the economic-convenience arguments in the Paramount case was appropriate even if the court had not deemed block booking to be illegal per se.

The rule of reason arguments made by NBC and CBS are virtually the same as those made in the Paramount case by the two defendant film distributors, Columbia and Universal, who unsuccessfully appealed from that portion of the district court decision holding block booking illegal per se. Columbia and Universal, in their briefs before the Supreme Court, made the following points:

1. "Economic necessity for licensing a season's product at one time finds its roots in the limited capital of the smaller companies like appellants" (Columbia brief, p. 14).

2. "[Columbia] needs block booking because it has to have some assurance of a market in order to hazard its capital in producing many pictures at a substantial cost. * * * If Columbia were not able to sell its season's product at one time it could not operate profitably" (Columbia brief, p. 18).

3. "If [Columbia were] compelled to sell picture by picture, there would practically be as many [sales] campaigns as pictures" (Columbia brief, p. 20).

"[Universal's] business reasons for endeavoring to license its season's product as a block, before production, are obvious since the licensing of [average] pictures one by one after production, would be exorbitantly expensive and highly speculative" (Universal brief, p. 91).

4. "The exhibitors * * * want [block booking]. It gives them an assurance of product" and avoids the necessity of separate arrangements for each picture (Columbia brief, p. 20).

"[Universal's] customers [want] to stock up for an entire season so that they will not run short of pictures" (Universal brief, p. 90).

5. "The exhibitor * * * is given a liberal right of selection—the right to reject a certain number of pictures" (Columbia brief, p. 23). "[T]he average selectivity on all contracts made by [Columbia] was 32 pictures out of 44" (id., p. 25).

In the Paramount case, the Supreme Court disposed of Columbia's arguments in terms that apply equally well to the similar current arguments of NBC and CBS:

"Columbia Pictures makes an earnest argument that enforcement of the restriction as to block booking will be very disadvantageous to it and will greatly impair its ability to operate profitably. But the policy of the antitrust laws is not qualified or conditioned by the convenience of those whose conduct is regulated. Nor can a vested interest in a practice which contravenes the policy of the antitrust laws receive judicial sanction (334 U. S. at 159).

II. THE MUST-BUY POLICY IS A PER SE VIOLATION OF THE ANTITRUST LAWS

The NBC and CBS briefs contend that the must-buy policy does not violate the antitrust laws for two reasons:

A. The policy is said to be decided by the network company, without the participation of the affiliated stations. The policy is therefore said to be outside the rule which brands collective refusals to deal as illegal per se.

B. Considered as an individual refusal to deal by the network company, the must-buy policy is said to be lawful because none of the stations offered only on a package basis has a monopoly in its own market, and the policy is not intended to affect, and has no substantial effect on, competition.

As shown below, neither of these defenses holds water.

A. The bold contention that the must-buy policy is an individual action of the network company, in which the affiliated stations do not participate, cannot stand against facts which establish a collective refusal to deal that is per se illegal.

1. CBS admits that in the case of one affiliated station, the affiliation agreement contains an express provision obligating the network to include the station on the must-buy list (CBS memorandum entitled "Network Practices," June 1956, p. 127).[10] In fact, in later testimony CBS's president admitted that "there may be 1 or 2 cases where it is a matter of contract," and that "this may have been a factor of some importance in the very early days."[11]

2. Affiliated stations continually urge the network companies to include them on the must-buy lists (testimony of Mr. Robert Sarnoff, transcript, p. 3693).

3. The inclusion of a station on the must-buy list is published by the network on its rate card and is known to the station.

4. Virtually all NBC and CBS must-buy stations themselves publicize the fact that they are included in the NBC or CBS must-buy list. They do so in their own rate cards, in the data they prepare for publication in the Standard Rate and Data Guide, and in the advertisements they publish in the trade press.

5. By optioning time to its network with knowledge that the network sells this time to advertisers only on an all-or-none basis, each must-buy station clearly consents to its inclusion in the must-buy package, and takes the essential action that is required for the must-buy policy to be effective.

6. The must-buy station, acting individually by signing an affiliation agreement including option time, and subsequently by clearing virtually all network programs offered during option time, places itself, by its own affirmative

[10] The record does not disclose whether NBC has any similar agreements with any of its affiliates.

[11] Hearings before special subcommittee of House Judiciary Committee, September 26, 1956, transcript, pp. 2200–2201.

action, in a position where it must and does refuse to deal with advertisers seeking to buy the same station time that is being cleared for a network program on a must-buy basis.

The courts have never required proof of formal agreements spelling out the precise conduct of each party in order to establish the existence of a conspiracy in restraint of trade. The courts are prepared to infer the existence of the conspiracy from the actions of the parties, taken with knowledge of the consequences. As the Supreme Court said in *Interstate Circuit, Inc.* v. *United States* (306 U. S. 208, at 226–227 (1939)):

"It was enough that, knowing that concerted action was contemplated and invited, the distributors gave their adherence to the scheme and participated in it. Each distributor was advised that the others were asked to participate; each knew that cooperation was essential to successful operation of the plan. They knew that the plan, if carried out, would result in a restraint of commerce, which, we will presently point out, was unreasonable within the meaning of the Sherman Act and, knowing it, all participated in the plan. The evidence is persuasive that each distributor early became aware that the others had joined. With that knowledge they renewed the arrangement and carried it into effect for the 2 successive years.

"It is elementary that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of the conspirators. * * * Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary consequence of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act."

As the Supreme Court said in *United States* v. *Masonite Corp.* (316 U. S. 265 (1942)), dealing with a resale price-fixing plan under the guise of del credere agency:

"It is not clear at what precise point of time each appellee became aware of the fact that its contract was not an isolated transaction but part of a larger arrangement. But it is clear that, as the arrangement continued, each became familiar with its purpose and scope" (316 U. S. 275).

Nor is the existence of the collective agreement disproved by the mere fact, emphasized in the NBC and CBS briefs, that NBC and CBS each reserves the sole right to decide whether a particular station will be included on its must-buy list. At best, this means only that the collective agreement as to the inclusion of any particular station on the list cannot come into effect until the network company has agreed.

The Supreme Court dealt with a similar argument in *United States* v. *Masonite Corp.*, supra, involving license agreements between Masonite and its competitors in manufacturing cardboard under Masonite patents, under which the competitors sold as del credere agents of Masonite at prices fixed by the latter. The defendants argued that since Masonite alone fixed the prices, there was no collective price-fixing agreement among them. The court found that all of the defendants were parties to a single price-fixing conspiracy, and gave the following reasons:

"Nor can the fact that Masonite alone fixed the prices, and that the other appellees never consulted with Masonite concerning them, make the combination any the less illegal. Prices are fixed when they are agreed upon (*United States* v. *Socony-Vacuum Oil Co.*, supra (p. 222)). The fixing of prices by one member of a group, pursuant to express delegation, acquiescence, or understanding, is just as illegal as the fixing of prices by direct, joint action" (316 U. S. 275–276).

The CBS brief (pp. 65–66) attempts to demonstrate that collective refusals to deal have not been held to be illegal per se. Even *Associated Press* v. *United States* (326 U. S. 1 (1945)) is swept aside with the statement that "none of the several opinions in the case suggested that such a refusal was illegal per se" (CBS brief, p. 66). But this is a patently erroneous reading of the cases. In *United States* v. *Columbia Steel Co.* (334 U. S. 495, 522–523 (1948)), the Supreme Court said:

"A restraint may be unreasonable either because a restraint otherwise reasonable is accompanied with a specific intent to accomplish a forbidden restraint or because it falls within the class of restraints that are illegal per se. For example, where a complaint charges that the defendants have engaged in price fixing, *or have concertedly refused to deal with nonmembers of an association*, or have licensed a patent device on condition that unpatented materials be employed in conjunction with the patented device, then the amount of commerce involved is immaterial because such restraints are illegal per se." [Emphasis added.]

The Court then cites *Associated Press* v. *United States*, supra, as authority for the per se illegality of group refusals. At best, the CBS position is a nonjudicial dissent from the Supreme Court's own appraisal of its own opinions, including Associated Press.

Later opinions of the Supreme Court confirm that collective refusals to deal are illegal per se. In *Kiefer-Stewart Co.* v. *Seagram & Sons* (340 U. S. 211 (1951)), Justice Black held for a unanimous Court that the concerted refusal of the two defendants to sell to plaintiff was within the prohibitions of the Sherman Act. At the trial the judge had instructed the jury that any evidence as to illegal acts of the plaintiff "was no defense to the present cause of action." The Court upheld this ruling:

"We hold that the instruction was correct. Seagram and Calvert, acting individually perhaps, might have refused to deal with petitioner or with any or all of the Indiana wholesalers. *But the Sherman Act makes it an offense for respondents to agree among themselves to stop selling to particular customers*" (340 U. S. 214). [Emphasis added.]

This from a four-page opinion in which the "rule of reason" is not even mentioned, much less applied.

As recently as 1952 the Court reaffirmed this position. In *Times-Picayune Publishing Co.* v. *United States* (345 U. S. 594 (1953)), Justice Clark said for the majority:

"Refusals to sell, without more, do not violate the law [but] group boycotts, or concerted refusals to deal, clearly run afoul of section 1, *Kiefer-Stewart Co.* v. *Seagram & Sons* (340 U. S. 211, 214 (1951)); *Associated Press* v. *United States* (326 U. S. 1 (1945)); see *United States* v. *Columbia Steel Co.* (324 U. S. 495, 522 (1948)) * * *" (345 U. S. at 625).

It is interesting to note that the CBS brief cites no case in which group refusals to deal have been upheld by the Supreme Court. And even the lone court of appeals case cited by CBS as involving a situation parallel to the network must-buy practices, *Prairie Farmer Pub. Co.* v. *Indiana Farmer's Guide Pub. Co.* (88 F. 2d 979 (7th Cir., 1937)), did not involve a refusal to deal, concerted or individual. The defendant papers, through their advertising agency, offered a group rate which made it more economical to deal with all of them as a group, rather than to combine advertising in some of them with advertising in plaintiff's paper. But there is no indication that an advertiser willing to pay the increased cost of a split advertising program would have been refused space in papers of group members (as results under the must-buy policy for television option time), merely because he purchased space in plaintiff's paper instead of the competing paper which was a member of the group.

In any event, the Farmer's Guide case is of the same vintage as Judge Manton's now discredited opinion in Paramount Famous-Lasky Corporation upholding the block booking of motion pictures (see p. 5, above) and seems equally invalid as a modern precedent. For example, it was heavily relied upon by the defendants in the Associated Press case [12] and was cited by Justice Roberts in his dissent (326 U. S. 1, 33) as supporting the legality of the bylaws there in question, but was disregarded by the majority.

B. If, as the network companies argue, the must-buy policy is the action of the network alone, it is still a type of individual refusal to deal that clearly violates the antitrust laws.

Each station on the must-buy list is a monopoly to a degree. Even in 7- or 4-station markets, each station is given by the FCC allocation and license a monopoly on a particular channel free of threat that any competitior can obtain the same channel in the same market and free of threat of competitors on other channels except the limited number allocated by the Commission. The network, in its must-buy practice, is thus using its control of time on one monopoly station to force advertisers to buy time on other stations in the chain.

The monopolistic leverage inherent in the must-buy practice is accentuated by the fact that, according to the current must-buy lists of NBC and CBS, there are at least 10 markets in which there are only 2 stations, 1 of which is an NBC affiliate included in the NBC must-buy list and the other is a CBS affiliate included in the CBS must-buy list.

By their parallel option time practices, the two networks together control the prime time in these markets on a completely closed basis. By their paral-

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[12] Associated Press brief in the Supreme Court, pp. 71–72; Associated Press reply brief in the Supreme Court, pp. 13–14, 23–24.

lel must-buy practices, they refuse to deal with advertisers for time in these closed markets unless the advertisers purchase time on the other stations on the must-buy lists, located in open markets where competing non-NBC and non-CBS stations exist. Each network uses its strategic position in the limited-station markets to force the advertiser to buy time on the network affiliates, rather than the competitors of these affiliates.

In *United States* v. *Griffith* (334 U. S. 100 (1948)), the Supreme Court held that a motion picture exhibitor, controlling a circuit of theaters in one-theater and multitheater towns, could not use the buying power of the entire circuit to negotiate films for competitive as well as closed towns. This was so even if the exhibitor made no threat to withhold the business of the one-theater towns unless exclusive rights were granted in competitive towns. This was so whether 1 circuit made the bargain with the distributor or whether 2 or more lumped their buying power. This was so even though the exhibitor had no patent or copyright monopoly, and even though there was no governmental limitation on the opening of competing theaters in the monopoly towns.

In *United States* v. *Paramount Pictures, Inc.* (334 U. S. 131 (1948)), the Supreme Court considered two types of agreements under which theater circuits pooled the bargaining power of the theaters in the circuit: (1) Formula deals, in which the theater circuit's license fee for a given feature film was measured by a specified percentage of the film's national gross and the circuit was allowed to allocate playing time and film rentals among its various theaters; and (2) master agreements covering the exhibition of features in a number of theaters, with the exhibitor permitted to allocate film rentals and playing time among the theaters. The Court gave two reasons for holding each of these practices to be an illegal restraint of trade (334 U. S. at 154–155):

"In the first place, they eliminate the possibility of bidding for films theater by theater. In that way they eliminated the opportunity for the small competitor to obtain the choice first runs, and put a premium on the size of the circuit. They are, therefore, devices for stifling competition and diverting the cream of the business to the large operators. In the second place, the pooling of the purchasing power of an entire circuit in bidding for films is a misuse of monopoly power insofar as it combines the theaters in closed towns with competitive situations. The reasons have been stated in *United States* v. *Griffith* (ante, p. 100), and *Schine Chain Theatre, Inc.* v. *United States* (ante, p. 110), and need not be repeated here. It is hardly necessary to add that distributors who join in such arrangements by exhibitors are active participants in effectuating a restraint of trade and a monopolistic practice."

Thus, there were two grounds in the Paramount case for holding these arrangements illegal. The Court did not rely solely on the Griffith situation of using monopoly towns to obtain advantage in nonmonopoly towns. Whether or not monopoly towns existed, the purchase of films for an entire circuit, by eliminating the opportunity of the small competitor to bid for films on a theater-by-theater basis, was in itself sufficient to constitute a violation of law.

In the television industry, the networks' must-buy lists combine monopoly and limited monopoly stations. Control of broadcast time in closed or relatively closed markets is used to control time in other markets whether closed or relatively open. In open markets the must-buy practice prevents a competing station in the same market as a member of the must-buy group from obtaining a national advertiser's order in prime viewing time, even when the advertiser, and not the network, owns the program. Even if this competing station is closed out by the individual action of the network company, rather than concerted action with its affilates (who proudly regard each other, for other purposes, as "partners" [13] the absence of concerted action does not save the must-buy policy from the impact of the Sherman Act.

And the fact that the two network companies do not agree between themselves as to their must-buy policies, and the fact that neither by itself controls a majority of the television stations or has a majority share of United States television advertising revenues, are irrelevant for purposes of considering the cumulative effect of inherently anticompetitive practices in which they each engage.

The illegal market restraint of an anticompetitive practice can be established, under the antitrust laws, by considering the cumulative dominance in the market achieved by the companies that follow the same practice, without the necessity of showing that they combined or conspired. In *Federal Trade Commission* v. *Motion Picture Advertising Service Co., Inc.* (344 U. S. 392 (1953)), the

[13] As in the testimony quoted at pp. 9, 10, 11, and 17.

respondent, a producer and distributor of advertising films, entered into contracts with theater owners under which the theater owner agreed to display no advertising films other than respondent's. Respondent operated in only 27 States and had exclusive contracts with less than 40 percent of the theaters in its area of operations. However, three other companies in the same business followed the same practice. The four together had arrangements with about 75 percent of the theaters in the country which displayed advertising films. The Court held that the exclusive contracts were not merely "unfair methods of competition" under the Federal Trade Commission Act, but that they also violated the Sherman Act. The Court said (344 U. S. at 395):

"The [Federal Trade] Commission found in the present case that respondent's exclusive contracts unreasonably restrain competition and tend to monopoly. Those findings are supported by substantial evidence. This is not a situation where by the nature of the market there is room for newcomers, irrespective of the existing restrictive practices. The number of outlets for the films is quite limited. And due to the exclusive contracts, respondent and the 3 other major companies have foreclosed to competitors 75 percent of all available outlets for this business throughout the United States. It is, we think, plain from the Commission's findings that a device which has sewed up a market so tightly for the benefit of a few falls within the prohibitions of the Sherman Act. * * *"

The must-buy practices of NBC and CBS cover a total of 111 stations in 63 markets. In more than 40 of these markets, with over 70 percent of the television homes of the United States, NBC and CBS each have a must-buy affiliate. The must-buy policy prevents the advertiser from dealing with whatever non-NBC and non-CBS stations exist in those markets. And in at least 10 of these markets, the NBC and CBS affiliates are the only stations that exist. If an advertiser wishes to purchase prime time in these markets, he must obey the must-buy policy and take the NBC or CBS affiliates in the other markets where other stations exist. Even if each network company is considered to be following this practice independently of the other and without "concert" with its affiliates, each is violating the antitrust laws by simultaneously following a practice which requires the advertiser to purchase the time of their affiliates and shuts out each affiliate's local competitors.

The Motion Picture Advertising case shows that in an industry where the number of outlets is limited, restrictive practices are particularly subject to Sherman Act attack. Now that block booking of programs and theaters has been outlawed in the movie industry, where there is an economic opportunity for as many outlets as the public demands, the parallel block booking of television programs is patently intolerable in the television industry where each outlet operates under Government license, and there is an absolute ceiling on the number of outlets. Where there are inherent impediments to competition, as there are in the television industry by reason of the limited number of channels available, the courts are particularly careful to insure that the remaining possibilities of competition are protected against restraint. See *Sugar Institute* v. *United States* (297 U. S. 553, 600 (1936)). Congress, in section 313 of the Federal Communications Act, has given a clear mandate that the antitrust laws shall be applicable to television broadcasting. Thus, both the cases and the statute require that anticompetitive practices in the television industry be effectively prohibited.

CONCLUSION

The record before this committee establishes that, under present day conditions:

(*a*) Under the time-option clause of the network-affiliate contracts, most of prime evening time in most of the principal television markets with 1, 2, or 3 stations is now occupied by network-distributed programs.

(*b*) Because prime evening time on a national basis is controlled by the networks under their time options, independent program producers cannot produce first-class television shows for national distribution during prime evening time unless these shows are distributed over the networks.

(*c*) Because the only high quality shows the independent producers can afford to produce are those that are sold for network distribution, independent stations cannot purchase first-class television shows of a quality high enough to compete with network distributed shows in prime evening time.

(*d*) Because the independent stations do not have first-class shows to offer during prime evening time, and because the network affiliates sell their time only on a national must-buy basis, regional and local advertisers cannot sponsor first-class television shows during prime evening time.

(*e*) The great majority of the American public is therefore limited during prime viewing hours to a choice of programs selected by three network companies in New York.

The evidence before the committee clearly establishes that the root of these evils is the complete network control over prime time on affiliated stations. The evidence also shows that the warp and woof of this fabric of network control are the time-option and the must-buy agreements between the networks and their affiliates.

Agreements of this type between business associates have always been condemned as illegal restraints under section 1 of the Sherman Act, whenever their actual or potential effects on competitors have been of the types listed above. As the Supreme Court said in *Associated Press* v. *United States* (326 U. S. 1 (1945)):

"The Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete. Victory of a member of such a combination over its business rivals achieved by such collective means cannot consistently with the Sherman Act or with practical, everyday knowledge be attributed to individual 'enterprise and sagacity'; such hampering of business rivals can only be attributed to that which really makes it possible—the collective power of an unlawful combination" (326 U. S. at p. 15).

Nor can the illegality of these restrictive network practices be wished away by the network contention that the time-option agreements, for example, are really not enforced by he neworks, that affiliated stations, as good partners acting in their own self-interest, usually clear network programs on their merits, and that the option functions merely as a "shield" to be used only when and if the rate of program rejection becomes so high as to threaten the "erosion" of the network schedule (Tr. pp. 3273–3274, 3489, 3499; CBS' memorandum entitled "Network Practices," June 1956, p. 110).

Unfortunately for the networks, the Sherman Act does not authorize contractual "shields" against the dangers of competition. The Sherman Act was intended to strike down such shields, even though they are not actually being used and are merely being held in reserve. To quote again from the Supreme Court's opinion in Associated Press:

"The [lower] court also found that AP's restrictive bylaws had hindered and impeded the growth of competing newspapers. This latter finding, as to the past effect of the restrictions, is challenged. We are inclined to think that it is supported by undisputed evidence, but we do not stop to labor the point. For the court below found, and we think correctly, that the bylaws on their face, and without regard to their past effect, constitute restraints of trade. Combinations are no less unlawful because they have not as yet resulted in restraint. An agreement or combination to follow a course of conduct which will necessarily restrain or monopolize a part of trade or commerce may violate the Sherman Act, whether it be 'wholly nascent or abortive on the one hand, or successful on the other' " (326 U. S. 1, at 11–12).

The "erosion" argument is the heart of the network case, and the issue can well be joined at this precise point. By "erosion," the network companies mean a wearing away of their program schedules as the result of competition—in the form of free and direct dealings between affiliated stations, independent program producers, and advertisers in the sale and programing of prime evening time, rather than dealings channeled through the network company as intermediary. The network companies may legitimately seek to preserve their role as intermediary by offering a better service at a lower price. But they may not, consistent with the Sherman Act, "shield" their role as intermediary by restrictive contractual arrangements with their affiliates, under which the network service is accepted, and competitors are excluded, regardless of quality or prcie.

The businessman's desire for a "shield" against "erosion" is precisely what the Sherman Act is about and why it exists. The act enunciates a public policy that favors "erosion" by the natural process of competition, and opposes "shields" against competition.

If the principles of the Sherman Act are valid for every other industry in the country, including the newspapers, the theater, the movies, why should television be an exception? Congress considered this question when it passed the Communications Act, and decided that no exception should be made.

Surely the great national television companies have sufficient economic strength, sufficient creative and administrative talent, and sufficient devotion to the basic principles of a free economy, to be able to lay down their contractual shields and compete.

If the network companies do compete on a fair and equal basis with the hundreds of other business organizations in the television industry—stations, program producers and advertisers—the entire history of this Nation indicates that all of the most efficient elements in the industry will flourish, quality will improve, creative innovations will appear, and both the industry and the public will gain.

Appendix A. Parallel Between Block-Booking Defense of Television Network Companies and Arguments in Overruled Paramount Famous-Lasky Case

In *United States* v. *Paramount Pictures, Inc.* (334 U. S. 131 (1948)), the Supreme Court affirmed the three-judge district court's holding that block booking of movie films by distributors was illegal under the Sherman Act. The district court, in arriving at its holding as to block booking (*United States* v. *Paramount Pictures, Inc.*, 66 F. Supp. 323, 348–350 (S. D. N. Y. 1946)) expressly disapproved an earlier decision (*Federal Trade Commission* v. *Paramount Famous-Lasky Corp.*, 57 F. 2d 152 (2d Cir. 1932)) in which it was held that block booking was not an unfair method of competition under section 5 of the Federal Trade Commission Act. The opinion of the district court in the Paramount Pictures case was written by Judge Augustus Hand, who had previously concurred in the Paramount Famous-Lasky decision.

In the Paramount Famous-Lasky case, the court described the block booking practice as follows (57 F. 2d at 155):

"A block is a group of films offered as a unit, containing a number of individual motion pictures which are available for lease by exhibitors for 3 months or for 1 year. Such blocks contain 13 or 26 films, or 52 or 104 films, according to whether the theater changes films once or twice a week. The individual films in blocks being offered are not always identical. The blocks offered to an exhibitor contain certain films which the exhibitor may not want to lease, but he must lease all or none. He may not select some of the individual films and reject others contained in the block unless he exercises the option to pay prices found by the Commission to be arbitrarily fixed from 50 to 75 percent higher than the estimated prices of such films as part of the block. If the exhibitor declines to take all, the block is successively offered to his competitors until a lease is made. Only if all competitors refuse the block are the individual films offered to exhibitors upon some other basis arrived at by negotiation between the producer and exhibitors."

The Federal Trade Commission's position was stated as follows: (ibid):

"The Commission determined this method of distribution to be unfair, and that the purpose and effect of the alternative offer is to coerce and intimidate an exhibitor into surrendering his free choice in the leasing of films, and into leasing films in blocks as offered, thereby denying to such exhibitor the opportunity and profit of leasing and exhibiting certain other films of higher qualities and which such exhibitor's patrons demand and which such exhibitor desires to exhibit. It is thus concluded by the Commission that this distribution policy lessens competition and tends to create a monopoly in the motion-picture industry by tending to exclude from the market and industry independent producers and distributors of films, and denies to the exhibitors freedom of choice in leasing films."

The only relevant difference between the block-booking practice involved in the 1932 Paramount Famous-Lasky case and the block-booking practice involved in the 1946–48 Paramount case is that in the latter the exhibitor could reject a percentage of the block of films he had been required to lease. Yet this right of rejection did not save the practice from being held illegal.

There is a striking similarity between the arguments advanced in the opinion of Judge Manton in the Paramount Famous-Lasky case to uphold the legality of block-booking feature films, and the arguments advanced in the NBC and CBS briefs to defend the legality of block-booking television programs. The closeness of the parallel is shown by the following table:

PARAMOUNT FAMOUS-LASKY OPINION	NBC AND CBS BRIEFS
The court said there were 7 other major and some minor producers competing with the defendant; there was free competition among producers and distributors; there was a lack of monopolization by the defendant and lack of ability to achieve monopolization.	The television network companies allege that there is competition among the three networks; that there is no monopolization.
The court said there was no effective or destructive injury to theaters, as shown by the fact that three-fourths of those showing defendant's pictures had shown less than 25% thereof.	The television network companies allege that some of their affiliates have not carried some of the block-booked network programs.
The court said that defendant's block booking had not been shown to have had any effect on the smaller producers; that all producers had been able successfully to distribute.	The television network companies allege that their booking practices have not and do not affect competing independent producers.
The court said defendant's block booking had not been shown to have injured theaters.	The television network companies allege that stations are not injured by their booking practices.
The court said that the theater had the choice of two alternatives—to take the block and forestall any competitors, or to refuse and, if competitors also refuse, to pay a higher price per individual film; that these were ordinary incidents of bargaining and selling between seller and buyer.	The television network companies allege that stations enter into affiliation agreements and accept option-time block booking voluntarily.
The court said that since there was no evidence of combination between defendant and other large producers, the fact that defendant's block booking tended to exclude independent producers was insufficient to constitute a violation of law.	The television network companies allege that there is no combination among themselves, so that their booking practices are not illegal.
The court said that defendant's block booking was not "inherently unlawful and unfair," so that its legality depended upon its effect.	The television network companies argue, despite the ruling in the *Paramount* case (overruling the *Paramount Famous-Lasky* case) that block booking is illegal *per se*, that their booking practices are not inherently unlawful, so that their legality depends upon their effect.
The court said that only a small percentage of contracts actually made were for blocks; that most were for a few pictures only.	The television network companies argue that their blocking practices apply only in a fraction of the broadcast hours.
The court said that no illegal tying contract was involved because the leasing of pictures in blocks was not tying them together; defendant's pictures were not indispensable to any exhibitor; defendant had no monopoly; and the fact that the films were copyrighted did not create the monopoly necessary for an illegal tying contract.	The television network companies allege that their practice of offering programs is not tying them together; that their programs are not indispensable to any station; that they have no monopoly; that the fact that each of their programs is unique and is or can be copyrighted does not create the monopoly necessary for an illegal tying contract.

14. PROGRAM SCHEDULES FOR A SAMPLE WEEK IN APRIL 1956, SUBMITTED BY THE FOLLOWING NETWORK AFFILIATED STATIONS WHO APPEARED BEFORE THE COMMITTEE

A. ABC AFFILIATES:
WMAL-TV, WASHINGTON, D. C.
WTTV, BLOOMINGTON, IND.
WBAP-TV, FORT WORTH, TEX.

Program schedule, WMAL-TV, Washington, D. C., week of Apr. 1-7, 1956

Time	Program	Source
Sunday:		
11:45 a. m.	Big Picture	Local film.[1]
12:15 p. m.	Japan Hour	Local film.
12:30 p. m.	Christopher Program	Do.
1 p. m.	This We Believe	Local live.
1:30 p. m.	Dean Pike	ABC.[2]
2 p. m.	Celebrity Parade	Local live and local film.
2:30 p. m.	All Star Theater	Local film.
3 p. m.	Sunday Matinee	Do.
4 p. m.	Evening Office for Easter Day	ABC.
5 p. m.	Super Circus	Do.
6 p. m.	Science Fiction Theater	Local film.
6:30 p. m.	Dr. Hudson's Secret Journal	Do.
7 p. m.	You Asked For It	ABC.
7:30 p. m.	Famous Film Festival	Do.
9 p. m.	Ted Mack Original Amateur Hour	Do.
10 p. m.	Follow That Man	Local film.
10:30 p. m.	Man Called X	Do.
11 p. m.	McCaffrey and News	Local live.
11:11 p. m.	Louis Allen	Do.
11:22 p. m.	Sunday Sports	Local live and local film.
11:30 p. m.	Starlite Theater	Local film.
12 p. m.	Signoff	
Monday:		
11:45 a. m.	This Is the Story	Do.
12 p. m.	Cartoon Concert	Do.
12:30 p. m.	Clown Corner	Local live and local film.
12:55 p. m.	Peoples News	Local live.
1 p. m.	Ladies Home Theater	Local film.
2:24 p. m.	Peoples News	Local live.
2:30 p. m.	Quiz Club	Do.
3 p. m.	Afternoon Film Festival	ABC.
5 p. m.	Mickey Mouse Club	Do.
6 p. m.	Clown Corner	Local live and local film.
6:30 p. m.	Town Country Time	Local live.
6:55 p. m.	Louis Allen	Do.
7 p. m.	Rash and the News	Do.
7:05 p. m.	Jim Gibbons Show	Do.
7:15 p. m.	John Daly News	ABC.
7:30 p. m.	Beulah	Local film.
8 p. m.	TV Readers Digest	ABC.
8:30 p. m.	Voice of Firestone	ABC.
9 p. m.	Film Fair	ABC.
11 p. m.	News—Rash	Local live.
11:10 p. m.	Louis Allen	Do.
11:16 p. m.	Sports Ticker	Local live and local film.
11:20 p. m.	Starlite Theater	Local film.
11:50 p. m.	Heart of the City	Do.
12:30 a. m.	Signoff	
Tuesday:		
11:45 a. m.	This Is the Story	Do.
12 m.	Cartoon Concert	Do.
12:30 p. m.	Clown Corner	Local live and local film.
12:55 p. m.	Peoples News	Local live.
1 p. m.	Ladies Home Theater	Local film.
2:25 p. m.	Peoples News	Local live.
2:30 p. m.	Quiz Club	Do.
3 p. m.	Afternoon Film Festival	ABC.
5 p. m.	Mickey Mouse Club	ABC.
6 p. m.	Clown Corner	Local live and local film.
6:30 p. m.	Town and Country Time	Local live.
6:55 p. m.	Louis Allen	Do.
7 p. m.	Rash and the News	Do.

[1] Syndicated feature, cartoon, news, or public service.
[2] ABC network service.

Program schedule, WMAL-TV, Washington, D. C., week of Apr. 1-7, 1956—Con.

Time	Program	Source
Tuesday—Con.		
7:05 p. m.	Jim Gibbons Show	Local live.
7:15 p. m.	John Daly News	ABC.
7:30 p. m.	Warner Bros. Presents	ABC.
8:30 p. m.	Wyatt Earp	ABC.
9 p. m.	Make Room for Daddy	ABC.
9:30 p. m.	Cavalcade Theater	ABC.
10 p. m.	Music From the Meadowbrook	ABC.
10:30 p. m.	Wrestling from Baltimore	ABC.
11 p. m.	News—Rash	Local live.
11:10 p. m.	Louis Allen	Do.
11:15 p. m.	Sport Ticker	Local live and local film.
11:20 p. m.	Starlite Theater	Local film.
11:50 p. m.	Heart of the City	Do.
12:30 a. m.	Signoff	
Wednesday:		
11:45 a. m.	This Is the Story	Do.
12 m.	Cartoon Concert	Do.
12:30 p. m.	Clown Corner	Local live and local film.
12:55 p. m.	Peoples News	Local live.
1 p. m.	Ladies Home Theater	Local film.
2:25 p. m.	Peoples News	Local live.
2:30 p. m.	Quiz Club	Do.
3 p. m.	Afternoon Film Festival	ABC.
5 p. m.	Micky Mouse Club	ABC.
6 p. m.	Sky King	Local film.
6:30 p. m.	Town and Country Time	Local live.
6:55 p. m.	Louis Allen	Do.
7 p. m.	Rash and the News	Do.
7:05 p. m.	Jim Gibbons Show	Do.
7:15 p. m.	John Daly News	ABC.
7:30 p. m.	Disneyland	ABC.
8:30 p. m.	M-G-M Parade	ABC.
9 p. m.	Masquerade Party	ABC.
9:30 p. m.	Break the Bank	ABC.
10 p. m.	Wednesday Night Fites	ABC.
10:44 p. m.	Sports Spotlight	Local film.
11 p. m.	News-Rash	Local live.
11:10 p. m.	Louis Allen	Do.
11:16 p. m.	Sports Ticker	Local live and local film.
11:22 p. m.	Starlite Theater	Local film.
11:50 p. m.	Heart of the City	Do.
12:30 a. m.	Signoff	
Thursday:		
11:45 a. m.	This Is the Story	Do.
12 p. m.	Cartoon Concert	Do.
12:30 p. m.	Clown Corner	Local live and local film.
12:55 p. m.	Peoples News	Local live.
1 p. m.	Ladies Home Theater	Local film.
2:25 p. m.	Peoples News	Local live.
2:30 p. m.	Quiz Club	Do.
3 p. m.	Afternoon Film Festival	ABC.
5 p. m.	Mickey Mouse Club	ABC.
6 p. m.	Buffalo Bill, Jr.	Local film.
6:30 p. m.	Town and Country Time	Local live.
6:55 p. m.	Louis Allen	Do.
7 p. m.	Rash and the News	Do.
7:06 p. m.	Jim Gibbons Show	Do.
7:15 p. m.	John Daly News	ABC.
7:30 p. m.	Lone Ranger	ABC.
8 p. m.	Life Is Worth Living	ABC.
8:30 p. m.	Stop the Music	ABC.
9 p. m.	Star Tonight	ABC.
9:30 p. m.	Down You Go	ABC.
10 p. m.	Confidential File	Local film.
10:30 p. m.	City Detective	Do.
11 p. m.	News—Rash	Local live.
11:10 p. m.	Louis Allen	Do.
11:15 p. m.	Sports Ticker	Local live and local film.
11:20 p. m.	Starlite Theater	Local film.
11:50 p. m.	Heart of the City	Do.
12:30 a. m.	Signoff	
Friday:		
11:45 a. m.	This Is the Story	Do.
12 p. m.	Cartoon Concert	Do.
12:30 p. m.	Clown Corner	Local live and local film.
12:55 p. m.	Peoples News	Local live.

Program schedule, WMAL–TV, Washington, D. C., week of Apr. 1–7, 1956—Con.

Time	Program	Source
Friday—Continued		
1 p. m.	Ladies Home Theater	Local film.
2:25 p. m.	Peoples News	Local live.
2:30 p. m.	Quiz Club	Do.
3 p. m.	Afternoon Film Festival	ABC.
5 p. m.	Mickey Mouse Club	ABC.
6 p. m.	Jungle Jim	Local film.
6:30 p. m.	Town and Country Time	Local live.
6:55 p. m.	Louis Allen	Do.
7 p. m.	Rash and the News	Do.
7:05 p. m.	Jim Gibbons Show	Do.
7:15 p. m.	John Daly News	ABC.
7:30 p. m.	Rin-Tin-Tin	ABC.
8 p. m.	Ozzie and Harriet	ABC.
8:30 p. m.	Crossroads	ABC.
9 p. m.	Studio 57	Local film.
9:30 p. m.	The Vise	ABC.
10 p. m.	Ethel and Albert	ABC.
10:30 p. m.	Passport to Danger	Local film.
11:00 p. m.	Rash-News	Local live.
11:10 p. m.	Louis Allen	Do.
11:16 p. m.	Sports Ticker	Local live and local film.
11:21 p. m.	Billion Dollar Movie	Local live.
1 a. m.	Signoff	
Saturday:		
5:30 p. m.	Future Flyers Club	Local live and local film.
6 p. m.	This Is the Story	Local live.
6:30 p. m.	Championship Bowling	Do.
7:30 p. m.	Ozark Jubilee	ABC.
9 p. m.	Lawrence Welk	ABC.
10 p. m.	Chance of a Lifetime	ABC.
10:30 p. m.	Town and Country Jamboree	Local live.
1:30 a. m.	Signoff	

Program schedule, WTTV, Bloomington, Ind., week of April 7, 1956

SUNDAY, APRIL 1, 1956

8:45: Test pattern and tone
9:11: National Anthem
9:13: Sign on (morning devotions)
9:15: Miracle of Love (religious film)
10:00: Sunday morning (local variety show)
11:30: Washington Report (Congressman Wm. G. Bray—film)
11:45: Rotobroil
12:00: Vista (remote from Indiana University—1½ hour education program from campus (weekly))
1:30: Country Matinee (live country music)
2:01: Boyd Bennett Show (live music)
3:00: Mark Saber (syndicated ½ hour)
3:28: Headlines (syndicated ½ hour)
3:58: Times Square Playhouse (syndicated ½ hour)
4:28: Mr. District Attorney (syndicated ½ hour)
5:00: Super Circus (network)
5:30: Kit Carson (syndicated ½ hour)
6:00: Cisco Kid (syndicated ½ hour)
6:30: Roy Rogers (network)
7:00: Lone Wolf (syndicated ½ hour)
7:30: Famous Film Festival (network)
9:00: Original Amateur Hour (network)
9:30: Follow That Man (syndicated ½ hour)
10:00: Man Called X (syndicated ½ hour)
10:30: March of Medicine (network)
11:00: It's a Great Life (network)
11:31: Indiana University Adult Series (educational series from Indiana Univeristy campus (weekly))
12:01: Goodnight News
12:06: Signoff (evening meditations)

Program schedule, WTTV, Bloomington, Ind., week of Apr. 7, 1956—**Continued**

MONDAY, APRIL 2, 1956

9:30: Test pattern and tone
9:36: National anthem
9:38: Sign on (morning devotions)
9:40: Sign on News
9:45: Coffee Break (local show)
10:00: Looney Tunes
10:30: Magic Clock (local live ½-hour children's show)
11:00: Feature Theater (feature movie)
12:01: Coffee Break
12:30: Les' Cartoons (film and live)
12:59: R. F. D. No. 4 (live ½-hour farm show)
1:30: Indiana University (remote, daily educational series)
2:00: Editorially Speaking (live cooking show)
2:29: Party Time (League of Women Voters, live)
3:00: Religious film
3:30: IGA Movie Matinee (syndicated ½-hour film)
4:00: Dance Time (live teen-age program)
4:34: Watch the Birdie (live children's show)
4:45: Cartoon Club
5:00: Mickey Mouse Club (network)
6:01: Little Rascals (local syndicated children's film show)
6:40: Weatherman
6:44: Frank Edwards News (live)
6:50: Mobil Theater (syndicated film)
7:30: Twilight Theater (syndicated film)
8:00: TV Reader's Digest (network)
8:30: Voice of Firestone (network)
9:00: Bowling Time (syndicated film)
10:00: Dumont Monday Boxing (network)
10:45: Sports Today (local live sports scores)
11:00: Frank Edwards News (live)
11:16: Starlight Theater (feature movie)
12:42: Goodnight News
12:49: Signoff (evening meditations)

TUESDAY, APRIL 3, 1956

9:30: Test pattern and tone
9:36: National anthem
9:38: Sign on (morning devotions)
9:40: Sign-on News
9:45: Coffee Break (local show)
10:00: Looney Tunes
10:30: Magic Clock (local live one-half hour children's show)
11:00: Feature Theater (feature movie)
12:17: Coffee Break (local show)
12:30: Les' Cartoons (film and live)
12:49: R. F. D. No. 4 (live one-half hour farm show)
1:30: Let's Find Out (remote daily educational series from Indiana University)
2:00: Eatitorially Speaking (live cooking show)
2:30: Famous Playhouse (feature film)
3:00: Royal Playhouse (feature film)
4:00: Dance Time (live teen-age program)
4:33: Watch the Birdie (live children's show)
4:44: Cartoon Club
5:00: Mickey Mouse Club (network)
6:01: Little Rascals (local syndicated children's film show)
6:37: Weatherman
6:44: Frank Edwards News (live)
6:59: Art Linkletter (syndicated film)
7:14: Industry on Parade (film)
7:30: Warner Bros. Presents (network)
8:30: Wyatt Earp (network)

Program schedule, WTTV, Bloomington, Ind., week of Apr. 7, 1956—Continued

TUESDAY, APRIL 3, 1956—continued

9:00: Make Room for Daddy (network)
9:30: Cavalcade Theater (network)
10:00: TV Fishing Club (local live show)
10:30: Biff Baker (syndicated film)
11:00: Frank Edwards News (live)
11:16: Starlight Theater (feature movie)
12:34: Goodnite News
12:39: Signoff (evening meditations)

WEDNESDAY, APRIL 4, 1956

9:30: Test pattern and tone
9:36: National anthem
9:38: Sign on (morning devotions)
9:40: Sign-on News
9:45: Coffee Break (local show)
10:00: Looney Tunes
10:30: Magic Clock (local live one-half hour children's show)
11:00: Feature Theater (feature movie)
12:14: Coffee Break (local show)
12:30: Les' Cartoons (film and live)
12:58: R. F. D. No. 4 (live one-half hour farm show)
1:00: Everyday Nutrition (remote daily educational series from Indiana University)
2:00: Eatitorially Speaking (live cooking show)
2:30: Famous Playhouse (feature film)
3:00: Royal Playhouse (feature film)
3:30: Iga Movie Matinee (syndicated one-half hour film)
4:00: Dance Time (live teen-age program)
4:44: Cartoon Club
5:00: Mickey Mouse Club (network)
6:01: Little Rascals (local syndicated children's film show)
6:37: Weatherman
6:43: Frank Edwards News (live)
7:00: Biff Baker (syndicated film)
7:30: Disneyland (network)
8:30: M-G-M Parade (network)
9:00: Masquerade Party (network)
9:30: Break the Bank (network)
10:00: Wednesday Night Fights (network)
10:45: Sports Forecast (local live sports show)
11:00: Frank Edwards News (live)
11:16: Starlight Theater (feature movie)
12:47: Goodnite News
12:54: Signoff (evening meditations)

THURSDAY, APRIL 5, 1956

9:30: Test pattern and tone
9:36: National anthem
9:38: Sign on (morning devotions)
9:40: Sign-on news
9:45: Coffee Break (local show)
10:00: Looney Tunes
10:30: Magic clock (local live half-hour children's show)
11:00: Feature Theater (feature movie)
12:22: Coffee Break (local show)
12:30: Les's Cartoons (film and live)
12:59: R. F. D. No. 4 (live half-hour farm show)
1:30: Indiana University (remote—daily educational series from Indiana University)
2:00: Eatitorially Speaking (live cooking show)

Program schedule, WTTV, Bloomington, Ind., week of Apr. 7, 1956—Continued

THURSDAY, APRIL 5, 1956—continued

2:30: Famous Playhouse (feature film)
3:00: Royal Playhouse (feature film)
3:30: IGA Movie Matinee (Syndicated half-hour film)
4:00: Dance Time (live teen-age program)
4:34: Watch the Birdie (film and live children's show)
4:44: Cartoon Club
5:00: Mickey Mouse Club (network)
6:01: Little Rascals (local syndicated children's film show)
6:37: Weatherman
6:43: Frank Edwards News (live)
6:59: City Detective (syndicated film)
7:30: The Lone Ranger (network)
8:00: Bishop Sheen (network)
8:30: Stop the Music (network)
9:00: Star Tonight (network)
9:30: Hayloft Frolic (local live country music)
10:01: Ten O'clock Theater (syndicated film)
11:01: Frank Edwards News (live)
11:18: Starlight Theater (feature movie)
1:00: Goodnite News
1:06: Signoff (evening meditations)

FRIDAY, APRIL 6, 1956

9:30: Test pattern and tone
9:36: National Anthem
9:38: Sign on (morning devotions)
9:40: Sign-on news
9:45: Coffee Break (local show)
10:00: Looney Tunes
10:30: Magic Clock (local live half-hour children's show)
11:00: Feature Theater (feature movie)
12:24: Les's Cartoons (film and live)
12:52: News (local live)
12:58: R. F. D. No. 4 (live half-hour farm show)
1:30: Indiana University (Remote—daily educational series from Indiana University)
2:00: Eatitorially Speaking (live cooking show)
2:30: Famous Playhouse (feature film)
3:00: Royal Playhouse (feature film)
3:30: IGA Movie Matinee (syndicated half-hour film)
4:00: Dance Time (live teen-age program)
4:34: Watch the Birdie (film and live children's show)
4:44: Cartoon Club
5:00: Mickey Mouse Club (network)
6:01: Little Rascals (local syndicated children's film show)
6:36: Weatherman
6:43: Frank Edwards News (live)
6:58: Favorite Story (syndicated half-hour film)
7:29: Waterfront (syndicated half-hour film)
8:00: Ozzie and Harriet (network)
8:30: Crossroads (network)
9:00: Dollar a Second (network)
9:30: The Vise (network)
10:00: Ethel and Albert (network)
10:30: Highway Patrol (syndicated half-hour film)
11:01: Frank Edwards News (live)
11:18: Starlight Theater (feature movie)
12:35: Goodnite News
12:35: Signoff (evening meditations)

Program schedule, WTTV, Bloomington, Ind., week of Apr. 7, 1956—Continued

SATURDAY—APRIL 7, 1956

8:30: Test pattern and tone
8:46: National Anthem
8:48: Sign on (morning devotions)
9:00: Big Picture (public service Army film)
9:30: Looney Tunes
10:00: Saturday Western Ledger (film and live)
11:00: The Play Room (remote—one-half hour children's program from Indiana University)
11:30: Super Circus (network)
12:00: News at Noon (live)
12:05: Saturday with Les and Jack (film and live children's program—3 hours)
3:00: Royal Playhouse (feature film)
3:30: Tuberculosis Program (public service life show)
4:00: Panorama of Faith (live public service religious program)
4:28: House of Mystery (feature film)
6:00: Lattie Moore Show (live country music)
6:30: Jack Noel Show (live country music)
7:00: Shorty Sheehan Show (live country music)
7:30: Royal Playhouse (syndicated film)
8:00: Ozark Jubilee (network)
9:00: Lawrence Welk (network)
10:00: Amateur Boxing (live)
11:02: Hook Feature Theater (feature film)
12:30: Goodnite News
12:35: Signoff (evening meditations)

WBAP-TV, channel 5, Forth Worth, Tex., television schedule, week of April 1–7, 1956

SUNDAY, APRIL 1

8:45: How Christian Science Heals (film)
9:00: Easter Sunday Church Services (NBC)
10:00: The Christophers
10:30: Air Force Digest (film)
10:45: Man to Man (film)
11:00: Travis Avenue Baptist Church (remote)
12:00: Industry on Parade (film)
12:15: Cartoon Capers (film)
12:30: Movie Marquee (film)
1:30: Christian Questions (studio)
2:00: Hopalong Cassidy (film)
3:00: Wide, Wide World (NBC)
4:30: Captain Gallant of the Foreign Legion (NBC)
5:00: Meet the Press (NBC)
5:30: Roy Rogers Show (NBC)
6:00: You Asked for It (ABC)
6:30: Famous Film Festival (ABC): Red Shoes, part I
8:00: Ted Mack's Original Amateur Hour (ABC)
9:00: The Loretta Young Show (NBC)
9:30: March of Medicine (NBC)
10:00: Texas News (studio and film)
10:15: Weather Telefacts (studio)
10:25: News Final (studio)
10:30: Les Paul and Mary Ford (film)
10:35: Movie Marquee (film)
12:00: Signoff.

MONDAY, APRIL 2

6:50: Let's Go Fishing (studio)
7:00: Sunup (studio)
8:00: Kitty's Wonderland (studio)
9:00: Ding Dong School (NBC)
9:30: Ernie Kovac Show (NBC)

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WBAP-TV, channel 5, Fort Worth, Tex., television schedule, week of Apr. 1-7, 1956—Continued

SUNDAY, APRIL 1—continued

10:00: Home (NBC)
11:00: Texas Living (studio, color)
11:45: TBA
12:00: High Noon News (studio, color)
12:30: Ann Alden Show (studio, color)
12:45: Movie Marquee (film)
2:00: Matinee Theater (NBC): Singer in the Valley (color)
3:00: A Date With Life (NBC)
3:15: Modern Romances (NBC)
3:30: Queen for a Day (NBC)
4:00: News (studio)
4:10: Weather (studio)
4:15: Tricks and Treats (studio)
5:00: Mickey Mouse Club (ABC)
6:00: Wild Bill Hickok (film)
6:30: Topper (ABC)
7:00: TV Reader's Digest (ABC)
7:30: Voice of Firestone (ABC)
8:00: Badge 714 (film)
8:30: Overseas Adventure (film)
9:00: Warner Brothers Presents (ABC)
10:00: Texas News (studio and film)
10:15: Weather Telefacts (studio)
10:25: News Final (studio)
10:30: Suspense (film)
11:00: Tonight (NBC)
12:00: Signoff

TUESDAY, APRIL 3

6:50: Let's Go Fishing (studio)
7:00: Sunup (studio)
8:00: Kitty's Wonderland (studio)
9:00: Ding Dong School (NBC)
9:30: Ernie Kovac Show (NBC)
10:00: Home (NBC)
11:00: Texas Living (studio, color)
11:45: Beauty School (studio, color)
12:00: High Noon News (studio, color)
12:30: Ann Alden Show (studio, color)
12:45: Movie Marquee (film)
2:00: Matinee Theater (NBC, color): The Heart of a Husband
3:00: A Date With Life (NBC)
3:15: Modern Romances (NBC)
3:30: Queen for a Day (NBC)
4:00: Evening News (studio)
4:10: Weathercast (studio)
4:15: Tricks and Treats (studio)
5:00: Mickey Mouse Club (ABC)
6:00: Annie Oakley (film)
6:30: Superman (film)
7:00: Milton Berle Show (NBC)
8:00: Jane Wyman's Fireside Theater (NBC)
8:30: Circle Theater (NBC)
9:30: Big Town (NBC)
10:00: Texas News (film)
10:15: Weather Telefacts (studio)
10:25: News Final (studio)
10:30: Racket Squad (film)
11:00: Tonight (NBC)
12:00: Signoff

WBAP, channel 5, Fort Worth, Tex., television schedule, week of

MONDAY, APRIL 2—Continued

WEDNESDAY, APRIL 4

Fishing (studio)
(studio)
Wonderland (studio)
Dong School (NBC)
rnie Kovacs Show (NBC)
(NBC)
s Living (studio—color)
Styles (studio—color)
Noon News (studio—color)
Alden Show (studio—color)
ovie Marquee (film)
: Matinee Theater (NBC—color): From the Desk of Margaret Tyding
3:00: A Date With Life (NBC)
3:15: Modern Romances (NBC)
3:30: Queen for a Day (NBC)
4:00: Evening News (studio)
4:10: Weathercast (studio)
4:15: Tricks and Treats (studio)
5:00: Mickey Mouse Club (ABC)
6:00: Cowboy Thrills (film)
6:30: Disneyland (ABC)
7:30: MGM Parade (ABC)
8:00: Masquerade Party (ABC)
8:30: Break the Bank (ABC)
9:00: Wednesday Nights Fights (ABC)
9:45: Sports With Sherman (studio)
10:00: Texas News (studio and film)
10:15: Weather Telefacts (studio)
10:25: News Final (studio)
10:30: Suspense (film)
11:00: Tonight (NBC)
12:00: Signoff

THURSDAY, APRIL 5

6:50: Let's Go Fishing (studio)
7:00: Sunup (studio)
8:00: Kitty's Wonderland (studio)
9:00: Ding Dong School (NBC)
9:30: Ernie Kovac Show (NBC)
10:00: Home (NBC)
11:00: Texas Living (studio—color)
11:45: Industry on Parade (film)
12:00: High Noon News (studio—color)
12:30: Ann Alden Show (studio—color)
12:45: Movie Marquee (film)
2:00: Matinee Theater (NBC—color): But You Look Like Sisters
3:00: A Date With Life (NBC)
3:15: Modern Romances (NBC)
3:30: Queen for a Day (NBC)
4:00: Evening News (studio)
4:10: Weathercast (studio)
4:15: Tricks and Treats (studio)
5:00: Mickey Mouse Club (ABC)
6:00: Cisco Kid (film)
6:30: The Lone Ranger (ABC)
7:00: You Bet Your Life (NBC)
7:30: Dragnet (NBC)
8:00: People's Choice
8:30: Ford Theater (NBC)
9:00: Lux Video Theater (NBC)
10:00: Texas News (studio and film)
10:15: Weather Telefacts (studio)

WBAP-TV, channel 5, Fort Worth, Tex., television schedule, Apr. 1-7, 1956—Continued

THURSDAY, APRIL 5—continued

10:25: News Final (studio)
10:30: Count of Monte Cristo (film)
11:00: Tonight (NBC)
12:00: Signoff

FRIDAY, APRIL 6

6:50: Let's Go Fishing (studio)
7:00: Sunup (studio)
8:00: Kitty's Wonderland (studio)
9:00: Ding Dong School (NBC)
9:30: Ernie Kovac Show (NBC)
10:00: Home (NBC)
11:00: Texas Living (studio—color)
11:45: TBA
12:00: High Noon News (studio—color)
12:30: Ann Alden Show (studio—color)
12:45: Movie Marquee (film)
2:00: Matinee Theater (NBC—color): The House of Seven Gables
3:00: A Date With Life (NBC)
3:15: Modern Romances (NBC)
3:30: Queen for a Day (NBC)
4:00: Evening News (studio)
4:10: Weathercast (studio)
4:15: Tricks and Treats (studio)
5:00: Mickey Mouse Club (ABC)
6:00: Cowboy Thrills (film)
6:30: Rin Tin Tin (ABC)
7:00: Ozzie and Harriet (ABC)
7:30: Crossroads (ABC)
8:00: Dollar a Second (ABC)
8:30: The Vise (ABC)
9:00: Ethel and Albert (ABC)
9:30: Douglas Fairbanks Presents (film)
10:00: Texas News (studio and film)
10:15: Weather Telefacts (studio)
10:25: News Final (studio)
10:30: Suspense (film)
11:00: Tonight (NBC)
12:00: Signoff

SATURDAY, APRIL 7

9:00: Children's Corner (NBC)
9:30: Pinky Lee Show (NBC)
10:00: Fury (NBC)
10:30: Bobby Peter's Jamboree (studio)
11:30: Cartoon Capers (film)
12:00: Farm Editor (studio)
12:30: Big Picture (film)
1:00: Six Gun Theater (film)
2:00: Saturday Matinee (film)
5:45: Two Grand (film)
6:00: Passport to Danger (film)
6:30: Susie (film)
7:00: Perry Como Show (NBC)
8:00: People Are Funny (NBC)
8:30: Texaco Star Theater (NBC)
9:00: George Gobel Show (NBC)
9:30: Your Hit Parade (NBC)
10:00: Telephone Spotlight on Texas (film)
10:15: Weather Telefacts (studio)
10:25: News Final (studio)
10:30: Les Paul and Mary Ford (film)
10:35: Movie Marquee (film)
12:00: Signoff

WBAP-TV film titles for week April 1 through April 7, 1956

Monday, April 2:
- 6:00 p. m.: Wild Bill Hickok, No. 55: The Doctor Story
- 8:30 p. m.: Badge 714, No. 114
- 10:30 p. m.: Suspense: Committed to Memory

Tuesday, April 3:
- 6:30 p. m.: Superman, No. 51: Whistling Bird
- 10:30 p. m.: Racket Squad: One More Dream

Wednesday, April 4:
- 6:00 p. m.: Cowboy Thrills—Kit Carson, No. 16: Hero of Hermosa
- 10:30 p. m.: Suspense: Trial of Mr. Kessel

Thursday, April 5:
- 6:00 p. m.: Cisco Kid, No. 115
- 10:30 p. m.: Count of Mounte Cristo: Naples

Friday, April 6:
- 6:00 p. m.: Cowboy Thrills—Kit Carson, No. 17: Ticket to Mexico
- 9:30 p. m.: Douglas Fairbanks, Jr.: Ship's Doctor
- 10:30 p. m.: Suspense: Concert Selection

Saturday, April 7:
- 5:45 p. m.: 2 Grand, No. 5
- 6:00 p. m.: Passport to Danger: London
- 10:00 p. m.: Spotlight on Texas: Fatal Step

MOVIE MARQUEE, APRIL 1 TO APRIL 7

Afternoon:
- Sunday, April 1: Rip Roaring Riley (Lloyd Hughes, Grant Withers)
- Monday, Rpril 2: The Challenge (Tom Conway, June Vincent, Richard Stapley)
- Tuesday, April 3: House Across the Bay (George Raft, Joan Bennett, Walter Pidgeon)
- Wednesday, April 4: The Trap (Sidney Toler, Manton Moreland)
- Thursday, April 5: Top Sargeant Mulligan (Nat Pendleton, Carol Hughes, Sterling Holloway)
- Friday, April 6: Ticket to Paradise (Roger Pryor, Wendie Barry)

Night:
- Sunday, April 1: Unknown Island (Barton MacLane, Virginia Gray)
- Saturday, April 7: The Longhorn (Wild Bill Elliott, Myron Healy, Phyllis Coates)

Hopalong Cassidy, April 1: Outlaws of the Desert

Six-Gun Theater, April 7: Law of the Lash (Lash LaRue)

Saturday Matinee, April 7: Abroad With Two Yanks (William Bendix, Helen Walker, Dennis O'Keefe)

B. CBS AFFILIATES

WTOP-TV, WASHINGTON, D. C.
KREX-TV, GRAND JUNCTION, COLO.
KDUB-TV, LUBBOCK, TEX.
KSBW-TV, SALINAS, CALIF.
WNOK-TV, COLUMBIA, S. C.
WCAU-TV, PHILADELPHIA, PA.
WCIA-TV, CHAMPAIGN, ILL.

WTOP-TV program schedule, Sunday, Apr. 8 through Saturday, Apr. 14, 1956

Time	Program	Source
Sunday, Apr. 8:		
8	Rural America [1]	Film.
8:15	What's Your Trouble [1]	Do.
8:30	Hans Christian Andersen [1]	Do.
9	Chapel of the Air [1]	Local, live.
9:30	Adventure [1]	CBS.
10	Mass for Shut-Ins	Local, live.
10:30	Oswald Rabbit Presents	Film.
12	Police Call [1]	Do.
12:30	Wild Bill Hickok	CBS.
1	Sunday Theatre [1]	Film.
2:15	Patti Page Show [1]	Do.
2:30	Life With Father	Do.
3	Face the Nation	CBS.
3:30	CBS Sunday News—Eric Sevareid	CBS.
4	Front Row Center	CBS.
5:00	Masters Golf Tournament [1]	CBS.
6	Telephone Time	CBS.
6:30	You Are There	CBS.
7	Lassie	CBS.
7:30	Jack Benny	CBS.
8	Ed Sullivan Show	CBS.
9	Judy Garland Show [1]	CBS.
9:30	Alfred Hitchcock Presents	CBS.
10	The $64,000 Challenge [1]	CBS.
10:30	What's My Line	CBS.
11	Sunday News Roundup	Local, live.
11:15	Sunday Sports Roundup	Do.
11:30	City Side	Do.
12	China Smith [1]	Film.
Saturday, Apr. 14:		
7:55	Morning Meditations	Local, live.
8	Stop, Look, and Listen	Film.
8:30	Oswald Rabbit Presents	Do.
9	Ask It Basket	Local, live.
9:30	Captain Kangaroo	CBS.
10:30	Mighty Mouse Playhouse	CBS.
11	Winky Dink and You	CBS.
11:30	Tales of the Texas Rangers	
12	The Big Top	CBS.
1	The Lone Ranger	CBS.
1:30	Captain Midnight	Film.
2	Saturday Matinee	Do.
4	Pick Temple's Giant Ranch	Local, live.
5:30	Saturday News Special	Do.
5:45	Patti Page Show	Film.
6	The Cisco Kid [1]	Do.
6:30	Count of Monte Cristo	Do.
7	Gene Autry [2]	CBS.
7:30	Beat the Clock	CBS.
8	Jackie Gleason in The Honeymooners	CBS.
8:30	Stage Show	CBS.
9	Two for the Money	CBS.
9:30	It's Always Jan [1]	CBS.
10	Gunsmoke [1]	CBS.
10:30	Damon Runyon Theatre [1]	CBS.
11	11 p. m. Report	Local, live.
11:15	The Late Show	Film.
Monday to Friday: (daytime):		
6:55	Morning Meditations	Local live.
7	Good Morning, Will Rogers, Jr	CBS.
8	Captain Kangaroo	CBS.
9	Mark Evans Show	Local live.
11	The Garry Moore Show (Monday, Thursday)	CBS.
10:30	Arthur Godfrey (Monday, Thursday)	CBS.
11	Garry Moore (Friday)	CBS
11:30	Strike it Rich	CBS.
12	Valiant Lady	CBS.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	The Guiding Light	CBS.
1	Jack Paar Show	CBS.
1:30	As the World Turns	CBS.
2	Robert Q. Lewis	CBS.
2:15	Donna Douglas Show	Local live.
2:30	Art Linkletter, House Party	CBS.
3	The Big Payoff	CBS.
3:30	Bob Crosby Show	CBS.
4	Pick Temple's Giant Ranch	Local live.
5	My Little Margie	Film.

See footnotes at end of table.

WTOP-TV program schedule, Sunday, Apr. 8 through Saturday, Apr. 14, 1956—Continued

Time	Program	Source
Monday to Friday (day time)—Con.		
5:30	Foreign Incident	Film.
6	The Cisco Kid	Do.
6:30	6:30 Spotlight	Local live.
6:45	Douglas Edwards and the News	CBS.
Monday evening, Apr. 9:		
7	The Turning Point	Film.
7:30	Adventures of Robin Hood	CBS.
8	Burns and Allen	CBS.
8:30	Godfrey's Talent Scouts	CBS.
9	I Love Lucy	CBS.
9:30	December Bride	CBS.
10	Studio One	CBS.
11	11 p. m. report	Local live.
11:15	The Late Show	Film.
1	News, signoff	Local live.
Tuesday evening, Apr. 10:		
7	Do You Trust Your Wife	CBS.
7:30	Name That Tune [1]	CBS.
8	The Phil Silvers [1] Show	CBS.
8:30	Navy Log	CBS.
9	Guy Lombardo's Diamond Jubilee	CBS.
9:30	Red Skelton Show	CBS.
10	$64,000 Question	CBS.
10:30	Celebrity Playhouse [1]	Film.
11	11 p. m. report	Local live.
11:15	The Late Show	Film.
1	News, signoff	Local live.
Wednesday evening, Apr. 11:		
7	Ramar of the Jungle	Film.
7:30	My Friend Flicka	CBS.
8	Arthur Godfrey and His Friends	CBS.
9	The Millionnaire	CBS.
9:30	I've Got A Secret	CBS.
10	United States Steel Hour [1]	CBS.
11	11 p. m. report	Local live.
11:15	The Late Show	Film.
1	News, signoff	Local live.
Thursday evening, Apr. 12:		
7	San Francisco Beat	Film.
7:30	Sergeant Preston of the Yukon	CBS.
8	Bob Cummings Show	CBS.
8:30	Shower of Stars [1 2]	CBS.
9:30	Four Star Playhouse	CBS.
10	Arthur Murray Party	CBS.
10:30	Public Defender	Film.
11	11 p. m. report	Local live.
11:15	The Late Show	Film.
1	News, signoff	Local live.
Friday evening, Apr. 13:		
7	Annie Oakley	Film.
7:30	Highway Patrol	Do.
8	Mama	CBS.
8:30	Our Miss Brooks	CBS.
9	Crusader	CBS.
9:30	Playhouse of Stars	CBS.
10	The Line-Up	CBS.
10:30	Person to Person	CBS.
11	11 p. m. report	Local live.
11:15	The Late Show	Film.
1	News, signoff	Local live

[1] Change.
[2] Color.

Program schedule, KREX-TV, Grand Junction, Colo., week of Apr. 8-14, 1956

Time	Program	Source
Sunday:		
4	The Christophers	Film.
4:30	Faith for Today	Do.
5	This Is the Life	Do.
5:30	Light of the World	Live.
5:45	What's Your Trouble	Film.
6	Ed Sullivan Show	CBS.
7	It's a Great Life	NBC.
7:30	Private Secretary	CBS.
8	Ray Milland	Film.
8:30	Great Gildersleeve	Do.
9	Weekly News Review	Live.
9:15	Editorial Broadcast	Do.
9:30	Break the Bank	ABC.
10	Dragnet	NBC.
10:30	Reporters Roundup	Film.
11	Signoff	
Monday:		
4:30	Robert Q. Lewis	CBS.
5	Love of Life	CBS.
5:15	World Through Stamps	Film.
5:30	Wild Bill Hickok	CBS.
6	Lazy B. Ranch	Live.
6:15	In Town Today	Do.
6:25	TV News	Do.
6:32	TV Weather	Do.
6:39	TV Sports	Do.
6:45	Sporting Show	Do.
7	I Love Lucy	CBS.
7:30	Robinhood	CBS.
8	Variety Time	Film and live.
8:30	Celebrity Playhouse	Film.
9	December Bride	CBS.
9:30	Burns and Allen	CBS.
10	Feature Theater	Film.
11:35	Signoff	
Tuesday:		
4:30	Garry Moore Show	CBS.
4:45	House Party	CBS.
5	Love of Life	CBS.
5:15	Industry on Parade	Film.
5:30	Mighty Mouse Playhouse	CBS.
6	Lazy B Ranch	Live.
6:15	In Town Today	Do.
6:25	TV News	Do.
6:32	TV Weather	Do.
6:39	TV Sports	Do.
6:45	Wildlife in Review	Do.
7	The Phil Silvers Show	CBS.
7:30	Highway Patrol	Film.
8	I Led 3 Lives	Do.
8:30	My Hero	Do.
9	Guy Lombardo Diamond Jubilee	CBS.
9:30	Mobile Theatre	Film.
10	Feature Theatre	Do.
11:30	Signoff	
Wednesday:		
4:30	Industry on Parade	Do.
4:45	Arthur Godfrey	CBS.
5	Love of Life	CBS.
5:15	Industry on Parade	Film.
5:30	Juvenile program—Kid Service	Do.
6	Lazy B Talent	Live.
6:15	In Town Today	Do.
6:25	TV News	Do.
6:32	TV Weather	Do.
6:39	TV Sports	Do.
6:45	Sportsman Club	Film.
7	Wrestling Workouts	Do.
7:30	Life in Western Colorado	Live.
8	Turning Point	Film.
8:30	Badge 714	Do.
9	I've Goat a Secret	CBS.
9:30	Godfrey and Friends	CBS.
10	Feature Theatre	Film.
11	Signoff	
Thursday:		
4:30	Industry on Parade	Do.
4:45	Houseparty	CBS.
5	Love of Life	CBS.
5:15	Public Service	Live.
5:30	Rin Tin Tin	Film.
6	Lazy B Ranch	Live.

Program schedule, KREX–TV, Grand Junction, Colo., week of Apr. 8–14, 1956—Continued

Time	Program	Source
Thursday—Con.		
6:15	In Town Today	Live.
6:25	TV News	Do.
6:32	TV Weather	Do.
6:39	TV Sports	Do.
6:45	Movie Museum	Film.
7	Milton Berle	NBC.
8	Liberace	Film.
8:30	Dr. Hudson's Secret Journal	Do.
9	Ford Theatre	NBC.
9:30	Star and the Story	Film.
10	Million Dollar Theatre	Do.
11	Signoff.	
Friday:		
4:30	Bob Crosby	CBS.
4:45	Arthur Godfrey Time	CBS.
5	Love of Life	CBS.
5:15	Industry on Parade	Film.
5:30	Western Marshal	Do.
6	Lazy B Ranch	Live.
6:15	In Town Today	Do.
6:25	TV News	Do.
6:32	TV Weather	Do.
6:39	TV Sports	Do.
6:45	Sportsman Club	Film.
7	Talent Scouts	CBS.
7:30	Science Fiction Theatre	Film.
8	Cisco Kid	Do.
8:30	You Bet Your Life	NBC.
9	Grand Ole Opry	Film.
9:30	The Hunter	Do.
10	Telephone Time	CBS.
10:30	Feature Theatre	Film.
11:30	Signoff.	
Saturday:		
4	Winky Dink and You	CBS.
4:30	Pinky Lee	NBC.
5	Roy Rogers	NBC.
5:30	Mr. Wizard	NBC.
6	Sid Caesar's Hour	NBC.
7	People Are Funny	NBC.
7:30	George Gobel	NBC.
8	Gunsmoke	CBS.
8:30	Playhouse of Stars	CBS.
9	Lawrence Welk	ABC.
10	Hit Parade	NBC.
10:30	Champions in Wrestling	Film.
11:30	Signoff.	

KDUB–TV, channel 13, Lubbock, Tex., program schedule, Apr. 8–14, 1956

Time	Program	Source
Sunday, Apr. 8, 1956:		
10:40	Program Previews	Slide.
10:50	First Baptist Church	Local live.
12	Music Box	Film.
12:15	Man to Man	Do.
12:30	The Christophers	Do.
1	This is the Life	Do.
1:30	Adventure (CBS)	Network.
2	Face the Nation (CBS)	Do.
2:30	CBS Sunday News (CBS)	Do.
3	Front Row Center (CBS)	Do.
4	Telephone Time with John Nesbitt (CBS)	Do.
4:30	Plains Talk	Local live.
5	Wild Bill Hickok (CBS)	Film.
5:30	You Are There (CBS)	Network.
6	Plainsman Parade	Local live.
6:30	Jack Benny (CBS)	Network.
7	Ed Sullivan Show (CBS)	Do.
8	G. E. Theatre (CBS)	Do.
8:30	Alfred Hitchcock (CBS)	Film.
9	Appointment With Adventure (CBS)	Do.
9:30	Annie Oakley	Do.
10	Confidential File	Do.
10:30	Final Edition	Local live.
10:45	Sunbonnet Sue	Film.
11:45	Sign Off	Slide.

KDUB-TV, channel 13, Lubbock, Tex., program schedule, Apr. 8-14, 1956—Con.

Time	Program	Source
Monday, Apr. 9, 1956:		
6:40	Sign On	Slide.
6:45	Advance Weathercast	Local live.
7	Will Rogers, Jr. (CBS)	Network.
7:25	Local News	Local live.
7:30	Will Rogers, Jr. (CBS)	Network.
7:55	Local Weather	Local live.
8	Captain Kangaroo (CBS)	Network.
8:25	Cartoons (CBS)	Do.
8:30	Captain Kangaroo (CBS)	Do.
8:55	Sing Song (CBS)	Do.
9	Garry Moore (CBS)	Do.
9:30	Bandstand	Film.
9:45	Godfrey Time (CBS)	Network.
10	The Homefinders	Local live.
10:15	Godfrey Time (CBS)	Network.
10:30	Strike It Rich (CBS)	Do.
11	Valiant Lady, (CBS)	Do.
11:15	Love of Life (CBS)	Do.
11:30	Search for Tomorrow (CBS)	Do.
11:45	News	Local live.
12	Jack Paar Show (CBS)	Network.
12:30	As the World Turns (CBS)	Do.
1	Robert Q. Lewis (CBS)	Do.
1:15	Recipe Roundup	Local live.
1:45	Houseparty (CBS)	Network.
2	Big Payoff (CBS)	Do.
2:30	Bandstand	Film.
2:45	TV Sermonette	Local live.
3	Brighter Day (CBS)	Network.
3:15	Secret Storm (CBS)	Do.
3:30	Edge of Night (CBS)	Do.
4	Western Movie	Film.
5	Mighty Mouse Playhouse (CBS)	Do.
5:30	Community Crossroads	Local live.
6	Local News, Sports, Weather	Do.
6:15	Doug Edwards (CBS)	Network.
6:30	Robin Hood (CBS)	Do.
7	Burns and Allen (CBS)	Do.
7:30	Douglas Fairbanks Presents	Film.
8	I Love Lucy (CBS)	Network.
8:30	December Bride (CBS)	Do.
9	Studio One (CBS)	Do.
10	Four Star Playhouse (CBS)	Film.
10:30	News, Sports, Weather	Local live.
11	Main Event Wrestling	Film.
12	Sign Off	Slide.
Tuesday, Apr. 10, 1956:		
6:40	Sign On	Do.
6:45	Advance Weathercast	Local live.
7	Will Rogers, Jr. (CBS)	Network.
7:25	Local News	Local live.
7:30	Will Rogers, Jr. (CBS)	Network.
7:55	Local Weather	Local live.
8	Captain Kangaroo (CBS)	Network.
8:25	Cartoons (CBS)	Do.
8:30	Captain Kangaroo (CBS)	Do.
8:55	Sing Song (CBS)	Do.
9	Garry Moore (CBS)	Do.
9:30	Hair Dresser Hi-Lites	Local live.
9:45	Godfrey Time (CBS)	Network.
10	Mr. and Mrs. North	Film.
10:30	Strike It Rich (CBS)	Network.
11	Valiant Lady (CBS)	Do.
11:15	Love of Life (CBS)	Do.
11:30	Search for Tomorrow (CBS)	Do.
11:45	News	Local live.
12	Jack Paar Show (CBS)	Network.
12:30	As the World Turns (CBS)	Do.
1	Robert Q. Lewis (CBS)	Do.
1:30	Recipe Roundup	Local live.
2	Big Payoff (CBS)	Network.
2:30	Bob Crosby (CBS)	Do.
3	Brighter Day (CBS)	Do.
3:15	Secret Storm (CBS)	Do.
3:30	Edge of Night (CBS)	Do.
4	Western Movie	Film.
5	Let's Take a Trip (CBS)	Do.
5:30	Community Crossroads	Local live.
6	Local News, Sports, Weather	Do.

KDUB-TV, channel 13, Lubbock, Tex., program schedule, Apr. 8-14, 1956—Con.

Time	Program	Source
Tuesday, Apr. 10, 1956—Continued		
6-15	Doug Edwards (CBS)	Network.
6.30	Name That Tune (CBS)	Do.
7	Phil Silvers (CBS)	Do.
7:30	Navy Log (CBS)	Do.
8	Guy Lombardo's Diamond Jubilee (CBS)	Do.
8:30	I Spy	Film.
9	$64,000 Question (CBS)	Network.
9:30	Do You Trust Your Wife (CBS)	Do.
10	Patti Page	Film.
10:15	Notes of Harmony	Do.
10:30	News, Sports, Weather	Local live.
11	Suspense	Film.
12	Sign Off	Slide.
Wednesday, Apr. 11, 1956:		
6:40	Sign On	Do.
6:45	Advance weathercast	Local live.
7	Will Rogers, Jr. (CBS)	Network.
7:25	Local News	Local live.
7:30	Will Rogers, Jr. (CBS)	Network.
7:55	Local weather	Local live.
8	Captain Kangaroo (CBS)	Network.
8:25	Cartoons (CBS)	Do.
8:30	Captain Kangaroo (CBS)	Do.
8:55	Sing Song (CBS)	Do.
9	Garry Moore (CBS)	Do.
9:30	Notes of Harmony	Film.
9:45	Godfrey Time (CBS)	Network.
10	The Homefinders	Local live.
10:15	Godfrey Time (CBS)	Network.
10:30	Strike It Rich (CBS)	Do.
11	Valiant Lady (CBS)	Do.
11:15	Love of Life (CBS)	Do.
11:30	Search for Tomorrow (CBS)	Do.
11:45	News	Local live.
12	Jack Paar Show (CBS)	Network.
12:30	As the World Turns (CBS)	Do.
1	Robert Q. Lewis (CBS)	Do.
1:30	Recipe Roundup	Local live.
1:45	Houseparty (CBS)	Network.
2	Big Payoff (CBS)	Do.
2:30	Bandstand	Film.
2:45	TV Sermonette	Local live.
3	Brighter Day (CBS)	Network.
3:15	Secret Storm (CBS)	Do.
3:30	Edge of Night (CBS)	Do.
4	Western Movie	Film.
5	The Ruggles	Do.
5:30	Community Crossroads	Local live.
6	Local News, Sports, Weather	Do.
6:15	Doug Edwards (CBS)	Network.
6:30	Range Rider	Film.
7	Arthur Godfrey (CBS)	Network.
8	The Millionaire (CBS)	Do.
8:30	I've Got a Secret (CBS)	Do.
9	U. S. Steel Hour (CBS)	Do.
10	Crunch and Des	Film.
10:30	News, Sports, Weather	Local live.
11	Chance of a Lifetime	Film.
12	Sign Off	Slide.
Thursday, Apr. 12, 1956:		
6:40	Sign On	Do.
6:45	Advance Weathercast	Local live.
7	Will Rogers, Jr. (CBS)	Network.
7:25	Local News	Local live.
7:30	Will Rogers, Jr. (CBS)	Network.
7:55	Local Weather	Local live.
8	Captain Kangaroo (CBS)	Network.
8:25	Cartoons (CBS)	Do.
8:30	Captain Kangaroo (CBS)	Do.
8:55	Sing Song (CBS)	Do.
9	Garry Moore (CBS)	Do.
10:30	Strike It Rich (CBS)	Do.
11	Valiant Lady (CBS)	Do.
11:15	Love of life (CBS)	Do.
11:30	Search for Tomorrow (CBS)	Do.
11:45	News	Local live.
12	Jack Paar Show (CBS)	Network.

KDUB-TV, channel 13, Lubbock, Tex., program schedule, Apr. 8-14, 1956—Con.

Time	Program	Source
Thursday Apr. 12 1956—Continued		
12:30	As the World Turns (CBS)	Network.
1	Club Day	Local live.
1:30	Recipe Roundup	Do.
1:45	Houseparty (CBS)	Network.
2	Big Payoff (CBS)	Do.
2:30	Bandstand	Film.
2:45	TV Sermonette	Local live.
3	Brighter Day (CBS)	Network.
3:15	Secret Storm (CBS)	Do.
3:30	Edge of Night (CBS)	Do.
4	Beauty School of the Air	Local live.
4:15	Western Movie	Film.
5	Winky Dink (CBS)	Do.
5:30	Community Crossroads	Local live.
6	Local News, Sports, Weather	Do.
6:15	Doug Edwards (CBS)	Network.
6:30	Sheena of the Jungle	Film.
7	Bob Cummings (CBS)	Network.
7:30	Shower of Stars (CBS)	Do.
8:30	Tele-Sports Digest	Film.
9	Arthur Murray Party (CBS)	Network.
9:30	Quiz Kids (CBS)	Do.
10	My Friend Flicka (CBS)	Film.
10:30	News, Sports, Weather	Local live.
11	She Shall Have Murder	Film.
12	Sign Off	Slide.
Friday, Apr. 13, 1956:		
6:40	Sign On	Do.
6:45	Advance Weathercast	Local, live.
7	Will Rogers, Jr. (CBS)	Network.
7:25	Local News	Local, live.
7:30	Will Rogers, Jr. (CBS)	Network.
7:55	Local Weather	Local, live.
8	Captain Kangaroo (CBS)	Network.
8:25	Cartoons (CBS)	Do.
8:30	Captain Kangaroo (CBS)	Do.
8:55	Sing Song (CBS)	Do.
9	Garry Moore (CBS)	Do.
9:30	Godfrey Time (CBS)	Do.
9:45	You and Your Garden	Local, live.
10	A to Z	Film.
10:30	Strike It Rich (CBS)	Network.
11	Valiant Lady (CBS)	Do.
11·15	Love of Life (CBS)	Do.
11:30	Search for Tomorrow (CBS)	Do.
11:45	News	Local, live.
12	Jack Paar Show (CBS)	Network.
12:30	As the World Turns (CBS)	Do.
1	Robert Q. Lewis (CBS)	Do.
1:30	Recipe Roundup	Local, live.
2	Big Payoff (CBS)	Network.
2:30	Bob Crosby (CBS)	Do.
2:45	TV Sermonette	Local, live.
3	Brighter Day (CBS)	Network.
3:15	Secret Storm (CBS)	Do.
3:30	Edge of Night (CBS)	Do.
4	Western Movie	Film.
5	Hank McCune	Do.
5:30	Community Crossroads	Local, live.
6	Local News, Sports, Weather	Do.
6:15	Doug Edwards (CBS)	Network.
6:30	Traffic Report of the Air	Local, live.
7	Mama (CBS)	Network.
7:30	Our Miss Brooks (CBS)	Do.
8	The Crusader (CBS)	Film.
8:30	Liberace	Do.
9	The Line Up (CBS)	Do.
9:30	Person to Person (CBS)	Network.
10	Patti Page	Film.
10:15	Notes of Harmony	Do.
10:30	News, Sports, Weather	Local, live.
11	Repeat Performance	Film.
12	Sign Off	Slide.

KDUB-TV, channel 13, Lubbock, Tex., program schedule, Apr. 8–14, 1956—Con.

Time	Program	Source
Saturday, Apr. 14, 1956:		
8:25	Sign On	Network.
8:30	Captain Kangaroo (CBS)	Network.
9:30	Mighty Mouse Playhouse (CBS)	Do.
10	Winky Dink (CBS)	Do.
10:30	Popcorn Theatre	Film.
11:30	Feature Movie	Do.
12:45	Baseball Previews (CBS)	Network.
12:55	New York Giants versus Brooklyn Dodgers (CBS)	Do.
3:30	Championship Bowling	Film.
4:30	Frontier Theatre	Do.
5:30	Frankie Laine Show	Do.
6	Man Behind the Badge	Do.
6:30	Beat the Clock (CBS)	Network.
7	Jackie Gleason (CBS)	Do.
7:30	Stage Show (CBS)	Do.
8	Two for the Money (CBS)	Do.
8:30	It's Always Jan (CBS)	Do.
9	Gunsmoke (CBS)	Do.
9:30	Judge Roy Bean	Film.
10	Stars of the Grand Ole Opry	Do.
10:30	Chicago Wrestling	Do.
11:30	Sign Off	Slide.

KSBW-TV, Channel 8, Salinas, Calif., program schedule, Apr. 8–14, 1956

Time	Program	Source
Sunday, Apr. 8, 1956:		
9:45	Test pattern and signon	Film.
10	American Forum	NBC.
10:30	Frontiers of Faith	NBC.
11	Princeton 56	NBC.
11:30	Adventure	CBS.
12	Face the Nation	CBS.
12:30	Sunday News	CBS.
1	NBC Opera Theater	NBC.
2:30	Million Dollar Movie	Film and live.
4	Lawrence Welk Show	ABC.
5	Watsonville Sciot's Band Concert	Live.
5:30	Telephone Time With Nesbitt	CBS.
6	You Are There	CBS.
6:30	It's a Great Life	NBC.
7	Jack Benny	CBS.
7:30	My Little Margie	Film.
8	Ed Sullivan Show	CBS.
9	GE Theater	CBS.
9:30	Loretta Young Show	NBC.
10	$64,000 Challenge	CBS.
10:30	Frankie Laine	Film.
11	Program Prevues	Live.
11:05	Signoff	
Monday, Apr. 9, 1956:		
2:30	Test pattern and signon	Film.
3	Sagebrush Playhouse	Do.
4	Fun Club	Live and film.
5	Mickey Mouse Club	ABC.
6	Annie Oakley	Film.
6:30	TV News Digest	Live.
7	The Line Up	CBS.
7:30	Waterfront	Film.
8	Talent Scouts	CBS.
8:30	Passport to Danger	Film.
9	I Love Lucy	CBS.
9:30	December Bride	CBS.
10	Bob Cummings Show	CBS.
10:30	Final Edition	Live.
10:35	Championship Wrestling	Film.
11:35	Program Prevues	Live.
11:40	Signoff	

KSBW-TV, channel 8, Salinas, Calif., program schedule, Apr. 8-14, 1956—Con.

Time	Program	Source
Tuesday, Apr. 10, 1956:		
2:30	Test pattern and signon	Film.
3	Sagebrush Playhouse	Do.
4	Fun Club	Film and live.
5	Mickey Mouse	ABC.
6	Wild Bill Hickok	Film.
6:30	TV News Digest	Live.
7	$64,000 Question	CBS.
7:30	Badge 714	Film.
8	Phil Silvers Show	CBS.
8:30	Famous Playhouse	Film.
9	Stars of Grand Ole Opry	Do.
9:30	Highway Patrol	Do.
10	Break the Bank	Do.
10:30	Douglas Fairbanks	Do.
11	Final Edition	Live.
11:05	Program Prevues	Do.
11:10	Signoff	
Wednesday, Apr. 11, 1956:		
2:30	Test pattern and sign on	Film.
3	Sagebrush Playhouse	Do.
4	Fun Club	Live and film.
5	Mickey Mouse Club	ABC.
6	Superman (makegood)	Film.
6:30	TV News Digest	Live.
7	Disneyland	ABC.
8	Life of Riley	Film.
8:30	Confidential File	Do.
9	I Am the Law	Do.
9:30	I've Got a Secret	CBS.
10	This Is Your Life	NBC.
10:30	Guy Lombardo	Film.
11	Final Edition	Live
11:05	Program Prevues	Do.
11:10	Signoff	
Thursday, Apr. 12, 1956:		
2:30	Test pattern and sign on	Film.
3	Sagebrush Playhouse	Do.
3:45	California Dried Fruit Research Insitute	Live.
4	Fun Club	Live and film.
5	Mickey Mouse Club	ABC.
6	Rin-Tin-Tin	Film.
6:30	TV News Digest	Live.
7	Western Marshall	Film.
7:30	Quiz Kids	CBS.
8	You Bet Your Life	NBC.
8:30	Dragnet	NBC.
9	Celebrity Playhouse	Film.
9:30	Ford Theater	NBC.
10	Lux Video Theater	NBC.
11	Final Edition	Live.
11:05	Arthur Murray Party	CBS.
11:35	Program Prevues	Live.
11:40	Signoff	
Friday, Apr. 13, 1956:		
2:30	Test pattern and signon	Film.
3	Sagebrush Playhouse	Do.
4	Fun Club	Live and film.
5	Mickey Mouse	ABC.
6	Cartoon Circus	Film.
6:30	TV News Digest	Live.
7	Cavalcade of Sports	NBC.
7:45	Industry on Parade	Film.
8	Crunch and Des	Do.
8:30	Make Room for Daddy	ABC.
9	City Detective	Film.
9:30	Playhouse of Stars	CBS.
10	Crusader	CBS.
10:30	Final Edition	Live.
10:35	Grand Ole Opry	Film.
11:45	Program Prevues	Live.
11:50	Signoff	

KSBW-TV, channel 8, Salinas, Calif., program schedule, Apr. 8–14, 1956—Con.

Time	Program	Source
Saturday, Apr. 14, 1956:		
10:15	Test pattern and signon	Film.
10:45	Baseball Previews	CBS.
10:55	Game of the Week	CBS.
1:30	Big Picture	Film.
2	Movie Time	Do.
3	Industry on Parade	Do.
3:15	Cartoon Circus	Do.
4	Sagebrush Playhouse	Do.
5	Hopalong Cassidy	Do.
6	Superman	Do.
6:30	Life With Elizabeth	Do.
6:50	John L. McCarthy	Live.
7	Gunsmoke	CBS.
7:30	Harry Owens Show	CBS.
8	The Honeymooners	CBS.
8:30	Mayor of the Town	Film.
9	Two for the Money	CBS.
9:30	Science Fiction Theater	Film.
10	Donald L. Grunsky	Live.
10:15	Helping the Tax Payer	Film.
10:30	Hit Parade	NBC.
11	Million Dollar Movie	Film.
12:45	Program Prevues	Live.
12:50	Signoff	

WNOK-TV, Columbia, S. C., program log, April 8–14, 1956

Time	Program	Source
Sunday, Apr. 8, 1956:		
10:15	Sign on and test pattern	
10:30	Look Up and Live	CBS.
11	Eye on New York	CBS.
11:30	Church Services	Local, live.
12:30	Oral Roberts	Film.
1	Senator Johnston Reports	Do.
1:05	Sign off	
2:15	Sign on and test pattern	
2:30	Adventure	CBS.
3	Face the Nation	CBS.
3:30	Sunday News	CBS.
4	Front Row Center	CBS.
5	Master's Tournament	CBS.
6	Telephone Time	CBS.
6:30	You Are There	CBS.
7	Abbott and Costello	Film.
7:30	Jack Benny	CBS.
8	Ed Sullivan Show	CBS.
9	General Electric Theater	CBS.
9:30	Alfred Hitchcock Presents	CBS.
10	$64,000 Challenge	CBS.
10:30	Highway Show	Local, live.
11	Columbia Newsreel	Local, live and film.
11:15	Sign off	
Monday, Apr. 9, 1956:		
10:30	Signon and test pattern	
10:45	Arthur Godfrey Time	CBS.
11	Garry Moore	CBS.
11:15	Arthur Godfrey Time	CBS.
11:30	Strike It Rich	CBS.
12	Ski Champions	Film.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	Guiding Light	CBS.
1	Jack Paar Show	CBS.
1:30	Tax Tips	Local, live.
1:45	We Did It Ourselves	Film.
2	Robert Q. Lewis Show	CBS.
2:15	An Apple a Day	Local, live.
2:30	Rehearsal for Disaster	Film.
2:45	House Party	CBS.
3	Big Payoff	CBS.

WNOK-TV, Columbia, S. C., program log—Continued

Time	Program	Source
Monday, Apr. 9, 1956—Continued		
3:30	The Pastor	Film.
3:45	In His Service	Local, live.
4	Brighter Day	CBS.
4:15	Secret Storm	CBS.
4:30	The Early Show	Film.
6	Robbie's Roundup	Local, live, and film.
7:10	Shell News	Local, live.
7:15	Douglas Edwards and News	CBS.
7:30	Robin Hood	CBS.
8	Burns and Allen	CBS.
8:30	Godfrey's Talent Scouts	CBS.
9	I Love Lucy	CBS.
9:30	December Bride	CBS.
10	Hollywood Offbeat	Film.
10:30	Country Junction	Local, live.
11	Final Edition	Do.
11:05	The Late Show	Loeal, livc, and film.
12:30	Sign Off	
Tuesday, Apr. 10, 1956:		
10:30	Signon and test pattern	
10:45	Arthur Godfrey Time	CBS.
11	Irish Holiday	Film.
11:15	Arthur Godfrey Time	CBS.
11:30	Strike It Rich	CBS.
12	The ABC's of Beef Cooking	Film.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	Guiding Light	CBS.
1	Jack Paar Show	CBS.
1:30	Test Pattern	
2	Robert Q. Lewis Show	CBS.
2:30	White Magic	Film.
2:45	House Party	CBS.
3	Big Payoff	CBS.
3:30	Short Cuts in Sewing	Film.
3:45	In His Service	Local, live.
4	Brighter Day	CBS.
4:15	Secret Storm	CBS.
4:30	The Early Show	Film.
6	Robbie's Roundup	Local, live and film.
7:10	Shell News	Local, live.
7:15	Douglas Edwards and News	CBS.
7:30	Name that Tune	CBS.
8	Phil Silvers Show	CBS.
8:30	Navy Log	CBS.
9	Guy Lombardo's Diamond Jubilee	CBS.
9:30	Science Fiction Theatre	Film.
10	$64,000 Question	CBS.
10:30	Do You Trust Your Wife?	CBS.
11	Final Edition	Local, live.
11:05	Focus	Film.
12:30	Signoff	
Wednesday, Apr. 11, 1956:		
10:30	Signon and test pattern	
10:45	Arthur Godfrey Time	CBS.
11	We Did It Ourselves	Film.
11:15	Arthur Godfrey Time	CBS.
11:30	Strike It Rich	CBS.
12	Disaster Rehearsal	Film.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	Guiding Light	CBS.
1	Jack Paar Show	CBS.
1:30	Test Pattern	
2	Robert Q. Lewis Show	CBS.
2:30	ABC's of Beef Cooking	Film.
2:45	House Party	CBS.
3	Big Payoff	CBS.
3:30	Bob Crosby Show	CBS.
3:45	In His Service	Local, live.
4	Brighter Day	CBS.
4:15	Secret Storm	CBS.
4:30	The Early Show	Film.
6	Robbie's Roundup	Local, live, and film.
7:10	Shell News	Local life.
7:15	Douglas Edwards and News	CBS.
7:30	TV Reader's Digest	Film.
8	Arthur Godfrey and Friends	CBS.

WNOK-TV, Columbia, S. C., program log—Continued

Time	Program	Source
Wednesday, Apr. 11, 1956—Con		
9	The Millionaire	CBS.
9:30	I've Got a Secret	CBS.
10	United States Steel Hour	CBS.
11	Final Edition	Local, live.
11:05	The Late Show	Film.
12:05	Signoff	
Thursday, Apr. 12, 1956:		
10:15	Signon and test pattern	
10:30	Arthur Godfrey Time	CBS.
10:45	North American Moves Ahead	Film.
11:05	The Fatal Second	Do.
11:15	Arthur Godfrey Time	CBS.
11:30	Strike It Rich	CBS.
12	Holiday Paradise	Film.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	Guiding Light	CBS.
1	Jack Paar Show	CBS.
1:30	Test Pattern	
2:15	Robert Q. Lewis Show	CBS.
2:30	Irish Holiday	Film.
2:45	House Party	CBS.
3	Big Payoff	CBS.
3:30	Ticket to Freedom	Film.
3:45	In His Service	Local, live.
4	Brighter Day	CBS.
4:15	Secret Storm	CBS.
4:30	Town Theatre	Local, live.
4:45	The Early Show	Film.
5:40	Map of an Empire	Do.
6	Robbie's Roundup	Local, live, and film
7:10	Shell News	Local, live.
7:15	Douglas Edwards and News	CBS.
7:30	Kim Calling	Local, live.
8	Bob Cummings Show	CBS.
8:30	Climax/Shower of Stars	CBS.
9:30	Four Star Playhouse	CBS.
10	Arthur Murray Party	CBS.
10:30	The Quiz Kids	CBS.
11	Final Edition	Local, live.
11:05	Weathervane	Do.
11:10	Focus	Film.
12:50	Signoff	
Friday, Apr. 13, 1956:		
11:15	Signon the test pattern	
11:30	Strike It Rich	CBS.
12	Tale of One City	Film.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	Guiding Light	CBS.
1	Jack Paar Show	CBS.
1:30	Test Pattern	
2:15	Robert Q. Lewis Show	CBS.
2:30	Mightier Than the Sword	Film.
3	Big Payoff	CBS.
3:30	The Christophers	Film.
3:45	In His Service	Local, live.
4	Brighter Day	CBS.
4:15	Secret Storm	CBS.
4:30	The Early Show	Film.
6	Robbie's Roundup	Local, live, and film.
7:10	Shell News	Local, live.
7:15	Douglas Edwards and News	CBS.
7:30	My Friend Flicka	CBS.
8	Chance of a Lifetime	ABC.
8:30	Damon Runyan Theatre	Film.
9	The Crusader	CBS.
9:30	Playhouse of Stars	CBS.
10	The Lineup	CBS.
10:30	Person to Person	CBS.
11	Final Edition	Local, live.
11:05	The Late Show	Film.
2:30	Sign Off	
rday, Apr. 14, 6:		
:15	Signon and test pattern	
:30	Mighty Mouse Playhouse	CBS.
	Winky Dink and You	CBS.
:30	That Inspiring Task	Film.

WNOK-TV, Columbia, S. C., program log—Continued

Time	Program	Source
Saturday Apr. 14, 1956—Continud.		
12	The Big Top	CBS.
1	Virgin Island Vacation	Film.
1:15	Test pattern	
1:45	Baseball Preview	CBS.
1:55	CBS Game of Week	CBS.
4:25	Pan American Games	Film.
4:50	The Big Picture	Do.
5:20	The Early Show	Do.
6:15	Schlitz Scoreboard	Local live and film
6:30	March of Dimes Fashions	Film.
7	Masquerade Party	ABC.
7:30	Cavalcade Theatre	ABC.
8	Gleason and Honeymooners	CBS.
8:30	Stage Show	CBS.
9	Variety Theatre	Film.
9:30	It's Always Jan	CBS.
10	Gunsmoke	CBS.
10:30	Grand Ole Opry	ABC.
11:30	Wrestling	Film.
12:25	Signoff	

WCAU, Philadelphia, Pa., television schedule, April 22–28, 1956

Time	Program	Source
Sunday, Apr. 22, 1956:		
7:45	Sign on, music	
7:55	News headlines	Local, film; public service.
8	Look Up and Live: Presented in cooperation with the National Council of Churches of Christ in America and the National Council of Catholic Men. A program of religious music emanating from Washington, D. C.'s, Immaculate Conception crypt of the National Shrine.	CBS—public service.
8:30	We Believe. The Reverend James J. McQuade, S. J. An introduction to a series on Catholic doctrine.	Local, film; public service.
9	Lamp Unto My Feet. Host, Dr. Lyman Bryson. A discussion by Abner Dean and Dr. Hans Hoffman, who will reexamine the Ten Commandments and reevaluate their application to modern life.	CBS—public service.
9:30	Let's Take a Trip, with Ginger MacManus, "Pud" Flanagan, and John Harlan. A trip on the ferry across the bay from Oakland to San Francisco.	Do.
10	Winky Dink and You	CBS.
10:30	Roy Rogers' Action Playhouse: Riding Down the Canyon. A swanky dude rancher, who is secretly head of a gang of horse rustlers, is foiled by Roy Rogers.	Local, film.
11:30	Children's Hour. Stan Lee Broza presents the stars of tomorrow in a variety program. This week: April in Paris and Clothes Line Art Exhibit.	Local, live.
12:30	Wild Bill Hickok. Starring Guy Madison and Andy Devine. Cry Wolf. An intended fishing holiday for Wild Bill and Jingles turns into an exciting adventure with desperate fur thieves.	CBS.
1	Command Performance—Pt. 1: Forever and a Day, with Ray Milland, Ida Lupino, Merle Oberon, and Robert Cummings. The story of the events in the lives of a distinguished English family for over a century.	Local, film.
2:15	Patti Page Show. Song stylings	Do.
2:30	Command Performance—Pt. 2: Dark Mirror, starring Olivia de Havilland and Lew Ayres. When a young girl is accused of murder, complications arise when it is found she has an identical twin sister.	Do.
3:30	Front Row Center, with Robert Sterling as emcee. Pretend You Belong To Me, with Mercedes McCambridge and Katherine Bard. A woman, who has just lost her 10-year-old son, tries to compensate for his loss by forming a dangerous attachment for the young son of a neighbor.	CBS.
4:30	The Big Idea, with Don Bennett as host. A paint remover and brush flattener; a golf-cup tool; a combination can, jar, and bottle opener; an electric wire creeper.	Local, live; publi[c] service.
5	Face the Nation. Panel discussion with Stuart Novins	CBS—public service.
5:30	You Are There. Reports on William Jennings Bryan's presidential nomination with Ainslie Pryor. Walter Cronkite, narrator.	Do.

WCAU, Philadelphia, Pa., television schedule—Continued

Date	Program	Source
Sunday Apr. 22, 1956—Continued		
6	Telephone Time. Series presenting dramatizations of stories by famed storyteller, John Nesbitt. Captain From Kopenick, with Emmett Kelly in his first speaking part on television. A German tramp upsets the German military system by posing as an officer.	CBS.
6:30	Waterfront. Adventure series, starring Preston Foster in Bait Cruise. A man, anxious to rectify his first and only mistake, saves a man from shark-infested waters.	Local, film, and live.
7	Lassie. Starring Lassie, Tommy Rettig, and Jan Clayton. War Dog: When a German shepherd war dog attacks its master, Jeff hides him and proves his innocence.	CBS.
7:30	The Jack Benny Show. Comedy	CBS.
8	The Ed Sullivan Show. Ed Sullivan, host. Guests: Marion Marlowe, Sam Levenson, the Ames Brothers, Senior Wences, and Enzo Stuarti.	CBS.
9	The GE Theater. Ronald Reagan, host. The Lord's Dollar, starring Ronald Reagan. A professional gambler has his entire life changed after beating 3 men at a poker game.	CBS.
9:30	Alfred Hitchcock Presents. Alfred Hitchcock, host-narrator. Never Again, starring Phyllis Thaxter, Warren Stevens, and Louise Albritton. A young woman awakens mysteriously in a hospital bed and struggles with her memory to reconstruct the events leading to her confinement; and discovers she has committed the one act that could destroy her life.	CBS.
10	$64,000 Challenge. Quiz, featuring winners of the $64,000 Question against challengers who believe they can match knowledge with the champs; with Sonny Fox as host.	CBS.
10:30	What's My Line. Panel quiz with John Daly, Dorothy Kilgallen, Arlene Francis, and Bennett Cerf.	CBS.
11	News and Sports, with Jack Whitaker	Local, live; public service.
11:15	Man About Town, with Frank Brookhouser	Do.
11:30	The Star and the Story: The Round Dozen, starring Brian Aherne. A bigamist with 11 wives decides to take a spinster in her late thirties as his 12th.	Local, film.
12	Sunday Night Mystery Theater: Murder Will Out, with Valerie Hobson, Edward Underdown, and James Robertson Justice. When a beautiful secretary is murdered the 3 suspects are all unable to establish an alibi to satisfy Scotland Yard.	Do.
1	Signoff	
Monday, Apr. 23, 1956:		
5:50	Signon, music.	
6	Word From Washington. Documentary film report from the Departments of Government.	Local, film; public service.
6:30	Channel 10 Farm Reporter, with WCAU-TV'S farm director, William Bennett: Culling Chickens.	Local, live; public service.
7	Good Morning, with Will Rogers, Jr., as host. News, weather, feature stories, anecdotes, and interviews.	CBS—10 percent public service.
7:25	The Weatherman	Local, public service.
7:30	Good Morning—Continued	CBS—10 percent public service.
7:55	Bill Campbell. News and sports	Local, live; public service.
8	Bless This House. Inspirational message from a clergyman of the Catholic, Protestant, or Jewish Faith.	Do.
8:05	Mister and Missus. Gene and Joan Crane	Local, live; 10 percent public service.
9	Captain Kangaroo. Gentle adventures for children, under the guidance of Captain Kangaroo, played by Bob Keeshan.	CBS.
9:25	Weather, with Joan Crane	Local, live; public service.
9:30	Captain Kangaroo—Continued	CBS.
9:55	Gene Crane and the News	Local, live; public service.
10	The Garry Moore Show, with Denise Lor, Durward Kirby, Ken Carson, and Howard Smith and his orchestra.	CBS.
10:30	Arthur Godfrey Time. The McGuire Sisters, Janette Davis, Tony Marvin, and Frank Parker, from Miami, Fla.	CBS.
11:30	Strike it Rich, with Warren Hull, host	CBS.
12	Valiant Lady. Dramatic series starring Flora Campbell	CBS.
12:15	Love of Life. Dramatic series starring Bonnie Bartlett	CBS.
12:30	Search for Tomorrow. Dramatic series starring Mary Stuart	CBS.
12:45	The Guiding Light. Dramatic series starring Susan Douglas	CBS.
1	Homemaker's Notebook. Marian Kemp, with special guests	Local, live; public service.
1:30	As the World Turns. Starring Don MacLaughlin	CBS.
2	Cinderella Weekend. Audience quiz, with Bill Hart, host	Local, live.
2:30	Art Linkletter's House Party	CBS.

WCAU, Philadelphia, Pa., television schedule—Continued

Time	Program	Source
Monday, Apr. 23, 1956—Continued		
3	The Big Payoff, with Randy Merriman. Jan Clayton subs for Bess Myerson.	CBS.
3:30	The Bob Crosby Show, featuring Joan O'Brien, Carol Richards, the Modernaires, and the Bobcats.	CBS.
4	The Brighter Day. Starring Blair Davies	CBS.
4:15	The Secret Storm. Starring Haila Stoddard	CBS.
4:30	The Edge of Night. Starring John Larkin	CBS.
5	Roy Rogers-Gene Autry Theatre: Sagebrush Troubadour, with Gene Autry. Gene and his partner, disguised as traveling musicians, bring a killerto justice.	Local, film and live.
5:55	Democratic political speech	Local, live; public service.
6	Susie. Starring Ann Sothern as Susia MacNamara: Hi Spirits. Susie discovers that Vi has been duped into revealing trade secrets and puts a stop to the sabotage.	Local, film and live.
6:30	News, with John Facenda	Local, live; public service.
6:40	Earl Selby and Mr. Fixit. The popular Bulletin columnist with his helper, Mr. Fixit.	Do.
6:45	Douglas Edwards and the News	CBS—Public service.
7	Superman. George Reeves in the role of Clark Kent. Jimmy the Kid: A cub reporter is kidnaped by a gang of crooked confidence men who manage to get a young ex-convict the reporter's job on the paper.	Local, film.
7:30	The Adventures of Robin Hood. Starring Richard Greene and Bernadette O'Farrell. Robin once again outwits the sheriff's men and saves the queen's fortune.	CBS.
8	George Burns and Gracie Allen Show	CBS.
8:30	Arthur Godfrey's Talent Scouts	CBS.
9	I Love Lucy. Starring Lucille Ball and Dsi Arnaz. Lucy takes her friends on a bicycle trip through Italy, which results in muscular aches and pains and Lucy losing her passport.	CBS.
9:30	December Bride. Starring Spring Byington and Verna Felton. Lily discovers there is nothing like a pretty girl to attract men to a charity show.	CBS.
10	See It Now. Report from Africa, with Edward R. Murrow. The fateful stirrings of unrest among the underdeveloped peoples of Africa, in their current struggle for freedom, will be discussed in a 2-part program.	CBS—Public service.
11	News, with John Facenda	Local, live; public service.
11:10	Western's Weatherman, with Phil Sheridan	Do.
11:15	Sports Final with Jack Whitaker	Do.
11:25	Republican political speech	Do.
11:30	Boston Blackie. Starring Kent Taylor. A murderer disposes of everyone who could convict him, but is tricked by Boston Blackie.	Local, film.
12	Midnight News, with John Facenda	Local, live; public service.
12:05	The Late Show: There Ain't No Justice, starring Michael Wilding. A prizefight story combining crime, boxing, and romance.	Local, film.
1	Signoff	
Tuesday, Apr. 24, 1956:		
5:50	Sign on, music	
6	Word From Washington	Local, film: public service.
6:30	Channel 10 Farm Reporter. Bill Bennett discusses insecticides.	Local, live; public service.
7	Good Morning, with Will Rogers, Jr	CBS—10 percent public service.
7:25	The Weatherman	Local, live; public service.
7:30	Good Morning—Continued	CBS—10 percent public service.
7:55	Bill Campbell. News and sports	Local, live; public service.
8	Bless This House	Do.
8:05	Mister and Missus	Local, live; 10 percent public service.
9	Captain Kangaroo, with Bob Keeshan	CBS.
9:25	Weather, with Joan Crane	Local, live; public service.
9:30	Captain Kangaroo—Continued	CBS.
9:55	Gene Crane and the News	Local, live; public service.

WCAU, Philadelphia, Pa., television schedule—Continued

Time	Program	Source
Tuesday, Apr. 24, 1956—Continued		
10	The Garry Moore Show	CBS.
10:30	Arthur Godfrey Time	CBS.
11:30	Strike It Rich	CBS.
12	Valiant Lady	CBS.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	The Guiding Light	CBS.
1	Marian Kemp's Kitchen. Cooking and menu hints	Local, live; public service.
1:30	As the World Turns. Starring Don MacLaughlin	CBS.
2	Cinderella Weekend	Local, live.
2:30	Art Linkletter's House Party	CBS.
3	My Hero. Starring Robert Cummings in Wheel of Fortune. Thackeray's aunt gives a party and invites 2 gamblers whom she believes to be very nice people, but it results in the police rounding up Thackeray, his aunt, and Beanblossom.	Local, film.
3:30	The Bob Crosby Show	CBS.
4	The Brighter Day	CBS.
4:15	The Secret Storm	CBS.
4:30	The Edge of Night. Starring John Larkin	CBS.
5	The Roy Rogers-Gene Autry Theatre: Billy the Kid Returns, with Roy Rogers. Roy is asked to impersonate Billy the Kid and expose 2 crooked cattlemen.	Local, film and live.
6	Susie. Starring Ann Sothern as Susie MacNamara: Live Wire. Susie attempts to stop a man whom she believes is trying to take over Peter's business.	Do.
6:30	News, with John Facenda	Local, live; public service.
6:40	Earl Selby and Mr. Fixit	Do.
6:45	Douglas Edwards and the News	CBS—public service.
7	Wild Bill Hickok. Starring Guy Madison and Andy Devine: Superstition Stage. Wild Bill and Jingles solve a mysterious tomahawk slaying of the town's coach drivers.	Local, film.
7:30	The Great Gildersleeve. Starring Willard Waterman: Gildy's Command Performance. Gildy winds up on stage in an amateur contest when he tries to encourage his nephew to pursue a career as a cowboy singer.	Local, film, and live.
8	The Phil Silvers Show. Starring Phil Silvers as Sergeant Bilko: Bilko finds his bald pate no laughing matter when his girl friend throws him over and dates a handsome young corporal.	CBS.
8:30	Navy Log. A navy pilot pits himself against the enemy and the elements as he fights a lone battle for survival in a Pacific jungle.	CBS.
9	Guy Lombardo's Diamond Jubilee. Guy Lombardo with songs that have played important roles in the lives of viewers and guest.	CBS.
9:30	The Red Skelton Show. Guests: Sterling Holloway, John Carradine, and Billy Gilbert.	CBS.
10	The $64,000 Question. Quiz, with Hal March as emcee	CBS.
10:30	Do You Trust Your Wife? Audience-participation quiz, with Edgar Bergen, Charlie McCarthy, and Mortimer Snerd.	CBS.
11	News, with John Facenda	Local, live; public service.
11:10	Western's Weatherman, with Phil Sheridan	Do.
11:15	Sports Final, with Jack Whitaker	Do.
11:25	That Man McMahon. Ed McMahon, with news, views, and reviews from the world of show business.	Do.
11:30	Overseas Adventure. James Daly as Michael Powers in Secret Documents. Mike discovers he is the target for the assassins of a 500-year-old secret society when a top member plans to reveal its subversive workings to him.	Local, film.
12	Midnight News, with John Facenda	Local, live; public service.
12:05	The Late Show: Port of Call, with Victor McLaglen. A big burly man shows that even a "pug ugly" can feel the call of his heart. It Happened in a Pawn Shop, starring Terry Moore. A musician borrows money to get his trumpet out of hock and falls in love with a girl in the pawnshop.	Local, film.
1	Signoff	
Wednesday, Apr. 25, 1956:		
5:50	Sign on, music	
6	Word From Washington	Local, film, public service.
6:30	Channel 10 Farm Reporter, with Bill Bennett. Discussion of food marketing with Eleanore G. Tompkins and William H. White.	Local, live; public service.
7	Good Morning, with Will Rogers, Jr.	CBS—10 percent public service.

WCAU, Philadelphia, Pa., television schedule—Continued

Time	Program	Source
Wednesday, Apr. 25, 1956—Con.		
7:25	The Weatherman	Local, live; public service.
7:30	Good Morning—Continued	CBS—10 percent public service.
7:55	Bill Campbell. News and sports	Local, live; public service.
8	Bless This House	Do
8:05	Mister and Missus	Local, live; 10 percent public service.
9	Captain Kangaroo, with Bob Keeshan	CBS.
9:25	Weather, with Joan Crane	Local, live; public service.
9:30	Captain Kangaroo—Continued	CBS.
9:55	Gene Crane and the News	Local, live; public service.
10	The Garry Moore Show	CBS.
10:30	Arthur Godfrey Time	CBS.
11:30	Strike It Rich	CBS.
12	Valiant Lady	CBS.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	The Guiding Light	CBS.
1	Woman's World. A program for women about women in the news, with Marian Kemp and Gene Grane.	Local, live; public service.
1:30	As the World Turns. Starring Don MacLaughlin	CBS.
2	Cinderella Weekend	Local, live.
2:30	Art Linkletter's House Party	CBS.
3	The Big Payoff	CBS.
3:30	The Bob Crosby Show	CBS.
4	The Brighter Day	CBS.
4:15	The Secret Storm	CBS.
4:30	The Edge of Night, with John Larkin	CBS.
5	Roy Rogers-Gene Autry Theater. Down Mexico Way, with Gene Autry. Gene pursues 2 notorious swindlers who have managed to sell worthless motion-picture stock, and escape with the loot.	Local, film, and live.
6	Susie. Starring Ann Southern as Susie MacNamara: The Still Small Voice. Peter loses interest in hunting when Susie berates him for shooting a deer, which he mounted in his office.	Do.
6:30	News, with John Facenda	Local, live; public service.
6:40	Earl Selby and Mr. Fixit	Do.
6:45	Douglas Edwards and the News	CBS, Public service.
7	Badge 714. Jack Webb stars as Sgt. Joe Friday in the Big Customer. Joe and his partner pursue a pair of lethal thieves who have wounded a storekeeper and a special officer.	Local, film, and live.
7:30	My Friend Flicka. Adventure series of a youngster and his horse, starring Gene Evans, Anita Louise, and Johnny Washbrook.	CBS.
8	Arthur Godfrey and His Friends. With the McGuire Sisters, Janette Davis, Tony Marvin, and Frank Parker, from Miami, Fla.	CBS.
9	The Millionaire. Marvin Miller, host. The Story of Ed Murdock, with Don Haggerty.	CBS.
9:30	I've Got a Secret, with Garry Moore as host. Panelists: Bill Cullen, Henry Morgan, Jayne Meadows, and guest.	CBS.
10	United States Steel Hour: Noon on Doomsday, starring Everett Sloane, Jack Warden, and Philip Abbott. The story of a small town's prejudice when a heinous crime is committed.	CBS.
11	News, with John Facenda	Local, live; public service.
11:10	Western's Weatherman, with Phil Sheridan	Do.
11:15	Sports Final, with Jack Whitaker	Do.
11:25	That Man McMahon. Ed McMahon, with news, views, and reviews from the world of show business.	Do.
11:30	Stories of the Century: Burt Alvord. A young deputy shieriff climaxes his secret career as a badman by trying to kill his father rather than be captured.	Local, film.
12	Midnight News, with John Facenda	Local, live; public service.
12:05	The Late Show: Forever and a Day. Costarring Ray Milland, Ida Lupino, Merle Oberon, and Robert Cummings. The events in the lives of a distinguished English family for over a century.	Local, film.
1	Signoff	

WCAU, Philadelphia, Pa., television schedule—Continued

Time	Program	Source
Thursday, Apr. 26, 1956:		
5:50	Sign on, music	Local, film; public service.
6	Word From Washington	Do.
6:30	Channel 10 Farm Reporter. Bill Bennett discusses goat farming.	Do.
7	Good Morning, with Will Rogers, Jr	CBS—10 percent public service.
7:25	The Weatherman	Local, live; public service.
7:30	Good Morning—Continued	CBS—10 percent public service.
7:55	Bill Campbell. News and sports	Local, live; public service.
8	Bless This House	Do.
8:05	Mister and Missus	Local, live; 10 percent public service.
9	Captain Kangaroo, with Bob Keeshan	CBS.
9:25	Weather, with Joan Crane	Local, live; public service.
9:30	Captain Kangaroo—Continued	CBS.
9:55	Gene Crane and the News	Local, live; public service.
10	The Gary Moore Show	CBS.
10:30	Arthur Godfrey Time	CBS.
11:30	Strike It Rich	CBS.
12	Valiant Lady	CBS.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	The Guiding Light	CBS.
1	Shop 'n Save, with Marian Kemp. Buying and menu hints	Local, live; public service.
1:30	As the World Turns, with Don MacLaughlin	CBS.
2	Cinderella Weekend	Local, live.
2:30	Art Linkletter's House Party	CBS.
3	My Hero: Starring Robert Cummings in Movie Star. A movie star who contemplates the purchase of a large home, transacts all his business on a golf course, and invites Thackeray and Beanblossom to join him in a game.	Local, film.
3:30	The Bob Crosby Show	CBS.
4	The Brighter Day	CBS.
4:15	The Secret Storm	CBS.
4:30	The Edge of Night, with John Larkin	CBS.
5	Roy Rogers-Gene Autrey Theatre: Heldorado, with Roy Rogers. Roy discovers that a local cattle broker is the secret head of an international syndicate which is passing counterfeit $1,000 bills.	Local, film, and live.
6	Susie. Ann Sothern stars as Susie MacNamara. April Showers—Susie and her best friend become the worst enemies when the latter, after calling off her wedding, finds her ex-boy friend making eyes at Susie.	Do.
6:30	News, with John Facenda	Local, live; public service.
6:40	Earl Selby and Mr. Fixit	Do.
6:45	Douglas Edwards and the News	CBS, public service.
7	I Led Three Lives. Richard Carlson, as FBI counterspy, Herb Philbrick, runs into trouble when a secret party mission seems destined to wreck both his career and his marriage.	Local, film.
7:30	Sergeant Preston of the Yukon. Starring Richard Simmons. The sinking of a battleship indirectly involves Sergeant Preston when he goes after an outlaw gang who steal a fortune in gold.	CBS.
8	The Bob Cummings Show. Starring Bob Cummings with Rosemary DeCamp. Bob sets out to recruit his nephew for the Air National Guard.	CBS.
8:30	Climax, (color broadcast). Bill Lundigan and Mary Costa, hosts. Ralph Bellamy stars in Sit Down With Death, with Constance Ford and Vicki Cummings. A father who suspects his son is a homicide victim, sets out to trap the culprit.	CBS.
9:30	Four Star Playhouse: Touch and Go, starring David Niven. A man, accused of murder, searches for the only person who can clear his name—a girl he never met.	CBS.
10	TheArthur Murray Party. WithKathryn Murray as hostess-emcee. Guest: Georgia Gibbs.	CBS.
10:30	Passport To Danger. Cesar Romero as diplomatic courier, Steve McQuinn, in Monte Carlo, is assigned to obtain proof that an American ally, anxious to protect its oil concessions, is helping a deposed monarch regain his throne.	Local, film.

WCAU, Philadelphia, Pa., television schedule—Continued

Time	Program	Source
Thursday, Apr. 26, 1956—Continued		
11	News, with John Facenda	Local, live; public service.
11:10	Western's Weatherman, with Phil Sheridan	Do.
11:15	Sports Final, with Jack Whitaker	Do.
11:25	That Man McMahon. Ed Mc Mahon, with news, views, and reviews from the world of show business.	Do.
11:30	Sherlock Holmes. Ronald Howard stars as Sherlock Holmes in Unlucky Gambler. Holmes uses his deductive reasoning to save an unfortunate man from a criminal career.	Local, film.
12	Midnight News, with John Facenda	Local, live; public service.
12:05	The Late Show: All's Fair in Love, with Cesar Romero. A woman's children break up the romance between her and a portrait painter. The Marriage of Lit-Lit, with Don DeFore. An Indian bride of a white man is forced by her father to betray her husband.	Local, film.
1	Signoff	
Friday, Apr. 27, 1956:		
5:50	Sign on, music	
6	Word from Washington	Local, film; public service.
6:30	Channel 10 Farm Reporter, with Bill Bennett. Film: Green Gold.	Local, live; public service.
7	Good Morning, with Will Rogers, Jr	CBS—10 percent public service.
7:25	The Weatherman	Local, live; public service.
7:30	Good Morning—Continued	CBS—10 percent public service.
7:55	Bill Campbell. News and sports	Local, live; public service.
8	Bless This House	Do.
8:05	Mister and Missus	Local, live; 10 percent public service.
9	Captain Kangaroo, with Bob Keeshan	CBS.
9:25	Weather, with Jean Crane	Local, live; public service.
9:30	Captain Kangaroo—Continued	CBS.
9:55	Gene Crane and the News	Local, live; public service.
10	The Garry Moore Show	CBS.
11:30	Strike It Rich	CBS.
12	Valiant Lady	CBS.
12:15	Love of Life	CBS.
12:30	Search for Tomorrow	CBS.
12:45	The Guiding Light	CBS.
1	Homemaker's Matinee: The Norther, with Stephen McNally. 2 men rob a post office and kill the postmaster, and then, charged with the crime, the elder man blames his partner for the job.	Local, live; public service.
1:30	As the World Turns, with Don MacLaughlin	CBS.
2	Cinderella Weekend	Local, live.
2:30	Art Linkletter's House Party	CBS.
3	The Big Payoff	CBS.
3:30	The Bob Crosby Show	CBS.
4	The Brighter Day	CBS.
4:15	The Secret Storm	CBS.
4:30	The Edge of Night, with John Larkin	CBS.
5	Roy Rogers-Gene Autry Theatre presents Tornado, starring Chester Morris and Nancy Kelly. A socially ambitious woman forces her miner husband to advance himself against his will.	Local, film, and live.
6	Susie. Starring Ann Sothern as Susie McNamara: The Crazy Mixed Up Kid. Susie is assigned by Peter Sands to see that a young actor keeps out of trouble.	Do.
6:30	News, with John Facenda	Local, live; public service.
6:40	Earl Selby and Mr. Fixit	Do.
6:45	Douglas Edwards and the News	CBS—Public service.
7	The Man Called X. Barry Sullivan, as American intelligence agent Ken Thurston, thrusts himself between 2 angry Balkan factions to cool tempers that threaten open hostilities.	Local, film.
7:30	Crunch and Des. Adventure series starring Forrest Tucker, Sandy Kenyon, and Joanne Bayes. Fifty-four, Forty and Fight—A contest between the 2 best fishermen in Caribee Key uncovers a vicious gambling racket.	Local, film.

WOAU, Philadelphia, Pa., television schedule—Continued

Time	Program	Source
Friday, Apr. 27, 1956—Continued		
8	Mama. Dramatic series starring Peggy Wood	CBS.
8:30	Our Miss Brooks. Starring Eve Arden, with Gale Gordon and Bob Sweeney. Connie "tells off" all her friends after winning a television quiz show.	CBS.
9	Crusader. Starring Brian Keith. Matt plays cupid amidst intrigue and bullets in East Berlin.	CBS.
9:30	Playhouse of Stars: Step Right Up and Die, starring Lyle Bettger. An amusement park proprietor finds a body in the Fun House but is afraid to tell the police, having once spent 3 years in jail for a crime he didn't commit.	CBS.
10	The Lineup. Starring Warner Anderson and Tom Tully. A woman avenges her son's death by attacking her husband, who introduced the boy to a life of crime.	CBS.
10:30	Person to Person. Edward R. Murrow televisits interesting personalities.	CBS.
11	News, with John Facenda	Local, live; public service.
11:10	Western's Weatherman, with Phil Sheridan	Do.
11:15	Sports Final, with Jack Whitaker	Do.
11:25	That Man McMahon. Ed McMahon, with news, views, and reviews from the world of show business.	Do.
11:30	The Whistler: Big Jump, with John Ireland and Tina Carver. An ex-convict tries to escape from the past by staging a fake suicide.	Local, film.
12	Midnight News, with John Facenda	Local, live; public service.
12:05	The Late Show: Dinner at the Ritz, starring Annabella and David Niven. The daughter of a famous Parisian banker resolves to track down her father's murderer.	Local, film.
1	Sighoff	
Saturday, Apr. 28, 1956:		
7:50	Sign on, music	
8	Saturday Western: Roaring Mountain, with George O'Brien and Barbara Fritchie. A 2-fisted mining prospector runs into trouble when he loses control of his mine and everyone turns against him.	Local, film.
9	Our Gang Comedy Theater, with Shirley Dinsdale and "Judy."	Do.
10	Carny the Clown. Carny C. Carny, with special chil dren's show.	Local, live.
10:30	Mighty Mouse Playhouse	CBS.
11	Superman's Cartoon Adventures. Dramatic adventure series	Local, film.
11:15	Funny Flickers, Cartoons	Do.
11:30	Tales of the Texas Ranger. Western series with Willard Parker and Harry Lauter in Home in San Antone. A statue which conceals a fortune in diamonds is filched from a pair of bandits who had taken it from its rightful owner.	CBS.
12	Big Top. Jack Sterling, Bill Hart, and Ted Devlet with exciting guest circus acts.	CBS, Live.
1	The Lone Ranger. Western adventure: The Masked Rider	CBS.
1:30	The Adventurer. Adventure series with Captain Nemo, host.	Local, live, and film.
2	Excitement, with Inspector Deadly: The Counterfeiters, with Saro Urzi and Doris Duranti. A police inspector disguises himself as a salesman and false money distributor in order to break up a gang of forgers.	Do.
	Shipbuilders, with Clive Brook. A firm, steeped in the finest traditions of superior work, is faced with financial ruin.	
4	Excitement—continued: Cowboy G-men, starring Russell Hayden and Jackie Coogan, in Spring the Trap. The G-men go after the most wanted outlaw only to find he has been killed.	Local, film, and live.
4:30	Gene Autry Show (color broadcast): The Golden Chariot. Unscrupulous carnival operators are put to rout by Autry when he enters his matched bays in a race.	CBS.
5	Sky King. Kirby Grant and Gloria Winters in Showdown. Sky arranges a clever "showdown" for horse thieves who had seriously wounded a friend of Penny.	Local, film.
5:30	Annie Oakley: Starring Gail Davis in Gunplay. Annie saves an innocent man, suspected of murder, from being lynched by the local townsfolk.	Do.
6	Count of Monte Cristo. Starring George Dolenz and Faith Domergue: The De Berry Affair. The Duchess De Berry is placed under arrest, and her immediate execution ordered, when an attempt to assassinate King Louis Philippe is foiled by the count.	Do.
6:30	Headline. Mark Stevens in Ferry Boat. A police detective's body found floating in the river starts Steve Wilson on one of the biggest stories ever covered by his paper.	Do.

WCAU, Philadelphia, Pa., television schedule—Continued

Time	Program	Source
Saturday, Apr. 28, 1956—Continued		
7	Name That Tune. Musical quiz, with George DeWitt as host.	CBS.
7:30	Beat the Clock. With Bud Collyer as host	CBS.
8	Jackie Gleason in The Honeymooners. With Art Carney, Audrey Meadows, and Joyce Randolph.	CBS.
8:30	Stage Show. Tommy and Jimmy Dorsey and the June Taylor Dancers. Guests: Tony Bennett, the De Marco Sisters, and Roger Ray.	CBS.
9	Two For The Money. Quiz, with Herb Shriner as host	CBS.
9:30	It's always Jan. Starring Janis Paige. Jan's daughter and her roommate rearrange an agent's life so he will meet the right girl, but things don't turn out according to plan.	CBS.
10	Gunsmoke. James Arness as Marshall Matt Dillon. Matt Dillon and his former friend, who has since turned outlaw, meet as mortal enemies when the latter invades Dodge City as a hired gunman.	CBS.
10:30	Turning Point: Unfair Game, with Richard Travis and Marguerite Chapman. Love and intrigue ensnare the members of a hunting trip in the Australian backwoods country.	Local, film.
11	News, with John Facenda	Local, live; public service.
11:10	Sports Corner, with Bill Campbell. Comments on sports topics.	Do.
11:15	Patti Page Show. Song stylings	Local, film.
11:30	Inner Sanctum: The Perfect Kill, with Lenka Peterson and Bramwell Fletcher. The suspicion is focused on a fellow student when it is discovered that the murder of one of his classmates conforms exactly to one that he has been reading in a magazine.	Do.
12	The Late Show: The Foreman Went to France, starring Robert Morley and Tommy Trinder. An English engineer goes to France to save secret machines from an approaching enemy.	Do.
1	Signoff	

Program schedule for WCIA, channel 3, Champaign, Ill., Apr. 8–14, 1956

Time	Program	Source
Sunday, Apr. 8, 1956:		
10:40 a. m	Inspiration Time	Station; film.
10:45 a. m	Man to Man	Do.
11 a. m	The Christophers	Do.
11:30 a. m	Wild Bill Hickok	CBS.
12 m	Farm	Station; live.
12:30 p. m	Frontiers of Faith	NBC.
1 p. m	Grand Ole Opry	Station; film.
2	Annie Oakley	Do.
2:30 p. m	Sky King	Do.
3 p. m	NBC Opera	NBC.
4:30 p. m	Captain Gallant	NBC.
5 p. m	My Friend Flicka	CBS.
5:30 p. m	You Are There	CBS.
6 p. m	It's A Great Life	NBC.
6:30 p. m	Jack Benny	CBS.
7 p. m	Ed Sullivan Show	CBS.
8 p. m	G. E. Theatre	CBS.
8:30 p. m	Alfred Hitchcock Presents	CBS.
9 p. m	Loretta Young Show	NBC.
9:30 p. m	What's My Line	CBS.
10 p. m	I Led Three Lives	Station; film.
10:30 p. m	News. Weather, and Sports	Station; live.
10:50 p. m	Ethel Barrymore Theatre	Station; film.
11:20 p. m	Evensong	Station; live.
Monday, Apr. 9, 1956:		
6:55 a. m	Inspiration Time	Station; film.
7 a. m	Good Morning	CBS.
7:25 a. m	Farm and Weather	Station; live.
7:30 a. m	Good Morning	CBS.
7:55 a. m	News	Station; live.
8 a. m	Captain Kangaroo	CBS.
8:25 a. m	News	Station; live.
8:30 a. m	Captain Kangaroo	CBS.
9 a. m	Garry Moore	CBS.

Program schedule for WCIA, channel 3, Champaign, Ill., April 8–14, 1956—Con.

Time	Program	Source
Monday, Apr. 9, 1956—Continued		
9:30 a. m.	Industry on Parade	Station; film.
9:45 a. m.	Arthur Godfrey Time	CBS.
10:30 a. m.	Strike It Rich	CBS.
11 a. m.	Valiant Lady	CBS.
11:15 a. m.	Love of Life	CBS.
11:30 a. m.	Search for Tomorrow	CBS.
11:45 a. m.	Guiding Light	CBS.
12 m.	News and Markets	Staton; live.
12:10 p. m.	Weather	CBS.
12:15 p. m.	Jack Paar Show	CBS.
12:30 p. m.	As the World Turns	CBS.
1 p. m.	Candid Camera	Station; film.
1:15 p. m.	Robert Q. Lewis	CBS.
1:30 p. m.	House Party	CBS.
2 p. m.	Big Payoff	CBS.
2:30 p. m.	You and Conservation	Station; live.
2:45 p. m.	Bob Crosby	CBS.
3 p. m.	Brighter Day	CBS.
3:15	Secret Storm	CBS.
3:30	The Edge of Night	CBS.
4	Happy Home	Station; live.
4:30	Midwest Matinee	Station; film.
5:30	The Little Rascals	Do.
6	Superman	Do.
6:30	Channel Three News	Station; live.
6:45	How's the Weather	Do.
6:50	Sports Desk	Do.
6:55	Les Paul and Mary Ford	Station; film.
7	Burns and Allen	CBS.
7:30	Damon Runyon Theater	Station; film.
8	I Love Lucy	CBS.
8:30	December Bride	CBS.
9	Playhouse of Stars	CBS.
9:30	Telephone Time	Station; film.
10	News, Weather and Sports	Station; live.
10:15	Bob Cummings Show	CBS.
10:45	Monday Playhouse	NBC.
11:15	News Final	Station; live.
Tuesday, Apr. 10, 1956:		
6:55 a. m.	Inspiration Time	Station; film.
7 a. m.	Good Morning	CBS.
7:25 a. m.	Farm and Weather	Station; live.
7:30 a. m.	Good Morning	CBS.
7:55 a. m.	News	Station; live.
8 a. m.	Captain Kangaroo	CBS.
8:25 a. m.	News	Station; live.
8:30 a. m.	Captain Kangaroo	CBS.
9 a. m.	Garry Moore	CBS.
9:30 a. m.	Arthur Godfrey Time	CBS.
10:30 a. m.	Strike It Rich	CBS.
11 a. m.	Valiant Lady	CBS.
11:15 a m.	Love of Life	CBS.
11:30 a. m.	Search for Tomorrow	CBS.
11:45 a. m.	Guiding Light	CBS.
12:00 m.	News and Markets	Station; live.
12:10 p. m.	Weather	Do.
12:15 p. m.	Jack Paar Show	CBS.
12:30 p. m.	As the World Turns	CBS.
1 p. m.	Robert Q. Lewis	CBS.
1:30 p. m.	House Party	CBS.
2 p. m.	Big Payoff	CBS.
2:30 p. m.	Bob Crosby	CBS.
3 p. m.	Brighter Day	CBS.
3:15 p. m.	Secret Storm	CBS.
3:30 p. m.	The Edge of Night	CBS.
4 p. m.	Happy Home	Station; live.
4:30 p. m.	Midwest Matinee	Station; film.
5:30 p. m.	The Little Rascals	Do.
6 p. m.	Western Marshall	Do.
6:30 p. m.	Channel Three News	Station; live.
6:45 p. m.	How's the Weather	Do.
6:50 p. m.	Sports Desk	Do.
6:55 p. m.	Les Paul and Mary Ford	Station; film.
7 p. m.	You Bet Your Life	NBC.
7:30 p. m.	Dragnet	NBC.
8 p. m.	Guy Lombardo	CBS.
8:30 p. m.	Red Skelton	CBS.

Program schedule for WCIA, channel 3, Champaign, Ill., April 8–14, 1956—Con.

Time	Program	Source
Tuesday, Apr. 10, 1956—Continued		
9 p. m	$64,000 Question	CBS.
9:30 p. m	Father Knows Best	Station; film.
10 p. m	News, Weather, and Sports	Station; live
10:15 p. m	This Is Your Life	NBC.
10:45 p. m	Justice	Studio; film.
11:15 p. m	News Final	Station; live.
Wednesday, Apr. 11, 1956:		
6:55 a. m	Inspiration Time	Station film.
7 a. m	Good Morning	CBS.
7:25 a. m	Farm and Weather	Station; live.
7:30 a. m	Good Morning	CBS.
7:55 a. m	News	Station; live.
8 a. m	Captain Kangaroo	CBS.
8:25 a. m	News	Station; live.
8:30 a. m	Captain Kangaroo	CBS.
9 a. m	Garry Moore	CBS.
9:30 a. m	Candid Camera	Station; film.
9:45 a. m	Arthur Godfrey Time	CBS.
10:30 a. m	Strike It Rich	CBS.
11 a. m	Valiant Lady	CBS.
11:15 a. m	Love of Life	CBS
11:30 a. m	Search for Tomorrow	CBS.
11:45 a. m	Guiding Light	CBS.
12 m	News and Markets	Station; live.
12:10 p. m	Weather	Do.
12:15 p. m	Jack Paar Show	CBS.
12:30 p. m	As the World Turns	CBS.
1 p. m	Robert Q. Lewis	CBS.
1:30 p. m	House Party	CBS.
2 p. m	Big Payoff	CBS.
2:30 p. m	Bob Crosby	CBS.
3 p. m	Brighter Day	CBS.
3:15 p. m	Secret Storm	CBS.
3:30 p. m	The Edge of Night	CBS.
4 p. m	Happy Home	Station; live.
4:30 p. m	Midwest Matinee	Station; film.
5:30 p. m	The Little Rascals	Do.
6 p. m	Wild Bill Hickok	Do.
6:30 p. m	Channel Three News	Station; live.
6:45 p. m	How's the Weather	Do.
6:50 p. m	Sports Desk	Do.
6:55 p. m	Les Paul and Mary Ford	Station; film.
7 p. m	Godfrey and Friends	CBS.
8 p. m	The Millionnaire	CBS.
8:30 p. m	I've Got A Secret	CBS.
9 p. m	United States Steel Hour	CBS.
10 p. m	News, Weather and Sports	Station; live.
10:15 p. m	Patti Page	Station; film.
10:30 p. m	Eddy Arnold	Do.
11 p. m	Midwest Marquee; The Teckman Mystery	Do.
12:30 a. m	News Final	Station; live.
Thursday, Apr. 12, 1956:		
6:55 a. m	Inspiration Time	Station; film.
7 a. m	Good Morning	CBS.
7:25 a. m	Farm and Weather	Station; live.
7:30 a. m	Good Morning	CBS.
7:55 a. m	News	Station; live.
8 a. m	Captain Kangaroo	CBS.
8:25 a. m	News	Station; live.
8:30 a. m	Captain Kangaroo	CBS.
9 a. m	Garry Moore	CBS.
9:30 a. m	Arthur Godfrey Time	CBS.
9:45 a. m	Rehearsal for Disaster	Station; film.
10 a. m	Arthur Godfrey Time	CBS.
10:30 a. m	Strike It Rich	CBS.
11 a. m	Valiant Lady	CBS.
11:15 a. m	Love of Life	CBS.
11:30 a. m	Search for Tomorrow	CBS.
11:45 a. m	Guiding Light	CBS.
12 m	News and Markets	Station; live.
12:10 p. m	Weather	Do.
12:15 p. m	Jack Paar Show	CBS.
12:30 p. m	As the World Turns	CBS.
1 p. m	Robert Q. Lewis	CBS.
1:30 p. m	House Party	CBS.
2 p. m	Let's Look at Learning	Station; live.

Program schedule for WCIA, channel 3, Champaign, Ill., April 8–14, 1956—Con.

Time	Program	Source
Thursday Apr. 12, 1956—Continued		
2:30 p. m.	Bob Crosby	CBS.
2:45 p. m.	Armed Forces Recruiting	Station; live.
3:00 p. m.	Brighter Day	CBS.
3:15 p. m.	Secret Storm	CBS.
3:30 p. m.	Edge of Night	CBS.
4 p. m.	Happy Home	Station; live.
4:30 p. m.	Midwest Matinee	Station; film.
5:30 p. m.	The Little Rascals	Do.
6 p. m.	Rin Tin Tin	Do.
6:30 p. m.	Channel Three News	Station; live.
6:45 p. m.	How's the Weather	Do.
6:50 p. m.	Sports Desk	Do.
6:55 p. m.	Les Paul and Mary Ford	Station; film.
7 p. m.	Life With Father	Do.
7:30 p. m.	Shower of Stars	CBS.
8:30 p. m.	Ford Theatre	NBC.
9 p. m.	Arthur Murray Party	CBS.
9:30 p. m.	I Married Joan	Station; film.
10 p. m.	News, Weather, and Sports	Station; live.
10:15 p. m.	Celebrity Playhouse	Station; film.
10:45 p. m.	Fireside Theatre	NBC.
11:15 p. m.	Midwest Marquee Big House for Girls	Station; film.
12:45 a. m.	News Final	Station; live.
Friday, Apr. 13, 1956:		
6:55 a. m.	Inspiration Time	Station; film.
7 a. m.	Good Morning	CBS.
7:25 a. m.	Farm and Weather	Station; live.
7:30 a. m.	Good Morning	CBS.
7:55 a. m.	News	Station; live.
8 a. m.	Captain Kangaroo	CB..
8:25 a. m.	News	Station; live.
8:30 a. m.	Captain Kangaroo	CBS.
9 a. m.	Candid Camera	Station; film.
9:15 a. m.	Garry Moore	CBS.
10:30 a. m.	Strike It Rich	CBS.
11 a. m.	Valiant Lady	CBS.
11:15 a. m.	Love of Life	CBS.
11:30 a. m.	Search for Tomorrow	CBS.
11:45 a. m.	Guiding Light	CBS.
12 m.	News and Markets	Station; live.
12:10 p. m.	Weather	Do.
12:15 p. m.	Jack Paar Show	CBS.
12:30 p. m.	As the World Turns	CBS.
1 p. m.	Know Your Neighbor	Station; live.
1:15 p. m.	Robert Q. Lewis	CBS.
1:30 p. m.	House Party	CBS.
2 p. m.	Big Payoff	CBS.
2:30 p. m.	Bob Crosby	CBS.
3 p. m.	Brighter Day	CBS.
3:15 p. m.	Secret Storm	CBS.
3:30 p. m.	Edge of Night	CBS.
4 p. m.	Happy Home	Station; live.
4:30 p. m.	Midwest Matinee	Station: film.
5:30 p. m.	The Little Rascals	Do.
6:00 p. m.	Range Rider	Do.
6:30 p. m.	Channel Three News	Station; live.
6:45 p. m.	How's the Weather	Do.
6:50 p. m.	Sports Desk	Do.
6:55 p. m.	Les Paul and Mary Ford	Station; film.
7:00 p. m.	Mobil Theatre	Do.
7:30 p. m.	The Unexpected	Do.
8:00 p. m.	Crusader	CBS.
8:30 p. m.	Federal Men	Station; film.
9:00 p. m.	The Lineup	CBS.
9:30 p. m.	The Man Called X	Station; film.
10:00 p. m.	News, Weather, and Sports	Station; live.
10:15 p. m.	Patti Page	Station; film.
10:30 p. m.	Masterpiece Theatre, Lady With a Lamp	Do.
12:00 p. m.	News Final	Station; live.
Saturday, Apr. 14, 1956:		
8:25 a. m.	Inspiration Time	Station; live.
8:30 a. m.	Captain Kangaroo	CBS.
9:30 a. m.	Telecourse	Station; live.
10 a. m.	Fury	NBC.
10:30 a. m.	Buffalo Bill	Station; film.
11 a. m.	Big Top	CBS.

Program schedule for WOIA, channel 3, Champaign, Ill., April 8–14, 1956—Con.

Time	Program	Source
Saturday, Apr. 14, 1956—Continued		
12 m	Lone Ranger	CBS.
12:30 p. m	Long John Silver	Station; film.
1 p. m	Baseball Game of the Week	CBS.
4:15 p. m	Senator's Report	Station; film.
4:30 p. m	Tales of Texas Rangers	Do.
5 p. m	Roy Rogers	NBC.
5:30 p. m	Lassie	CBS.
6 p. m	Big Town	NBC.
6:30 p. m	The Big Surprise	NBC.
7 p. m	The Honeymooners	CBS.
7:30 p. m	Stage Show	CBS.
8 p. m	Two for the Money	CBS.
8:30 p. m	It's Always Jan	CBS.
9 p. m	Gunsmoke	CBS.
9:30 p. m	Your Hit Parade	NBC.
10 p. m	Masquerade Party	Station; film.
10:30 p. m	Midwest Marquee Close Up	Do.
12 p. m	News Final	Station; live.

C. NBC affiliates:

WFBC–TV, Greenville, S. C.
WSJS–TV, Winston-Salem, N. C.
WSAZ–TV, Huntington, W. Va.
KELO–TV, Sioux Falls, S. Dak.
KMTV, Omaha, Nebr.
WWLP, Springfield, Mass.
KQTV, Fort Dodge, Iowa
WVEC–TV, Hampton, Va.
WDSU–TV, New Orleans, La.
KCBD–TV, Lubbock, Tex.
KOMO–TV, Seattle, Wash.
KPRC–TV, Houston, Tex.
WJIM–TV, Lansing, Mich.
KOMU–TV, Columbia, Mo.
KIDO–TV, Boise, Idaho
WJHP–TV, Jacksonville, Fla.
KVOO–TV, Tulsa, Okla.

Program schedule, WFBC–TV, Greenville, S. C., week of April 1 to 7, 1956

SUNDAY, APRIL 1

10:00 Easter services (NBC)[1]
11:00 St. Mark Methodist Church (NBC)[1]
12:00 Man to Man
12:15 The Way
12:45 Miracle of Love[1]
1:30 Green Scarf[1]
3:00 Medical Forum (studio)[1]
3:30 Zoo Parade (NBC)[1]
4:00 Wide Wide World (NBC)
5:30 Film Feature
6:00 Long John Silver
6:30 Soldiers of Fortune
7:00 Studio Fifty-seven
7:30 Druggists Theater[1]
8:00 Comedy Hour (NBC)[1]
9:00 Alcoa Playhouse (NBC)[1]
10:00 Loretta Young Show (NBC)
10:30 I Led Three Lives
11:00 Green Scarf[1]

MONDAY, APRIL 2

7:00 Today (NBC)
9:00 They Were Sisters[1]
10:00 Ding Dong School (NBC)
10:30 E. Kovacs Show (NBC)
11:00 Home (NBC)
12:00 Tennessee Ernie (NBC)
12:30 Feather Your Nest (NBC)
1:00 Housekeeping a Hobby (studio)
1:30 Bad Lord Byron[1]
2:30 My Little Margie
3:00 Matinee Theater (N B C) (color)
4:00 Devotions (studio)
4:15 Modern Romances (NBC)
4:30 Queen for a Day (NBC)
5:00 Little Rascals
5:30 Howdy Doody (NBC) (color)
6:00 Justice (NBC)
6:30 Esso Reporter (studio)
6:40 Druggist Weather (studio)
6:45 Sports Desk (studio)
6:55 Les Paul and Mary Ford
7:00 Big Playback
7:15 Patti Page Show
7:30 Playhouse Fifteen
7:45 News Caravan (NBC)
8:00 Producers Showcase (NBC) (color)[1]
9:30 Robert Montgomery Presents (NBC)
10:30 Star Stage (NBC)
11:00 Atlantic Weatherman (studio)
11:05 Sports Final (studio)
11:15 News (studio)
11:30 Tonight (NBC)

Program schedule, WFBC–TV, Greenville, S. C., week of April 1 to 7—**Continued**

TUESDAY, APRIL 3

7:00	Today (NBC)
9:00	Bad Lord Byron [1]
10:00	Ding Dong School (NBC)
10:30	E. Kovacs Show (NBC)
11:00	Home (NBC)
12:00	Tennessee Ernie (NBC)
12:30	Feather Your Nest (NBC)
1:00	Housekeeping a Hobby (studio)
1:30	Dreaminng Out Loud [1]
2:30	Trouble With Father
3:00	Matinee Theater (NBC) (color)
4:00	Devotions (studio)
4:15	Modern Romances (NBC)
4:30	Queen For a Day (NBC)
5:00	Kids Korral (studio)
5:30	Howdy Doody (NBC) (color)
6:00	Chiropractic Forum (studio)
6:15	Statesmen Quartet
6:30	Esso Reporter (studio)
6:40	Druggist Weather (studio)
6:45	Sports Desk (studio)
6:55	Les Paul and Mary Ford
7:00	Great Gildersleeve
7:30	Dinah Shore (NBC)[1]
7:45	News Caravan (NBC)
8:00	M. Berle (NBC) (color)[1]
9:00	Fireside Theater
9:30	Circle Theater (NBC)[1]
10:30	Big Town (NBC)
11:00	Atlantic Weatherman (studio)
11:05	Sports Final (studio)
11:15	News (studio)
11:30	Tonight (NBC)

WEDNESDAY, APRIL 4

7:00	Today (NBC)
9:00	Dreaming Out Loud [1]
10:00	Ding Dong School (NBC)
10:30	E. Kovacs Show (NBC)
11:00	Home (NBC)
12:00	Tennessee Ernie (NBC)
12:30	Feather Your Nest (NBC)
1:00	Housekeeping a Hobby (studio)
1:30	Diplomatic Passport [1]
2:30	My Little Margie
3:00	Matinee Theater (NBC) (color)
4:00	Devotions (studio)
4:15	Modern Romances (NBC)
4:30	Queen for a Day (NBC)
5:00	Little Rascals
5:30	Howdy Doody (NBC) (color)
6:00	Superman
6:30	Esso Reporter (studio)
6:40	Druggists Weather (studio)
6:45	Sports Desk (studio)
6:55	Les Paul and Mary Ford
7:00	Passport to Danger
7:30	Comfort Theater
7:45	News Caravan (NBC)
8:00	Highway Patrol
8:30	Father Knows Best (NBC)
9:00	Badge 714
9:30	Patti Page Show
9:45	Greatest Dramas
10:00	This Is Your Life (NBC)
10:30	Damon Runyon Theater
11:00	Atlantic Weatherman (studio)
11:05	Sports Final (studio)
11:15	Outdoors With Shelley (studio)
11:30	Tonight (NBC)

THURSDAY, APRIL 5

7:00	Today (NBC)
9:00	Diplomatic Passport [1]
10:00	Ding Dong School (NBC)
10:30	E. Kovacs Show (NBC)
11:00	Home (NBC)
12:00	Tennessee Ernie (NBC)
12:30	Feather Your Nest (NBC)
1:00	Housekeeping a Hobby (studio)
1:30	I'll Get You [1]
2:30	Trouble With Father
3:00	Matinee Theater (NBC) (color)
4:00	Devotions (studio)
4:15	Modern Romances (NBC)
4:30	Queen for a Day (NBC)
5:00	Kids Korral (studio)
5:30	Howdy Doody (NBC) (color)
6:00	Annie Oakley [1]
6:30	Esso Reporter (studio)
6:40	Druggists Weather (studio)
6:45	Sports Desk (studio)
6:55	Les Paul and Mary Ford
7:00	Liberace
7:30	Dinah Shore (NBC)
7:45	News Caravan (NBC)
8:00	Groucho Marx (NBC)
8:30	Dragnet (NBC)
9:00	Peoples Choice (NBC)
9:30	Ford Theater (NBC)
10:00	Lux Video Theater (NBC)[1]
11:00	Atlantic Weatherman (studio)
11:05	Sports Final (studio)
11:15	News (studio)
11:30	Tonight (NBC)

Program schedule, WFBC-TV, Greenville, S. C., week of April 1 to 7—Continued

FRIDAY, APRIL 6

7:00	Today (NBC)	6:30	Esso Reporter—Studio
9:00	I'll Get You [1]	6:40	Cullers Weather—Studio
10:00	Ding Dong School (NBC)	6:45	Sports Desk—Studio
10:30	E. Kovacs Show (NBC)	6:55	Les Palmer and Mary Ford
11:00	Home (NBC)	7:00	Jungle Jim
12:00	Tennessee Ernie (NBC)	7:30	Rimer Show—Studio
12:30	Feather Your Nest (NBC)	7:45	News Caravan (NBC)
1:00	Housekeeping A Bobby—Studio	8:00	Truth or Consequences (NBC)
1:30	Scattergood Baines [1]	8:30	Life of Riley (NBC)
2:30	My Little Margie	9:00	Big Story (NBC)
3:00	Matinee Theater (NBC) (color)	9:30	Amos 'n Andy
4:00	Lessons for Living (studio)	10:00	Cavalcade of Sports (NBC)
4:15	Modern Romances (NBC)	10:45	Film Feature
4:30	Queen for a Day (NBC)	11:00	Atlantic Weatherman—Studio
5:00	Little Rascals	11:05	Sports Final—Studio
5:30	Howdy Doody (NBC) (color)	11:15	News—Studio
6:00	Harmony Time—Studio	11:30	Tonight (NBC)

SATURDAY, APRIL 7

10:00	Children's Corner (NBC)	3:00	Saturday Matinee [1]
10:30	Pinky Lee (NBC)	5:00	Phillis Wheatley Time (studio) [1]
11:00	Film feature [1]	5:30	Wild Bill Hickok
11:30	Paul Winchell (NBC) [1]	6:00	Stars of The Grand Ole Opry
12:00	Dandyland—Studio	6:30	Lone Ranger
12:30	Kids Korral—Studio	7:00	Playhouse of Stars
12:45	Air Force Film	7:30	Big Surprise (NBC)
1:00	Farm Digest—Studio	8:00	Perry Como (NBC)
1:15	Dixie Rebels—Studio	9:00	People Are Funny (NBC)
1:30	Film Feature	9:30	Jimmy Durante (NBC) [1]
1:45	Science Fair—Studio	10:00	George Gobel (NBC)
2:00	Film feature [1]	10:30	Your Hit Parade (NBC)
2:30	School Showcase—Studio	11:00	Your All-Star Theater
2:45	Biology Club—Studio	11:30	Texas Rasslin'

[1] Change from last week's schedule.

List of programs on WSJS television, Winston-Salem, N. C., for the week of Apr. 1–7, 1956

Date and time	Program title	Source
Sunday, Apr. 1:		
9	Test pattern	Local.
9:45	Sign on	Do.
9:46	Music, prevues, test pattern	Do.
9:57:30	News summary	Do.
10	Easter church service	NBC.
11	That I May See	Film.
11:57	News summary	Local.
12:01	The Triumphant Hour	Film.
1	Youth Wants To Know	NBC.
1:30	Frontiers of Faith	NBC.
2	Children's Gospel Hour	Film.
2:30	Outlook, Chet Huntley	NBC.
3	Dr. Spock	NBC.
3:30	Zoo Parade	NBC.
4	Wide Wide World	NBC.
5:30	This Is the Life	Film.
5:59	News Summary	Local.
6:02:10	Meet the Press	NBC.
6:30	Long John Silver	Film.
7	It's a Great Life	NBC.
7:30	Frontier	NBC.
8	Comedy Hour	NBC.
9	Alcoa Hour	NBC.
10	Loretta Young Show	NBC.
10:30	March of Medicine	NBC.
11	Miracle of Love	Film.
11:44:30	Spray Gun	Do.
11:59:30	News final	Local.
12:03	Signoff	
Monday, Apr. 2:		
6	Test pattern	Local.
6:45	Sign on	Do.
6:46	Music, prevues, test pattern	Do.
6:59	Weather	Do.
7	Today	NBC.
7:55:30	Today's News at Home	Local.
8	Today	NBC.
8:24:30	Today's News at Home	Local.
8:30	Today	NBC.
9	Romper Room	Local.
10	Ding Dong School	NBC.
10:30	Ernie Kovacs	NBC.
11	Home	NBC.
12	Tennessee Ernie Ford	NBC.
12:30	Feather Your Nest	NBC.
1	On the Farm	Local.
1:15	News	Do.
1:20	Devotions	Do.
1:30	What's Your Trouble	Film.
1:45	This Afternoon	Local.
3	Matinee Theater	NBC.
4	Date With Life	NBC.
4:15	Modern Romances	NBC.
4:30	Queen for a Day	NBC.
5	Pinky Lee Circus	NBC.
5:30	Howdy Doody	NBC.
6	Jolly Junction	Local.
6:30	News	Do.
6:45	Weather Tower	Do.
6:51:10	Sportsdesk	Do.
7	Nationwide Theater	Film.
7:30	The Big Playback	Do.
7:45	News Caravan	NBC.
8	Barretts of Wimpole Street	NBC.
9:30	Montgomery Theater	NBC.
10:30	Star and the Story	Film.
11	Esso News Reporter	Local.
11:11	Weather report	Do.
11:16	Movie Museum	Film.
11:30	Tonight	NBC.
1:01	Signoff	Local.
Tuesday, Apr. 3:		
6	Test pattern	Local.
6:45	Sign on	Do.
6:46	Music, prevues, test pattern	Do.
6:59	Weather	Do.
7	Today	NBC.
7:54:30	Today's News at Home	Local.
8	Today	NBC.
8:24:30	Today's News at Home	Local.
8:30	Today	NBC.

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List of programs on WSJS television, Winston-Salem, N. C., for the week of April 1-7, 1956—Continued

Date and time	Program title	Source
Thursday Apr. 3—Continued		
9	Romper Room	Local.
10	Ding Dong School	NBC.
10:30	Ernie Kovacs	NBC.
11	Home	NBC.
12	Tennessee Ernie Ford	NBC.
12:30	Feather Your Nest	NBC.
1	On the Farm	Local.
1:15	News	Do.
1:20	Devotions	Do.
1:30	The Fraziers	Do.
1:45	The Way	Film.
2:15	This Afternoon	Local.
3	Matinee Theater	NBC.
4	Date With Life	NBC.
4:15	Modern Romances	NBC.
4:30	Queen for a Day	NBC.
5	Pinky Lee Circus	NBC.
5:30	Howdy Doody	NBC.
6	Jolly Junction	Local.
6:15	Mayor Kurfees	Do.
6:30:40	News	Do.
6:45	Weather Tower	Do.
6:51:20	Sports desk	Do.
7	Damon Runyon Theater	Film.
7:30	Dinah Shore Show	NBC.
7:45	News Caravan	NBC.
8	Milton Berle	NBC.
9	Fireside Theater	NBC.
9:30	Circle Theater	NBC.
10:30	Big Town	Film.
11	Esso News Reporter	Local.
11:11	Weather Report	Do.
11:16	Movie Museum	Film.
11:30	Harry Truman	NBC.
12	Tonight	NBC.
1:01	Signoff	Local.
Wednesday, Apr. 4:		
6	Test pattern	Do.
6:45	Sign on	Do.
6:46	Music, prevues, test pattern	Do.
6:58:20	Weather	Do.
7	Today	NBC.
7:54:30	Today's News at Home	Local.
8	Today	NBC.
8:25:30	Today's News at Home	Local.
8:30	Today	NBC.
9	Romper Room	Local.
10	Ding Dong School	NBC.
10:30	Ernie Kovacs	NBC.
11	Home	NBC.
12	Tennessee Ernie Ford	NBC.
12:30	Feather Your Nest	NBC.
1	On the Farm	Local.
1:15	News	Do.
1:20	Devotions	Do.
1:30	The Christophers	Film.
1:45	This Afternoon	Local.
3	Matinee Theater	NBC.
4	Date With Life	NBC.
4:15	Modern Romances	NBC.
4:30	Queen for a Day	NBC.
5	Pinky Lee Circus	NBC.
5:30	Howdy Doody	NBC.
6	Jolly Junction	Local.
6:30	News	Do.
6:45	Weather Tower	Do.
6:51:10	Sportsdesk	Do.
7:00:50	Soap Box Derby	Film.
7:30	Eddie Fisher	NBC.
7:45	News Caravan	NBC.
8	Racket Squad	Film.
8:30	Father Knows Best	NBC.
9	Kraft Television Theater	NBC.
10	This Is Your Life	NBC.
10:30	Midwestern Hayride	NBC.
11	Esso News Reporter	Local.
11:11	Weather Report	Do.
11:16	Movie Museum	Film.
11:30	Tonight	NBC.
1:01	Signoff	Local.

List of programs on WSJS television, Winston-Salem, N. C., for the week of April 1–7, 1956—Continued

Date and time	Program title	Source
Thursday, Apr. 5:		
6	Test pattern	Local.
6:45	Sign on	Do.
6:46	Music, prevues, test pattern	Do.
6:58:20	Weather	Do.
7	Today	NBC.
7:54:50	Today's News at Home	Local.
8	Today	NBC.
8:25:30	Today's News at Home	Local.
8:30	Today	NBC.
9:00:40	Romper Room	Local.
10	Ding Dong School	NBC.
10:30	Ernie Kovacs Show	NBC.
11	Home	NBC.
12	Tennessee Ernie Ford	NBC.
12:30	Feather Your Nest	NBC.
1	On the Farm	Local.
1:15	News	Do.
1:20	Devotions	Local.
1:30	The Fraziers	Do.
1:45	This Afternoon	Do.
3	Matinee Theater	NBC.
4	Date With Life	NBC.
4:15	Modern Romances	NBC.
4:30	Queen for a Day	NBC.
5	Pinky Lee Circus	NBC.
5:30	Howdy Doody	NBC.
6	Lone Ranger	Film.
6:30:30	News	Local.
6:45	Weather Tower	Do.
6:51:10	Sportsdesk	Do.
7	Highway Patrol	Film.
7:30:15	Education Report	WUNC (remote).
8	You Bet Your Life	NBC.
8:30	Dragnet	NBC.
9	People's Choice	NBC.
9:30	Ford Theater	NBC.
10	Lux Video Theater	NBC.
11	Esso News Reporter	Local.
11:11	Weather Report	Do.
11:16	Movie Museum	Film.
11:30	Tonight	NBC.
1:01	Signoff	Local.
Friday, Apr. 6:		
6	Test pattern	Local.
6:45	Sign on	Do.
6:46	Music, prevues, test pattern	Do.
6:58:20	Weather	Do.
7	Today	NBC.
7:54:30	Today's News at Home	Local.
8	Today	NBC.
8:25:30	Today's News at Home	Local.
8:30	Today	NBC.
9:00:40	Romper Room	Local.
10	Ding Dong School	NBC.
10:30	Ernie Kovacs	NBC.
11	Home	NBC.
12	Tennessee Ernie Ford	NBC.
12:30	Feather Your Nest	NBC.
1:00:40	On the Farm	Local.
1:15	News	Do.
1:20	Devotions	Do.
1:30	The Pastor's Study	Film.
1:45	This Afternoon	Local.
3	Matinee Theater	NBC.
4	Date With Life	NBC.
4:15	Modern Romances	NBC.
4:30	Queen For A Day	NBC.
5	Pinky Lee Circus	NBC.
5:30	Howdy Doody	NBC.
6	Jolly Junction	Local.
6:30	News	Do.
6:46	Weather Tower	Do.
6:51:30	Sportsdesk	Do.
7	Death Valley Days	Film.
7:30	Eddie Fisher	NBC.
7:45	News Caravan	NBC.
8	Truth or Consequences	NBC.
8:30	Life of Riley	NBC.
9	Big Story	NBC.
9:30	Star Stage	NBC.

List of programs on WSJS television, Winston-Salem, N. C., for the week of April 1–7, 1956—Continued

Date and time	Program title	Source
Friday, Apr. 6, 1956—Con.		
10	Boxing	NBC.
10:45	Red Barber's Corner	NBC.
11	Esso Reporter	Local.
11:11	Hodges Press Conference	Film.
11:19:50	Hutchinson Wax	Do.
11:30	Tonight	NBC.
1:01	Signoff	Local.
Saturday, Apr. 7:		
9:30	Sign on	Do.
9:31	Music, prevues, test pattern	Do.
9:43:30	News	Do.
9:46	Industry On Parade	Film.
10	Pinky Lee Circus	NBC.
10:30	Children's Corner	NBC.
11	Fury	NBC.
11:30	Uncle Johnny Coons	NBC.
12	Winchell and Mahoney	NBC.
12:30	Movie Matinee	Film.
2:00:30	Speedy Ross Exerciser	Do.
2:10:15	Amphibious Marines	Do.
2:31:10	Sagebrush Theater	Do.
3:32:15	The Christophers	Do.
4	Jack Brown, Spiritualaires	Local.
4:31:40	The Big Picture	Film.
5	Mr. Wizard	NBC.
5:30	Spray Gun	Film.
5:45	We Did It Ourselves	Do.
6	Grand Ol' Opry	Do.
7	The Way	Do.
7:30	The Big Surprise	NBC.
8	Perry Como	NBC.
9	People Are Funny	NBC.
9:30	Jimmy Durante Show	NBC.
10	George Gobel Show	NBC.
10:30	Your Hit Parade	NBC.
11:00:40	Dwight Barker	Local.
12:00:40	Journey	Film.
12:13:40	News final	Local.
12:17:10	Signoff	Do.

Source: NBC, 60 percent; film, 10.2 percent; local, 20.8 percent.

WSAZ–TV program schedule, Huntington, W. Va., April 1–7, 1956

Time	Program	Source
Sunday, Apr. 1, 1956:		
9:45 a. m	Test pattern	
9:56 a. m	Signon	
10 a. m	Eastern Sunday Church Service	NBC, live.
11 a. m	This Is the Life	Local, film.
11:30 a. m	Man to Man	Do.
11:45 a. m	Gospel Harmony Boys	Local, live.
12 noon	The Way	Local, film.
12:30 p. m	Television Chapel	Local, remote.
1 p. m	Championship Bowling	Local, film.
2 p. m	Talent Showcase	Local, live.
2:30 p. m	Outlook	NBC, live.
3 p. m	Dr. Spock	Do.
3:30 p. m	Zoo Parade	Do.
4 p. m	Wide Wide World	Do.
5:30 p. m	Captain Gallant of Foreign Legion	NBC, film.
6 p. m	Meet the Press	NBC, live.
6:30 p. m	Statesmen Quartet	Local, film.
6:45 p. m	News picture	Local, live.
7 p. m	Liberace	Local, film.
7:30 p. m	Frontier	NBC, live.
8 p. m	Comedy Hour	Do.
9 p. m	Television Playhouse	Do.
10 p. m	Loretta Young	Do.
10:30 p. m	March of Medicine	Do.
11 p. m	News and Sports Headlines	Local, live.
11:15 p. m	Treasure Theatre	Local, film.
12:30 a. m	Signoff	

WSAZ-TV program schedule, Huntington, W. Va.—Continued

Time	Program	Source
Monday, Apr. 2, 1956:		
6:45 a. m	Test pattern	
6:56 a. m	Signon	
7 a. m	Today	NBC, live.
9 a. m	Coffee Time	Local, live.
10 a. m	Ding Dong School	NBC, live.
10:30 a. m	Ernie Kovacs Show	Do.
11 a. m	Home	Do.
12 noon	Tennessee Ernie Ford Show	Do.
12:30 p. m	Feather Your Nest	Do.
1 p. m	Current	Local, live.
2 p. m	Ellery Queen	Local, film.
2:30 p. m	Camera Goes to School	Local, live.
3 p. m	Matinee Theatre	NBC, live.
4 p. m	Date With Life	Do.
4:15 p. m	Modern Romances	Do.
4:30 p. m	Queen for a Day	Do.
5 p. m	The Aunt Dru Show	Local, live.
5:30 p. m	Howdy Doody	NBC, live.
6 p. m	Superman	Local, film.
6:30 p. m	Sports Eye	Local, live.
6:40 p. m	News Picture	Local, live, remote seg.
6:55 p. m	Les Paul and Mary Ford	Local, film
7 p. m	Big Town	NBC, kinescope.
7:30 p. m	Gordon MacRae	NBC, live.
7:45 p. m	News Caravan	Do.
8 p. m	Producer's Showcase	Do.
9:30 p. m	Robert Montgomery	Do.
10:30 p. m	Dodge All-Star Theatre	Local, film.
11 p. m	News Headlines	Local, live.
11:05 p. m	Weathercast	Do.
11:10 p. m	Press Box	Do.
11:15 p. m	Greatest Fights of the Century	Local, film.
11:30 p. m	Tonight	NBC, live.
1 a. m	Signoff	
Tuesday, Apr. 3, 1956:		
6:45 a. m	Test pattern	
6:56 a. m	Signon	
7 a. m	Today	Do.
9 a. m	Coffee Time	Local, live.
10 a. m	Ding Dong School	NBC, live.
10:30 a. m	Ernie Kovacs Show	Do.
11 a. m	Home	Do.
12 noon	Tennessee Ernie Ford Show	Do.
12:30 p. m	Feather Your Nest	Do.
1 p. m	Current	Local, live.
2 p. m	Star Showcase	Local, film.
2:30 p. m	Parson's Study	Local, live.
3 p. m	Matinee Theatre	NBC, live.
4 p. m	Date With Life	Do.
4:14 p. m	Modern Romances	Do.
4:30 p. m	Queen for a Day	Do.
5 p. m	The Aunt Dru Show	Local, live.
5:30 p. m	Howdy Doody	NBC, live.
6 p. m	Soldiers of Fortune	Local, film.
6:30 p. m	Sports Eye	Local, live.
6:40 p. m	News Picture	Local, live, remote seg.
6:55 p. m	Les Paul and Mary Ford	Local, film.
7 p. m	Stars of Grand Ole Opry	Do.
7:30 p. m	Dinah Shore	NBC, live.
7:45 p. m	News Caravan	Do.
8 p. m	Milton Berle	Do.
9 p. m	Fireside Theatre	Do.
9:30 p. m	Circle Theatre	Do.
10:30 p. m	Mr. District Attorney	Local, film.
11 p. m	News Headlines	Local, live.
11:05 p. m	Weathercast	Do.
11:10 p. m	Press Box	Do.
11:15 p. m	Sports for Family	Local, film.
11:30 p. m	Address by Former President Truman	NBC, live.
12 midnight	Tonight	Do.
1 a. m	Signoff	
Wednesday, Apr. 4, 1956:		
6:45 a. m	Test pattern	
6:56 a. m	Signon	
7 a. m	Today	Do.
9 a. m	Coffee Time	Local, live.
10 a. m	Ding Dong School	NBC, live.
10:30 a. m	Ernie Kovacs Show	Do.

WSAZ-TV program schedule, Huntington, W. Va.—Continued

Time	Program	Source
Wednesday, Apr. 4, 1956—Continued		
11 a. m	Home	NBC, live.
12 noon	Tennessee Ernie Ford Show	Do.
12:30 p. m	Feather Your Nest	Do.
1 p. m	Current	Local, live.
2 p. m	Susie	Local, film.
2:30 p. m	Camera Goes to School	Local, live.
3 p. m	Matinee Theater	NBC, live.
4 p. m	Date With Life	Do.
4:15 p. m	Modern Romances	Do.
4:30 p. m	Queen for a Day	Do.
5 p. m	The Aunt Dru Show	Local, live.
5:30 p. m	Howdy Doody	NBC, live.
6 p. m	Hopalong Cassidy	Local, film.
6:30 p. m	Sports Eye	Local, live.
6:40 p. m	News Picture	Local, live, remote seg.
6:55 p. m	Les Paul and Mary Ford	Local, film.
7 p. m	Dr. Hudson's Secret Journal	Do.
7:30 p. m	Coke Time	NBC, live.
7:45 p. m	News Caravan	Do.
8 p. m	Screen Directors Playhouse	NBC, film.
8:30 p. m	Father Knows Best	Do.
9 p. m	Kraft Theater	NBC, live.
10 p. m	This Is Your Life	Do.
10:30 p. m	Damon Runyon Theater	Local, film.
11 p. m	News Headlines	Local, live.
11:05 p. m	Weathercast	Do.
11:10 p. m	Press Box	Do.
11:15 p. m	Greatest Fights of the Century	Local, film.
11:30 p. m	Tonight	NBC, live.
1 a. m	Signoff	
Thursday, Apr. 5, 1956:		
6:45 a. m	Test pattern	
6:56 a. m	Signon	
7 a. m	Today	Do.
9 a. m	Coffee Time	Local, live.
10 a m	Ding Dong School	NBC, live.
10:30 a. m	Ernie Kovacs Show	Do.
11 a. m	Home	Do.
12 noon	Tennessee Ernie Ford Show	Do.
12:30 p. m	Feather Your Nest	Do.
1 p. m	Current	Local, live.
2 p. m	Halls of Ivy	Local, film.
2:30 p. m	Parson's Study	Local, live.
3 p. m	Matinee Theatre	NBC, live.
4 p. m	Date With Life	Do.
4:15 p. m	Modern Romances	Do.
4:30 p. m	Queen for a Day	Do.
5 p. m	The Aunt Dru Show	Local, live.
5:30 p. m	Howdy Doody	NBC, live.
6 p. m	Flatt and Scruggs	Local, live.
6:29:30 p. m	Sports Eye	Do.
6:34:30 p. m	Political program	Local, film.
6:40 p. m	News Picture	Local, live, remote seg.
6:55 p. m	Les Paul and Mary Ford	Local, film.
7 p. m	The Hunter	Do.
7:30 p. m	Dinah Shore	NBC, live.
7:45 p. m	News Caravan	Do.
8 p. m	You Bet Your Life	Do.
8:30 p. m	Dragnet	Do.
9 p. m	People's Choice	NBC, film.
9:30 p. m	Ford Theatre	Do.
10 p. m	Lux Video Theatre	NBC, live.
11 p. m	News Headlines	Local, live.
11:05 p. m	Weathercast	Do.
11:10 p. m	Press Box	Do.
11:15 p. m	Sports for Family	Local, film.
11:30 p. m	Political program	Local, live.
12 midnight	Tonight	NBC, live.
1 a. m	Signoff	
Friday, Apr. 6, 1956:		
6:45 a. m	Test pattern	
6:56 a. m	Signon	
7 a. m	Today	Do.
9 a. m	Coffee Time	Local, live.
10 a. m	Ding Dong School	NBC, live.
10:30 a. m	Ernie Kovacs Show	Do.
11 a. m	Home	Do.

WSAZ–TV program schedule, Huntington, W. Va.—Continued

Time	Program	Source
Friday, Apr. 6, 1956—Continued		
12 noon	Tennessee Ernie Ford Show	NBC, live.
12:30 p. m	Feather Your Nest	Do.
1 p. m	Current	Local, live.
2 p. m	Count of Monte Cristo	Local, film.
2:30 p. m	Camera Goes to School	Local, live.
3 p. m	Matinee Theatre	NBC, live.
4 p. m	Date With Life	Do.
4:15 p. m	Modern Romances	Do.
4:30 p. m	Queen for a Day	Do.
5 p. m	The Aunt Dru Show	Local, live.
5:30 p. m	Howdy Doody	NBC, live.
6 p. m	Wild Bill Hickok	Local, film.
6:30 p. m	Sports Eye	Local, live.
6:40 p. m	News Picture	Local, live, remote seg.
6:55 p. m	Les Paul and Mary Ford	Local, film.
7 p. m	Life of Riley	NBC, kinescope.
7:30 p. m	Coke Time	NBC, live.
7:45 p. m	News Caravan	Do.
8 p. m	Truth or Consequences	Do.
8:30 p. m	The Whistler	Local, film.
9 p. m	Big Story	NBC, live.
9:30 p. m	Star Stage	NBC, film.
10 p. m	Cavalcade of Sports	NBC, live.
10:45 p. m	Red Barber's Corner	Do.
11 p. m	News Headlines	Local, live.
11:05 p. m	Weathercast	Do.
11:10 p. m	Press Box	Do.
11:15 p. m	Greatest Fights of the Century	Local, film.
11:30 p. m	Tonight	NBC, live.
1 a. m	Signoff	
Saturday, Apr. 7, 1956:		
9:45 a. m	Test pattern	
9:56 a. m	Signon	Do.
10 a. m	Pinky Lee Show	Do.
10:30 a. m	Children's Corner	Do.
11 a. m	Fury	NBC, film.
11:30 a. m	Uncle Johnny Coons	NBC, live.
12 noon	Paul Winchell and Jerry Mahoney Variety	Do.
12:30 p. m	Captain Z-RO	Local, film.
1 p. m	Down on the Farm	Local, live.
1:30 p. m	Nimrod and Angler	Local, live, remote
2 p. m	Top Ten Dance Party	Local, live.
3 p. m	Western Theatre	Local, film.
4:30 p. m	Buffalo Bill, Jr	Do.
5 p. m	Mr. Wizard	NBC, film.
5:30 p. m	Sky King	Local, film.
6 p. m	Roy Rogers	NBC, film.
6:30 p. m	It's A Great Life	NBC, kinescope.
7 p. m	Saturday Night Jamboree	Local, live.
7:30 p. m	Big Surprise	NBC, live.
8 p. m	Perry Como Show	Do.
9 p. m	People Are Funny	Do.
9:30 p. m	Texaco Star Theatre	Do.
10 p. m	George Gobel	Do.
10:30 p. m	Hit Parade	Do.
11 p. m	News and Sports Headlines	Local, live.
11:10 p. m	Roller Derby	Local, film.
11:45 p. m	Owl Theatre	Local, film.
1 a. m	Signoff	

KELO–TV, Sioux Falls, S. Dak., program schedule for week of Apr. 1, 1956

Time	Program	Source
Sunday, Apr. 1, 1956:		
8:58 a. m	News and weather	Local, live.
9 a. m	Easter Sunday church services	NBC, live.
10 a. m	Sioux Falls Ministerial Association	Local, live.
10:30 a. m	Christian Science	Local, film.
10:45 a. m	Man to Man	Do.
11 a. m	This Is the Life	Do.
11:30 a. m	Knights of Columbus	Do.
12 noon	Youth Wants To Know	NBC, live.
12:30 p. m	Faith For Today	Local, film.
1 p. m	Princeton, 1956	NBC, live.
1:30 p. m	I Spy	Local, film.

KELO-TV, Sioux Falls, S. Dak., program schedule for week of Apr. 1, 1956—Con.

Time	Program	Source
Sunday, Apr. 1, 1956—Continued		
2 p. m	Science Fiction	Local, film.
2:30 p. m	Zoo Parade	NBC, live.
3 p. m	Wide, Wide World	Do.
4:30 p. m	Dr. Hudson	Local, film.
5 p. m	Meet The Press	NBC, live.
5:30 p. m	First Lutheran Church	Local, live.
5:45 p. m	Our Family News	Do.
6 p. m	Ed Sullivan Show	CBS, film.
7 p. m	Comedy Hour	NBC, live.
8 p. m	Fantle's Playhouse	Local, film.
8:30 p. m	Mobil Theater	Do.
9 p. m	Loretta Young	NBC, live.
9:30 p. m	Week's News in Review	Local, film.
9:45 p. m	Weather	Do.
9:50 p. m	Late news	Do.
10 p. m	Red Owl Theater	Local, film.
11:50 p. m	Art instruction	Do.
12 midnight	The Hunter	Do.
12:30 a. m	Religion Overseas	Do.
12:38 a. m	News and weather	Local, live.
12:40 a. m	Lord's Prayer and Signoff	Local, film.
Monday, Apr. 2:		
6:58 a. m	News and weather	Local live.
7 a. m	Today	NBC, live.
7:25 a. m	News and weather	Local, live.
7:30 a. m	Today	NBC, live.
7:55 a. m	News and weather	Local, live.
8 a. m	Today	NBC, live.
8:25 a. m	News and weather	Local, live.
8:30 a. m	Today	NBC, live.
8:55 a. m	News and weather	Do.
9 a. m	Ding Dong School	Do.
9:30 a. m	Ernie Kovac Show	Do.
10 a. m	Home	Do.
11 a. m	Tennessee Ernie Ford	Do.
11:15 a. m	Love of Life	CBS, live.
11:30 a. m	Search for Tomorrow	Do.
11:45 a. m	Industry on Parade	Local, film.
12:00 noon	Johnnie White	Local, live.
12:15 p. m	Noontime News	Do.
12:30 p. m	Weather	Do.
12:35 p. m	Livestock Market Guide	Do.
12:50 p. m	Highline Harmony	Local, film.
1 p. m	Love Story	CBS, film.
1:30 p. m	Sparkle and Spice	Local, live.
2:00 p. m	Big Payoff	CBS, live.
2:30 p. m	American Religious Townhall Meeting	Local, film.
3:00 p. m	Brighter Day	CBS. live.
3:15	Secret Storm	Do.
3:30	The World Within	Do.
4	Movie Quick Quiz	Local, live.
4:15	Ben Franklin Almanac	Do.
4:30	Howdy Doody	NBC, live.
5	Captain 11	Local, live.
5:30	The Lone Ranger	ABC, film.
6	Farm-Market News	Local, live.
6:08	Sideline Sidelites	Do.
6:15	Home Edition News	Do.
6:25	Weather	Do.
6:30	Robinhood	CBS, live.
7	Producers Showcase	NBC, live.
8:30	Robert Montgomery Presents	Do.
9:30	December Bride	CBS, film.
10	Old Home Weather	Local, live.
10:10	Burt's Sportsreel	Do.
10:20	Night Edition of the News	Do.
10:30	Senator Case Report	Local, film.
10:45	Camera Demonstration	Do.
10:50	Musical Moments	Do.
11	Alfred Hitchcock Presents	CBS, film.
11:30	Championship Wrestling	Local, film.
12	News and weather	Do.
12:02	National anthem and signoff	Do.
Tuesday, Apr. 3:		
6:58 a. m	News and weather	Local, live.
7 a. m	Today	NBC, live.
7:25 a. m	News and weather	Local, live.
7:30 a. m	Today	NBC, live.
7:55 a. m	News and weather	Local, live.
8 a. m	Today	NBC, live.
8:25 a. m	News and weather	Local, live.
8:30 a. m	Today	NBC, live.
8:55 a. m	News and weather	Local, live.

KELO-TV, Sioux Falls, S. Dak., program schedule for week of Apr. 1, 1956—Con.

Time	Program	Source
Tuesday, Apr. 3—Continued		
9 a. m	Ding Dong School	NBC, live.
9:30 a. m	Ernie Kovac Show	Do.
10 a. m	Home	Do.
11 a. m	Tennessee Ernie Ford	NBC, film.
11:15 a. m	Love of Life	CBS, live.
11:30 a. m	Search for Tomorrow	Do.
11:45 a. m	Godfrey Time	CBS, film.
12 noon	Industry on Parade	Local, film.
12:15 p. m	Noontime news	Local, live.
12:30 p. m	Weather	Do.
12:35 p. m	Livestock Market Guide	Do.
12:50 p. m	Highline Harmony	Local, film.
1 p. m	Love Story	CBS, film.
1:30 p. m	House Party	CBS, live.
1:45 p. m	Teaching Your Child With Toys	Local, film.
2 p. m	Big Payoff	CBS, live.
2:30 p. m	Design for Living	Local, live.
3 p. m	Brighter Day	CBS, live.
3:15 p. m	Secret Storm	Do.
3:30 p. m	The World Within	Do.
4 p. m	Movie Quick Quiz	Local, live.
4:15 p. m	Sylvia Dunn Show	Do.
4:30 p. m	Howdy Doody	NBC, live.
5 p. m	Captain 11	Local, live.
5:30 p. m	Superman	Local, film.
6 p. m	Farm-Market News	Local, live.
6:08 p. m	Sideline Sidelites	Do.
6:15 p. m	Home Edition News	Do.
6:25 p. m	Weather	Do.
6:30 p. m	Navy Log	CBS, film.
7 p. m	Milton Berle	NBC, live.
8 p. m	Fireside Theatre	Do.
8:30 p. m	Circle Theatre	Do.
9:30 p. m	Big Town	Do.
10 p. m	Old Home Weather	Local, live.
10:10 p. m	Burt's Sportsreel	Do.
10:20 p. m	Night Edition of the News	Do.
10:30 p. m	Du Pont Cavalcade Theatre	ABC, film.
11 p. m	Showtime	Local, film.
11:30 p. m	Feature Movie	Do.
12:30 a. m	News and weather	Local, live.
12:32 a. m	Star-Spangled Banner and signoff	Local, film.
Wednesday, Apr. 4, 1956:		
6:58 a. m	News and weather	Local, live.
7 a. m	Today	NBC, live.
7:25 a. m	News and weather	Local, live.
7:30 a. m	Today	NBC, live.
7:55 a. m	News and weather	Local, live.
8 a. m	Today	NBC, live.
8:25 a. m	News and weather	Local, live.
8:30 a. m	Today	NBC, live.
8:55 a. m	News and weather	Local, live.
9 a. m	Ding Dong School	NBC, live.
9:30 a. m	Ernie Kovac Show	Do.
10 a. m	Home	Do.
11 a. m	Tennessee Ernie Ford	Do.
11:15 a. m	Love of Life	CBS, live.
11:30 a. m	Search for Tomorrow	Do.
11:45 a. m	Industry on Parade	Local, film.
12 noon	Johnnie White	Local, live.
12:15 p. m	Noontime news	Do.
12:30 p. m	Weather	Do.
12:35 p. m	Livestock market guide	Do.
12:50 p. m	Highline Harmony	Local, film.
1 p. m	Love story	CBS, film.
1:30 p. m	Sparkle and Spice	Local, live.
2 p. m	Big Payoff	CBS, live.
2:30 p. m	Augustana College	Local, live.
3 p. m	Brighter Day	CBS, live.
3:15 p. m	Secret Storm	Do.
3:30 p. m	The World Within	Do.
4 p. m	Movie Quick Quiz	Local, live.
4:15 p. m	Jean White Shopper	Do.
4:30 p. m	Howdy Doody	NBC, live.
5 p. m	Captain 11	Local, live.
5:30 p. m	Soldiers of Fortune	Local, film.
6 p. m	Farm-Market News	Local, live.
6:08 p. m	Sideline Sidelites	Do.
6:15 p. m	Home Edition of the News	Do.
6:25 p. m	Weather	Do.

KELO-TV, Sioux Falls, S. Dak., program schedule for week of Apr. 1, 1956—Con.

Time	Program	Source
Wednesday, Apr. 4, 1956—Continued		
6:30 p. m	Coke Time	NBC, live.
6:45 p. m	Treasure Chest	Local, live.
7 p. m	I Love Lucy	CBS, film.
7:30 p. m	Bishop Sheen	ABC, film.
8 p. m	Millionaire	CBS, live.
8:30 p. m	I've Got a Secret	Do.
9 p. m	Wednesday Nite Fights	ABC, live.
9:50 p. m	Sports in General	Local, live.
10 p. m	Old Home Weather	Do.
10:10 p. m	Burt's Sportsreel	Do.
10:20 p. m	Night Edition of the News	Do.
10:30 p. m	Patti Page Show	Local, film.
10:45 p. m	Mayor's Report	Local, live.
10:55 p. m	Sioux Empire Newsletter	Local, film.
11 p. m	Dollar a Second	ABC, film.
11:30 p. m	Western Feature Movie	Local, film.
12:30 a. m	News and Weather	Local, live.
12:32 a. m	Lord's Prayer and signoff	Local, film.
Thursday, Apr. 5, 1956:		
6:58 a. m	News and weather	Local, live.
7 a. m	Today	NBC, live.
7:25 a. m	News and weather	Local, live.
7:30 a. m	Today	NBC, live.
7:55 a. m	News and weather	Local, live.
8 a. m	Today	NBC, live.
8:25 a. m	News and weather	Local, live.
8:30 a. m	Today	NBC, live.
8:55	News and weather	Local, live.
9 a. m	Ding Dong School	NBC, live.
9:30 a. m	Ernie Kovac Show	Do.
10 a. m	Home	Do.
11 a. m	Tennessee Ernie Ford	NBC, film.
11:15 a. m	Love of Life	CBS, live.
11:30 a. m	Search For Tomorrow	Do.
11:45 a. m	Godfrey Time	CBS, film.
12 Noon	Industry on Parade	Local, film.
12:15 p. m	Noontime News	Local, live.
12:30 p. m	Weather	Do.
12:35 p. m	Livestock Market Guide	Do.
12:50 p. m	Highline Harmony	Local, film.
1 p. m	Love Story	CBS, film.
1:30 p. m	House Party	CBS, live.
1:45 p. m	What One Person Can Do	Local, film.
2 p. m	Big Payoff	CBS, live.
2:30 p. m	Glamorene	Local, film.
2:45 p. m	Red Cross program	Do.
3 p. m	Brighter Day	CBS, live.
3:15 p. m	Secret Storm	Do.
3:30 p. m	The World Within	Do.
4 p. m	Movie Quick Quiz	Local, live.
4:15 p. m	V-Store Melodies	Do.
4:30 p. m	Howdy Doody	NBC, live.
5 p. m	Captain 11	Local, live.
5:30 p. m	Sky King	Local, film.
6 p. m	Farm-Market News	Local, live.
6:08 p. m	Sideline Sidelites	Do.
6:15 p. m	Home Edition News	Do.
6:25 p. m	Weather	Do.
6:30 p. m	Ray Milland	Local film.
7 p. m	You Bet Your Life	NBC, live.
7:30 p. m	Dragnet	Do.
8 p. m	Highway Patrol	Local, film.
8:30 p. m	Four Star Playhouse	CBS, live.
9 p. m	Lux Video Theatre	NBC, live.
10 p. m	Old Home Weather	Local, live.
10:10 p. m	Burt's Sportsreel	Do.
10:20 p. m	Night Edition News	Do.
20:30 p. m	Break the Bank	ABC, film.
10 p. m	It's Always Jan	CBS, film.
11:30 p. m	Jaycee Roundup	Local, film.
12 m	The Pendulum	Do.
12:30 a. m	News and Weather	Local, live.
12:32 a. m	23d Psalm and signoff	Local, film.
Friday, Apr. 6:		
6:58 a. m	News and weather	Local, live.
7 a. m	Today	NBC, live.
7:25 a. m	News and weather	Local, live.
7:30 a. m	Today	NBC, live.
7:55 a. m	News and weather	Local, live.

KELO-TV, Sioux Falls, S. Dak., program schedule for week of Apr. 1, 1956—Con.

Time	Program	Source
Friday, Apr. 6—Continued		
8 a. m.	Today	NBC, live.
8:25 a. m.	News and weather	Local, live.
8:30 a. m.	Today	NBC, live.
8:55 a. m.	News and weather	Local, live.
9 a. m.	Ding Dong School	NBC, live.
9:30 a. m.	Ernie Kovacs	Do.
9:45 a. m.	Industry on Parade	Local, film.
10 a. m.	Home	NBC, live.
11 a. m.	Tennessee Ernie Ford	Do.
11:15 a. m.	Love of Life	CBS, live.
11:30 a. m.	Search for Tomorrow	Do.
11:45 a. m.	Industry on Parade	Local, film.
12 noon	Johnnie White	Local, live.
12:15 p. m.	Noontime News	Do.
12:30 p. m.	Weather	Do.
12:35 p. m.	Livestock Market Guide	Do.
12:50 p. m.	Highline Harmony	Local, film.
1 p. m.	Love story	CBS, film.
1:30 p. m.	Sparkle and Spice	Local, live.
2 p. m.	Big Payoff	CBS, live.
2:30 p. m.	TV Record Den	Local, live.
3 p. m.	Brighter Day	CBS, live.
3:15 p. m.	Secret Storms	Do.
3:30 p. m.	The World Within	Do.
4 p. m.	Movie Quick Quiz	Local, live.
4:15 p. m.	Mr. and Mrs. Show	Do.
4:30 p. m.	Howdy Doody	NBC, live.
5 p. m.	Captain 11	Local, live.
5:30 p. m.	Wild Bill Hickok	Local, film.
6 p. m.	Farm-Market News	Local, live.
6:08 p. m.	Sideline Sidelites	Do.
6:15 p. m.	Home Edition News	Do.
6:25 p. m.	Weather	Do.
6:30 p. m.	Coke Time	NBC, live.
6:45 p. m.	Treasure Chest	Local, live.
7 p. m.	Truth or Consequences	NBC, live.
7:30 p. m.	Damon Runyon Theatre	Local, film.
8 p. m.	Crusader	CBS, live.
8:30 p. m.	Ford Theatre	Local, film.
9 p. m.	Cavalcade of Sports	NBC, live.
9:45 p. m.	Red Barber's Corner	Do.
10 p. m.	Old Home Weather	Local, live.
10:10 p. m.	Burt's Sportsreel	Do.
10:20 p. m.	Night Edition News	Do.
10:30 p. m.	Patti Page	Local, film.
10:45 p. m.	Senator Martin	Do.
11 p. m.	Lawrence Welk	ABC, film.
12 p. m.	Mark Saber	Local, film.
12:30 a. m.	News and Weather	Local, live.
12:32 a. m.	Mount Rushmore, national anthem, and signoff	Local, film.
Saturday, Apr. 7:		
8:58 a. m.	News and Weather	Local, live.
9 a. m.	The Children's Corner	NBC, live.
9:30 a. m.	Mr. Wizard	NBC, film.
10 a. m.	Fury	NBC, live.
10:30 a. m.	Winchell Mahoney Variety Show	NBC, film.
11 a. m.	Junior Auction	Local, live.
11:30 a. m.	Big Picture	ABC, film.
12 noon	Sports Showcase	Local, live.
12:30 p. m.	Water Magic	Local, film.
1 p. m.	Report of the Navy	Do.
1:15 p. m.	Baseball Preview	CBS, live.
1:25 p. m.	Baseball game	Do.
4:20 p. m.	Intercollegiate Quiz Program	Local, live
4:30 p. m.	South Dakota Congressional Show	Local, film.
4:45 p. m.	South Dakota Highway Safety	Local, live.
5 p. m.	Annie Oakley	Local, film.
5:30 p. m.	Disneyland	ABC, film.
6:30 p. m.	MGM Parade	Do.
7 p. m.	Jackie Gleason in The Honeymooners	CBS, live.
7:30 p. m.	Wyatt Earp	ABC, film.
8 p. m.	Two for the Money	CBS, live.
8:30 p. m.	I Led Three Lives	Local, film.
9 p. m.	George Gobel Show	NBC, live.
9:30 p. m.	Your Hit Parade	Do.
10 p. m.	China Smith	Local, film.
10:30 p. m.	Culligan Weather	Local, live.
10:35 p. m.	Weekend Edition of the News	Do.
10:45 p. m.	Great Gildersleeve	Local, film.
11:15 p. m.	Championship Bowling	Do.
12:15 a. m.	Late Late Show	Do.
1:55 a. m.	News and Weather	Local, live.
1:57 a. m.	Ave Maria and signoff	Local, film.

KMTV, Omaha, Nebr., program schedule for week of Apr. 1–7, 1956

Time	Program	Source
Sunday, Apr. 1, 1956:		
6:45 a. m.	Cowboys and Indians	Local.
7:45 a. m.	Puritan Circle 3 Ranch	Do.
9 a. m.	Easter Services	NBC.
10 a. m.	Hill No. 1	Local.
11 a. m.	Miracle of Love	NBC.
12 noon	Sunday Noon Edition of News	NBC.
12:15 p. m.	Picture Your Home	NBC.
12:30 p. m.	Your Doctor and You	NBC.
1 p. m.	I-Go-Bowling	NBC.
2 p. m.	Kit Carson	NBC.
2:30 p. m.	Zoo Parade	NBC.
3 p. m.	Wide Wide World	NBC.
4:30 p. m.	Captain Gallant	NBC.
5 p. m.	You Asked For It	ABC.
5:30 p. m.	Roy Rogers	NBC.
6 p. m.	It's a Great Life	NBC.
6:30 p. m.	Frontier	NBC.
7 p. m.	Comedy Hour	NBC.
8 p. m.	Alcoa Theater	NBC.
9 p. m.	Loretta Young Show	NBC.
9:30 p. m.	March of Medicine	NBC.
10 p. m.	Weather and News	Local.
10:15 p. m.	Warner Brothers Presents	ABC.
11:15 p. m.	Craig Kennedy	Local.
12 a. m.	Late Edition News—Days' End—Signoff	Do.
Monday Apr. 2, 1956:		
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	Do.
9:30 a. m.	Your TV Home	Local.
10 a. m.	Home	NBC.
11 a. m.	Tennessee Ernie	Do.
11:30 a. m.	Feather Your Nest	Do.
12 noon	Noon Edition	Local.
12:15 p. m.	The Hawk	Do.
1 p. m.	Martha Bohlson	Do.
1:15 p. m.	Over the Garden Fence	Do.
1:30 p. m.	Better Living	Do.
2 p. m.	Matinee Theatre	NBC.
3 p. m.	Date with Life	Do.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen for a Day	Do.
4 p. m.	The Hawk	Local.
4:30 p. m.	Howdy Doody	NBC.
5 p. m.	The Mickey Mouse Club	ABC.
6 p. m.	Wrestling Interview	Local.
6:15 p. m.	Patti Page	Do.
6:30 p. m.	Gordon McRae	NBC.
6:45 p. m.	News Caravan	NBC.
7 p. m.	Producers Showcase	NBC.
8:30 p. m.	Robert Montgomery Presents	NBC.
9:30 p. m.	Celebrity Playhouse	Local.
10 p. m.	Report	Do.
10:30 p. m.	Let's Dance	Do.
11 p. m.	City Assignment	Do.
11:30 p. m.	Dateline Europe	Do.
12 p. m.	Late Edition—Days' End—signoff	Do.
Tuesday, Apr. 3, 1956:		
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	NBC.
9:30 a. m.	Your TV Home	Local.
10 a. m.	Home	NBC.
11 a. m.	Tennessee Ernie	NBC.
11:30 a. m.	Feather Your Nest	NBC.
12 noon	Noon Edition	Local.
12:15 p. m.	The Hawk	Do.
1 p. m.	Martha Bohlson	Do.
1:15 p. m.	Arthur Murray Show	Do.
1:30 p. m.	Better Living	Do.
2 p. m.	Matinee Theatre	NBC.
3 p. m.	Date With Life	NBC.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen for a Day	Do.
4 p. m.	The Hawk	Local.
4:30 p. m.	Howdy Doody	NBC.
5 p. m.	The Mickey Mouse Club	ABC.
6 p. m.	Lone Ranger	ABC.
6:30 p. m.	Dinah Shore	NBC.
6:45 p. m.	News Caravan	NBC.
7 p. m.	Milton Berle	NBC.
8 p. m.	Fireside Theatre	NBC.

KMTV, Omaha, Nebr., program schedule for week of Apr. 1–7, 1956—Continued

Time	Program	Source
Tuesday, Apr. 3 1956—Continued		
8:30 p. m.	Circle Theatre	NBC.
9:30 p. m.	Big Town	NBC.
10 p. m.	Report	Local.
10:30 p. m.	Cross Currents	Do.
11 p. m.	Les Paul and Mary Ford	Do.
11:05 p. m.	Jalopy Derby	Do.
11:30 p. m.	I Am the Law	Do.
12 a. m.	Late Edition—Days' End—Signoff	Do.
Wednesday, Apr. 4, 1956:		
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	NBC.
9:30 a. m.	Your TV Home	Local.
10 a. m.	Home	NBC.
11 a. m.	Tennessee Ernie	NBC.
11:30 a. m.	Feather Your Nest	NBC.
12 noon	Noon Edition	Local.
12:15 p. m.	The Hawk	Do.
1 p. m.	Martha Bohlson	Do.
1:15 p. m.	Over the Garden Fence	Do.
1:30 p. m.	Better Living	Do.
2 p. m.	Matinee Theatre	NBC.
3 p. m.	Date With Life	NBC.
3:15 p. m.	Modern Romances	NBC.
3:30 p. m.	Queen for a Day	NBC.
4 p. m.	The Hawk	Local.
4:30 p. m.	Howdy Doody	NBC.
5 p. m.	The Mickey Mouse Club	ABC.
6 p. m.	Frankie Lane	Local.
6:15 p. m.	Patti Page	Do.
6:30 p. m.	Coke Time	NBC.
6:45 p. m.	News Caravan	NBC.
7 p. m.	Screen Directors Playhouse	NBC.
7:30 p. m.	Father Knows Best	NBC.
8 p. m.	Kraft TV Theatre	NBC.
9 p. m.	This Is Your Life	NBC.
9:30 p. m.	Dr. Hudson's Secret Journal	Local.
10 p. m.	Report	Do.
10:30 p. m.	Rasslin' from Texas	Do.
11:30 p. m.	Overseas Adventure	Do.
12 a. m.	Late Edition—Day's End—Sign off	Do.
Thursday, Apr. 5, 1956:		
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	NBC.
9:30 a. m.	Your TV Home	Local.
10 a. m.	Home	NBC.
11 a. m.	Tennessee Ernie	NBC.
11:30 a. m.	Feather Your Nest	NBC.
12 noon	Noon Edition	Local.
12:15 p. m.	The Hawk	Do.
1 p. m.	Martha Bohlson	Do.
1:15 p. m.	Arthur Murray Show	Do.
1:30 p. m.	Better Living	Do.
2 p. m.	Matinee Theater	NBC.
3 p. m.	Date With Life	NBC.
3:15 p. m.	Modern Romances	NBC.
3:30 p. m.	Queen for a Day	NBC.
4 p. m.	The Hawk	Local.
4:30 p. m.	Howdy Doody	NBC.
5 p. m.	The Mickey Mouse Club	ABC.
6 p. m.	Stop the Music	ABC.
6:30 p. m.	Dinah Shore	NBC.
6:45 p. m.	News Caravan	NBC.
7 p. m.	You Bet Your Life	NBC.
7:30 p. m.	Dragnet	NBC.
8 p. m.	Soldiers of Fortune	Local.
8:30 p. m.	Ford Theatre	NBC.
9 p. m.	Lux Video Theatre	NBC.
10 p. m.	Report	Local.
10:30 p. m.	Masquerade Party	Do.
11 p. m.	Dollar a Second	ABC.
11:30 p. m.	Mr. and Mrs. North	Local.
12 a. m.	Late Edition—Day's End—Signoff	Do.

KMTV, Omaha, Nebr., program schedule for week of Apr. 1–7, 1956—Continued

Time	Program	Source
Friday, Apr. 6, 1956:		
7 a. m	Today	NBC.
9 a. m	Ding Dong School	NBC.
9:30 a. m	Your TV Home	Local.
10 a. m	Home	NBC.
11 a. m	Tennessee Ernie	NBC.
11:30 a. m	Feather Your Nest	NBC.
12 noon	Noon Edition	Local.
12:15 p. m	The Hawk	Do.
1 p. m	Martha Bohlson	Do.
1:15 p. m	Over the Garden Fence	Do.
1:30 p. m	Better Living	Do.
2 p. m	Matinee Theater	NBC.
3 p. m	Date With Life	NBC.
3:15 p. m	Modern Romances	NBC.
3:00 p. m	Queen For A Day	NBC.
4 p. m	The Hawk	Local.
4:30 p. m	Howdy Doody	Do.
5 p. m	The Mickey Mouse Club	ABC.
6 p. m	Annie Oakley	Local.
6:30 p. m	Coke Time	NBC.
6:45 p. m	News Caravan	NBC.
7 p. m	Truth or Consequences	NBC.
7:30 p. m	Superman	Local.
8 p. m	Big Story	NBC.
8:30 p. m	Star Stage	NBC.
9 p. m	Calvalcade of Sports	NBC.
10 p. m	Report	Local.
10:30 p. m	Calvalcade Theatre	Do.
11:00 p. m	Curtain Time	Do.
12:30 a. m	Late Edition—Days' End—Signoff	Do.
Saturday, Apr. 7, 1956:		
7:30 a. m	Color test pattern	Do.
8 a. m	Big Picture	Do.
8:30 a. m	TV Classroom	Do.
9 a. m	Pinky Lee	NBC.
9:30 a. m	Children's Corner	NBC.
10 a. m	Fury	NBC.
10:30 a. m	Uncle Johnny Coons	NBC.
11 a. m	Winchell and Mahoney	NBC.
11:30 a. m	Junior Theatre	Local.
12:15 p. m	Colorama	Do.
12:45 p. m	Western Matinee	Do.
4 p. m	The Prodigal Son	Do.
5 p. m	Lawrence Welk	ABC.
6 p. m	Wyatt Earp	ABC.
6:30 p. m	Big Surprise	NBC.
7 p. m	Perry Como	NBC.
8 p. m	People are Funny	NBC.
8:30 p. m	The Durante Show	NBC.
9 p. m	George Gobel	NBC.
9:30 p. m	Your Hit Parade	NBC.
10 p. m	Weather and News	Local.
10:15 p. m	Sports	Do.
10:30 p. m	Crossroads	ABC.
11 p. m	Ranch House Jamboree	Local.
11:30 p. m	Nighthawk Movie	Do.
1 a. m	Late Edition—Days' End—Signoff	Do.

Program schedule, WWLP-TV, Springfield, Mass., week of Apr. 1–7, 1956

Time	Program	Source
Sunday:		
10:30 a. m	Easter church service	NBC, sustainer.
11 a. m	Hopalong Cassidy	Local, participating.
12 m	Rev. Oral Roberts	Do.
12:30 p. m	Charles Antell	Local, commercial.
1 p. m	Cavalcade of Melody	Do.
2 p. m	First-Run Theatre	Local, participating.
3:30 p. m	Zoo Parade	NBC, sustainer.
4 p. m	Wide Wide World	NBC, commercial.
5:30 p. m	Western Marshal	Local, commercial.
6 p. m	Susie	Do.
6:30 p. m	Roy Rogers	NBC, commercial.
7 p. m	The Great Gildersleeve	Local, participating.
7:30 p. m	Frontier	NBC, commercial.

Program schedule, WWLP–TV, Springfield, Mass., week of Apr. 1–7, 1956—Con.

Time	Program	Source
Sunday—Continued		
8 p. m.	NBC Comedy Hour	Do.
9 p. m.	TV Playhouse or Alcoa Hour (alternating)	Do.
10 p. m.	It's a Great Life	NBC, commercial, film.
10:30 p. m.	The Vise	ABC, commercial, kinescope.
11 p. m.	Pioneer Valley Theatre	Local, participating.
12:30 a. m.	Signoff	
Monday:		
7 a. m.	Today—Weather and sports	NBC and local, participating.
9 a. m.	The Rod Barkley Show	Local, commercial.
10 a. m.	Ding Dong School	NBC, commercial.
10:30 a. m.	Ernie Kovacs Show	NBC, sustainer.
11 a. m.	Home	NBC, participating.
12 m.	Tennessee Ernie Ford	NBC, commercial.
12:30 p. m.	Feather Your Nest	Do.
1 p. m.	At Home With Kitty	Local, commercial.
1:45 p. m.	Playhouse 15	Local, participating.
2 p. m.	Movieland Matinee	Do.
3 p. m.	NBC Matinee	NBC participating.
4 p. m.	Comedy Theatre	Local, participating.
4:15 p. m.	Modern Romances	NBC, commercial.
4:30 p. m.	Queen for a Day	Do.
5 p. m.	Uncle Ed	Local, participating.
5:30 p. m.	Howdy Doody	NBC sustainer.
6 p. m.	Junior Weathercasters	Local, commercial.
6:05 p. m.	Hopalong Cassidy	Local, participating.
6:35 p. m.	Sports Digest	Do.
6:45 p. m.	News	Local, commercial.
7 p. m.	Weather	Do.
7:05 p. m.	Music	Local, participating.
7:15 p. m.	Highlights	Local, commercial.
7:30 p. m.	Gordon MacRae	NBC commercial.
7:45 p. m.	News Caravan	Do.
8 p. m.	Bishop Sheen	ABC commercial, kinescope.
8:30 p. m.	Voice of Firestone	ABC commercial.
9 p. m.	This Is Your Problem	Local, sustainer.
9:30 p. m.	Robert Montgomery	NBC commercial.
10:30 p. m.	Orient Express	Local, participating.
11 p. m.	News—Sports—Weather	Local, commercial.
11:15 p. m.	Ted Lockwood	Do.
11:30 p. m.	Tonight	NBC commercial.
1 a. m.	Signoff	
Tuesday:		
7 a. m.	Today—Weather and Sports	NBC and local participating.
9 a. m.	The Rod Barkley Show	Local, commercial.
10 a. m.	Ding Dong School	NBC sustainer.
10:30 a. m.	Ernie Kovacs Show	Do.
11 a. m.	Home	NBC participating.
12 m.	Tennessee Ernie Ford	NBC commercial.
12:30 p. m.	Feather Your Nest	Do.
1 p. m.	At Home With Kitty	Local, commercial.
1:45 p. m.	Father Fidelis Rice, C. P	Local, participating.
2 p. m.	Movieland Matinee	Do.
3 p. m.	NBC Matinee	NBC, participating.
4 p. m.	Air Force News Review	Local, participating.
4:15 p. m.	Modern Romances	NBC, commercial.
4:30 p. m.	This is Chemistry	Local, participating.
5 p. m.	Uncle Ed	Local, commercial.
5:30 p. m.	Howdy Doody	NBC, sustainer.
6 p. m.	Junior Weathercasters	Local, commercial.
6:05 p. m.	Superman	Local, participating.
6:35 p. m.	Sports Digest	Do.
6:45 p. m.	News	Local, commercial.
7 p. m.	Weather	Do.
7:05 p. m.	Music	Local, participating.
7:15 p. m.	Highlights	Local, commercial.
7:30 p. m.	Dinah Shore	NBC, commercial.
7:45 p. m.	News Caravan	Do.
8 p. m.	Milton Berle Show	Do.
9 p. m.	Danny Thomas	ABC commercial.
9:30 p. m.	Death Valley Days	Local, commercial.
10 p. m.	Focal Point	Local, participating.
10:30 p. m.	Big Town	NBC commercial.
11 p. m.	News—Sports—Weather	Local commercial.
11:15 p. m.	Joe Johnson Quartet	Local, participating.
11:30 p. m.	Address by Harry Truman.	
12 p. m.	Tonight	NBC commercial.
1 a. m.	Signoff.	

Program schedule, WWLP-TV, Springfield, Mass., week of Apr. 1-7, 1956—Con.

Time	Program	Source
Wednesday:		
7 a. m.	Today—Weather and Sports	NBC and local, participating.
9 a. m.	The Rod Barkley Show	Local, commercial.
10 a. m.	Ding Dong School	NBC, sustainer.
10:30 a. m.	Ernie Kovacs Show	Do.
11 a. m.	Home	NBC, participating.
12 m.	Tennessee Ernie Ford	NBC, sustainer.
12:30 p. m.	Feather Your Nest	Do.
1 p. m.	At Home With Kitty	Local, commercial.
1:30 p. m.	Dione Lucas	Do.
2 p. m.	Movieland Matinee	Local, participating.
3 p. m.	NBC Matinee	NBC, participating.
4 p. m.	Comedy Theatre	Local, participating.
4:15 p. m.	Modern Romances	NBC sustainer.
4:30 p. m.	Queen for a Day	NBC commercial.
5 p. m.	Uncle Ed	Local participating.
5:30 p. m.	Howdy Doody	NBC sustainer.
6 p. m.	Junior Weathercasters	Local, commercial.
6:05 p. m.	Hopalong Cassidy	Local, participating.
6:35 p. m.	Sports Digest	Local, commercial.
6:45 p. m.	News	Do.
7 p. m.	Weather	Do.
7:05 p. m.	Music	Local, participating.
7:15 p. m.	Highlights	Local, commercial.
7:30 p. m.	Arthur Murray Dance Time	Do.
7:45 p. m.	News Caravan	NBC commercial.
8 p. m.	Warner Bros. Presents	ABC commercial.
9 p. m.	TV Theatre	NBC commercial.
10 p. m.	Fights	ABC commercial.
10:45 p. m.	Famous Fights	Local, commercial.
11 p. m.	News—Sports—Weather	Do.
11:15 p. m.	The Autumnaires	Local, participating.
11:30 p. m.	Tonight	NBC commercial.
1 a. m.	Signoff	
Thursday:		
7 a. m.	Today—Weather and Sports	NBC and local, participating.
9 a. m.	The Rod Barkley Show	Local, commercial.
10	Ding Dong School	NBC sustainer.
10:30 a. m.	Ernie Kovacs Show	Do.
11 a. m.	Home	NBC participating.
12 noon	Tennessee Ernie Ford	NBC sustainer.
13:30 p. m.	Feather Your Nest	Do.
1 p. m.	At Home With Kitty	Local, commercial.
1:45 p. m.	Playhouse 15	Local, participating.
2 p. m.	Movieland Matinee	Do.
3 p. m.	NBC Matinee	NBC participating.
4 p. m.	Comedy Theatre	Local participating.
4:15 p. m.	Modern Romances	NBC sustainer.
4:30 p. m.	Queen for a Day	NBC, commercial.
5 p. m.	Uncle Ed	Local, commercial.
5:30 p. m.	Howdy Doody	NBC sustainer.
6 p. m.	Jr. Weathercasters	Local, commercial.
6:05 p. m.	Sheena, Queen of the Jungle	Local, participating.
6:35 p. m.	Sports Digest	Do.
6:45 p. m.	News	Local, commercial.
7 p. m.	Weather	Do.
7:05 p. m.	Music	Local, participating.
7:15 p. m.	Highlights	Local, commercial.
7:30 p. m.	Dinah Shore	NBC, commercial.
7:45 p. m.	News Caravan	NBC, commercial.
8 p. m.	Groucho Marx	Do.
8:30 p. m.	Dragent	Do.
9 p. m.	Highway Patrol	Local, commercial.
9:30 p. m.	Science Fiction Theatre	Do.
10 p. m.	Video Theatre	NBC, commercial.
11 p. m.	News, Sports, Weather	Local, commercial.
11:15 p. m.	The Autumnaires	Local, participating.
11:30 p. m.	Tonight	NBC, commercial.
1 a. m.	Signoff	
Friday:		
7 a. m.	Today, Weather and Sports	NBC, participating, local participating.
9 a. m.	The Rod Barkley Show	Local, commercial.
10 a. m.	Ding Dong School	NBC, commercial.
10:30 a. m.	Ernie Kovacs Show	NBC, sustainer.
11 a. m.	Home	NBC, participating.
12 noon	Tennessee Ernie Ford	NBC, sustainer.
12:30 p. m.	Feather Your Nest	NBC, commercial.
1 p. m.	At Home with Kitty	Local, commercial.
1:45 p. m.	Father Fidelis Rice, C. P	Local, participating.
2 p. m.	Movieland Matinee	Local, sustainer.
3 p. m.	NBC Matinee	NBC, participating.

Program schedule, WWLP-TV, Springfield, Mass., week of Apr. 1-7, 1956—Con.

Time	Program	Source
Friday—Continued		
4 p. m	Comedy Theater	Local, participating.
4:15 p. m	Modern Romances	NBC, commercial.
4:30 p. m	Queen for a Day	Do.
5 p. m	Uncle Ed	Local, participating.
5:30 p. m	Howdy Doody	NBC, sustainer.
6 p. m	Junior Weathercasters	Local, commercial.
6:05 p. m	Hopalong Cassidy	Local, participating.
6:35 p. m	Sports Digest	Local, commercial.
6:45 p. m	News	Do.
7 p. m	Weather	Do.
7:05 p. m	Music	Local, participating.
7:15 p. m	Highlights	Local, commercial.
7:30 p. m	Sportsmen's Den Sportsmen's Court	Local, commercial.
7:45 p. m	News Caravan	NBC, commercial.
8 p. m	Truth or Consequences	Do.
8:30 p. m	Life of Riley	Do.
9 p. m	Big Story	Do.
9:30 p. m	Star Stage	Do.
10 p. m	Cavalcade of Sports	Do.
10:45 p. m	Famous Fights	Local, commercial.
11 p. m	News—Sports—Weather	Do.
11:15 p. m	Joe Johnson Quartet	Local, participating.
11:30 p. m	Tonight	NBC, commercial.
1 a. m	Sign off	
Saturday:		
9 a. m	Cowboy Playhouse	Local participating.
9:50 a. m	Super Jet	Local, commercial.
10 a. m	Pinky Lee	NBC, sustainer.
10:30 a. m	Children's Corner	Do.
11 a. m	Fury	NBC, commercial.
11:30 a. m	Top Secret—Cartoons	Local, participating.
12 m	Winchell and Mahoney	NBC, commercial.
12:30 p. m	3-Star Theatre	NBC, sustainer.
1 p. m	do	Local, participating.
3:30 p. m	Big Picture	Do.
4 p. m	Grand Ole Opry	Do.
4:30 p. m	The Jungle	Do.
5 p. m	Mr. Wizard	NBC, sustainer.
5:30 p. m	Disneyland	ABC, commercial.
6:30 p. m	Long John Silver	Local, participating.
7 p. m	Break the Bank	ABC, commercial, kinescope.
7:30	The Big Surprise	NBC, commercial.
8 p. m	Perry Como Show	Do.
9 p. m	Justice	Do.
9:30 p. m	Play of the Week	Local, participating.
10 p. m	George Gobel	NBC, commercial.
10:30 p. m	Your Hit Parade	Do.
11 p. m	Dollar a Second	ABC, commercial, kinescope.
11:30 p. m	Eleventh Hour Movie	Local, participating.
1 a. m	Signoff	

Television Station KQTV, Channel 21, Fort Dodge, Iowa, week of April 1-7, 1956

SUNDAY

11:30 Oral Roberts Easter Show (film)
12:00 American Forum (NBC)
12:30 What's Your Trouble (film)
12:45 Christian Science (film)
1:00 Oral Roberts (film)
1:30 Championship bowling (film)
2:30 Zoo Parade (NBC)
3:00 Wide, Wide World (NBC)
4:30 Main event wrestling (film)
5:30 Roy Rogers (NBC)
6:00 This Is the Life (film)
6:30 The Ruggles (film)
7:00 Comedy Hour (NBC)
8:00 Triumphant Hour (film)
9:00 Show Time (film)
10:15 Signoff

Television Station KQTV, Channel 21, Fort Dodge, Iowa, week of April 1-7, 1956—Continued

MONDAY

2:00	Matinee Theater (NBC)
3:00	Eve's Kitchen (live)
3:30	Queen for a Day (NBC)
4:00	Pinky Lee (NBC)
4:30	Howdy Doody (NBC)
5:00	Buckskin Tales (film and live)
6:00	Industry on Parade (film)
6:15	News, weather, sports (live)
6:30	Parade (film)
6:45	News Caravan (NBC)
7:00	KQTV Theater (film)
8:00	Justice (NBC)
8:30	Wild Bill Hickock (film)
9:00	The Pendulum (film)
9:30	Sports 'n Stuff (film)
10:00	News, weather, sports (live)
10:15	Signoff

TUESDAY

2:00	Matinee Theater (NBC)
3:00	Eve's Kitchen (live)
3:30	Queen for a day (NBC)
4:00	Pinky Lee (NBC)
4:30	Howdy Doody (NBC)
5:00	Buckskin Tales (film and live)
6:00	Mailbag (live)
6:15	News, weather, sports (live)
6:30	Dinah Shore (NBC)
6:45	News Caravan (NBC)
7:00	Milton Berle (NBC)
8:00	Mobile Theater (film)
8:30	Western Theater (film)
9:30	The Hunter (film)
10:00	News, weather, sports (live)
10:15	Signoff

WEDNESDAY

2:00	Matinee Theater (NBC)
3:00	Eve's Kitchen (live)
3:30	Queen for a Day (NBC)
4:00	Pinky Lee (NBC)
4:30	Howdy Doody (NBC)
5:00	Buckskin Tales (film and live)
6:00	It Seems to Me (live)
6:15	News, weather, sports (live)
6:30	Music 21 (live)
6:45	News Caravan (NBC)
7:00	Inspector Mark Saber (film)
7:30	Soldiers of Fortune (film)
8:00	Bill, Lou and Circle T Boys (live)
8:30	Super Teloh (live)
9:30	I Led Three Lives (film)
10:00	News, weather, sports (live)
10:15	Signoff

THURSDAY

2:00	Matinee Theater (NBC)
3:00	Eve's Kitchen (live)
3:30	Queen for a Day (NBC)
4:00	Pinky Lee (NBC)
4:30	Mowdy Doody (NBC)
5:00	Buckskin Tales (film and live)
6:00	Mailbag (live)
6:15	News, weather, sports (live)
6:30	Dinah Shore (NBC)
6:45	News Caravan (NBC)
7:00	You Bet Your Life)NBC)
7:30	Dragnet (NBC)
8:00	Playhouse of Stars (film)
8:30	Ford Theater (NBC)
9:00	Lux Video Theater (NBC)
10:00	News, weather, sports (live)
10:15	Signoff

FRIDAY

2:00	Matinee Theater (NBC)
3:00	Eve's Kitchen (live)
3:30	Queen for a Day (NBC)
4:00	Pink Lee (NBC)
4:30	Howdy Doody (NBC)
5:00	Buckskin Tales (film and live)
6:00	Sappy Homies (film)
6:15	News, weather, sports (live)
6:30	Parade (film)
6:45	News Caravan (NBC)
7:00	Truth or Consequences)NBC)
7:30	Turnabout (live)
8:00	Superman (film)
8:30	Wrestling Highlights (film)
9:00	Cavalcade of Sports (NBC)
9:45	Red Barber's Corner (NBC)
10:00	News, weather, sports (live)
10:15	Burch Theater (film)
11:15	Signoff

Television Station KQTV, Channel 21, Fort Dodge, Iowa, week of April 1–7, 1956—Continued

SATURDAY

1:15 Baseball Preview (CBS)
1:25 Game of the Week—Indians versus Giants (CBS)
4:00 Western Theater (film)
5:00 Man to Man (film)
5:15 Pet Shop (live)
5:30 Outdoor in Iowa (film)
5:45 Mom's Night Out (live)
6:00 Mr. Wizard (NBC, Kine)
6:30 Pathway to Fame (live)
7:00 Perry Como Show (NBC)
8:00 People Are Funny (NBC)
8:30 Barn Dance Preview (live)
9:00 George Gobel (NBC)
9:30 Hit Parade (NBC)
10:00 Barn Dance (live)
11:15 Labor Saver (film)
11:30 Show Time (film)
12:45 Signoff

WVEC–TV, Hampton, Va., program schedule for week of Apr. 1–7, 1956

SUNDAY, APRIL 1

10:00 Easter church service
11:00 That I May See
11:56 Tax Tips No. 2
12:00 Facts Forum
12:30 Faith for Today
1:00 Youth Wants To Know
1:30 Oral Roberts
2:00 Search for Beauty
2:30 Outlook
3:00 Dr. Spock
3:30 Zoo Parade
4:00 Wide, Wide World
5:30 Captain Gallant
6:00 Meet the Press
6:30 Roy Rogers
7:00 It's a Great Life
7:30 Frontier
8:00 Comedy Hour
9:00 TV Playhouse
10:00 Loretta Young Show
10:30 March of Medicine
11:00 Robot Gardener
11:10 Cinema Playhouse
12:47 Signoff

MONDAY, APRIL 2

7:00 Today
9:00 Morning movie
10:00 Ding Dong School
10:30 Ernie Kovac Show
11:00 Home
12:00 Tennessee Ernie
12:30 Feather Your Nest
1:00 Alice B. White
1:30 P. M.
3:00 Matinee Theater
4:00 Date With Life
4:15 Modern Romances
4:30 Queen for a Day
5:00 Pinky Lee
5:30 Howdy Doody
6:00 Bob and Chauncey
6:30 Youth Today, Adults Tomorrow
6:45 Telescope
6:53 Dealing It Out
7:00 Garden Club of the Air
7:15 Patti Page
7:30 Gordon Macrae
7:45 News Caravan
8:00 Producers' Showcase
9:30 Robert Montgomery Presents
10:30 Political telecast
11:00 World news
11:05 What of the Night
11:30 Tonight
1:00 Signoff

TUESDAY, APRIL 3

7:00 Today
9:00 Morning movie
10:00 Ding Dong School
10:30 Ernie Kovac Show
11:00 Home
12:00 Tennessee Ernie
12:30 Feather Your Nest
1:00 Alice B. White
1:30 P. M.
3:00 Matinee Theater
4:00 Date With Life
4:15 Modern Romances
4:30 Queen for a Day
5:00 Pinky Lee
5:30 Howdy Doody
6:00 Bob and Chauncey
6:30 Tee to Green
6:45 Telescope
6:53 Dealing It Out
7:00 I'll Clue You
7:30 Dinah Shore Show
7:45 News Caravan
8:00 Milton Berle
9:00 Fireside Theater
9:30 Circle Theater
10:30 Big Town
11:00 World news
11:05 Election returns
11:20 Club Kimo
11:30 Address by Truman
12:00 Tonight
1:00 Signoff

WVEC-TV, Hampton, Va., program schedule for week of Apr. 1-7, 1956—Con.

WEDNESDAY, APRIL 4

7:00	Today
9:00	Morning movie
10:00	Ding Dong School
10:30	Ernie Kovac Show
11:00	Home
12:00	Tennessee Ernie
12:30	Feather Your Nest
1:00	Alice B. White
1:30	P. M.
3:00	Matinee Theater
4:00	Date With Life
4:15	Modern Romances
4:30	Queen for a Day
5:00	Pinky Lee
5:30	Howdy Doody
6:00	Bob and Chauncey
6:30	Peninsula Boys Club
6:45	Telescope
6:53	Dealing It Out
7:00	Living Book
7:30	Coke Time
7:45	News Caravan
8:00	Screen Directors' Playhouse
8:30	Father Knows Best
9:00	Kraft Theater
10:00	This is Your Life
10:30	Midwestern Hayride
11:00	World news
11:06	Flame Foil
11:30	Tonight
1:00	Signoff

THURSDAY, APRIL 5

7:00	Today
9:00	Morning movie
10:00	Ding Dong School
10:30	Ernie Kovac Show
11:00	Home
12:00	Tennessee Ernie
12:30	Feather Your Nest
1:00	Alice B. White
1:30	P. M.
3:00	Matinee Theater
4:00	Date with Life
4:15	Modern Romances
4:30	Queen for a Day
5:00	Pinky Lee
5:30	Howdy Doody
6:00	Bob and Chauncey
6:30	The Gator Show
6:45	Telescope
6:53	Dealing It Out
7:00	Life Is Worth Living
7:30	Dinah Shore
7:45	News Caravan
8:00	You Bet Your Life
8:30	Dragnet
9:00	Yours to Keep
9:30	Ford Theater
10:00	Lux Video Theater
11:00	World news
11:05	Club Kimo
11:30	Tonight
1:00	Signoff

FRIDAY, APRIL 6

7:30	Today
9:00	Morning movie
10:00	Ding Dong School
10:30	Ernie Kovac Show
11:00	Home
12:00	Tennessee Ernie
12:30	Feather Your Nest
1:00	Alice B. White
1:30	P. M.
3:00	Matinee Theater
4:00	Date With Life
4:15	Modern Romances
4:30	Queen for a Day
5:00	Pinky Lee
5:30	Howdy Doody
6:00	Bob and Chauncey
6:30	Speak Up
6:45	Telescope
6:53	Dealing It Out
7:00	Victims
7:15	Patti Page
7:30	Coke Time
7:45	News Caravan
8:00	Truth or Consequences
8:30	Life of Riley
9:00	Big Story
9:30	Star Stage
10:00	Cavalcade of Sports
10:45	Red Barber's Corner
11:00	World news
11:05	Children of the Sun
11:30	Tonight
1:00	Signoff

WVEC-TV, Hampton, Va., program schedule for week of Apr. 1–7, 1956—Con.

SATURDAY, APRIL 7

9:00	Western Feature
10:00	Pinky Lee
10:30	Children's Corner
11:00	Fury
11:30	Uncle Johnny Coons
12:00	Paul Winchell and Jerry Mahoney
12:30	Six Gun Theater
3:05	White Magic
3:15	Marine Close Air Support
3:30	King of the River
3:45	Opening New Frontiers
3:58	Tax Tips No. 1
4:03	Championship Bowling
5:00	Mr. Wizard
5:30	Pride of Main Street
5:45	Brookpark Dinnerware
6:00	Big Picture
6:30	Lawrence Welk Show
7:30	The Big Surprise
8:00	Perry Como
9:00	People Are Funny
9:30	Texaco Star Theater
10:00	George Gobel
10:30	Your Hit Parade
11:00	Million Dollar Movie
12:30	Signoff

WDSU television, New Orleans, La., program schedule No. 14, Apr. 1–7, 1956

Time	Program	Source
Sunday, Apr. 1:		
7:45	Test pattern and tone	
8:05	Morning prayer	Slide; electrical transmission.
8:10	World news	Slide; announcer in booth.
8:15	Christian Science program	Film.
8:30	The Christophers	Do.
9	Mr. Wizard	NBC kinescope.
9:30	Cap'n Sam	Film; live studio.
10	St. Louis Cathedral Mass	Local remote.
11:30	Faith for Today	Film.
12	Real Estate Show (Part)	Live studio.
12:30	Wild Bill Hickok (Kelloggs)	Film.
1	Dateline New Orleans	Film; live studio.
1:30	Tulane Close-up	Live studio.
1:55	Do You Know Why? (Pan Am)	Film.
2	You Are There (Prudential Insurance Co.)	CBS kinescope.
2:30	Sunday Supplement (Pattison Pontiac)	Film; live studio.
3	Wide Wide World (General Motors)	NBC network cable.
4:30	Captain Gallant (Heinz)	Do.
5	Soldiers of Fortune (7 Up Bottling Co.)	Film.
5:30	Roy Rogers (General Foods)	NBC network cable.
6	It's a Great Life (Chrysler)	Do.
6:30	Frontier (Reynolds Metals Co.)	Do.
7	Comedy Hour (Avco, Viceroy, Jergens)	Do.
8	Television Playhouse (Alcoa)	Do.
9	The Loretta Young Show (P. & G.)	Do.
9:30	Amos & Andy (Kirschman's)	Film; live studio.
10	Ozzie & Harriet (Pepto-Bismol)	Film.
10:30	Make Room for Daddy (Pall Mall)	Do.
11	The World Tonight	Film; live studio.
11:15	The Late Show	Film.
12:15	Nitecap News and Sports Results	Slide; announcer in booth; electrical transcription.
12:20	Prayer for Peace	Slide; electrical transcription.
Monday, Apr. 2:		
6:42 a. m	Morning Prayer	Slide; electrical transcription.
6:50 a. m	Agriculture News	Live studio.
6:55 a. m	Morning News	Film; live studio.
7 a. m	Today (various network sponsors)	NBC network cable.
7:25 a. m	Weather Tower (Shell Oil Co.)	Live studio.
7:30 a. m	Today (various network sponsors)	NBC network cable.
7:55 a. m	Shell News (Shell Oil Co.)	Film; live studio.
8 a. m	Today (various network sponsors)	NBC network cable.
8:25 a. m	Today in New Orleans (D. H. Holmes)	Film; live studio; slide; announcer in booth.
8:30 a. m	Today (various network sponsors)	NBC network cable.
8:55 a. m	Today in New Orleans (Procter & Gamble)	Film; live studio; slide; announcer in booth.
9:00 a. m	Ding Dong School	NBC network cable.
9:15 a. m	Ding Dong School (Gerber Foods)	Do.
9:30 a. m	Ernie Kovacs Show	Do.
10:00 a. m	Home (various network sponsors)	Do.
11 a. m	Valiant Lady (Scott Paper Co.)	CBS network cable.
11:15 a. m	Love of Life (American Home Products)	Do.
11:30 a. m	Search for Tomorrow (Procter & Gamble)	Do.
11:45 a. m	The Guiding Light (Procter & Gamble)	Do.
12 noon	News at Noon (Barnett Furniture Co.)	Film; live studio.

WDSU television, New Orleans, La., program schedule No. 14, Apr. 1–7, 1596—Continued

Time	Program	Origin
Monday, Apr. 2—Continued		
12:05 p. m	Our House (part)	Live studio.
12:30 p. m	New Orleans Cookbook (part)	Do.
1 p. m	Kelners Korner (part)	Do.
1:15 p. m	Tennessee Ernie Ford Show (Procter & Gamble)	NBC kinescope.
1:30 p. m	Show Biz (part)	Live studio.
1:45 p. m	Dial-A-Tune (part)	Do.
2:00 p. m	Matinee Theatre (various network sponsors)	NBC network cable (color).
3 p. m	Date With Life (Borden)	NBC network cable.
3:15 p. m	Modern Romances (Colgate)	Do.
3:30 p. m	Queen for a Day	Do.
3:45 p. m	Queen for a Day (Procter & Gamble)	Do.
4 p. m	Pinky Lee (part)	NBC network cable.
4:30 p. m	Howdy Doody	NBC network cable (color).
5 p. m	Wild Bill Hickok (Kelloggs)	Film.
5:30 p. m	Cowboy G-Men (Gold Seal)	Film; live studio.
6 p. m	Esso Reporter (Esso)	Do.
6:15 p. m	World of Sports and Weatherman (Jax)	Do.
6:30 p. m	Gordon MacRae Show (Lever Brothers)	NBC network cable.
6:45 p. m	Camel News Caravan (Camels)	Do.
7 p. m	Producers Showcase (Ford and Radio Corporation of America).	NBC network cable (color).
8:30 p. m	Robert Montgomery Presents (S. C. Johnson)	NBC network cable.
9:30 p. m	Around the Town "NOPD" (Brown's Velvet)	Film; slide; announcer in booth.
10 p. m	Science Fiction Theatre (Continental Oil Co.)	Do.
10:30 p. m	Playhouse of Stars (Schlitz)	Film.
11. p m	The World Tonight	Film; live studio.
11:15 p. m	Damon Runyon Theatre (Budweiser)	Film.
11:45 p. m	The Late Show	Do.
12:45 a. m	Nitecap News and Sports Results	Slide; announcer in booth.
12:50 a. m	Prayer for Peace	Slide; electrical transcription.
Tuesday, April 3:		
6:42 a. m	Morning Prayer	Slide; electrical transcription.
6:50 a. m	Agriculture News	Live studio.
6:55 a. m	Morning News	Film; live studio.
7 a. m	Today (various network sponsors)	NBC network cable.
7:25 a. m	Weather Tower (Shell Oil Co.)	Live studio.
7:30 a. m	Today (various network sponsors)	NBC network cable.
7:55 a. m	Shell News (Shell Oil Co.)	Film; live studio.
8 a. m	Today (various network sponsors)	NBC network cable.
8:25 a. m	Today in New Orleans (D. H. Holmes)	Film; live studio; slide; announcer in booth.
8:30 a. m	Today (various network sponsors)	NBC network cable.
8:55 a. m	Today in New Orleans (P. & G.)	Film; live studio; slide; announcer in booth.
9 a. m	Ding Dong School	NBC network cable.
9:15 a. m	do	Do.
9:30 a. m	Ernie Kovacs Show	Do.
10 a. m	Home (various network sponsors)	Do.
11 a. m	Valiant Lady (Wesson Oil)	CBS network cable.
11:15 a. m	Love of Life (American Home Products)	Do.
11:30 a. m	Search for Tomorrow (P. & G.)	Do.
11:45 a. m	The Guiding Light (P. & G.)	Do.
12 noon	News at Noon	Film; live studio.
12:05 p. m	Our House (part)	Live studio.
12:30 p. m	New Orleans Cookbook (part)	Do.
1 p. m	John Gary Show (part)	Do.
1:15 p. m	Tennessee Ernie Ford Show (P. & G.)	NBC kinescope.
1:30 p. m	Show Biz (part)	Live show.
1:45 p. m	Dial-A-Tune (part)	Do.
2 p. m	Matinee Theatre (various network sponsors)	NBC network cable (color).
3 p. m	Date With Life	NBC network cable.
3:15 p. m	Modern Romances (Colgate)	Do.
3:30 p. m	Queen for a Day	Do.
3:45 p. m	Queen for a Day (Maybelline)	Do.
4 p. m	Pinky Lee (part)	Do.
4:30 p. m	Howdy Doody	NBC network cable (color).
4:45 p. m	Howdy Doody (Colgate)	Do.
5 p. m	Mrs. Muffins Birthday Party (part)	Live studio.
5:30 p. m	Cisco Kid (King Cotton Meat Products)	Film.
6 p. m	Esso Reporter (Esso)	Film; live studio.
6:15 p. m	World of Sports and Weatherman (Jax)	Do.
6:30 p. m	Dina Shore (Chevrolet)	NBC network cable.
6:45 p. m	Camel News Caravan (Camels)	Do.
7 p. m	Milton Berle (RCA, Sunbeam, Whirlpool)	NBC network cable (color).
8 p. m	Fireside Theatre (P. & G.)	NBC network cable.
8:30 p. m	Circle Theatre (Armstrong)	Do.
9:30 p. m	Premiere (Maison Blanche)	Film; live studio.
10 p. m	Celebrity Playhouse (Falstaff)	Film.
10:30 p. m	Studio 57 (Heinz 57 Varieties)	Do.

WDSU television, New Orleans, La., program schedule No. 14, Apr. 1–7, 1596—Continued

Time	Program	Origin
Tuesday, Apr. 3—Continued		
11 p. m.	The World Tonight	Film; live studio.
1:15 p. m.	The Late Show (part)	Film; slide; announcer in booth.
12:45 a. m.	Nitecap News and Sports Results	Slide; announcer in booth; electrical transcription.
12:50 a. m.	Prayer for Peace	Slide; electrical transcription.
Wednesday, April 4:		
6:42 a. m.	Morning Prayer	Slide; electrical transmission.
6:50 a. m.	Agriculture news	Live studio.
6:55 a. m.	Morning news	Film; live studio.
7 a. m.	Today (various network sponsors)	NBC network cable.
7:25 a. m.	Weather Tower (Shell Oil Co.)	Live studio.
7:30 a. m.	Today (various network sponsors)	NBC network cable.
7:55 a. m.	Shell News (Shell Oil Co.)	Film; live studio.
8 a. m.	Today (various network sponsors)	NBC network cable.
8:25 a. m.	Today in New Orleans (D. R. Holmes)	Film, live studio; slide; announcer in booth.
8:30 a. m.	Today (various network sponsors)	NBC network cable.
8:55 a. m.	Today in New Orleans (P. & G.)	Film; live studio; slide; announcer in booth.
9 a. m.	Ding Dong School	NBC network cable.
9:15 a. m.	do	Do.
9:30 a. m.	Ernie Kovac's Show	Do.
10 a. m.	Home (various network sponsors)	Do.
11 a. m.	Valiant Lady (General Mills)	CBS network cable.
11:15 a. m.	Love of Life (American Home Products)	Do.
11:30 a. m.	Search for Tomorrow (P. & G.)	Do.
11:45 a. m.	The Guiding Light (P. & G.)	Do.
12 Noon	News at Noon (Barnett Furniture Co.)	Film; live studio.
12:05 p. m.	Our House (part)	Live studio.
12:30 p. m.	Homemakers Holiday (NOPSI)	Do.
1 p. m.	Kelners Korner (part)	Do.
1:15 p. m.	Tennessee Ernie Ford Show (P. & G.)	NBC kinescope.
1:30 p. m.	Show Biz (part)	Live studio.
1:45 p. m.	Dial-a-Tune (part)	Do.
2 p. m.	Matinee Theater (various network sponsors)	NBC network cable (color).
3 p. m.	Date With Life (Bordens)	NBC network cable.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen For a Day (Helene Curtis)	Do.
3:45 p. m.	Queen For a Day (P. & G.)	Do.
4 p. m.	Magic Tree	Live studio.
4:15 p. m.	Cap'n Sam	Film; live studio.
4:30 p. m.	Junior Supplement	Live studio.
5 p. m.	Superman (Kelloggs)	Film.
5:30 p. m.	The Lone Ranger (Merita)	Do.
6 p. m.	Esso Reporter (Esso)	Film; live studio.
6:15 p. m.	World of Sports and Weatherman (Jax)	Do.
6:30 p. m.	Eddie Fisher (Coca Cola)	NBC/CA network cable.
6:45 p. m.	Plymouth News Caravan (Plymouth)	Do.
7 p. m.	Screen Director's Playhouse (Eastman Kodak Co.)	Do.
7:30 p. m.	Father Knows Best (Scott Paper Co.)	Do.
8 p. m.	Kraft Theatre (Kraft)	Do.
9 p. m.	This Is Your Life (P. & G.)	Do.
9:30 p. m.	San Francisco Beat (Progresso)	Film; live studio.
0 p. m.	Four Star Playhouse (Bristol-Myers)	Film.
:30 p. m.	Death Valley Days (Borax)	Do.
p. m.	The World Tonight	Film; live studio.
:15 p. m.	The Late Show	Do.
45 a. m.	Nitecap News and Sports Results	Slide; announcer in booth; electrical transcription.
50 a. m.	Prayer For Peace	Slide; electrical transcription.
ay, Apr. 5:		
a. m.	Morning Prayer	Slide; electrical transmission.
a. m.	Agriculture News	Live studio.
. m.	Morning News	Film; live studio.
	Today (various network sponsors)	NBC; network cable.
. m.	Weather Tower (Shell Oil Co.)	Live studio.
m.	Today (various network sponsors)	NBC; network cable.
m.	Shell News (Shell Oil Co.)	Film; live studio.
	Today (various network sponsors)	NBC; network cable.
m.	Today in New Orleans (D. Dh. Holmes)	Film; live studio; slide; announcer.
	Today (various network sponsors)	NBC; network cable.
	Today in New Orleans (P. & G.)	Film; live studio; slide; announcer in booth.
	Ding Dong School (Miles Laboratories)	NBC; network cable.

WDSU television, New Orleans, La., program schedule No. 14, Apr. 1–7, 1956—Continued

Time	Program	Source
Thursday, Apr. 5—Continued		
9:15 a. m.	Ding Dong School (Miles Laboratories)	NBC; network cable.
9:30 a. m.	Ernie Kovac Show	Do.
10 a. m.	Home (various network sponsors)	Do.
11 a. m.	Valiant Lady (Toni)	Do.
11:15 a. m.	Love of Life (American Home Products)	Do.
11:30 a. m.	Search for Tomorrow (P. & G.)	Do.
11:45 a. m.	The Guiding Light (P. & G.)	Do.
12 noon	News at Noon (Barnett Furniture Co.)	Film; live studio.
12:05 p. m.	Our House (part)	Live studio.
12:30 p. m.	New Orleans Cookbook (part)	Do.
1 p. m.	John Gary Show (part)	Do.
1:15 p. m.	Tennessee Ernie Ford Show (P. & G.)	NBC; Kinescope.
1:30 p. m.	Show Biz (part)	Live studio.
1:45 p. m.	Dial-A-Tune (part)	Do.
2 p. m.	Matinee Theatre (various network sponsors)	NBC; network cable Color.
3 p. m.	Date With Life	NBC; network cable.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen for a Day (Reddi Whip)	Do.
3:45 p. m.	Queen for a Day (Miles Laboratories)	Do.
4 p. m.	Pinky Lee (part)	NBC; network cable.
4:30 p. m.	Howdy Doody	NBC; network cable (color).
4:45 p. m.	do	Do.
5 p. m.	Mrs. Muffins Surprise Party (part)	Live studio.
5:30 p. m.	Buffalo Bill, Jr. (Mars)	Film.
6 p. m	Esso Reporter (Esso)	Film; live studio.
6:15 p. m.	World of Sports and Weatherman (Jax)	Do.
6:30 p. m.	Dinah Shore (Chevrolet)	NBC; network cable (color).
6:45 p. m.	Camel News Caravan (Camels)	NBC; network cable.
7 p. m	Groucho Marx (DeSoto-Plymouth)	Do.
7:30 p. m.	Dragnet (Liggett & Myers)	Do.
8 p. m.	People's Choice (Bordens)	Do.
8:30 p. m.	Ford Theatre (Ford)	Do.
9 p. m.	Lux Video Theatre (Lux)	Do.
10 p. m.	Eddie Cantor (Jax)	Film.
10:30 p. m.	Mr. District Attorney (Carter)	Film; announcer in booth.
11 p. m.	The World Tonight	Film; live studio.
11:15 p. m.	The Late Show	Film.
12:15 a. m.	Nitecap News and Sports Results	Slide; announcer in booth electrical transcription.
12:20 a. m.	Prayer for Peace	Slide; electrical transcription.
Friday, April 6:		
6:42 a. m.	Morning Prayer	Slide; electrical transcription.
6:50 a. m.	Agriculture News	Live studio.
6:55 a. m.	Morning News	Film; live studio.
7 a. m.	Today (various network sponsors)	NBC network cable.
7:25 a. m.	Weather Tower (Shell Oil Co.)	Live studio.
7:30 a. m.	Today (various network sponsors)	NBC network cable.
7:55 a. m.	Shell News (Shell Oil Co.)	Film; live studio.
8 a. m.	Today (various network sponsors)	NBC network cable.
8:25 a. m.	Today in New Orleans (D. H. Holmes)	Film; live studio; sl nouncer in booth.
8:30 a. m.	Today (various network sponsors)	NBC network cable.
8:55 a. m.	Today in New Orleans (P. & G.)	Film; live studio; nouncer in booth.
9 a. m.	Ding Dong School	NBC network cab
9:15 a. m.	Ding Dong School (Mennen Co.)	Do.
9:30 a. m.	Ernie Kovacs Show	Do.
10 a. m.	Home (various network sponsors)	Do.
11 a. m.	Valiant Lady (General Mills)	CBS network c
11:15 a. m.	Love of Life (American Home Products)	Do.
11:30 a. m.	Search for Tomorrow (P. & G.)	Do.
11:45 a. m.	The Guiding Light (P. & G.)	Do.
12 noon	News at Noon	Film; live st
12:05 p. m.	Our House (part)	Live studio
12:30 p. m.	New Orleans Cookbook (part)	Do.
1 p. m.	Kelners Korner (part)	Do.
1:15 p. m.	Tennessee Ernie Ford Show (P. & G.)	NBC kine
1:30 p. m.	Show Biz (part)	Live studi
1:45 p. m.	Dial-A-Tune (part)	Do.
2 p. m.	Matinee Theater (various network sponsors)	NBC net
3 p. m.	Date With Life (Bordens)	NBC net
3:15 p. m.	Modern Romances (Colgate)	Do.
3:30 p. m.	Queen for a Day (Corn Products)	Do.
3:45 p. m.	Queen for a Day (P. & G.)	Do. r).
4 p. m.	Pinky Lee (part)	NBC n
4:30 p. m.	Howdy Doody	NBC n
4:45 p. m.	Howdy Doody (standard brands)	Do
5 p. m.	Cap'n Sam Little Rascals (part)	Film;
5:30 p. m.	Range Riders (Kelloggs)	Film.

WDSU television, New Orleans, La., program schedule No. 14, Apr. 1–7, 1956—Continued

Time	Program	Source
Friday, Apr. 6—Continued		
6 p. m.	Esso Reporter (Esso)	Film; live studio.
6:15 p. m.	World of Sports and Weatherman (Jax)	Do.
6:30 p. m.	Eddie Fisher (Coca Cola)	NBC network cable.
6:45 p. m.	Plymouth News Caravan (Plymouth)	Do.
7 p. m.	Truth or Consequences (Old Gold)	Do.
7:30 p. m.	Life of Riley (Gulf)	Do.
8 p. m.	The Big Story (Pall Mall)	Do.
8:30 p. m.	Star Stage (Chesebrough-Ponds)	Do.
9 p. m.	Cavalcade of Sports (Gillette)	Do.
9:45 p. m.	The Leon Kelner Show (Universal Furniture Co.)	Film; live studio; slide; announcer in booth.
10 p. m.	Highway Patrol (Regal)	Film.
10:30 p. m.	Luzianne Patio Playhouse (Luzianne)	Film; live studio.
11 p. m.	The World Tonight	Do.
11:15 p. m.	The Late Show (part)	Do.
12:45 a. m.	Income Tax Program	Film.
1 a. m.	Nitecap News and Sports Results	Slide; announcer in booth; electrical transcription.
1:05 a. m.	Prayer for Peace	Slide; electrical transcription.
Saturday, April 7:		
8:10 a. m.	Morning Prayer	Slide; electrical transcription.
8:15 a. m.	Telecomics	Film.
8:30 a. m.	Captain Midnight (Wander & Co.)	Do.
9 a. m.	Pinky Lee (Sweets Co. of America)	NBC kinescope.
9:30 a. m.	Sky King (National Biscuit Co.)	Film.
10 a. m.	Fury (General Foods)	NBC network cable.
10:30 a. m.	Rin Tin Tin (Dickey's Potato Chips)	Film; live studio.
11 a. m.	Big Top (Sealtest)	CBS cable.
12 noon	Annie Oakley (McKenzie Pastry Shoppes)	Film; live studio.
12:30 p. m.	Tales of the Texas Rangers (Curtiss Candy)	Film.
1 p, m.	Wyatt Earp (Parker Pen)	ABC kinescope.
1:30 p. m.	Western Roundup	Film.
2:30 p. m.	Afternoon Movie	Do.
4 p. m.	Pattison Baseball Preview (Pattison Pontiac)	Film; live studio.
4:25 p. m.	Do You Know Why? (Pan American)	Film.
4:30 p. m.	Big Town (A-C Spark Plugs)	NBC kinescope.
5 p. m.	Grand Ole Opry (Pillsbury)	Film.
5:30 p. m.	Disneyland (American Motors and American Dairy).	ABC kinescope.
6:30 p. m.	The Big Surprise (Speidel)	NBC network cable.
7 p. m.	Perry Como Show (Armour, Dormeyer, Gold Seal).	Do.
8 p. m.	People Are Funny (Toni)	Do.
8:30 p. m.	Texaco Star Theatre (Texaco)	Do.
9 p. m.	George Gobel (Dial Soap and Shampoo)	Do.
9:30 p. m.	Liberace (Carnation)	Film; slide; announcer in booth.
10 p. m.	Crunch and Des (Citizens' Homestead)	Do.
10:30 p. m.	I Led Three Lives (Falstaff)	Film.
11 p. m.	The World Tonight	Film; live studio.
11:15 p. m.	Studio One (Westinghouse)	CBS kinescope.
12:15 a. m.	The Late Show	Film.
1:15 a. m.	Nitecap News and Sports Results	Slide; announcer in booth; electrical transcription.
1:20 a. m.	Prayer for Peace	Slide; electrical transcription.

Program schedule, KCBD–TV schedule, channel 11, Lubbock, Tex., Apr. 1–7, 1956

Time	Program	Origin
Sunday, Apr. 1, 1956:		
12:30 p. m.	Frontiers of Faith	NBC.
1 p. m.	Family Bible Quiz	Local, live.
1:15 p. m.	Norman Vincent Peale	Film.
1:30 p. m.	Family Bible Quiz	Local, live.
2 p. m.	Lawrence Welk Show	ABC.
3 p. m.	Wide Wide World	NBC.
4:30 p. m.	Faith For Living	Local, live.
5 p. m.	Captain Gallant	Film.
5:30 p. m.	Hopalong Cassidy	Do.
6 p. m.	It's A Great Life	NBC.
6:30 p. m.	Frontier	NBC.
7 p. m.	NBC Comedy Hour	NBC.
8 p. m.	Highway Patrol	Film.
8:30 p. m.	District Attorney	Do.

KCBD–TV schedule, channel 11, Lubbock, Tex.—Continued

Time	Program	Source
Sunday, Apr. 1, 1956—Continued		
9 p. m.	Loretta Young	NBC.
9:30 p. m.	A Man Called X	Film.
10 p. m.	Cavalcade Theater	ABC.
10:30	News	Local, live.
10:40 p. m.	Weather	Do.
10:45 p. m.	Sports	Do.
11 p. m.	Star Showcase	Film.
Monday, Apr. 2, 1956:		
6:55 a. m.	Program Review	Local, live.
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	NBC.
9:30 a. m.	Ernie Kovacs Show	NBC.
10 a. m.	Home	NBC.
11 a. m.	Tennessee Ernie Ford	NBC.
11:30 a. m.	Feather Your Nest	NBC.
12 noon	Norma Raine	Local, live.
12:15 p. m.	RFD 11	Do.
12:30 p. m.	Serenaders	Do.
1 p. m.	Cook Book	Do.
1:30 p. m.	Perry's Personality School	Do.
2 p. m.	NBC Matinee (color)	NBC.
3 p. m.	News	Local, live.
3:15 p. m.	Modern Romances	NBC.
3:30 p. m.	Queen For A Day	NBC.
4 p. m.	Pinky Lee	NBC.
4:30 p. m.	Howdy Doody (color)	NBC.
5 p. m.	Superman	NBC.
5:30 p. m.	Bunny Theater	Film.
6 p. m.	Hospitality Time	Local, live.
6:15 p. m.	News	Do.
6:20 p. m.	Weather	Do.
6:25 p. m.	Sports	Do.
6:30 p. m.	Gordon MacRae	NBC.
6:45 p. m.	Here's Howell	Local, live.
7 p. m.	Great Gildersleeve	Film.
7:30 p. m.	My Little Margie	Do.
8 p. m.	Badge 714	Do.
8:30 p. m.	Robert Montgomery	NBC.
9:30 p. m.	Texas In Review	Film.
10 p. m.	Serenaders	Local, live
10:30 p. m.	News	Do.
10:40 p. m.	Weather	Do.
10:45 p. m.	Sports	Do.
11 p. m.	Channel 11 Theater	Film.
Tuesday, Apr. 3, 1956:		
6:55 a. m.	Program Preview	Local live.
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	NBC.
9:30 a. m.	Ernie Kovac Show	NBC.
10 a. m.	Home	NBC.
11 a. m.	Tennessee Ernie Ford	NBC.
11:30 a. m.	Feather Your Nest	NBC.
12 noon	Norma Raine	Local live.
12:15 p. m.	RFD 11	Do.
12:30 p. m.	Serenaders	Do.
1 p. m.	Cook Book	Do.
1:30 p. m.	From Hollywood	Film.
2 p. m.	NBC Matinee (color)	NBC.
3 p. m.	News	Local live.
3:15 p. m.	Modern Romances	NBC.
3:30 p. m.	Queen For A Day	NBC.
4 p. m.	Pinky Lee	NBC.
4:30 p. m.	Howdy Doody (color)	NBC.
5 p. m.	Roy Rogers	Film.
6 p. m.	Hospitality Time	Local live.
6:15 p. m.	News	Do.
6:20 p. m.	Weather	Do.
6:25 p. m.	Sports	Do.
6:30 p. m.	Dinah Shore	NBC.
6:45 p. m.	Here's Howell	Local live.
7 p. m.	Milton Berle	NBC.
8 p. m.	Fireside Theater	NBC.
8:30 p. m.	Ford Theatre	NBC.
9 p. m.	Trouble With Father	Film.
9:30 p. m.	Big Town	NBC.
10 p. m.	Justice	NBC.
10:30 p. m.	News	Local live.
10:40 p. m.	Weather	Do.
10:45 p. m.	Sports	Do.
11 p. m.	Channel 11 Theater	Film.

KCBD-TV schedule, channel 11, Lubbock, Tex.—Continued

Time	Program	Source
Wednesday, Apr. 4, 1956:		
6:55 a. m.	Program Review	Local, live.
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	NBC.
9:30 a. m.	Ernie Kovacs Show	NBC.
10 a. m.	Home	NBC.
11 a. m.	Tennessee Ernie Ford	NBC.
11:30 a. m.	Feather Your Nest	NBC.
12 noon	Norma Raine	Local, live.
12:15 p. m.	RFD 11	Do.
12:30 p. m.	Serenaders	Do.
1 p. m.	Cook Book	Do.
1:30 p. m.	Styles of Distinction	Do.
1:45 p. m.	Melody Go Round	Film.
2 p. m.	NBC Matinee (color)	NBC.
3 p. m.	News	Local, live.
3:15 p. m.	Modern Romances	NBC.
3:30 p. m.	Queen for a Day	NBC.
4 p. m.	Pinky Lee	NBC.
4:30 p. m.	Howdy Doody (color)	NBC.
5 p. m.	Western	Film.
5:30 p. m.	Bunny Theater	Do.
6 p. m.	Hospitality Time	Local, live.
6:15 p. m.	News	Do.
6:20 p. m.	Weather	Do.
6:25 p. m.	Sports	Do.
6:30 p. m.	Eddie Fisher	NBC.
6:45 p. m.	Here's Howell	Local, live.
7 p. m.	Disneyland	ABC.
8 p. m.	Father Knows Best	NBC.
8:30 p. m.	Danny Thomas	NBC.
9 p. m.	This Is Your Life	NBC.
9:30 p. m.	Warner Bros. Presents	ABC.
10:30 p. m.	News	Local, live.
10:40 p. m.	Weather	Do.
10:45 p. m.	Sports	Do.
11 p. m.	Channel 11 Theater	Film.
Thursday, Apr. 5:		
6:55 a. m.	Program Preview	Local, live.
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	NBC.
9:30 a. m.	Ernie Kovacs Show	NBC.
10 a. m.	Home	NBC.
11 a. m.	Tennessee Ernie Ford	NBC.
11:30 a. m.	Feather Your Nest	NBC.
12 m.	Nora Raine	Local, live.
12:15 p. m.	RFD 11	Do.
12:30 p. m.	Serenaders	Do.
1 p. m.	Cook Book	Do.
1:30 p. m.	From Hollywood	Film.
2 p. m.	NBC Matinee (color)	NBC.
3 p. m.	News	Local, live.
3:15 p. m.	Modern Romances	NBC.
3:30 p. m.	Queen For Day	NBC.
4 p. m.	Pinky Lee	NBC.
4:30 p. m.	Howdy Doody (color)	NBC.
5 p. m.	Roy Rogers	Film.
6 p. m.	Hospitality Time	Local, live.
6:15 p. m.	News	Do.
6:20 p. m.	Weather	Do.
6:25 p. m.	Sports	Do.
6:30 p. m.	Dinah Shore	NBC.
6:45 p. m.	Here's Howell	Local, live.
7 p. m.	Groucho Marx	NBC.
7:30 p. m.	Dragnet	NBC.
8 p. m.	People's Choice	NBC.
8:30 p. m.	Dateline Europe	Film.
9 p. m.	Science Fiction Theater	Do.
9:30 p. m.	Tales of Texas Rangers	Do.
10 p. m.	Waterfront	Do.
10:30 p. m.	News	Local, live.
10:40 p. m.	Weather	Do.
10:45 p. m.	Sports	Do.
11 p. m.	Channel 11 Theater	Film.
Friday, Apr. 6, 1956:		
6:55 a. m.	Program Preview	Local, live.
7 a. m.	Today	NBC.
9 a. m.	Ding Dong School	NBC.
9:30 a. m.	Ernie Kovacs Show	NBC.
10 a. m.	Home	NBC.
11 a. m.	Ernie Ford	NBC.
11:30 a. m.	Feather Your Nest	NBC.

KOBD-TV schedule, channel 11, Lubbock, Tex.—Continued

Time	Program	Source
Friday, Apr. 6, 1956—Continued		
12 noon	Norma Raine	Local, live.
12:15 p. m	RFD 11	Do.
12:30 p. m	Serenaders	Do.
1 p. m	Cook Book	Do.
1:30 p. m	From Hollywood	Film.
2 p. m	NBC Matinee (color)	NBC.
3 p. m	News	Local, live.
3:15 p. m	Modern Romances	NBC.
3:30 p. m	Queen For A Day	NBC.
4 p. m	Pinky Lee	NBC.
4:30 p. m	Howdy Doody (color)	NBC.
5 p. m	Rin Tin Tin	ABC.
5:30 p. m	Little Rascals	Film.
6 p. m	Hospitality Time	Local, live.
6:15 p. m	News	Do.
6:20 p. m	Weather	Do.
6:25 p. m	Sports	Do.
6:30 p. m	Eddie Fisher	NBC.
6:45 p. m	Here's Howell	Local, live.
7 p. m	Dr. Hudson's Journal	Film.
7:30 p. m	Life of Riley	NBC.
8 p. m	Big Story	NBC.
8:30 p. m	Celebrity Playhouse	Film.
9 p. m	Cavalcade of Sports	NBC.
9:45 p. m	Red Barber Show	NBC.
10 p. m	Break the Bank	ABC.
10:30 p. m	News	Local, live.
10:40 p. m	Weather	Do.
10:45 p. m	Sports	Do.
11 p. m	The Vise	ABC.
Saturday, Apr. 7, 1956:		
12 noon	Wizard	NBC.
12:30 p. m	Channel 11 Theater	Film.
5 p. m	Playtime	Local, live.
5:45 p. m	Western	Film.
6:15 p. m	News	Local, live.
6:20 p. m	Weather	Do.
6:25 p. m	Sports	Do.
6:30 p. m	George Gobel	NBC.
7 p. m	Lone Ranger	ABC.
7:30 p. m	Cisco Kid	Film.
8 p. m	Star Stage	Do.
8:30 p. m	Crossroads	ABC.
9 p. m	I Led 3 Lives	Film.
9:30 p. m	Your Hit Parade	NBC.
10 p. m	Ted Mack's Amateur Hour	ABC.
10:30 p. m	News, Weather, Sports	Local, live.
11 p. m	Channel 11 Theater	Film.

KOMO-TV, Seattle, Wash., source of programs, Apr. 1-7, 1956

Time	Title	Source
Sunday, Apr. 1, 1956:		
6:55 a. m	News	Live.
7 a. m	Easter Sunday Church Service	NBC network.
8 a. m	Color test pattern	
8:35 a. m	A Note of Faith	Live.
8:40 a. m	News	Do.
8:45 a. m	Miracle of Love (Easter film)	Other film.
9:30 a. m	Colorama—Miracle of Feeding America	Do.
10 a. m	American Forum	NBC network.
10:30 a. m	Frontiers of Faith	Do.
11 a. m	Princeton 1956	Do.
11:30 a. m	Outlook with Chet Huntley	Do.
12 noon	Christopher Program—Tips from Senator John Kennedy	Other film.
12:30 p. m	Colorama—Wings to Germany	Do.
1 p. m	Wide Wide World	NBC network.
2:30 p. m	Your Career (in color)—Hotel Management	Other film.
3 p. m	Dr. Benjamin Spock	NBC network.
3:30 p. m	Zoo Parade	Do.
4 p. m	Eddie Fisher	Do.
4:15 p. m	Channel 4 Sunday Matinee—Bold Caballero	Feature film.
5:30 p. m	Captain Gallant	NBC network.
6 p. m	Mayor of the Town—Money for the Mayor	Syndicated film.
6:30 p. m	Roy Rogers	NBC network.
7 p. m	It's a Great Life	Do.

KOMO-TV, Seattle, Wash., source of programs, Apr. 1-7, 1956—Continued

Time	Title	Source
Sunday, Apr. 6, 1956—Continued		NBC network.
7:30 p. m.	Frontier	Do.
8 p. m.	Comedy Hour	Do.
9 p. m.	Alcoa Hour	Do.
10 p. m.	Loretta Young Show	Do.
10:30 p. m.	March of Medicine	Do.
11 p. m.	Meet the Press	Do.
11:30 p. m.	News	Live.
11:35 p. m.	A Note of Faith	Do.
11:40 p. m.	Signoff	
Monday, Apr. 2, 1956:		
7:35 a. m.	Color test pattern	
7:50 a. m.	A Note of Faith	Live.
7:55 a. m.	Farm Report	Do.
8 a. m.	Today	NBC network.
8:55 a. m.	News	Live.
9 a. m.	Tennessee Ernie Ford Show	NBC network.
9:30 a. m.	Feather Your Nest	Do.
10 a. m.	Ding Dong School	Do.
10:30 a. m.	Ernie Kovac Show	Do.
11 a. m.	Home	Do.
12 noon	NBC Matinee Theater (in color)	Do.
1 p. m.	Date with Life	Do.
1:15 p. m.	Modern Romances	Do.
1:30 p. m.	Queen for a Day	Do.
2 p. m.	Cookbook Quiz	Live.
2:30 p. m.	Movietime on 4—Shepherd of the Ozarks	Feature film.
3:45 p. m.	Man About Town	Live.
4 p. m.	Cliff Carl Show	Do.
4:45 p. m.	The Secret Tower (in color)	Do.
5 p. m.	Producers Showcase (in color)—The Barretts of Wimpole Street.	NBC network.
6:30 p. m.	Deadline (in color)	Live.
6:55 p. m.	Weather (in color)	Do.
7 p. m.	Ken Murray Show	Syndicated film.
7:30 p. m.	Gordon MacRae	NBC network.
7:45 p. m.	News Caravan	Do.
8 p. m.	Premiere Movie—Dark Command	Feature film.
9:30 p. m.	Robert Montgomery Presents	NBC network.
10:30 p. m.	The Turning Point	Syndicated film.
11 p. m.	Les Paul and Mary Ford	Other film.
11:05 p. m.	My Little Margie—The Hypochondriac	Syndicated film.
11:35 p. m.	Curtain Time—Profile	Feature film.
1 a. m.	News	Live.
1:05 a. m.	A Note of Faith	Do.
1:10 a. m.	Signoff	
Tuesday, Apr. 3, 1956:		
7:35 a. m.	Color test pattern	
7:50 a. m.	A Note of Faith	Do.
7:55 a. m.	Farm Report	Do.
8 a. m.	Today	NBC network.
8:55 a. m.	News	Live.
9 a. m.	Tennessee Ernie Ford Show	NBC network.
9:30 a. m.	Feather Your Nest	Do.
10 a. m.	Ding Dong School	Do.
10:30 a. m.	Ernie Kovac Show	Do.
11 a. m.	Home	Do.
12 noon	NBC Matinee Theater (in color)	Do.
1 p. m.	Date With Life	Do.
1:15 p. m.	Modern Romances	Do.
1:30 p. m.	Queen for a Day	Do.
2 p. m.	Cookbook Quiz	Live.
2:30 p. m.	Movietime on 4—The Girl Who Forgot	Feature film.
3:45 p. m.	Man About Town	Live.
4 p. m.	Cliff Carl Show	Do.
4:45 p. m.	The Secret Tower (in color)	Do.
5 p. m.	Pinky Lee	NBC network.
5:30 p. m.	Howdy Doody	Do.
6 p. m.	Life With Elizabeth	Syndicated film.
6:30 p. m.	Deadline	Live.
6:55 p. m.	Weather (in color)	Do.
7 p. m.	Jungle Jim—The Silver Locket	Syndicated film.
7:30 p. m.	Dinah Shore	NBC network.
7:45 p. m.	News Caravan	Do.
8 p. m.	Milton Berle	Do.
9 p. m.	Fireside Theater	Do.
9:30 p. m.	Circle Theater	Do.
10:30 p. m.	Big Town	Do.
11 p. m.	Les Paul and Mary Ford	Other film.
11:05 p. m.	Curtain Time—Hurricane at Pilgrim Hill	Feature film.
12:30 a. m.	News	Live.
12:35 a. m.	A Note of Faith	Do.
12:40 a. m.	Signoff	

KOMO-TV, Seattle, Wash., source of programs, Apr. 1-7, 1956—**Continued**

Time	Title	Source
Wednesday, Apr. 4, 1956:		
7:35 a. m	Color test pattern	
7:50 a. m	A Note of Faith	Live.
7:55 a. m	Farm Report	Do.
8 a. m	Today	NBC network.
8:55 a. m	News	Live.
9 a. m	Tennessee Ernie Ford Show	NBC network.
9:30 a. m	Feather Your Nest	Do.
10 a. m	Ding Dong School	Do.
10:30 a. m	Ernie Kovac Show	Do.
11 a. m	Home	Do.
12 noon	NBC Matinee Theater (in color)	Do.
1 p. m	Date With Life	Do.
1:15 p. m	Modern Romances	Do.
1:30 p. m	Queen for a Day	Do.
2 p. m	Cookbook Quiz	Live.
2:30 p. m	Movietime on 4—Worm's Eye View	Feature film.
3:45 p. m	Man About Town	Live.
4 p. m	Cliff Carl Show	Do.
4:45 p. m	The Secret Tower (in color)	Do.
5 p. m	Pinky Lee	NBC network.
5:30 p. m	Howdy Doody	Do.
6 p. m	My Hero with Bob Cummings—Movie Star	Syndicated film.
6:30 p. m	Deadline	Live.
6:55 p. m	Weather (in color)	Do.
7 p. m	Cisco Kid	Syndicated film.
7:30 p. m	Eddie Fisher	NBC network.
7:45 p. m	News Caravan	Do.
8 p. m	Screen Director's Playhouse	Do.
8:30 p. m	Father Knows Best	Do.
9 p. m	Kraft TV Theater	Do.
10 p. m	This Is Your Life	Do.
10:30 p. m	Waterfront—Floating Bottle	Syndicated film.
11 p. m	Curtain Time—Charlie Chan in Panama	Feature film.
12:30 a. m	News	Live.
12:35 a. m	A Note of Faith	Do.
12:40 a. m	Signoff	
Thursday, Apr. 5, 1956:		
7:35 a. m	Color test pattern	
7:50 a. m	A Note of Faith	Do.
7:55 a. m	Farm Report	Do.
8 a. m	Today	NBC network.
8:55 a. m	News	Live.
9 a. m	Tennessee Ernie Ford Show	NBC network.
9:30 a. m	Feather Your Nest	Do.
10 a. m	Ding Dong School	Do.
10:30 a. m	Ernie Kovac Show	Do.
11 a. m	Home	Do.
12 noon	NBC Matinee Theater (in color)	Do.
1 p. m	Date with Life	Do.
1:15 p. m	Modern Romances	Do.
1:30 p. m	Queen for a Day	Do.
2 p. m	Cookbook Quiz	Live.
2:30 p. m	Movietime on 4—Return of a Stranger	Feature film.
3:45 p. m	Man About Town	Live.
4 p. m	Cliff Carl Show	Do.
4:45 p. m	The Secret Tower (in color)	Do.
5 p. m	Pinky Lee	NBC network.
5:30 p. m	Howdy Doody	Do.
6 p. m	Stars of the Grand Ole Opry	Syndicated film.
6:30 p. m	Deadline	Live.
6:55 p. m	Weather (in color)	Do.
7 p. m	Highway Patrol	Syndicated film.
7:30 p. m	Dinah Shore	NBC network.
7:45 p. m	News Caravan	Do.
8 p. m	You Bet Your Life	Do.
8:30 p. m	Dragnet	Do.
9 p. m	Celebrity Playhouse	Syndicated film.
9:30 p. m	Ford Theater	NBC network.
10 p. m	Lux Video Theater	Do.
11 p. m	Les Paul and Mary Ford	Other film.
11:05 p. m	Curtain time—My Dear Secretary	Feature film.
12:30 a. m	News	Live.
12:35 a. m	A Note of Faith	Do.
12:40 a. m	Signoff	

KOMO-TV, Seattle, Wash., source of programs, Apr. 1-7, 1956—Continued

Time	Title	Source
Friday, Apr. 6, 1956:		
7:35 a. m.	Color test pattern	
7:50 a. m.	A Note of Faith	Live.
7:55 a. m.	Farm Report	Do.
8 a. m.	Today	NBC network.
8:55 a. m.	News	Live.
9 a. m.	Tennessee Ernie Ford Show	NBC network.
9:30 a. m.	Feather Your Nest	Do.
10 a. m.	Ding Dong School	Do.
10:30 a. m.	Ernie Kovac Show	Do.
11 a. m.	Home	Do.
12 noon	NBC Matinee Theater (in color)	Do.
1 p. m.	Date With Life	Do.
1:15 p. m.	Modern Romances	Do.
1:30 p. m.	Queen For A Day	Do.
2 p. m.	Cookbook Quiz	Live.
2:30 p. m.	Movietime on 4—Daughter of the West	Feature film.
3:45 p. m.	Man About Town	Live.
4 p. m.	Cliff Carl Show	Do.
4:45 p. m.	The Secret Tower (in color)	Do.
5 p. m.	Pinky Lee	NBC network.
5:30 p. m.	Howdy Doody	Do.
6 p. m.	Ray Milland Show—Swimming Problem	Syndicated film.
6:30 p. m.	Deadline	Live.
6:55 p. m.	Weather (in color)	Do.
7 p. m.	Cavalcade of Sports	NBC network.
7:45 p. m.	News Caravan	Do.
8 p. m.	Truth or Consequences	Do.
8:30 p. m.	Hall of Stars	Syndicated film.
9 p. m.	Big Story	NBC network.
9:30 p. m.	Star Stage	Do.
10 p. m.	Crunch and Des—The Expert	Syndicated film.
10:30 p. m.	Les Paul and Mary Ford	Other film.
10:35 p. m.	Curtain Time—Charlie Chan, in Castle in the Desert	Feature film.
12 midnight	News	Live.
12:05 a. m.	A Note of Faith	Do.
12:10 a. m.	Signoff	
Saturday, Apr. 7, 1956:		
9:05 a. m.	Color test pattern	
9:20 a. m.	A Note of Faith	Do.
9:25 a. m.	News Headlines	Do.
9:30 a. m.	Choose Up Sides	NBC network.
10 a. m.	Children's Corner	Do.
10:30 a. m.	Pinky Lee Show	Do.
11 a. m.	Fury	Do.
11:30 a. m.	Uncle Johnny Coons	Do.
12 noon	Mr. Wizard	Do.
12:30 p. m.	Colorama—Racing Heritage, Design for Dining, Stop and Go Safety Twins, Any Time is Turkey Time.	Other film.
2 p. m.	Saturday Matinee—The Fabulous Texan	Feature film.
3 p. m.	Colorama—Point, Trail to the Midnight Sun	Other film.
4 p. m.	Garden Digest	Live.
4:30 p. m.	Congress Reports—Congressman Jack Westland	Other film.
4:45 p. m.	KOMO Cartoons	Do.
5 p. m.	Career Medical Technologist (in color)	Do.
5:30 p. m.	Frontiers of Health	Do.
6 p. m.	Pageant, with Philip Evans	Live.
6:30 p. m.	Championship Bowling	Syndicated film.
7:30 p. m.	Big Surprise	NBC network.
8 p. m.	Perry Como Show	Do.
9 p. m.	People Are Funny	Do.
9:30 p. m.	Jimmy Durante	Do.
10 p. m.	George Gobel	Do.
10:30 p. m.	Your Hit Parade	Do.
11 p. m.	Les Paul and Mary Ford	Other film.
11:05 p. m.	Curtain Time—Strangers	Feature film.
12:30 a. m.	News	Live.
12:35 a. m.	A Note of Faith	Do.
12:40 a. m.	Signoff	

Program schedule, KPRC-TV, Houston, Tex., week of Apr. 1-7, 1956

Time	Program	Source
Sunday:		
9 a. m.	Morning devotionals	Local, religious.
9:15 a. m.	Industry on Parade	Local, public interest.
9:30 a. m.	Put God First	Local, religious.
9:45 a. m.	How Christian Science Heals	Do.
10 a. m.	Frontiers of Faith	NBC, religious.
10:30 a. m.	Man to Man	Local, religious.
10:45 a. m.	What's Your Trouble?	Do.
11 a. m.	Christophers	Do.
11:30 a. m.	This Is the Life	Do.
12 m.	Royal Playhouse	Local, drama.
12:30 p. m.	Susie	Do.
1 p. m.	Million Dollar Movie	Local drama, participating.
2:30 p. m.	Count of Monte Cristo	NBC, drama.
3 p. m.	Wide, Wide World	NBC, variety.
4:30 p. m.	Captain Gallant	NBC, drama.
5 p. m.	Meet the Press	Local, children's participating.
5:30 p. m.	Judge Roy Bean	Local, drama.
6 p. m.	It's a Great Life	NBC, drama.
6:30 p. m.	Frontier	Do.
7 p. m.	Comedy Hour	NBC, variety.
8 p. m.	TV Playhouse	NBC, drama.
9 p. m.	Loretta Young	Do.
9:30 p. m.	Highway Patrol	Local, drama.
10 p. m.	Texas in Review	Local, public interest.
10:30 p. m.	Heart of the City	Local, drama, participating.
11 p. m.	Justice	NBC, drama.
11:30 p. m.	Movie Showtime	
12:30 a. m.	Vespers and signoff.	
Monday:		
6:40 a. m.	Morning prayers	Local, religions.
6:45 a. m.	George Roesner—RFD	Local, public interest.
7 a. m.	Today	NBC, Texas Quality network, participating.
7:25 a. m.	Today's Weather	Local, public interest.
7:30 a. m.	Today	NBC, participating.
7:55 a. m.	Today in Houston	Local, public interest.
8 a. m.	Today	NBC, Texas Quality network, participating.
8:25 a. m.	Today's Weather	Local, public interest.
8:30 a. m.	Today	NBC, participating.
8:55 a. m.	Today's Strength	Local, religious.
9 a. m.	Ding Dong School	NBC, children's.
9:30 a. m.	Ernie Kovac Show	NBC, variety.
10 a. m.	Home	NBC, Texas Quality network, participating.
11 a. m.	Tennessee Ernie Show	NBC, variety.
11:30 a. m.	Feather Your Nest	NBC, audience participating.
12 noon	TV Kitchen	Local, Texas Quality network, participating.
12:30 p. m.	Movie Date	Local, drama, participating.
2 p. m.	NBC Theatre	NBC, drama, participating.
3 p. m.	A Date With Life	NBC, drama.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen for a Day	NBC, audience participation.
4 p. m.	Matinee	Local, variety, participating.
4:30 p. m.	Howdy Doody	NBC, children's.
5 p. m.	Looney Towne	Local, children's participating.
5:30 p. m.	Wild Bill Hickok	Local, children's.
6 p. m.	World at Large	Local, Texas Quality network.
6:10 p. m.	Today in Sports	Local, sports, participating.
6:15 p. m.	Channel 2 Newsreel	Local; Texas Quality network participating.
6:25 p. m.	Weathercast	Local; public interest.
6:30 p. m.	Gordon MacRae	NBC, music.
6:45 p. m.	News Caravan	NBC, Texas Quality network.
7 p. m.	Caesar's Hour	NBC, variety.
8 p. m.	Medic	NBC, drama.
8:30 p. m.	Robert Montgomery	Do.
9:30 p. m.	Dr. Hudson's Secret Journal	Local, drama.
10 p. m.	The Turning Point	Do.
10:30 p. m.	Final Edition News	Local, Texas Quality network.
10:40 p. m.	Weathercast	Local, public interest.
10:45 p. m.	Les Paul-Mary Ford	Local, music.
10:50 p. m.	Mann About Sports	Local, sport, participating.
11:00 p. m.	Tonight	NBC, variety.
12 p. m.	Vespers and signoff	

Program schedule, KPRC-TV, Houston, Tex., week of Apr. 1-7, 1956—Continued

Time	Program	Source
Tuesday:		
6:40 a. m.	Morning Prayers	Local, religious.
6:45 a. m.	George Roesner—RFD	Local, public interest.
7 a. m.	Today	NBC, Texas Quality network, participating.
7:25 a. m.	Today's Weather	Local, public interest.
7:30 a. m.	Today	NBC, Texas Quality network, participating.
7:55 a. m.	Today in Houston	Local, public interest.
8 a. m.	Today	NBC, Texas Quality network, participating.
8:25 a. m.	Today's Weather	Local, public interest.
8:30 a. m.	Today	NBC, Texas Quality network, participating.
8:55 a. m.	Today's Strength	Local, religious.
9:00 a. m.	Ding Dong School	NBC, children's.
9:30 a. m.	Ernie Kovac Show	NBC, variety.
10 a. m.	Home	NBC, Texas Quality network participating.
11 a. m.	Tennessee Ernie Show	NBC, variety.
11:30 a. m.	Feather Your Nest	NBC, audience participating.
12 m.	TV Kitchen	Local, Texas Quality network participating.
12:30 p. m.	Movie Date	Local, drama, participating.
2 p. m.	NBC Theater	NBC, drama, participating.
3 p. m.	A Date With Life	NBC, drama.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen for a Day	NBC, audience participating.
4 p. m.	Matinee	Local, variety, participating.
4:30 p. m.	Howdy Doody	NBC, children's.
5 p. m.	Looney Towne	Local, children's, participating.
5:30 p. m.	Ramar of the Jungle	Do.
6 p. m.	World at Large	Local, Texas Quality network.
6:10 p. m.	Today in Sports	Local, sports, participating.
6:15 p. m.	Channel 2 Newsreel	Local, Texas Quality network.
6:25 p. m.	Weathercast	Local, public interest.
6:30 p. m.	Dinah Shore	NBC, music.
6:45 p. m.	News Caravan	NBC, Texas Quality network.
7 p. m.	Martha Raye	NBC, variety.
8 p. m.	Fireside Theater	NBC, drama.
8:30 p. m.	Circle Theater	Do.
9:30 p. m.	I Led Three Lives	Local, drama.
10 p. m.	Badge 714	Local, drama, participating.
10:30 p. m.	Final Edition News	Local, Texas Quality network.
10:40 p. m.	Weathercast	Local, public interest.
10:45 p. m.	Les Paul-Mary Ford	Local, music.
10:50 p. m.	Mann About Sports	Local, sports, participating.
11 p. m.	Tonight	NBC, variety.
12 p. m.	Vespers and signoff	
Wednesday:		
6:40 a. m.	Morning prayers	Local, religious.
6:45 a. m.	George Roesner—RFD	Local, public interest.
7 a. m.	Today	NBC, Texas Quality network, participating.
7:25 a. m.	Today's Weather	Local, public interest.
7:30 a. m.	Today	NBC, Texas Quality network, participating.
7:55 a. m.	Today in Houston	Local, public interest.
8 a. m.	Today	NBC, Texas Quality network, participating.
8:25 a. m.	Today's Weather	Local, public interest.
8:30 a. m.	Today	NBC, Texas Quality network, participating.
8:55 a. m.	Today's Strength	Local, religious.
9 a. m.	Ding Dong School	NBC, children's.
9:30 a. m.	Ernie Kovac Show	NBC, variety.
10 a. m.	Home	NBC, Texas Quality network, participating.
11 a. m.	Tennessee Ernie Show	NBC, variety.
11:30 a. m.	Feather Your Nest	NBC, audience participating.
12 m.	TV Kitchen	Local, Texas Quality network, participating.
12:30 p. m.	Movie Date	Local, drama, participating.
2 p. m.	NBC Theatre	NBC, drama, participating.
3 p. m.	A Date With Life	NBC, drama.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen for a Day	NBC, audience participation
4 p. m.	Matinee	Local, variety, participating.
4:30 p. m.	Howdy Doody	NBC, children's.
5 p. m.	Roy Rogers	Local, children's, participating.

Program schedule, KPRC-TV, Houston, Tex., week of Apr. 1-7, 1956—Continued

Time	Program	Source
Wednesday—Con.		
6 p. m.	World at Large	Local, Texas Quality network.
6:10 p. m.	Today in Sports	Local, sports, participating.
6:15 p. m.	Channel 2 Newsreel	Local, Texas Quality network, participating.
6:25 p. m.	Weathercast	Local, public interest.
6:30 p. m.	Eddie Fisher	NBC, music.
6:45 p. m.	News Caravan	NBC, Texas Quality network.
7 p. m.	Screen Director's Playhouse	NBC, drama.
7:30 p. m.	Father Knows Best	Do.
8 p. m.	Great Gildersleeve	Local, drama.
8:30 p. m.	Waterfront	Local, drama, participating.
9 p. m.	This Is Your Life	NBC, Texas Quality network.
9:30 p. m.	Dragnet	NBC, drama.
10 p. m.	Celebrity Theatre	Local, drama.
10:30 p. m.	Final Edition News	Local, Texas Quality network.
10:40 p. m.	Weathercast	Local, public interest.
10:45 p. m.	Les Paul-Mary Ford	Local, music.
10:50 p. m.	Mann About Sports	Local, sports, participating.
11 p. m.	Tonight	NBC, variety.
12 p. m.	Vespers and signoff	
Thursday:		
6:40 a. m.	Morning Prayers	Local, religious.
6:45 a. m.	George Roesner—RFD	Local, public interest.
7 a. m.	Today	NBC, Texas Quality network, participating.
7:25 a. m.	Today's Weather	Local, public interest.
7:30 a. m.	Today	NBC, Texas Quality network, participating.
7:55 a. m.	Today in Houston	Local, public interest.
8 a. m.	Today	NBC, Texas Quality network, participating.
8:25 a. m.	Today's weather	Local, public interest.
8:30 a. m.	Today	NBC, Texas Quality network, participating.
8:55 a. m.	Today's Strength	Local, religious.
9 a. m.	Ding Dong School	NBC, children's.
9:30 a. m.	Ernie Kovac Show	NBC, variety.
10 a. m.	Home	NBC, Texas Quality network, participating.
11 a. m.	Tennessee Ernie Show	NBC, variety.
11:30 a. m.	Feather Your Nest	NBC, audience participating.
12 m.	TV Kitchen	Local, Texas Quality network, participating.
12:30 p. m.	Movie Date	Local, drama, participating.
2 p. m.	NBC Theatre	NBC, drama, participating.
3 p. m.	A Date With Life	NBC, drama.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen for a Day	NBC, audience participation.
4 p. m.	Matinee	Local, variety, participating.
4:30 p. m.	Howdy Doody	NBC; children's.
5 p. m.	Looney Towne	Local, children's, participating.
5:30 p. m.	Ramar of the Jungle	Do.
6 p. m.	World at Large	Local, Texas Quality network.
6:10 p. m.	Today in Sports	Local, sports, participating.
6:15 p. m.	Channel 2 Newsreel	Local, Texas Quality network, participating.
6:25 p. m.	Weathercast	Local, public interest.
6:30 p. m.	Dinah Shore	NBC; music.
6:45 p. m.	News Caravan	NBC, Texas Quality network.
7 p. m.	Groucho Marx	Do.
7:30 p. m.	Cisco Kid	Local, drama.
8 p. m.	I Spy	Do.
8:30 p. m.	Ford Theatre	NBC, drama.
9 p. m.	Lux Video Theatre	Do.
10 p. m.	Crunch and Des	Local, drama.
10:30 p. m.	Final Edition News	Local, Texas Quality, network.
10:40 p. m.	Weathercast	Local, public interest.
10:45 p. m.	Les Paul-Mary Ford	Local, music.
10:50 p. m.	Mann About Sports	Local, sports, participating.
11 p. m.	Tonight	NBC, variety.
12 p. m.	Vespers and signoff	
Friday:		
6:40 a. m.	Morning Prayers	Local, religious.
6:45 a. m.	George Roesner-RFD	Local, public interest.
7 a. m.	Today	NBC, Texas Quality network, participating.
7:25 a. m.	Today's Weather	Local, public interest.
7:30 a. m.	Today	NBC, Texas Quality network, participating.
7:55 a. m.	Today in Houston	Local, public interest.

Program schedule, KPRC-TV, Houston, Tex., week of Apr. 1-7, 1956—**Continued**

Time	Program	Source
Friday—Con.		
8 a. m.	Today	NBC, Texas Quality network, participating.
8:25 a. m.	Today's Weather	Local, public interest.
8:30 a. m.	Today	NBC, Texas Quality network, participating.
8:55 a. m.	Today's Strength	Local, religious.
9 a. m.	Ding Dong School	NBC, children's.
9:30 a. m.	Ernie Kovac Show	NBC, variety.
10 a. m.	Home	NBC, Texas Quality network, participating.
11 a. m.	Tennessee Ernie Show	NBC, variety.
11:30 a. m.	Feather Your Nest	NBC, audience participation.
12 m.	TV Kitchen	Local, Texas Quality network, participating.
12:30 p. m.	Movie Date	Local, drama, participating.
2 p. m.	NBC Theatre	NBC, drama, participating.
3 p. m.	A Date With Life	NBC, drama.
3:15 p. m.	Modern Romances	Do.
3:30 p. m.	Queen for a Day	NBC, audience participation.
4 p. m.	Matinee	Local, variety, participating.
4:30 p. m.	Howdy Doody	NBC, children's.
5 p. m.	Looney Towne	Local, children's, participating.
5:15 p. m.	Cartoons	Local, children's.
5:30 p. m.	Superman	Do.
6 p. m.	World at Large	Local, Texas Quality network.
6:10 p. m.	Today in Sports	Local, sports, participating.
6:15 p. m.	Channel 2 Newsreel	Local, Texas Quality network.
6:25 p. m.	Weathercast	Local, public interest.
6:30 p. m.	Eddie Fisher	NBC, music.
6:45 p. m.	News Caravan	NBC, Texas Quality network.
7 p. m.	Truth or Consequences	NBC, audience participation.
7:30 p. m.	Life of Riley	NBC, drama.
8 p. m.	Curley Fox-Texas Ruby	Local, music.
8:30 p. m.	Star Stage	NBC, drama.
9 p. m.	Cavalcade of Sports	NBC, sports.
9:45 p. m.	Final Edition News	Local, Texas Quality network.
9:55 p. m.	Weathercast	Local, public interest.
10 p. m.	Big Story	NBC, drama.
10:30 p. m.	Home Folks Jubilee	Local, NBC.
10:45 p. m.	Les Paul-Mary Ford	Local, music.
10:50 p. m.	Clark Nealon Sports	Local, sports, participating.
11 p. m.	Tonight	NBC, variety.
12 p. m.	Vespers and signoff	
Saturday:		
8:25 a. m.	Morning Prayers	Local, religious.
8:30 a. m.	Mr. Wizard	NBC, children's.
9 a. m.	Children's Corner	Local, children's.
9:30 a. m.	Pinky Lee	NBC, children's.
10 a. m.	Captain Midnight	Local, children's.
10:30 a. m.	Uncle Johnny Coons	NBC, children's.
11 a. m.	Fury	Do.
11:30 a. m.	Buffalo Bill, Jr.	Local, children's.
12 noon	Western Movie	Do.
1 p. m.	Saturday Showtime	Local, drama, participating.
4 p. m.	Royal Playhouse	Do.
4:30 p. m.	Annie Oakley	Local, drama.
5 p. m.	Roy Rogers	NBC, drama.
5:30 p. m.	Soldiers of Fortune	Local, drama.
6 p. m.	People's Choice	NBC, drama.
6:30 p. m.	The Big Surprise	NBC, Texas Quality network.
7 p. m.	Perry Como	NBC, variety.
8 p. m.	People Are Funny	NBC, Texas Quality network.
8:30 p. m.	Jimmy Durante	NBC, variety.
9 p. m.	George Gobel	Do.
9:30 p. m.	Your Hit Parade	NBC, music.
10 p. m.	City Detective	Local, drama.
10:30 p. m.	Studio 57	Do.
11 p. m.	Movie Spectacular	Do.
12 p. m.	Vespers and signoff	

Program schedule, WJIM-TV, Lansing, Mich., week of Apr. 1-7, 1956

Time	Program title	Source
Sunday, Apr. 1:		
9:30 a. m.	Test pattern	
10 a. m.	Easter Sunday Church Service	Network.
11 a. m.	Miracle of Love, National Council of Churches	Film.
11:45 a. m.	Historic Galilee	Do.
12 noon	This is the Life	Do.
12:30 p. m.	Wild Bill Hickok	Network.
1 p. m.	Youth Wants to Know	Do.
1:30 p. m.	Dr. Spock	Do.
2 p. m.	MGM Parade	Do.
2:30 p. m.	You are There	Do.
3 p. m.	Readers Digest	Do.
3:30 p. m.	Zoo Parade	Do.
4 p. m.	Wide Wide World	Do.
5:30 p. m.	Captain Gallant	Do.
6 p. m.	Meet the Press	Do.
6:30 p. m.	The Playhouse	Film.
7 p. m.	Masquerade Party	Do.
7:30 p. m.	I Love Lucy	Network.
8 p. m.	Ed Sullivan Show	Do.
9 p. m.	Television Playhouse	Do.
10 p. m.	Climax	Do.
11 p. m.	Sunday News Special	Do.
11:15 p. m.	This is Your Life	Do.
11:45 p. m.	Headline News	Local.
11:51 p. m.	Easter Prayer	Do.
11:53 p. m.	Signoff	
Monday, Apr. 2:		
6:45 a. m.	Test pattern	
7 a. m.	Today	Network.
8 a. m.	do	Do.
8:55 a. m.	Moments of Meditation	Local.
9 a. m.	On Your Account	Network.
9:30 a. m.	Ding Dong School	Do.
10 a. m.	Garry Moore	Do.
10:30 a. m.	Copper Kettle	Local.
11 a. m.	Home	Network.
12 noon	Tennessee Ernie Ford	Do.
12:30 p. m.	Search for Tomorrow	Do.
1 p. m.	Date With Life	Do.
1:15 p. m.	Godfrey Time	Do.
1:30 p. m.	As the World Turns	Do.
2 p. m.	Country House Matinee	Local.
3 p. m.	House Party	Network.
3:30 p. m.	Bob Crosby Show	Do.
4 p. m.	Brighter Day	Do.
4:15 p. m.	Secret Storm	Do.
4:30 p. m.	Queen for a Day	Do.
5 p. m.	Mickey Mouse Club	Do.
6 p. m.	Father Knows Best	Do.
6:30 p. m.	It's a Great Life	Do.
7 p. m.	Playhouse of Stars	Film.
7:30 p. m.	Patti Page	Do.
7:45 p. m.	News Caravan	Network.
8 p. m.	Producers Showcase	Do.
9 p. m.	Producers Showcase—Continued	Do.
9:30 p. m.	Robert Montgomery Presents	Do.
10:30 p. m.	City Detective	Film.
11 p. m.	Break the Bank	Network.
11:30 p. m.	Les Paul and Mary Ford	Film.
11:36 p. m.	Tonight	Network.
12:58 a. m.	Headline News	Local.
1:03 a. m.	Goodnight prayer and signoff	
Tuesday, Apr. 3:		
6:45 a. m.	Test pattern	
7 a. m.	Today	Network.
8 a. m.	do	Do.
8:55 a. m.	Moments of Meditation	Local.
9 a. m.	On Your Account	Network.
9:30 a. m.	Ding Dong School	Do.
10 a. m.	Garry Moore	Do.
10:30 a. m.	Copper Kettle	Local.
11 a. m.	Home	Network.
12 noon	Tennessee Ernie Ford	Do.
12:30 p. m.	Search for Tomorrow	Do.
1 p. m.	Date with Life	Do.
1:15 p. m.	Godfrey Time	Do.
1:30 p. m.	As the World Turns	Do.
2 p. m.	Country House Matinee	Local.
3 p. m.	Habit of Victory	Film.
3:15 p. m.	House Party	Network.

Program schedule, WJIM-TV, Lansing, Mich., week of Apr. 1-7, 1956—Continued

Time	Program time	Source
Tuesday Apr. 3—Continued		
3:30 p. m.	Bob Crosby Show	Network.
4 p. m.	Brighter Day	Do.
4:15 p. m.	Secret Storm	Do.
4:30 p. m.	Peggy's Playhouse	Local.
5 p. m.	Mickey Mouse Club	Network.
6 p. m.	Wild Bill Hickok	Film.
6:30 p. m.	Truth or Consequences	Network.
7 p. m.	Douglas Fairbanks Presents	Film.
7:30 p. m.	Dinah Shore	Network.
7:45 p. m.	News Caravan	Do.
8 p. m.	Milton Berle	Do.
9 p. m.	Fireside Theatre	Do.
9:30 p. m.	Four Star Playhouse	Film.
10 p. m.	$64,000 Question	Network.
10:30 p. m.	Highway Patrol	Film.
11 p. m.	Big Town	Network.
11:30 p. m.	Harry S. Truman Address	Do.
12 midnight	Les Paul and Mary Ford	Film.
12:05 a. m.	Tonight	Network.
12:57 a. m.	Headline News	Local.
1:02 a. m.	Goodnight prayer and signoff	
Wednesday, Apr. 4:		
6:45 a. m.	Test pattern	
7 a. m.	Today	Network.
7:30 a. m.	Michigan Tornado Report	Local.
7:38 a. m.	Today	Network.
8 a. m.	do	Do.
8:55 a. m.	Moments of Meditation	Local.
9 a. m.	On Your Account	Network.
9:30 a. m.	Ding Dong School	Do.
10 a. m.	Garry Moore	Do.
10:30 a. m.	Copper Kettle	Local.
11 a. m.	Home	Network.
12 Noon	Tennessee Ernie Ford	Do.
12:30 p. m.	Search for Tomorrow	Do.
1 p. m.	Date With Life	Do.
1:15 p. m.	Godfrey Time	Do.
1:30 p. m.	As the World Turns	Do.
2 p. m.	Country House Matinee	Local.
3 p. m.	House Party	Network.
3:30 p. m.	Bob Crosby Show	Do.
4 p. m.	Brighter Day	Do.
4:15 p. m.	Secret Storm	Do.
4:30 p. m.	Queen for a Day	Do.
5 p. m.	Mickey Mouse Club	Do.
6 p. m.	Life of Riley	Do.
6:30 p. m.	Screen Directors Playhouse	Do.
7 p. m.	The Count of Monte Cristo	Film.
7:30 p. m.	Eddie Fisher	Network.
7:45 p. m.	News Caravan	Do.
8 p. m.	Damon Runyon Theater	Film.
8:30 p. m.	Godfrey and Friends	Network.
9 p. m.	Kraft TV Theater	Do.
10 p. m.	Wednesday Nite Fites	Do.
10:55 p. m.	Les Paul and Mary Ford	Film.
11 p. m.	Dangerous Assignments	Do.
11:30 p. m.	Two for the Money	Network.
12 p. m.	Tonight	Do.
12:59 a. m.	Headline News	Local.
1:06 a. m.	Goodnight prayer and signoff	
Thursday, Apr. 5:		
6:45 a. m.	Test pattern	
7 a. m.	Today	Network.
8 a. m.	do	Do.
8:55	Moments of Meditation	Local.
9 a. m.	On Your Account	Network.
9:30 a. m.	Ding Dong School	Do.
10 a. m.	Garry Moore	Do.
10:30 a. m.	Copper Kettle	Local.
11 a. m.	Home	Network.
12 noon	Tennessee Ernie Ford	Do.
12:30 p. m.	Search for Tomorrow	Do.
1 p. m.	Date With Life	Do.
1:15	Godfrey Time	Do.
1:30 p. m.	As the World Turns	Do.
2 p. m.	Country House Matinee	Local.
3 p. m.	Industry on Parade	Film.
3:15 p. m.	House Party	Network.
3:30 p. m.	Bob Crosby	Do.
4 p. m.	Brighter Day	Do.
4:15 p. m.	Secret Storm	Do.
4:30 p. m.	Rin Tin Tin	Film.
5 p. m.	Mickey Mouse Club	Network.

Program schedule, WJIM-TV, Lansing, Mich., week of Apr. 1-7, 1956—Continued

Time	Program title	Source
Thursday, Apr. 5—Continued		
6 p. m.	Annie Oakley	Film.
6:30 p. m.	I Led Three Lives	Do.
7 p. m.	Michigan Outdoors	Local.
7:30 p. m.	Dinah Shore	Network.
7:45 p. m.	News Caravan	Do.
8 p. m.	You Bet Your Life	Do.
8:30 p. m.	Dragnet	Do.
9 p. m.	Ozzie and Harriett	Film.
9:30 p. m.	Hockey	Local.
10:30 p. m.	do	Do.
10:58 p. m.	People Are Funny	Network.
11:28 p. m.	Les Paul and Mary Ford	Film.
11:35 p. m.	Michigan Conservation	Do.
11:50 p. m.	Tonight	Network.
12:59 a. m.	Headline News	Local.
1:05 a. m.	Signoff and goodnight prayer	
Friday, Apr. 6:		
6:45 a. m.	Test pattern	
7 a. m.	Today	Network.
8 a. m.	do	Do.
8:55 a. m.	Moments of Meditation	Local.
9 a. m.	On Your Account	Network.
9:30 a. m.	Ding Dong School	Do.
10 a. m.	Garry Moore	Do.
10:30 a. m.	Copper Kettle	Local.
11 a. m.	Home	Network.
12 noon	Tennessee Ernie Ford	Do.
12:30 p. m.	Search for Tomorrow	Do.
1 p. m.	Date With Life	Do.
1:15 p. m.	Godfrey Time	Do.
1:30 p. m.	As the World Turns	Do.
2 p. m.	Country House Matinee	Local.
2:45 p. m.	Dione Lucas Show	Film.
3:15 p. m.	House Party	Network.
3:30 p. m.	Bob Crosby Show	Do.
4 p. m.	Brighter Day	Do.
4:15 p. m.	Secret Storm	Do.
4:30 p. m.	Queen for a Day	Do.
5 p. m.	Mickey Mouse Club	Do.
6 p. m.	The Great Gildersleeve	Film.
6:30 p. m.	Life Is Worth Living	Network.
7 p. m.	Gordon Macrae	Do.
7:15 p. m.	Patti Page	Film.
7:30 p. m.	Eddie Fisher	Network.
7:45 p. m.	News Caravan	Do.
8 p. m.	Playwrights 56	Do.
9 p. m.	Big Story	Do.
9:30 p. m.	Susie	Film.
10 p. m.	Calvalcade of Sports	Network.
10:52 p. m.	Man Called X	Film.
11:24 p. m.	Les Paul and Mary Ford	Do.
11:30 p. m.	Tony Coats Hour	Do.
12:35 a. m.	Tonight	Network.
12:59 a. m.	Headline News	Local.
1:05 a. m.	Goodnight prayer and signoff	
Saturday, Apr 7:		
9:30 a. m.	Test pattern	
9:56 a. m.	Headline News	Do.
10 a. m.	Pinky Lee	Network.
10:30 a. m.	Country Close Up	Film.
10:55 a. m.	Safety Council Series	Do.
11 a. m.	Fury	Network.
11:30 a. m.	Winchell & Mahoney	Do.
12 noon	Big Top	Do.
1 p. m.	Tales of Texas Ranger	Do.
1:30 p. m.	Captain Midnight	Do.
2 p. m.	Lone Ranger	Do.
2:25 p. m.	Baseball	Do.
3 p. m.	Baseball	Do.
4 p. m.	Baseball	Do.
5:24 p. m.	Disneyland	Do.
6 p. m.	The Explorers	Local.
6:30 p. m.	Celebrity Theater	Film.
7 p. m.	Make Room for Daddy	Network.
7:30 p. m.	The Honeymooners	Do.
8 p. m.	Perry Como Show	Do.
9 p. m.	Loretta Young Show	Do.
9:30 p. m.	Star Theater	Do.
10 p. m.	George Gobel Show	Do.
10:30 p. m.	Your Hit Parade	Do.
11 p. m.	Grand Ole Opry	Film.
12 p. m.	Headline News	local.
12:08 a. m.	Goodnight prayer and signoff	

TV programs, KOMU-TV, Columbia, Mo., Apr. 1-7, 1956

SUNDAY, APRIL 1

1:00	Princeton '56	6:30	Highway Patrol
1:30	Outlook	7:00	Comedy Hour
2:00	The Christophers	8:00	Amos 'n Andy
2:30	Zoo Parade	8:30	Masquerade Party (ABC)
3:00	Wide, Wide World	9:00	Loretta Young (NBC)
4:30	This Is the Life	9:30	March of Medicine
5:00	Meet the Press (NBC)	10:00	Lawrence Welk (ABC)
5:30	Overseas Adventure	11:00	Man to Man
6:00	It's a Great Life (NBC)		

MONDAY, APRIL 2

12:00	The Early Show	6:35	News Camera
1:15	Tennessee Ernie	6:45	News Caravan (NBC)
1:45	Modern Romances	7:00	TV Theater
2:00	NBC Matinee Theater	8:00	TV Reader's Digest
3:00	Feather Your Nest (NBC)	8:30	R. Montgomery (NBC)
3:30	Queen for a Day (NBC)	9:30	Damon Runyon Theater
4:00	Pinky Lee (NBC)	10:00	News Roundup
4:30	Howdy Doody (NBC)	10:10	Weather Roundup
5:00	Time for Adventure	10:15	Sports Roundup
6:00	Missouri Forum	10:30	Late Show
6:30	Weather Camera		

TUESDAY, APRIL 3

12:30	Early Show	6:35	News Camera
1:45	Modern Romances	6:45	News Caravan (NBC)
2:00	NBC Matinee Theater	7:00	Milton Berle Show
3:00	Feather Your Nest (NBC)	8:00	Disneyland (ABC)
3:30	Queen for a Day (NBC)	9:00	MGM Parade (ABC)
4:00	Pinky Lee (NBC)	9:30	Mark Saber
4:30	Howdy Doody (NBC)	10:00	News Roundup
5:00	Time for Adventure	10:10	Weather Roundup
6:00	R. F. D.	10:15	Sports Roundup
6:30	Weather Camera	10:30	Goodyear Playhouse

WEDNESDAY, APRIL 4

12:00	Early Show	6:35	News Camera
1:15	Tennessee Ernie	6:45	News Caravan (NBC)
1:45	Modern Romances	7:00	Jungle Jim
2:00	NBC Matinee Theater	7:30	Town and Country
3:00	Feather Your Nest	8:00	The Pendulum
3:30	Queen for a Day (NBC)	8:30	Dollar a Second (ABC)
4:00	Pinky Lee (NBC)	9:00	This Is Your Life (NBC)
4:30	Howdy Doody (NBC)	9:30	Break the Bank
5:00	Time for Adventure	10:00	News Roundup
6:00	Not in Our Stars	10:10	Weather Roundup
6:15	Industry on Parade	10:15	Sports Roundup
6:30	Weather Camera	10:30	Late Show

THURSDAY, APRIL 5

12:30	The Early Show	6:35	News Camera
1:45	Modern Romances	6:45	News Caravan (NBC)
2:00	NBC Matinee Theater	7:00	You Bet Your Life (NBC)
3:00	Sewing Basket	7:30	Dragnet (NBC)
3:15	Ballot Box	8:00	I Led Three Lives
3:30	Queen for a Day (NBC)	8:30	Ford Theater (NBC)
4:00	Pinky Lee (NBC)	9:00	Lux Video Theater
4:30	Howdy Doody (NBC)	10:00	News Roundup
5:00	Time for Adventure	10:10	Weather Roundup
5:30	Farm and Home Show	10:15	Sports Roundup
6:00	Crunch and Des	10:30	Sportsmen's Club
6:30	Weather Camera	10:45	Late Show

TV programs, KOMU-TV, Columbia, Mo., Apr. 1-7, 1956—Continued

FRIDAY, APRIL 6

12:00	Early Show
1:15	Tennessee Ernie
1:45	Modern Romances
2:00	NBC Matinee Theater
3:00	Feather Your Nest (NBC)
3:30	Queen for a Day (NBC)
4:00	Pinky Lee (NBC)
4:30	Howdy Doody
5:00	Time for Adventure
5:30	Showcase
6:00	Rin Tin Tin (ABC)
6:30	Weather Camera
6:35	News Camera
6:45	News Caravan (NBC)
7:00	Gene Autry
7:30	Life of Riley (NBC)
8:00	Make Room for Daddy
8:30	Badge 714
9:00	Cavalcade of Sports
Conclusion:	Red Barber's Corner
10:00	News Roundup
10:10	Weather Roundup
10:15	Sports Roundup
10:30	G. E. Million Dollar Movie

SATURDAY, APRIL 7

1:30	The Big Picture
2:00	Saturday Matinee
4:30	Movie
5:00	Mr. Wizard
5:30	Western Theater
6:30	Ozark Jubilee
7:00	Ozark Jubilee
8:00	People Are Funny
8:30	Four Star Playhouse
9:00	George Gobel
9:30	Your Hit Parade (NBC)
10:00	Telenews Weekly
10:15	Cavalcade Theater (ABC)
10:45	Late Show

Program schedule, KIDO-TV, channel 7, Boise, Idaho, Apr. 1-7, 1956

	Program	Type	Sponsor
	SUNDAY, APR. 1, 1956		
1:30	Sign on		
1:30	Easter feature: That I May See	Free film, sustaining	
2:30	This Is the Life	do	
3:00	Your Schools in Action	Live sustaining	
3:30	Industry on Parade	Free film, sustaining	
3:45	News Review of the Week—Wayne Davis.	Live commercial	Quality Corner.
4:00	Pontiac Playwright 1956	NBC commercial	Pontiac.
5:00	Ministry	Live sustaining	
5:30	Halls of Ivy—Ronald Colman	Syndicated film commercial	Peasley Transfer & Storage.
6:00	Sid Caesar's Hour	NBC commercial	Remington—American Chicle—Helene Curtis.
7:00	Lawrence Welk Show	ABC commercial	Dodge.
8:00	Life of Riley	Syndicated film commercial	Safeway.
8:30	Loretta Young Show	NBC commercial	P. & G.
9:00	Amos and Andy	Syndicated film commercial	Purity Biscuit.
9:30	Special—The Twisted Cross	NBC commercial	North American Phillips Co.
10:30	Justice	do	American Tobacco Co.
11:00	Flying A Reporter—Wayne Davis	Live commercial	Goodman Oil Co.
11:15	Play of the Week	Syndicated film participating	
11:45	Nite Owl News	Live sustaining	
	MONDAY, APR. 2, 1956		
2:00	Test pattern		
2:30	Sign on		
2:30	International Theatre	Feature film participating	
3:30	Dr. Norman Vincent Peale	Free film, sustaining	
3:45	James Mason Show	Syndicated film participating	
3:55	Philena Barden Exercises	do	
4:00	Stu Irwin—Trouble with Father	do	
4:30	Sheriff Spud and Western Yarn	Live and feature film participating.	
5:45	Sheriff Spud and Telecomics	Syndicated film participating	
6:00	Cowboy G-men	do	
6:30	Shell News—Vern Moore	Live commercial	Shell Oil Co.
6:45	Quality Corner News—Del Lundbom.	do	Qualifreeze Foods.
6:55	Boise Building Supply Weather Picture—Jack Link.	do	Boise Building Supply.
7:00	Disneyland, U. S. A.—Uncle Remus.	ABC commercial	American Motors—Derby Foods—American Dairy Association.

Program schedule, KIDO–TV, channel 7, Boise, Idaho, Apr. 1–7, 1956—Continued

	Program	Type	Sponsor
	MONDAY, APR. 2, 1956—continued		
8:00	Ironrite full-length feature	Feature film commercial	Mangums—Ironrite.
9:30	Dupont Cavalcade Theatre	ABC commercial	DuPont.
10:00	Patti Page Show	Syndicated film commercial	Oldsmobile.
10:15	Flying A Reporter—Del Lundbom	Live commercial	Goodman Oil Co.
10:30	Stein McMurray Final Weather Picture—Jack Link.	do	Safeco Insurance Agents.
10:35	Masterpiece Theater	Feature film participating	
12:00	Nite Owl News	Live sustaining	
	TUESDAY, APR. 3, 1956		
2:00	Test pattern		
2:30	Sign on		
2:30	International Theater	Feature film participating	
3:30	Hal Roach Half Hour	Syndicated film participating	
4:00	Stu Irwin—Trouble With Father	do	
4:30	Sheriff Spud and Western Yarn	Live and feature film participating.	
5:45	Sheriff Spud and Telecomics	Syndicated film participating	
6:00	Superman	do	
6:30	Shell News—Vern Moore	Live commercial	Shell Oil Co.
6:45	Quality Corner News—Del Lundbom.	do	Qualifreeze Foods.
6:55	Purina Weather Picture—Jack Link	do	Purina Dealers.
7:00	Fireside Theater	NBC commercial	P. & G.
7:30	My Little Margie	Syndicated film commercial	Clover Club Potato Chips.
8:00	The Chevy Show	NBC commercial	Chevrolet.
9:00	Sexty's Broadway Star Theater	Syndicated film commercial	Sexty's Jewelers.
9:30	Celebrity Playhouse	do	Boise Payette Lumber Co.—Sego Milk.
10:00	Truth or Consequences	NBC commercial	Old Golds.
10:30	Flying A Reporter—Del Lundbom	Live commercial	Goodman Oil Co.
10:45	Stein McMurray Final Weather—Jack Link.	do	Safeco Insurance Agents.
10:50	Festival Theater	Feature film participating	
11:45	Nite Owl News	Live sustaining	
	WEDNESDAY, APR. 4, 1956		
2:00	Test pattern		
2:30	Sign on		
2:30	International Theater	Feature film participating	
3:30	Orange—From Tree to Table	Free film sustaining	
3:55	Philena Barden Exercises	Syndicated film participating	
4:00	Stu Irwin—Trouble With Father	do	
4:30	Sheriff Spud and Western Yarn	Live and Western film participating.	
5:45	Sheriff Spud and Telecomics	Syndicated film participating	
6:00	Frankie Fontaine Showtime	do	
6:30	Shell News—Vern Moore	Live commercial	Shell Oil Co.
6:45	Quality Corner News—Del Lundbom.	do	Qualifreeze Foods.
6:55	Boise Building Supply Weather Picture—Jack Link.	do	Boise Building Supply.
7:00	It's a Great Life	NBC commercial	Chrysler—Plymouth.
7:30	Passport to Danger	Syndicated film commercial	Fifer's Fair—Royal Tire & Battery.
8:00	Science Fiction Theater	do	Olympia Brewing—White King.
8:30	Ford Theater	NBC commercial	Ford Motors.
9:00	First Security Theater	Feature film commercial	First Security Bank.
10:30	Flying A Reporter—Del Lundbom	Live commercial	Goodman Oil Co.
10:45	Stein McMurray Final Weather—Jack Link.	do	Safeco Insurance Agents.
10:50	Liberace	Syndicated Film Sustaining	
11:15	Harvest Hands	do	
11:45	Nite Owl News	Live sustaining	
	THURSDAY, APR. 5, 1956		
2:00	Test pattern		
2:30	Sign on		
2:30	International Theater	Feature film participating	
3:30	The Beulah Show	Syndicated film participating	
4:00	Stu Irwin—Trouble With Father	do	
4:30	Sheriff Spud and Western Yarn	Live and western film participating.	
5:45	Sheriff Spud and Telecomics	Syndicated film participating	
6:00	The Lone Ranger	ABC commercial	General Mills—American Dairy.

Program schedule, KIDO-TV, channel 7, Boise, Idaho, Apr. 1–7, 1956—**Continued**

	Program	Type	Sponsor
	THURSDAY APR. 5, 1956—continued		
6:30	Shell News—Vern Moore	Live commercial	Shell Oil Co.
6:45	Quality Corner News—Del Lundbom.	do	Qualifreeze Foods.
6:55	Purina Weather Picture—Jack Link.	do	Purina Dealers.
7:00	Bishop Fulton Sheen	ABC commercial	Admiral Dealers.
7:30	Susie MacNamara—Private Secretary.	Syndicated film commercial	Best Appliance.
8:00	Groucho Marx	NBC commercial	DeSoto-Plymouth.
8:30	The Star and the Story	Syndicated film commercial	Brown & Haley—Morning Milk.
9:00	Dragnet	NBC commercial	Chesterfields.
9:30	Ford Dealers Theater	Feature film commercial	Ford Motor Dealers.
11:00	Flying A Reporter—Del Lundbom.	Live commercial	Goodman Oil Co.
11:15	Stein McMurray Final Weather—Jack Link.	do	Safeco Insurance Agents.
11:20	Frankie Laine Show	Syndicated film sustaining	
12:00	Nite Owl News	Live sustaining	
	FRIDAY, APR. 6, 1956		
2:00	Test pattern		
2:30	Sign on		
2:30	International Theater Trio	Feature film participating	
3:55	Philena Barden Exercises	Syndicated film participating.	
4:00	The Roy Rogers Show	NBC commercial	General Foods.
4:30	Sheriff Spud and Western Yarn	Live and feature film participating.	
5:45	Sheriff Spud and Bobo the Hobo	Syndicated film participating.	
6:00	Cisco Kid and Pancho	do	
6:30	Shell News—Vern Moore	Live commercial	Shell Oil Co.
6:45	Quality Corner News—Del Lundbom.	do	Qualifreeze Foods.
6:55	Boise Building Supply Weather Picture—Jack Link.	do	Boise Building Supply.
7:00	Top Plays of 1956	Syndicated film participating.	
7:30	Stop the Music	ABC commercial	Necchi Dealers.
8:00	Ken Murray Show	Syndicated film commercial	Bekins Moving & Storage.
8:30	Break the Bank	ABC commercial	Dodge Dealers.
9:00	Mayor of the Town	Syndicated film commercial	Richfield Oil.
9:30	I Spy—Raymond Massey	do	Boise Payette Lumber Co
10:00	Patti Page Show	do	Oldsmobile.
10:15	Flying A Reporter—Del Lundbom.	Live commercial	Goodman Oil Co.
10:30	Stein McMurray Final Weather—Jack Link.	do	Safeco Insurance Agents.
10:35	Billboard Theater	Feature film participating	
12:00	Nite Owl News	Live sustaining	
	SATURDAY, APR. 7, 1956		
2:30	Sign on		
2:30	Poised for Protection	Free film sustaining	
2:45	Bill Corum Sports	Syndicated film sustaining	
3:00	Roller Derby	do	
3:30	Jalopy Derby	do	
4:00	Classroom—BJC	Live sustaining	
4:20	Find a Hobby	Syndicated film sustaining	
4:30	Sheriff Spud and Mr. Wizard	Live and NBC sustaining	
5:15	Sheriff Spud Variety Show	Live participating	
5:45	Sheriff Spud Birthdays	do	
6:00	China Smith	Syndicated film participating	
6:30	Quality Corner News—Wayne Davis.	Live commercial	Ace Dry Cleaners.
6:55	Purina Weather Picture—Jack Link	do	Purina Dealers.
7:00	Life With Elizabeth	Syndicated film participating	
7:30	Crossroads	ABC commercial	Chevrolet Motors.
8:00	George Gobel Show	NBC commercial	Pet Milk—Dial Soap.
8:30	Your Hit Parade	do	Lucky Strike—Richard Hudnut.
9:00	Premier—"Crunch and Des"	Syndicated film commercial	Lucky Lager.
9:30	Warner Bros. Presents	ABC commercial	Liggett & Myers—General Electric—Monsanto Chemical.
10:30	TV Reader's Digest	do	Studebaker-Packard.
11:00	Flying "A" Reporter—Wayne Davis.	Live commercial	Goodman Oil Co.
11:15	Chicago wrestling	Syndicated film participating	
11:45	Nite Owl News	Live sustaining	

Program schedule for WJHP-TV, Jacksonville, Fla., channel 36, Apr. 1-7, 1956

Time	Program	Source
Sunday, Apr. 1:		
12:15 p. m	Sign on	Test pattern.
12:30 p. m	Faith for Today	Filmed program.
1 p. m	Oral Roberts	Do.
1:30 p. m	Frontiers of Faith	NBC network program.
2 p. m	Princeton '56	Do.
2:30 p. m	Outlook	Do.
3 p. m	Dr. Spock	Do.
3:30 p. m	Zoo Parade	Do.
4 p. m	Wide, Wide World	Do.
5:30 p. m	The Big Picture	Filmed program.
6 p. m	Meet the Press	NBC network program.
6:30 p. m	Our Merchant Marine	Filmed program.
7 p. m	It's a Great Life	NBC network program.
7:30 p. m	Frontier	Do.
8 p. m	Comedy Hour	Do.
9 p. m	Alcoa Hour	Do.
10 p. m	Loretta Young Show	Do.
10:30 p. m	March of Medicine	Do.
11 p. m	Tomorrow's Weather	Local live program.
11:01 p. m	Robot Gardener	Filmed program.
11:11 p. m	Four Act Playhouse	Do.
12:45 a. m	Late News	Local live program.
12:47 a. m	Signoff	
Monday, Apr. 2:		
6:45 a. m	Sign on	Test pattern.
7 a. m	Today	NBC network program.
9 a. m	Morning Theater	Filmed program.
10 a. m	Ding Dong School	NBC network program.
10:30 a. m	Ernie Kovacs Show	Do.
11 a. m	Home	Do.
12 noon	News	Local live program.
12:05 p. m	Timely Topics	Filmed program.
12:30 p. m	Feather Your Nest	NBC network program.
1 p. m	News	Local live program.
1:05 p. m	TV Chapel	Do.
1:15 p. m	Afternoon Movie	Filmed program.
3 p. m	Matinee Theater	NBC network program; color.
4 p. m	Ish Brant [1]	Local live program.
4:05 p. m	Song Theater	Filmed program.
4:15 p. m	Modern Romances	NBC network program.
4:30 p. m	Queen for a Day	Do.
5 p. m	Pinky Lee Show	Do.
5:30 p. m	Howdy Doody	NBC network program; color.
6 p. m	Tony Mason Show	Local live program.
6:15 p. m	Ted Chapeau Show	Do.
6:25 p. m	Sports	Do.
6:30 p. m	Television Journal	Do.
6:40 p. m	Weather Wise	Do.
6:45 p. m	Riders of the Purple Sage	Filmed program.
7 p. m	Sherlock Holmes	Filmed program.
7:30 p. m	This Is Your Navy	Local live program.
7:45 p. m	Camel News Caravan	NBC network program.
8 p. m	Producer's Showcase	NBC network program; color.
9:30 p. m	Four Act Playhouse	Filmed program.
10:30 p. m	The Navy O. L. Story	Do.
11 p. m	Tomorrow's Weather	Local live program.
11:01 p. m	Curtain Call	Filmed program.
11:30 p. m	Tonight	NBC network program.
1 a. m	Signoff	
Tuesday, Apr. 3:		
6:45 a. m	Sign on [2]	Test pattern.[2]
7:45 a. m	Today	NBC network program.
9 a. m	Morning Theater	Filmed program.
10 a. m	Ding Dong School	NBC network program.
10:30 a. m	Ernie Kovacs Show	Do.
11 a. m	Home	Do.
12 noon	News	Local live program.
12:05 p. m	Timely Topics	Filmed program.
12:30 p. m	Feather Your Nest	NBC network program.
1 p. m	News	Local live program.
1:05 p. m	TV Chapel	Do.
1:15 p. m	Afternoon Movie	Filmed program.
3 p. m	Matinee Theater	NBC network program (color).
4 p. m	Song Theater	Filmed program.
4:15 p. m	Modern Romances	NBC network program.
4:30 p. m	Queen for a Day	Do.
5 p. m	Pinky Lee Show	Do.
5:30 p. m	Howdy Doody	NBC network program (color).
6 p. m	Tony Mason Show	Local live program.

See footnote at end of table.

Program schedule for WJHP-TV, Jacksonville, Fla., channel 36, Apr. 1-7, 1956—Continued

Time	Program	Source
Tuesday, Apr. 3—Continued		
6:15 p. m.	Ted Chapeau Show	Local live program
6:25 p. m.	Sports	Do.
6:30 p. m.	Television Journal	Do.
6:40 p. m.	Weather Wise	Do.
6:45 p. m.	Riders of the Purple Sage	Filmed program.
7 p. m.	Right Off the Reel	Local live program.
7:15 p. m.	John Daly and the News	ABC network program.
7:30 p. m.	Dinah Shore Show	NBC network program.
7:45 p. m.	Camel News Caravan	Do.
8 p. m.	Milton Berle Show	NBC network program; color.
9 p. m.	Fireside Theater	NBC network program.
9:30 p. m.	This Is Your Life	NBC network program; filmed.
10 p. m.	Tomorrow's Careers	ABC network program.
10:30 p. m.	Star Tonight	ABC network program; filmed.
11 p. m.	Tomorrow's Weather	Local live program.
11:01 p. m.	Curtain Call	Filmed program.
11:30 p. m.	Harry Truman	NBC network program.
12 midnight	Tonight	Do.
1 a. m.	Signoff	
Wednesday, Apr. 4:		
6:45 a. m.	Sign on	Test pattern.
7 a. m.	Today	NBC network program.
9 a. m.	Morning Theater	Filmed program.
10 a. m.	Ding Dong School	NBC network program.
10:30 a. m.	Ernie Kovacs Show	Do.
11 a. m.	Home	Do.
12 noon	News	Local live program.
12:05 p. m.	Timely Topics	Filmed program.
12:30 p. m.	Feather Your Nest	NBC network program.
1 p. m.	News	Local live program.
1:05 p. m.	TV Chapel	Do.
1:15 p. m.	Afternoon Movie	Filmed program.
3 p. m.	Matinee Theater	NBC network program (color).
4 p. m.	Ish Brant [1]	Local live program.
4:05 p. m.	Song Theater	Filmed program.
4:15 p. m.	Modern Romances	NBC network program.
4:30 p. m.	Queen for a Day	Do.
5 p. m.	Pinky Lee Show	Do.
5:30 p. m.	Howdy Doody	NBC program (color).
6 p. m.	Tony Mason Show	Local live program.
6:15 p. m.	Ted Chapeau Show	Do.
6:25 p. m.	Sports	Do.
6:30 p. m.	Television Journal	Do.
6:40 p. m.	Weather Wise	Do.
6:45 p. m.	Sportsman's Club	Filmed and local live program.
7 p. m.	Highway Patrol	Filmed program.
7:30 p. m.	Coke Time	NBC network program.
7:45	Greatest Fights of the Century	Filmed program.
8 p. m.	Ish Brant [1]	Local live program.
8:15 p. m.	Theatre '36	Filmed program.
8:30 p. m.	Make Room For Daddy	ABC network program; film.
9 p. m.	Wyatt Earp	Do.
9:30 p. m.	Count of Monte Cristo	Filmed program.
10 p. m.	Wednesday Night Fights	ABC network program.
10:45 p. m.	Featurette	Filmed program.
11 p. m.	Tomorrow's Weather	local live program.
11:01 p. m.	Curtain Call	Filmed program.
11:30 p. m.	Tonight	NBC network program.
1 a. m.	Sign off	
Thursday, Apr. 5:		
6:45 a. m.	Sign on	Test pattern.
7 a. m.	Today	NBC network program.
9 a. m.	Morning Theater	Filmed program.
10 a. m.	Ding Dong School	NBC network program.
10:30 a. m.	Ernie Kovacs Show	Do.
11 a. m.	Home	Do.
12 noon	News	Local live program.
12:05 p. m.	Timely Topics	Filmed program.
12:30 p. m.	Feather Your Nest	NBC network program.
1 p. m.	News	Local live program.
1:05 p. m.	TV Chapel	Do.
1:15 p. m.	Afternoon Movie	Filmed program.
3 p. m.	Matinee Theater	NBC network program; color.
4 p. m.	Song Theater	Filmed program.
4:15 p. m.	Modern Romances	NBC network program.
4:30 p. m.	Queen for a Day	Do.
5 p. m.	Pinky Lee Show	Do.
5:30 p. m.	Howdy Doody	NBC network program; color.
6 p. m.	Tony Mason Show	Local live program.
6:15 p. m.	Ted Chapeau Show	Do.
6:25 p. m.	Sports	Do.

See footnote at end of table.

Program schedule for WJHP-TV, Jacksonville, Fla., channel 36, Apr. 1–7, 1956—Continued

Time	Program	Source
Thursday, Apr. 5—Con.		
6:30 p. m	Television Journal	Local live program
6:40 p. m	Weather Wise	Do.
6:45 p. m	Riders of the Purple Sage	Filmed program.
7 p. m	Musical Stars	Filmed program.
7:15 p. m	John Daly and the News	ABC network program.
7:30 p. m	Dinah Shore Show	NBC network program.
7:45 p. m	News Caravan	Do.
8 p. m	You Bet Your Life	Do.
8:30 p. m	Dragnet	Do.
9 p. m	People's Choice	Do.
9:30 p. m	Big Town	NBC network program; filmed.
10 p. m	Lux Video Theater	NBC network program.
11 p. m	Tomorrow's Weather	Local live program.
11:01 p. m	Curtain Call	Filmed program.
11:30 p. m	Tonight	NBC network program.
1 a. m	Signoff	
Friday, Apr. 6:		
6:45 a. m	Sign on	Test pattern.
7 a. m	Today	NBC network program.
9 a. m	Morning Theater	Filmed program.
10 a. m	Ding Dong School	NBC network program.
10:30 a. m	Ernie Kovacs Show	Do.
11 a. m	Home	Do.
12 noon	News	Local, live program.
12:05 p. m	Timely Topics	Filmed program.
12:30 p. m	Feather Your Nest	NBC network program.
1 p. m	News	Local, live program.
1:05 p. m	TV Chapel	Do.
1:15 p. m	Afternoon Movie	Filmed program.
3 p. m	Matinee Theater	NBC network program; color
4 p. m	Ish Brant [1]	Local, live program.
4:05 p. m	Song Theater	Filmed program.
4:15 p. m	Modern Romances	NBC network program.
4:30 p. m	Queen for a Day	Do.
5 p. m	Pinky Lee Show	Do.
5:30 p. m	Howdy Doody	NBC netwrok program; color.
6 p. m	Tony Mason Show	Local, live program.
6:15 p. m	Ted Chapeau Show	Do.
6:25 p. m	Sports	Do.
6:30 p. m	Television Journal	Do.
6:40 p. m	Weather Wise	Do.
6:45 p. m	LeRoy Collins [3]	Do.
7 p. m	Boating Time	Local live program.
7:15 p. m	John Daly and the News	ABC network program.
7:30 p. m	Coke Time	NBC network program.
7:45 p. m	News Caravan	Do.
8 p. m	Crossroads	ABC network program; filmed.
8:30 p. m	Life of Riley	NBC network program.
9 p. m	The Big Story	Do.
9:30 p. m	Farris Bryant [3]	Live local program.
10 p. m	Cavalcade of Sports	NBC network program.
10:45 p. m	Red Barber's Corner	Do.
11 p. m	Tomorrow's Weather	Local live program.
11:01 p. m	Curtain Call	Filmed.
11:30 p. m	Tonight	NBC network program.
1 a. m	Signoff	
Saturday, Apr. 7:		
10:15 a. m	Sign on	Test pattern.
10:30 a. m	Children's Corner	NBC network program.
11 a. m	Fury	Do.
11:30 a. m	Uncle Johnny Coons	Do.
12 noon	Winchell-Mahoney Show	Do.
12:30 p. m	Mr. Wizard	NBC network program; filmed.
1 p. m	Wild West Playhouse	Filmed program.
6:30 p. m	Beaver Street Baptist Church Hour	Local live program.
7 p. m	Chance of a Lifetime	ABC network program; filmed.
7:30 p. m	The Big Surprise	NBC network program.
8 p. m	Perry Como Show	Do.
9 p. m	People Are Funny	Do.
9:30 p. m	Break the Bank	ABC network program; filmed.
10 p. m	George Gobel Show	NBC network program.
10:30 p. m	Hit Parade	Do.
11 p. m	Tomorrow's Weather	Local live program.
11:01 p. m	Salad Mixer	Filmed program.
11:11 p. m	Four Act Playhouse	Do.
12:25 a. m	Late News	Local live program.
12:30 a. m	Signoff	

[1] Political candidate for superintendent of board of public instruction.
[2] Due to technical difficulties off the air until 7:45 a. m.
[3] Political candidate for office of Governor of Florida.

Central Plains Enterprises, Inc., television station KVOO-TV, Tulsa, Okla.: Program schedule, April 1 through 7, 1956

Sunday, April 1:
- 12 noon to 12:30 p. m.: The Christophers
- 12:30 to 12:45 p. m.: Man to Man
- 12:45 to 1 p. m.: Film Tour
- 1 to 1:30 p. m.: The Way
- 1:30 to 2 p. m.: Outlook (NBC)
- 2 to 2:30 p. m.: Know Your City
- 2:30 to 3 p. m.: Zoo Parade (NBC)
- 3 to 4:30 p.m.: Wide, Wide World (NBC)
- 4:30 to 5 p. m.: Captain Gallant (NBC)
- 5 to 5:30 p. m.: Soldiers of Fortune
- 5:30 to 6 p. m.: Roy Rogers (NBC)
- 6 to 6:30 p. m.: It's a Great Life (NBC)
- 6:30 to 7 p. m.: Frontier (NBC)
- 7 to 8 p. m.: Comedy Time (NBC)
- 8 to 9 p. m.: Alcoa Hour (NBC)
- 9 to 9:30 p. m.: Loretta Young Show (NBC)
- 9:30 to 10 p. m.: March of Medicine (NBC)
- 10 to 10:30 p. m.: TV Playhouse
- 10:30 to 11 p. m.: Badge 714
- 11 p. m. to 12 midnight: Wrestling

Monday, April 2:
- 7 to 9 a. m.: Today (NBC)
- 9 to 9:30 a. m.: Ding Dong School (NBC)
- 9:30 to 10 a. m.: Ernie Kovacs (NBC)
- 10 to 11 a. m.: Home (NBC)
- 11 to 11:30 a. m.: Tennessee Ernie (NBC)
- 11:30 a. m. to 12 noon: Feather Your Nest (NBC)
- 12 noon to 12:05 p. m.: News
- 12:05 to 12:30 p. m.: Noon Show
- 12:30 to 1 p. m.: Looney Tunes
- 1 to 1:30 p. m.: My Little Margie
- 1:30 to 2 p. m.: Your Magic Empire
- 2 to 3 p. m.: Matinee Theater (NBC)
- 3 to 3:15 p. m.: Date With Life (NBC)
- 3:15 to 3:30 p. m.: Modern Romances (NBC)
- 3:30 to 4 p. m.: Queen for a Day (NBC)
- 4 to 4:30 p. m.: Pinky Lee Show (NBC)
- 4:30 to 5 p. m.: Howdy Doody (NBC)
- 5 to 6:15 p. m.: Uncle Hiram
- 6:15 to 6:20 p. m.: News
- 6:20 to 6:25 p. m.: Weather
- 6:25 to 6:30 p. m.: Sports
- 6:30 to 6:45 p. m.: Gordon MacRae (NBC)
- 6:45 to 7 p. m.: News (NBC)
- 7 to 8:30 p. m.: Producers Showcase (NBC)
- 8:30 to 9:30 p. m.: Robert Montgomery Presents (NBC)
- 9:30 to 10 p. m.: Man Called "X"
- 10 to 10:30 p. m.: Let's Dance
- 10:30 to 10:40 p. m.: News
- 10:40 to 10:50 p. m.: Weather
- 10:50 to 11 p. m.: Sports
- 11 p. m. to 12 midnight: Tonight (NBC)

Tuesday, April 3:
- 7 to 9 a. m.: Today (NBC)
- 9 to 9:30 a. m.: Ding Dong School (NBC)
- 9:30 to 10 a. m.: Ernie Kovacs (NBC)
- 10 to 11 a. m.: Home (NBC)
- 11 to 11:30 a. m.: Tennessee Ernie (NBC)
- 11:30 a. m. to 12 noon: Feather Your Nest (NBC)
- 12 noon to 12:05 p. m.: News
- 12:05 to 12:30 p. m.: Noon Show
- 12:30 to 1 p. m.: Looney Tunes
- 1 to 1:30 p. m.: My Little Margie

Central Plains Enterprises, Inc., television station KVOO-TV, Tulsa, Okla.: Program schedule, April 1 through 7, 1956—Continued

Tuesday, April 3—Continued
- 1:30 to 2 p. m.: Tulsa Schoolroom
- 2 to 3 p. m.: Matinee Theater (NBC)
- 3 to 3:15 p. m.: Date With Life (NBC)
- 3:15 to 3:30 p. m.: Modern Romances (NBC)
- 3:30 to 4 p. m.: Queen for a Day (NBC)
- 4 to 4:30 p. m.: Pinky Lee Show (NBC)
- 4:30 to 5 p. m.: Howdy Doody (NBC)
- 5 to 6:15 p. m.: Uncle Hiram
- 6:15 to 6:20 p. m.: News
- 6:20 to 6:25 p. m.: Weather
- 6:25 to 6:30 p. m.: Sports
- 6:30 to 6:45 p. m.: Dinah Shore (NBC)
- 6:45 to 7 p. m.: News (NBC)
- 7 to 8 p. m.: Milton Berle (NBC)
- 8 to 8:30 p. m.: Jane Wyman Theater (NBC)
- 8:30 to 9:30 p. m.: Circle Theater (NBC)
- 9:30 to 10 p. m.: Big Town (NBC)
- 10 to 10:15 p. m.: Patti Page
- 10:15 to 10:30 p. m.: Sports Shop
- 10:30 to 10:40 p. m.: News
- 10:40 to 10:50 p. m.: Weather
- 10:50 to 11 p. m.: Sports
- 11 p. m. to 12 midnight: Tonight (NBC)

Wednesday, April 4:
- 7 to 9 a. m.: Today (NBC)
- 9 to 9:30 a. m.: Ding Dong School (NBC)
- 9:30 to 10 a. m.: Ernie Kovacs (NBC)
- 10 to 11 a. m.: Home (NBC)
- 11 to 11:30 a. m.: Tennessee Ernie (NBC)
- 11:30 a. m. to 12 noon: Feather Your Nest (NBC)
- 12 noon to 12:05 p. m.: News
- 12:05 to 12:30 p. m.: Noon Show
- 12:30 to 1 p. m.: Looney Tunes
- 1 to 1:30 p. m.: My Little Margie
- 1:30 to 2 p. m.: Tulsa University
- 2 to 3 p. m.: Matinee Theater (NBC)
- 3 to 3:15 p. m.: Date With Life (NBC)
- 3:15 to 3:30 p. m.: Modern Romances (NBC)
- 3:30 to 4 p. m.: Queen for a Day (NBC)
- 4 to 4:30 p. m.: Pinky Lee Show (NBC)
- 4:30 to 5 p. m.: Howdy Doody (NBC)
- 5 to 6:15 p. m.: Uncle Hiram
- 6:15 to 6:20 p. m.: News
- 6:20 to 6:25 p. m.: Weather
- 6:25 to 6:30 p. m.: Sports
- 6:30 to 6:45 p. m.: Eddie Fisher (NBC)
- 6:45 to 7 p. m.: News (NBC)
- 7 to 7:30 p. m.: Screen Directors Playhouse (NBC)
- 7:30 to 8 p. m.: Father Knows Best (NBC)
- 8 to 9 p. m.: Kraft TV Theater (NBC)
- 9 to 9:30 p. m.: This is Your Life (NBC)
- 9:30 to 10 p. m.: Midwestern Hayride (NBC)
- 10 to 10:30 p. m.: T-Town Jubilee
- 10:30 to 10:40 p. m.: News
- 10:40 to 10:50 p. m.: Weather
- 10:50 to 11 p. m.: Sports
- 11 p. m to 12 midnight: Tonight (NBC)

Thursday, April 5:
- 7 to 9 a. m.: Today (NBC)
- 9 to 9:30 a. m.: Ding Dong School (NBC)
- 9:30 to 10 a. m.: Ernie Kovacs (NBC)
- 10 to 11 a. m.: Home (NBC)
- 11 to 11:30 a. m.: Tennessee Ernie (NBC)

Central Plains Enterprises, Inc., television station KVOO–TV, Tulsa, Okla., Program schedule, April 1 through 7, 1956—Continued

Thursday, April 5—Continued
- 11:30 a. m. to 12 noon: Feather Your Nest (NBC)
- 12 noon to 12:05 p. m.: News
- 12:05 to 12:30 p. m.: Noon Show
- 12:30 to 1 p. m.: Looney Tunes
- 1 to 1:30 p. m.: My Little Margie
- 1:30 to 2 p. m.: Tulsa Schoolroom
- 2 to 3 p. m.: Matinee Theater (NBC)
- 3 to 3:15 p. m.: Date with Life (NBC)
- 3:15 to 3:30 p. m.: Modern Romances (NBC)
- 3:30 to 4 p. m.: Queen for a Day (NBC)
- 4 to 4:30 p. m.: Pinky Lee Show (NBC)
- 4:30 to 5 p. m.: Howdy Doody (NBC)
- 5 to 6:15 p. m.: Uncle Hiram
- 6:15 to 6:20 p. m.: News
- 6:20 to 6:25 p. m.: Weather
- 6:25 to 6:30 p. m.: Sports
- 6:30 to 6 45 p. m.: Dinah Shore (NBC)
- 6:45 to 7 p. m.: News (NBC)
- 7 to 7:30 p. m.: Groucho Marx (NBC)
- 7:30 to 8 p. m.: Dragnet (NBC)
- 8 to 8:30 p. m.: Peoples Choice (NBC)
- 8:30 to 9 p. m.: Ford Theater (NBC)
- 9 to 10 p. m.: Lux Video Theater (NBC)
- 10 to 10:30 p. m.: Leon McAuliffe
- 10:30 to 10:40 p. m.: News
- 10:40 to 10:50 p. m.: Weather
- 10:50 to 11 p. m.: Sports
- 11 p. m. to 12 midnight: Tonight (NBC)

Friday, April 6:
- 7 to 9 a. m.: Today (NBC)
- 9 to 9:30 a. m.: Ding Dong School (NBC)
- 9:30 to 10 a. m.: Ernie Kovacs (NBC)
- 10 to 11 a. m.: Home (NBC)
- 11 to 11:30 a. m.: Tennessee Ernie (NBC)
- 11:30 a. m. to 12 noon: Feather Your Nest (NBC)
- 12 noon to 12:05 p. m.: News
- 12:05 to 12:30 p. m.: Noon show
- 12:30 to 1 p. m.: Looney Tunes
- 1 to 1:30 p. m.: My Little Margie
- 1:30 to 2 p. m.: Magic Empire
- 2 to 3 p. m.: Matinee Theater (NBC)
- 3 to 3:15 p. m.: Date With Life (NBC)
- 3:15 to 3:30 p. m.: Modern Romances (NBC)
- 3:30 to 4 p. m.: Queen for a Day (NBC)
- 4 to 4:30 p. m.: Pinky Lee Show (NBC)
- 4:30 to 5 p. m.: Howdy Doody (NBC)
- 5 to 6:15 p. m.: Uncle Hiram
- 6:15 to 6:20 p. m.: News
- 6:20 to 6:25 p. m.: Weather
- 6:25 to 6:30 p. m.: Sports
- 6:30 to 6:45 p. m.: Eddie Fisher (NBC)
- 6:45 to 7 p. m.: News (NBC)
- 7 to 7:30 p. m.: Truth or Consequences (NBC)
- 7:30 to 8 p. m.: Great Gildersleeve
- 8 to 8:30 p. m.: Big Story (NBC)
- 8:30 to 9 p. m.: Star Stage (NBC)
- 9 to 9:45 p. m.: Boxing (NBC)
- 9:45 to 10 p. m.: Red Barbers Corner (NBC)
- 10 to 10:15 p. m.: Patti Page Show
- 10:15 to 10:30 p. m.: Public Prosecutor
- 10:30 to 10:40 p. m.: News
- 10:40 to 10:50 p. m.: Weather
- 10:50 to 11 p. m.: Sports
- 11 p. m. to 12 midnight: Tonight (NBC)

Central Plains Enterprises, Inc., television station KVOO-TV, Tulsa, Okla.: Program schedule, April 1 through 7, 1956—Continued

Saturday, April 7:
- 8 to 9 a. m.: Western Movie
- 9 to 9: 30 a. m.: Pinky Lee (NBC)
- 9: 30 to 10 a. m.: Childrens Corner (NBC)
- 10 to 10: 30 a. m.: Fury (NBC)
- 10: 30 to 11 a. m.: Uncle Johnny Coons (NBC)
- 11 to 11: 30 a. m.: Winchell-Mahoney Show (NBC)
- 11: 30 to 12: 30 p. m.: Western Movie
- 12: 30 to 1 p. m.: Rural Route No. 2.
- 1 to 1: 30 p. m.: Agriculture on Parade
- 1: 30 to 2 p. m.: Oil Capital
- 2 to 3 p. m.: Western Movie
- 3 to 4 p. m.: Movie
- 4 to 4: 30 p. m.: Questions and Quotations
- 4: 30 to 5 p. m.: Big Picture
- 5 to 5: 30 p. m.: Wrestling
- 5: 30 to 6 p. m.: Front Page Detective
- 6 to 6: 15 p. m.: Sports
- 6: 15 to 6: 25 p. m.: News
- 6: 25 to 6: 30 p. m.: Weather
- 6: 30 to 7 p. m.: The Big Surprise (NBC)
- 7 to 8 p. m.: Perry Como Show (NBC)
- 8 to 8: 30 p. m.: People Are Funny (NBC)
- 8: 30 to 9 p. m.: Jimmy Durante (NBC)
- 9 to 9: 30 p. m.: George Gobel (NBC)
- 9: 30 to 10 p. m.: Your Hit Parade (NBC)
- 10 to 10: 30 p. m.: Big Idea
- 10: 30 to 11 p. m.: Grand Ole Opry
- 11 to 11: 05 p. m.: News
- 11: 05 p. m. to 12 midnight: Western Movie

15. Standard Form of Affiliation Agreements Employed by the Three Networks

ABC

In its response to the committee's network questionnaire, ABC answered question 11 pertaining to affiliation standards and agreements as follows:

11 a. Have there been any changes in the criteria which you use in selecting affiliates since the preparation of the memorandums which you submitted to the Interstate and Foreign Commerce Committee in response to Senator Bricker's letter of October 19, 1954? If so, please describe in detail.

Answer: No.

b. Please attach examples of the forms of affiliation agreements currently used by you, including any per program agreements.

Answer: Examples (a)-(j) attached.

c. Please explain the nature of any special provisions that are normally or frequently added to these forms.

Answer:

Rider No. 1, attached (g), and self-explanatory.

Rider No. 2, attached (h), and self-explanatory.

Attached (i), which is a 90-day mutual right of cancellation. This on occasion is modified to provide for a mutual cancellation privilege of 6 months or 12 months.

On occasion, a special provision is inserted whereby the ABC service is delivered to the A. T. & T. test board in the city rather than to the controls of the station involved.

d. Do you require an affiliate which owns an AM station to maintain affiliation with your radio network?

Answer: No.

The forms attached as exhibits are as follows:

(A) Noninterconnected Contract—First Call—25-Percent Rate

American Broadcasting Company,
7 West 66th Street, New York 23, N. Y.

Television Station ----------.

Gentlemen: We are proposing in this letter the following plan of network cooperation between this Company and your Television Station ----------.

I. Network Affiliation and Program Service

In order that your station may continue to serve the public interest, convenience and necessity by broadcasting programs of a quality and character generally beyond the reach of individual stations, we will offer your station the first call for television broadcasting in the community in which your studios are located upon all our network television programs scheduled to be broadcast by a television station in that community. The program service we are offering will be as follows:

1. Sustaining Programs

a. The network sustaining programs (film recorded) which we will offer to you may not be sold by your station for commercial sponsorship or interrupted for commercial announcements or used for any purpose other than sustaining broadcasting without our prior written consent. The charge to you for such sustaining programs will be $100 per clock hour prorated for shorter periods.

b. We will from time to time offer you film recorded programs identified as cooperative, spot sustaining and syndicated programs. You may carry the cooperative or spot sustaining programs on the same basis as regular sustaining programs or you may offer them for commercial sponsorship on the terms and conditions specified by us at the time such programs are offered to you. Syndicated programs may be broadcast only pursuant to the terms offered.

2. Commercial Programs

a. We will offer you all ABC television network sponsored programs for which advertisers may request broadcasting by your station.

b. You will receive compensation for the network sponsored programs broadcast by your station in accordance with the provision of Part II hereof.

c. You agree to broadcast the network sponsored programs which you accept without interruption for local announcements of any kind unless otherwise directed by us.

3. General Provisions Relating to Program Service

a. The programs we will offer to you will be live and/or on film, and you agree to accept or reject each offer within seventy-two (72) hours after receipt thereof. Unless we receive notice of acceptance from you within the period specified, we shall have the right to offer the programs to other stations in your community.

b. Each of us shall endeavor to give the other three (3) weeks' notice of discontinuance of a sustaining program. The period of notice of discontinuance of cooperative, spot sustaining and/or syndicated programs will be specified in each instance when the offer for such program is made. We will give you at least twenty-eight (28) days' advance notice of the discontinuance of any scheduled series of network commercial programs, failing which we will pay you the compensation you would have received if the series had continued for twenty-eight (28) days following the receipt by you of notice of discontinuance except that you will not be entitled to compensation for any discontinued programs for which we substitute another network commercial program.

c. The offering of film recorded programs is contingent upon our ability to make arrangements satisfactory to us for the recordings necessary to deliver the programs to you. Positive prints of recorded programs will be shipped by us, shipping charges prepaid, and you agree to return to us or to forward to such television station as we designate, shipping charges prepaid, each print or copy received by you hereunder, together with the reels and containers furnished therewith. You will return all prints in the same condition as received by you, ordinary wear and tear excepted, immediately after a single TV broadcast thereof over your station unless otherwise specified by us. In the event you damage a print of any program which we deliver to you, you agree to pay the cost of replacing the complete print at the rate of $1.25 per minute of running time for the full length of the print.

II. STATION COMPENSATION

Approximately twenty (20) days after the close of each month we will pay you in accordance with the following provisions for broadcasting our sponsored television network programs on the station during each month:

1. The network station rate of your station shall be determined in accordance with the table which is attached hereto and made a part thereof.

2. For the broadcasting of television network sponsored programs by your station we will pay you a sum equal to 25 percent of the total gross amount billed to the advertisers by us at the rates for your station shown on the attached table.

3. We reserve the right to change at any time your network station rate to advertisers from that set forth in the attached table. In the event of such change, the station compensation due you will be adjusted as follows:

a. If we increase your network station rate to advertisers above that set forth in the attached table, such increased rate shall be used in computing the station compensation due you on business actually sold by us at such increased rate, all in accordance with ABC's regular rate protection policies.

b. If we decrease your network station rate to advertisers below that set forth in the attached table, such decreased rate shall be used in computing the station compensation due you, provided we have given you six (6) months' written notice of our intention to so decrease your station compensation. In the event of such decrease in your station compensation, you may terminate this agreement as of the effective date of such station compensation decrease by giving us written notification within ninety (90) days after the receipt of our notice to you to so reduce your compensation.

4. You agree to maintain for your television station such licenses, including performing rights licenses, as now or hereafter may be in general use by television broadcasting stations and necessary for you to broadcast the television programs which we furnish to you hereunder. We will clear at the source all music in the repertory of ASCAP and of BMI used on our network programs, thereby licensing the broadcasting of such music on such programs over your station. In return for such clearance at the source you agree to pay us a sum equal to 4.225 percent of the compensation due you from us for the broadcasting of our network programs. In view of the fact that we pay ASCAP and BMI no royalties on certain network television commercial programs, the sum which you agree to pay us for each accounting period, as calculated in the foregoing sentence, shall be reduced by the ratio of the gross charges which we make to advertisers for your station for network programs on which we pay no royalties, to the gross charges which we make to advertisers for your station for all network programs for such accounting period.

5. If you should be unable, for any reason, to broadcast any sponsored program and we thereby rebate all or part of the time charge to any advertisers, your compensation from us for that month shall be proportionately reduced.

6. An advertiser (or advertisers controlled by the same person, firm, or corporation) using a block of time, even though it be broken into two or more contiguous periods for the purpose of advertising separate products, may be entitled to the benefit of the rate applicable to the entire block of time, in which event the rate for your station for such entire block of time will be used in computing the compensation due you.

III. NETWORK OPTIONAL TIME

1. Insofar as the regulations of the Federal Communications Commission will permit, you hereby option to us the hours designated below as network optional time for the broadcasting of the network commercial programs which we furnish to you.

2. Because of the public responsibility of the network and its associated stations, we may at any time substitute for any scheduled network program a network program which involves a special event of public interest or importance. No compensation will be paid for the cancelled program or for the substituted program unless the substituted program is commercially sponsored.

3. Because of your public responsibility, your station may reject any network program which you reasonably believe to be unsatisfactory or unsuitable or the broadcasting of which would in your opinion not be in the public interest or be less in the public interest than a program of outstanding national or local importance which you wish to substitute therefor, all in accordance with the regulations of the Federal Communications Commission.

IV. CUT-IN ANNOUNCEMENT SERVICES

1. You agree to supply upon order from us the services of such personnel and the use of such equipment as may be necessary to broadcast, either from your station alone or from your station and to a network of stations, any announcements (except live video) we may request on any network commercial program broadcast by your station, provided such order is received by you not less than twenty-four (20) hours in advance of the program on which the announcement is to be made.

2. Either simultaneously with the placing of such order by us, or as soon thereafter as possible, we agree to supply you with the text of such announcements, or a recording of such announcements, or the film or slides, together with the necessary instructions as to the time and place in our network program during which we desire such announcements to be broadcast, and you agree to make such announcements, with or without local voice, in accordance with out instructions. It is understood, of course, that you may refuse to broadcast any announcements, the broadcasting of which would not, in your opinion, be in the public interest, convenience and necessity.

3. We may cancel any such order for announcements, without liability on our part, provided we do so upon not less than twenty-four (24) hours' notice to you, failing which we will pay you the compensation you would have received if the announcements had continued as scheduled for twenty-four (24) hours following receipt by you of such notice of cancellation.

4. For each program during which these announcement services are performed, we agree to pay you 7½ percent of your regular network hourly station rate applicable to the hour at your station during which such program was scheduled to start.

V. GENERAL

1. You will submit to us in writing such reports covering network programs broadcast by your station as we may request from time to time, upon forms provided by us for that purpose.

2. Neither you nor ourselves shall incur any liability hereunder because of our failure to deliver, or your failure to broadcast, any or all programs due to: (1) failure of facilities, (2) labor disputes, or (3) causes beyond the control of the party so failing to deliver or to broadcast.

3. In the event that the transmitter location, power, frequency, or hours of operation of your station are changed at any time so that your station is less valuable to us as a network outlet than it is at the time this offer is accepted by you, we will terminate this agreement upon thirty (30) days' written notice.

4. You agree not to assign or transfer any of the rights or privileges granted to you under this agreement without our consent in writing. You agree that if you transfer your station license or sell or otherwise dispose of all or any of your assets without which you would be unable to perform this agreement, you will make such sale or assignment subject to the obligation on the part of the purchaser to assume and perform this agreement.

5. You agree not to authorize, cause, permit or enable anything to be done whereby any program which we supply to you hereunder may be used for any purpose other than broadcasting by your station intended for reception by the general public in places to which no admission is charged.

6. You agree not to authorize, cause, permit or enable anything to be done without our consent, whereby a recording on film or otherwise is made or a recording is broadcast, of a program which has been, or is being, broadcast on our network.

7. No waiver by either of us of any breach of any provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision.

8. This agreement shall be construed in accordance with the laws of the State of New York.

9. Any arrangement with your station relates only to us and your station and is not related to any arrangement that exists or may later be made between us and any other station.

VI. TERM

The term of this agreement shall be from 3:00 a. m. NYT on the ____ day of __________, 19__, to 3:00 a. m. NYT on the ____ day of __________, 19__. At such time as coaxial cable, radio relays or other suitable circuit becomes regularly available connecting your station with our network, this agreement shall terminate and we agree at the time to undertake to negotiate a new affiliation contract suited to such changed conditions.

Very sincerely yours,

AMERICAN BROADCASTING COMPANY,
A Division of American Broadcasting-Paramount Theatres, Inc.
By ______________________________

Accepted this ____ day of ______________, 19__.

TELEVISION STATION
By ____________________________

(b) NONINTERCONNECTED CONTRACT—NO FIRST CALL—25-PERCENT RATE

"We are proposing in this letter the following plan of network cooperation between this Company and your Television Station __________.

"I. NETWORK AFFILIATION AND PROGRAM SERVICE

"In order that your station may continue to serve the public interest. convenience and necessity by broadcasting programs of a quality and character generally beyond the reach of individual stations, we will offer your station programs of wide variety including musical, sports, educational entertainment, religious, and special events. The program service we are offering will be as follows:"

[The balance of this contract contains exactly the same provisions as form (a).]

(c) INTERCONNECTED CONTRACT—NO FIRST CALL—25-PERCENT RATE

"We are proposing in this letter the following plan of network cooperation between this Company and your Television Station __________.

"I. NETWORK AFFILIATION AND PROGRAM SERVICE

"In order that your station may continue to serve the public interest, convenience, and necessity by broadcasting programs of a quality and character generally beyond the reach of individual stations, we will at our own expense arrange for our programs to be delivered to your control board at your main studios. It is understood that ABC shall have the right to the use of the local loop and connection facilities between the local A. T. & T. test board and your main studios and that each month you will bill us and we will pay you an amount for the use of these facilities which shall have the same proportionate relationship to the total monthly cost of said facilities as the total amount of ABC live programs carried by your station during the months bears to the total amount of live programs carried from all networks including ABC. The program service we are offering will be as follows:

"1. Sustaining programs

"a. The network-sustaining programs (live or film recorded) which we will offer to you may not be sold by your station for commercial sponsorship or interrupted for commercial announcements or used for any purpose other than sustaining broadcasting without our prior written consent. The charge to you for such sustaining programs will be $100 per clock-hour prorated for shorter periods."

[The balance of this contract contains exactly the same provisions as form (a) except that the paragraph following the provision as to term of the agreement is changed to read as follows:

"If, after examination, you find that the arrangement herein proposed is satisfactory to you, please indicate your acceptance on the copy of this letter enclosed for that purpose and return that copy to us."]

(D) INTERCONNECTED CONTRACT—FIRST CALL—25 PERCENT RATE

"We are proposing in this letter the following plan of network cooperation between this Company and your Television Station.

"I. NETWORK AFFILIATION AND PROGRAM SERVICE

"In order that your station may continue to serve the public interest, concenience, and necessity by broadcasting programs of a quality and character generally beyond the reach of individual stations, we will at our own expense ar- arrange for our programs to be delivered to your control board at your main studios. It is understood that ABC shall have the right to the use of the local loop and connection facilities between the local A. T. & T. test board and your main studios and that each month you will bill us and we will pay you an amount for the use of these facilities which shall have the same proportionate relationship to the total monthly cost of said facilities as the total amount of ABC live programs carried by your station during the month bears to the total amount of live programs carried from all networks including ABC. We will offer your station the first call for television broadcasting in the community in which those studios are located upon all our network television programs scheduled to be broadcast by a television station in that community. The program service we are offering will be as follows:"

[The balance of this contract contains exactly the same provisions as form (c).]

(E) ALTERNATE PAGE TO SPECIFY 30 PERCENT RATE IN CONTRACTS (A) TO (D)

This page is the same as the corresponding page in forms (a) to (d) except that "30 percent" is substituted for "25 percent" in paragraph 2 of part II on Station Compensation.

(F) INTERCONNECTED CONTRACT—FIRST CALL—22 FREE HOURS, 30 PERCENT RATE

"We are proposing in this letter the following plan of network cooperation between this Company and your Television Station __________.

"I. NETWORK AFFILIATION AND PROGRAM SERVICE

"In order that your station may continue to serve the public interest, convience, and necessity by broadcasting programs of a quality and character generally beyond the reach of individual stations, we will at our own expense arrange for our programs to be delivered to your control board at your main studios. It is understood that ABC shall be the customer for the local loop and connection facilities between the local A. T. & T. test board and your main studios and that each month we will bill you, and you will pay us for the use of these facilities when used for all other than ABC live service an amount which shall have the same proportionate relationship to the total monthly cost of said facilities as the total amount of such live programs other than ABC carried by your station during the month bears to the total amount of live programs carried for all purposes including ABC. We will offer your station the first call for television broadcasting in the community in which those studios are located upon all our network television programs scheduled to be broadcast by a television station in that community.

"In return for the network affiliation, including any live sustaining program service which we may offer to you, you will waive compensation for 22 unit hours of our network commercial programs broadcast by your station during each calendar month.

"The program service we are offering will be as follows:"

[The balance of this contract contains exactly the same provisions as form (c) except that:

(1) Paragraphs 1 and 2 of part II on Station Compensation are changed to read as follows:

"1. Your compensation for broadcasting our network commercial programs under this arrangement will be based upon an average unit hour rate computed for each calendar month by dividing the total value, at the network rate for your station, of the network commercial programs broadcast from your station by the total number of unit hours of such programs during that month.

"2. The network station rate of your station shall be determined in accordance with the table which is attached hereto and made a part hereof.

"a. For all unit hours in excess of 22 unit hours, we will pay you at the rate of 30% of your average unit hour rate for the calendar month."

(2) In paragraph 1 of part III on Network Optional Time the following is inserted:

"Network optional time will be as follows:

"Weekdays and Sundays (New York City Time):

"9:30 a. m. to 12:30 p. m.

"3:00 p. m. to 6:00 p. m.

"3:30 p. m. to 6:00 p. m.

(g) Rider No. 1

"(a) You agree to reimburse us each month in part for the cost of maintaining our network service, an amount computed according to the following table:

COLUMN I *Unit hours of commercial programs*	COLUMN II *Payment to ABC*
0	
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	

"(b) It is understood and agreed, however, that in the event the cost to us of the A. T. & T. facilities involved in our delivering our network programs to your station should change at any time, the figures appearing in column II above shall be adjusted accordingly."

(h) Rider No. 2

"1. We shall have the right to sell up to four participations per day in a specific half-hour daytime network program broadcast Monday through Friday, to be designated by us, on the basis that the station will be compensated at 25 percent of the applicable half-hour rate for each such participation. The four participations will be scheduled in the first 25 minutes of the program and we will make available, without charge to the station, a fifth spot for local sale by the station within the final 5 minutes of the network program.

"2. We shall have the right to sell to two different advertisers as cosponsors specific quarter-hour evening programs designated by us, with compensation to the station at 50 percent of the applicable quarter-hour rate for each sponsor. We shall have the right to sell to three different advertisers as cosponsors specific half-hour evening programs designated by us, with compensation to the station at 33⅓ percent of the applicable half-hour rate for each sponsor.

"3. Contiguous rates shall apply to noncontiguous programs during the same day provided the advertiser buys a minimum of two quarter-hours per day on two different days per week, Monday through Friday, prior to 6 p. m. local time."

(i) PAGE 6—MUTUAL 90-DAY RIGHT OF CANCELLATION

[This modifies part VI as to term in the following way:

"This agreement shall become effective at 3:00 A. M., NYT, on the ____ day of __________, 19__, and it shall continue until 3:00 a. m., NYT, on the ____ day of __________, 19__. It is understood and agreed, however, that this agreement may be terminated by either party upon giving the other party ninety (90) days' advance written notice of its intention so to do. This 90-day option to terminate may be put into effect at any time beginning with the acceptance date indicated below."

ABC advises that this is modified, on occasion, to provide for a mutual cancellation privilege of 6 months or 12 months.]

(J) PER PROGRAM AGREEMENT

"In accordance with our understanding, from time to time we may be in a position to offer to you for broadcast over Television Station __________ certain ABC television network sponsored programs in accordance with our program, sales, and operating policies.

"We shall pay you as compensation for such broadcasting by you of any network sponsored programs furnished by us, 25 percent of the gross time charges actually received by us from the sponsor of such network programs for such broadcasting by you, after deducting from the monies payable to you the total of our then current ASCAP and BMI percentages, which now total 4.225 percent.

"If any such program is offered to you on a live basis, we shall outline to you the terms and conditions under which any such live program will be made available to the control board of your station. If any such program is offered to you on a recorded basis, you shall return such recording to us after a single television broadcast thereof over your station, at such place as we designate, shipping charges prepaid, in the same condition as received by you, ordinary wear and tear excepted, together with any reels and containers furnished by us. In the event you damage any program which we deliver to you, you agree to pay the cost of replacing the complete print at the rate of $1.25 per minute of running time for the full length of the print. You agree to observe all limitations placed by us on the broadcast and use of all programs.

"You agree to supply upon order from us the services of such personnel and the use of such equipment as may be necessary to broadcast any announcements (except live viedo), we may request on any network commercial program broadcast by your station, provided such order is received by you not less than twenty-four (24) hours in advance of the program on which the announcement is to be made. We may cancel any such order for announcements, without liability on our part, provided we do so upon not less than twenty-four (24) hours notice to you, failing which we will pay you the compensation you would have received if the announcements had continued as scheduled for twenty-four (24) hours following receipt by you of such notice of cancellation. For each program during which these announcement services are performed, we agree to pay you 7½ percent of your regular network hourly station rate applicable to the hour at your station during which such program was scheduled to start.

"An advertiser (or advertisers controlled by the same person, firm, or corporation) using a block of time, even though it be broken into two or more contiguous periods for the purpose of advertising separate products, may be entitled to the benefit of the rate applicable to the entire block of time, in which event the rate for your station for such entire block of time will be used in computing the compensation due you. Contiguous rates shall apply to noncontiguous programs during the same day provided the advertiser buys a minimum of two quarter-hours, prior to 6 p. m. local time, Monday through Friday.

"You agree to maintain for your television station such licenses, including performing rights licenses, as now are or hereafter may be in general use by television broadcasting stations and necessary for you to broadcast the television programs which we may furnish to you hereunder. You shall submit to us in writing reports covering broadcasts by you as we may request from time to time.

"Neither you nor we shall incur any liability because of our failure to deliver, or your failure to broadcast, any or all programs due to: (1) failure of facilities, (2) labor disputes, (3) causes beyond the control of the party so failing to deliver or to broadcast, or (4) preemption due to an event or program of public interest or importance.

"You and we shall each have the right to terminate this agreement, or any ABC program or programs broadcast by you, at any time by giving the other not less than four (4) weeks prior written notice. Nothing contained herein shall be deemed to be a commitment by us for the furnishing to you of ABC television programming service.

"Will you kindly confirm your agreement to the foregoing by signing a copy of this letter in the space indicated therefor and returning the same to us.

"Very sincerely yours,

"AMERICAN BROADCASTING COMPANY,
"*A Division of American Broadcasting-Paramount Theatres, Inc.*
"By ________________________________
"*Director, Television Station Relations.*

"Accepted this ____ day of __________ 19____.

"TELEVISION STATION __________
"By ________________________"

Television rate schedule

UNIT HOURS ARE COMPUTED ACCORDING TO THE FOLLOWING TABLE

Local time at station	Unit hour credit											
	5 minutes	10 minutes	15 minutes	20 minutes	25 minutes	30 minutes	35 minutes	40 minutes	45 minutes	50 minutes	55 minutes	60 minutes
A. Evening rate: Monday–Saturday 6 to 11 p. m., Sunday 5 to 11 p. m.	0.083	0.167	0.250	0.333	0.417	0.500	0.583	0.667	0.750	0.833	0.917	1.000
B. 75 percent of evening rate: Saturday 2 to 6 p. m., Sunday 1 to 5 p. m.	.062	.125	.188	.250	.313	.375	.437	.500	.563	.625	.688	.750
C. 50 percent of evening rate: All other times day and night	.042	.083	.125	.167	.208	.250	.292	.333	.375	.417	.459	.500

RATES ARE COMPUTED ACCORDING TO THE FOLLOWING TABLE

Local time at station	Network station rate											
	5 minutes	10 minutes	15 minutes	20 minutes	25 minutes	30 minutes	35 minutes	40 minutes	45 minutes	50 minutes	55 minutes	60 minutes
A. Evening rate: Monday–Saturday 6 to 11 p. m., Sunday 5 to 11 p. m.	$26.67	$33.33	$40.00	$46.67	$53.33	$60.00	$66.67	$73.33	$80.00	$86.67	$93.33	$100.00
B. 75 percent of evening rate: Saturday 2 to 6 p. m., Sunday 1 to 5 p. m.	20.00	25.00	30.00	35.00	40.00	45.00	50.00	55.00	60.00	65.00	70.00	75.00
C. 50 percent of evening rate: all other times day and night	13.33	16.67	20.00	23.33	26.67	30.00	33.33	36.67	40.00	43.33	46.67	50.00

CBS

In its reply to the committee's network questionnaire, CBS supplied the following information with respect to affiliation and affiliation agreements:

Question 11:

a. Have there been any changes in the criteria which you use in selecting affiliates since the preparation of the memoranda which you submitted to the Interstate and Foreign Commerce Committee in response to Senator Bricker's letter of October 19, 1954? If so, please describe in detail.

b. Please attach examples of the forms of affiliation agreements currently used by you, including any per-program agreements.

c. Please explain the nature of any special provisions that are normally or frequently added to these forms.

d. Do you require an affiliate which owns an AM station to maintain affiliation with your radio network?

Answer:

The response to question 11a is contained in appendix C, pages X–XXXIII, of the supplemental memorandum. The answer to question 11d is that the CBS television network does not require an affiliate which owns an AM station to maintain affiliation with the CBS radio network. The response to question 11b and 11c is as follows:

Exhibits I through III attached hereto are, respectfully, copies of CBS television's standard forms of primary, scondary, and extended market plan affiliation agreements. Exhibit IV is a copy of the extended program service plan agreement which is in effect a modification of the affiliation agreement of each station participating in the plan. From time to time, as the result of negotiations between the parties, certain provisions may be added to the standard forms and, from time to time, certain deletions may be made therefrom.

Exhibits V through IX, attached hereto, are examples of provisions which may be so added to the standard forms of affiliation agreements. The nature of each of such provisions is set forth on each such exhibit.

As of June 7, 1956, a provision substantially the same as that set forth in exhibit V appeared in 6 affiliation agreements; a provision substantially the same as that set forth in exhibit VI appeared in 6 affiliation agreements; a provision substantially the same as that set forth in exhibit VII appeared either as a part of or as an amendment to 6 affiliation agreements; a provision substantially the same as that set forth in exhibit VIII appeared either as part of or as an amendment to 3 affiliation agreements; and a provision substantially the same as that set forth in exhibit IX appeared in 2 affiliation agreements and as an amendment to 26 others. Deletions may be made from the standard form from time to time. As of June 7, 1956, the automatic renewal provisions had been deleted from 6 affiliation agreements; the provision governing termination by notice during the term had been deleted from 20 affiliation agreements, and, in 33 others, the period required for notice of such termination had been changed; provisions relating to sustaining programs had been deleted from 3 affiliation agreements; and the provision requiring recordings to be returned transportation prepaid had been deleted from 4 affiliation agreements.

Exhibit X, attached hereto, represents the usual form of agreement with "per-program stations." Per-program stations are not regarded as affiliates by CBS television. Agreements with per-program stations cover the amount payable to them with respect to network sponsored programs which they may carry under the conditions set forth in the section entitled "Per-Program Stations," pages XXXII–XXXIII of appendix C of the supplemental memorandum.

The forms of agreement attached as exhibits are as follows:

CBS Exhibit I

1. Primary Affiliation Agreement

CBS Television, a division of Columbia Broadcasting System, Inc., Television Affiliation Agreement:

Agreement made this ---- day of ----------, 19 --, by and between CBS Television, a division of Columbia Broadcasting System, Inc., 485 Madison Avenue, New York 22, New York (herein called "CBS Television") and

----

(herein called "Station") licensed to operate television station ---------- at -------------------- full time on a frequency of ---------- on Channel number --.

CBS Television is engaged in operating a television broadcasting network and in furnishing programs to affiliated television stations. Some of such programs, herein called "sponsored programs", are sold by CBS Television for sponsorship by its client-advertisers. All nonsponsored programs are herein called "sustaining programs." "Network sustaining programs," "network sponsored programs," and "network programs" as used herein mean network television programs. Station and CBS Television recognize that the regular audience of Station will be increased, to their mutual benefit, if CBS Television provides Station with television programs not otherwise locally available.

Accordingly, it is mutually agreed as follows:

1. CBS Television will offer to Station for broadcasting by Station network sustaining programs as hereinafter provided, without charge, and CBS Television network sponsored programs for which clients may request broadcasting by Station and which are consistent with CBS Television's sales and program policies. Network sustaining programs made available by CBS Television are for sustaining use only and may not be sold for local sponsorship or used for any other purpose without the written consent of CBS Television in each instance.

Station shall have a "first refusal" of each network sponsored program and each network sustaining program which is to be offered to any television station licensed to operate in the community in which Station is licensed to operate. Station may exercise its "first refusal" with respect to any network program by notifying CBS Television within 72 hours (exclusive of Saturdays, Sundays and holidays) after CBS Television shall have offered the program to Station that Station will accept and broadcast such program in the time period and commencing on the date specified by CBS Television in its offer of such program to Station. In the event that Station shall not so notify CBS Television with respect to any such program, Station shall not thereafter have any right to broadcast such program.

2. (a) Station, as an independent contractor, will accept and broadcast all network-sponsored programs offered and furnished to it by CBS Television during "network-option time" (as hereinafter defined); provided, however, that Station shall be under no obligation to accept or broadcast any such network-sponsored program (i) on less than 56 days' notice, or (ii) for broadcasting during a period in which Station is obligated by contract to broadcast a program of another network. Station may, of course, at its election, accept and broadcast network-sponsored programs which CBS Television may offer within hours other than network-option time.

(b) As used herein, the term "network-option time" shall mean the following hours:

(i) if Station is in the Eastern or Central Time Zone, daily, including Sunday, 10:00 a. m. to 1:00 p. m., 2:00 p. m. to 5:00 p. m. and 7:30 p. m. to 10:30 p. m. (expressed in New York time current on the date of broadcast);

(ii) if Station is in the Mountain or Pacific Time Zone, daily, including Sunday, 10:00 a. m. to 1:00 p. m., 2:00 p. m. to 5:00 p. m. and 7:30 p. m. to 10:30 p. m. (expressed in local time of Station current on the date of broadcast).

3. Nothing herein shall be construed (i) with respect to network programs offered pursuant hereto, to prevent or hinder Station from rejecting or refusing network programs which Station reasonably believes to be unsatisfactory or unsuitable, or (ii) with respect to network programs so offered or already contracted for, (A) to prevent Station from rejecting or refusing any program which, in its opinion, is contrary to the public interest, or (B) from substituting a program of outstanding local or national importance. CBS Television may, also, substitute for one or more of the programs offered hereunder other programs, sponsored or sustaining, of outstanding local or national importance, without any obligation to make any payment on account thereof (other than for the substitute program, if the substitute program is sponsored). In the event of any such rejection, refusal, or substitution by either party, it will notify the other by private wire or telegram thereof as soon as practicable.

4. Station will not make either aural or visual commercial spot announcements in the "break" occurring in the course of a single network program or between contiguous network-sponsored programs for the same sponsor where the usual station break does not occur.

5. CBS Television will pay Station for broadcasting network-sponsored programs furnished by CBS Television as specified in Schedule A, attached hereto and hereby in all respects made a part hereof. Payment to Station will be made by CBS Television for network-sponsored programs broadcast over Station within twenty (20) days following the termination of CBS Television's four or five week fiscal period, as the case may be, during which such sponsored programs were broadcast.

6. CBS Television will offer to Station for broadcasting such network-sustaining programs as CBS Television is able to cause to be delivered to Station over coaxial cable or radio-relay program transmission lines under arrangement satisfactory to CBS Television. CBS Television shall not be obligated to offer, or make available to Station hereunder, such network-sustaining programs as it may have available in the form of TV recordings, unless CBS Television has the right so to do and Station shall agree to pay CBS Television's charges therefor.

7. When, in the opinion of CBS Television, the transmission of network-sponsored programs over coaxial cable or radio relay program transmission lines is, for any reason, impractical or undesirable, CBS Television reserves the right to deliver any such program to Station in the form of TV recordings, or otherwise.

8. Station agrees to observe any limitations CBS Television may place on the use of TV recordings and to return to CBS Television, transportation prepaid by Station, immediately following a single broadcast thereof, at such place as CBS Television may direct, and in the same condition as received by Station, ordinary wear and tear excepted, each print or copy of the TV recording of any network program, together with the reels and containers furnished therewith. Each such TV recording shall be used by Station only for the purpose herein contemplated.

9. Neither party hereto shall be liable to the other for claims by third parties, or for failure to operate facilities or supply programs for broadcasting if such failure is due to failure of equipment or action or claims by network clients, labor dispute, or any similar or different cause or reason beyond the party's control.

10. The obligations of the parties hereunder are subject to all applicable laws, rules, and regulations, present and future, especially including rules and regulations of the Federal Communications Commission.

11. Station shall notify CBS Television forthwith if any application is made to the Federal Communications Commission relating to the transfer of any interest in Station (or in the television station to which this Agreement relates), and CBS Television may terminate this Agreement, effective as of the effective date of such transfer, by giving not less than ten days' prior notice to Station. If CBS Television does not so terminate this Agreement, Station will procure the agreement of the proposed transferee that, upon the consummation of the transfer, the transferee will assume and perform this Agreement.

12. All notices required, or permitted, to be given hereunder, shall be given in writing, either by personal delivery or by mail or by telegram or by private wire (except as otherwise expressly herein provided), at the respective addresses of the parties hereto set forth above, or at such other addresses as may be designated in writing by registered mail by either party. Notice given by mail shall be deemed given on the date of mailing thereof. Notice given by telegram shall be deemed given on delivery of such telegram to a telegraph office, charges prepaid or to be billed. Notice given by private wire shall be deemed given on the sending thereof.

13. This Agreement shall be construed in accordance with the laws of the State of New York applicable to contracts fully to be performed therein, and cannot be changed or terminated orally.

14. Neither party shall be or be deemed to be or hold itself out as the agent of the other hereunder.

15. As of the beginning of the term hereof, this Agreement takes the place of, and is substituted for, any and all television-affiliation agreements heretofore existing between the parties hereto concerning the market area to which this Agreement relates, subject only to the fulfillment of any accrued obligations thereunder.

16. The term of this Agreement shall begin on ____________________ and shall continue for a period of two (2) years from such date; provided, however, that unless either party shall send notice to the other at least six months prior to the expiration of the then current two-year period that the party sending such notice does not wish to have the term extended beyond such two-year period, the term of this Agreement shall be automatically extended upon the expiration of the original term and each subsequent extension thereof for an additional period of two years; and provided, further, that this Agreement may be terminated effective at any time by either party by sending notice to the other at least twelve months prior to the effective date of termination specified therein.

In witness whereof, the parties hereto have executed this Agreement as of the day and year first above written.

CBS TELEVISION,
a Division of Columbia Broadcasting System, Inc.
By --
By --

SCHEDULE A

(Attached to and forming part of the agreement between CBS Television and ---------------------. This Schedule A contains provisions supplementary to said agreement, and in case of any conflict therewith the provisions of this Schedule A shall govern.)

I. CBS Television will pay Station for broadcasting network-sponsored programs furnished by CBS Television during each week of the term hereof, thirty percent (30%) of the gross time charges for such week, less the "converted hour" deduction and the ASCAP and BMI deduction.

II. The "converted hour" deduction for any week shall be one hundred fifty percent (150%) of the amount obtained by dividing the gross time charges for such week by the number of "converted hours" (as hereinafter defined) in such week.

III. The ASCAP and BMI deduction for any week shall be the amount obtained by (i) deducting the "converted hour" deduction for such week from thirty percent (30%) of the gross time charges for such week, and (ii) multiplying the remainder by the ASCAP and BMI percentage.

IV. As used herein, the term "gross time charges" for any week shall mean the aggregate of the gross card rates charged and received by CBS Television for broadcasting time over Station for all network-sponsored programs broadcast by Station during such week at the request of CBS Television.

V. As used herein, the term "converted hour" means an aggregate period of one hour during which there shall be broadcast over Station one or more network-sponsored programs for which CBS Television shall charge and receive its Class A timecard rate for broadcasting time over Station. An aggregate period of one hour during which there shall be broadcast over Station one or more network-sponsored programs for which CBS Television shall charge and receive a percentage of its Class A timecard rate, such as its Class B timecard rate, shall be the equivalent of the same percentage of a converted hour. Fractions of an hour shall be treated for all purposes as their fractional proportions of a full hour within the same time classification.

VI. CBS Television shall not have the right to reduce Station's gross hourly card rates for network-sponsored programs except in connection with a reevaluation of the gross hourly card rates for network-sponsored programs of a substantial number of its affiliated stations. CBS Television shall give Station at least thirty days' prior notice of any reduction in Station's then current gross hourly card rates for network-sponsored programs, and Station may terminate this Agreement, effective as of the effective date of any such reduction, on not less than fifteen days' prior notice to CBS Television.

VII. As used herein, the term "ASCP and BMI percentage" shall mean the aggregate of the percentages of CBS Television's "net receipts from sponsors after deductions" and of CBS Television's net receipts from advertisers after deductions" paid or payable, respectively, to American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) under CBS Television's network blanket license agreements with ASCAP and BMI. (Currently such percentages are 3.025 and 1.2, respectively.)

VIII. In the event that CBS Television shall have license agreements with ASCAP or BMI which shall provide for the payment of license fees computed on a basis other than a percentage of CBS Television's "net receipts from sponsors after deductions" or "net receipts from advertisers after deductions," as the case may be, CBS Television shall deduct from each payment to Station, in lieu of the ASCAP and BMI deduction, the proportionate share of music license fees paid or payable by CBS Television which is properly allocable to such payment.

IX. The obligations of CBS Television hereunder are contingent upon its ability to make arrangements satisfactory to it for facilities for transmitting CBS Television network programs to the control board of Station.

IX. Anything contained herein to the contrary notwithstanding, until such time as Station becomes interconnected by coaxial cable or radio relay programs transmission lines.

(i) CBS Television shall not be obligated to offer network sustaining programs to Station, except such programs as CBS Television has available in the form of TV recordings (and for which Station agrees to pay CBS Television's charges) ; and

(ii) network sponsored programs shall be delivered in the form of TV recordings; and

(iii) in lieu of the compensation specified in paragraph I of this Schedule A, CBS Television will pay Station for broadcasting network sponsored programs furnished by CBS Television during each week of the term hereof, thirty percent (30%) of the gross time charges for such week, less the ASCAP and BMI deduction (and the ASCAP and BMI deduction for such week shall be the amount obtained by multiplying thirty percent (30 %) of the gross time charges for such week by the ASCAP and BMI percentage).

SCHEDULE A

(Attached to and forming part of the agreement between CBS Television and ____________________. This Schedule A contains provisions supplementary to said agreement and in case of any conflict therewith, the provisions of this Schedule A shall govern.)

I. CBS Television will pay Station for broadcasting network sponsored programs furnished by CBS Television during each week of the term hereof, the following respective percentages of "average gross time charges per converted hour" (as hereinafter defined): ____

____

less the ASCAP and BMI deduction.

II. The ASCAP and BMI deduction for any week shall be the amount obtained by multiplying the sums paid to Station pursuant to paragraph I of this Schedule A for such week by the ASCAP and BMI percentage.

III. As used herein, the term "gross time charges" for any week shall mean the aggregate of the gross card rates charged and received by CBS Television for broadcasting time over Station for all network sponsored programs broadcast by Station during such week at the request of CBS Television, and the term "average gross time charges per converted hour" for any week shall mean the amount obtained by dividing the gross time charges for such week by the number of "converted hours" in such week.

IV. As used herein, the term "converted hour" means an aggregate period of one hour during which there shall be broadcast over Station one or more network sponsored programs for which CBS Television shall charge and receive its Class A timecard rate for broadcasting time over Station. An aggregate period of one hour during which there shall be broadcast over Station one or more network sponsored programs for which CBS Television shall charge and receive a percentage of its Class A timecard rate, such as its Class B timecard rate, shall be the equivalent of the same percentage of a converted hour. Fractions of an hour shall be treated for all purposes as their fractional proportions of a full hour within the same time classification.

V. As used herein, the term "ASCAP and BMI percentage" shall mean the aggregate of the percentages of CBS Television's "net receipts from sponsors after deductions" and of CBS Television's "net receipts from advertisers after deductions" paid or payable, respectively, to American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) under CBS Television's network blanket license agrements with ASCAP and BMI. (Currently such percentages are 3.025 and 1.2, respectively.)

VI. In the event that CBS Television shall have license agreements with ASCAP or BIM which shall provide for the payment of license fees computed on a basis other than a percentage of CBS Television's "net receipts from sponsors after deductions" or "net receipts from advertisers after deduction," as the case may be, CBS Television shall deduct from each payment to Station, in lieu of the ASCAP and BMI deduction, the proportionate share of music license fees paid or payable by CBS Television which is properly allocable to such payment.

VII. CBS Television shall not have the right to reduce Station's gross hourly card rates for network sponsored programs except in connection with a reevaluation of the gross hourly card rates for network sponsored programs of a substantial number of its affiliated stations. CBS Television shall give Station at least thirty days' prior notice of any reduction in Station's then current gross hourly card rates for network sponsored programs and Station may terminate this Agreement, effective as of the effective date of any such reduction, on not less than fifteen days' prior notice to CBS Television.

VIII. The obligations of CBS Television hereunder are contingent upon its ability to make arrangements satisfactory to it for facilities for transmitting CBS Television network programs to the control board of Station.

CBS Exhibit II

2. Secondary Affiliation Agreement

The provisions of this form of agreement are identical to those of Form 1, except as follows:

(a) Paragraph 2 is altered to read:

"2. This Agreement does not provide for, and CBS Television has no understanding, express or implied, with Station for, option time within the purview of subparagraph (d) of Section 3.658 of the Federal Communications Commission rules and regulations. Subject to Station's right to reject network programs as provided in subparagraph (e) of Section 3.658 and subject to all other applicable sections of the rules and regulations of the Federal Communications Commission, Station, as an independent contractor, agrees to accept and broadcast television network sponsored programs offered and furnished to Station by CBS Television in time periods to be mutually agreed upon between the parties. If any network sponsored program is accepted by Station for broadcast in a specified time period, Station agrees that such program will continue to be broadcast by Station at the same hour of the day on the same day of the week for the duration of the term of this Agreement, or for the duration of CBS Television's agreement with the sponsor and all renewals thereof, whichever may be the shorter, except as otherwise herein provided."

(b) Paragraph 16 is altered to read:

"16. The term of this Agreement shall begin on ____________________ and shall continue for a period of two (2) years from such date: *Provided, however*, That this Agrement may be terminated effective at any time by either party by sending notice to the other at least six months prior to the effective date of termination specified therein."

(c) Schedule A is altered to read:

"SCHEDULE A

"(Attached to and forming part of the Agreement between CBS Television and ______________________. This Schedule A contains provisions supplementary to said Agreement and in case of any conflict therewith, the provisions of this Schedule A shall govern.)

"I. CBS Television will pay Station for broadcasting network sponsored programs furnished by CBS Television during each week of the term hereof, thirty percent (30 percent) of the gross time charges for such week, less the ASCAP and BMI deduction.

"II. The ASCAP and BMI deduction for any week shall be the amount obtained by multiplying thirty percent (30 percent) of the gross time charges for such week by the ASCAP and BMI percentage.

"III. As used herein, the term 'gross time charges' for any week shall mean the aggregate of the gross card rates charged and received by CBS Television for broadcasting time over Station for all network sponsored programs broadcast by Station during such week at the request of CBS Television.

"IV. As used herein, the term 'ASCAP and BMI percentage' shall mean the aggregate of the percentages of CBS Television's 'net receipts from sponsors after deductions' and of CBS Television's 'net receipts from advertisers after deductions' paid or payable, respectively, to American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) under CBS Television's network blanket license agreements with ASCAP and BMI. (Currently such percentages are 3.025 and 1.2 respectively.)

"V. In the event that CBS Television shall have license agreements with ASCAP or BMI which shall provide for the payment of license fees computed on a basis other than a percentage of CBS Television's 'net receipts from sponsors after deductions' or 'net receipts from advertisers after deductions,' as the case may be, CBS Television shall deduct from each payment to Station, in lieu of the ASCAP and BMI deduction, the proportionate share of music license fees paid or payable by CBS Television which is properly allocable to such payment.

"VI. CBS Television shall not have the right to reduce Station's gross hourly card rates for network sponsored programs except in connection with a reevaluation of the gross hourly card rates for network sponsored programs of a substantial number of its affiliated stations. CBS Television shall give Station at least thirty days' prior notice of any reduction in Station's then current gross hourly card rates for network sponsored programs and Station may terminate this Agreement, effective as of the effective date of any such reduction, on not less than fifteen days' prior notice to CBS Television.

"VII. The obligations of CBS Television hereunder are contingent upon its ability to make arrangements satisfactory to it for facilities for transmitting CBS Television network programs to the control board of Station."

(End of Schedule A.)

CBS EXHIBIT III

3. EXTENDED MARKET PLAN AFFILIATION AGREEMENT

The provisions of this form of agreement are identical to those of form 2, except as follows:

(a) The first portion of paragraph 1 is altered to read:

"1. CBS Television will offer to Station for broadcasting by Station network sustaining programs as hereinafter provided, and network sponsored programs for which clients may request broadcasting by Station and which are consistent with CBS Television's sales and program policies. Network sustaining programs made available by CBS Television are for sustaining use only and may not be sold for local sponsorship or used for any other purpose without the written consent of CBS Television in each instance."

(b) Paragraph 3 is altered by the insertion of the word "network" after the fifteenth word of the second sentence, to make it read "* * * other network programs, sponsored or unsponsored * * *"

(c) Paragraph 5 is altered by deleting the phrase "in all respects" from the first sentence.

(d) Paragraph 6 is altered to read:

"6. The network programs to be offered to Station hereunder will be made available in the form of TV recordings, or, if Station so elects and transmission arrangements satisfactory to CBS Television can be effected, such programs will be made available over coaxial cable or microwave relay transmission lines. Anything contained herein to the contrary notwithstanding, CBS Television shall not be obligated to offer any programs to Station in the form of TV recordings unless CBS Television has the right so to do and shall have made TV recordings for broadcast on stations other than stations affiliated with CBS Television on an Extended Market basis."

(e) Paragraph 7 is deleted, so that the paragraph numbered 7 in this form is equivalent to paragraph 8 in form 2.

(f) Two new paragraphs, numbered 8 and 9, are inserted, reading as follows:

"8. Station shall pay CBS Television, as a service fee, the sum of Five Dollars ($5.00) for each program (of whatever length) furnished to Station hereunder by means of TV recording. CBS Television shall have the right from time to time to increase and/or decrease the service fee by giving Station at least four (4) weeks' notice to such effect, provided, that in the event of any increase in the service fee, Station may terminate this Agreement, effective on or before the effective date of such increase, by giving CBS Television at least two (2) weeks' notice to such effect. Payment of service fees for programs furnished to Station for broadcast during each of the fiscal periods referred to in paragraph 5 hereof shall be made within thirty (30) days following termination of such fiscal period. CBS Television may deduct the aggregate amount of such service fees from sums due Station pursuant to paragraph 5 hereof.

"9. Station shall pay all interconnection and transmission charges in connection with the transmission to Station of network programs furnished to Station by coaxial cable and/or mirowave relay transmission lines."

(g) The provision of Paragraphs 9 to 15 inclusive of Form 2 are found in the same language in Paragraphs 10 to 16 of this form

(h) The provision as to term of the agreement (found in Paragraph 16 of Form 2) is here set forth in Paragraph 17 as follows:

"17. The term of this Agreement shall begin on ____________________ and shall continue for a period of two (2) years from such date; provided, however, that unless either party shall send notice to the other at least six (6) months prior to the expiration of the then current two-year period that the party sending such notice does not wish to have the term extended beyond such two-year period, the term of this Agreement shall be automatically extended upon the expiration of the original term and each subsequent extension thereof for an additional period of two years; and provided, further, that this Agreement may be terminated effective at any time by either party by sending notice to the other at least six (6) months prior to the effective date of termination specified therein."

(i) Schedule A is altered by deleting Paragraph VII.

CBS Exhibit IV

4. Extended Program Service Plan Agreement

[This is, in effect, a modification of the affiliation agreement of each station. It sets forth the basis upon which CBS Television will make available to an affiliated station, for sustaining use only, various sponsored programs not otherwise available to such station.]

We refer to our affiliation agreement with you dated ____________________ relating to Station ___________. It is hereby agreed that, effective ___________ ___________ said agreement is amended and supplemented as follows:

1. From time to time we will, subject to the approval of the network sponsor thereof, offer to you television programs which have been included in our Extended Program Service plan and, subject to the conditions hereinafter set forth, you shall have the right to broadcast such programs by giving us written notice of your acceptance thereof not later than ten days after your receipt of our offer thereof, it being understood that you shall be under no obligation to accept or broadcast any such programs.

2. All programs offered pursuant to the terms hereof are for sustaining use only and you agree that you will not permit any aural or visual announcement to be made, either in the course of such programs or otherwise which may directly or indirectly imply the sponsorship thereof by any sponsor, provided, however, that you may, of course, insert public service messages and/or program promotion announcements in such programs in those places wherein the commercial message has been deleted.

3. Programs accepted by you hereunder may be delivered by us over coaxial cable or radio relay transmission lines or in the form of TV recordings, as we may from time to time elect.

4. You shall have the right to broadcast the programs accepted by you hereunder only on the days and at the time specified in our offer thereof, and you agree to make no other use thereof.

5. You agree to return to us, or forward as per our instructions, shipping expenses prepaid, immediately following a single broadcast thereof, to such place as we may direct, and in the same condition as received by you, ordinary wear and tear excepted, each print or copy of TV recordings furnished hereunder, together with the reels and containers furnished therewith.

6. You agree to pay us, with respect to each program accepted hereunder which is—

(a) delivered over coaxial cable or radio relay transmission lines, such costs, if any, as we may be required to pay to interconnect your station for the broadcast thereof at the time specified by us,

(b) delivered in the form of a TV recording, the sum of Ten Dollars ($10) per recording.

7. With respect to offers of TV recordings accepted by you hereunder,

(a) you agree that your acceptance shall be for a minimum of four consecutive weeks, payment to be made for each recording delivered whether broadcast or not as outlined in Paragraph 6 (b) above, and

(b) we agree that such acceptance may be cancelled effective after such fourth consecutive week on not less than 14 days' prior notice given by letter, telegram, or telephone.

8. We may recapture, on not less than ten days' prior notice to you, any program accepted by you hereunder and may terminate—

(a) said affiliation agreement forthwith upon any breach of paragraph 2 or 4 hereof by you, or

(b) this amendment on not less than ten days' prior written notice.

9. We shall not be liable to you for failure to deliver any program accepted by you hereunder if such failure is due to—

(a) causes beyond our control, or

(b) the substitution for such program of a program of outstanding local or national importance, if such substituted program is not available under our Extended Program Service plan.

Unless sooner terminated, this amendment shall automatically terminate effective as of the effective date of any expiration or termination of said affiliation agreement.

As herein amended and supplemented, said affiliation agreement is in all respects ratified and affirmed.

CBS TELEVISION,
A Division of Columbia Broadcasting System, Inc.
By ______________________

Accepted and Agreed:
By______________________
Date______________________

5. EXAMPLES OF PROVISIONS WHICH MAY BE ADDED TO THE STANDARD FORMS OF AFFILIATION AGREEMENTS AS THE RESULT OF NEGOTIATIONS BETWEEN THE PARTIES

CBS EXHIBIT V

(a) *Provision used where CBS Television enters into an affiliation agreement with a station prior to its commercial starting date*

"The term of this Agreement shall commence on the effective date on which (Licensee) commences to operate Station XXXX at City, State and shall continue until the earlier of

"(a) two (2) years from such date, or

"(b) two (2) years and six (6) months from the date hereof,

"provided that, unless either party shall send notice to the other at least six (6) months prior to the expiration of the then current period of the term hereof that the party sending such notice does not wish to have the term extended beyond such period, the term of this Agreement shall be automatically extended upon the expiration of the original term and each subsequent extension thereof for an additional period of two (2) years; and provided further that this Agreement may be terminated effective at any time by either party sending written notice to the other at least twelve (12) months prior to the effective date of termination specified therein. This Agreement shall be null and void and of no effect if the term hereof shall not have commenced on or before (date)."

CBS EXHIBIT VI

(b) *Provision used where there is an existing affiliation agreement with another station in the same city*

"Notwithstanding anything contained elsewhere herein, prior to (date),[1]

"(i) CBS Television shall be under no obligation to offer to Station any network sustaining program or any network sponsored program unless and until such program shall be offered to and rejected by Station YYYY at City, State; and

"(ii) Station shall not be obligated to accept or broadcast any network program."

CBS EXHIBIT VII

(c) *Provision used in granting permission to an affiliated station to rebroadcast network programs on a booster station*

"GENTLEMEN: You have advised us that, effective (date), television station x at ____________________, operating on a frequency of ____ MC. on Channel ____, will, during its entire period of operation, broadcast simultaneously with

[1] The date inserted is the date on which CBS Television's affiliation with the other station ceases.

television station Y, all programs (including commercial announcements) broadcast by Y.

"This will constitute our agreement that, effective (date), and continuing so long as X, during its entire period of operation, broadcasts simultaneously with Y all programs (including commercial announcements) broadcast by Y, you will cause X to broadcast, simultaneously with Y, all CBS Television programs (including commercial announcements) broadcast by Y; it being understood that:

"(a) all costs caused by or resulting from such simultaneous broadcast by X shall be borne by you;

"(b) we shall not be obligated to make any payments to X in respect of such simultaneous broadcast by X; and

"(c) such simultaneous broadcast by X shall not increase your station payments under the television affiliation agreement dated ____________________ relating to Y.

"Either you or we may terminate this agreement, without terminating the television affiliation agreement referred to in (c) above on not less than thirty (30) days prior written notice to the other and this agreement will terminate simultaneously with any expiration or termination of the television affiliation agreement referred to in (c) above."

CBS Exhibit VIII

(d) *Provision used in cases where the affiliated station provides its own local interconnection facilities*

"Anything herein to the contrary notwithstanding, Station shall pay for all coaxial, cable, microwave, relay or local loop facilities necessary to transmit programs to the control board of Station, and Station hereby agrees to obtain such facilities for interconnection.' '

CBS Exhibit IX

(e) ***Provision used to allow off-the-air pickup of CBS Television programs as requested by an affiliated station where such pickup would be less expensive than cable inconnection***

"Gentlemen: We have been advised that Station X ____________________ has requested permission to make 'off-the-air' pickup of CBS Television network sustaining and commercial programs broadcast over the facilities of Station Y, ____________________ and make a simultaneous rebroadcast of such programs over the facilities of X.

"We hereby authorize you to grant such permission to Station X effective (date), provided that

"(i) such permission shall be related to programs actually broadcast on Y;

"(ii) in respect of network commercial programs, such permission shall be limited to programs, the sponsor of which has ordered X; and

"(iii) this permission shall terminate simultaneously with any expiration or termination of the television affiliation agreement between us dated ____________________ relating to Y."

CBS Exhibit X

6. Per Program Agreement

[Per program stations are not regarded as affiliates by CBS Television. Agreements with per program stations cover the amount payable to them with respect to network sponsored programs which they may carry under the conditions set forth in the section entitled "Per Program Stations" in Appendix C to the Supplemental Memorandum inserted in the record in connection with Dr. Stanton's testimony — see page —.]

Gentlemen: In accordance with recent discussions, it is contemplated that, from time to time hereafter, you may broadcast over television Station ____________________ certain CBS Television network programs for which one of our advertiser-clients requests such broadcasting and which are consistent with our sales and program policies.

We shall pay you for such broadcasting by you of a network sponsored program furnished by us to you, thirty percent (30 percent) of the gross time charges actually received by us from said advertiser-client in connection with such broadcasting by you, less an amount obtained by multiplying said thirty percent (30 percent) of said time charges by the aggregate of the then current ASCAP and BMI percentages payable by us (said percentages now being 3.025 percent and 1.2 percent, respectively).

You will pay, or reimburse us for payment of all costs in connection with the delivery (other than by TV recording) to Station ----------, from the A. T. & T. test board in --------------------, of programs furnished by us to you hereunder.

You will observe any limitations we may place on the use of TV recordings furnished you hereunder and will, immediately following a single broadcast thereof, return to us at such place as we shall direct, with transportation thereof paid by you, and in the same condition as received by you, ordinary wear and tear excepted, each print or copy of each such TV recording, together with the reels and containers furnished therewith.

Nothing herein contained shall, of course, be or be deemed to be any commitment by us that we shall furnish any CBS Television programs to you for broadcasting by said station: and you and we shall each have the right to terminate this arrangement at any time by giving the other at least two weeks' prior written notice thereof.

If the foregoing accords with your understanding, please sign below to indicate your agreement with and acceptance of the same.

Very truly yours,

CBS TELEVISION,
A Division of Columbia Broadcasting System, Inc.
By --------------------

Accepted and Agreed:

By --------------------------------

NBC

In its reply to the committee's network questionnaire, NBC made the following response to question 11 concerning affiliation arrangements:

11 a. Have there been any changes in the criteria which you use in selecting affiliates since the preparation of the memoranda which you submitted to the Interstate and Foreign Commerce Committee in response to Senator Bricker's letter of October 19, 1954? If so, please describe in detail.

No.

b. Please attach samples of the forms of affiliation agreements currently used by you, including any per program agreements.

The following forms of television affiliation agreements are attached hereto:

Exhibit 3: Interconnected "effective hour"
Exhibit 4: Interconnected "equivalent hour"
Exhibit 5: Noninterconnected "equivalent hour"
Exhibit 6: Per program

c. Please explain the nature of any special provisions that are normally or frequently added to these forms.

Special provisions normally or frequently added to these forms include provisions for a mutual right of cancellation prior to expiration of term, variations in conventional compensation provisions, and amendments or supplements to the agreements similar to those attached hereto as exhibit 7.

d. Do you require an affiliate which owns an AM station to maintain affiliation with your radio network?

No.

The attached forms are as follows:

NBC EXHIBIT 3

1. Interconnected "effective hour

1. INTERCONNECTED "EFFECTIVE HOUR"

NATIONAL BROADCASTING COMPANY, INC.,
New York, N. Y.

GENTLEMEN: The following shall comprise the agreement between us for affiliation of your television broadcasting station (herein called "Station") with the NBC Television Network:

1. NBC will offer to the Station for television broadcasting a variety of NBC Television Network programs, sponsored or unsponsored, or both. In order to furnish such programs to the Station, NBC, as soon and for so long as it deem it practicable on both engineering and economic grounds, will order common carrier facilities (either program transmission lines or radio relay circuits), including local loops and connections, to be extended to the control board at the main studios of the Station. Pending extension of common carrier facilities to the Station, NBC may use non-common-carrier radio relay links connecting the Station with the NBC Television Network for the delivery of NBC Television Network programs. Where, in the opinion of NBC, the transmission over program transmission lines or radio relay links of a network television program to be broadcast by the Station is for any reason impractical or undesirable, NBC may deliver such program to the Station in the form of motion picture film or other recorded version, as set forth in Paragraph 3 below. NBC will pay all charges for providing interconnection facilities except nonrecurring charges (whether installation or other charges), if any, assessed upon the initial connection of the Station with the NBC Television Network, such nonrecurring charges to be paid by the Station. NBC will pay all costs of providing NBC Television Network sponsored programs to the Station by motion picture film or other recorded version.

2. You shall have the right of first refusal good for 72 hours, as against any other television station located in the same community as the Station, upon the NBC Television Network programs referred to in Paragraph 1.

3. In those cases where the NBC Television Network programs offered to the Station are not transmitted to the Station over program transmission lines or radio relay links, NBC may deliver to you, transportation prepaid, a positive print or copy of a motion picture film or other recorded version of any such program in sufficient time for you to broadcast such program over the Station at the time scheduled. You agree to comply with NBC's instructions concerning the disposition to be made of each such print or copy received by you hereunder, together with the reels and containers furnished therewith, by returning to NBC or forwarding the same to others transportation prepaid, or by making such other disposition thereof as NBC may otherwise direct, in as good condition as when received, ordinary wear and tear excepted. NBC will reimburse you for your out-of-pocket cost of any such transportation prepaid by you on the next accounting date following receipt of your invoice therefor. Each such print or copy is to be returned to NBC immediately after a single television broadcast thereof has been made over the Station, unless otherwise specified by NBC.

4. Upon not less than 56 days' notice from NBC you will cause to be broadcast over the Station any sponsored program offered to the Station hereunder which NBC requests the Station to broadcast within the hours hereinafter designated as "network optional time," except that the Station shall not be obligated to broadcast any such program at a time during which the Station is already obligated to broadcast the program of another network. "Network optional time," as used herein, consists of the following hours of each day (expressed in New York City time current on the date of the broadcast):

Daily except Saturday and Sunday:
10:00 a. m. to 1:00 p. m.
2:30 p. m. to 5:30 p. m.
7:30 p. m. to 10:30 p. m.

Saturday and Sunday:
10:00 a. m. to 1:00 p. m.
3:00 p. m. to 6:00 p. m.
7:30 p. m. to 10:30 p. m.

5. From time to time you may desire to sell specific periods of time, during hours other than those designated as network optional time, for the broadcasting of one or more NBC Television Network sponsored programs. In the event such sale is consummated it is understood and agree that, subject to NBC's 28-day right of cancellation provided in Paragraph 6, you shall broadcast such programs for the duration of NBC's commitment to deliver your Station to the sponsor but in no instance shall you be so obligated for more than 52 weeks. NBC shall advise you of the expiration date of its initial commitment and of each renewal commitment subsequently made for the Station to the sponsor and you shall notify NBC at least 35 days prior to each date in the event you do not desire to broadcast a continuation of such programs.

In the event you fail to so notify NBC, NBC shall consider the Station to be available for the immediately following renewal term of not more than 52 weeks should the sponsor elect to continue such programs over the Station. Except as expressly provided to the contrary in this paragraph, your use and the broadcasting of such programs shall be subject to all the terms and conditions of this agreement.

6. NBC will give you at least 28 days' advance notice of the cancellation or discontinuance of any scheduled series of NBC Television Network sponsored programs, failing which NBC will pay to you the compensation you would have received for any broadcast in such series which would have taken place except for such cancellation or discontinuance during the 28 days following the receipt by you of notice of cancellation or discontinuance, except that you will not be entitled to compensation for any canceled or discontinued program which was scheduled for broadcast during a period in which another sponsored program is broadcast. Nothing in this paragraph shall entitle you to compensation as a result of NBC's changing a network program within 28 days' advance notice to a time in network optional time for which the Station is not already committed to carry a sponsored broadcast.

7. Nothing herein contained shall: (a) prevent or hinder the Station from rejecting or refusing any program offered hereunder which it reasonably believes to be unsatisfactory or unsuitable, or (b) prevent the Station from rejecting or refusing any program offered to or previously accepted by it which in its opinion is contrary to the public interest, or (c) prevent the Station from substituting therefor a program of outstanding local or national importance.

8. NBC may at any time substitute for any scheduled NBC Television Network program another program which in its judgment involves a special event of outstanding local or national importance. No compensation will be paid for the canceled program or the substituted program unless the substituted program is commercially sponsored, in which event the regular compensation will be paid for it.

9. The following shall be the financial arrangement between NBC and you for the NBC Television Network programs and other services which NBC will supply to the Station and for the time which the Station will make available for NBC Television Network programs. Settlements will be made approximately 20 days after the close of each month.

(a) The Network Station Rate of the Station shall be \$-------- per hour for full-rate periods; \$-------- per hour for three-quarter-rate periods; and \$------ per hour for half-rate periods. Full-rate periods shall be from 5:00 p. m. to 11:00 p. m. Sundays and from 6:00 p. m. to 11:00 p. m. Mondays through Saturdays; three-quarter-rate periods shall be from 1:00 p. m. to 5:00 p. m. Sundays and from 5:30 p. m. to 6:00 p. m. Mondays through Fridays; and from 5:00 p. m. to 6:00 p. m. Saturdays; all other periods shall be half-rate periods. The time brackets in the preceding sentence are expressed in local time at the Station. The rates for programs of less than one hour in duration shall be changed proportionately.

(b) As a means of sharing the cost to NBC of providing network service, including, among other things, the cost of interconnection facilities and of unsponsored broadcasting over the Station at the effective rate for NBC Television therefor, you will waive to NBC each month compensation on 24 hours of network sponsored broadcast over the Station at the effective rate for NBC Television Network sponsored programs carried on the Station in the full-rate periods during such month. The amount of such compensation shall be determined in the following manner: The gross receipts of NBC in each month from the sale of time on the Station during the full-rate periods specified in subparagraph (a) above prior to the allowance of any discounts, rebates, or agency commissions shall be determined. Such gross amount shall be divided by the total number of clock hours or fractions thereof of such full-rate periods during which NBC Television Network sponsored programs are broadcast by the Station in such month to obtain the effective rate per hour for such hours. The result of such division shall be multiplied by 24 and the result of such multiplication shall be the amount of revenue upon which you will waive to NBC compensation for such month. In the event that in any month the revenue from sponsored NBC Television Network programs broadcast on the Station shall be less than the amount of revenue upon which you waive compensation to NBC hereunder you will not be obligated to make up such deficit.

(c) As to all NBC Television Network sponsored programs broadcast over the Station during each month in excess of the 24 hours upon which compensation is waived under subparagraph (b) above, NBC will pay to you a sum equal to 33⅓ percent of the total gross amount billed by NBC therefor at the rates specified in subparagraph (a) above (or at such other rates as may be applicable under the rate protection policy of the NBC Television Network) prior to the allowance of any discounts, rebates or agency commissions.

(d) You will pay to NBC each month for NBC Television Network unsponsored programs which NBC delivers to the Station during the month upon your order in the form of motion-picture film or other recorded version an amount equal to the number of hours or fractions thereof of such unsponsored programs multiplied by $75.00. NBC shall have the right to change the charge specified in this subparagraph (d) at any time upon two weeks written notice to the Station; provided, however, that if the charge is increased, the Station may at its option cancel any existing orders for such programs by giving written notice to NBC of such cancellation before the effective date of the increase.

You shall have the right to cancel an order for an unsponsored program covered by this subparagraph (d) at any time by giving written notice thereof to NBC, provided that if such cancellation shall be for a reason other than a reason stated in clauses (a) and (b) of Paragraph 7 or in the immediately preceding sentence of this subparagraph (d) you shall reimburse NBC for the cost to it of each print of such program which has been made prior to the receipt by NBC of such cancellation notice for use by the Station.

(e) NBC may grant to an advertiser using a block of time, even though it be broken into fractional contiguous periods, the benefit of the rate applicable to the entire block of time, in which event the Network Station Rate of the Station for such entire block of time will be used in computing the compensation due you.

(f) NBC may grant to an advertiser using two or more noncontiguous periods of time in network optional time on any one day (Saturdays and Sundays excluded) the benefit of the rate for such periods of time which said advertiser would have paid had such periods of time been contiguous, provided:

(i) All such programs are scheduled for original broadcast prior to 6:00 p. m. (New York City time); and

(ii) In the event the original broadcast of any such program is not scheduled on the Station but instead a repeat or delayed broadcast is scheduled, such repeat or delayed broadcast occurs prior to 6:00 p. m. local time at your Station.

(iii) If the separate time periods occur in different time classifications (e. g., if one time period is a half-rate period and the other is a three-quarter-rate-period) the charge for the period in each classification will be in the proportion that the amount of time in such classification bears to the total amount of time.

(g) Advertisers under the common control of the same person, firm or corporation may be entitled to the rate to which the controlling party would have been entitled if such controlling party had been the advertiser.

(h) NBC reserves the right to change at any time the Network Station Rate of the Station from that set forth in subparagraph (a) above. If NBC increases the Network Station Rate of the Station from that set forth in subparagraph (a) above, such increased rate shall be used in computing the compensation due you on business actually sold by NBC at such increased rate. If NBC decreases the Network Station Rate of the Station below that set forth in subparagraph (a) above, such decreased rate shall be used in computing the compensation due you provided NBC has given you at least 90 days' written notice of its intention so to decrease such rate.

In the event of such decrease in the Network Station Rate of the Station you may terminate this agreement as of the effective date of such decrease by giving NBC written notice within 30 days after the receipt of NBC's notice to you of such reduction.

10. The Station will make available to NBC for broadcasting on the NBC Television Network all unsponsored television programs produced by the Station, without charge to NBC except that NBC shall reimburse the Station for additional expenses, if any, incurred by the Station as a result of the use of such programs as NBC Television Network programs.

11. You shall not be obligated to continue to broadcast nor shall NBC be obligated to continue to furnish, subsequent to the termination of this agreement, any programs which NBC may have offered and which you may have accepted during the term hereof.

12. You agree that you will not without NBC's consent make any deletions from or additions to, or broadcast any commercial or other announcements from the Station during, any program furnished to you hereunder or sell for commercial sponsorship the NBC Television Network unsponsored programs which we furnish to the Station hereunder. You agree to broadcast over the Station the NBC identification including the NBC Chimes when and as it is given at the conclusion of each NBC Television Network program which you broadcast.

13. In the event the Station is unable to broadcast an NBC Television Network program offered for transmission to the Station by means of coaxial cable or radio relay at the time such program is transmitted over facilities interconnecting the Station and the NBC Television Network, and in the event each of us desires a delayed broadcast of such program to be made by the Station from a motion picture film or other recorded version, such delayed broadcast shall be made as follows.

(a) At the time of each delayed broadcast, the Station will broadcast an appropriate announcement stating that the program is a film or other recorded version of a program presented earlier over the NBC Television Network.

(b) The Station will use each such film or other recorded version only for the purpose herein contemplated, will broadcast it only at the time agreed upon, and will comply with NBC's instructions concerning its disposition.

(c) NBC reserves the right to discontinue, upon twenty-four hours notice to you, any arrangements with you with respect to any or all delayed broadcasts of television programs.

(d) You shall be compensated for any such delayed broadcast of a sponsored television program as if it had been carried directly over interconnections from the network at the time the delayed broadcast is made; provided that if such delayed broadcast occurs after the expiration of the period of protection under NBC's Rate Protection Policy and the original broadcast over the interconnected network occurred prior to the expiration of such period, the Network Station Rate upon which compensation is based shall be the rate applicable prior to the expiration of such period.

14. You agree to maintain for the Station such licenses, including performing rights licenses, as now are or hereafter may be in general use by television broadcasting stations and necessary for you to broadcast the programs which NBC furnishes to you hereunder. NBC will endeavor to enter into appropriate arrangements to clear at the source all music in the repertory of ASCAP and of BMI used in NBC Television Network programs thereby licensing the broadcasting of such music on such programs over the Station. In return for such clearance at the source you agree to pay NBC, at the time of settlement with you for each monthly accounting period, a sum equal to 4.225 percent of the compensation due you from NBC, for the broadcasting of NBC Television Network programs during such accounting period. Of such percentage rate, 3,025 percent is applicable to payment for use of ASCAP music and 1.2 percent for use of BMI music. In the event either or both of the percentage rates specified in the preceding sentence shall be increased or decreased, a corresponding increase or decrease shall be made in the percentage rate which you are required to pay to NBC, effective as of the date upon which such increase or decrease becomes effective. Under the current ASCAP Blanket Television Network License the fee to be paid by NBC to ASCAP may be a rate less than 3.025 percent for a calendar year. Whether the rate will be less than 3.025 percent and the specific amount of such rate, if any, cannot be determined until the end of the year by reason of provisions in the License for annual adjustments in fees which may be required to be made within sixty (60) days after the end of the year. If the rate thus deter-

mined is less than 3.025 percent per calendar year, NBC will make a corresponding reduction in the amount of the Station's compensation withheld hereunder for such calendar year. In view of the fact that NBC pays ASCAP and BMI no royaltites on certain network sponsored programs the sum which you agree to pay NBC hereunder for each accounting period, as caculated above, shall be reduced by the ratio of the gross charges which we make to advertisers for the Station for NBC Television Network programs on which no royalties are payable, to the gross charges which we make to advertisers for the Station for all network programs for such accounting period.

15. Neither you nor NBC shall incur any liability hereunder because of NBC's failure to deliver or the failure of the Station to broadcast any or all programs due to failure of facilities, labor disputes, government regulations or causes beyond the control of the party so failing to deliver or to broadcast. Without limiting the generality of the foregoing, our failure to deliver a program for the following reasons shall be deemed to be for causes beyond our control: cancellation of a program because of the death or illness of a star or principal performer thereon or because of such person's failure to conduct himself with due regard to social conventions and public morals and decency or such person's commission of any act or involvement in any situation or occurrence tending to degrade him in society or bringing him into public disrepute, contempt, scandal or ridicule, or tending to shock, insult or offend the community or which tends to reflect unfavorably upon NBC or the program sponsor.

16. You will submit to NBC in writing, upon forms provided by NBC such reports as NBC may request covering the broadcast by the Station of NBC Television Network programs furnished to you hereunder.

17. In the event that the transmitter location, power, frequency or hours or manner of operation of the Station are changed at any time so that the Station is less valuable to NBC as a network outlet than it is at the time this offer is accepted by you, NBC shall have the right to terminate this agreement by giving at least 30 days written notice to you.

18. You agree to keep the operation of the broadcasting equipment of your Station entirely under your control for the period during which you are licensed to operate your Station. You agree not to assign your Station license unless such assignment expressly states that the assignee assumes all your obligations contained in this agreement and unless written notice of such assignment is given to us on or before the effective date thereof. In the event of such an assignment, we shall have the right to terminate this agreement within 60 days after receipt of notice of the assignment by giving written notice to the assignee of such termination specifying the effective date of such termination which date shall be the last date of a month.

19. You agree that you will not authorize, cause, permit or enable anything to be done without NBC's consent whereby any television program, motion-picture film, recording or other material furnished to you hereunder may be recorded, duplicated, or otherwise used for any purpose other than broadcasting by the Station as provided herein.

20. This constitutes the entire agreement between you and us, all prior understandings being merged herein. All questions with respect to this agreement shall be determined in accordance with the internal laws of the State of New York. This agreement may not be changed, modified, renewed, extended or discharged, except as specifically provided herein or by an agreement in writing signed by the parties hereto.

21. Any notices hereunder shall be in writing and shall be given by postpaid mail or prepaid telegram addressed to the respective address stated on the first page of this agreement or at such other address as may be specified in writing by the party to whom the notice is given. When a notice is given by mail or by telegram the date of mailing or the date of delivery to the telegraph office shall be deemed the date of giving the notice.

22. A waiver by either of us of a breach of any provision of this agreement shall not be deemed to constitute a waiver of any preceding or subsequent breach of the same provision or any other provision.

23. This agreement shall become effective at 3:00 a. m., New York City time on the ---- day of ----------, 19--, and, unless sooner terminated as hereinabove provided, it shall remain in effect for a period of two years thereafter. It shall then be renewed on the same terms and conditions for a further period of two years and so on for successive further periods of two years each, unless and until either party shall, at least 180 days prior to the expiration of the then

current term, give the other party written notice that it does not desire to have the contract renewed for a further period.

If this is in accordance with your understanding, will you please indicate your acceptance on the copy of this letter enclosed for that purpose and return that copy to NBC.

Very truly yours,

NATIONAL BROADCASTING COMPANY, INC.

By ____________________

Agreed:

By ____________________

NBC EXHIBIT 4

2. INTERCONNECTED "EQUIVALENT HOUR"

The provisions of Form 1 are found in exactly the same language in Form 2, except that:

(a) Paragraph 9 is changed to read:

"9. The following shall be the financial arrangement between NBC and you for the NBC Television Network programs and other services which NBC will supply to the Station and for the time which the Station will make available for NBC Television Network programs. Settlements will be made approximately 20 days after the close of each month.

"(a) The Network Station Rate of the Station shall be $________ per hour for full-rate periods $________ per hour for three-quarter-rate periods; and $________ per hour for half-rate periods. Full-rate periods shall be from 5:00 p. m. to 11:00 p. m. Sundays and from 6:00 p. m. to 11:00 p. m. Mondays through Saturdays; three-quarter-rate periods shall be from 1:00 p. m. to 5:00 p. m. Sundays and from 5:30 p. m. to 6:00 p. m. Mondays through Fridays and from 5:00 p. m. to 6:00 p. m. Saturdays; all other periods shall be half-rate periods. The time brackets in preceding sentence are expressed in local time at the Station.

"(b) Compensation for NBC Television Network sponsored programs broadcast by the Station will be computed as follows:

"(i) The number of hours and fractions thereof of sponsored programs broadcast by the Station during the month will first be stated in terms of equivalent hours. Each hour of programs broadcast during full-rate periods shall be equal to one equivalent hour. Each hour of programs broadcast in three-quarter-rate periods shall be equal to three-fourths of an equivalent hour. Each hour of programs broadcast during half-rate periods shall be equal to half of an equivalent hour. Fractions of an hour shall for all purposes be treated as their fractional proportions of full hours in the same rate classification.

"(ii) As a means of sharing the cost to NBC of providing network service, including, among other things, the cost of interconnected facilities and of unsponsored programs furnished to the Station by interconnection without charge therefor, you will waive to NBC each month compensation on ____ equivalent hours.

"(iii) Each equivalent hour or fraction thereof in excess of the ____ hours upon which compensation is waived will then be multiplied by the Network Station Rate of the Station for full-rate periods. NBC will pay to you ____ of the result of such multiplication.

"(c) You will pay to NBC each month for NBC Television Network unsponsored programs on film or other recorded version which NBC delivers to the Station during the month upon your order an amount equal to the number of hours or fractions thereof of such unsponsored programs multiplied by $75.00. NBC shall have the right to change the charge specified in this subparagraph (c) at any time upon two weeks written notice to the station; provided, however, that if the charge is increased, the Station may at its option cancel any existing orders for such programs by giving written notice to NBC of such cancellation before the effective date of the increase.

"You shall have the right to cancel an order for an unsponsored program covered by this subparagraph (c) at any time by giving written notice thereof to NBC, provided that if such cancellation shall be for a reason other than a reason stated in clauses (a) and (b) of Paragraph (7) or in the immediately preceding sentence of this subparagraph (c) you shall reimburse NBC for the cost to it of each print of such program which has been made prior to the receipt of NBC of such cancellation notice for use by the Station.

"(d) If the Station for any reason excusable at law, other than a reason stated in clauses (a) and (b) of Paragraph 7, fails to broadcast a sponsored NBC Television Network program which it is otherwise committed to broadcast, you shall reimburse NBC for the cost to it of each print of such program which has been made for use by the Station and for the cost, if any, of transporting the print to and from the Station.

"(e) NBC reserves the right to change at any time the Network Station Rate of the Station from that set forth in subparagraph (a) above. If NBC increases the Network Station Rate of the Station from that set forth in subparagraph (a) above, such increased rate shall be used in computing the compensation due you on business actually sold by NBC at such increased rate. If NBC decreases the Network Station Rate of the Station below that set forth in subparagraph (a) above, such decreased rate shall be used in computing the compensation due you provided NBC has given you at least 90 days written notice of its intention so to decrease such rate.

"In the event of such decrease in the Network Station Rate of the Station you may terminate this agreement as of the effective date of such decrease by giving NBC written notice within 30 days after the receipt of NBC's notice to you of such reduction."

(b) The last sentence of Paragraph 14 is changed to read:

"In view of the fact that NBC pays ASCAP and BMI no royalties on certain network sponsored programs the sum which you agree to pay NBC hereunder for each month, as calculated above shall be reduced by the ratio of the number of equivalent hours broadcast by your Station of network programs on which no royalties are payable to the number of equivalent hours broadcast by your Station of all network programs for such month."

NBC Exhibit 5

3. Noninterconnected "Equivalent Hour"

The provisions of Form 2 are found in exactly the same language in Form 3, except that:

(a) Paragraph 1 is changed to read:

"1. NBC will offer to the Station for television broadcasting NBC Television Network programs, sponsored or unsponsored or both, in 16 mm. motion picture film or other 16 mm. recorded version, and as to which NBC has the right to make the same available for broadcasting by the Station."

(b) The first sentence of Paragraph 3 is changed to read:

"NBC agrees to deliver to you, transportation prepaid, a positive print or copy of a motion picture film or other recorded version of any program referred to in Paragraph 1 above, in sufficient time for you to broadcast such program over the Station at the time scheduled."

(c) The second sentence of Paragraph 4 is changed to read:

" 'Network optional time,' as used herein, consists of the following hours of each day (expressed in local time current on the date of the broadcast):"

(d) The last sentence of Paragraph 6, contains the phrase "within 28 days' advance notice" whereas in Form 2 this read "without 28 days' advance notice." However, this variation may have been inadvertent.

(e) Subparagraph (ii) of Paragraph 9 (b) is deleted, so that the provisions of Subparagraph (iii) in Form 2 are designated as (ii) in Form 3.

(f) Paragraph 10 is deleted, so that the material in Paragraph 11 in Form 2 is found in Paragraph 10 of Form 3.

(g) The second sentence of Paragraph 12 is deleted, the remainder of the paragraph appearing as Paragraph 11 in Form 3.

(h) Paragraph 13 is deleted.

(i) New material is added, designated Paragraph 12, as follows:

"12. In the event that any recorded version of a program furnished to the Station hereunder is a recorded version of a live NBC Television Network program broadcast by NBC, the Station at the time of each broadcast made by means of such recorded version will if we so request, broadcast an appropriate announcement stating that the program is a recorded verision of a program presented earlier over the NBC Television Network."

(j) The provisions of Paragraphs 14 to 23, inclusive, in Form 2 are set forth in the same language in Paragraphs 13 to 22, inclusive, of Form 3.

4. Per Program

[NBC set forth two forms of per program agreement. However, these are identical except that Paragraph 1 varies depending on whether the station is interconnected or not. The form of agreement, with the two variant forms of Paragraph 1, is as follows:]

GENTLEMEN: The following shall comprise the agreement between us for the affiliation of Station -------- with the NBC Television Network for the program series --------------------- only.

1. We will deliver to the Station each week during the term of this agreement a motion picture or other recorded version of the ---------- television program series --------------------- sponsored by ---------------------. You will broadcast such programs over your station on ---------- at -------- local time, or at such other time as shall have been agreed to by us in writing.

or—

1. We will deliver to the A. T. & T. test board in each week during the term of this agreement the ---------- television program series --------------------- sponsored by ---------------------. It is understood and agreed that you will order and pay for local loops and connections. You will broadcast such programs on -------- at -------- or at such other time as shall have been agreed to by us in writing.

2. We will pay you as your compensation $-------- for each broadcast. Settlements will be made to you on a calendar month basis approximately 15 days after the close of such period. We shall be entitled to deduct from the amounts due you a sum equal to 4.225 percent thereof for clearance at the source of ASCAP and BMI music.

3. This agreement shall become effective as of --------------------- (or as soon thereafter as that station begins operation) and will continue in effect until ---------------------. Each of us may terminate the agreement at any time upon giving the other party at least 28 days' prior written notice of such termination.

4. Nothing herein contained shall be construed to prevent or hinder you from rejecting or refusing any program delivered hereunder which you reasonably believe to be unsatisfactory or unsuitable, or from rejecting or refusing any program delivered hereunder which, in your opinion, is contrary to the public interest, or from substituting for any program delivered hereunder a program of outstanding local or national importance.

5. We may at any time cancel a program to be delivered hereunder for the purpose of broadcasting a network program which involves a special event of public importance at the time scheduled for the canceled program. No compensation will be paid you for the canceled program and we shall be under no obligation to deliver the substituted program to you.

6. Neither you nor ourselves shall incur any liability hereunder because of our failure to deliver or your failure to broadcast due to: (a) failure of facilities, (b) labor disputes, or (c) causes beyond the control of the parties so failing to deliver or broadcast. It is understood that in the event of interruption of service it may be necessary to make appropriate adjustments in the charges to sponsors and that in such event corresponding adjustments may be made in the compensation payable to you.

7. You will not authorize, cause, permit, or enable anything to be done whereby the programs supplied to you hereunder may be used for any purpose other than broadcasting by your station. After one broadcast of each program, in the event the program is on film or other recorded version, you will return the film or other recorded version of the same together with reels and containers, to NBC, 30 Rockefeller Plaza, New York 20, New York, transportation prepaid by you.

If this is in accordance with your understanding, will you please indicate your acceptance on the copy of this letter enclosed for that purpose and return that copy to NBC.

Very truly yours,

NATIONAL BROADCASTING COMPANY, INC.

By ------------------------------------

Agreed:

By ------------------------------------

NBC EXHIBIT 7

5. TYPICAL AMENDMENTS OR SUPPLEMENTS TO AFFILIATION AGREEMENTS

(a)

GENTLEMEN: This letter when signed by each of us will constitute an agreement between us with respect to the reciprocal advertising campaign outlined below.

The NBC Television Network will make arrangements with the publishers of important national magazines by which advertising space in such magazines will be exchanged for one-minute announcements in any NBC Television Network participation programs including but not limited to Today, Home, and Tonight. The exchange will be made on a dollar-for-dollar basis according to the rate cards of the respective media.

The NBS Television Network will utilize the advertising space so obtained for advertising and promoting NBC Television Network programs. The national magazines will use the one-minute announcements for advertisements promoting the sale of the magazines to readers. NBC will not permit national magazines to use the announcements for an appeal to advertisers to buy space in such magazines.

The reciprocal announcements will be scheduled during the period from December 1, 1955, to December 31, 1956, inclusive, and will not exceed a total of 312 per calendar year.

NBC will pay all of the expenses incurred in preparation of the advertising to be used in the magazines and agency commissions as required. If your station is broadcasting NBC Television Network participation programs at the time such reciprocal announcements are scheduled, you will broadcast such announcements and waive all station compensation for them. Under our agreements with ASCAP and BMI it may be necessary for NBC to pay usual music license fees on the reciprocal announcements exchanged for space in the magazines. You agree to pay your share of these music license fees on the same basis as if the reciprocal announcements were sold in the normal way to network advertisers.

If the above is in accordance with your understanding please sign and return one copy of this agreement to us.

Very truly yours,

NATIONAL BROADCASTING COMPANY, INC.,
By --

Agreed:

(Name of Licensee of Station)
By ----------------------------------
Call Letters of Station -------------
Date --------------------------------

(b)

[Amendment to agreement with respect to the reciprocal advertising plan:]

GENTLEMEN: This letter constitutes an amendment to the agreement between you and us with respect to the reciprocal advertising plan.

Effective at 3:00 a. m., New York Time, April 1, 1956, the provisions of such agreement relating to music license fee payments by you on reciprocal announcements shall be deleted and shall be of no further force and effect.

Very truly yours,

NATIONAL BROADCASTING COMPANY, INC.,
By --

(c)

GENTLEMEN: Reference is made to the agreement between us for the affiliation of your television station with the NBC Television Network. This letter, when signed by each of us, will constitute an amendment to such agreement.

Effective April 1, 1956, the provision in your affiliation agreement with regard to the granting to advertisers the rate applicable to contiguous periods for certain periods of time which are noncontiguous shall be amended as follows:

NBC may grant to an advertiser ordering two or more noncontiguous periods of time in network optional time on any one day (Sundays excluded) the benefit of the rate for such periods of time which said advertiser would have paid had such periods of time been contiguous, provided:

(i) All such programs are scheduled for original broadcast prior to 6:00 p.m. (New York City time); and

(ii) In the event the original broadcast of any such program is not scheduled on the Station but instead a repeat or delayed broadcast is scheduled; such repeat or delayed broadcast occurs prior to 6:00 p.m. local time at your Station.

(iii) If the separate time periods occur in different time classifications (e. g., if one time period is a half-rate period and the other is a three-quarter rate period) the charge for the period in each classification will be in the proportion that the amount of time in such classification bears to the total amount of time.

Very truly yours,

NATIONAL BROADCASTING COMPANY, INC.,
By --

Agreed:

(Name of Licensee of Station)
By ------------------------------------
Call Letters of Station ----------------
Date: ------------------------------

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16. SAMPLE LETTERS OF INQUIRY ADDRESSED BY THE CHAIRMAN OF THE COMMITTEE TO CERTAIN FILM SYNDICATION ORGANIZATIONS

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
July 30, 1956.

Mr. REUBEN KAUFMAN,
Guild Films Co., Inc., New York, N. Y.

DEAR MR. KAUFMAN: As you may know, a great deal of testimony has been received during the course of the television inquiry being conducted by the Senate Interstate and Foreign Commerce Committee relative to the problems of independent suppliers of film programs for television. In an effort to determine some of the relevant facts in this connection, I am writing to a number of film producers.

In the first place, I would like to have you submit answers to the following questions:

1. What, if any, first-run film series produced and/or distributed by your company have been sold for network broadcast starting in the fall of 1956?

On what day of the week and at what hour are these scheduled for broadcast?

2. What, if any, first-run film series is your company offering exclusively for syndication for next fall?

(a) Are these in production, or, are you trying to make sales on the basis of a pilot film or films?

(b) On what stations do you have clearance for each series? Please show day of the week and hour cleared in each case.

3. If you have film series in both categories, how do the per-picture budgets for series offered for syndication compare with those for series to be broadcast on the networks?

4. How many first-run film series did your company offer for syndication in the broadcast year beginning in September 1954? How many in the year beginning September 1955?

5. Do the option rights of the networks, in conjunction with their must-buy policies, operate to exclude your syndicated programs from the most desirable broadcast times in key markets?

Please explain in detail.

6. As a result of difficulties occasioned by these practices, has your company tended to concentrate on the production of pictures for national sale, reducing the number of programs to be offered strictly on a syndicated basis?

We have been advised that your company is offering a new first-run program called Here Comes Tobor, for syndication next fall. Is this a correct statement? Of course, if you have already covered this in your answer above, you may ignore this direct inquiry.

Can you tell me whether you know of any first-run, grade A film series which are being offered for syndication, as distinguished from network broadcast, by other companies for the season starting next fall?

We are keeping the record in our inquiry open until September 15, 1956. I would very greatly appreciate it if you could furnish the answers to the above questions by that date.

Very truly yours,

WARREN G. MAGNUSON, *Chairman.*

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
July 30, 1956.

Mr. ARMAND SCHAEFER,
Flying A Enterprises, Hollywood, Calif.

DEAR MR. SCHAEFER: As you may know, a great deal of testimony has been received during the course of the television inquiry being conducted by the Senate Interstate and Foreign Commerce Committee relative to the problems of independent suppliers of film programs for television. In an effort to determine some of the relevant facts in this connection, I am writing to a number of film producers.

We have been advised that your company is offering a new first-run program called Red Ryder for syndication next fall. Is this acorrect statement?

We are keeping the record in our inquiry open until September 15, 1956. I would very greatly appreciate it if you could furnish the answer to the above question by that date.

Very truly yours,
WARREN G. MAGNUSON, *Chairman.*

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17. REPLIES OF THE FOLLOWING FILM SYNDICATION ORGANIZATIONS (IN ORDER OF THEIR RECEIPT)

GUILD FILMS
BERNARD L. SCHUBERT, INC.
STUART REYNOLDS PRODUCTIONS
DESILU PRODUCTIONS, INC.
OFFICIAL FILMS, INC.
FLYING A ENTERPRISES (THROUGH MITCHELL J. HAMILBURG)
HOLLYWOOD TELEVISION SERVICE, INC.
NBC TELEVISION FILMS
TELEVISION PROGRAMS OF AMERICA, INC.
ZIV TELEVISION PROGRAMS, INC.
MCA TV, LTD.
HAL ROACH STUDIOS
ABC FILM SYNDICATION, INC.
INTERSTATE TELEVISION CORP.
ALLIED ARTISTS PICTURES CORP.
CBS TELEVISION FILM SALES, INC.
SCREEN GEMS, INC.
FOUR STAR FILMS, INC.
MCCADDEN CORP.
NATIONAL TELEFILM ASSOCIATES, INC.

GUILD FILMS CO., INC.,
New York, N. Y., August 6, 1956.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: Thank you for your good letter of July 30. In reply I am pleased to advise you as follows:

Re your question No. 1: None as of this date.

Re your question No. 2: The only completely first-run film series which we are offering exclusively for syndication this fall is our Kingdom of the Sea, of which we have a total of 39 films "in the can" or in the process of being completed.

This series has just gone into syndication and as of this moment, no arrangements have been completed with regard to time clearance over any stations.

In addition to the above completely first-run film series which we are offering for syndication, we are also continuing the sale of 11 other series previously produced by us. While many of these particular films have already run at least once, they still are first-run for some markets where we failed to make sales in the past.

Re your question No. 3: Although none of the film series which we have heretofore made has ever been sold for use over a network, we feel that to a limited extent this may have been due to the series themselves, even though many of our series have been extremely successful in syndication. Examples of this are our Liberace program, our Confidential File series, our I Spy series, our Life With Elizabeth series, and others. This year we have determined to make an all-out effort to sell some of our series now currently in production for network telecast, and it will be quite interesting to see whether we succeed. Among other things we are upgrading the quality of our shows to a point where we feel no objection of any kind whatsoever can be found with the writing, production, or entertainment values. This has necessitated increasing production budget per-film is a series from figures in the neighborhood of $25,000 per film to $50,000 per film, the amount we are now spending on production of our Jack London-Captain David Grief series which is being shot in color on location in the South Seas. The budget for 39 films in this series has been set at $1,912,000. We also have set several other series for this type of production. For your information, it is our experience that it is practically impossible to recoup the cost of such a high-budgeted series from syndication alone, and if we fail to obtain network sponsors of this type of series, we shall be compelled to stop making them.

Re your question No. 4: We offered four first-run film series for syndication in the broadcast year beginning September 1954. For the broadcast year beginning September 1955 we offered three first-run film series.

Re your question No. 5: We firmly believe that the answer to this question is in the affirmative. The reason is quite simple as the networks' option rights cover the most desirable broadcast times in the key markets. Since a syndication program must run into high production cost if it is to be of a quality which will attract a maximum number of viewers, it therefore must be broadcast at a time when a maximum number of viewers can watch it. Consequently, when a film of even the highest quality is broadcast at a time when a maximum number of viewers are not likely to be watching it, it becomes a virtual impossibility for that film to pay off. The effect of this situation is to gradually eliminate the likelihood of producing top-quality films for syndication, and ultimately production of films for syndication will be reduced to an absolute minimum or completely stopped, and fringe times will be left to rerun properties from the networks or to cast off feature films from the feature film studios. It isn't a pretty picture for syndicators to contemplate.

Re your question No. 6: The answer to this question is definitely in the affirmative, I regret to say.

Regarding Here Comes Tobor we are not offering this program for syndication. This program is too costly to produce in the hope that we will recoup our investment and perhaps make a profit from syndication sales. We made a pilot which we used in an effort to conclude a national sale. Although we found a great deal of interest, we failed to make a national sale and therefore decided not to proceed with further production.

I do not presently know of any grade A film series which are being offered for syndication.

Our company has been fairly successful in the field of syndication, but the problems which face all syndicators have compelled us to change somewhat the character of our operation and to diversify the sources of our income. Among other things, we recently contracted for the purchase of a television station and a radio station, both NBC affiliates, transfer of which has been approved recently by the FCC. We plan to acquire and operate more television stations. While not completely giving up the producing and distribution of films for television syndication, we are now following a policy of producing the finest quality film series for primary offering to network sponsors under theory that if a program is really good enough it cannot be kept off the networks. Under present conditions syndication business is indeed in a sad plight. Fortunately, for us, we have the resources to do something about the situation, but this does not apply to some of the other syndicators who should have had an opportunity to help develop this industry.

The most ridiculous nonsense which I've yet heard is the proposal by the FCC that it might favor extending the right of ownership of TV stations to include ownership by a single person or organization of as many stations as will cover 25 percent of the total audience of the United States. If this should become a fact television will surely become a monopoly in the United States.

Very kindest regards to you, Senator, and I wish you every success in the work you have undertaken. America needs your kind of people.

Sincerely yours,

REUBEN R. KAUFMAN, *President.*

BERNARD L. SCHUBERT, INC.,
New York, August 6, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: In answer to your letter of July 30, 1956, I will attempt to answer some of the questions you posed.

1. We have had a renewal on a first-run film series we produced entitled, "Crossroads." The first 39 films in this series had been sold to the Chevrolet Motor Car Co. in 1955 and were shown over the American Broadcasting Co. Thirty-nine new films have been ordered for the 1956–57 season.

The films are broadcast on Friday from 8:30 to 9 p. m. over the American Broadcasting Co.

2. We are not offering any first-run film series exclusively for syndication next fall.

3. To answer this question, we are not planning any first-run film series to be offered for syndication because, economically, it is impossible for us to gross enough money on local or syndicated sales to justify such a venture. Our average budget for a first-run network, half-hour TV picture runs around $32,000. In our opinion, in order to make any money from a first-run syndicated film, the budget for each film should not exceed a maximum of $20,000 per subject. Based on current costs, this is almost impossible.

4. In 1954 we offered 1 series of 39 first-run films for syndication. In September 1955 we offered none.

5. Since we are not offering any first-run product in syndicated markets, we are not in a position to answer this question.

6. As a result of the difficulties already mentioned, our company will only concentrate on the production of pictures for national sale and, at the conclusion of the national run, these programs will be offered for syndication. Judging from the number of new shows being produced for syndication, it appears that most of our competitors have experienced the same difficulties.

To my knowledge there are only two new series being offered for first-run syndication. These are Dr. Christian and Dr. Hudson's Secret Journal.

Very truly yours,

BERNARD L. SCHUBERT, *President.*

STUART REYNOLDS PRODUCTIONS,
Los Angeles, Calif, August 7, 1956.

WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR MR. MAGNUSON: We have your letter of July 30 and will be glad to cooperate in answering the questions therein.

1. We have not produced and/or distributed any first-run series to start in the fall of 1956.

2. We are not offering any first-run series exclusively for syndication for next fall.

3. Based on above—therefore, no budget figures available.

4. We did not offer any first-run series for syndication in September 1954 or September 1955.

5. No; as we have not produced any programs for syndication.

6. We have produced pictures for national sale only, on orders received in advance of production.

We do have several first-run series in the preproduction stage, but do not plan to go into active production unless an order for a national sale is received.

We read in Radio Daily yesterday (August 3 issue) that Gross-Krasne are producing a grade A film series for syndication to start this fall, entitled "O. Henry Playhouse." This is the only series specifically for syndication that we know of.

If we can be of any further help to you, please let us know.

Sincerely,

STUART REYNOLDS.

DESILU PRODUCTIONS, INC.,
Hollywood, Calif., August 13, 1956.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: In reference to your letter of July 30, 1956, in connection with those items related to therein and in which we have been connected, the following are our answers:

1. The first-run film series produced by our company and sold for network broadcast starting in the fall of 1956 are: I Love Lucy and December Bride.

   I Love Lucy is broadcast on Monday at 9 p. m.; December Bride on Monday at 9: 30 p. m.

2. We are offering, in cooperation with National Telefilm Associates, Inc., the program entitled "Sheriff of Cochise."

   (*a*) This program goes into production tomorrow, and sales were made by NTA on the basis of a pilot film.

   (*b*) Approximately 100 stations have been cleared; the exact clearance for which I would like to refer you to NTA.

3. The per-picture budgets for series offered for syndication compare favorably with those for series to be broadcast on the networks.

4. Our company offered 2 programs for syndication beginning in September 1954, and 1 beginning September 1955.

5. On the limited scale with which we have been engaged in syndicated programing, or endeavoring to engage in same, we can only express opinion as to the effect of the network must-buy policies which would operate to exclude our syndicated programs from the most desirable broadcast times in key markets, since up to the present time we are not actively engaged in syndication ourselves.

6. Our company has definitely tended to concentrate on the production of pictures for national sale reducing the number of programs to be offered strictly on a syndicated basis, but cannot ascribe the total reasons for this action to the difficulty of obtaining desirable broadcast times in key markets.

It is my understanding the ZIV and Revue Productions are offering first-run, grade A film series for syndication, as distinguished from network broadcast.

Sincerely yours,

MARTIN N. LEEDS,
Executive Vice President.

OFFICIAL FILMS, INC.,
New York, N. Y., August 14, 1956.

Senator WARREN G. MAGNUSON,
United States Senate, Committee on Interstate and Foreign Commerce,
Washington, D. C.

DEAR SENATOR MAGNUSON: The following will answer the questions of your letter of July 30:

Question No. 1

What, if any, first-run film series produced and/or distributed by your company have been sold for network broadcast starting in the fall of 1956?

On what day of the week and at what hour are these scheduled for broadcast?

Answer No. 1

For the fall of 1956, Official Films is distributing 3 programs that will be telecast over the 2 major networks. They are as follows:

Robin Hood: Its second consecutive year sponsored by Johnson & Johnson Products, and Wildroot Cream Oil, over the CBS network, 7: 30 to 8 p. m. (e. s. t.) Monday night.

The Adventures of Sir Lancelot: A new series which we have sold directly to NBC, and scheduled to be telecast Monday nights 8 to 8: 30 p. m. (e. s. t.) 3 out of every 4 weeks. NBC has arranged for Lever Bros. and Whitehall Pharmaceuticals to sponsor this series.

The Buccaneers: A new series which will be sponsored by the Sylvania Electric Co. over the CBS network, 7:30 to 8 p. m. (e. s. t.) Saturday nights.

Question No. 2

What, if any, first-run film series is your company offering exclusively for syndication for next fall?

(*a*) Are these in production, or are you trying to make sales on the basis of a pilot of film or films?

(*b*) On what stations do you have clearance for each series? Please show day of the week and hour cleared in such cases.

Answer No. 2

As of this date, we have no plans for the release of any first-run film series for syndication. We do, at this time, maintain an option on a series of 26 first-run programs being produced in England.

We are currently attempting to sell this series, The Adventures of Mitch to national sponsors. We are at the end of our selling season and are therefore giving consideration to a few large regional sponsors who are still looking for a new series and who have time in local markets.

In the next 30 days, should the market conditions look favorable, more favorable than they have this past year, we might exercise our option, in which event we will be distributing 26 first-run shows. Since we have not released them as yet, we have no stations or time clearance to report.

Question No. 3

If you have film series in both categories, how do the per-picture budgets for series offered for syndication compare with those for series to be broadcast on the networks?

Answer No. 3

Our national programs are budgeted at $25,000 to $30,000. On our syndicated programs, should we have them, they will not exceed a budget of $20,000. The reason for the low-budget program in syndication is obvious and has been discussed in our Barrow committee presentation.

Question No. 4

How many first-run films series did your company offer for syndication in the broadcast year beginning in September 1954? How many in the year beginning September 1955?

Answer No. 4

Official Films released two first-run, half-hour series for syndication in 1954. These series were The Star and the Story, consisting of 39 half-hour films, and This Is Your Music, with 26 films.

In the year 1955, we released one first-run product for syndication: The Adventures of the Scarlet Pimpernel, consisting of only 18 films.

Question No. 5

Do the option rights of the networks, in conjunction with their must-buy policies, operate to exclude your syndicated programs from the most desirable broadcast times in key markets?

Please explain in detail.

Answer No. 5

Yes. To answer this question in detail would take many pages and a great deal of time. The simple and most direct answer is "Yes." The reasons, problems, etc., are all outlined in the Barrow committee presentation.

Question No. 6

As a result of difficulties occasioned by these practices, has your company tended to concentrate on the production of pictures for national sale, reducing the number of programs to be offered strictly on a syndicated basis?

As you no doubt know, the National Broadcasting Corp., in a document filed with our committee, quoted trade press reports that: "The biggest batch of new offerings during the past year came out from Official Films, which brought 11 half-hour series into syndication."

Will you please comment on this statement in the context in which it was quoted by NBC; namely, to establish that film syndicators are doing a record business.

Can you tell me whether you know of any first-run, grade A film series which are being offered by syndication, as distinguished from network broadcast, by other companies for the season starting with next fall?

Answer No. 6

As a result of difficulties that we encounter due to the problems in the industry, the only plans we have for syndication products will be rerun films after the network sponsors have already telecast them.

In regard to the NBC document filed with Senate committee that states: "The biggest batch of new offerings during the past year came out from Official Films, which brought 11 half-hour series into syndication," my only comment is this is the first time any intelligent group, such as NBC, has relied upon publicity releases to trade papers, gossip, and rumor as being authentic. There is no truth to the statement that we released 11 half-hour series into syndication in 1955. The following series are those that we did release, and each one was a network rerun, not first run: My Little Margie, 126 programs; The Stu Erwin Show, 130 programs; Willy, 39 programs; Foreign Intrigue, 156 programs. As you can see, there are only 4 series, not 11.

This year, 1956, we have released the following reruns only: Four Star Playhouse, 153 programs; the American Legend, 39 programs.

In my personal opinion, I do not know of any first-run, grade A series of network caliber, being released for syndication by any of the other companies, although there are a number of first-run shows being discussed. For your information, they are: Sheriff of Cochise, Frontier Doctor, Annapolis.

Trust this will be helpful to you in compiling an answer on behalf of our fine association.

Very truly yours,

HERMAN RUSH.

MITCHELL J. HAMILBURG AGENCY,
Hollywood, Calif., August 20, 1956.

Mr. WARREN G. MAGNUSON,
United States Senate, Washington, D. C.

DEAR SIR: I am in receipt of your letter of July 30 addressed to Mr. Armand Schaefer, of Flying A Enterprises, and since he is away on vacation, I am writing to give you the information you requested about our company.

We have at the present time the following series:

Gene Autry: Syndicated through CBS–TV.

Range Rider: Film Sales, Inc.

Annie Oakley: Sold to Carnation Co. and Continental Baking Co.

Buffalo Bill, Jr.: Sold to Mars Candy Co. and Brown Shoe Co.

We have for offer this fall a new program called Red Ryder. This is open for syndication or national sale. We also have Adventures of Champion, 26 pictures made for national sale, all through CBS Television Film Sales, Inc.

Trusting this information is what you wanted.

Sincerely yours,

MITCHELL J. HAMILBURG.

HOLLYWOOD TELEVISION SERVICE, INC.,
North Hollywood, Calif., August 21, 1956.

Senator WARREN G. MAGNUSON,
Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: This will acknowledge your letter of July 30.

1. Please be advised that we have not sold any show for network broadcast which is to be started in the fall of 1956.

2. We are currently offering the Adventures of Dr. Fu Manchu, Commando Cody, and Frontier Doctor exclusively for syndication sales.

(*a*) Frontier Doctor is in production. The other two series have been completed.

(*b*) It is impossible to give you the exact stations as for the most part we sell advertising agencies and they clear time in the various markets.

3. The budget would be the same for either network or syndication sales. It just happens we could not make a network sale on previous product.

4. Stories of the Century was being sold for syndication in the fall of 1954. In the year 1955, the Adventures of Dr. Fu Manchu was offered for sale.

5. It is true that one reason we have been unable to complete a network deal is the fact of time clearances. We could not secure enough open time at the proper hours to negotiate a satisfactory deal on a network basis.

6. It is the opinion of the writer that we should concentrate only on film for national sale during the months and years ahead. It is becoming harder and harder to recoup your original investment on straight syndicated sales.

There are several first-run grade A film series which are now being offered for syndication, such as, Dr. Christian, Code 3, Sheriff of Cochise, Highway Patrol, Passport to Danger, Sheena Queen of the Jungle, and many more.

I certainly hope that the above will answer satisfactorily the inquiries in your letter.

Very truly yours,

EARL R. COLLINS.

NBC TELEVISION FILMS,
A DIVISION OF CALIFORNIA NATIONAL PRODUCTIONS, INC.,
A SUBSIDIARY OF NATIONAL BROADCASTING CO., INC.,
New York, N. Y., August 28, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate,
Washington, D. C.

DEAR SENATOR MAGNUSON: This is in reply to your letter of July 30, setting forth various questions on which you asked that data be submitted prior to September 15, in connection with the television inquiry being conducted by the Senate Committee on Interstate and Foreign Commerce. These questions are restated for convenience of reference, and the answers are set forth below each question. Where a question refers to first-run film series, we understand from Mr. Cox that this means a program which has not been previously broadcast on a network basis or any other basis, and the answers are in accordance with that understanding. The NBC Film Division has recently been renamed NBC Television Films, and it is now part of California National Productions, Inc., a wholly owned subsidiary of the National Broadcasting Co.; the references to "your company" in the questions are answered in terms of NBC Television Films.

1. What, if any, first-run film series produced and/or distributed by your company have been sold for network broadcast starting in the fall of 1956?

Answer. None.

2. What, if any, first-run film series is your company offering exclusively for syndication next fall?

Answer. NBC Television Films is offering for syndication first-run episodes of Life of Riley in markets where the Gulf Oil Co. does not sponsor the series on a network basis. (See Exhibit A.)

2(a). Are these in production or are you trying to make sales on the basis of a pilot film or films?

Answer. The Life of Riley films which will be concurrently broadcast this fall in some markets on a network basis and in other markets on a syndicated basis are currently in production.

2. (b) On what stations do you have clearance for each series? Please show day of week and hour cleared in each case.

Answer. The syndication sales of Life of Riley are made both to advertisers, who place the films on stations of their choice, and directly to stations. The stations carrying the films sold on either of these bases determine the broadcast period available for them. Exhibit A sets forth information on the stations carrying the films sold on a syndication basis, the periods in which they are carried (to the extent known to us), and the advertisers sponsoring them.

3. If you have film series in both categories, how do the per-picture budgets for series offered for syndication compare with those for series to be broadcast on the networks?

Answer. We do not have film series in both categories, since we have no first-run series which we have sold for network broadcast starting in the fall of 1956.

4. How many first-run series did your company offer for syndication in the broadcast year beginning in September 1954? How many in the year beginning in September 1955?

Answer. We offered 3 first-run film series for syndication during the 1954–55 broadcast season and 4 such series during the 1955–56 broadcast season, as follows:

1954–55 broadcast season:

Adventures of the Falcon (release date, June 1954)
Life of Riley (release date, September 1954)
His Honor, Homer Bell (release date, December 1954)

1955–56 broadcast season:

Steve Donovan (release date, April 1955)
Great Gildersleeve (release date, July 1955)
Life of Riley (release date, September 1955)
Crunch and Des (release date, December 1955)

5. Do the option rights of the networks in conjunction with their must-buy policy operate to exclude your syndicated programs from the most desirable broadcast times in key markets?

Answer. There is a high percentage of clearance by network-affiliated stations for network programs in network-option time, and to the extent that such a station decides to schedule a network program in such a period, the period is not available for our syndicated films. Similarly, to the extent that a station decides to schedule programs of other nonnetwork organizations in any period, such period is not available for our syndicated films. However, in a number of cases, network-affiliated stations have scheduled our syndicated films in network-option time periods. Exhibit B shows examples where this has occurred in recent months, and also shows examples where our syndicated films have been scheduled by network-affiliated stations in time periods between 6 to 11 p. m., other than network-option time. This list is limited to stations whose time of broadcast of the films in question is known to us.

6. As a result of difficulties occasioned by these practices, has your company tended to concentrate on the production of pictures for national sale, reducing the number of programs to be offered strictly on a syndicated basis?

Answer. There has been no change in network-affiliate arrangements which would lead NBC Television Films to concentrate on the production of films for national sale (to a national advertiser or a network) as distinguished from sales directly to stations on a market-by-market basis. A national sale, however, has financial attractions as compared with market-by-market syndication sales, because it involves less risk and assures a known income within a designated time; whereas the recovery of production costs through sales to stations or advertisers on a market-by-market basis is a long-drawn-out process, in which the variable price, starting dates, and continued popularity of the program increase the risk. NBC Television Films has offered series both for market-by-market syndication and for national sale, and in some cases, where market-by-market syndication would entail excessive risks in view of the projected costs of the series, we have offered a series only for national sale on the basis of a pilot film.

You have asked whether or not NBC Television Films is offering the Bob Mathias Show and Badge 714 for syndication next fall as first-run programs, and whether the Badge 714 programs have not been previously broadcast on a network basis under the Dragnet title. We are currently offering the Bob Mathias series, on the basis of a pilot, to advertisers for national spot or network broadcasts, but are not offering it to stations or advertisers on a market-by-market basis. With regard to Badge 714, each series offered for broadcast beginning in October of each year has not previously been offered on a syndicated basis, but has been broadcast during the preceding year on a network basis under the Dragnet title; accordingly it is first-run in the sense referred to in your letter (i. e., no previous broadcast on a network or any other basis) only in those markets where it was not carried on a network basis during the preceding year.

You also ask for information available to us with regard to any first-run, grade A film series which other companies are offering for syndication for the season beginning in the coming fall. On the basis of trade reports, and without vouching for the caliber of the programs or the accuracy or completeness of the information, we understand that examples of first-run series being offered for syndication include the following: Dr. Christian, Blondie, State Trooper, Frontier Doctor, Dr. Hudson's Secret Journal, Highway Patrol, Last of the Mohicans, Sheriff of Cochise, O'Henry Playhouse, and Foreign Legion.

Yours sincerely,

CARL M. STANTON, *Vice President.*

Exhibit A.—*Stations scheduling Life of Riley syndicated series (syndicated sales to advertiser or directly to station)*

Station and market	Day and time (p. m.)	Advertiser
KIDO, Boise	Friday [1]	Fenway Department Store.
KXLF, Butte	Tuesday [1]	Safeway Stores.
KKTV, Colorado Springs	Sunday [1]	Sinton Dairy.
KVAL, Eugene	Wednesday [1]	Pacific Gamble Robinson.
KIEM, Eureka	Thursday [1]	Master Bread.
KID, Idaho Falls	Monday [1]	Safeway Stores.
KLAS, Las Vegas	Monday, 7	([1]).
KGVO, Missoula	Tuesday [1]	Safeway Stores.
KSBW, Salinas	Wednesday, 9	Bordens Dairy.
KIMA, Yakima	Wednesday, 10	([1]).
KRNT, Ames-Des Moines	Sunday, 9	([1]).
KTVH, Hutchinson	Sunday, 8:30	Coleman Furnace Co.
KOAM, Pittsburg, Kans	Friday, 8	([1]).
KTVO, Kirksville-Ottumwa	Tuesday, 9	IGA Stores.
KOTA, Rapid City	Monday [1]	Brown Swift Dairy & Western Stations.
KIVA, Yuma	Tuesday [1]	([1]).
KHOL, Kearney-Holdredge	Monday [1]	([1]).
KLZ, Denver	Monday, 8	Beatrice Foods.
KLIX, Twin Falls	Monday [1]	([1]).
WDAY, Fargo	Sunday, 7:30	([1]).
WOW, Omaha	Friday, 10:30	Gamble Robinson.
KBET, Sacramento	Thursday, 7	([1]).
WXIX, Milwaukee	Saturday, 7	Blue Cross.
KSTP, Minneapolis-St. Paul	Monday, 8:30	Holsum Bread.
KWTV, Oklahoma City	Friday [1]	Red Bud Food Stores-Scriver Stevens Co.
KTSM, El Paso	Tuesday, 7	([1]).
KJEO, Fresno-Tulare	Sunday, 7	([1]).
KGMB, Honolulu	Sunday, 6	([1]).
KTTV, Los Angeles	Monday, 8:30	Kent Cigarettes.
KOIN, Portland	Friday [1]	Portland General Electric Co.
KTVT, Salt Lake City	Friday, 9:30	Henagers School of Business and Ironrite.
KING, Seattle-Tacoma	Thursday, 8:30	([1]).
KHQ, Spokane	Wednesday [1]	Prudential Distributor and Brown & Haley.
KFYR, Bismarck	do.[1]	([1]).
WEAU, Eau Claire	do.[1]	Gamble Robinson.
KGEO, Enid	Thursday, 9	Master Bread.
KGLO, Mason City	Thursday, 6:30	Gamble Robinson.
KYTV, Springfield	Sunday [1]	Springfield Grover Co.
WSAU, Wausaw, Wis	Monday [1]	Gamble Robinson.
KMBC, Kansas City	Sunday, 8	Kansas Service Co.
WTVP, Decatur	Saturday [1]	([1]).

[1] Time of broadcast or advertiser unknown.

Exhibit B.—*Examples of NBC television film syndicated series scheduled by network affiliates in network option time* [1] *and nonoption time between 6 to 11 p. m.*

1. DANGEROUS ASSIGNMENT

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WBUF, Buffalo	Wednesday, 8 p. m.	
	Monday	
WHP, Harrisburg	Monday, 9 p. m.	
WHEC, Rochester	Saturday, 12 noon	
WABC, New York City	Thursday, 10 p. m.	
WJTV, Jackson	Monday, 8:30 p. m.	
WBIR, Knoxville	Friday, 9:30 p. m.	
KRBB, El Dorado	Friday, 7:30 p. m.	
WGBS, Miami		Monday, 7 p. m.
WXEX, Richmond	Tuesday, 7:30 p. m.	
WTVN, Columbus		Saturday, 6 p. m.
WBAP, Fort Worth		Tuesday, 10:30 p. m.
WIBW, Topeka		Friday, 9:30 p. m.
WXIX, Milwaukee		Friday, 10:30 p. m.
KSTP, Minneapolis		Saturday, 10:30 p. m.
KWK, St. Louis		Wednesday, 10:30 p. m.
KBAK, Bakersfield	Monday, 7:30 p. m.	
KKTV, Colorado Springs		Tuesday, 10:40 p. m.

See footnotes at end of table.

EXHIBIT B.—*Examples of NBC television film syndicated series scheduled by network affiliates in network option time*[1] *and nonoption time between 6 to 11 p. m.*—Continued

2. HOPALONG CASSIDY (½ HOURS)

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WBAL, Baltimore	Saturday, 4:30 p. m.	
WABI, Bangor		Sunday, 6:30 p. m.
WNBF, Binghamton		Monday, 6:30 p. m.
WGR, Buffalo		Thursday, 6 p. m.
WHAM, Rochester		Monday, 6 p. m.
WSYR, Syracuse	Saturday, 12:30 p. m.	
WILK, Wilkes-Barre		Saturday, 7 p. m.
WLOS, Asheville	Sunday, 5 p. m.	
WABT, Birmingham	Monday, 3:30 p. m.	
WBTV, Charlotte	Wednesday, 5 p. m.	
WFBC, Greenville		Friday, 6–6:30 p. m.
WJTV, Jackson	Saturday, 11 a. m.	
WSIX, Nashville		Friday, 6–6:30 p. m.
KTBS, Shreveport	Saturday, 4:30 p. m.	
KRNT, Ames-Des Moines	Saturday, 1:30 p. m.	
WDSM, Duluth		Saturday, 6 p. m.
WFIE, Evansville	Friday, 8:30 p. m.	
WSAZ, Huntington		Wednesday, 6 p. m.
WDAF, Kansas City	Sunday, 4 p. m.	
WCCO, Minneapolis	Saturday, 6:30 p. m.	
KRGV, Weslaco-Harlingen	Wednesday, 8:30 p. m.	
WKBN, Youngstown		Monday, 6 p. m.
KBTV, Denver	Friday, 5:45 p. m.	
KROD, El Paso	Monday, 4:30 p. m.	
KMJ, Fresno-Tulare		Monday, 6:30 p. m.
KLAS, Las Vegas		Wednesday, 6:30 p. m.
KHQ, Spokane		Thursday, 6 p. m.

3. HOPALONG CASSIDY (1 HOUR)

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WHAM, Rochester	Saturday, 12 p. m.	
WABC, New York City	Monday through Friday, 11 a. m.	
WFBC, Greenville-Anderson	Saturday, 3 p. m.	
WBIR, Knoxville	Saturday, 10 a. m.	
WMCT, Memphis		Monday, Tuesday, and Thursday, 6 p. m.
WCKT, Fort Lauderdale	Saturday, 4:30 p. m.	
WSUN, Tampa, St. Petersburg	Saturday, 3:30 p. m.	
WTVA, Columbus		Monday, 6 p. m.
WFBM, Indianapolis	Saturday, 10:30 a. m.	
WCCO, Minneapolis	Sunday, 10:30 a. m.	
KHQA, Quincy	Saturday, 10 a. m.	
WSJV, South Bend	Sunday, 4:30 p. m.	
KTVH, Hutchinson		Saturday, 6 p. m.
WKBN, Youngstown	Saturday, 4:30 p. m.	
WHIZ, Zanesville	Sunday, 5:30 p. m.	
KCCC, Sacramento	Saturday, 6 p. m.	
KHQ, Spokane	Sunday, 5 p. m.	

4. VICTORY AT SEA

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WBUF, Buffalo	Wednesday, 8:30 p. m.	
WCAU, Philadelphia	Sunday, 4:30 p. m.	
WJAR, Providence		Monday, 10:30 p. m.
WWLP, Springfield	Tuesday, 10 p. m.	
WHEN, Syracuse		Thursday, 10:30 p. m.
WBRZ, Baton Rouge	Sunday, 9 p. m.	
WFBC, Greenville		Friday, 7 p. m.
WBTW, Florence	Monday, 9:30 p. m.	
WSAV, Savannah		Sunday, 6:30 p. m.
KTBS, Shreveport		Thursday, 10 p. m.
WTUN, Columbus	Tuesday, 9 p. m.	
KSTP, Minneapolis	Sunday, 9 p. m.	
KMJ, Fresno	Sunday, 4:30 p. m.	
KVOA, Tucson		Saturday, 6:30 p. m.

See footnote at end of table.

EXHIBIT B.—*Examples of NBC television film syndicated series scheduled by network affiliates in network option time*[1] *and nonoption time between 6 to 11 p. m.*—Continued

5. PARAGON PLAYHOUSE

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WTPA, Harrisburg	Thursday, 9:30 p. m.	
WGAN, Portland		Saturday, 10:30 p. m.
WHYN, Springfield	Sunday, 8 p. m.	
WBTV, Charlotte	Tuesday, 8 p. m.	
WGBS, Miami	Wednesday, 8 p. m.	
KDAL, Duluth	Tuesday, 7 p. m.	
KCCC, Sacramento	Sunday, 8 p. m.	

6. CAPTURED

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WBUF, Buffalo	Monday, 9 p. m.	
WPRO, Providence	Saturday, 12 noon	
WCSC, Charleston	Sunday, 9:30 p. m.	
WRDW, Augusta	Tuesday, 8:30 p. m.	
WRGP, Chattanooga	Thursday, 7:30 p. m.	
WGBS, Ft. Lauderdale	Tuesday, 9:30 p. m.	
WJW, Cleveland-Akron		Saturday, 10:30 p. m.
WTUN, Columbus	Thursday, 9 p. m.	
WEEK, Peoria	Friday, 7:30 p. m.	
KSL, Salt Lake City	Tuesday, 8:30 p. m.	

7. INNER SANCTUM

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WBUF, Buffalo		Tuesday, 10:30 p. m.
WILK, Wilkes Barre	Saturday, 10 p. m.	
WLWA, Atlanta	Tuesday, 7:30 p. m.	
WBRZ, Baton Rouge		Saturday, 6 p. m.
WBIR, Knoxville		Thursday, 10:45 p. m.
WTVN, Columbus	Monday, 8 p. m.	
WFAA, Dallas	Saturday, 8:30 p. m.	
KATV, Pine Bluff		Friday, 9:30 p. m.
WOW, Omaha		Monday, 10:30 p. m.
WEEK, Peoria		Thursday, 10:30 p. m.
WLEX, Pittsburg, Kans	Tuesday, 8:30 p. m.	
KRDO, Colorado Springs		Tuesday, 10:30 p. m.
KCCC, Sacramento-Stockton	Friday, 8:30 p. m.	

8. THE ADVENTURES OF THE FALCON

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WBUF, Buffalo		Monday, 7 p. m.
WHP, Harrisburg	Wednesday, 8:30 p. m.	
KDKA, Pittsburgh	Friday, 9 p. m.	
WGAN, Portland		Friday, 7 p. m.
WABC, New York City		Friday, 10:30 p. m.
WCSC, Charleston, S. C	Wednesday, 7:30 p. m.	
WDRG, Mobile		Friday, 9:30 p. m.
KSLA, Shreveport	Thursday, 8:30 p. m.	
WHIS, Bluefield	Wednesday, 8 p. m.	
WHO, Ames-Des Moines		Thursday, 10:30 p. m.
WNBQ, Chicago		Saturday, 6 p. m.
WKRC, Cincinnati	Saturday, 10 p. m.	
WHBF, Rock Island		Sunday, 10 p. m.
KGUL, Galveston		Saturday, 6 p. m.
KCMO, Kansas City		Sunday, 10 p. m.
WNDU, South Bend		Friday, 10:30 p. m.
KOAT, Albuquerque		Thursday, 6:30 p. m.
KRDO, Colorado Springs	Monday, 8:30 p. m.	
KABC, Los Angeles		Sunday, 7 p. m.
KVAR, Phoenix	Friday, 9:30 p. m.	
KLOR, Portland-Vancouver	Tuesday, 9:30 p. m.	
KVOA, Tucson	Sunday, 7:30 p. m.	
KCSJ, Pueblo	Thursday, 8:30 p. m.	

See footnote at end of table.

EXHIBIT B.—*Examples of NBC television film syndicated series scheduled by network affiliates in network option time*[1] *and nonoption time between 6 to 11 p. m.*—Continued

9. HIS HONOR HOMER BELL

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WTPA, Harrisburg		Sunday, 6:30 p. m.
KDKA, Pittsburgh	Tuesday, 3:30 p. m.	
KRBC, Abilene	Friday, 8 p. m.	
WFAA, Fort Worth	Saturday, 6:30 p. m.	
KCEN, Temple-Waco		Wednesday, 9:30 p. m.
KRGV, Weslaco		Tuesday, 9:30 p. m.
KBTV, Denver		Saturday, 6 p. m.
KID, Idaho Falls	Sunday, 5 p. m.	

10. STEVE DONOVAN, WESTERN MARSHAL

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WABI, Bangor		Monday, 7 p. m.
WNAC, Boston	Wednesday, 7:30 p. m.	
WHP, Harrisburg	Wednesday, 8 p. m.	
KDKA, Pittsburgh	Wednesday, 5:30 p. m.	
WWLP, Springfield	Sunday, 5:30–6 p. m.	
WGBI, Wilkes Barre-Scranton		Tuesday, 6 p. m.
WLWA, Atlanta		Friday, 6 p. m.
WFBC, Greenville		Saturday, 11 p. m.
WTVD, Durham		Friday, 6:30 p. m.
KRBB, El Dorado	Saturday, 8:30–9 p. m.	
WKRG, Mobile		Monday, 10 p. m.
WSAV, Savannah		Wednesday, 6:30 p. m.
WJHL, Johnson City	Monday, 8:30 p. m.	
WDSU, New Orleans		Saturday, 10:30 p. m.
KRNT, Des Moines		Saturday, 6 p. m.
WCIA, Champaign		Tuesday, 6 p. m.
KOMU, Columbia	Wednesday, 8 p. m.	
KGEO, Enid	Thursday, 8:30 p. m.	
WFAA, Dallas	Sunday, 2:30 p. m.	
KGUL, Galveston	Saturday, 10 p. m.	
WFBM, Indianapolis		Friday, 10:30 p. m.
KMBC, Kansas City	Friday, 7 p. m.	
KOSA, Midland	Saturday, 6:30 p. m.	
WCCO, Minneapolis		Saturday, 11 p. m.
WDNU, South Bend		Friday, 6 p. m.
KTVX, Tulsa-Muskogee	Friday, 8 p. m.	
KERO, Bakersfield		Thursday, 7 p. m.
KHSL, Chico		Thursday, 7 p. m.
KLZ, Denver		Friday, 6:30 p. m.
KTSM, El Paso	Thursday, 7:30 p. m.	
KUAL, Eugene		Thursday, 6:30 p. m.
KMJ, Fresno-Tulare		Monday, 7 p. m.
KID, Idaho Falls	Wednesday, 5:30 p. m.	
KLAS, Las Vegas	Friday, 9 p. m.	
KRCA, Los Angeles		Thursday, 7 p. m.
KVAR, Phoenix		Tuesday, 6 p. m.
KLOR, Portland-Vancouver		Monday, 6:30 p. m.
KSBW, Salinas		Thursday, 7 p. m.
KFMB, San Diego	Thursday, 7:30 p. m.	
KPIX, San Francisco		Tuesday, 6:30 p. m.
KEYT, Santa Barbara		Thursday, 7 p. m.
KING, Seattle-Tacoma		Wednesday, 7 p. m.
KIMA, Yakima	Monday, 7:30 p. m.	

11. GREAT GILDERSLEEVE

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WBAL, Baltimore		Sunday, 7 p. m.
WTPA, Harrisburg	Thursday, 7:30 p. m.	
WNHC, New Haven		Friday, 10:30 p. m.
WCAU, Philadelphia	Tuesday, 7:30 p. m.	
WCSH, Portland, Maine		Wednesday, 7 p. m.
WWLP, Springfield-Holyoke		Sunday, 7 p. m.
WSYR, Syracuse	Friday, 9:30 p. m.	
WILK, Wilkes-Barre	Monday, 9 p. m.	
WRCA, New York City		Tuesday, 7 p. m.
WBOC, Salisbury		Sunday, 7 p. m.
WALB, Albany, Ga	Thursday, 8 p. m.	
WSB, Atlanta	Wednesday, 9:30 p. m.	
WRDW, Augusta	Thursday, 8:30 p. m.	
WAFB, Baton Rouge	Tuesday, 8:30 p. m.	
WUSN, Charleston	Wednesday, 9 p. m.	

EXHIBIT B.—*Examples of NBC television film syndicated series scheduled by network affiliates in network option time*[1] *and nonoption time between 6 to 11 p. m.*—Continued

11. GREAT GILDERSLEEVE—Continued

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WIS, Columbia	Wednesday, 9:30 p. m.	
WFMY, Greensboro-Winston-Salem	Friday, 8 p. m.	
WFBC, Greenville, S. C.	Tuesday, 7 p. m.	
WNCT, Greenville, N. C.	Thursday, 8 p. m.	
WHTE, Knoxville		Friday, 7 p. m.
WMAZ, Macon		Thursday, 7 p. m.
WDSU, New Orleans		Sunday, 9:30 p. m.
WVEC, Norfolk	Sunday, 9:30 p. m.	
WTVR, Richmond-Petersburg	Friday, 9 p. m.	
WSAV, Savannah	Friday, 8 p. m.	
KTBS, Shreveport	Tuesday, 8:30 p. m.	
WFLA, Tampa-St. Petersburg	Sunday, 9:30 p. m.	
WHIS, Bluefield		Monday, 7 p. m.
WTVD, Raleigh-Durham	Tuesday, 7:30 p. m.	
KPAR, Abilene	Tuesday, 8:30 p. m.	
KGNC, Amarillo	Wednesday, 7:30 p. m.	
WNEM, Bay City-Saginaw	Friday, 7:30 p. m.	
WNBQ, Chicago		Monday, 9:30 p. m.
WJW, Cleveland-Akron		Wednesday, 7 p. m.
KRIS, Corpus Christi	Wednesday, 7 p. m.	
WWJ, Detroit		Friday, 10:30 p. m.
WFIE, Evansville-Henderson		Sunday, 9:30 p. m.
WDAY, Fargo-Valley City	Monday, 9 p. m.	
WKJG, Fort Wayne	Wednesday, 7 p. m.	
WFAA, Fort Worth-Dallas	Monday, 6:30 p. m.	
WOOD, Grand Rapids-Kalamazoo		Friday, 7 p. m.
KPRC, Houston-Galveston	Wednesday, 7:30 p. m.	
WFBM, Indianapolis	Thursday, 7 p. m.	
KARK, Little Rock-Pine Bluff	Saturday, 7:30 p. m.	
KCBD, Lubbock	Monday, 7 p. m.	
KWTV, Oklahoma City	Friday, 7 p. m.	
WTVA, Peoria	Monday, 8:30 p. m.	
WIMA, Lima	Thursday, 9 p. m.	
KTXL, San Angelo	Monday, 6:30 p. m.	
KVOO, Tulsa-Muskogee	Saturday, 9 p. m.	
KGBT, Weslaco-Harlingen	Monday, 9 p. n.	
KAKE, Great Bend		Friday, 6 p. m.
WKBN, Youngstown		Thursday, 7 p. m.
KBST, Big Springs	Tuesday, 8:30 p. m.	
KERO, Bakersfield	Friday, 8:30 p. m.	
KIDO, Boise	Saturday, 9 p. m.	
KKTV, Colorado Springs		Friday, 7 p. m.
KTSM, El Paso	Monday, 7:30 p. m.	
KLAS, Las Vegas	Thursday, 7:30 p. m.	
KXLY, Spokane	Friday, 8 p. m.	

12. CRUNCH AND DES

WBAL, Baltimore		Wednesday, 10:30 p. m.
WTWO, Bangor, Maine		Friday, 7 p. m.
WBUF, Buffalo	Thursday, 10 p. m.	
WGAL, Lancaster		Thursday, 7 p. m.
WKNB, New Haven		Monday, 10:30 p. m.
WCAU, Philadelphia		Friday, 7 p. m.
KDKA, Pittsburgh	Thursday, 9 p. m.	
WCSH, Portland, Maine		Saturday, 7 p. m.
WPRO, Providence	Wednesday, 7:30 p. m.	
WVET, Rochester, N. Y.		Monday, 7 p. m.
WHEN, Syracuse		Saturday, 7 p. m.
WBRE, Wilkes-Barre		Monday, 7 p. m.
WINK, Ft. Myers, Fla.		Tuesday, 7 p. m.
WAGA, Atlanta		Do.
WBRZ, Baton Rouge	Friday, 7:30 p. m.	
WABT, Birmingham	Wednesday, 8:30 p. m.	
WRGP, Chattanooga	Thursday, 8 p. m.	
WJTV, Jackson		Sunday, 10 p. m.
WATE, Knoxville	Tuesday, 7:30 p. m.	
KALB, Alexandria, La.	Monday, 9 p. m.	
WTVJ, Miami		Friday, 10:30 p. m.
WKRG, Mobile		Thursday, 6:30 p. m.
KNOE, Monroe		Saturday, 9:30 p. m.
WXIX, Nashville	Thursday, 8:30 p. m.	
KTSM, El Paso	Tuesday, 8 p. m.	
KVAL, Eugene	Friday, 8 p. m.	

See footnotes at end of table

EXHIBIT B.—*Examples of NBC television film syndicated series scheduled by network affiliates in network option time*[1] *and nonoption time between 6 to 11 p. m.*—Continued

12. CRUNCH AND DES—Continued

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
KIEM, Eureka	Friday, 8:30 p. m.	
KJEO, Fresno	Friday, 9:30 p. m.	
KFBB, Great Falls	Saturday, 8 p. m.	
KID, Idaho Falls	Saturday, 7:30 p. m.	
KLAS, Las Vegas	Thursday, 7:30 p. m.	
KRCA, Los Angeles	Friday, 8:30 p. m.	
KBES, Medford	Saturday, 8 p. m.	
KGVO, Missoula	Wednesday, 8:30 p. m.	
KVAR, Phoenix	Thursday, 9 p. m.	
KPTV, Portland	Friday, 7:30 p. m.	
KZTV, Reno	Thursday, 8:30 p. m.	
KSWS, Roswell	Tuesday, 8 p. m.	
KBET, Sacramento	Thursday, 7:30 p. m.	
KSBW, Salinas	Friday, 8 p. m.	
KTVT, Salt Lake City	Monday, 9 p. m.	
KFSD, San Diego	Friday, 8:30 p. m.	
KRON, San Francisco		Wednesday, 7 p. m.
KEYT, Santa Barbara	Saturday, 9:30 p. m.	
KOMO, Seattle-Tacoma	Friday, 9 p. m.	
KVOA, Tucson	Thursday, 9 p. m.	
KLIX, Twin Falls	Thursday, 7:30 p. m.	
KIMA, Yakima	Saturday, 8 p. m.	
KIVA, Yuma	Thursday, 9 p. m.	
WFAM, Lafayette		Thursday, 9:30 p. m.
WJIM, Lansing	Wednesday, 10:15 p. m.	
KSWO, Lawton	Monday, 8 p. m.	
KATV, Little Rock	Monday, 7:30 p. m.	
KDUB, Lubbock		Wednesday, 10:30 p. m.
KMID, Midland	Wednesday, 7 p. m.	
WTMJ, Milwaukee		Wednesday, 9:30 p. m.
WLBC, Muncie	Wednesday, 9 p. m.	
KWTV, Oklahoma City	Thursday, 8 p. m.	
WHAS, Louisville, Ky	Sunday, 8:30 p. m.	
WIMA, Lima	Tuesday, 8 p. m.	
WPMJ, Marquette	Thursday, 9 p. m.	
WNDU, South Bend		Do.
KCEN, Temple-Waco	Wednesday, 9 p. m.	
WSPD, Toledo	Saturday, 10 p. m.	
KGBT, Harlingen		Thursday, 9:30 p. m.
KSYD, Wichita Falls	Tuesday, 7:30 p. m.	
WKBN, Youngstown	Saturday, 8:30 p. m.	
WHIZ, Zanesville	Thursday, 8 p. m.	
KOB, Albuquerque		Wednesday, 7 p. m.
KERO, Bakersfield	Friday, 9:30 p. m.	
KIDO, Boise	Saturday, 9 p. m.	
KXLF, Butte	Friday, 9:30 p. m.	
KHEL, Chico	Thursday, 9:30 p. m.	
KLZ, Denver	Friday, 8 p. m.	
WDSU, New Orleans		Saturday, 10 p. m.
WVEC, Norfolk	Monday, 9:30 p. m.	
WDBO, Orlando		Wednesday, 10:30 p. m.
WFLA, Tampa	Wednesday, 7:30 p. m.	
WJNO, West Palm Beach		Friday, 10:30 p. m.
WCTV, Tallahassee, Fla		Monday, 7 p. m.
KGNC, Amarillo		Wednesday, 9:30 p. m.
WHO, Ames	Wednesday, 8:30 p. m.	
KTBC, Austin, Tex	Monday, 9 p. m.	
WNEM, Bay City		Wednesday, 10 p. m.
WWTV, Cadillac	Friday, 8:30 p. m.	
KCRG, Cedar Rapids	Tuesday, 8:30 p. m.	
KYW, Cleveland		Wednesday, 7 p. m.
KOMU, Columbia	Friday, 9 p. m.	
WBNS, Columbus	Thursday, 10:15 p. m.	
KVDO, Corpus Christi	Sunday, 7 p. m.	
WLWD, Dayton	Thursday, 7:30 p. m.	
WJBK, Detroit	Saturday, 9:30 p. m.	
WKJG, Fort Wayne		Wednesday, 10:30 p. m.
WBAP, Fort Wayne	Saturday, 9 p. m.	
WOOD, Grand Rapids	Wednesday, 10 p. m.	
WBAY, Green Bay		Thursday, 10:30 p. m.
KPRC, Houston		Thursday, 10 p. m.
WFBM, Indianapolis		Monday, 10 p. m.
KMBC, Kansas City		Thursday, 9:30 p. m.
WKBT, La Crosse		Thursday, 9:30 p. m.

See footnote at end of table.

EXHIBIT B.—*Examples of NBC television film syndicated series scheduled by network affiliates in network option time*[1] *and nonoption time between 6 to 11 p. m.*—**Continued**

13. THE VISITOR

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WTPA, Harrisburg		Friday, 10:30 p. m.
WGAN, Portland, Maine		Saturday, 6 p. m.
WHEC, Rochester, N. Y	Monday, 9:30 p. m	
WHYN, Springfield-Holyoke	Sunday, 8:30 p. m	
WILK, Wilkes-Barre	Tuesday, 10 p. m	
WBRZ, Baton Rouge	Sunday, 4:30 p. m	
WFMY, Greensboro-Winston-Salem		Thursday, 7 p. m.
KOMU, Columbia-Sedalia	Wednesday, 9 p. m	
WTVN, Columbus	Wednesday, 8:30 p. m	
KERO, Bakersfield	Sunday, 3 p. m	
KKTV, Colorado Springs	Monday, 9:30 p. m	
KROD, El Paso		Sunday, 10 p. m.
KZTV, Reno	Sunday, 8:30 p. m	

14. BADGE 714

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WABI, Bangor		Saturday, 7 p. m.
WNAC, Boston		Wednesday, 6:30 p. m.
WNHC, New Haven		Sunday, 6 p. m.
WCAU, Philadelphia		Wednesday, 7 p. m.
WCSH, Portland		Tuesday, 6 p. m.
WJAR, Providence		Sunday, 10:30 p. m.
WHYN, Springfield	Wednesday, 9 p. m	
WLOS, Asheville	Sunday, 9:30 p. m	
WJBF, Augusta	Tuesday, 8:30 p. m	
WAFB, Baton Rouge	Tuesday, 7:30 p. m	
WBRC, Birmingham		Friday, 9:30 p. m.
WRGP, Chattanooga		Wednesday, 9:30 p. m.
WIS, Columbia	Wednesday, 9 p. m	
WFBC, Greenville	Wednesday, 8:30 p. m	
WLBT, Jackson	Friday, 7 p. m	
WMBR, Jacksonville		Monday, 7 p. m.
WNAO, Raleigh		Monday, 7 p. m.
WMCT, Memphis		Friday, 9:30 p. m.
KNOE, Monroe	Friday, 7 p. m	
WSM, Nashville		Monday, 10 p. m.
WTOC, Savannah	Monday, 7:30 p. m	
WSUN, Tampa	Saturday, 9:30 p. m	
WTRF, Wheeling	Wednesday, 9:30 p. m	
KRBB, El Dorado	Wednesday, 7 p. m	
KALB, Alexandria	Wednesday, 7:30 p. m	
WDAK, Columbus	Monday, 9:30 p. m	
WKNX, Bay City		Monday, 10 p. m.
KFDM, Beaumont	Friday, 8 p. m	
WJW, Cleveland		Friday, 7 p. m.
KVDO, Corpus Christi		Wednesday, 9:30 p. m.
WHIO, Dayton		Saturday, 10:30 p. m.
WWJ, Detroit	Sunday, 10 p. m	
KDAL, Duluth	Tuesday, 8 p. m	
WBAP, Fort Worth		Monday, 9:30 p. m.
WKZO, Grand Rapids	Tuesday, 9 p. m	
WBAY, Green Bay	Friday, 7:30 p. m	
KPRC, Houston		Tuesday, 10 p. m.
KCMO, Kansas City		Friday, 10 p. m.
KATV, Little Rock	Monday, 8 p. m	
KCBD, Lubbock	Monday, 8 p. m	
WMTV, Madison		Tuesday, 9:30 p. m.
KMID, Midland		Sunday, 9:30 p. m.
KSTP, Minneapolis		Tuesday, 10:30 p. m.
WKY, Oklahoma City	Friday, 7:30 p. m	
WEEK, Peoria		Monday, 10:30 p. m.
KHQA, Quincy	Friday, 7:30 p. m	
KGLO, Mason City	Wednesday, 8 p. m	
KSD, St. Louis	Monday, 9 p. m	
WOAI, San Antonio	Friday, 7:30 p. m	
WSBT, South Bend		Sunday, 10 p. m.
KTTS, Springfield		Sunday, 9:30 p. m.
KCMC, Texarkana		Monday, 9:30 p. m.
WSPD, Toledo		Thursday, 7 p. m.
KVOO, Tulsa		Saturday, 9:30 p. m.
KLTV, Tyler-Longview	Friday, 9 p. m	
KRGV, Weslaco		Wednesday, 10:15 p. m.
KARD, Wichita		Tuesday, 10 p. m.
KFDX, Wichita Falls	Saturday, 7:30 p. m	

See footnote at end of table.

EXHIBIT B.—*Examples of NBC television film syndicated series scheduled by network affiliates in network option time*[1] *and nonoption time between 6 to 11 p. m.*—Continued

14. BADGE 714—Continued

Station and market	Option time period	Nonoption time between 6 and 11 p. m.
WFMJ, Youngstown		Monday, 10:30 p. m.
KTVO, Kirksville	Sunday, 8 p. m	
KOB, Albuquerque	Monday, 8 p. m	
KERO, Bakersfield	Saturday, 9 p. m	
KVOS, Bellingham	Friday, 8:30 p. m	
KIDO, Boise	Tuesday, 9 p. m	
KRDO, Colorado Springs	Tuesday, 9 p. m	
KROD, El Paso		Monday, 9:30 p. m.
KMJ, Fresno	Friday, 10 p. m	
KLAS, Las Vegas		Thursday, 7 p. m.
KVAR, Phoenix	Wednesday, 9:30 p. m	
KPTV, Portland	Friday, 10 p. m	
KCCC, Sacramento	Wednesday, 9:30 p. m	
KSBW, Salinas-Monterey	Tuesday, 7:30 p. m	
KTVT, Salt Lake City	Tuesday, 9 p. m	
KFMB, San Diego	Saturday, 9 p. m	
KPIX, San Francisco	Wednesday, 9 p. m	
KING, Seattle	Friday, 9:30 p. m	
KXLY, Spokane	Tuesday, 10 p. m	
KVOA, Tucson	Tuesday, 9 p. m	
KCSJ, Pueblo	Wednesday, 9 p. m	

15. LIFE OF RILEY

KRNT, Ames-Des Moines	Sunday, 9 p. m	
KGEO, Enid	Thursday, 9 p. m	
WDAY, Fargo-Valley City	Sunday, 7:30 p. m	
KMBC, Kansas City-St. Joseph	Sunday, 8 p. m	
WXIX, Milwaukee	Saturday, 7 p. m	
KSTP, St. Paul	Monday, 8:30 p. m	
WOW, Omaha-Lincoln		Friday, 10:30 p. m.
KOAM, Pittsburg, Kans	Friday, 8 p. m	
KGLO, Mason City	Thursday, 6:30 p. m	
KTVH, Hutchinson	Sunday, 8:30 p. m	
KTVO, Kirksville-Ottumwa	Tuesday, 9 p. m	
KLZ, Denver	Monday, 8 p. m	
KTSM, El Paso	Tuesday, 7 p. m	
KJEO, Fresno		Sunday, 7 p. m.
KLAS, Las Vegas		Monday, 7 p. m.
KBET, Sacramento		Thursday, 7 p. m.
KSBW, Salinas	Wednesday, 9 p. m	
KTVT, Salt Lake City	Friday, 9:30 p. m	
KING, Seattle	Thursday, 8:30 p. m	
KIMA, Yakima	Wednesday, 10 p. m	

[1] Based on network option time periods of ABC, CBS, or NBC as applicable; time periods shown in terms of local time of broadcast.

NOTE.—Limited to those cases where we have information as to the period the program is scheduled by the station.

TELEVISION PROGRAMS OF AMERICA, INC.,
New York, September 5, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: Permit me to thank you for your letter of July 30. In answer to the questions contained therein, I am happy to furnish the following material on behalf of Television Programs of America, Inc.:

1. Question. What, if any, first-run film series produced and/or distributed by your company have been sold for network broadcast starting in the fall of 1956?

On what day of the week and at what hour are these scheduled for broadcast?

Answer. Television Programs of America has made no new domestic network sale for a fall start. Renewals have been obtained on the four TPA national network properties currently on the air:

Lassie: CBS network, Sundays 7 to 7:30 p. m., sponsored by the Campbell Soup Co.

Private Secretary: CBS network, Sundays 7:30 to 8 p. m., sponsored by the American Tobacco Co.

Captain Gallant of the Foreign Legion: NBC network, Sundays 5:30 to 6 p. m., sponsored by the H. J. Heinz Co.

Fury: NBC network, Saturdays 11 to 11:30 a. m., sponsored jointly by General Foods Corp. and the Borden Co.

2. Question. What, if any, first-run film series is your company offering exclusively for syndication for next fall?

(*a*) Are these in production, or, are you trying to make sales on the basis of a pilot film or films?

(*b*) On what stations do you have clearance for each series? Please show day of the week and hour cleared in each case.

Answer. TPA has not, as yet, decided on a new first-run filmed series exclusively for syndication to be offered this fall. We are still in the process of completing sales on two first-run series in as yet unsold markets, the campaigns for which were begun late last year and early this spring. They are The Count of Monte Cristo and Stage 7.

3. Question. If you have film series in both categories, how do the per picture budgets for series offered for syndication compare with those for series to be broadcast on the networks?

Answer. The per picture budgets for different series depend, of course, on the quality of the productions and vary from series to series. In general, however, the budgets for national network shows are higher than those offered for syndication. This follows from the shortage of prime viewing time available for syndication and the greater risks involved in satisfying local and regional advertisers within this narrow framework.

4. Question. How many first-run film series did your company offer for syndication in the broadcast year beginning in September 1954? How many in the year beginning September 1955?

Answer. Of the 5 first-run syndicated properties produced and/or distributed by TPA, 2 (Ramar of the Jungle and Ellery Queen) were first offered for syndicated sale prior to September 1954; 1 series (Science in Action) was first offered in the broadcast year beginning September 1954; 2 (Count of Monte Cristo and Stage 7) were first offered during the broadcast year beginning September 1955.

5. Question. Do the option rights of the networks, in conjunction with their must-buy policies, operate to exclude your syndicated programs from the most desirable broadcast time in key markets?

Please explain in detail.

Answer. Yes.

TPA's syndicated programs are designed for top-level audience appeal and are of necessity priced for exhibition in time periods when large audiences are available. Network evening option time is between 7:30 and 10:30 p. m., New York time, the period of highest sets in use. With rare exceptions, these most valuable telecasting hours are occupied by network programs on network-affiliated stations.

To illustrate the situation, consider the 40 cities in which NBC and CBS each have basic affiliates:

New York	Kansas City	Sacramento
Chicago	Seattle	Nashville
Los Angeles	Atlanta	Norfolk
Philadelphia	Portland, Oreg.	Providence
Detroit	Dallas	Salt Lake City
Boston	San Diego	Tulsa
San Francisco	Denver	Davenport
St. Louis	Louisville	Columbus
Washington	San Antonio	Dayton
Baltimore	Tampa	Cincinnati
Minneapolis	Rochester	Cleveland
Buffalo	Omaha	Birmingham
Houston	Syracuse	
Milwaukee	Oklahoma City	

These cities contain more than 70 percent of the TV sets in the country. The 3 hours nightly of peak viewing time (7:30 to 10:30 p. m.) multiplied by 7 nights per week, multiplied by the 80 CBS and NBC basic affiliates, equals 1,680 hours weekly. This amounts to 3,360 half hours, the usual program time period.

Taking the typical week of February 19–25, 1956, CBS and NBC network programs were carried during 3,150 out of the 3,360 available half-hour periods of peak viewing time, or 93.7 percent of the total. This left 6.3 percent available for all other programs—syndicated film, local live programs, and programs of the ABC network.

To round out the picture, it is vital to remember that there are only 7 markets in the entire United States which have 4 or more VHF outlets. Since all 3 existing networks employ option time (with its preemption powers), there are only 7 important markets where nonnetwork advertisers can be assured of continuity in sponsoring a program during prime evening time.

6. Question. As a result of difficulties occasioned by these practices, has your company tended to concentrate on the production of pictures for national sale, reducing the number of programs to be offered strictly on a syndicated basis?

Answer. Yes. In view of the limited peak viewing time available locally for the quality product which TPA produces, we have had to gear our production to the quantity of syndicated programs that our sales force around the country can place for exhibition within the time periods available.

7. Question. As you no doubt know, the National Broadcasting Corp., in a document filed with our committee, quoted a statement issued by your company as follows:

"TPA's own growth illustrates the TV film industry's progress. When TPA started, less than 3 years ago (September 1953), the company had 1 half-hour series. Today there are 10 TPA shows on the air and 6 more—Tugboat Annie; Last of the Mohicans; Captain Kidd; New York Confidential; Mr. Digby, based on the Saturday Evening Post series of the same name; and Shark Malone, in various stages of production. * * *

"In 1955 Hollywood produced 2,835,000 feet, or 500 hours, of theatrical (feature) films. TV production for the same year was 10,538,000 feet, or almost 2,000 hours of entertainment."

Will you please comment on this statement in the context in which it was quoted by NBC, namely, to establish that film syndicators are doing a record business.

Answer. This statement, apparently quoted from the trade press, should be judged in context—that of a talk I gave as TPA's executive vice president before the National Association of Radio and Television Broadcasters' convention in April 1956. I was addressing myself to the importance of film programing in television as a part of the film producers' and distributors' continuing drive to develop their share of the market. Of the 6 new series listed as "in various stages of production" as of April 1956, only 1, The Last of the Mohicans, is actually now in the shooting stage. TPA is investing over a million dollars in these films without as yet a single sponsor in the United States and with no assurance of obtaining suitable broadcast time either nationally or on a station-by-station basis.

8. Question. We have been advised that your company is offering new first-run programs called Hawkeye, New York Confidential, Tugboat Annie for syndication next fall. Is this a correct statement? Of course, if you have already covered this in your answer above, you may ignore this direct inquiry.

Answer. The statement that TPA is offering Hawkeye, New York Confidential, and Tugboat Annie for syndication next fall is wholly inaccurate. It is possible that one of them may be offered for syndication later on this year or early next year, but this decision has not yet been made.

9. Question. Can you tell me whether you know of any first-run grade A film series which are being offered for syndication, as distinguished from network broadcast, by other companies for the season starting next fall?

Answer. We have heard in the trade of other companies offering such programs, but have no direct knowledge on this question.

I hope that this information will be helpful to you and to the committee.

Sincerely,

MICHAEL M. SILLERMAN.

ZIV TELEVISION PROGRAMS,
New York, N. Y., September 10, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce,
Washington, D. C.

DEAR SENATOR MAGNUSON: The following material is respectfully furnished in reply to your letter of July 30, 1956. The numbers of the paragraphs refer to the questions you have propounded having the same numbers.

1. (*a*) West Point, sold to General Foods for broadcast over CBS. (*b*) Fridays at 8 p. m.
2. Dr. Christian.
   (*a*) In production.
   (*b*) To date, this program has been leased for telecast on 125 stations. We do not now know the day and hour of all these telecasts.
3. Method of exhibition is not determinative of per picture budgets. The kind of time period during which the series will be telecast, whether network or syndication, is, however, a most important factor. It is possible, therefore, that some syndicated series that are fortunate enough to obtain good time periods will have higher budgets than some network shows, and vice versa.
4. New first-run film series offered for syndication in—
   (*a*) Year beginning September 1954, 3 series: Meet Corliss Archer, Eddie Cantor Comedy Theater, Science Fiction Theater.
   (*b*) Year beginning September 1955, 2 series: Highway Patrol, Man Called X.
5. (*a*) Answer: Yes. (*b*) Explanation: Most important television stations are either owned by or are affiliated with the networks. By means of option-time contracts, the networks preempt the most desirable time segments, so that they are generally (with few exceptions) not available for local or regional programing and sponsorship.
6. Yes.

With reference to the quoted report issued by our company, this is the paraphrase of a release to the trade press. We do not understand how it can "establish that film syndicators are doing a record business." It was simply the expression of a hope that we, as an individual company, would do a good business.

In reply to your final question, we do not know of our personal knowledge of any "first-run, grade A film series which are being offered for syndication * * * by other companies for the season starting next fall." We have been informed of 2 or 3 series being offered by other companies, but whether or not they were first offered earlier in the year, whether they are offered entirely on a syndicated basis, and whether to classify them as grade A or otherwise, would take us into the realm of speculation.

If we can be of further service to you, please let us know.

Sincerely,

John L. Sinn, *President.*

MCA TV, Ltd,
New York, September 11, 1956.

Senator Warren G. Magnuson,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

My Dear Senator Magnuson: This is in reply to your letter to us dated July 30, 1956. The numbers preceding our answers below correspond to the questions bearing the same numbers in your letter.

(1) Of the first-run films that we distribute, the following have been sold for network broadcast for the fall of 1956:

Program, day, and time:
Millionaire—Wednesday, 9 p. m.
General Electric Theater—Sunday, 9 p. m.
Alfred Hitchcock Presents—Sunday, 9:30 p. m.
On Trial—Friday, 9 p. m.
Crusader (canceled as of December 28, 1956)—Friday, 9 p. m.

(2) The following first-run film series have been or are being offered by us exclusively for syndication for the fall of 1956:
State Trooper
Rosemary Clooney Show
Dr. Hudson's Secret Journal, series II
Soldiers of Fortune
Heinz Studio 57

All of the above-mentioned programs in this paragraph are either presently in production or have already been partially produced. The clearances of these programs with stations are contracted for by our purchasers and therefore the information as to actual clearances are received by us from them. We have been informed to date by the purchasers that the stations that have actually been cleared for such programs are as listed in exhibit A attached. We also have attached exhibit B, which indicates that the programs mentioned in such exhibit have already been committed for the markets there specified and that to date we have not received any information from the purchasers as to what stations in those markets have actually been cleared for these programs.

(3) Our information is that there is no consistent pattern. While series first sold for network exhibition seemingly have a higher budget than syndicated shows, there are some instances where the syndicated shows have a higher budget than some network shows.

(4) We offered five series for syndication during the broadcast year beginning in September 1954. We offered five series for syndication during the broadcast year beginning in September 1955.

(5) and (6) The acquisition of broadcast times for programs which we distribute is contracted for by our purchasers and not by us. Our own experience has been that option rights of the networks, in conjunction with their must-buy policies, generally do not operate to exclude our syndicated programs from the most desirable broadcast times in key markets.

We understand from articles in trade periodicals that a large number of grade A film series, including feature films, are being offered for syndication by other companies for the season starting fall 1956.

Very truly yours,

DAVID SUTTON.

EXHIBIT A

ROSEMARY CLOONEY SHOW (AS OF AUG. 17, 1956)

City	Station	Day and time
Abilene, Tex	KRBC	Sunday, 8:30.
Albany, Ga	WALB-TV	Friday, 8.
Albuquerque, N. Mex	KOB-TV	Thursday, 8.
Atlanta, Ga	WAGA-TV	Monday, 10.
Bakersfield, Calif	KERO-TV	Sunday, 7:30.
Bay City, Mich	WNEM	Wednesday, 7:30.
Big Springs, Tex	KBST-TV	Saturday, 9:30.
Birmingham, Ala	WBRC-TV	Saturday, 6:30.
Bismarck, N. Dak	WFYR-TV	Wednesday, 9.
Bluefield, W. Va	WHIS-TV	Do.
Boise, Idaho		Thursday.
Buffalo, N. Y	WGR-TV	Saturday.
Cadillac, Mich	WWTV	Tuesday, 8:30.
Cedar Rapids-Waterloo, Iowa	WMT	Monday.
Charlotte, N. C	WBTV	Sunday, 10:45.
Chattanooga, Tenn		Friday.
Chicago, Ill	WBKB	Friday, 9:30.
Chico, Calif	KHSL-TV	Friday, 8.
Cincinnati, Ohio	WKRC-TV	Thursday.
Columbia, S. C	WIS-TV	Tuesday, 7:30.
Columbus, Ga	WDAK-TV	Monday, 9:30.
Corpus Christi, Tex	KVDO-TV	Saturday, 9:30.
Dallas-Fort Worth, Tex	WFAA-TV	Monday, 8:30.
Dayton, Ohio		Thursday.
Denver, Colo	KLZ	
Detroit, Mich	WWJ-TV	Sunday, 10:30.
Duluth, Minn	KDAL-TV	Tuesday, 7:30.
El Paso, Tex	KTSM-TV	Sunday, 7.
Eureka, Calif	KIEM-TV	Friday, 9.
Evansville, Ind.-Henderson, Ky		Friday.
Florence, S. C	WBTW	Thursday, 10.
Fort Myers, Fla	WINK-TV	Sunday, 7.
Fresno, Calif	KFRE-TV	Tuesday, 8.
Great Falls, Mont	KFBB	Saturday.
Honolulu, Hawaii	KGMB-TV	Saturday, 9:30.
Houston-Galveston, Tex	KPRC-TV	Wednesday, 7:30.
Huntington-Oak Hill-Charleston, W. Va.-Ashland, Ky	WSAZ-TV	Tuesday, 9:30.
Idaho Falls, Idaho	KID	Sunday, 9.
Indianapolis-Bloomington, Ind		Friday.
Jackson, Miss	WJTV	Tuesday.
Jacksonville, Fla	WMBR-TV	Thursday, 10.
Johnson City, Tenn	WJHL-TV	Tuesday, 10:30.
Joplin, Mo.-Pittsburg, Kans	KSWM	Tuesday, 8.
Kalamazoo-Grand Rapids, Mich	WKZO	Tuesday, 8:30.
Kansas City, Mo.-Topeka, Kans	WDAF-TV	Wednesday, 9:30.
Little Rock-Pine Bluff, Ark	KATV	Do.
Los Angeles, Calif	KTTV	Tuesday, 9.
Louisville, Ky		Friday.
Lubbock, Tex	KCBD-TV	Saturday, 9.
Miami, Fla	WTVJ	Wednesday, 10:30.
Midland-Odessa, Tex	KOSA-TV	Monday, 9.
Minneapolis-St. Paul, Minn	WCCO-TV	Do.

EXHIBIT A—Continued

ROSEMARY CLOONEY SHOW (AS OF AUG. 17, 1956)—Continued

City	Station	Day and time
Monroe, La	KNOE-TV	Sunday, 6.
Montgomery, Selma, Ala	WSFA-TV	Friday, 9:30.
Nashville, Tenn		Friday.
New York, N. Y	WRCA	Saturday, 11:15.
Do	WPIX	Wednesday, 7:30.
Norfolk, Va	WTAR	Monday.
Orlando, Fla	WDBO-TV	Sunday, 10:30.
Pensacola, Fla.-Mobile, Ala	WEAR-TV	Thursday, 9.
Philadelphia, Pa	WRCV	Thursday, 7.
Sacramento-Stockton, Calif	KBET-TV	Saturday, 7.
Salinas, Calif	KSBW-TV	Tuesday, 9.
Salt Lake City, Utah	KSL	Sunday, 8.
San Antonio, Tex	WOAI-TV	Friday, 9:30.
San Diego, Calif	XETV	Wednesday, 9.
San Francisco-San Jose, Calif	KPIX	Sunday, 9:30.
Santa Barbara, Calif	KEY-TV	Wednesday, 8:30.
Savannah, Ga	WTOC-TV	Monday, 9:30.
Schenectady, N. Y	WRGB	Saturday.
Shreveport, La	KSLA-TV	Wednesday, 9:30.
Sioux Falls, S. Dak	KELO-TV	Friday, 6:30.
Spartanburg-Greenville, S. C	WSPA-TV	Thursday, 8:30.
Springfield, Mo	KYTV	Thursday, 7.
St. Louis, Mo	KSD-TV	Saturday.
Syracuse, N. Y	WSYR	Monday.
Tacoma, Wash	KTNT	Tuesday.
Tallahassee-Fla.-Thomasville, Ga	WCTV	Sunday, 9:30.
Tampa-St. Petersburg, Fla	WFLA-TV	Monday, 9:30.
Terre Haute, Ind		Friday.
Twin Falls, Idaho	KUX-TV	Sunday, 9.
Valley City-Fargo, N. Dak	KXJB-TV	Monday, 9.
Watertown, N. Y	WCNY-TV	Sunday.
Wichita-Hutchinson, Kans	KTVH-TV	Tuesday.
Wilkes-Barre, Pa	WILK	Monday.

DR. HUDSON, SERIES II (AS OF AUG. 17, 1956)

Albuquerque, N. Mex	KOB	Friday.
Amarillo, Tex	KGNC	Do.
Asheville, N. C	WLOS	Wednesday.
Atlanta, Ga		
Austin, Tex	KTBC	Tuesday.
Baton Rouge, La	WAFB	Friday.
Birmingham, Ala		
Boise, Idaho	KBOI	Tuesday.
Buffalo, N. Y		
Butte, Mont	KXLF	Monday.
Cedar Rapids, Iowa		
Chattanooga, Tenn	WRGP	Thursday, 9.
Cheyenne, Wyo	KFBC	Monday.
Chicago, Ill	WNBQ	Saturday.
Cleveland, Ohio	WJW	Sunday.
Colorado Springs, Colo	KKTV	Thursday.
Dallas, Tex	KRLD	Thursday, 8:30.
Denver Colo	KLZ	Friday.
Duluth, Minn	KDAL	Do.
El Paso, Tex	KROD	Do.
Fargo, N. Dak	WDAY	Thursday.
Florence, S. C	WBTW	Do.
Grand Junction, Colo	KFXJ	Do.
Jacksonville, Fla	WMBR	Tuesday.
Little Rock, Ark	KARK	Friday, 7:30.
Los Angeles, Calif	KTTV	Sunday, 9.
Lubbock, Tex	KCBD	Thursday.
Memphis, Tenn	WBBQ	Tuesday.
Miami, Fla	WCKT	Do.
Milwaukee, Wis	WTMJ	Saturday.
Minneapolis, Minn	KSTP	Tuesday.
Mobile, Ala	WALA	Do.
Odessa, Tex	KOSA	Do.
Oklahoma City, Okla		Do.
Omaha, Nebr	KMTV	Do.
Pittsburg, Kans	KOAM	Friday.
Pittsburgh, Pa	KOKA	Sunday.
Raleigh, N. C	WNAO	Tuesday.
Redding, Calif	KVIP	Friday.
Roanoke, Va	WSLS	Tuesday.
Rochester, N. Y		Wednesday.
Roswell, N. Mex	KSWS	Thursday.
Salt Lake City, Utah	KTVT	Do.

EXHIBIT A—Continued

DR. HUDSON, SERIES II (AS OF AUG. 17, 1956)—Continued

City	Station	Day and time
San Antonio, Tex	WOAI	Thursday.
Schenectady, N. Y	WRGB	Friday.
Scranton-Wilkes-Barre, Pa	WBRE	Tuesday.
Shreveport, La		Do.
Syracuse, N. Y	WSYR	Do.
Tampa, Fla		Do.
Temple, Tex	KCEN	Friday.
Thomasville, Ga	WCTV	Wednesday.
Tulsa, Okla		Tuesday.
Wichita Falls, Tex	KFDX	Friday.
Wilmington, N. C	WMFD	Saturday.

SOLDIERS OF FORTUNE (AS OF AUG. 21, 1956)

City	Station	Day and time
Ada, Okla	KTEN	Sunday, 5.
Albuquerque, N. Mex	KOB-TV	Tuesday, 7:30.
		Tuesday, 7.
Atlanta, Ga	WAGA-TV	Saturday, 5:30.
		Saturday, 6.
Austin, Tex	KTBC-TV	Sunday, 5.
		Sunday, 4:30.
Baltimore, Md	WBAL-TV	Thursday, 7.
Baton Rouge, La	WBRZ-TV	Thursday, 6:30.
Bay City, Mich	WNEM-TV	Monday, 5:30.
		Monday, 6.
Beaumont, Tex	KFDM-TV	Monday, 6:30.
Binghamton, N. Y	WNBF-TV	Monday, 7.
Birmingham, Ala	WBRC-TV	Monday, 5:30.
		Monday, 6.
Buffalo, N. Y	WGR-TV	Wednesday, 6.
Cadillac, Mich	WWTV	Monday, 5:30.
Cape Girardeau, Mo	KFVS-TV	Saturday, 6:30.
Cedar Rapids, Iowa	WMT-TV	Saturday, 6.
Champaign, Ill	WCIA	Sunday, 6.
Charleston, S. C	WUSN-TV	Tuesday, 7:30.
Charlotte, N. C	WBTV	Monday, 5:30.
Chicago, Ill	WGN-TV	Monday, 6.
Chico, Calif	KHSL-TV	Wednesday, 7:30.
Cincinnati, Ohio	WCPO-TV	Wednesday, 6.
Cleveland, Ohio	KYW-TV	Thursday, 7.
Colorado Springs, Colo	KRDO-TV	Thursday, 8.
Pueblo, Colo	KCSJ-TV	Wednesday, 8:30.
Columbus, Ohio	WBNS-TV	Saturday, 6:30.
		Wednesday, 6:30.
Dallas, Tex	WFAA-TV	Sunday, 4:30.
		Sunday, 5.
Dayton, Ohio	WHIO-TV	Monday, 6.[1]
Denver, Colo	KBTV	Friday, 6.
		Friday, 7.
Des Moines, Iowa	KRNT-TV	Tuesday, 8:30.
		Tuesday, 9:30.
Detroit, Mich	WXYZ-TV	Friday, 1 .
		Friday, 6.
Duluth, Minn	KDAL-TV	Wednesday, 6:30.
Eau Claire, Wis	WEAU-TV	Saturday, 5:30.
		Saturday, 6.
El Paso, Tex	KTSM-TV	
Evansville, Ind	WFIE-TV	Wednesday, 6.
Fargo, N. Dak	WDAY-TV	Saturday, 9.
		Monday, 6:30.
Fresno, Calif	KJEO-TV	Sunday, 6.
Fort Dodge, Iowa	KQTV	Sunday, 7.
		Sunday, 8.
Fort Wayne, Ind	WKJG-TV	Saturday, 6.
		Saturday, 6:30.
Great Bend, Kans	KCKT-TV	Friday, 7.
Green Bay, Wis	WBAY-TV	Sunday, 5:30.
		Tuesday, 6:30.
Greensboro, N. C	WFMY-TV	Saturday, 6:30.
		Saturday, 7.
Greenville, S. C	WFBC-TV	Sunday, 6.
Greenville-Washington, N. C	WITN-TV	Thursday, 7.
Honolulu, T. H	KGMB-TV	Saturday, 6.
Houston, Tex	KPRC-TV	Sunday, 3.
		Sunday, 5:30.
Huntington, W. Va	WSAZ-TV	Monday, 5:30.
		Monday, 7.

[1] Option to move if desired to Monday, 7.

Exhibit A—Continued

SOLDIERS OF FORTUNE (AS OF AUG. 21, 1956)—Continued

City	Station	Day and time
Indianapolis, Ind	WISH-TV	Thursday, 10:15.
		Thursday, 7.
Jefferson City, Mo	KRCG-TV	Wednesday, 6:30.
Johnstown, Pa	WJAC-TV	Monday, 5:30.
Kalamazoo, Mich	WKZO-TV	Thursday, 10.
		Thursday, 7.
Kansas City, Mo	KCMO-TV	Sunday, 5:30.
Kearney, Nebr	KHOL-TV	Sunday, 6.
LaCrosse, Wis	WKBT	Sunday, 9.
		Sunday, 6.
Lancaster, Pa	WGAL-TV	Wednesday, 6.
Las Vegas, Nev	KLRJ-TV	Monday, 7:30.
Lincoln, Nebr	KOLN-TV	Friday, 7.
Little Rock, Ark	KATV	Wednesday, 6.
Louisville, Ky	WHAS-TV	Saturday, 5:30.
Lufkin, Tex	KTRE-TV	Sunday, 3.
		Sunday, 5:30.
Macon, Ga	WMAZ-TV	Saturday, 5:30.
Madison, Wis	WISC-TV	Sunday, 6.
Mason City, Iowa	KGLO-TV	Do.
Memphis, Tenn	WMCT	Tuesday, 6.
Miami, Fla	WCKT	Tuesday, 10.
		Tuesday, 7.
Minneapolis-St. Paul, Minn	WCCO-TV	Thursday, 7.
		Thursday, 10.
Mobile, Ala	WKRG-TV	Sunday, 5.
Nashville, Tenn	WLAC-TV	Sunday, 5:30.
New Orleans, La	WDSU-TV	Sunday, 9.
		Sunday, 5.
New York, N. Y	WPIX	Sunday, 6.
Norfolk, Va	WTAR-TV	Saturday, 10.
		Saturday, 6.
Oklahoma City, Okla	KWTV	Monday, 6.
Omaha, Nebr	WOW-TV	Friday, 6:30.
Orlando, Fla	WDBO-TV	Thursday, 5:30.
Panama City, Fla	WJDM-TV	Sunday, 6.
Pensacola, Fla	WEAR-TV	Thursday, 7.
Peoria, Ill	WTVH	Saturday, 6.
Philadelphia, Pa	WCAU-TV	Do.
Phoenix, Ariz	KVAR-TV	Thursday, 6.
Pittsburgh, Pa	KDKA-TV	Tuesday, 5:30.
Pittsburg-Joplin, Mo	KOAM-TV	Friday, 7.
		Friday, 8.
Portland, Oreg	KOIN-TV	Saturday, 6.
Providence, R. I	WJAR-TV	Thursday, 6.
Quincy, Ill	WGEM-TV	Sunday, 5:30.
Raleigh, N. C	WNAO-TV	Friday, 7.
		Friday, 8.
Reno, Nev	KOLO-TV	Tuesday, 7:30.
Richmond, Va	WXEX-TV	Friday, 7.
		Tuesday, 7.
Roanoke, Va	WSLS-TV	Saturday, 5:30.
		Saturday, 6:30.
Rochester, Minn	KROC-TV	Friday, 6:30.
		Friday, 5:30.
Rockford, Ill	WREX-TV	Saturday, 5:30.
Rock Island, Ill	WHBF-TV	Monday, 6.
Roswell, N. Mex	KSWS-TV	Sunday, 8:30.
Sacramento, Calif	KCCC-TV	Friday, 6.
Salt Lake City, Utah	KUTV	Do.
San Antonio, Tex	WOAI-TV	Saturday, 9.
		Saturday, 9:30.
San Diego, Calif	XETV	Tuesday, 6.
Santa Barbara, Calif	KEY-TV	Friday, 8.
Seattle, Wash	KING-TV	Monday, 6.
Shreveport, La	KSLA-TV	Wednesday, 6:30.
Sioux City, Iowa	KVTV	Tuesday, 8:30.
		Tuesday, 8.
Sioux Falls, S. Dak	KELO-TV	Wednesday, 5.
		Wednesday, 5:30.
South Bend, Ind	WSBT-TV	Saturday, 6.
Springfield, Ill	WICS-TV	Friday, 7:30.
		Friday, 7.
Steubenville, Ohio	WSTV-TV	Wednesday, 6
St. Louis, Mo	KSD-TV	Monday, 10.
Syracuse, N. Y	WHEN-TV	Monday, 6.
Tallahassee, Fla	WCTV	Friday, 7.
Tampa, Fla	WTVT	Friday, 10
		Friday, 7.

Exhibit A—Continued

SOLDIERS OF FORTUNE (AS OF AUG. 21, 1956)—Continued

Wind Citw	Station	Day
Terre Haute, Ind	WTHI-TV	Saturday, 7:30.
		Saturday, 8.
Topeka, Kans	WIBW-TV	Saturday, 6:30.
Tucson, Ariz	KOPO-TV	Saturday, 8:30.
		Saturday, 7:30.
		Saturday, 7.
Tulsa, Okla	KVOO-TV	Sunday, 5.
Tyler, Tex	KLTV	Thursday, 6:30.
Waco, Tex	KWTX-TV	Friday, 7.
		Wednesday, 7:30.
Washington, D. C	WTOP-TV	Monday, 7.
Wichita, Kans	KAKE-TV	Thursday, 6.
Wilkes-Barre, Pa	WILK-TV	Do.
Wilmington, N. C	WMFD-TV	Friday, 6.
Youngstown, Ohio	WFMJ-TV	Tuesday, 10.
		Tuesday, 7.
Ann Arbor, Mich	WPAG-TV	Thursday, 7.
Anchorage, Alaska	KTVA	Sunday, 6:30.
Fairbanks, Alaska	KTVF	Do.
Juneau, Alaska	KINY-TV	Do.

Exhibit B

State Trooper (As of September 5, 1956)

Alexandria, Va.
Austin, Tex.
Amarillo, Tex.
Albuquerque, N. Mex.
Baton Rouge, La.
Birmingham, Ala.
Beaumont-Port Arthur, Tex.
Bakersfield, Calif.
Champaign-Urbana, Ill.
Cape Girardeau, Mo.
Columbia-Jefferson City, Mo.
Chattanooga, Tenn.
Waterloo-Cedar Rapids, Iowa
Columbus, Ga.
Corpus Christi, Tex.
Chico, Calif.
Denver, Colo.
Des Moines, Ames, Iowa
Dallas-Fort Worth, Tex.
El Paso, Tex.
Eureka, Calif.
Fresno, Calif.
Fort Wayne-Waterloo, Ind.
Grand Rapids-Kalamazoo, Mich.
Hannibal, Mo.-Quincy, Ill.
Houston-Galveston, Tex.
Honolulu, Hawaii
Joplin, Mo.-Pittsburg, Kans.
Jackson, Miss.
Indianapolis-Bloomington, Ind.
Kansas City, Mo.-St. Joseph, Mo.
Little Rock-Pine Bluff, Ark.
Lake Charles, La.
Lafayette, La.
Longview-Tyler, Tex.
Lansing, Mich.
Memphis, Tenn.
Mobile, Ala.-Pensacola, Fla.
Monroe, La.
Montgomery, Ala.
Meridian, Miss.
Midland-Odessa, Tex.
Nashville, Tenn.
New Orleans, La.
Phoenix, Ariz.
Peoria, Ill.
Oklahoma City, Okla.
Omaha, Nebr.
South Bend-Elkhart, Ind.
Saginaw-Bay City, Mich.
St. Louis, Mo.
Rock Island-Davenport, Ill.
Rockford, Ill.
Springfield, Mo.
Sioux City, Iowa
Shreveport, La.
San Antonio, Tex.
San Angelo, Tex.
San Francisco, Calif.
Sacramento, Calif.
Texarkana, Ark.
Tulsa, Okla.
Topeka, Kans.
Tampa-St. Petersburg, Fla.
Temple-Waco, Tex.
Salinas-Monterey, Calif.
Wichita Falls, Tex.
Wichita-Hutchinson, Kans.
Las Vegas, Nev.
Reno, Nev.
Tucson, Ariz.
Harlingen-Weslaco, Tex.
Philadelphia, Pa.
Lancaster, Pa.
Johnstown, Pa.
New Britain, Conn.
Portland, Maine

HAL ROACH STUDIOS,
Culver City, Calif., September 11, 1956.

Hon. WARREN G. MAGNUSON,
Senate Office Building,
Washington, D. C.

DEAR SENATOR MAGNUSON: This is in reply to your recent letter requesting information pertinent to the television inquiry being conducted by the Senate Interstate and Foreign Commerce Committee. The following facts are related to the questions raised in your letter.

1. Only one new television series has been sold by our company for network broadcast starting in the fall of 1956.

This show was purchased by the Nestle Co. to be broadcast on CBS network, Saturday at 9 p. m.

2. Hal Roach Studies does not operate a national syndication selling organization. However, we do produce television series for syndication by contractual arrangement with several of the leading national syndication organizations.

Our company is not offering any first-run film series exclusively for syndication next fall.

(*a*) Our studios have completed production on 10 pilot films, any one of which could be produced as a series for any film syndication company or advertiser that is prepared to share the financial responsibility.

(*b*) At the present time, we have no station clearances for any of the above-mentioned pilot films.

3. The per picture budgets for series offered for syndication as a general rule run approximately one-third less than those for series to be broadcast on the networks. This is due primarily to the considerably reduced gross sales potential when selling on a syndication basis, which in turn is related to the unavailability of acceptable time clearances.

4. Hal Roach Studios produced two new first-run film series for syndication in the broadcast year beginning September 1954. In the year beginning September 1955 we produced one new first-run series exclusively for syndication.

5. The option rights of the networks in conjunction with their must-buy provisions, represent the greatest single sales handicap to exclude syndicated programs from the most desirable broadcast times in key markets.

On many occasions, through our own sales organization or through our national syndication representatives, we have had substantial contracts offered to us subject to our securing acceptable time periods in specific markets and we have had to forego such contracts due to the unavailability of suitable time periods.

6. As a result of difficulties occasioned by these practices, our company is concentrating primarily on production of television series for national sale. It is the general policy of this company at the present time not to undertake the production of a new series for syndication unless a substantial percentage of the total investment is committed for in advance by either a national syndication company or a national advertiser.

It is impractical for me to attempt to answer your question on the first-run grade A film series which are being offered for syndication by other companies for the coming season. However, it is our general observation that the number of such series has been considerably reduced during the past few years. This is particularly true when you specify grade A pictures. It is possible that the reduction in grade A pictures being offered in syndication has been more than offset by the production of grade B or C television series which are more economically feasible for the class B and C time periods which are most generally available today for syndicated shows.

I sincerely trust this provides the information desired by your committee. If we can be of any further assistance to you or your associates, I shall be most pleased to hear from you.

Very truly yours,

HAL ROACH, Jr., *President.*

ABC FILM SYNDICATION, INC.,
New York, N. Y., September 12, 1956.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: We acknowledge receipt of your letter dated July 30, 1956, and will endeavor to answer the questions posed by you to the best of our ability and knowledge.

1. We have offered, on the basis of a pilot film, one film series, first run, for network telecast starting in the fall of 1956. At the present writing we have not been successful in selling this series, but we are continuing our sales effort in regard thereto.

2. We are offering code 3, a first-run film series, in syndication this fall.

(*a*) A series of 39 films is presently in production, with approximately 30 in which shooting has been completed at this time.

(*b*) Attached hereto, marked "Exhibit A," is a list showing stations, day of week and time slots which have been cleared for this series as of the close of business on September 8, 1956.

The series has also been licensed for telecasting on the station shown in list attached, marked "Exhibit B," starting in the fall of 1956, but neither day of the week nor time slot has been set as of this writing.

3. The budget, on a per picture averaging basis, for the series which we are offering for network sale has not yet been determined to any degree of exactness. For this reason it is impossible to make a realistic comparison. It is anticipated, however, that the budget for the series being offered for network telecasting, if produced, would be from 10 to 15 percent higher than that for code 3.

4. This company offered 1 series of 39 first-run pictures for syndication around the late summer of 1954. We offered 2 series of 26 first-run pictures each and 1 series of 117 first-run pictures during the summer and fall of 1955.

5. Inasmuch as a television station operates only during certain hours of each 24, the option rights of the networks, in conjunction with their must-buy policies, do operate to reduce the number of certain prime time periods which might be available for syndicated shows. In the 1- and 2-station markets in the eastern time zone this is more pronounced than in markets with a larger number of stations, and it has less effect in other time zones than in the eastern zone due to the difference in time in the city taking the feed from the networks as contrasted to the time at the point of origination.

6. We do not believe that the option rights or must-buy policies of the networks have caused us to concentrate on the production of pictures for national sale.

7. Our only sources of information relating to the plans of other syndicators are the trade press and the information our salesmen pick up from stations, agency people, and sponsors. We are informed that several first-run film series are being currently offered by our competitors, but we are unable to make any comment with regard to their quality.

Respectfully yours,

GEORGE T. SHUPERT.

EXHIBIT A

Station	City	Day and time
KFDM	Beaumont	Thursday, 7:30 to 8.
KIDO	Boise	Tuesday.
KBAK	Bakersfield	Thursday, 9:30 to 10.
KOA	Denver	Do.
WXYZ	Detroit	Thursday, 9 to 9:30.
WICU	Erie	Monday, 10 to 10:30.
KFRE	Fresno	Do.
KID	Idaho Falls	Tuesday.
WKZO	Kalamazoo	Tuesday, 10:30 to 11.
KTTV	Los Angeles	Monday, 9:30 to 10.
KLAS	Las Vegas	Friday.
WMUR	Manchester	Thursday, 10 to 10:30.
WRCA	New York	Saturday, 7 to 7:30.
WKRG	Mobile	Friday, 8:30 to 9.
WLAC	Nashville	Thursday, 10 to 10:30.
WRCV	Philadelphia	Wednesday, 7 to 7:30.
KOOL	Phoenix	Tuesday, 10 to 10:30.
KOIN	Portland	Tuesday, 8 to 8:30.
KCRA	Sacramento	Sunday, 10:30 to 11.
KFMB	San Diego	Wednesday, 9:30 to 10.
KEYT	Santa Barbara	Thursday, 9 to 9:30.
KRON	San Francisco	Wednesday, 10:30 to 11.
KING	Seattle	Friday, 10 to 10:30.
KSLA	Shreveport	Monday, 10 to 10:30.
KHQ	Spokane	Wednesday, 9:30 to 10.
WHYN	Springfield	Wednesday, 7:30 to 8.
WSTV	Steubenville	Thursday, 9:30 to 10.
KSD	St. Louis	Friday, 10 to 10:30.
KHTV	Twin Falls	Tuesday.
KIVA	Yuma	Wednesday.
WSAU	Wausau	Monday, 7:30 to 8.
WISN	Milwaukee	Monday, 9:30 to 10.
WISC	Madison	Friday, 7:30 to 8.
WBAY	Green Bay	Saturday, 8:30 to 9.
WEAU	Eau Claire	Wednesday, 8:30 to 9.
KTVT	Salt Lake City	Saturday.
WHEC	Rochester	Sunday, 10:30 to 11.
KGNC	Amarillo	Monday.
KRLD	Dallas	Tuesday, 8:30 to 9.
WTOP	Washington	Tuesday, 7 to 7:30.
WTTV	Indianapolis	Thursday, 8 to 8:30.

EXHIBIT B

KGGM, Albuquerque
WRGP, Altoona
WAFB, Baton Rouge
WNAC, Boston
WRGP, Chattanooga
KVDO, Corpus Christi
KROD, El Paso
WBIR, Knoxville
KPRC, Houston
KDUB, Lubbock
WTVJ, Miami
WKY, Oklahoma City
KPAR, Sweetwater
KOPO, Tucson
KOTV, Tulsa
KSYD, Wichita Falls
KRGV, Weslaco
KATV, Little Rock
WEWS, Cleveland
WIBW, Topeka
KMBC, Kansas City
KOMU, Columbia
KAKE, Wichita
KALB, Alexandria
WOAI, San Antonio
KKTV, Colorado Springs

INTERSTATE TELEVISION CORP.,
Hollywood, Calif., September 25, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: This will acknowledge your letter of the 18th, and I will attempt to answer the questions in the order of their sequence.

1. Interstate has no first run series, produced or distributed, that have been sold to the network for the fall of 1956.

2. Interstate has no first run subjects which we are offering exclusively for syndication for next fall.
3. Need not be answered, as per the above.
4. We did not offer any first run series for syndication broadcasting in the year of 1954 or in the year of 1955.
5. We do not know.
6. We will only produce subjects for national sale, for at this time we do not believe syndication will return the costs of half-hour subjects.

We are also concerned as to what the great number of feature pictures will do to the half-hour syndication market.

Very truly yours,

G. RALPH BRANTON.

ALLIED ARTISTS PICTURES CORP.,
New York, N. Y., September 27, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: With reference to your letter of July 30, which I have not been able to answer until now due to vacations and being out of town, I wish to advise you as follows:

We have not produced any first-run TV series in recent years and we have no first-run film series to offer for distribution next fall.

With reference to your paragraph 4, we have not had any first-run film series in either September 1954 or September 1955.

With reference to paragraphs 5 and 6, Interstate Television, which is a wholly owned subsidiary of Allied Artists Pictures Corp., concentrates in the selling of old Monogram Pictures Corp. features and westerns (Monogram is the predecessor of Allied Artists Pictures Corp.)

We are releasing a half-hour TV series on Public Defender but these are not first-run shows as they were originally shown over the CBS network and we acquired the rerun rights to these series.

With reference to the Little Rascals, these are shorts which were made many years ago and titled for theatrical distribution as the Our Gang Comedies. We have been releasing Little Rascals for several years now.

I trust that this information has been helpful to you.

Sincerely,

LLOYD L. LIND.

CBS TELEVISION FILM SALES, INC.,
New York, N. Y., October 4, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I am happy to provide herewith the answers to the questions raised in your letter of July 30, 1956, concerning the production and distribution operations of CBS Television Film Sales, Inc.:

Question 1. What, if any, first-run series produced and/or distributed by your company have been sold for network broadcasting starting in the fall of 1956?

On what day of the week and at what hour are these scheduled for broadcast?

Answer. The only first-run film series produced and/or distributed by CBS Television Film Sales, Inc., which has been sold for a network broadcast in the fall of 1956 is Navy Log which has been sold to a sponsor for broadcast over the ABC television network on Wednesdays, 8:30 to 9 p. m., commencing October 10, 1956.

Question 2. What, if any, first-run film series is your company offering exclusively for syndication for next fall?

(*a*) Are these in production, or, are you trying to make sales on the basis of a pilot film or films?

(*b*) On what stations do you have clearance for each series?

Please show day of the week and hour cleared in each case.

Answer. The answer to this question is provided on two bases:

(1) If the term "first-run film series" is interpreted as meaning films which have not been broadcast on a syndicated basis over any television station in

the United States, the answer is that no such series is being offered exclusively for syndication since the only "first-run film series" being produced and/or distributed by CBS Television Film Sales, Inc., for the fall of 1956 is Navy Log, which has been sold for broadcast over the ABC television network as stated in response to question 1.

(2) If the term "first-run film series" is interpreted as meaning films which have not been broadcast on a syndicated basis in all markets and are, therefore, "first-run" with respect to some markets, the answer is that all film series currently being distributed by CBS Television Film Sales, Inc., with the exception of Navy Log, are available exclusively for syndication.

Exhibit I hereto contains data sheets for all film series currently being distributed by CBS Television Film Sales, Inc., showing with respect to each such series the markets in which they have not been shown, the markets (with station call letters) in which they are scheduled (as of September 1, 1956) to be shown in the fall of 1956, and the day of the week and time period cleared in each such market, where such information is available. None of the sales made for the fall of 1956 and indicated in exhibit I was made on the basis of a pilot film. All of the series had been produced prior to offering and sales were made on the basis of episodes of the produced series.

Question 3. If you have film series in both categories, how do the per picture budgets for series offered for syndication compare with those for series to be broadcast on the networks?

Answer. The only film series produced by CBS Television Film Sales, Inc., or by CBS Television Film Sales, Inc., in association with outside producers, and currently being distributed by it are: Navy Log, which is scheduled for fall broadcast on the ABC television network; The Whistler; part of the Amos 'n' Andy series; Gene Autry; Range Rider; Adventures of Eddie Drake; and Files of Jeffrey Jones. All of these series are in episodes of 30 minutes each. A comparison of the average per-episode budgets of these syndicated series with the average per-episode budget of Navy Log and the dates of production of the syndicated series are shown in the following table:

Series	Production dates	Comparison with Navy Log
Adventures of Eddie Drake	1951	Approximately 65 percent less.
Amos 'n' Andy	1955	Approximately the same.
Files of Jeffrey Jones	1952	Approximately 50 percent less.
Gene Autry	1950–53	Approximately 43 percent less.
Range Rider	1951–53	Approximately 38 percent less.
The Whistler	1955	Approximately 18 percent less.

It should be noted that budget figures for these series and Navy Log are not comparable in many respects. Production costs—particularly union costs, studio and technical facilities and talent payments—have increased appreciably since 1950. Differences in type of program account for considerable variation in budgets. Furthermore, our experience has indicated that the growth of television generally, the increase in the number of producers of syndicated film, the greater availability of better quality feature film, and the demand by many advertisers for improved quality in syndicated film have reduced substantially the cost differential between syndicated series and series released for network broadcast.

Question 4. How many first-run film series did your company offer for syndication in the broadcast year beginning in September 1954? How many in the year beginning September 1955?

Answer. The answer to this question is provided on two bases:

(1) If the term "first-run film series" is interpreted as meaning films which have not been broadcast on a syndicated basis over any television station in the United States, the answer is that 7 series were offered by CBS Television Film Sales, Inc., for syndication in the broadcast year beginning September 1954, and that 4 series were offered for syndication in the year beginning September 1955. These figures include new episodes of series which had been offered in prior years.

(2) If the term "first-run film series" is interpreted as meaning films which have not been shown in all markets and are, therefore, "first-run with respect to some markets the answer is that 12 series were offered by CBS Television Film

Sales, Inc., for syndication in the year beginning September 1954, and 16[1] series for syndication in the year beginning September 1955.

Question 5. Do the option rights of the networks, in conjunction with their must-buy policies, operate to exclude your syndicated programs from the most desirable broadcast times in key markets?

Answer. It has been our experience that the provisions in network affiliation contracts concerning option time and so-called must-buy policies do not exclude syndicated programs from the most desirable broadcast times in key markets. Thus an analysis of programs broadcast by representative CBS television-network affiliates, more than half of which are basic required and all of which have option-time provisions in their affiliation contracts, and stations not affiliated with any network shows that first-run syndicated film series broadcast by affiliated stations exceeded the number of first-run syndicated film series broadcast by nonaffiliated stations. See Memorandum Concerning the Statement of Richard A. Moore Prepared for the Senate Committee on Interstate and Foreign Commerce by Columbia Broadcasting System, Inc., June 1956, pages 17–23, and in particular, the table on page 22. Our experience with respect to the desirability of the time cleared by stations for syndicated programs is borne out by the statement by Oliver Treyz, president, Television Bureau of Advertising, in a speech delivered April 18, 1956, at the annual convention of the National Association of Radio and Television Broadcasters:

"Man Behind the Badge, sponsored by Ohio Oil and ordered in 11 stations was cleared on 10 of these in the supposedly difficult class A time. Great Gildersleeve, for Lucky Lager Beer, was ordered in 26 stations and achieved 100 percent class A clearance—26 class A clearances in 26 markets. Steve Donovan, for Langendorf Bakeries, ordered into 13 stations, cleared in class A time in 11 of them. Racket Squad, for Heilman Brewing Co., ordered in 9 markets, 100 percent class A clearance—9 markets cleared in class A time. The Turning Point, a new program for General Electric, ordered into 68 markets and 66 markets with class A clearance. Dr. Hudson's Secret Journal for Bowman Biscuit Co.—12 markets ordered, class A clearance in all 12. Socony Mobil Theatre, for Socony Mobil-Oil, primarily a central division order, 56 markets ordered, 56 markets cleared in class A time. * * * This is a clear-cut demonstration that there are excellent availabilities in time and that these times can be claimed and can be staked out as franchises for syndicated film programs."

Question 6. As a result of difficulties occasioned by these practices, has your company tended to concentrate on the production of pictures for national sale, reducing the number of programs to be offered strictly on a syndicated basis?

Answer. As stated in response to question 5, it has been our experience that the practices referred to do not operate to exclude syndicated programs from the most desirable broadcast time in key markets. CBS Television Film Sales, Inc., has never made a market distinction between programs produced by it and intended for network release and programs produced by it for syndicated release.

Your letter also raised a question as to syndication by CBS Television Film Sales, Inc., of Long John Silver. As indicated in the response to question 2, Long John Silver is currently being offered by CBS Television Film Sales, Inc.

In the penultimate paragraph of your letter you raised a question as to the practice of other companies engaged in film syndication. We do not have specific information in response to this question but we are enclosing a copy of Standard Rate and Data Service, Films for Television, a listing of current offerings by most film syndication companies, which may be of help to you.

Very truly yours,

LESLIE HARRIS.

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[1] Standard Rate and Data Service, Films For Television lists 19 film series as being offered by CBS Television Film Sales, Inc. Of these, Holiday in Paris has been withdrawn; Newsfilm is a special service offered by CBS Television Film Sales, Inc.; and Adventures of Champion is available only on a national or regional sponsorship basis.

EXHIBIT I

United States markets	Adventures of Long John Silver		Annie Oakley		Amos 'N' Andy		Brave Eagle [1]		Buffalo Bill, Jr. [1]		Cases of Eddie Drake		Fabian of Scotland Yard		Files of Jeffrey Jones	
	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]
Abilene, Tex	No	No	Yes	No	Yes	No					No	No	No	No	Yes	No.
Ada, Okla	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Akron, Ohio	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Albany, Ga	No	No	No	No	No	No					No	No	No	No	No	No.
Albany, N. Y. (see Schenectady)	Yes	No	Yes	Yes	Yes	Yes					No	No	No	No	(4)	No.
Albuquerque, N. Mex	Yes	Yes	Yes	No	Yes	No	No	Yes			Yes	No	No	No	Yes	No.
Alexandria, La	No	No	No	No	Yes	No					No	No	No	No	No	No.
Allentown, Pa	No	No	Yes	No	Yes	No					Yes	No	No	No	Yes	No.
Altoona, Pa	No	No	Yes	Yes	No	No					No	No	Yes	No	No	No.
Amarillo, Tex	Yes	Yes	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Ames, Iowa (see Des Moines)	Yes	Yes	Yes	Yes	Yes	No					(4)	No	No	No	No	(4).
Anchorage, Alaska	No	No	Yes	No	Yes	No					Yes	No	No	No	Yes	No.
Anderson, S. C	No	No	No	No	Yes	No					No	No	No	No	No	No.
Ann Arbor, Mich	No	No	Yes	No	No	No					No	No	No	No	Yes	No.
Asheville, N. C	Yes	No	Yes	Yes	No	No					No	No	No	No	No	No.
Ashtabula, Ohio	No	No	No	No	No	No					No	No	No	No	No	No.
Atlanta, Ga	Yes	No	Yes	Yes	Yes	Yes					No	No	No	No	No	No.
Augusta, Ga	Yes	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Austin, Minn	No	No	No	No	No	No					No	No	No	No	No	No.
Austin, Tex	No	No	Yes	No	Yes	Yes					No	No	No	No	No	No.
Bakersfield, Calif	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Baltimore, Md	No	No	Yes	Yes	Yes	No					Yes	No	Yes	No	Yes	Yes.
Bangor, Maine	No	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Baton Rouge, La	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No	No	No	No	No	No.
Bay City, Mich. (see Saginaw)	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Beaumont, Tex	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Belleville, Ill. (see St. Louis)	No	No	Yes	Yes	Yes	No					No	No	(4)	No	No	No.
Bellingham, Wash	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Bethlehem, Pa. (see Allentown)	No	No	(4)	No	(4)	No					(4)	No	No	No	(4)	No.
Big Springs, Tex. (see Midland, Odessa)	(4)	No	(4)	No	(4)	No					No	No	No	No	No	(4).
Billings, Mont	No	No	No	No	Yes	No					No	No	Yes	Yes	No	No.
Binghamton, N. Y	No	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Birmingham, Ala	Yes	Yes	Yes	Yes	Yes	Yes					Yes	No	No	No	Yes	No.
Bismarck, N. Dak	No	No	No	No	No	No					No	No	No	No	No	No.
Bloomington, Ill	No	No	No	No	Yes	No					Yes	No	No	No	Yes	No.
Bloomington, Ind. (see Indianapolis)	(4)	No	(4)	(4)	(4)	No					Yes	No	No	No	(4)	No.
Boise, Idaho	No	No	Yes	Yes	Yes	No	Yes	Yes			Yes	No	No	No	Yes	No.
Boston, Mass	No	No	Yes	Yes	Yes	No					Yes	No	Yes	No	Yes	No.

See footnotes at end of table.

EXHIBIT I—Continued

United States markets	Adventures of Long John Silver		Annie Oakley		Amos'N Andy		Brave Eagle [1]		Buffalo Bill, Jr.[1]		Cases of Eddie Drake		Fabian of Scotland Yard		Files of Jeffrey Jones	
	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]
Bridgeport, Conn	No	No	Yes	No	No	No					No	No	No	No	No	No.
Buffalo, N. Y	Yes	Yes	Yes	Yes	Yes	Yes					Yes	No	No	No	Yes	Yes.
Burlington, Vt	No	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Butte, Mont	No	No	No	No	Yes	No					No	No	No	No	No	No.
Cadillac, Mich. (see Traverse)	No	No	Yes	No	Yes	(4)					No	No	No	No	Yes	No.
Cambridge, Mass. (see Boston)	No	No	(4)	(4)	(4)	No					(4)	No	(4)	No	(4)	No.
Carlsbad, N. Mex	Yes	Yes	No	No	No	No					No	No	No	No	No	No.
Cape Girardeau, Mo	No	No	Yes	Yes	No	No					No	No	Yes	Yes	No	No.
Carthage, N. Y	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Cedar Rapids, Iowa	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Champaign, Ill. (see Danville)	Yes	Yes	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Charleston, S. C	No	No	Yes	Yes	Yes	Yes					No	No	No	No	Yes	No.
Charleston, W. Va. (see Huntington)	No	No	Yes	Yes	(4)	No					No	No	No	No	No	No.
Charlotte, N. C	Yes	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Chattanooga, Tenn	Yes	No	Yes	Yes	Yes	Yes					No	No	No	No	No	No.
Cheyenne, Wyo	No	No	No	No	No	No					No	No	No	No	No	No.
Chicago, Ill	Yes	Yes	Yes	Yes	Yes	No					Yes	No	Yes	No	Yes	No.
Chico, Calif	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Cincinnati, Ohio	No	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Clarksburg, W. Va	No	No	No	No	No	No					No	No	No	No	No	No.
Cleveland, Ohio	Yes	Yes	Yes	Yes	Yes	Yes					Yes	No	No	No	Yes	No.
Colorado Springs	No	No	Yes	Yes	Yes	Yes	Yes	No			No	No	No	No	Yes	No.
Columbia, Mo	No	No	No	No	Yes	Yes					No	No	No	No	No	No.
Columbia, S. C	Yes	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Columbus, Ga	Yes	No	Yes	Yes	No	No					Yes	No	No	No	Yes	No.
Columbus, Miss	No	No	No	No	No	No					No	No	No	No	No	No.
Columbus, Ohio	Yes	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Corpus Christi, Tex	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Dallas, Tex. (see Fort Worth)	Yes	No	(4)	(4)	Yes	No					Yes	No	Yes	Yes	(4)	No.
Danville, Ill. (see Champaign)	(4)	(4)	(4)	(4)	(4)	No					(4)	No	No	No	(4)	No.
Davenport, Iowa (see Rock Island)	No	No	(4)	(4)	(4)	No					Yes	No	No	No	Yes	No.
Dayton, Ohio	No	No	Yes	Yes	Yes	Yes					Yes	No	No	No	No	No.
Decatur, Ala	No	No	No	No	No	No					No	No	No	No	No	No.
Decatur, Ill	No	No	No	No	No	No					No	No	No	No	Yes	No.
Denver, Colo	Yes	Yes	Yes	Yes	Yes	No			Yes	No	Yes	No	No	No	No	No.
Des Moines, Iowa (see Ames)	Yes	Yes	(4)	(4)	Yes	No	Yes	Yes			Yes	No	No	No	No	Yes.
Detroit, Mich	Yes	Yes	Yes	Yes	Yes	Yes					Yes	No	Yes	Yes	Yes	Yes.
Dothan, Ala	No	No	No	No	Yes	Yes					No	No	No	No	No	No.

Duluth, Minn	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Durham, N. C. (see Raleigh)	No	No	Yes	Yes	(4)	(4)					No	No	No	No	No	No.
East Lansing, Mich. (see Lansing)	No	No	(4)	(4)	(4)	No					(4)	No	No	No	(4)	No.
Eau Claire, Wis	No	No	No	No	No	No					No	No	No	No	No	No.
Elkhart, Ind	No	No	No	No	No	No					No	No	No	No	No	No.
Elmira, N. Y	No	No	No	No	Yes	No					Yes	No	No	No	No	No.
El Paso, Tex	No	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Enid, Okla	No	No	No	No	No	No					No	No	No	No	No	No.
Erie, Pa	No	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Eugene, Oreg	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Eureka, Calif	No	No	No	No	No	No					No	No	No	No	No	No.
Evansville, Ind. (see Henderson, Ky.)	Yes	Yes	Yes	Yes	(4)	No					(4)	No	No	No	Yes	No.
Fairbanks, Alaska	No	No	Yes	No	No	No					No	No	No	No	No	No.
Fairmont, W. Va	No	No	No	No	No	No					No	No	No	No	No	No.
Fargo, N. Dak. (see Valley City)	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Flint, Mich	No	No	No	No	No	No					No	No	No	No	No	No.
Florence, S. C	No	No	No	No	Yes	Yes					No	No	No	No	No	No.
Fort Dodge, Iowa	No	No	No	No	Yes	No					No	No	No	No	Yes	No.
Fort Lauderdale, Fla. (see Miami)	(4)	No	Yes	(4)	Yes	No					Yes	No	No	No	Yes	No.
Fort Myers, Fla	No	No	No	No	No	No					No	No	No	No	No	No.
Fort Smith, Ark	No	No	No	No	Yes	No					No	No	No	No	No	No.
Fort Wayne, Ind. (see Waterloo, Ind.)	No	No	(4)	(4)	Yes	No					No	No	Yes	(4)	Yes	(4)
Fort Worth, Tex. (see Dallas)	(4)	No	Yes	Yes	Yes	No					Yes	No	(4)	(4)	Yes	No.
Fresno, Calif	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No.
Galveston, Tex. (see Houston)	(4)	No	(4)	(4)	(4)	No					No	No	No	No	(4)	No.
Grand Junction, Colo	No	No	No	No	No	No					No	No	No	No	No	No.
Grand Rapids, Mich. (see Kalamazoo)	No	No	(4)	(4)	Yes	Yes					Yes	No	No	No	No	No.
Great Falls, Mont	No	No	No	No	Yes	No					No	No	Yes	Yes	No	No.
Great Bend, Kans	No	No	No	No	Yes	Yes					No	No	No	No	No	No.
Green Bay, Wis	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Greensboro, N. C. (see Winston-Salem)	(4)	No	Yes	Yes	Yes	Yes					No	No	No	No	Yes	No.
Greenville, N. C	Yes	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Greenville, S. C	Yes	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Hampton, Va. (see Norfolk)	No	No	(4)	(4)	(4)	No					No	No	No	No	No	No.
Hannibal, Mo. (see Quincy, Ill.)	(4)	(4)	(4)	(4)	(4)	No					Yes	No	No	No	(4)	No.
Harlingen, Tex	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Harrisburg, Ill	No	No	No	No	Yes	No					Yes	No	No	No	No	No.
Harrisburg, Pa	Yes	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Harrisonburg, Va	No	No	No	No	No	No					No	No	No	No	No	No.
Hartford, Conn. (see New Britain, New Haven).	No	No	Yes	Yes	(4)	No					Yes	No	(4)	(4)	Yes	No.
Hastings, Nebr	No	No	Yes	Yes	Yes	Yes					Yes	No	No	No	Yes	Yes.
Henderson, Ky. (see Evansville)	(4)	(4)	(4)	(4)	Yes	No					Yes	No	No	No	(4)	No.
Holdredge, Nebr. (see Kearney)	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Hollywood, Fla. (see Miami, Fort Lauderdale).	(4)	No	(4)	(4)	(4)	No					(4)	No	No	No	(4)	No.
Holyoke, Mass. (see Springfield, Mass.)	(4)	No	(4)	(4)	(4)	No					No	No	No	No	(4)	No.
Honolulu, T. H	No	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Houston, Tex. (see Galveston)	Yes	No	Yes	Yes	Yes	Yes					No	No	No	No	Yes	No.

See footnotes at end of table.

EXHIBIT I—Continued

United States markets	Adventures of Long John Silver		Annie Oakley		Amos 'N Andy		Brave Eagle [1]		Buffalo Bill, Jr.[1]		Cases of Eddie Drake		Fabian of Scotland Yard		Files of Jeffrey Jones	
	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]
Huntington, W. Va. (see Charleston)	No	No	(4)	(4)	Yes	No					No	No	No	No	No	No.
Hutchinson, Kans. (see Wichita)	(4)	No	Yes	(4)	Yes	No					Yes	No	No	No	No	No.
Idaho Falls, Idaho	No	No	Yes	Yes	Yes	Yes					No	No	No	No	No	No.
Indianapolis, Ind	Yes	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Jackson, Miss	Yes	No	Yes	Yes	Yes	Yes					Yes	No	No	No	Yes	Yes.
Jackson, Tenn	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Jacksonville, Fla	Yes	No	Yes	Yes	No	No					Yes	No	No	No	No	No.
Jefferson City, Mo	No	No	Yes	No	No	No					No	No	No	No	Yes	No.
Johnson City, Tenn	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Johnstown, Pa	No	No	Yes	Yes	Yes	No					No	No	Yes	Yes	No	No.
Joplin, Mo. (see Pittsburg, Kans.)	No	No	(4)	(4)	Yes	Yes					No	No	No	No	No	No.
Kalamazoo, Mich. (See Grand Rapids)	No	No	Yes	Yes	Yes	(4)					(4)	No	No	No	No	No.
Kansas City, Mo	No	No	Yes	Yes	Yes	No					Yes	No	No	Yes	Yes	No.
Kearney, Nebr. (see Holdredge, Kans.)	No	No	(4)	(4)	(4)	No					No	No	No	No	No	No.
Kingston, N. Y	No	No	Yes	No	Yes	No					Yes	No	No	No	Yes	No.
Knoxville, Tenn	Yes	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
La Crosse, Wis	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Lafayette, La	No	No	Yes	Yes	Yes	Yes					Yes	No	No	No	Yes	No.
Lake Charles, La	No	No	No	No	Yes	No					No	No	No	No	No	No.
Lancaster, Pa	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Lansing, Mich	No	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Las Vegas, Nev	Yes	No	Yes	No	Yes	No					No	No	No	No	No	No.
Lawton, Okla	No	No	No	No	No	No					Yes	No	No	No	Yes	No.
Lebanon, Pa. (see Harrisburg)	(4)	No	(4)	(4)	(4)	No					(4)	No	No	No	(4)	No.
Lexington, Ky	No	No	Yes	Yes	Yes	Yes					No	No	No	No	No	No.
Lima, Ohio	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Lincoln, Nebr	No	No	Yes	Yes	No	No					No	No	No	No	Yes	No.
Little Rock, Ark. (see Pine Bluff)	Yes	Yes	Yes	Yes	Yes	(4)					(4)	No	No	No	Yes	No.
Longview, Tex	No	No	No	No	Yes	No					Yes	No	No	No	Yes	No.
Los Angeles, Calif	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			Yes	No	No	No	Yes	Yes.
Louisville, Ky	Yes	No	Yes	Yes	Yes	No	Yes	Yes			Yes	No	No	No	Yes	No.
Lubbock, Tex	Yes	Yes	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Lufkin, Tex	Yes	Yes	Yes	No	Yes	Yes					No	No	No	No	No	No.
Lunchburg, Va	No	No	Yes	No	Yes	No					Yes	No	No	No	No	No.
Macon, Ga	Yes	No	Yes	Yes	No	No					Yes	No	No	No	Yes	No.
Madison, Wis	Yes	Yes	Yes	Yes	Yes	Yes					Yes	No	No	No	No	No.
Manchester, N. H	No	No	Yes	No	No	No					No	No	No	No	No	No.
Marinette, Wis	No	No	No	No	No	No					No	No	No	No	No	No.

Mason City, Iowa	No	No	Yes	Yes	Yes	Yes					Yes	No	No	No	Yes	No.
Medford, Oreg	No	No	No	No	Yes	No					No	No	No	No	No	No.
Memphis, Tenn	Yes	No	Yes	Yes	Yes	Yes					No	No	Yes	No	No	No.
Meridian, Miss	No	No	Yes	No	Yes	No					Yes	No	No	No	Yes	No.
Mesa, Ariz. (see Phoenix)	(4)	(4)	(4)	(4)	(4)	(4)					No	No	No	No	(4)	(4)
Miami, Fla. (see Fort Lauderdale)	Yes	No	Yes	Yes	Yes	No					(4)	No	No	No	(4)	No.
Midland, Tex. (see Odessa, Big Spring)	(4)	No	Yes	No	Yes	No					No	No	No	No	(4)	(4)
Milwaukee, Wis	No	No	Yes	Yes	Yes	No					Yes	No	Yes	No	Yes	No.
Minneapolis, Minn. (see St. Paul)	No	No	Yes	Yes	Yes	Yes					No	No	No	No	No	No.
Minot, N. Dak	No	No	No	No	No	No					No	No	No	No	No	No.
Missoula, Mont	No	No	No	No	No	No					No	No	No	No	No	No.
Mobile, Ala	Yes	No	Yes	Yes	Yes	No			Yes	Yes	No	Yes	No	No	Yes	Yes.
Monroe, La	No	No	No	No	Yes	No					No	No	No	No	No	No.
Monterey, Calif. (see Salinas)	No	No	(4)	(4)	No	No					Yes	No	No	No	(4)	No.
Montgomery, Ala	Yes	No	No	No	Yes	No					No	No	No	No	No	No.
Montpelier, Vt	No	No	No	No	No	No					No	No	No	No	No	No.
Mount Washington, N. H. (see Poland Springs).	No	No	(4)	(4)	No	No					No	No	No	No	No	No.
Muncie, Ind	No	No	No	No	Yes	No					No	No	No	No	No	No.
Muskogee, Okla. (see Tulsa)	Yes	No	Yes	Yes	(4)	Yes					No	No	No	No	No	No.
Nashville, Tenn. (see Old Hickory)	Yes	No	Yes	Yes	Yes	No	No	Yes			No	No	No	No	Yes	No.
Neenah, Wis	No	No	No	No	Yes	No					Yes	No	No	No	No	No.
New Britain, Conn. (see Hartford, New Haven).	No	No	(4)	(4)	Yes	No					Yes	No	(4)	(4)	Yes	No.
New Haven, Conn. (see Hartford, New Britain).	No	No	Yes	Yes	Yes	No					(4)	(4)	Yes	Yes	(4)	No.
New Orleans, La	No	No	Yes	Yes	Yes	Yes					No	No	No	No	Yes	No.
New York, N. Y	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes			Yes	No	Yes	Yes	Yes	Yes.
Newark, N. J. (see New York)	(4)	(4)	(4)	(4)	(4)	(4)					(4)	No	(4)	(4)	(4)	(4)
Newport News, Va. (see Norfolk, Hampton).	No	No	(4)	(4)	(4)	No					No	No	No	No	No	No.
Norfolk, Va. (see Hampton)	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Oak Hill, W. Va	No	No	No	No	No	No					No	No	No	No	No	No.
Odessa, Tex. (see Midland, Big Spring)	Yes	No	(4)	No	(4)	No			Yes	No	No	No	No	No	Yes	Yes.
Old Hickory, Tenn. (see Nashville)	(4)	No	(4)	(4)	(4)	No					No	No	No	No	(4)	No.
Oklahoma City, Okla	Yes	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Omaha, Nebr	Yes	Yes	Yes	Yes	Yes	No					No	No	No	No	No	No.
Orlando, Fla	No	No	No	No	Yes	No					No	No	No	No	No	No.
Ottumwa, Iowa	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Panama City, Fla	No	No	No	No	No	No					No	No	No	No	No	No.
Parkersburg, W. Va	No	No	No	No	Yes	Yes					No	No	No	No	No	No.
Peoria, Ill	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Pensacola, Fla	No	No	No	No	Yes	Yes					Yes	No	No	No	Yes	No.
Philadelphia, Pa	No	No	Yes	Yes	Yes	Yes					No	No	Yes	No	Yes	No.
Phoenix, Ariz	Yes	Yes	Yes	Yes	Yes	Yes					No	No	No	No	Yes	Yes.
Pine Bluff, Ark. (see Little Rock)	(4)	(4)	(4)	(4)	Yes	Yes					Yes	No	No	No	(4)	No.
Pittsburg, Kans. (see Joplin)	No	No	Yes	Yes	(4)	(4)					No	No	No	No	No	No.
Pittsburgh, Pa	No	No	Yes	Yes	Yes	No	No	Yes			No	No	No	No	Yes	No.
Pittsfield, Mass	No	No	No	No	No	No					No	No	No	No	No	No.
Plattsburg, N. Y	No	No	No	No	No	No					No	No	No	No	No	No.

See footnotes at end of table.

EXHIBIT I—Continued

United States markets	Adventures of Long John Silver		Annie Oakley		Amos 'N Andy		Brave Eagle [1]		Buffalo Bill, Jr.[1]		Cases of Eddie Drake		Fabian of Scotland Yard		Files of Jeffrey Jones	
	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]
Poland Spring, Maine	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Portland, Maine	Yes	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Portland, Oreg	Yes	Yes	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Providence, R. I	No	No	Yes	Yes	Yes	Yes					No	No	Yes	Yes	Yes	No.
Pueblo, Colo. (see Colorado Springs)	No	No	(4)	(4)	Yes	(4)					No	No	No	No	(4)	No.
Quincy, Ill. (see Hannibal)	Yes	Yes	Yes	Yes	Yes	Yes					(4)	No	No	No	Yes	No.
Raleigh, N. C. (see Durham)	No	No	(4)	(4)	Yes	Yes					No	No	No	No	No	No.
Rapid City, S. Dak	No	No	Yes	No	No	No			Yes	Yes	No	No	No	No	No	No.
Reading, Pa	No	No	No	No	Yes	No					No	No	No	No	Yes	No.
Reno, Nev	No	No	Yes	Yes	Yes	No					Yes	No	No	No	No	No.
Richmond, Va	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Roanoke, Va	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Rochester, Minn	No	No	No	No	No	No					No	No	No	No	No	No.
Rochester, N. Y	Yes	Yes	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Rockford, Ill	Yes	Yes	Yes	Yes	No	No					No	No	No	No	No	No.
Rock Island, Ill. (see Davenport)	No	No	Yes	Yes	Yes	No					(4)	No	No	No	(4)	No.
Rome, Ga	No	No	Yes	No	Yes	No					No	No	No	No	Yes	No.
Roswell, N. Mex	No	No	No	No	Yes	No			Yes	No	Yes	No	No	No	Yes	No.
Sacramento, Calif	No	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Saginaw, Mich. (see Bay City)	No	No	(4)	(4)	(4)	No					No	No	No	No	No	No.
St. Joseph, Mo	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
St. Louis, Mo. (see Belleville)	No	No	Yes	Yes	(4)	No					No	No	Yes	No	Yes	No.
St. Paul, Minn. (see Minneapolis)	No	No	(4)	(4)	(4)	(4)					No	No	No	No	No	No.
St. Petersburg, Fla. (see Tampa)	Yes	No	(4)	(4)	Yes	(4)					No	No	No	No	No	No.
Salinas, Calif. (see Monterey)	No	No	Yes	Yes	No	No					(4)	No	No	No	Yes	No.
Salisbury, Md	No	No	No	No	No	No					No	No	No	No	No	No.
Salt Lake City, Utah	Yes	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
San Angelo, Tex	No	No	Yes	Yes	Yes	No			Yes	No	No	No	No	No	No	No.
San Antonio, Tex	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
San Diego, Calif	Yes	Yes	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
San Francisco, Calif	Yes	Yes	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
San Juan, P. R	No	No	No	No	No	No					No	No	No	No	No	No.
San Luis Obispo, Calif	No	No	Yes	Yes	Yes	No					Yes	No	No	No	No	No.
Santa Barbara, Calif	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Savannah, Ga	Yes	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Schenectady, N. Y (see Albany)	Yes	No	Yes	Yes	Yes	Yes					No	No	No	No	Yes	No.
Scranton, Pa. (see Wilkes-Barre)	Yes	Yes	Yes	Yes	Yes	Yes					Yes	No	Yes	No	Yes	No.
Seattle, Wash (see Tacoma)	Yes	Yes	Yes	Yes	Yes	No					No	No	No	No	Yes	No.

Sedalia, Mo	No	No	No	No	No	No					No	No	No	No	No	No.
Selma, Ala	No	No	No	No	No	No					No	No	No	No	No	No.
Shreveport, La	No	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Sioux City, Iowa	No	No	Yes	Yes	Yes	Yes					No	No	No	No	No	No.
Sioux Falls, S. Dak	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
South Bend, Ind	Yes	Yes	Yes	Yes	No	No					No	No	No	No	No	No.
Spartanburg, S. C	No	No	No	No	No	No					No	No	No	No	No	No.
Spokane, Wash	No	No	Yes	Yes	Yes	No					No	No	Yes	Yes	No	No.
Springfield, Ill	No	No	Yes	Yes	No	No					No	No	No	No	Yes	No.
Springfield, Mass	Yes	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Springfield, Mo	Yes	Yes	Yes	Yes	Yes	Yes					Yes	No	No	No	Yes	No.
Steubenville, Ohio (see Wheeling)	No	No	(4)	(4)	Yes	No					Yes	No	No	No	Yes	No.
Stockton, Calif	No	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Superior, Wis. (see Duluth)	No	No	(4)	(4)	No	No					No	No	No	No	No	No.
Syracuse, N. Y	No	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Sweetwater, Tex	Yes	No	Yes	Yes												
Tacoma, Wash. (see Seattle)	(4)	(4)	(4)	(4)	(4)	No					No	No	No	No	Yes	No.
Tampa, Fla. (see St. Petersburg)	(4)	No	Yes	Yes	Yes	Yes					No	No	No	No	No	No.
Temple, Tex. (see Waco)	No	No	No	No	(4)	No					(4)	No	No	No	(4)	No.
Terre Haute, Ind	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Texarkana, Tex	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Thomasville, Ga	No	No	No	No	No	No					No	No	No	No	No	No.
Toledo, Ohio	No	No	Yes	Yes	Yes	No					No	No	No	No	Yes	No.
Topeka, Kans	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Traverse City, Mich. (see Cadillac)	No	No	(4)	No	Yes	Yes					No	No	No	No	(4)	No.
Troy, N. Y. (see Schenectady, Albany)	(4)	No	(4)	(4)	(4)	(4)					No	No	No	No	(4)	No.
Tucson, Ariz	Yes	No	Yes	Yes	Yes	No			Yes	Yes	Yes	No	No	No	Yes	No.
Tulare, Calif. (see Fresno)	(4)	No	(4)	(4)	Yes	No					No	No	No	No	(4)	No.
Tulsa, Okla. (see Muscogee)	(4)	No	(4)	(4)	Yes	(4)					No	No	No	No	No	No.
Twin Falls, Idaho	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Tyler, Tex	No	No	No	No	Yes	No					No	No	No	No	No	No.
Utica, N. Y	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Valley City, N. Dak	No	No	No	No	No	No					No	No	No	No	No	No.
Vancouver, Wash. (see Portland, Oreg.)	(4)	(4)	(4)	(4)	(4)	No					No	No	No	No	(4)	No.
Waco, Tex	No	No	No	No	Yes	No					Yes	No	No	No	Yes	No.
Wausau, Wis	No	No	No	No	No	No					No	No	No	No	No	No.
Washington, D. C	Yes	Yes	Yes	Yes	Yes	Yes					No	No	Yes	Yes	No	No.
Waterbury, Conn	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Waterloo, Ind	No	No	Yes	Yes	No	No					No	No	Yes	Yes	Yes	Yes.
Waterloo, Iowa (see Cedar Rapids)	No	No	(4)	(4)	(4)	No					No	No	No	No	No	No.
Watertown, N. Y. (see Carthage)	No	No	(4)	(4)	No	No					No	No	No	No	No	No.
West Palm Beach, Fla	No	No	No	No	Yes	No					No	No	No	No	No	No.
Weslaco, Tex. (see Harlingen)	No	No	(4)	(4)	(4)	No					No	No	No	No	No	No.
Wheeling, W. Va. (see Steubenville)	No	No	Yes	Yes	(4)	No					(4)	No	No	No	(4)	No.
Wichita, Kans. (see Hutchinson)	Yes	No	Yes	Yes	(4)	No					(4)	No	No	No	No	No.
Wichita Falls, Tex	No	No	Yes	Yes	Yes	No					Yes	No	No	No	Yes	No.
Wilkes-Barre, Pa. (see Scranton)	(4)	(4)	(4)	(4)	(4)	(4)					(4)	No	(4)	No	(4)	No.
Wilmington, Del	No	No	Yes	Yes	No	No					No	No	No	No	No	No.
Wilmington, N. C	No	No	No	No	Yes	No					No	No	No	No	No	No.
Winston-Salem, N. C. (see Greensboro)	Yes	Yes	(4)	(4)	(4)	(4)					No	No	No	No	(4)	No.

See footnotes at end of table.

EXHIBIT I—Continued

United States markets	Adventures of Long John Silver		Annie Oakley		Amos' N Andy		Brave Eagle [1]		Buffalo Bill, Jr.[1]		Cases of Eddie Drake		Fabian of Scotland Yard		Files of Jeffrey Jones	
	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]
Worcester, Mass.	No	No	No	No	No	No					No	No	No	No	No	No.
Yakima, Wash.	No	No	Yes	Yes	Yes	No					No	No	No	No	No	
York, Pa.	No	No	No	No	Yes	No					No	No	No	No	No	No.
Youngstown, Ohio	No	No	Yes	Yes	Yes	No					No	No	No	No	No	No.
Yuma, Ariz.	No	No	Yes	Yes	Yes	Yes					No	No	No	No	No	No.
Zanesville, Ohio	No	No	No	No	No	No					No	No		No	Yes	No.
Limestone, Maine																
San Jose, Calif.																
Tallahassee, Fla.																

[1] In all markets other than those for which data are shown, this series is available on a first-run syndicated basis.
[2] Question 1: "Has series been broadcast in this market prior to fall 1956?"
[3] Question 2: "Is series cleared for broadcast in the fall of 1956?"
[4] See other market or markets listed for exposure in this multiple market.

EXHIBIT I

United States markets	The Gene Autry Show		Life With Father		Newsfilm		Range Rider		San Francisco Beat		Terrytoons Cartoons		The Whistler		Under the Sun [1]	
	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]
Abilene, Tex.	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Ada, Okla.	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Akron, Ohio	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Albany, Ga.	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Albany, N. Y. (see Schenectady)	Yes	No	Yes	No	(4)	(4)	(4)	No	(4)	(4)	Yes	No	No	No		
Albuquerque, N. Mex.	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	Yes	No		
Alexandria, La.	No	No	No	No	No	No	No	No	No	No	No	No	Yes	Yes		
Allentown, Pa.	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Altoona, Pa.	Yes	No	No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No		
Amarillo, Tex.	Yes	No	No	No	No	No	Yes	No	Yes	No	No	No	Yes	Yes		

Ames, Iowa (see Des Moines)	Yes	No	Yes	(4)	(4)	(4)	No	No	No	No	No	No	(4)	(4)
Anchorage, Alaska	Yes	No	No	No	Yes	Yes	Yes	No	No	No	No	No	Yes	No
Anderson, S. C	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No
Ann Arbor, Mich	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Asheville, N. C	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No
Ashtabula, Ohio	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Atlanta, Ga	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No
Augusta, Ga	Yes	No	No	No	No	No	No	No	No	No	No	No	Yes	No
Austin, Minn	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No
Austin, Tex	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No
Bakersfield, Calif	Yes	No	No	No	No	No	Yes	Yes	No	No	No	No	Yes	No
Baltimore, Md	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No
Bangor, Maine	Yes	No	Yes	Yes	No	No	Yes	No	Yes	Yes	No	No	Yes	No
Baton Rouge, La	Yes	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No
Bay City, Mich. (see Saginaw)	No	No	(4)	No	No	No	Yes	No	No	No	No	No	No	No
Beaumont, Tex	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Belleville, Ill. (see St. Louis)	No	No	(4)	No	(4)	(4)	(4)	No	No	No	No	No	No	No
Bellingham, Wash	No	No	Yes	No	No	No	No	No	Yes	No	No	No	Yes	No
Bethlehem, Pa. (see Allentown)	(4)	No	No	No	No	No	(4)	No	No	No	No	No	No	No
Big Springs, Tex. (see Midland, Odessa)	(4)	No	Yes	Yes	No	No	(4)	No	(4)	(4)	No	No	(4)	(4)
Billings, Mont	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Binghamton, N. Y	Yes	No	Yes	No	No	No	Yes	No	Yes	Yes	Yes	Yes	No	No
Birmingham, Ala	Yes	No	Yes	No	No	No	Yes	No	No	No	Yes	Yes	No	No
Bismarck, N. Dak	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Bloomington, Ill	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No
Bloomington, Ind. (see Indianapolis)	(4)	No	(4)	No	(4)	No	(4)	No	Yes	(4)	No	No	Yes	No
Boise, Idaho	Yes	No	No	No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No
Boston, Mass	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No
Bridgeport, Conn	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Buffalo, N. Y	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Burlington, Vt	Yes	No	No	No	No	No	Yes	Yes	No	No	No	No	Yes	No
Butte, Mont	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Cadillac, Mich. (see Traverse)	Yes	No	Yes	No	No	No	Yes	No	No	No	No	Yes	No	No
Cambridge, Mass. (see Boston)	(4)	No	(4)	No	(4)	(4)	(4)	(4)	No	(4)	No	No	(4)	No
Carlsbad, N. Mex	No	No	Yes	No	No	No	No	No	No	No	Yes	Yes	No	No
Cape Girardeau, Mo	No	No	Yes	Yes	No	No	No	No	No	No	No	No	No	No
Carthage, N. Y	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Cedar Rapids, Iowa	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No
Champaign, Ill. (see Danville)	Yes	No	Yes	No	No	No	Yes	(4)	No	No	No	No	No	No
Charleston, S. C	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No
Charleston, W. Va. (see Huntington)	(4)	No	Yes	No	No	No	Yes	Yes	No	No	No	No	(4)	(4)
Charlotte, N. C	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No
Chattanooga, Tenn	No	No	Yes	No	Yes	Yes	No	No	No	No	Yes	Yes	Yes	No
Cheyenne, Wyo	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No
Chicago, Ill	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Chico, Calif	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No
Cincinnati, Ohio	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No
Clarksburg, W. Va	No	No	No	No	No	No	No	No	No	No	No	No	No	No
Cleveland, Ohio	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Colorado Springs	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No

See footnote at end of table.

EXHIBIT I—Continued

United States markets	The Gene Autry Show		Life With Father		Newsfilm		Range Rider		San Francisco Beat		Terrytoons Cartoons		The Whistler		Under the Sun [1]	
	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]
Columbia, Mo	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Columbia, S. C	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	Yes		
Columbus, Ga	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No		
Columbus, Miss	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Columbus, Ohio	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	No	No		
Corpus Christi, Tex	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Dallas, Tex. (see Fort Worth)	Yes	Yes	Yes	No	(4)	(4)	Yes	No	(4)	(4)	Yes	Yes	Yes	Yes		
Danville, Ill. (see Champaign)	(4)	No	(4)	No	No	No	(4)	Yes	No	No	No	No	No	No		
Davenport, Iowa (see Rock Island)	No	No	(4)	No	(4)	(4)	Yes	No	No	No	(4)	(4)	No	No		
Dayton, Ohio	Yes	Yes	Yes	No	No	No	Yes	No	No	No	No	No	Yes	Yes		
Decatur, Ala	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Decatur, Ill	No	No	No	No	No	No	No	No	No	No	No	Yes	No	No		
Denver, Colo	Yes	No	Yes	No	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes		
Des Moines, Iowa (see Ames)	(4)	No	(4)	Yes	Yes	Yes	No	No	No	No	No	No	Yes	Yes		
Detroit, Mich	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes		
Dothan, Ala	No	No	No	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No		
Duluth, Minn	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No		
Durham, N. C. (see Raleigh)	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
East Lansing, Mich. (see Lansing)	(4)	No	(4)	No	No	No	(4)	No	No	No	No	No	No	No		
Eau Claire, Wis	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Elkhart, Ind	No	No	No	No	Yes	No	No	No	No	No	No	No	Yes	No		
Elmira, N. Y	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
El Paso, Tex	Yes	Yes	Yes	No	No	No	Yes	No	No	No	No	No	Yes	Yes		
Enid, Okla	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Erie, Pa	Yes	No	Yes	No	No	No	No	No	No	No	No	No	No	No		
Eugene, Oreg	No	No	No	No	No	No	Yes	No	No	No	No	No	Yes	No		
Eureka, Calif	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No		
Evansville, Ind. (see Henderson, Ky.)	(4)	No	Yes	No	No	No	Yes	No	No	No	Yes	Yes	Yes	No		
Fairbanks, Alaska	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	Yes	No		
Fairmont, W. Va	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Fargo, N. Dak. (see Valley City)	(4)	No	(4)	No	No	No	Yes	No	No	No	No	No	No	No		
Flint, Mich	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Florence, S. C	No	No	Yes	No	Yes	Yes	No	No	No	No	No	No	Yes	No		
Fort Dodge, Iowa	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Fort Lauderdale, Fla. (see Miami)	No	No	Yes	Yes	(4)	(4)	(4)	No	(4)	(4)	(4)	(4)	Yes	No		
Fort Myers, Fla	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Fort Smith, Ark	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Fort Wayne, Ind. (see Waterloo, Ind.)	(4)	No	No	No	No	No	Yes	No	(4)	(4)	No	No	(4)	(4)		
Fort Worth, Tex. (see Dallas)	Yes	(4)	(4)	No	Yes	Yes	Yes	No	Yes	Yes	(4)	(4)	(4)	(4)		

Fresno, Calif	Yes	No	Yes	Yes	No	No	Yes	No	Yes	Yes	No	No	Yes	No		
Galveston, Tex. (see Houston)	Yes	No	Yes	No	[4]	[4]	Yes	No	No	No	No	No	No	No		
Grand Junction, Colo	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Grand Rapids, Mich. (see Kalamazoo)	[4]	No	[4]	No	No	No	Yes	No	[4]	[4]	No	No	No	No		
Great Falls, Mont	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No		
Great Bend, Kans	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No		
Green Bay, Wis	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Greensboro, N. C. (see Winston-Salem)	No	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	No		
Greenville, N. C	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	No	No		
Greenville, S. C	No	No	[4]	No	No	No	[4]	No	No	No	Yes	Yes	No	No		
Hampton, Va. (see Norfolk)	No	No	[4]	No	No	No	[4]	No	No	No	Yes	Yes	No	No		
Hannibal, Mo. (see Quincy, Ill.)	[4]	No	[4]	No	[4]	[4]	[4]	[4]	No	No	No	No	[4]	[4]		
Harlingen, Tex	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Harrisburg, Ill	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Harrisburg, Pa	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	No	No	Yes	No		
Harrisonburg, Va	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No		
Hartford, Conn. (New Britain, New Haven).	[4]	No	[4]	No	No	No	Yes	No	[4]	[4]	Yes	Yes	[4]	No		
Hastings, Nebr	Yes	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes		
Henderson, Ky. (see Evansville)	Yes	No	[4]	No	No	No	[4]	No	No	No	[4]	No	No	No		
Holdredge, Nebr. (see Kearney)	No	No	[4]	No	No	No	Yes	No	No	No	No	No	No	No		
Hollywood, Fla. (see Miami, Fort Lauderdale).	No	No	[4]	[4]	[4]	[4]	[4]	No	[4]	[4]	[4]	[4]	No	No		
Holyoke, Mass. (see Springfield)	[4]	[4]	[4]	No	No	No	[4]	No	[4]	[4]	No	No	[4]	No		
Honolulu, T. H	Yes	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	Yes	No		
Houston, Tex. (see Galveston)	Yes	No	[4]	No	Yes	Yes	Yes	No	No	No	No	No	Yes	No		
Huntington, W. Va. (see Charleston)	Yes	No	[4]	No	No	No	[4]	[4]	No	No	No	No	Yes	Yes		
Hutchinson, Kans. (see Witchita)	Yes	No	Yes	[4]	No	No	Yes	No	No	No	No	No	Yes	No		
Idaho Falls, Idaho	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Indianapolis, Ind	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes	No	No	Yes	No		
Jackson, Miss	Yes	No	No	No	No	No	Yes	No	No	No			Yes	Yes		
Jackson, Tenn	No	No	No	No	No	No	No	No	No	No			No	No		
Jacksonville, Fla	Yes	No	Yes	No	No	No	No	No	No	No			No	No		
Jefferson City, Mo	No	No	No	No	No	No	No	No	No	No			Yes	Yes		
Johnson City, Tenn	Yes	No	Yes	No	No	No	No	No	No	No			No	No		
Johnstown, Pa	No	No	No	No	No	No	No	No	Yes	Yes			No	No		
Joplin, Mo. (see Pittsburg, Kans.)	Yes	No	No	No	No	No	Yes	No	No	No			No	No		
Kalamazoo, Mich. (see Grand Rapids)	Yes	No	Yes	No	No	No	Yes	No	Yes	Yes			No	No		
Kansas City, Mo	Yes	No	Yes	No	No	No	Yes	No	Yes	Yes			Yes	No		
Kearney, Nebr. (see Holdredge)	No	No	Yes	No	No	No	[4]	No	No	No			No	No		
Kingston, N. Y	Yes	No	No	No	Yes	No	Yes	No	No	No			No	No		
Knoxville, Tenn	No	No	No	No	No	No	No	No	No	No			No	No		
La Crosse, Wis	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Lafayette, La	Yes	No	Yes	No	No	No	Yes	No	Yes	No	No	No	Yes	No		
Lake Charles, La	Yes	No	No	No	No	No	Yes	No	Yes	No	No	No	Yes	No		
Lancaster, Pa	No	No	No	No	Yes	Yes	No	No	No	No	No	No	Yes	Yes		
Lansing, Mich	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Las Vegas, Nev	Yes	No	No	No	No	No	Yes	No	Yes	No	Yes	Yes	Yes	No	No	Yes.
Lawton, Okla	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No		

See footnote at end of table.

EXHIBIT I—Continued

United States markets	The Gene Autry Show		Life With Father		Newsfilm		Range Rider		San Francisco Beat		Terrytoons Cartoons		The Whistler		Under the Sun [1]	
	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2 [3]	Question 1 [2]	Question 2
Lebanon, Pa. (see Harrisburg)	(4)	No	(4)	No	(4)	(4)	(4)	No	(4)	No	No	No	(4)	No		
Lexington, Ky	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Lima, Ohio	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Lincoln, Nebr	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Little Rock, Ark. (see Pine Bluff)	(4)	No	Yes	No	(4)	(4)	Yes	No	No	No	Yes	Yes	No	No		
Longview, Tex	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No		
Los Angeles, Calif	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes.
Louisville, Ky	Yes	No	No	No	No	No	Yes	No	Yes	Yes	No	No	Yes	No		
Lubbock, Tex	Yes	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No		
Lufkin, Tex	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Lynchburg, Va	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Macon, Ga	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	No		
Madison, Wis	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Manchester, N. H	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Marinette, Wis	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Mason City, Iowa	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No		
Medford, Oreg	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No		
Memphis, Tenn	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No		
Meridian, Miss	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Mesa, Ariz. (see Phoenix)	(4)	No	(4)	(4)	(4)	(4)	(4)	No	(4)	(4)	No	No	(4)	No		
Miami, Fla. (see Fort Lauderdale)	No	No	Yes	(4)	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No		
Midland, Tex. (see Odessa, Big Spring)	Yes	No	(4)	(4)	No	No	Yes	No	(4)	(4)	No	No	(4)	(4)		
Milwaukee, Wis	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes		
Minneapolis, Minn. (see St. Paul)	Yes	No	Yes	No	No	No	Yes	No	No	No	(4)	(4)	Yes	Yes		
Minot, N. Dak	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Missoula, Mont	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Mobile, Ala	Yes	Yes	No	No	No	No	Yes	No	No	No	No	Yes	Yes	Yes		
Monroe, La	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Monterey, Calif. (see Salinas)	Yes	No	(4)	No	No	No	Yes	No	No	No	No	No	No	No		
Montgomery, Ala	No	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	No		
Montpelier, Vt	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Mount Washington, N. H. (See Poland Springs).	No	No	Yes	No	No	No	No	No	No	(4)	No	(4)	No	No		
Muncie, Ind	No	No	Yes	No	No	No	No	No	Yes	Yes	No	No	No	No		
Muskogee, Okla. (see Tulsa)	No	No	(4)	No	(4)	(4)	(4)	No	Yes	Yes	(4)	No	(4)	No		
Nashville, Tenn. (see Old Hickory)	Yes	Yes	Yes	No	(4)	(4)	Yes	Yes	No	No	(4)	(4)	Yes	No		
Neena, Wis	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
New Britain, Conn. (see Hartford, New Haven).	Yes	No	Yes	No	No	No	Yes	No	Yes	Yes	(4)	(4)	(4)	No		

New Haven, Conn. (see Hartford, New Britain).	(4)	No	(4)	No	No	No	(4)	No	Yes	Yes	(4)	(4)	Yes	No		
New Orleans, La	No	No	No	No	No	No	Yes	No	Yes	Yes	No	No	Yes	No		
New York, N. Y	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		
Newark, N. J. (see New York)	(4)	(4)	(4)	(4)	No	No	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4		
Newport News, Va. (see Norfolk, Hampton).	No	No	(4)	No	No	No	(4)	No	No	No	(4)	(4)	No	No		
Norfolk, Va. (see Hampton)	No	No	Yes	No	No	No	Yes	No	No	No	(4)	(4)	No	No		
Oak Hill, W. Va	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Odessa, Tex. (see Midland, Big Spring)	(4)	No	Yes	(4)	No	No	(4)	No	Yes	Yes	No	No	Yes	Yes		
Old Hickory, Tenn. (see Nashville)	(4)	(4)	(4)	No	Yes	Yes	Yes	(4)	No	No	Yes	Yes	(4)	No		
Oklahoma City, Okla	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Omaha, Nebr	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Orlando, Fla	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Ottumwa, Iowa	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes		
Panama City, Fla	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Parkersburg, W. Va	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Peoria, Ill	No	No	No	No	Yes	Yes	Yes	Yes	No	No	No	No	No	No		
Pensacola, Fla	Yes	No	Yes	No	No	No	Yes	No	Yes	No	No	No	No	No		
Philadelphia, Pa	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No		
Phoenix, Ariz	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	No		
Pine Bluff, Ark. (see Little Rock)	Yes	No	(4)	No	Yes	Yes	Yes	No	No	No	(4)	(4)	No	No		
Pittsburg, Kans. (see Joplin)	(4)	No	No	No	No	No	(4)	No	No	No	No	No	No	No		
Pittsburgh, Pa	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	No		
Pittsfield, Mass	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Plattsburg, N. Y	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Poland Spring, Maine	No	No	No	No	No	No	No	No	No	Yes	No	Yes	No	No		
Portland, Maine	Yes	No	Yes	No	No	No	Yes	No	Yes	No	Yes	No	Yes	No		
Portland, Oreg	Yes	No	Yes	Yes	Yes	No	Yes	No	No	No	No	No	Yes	No		
Providence, R. I	Yes	No	No	No	No	No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes		
Pueblo, Colo. (see Colorado Springs)	(4)	No	(4)	No	No	No	(4)	No	No	No	No	No	No	No		
Quincy, Ill. (see Hannibal)	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes		
Raleigh, N. C. (see Durham)	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Rapid City, S. Dak	Yes	No	No	No	No	No	No	No	No	No	No	No	No	No		
Reading, Pa	No	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	No		
Reno, Nev	No	No	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes.
Richmond, Va	No	No	No	No	Yes	Yes	Yes	No	No	No	No	No	Yes	No		
Roanoke, Va	Yes	No	No	No	Yes	Yes	No	No	No	No	Yes	Yes	No	No		
Rochester, Minn	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Rochester, N. Y	No	No	Yes	No	Yes	No	Yes	No	No	No	No	No	No	No		
Rockford, Ill	Yes	No	Yes	No	No	No	No	No	No	No	No	No	No	No		
Rock Island, Ill. (see Davenport)	No	No	Yes	No	Yes	Yes	(4)	No	No	No	Yes	Yes	No	No		
Rome, Ga	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Roswell, N. Mex	Yes	No	No	No	No	No	Yes	No	Yes	No	No	No	Yes	No		
Sacramento, Calif	Yes	No	No	No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No		
Saginaw, Mich. (see Bay City)	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
St. Joseph, Mo	Yes	No	No	No	No	No	Yes	No	Yes	Yes	No	No	No	No		
St. Louis, Mo. (see Belleville)	No	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	No		
St. Paul, Minn. (see Minneapolis)	(4)	No	(4)	No	No	No	(4)	No	No	No	Yes	Yes	No	No		

See footnote at end of table.

EXHIBIT I—Continued

United States markets	The Gene Autry Show: Question 1 [2]	The Gene Autry Show: Question 2 [3]	Life With Father: Question 1 [2]	Life With Father: Question 2 [3]	Newsfilm: Question 1 [2]	Newsfilm: Question 2 [3]	Range Rider: Question 1	Range Rider: Question 2 [2]	San Francisco Beat: Question 1 [3]	San Francisco Beat: Question 2 [2]	Terrytoons Cartoons: Question 1 [3]	Terrytoons Cartoons: Question 2 [2]	The Whistler: Question 1 [3]	The Whistler: Question 2 [2]	Under the Sun [1]: Question 1 [3]	Under the Sun [1]: Question 2 [2]
St. Petersburg, Fla. (see Tampa)	Yes	No	No	No	(4)	(4)	Yes	No	(4)	No	No	No	No	No		
Salinas, Calif. (see Monterey)	(4)	No	Yes	No	No	No	(4)	No	No	No	No	No	No	No		
Salisbury, Md	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Salt Lake City, Utah	Yes	No	Yes	No	Yes	No	Yes	No	No	No	Yes	Yes	Yes	No		
San Angelo, Tex	No	No	No	No	No	No	Yes	Yes	No	No	No	No	No	No		
San Antonio, Tex	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
San Diego, Calif	Yes	No	Yes	No	No	No	Yes	No	Yes	Yes	No	No	Yes	No		
San Francisco, Calif	No	Yes	Yes	No	Yes	No	Yes	No	No	No	No	No	Yes	No		
San Juan, P. R	No	No	No	No	Yes	No	No	No	No	No	Yes	No	No	No		
San Luis Obispo, Calif	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Santa Barbara, Calif	No	No	No	No	No	No	Yes	No	No	No	No	No	Yes	No		
Savannal, Ga	No	No	Yes	No	No	No	No	No	No	No	No	No	Yes	No		
Schenectady, N. Y. (see Albany)	Yes	Yes	(4)	No	Yes	Yes	Yes	Yes	Yes	Yes	(4)	No	No	No		
Scranton, Pa. (see Wilkes-Barre)	Yes	No	Yes	No	Yes	Yes	(4)	(4)	Yes	Yes	Yes	Yes	Yes	No		
Seattle, Wash. (see Tacoma)	Yes	No	(4)	No	Yes	Yes	Yes	No	No	No	(4)	(4)	Yes	No		
Sedalia, Mo	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Selma, Ala	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Shreveport, La	No	No	No	No	Yes	No	Yes	Yes	No	No	No	No	Yes	No		
Sioux City, Iowa	No	No	Yes	No	No	No	Yes	No	No	No	No	No	No	No		
Sioux Falls, S. Dak	Yes	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
South Bend, Ind	Yes	No	Yes	No	No	No	Yes	Yes	No	No	Yes	Yes	No	No		
Spartanburg, S. C	No	No	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	No	Yes		
Spokane, Wash	No	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	No		
Springfield, Ill	Yes	No	No	No	No	Yes	No	No	No	No	No	No	No	No		
Springfield, Mass	Yes	Yes	Yes	No	No	No	Yes	No	Yes	Yes			Yes	No		
Springfield, Mo	No	No	No	No	No	No	Yes	No	No	No			No	No		
Steubenville, Ohio (see Wheeling)	Yes	No	Yes	No	Yes	Yes	(4)	No	No	No			No	No		
Stockton, Calif	Yes	No	No	No	Yes	No	Yes	No	Yes	Yes			No	No		
Superior, Wis. (see Duluth)	No	No	(4)	No	No	No	No	No					No	No		
Syracuse, N. Y	Yes	No	Yes	No	No	No	Yes	No	No	No			Yes	No		
Sweetwater, Tex	Yes	Yes											Yes	Yes		
Tacoma, Wash. (see Seattle)	(4)	No	Yes	No	(4)	(4)	Yes	No	No	No			(4)	No		
Tampa, Fla. (see St. Petersburg)	(4)	No	No	No	Yes	Yes	Yes	No	Yes	No			No	No		
Temple, Tex. (see Waco)	(4)	No	(4)	No	No	No	(4)	No	(4)	No			No	No		
Terre Haute, Ind	Yes	No	Yes	No	No	No	Yes	Yes	No	No			No	No		
Texarkana, Tex	No	No	Yes	No	Yes	No	No	No	No	No			No	No		
Thomasville, Ga	No	No	Yes	Yes	No	No	No	No	No	No			No	No		
Toledo, Ohio	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No		
Topeka, Kans	No	No	Yes	No	No	No	No	No	No	No	No	No	No	No		

Traverse City, Mich. (see Cadillac)	[4]	No	[4]	No	No	No	[4]	No	No	No	No	[4]	No	No		
Troy, N. Y. (see Schenectady, Albany)	[4]	[4]	[4]	No	[4]	[4]	[4]	[4]	[4]	[4]	[4]	No	No	No		
Tucson, Ariz	Yes	No	Yes	No	No	No	Yes	No	No	No	No	No	Yes	No		
Tulare, Calif. (see Fresno)	[4]	No	[4]	[4]	No	No	[4]	No	[4]	[4]	No	No	[4]	No		
Tulsa, Okla. (see Muscogee)	No	No	Yes	No	Yes	Yes	Yes	No	[4]	[4]	Yes	Yes	Yes	No		
Twin Falls, Idaho	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Tyler, Tex	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Utica, N. Y	No	No	No	No	No	No	No	No	Yes	Yes	No	No	No	No		
Valley City, N. Dak	Yes	No	Yes	No	No	No	No	No	No	No	No	No	No	No		
Vancouver, Wash. (see Portland, Oreg.)	[4]	No	[4]	No	[4]	No	[4]	No	No	No	No	No	[4]	No		
Waco, Tex	Yes	No	Yes	No	No	No	Yes	No	Yes	No	No	No	No	No		
Wausau, Wis	No	No	Yes	No	Yes	No	No	No	No	No	No	No	No	No		
Washington, D. C	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes		
Waterbury, Conn	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Waterloo, Ind	Yes	No	No	No	No	No	Yes	No	Yes	Yes	No	No	Yes	Yes		
Waterloo, Iowa (see Cedar Rapids)	[4]	No	[4]	No	[4]	[4]	[4]	No	No	No	No	No	No	No		
Watertown, N. Y. (see Carthage)	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
West Palm Beach, Fla	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Weslaco, Tex. (see Harlingen)	No	No	[4]	No	No	No	[4]	No	No	No	No	No	No	No		
Wheeling, W. Va. (see Steubenville)	[4]	No	[4]	No	[4]	[4]	Yes	No	No	No	No	No	No	No		
Wichita, Kans. (see Hutchinson)	Yes	No	Yes	Yes	No	No	[4]	No	No	No	No	No	[4]	No		
Wichita Falls, Tex	Yes	No	No	No	No	No	Yes	No	No	No	Yes	Yes	Yes	No		
Wilkes-Barre, Pa. (see Scranton)	Yes	No	[4]	No	[4]	[4]	Yes	Yes	[4]	[4]	[4]	[4]	[4]	No		
Wilmington, Del	No	No	No	No	Yes	Yes	No	No	No	No	No	No	No	No		
Wilmington, N. C	No	No	No	No	Yes	Yes	No	No	No	No	No	No	No	No		
Winston-Salem, N. C. (see Greensboro)	No	No	[4]	No	No	No	[4]	No	No	No	No	No	[4]	No		
Worcester, Mass	No	No	No	No	No	No	No	No	No	No	No	No	No	No		
Yakima, Wash	Yes	No	No	No	Yes	Yes	Yes	Yes	No	No	No	No	No	No		
York, Pa	Yes	No	No	No	Yes	No	No	No	No	No	No	No	No	No		
Youngstown, Ohio	No	No	No	No	No	No	Yes	No	Yes	Yes	No	No	No	No		
Yuma, Ariz	No	No	No	No	No	No	No	No	No	No	No	No	Yes	No		
Zanesville, Ohio	No	No	No	No	No	No	Yes	No	No	No	No	No	No	No		
Limestone, Maine					Yes	No			Yes	Yes						
San Jose, Calif									Yes	Yes						
Tallahassee, Fla															Yes	Yes.

[1] In all markets other than those for which data are shown, this series is available on a first-run syndicated basis.

[2] Question 1: "Has series been broadcast in this market prior to fall 1956?"

[3] Question 2: "Is series cleared for broadcast in the fall of 1956?"

[4] See other market or markets listed for exposure in this multiple market.

SCREEN GEMS, INC.,
TELEVISION SUBSIDIARY OF COLUMBIA PICTURES CORP.,
New York, November 13, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate Commerce,
Washington, D. C.

DEAR SENATOR MAGNUSON: The following is in reply to your letter of July 30, 1956, requesting certain information. Please excuse the long delay in sending this reply to you. Many of the persons who have the information requested have been on vacation. We hope the delay has not inconvenienced the work of your committee.

Question 1: What, if any, first-run film series produced and/or distributed by your company have been sold for network broadcast starting in the fall of 1956?

On what day of the week and at what hour are these scheduled for broadcast?

Answer to question 1:

1. Adventures of Rin Tin Tin, ABC, Friday, 7:30 to 8 p. m.
2. Cowboy Theater, NBC, Saturday, noon to 1 p. m.
3. Playhouse 90, CBS, Thursday, 9 to 10:30 p. m. (every fourth week).
4. Ford Theater, ABC, Thursday, 9:30 to 10 p. m.
5. 77th Bengal Lancers, NBC, Sunday, 7 to 7:30 p. m.
6. Circus Boy, NBC, Sunday, 7:30 to 8 p. m.
7. Father Knows Best, NBC, Wednesday, 8:30 to 9 p. m.
8. Tales of the Texas Rangers, CBS, Saturday, 11:30 a. m. to noon.

Question 2: What, if any, first-run film series is your company offering exclusively for syndication for next fall:

(*a*) Are these in production, or are you trying to make sales on the basis of a pilot film or films?

(*b*) On what stations do you have clearance for each series?

Please show day of the week and hour cleared in such case.

Answer to question 2: Screen Gems, Inc., is offering no new first-run film series exclusively for syndication for the fall of 1956. However, Screen Gems, Inc., has two series, Celebrity Playhouse and Jungle Jim, which are carryover series from 1955 which are still being offered for first-run telecasting in many markets.

Question 3: If you have film series in both categories, how do the per picture budgets for series offered for syndication compare with those for series to be broadcast on the networks?

Answer to question 3: The Celebrity Playhouse and Jungle Jim series referred to above, which are being offered in syndication for first-run telecasting, have substantially the same negative cost as network programs produced and/or distributed by Screen Gems, Inc., in the same entertainment category; that is, the negative cost of Celebrity Playhouse, which is an anthology series, is substantially the same as the negative cost of Ford Theater, also an anthology series being telecast on a network basis, and the negative cost of Jungle Jim, a children's adventure series, is substantially the same as the negative cost of one of its children's adventure series being broadcast on a network basis, such as the Adventures of Rin Tin Tin and higher than another such program, Tales of the Texas Rangers.

Question 4: How many first-run film series did your company offer for syndication in the broadcast year beginning in September 1954? How many in the year beginning September 1955?

Answer to question 4: No first-run film series was offered by Screen Gems for syndication in the broadcast year beginning September 1954. Two such series (Celebrity Playhouse and Jungle Jim) were offered in the year beginning September 1955.

The above data make available to you all the factual information requested by your letter. The remaining questions call for opinions on subjects which were, we think, comprehensively covered by the detailed memorandum submitted to the Network Study Committee of the Federal Communications Commission by the Association of Television Film Distributors, of which Screen Gems, Inc., is a member. Copies of this memorandum were supplied to counsel for your committee at their request. Under the circumstances we do not feel it necessary or helpful at this time to attempt a summary of the observations made to the Network Study Committee, nor do we at this time have anything to add to what was said at that time.

If we can be of any further service, please call upon us.

Sincerely yours,

RALPH M. COHN, *Vice President.*

SCREEN GEMS, INC.,
TELEVISION SUBSIDIARY OF COLUMBIA PICTURES CORP.,
New York, N. Y., December 12, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate Commerce,
Washington, D. C.

DEAR SENATOR MAGNUSON: We acknowledge receipt of your letter of November 13 and are pleased to note your continued interest in the problems of independent suppliers of filmed television programs, such as ourselves.

Your assumption that our current production plans "center largely around production for network broadcast rather than around syndication activities" is quite correct. We have found from experience that there is insufficient broadcasting time available in local television markets for syndicated film programs produced and distributed by independent producers such as ourselves. The lack of available time is an artificial scarcity resulting from the great shortage of stations—the overwhelming majority of television cities in this country have but 1 or 2 stations—and this shortage is aggravated by network option time which preempts the peak viewing periods on most local stations.

Manifestly, we cannot sell our programs locally, either to local advertisers or to the stations themselves, if there is no time on the local station which can be made available for the broadcasting of the program. At best, we find that our programs are relegated to fringe time which means that for an advertiser to afford our program in terms of the industry yardstick of cost per thousand viewers, we must be content to take a very much lower price for our programs than we could get if they could be broadcast at times when more people generally were watching television.

In the face of the difficulty of obtaining adequate financial returns from the syndication of our filmed programs, we are, obviously, hesitant about investing substantial sums in films designed exclusively or even primarily for the syndication market. Even if we are careful about keeping our production costs down on such programs, and regardless of the quality and public appeal of any particular program, we have something less than confidence that even this reduced investment can be recouped and some margin of profit realized.

Accordingly, we are constrained to concentrate on producing programs for national broadcast primarily, either by a national advertiser or a network, who will pay us a license fee which will approach and perhaps even exceed our cost of production. In such cases we reserve the right to syndicate the program after the expiration of the exclusive national broadcasting license and we rely on such subsequent exploitation for our profits, if any.

In line with this policy, of the 12 new programs planned for the 1957–58 broadcasting season, only 2 are designed primarily for syndication exploitation.

We further note your inquiry concerning the present status of five proposed program series with respect to which you have received reports from others. The present status of these programs is as follows:

You Can't Take It With You: Resumption of production of this series has been delayed because of difficulties we have had in solving the unusual casting problems involved. We hope, however, to find suitable performers for this series in the near future at which time we will produce a new pilot film which will be offered for sale in accordance with our usual procedure which we have described above.

Criminal Code: Production of this series has been tabled for the time being in favor of other programs with respect to which we expect to have pilots for presentation to our clients early next spring.

Mystery Writers Theatre: The title of this program has been changed to the George Sanders Mystery Theatre and it has been sold to the National Broadcasting Co. for national network broadcasting commencing on a date to be selected by NBC.

The Web: We are in the process of reediting two pilot films which have been produced in this series and we expect to have these ready for presentation early next spring in accordance with our usual procedure.

Emergency: Production of a pilot film of this series under a different title is planned for this winter and we expect to be able to offer this series also sometime in the early spring in accordance with our usual procedure.

We hope that the foregoing gives you the information requested and if we can be of further assistance, please do not hesitate to call upon us.

Sincerely yours,

RALPH M. COHN, *Vice President.*

FOUR STAR FILMS, INC.,
Beverly Hills, Calif., December 3, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I apologize for this delay in answering your letter of July 30, 1956, addressed to Four Star Productions, Inc. That letter did not come to my attention until your followup letter of November 30 reached me.

Four Star Productions, Inc., was dissolved on March 15, 1956, as a result of a merger of that corporation into Official Films, Inc., a television distribution company of New York. Four Star Films, Inc., is continuing as an active producer of television film programs, and is owned by the same individuals who owned the earlier corporation. The answers that I will give in this letter to your questions relate to both of these Four Star corporations without distinction as to whether the first or the second of them was involved at the times referred to.

In answer to the questions set forth in your July 30 letter, I can state the following:

1. We are producing two new film series for initial network broadcast during the 1956–57 season. These are the Zane Grey Theater, being sponsored by General Foods through Benton & Bowles, Inc., and broadcast on CBS at 8:30 on Fridays, and Hey, Jeannie, sponsored by Proctor & Gamble through Compton Agency, and broadcast on Saturdays at 9:30 on CBS.

We are also producing as a contractor for CBS and Bridget Productions, a series entitled "Mr. Adams and Eve," featuring Ida Lupino and Howard Duff which, we understand, will be broadcast commencing in January 1957.

2. The only film series we have been producing for initial broadcast in syndication this year is called Stage 7. It has been released in 1956 on behalf of Standard Oil Company of Califorina in the Western States under the title "Chevron Hall of Stars." In addition to the western regional sale to the Standard Oil, the series has been sold on a regional basis to American Home Products Co., in New York and the New England States, and to another advertiser for broadcast commencing in the near future in Chicago and several other midwestern markets.

The distribution of this series is being handled for us by Television Programs of America, Inc., which organization could give you a more detailed report of the actual stations carrying the programs of this series. We do not have that information in complete form.

3. The films made for the series initially released in syndication are budgeted to cost from 60 to 75 percent of the budgeted cost of the films produced for the series to be initially broadcast on a national network basis.

4. Prior to the series mentioned above, the only series we have produced for initial release insyndication was called The Star and the Story, which went on the air in the latter part of 1954. With respect to that series, however, the project was undertaken only after a very substantial regional sale had been made for the New York area and the western markets. We then made syndication sales throughout the rest of the country in other areas. All of our other production activities have been on films for series to be released initially on a national network basis.

5. We cannot reasonably evaluate the effect of network option rights upon our syndicated programs. All syndication sales have been handled for us by Official Films, Inc., or by Television Programs of America, Inc., either of which would be in a better position to describe the effect of such option rights.

As a matter of policy, we have attempted to sell our product initially for release on a national network, with the expectation of thereafter licensing these films for syndication release in their second and subsequent showings.

In this way, we have believed that the greatest return might be realized from the films produced by us. Production of films for initial syndication release has seemed unwise to us, generally, because of the greater financial investment required in such an undertaking, the greater expense incurred in local or regional distribution, and the loss of the larger initial price obtainable by us from a network release.

6. As a result of the considerations I have mentioned above, our company has concentrated on the production of films for national sale, rather than films to be offered strictly on the syndicated basis.

Apart from 1 or 2 series that the being produced by or for National Telefilm Associates, for syndication release, I do not know of any grade A film series now being produced for syndication.

We shall be happy to furnish any other information that might be requested by you and to cooperate in your investigation in any way.

Very truly yours,

WM. A. CRUIKSHANK, Jr.

McCADDEN CORP.,
Hollywood, Calif., December 18, 1956.

Hon. WARREN G. MAGNUSON,
United States Senate,
Washington, D. C.

DEAR SENATOR MAGNUSON: In reply to your letters of July 30 and November 30, we can only advise you that we have little knowledge or information with respect to the business of producing films for syndication inasmuch as our business is solely that of producing films for network broadcast pursuant to agreement with a sponsor or sponsors thereof.

However, the answer to the first question in your letter of July 30 follows:

The Burns and Allen Show. Monday evening 8 p. m. over CBS.
The Bob Cummings Show. Thursday evening 8 p. m. over CBS.
The People's Choice. Thursday evening 9 p. m. over NBC.

Very truly yours,

McCADDEN CORPORATION,
MAURICE R. MORTON,
Vice President.

NATIONAL TELEFILM ASSOCIATES, INC.,
New York, N. Y., December 26, 1956.

Hon. WARREN G. MAGNUSON,
United States Senate,
Washington, D. C.

DEAR SENATOR MAGNUSON: We regret very much the delay which ensued in responding to your letter of July 30, 1956, requesting certain information. All of us have been under considerable pressure throughout the past few months. We hope that the information contained herein may still be of some assistance to you.

In response to the items of your letter, we are pleased to submit the following:

(1) We have had no first-run film series produced or distributed by us which has been sold for network broadcast starting in the fall of 1956.

(2) We have had two first-run film series which we offered for syndication commencing Otcober 1, 1956. The first was entitled "Theatre With Lilli Palmer" and consisted of a series of 39 one-half hour filmed television programs, and the second was The Sheriff of Cochise, which likewise consisted of 39 such programs. The Sheriff has been sold regionally as well as on a syndication basis.

(a) The Lilli Palmer package was completed with the exception of three programs which will probably be acquired shortly and the Sheriff of Cochise package is in production and will be completed by Desilu Productions, Inc. The Lilli Palmers have been sold on the basis of completed films and the Sheriff has been sold through the medium of a pilot film.

(b) We do not clear time in the sense in which you employ that term. So far as our Lilli Palmers are concerned, they have thus far been sold in a number of individual markets, and the station may assign to them any time slot which they may desire. So far as the Sheriff of Cochise series is concerned, our arrangements have been made with advertising agencies who represent a number of sponsors, such agencies clearing the date and time directly with stations or networks.

(3) Since we do not have any film series sold for network broadcasts, we have no basis for comparison, but we do not believe that the budgets for a series offered for syndication would compare unfavorably with those offered for network broadcasts.

(4) During the year beginning September 1954 we offered for syndication 4 first-run film series and during the year beginning September 1955 we offered an additional 4.

(5) The option practices of the networks obviously have an important effect uopn the saleability of syndicated programs in desirable broadcast time in many markets. It is difficult, however, to admeasure the precise degree of such influence.

(6) The national sale of a series is, of course, always the goal for which we strive, and if such a sale cannot be accomplished, or if the equally satisfactory device of a regional sale cannot be achieved, then, of course, the marketing of the programs on a syndicated basis is indicated. It must be observed that we would not, in all probability, produce a complete motion-picture series without firm assurance that such series is destined for national or regional sale. Our present method of operation, as exemplified by our series Sheriff of Cochise, is to have the pilot produced and sell the series on the basis of the pilot rather than produce an entire series initially.

We were aware, as of the date of your letter, that various companies were offering first-run grade A film series for syndication for the fall of 1956. We assume that as of this date the titles of such series are known to you.

If we may furnish you with other information, please do not hesitate to call upon us.

Thank you for your cooperation.

Very truly yours,

ELY LANDAU, *President.*

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18. LETTER DATED JULY 20, 1956, FROM CHAIRMAN MCCONNAUGHEY OF THE FCC TO THE CHAIRMAN OF THE COMMITTEE; SENATOR MAGNUSON'S REPLY DATED JULY 26, 1956; AND MR. MCCONNAUGHEY'S FURTHER RESPONSE DATED JANUARY 3, 1957, ALL CONCERNED WITH THE ANTITRUST LAWS AND THE ENFORCEMENT ROLES OF THE FCC AND THE DEPARTMENT OF JUSTICE

[For an earlier letter of Mr. McConnaughey on this subject, see p. 1674.]

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I have your letter of June 22, 1956, in further reference to the testimony before your committee of Mr. Richard A. Moore, and the legal memorandum concerning network option time and must-buy requirement which he filed with the committee. You ask whether I can provide you with an evaluation of the legality of the practices described by Mr. Moore and clarification of the Commission's understanding with the Department of Justice as to our respective roles in dealing with conditions in the communications field which may also involve possible violations of the antitrust laws.

I am, of course, aware of the operation of the network option system discussed by Mr. Moore as well as of the must-buy practice employed by television networks in selling their network facilities to potential advertisers. In 1941 the Commission, after a lengthy proceeding, adopted a rule limiting option time provisions of contracts between networks and their affiliates. I have assumed up to the present time that practices in compliance with option time rules are not violations of the antitrust laws or any other laws. Determination of their continuing legality would appear to depend upon an evaluation which I believe can only be made by the Commission as a result of the type of exhaustive, impartial study of the entire industry framework as is presently being conducted by the Commission. In this study we are concerned not only with minimum legality but also, and primarily, with determining whether option time provisions are in the public interest. Until the study is completed, I do not see how we can determine whether the extent and type of option time which the Commission found to be in the public interest with respect to radio networks in 1941 is or is not in the public interest today.

The must-buy selling technique of the networks presents, I am inclined to believe, a somewhat different regulatory problem. Here the Commission's role may be less direct since the arrangements are between a network and a sponsor or advertising agency rather than with a station licensed by this Commission. This practice is not covered in any manner by our existing chain broadcasting regulations nor was it the subject of any considerable discussion in the reports of the 1938–41 network investigation. Like option time, must-buy, too, is being subjected to study and under the circumstances, I believe it would be particularly premature for me to express any opinion as to the legal status of such practices.

I do not think there is anything basically inconsistent between the comments of the Commission and the Department of Justice with respect to our several but necessarily overlapping roles. As I pointed out in my previous letter, the primary responsibility for enforcement of the antitrust laws rests with the Antitrust Division of the Department of Justice, rather than with this Commission. This does not, of course, mean that in our analysis of the network picture to determine what additional rulemaking action within our competence may be required in the public interest, we can ignore the national policy embodied in the antitrust laws and expressly made applicable to interstate and foreign communications in the Communications Act. Similarly, I can recognize the validity of Assistant Attorney General Barnes' position that the Department of Justice in deciding the most appropriate areas on which to focus its attention might well wish to consider the fact that the Commission had instituted a network study which was already examining into some communications problems having substantial antitrust implications and decide to defer action or the expression of any opinion until it could have the benefits of the study's work.

Inevitably the Commission and the Department must maintain close liaison in this field to avoid needless duplication of effort and unnecessary inconvenience to the private interests concerned. There must be—and in fact is—a continuing exchange of information back and forth between the two agencies. I do not think, however, it would be either possble or useful for us to attempt in advance to draw rigid lines of priority or spheres of interest. We may recognize that certain matters, such as considerations of option time are, in the light of the Commission's existing rules thereon, peculiarly proper for study and investigation by the Commission. On the other hand such questions as price maintenance agreements between stations, of the type allegedly engaged in by a number of Philadelphia AM stations, are clearly matters with which the Department of Justice has the primary responsibility to deal, even though they may be technically also within the Commission's licensing jurisdiction. But beyond this, I seriously doubt whether attempts at demarkation would be of any real value as a substitute for ad hoc determinations based upon previous interagency liaison.

If you have any further questions, please do not hesitate to write.

Sincerely yours,

George C. McConnaughey, *Chairman.*

July 26, 1956.

Hon. George C. McConnaughey,
Chairman, Federal Communications Commission,
Washington, D. C.

Dear Mr. Chairman: Thank you for your letter of July 20, 1956, in further reference to the testimony of Mr. Richard A. Moore and to the problem of division of responsibility in the antitrust field between the Commission and the Department of Justice. I very greatly appreciate your comment with respect to the matters of option time and must-buy.

With respect to the difficult question of antitrust enforcement, I would like to direct the following additional questions to the Commission:

1. When the Commission or its staff, in considering an application for a license, transfer of a license, or for any other action requiring Commission approval, feels that an issue under the antitrust laws is or may be involved, at what stage in its proceedings is information regarding the matter forwarded to the Antitrust Division of the Department of Justice?

2. Is your liaison with the Department of Justice set up in such a way that members of the Commission staff, without prior Commission action, are permitted and instructed to alert the Department whenever an antitrust issue is encountered?

3. After the Antitrust Division has been advised of the pendency of a matter before the Commission which may possibly involve antitrust questions, what

procedures does the Commission follow to ascertain the ultimate position of the Department before the Commission takes final action on the matter?

4. Does the Commission feel it would be good policy, in cases where the Department of Justice is conducting a separate investigation, to require hearings before taking any formal Commission action?

5. In taking action in these matters, after advising the Department of Justice of the presence of antitrust elements, does the Commission give careful consideration to the possibility that action by the Commission may insulate the transaction from later enforcement of the antitrust laws?

6. Would it be desirable for the Commission and the Department of Justice to work out a statement of policy, to be given public dissemination, to the effect that antitrust jurisdiction in the communications field shall be concurrent as between them, so that, on the one hand, the Commission may refuse to take action which, in its opinion, may involve violation of the antitrust laws because of time and personnel problems, but, on the other hand, its approval of an application on its taking of other action shall in no way impair the authority of the Department (after the more thorough inquiry it alone is qualified to make), to challenge the actions as violative of the antitrust laws? If legislation is needed to accomplish this objective, indicate changes that should be made.

I would appreciate your comment with respect to the above matters, since I am still somewhat concerned about the possibility that the antitrust laws may not be fully and effectively enforced in the communications field because of division of responsibility between the Commission and the Department of Justice.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., January 3, 1957.

Hon. WARREN G. MAGNUSON,
United States Senate,
Washington 25, D. C.

DEAR SENATOR MAGNUSON: This is in reply to your letter of July 26, 1956, in further reference to the dual responsibilities of this agency and the Department of Justice with respect to antitrust questions involving the communications field. In your letter you express a concern about the possibility that antitrust laws may not be fully enforced in the communications field because of the division of responsibilities between the Commission and the Department of Justice and direct certain specific questions to this Commisson relatng to the problem.

In vew of the importance of the questions which you have raised, I have presented the matter to the Commission for its consideration. The following represents the views of the Commission as a whole with the exception of Commissioner Doerfer, who was absent, and Commissioner Bartley, who was unable to approve this letter.

We should like to state at the beginning of our reply that we recognize the possibility of overlapping areas of responsibility which both this Commission and the Department of Justice have with respect to antitrust and other concentration of control questions in the communications field. We do not believe, however, that this situation, assuming a proper liaison exists between the two agencies, should have the result of impairing either enforcement of the antitrust laws by the Department of Justice or the proper consideration of antitrust questions by the Commission as an element of its public interest determinations. On the contrary, with the proper coordination of our efforts (and we think it fair to say that we have made great strides toward such coordination in recent years) the dual responsibilities of the two agencies should be able to be more fully carried out than if the entire responsibility is to be centered either in the Department or in this Commisison. For as was pointed out in our previous letter of July 20, 1956, there are certan problems which lend themselves better to handling by the Commission and others with which the Department of Justice can more efficaciously deal.

We should like to answer your questions 1 and 2 together since they both relate to the Commission's policy with respect to advising the Department of Justice that an antitrust problem appears to have arisen during the course of some Commission proceeding. Continuing liaison between the two agencies is maintained between members of the General Counsel's staff and members of the Antitrust Division of the Department of Justice. Through this liaison members of the Antitrust Division's staff are enabled to determine, without first referring the matter to the Commission, what information relating to matters of interest to them may be already in the possession of the Commission. But we do not authorize members of the Commission's staff, including those members of the General Counsel's Office who have these liaison responsibilities, to advise the Department of Justice that a particular Commission proceeding appears to present antitrust questions until the matter has first been presented to the Commission for evaluation and consideration. However, once liaison has been established with the Department with respect to a particular proceeding, the staff will keep the Department advised of future developments in that proceeding as they occur and without reference back to the Commission for its additional approval. It is impossible to make any definite statement as to the exact stage in any Commission proceeding in which information regarding significant antitrust questions is made available to the Department of Justice. It can be said, however, that every effort is made to provide the Department with this information a a sufficiently early stage so that it could take the necessary action to intervene in the Commission proceeding should the Department so decide.

At the time the Commission advises the Department of Justice that a possible antitrust question has been raised in a proceeding pending before the Commission, we also advise the Department of the status of the Commission proceeding and whether or not any hearing has been designated with respect to the matter by the Commission itself. We also make clear to the Department its rights to intervene or otherwise participate in any Commission proceeding which has been initiated or to make a formal request that the Commission initiate such a proceeding. In the absence of some formal request or other statement by the Department of Justice, however, the Commission does not believe that the fact that it has advised the Department of a possible antitrust question is grounds for deferring action by the Commission in accordance with those statutory responsibilities any more than we would have the right to ask the Department to defer any investigation or court action which it might believe appropriate pending the outcome of a Commission proceeding.

While it is not possible to answer your fourth question with any degree of absoluteness in view of the varying situations which may arise, we believe in general that the fact that the Department of Justice is conducting a separate investigation does not necessarily make advisable the holding of a hearing by the Commission before it takes any formal action in any adjudicatory proceeding. This is particularly true where the Department of Justice's investigation relates to conduct by a proposed or existing licensee of this agency which is not directly related to their operation as a licensee of this Commission but which might have a significant relationship to their character and other qualifications to be a Commission licensee. But even where the problems involved in the Department's investigation are more directly related to the communications field we do not believe that a separate Commission hearing is always necessary or even appropriate.

Thus, the Department of Justice has recently instituted civil antitrust proceedings alleging a conspiracy between the National Broadcasting Co., a licensee of this Commission, and the Radio Corporation of America, which is not a Commission licensee, aimed at securing station licenses in 5 of 8 largest markets in the country through the exercise of what the Department believes is improper economic control and pressures. The Department investigation which led to this antitrust action stemmed from certain information which was originally made available to the Department by the Commission. Shortly after the initiation of this antitrust action the Commission was faced with a situation in which the National Broadcasting Co. was seeking to purchase an additional UHF station in New Britain, Conn., and the question arose as to what action, if any, the Commission should take in the light of the antitrust action which had been filed by the Department of Justice. The Commission determined in this situation that a grant, which would help in strengthening the UHF situation with which you are familiar, would serve the public interest and that nothing would be gained by having the Commission either conduct a hearing on its own in the antitrust questions which would duplicate the proceedings more appropriately heard by the district court, or in deferring Commission approval of the transfer until the antitrust questions had been resolved. The Commission made clear, however, in granting its approval to the transfer that it was doing so without prejudice to any action arising out of the antitrust case. The Commission has taken a similar position with respect to the pending antitrust action against the Kansas City Star which is also a licensee of this agency. Your attention should be called to the converse situation which existed at the time of the promulgation of the Commission's network rules in 1941. At that time the Department of Justice brought an antitrust action against the major networks but deferred action therein and subsequently withdrew the suits upon the judicial approval of the Commission's chain broadcasting regulations.

In adopting the policies set forth above, the Commission has, of course, given consideration to the possibility that action by the Commission might be claimed to insulate a particular transaction from later enforcement by the Department of Justice under the antitrust laws. In the common carrier field it is clear that certain actions of the Commission do provide immunity from subsequent prosecution under the antitrust laws. Thus, section 221 (a) of the act provides, where the Commission authorizes a consolidation of the properties of one or more telephone companies or the acquisition of one by the other, that "thereupon any act or acts of Congress making the proposed transaction unlawful shall not apply." A similar provision with respect to telegraph merger is contained in section 222 of the act. No such provisions, however, are contained in the radio licensing provisions of title III of the Communications Act. On the contrary, section 313 of the act expressly provides that all laws of the United States "relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable * * * in state or foreign radio communications." In the light of the provisions of the act, the Commission has taken the position that an action by it in an adjudicatory proceeding finding a particular grant of a license to be in the public interest cannot and does not insulate that transaction from further challenge by the Department under the antitrust laws. On the other hand, the Commission does recognize that where it exercises its rulemaking powers, pursuant to the provisions of section 303 of the act, to expressly authorize certain types of activities by its licensees, such action, while not precluding the Department of Justice from adopting a contrary position in an action under the antitrust laws, might make the successful prosecution of such an action more difficult. Consequently, in this rulemaking area the Commission has always been particularly careful to seek and consider the advice of the Department of Justice, as well as other interested Government agencies, before taking definitive action.

If the positions outlined above are sound, as we believe they are, we do not believe that any necessity exists for working out or publishing a definitive statement or policy with respect to these matters between the Commission and the Department. Nor do we believe that any legislation is required. We have no objection to the publication of this letter and, as indicated before, have publicly stated similar positions on a number of occasions. We are inclined to believe, however, that the danger of attempting to formulate in any one document the entire and necessarily complex interrelationships of this agency and the Department of Justice in the antitrust and related fields would not be wise. The ever-present risk that certain problems might be inadvertently overlooked or that specific situations might subsequently develop which do not fit within any of the preconceived categories would more than outweigh any advantages which might be achieved by such an effort. Thus, in the absence of any controlling judicial opinion to the contrary, we believe that it would be best to adhere to the status quo with respect to the handling of these problems while endeavoring, of course, constantly to improve our liaison with the Department of Justice.

By direction of the Commission:

GEORGE C. McCONNAUGHEY, *Chairman.*

19. LETTER DATED JULY 20, 1956, FROM SENATOR MAGNUSON TO JUDGE HANSEN OF THE ANTITRUST DIVISION OF THE DEPARTMENT OF JUSTICE AND THE LATTER'S REPLY DATED SEPTEMBER 12, 1956, RELATING TO THE DIVISION OF RESPONSIBILITY FOR ENFORCEMENT OF THE ANTITRUST LAWS AS BETWEEN THE DEPARTMENT AND THE FCC

[For an earlier letter from the Department of Justice on this subject see page 1673.]

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
July 20, 1956.

Judge VICTOR R. HANSEN,
Assistant Attorney General, Antitrust Division,
Department of Justice, Washington, D. C.

DEAR JUDGE HANSEN: On June 22, 1956, I wrote to Judge Barnes expressing my continued concern over the lack of clarity as to division of responsibility between the Department of Justice and the Federal Communications Commission with respect to enforcement of the antitrust laws in the television field.

On July 17, 1956, the members of the FCC appeared again before the Senate Interstate and Foreign Commerce Committee. We again raised this question with the Commissioners and are advised that they are preparing a letter setting forth their views on the matter. I would appreciate it if you would do the same with respect to the position of the Department of Justice, if possible, after some consultation with the Commission to see if some more definite division of responsibility can be worked out.

We have now concluded our presently scheduled hearings, but are keeping the record open for the filing of additional statements until September 15, 1956. I would appreciate it if you would submit your comments by that date.

Very truly yours,

WARREN G. MAGNUSON, *Chairman.*

DEPARTMENT OF JUSTICE,
Washington, September 12, 1956.

HON. WARREN G. MAGNUSON,
United States Senate,
Washington, D. C.

MY DEAR SENATOR MAGNUSON: This is in reply to your letter of July 20, 1956, in which you expressed your "continued concern over the lack of clarity as to division of responsibility" in antitrust law enforcement in the television field between the Department of Justice and the Federal Communications Commission. You asked that, by September 15, 1956, I submit my comments concerning "some more definite division of responsibility" in this area.

At the outset, clearly set by Congress are the antitrust enforcement responsibilities of this Department and the Federal Communications Commission. Section 4 of the Sherman Act obliges the Attorney General to enforce that law. And section 15 of the Clayton Act imposes a similar responsibility on the Attorney General for that act. The Federal Communications Commission, in contrast, has no power to enforce the Sherman Act and only limited authority, never thus far exercised, to enforce Clayton Act section 7 against "common carriers engaged in wire or radio communication or radio transmission of energy" (15 U. S. C. 21).

More broadly, however, the Commission is required to "encourage the larger and more effective use of radio in the public interest" (47 U. S. C. sec. 303 (g)). Implicit in the duty to protect the public interest is the necessity of giving proper consideration to the national economic policy expressed in the antitrust laws. In complying with this duty it is directed to refuse a license to anyone whose license has been revoked by a court as a penalty for violation of the antitrust laws (47 U. S. C. sec. 311). Beyond that, the Federal Communications Commission has no power to grant a broadcasting licensee any antitrust immunity.[1] Finally, section 313 of the Communications Act of 1934 provides in pertinent part:

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[1] The limited authority granted to the Commission to exempt a consolidation or merger of wire communication common carriers (47 U. S. C. sec. 222 (c) (1)) from the operations of sec. 7 of the Clayton Act and other antitrust laws is not pertinent to our present area of interest.

"All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to * * * interstate and foreign radio communications."

As you know, however, entry into the business of broadcasting requires the issuance of a license by the Federal Communications Commission. In addition to controlling entry, the Commission has authority to and does regulate many broadcasting activities. Consequently, if the licensee has shaped his action to conform with rules of the Commission, one court at least, in a private antitrust suit, has deemed "it improper to grant a preliminary injunction * * * where the Federal Communications Commission, after protracted hearings * * * has specifically sanctioned many of the important terms of the affiliation contracts" there challenged. *Federal Broadcasting System* v. *American Broadcasting Company* (167 F. 2d 349, 352 (2d Cir. 1948)). (Compare *United States* v. *Far Eastern Conference, et al.*, 342 U. S. 570, 574–575 (1952); *Seatrain Lines, Inc.* v. *Pennsylpany* (167 F. 2d 349, 352 (2d Cir. 1949)). (Compare *United States* v. *Far Eastern* with *S. S. W. Inc.* v. *Air Transport Ass'n of America*, 191 F. 2d 658, 662 (D. C. Cir. 1951).) In light of such uncertainty regarding the timing and extent of judicial scrutiny under the antitrust laws, the Department of Justice must proceed with caution before challenging certain business activities of broadcasting licensees.

You may rest assured, however, that the Antitrust Division will continue its several pending investigations into alleged violations of the antitrust laws by various radio and television broadcasters and by networks. We can do no less if we are to fulfill the responsibilities expressly imposed by Congress on the Attorney General in the Sherman and Clayton Acts.

Meanwhile, I am confident that close and continuous liaison work by the legal staff of the Commission with the Antitrust Division will help to avoid any possibility that the Sherman and Clayton Acts are not being properly enforced in the broadcasting field. All communications matters having antitrust implications that are referred to the Department of Justice by the Commission will continue to receive our prompt attention and investigation. In turn, when the Antitrust Division receives complaints, or on its own initiative institutes an investigation of alleged antitrust violations by Commission licensees, it will keep the Commission informed of its actions.

In order to maintain the type of cooperation between the two agencies that we all desire, we have furnished copies of this letter to appropriate members of the legal staff of the Federal Communications Commission for their information and comment.

Sincerely yours,

VICTOR R. HANSEN,
Assistant Attorney General,
Antitrust Division.

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20. EXCHANGE OF CORRESPONDENCE BETWEEN SENATOR MAGNUSON AND CHAIRMAN McCONNAUGHEY REGARDING CERTAIN FINANCIAL DATA FOR THE TELEVISION INDUSTRY IN 1955

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., June 6, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: I am enclosing an exchange of correspondence between Senator Bricker and myself concerning his request for certain financial data for the television industry in 1955.

In view of the fact that the requested information brings up to date a large part of the television financial data previously requested by your committee, and supplied by me under letter dated January 3, 1956, I am enclosing a copy of the 1955 data which we are sending at this time to Senator Bricker.

The Commission will be pleased to furnish additional information or assistance if you so desire.

Sincerely yours,

GEORGE C. McCONNAUGHEY, *Chairman.*

SENATE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
July 16, 1956.

Hon. GEORGE C. MCCONNAUGHEY,
Chairman, Federal Communications Commission,
Washington, D. C.

DEAR MR. MCCONNAUGHEY: This will acknowledge, rather belatedly I am afraid, your letter of June 6, 1956, enclosing exchange of correspondence between Senator Bricker and yourself, together with a copy of certain financial data for 1955 which you forwarded to Senator Bricker.

In accordance with your comment in your letter of that date to Senator Bricker, we have to this date kept this information confidential. However, I am advised that this information has now been made a part of the record before the Antimonopoly Subcommittee of the House Judiciary Committee. Will you please advise me whether this is the case, since, if it is, there would be no need in our continuing to give confidential treatment to the information.

Thank you for your courtesy in furnishing this information to me.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., August 9, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: This is in reply to your letter of July 16, 1956, which refers to my letter of June 6, 1956, to you, in which was enclosed an exchange of correspondence between Senator Bricker and myself, together with a copy of certain financial data for 1955.

This same information was submitted to Congressman Celler on the same basis as that on which it was furnished to you, for his use in connection with hearings before the Antimonopoly Subcommittee of the House Judiciary Committee. You have been correctly informed that it has now been made a part of the record before that subcommittee.

Sincerely yours,

GEORGE C. MCCONNAUGHEY, *Chairman.*

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21. STATEMENT OF NATIONAL WOMAN'S CHRISTIAN TEMPERANCE UNION IN SUPPORT OF S. 825, TO REGULATE RADIO AND TELEVISION NETWORKS (THIS WAS INSERTED IN THE RECORD ON JULY 18, 1956)

STATEMENT OF NATIONAL WOMAN'S CHRISTIAN TEMPERANCE UNION

This statement is filed on behalf of the National Woman's Christian Temperance Union. Our bureau of legislation is at 144 Constitution Avenue NE., Washington, D. C.

The National Woman's Christian Temperance Union is interested in the problems of children and youth. We have two youth organizations: Children from 7 to 14, and young people 15 to 25.

Television, a development of the new age, is peculiarly interesting to children who sit in absorbed silence hour after hour watching the figures perform on the screen. Like all audiovisual communications it has a profound influence on their unformed minds, and also on the thinking of young people seeking to adjust to the world outside home and school, and sensitive to suggestions.

It is obvious from the present makeup of presentations on the screen that a proper adjustment to the requirements of a healthy social community cannot be left to the mercies of self-regulation. As was the case with the motion-picture industry, a certain type of mind that cannot be convinced that the best road to financial success does not lie along the path of cheap sensationalism and appeals to morbid curiosity inevitably shows up in positions of power in the entertainment field. Consequently, the Congress in its wisdom has seen fit to provide Government agencies empowered to control the communications industry, including radio and television. So far, so good.

But this control is now exercised over the individual stations which must from time to time come up for a review of their activities, when applying for a renewal of their licenses, and are subject to complaints.

From the fruit of bitter experience, we have learned that the individual motion-picture exhibitor, the individual newsstand owner in this day of big-business combination is not left to exercise his own judgment in the matter of selection of materials for his own public. Complaints made to these individuals brought out the existence of a pressure type of contract under which a motion-picture exhibitor was compelled to buy a blind package of inferior pictures in order to obtain 1 or 2 worthwhile films.

It was testified at House hearings on obscene literature that in order to get the Curtis publications newsstand operators had to accept a quantity of smutty books.

Here we are finding the pattern again. Local stations in order to obtain network programs are obliged to accept programs and ads obnoxious to their own listeners. In their efforts to stay afloat they will accept the risk of censure by the Federal Communications Commission, whose problems become multiplied by these industry conditions.

We believe it is highly desirable that the chains themselves be subject to the supervision of the Federal Communications Commission and hold their licenses under the same conditions as the stations. In this way Congress through its agency, the Federal Communications Commission, will be able to exercise some wholesome supervision over such activities and to have better control of the stations.

We also believe that program content should be subject to Federal regulation.

We cannot have a sound economy when chains are allowed to become monopolies and completely dominate the life of the local stations. Nor should there be one law for the network and another for the station.

We recommend the passage of S. 825.

Respectfully submitted.

ELIZABETH A. SMART
(For National Woman's Christian Temperance Union).

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22. LETTER FROM LEONARD H. GOLDENSON, PRESIDENT OF AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC., DATED NOVEMBER 16, 1956, REAFFIRMING THE POSITION OF ABC WITH RESPECT TO THE NEED FOR ADDITIONAL TELEVISION STATIONS

AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.,
New York, N. Y., November 16, 1956.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Interstate and Foreign Commerce, United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: Because of an informal inquiry by one of your staff members, I should like to state unequivocally that the position of the American Broadcasting Co. with respect to the need for additional television stations to properly serve the public interest remains unchanged.

Your committe staff member has made some reference to the articles which appeared in some newspapers and trade periodicals which ascribed to ABC the concept that better programing would solve our station scarcity problems. This position wa sattributed to Oliver Treyz, our vice preseident in charge of the ABC television network. It should be noted that Mr. Treyz reiterated the position was attributed to Oliver Treyz, our vice president in charge of the outlets in markets where adequate competitive facilities have been allocated but not granted such as Boston, Pittsburgh, St. Louis, and Miami. In addition, ABC again urged that early consideration be given to its allocation plan previously submitted to the Commission which would, if implemented, provide at least three competitive facilities, all UHF or all VHF, in markets such as New Orleans, Louisville, and Fresno.

The import of Mr. Treyz's position was that, with these additional outlets, the ABC programing structure, which is constantly being improved, would afford us better opportunity to compete effectively.

I hope to see you next time I am in Washington.

Sincerely,

LEONARD H. GOLDENSON.

23. LETTER DATED JULY 13, 1956, FROM GEORGE WESTHOFF OF PHILADELPHIA, PA., COMMENTING ON CENTRALIZATION OF CONTROL OF TELEVISION

PHILADELPHIA, PA., *July 13, 1956.*

WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
Washington, D. C.

MY DEAR SENATOR: I appreciate your kind offer allowing me to submit my views about television programing to be placed in the official record of the hearings. I have many ideas to improve television and I will try to list the ones I consider the most important for the general welfare of all concerned.

Believing that since I helped develop television, it has fallen and is being controlled by too few in the United States and believe that many more should have an opportunity to take part in and expand this great industry. What I am trying to say is that large newspapers now have television stations and their reporters and commentators now have the enviable positions of master of ceremonies on our larger shows. In other words they have about five good jobs and seem to get the pick of the programs constantly now for several years and I would like to point out in show business the people seeing the same entertainers for too long a period get tired of the best, so it is necessary for these broadcasting companies to develop more leaders in this field constantly. We have too many news programs. They keep repeating the same thing from morning to night. They should know by now that the American people get tired of hearing the same thing over and over again. For an example at 11 o'clock at night when you would like to see a good movie or show, these newscasters are on all the stations at the same time and keep giving you the same news as heard earlier in the evening and if they have one of their pet subjects such as a public figure who is in the limelight they really kill this subject by repeating it over and over from Monday to Sunday. When we have a good civic problem on that is important to the community or the Government they rush the speakers and guest so fast that they never allow a good finish of a debate because of the shortness of the time allowed yet when it is all over the next program is usually one of those ancient cowboy stories that we have probably seen a half-dozen times before and repeat programs is really a bad defect because when I see a show more than twice I am tired of it for the rest of my life. It appears when these foreign personalities come to the United States they rush them to a television station as soon as they get off the boat but many of our fine citizens will never see the inside of a television station. Let us give our own this fine opportunity. Hoping for many programs that benefit the sick through charity and educate the people to cure themselves of many diseases with education and help us solve our many crimes that has increased in this country.

Sincerely yours,

GEORGE WESTHOFF.

24. LETTER DATED JANUARY 3, 1957, FROM GEORGE C. MCCONNAUGHEY, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION, RELATIVE TO TESTIMONY OF J. W. BOLER RE: TARIFF RATES AND REGULATIONS OF A. T. & T., ETC.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D. C., January 3, 1957.

Hon. WARREN G. MAGNUSON,
Senate Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: This is in further reference to your letter of July 19, 1956, relative to the testimony of Mr. J. W. Boler, president of the North Dakota Broadcasting Co., before the Senate Interstate and Foreign Commerce Committee, regarding the regulations and policies of the Commission with respect to licensing television broadcasters to construct and operate their own radio relay facilities, and tariff rates and regulations of the American Telephone & Telegraph Co. applicable to television transmission services and facilities.

For the most part, Mr. Boler's testimony before your committee is directed to the general question as to whether broadcasters should be authorized to provide their own relay facilities regardless of the availability of common-carrier facilities. As you know, there has been pending before the Commission a general rulemaking proceeding (Docket No. 11164) designed to explore this question.

The arguments advanced by Mr. Boler with respect to the alleged inequities and deficiencies of the existing rules and policies of the Commission and the deterrent effects thereof on the development of television service in the smaller communities of the Nation have all been presented to the Commission by the pleadings filed by Mr. Boler and others in the proceeding.

The Commission has not been unmindful of the various considerations raised by Mr. Boler and, accordingly, for some time past, has been granting applications filed by television broadcasters for authority to construct and operate their own radio-relay systems in cases where common-carrier facilities would have to be constructed in order to serve the broadcaster, and where it has been shown that the broadcaster can more quickly provide such facilities for himself. Such authorizations have been granted in cases involving nonavailability of common-carrier facilities, and the effect has been to provide the means by which many small stations have been able to obtain network programs and service on an economical basis. The Commission intends to continue to make such authorizations on a case-by-case evaluation pending the outcome of the proceedings in Docket No. 11164.

With respect to Mr. Boler's alleged difficulties in dealing with representatives of A. T. & T. in connection with his application to this Commission for an authorization for a private relay system from Minneapolis to Fargo, we have, of course, no first-hand knowledge of the conversations or dealings to which he refers in his testimony. As Mr. Boler states, the Commission's rules presently contemplate the authorization of such private systems only in cases where common carrier facilities are not available. In pursuance of this provision of the rules, the Commission's staff has customarily requested the applicants for private relay authorizations to furnish a statement from the common carrier operating in the area involved as to the availability or nonavailability of common-carrier facilities. However, under the present policy, failure to obtain such a statement does not preclude grant of an authorization.

Insofar as the charges of A. T. & T. for television transmission service are concerned, as you know, the company, at the request of the Commission, has made a series of studies designed to show its investment, expenses and return on investment attributable to the rendition of such service. Based upon our reviews and analyses of these studies and the level of earnings indicated thereby, we have concluded that we would not be warranted at this time in instituting formal action on our own motion looking toward downward adjustments in the overall level of rates applicable to the service. However, we are giving continuing consideration and study to the rates and rate structure involved, and we shall take appropriate action to effect such adjustments therein as our studies show to be desirable.

By direction of the Commission:

GEORGE C. MCCONNAUGHEY, *Chairman.*

25. LETTER DATED DECEMBER 12, 1956, FROM THOMAS E. ERVIN, VICE PRESIDENT, NATIONAL BROADCASTING COMPANY, SUPPLYING INFORMATION REQUESTED DURING TESTIMONY OF ROBERT SARNOFF

NATIONAL BROADCASTING CO., INC.,
New York, N. Y., December 12, 1956.

KENNETH A. COX, Esq.,
Special Counsel, United States Senate Committee on Interstate and Foreign Commerce, United States Courthouse Building, Seattle 4, Wash.

DEAR KEN: Here is the information requested in your letter of November 19, 1956:

We have worked up the percentage of television network broadcast time which was unsponsored during the composite week, and it comes to approximately 43 percent of our network schedule. This includes the sustaining portions of such programs as Ding Dong School, Today, Home, and Tonight, which were available for sponsorship but which were either completely or partially unsponsored during the composite week. It also includes such programs as American Forum, Frontiers of Faith, and The NBC Opera.

We did not include among these unsponsored programs such programs as Meet the Press or NBC News, as these programs were sponsored during the composite week. However, you will recall that the members of the committee indicated that they might classify these as "public service" programs. Because of the problem of defining "public service," in computing the above percentage we have used the standard of whether a program or a portion of it is unsponsored.

I hope that this will answer any questions you may have. If it does not, please feel free to call upon me for additional information.

Sincerely,

THOMAS E. ERVIN.

26. EXCERPT FROM TESTIMONY OF BILL HOOVER, MANAGER OF STATION KTEN, ADA, OKLA.

Bill Hoover, of Ada, Okla., appeared before the committee on May 14, 1956. Since most of his testimony referred to allocations it will be found in full beginning at page 873 in the second volume on the UHF–VHF allocations problem. However, one brief passage relates to network-affiliate relations and is therefore again set forth at this point, as follows:

"Mr. HOOVER. * * *

"Now with regard to the networks and their attitude concerning satellite operations. I believe it has been conclusively proved by this committee that the networks are dedicated to the proposition of covering the United States with as few stations as possible. If there is some sparsely populated area which does not receive service, then that area will just have to struggle along without service.

"Mr. COX. What of their argument, Mr. Hoover, that it is necessary to attempt to get this coverage from a few powerful stations in order to make television a competitive medium, as far as advertising generally is concerned?

"Mr. HOOVER. What is wrong with having competition out in the sparsely settled areas, just as well as having competition in the metropolitan areas? It doesn't add up that competition can only exist in just the metropolitan areas, sir.

"Mr. COX. I think the point they try to make is that the cost per thousand goes up in a more sparsely populated area, and that this renders television competitively unequal, as far as magazine, newspaper, or radio is concerned; and that it is, therefore, impossible to develop a television service on as broad a basis, for instance, as we now have radio service.

"Mr. HOOVER. I would like to answer that a little bit later when I get into coverages, because I will show how, if each station is paid for its actual coverage, then there will be some left for the fringe area. I would like to get into that in the second phase, if you don't mind.

"Mr. COX. Fine.

"Mr. HOOVER. Since the basic station in the metropolitan area is such a lucrative property for the network, the network, rather than offend its affiliate, will readily agree to allow the affiliate to feed its fine programs to the newly born satellite, in the public interest, convenience, and necessity. In doing so, the network knows full well that the actual profit and coverage of the satellite will ultimately accrue to the basic network station, which will enable the network to maintain its principle of 'coverage of the United States with as few stations as possible,' because the 2 then are considered as 1, as you see.

"Of course, the local station, which had been knocking on the doors of the networks for months and months and months, requesting affiliation as a legitimate local service to the citizens of the area in question, can be told: 'We don't need you; we have coverage in that area,' and the big squeeze is on.

"Mr. COX. Now is it the current practice of the networks to regard satellites as additional affiliates of the network, or do they——

"Mr. HOOVER. Well, it can be molded into the coverage of the basic station. It is a lump, if you please; or filling out a hollow spot. There is one thing I would like to point out right here in favor of the networks right along this line, and that is that I sincerely believe that in many instances the networks would prefer to affiliate the local or area independent station in preference to a satellite station, if it were not for the tremendous pressure applied to the network by the basic affiliate, and particularly by a basic affiliate in a city where there are less than three VHF outlets.

"A network, you know, must get along with its affiliates in the principal cities, or the affiliate in a principal city where there are less than three VHF outlets can reject the network's programing in favor of another network which is anxiously waiting just to get his programing into the market. So all of the ills of the satellite problem cannot honestly be laid at the door of the networks.

In fact, if the proposals that I will present here later were adopted, the networks would seldom be put in the awkward position described above. And they are definitely put in a very awkward position."

27. LETTER FROM RICHARD S. SALANT, VICE PRESIDENT, COLUMBIA BROADCASTING SYSTEM, INC., NEW YORK, N. Y., DATED JANUARY 23, 1957, RE AVERAGE WORKING CAPITAL DEVOTED TO TELEVISION NETWORKING

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N. Y., January 23, 1957.

Mr. KENNETH A. COX,
Special Counsel, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR KEN: This is in reference to your letter of December 11, 1956, concerning information you have requested from us.

The information you requested on the average working capital (excess of current assets over current liabilities) devoted to television networking is, for the fiscal years 1951–56, as follows:

End of fiscal year—	*Amount (rounded to nearest $100,000)*
1951	$8,000,000
1952	10,700,000
1953	14,500,000
1954	22,500,000
1955	30,500,000
1956	33,000,000

The above figures for 1951–55 are estimates based on review, analysis, and allocation. The figure for 1956 has been estimated without such review, analysis, or allocation.

Sincerely,

RICHARD S. SALANT, *Vice President.*

28. CORRESPONDENCE FROM SENATOR WARREN G. MAGNUSON TO TELEVISION BUREAU OF ADVERTISING AND OTHERS REGARDING CLASS A CLEARANCES FOR SYNDICATED FILMS REFERRED TO IN TESTIMONY OF DR. FRANK STANTON, PRESIDENT OF CBS

SEATTLE 4, WASH., *November 13, 1956.*

Mr. NORMAN E. CASH,
Television Bureau of Advertising, Inc.,
New York 22, N. Y.

DEAR MR. CASH: During his testimony before the Senate Committee on Interstate and Foreign Commerce on June 13, 1956, at page 3460, Dr. Frank Stanton, of CBS, quoted from a speech made by Mr. Treyz on April 18, 1956, before the convention of the National Association of Radio and Television Broadcasters. In this quotation reference was made to a number of advertisers who had succeded in obtaining satisfactory clearances in class A time. In addition, two others are listed in a brochure published by TVB. I wish to get in touch with these advertisers or their agencies with respect to this matter and would appreciate it if you could advise me as to the names and addresses of the persons from whom your organization obtained the information underlying Mr. Treyz's speech.

The advertisers and the programs in question are as follows:

Advertisers	*Programs*
Ohio Oil Co	Man Behind the Badge.
Lucky Lager Beer	Great Gildersleeve.
Langendorf Bakeries	Steve Donovan.
Heileman Brewing Co	Racket Squad.
General Electric	The Turning Point.
Bowman Biscuit Co	Dr. Hudson's Secret Journal.
Socony Mobil-Oil	Socony Mobil Theater.
Colonial Stores	Great Gildersleeve.
Carter Products	Mr. District Attorney.

It may be that you yourself can supply me with some of the information which I would like to have. I have seen a copy of the very interesting presentation which you published entitled "Advertising's All-Purpose Working Tool." This matter is covered at what would apparently be pages 26 and 27 of this brochure.

In addition to listing the programs and clearances obtained you give the actual clearances for the Socony-Mobil Theater, market by market, showing the hour and the day on which clearance was obtained. I wonder whether you could furnish me similar information with respect to the other eight programs referred to in your brochure.

Thank you for your attention to this matter. May I have the names and addresses requested at your earliest convenience so that I can get in touch with the individuals concerned in the near future?

With kind regards, I am,

Very truly yours,

WARREN G. MAGNUSON, *Chairman.*

TELEVISION BUREAU OF ADVERTISING, INC.,
New York, N. Y., November 20, 1956.

Senator WARREN G. MAGNUSON,
United States Courthouse Building,
Seattle, Wash.

DEAR SENATOR MAGNUSON: In reply to your letter of November 13, TVB is happy to supply you with the names of our contacts who furnished us the information on clearances of syndicated programs, as subsequently referred to by (*a*) Mr. Oliver Treyz in an address to the convention of the National Association of Radio & Television Broadcasters in Chicago on April 18, (*b*) Dr. Frank Stanton, of CBS, in testimony before your committee on June 13, and (*c*) as listed in our presentation, Advertising's All-Purpose Working Tool.

As you will note from the list below covering the eight program-sponsor situations, we did not, in most cases, go to the advertising agency for information on clearances, but rather to the vendor of the film, i. e., the program syndicator.

Here, for your information, is a list of the individuals from whom we obtained the clearance information:

Advertiser	Program	Source of information
Carter Products	Mr. District Attorney	Mr. Eugene Moss, CBS TV Film Sales, Inc., 485 Madison Ave., New York, N. Y.
Ohio Oil Co	Man Behind the Badge	
Bowman Biscuit Co	Dr. Hudson's Secret Journal	
Heileman Brewing Co	Racket Squad	
Lucky Lager Beer	Great Gildersleeve	
General Electric	Turning Point [1]	Mr. Thomas Lynch, Young & Rubicam, Inc., 285 Madison Ave., New York, N. Y.
Colonial Stores	Great Gildersleeve	Mr. H. Weller Keever, NBC Television Films, 663 5th Ave., New York, N. Y.
Langendorf Bakeries	Steve Donovan	

[1] Reanalysis following presentation reduces number of class A clearances from 66 to 62.

In all cases we did not obtain the precise details for the program's clearance as was done in our case history of Socony Mobil Theater. For that reason I have supplied, as requested in your letter, the names of our sources of information from which stemmed Mr. Treyz' statement of April of this year.

Best wishes.

Very truly yours,

NORMAN E. CASH.

NOVEMBER 29, 1956.

Mr. EUGENE MOSS,
CBS Television Film Sales, Inc.,
New York, N. Y.

DEAR MR. MOSS: When Dr. Stanton, of CBS, appeared before the Senate Interstate and Foreign Commerce Committee last June, he made reference to the successful clearance on a spot basis of certain syndicated film programs. This information was based upon studies made by the Television Bureau of Advertising.

I recently have been advised by Mr. Cash of that organization that you were the source of the information upon which Mr. Treyz based his address to the convention of the National Association of Radio & Television Broadcasters with respect to certain of these programs. According to this information, you supplied the data with respect to the clearance for Carter Products for Mr. District Attorney, Ohio Oil Co., for Man Behind the Badge, Bowman Biscuit Co., for Dr. Hudson's Secret Journal, Hielman Brewing Co. for Racket Squad, and Lucky Lager Beer, for Great Gildersleeve.

I am wondering if you could provide me with a list of the stations on which clearance for each of these programs was extended together with the time and date at which they were broadcast in each market. In addition, I would appreciate it if you could tell me whether or not these advertisers desired clearance in other markets in addition to those for which formal orders were placed. As stated by Mr. Treyz in his speech, and in TV–B's brochure entitled "Advertising's All-Purpose Working Tool," it would appear that nearly 100 percent clearance was obtained in class A time in all the markets ordered. It has been suggested to the committee by Mr. Moore of KTTV in a reply memorandum to the testimony of Dr. Stanton, that advertisers placing programs on a spot basis usually do not order a station until they have already had some advance indication that a desirable time period is available. He indicates that this is in distinction to the ordering practices of the network where the stations order without advance check simply on the basis of the option arrangements.

What I am, therefore, getting at with regard to this latest point is the possibility that your records may show that these advertisers would like to have had broader clearances but never placed orders for additional markets because they had no reason to believe that satisfactory time was available. For instance, did Carter Products initially seek placement for Mr. District Attorney in more than 23 markets? If so, I would appreciate it if you could tell me approximately how many additional markets were investigated, and if your records indicate this I would like to know what these other markets are?

I am sorry to impose on you with regard to this matter, but I would like to get this question cleared up as fully as possible for our records.

Very truly yours,

WARREN G. MAGNUSON,
United States Senator.

CBS TELEVISION FILM SALES, INC.,
New York, N. Y., December 7, 1956.

Senator WARREN G. MAGNUSON,
United States Courthouse Building,
Seattle, Wash.

DEAR SENATOR MAGNUSON: The information which I supplied to the Television Bureau of Advertising was based on the published report issued by the N. C. Rorabaugh Co., dated January 25, 1956.

This is a report on spot television indicating the market-by-market television advertising of sponsors of television programs. This is a standard, authoritative, published record of spot television; it is issued quarterly.

It does not provide the sort of information which you have requested in your letter to me dated November 29. It is entirely possible that there are additional markets, with class A nighttime clearance, besides those reported in the Rorabaugh study. This study does not purport to be exhaustive; in fact, it can't be since not all stations in all markets are willing to submit their schedules and sponsor list to Rorabaugh. Nevertheless, the study is the most complete and thorough report on spot television that is available.

For complete, exhaustive information on any specific client, it would be necessary to go directly to the client or to his advertising agency. This is information which is neither mine nor to which I have access. I am submitting the information that I obtained from Rorabaugh. And, as I have mentioned, the complete information could be supplied by the clients or their agencies.

Very truly yours,

EUGENE W. MOSS,
Sales Promotion Manager.

Carter Products

MR. DISTRICT ATTORNEY

Nighttime, class A, in 22 out of their 23 markets (96 percent)

1. Los Angeles (late night)

Class A

2. San Francisco
3. Denver
4. New Haven
5. Atlanta
6. Louisville
7. Baltimore
8. Detroit
9. Lansing
10. Minneapolis
11. Kansas City
12. Binghamton

Class A

13. Cleveland
14. Oklahoma City
15. Portland, Oreg.
16. Erie
17. Johnstown
18. Philadelphia
19. Memphis
20. Houston
21. San Antonio
22. Seattle-Tacoma
23. Huntington

Lucky Lager Beer

GREAT GILDERSLEEVE

Nighttime, class A, in 16 out of 16 markets (100 percent)

1. Bakersfield
2. Eureka
3. Fresno
4. Los Angeles
5. Salinas
6. San Diego
7. San Francisco
8. Boise
9. Idaho Falls
10. Las Vegas
11. Reno
12. Roswell
13. Medford

Ohio Oil (Marathon Gas)

MAN BEHIND THE BADGE

Class A in 10 out of 11 markets (91 percent)

1. Bloomington, Ind. (late night)
2. Champaign
3. Ft. Wayne
4. Indianapolis
5. South Bend
6. Grand Rapids
7. Kalamazoo
8. Lansing
9. Columbus
10. Dayton
11. Toledo

Heilman Brewing (Old Style Lager)

RACKET SQUAD

9 class A markets out of 9 markets (100 percent)

1. Peoria
2. Rockford
3. Cedar Rapids
4. Davenport
5. Des Moines
6. Sioux City
7. Omaha
8. Madison
9. Milwaukee

Bowman Biscuit

DR. HUDSON'S SECRET JOURNAL

12 class A markets out of 12 (100 percent)

1. Colorado Springs
2. Denver
3. Roswell
4. Abilene, Tex.
5. Amarillo
6. Austin
7. Dallas
8. El Paso
9. Lubbock
10. San Antonio
11. Temple
12. Wichita Falls

NOVEMBER 29, 1956.

Mr. THOMAS LYNCH,
Young & Rubicam, Inc.,
New York, N. Y.

DEAR MR. LYNCH: When Dr. Stanton of CBS appeared before the Senate Interstate and Foreign Commerce Committee last June he made reference to the successful clearance on a spot basis of certain syndicated film programs. This information was based upon studies made by the Television Bureau of Advertising.

I recently have been advised by Mr. Cash of that organization that you were the source of the information upon which Mr. Treyz based his address to the convention of the National Association of Radio and Television Broadcasters with respect to certain of these programs. According to this information, you supplied the data with respect to the clearance for General Electric for Turning Point.

I am wondering if you could provide me with a list of the stations on which clearance for this program was extended together with the date and time at which it was broadcast in each market. In addition, I would appreciate it if you could tell me whether or not this advertiser desired clearance in other markets in addition to those for which formal orders were placed. As stated by Mr. Treyz in his speech, and in TvB's brochure entitled "Advertising's All-Purpose Working Tool," it would appear that nearly 100 percent clearance was obtained in class A time in all the markets ordered. It has been suggested to the committee by Mr. Moore of KTTV in a reply memorandum to the testimony of Dr. Stanton, that advertisers placing programs on a spot basis usually do not order a station until they have already had some advance indication that a desirable time period is available. He indicates that this is in distinction to the ordering practices of the network where the stations order without advance check simply on the basis of the option arrangements.

What I am, therefore, getting at with regard to this latest point is the possibility that your records may show that this advertiser would like to have had broader clearance but never placed orders for additional markets because he had no reason to believe that satisfactory time was available. Did General Electric desire clearance in more than 77 markets? If so, I would appreciate it if you could tell me approximately how many additional markets were investigated, and if your records indicate this I would like to know what these other markets are.

I am sorry to impose on you with regard to this matter but I would like to get this question cleared up as fully as possible for our records.

Very truly yours,

WARREN G. MAGNUSON,
United States Senator.

YOUNG & RUBICAM, INC.,
New York, N. Y., December 17, 1956.

Senator WARREN G. MAGNUSON,
United States Senate, Washington, D. C.

DEAR SENATOR: I am sorry that the reply to your letter of November 29 has been a little delayed but I have been out of town on business and was not able to give it my attention until now.

As requested we are enclosing a complete list showing the day, time, and starting date for all markets used on the Turning Point.

The procedure followed on this program for General Electric was:

(1) To determine the markets to be used, and

(2) Requesting half-hour availabilities from all stations in all markets for a starting date of week of March 5.

As stated by Mr. Treyz we were able to clear nearly 100 percent of the required markets (only Lancaster, Pa., was unable to supply satisfactory time). However, by looking over this list you will note that 100 percent are not in class A time, many periods being before 7 p. m. and after 10:30 p. m.

I believe that the above information has covered all your questions but if any additional information is required I am sure that we can satisfactorily supply it.

Very truly yours,

THOMAS J. LYNCH.

General Electric Co.—The Turning Point

City and State	Station	Day	Starting date	Time	
Abilene, Tex	KRBC-TV	Tuesday	Mar. 20	8:30 to 9 p. m	
Albuquerque, N. Mex	KOB-TV	Saturday	Mar. 10	9 to 9:30 p. m	ATC [1] 8 p. m.
Alexandria, La	KALB-TV	Wednesday	Mar. 28	10:30 to 11 p. m	
Amarillo, Tex	KFDA-TV	Monday	Mar. 12	7:30 to 8 p. m	Do.
Ann Arbor, Mich	WPAG-TV	Friday	Mar. 9	8:30 to 9 p. m	Bonus station.
Austin, Tex	KTBC-TV	Sunday	Apr. 29	10:30 to 11 p. m	
Atlanta, Ga	WSB-TV	Saturday	Mar. 10	7 to 7:30 p. m	ATC 10 p. m.
Baltimore, Md	WMAR-TV	do	do	do	
Beaumont, Tex	KFDM-TV	do	Apr. 12	10:30 to 11 p. m	Preempt June 2, 30, July 28, Aug. 25.
Big Springs, Tex	KBST-TV	Friday	Mar. 23	9:30 to 10 p. m	
Birmingham, Ala	WBRC-TV	Thursday	Mar. 8	6 to 6:30 p. m	ATC: 9 p. m. Friday.
Bismarck, N. Dak	KFYR-TV	Friday	Mar. 30	8:30 to 9 p. m	
Boston, Mass	WBZ-TV	Thursday	Mar. 8	11:10 to 11:40 p. m	
Buffalo, N. Y	WGR-TV	Sunday	Mar. 11	10 to 10:30 p. m	
Charleston, S. C	WCSC-TV	Thursday	May 3	9 to 9:30 p. m	
Chicago, Ill	WBKB-TV	Monday	Mar. 5	10:30 to 11 p. m	
Do	WGN-TV	Friday	Mar. 30	9 to 9:30 p. m	
Cincinnati, Ohio	WLW-TV	Monday	Apr. 16	10:30 to 11 p. m	
Columbia, S. C	WIS-TV	Sunday	Apr. 1	do	ATC 9:30 p. m.
Cleveland, Ohio	KYW-TV	Friday	Apr. 6	7 to 7:30 p. m	ATC 10:30 p. m. Monday.
Columbus, Ohio	WBNS-TV	do	Mar. 9	6:30 to 7 p. m	ATC 10:30 p. m.
Corpus Christi, Tex	KVDO-TV	Saturday	Mar. 24	9 to 9:30 p. m	
Dallas, Tex	KRLD-TV	Friday	May 4	do	
Dayton, Ohio	WLW-D	Monday	Apr. 16	10:30 to 11 p. m	
Denver, Colo	KOA-TV	Saturday	Mar. 10	9:30 to 10 p. m	ATC 8:30 p. m.
Des Moines, Iowa	KRNT-TV	Tuesday	Apr. 3	do	Do.
Detroit, Mich	WWJ-TV	Saturday	Mar. 31	7 to 7:30 p. m	ATC 10 p. m.
Durham-Raleigh, N. C	WTVD	do	Mar. 10	7:30 to 8 p. m	ATC 10 p. m. Friday.
El Paso, Tex	KROD-TV	Thursday	Mar. 8	10 to 10:30 p. m	
Fresno, Calif	KJEO-TV	Friday	Mar. 9	10:30 to 11 p. m	Effective June 8, 9:30 p. m. Friday.
Grand Forks, N. Dak	KNOX-TV	Thursday	Apr. 12	9:30 to 10 p. m	
Grand Junction	KFXJ-TV	Wednesday	Apr. 4	8 to 8:30 p. m	
Grand Rapids, Mich	WOOD-TV	Sunday	Mar. 25	10:30 to 11 p. m	ATC 9:30 p. m.
Honolulu, T. H	KGMB-TV	Friday	Mar. 9	7 to 7:30 p. m	
Houston, Tex	KPRC-TV	Monday	Mar. 5	10 to 10:30 p. m	ATC 9 p. m. Saturday.
Indianapolis, Ind	WFBM-TV	Saturday	Mar. 10	6 to 6:30 p. m	ATC 10 p. m.
Kansas City, Mo	WDAF-TV	do	do	10:30 to 11 p. m	ATC 9:30 p. m. Saturday.
Lake Charles, La	KPLC-TV	Thursday	Mar. 22	do	
Little Rock, Ark	KATV	Friday	Apr. 6	9 to 9:30 p. m	
Medford, Oreg	KBFS-TV	Thursday	May 3	6:30 to 7 p. m	
Memphis, Tenn	WMCT	Monday	Mar. 5	9:30 to 10 p. m	ATC 8:30 p. m.
Miami, Fla	WTVJ-TV	Thursday	May 31	do	
Minneapolis, Minn	WCCO-TV	Saturday	Mar. 10	10 to 10:30 p. m	ATC 8:30 p. m. Sunday.
Milwaukee, Wis	WTMJ-TV	Monday	Mar. 5	9:30 to 10 p. m	ATC 9:30 p. m. Friday.
Minot, N. Dak	KCJB-TV	Sunday	Apr. 1	8 to 8:30 p. m	
Mount Washington, N. H.	WMTW	Saturday	Mar. 10	9 to 9:30 p. m	
Nashville, Tenn	WLAC-TV	Friday	Mar. 9	8:30 to 9 p. m	
New Haven, Conn	WNHC-TV	Thursday	Mar. 15	10:30 to 11 p. m	
New Orleans, La	WDSU-TV	Friday	May 4	do	
Jacksonville, Fla	WMBR-TV	Saturday	May 12	do	
New York, N. Y	WRCA-TV	do	Apr. 28	7 to 7:30 p. m	
Norfolk, Va	WTAR-TV	do	Mar. 10	10:30 to 11 p. m	Preempt Mar. 10, Apr. 7, May 5, June 2.
Oklahoma City, Okla	KWTV	do	do	10 to 10:30 p. m	
Omaha, Nebr	KMTV	Thursday	Apr. 26	7 to 7:30 p. m	
Philadelphia, Pa	WCAU-TV	Saturday	Mar. 10	10:30 to 11 p. m	Do.
Phoenix, Ariz	KPHO-TV	Thursday	Mar. 8	8 to 8:30 p. m	
Pittsburgh, Pa	KDKA-TV	Sunday	May 13	4:30 to 5 p. m	
Portland, Oreg	KOIN-TV	Friday	Mar. 9	7 to 7:30 p. m	ATC 9:30 p. m. Friday.

[1] ATC—Alternate time change.

General Electric Co.—The Turning Point—Continued

City and State	Station	Day	Starting date	Time	
Providence, R. I.	WPRO-TV	Thursday	Mar. 29	10:30 to 11 p. m.	
Pueblo, Colo	KSCJ-TV	Monday	Apr. 16	9 to 9:30 p. m.	
Rock Island-Davenport	WOC-TV	Saturday	May 5	9:30 to 10 p. m.	
Richmond, Va	WXEX-TV	Sunday	Mar. 31	10:30 to 11 p. m.	ATC 9:30 p. m. Sunday.
Rochester, N. Y	WHEC-TV	do	Apr. 22	7 to 7:30 p. m.	
Rockford, Ill	WREX-TV	Wednesday	May 9	10:30 to 11 p. m.	
Salt Lake City, Utah	KTVT	Saturday	Mar. 10	9 to 9:30 p. m.	ATC 10 p. m.
St. Louis, Mo	KSD-TV	Friday	Apr. 13	10:30 to 11 p. m.	
		Saturday	(2)	do	
San Antonio, Tex	KENS	Friday	Mar. 9	10 to 10:30 p. m.	
San Diego, Calif	KFSD-TV	Saturday	Mar. 10	7 to 7:30 p. m.	Extension 4th week, 9 p. m.
San Jose, Calif	KNTV	Friday	Apr. 6	10 to 10:30 p. m.	
Sacramento, Calif	KBET-TV	Monday	Apr. 16	do	
San Francisco, Calif	KRON-TV	Sunday	Apr. 1	10:30 to 11 p. m.	
Schenectady, N. Y	WRGB-TV	Thursday	June 14	7 to 7:30 p. m.	Alternate weeks.
Seattle, Wash	KOMO-TV	Monday	Mar. 5	10:30 to 11 p. m.	ATC 9:30 p. m.
Sioux City, Iowa	KVTV	Tuesday	Apr. 10	8 to 8:30 p. m.	ATC 8:30 p. m. Monday.
South Bend, Ind	WNDU-TV	Sunday	Mar. 11	9:30 to 10 p. m.	Canceled after May 13.
Do	WSBT-TV	Monday	May 21	7:30 to 8 p. m.	
Springfield-Holyoke	WHYN-TV	Friday	Mar. 9	9 to 9:30 p. m.	
Syracuse, N. Y	WSYR-TV	Tuesday	Mar. 6	7 to 7:30 p. m.	
Tampa, Fla	WTVT	do	Apr. 3	do	ATC 10:30 p. m.
Toledo, Ohio	WSPD-TV	Sunday	Mar. 11	3:30 to 4 p. m.	ATC 9 p. m.
Tulsa, Okla	KOTV	Saturday	Mar. 10	10:30 to 11 p. m.	
Washington, D. C	WTOP-TV	Monday	Apr. 2	7 to 7:30 p. m.	
Weslaco, Tex	KRGV-TV	Saturday	Mar. 31	10 to 10:30 p. m.	
Wichita, Kans	KAKE-TV	Monday	Mar. 5	9 to 9:30 p. m.	

[2] Effective June 2.

NOVEMBER 29, 1956.

Mr. H. WELLER KEEVER,
NBC Television Films, New York, N. Y.

DEAR MR. KEEVER: When Dr. Stanton of CBS appeared before the Senate Interstate and Foreign Commerce Committee last June, he made reefrence to the successful clearance on a spot basis of certain syndicated firm programs. This information was based upon studies made by the Television Bureau of Advertising.

I recently have been advised by Mr. Cash of that organization that you were the source of that information upon which Mr. Treyz based his address to the Convention of the National Association of Radio & Television Broadcasters with respect to certain of these programs. According to this information, you supplied the data with respect to the clearance for Colonial Stores for Great Gildersleeve, and Langendorf Bakeries for Steve Donovan.

I am wondering if you could provide me with a list of the stations on which clearance for each of these programs was extended together with the date and time at which they were broadcast in each market. In addition, I would appreciate it if you could tell me whether or not these advertisers desired clearance in other markets in addition to those for which formal orders were placed. As stated by Mr. Treyz in his speech, and in TvB's brochure entitled "Advertising's All-Purpose Working Tool," it would appear that nearly 100 percent clearance was obtained in class A time in all the markets ordered. It has been suggested to the committee by Mr. Moore of KTTV in a reply memorandum to the testimony of Dr. Stanton, that advertisers placing programs on a spot basis usually do not order a station until they have already had some advance indication that a desirable time period is available. He indicates that this is in distinction to the ordering practices of the network where the stations order without advance check simply on the basis of the option arrangements.

What I am, therefore, getting at with regard to this latest point is the possibility that your records may show that these advertisers would like to have had broader clearances but never placed orders for additional markets because they had no reason to believe that satisfactory time was available. For instance, did Colonial Stores want clearance in more than 13 markets for the Great Gildersleeve? If so, I would appreciate it if you could tell me approximately how many additional markets were investigated, and if your records indicate this I would like to know what these other markets are.

I am sorry to impose on you with regard to this matter, but I would like to get this question cleared up as fully as possible for our records.

Very truly yours,

WARREN G. MAGNUSON,
United States Senator.

CALIFORNIA NATIONAL PRODUCTIONS, INC.,
New York, N. Y., January 14, 1957.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: This is in reply to your letter of November 29, 1956, to Mr. H. Weller Keever. We have endeavored to check our records and the memories of our personnel in an effort to answer your letter as completely and accurately as possible.

Attached hereto are lists of stations on which clearance was obtained on behalf of Colonial Stores for the Great Gildersleeve and for Langendorf Bakeries for Steve Donovan. In some instances the day and time of broadcast may have changed after the commencement of the series, but such change would most likely have been to a day or time more acceptable to the sponsor.

In addition to these two series with respect to which you requested information, we supplied information to the Television Bureau of Advertising, Inc., on the sponsorship of the Great Gildersleeve on behalf of Lucky Lager Beer, and assumed that you would be interested in the same information in connection with that sale and we attach it hereto.

To the best of our knowledge, no additional markets were wanted by any of these three clients.

None of the clients expressed a desire to clear stations in additional markets for any time period.

Very truly yours,

ROBERT D. LEVITT, *President.*

Colonial Stores—The Great Gildersleeve

Station	Market	Starting date	Day	Original time cleared
WALB	Albany, Ga	Nov. 3, 1955	Thursday	8 to 8:30.
WSB	Atlanta, Ga	Nov. 4, 1955	Friday	7 to 7:30.
WRDW	Augusta, Ga	Nov. 2, 1955	Wednesday	7:30 to 8.
WIS	Columbia	do	do	9:30 to 10.
WFMY	Greensboro	Nov. 4, 1955	Friday	8 to 8:30.
WFBC	Greenville, S. C	Nov. 1, 1955	Tuesday	7 to 7:30.
WNCT	Greenville, N. C	Nov. 3, 1955	Thursday	8 to 8 30.
WMAZ	Macon, Ga	do	do	7 to 7:30.
WVEC	Norfolk, Va	do	do	8 to 8:30.
WTVR	Richmond	do	do	9:30 to 10.
WTVD	Raleigh	Nov. 1, 1955	Tuesday	7:30 to 8.

Langendorf Bakeries—Steve Donovan

Station	Market	Starting date	Day	Original time cleared
KERO-TV	Bakersfield, Calif	Apr. 7, 1955	Thursday	7 to 7:30.
KHSL-TV	Chico, Calif	do	do	7 to 7:30.
KVAL-TV	Eugene, Oreg	do	do	7 to 7:30.
KMJ	Fresno, Calif	Apr. 4, 1955	Monday	7 to 7:30.
KRCA	Los Angeles	Apr. 5, 1955	Tuesday	7 to 7:30.
KLOR	Portland	do	do	7 to 7:30.
KSBW	Salinas, Calif	Apr. 7, 1955	Thursday	7 to 7:30.
KFMB	San Diego	do	do	7:30 to 8.
KPIX	San Francisco	Apr. 5, 1955	Tuesday	7 to 7:30.
KEYT	Santa Barbara	do	do	7 to 7:30.
KING	Seattle	do	do	7 to 7:30.
KIMA	Yakima	Apr. 4, 1955	Monday	7 to 7:30.
KOVR	Stockton	Apr. 7, 1955	Thursday	7 to 7:30.

Lucky Lager Beer—The Great Gildersleeve

Station	Market	Starting date	Day	Original time cleared
KERO	Bakersfield, Calif	Oct. 7, 1955	Friday	9:30 to 10.
KIDO	Boise, Idaho	Oct. 8, 1955	Saturday	9 to 9:30.
KLAS	Las Vegas	Oct. 20, 1955	Thursday	7:30 to 8.
KXLY	Spokane, Wash	Oct. 7, 1955	Friday	8 to 8:30.
KOAT	Albuquerque, N. Mex	Sept. 2, 1955	do	9 to 9:30.
KHSL	Chico, Calif	Oct. 12, 1955	Wednesday	9 to 9:30.
KVAL	Eugene, Oreg	Oct. 7, 1955	Friday	8 to 8:30.
KJEO	Fresno, Calif	do	do	9:30 to 10.
KGMB	Honolulu	Sept. 27, 1955	Tuesday	8 to 8:30.
KID	Idaho Falls	Oct. 8, 1955	Saturday	7:30 to 8.
KRCA	Los Angeles, Calif	Sept. 16, 1955	Friday	8:30 to 9.
KBES	Medford, Oreg	Oct. 8, 1955	Saturday	8 to 8:30.
KVAR	Phoenix, Ariz	Oct. 13, 1955	Thursday	8:30 to 9.
KPTV	Portland, Oreg	Sept. 30, 1955	Friday	8:30 to 9.
KZTV	Reno, Nev	Nov. 24, 1955	Thursday	8:30 to 9.
KSWS	Roswell, N. Mex	Oct. 4, 1955	Tuesday	8 to 8:30.
KCRA	Sacramento, Calif	Sept. 18, 1955	Thursday	7 to 7:30.
KSBW	Salinas, Calif	Oct. 7, 1955	Friday	8 to 8:30.
KTVT	Salt Lake City	Sept. 12, 1955	Monday	8:30 to 9.
KFSD	San Diego	Oct. 7, 1955	Friday	8:30 to 9.
KRON	San Francisco	Aug. 11, 1955	Thursday	7 to 7:30.
KOMO	Seattle	Aug. 19, 1955	Friday	9 to 9:30.
KVOA	Tucson	Oct. 13, 1955	Thursday	9:30 to 10.
KIMA	Yakima, Wash	Oct. 1, 1955	Saturday	9 to 9:30.
KIVA	Yuma, Ariz	Oct. 20, 1955	Thursday	8 to 8:30.
KIEM	Eureka, Calif	Oct. 7, 1955	Friday	8:30 to 9.

29. Reply to Comments of KTTV, Dated October 29, 1956

(Prepared for the Senate Committee on Interstate and Foreign Commerce by Columbia Broadcasting System, Inc., January 1957)

Reply to Comments of KTTV, Dated October 29, 1956

On March 26, 1956, Richard A. Moore, president of KTTV, Inc., made a statement (hereinafter referred to as the statement) before this committee on behalf of KTTV. The chairman requested the networks to respond to the statement. When Dr. Frank Stanton, president, Columbia Broadcasting System, Inc., testified before the committee on June 12 and 13, 1956, he submitted, along with other documents, a memorandum concerning the statement of Richard A. Moore (hereinafter referred to as the memorandum) dealing specifically with the statement.

Under date of October 29, 1956, KTTV filed its comments (hereinafter referred to as the comments) on the memorandum. The comments purport to be a "comprehensive and detailed reply" to the memorandum, enabling the committee to "properly assess the validity of the KTTV position" (comments, p. 1).

In the comments, KTTV objects to the CBS characterization of the statement as "inaccurate" and "misleading," and its use of other terms like "irresponsible," "unsubstantiated," and "false" with respect to portions of the statement. KTTV further asserts that CBS' specific allegations of inaccuracy were relatively few[1] and that they involved a technique whereby CBS, after paraphrasing the KTTV statement and changing its meaning, attempted to refute the changed version. In 20 serially numbered sections KTTV purports to reply to each allegation of inaccuracy made by CBS after first "correcting," where necessary, the CBS version of the KTTV statement. In the process, it questions the significance of some of the data submitted by CBS in the memorandum and reiterates and reargues many of the principal contentions contained in its statement. It also supplies additional data in support of its contentions.

While recognizing the desirability of putting an end to the cross-talk between KTTV and CBS, we believe it is not only appropriate to examine whether CBS has misinterpreted the statement, but that a responsibility rests upon CBS to examine into the manner and extent to which KTTV has dealt with the matters raised in the CBS memorandum and to answer new allegations made by KTTV in its latest comments.

For convenience, this reply will consider the principal points made by KTTV in 20 serially numbered sections to correspond with those in the comments. Unless otherwise indicated, all page references will be to the comments.

1

KTTV denies having alleged that television network affiliates become mere mechanical conduits (p. 2). KTTV did not use that exact phrase. But this, in part, is what it did say:

"As an illustration of how completely the affiliated stations have been required to surrender their responsibility for program selection to the networks * * *" (Tr. 1590).[2]

"* * * we find there was only 3.7 percent of the time when the station might have bought some program other than dictated by the network" (Tr. 1592).

"Now as a further and specific example of how the stations have been required to abandon their local responsibility and simply have patched in what the network offers * * *" (Tr. 1594).

We are satisfied to leave it to the committee whether the meaning KTTV intended to convey was fairly paraphrased.

KTTV denies further that it alleged that television network affiliates "broadcast an unreasonably large amount of network programs" (p. 3) and suggests that CBS miscited KTTV in order to shift emphasis away from the evening viewing hours, which were the main concern of KTTV (p. 8). The statement was made by CBS in connection with its discussion of the alleged effect of network option time (memorandum, pp. 2, 3), and it was specifically related to KTTV's study of program occupancy during evening network option time in 40 cities in which NBC and CBS both had basic-required affiliates (memorandum, pp. 3, 4). Thus, it clearly had reference to evening hours and it is erroneous to charge that CBS was here attempting to mislead or distract the committee. It should be noted in any event that if as it says, KTTV's sole concern is with the prime evening hours, no reason would exist for its proposal to limit the access of networks to its affiliates to 75 percent of all segments of the broadcast day.

KTTV's statement (p. 4) that its proposal would permit more network programs, not less, is patently untrue. At present there is no legal limitation on the amount of network programs a station may carry. Under the KTTV proposal, there would be such a limitation. Hence it obviously would not permit more than is now permitted.

2

KTTV admits that it was incorrect in stating that network affiliates must agree to carry network programs offered during the 12 hours of option time each day, since, as it concedes, the affiliation contracts call for only 9 such hours (p. 4). This erroneous inflation of 33⅓ percent of the amount of time under option to the networks is glossed over by KTTV as being unimportant. But it remains, particularly in light of the ease with which the truth could have been

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[1] It may be that CBS' specific allegations of inaccuracy were relatively few, considering the length of the statement, but, as was pointed out in the memorandum, the statement was singularly deficient in the utilization of factual supporting data. Accordingly, the statement did not lend itself to refutation in specific terms.

[2] Tr. references are to the transcript of hearings of this Committee on Television Inquiry, 1956.

ascertained, as evidence of KTTV's carelessness, engendered by its eager advocacy.

3

KTTV denies that it stated that one-half hour of option time was "added" by the "straddle" device of broadcasting hour-long network programs partly within and partly outside network option time (p. 5). It admits, however, that it did state that it is a device whereby "the networks take an additional half hour away from the station quite consistently" (pp. 5, 6). But, in fact, KTTV said more. In discussing "straddling," it stated (Tr. 1953, 1954):

"* * * the station which is obliged to clear for the first half of the program either has to surrender station time or cut the prizefight off in the middle or cut off in the middle of a dramatic show and this is a way whereby the networks gain an additional half hour away from the station quite consistently."

If this statement has any meaning, it is that the device of "straddling" hour-long programs over option and nonoption time had the effect of adding one-half hour to the time controlled by the networks by reason of network option time. This is clearly incorrect.

KTTV also alleges that CBS was unable to deny that the "straddle" programs have the effect of enabling the network to occupy an additional half hour of station time (p. 6). This also is untrue. CBS can and in fact did enter such a denial (memorandum p. 3, supplemental memorandum p. 104). Option time does not require a station to carry the programs straddling option time.

KTTV suggests that the record of station acceptances of four specific programs negates the "erosion" argument advanced by Dr. Stanton (p. 7). In light of the elaboration of Dr. Stanton's argument at pages 107–110 of the CBS supplemental memorandum, it would be superfluous to say more than that Dr. Stanton's comments were premised on the gradual defection from the network of key stations in major markets during various broadcast time periods, wherefore the clearance history of four programs during a period of expanding advertising expenditures simply is not in point.

4

KTTV points out that CBS did not dispute the validity of the KTTV statistics relative to the clearance of network programs by the CBS and NBC affiliated stations in 40 markets which are or were basic-required by both networks (p. 9). These figures merely reflected the degree of station clearance of network programs on certain CBS and NBC affiliated stations during the evening option hours. They did not show the extent to which this clearance was granted by compulsion of option-time requirement, which CBS then understood to be the principal focus of KTTV. Hence, the figures showed only the extent to which network programs were in fact carried in these particular 40 markets on affiliates of CBS and NBC during the period specified, and, therefore, they do not demonstrate the effect of option time—the only material question.

5

KTTV decries CBS' statement—that it could not understand the significance of the KTTV data derived from the 40-market study, done as it was in a carefully selected group of cities during carefully selected hours of the day—as implying that KTTV's selection of stations was arbitrary. The implication which KTTV finds in CBS' statement is a fair one, for, so far as is revealed in any of KTTV's memorandums, the selection of stations was arbitrary. No relevant reason appears for KTTV's selection of these particular markets and hours from among the hundreds of markets available for study and from among all the option and nonoption hours of a broadcast day. The inescapable inference is that the basis of the selection was to reach a preconceived result, i. e., a very large percentage figure from which the conclusion would be implied that the high percentage was of general application. (See the general application by KTTV of the figure at transcript 1601 and 1627.)

The objections to the validity of the KTTV study are twofold: First, as stated above under point 4, the study shows nothing concerning the extent to which clearance was granted during evening option hours by reason of option time; second, the limited scope of the study deprives it of any probative value. These 40 markets did not constitute all the markets in which CBS television affiliates existed. They did not constitute all the markets in which there were CBS television affiliates with which CBS television had option-time agreements. They did not constitute all the markets in which CBS television basic-required affiliates existed, nor did they constitute all the markets in which CBS and NBC each had basic-required affiliates. The 40-market study is further limited to the evening network option-time hours and hence there is a failure to consider KTTV's complaint concerning option time with regards to all option-time hours or its effect during the entire broadcast day. Thus, even if one were to assume that the clearance of network programs was always by virtue of the option-time provision, the study of 40 markets during 3 particular option-time hours is so limited in scope as to constitute neither a valid sampling nor a meaningful universe.

In short, the study serves no valid purpose.

6

KTTV refers to the clearance figures for the week of May 19, 1956, set forth on page 4 of the memorandum and states that they purported to represent a concept, the significance of which is questionable and misleading (p. 11). We believe the figures are both significant and straightforward. They were presented only to show the extent to which there were clearances during that week on all CBS television network affiliates and on all CBS television network basic-required affiliates in periods when option time was actually applicable. To the extent that any clearances were for time periods to which the contractual option provisions were inapplicable, the time period in question was, of course, equally available, so far as option time rights are concerned, to nonnetwork programing sources.

KTTV also asserts that the CBS statement that the time option is inapplicable when the network offers an unsponsored program is incorrect (p. 14). In fact, our statement is correct. Our affiliation agreements are clear on this. Time may be claimed under the option provision only as to "all network-sponsored programs offered and furnished to it by CBS television during network option time" (supplemental memorandum, p. 103).

7

KTTV reiterates its view that the exceptions to the option-time requirement contained in the affiliation agreement are rarely invoked and have little practical effect (p. 19) and cites in support the figures submitted by CBS (memorandum, p. 4). But these figures do not support KTTV. They reflect the availability of network-option hours to nonnetwork-program sources; nor does KTTV dispute that the figures establish that during 1 week more than 500 option hours were not cleared as ordered (memorandum, p. 5).

8

KTTV denies that it contended, as "CBS seems to assume," that all nonnetwork programs are capable of winning more audience that any network program (p. 21). KTTV states that all it argued is that some nonnetwork programs have more appeal to the audience than some network programs (p. 21).

But KTTV went further in its testimony than it now contends. KTTV stated, with reference to nonnetwork programs (transcript 1601): "yet we have seen how superior they [nonnetwork programs] are in the eyes of the public when the public is given an opportunity to judge them."

9

KTTV takes issue with CBS on the significance of the clearance data relating to the Disneyland program (pp. 24, 25). Its clearance pattern was alleged by KTTV to illustrate how stations have been required to abandon their local responsibility and patch in the network (transcript 1594). Its conclusions were based on its view that reasonable broadcasters would agree that the hour during which the ABC network regularly schedules Disneyland in the Pacific time zone is too late for a children's program (p. 24) and that accordingly it was or must have been under the compulsion of option time that stations carried the programs during that time period. In reply, CBS showed that several stations carried this program during that time period despite the fact (not denied by KTTV) that ABC had no option on the time of those stations. Thus, the scheduling of the program by stations for the time period in question shows that broadcasters may and do differ with KTTV as to the suitability of the time period. That program may not properly be used, as was attempted by KTTV, to establish the alleged adverse effect of option time on the proper exercise by local stations of their programing responsibilities.

10

KTTV admits that it may have been ill-advised in using the phrase "blind selling" to describe the relationship between networks and their affiliates with regard to the programs carried by the stations and substitutes the phrase "blind offer and acceptance" (p. 25). With respect to whether such "offer and acceptance" is in fact "blind," KTTV acknowledges the considerable testimony concerning the extent to which the CBS television network regularly advises its affiliates of the contents of a forthcoming program (p. 25). Typically, KTTV adds that it recognizes certain practical (but nonspecified) difficulties which would serve to prevent complete review of all network programs in advance by the affiliates (p. 25). Of course, CBS never maintained that there would or could be complete review in advance by the affiliates of all network programs any more than there is or could be complete review of all programs for the first run of a syndicated film series. KTTV fails to comment on the comparison set forth in the memorandum (pp. 9–11) as to the degree and effectiveness of the initial review and the subsequent right to reject after viewing in the case of network programs on the one hand and syndicated film series on the other.

11

KTTV states that the CBS interpretation of KTTV's purpose in reciting facts showing that station's allegedly superior operation is incorrect (p. 26). CBS had assumed that the testimony relating to KTTV's alleged programing superiority (transcript 1572–1575) had some connection with its contention concerning the effect of option time on the service rendered the community by the station. KTTV now states that its purpose was simply to indicate what could be done by an independent station as long as there is an available supply of good programs. The question as to whether the supply is in fact declining and, if so, the cause, is considered below.

12–13

The comparison, by sources of programs, between the operations of KTTV and KNXT, set out on pages 11 and 12 of the memorandum, was made to refute what CBS understood to be the purport of KTTV's statement, namely, that KTTV operated a superior station because it was nonnetwork. Since KTTV does not now claim superiority over KNXT or the other network-owned stations in Los Angeles (pp. 26–27), the matter need not be considered further. For the same reason, there is no point in debating which type of analysis—quarter hour "wins" or average ratings—best reflects the audience position or popularity of stations (pp. 28–29; memorandum pp. 12, 13).

14

In the memorandum, CBS took issue with KTTV's contention that networks "tie-in" the sale of network-produced programs with the sale of desirable network time periods, allegedly motivated by the profits made by networks in program production (memorandum, pp. 15, 16). In the comments, KTTV makes no more effort to substantiate this charge (pp. 30, 31) than was made during the course of its testimony (transcript 1635). It notes only that the CBS television network's operations are profitable and that a profit is made in the production of Studio One (p. 31).

KTTV also makes the surprising comment that it is irrelevant whether a profit is made by the network in the program production field (p. 31). Having made an unsupportable accusation, KTTV should not be permitted to dismiss its own charge as being irrelevant in any event.

KTTV attempts to camouflage its error by referring to CBS' testimony that CBS does insist on the placement of certain programs in certain time periods (pp. 29–30). This, of course, is quite different from "tying-in" because of profit made from production of the program. The reason for requiring the broadcast of certain programs at specific times is detailed in footnote 1, page 88, supplement memorandum, and will not be elaborated here. It should be noted, however, that KTTV has failed to make any comment or even reference to this explanation.

15

In reply to the categorical denial by CBS of the implication in KTTV's testimony (transcript 1606–1608) that CBS has imposed as a condition of its acceptance of a program, or of its making time available for it, a requirement that CBS be granted a financial interest, KTTV states that the agreements between networks and program producers are not a matter of direct knowledge by KTTV and that KTTV did not single out CBS or any particular network (p. 32). But KTTV was not that careful in its earlier testimony (transcript 1607):

"I think you will find that the networks have partial ownership or partial interest in the film properties which have come to them from independent producers which they have either bought or sold to sponsors. * * * I have had the usual luncheon date complaints from film producers that you can't get on the air unless you want to cut the network in. I have heard specific oral conversations referred to but I cannot assert that that is the fact."

Despite its disavowal of any direct knowledge and in spite of its suggestion that information on the subject could best be obtained from the parties concerned,[3] KTTV does not hesitate to suggest that networks acquire financial interests in independently produced programs largely because they have control over broadcast time (pp. 32, 33). Such a gratuitous suggestion, unsupported as it is, is further justification for the CBS characterization of KTTV's testimony. It is nothing more than a self-serving assumption that the networks necessarily would, if they could, use their alleged power in this manner, and is not entitled to any weight as evidence before this committee.

16

In the memorandum, CBS carefully refuted KTTV's contention that network practices are harmful to syndicated film distributors in their relations with stations. In the course of the presentation, CBS factually demonstrated (a) that syndicated film programs are able to clear class A time in substantial numbers of markets, (b) that class B and class C times are also adequate for syndicated film as well as networks, and (c) that stations are not prevented from buying the product of syndicated film distributors. KTTV purports to answer CBS with respect to each of these points (pp. 30–39).

(*a*) In support of its first point CBS referred to some of the syndicated film programs which have cleared class A time in a substantial number of markets, listed by Oliver Treyz, then president of the Television Bureau of Advertising (memorandum, p. 18). KTTV seems to consider this proof inadequate for two reasons—first, because the 8 syndicated film programs listed, among them, cleared between 7 and 10: 30 p. m. a number of station half-hours less (actually, only slightly less) than the average clearance of 2 network evening programs (p. 34), and second, because there is no way of knowing how many more stations the sponsors of the films unsuccessfully tried to clear. But it is not necessary to establish either that syndicated films obtain as much clearance as network programs or that they clear 10 percent; the important fact is that what evidence there is at least proves substantial clearance of nonnetwork programs during class A time. It should be noted, too, that the clearance record indicated by the data is not complete for the particular syndicated films listed. For the clearances cited were only those sought and obtained for the programs by the specific sponsors named. The same programs, sponsored by other advertisers, had substantial clearances in other markets, some in the 7–10: 30 time period. Doctor Hudson's Secret Journal, for example, was broadcast in approximately 105 markets in contrast to the 12 mentioned by Mr. Treyz.

KTTV also finds fault with the Treyz report[4] because it does not show clearance in the large- and medium-sized markets where the network saturation is so complete and where clearance is so vital (p. 35). It then attempts to refute that report by analyzing the clearance record of Socony Mobil Theater and the Rosemary Clooney Show.

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[3] KTTV did casually refer to the negotiations between Screen Gems and ABC described by the vice president of Screen Gems when he testified before the subcommittee of the House Judiciary Committee. However, KTTV admitted that it had no direct knowledge of those negotiations and, of course, neither has CBS.

[4] After setting forth the excellent clearance records of several syndicated film programs during class A time, Mr. Treyz concluded that "This is a clear-cut demonstration that there are excellent availabilities in time and that these times can be claimed and can be staked out as franchises for syndicated film programs" (supplemental memorandum, pp. 120–121).

With respect to the Socony Mobil program, KTTV states that Socony Mobil distributes its products in 43 States and "it seems fair to assume that the advertiser would want to cover a correspondingly extensive number of markets with Socony Mobil Theater, if suitable time periods were available" (p. 36). But this is not a fair assumption at all. Attached hereto as appendix A is a map showing the markets cleared by the advertiser for Socony Mobil Theater.[5] Also attached as appendix B is a map showing the markets cleared by the advertiser on the Rosemary Clooney Show. Both maps show a pattern which should have given KTTV pause before assuming that the advertiser sought nationwide coverage. KTTV's attacks on the clearance records of those programs are without meaning unless they are accompanied by a showing of markets which the advertisers actually desired but in which they were unable to clear time. KTTV has not furnished the results of any such investigations, although the correct information with respect to the desired coverage was certainly available to KTTV. Can this be characterized as anything but "irresponsible" and "misleading"? In the light of these fundamental errors, KTTV's analyses of the clearance data for the programs in terms of the size of markets cleared (p. 36) is meaningless. It certainly does not establish, as KTTV would have the committee believe, that the two programs were unsuccessful in clearing large- and medium-sized markets desired by the respective sponsors.

(*b*) Not only did CBS show that there was class A time available for syndicated film programs, it also showed that there were large audiences available during class B and class C time periods, audiences large enough to provide incentive for the production of syndicated film series. KTTV did not even attempt to refute the facts with respect to the value of class B and class C time. Indeed, it apparently took pains to avoid quoting the following sentence which appeared in the CBS memorandum immediately following what KTTV does quote:

"It is also to be noted that more than 50 percent of the time revenues the CBS Television Network derives from the sale of time on basic-required stations is from time sold outside 7:30–10:30 p. m." (p. 20, memorandum).

Instead, KTTV "interpreted" the fact that incentive for syndicated film production was not impaired by time options to mean that "hours outside of 7:30 to 10:30 p. m. are good enough for [others], but not good enough CBS. * * *" That has never been CBS's position, and we respectfully suggest that no argument or explanation made by CBS with respect to option time could itself to any such interpretation.

(c) CBS supported its showing that stations are not prevented from buying the product of independent film producers by listing some current syndicated films with the approximate number of cities in which each is broadcast. In reply, KTTV states that further production of some of these programs has been abandoned and others are now being produced for network use (p. 38). This is discussed below (section 18).

In additon, KTTV points out that the number of stations cleared contrasts sharply with the average clearance of network programs on CBS during evening option hours. That may be so, but the material fact remains that there is substantial clearance for nonnetwork programs.

17

KTTV responds to the point that network-affiliated stations with option time make greater use of first-run syndicated film series than do unaffiliated stations by claiming (a) that many series which are first-run on a network affiliated station may be second, third or subsequent run (and, in fact, may be out of production) on an independent station like KTTV, and (b) that the data supplied by CBS indicating the number of first-run syndicated film series broadcast during the week by affiliated and nonaffiliated stations give no indication of the desirability of the time periods in which the films have obtained clearance on the network-affiliated stations (p. 40). Neither of those claims alter the fact that network-affiliated stations do carry a considerable amount of first-run syndicated film despite the existence of option time. As to (b), since the programs are carried by the station and purchased by the sponsor, the time period during which they are shown is apparently satisfactory to both, and neither would be satisfied if there were not an adequate audience.

[5] See also the speech of Mr. Treyz, quoted on pp. 120–121, supplemental memorandum, in which in listing the programs, he said: "Socony Mobil Theater, for Socony Mobile-Oil, *primarily a central division order*, 56 markets ordered, 56 markets cleared in class 'A' time" (emphasis supplied).

KTTV contends that the CBS prediction of an increase in production of nonnetwork programs has proved to be unfounded and incorrect and that the facts and figures cited by CBS (pp. 2–23; supplemental memorandum, 113–118) were either incorrect or failed to support the conclusions drawn from them by CBS (p. 40).

It is always arguable whether facts and figures support a prediction as to the future, and there is always room for debate as to the proper inferences to be drawn from certain facts. But it should not be too difficult to demonstrate whether cited facts and figures are correct or not. In any event, no charge should be made that they are incorrect unless accompanied by at least some offer of proof. Examination of the material submitted by KTTV (pp. 42–53) following its general charge of inaccuracy on the part of CBS reveals not an iota of proof as to such inaccuracy. Not only is proof lacking, but nowhere is there any particularization as to which of the cited facts and figures are incorrect. Rather, KTTV itemizes several of the examples of reported prosperity of the prominent companies engaged in the production of films for television mentioned by CBS and purports to show that they are either not as prosperous as the figures cited by CBS would indicate or that such prosperity is not due to their syndicated film production. The figures given by CBS for each of the companies are not disputed.

KTTV, on the other hand, has not been so careful. Some of the facts and figures cited by it with respect to the production of syndicated films by various of the companies are either erroneous or, at the least, misleading (pp. 44 et seq.). Here are some examples:

(i) With respect to Screen Gems, KTTV mentions three shows formerly produced for network broadcast which "are not continuing this year on the network, and production of any new episodes in all of these series has been discontinued" (p. 45). In fact, 1 of those programs is still on the CBS Television Network, as well as in syndication, and the other 2 are being syndicated. Contrary to the implication that Screen Gems will not produce any new programs for syndication, it has recently been announced that Screen Gems intends to produce 18 new film series, without specifying that any will be available only to the networks.

(ii) With respect to Guild Films, KTTV states that during 1956 Guild has produced or offered no new programs for syndication (p. 45). This is incorrect. It is offering two new shows currently, Captain David Grief and Kingdom of the Sea, both of which have already been sold in some markets.

(iii) With respect to National Television Associates, Inc., KTTV states that it is presently offering only one new series produced specifically for television syndication (p. 46). This, too, is incorrect. It is offering three such series—Sheriff of Cochise, Lili Palmer Theater, and Combat Sergeant. A recent announcement notes that NTA intends to produce 10 new series without specifying that any will be available only to the networks.

(iv) With respect to Television Programs of America, Inc., KTTV states that it is producing or offering no new programs for syndication p. 46). This is incorrect. It is currently offering Hawkeye and the Last of the Mohicans, which has already been sold to some west-coast stations. A recent announcement notes that TPA intends to produce 5 new film series, 1 of which, it is reported, is likely to be put into syndication and the others of which TPA has not specified will be offered only for network broadcast.

(v) KTTV refers to reports in the press that Hal Roach had planned production of a new series for 1956, Blondie, which was to be sold to national advertisers for nonnetwork clearance. It adds, "we understand that this project has been abandoned" (p. 48). KTTV thus implies that it was abandoned because of the time-clearance problems. KTTV offers no evidence to this effect. Wesson Oil and Sunkist had ordered time on a number of stations for Blondie. Of the 12 markets where CBS Television Spot Sales then represented stations, 9 offered time; 2 were not on the Wesson-Sunkist list; and only 1 (a single-station market) did not offer availabilities. Four were ordered and four others lost the business to competitive stations. The ninth was still in doubt. After time had been cleared, Spot Sales was advised in identical wires by the advertising agencies for Wesson Oil and Sunkist that they were unable to conclude an agreement with Hal Roach and that they had no "further interest in the availabilities." At no time was Spot Sales advised that the transaction failed through lack of clearance.

(vi) Contrary to the implication that ZIV is ceasing to produce programs for syndication (p. 48), it has been announced that it intends to produce 10 new series, without specifying that any will be available only to the networks.

(vii) Contrary to the implication that Official Films will produce no new programs for syndication (p. 49) it has been announced that it intends to produce two new series without specifying that either will be available only to the networks.

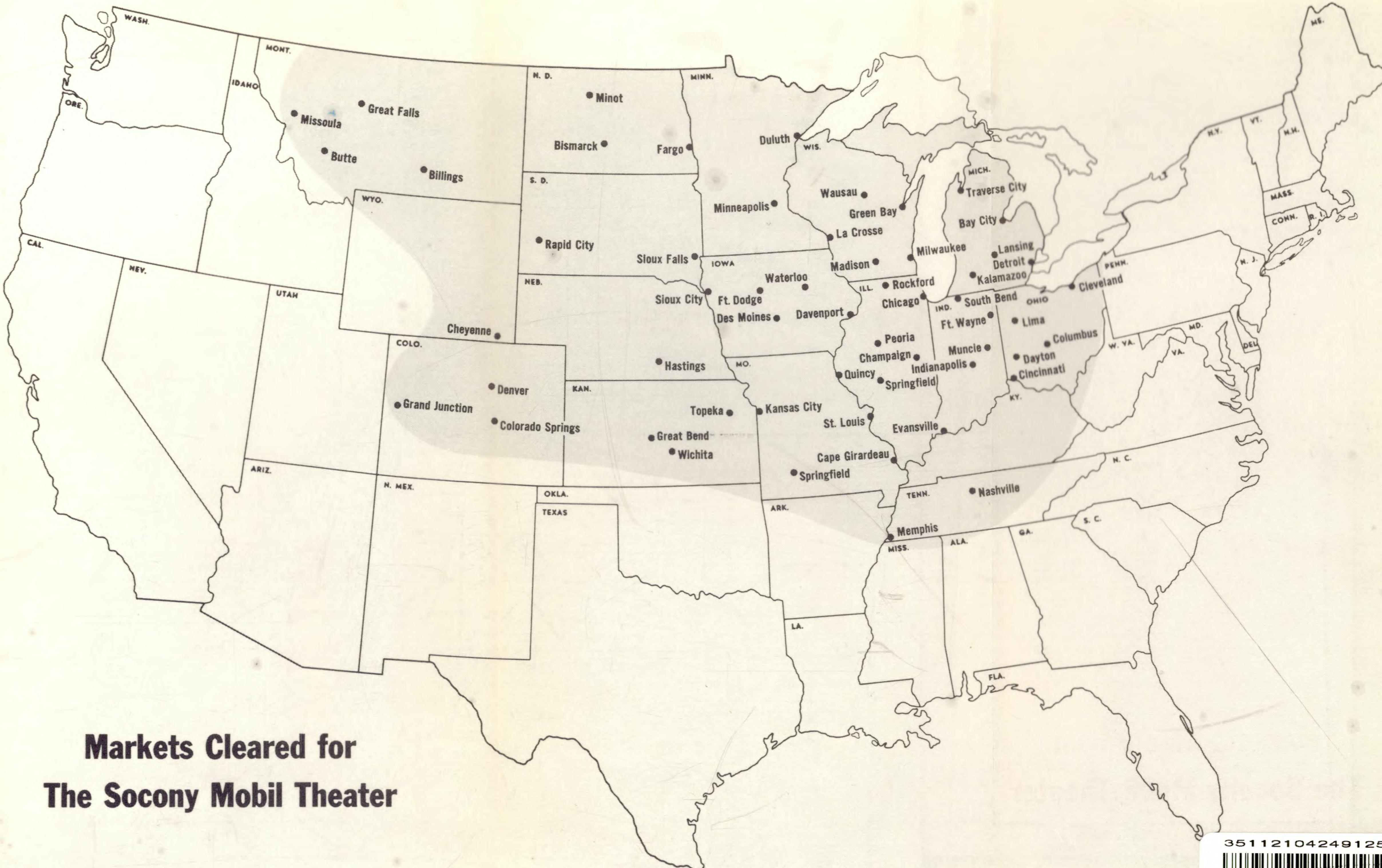
(viii) KTTV's assertion that CBS Television Film Sales, Inc., released no programs for syndication in 1956 is in error (pp. 50–51). In fact, 4 film series were released for syndication and 1 for national spot for the first time in 1956. In 1957, two new series have already ben released, and others are presently being planned.

After reviewing the syndicated film production record of the companies listed by CBS, and others selected by KTTV, KTTV states "this, then, is the sad state of television-film syndication brought about by the effects of option time" (p. 52). But television-film syndication is not in a "sad state." The figures and data supplied by CBS in the memorandum and the supplemental memorandum, referred to above, negate this conclusion. Further, according to the latest figures, there were 16 new syndicated series released in 1956 as compared with 15 in 1955, and, according to Television magazine, the total number of half-hour series in syndication in 1956 was 240 as against 170 in 1955. These figures do not include those which have gone into syndication following a network run, which may well be included because they are among the top in popularity in the syndicated field.

It should be noted, too, that KTTV limited its remarks to a selected group of companies. Other companies not mentioned by it are producing and offering new shows for sale. Gross-Krasne has reportedly closed contracts for more than $1 million in 65 markets on the O. Henry Playhouse. Walter Schwimmer reports a 40-market sale of the Eddie Arnold Show and the release early in 1957 of All Star Golf, in which $600,000 will be invested in 26 shows. It has been announced that MCA–TV's State Trooper was recently sold in 5 markets to 1 advertiser with 100 percent class A time clearance, and to another advertiser in 71 markets with 91 percent clearance in class A time. Another new program is The Tracer, produced by Minot TV, which premiered in the New York market in October 1956. Also, General Teleradio has announced three new properties for syndication—Aggie, Sailors of Fortune, and The Big Idea.

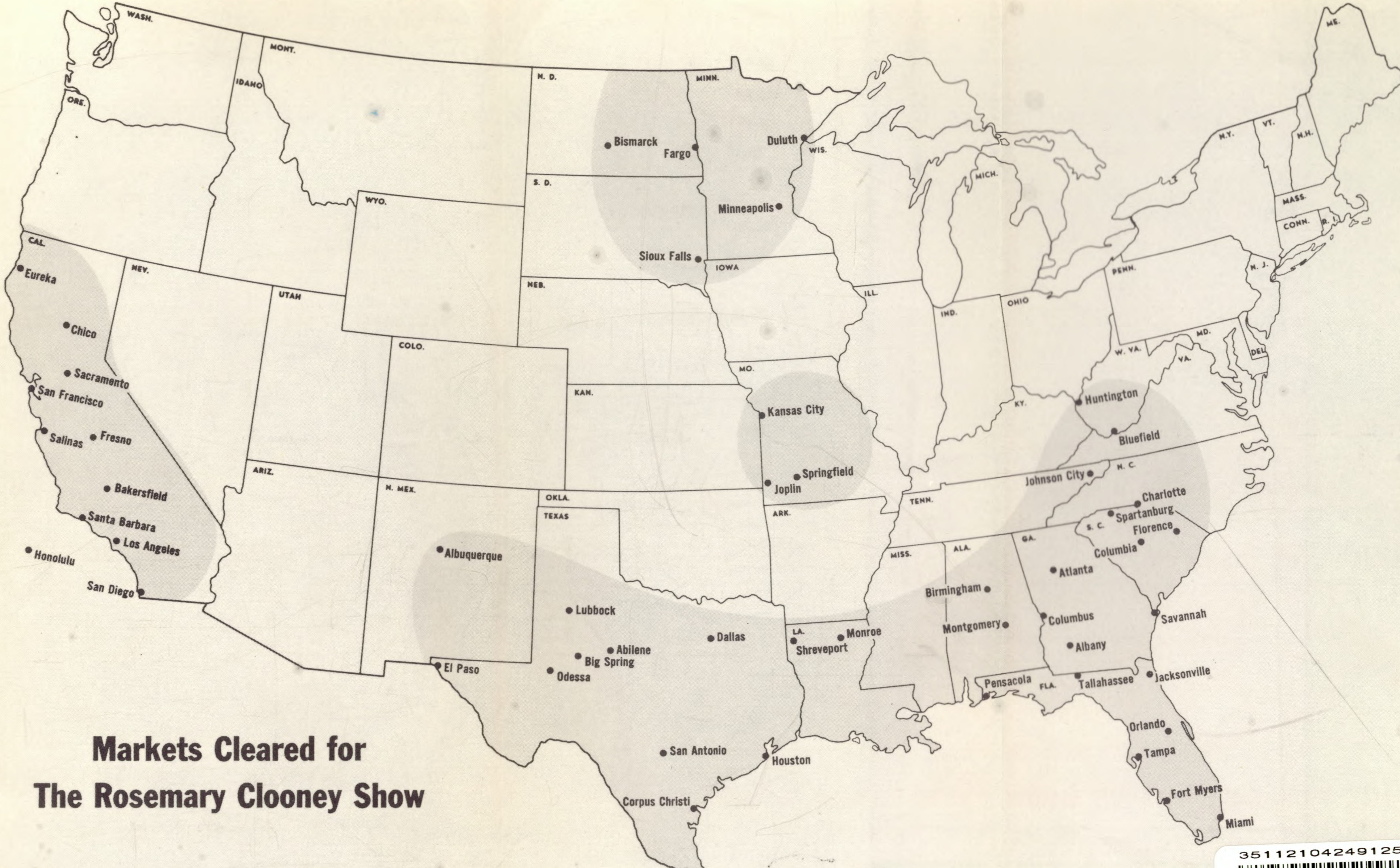
This brief recital of facts belies the alleged "sad state of television-film syndication brought about by the effects of option time." Furthermore, KTTV has overlooked a number of factors which might cause a particular producer or syndicator to discontinue production of an existing series, none of which is related to the option-time provision. In the first place, the poor series, which were not sold for that reason, die automatically. Syndicated series have had a higher fatality rate because many were not up to the standard of competitive programs—many, for instance, had previously been offered but not sold to a network or a national sponsor. Thus the syndicated film field has had a high percentage of inferior shows which would have failed regardless of time clearance. As to the good programs, they generally sell more than once in the same market. Producers depend on the residual value of the reruns to obtain the maximum profit from a series. When new shows are added to the series it is more difficult to sell the old ones and they face higher costs in producing the new ones than the old ones. It is profit to the producer or syndicator which is the deciding factor—not network option time.

As was stated in pages 117–118 of the supplemental memorandum, to the extent that there is any uncertainty on the part of syndicated-film producers and distributors concerning the future salability of their products, it is in large part attributable to the existence in the market of the film inventories of the major motion-picture studios which are being made available for television use. During 1956 the pre-1949 libraries of some of the big motion-picture companies have been released in whole or in part to television. There were between 2,000 and 2,500 different features released to television in 1956, representing 3,000 to 4,000 hours of programing. At the 3,000-hour figure, this is the equivalent of 115 series of 52 half-hour shows. As KTTV stated on page 9 of its memorandum concerning time options, much of this is very good product. There are other libraries yet to come and they will be followed by the post-1948 features. In the face of this evidence, it is farfetched to attribute to option time such unwillingness as there may be on the part of syndicated-film producers to embark on new product.



Markets Cleared for The Socony Mobil Theater

75589 O-57-pt. 4 (Face p. 3142) No. 1



Markets Cleared for The Rosemary Clooney Show

75589 O-57-pt. 4 (Face p. 3142) No. 2

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In the memorandum, CBS sharply disputed KTTV's contention (Tr. 1616–1619) that the nonaffiliated stations suffer economic loss as a result of network practices—first, because the basic-required practice of the networks prevents the network advertisers from placing their programs on nonaffiliated stations in the basic-required markets; and, second, because the networks exert improper pressure on advertisers to transfer to network affiliates network programs previously placed on nonaffiliated stations. In the comments, with respect to the first point, KTTV states only that CBS did not contradict the facts presented by KTTV but merely gave legal and economic arguments attempting to justify the validity of the "must-buy" practice (p. 54). But the only facts presented by KTTV to establish the first proposition was the so-called history of the Captain Midnight case. It was clearly shown by the letter of George A. Bolas, attached as appendix A to the memorandum, that there was no relationship between the placing of that program on KNXT, rather than on KTTV, and the basic-required practice.

CBS, in fact, did more than present legal and economic arguments. It listed numerous nationally advertised products which were advertised on network stations in Los Angeles and which were also advertised on KTTV during the period March 3–9, 1956 (memorandum, pp. 24–25). KTTV makes no reference to this or to the obvious proposition set forth in the memorandum (p. 25) that it is not the basic-required practice, but the fact of affiliation, which determines which station in a particular market will carry the network program.

Confronted as it is by the aforesaid letter of George A. Bolas, KTTV can no longer use the Captain Midnight case to prove its contention that networks exert improper pressure on advertisers to transfer programs from nonaffiliates to affiliates.[6] It now asserts that its main point was that the advertiser's decision as between KTTV and KNXT was influenced by the advertiser's desire to retain the CBS network distribution for Captain Midnight in other cities, as well as to place Tales of the Texas Rangers on the CBS network (p. 56). Again, no evidence of a tie-in by CBS of the two programs is offered. Again, KTTV is indulging in conjecture.

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KTTV reiterates its claim that there are many advertisers who would like to use television, and for whom television might be vital to the success of their businesses, but who are restricted to the second class use of television because of network practices (p. 60). It offers no proof in addition to that of the KTTV testimony (Tr. 1611–1612). Hence we rest on our reply thereto in the memorandum (pp. 29, 30). Significantly, KTTV failed to comment on the report of the Television Bureau of Advertising for the first quarter of 1956 described in the memorandum (p. 30) which shows that no network advertisers have access to television during all hours of the broadcast day.

KTTV cites the experience of KPRC-TV, Houston, to establish that even where a nonnetwork advertiser can obtain prime time on a local station, it is confronted with a diminishing supply of quality programs (p. 62). It then refers to the record of KLIX-TV, Twin Falls and KDKA-TV, Pittsburgh, taken from the hearings before this committee, to show what a fine programing job can be done by a network-affiliated station when it makes prime time available to nonnetwork programing (pp. 63–64). We conclude therefrom that the experience described by KPRC-TV is not typical and that ample nonnetwork programing is not only available but gains access to the best viewing hours on network-affiliated stations.

30. Memorandum on Behalf of Columbia Broadcasting System, Inc., in Reply to the Reply Memorandum of Law Submitted by KTTV, Inc.

INTRODUCTORY STATEMENT

Under date of October 29, 1956, KTTV, Inc., submitted to the Committee a memorandum of law purportedly replying to the opinion of counsel for CBS and

[6] It states, in part: "We were never threatened or informed in any way by CBS that we were jeopardizing the possible time period clearance of Tales of the Texas Rangers unless we moved Captain Midnight to the CBS network station in Los Angeles. We can also state that we did not inform Mr. Moore that such was the case."

the brief by counsel for NBC with respect to the legality under the antitrust laws of

(1) the option-time provisions in the Networks' contracts with their affiliated stations; and

(2) the "basic required" practices of the Networks in selling to advetisers a minimum network composed of, in the case of CBS, 52 stations.

In view of the prior memoranda submitted by CBS, this memorandum is offered, not to elaborate the entire context of fact and law required to appreciate the full merit of CBS's position, but, rather, only to correct the more plangent misconception of fact and law which KTTV's brief attempts to impart to this Committee.

I. OPTION TIME

KTTV's entire attack on the option time provisions in the Network's contracts with their affiliated television stations is built as a deceptively simple classic syllogism:

(1) block-booking is illegal *per se;*

(2) option time is factually equivalent to block-booking;

(3) therefore, option time is illegal *per se.*

As might be expected of so easy a disposition of the problem, the fault in the conclusion is that the basic premise requires serious qualification and the minor premise is not in accord with reality.

A. The movie case ruling that block-booking of movies was illegal is not determinative of television option-time practices.

Resolution of the argument postulated by KTTV turns in part upon a complete understanding of the Supreme Court's ruling with respect to block-booking in *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131 (1948). To begin with, it is not particularly helpful to inquire into what were the arguments of counsel in the *Paramount* case. Counsel for Columbia Pictures did argue, as the KTTV brief accusingly points out, that the ruling of the District Court appeared to hold, in effect, that block-booking was illegal *per se.* But, just as plainly, the Government argued that the ruling below was based upon substantial evidence that the extensive tying of film copyrights had an unreasonable purpose and effect. See Brief for the United States in Case Nos. 80–86, pp. 43–44 and 61–62. And upon the oral argument, Justices Reed and Rutledge pointed out that the decree ordered with respect to block-booking may have been justified by Columbia's participation in the overall conspiracy found by the District Court. In this setting, it is as important to note what the Court did not decide as what it did decide—how careful the Court was to state as the basis of its decision only that block-booking of copyrighted movies had the result of "add[ing] to the monopoly of the copyright in violation of the principle of the patent cases involving tying clauses" [334 U. S. at 158]. Nor did the Court, in its passing reference in *United States* v. *Columbia Steel Company*, 334 U. S. 495 (1948), to restraints that are illegal *per se*, cite the *Paramount* case, despite the fact that other portions of the *Columbia Steel* opinion discussed the *Paramount* decision at length.

But we are not left to utter speculation in interpreting the present state of the law. The Supreme Court only recently has had occasion, in *Times-Picayune Publishing Co.* v. *United States*, 345 U. S. 594 (1953) explicitly to hold that in some circumstances sales in block are not only not illegal *per se*, but are, indeed, entirely reasonable and, therefore, lawful restraints upon trade. In that case, the proprietor of the only morning newspaper in town insisted on selling advertising space only in block for both its morning newspaper (the Times-Picayune) and its afternoon newspaper (the States). The Court, nevertheless, reversed a District Court ruling in favor of the Government, inquired itself into the reasonableness of the restraint in the peculiar setting of the New Orleans newspaper field and found for the defendant. (Moreover, the Court's opinion makes its decision very nearly a controlling precedent in this case. Prior cases, including the *Paramount* case, were amply distinguished on the grounds that (a) the Times-Picayune was not dominant in the advertising market—its sales constituted but 40% of the general and classified lineage sold by the city's three newspapers; and (b) in any event, the product sold by both the Times-Picayune and the States was "fungible customer potential," so that the product of neither could be a dominant tying product. (See Section I B. *infra.*)

Thus faced with a direct contradiction of KTTV's sweeping major premise, the question is, what are the determinative factors in judging whether block sales are permissible or not. The answer is not to be found in any single word or phrase from the opinions of the Court, employed by others as a substitute for analysis of and reflection upon particulars—still less by any doctrine such as is suggested by the *per se* rule, which deems inquiry unnecessary where the conduct proscribed so reeks with evil upon its mere presentment that a court must assume the foulness of its subject. The answer, rather, must be discerned from a careful examination of the whole of the cases themselves.

For such an inquiry it is helpful to begin with one case which the Supreme Court carefully and deliberately distinguished in the *Times-Picayune* case, *Lorain Journal* v. *United States*, 342 U. S. 143 (1951). In that case a monopolistically situated newspaper's refusal to sell space to advertisers unless they forwent advertising over the local radio station was held to be an attempt to monopolize in violation of Section 2 of the Sherman Act. The monopolistic position of the newspaper cannot have been the solely determinative factor distinguishing that case from the *Times-Picayune* case, for, as the Court noted in the latter case, "* * * advertising space in the Times-Picayune, as the sole morning daily, was doubtless essential to blanket coverage of the local newspaper readership. * * *" [345 U. S. at 613.] The circumstances inevitably suggest, instead, that the fact of importance was that the Lorain Journal could advance not a single business justification for its conduct, except the desirability to it of eliminating competition from the radio station for the advertisers' dollars. The peril to the station flowed not from natural business consequences or "economic inevitability," but from manifestly "predatory commercial behavior." *Cf. Tuttle* v. *Buck*, 107 Minn. 145, 119 N. W. 946 (1909). In contrast, in the *Times-Picayune* case, despite the similar economic impact upon the competing afternoon newspaper, the Court found no "remotely comparable charge." It may be concluded, then, that there is a line to be drawn between those business practices which are designed to exclude competitors unnecessarily and those which, although they may also tend to imperil competitors, stem from fairly motivated "business requirements" and are not unreasonably designed to fit the circumstance.

That this is a fair reading of what the Court has done may be confirmed by analysis of the very cases upon which KTTV relies in its brief: *Federal Trade Commission* v. *Motion Picture Advertising Service Co.*, 334 U. S. 392 (1953); *Associated Press* v. *United States*, 326 U. S. 1 (1945); *United States* v. *Northern Pacific R. Co.*, CCH Trade Reg. Rep. para. 68,401 (W. D. Wash. June 23, 1956).

In the *Motion Picture Advertising* case, the respondent had contracted with a great number of theatre owners for the display of advertising films and bargained for the inclusion of contractual provisions that the theatre owner would display only advertising films furnished by the respondent—thus purposefully excluding the display of films by others in those theatres. The Federal Trade Commission forbade such contracts for more than one year's duration, and the Supreme Court upheld the Commission's ruling. Of course, some foreclosure of the market to competitors must result from any kind of contract the respondent might make with a theatre, in that the theatre would make room only for a certain number of advertising films. Moreover, the contracts which the Commission and the Court determined to permit would *completely* exclude *all* others for a limited period of time. What was determined unlawful then, was the complete exclusion of all competitors for an unreasonable period of time.

In the *Associated Press* case, the Government attacked the By-laws of the Association, which (1) prohibited the member newspaper publishers from selling their spontaneous news or AP news to anyone other than the Association, and (2) erected virtually insuperable obstacles to the admission to membership of any newspaper in competition with a member of the Association. The Court held that the entire design of the By-laws was to impede or destroy competition—unnecessarily and unfairly to exclude non-member publishers from the unique benefits of the AP service.

In the *Northern Pacific* case, defendants sold or leased many acres (perhaps millions of acres) of land, originally granted to it by Congress, subject to an obligation that the grantee or lessee would route by defendant's railroad railway shipments of commodities produced by or on the land. Such provisions, except in industrial leases (which the Court said might make the land an integral part of defendant's transportation business) were held to violate Section 1 of the Sherman Act. Again, the distinguishing feature of the case may be seen as the purposeful exclusion of competitors in the course of dealings entirely extracurricular to the competitive business restrained.

What emerges from a careful consideration of the decisions, then, is far from the sweeping, qualified assertion of KTTV. In fact, our courts have viewed block-booking or selling with that degree of "robust common sense" heralded in the common law, adopted as the "rule of reason" in antitrust cases and required to make of the Sherman Act a practical charter of freedom and progress. If it were otherwise, it would be illegal for a theatre to refuse to sell a separate ticket for each act or playlet in an evening's performance; for the Metropolitan Opera to refuse to sell certain seats except on a season ticket basis; for a magazine to refuse to sell less than a quarter of a page for an advertisement; for a building owner to refuse to sell less than a full floor of his building; or for a candy bar manufacturer to refuse to sell less than a 10-cent package when it consisted of two bars.

In short, neither authority nor reason supports KTTV's major premise that block-booking of any kind is illegal *per se*.

B. The movie case ruling that block-booking of movies was illegal is not applicable to television option time practices.

KTTV's brief takes a few of the lesser, but still vital, differences between the sale of movies in block and the securing of option time by television networks, looks at each of them separately and concludes that the networks' business is just like the movie industry. But that is not the fact.

First, KTTV has attempted to recast the business of the network (which, it will be remembered, sells nothing to affiliated stations, but instead sells its composite network service, including the time and facilities made available by stations for the broadcast of network programs, to advertisers) to make it appear as a mere supplier of programs—just like movie distributors, the brief says. But, of course, to movie distributors, the licensing of films is a complete, self-contained business function, their entire business reason for being. In contrast, programming is only a part—an unprofitable part, it should be noted—of CBS's service, emanating from its interest in large audiences as an attraction to advertisers. High quality, balanced programing, CBS believes, stimulates television viewing and thus adds inducement to advertisers to purchase national television advertising, ultimately to CBS's benefit. It is upon this belief that CBS has acted in engaging in programming; what CBS seeks from its investment in programming is, not immediate return, but the creation and maintenance of a capital asset, audiences, upon which may be founded an advertising business. Thus, the supplying of programs—however important, as CBS believes it is, to the attraction and maintenance of a television audience—is but a concomitancy of CBS's unique function, which is to make the many complex, large-scale arrangements required for national chain telecasting, including the engagement of simultaneous time over many stations comprising a national chain and the support of central broadcasting and national interconnection facilities. Its business is to sell the fused result as a national advertising medium to national advertisers.

In accordance with its business interest, CBS does not think of blocking programs. It thinks of securing enough time—a single block of substance—to sell to enough advertisers to render its operations economically feasible. An evenings' time, for instance, is parceled out to several advertisers only because one or two would not pay the requisite cost. The time usually is used for various programs only because, in the past, the several advertisers preferred it that way, while the network, acting in the stations' interest, could thereby insure balanced variety programing. But, businesswise, CBS is interested in individual programs only as a generative force to attain large audiences which will attract advertisers. Unlike the defendants in the *Paramount* case, it does not sell programs to its affiliated stations, not because of whimsey, but because its ultimate business is, not programing for stations, but formulating a national advertising medium for advertisers. To this business, optioned time is indigenous and essential. If analogy is required, CBS's position is not unlike that of a prospective magazine publisher who engages upon reasonable terms the services of writers, printers, and distributors so that he may be assured of a product in which to sell advertising space. As one article cannot launch a magazine, so 1 hour cannot make a network attempting to maintain or continuously use, in the public interest, national central broadcasting and interconnecting facilities.

Thus it is that the construct which KTTV blithely passes off as a mere matter of form in reality propounds differences of such substance as to pose a case entirely different from the movie case. Instead, precisely within the terms of the *Time-Picayune* case, CBS has no monopoly of means of reaching "fungible customer potential," and there is nothing in CBS's business unlawfully tied to the sale of anything else.

Apart from the precise ruling of the *Times-Picayune* decision, however, there is to be considered the unique justification of option time provisions in the television industry.

Optioned time is the only contractual consideration granted to CBS by any of its affiliated stations. Without a reasonable amount of such time, there would be at the outset no inducement to CBS to enter into affiliation agreements, and, correspondingly, no occasion for CBS to provide the manifold services it now renders to its affiliates, services which they transmit to the public. Certainly, without a reasonable block of contiguous optioned time, CBS could not satisfy the want of station operators for assistance in presenting the best available, balanced, most profitable (to the stations), continuous programing, during non-option as well as option time. Indeed, it is most uncertain whether CBS could maintain even its central broadcasting facilities and the interconnection services for which it presently contracts. It is, of course, by the preservation of these facilities for continuous television use that affiliated stations and viewers are afforded opportunities to view popular programs broadcast from the centers of the entertainment world and events of great public interest, such as a Presidential address, as and when they occur—again during nonoption as well as option time.

In the last analysis, the primary fact is that contracting for options in block is the natural corollary of contracting with a single station in an individual community. Contracting with one station in a community, in turn, is (a) practically compelled by the increased complexity that would be incurred by switching from one grouping of stations to another at frequent intervals, and (b) the natural, sensible business course for two parties each interested in the other's service on a continuous basis.

Viewing the whole, then, what movie producer or other supplier ever had this complex physical, definitional, natural justification for contracting in block? There was no problem in the movie case of serving national advertisers; of arranging for simultaneous showing of the same program across the country; of national interconnection facilities desired by all on a continuous basis; of balanced programming in the public interest required of stations; of affiliations compelled by practicalities. In truth, the optioned time for which CBS contracts is designed to grant only reasonable assurance that a network as the television industry has come to know it—and perhaps even the industry as the public has come to know it—can exist. No law, we submit, has yet been interpreted to outlaw existence.

Turning next to the reasonableness of the option time provisions themselves, again KTTV has aimed wide of the significant facts.

First, the most crucial fact—totally ignored in KTTV's brief, is that the option does not operate against contracts by CBS affiliated stations with other networks. Since a network by definition is an organizational means by which occurs simultaneous broadcasting of an identical program by even two interconnected stations [cf. § 3 (p) of the Federal Communications Act, 48 Stat. 1066 (1934), as amended, 47 U. S. C. § 153 (p) (Supp. 1955)], and thus may include even regional network organizations [see F. C. C. Report on Chain Broadcasting, Chapter VII J; 47 Fed. Regs. § 3.23], this fact is of great practical business moment. See Cravath, Swaine & Moore *Opinion and Memorandum*, p. 49. Thus far, no case, we think, has held unlawful a contractual provision having so minimal an effect upon competitors.

Second, even as against the station, the provisions are so cautiously drafted that, in the light of the high purposes to be achieved, they cannot be deemed anything but *eminently* reasonable. In addition to the complete freedom of the station to contract with other networks, the following limitations on option time deserve to be restated. (1) The option applies only to *sponsored* programs, thus at once eliminating any suspicion that the time contracted for is unrelated to the requirements of advertisers. (2) Any program offered by CBS which the station "reasonably believes to be unsatisfactory or unsuitable" may be rejected or refused. (3) Any program offered or even already contracted for which, in the station's "opinion", is contrary to the public interest may be rejected or refused. (4) A program may also be rejected or refused, when offered or even when already contracted for, when the station wishes to substitute a program of outstanding local or national importance. (5)

In addition, the option does not apply to any program offered on less than 56 days' notice. One may search the annuals of reported cases or the files of any industry, we believe, without finding a contractual provision so mild in protecting one party and so yielding in protecting the other.

To all this, KTTV can answer only that the provision must mean something, emphasizing that network sponsored programs offered during nonoption time may be broadcast by the station "at its election". Of course, the option time provisions mean something. But that does not mean that they are exclusionary, or tie any program to another or are in the least tainted with illegality. What the network protects itself against is the utter caprice or bad faith of the individual station operator. When it is appreciated that some assurance of time is essential to the creation and operation of a network, so little hardly can be said to be too much.

The attempt to draw a pattern of similarity, then, between this case and the movie case comes down to the mere distortion or slighting of significant differing facts and the exploitation of a word, "block-booking", which came from the movie industry. Quite simply, this is not the movie industry; this is not the movie case.

II. BASIC REQUIRED STATIONS

KTTV's attack on CBS's rule that a CBS advertiser use at least 52 stations within the network is equally an attempt to strip the meat from the bones of the television industry and pass off the skeleton as some other case which better serves KTTV's argument.

In the point of fact, KTTV is right about only one thing, and that is that the option-time provisions and the basic required rule are related parts of the network organism. As station-time options are required to compose a network, a minimum network-purchase rule is necessary to insure use of the synthesis devised, which, in the case of CBS, is a nationwide network. This is compelled by both congenital business and physical considerations.

The CBS Television Network, it bears repeating, is a *national* advertising medium. It avails itself of *national* interconnection facilities on a continuous basis and otherwise has geared its business to attract and service *national* advertisers. Such advertisers are charged a minimum amount commensurate with the service thus made available, which amount provides the viewership of 52 "basic" stations as the basic network unit. To charge less, to provide less, would be so to retrench the business as to disable the network from continuing its many nationally scaled commitments. For the basic physical fact is that once interconnecting, transmission lines have been committed to one program, *they cannot be used to transmit another program during the same time*. Moreover, due to the limited number of transmission lines which may be available to one network at a given time or over a period of time, in some circumstances, depending on the location of the stations receiving the first program, the telecast of a second program by CBS over separate transmission lines to stations not receiving the first program would be impossible. In any event, probably in many cases, the relative cost (in terms of the audience reached) to an advertiser of such a second program would be prohibitive. Thus, if a number of advertisers chose to utilize the CBS network to reach audiences only in 10 or 20 cities of their selection—choosing, for instance, the 20 stations reaching the largest audiences or stations in cities where the advertiser desired special sales promotion—the rest of the country much of the time might well be cut off from any live CBS network program. In result, to force CBS to telecast any advertiser's program over his selection of stations, however few in number or arbitrary in choice, would effect the Balkanization and virtual destruction of a nationwide communications medium.

Nevertheless, KTTV insists that the minimum network must fall beneath the wooden application of per se doctrines condemning "refusals to deal," concerted or otherwise. As might be expected, however, upon analysis, the law is not so impervious to reason.

It would serve little purpose to recite the obvious conecrning the refusal to deal cases and quotations put together in KTTV's brief. Together with the other leading decisions, they are sufficiently treated in the recent opinion of the District Court in *Interborough News Co.* v. *The Curtis Publishing Co.*, 127 F. Supp. 286, 300, n. 13 (S. D. N. Y. 1954), aff'd, 225 F. 2d 289 (2d Cir. 1955), holding that even group refusals to deal are not illegal per se. See also *United States* v. *Insurance Board of Cleveland*, 144 F. Supp. 684, 697–698 (N. D. Ohio

1956). It should suffice here to repeat Judge Sugarman's carefully drawn conclusion that:

"On analysis, it seems that the boycott itself was not condemned as an unreasonable restraint of trade in each of those cases, but rather the Court condemned either what was sought to be accomplished by the concerted refusals to deal or what was the necessary result thereof." [127 F. Supp. at 300.]

Or, in other words,

"An examination of the cases cited * * * reveals that in all of them the vice of illegality was inherent in the unlawful objectives of the combination and in the means employed to accomplish their purposes * * *." [*United States* v. *Insurance Board of Cleveland, supra.*]

There is not in the case of CBS, as there was in *Kiefer-Stewart Co.* v. *Seagram & Sons*, 340 U. S. 211 (1951), any unlawful ultimate purpose (e. g., price fixing) in CBS's decision to define its medium nationally in terms of basic required stations. There is not, as there was in *Fashion Originators Guild* v. *Federal Trade Commission*, 312 U. S. 457 (1941), any agreement with competitors to regulate competition among them and totally preclude other competitors from selling to the conspirators' customers. There is not, as there was in *Associated Press* v. *United States*, 326 U. S. 1 (1945), any agreement among competitors designedly to totally exclude some, unnecessarily, from the benefits of a vital service. There is merely the decision to engage in one's business, nationwide network broadcasting, in the manner which the nature of the business orders.

Perhaps recognizing the absence of all such earmarks of suspect conduct, KTTV has confined itself to finding exclusion of, or monopoly "closed town" leverage against, advertisers as the consequence of "affiliation agreement[s] including option time * * *." Thus KTTV is brought back full circle to its original misunderstanding and exaggeration of option time.

In fact, option time excludes no one from either network or local station advertising and gives CBS no monopoly of time on any station with which to "force advertisers to buy time on other stations in the chain." So far as an advertiser who wishes to reach the audience of more than one station but less than 52 is concerned, he can avail himself of other networks of any size which presently exist or might be created, for an hour, or a year, without any option time barrier to including CBS affiliates within his network. See p. 10, *supra*. Or he may agree with another advertiser or other advertisers and CBS to split the CBS Television 52 station network, each advertiser taking a convenient segment of the whole. An advertiser who wishes only a local audience reached by one CBS affiliated station, of course, has available to him (i) all the non-option time during the station's broadcasting day; (ii) all the spot announcement time during all hours, including time adjacent to or interspering network programs sponsored by national advertisers; and (iii) the very real opportunity to persuade the local station to accept his program in lieu of the network program [see pp. 10–11, *supra*]. In substance, all that is forbidden to any advertiser is the use of the CBS network facilities for less than they are. In the sense of the cases, this is not at all a refusal to deal.

In this analysis which lends special pertinence to KTTV's counsel's conclusion that *Prairie Farmer Publishing Co.* v. *Indiana Farmer's Guide Publishing Co.*, 88 F. 2d 979 (7th Cir. 1937), *cert. denied*, 301 U. S. 696 (1937), *rehearing denied*, 302 U. S. 773 (1937), "did not involve a refusal to deal, concerted or individual." In this they are right, for no advertiser was excluded from advertising in any of defendant's publications. It was rather that no advertiser was permitted to force upon the publishers a grouping of publications for joint advertising rates not of the publishers' choosing. So concededly distinguished from the true "refusal to deal" cases, this ruling remains convincing authority, cited approvingly as recently as 1954 [*Interborough News Co.* v. *The Curtis Publishing Co.*, *supra*, 127 F. Supp. at 300, n. 14]. What must then be conceded is that the *Prairie Farmer* case is the network case in the extreme. Exactly as in the *Prairie Farmer* case no television advertiser is precluded from advertising over any station individually or through any network, except as a station, in its own unfettered judgment, prefers to commit certain time to others and has some minimal obligation to the network during certain hours for certain programs. It is rather that, by the dictates of legitimate business choice, economic sense, physical necessity and fairness to viewers, an advertiser is not permitted to so abuse the use of the national television medium as to accomplish its destruction. That, reason suggests and authority confirms, cannot be deemed unlawful.

CONCLUSION

For the foregoing reasons it is submitted that KTTV's memorandum does not fairly present the facts or represent the law by which the legality of CBS's business practices must be judged. Both the option time contractual provisions and the minimum network rule are so rooted in the peculiar necessities of the industry that they cannot be understood, let alone judged, apart from the industry. When such understanding is supplied the Committee might well ask, could it be otherwise? The answer may be hard to come by—which, in a sense, is a justification in itself of the practices which the industry developed as natural to it. Beyond that the answer, we suggest, is to be found in the artistic and economic growth of all those engaged in various endeavors within the industry. It is a fitting admonition that—

> "* * * We must not forget that the law is a living dynamic force at all times responsive to the needs of society, and not a mere game in the playing of which judges move about quotations from earlier cases as one would shift kings and queens on a chessboard." [*United States* v. *Morgan*, 118 F. Supp. 621, 688 (S. D. N. Y. 1953).]

In their setting we urge again that neither the option time provisions nor the minimum network rule violates any of the antitrust laws.

January 28, 1957.

Respectfully submitted.

CRAVATH, SWAINE & MOORE,
Attorneys for Columbia Broadcasting System, Inc.,
New York 5, N. Y.

31. LETTER FROM GEORGE R. DONAHUE REGARDING THE QUALITY OF THE WORK OF INDEPENDENT SUPPLIERS OF SCENERY AND SETS

NEW YORK, N. Y., *January 31, 1957.*

Senator WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce, United States Senate, Washington, D. C.

DEAR SENATOR MAGNUSON: Last year your committee was gracious enough to hear the complaints of my clients, members of the Scenery Suppliers Association, relative to the domination of the scenery supply aspects of television production in the New York area by the three giant networks.

Subsequent to the presentation of our written statements and oral testimony before the committee the networks submitted statements concerning staging services and their policies and practices re the procurement of scenery.

All of these statements stress the networks greater capacity to develop new techniques and methods geared to the electronic and color requirements of television. I would like now to specifically call your attention to the one remaining show which is produced, staged, and serviced by factors completely independent of the networks.

This show is called Your Hit Parade, and is produced by Batten, Barton, Durstine, and Osborn through producers, directors, and the independent scenery supply company of Peter J. Rotondo, one of the principal witnesses before your committee, all hired by that agency. Mr. Rotondo's organization not only supplies the scenery but contracts to supply the costumes and other staging effects needed for this production.

My point in calling your attention to this show is that its production has been hailed as the most imaginative black and white program, and when it has been presented in color as the outstanding example of a true artistic use of the new color medium.

In support of this I am submitting to you with this letter photostatic copies of three columns written by the Nation's outstanding reviewer, Jack Gould, of the New York Times, covering a period from January 18, 1954, which not only describe the artistic quality of this show but deal with the whole problem of color vis-a-vis black and white using this independently produced show as a criteria for proper development in both media.

I sincerely hope that the committee takes judicial notice of these facts, and in the light of them evaluates the networks' contention that they are justified in being in the scenery supply and staging services business because they alone are competent to develop the techniques necessary for television. To the members of the Scenery Suppliers Association and people connected with the industry this claim has long been considered an obvious tongue-in-cheek assertion to justify network domination of all aspects of television broadcasting.

It is our hope that your committee will see through this sham and urge needed relief to the traditional small businesses connected with the American theater who face the threat of extinction by virtue of the grave monopoly trend within the television industry.

Please accept my personal thanks and best wishes for your cooperation and interest in this matter.

Sincerely yours,

GEORGE R. DONAHUE, *Consultant.*

[From the New York Times, Monday, January 18, 1954]

TELEVISION IN REVIEW HIT PARADE

SATURDAY NIGHT GLOWS AS TUNEFUL PROGRAM IS GIVEN IN COLOR—SONG, DANCE PRETTY GIRLS AND COSTUMES COMBINE TO SHOW OFF MEDIUM

By Jack Gould

The National Broadcasting Co. played its ace in color television on Saturday night—a presentation of Your Hit Parade in natural tints. In its visual attractiveness the program was a joy, a panorama of shadings and hues that was altogether captivating. The Broadway musical comedy stage had better start worrying; color TV is going to be stiff competition.

The color broadcast of Your Hit Parade long had been awaited because the program is a readymade subject for the electronic palette. With song, dance, pretty girls and superb production and costuming, the weekly dramatization of popular tunes contains all the requirements for an exciting display of the new medium.

The advance hopes were thoroughly justified. From the opening glimpse of Dorothy Collins in her familiar blouse, which turned out to be a beguilingly soft pink, Your Hit Parade was a tasteful, gay, and subdued reflection of the rainbow's wonders. It was probably the most impressive color TV shown thus far.

With color, Your Hit Parade acquired a veritable Ziegfeld opulence. The introduction of lovely pastels complemented the mood of the romantic ballads and the more vivid hues imparted a new gaiety to the livelier selection. To television's existing artistic tools of melody and movement, there was added before a viewer's eyes the third emotional dimension of color. The addition spelled the difference betwen "live" television and living theater.

As a black-and-white program, Your Hit Parade always has reflected perhaps the most imaginative stagecraft of any TV show, and this know-how was magnificently translated to color.

For the number entitled "Changing Partners" the setting was a large ballroom. As the couples swirled around the floor, the delicate blues, salmon pinks, and fragile lavenders of the ladies' gowns made their own symphony for the eye. The long white gloves and the contrasting hair tints of the girls, set against the black and white of the men's formal attire, were straight out of a picture book.

In another selection a red devil dancer bounded on stage; it was the color alone that made him an exciting menace. The story of the clown in Oh, Mein Papa was told in a way that in black and white could not have had the same meaning. In the foreground the solosit was shown in closeup; in the background there was a small figure in full clown regalia entertaining an off-stage audience. Thanks to color, the clown was not lost in a gray haze but was seen in definition and detail.

Giselle McKenzie is eyeful enough in black and white but in a silver lame gown, brilliant lipstick and recognizable flesh tones she made a torch ballad seem to say more than ever. For the No. 1 song on the parade, Stranger in Paradise, the setting was borrowed from Madame Butterfly. The contrast between the Navy officer's dress-whites worn by Snooky Lanson, and the lush kimono worn by his oriental vis-a-vis gave a truly wonderland creditability to the rather trite lyrics.

Your Hit Parade is never going to seem quite the same again in black and white.

On another color television front, Dr. Allen B. Du Mont, head of the Du Mont network and manufacturing company, and Kenneth B. Wilson, president of the National Better Business Bureau, were heard Thursday night in a special panel discussion on the future of color TV. The program dealt onesidedly with color TV's technical and economic problems and never came to grips with the importance of the end product from the public's standpoint—what seeing a show in color means.

The discussion, especially in the loaded questions of John K. M. McCaffrey, the moderator, was obviously designed to stimulate black-and-white set sales. It reflected what is now almost a state of mind among many manufacturers and retailers—that color TV should go away and stop bothering them. After Your Hit Parade that seems like a forlorn hope.

[From the New York Times, December 17, 1956]

TV: Color as it Should be

YOUR HIT PARADE SOLVES MAJOR PROBLEMS BY USING TASTE AND IMAGINATION

By Jack Gould

While the National Broadcasting Co.s nabobs and trained seals were vacationing in Miami over the weekend, they may have missed a major development on their own color television front.

Saturday night's presentation of Your Hit Parade over channel 4 was far and away the most exciting color yet seen. It was vivid proof that most of color television's problems now originate in the studio, not in the modern color receiver.

The staff of Your Hit Parade—Dan Lounsbery, producer; William Hobin, director; Ernest Flatt, choreographer; Phil Hymes, lighting specialist; Paul Barnes, scenic designer; and Sal Anthony, costume designer—follow a major credo in color; simplicity. On Saturday the color was employed sparingly but with exquisite taste and imagination.

For once the screen was not cluttered with coarse pigments, but alive with real beauty and striking lines. The great feat was the merciful liberation from the two hues that have thus far almost stopped color video in its tracks: the dominant and immensely irritating neon blue and neon red.

Part of the answer was that Your Hit Parade was not afraid to make generous use of white in settings and costumes. Normally, white is scorned in color programing because it allegedly shows up poorly on black and white receivers. But Your Hit Parade showed that white can be employed to magnificent effect, framing facial complexions, setting off other colors and lending reality and visual cleanness to the whole scene. Further, Your Hit Parade obviously employed color to speak for itself, as an added instrument of expression.

Particularly significant Saturday night was the fact that the color set could be adjusted once and then left alone: the color composition on the screen was both so natural and balanced that there was no need to commute between the set and viewing chair.

If the Sarnoffs, pere and fils, really want to get color off the ground, the staff of Your Hit Parade is their answer. On Saturday a viewer at last saw a true artistic use of the new color medium; it has been a long time in coming.

[From the New York Times, December 30, 1956]

Color TV Marks Time

IT HAS A LONG WAY TO GO TO PUBLIC ACCEPTANCE

(By Jack Gould)

Color television obviously still faces a long uphill fight before it enjoys significant public acceptance. The new medium has not come along as quickly as many persons had hoped and its immediate future course now must be reexamined. Economically and artistically, color TV has many problems that would appear to preclude further overly optimistic predictions. Very probably it will be some years yet before color video achieves the status of a mass service.

In a refreshingly candid statement David Sarnoff, chairman of the Radio Corporation of America, which has waged the color battle single-handedly, acknowledged Wednesday that in the last year 102,000 color sets were sold, roughly half of what had been expected. In contrast with the estimated 39 million black-and-white receivers reportedly in use, the statistical importance of color is indeed small.

Some of RCA's rivals in the manufacturing field have rather gleefully noted the slow progress in color and others have suggested that tinted TV is one of the industrial failures of the year. That these concerns have done nothing themselves to aid the cause of color is one major reason for the disappointing showing. But it is also evident that color has not yet generated the excitement RCA understandably believed would be forthcoming. Several hard facts must be faced.

First, there is the cost of the television receiver itself. Some years ago it was widely assumed that if the cost of sets dropped to the $500 mark the so-called Cadillac trade would become interested and give color the initial push essential to assembly-line production. This goal has been reached, in itself an accomplishment of no small magnitude, but the economic premise itself may be now out of date.

PREMIUM

Realistically, it must be questioned whether the public will pay any substantial premium for color. With the manufacture of television receivers, a violently competitive and even cutthroat operation, the day may come when it will be necessary to think of color merely as an added sales appeal. In short, the color receiver must become truly competitive with the black-and-white receiver, which means it must drop down in cost to $200 or $250.

When the consumer can get a combined color and black-and-white receiver for the same price as color alone, then the new medium will get off the ground on a large scale. If RCA perseveres in its efforts to attain that objective, its very real color losses at the moment—some $6,900,000 last year—could be quickly erased by a whopping competitive advantage in the future. Manifestly, that is what lies behind Mr. Sarnoff's current thinking.

But before Mr. Sarnoff can hope to realize that ambition it may be necessary that both RCA and its corporate subsidiary, the National Broadcasting Co., take a fresh look at the color they are putting on the air. As one who has had color in his home for several years, this viewer is of the opinion that perhaps Mr. Sarnoff has erred in increasing the volume of color programing, as he has done very substantially this year, without due thought to the quality of the tints being shown the public.

The whole history of color has revolved primarily around the word "compatibility." It has been used in the technical sense of meaning that a program transmitted in color could be seen on black-and-white on sets currently in use.

But now the greater problem is "compatibility" in the artistic sense. Does the color program appear on the color set in natural and beguiling tints while at the same time giving a satisfactory image on black-and-white receivers? It can, but by no means often enough.

COMPROMISE

Strangers to color TV frequently watch a program in various hues and come away disappointed; there is something a little unreal and unappealing about the colors. When the volume of this type of programing is indiscriminately increased, it must be asked whether the cause of color is not actually being harmed rather than helped.

The difficulty lies in artistic pursuit of compromise between the color and monochrome images. Shadings that may make the best images in black and white often are not the best for the color screen. And since 39 million homes are watching in black and white and only some 102,000 in color, the emphasis is naturally on satisfying the former.

The upshot is that a great deal of today's color is not what it should be. Because blue reproduces so satisfactorily in black and white, it receives inordinate use in color programing. So, too, does red.

Here economics plays a major part. Unless production budgets are increased fabulously, which no sponsor wants to encourage, a costume designer for a spectacular, for instance, must make use of the gowns that are available in the rental costume houses. The inventory of these houses naturally has been built up for the needs of black-and-white television. In turn, the costume availability may dictate the coloring of scenery. A chain of events is set in motion that precludes a choice of colors for the sake of color alone.

There is a solution but cost has prevented its widespread adoption. This is the design of entirely new costumes for the color medium. Your Hit Parade, which can amortize the cost of clothes over several weekly programs, is in a position to do this; this is one major reason why its few color programs have been so strikingly impressive yet also excellent on black-and-white sets. The same tasteful and beguiling use of color shows up in the gowns of Dinah Shore.

But where color for its own sake is not the first consideration there are the visual distortions of seeing a Christmas tree in blue, a Southern mansion in blue or Greer Garson, in the somber final act of The Little Foxes, attired in a discordant brilliant blue dress.

COMMENDATION

In the long run, therefore, RCA and NBC would seem well advised to reexamine their expenditures on color. Too many of their current presentations are just shows intended for black and white upon which a color camera has been focused; these could be curtailed without any great loss. With the money thus saved there could be more experimentation in doing shows in terms of color alone, with costumes, scenery and lighting all planned for their value in tints.

For those who have seen color at its finest—and its sheer visual beauty can add enormously to the pleasure of viewing—the efforts of RCA must be commended; those concerns that propose merely to sit around and cash in after RCA has coped with the economic headaches of pioneering are hardly adding to their own stature.

But, having staked both his reputation and his company's resources on color, Mr. Sarnoff must proceed judiciously. Color that isn't truly natural will only lessen enthusiasm for the new medium and drive prospective customers away. Unlike black-and-white television the color medium will not be popularized by its novelty; only sustained quality will tell the story.

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